

21391

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN J. BURRIS,

APPELLANT

APPELLATE CASE NO. 2013-001035

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated April 25, 2013).....	1
MOTION TO AMEND INDICTMENT.....	9
MOTION TO RECUSE JUDGE.....	21
MOTION TO SEQUESTER WITNESSES.....	22
MOTIONS TO SUPPRESS.....	22
MOTION FOR CONTINUANCE.....	29
PRELIMINARY REMARKS BY THE COURT TO THE JURY.....	34
OPENING STATEMENT BY MR. WARING.....	41
OPENING STATEMENT BY MR. BURRIS.....	43
TESTIMONY	
JESSE ALLEN GAY	
Direct examination by Mr. Waring.....	46
Cross-examination by Mr. Burris.....	53
Redirect examination by Mr. Waring.....	57
Recross examination by Mr. Burris.....	58
TONY BUNCH	
Direct examination by Mr. Waring.....	59
Cross-examination by Mr. Burris.....	67
Redirect examination by Mr. Waring.....	83
Recross examination by Mr. Burris.....	84
ANTHONY MARTIN DOXEY, JR	
Direct examination by Mr. Waring.....	87
Cross-examination by Mr. Burris.....	99
ROBERT ANDREW COKER	
Direct examination by Mr. Waring.....	117
Cross-examination by Mr. Burris.....	141
Redirect examination by Mr. Waring.....	173

Recross examination by Mr. Burris	175
DAVID MICHAEL OWCA	
Direct Examination by Mr. Waring	177
Cross-examination by Mr. Burris	184
Redirect examination by Mr. Waring	192
Recross examination by Mr. Burris	194
MOTION FOR A DIRECTED VERDICT	196
CLOSING ARGUMENT BY MR. BURRIS	201
CLOSING ARGUMENT BY MR. WARING	204
CHARGE ON THE LAW	208
VERDICT	222
SENTENCING	228
DEFENDANT'S EXHIBIT # 25 (E-MAIL AND REPAIR INVOICE)	230
DEFENDANT'S EXHIBIT # 26 (WORK ORDER)	233
DEFENDANT'S EXHIBIT # 27 (INVOICE)	237
INDICTMENTS	238
CERTIFICATE OF COUNSEL	242

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS
COURT:**

**STATE'S EXHIBIT # 4 (PHOTOGRAPH)
STATE'S EXHIBIT # 5 (PHOTOGRAPH)
STATE'S EXHIBIT # 6 (PHOTOGRAPH)**

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case Nos.: 2012-GS-10-4289
SHAWN JUSTIN BURRIS,) 2012-GS-10-4290
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON APRIL 25, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

1	<u>I N D E X</u>	
2	DESCRIPTION	PAGE
3	PROCEEDINGS	7
4	FORMAL ARRAIGNMENT	17
5	JURY SELECTION	19
6	PRETRIAL MATTERS	38
7	JURY INSTRUCTIONS	51
8	OPENING STATEMENTS	
9	By Mr. Waring	59
10	By Mr. Burris	61
11	WITNESS: JESSE GAY	
12	Direct Examination by Mr. Waring	64
13	Cross-Examination by Mr. Burris	70
14	Redirect Examination by Mr. Waring	74
15	Recross-Examination by Mr. Burris	76
16	WITNESS: TONY BUNCH	
17	Direct Examination by Mr. Waring	78
18	Cross-Examination by Mr. Burris	85
19	Redirect Examination by Mr. Waring	101
20	Recross-Examination by Mr. Burris	102
21	WITNESS: ANTHONY MARTIN DOXEY, JR.	
22	Direct Examination by Mr. Waring	105
23	Cross-Examination by Mr. Burris	117
24	WITNESS: ROBERT ANDREW COKER	
25	Direct Examination by Mr. Waring	135
26	Cross-Examination by Mr. Burris	159
27	Redirect Examination by Mr. Waring	190
28	Recross-Examination by Mr. Burris	193
29	WITNESS: DAVID MICHAEL OWCA	
30	Direct Examination by Mr. Waring	195
31	Cross-Examination by Mr. Burris	202
32	Redirect Examination by Mr. Waring	210
33	Recross-Examination by Mr. Burris	212
34	STATE RESTS	213
35	DEFENSE RESTS	220
36	CLOSING ARGUMENTS	
37	By Mr. Burris	221
38	By Mr. Waring	224
39	JURY CHARGES	227
40	VERDICT	241
41	POLLING OF THE JURY	242
42	SENTENCING	248
43	REPORTER'S CERTIFICATE	255

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

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LORELLE PROCTOR

TED SMITH

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

<u>E X H I B I T S</u>			
	DESCRIPTION	I.D.	ADMITTED
1	State's Exhibits:		
2			
3	No. 1 Photo	47	80
4	No. 2 Photo	47	107
5	No. 3 Photo	47	107
6	No. 4 Photo	47	109
7	No. 5 Photo	47	109
8	No. 6 Photo	47	109
9	No. 7 Photo	47	111
10	No. 8 Photo	47	111
11	No. 9 Photo	47	114
12	No. 10 Photo	47	114
13	No. 11 Photo	47	139
14	No. 12 Photo	47	139
15	No. 13 Photo	47	139
16	No. 14 Photo	47	139
17	No. 15 Spray Paint	140	141
18	No. 16 Photo	47	142
19	No. 17 Photo	47	142
20	No. 18 Photo	47	142
21	No. 19 Photo	47	142
22	No. 20 Photo	47	142
23	No. 21 Photo	47	142
24	No. 22 Photo	47	142
25			

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1	<u>EXHIBITS</u>		
2	(continued)		
3	DESCRIPTION	I.D.	ADMITTED
4	State's Exhibits:		
5	No. 23 Saw handle	145	146
6	No. 24 Saw blade	145	146
7	No. 25 Photo	47	148
8	No. 26 Photo	47	148
9	No. 27 Photo	47	148

10	<u>EXHIBITS</u>		
11	DESCRIPTION	I.D.	ADMITTED
12	Defendant's Exhibits:		
13	No. 1 Photo	47	
14	No. 2 Photo	47	
15	No. 3 Photo	47	
16	No. 4 Photo	47	
17	No. 5 Photo	47	
18	No. 6 Photo	47	
19	No. 7 Photo	47	
20	No. 8 Photo	47	
21	No. 9 Photo	47	
22	No. 10 Photo	47	
23	No. 11 Photo	47	
24	No. 12 Photo	47	
25	No. 13 Photo	47	

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<u>EXHIBITS</u>			
(continued)			
	DESCRIPTION	I.D.	ADMITTED
1	Defendant's Exhibits:		
2	No. 14 Photo	47	
3	No. 15 Photo	88	
4	No. 16 Bunch -- Report	96	97
5	No. 17 Weather Report	117	
6	No. 18 Policy and Procedure	122	
7	No. 19 Report, Additional Narrative	132	
8	No. 20 Photo	167	
9	No. 21 Photo	167	
10	No. 22 Detail of Evidence	169	
11	No. 23 NCPD Prospective Summ Report	173	
12	No. 24 Affidavit/Warrant	181	
13	No. 25 Invoices/Google E-mail	204	
14	No. 26 Maintenance Report/Work Order	208	
15	No. 27 Kru-Kel Invoice	212	
16			
17			
18			
19			
20			
21			
22			
23			
24			
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Reported By:
 Rolayne M. Volpe, CCR, RPR
 Official Court Reporter for the State of South Carolina

1 The above-styled cause came on for hearing on
2 the 25th day of April, 2013, at 9:01 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL

9 (The Defendant is present in the courtroom.)

10 THE COURT: We are beginning our pretrial
11 matters in the matter of the State versus Shawn Justin
12 Burris. Mr. Waring, are you prepared to go forward?

13 MR. WARING: Yes, your Honor.

14 THE COURT: Mr. Burris, are you prepared to go
15 forward at this time?

16 MR. BURRIS: Yes, ma'am.

17 THE COURT: Mr. Burris, I just wanted to take
18 just a few moments, and I normally would not do this,
19 but it was -- I was apprised last evening -- and I don't
20 need a comment as to the veracity of what was said. --
21 but it was indicated to me that there was some
22 indication that you were going to receive a contempt
23 charge. Let me make this clear to you. I'm going to
24 treat you with the same courtesy and professionalism
25 that I treat Mr. Waring, Mr. Malloy, and Ms. Proctor.

1 If you abuse the courtesy that I am showing to you, we
2 will continue the trial without you. Do you understand
3 that, sir?

4 MR. BURRIS: Yes, your Honor.

5 THE COURT: All right. Mr. Burris, I take this
6 very seriously, and you will hear in the charge that I
7 give to the jurors: This courtroom is a place of honor
8 that's dedicated to the protection and preservation of
9 citizens' rights, and that includes you. All right?
10 And so this -- I will treat you with the same respect,
11 because this is very important. You sit here -- and I
12 used to give the charge that you are surrounded and you
13 are wearing a robe of righteousness. All right?

14 MR. BURRIS: (Moves head up and down.)

15 THE COURT: And so I ask of you that you
16 conduct yourself accordingly. I'm going to instruct the
17 jurors that you are appearing *pro se* and, as such, you
18 are in -- in essence, representing yourself and, as
19 such, you are an officer of this Court. Do you
20 understand what that means?

21 MR. BURRIS: Yes, ma'am.

22 THE COURT: Thank you.

23 Mr. Burris, do you waive formal arraignment?

24 MR. BURRIS: No, ma'am.

25 THE COURT: All right. You wish to be formally

1 arraigned?

2 MR. BURRIS: Yes, ma'am.

3 THE COURT: Are there any matters concerning
4 the Indictment -- or the two Indictments that we need to
5 address?

6 MR. BURRIS: Not that I'm aware of, ma'am.

7 THE COURT: Thank you.

8 Mr. Waring, are there any matters concerning
9 the Indictment that we need to address?

10 MR. WARING: No, your Honor.

11 THE COURT: On the obtaining nonferrous metals,
12 can you tell me which statute number you are going
13 forward on, Mr. Waring?

14 MR. WARING: Court's indulgence, your Honor?

15 THE COURT: Yes, sir.

16 (Respite.)

17 MR. WARING: Your Honor, I misspoke, there is
18 one little matter. The statute number is correct
19 16-11-523. There's no subsection of (b). There's no
20 third subsection. That's the matter.

21 THE COURT: And based upon that, do you have a
22 request, Mr. Waring?

23 MR. WARING: Yes, your Honor.

24 THE COURT: What is that request?

25 MR. WARING: To have the Indictment amended to

1 scratch out the (3).

2 THE COURT: There is still a (b), just no (3)?

3 Any objection, Mr. Burris, to amending the
4 Indictment to remove the parentheses 3 after (b)?

5 MR. BURRIS: Your Honor, I don't know what the
6 3 means. Can you explain to me?

7 THE COURT: Mr. Malloy, could you explain
8 -- does he have a copy of the Indictment in front of
9 him?

10 MR. MALLOY: He does, your Honor.

11 THE COURT: All right. Do you see the last
12 line of the paragraph that says: This is in violation
13 of Section 16-11-523(b) (3)?

14 MR. BURRIS: Yes, ma'am, I do.

15 THE COURT: The State is requesting to strike
16 the 3. There is -- there is no 3. I'm assuming that it
17 was a typo or a scrivener's error or something of that
18 nature it. It does not change the language of the
19 paragraph; it's just simply conforming the Indictment to
20 the statute? Any objection to doing that?

21 MR. BURRIS: In other words, it just don't have
22 any relevance?

23 THE COURT: Correct. Thank you. I will
24 make --

25 Any objection to making the amendment on the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Indictment?

2 MR. WARING: No, your Honor.

3 THE COURT: No objection? I'm just going to
4 write it -- actually, scratch it out and initial it?

5 MR. BURRIS: No, ma'am.

6 THE COURT: Thank you.

7 (Respite.)

8 THE COURT: All right. Mr. -- just so I
9 understand, Mr. Waring, you are alleging that the damage
10 was \$10,000? That's specific to this case; is that
11 correct?

12 MR. WARING: Your Honor, the State wasn't
13 really going to get into the actual specific damage, the
14 cost of it, until the sentencing phase; and if he is
15 convicted, we're just going to go into the general
16 amount of the damage.

17 THE COURT: All right.

18 MR. WARING: Because the -- the cost damage is
19 not one of the elements of the crimes of unlawful
20 obtaining nonferrous metals or possession of burglary
21 tools.

22 THE COURT: All right. Mr. Waring, Mr. Burris
23 is requesting formal arraignment, so the entirety of the
24 Indictment -- the entirety of the --

25 Ms. Proctor, we have a verdict. If you can

1 let --

2 MS. PROCTOR: Yes, ma'am.

3 THE COURT: Thank you.

4 Mr. Waring, let's finish this Indictment issue.

5 The entirety of the Indictment will be read during

6 formal arraignment.

7 MR. WARING: Yes, your Honor.

8 THE COURT: And in the Indictment, it indicates

9 the property -- the amount of the property loss.

10 MR. WARING: Yes, ma'am.

11 THE COURT: I understand that the -- that the

12 amount of the damage goes to punishment.

13 MR. WARING: Yes, your Honor.

14 THE COURT: Less than 5,000 is a misdemeanor;

15 more than \$5,000 is a felony.

16 MR. WARING: Yes, ma'am.

17 THE COURT: Are you asking, then, the \$10,000

18 or more be read to the jury --

19 MR. WARING: Yes, your Honor.

20 THE COURT: -- in the Indictment?

21 All right. Mr. Burris, I'm just asking. Do

22 you understand what's been going -- what the dialogue

23 is?

24 MR. BURRIS: Yes, ma'am.

25 THE COURT: Just, in essence -- just so you

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 understand -- the amount goes to punishment; it's not
2 necessarily an element -- it's not an element of the
3 crime; it just goes to punishment. And so I just wanted
4 to -- sometimes Defendants will waive formal arraignment
5 and the Indictment necessarily is not read to the jury.
6 So I just want to make sure that everyone is clear as to
7 what is going to be read during the formal arraignment.
8 All right?

9 MR. BURRIS: Yes, ma'am.

10 THE COURT: So that will be read. All right?

11 MR. BURRIS: Yes, ma'am.

12 THE COURT: Thank you.

13 All right. Mr. Burris, we have a verdict in
14 the previous case that I was trying, so I'm going to go
15 ahead and take care of that matter. We are still
16 awaiting more jurors to arrive downstairs, and so you
17 may leave all of your material there, and they will
18 bring you back in once I take care of that other matter.
19 All right?

20 MR. BURRIS: Yes, ma'am.

21 THE COURT: All right. Thank you. See you in
22 a few moments.

23 (The Defendant, Mr. Burris, is escorted from
24 the courtroom at 9:12 a.m.)

25 (The Judge handles a different matter on the

1 docket, and then the proceedings continue at 9:57 a.m.
2 as follows:)

3 (The Defendant is present in the courtroom.)

4 MS. PROCTOR: I just wanted to say, your Honor,
5 I took the pictures back from the court reporter because
6 I told him there's so many I wanted him to sort of go
7 through and maybe not have a hundred of them. So that's
8 just why I have them for now. But they haven't been
9 marked yet.

10 THE COURT: So have we --

11 MS. PROCTOR: Well, we just started. But we
12 don't need them before we pick a jury. This is for --
13 we don't need them before the trial starts.

14 THE COURT: All right. Mr. Waring, any
15 objection to the Defendant's requested *voir dire*?

16 MR. WARING: No, your Honor.

17 THE COURT: Mr. Burris, any objections to the
18 State's requested *voir dire*?

19 MR. BURRIS: No, your Honor.

20 THE COURT: Mr. Burris, you have indicated on
21 your witness list Charleston County CST; is that
22 correct? What does CST stand for?

23 MR. BURRIS: Crime screen technician. I don't
24 think we have one available.

25 THE COURT: All right.

1 All right. I'm going to bring up the jury.

2 Strikes are five and five. Is that correct?

3 MR. WARING: Yes, your Honor.

4 THE COURT: Five and five.

5 MR. BURRIS: Yes, ma'am.

6 THE COURT: And, Mr. Malloy, you will be
7 helping Mr. Burris?

8 MR. MALLOY: I will, your Honor.

9 THE COURT: And, Mr. Waring and Mr. Burris,
10 please use the podium. And, Mr. Burris, I am not -- I'm
11 going to give you the benefit of removing your handcuffs
12 and your shackles. That is a privilege.

13 MR. BURRIS: Yes.

14 THE COURT: All right. So, please, you must
15 stay at the podium, and the podium can go no farther
16 than the edge of the State's table when you are
17 addressing the jury in your opening and your closing.
18 Do you understand that, sir?

19 MR. BURRIS: Yes, ma'am.

20 THE COURT: If you need to approach -- if you
21 need to hand something to the witness, Mr. Malloy will
22 you do that.

23 MR. MALLOY: I will, your Honor.

24 THE COURT: All right, sir. Thank you.

25 And during bench conferences, if there's

1 something -- a matter that needs to be taken up outside
2 of the presence of the jury, if either one of you will
3 just alert the Court, and I'll have the jury removed,
4 and that way we can put everything on the record.

5 MR. BURRIS: Yes, ma'am.

6 THE COURT: Thank you.

7 MR. WARING: Your Honor, is the State
8 restricted to the podium during opening and closing?

9 THE COURT: I need you to put it parallel to
10 your table, but you're not tethered to the podium. But
11 you don't get to walk all the way around. Does that
12 make sense?

13 MR. WARING: Yes, your Honor. So I can put it
14 over there and can't go any farther than the podium?

15 THE COURT: Correct.

16 MR. WARING: Okay. Yes, your Honor.

17 THE COURT: That's my concern is I don't
18 want -- and I just -- it's a -- I don't like anybody
19 being that close to the jury anyway.

20 MR. WARING: Yes, your Honor.

21 THE BAILIFF: Are you ready for the panel, your
22 Honor?

23 THE COURT: I'm ready. Are they right outside?
24 Yes. Bring them in.

25 (Respite.)

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 (The prospective jurors are brought into the
2 courtroom at 10:10 a.m.)

3 THE COURT: Everybody's here?

4 THE BAILIFF: That's it, Judge.

5 THE COURT: All right. Thank you.

6 Good morning, ladies and gentlemen. We are
7 about to begin the case of the State of South Carolina
8 versus Shawn Justin Burris.

9 Mr. Burris, you request formal arraignment; is
10 that correct?

11 MR. BURRIS: Yes, ma'am.

12 THE COURT: Madam Clerk?

13 THE DEPUTY CLERK OF COURT: Case Number
14 2012-GS-10-4289, State of South Carolina versus Shawn
15 Justin Burris, in Case Number 2012-GS-10-4290, State of
16 South Carolina versus Shawn Justin Burris, Indictment
17 for unlawful obtaining of nonferrous metals and the
18 Indictment for possession of tools of a crime. If you
19 answer to that name, please raise your right hand.

20 You may put it down.

21 You stand indicted by the name Shawn Justin
22 Burris as to Indictment for unlawful obtaining of a
23 nonferrous metal. That the Defendant, Shawn Justin
24 Burris, did in Charleston County, South Carolina, on or
25 about April 26th, 2012, willfully and maliciously cut,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 mutilated, defaced, or otherwise injured personal or
2 real property, including fixtures or improvements
3 belonging to Bi-Lo, located 1357 Remount Road, North
4 Charleston, South Carolina, for the purpose of obtaining
5 nonferrous metals with a direct injury to the property
6 or the loss and value to the property or the cost to
7 repair the property or the property lost, including
8 fixtures or improvements being \$10,000 or more. This is
9 a violation of Section 16-11-523(b) of the South
10 Carolina Code of Laws, 1976, as amended.

11 As to the Indictment for possession of tools of
12 a crime, that in Charleston County, South Carolina, on
13 or about April 26th, 2012, the Defendant Shawn Justin
14 Burris did have in his possession a hacksaw with extra
15 blades, screwdriver with multiple bits, vise-grip
16 pliers, wire cutters, adjustable Crescent wrench, and
17 duffle bag adapted and designed and commonly used in
18 burglary, larceny, safecracking, or other crime under
19 circumstances evincing an intent to use the same in the
20 commission of a crime or having knowledge that they are
21 intended to be used in the possession of a crime, all in
22 violation of Section 16-11-20 of the South Carolina Code
23 of Laws, 1976, as amended.

24 How say you? Are you guilty or not guilty?

25 MR. BURRIS: Not guilty.

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE DEPUTY CLERK OF COURT: How will you be
2 tried?

3 MR. BURRIS: By God and my country.

4 THE DEPUTY CLERK OF COURT: Based on your true
5 deliverance, are you ready for trial?

6 MR. BURRIS: Yes, ma'am.

7 THE COURT: Thank you.

8 Ladies and gentlemen, is there any member of
9 the jury panel that knows anything about this case other
10 than what I have just read to you? If so, please stand.

11 Thank you. There are none.

12 Ladies and gentlemen, Mr. Burris is appearing
13 *pro se* in this trial. What that simply means is --
14 *pro se* simply means -- it's a fancy legal term for
15 representing oneself. Mr. Burris has a constitutional
16 right to represent himself. Mr. Malloy and Ms. Proctor,
17 with the Charleston County Public Defender's Office, and
18 perhaps Mr. Phillips, will be acting only as Mr. Burris'
19 advisors.

20 Mr. Burris, if you would please stand,
21 introduce yourself; and Mr. Malloy and Ms. Proctor, if
22 you'll just stand.

23 Thank you.

24 MR. BURRIS: Good day, y'all. I'm Shawn Justin
25 Burris.

1 this week would not have been heard, and we would not
2 have been able to do our job. So thank you. There have
3 been counties that I have been in -- because I travel
4 not only to Charleston and Berkeley, but all over the
5 State -- where I didn't have enough jurors to even
6 select a jury to try a case. So what that means is that
7 we just sit here and justice stops. So please
8 understand that it is so important that you have
9 accepted the responsibility of jury service and what
10 that means for Charleston County and for the State.

11 Ladies and gentlemen, I appreciate your
12 service. You've earned your exemption. I hope to see
13 most of you back in the next three years. Have a
14 wonderful afternoon and enjoy the free time that you
15 have before you have to go back to work. But maybe some
16 of you will have the opportunity to enjoy the beautiful
17 day. Thank you.

18 (The rest of the jury panel is excused from the
19 courtroom at 10:40 a.m.)

20 THE COURT: Thank you. Be seated. I'm sorry,
21 you were not standing. I'm sorry. Just get in the
22 habit when the jury -- thank you.

23 All right. Anything before we bring the jury
24 back in?

25 MR. WARING: Nothing from the State, your

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Honor.

2 MR. BURRIS: Yes, ma'am, I've got a few issues.
3 First one is, just for the record, I mean no disrespect
4 by it, but it's a motion to recuse you.

5 THE COURT: All right. And what's the basis of
6 that, sir?

7 MR. BURRIS: That I feel that you showed bias
8 in having a discussion with him concerning the
9 restrictions on my handling of the material in question
10 that we discussed yesterday.

11 THE COURT: All right.

12 MR. BURRIS: And I felt that, as I was not
13 present, it showed bias towards the State.

14 THE COURT: All right. And what prejudice have
15 you -- what prejudice did you suffer because of that,
16 Mr. Burris?

17 MR. BURRIS: Well, I still have got no notes
18 whatsoever -- I got a pencil and pen this morning, but,
19 unfortunately, the material wasn't available to me.
20 But, I mean, that's past, so I'm just wanting this for
21 the record. That's all.

22 THE COURT: Thank you, Mr. Burris. And just
23 for the record, please do not feel that you're going to
24 hurt my feelings in any way. You need to make the
25 record. If you feel that that's what you need to put on

1 the record, you put it on the record.

2 MR. BURRIS: Thank you, ma'am.

3 THE COURT: Thank you.

4 I deny your motion for me to recuse myself.

5 Thank you.

6 Anything before we bring in the panel? I'd

7 like to take a short comfort break; let the court

8 reporter take a break.

9 MR. BURRIS: Your Honor --

10 THE COURT: Hold on one second.

11 Anything before we take a short comfort break?

12 MR. WARING: Nothing from the State, your

13 Honor.

14 THE COURT: All right. Now, Mr. Burris?

15 MR. BURRIS: When would you like to hear my

16 pretrial motions?

17 THE COURT: What are they? I don't want to

18 hear them. Just tell me what they are.

19 MR. BURRIS: One's for sequestering the

20 witnesses.

21 THE COURT: All right. That motion's granted.

22 MR. BURRIS: One's a Notice of Motion to

23 Suppress any and all reference to the damage that are

24 related to this case until sentencing.

25 THE COURT: All right. And what's your next

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 one?

2 MR. BURRIS: Notice to -- and a Motion to
3 Suppress the book bag, tools, and other items recovered
4 from the scene.

5 THE COURT: I didn't know that we had pretrial
6 motions, Mr. Burris.

7 As to the damages, let me hear from you why
8 those should not be discussed.

9 MR. BURRIS: Well, for one, there's two sets of
10 them: One that I want entered into evidence, the date
11 of my arrest, that had no relevance to the case in
12 question at all. And it was used at my pretrial
13 hearing -- I -- we spoke briefly on it the other day --
14 that they're, in fact, in another county outside the
15 Charleston County's jurisdiction altogether, but yet
16 they found their way into my motion, just my Rule 5, and
17 they were used against me to present guilt and help deny
18 bond and require the hot bond. They were already used
19 against me. And I felt it would be prejudicial to
20 present that to the jury.

21 And there's another one with the discrepancies
22 in it that I would like to present later on.

23 THE COURT: Say that last thing one more time,
24 Mr. Burris. I'm sorry.

25 MR. BURRIS: The new set of estimates or

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 whatever, the -- I'll go ahead and tell you. Bi-Lo
2 included a false quote in there for \$43,000.
3 After -- if you -- if the State will look over the
4 paperwork, it says: Maintenance department completed
5 all work on the same day of my arrest. About three
6 weeks later, Bi-Lo's entering a false statement saying
7 that they were seeking damages for \$43,000 including
8 installation of AC units that were never bought.

9 THE COURT: Mr. Waring, what's your position as
10 to Mr. Burris' motion?

11 MR. WARING: Well, your Honor, most of it I
12 have no idea what he's talking about. As far as the
13 bond hearing and using other materials for this trial, I
14 don't have any idea what he's talking about.

15 THE COURT: All right. Let's focus the issue.
16 What I understand the issue that we need to address
17 right now is Mr. Burris wants there to be no testimony
18 regarding the amount of damages.

19 MR. WARING: Yes, your Honor. Regarding that
20 matter, as a direct result of him cutting the pipes, as
21 part of the *res gestae*, there was damage. So we were
22 going to get into a little bit of that. But we're
23 not -- we weren't planning on actually getting into
24 specific details about monetary loss until, if and when
25 he's convicted, at the sentencing phase.

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: All right. Mr. Burris, to the
2 extent that you have made your motion, the State must
3 prove that you willfully and maliciously cut, mutilated,
4 defaced, or otherwise injured personal or real property.
5 And one of the ways that I am assuming that they are
6 going to attempt to show that is by -- that there was
7 some damage and the only way to show damage is that
8 there was some cost associated with that. Do you
9 understand that?

10 MR. BURRIS: Yes, ma'am.

11 THE COURT: And so, Mr. Burris, there will
12 be, assuming we get to the stage that the jury finds
13 you guilty, we will have an opportunity -- the Bi-Lo
14 representative to come in and present testimony as to
15 whether it was over 5,000 or under 5,000. Do you
16 understand?

17 MR. BURRIS: Yes, ma'am.

18 THE COURT: But I'm going to allow the State to
19 introduce evidence that would prove that the copper
20 wires were cut, mutilated, or otherwise injured. Do you
21 understand that sir?

22 MR. BURRIS: Yes, ma'am.

23 THE COURT: All right. Thank you. And then
24 one more -- you had one more motion about a book bag; is
25 that right?

1 MR. BURRIS: I had quite a few actually. These
2 are the ones that I wrote myself.

3 THE COURT: Okay. Tell me about the book bag.

4 MR. BURRIS: Excuse me. I do believe under the
5 Rule 5 clause, it says that the State was supposed to
6 disclose to me everything that they have. Well, as this
7 proceeding has already started, I never received the
8 chain of custody sheets saying it was put into evidence,
9 although there's a reference to it in the action and
10 operations report, and I believe I'm entitled to that.

11 THE COURT: Do you have the chain of custody of
12 the book bag?

13 MR. WARING: Your Honor, I believe we turned
14 that over with the rest of Rule 5.

15 MR. BURRIS: It's not documented, your Honor.

16 THE COURT: I'm sorry?

17 MR. BURRIS: It's not documented no where in
18 the --

19 THE COURT: Do you have a copy that you can
20 give to Mr. Burris as to the book bag, the chain of
21 custody?

22 MR. WARING: I do have one of the
23 copies -- Court's indulgence?

24 THE COURT: Hold on one second.

25 And, Mr. Burris, this is the way -- I'm going

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 to let you articulate just as much as you need to on the
2 record. But the way that I like to do it is, I'm going
3 to give you an opportunity to speak, and Mr. Waring an
4 opportunity to speak. And if you don't interrupt each
5 other, it just flows smoother. So understand, I'm going
6 to give you an opportunity to address what he tells me.
7 All right? Thank you.

8 MR. BURRIS: Yes, ma'am.

9 MR. WARING: Your Honor, this was included in
10 the Rule 5, but here's another copy for him.

11 THE COURT: All right. Thank you. And that is
12 the chain of custody from the book bag?

13 MR. WARING: Yes, your Honor.

14 THE COURT: All right.

15 MR. WARING: That's the first item on the list.

16 THE COURT: Okay. All right. And just what do
17 your records indicate as to when the Rule 5 material was
18 given to Mr. Burris, either directly or through
19 Mr. Malloy?

20 MR. WARING: Court's indulgence?

21 Your Honor, Mr. Malloy would probably have a
22 better answer for that.

23 MR. MALLOY: Court's indulgence, your Honor?

24 Your Honor, the Rule 5 packet was sent on June
25 5th. Karen Barker was actually representing Mr. Burris

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 at that time. But that's what the timestamp is for
2 the -- on the cover of the Rule 5.

3 THE COURT: All right. Mr. Burris, if you need
4 any additional time to review that, I will give you the
5 additional time.

6 MR. BURRIS: I do have one more issue.

7 THE COURT: All right. Thank you.

8 MR. BURRIS: There was an item on the outside
9 of the book bag at the crime scene, and it's nowhere
10 listed on here. So the book bag was altered from its
11 original state. There is a --

12 THE COURT: We'll address that -- I don't know
13 the facts, and so we'll address that when that becomes
14 an issue. All right, Mr. Burris?

15 MR. BURRIS: Yes, ma'am.

16 THE COURT: All right. Thank you.

17 All right. We're going to take a break. Thank
18 you.

19 MS. PROCTOR: If they'll let him stay out here
20 just for a minute so we can make sure he's got all his
21 motions.

22 THE COURT: Okay. Thank you.

23 (The Judge steps off the bench at 10:51 a.m.)

24 (Pre-marked for identification the State's
25 Exhibit Numbers 1 through 14, then 16 through 22, and

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 then 25 through 27.)

2 (Pre-marked for the Defendant, Defendant's
3 Exhibits 1 through 14.)

4 (After a break, the Judge resumes the bench at
5 11:03 a.m.)

6 (The Defendant is present in the courtroom.)

7 THE COURT: All right. Anything before we
8 bring in the jury?

9 MR. WARING: Nothing from the State, your
10 Honor.

11 THE COURT: Mr. Burris?

12 MR. BURRIS: Yes, ma'am. I have some motions
13 still. How do you want to do that?

14 THE COURT: Again, Mr. Burris, when I asked you
15 what motions you had, you told me that you only had
16 those three. So what else do you have?

17 MR. BURRIS: I've got quite a few actually. I
18 mean, I'm sorry you misunderstood. I didn't make myself
19 clear. I apologize.

20 THE COURT: All right. What do you have left?

21 MR. BURRIS: I know you've already ruled on it,
22 but I just wanted -- the Motion to the Continuance from
23 yesterday, I just want it on the record you've already
24 made your decision --

25 THE COURT: It's been on the record twice now.

1 MR. BURRIS: Okay.

2 THE COURT: Thank you.

3 MR. BURRIS: I want to question, as to my
4 convictions, I don't want to show cause that I couldn't
5 do the crimes from the evidence -- from the -- the
6 sheets, when they were put into evidence against me.

7 THE COURT: All right. So you're requesting
8 your convictions not being mentioned?

9 MR. BURRIS: I mean, I don't have a problem if
10 it becomes necessary to mention the two that I was in
11 jail for at the time to show that I was in jail and my
12 inability --

13 THE COURT: The Solicitor has to follow certain
14 rules, and so I'm sure that before that happens, he will
15 let the Court know, and we'll address that outside the
16 presence of the jury. All right?

17 MR. BURRIS: Okay. The next motion is to
18 suppress the gloves for being too far removed from the
19 crime. And it took them 11 months to come and get them.
20 Although they took pictures of them at the crime scene,
21 the technician failed to take them to [sic] me. And
22 based on that fact, they weren't considered evidence.

23 THE COURT: Tell me about the gloves,
24 Mr. Waring. Do you plan to introduce the gloves?

25 MR. WARING: Your Honor, the Defendant was

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 found at the scene with his gloves on. I think they're
2 a pretty important part of this case. When he was
3 arrested, they were still on him when they were
4 handcuffed, and they were removed at the jail as part of
5 his property. Since then, they have been put into
6 evidence.

7 THE COURT: All right.

8 MR. WARING: The State plans on introducing
9 pictures of gloves.

10 THE COURT: But not the gloves?

11 MR. WARING: No, your Honor.

12 THE COURT: All right. Mr. Burris?

13 MR. BURRIS: I can't see how he should be
14 allowed to do that, to have them -- if he can't use the
15 gloves as evidence --

16 THE COURT: Assuming he lays the proper
17 foundation, he will be allowed to do that.

18 MR. BURRIS: Okay.

19 THE COURT: All right. Thank you.

20 Next motioning.

21 MR. BURRIS: The other was one to compel the
22 State to bring former Officer Bullard (phonetic) to the
23 stand or dismiss, concerning his significant roles in
24 the crime. He's an officer --

25 THE COURT: I can't tell the State how to try

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 their case.

2 MR. BURRIS: Okay.

3 THE COURT: They get to decide who they call or
4 not call.

5 MR. BURRIS: All right.

6 THE COURT: And you have the ability to
7 subpoena whomever you wish.

8 MR. BURRIS: All right. Then I'd like to
9 question the -- I can force the witnesses to show cause
10 why he's not present, because he was a supervising
11 officer at the scene, he had control of the crime scene,
12 he turned it over to the crime scene tech and so forth.
13 I mean --

14 THE COURT: If that becomes relevant to the
15 case, you may question on any issue that is relevant to
16 this case.

17 MR. BURRIS: Okay.

18 THE COURT: I'm not sure why that would be
19 relevant, but I'm assuming you know why it would be.

20 MR. BURRIS: Yes, ma'am. He's the one --

21 THE COURT: I don't need to know.

22 Thank you.

23 MR. BURRIS: No problem.

24 And I believe that's it, ma'am. Thank you.

25 THE COURT: All right. Thank you.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Let's bring in the jury.

2 THE COURT: Mr. Burris, are you going to give
3 an opening statement?

4 MR. BURRIS: Yes, ma'am.

5 THE COURT: All right. Thank you.

6 We stand when the jury comes and remain
7 standing until they are seated.

8 Where's your pen, Mr. Burris?

9 MR. BURRIS: Right here, ma'am. Thank you.

10 THE COURT: Thank you.

11 (Mr. Ted Smith is not present, not
12 Ms. Proctor.)

13 (The jury is escorted into the courtroom at
14 11:10 a.m.)

15 MR. BURRIS: Thank you. Please be seated.

16 Ladies and gentlemen, you have been selected as
17 the jury to try this case. The case that we are about
18 to start is the case of the State versus Shawn Justin
19 Burris, Defendant.

20 Before we begin this trial, I wanted to take an
21 opportunity to explain the procedure that we will be
22 following so that you'll better be able to understand
23 what is going on. The Clerk is going to administer an
24 oath to you at this time.

25 Madam Clerk?

1 THE DEPUTY CLERK OF COURT: Mr. Burris, please
2 stand.

3 Ladies and gentlemen of the jury, please stand
4 and raise your right hands to be sworn.

5 (The oath is administered by the Deputy Clerk
6 of Court.)

7 THE DEPUTY CLERK OF COURT: Please indicate by
8 saying "I do."

9 THE JURORS (in unison): I do.

10 THE DEPUTY CLERK OF COURT: If you have
11 accepted this oath, please be seated; if not, remain
12 standing.

13 THE COURT: All 13 jurors are seated.

14 Ladies and gentlemen, you have been given
15 notepads which indicates to the Court that you are
16 allowed to take notes throughout the progress of this
17 trial. Please remember that one juror's notes are no
18 more correct or accurate than another juror's notes.
19 Those are your notes, and you will be allowed to take
20 those notes back with you while you are deliberating.

21 Ladies and gentlemen, most people don't have
22 the opportunity to come into court and observe trials as
23 you are doing now. Most people think, from watching
24 television or reading books or movies, that trials are
25 full of high drama, intense action, and riveting

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/

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 circumstances. While all of these things may be true at
2 times, please remember this trial is not for
3 entertainment. It is a fundamental part of our
4 democracy. It is a search for truth in an effort to
5 make sure that justice is done between the parties
6 before the Court. Please remember that searching for
7 the truth and making sure that justice is done is often
8 slow, deliberate, and repetitive. The opposite of what
9 you have seen on television or in movies or read in
10 books.

11 This courtroom is a place of honor. It is
12 dedicated to the protection and preservation of
13 citizens' rights through what many have called the
14 greatest justice system ever created. The attorneys and
15 Mr. Burris, representing himself, appearing before you
16 are advocates for the parties they represent. But they
17 are officers of this Court. They are and will uphold
18 the integrity and the fairness of our judicial system,
19 and they are here to help you in the search for the
20 truth.

21 Ladies and gentlemen, you have taken an oath to
22 try this case. You are expected to reach a fair and
23 just verdict. You are also expected to be professional,
24 reasonable, and ethical. Thank you again for accepting
25 this most important responsibility of jury service and

Reported By:
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1 for your contribution today to our justice system.

2 What I now say is, again, intended to serve as
3 the introduction to the trial of this case. These
4 remarks are not a charge on the law. I will instruct
5 you on the law throughout the trial and the close of the
6 trial before you retire to consider your verdict. This
7 is merely the explanation, the procedures, that we will
8 follow.

9 The Defendant is charged by an Indictment filed
10 in this Court with the crimes of unlawful obtaining of
11 nonferrous metals and of possession of tools of a crime
12 of -- possession of tools of a crime. I will explain
13 the elements of both of those Indictments to you later.
14 The Indictment is simply the formal charge; the way this
15 case is brought into court. It is not in any sense
16 evidence of the allegations it contains. The Defendant
17 has pled not guilty to each Indictment. The State has
18 the burden of proving each of the elements of both
19 Indictments beyond a reasonable doubt. It is your duty,
20 ladies and gentlemen, to determine whether
21 that -- whether the State has met that burden.

22 Your purpose as jurors is to find and determine
23 the facts. You are the sole judges of the facts in this
24 case. Out of respect for your new position as judges of
25 the facts, you may have noticed that when you came in,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the attorneys and the members of the audience were
2 standing. Please come in and have a seat as quickly as
3 you can, because everyone will remain standing until all
4 13 of you are seated. Please remember, if at any time I
5 make any comment regarding the facts in this case, you
6 must disregard it. You are to determine the facts from
7 the testimony you hear and the other evidence that is
8 introduced in court. It is up to you to determine the
9 inferences which you feel may be properly drawn from the
10 evidence. It is important that you perform your duty of
11 determining the facts diligently and conscientiously
12 because ordinarily there is no way to correct an
13 erroneous determination of facts by a jury.

14 On the other hand and with equal emphasis, the
15 same law that makes you the judges of the facts makes me
16 the judge of the law. The law as given by this Court is
17 the only law that you may consider. You must accept it
18 and follow it even though you may disagree with it. I
19 cannot tell you what I think the law -- what the facts
20 are, and you cannot disagree with me about what the law
21 is or what the law ought to be.

22 Your job is to take the law as I give it to
23 you, apply it to the facts as you find them from the
24 testimony of the witnesses, as well as any other
25 evidence that is introduced. After doing that, you will

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 render your verdict, a true and just verdict under your
2 solemn oath.

3 Until I advise you to begin your deliberations,
4 you must not discuss this case with anyone. That
5 includes your fellow jurors, your friends, your family
6 members, or anyone else. You may not do any independent
7 investigation regarding this matter and you may not
8 read, watch, listen to any news accounts regarding this
9 case, should there be any.

10 It is important that you keep an open mind
11 throughout this trial and not decide any issue in this
12 case until all of the evidence has been presented, the
13 parties have made their closing arguments, and I have
14 instructed you on the law applicable to this case.

15 It is your solemn responsibility to determine
16 the guilt or innocence of the Defendant, and your
17 verdict must be based solely on the evidence as it is
18 presented to you in this trial and on the law as I
19 instruct you during and at the close of the trial.

20 In just a moment, the Solicitor will make what
21 is called an opening statement in which the Solicitor
22 will explain to you the issues in this case or at least
23 what the Solicitor thinks the issues are. The Defendant
24 may also make an opening statement, although he is not
25 required to do so. Please remember, what you are told

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 during opening statements is not evidence in this case;
2 it is only the contention of the parties as to what the
3 evidence will show. The evidence in this case will be
4 presented to you by the testimony of sworn witnesses
5 from the witness stand, as well as any exhibits that may
6 be introduced into evidence.

7 From time to time, you may hear one of the
8 parties say something like, Your Honor, we have a
9 question of law; may we approach the bench? Or I might
10 find it necessary to excuse you for a short while. We
11 are not hiding anything from you. The reason for this
12 is sometimes it is necessary for me to make a comment
13 regarding the facts when I issue a ruling related to the
14 law, and as I just indicated to you, the law does not
15 allow me to have an opinion about the facts in this
16 case. So I will probably be excusing you from the
17 courtroom so that I may issue my ruling concerning the
18 law and not influence you regarding the facts.

19 In determining what the true facts are in this
20 case, you must decide whether or not the testimony you
21 hear is believable. It is my responsibility to
22 determine as a matter of law whether certain testimony
23 is admissible. But once it is admitted, whether or not
24 you believe it, is solely for you to determine.

25 In deciding whether to believe a witness, you

1 have the right to consider the interest of the witness,
2 the bias of the witness, the prejudice of the witness,
3 the opportunity for the witness to have seen and heard
4 the matters about which the witness may testify, as well
5 as the way the witness acts on the witness stand. You
6 have a right to consider anything in the record that
7 will help you evaluate the testimony of the witnesses.
8 That means it's your duty to pay close attention to the
9 witnesses, to observe the witnesses, to listen to the
10 witnesses, to pay close attention to the parties
11 involved, and to the Court. Please do not let your
12 thoughts wander and give strict attention so at the end
13 of this case, after you have heard closing arguments and
14 I have instructed you on the law applicable to this
15 case, you will be in a position to determine what the
16 true facts are and render a verdict, a true and just
17 verdict.

18 Mr. McClain, you have been selected as the
19 foreperson in this case. As such, you are the jury
20 spokesperson here in Court. So if at any time, you need
21 any additional breaks or having any other issues, if you
22 will let your foreperson know, he will alert the
23 bailiffs, and we will handle the matter accordingly. It
24 is also your responsibility to write the verdict, but
25 I'll give you further instructions regarding that matter

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 later.

2 Ladies and gentlemen, please give your strict
3 attention.

4 Mr. Waring?

5 MR. WARING: Yes, your Honor.

6 THE COURT: Thank you.

7 MR. WARING: Thank you, your Honor. May it
8 please the Court?

9 OPENING STATEMENTS

10 MR. WARING: Choices, consequences, and
11 accountability. That's what this case is about. This
12 Defendant made a choice to cut copper pipes on top of
13 the Bi-Lo at Remount Road. He caused massive damage as
14 a consequence. We need to hold him accountable for
15 that: choices; consequences; accountability.

16 On April 26th, 2012, around 5:00 a.m. in the
17 morning, Bi-Lo employee Jesse Gay is working late. He's
18 stocking groceries; he's minding his own business. All
19 of a sudden he hears some noises on the roof. He hears
20 what sounds like cutting noises. Per Bi-Lo policy, he
21 calls the alarm company, and, in turn, the alarm company
22 calls 911.

23 Shortly after that, North Charleston Police
24 Department officers arrive on the scene, and they try to
25 determine status of the problem. One of the officers

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1 walks around to the side of the Bi-Lo building, and he
2 sees the Defendant on the roof; sees the Defendant
3 pacing back and forth and performing what looks like
4 stacking maneuvers, as if he's stacking something.

5 After that, other officers started arriving on
6 the scene. They linked up with Jesse Gay, the Bi-Lo
7 employee, and he informed them that there was someone on
8 the roof, and that they could get to the roof via a
9 hatch from inside the Bi-Lo. So he shows them the
10 hatch. The officers open that up, and they make their
11 way to the top of the roof.

12 First thing they see is a bunch of cut copper
13 pipes laying on the ground. They keep searching the
14 scene, and they find the Defendant hiding behind an AC
15 unit. There's a struggle. They have to drag him out.
16 The Defendant's wearing gloves, and he's alone. He is
17 alone. He's also got in his possession a backpack
18 filled with tools; he's got a saw handle; saw blade;
19 screwdriver; duffle bags -- you name it. -- also a
20 spray paint can. Based on the acts of cutting the
21 copper pipes, the Defendant was charged with unlawful
22 obtaining nonferrous metals and possession of tools of a
23 crime.

24 Now, what does that mean? Well, in order to
25 prove the Defendant committed the crime of unlawful

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 obtaining nonferrous metals, the State has to prove
2 beyond a reasonable doubt that he willfully and
3 maliciously cut or injured property for the purpose of
4 obtaining nonferrous metals. That includes copper.
5 In order to prove that he committed the crime of
6 possession of tools of a crime, the State has to prove
7 beyond a reasonable doubt that he possessed tools
8 adapted or commonly used for burglary, larceny, or other
9 such crimes under circumstances indicating intent to use
10 them.

11 Now, I'm confident that after presentation of
12 all the evidence, you'll determine the State has carried
13 that burden and proven that the Defendant is guilty
14 beyond a reasonable doubt.

15 Now, I want you to remember those words that I
16 mentioned at the beginning: choices, consequences, and
17 accountability. At the end of the trial, I'm going to
18 ask you to hold the Defendant accountable for his
19 choices.

20 Thank you.

21 THE COURT: Mr. Burris?

22 MR. BURRIS: Thank you, your Honor.

23 OPENING STATEMENTS

24 MR. BURRIS: Good day, ladies and gentlemen. I
25 prepared a statement so bear with me. I'm not going to

1 try to stand here and make you believe I didn't do this
2 crime or that I was even there. Instead, I'm going to
3 let the facts and the evidence speak for me because
4 they're going to say everything.

5 I would like to ask you to look and listen to
6 how the facts and evidence are presented or not
7 presented by the State, and I would also ask that while
8 in doing this, you pay special attention to how the
9 facts and the evidence were obtained, because that is
10 very important in this matter.

11 So you'll see this for yourself, it goes to the
12 extremes, that North Charleston Police Department and
13 even the State are going to go to so that they can
14 convict someone of these type of crimes. I'd also like
15 to point out that in the time that I've been
16 incarcerated in Charleston County Detention Center, I've
17 seen on the news at least two other times of this exact
18 same crime happening. So unless I'm a magician, I
19 couldn't have been the one doing it.

20 Now, I'm sure the police departments all are
21 under a lot of pressure from store owners and various
22 other sources statewide, so that kind of makes me an
23 easy scapegoat, because I was in the vicinity.

24 And so, again, all I ask you to do is pay
25 special attention to the details because that's where

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the truth lies. That is how you must base your judgment
2 of me on this. The facts in evidence won't support the
3 officers' testimony. You'll see this for yourself.

4 One more thing: The State may try to hide some
5 facts from you that are extremely important and would
6 affect your judgment on this case, so look for them. I
7 may not be able to present them. But I will tell you
8 this: Every single question I ask has a purpose. It's
9 not just merely show and tell. And please remember, the
10 State has to prove beyond a reasonable doubt, which they
11 can't do.

12 Thank you, ladies and gentlemen.

13 THE COURT: Call your first witness.

14 MR. WARING: State calls Jesse Gay.

15 THE COURT: Please come forward. Just going to
16 swear you in. Thank you. Right there, sir.

17 THE DEPUTY CLERK OF COURT: Just place your
18 left hand here and raise your right hand.

19 (The oath is administered by the Deputy Clerk
20 of Court, and the witness answers as follows:)

21 THE WITNESS: Yes.

22 THE DEPUTY CLERK OF COURT: Please have a seat
23 and state your full name, spelling your last name for
24 the record.

25 THE WITNESS: Jesse Allen Gay; last name is

1 G-a-y.

2 THE COURT: Mr. Waring?

3 JESSE ALLEN GAY,

4 having been first duly sworn by the Deputy Clerk of
5 Court to tell the truth, the whole truth, and nothing
6 but the truth, was examined and testified upon his oath
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. WARING:

10 Q Good morning, Jesse.

11 A Hello.

12 Q How are you doing today?

13 A Pretty good.

14 Q Now, Jesse, will you tell the jury where you're
15 from?

16 A Here, North Charleston.

17 Q And is that where you live today?

18 A Yes, sir.

19 Q And where are you currently employed?

20 A Bi-Lo, Remount Road.

21 Q And how long have you worked there?

22 A Three-and-a-half years.

23 Q What's the location of the Bi-Lo?

24 A I believe it's 1347 Remount Road.

25 Q And as far as you know, is that in Charleston

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 County?

2 A Yeah.

3 Q Okay. And what's your role there?

4 A Stock clerk.

5 Q What does that mean?

6 A It means I work in the freezer, so I unload the
7 truck out the freezer, break the truck down, put the
8 stuff on the shelf, outside on the shelf on the sales
9 floor, and keep the freezer straightened up. Do the
10 order and do the displays.

11 Q I'm sorry, I couldn't catch the last thing you
12 said.

13 A I'm sorry. I do the ordering and do the
14 displays, change the displays out. Put the displays
15 out.

16 Q Okay. And were you employed at this Bi-Lo back
17 in April of 2012?

18 A Yes.

19 Q Okay. And what was your shift on April 26th,
20 2012?

21 A 11:00 to 6:00.

22 Q 11:00 a.m.?

23 A 11:00 p.m. to 6:00 a.m.

24 Q Okay. So you were working the night shift?

25 A Yes, sir.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

1 Q Okay. And what were you doing the morning of
2 April 26th, 2012?

3 A Working -- I was minusing off ice cream outside
4 the freezer door.

5 Q I'm sorry, Jessie. I'm going to have to ask
6 you to speak a little more clearly.

7 A I'm sorry. I've got something wrong with face.
8 It makes it hard to speak. I was minusing off ice cream
9 outside the freezer door, putting it in the gun.

10 Q I'm sorry. Can you say that again? What were
11 you doing?

12 A Minusing off ice. . .

13 Q That's okay. Take your time.

14 A You put stuff in the computer that you already
15 have in the freezer so you don't order it again, and I
16 was doing that with ice cream.

17 Q So you were in the store working?

18 A Uh-huh.

19 Q Okay. Did anything out of the ordinary happen
20 that morning?

21 A While I was in the back, doing that with ice
22 cream, I heard some noise on the roof that I'd never
23 heard before, and it was just -- I'd worked back there
24 for, like I said, six months or seven -- seven, eight
25 months doing over -- on the night shift, doing that in

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the freezer, and I've never heard that noise before that
2 I heard on the roof. It makes a lot of noise. There's
3 a lot of noise that machine makes upstairs, the -- like
4 the refrigeration unit makes on the roof, all night
5 long. But I've never heard that noise before that night
6 that I heard that night.

7 Q So what did the noise sound like?

8 A It just sounded like cutting noise, banging
9 noise, metal pipe. Something was just going -- it was
10 just banging against a metal pipe, and I'd never heard
11 that before.

12 Q And once you heard that noise, what did you do?

13 A I went upstairs -- went up to the front, and
14 called the security company and told them that my boss
15 had told me to pay attention to noises that we don't
16 hear when we work on the night shift, because people had
17 been stealing copper off the roof of several grocery
18 stores throughout the area, and I told them I thought
19 somebody was on the roof cutting -- stealing copper out
20 of our air-conditioning unit.

21 Q So why didn't you call the police?

22 A It's policy to call the security company in
23 case anything goes wrong, and they call the cops if they
24 think -- if they deem it's necessary.

25 Q Okay. Do you remember about what time you made

1 the call?

2 A About 4:30.

3 Q A.M.?

4 A Uh-huh.

5 Q Okay. So would you say you were just following
6 the Bi-Lo policy?

7 A Yes.

8 Q By calling the alarm company?

9 A Yes.

10 Q Now, can you tell me what happened after that?

11 A I called them. Shortly after that, two cops
12 came up to the front door, because I was waiting at the
13 front door to see -- waiting on the cops to come,
14 because they said they would call the cops. And the
15 cops came, and they said they needed to come inside.
16 And I said, Well, I have to call the alarm company. So
17 I went and called the alarm company again to turn the
18 alarm off, let them in.

19 They asked if there was a way to get to the
20 roof of the building from inside the store. I said,
21 Yes. You can go through the hatch in the -- the
22 maintenance hatch in the back and that goes straight up
23 to the roof.

24 So I went upstairs, and I gave them the keys so
25 they could go upstairs and open the hatch because they

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 didn't want me to go upstairs with them to open the
2 hatch. And they went upstairs, and then they went
3 outside, and all I heard was, Get down. They shouted,
4 Get down, get down, get down. And that was all I heard.

5 And I did not see -- nobody came back through
6 the hatch, downstairs back through the hatch.

7 Q So could you see and hear the police
8 surrounding the Bi-Lo?

9 A Yeah. You could see them going -- when that
10 happened, I went back up front, and they had all kind of
11 cop cars and everything out front -- in front of the
12 road, in front of the store. I saw a couple of them go
13 down the side of the store, so I guess they were going
14 back behind the store to the rear entrance.

15 Q How many policemen would you say, overall,
16 there were?

17 A What I saw was probably, like, ten or 12
18 policemen and maybe like eight or nine cars.

19 Q Okay. So earlier in your story, you were
20 saying that the officers came inside, to the Bi-Lo?

21 A Yeah.

22 Q Okay. And when -- about what time would you
23 say they came in the store?

24 A About ten, 15 minutes after I called, they got
25 there.

1 Q Okay. Now, you said earlier that you'd been
2 working at the Bi-Lo for about three years?

3 A Yeah.

4 Q Okay. Was there -- as far as you know, was
5 there any reason for somebody to be on the roof --

6 A No. Not at that time.

7 Q -- at that time?

8 A No. They never -- maintenance never does any
9 work at night. After the store closes, if it happens
10 after the store closes, then they come the first thing
11 in the morning. But nobody's ever done anything on the
12 roof at nighttime.

13 Q Did you ever actually see the Defendant?

14 A No.

15 Q Did you ever talk to him?

16 A No.

17 MR. WARING: Okay. Court's indulgence?

18 THE COURT: Take your time.

19 MR. WARING: Please answer any questions the
20 Defense has.

21 THE WITNESS: Okay.

22 THE COURT: All right. Mr. Burris?

23 CROSS-EXAMINATION

24 BY MR. BURRIS:

25 Q Good day.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Hello, sir.

2 Q You're the one that called the alarm company;
3 correct?

4 A Yes, sir.

5 Q At what time again?

6 A About 4:30.

7 Q Okay. Can you tell me, did the tamper alarm go
8 off at some time before you called the alarm company?

9 A The refrigeration alarm had gone off about 30
10 minutes before, and I went and checked it, and it said
11 that there was an issue. And then I called, and I let
12 the manager know when he come in in the morning. That's
13 usually what you do. And then they'll call maintenance,
14 and maintenance come out sometime and fix it.

15 Q So the tamper alarm went off about 30 minutes
16 before, so roughly four o'clock, then?

17 A Yeah.

18 Q No police call or nothing?

19 A No. Because I didn't know there was -- didn't
20 hear anything at that time, no. Because sometimes -- it
21 goes off almost -- I mean, maybe two or three times a
22 night -- two or three times a week, it'll go off. It
23 just depends. There's lots of reasons. The Freon could
24 run out; there could be a glitch in the system. It's
25 just -- that's what it's designed for.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

1 Q Tamper alarm was related to the -- and it was
2 hooked up to the refrigeration system?

3 A Yeah. It let's you know if something goes
4 wrong with the refrigeration system.

5 Q Do you know how many days it took to repair all
6 the rooftop machinery?

7 A I believe they were there three days working on
8 it. They got there that morning, and I think it took
9 them two to three days before they finally fixed it.

10 Q Did they actually have to replace any of the
11 machinery; do you know?

12 A I don't know. I know they had to replace all
13 the copper that was taken, but the machinery, I don't
14 know.

15 Q Okay.

16 A I know they had to replace Freon. They had --
17 all the Freon had leaked out. They had to replace that.
18 But as far as the machinery, I don't know.

19 Q How many other people were in the store with
20 you?

21 A Me and another part-time stocker.

22 Q Okay. So you just heard noises on the roof so
23 you called the alarm company; correct?

24 A Yes, sir.

25 Q Did anyone besides you hear these noises?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A No.

2 Q You have pretty good hearing?

3 A Well, like I said, I mean, you hear noises all
4 night long back there, and that noise I'd never heard
5 before.

6 Q So you didn't actually see anyone on the roof;
7 correct?

8 A No.

9 Q Did you have anything to do with the cutting
10 copper from the roof?

11 A No.

12 Q You have a criminal record; don't you?

13 A Yes, sir.

14 Q In fact, that's one count of financial credit
15 card --

16 MR. WARING: Objection, your Honor.

17 THE COURT: What's the basis?

18 MR. WARING: Relevance, your Honor. I don't
19 see how his record has any relevance to what he heard on
20 the roof.

21 THE COURT: One second. Counsel approach,
22 Mr. Burris.

23 (Mr. Malloy, Mr. Smith, Mr. Burris, Mr. Waring,
24 and Mr. Kidd all approach the bench for a discussion off
25 the record.)

1 THE COURT: Overruled.

2 Mr. Burris, your witness.

3 Q (By Mr. Burris) Why should we believe you,
4 then?

5 A Because I don't have any reason why not
6 to believe me. I don't know how to answer your
7 question.

8 Q Aren't all of your crimes that you've been
9 convicted of crimes of dishonesty?

10 A Yeah. But that was --

11 Q No further questions.

12 A -- when I was 19.

13 Q Hold on.

14 MR. BURRIS: No further questions, your
15 Honor.

16 THE COURT: No further questions of this
17 witness?

18 MR. BURRIS: No.

19 THE COURT: Thank you, Mr. Burris.

20 Mr. Waring?

21 REDIRECT EXAMINATION

22 BY MR. WARING:

23 Q Jesse, when were these convictions; do you
24 recall?

25 A When I was 18 or 19.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q And how old are you now?

2 A Forty.

3 Q Okay. And do these previous convictions, did
4 they have any way of, I guess, messing with your ability
5 to hear what was going on on the roof?

6 A No.

7 Q And you said earlier that you never saw the
8 Defendant; right?

9 A No.

10 Q Would you have any reason to try to lie about
11 somebody that you had never seen before?

12 A No.

13 MR. WARING: Court's indulgence?

14 THE COURT: Take your time.

15 (Mr. Waring speaks with Mr. Kidd off the
16 record.)

17 Q (By Mr. Waring) Jesse, will you tell the Court
18 what those convictions were?

19 A I believe it was a stolen credit card and
20 burglary.

21 MR. WARING: Okay. Court's indulgence?

22 (Mr. Waring speaks with Mr. Kidd off the
23 record.)

24 THE COURT: Hold on one second. He's not done
25 yet. Thank you.

1 (Mr. Burris sits back down.)

2 MR. WARING: No further questions.

3 THE COURT: All right. Mr. Burris, Recross?
4 Limited to Mr. Waring's Redirect.

5 RECROSS-EXAMINATION

6 BY MR. BURRIS:

7 Q Are you sure those are the only charges that
8 you had on your convictions?

9 A Yeah. I wrote some bad checks, but those were
10 just misdemeanors.

11 Q How many bad checks?

12 A Honestly, I don't know. Maybe 20, 23. I don't
13 really know.

14 MR. BURRIS: Thank you.

15 THE WITNESS: Uh-huh.

16 THE COURT: You may step down.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: Feel free to remain with us.

19 He's free to leave; is that correct,

20 Mr. Waring?

21 MR. WARING: Yes, your Honor.

22 THE COURT: Any objections to him being
23 excused, Mr. Burris?

24 MR. BURRIS: No, ma'am.

25 THE COURT: All right. Thank you.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE WITNESS: Thank you.

2 THE COURT: You may stay with us, but you're
3 also free to leave.

4 THE WITNESS: Okay. Thanks.

5 THE COURT: Call your next witness.

6 MR. WARING: State calls Officer Tony Bunch.

7 THE COURT: Officer Bunch, please come forward
8 and be sworn. Good morning.

9 THE WITNESS: Good morning, your Honor.

10 THE DEPUTY CLERK OF COURT: Place your left
11 hand here and raise your right hand.

12 (The oath is administered by the Deputy Clerk
13 of Court, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: Please have a seat,
16 and state your full name, spelling your last name for
17 the record.

18 THE WITNESS: My name is Tony Bunch. Last name
19 is B-u-n-c-h.

20 THE COURT: Mr. Waring?

21 TONY BUNCH,

22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

1 DIRECT EXAMINATION

2 BY MR. WARING:

3 Q Good morning, Officer Bunch.

4 A Good morning.

5 Q How's it going today?

6 A All right. Yourself?

7 Q Good. Good.

8 I'm just going to ask you some questions.

9 Starting off, where are you employed?

10 A City of Charleston.

11 Q Okay. And how long have you been with -- so do
12 you work for the police department?

13 A For the police department, yes, sir. I
14 apologize.

15 Q Okay. How long have you worked for them?

16 A Three years.

17 Q What's your current position?

18 A Patrol officer.

19 Q Okay. And was that your position in April of
20 2012?

21 A Yes, sir.

22 Q Can you tell the jury what some of your duties
23 and responsibilities are as a police officer?

24 A My responsibilities are answering calls for
25 service and enforcing traffic laws, as well as drug and

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 community enforcement. I guess, make sure the community
2 is safe.

3 Q Were you involved with the Shawn Burris case?

4 A I was.

5 Q And how'd you get brought into that case?

6 A I was called with dispatch to help, and I
7 answered the call.

8 Q Okay. So what does that mean? You got it over
9 the radio?

10 A Yes, sir.

11 Q Okay. And do you remember about what time?

12 A Approximately 5:00 a.m.

13 Q What county is this incident in?

14 A Charleston.

15 Q Okay. Now, once you got there, what did you
16 do?

17 A I parked my patrol vehicle up front and made
18 contact with the employee in the business.

19 Q Do you remember what that employee's name is?

20 A I do not recall.

21 Q Okay. After you got the call, about how long
22 did it take you to get there?

23 A Approximately two minutes.

24 Q So not very long?

25 A Not long at all.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Okay. And what did you see when you got there?

2 A When I got there, the employees were stocking
3 inside. I told them what I was there for, and then I
4 went and checked the outside of the business, and I saw
5 the individual, back side of the roof.

6 MR. WARING: Okay. May I approach the witness,
7 your Honor?

8 THE COURT: You may.

9 Q (By Mr. Waring) I'm showing you what's been
10 marked for identification purposes only as State's
11 Exhibit 1. Do you recognize this?

12 A I do.

13 Q Can you tell the jury what you see?

14 A It's a picture of the Bi-Lo on Remount Road.

15 Q Does that photo fairly and accurately depict
16 the Bi-Lo as it was during the time of the incident?

17 A It does.

18 MR. WARING: Your Honor, at this point the
19 State moves to have Exhibit 1 admitted into evidence.

20 THE COURT: Any objection?

21 MR. BURRIS: No, your Honor.

22 THE COURT: State's 1 into evidence without
23 objection.

24 (State's Exhibit Number 1 is admitted into
25 evidence.)

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. WARING: Let me see if I can place that on
2 a tripod for you.

3 Q (By Mr. Waring) Officer Bunch, would you mind
4 coming down here and pointing out for the jury where you
5 were walking?

6 A I parked my patrol vehicle right about here,
7 walked around this side of the building, and came
8 around.

9 THE COURT: Hold on one sec. Can you move that
10 back just a little bit?

11 MR. WARING: Yes, your Honor.

12 THE COURT: Thank you.

13 So that everybody can see, including
14 Mr. Burris.

15 Can all the jurors see?

16 THE JURORS: (Moves head up and down.)

17 THE COURT: Thank you.

18 Q (By Mr. Waring) And just so the jury knows,
19 what is this right here?

20 A That's the roof of Bi-Lo.

21 Q This white structure is the Bi-Lo?

22 A Yes, sir.

23 Q Okay. And where did you walk?

24 A I parked my car right about here, so I walked
25 around the side of the building, the Bi-Lo.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Okay. And earlier you said you saw the

2 Defendant; is that correct?

3 A Yes, sir.

4 Q Okay. Where did you see him?

5 A I saw him right in this corner right here,
6 right by the AC units.

7 Q Did you get a good look at his face?

8 A Not from this distance.

9 Q Okay. You can have a seat, Officer Bunch.
10 Thank you.

11 (The witness resumes the stand.)

12 Q (By Mr. Waring) What did it look like the
13 Defendant was doing?

14 A He appeared to be moving from one side to the
15 other, kind of like he was stacking stuff.

16 Q And about how long would you say you were
17 observing the Defendant while he was up there doing
18 that?

19 A Maybe five minutes, a little less.

20 Q At that point, what did you do?

21 A When I first saw him, I radioed in that I saw
22 someone on the roof, and we got some assisting units
23 en route. And then I helped establish where the
24 perimeter needed to be set up.

25 Q Okay. And while this is going on, what's the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Defendant doing?

2 A While I was initially talking on the radio, he
3 was still doing the same activities he was when I first
4 saw him. Once he saw me, he kind of dove down. I lost
5 sight of him.

6 Q All right, sir. And how many officers total
7 would you say about -- approximately there were?

8 A About ten.

9 Q Was the -- I mean, would you say the building
10 was surrounded?

11 A Yes, sir.

12 Q Okay. And at that point, what happened next?

13 A After we got the building sufficiently
14 surrounded and were able to make contact with the
15 business to get inside, couple of officers went inside,
16 went to the interior hatch, and went to the roof.

17 Q Was anything found with the Defendant on the
18 roof?

19 A They found some tools and the duffle bag, as
20 well as some copper piping that had been cut and set to
21 the side.

22 Q Had anything -- I guess that gets into that
23 next question. So there was some damage up on the roof;
24 is that correct?

25 A Yes, sir, there was.

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q And after the Defendant was apprehended, how
2 did y'all get him off the roof?

3 A Oh, we responded -- North Charleston Fire
4 Department brought a ladder truck out there and used it
5 to get him off the roof.

6 Q Okay. Did you go onto the roof at all?

7 A I did not.

8 Q Okay. And after that, was the Defendant taken
9 to jail?

10 A Yes, sir, he was.

11 Q Based on what y'all found, what was he charged
12 with?

13 A He was charged with unlawfully obtaining
14 nonferrous metals, as well as possession of burglary
15 tools.

16 Q Can you tell the jury why he was charged with
17 that?

18 A The unlawfully obtaining of nonferrous metals
19 was the illegal taking of the copper material, and the
20 possession of burglary tools is the tools found in the
21 bag up there with him.

22 Q After all this was over, did you write a
23 report?

24 A I did.

25 Q Okay. And after that, did you have any other

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 involvement with the case?

2 A I did not.

3 MR. WARING: Court's indulgence?

4 (Respite.)

5 MR. WARING: Please answer any questions that
6 the Defense has.

7 THE COURT: Mr. Burris?

8 CROSS-EXAMINATION

9 BY MR. BURRIS:

10 Q When was the last time you seen your report,
11 sir?

12 A The last time I saw the report?

13 Q Yes, sir.

14 A It's right here in front of me.

15 Q Okay. You just testified you seen me on the
16 roof. Would you mind reading the part about the unknown
17 race male that you seen?

18 A Let me find it.

19 Q On the front page, sir.

20 A Once I reached the corner, I observed an
21 unknown race male moving items in a corner, appearing to
22 be stacking them --

23 THE COURT REPORTER: I'm sorry, please slow
24 down.

25 THE COURT: Slow down. Thank you.

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE WITNESS: Oh, sorry. Sorry.

2 Which part were we at?

3 THE COURT: If you could just start over, how
4 about that?

5 THE WITNESS: Okay.

6 Once I reached the corner, I observed an
7 unknown race male moving items in a corner, appearing to
8 be stacking them.

9 Q (By Mr. Burris) All right. You do realize you
10 just lied, don't you?

11 A What's that?

12 Q You realize you just lied; don't you?

13 A How did I lie?

14 Q Because you said you identified me --

15 MR. WARING: Objection, your Honor.

16 Q You said you --

17 THE COURT: Hold on one second, Mr. Burris.

18 When there's an objection, I need you stop speaking
19 until I rule on it.

20 Thank you.

21 What's your -- what's the basis? What's your
22 basis, Mr. Waring?

23 MR. WARING: He's badgering the witness, your
24 Honor.

25 THE COURT: Overruled as to badgering.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

1 You may continue.

2 Q (By Mr. Burris) As I was saying, you just
3 lied?

4 A If I may clarify. At the time, I saw an
5 unknown race male --

6 Q And --

7 THE COURT: Hold on one second. Now,
8 Mr. Burris, when he's answering a question, you cannot
9 interrupt him. All right. So you need to let him
10 finish, and then you can ask a follow-up.

11 Officer, you may finish your statement.

12 THE WITNESS: At the time, I -- I saw an
13 unknown race male up there, later identified as you.

14 Q (By Mr. Burris) You couldn't tell what color
15 he was. How could you tell what sex he was?

16 A Because I could make out an outline that did
17 not appear to be female. Short hair, physical,
18 features, et cetera.

19 MR. BURRIS: May I enter something, your Honor?

20 THE COURT: I'm sorry?

21 MR. BURRIS: May I enter a picture into
22 evidence?

23 THE COURT: If you'll approach. Mr. Malloy,
24 can you help him -- assist him with that?

25 MR. MALLOY: I will, your Honor.

1 THE COURT: Thank you.

2 (Mr. Burris is speaking with Mr. Malloy off the
3 record.)

4 MR. MALLOY: Your Honor, would you like me to
5 approach?

6 THE COURT: All right. You're going to hand
7 the picture to Officer Bunch?

8 MR. MALLOY: I will, your Honor.

9 THE COURT: All right. Thank you.
10 You may approach.

11 And if you could, just tell me the exhibit
12 number on the back. Has that one been marked?

13 MR. MALLOY: It has not, your Honor.

14 THE COURT: All right. If you'll hand it to
15 the court reporter. I thought we marked these.

16 MR. MALLOY: Your Honor, I think this was one
17 that was not marked.

18 THE COURT: One that wasn't marked. All right.
19 Let's give her an opportunity to mark it.

20 Thank you.

21 THE COURT REPORTER: It will be Number 15, your
22 Honor.

23 (Defendant's Exhibit Number 15 is marked for
24 identification.)

25 (Defendant's Exhibit Number 15 is shown to

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Mr. Waring, and then handed to the witness.)
2 Q (By Mr. Burris) Did you have a problem telling
3 what color the officer is up there?
4 A With the --
5 Q What color is he?
6 A With the spotlight from the fire truck, he's
7 white in color.
8 Q Okay. I'll go for that.
9 THE COURT REPORTER: I'm sorry?
10 THE COURT: I think he said: Okay. I'll go
11 for that.
12 Is that what you said, Mr. Burris?
13 MR. WARING: Objection, your Honor.
14 THE COURT: Hold on one second.
15 Is that what you said, Mr. Burris?
16 MR. BURRIS: Yes, ma'am.
17 THE COURT: All right. What's your objection?
18 MR. WARING: He's testifying, your Honor.
19 THE COURT: Mr. Burris, you need to ask
20 questions. You can't just make general statements.
21 Sustained.
22 MR. BURRIS: I apologize.
23 THE COURT: All right. Thank you.
24 Q (By Mr. Burris) How long have you been an
25 officer in North Charleston?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Three years.

2 Q So, then, you know and follow all procedures
3 and policies for all North Charleston Police Officers;
4 correct?

5 A Can you repeat the question, sir?

6 Q So then you know and follow policies and
7 procedures for all the North Charleston Police Officers;
8 correct?

9 A Yes, sir.

10 Q Have you ever been reprimanded on the job for
11 not following procedure or anything else?

12 MR. WARING: Objection, your Honor.

13 THE COURT: What's the basis?

14 MR. WARING: Relevance, your Honor.

15 THE COURT: I'll allow you to ask that
16 question. He may answer.

17 THE WITNESS: I had a minor collision -- minor
18 parking lot collision, if that's what you referring to.

19 Q (By Mr. Burris) Okay. Thank you.

20 Why are you listed as the arresting officer and
21 not the officer who supposedly arrested and took me into
22 custody?

23 A I was the initial reporting officer, and I took
24 the arrest because I was the first officer on scene.

25 Q Okay. We've already covered --

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: Mr. Burris, I didn't hear what you
2 said.

3 MR. BURRIS: I was skipping a question --

4 THE COURT: All right. Thank you.

5 MR. BURRIS: Sorry. I apologize.

6 THE COURT: That was not a question. I just
7 want to make sure the record is clear.

8 Thank you.

9 Q (By Mr. Burris) In your summary report, it
10 states the incident took place at 0500 hours; correct?

11 A I put on here at 5:00 a.m., yes, sir.

12 Q Okay. On the incident report, it says the
13 offense took place at 0230 a.m.; correct?

14 A It actually states it took place from 2:30 to
15 5:00 a.m. due to an alarm that was activated at 3:00
16 a.m.

17 Q I said "offense," not "incident," sir.

18 A Can you clarify that, please?

19 Q Yeah. The little box down there that says
20 "date and time of the offense," what time is that?

21 A That is based off the first time on the
22 incident report. That's automatically put in by the
23 computer. I don't control that.

24 Q Okay. All right. On the incident report next
25 to the date and time --

1 MR. WARING: Objection, your Honor. He's
2 testifying off the incident report, your Honor. If he
3 wants to admit it --

4 MR. BURRIS: I'm asking him questions --

5 THE COURT: Mr. Burris, you need to direct your
6 questions to the Court, not to Mr. Waring.

7 MR. WARING: The incident report isn't in
8 evidence. If he wants to have it admitted, that's
9 another story. But he's --

10 THE COURT: Overruled.

11 You may continue, Mr. Burris. Please phrase it
12 in a question.

13 Q (By Mr. Burris) On the incident report next to
14 the date and time of the offense is the box for date and
15 time of arrest; correct?

16 A Yes, sir.

17 Q Was there a date and time by arrest there?

18 A No, sir, it's not on there.

19 Q Thank you.

20 In relation to your job, what is a report?

21 A A report is the -- a report of what happened.

22 Q Explain further, please.

23 A Can you repeat the question, please.

24 Q Is a report something you make?

25 A It's a depiction of the incident that happened.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q In other words, this; correct?

2 A Yes.

3 Q This is the report?

4 A More or less.

5 Q What about an incident?

6 A An incident is something that's happened.

7 Q Okay. An offense?

8 A That's -- a crime that's been committed.

9 Q Okay. So correct me if -- let me know if I'm
10 right here.

11 So you do a report after an incident on an
12 offense; correct?

13 A That would be correct.

14 Q Okay. Did you know there's a place on these
15 reports that reads "report date and time"?

16 A Uh-huh.

17 THE COURT: Was that a yes?

18 THE WITNESS: Yes. I apologize.

19 Q (By Mr. Burris) Okay. Please look. It
20 doesn't say "incident report date or time," does it?

21 A Where are you speaking about?

22 Q Specifically, in the very top, on the back, it
23 states the agency name, the ORI number, the report date
24 and time?

25 A Uh-huh.

1 Q Okay. That's what I'm talking about. Did you
2 put that in, or did the computer do that?

3 A This would be the computer program, sir. I
4 don't control that.

5 Q Okay. Now, so -- just to make sure, that's the
6 report, as in, what time that this was actually
7 referring to in the report, not an incident or an
8 offense; correct?

9 A That would -- I'm not sure what you're talking
10 about, sir. I'm not the one that writes the program for
11 these forms.

12 Q Let me clarify, if I may.

13 It don't say what -- that's not a reference to
14 what time the offense took place? That is a reference
15 to the report; right?

16 A It has the offense time on there, so I'm
17 assuming that this offense, I'm -- like I said, I'm not
18 the writer of this program.

19 Q It doesn't say "offense"; it doesn't say
20 "incident," sir. It says "report."

21 A That would be a technical question to ask the
22 people who writes the program.

23 Q Okay. We both agree, don't we, that it does
24 say "report date and time"?

25 A I didn't make the program, but, yes, sir, it

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 does.

2 Q Could you please tell the Court what time it
3 says that report was made?

4 A No. This isn't the time the report was made.

5 Q That isn't what I asked you, sir.

6 A The time the report was generated would be down
7 at the bottom.

8 MR. BURRIS: Your Honor, I asked him to read
9 the -- if you will look, it says report --

10 THE COURT: All right. I need you to -- you
11 cannot testify. There are no speaking objections.

12 What is it that you need, Mr. Burris?

13 MR. BURRIS: I asked him to read what time it
14 says the report was made by this document.

15 THE COURT: All right. Mr. Waring?

16 MR. WARING: Your Honor, the State still has
17 the same objection as earlier. He's testifying. If he
18 wants to admit it into evidence, he needs to do that.
19 He's having the officer testify off of the incident
20 report.

21 THE COURT: Mr. Burris, do you wish to
22 introduce the document?

23 MR. BURRIS: Yes.

24 THE COURT: All right. Mr. Malloy, can you
25 assist?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Officer Bunch, we're going to need to mark that
2 exhibit.

3 THE WITNESS: Okay.

4 MR. MALLOY: You want to go ahead and use the
5 one he's had --

6 THE COURT: Yes.

7 MR. MALLOY: -- he's using?

8 Okay.

9 THE COURT: That's yours?

10 THE WITNESS: Yes, that is my copy.

11 THE COURT: Do you mind if we mark that?

12 THE WITNESS: That's fine.

13 THE COURT: Okay. Thank you.

14 Mr. Waring, do you mind if we mark
15 Officer Bunch's copy of the report?

16 MR. WARING: No, your Honor.

17 THE WITNESS: Here you go, ma'am.

18 (Defendant's Exhibit Number 16 is marked for
19 identification.)

20 THE COURT REPORTER: Sixteen.

21 THE COURT: And Defendant's Exhibit 16 will
22 be in evidence without objection; is that correct,
23 Mr. Waring?

24 MR. WARING: Yes, your Honor.

25 THE COURT: All right. Thank you.

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 And, Mr. Burris, Defendant's 16 is in evidence,
2 so the jury will have that back in the deliberation
3 room.

4 You may continue.

5 (Defendant's Exhibit Number 16 is admitted into
6 evidence.)

7 MR. BURRIS: Thank you.

8 Q (By Mr. Burris) Will you please tell me what
9 time it says on there, sir?

10 A The --

11 All right. Sir, can you please ask the
12 question again?

13 Q Yeah. Please read what time it says on there
14 for report date and time?

15 A Report date and time says 4-26-2012 at
16 2:30 a.m.

17 Q No, sir, it don't, not in regards to
18 what we was just talking about. You said that was
19 computer-generated?

20 A Are we talking about this block right here?
21 That says 4-26-2012, 2:30 a.m.?

22 Q 2:30 a.m. Okay.

23 That's about the same time the alarm -- the
24 tamper alarm went off, isn't it?

25 A What?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q About the same time the tamper alarm went off;
2 correct?

3 A I would say, yes, sir.

4 Q Okay. So that's basically two-and-a-half hours
5 before you say you arrived at the scene too?

6 A Yes, sir.

7 Q Did you know there's a total of five different
8 reports that said they were made on 4-26-12 at 2:30
9 a.m.?

10 MR. WARING: Objection, your Honor.

11 THE COURT: What's the basis?

12 MR. WARING: Foundation. Defendant has to lay
13 the foundation for that.

14 THE COURT: All right. Sustained.

15 You need to lay a foundation.

16 MR. BURRIS: May I ask a question of my
17 attorney, please?

18 THE COURT: You may.

19 (Mr. Burris speaks with Mr. Malloy off the
20 record.)

21 MR. BURRIS: We'll move forward, your Honor, at
22 this time.

23 THE COURT: All right. Thank you.

24 Q (By Mr. Burris) Who is the senior officer
25 approving my arrest?

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Official Court Reporter for the State of South Carolina

Page 99

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Sir?

2 Q Who was the senior officer approving my arrest?

3 A Sergeant Eddie Bullard (phonetic).

4 Q Where is he?

5 A Sir?

6 Q Where is he?

7 A He's --

8 MR. WARING: Objection.

9 THE COURT: Hold on one second.

10 What's the basis?

11 MR. WARING: Relevance.

12 THE COURT: Sustained as to relevance.

13 Q (By Mr. Burris) He had --

14 MR. BURRIS: Hold on. Let me make sure I do

15 this right.

16 (Mr. Burris speaks with Mr. Malloy off the

17 record.)

18 Q (By Mr. Burris) What was his involvement?

19 A He was supervisor on scene.

20 Q Okay. Is that the only thing?

21 A He also went on the rooftop.

22 Q Okay. Let me make sure he don't object to

23 this.

24 Is he the officer that turned over the crime

25 scene to the crime scene tech? He was supervising

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 officer that turned over the crime scene; right?

2 A I'm not sure what you are asking.

3 Q He had control of the crime scene until the
4 crime scene technician arrived; correct?

5 A Officer Doxey handles our -- on the -- on the
6 rooftops, if that's what you're asking?

7 Q But there's no documentation nowhere from
8 Officer Doxey.

9 He is the officer -- Mr. Bullard's the officer
10 that made the report saying he took me into custody;
11 correct?

12 A Yes, sir.

13 Q All right. He's your supervisor too?

14 A At the time.

15 Q Okay.

16 MR. BURRIS: Excuse me, your Honor.

17 (Mr. Burris speaks with Mr. Malloy off the
18 record.)

19 Q (By Mr. Burris) Can you tell me why he's no
20 longer with the North Charleston Police Department --

21 MR. WARING: Objection, your Honor.

22 THE COURT: What's your basis?

23 MR. WARING: Relevance, your Honor.

24 THE COURT: Sustained.

25 MR. BURRIS: No further questions, your

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Honor.

2 THE COURT: Thank you.

3 Redirect.

4 MR. WARING: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WARING:

7 Q Officer Bunch, what was the actual time for the
8 dispatch call?

9 A The dispatch time was 5:00 a.m.

10 Q Okay. And what time did y'all actually
11 arrive -- what time did you arrive?

12 A I got on the scene at 5:02 a.m.

13 MR. WARING: Court's indulgence?

14 Q (By Mr. Waring) And what time did you leave?

15 A Approximately 6:30 a.m.

16 MR. WARING: Court's indulgence?

17 (Mr. Waring speaks with Mr. Kidd off the
18 record.)

19 Q (By Mr. Waring) Officer Bunch, why is there
20 reference of the 2:30 a.m.? Where does that come from?

21 A The tamper alarm originally went off at
22 3:00 a.m., so we were giving time for him to get up on
23 the roof and get started cutting on the metal to
24 initiate the tamper alarm.

25 MR. BURRIS: Your Honor, objection.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: What's the basis?

2 MR. BURRIS: He's speculating.

3 THE COURT: Overruled.

4 You may continue your answer.

5 Q (By Mr. Waring) And so on other -- on other
6 pages of the incident report, why is there that
7 reference again of the 2:30 a.m.?

8 A The report just takes the starting point of the
9 incident and just puts that on each of those pages for
10 some reason unknown to me.

11 Q So is that computer-generated?

12 A That's computer-generated.

13 MR. WARING: Please answer any questions that
14 the Defense has.

15 THE COURT: All right. Mr. Burris, Recross
16 limited to Mr. Waring's Redirect.

17 MR. BURRIS: Yes, ma'am.

18 RECROSS-EXAMINATION

19 BY MR. BURRIS:

20 Q So you let me see if I get this correct. Even
21 though it says report date and time, the computer
22 automatically logged it in as saying when the offense
23 took place?

24 A I'm not understanding.

25 Q Even though it says report date and time, the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 computer logged it in as when the crime actually
2 occurred?

3 A Well, I put the start of the incident. That's
4 what it transfers to the other pages apparently.

5 Q Correct me if I'm wrong, but that kind of
6 defeats the purpose of having a report date and time
7 stamped on it.

8 A That's not something I control, sir.

9 Q You sure you didn't make this report out at
10 2:30?

11 A No, sir, I didn't. I made it around seven
12 o'clock.

13 Q It don't say that nowhere on there; does
14 it?

15 A That's not my control, sir. I didn't write the
16 program.

17 Q I mean -- it's not an incident -- does it
18 say incident report? It doesn't say offense report.
19 To me, it should say what time the report was made;
20 correct?

21 A That's something you would have to take up with
22 Visionair Programming.

23 Q And -- all right.

24 MR. BURRIS: Thank you, your Honor.

25 THE COURT: Is Officer Bunch excused?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. WARING: Yes, your Honor.

2 THE COURT: Any objection, Mr. Burris?

3 MR. BURRIS: No, ma'am.

4 THE COURT: Officer Bunch, you are excused.

5 Feel free to remain with us, but you're also free to

6 leave the courtroom.

7 Call your next witness.

8 MR. WARING: State calls Officer Doxey.

9 THE DEPUTY CLERK OF COURT: Just place your
10 left hand here and raise your right hand.

11 (The oath is administered by the Deputy Clerk
12 of Court, and the witness answers as follows:)

13 THE WITNESS: I do.

14 THE DEPUTY CLERK OF COURT: Please have a
15 seat. State your full name, spelling your last name for
16 the record.

17 THE WITNESS: Anthony Martin Doxey, Jr. My
18 last name is spelled D-o-x-e-y.

19 THE COURT: Mr. Waring, your witness.

20 MR. WARING: Thank you, your Honor.

21 ANTHONY MARTIN DOXEY, JR.,

22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 DIRECT EXAMINATION

2 BY MR. WARING:

3 Q Good afternoon, Officer. How are you?

4 A I'm doing fine.

5 Q Sir, can you tell the jury where you're
6 employed?

7 A I'm employed for the City of North Charleston.

8 Q And are you a police officer?

9 A I am.

10 Q What's your current position?

11 A I'm a patrol officer with the city.

12 Q And was that your position in April of 2012?

13 A Yes, sir, it was.

14 Q Were you involved with the Shawn Burris case?

15 A I was.

16 Q And how'd you get involved with that case?

17 A I was dispatched originally to the call at
18 Bi-Lo. The individual employees had heard somebody on
19 the roof, so I responded.

20 Q And once you got there, what'd you do?

21 A I knew officers were around the rear of the
22 building, so I sat up in front of the building until the
23 other officers got there so we could secure the scene.

24 Q Were there any other units when you got there?

25 A There was. To my knowledge, I think there was

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 two already on scene. They were in the back of the
2 building.

3 Q So about how long did it take for the police to
4 respond?

5 A I believe it took two minutes. I believe the
6 call came in at five o'clock in the morning, and I think
7 the first officer on was scene at 5:02.

8 MR. WARING: Can I approach the witness, your
9 Honor?

10 THE COURT: You may.

11 Q (By Mr. Waring) I'm showing you what's been
12 marked for identification purposes as State's Exhibits 2
13 and 3, I believe without objections.

14 (Documents are shown to Mr. Burris.)

15 (Documents are handed to the witness.)

16 Q (By Mr. Waring) Do you recognize these photos?

17 A I do.

18 Q And can you tell the jury what you see in those
19 photos?

20 A One set of officers got on scene. Myself and
21 Sergeant Bullard made contact with the employees and
22 asked them where the -- the access to the roof was. The
23 employees took us to the back. Exhibit 2 shows that
24 hatch where we -- where we came onto the building.

25 Same with Exhibit 3. That's the backside of

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the entry hatch to the roof of the building.

2 Q So do those pictures fairly and accurately
3 depict the hatch of the roof as they were at the time of
4 the incident?

5 A Yes, sir.

6 MR. WARING: Your Honor, at this point, State
7 moves Exhibits 2 and 3 admitted into evidence.

8 THE COURT: Any objection?

9 MR. BURRIS: No, your Honor.

10 THE COURT: State's 2 and 3 into evidence
11 without objection.

12 (State's Exhibit Numbers 2 and 3 are admitted
13 into evidence.)

14 MR. WARING: May I publish the pictures, Judge?

15 THE COURT: You may.

16 MR. WARING: Your Honor, I'm going to put these
17 photos on.

18 Q (By Mr. Waring) Can you describe to the jury
19 what's going on with these photos?

20 A When we arrived, the hatch was closed. You
21 can -- it's a ladder that leads up from the building.
22 So we came up. We just barely cracked it to make sure
23 nobody was standing right there. Once we realized
24 nobody was there, we opened the hatch, came out from
25 behind the hatch. Laying behind the hatch, we noticed

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 there was a stack of cut copper pipe. Once we
2 established that was clear, we began searching the top
3 of the roof.

4 Q So did you announce the presence -- your
5 presence to the Defendant?

6 A We did. Once we got on top and made sure the
7 hatch was clear and behind us was, we informed whoever
8 was up there, it was the North Charleston Police, to
9 come out.

10 MR. WARING: May I approach the witness, your
11 Honor?

12 THE COURT: You may.

13 Q (By Mr. Waring) I'm now going to show you
14 what's been marked for I.D. purposes only as State's 4,
15 5, and 6, I believe without objection.

16 (Documents are shown to Mr. Burris.)

17 (Documents are handed to the witness.)

18 Q (By Mr. Waring) Do you recognize what's in
19 these photos?

20 A I do.

21 Q And can you tell the jury what you see?

22 A This is the pipe, that was apparently cut from
23 the air conditioner, stacked on the rear of the building
24 near the back corner.

25 Q And do those photos fairly and accurately

Reported By:
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Official Court Reporter for the State of South Carolina

Page 109

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 depict the pipes as you saw them on the night of the
2 incident?

3 A Yes, sir, they do.

4 MR. WARING: At this point, State moves
5 Exhibits 4, 5, and 6 admitted into evidence.

6 THE COURT: Any objection?

7 MR. BURRIS: No.

8 THE COURT: States 4, 5, and 6 into evidence
9 without objection.

10 (State's Exhibit Numbers 4, 5, and 6 are
11 admitted into evidence.)

12 Q (By Mr. Waring) I'm going to put these on one
13 at a time. Can you just tell the jury, please, what you
14 see in each one?

15 A It's sort of hard to see on this picture, but
16 to the right of the air conditioner, right there, is a
17 couple of large pieces of copper pipe that had been
18 removed from the air-conditioning system.

19 Q How about this one?

20 A Same thing. Copper pipes that had been removed
21 from the -- I say air conditioner. It was the
22 refrigeration system, what I understand later on.

23 Q And tell us about this one.

24 A That's where they were cut from, from the
25 refrigeration unit, that's right in the middle that led

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 to the air conditioner.

2 Q So what happened after you saw the pipes?

3 A We began to clear the building. Of course, we
4 had our guns and flashlight drawn as we worked our way
5 around the building. Underneath the air-conditioning
6 unit, I observed the Defendant laying flat on the ground
7 underneath it.

8 Q So was he trying to stay concealed from you?

9 A He was. And when I ordered him out, I ordered
10 him to come towards me so I could see. But he began to
11 crawl backwards away from me.

12 MR. WARING: May I approach the witness, your
13 Honor?

14 THE COURT: You may.

15 Q (By Mr. Waring) I'm next going to show you
16 what's been marked for I.D. purposes only as State's 7
17 and 8, I believe without objection.

18 (Documents are shown to Mr. Burris.)

19 (Documents are handed to the witness.)

20 Q (By Mr. Waring) Do you recognize what's in
21 these photos?

22 A I do.

23 Q Okay. Can you tell the jury what you see?

24 A The air-conditioning unit as it connects to the
25 building, you could see some AC ductwork. The Defendant

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 was laying under it.

2 Q And do those photos fairly and accurately
3 depict the AC unit and where the Defendant was on the
4 night of the incident?

5 A They do.

6 MR. WARING: Your Honor, at this point, the
7 State moves to have Exhibits 7 and 8 admitted into
8 evidence.

9 THE COURT: Any objection?

10 MR. BURRIS: No, your Honor.

11 THE COURT: State's Exhibit 7 and 8 into
12 evidence without objection.

13 (State's Exhibit Numbers 7 and 8 are admitted
14 into evidence.)

15 Q (By Mr. Waring) Now I'm going to put these
16 overhead. Can you just kind of point out for the
17 jury --

18 A When I came up to the --

19 Q -- what you just talked about?

20 A -- to the right side of the unit is where I
21 went around, and you can see where it connects to the
22 building. He was laying up under there. I saw the
23 Defendant laying under it.

24 That's the back side of the air conditioner
25 where he backed out and other officers -- we took him

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 into custody on that side of the air-conditioning unit.

2 Q So just so the jury can get a better idea, was
3 he to the left of that AC unit?

4 A Yes, sir, to the left. The white part is where
5 the building rises up and where the air conditioner unit
6 connects to the building. He was up under there.

7 MR. WARING: Court's indulgence?

8 (Mr. Waring speaks with Mr. Kidd off the
9 record.)

10 Q (By Mr. Waring) Did the Defendant put up a
11 fight?

12 A He did resist. He wouldn't give us his hands.
13 He was laying on his stomach when he was drug out from
14 underneath the air conditioner by other officers. He
15 wouldn't give us his hands, so it was a struggle to get
16 his hands out from under him.

17 Q Was there anything on the Defendant's hands?

18 A He was wearing a pair of gloves.

19 MR. WARING: May I approach the witness, your
20 Honor?

21 THE COURT: You may.

22 Q (By Mr. Waring) I'm next going to show you
23 what's been marked for I.D. purposes only as State's 9
24 and 10, I believe without objection.

25 (Documents are shown to Mr. Burris.)

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 (Documents are handed to the witness.)

2 Q (By Mr. Waring) Do you do you recognize what's
3 in these photos?

4 A I do. It's the Defendant's hands after we
5 handcuffed him, wearing the gloves that he had on when
6 he was arrested.

7 Q And do these photos fairly and accurately
8 depict the Defendant's hands as they were on the night
9 of the incident?

10 A They do.

11 MR. WARING: Your Honor, at this point, the
12 State moves to have Exhibits 9 and 10 admitted into
13 evidence.

14 THE COURT: Any objection?

15 MR. BURRIS: Objection, your Honor.

16 THE COURT: What's the basis?

17 MR. BURRIS: The same argument I presented
18 at pretrial, that they weren't there; and, therefore,
19 they weren't considered by evidence by the C.S. on the
20 scene.

21 THE COURT: What's the objection to the
22 photographs?

23 MR. BURRIS: He's trying to show the gloves.
24 They weren't taken as evidence for 11 months.

25 THE COURT: Thank you, Mr. Burris. No speaking

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 objections. Thank you.

2 State's 9 and 10 into evidence over your
3 objection.

4 (State's Exhibit Numbers 9 and 10 are admitted
5 into evidence.)

6 THE COURT: You may continue, Mr. Waring.

7 MR. WARING: Thank you, your Honor.

8 Q (By Mr. Waring) I'm now going to put these on
9 the overhead for the jury.

10 Are these the gloves that he was wearing on
11 that night?

12 A They were.

13 Q Do you see the Defendant in the courtroom
14 today?

15 A I do.

16 Q Would you please point him out for the jury?

17 A He's sitting over behind the Defense table,
18 Mr. Burris.

19 Q The one in the middle?

20 A Yes, sir.

21 MR. WARING: Let the record reflect the witness
22 has identified the Defendant.

23 THE COURT: It will.

24 Q (By Mr. Waring) What happened after the
25 Defendant was detained?

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A We -- I know we searched him because we got his
2 I.D. out of his pocket. He had a backpack laying near
3 him. We went through it pretty rapidly just to make
4 sure there was no weapons. I let Sergeant Bullard and
5 the CY [sic] check the rest of the building to make sure
6 there wasn't a second person on the building.

7 Q And so was he -- was the Defendant the only one
8 on the roof?

9 A He was.

10 Q Are you positive there was nobody else?

11 A I'm positive. I searched the rest of the
12 building myself. I knew there was nobody else on the
13 building at that time.

14 Q And you mentioned short time ago that y'all
15 found some items?

16 A We did. In the backpack, I believe there was a
17 hacksaw, a hacksaw blade, orange can of spray paint, I
18 think there was some vise-grips, and two other smaller
19 bags.

20 Q Did you personally remove any of those items
21 from the roof?

22 A I did not.

23 Q Can you tell the jury about how far away from
24 where the Defendant was apprehended where the bag
25 containing the tools was?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A It was -- probably, max, 5 feet. He was laying
2 up under the ductwork. The bag was sitting right out
3 there beside it.

4 Q So were those items close enough for the
5 Defendant to grab if he wanted to?

6 A Yes, sir.

7 Q Were any other suspects apprehended on this
8 case?

9 A No, sir.

10 Q So what happened after y'all went and
11 apprehended him?

12 A Well, to get him off -- I know Crime Scene was
13 contacted to get him off the roof. We had to contact
14 the fire department. They brought one of their bucket
15 trucks out. We all got on there and loaded him to the
16 ground, and he was placed in the patrol vehicle.

17 Q Did you have any other involvement with this
18 case?

19 A After that point, no, sir.

20 MR. WARING: Court's indulgence?

21 THE COURT: Take your time.

22 MR. WARING: Please answer any questions that
23 the Defense has.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Burris?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 CROSS-EXAMINATION

2 BY MR. BURRIS:

3 Q Do you happen to know what the temperature was
4 that night, sir?

5 A I do not. But I don't believe it was that
6 cold. It -- mild night.

7 MR. BURRIS: May I introduce into evidence,
8 your Honor? This is the weather report for that night.

9 THE COURT: All right. You need to let
10 Mr. Waring see it.

11 (Document is shown to Mr. Waring.)

12 (Document is handed to the witness.)

13 THE COURT: All right. We'll need to mark
14 that.

15 (Defendant's Exhibit Number 17 is marked for
16 identification.)

17 Q (By Mr. Burris) Including the dew point, could
18 you tell me what the temperature was -- what it was at
19 the time of my arrest -- or my supposed arrest, rather?

20 A Shows on here -- looks like it was 54 degrees
21 with the dew point and everything. The temperature --
22 air temperature was 66 degrees.

23 Q Are you aware that I've got about \$10,000 worth
24 of titanium in my hand?

25 A Not aware of that, sir.

1 MR. WARING: Objection, your Honor.

2 THE COURT: What's the basis?

3 MR. WARING: Relevance.

4 THE COURT: Sustained.

5 MR. BURRIS: Your Honor, it's a legal reason
6 for the -- when the wind chill and stuff like that --

7 THE COURT: All right. Mr. -- I have ruled.

8 MR. BURRIS: Okay.

9 THE COURT: Thank you.

10 Q (By Mr. Burris) All right. In relation to
11 your job, what is a report?

12 A I'm sorry. Could you repeat that?

13 Q In relation to your job, what is a report?

14 A A report?

15 Q Yes, sir.

16 A When people are arrested or we go to different
17 scenes, if it dictates a report, we put it in the
18 computer and -- and it sort of depicts the -- the
19 information that why we were on the scene.

20 Q So it -- basically, it was an accounting of
21 what happened --

22 A Yes, sir.

23 Q -- correct?

24 An incident?

25 A Well, the report will depict what happened on

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the incident.

2 Q And in an offense?

3 A That's what you're going to be charged with.

4 Q So you do a report after an incident or an
5 offense; correct?

6 A Yes, sir. It's hard to do one before it
7 happens.

8 Q And you're required to use a 24-hour military
9 clock when filling out the reports; correct?

10 A Not necessarily. I don't write my reports, the
11 narrative, in military time, because a lot of people
12 don't understand military time.

13 Q How long have you been an officer with the
14 North Charleston Police Department?

15 A Seven-and-a-half years.

16 Q Okay. So, then, you know all policies and
17 procedures for all North Charleston Police Officers;
18 correct?

19 A I know a majority of them.

20 MR. BURRIS: That's not really an answer.

21 That's --

22 MR. WARING: Objection, your Honor.

23 THE COURT: Sustained.

24 Please ask a question.

25 Q (By Mr. Burris) Do you normally follow

1 policies and procedures for all North Charleston Police
2 Officers?

3 A To the best of my ability.

4 Q Thank you.

5 Have you ever been reprimanded on the job for
6 not following procedure or anything else --

7 MR. WARING: Objection, your Honor.

8 THE COURT: What's the basis?

9 MR. WARING: Relevance..

10 THE COURT: What's the relevance?

11 MR. WARING: I don't see how --

12 THE COURT: You can't answer that. I'm asking
13 Mr. Burris.

14 Mr. Burris, what's the relevance?

15 MR. BURRIS: If you will let me ask a couple of
16 questions, I can show the relevance.

17 THE COURT: That's not how it works,
18 Mr. Burris.

19 MR. BURRIS: Yes, ma'am.

20 THE COURT: All right, sir. Sustained.

21 MR. BURRIS: Okay.

22 Q (By Mr. Burris) When you entered on to the
23 crime scene, the crime scene perimeter was secured;
24 correct?

25 A It was not. We were still in the process of

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 setting it up. There was two officers on the scene, to
2 my knowledge, when I got there. I stayed in the front
3 of the building because there was nobody there yet.

4 Q Correct me if I'm wrong, the crime -- the crime
5 scene was on the roof?

6 A The crime scene started as soon as the crime
7 was committed.

8 Q Okay. So you entered the crime scene before it
9 was secure?

10 A No, sir. It was secured -- it started as soon
11 as the crime began, which was exterior of the building.
12 Before officers ever made it on, it was a crime scene.

13 Q Okay. Well, I mean, maybe I'm not asking the
14 question right. Let me rephrase that.

15 A Okay.

16 Q When you entered onto the roof --

17 A Yes, sir.

18 Q -- was the crime scene secured at that time?

19 A Yes, sir.

20 Q Okay. Thank you. What officer was with you
21 when you entered onto the crime scene on the roof?

22 A Myself and Sergeant Bullard went up to the
23 roof.

24 Q What were your significant roles at the crime
25 scene?

1 A I'm sorry. I didn't understand the question.

2 Can you repeat it, please?

3 Q What were your significant roles at the crime
4 scene?

5 A Mine or Sergeant Bullard's?

6 Q Sergeant Bullard's.

7 A I can't tell you what his role was. I mean,
8 after we secured the hatch, we began searching for
9 whoever was up there.

10 Q Okay. All right. Did you make a report for
11 any -- for the crime scene?

12 A I did not. Sergeant Bullard and I got
13 together, and we sort of put it into one sheet, his
14 supplement.

15 MR. BURRIS: Okay. May I enter --

16 THE COURT: Mr. Malloy?

17 MR. BURRIS: This is a copy of procedures on --

18 THE COURT: All right. Hold on one second.
19 Just -- let's follow the protocol. We need to let
20 Defense -- or opposing counsel see it. And then we're
21 going to mark it, unless they have been previously
22 marked.

23 (Defendant's Exhibit Number 18 is marked for
24 identification.)

25 THE COURT: Mr. Burris?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q (By Mr. Burris) Are you familiar with them
2 documents, sir?

3 MR. WARING: Objection, your Honor.

4 THE COURT: What's your objection to that
5 question?

6 MR. WARING: Your Honor, relevance and hearsay.

7 THE COURT: He can answer that question. It's
8 yes or no.

9 THE WITNESS: I have read this policy.

10 Q (By Mr. Burris) Is there any reason why you
11 didn't follow it?

12 MR. WARING: Objection. Same -- same issues.

13 THE COURT: You need to lay the foundation.

14 MR. BURRIS: He didn't make the report.

15 THE COURT: It's not -- you don't need to tell
16 me. You need to lay the foundation with the officer.

17 Q (By Mr. Burris) You didn't make the report,
18 did you?

19 A I wouldn't have been the reporting officer. I
20 could have did a supplement, but Sergeant Bullard and I
21 got together and covered it under his, which is common
22 practice.

23 (Mr. Burris speaks with Mr. Malloy off the
24 record.)

25 Q (By Mr. Burris) You're familiar with what

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 you're looking at; correct?

2 A Yes, sir.

3 Q What is it?

4 A It's our policy on collection and preservation
5 of evidence.

6 MR. BURRIS: Now, may I enter that, please,
7 ma'am?

8 THE COURT: Any objections?

9 MR. WARING: Yes, your Honor. Same basis:
10 hearsay and relevance.

11 THE COURT: Sustained.

12 (Mr. Burris speaks to Mr. Malloy off the
13 record.)

14 Q (By Mr. Burris) There's a spot by your name.
15 What does it say?

16 A There's several of them. Which one would you
17 like me to read?

18 Q The one on the front page, sir.

19 A Okay. There's two of them.

20 Q I believe it's the -- the one by yourself, with
21 the name by yourself.

22 A Yes, sir, I see that.

23 MR. WARING: Objection, your Honor. Same
24 basis. He's testifying --

25 THE COURT: There's not a question. Wait for

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the question.

2 Q (By Mr. Burris) What does it say?

3 MR. WARING: Objection, your Honor.

4 THE COURT: What's the basis for that
5 objection?

6 MR. WARING: Same basis: hearsay and
7 relevance.

8 THE COURT: What's the relevance, Mr. Burris?

9 MR. BURRIS: It's policy and procedures that
10 all officers are supposed to follow when entering a
11 crime scene in collection of the evidence and
12 preservation of it.

13 THE COURT: All right. Counsel approach.

14 (Mr. Burris, Mr. Waring, Mr. Malloy, Mr. Smith,
15 and Mr. Kidd all approach the bench for a discussion off
16 the record.)

17 Q (By Mr. Burris) All right. How is your memory
18 so good if you never made a supplement?

19 A I've made supplements before.

20 Q Not in this particular case, though, did you?

21 A Not in this one, no, sir. Like I stated,
22 Sergeant Bullard and I got together, and our actions
23 were practically the same.

24 Q But it's been a year to the date, as a matter
25 of fact, and your memory's quite good, so how can -- how

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 is it like that? You've got a photographic memory or
2 something?

3 A No, sir. I read over the incident report like
4 we do before all trials.

5 Q You read somebody else's incident report;
6 correct?

7 A It reflected the same thing that I -- we did,
8 so yes, sir.

9 Q Does policy and procedure require you to make a
10 report when entering a crime scene?

11 A It does.

12 Q And yet you didn't do it?

13 A Correct.

14 Q Thank you.

15 A Yes, sir.

16 Q You're also listed as the reporting officer
17 too; correct?

18 A Assisting. I believe Patrolman Bunch was the
19 reporting officer. I don't have the incident report
20 with me here.

21 Q The incident report was entered into evidence.

22 THE COURT: Defendant's Exhibit 16.

23 (Document is handed to the witness.)

24 A It does show reporting. But, like I said, I
25 assisted him.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q (By Mr. Burris) Did you make a report as a
2 documenting reporting officer?

3 A No, sir. I wasn't the reporting officer.

4 Q But --

5 A I was the assisting officer. It doesn't -- it
6 lists it that way, but the first officer on the scene is
7 usually the reporting officer.

8 Q Okay. Well, based on what you just said, even
9 though the document lists you as the reporting officer,
10 you're saying you were assisting officer; correct?

11 A Yes, correct.

12 Q So why did you make out that supplemental form?

13 MR. WARING: Objection, your Honor. Asked and
14 answered.

15 THE COURT: Sustained.

16 Q (By Mr. Burris) You say you took me into
17 custody; right?

18 A Myself and Sergeant Bullard took you into
19 custody on top of this roof, yes, sir.

20 Q You keep making references to Sergeant Bullard.
21 Why isn't he here today?

22 A It's not for me to answer, sir. You'd have to
23 answer to the Court.

24 MR. WARING: Objection.

25 THE COURT: Hold on one second.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 What's your objection?

2 MR. WARING: Relevance.

3 THE COURT: Sustained as to relevance.

4 Q (By Mr. Burris) You do know as an officer who
5 apprehended me, you should have made a report stating
6 that fact; correct?

7 A Sir, but your opinion --

8 MR. WARING: Objection, your Honor; asked and
9 answered.

10 THE COURT: All right. Mr. Waring, you're
11 getting a little behind on your objections.

12 All right. Sustained as to asked and answered.

13 Thank you.

14 Q (By Mr. Burris) As the officer who supposedly
15 took me into custody, was it you who took my cigarettes,
16 lighter, and wallet out of my pocket?

17 A Your wallet to get your identification.

18 Q It was you?

19 A Yes, sir. I'm also expected to go through your
20 pockets to make sure there's no weapons that can hurt
21 any officers.

22 Q Didn't ask all that.

23 A Yes, sir.

24 Q You did take my wallet. But what about the
25 cigarettes?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A I don't recall the cigarettes. So I don't know
2 if I removed them or Sergeant Bullard removed them.

3 Q Did you take my I.D.?

4 A I did.

5 Q And my hotel key cards out of that wallet?

6 A I did not take a hotel key card. I took your
7 wallet -- your identification out.

8 Q And you say you did this on the roof?

9 A I did.

10 Q You're positive of that?

11 A I definitely am.

12 Q Okay. So are you the officer who wrote the
13 report claiming that I struggled with you and as a
14 result --

15 MR. WARING: Objection, your Honor.

16 THE COURT: What's the basis?

17 MR. WARING: Asked and answered.

18 THE COURT: Sustained.

19 Q (By Mr. Burris) Okay. Are you the
20 officer -- are you the officer I supposedly struggled
21 and, as a result of that, bruised the side of my head
22 and jaw and busted up the back of my head?

23 A I'm not sure how you're head got busted up.
24 Probably while we were dragging you out when you tried
25 to hide underneath the ductwork, because there wasn't

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 much space between that and the rock roof.

2 Q Okay. Did you see it happen?

3 A What happened?

4 Q My wallet and I.D. get separated from each
5 other.

6 A If I took out your I.D., I probably would say
7 yes.

8 Q What about -- did you see how I obtained the
9 bruises on the side of my head?

10 A I saw no bruises on your head, sir.

11 (Mr. Burris speaks to Mr. Malloy off the
12 record.)

13 (Documents are shown to the State.)

14 (Documents are handed to the witness.)

15 MR. MALLOY: Your Honor, these have already
16 been marked.

17 THE COURT: What are their numbers?

18 MR. MALLOY: One, two, and three.

19 THE COURT: All right. Mr. Burris?

20 Q (By Mr. Burris) Now, do you see the bruises on
21 the side of my jaw and my ear all swollen and purple?

22 A I do not.

23 Q What about that big old knot on the back of my
24 head?

25 A I see.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q How'd you say I got that again?

2 A You could have got it being drug out from
3 beneath the air conditioner duct since you wouldn't come
4 out.

5 Q Drug out from under something would cause a
6 struggle like that?

7 A Well, if it's hit hard enough. I'm not a
8 doctor. I can't testify to that.

9 Q A fist would also do that, wouldn't it?

10 A It could.

11 Q Especially if it was done a couple of times?

12 A I imagine it could.

13 Q But you didn't see nobody hit me?

14 A No, sir. I remember struggling trying to get
15 your hands out from your -- if your ear's red, probably
16 because I had my knee on the side of your head trying to
17 hold you down to get your hands out since you wouldn't
18 comply to our lawful orders.

19 Q Me and you have different opinions. I don't
20 remember that.

21 MR. WARING: Objection, your Honor.

22 THE COURT: Sustained.

23 Mr. Burris, remember you have to ask questions
24 of the witness.

25 Q (By Mr. Burris) Do you know that another

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 officer wrote a report saying he's the officer that took
2 me into custody?

3 A No, I'm not. If anything, because you was
4 transferred to another officer since I wasn't the
5 reporting officer.

6 Q Officer Bullard was there.

7 MR. BURRIS: Can I enter this?

8 THE COURT: Remember the procedure.

9 Mr. Malloy?

10 MR. BURRIS: I'm sorry, your Honor.

11 (Mr. Malloy and Mr. Burris speak off the
12 record.)

13 (Defendant's Exhibit Number 19 is marked for
14 identification.)

15 Q (By Mr. Burris) Who wrote that report, sir?

16 A Says at the top Sergeant Bullard.

17 Q Okay. Are all officers required to write a
18 report when force is used?

19 A Yes, sir.

20 Q Did you make one?

21 A No, sir. Myself and Sergeant Bullard
22 collaborated on exactly what I'm reading right here.

23 Q That ain't what I asked you.

24 A That's the only answer I can give you.

25 Q You just said y'all are required to give --

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 every officer is required to make one, which means you
2 should have made you own one; correct?

3 MR. WARING: Objection, your Honor; asked and
4 answered.

5 THE COURT: Overruled.

6 Officer, you may answer.

7 THE WITNESS: It should have been a separate
8 one.

9 Q (By Mr. Burris) Okay. So you should have also
10 made a separate report as to handling a secured crime
11 scene, too, then; correct?

12 A It would not have been a separate report. It
13 would have been a supplement to the original report.

14 Q But you should have made an individual report;
15 correct?

16 A Yes, sir.

17 Q Did you do that?

18 A No, sir.

19 Q Okay. And you -- you -- how do I put this?

20 I asked you earlier if you normally -- if you
21 normally follow procedure of North Charleston Police
22 Officers; correct?

23 A To best of my ability, I do.

24 Q What different reason do you have --

25 A It's common practice that we collaborate, which

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 I stated earlier, on the same -- same -- if we do
2 basically the same thing, then we collaborate on it, and
3 it usually goes in a supplement.

4 Q You just testified that you were required to
5 make an original supplement.

6 MR. WARING: Objection, your Honor; asked and
7 answered.

8 THE COURT: Sustained.

9 Q (By Mr. Burris) Do you normally not follow
10 procedure?

11 MR. WARING: Objection, your Honor.

12 THE COURT: Sustained.

13 MR. BURRIS: Thank you, ma'am.

14 THE COURT: Do you have any further questions
15 for this witness?

16 MR. BURRIS: No, ma'am.

17 THE COURT: All right. Thank you.

18 MR. WARING: Nothing from the State, your
19 Honor.

20 THE COURT: You may step down. Feel free to
21 remain with us. You're also free to leave.

22 THE WITNESS: Thank you, your Honor.

23 THE COURT: Call your next witness.

24 MR. WARING: State calls Officer Andy Coker.

25 THE DEPUTY CLERK OF COURT: Put your left hand

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 here and raise your right hand, please.

2 (The oath is administered by the Deputy Clerk
3 of Court, and the witness answers as follows:)

4 THE WITNESS: Yes, I do.

5 THE DEPUTY CLERK OF COURT: Please have a seat.
6 State your full name; spell your last name for the
7 record.

8 THE WITNESS: Robert Andrew Coker, C-o-k-e-r.

9 THE COURT: Mr. Waring?

10 MR. WARING: Thank you, your Honor.

11 ROBERT ANDREW COKER,

12 having been first duly sworn by the Deputy Clerk of
13 Court to tell the truth, the whole truth, and nothing
14 but the truth, was examined and testified upon his oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. WARING:

18 Q Good afternoon, Mr. Coker. How are you?

19 A Doing well.

20 Q Officer Coker, can you tell the jury where
21 you're employed?

22 A I'm employed with the City of North Charleston
23 Police Department.

24 Q Are you a police officer?

25 A I'm a police sergeant.

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q What is your current position?

2 A Currently, a supervisor of the evening shift
3 patrol division out of central bureau.

4 Q What was your position in April of 2012?

5 A In April of 2012, I was the crime scene
6 investigator with the City of the North Charleston
7 Police Department.

8 Q Can you describe to the jury what some of your
9 duties at a crime scene are?

10 A Some of my duties with the crime scene unit
11 would have been responding to an investigating scene to
12 a reported a criminal incident to include taking
13 photographs and/or video of the scene, collecting any
14 evidence that was at the scene, processing the
15 fingerprint evidence, possibly collecting DNA evidence,
16 whatever pertains to the scene, and then going back to
17 the station and packaging up the items and submitting
18 them to the -- to the evidence locker and perhaps
19 sending some of them also to the State lab to be tested,
20 if necessary. Additionally, I'm a fingerprint examiner.

21 Q Were you involved with the Shawn Burris case?

22 A Yes, I was.

23 Q And how did you get brought on this case?

24 A I was requested to the come to the scene
25 during -- during the investigating.

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q When you arrived on scene, what'd you do?

2 A When I arrived at the scene, I just made some
3 initial observations and contacted the supervisor at the
4 scene.

5 Q Did you do anything else? Did you take any
6 photographs?

7 A Oh, yes. I did take some photographs using my
8 assigned digital camera.

9 Q And was the Defendant still there when you got
10 there?

11 A The Defendant was.

12 Q Did you see the copper pipes?

13 A Yes.

14 Q And what kind of pipes were they?

15 A Looked like pipes for a refrigeration unit.

16 Q I'm going to show you State's -- what's already
17 been marked State's Exhibits 4, 5, and 6.

18 Can you tell the jury what you see in these
19 photos?

20 A This would be the air-conditioning unit on top
21 of the building.

22 Q Okay. How about this one?

23 A That will be loose copper pipe that had fresh
24 cuts on it. That would also be some more piping for the
25 refrigeration unit.

1 Q Were these pipes weathered?

2 A Some of them were, yes.

3 Q Did it appear that they had been freshly cut?

4 A Yes.

5 Q Can you tell the jury why -- what's the purpose
6 of cutting these pipes in the first place?

7 A The only reason I could see why the pipes would
8 have been cut would be to remove them from the property,
9 take them off.

10 Q What happens when people do that? I mean, what
11 do they do with copper?

12 A Commonly the copper is sold to scrap companies
13 locally.

14 MR. BURRIS: Objection.

15 THE COURT: What's your basis?

16 MR. BURRIS: Speculation.

17 THE COURT: Sustained.

18 Have him lay a foundation.

19 MR. WARING: I'm going to move on, your Honor.

20 THE COURT: Thank you.

21 MR. WARING: May I approach the witness, your
22 Honor?

23 THE COURT: You may.

24 Q (By Mr. Waring) I'm now going to show you
25 what's been marked for I.D. purposes only as State's 11

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 through 14, I believe without objection.

2 (Document is shown to Mr. Burris.)

3 (Document is handed to the witness.)

4 Q (By Mr. Waring) Do you recognize what is in
5 these photos?

6 A Yes, sir. Marked on the photo number 11 is
7 a -- an air-conditioning unit that has a camera and a
8 motion sensor affixed to it with a sign that says, This
9 parking lot monitored by closed-circuit TV. And the two
10 items have been sprayed over with red paint.

11 Q So these photos fairly and accurately depict
12 the camera and motion sensors as they existed that
13 night?

14 A Yes.

15 MR. WARING: Your Honor, at this time the State
16 moves to have Exhibits 11 through 14 admitted into
17 evidence.

18 THE COURT: Any objections?

19 MR. BURRIS: No, ma'am.

20 THE COURT: State's 11, 12, 13, and 14 into
21 evidence without objection. You may publish.

22 (State's Exhibit Numbers 11, 12, 13, and 14 are
23 admitted into evidence.)

24 MR. WARING: Thank you, your Honor.

25 Q (Mr. Waring) I'm going to put these on the

1 overhead. Can you just kind of tell the jury what's
2 going on in these photos?

3 A Yes. Again, this is a photo of the face of a
4 air-conditioning unit on top of the roof of the grocery
5 store. Affixed to the air-conditioning unit is a camera
6 and a motion detector with the warning sign affixed in
7 between the two of them.

8 And that's a closer view of the same items.

9 And this would be a close-up of the camera
10 itself.

11 And a close-up of the motion detector.

12 Q So can you tell the jury again what's happened
13 to these items, the motion sensor and the camera?

14 A Yeah. The camera and motion sensors were
15 sprayed over with red paint, possibly from a spray can.

16 (State's Exhibit Number 15 is marked for
17 identification.)

18 MR. WARING: May I approach the witness, your
19 Honor?

20 THE COURT: You may.

21 Q (By Mr. Waring) I'm now showing you what's
22 been marked for I.D. purposes only as State's 15.

23 (Document is shown to Mr. Burris.)

24 (Document is handed to the witness.)

25 Q (By Mr. Waring) Do you recognize this?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Yes, I do.

2 Q And can you tell the jury what it is?

3 A A can of red Rust-Oleum spray paint.

4 Q And is that in substantially the same condition
5 as it was on the night of the incident?

6 A Yes.

7 MR. WARING: Your Honor, at this point the
8 State moves to have Exhibit 15 admitted into evidence.

9 THE COURT: Any objection?

10 MR. BURRIS: No, ma'am.

11 THE COURT: State's 15 into evidence without
12 objection.

13 (State's Exhibit Number 15 is admitted into
14 evidence.)

15 Q (By Mr. Waring) What color paint was sprayed
16 over the camera and motion sensor?

17 A Red.

18 Q And what color is this can of spray paint?

19 A This is also red.

20 Q And where was the spray paint found?

21 A The spray paint was found in a bag that was
22 found up on the roof -- a duffle-type bag that was found
23 on the roof that had multiple tools, spray paint, and
24 other items inside of it.

25 MR. WARING: All right. May I approach the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 witness, your Honor?

2 THE COURT: You may.

3 Q (By Mr. Waring) I'm now going to show you what
4 has been marked as State's 16 through 22 for I.D.
5 purposes only. Do you recognize what's in these photos?

6 (Document is handed to the witness.)

7 A Yes, sir. These would be the items -- the bag
8 and the contents of that bag.

9 Q And what do you see?

10 A A blue backpack in Number 16. Number 17 is the
11 opened backpack with items inside of it. 18, 19, 20,
12 21, and 22 are all items that were removed from the
13 backpack.

14 Q Do those photos fairly and accurately depict
15 the book bag, tools, et cetera, that were found that
16 night?

17 A Yes, they do.

18 MR. WARING: Your Honor, at this point the
19 State moves to have Exhibits 16 through 22 admitted into
20 evidence.

21 THE COURT: Any objection?

22 MR. BURRIS: No, your Honor.

23 THE COURT: State's 16 through 22 into evidence
24 without objection.

25 (State's Exhibit Numbers 16, 17, 18, 19, 20,

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 21, and 22 are admitted into evidence.)

2 MR. WARING: May I publish?

3 THE COURT: You may.

4 Q (By Mr. Waring) I'm now going to put these on
5 the overhead. And please describe to the jury photo-by-
6 photo what you see in each photograph.

7 A Yes, sir. The first one is the blue duffle bag
8 that was found on the rooftop of the grocery store.

9 MR. BURRIS: Objection, your Honor. That don't
10 look like a duffle bag to me.

11 THE COURT: They've already been admitted over
12 your objection.

13 MR. BURRIS: I would ask for him to clarify
14 what it is.

15 THE COURT: That's what he's saying, sir. It's
16 in. It's in. You will have an opportunity to
17 cross-examine.

18 Thank you.

19 Q (By Mr. Waring) And what do you see in this
20 photo?

21 A It's the blue bag with the flap opened on it to
22 see the contents as they were.

23 That is an item that was removed from the
24 interior of the bag itself. I believe it's a duffle.

25 Q A duffle bag?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A A duffle bag.

2 MR. BURRIS: Objection. Speculation, your

3 Honor.

4 THE COURT: Overruled.

5 THE WITNESS: These are also items that were
6 removed, some of the tools that were inside of the bag.

7 Q (By Mr. Waring) What's that big item look
8 like?

9 A The large item appears to be a handle for a
10 saw.

11 And these are more items that were removed from
12 the bag.

13 Q What's that thing in the middle right there?
14 What is that?

15 A That is a saw blade.

16 Again, other items that were removed from the
17 tool bag.

18 Q And this last one?

19 A Additional items that were removed from the
20 bag.

21 Q Are those tools consistent with the cutting of
22 the copper pipes?

23 A Some of them are.

24 Q And where were these tools found again?

25 A They were found in the bag on the roof of the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 grocery store.

2 MR. WARING: May I approach the witness, your
3 Honor?

4 THE COURT: You may.

5 (State's Exhibit Numbers 23 and 24 are marked
6 for identification.)

7 MR. WARING: Now I'm going to show you what's
8 been marked for I.D. purposes only as State's 23 and 24.

9 (Documents are shown to Mr. Burris.)

10 (Documents are handed to the witness.)

11 Q (By Mr. Waring) Do you recognize these?

12 A Yes.

13 Q And can you tell the jury what they are?

14 A Yes. Item 23, is the saw handle that we saw
15 there in the photos a few minutes ago, and 24 is a saw
16 blade.

17 MR. WARING: Court's indulgence, your Honor?

18 (Mr. Waring speaks with Mr. Kidd off the
19 record.)

20 Q (By Mr. Waring) I'm going to put a photo back
21 on for you of one of the items. Can you tell the jury
22 what that item is?

23 A It's a wallet.

24 Q And do you know where that was found?

25 A It was also found in the bag.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Are those substantially in the same condition
2 as when you first saw them?

3 A Yes.

4 MR. WARING: Your Honor, at this point the
5 State moves to have Exhibits 23 and 24 into evidence.

6 THE COURT: Any objection?

7 MR. BURRIS: No, your Honor.

8 THE COURT: State's 23 and 24 into evidence
9 without objection.

10 (State's Exhibit Numbers 23 and 24 are admitted
11 into evidence.)

12 Q (By Mr. Waring) Do you know what this kind of
13 saw is used for?

14 A I'm not familiar with the full uses of it, no.

15 Q Can it be used for cutting --

16 A Yes.

17 Q -- metal?

18 A Yes. Yes.

19 Q Could it be used for cutting copper pipes?

20 A I would assume it could.

21 Q Earlier you mentioned in one of those photos
22 that there was a duffle bag. Do you recall how big
23 those things were?

24 A They were fairly large. I don't remember the
25 dimensions of them.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Would you say they're big enough to fit a pipe
2 in it?

3 A It's possible. Depending on the length of the
4 pipe.

5 Q Is there any reason you can think of why
6 somebody would need all those tools up there at night?

7 A At night? Can't think of any reason why
8 somebody would need them at night, no.

9 MR. WARING: May I approach the witness, your
10 Honor?

11 THE COURT: You may.

12 Q (By Mr. Waring) I'm now showing you what's
13 been marked for I.D. purposes only as State's 25 through
14 27.

15 MR. BURRIS: Relevance.

16 THE COURT: Hold on one second. We haven't
17 gotten that far yet.

18 Thank you.

19 Q (By Mr. Waring) Do you recognize these?

20 A Yes, sir.

21 Q And can you tell the jury what you see?

22 A Yes, sir. These are photos of the exterior of
23 the rear of the grocery store including a fenced-in area
24 and an awning above the stairwell.

25 MR. WARING: Your Honor -- forgive me, your

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Honor.

2 Q (By Mr. Waring) Those photos fairly and
3 accurately depict the overhang and the dumpster area as
4 it was that night?

5 A Yes.

6 MR. WARING: Your Honor, at this point, the
7 State moves to have Exhibits 25 through 27 admitted into
8 evidence.

9 MR. BURRIS: Objection, your Honor; speculation
10 and relevance.

11 THE COURT: Okay. So you are objecting to
12 State's 25 and 26 being admitted, which are photographs.

13 State's 25 and 26 into evidence with -- over
14 your objection.

15 You may publish.

16 MR. KIDD: I believe it was 27, as well.

17 MR. WARING: That's correct your Honor; 25
18 through 27.

19 THE COURT: Thank you.

20 (State's Exhibit Numbers 25, 26, and 27 are
21 admitted into evidence.)

22 Q (By Mr. Waring) I'm going to put these on the
23 overhead for you. Can you describe for the jury what
24 this is showing in these pictures?

25 A Yes, sir. The first photo is the rear of the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 building, the enclosed area I was referring to where
2 they have several racks, a pallet of recycled cardboard,
3 and multiple other items.

4 This is the outside of that fenced area towards
5 the far end of the first photograph showing a stairwell
6 leading to a rear entrance to the grocery store.

7 And that's the awning over the door to that
8 rear entrance.

9 Q Can you describe with -- what's going on here?

10 A Yes, sir. There's a dent in the -- in the
11 roof -- or on the awning just above the door which
12 appears to have been caused by something heavy on it.

13 MR. BURRIS: Objection, your Honor.
14 Speculation.

15 THE COURT: Overruled.

16 Q (By Mr. Waring) Is it possible that somebody
17 could have climbed up that gate and accessed that roof
18 via that little overhang?

19 A Yes.

20 Q What did you do with all the evidence at the
21 end of the day?

22 A The -- as far as the bag with the contents of
23 it, they were taken to City Hall. And I -- that's where
24 I removed the items from the bag, photographed them, and
25 then they were all packaged and submitted to the locker

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 evidence room.

2 Q Did you write up a report?

3 A Yes, I did.

4 Q Now, did you look for any fingerprints in this
5 case?

6 A I did not.

7 Q Will you tell the jury why you didn't?

8 A I did not because at the time that I was
9 investigating the scene, the Defendant had a pair of
10 gloves on at the scene, so fingerprints did not seem
11 like that would be relevant in this case due to the
12 Defendant wearing gloves.

13 Q Did you have any other involvement in this
14 case?

15 A Aside from photographing the scene and
16 collecting the evidence and transporting the evidence to
17 City Hall where it was packaged and was submitted in the
18 evidence locker, no, I did not.

19 MR. WARING: Court's indulgence?

20 THE COURT: Take your time.

21 MR. WARING: Please answer any questions the
22 Defense may have.

23 THE COURT: All right. One moment.

24 Ladies and gentlemen, I typically like to break
25 when a witness is done, but it's an appropriate time for

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 us to go ahead. It's 1:00 p.m. I think it's
2 appropriate to break for lunch.

3 Do not begin your deliberations. Do not
4 discuss this case amongst yourselves. You're going to
5 be able to go outside and use your devices. You may not
6 do any independent investigation regarding this case.
7 You may not research any of the subjects or go to the
8 scene where any of the events are alleged to have taken
9 place or use anything like Google Maps or anything of
10 that nature to view any of the places we've discussed.

11 Ladies and gentlemen, if you will, please, you
12 may leave your notepads in the chair. Please be back in
13 the jury room at 2:15. We will begin promptly at that
14 time.

15 Please remember that discussion means
16 face-to-face discussion, but it also means you may not
17 text, blog, make any entry on Myspace, Facebook,
18 anything of that nature. So no face-to-face
19 communication; no electronic communications regarding
20 any issue in this case.

21 Please have a wonderful lunch. Be back at
22 2:15. Thank you.

23 (The jury is escorted from the courtroom
24 at 1:03 p.m.)

25 THE COURT: Thank you, be seated.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 All right. Officer, you may not discuss your
2 testimony with anyone. Do you understand what that
3 means?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right. The rule of
6 sequestration has been invoked. There are several
7 officers that have already testified. You can't talk
8 about your testimony with them, with the State, with any
9 representatives of the Defendant. Do you understand?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: You may step down. Please be back
12 at 2:15.

13 All right. Mr. Burris, I'm going to go ahead
14 and advise you of your right to testify. So please
15 stand.

16 Place Mr. Burris under oath.

17 (The oath is administered by the Deputy Clerk
18 of Court, and the Defendant answers as follows:)

19 MR. BURRIS: Yes, ma'am.

20 THE COURT: I anticipate that you have one more
21 witness; is that correct, Mr. Waring?

22 MR. WARING: That's correct, your Honor.

23 THE COURT: So, Mr. Burris, because we're
24 breaking for lunch and I anticipate that the State will
25 rest after that additional witness is called, I'm going

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 to go ahead and advise you of your rights. If you do
2 not understand anything that I say, please let me know.
3 And if you need me to explain anything in further
4 detail, please let me know.

5 Do you understand?

6 MR. BURRIS: Yes, ma'am.

7 THE COURT: We have reached -- or will soon
8 reach the stage of the trial where you may present your
9 defense. You have the right to claim the protections
10 given to you by the Fifth Amendment of the Constitution
11 of the United States. This Amendment states, in part,
12 that no person shall be compelled in any criminal case
13 to be a witness against himself. This means that you
14 cannot be required to testify in this case. You do have
15 the right to testify on your own behalf, but no one can
16 make you testify. This is a personal right, and no one
17 can waive this right except for you.

18 If you decide to testify, you will be subject
19 to the same rules that govern other witnesses and may be
20 examined and cross-examined on any relevant issue in
21 this case. If you have any convictions involving
22 dishonesty or false statement or for crimes punishable
23 by imprisonment for more than one year and I determine
24 that the probative value of admitting that evidence
25 outweighs the prejudicial affect to you, the Solicitor

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 will be able to produce your record to attack your
2 credibility. If you decide to testify, this decision
3 must be freely, voluntarily, and intelligently made,
4 with the knowledge of the protections given to you by
5 the Fifth Amendment and the consequences of your
6 decision to testify.

7 If you decide not to testify, I will instruct
8 the jurors that they cannot give the fact that you did
9 not testify any consideration whatsoever, and that there
10 is to be absolutely no prejudice to you because you did
11 not testify. It is left entirely up to you whether
12 or not to testify. You may talk with Mr. Malloy,
13 Mr. Smith, or anyone else, but the final decision is
14 left up to you.

15 Do you understand what I have explained to you?

16 MR. BURRIS: Yes, ma'am.

17 THE COURT: Do you have any questions about
18 what I've explained to you?

19 MR. BURRIS: No, ma'am.

20 THE COURT: Mr. Waring, what, if any,
21 convictions do you plan to use should he testify?

22 MR. WARING: Your Honor, he's got some prior
23 burglary seconds and some shoplifting and things of that
24 nature. I was planning on introducing some of those.

25 THE COURT: All right. Mr. Burris, you agree

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 that you have some burglaries and shoplifting that may
2 be used to impeach you should you take the stand?

3 MR. BURRIS: Yes, ma'am.

4 THE COURT: All right. Thank you.

5 Have you made a decision whether or not you
6 will testify?

7 MR. BURRIS: Not at this time, I haven't.

8 THE COURT: All right. Do you have witnesses
9 that you plan to call?

10 MR. BURRIS: I believe I'm going to call
11 Detective Aiken.

12 THE COURT: All right. And is Detective Aiken
13 under subpoena?

14 MR. BURRIS: Yes, ma'am.

15 THE COURT: Is Detective Aiken here?

16 THE COURT OFFICER: No, ma'am.

17 THE COURT: Mr. Malloy, did you attempt to
18 subpoena Detective Aiken?

19 MR. MALLOY: I believe Aiken is under subpoena.

20 MR. BURRIS: I'm going to call Mr. Bullard.

21 THE COURT: All right. Is he under subpoena?

22 MR. BURRIS: Yes, ma'am.

23 THE COURT: All right. So you're going to call
24 Detective Aiken and Mr. Bullard; is that correct?

25 MR. BURRIS: Yes, ma'am.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: And anyone else?

2 MR. BURRIS: No, ma'am.

3 THE COURT: You need to have your witnesses
4 here at 2:15 ready to testify.

5 I'm working on the jury charge. Are there any
6 lesser includeds?

7 MR. WARING: No, your Honor.

8 THE COURT: I cannot find any lesser includeds.
9 Do you -- are there any lesser included offenses that
10 you wish for me to -- to look at? I don't believe that
11 there's any, Mr. Malloy?

12 MR. BURRIS: Criminal trespassing.

13 THE COURT: How do we get to criminal
14 trespassing?

15 MR. BURRIS: Nevermind, your Honor.

16 THE COURT: You withdraw that request, sir?

17 MR. BURRIS: Yes, ma'am.

18 THE COURT: All right. Thank you.

19 Are there any special charges that you are
20 requesting from the State?

21 MR. WARING: No, your Honor.

22 THE COURT: Standard -- my standard charge is
23 sufficient?

24 MR. WARING: Yes, your Honor.

25 THE COURT: Thank you.

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Mr. Burris, anything -- any special charges
2 that you're requesting?

3 MR. BURRIS: I believe mere presence at the
4 scene.

5 THE COURT: All right. Mere presence. Any
6 objection to mere presence?

7 MR. WARING: No, your Honor.

8 THE COURT: Okay. Thank you. I will include
9 mere presence.

10 Anything else?

11 MR. BURRIS: No. Thank you very much.

12 THE COURT: All right. Thank you.

13 Then I will prepare the charges with the
14 anticipation that we could actually charge this
15 afternoon.

16 All right. Thank you.

17 MR. WARING: Thank you, your Honor.

18 THE COURT: We're at ease.

19 Mr. Malloy, can you help Mr. Burris if he
20 needs -- because he's not going to be able to take his
21 writing utensil?

22 Can y'all take a shorter lunch and then bring
23 him back, or --

24 THE COURT OFFICER: He has a pen back here.

25 THE COURT: Okay. So he has the ability to

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 take notes in preparation --
2 THE COURT OFFICER: Yes, ma'am.
3 THE COURT: Okay. Thank you.
4 (The Judge steps off the bench at 1:11 p.m.)
5 (A lunch break is taken from 1:11 p.m. until
6 2:18 p.m.; at which time, the proceedings continue as
7 follows:)
8 (The Defendant is present in the courtroom.)
9 THE COURT: Still waiting for some jurors. Is
10 there anything that we to need to address while we're
11 waiting on the jury?
12 MR. WARING: Nothing from the State, your
13 Honor.
14 THE COURT: Mr. Burris?
15 MR. BURRIS: No, ma'am.
16 THE COURT: We don't need to address any of the
17 Defendant's witnesses? Any issues with that?
18 MR. WARING: No, your Honor.
19 THE COURT: All right. Thank you.
20 Are y'all observing? Do you have matters
21 before the Court?
22 ASSISTANT SOLICITORS: Just observing, your
23 Honor.
24 THE COURT: All right. Thank you.
25 THE BAILIFF: All present, your Honor.

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: All right. Let's bring in the
2 jury.
3 Where's our officer?
4 (Respite.)
5 THE COURT: I remind you, sir, that you are
6 still under oath. Please come forward and have a seat.
7 Thank you.
8 (The witness resumes the witness stand.)
9 (The jury is escorted into the courtroom at
10 2:21 p.m.)
11 THE BAILIFF: All present, your Honor.
12 THE COURT: Thank you. Please be seated.
13 Your witness, Mr. Burris.
14 MR. BURRIS: Thank you, ma'am.
15 CROSS-EXAMINATION
16 BY MR. BURRIS:
17 Q Good afternoon, officer.
18 A How are you doing?
19 Q Just want to clear one thing up. You did say
20 that my wallet was in that book bag; correct?
21 A There was a wallet in the book bag.
22 Q Okay. How long have you been an officer with
23 the North Charleston Police Department?
24 A Just over 22 years.
25 Q So then you know and follow procedures for

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 North Charleston Police Officers?

2 A Yes, sir.

3 Q Have you ever been reprimanded on the job for
4 not following procedures?

5 MR. WARING: Objection, your Honor.

6 THE COURT: What's the basis?

7 MR. WARING: Relevance, your Honor.

8 THE COURT: What's the relevance?

9 MR. BURRIS: The wallet.

10 THE COURT: Sustained.

11 You do not have to answer that question. Thank
12 you.

13 Q (By Mr. Burris) Where did you get certified as
14 a crime scene technician?

15 A I am not a certified crime scene investigator.

16 MR. BURRIS: Excuse me for a second.

17 THE COURT: Take your time.

18 (Mr. Burris speaks with Mr. Malloy off the
19 record.)

20 Q (By Mr. Burris) In your report, you're listed
21 as the forensic investigator; is that correct?

22 A That's correct.

23 Q Are you certified in that?

24 A I am not a certified crime scene investigator.
25 That was my job title.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Okay. But you -- as stated earlier, you did
2 collect all the evidence at the scene; correct?

3 A Yes, sir, that's correct.

4 Q Thank you.

5 Let's see. . .

6 So then you know and follow procedures for
7 the collection of evidence and the preservation of
8 evidence's integrity; correct?

9 A Yes, sir.

10 Q Okay. And the correct way to process the crime
11 scene too; right?

12 A Yes, sir.

13 Q All right. For instance, you must catalog and
14 package evidence as you find it. You've got to take
15 pictures of it; correct?

16 A That's correct.

17 Q Okay. In its original state too?

18 A Yes, sir.

19 Q Okay. Separate items should be packaged as
20 separate items; correct?

21 A Technically.

22 Q Can you clarify that for me?

23 A Yes, sir. In order to package separate items
24 in this case, it would involve removing everything from
25 the backpack and packaging it in a separate bag.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q I agree with that. Let me rephrase that in
2 reference to the book bag.

3 That would have been one piece of evidence
4 containing the following items?

5 A Yes, sir, that's correct.

6 Q Thank you. And that must be documented as
7 separate items too; correct?

8 A Yes, sir. They're listed as separately.

9 Q In accordance with the way you found them when
10 you arrived at the crime scene?

11 A Yes, sir.

12 Q Just to be clear about it, separate items
13 should be packaged and documented as separate items;
14 correct?

15 A Yes, sir.

16 Q You can't just assume that one item goes with
17 another item, can you?

18 A It would depend on the situation, sir.

19 Q All righty. When you are collecting evidence,
20 your job is to collect and preserve the evidence;
21 correct?

22 A Yes.

23 Q While collecting evidence, your main concern
24 is collecting, preserving evidence integrity, and
25 documenting the evidence as you find it in its original

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 state; correct?

2 A Yes.

3 Q I know this sounds repetitive, but please bear
4 with me.

5 When collecting evidence, your job is not to
6 try and interpret the meaning of the evidence or make
7 assumptions on how the evidence is to processed and
8 packaged in relation to other evidence, is it?

9 A Like I said, it depends on the context of the
10 evidence. My job as a forensic investigator is to
11 locate the evidence and determine what context it was
12 therein, why it was there.

13 Q Okay. Let me see if I can make the -- clarify
14 a little bit. Let me think about this for a second.

15 Okay. You walk onto the scene, you see items
16 over here. That's one piece of evidence by itself;
17 correct?

18 A Correct.

19 Q See another item over here. That's another
20 piece of evidence by itself; correct?

21 A Yes.

22 Q What happens if you was to combine them? That
23 would be contaminating the evidence, wouldn't it?

24 A It could be interpreted that way, I would
25 assume.

1 Q Okay. Could it be interpreted as planting
2 evidence?

3 A No, I would not see that..

4 Q But what if they could present ownership?
5 Would it be considered planting evidence then?

6 A I don't understand the question, sir.

7 Q Let me see. . .

8 I guess I'll go ahead and just say it. In your
9 earlier testimony, you said that my wallet was in that
10 book bag; right?

11 A Yes, sir.

12 MR. BURRIS: I believe those pictures are
13 already in evidence.

14 Can you help me with this; put them on the big
15 screen?

16 (Mr. Malloy and Mr. Burris speak off the
17 record.)

18 THE COURT: Are you referring to the State's
19 exhibits or the -- or do you have separate --

20 MR. BURRIS: I believe I --

21 THE COURT: You have your own. . Okay. Thank
22 you.

23 (Mr. Malloy and Mr. Burris are speaking off the
24 record.)

25 MR. MALLOY: Your Honor, these are already

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 marked.

2 THE COURT: All right, Mr. Burris.

3 MR. MALLOY: This is Defense's 6, 11, 12, and
4 14.

5 THE COURT: 6, 11, 12, and, 14.

6 Q (By Mr. Burris) Would you look at the one
7 contained --

8 THE COURT: Hold on one second.

9 MR. BURRIS: I'm sorry.

10 THE COURT: Madame Court Reporter, are you
11 ready?

12 THE COURT REPORTER: Yes, ma'am.

13 THE COURT: All right. Mr. Burris.

14 Q (By Mr. Burris) Did you look at the -- do you
15 see the one with the items in it, the cigarettes and
16 the -- and the wallet and stuff like that in it and the
17 hat; correct?

18 A I see one with a wallet and a knit cap --

19 Q And you say that was the way you found it;
20 correct?

21 A Three of these photos depict items that I
22 located -- I'm sorry. Two of these photos depict items
23 that I located on the scene. Two were photos that I
24 took of the items when I returned to City Hall.

25 Q Okay. Glad that you noticed that. I wanted

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 him to. . .

2 THE COURT REPORTER: I'm sorry. Please repeat.

3 MR. BURRIS: I said: I'm glad he noticed that.

4 I want him to remember that in a second.

5 MR. WARING: Objection, your Honor.

6 MR. BURRIS: I apologize.

7 THE COURT: All right. Mr. Burris, remember,

8 you have to ask questions. You cannot make statements.

9 Thank you.

10 Q (By Mr. Burris) Let me ask you this question
11 while we're waiting. What if one separate item can
12 present ownership of another and all of the photographs
13 of separate items, you put it inside of another item,
14 thereby presenting ownership and taking pictures of it
15 in that state, could that be called planting and
16 tampering with evidence?

17 A I don't believe it would be considered planting
18 and tampering with evidence unless that was the intent.

19 Q You got me there.

20 What exactly would you call it?

21 A It would depend on the context, sir.

22 Q Again, you took the pictures of two separate
23 items as separate items.

24 A Which items are you referring to, sir?

25 (Mr. Burris speaks with Mr. Malloy off the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 record.)

2 MR. MALLOY: This photo has been marked as
3 Defense 4.

4 (Defendant's Exhibit Number 20 and 21 marked
5 for identification.)

6 THE COURT REPORTER: Passing him 4, 20, and 21.

7 (Documents are handed to the witness.)

8 MR. BURRIS: Ma'am, is there any way you can
9 locate the pictures of me with my head busted open?

10 THE COURT: Mr. Malloy, can you look through
11 the pictures?

12 MR. MALLOY: I am looking, your Honor.

13 MR. BURRIS: I already submitted them.

14 THE COURT: Are you referring to exhibits that
15 have already been admitted?

16 MR. BURRIS: Yes, ma'am. Yes, ma'am.

17 Can you show that to the officer?

18 THE COURT: All right. And that's Defendant's?

19 MR. MALLOY: This is State's Exhibit 9.

20 THE COURT: State's 9?

21 MR. MALLOY: Uh-huh.

22 (State's Exhibit 9 is handed to the witness.)

23 Q (By Mr. Burris) Can you look at that photo?
24 Could you look at my pockets?

25 A Yes, sir.

1 Q How are they?

2 A The one pocket that I can see is turned out.

3 Q So good probability something came out of them
4 pockets; isn't there?

5 A It's possible, yes, sir.

6 Q And yet you just said that my wallet was
7 located in that book bag and is also -- can you tell me
8 what else is in that wallet -- in that book bag?

9 A No, sir. Because there's a whole list of items
10 that I indicated that were in the book bag.

11 Q What about a pack of cigarettes?

12 A There's a pack of cigarettes in the photo, yes,
13 sir.

14 Q What about a black hat?

15 A Yes, sir.

16 Q Okay. What about two hotel key cards?

17 A I would assume that's what those are. I can't
18 tell by the photo.

19 (Document is handed to the witness.)

20 A Yes, sir, I have a copy of this.

21 Q Do you have it with you, sir?

22 A Yes.

23 MR. MALLOY: We're having this marked.

24 THE COURT: I'm sorry?

25 MR. MALLOY: He'd like to have this marked.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q (By Mr. Burris) Would you please read to the
2 jury --

3 THE COURT: Hold on one second.

4 MR. BURRIS: I apologize.

5 THE COURT REPORTER: It'll be Defendant's
6 Number 22.

7 Q (By Mr. Burris) Would you please read to the
8 jury --

9 THE COURT REPORTER: One moment.

10 THE COURT: Wait, Mr. Burris. I will let you
11 know --

12 MR. BURRIS: I'm sorry. I apologize.

13 THE COURT: She has some limitations. One of
14 those is she cannot take down two people talking at the
15 same time. Plus she cannot mark exhibits while you are
16 talking or while anyone is talking. I want the record
17 to be abundantly clear, so please follow those --

18 MR. BURRIS: I apologize.

19 THE COURT: So, Madam Court Reporter, what are
20 those two numbers?

21 THE COURT REPORTER: It is Exhibit 22,
22 Defendant's Exhibit 22.

23 (Defendant's Exhibit Number 22 is marked for
24 identification.)

25 THE COURT: Thank you.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 All right. Mr. Burris?

2 Q (By Mr. Burris) Could you please read to the
3 jury and the Court what those items are you've got
4 listed as contained in that book bag?

5 A From the start of the paragraph, is that what
6 you're asking?

7 Q Yes, sir.

8 A Yes, sir. The contents of the backpack were
9 photographed in and out of the backpack. The backpack
10 and duffle were secured in the forensic unit for the
11 subsequent submission the evidence locker. The
12 photographs were then downloaded to DVD and filed with
13 the forensic unit office. I later packaged and
14 submitted the backpack and duffle to the evidence locker
15 with an accompanying chain of custody form. No further
16 information at this time.

17 Q Now would you read the items listed in the book
18 bag?

19 A Yes, sir. When I packaged the items, they are
20 blue backpack containing screwdriver with bits --

21 THE COURT REPORTER: Can you please slow down?

22 THE WITNESS: Yes, ma'am.

23 THE COURT REPORTER: Thank you.

24 THE WITNESS: -- two saw blades, wire cutters,
25 adjustable wrench, multi-tool, saw handle, two nail

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 clippers, pencil, red pen, eye drops, bag with face
2 masks, two pillow cases, camouflage ball cap, black knit
3 cap, wallet, Maverick -- excuse me, Maverick cigarettes,
4 yellow lighter, hotel card, vise-grips, Rust-Oleum spray
5 paint can, blue duffle bag. And the second item listed
6 is blue duffle bag, separately.

7 (Mr. Burris and Mr. Malloy speak off the
8 record.)

9 MR. MALLOY: Your Honor, is it okay if he
10 stands here?

11 THE COURT: Sure.

12 MR. BURRIS: Ladies and gentlemen, I ask you
13 to --

14 THE COURT: All right. You cannot address the
15 jury. You have to ask a question of the witness.

16 MR. BURRIS: Excuse me. I apologize.

17 Q (By Mr. Burris) Sir, can you see?

18 A I can see the photo. It's at a distance. The
19 items you're referring to.

20 Q There's two items on that photo, is there not?

21 A There appears to be two items.

22 Q Looks like a pack of cigarettes on the top of
23 that roof; don't it?

24 A Yes.

25 Q Okay. That like looks like my wallet, a hat,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 two hotel key cards, and a lighter outside of that bag,
2 too, don't it?

3 A That's correct.

4 Q Sir, can you tell me how they found their way
5 in that bag?

6 A When I collected the items off of the roof, I
7 collected them and put them in the bag, as they were
8 sitting next to the bag in close proximity.

9 Q Correct me if I'm wrong, but you just broke
10 procedure; did you not?

11 A The items could be listed separately; however,
12 I made no reference to the context of those items that I
13 collected there. And the other items in the backpack
14 all belonged to the same person. I collected the items
15 and packaged them, listing the items that I placed in
16 the backpack.

17 Q Nevertheless, you took pictures of them
18 separately, now, didn't you?

19 A That's correct.

20 Q So, therefore, they should have been listed as
21 separate items?

22 A Perhaps they should have been listed as
23 separate items.

24 Q So that could be considered planting and
25 tampering with evidence?

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Again, it's all in the context and your intent,
2 sir.

3 Q Okay. How can you prove that that book bag was
4 mine?

5 A I never said the book bag was yours.

6 Q But it's being used as evidence anyway.

7 All right.

8 (Mr. Burris and Mr. Malloy speak off the
9 record.)

10 (Document is handed to the witness.)

11 MR. MALLOY: Your Honor, this is not being
12 marked. This is not being entered into evidence.

13 THE COURT: Okay.

14 You want it marked?

15 MR. BURRIS: Your Honor --

16 THE COURT: Hold up one second.

17 So what are you doing with it?

18 MR. MALLOY: I'm handing it up to the witness.

19 It's not being entered into evidence. We can have it
20 marked if you'd like.

21 THE COURT: I do want it marked so the record
22 is clear. It'd be 23?

23 THE COURT REPORTER: Yes, ma'am.

24 (Defendant's Exhibit Number 23 is marked for
25 identification.)

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: Mr. Burris?

2 MR. BURRIS: I think I need to approach the
3 bench for a second.

4 THE COURT: All right. You may approach the
5 bench.

6 (Mr. Smith, Mr. Kidd, Mr. Malloy, Mr. Burris,
7 and Mr. Waring are all at the bench for an
8 off-the-record bench conference.)

9 THE COURT: Thank you.

10 All right. Mr. Burris?

11 MR. BURRIS. Let me find out where I was at.

12 Q (By Mr. Burris) Okay. Also when collecting
13 the evidence, it's not your job to decide whether an
14 item that's inside of another item that you've listed as
15 evidence, whether it's evidence or not; correct?

16 A Repeat the question. I didn't hear it.

17 Q For instance, the book bag, you listed as
18 evidence so everything inside of it should be listed
19 inside of it as part of that piece of evidence; correct?

20 A I listed the contents of it, yes, sir.

21 Q Hmm? Are you positive?

22 A I listed the contents to include the items that
23 you questioned me about a minute ago, yes, sir.

24 Q Okie-doke, then.

25 (Mr. Burris and Mr. Malloy speak off the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 record.)

2 (Document is shown to the State.)

3 (Document is handed to the witness.)

4 MR. MALLOY: Your Honor, I'm handing up
5 Defendant's Exhibit 11.

6 Q (By Mr. Burris) Just inside that book bag,
7 sir, there's a water bottle, is there not?

8 A I'm sorry, a water bottle?

9 Q Yes. Is there not?

10 A Yes, sir.

11 Q And could you look at that list that you just
12 read off and tell me if that water bottle is listed on
13 there?

14 A No, sir, I don't see it listed on there.

15 Q Correct me if I'm wrong, forensics today, you
16 could possibly get saliva off of that bottle, couldn't
17 you?

18 A It's very possible.

19 Q Well, can you tell us what happened to it,
20 then?

21 A I did not process the bottle for saliva.

22 Q You didn't process it at all, did you?

23 A No, sir, I did not.

24 Q So that was your job to decide whether it was
25 evidence or not?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A No, sir. It was evidence. I collected it as
2 such.

3 Q Okay. Repeat that for me.

4 A It was evidence. I collected it as such. I
5 just failed to list it on the report.

6 Q I don't see it nowhere, and it's in none of the
7 pictures. Can you show it to me? Can you show it to me
8 somewhere, please?

9 A You indicated it was in the photo, sir.

10 Q That's the last time it's seen too?

11 A Yes, sir. It was not removed by myself.

12 (Mr. Burris and Mr. Malloy speak off the
13 record.)

14 Q (By Mr. Burris) Anyways, it's not listed on
15 the evidence; is that correct?

16 A No, sir, it's not listed on the form.

17 Q So safe to assume it's not in evidence? It's
18 gone?

19 A I don't know where the bottle is, sir.

20 Q Don't know where it is, but you processed it?

21 A I did not process that piece of evidence.

22 Q You took a picture of it at the crime scene --

23 A Correct.

24 Q -- and transported it to the forensic units
25 office, though?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A That's correct.

2 Q So where did it go between the trip?

3 A I don't know. I don't have the bottle, sir,
4 unless it remains in the bag. But I don't have the bag,
5 sir, with me.

6 Q Okie-doke. All right.

7 Are you aware that you took pictures of me with
8 my pockets turned inside out?

9 A I took one photo that I'm aware of.

10 Q And you just said that the wallet and stuff was
11 inside that book bag?

12 A The way I packaged them, the way I listed them,
13 they're on the -- they're listed as contained inside the
14 book bag, yes.

15 Q The pictures clearly show them as separate
16 items; correct?

17 A Yes, sir.

18 Q Okay. Do you know both definitions of a
19 statement?

20 A I'm sorry?

21 Q Do you know both definitions of a statement?

22 A I believe so.

23 Q Would you tell me?

24 A Not verbatim, no, sir.

25 MR. BURRIS: Is it permitted for me to -- is it

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 permitted for me to --

2 THE COURT: Just make a question, sir.

3 MR. BURRIS: Okay.

4 Q (By Mr. Burris) A statement could be an oral
5 or written assertion, couldn't it? It could be -- a
6 statement can be made in handwriting or verbally,
7 correct?

8 A Correct.

9 Q Okay. Also, a statement can be made by a
10 nonverbal conduct of a person too; correct?

11 A I would guess so.

12 Q In other words, your actions would be making a
13 statement?

14 A It could be interpreted that way, yes, sir.

15 Q All right. Do you realize your actions make a
16 different statement than the one you're saying up here?

17 A My actions of --

18 Q Yes, sir.

19 A -- packaging all the items together?

20 Q Yes, sir.

21 A I don't see how they contradict. I said I put
22 the items in the bag as I collected them, being that
23 they were in proximity.

24 Q You took pictures of them as separate items,
25 you -- and you said that they were required to be

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 handled as separate items; did you not?

2 A You stated that: The items are to be packaged
3 separately.

4 Q Yeah.

5 A I stated that: When I collected the items, I
6 placed those items in the bag. So I stated they were
7 not packaged separately.

8 Q That sounds like -- like tampering with the
9 evidence, though, doesn't it?

10 A Again, that's a matter of interpretation, sir.

11 Q Is there any particular way you'd like to
12 interpret them?

13 MR. WARING: Objection, your Honor; asked and
14 answered.

15 THE COURT: Overruled. You may answer.

16 THE WITNESS: It was an oversight on my part.
17 I picked up the items that were in close proximity of
18 the bag and put them with the bag.

19 Q (By Mr. Waring) Do you make oversights like
20 that a lot?

21 A No, sir. It's not often that I have a
22 situation like this.

23 Q Okay. Have you ever heard the saying, Evidence
24 don't lie, but people do?

25 A Yes, sir, I've heard that.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Popular phrase; isn't it?

2 A Could be.

3 Q Okay. What about, The evidence speaks for
4 itself? Is that a popular statement in the -- in
5 forensic evidence?

6 A Yes, sir.

7 Q Thank you.

8 Now, let's talk about the gloves. Although you
9 took pictures of them, you didn't take them as evidence,
10 did you?

11 A No, sir, I did not collect them.

12 Q Did you not consider them evidence, then?

13 A Yes, sir, they were evidence. I did not have
14 custody of you, however, so I did not collect the items
15 from your person.

16 Q You didn't have custody of me. You took
17 pictures of them and didn't take them as evidence?

18 A Correct. But you were not in my custody.

19 Q Okie-doke. Are you aware it took 11 months for
20 them to become evidence?

21 A I found out afterwards that they were not
22 collected that night.

23 Q In the search warrant --

24 (Mr. Burris speaks with Mr. Malloy off the
25 record.)

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 (Document is shown to the State.)

2 (Defendant's Exhibit Number 24 is marked for
3 identification.)

4 Q (By Mr. Burris) Could you please read the
5 underlined --

6 MR. WARING: Objection, your Honor; improper
7 foundation.

8 THE COURT: You need to lay the foundation.

9 Sustained.

10 Mr. Burris?

11 Q (By Mr. Burris) That is a search warrant,
12 correct, for the seizure of the gloves?

13 A It appears to be a search warrant affidavit.

14 Q Could you please read the reason stated for the
15 seizure of the gloves?

16 MR. WARING: Objection, your Honor.

17 THE COURT: Basis?

18 MR. WARING: Same basis and lack of personal
19 knowledge.

20 THE COURT: Sustained.

21 You need to lay the foundation.

22 (Mr. Burris speaks with Mr. Malloy off the
23 record.)

24 MR. BURRIS: I'll move along to something else,
25 ma'am.

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: Thank you.

2 Q (By Mr. Burris) Just one question. Do you
3 know if any tests were run on the gloves?

4 A I do not.

5 Q When you took pictures of them, was there any
6 oily residue on them or red paint, for instance?

7 A I did not fully examine them. I just snapped a
8 photo of you wearing the gloves.

9 Q Okay. All right.
10 You took pictures of the camera and motion
11 sensors spray painted; correct?

12 A Yes, sir.

13 Q You also took pictures of different sets of
14 shoe prints; correct?

15 A Yes, sir.

16 Q Did you make any matches?

17 A I'm not capable of doing that. I'm not a shoe
18 print or tire tread wear examiner.

19 Q Do you have any knowledge of that having to --
20 being pursued at all?

21 A No, it was not pursued. I can tell you that.

22 Q You took pictures of me with my head bleeding;
23 correct?

24 A I'm sorry?

25 Q I have -- you took pictures of me with all my

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 head wounds; correct?

2 MR. WARING: Objection, your Honor.

3 THE COURT: Hold on one second.

4 What's the basis?

5 MR. WARING: Asked and answered, your Honor.

6 THE COURT: You may answer.

7 THE WITNESS: I took photos of you. I don't
8 recall if there was a head wound or not.

9 Q (By Mr. Burris) Did you find any blood on
10 them?

11 A I did not look for any blood, nor did I find
12 any.

13 Q You took pictures of cigarettes. I have no
14 problem saying those are my cigarettes. Did you find
15 any of them brand of cigarettes anywhere on that roof?

16 A I didn't collect any from the roof except for
17 the pack that was left there.

18 Q I mean cigarette butts, did you find any?

19 A No, I didn't find any.

20 Q Okay. Did you fingerprint anything in the book
21 bag?

22 A No, I did not.

23 Q Why not?

24 A It -- most of the items in there were not in a
25 good enough shape physically to be fingerprinted. And

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the items that were just not fingerprinted due to the
2 context of the investigation, yourself being arrested
3 wearing gloves would not have put you with that book
4 bag, so -- or with the items that were in it.

5 Q Did you fingerprint the spray can?

6 A No, I did not.

7 Q Do you know if anybody else did?

8 A No, I do not.

9 Q Okay. What about the saw handle?

10 A No, it was not processed for prints.

11 Q Do you know if anybody else did?

12 A No.

13 Q Did you or anyone else make any tool mark
14 comparisons in relation to the saw versus the copper
15 that was cut?

16 A No, sir, there were no toolmark compressions.
17 The copper itself was not collected.

18 Q So you can't say for sure whether that item was
19 used to cut, can you?

20 A I believe I testified earlier that I am not
21 aware of what those items were used for.

22 Q I'm sorry. I didn't mean to. . .

23 What I don't understand is, at some point, I
24 would have handled these items in the bag without gloves
25 if they were mine; right?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A It's possible.

2 Q I mean, it's not -- do you think I would walk
3 around with gloves on all the time?

4 A I don't know, sir.

5 Q Okay. There were fingernail clippers in there,
6 too, weren't there?

7 A Yes, sir.

8 Q Can't cut your fingernails with gloves on, can
9 you?

10 A I would assume you would not be able to cut
11 your fingernails with gloves on.

12 MR. WARING: Objection, your Honor;
13 speculation.

14 THE COURT: Overruled.

15 Q (By Mr. Burris) I had -- meaning I would have
16 to use them without gloves on. It's highly -- high
17 probability there would be fingerprints on them, would
18 it not?

19 A On the --

20 Q Fingernail clippers.

21 A -- fingernail clippers?

22 If there were, they would be very small and
23 perhaps unusable.

24 Q Okay. Just for argument's sake, did you test
25 the wallet or the hotel key cards for fingerprints?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A I did not. However, those were found with the
2 cigarettes, separate from the bag.

3 Q And if I wasn't claiming them, you couldn't
4 prove that they were mine, could you?

5 A I did not test for any prints or any DNA on any
6 of the items.

7 Q How about with the wallet and the hat, did you
8 test for DNA, hair sample or sweat?

9 A No, sir.

10 Q Hmm? They would possibly contain that, though,
11 wouldn't they?

12 A It's possible.

13 Q And we discussed the bottle. There would most
14 likely be saliva on that bottle; correct?

15 A It's possible.

16 Q But you didn't test for that either?

17 A No, sir.

18 Q Your job was to prove this evidence belonged to
19 me, wasn't it?

20 A My job is to photograph, collect, and process
21 evidence as necessary for an investigation.

22 Q So whose job would it have probably been to try
23 to prove that these items belonged to me?

24 A Again, I never said these items belonged to
25 you, sir.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q But they're being used as evidence against me
2 in this case.

3 A That's not my doing, sir.

4 Q When exactly did you make your actions and
5 observations report?

6 A I made it later on the next evening. This was
7 towards the end of my shift, this incident occurred.
8 That's why the items were collected and transported to
9 City Hall and secured in the forensic unit and not
10 packaged until later that evening when I came in to a
11 later shift.

12 MR. BURRIS: Your Honor, I'm going to ask a
13 question, and it's not being sarcastic when I ask this.
14 There is basis for it.

15 Q (By Mr. Burris) Could you have a memory loss
16 problem or something?

17 A No, sir.

18 Q All right. Can you read in your report for me
19 what you said you took pictures of?

20 A Would that be on the second page, sir?

21 Q It would be on the first page.

22 A First page?

23 Q Yes, sir. About the air-conditioning units and
24 stuff like that.

25 A Yes, sir. Using my assigned Nikon D3100

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 digital camera, I photographed the scene --

2 THE COURT REPORTER: Please slow down.

3 THE WITNESS: -- including the subject with his
4 gloves on. The point of the entry onto the rooftop --
5 correction, onto the roof appeared to be a fence
6 adjacent to a rear entry door where the subject climbed
7 onto an awning over the door then to the roof.

8 I then went to the roof with Sergeant Hille,
9 Sergeant S. Hille, and we found that the subject had
10 left a blue backpack on the roof with an empty duffle
11 bag next to it.

12 Inside the backpack was found a red spray paint
13 can, multiple tools, including saw blades, wire cutters,
14 and vise-grips, and several other items.

15 Do you wish me to continue?

16 Q Let me see if I can narrow this down.

17 Start off, I photographed the refrigeration
18 unit's rooftop machinery.

19 A I photographed the refrigeration unit's rooftop
20 machinery, the cut wire copper -- cut copper wire --

21 Q That's all I needed right there. Thank you.

22 You stated you took pictures of the cut copper
23 wire; correct?

24 A Yes, sir.

25 (Mr. Burris and Mr. Malloy speak off the

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 record.)

2 MR. MALLOY: Your Honor, I'm handing up State's
3 Exhibits 6, 5, and 4.)

4 (Documents are shown to the State.)

5 MR. WARING: (Moves head up and down.)

6 (Documents are handed to the witness.)

7 Q (By Mr. Burris) Does that look like the copper
8 wire, sir?

9 A No, sir. It's copper piping. The word "wire"
10 was an error in my report.

11 Q That's an awful big error; don't you think?

12 A As would be the address listed at the top, sir.

13 Q Correct me if I'm wrong, but that would be like
14 saying a pencil was a baseball bat, wouldn't it?

15 A Yes, sir, it could be. However, it's still a
16 typographical error in my report.

17 Q Hope you don't make that often. Do you?

18 A I try not to, sir.

19 Q What exactly did you do in your investigation
20 of the crime scene?

21 A My investigations of the crime scene involved
22 responding to the scene, making my observations of what
23 it appeared as I arrived, communicating with the
24 sergeant on duty to find out what actions occurred prior
25 to my arrival, photographing whatever items appeared to

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 be relevant to the incident location, and collecting
2 items that were relevant to the incident location.

3 Q Do you know what you didn't do? I don't see
4 where you proved -- anyone in the State's case proved
5 that any of this belonged to me. Do you?

6 MR. WARING: Objection, your Honor.

7 THE COURT: Sustained.

8 Q (By Mr. Burris) With all the possible forensic
9 evidence, why wasn't any of it used to prove that this
10 was mine?

11 A Due to the fact that you were wearing gloves
12 during the incident, there would have been none of your
13 fingerprints on those items while the items were at the
14 scene.

15 Q Again, if the backpack was mine, at some point
16 I would have handled those items without the gloves on;
17 correct?

18 A That, again, is possible, sir.

19 MR. BURRIS: All right. I believe I'm done,
20 your Honor. Thank you.

21 THE COURT: Redirect?

22 MR. WARING: Thank you, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. WARING:

25 Q Officer Doxey, the photographs you were shown

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 earlier, you took; right?

2 A I'm not Doxey.

3 Q I apologize. Officer Coker.

4 A I'm sorry, the photographs were what?

5 Q The photographs you were shown earlier, you
6 took; correct?

7 A Yes.

8 Q Okay. And what's the reason you take those
9 photos?

10 A I take the photos to document the scene as I
11 arrive without anything being manipulated by myself
12 prior to the photographs being taken. That just shows
13 as they were when I arrived.

14 Q And you ended up taking those -- you ended up
15 taking the evidence back to City Hall as you mentioned;
16 correct?

17 A Yes, I did.

18 Q And did you take more photos when you got to
19 city Hall?

20 A Yes, I did.

21 Q Okay. And did you splay out the evidence when
22 you got to City Hall?

23 A I removed the items and set them on the
24 countertop in the forensic lab area, as we refer to it.

25 Q So the way that items were splayed out at City

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Hall might be different from where they were found on
2 top of the rooftop?

3 A Yes.

4 Q Is that right?

5 A Yes, sir. In this case, they were.

6 MR. WARING: Court's indulgence?

7 THE COURT: Take your time.

8 (Mr. Waring speaks with Mr. Kidd off the
9 record.)

10 Q (By Mr. Waring) I'm going to show you a couple
11 of photos.

12 Showing you what's been entered into evidence
13 already as State's Exhibits 7, 8, 17, and 19.

14 Now, earlier you were talking about the
15 backpack; correct?

16 A Yes, sir.

17 Q Okay. And can you kind of tell the jury a
18 little bit of how the tools are packaged at this point
19 when you found them?

20 A I can't see this photo. I'm sorry.

21 Q Let me see if I can put a different photo up?

22 A Defense photo right here's a little bit better.
23 I believe it's with these.

24 Q Okay. I'm showing you Defense's Exhibit 11.
25 Is this how you found the tools and spray paint can and

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 hat, et cetera, when you were at the scene?

2 A These were the items that were found on the
3 roof as they were on the roof. I would have to look at
4 a photo that was a little farther out to know whether
5 the bag was opened or closed at that time.

6 Q Would there be discrepancies between the layout
7 of how the evidence is found at the scene and the way
8 it's pictured at -- back at City Hall?

9 A Yes, sir, absolutely.

10 Q And how would you explain those discrepancies?

11 A It was a matter of when I collected the items
12 found at the scene, specifically, the cigarettes,
13 wallet, lighter, I believe a toboggan cap, and a hotel
14 card key. I picked these items up, and I placed them
15 into the backpack to carry to City Hall.

16 MR. WARING: Court's indulgence?

17 (Respite.)

18 MR. WARING: No further questions.

19 THE COURT: Mr. Burris, Recross?

20 MR. BURRIS: Yes, ma'am.

21 RECROSS-EXAMINATION

22 BY MR. BURRIS:

23 Q There still is no evidence that directly links
24 me with any of this; does it -- is there?

25 A With the exception of your proximity to --

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. WARING: Objection, your Honor.
2 THE COURT: What's your basis?
3 MR. WARING: Speculation.
4 THE COURT: Sustained.
5 Q (By Mr. Burris) To the best of your knowledge,
6 is there any evidence that directly links me to this
7 stuff?
8 MR. WARING: Objection.
9 THE COURT: Sustained.
10 MR. BURRIS: I'm done, your Honor.
11 THE COURT: Anything further?
12 MR. BURRIS: No, ma'am.
13 THE COURT: All right. You may step
14 down.
15 THE WITNESS: Thank you.
16 THE COURT: Is this witness excused?
17 MR. WARING: Yes.
18 THE COURT: Any objection?
19 MR. BURRIS: No, ma'am.
20 THE COURT: You may be excused. You are free
21 to stay with us, but you're also free to leave.
22 THE WITNESS: Thank you.
23 THE COURT: Call your next witness.
24 MR. WARING: The State calls Dave Owca.
25 THE DEPUTY CLERK OF COURT: Please place your

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Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 left hand here and raise your right hand.

2 (The oath is administered by the Deputy Clerk
3 of Court, and the witness answers as follows:)

4 THE WITNESS: I do.

5 THE DEPUTY CLERK OF COURT: Please have a seat,
6 and state your full name; spelling your last name for
7 the record.

8 THE WITNESS: My name's David Michael Owca,
9 O-w-c-a.

10 DAVID MICHAEL OWCA,
11 having been first duly sworn by the Clerk of the Court
12 to tell the truth, the whole truth, and nothing but the
13 truth, was examined and testified upon his oath as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. WARING:

17 Q Good afternoon, Dave. How are you doing?

18 A Good. Thank you.

19 Q Dave, can you tell the jury where you're from?

20 A Originally, I'm from Chicago.

21 Q And where do you live now?

22 A Summerville.

23 Q Where are you employed?

24 A Bi-Lo.

25 Q And how long have you worked at that Bi-Lo?

1 A I've been at that Bi-Lo two years now.

2 Q And just so the jury knows, where is that Bi-Lo
3 located?

4 A 1357 Remount Road in North Charleston.

5 Q What is your role there?

6 A I'm the store director.

7 Q And can you tell them what that means?

8 A It's like the store manager. I'm in charge of
9 all four walls and everything in between.

10 Q Were you employed at Bi-Lo, Remount Road, in
11 April, 2012?

12 A Yes, I was.

13 Q And was your role the same then?

14 A It was.

15 Q Did you report to work that morning on
16 April 26, 2012?

17 A I did.

18 Q Do you remember about what time you got there?

19 A I arrived about 5:20 that morning.

20 Q And had you got the call from anybody, or did
21 you just show up?

22 A That's my normal time to arrive. I hadn't
23 received any phone calls.

24 Q So at that point, did you not know anything?

25 A Not until I rolled up and saw the blue lights

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 in my parking lot.

2 Q You see -- did you see anybody near the Bi-Lo
3 building when you arrived?

4 A I saw several police officers when I pulled in.

5 Q Do you know about how many you saw?

6 A Just in the front, I -- there was at least
7 three.

8 Q Did you speak with anybody?

9 A I did speak with one of the officers.

10 Q And after speaking with the officers, what was
11 your understanding of what was going on?

12 A That they had a subject trapped on my roof.

13 Q Did anybody have any permission to be on the
14 roof during the time of the incident?

15 A Absolutely not.

16 Q Did the Defendant have permission to be on the
17 roof?

18 A No.

19 Q Would anybody have any legitimate reason for
20 being on the roof that morning?

21 A No.

22 Q Had there been any maintenance workers leading
23 up to that incident that would have been up there that
24 would have left tools or anything?

25 A No.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Was the Defendant an employee at the Bi-Lo?

2 A No, he was not.

3 Q Has he ever been employed by that Bi-Lo on
4 Remount Road?

5 A Not to my knowledge.

6 Q Okay. Now I want to switch gears and talk
7 about the Bi-Lo policy. When an employee is working
8 late at night and they hear something strange going on,
9 what is Bi-Lo policy?

10 A First thing they need to do is contact our
11 alarm company.

12 Q So are you saying that they are not supposed to
13 call 911?

14 A Not immediately. That's usually up to the
15 alarm company depending on the -- you know, the severity
16 of the emergency. If somebody kicks in the front door,
17 of course, you call 911; otherwise, you call the alarm
18 company.

19 Q So if somebody, for instance, hears cutting
20 noises on top of the roof, they're supposed to call the
21 alarm company; is that right?

22 A That's correct.

23 Q Early in the trial Jesse Gay, Bi-Lo employee,
24 testified he called the alarm company after hearing
25 noises on the roof. Is his action of doing that

Reported By:
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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 consistent with Bi-Lo policy?

2 A Yes, it is.

3 Q Now, I want to talk about the Defendant. Did
4 he cause any damage?

5 A Massive amounts of damage.

6 Q In general, can you explain what that damage
7 was?

8 A When the pipes were cut on my roof, it
9 immediately put about 60 percent of all my merchandise
10 in harm's way, everything from milk to eggs to meat to
11 produce to deli/bakery to all the frozen food in the
12 store, all the frozen food stored in the back, all the
13 refrigerated products stored in back. It's about 60
14 percent of my total store inventory.

15 Q So would you say that most of your inventory
16 was compromised?

17 A Yes.

18 Q And everything that required cooling, was that
19 compromised?

20 A Everything. Yes.

21 Q Did Bi-Lo take countermeasures to try to
22 mitigate the damage?

23 A Absolutely. We had to bring in freezer trucks
24 all the way from Greenville. We had to call in other
25 crews from 14 other stores in the district to come in

1 and try to move and save as much product as possible.

2 Q Would you say that Bi-Lo was in a state of
3 emergency?

4 A Absolutely.

5 Q Now, I want to talk about these copper pipes
6 for a second, the ones that the Defendant cut. What
7 kind of pipes were they?

8 A They were refrigeration pipes.

9 Q And were they permanently installed into the
10 Bi-Lo?

11 A Yes.

12 Q So would you say that they were part of a
13 fixture?

14 A Yes.

15 Q And did those pipes belong to Bi-Lo?

16 A Yes.

17 Q Now, was there a camera on the roof?

18 A There was a fake camera on the roof.

19 Q So is that why it wouldn't capture somebody if
20 they were on the roof?

21 A That's correct.

22 Q Now, what about motion sensors, do y'all have
23 any of those?

24 A There was a fake motion sensor on the roof.

25 Q Okay. And is that why it wouldn't detect

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 somebody moving around on the roof?

2 A Correct.

3 Q So how would you affect -- how would you
4 categorize the overall effect the Defendant caused Bi-Lo
5 at Remount Road?

6 MR. BURRIS: Speculation, your Honor;
7 objection. He -- I haven't been found guilty.

8 THE COURT: Please stand.
9 Speculation?

10 MR. BURRIS: Yes, ma'am. I haven't been found
11 guilty yet.

12 THE COURT: Overruled.

13 THE WITNESS: Catastrophic. And it would have
14 been a lot worse if we hadn't moved so quick to save as
15 much as we did.

16 MR. WARING: Court's indulgence?

17 THE COURT: Take your time.

18 (Mr. Waring speaks with Mr. Kidd off the
19 record.)

20 Q (By Mr. Waring) Now, the equipment that was
21 damaged, did that have to be replaced?

22 A Yes. The condensers. There's two large
23 condensers on the roof that both had to be replaced
24 eventually.

25 Q So was maintenance a necessary thing?

1 A Yeah, absolutely.

2 Q What kind of maintenance?

3 A Well, that day, that next -- that morning --

4 Q Well, just --

5 A -- or long-term?

6 Q -- overall.

7 A Well, that next morning we had every
8 maintenance technician in the area working on the
9 building to try to get some sort of refrigeration back
10 as fastly -- as quickly as possible. But in the
11 long-term, the -- both condensers had to be replaced
12 because once the condenser is cut and moisture is
13 allowed in, it's just a matter of very short time before
14 they completely fail. So they had to be replaced.

15 MR. WARING: Court's indulgence?

16 THE COURT: Take your time.

17 MR. WARING: Please answer any questions that
18 the Defense has.

19 THE COURT: Mr. Burris?

20 CROSS-EXAMINATION

21 BY MR. BURRIS:

22 Q As an employer, you're here representing Bi-Lo;
23 correct?

24 A I am.

25 Q And the tamper alarm went off sometime before

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the alarm company was called; correct?

2 A It's actually a refrigeration alarm. It's not
3 a tamper alarm.

4 Q Okay. Let me see. . .

5 And you just stated that -- how many days did
6 it take for all the necessary repairs to be done?

7 A The immediate repairs were done in three days.
8 Long-term repairs took a lot longer because of the --
9 had to replace the evaporator cores and the condensers.

10 Q All right. Who are Fred Gregorio (phonetic)
11 and Ramesh Rashad (phonetic)?

12 A They are loss prevention officers with our
13 company.

14 Q Okay. So they're representatives of Bi-Lo too;
15 correct?

16 A Also, yes.

17 Q Are you aware they brought invoices for the
18 damage done to the store on the day of my arrest?

19 A Am I aware of what?

20 Q Are you aware that they brought invoices for
21 damage done to the store on the day of my arrest?

22 A I'm not aware of that.

23 Q These documents were provided by them.

24 (Documents are shown to the State.)

25 MR. WARING: No objection.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. MALLOY: These need to be marked.

2 (Defendant's Exhibit Number 25 is marked for
3 identification.)

4 Q (By Mr. Burris) They provided that information
5 to Detective Aiken on the day of my arrest saying the
6 amount of damage that was done.

7 A These are only partial. There was much more
8 damage done than just this. This is what was needed
9 immediately to mitigate loss. This is what was needed
10 at the time just to repair the damage.

11 Q You sure about that?

12 A I am sure about that.

13 Q Okay. And please go to the one that's got the
14 Google mark on it, please, sir?

15 A Yeah.

16 Q Can you read the date that that thing was made
17 out for me? I believe it says October 24th, 2011?

18 A Yeah. This -- this wasn't --

19 MR. WARING: Objection, your Honor.

20 THE COURT: What's your objection?

21 MR. WARING: He's got to have a chance to
22 explain.

23 THE COURT: Please let the witness respond.

24 You may --

25 The witness needs to respond to your last

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 question. You cut him off.

2 You may continue, Mr. Owca.

3 THE WITNESS: This was not for damage to my
4 store. This was damage done to another store with
5 another incident, sir.

6 Q (By Mr. Burris) So what relation did it have
7 to this case?

8 A This has nothing to do with this case. This is
9 for a different store.

10 Q But yet it was used at my bond hearing and my
11 preliminary hearing as evidence.

12 A I'm not aware of that.

13 MR. WARING: Objection, your Honor.

14 THE COURT: One second.

15 Basis?

16 MR. WARING: Relevance.

17 THE COURT: Sustained.

18 Q (By Mr. Burris) You said that was damage done
19 to one store; correct?

20 A That was damage to another store other than
21 mine.

22 Q Would you look at the addresses on them for me
23 real closely? And the ZIP codes?

24 A On the first page?

25 Q On all of them. On the Kru-Kel and the ExZel

1 (phonetic) and Russell?

2 A Okay. These are -- all -- these first three
3 are for my store in Moncks Corner. And it appears that
4 the last one is for the store in North Charleston.

5 MR. MALLOY: Sir, he wants to look at this.

6 (Document is handed back to Mr. Burris.)

7 Q You said the last one was for your store in
8 North Charleston?

9 A Yeah, it appeared the Kru-Kel is the one sent
10 to North Charleston.

11 Q Kru-Kel was in North Charleston.

12 Can you show Mr. Malloy where it says that at,
13 because I don't see it?

14 (Document is handed back to the witness.)

15 MR. MALLOY: Handing back Defendant's
16 Exhibit 25.

17 MR. BURRIS: Can I please have that entered
18 into evidence?

19 THE COURT: Defense 25, he's requesting that it
20 be admitted into evidence.

21 MR. WARING: Your Honor, can we see the
22 document first?

23 THE WITNESS: Actually, the last one does
24 not --

25 THE COURT: Hold on one second. There's not a

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 question.

2 (Document is handed to Mr. Malloy and then
3 shown to the State.)

4 THE COURT: State's response to 25?

5 MR. WARING: Your Honor, the State objects to
6 everything. That's not the actual Bi-Lo we're talking
7 about here in this case.

8 THE COURT: Defense 25 not in evidence.

9 MR. BURRIS: Your Honor --

10 THE COURT: You may continue.

11 MR. BURRIS: May I make a statement, your
12 Honor?

13 THE COURT: You may not. Not concerning that
14 and not concerning my ruling.

15 Thank you.

16 (Mr. Burris and Mr. Malloy speak off the
17 record.)

18 Q (By Mr. Burris) Concerning those documents,
19 you said they had nothing to do with the case in
20 question; right?

21 A These have nothing to do with my store.

22 Q Can you give me a legitimate reason why they
23 were presented then?

24 A I cannot.

25 Q They had nothing to do -- they weren't even

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 from a store in this county; correct?

2 A I believe that's in Berkeley County.

3 Q So they should have been barred all together?
4 They should not have been submitted by your employees?

5 A I can't answer for that. They're not my
6 employees.

7 Q Bi-Lo's employees. You're here as a
8 representative; correct?

9 A Correct. I cannot answer for them.

10 Q I have here your maintenance workers' time
11 sheets for the incident in question. And --

12 MR. BURRIS: Mr. Malloy.

13 (Mr. Malloy and Mr. Burris speak off the
14 record.)

15 (Document is shown to the State.)

16 Q (By Mr. Burris) Them documents up there, am I
17 being accused of them --

18 THE COURT: Wait. Stop, Mr. Burris.

19 MR. BURRIS: I'm sorry.

20 THE COURT: When showing -- I know you're now
21 showing it to the State, but they still need to listen.
22 They need to have an opportunity to review.

23 Thank you.

24 MR. MALLOY: Needs to be marked.

25 (Defendant's Exhibit Number 26 is marked for

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 identification.)

2 THE COURT: Mr. Burris, you may continue.

3 Q (By Mr. Burris) Concerning the earlier
4 document, sir, am I being accused of them or something?

5 A I don't know, sir.

6 MR. WARING: Objection, your Honor.

7 THE COURT: Sustained.

8 Q (By Mr. Burris) Those are all from the same
9 date; correct?

10 A It appears that way, yes.

11 Q If you will look on the fourth page at the
12 bottom, about the job being explained and completed to
13 the satisfaction --

14 A Uh-huh.

15 Q -- is that correct?

16 A What was your question again?

17 Q Did the mark -- that the supervisor or manager
18 on duty has to, I guess, examine the work or whatever
19 and okay it and say it was done to their satisfaction?

20 A On the last page?

21 Q Yes, sir.

22 A It hasn't been marked.

23 Q On the fourth page, it has checked "yes" in
24 both cases.

25 A That would be the third page.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Q Out of order. I apologize.

2 A That's all right.

3 Yes, they've been marked.

4 Q And you say later on you had to replace how
5 many units?

6 A Two.

7 Q When exactly did that happen?

8 A Sir?

9 Q When exactly did that take place?

10 A I would have to check my records, but it was
11 probably about three or four months later.

12 Q So you went three or four months without units?

13 A No. We had units. The units we had were
14 compromised when they were cut open. So they would have
15 had to eventually be replaced, and they were.

16 MR. BURRIS: Okay. No further questions.

17 THE COURT: Redirect?

18 MR. WARING: Thank you, your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WARING:

21 Q Dave, can you tell the jury, figurewise,
22 moneywise, the extent of the damage that was caused?

23 MR. BURRIS: Objection, your Honor.

24 THE COURT: What's the basis?

25 MR. BURRIS: Prior -- prior motion not to do

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 that until sentencing.

2 THE COURT: Overruled. I'm going to allow it.

3 THE WITNESS: It's approximately \$189,000.

4 Q (By Mr. Waring) And can you kind of break that
5 down a little bit in layman's terms where all that is
6 coming from?

7 A Yeah. The evaporator units on the roof that
8 had to be replaced were \$30,000 apiece. The -- just the
9 amount to replace the Freon was \$48,000. And then you
10 add up all the lost product, the extra labor, the extra
11 time, the things we needed to mitigate -- loss, bringing
12 in trucks down from Greenville -- it all adds up to
13 about 189.

14 MR. WARING: Court's indulgence?

15 No further questions.

16 MR. BURRIS: Yes, ma'am.

17 (Mr. Burris speaks with Mr. Malloy off the
18 record.)

19 THE COURT: All right. Mr. Burris, you're
20 limited to what was brought on out Redirect.

21 MR. BURRIS: This concerns what he --

22 THE COURT: I didn't need an -- I just wanted
23 you to know what the parameters are.

24 (Mr. Burris speaks with Mr. Malloy off the
25 record.)

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 (Document is shown to the State.)

2 MR. MALLOY: Your Honor, we're having this
3 marked.

4 (Defendant's Exhibit Number 27 is marked for
5 identification.)

6 RECROSS-EXAMINATION

7 BY MR. BURRIS:

8 Q On that paper, it says you ordered 160 bottles
9 of R22, that -- 30-pound bottles; correct?

10 A Yeah. My maintenance crew did it. I don't
11 order that kind of stuff. The maintenance people do.

12 (Mr. Burris speaks with Mr. Malloy off the
13 record.)

14 Q (By Mr. Burris) The first set of documents I
15 gave you, there's a Kru-Kel invoice on there. Could you
16 look at that for me, sir? Look at the very first line.
17 Can you read what it says for me?

18 A It says 160 units of R22 refrigerant.

19 Q And what was the price per bottle and the
20 total?

21 A 142.50 each.

22 Q And total?

23 A Total is 22,800.

24 Q Now, last document that I gave you, would you
25 look at that for me? Can you read it?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A Says 160 units of R22 at two -- I really can't
2 make that out -- 280?

3 Q 285.

4 A 285 per unit.

5 Q Total?

6 A Total \$45,600.

7 Q Correct me if I'm wrong, that's exactly double;
8 ain't it?

9 A It's also a six-month time difference, and
10 Freon goes up quickly.

11 Q Are you sure y'all weren't just trying to make
12 up for losses from other stores?

13 A I would have no knowledge of that, sir.

14 Q That's exactly double to the penny. I find
15 that very hard to believe, sir.

16 Thank you.

17 THE COURT: You may step down.

18 Is this witness excused?

19 MR. WARING: Yes, your Honor.

20 THE COURT: Any objection, Mr. Burris?

21 MR. BURRIS: No, your Honor.

22 THE COURT: All right. Call your next witness.

23 MR. WARING: State rests, your Honor.

24 THE COURT: Ladies and gentlemen, that
25 indicates to the Court there's a matter of law that I

1 must take up outside of your presence. Do not begin
2 deliberations; do not discuss this case amongst
3 yourselves. The Court will receive you back in the
4 courtroom in just a few moments. Please feel free to
5 leave your notepads right in your chairs.

6 Thank you.

7 Please rise for the jury.

8 (The jury is escorted out of the courtroom
9 at 3:38 p.m.)

10 THE COURT: Thank you. Be seated.

11 Any motions or matters, Mr. Burris?

12 MR. BURRIS: Yes, ma'am. Motion for a directed
13 verdict because they've failed to prove their claims in
14 question are nonferrous. The State has not provided any
15 evidence indicating the pipes were constructed of
16 nonferrous metals. No scientific evidence has been --

17 THE COURT REPORTER: I'm sorry. Can you please
18 slow down?

19 THE COURT: You're going to have to slow down.

20 MR. BURRIS: Sorry.

21 THE COURT REPORTER: Would you please start
22 over?

23 MR. BURRIS: Motion for a directed verdict
24 because they failed to prove that the pipes in question
25 are nonferrous. State has not provided any evidence

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 indicating the pipes were constructed with nonferrous
2 metals. No scientific evidence has been introduced.
3 Mere testimony that the pipes were copper is not enough.
4 No expert opinion about their composition. Statute
5 requires that the metal be nonferrous. Nonferrous
6 metals are metals that do not contain iron. No evidence
7 that the pipes at issue here did not contain iron.

8 And -- excuse me, your Honor.

9 (Mr. Burris speaks with Mr. Smith off the
10 record.)

11 MR. BURRIS: I'm finished, ma'am.

12 THE COURT: All right. Mr. Waring?

13 MR. WARING: Your Honor, the State believes
14 that we've provided ample evidence and sufficient
15 evidence that the pipes were copper. We had a store
16 director testify. He's very knowledgeable about this
17 stuff. He works at the store. He's worked there for a
18 while. He knows that they're copper pipes. He
19 testified to the copper pipes. The police officers
20 indicated --

21 THE COURT: Mr. Burris, we've been through
22 this. We're halfway through the trial; you know the
23 procedure. Please sit down.

24 MR. WARING: I don't believe we need an expert
25 witness to testify that the pipes are actually copper,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 and so the State opposes the motion.

2 Viewing the evidence in light most favorable to
3 the State, we think it's a question that should go to
4 the jury, your Honor.

5 THE COURT: All right. Thank you.

6 Mr. Burris?

7 MR. BURRIS: I do not think Bi-Lo manager is
8 the qualified person to state that pipes were metal or
9 iron or anything of the sort. I mean, that would be
10 like asking one of these lawyers to do that. That's not
11 their area of expertise.

12 THE COURT: All right. In ruling on a motion
13 for directed verdict, the Court relies upon Rule 19 of
14 the South Carolina Rules of Criminal Procedures. I must
15 view the evidence in all reasonable inferences in light
16 most favorable to the nonmoving party, which is the
17 State in this case. Further, this Court is concerned
18 only with the existence or nonexistence of the evidence,
19 not to the weight.

20 Mr. Burris is charged with unlawful obtaining
21 of nonferrous metals. In order to find the Defendant
22 guilty, the State must prove beyond a reasonable doubt
23 that Mr. Burris willfully and maliciously cut,
24 mutilated, defaced, or otherwise injured any real or
25 personal property including any fixtures or improvements

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 for the purpose of obtaining nonferrous metals in any
2 amount.

3 Nonferrous metals, according to the Statute's
4 definition, means metals not containing significant
5 quantities of iron or steel, including, but not limited
6 to, copper wire, copper clad steel wire, copper pipe,
7 copper bars, copper sheeting, aluminum other than
8 aluminum cans, a product that is a mixture of aluminum
9 and copper, catalytic converters, lead-acid batteries,
10 filled propane tank, gas tanks, and stainless steel beer
11 kegs or containers.

12 Mr. Burris is also charged with the possession
13 of tools of the crime. The State must prove beyond a
14 reasonable doubt that the Defendant had in his
15 possession any engine, machine, tool, false key tool,
16 picklock, bit, nippers, dynamite cap, steel wedge,
17 drill, or other implement or thing adapted, designed, or
18 commonly used for the commission of burglary, larceny,
19 safecracking, or other crime, under circumstances
20 evincing an intent to use, employ, or allow the same to
21 be used in the commission of a crime.

22 Jesse Gay testified that he was working the
23 nightshift at Bi-Lo on April 26th, 2012, and heard
24 noises on the roof that he had never heard before. He
25 testified that the noises were cutting and banging

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 noises.

2 Officer Bunch testified that he saw an
3 individual on the backside of the roof at the Bi-Lo in a
4 corner right by the air-conditioning unit, and the
5 individual ducked down when spotted.

6 Officer Doxey testified that when he arrived on
7 the scene, he saw pipes stacked on the rear corner and
8 large pieces of copper pipe was removed from the
9 refrigeration system. He testified that he observed the
10 Defendant lying on the ground beneath the refrigeration
11 system, and a bag of tools was approximately five feet
12 from the Defendant, close enough to be in the
13 Defendant's grab area.

14 Officer Coker testified he saw cut cooper pipes
15 that looked like pipes in a refrigeration unit. He
16 removed several items from the bag found on the roof and
17 the tools could be used for cutting copper. He also
18 testified that the duffle bag fit pipes in it depending
19 on how the pipe was cut.

20 Dave Owca testified that the Defendant caused
21 massive amounts of damage, putting approximately 60
22 percent of his store's merchandise in harm's ray.

23 In viewing the evidence in the light most
24 favorable to the nonmoving party, I deny your motion for
25 a directed verdict on both Indictments.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 case. Ladies and gentlemen, you will now hear closing
2 arguments on behalf of the State and Mr. Burris. And
3 after that, I will instruct you on the law applicable to
4 this case. Please give your attention.

5 Mr. Burris.

6 MR. BURRIS: Thank you, your Honor.

7 CLOSING ARGUMENTS

8 MR. BURRIS: I don't know really how to say
9 this, but I appreciate y'all's time and effort in this
10 situation. Basically, I'm going to say the State has
11 failed to prove conclusively that the pipe's cut. There
12 is no expert testimony saying that it was nonferrous
13 metal; therefore, they have no proof of that. And if
14 you remember, I asked you to pay attention to the facts
15 and the evidence. I see no evidence that says I did
16 this. All the forensic stuff in there, they could have
17 found me -- they could have used any one of them items.
18 But at some point they could have proved beyond a
19 reasonable doubt very easily, and we wouldn't be having
20 this argument. Instead, they're leaving it up to y'all
21 to speculate.

22 And you've seen what happened with the wallet.
23 You heard one officer testify that he took it out of my
24 pocket.. You heard the CSE say it was in the book bag,
25 even after I showed him pictures that it wasn't in that

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 shape. And I don't know if you looked at that closely
2 or not, but if you'd have paid attention, you would have
3 seen they were stacked, like somebody laid them there.
4 There is no picture of me on that roof. There's no
5 blood. You seen pictures with my head wound. And the
6 gloves weren't tested, for whatever reason. At some
7 point, I would have handled some of those items without
8 -- they didn't prove it. That's all I can tell you on
9 that.

10 Mere presence of me being there, if that's what
11 you think, there's not enough either. And you have to
12 ask yourself, if I was there, why go to the trouble of
13 putting -- whether they claim they didn't or not,
14 actions make a statement on their own. How -- planting
15 -- you see my pockets turned inside out, on the ground,
16 I might add.

17 And evidence don't lie. All of us lie at some
18 point, whether intentionally or not, white lies,
19 whatever. It makes us human. But you're judging the
20 next 15 years of my life.

21 MR. WARING: Objection, your Honor.

22 THE COURT: Ladies and gentlemen, that is an
23 inappropriate comment for closing arguments. Just
24 please disregard that last statement.

25 MR. BURRIS: Apologize, your Honor. Excuse me.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 We have contradicting officers' testimonies,
2 not following procedures, when it was clear that they
3 should have did it, regardless of what they usually do.
4 Instead, they want you to speculate. One simple test on
5 any one of the items. They said I bled a lot; I was
6 bleeding of the roof. There's no blood.

7 The cameras, because there's no footage -- it's
8 a fake camera. That's a multimillion-dollar
9 corporation. If they're going to go through all the
10 trouble to put fake monitors up there -- there's no
11 proof that they were fake. If I sprayed them, there
12 should be something there. They don't have it -- they
13 are fake -- because there's no evidence of me on the
14 roof. But I bet you if I was on that roof and there was
15 pictures of it, they'd have them.

16 There was no cigarette butts on there. They
17 expect you to believe that I was up there for three
18 hours, and there's no physical evidence. I mean, I
19 can't stress that enough. The burden of proof is on the
20 State.

21 The facts and evidence, they just don't support
22 the officers' testimony. I mean, they're testifying one
23 way, but no attempt was made. I mean, some attempt
24 should have been made. Why collect the evidence? You
25 know, even with the gloves, I -- I don't really have a

Reported By:
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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 problem admitting wearing the gloves. It was 54 degrees
2 out. And, you know, whatever -- some people is
3 different. But why wait 11 months to get them if they
4 were considered evidence?

5 All I can tell you is facts speak for
6 themselves. If there's a fact up there that shows I'm
7 on that roof, I respect y'all's' decision, but I just
8 don't see it. There's no evidence. And speculation by
9 itself is not enough to convict me. That's all I ask
10 y'all to think about. Thank you.

11 THE COURT: Mr. Waring.

12 MR. WARING: Thank you, your Honor. May it
13 please the Court?

14 CLOSING ARGUMENTS

15 MR. WARING: Choices; consequences;
16 accountability. At the beginning of the trial, I
17 mentioned those three words. And just shortly, you're
18 going to go back into the jury room, and you're going to
19 deliberate. I want you to remember those three words.
20 They are very important. That's what this case is
21 about. This Defendant went onto the roof of the Bi-Lo
22 by himself; he was wearing gloves. That's a fact. This
23 is not speculation. Let's go through the facts that
24 prove that he is guilty.

25 You heard a lot of testimony today. You saw a

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 bunch of evidence; you saw many photos. I challenge you
2 to go back into the jury room and look at that stuff.
3 Look at the incident report; look at all the photos.
4 You saw Jessie Gay get up on the stand and testify about
5 hearing noises around 5:00 a.m., calling the alarm
6 company. You had Officer Bunch testify that he walked
7 around the side of the Bi-Lo and saw the Defendant
8 walking back and forth and performing what looked like
9 stacking maneuvers. You had Officer Doxey, who went
10 onto the roof via the hatch, saw the copper pipes and
11 had to drag the Defendant behind the AC unit -- from
12 behind the AC unit. Why? Why did he have to drag him?
13 Because he was hiding. Why was he hiding? Because he
14 had something to hide. He had cut copper pipes. Of
15 course, he was hiding. Then you had crime scene tech,
16 Coker, testify about all the evidence, about the saw,
17 how it could have -- how it could have cut the copper
18 pipes. I challenge you to go back and recall that
19 testimony, match it up with the photos, and think about
20 it.

21 You got the Defendant on the roof, with gloves.
22 It's Charleston. It's April when this happened. I
23 don't care even if it's 54 degrees; you don't need
24 gloves. And if you look at the picture, those gloves
25 are not the kind that you would wear if it was cold

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 outside. Those gloves are designed for gripping. He
2 needed some serious gloves so that he wouldn't damage
3 his hands.

4 Now, early in the trial, I mentioned to y'all
5 that the State carries the burden of proving the
6 Defendant committed these crimes beyond a reasonable
7 doubt. Now, let's go through the elements of each one
8 of these crimes and see if the State has carried that
9 burden.

10 With the unlawful obtaining nonferrous metals,
11 we have to prove -- the State, that is -- that he
12 willfully and maliciously cut or injured property with
13 the purpose of obtaining nonferrous metals, which
14 includes copper. Let's go through the elements. He was
15 on the roof, hiding behind the AC unit, wearing gloves,
16 with a backpack of tools right next to him. You've got
17 that. You've got the copper pipes laying on the ground
18 right near him. It doesn't take much common sense to
19 put two and two together, that he willfully cut that
20 property. We had Dave Owca, who was on the stand, who
21 testified that those pipes belonged to Bi-Lo. So he cut
22 Bi-Lo's property. Why would he do that? Well, the
23 reason is very simple. He wanted the copper. The State
24 has carried that burden of proving that crime beyond a
25 reasonable doubt.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 With regard to the possession of tools of a
2 crime, let's go through those elements. He must have
3 possessed tools that are adapted or commonly used for
4 burglary, larceny, or other such crimes under
5 circumstances indicating the attempt to use them. Okay.
6 He's on the roof; he's hiding behind the AC unit; he's
7 got the saw, the tools, the duffle bag, the book bag,
8 the screwdrivers; he's got all that stuff, as you heard,
9 roughly five feet away from him. It's in his presence.
10 So he possessed the tools, and he not only intended to
11 use them, but he did use them. That's why we're here
12 today.

13 Ladies and gentlemen, I believe that the
14 State has carried its burden. We've proved that the
15 Defendant, Shawn Burris, committed these crimes beyond a
16 reasonable doubt. Now, I'm asking you, when you go back
17 in the jury room, think of those three words that I
18 mentioned: choices; consequences; accountability.

19 This is serious stuff. We have got to hold him
20 accountable. He does not get to walk out of here today
21 a free man. So ladies and gentlemen, you go back, and
22 I'm going to ask you to render a verdict of guilty.
23 Thank you.

24 JURY CHARGES

25 THE COURT: All right. Ladies and gentlemen,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 I remind you that during this trial, you and I have had
2 certain duties to perform. As the trial judge, it is
3 my responsibility to preside over the trial of this
4 case, and I have the additional duty to rule on the
5 admissibility of the evidence offered during this trial.
6 You are to consider only the competent evidence before
7 you. If there was any testimony ordered stricken from
8 the record, you must disregard that testimony. You are
9 to consider only the testimony that has been presented
10 to you from the witness stand, the exhibits that are --
11 have been made part of the record in this case, as well
12 as any stipulations of the parties.

13 I have the additional duty to charge you the
14 law applicable to this case. As the presiding judge, I
15 am sole judge of the law in this case. It is your duty
16 as jurors to accept the law and apply the law exactly as
17 I state it to you now. If you already have any idea as
18 to what the law is or what the law ought to be and it
19 does not agree with what I tell you, you must abandon
20 your own idea, because you are sworn to accept the law
21 and apply the law exactly as I state it to you now.

22 In every case tried in this court before a
23 jury, the jury becomes the sole and exclusive judges of
24 the facts. The trial judge may not make any comment
25 regarding the facts in this case. You, the jury, are

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 the sole judges of the facts in this case. Do not think
2 by anything that I have said or done throughout the
3 progress of this trial or while I'm instructing you on
4 the law that I have any opinion about the facts in this
5 case. The law does not allow me to have an opinion
6 about the facts in this case.

7 Ladies and gentlemen, that is a matter that is
8 solely for you to determine. The Indictments in this
9 case charge Mr. Burris with unlawful obtaining of
10 nonferrous metal and possession of tools of a crime. I
11 remind you, the fact that Mr. Burris was arrested,
12 charged, and indicted cannot be considered by you as
13 evidence or as any -- it is not evidence and cannot be
14 considered by you as evidence in any way.

15 An Indictment, as I indicated to you before, is
16 simply the formal document that brings this case to
17 court. The Indictments in this case allege two
18 different offenses against Mr. Burris. There is no
19 significance in the order that I reference the above
20 Indictments. It is simply something must go first.
21 Each Indictment charges a separate and distinct charge.
22 You must decide each Indictment separately on the
23 evidence and the law applicable to it, uninfluenced by
24 your decision as to any other Indictment. Mr. Burris
25 may be convicted or acquitted on any or both of the

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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 offenses charged. You will be asked to write a separate
2 verdict for each offense.

3 Mr. Burris has pled not guilty to each
4 Indictment. A person charged with committing a criminal
5 offense in South Carolina is never required to prove
6 himself innocent. I charge you, it is an important rule
7 of law that the defendant in a criminal trial, no matter
8 what the seriousness of the charge may be, will always
9 be presumed innocent of the crime for which the
10 Indictment was issued, unless guilt has been proven by
11 evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 This presumption of innocence does not end when
14 you begin your deliberations, but it accompanies the
15 Defendant throughout the trial until you reach a verdict
16 of guilt based on evidence satisfying you of that guilt
17 beyond a reasonable doubt. The presumption of innocence
18 is not merely a theory. It is not just a legal phrase.
19 It is a substantial right to which every defendant is
20 entitled, unless you, the jury, are satisfied from the
21 evidence of the Defendant's guilt beyond a reasonable
22 doubt.

23 The State has the burden of proving Mr. Burris
24 guilty beyond a reasonable doubt. Some of you may have
25 served as jurors in civil cases where you were told it

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 was only necessary to prove that a fact is more likely
2 true than not true, such as by greater weight or
3 preponderance of the evidence. In criminal cases, the
4 State's burden must be more powerful than that. It must
5 be beyond a reasonable doubt. Proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced of the
7 Defendant's guilt. There are very few things that we
8 know in this world with absolute certainty, and the law
9 does not require proof that overcomes every possible
10 doubt.

11 If based upon your consideration of the
12 evidence that you have been presented, you are firmly
13 convinced that Mr. Burris is guilty of the crime
14 charged, you must find him guilty. On the other hand,
15 if you think that there is a real possibility that
16 Mr. Burris is not guilty, you must give him the benefit
17 of the doubt and find him not guilty.

18 There are two types of evidence generally
19 presented during a trial: direct evidence and
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact, such as an eyewitness. It is
23 evidence which immediately establishes the main fact to
24 be proved. Circumstantial evidence is proof of a chain
25 of acts and circumstances indicating the existence of a

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be
3 inferred. Circumstantial evidence is based on inference
4 and not on personal knowledge or observation.

5 You should weigh all of the evidence in this
6 case, and after weighing all the evidence in this case,
7 if you are not convinced of the guilt of the Defendant
8 beyond a reasonable doubt, you must find the Defendant
9 not guilty.

10 Necessarily, you must determine the credibility
11 of the witnesses who have testified in this case.
12 Credibility simply means believability. It becomes your
13 duty as jurors to analyze the evidence and establish and
14 determine which evidence convinces you it's true. In
15 determining the believability of the witnesses who have
16 testified in this case, you have the right to believe
17 one witness over several witnesses or several witnesses
18 over one witness. You may believe a part of the
19 testimony of a witness and reject the remaining part of
20 the testimony of that same witness. You have the right
21 to consider whether any witness has exhibited to you any
22 interest, bias, or prejudice, or other motive in this
23 case. You may also consider whether the -- you can
24 consider the appearance and the manner of the witness
25 while on the witness stand.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 A person who has a past criminal record is
2 competent to testify during a trial. A past record does
3 not affect the ability of that witness to testify. The
4 past record may only be considered by you, if at all, in
5 determining the witness' believability. I instruct you
6 and emphasize, the fact that Mr. Burris did not testify
7 is not a factor for you to consider by -- in any way in
8 your deliberation and in your consideration on the
9 question of Mr. Burris's guilty. It must not be
10 considered by you in any manner whatsoever. A Defendant
11 has a Constitutional right to remain silent, and the
12 assertion of this right must not be considered by you in
13 your deliberations. I repeat, under your oath, you are
14 to draw no conclusion whatsoever from the fact that the
15 Defendant in this case did not testify.

16 Mr. Foreman, you must ensure that the fact that
17 Mr. Burris did not testify is not even discussed in the
18 jury room.

19 The Defendant is not required to prove its
20 innocence. The burden of proof remains on the State to
21 prove guilt beyond a reasonable doubt. Mere presence at
22 the scene is not sufficient to prove someone guilty of a
23 crime. A defendant's presence where a crime is being
24 committed does not make a defendant an accomplice or an
25 aider and abettor of the person committing the crime.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 The burden is on the State to prove every element of the
2 crime charged. If you find, after reviewing all of the
3 evidence, the State has proved Mr. Burris was only
4 present at the scene of the crime, and that they have
5 not proved beyond a reasonable doubt any other
6 participation in the crime, then you must find
7 Mr. Burris not guilty. The law is that proof
8 of -- proof of one at the scene of the crime is not
9 sufficient to find someone guilty.

10 In order to establish criminal liability,
11 criminal intent is required. For example, the mental
12 state required to be proven by the State for a
13 particular crime might be purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal intent
15 must be proven by the State beyond a reasonable doubt.
16 It is always a matter to be determined by the jury from
17 the circumstances surrounding the situation.

18 There is no way to prove intent to a
19 mathematical certainty. The law says that criminal
20 intent may be inferred from the circumstances shown to
21 have existed. This is how you make a determination of
22 whether or not the element required of intent was
23 present. It is not necessary to establish intent by
24 direct and positive evidence, but intent may be
25 established by inference in the same way as any other

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 fact by taking into consideration the act of the parties
2 and all the facts and circumstances of this case.

3 Criminal intent is a mental state and conscious
4 wrongdoing. It is up to you to determine what the
5 Defendant intended to do, based upon the circumstances
6 shown to have existed.

7 Criminal intent can arise from action or a
8 failure to act. It may arise from negligence,
9 recklessness, or to an indifference to duty, or to
10 consequences that is considered by the law to be the
11 equivalent of criminal intent.

12 Mr. Burris is charged with unlawful obtaining
13 of nonferrous metals. In order to find Mr. Burris
14 guilty of unlawful obtaining of nonferrous metals, the
15 State must prove beyond a reasonable doubt that
16 Mr. Burris willfully and maliciously cut, mutilated,
17 defaced, or otherwise injured any personal or real
18 property, including any fixtures or improvements for the
19 purpose of obtaining nonferrous metals in any amount.

20 Nonferrous metals means metals not containing
21 significant quantities of iron or steel, including but
22 not limited to, copper, wire, copper clad steel wire,
23 copper pipe, copper bars, copper sheeting, aluminum,
24 other than aluminum cans, a product that is a mixture of
25 aluminum and copper, catalytic converters, lead-acid

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 batteries, steel, propane, gas tanks, and stainless
2 steel, beer kegs, or containers.

3 The Defendant is also charged with possession
4 of tools of a crime. In order to find Mr. Burris guilty
5 of possession of tools of a crime, the State must prove
6 beyond a reasonable doubt that Mr. Burris had in his
7 possession any engine, machine, tool, false key,
8 picklock, bit, nippers, dynamite cap, coil or fuse,
9 steel wedge, drill, tap-pin, or other implement or thing
10 adapted, designed, or commonly used for the commission
11 of burglary, larceny, safecracking, or other crime.

12 Actual possession means that the item was
13 in the actual physical custody of the Defendant.
14 Constructive possession means that the Defendant had
15 dominion and control or the right to exercise dominion
16 and control over either the item or the property in
17 which they were found. Mere presence at the scene where
18 the items were found is not enough to prove possession.
19 Actual knowledge of the presence of the item is strong
20 evidence of the Defendant's intent to control its
21 disposition or use.

22 The State must also prove beyond a reasonable
23 doubt that the Defendant had an intent to use, employ,
24 or allow the same to be used or employed in the
25 commission of a crime or knew that the same were

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 intended to be so used.

2 Ladies and gentlemen, I'm going to go over the
3 verdict form with you. As I indicated to you, there is
4 no significance in the way that I read the verdict form.
5 It's simply, something has to go on the paper first.

6 Ladies and gentlemen, in the Court of General
7 Sessions, Ninth Judicial Circuit, State of South
8 Carolina versus Shawn Justin Burris, we, the jury, find
9 the Defendant -- excuse me -- we, the jury, find Shawn
10 Justin Burris not guilty, or we, the jury, find Shawn
11 Burris guilty of unlawful obtaining of nonferrous metal.

12 Mr. Foreman, you must sign the verdict form and
13 date the verdict form, indicating it's the unanimous
14 decision of the jury, meaning all 12 of you must agree.

15 As I indicated to you, there are two separate
16 charges, and they must be considered independent of each
17 other.

18 Case Number 2012-GS-10-4290, State of South
19 Carolina versus Shawn Justice Burris, we, the jury, find
20 Shawn Justin Burris not guilty, or we, the jury, find
21 Shawn Justin Burris guilty of possession of tools of a
22 crime.

23 Once again, you will sign and date the verdict
24 form, indicating it's a unanimous decision of the jury.

25 Ladies and gentlemen, are there any of the 12

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 that are unable, for whatever reason, to continue and
2 move on to the deliberating at this point? If there is
3 any juror who cannot continue in this case, for whatever
4 reason, please stand.

5 Thank you. All 12 have indicated that they are
6 prepared to go forward to the deliberation stage.

7 Ladies and gentlemen, do not begin your
8 deliberations; do not begin discussing this case amongst
9 yourselves. We will gather the verdict forms and the
10 evidence to come back to you, and at that time, the
11 bailiff will indicate to you, you may begin your
12 deliberations.

13 Madam Alternate, you have completed your
14 service to this case. I will keep you separate for just
15 a few moments until your brethren have begun their
16 deliberations, and then I'll release you from your
17 service.

18 Ladies and gentlemen, please take all of your
19 belongings back with you. Please rise for the jury.

20 (The jury is escorted from the courtroom at
21 4:31 p.m.)

22 THE COURT: Thank you. Be seated. Any
23 objections, corrections to the charge as read? From the
24 State?

25 MR. WARING: No, your Honor.

Reported By:
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Official Court Reporter for the State of South Carolina

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: Mr. Burris?

2 MR. BURRIS: No, ma'am.

3 THE COURT: Thank you.

4 MR. MALLOY: Do you want us to gather the
5 evidence.

6 THE COURT: Yes.

7 (Review of the exhibits.)

8 THE COURT: Any objection?

9 MR. BURRIS: No.

10 (Respite.)

11 THE COURT: All right. I understand that you
12 have a motion, Mr. Burris?

13 MR. BURRIS: Yes, ma'am. I'd like to renew my
14 directed verdict, please.

15 THE COURT: All right. I believe,
16 procedurally, that since this has already gone to the
17 jury, you have waived your motion for directed verdict
18 at the close of your case, but I'll be more than happy
19 to allow you to place it on the record.

20 MR. BURRIS: Thank you, ma'am.

21 I'm renewing it based on the previous grounds
22 stated.

23 THE COURT: All right. And, Mr. Waring,
24 anything from you?

25 MR. WARING: Your Honor, for reasons stated

1 prior, the State opposes it.

2 THE COURT: All right.

3 Mr. Burris, I have heard nothing new since I
4 gave you my ruling at the close of the State's case, so
5 I stand by my ruling at that point. Note your
6 exception. It has already gone to the jury.

7 All right. Anything further?

8 MR. BURRIS: No, ma'am. Thank you.

9 THE COURT: All right. We will be at ease,
10 awaiting either a note or a verdict.

11 Anything further, Mr. Waring?

12 MR. WARING: Nothing, your Honor.

13 THE COURT: Mr. Burris, is there any reason
14 that you need to meet with your attorneys or have
15 -- have any notes or anything?

16 MR. BURRIS: No. I just need to gather my
17 stuff up.

18 THE COURT: All right. Take your time
19 gathering your stuff up, because I -- I don't anticipate
20 that you will need any more of your documents today.
21 We're just waiting for the jury to come back.

22 Mr. Malloy, you have advised -- I have no idea
23 what is going to happen, but Mr. Burris is advised of
24 his rights to appeal?

25 MR. MALLOY: Yes, your Honor. We'll file that

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 -- if that is the case, we will put in a notice of
2 appeal.

3 THE COURT: All right. Thank you.

4 (The Judge steps off the bench at 4:36 p.m.,
5 and Court is in recess.)

6 (The Judge enters the courtroom at 5:11 p.m.)

7 (The Defendant is present in the courtroom.)

8 THE COURT: Thank you. Be seated.

9 Anything before we bring in the jury? From the
10 State?

11 MR. WARING: Nothing, your Honor.

12 THE COURT: Mr. Burris?

13 MR. BURRIS: No, your Honor.

14 THE COURT: Thank you. Let's bring in the
15 jury.

16 (The jury is escorted into the courtroom
17 at 5:12 p.m.)

18 THE COURT: Thank you. Be seated. I
19 understand that the jury has reached a verdict. If you
20 will hand the verdict forms to the bailiff. Thank you.

21 (The document is handed to the Judge.)

22 THE COURT: Thank you.

23 (The document is handed to the Clerk.)

24 THE DEPUTY CLERK OF COURT: State of South
25 Carolina, in the Court of General Sessions, Ninth

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 Judicial Circuit, Case Number 2012-GS-10-4289, we, the
2 jury, find Shawn Justin Burris guilty of unlawful
3 obtaining of nonferrous metal.

4 As to Case Number 2012-GS-10-4290, we, the
5 jury, find Shawn Justin Burris guilty of possession of
6 tools of a crime.

7 Ladies and gentlemen of the jury, if this is
8 your verdict, please raise your right hand.

9 (Jury complies.)

10 THE DEPUTY CLERK OF COURT: Thank you.

11 THE COURT: Anything further required of the
12 jury? From the State?

13 MR. WARING: Nothing, your Honor.

14 THE COURT: Mr. Burris?

15 MR. BURRIS: Poll the jury, please, ma'am.

16 THE COURT: All right. If you will poll the
17 jury. Thank you.

18 THE DEPUTY CLERK OF COURT: When I call your
19 juror number, please raise your right hand to identify
20 yourself. I will then ask you two questions. Please
21 answer them with yes or no.

22 Mr. Foreman, Juror Number 156, is this your
23 verdict?

24 JUROR 156: Yes.

25 THE DEPUTY CLERK OF COURT: Is it still your

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 (The Defendant is present in the courtroom.)

2 SENTENCING

3 THE COURT: Thank you. Be seated.

4 2010 amendment?

5 MR. WARING: That's what it looks like, your

6 Honor.

7 THE COURT: So we're going forward on more than

8 5,000?

9 MR. WARING: Yes, your Honor.

10 THE COURT: All right.

11 Mr. Burris, are you prepared to go forward with

12 sentencing at this time?

13 MR. BURRIS: Yes, ma'am, I am.

14 THE COURT: All right. I have two sentencing
15 sheets in front of me. You're not required to sign
16 them, but I will give you an opportunity to look at them
17 if you would like.

18 MR. BURRIS: Yes, ma'am.

19 THE COURT: You would like to look at them?

20 MR. BURRIS: I'll trust the Court on this.

21 THE COURT: All right. Thank you. Anything
22 further that I need to know about Mr. Burris before I
23 impose sentence?

24 MR. WARING: Yes, your Honor. Just wanted to
25 read his record for the Court: 1990, burglary second,

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 times three; grand larceny; accessory after the fact to
2 armed robbery; 1992, failure to stop for the blue light;
3 leaving the scene of a personal injury; burglary second,
4 in which he did a ten-year sentence; 2001, hit and run
5 with property damage; simple possession of marijuana;
6 and disorderly conduct; 2002, public drunk; simple
7 possession of marijuana; 2004, throwing bodily fluids;
8 disorderly conduct; 2007, habitual traffic offender;
9 DUI; 2009, simple possession of marijuana; 2011,
10 unlawful possession of nonferrous metals; receiving
11 stolen goods; petty larceny; and property enhancement
12 offense --

13 THE COURT: What was the offense on the 2011?
14 I mean, what was the sentence on the 2011, obtaining
15 nonferrous?

16 MR. WARING: He was given time served on that,
17 your Honor.

18 THE COURT: How much time was it?

19 MR. WARING: Court's indulgence?

20 Looks like 79 days.

21 THE COURT: What was the release date? What
22 date did he plea?

23 MR. WARING: Pled on 11-9-2011.

24 THE COURT: All right. Anything further from
25 the State?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. WARING: Yes, your Honor. The State feels
2 that given his record and the fact that he caused
3 massive damage, he is a career criminal. This is his
4 job. We're requesting the maximum and the sentence to
5 be run consecutive.

6 THE COURT: All right. Anything further?

7 MR. WARING: No, your Honor.

8 THE COURT: Mr. Burris, I'll be happy to hear
9 from you.

10 MR. MALLOY: Your Honor, I know you didn't hear
11 much from me during the course of this trial, but Shawn
12 has indicated to me that he would like me to speak on
13 his behalf.

14 THE COURT: No, sir, he doesn't get it both
15 ways. There's no hybrid representation. He either
16 represents himself, or he doesn't. So he has chosen
17 not -- to represent himself, and so he can offer any
18 mitigation to the Court.

19 MR. BURRIS: I don't know what to say, your
20 Honor. I would just ask that you run the sentence
21 concurrent, if possible. Other than that, I mean. . .

22 Everything said, pretty much is already said
23 and done. So that's all I have.

24 THE COURT: All right. Mr. Burris, we've had
25 several discussions prior to beginning trial throughout

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 this week, and I just, first of all, wish to thank you.

2 You were very appropriate during court.

3 MR. BURRIS: Thank you, ma'am.

4 THE COURT: And I appreciate you being
5 considerate to the Court and to my staff throughout the
6 progress of this trial, and to Mr. Malloy and to
7 Mr. Smith.

8 Mr. Burris, this was a very serious offense.
9 It could have put a lot of people in danger, including
10 yourself. What is most concerning to me is your lengthy
11 criminal history; the fact that you had just received,
12 less than approximately four months before, a conviction
13 for this very same offense. Is that correct, sir?

14 MR. BURRIS: If I may, the actual charge was
15 for receiving stolen goods, and it was a misdemeanor. I
16 was charged --

17 THE COURT: But in -- in November of
18 -- November of 2011, you had a conviction for
19 nonferrous.

20 Is that correct, Mr. Waring? Is that what you
21 indicated to the Court?

22 MR. WARING: Yes, that's correct, your Honor.

23 MR. BURRIS: The actual charge was receiving
24 stolen goods.

25 THE COURT: You pled to receiving stolen goods?

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 MR. BURRIS: Yes, ma'am.

2 THE COURT: But you were indicted for
3 nonferrous metal?

4 MR. BURRIS: I was indicted for property crime
5 enhancement and receiving stolen goods. And if you need
6 to see the disposition papers --

7 THE COURT: Hold on. Hold on. I'm having
8 Mr. Waring check.

9 MR. WARING: Your Honor, it looks like he was
10 also convicted of property crime enhancement receiving
11 stolen goods a few days after that unlawful obtaining
12 nonferrous metals conviction. That's what his rap says.

13 THE COURT: All right. Mr. Burris?

14 MR. BURRIS: I don't know what he's talking
15 about. I was never charged with unlawfully obtaining.
16 There was an unlawful transportation, because I was in
17 the car with somebody.

18 THE COURT: Mr. Malloy, have you had an
19 opportunity to review his record?

20 MR. KIDD: Judge, may I address the Court?

21 THE COURT: Hold on one second.

22 (Mr. Malloy is speaking with Mr. Burris off the
23 record.)

24 MR. MALLOY: Your Honor, I didn't represent him
25 on that charge. I can't say for sure.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: All right.

2 But, Mr. Burris, you agree that you had a
3 conviction for some property crime in November of 2011?

4 MR. BURRIS: Yes, ma'am. Receiving stolen
5 goods.

6 THE COURT: All right, sir. Mr. -- anything
7 further, Mr. Burris, before I impose sentence?

8 MR. BURRIS: No, ma'am.

9 THE COURT: It's the Order of the Court, on
10 Indictment 2012-GS-10-4289, that you be committed to the
11 State Department of Corrections for a term of ten years.
12 It's the Order of the Court, on Indictment
13 2012-GS-10-4290, that you be committed to the State
14 Department of Corrections for a term of five years.
15 Give you credit for the time that you have served. They
16 are to run concurrent. Good luck to you, sir.

17 And, Mr. Burris, you have the right to appeal
18 this sentence. You have ten days.

19 MR. BURRIS: Yes, ma'am. They are going to do
20 that for me.

21 THE COURT: All right. Thank you. Good luck
22 to you, Mr. Burris.

23 Mr. Waring, Mr. Malloy, anything before we
24 break?

25 MR. WARING: No, your Honor.

Jury trial, State versus Shawn Justin Burris
April 25, 2013

1 THE COURT: All right. We're off the record.

2 COURT IN ADJOURNMENT.

3 WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS

4 CAUSE.

5 (The hearing of this cause concluded

6 at 5:36 p.m., on April 25th, 2013.)

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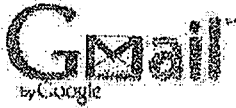
25

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

BI-LO, LLC Mail - estimated lost for 284

2012014684

Page 1 of 1



Fred Digregorio <fred.digregorio@bi-lo.com>

estimated lost for 284

Co-Mgr Service B00284 <b00284a2@bi-lo.com>
 To: Ramesh Prasad <ramesh.prasad@bi-lo.com>
 Cc: Fred Digregorio <fred.digregorio@bi-lo.com>

Mon, Oct 24, 2011 at 9:29 PM

Sorry for getting this to you so late.

- Meat lost \$2232.86
- deli lost \$895.66
- produce lost \$1162.15

We lost \$24,400.00 in ice cream. \$27,685.34 in the rest of grocery.

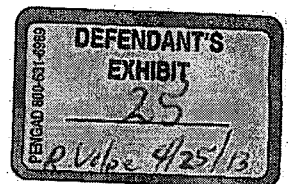
We use 248 hours from other stores. So estimated pay for them is \$2532.00.

If you need any other information just let me know.

Thank you,

Tiffany Walker
 Co Svr
 BI-Lo 284

13,211
 27,685.
 24,400
 71,904
 22,328.86
 895.66
 1162.15
 128,389.67
 2,532.00
 130,921.67



2012014684

EXCELL REFRIGERATION OF SC, INC.

Page 2 of 2

Invoice

359 RIVERCHASE WAY

LEXINGTON, SC 29072

Phone/Fax 803-939-1914 / 803-939-7002

Date

12/19/11

Invoice #

188703

Bill to # 20

Service Location # 400284

BI-LO

BI-LO 284

MAINTENANCE DEPT

110 BI-LO DRIVE

P.O. BOX 99

SUITE B

MAULDIN, SC 29662

MONCK'S CORNER, SC 29481

Terms INVOICED

PO #

Call # 188703

Salesman -

Description**Amount**

TECH # 220 - FORNER - MICHAEL 384-100200 361V DL 12/19/11

REPAIRS COMPLETED,,, TRIP CHARGE \$10
 PUMPED OUT CONDENSORS ON RACKS LT1 AND MT. 1 AND 2. CHANGED OUT CONDENSORS.
 PULLED VACUUM AND REWIRED. LEAK CHECKED CONDENSORS.
 STARTED UP AND CHECKED ROTATION. CHECKED CASES BEFORE LEAVING STORE

TECHNICIAN INFORMATION DATE 12/05/11
 TECH - JEREMY LEE (2 HOURS)
 TECH - CODY BURNSED (2 HOURS)

TECHNICIAN INFORMATION DATE 12/19/11
 TECH - MIKE DRISCOLL (8 HOURS)
 TECH - JEREMY LEE (13 HOURS)
 TECH - CODY BURNSED (13 HOURS)
 TECH - PAT CRAWFORD (13 HOURS)
 TECH - RYAN STUBBS (13 HOURS)
 TECH - LARRY MOYE (14 HOURS)
 REMOVED FIVE OLD CONDENSERS FROM ROOF, INSTALLED NEW CONDENSERS

SUB TOTAL 11,599.77

SALES TAX 220.74

TOTAL \$ 11,820.51

MAINT. A/C

Complete
 Per Garry

MAINTENANCE DEPARTMENT

DATE ENTERED: 12/23/11

PERIOD: 13 12/11



REMIT TO:
Kru-Kel Company, Inc.
P.O. Box 71501
North Charleston, SC 29415
Phone # (843)744-2558
Fax # (843)744-8729

INVOICE

Date Invoice #
10/24/2011 166100

Bill To

Ship To

BL-LO, INC.
P.O. DRAWER 99
MAULDIN, SC 29662

FAX# 1-864-289-3204

P.O. Number

Terms

Rep

Order date

Via

M508482

Net 10th

LWG

10/24/2011

Qty.	U/M	Item Code	Description	Price Ea.	Amount
160	ea	R22/30	30 LBS. R22 REFRIGERANT	142.50	22,800.00T
9	ea	MC REFILL	ACETYLENE REFILL	16.80	151.20T
9	ea	R REFILL	OXYGEN REFILL	11.16	100.44T
60	ft	218ACR	2 1/8" ACR TUBING	13.54	812.40T
40	ft	38ACR	3/8" ACR TUBING	1.35	54.00T
60	ea	158ACR	1 5/8" ACR TUBING	13.30	798.00T
8	lb	15% SOLDER	15% SILVER SOLDER	124.95	999.60T
2	pk	31192W	45% BLUES FLUX COATED ROD	99.87	199.74T
10	ea	CAPC158	1 5/8" CAP COPPER	3.64	36.40T
8	ea	ELLCLR158	1 5/8" LR ELL COPPER	14.50	116.00T
10	ea	CPLGC218	2 1/8" COUPLING COPPER	8.70	87.00T
10	ea	BSHNGC218158	2 1/8" X 1 5/8" FTG. REDUCER COPPER	13.76	137.60T
1	lb	30492	1/8" SQ X 36" 15% SOLDER	124.25	124.25T
7	ea	TBEC158	1 5/8" TEE COPPER	15.48	108.36T
1	gal	93094	GAL VACUUM PUMP OIL	27.08	27.08T
30	ft	12ACR	1/2" ACR TUBING	2.06	61.80T
20	ft	118ACR	1 1/8" ACR TUBING	5.26	105.20T
25	ea	CPLGC12	1/2" COUPLING COPPER	0.58	14.50T
25	ea	ELLCLR12	1/2" LR ELL COPPER	3.26	81.50T
25	ea	ELLCLR12ST	1/2" LR ST ELL COPPER	4.96	124.00T
10	ea	CPLGC118	1 1/8" COUPLING COPPER	1.78	17.80T
10	ea	ELLCLR118	1 1/8" LR ELL COPPER	4.26	42.60T
10	ea	ELLCLR118ST	1 1/8" LR ST ELL COPPER	8.22	82.20T
10	ea	BSHNGC158118	1 5/8" X 1 1/8" FTG. REDUCER COPPER	5.76	57.60T
10	ea	CPLGC158118	1 5/8" X 1 1/8" RED COUPLING COPPER	7.88	78.80T
2	ea	594WAS-21ST	2 1/8" BALL VALVE W/ACCESS	150.96	301.92T
2	ea	593WAS-15ST	1 5/8" BALL VALVE W/ACCESS	97.50	195.00T

MAINT. - A/C

Received

By:

Cleopatra 234-11226

Subtotal

\$27,719.39

Sales Tax (8.5%)

\$2,356.15

Print

Name:

DATE ENTERED: 12/13/11

PERIOD: 13 FICC

Total

\$30,075.54

P 5/11 233

8437470797 >> nth Judicial V/W

8438713178 >

12-05-31 18:00 BIL0 #74

2012-04-30 03:31 BI-10 #645

BILLO

MAINTENANCE DEPARTMENT WORK ORDER

Score No. 74 Date 4-26-12
Service Personnel John Davis

Employee Code: 630

Call Received

Date: _____ Time: _____

Location: _____

Problems

Travel Register To Stores

Left Store	Location/Time
6:00	

Arrived: 74 / 6:25
Location/Time

Travel Report From Store:
Left: 7/7 / 1960
Location/Time

Going To: Edy 20:00
Location/Time

Job#	Description	Code No.	Labor Time
1	STOLEN COPPER - REBUILD <u>CONDENSERS</u>	02-188-0305-	12.75 @ \$.0831
		\$ 369.94	
	Leave at 13-13:50		

Job #	Refrigerant Type	BI-LQ Part #	Qty.	Location

Technician Signature

SECTION 1.600 IS TO BE LIFTED OUT BY SENIOR MANAGER-CONDUCT

The above work and charges have been fully explained. ☐ YES ☐ NO *If No, Explain

The above jobs were completed to my satisfaction. ☐ YES ☐ NO *If No, Explain

Commentary

Senior Manager on duty
Signature

Tide

BI - LOster# 074
1517 REMOUNT ROAD
SUITE 2
N. CHAPEL HILL, NC 27516

Copies: WHITE-Technician • YELLOW-Shop/Office • PINK-Store

P 5711

BLO

MAINTENANCE DEPARTMENT WORK ORDER

Store No. 74 Date 4-26-72
Service Personnel: OK 100%

Employee Code: 842

Call Received _____
Date: _____ Time: _____
Location: _____
Problem: _____

Travel Roster To Stores
Left 5:20 6:20
Location/Time

Arrived: 74/6/50
Location/Time

Travel Report From Scores
 Date 7/2/2000
 Location/Time

Going To: SEA 2/5
Location/Time

Job#	Description	Code No.	Labor Time
	central copper cable and signal copper cable, and cable back in cable. Vac. and exchange system. 4500105 R-27	02-162-0202	14.0 @ \$32.37
		47746	
		Lunch.	

Job #	Refrigerant Type	BL-LQ Part #	Qty.	Location

Technician Signature

SEE IF AN EMPLOYEE IS TO BE FIRED OR FIRED BY SENIOR MANAGEMENT INDIVIDUAL

The above work and changes have been fully explained. ☒ YES ☐ NO *If No, Explain.

The above jobs were completed to my satisfaction. ☒ YES ☐ NO "If No, Explain

CONTENTS

Senior Manager on duty
Signature

THE

BI-LO #074
195 MOUNT ROAD
SUITE 2 STAMP
N. CHARLESTON, SC 29405

Colors: WHITE-Technician • YELLOW-Shop/Office • PINK-Store

8437470797 >> nth Judicial V/M

9071528578

234 18-01 B1LO #74

2012-04-29 20:24 81104296

BILO**MAINTENANCE DEPARTMENT
WORK ORDER**Store No. 74 Date: 4/26/12
Service Personnel: Greg DAEmployee Code: 640

Call Received

Date: _____ Time: _____

Location: _____

Problem: _____

Travel Roster To Store: SDLeft: 7:00 / 7:00
Location/TimeArrived: 7:15 / 7:00
Location/Time

Travel Roster From Store:

Left: 7:45 / 7:00
Location/TimeGoing To: 7:15 / 7:00
Location/Time

Job#	Description	Code No.	Labor Time
	Had to hold condenser due to that of cap on top	02-162-0602	11.5 P. 33.15

Job#	Refrigerant Type	BI-LO Part #	Qty	Location


 Technician Signature

SECTION BELOW IS TO BE FILLED OUT BY SENIOR MANAGER-ON-DUTY

 The above work and charges have been fully explained. ☒ YES ☐ NO *If No, Explain
 The above jobs were completed to my satisfaction. ☒ YES ☐ NO *If No, Explain

Comments: _____


 Senior Manager on duty
 Signature


 Title

BI-LO #074
 1871 PINEHURST ROAD
 SUITE 2
 N. CHARLESTON, SC 29406

BILO

MAINTENANCE DEPARTMENT WORK ORDER

 Store No. 74 Date: 4-26-12
 Service Personnel: Ricky A
Employee Code: 760
 Call Received
 Date: _____ Time: _____
 Location: _____
 Problem: _____

 Travel Roster To Store: 1.00
 Left: 07:30 / 2:30
 Location/Time

 Arrived: 07:18:50
 Location/Time

 Travel Roster From Store:
 Left: 07:18:50
 Location/Time

 Going To: 12:00
 Location/Time

Job#	Description	Code No.	Labor Time
1	Worked on Purgeing the AC	CH-370-1372	140 10.50
	also to the shop		@ \$23.35

Job#	Refrigerant Type	BI-LQ Part #	Qty.	Location
B-Shop				
Chad Smith				

 Technician Signature
Ricky A. Schubert

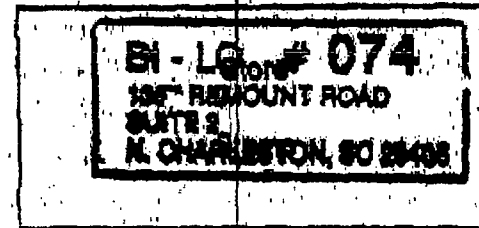
SECTION BELOW IS TO BE FILLED OUT BY SENIOR MANAGER-ON-DUTY

 The above work and charges have been fully explained. ☐ YES ☐ NO *If No, Explain
 The above jobs were completed to my satisfaction. ☐ YES ☐ NO *If No, Explain

*Comments _____

 Senior Manager on duty
 Signature

Title



Copies: WHITE-Technician • YELLOW-Shop/Office • PINK-Store



2125 Macon Ave.
North Charleston, SC 29405
Phone: 843-744-2658
Fax: 843-744-8729

INVOICE

Page No 1

REMIT TO:
P.O. Box 71601
North Charleston, SC 29416

4200714		20250	302130	4/26/12	Net 10th	4/26/12
OUR TRACK	01057840			4/26/12	North Charleston, SC	KRU-KEL

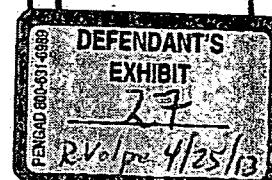
Entered By: SP

Sold To: HI-LO, INC.
P.O. DRAWER 99
HARLDM SC 29662

Ship To: HI-LO, INC.
P.O. DRAWER 99
HARLDM SC 29662

Reference

160	160	222/30	288.0000	45,600.00
		30 LBS. KMS HYDROXYMANT		



45,600.00	3,075.00	49,675.00	49,476.00
-----------	----------	-----------	-----------

Signature

Print Name

238

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012014684

ARREST WARRANT NUMBER

M997706

DATE OF ARREST

April 27, 2012

ACTION OF GRAND JURY

TRUE BILL

E.M. *[Signature]*
Foreperson of Grand Jury JUL 11 2012
Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1004289

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

SHAWN JUSTIN BURRIS

DOB:

W/M

Indictment for

Unlawful Obtaining Of Non-Ferrous Metals

[Signature] 4/25/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

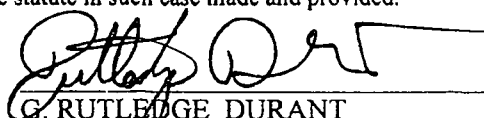
Unlawful Obtaining Of Non-Ferrous Metals

That the Defendant, Shawn Justin Burris, did in Charleston County, South Carolina, on or about April 26, 2012, willfully and maliciously cut, mutilate, deface, or otherwise injure personal or real property, including fixtures or improvements, belonging to BiLo, located at 1357 Remount Road, North Charleston, South Carolina, for the purpose of obtaining nonferrous metals with the direct injury to the property or the loss in value to the property or the cost to repair the property or the property loss, including fixtures or improvements, being Ten Thousand (\$10,000.00) Dollars or more. This is in violation of Section 16-11-

523(B)(1) of the South Carolina Code of Laws (1976) as amended.

KA
4/25/13

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012014684

ARREST WARRANT NUMBER

M997708

DATE OF ARREST

April 27, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 11 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1004290

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

SHAWN JUSTIN BURRIS

DOB:

W/M

Indictment for

Possession Of Tools Of A Crime

4/25/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession Of Tools Of A Crime

That in Charleston County, South Carolina, on or about April 26, 2012, the Defendant, SHAWN JUSTIN BURRIS, did have in his possession a hacksaw with extra blades, screwdriver with multiple bits, vise-grip pliers, wire cutters, adjustable crescent wrench and duffle bags, adapted, designed or commonly used for burglary, larceny, safecracking or other crime, under circumstances evincing an intent to use the same in the commission of a crime or having knowledge that they are intended to be used in the commission of a crime; all in violation of Section 16-11-20, of the South Carolina Code of Laws (1976) as amended.

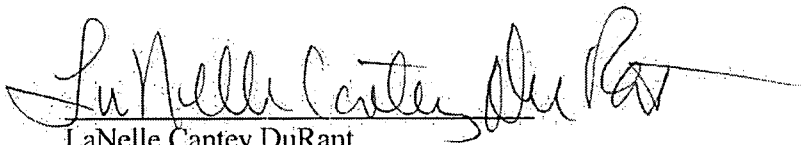
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 27th, 2014

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT