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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWNDELL QUINTEL McCLENTON

APPELLANT

Appellate Case No: 2014-000978

RECORD ON APPEAL

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**\*\* State's Exhibit #34, DVD of Statement, is on file with the Court.**

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2012-GS-10-2892  
2012-GS-10-2893  
2012-GS-10-3189

STATE OF SOUTH CAROLINA )  
-vs- ) TRANSCRIPT OF RECORD  
SHAWNDELL Q. McCLENTON, ) April 21-23, 2014  
Defendant. ) Charleston, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

A P P E A R A N C E S:

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Circuit Court Reporter

|    | I N D E X           |        |       |          |         |
|----|---------------------|--------|-------|----------|---------|
|    | WITNESS             | DIRECT | CROSS | REDIRECT | RECROSS |
| 1  |                     |        |       |          |         |
| 2  | Joe Piech           | 26     | 38    | --       | --      |
| 3  |                     | 237    | 267   | --       | --      |
| 4  | Dawn Lee            | 41     | 45    | 57       | 58      |
| 5  | Shawndell McClenton | 76     | 80    | 88       | 90      |
| 6  | Robert Feeters      | 92     | 99    | 316      | --      |
| 7  |                     | 305    | 313   | --       | --      |
| 8  | Jeremy Jacobs       | 128    | 134   | --       | --      |
| 9  |                     | 143    | 148   | --       | --      |
| 10 | Warren Johnson      | 174    | 189   | 235      | 236     |
| 11 |                     | 218    | 229   | --       | --      |
| 12 | Jeffrey Miller      | 273    | 297   | --       | --      |
| 13 | Amanda Mitchell     | 294    | 299   | --       | --      |
| 14 | Caitlyn Horton      | 318    | 321   | --       | --      |
| 15 |                     |        |       |          |         |
| 16 |                     |        |       |          |         |
| 17 |                     |        |       |          |         |
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| 25 |                     |        |       |          |         |

| 1  | E X H I B I T S |             |     |     |
|----|-----------------|-------------|-----|-----|
| 2  | NO.             | DESCRIPTION | ID. | EV. |
| 3  | State's 1       | Photograph  | 291 | 291 |
| 4  | State's 2       | Photograph  | 291 | 291 |
| 5  | State's 3       | Photograph  | 291 | 291 |
| 6  | State's 4       | Photograph  | 291 | 291 |
| 7  | State's 5       | Photograph  | 291 | 291 |
| 8  | State's 6       | Photograph  | 291 | 291 |
| 9  | State's 7       | Photograph  | 291 | 291 |
| 10 | State's 8       | Photograph  | 291 | 291 |
| 11 | State's 9       | Photograph  | 291 | 291 |
| 12 | State's 10      | Photograph  | 291 | 291 |
| 13 | State's 11      | Photograph  | 291 | 291 |
| 14 | State's 12      | Photograph  | 291 | 291 |
| 15 | State's 13      | Photograph  | 291 | 291 |
| 16 | State's 14      | Photograph  | 291 | 291 |
| 17 | State's 15      | Photograph  | 291 | 291 |
| 18 | State's 16      | Photograph  | 291 | 291 |
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| 21 | State's 19      | Photograph  | 291 | 291 |
| 22 | State's 20      | Photograph  | 291 | 291 |
| 23 | State's 21      | Photograph  | 291 | 291 |
| 24 | State's 22      | Photograph  | 291 | 291 |
| 25 | State's 23      | Photograph  | 291 | 291 |

| 1  | E X H I B I T S |                    |     |     |
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| 2  | NO.             | DESCRIPTION        | ID. | EV. |
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| 4  | State's 25      | Photograph         | 291 | 291 |
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| 6  | State's 27      | Photograph         | 291 | 291 |
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| 24 |                 |             |     |     |
| 25 |                 |             |     |     |

1 (April 21, 2014.)

2 THE COURT: What do we have?

3 MR. LEWIS: This a burglary first, two counts  
4 burglary first, and one count of breaking and entering  
5 motor vehicle stemming from the same set of facts and  
6 circumstances from February 25th, 2012.

7 With me is Christina Parnall, also from the  
8 public defender's office.

9 THE COURT: Are you okay?

10 THE DEFENDANT: The medicine they got me on  
11 is having side effect. They're supposed to switch it,  
12 but the waiting list for me coming to see you for the  
13 situation, it takes a long time, so I've been trying to  
14 get them to switch the medicine. I'm having tremors and  
15 stuff like that.

16 MR. LEWIS: Judge, I did learn recently that  
17 he had been prescribed Zyprexa and Cogentin. Zyprexa is  
18 usually for paranoid schizophrenia, and Cogentin is  
19 normally to treat the side effects that are sometimes  
20 caused by that.

21 This was sort of a new development. I had  
22 not seen this reaction in him before, but I did think it  
23 necessary to bring it to the Court's attention so that  
24 you can question him and see how you can instruct us how  
25 to proceed at this point.

JEREMY JACOBS - DIRECT BY MR. FINCH

1 to 5:00. I've got to leave no later than 4:45.

2 MR. FINCH: I think my direct of Mr. Jenkins  
3 is about six minutes, regarding the Biggers hearing, then  
4 the State is ready to proceed with its openings. I don't  
5 know how long your instructions are for the jury.

6 The State calls Jeremy Jacobs.

7 JEREMY JACOBS,  
8 having been first duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FINCH:

12 Q. Good of afternoon, Mr. Jacobs. Where is it you're  
13 employed right now?

14 A. Ameris Bank.

15 Q. And where is that?

16 A. St. Mary's, Georgia.

17 Q. And you drove up here today?

18 A. Yes.

19 Q. To testify in this trial?

20 A. Yes.

21 Q. I want to take you back to February 25, 2012.

22 Were you living at [REDACTED]?

23 A. Yes, sir.

24 Q. What was your apartment number, [REDACTED]?

25 A. Yes, it was, [REDACTED].

JEREMY JACOBS - DIRECT BY MR. FINCH

1 Q. And while you were residing there, did you have  
2 occasion to happen upon a criminal investigation near  
3 that address on that date?

4 A. I did.

5 Q. And on that date do you recall about what time you  
6 came back home?

7 A. I don't remember the exact time, but it was  
8 evening time. It was dark, so the sun had set, and,  
9 well, February, I guess it gets dark early, so it was  
10 already dark.

11 Q. Would it have been around 10:00?

12 A. Yes.

13 Q. Tell us what you did when you got home.

14 A. Walked -- pulled in the apartment and I went  
15 upstairs and I got my dog and I brought him outside to  
16 take a walk and use the restroom.

17 Q. What is the lighting around the breezeway to your  
18 apartment?

19 A. They have lights in the breezeway.

20 Q. And when you were -- when you went out to walk the  
21 dog, did you see anything out of the ordinary?

22 A. No. There was a vehicle parked in the dead end,  
23 right there by the apartments, and so there was a vehicle  
24 parked facing outwards. Seemed a little out of the  
25 ordinary, but nothing too alarming.

JEREMY JACOBS - DIRECT BY MR. FINCH

1 Q. As you continued to walk the dog, did you see  
2 anything out of the ordinary.

3 A. I wouldn't call it out of the ordinary.

4 Q. Did you see anyone going into the white vehicle?

5 A. I did.

6 Q. Describe your thoughts regarding the white  
7 vehicle.

8 A. It looked like the person in the vehicle owned it.  
9 They were just -- the door was open. The dome light was  
10 on. They looked like they were searching for something  
11 in the middle compartment there of the car. I was new to  
12 the area, so I didn't know -- it didn't seem out of the  
13 ordinary to me.

14 Q. How far away were you from the vehicle at that  
15 time?

16 A. I walked right by it. The breezeway -- that car  
17 was in the first spot, right beside the breezeway, right  
18 beside the sidewalk, so I would say two, three feet.

19 Q. Were you able to observe the individual inside the  
20 vehicle?

21 A. Yes.

22 Q. Were you able to get a good look at that  
23 individual's face?

24 A. Yes.

25 Q. And what the person was wearing?

1 A. Yes.

2 Q. About how long were you able to view that  
3 individual?

4 A. It was just a few moments. You know, we passed by  
5 him on the way up to the apartment and again on the way  
6 back, and as I was walking my dog, I noticed that he got  
7 in the car and left.

8 Q. When you say the car, could you describe the car?

9 A. It was a Chevy Cavalier.

10 Q. What color?

11 A. Blue.

12 Q. Did you notice any distinguishing marks on it?

13 A. Nothing that stood out, just blue Cavalier, an  
14 older model.

15 Q. Could you tell who was driving the vehicle?

16 A. There was a white female driving the vehicle, with  
17 brown hair, ponytail.

18 Q. A little bit later did you notice police at that  
19 address?

20 A. I did.

21 Q. What were they doing?

22 A. They were using their flashlights to look in the  
23 white car that was in that first spot.

24 Q. And did you approach the police?

25 A. I did.

JEREMY JACOBS - DIRECT BY MR. FINCH

1 Q. What did you tell them?

2 A. I told them if you're looking for the guy that  
3 owns the car or whatever, you know, he was here earlier  
4 but he left.

5 Q. Did the police ask you to accompany them to try to  
6 make an identification of that individual?

7 A. They did.

8 Q. And where did that happen?

9 A. That happened out in front of Lowe's on the drive  
10 out going towards -- I guess that's Daniel Ellis.

11 Q. And what was the -- were you able to identify an  
12 individual?

13 A. Yes.

14 Q. What was that individual doing when you identified  
15 him?

16 A. They were standing -- they brought him out of the  
17 vehicle, out of the police officer's car, and asked me if  
18 I recognized him.

19 Q. Did you have any hesitation, being able to  
20 recognize him?

21 A. No.

22 Q. If you could rate out of a scale to ten how  
23 confident you were that was the individual in the car  
24 then later identified in front of Lowe's out of ten, how  
25 confident were you at that time?

JEREMY JACOBS - DIRECT BY MR. FINCH

1 A. Ten.

2 Q. What about the vehicle that that individual was  
3 in?

4 A. Ten.

5 Q. Was that also at the scene?

6 A. It was.

7 Q. Any other items visible to you other than the  
8 individual in the car and the police cars?

9 A. The dress of the person. I recognized the white  
10 sweater pullover and dark jeans.

11 Q. Did you recognize his face?

12 A. Yes.

13 Q. Did you convey that to the officers at the scene?

14 A. Yes.

15 Q. Did any officer indicate that you should identify  
16 anybody at the scene?

17 A. No.

18 Q. Were any suggestion made to you about anything  
19 regarding your involvement in this case?

20 A. No.

21 Q. From law enforcement or any victims?

22 A. No, sir.

23 MR. FINCH: Please answer any questions Mr.  
24 Lewis has.

25 THE COURT: Yes, sir.

JEREMY JACOBS - CROSS BY MR. LEWIS

1 MR. LEWIS: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. LEWIS:

4 Q. It was nice to talk to you on the phone the other  
5 day.

6 I want to speak to you briefly about the  
7 opportunity you had to view him. You said it didn't  
8 really seem like it stuck out for you. It is just a guy,  
9 could have been going through his own car?

10 A. Uh-huh.

11 Q. What really drew your attention? Was there  
12 anything that made you focus on him, or is that how you  
13 normally are?

14 A. I would say it's how I normally am. I'm always  
15 just kind of aware of my surroundings and who's around  
16 me, try to be.

17 Q. Okay. I understand. And when they actually took  
18 you for the show up, all the stuff kind of fell into  
19 place for you, right, the car, the clothes, and the guy?

20 A. Yes. It appeared that that was the person, the  
21 car that I saw, just, you know, just before.

22 Q. And you -- it's not like they took the guy away  
23 from the car. It was all kind of in one place at the  
24 same time?

25 A. Yes, yes, sir.

1 Q. Was he handcuffed?

2 A. I believe he was, yes.

3 Q. Okay. Blue lights still on or did they turn them  
4 off for you?

5 A. I believe the lights were off.

6 Q. Okay. Do they show you any other people but him?

7 A. They also pulled a female out of the vehicle.

8 Q. Okay. How did you describe him?

9 A. I described him as a black gentleman, probably  
10 around six feet tall, maybe 200 pounds, give or take. He  
11 had on a white fleece top and dark blue jeans.

12 Q. Okay. And age?

13 A. I'm not sure that we talked about age.

14 Q. You talked about how it was dark, nothing that  
15 really stuck out on his face, no scars, no tattoos, no  
16 eyeglasses, nothing that stuck out from you?

17 A. Nothing that stuck out. No distinguishing  
18 features.

19 Q. Right. No gold lip ring or anything that --

20 A. No, sir.

21 MR. LEWIS: Okay. Nothing further, Judge.

22 Just looking at the facts we're supposed to  
23 with identifications like this, the whole reason we get  
24 to those, the suggestibility prong, the Courts have held  
25 these sort of show-up IDs are inherently suggestive, and

JEREMY JACOBS - CROSS BY MR. LEWIS

1 increasingly so when the suspect is in handcuffs and  
2 especially here that the ID of the vehicle and the ID of  
3 the defendant were done simultaneously.

4           Given that, I think the first prong is overly  
5 suggestive. The Courts considered. The witness didn't  
6 necessarily did not see anything special about this, so  
7 that would suggest that the degree of his attention isn't  
8 going to be particularly high. He's testified that he's  
9 one of those people who is always a perfect witness, can  
10 kind of focus on what's going on around him, but nothing  
11 really stuck out that day, and he actually believed that  
12 the suspect was the owner of the vehicle, nothing that  
13 would actually draw his attention to it.

14           Yes, he did say he was ten out of ten in  
15 certainty, and, yes, it was quick in time afterwards, but  
16 the issues with the degree of attention and nothing was  
17 actually taking place like -- that would make something  
18 stick out in their mind, it's just a guy rifling through  
19 a car, and because of those reasons, we would ask the  
20 ID in regards to this witness not be allowed.

21           Thank you, Judge.

22           THE COURT: All right.

23           While I find that the single person show-ups  
24 are highly suggestive in nature, they're still proper  
25 where the identification occurs shortly or immediately

1 after an offense at or near the scene of the crime, where  
2 the witness's description is accurate, on point with  
3 regard to the description of the suspect as well as the  
4 car involved and it's all fresh in the witness's memory,  
5 there is no opportunity based upon the factual scenario  
6 presented for it to be any other person matching that  
7 description.

8           The circumstances surrounding this  
9 identification is ultimately indicia of reliability to  
10 the purpose be served by having to bring this individual  
11 and to rule this individual out and continue searching  
12 for the right person if you got the wrong person, it  
13 would be one reason to favor a show-up in this particular  
14 circumstance. I find that although the suspect is  
15 handcuffed or in the presence of police officers, he  
16 still has all the indicia of reliability, based on the  
17 freshness of the identification, so I deny any motion to  
18 suppress the identification.

19           (In open court, jury present.)

20           (Jury duly sworn.)

21           THE COURT: Let the record reflect the jury  
22 has been sworn.

23           Ladies and gentlemen: You've now been an  
24 oath to well and truly try this case according to the law  
25 and according to the evidence so help you God. As long

JEREMY JACOBS - CROSS BY MR. LEWIS

1 seek to find out anything about this case other than what  
2 is presented here in the courtroom and also that you not  
3 discuss this case with anyone not on the jury nor any one  
4 of your fellow jurors until it's time to deliberate on  
5 the case. I look forward to working with you and making  
6 this experience as meaningful as possible.

7 We'll proceed now with opening statements.

8 MR. FINCH: Thank you, Your Honor. May it  
9 please the Court:

10 THE COURT: I'll tell you one additional  
11 thing. I will pick a foreperson a little later in the  
12 process.

13 MR. FINCH: Thank you, Your Honor.

14 Good afternoon. On February 25, 2012,  
15 Shawndell McClenton and the mother of his child, Dawn  
16 Lee, drove from their residence in North Charleston to  
17 700 Daniel Ellis Drive with their two-month-old child in  
18 the car.

19 Once there, Ms. Lee parked the car. She had  
20 been instructed to drive Mr. McClenton there because he  
21 was going to meet a friend. That's what he told her, and  
22 after he got there, he got out of the car. She parked  
23 the car, turned off the lights, sat in the car with her  
24 child.

25 At that time Mr. McClenton entered building

JEREMY JACOBS - CROSS BY MR. LEWIS

1 11, in the rear, and, through an open and unlocked  
2 window, entered apartment -- or unit 11106. Once inside,  
3 he took a purse, he left. He went back to the car, and  
4 then he went to another residence, unit 14103, and there  
5 he used an instrument to pry open a door into the  
6 residence, pried open the lock, once inside, ransacked  
7 that unit, took personal items, computers, electronics  
8 jewelry, clothing, put it all in a trash bag that he had  
9 taken from inside that residence, put it in that car.  
10 Also took a key fob, and the key fob allowed him to open  
11 the car of the resident of that unit 14103, Ms. Amanda  
12 Mitchell, who just left a little bit earlier, around  
13 9:45, during the nighttime hours, and that car was parked  
14 right in front of her unit.

15 So he hit that key fob until he saw the  
16 lights, and that car unlocked and went inside that car  
17 looking for other items. At that time, Ms. Lee had  
18 pulled the car, the co-defendant, pulled the car up to  
19 that car, and he went back and forth from one car to the  
20 next until they finally left. When he left, there's only  
21 one way in and out of that set of apartments.

22 Officers had already been dispatched, and  
23 they were waiting, two officers went in, one officer  
24 stayed at the only entrance and exit of that unit. There  
25 is a description of the car, description of

JEREMY JACOBS - CROSS BY MR. LEWIS

1 Mr. McClenton, and description of Ms. Lee given to law  
2 enforcement. They stopped a car matching that  
3 description, containing the defendant. They got consent  
4 to search that vehicle. They opened the trunk, and in  
5 there they found all the items from 14103 and 11106.  
6 That defendant was then immediately identified at the  
7 scene, and there were witnesses called 911 while this is  
8 happening.

9 The elements of burglary first are that the  
10 defendant entered the dwelling at night with the intent  
11 to commit a crime therein, breaking and entering a motor  
12 vehicle, breaking inside their car.

13 Again, at the end of the trial, the State  
14 will deliver to you enough evidence, testimony, exhibits,  
15 and your own common sense, putting together all the  
16 circumstantial bits, that you'll be able to confidently  
17 find Mr. McClenton guilty of burglary in the first degree  
18 and breaking and entering a motor vehicle.

19 MR. LEWIS: Good afternoon, ladies and  
20 gentlemen: All right. Well, if that's all it is, we're  
21 done. Clearly it's not that simple. If it were, we  
22 wouldn't be here today.

23 When I think about this case, what comes to  
24 mind to me is two childhood games, hot potato -- I'm from  
25 Kentucky, so I hope that's here as well, universal game,

JEREMY JACOBS - CROSS BY MR. LEWIS

1 and musical chairs. Those two games have a lot to do  
2 with this case because neither side is going to disagree  
3 with the property that was recovered from inside the  
4 vehicle.

5 He had the property. He got it from somebody  
6 else. That's not a burglary. You have to go inside,  
7 commit the crime. That's burglary. If you buy stolen  
8 goods, that's receiving stolen goods. It's a completely  
9 different crime, but what I'm asking you all to do is  
10 hear the evidence, ask the evidence that helps prove  
11 where a human being has been.

12 Our fingerprints stick on nice flat surfaces  
13 like that. You can see them if you look at the right  
14 angle; DNA, anything that actually shows that something  
15 took place. Don't just let circumstantial evidence steer  
16 you towards the result the State wants.

17 The music has not stopped playing. There is  
18 still lots of chairs there. We don't have to say that  
19 he's guilty just because he possessed stolen goods, so  
20 once you've heard all the evidence in this case I will  
21 ask, probably tomorrow afternoon, that you find  
22 Mr. McClenton not guilty.

23 Thank you.

24 THE COURT: Who is your first witness?

25 MR. FINCH: State calls Jeremy Jacobs.

JEREMY JACOBS - DIRECT BY MR. FINCH

1 JEREMY JACOBS,

2 having been first-duly sworn,

3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FINCH:

6 Q. Good afternoon, Mr. Jacobs. If you could, tell  
7 the Court where it is you're employed.

8 A. Ameris Bank.

9 Q. Where is that?

10 A. In St. Mary's, Georgia.

11 Q. And back in 2012, did you live in the Charleston  
12 area?

13 A. I did.

14 Q. Where did you live?

15 A. I lived over on [REDACTED].

16 Q. What unit were you in?

17 A. [REDACTED].

18 Q. And is that directly above [REDACTED]?

19 A. It is.

20 Q. Do you recall the night of February 25th, 2012?

21 A. Yes, sir.

22 Q. Do you recall what time you got home that evening?

23 A. It would have been after dinner, you know, 9:00,  
24 around there, 8:00, 9:00.

25 Q. Okay. And did you walk your dog after that?

JEREMY JACOBS - DIRECT BY MR. FINCH

1       A. I did. I did. When we arrived in the parking  
2 lot, came upstairs, into my apartment, got my dog,  
3 brought him down, walked him around and used the rest  
4 room.

5       Q. Did you notice any individuals -- let me back up.  
6       How is the lighting in the breezeway on the  
7 entranceway?

8       A. There are lights in the breezeway. It's good.

9       Q. Fairly well lit?

10      A. Yes.

11      Q. And when you walked out with your dog, did you see  
12 anybody outside?

13      A. I did, I did.

14      Q. What did you see?

15      A. I saw a gentleman in a car, in the first parking  
16 spot, right next to the walkway going up the apartments.  
17 He was in a car, looking around, looking for something,  
18 maybe in the center console.

19      Q. Was the door to the car open?

20      A. It was.

21      Q. Dome light on?

22      A. Yes, sir.

23      Q. Were you able to see inside the vehicle?

24      A. Yes.

25      Q. Were you able to get a good look at that

1 individual?

2 A. Yes, sir. - - -

3 Q. Be able to see his face?

4 A. Yes, sir.

5 Q. Clothes he was wearing?

6 A. Yes, sir.

7 Q. And what was he doing in the car other than  
8 looking for items, seemingly looking for items, anything  
9 else?

10 A. No. I didn't observe anything else. It just  
11 seemed like he was looking for something in the console.

12 Q. Was there another car in the area?

13 A. There was.

14 Q. And what was that car like?

15 A. It was where our apartment building was, there  
16 is -- it kind of dead ends right there, and there was a  
17 car facing outwards, not in a parking spot when we pulled  
18 in. We saw the car sitting there kind of out in the  
19 open.

20 Q. Can you describe that vehicle?

21 A. It was a blue Chevy Cavalier.

22 Q. And did you see that individual get out of the  
23 car? Did he go back up to the apartments?

24 A. He did.

25 Q. What did he do there?

1 A. He went up to the apartment, checked the door, and  
2 that's where I got kind of the best look at him because  
3 there is an overhead light right in front of door you can  
4 put your key in.

5 Q. Which apartment was that?

6 A. The one below mine, so [REDACTED].

7 Q. You're [REDACTED]?

8 A. Yeah, I'm [REDACTED].

9 Q. [REDACTED]?

10 A. [REDACTED].

11 Q. And he went to the door. What did he do at the  
12 door?

13 A. It appeared he checked the doorknob and, you know,  
14 as if he was making sure it was locked. I was new to the  
15 area, so I didn't know -- and my neighbors yet, and so I  
16 didn't -- it seemed like he went up, checked the doorknob  
17 as if he were meant to have it, make sure it's locked,  
18 and then got in the car, in that Cavalier, and took off.

19 Q. And a short time later were police in the area?

20 A. They were.

21 Q. What did you do?

22 A. I went downstairs. The lights -- I was watching  
23 TV. The blue lights caught my eye. I noticed they were  
24 searching. The police officer had their mag light out,  
25 looking in the car where I saw the gentleman, and so I

JEREMY JACOBS - DIRECT BY MR. FINCH

1 thought, well, if they're looking for him, he's gone.

2 I'll go down and tell them, and --

3 Q. Is that what you told them?

4 A. Yes. I said, If you're looking for somebody, I  
5 saw the guy that was in the car. He took off with  
6 somebody already.

7 Q. Did you give a description of that individual?

8 A. Yes, I did.

9 Q. And did the police ask you to come with them to  
10 make a possible identification?

11 A. Yes.

12 Q. And where did that happen?

13 A. That happened just -- it was still on Daniel Ellis  
14 Drive as you go out of the condominiums there in front of  
15 Lowe's is less than a half a mile away.

16 Q. And where was -- were you able to make an  
17 identification?

18 A. I was.

19 Q. How certain were you --

20 MR. LEWIS: Objection, Your Honor. Just to  
21 renew my objection for the record.

22 THE COURT: Yes.

23 BY MR. FINCH:

24 Q. Were you able to make an identification?

25 A. Yes, sir.

JEREMY JACOBS - CROSS BY MR. LEWIS

1 Q. How certain were you that the person you saw in  
2 the car was the person that the police had asked to see  
3 if you could identify?

4 A. I was very certain.

5 Q. Ten out of ten?

6 A. Ten out of ten.

7 Q. How about the vehicle?

8 A. Ten out of ten.

9 Q. How long had it been, roughly, since the time that  
10 you saw that individual until the time that the police  
11 asked you to potentially identify someone?

12 A. It wasn't too terribly long, maybe 30, 40 minutes.

13 Q. Okay. And --

14 MR. FINCH: That's all I have. Please answer  
15 any questions Mr. Lewis may have.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. LEWIS:

19 Q. Good to talk to you again. Really briefly.

20 So when you saw the guy in the center console of  
21 the vehicle, he didn't take off running? He didn't say  
22 anything to you, right?

23 A. Correct.

24 Q. Didn't attack you?

25 A. Correct.

JEREMY JACOBS - CROSS BY MR. LEWIS

1 Q. Didn't swing a crowbar at you?

2 A. No, sir.

3 Q. No mask over his face?

4 A. No, sir.

5 Q. Nothing like that that would have made your  
6 suspicions rise up that something bad is going on?

7 A. Correct.

8 Q. Now, and one thing that wasn't necessarily brought  
9 up, when you got back from dinner did you hear any  
10 banging noises, like a door being pried open?

11 A. I did not.

12 Q. Nothing like that, and your apartment was directly  
13 above?

14 A. Correct.

15 Q. Okay. Okay. Did you see the guy getting into the  
16 Cavalier with the crowbar?

17 A. I did not see anything in his hands.

18 Q. Did you see if he had gloves on?

19 A. I didn't notice any gloves.

20 Q. Okay. But it was well lit. You would have been  
21 able to see that, right?

22 A. It's light underneath the apartment, and when the  
23 car was open, the dome light was on, but outside after it  
24 passes the walkway out into the parking lot, you know,  
25 it's nighttime.

1 Q. Right. So then it's hard -- we all have different  
2 levels of night vision. I'm blind as a bat at night, but  
3 you said the way you were able to make your determination  
4 is what you saw when he was under that -- the light in  
5 the breezeway.

6 A. Correct.

7 Q. Okay. In most scenarios, your memory fades. That  
8 night you said you didn't get necessarily a great look at  
9 his face, but a lot of it played together when you saw  
10 things together.

11 A. Yes.

12 Q. You saw the car; you saw the guy?

13 A. Yes.

14 Q. Right? And so you thought that this has to be  
15 right.

16 A. Yes.

17 Q. Ten out of ten?

18 A. Ten out of ten.

19 Q. 100 percent?

20 A. 100 percent.

21 Q. Not a lot of things in like are completely 100  
22 percent certain, right?

23 A. Correct.

24 Q. But you were sure of this?

25 A. Yes, sir.

JEREMY JACOBS - CROSS BY MR. LEWIS

1 Q. Okay. You said you saw him check the door as if  
2 it was locked then, like to make sure it's locked.

3 A. Yes, sir.

4 Q. Okay. So when you're seeing that, that means  
5 you're seeing the hand.

6 A. Uh-huh.

7 Q. Right?

8 A. I saw the hand on the door.

9 Q. So glove or no glove?

10 A. I couldn't see that.

11 Q. Okay.

12 A. Or I don't recall if there was a glove on or not.

13 Q. Right. But you would have seen that back then?  
14 If you would have seen a glove, something that would have  
15 covered up fingerprints or DNA or something like that?

16 A. Yes.

17 Q. One second, Judge. Very brief.

18 The description you gave of the suspect's  
19 face, the person doing it --

20 A. I don't believe I described his face the night of.

21 Q. Okay.

22 THE COURT: Anything further?

23 MR. FINCH: No, Your Honor.

24 THE COURT: All right. Thank you. You may  
25 step down. We're going stop for the day and start back

WARREN JOHNSON - DIRECT BY MR. FINCH

1 objection.

2 THE COURT: Is that right?

3 MR. LEWIS: Yes, Your Honor. All these  
4 pictures admitted without objection.

5 THE COURT: Exhibits 1 through 33.

6 (State's Exhibit Nos. 1 through 33 were  
7 marked for identification and admitted into evidence.)

8 THE COURT: All right. Let's get the jury  
9 stepping this way.

10 (In open court jury present.)

11 THE COURT: We've been sitting here, various  
12 ones of us, since 9:30 this morning. We had to deal with  
13 matters that did not involve you. That happens from time  
14 to time.

15 Welcome back, day number two of State versus  
16 McClenton. State's case. You may call your next  
17 witness.

18 MR. FINCH: Thank you, Your Honor.

19 The State calls Warren Johnson.

20 WARREN JOHNSON,

21 having been first duly sworn,  
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FINCH:

25 Q. Good afternoon, Mr. Johnson.

WARREN JOHNSON - DIRECT BY MR. FINCH

1 A. Good afternoon.

2 Q. Would you go ahead and tell the jury where you are  
3 employed?

4 A. I am self employed in the advertising industry.

5 Q. And how long have you lived in the Charleston  
6 area?

7 A. I have been back in Charleston for approximately  
8 six years.

9 Q. And in 2012, February 2012, were you living over  
10 on James Island?

11 A. Yes.

12 Q. Whereabouts on James Island?

13 A. I was living in the Peninsula Condominiums, [REDACTED]

14 [REDACTED] I believe it was [REDACTED] or [REDACTED].

15 Q. And as of February 25th, about how long had you  
16 been living there?

17 A. Two weeks.

18 Q. And --

19 A. As I recall.

20 Q. Do you recall an incident involving the police on  
21 February 25th, 2012?

22 A. Yes.

23 Q. Tell us about that night. Where were you when you  
24 returned back to your condominium? Where would you be  
25 coming from?

WARREN JOHNSON - DIRECT BY MR. FINCH

1       A. I had been coming from the -- I came from the  
2 grocery store. Did you want me to walk through the  
3 sequence of events --

4       Q. You came from the grocery store?

5       A. Yes.

6       Q. And then you returned to your condominium?

7       A. Correct.

8       Q. Where did you park?

9       A. Directly in front of -- directly in front of my  
10 unit.

11      Q. And what did you do after that?

12      A. I grabbed my groceries, went up the stairs, and  
13 entered my unit.

14      Q. Did you see anything when you parked your car?

15      A. Yes. I saw a gentleman standing in the breezeway,  
16 close to my apartment, looking out towards me, towards  
17 the apartment, or towards my vehicle.

18      Q. I'm going to show you what's been entered into  
19 evidence as State's Exhibit No. 31.

20            Could you take a look at that and see if you can  
21 tell me what that's a photograph of.

22      A. This is a photograph of the building. My  
23 breezeway is not shown. I do, however, see my unit's  
24 porch. This is the facade of the building where I was  
25 living.

WARREN JOHNSON - DIRECT BY MR. FINCH

1 Q. And I'm going to put it up on the screen so you  
2 can see it. I know you indicated your breezeway is not  
3 shown, but are all the breezeways fairly similar in these  
4 condominiums?

5 A. They are.

6 Q. So looking at this breezeway here, is that fairly  
7 similar to the breezeway where your apartment was?

8 A. Yes.

9 Q. So if you could indicate where you're talking  
10 about, this individual was standing, using that as an  
11 example, that breezeway.

12 A. Well, so my breezeway is here. It's, you know, a  
13 duplicate, if you will, of this, and so when I pulled up,  
14 my vehicle would have been to the right of this silver  
15 vehicle, probably by a spot or two. A similar example  
16 would be, you know, if this were my unit, this is where I  
17 would have parked, and this is where the gentleman would  
18 have been standing there.

19 Q. Up there?

20 A. Yes.

21 Q. Looking out towards the parking lot?

22 A. Correct.

23 Q. Did you take note of that individual? Did you  
24 notice him in any way?

25 A. Well, when I walked up, he walked down, we

WARREN JOHNSON - DIRECT BY MR. FINCH

1 recognized one another, said hello, or good evening or --

2 Q. And when you say recognize, you didn't mean that  
3 you had seen him before and you knew who he was, you just  
4 sort of --

5 A. No, I had never seen him before.

6 Q. Okay. And then you took the groceries in?

7 A. Yes.

8 Q. What happened after that?

9 A. I realized that -- I realized I had left my phone  
10 in my car, so I came back out to my car. I glanced over  
11 to my right and noticed that the gentleman who was  
12 standing up here in my breezeway was now on the first  
13 floor behind a series of bushes here, and when I looked  
14 over, entering my unit again, he backed in this direction  
15 into the breezeway, just backed up.

16 Q. I'm going to show you what's been entered into  
17 evidence as State's Exhibit 33. Take a look at that and  
18 see if you can identify it.

19 A. Yes, I can.

20 Q. What's that?

21 A. That would be the -- that would be the breezeway  
22 that I just referred to where he -- that was the second  
23 breezeway. The first, to my right, the second was the  
24 breezeway that the gentleman stepped back into.

25 Q. Put this up on the screen, and I'll have you take

1 a look at this and help the jury understand where this  
2 individual was standing as you viewed him, just go ahead  
3 and make a mark on that screen.

4 A. From my vantage point looking at this, the  
5 gentleman is standing here. There was a series of bushes  
6 here. This is the entrance to the breezeway, and I was  
7 walking in this direction, upstairs into my unit.

8 Q. And what did that individual do?

9 A. He backed in -- once he saw me, he backed into the  
10 breezeway.

11 Q. And where did you go?

12 A. I went back into my unit.

13 Q. What did you do after that?

14 A. I thought about it for a moment, poured myself a  
15 glass of wine, and then I went back on to the porch  
16 because the idea of this man standing in my breezeway and  
17 now standing in that breezeway and then backing up caused  
18 suspicion, so I decided to step out on my porch which is  
19 here.

20 Q. All right. And then what did you do? Did you  
21 have that glass of wine out on the porch?

22 A. Yes, I did. I was there, as I recall, maybe about  
23 five minutes. At that point, I heard some rustling  
24 around with what seemed to be, you know, an awkward sound  
25 of glass and plastic and awkward movement, so I stood up

WARREN JOHNSON - DIRECT BY MR. FINCH

1 and looked down and saw this individual with a bag or  
2 bags of -- we'll call it merchandise or items, and then  
3 simultaneously, when he was standing in this area, this  
4 whole area has since been relandscaped, but this was a  
5 grass area, and upon exiting, he grabbed a set of keys  
6 that one can use to open a car and held it up and did it  
7 a few times and a white, late model vehicle lit up, the  
8 interior of that car lit up.

9 Q. What did you see after that?

10 A. After that, I don't recall if he got directly into  
11 the vehicle, but he exited this front landscaped area,  
12 walked through the parking lot, passed a series of  
13 garages towards some woods to the right of the garage,  
14 garages.

15 Q. I'm going to show you what's been marked for ID  
16 purposes only as State's 35. Could you take a look at  
17 that and tell me if you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is the area I just described where the  
21 gentleman was standing, holding up the electronic car  
22 key, exited down the breezeway, steps through the parking  
23 lot and past the series of garages towards the woods.

24 Q. And that photograph fairly and accurately  
25 represents the area as you recall it at that time?

WARREN JOHNSON - DIRECT BY MR. FINCH

1           A.   Yes.

2           MR. FINCH:-- At this time the State would more  
3 for State's admission of 35.

4           THE COURT: Any objection?

5           MR. LEWIS: No objection.

6           MR. FINCH: Permission to publish, Your  
7 Honor?

8           THE COURT: Yes.

9           (State's Exhibit No. 35 was marked for  
10 identification and admitted into evidence.)

11 BY MR. FINCH:

12         Q. All right, Mr. Johnson. If you could, just walk  
13 us through what you just testified to, looking at State's  
14 Exhibit 35.

15         A. You can't see it, but this is the grassy area I  
16 was referring to where I was on the phone with the  
17 police, describing what I was seeing in this area. He  
18 walked down here through the through the parking lot and  
19 this direction, towards the woods.

20         Q. And that was after the car lit up, white car?

21         A. That's correct.

22         Q. Did -- what happened after that, as he walked down  
23 that direction?

24         A. I was standing on my porch. A dark metallic blue  
25 older model domestic car pulled up next to the white car

WARREN JOHNSON - DIRECT BY MR. FINCH

1 that was just lit up via the electronic key.

2 The car may have been in this spot, this spot,  
3 this spot, or this spot, I don't recall, but if it were  
4 this spot, this vehicle that I'm referring to pulled back  
5 into this parking lot, here is where the white car was,  
6 and pulled in, headlights first. He exited the passenger  
7 side door and went into the driver's side door of the  
8 white car.

9 This happened a couple of times. Whenever a  
10 vehicle would approach from this direction or from this  
11 direction, he would exit the vehicle and enter the  
12 passenger side of the vehicle that he approached, and  
13 this happened, I want to say, three or four times.

14 Q. And when he was in the car, did the dome light  
15 come on in that car?

16 A. Yes.

17 Q. And did it appear to be the same person that you  
18 saw in the breezeway?

19 A. Yes.

20 MR. LEWIS: Objection, Judge.

21 THE COURT: Objection is overruled.

22 BY MR. FINCH:

23 Q. And could you see what he was doing inside the  
24 vehicle?

25 A. He just seemed to be fumbling around in the

WARREN JOHNSON - DIRECT BY MR. FINCH

1 vehicle, perhaps looking for things, going into the glove  
2 box. -- I'm just assuming.

3 Q. And at that time, did you -- what did you do?

4 A. Well, I was on my porch and I was just -- I was on  
5 the phone with the police, describing what I was seeing.

6 Q. And were you describing what you were seeing  
7 directly to the 911 dispatcher?

8 A. Yes.

9 Q. Are you aware if those calls are audio recorded?

10 A. Yes.

11 Q. Have you had an opportunity to listen to the  
12 recording of that?

13 A. It's been some time since I've listened to that.  
14 I have listened to an interview that I did with the  
15 detective after this event.

16 Q. Mr. Johnson, did you have an opportunity to listen  
17 to copy of that call in my office?

18 A. Yes.

19 Q. And I'm going to show you now what's been marked  
20 for ID purposes as State's 36. Can you identify this  
21 item.

22 A. That has my initials on it, yes.

23 Q. And is there a date?

24 A. 11/19/13.

25 Q. Is this the CD you listened to in my office?

WARREN JOHNSON - DIRECT BY MR. FINCH

1 A. Yes.

2 Q. Of the 911 call?

3 A. Yes.

4 MR. FINCH: Your Honor, at this time the  
5 State would move for admission of State's 36.

6 THE COURT: Any objection?

7 MR. LEWIS: No objection.

8 THE COURT: It's admitted.

9 (State's Exhibit No. 36 was marked for  
10 identification and admitted into evidence.)

11 MR. FINCH: Permission to publish, Your  
12 Honor?

13 THE COURT: Yes.

14 (Whereupon the CD of the 911 call was played  
15 for the jury of.)

16 BY MR. FINCH:

17 Q. Mr. Johnson, you were describing things that you  
18 saw and giving that information directly to the 911  
19 folks?

20 A. Correct.

21 Q. After that, it sounds like that call wrapped up  
22 with the police nearby. Did you meet with police that  
23 evening?

24 A. Yes.

25 Q. You gave them a statement?

WARREN JOHNSON - CROSS BY MR. LEWIS

1 A. I did.

2 Q. And did they ask you to come and see if you could  
3 identify anything?

4 A. They did.

5 Q. And you were able to identify the vehicle?

6 A. Yes.

7 Q. I'm going to show you what has been previously  
8 admitted as State's 16. Is that the vehicle you  
9 identified for police?

10 A. I believe so, yes. It's been a few years since  
11 I've seen it, but it appears to be accurate.

12 Q. And --

13 MR. FINCH: Beg the Court's indulgence.  
14 Please answer any questions Mr. Lewis has for you.

15 THE WITNESS: Sure.

16 CROSS-EXAMINATION

17 BY MR. LEWIS:

18 Q. Good afternoon, Mr. Johnson.

19 A. Good afternoon.

20 Q. So at that time you were living in apartment  
21 [REDACTED], right?

22 A. Yes.

23 Q. And we should have some pictures here that would  
24 help guide us. And so [REDACTED], where is that?

25 A. Right here (indicating).

WARREN JOHNSON - CROSS BY MR. LEWIS

1 Q. And so you've testified you saw someone around the  
2 bush. I understand this is a newer picture so it doesn't  
3 have the bushes around it, but I believe you testified  
4 bushes were basically nearby where we could see the two  
5 air blowers, HVAC units by the breezeway?

6 A. Yes.

7 Q. Can you go ahead and mark it for me.

8 Okay. Now, we discussed this case in another  
9 hearing, but on the 911 call we all just heard, you say  
10 you could specifically see someone coming out of this  
11 apartment.

12 A. Yes.

13 Q. But you couldn't. You saw them in the area,  
14 right?

15 A. Correct. This whole area here -- this whole area  
16 here at the time was a grassy area, and so right around  
17 in here is where he held up the --

18 Q. Clicker?

19 A. -- clicker and had the bag of stuff.

20 Q. Okay. I want to be clear about the 911 call. I  
21 understand what you believe you were seeing, but I want  
22 to be clear about what you actually saw.

23 A. Sure.

24 Q. You can't say you actually saw anyone coming out  
25 of apartment [REDACTED]?

1       A. I could not. I just -- when I was standing on my  
2 porch, I could only hear the rustling. I did not see  
3 anyone walk out.

4       Q. Okay. But did you see a bag of stuff?

5       A. Yes.

6       Q. You heard it clanking, so it had some weight to  
7 it?

8       A. Yes.

9       Q. But you don't know where it came from, right?

10      A. No, I don't. All I know all, he was in this area  
11 with this stuff. He seemed to be awkward, carrying some  
12 things and trying to locate the car at the same time.

13      Q. And you don't know who would have placed those  
14 items in the bag that was rustling?

15      A. Correct.

16      Q. So you saw a guy with a bag?

17      A. Correct.

18      Q. Okay. And after the rustling, the seeing him in,  
19 I guess, two different breezeways, came across as  
20 suspicious to you so you called police.

21      A. That's correct.

22      Q. And you stayed on the phone with them, and what we  
23 just heard was that 911 call, right?

24      A. Yes. I called the police after he came out.

25      Q. With the stuff?

1 A. With the stuff that I had not seen him carrying.

2 Q. And I just got to focus in again.

3 A. Sure. Sorry.

4 Q. Came out from where the bushes are, but you cannot  
5 say and are not saying that he came out of that  
6 apartment?

7 A. I did not witness it. I could only hear the  
8 rustling which caused me to get up that I should probably  
9 call police.

10 Q. And the rustling that we're talking about is the  
11 sound of stuff in a bag, almost like you're taking out  
12 your recycling and it has some wind bottles in it or  
13 something like that, not the sound that would be created  
14 if someone were prying open a door?

15 A. You know, it was just -- so I could hear the  
16 stuff, but I could hear just an awkward rustling around.

17 Q. Okay.

18 A. And I could hear that -- with that rustling  
19 around, I could hear things clinking in a bag.

20 Q. Okay. On the 911 call, you described two males  
21 were in the vehicle?

22 A. Yes.

23 Q. I know it sounds like it's splitting hairs,  
24 color-wise. What color blue is that?

25 A. You know, I would say a metallic --

1 Q. I'll put it up.

2 A. Sure.

3 Q. I think it's in evidence already, State's 16. So  
4 metallic?

5 A. Yes.

6 Q. Is it a sky blue?

7 A. You know, it depends if we're splitting hairs  
8 depending on how the light hits it.

9 Q. I guess I can kind of see it, especially in this  
10 light. Certainly not a powder blue?

11 A. Well, depending on how the light hits it, but as  
12 I'm looking at it presently, no, this would be a  
13 darker -- a darker blue.

14 Q. And on the 911 call, you had described -- you were  
15 speaking in a hushed tone. Is it fair to say that?

16 A. Yes.

17 Q. You didn't want to be seen?

18 A. That's correct.

19 Q. You actually described that you were kind of  
20 standing back in your balcony?

21 A. Yes.

22 Q. So not exactly an ideal position, but you're doing  
23 your best as a witness to say what you're seeing.

24 A. Ideal for me so as to not be seen, yes.

25 Q. Different goals. You don't want to be seen?

1 A. Yes.

2 Q. But that's when you were able to provide the  
3 information of two males in a sedan, right?

4 A. Uh-huh. If that's what I said, yes.

5 Q. That's why we all heard the 911 call. And I know  
6 I'm splitting hairs again, but how many doors does a  
7 sedan have?

8 A. Four.

9 Q. How many doors does the car you picked out have?

10 A. Two.

11 Q. Okay. Sometimes it's just what we have to do.  
12 And after that, I have to reiterate to be clear about  
13 this. You never saw anyone stepping over -- stepping  
14 over this railing?

15 A. Not that I can recall. I was sitting here, heard  
16 a rustling noise that came from this direction, and when  
17 I looked down here, he was here with the stuff and the  
18 key.

19 Q. Okay. Right here on the ground there?

20 A. That's correct.

21 Q. And as we discussed again in a brief hearing,  
22 there was a different landscaping plan back then, two  
23 years ago.

24 A. Yes, yes.

25 Q. And that included a series of bushes?

WARREN JOHNSON - REDIRECT BY MR. FINCH

1 A. Yes.

2 Q. And in that hearing you said whether he was in  
3 front of or behind those bushes, he was actually inside  
4 or outside, he was outside of those bushes?

5 A. That's correct, I did say that, yes.

6 Q. Okay. One second, Judge.

7 We also talked about this, gloves. Anybody  
8 wearing gloves?

9 A. Not that I recall.

10 MR. LEWIS: Nothing further at this time,  
11 Judge. Thank you.

12 THE COURT: Redirect?

13 MR. FINCH: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. FINCH:

16 Q. Mr. Johnson, you recall stating to the 911  
17 operator that you couldn't see the driver?

18 A. That's correct.

19 MR. FINCH: Thank you. Nothing further, Your  
20 Honor.

21 THE COURT: Yes?

22 MR. LEWIS: Just to explore that one quick  
23 question.

24 RECROSS-EXAMINATION

25 BY MR. LEWIS:

1 Q. So you just made an assumption. You assumed it  
2 was a male?

3 A. I did, yes.

4 MR. LEWIS: Nothing further.

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

7 You may call your next witness.

8 MR. FINCH: State calls Officer Joe Piech.

9 MR. LEWIS: Judge per your policies, he is  
10 excused.

11 THE COURT: Once a witness steps down,  
12 they're excused.

13 JOE PIECH,

14 having been first duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 THE WITNESS: My name is Joe Piech with the  
18 City of Charleston Police Department.

19 BY MR. VOIGT:

20 Q. Could you spell that for the court reporter.

21 A. My last name is spelled P-i-e-c-h.

22 Q. How long have you been with the City of Charleston  
23 Police Department?

24 A. I just passed my seven year mark in April.

25 Q. How are you currently assigned?

JOE PIECH - DIRECT BY MR. VOIGT

1       A. I am currently working with the team three power  
2 squad. I'm still in the same position, but it's a  
3 special unit.

4       Q. Where were you assigned back on February 25, 2012?

5       A. To the best of my memory, I was working a  
6 neighborhood officer position. It was a special patrol  
7 in the Westchester neighborhood of James Island, and my  
8 shift secured at 2300 hours and I was on my way in when  
9 this call went out.

10      Q. So you were on your way to work?

11      A. I was on my way home. I'm sorry.

12      Q. And during February 2012, did you work primarily  
13 in James Island?

14      A. Only. I worked a specified neighborhood, and I  
15 was on my way back to the office. That was the only way  
16 I could pass by this area.

17      Q. And so you worked at very limited geographical  
18 areas?

19      A. Yes.

20      Q. And why do they assign you to a very limited  
21 geographical area?

22      A. Because those limited areas are very crime ridden  
23 and they can -- they basically block them off for  
24 specialized patrols during specific times of the day that  
25 occur, anywhere from gang activity to drug activity. The

JOE PIECH - DIRECT BY MR. VOIGT

1 violence just kind of depends on what we got going on in  
2 those different areas.

3 Q. And some of that is what you observed while you're  
4 patrolling?

5 A. That's my job, yeah.

6 Q. And some of that is what you get called out for?

7 A. Sometimes, yeah.

8 Q. And on the 25th of February, 2012, did you have  
9 occasion to be called out to the Peninsula Condos?

10 A. The call was toned out, which means it was sent  
11 out as an urgent call, the type of call you put your  
12 sirens on and your blue lights and your sirens.

13 I just -- I was just coming up on Daniel Ellis  
14 Drive as it went out. Two cars, two to three cars, beat  
15 me to the punch turning on to Daniel Ellis Drive. I  
16 followed them in and that is how it started for me.

17 Q. How do you get called out to crimes? How did that  
18 work in 2012?

19 A. By tone. That's what we call it. It's a tone  
20 that goes out over the radio that means you got to get  
21 there quickly.

22 Q. And what were you responding to? What were you  
23 being toned out to?

24 A. A burglary in progress or a burglary that had just  
25 occurred, is how I remember it. It was an in progress

JOE PIECH - DIRECT BY MR. VOIGT

1 call. We had to get there.

2 Q. So an in progress call means that perhaps the  
3 perpetrator or perpetrators are still in the vicinity of  
4 the call.

5 A. Yes, yes.

6 Q. And from the time you got toned out to the time  
7 you turned into the area by the Peninsula Condos,  
8 approximately how long was that?

9 A. Less than two minutes.

10 Q. Had your sirens on?

11 A. Yes.

12 Q. You had blue lights going?

13 A. Yes.

14 Q. Were you alone in the car that evening?

15 A. Yes.

16 Q. Now, how was the Peninsula Condos set up? What  
17 kind of apartment complex is it?

18 A. You turn on to Daniel Ellis Drive from Folly Road,  
19 and that pretty much will -- you take a left and it goes  
20 by some businesses, and then it dead ends into the  
21 apartments back there, the condos, as they're called.

22 Q. I'm going to show you what's been marked as  
23 State's Exhibits 29 and 30.

24 MR. VOIGT: May I approach, Your Honor?

25 THE COURT: Yes.

JOE PIECH - DIRECT BY MR. VOIGT

1 BY MR. VOIGT:

2 Q. Do you recognize State's Exhibit 29 and 30? Take  
3 a look for a second.

4 A. It took me a minute, but yes.

5 Q. Are you oriented?

6 A. Yeah. I had to turn it around.

7 Q. What do State's 29 and 30 depict? Do they depict  
8 the general area around Daniel Ellis Drive, the Peninsula  
9 Condos?

10 A. Yeah. Number 29 will show you almost pretty much  
11 the entire thing of businesses in the condos, and number  
12 30 is more specifically the condos.

13 Q. So one is a closer in picture?

14 A. Yes.

15 Q. All right.

16 MR. FINCH: At this time the State would  
17 offer Exhibits 29 and 30.

18 MR. LEWIS: Without objection.

19 THE COURT: It's admitted.

20 MR. VOIGT: Can I publish these, Your Honor?

21 THE COURT: Yes. What are we looking at  
22 there in and that is State's 29.

23 THE WITNESS: Yeah, those are the condos  
24 directly in front of me.

25 BY MR. VOIGT:

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. What is that big flat roofed building there?

2 A. In the upper right-hand corner would be Lowe's.

3 Q. Okay. And how many means -- how do you get in and  
4 out of Peninsula Condos?

5 A. One entrance.

6 Q. So if you go in there, you got to go the same way  
7 to come out?

8 A. Yeah. There is no rear. That's just that one.

9 Q. Because there is nothing but marsh back there?

10 A. Right.

11 Q. So you get toned out to this burglary in progress.  
12 What did you decide to do?

13 A. I've been a police officer at that point since  
14 2003. It's not the first burglary I responded to. I  
15 take my job seriously, and I want to get there promptly  
16 but I don't panic. I saw two cars -- at least two cars I  
17 remember going in before me. Knowing that there was no  
18 way out of there, since dispatch was telling me there was  
19 possibly a car involved, I decided to deactivate my blue  
20 lights and wait at Lowe's to see if a car was coming out.

21 Q. Is this the area right here? Is this the in and  
22 out?

23 A. Yeah, by that pool. There is a pool and a  
24 clubhouse, and there is gates just past that.

25 Q. I'm going to move this just slightly. Could you

JOE PIECH - DIRECT BY MR. VOIGT

1 see in that where you positioned car care?

2 A. No, you got to move it more down to me.

3 Q. Like this direction? Could you see where your put  
4 your car?

5 A. Yes.

6 Q. And that is a little touch screen there.

7 A. Just tap it?

8 Q. Yeah, go ahead. So you're there.

9 A. Yeah.

10 Q. So what should you do? You parked your car there?

11 A. And I just said to myself two cars just went  
12 screaming in there. A lot of times burglars will run,  
13 sometimes, but since they're putting out a car and it  
14 sounded like there was someone else possibly in that car,  
15 I said I'm going to wait by that entrance were my  
16 headlights on. My headlights were on. I was just going  
17 to sit there and see if anything came out.

18 Q. Did you know what you were looking for?

19 A. Well, almost precisely in that time frame where I  
20 parked, or almost immediately, dispatch began to put out  
21 description of a blue sedan and a black male wearing a  
22 white sweater or sweatshirt or something of that sort.

23 Q. Were you told to look for a four-door or two-door  
24 sedan?

25 A. I don't remember. I just remember a blue sedan.

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. And does the word sedan have any specific meaning  
2 for you in terms?

3 A. Just a smaller car.

4 Q. So not a van or a truck or a bus or a motorcycle?

5 A. No, not like a full size car, like a Cadillac or  
6 something, a smaller sized car.

7 Q. Let me show you what's been marked as State's  
8 Exhibit 16. Is that the car you saw?

9 A. Yes.

10 Q. When you saw that car, what did you do?

11 A. As we're looking at this picture now is how I saw  
12 it because I had my headlights on. They were putting out  
13 the description. I saw the car coming. It passed  
14 through my light beam. I saw a blue sedan with that  
15 black male occupant wearing the white shirt inside.  
16 After seeing that, I initiated the traffic stop.

17 Q. From where you were seated in your car, was the  
18 passenger closer to you or was the driver closer to you?

19 A. Driver was closer to me.

20 Q. Could you see through the vehicle all the way to  
21 the passenger?

22 A. Yes.

23 Q. What did you do once you saw this vehicle?

24 A. Pulled it over.

25 Q. Which side did you approach?

JOE PIECH - DIRECT BY MR. VOIGT

1       A. I approached from the passenger side. I've almost  
2 ~~been hit a couple of times on traffic stop. I don't want~~  
3 to get hit. There wasn't a ton of traffic, obviously.  
4 There was no traffic on that road. It's just a muscle  
5 memory thing that I do, so any time I initiate a traffic  
6 stop, I approach from the passenger side.

7       Q. Now, we've heard a little bit of it before we came  
8 in here. Were you on the radio with other officers?

9       A. When a car like that goes out, there is a ton of  
10 people on the radio. Unless something important happens,  
11 I don't talk that much, if I can help it, and I'm pretty  
12 certain that I didn't say anything until I pulled that  
13 traffic stop.

14       Q. Okay. Once you pulled that car over, where did  
15 you position the vehicle?

16       A. Directly behind it as I standardly would.

17       Q. Did you inform other officers you were getting out  
18 with this vehicle?

19       A. I'm pretty sure that I put it out as a traffic  
20 stop, yeah.

21       Q. Why would you do that? Why would you let  
22 everybody else know what to do?

23       A. Officer safety, and that's just what we do to get  
24 another officer there to help you. It can hurt to have  
25 two of us or three of us there.

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. You were in your car by yourself?

2 A. Yes.

3 Q. You didn't have a partner riding with you?

4 A. No.

5 Q. Did other vehicles respond to your traffic stop?

6 A. Yes. The way I remember it is I put it out as a  
7 traffic stop just as I would and we -- as I did that,  
8 cars came in. They were turning in. They were just  
9 arriving on the scene and were, you know, doing U-turns  
10 and getting around and helping me out.

11 Q. So a number of other vehicles responding to the  
12 additional -- the original tone?

13 A. Yeah.

14 Q. Call?

15 A. This happened right at a shift change so we had  
16 plenty of cars.

17 Q. You had people coming and going?

18 A. Yeah.

19 Q. Approximately how many different cars surrounded  
20 you after you got out of this vehicle, police cars?

21 A. Shortly thereafter, I would say that I had at  
22 least two more out with me that stopped.

23 Q. Who did you make first contact with?

24 A. In the car?

25 Q. Yeah.

JOE PIECH - DIRECT BY MR. VOIGT

1 A. Mr. McClenton, the passenger, since I approached  
2 from the passenger side.

3 Q. What did you observe him to be wearing?

4 A. A white sweater.

5 Q. Was that -- did that fit the description of  
6 someone you were looking for?

7 A. Yes.

8 Q. What did you ask him to do?

9 A. I explained to him what was going on, why he was  
10 being stopped, and I asked him to get out of the vehicle  
11 to speak with me and he agreed.

12 Q. Did you have your gun drawn?

13 A. No.

14 Q. Did you yell at him, shout at him, curse at him?

15 A. No.

16 Q. Did he voluntarily got out of the vehicle?

17 A. Yes.

18 Q. Did he attempt to run or flee or fight you in any  
19 way?

20 A. No, no. His demeanor was one of just being  
21 compliant with what I was asking.

22 Q. Did he appear nervous in any way?

23 A. A little, yeah.

24 Q. Did you tell him why he had been pulled over?

25 A. Yes.

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. Was he free to go?

2 A. No. I held him, I spoke with him, and I performed  
3 a pat down of him, given the nature of the call. We were  
4 going to verify whether or not he was -- I mean, I made  
5 that clear.

6 Q. Okay.

7 A. Based on what they were driving and what he was  
8 wearing.

9 Q. Did you make contact with the driver?

10 A. Once -- I mean, it all happened in seconds, but  
11 once I had help to kind of help out with Mr. McClenton,  
12 yeah, we spoke with the driver and explained to her what  
13 was going on.

14 Q. Did you place Mr. McClenton in handcuffs?

15 A. Not right away, no.

16 Q. About how long did that take?

17 A. I would say I spoke with him -- I would say under  
18 five minutes. I had officers on the radio advising me to  
19 detain him because they had found forced entry.

20 Q. So you're in radio communication with other  
21 officers at other areas in Peninsula Condominiums?

22 A. That had been broken into, yeah.

23 Q. So at this point you knew -- what did you know at  
24 this point?

25 A. That we had a burglary and that I had a vehicle

JOE PIECH - DIRECT BY MR. VOIGT

1 pulled over with a suspect that was matching what we were  
2 being told by the caller.

3 Q. And that's as good as far as that goes, but --

4 A. To get him out of the car?

5 Q. To arrest him for something?

6 A. Oh, absolutely.

7 Q. Who was in that vehicle?

8 A. With Mr. McClenton?

9 Q. Do you recall her name?

10 A. Yeah. It's Dawn Lee.

11 Q. Okay.

12 A. And a very young child in the passenger seat.

13 Q. Was the child in the car seat, secured in a car  
14 seat?

15 A. Yes.

16 Q. Do you know approximately how old the child was,  
17 months, weeks?

18 A. No, very brand new, very young.

19 Q. Not holding neck upright yet?

20 A. No, no.

21 Q. February 25th, was it a warm or cold night?

22 A. It was a cold night. You could see your breath.

23 Q. Did you have any concerns for the child in the  
24 cold?

25 A. I did, and that was it became --

JOE PIECH - DIRECT BY MR. VOIGT

1 MR. LEWIS: Objection, Your Honor.  
2 Relevance.

3 THE COURT: Objection overruled.

4  
5 THE WITNESS: I became concerned for the  
6 welfare of the child shortly after we learned that it was  
7 in the car. It was cold. You know, for some reason it  
8 didn't seem like they had the heat on in the car.  
9 Eventually we got her and the kid in a police cruiser so  
10 they could stay warm. It was a concern.

11 BY MR. VOIGT:

12 Q. We're talking about the mother of -- Ms. Lee?

13 A. Yeah. We wanted her to take care of her child  
14 while we were out there.

15 Q. Did you make a visual inspection of inside of the  
16 vehicle?

17 A. Yeah. When I -- upon my initial approach when I  
18 pass over to the passenger side if the windows aren't  
19 tinted, I can get a pretty good panoramic, plus seeing  
20 inside and speaking with them; yes, I could see.

21 Q. And why do you do that? Why would you look inside  
22 the vehicle?

23 A. Oh, just officer safety. We see in training and  
24 all see in videos and such it doesn't take but a couple  
25 seconds to get shot in traffic stops.

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. Are traffic stops historically dangerous for  
2 officers in the line of duty?

3 A. They can be, yeah.

4 Q. And you're just trying to eliminate any potential  
5 threat or any -- and that is just a visual inspection?

6 A. From the get go. I mean, most violent things are  
7 done with the hands of the bad people, and you can get a  
8 good view of their hands as well. It's just -- it's  
9 important to me when I stop the car.

10 Q. You didn't have any indication, though, that  
11 Ms. Lee was a threat to you?

12 A. No.

13 Q. And the defendant had been compliant with what you  
14 had requested to do, and at that point he was secured and  
15 he wasn't a threat to you?

16 A. No.

17 Q. Did you ask Ms. Lee if you could search the trunk?

18 MR. LEWIS: Objection pursuant to my previous  
19 objection.

20 THE COURT: Overruled.

21 THE WITNESS: We did ask for permission to  
22 search her vehicle, eventually.

23 BY MR. VOIGT:

24 Q. And how long do you think it was before you asked  
25 her?

JOE PIECH - DIRECT BY MR. VOIGT

1       A. Once we were given radio information offhand,  
2       based on the forced entry, we were also given additional  
3       information over the radio of objects that were taken, we  
4       had to actually contact the victim, to what I recall, so  
5       there was a little bit of a lapse for us to get the  
6       victim out there but it wasn't very long. It wasn't like  
7       a couple hours or anything like that.

8       Q. So by the time you asked for consent, did you have  
9       at least a general idea of the sorts of items you were  
10      looking for?

11      A. Yes, yes.

12      Q. And that was related to you via radio from other  
13      officers or victims or however that may have been?

14      A. Yeah, right.

15      Q. Okay. You patted down Mr. McClenton.

16      A. Yes.

17      Q. Did he have any keys on him for any vehicle that  
18      you recall?

19      A. Not that I can remember, no.

20      Q. And he hadn't been driving this particular  
21      vehicle?

22      A. No. He was a passenger.

23      Q. All right. Did you look in the trunk?

24      A. After it was opened, yes.

25      Q. Did you open the trunk?

JOE PIECH - DIRECT BY MR. VOIGT

1 A. Not that I can recall, no.

2 Q. Do you recall who did?

3 A. No.

4 Q. Okay.

5 A. I want to say that Ms. Lee did.

6 Q. Did she use some sort of interior latch or  
7 something on the key fob or something like that?

8 A. It's possible. You know, a lot of times keys  
9 don't work and they got to use the inside. The inside  
10 doesn't work, and they got to use the keys. Usually when  
11 the owner of the vehicle or the person that's driving it  
12 gives us consent, we go ahead and let them do it since  
13 it's their trunk and it's less of a headache for us.

14 Q. Now, you say that you got consent from Ms. Lee.  
15 Did you threaten Ms. Lee with -- well, with anything, to  
16 get her to do that?

17 A. No.

18 Q. Did you promise some sort of leniency or promise  
19 to let her go or do anything like that to get her to let  
20 you look in the trunk?

21 A. No.

22 Q. Did you make any threats to her that you were --  
23 you know, you were going to do it by hook or by crook?

24 A. No.

25 Q. Okay. Did she seem intimidated or afraid of you?

JOE PIECH - DIRECT BY MR. VOIGT

1 A. Not of me personally. I think appeared very  
2 nervous with the situation, though.

3 Q. Didn't at some point she become emotional?

4 A. I remember her being pretty emotional from the  
5 point where I was explaining to them why they were being  
6 stopped to why I got him out of the car. It was kind of  
7 like, you know, she started, you know, to get nervous and  
8 eventually that turned into tears.

9 Q. Okay. Were you able to ascertain whether or not  
10 Ms. Lee or the defendant lived in the Peninsula Condos?

11 A. I did ask --

12 MR. LEWIS: Objection, Your Honor.

13 THE COURT: Basis for the objection?

14 MR. LEWIS: We would actually have a matter  
15 of law. If we're going to go into specifics as to what  
16 the defendant or Ms. Lee said, if it's Ms. Lee, it's  
17 hearsay; if it's the defendant, we need a hearing on it.

18 THE COURT: Restate the question? And don't  
19 answer it.

20 MR. VOIGT: The question I asked: Were you  
21 able to ascertain whether Ms. Lee or the defendant lived  
22 in the Peninsula Condos.

23 THE COURT: Objection is overruled.

24 THE WITNESS: So I can go ahead and answer?

25 BY MR. VOIGT:

JOE PIECH - DIRECT BY MR. VOIGT

1 Q. Without telling us what other people said, were  
2 you able to find out if they lived there or not?

3 A. Yes. One of the things I asked the offender,  
4 before he was detained, is why he was there. What are  
5 you doing in the area? He advised me that the driver had  
6 dropped him off in the apartment complex to see one of  
7 his friends and then she left.

8 He said that he couldn't find his friend's  
9 apartment that she came to pick him up, and I pulled them  
10 as they were just leaving the complex, but he wasn't able  
11 to give me the name of the friend or where in the complex  
12 he supposedly lived.

13 THE COURT: Ladies and gentlemen: We're  
14 going to break at this time for lunch as it relates to  
15 the jury for 45 minutes, and we want to come back at  
16 2:00. So please go to the jury room and don't discuss  
17 the case. Pertaining to the jury only.

18 (In open court, jury not present.)

19 THE COURT: All right. Regarding the issue  
20 and the objection about a necessity of hearing because of  
21 the statement by the defendant?

22 MR. LEWIS: Well, actually, Judge, on second  
23 thought, now that that testimony has been elicited, I  
24 like what I heard, so I withdraw my objection. This  
25 portion sounds great to me.

JOE PIECH - DIRECT BY MR. VOIGT

1 THE COURT: Okay.

2 MR. LEWIS: So I'm glad it's in evidence.

3 THE COURT: All right. Anything by the  
4 State?

5 MR. VOIGT: No, Your Honor.

6 THE COURT: I'm just listening as whether it  
7 qualified as a statement necessitating an out of court  
8 hearing, based on the voluntariness, but you like the  
9 answer and you don't want me to do any issues surrounding  
10 it, right?

11 MR. LEWIS: My initial gut reaction when I  
12 hear something is to object, but -- and I think we could  
13 have had a hearing. At this point I'm waiving it in  
14 regards to the statements that have been made.

15 THE COURT: All right.

16 MR. LEWIS: I understand that that should be  
17 the completion of Officer Piech's interactions with  
18 Mr. McClenton. If there were, then I would need a  
19 hearing on those, but I think that this is it, and as I  
20 said, in regards to these statements coming in, I'm happy  
21 with it, I do not object to those statements coming into  
22 evidence.

23 THE COURT: All right. And you think your  
24 client agrees with you on that?

25 MR. LEWIS: I was going to say I hate to be

JOE PIECH - DIRECT BY MR. VOIGT

1 so blunt, but it doesn't matter, what -- I'll ask him  
2 now.

3 THE COURT: What did he say? He said he's  
4 good?

5 MR. LEWIS: He said whatever I want to go  
6 with; is that right? All right. I'm good.

7 THE COURT: All right. Okay. Any other  
8 statements by this defendant to this officer that would  
9 necessitate any type of hearing?

10 MR. VOIGT: Not that I'm aware of, and, for  
11 the record, I was, I think, even in the second go around  
12 I said trying not to go there, so --

13 THE COURT: Okay. We're in the breaking mode  
14 until 2:00. And, Officer, you're under examination.

15 Do not discuss your testimony with anyone.

16 (Recess taken.)

17 A F T E R N O O N S E S S I O N

18 THE COURT: Okay. We can bring in the jury.

19 (In open court, jury present.)

20 THE COURT: All right. You may proceed.

21 BY MR. VOIGT:

22 Q. I think I was in the middle of asking you some  
23 questions about a blue car and the people and the  
24 contents of the car.

25 So here we are, to go back to the car. You asked

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1 Ms. Lee for consent?

2 A. Yes.

3 Q. Did she seem to understand what you were asking  
4 her to do?

5 A. Yes. You know, we made it clear what had just  
6 happened, and it was implied, you know, one of them might  
7 be it and they might have stuff that was missing.

8 Q. And so the trunk, she popped it somehow or  
9 another, I think you said?

10 A. Yes, yeah.

11 Q. Well, what happened after that?

12 A. The primary thing that immediately jumped out and  
13 over the radio was that there was a white trash bag  
14 containing something that he was carrying away from where  
15 the complainant saw him. Once the trunk was opened,  
16 right there was a white trash bag.

17 Q. Okay. I'm going to show you what's been marked --  
18 I think it's actually entered into evidence as State's  
19 20.

20 MR. LEWIS: They've all been entered.

21 BY MR. VOIGT:

22 Q. I'm going to put it up on the screen. This is  
23 State's 20. Do you recognize that?

24 A. Yeah.

25 Q. What's that?

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1 A. It's a white trash bag containing wine bottles.

2 Q. I'm going to show you what's previously been

3 marked and entered as State's 21. What's that? Is that  
4 the same bag?

5 A. Yeah. Wine bottles, electronics -- there was  
6 quite a bit of electronic stuff that was in the bag and  
7 outside of it because they were too large to put inside  
8 there.

9 Q. Did you take the stuff out and kind of see what  
10 was in there?

11 A. I did not. Other officers did. I kind of relied  
12 on my eyes to see, yeah, that looks like what we're being  
13 told over the radio, but I couldn't do everything at  
14 once, and I'm pretty sure another officer did that.

15 MR. VOIGT: May I approach the court  
16 reporter, Your Honor? What number are we on?

17 BY MR. VOIGT:

18 Q. Officer Piech, I'm going to show you what's been  
19 marked State's 37 and ask you to take a look at the  
20 outside of that and then take a look at the contents and  
21 tell me if you recognize that.

22 A. That's our white trash bag and one of our burglary  
23 tools.

24 MR. LEWIS: Objection, Your Honor.  
25 Classification of a burglary tool.

JOE PIECH - DIRECT BY MR. VOIGT

1 THE COURT: Of a what?

2 MR. LEWIS: He said this is a white trash bag  
3 and a burglary tool. I'm objecting to him calling a  
4 screwdriver a burglary tool.

5 THE COURT: Any response?

6 MR. VOIGT: It's a screwdriver, however we  
7 want to classify it.

8 THE COURT: All right. The objection is  
9 sustained to the characterization.

10 BY MR. VOIGT:

11 Q. So is that a screwdriver?

12 A. Yes, it's a screwdriver, and my apologies. It's  
13 commonly referred to in those instances, but yes, it is a  
14 screwdriver.

15 Q. Could also be used for turning screws?

16 A. Yes.

17 Q. Do you recognize that as something having been  
18 seized from the blue car driven by Dawn Lee?

19 A. Yeah.

20 Q. How do you know those are the items you seized?  
21 Did you place those into evidence?

22 A. No, I did not.

23 Q. Is your name on the evidence sheet at all?

24 A. Yeah, it is.

25 Q. Yeah, it is. And why do you put your name on an

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1 evidence card outside of a bag?

2 A. So you know who dumped evidence.

3 Q. Right. And in this case, would that have been  
4 you?

5 A. It's very possible. It's my handwriting. If I  
6 did it, I placed it in there. Just the time frame --

7 Q. You're having a hard time remembering actually  
8 having done that?

9 A. Yes, yes.

10 Q. And one of the reasons we keep track of things in  
11 bags and on those little sheets is --

12 MR. LEWIS: Objection. Leading.

13 THE COURT: I haven't heard the question.

14 BY MR. VOIGT:

15 Q. Why do we label things like that?

16 A. For recordkeeping and, you know, so that we know  
17 who dropped what.

18 Q. Do we know who placed the white bag and the  
19 screwdriver in evidence?

20 A. Yeah, me, apparently.

21 Q. Okay.

22 MR. VOIGT: At this time I would offer  
23 State's 37 and mark the screwdriver as State's 38.

24 MR. LEWIS: Renewing my objection to all the  
25 specific items, no -- no further objection as to

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1 authentication, so no objection, Judge.

2 THE COURT: All right. They're admitted over  
3 objection.

4 (State's Exhibit Nos. 37 and 38 were marked  
5 for identification and admitted into evidence.)

6 BY MR. VOIGT:

7 Q. Can you take those out?

8 A. Yes.

9 Q. So this is 37. This is the bag.

10 A. Okay.

11 Q. And I'm going to place that on there. That is  
12 just a buy-at-the-store kind of screwdriver.

13 A. Yes.

14 Q. What was in the trunk of that car?

15 A. When the trunk was opened, the white bag was  
16 visible. Once that bag was removed, there were also some  
17 computers, some laptop computers, and some other  
18 electronic stuff.

19 Q. I'm going to show you what's been previously  
20 marked as State's 17. Are these the computers we're  
21 talking about?

22 A. Yes.

23 Q. State's 24, are these some of the items we're  
24 talking about?

25 A. Yeah. There was one -- once Mr. McClenton was

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1 detained, then we realized that the missing items were in  
2 the trunk, we searched his coat pocket and found the  
3 victim's watch, the cameras. It could very well be that  
4 watch.

5 Q. I'm going to bring the bag that this apparently  
6 was in. Take a look at the bag and then the contents  
7 thereof. Do you recognize it?

8 A. Yes.

9 Q. How do you recognize it?

10 A. The sticker with my name on it that I dropped.

11 Q. Okay. By dropped, you mean --

12 A. Dropping into evidence. I placed it into  
13 evidence, yes.

14 Q. And is -- describe to the jury, so that they can  
15 know, what is the evidence facility like at CPD, do you  
16 know?

17 A. Yeah. You take an object, a coat, or anything  
18 else that -- everything has a different sort of  
19 procedure. Most things you place into some sort of bag  
20 like this if it's too large or a smaller envelope or  
21 plastic bag, and it's placed in a mailbox or a locker and  
22 then itemized into a computer system.

23 Q. So are all the things seized by the Charleston  
24 Police Department in all their cases, are they all mixed  
25 together? Does the police department try to keep them

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1 separate?

2 A. How do you mean, just --

3 Q. Do I keep them by item number by OCA number?

4 A. By case number, yes. All associated items with  
5 one case number will be at the same access.

6 Q. So the case -- do you recognize the case number  
7 associated with this particular case on that bag?

8 A. Yep.

9 Q. And what number is that?

10 A. That's case number 1203151.

11 Q. And do you recognize that item, which I will call  
12 State's 39, do you recognize that as something that you  
13 took from the vehicle?

14 A. Yes.

15 Q. And where did you take it from in the vehicle?

16 A. From the front seat. He was sitting on it.

17 Q. Okay.

18 MR. FINCH: At this time the State would  
19 offer into evidence State's 39.

20 MR. LEWIS: Same.

21 THE COURT: It's admitted.

22 (State's Exhibit No. 39 was marked for  
23 identification and admitted into evidence.)

24 BY MR. VOIGT:

25 Q. So this is State's 39. He was sitting on this?

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1 A. Yes, yeah.

2 Q. What did you find inside this?

3 A. The watch -- or the watch of the victim and a  
4 camera.

5 Q. And I'm going to show you what's been marked as  
6 State's 25. Is that what this depicts?

7 A. Yeah. There is the camera, and forgive me. There  
8 was also stolen jewelry in the picture there.

9 Q. All that was in the coat?

10 A. Yes.

11 Q. All right. Got one more to show you, 40. I'm  
12 going to show you what's been marked as State's 40, ask  
13 you to take a look in this particular bag.

14 Do you recognize those items as items that you  
15 seized from the trunk of the blue vehicle?

16 A. Yes.

17 Q. And how do you know those are items you seized  
18 from the trunk of the blue vehicle?

19 A. Because my name is on the sticker and I  
20 actually -- I remember this one because of how difficult  
21 it was to get the crowbar to stay in there.

22 Q. Okay. And where in the trunk were those items?

23 A. Her trunk was kind of -- I didn't know -- kind of  
24 sometimes people's trunks, stuff kind of gets pushed to  
25 the back, and there is only room in the front. They'll

JOE PIECH - DIRECT BY MR. VOIGT

1 have a tire, and then maybe they'll throw bags or kids'  
2 items back there.

3 There was -- most of it was situated immediately  
4 in the trunk when you opened it up. It wasn't like a  
5 cubby, it was kind of like a cubby that made itself in  
6 front of wheel well and all this other stuff.

7 Q. Is there anything besides the large metal object  
8 in that bag?

9 A. There's a flashlight, a green flashlight.

10 MR. VOIGT: And I would mark that as State's  
11 41. At this time I would move to offer State's 40 and  
12 41.

13 MR. LEWIS: Same objection.

14 THE COURT: It's admitted over objection.

15 (State's Exhibit Nos. 40 and 41 were marked  
16 for identification and admitted into evidence.)

17 BY MR. VOIGT:

18 Q. What is State's 41 that I just -- I've labelled  
19 that for you?

20 A. This is a green flashlight.

21 Q. Is this the same flashlight that is in State's 23?

22 A. Yes.

23 Q. And State's 40, is this the same tool that is  
24 depicted in State's 23 as we previously entered into  
25 evidence?

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1 A. Yes.

2 Q. Now, that's part of a tire jack, isn't it?

3 A. Yeah, it could possibly be that.

4 Q. Now, I may have to peel through layers of pictures  
5 here. Could you tell, looking in that trunk, where the  
6 spare of that particular car was located?

7 A. I want to say that it was above the -- sometimes  
8 you have the tire underneath the compartment in the  
9 trunk. I want to say it was above. I can't be 100  
10 percent certain.

11 Q. Was there a compartment where the tire iron and  
12 the jack and all those things were? Do you remember  
13 there even being a jack in the car?

14 A. I don't remember seeing a jack, no.

15 Q. Was that -- and I'm referring now to State's 26,  
16 or the picture of State's 26. Was that loose in the  
17 trunk?

18 A. That was sitting next to all the other objects  
19 that were in the front when you opened it up.

20 Q. Next to the computers and all the other --

21 A. Yes. To the best of my memory, yes.

22 Q. All right. One moment, Your Honor.

23 MR. VOIGT: I will tender the witness, Your  
24 Honor.

25 CROSS-EXAMINATION

1 BY MR. LEWIS:

2 Q. To the best of your memory, right?

3 A. Yes.

4 Q. We are all human. We all make mistakes?

5 A. Yes.

6 Q. Forgot who put everything into evidence, right?

7 Hey, it happens.

8 A. It was a long night for me. That was the end of  
9 my shift, and, you know, I got held over, I think, about  
10 four hours, so it was one of those groggy nights of  
11 submitting reports and such.

12 Q. I understand. But, like I said, we all make  
13 mistakes. We get things wrong, right?

14 A. We can.

15 Q. I mean, you're not going to fight me on that. You  
16 just did, so let's own it together and move on. You made  
17 a mistake.

18 A. In what?

19 Q. You forgot who put it into evidence?

20 A. Well, yeah, I did forget, but I was reminded by my  
21 signature on the evidence label.

22 Q. Right. So I did --

23 A. I'm not trying to argue, I --

24 Q. No, that's fine. You said earlier when you  
25 stopped him you exchanged some words with Mr. McClenton,

JOE PIECH - CROSS BY MR. LEWIS

1 but he wouldn't give you a name, somebody's name, the  
2 person he was there to meet.

3 A. Correct.

4 Q. And as a police officer now seven years, you're  
5 kind of used to that, aren't you, people not giving up  
6 the names of other people?

7 A. I mean, most people, if they're visiting friends,  
8 don't have a problem saying who they are.

9 Q. That's not what I'm asking you. I'm asking you,  
10 as a police officer, in your experience, most of the time  
11 people don't want to get other people in trouble. They  
12 don't give up other people's names?

13 MR. VOIGT: Object to the form of the  
14 question. Calls for speculation.

15 MR. LEWIS: I'm asking, in his experience, if  
16 people have not given up other people's names? He can  
17 say I did or I didn't.

18 THE COURT: I heard the question. There was  
19 an objection. Did you want to --

20 MR. LEWIS: Yes. I'm not asking him to  
21 speculate. I'm asking him, in his life, when he asks for  
22 people to tell the names of people that they're around,  
23 that they'll often say, I'm not going to tell you. I  
24 don't know.

25 THE COURT: Overrule the objection.

JOE PIECH - CROSS BY MR. LEWIS

1 MR. LEWIS: Thank you.

2 THE COURT: You don't have to thank me, but  
3 you may answer the question.

4 THE WITNESS: Could you just please read --  
5 BY MR. LEWIS:

6 Q. Sure. The question is, in your time as a police  
7 officer, isn't it common for the people that you interact  
8 with to not want to name other people?

9 A. I mean, sometimes when that interaction with them  
10 means they might be getting in trouble, they won't, but  
11 often on traffic stops when we initiate contact, explain  
12 to them why we're doing such a stop and just after  
13 explaining that, they usually don't have a problem with  
14 telling us, Yeah, I was just at my buddy Joe's or Tom's.

15 Q. You must interact with completely different  
16 people?

17 A. I interact with the citizens of Charleston.

18 MR. VOIGT: Objection.

19 THE COURT: Is that a question or comment?

20 MR. LEWIS: No, I'm sorry, Judge. I'll move  
21 on.

22 BY MR. LEWIS:

23 Q. You said earlier that those were burglary tools.

24 A. Yes.

25 Q. The screwdriver.

1 A. Yes.

2 Q. You're making a conclusion, right, that that's  
3 what that is?

4 A. I did, yes.

5 Q. So it's got to be a burglary tool because it's a  
6 screwdriver.

7 A. Well, remembering that night, I remember that  
8 doors were pried open.

9 Q. Okay.

10 A. That's what made us seize those items.

11 Q. So you think this did that?

12 A. It can.

13 Q. Okay. Sure.

14 A. Windows, doors -- I wasn't on scene to see what  
15 had been pried open, even though sometimes stuff is being  
16 communicated to you over the radio, you can't always  
17 intimately listen because you're engaged on the scene  
18 with other things.

19 Q. You said a lot of times burglars will run.

20 A. Yes.

21 Q. Anybody run?

22 A. When I got there, I said to myself, I'm going to  
23 wait here for a very small window of time before thinking  
24 of something else to do. We've had -- I've worked in --  
25 in 2012, I had worked on team three for five years, where

JOE PIECH - CROSS BY MR. LEWIS

1 I was coming up on five years. When we've chased people  
2 ~~out of those particular condos in general, they come~~  
3 through that back wood line, they never come through the  
4 front, but I thought that since was a sedan mentioned  
5 that I should wait just a few minutes to see if somebody  
6 comes up.

7 Q. Okay. I appreciate all that. This is a very  
8 simple question. You can say yes or you can say no. Did  
9 he run in?

10 MR. VOIGT: Object to the characterization of  
11 his question.

12 THE COURT: The objection is sustained.

13 BY MR. LEWIS:

14 Q. Did they run?

15 A. Nobody ran that night.

16 Q. Okay. But you did say a lot of times burglars  
17 will run.

18 A. Well, they have before. I've chased them before,  
19 yeah.

20 Q. You also said something that you may be splitting  
21 hairs that I'm just confused about in law enforcement.  
22 Part of what you do is identify vehicles, right?

23 A. What do you mean by identify? Based on  
24 information we're given?

25 Q. Yeah.

JOE PIECH - CROSS BY MR. LEWIS

1 A. Yeah, sure.

2 Q. Okay. A two-door vehicle is called a coupe,  
3 right?

4 A. Yeah, sometimes. A lot of times we're given sedan  
5 information. It goes from phone to dispatcher to us  
6 because we need it.

7 Q. A four-door vehicle is called a sedan, right?

8 A. Yes.

9 Q. There are two different words for two different  
10 things, right?

11 A. Yeah.

12 Q. Okay. So a Cadillac not being a sedan isn't  
13 actually accurate; Cadillacs, they have two-door coupes  
14 and four-door sedans, right?

15 A. Yeah, to the best of my knowledge.

16 Q. I got you. Just making sure. And so at this  
17 point, when you're performing the traffic stop and you're  
18 taking these items and putting them into evidence, you  
19 don't know they came from, do you?

20 A. Well, I was there. I saw them. You mean like  
21 where they came from --

22 Q. The origin -- no, the origin of them.

23 A. No, no, I never went to the scene -- no.

24 Q. So you don't know who took them out of the  
25 apartment?

JEFFREY MILLER - DIRECT BY MR. FINCH

1 A. No.

2 Q. You don't know where they started. You just know  
3 when you saw them there they were in the trunk?

4 A. Yes.

5 MR. LEWIS: One moment, Judge.

6 No further questions, Judge.

7 MR. VOIGT: No redirect.

8 THE COURT: Thank you, sir. You may step  
9 down.

10 THE WITNESS: Thank you.

11 JEFFREY MILLER,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FINCH:

16 Q. Tell the Court where it is you're employed.

17 A. Charleston police department.

18 Q. What do you do for CPD?

19 A. I'm a crime scene technician.

20 Q. As part of crime scene technician, what are some  
21 of your duties and responsibilities?

22 A. We respond to calls like burglaries, car  
23 break-ins, armed robberies, and we take photographs with  
24 the physical evidence and document scenes.

25 Q. On February 25 to February 26, 2012, did have you

JEFFREY MILLER - DIRECT BY MR. FINCH

1 occasion to be called out as part of OCA 1203151 and OCA  
2 1203165?

3 A. Yes.

4 Q. What was your role in those cases?

5 A. They were two separate burglaries to apartments in  
6 an apartment complex.

7 Q. Was that at [REDACTED]?

8 A. Yes.

9 Q. And do you recall the apartment numbers for those  
10 separate --

11 A. I could check my reports.

12 Q. If you need to refresh your recollection, please  
13 do so.

14 A. The first apartment that I went to, which was on  
15 the 25th, was apartment [REDACTED], and then the second one,  
16 which was on the 26th, which is still during my shift,  
17 was [REDACTED].

18 Q. And let's talk now about apartment 14103. What  
19 did you do at that scene?

20 A. I responded to an in progress burglary that just  
21 occurred.

22 Q. When you got to apartment [REDACTED] -- let's back up.

23 When you go to any crime scene in general, a  
24 burglary crime scene, what are the steps you do to start  
25 your investigation?

JEFFREY MILLER - DIRECT BY MR. FINCH

1       A. The first thing is I want to talk to the officer  
2 that's there, and in this case, I talked to Sergeant  
3 Rivers, and then she filled me in on the particulars of  
4 the case.

5       Q. And would that be where they -- where other  
6 officers thought maybe was a point of entry or other  
7 items?

8       A. Yes. They had already been in the apartment to  
9 check to make sure there was nobody in there.

10      Q. And they cleared the apartment?

11      A. Yes.

12      Q. For officer safety?

13      A. Yes.

14      Q. Did they find anybody in there, to your knowledge?

15      A. No.

16      Q. And then once you get to a scene, do you start to  
17 document it in any way?

18      A. Yes. I'll start off with photographs. I like to  
19 get the case number because that's how I start my photos,  
20 and then I get pictures and start with latent processing  
21 and then go through the scene.

22      Q. So did you say latent processing?

23      A. Yes, processing for fingerprints.

24      Q. And how do you do that?

25      A. With black powder, black fingerprint powder.

JEFFREY MILLER - DIRECT BY MR. FINCH

1 Q. And let's talk about fingerprints for a bit.

2 How does that look-with the black powder when  
3 you're searching for fingerprints or evidence of  
4 fingerprints?

5 A. What we do is we have brushes, and we tint the  
6 brush and we dip it into the powder. It's a very fine  
7 powder, and what it does is it will attach itself to the  
8 moisture left behind from a fingerprint. You can also  
9 get water spots as well if you're doing cars or different  
10 surfaces.

11 Q. And in this case you processed the scene of  
12 apartment -- or condo [REDACTED]?

13 A. Yes.

14 Q. For fingerprints?

15 A. Yes.

16 Q. Did you get any fingerprints from that apartment?

17 A. No.

18 Q. No, none at all?

19 A. None.

20 Q. Why might that be the case?

21 A. Well, with fingerprints, you're looking for a  
22 latent, which means it's hidden, and by applying powder,  
23 it would raise it up, and if you see ridge detail, that  
24 would be my print. You then apply the tape to lift it,  
25 but there are numerous factors that can affect that.

JEFFREY MILLER - DIRECT BY MR. FINCH

1           Number one would be the person. Are they going to  
2 be somebody that leaves a print? The surface itself, is  
3 it a smooth surface, a rough surface? Is it clean? Does  
4 it have anything to prevent anything from sticking to it?

5       Q. And what areas did you process for fingerprints in  
6 this case?

7       A. On this apartment, I started -- there was a window  
8 screen for the living room that was off. I don't know if  
9 it had anything to do with this case or if it had just  
10 been laying there on the ground, so that was processed  
11 first, and then there was a car that was entered, process  
12 the car next.

13           I then started on my way into the apartment, which  
14 there was a bannister to the porch, so the bannister was  
15 done. Then the door, which had the pry marks. Then went  
16 inside to the bedroom, and there were dresser drawers  
17 that were open, a jewelry box, and then I looked for  
18 different things that may have been rummaged or touched.

19       Q. I'm going to show you what's already been entered  
20 into as State's 6, 7, 8, 9, 10, 11, 12, 13, 14, 15. Take  
21 a look at those photographs and tell me if you recognize  
22 them.

23       A. Yes. These are photos I took at the scene.

24       Q. I'm showing you now State's No. 7. Is that the  
25 screen you're talking about?

JEFFREY MILLER - DIRECT BY MR. FINCH

1 A. Yes. This is the screen to the living room.

2 Q. And State's 9, is that the car you're talking  
3 about?

4 A. Yes, that's the car.

5 Q. What's on the top of that car?

6 A. Where you see moisture?

7 Q. Is it like dew?

8 A. Yes.

9 Q. And State's 12, the dresser you're referring to?

10 A. Yes. This was in the bedroom.

11 Q. And then State's 11, is that the damage to the  
12 door?

13 A. Yes. These are the marks on the door, where you  
14 see the dead bolt lock there.

15 Q. All right. You said you got no latents -- no  
16 fingerprints that were found at any of those locations?

17 A. Correct.

18 Q. Does that mean no one has ever touched those  
19 items?

20 A. No.

21 Q. It just means that you couldn't get a latent?

22 A. Right.

23 Q. Did you do any further processing of the marks on  
24 this door?

25 A. Well, I took the photos that you see here. Here

JEFFREY MILLER - DIRECT BY MR. FINCH

1 is one picture, but I also took photos because you could  
2 see marks on it, and I put a scale in there, in case a  
3 tool was recovered, then it could go to a tool examiner  
4 for any kind of direct comparison.

5 Q. And let me show you what's been entered as State's  
6 14. Is that an example of the scale you used?

7 A. Yes.

8 Q. What is the total distance in that scale?

9 A. It's a two-inch scale from top to bottom.

10 Q. Is that a sticker you can put on?

11 A. Yes.

12 Q. And let me show you, this is State's 13. Is that  
13 the same doorjamb?

14 A. Yes.

15 Q. And when you're looking at that doorjamb, did you  
16 notice anything about the doorjamb that was interesting  
17 to you?

18 A. Well, the reason -- when I took this photo, and I  
19 put the scale in for it, is you can see marks.

20 Q. That's a touch screen. You can go ahead and touch  
21 that.

22 A. You can see marks along here and here, which have  
23 like a straight edge. In my report I refer to possibly a  
24 large screwdriver or a crowbar which would make that  
25 straight mark.

JEFFREY MILLER - DIRECT BY MR. FINCH

1 Q. And let me show you a picture with a scale.

2 Looking at your scale and those marks, could you tell  
3 about how big those marks are?

4 A. Yeah. With the scale they look about a half inch.

5 Q. All right. And using that scale, could you tell  
6 the difference between where those marks are that you  
7 marked on there, roughly, to the edge of that doorjamb?

8 A. Well, the width of the scale was a full edge, so  
9 based upon looking at this, you're probably looking at  
10 about three inches, maybe a little more, with the wood  
11 pushed out.

12 Q. What can you tell them? Looking at State's 11, is  
13 there anything you can tell, looking at those marks of  
14 the shape of something that may have made that mark?

15 MR. LEWIS: Objection. Calls for  
16 speculation.

17 THE COURT: Objection is overruled.

18 BY MR. FINCH:

19 Q. You can answer that question.

20 A. You can see whatever pressure was applied with the  
21 tool that was used. It made like an indentation, almost  
22 like a curve.

23 Q. I'm sorry. Did you say curve?

24 A. Yeah.

25 Q. What kind of object would make that kind of

1 indentation?

2 A. Well, a curved tool, like I said in my report. A  
3 large screwdriver, which would be round, or a crowbar.

4 Q. I'm going to have you look at what has been  
5 entered into evidence as State's 40, and as you look at  
6 that item, let me get a photo of it as well, I'm  
7 referring to the exhibit of State's 26, which is a  
8 photograph of the State's 40, what is that?

9 A. Well, that's a crowbar or a tire iron. It just  
10 depends on your terminology.

11 Q. Something you might use to lift a jack up on a  
12 car?

13 A. Yeah, sort of take the wheel off.

14 Q. Change a flat tire?

15 A. Yes.

16 Q. Looking at the item in front of you, and if you  
17 need a ruler I can provide one, but what is the width of  
18 the tip of that?

19 A. It's a half inch.

20 Q. And about three inches from the tip of that, is  
21 there anything interesting or anything of note about that  
22 item in front of you, State's 40?

23 A. Well, you can see where the paint -- because it's  
24 black, some of the paint has been worn off.

25 Q. And how does paint generally wear off items?

JEFFREY MILLER - DIRECT BY MR. FINCH

1       A. It has to strike something or rub up against  
2 something. . . . .

3       Q. I want to now focus on apartment 11106. I'm going  
4 to show you a series of photographs, State's 1 through 5,  
5 see if you can recognize those items.

6       A. Yes.

7       Q. And what are those?

8       A. These are photos of the second apartment that I  
9 went to, which was on the 26th.

10      Q. Do you remember what time that was on the 26th?

11      A. That was 0540 in the morning.

12      Q. So 20 to 6:00 in the morning?

13      A. Right, 5:40 a.m.

14      Q. And this was a separate crime scene, correct?

15      A. Yes.

16      Q. Do you remember how you were directed to that  
17 crime scene?

18      A. I responded there and spoke to Officer Leahy.  
19 During their investigation of the apartment, they located  
20 items that belonged to the person that lived in this  
21 apartment, and then they went there and they found it had  
22 been broken into.

23      Q. And did they -- were you able to determine a point  
24 of entry?

25      A. Yeah. There was a window in the bedroom where,

JEFFREY MILLER - DIRECT BY MR. FINCH

1 according to the complainant, the window had been left  
2 open so the window screen was off and you could see the  
3 window was up.

4 Q. I'm going to show you what's been entered as  
5 State's 2. Take a look up on the screen or the screen in  
6 front of you. Is that the photo you took of the rear of  
7 that unit?

8 A. Yes.

9 Q. And State's 5, interior of the same window?

10 A. Yes.

11 Q. Did you process that scene?

12 A. Yes.

13 Q. For fingerprints?

14 A. Yes.

15 Q. What were the results?

16 A. I didn't find anything.

17 Q. Again, same thing, relatively the same conditions  
18 as the first, atmospheric weather conditions?

19 A. Yes, it was chilly. It was cold.

20 Q. That window had been opened by somebody?

21 A. Well, my information is the window had been left  
22 open.

23 Q. So it was opened by someone?

24 A. Right.

25 Q. Maybe the resident?

JEFFREY MILLER - DIRECT BY MR. FINCH

1 A. The screen was there, but the window had been left  
2 open by the resident. - - -

3 Q. Did you process the screen?

4 A. Yes. The screen was processed first.

5 Q. And do you see that item off the ground, that  
6 platform there, no fingerprints on the screen?

7 A. None.

8 Q. Correct, none on the window?

9 A. None.

10 Q. Not from the residence?

11 A. From nobody, right. The screen, the window  
12 outside, inside, and the door leading out of the  
13 apartment.

14 Q. Okay. And then you -- did you also take  
15 photographs at where a car was stopped on Daniel Ellis  
16 Drive?

17 A. Yes.

18 Q. And, again, these have already been entered into  
19 evidence. It's a sample of some of these, State's 23, a  
20 photo you took of items, State's 21?

21 A. Yes.

22 Q. Is that your hand in that photograph?

23 A. Yes.

24 Q. Is that also your hand?

25 A. Yes.

JEFFREY MILLER - DIRECT BY MR. FINCH

1 Q. What is that? What is that item in the  
2 photograph, do you know? -

3 A. A set of car keys.

4 Q. Is that --

5 A. A remote control, and then you can see the key.

6 Q. All right. When you got to these items, did you  
7 process any of the items that came out of that vehicle?

8 A. No.

9 Q. The crowbar was not processed for fingerprints?

10 A. No.

11 Q. DNA?

12 A. No.

13 Q. Why not?

14 A. Well, the officers were handling the car. I was  
15 there to document the items they had in the car by taking  
16 the photographs.

17 Q. Generally, would you fingerprint or swab for DNA  
18 items that were in someone's possession?

19 A. Not in their possession, no. There are rare  
20 circumstances, but being a burglary like this, no, we  
21 wouldn't.

22 Q. Why is that?

23 A. Well, you're looking for contact DNA, and normally  
24 when you want to take something somebody has in their  
25 possession and you're looking for their DNA, it's kind of

JEFFREY MILLER - DIRECT BY MR. FINCH

1 a waste.

2 Q. When you say it's a waste, from your experience,  
3 why would you say that?

4 A. Well, like with a tool, if somebody has a tool in  
5 their possession, I'm not going to swab that for contact  
6 DNA, but if a tool was left at a scene, that would be a  
7 surface to swab for contact DNA.

8 Q. What is the difference if it's in their possession  
9 or not?

10 A. You don't know who it belongs to when it's found  
11 at a scene, inside of a scene.

12 Q. And when it's found with the person?

13 A. Then you have possession.

14 Q. Let me ask you this: You've worked with this city  
15 now for 19 years?

16 A. I've been with the city for 28 years. I've been  
17 in crime scene for 19 years.

18 Q. In that time, you have swabbed for touch DNA in  
19 the past?

20 A. Yes.

21 Q. And in property crimes, what is your experience in  
22 the collection and processing analysis of touch DNA?

23 MR. LEWIS: Objection, Your Honor.

24 THE COURT: We're not talking about  
25 statistics of other cases. It's irrelevant. Rephrase

JEFFREY MILLER - CROSS BY MR. LEWIS

1 the question or restate the questions.

2 BY MR. FINCH: - - - - -

3 Q. You didn't swab for DNA in this case, touch DNA in  
4 this case, correct?

5 A. Correct.

6 Q. And based on your experience in swabbing for touch  
7 DNA, what would those results have been?

8 A. Well, depending on the type of surfaces that we  
9 were looking at -- we did do a program with Marshall  
10 University where we were doing contact DNA swabs of any  
11 kind of items that we suspected of being touched, it  
12 seems, and mostly to do property crimes, and we got very,  
13 very few positives.

14 Not knowing the statistics of knowing how many of  
15 everything was sent, most of the things that I know of  
16 that we did get good results -- it's like if somebody  
17 took a drink out of a can.

18 Q. Just saliva?

19 A. Yes.

20 MR. FINCH: Thank you. Please answer any  
21 questions Mr. Lewis has.

22 CROSS-EXAMINATION

23 BY MR. LEWIS:

24 Q. So the moral of the story is don't try, right? If  
25 it's tough to get evidence, don't even bother trying to

1 do that?

2 A. I don't understand your -- is that a question?

3 Q. Yes, because you didn't even try. Because it's  
4 tough, it would be hard to get DNA.

5 A. No.

6 Q. It is or it isn't?

7 A. Well, when you say try, it also depends on the  
8 type of crime as to how far you go. When you go into a  
9 scene and you look -- and everything that you see, you're  
10 taking everything into consideration, how things were  
11 touched, how they might have been touched.

12 If you don't see anything, then the chances of  
13 swabbing there, all I'm doing is just wasting time and  
14 effort and -- chances of finding anything.

15 Q. So you only take DNA samples if you can see them.  
16 DNA is visible, right?

17 A. Well, what I said before -- no, DNA is not visible  
18 unless you're collecting blood.

19 Q. Right. Exactly. So you have to take a sample to  
20 see if there is evidence there. You can't see it. You  
21 have to swab it and submit it for DNA testing, right?

22 A. Just depends on the circumstances, and in this  
23 case I didn't feel it was necessary.

24 Q. In any way, in anything?

25 A. Right.

JEFFREY MILLER - CROSS BY MR. LEWIS

1 Q. Two apartments, a bunch of different items,  
2 including something that they're trying to suggest, a  
3 crowbar, you said? Where is that? Let me grab that real  
4 quick. So what you're alleging here is this was used?

5 A. It could have been used.

6 Q. Anything that looks like it could have been used?

7 A. That's what I say, yes.

8 Q. These marks here, what caused those here?

9 A. Something rubbed against it to knock it off.

10 Q. This end?

11 A. Yes.

12 Q. So you're not suggesting this was stuck in the  
13 door and pried. You don't have any idea what caused any  
14 of the marks on here?

15 A. Correct.

16 Q. No clue?

17 A. Correct.

18 Q. So you don't know if it's used in any way?

19 A. Correct.

20 Q. You don't know if it's connected to this scene in  
21 any way?

22 A. Correct.

23 Q. And you call it a crowbar? It's got a socket on  
24 it?

25 A. I said a crowbar or a car tire iron.

JEFFREY MILLER - CROSS BY MR. LEWIS

1 Q. A call it a jackhammer.

2 A. Right. - - - - -

3 Q. Where would you keep a jackhammer?

4 A. Well, in my car it would be in the trunk.

5 Q. That's what I expected.

6 MR. FINCH: Objection, Your Honor.

7 THE COURT: What was the question?

8 MR. LEWIS: It wasn't a question. He's  
9 right.

10 BY MR. LEWIS:

11 Q. So you keep your jackhammer in the trunk of your  
12 car?

13 A. Yes.

14 Q. Okay. You talked a lot about latent processing as  
15 well, and you said, well, there could have been dew  
16 there. So it would have been hard to get prints?

17 A. Yeah. If anything is wet, you can't apply the  
18 fingerprint powder to it, so you're just making a mess.

19 Q. So in an entire house, not one fingerprint.

20 A. You don't do the entire house. You only do the  
21 areas that you suspect where things were disturbed or  
22 touched.

23 Q. So on every countertop where something was taken,  
24 no prints, nowhere?

25 A. Correct.

JEFFREY MILLER - CROSS BY MR. LEWIS

1 Q. Okay. No prints, no DNA, no forensic evidence at  
2 all, from anywhere. ---

3 A. Correct.

4 Q. But part of what you said right at the very  
5 beginning, how you investigate a case, is you talk to  
6 other officers so you know a little bit about what you're  
7 going to be doing, right?

8 A. Yes.

9 Q. You know if they tell you, Hey, we caught  
10 somebody. We got a guy. He's got all the stuff. It's  
11 not a tough case for you, is it?

12 A. Well, it would have been nice to find something in  
13 the apartment, but in this case I did not.

14 Q. No?

15 A. Now, what would have made it easier for me if he  
16 had actually been in the apartment when the officers  
17 arrived.

18 Q. I would agree. That would certainly make it  
19 pretty easy. But because we don't have that in every  
20 case, we have to rely on you, evidence collection,  
21 examinations by experts, and we have none of that here.

22 A. Right.

23 Q. Okay. And especially in regards to this, you  
24 mentioned a specific type of expert that's not you?

25 A. Correct.

JEFFREY MILLER - CROSS BY MR. LEWIS

1 Q. So you're guessing, like I would be, as to who  
2 make these marks? - - - - -

3 A. Right.

4 Q. All right. I can understand not wanting to take  
5 fingerprints from the outside that would show the dew on  
6 the top of the car, right?

7 A. Yes.

8 Q. But the inside of the car didn't have dew all over  
9 it, did it?

10 A. No.

11 Q. And then Mr. Finch showed us a whole bunch of  
12 pictures about stuff taken out of the trunk of the  
13 vehicle, and the idea is you said you don't want to do  
14 prints when something is in someone's possession, right,  
15 or you don't bother to.

16 A. Right. It just kind of defeats the purpose.

17 Q. Okay. So, for example, these wine bottles that  
18 have a really nice flat surface, right?

19 A. Right.

20 Q. Perfect for fingerprints?

21 A. Right.

22 Q. But you didn't test those to see who may have  
23 taken those and put them in the bag of stuff?

24 A. No.

25 Q. None of those items, and then what is that,

AMANDA MITCHELL - DIRECT BY MR. FINCH

1 candle, box, a charger? All those have flat surfaces?

2 A. Uh-huh. - - - - -

3 Q. But none of them were even attempted to be  
4 fingerprinted to see who took them and who put them in  
5 the back?

6 A. Right.

7 MR. LEWIS: No further questions.

8 THE COURT: Any redirect?

9 MR. FINCH: No, Your Honor.

10 THE COURT: Thank you, sir. Next witness,  
11 please.

12 MR. FINCH: State calls Amanda Mitchell.

13 AMANDA MITCHELL,

14 having been first duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FINCH:

18 Q. Good afternoon, Ms. Mitchell.

19 A. Hi.

20 Q. If you would tell the Court where it is you're  
21 employed.

22 A. Southern Wine and Spirits.

23 Q. And what do you do for Southern Wine and Spirits?

24 A. I am a sales rep for wine and beer.

25 Q. And how long have you lived in Charleston area?

AMANDA MITCHELL - DIRECT BY MR. FINCH

1 A. About three years.

2 Q. Where are you from originally?

3 A. Columbia, South Carolina.

4 Q. Back in 2012, where were you living?

5 A. On James Island, [REDACTED].

6 Q. And do you remember back on February 25, 2012 when  
7 that unit was broken into?

8 A. Yes.

9 Q. Tell us what you were doing that day, or that  
10 evening.

11 A. That evening, I went over to a friend's house. I  
12 got a ride over there because my car was still at my  
13 apartment, and I got a call around, I think, 9:30, that I  
14 didn't know what the call was about, a police officer  
15 just saying, You need to get back immediately.

16 Q. When you left the house, do you recall what time  
17 you left? How long had you been away from the house by  
18 the time you got a phone call?

19 A. Maybe two hours.

20 Q. And when you left, was it dark out?

21 A. I think so. I think it was just setting.

22 Q. You left, and what was the condition of your  
23 apartment when you left?

24 A. It was locked.

25 Q. And what about the inside? Was it fairly neat?

AMANDA MITCHELL - DIRECT BY MR. FINCH

1 A. Yeah. I try to keep it fairly clean.

2 Q. Do you keep some wine in the house?

3 A. I do. At night and over the weekends, if I have  
4 extra wines for customers, I don't like to keep them in  
5 my car, so I bring them inside.

6 Q. And what kind of car do you drive?

7 A. A Hyundai Sonata.

8 Q. What color is that?

9 A. White.

10 Q. And -- all right. So you left, went over to a  
11 friend's house, and you got a call from who?

12 A. The police.

13 Q. And what did they tell you?

14 A. They said that I just needed to get back  
15 immediately.

16 Q. And so what did you do?

17 A. I got back immediately, and there was officers all  
18 over the place, and they told me that my house got broken  
19 into.

20 Q. And did you go through the apartment, or the  
21 condo, to see what was missing?

22 A. Yes. Some things didn't catch immediately.

23 Q. What was missing from the house?

24 A. From my room, I noticed some of my shoes were  
25 gone. Wine, there was some white wines gone. My

AMANDA MITCHELL - DIRECT BY MR. FINCH

1 computers -- that's one of the first things I looked for.  
2 My personal computer and my work computer were gone. I  
3 had a digital camera that was gone, some jewelry that was  
4 gone, those things. Those were the definite things I saw  
5 right off the bat.

6 Q. I'm going to show you some pictures. This is  
7 State's Exhibit 23. Take a look at that. Can you  
8 identify any of those items?

9 A. Yes. Those are the wines, and in front of the  
10 wines, that's my computer charger, and then some  
11 coasters. Actually, a jewelry box that's -- that looks  
12 empty, and some boots, shoes, and a little wallet, or a  
13 purse.

14 Q. Is that that orangey rectangular thing?

15 A. Yes.

16 Q. And this is State's 25?

17 A. Yes. That's some jewelry and my camera.

18 Q. Okay. And then State's 24?

19 A. That's my watch.

20 Q. And how about State's 17?

21 A. That is my computer case. There were -- my work  
22 computer is in that case, and my personal computer is  
23 above that.

24 Q. Where did you buy your car from?

25 A. Car Max.

1 Q. Recognize that?

2 A. Yeah. Those are my spare keys that were in my  
3 dresser.

4 Q. The dresser in your bedroom?

5 A. In my living room.

6 Q. How about that dresser?

7 A. Yeah.

8 Q. Where is that?

9 A. That is in my bedroom. That's where I keep all my  
10 jewelry on top.

11 Q. Is that how you left it?

12 A. No.

13 Q. What's different about how you left it and how it  
14 appears in that photograph?

15 A. Well, usually I do leave my jewelry on top, but a  
16 little more organized, and then the drawers and the white  
17 jewelry box are usually closed and then the drawers are  
18 usually closed shut.

19 Q. When you got back to the house, you identified  
20 those items for police that had been taken?

21 A. Yes.

22 Q. And did you identify those on site?

23 A. Yes.

24 Q. And were those items returned to you?

25 A. Yes.

AMANDA MITCHELL - DIRECT BY MR. FINCH

1 Q. Everything taken from your apartment returned to  
2 you?

3 A. Not everything. I had a pair of earrings. My  
4 birthstone is aquamarine that my parents gave me a long  
5 time ago that were not there.

6 Q. I'm going to show you -- and this has been entered  
7 into evidence as State's 41. Recognize that item?

8 A. No.

9 Q. Doesn't belong to you?

10 A. No.

11 Q. If it had, would it have been returned to you?

12 A. Yes.

13 Q. Do you know Mr. McClenton?

14 A. I do not.

15 Q. Have you ever seen him before?

16 A. I don't think so.

17 Q. Did you give him permission to go in your house?

18 A. No.

19 Q. Allow him to go through your car?

20 A. No.

21 MR. FINCH: Thank you. Please answer any  
22 questions Mr. Lewis has.

23 MR. LEWIS: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. LEWIS:

1 Q. Nobody likes being burglarized. I'm sorry you had  
2 to go through that.

3 You said you got a call from the police?

4 A. Yes.

5 Q. And that was about 9:30.

6 A. I think so, yes.

7 Q. And you had been gone with your friends for about  
8 two hours, you said?

9 A. Probably a little less than, yes.

10 Q. But it wasn't dark yet when you left?

11 A. I think it just -- if was just now getting dark or  
12 just then getting dark.

13 Q. But it's not pitch black at 7:30.

14 A. No, I don't know, I --

15 Q. I mean -- I know it's really hard to think back  
16 that far, but, basically, what you said today was two  
17 hours.

18 A. Right.

19 Q. Okay. Recognize me?

20 A. No.

21 Q. Have I ever been in your house?

22 A. No.

23 Q. Do I have permission to be in your house?

24 A. No.

25 Q. What about any of them?

AMANDA MITCHELL - CROSS BY MR. LEWIS

1 A. No.

2 Q. Okay. So do you have any way of knowing that guy  
3 has ever been in your house? I mean, you don't have a  
4 camera set up, right?

5 A. No.

6 Q. So you just don't know who did this to you, right?

7 A. Right.

8 Q. Okay. I'm not trying to trick you. Probably --  
9 give me one second.

10 MR. LEWIS: Thank you, ma'am.

11 THE COURT: Any redirect?

12 Thank you. You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: All right. We'll take a little  
15 break now. When you return, Ms. Campbell, Ms.

16 Campbell -- is it Gamble? What is your name?

17 A PROSPECTIVE JUROR: Bramble.

18 THE COURT: Bramble. I was close. I'm  
19 appointing you to be foreperson of the jury, and if  
20 you'll take the foreperson's seat, it will be your  
21 responsibility to preside over the jury deliberations,  
22 serve as a spokesperson for the jury, and to complete the  
23 verdict form when the -- when and if the jury reaches a  
24 verdict at the end of this case.

25 We'll take a few minutes. Please do not

ROBERT FEETERS - DIRECT BY MR. FINCH

1 MR. FINCH: The State calls detective Rob  
2 Feeters.

3 ROBERT FEETERS,  
4 having been first duly sworn,  
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FINCH:

8 Q. Good afternoon, Detective Feeters.

9 A. Good afternoon.

10 Q. If you could tell the Court where it is you're  
11 employed.

12 A. Employed with the Charleston city police  
13 department.

14 Q. What do you discover for CPD?

15 A. I'm a detective assigned to central warrants.

16 Q. And as a detective with Charleston Police  
17 Department, what are some of your duties and  
18 responsibilities?

19 A. Once every other month detectives are assigned  
20 different shifts, and the night in question, I was  
21 working night shift, and I was responsible for any  
22 call-out for any major crimes that needed to be  
23 investigated or witnesses that needed to be interviewed.

24 Q. You said the date in question, February 25th,  
25 2012.

1 A. Yes, sir.

2 Q. You said -- what shift were you on, night shift?

3 A. Yes, sir.

4 Q. And what are the hours of the night shift?

5 A. That night in particular it was 11:00 at night  
6 till 7:00 in the morning.

7 THE COURT: And, Officer, the mike, too, if  
8 you can push it over towards you.

9 BY MR. FINCH:

10 Q. And you got called out to 700 Daniel Ellis Drive  
11 on that evening?

12 A. Yes.

13 Q. What time did you get called out?

14 A. I heard initial tones go out for the call, so I  
15 automatically started heading that way to assist in any  
16 way.

17 Q. You say tones. Is that what we hear on the 911,  
18 those alternating beeping, loud kind of alarm sounds?

19 A. Correct. Whenever it's in progress, serious  
20 crime, the tone goes out to the officers' attention, and  
21 the call is immediately dispatched after that. That's  
22 only for in progress or serious calls.

23 Q. And what type did this call tone out?

24 A. Approximately 2225 hours, about 10:25 p.m.

25 Q. Dark at that time?

ROBERT FEETERS - DIRECT BY MR. FINCH

1 A. Yes, sir.

2 Q. And what did you do once you heard that tone out?

3 A. I responded to the area, I got there, obviously  
4 after the officers got there. Upon approach to the  
5 location, I saw the officers had pulled over a vehicle  
6 that matched the description given did dispatch.

7 I stopped there briefly to get some basic  
8 information on the occupants in the vehicle and what they  
9 had. After I spoke with the officers, the sergeant, I  
10 was briefed on what was going on, I briefly spoke with  
11 Mr. McClenton, just got his name and also the driver.

12 Upon hearing that, I went straight to the  
13 apartments where we meant with Mr. Warren Johnson first.

14 Q. And Mr. Johnson is a witness?

15 A. Yes, sir.

16 Q. Did you take a statement from Mr. Johnson?

17 A. Yes, took a recorded statement in which when I was  
18 done with the statement, it was entered into  
19 CPD evidence.

20 Q. And did you meet with other witnesses?

21 A. Yes, sir. After -- approximately 2245, I met with  
22 Mr. Johnson, and then at 1201 I met with Mr. Jeremy  
23 Jacobs.

24 Q. And that's midnight now on the 26th?

25 A. Correct.

ROBERT FEETERS - DIRECT BY MR. FINCH

1 Q. Okay. Did you also speak with Dawn Lee?

2 A. I briefly spoke with Dawn Lee at the initial  
3 traffic stop, just to get some preliminary information to  
4 look at who they had, see if it matched up with the  
5 information they were giving to me. So I didn't question  
6 them, I just got basic information with what they had so  
7 I could go.

8 Q. Regarding the defendant, Mr. McClenton, did you  
9 speak with him?

10 A. Briefly.

11 Q. Aside from at the car?

12 A. No, no. At the car I spoke with him briefly. If  
13 he wanted to speak to me, I said, We can talk later. And  
14 I said, Let me speak to my investigator, and I'll get  
15 back with you later.

16 Q. So during your investigation, do you know what  
17 time Sergeant Rivers called Ms. Mitchell?

18 A. It had to have been after --

19 MR. LEWIS: Objection, Your Honor. Calls for  
20 speculation.

21 THE COURT: Does he know what time who called  
22 who?

23 MR. FINCH: Sergeant Rivers, one of the  
24 officers at the scene, called the victim.

25 THE COURT: Called who?

ROBERT FEETERS - DIRECT BY MR. FINCH

1 MR. FINCH: The victim, Ms. Mitchell.

2 THE COURT: -He can answer yes or no.

3 THE WITNESS: I don't know the exact time,  
4 but it had to have been after --

5 MR. LEWIS: And it would also be hearsay,  
6 Judge.

7 THE COURT: If he knows, he knows.

8 THE WITNESS: It happened after the traffic  
9 stop when we were doing the investigation.

10 BY MR. FINCH:

11 Q. What time is the traffic stop?

12 A. Traffic stop is at shortly after 2225 hours, I  
13 would have to say 2245 hours when they were on the scene  
14 when they found the forced entry. They got information  
15 on the owner, and that's who he made the phone call to,  
16 to the owner of the apartment.

17 Q. Did you, in fact, speak with Mr. McClenton later  
18 on after you met with him on the side of the road there?

19 A. Yes. Once probable cause was to his arrest, he  
20 transported back to Charleston Police Department, which I  
21 interviewed him. We had an audio interview.

22 Q. And at that time was Mr. McClenton in custody?

23 A. Yes, sir.

24 Q. Let me show you what's been marked as State's  
25 Exhibit 42.

ROBERT FEETERS - DIRECT BY MR. FINCH

1       A. This is a Charleston County police department  
2     Miranda card. - - - - -

3       Q. Did you read Mr. McClenton his Miranda rights  
4     before speaking to him?

5       A. Correct. I did it verbatim, what was on the card.  
6     I asked him to follow along with me. On the back side,  
7     it says, Do you understand your rights?

8               I asked him to initial the rights.

9       MR. LEWIS: I'm just renewing my previous  
10    objection.

11           THE COURT: Yes, sir. It's noted.

12           THE WITNESS: Where you put the time and date  
13    it was recorded, he signed his signature there, and I  
14    initialed my signature. That was placed into evidence.

15    BY MR. FINCH:

16       Q. Commonly -- there's rights around the back as the  
17    ones we're all familiar with on television, et cetera?

18       A. Correct.

19       Q. Right to remain silent, et cetera?

20           MR. FINCH: At this time, the State would  
21    move for admission of State's 42.

22           MR. LEWIS: Same objection, Your Honor.

23           THE COURT: It's admitted over objection.

24           (State's Exhibit No. 42 was marked for  
25    identification and admitted into evidence.)

ROBERT FEETERS - DIRECT BY MR. FINCH

1 BY MR. FINCH:

2 Q. And you said you record the statement with the  
3 defendant.

4 A. Yes, sir.

5 Q. Digital audio recording?

6 A. Audio.

7 Q. Audio recording?

8 A. Yes.

9 Q. And have you had a chance to listen to that  
10 statement since you took it from the defendant?

11 A. Yes, sir.

12 Q. And you provided with a CD to listen to?

13 A. Yes, sir.

14 Q. And it's your understanding that is an edited  
15 version of that statement?

16 A. That's an edited version, correct.

17 Q. I'm going to have you look at what's been marked  
18 for ID as State's 34. Take a look at that disk and tell  
19 me if you recognize it.

20 A. Yes, sir. This is the statement that was  
21 provided. I initialed my initials underneath there.

22 Q. So that's the recording of the edited statement  
23 that that you listened to?

24 A. Correct.

25 MR. FINCH: State would move for the

ROBERT FEETERS - DIRECT BY MR. FINCH

1 admission of State's 34.

2 MR. LEWIS: Previous objection.

3 THE COURT: Admitted.

4 (State's Exhibit No. 34 was marked for  
5 identification and admitted into evidence.

6 MR. FINCH: Permission to publish, Your  
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. FINCH:

10 Q. Detective Fretters, when Mr. McClenton was giving  
11 you that statement, did he appear to understand what he  
12 was doing?

13 A. Yes, in my opinion.

14 Q. Did he appear to be under the influence of any  
15 drugs or alcohol?

16 A. I think he was excited. I didn't smell any type  
17 of alcohol about his person.

18 Q. He seemed to be fully aware what he was doing and  
19 saying?

20 A. Yes.

21 Q. You also interviewed Dawn Lee?

22 A. Yes.

23 Q. Did you ask her about whether or not she --

24 MR. LEWIS: Objection, Your Honor. Hearsay,  
25 asking about what Dawn Lee may have said.

ROBERT FEETERS - CRSS BY MR. LEWIS

1 MR. FINCH: The question was, have you asked  
2 ~~Dawn Lee~~ if he asked Dawn Lee about driving there. Is  
3 is that what he asked?

4 MR. LEWIS: Judge, the whole line of  
5 questioning -- to give a response to even talk about it  
6 is all hearsay. You can elicit from one person what  
7 another person said or their response to a person without  
8 them here to testify.

9 THE COURT: All right. Solicitor?

10 MR. FINCH: Co-conspirator's statement.

11 THE COURT: All right.

12 (Discussion held at sidebar.)

13 THE COURT: Objection sustained.

14 MR. FINCH: Thank you, Detective Feeters.

15 THE COURT: Yes, sir.

16 MR. LEWIS: Thank you.

17 CROSS-EXAMINATION

18 BY MR. LEWIS:

19 Q. Good afternoon, Detective.

20 A. Mr. Lewis.

21 Q. You said now you're in the central investigations  
22 portion, right?

23 A. Yes, sir.

24 Q. And y'all handle major crimes.

25 A. Yes, sir.

1 Q. Things that are big deals.

2 A. Yes.

3 Q. So tone cases. Unfortunately, you and I have  
4 heard a lot of them throughout the years the same thing  
5 that Mr. Finch talked about, the 911 calls, right?

6 A. Yes.

7 Q. That signifies it's a big deal. You need to get  
8 there quickly, and what you said, that means there are  
9 serious cases that are currently in progress.

10 A. Correct.

11 Q. Right? But a lot of that is based on what  
12 witnesses say, so you have to treat it as serious. You  
13 don't know yet what's actually taking place.

14 A. Correct.

15 Q. Right? So, I mean, if a call goes out, for  
16 example, for a kidnapping case, you're immediately --  
17 that tone is going to go off, and y'all are going to  
18 respond, right?

19 A. Correct.

20 Q. Could be somebody duct-taped one of their guys to  
21 a tree, but you're going to treat it as if it's the  
22 biggest deal in the world, right?

23 A. Right.

24 Q. You did respond to the scene. You were able to  
25 see two people in the -- well, two people and a very

1 young baby in the car?

2 A. Correct.

3 Q. Is Dawn Lee male or female?

4 A. Female.

5 Q. Is she black or white?

6 A. White female.

7 Q. We heard the interview, slightly edited version of  
8 the interview. At one point you tell Shawndell you're  
9 going to let him talk to Dawn, right?

10 A. Correct. That would have been after I interviewed  
11 her.

12 Q. I certainly understand. But then he doesn't give  
13 you an answer, and you say, I'm not going to let you talk  
14 to her. I'm too busy. I'm the only detective on  
15 tonight, right?

16 A. At the point -- what I thought he wanted, he  
17 wanted to talk to her now, and I said, No, I can't  
18 accommodate you with that, and I was going to let him --  
19 after I interviewed Dawn, all right, and if I could, you  
20 know, if everything was okay -- because I didn't want to  
21 end up passing information to her.

22 If it was okay, I would accommodate him because  
23 they are, you know, joined and they have a child  
24 together, so I don't have a problem with it.

25 Q. And we were able to hear all through that he keeps

ROBERT FEETERS - CROSS BY MR. LEWIS

1 asking about Dawn. Is she going to be charged? Is she  
2 going to be arrested? And she ultimately was.

3 A. Correct.

4 Q. You had her arrested. And he was worried about  
5 that, worried about her?

6 A. Yes. It appeared he was.

7 Q. He also explained that he had been dropped off by  
8 a friend, and you asked -- like all good detectives, you  
9 want to know, all right, Who did it? Who dropped you  
10 off?

11 And he wouldn't give you the name, right?

12 A. Right.

13 Q. And that's when -- all right. Fine. I'm done.  
14 And that's the last thing they heard, right?

15 A. Right.

16 Q. All right.

17 MR. LEWIS: One second, Judge.

18 No further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. FINCH:

22 Q. Let me back up. Were you able to corroborate  
23 anything Mr. McClenton told you?

24 A. Nothing, nothing at all. Based on the whole  
25 interview, there is nothing that could be corroborated by

ROBERT FEETERS - CROSS BY MR. LEWIS

1 what I saw and what I heard.

2 Q. All right. What Mr. McClenton told you about a  
3 friend that had dropped him off, were you ever able to  
4 ascertain from your investigation who dropped him off?

5 A. From the --

6 MR. LEWIS: Objection, Your Honor.

7 THE COURT: Objection is overruled.

8 THE WITNESS: From Dawn Lee interview --

9 MR. LEWIS: Objection, Your Honor.

10 THE COURT: Objection is overruled.

11 THE WITNESS: Post-Miranda statement, she  
12 explained that she did, in fact, drive him to go see a  
13 friend at the apartments and that she did park the  
14 vehicle.

15 She stated that he got out of the vehicle to  
16 go find a friend. He came back a short time later which  
17 he instructed her to pop the trunk.

18 BY MR. FINCH:

19 Q. All right. So that's -- you're saying that during  
20 your investigation Dawn Lee drove him there?

21 A. Based on my findings, yes.

22 Q. And she was the driver on the way out?

23 A. Correct.

24 THE COURT: And, ladies and gentlemen, beyond  
25 the testimony that he was able to ascertain the driver of

CAITLYN HORTON - DIRECT BY MR. FINCH

1 the vehicle, you are to disregard the remaining portion  
2 of the witness's answer as not being responsive to the  
3 solicitor's question.

4 MR. FINCH: Thank you, Your Honor. I have  
5 nothing further.

6 MR. LEWIS: Your Honor, may we approach,  
7 briefly?

8 THE COURT: Yes.

9 (Discussion held at sidebar.)

10 THE COURT: Redirect, Mr. Lewis?

11 MR. LEWIS: I anticipate nothing, Judge. One  
12 second.

13 Thank you, Detective.

14 THE COURT: Thank you. Next witness, please.

15 MR. FINCH: State calls Caitlyn Horton.

16 CAITLYN HORTON,

17 having been first duly sworn,  
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FINCH:

21 Q. Good afternoon, Ms. Horton.

22 A. Hi.

23 Q. If you would, tell the jury and the Court what you  
24 do in town.

25 A. I'm a nursing student at MUSC.

CAITLYN HORTON - DIRECT BY MR. FINCH

1 Q. And you're right in the middle of exams, aren't  
2 you?

3 A. I am.

4 Q. We appreciate you being here. How long have you  
5 lived in the Charleston area?

6 A. It will be three years in June.

7 Q. And back in 2012, February 2012, where did you  
8 live?

9 A. James Island.

10 Q. [REDACTED]?

11 A. Yes.

12 Q. [REDACTED]?

13 A. Uh-huh.

14 Q. Was that Apartment [REDACTED]?

15 A. I think so, yeah.

16 Q. I'm going to show you some pictures which have  
17 been entered into evidence. These are State's Exhibits 1  
18 through 5. Could you just leaf through those and see if  
19 you recognize that residence.

20 A. Yes, this is my apartment, my old apartment.

21 Q. Okay. And on the evening of February 25th, 2012,  
22 do you remember the last time you were at that residence  
23 that evening?

24 A. It was around 6:30 or 7 p.m.

25 Q. And then you left out for the night?

CAITLYN HORTON - DIRECT BY MR. FINCH

1 A. Uh-huh.

2 Q. Did you later find out that your house had been  
3 burglarized?

4 A. Yeah, uh-huh.

5 Q. How did you find out?

6 A. The police department called me around 3:00 in the  
7 morning.

8 Q. And then did you have to go back --

9 A. Yeah, and -- I was at my ex-boyfriend's house and  
10 I drove back.

11 Q. And did you leave the window open?

12 A. I did, the bedroom window.

13 Q. And is that -- let me show you what's been entered  
14 in as State's 5. And that's the bedroom window?

15 A. Uh-huh, yes, sir.

16 Q. What was missing from your house?

17 A. My wallet.

18 Q. And --

19 A. And my social security card that was inside.

20 Q. And was that returned to you?

21 A. It was.

22 Q. Police tell you how they got it?

23 A. Uh-huh.

24 Q. Okay. What did they tell you?

25 A. They found it in the intruder's car.

CAITLYN HORTON - RECROSS BY MR. LEWIS

1 Q. And do you know Shawndell McClenton?

2 A. I don't.

3 Q. Have you ever heard that name before?

4 A. Yes. He is the person who broke into my  
5 apartment.

6 Q. Do you recognize this man sitting over here at  
7 this table in the white shirt?

8 A. I've never seen him before.

9 Q. Didn't give him permission to be in your house?

10 A. No, sir.

11 Q. Didn't give him permission to take your purse?

12 A. No, sir.

13 Q. Social security card?

14 A. No, sir.

15 Q. Please answer any questions Mr. Lewis has for you.

16 A. Okay.

17 RECROSS-EXAMINATION

18 BY MR. LEWIS:

19 Q. How are you doing? We'll keep this pretty short  
20 and painless.

21 You said the police told you he's the guy that  
22 broke into your house.

23 A. Yes.

24 Q. But you don't know if he's the guy that broke into  
25 your house or not, right, because you were away from your

1 house?

2 A. Uh-huh.

3 Q. So you're not an eyewitness. Right?

4 A. No.

5 Q. Not an ear witness? You didn't hear anything,  
6 didn't see anything; no video cameras; no nothing?

7 A. Uh-huh.

8 Q. So, like many of us, you're just believing what  
9 people tell you, right?

10 A. Yeah.

11 Q. Okay. I'm not trying to be mean, but you don't  
12 know if that man has ever been in your house or not?

13 A. Correct.

14 Q. Or her or me or the judge or anybody, right?

15 A. I mean, all I know is that the wallet was found in  
16 his possession.

17 Q. Right. But if I give you my pen --

18 A. Uh-huh.

19 Q. -- I'm handing it to you. If I gave that to you,  
20 it came from me, correct?

21 A. Uh-huh.

22 Q. It doesn't mean that if that's illegal and I gave  
23 it to you that you stole it, right?

24 A. Uh-huh.

25 Q. Just wanting to clarify that, that if I give

CAITLYN HORTON - RECROSS BY MR. LEWIS

1 something to you, I steal something and I give it to you,  
2 ~~you're not the burglar of that, right?~~

3 A. Sure. I don't know.

4 MR. FINCH: Objection, Your Honor. Calls for  
5 legal conclusion.

6 THE COURT: All right. What about that?

7 MR. LEWIS: I'll rephrase me question.

8 BY MR. LEWIS:

9 Q. I'll keep it very simple.

10 This is a house. There is something in the house.

11 A. Uh-huh.

12 Q. I'm a burglar. I take it and I give it to you.

13 A. Uh-huh.

14 Q. Did you break into that house?

15 A. No.

16 MR. LEWIS: Thank you, ma'am. Very fast.  
17 You can get back to studying.

18 THE COURT: Any redirect?

19 MR. FINCH: No, Your Honor.

20 MR. LEWIS: Oh, I'm sorry. One last  
21 question. Almost let something go.

22 Q. What time did you leave your house that day?

23 A. 6:30 or 7:00 at night.

24 Q. And when you say at night, was it completely dark  
25 outside when you left?

1 A. I have a hard time. I'm not sure.

2 Q. Okay. But in the evening?

3 A. Uh-huh. All right.

4 MR. LEWIS: Thank you.

5 THE COURT: Anything further?

6 MR. FINCH: No, Your Honor.

7 THE COURT: All right. You can step down and  
8 you're excused.

9 Anything further from the State?

10 MR. FINCH: The State rests.

11 THE COURT: All right. You've heard the  
12 State's case. We'll take a few-minute break and have you  
13 come back after giving the jurors an opportunity to make  
14 phone calls to see if they can clear up any scheduling  
15 issues.

16 (In open court, jury not present.)

17 THE COURT: Yes, sir. Any motions or matters  
18 of law?

19 MR. LEWIS: Yes, sir.

20 At this time the defense moves for a directed  
21 verdict, specifically in regards to the aggravator of  
22 nighttime hours. We've heard testimony that is kind of  
23 speculative as to when the crime occurred. We have heard  
24 testimony, though, that puts him outside in the evening  
25 hours when the tone went out would have been around 10 --

1 10:25.

2 There has been no evidence that can put  
3 Mr. McClenton, first off, inside. I understand the  
4 circumstantial nature of the case, but, more importantly,  
5 at the time, under the hours of darkness, the only  
6 aggravator that exists here on this case, and for those  
7 reasons, I would move those charges at least be amended  
8 at this point or would have to be amended for directed  
9 verdict purposes to a burglary second because there is no  
10 other aggravator that's been provided to support the  
11 Court.

12 THE COURT: What about the eyewitnesses?

13 MR. LEWIS: The eyewitnesses put him outside,  
14 Judge.

15 THE COURT: Hauling away merchandise.

16 MR. LEWIS: Yes, Your Honor.

17 THE COURT: Is that part of the crime or --

18 MR. LEWIS: The entering must occur at night,  
19 Judge. There is no evidence that the entering occurs at  
20 night.

21 THE COURT: Is the carrying away of  
22 merchandise part of the crime? These goods could have --  
23 whatever time they said at night.

24 MR. LEWIS: I would not believe so, Judge,  
25 because in that case, any burglar, as he continues to

1 take his stuff to the pawn shop the next day, is going to  
2 possibly be in the hours at night. At some point, yes,  
3 it's going to become night again. They have to prove  
4 that when he entered it was nighttime hours, at that  
5 point, when they had to prove both that, that he entered  
6 and that when he did it, it was dark, it was nighttime,  
7 to prove up that aggravator.

8 THE COURT: And one witness who said it was  
9 getting dark?

10 MR. LEWIS: One witness said it was getting  
11 dark, we have two different times that have been  
12 provided. This witness said 6:30 or 7:30, the other  
13 witness said 7:30, but possibly later because of the  
14 two-hour window as to when she received the phone call.

15 THE COURT: They didn't have to leave home at  
16 the same time. They live at different places.

17 MR. LEWIS: Absolutely, which even furthers  
18 my argument that there is not evidence that puts these  
19 crimes occurring under the hours of darkness, the  
20 elements that are required to make this a burglary first.

21 THE COURT: What do you say to that,  
22 Mr. Solicitor?

23 MR. FINCH: Thank you, Your Honor.

24 There's an eyewitness in this case,  
25 Mr. Warren Johnson, who says -- who places the defendant

1 at the apartments at dark, in the breezeway away from one  
2 of the subject apartments. Then, right in the area of  
3 the subject Apartment [REDACTED], he hears rustling in the  
4 area of what he believed is either the door to off the  
5 patio or the door in the breezeway, is the only two doors  
6 in the residence.

7 He hears clanging of glass items being  
8 removed. He hears rustling and confused movements  
9 separate and apart from the removal of the items, which  
10 is the clanging that's been characterized as like taking  
11 the recycling out.

12 Additionally, Mr. Jeremy Jacobs has the  
13 individual, Mr. McClenton in the exact same area at the  
14 exact same time. Ms. Horton -- I'm sorry, Ms. Mitchell  
15 said when she left, she was gone no longer than two  
16 hours, that her house was in fair order. It was not in  
17 any disarray or had been broken into at that point, and  
18 all her items remained within.

19 Now, backtracking that, no more than two  
20 hours still puts us in the hour of nighttime, as this  
21 call was toned out at 10:25. She was called and returned  
22 no later than two hours, that it would have been  
23 impossible for them to call her to return to the burglary  
24 prior to the call being toned out.

25 Detective Fretters said it had to have been

1 after the tone was called out. They would not have  
2 called and said, We found your merchandise, your items,  
3 in another vehicle -- in a vehicle that has been seen  
4 leaving the area prior to that call going out.

5 It would have been physically impossible, and  
6 for that reason, there is substantial circumstantial  
7 evidence that the defendant committed these crimes in the  
8 nighttime hours. The proximity of both apartments -- the  
9 testimony of Mr. Johnson that the car moved from area of  
10 building 11, building 14, in that area the two subject  
11 residences all happening at about the same time, two  
12 residences with one vehicle, all happening at the same  
13 time, all reported as dark. The only way they saw this  
14 individual is through the illumination in the breezeway  
15 and the dome light in the car.

16 THE COURT: Was hauling away the goods part  
17 of the burglary?

18 MR. LEWIS: No, Judge.

19 THE COURT: I'm not talking to you.

20 MR. FINCH: It is the larceny portion of --  
21 that the State would be alleging is a crime to commit  
22 therein.

23 THE COURT: Taking and carrying away --

24 MR. FINCH: Taking and carrying away the  
25 goods.

1 THE COURT: Carrying away is part of the  
2 burglary, part of the larceny associated with the  
3 burglary?

4 MR. FINCH: Correct.

5 THE COURT: So part of the crime itself.

6 MR. FINCH: Correct, Your Honor.

7 THE COURT: Which clearly occurred in the  
8 nighttime.

9 MR. FINCH: Clearly, but seemingly without  
10 any debate that it occurred at nighttime, somewhere  
11 around 10:20 to 10:25.

12 MR. LEWIS: The statute says entering or  
13 remaining occurs during the nighttime hours. That's the  
14 aggravating.

15 I understand. We would love to plead to a  
16 larceny, but the aggravator that is necessary to continue  
17 prosecuting this as a burglary first degree requires the  
18 entering or remaining, not the flight therefrom, not the  
19 transfer of goods, must occur during the nighttime hours.

20 THE COURT: I'm beyond whether or not you get  
21 a directed verdict. You absolutely do not get a directed  
22 verdict.

23 I am at the point of evaluating whether or  
24 not the second degree should be submitted as a lesser  
25 included, whether there is any evidence from which the

1 jury could conclude the burglary occurred during the  
2 daytime versus the nighttime. So, I mean, you're arguing  
3 based on directed verdict.

4 MR. LEWIS: I understand.

5 THE COURT: So I deny the motion for  
6 convicted verdict.

7 MR. LEWIS: Yes, Your Honor.

8 THE COURT: Based on eyewitness testimony  
9 placing the testify there committing the burglary.

10 MR. LEWIS: Yes, Your Honor. I understand.

11 Procedurally, I think I'm supposed to renew  
12 all previous objections, and I think I can actually say  
13 that by saying, Judge, I renew all previously  
14 made objections that the Court overruled.

15 THE COURT: All right. Deny the them now as  
16 I did them, if I denied them then, or overruled them  
17 again.

18 Mr. McClenton, we've reached that stage where  
19 you have the right to present your defense, and, once  
20 again, I reiterate that you have the constitutional right  
21 to remain silent or the right to testify. It's your  
22 decision as to whether or not you would testify or not  
23 testify.

24 Have you made a choice.

25 THE DEFENDANT: Yes, sir, not to testify.

1 THE COURT: You're not going to testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Very good. Thank  
4 you.

5 Do you have any other witnesses that you  
6 intend to call?

7 MR. LEWIS: No, Your Honor. We would simply  
8 ask to rest in the presence of the jury.

9 THE COURT: What do you want?

10 MR. LEWIS: Mere presence and receiving  
11 stolen goods.

12 THE COURT: You're requesting mere presence  
13 and requesting receiving stolen goods?

14 MR. LEWIS: Yes, sir.

15 THE COURT: What says the State?

16 MR. FINCH: Candidly, I don't think there is  
17 any grounds for mere presence charge, and Mr. Jacobs  
18 identified Mr. McClenton as the individual he saw going  
19 into the vehicle; one, Mr. Johnson, was confident that  
20 the same person that was in the breezeway and behind the  
21 hedges and carrying out the items was the same person who  
22 got in the car.

23 There doesn't seem to be indication that  
24 Mr. McClenton somehow got in the car prior to it  
25 leaving -- or after it leaving Mr. Johnson's site and

1 then the car being seen again. In fact, Mr. McClendon's  
2 own words say there is no one else in the car, so the  
3 idea that there's merely present at the scene while  
4 somebody else was committing these crimes just doesn't  
5 seem to hold water and logic, and we ask that not be a  
6 charge to the jury.

7 MR. LEWIS: Subsequent, while the person that  
8 we have alleged, the friend he just refused to name is  
9 the person that committed burglary, he's caught with the  
10 stolen goods.

11 THE COURT: I don't follow you. I haven't  
12 heard any testimony about any friend.

13 MR. LEWIS: You didn't -- well, Judge, it was  
14 elicited by Mr. Voigt when he had Officer Piech testify  
15 as to what Mr. McClendon had said at the scene.

16 He said, I'm here to meet a friend. Later,  
17 they elicited Dawn Lee's testimony of the same thing, but  
18 she suppressed that, but Officer Piech also said the  
19 same, saying that Shawndell told him, came into evidence,  
20 that he was just there to meet a friend.

21 THE COURT: Well -- go ahead.

22 MR. LEWIS: In regards to receiving stolen  
23 goods, they were not given willingly but they were in his  
24 possession. In regards to that, that's the reason I  
25 would ask for that lesser charge.

1           If the jury ends up believing he is guilty of  
2 ~~something but not the burglary itself, it gives them that~~  
3 fall back.

4           THE COURT: If he's there to visit someone,  
5 the person he's there to visit would be a burglar?

6           MR. LEWIS: Yes, Your Honor.

7           THE COURT: All right. I think that  
8 stretches credulity. There is no basis for me to charge  
9 either mere presence or receiving stolen goods, and I  
10 deny those requests.

11          MR. LEWIS: Thank you, Judge. I would just  
12 ask my objection be noted for the record, or my request.

13          THE COURT: How about this issue of burglary  
14 second. It's not a request, or is it?

15          MR. LEWIS: Absolutely. I would absolutely  
16 also request a charge on burglary second. The issue  
17 about the timing of when the entering and remaining  
18 occurred is the question that needs to be left to the  
19 jury.

20          It's not so specific that it had to have  
21 occurred at night; thus, I think we're entitled to a  
22 burglary second charge as well, if we put on the verdict  
23 form it could give the jury the ability to choose that as  
24 well, if they believe no aggravating.

25          MR. FINCH: It's the State's position that

1 there is no evidence that putting Mr. McClenton in the  
2 that apartment complex during the daytime hours, whether  
3 or not he is dropped off -- even if you believe he is  
4 dropped off by a friend or that Ms. Dawn Lee put him  
5 there, no one -- there has been no testimony, no evidence  
6 that anybody saw that car during the daylight hours.

7 There has been no evidence whatsoever that  
8 Mr. McClendon or anybody fitting his general description  
9 was in that area during the daylight hours. The only  
10 evidence we have is that Mr. McClenton was seen in and  
11 around the subject premises in the nighttime hours, in  
12 the dark, right around 10:00 to 10:20 in the evening.

13 THE COURT: Yes, sir?

14 MR. LEWIS: Judge, I stand on my previous  
15 comments that it's the State's burden to prove  
16 specifically the entering or remaining during the  
17 nighttime hours. They cannot do that. There is no  
18 witness that says, I saw that take place.

19 No admission that says that I did that at  
20 night. It's all speculative as to when the actual  
21 entering occurred. So I know we're close here, but the  
22 issue, I think, is they can't prove it beyond a  
23 reasonable doubt that that entering occurred during the  
24 nighttime hours, and I think that's why the jury should  
25 have the ability to choose the lesser if they believe he

1 committed the burglary and don't believe it occurred  
2 during the nighttime hours.

3 MR. FINCH: Also, statutorily, immediate  
4 flight from the residence happened in the nighttime  
5 hours. In the statute to burglary first includes  
6 immediate flight, immediate flight from that area and  
7 that time and from that residence was in the nighttime  
8 hours, and it's testified by Mr. Jacobs and Mr. Johnson.

9 THE COURT: Back to my previous question, is  
10 hauling away the goods part of the burglary, and  
11 Mr. Lewis interrupted the conversation and said  
12 entering -- what did you say?

13 MR. LEWIS: Entering and remaining.

14 THE COURT: Entering and remaining. You have  
15 to be in the place, according to him. When, in effecting  
16 entry or while in the building or in immediate flight  
17 therefrom, per the statute. So let's read that statute  
18 and see what it says.

19 MR. LEWIS: Don't mean to spike the football  
20 here, Judge, but the burglary statute, the reason it  
21 differentiates burglary second from burglary third is the  
22 addition of an aggravator. You always have to have a  
23 dwelling, but the aggravator that they're relying on here  
24 modifies the immediate flight to say, under subsection 3,  
25 (d)3, the entering or remaining occurs in the nighttime,

1 requiring that modification. That is the aggravator, the  
2 entering and remaining in the nighttime.

3 THE COURT: I'm not sure I'm following  
4 exactly what you're saying. Say it one more time.

5 MR. LEWIS: Yes, Your Honor. Burglary first.  
6 A person is guilty of burglary in the first degree if the  
7 person enters a dwelling without consent with the intent  
8 to commit a crime in the dwelling and either when  
9 affecting entry or while in the dwelling or an immediate  
10 flight therefrom, he or another participant of the crime,  
11 and then there are the aggravators.

12 The problem is the entering or remaining  
13 occurs in the nighttime. The subsection (d) allows for  
14 an or. The or at the end of the (d) gives the two prior  
15 burglaries aggravator and the nighttime aggravator, so  
16 the first subsection does not include flight. That  
17 includes the I just robbed you during the daytime, took  
18 your gun, and as I'm running away from you, I still got  
19 your gun, or causes physical injury to another person.

20 So from the aggravator point of view, so the  
21 only way is if they're able to show that the entering or  
22 remaining occurred at nighttime, not the flight. It  
23 would be our interpretation, Judge, that the flight  
24 applies the lowercase a, b, c, and then d.

25 MR. FINCH: Still no evidence he was there

1 earlier in the day. Eyewitnesses put him there. They  
2 ~~hear the sounds of entry, and they hear the sounds~~  
3 separate and apart from the hauling away of goods. Entry  
4 was made two different places. Eyewitnesses have that  
5 defendant heading in the direction of two places in the  
6 nighttime. Ms. Horton -- I mean, Ms. Mitchell identifies  
7 that when she left, at the time it would have been dark,  
8 her house was undisturbed.

9 MR. LEWIS: I think she said it was getting  
10 dark, Judge. It's one of those kind of pregnant things.  
11 We're not quite too pregnant here. It's not nighttime  
12 yet when she left.

13 MR. FINCH: Additionally, Mr. Johnson  
14 indicates that he saw Mr. McClenton -- he saw the suspect  
15 going from one breezeway into the next and about five  
16 minutes later leaving with goods, didn't see him with a  
17 bag beforehand, didn't see him -- didn't see him carrying  
18 anything prior to that that he could note. The State's  
19 position is the evidence still points to the entry and  
20 the departure all happening within that five-minute span,  
21 all in the nighttime hours, all in the dark.

22 THE COURT: Well, based on your two  
23 arguments, you should have no problem whatsoever in  
24 convincing the jury as to which one of them which one is  
25 right, so I'm going to give the jury the option on second

1 degree and see who convinces the jury of that, because  
2 it's a -- I think Mr. Lewis can spike the football. As  
3 far as the way that statute is written, the immediate  
4 flight relates to the person being armed, causing  
5 physical injury or threatening with a dangerous  
6 instrument or displaying the knife or just whatever, and  
7 the entering into a nighttime is a totally deceptive  
8 qualifier, and there is such a small sliver of  
9 possibility, but maybe there is a two percent chance that  
10 the jurors would conclude that the State has not proven  
11 the burglary occurred. Maybe a 1 percent chance, but  
12 that 1 percent is enough to submit it to the jury and let  
13 the jury answer the question.

14 And since the burden is on the State and it  
15 carries 15 years to life, so let's see what the jury says  
16 about it. I will include that as a lesser offense and  
17 see what they say.

18 MR. LEWIS: Thank you, Your Honor.

19 MR. FINCH: Thank you, Your Honor.

20 THE COURT: Now, whether the jury can decide  
21 burglary first degree, burglary second degree, and not  
22 guilty, any objection to them writing whatever that  
23 decision is on the back of the verdict form, on the back  
24 of the indictment?

25 MR. FINCH: Would they be writing just guilty

1 The defense has rested. It means you've heard all the  
2 evidence in this case. It's now time to hear the  
3 arguments in this case, first by the State and then the  
4 defendant.

5 MR. LEWIS: Just briefly, at the close of my  
6 case, I renew my previous argument.

7 THE COURT: Noted.

8 MR. LEWIS: Thank you, Judge.

9 MR. FINCH: Good afternoon. Yesterday you  
10 joined us here in the courtroom as judges of the facts in  
11 this case, and the State's job is to present the facts  
12 and to try to convince you beyond a reasonable doubt that  
13 the defendant is guilty of the crimes he's charged with.

14 In this case, he's charged with two counts of  
15 burglary first degree, one count of breaking and entering  
16 a motor vehicle. The law on that is fairly succinct;  
17 however, the judge is going to reinstruct you or charge  
18 you on the law so if anything differs from what I tell  
19 you about the law, please refer to the judge.

20 My job is to advocate on behalf of the State  
21 but also to instruct you at first glance here about what  
22 the law is in this case because you're going to have to  
23 apply these facts that you're determining in deciding and  
24 apply them to the law as the Court states it to you.  
25 Again, the judge is the judge of the law, and you're the

1 judge of the facts.

2 ----- Burglary first, the elements are entering a  
3 dwelling with the intent to commit a crime therein. In  
4 this case, that occurs in the nighttime hours. Nighttime  
5 hours are generally between dusk and dawn, nighttime,  
6 when it's dark enough that it would be hard to make out  
7 one's face if it wasn't illuminated by natural light or  
8 moonlight or artificial light.

9 Breaking and entering into a motor vehicle  
10 doesn't have a nighttime component, just entering or  
11 breaking into a vehicle with the intent to commit a crime  
12 therein.

13 In this case, you've heard a lot of the  
14 facts. You've heard testimony from eyewitnesses; you've  
15 heard testimony from victims; you've heard testimony from  
16 the police; you've heard lots of testimony. I cranked it  
17 all in, most of it in one day, and that doesn't mean  
18 we're rushing through it or it's not important. All that  
19 testimony and the evidence and the exhibits you have are  
20 all you have to establish the facts of what happened  
21 February 25th, 2012 on 700 Daniel Ellis Drive in James  
22 Island.

23 And I think, after you weigh all that  
24 evidence, you will be firmly convinced about the guilt of  
25 the defendant, but let's review the evidence and

1 testimony you've heard, because although it was all in a  
2 short amount of time, it's a lot of information to go  
3 through. So I'm going to review starting with yesterday,  
4 the testimony from Jeremy Jenkins.

5 Jeremy Jenkins came up here from Georgia, and  
6 at the time of this incident, he was living in [REDACTED]  
7 [REDACTED], living right above one of residents -- or  
8 the residences that was broken into, right above, and he  
9 told you when he got home he was went upstairs and took  
10 his dog out, pretty benign activity, pretty normal, and  
11 he walked past somebody in a car, rummaging through it.  
12 Kind of looked like they owned that car, but they were  
13 definitely digging through it, digging through the side  
14 compartments, et cetera, and they walked around.

15 Dome light was on. He could see that  
16 individual. He could see it was well lit by the  
17 breezeway there. He could see that. He could see what  
18 he was wearing. He could see what he was doing. He went  
19 back upstairs. He saw the blue lights, saw the police  
20 went to look out the window, and sees the police looking  
21 at this car.

22 He saw somebody near the car. He said to the  
23 police, Hey, if you're looking for the guy that was in  
24 that car, he just left.

25 And so they said, Well, see if you can make

1 an identification.

2 ----- So they took him to the scene and told you  
3 about a car that they had seen that that person left in,  
4 and he saw the police and Mr. McClenton detained along  
5 with Ms. Lee and that vehicle. He was 100 percent sure  
6 that was the vehicle that took the person in the car  
7 away. He was 100 percent sure the person standing there  
8 in front of him was the person that was inside that car.  
9 It was all important.

10 He told the officers that night, ten out of  
11 ten. Told you right here on the stand, sworn in, ten out  
12 of ten, 100 percent sure. And it's interesting to note,  
13 think about Mr. Jacobs. He lives in Georgia now. He  
14 doesn't live at that apartment complex. He doesn't know  
15 anybody involved. He doesn't have a dog in this fight.  
16 He doesn't have any reason to lie to you about who was in  
17 that car or what he thought they were doing or anything  
18 else, no reason to lie.

19 In fact, he came up here. He stayed up here  
20 throughout the day, and the reason we got him in is so he  
21 could go back to work.

22 Next you heard for Warren Johnson. Remember,  
23 Jeremy Jacobs told you this all happened in the dark, but  
24 he could see because that dome light was on. You heard  
25 from Warren Johnson.

1 Warren Johnson came home from grocery  
2 shopping, around 10:00 or so, went upstairs, put the  
3 groceries in. Forgot his phone. Many people know what's  
4 that like, to forget your phone. You got to go get your  
5 phone. Years ago, you didn't even need your phone. He  
6 goes up and gets his phone. Saw somebody up there when  
7 he pulled in. Didn't think anything about it. He hadn't  
8 lived there very long. This guy could have lived there.

9 He didn't think there was anything out of the  
10 usual with this individual until he came back and got his  
11 phone. He looked over and sees him standing over. Jumps  
12 back. That's kind of an odd thing to do, at least that's  
13 what Warren Johnson thought, and he started to process  
14 this, and he said, Something is not right. Something is  
15 just not right.

16 So he got his phone, went back upstairs, got  
17 a glass of wine, said I'm just going to go out on this  
18 patio here and see if I see anything.

19 He looked down and heard some noise. He  
20 heard some noises right around that patio door, that  
21 patio door you later find out is a point of entry that  
22 has been pried open by some item. There is clanging of  
23 bottles, something sounds like recycling going on, large  
24 heavy bag, full white bag, trash bag.

25 And he looks down and then he sees the

1 defendant, blue car. He sees him -- car come around,  
2 sees him in the white vehicle using the key fob that you  
3 heard Amanda Mitchell say she left inside her house. She  
4 left it inside her house. It was in the dresser drawer,  
5 same dresser drawer that were open, same dresser drawers  
6 where all the jewelry came from, where -- right below  
7 where the jewelry was; same dresser drawers that she  
8 normally shuts; same dresser drawers that seems like  
9 Amanda Mitchell wasn't thrilled about you seeing her  
10 house in disarray. Seems like she keeps a neat house.

11 She knew what wine was missing because she's  
12 a wine rep. She's responsible for those things. She  
13 took it for more customers so she didn't have to  
14 re-inventory it or put it away, and she could identify  
15 and did identify for police what was missing, but there's  
16 all that stuff: Key fob, lighting up the car, items  
17 being placed in the car, defendant coming out of the car,  
18 went back and forth to the blue car, white car, blue car,  
19 white car.

20 And he's on the phone to 911, and when you  
21 listen to the 911 tape, you can tell he's narrating what  
22 he's seeing. In fact, I asked him that question: Are  
23 you saying what you saw to the dispatcher?

24 He was, as it was happening. It's almost a  
25 play by play.

1 And while this is happening, 10:00, 10:20, we  
2 heard from Detective Feeters that tone went out at 10:25.  
3 All that's happening in those nighttime hours. All of  
4 that is happening live.

5 You hear Warren Johnson say, I hear the  
6 sirens. You hear Joe Piech say, We hear lights and  
7 sirens all happening at the same time. And Warren  
8 Johnson, you hear his voice change. Maybe you didn't  
9 notice it on the first listen. You listen to any of the  
10 statements again -- you can listen to 911 again. You got  
11 that ability to assess and then look at anything, that's  
12 all on your purview, but what you hear is his voice  
13 change when that car goes away.

14 Oh, okay. They're gone. He has hushed  
15 tones. I don't want to be seen. Didn't really at that  
16 point seem like he didn't really want to -- he didn't  
17 want to be seen by anybody, but here he is standing up  
18 and telling you why, because he knows a crime was  
19 committed and he has information that's valuable to you  
20 to help you make a determination.

21 Then you heard from Joe Piech. Joe Piech  
22 seems like a straight-shooting policeman on the force for  
23 seven years, at that point five years.

24 He tells you, I've been doing it those five  
25 years, at the point when this happened. He doesn't get

1 rattled. He's responded to lots of burglaries in  
2 progress, sure, tone's out, but he's not going to rush  
3 in. He's not going to freak out, and he made a  
4 reasonable decision.

5           There's only one way in and one way out of  
6 this apartment complex, so he took up a position where  
7 anybody leaving by vehicle, which is the information he  
8 had, would have had to pass. It's good police work.  
9 It's just using your brain, using your common sense.

10           And what happens? Almost simultaneously with  
11 the time Warren Johnson is on the phone to 911, as fast  
12 as 911 can turn around that description, blue car. Is it  
13 a sedan? Is it a coupe?

14           You heard Officer Piech. It's like playing  
15 telephone, and, really, it is playing telephone, one  
16 telephone to dispatch. He understood sedan to mean the  
17 vehicle is smaller. So he sees the defendant in the  
18 vehicle, and he said, That's incredible. Blue car, black  
19 male, white shirt. I'm getting the description, seeing  
20 the description, pulls him over.

21           He approaches, talks to Mr. McClenton, gets  
22 consent to search the vehicle based on information.  
23 There was a white plastic bag or white trash bag or white  
24 bag with items in it. Trunk opens, right there in front  
25 of him. Right there in a little cubby that had been

1 carved out for this, sort of things moved around, is this  
2 white bag. And in that white bag the contents were laid  
3 out, and there's wine. There's some coasters. There was  
4 some clothing items, all from Amanda Mitchell's  
5 apartment, same apartment. Warren Johnson heard the  
6 rustling and the clanging, saw the defendant duck back  
7 into the breezeway, right by the entrance, right in the  
8 area of the patio with the railing where the forced entry  
9 was made.

10 And what else was found right by all the  
11 items that were taken underneath that? Laptop computers  
12 belonging to Amanda Mitchell. There was also a  
13 flashlight that didn't belong to Amanda Mitchell, and  
14 that was with this tire iron, crowbar. You can make  
15 whatever description, whatever title you want based on  
16 how you use this tool. You can call it a paperweight if  
17 you put it on your desk.

18 The fact of the matter is the marks noticed  
19 by the crime scene tech, Jeff Miller, who just comes in  
20 to report facts. He doesn't know, he's not telling you  
21 necessarily who did what. He just reported facts. He  
22 got on the stand and reported facts.

23 He said, I measured the blade mark into the  
24 door. It's half an inch. It's not an expert opinion.

25 Any one of you, any person who's qualified,

1 anybody can read a ruler is qualified to say that mark is  
2 about half an inch, and he told us this blade right here  
3 is half an inch wide.

4 He also told you that about three inches from  
5 the tip paint is worn away on both sides, down to bare  
6 metal. This is going to be with you in the jury room.  
7 You can take a look at it. He also told you it was a  
8 round radius of the tool that was used to pry open that.

9 Now, Mr. Miller wasn't going to go so far as  
10 to say that was definitively the tool that was used  
11 because it didn't make a tool mark, and that's up to you.  
12 Circumstantial evidence. He's found with a flashlight.  
13 He's found with all these stolen items. I'm sure it's  
14 not in the trunk of the car, but it's not found with the  
15 spare tire. It's not found with the jack. In fact,  
16 there is no testimony that anyone even saw a jack.

17 But the size, shape -- they're all consistent  
18 with a tool that was used to open that door, a  
19 measurement and characteristics.

20 So you heard from Jeff Miller, and Jeff  
21 Miller told you about -- and this is where we get to the  
22 important part. This is sort of the CSI moment, all  
23 right? It's common that many people want to see DNA and  
24 fingerprints in this day and age.

25 DNA is a great piece of evidence if you can

1 find it. Typically, as Mr. Miller indicated, you find it  
2 in the body. He referenced saliva and blood. He also  
3 told you it's very rare to get touch DNA. In fact, it's  
4 almost a waste of time to try to get touch DNA off of an  
5 item, just touch DNA, and that's in cells that perhaps  
6 may be left behind. In reference, many times it's  
7 attempted and not found.

8           And Mr. Miller also told you, You don't swab  
9 for DNA or fingerprints for something that's in personal  
10 possession, because what you're doing is proving  
11 possession. If something is in somebody's possession,  
12 you don't need to prove it was in their possession.  
13 That's why he said it was a waste of time.

14           Now, if, for instance, that flashlight or  
15 that screwdriver or the tire iron had been found near the  
16 scene, it would have been useful to try to swab for DNA  
17 or fingerprints. Just think of the difference. It's  
18 found in the car, and if you find fingerprints and DNA  
19 from Mr. McClenton, in the car that he's driving in, he  
20 had possession.

21           Of course his fingerprints were on that. He  
22 used it to change a tire. Of course his DNA is on it.  
23 It's sitting next to his clothes, so the swabbing for the  
24 DNA or the dusting for fingerprints for an item that's in  
25 somebody's possession doesn't move the ball.

1                   It doesn't defeat the fact that a tool that  
2 matches the marks, at least the radius and dimensions by  
3 the marks noticed by Jeff Miller, is found in the  
4 defendant's possession in that vehicle with all the  
5 stolen items.

6                   Now, you also heard from the victims in this  
7 case, two young women who, again, took time out of their  
8 day, so they do have a dog in this fight, so to speak,  
9 but they got out there and told you they didn't know who  
10 broke into the place. He didn't know who took these  
11 items, and I didn't put them up there to tell you or to  
12 hope that they would be able to point to Mr. McClenton,  
13 say he was the one that did it.

14                  In spite of what the State has to do in its  
15 burden to prove to you beyond a reasonable doubt is not  
16 just present the evidence, but anticipate defenses  
17 because the defense has no burden, and the judge will  
18 instruct you on it. They have no burden to present any  
19 evidence. The burden is totally on the State to prove to  
20 you beyond a reasonable doubt the facts as alleged by the  
21 State, but part of that is to dispel potential defenses.

22                  And so you understand why Ms. Mitchell and  
23 Ms. Horton were on the stand, that's to explain that this  
24 wasn't a mistake, that these items weren't there by  
25 accident, that they had been to a flea market earlier and

1 sold these things and forgot about them and left them  
2 outside, but to establish that the house was the way it  
3 was when they left, the house was broken into, it wasn't  
4 a mistake, and Mr. McClenton had these items.

5 Now, you last heard from Detective Feeters.  
6 Detective Feeters did what detectives do: He asked him  
7 questions, tried to put the picture together as to what  
8 happened. And Detective Feeters took statements from  
9 Warren Johnson, took statements from Jeremy Jacobs, took  
10 statements from Dawn Lee. And sometimes people wonder  
11 why you don't hear those statements.

12 You got to hear Mr. Jacobs testify. You got  
13 to hear Mr. Johnson testify, so we don't have to play  
14 those statements for you. He also took a statement from  
15 the defendant, Mr. McClenton. It's interesting, what you  
16 learn by listening to that statement. Keep in mind,  
17 Detective Feeters testified that Mr. McClenton was, in  
18 his opinion, not under the influence of any drugs or  
19 alcohol, not confused about where he was, understood what  
20 he was doing and willingly and knowingly waived his right  
21 to remain silent and give a statement.

22 So Detective Feeters asked him some  
23 questions, and Mr. McClenton asked him, What am I being  
24 charged with?

25 Detective Feeters said, Burglary, breaking

1 and entering a motor vehicle.

2 What did Mr. McClenton say? Motor vehicle?

3 Motor vehicle? I didn't break into motor a vehicle.

4 Well, that's interesting as to what he  
5 doesn't say. He didn't say, I didn't break into a house.  
6 Focus on the motor vehicle, and then later on he said,  
7 What do you mean, break in? What do you mean break in?  
8 What's going to happen to my girlfriend? I didn't break  
9 into a motor vehicle.

10 You heard an edited version of that. It was  
11 about 12 minutes long. Not once in 12 minutes, when  
12 referencing the burglary, did he say, I didn't burglarize  
13 that house.

14 Not once did he say, I didn't break into that  
15 house, I didn't take that stuff. He's asked the question  
16 pointedly, what stuff did you take? And the answer  
17 wasn't I didn't take A.

18 Back to the motor vehicle. What's going to  
19 happen to my girlfriend?

20 In fact, Detective Feeters at one point talks  
21 about him breaking into an apartment and he says, Yeah,  
22 but I didn't break into a motor vehicle.

23 Detective Feeters says, You feel sorry for  
24 yourself. You should feel sorry for your child and your  
25 girlfriend and your victim, the people you did this to

1 tonight. They're petrified. You need to feel sorry for  
2 them, and he says, I do.

3 And later he asks him, Detective Feeters  
4 says, Is this the first time did you this?

5 What, kicked in a door? Yeah.

6 Mr. McClenton also tells you and tells the  
7 Court there is no one else in the car. He tells  
8 Detective Feeters a friend dropped him off. Called Dawn  
9 Lee to pick him up. Detective Feeters finds out Dawn Lee  
10 drove him there, stayed there. She was in the car and  
11 they left.

12 So what does this all mean? What does all  
13 this circumstantial evidence mean? Now, the judge will  
14 tell you, as far as the charge on circumstantial  
15 evidence -- the charge means instruction -- that it all  
16 should point to one answer, and the part of this is where  
17 I at least give you what I think that law is, so let me  
18 walk you through it briefly.

19 Dawn Lee and Shawndell McClenton drive over  
20 to Daniel Ellis Drive, 700 Daniel Ellis Drive. Parked  
21 the car. Mr. McClenton gets out, starts looking around  
22 the grounds, finds an open window, climbs up, on the  
23 little stand where the HVAC unit is, removes the screen,  
24 goes in, grabs a purse, goes out the front door.

25 You'll see the pictures in front of [REDACTED]

1 nothing else is disturbed. Then goes over to building  
2 14, upstairs, downstairs. He just went in one place, so  
3 the easiest way to get in, looking for other places,  
4 easiest ways in. This is a smash and grab situation:  
5 Get in, get out. Get what you can. Get the most  
6 valuable things.

7 So he finds a way in and finds some  
8 opportunity, makes his way in to [REDACTED] Amanda Mitchell's  
9 apartment. In there he takes jewelry, computers, wine,  
10 clothing, coasters, another handbag, and other items,  
11 cameras, electronics. Everything is counted for except  
12 for something. Also found that key fob. Here you go.  
13 Let's figure out where it is, it's quick. It's right  
14 there.

15 Goes into the car, tries to find something to  
16 steal there, goes back and forth because he doesn't want  
17 to be detected in the car. Doesn't know Warren Johnson  
18 is on the balcony watching him because Warren Johnson  
19 tells you he's hiding, didn't want to see him, and then  
20 off they go and off they go and get stopped almost  
21 immediately, within 30 seconds or so by the police.

22 All the items were found in the car. Tools  
23 consistent with the breaking and entering point of the  
24 home are found in the car. Flashlight is found in the  
25 car. Flashlights with -- everything else is Amanda

1 Mitchell's, but it's not Amanda Mitchell's. There is  
2 only one reason to have a flashlight with all the stolen  
3 stuff, in the same bag as the stolen stuff, because you  
4 used it to look around the apartment.

5 Now, I'm going to ask you to weigh the  
6 evidence, the photographs, the testimony you heard, what  
7 makes sense. Does it make sense that Mr. McClenton is  
8 just sort of there and he happens to run into somebody in  
9 the parking lot and just happened to rob this place and  
10 just happened to have put it all in a bag or something or  
11 just found it, just happened to be over there? It  
12 doesn't make sense.

13 The reason we chose you 12 people from the  
14 community is because you can apply common sense, apply  
15 your common sense. It doesn't make sense. What makes  
16 sense is Mr. McClenton over there looking at breaking  
17 into some place, gets some stuff to do whatever he's  
18 going to do with the stuff.

19 Luckily, other citizens called the police,  
20 reported it in a timely and immediate fashion, and  
21 Mr. McClenton was apprehended right there. People got  
22 their stuff back, but it doesn't change the fact he went  
23 in and did it. Doesn't change the fact that he went in  
24 and took the stuff and then left the stuff.

25 Doesn't change the fact that these people's

1 homes were invaded and violated, their cars were broken  
2 into. Just because stuff got returned, or most of the  
3 stuff, doesn't mean that this didn't happen or it's not  
4 important.

5 All this circumstantial evidence points in  
6 one direction: Dawn Lee sat in the car, waited for  
7 Mr. McClenton to finish, find out if there was any  
8 valuables that you could easily grab and get back into  
9 the car and make it out of there. Well, they got in and  
10 they got out, but they didn't get away.

11 Weigh the evidence. Think about it. Think  
12 about what reasonable doubt is. Reasonable doubt is a  
13 doubt that leaves you firmly convinced, hesitation that  
14 wouldn't cause you to hesitate to act. Hesitation is  
15 different than deliberation.

16 I want you to think about it. Think about  
17 what makes sense. It's not hesitation, it's  
18 deliberation. Think about the facts. Think about what  
19 the circumstantial evidence leads to, one conclusion:  
20 Shawndell McClenton is guilty of burglary in the first  
21 degree.

22 He broke into a house at night. It's dark  
23 outside. Took stuff. He broke into a car. He's guilty  
24 of BEMV.

25 We ask you to return verdicts accordingly

1 with that.

2 THE COURT: Mr. Lewis?

3 MR. LEWIS: May it please the Court: Good  
4 afternoon, ladies and gentlemen.

5 I know you're tired. I know you're ready for  
6 this to be over. I will try to get this done as quickly  
7 as I can so y'all can do what you are here to do, which  
8 is decide what you believe actually took place.

9 You all get to stop the music. I said that  
10 at the beginning that this case reminds me of two  
11 childhood games: Hot potato and musical chairs, and that  
12 is what we're dealing with here.

13 There is not a hotter potato than that stolen  
14 stuff. That's true. He has the hot potato. This isn't  
15 a receiving stolen goods case. This is a burglary case.  
16 You have to decide if he actually is the person that  
17 crossed that threshold, that went into that person's  
18 home. You have to decide that beyond a reasonable doubt.

19 Now, you've heard the State talking about  
20 these issues of, well, the CSI doesn't matter. It  
21 matters more than I could possibly express to you, how  
22 important that is. That's how we, in a modern society,  
23 decide whether or not someone did something in some  
24 place.

25 If we don't have an eyewitness that says yes,

1 I saw them inside, which we don't -- make no mistake. No  
2 one says, I saw him in there. People say, what they're  
3 saying, He had the bag. Whether you believe that is up  
4 to you to decide. That is not burglary. Burglary is  
5 crossing the threshold, going into someone's home and  
6 committing the crime.

7 Now, he did possess stolen goods. He was  
8 questioned about that. Who were you with? Anybody else  
9 in the car? No, no.

10 That's a lie. We know that's a lie. Dawn Lee  
11 was in the car. Just because he's covering up for  
12 somebody doesn't mean he's a burglar. Just because he  
13 didn't want Dawn to be sitting right here doesn't mean  
14 that he's a burglar. He's trying to protect other  
15 people, sacrificing himself.

16 Now, we're not sacrificing ourselves  
17 completely. We're here to count on you all to look at  
18 the evidence and the lack of evidence. Not one  
19 fingerprint in two apartments? The kind of guy that's  
20 going to walk around with a bag of stolen stuff is not  
21 going to be savvy enough to wipe down evidence, to leave  
22 no trace.

23 They use these sort of excuses to say, It's  
24 good enough, guys. It's good enough. Convict him.  
25 Let's move on. Got places to go. It's not good enough.

1 It's way too important.

2 They don't tone out for a shoplifting. They  
3 don't tone out get everybody moving for a low level case.  
4 This is a big deal. So, as I said, the music hadn't  
5 stopped. They're trying to stop the music today, and  
6 they're trying to leave the only person without a chair  
7 Shawndell, and it's not right. That's not what the  
8 evidence confirms.

9 We all make mistakes, and maybe I seem rude  
10 to call Officer Piech out on the mistakes he made, but  
11 it's an important idea. He had no hesitation whatsoever  
12 in calling a simple screwdriver -- it's a screwdriver,  
13 yes, it is a burglary tool. But if I asked him about the  
14 difference between a sedan and a coupe, I'm the bad guy.  
15 I'm saying something strange. No. We all have lived our  
16 lives. We know what a sedan is, what is coupe is. Most  
17 of us drive.

18 But he made a mistake about who put the rest  
19 of this stuff into evidence, so we have to understand  
20 that those sorts of mistakes -- you're not automatically  
21 correct. That doesn't mean it's a burglary. Someone  
22 caught with stolen goods doesn't mean they committed the  
23 crime. That's why, like I said, we rely on forensics, to  
24 help corroborate what actually took place.

25 Back in the dark ages, they would throw

1 people over into the water, and if they sank, they were  
2 innocent, and if they floated, they were witches so they  
3 burned.

4 We don't need to do that anymore. We can now  
5 rely on science, thank God, because we can say, Show me  
6 the evidence. There is no evidence. We got a lot of  
7 pictures. You got a flashlight like I would keep in my  
8 car. You've got -- whatever you want to call it. It has  
9 marks where the hydraulic jack would be to change a tire.  
10 It's not as nefarious as is being presented today.

11 It's what we keep in the trunks of our cars.  
12 We keep tire irons in the trunks of our cars. We don't  
13 keep stolen stuff in the trunks of our cars. That's the  
14 kind of thing that a fence would do. Also, the kind of  
15 thing a fence would do is not reveal the person who he  
16 got the stuff from.

17 Is he going to be charged too? Is he going  
18 to be charged too? That the last thing he asked before  
19 Feeters shook off that day, him worrying about somebody  
20 tells. He knows he's caught with stolen stuff. That  
21 doesn't mean he was caught doing the burglary, so that's  
22 why the forensics in this case are so important.

23 Please look at the lack of any forensic  
24 evidence, any corroboration. They just glossed over it.  
25 They don't care. They made excuses about dew, yeah,

1 outside. Inside, no evidence?

2 ----- Again, I did it in the opening. I'm doing it  
3 again now. There is evidence that exists that should be  
4 able to be found. They didn't bother to swipe. They  
5 didn't bother to do their job. Those wine bottles would  
6 be incredibly easy to see who took them, who put them in  
7 that bag. They didn't bother to check, and that's what's  
8 so problematic about it because they want to bootstrap  
9 up, Oh, he's caught with stuff. He did it.

10 No. You have to be convinced, like I said,  
11 that he's the one that crossed that threshold and  
12 remaining at nighttime.

13 We don't know when the actual burglary took  
14 place. We have ideas about it. We think that it might  
15 be after dark because it wouldn't make sense otherwise  
16 because people left around 7:30 or 8:00 and that's when  
17 they had to come back. That's another element that y'all  
18 need to consider, is whether or not the burglary occurred  
19 at nighttime, and you also have -- the more important  
20 part is you have to decide whether he did it or not,  
21 whether he's the person that actually committed that  
22 burglary, the person who actually crossed that threshold.

23 I think it's important to bring up just a few  
24 of the facts. You heard testimony from two different  
25 witnesses, Warren Johnson and Jeremy Jacobs. Warren

1 Johnson said he was on his balcony watching the whole  
2 thing, eyes like a hawk, could see it, but didn't see  
3 Jeremy Jacobs who said he was walking his dog right in  
4 the area.

5 People make mistakes. He's mistaken about  
6 what he saw. He said that person wasn't there. They  
7 both can't be right unless they're both -- one of them is  
8 mistaken. Not anything nefarious, not bias, not liars.  
9 I'm not saying anyone here is lying.

10 What I'm saying is they jumped to  
11 conclusions. They're relying on excuses. They're not  
12 thinking it through. Think back, please, about that part  
13 as well. He had an opportunity to say, Yeah, I saw a  
14 white guy walking a dog while this other guy, the black  
15 male, was breaking into the car.

16 He didn't say that. He didn't call out to  
17 that person. The two things, the two stories, the two  
18 versions don't match up.

19 Both people do say that the person they saw  
20 carrying the white bag were not wearing gloves. Again, I  
21 know I'm reiterating the same point about if you're not  
22 wearing gloves there should be evidence. There should be  
23 something that shows what happened.

24 So what actually happened is the police said,  
25 Oh, well this is easy.

1           They told their crime scene tech, We got the  
2   guy. You don't need to work so hard, so let's move on,  
3   so that's why there is not a single DNA swab even done,  
4   let alone analyzed.

5           Warren Johnson also said they saw two males  
6   in the car. Were there two males in the car? Was he  
7   wrong? Again, people make mistakes. The idea is we have  
8   to rely, in this room, on the -- on the street, it's good  
9   enough, but in this courtroom, we have to decide whether  
10   it's proof beyond a reasonable doubt, whether you can  
11   believe it completely whether he's the person that  
12   committed -- not that he got caught holding that hot  
13   potato.

14           The earrings that are still missing, I don't  
15   know if that's what the actual burglar wanted to keep and  
16   fence the rest of the goods through Mr. McClenton. They  
17   weren't recovered. Mr. McClenton had done this,  
18   everything that was stolen would have been right there.  
19   You don't get rid of, you don't drop, you don't throw  
20   away earrings.

21           Now, I talked to you about entering, entering  
22   and remaining. It's a legal term you have to go over  
23   when you're talking about what burglary means, but you'll  
24   be given charges on two different prompts. I hope you'll  
25   see what I'm trying to argue today and you'll understand

1 Mr. McClenton is not guilty. I hope you'll see that, but  
2 if you don't, there is a charge that is a little bit  
3 lower than the burglary first.

4 It's burglary second. If you can't believe  
5 or you don't know when the actual burglary took place,  
6 whether it was when it was dark outside or whether it  
7 occurred earlier in the day, and that is another  
8 distinction that you can make.

9 The specifically legalese is the entering and  
10 remaining, which means the crossing that threshold into  
11 that apartment had to occur while it was dark outside.  
12 It's an old reason, an old law, because the idea that  
13 we're home, we don't want our homes invaded while we're  
14 going to be home sleeping, cooking. That's why it's a  
15 different charge.

16 Lastly, in every case, we always talk about  
17 proof beyond a reasonable doubt. It's a hard standard to  
18 explain, but the way I like to look at it is if someone  
19 told me my mother was a burglar, I wouldn't believe them.  
20 I would demand proof, just like you should.

21 You don't know Shawndell. I hope you care  
22 about him, because we should all care about each other,  
23 you don't know him, but you should demand the same sort  
24 of evidence to convince beyond a reasonable doubt, to  
25 prove that he was in there, as you would someone you

1   cared about.

2                   MR. FINCH: Objection, Your Honor. Golden  
3 rule.

4                   THE COURT: Stay within the lines.

5                   MR. LEWIS: For me, that's how I imagine  
6 reasonable doubt is, what you would have to show me to  
7 convince me that someone I cared about did this. Please  
8 do the same. Please find him not guilty.

9                   Thank you.

10                  THE COURT: Madame forelady and ladies and  
11 gentlemen: You have heard the testimony the evidence and  
12 the arguments of the State and the defendant. I will now  
13 explain to you the law that applies to this case.

14                  Under the constitution and the laws of South  
15 Carolina, you are the finders of the facts in this case.  
16 I do not have the right to pass upon the facts or even to  
17 express any opinion that I might have as to them because  
18 this is a matter solely for you, the jury, to determine.

19                  As jurors then, it is your duty to determine  
20 the effect, the value, the weight and the truth of the  
21 evidence presented during this trial. You are also the  
22 judges, the sole judges, of the credibility, that is, the  
23 believability of the witnesses who have testified and of  
24 the evidence presented during this trial.

25                  In passing upon credibility, you may take

1                   And, fourthly, and you didn't ask this  
2 question, given the hour being 7:52, if you decide you  
3 don't wish to continue deliberating into the night at any  
4 period of time, you can come back tomorrow at 1:00 p.m.  
5 and resume deliberating.

6                   So it is your choice to do that, Madame  
7 Forelady. We'll send a note saying that's what your  
8 decision is, then we'll have you come back at 1 p.m.  
9 tomorrow.

10                  And with that information, I will have you go  
11 back to the jury room and resume deliberating. We'll  
12 send in the CD player.

13                  (7:53 p.m., jury resumes deliberations.)

14                  THE COURT: Any additions or exceptions to  
15 the charge?

16                  MR. FINCH: None from the State.

17                  MR. LEWIS: None from the defense.

18                  (Recess taken.)

19                  (8:48 p.m., in open court, jury present.)

20                  THE COURT: All right. Madame Forelady, have  
21 you reached a verdict?

22                  THE FOREPERSON: Yes, Your Honor.

23                  THE COURT: Is it unanimous.

24                  THE FOREPERSON: It is Your Honor.

25                  THE COURT: All right. You may pass it up

1 and be seated. Defendant will rise.

2 ----- Madame Clerk: You may publish the verdict.

3 THE CLERK: Yes, sir. Case number  
4 2012-GS-10-3189, the State of South Carolina, County of  
5 Charleston versus Shawndell McClenton: We, the jury,  
6 unanimously find the defendant guilty on burglary in the  
7 first degree. Signed, Foreperson, Kelly Bramble,  
8 4/22/2014.

9 2012-GS-10-2892 the State of South Carolina,  
10 County of Charleston, versus Shawndell McClenton burglary  
11 in the first degree, we, the jury, unanimously find the  
12 defendant guilty, signed foreperson Kelly Bramble  
13 4/22/2014.

14 Indictment number 2012-GS-10-2893, State of  
15 South Carolina, County of Charleston, versus defendant,  
16 Shawndell McClenton, indictment for breaking and entering  
17 a motor vehicle, we, the jury, find the defendant  
18 unanimously guilty, signed Kelly Bramble, 4/22/2014.

19 THE COURT: All right. Ladies and gentlemen:  
20 If that is the verdict of each and every one of you,  
21 please let me know by raising your right hand. I thank  
22 you very much.

23 Any additional polling or individual polling  
24 requested?

25 MR. LEWIS: Yes, please.

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror number 225, is this your  
6 verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror number 65, is this your  
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Your Honor, the verdict has been  
16 polled. The verdict stands.

17 THE COURT: The verdict is the unanimous  
18 verdict. Thank you, ladies and gentlemen, for your time  
19 and effort in deliberating and reaching a verdict in this  
20 case.

21 Are there any post-trial motions?

22 MR. LEWIS: Yes, Your Honor. We renew all  
23 previous objections. Motion to set aside verdict and ask  
24 for a new trial.

25 THE COURT: All right. Any response,

1 Solicitor?

2 MR. FINCH: No, Your Honor.

3 THE COURT: The evidence of guilt in this  
4 case is overwhelming, and the defendant has had a fair  
5 trial before the jury of your selection, and I  
6 respectfully deny all post-trial motions.

7 MR. LEWIS: Yes, Your Honor.

8 THE COURT: Ladies and gentlemen: When you  
9 find someone guilty, it then becomes my duty to sentence  
10 the person. Burglary of first degree carries from 15  
11 years to life imprisonment.

12 The defendant has a criminal record. What is  
13 that record, Mr. Solicitor?

14 MR. FINCH: Just a moment, Your Honor.

15 You're aware of his pending charges, which  
16 remain to be resolved.

17 THE COURT: What are they?

18 MR. FINCH: He has -- I apologize. I had it  
19 earlier. I know he has a --

20 MR. LEWIS: I can provide it.

21 THE COURT: All right. What is it? What are  
22 they?

23 MR. LEWIS: We have two pending indecent  
24 exposures, possession of a controlled substance, the  
25 burglary first, and the B and E motor vehicle were just

1 I'm sure you love the child, and the child or  
2 children, they love you, but with the pattern that you  
3 have demonstrated in the presence of the child, your own  
4 acknowledgement of drug abuse and all types of criminal  
5 activity I don't see what you could offer a child as far  
6 as becoming a productive member of society. Maybe some  
7 miracle will happen in your life and you will see the  
8 light, and it can be a possibility in the future but  
9 currently that's the way I assess the situation. I sort  
10 of hope that I'm wrong.

11 And with regard to this burglary in the first  
12 degree, the sentence is that you should be committed to  
13 the state department of corrections for a period of 24  
14 years. On each count of burglary first degree, sentence  
15 on breaking and entering into a car, you be committed to  
16 the State department of corrections for five years.  
17 Sentences will run concurrent, and you'll receive  
18 credit -- you'll receive credit for 654 days. I wish you  
19 the best of luck.

20 MR. LEWIS: Thank you, Your Honor.

21

- - -

22

(Whereupon, the proceedings were concluded.)

23

- - -

24

25

FC1120120201565

WITNESSES

Charleston City Police Department

DOCKET NO. 2012GS1002892

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

1203151

ARREST WARRANT NUMBER

M996600

DATE OF ARREST

February 25, 2012

ACTION OF GRAND JURY

TRUE BILL  
FILED

Foreperson of Grand Jury  
Date:

MAY 07 2012

VERDICT

Guilty of Burglary 1<sup>st</sup> Degree

Kelly M. Bramble  
Foreperson of Petit Jury

4/22/14  
Date:

INDICT

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON

DOB: [REDACTED]  
B/M

Indictment for

Burglary - 1st Degree

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By Christine  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

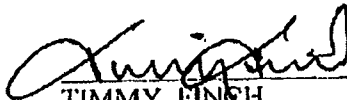
INDICTMENT

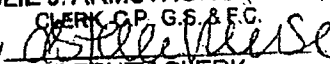
At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

**Burglary - 1st Degree**

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL Q MCCLENTON, did enter the dwelling of Amanda Mitchell, located at [REDACTED] Apt [REDACTED] without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time; in violation of Section 16-11-311 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.

  
TIMMY FINCH  
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & E.C.  
By   
DEPUTY CLERK

FCH20120201565

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203151

ARREST WARRANT NUMBER

M996607

DATE OF ARREST

February 25, 2012

ACTION OF GRAND JURY

TRUE BILL  
FILED

Foreperson of Grand Jury  
Date:

MAY 07 2012

VERDICT

Guilty

Foreperson of Petit Jury

4/25/14  
Date:

INDICT

DOCKET NO. 2012GS1002893

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

VS.

SHAWNDELL Q MCCLINTON  
DOB: [REDACTED]

B/M

Indictment for

Breaking and Entering a Motor Vehicle

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By [Signature]  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF CHARLESTON )

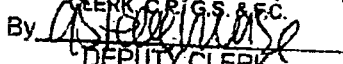
At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

**Breaking and Entering a Motor Vehicle**

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant, SHAWNDELL Q MCCLINTON, did break or attempt to break into a motor vehicle belonging to Amanda Mitchell, at [REDACTED] South Carolina, with intent to steal the same or anything of value there from; in violation of Section 16-13-160 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.

  
TIMMY FINCH  
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.R.I.G.S. & F.C.  
By   
DEPUTY CLERK

FCH20120302072

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1203165

ARREST WARRANT NUMBER

M996943

DATE OF ARREST

March 14, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date:

JUN 11 2012

VERDICT

Guilty Burglary 1st Degree

Foreperson of Petit Jury  
Date:

INDICT

DOCKET NO. 2012GS1003189

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

SHAWNDELL Q MCCLINTON a/k/a  
SHAWNDELL MCCLINTON

DOB: [REDACTED]  
B/M

Indictment for

Burglary - 1st Degree

STATE OF SOUTH CAROLINA )

INDICTMENT

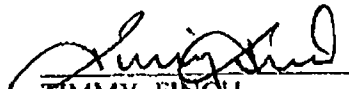
COUNTY OF CHARLESTON )

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

**Burglary - 1st Degree**

That in Charleston County, South Carolina, on or about February 25, 2012, the Defendant SHAWNDELL O MCCLINTON a/k/a SHAWNDELL MCCLINTON, did enter the dwelling of Caitlyn Horton, located at [REDACTED] Apt [REDACTED] without consent and with the intent to commit a crime therein. That, in addition, the defendant entered the dwelling at night time; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

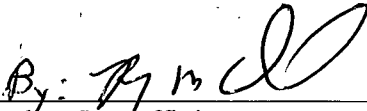
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
TIMMY FINCH  
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."

April 30th, 2015

By: 

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(803) 731-1330

ATTORNEYS FOR APPELLANT

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SC Court of Appeals

**ORIGINAL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Clifton Newman, Circuit Court Judge  
Appellate Case No: 2014-000978

**RECEIVED**

APR 30 2015

THE STATE,

**SC Court of Appeals**

RESPONDENT,

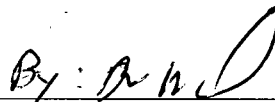
V.

SHAWNDELL MCCLENTON,

APPELLANT

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Record on Appeal in the above referenced case has been served upon Mary W. Leddon, Esquire, at PO Box 11549, Columbia, SC 29211, this 30<sup>th</sup> day of April, 2015.

By: 

Joshua B. Raffini  
Pruitt & Pruitt

Robert M. Dudek  
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 30<sup>th</sup> day of April, 2015.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.