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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON LEE GOINS

APPELLANT

APPELLATE CASE NO. 2014-000762

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF YORK

3 _____
4 State of South Carolina, Transcript of Record
5 vs. Volume I
6 2014-GS-46-00432-00434
7 Brandon Goins
8 Defendant.
9 _____

10 Date: March 31, 2014

11
12 BEFORE: The Honorable Lee Alford

13
14 APPEARANCES:

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22 Court Reporter
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24
25

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1 MS. SHELTON: Your Honor, at this time,
2 the State would call the case of the State
3 versus Brandon Goins, Indictment 2013-GS-46-0432
4 for the charge of burglary in the first degree.
5 Indictment Number 2014-GS-46-0433 for the charge
6 of grand larceny. And Indictment Number
7 2014-GS-46-0434 for the charge of criminal
8 conspiracy.

9 THE JUDGE: Is the defense ready for
10 trial, Mr. Wellborn?

11 MR. WELLBORN: We are, your Honor.

12 MR. SPRINGS: Your Honor, I believe you
13 have both sides witness list and request of voir
14 dire. I am handing up to the Court the State's
15 motions in limine. It reference to some case
16 law, I have all those cases should you need to
17 inquire.

18 MS. SHELTON: Your Honor, in addition to
19 those motions, we would need to do a Denno
20 hearing for the defendant's statements. At the
21 appropriate time, I would like to put the
22 pre-negotiations on the record.

23 THE JUDGE: I will hear you with regard to
24 pre-trial motions at this time.

25 MR. SPRINGS: Our first motion is asking

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1 if the defendant has complied with our
2 reciprocal discovery motion turned over in the
3 exhibits they tend to introduce, and mental
4 health defenses and alibi.

5 MR. WELLBORN: I met with the investigator
6 with the solicitor's office last week. She came
7 by the office. I gave her the tangible
8 documents of evidence I intend on introducing
9 including several I don't intend on introducing,
10 but they were a whole series of photographs. We
11 have turned over the results of various mental
12 examinations including the name of the
13 individual who gave those examinations. We have
14 turned over all of that. We do not intend on
15 introducing an alibi defense. I think they have
16 been aware of that since day one.

17 MR. SPRINGS: Turning to our second motion,
18 your Honor, we are moving to have the defendant
19 precluded from any mention of the potential
20 sentences of these charges. It is irrelevant
21 whether he is guilty or not guilty and it could
22 be very prejudicial to the State. So we would
23 like the defendant to be instructed not to in
24 opening or closing or through questioning of any
25 witness, defense or state, put before the jury

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1 the potential punishment sentence for these
2 crimes.

3 THE JUDGE: Mr. Wellborn.

4 MR. WELLBORN: We did not intend to
5 introduce that in our case in chief. However,
6 for cross-examination purposes, should the State
7 put up the codefendant who was charged with
8 exactly the same charges, facing the exact same
9 amount of time, pled and on the record
10 acknowledged he was facing the exact same amount
11 of time and as part of a negotiation for a
12 reduced sentence, he would testify against my
13 client. I have a certified transcript from the
14 plea taken before your Honor. Should that
15 codefendant testify, given the authority of
16 State vs. Brown from our Supreme Court in 1991,
17 State vs Lowzell, if you would like our your
18 Honor --

19 THE JUDGE: No. Mr. Wellborn, it is not
20 necessary for you to recite the law to the Court
21 unless I ask for it. You can simply say we
22 would be entitled to do that.

23 MR. WELLBORN: Yes, sir.

24 THE JUDGE: I agree with you.

25 MR. WELLBORN: Thank you.

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1 THE JUDGE: Given the case law.

2 MR. WELLBORN: That would be the only
3 instance I would intend on bringing it up should
4 this particular individual testify and go to his
5 bias, his prejudice, his motive to testify in
6 the way that he is testifying.

7 THE JUDGE: I think the Supreme Court, not
8 to all together, ruled that in the event a
9 codefendant was charged and got the benefits of
10 pleading and plea negotiations in return for
11 testifying, they are entitled to ask him about
12 potential charges he would get for previous
13 charges, and they have ruled on that. I think
14 it is clear.

15 MR. SPRINGS: We are in full agreement
16 with that. We are not calling him for that.
17 There is absolutely no possibility of a
18 potential sentence coming in here in this trial
19 in any shape, way or form.

20 Our third motion, we move to preclude any
21 attempt by defense to elicit the defendant's
22 hearsay statements. He has no hearsay exception
23 for himself. They would be inadmissible and
24 improper whether it is in opening, closing or
25 asking some witness, well, did he tell you he

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1 goes to Sunday school, whatever, any hearsay by
2 the defendant listed by the defense would be
3 improper and we move for a pre-trial motion
4 precluding that.

5 MR. WELLBORN: We don't intend to elicit
6 any witness saying what my client told him. I
7 assume the State will attempt to elicit that as
8 alleged admissions of my client. Beyond that,
9 we don't intend to elicit any hearsay statements
10 from my client.

11 MR. SPRINGS: And our last motion, your
12 Honor, Number four, we move to preclude any
13 mention of a mental testing or evaluation of the
14 defendant. Mr. Wellborn, mentioned a little
15 while ago, also preclude any mention of the
16 results of such test. The test and their
17 results are irrelevant and inadmissible.

18 MR. WELLBORN: There doesn't seem to be
19 any basis for that other than the State saying
20 it is irrelevant and inadmissible. You have no
21 proffer before your Honor at this stage. It
22 goes to our case. It goes to the heart of our
23 defense. I intend on using it, but obviously,
24 your Honor, it would be proper at such time and
25 events as necessary. Your Honor is not in a

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1 position to rule it is not irrelevant at this
2 stage without knowing what it is.

3 THE JUDGE: I think it is presumably
4 inadmissible but we will see. He can make a
5 proffer if he wants to.

6 MR. WELLBORN: Your Honor, I would take
7 respective exception to the fact that a mental
8 evaluation of my client is presumably
9 inadmissible.

10 THE JUDGE: Unless you are alleging it is
11 a defense, counsel.

12 MR. WELLBORN: Yes, I am alleging that
13 part of the mental --

14 THE JUDGE: Are you then saying he is
15 guilty but mentally ill? Are you saying he was
16 mentally incompetent at the time?

17 MR. WELLBORN: No, sir.

18 THE JUDGE: If you are not saying those,
19 how does it become admissible?

20 MR. WELLBORN: What my expert will testify
21 that after examining my client, he came up with
22 a psychological profile based on all of the
23 tests given, standardized tests that were given.
24 There were a battery of four, including the
25 Intel [sic], and based upon that was able to

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1 make a psychological determination of my
2 client's profile in terms of --

3 THE JUDGE: That is probably not coming in
4 but I will allow you to proffer. That isn't
5 coming in because somebody can come in and say
6 he has something about his personality that
7 required him to do this. You know that's not
8 coming in. I will allow you to consider it and
9 make a ruling when the proffer is made.

10 MR. WELLBORN: Thank you, your Honor.
11 That's all we ask, just be allowed a proffer.

12 MR. SPRINGS: Not to beat a dead horse.
13 Testing and the results of any testing showing
14 him to be not particularly smart would not come
15 in at any opening statement, your Honor. That
16 would be highly improper for proffer.

17 THE JUDGE: True.

18 MR. SPRINGS: Thank you.

19 MS. SHELTON: Your Honor, to cover the
20 record, I would like to put in pre-trial
21 negotiations and we would also need to call
22 Detective Brandon for Jackson vs. Denno hearing.

23 THE JUDGE: Proceed.

24 MS. SHELTON: Your Honor, Mr. Wellborn was
25 retained on this case I believe back in October

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1 of 2013. His client was arrested in June of
2 2013. Upon his arrest, he retained Mike Brown
3 from the York County Bar. At that time, the
4 codefendant, George Canupp, had offer for drug
5 court. As soon as Mr. Brown was on the case, I
6 extended the same offer to Mr. Brown. His
7 client applied for drug court.

8 Your Honor is well aware, it takes a
9 longer period of time than some people are
10 prepared to wait to get that acceptance. I
11 received the notification from Drug Court that
12 Mr. Goins had been accepted into the Drug Court
13 Program on the exact same date I received the
14 letter of representation from Mr. Wellborn. I
15 sent Mr. Wellborn an e-mail that day saying that
16 Mr. Goins has been accepted into drug court.
17 Mr. Wellborn asked if he could speak with me.
18 We met a few days later.

19 At that point, it was my understanding
20 from his conversation that his client did not
21 wish to participate in Drug Court and that he
22 was withdrawing his application. That was
23 October 15. I sent Mr. Wellborn an e-mail that
24 morning around 10 o'clock saying it was my
25 understanding his client wished to withdraw that

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1 application, that the State would offer six
2 years for burglary second and grand larceny,
3 criminal conspiracy in lieu of the Drug Court
4 offer.

5 I asked that Mr. Wellborn respond by
6 e-mail by 5 p.m. that day so I could notify Drug
7 Court. Mr. Wellborn did not respond to that
8 e-mail until October 18th, three days later. At
9 that point, I notified Drug Court I did not
10 receive a response from Mr. Wellborn and
11 Mr. Goins wished to withdraw his application.

12 When I received the e-mail from
13 Mr. Wellborn from that Friday, I again spoke
14 with Ms. Melton in Drug Court and Mr. Bracket
15 about whether or not we would continue to leave
16 the Drug Court offer open. It was Mr. Bracket's
17 decision not to at that point.

18 The six-year offer was on the table. That
19 was rejected by November or December. During
20 trial preparation last week after meeting with
21 the detective and talking with the victim, we
22 all decided that we would wish to extend another
23 offer to Mr. Goins. At that point, I spoke with
24 Mr. Bracket and Ms. Melton again about possibly
25 allowing him back into Drug Court. I believe

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1 that was last Wednesday. Again, I spoke to
2 Mr. Wellborn on the phone and sent him an e-mail
3 saying that the State would allow Mr. Goins to
4 participate in Drug Court with the caveat that
5 he do a Shock YOA on grand larceny conspiracy
6 charge, do that first and then come out and
7 start the Drug Court Program.

8 I asked Mr. Wellborn to respond to that
9 offer by noon the next day. I extended that
10 deadline to late in the afternoon on Thursday.
11 I believe it was close to 5 o'clock when that
12 offer was rejected. That was the last plea
13 bargain in the case, Shock YOA for criminal
14 conspiracy grand larceny followed by Drug Court,
15 and that was rejected last Thursday at 5 p.m.

16 THE JUDGE: Do you wish to comment on
17 that, Counselor?

18 MR. WELLBORN: I think in terms of some of
19 the detail it is not complete, but my client
20 has, in fact, rejected the latest State's offer
21 which was that he serve YOA on grand larceny and
22 conspiracy charge. After coming out of that, he
23 would then go to Drug Court but he would have a
24 15 year sentence hanging over his head should he
25 not complete Drug Court. He has rejected that

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1 offer, that is correct.

2 THE JUDGE: Mr. Goins, I want to ask you
3 if you would stand up, please. You understand
4 it is your decision whether or not to accept the
5 plea bargain offer. Your attorney has stated
6 his position in regard to talking to you. Do
7 you understand your attorney can make a
8 recommendation to you one way or the another
9 about acceptance of a plea bargain offer, but he
10 does not control that. You control that. He
11 can advise you one way or another whether to
12 accept it or not to accept it or go to trial,
13 but the formal decision is yours to make. Is it
14 your decision to reject the plea bargain offer
15 and go to trial on this charge?

16 THE DEFENDANT: Yes, sir.

17 THE JUDGE: That's all I need to know.
18 Thank you. Ms. Shelton.

19 MS. SHELTON: Thank you, your Honor. The
20 State does have a statement made by Mr. Goins
21 while he was in custody that we would seek to
22 introduce in our case in chief, and we need to
23 do a Denno hearing at this time.

24 THE JUDGE: Okay.

25 MS. SHELTON: We call Detective Pete

PETE BRANDON - DIRECT BY MS. SHELTON

1 Branham.

2 (Whereupon, State's Exhibit 1, Miranda
3 Rights Form, was marked for identification.)

4 PETE BRANHAM, being duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MS. SHELTON:

8 Q State your name for the record, please.

9 A Pete Branham.

10 Q What is your rank and occupation?

11 A I am a detective with the York County
12 Sheriff's Office.

13 Q How long have you been with the York County
14 Sheriff's Office?

15 A For over 18 years.

16 Q You were with them back in September of 2012?

17 A I was.

18 Q During that time, did you become involved in an
19 investigation of burglary at 3145 Long Meadow
20 Road in Rock Hill?

21 A I did.

22 Q As part of that investigation, did you have the
23 opportunity to interview Brandon Goins?

24 A I did.

25 Q What was the basis of that interview?

PETE BRANDON - DIRECT BY MS. SHELTON

1 A I interviewed him on the basis of the
2 burglary that occurred at [REDACTED]

3 Q Where was he at the time of the interview?

4 A He was in the York County Detention Center.

5 Q For what reason?

6 A He was arrested on the charges for the
7 burglary on Long Meadow.

8 Q At the time of the interview, was he advised of
9 his Miranda?

10 A He was.

11 Q Did you use anything to assist you in that?

12 A I used a form, a Miranda Rights Form.

13 Q I am going to show you what has been marked for
14 identification as State's Exhibit Number 1?

15 I am going to ask you to refer to Page 2
16 of that. Do you recognize what is on Page 2?

17 A I do.

18 Q Is that the form that you used?

19 A It is.

20 Q How do you recognize it?

21 A It is the form that most of us use. It has
22 the case number along with Detective
23 Schettler's, the date, and time on it.

24 Q Using that, would you read onto the record how
25 Mr. Goins was advised of his rights?

PETE BRANDON - DIRECT BY MS. SHELTON

1 A I put the form in front of him and I started
2 off reading it and let him read along with me.
3 Your rights -- before I ask you any questions, I
4 will advise you of your rights. You have the
5 right to remain silent. Anything you say can be
6 used against you in a court of law. You have
7 the right to talk to an attorney and have him or
8 her present with you while you are being
9 questioned. If you cannot afford to hire an
10 attorney, one will be appointed to represent you
11 before any questioning if you wish. You can
12 decide at any time to exercise these rights and
13 not answer any questions or make any statements.
14 Do you understand each of these rights I
15 explained to you?

16 Q Is that exactly how you read it to him on that
17 date?

18 A Yes.

19 Q What date was that?

20 A June 10, 2013.

21 Q Did he say anything or do anything to indicate
22 that he understood those rights?

23 A He checked the yes box stating that he
24 understood and he signed and dated it.

25 Q Was there anyone else present with you at this

PETE BRANDON - DIRECT BY MS. SHELTON

1 time when you were reading those rights to him?

2 A Detective Schettler was.

3 Q Is Detective Schettler here today?

4 A He is not.

5 Q Where is he?

6 A He is currently no longer with the Sheriff's
7 Office.

8 Q Where did he go, do you know?

9 A He took another form of employment.

10 Q Did Mr. Goins appear to understand all of his
11 rights?

12 A He did.

13 Q Was he under the influence of any drugs or
14 alcohol that you know of?

15 A Not that I know of.

16 Q Did he appear to be under the influence of
17 anything?

18 A He did not appear to be under the influence
19 of anything.

20 Q Did you or Detective Schettler do or say
21 anything to influence Mr. Goins?

22 A We did not.

23 Q Did you make any promises or threats?

24 A We did not.

25 Q Did you display your weapon toward him at any

PETE BRANDON - DIRECT BY MS. SHELTON

1 point in time?

2 A We were in the Detention Center so we were
3 not allowed to have weapons in there.

4 Q How were you dressed?

5 A In plain clothes, golf shirt, khaki pants.

6 Q Did you identify yourself as law enforcement?

7 A I did.

8 Q Was he threatened or forced in any way?

9 A He was not.

10 Q Did he at any time ask for an attorney?

11 A He did not.

12 Q Did he make any statements?

13 A He did.

14 Q Was it a written or oral statement?

15 A Oral at first and then he wrote it down.

16 Q Did he write it or did you write it?

17 A He wrote it.

18 Q Was Detective Schettler still present at that
19 time?

20 A He was.

21 Q What, if any, statement did he make regarding
22 the burglary at [REDACTED]

23 A He admitted along with Canupp went into
24 Darryl Smith's residence and stole some items,
25 fishing rods and jewelry.

PETE BRANDON - DIRECT BY MS. SHELTON

1 Q Did he use the word stole?

2 A No.

3 Q How did he phrase it?

4 A "On September 6th, 2012, me and Jordon was
5 intoxicated and got to talking about money.
6 After Jordon said he had a few things at his
7 uncle's house, we then walked down and went to
8 the front door. It was locked so Jordon went in
9 from the back and let me in the front. He began
10 to get a few fishing rods and a gold necklace
11 and said this should be good, and we then got in
12 his car and he took me home. He told me to hold
13 the fishing rods until tomorrow and I never saw
14 him again after that night. It was in the
15 middle of the night."

16 Q Is that consistent with what he told you when he
17 said he gave you the verbal statement?

18 A Yes.

19 MS. SHELTON: Thank you. Please answer
20 any questions Mr. Wellborn has for you.

21 MR. WELLBORN: I have no questions.

22 THE JUDGE: Thank you, sir. You may
23 stand down.

24 (Witness excused.)

25 THE JUDGE: Anything else from the State.

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1 MS. SHELTON: No.

2 THE JUDGE: Mr. Wellborn?

3 MR. WELLBORN: Briefly, first I ask my
4 client be allowed out on bond during the course
5 of the trial. Jay Adams who is the bondsman is
6 here and can verify he will remain on bond.

7 THE JUDGE: Mr. Adams, can you state that
8 for the record that you will stay on his bond
9 throughout the trial until the trial is over?

10 BONDSMAN ADAMS: Yes, sir.

11 THE JUDGE: Thank you. Let me go ahead
12 and advise Mr. Goins. Even though we are
13 allowing you to stay out on bond -- even though
14 the bond ends when the case is called for trial,
15 we are going to let you stay out on bond. At
16 any time during the trial, if you fail to show
17 up for the trial, the trial will go on in your
18 absence and your attorney will be here to
19 represent you to the best of his ability, but if
20 you are not here the trial about go forward and
21 the jury will find you not guilty and that will
22 be the end of it. If they found you guilty then
23 the Court will issue a sealed sentence and a
24 bench warrant will be issued for your arrest.
25 If you are picked up on the bench warrant, you

STATE OF SC VS. BRANDON GOINS - 3-31-14

1 would be brought in and the sentence would be
2 issued to you at that time.

3 Do you understand how that that works?

4 THE DEFENDANT: Yes, sir.

5 THE JUDGE: Anything else?

6 MR. WELLBORN: Yes. The next motion would
7 be preclude to any use of Mr. Canupp's
8 statements or statements given by Jordon Canupp
9 that relate to my client and this case as being
10 violative of my client's confrontation with
11 clause rights under the Sixth Amendment as
12 outlined in Crawford vs. Washington, United
13 States Supreme Court case.

14 All of these statements given by
15 Mr. Canupp were statements given after he had
16 been placed under arrest. It was approximately
17 six months after the incident had taken place.
18 They were made for purposes of investigating the
19 case and/or prosecuting the case; therefore, by
20 definition in Justice Scalia in Crawford there
21 would be testimony on the nature. I have not
22 had a prior opportunity to cross-examine
23 Mr. Canupp under oath. There doesn't seem to be
24 any issue that has been presented in court of
25 availability which, of course, would be another

STATE OF SC VS. BRANDON GOINS - 3-31-14

1 problem. They simply chose not to call him as a
2 witness for what I would call fairly obvious
3 reasons, but nonetheless, allowing his
4 statements to be used against my client would be
5 in square with Crawford and violative for my
6 client's rights to confront with the Sixth
7 Amendment.

8 MR. SPRINGS: We do not intend to use any
9 statements from the codefendant.

10 THE JUDGE: Anything else, Mr. Wellborn?
11 Any other pre-trial?

12 MR. WELLBORN: Whether the State has
13 fully complied with its discovery obligations.
14 Obviously, they asked me if I supply the
15 certificate of reciprocal. Of course, it is not
16 triggered unless the State has fully complied.
17 I would ask that they put on the record and
18 state they complied with any statements
19 supposedly given by my client, any tangible
20 evidence, or any other items they plan to
21 present for their case in chief.

22 MS. SHELTON: Your Honor, we have. We
23 intend to produce no physical evidence. There
24 were no pictures taken. There were two items
25 taken into evidence that the State chose not to

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1 have tested. We don't intend to introduce those
2 physical items. The only statement that we are
3 aware of from his client is the one we just
4 previously discussed.

5 MR. WELLBORN: Your Honor, that would be
6 it for the defense pre-trial motions.
7 Obviously, we have voir dire. I can hand it up.

8 THE JUDGE: I am about to go into that.
9 Does the defense have any objection to the
10 State's request for voir dire? They had four
11 questions.

12 MR. WELLBORN: No, sir, I do not.

13 THE JUDGE: Let me tell you, Solicitor, we
14 will, Number 1 and 4, if anybody stands up on
15 those questions, I will take their responses
16 down front and invite counsel up too. We never
17 know what they are going to say, and I would
18 rather get it down on the record whatever
19 information I might give to other jurors which
20 might be prejudicial to one side or the other.

21 Number 2 will be taken care of in my
22 normal course of starting voir dire as you are
23 well aware of my way of doing that.

24 Number 3 I am not sure where you are going
25 with that. Do you have any family or person and

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1 the attorney's name in this case. I am already
2 going to ask about the two of you and
3 Mr. Wellborn. He is asking for everybody in the
4 solicitor's office. Anything else?

5 MS. SHELTON: No, sir, your Honor. I
6 think I throw that in there just in case of --

7 THE JUDGE: Another attorney?

8 MS. SHELTON: Yes, sir.

9 MR. WELLBORN: Your Honor, while we are
10 addressing that, I would bring to the Court's
11 attention, I don't know if this particular juror
12 will be drawn, but there is a juror, his name is
13 Craig Phillips, if you would give me one second
14 I will be glad to give you the juror number. I
15 apologize for not having that at hand. Edward
16 C. Phillips, Number 177. Should that juror come
17 up, I would challenge for cause. I think it is
18 appropriate since none of the jurors are here
19 that your Honor apply it that way and you are
20 not caught on fly with this.

21 Mr. Phillips was previously married to my
22 wife's first cousin. They were extremely close.
23 My oldest daughter is named after this first
24 cousin. They were involved in a horrific
25 automobile accident before my first child was

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1 born so we are talking about 19 years ago. In
2 which Mr. Phillip's wife, my wife's first
3 cousin, died. Mr. Phillips and the two children
4 survived.

5 Shortly thereupon, Mr. Phillips was taken
6 in during the grieving process by my wife's
7 first cousin's brother and his wife in Gaffney.
8 He started a relationship with the surviving
9 brother of this wife. Ultimately, the two of
10 them decided to move in together. I was brought
11 in on a pro bono basis to represent the brother
12 in a very, very contentious and you can imagine
13 an emotionally charged divorce which involved
14 litigation, depositions, and the like.

15 Under the circumstances, I cannot imagine
16 an instance where Mr. Phillips could possibly be
17 unbiased wherein a case where I represented.
18 Should his name come up, I would challenge and I
19 thought it completely unfair to the Court to be
20 put on the fly.

21 THE JUDGE: Does the State take a position
22 on that?

23 MR. SPRINGS: We think Mr. Wellborn is
24 capable of using a strike on Mr. Phillips. If
25 he says he can be fair and unbiased, he is a

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1 proper juror. There is no cause if he is a
2 citizen and has no disqualifying criminal
3 conviction, there is no cause. It is an issue
4 of using a jury strike, and Mr. Wellborn will
5 have ten of those.

6 I would say now, and I know the Court is
7 going to ask if anyone knows Mr. Wellborn, Mr.
8 Springs and Ms. Shelton and if Mr. Phillips
9 doesn't respond at all --

10 THE JUDGE: What if he doesn't stand up.

11 MR. SPRINGS: Then a query needs to be
12 made. Do you know Attorney Wellborn? But
13 assuming he stands up, I know Mr. Wellborn, and
14 I can be fair to in this case. He is entitled
15 to be a juror.

16 THE JUDGE: I guess I think you were
17 looking to avoid getting into that?

18 MR. WELLBORN: I want to bring it to the
19 Court's attention.

20 THE JUDGE: What I will do is -- you may
21 very well be entitled to excuse him for cause,
22 but I will have to wait and make a decision of
23 that. He may not be part of a panel, Number 1.
24 Number 2, he may not be cause if he is part of
25 the panel. And Number 3, if he is, then I will

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1 ask the question. First thing is we will get
2 started with related by blood, marriage,
3 friends, any other type of social business,
4 professional or social relationship with each of
5 the solicitor's and also then with you. If he
6 fails to stand up, we will bring him down, or
7 that might be good enough to excuse him for
8 cause. It appears to me if he doesn't respond
9 and he somehow is related, or in any event, what
10 we will do is talk to him about it. We will
11 bring him down next to the court reporter here
12 so we don't bring anything up that might have an
13 effect on the jury. We will do it down here and
14 I will make a decision if you want to excuse for
15 cause at that point.

16 I am not satisfied he should be excused
17 based on responses then you can make your motion
18 to excuse for cause and I will take that up. I
19 will decide if I believe good cause has been
20 shown at that point.

21 THE JUDGE: Okay. We will do it that
22 way. Anything else?

23 MR. WELLBORN: No, sir, not for purposes
24 of voir dire. I don't know if the State has any
25 objection.

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1 THE JUDGE: I am going there now. Any
2 objections to Mr. Wellborn's request on behalf
3 of the defendant?

4 MR. SPRINGS: Yes, your Honor. Many of
5 them are completely unnecessary. Number 1 is
6 going to be handled in your normal voir dire.
7 There is absolutely no reason to carve out,
8 specifically pinpoint Pete Branham.

9 THE JUDGE: I am going to ask on your
10 witness list Officer Branham, Detective Branham.

11 MR. SPRINGS: Same thing with Number 2.
12 It is duplicative.

13 THE JUDGE: Same thing.

14 MR. SPRINGS: Number 3, were all of the
15 law enforcement agencies in the county named
16 plus the highway patrol, that's unnecessary. It
17 is unnecessary.

18 THE JUDGE: It might be. I will ask it
19 anyway. It is overkill, but I will ask it
20 anyway. You could just ask is anybody in a law
21 enforcement agency, or any law enforcement
22 officer, the way it is normally asked instead of
23 naming all of these.

24 MR. SPRINGS: We are fine with Number 4.
25 Number 5, again, you are going to ask.

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1 THE JUDGE: I am going to ask right off
2 the bat.

3 MR. SPRINGS: Number 6, if all these
4 people are on a witness list, either State's or
5 defense, that's fine, but we don't know that.
6 It is ridiculous to throw out names. Does
7 anybody know Barack Obama. What is the
8 relevance of all these people? If they are on
9 the witness list, that's fine. If not, it would
10 be improper to be asking. Do you know so and
11 so?

12 THE JUDGE: Well, two of the requests
13 under Number 6 are duplicates. Well, is Jordon
14 Canupp on your list if you don't plan to call
15 him?

16 MS. SHELTON: He is on our list, your
17 Honor, but we do not plan to call him.

18 THE JUDGE: Do you plan to call him?

19 MR. WELLBORN: We may. His name is going
20 to come up, and since his name is going to come
21 up.

22 THE JUDGE: Good point. We will ask that.

23 MR. SPRINGS: Number 7 could easily,
24 without working the Court to death, could be is
25 anyone close friends or relatives with anyone

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1 that works in the Solicitor's office?

2 THE JUDGE: That's what I normally ask.
3 Would that satisfy you, Counselor, or not?

4 MR. WELLBORN: The answer is no. The
5 reason is, and this is why I have always done it
6 this way in every trial I have had with your
7 honor or any other judge including multiple with
8 Mr. Springs. I have had the unfortunate
9 experience of trying a case which wound up in an
10 11 to 1 hung jury not guilty. The one hang up
11 was someone realized in the middle of the trial
12 that they were neighbors of an assistant
13 solicitor that was not involved in the case but
14 felt they needed to be supportive. I would much
15 prefer to get that information out on the front
16 end. At least I can make an intelligent strike
17 if somebody is best friends with Erin Hayes or
18 best friends with Chris Epting or best friends
19 with Marina Hamilton, I need to know it for the
20 purpose of making an intelligent strike. That's
21 why they are listed.

22 Obviously, if I work for law firm and I
23 had partners, I am sure the State would be
24 asking if anyone was friends, relatives, or
25 clients of any of my partners, which is standard

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1 fare. The solicitor's office is the largest law
2 firm in the county, but they are a law firm
3 effectively for purposes of representing a
4 party. That's why I asked it. I have limited
5 it to lawyers, not investigators, not
6 secretaries, but here we are.

7 THE JUDGE: A couple of these people work
8 in Family Court dealing with juveniles.

9 MR. WELLBORN: That is correct, but they
10 still prosecute cases, and some of the people on
11 the jury may have had cases where they were
12 victims of crimes, where they were these people
13 who were the prosecutors whether they were
14 juvenile court or other court.

15 THE JUDGE: All right. I will ask it. I
16 think it is overkill but I will ask it.

17 MR. SPRINGS: Number 8, isn't per se
18 improper, but I think we are opening the door to
19 being here all afternoon as people get up and
20 talk about all various times that they have had
21 to call because there was a prowler or something
22 that has gone on in the neighborhood. It asks,
23 has anyone asked for assistance or been given
24 assistance by York County -- excuse me. I need
25 to put my glasses on. I was reading that as

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1 Sheriff's office. I don't have a problem with
2 Number 8. My apologies with that.

3 Number 9, I will leave it in the Court's
4 discretion. Has anyone testified as a witness
5 for the prosecution.

6 Number 10, we had no problem with.

7 Number 11, we had no problem with.

8 Number 12, we have no problem with.

9 THE JUDGE: Okay. I will eliminate the
10 duplicates. I will only ask them one time.
11 Number 8, 9, 10, and 11, I will ask those, but I
12 will take their responses down up front if they
13 need to respond.

14 MR. WELLBORN: Thank you, your Honor. I
15 should have requested that in my voir dire. I
16 think that's the appropriate way to do it.

17 THE JUDGE: There is two on the State's
18 list and two on the defense's list that we will
19 take down front, a total of six. I will hold
20 off on those and ask them last. Also, it might
21 save them some embarrassment as well.

22 Anything else that you can think of?

23 MR. SPRINGS: Nothing.

24 MR. WELLBORN: No, sir. Thank you.

25 THE JUDGE: Strikes of 10 and 5.

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1 MR. WELLBORN: That is correct.

2 MR. SPRINGS: Yes.

3 THE JUDGE: I thin one alternate should be
4 sufficient. We will draw one alternate.
5 Strikes are two for defense and one for State.

6 MS. SHELTON: Your Honor, I just realized
7 Mr. Wellborn did not make a specific motion to
8 suppress the statement, but I would feel more
9 comfortable if there was a pre-trial ruling on
10 the Jackson vs. Denno issue. We kind of skipped
11 over it.

12 THE JUDGE: Well, he didn't ask any
13 questions.

14 MR. WELLBORN: For the record, I was not
15 seeking to suppress it.

16 THE JUDGE: I understand. You didn't ask
17 any questions. Based on the officer's
18 testimony, I find the Miranda warnings were
19 given and the rights were explained to
20 defendant, and he wrote the statement out on his
21 own after an oral statement. There were not any
22 undue influence used or any kind of force used,
23 threats, or intimidation, no officer threatened.
24 There was no incentive given to him to make a
25 statement. That is to say nothing was promised

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1 to him apparently. He was not held for a
2 significant period of time without food, water,
3 or not able to go to the restroom. I don't find
4 any reason to find anything other than the
5 statement was free and voluntarily given after
6 being fully advised of all of his constitutional
7 Miranda warnings, and the statement was freely
8 and voluntarily given.

9 Anything else?

10 MS. SHELTON: Nothing from the State, your
11 Honor.

12 THE JUDGE: Are you ready for the jury?
13 Do you need a break?

14 MS. SHELTON: I don't think there is going
15 to be one ready for some time.

16 MR. SPRINGS: Could the Clerk check with
17 the jury coordinator?

18 THE JUDGE: We will take a 10 minute
19 recess.

20 (Court in recess at 2:41 p.m.)

21 (Open Court at 3:00 p.m.)

22 THE JUDGE: Good afternoon, ladies and
23 gentlemen of the jury panel. If you would give
24 me your attention, please. We are about to go
25 into a trial in the matter of the State of South

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1 Carolina versus Brandon Goins, last name spelled
2 G-O-I-N-S. The State charges Mr. Goins with the
3 offenses of burglary first degree, grand
4 larceny, and criminal conspiracy. To these
5 charges, the defendant has pled not guilty and
6 we are about to go into a trial on those
7 charges.

8 The State is represented in this case by
9 Assistant Solicitor's Misti Shelton and E.B.
10 Springs, IV.

11 Counsel, please stand so the jury can see
12 you in person. Thank you. You maybe seated.

13 Is anyone on the jury panel related by
14 blood or marriage, friends with, have any other
15 type of social, professional relationship with
16 Misti Shelton or E.B. Springs, IV. If so,
17 please stand.

18 Ladies and gentlemen of the jury panel, I
19 am going to go through a list of the solicitor's
20 that we have in York County and the solicitor's
21 office. What I am going to ask you to do when I
22 call the assistant solicitor names, some of
23 these most work in York, some work in Family
24 Court in Rock Hill. What I am going to ask you
25 to do when I call the assistant solicitor or

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1 solicitor's name, if you are related by blood or
2 marriage, friends with, or have any other type
3 of social, business, or professional
4 relationship with any of these names, persons
5 working in the solicitor's office, or attorneys
6 in the solicitor's office, when I call their
7 names I would ask you please stand. Kevin
8 Brackett is the solicitor for the Sixteenth
9 Circuit. Willy Thompson, Marina Hamilton, Betty
10 Miller, Jennifer Colton, C-O-L-T-O-N, Jennifer
11 Desch, D-E-S-C-H, Chris Epting, Leslie Robinson,
12 Jessica Holland, Teasa Weaver, Matt Shelton,
13 Quida Dest, Stephanie Wood, Ryan Newkirk, John
14 Shiflet, Christopher Jones, Whitney Payne, Erin
15 Hayes, Matthew Hogge spelled H-O-G-G-E, Sharon
16 O'Hayon, O-'-H-A-Y-O-N, Erin Joyner.

17 Now, the defendant in this case, Brandon
18 Goins, is represented by Attorney Christopher
19 Wellborn of Rock Hill bar.

20 Mr. Wellborn, if you would please stand
21 and ask Mr. Wellborn to please stand so the jury
22 can see who he is. Thank you. You may be
23 seated.

24 Is anyone on the jury panel related by
25 blood or marriage, friends with, or any other

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1 type, social, business or professional
2 relationship with Brandon Goins? If so, please
3 stand.

4 Is anyone on the jury panel related by
5 blood or marriage, friends with, or have any
6 other type, social, business or professional
7 relationship, that is to say currently or
8 formally represented by or have him on the other
9 side of a case which you are involved? If so,
10 please stand.

11 I am going to go through a list of
12 potential witnesses in this case. All of these
13 witnesses may not be called but they may be
14 called. What I am going to ask you to do is
15 when I call the witness' name, I would ask that
16 you please stand.

17 First of all, let me ask you about these
18 witnesses first before I do that. Is anyone in
19 the jury panel a friend, relative by blood or
20 marriage, a neighbor or have a business, church,
21 or social relationship with Investigator Pete
22 Branham of the York County Sheriff's Office or
23 any member of his family. If so, please stand.

24 Is anyone on the jury panel a friend,
25 relative by blood or marriage, a neighbor, or

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1 have a business, church, or social relationship
2 with Josh Yates or Chris Doty, D-O-T-Y of the
3 York County Sheriff's Office or with their
4 families? If so, please stand.

5 Yes, sir. Please give us your name and
6 number, sir.

7 PROSPECTIVE JUROR 78: Ken Ester.

8 THE JUDGE: Your number?

9 PROSPECTIVE JUROR: Juror number 78.

10 THE JUDGE: Yes, sir.

11 PROSPECTIVE JUROR 78: I live three doors
12 down from Josh Yates.

13 THE JUDGE: Is there anything about that
14 relationship that would interfere in any way
15 with your ability to give both the State and the
16 defendant a fair and impartial trial if Josh
17 Yates was called a witness?

18 PROSPECTIVE JUROR 78: No, sir, I don't
19 think so.

20 THE JUDGE: Thank you, sir. You may be
21 seated. Anyone else?

22 Is anyone on the jury panel -- well, let
23 me back one minute. Let me go through a list of
24 potential witnesses in this case. Again, if you
25 are related by blood or marriage, friends with,

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1 or have any other type of social, business, or
2 professional relationship with any of these
3 potential witnesses, when I call their names I
4 would ask that you please stand.

5 Pete Skidmore, Bobby Brooks, Shelby
6 Esteves, Rubin Ridgeway, Melvin Howell, Jordon
7 Clyde Canupp, Hannah Smith, Pete Mitchum,
8 Richard Goins, A.J. Bolen, Patricia Stiber,
9 spelled S-T-I-B-E-R, Marshall Smith, Detective
10 Brian Schettler, S-C-H-E-T-T-L-E-R, from the
11 York County Sheriff's office, Officer Crystal
12 Beck with the York County Sheriff's office,
13 Darryl Smith, Sandy Smith.

14 Is anyone on the jury panel related to by
15 blood or marriage, a friend or neighbor or have
16 a social or church relationship with any member
17 of the South Carolina Highway Patrol or Rock
18 Hill Police Department, York County Sheriff's
19 Office, Fort Mill Police Department, Clover
20 Police Department, York Police Department, Tega
21 Cay Police Department, or any other law
22 enforcement agency in South Carolina or any
23 other state or federal agency. If so, please
24 stand.

25 Yes, sir, please give us your name and

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1 number, sir.

2 PROSPECTIVE JUROR 225: Stanley Traylor,
3 Number 225. My stepson is a city of York police
4 officer.

5 THE JUDGE: Sir, is there anything about
6 that relationship that would interfere in any
7 way with your ability to give both sides a fair
8 and impartial in this case?

9 PROSPECTIVE JUROR 225: No, sir.

10 THE JUDGE: Yes, ma'am.

11 PROSPECTIVE JUROR 2: Tina Adams, Juror
12 Number 2. Wilson Barnett.

13 THE JUDGE: Wilson Barnett is what to you,
14 ma'am?

15 PROSPECTIVE JUROR 2: My cousin.

16 THE JUDGE: He is retired then, is he not?

17 PROSPECTIVE JUROR 2: Yes.

18 THE JUDGE: Is there anything about that
19 relationship that would interfere in any way
20 with your ability to give both sides a fair and
21 impartial trial in this case?

22 PROSPECTIVE JUROR 2: No.

23 THE JUDGE: Yes, ma'am.

24 PROSPECTIVE JUROR 101: Laquacia Weldon.
25 I work for the County Department of Social

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1 Services.

2 THE JUDGE: Your number, ma'am?

3 PROSPECTIVE JUROR: 101.

4 THE JUDGE: Is there anything about that
5 employment that would interfere in any way with
6 your ability to give both the State and the
7 defendant a fair and impartial trial in this
8 case?

9 PROSPECTIVE JUROR 101: No, sir.

10 THE JUDGE: Thank you.

11 Yes, sir.

12 PROSPECTIVE JUROR: Leo Rodriguez, Number
13 196. My uncle is in the FBI.

14 THE JUDGE: Sir, is there anything about
15 that relationship that would interfere in any
16 way with your ability to give both sides a fair
17 and impartial trial in this case?

18 PROSPECTIVE JUROR: No, sir.

19 THE JUDGE: Thank you. Anyone else?

20 Has anyone on the jury panel ever worked
21 for, or have any of your friends, relatives, or
22 neighbors ever worked for any law enforcement
23 agency here in South Carolina or any other state
24 or federal law enforcement agency? If so,
25 please stand.

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1 THE JUDGE: Yes, ma'am, give us your name
2 and number, please.

3 PROSPECTIVE JUROR 80: Kate Ethridge,
4 Number 80.

5 THE JUDGE: Yes, ma'am.

6 PROSPECTIVE JUROR 80: My ex father-in-law
7 was a state trooper.

8 THE JUDGE: Ma'am, is there anything about
9 that relationship that would interfere in any
10 way with your ability to give both sides a fair
11 and impartial in this case?

12 PROSPECTIVE JUROR 80: No.

13 THE JUDGE: Thank you. Yes, ma'am.

14 PROSPECTIVE JUROR 66: My sister was a
15 Rock Hill police officer.

16 THE JUDGE: Was a police officer?

17 PROSPECTIVE JUROR 66: Was.

18 THE JUDGE: Give us your name and number
19 for the record.

20 PROSPECTIVE JUROR 66: Carla Defratti, 66.

21 THE JUDGE: Ma'am, is there anything about
22 that relationship that would interfere in any
23 way with your ability to give both sides a fair
24 and impartial trial in this case?

25 PROSPECTIVE JUROR 66: No, sir.

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1 THE JUDGE: Thank you. Yes, ma'am.

2 PROSPECTIVE JUROR 76: Jill Eaton, Juror
3 76. My father-in-law was the sheriff of York
4 County.

5 THE JUDGE: Which county?

6 PROSPECTIVE JUROR 76: York.

7 THE JUDGE: York County with the Sheriff's
8 office?

9 PROSPECTIVE JUROR 76: He was the Sheriff.

10 THE JUDGE: Pardon me?

11 PROSPECTIVE JUROR 76: He was the Sheriff
12 of York County.

13 THE JUDGE: Ma'am, is there anything about
14 that relationship that would interfere in any
15 way with your ability to give both sides a fair
16 and impartial trial in this case?

17 PROSPECTIVE JUROR 76: No, sir.

18 THE JUDGE: Anyone else?

19 Has anyone on the jury panel ever been a
20 customer of or used Captain Darryl's Guide
21 Service or been on a fishing trip with Darryl
22 Smith? If so, please stand.

23 Ladies and gentlemen, I am now going to
24 ask you a total of six questions and the
25 responses to some of these questions may be

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1 rather personal. For that reason it is my
2 policy on these questions, if you need to
3 respond to one or more of them, I will take your
4 responses down front next to the court reporter.
5 We have to record your responses, but we can do
6 that with a little more privacy down front next
7 to the court reporter. So listen carefully to
8 the questions. If you think one or more of
9 these questions may apply to you, I will ask you
10 to wait until I have gone through all six
11 questions and then at that time if you need to
12 respond to them, we will have you come to the
13 center aisle and bring you down and take your
14 responses one at a time next to the court
15 reporter. Here are the questions.

16 Have you or a member of your immediate
17 family ever been arrested for an offense
18 involving allegations of theft or burglary?

19 Do you have any beliefs, religious or
20 otherwise, that prevent you from rendering
21 judgment against another person?

22 Has anyone on the jury panel ever sought
23 assistance from or been given assistance by the
24 York County Solicitor's office?

25 Has anyone on the jury panel ever

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1 testified as a witness for the prosecution in
2 court?

3 Has anyone on jury panel ever had his or
4 her home broken into?

5 Finally, does anyone have any close
6 friends, relatives, or co-workers whose homes
7 were broken into?

8 If you need to respond to one or more of
9 these questions, I will ask you to come to the
10 center aisle at this time and we would receive
11 the responses down front.

12 THE JUDGE: Give us your name and number
13 for the record.

14 PROSPECTIVE JUROR 32: Derek Brown, Number
15 32.

16 THE JUDGE: Yes, sir.

17 PROSPECTIVE JUROR 32: Question 1, 5 and
18 6. One, my wife was arrested in 2008 for second
19 degree burglary and grand larceny. My house was
20 broken into on more than one occasion. My
21 parents place of business has been broken into
22 before.

23 THE JUDGE: Their what?

24 PROSPECTIVE JUROR 32: Place of business
25 has been broken into.

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1 THE JUDGE: Let me ask you whether there
2 is anything about your experiences in that
3 regard in any one or more of them that would
4 interfere in any way with your ability to give
5 the State and the defendant a fair and impartial
6 trial in this case?

7 PROSPECTIVE JUROR 32: No, it won't.

8 THE JUDGE: Thank you. Give us your name
9 and number for the record.

10 PROSPECTIVE JUROR 120: Lauren Jenkins,
11 120.

12 THE JUDGE: Yes, ma'am.

13 PROSPECTIVE JUROR 120: My Uncle Shane
14 Jenkins, his house was broken into last year and
15 he was murdered.

16 THE JUDGE: Let me ask you if there is
17 anything about your experiences in that regard
18 that would interfere with your ability to give
19 both the State and the defendant a fair and
20 impartial trial in this case?

21 PROSPECTIVE JUROR 120: No, sir.

22 THE JUDGE: Thank you, ma'am.

23 Give us your name and number, again, for
24 the record?

25 PROSPECTIVE JUROR 2: Tina Adams, Number

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1 2.

2 THE JUDGE: Yes, ma'am.

3 PROSPECTIVE JUROR 2: I have been broken
4 into.

5 THE JUDGE: You personally. Is there
6 anything about your experiences in that regard
7 that interfere with your ability to give both
8 the State and the defendant a fair and impartial
9 in this case?

10 PROSPECTIVE JUROR 2: No.

11 THE JUDGE: Okay. Return to your seat.
12 Give us your name and number.

13 PROSPECTIVE JUROR 188: Teresa Ramey,
14 188.

15 THE JUDGE: Yes, ma'am.

16 PROSPECTIVE JUROR 188: I had a coworker
17 that had her home broken into.

18 THE JUDGE: Is there anything about your
19 experiences in that regard that would interfere
20 in any way with your ability to give both the
21 State and the defendant a fair and impartial
22 trial in this case?

23 PROSPECTIVE JUROR 188: No.

24 THE JUDGE: Thank you. Your name and
25 number for the record.

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1 PROSPECTIVE JUROR: Stanley Traylor,
2 Number 225.

3 THE JUDGE: Yes, sir.

4 PROSPECTIVE JUROR 225: My home was broken
5 into. I have been broken into.

6 THE JUDGE: Let me ask you: Is there
7 anything about your experiences in that regard
8 that would interfere in any way with your
9 ability to give both the State and the defendant
10 a fair and impartial trial in this case?

11 PROSPECTIVE JUROR 225: No, sir.

12 THE JUDGE: Thank you, sir. Give us your
13 name and number.

14 PROSPECTIVE JUROR 9: Lisa Ayers, Number
15 9.

16 THE JUDGE: Yes, ma'am.

17 PROSPECTIVE JUROR 9: My family was broken
18 into three different times, but it wouldn't
19 affect me.

20 THE JUDGE: Let me ask you specifically:
21 Was there anything about your experiences in
22 that regard that would interfere in any way to
23 give both the State and the defendant a fair and
24 impartial trial in this case?

25 PROSPECTIVE JUROR: No.

JURY SELECTION

1 THE JUDGE: Thank you, ma'am. Give us
2 your name and number.

3 PROSPECTIVE JUROR 21: Paula Bergseng,
4 Number 21. I had a family member that was
5 arrested less than a year ago for theft.

6 THE JUDGE: A family member?

7 PROSPECTIVE JUROR 21: A family member, my
8 daughter.

9 THE JUDGE: It was your --

10 PROSPECTIVE JUROR 21: Daughter.

11 THE JUDGE: Anything about your experience
12 in that regard that would interfere in any way
13 with your ability to give both the State and the
14 defendant a fair and impartial trial in this
15 case?

16 PROSPECTIVE JUROR 21: No, sir.

17 THE JUDGE: Thank you. Give us your name
18 and number.

19 PROSPECTIVE JUROR 58: Ronald C. Canupp,
20 number 58.

21 THE JUDGE: Yes, sir.

22 PROSPECTIVE JUROR 58: My older brother
23 has been arrested so many times. I am sure one
24 of them probably had to do with theft.

25 THE JUDGE: All right. Let me ask you

JURY SELECTION

1 whether there is anything about your experiences
2 that would interfere in any way with your
3 ability to give both the State and the defendant
4 a fair and impartial trial in this case?

5 PROSPECTIVE JUROR 58: No, your Honor.

6 THE JUDGE: Thank you, sir. What is your
7 name and number for the record?

8 PROSPECTIVE JUROR 246: Lillie A.
9 Witherspoon, Juror 246.

10 THE JUDGE: Yes, ma'am.

11 PROSPECTIVE JUROR 246: My daughter's car
12 was burglarized. She filed a police report.

13 THE JUDGE: Let me ask you whether there
14 is anything about your experience in that regard
15 that would interfere in any way to give the
16 State and the defendant a fair and impartial
17 trial in this case?

18 PROSPECTIVE JUROR 246: No, sir. All I do
19 is follow the evidence.

20 THE JUDGE: Thank you. Give us your name
21 and number for the record.

22 PROSPECTIVE JUROR 196: Leo Goyco
23 Rodriguez, 196.

24 THE JUDGE: Yes, sir.

25 PROSPECTIVE JUROR 196: A friend's home

JURY SELECTION

1 was broken into a few times and my grandparent's
2 home in New York and Puerto Rico were broken
3 into.

4 THE JUDGE: Let me ask you if your
5 experiences in that regard would interfere in
6 any way with your ability to give the State and
7 the defendant a fair and impartial trial in this
8 case?

9 PROSPECTIVE JUROR 196: No, your Honor.

10 THE JUDGE: Give us your name and number.

11 PROSPECTIVE JUROR 66: 66.

12 THE JUDGE: Your name?

13 PROSPECTIVE JUROR 66: Carla Defratti.

14 THE JUDGE: Yes, ma'am.

15 PROSPECTIVE JUROR 66: My next door
16 neighbor, who is my best friend, house was
17 burglarized in December.

18 THE JUDGE: Let me ask you whether there
19 is anything about your experiences in that
20 regard that would interfere in any way with your
21 ability to give both the State and the defendant
22 a fair and impartial trial in this matter?

23 PROSPECTIVE JUROR 66: No, sir.

24 THE JUDGE: Please give us your name and
25 number for the record.

JURY SELECTION

1 PROSPECTIVE JUROR 76: Jill Eaton, 76.

2 THE JUDGE: Yes, ma'am.

3 PROSPECTIVE JUROR 76: I am a retired New
4 York City police officer and arrested people for
5 burglary and also took them to prosecution.

6 THE JUDGE: Let me ask you this? Is there
7 anything about your prior employment and your
8 experiences in that regard that would interfere
9 with your ability to give both the State and the
10 defendant a fair and impartial trial in this
11 case?

12 PROSPECTIVE JUROR 76: No.

13 THE JUDGE: Thank you. Please give us
14 your name and number for the record.

15 PROSPECTIVE JUROR 128: Katherine King,
16 128.

17 THE JUDGE: Yes, ma'am.

18 PROSPECTIVE JUROR 128: I am sorry, I
19 didn't hear the beginning because my ear was
20 crackling from the air this morning. I used to
21 work at a shop that Mr. Springs brought his car
22 to. I am sorry I didn't hear until the second
23 time you mentioned if anybody had any business.
24 It would not sway my.

25 THE JUDGE: Let me ask you specifically

JURY SELECTION

1 whether that relationship would interfere with
2 your ability to give both the State and the
3 defendant a fair and impartial trial in this
4 case?

5 PROSPECTIVE JUROR 128: No, sir.

6 THE JUDGE: Okay. Ladies and gentlemen,
7 just a few more questions, if you would give me
8 your attention please.

9 Has any member of the jury panel had any
10 prior knowledge about this case from any source
11 before coming here to court today, from any
12 source? If so, please stand.

13 Has any member of the jury panel formed or
14 expressed an opinion as to the guilt or
15 innocence of the defendant, Brandon Goins? If
16 so, please stand.

17 Is any member of the jury panel conscious
18 of any interest, bias or prejudice for or
19 against the defendant, Brandon Goins? If so,
20 please stand.

21 Can each member of the jury panel give
22 both the State and the defendant, Brandon Goins,
23 a fair and impartial trial in this case? If
24 not, please stand.

25 Does any member of the jury panel know of

JURY SELECTION

1 any reason whatsoever why he or she should not
2 serve as a juror in this particular case? If
3 so, please stand.

4 Any additional requests requested of the
5 jury panel from the State?

6 MS. SHELTON: None from the State, your
7 Honor.

8 THE JUDGE: From the defense?

9 MR. WELLBORN: No, sir. Thank you.

10 THE JUDGE: Madam Clerk, please give us
11 the jury.

12 THE CLERK: When your name is called,
13 please bring your belongings and stand by the
14 bailiff.

15 Number 111, Juanita Helton.

16 What say ye for the State?

17 MS. SHELTON: Please present this juror.

18 THE CLERK: Defense?

19 MR. WELLBORN: Please swear this juror.

20 THE CLERK: Have a seat in the jury box.

21 Number 107, Richard Harrison.

22 What say ye for the State?

23 MS. SHELTON: Please present this juror.

24 THE CLERK: Defense?

25 MR. WELLBORN: Please swear this juror.

JURY SELECTION

1 THE CLERK: Have a seat in the jury box.

2 Number 136 Karen Laster.

3 What say ye for the State?

4 MS. SHELTON: Please present this juror.

5 THE CLERK: Defense?

6 MR. WELLBORN: Please swear this juror.

7 THE CLERK: Have a seat in the jury box.

8 Number 9, Lisa Ayers.

9 What say ye for the State?

10 MS. SHELTON: Please present this juror.

11 THE CLERK: Defense?

12 MR. WELLBORN: Please excuse Ms. Ayers.

13 THE CLERK: You may return to your seat.

14 Number 219, Thomas Sutton.

15 What say ye for the State.

16 MS. SHELTON: Please present this juror.

17 THE CLERK: Defense?

18 MR. WELLBORN: Please excuse Mr. Sutton.

19 THE CLERK: You may return to your seat.

20 Number 16, Octavia Beaty. What say ye for the

21 State?

22 MS. SHELTON: Please present this juror.

23 THE CLERK: Defense.

24 MR. WELLBORN: Please swear Ms. Beaty.

25 THE CLERK: Have a seat in the jury box.

JURY SELECTION

1 Number 166, Larry Myers.

2 What say ye for the State?

3 MS. SHELTON: Please present this juror.

4 THE CLERK: Defense?

5 MR. WELLBORN: Please swear Mr. Myers.

6 THE CLERK: Have a seat in the jury box.

7 Number 95, Terry Green.

8 What say ye for the State?

9 MS. SHELTON: Please present this juror.

10 THE CLERK: Defense?

11 MR. WELLBORN: Please swear Mr. Green.

12 THE CLERK: Have a seat in the jury box.

13 Number 222, Keshia Thacker.

14 What say ye for the State?

15 MS. SHELTON: Please excuse Ms. Thacker.

16 THE CLERK: You may return to your seat.

17 Number 76, Jill Eaton.

18 What say ye for the State?

19 MS. SHELTON: Is that Juror Number 76?

20 THE CLERK: 76.

21 MS. SHELTON: Please present this juror.

22 THE CLERK: Defense?

23 MR. WELLBORN: Please excuse Ms. Eaton.

24 THE CLERK: Please return to your seat.

25 Number 35, Lisa Brown.

JURY SELECTION

1 What say ye for the State?

2 MS. SHELTON: Please present this juror.

3 THE CLERK: Defense?

4 MR. WELLBORN: Please swear Ms. Brown.

5 THE CLERK: Have a seat in the jury box.

6 Number 49, Stacey Cooper. What say ye for the
7 State?

8 MS. SHELTON: Please present this juror.

9 THE CLERK: Defense?

10 MR. WELLBORN: Please swear Ms. Cooper.

11 THE CLERK: Have a seat in the jury box.

12 Number 21, Paula Bergseng.

13 What say ye for the State?

14 MS. SHELTON: Please EXCUSE this juror.

15 THE CLERK: You may return to your seat.

16 Number 54, Hope Craig.

17 What say ye for the State?

18 MS. SHELTON: Please present this juror.

19 THE CLERK: Defense?

20 MR. WELLBORN: Please swear this juror.

21 THE CLERK: Have a seat in the juror box.

22 Number 218, Deborah Deborah Suttles.

23 What say ye for the State?

24 MS. SHELTON: Please excuse this juror.

25 THE CLERK: You may return to your seat.

JURY SELECTION

1 Number 225, Stanley Traylor.

2 What say ye for the State?

3 MS. SHELTON: Please present this juror.

4 THE CLERK: Defense?

5 MR. WELLBORN: Please excuse this juror.

6 THE CLERK: You may return to your seat.

7 Number 105, George Hardin.

8 What say ye for the State?

9 MS. SHELTON: Please excuse Mr. Hardin.

10 THE CLERK: You may return to your seat.

11 Number 101, Lacquacia Weldon.

12 What say ye for the State?

13 MS. SHELTON: Please present this juror.

14 THE CLERK: Defense?

15 MR. WELLBORN: Please excuse Ms. Weldon in
16 this case. Thank you.

17 THE CLERK: Number 2, Tina Adams.

18 What say ye for the State?

19 MS. SHELTON: Please present this juror.

20 THE CLERK: Defense?

21 MR. WELLBORN: Please swear Ms. Adams.

22 THE CLERK: Number 189, Glenn Ray.

23 What say ye for the State?

24 MS. SHELTON: Please present this juror.

25 THE CLERK: Defense?

JURY SELECTION

1 MR. WELLBORN: Please swear Mr. Ray.

2 THE CLERK: Have a seat in the jury box.

3 Number 59, Dennis Dakes.

4 What say ye for the State?

5 MS. SHELTON: Please present this juror.

6 THE CLERK: Defense?

7 MR. WELLBORN: Please excuse Mr. Dakes.

8 THE CLERK: You may return to your seat.

9 Number 66, Carla Defratti.

10 What say ye for the State?

11 MS. SHELTON: Please present this juror.

12 THE CLERK: Defense?

13 MR. WELLBORN: Please excuse Ms. Defratti.

14 THE CLERK: Number 45, Robert Clark. What
15 say ye for the State?

16 MS. SHELTON: Please excuse this juror.

17 THE CLERK: Number 196, Leo

18 Rodriguez-Goyco.

19 What say ye for the State?

20 MS. SHELTON: Please present this juror.

21 THE CLERK: Defense?

22 MR. WELLBORN: Please swear Mr. Rodriguez.

23 THE CLERK: Number 32, Derek Brown.

24 THE JUDGE: This is the alternate?

25 THE CLERK: No, sir. Maybe we have 12. I

JURY SELECTION

1 missed one.

2 THE JUDGE: This will be for the
3 alternate, Counsel.

4 MR. WELLBORN: Can we have the number
5 again?

6 THE CLERK: 32, Derek Brown.

7 What say ye for the State?

8 MS. SHELTON: Please excuse this juror.

9 THE CLERK: You may return to your seat.
10 Number 207, Angela Shively.

11 What say ye for the State?

12 MS. SHELTON: Can I get the number one
13 more time.

14 THE CLERK: 207.

15 MS. SHELTON: Thank you. Please present
16 this juror.

17 THE CLERK: Defense?

18 MR. WELLBORN: Please swear Ms. Shively.

19 THE CLERK: Have a seat in the box.

20 THE JUDGE: Any questions concerning the
21 selection process from the State?

22 MS. SHELTON: No, sir, your Honor.

23 THE JUDGE: From the defense?

24 MR. WELLBORN: Can we have a second to
25 confer with counsel?

JURY SELECTION

1 THE JUDGE: Sure.

2 MR. WELLBORN: Thank you, your Honor.

3 Nothing from defense.

4 THE JUDGE: All right. Ladies and
5 gentlemen of the jury panel who were not
6 selected for this particular case, I want to
7 thank you for your patience today and your
8 service thus far this week. We do appreciate
9 it. We are going to excuse you at this time and
10 ask you if you will to call your voicemail
11 number tonight any time after 7 o'clock. You
12 can call later than that but you may not be on
13 there until after 7. Thank you for your service
14 and please call in.

15 (Prospective jurors exiting courtroom.)

16 THE JUDGE: Counsel, approach just a minute
17 while the jury is exiting.

18 (Whereupon, a bench conference was held
19 off the record in the presence of the jury, but
20 out of hearing of the jury.)

21 THE JUDGE: Ladies and gentlemen of the
22 jury panel, we are not really going to get
23 started into the trial today. It is already
24 almost 5 o'clock. We don't like to go much
25 later than that. What I am going to do is give

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1 you the preliminary instructions about the
2 format of the trial, what to expect as we go
3 through the trial and how we are going to
4 proceed. I suspect that most of you have not
5 served on a jury in General Sessions Circuit
6 court before and hope this instruction will make
7 you feel a little more comfortable in these
8 unfamiliar surroundings.

9 The first thing that will happen tomorrow
10 when we get started really will be that the
11 attorney for the State, who is the assistant
12 solicitor, will make an opening statement to you
13 and then the attorney for the defendant will
14 have the same opportunity to address you in an
15 opening statement.

16 These opening statements by the attorneys
17 are not evidence. You should pay close
18 attention because they are in essence going to
19 identify to you what they perceive or say the
20 issues in the case are.

21 After they have made their opening
22 statements to you, then the State will proceed
23 by presenting the testimony and evidence that
24 they want you to consider. The reason the State
25 goes first is that the State has the burden of

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1 proof in this case. There is no burden of proof
2 upon the defendant to prove his innocence. The
3 burden of proof is upon the State of South
4 Carolina to prove the charges against this
5 defendant by evidence that satisfies you, the
6 jury, beyond a reasonable doubt before you can
7 return a verdict of guilty.

8 If the State fails to meet that burden of
9 proof, then your verdict must be not guilty.

10 After the assistant solicitor's have
11 presented you the evidence they want you to
12 consider on behalf of the State then the same
13 opportunity will be afforded to the defense.
14 The defendant may, but is not required, to
15 present any testimony or evidence because the
16 State has the burden of proving the defendant
17 guilty beyond a reasonable doubt.

18 Now, the defendant does not have to prove
19 he is innocent. He is presumed innocent and
20 that presumption stays with him throughout the
21 trial and may only be removed if the State meets
22 its burden of proving the guilt of the defendant
23 beyond a reasonable doubt.

24 Now, what is evidence? Evidence is the
25 sworn testimony you will hear from the witness

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1 stand to my right, exhibits admitted into the
2 record for your consideration by me the
3 presiding judge, and any stipulation of counsel.
4 Exhibits may take many forms such as documents,
5 pictures, videotapes, maps, diagrams and so
6 forth.

7 Stipulations are agreements of facts by
8 the attorneys. If the attorneys ever enter a
9 stipulation or agreement of fact that may be
10 made known to you and you can consider it along
11 with all of the other testimony and evidence,
12 give it such weight you deem appropriate once
13 you begin your deliberations.

14 Sworn testimony, the exhibits, and
15 stipulations are the only evidence you may
16 consider in your deliberations of the innocence
17 or guilt of the defendant. You may not consider
18 anything you heard from any other source about
19 this case in making your decision because that
20 is not evidence.

21 After you heard all of the evidence from
22 the attorneys for the State and the defendant
23 will once again appear before you and make what
24 we call closing arguments. We call them
25 arguments because the attorneys are allowed at

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1 that time to argue their positions, will attempt
2 to persuade you as to their position or view as
3 to the facts. When you have heard final
4 arguments from counsel, I will then charge you,
5 which you simply means to instruct you as to the
6 law that applies to the issues in this case.

7 You will then retire to the jury room to
8 deliberate and the reach your verdict. That's
9 how a case is tried in General Sessions Court,
10 whether it be this case or some other case.
11 Some cases take a half day or a day. Some cases
12 take weeks, but the same format applies in every
13 case.

14 As the trial judge, I have three functions
15 to perform during the trial. I am the presiding
16 officer, and therefore, must see that the trial
17 is run in orderly manner. I decide, based on
18 rules of civil and criminal procedure, whether
19 testimony and exhibits are admissible into
20 evidence for your consideration and at the
21 conclusion of the trial I instruct you as to the
22 law you must apply to the facts in this case in
23 reaching your verdict.

24 You, ladies and gentlemen, are also judges
25 in this case. You are the judges of the facts.

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1 In other words, you determine the truth of the
2 facts in this case. Under our constitution, I
3 am not permitted as the judge of the law to have
4 an opinion about the facts so I do not get into
5 whether I believe a witness or not. That is not
6 my function. I am not even permitted to express
7 an opinion if I had one as to the facts in this
8 case. So you the jurors determine what is the
9 truth of the facts.

10 Now, I do not permit jurors to take notes
11 during the trial because it is my experience
12 that while writing notes you may miss something
13 very important for you to hear and you may have
14 failed to observe a witness who is testifying.
15 It is important that you pay careful attention
16 to all testimony and the introduction of
17 evidence since you must judge the credibility or
18 believability of witnesses and the weight to
19 give all evidence to introduced in this case in
20 determining the truth of the facts.

21 During the trial, the attorneys may object
22 to the admissibility of certain testimony or
23 other evidence. I will either sustain the
24 objection, which means I agree, and the
25 testimony or evidence may not be made part of

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1 the record for your consideration. Or, I will
2 overrule the objection, which means as the judge
3 of the law I have determined that it is
4 admissible as part of the record for your
5 consideration.

6 Again, that is according to the rules of
7 civil and criminal procedure.

8 The mere fact that I have admitted it does
9 not mean that you must believe it or disbelieve
10 it. I have simply determined that it is
11 admissible under our rules. It up to you then
12 to believe it or disbelieve it and assign such
13 weight to it as you determine to be appropriate.

14 At the conclusion of the trial, I will
15 send you to the jury room. Every exhibit that
16 is admitted into evidence will be sent to the
17 jury room for you to examine further and to
18 consider.

19 I remind you that one of the most
20 important aspects of the jury lies essentially
21 in an oath that you will take in the morning
22 before we get started. We will delay that in
23 the morning to determine the truth of the facts
24 in this case. That oath, once again, in a very
25 essential way says that you are the sole judges

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1 of the facts in this case.

2 Ladies and gentlemen, whatever your
3 verdict is in this case, it must be an unanimous
4 verdict. All 12 jurors must agree on the
5 verdict and it is the foreperson that must be
6 authorized to write for the jury. Ladies and
7 gentlemen, you are not to discuss this case at
8 any time during the trial until I tell you, and
9 that will not occur until you received all of
10 the evidence and I have instructed you upon the
11 law that applies. You should not discuss the
12 case amongst yourselves, and you should not
13 discuss it with your family, friends, or anyone
14 else you may see on recess from the Court.

15 You might say to the Court, what is wrong
16 with my discussing the case as we go along? If
17 someone finds out I am on the jury and they want
18 to know something about the case. What is wrong
19 with discussing it with them?

20 The problem with discussing it with them
21 or anyone else on recess from the Court is, once
22 you start discussing the case you start forming
23 opinions. It wouldn't be fair to both sides of
24 this case if you didn't wait until you heard all
25 of the testimony and evidence, I have instructed

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1 you upon the law that applies before you start
2 forming opinions. Until then, you should keep
3 an open mind and wait until you have all of the
4 information you need before you start forming
5 opinions.

6 Now, if you should overhear the parties,
7 their attorneys, or the witnesses talking about
8 the case outside of the courtroom, you should
9 not listen and move away from them. If anyone
10 should deliberately try to discuss the case with
11 you, you should not discuss it with them but
12 leave and report that attempt to me through one
13 of the bailiffs and the Clerk of Court's office
14 and they will let me know and give me the best
15 description of that person and I will deal
16 appropriately with that person. No one should
17 try and discuss the case with you. If they do,
18 I should be made aware of it.

19 If there should be any media coverage of
20 this trial, please do not read or listen or
21 watch any media account until after the trial is
22 over and the verdict is in. You must decide
23 this case based solely on the evidence presented
24 in this courtroom and the exhibits and testimony
25 and from no other source. There is no way we

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1 can guarantee the accuracy of any other account
2 of this trial, any other information about this
3 case from any other source. It is very
4 important that you not read, listen to, or watch
5 any media account of the trial.

6 I am well aware that a lot of people get
7 their information through electronic means these
8 days whether on the internet, Facebook, whatever
9 -- well, not Facebook, but on an iPad or any
10 other kind of a smart phone. There is all kind
11 of information available through those sources
12 these days. Please do not go onto any kind of
13 electronic device whether it be computers,
14 iPads, smart phones, whatever, to try to find
15 out anything about this case.

16 After the trial is over and the verdict is
17 in, you are welcome to watch any kind of media
18 account or go on any kind of electronic device
19 to find out about the case. This will be a
20 fairly short case and certainly will not be a
21 hardship to go on any kind of electronic device
22 to try to find out anything about this case.

23 Should I find out that you have gone on
24 any kind of electronic device to get information
25 then that will cause a problem in this case

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1 because I have instructed you not to do that.

2 I am concerned about your comfort and
3 ability to see and hear the testimony and
4 evidence so you can properly do your job. I
5 will try to take a break about every hour and a
6 half. If you need a break before the time a
7 break is taken, just raise your right hand and
8 let me know and I will take a break as quickly
9 after that as I can.

10 If you cannot see or hear something you
11 need to see or hear during the course of the
12 trial, please do not hesitate to raise your
13 right hand and let me know. I will try to
14 anticipate that but some of you are much further
15 away from the witness stand where the attorneys
16 may be standing than I. If you cannot hear or
17 see something that need to hear, please raise
18 your right hand and let me know and I will make
19 sure you can hear and see so you can properly do
20 your job.

21 If you wish to communicate with the Court
22 other than needing a break or inability to hear
23 or see, please write the message down on tablet
24 back in the jury room. Give it to the bailiff.
25 The bailiff will bring to me. I will either

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1 correspond in like manner or I will bring you
2 back in the courtroom to respond as the case
3 need be. That's how we would communicate once
4 this case gets started.

5 If you something to drink back in the jury
6 room and you want to bring it in the jury box to
7 drink as we go through the trial, counsel and
8 myself will be sipping water as we go through
9 the trial. If you have coffee, water, coke,
10 tea, or whatever back in the jury room and you
11 want to bring it to the jury box, the Clerk of
12 Court allows that and so will I. If if you want
13 to do that, don't hesitate to do that.

14 Now, ladies and gentlemen of the jury
15 panel, I am going explain the role of the
16 alternate. Ms. Shively, you are the alternate
17 in this case. Your role is the same as the
18 first 12 jurors chosen. You have to listen
19 carefully to the testimony and the evidence so
20 you will be in a position to deliberate and
21 reach a verdict in this case because if for any
22 reason an emergency should develop with regard
23 to any of the first jurors chosen and we have to
24 excuse that juror, you would have to fill in for
25 the missing juror. You couldn't do that if you

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1 haven't listened carefully to the testimony and
2 evidence and in a position to reach a verdict in
3 this case. We ask that you keep that same seat
4 throughout the trial.

5 I am going to ask the jury as your first
6 official act in this case to go back into the
7 jury room and select from the first 12 jurors
8 chosen a foreperson. Let me explain the role of
9 the foreperson. The foreperson is asked to
10 serve as spokesperson person for the jury back
11 to the Court. If there is a matter that needs
12 to come to the attention of the Court from the
13 jury, we ask that the foreperson write the
14 message on tablet and provide it to the bailiff
15 and bring it to Court and I will correspondence
16 appropriately. We also ask that the foreperson
17 serve as the moderator once we reach the
18 deliberation stage of the trial to maintain
19 order in the deliberations, make sure everyone
20 is allowed to participate and deliberate in the
21 deliberations, and once the verdict is reached
22 by the jury to record that verdict on the
23 verdict form which will be provided to you and
24 explained to you at the appropriate time at the
25 conclusion of the trial.

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1 The primary role of the foreperson is to
2 listen carefully to the testimony and evidence
3 so you will be in a position to deliberate and
4 reach a verdict in this case.

5 I have a short matter to take up in the
6 morning before we actually get started so I am
7 going to ask you to be back in the jury room
8 ready to go at 9:30. The foreperson will sit in
9 first seat in the front row. The bailiff will
10 take care of that. All of the other seats are
11 interchangeable so it doesn't really matter
12 where you sit. We like to keep the foreperson
13 and alternate in same seat throughout the trial.

14 The foreperson should be selected from the
15 first 12 jurors chosen, not the alternate, but
16 the first 12 jurors chosen. If that person who
17 is chosen will write their name and juror number
18 down on the tablet provided back in the jury
19 room and give it to bailiff to bring to me so I
20 have that information.

21 I will excuse you at this time. Once you
22 have elected a foreperson, you are free to go
23 and I ask you to be back in the jury room
24 tomorrow at 9:30. Thank you.

25 (Whereupon, the jury exited the courtroom

STATE VS. BRANDON GOINS - 3-31-14

1 at 5:02 p.m.)

2 THE JUDGE: Anything we need to take up
3 out of presence of the jury at this time?

4 MS. SHELTON: Nothing from the State.

5 THE JUDGE: Anything from defense?

6 MR. WELLBORN: No, sir.

7 THE JUDGE: All right. We will resume at
8 9:30. I agreed to take a bond hearing at 9 in
9 the morning so we will start at 9:30.

10 (Whereupon, the above-entitled matter was
11 adjourned at 5:04 p.m.)

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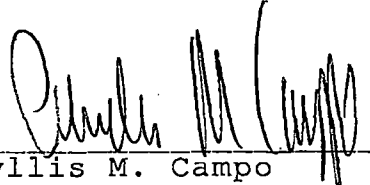
C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA
COUNTY OF YORK

I, Phyllis M. Campo, RPR, Official
Court Reporter for the Sixteenth Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of
the proceedings at the time and place herein in
the above-entitled matter.

I do further certify that I am neither of
kin, counsel, nor interest to any party hereto.

September 23, 2014



Phyllis M. Campo
Official Court Reporter

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF YORK

3 _____ Transcript of Record
4 State of South Carolina,

5 vs.

2014-GS-46-00432-00434

6 Brandon Goins,

Volume II

7 Defendant.
8 _____

9 Date: April 1, 2014
10
11

12 BEFORE: The Honorable Lee Alford
13
14

15 APPEARANCES:

16 Misti Shelton, Esq.,
Assistant Solicitor.

17 E.B. Springs, Esq.,
Assistant Solicitor

18 Christopher Wellborn, Esq.,
19 Attorney for Defendant
20

21 Phyllis M. Campo, RPR
22 Court Reporter
23
24
25

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1 (Whereupon, Court Exhibit 1, was marked
2 for identification and received into evidence.)

3 THE JUDGE: Counsel, for your information
4 the jury selected Juror Number 196, Leo
5 Rodriguez-Goyco as foreperson. Bring the jury
6 in.

7 (Whereupon, the jury came into open court
8 at 9:36 a.m.)

9 THE JUDGE: Good morning, ladies and
10 gentlemen of the jury panel. I hope you had a
11 pleasant night last night. We are ready to get
12 started with the trial at this time. I have
13 your note from yesterday indicating that you
14 selected Juror Number 196, Leo Rodriguez-Goyco
15 as your foreperson. That is you sitting in the
16 foreperson seat; is that correct?

17 THE FOREPERSON: Yes.

18 THE JUDGE: We are ready to get started
19 with the trial at this time. I will ask the
20 Clerk to swear the jury, please.

21 (Whereupon, the jury was duly sworn.)

22 THE JUDGE: Mr. Foreman, ladies and
23 gentlemen of the jury panel, we are to that part
24 of the trial where counsel will make their
25 opening statements to you. Please listen

STATE VS. BRANDON GOINS - OPENING

1 attentively when counsel addresses you in their
2 opening statement.

3 Solicitor.

4 MS. SHELTON: Thank you, your Honor.
5 Ladies and gentlemen of the jury, on September
6 7th of 2012, Captain Darryl Smith returned home
7 from a fishing trip. That's what he does for a
8 living. He takes folks out fishing on local
9 lakes, and he may go into more of that when he
10 is testifying. That is what he does for a
11 living. He returned around 6 a.m. from a
12 fishing trip. He went into his home, was very
13 tired, had been out most of the night. He drove
14 straight home and went to bed and slept for just
15 a few hours.

16 He got up around 9:30. When he got up, he
17 started to notice that something wasn't quite
18 right about his home. He noticed a couple of
19 things that seemed out of place to him.
20 Something wasn't right. He goes to the front
21 door, and even though when he got home, it was
22 closed and locked, he noticed that the front
23 door had been damaged. He will explain it as a
24 trapper, which I had to ask him what that is
25 because I didn't know, but the trapper is

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1 broken. That it had been placed back together
2 that you don't notice it when you first look at
3 it. The trapper is broken and someone has been
4 in his home. He also noticed that several
5 windows around his home had been damaged, either
6 screens cut or pry marks on the windows. He
7 calls local law enforcement of the York County
8 Sheriff's Office. Officer Chris Doty comes out.
9 At that time, Captain Smith is not aware
10 anything was taken from his home. Officer Doty
11 takes a report and leaves.

12 At some point Mr. Smith and his wife
13 realize that some jewelry have been taken and
14 fishing rods have been taken and medication have
15 been taken. They call law enforcement back out.
16 Deputy Yates comes out and takes that report.

17 There were two pieces of evidence that
18 were collected at the scene. Officer Doty
19 collected cigarette butts. Derrick Smith nor
20 his wife smoked. The second time when Officer
21 Yates comes out, he collects a swab from the
22 front porch. At that time, there is no
23 suspects.

24 Months go by, and eventually Detective
25 Brown speaks with the defendant, Mr. Goins.

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1 When he speaks with him about this break in,
2 Mr. Goins admits to being there and admits to
3 ending up with the fishing rods. That's our
4 case.

5 After you hear from our witnesses at the
6 end of the trial, I will speak with you again;
7 and at that point, I will ask you to return a
8 verdict of guilty. Thank you.

9 THE JUDGE: Counselor.

10 MR. WELLBORN: There is an old story about
11 a man who is walking down a road in the
12 wintertime. There is ice on the ground. There
13 is snow on the ground. It is bitterly cold and
14 he sees a snake in the road.

15 MR. SPRINGS: I object. This is opening
16 statement. We state what the evidence is going
17 to show and we don't tell snake stories in the
18 opening statement.

19 MR. WELLBORN: It is opening statement. I
20 can --

21 THE JUDGE: I will give you a little
22 leeway. Remember, it is opening statement.

23 MR. WELLBORN: Thank you. He sees this
24 frozen snake lying in the road. He walks up and
25 he is nervous about the snake, not sure about

STATE VS. BRANDON GOINS - OPENING

1 snakes. The snake looks at him and pitifully
2 cries, please take me in. I am dying. I need
3 help. The old man who has a good heart takes
4 the snake and brings him home, sticks him by the
5 fire and warms him up and sits with the snake to
6 see how the snake is doing.

7 Gradually, the snake wakes up and sees the
8 old man and bites him. As the old man is dying
9 from the poison, he says, why did you do that?
10 I took you in. The snake says, you knew I was a
11 snake when you brought me in.

12 You're going to hear in this trial about a
13 snake. You are going to hear in this trial
14 about someone who took advantage of other
15 people, multiple people. You are going to hear
16 that some of these people had a hard time
17 distinguishing between poisonous and poisonous
18 snakes.

19 As little kids we learn the little rhyme,
20 red and yellow will kill a fellow. Red and
21 black, friend of jack. Some people don't know
22 that when they deal with other people. Some
23 people are very trusting by nature. Some
24 recognize that and abuse that trust. Some
25 people are easily duped. Some people take

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1 advantage of that and they duke them. Some
2 people because they are trusting are easily
3 conned and some people --

4 MR. SPRINGS: I object, your Honor. We
5 were talking about this pre-trial, about making
6 stuff up.

7 THE JUDGE: Counsel, this is opening
8 statement. You may save that for your final
9 argument.

10 MR. WELLBORN: Thank you. We are not
11 making anything up here. As the solicitor may
12 not like to admit right now, this is what you
13 are going to hear in this case.

14 MR. SPRINGS: I am going to object, your
15 Honor. It is not what we are going to hear in
16 this case.

17 THE JUDGE: Well, it is yet to be
18 determined. Let's go ahead and complete your
19 opening statement.

20 MR. WELLBORN: We are going to have
21 evidence -- you are going to have evidence
22 presented to you that a certain person was taken
23 in by the victim in this case, Darryl Smith,
24 that Darryl Smith helped this person, that
25 ultimately Darryl Smith was robbed. You're

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1 going to hear evidence that, in fact, items
2 taken from Darryl Smith were later found in
3 possession of the snake that I'm talking about,
4 and it is not Brandon Goins.

5 You are going to hear in this case that
6 Brandon Goins, like Darryl Smith, like others,
7 trusted this particular individual. His name by
8 the name by the way is Jordon Clyde Canupp. You
9 are going to hear that Jordon Clyde Canupp lived
10 next door with Darryl Smith, lived with Darryl
11 Smith's niece for quite a period of time. You
12 are going to hear that Jordon Clyde Canupp had
13 an opportunity to be around Darryl Smith. You
14 are going to hear that Jordon Clyde Canupp knew
15 who Darryl Smith was, knew his whereabouts, or
16 at least should have known his whereabouts, knew
17 who he was and took advantage of Darryl Smith.
18 You are going to hear that Jordon Clyde Canupp
19 also took advantage of Brandon Goins.

20 What you are not going to hear is that
21 Brandon Goins wound up with any fishing rods.
22 What you are not going to hear is that Brandon
23 Goins wound up with any jewelry. What you are
24 not going to hear is that Brandon Goins had a
25 clue that the fishing rods and the jewelry that

STATE VS. BRANDON GOINS - OPENING

1 were taken from Mr. Smith belonged to anybody
2 but Jordon Clyde Canupp. That's what you are
3 going to hear in this case.

4 What you are going to hear is my client is
5 trusting. My client, Brandon Goins, is easily
6 duped. My client --

7 MR. SPRINGS: I object. We talked about
8 this pre-trial.

9 THE JUDGE: I am not going to say this to
10 you again. I agree with what the solicitor is
11 saying. I have sustained the objection. No
12 ruling has been made on any of that. Move on
13 and close out your opening statement.

14 MR. WELLBORN: The evidence is going to
15 show that my client is true trusting, that my
16 client trusted --

17 MR. SPRINGS: I object. He is making
18 stuff up again. We talked about this in
19 pre-trial.

20 MR. WELLBORN: Can we take this outside
21 presence of the jury.

22 THE JUDGE: Ladies and gentlemen, foreman
23 of the jury, if you would please retire to the
24 jury room briefly.

25 (Whereupon, the jury exited the courtroom

STATE VS. BRANDON GOINS - OPENING

1 at 9:49 a.m.)

2 THE JUDGE: All right.

3 MR. SPRINGS: We talked about this
4 pre-trial. He has put before the jury the
5 results of that mental examination and that was
6 strictly off limits. He has defied the Court's
7 order. I ask you to lock him up. Lock up
8 Mr. Wellborn. He has committed contempt of
9 court and has gone into the results of that
10 mental evaluation against your orders pre-trial.
11 He has put it all before the jury.

12 MR. WELLBORN: Briefly in response, I have
13 not mentioned any mental examination.

14 THE JUDGE: You don't have to do it by
15 saying mental examination, Mr. Wellborn, and you
16 know that as well as I do. You don't have to do
17 that. You put all of this before the jury. You
18 are trying to testify to the jury what the
19 testimony is going to show, and there is no
20 testimony so far as to those things.

21 MR. WELLBORN: With all due respect, your
22 Honor --

23 THE JUDGE: If you are depending on
24 getting in some psychiatric evaluation that I
25 probably am not going to let in, I don't know

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1 yet. I said I would give you a chance to
2 profer. You agreed to stay away from it in
3 opening statement. That doesn't mean just
4 saying to the jury there is a psychiatric
5 evaluation that shows this, and this expert
6 would testify to this. You don't have to say it
7 that way. You can say it in other ways. I
8 understand that. I wasn't born yesterday. I
9 have been in this job long time.

10 You don't get into it in opening
11 statement. Opening statement is what you are
12 going to prove, not testifying in the case. You
13 understand and the solicitor understands that
14 that's what you are trying to do. That is one
15 thing, but when I tell for the third time not to
16 do that, you know that does not sit well this
17 with this Court. We have tried cases before.
18 When I tell you one time, that's one thing. I
19 tell you a second time, that's another thing.
20 When I have to tell you the third time, you are
21 going to get in trouble.

22 Do you understand what I am saying?

23 MR. WELLBORN: Yes, sir. Tell me where I
24 am --

25 THE JUDGE: That's the third time. I told

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1 you not to do it whether you agree with it or
2 not, Mr. Wellborn. I don't tell somebody for
3 the third time.

4 MR. WELLBORN: I will be glad to respond
5 at such point you will allow me too.

6 THE JUDGE: I will allow you to respond.
7 But I want you to respond why the third time I
8 had to tell you three times not to do that.

9 MR. WELLBORN: Absolutely.

10 THE JUDGE: It is not whether you agree
11 with me or not.

12 MR. WELLBORN: Absolutely, your Honor.
13 The reason I said what I said. First of all, I
14 was not addressing any mental evaluation. We
15 are going to have other witnesses absent the
16 doctor who will talk about the fact that my
17 client is trusting in general. That's number
18 one.

19 Number two, the State was allowed to get
20 into their version of the facts and what they
21 think the evidence will show. I am simply
22 telling the jury our evidence will show that we
23 are going to present that my client is a
24 trusting guy.

25 THE JUDGE: You are painting a mental

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1 picture of a snake, number one, this other guy.
2 Number two, the person out of the profile of
3 your client. You are getting into that. You
4 can get into that in final argument but you
5 cannot get into that in opening statement. We
6 will wait and see what the testimony is going to
7 show.

8 MR. WELLBORN: If the State is going to
9 allow to get into --

10 THE JUDGE: All they gave was simple facts
11 they got. They didn't go out of bounds with it.
12 They didn't try to paint a mental picture of
13 anybody or some kind of psychological profile of
14 somebody. They didn't try to do that in opening
15 statement. She just showed what facts they had
16 very simply put. They didn't dwell on it.

17 MR. WELLBORN: I presume then as a matter
18 of equal protection, my client would get to
19 entitled to present the simple facts.

20 THE JUDGE: You don't get to testify in
21 opening statement.

22 MR. WELLBORN: I am not testifying the
23 evidence will show that. That was not
24 testimony.

25 THE JUDGE: That's not what you said.

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1 MR. WELLBORN: I will be glad to say it
2 again. The evidence will show because that's
3 what I intend to say. The evidence will show
4 that. I think if the court reporter were to
5 replay it.

6 THE JUDGE: I will bring the jury back in
7 and you are going to wrap it up.

8 MR. WELLBORN: That's fine. I assume I
9 will be able to get into other areas that the
10 evidence will show.

11 THE JUDGE: If it is real evidence, yes.
12 Not mental pictures. Okay? Not mental pictures
13 that people may or may not agree with or I may
14 or may not let into the record. That's the key.
15 You don't know yet whether I am going to let it
16 in the record so you can't argue something that
17 I may not let into the record and have been told
18 to stay away from. You cannot argue that in
19 opening statement. You can do that in final
20 argument based on whatever evidence is admitted.

21 MR. WELLBORN: I have not made any
22 argument simply stated what the evidence is
23 going to show.

24 THE JUDGE: I don't agree with you and you
25 cannot paint mental pictures based on

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1 psychiatric profiles to the jury. We would like
2 to see what the evidence shows.

3 MR. SPRINGS: He is telling the Court that
4 he is going to have people testify that
5 Mr. Goins has a trusting nature. That is not
6 evidence. That is character evidence. It is
7 not admissible.

8 THE JUDGE: I agree. I am saying to you
9 that whether I admit it or not remains to be
10 seen. If you argue to the jury in opening
11 statement whether I may or may not admit it, you
12 have before the jury whether I admitted it or
13 not, and that's not appropriate.

14 You agreed to stay away from it. We
15 agreed to stay away from that in opening
16 statement but you insist on going into it.
17 There is one thing if you think you can go into
18 something, and I don't agree with that, but when
19 I have to tell you the third time not to do it
20 then we have a problem.

21 MR. WELLBORN: For the record, I did not
22 mention anything about any mental examinations.

23 THE JUDGE: You can respond to my saying
24 to you that I told you three times not to do it
25 and did you it three times. That's what you can

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1 respond to.

2 MR. WELLBORN: I apologize, your Honor,
3 but I assumed livelily that just like the State
4 I would be able to tell the jury --

5 THE JUDGE: Respond to what I just said to
6 you, Mr. Wellborn. Don't go back to what you
7 thought you could do. Go back to why you went
8 ahead and did it the third time when I told you
9 two previous times not to do it. That's a
10 violation of the rules. He is right, I can hold
11 you in contempt of Court.

12 MR. WELLBORN: With all due respect, I am
13 not sure what the ruling was because the
14 objection was --

15 THE JUDGE: I ruled. I told you to stay
16 away from it.

17 MR. WELLBORN: I didn't know what I was
18 supposed to stay away from. That's the problem.

19 THE JUDGE: You did what you usually do,
20 and that is, when I rule, if you can't do
21 something you find a different way to say it.
22 And when I rule again, you find a third way to
23 say the same thing. That's your nature. That's
24 what you do in trials. We have had this problem
25 before.

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1 MR. WELLBORN: Again, I wasn't sure what
2 the objection was other than I couldn't talk
3 about what the evidence would show.

4 THE JUDGE: That's not the question. The
5 question is getting into the psychological
6 profiling which may or may not be admissible
7 into evidence or may or may not be relevant to
8 this case.

9 MR. WELLBORN: I certainly would agree. I
10 should not have gotten into that in opening. I
11 did not. I did not mention psychological
12 profiling.

13 THE JUDGE: It is the same difference when
14 somebody else is going to come in and testify
15 this guy is easily gullible and easily led. I
16 don't know if you are going to get into that at
17 all. It may not be relevant to this case at
18 all. That's what I am saying. It is not just
19 psychiatrist report or psychologist report. It
20 is not just that. It is some of the other
21 people being able to testify, well, this guy is
22 easily led. I don't know if you can get into
23 that or not. We will see.

24 MR. WELLBORN: So I don't invite any
25 further objection. I assume I will be able to

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1 get into what physical evidence is not -- the
2 jury will not hear certain things in physical
3 evidence.

4 THE JUDGE: That's appropriate.

5 MR. WELLBORN: You are going to hear
6 evidence of how my client arrived at the scene.
7 I assume that we will be able to talk about
8 that. Because from our perspective we are going
9 have evidence about that. We are allowed to
10 tell the jury what the evidence will show about
11 how my client arrived at the scene.

12 THE JUDGE: As long as you stay away from
13 his mental state and his psychological profile,
14 whether it comes from a professional or comes
15 from individuals, as long as you stay away from
16 that in opening statement, counsel, I don't
17 think we will have a problem if you stick to the
18 evidence that will be produced other than those
19 things.

20 MR. WELLBORN: I assume I will be able to
21 talk about the evidence will show certain things
22 were not done in the case.

23 THE JUDGE: I don't know what you mean by
24 that.

25 MR. WELLBORN: What the jury will not get

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1 to see or not get to hear about or not have in
2 the case. I presume we will be able to discuss
3 that in opening.

4 THE JUDGE: You can tell them what
5 evidence will not be shown, but this is opening
6 statement. It is not final argument.

7 MR. WELLBORN: I understand that.

8 THE JUDGE: So you can say, you know, this
9 evidence will not be in, or this evidence will
10 be in, and that's it. As long as you stay away
11 from the psychological profiling issues until
12 some ruling is made by the Court.

13 MR. WELLBORN: Absolutely.

14 THE JUDGE: Then you can do it in final
15 argument, whatever the Court admits or whatever
16 is part of the record. If we don't admit it if
17 it is not appropriate to put in the jury's mind
18 when it may not be admitted.

19 MR. WELLBORN: Understood.

20 THE JUDGE: I am glad you do after three
21 times of telling you that. I am telling you
22 that for the fourth time. I hope you understand
23 it.

24 MR. WELLBORN: Judge, I did not present
25 anything to that jury that I didn't think --

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1 THE JUDGE: I am not interested in what
2 you think, Mr. Wellborn. I am interested in you
3 following my rules.

4 MR. WELLBORN: I guess the reason I
5 stated --

6 THE JUDGE: Bring the jury back in. I am
7 tired. I am through. I am done. You finish up
8 your opening statement and you stick to anything
9 other than psychological profiling and mental
10 state.

11 MR. WELLBORN: Yes, sir.

12 THE JUDGE: If you do it again, I can
13 promise you, you will be in trouble.

14 (Whereupon, the jury entered the courtroom
15 at 9:59 a.m.)

16 THE JUDGE: All right. Counsel, proceed.

17 MR. WELLBORN: Thank you. The evidence is
18 going to show that when the police came out, the
19 deputy came out to investigate this case, that
20 he was shown a cigarette butt, a partially
21 smoked cigarette butt that was found on the
22 living room floor, and that was collected by the
23 Sheriff's Department and they took that into
24 evidence.

25 The evidence will also show that seven

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1 days later when the deputies were called out
2 again, they were shown new evidence or potential
3 evidence, blood stains on the front door, and
4 the deputies took swabs and took that into
5 evidence. You will hear that the Sheriff's
6 Department still has all that evidence. You
7 will hear that it has never been tested. You
8 will hear that there were never any fingerprints
9 taken at this burglary scene. You will hear
10 that there were never any photographs taken by
11 the police during their investigation. You will
12 hear that none of the items that were taken were
13 ever found in possession of Brandon Goins. You
14 will hear that some of the items that might have
15 been taken were, in fact, in possession later of
16 Jordon Clyde Canupp. That's what the evidence
17 is going to show in this case.

18 You are going to get a copy. You are
19 going to get to see, and you are going to get to
20 hear about what Brandon Goins said when he was
21 questioned about this. You are going to hear
22 that he was with Jordon Clyde Canupp next door,
23 that he was drunk. You are going to hear that
24 Brandon Goins was there for quite some time.
25 The evidence is going to show that they were

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1 talking about all kinds of stuff. The evidence
2 is going to show that at some point Jordon Clyde
3 Canupp said, I've got some things.

4 MS. SHELTON: Objection.

5 THE JUDGE: Sustained.

6 MR. WELLBORN: You are going to hear that
7 Brandon Goins told police that Jordon Clyde
8 Canupp said --

9 MS. SHELTON: Objection.

10 THE JUDGE: Sustained.

11 MR. WELLBORN: Okay.

12 THE JUDGE: Counselor, you know better.
13 That's twice. Don't do it a third time.

14 MR. WELLBORN: That is what my client
15 said.

16 THE JUDGE: I don't care what he said. It
17 is hearsay and you know it before you ever
18 stated it.

19 MR. WELLBORN: You are going to get to see
20 Brandon Goins' statement. You are going to get
21 to hear what he said. You are going to have
22 absolutely no evidence presented to you that
23 Brandon Goins knew who lived in this house that
24 was broken into. You are going to have no
25 evidence presented to you that Brandon Goins

STATE VS. BRANDON GOINS - OPENING

1 knew whether this person was a friend, relative,
2 or had any connection to Jordon Clyde Canupp.
3 You are going to hear no evidence that Brandon
4 Goins knew a burglary was taking place. You are
5 going to hear no evidence that any of the items
6 taken that Brandon Goins knew or had any
7 knowledge, one way or the other, whether they
8 belonged to Jordon Clyde Canupp or not. You are
9 going to hear that, in fact, Brandon Goins wound
10 up with none of the items. You are going to
11 hear that Brandon Goins was duped into something
12 that he had no clue about, and you are going to
13 hear why. That's what you are going to hear in
14 this case.

15 This is a case that is built on absolutely
16 nothing other than Brandon Goins being too
17 trusting --

18 MR. SPRINGS: Here we go again.
19 Objection.

20 THE JUDGE: Sustained, Counselor.

21 MR. WELLBORN: You are going to hear this
22 is a case built on nothing. You are going to
23 understand at the end of this trial why it is
24 built on nothing.

25 This is a serious case. These are serious

STATE VS. BRANDON GOINS - OPENING.

1 charges. That's something I ask you to consider
2 throughout this trial. Like all cases, it is
3 serious, but these are very serious charges.
4 Take this cases seriously because serious cases,
5 serious charges, have serious consequences.
6 There is never an upside to convicting an
7 innocent person. It doesn't help society. It
8 doesn't help the system. It doesn't help the
9 person.

10 MR. SPRINGS: I think we have heard enough
11 closing argument --

12 THE JUDGE: Counsel, wrap it up. Save it
13 for final argument.

14 MR. WELLBORN: I simply ask you to pay
15 careful attention, and I look forward to
16 speaking with you again.

17 THE JUDGE: Will the State call its first
18 witness.

19 MS. SHELTON: Yes, your Honor. The State
20 would call Darryl Smith.

21 DARRYL SMITH, being duly sworn, testified
22 as follows:

23 DIRECT-EXAMINATION:

24 BY MS. SHELTON:

25 Q State your name for the record please?

DARYLL SMITH - DIRECT BY MS. SHELTON

1 A Darryl Ray Smith.

2 Q Mr. Smith, where do you live?

3 A I live at [REDACTED] in rock
4 hill.

5 Q How long have you lived there?

6 A Approximately 25, 26 years.

7 Q So you were living there back on September 7,
8 September 6 of 2012?

9 A Yes, ma'am.

10 Q Do you remember calling Sheriff's Department
11 back on September 7th, 2012?

12 A Yes, sir.

13 Q Why did you call them?

14 A Because the house has been forcibly broken
15 into.

16 Q How do you know that?

17 A Well, when I come in that morning, I went
18 straight to bed. When I got up that morning,
19 roughly around 9:30, I sat there in the chair
20 because I just got through pulling close to 26
21 hours of work. I seen the screen on my front
22 window had been messed with and I seen where the
23 window was sweating, somebody had wiped it.
24 That was very unusual. So I went to the door,
25 and as soon as I went to the door, I seen the

DARYLL SMITH - DIRECT BY MS. SHELTON

1 front door had been forcibly torn into with some
2 kind of metal object. At that time, I picked up
3 the phone and called the police and went outside
4 to try to keep from disturbing any kind of
5 evidence or anything at that point.

6 Q When you say forcibly torn into, how can you
7 tell that?

8 A I have a lot of years of experience at this
9 here. The door was bent up. The jam of the
10 door, which is the frame around the door that
11 the door closes to, it was torn up. The keeper
12 that actually holds your door shut was
13 shattered.

14 Q You didn't notice that when you first came in?

15 A When I came in it was pitch black dark, and
16 I just got through pulling a lot of hours and
17 spent two and a half hours on the road driving
18 in. I was exhausted.

19 Q Now, did you talk to law enforcement that day?

20 A Yes, ma'am.

21 Q What did you tell them?

22 A I showed them how the front door was tore up
23 and the screens and all. I told them that the
24 house had been gone into, but at that point,
25 because as soon as I noticed it, I left out of

DARYLL SMITH - DIRECT BY MS. SHELTON

1 the house and called the law to keep from
2 disturbing anything so I did not know if
3 anything had been taken at that point.

4 Q That was on the 7th?

5 A That was on the 7th.

6 Q So you did not report anything stolen that day?

7 A No, ma'am. I told them at this point I did
8 not know, but it would take us a little time to
9 look because there was nothing obviously taken
10 like the TVs or nothing. There wasn't big
11 objects. We had to find out what had been
12 taken.

13 Q Did you ever discover anything taken?

14 A Yes, ma'am.

15 Q What did you do after you discovered missing
16 items?

17 A We got the list together of missing items
18 and then we called the Sheriff's Department
19 again to tell them what we had discovered so far
20 at that point that had been taken, which
21 eventually we found more stuff had been missing
22 over the next few days too.

23 Q Once you called the Sheriff's Department, did an
24 officer come out?

25 A To be honest with you, I can't remember at

DARYLL SMITH - DIRECT BY MS. SHELTON

1 that point because I have spent a lot of time
2 out of town running back and forth, and I know
3 my wife dealt with getting some of this
4 information, and we dealt with some of it over
5 the phone.

6 Q After that initial report, do you remember any
7 time an officer came back out to your house for
8 any reason?

9 A Yes, ma'am.

10 Q What was that?

11 A I called the Sheriff's Department back out
12 there because at the same time my house got
13 broke into, the house behind me got broke into
14 where they broke through the glass. That's when
15 I found blood on the front door and I didn't
16 know if it was from them or what, but it was in
17 the center of my front door, and there was no
18 need for blood to be there.

19 Q You didn't notice that until a week later?

20 A No, ma'am. Because I come and go a lot in
21 the late hours of the night traveling back and
22 forth. I work 150 miles away from my home.

23 Q What did you report stolen to the Sheriff's
24 Department?

25 A There were earrings that were stolen from a

DARYLL SMITH - DIRECT BY MS. SHELTON

1 past, present, future set that I bought for my
2 wife, our 20th anniversary. There were some
3 necklaces stolen. Rod and reels were stolen.
4 There was prescription medications we found that
5 were stolen.

6 Q The earrings you bought and paid for them?

7 A Yes, ma'am, I bought them for our 20th
8 wedding anniversary.

9 Q What was the approximate value them?

10 A The approximate value -- I bought it as a
11 set was roughly around \$4,500. So I would have
12 to say the earrings were close to half of that
13 since it was two sets and eight diamonds
14 involved.

15 Q The necklaces, do you remember the approximate
16 value of the necklaces?

17 A No, ma'am, not off the top of my head. I
18 can't remember all of that there. It was
19 roughly around \$500 a piece or something.

20 Q The fishing rods, do you remember how many were
21 stolen?

22 A As far as I know, there was only two taken.
23 You got to think I have thousands because I am
24 sponsored by every rod and reel company in the
25 world except for just a couple because of my

DARYLL SMITH - DIRECT BY MS. SHELTON

1 accomplishments into the fishing world.

2 Q Do you know the approximate value of those rods?

3 A Roughly around -- they would be somewhere
4 roughly around \$300 for those.

5 Q For each or together?

6 A For both of them.

7 Q Your home, what county is that in?

8 A York County.

9 Q Just to be clear, you weren't home when your
10 house was broken?

11 A As far as I know, when I noticed that my
12 house has been broken into, I had been gone for
13 several days because like I say I work 150 miles
14 away from home.

15 Q You don't personally know Brandon Goins,
16 correct?

17 A No, ma'am.

18 Q Did you give anyone permission to enter your
19 home?

20 A Absolutely not. My parents don't even have
21 permission for that.

22 Q Was your door locked when you left your home?

23 A Always.

24 Q Does anyone else have a key to your home?

25 A No, ma'am.

DARYLL SMITH - DIRECT BY MS. SHELTON

1 Q Does anyone else keep fishing rods in your home?

2 A No, ma'am.

3 Q Was your wife at home when your house was broken
4 into?

5 A No, ma'am. From what we can tell when the
6 house was broken into, we assumed it was that
7 night before. My mother had a massive stroke
8 and somebody has to stay with her, and my oldest
9 brother who normally stays with her was in the
10 hospital having surgery, having an amputation.
11 So while I was out of town, my wife went to my
12 mother's that night to stay with her.

13 MS. SHELTON: Thank you. Please answer
14 any questions the defense has for you.

15 CROSS-EXAMINATION:

16 BY MR. WELLBORN:

17 Q Good morning, Mr. Smith. When did your wife
18 come home after -- you woke up that morning
19 after coming home and you discovered your house
20 was broken into, right?

21 A Yes.

22 Q How long after that was it that your wife came
23 home?

24 A My wife was at work at that point because
25 she works early in the morning until 5 o'clock

DARYLL SMITH - CROSS BY MR. WELLBORN

1 so it was roughly around 5:30, but I had called
2 her immediately as soon as I seen what had
3 happened.

4 Q Okay. When you called her, you told her about
5 this break in, right?

6 A Yes, sir.

7 Q Of course you were concerned about the break in,
8 weren't you?

9 A Yes, sir.

10 Q And I would imagine your wife was concerned as
11 well, correct?

12 A I would imagine.

13 Q Did she sound concerned when you talked to her
14 on the phone?

15 A She sounded disgusted and sickening over it
16 because we never had any trouble in our area.

17 Q Was she worried?

18 A I could not answer that one.

19 Q Did your wife come home from work right away or
20 finish out her day, or come home at the end of
21 the day?

22 A I told her to stay at work because I knew
23 the police were going to be coming and I knew a
24 lot would be going on. She has a position that
25 she doesn't easily need to walk away from.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q What time did she come home that day?

2 A Roughly around 5:15 or 5:30.

3 Q This was September 7th, correct?

4 A Yes.

5 Q So she would have gotten home before dark,
6 right?

7 A Yes.

8 Q When she came home she, of course, knew this
9 break in had taken place, correct?

10 A Because I had told her.

11 Q Absolutely. I am sure you showed her the door,
12 didn't you?

13 A We looked at everything, all of the window
14 damage, everything.

15 Q Now, you lived in the trailer you said for 26
16 years, correct?

17 A Yes.

18 Q Did you purchase the trailer yourself or?

19 A Yes.

20 Q This is single-wide trailer as I recall,
21 correct?

22 A Yes.

23 Q I am going to show you a couple of photographs
24 and ask you if you can identify this for me.

25 MR. WELLBORN: May I approach?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 THE JUDGE: Yes, sir.

2 BY MR. WELLBORN:

3 Q I am going to show you a photograph. Is that a
4 photograph of your trailer, sir?

5 A Yes, sir.

6 Q Is that a true and accurate picture of your
7 trailer?

8 A Yes, sir.

9 Q Okay. Is this another photograph showing a
10 farther away picture of your trailer?

11 A Yes, sir.

12 Q Okay. In fact, there is two trucks shown in the
13 photograph. Are they both your trucks or one of
14 them your wife's truck?

15 A One is my wife's, one is mine.

16 Q Which one is yours, sir?

17 A The dark gray.

18 Q The red one is your wife's truck?

19 A Yes.

20 Q Is this a true and accurate picture of the
21 trailer and the trucks?

22 A Yes, sir.

23 Q I am going to show you another picture. Is this
24 a picture showing your trailer from another
25 angle, sir?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A Yes, sir.

2 Q This truck shown in the picture is the dark gray
3 one is your wife's?

4 A No, sir, that's mine.

5 Q I am sorry. I apologize. The red one slightly
6 behind it that we can barely see is your wife's?

7 A That's correct.

8 Q Is this picture true and accurate?

9 A Yes.

10 MR. WELLBORN: I beg the Court's
11 indulgence.

12 Your Honor, I would like to have these
13 marked as Defendant's 1, 2 and 3 without
14 objection.

15 MS. SHELTON: Without objection.

16 (Whereupon, Defendant's Exhibits 1, 2 and
17 3 were marked for identification.)

18 MS. SHELTON: Your Honor, were these
19 being moved into evidence?

20 MR. WELLBORN: Yes. I would seek to move
21 them into evidence.

22 THE JUDGE: Admitted without objection.

23 (Whereupon, Defendant's Exhibits 1, 2 and
24 3, previously marked for identification, were
25 received into evidence.)

DARYLL SMITH - CROSS BY MR. WELLBORN

1 MS. SHELTON: Thank you, your Honor.

2 BY MR. WELLBORN:

3 Q Now, as you described -- this is Defense Exhibit
4 1. This is your trailer, correct? You already
5 identified that?

6 A Yes, sir.

7 Q Which side is what you would refer to as the
8 front door?

9 A Around the --

10 Q Would that be the one shown in Defense --

11 A That would be.

12 THE JUDGE: Refer to it by exhibit number.

13 BY MR. WELLBORN:

14 Q Defense Exhibit Number 3 would show your front
15 door; is that correct?

16 A Yes.

17 Q All right. Thank you very much.

18 MR. WELLBORN: Permission to publish to
19 the jury?

20 THE JUDGE: You may publish.

21 (Publishing photograph to jury.)

22 BY MR. WELLBORN:

23 Q Now, you and your wife keep your trailer neat,
24 don't you?

25 A We keep it liveable.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q So you know where things are?

2 A Yes.

3 Q That's important because there is a limited
4 amount of space, correct?

5 A Yes.

6 Q By profession you are a fishing captain?

7 A Yes, sir.

8 Q You have your own boat?

9 A Yes, sir.

10 Q In fact, you have a couple of boats, don't you?

11 A I have a number of boats. I am a licensed
12 coast guard captain.

13 Q As a fishing captain, it is important to keep
14 things tucked away in order so you know where
15 things are and you don't trip over things,
16 correct?

17 A Yes.

18 Q So by nature, you are someone who is careful
19 about putting things where they belong, aren't
20 you?

21 A Yes, sir.

22 Q In this trailer there is a living room; is that
23 correct?

24 A Yes, sir.

25 Q There will be a kitchen area, correct?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A Yes, sir.

2 Q How many bedrooms are there?

3 A Two.

4 Q Two bedrooms. How many bathrooms?

5 A One.

6 Q Now, when the front door is open, that leads
7 into which room?

8 A The living room.

9 Q Now, if you were in your trailer and you were
10 looking for something, you would know where to
11 find it, wouldn't you?

12 A Yes, sir, I would know the area to look for
13 it.

14 Q You take pride in your captain's license, don't
15 you?

16 A Yes, sir.

17 Q And your profession. It is an honorable
18 profession, isn't it?

19 A Yes, sir.

20 Q You have been doing it for quite a long time?

21 A Since 2000.

22 Q You also take pride in your equipment, don't
23 you?

24 A Yes, sir.

25 Q You keep it up to date?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A Yes, sir.

2 Q And you keep it maintained?

3 A Yes, sir.

4 Q And you keep it stored in a way that it is not
5 going to get damaged?

6 A The ones I use yes, sir.

7 Q Now, in the trailer you keep your fishing poles
8 or your fishing reels in a certain area
9 presumably, or do you leave them anywhere?

10 A No, sir. The rods that were missing I only
11 keep just a couple in the house because I also
12 have a pond at my house that I enjoy fishing.
13 The rest of my equipment is in my storage
14 building outside or either at my place in
15 Charleston, South Carolina.

16 Q So you only keep a couple rods in the house; is
17 that correct?

18 A Yes, sir.

19 Q What kind of rods were those by the way?

20 A Those were bait casting rods that you would
21 use for bass fishing.

22 Q Okay. Where in the house did you keep those
23 couple of rods?

24 A I kept those rods right there in a storage
25 area in the kitchen where we keep brooms.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q So they were kept in the storage area in the
2 kitchen. Is this a door that is a sliding door?
3 A No, sir. It is just an area between a China
4 cabinet and another freezer area.

5 Q This is in your kitchen?

6 A Yes, sir.

7 Q It is not in the living room.

8 A No, sir.

9 Q When you come into your living room to turn the
10 lights on, do you look to your left or to your
11 right?

12 A To the left.

13 Q Are the lights switch immediate -- is the light
14 switch immediate on the left to the door?

15 A Yes, sir.

16 Q Where is the light switch to the kitchen?

17 A The light switch in the kitchen is actually
18 in the kitchen.

19 Q In the kitchen. As you walk through the living
20 room do you go left or right to the kitchen?

21 A You go to the -- once you come in front door
22 you go to left to come to kitchen.

23 Q Do you to go around the counter or is there a
24 wall?

25 A There is a counter, a bar.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q As you walk around the counter, where is the
2 light switch?

3 A There is two light switches. There is one
4 right on the kitchen counter where the stove is
5 and then the other light switch is where -- if
6 you were coming in from the back door through
7 the hallway into the kitchen.

8 Q Okay. The light switch for the counter -- is
9 that counter, by the way, facing the living room
10 or away from the living room?

11 A We got the main counter that faces the
12 kitchen and then the back of the bar faces into
13 the kitchen as well.

14 Q Does the counter for the kitchen, the main
15 counter, is that between the kitchen and the
16 living room, I guess maybe is better way to put
17 it?

18 A You need to explain what you are asking.

19 Q Sure. If I am in the living room, can I reach
20 through on the counter into the kitchen?

21 A Yes, it is a bar.

22 Q That's what I was getting at. You said there is
23 a light switch just for that?

24 A In the kitchen itself.

25 Q So if you turn on the light for the kitchen, you

DARYLL SMITH - CROSS BY MR. WELLBORN

1 go into the kitchen?

2 A Into the kitchen.

3 Q Of course, to turn on the light in the kitchen,
4 you have to know where the light is, right?

5 A It is right there on the wall in plain view.

6 Q But if you are in the house at night and it is
7 dark, you have to kind of know where it is,
8 right, or fumble around to find it?

9 A It is next to the doorway.

10 Q The light to the kitchen is by the doorway?

11 A The light for the kitchen is by the doorway.
12 There is two light switches in there.

13 Q So there were two rods that you kept in your
14 house, correct?

15 A Yes.

16 Q You identified those rods?

17 A Yes, sir.

18 Q Now, the jewelry was kept in a jewelry box?

19 A Yes, sir.

20 Q And that was in which room?

21 A That was in the master bedroom.

22 Q There were two bedrooms as we described?

23 A Yes, sir.

24 Q As you walked into the bedroom was the jewelry
25 box on the night stand next to bed or on

DARYLL SMITH - CROSS BY MR. WELLBORN

1 dresser? Where was the jewelry box?

2 A On a dresser.

3 Q How many dressers did you have in the bedroom?

4 A Two.

5 Q So there is one dresser for your wife and one
6 dresser for yourself?

7 A No, sir. It is all for her. My stuff stays
8 in the other bedroom.

9 Q Okay. When you walked into the bedroom, did you
10 notice when you first walked into, or even later
11 when you walked into the bedroom, did you notice
12 anything funny about the bedroom, things
13 ruffled, things open, drawers pulled open,
14 anything like that?

15 A Not in the bedroom, no, sir.

16 Q Let's stay with us for the bedroom for a second.
17 Were any cabinets or any closet doors open in
18 the bedroom?

19 A No, sir.

20 Q Was anything strewn out on the bed?

21 A No, sir.

22 Q Was the jewelry box opened?

23 A I could not answer that. I have no idea.

24 Q Was there anything when you first saw the
25 bedroom that struck you funny about the bedroom?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A No, sir. Let's.

2 Q Okay. Let's talk about the -- we will go back
3 to the cigarette butt. But did you find
4 anything else in the house when you got up and
5 you started looking around? Did you find
6 anything else that seemed funny about drawers
7 opened, cabinets opened?

8 A We have a roll top desk with paperwork in
9 it. That paperwork had been gone through.

10 Q Okay.

11 A And then in the other bedroom which is also
12 my office, there was paperwork and all that that
13 had been gone through there as well.

14 Q Okay. But nothing was missing?

15 A No, sir.

16 Q So office paperwork had been gone through, and
17 you said there was a roll top desk?

18 A Yes, sir.

19 Q That was in where? I am sorry.

20 A That is in the living room.

21 Q That had been gone through?

22 A Yes, sir.

23 Q Do you any TVs in the house?

24 A Yes, sir, two.

25 Q They were both there?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A Yes, sir.

2 Q Do you any radios in the house?

3 A Yes, sir.

4 Q Describe what kind of radios you have?

5 A My wife has a little old stereo in the
6 master bedroom and then we have an antique radio
7 in the kitchen.

8 Q Okay. Were they both still there?

9 A Yes, sir.

10 Q Do you have any guns in the house?

11 A Yes, sir.

12 Q Where are the guns kept?

13 A My guns, my primary guns, are kept in my gun
14 safe because I am an avid hunter and a long
15 distance shooter. I had a couple that was in my
16 office that I was working on before I left. And
17 also, I had one sitting beside my chair in the
18 living room, my recliner.

19 Q The one that was beside your recliner in the
20 living room, is that still there?

21 A At that time, yes, sir.

22 Q Well, what I am getting at is after, when you
23 woke up the next morning --

24 A It was there when I woke up.

25 Q So it was not taken by this break in?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A No, sir, no firearms.

2 Q The ones that you were working on, the other
3 guns that you were working on, they were still
4 present as well, correct?

5 A Yes, sir.

6 Q Do you have any watches other than the one that
7 you are wearing currently?

8 A I only have a pocket watch that my mother
9 gave me years ago which is in my gun safe.

10 Q Okay. Do you have any CD players -- do you a
11 computer at your house?

12 A My computer travels with me. It is a laptop
13 because I have to log on all of the time being a
14 coast guard captain.

15 Q So since you have to log on, do you occasionally
16 log on from home?

17 A I use wireless internet. I log on
18 everywhere, literally everywhere.

19 Q All right. Now, when you looked through your
20 bathroom, was there any place that had been
21 obviously opened up or looked into?

22 A Yes. There is a medicine cabinet in the
23 bathroom that had been gone through.

24 Q Okay. Let's take a moment and talk about that.
25 To get into your bathroom door, do you have to

DARYLL SMITH - CROSS BY MR. WELLBORN

1 open up a door or is it just open?

2 A We leave it open because it is nothing but
3 me and my wife and my little dog.

4 Q Sure. Is the medicine cabinet glass or is it
5 wood?

6 A It is both.

7 Q You said it had been gone through. Can you tell
8 us how it had been gone through?

9 A The doors opened and the medication was just
10 moved all around and on shelves that they
11 shouldn't be on because we normally keep
12 medication on one shelf only.

13 Q How many shelves are there?

14 A Three.

15 Q Do you keep certain items on top, middle, and
16 the bottom shelf?

17 A Yes.

18 Q On the top shelf, what do you keep?

19 A There is no medicine on the top shelf. It
20 is beauty products.

21 Q Had any of those been moved around?

22 A Not that we could tell on that.

23 Q The second shelf and the bottom shelf would be
24 where the medicine is?

25 A Yes, the bottom shelf is where the

DARYLL SMITH - CROSS BY MR. WELLBORN

1 medication is.

2 Q Had that been moved around?

3 A There was medication taken from the bottom
4 shelf placed on the second shelf, moved around.

5 Q So someone touched the medicine bottle on the
6 bottom shelf and moved it to the second?

7 A Numbers of them.

8 Q Okay. Approximately, how many bottles do you
9 think had been moved?

10 A There is probably 15 bottles of medication
11 in there and every single one of them had been
12 moved around.

13 Q These bottles are plastic, glass, combination of
14 both?

15 A Plastic.

16 Q So 15 items had been picked up off the bottom
17 shelf and moved --

18 A Moved to the second. Three or four had been
19 moved to the second shelf, but all of them had
20 been moved around.

21 Q Since you are familiar with your medicine
22 cabinet, you would recognize that right away,
23 wouldn't you?

24 A Yes, sir.

25 Q Your wife, of course, would recognize it because

DARYLL SMITH - CROSS BY MR. WELLBORN

1 she is familiar with the medicine cabinet?

2 A Yes, sir.

3 Q Which one of you discovered that the medicine
4 cabinet was open and these items had been
5 removed, you or your wife?

6 A I did.

7 Q Okay. Now, you woke up -- about what time did
8 you get up that morning?

9 A It was roughly around 9:30 because that's my
10 general time. In the summertime, I finish at
11 night. I get on the water in the mid afternoon
12 or the day before and I always finish -- I come
13 off the water roughly around 4 o'clock in the
14 morning every morning, get in bed around 5
15 o'clock, and I am on a schedule then from we are
16 running every day in a routine that I wake up
17 around 9, 9:30 in the morning because I have to
18 start prepping my boat, charging batteries,
19 taking care of bait and everything to prepare
20 for the next night. I always wake up between 9
21 and 9:30.

22 Q You woke up in your bedroom, correct?

23 A Yes, the master bedroom.

24 Q When you woke up -- as you woke up, did you
25 notice anything funny about your bedroom?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A No, sir, I was still dog tired.

2 Q Right. But as you described even later, you
3 didn't see anything that looked unusual about
4 the bedroom; is that correct?

5 A Not when we went in there because everything
6 that was done except for the bathroom cabinet
7 was done very particular. Even the front door,
8 they fixed the front door back to where it was
9 locked on the way out trying to make sure it
10 didn't look like it was broken into.

11 Q After you got up, where did you go next after
12 you got out of bed?

13 A Always to the bathroom.

14 Q When you walked into the bathroom did you notice
15 the medicine cabinet was open?

16 A I did, but I assumed maybe my wife at that
17 point where she had gone to work, may have been
18 in there and she was in hurry and also dealing
19 with the dog in the morning. I just assumed
20 that and went straight back to the living room
21 to sit down and catch my breath for minute.

22 Q Did you notice that when you were in there and
23 the medicine cabinet had been opened, did it
24 seem funny all this medicine had been moved
25 around and things that were supposed to be on

DARYLL SMITH - CROSS BY MR. WELLBORN

1 middle shelf were on the middle shelf and things
2 on the bottom shelf weren't there?

3 A No, sir. My wife, that is 99 percent her
4 medication, and I have no idea what doctors have
5 her on from time to time.

6 Q Then you went into the living room and you sat
7 down?

8 A Yes, sir.

9 Q After sitting down for a while, did you get up
10 and have breakfast, make coffee, anything?

11 A No, sir. I wasn't sitting three minutes
12 when I noticed the window screen and how those
13 smear marks were on the window.

14 Q Describe the smear marks on the window?

15 A Somebody pried the screen -- well, at first
16 from what I could tell, they probably were just
17 trying to rub over the screen to rub the sweat
18 away from the air conditioner because I do keep
19 my house cold in the summertime, and they popped
20 the screen out and smeared into another part of
21 it to where they were trying to see inside the
22 house.

23 Q This is the window near the front door, correct?

24 A Yes, sir, the window right beside the front
25 door.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q Okay. When the police showed up, did you show
2 them that smear mark?

3 A Yes, sir, I did.

4 Q So the deputy that first responded, he got to
5 see the smear mark?

6 A Yes, sir, he did.

7 Q You identified it as a smear mark?

8 A Yes, sir.

9 Q Fair enough. Then after seeing the screen and
10 the smear mark, what did you notice next?

11 A That's when I went to the front door. As
12 soon as I seen the destruction there, I picked
13 up my phone, went outside and called the
14 Sheriff's Department.

15 Q Okay. After you called the Sheriff's
16 Department, about how long was it before you
17 Deputy Doty arrived?

18 A Twenty minutes, roughly.

19 Q When he arrived, you met him outside?

20 A Yes, sir.

21 Q When you met him outside, you told him before he
22 came in about the windows, right?

23 A When we first met I told him that I had a
24 break in. I showed him the front door, that
25 window, and while I was waiting on the Sheriff's

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Department to get there, I had done the outside
2 parameter view of my house and seen where there
3 was only one window in my whole entire house.
4 They did not try to tear up and get into it.
5 They did not touch the back door.

6 Q All right. The back door for people that are
7 familiar with the house would be shown in
8 Defense Exhibit 1, correct?

9 A Yes, sir.

10 Q Nothing was touched in the back door?

11 A Nothing at all.

12 Q Nothing at all. The front door, for people that
13 are familiar with your trailer, would be shown
14 Defense Exhibit 3, correct?

15 A Yes, sir.

16 Q Okay. And anybody who has been in your trailer
17 or familiar with you would know which one is the
18 front door and the back door, correct?

19 A Not necessarily because sometimes we have
20 people come to the back door.

21 Q Okay.

22 A We do not use the back door for any reason.

23 Q Sometimes other people come to back door?

24 A They will knock on the back door. If they
25 knock on back door, we walk out front door and

DARYLL SMITH - CROSS BY MR. WELLBORN

1 come around.

2 Q Do either of your doors have anything that
3 identify them as being the front door or back
4 door, like a sign?

5 A No. Well, burglar alarm sign.

6 Q Okay. Do you have a post box on either the
7 front door or the back door?

8 A No, sir.

9 Q Do you have a house number on either the front
10 door or the back door?

11 A No, sir. I have it identified out in the
12 front yard on a tree.

13 Q All right. So you showed the deputy the damage
14 to the door. You mentioned that it was clear
15 someone had tried to put things back to make it
16 look like nothing had happened?

17 A Yes, sir. On a door there is a little medal
18 bracket that is on the frame of the door. When
19 you push your doorknob to, it is called a
20 keeper. That holds your door shut. That had
21 been broken into pieces and the piece that was
22 still left on the door, they had to move all
23 that back around in position to get it to the
24 point where it would hold my door shut.

25 Q So presumably, whoever moved this piece back in

DARYLL SMITH - CROSS BY MR. WELLBORN

1 the position so your door would shut would have
2 used their hands, right?

3 A I would assume they would.

4 Q Sure. It would be kind of hard to do it with
5 some other part of the body?

6 A Not really the way it was broke up and the
7 way it was done. It could be just actually
8 pushed down with an elbow or something. The way
9 it was broken, it would have been sticking out
10 into the living room itself, and it was pushed
11 back down.

12 Q Where were the blood stains in relation to that
13 area of the door and the keeper?

14 A Where the doorknob is on the outside --
15 looking at my house where the doorknob is, they
16 were just above the doorknob and several inches
17 away from -- six, eight inches away from the
18 side of the door. They must have put force on
19 my door.

20 Q Were the blood stains on the door itself or on
21 the siding of your trailer next to the door?

22 A On the door itself.

23 Q On the door itself. Okay. Were the blood
24 stains smeared or were they blocks or what were
25 they?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A It was a smear.

2 Q It was a smear.

3 A Where I am an active hunter I am good at
4 checking blood trails and I know the difference
5 between smear and a drop.

6 Q It was an obvious smear?

7 A It was a smear.

8 Q You were obviously concerned when you found out
9 your home had been broken into concerned enough
10 to call the Sheriff's Department, correct?

11 A Oh, yes.

12 Q You obviously would have been worried, correct?

13 A I was actually sick knowing that somebody
14 had been in my house.

15 Q It is an awful feeling, isn't it?

16 A Yes, sir, it is.

17 Q Because your house is kind of your private
18 place, isn't it?

19 A That's it.

20 Q It is where you keep your things?

21 A Yes, sir.

22 Q And your wife keeps her things?

23 A Yes, sir.

24 Q And some of those things have sentimental value?

25 A Yes, sir.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q You feel like somebody has been inside you, you
2 personally, when they have been inside your
3 house, don't you?

4 A I feel like I have been messed with
5 personally.

6 Q The deputy was there about how long?

7 A Oh, God, I could not even start to tell you
8 about that because that's almost two years ago.
9 He was there long enough to look at everything,
10 the damage. He stepped inside and looked around
11 a little bit and discussed if anything had been
12 stolen. So all in time I would say probably 30
13 minutes.

14 Q So a half hour?

15 A Yes, sir.

16 Q Did the deputy go into the kitchen?

17 A I cannot remember. We walked all over the
18 place so I cannot really remember at that point.

19 Q Did the deputy go into the bathroom?

20 A No, sir.

21 Q Did the deputy go into the master bedroom?

22 A I cannot remember on that one there because,
23 like I say, without knowing.

24 Q Did the deputy go into the other bedroom where
25 you had this office?

DARYLL SMITH - CROSS BY MR. WELLBORN

1 A No, sir.

2 Q You are sure he didn't go in there?

3 A No, sir, he did not go in there.

4 Q After the deputy left, did you look around the
5 trailer to see if anything was missing?

6 A For days.

7 Q So the first day after the deputy left which
8 would have been -- well, actually, the rest of
9 the day of September 7th, you looked around the
10 trailer, didn't you?

11 A I had a lot of inventory I had to start
12 going through, to start looking through, that
13 would take some time. Once I seen my desk had
14 been messed with, that paperwork, because I am a
15 coast guard captain, I had to do everything I
16 think to protect my identity, and those were the
17 first things I went through because if somebody
18 steals my identity people can die.

19 Q Sure. So on the first day, September 7th, you
20 did start looking around to see if stuff was
21 missing?

22 A I was going through paperwork to see if any
23 social security numbers, coast guard license
24 numbers, or anything had been taken.

25 Q What about on the second day. Did you start

DARYLL SMITH - CROSS BY MR. WELLBORN

1 looking around the house to see if anything was
2 missing?

3 A I looked -- we looked pretty much that whole
4 day.

5 Q You didn't notice anything on September 8th?

6 A We were slowly gathering. I don't know what
7 timeframe we were finding different objects, but
8 we were going through compiling a list, and over
9 a period of a few days, we compiled a list.

10 Q Because it was seven days later that you called
11 the Sheriff's Department to say there was some
12 stuff missing, correct?

13 A They told me to go ahead and take time and
14 look around because this wasn't a ransacking
15 job. They did not go in and just try to take
16 everything in the house. Whoever went in, they
17 knew what they were doing. These were not,
18 absolutely were not, your average criminals from
19 where I have prepared too many homes that have
20 been broken into. They went in and took very
21 small and specific items.

22 Q So whoever went in knew what they were doing as
23 you said?

24 A Yes.

25 Q Presumably, might have even known what they were

DARYLL SMITH - CROSS BY MR. WELLBORN

1 looking for, correct?

2 A No, sir. Because no one knows, we do not
3 show that kind of stuff to everybody. When
4 people come in, we don't invite people into
5 other rooms of our house. We keep the other
6 parts of our house private.

7 Q So we are clear, they didn't take any guns?

8 A No, sir.

9 Q They didn't take any stereo equipment?

10 A No, sir.

11 Q They didn't take any TV equipment?

12 A No, sir.

13 Q They didn't take any appliances whatsoever?

14 A No, sir.

15 Q They took your wife's jewelry which was in the
16 jewelry box?

17 A Some of her jewelry.

18 Q Some of the jewelry which was in the jewelry box
19 in the master bedroom and two fishing rods in
20 the kitchen?

21 A Yes, sir, and prescription medication.

22 Q And one bottle of prescription medication?

23 A No, sir.

24 Q How many bottles?

25 A Off the top of my head, I want to say

DARYLL SMITH - CROSS BY MR. WELLBORN

1 roughly five different prescriptions.

2 Q Do you recall telling the deputies?

3 A We gave the deputies a list of what
4 medications were taken.

5 Q Okay. And did you give an idea of how many
6 bottles?

7 A Yes, sir.

8 Q Okay. Fair enough. Now, when your wife got
9 home for the first time and found out your home
10 had been broken into, where was the first place
11 that she looked to see if anything was missing?

12 A Straight into the master bedroom because
13 that's pretty much her area because I keep my
14 stuff in the other room.

15 Q That's where she kept her jewelry?

16 A Yes, sir.

17 Q I want to talk to you about who lived next door
18 to you during this period of time?

19 A I had a niece that moved in next to me and
20 her boyfriend.

21 Q And the boyfriend's name was Jordon Clyde
22 Canupp?

23 A Yes, sir.

24 Q When did he move in?

25 A They had been living there I want to say

DARYLL SMITH - CROSS BY MR. WELLBORN

1 roughly a month and a half, two months.

2 Q Okay. Did you assist him at all, help him with
3 anything, as far as food, getting a job,
4 anything like that?

5 A They were very struggling, two young adults
6 trying to start out their own. I didn't know
7 how bad of shape they were in. My brother
8 called me one night and they asked me if I could
9 take some deer meat and all because I keep a
10 freezer full of various meat, that they needed
11 something to eat. I went over and got them,
12 took them to the grocery store on a number of
13 occasions, bought them groceries, give them
14 food, clothing, furniture, stuff like that, yes,
15 sir.

16 Q So you were over at their trailer on occasion?

17 A I never put foot in their trailer.

18 Q Did they ever put foot in your trailer?

19 A The only time they did, they were right
20 there in the living room because, like I say, we
21 keep the rest of our house private to us.

22 Q Did you ever go out to dinner with them?

23 A I took them out one time, yes, sir.

24 Q But you did things and on various occasions you
25 were trying to help them with meat, help them

DARYLL SMITH - CROSS BY MR. WELLBORN

1 with various things, correct?

2 A Yes, sir, I help a lot of people that way.

3 Q Now, Jordon was dating your niece Hannah?

4 A Yes, sir. To my understanding, they were
5 actually engaged, I guess.

6 Q He was living there at the trailer next door?

7 A Yes.

8 Q I believe that trailer is shown in Defense
9 Exhibit 2, correct?

10 A Yes, sir.

11 Q From that trailer there is a view of your front
12 door and your parking area, correct?

13 A Yes, sir.

14 Q So someone who was in that trailer looking out
15 the living room window would know whether or not
16 your truck was there, correct?

17 A Yes, sir.

18 Q Especially if they knew what you drove, right?

19 A Yes, sir.

20 Q They would know whether your wife's truck was
21 there?

22 A Yes, sir.

23 Q Especially if they knew what your wife drove?

24 A Yes, sir.

25 Q By the way, when you leave to go out of town if

DARYLL SMITH - CROSS BY MR. WELLBORN

1 your wife isn't there, do you leave the lights
2 on in your trailer?

3 A I am gone for weeks at a time, sometimes
4 even a month. I would imagine she would leave
5 the light on for her so she doesn't walk into a
6 dark house.

7 Q I understand that's what you imagine. My
8 question is, when you leave and your wife is not
9 home and you are leaving, do you turn the lights
10 out or do you leave them on?

11 A All of the lights are out. I never leave
12 lights on.

13 Q So one of your habits is, if you are leaving you
14 turn out the lights?

15 A Every single time. My parents taught us as
16 a young kid with a very stern enforcement that
17 you do not leave lights on. When you leave the
18 room, you turn the lights off.

19 Q Fair enough. So somebody who is familiar with
20 your trailer would recognize whether the lights
21 were on or lights were off, correct?

22 A Yes, sir.

23 Q Now, Jordon Canupp knew you were a fishing
24 captain?

25 A Yes, sir.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q And he knew you had fishing equipment?

2 A I would assume he would.

3 Q He knew you were Hannah Smith's -- that's your
4 niece's name, right?

5 A Yes, sir.

6 Q You were Hannah Smith's uncle?

7 A Yes.

8 Q He knew you were not his uncle?

9 A I cannot speculate on what he knew.

10 Q You are not his uncle?

11 A No.

12 Q He knew what your wife looked like, right?

13 A Yes, sir.

14 Q And what she drove?

15 A Yes, sir.

16 Q As you said he had been inside your trailer, at
17 least in the living room area, right?

18 A One, maybe two times, not much.

19 Q He knew you had a little dog?

20 A Yes, sir.

21 Q He knew what your dog looked like?

22 A Yes, sir.

23 Q And what your dog's personality was?

24 A I don't know if he knew that there. You are
25 asking me to speculate. I have no idea.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q But I believe your dog is or was a very, very
2 gentle, sweet dog?

3 A Very.

4 Q And anybody around your dog would pick up on
5 that I am assuming, correct?

6 A Well, I train my dogs to let me know where I
7 am. I am tone deaf in my left ear. I have
8 trained every single dog I have. That's the
9 reason I have inside dogs. No matter how many
10 times it sees you, until I say or my wife says
11 it is okay for it to stop, give it an order to
12 stop.

13 Q So this dog would bark if someone came to the
14 door?

15 A Excessively.

16 Q And anybody who lived next door would know that,
17 right?

18 A Not really, because we keep a very private
19 life.

20 Q Understood. When dogs bark and bark excessively
21 they make noise that people on the outside
22 occasionally can hear, right?

23 A You are asking me a speculating question if
24 I can hear my dog outside my house while it is
25 barking. I don't pay no attention because when

DARYLL SMITH - CROSS BY MR. WELLBORN

1 I am outside my dog is with me.

2 Q Okay. Let's try this one. If somebody ever
3 came to your front door before and come inside
4 your house and your dog was barking, they would
5 know?

6 A Oh, yes.

7 Q So someone who had been in your living room
8 might have had that experience, correct?

9 A Anyone who had been in my house, even the
10 police officers when they come to my house can
11 testify my dog will alert me.

12 Q On the day that Officer Doty arrived on
13 September 7th, you pointed out to Officer Doty
14 that there was a partially smoked cigarette or
15 looked like a partially smoked cigarette butt in
16 the middle of your living room, right?

17 A It was over by my roll top desk area.

18 Q The roll top desk you said someone had been
19 through?

20 A Yes, sir.

21 Q Had they opened up the roll top?

22 A Yes, sir.

23 Q The roll top had been shut and they opened it
24 up?

25 A They opened it up.

DARYLL SMITH - CROSS BY MR. WELLBORN

1 Q They went gone through the desk. Were the
2 drawers opened?

3 A They had gone through everything. I keep my
4 paperwork in order to find paperwork, and all of
5 the paperwork in that whole entire desk had been
6 gone through.

7 Q The cigarette butt was found in that area?

8 A Right beside it.

9 Q I believe you told Officer Doty neither you or
10 your wife smoked?

11 A No, sir, neither of us do and never have.

12 Q In your mind, it makes sense whoever broke into
13 your place and maybe whoever went through your
14 roll top desk smoked a cigarette.

15 A We don't allow smoking in our house. I am
16 allergic to smoke of a lot of different
17 cigarettes. If somebody wants to smoke, we ask
18 them to go outside.

19 Q So, again, it makes sense to you whoever has
20 been through your roll top desk might have been
21 a person smoking a cigarette; correct?

22 A I assume that because we do not smoke.

23 Q It made perfect sense to you when you discovered
24 seven days later the blood stains, that whoever
25 had left that blood smear on your front door

DARYLL SMITH - CROSS BY MR. WELLBORN

1 might have been the person who broke into your
2 house, right?

3 A I come and go a lot in the dark. That's why
4 I would not have seen that blood stain for a
5 while. When I seen that there, because of the
6 window being broken out of the house next door,
7 who broke into it, because both of them were
8 broken into at the same time, I assumed that --
9 I had told the officers they may have cut their
10 self on that there. It wasn't my blood and it
11 wasn't my wife's blood for sure because if we
12 would have done it, we would have cleaned it
13 off.

14 Q Again, it was logical to assume that whoever
15 broke into your front door left that blood
16 smear, correct?

17 A That's what I assumed, yes, sir.

18 Q You mentioned that to the deputies, right?

19 A Yes, sir.

20 MR. WELLBORN: That's all I have --

21 A I said it may have been.

22 Q Sure. I mean, it is possible that someone just
23 came up to your front door --

24 THE JUDGE: Move on. He answered it. No
25 use keep going on and on when you already

DARYLL SMITH - CROSS BY MR. WELLBORN

1 covered that. Do you have any other questions?

2 MR. WELLBORN: I do, Judge.

3 THE JUDGE: I thought you said you were
4 done.

5 MR. WELLBORN: No.

6 THE JUDGE: Please continue then.

7 BY MR. WELLBORN:

8 Q The burglary or break in that happened behind
9 you, where was that?

10 A There is a mobile home straight behind me
11 and it was broken into.

12 Q Who lives in that mobile home?

13 A No one.

14 Q It was an empty mobile home?

15 A Yes, sir.

16 Q How did you know it was broken into?

17 A My wife found that there the afternoon
18 before when she came into work to get ready to
19 go to my parent's house, she seen curtains
20 blowing in the wind and she called the Sheriff's
21 Department then and they come out and looked at
22 that there. She called me at work. I was on
23 the water with my clients and told me about the
24 neighbor's house being broken into because
25 normally when I would come off the water that

DARYLL SMITH - CROSS BY MR. WELLBORN

1 early in the morning, I would lay down and go to
2 sleep and rest before I would drive home. But
3 since that had been broken into that night, as
4 soon as I got off the water I came home.

5 Q Did the police come out and talk to you and your
6 wife about this break in?

7 A I was not there. My wife called so they
8 would have talked to her because I was not
9 there.

10 Q But you were concerned enough about what had
11 happened to a neighbor's empty house that you
12 didn't rest down there where you were fishing
13 and drove straight home?

14 A No, sir, because at that point there had
15 never been nothing disturbed in our area at all.

16 Q As you were driving home late that morning or
17 early that morning on September 7, you were
18 already concerned about break-ins in the
19 neighborhood?

20 A No, sir. I was concerned about what --
21 well, the neighbor's house.

22 Q Sure.

23 A I wanted to get home and check that out
24 because I do oversee all that there, tried to
25 keep -- I am a neighborhood watchman. I am not

DARYLL SMITH - CROSS BY MR. WELLBORN

1 one that turns a deaf ear.

2 Q Even as you pulled in your own driveway, you
3 knew at that moment that someone had broken into
4 your neighbor's house, right?

5 A When I pulled in, it was dark. When I
6 pulled in, I was going by what my wife told me,
7 that the neighbor's house had been broken into.

8 Q And you had every reason to believe your wife
9 that your neighbor's house had been broken into?

10 A Yes.

11 Q All right. That house was broken into -- your
12 wife discovered that on September 6th, the day
13 while you were on the water?

14 A Yes, sir.

15 Q About what time did your wife call you that day
16 and let you know?

17 A I could not even start and tell you. When I
18 am at work, I am consumed in that there because
19 I'm having to watch out for safety plus do my
20 job.

21 Q Right. What time did your wife leave your house
22 on September 6th?

23 A I have no idea. It was sometime after she
24 got off work and got home and changed clothes.

25 Q So she would have been gone at work on September

DARYLL SMITH - CROSS BY MR. WELLBORN

1 6, right?

2 A Yes, sir.

3 Q And then she got home. Typically, what time did
4 she get home?

5 A Between 5:15 and 5:30.

6 Q Then she went straight that night to sit with?

7 A My mother.

8 Q So sometime between getting home at 5:30 on
9 September 6th and leaving to go to say with your
10 mom, she discovered this break in, right, the
11 one at the neighbor's house?

12 A When she came from work, what time she came
13 in, that's when she had discovered it.

14 Q Okay. You mentioned that, of course, to Deputy
15 Doty who responded to your burglary, correct?

16 A I could not -- I have no idea what we talked
17 about at my house.

18 Q Okay. Did you mention it with Deputy Yates when
19 you were showing him the blood smear, like you
20 explained it to us, that you thought it might be
21 related?

22 A Yes, sir. When the second officer come out
23 to take the swab of the blood off my front door,
24 I told him that's what I thought, that it may
25 have been where it come from because neither one

DARYLL SMITH - CROSS BY MR. WELLBORN

1 of us had been cut.

2 Q Did either of those officers in your presence --
3 or the second officer, because that is who you
4 talked about it with. Did he in your presence
5 go over to the neighbor's house to look at the
6 broken window or anything where blood stains
7 might have come from?

8 A Yes, sir, we walked over there and looked at
9 the broken glass and all. He looked around the
10 glass to see if somebody had been cut on that
11 there. He did look at that there.

12 Q In fact, he took swabs from your door, didn't
13 he?

14 A Yes, sir.

15 Q Deputy Doty picked up the cigarette butt you
16 found next to the roll top desk and he took that
17 into evidence?

18 A That's the first officer.

19 Q Yes, that's the first officer?

20 A Yes.

21 MR. WELLBORN: Thank you so much for your
22 time.

23 MS. SHELTON: Just briefly, your Honor.

24 REDIRECT EXAMINATION:

25 BY MS. SHELTON:

DARRYL SMITH - REDIRECT BY MS. SHELTON

1 Q I am going to show you what has been marked for
2 identification as Defense Exhibit Number 1. You
3 identified that as your residence?

4 A Yes, ma'am.

5 Q That is what part, of your trailer?

6 A This is the back of my house here
7 (indicating).

8 Q That door, what does that lead into?

9 A That leads into a hallway.

10 Q If you went into that door, you would just go
11 immediately into a hallway?

12 A You would go into a hallway.

13 Q The driveway, does it lead up to that door?

14 A No, ma'am.

15 Q Is there something in that picture blocking
16 access from the drive to the house?

17 A Yes, there is. There are posts in the
18 ground because people used to think that was a
19 circle drive. It is not. It is all grass. So
20 I put barricade up to stop people from driving
21 through my yard.

22 MS. SHELTON: Thank you. I have no
23 further questions.

24 THE JUDGE: Thank you, sir. You may stand
25 down.

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 (Witness excused.)

2 MR. SPRINGS: Your Honor, may we take a
3 comfort break.

4 THE JUDGE: Mr. Foreman, ladies and
5 gentlemen of the jury panel, we will take a
6 short break at this time. You may refresh
7 yourselves.

8 (Whereupon, the jury exited the courtroom
9 at 11:04 a.m.)

10 THE JUDGE: We will take ten minutes.

11 (Court in recess at 11:05 a.m.)

12 (Court resumes at 11:18 a.m.)

13 THE JUDGE: Counsel approach just a
14 minute.

15 (Whereupon, a bench conference was held
16 off the record.)

17 THE JUDGE: Please bring the jury in.

18 (Whereupon, the jury came into open court
19 at 11:33 a.m.)

20 THE JUDGE: Mr. Foreman, ladies and
21 gentlemen jury panel, I have your note. I don't
22 know if the foreperson wrote the note. It
23 doesn't indicate who wrote the note. Let me
24 answer your question this way: The jury is not
25 allowed to ask questions during the course of

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 the trial. What I would ask you to do is listen
2 carefully to the testimony and the evidence and
3 your decision be based on the testimony and
4 evidence as it comes in during the trial. I
5 just ask you to listen attentively to that.

6 Let's proceed.

7 MS. SHELTON: Your Honor, the State would
8 call Officer Chris Doty.

9 CHRISTOPHER DOTY, being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION:

12 BY MS. SHELTON

13 Q State your name for the record, please.

14 A Christopher Doty.

15 Q What is your occupation and rank?

16 A Master Deputy with the York County Sheriff's
17 Office.

18 Q Deputy, how long have you been in law
19 enforcement?

20 A A little over nine years.

21 Q How long have you been with the Sheriff's
22 Department?

23 A A little over nine years.

24 Q What are your present duties?

25 A I work in the patrol division out of the

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 Rock Hill office.

2 Q As part of role, what normally are you called to
3 do?

4 A When a call comes in we typically take the
5 initial report, deal with alarm calls, whatever
6 else --

7 MR. SPRINGS: Could the deputy keep his
8 voice up.

9 THE JUDGE: Yes. Please speak up a little
10 bit.

11 BY MS. SHELTON:

12 Q Are you on duty now?

13 A Not for patrol. I am obviously here but...

14 Q When were you last on duty?

15 A Last night.

16 Q You got off what time?

17 A Two o'clock.

18 Q They let you off early. Were you working patrol
19 back in September of 2012?

20 A Yes, ma'am.

21 Q Do you remember becoming involved in an
22 investigation at [REDACTED] around
23 September 7th of that year?

24 A I don't remember the exact date. I remember
25 responding to the call, yes, ma'am.

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 Q Would having an incident report help refresh
2 your memory?

3 A Yes, ma'am.

4 MS. SHELTON: Court's indulgence.

5 BY MS. SHELTON:

6 Q Do you recognize that?

7 A Yes, ma'am.

8 Q What is it?

9 A The case report summary.

10 Q Is part of that your case report summary?

11 A Yes, ma'am.

12 Q Having that helped refresh your memory of the
13 events that happened back in September?

14 A Yes, ma'am.

15 Q Were you called out on September 7th, 2012 to
16 [REDACTED]

17 A Yes, ma'am.

18 Q For what reason?

19 A I believe the individual said that somebody
20 had either possibly or had broken into his home.

21 Q Did you go there?

22 A Yes, ma'am.

23 Q Did you speak with anyone?

24 A Yes, ma'am, Mr. Smith.

25 Q What did you do to investigate his allegations

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 at the time?

2 A I spoke with Mr. Smith. I remember looking
3 at the front door, briefly looked around the
4 living room.

5 THE JUDGE: Sir, you have to speak loud
6 enough for everyone on the jury to hear you and
7 you are kind of trailing off in your voice.
8 Speak up a little bit.

9 BY MS. SHELTON:

10 Q You briefly looked around the living room?

11 A Yes, ma'am.

12 Q At that time, did he report anything stolen?

13 A No, ma'am, he did not.

14 Q At that time did you collect any evidence?

15 A Yes, ma'am.

16 Q What did you collect?

17 A A partially smoked cigarette butt on the
18 floor in the living room.

19 Q Could you explain to this jury what the Forensic
20 Service Unit is?

21 A They process evidence from my understanding.

22 Q Did you call them out?

23 A No, ma'am.

24 Q Why not?

25 A I was able to collect it and submit it to

CHRISTOPHER DOTY - DIRECT BY MS. SHELTON

1 evidence. It is something I can do myself so I
2 did that.

3 Q Did you take any pictures?

4 A No, ma'am.

5 Q Do you have a camera in your car?

6 A Yes, ma'am.

7 Q Why didn't you take any pictures?

8 A I can't answer that question, ma'am.

9 Q Did you see any signs of forced entry?

10 A I don't recall exactly.

11 Q You already said you didn't take any pictures.

12 Did you make any notes in your incident report
13 of what you observed?

14 A The only note I put in there was that
15 Mr. Smith advised that there was damage to the
16 front door.

17 Q So at that point, you basically just took a
18 report of an attempted burglary?

19 A From my understanding, yes, ma'am.

20 Q What did you do with that -- what did you do
21 with the case after that?

22 A I completed the incident report and it got
23 referred up from there.

24 Q Who does it get referred to?

25 A The Detective Division.

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 Q At the time you initially went out, were there
2 any suspects listed?

3 A No, ma'am.

4 Q That address, the [REDACTED] what
5 county is that in?

6 A York County.

7 MS. SHELTON: Thank you. Answer any
8 questions the defense has for you.

9 THE WITNESS: Yes, ma'am.

10 CROSS-EXAMINATION:

11 BY MR. WELLBORN:

12 Q Good morning. What time did you get out there
13 to the residence, the trailer?

14 A I don't recall. That information is not on
15 this report.

16 Q Do you keep any records at the Sheriff's
17 Department of what time you responded to a call?

18 A There would be records on a different
19 version of this incident report that has the
20 times on it. I don't have that with me.

21 Q Okay. So you arrived at some time during the
22 daylight, right?

23 A Yes, sir.

24 Q Morning, afternoon, do you recall?

25 A I don't know exactly, no, sir.

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 Q Sometime during the day you responded?

2 A Yes, sir.

3 Q In your car, you have -- do you have a computer
4 in your car or access to the Sheriff's
5 Department records in your car?

6 A There is a computer in the car. It doesn't
7 have access to the Sheriff Department records.

8 Q Do you have access to a dispatcher from your
9 car?

10 A Via radio, yes, sir.

11 Q If there had been other break-ins in the
12 neighborhood, would that be something you could
13 find out about by contacting the Sheriff's
14 Department from your car?

15 A We could ask dispatch, yes.

16 Q If someone told you there had been a break in
17 next door to their house, is that something that
18 you could check with dispatch and verify whether
19 or not that had been reported?

20 A Yes.

21 Q Do you recall anybody telling you that there had
22 been a break in next door?

23 A I did not.

24 Q When you got this to particular trailer, you met
25 Daryll Smith?

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 A Yes.

2 Q Do you recall where you met him?

3 A I believe it was outside.

4 Q He reported there had been this burglary --
5 there had been a break in, correct?

6 A Yes, sir.

7 Q Now, you indicated he mentioned there had been
8 damage to the front door; is that correct?

9 A Yes, sir.

10 Q Did he show you the damage to the front door?

11 A I remember it being mentioned. I don't
12 remember exactly to what degree I looked at it.

13 Q You knew you were investigating a potential
14 break in?

15 A Yes, sir.

16 Q You knew that you were investigating someone
17 potentially breaking into someone's home,
18 correct?

19 A Yes, sir.

20 Q All right. You knew that whoever broke into the
21 home had come in presumably through the front
22 door since there is damage to the front door,
23 right?

24 A I would assume.

25 Q You would assume. Since you are refreshing your

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 recollection from that document, do you mind if
2 I look at it for a second?

3 A My portion is the portion on the bottom.

4 Q Now, Mr. Smith said that someone had come into
5 his residence, right?

6 THE JUDGE: Yes or no, please.

7 A Sorry. Yes, sir.

8 Q That window screens had been cut, correct?

9 A Yes, sir.

10 Q That one window had pry marks on it, correct?

11 A Yes, sir.

12 Q Did you see the pry marks?

13 A I do not recall to what extent.

14 Q He looked around the house and did not notice
15 anything missing, correct?

16 A Yes, sir.

17 Q There was this partially smoked cigarette butt
18 on the floor near the desk?

19 A Yes, sir.

20 Q Do you recall anything specific about the desk,
21 what kind of desk it was?

22 A No, sir, I do not.

23 Q Do you recall whether Mr. Smith indicated that
24 anybody had fooled with the desk at all?

25 A I did not.

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 Q So someone clearly, according to Mr. Smith, had
2 been inside his house, correct?

3 A Yes, sir.

4 Q That's why he mentioned the cigarette butt?

5 A Yes, sir.

6 Q You thought the cigarette butt might be
7 important so you took it into evidence?

8 A Yes, sir.

9 Q You were careful about taking that into evidence
10 so it could be preserved?

11 A Yes, sir.

12 Q And preserved it potentially for later testing?

13 A Yes, sir.

14 Q To determine who might have smoked that
15 cigarette butt?

16 A Possibly.

17 Q Because Mr. Smith told you neither he or his
18 wife smoked cigarettes?

19 A He did.

20 Q So the cigarette butt was an important piece
21 evidence?

22 A Possibly.

23 Q The front door where someone broke in, that
24 would also be an important piece evidence in the
25 case, correct?

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 A It could be.

2 Q I am going to show you a photograph. Is this
3 the door area that Mr. Smith indicated had been
4 broken in through?

5 A I can't answer that question.

6 Q Would you recognize the trailer at all where
7 Mr. Smith showed you?

8 A No, sir.

9 Q Fair enough. Did you look at the door that
10 Mr. Smith said was damaged?

11 A I remember looking at a door. I don't
12 remember specifics.

13 Q Let's try it from the top. Did you look at the
14 front part of the door?

15 A I do not recall.

16 Q Would that be something if you were
17 investigating a break in you would do, would be
18 to look at the front part of a door?

19 A To look at the door yes, sir.

20 Q Would you look at both sides of the door,
21 typically?

22 A Typically.

23 Q You have been on duty -- how long had you been
24 deputy at the time you investigated this break
25 in or potential break in?

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 A 2012 so it was roughly seven years.

2 Q Before your seven years of service with the
3 Sheriff's Department, you went through training
4 at the Criminal Justice Academy?

5 A Yes, sir.

6 Q You learned about evidence?

7 A Yes, sir.

8 Q And preserving evidence?

9 A Yes, sir.

10 Q And investigating cases?

11 A Yes, sir.

12 Q You learned about specific kinds of crimes such
13 as burglary, how they occurred, and that sort of
14 thing?

15 A To a limited degree.

16 Q And you had further training at the Sheriff's
17 Department?

18 A Yes, sir.

19 Q At the time you were at Mr. Smith's residence,
20 you were an experienced deputy, right?

21 A Yes, sir.

22 Q You investigated break ins before?

23 A Yes, sir.

24 Q So you knew kind of what to look for, right?

25 A Yes, sir.

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 Q You knew that if somebody told you a front door
2 had been broken into, you needed to at least
3 look at the door?

4 A Yes, sir.

5 Q If there was damage to the door, you should,
6 perhaps, write down what you noticed about
7 damage to the door, right?

8 A Yes, sir.

9 Q You didn't write anything down about damage you
10 noticed to the door, did you?

11 A No, sir, I did not.

12 Q You would also would know as an experienced
13 deputy if you saw blood stains on the front of
14 the door when you got there on September 7th,
15 you would have noticed those blood stains,
16 right?

17 A I don't recall there being blood stains.

18 Q I understand that. My question is, if you had
19 seen blood stains, you would have made a note of
20 that?

21 A If I had seen them yes, sir.

22 Q All right. You made no notes of any blood
23 stains on the front door, did you?

24 A No, sir.

25 Q Now, you had in your camera or you had in your

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 car a camera?

2 A Yes, sir.

3 Q The camera will take photographs, correct?

4 A Most cameras do, yes, sir.

5 Q Photographs can be used to show where evidence
6 was found?

7 A Yes, sir.

8 Q So, for instance, if there had been damage to
9 the front door, you could have taken a picture
10 of the front door showing where the damage was?

11 A Yes, sir.

12 Q If there was blood stains on the front door on
13 the outside you could have taken a picture where
14 the blood stains were, correct?

15 A If I was to notice them, yes, sir.

16 Q If you were to notice them. Again, this was
17 daylight when you were there?

18 A Yes, sir.

19 Q You have seen blood stains before as a deputy,
20 right?

21 A A few times yes, sir.

22 Q You agree those could be important pieces of
23 evidence, correct?

24 A Yes, sir.

25 Q Especially if they were in an area where someone

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 says the home was broken into, right?

2 A Yes, sir.

3 Q You were concerned about evidence which is why
4 you took the cigarette butt, right?

5 A Yes, sir.

6 Q Mr. Smith is the one that showed you the
7 cigarette butt?

8 A Yes, sir.

9 Q Next to his desk in the living room?

10 A Yes, sir.

11 Q Did you go into any other rooms in the house
12 other than the living room? Did you go into the
13 kitchen?

14 A I do not recall.

15 Q If you were investigating a break in, would you
16 typically walk throughout other parts of a home,
17 especially a small home such as this single wide
18 trailer? Would you look in other areas?

19 A It depends.

20 Q What would it depend on?

21 A What the victim or complainant has told us
22 since we had been there.

23 Q All right. Did Mr. Smith show you the screens
24 that he said were cut?

25 A I remember walking around the home, yes,

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 sir.

2 Q You remember walking around the home. Do you
3 have any specific memory of seeing the screens
4 that had been cut?

5 A No, sir.

6 Q You have no recollection of that. If you had
7 seen screens that had been cut and Mr. Smith had
8 told you these screens were cut and not by me,
9 that would have been important in the case,
10 wouldn't it?

11 A Yes, sir.

12 Q You would have taken a photograph of those,
13 correct?

14 A Possibly.

15 Q Possibly.

16 A It is not something I do on a regular basis.

17 Q Would you have at least noted it in your
18 incident report?

19 A I noted that Mr. Smith stated that there was
20 damage to the screens.

21 Q Okay. But you don't have any independent
22 recollection of whether there was damage to
23 those screens or not?

24 A No, sir.

25 Q How long were you there at the scene?

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 A I do not recall.

2 Q Okay. But you were inside the trailer, correct?

3 A Yes, sir.

4 Q You walked around the outside of the trailer?

5 A Yes, sir.

6 Q The partially smoked cigarette that you found
7 because it was partially smoked, it would have
8 been in somebody's mouth, right?

9 A I would assume, yes, sir.

10 Q Because it had been in someone's mouth
11 potentially they would have left some kind of
12 evidence, trace evidence on the cigarette butt,
13 right?

14 A I would assume, yes, sir.

15 Q Which is why you took it into evidence?

16 A Yes, sir.

17 Q You are trained to take it into evidence, aren't
18 you, the things you think are important?

19 A Yes, sir.

20 Q So if you see something that you think is
21 important or potentially important evidence in
22 the case, you are trained to take it into
23 evidence, right?

24 A Yes, sir.

25 Q You are trained to look for evidence?

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 A Yes, sir.

2 Q Especially in areas where you would expect the
3 evidence might be found, right?

4 A Yes, sir.

5 Q What you have heard from Mr. Smith is that
6 someone had broken into his trailer through a
7 particular door, right?

8 A Yes, sir.

9 Q There was damage to that door?

10 A Yes, sir. That's what he stated.

11 Q So presumably, whoever broke into that area
12 might have used their hands, fingers, or palms,
13 or some part of their body that is connected to
14 their hand, correct?

15 A There is mirror of different ways they could
16 have entered.

17 Q But it is a possibility they could have used
18 their hands, right?

19 A Possibly.

20 Q So for instance, there might be evidence left my
21 by their hands from you pushing, banging,
22 smashing on the door, correct?

23 A Possibly.

24 Q Your department has fingerprint technicians?

25 A They have people that are trained to collect

CHRISTOPHER DOTY - CROSS BY MR. WELLBORN

1 fingerprints, yes.

2 Q And fingerprints can be valuable evidence in
3 cases?

4 A It can be.

5 Q For instance, if we had fingerprints on that
6 door area where Mr. Smith said something was
7 broken into, that could potentially identify who
8 knocked open that door, right?

9 A Potentially.

10 Q If there were blood stains found on that door,
11 it could potentially identify whose blood it
12 was, right?

13 A Possibly. From my understanding, yes, sir.

14 Q The same thing with the cigarette butt?

15 A Yes, sir.

16 Q Do you recall why you made the decision not to
17 take any photographs whatsoever of anything to
18 do with this break in?

19 A No, sir, I did not.

20 Q Do you recall why you made the decision not to
21 call for any fingerprint people to come out and
22 attempt to see if they could get fingerprints
23 from anywhere inside or outside this trailer?

24 A I did not, no, sir.

25 MR. WELLBORN: All right. Please answer

CHRISTOPHER DOTY - REDIRECT BY MS. SHELTON

1 any questions that the prosecutor might have.

2 MS. SHELTON: Just very briefly, your
3 Honor.

4 REDIRECT EXAMINATION

5 BY MS. SHELTON

6 Q In your incident report, Deputy Doty, you didn't
7 make an incident report that you observed a
8 broken door or cuts in the screen or signs of
9 forced entry?

10 A Correct.

11 Q You just didn't do anything?

12 A Correct.

13 Q You got there probably around lunchtime?

14 A I don't recall the exact time.

15 Q If you look there I think there is a time and
16 date on that form. You reference an above date
17 and time?

18 A Yes. That is on a different format of the
19 report. The time and date on there is the date
20 it was printed.

21 Q Okay. Thank you.

22 A Yes, ma'am. Thank you.

23 MS. SHELTON: I have nothing else.

24 MR. WELLBORN: Nothing further.

25 MR. SPRINGS: Can Deputy Doty be excused

JOSH YATES - DIRECT BY MS. SHELTON

1 to go back to work?

2 THE JUDGE: You are excused.

3 (Witness excused.)

4 MR. WELLBORN: Your Honor, for the record,
5 I subpoenaed Deputy Doty, but I will release him
6 so we are clear on that.

7 MS. SHELTON: Your Honor, the State would
8 call Officer Josh Yates to the stand.

9 JOSH YATES, being duly sworn by the Court
10 Clerk, testified as follows:

11 DIRECT EXAMINATION:

12 BY MS. SHELTON:

13 Q State your name and occupation and rank for the
14 record.

15 A Josh Yates, patrol in Rock Hill.

16 Q You are a deputy?

17 A Deputy 2 is my rank.

18 Q How long have you worked in law enforcement?

19 A Six years.

20 Q How long have you been with the Sheriff's
21 Department?

22 A Six years.

23 Q Could you explain to the jury what your job as
24 part of patrol is, what do you do?

25 A Patrol, we respond. We are the initial unit

JOSH YATES - DIRECT BY MS. SHELTON

1 responding to the scene. Basically, citizens
2 call 911 or the nonemergency number at the
3 Sheriff's office or our dispatch and then we are
4 dispatched to the residence. I guess we are the
5 frontline responders that come to your residence
6 and document any investigations or any reports
7 that are needed.

8 Q Were you working as doing that job back in
9 September of 2012?

10 A Yes, ma'am.

11 Q Do you remember being involved in an
12 investigation of a burglary at [REDACTED]
13 [REDACTED] in Rock Hill?

14 A Yes, I do.

15 Q Do you remember what date you were called out?

16 A I believe it was September 13, 2012.

17 Q Do you remember why you were called out there?

18 A I was called out there for a follow-up to
19 the original investigation, that Mr. Smith had
20 found some items that were actually taken from
21 the burglary, from the earlier incident.

22 Q Did he report to you at that time what was
23 taken?

24 A He did.

25 Q Do you remember what he --

JOSH YATES - DIRECT BY MS. SHELTON

1 A Not off the top of my head. I know there
2 was some pieces of jewelry, fishing rod, and
3 some medication. I believe I put specifics in
4 the actual narrative of my report.

5 Q Would having your report help refresh your
6 memory?

7 A It would.

8 Q Do you recognize that report?

9 A I do.

10 Q Did you make that report?

11 A I did, the top section.

12 Q From that, does that refresh your memory on what
13 items Mr. Smith reported stolen at that time?

14 A It does. At that time, he reported that his
15 wife's jewelry, rod and reels, and cough
16 medicine with codeine was missing. He actually
17 went into detail and stated that a pair of three
18 diamond earrings, past, present, and future were
19 missing, round pair of diamond hearings, two
20 gold necklaces with two diamond pendants, six
21 and a half foot bait caster rod and reel, a
22 Pflueger Reel, and a bottle of cough medicine
23 with codeine was stolen from his residence.

24 Q In addition to making that report, did Mr. Smith
25 report anything else to you?

JOSH YATES - DIRECT BY MS. SHELTON

1 A At that point, he did not.

2 Q Did he ask you to look at any evidence or
3 anything like that?

4 A Mr. Smith advised there was a blood stain on
5 his door that he wanted me to look at.

6 Q Did you do that or did you call FSU?

7 A I actually looked at it.

8 Q What did you do with it?

9 A I observed a small blood stain on, I
10 believe, the front door of the residence and I
11 took basically a blood swab.

12 Some of our training at the Sheriff's
13 office we are given little bottles of distilled
14 water and a big Q-tip, and it has a way that you
15 can secure the end of the Q-tip. At that point,
16 I put the distilled water on Q-tip, rubbed the
17 front door and then I closed the top on them. I
18 believe I took several of the blood swabs. I
19 don't know how many in numbers.

20 At that point, I secured them. As I said,
21 they have a top on them where you can secure
22 them and nothing gets on the actual tip of the
23 Q-tip. At that point, they were placed in the
24 evidence envelopes.

25 Q Can you definitively say it was blood?

JOSH YATES - DIRECT BY MS. SHELTON

1 A I can't definitely say it was blood.

2 Q Just something you swabbed?

3 A Yes.

4 Q Did you request that any test be done on those
5 swabs?

6 A I did not. I entered them into evidence.

7 Q Do you have a camera in your car?

8 A I do.

9 Q Did you take any pictures?

10 A I do not.

11 Q Do you recall if Mr. Smith showed you any damage
12 done to his trailer or any points of entry?

13 A At that point, I don't recall. I know it
14 was seven days after the initial report.

15 Q What did you do after you took that report?

16 A After I took this report, I admitted the
17 swabs into our evidence at Moss Justice Center.

18 Q What happened with the case?

19 A It was referred to the Detective Division.

20 Q To your knowledge, were there any suspects at
21 the time?

22 A No, ma'am.

23 MS. SHELTON: Please answer any questions
24 the defense has for you.

25 CROSS-EXAMINATION:

JOSH YATES - CROSS BY MR. WELLBORN

1 BY MR. WELLBORN:

2 Q I want to ask you briefly because you mentioned
3 what Mr. Smith said might have been taken. I
4 believe you referred to your notes. Do you mind
5 if I borrow that?

6 A No, sir.

7 Q Thank you. Did Mr. Smith say that a bottle of
8 cough medicine was taken or multiple bottles was
9 taken?

10 A A bottle, singular.

11 Q So one bottle was taken according to Mr. Smith?

12 A Yes, sir.

13 Q Not multiple bottles?

14 A Correct -- when I was there. As far as him,
15 he could have contacted the Sheriff's office
16 later on. When I was out there he said a
17 bottle.

18 Q Okay. Thank you. I just wanted to be clear on
19 that. Now, Mr. Smith, when he called you out
20 there, where did he meet you, inside or outside
21 his trailer?

22 A I believe it was outside.

23 Q He mentioned there were blood stains on the
24 front door or on the door, correct?

25 A Correct.

JOSH YATES - CROSS BY MR. WELLBORN

1 Q Did you know whether it was front door, back
2 door, or any door it was?

3 A It appeared to be the front door, closest up
4 to where I pull my patrol car.

5 Q You said the stains -- describe the stains?
6 Were they big stains, small stains, drops? What
7 were they?

8 A Smaller than a dime.

9 Q Smaller than a dime. How many of these smaller
10 than a dime stains were there?

11 A I do not recall.

12 Q Were the stains compact like a drop or were they
13 big, long smears, what were they?

14 A More compact.

15 Q Would you describe them as a more like a drop or
16 a dab or a smear?

17 A Probably a drop.

18 Q You would not describe them as a smear?

19 A No, sir.

20 Q Okay. All right. These drops or dabs that you
21 saw, can you describe them any more than that
22 other than the fact they were drops and dabs and
23 smaller than a dime?

24 A Yes, sir. I don't know what they were. I
25 don't know if it was blood or anything else.

JOSH YATES - CROSS BY MR. WELLBORN

1 Q Okay. But you took the swabs, none the less?

2 A Correct.

3 Q Did you go inside the trailer?

4 A I do not recall.

5 Q Now, he reported multiple things being missing
6 from the trailer?

7 A Yes, sir.

8 Q You, of course, were there to investigate that,
9 right?

10 A Yes, sir.

11 Q So in investigating that, you would want to know
12 where these items were potentially taken from,
13 right?

14 A Yes, sir.

15 Q So, for instance, he mentioned to you that
16 jewelry was taken, right?

17 A Correct.

18 Q So you would have asked him where the jewelry
19 was taken from, what part of the trailer,
20 correct?

21 A Correct.

22 Q That would have interested you?

23 A Correct.

24 Q So presumably, you did that, correct?

25 A I did what?

JOSH YATES - CROSS BY MR. WELLBORN

1 Q Asked him where the jewelry was taken from?

2 A Yes, sir.

3 Q So you would have looked at the area where the
4 jewelry was taken from because that would be
5 important in investigating a case, right?

6 A Again, I don't recall. I do recall a
7 majority of our conversation was outside at the
8 door.

9 Q Let's try this: If you are investigating a
10 burglary, would it be important to look for
11 evidence?

12 A Correct.

13 Q Would it be important to look in areas where the
14 burglar had potentially been?

15 A Yes, sir.

16 Q Would it be important to look in areas where the
17 burglar or burglars, however many there were,
18 one, two, five, six, whatever it was, had taken
19 things from?

20 A Yes, sir, but due to the timeframe, being it
21 was a week later, Mr. Smith could have had
22 numerous people come in and out of the residence
23 at that point, and again, I was following up on
24 the incident, the initial incident report.

25 Q Understood. Did you ask Mr. Smith how many

JOSH YATES - CROSS BY MR. WELLBORN

1 people had been inside or outside the residence
2 since?

3 A I did not.

4 Q So you didn't know?

5 A No.

6 Q So for all you knew nobody had been in the
7 residence since Mr. Smith reported it, correct?

8 A It is possible.

9 Q All right. Once again, it would be important to
10 look in the areas where things had been taken,
11 right?

12 A Correct.

13 Q Did he tell you where the jewelry had been taken
14 from?

15 A I do not recall.

16 Q But again, that would be --

17 A I would assume it would be from a jewelry
18 box.

19 Q If somebody had taken something from a jewelry
20 box, unless they were wearing gloves, they might
21 have left fingerprints?

22 A They might have.

23 Q Fingerprints can be valuable evidence?

24 A Yes, sir.

25 Q Of course, if it was taken from a jewelry box,

JOSH YATES - CROSS BY MR. WELLBORN

1 it might be important to take a picture of the
2 jewelry box, correct?

3 A Correct.

4 Q Now, also missing, supposedly, were rods and
5 reels, right?

6 A Yes, sir.

7 Q Mr. Smith told you where those had been taken
8 from?

9 A I do not recall if he told me.

10 Q But you would have typically asked, right?

11 A Correct.

12 Q So it would be important to see if the area
13 where the rods and reels were from were in an
14 area where somebody getting them would have left
15 fingerprints, right?

16 A Correct.

17 Q And potentially, take a picture of that,
18 correct?

19 A Yes.

20 Q You are, as you describe, a line officer, kind
21 of the first line of response, right?

22 A Correct.

23 Q But you work for a very large department, don't
24 you?

25 A I do.

JOSH YATES - CROSS BY MR. WELLBORN

1 Q Approximately, how many officers, investigators,
2 what not, are in the Sheriff's department, any
3 rough guess?

4 A I couldn't tell you. The department is
5 growing.

6 Q It is a large department, isn't it?

7 A Yes.

8 Q You have a forensic division, don't you?

9 A We do.

10 Q You have fingerprint experts, right?

11 A We do.

12 Q You have video equipment?

13 A We do.

14 Q You have audio equipment?

15 A Yes, sir.

16 Q You have sophisticated computers?

17 A Yes, sir.

18 Q You have cameras?

19 A We do.

20 Q You even have a camera in your patrol car?

21 A I do.

22 Q The purpose of the camera is to take pictures to
23 preserve evidence, right?

24 A Correct.

25 Q You have access via radio to call for someone to

JOSH YATES - CROSS BY MR. WELLBORN

1 come out and do fingerprints, correct?

2 A Correct.

3 Q All right. All of which, if you chose to, you
4 can do if you feel it is important?

5 A Yes, sir.

6 Q Now, the blood swabs you did think were
7 important because you put those in evidence?

8 A Correct.

9 Q I am going to show you an evidence inventory
10 sheet. Do you recognize this particular
11 document?

12 A I do.

13 Q Is that your signature on that document?

14 A Yes, sir.

15 Q Does this show the time that you collected the
16 blood swabs?

17 A Yes, sir.

18 Q Okay. The time you collected the blood swabs
19 was 11:12 a.m.?

20 A Correct.

21 Q It would have been daylight?

22 A Yes.

23 Q It shows where you collected the blood swabs,
24 right?

25 A Correct.

JOSH YATES - CROSS BY MR. WELLBORN

1 Q And then it shows what you did with the blood
2 swabs after you collected them, right?

3 A Right. Put them in evidence.

4 Q You put them into evidence on what date?

5 A On September 13th.

6 Q Okay. That's the date you collected the blood
7 swabs?

8 A Correct.

9 Q You put them in the same day?

10 A Yes.

11 Q Does this show the time you put them into
12 evidence, 16:41?

13 A Yes, sir.

14 Q Which would be 4:41 p.m., correct?

15 A Yes.

16 MR. WELLBORN: Your Honor, I would like to
17 move this into evidence as Defense Exhibit
18 Number 4.

19 MS. SHELTON: No objection.

20 THE JUDGE: Admitted without objection.

21 (Whereupon, Defendant's Exhibit 4, was
22 marked for identification and received into
23 evidence, this date.)

24 THE JUDGE: You may publish, counsel.

25 MR. WELLBORN: I'm sorry, your Honor, may

JOSH YATES - CROSS BY MR. WELLBORN

1 I publish?

2 THE JUDGE: You already have.

3 MR. WELLBORN: Well...

4 THE JUDGE: Move on.

5 MR. WELLBORN: Thank you, your Honor.

6 BY MR. WELLBORN:

7 Q As you described these blood swabs were not a
8 smear, they were like little dots, right?

9 A Correct.

10 Q Did Mr. Smith tell you about a break in that
11 occurred behind his trailer or next door at his
12 trailer?

13 A I don't recall.

14 Q If he had told you something about that, would
15 that have been something that might have been
16 important to you in investigating the break in
17 his trailer?

18 A Yes, sir.

19 Q Would you have noted that?

20 A Yes, sir.

21 Q So because you would have noted it and you
22 didn't note it, is it in your mind safe to
23 assume he didn't tell you about that?

24 A I can't speculate on that.

25 Q Did you walk with Mr. Smith to another residence

JOSH YATES - CROSS BY MR. WELLBORN

1 to look at anything that had been broken into at
2 that residence?

3 A That I don't recall.

4 Q Is that the kind of event that would stick out
5 in your mind?

6 A Yes, sir.

7 Q Okay. Did you speak to Mrs. Smith at all?

8 A I did not.

9 MR. WELLBORN: That's all of the questions
10 I have.

11 MS. SHELTON: Nothing further, your Honor.
12 We ask Deputy Yates be excused.

13 MR. WELLBORN: Without objection.

14 THE JUDGE: Thank you. You are excused.
15 (Witness excused.)

16 MS. SHELTON: Your Honor, may we approach
17 about scheduling?

18 THE JUDGE: Yes.

19 (Whereupon, a bench conference was held
20 off the record in the presence of the jury, but
21 out of hearing of the jury.)

22 THE JUDGE: Mr. Foreman, ladies and
23 gentlemen of the jury panel, the next witness is
24 expected to be rather lengthy and it is few
25 minutes after 12 so we are going to go ahead and

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1 take a lunch break at this time. I will ask you
2 to be back in the jury room ready to go about 10
3 minutes after 1. If you will get lunch and be
4 back at 10 after 1. Thank you.

5 I remind you not to discuss the case among
6 yourselves or with anyone else you might see on
7 lunch break. Please enjoy your lunch and be
8 back at 1:10.

9 (Whereupon, the jury exited the courtroom
10 at 12:00 p.m.)

11 (Court in recess at 12:01 p.m.)

12 (Court resumes at 1:21 p.m.)

13 THE JUDGE: Is counsel ready to proceed?

14 MS. SHELTON: Yes, your Honor.

15 MR. WELLBORN: Yes.

16 MS. SHELTON: I don't know if we need to
17 address this before the jury comes in.
18 Detective Branham is our next witness. We
19 intend to introduce Mr. Goins' statement through
20 Detective Branham. During pre-trial I didn't
21 cover this. There are parts of his statement,
22 Mr. Goins' statement, that Jordon Canupp said or
23 Jordon Canupp told me. I have redacted those
24 statements from his statement, but I believe
25 Mr. Wellborn wishes to be heard on whether or

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1 not that should be how it comes in.

2 MR. WELLBORN: I do. Just so we are
3 clear, the original statement as given to my
4 client, and this was in the record initially.
5 In the record yesterday was, "Me and Jordon was
6 intoxicated and got to talking about money.
7 Afterwards Jordon said he had a few things at
8 his uncle's house. We then walked down and went
9 in the front door. It was locked so Jordon went
10 in the back and let me in the front. He began
11 to get some fishing rods and a gold necklace and
12 said this should be good. Then we got in his
13 car and he took me home." There is no further
14 mention of anything Mr. Canupp said.

15 I would argue that redacting it, aside
16 from the fact that it goes to the statement
17 itself and intent goes to part of our case, it
18 also meets the hearsay exception which is the
19 state of mind of two individuals in this case.
20 One is my client's state of mind is paramount
21 because to prove that he is guilty of conspiracy
22 there would have to an intent to enter this
23 conspiracy. That's a state of mind. There has
24 to be an intent to commit a crime when he goes
25 into Mr. Smith's house. That requires a state

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1 of mind. The grand larceny requires an intent
2 to deprive the owner permanently of a piece of
3 property all of which is my client's state of
4 mind.

5 Furthermore, it goes to Mr. Canupp's state
6 of mind, which is another hearsay exception
7 under this specific Rule 803, Section 3, which
8 is a statement of the declarant's then existing
9 state of mind, emotion, sensation such as
10 intent, plan, motive, or design. If
11 Mr. Canupp's intent, plan, motive or design as
12 stated to my client is to simply go to his
13 uncle's house and get his own stuff, that
14 suggests there was no crime from my client's
15 perspective committed.

16 It goes certainly to my client's state of
17 mind is absolutely the entire crux of this case
18 that the state has to prove, but Mr. Canupp's
19 state of mind is also relevant in this
20 particular regard.

21 I have no objection to the statement
22 coming in, but I do have an objection to the
23 deletions of everything possible that would show
24 both what my client's state of mind was at the
25 time, and the only evidence, by the way, of my

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1 client's state of mind, the only evidence, and
2 what Mr. Canupp's state mind is. I would point
3 out to your Honor that there is absolutely
4 nothing else in this case that corroborates my
5 client even being at this place where the crime
6 occurred other than this particular statement.
7 Nothing else. The entire case rises and falls
8 based on this.

9 THE JUDGE: You don't have to go around
10 the world with me. You are not educating me.
11 If you want to educate the audience, that's
12 fine. It comes in. It comes in for
13 completeness. You need to see the whole
14 statement if it comes in. I realize some of it
15 is self-serving hearsay, I realize that, but it
16 is also part of his statements and it goes to
17 the elements of at least three offenses that I
18 can think of.

19 I don't know necessarily that it falls
20 under 803(3). Perhaps. It seems to be
21 generally, but I don't know specifically if it
22 does, if we can differentiate those or not.

23 I think if you are going to put in the
24 statement itself, that takes away the whole
25 meaning of the statement, an important part of

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1 the statement. If you take that part out, it
2 changes the whole statement. The first part
3 shows it would not incriminate him and the
4 second part incriminates him, but if you put the
5 two together, it would not be incriminating
6 necessarily. Therefore, I think the rule of
7 completeness, in fairness to the defendant, or
8 if you are going to put in part of the
9 statement, then all of it ought to be put in it
10 appears to me, particularly if you talk about
11 elements involving these offenses of what the
12 State has to prove on those elements.

13 MR. SPRINGS: Very good, your Honor, we
14 accept the Court's ruling. I think it should be
15 clear that this doesn't open the door to
16 something else that Jordon Canupp said at some
17 other time.

18 MR. WELLBORN: I agree.

19 THE JUDGE: Please, Mr. Wellborn.

20 MR. WELLBORN: I was just acknowledging I
21 agree with that. I apologize.

22 THE JUDGE: Absolutely. I agree with
23 that. We are talking this statement itself, and
24 to get the full meaning of this statement then I
25 think that to separate it out would not be fair

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1 to the defendant in this case. So either I
2 think all of it comes in or none of it comes in.

3 MR. WELLBORN: Thank you, your Honor.

4 MS. SHELTON: Thank you, your Honor.

5 THE JUDGE: Anything else?

6 Please bring the jury in.

7 I was referring to Rule 106 of the Rules
8 of Evidence.

9 MS. SHELTON: Yes, sir, your Honor.

10 (Whereupon, the jury came into open court
11 at 1:27 p.m.)

12 THE JUDGE: Good afternoon, Mr. Foreman,
13 ladies and gentlemen of the jury panel. I hope
14 you enjoyed your lunch. We are ready to proceed
15 with the trial.

16 Counsel, proceed.

17 MS. SHELTON: We call Detective Pete
18 Branham.

19 PETER BRANHAM, being duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION:

22 BY MS. SHELTON:

23 Q State your name and rank and occupation for the
24 jury, please.

25 A My name is Pete Branham. I am a detective

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1 with the York County Sheriff's Office.

2 Q Detective, how long have you been in law
3 enforcement?

4 A For over 18 years.

5 Q How long have you been with the Sheriff's
6 Department?

7 A For the same.

8 Q How long have you been a detective?

9 A All together since 2002.

10 Q What are your current duties as a detective?

11 A I am assigned to the Property Crime Division
12 at the Sheriff's Office in Criminal
13 Investigation Unit.

14 Q As part of that, what do you normally do?

15 A Investigate all property crimes such as
16 burglaries, auto thefts, arson, damage to
17 property. Just property crimes.

18 Q You were working at the Sheriff's Department as
19 a property crime detective in 2012?

20 A I was.

21 Q Did you at some point become involved in an
22 investigation of a burglary at [REDACTED]
23 [REDACTED] in Rock Hill?

24 A I did.

25 Q What county is that residence in?

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1 A York County.

2 Q What was your involvement in that investigation?

3 A I was assigned the case to investigate the
4 follow up from the initial report.

5 Q Do you remember how long after the initial
6 report were you assigned the case?

7 A Approximately, ten days to two weeks.

8 Q Is that the usual time it takes? How does it
9 work?

10 A It depends. Our reporting system is kind of
11 new and evolving. Sometimes it takes days,
12 couple days to get reports in or for me to see
13 them. There is dates on them but when I
14 officially look at them because of the
15 assignments and being given to a clerk to be
16 assigned out, it could take up to a couple days,
17 ten days, depending on how it flows.

18 Q What did do you once you were assigned the case?

19 A The first thing I did was contact Mr. Smith.

20 Q Did he make a report to you as to what was
21 stolen?

22 A Did he make a report to me?

23 Q Yes.

24 A We covered it, but he did not make the
25 initial report to me.

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1 Q You covered it with him?

2 A Yes.

3 Q What about the values of the things that were
4 taken? Is that in your report?

5 A Some of it, yes. But I don't remember if we
6 went through specifics on the values or not.

7 Q Do you have your file with you?

8 A I do not.

9 Q Would having your report help refresh your
10 memory?

11 A Yes.

12 Q Detective Branham, do you recognize what I gave
13 you.

14 A Yes. That's my case summary of the case.

15 Q You prepared that document?

16 A I did.

17 Q What is the case summary?

18 A It is a collection of all of the evidence
19 and actions that I took or that were reported to
20 me through the whole case investigation.

21 Q As part of that report, a list of the items that
22 were reported by Mr. Smith of items taken from
23 his home?

24 A Yes.

25 Q Could you tell the jury what was reported and

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1 the reported value of those items?

2 A The reported values that I have here -- let
3 me make sure I have them all.

4 MR. WELLBORN: Your Honor, I object to
5 that. Mr. Smith has testified to that, but
6 beyond that, the rest would be hearsay. We
7 don't know who reported it, who reported it to
8 Detective Branham. Just the fact it is written
9 on a report doesn't change the facts.

10 MS. SHELTON: Mr. Smith has testified to
11 it and has been cross-examined on it. I'm
12 having the detective confirm what was reported
13 by the victim who already testified and was
14 cross-examined on it.

15 MR. WELLBORN: I have no objection as to
16 what Mr. Smith told him personally has been
17 taken.

18 THE JUDGE: I think that's what the basis
19 of his testimony was, correct?

20 BY MS. SHELTON:

21 Q If it is the basis of your testimony, what was
22 in your report, was it confirmed through
23 Mr. Smith by you?

24 A Yes.

25 Q Could you testify to those values, please?

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1 A The cough medicine that was taken was valued
2 at \$15. A six and a half foot rod real was
3 valued \$150. Two gold necklaces with two round
4 diamond pendants, yellow in color, valued at
5 \$500. Two round diamond earrings, yellow in
6 color, valued at \$500. A pair of diamond
7 earrings, past, present and future diamonds,
8 valued at \$1,500.

9 Q That's what you confirm as reported by Mr. Smith
10 at the time of writing that report?

11 A That's correct.

12 Q When was that report written?

13 A I am not really sure when this report was
14 written.

15 Q When do you normally write your case summary
16 reports?

17 A Initially, after ten days after the arrest
18 of the subject.

19 Q Could you explain to this jury what the FSU is,
20 what FSU stand for is where I would ask you to
21 start?

22 A FSU is the Forensic Service Unit, which is
23 multi-jurisdictional here with our agency. That
24 is an investigative unit that goes out to all
25 crime scenes to process for prints, DNA

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1 collection, photographs, gunshot residue if you
2 have a shooting incident, various things, but
3 they process all crime scenes they are called
4 to.

5 Q How would they be made aware of a crime scene?

6 A When a deputy arrives on scene and
7 determines a crime has been committed and that
8 there are evidence to be collected, that if it
9 is overwhelming and more for them to handle then
10 they can contact the FSU to come out and process
11 the same.

12 Q It would be up to the deputy to initially
13 responds?

14 A That's correct.

15 Q Now, you personally, Detective Branham, did you
16 take any pictures?

17 A I did not.

18 Q Did you ever call FSU out to the scene?

19 A I did not.

20 Q Why not?

21 A When I got assigned the case and made the
22 initial contact with Mr. Smith, number one, when
23 I went to his residence he was not at home. We
24 talked on the phone.

25 Number two, because it had been almost a

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1 two-week period from the time the crime had been
2 committed, and due to the contamination of the
3 scene, I didn't feel the need to call out
4 forensic.

5 Q As a case agent, are you aware that there were
6 items collected at the scene?

7 A Yes, I am.

8 Q Are you aware of what happened with those items?

9 A Yes, I am.

10 Q What happened to those items?

11 A They are still in evidence as far as I know.

12 Q Can you explain to the jury when an item -- what
13 items were collected at the scene?

14 A The cigarette butt and the swabs of the
15 supposed blood stain.

16 Q Can you explain to this jury what testing could
17 have been done to those items and the process
18 that would have needed to be followed for that
19 to happen?

20 A I could have sent them off to S.L.E.D to be
21 tested by -- to have DNA analysis run on them.
22 If a subject was in the CODA System or combined
23 DNA Index System then it would have come back
24 with a pairing, I assume. I am not a DNA expert
25 but my basic training I do have. It could be

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1 entered into that system. If it is an unknown,
2 if there is no samplers i.e. from the subject to
3 be submitted with those.

4 Q Let's stop there. If it is unknown. What does
5 unknown mean?

6 A Unknown means I am Smith this with no other,
7 do not compare to anything else, run it and it
8 will be run through the coded ^ system ^ stem to
9 see if there were any matches in the system.

10 Q That would be if you didn't have a sample of the
11 subject to send with the index?

12 A That's correct.

13 Q At the time those items were collected, did you
14 have a suspect?

15 A I did not.

16 Q Did you do anything to have those items tested
17 at that time?

18 A No.

19 Q Why not?

20 A I found that when you send stuff off from a
21 property crime to S.L.E.D, it can take years,
22 year, year and a half in order to get the
23 analysis back. I have not had much success with
24 unknowns given the fact that I didn't have a
25 listed subject or anyone to send it off with at

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1 that time. I decided to hold onto it. What I
2 do, generally, is if I close out a case and I
3 have gotten nowhere on the case, when I close it
4 out six months to a year later, when I close out
5 the case, I then send it off. If I am going to
6 wait that long, it will be just a little longer
7 before I get an answer back.

8 Q You initially did not send it off?

9 A That's correct.

10 Q At that point in time had no suspects?

11 A That's correct.

12 Q At some point, did you interview Brandon Goins
13 about this case?

14 A I did.

15 Q At the time of that interview, where was he?

16 A At the York County Detention Center.

17 Q Why was he at York County Detention Center?

18 A He was arrested on warrants that I detained
19 on him.

20 Q Warrants for this case?

21 A Yes, That's correct.

22 Q When you say you met with him at the Detention
23 Center, where at the Detention Center?

24 A I had to get him out of the Detention
25 Center, obviously, and go in to an interview

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1 room down there.

2 Q In speaking with him, did he agree to speak with
3 you?

4 A Yes, he did.

5 Q Did you advise him of his Miranda rights?

6 A I did.

7 Q I am going to show you what has been marked for
8 identification as State's Exhibit Number 1. I
9 am going to ask you to refer to the second page
10 of that exhibit. Do you recognize that page?

11 A I do.

12 Q What is it?

13 A It is the Miranda rights form I read to
14 Mr. Goins.

15 Q And could you read that to the jury as you would
16 have read it to Mr. Goins?

17 A Yes. "Your rights: Before I ask you any
18 questions, I want to advise you of your rights.
19 You have the right to right to remain silent.
20 Anything you say can and will be used against
21 you in a court of law. You have a right to talk
22 to an attorney and have him or her present with
23 you while you are questioned. If you cannot
24 afford to hire an attorney, one will be
25 appointed to represent you before any questions,

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1 if you wish. You can decide at any time to
2 exercise these rights and not answer any
3 questions or make any statements.

4 Do you understand each of these rights I
5 have explained to you?"

6 Q Did he indicate that he understood those rights?

7 A He did. He checked the yes box and signed
8 and dated it.

9 Q Did he appear when talking to him as if he
10 understood those rights?

11 A Yes.

12 Q Did he appear to be under the influence of drugs
13 or alcohol?

14 A No.

15 Q At the time when you met with him, how long did
16 you have him detained?

17 A How long did I have him detained? This is
18 the first thing I did so a couple of minutes.

19 Q Did he ask for anything to eat or drink?

20 A No.

21 Q Did you threaten him or coerce him in any way?

22 A No, I did not.

23 Q Was anyone else present with you?

24 A Yes. Detective Schettler was with me.

25 Q Where is Detective Schettler now?

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1 A He has taken another job with the National
2 Insurance Crime Bureau as an investigator/agent
3 with that company.

4 Q Is he in town this week?

5 A No, he is not.

6 Q Did Detective Schettler do anything to threaten
7 or coerce him?

8 A He did not.

9 Q Was anything promised to him?

10 A It was not.

11 Q At any time, did he ask for an attorney?

12 A No, he did not.

13 Q Did anyone tell him what to say?

14 A No.

15 Q Did he ever ask for an attorney? Did he ask for
16 an attorney?

17 A He did not, no.

18 Q At some point, did he give you a statement?

19 A Yes, he did.

20 Q Was that a written or verbal statement?

21 A A verbal at first and then written.

22 Q I am going to ask you to refer to Page 1. Do
23 you recognize that?

24 A Yes.

25 Q What is it?

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1 A It is the statement that Mr. Goins wrote
2 that day.

3 Q How do you recognize it?

4 A It has the date, the case number, and then
5 my signature as a witness.

6 Q Did he write that statement himself?

7 A He did.

8 Q You previously testified that he gave you a
9 verbal statement first?

10 A That's correct.

11 Q And he wrote his own statement?

12 A That's correct.

13 Q Is that statement consistent with what he told
14 you?

15 A Yes.

16 MS. SHELTON: Your Honor, at this time I
17 ask the witness be allowed to read the
18 statement.

19 THE JUDGE: Are you admitting it?

20 MS. SHELTON: Yes. We are asking it be
21 admitted into evidence and ask it published to
22 the jury.

23 MR. WELLBORN: Without objection.

24 THE JUDGE: Without objection.

25 (Whereupon, State's Exhibit 1, previously

PETE BRANHAM - DIRECT BY MS. SHELTON

1 marked for identification, was received into
2 evidence.)

3 THE JUDGE: You may publish it.

4 BY MS. SHELTON:

5 Q If you would read that to the jury.

6 A "On September 6, 2012, me and Jordon was
7 intoxicated and got to talking about money.
8 After Jordon said he had a few things at his
9 uncle's house, we then walked down and went to
10 the front door. It was locked. So Jordon went
11 in from the back and let me in the front. He
12 began to get a few fishing rods and a gold
13 necklace and said this should be good. We then
14 got in his car and he took me home. He told me
15 to hold the fishing rods until tomorrow and I
16 never saw him again after that night. It was in
17 the middle of the night."

18 Q That was Mr. Goins' statement?

19 A Yes.

20 Q Who was Jordon?

21 A A codefendant this case.

22 Q He said that he and Jordan were talking and went
23 to Jordan's uncles house. When talking with him
24 about this statement beforehand, was he clear of
25 where you were asking him about the break in?

PETE BRANHAM - DIRECT BY MS. SHELTON

1 A Yes.

2 Q How do you know that?

3 A He said that he went from front door of
4 Jordan's residence across the drive to the front
5 door of the residence right beside Jordan's
6 residence, which would be Mr. Smith.

7 Q He said in that statement that Jordan asked him
8 to hold onto the fishing rod that night?

9 A That's correct.

10 Q And he never saw Jordan again after that night?

11 A That's correct.

12 Q When did he give that statement?

13 A That was on June 10th, 2013.

14 Q When was he arrested?

15 A On June 10th, 2013.

16 Q Did you ever recover any of the stolen items?

17 A I did not.

18 Q Did you ever make any attempts to recover any of
19 the stolen items?

20 A I did. At that particular date and time,
21 Mr. Goins and myself had placed a call to a
22 friend. His parents were out of town at that
23 time. There was no specifics on exactly what
24 kind of fishing rods were at the house. I did
25 not feel with it not being a freshly committed

PETE BRANHAM - DIRECT BY MS. SHELTON

1 crime and not having specific details that I
2 would have enough warranty to get a search
3 warrant to go search Mr. Goins' residence, and
4 it never fell into place to recover those items.

5 Q Mr. Goins himself told you he had the rod?

6 A He said he may or may not have the rods.

7 Q Have you personally been to Mr. Smith's
8 residence?

9 A I have.

10 Q In going there, did you have a hard time
11 figuring out what was the front door?

12 A I did not.

13 Q Why not?

14 A The driveway itself -- there was a couple of
15 vehicles. I think a boat was parked there. It
16 is the one place where you drive up to the front
17 of the house. As soon as you are there, there
18 is a front door that looked like a front door of
19 the residence. I was not confused on whether I
20 should go around back or not. It was just off
21 the driveway and where I pulled up at the
22 residence.

23 Q Is the person who made that statement to you
24 present in the courtroom?

25 A He is.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q Where is he?

2 A He is sitting there (indicating).

3 Q Can you identify where he is sitting?

4 A He is wearing a light button-up shirt with
5 stripes in the defendant's chair.

6 MS. SHELTON: Your Honor, please let the
7 record reflect the witness has identified
8 Brandon Goins.

9 BY MS. SHELTON:

10 Q You mentioned in that statement that Mr. Goins
11 mentioned Jordan Canupp, the codefendant, was he
12 also charged?

13 A He was.

14 Q Has his case been closed?

15 A Yes, it has.

16 Q Detective, very briefly, did the arrest of
17 Brandon Goins, was that the result of a detailed
18 investigation on your part?

19 A Yes.

20 MS. SHELTON: No further questions.

21 CROSS-EXAMINATION:

22 BY MR. WELLBORN:

23 Q Good afternoon.

24 A Good afternoon.

25 Q I have a few questions about the detailed

PETE BRANHAM - CROSS BY MR. WELLBORN

1 investigation. First of all, you went to
2 Mr. Smith's house to investigate?

3 A That's correct.

4 Q When did you do that?

5 A Let me refer to my notes here.

6 Q Was it the 15th or the 18th?

7 A The 18th.

8 Q Of September. Okay. When you went there, where
9 did you first see Mr. Smith?

10 A Mr. Smith?

11 Q Yes.

12 A Mr. Darryl Smith?

13 Q Yes.

14 A I did not lay eyes on Mr. Smith until court
15 started this week.

16 Q So when you went there, you were already
17 familiar with the information from the two
18 previous deputies that had been there, correct?

19 A Other than the report, that's correct.

20 Q So you knew something about what was going on in
21 the case because you were the lead investigator
22 in the case?

23 A I knew it had been a burglary at Mr. Smith's
24 residence, yes.

25 Q You knew already by that date that there were

PETE BRANHAM - CROSS BY MR. WELLBORN

1 supposedly blood stains that had been found on
2 the front door, correct?

3 A No, not at that particular time, no, I did
4 not.

5 Q Those were found on the 13th?

6 A That's correct.

7 Q Two days before you arrived?

8 A That's correct.

9 Q Actually, no, five days before you arrived?

10 A Yes.

11 Q Before you arrived, did you do anything as far
12 as looking at the case file to determine what
13 the case was about?

14 A Did I look at anything to determine?

15 Q Yes.

16 A When I got the first original assigned to
17 me, I did not have the supplemental with the
18 missing items or the blood stains that were on
19 there. I got the general one that had the
20 collection of the cigarette and the break in
21 with the pry marks and the window screens.

22 Q Was anyone at the Smith residence when you
23 arrived that day?

24 A No.

25 Q Okay. So when you arrived that day, did you

PETE BRANHAM - CROSS BY MR. WELLBORN

1 look at the Smith's residence? Did you walk
2 around it?

3 A I went to the front door and that's as far
4 as I went.

5 Q Okay. Fair enough. I take it this was daylight
6 when you were there?

7 A That's correct.

8 Q And I also take it that when you went there you
9 were not under the influence of alcohol?

10 A That is true.

11 Q Okay. Now, you ultimately nine months later met
12 Mr. Goins, correct?

13 A That's correct.

14 Q When you went there to his residence, you did
15 not go inside? Did you go inside?

16 A Mr. Goins' home?

17 Q Yes.

18 A Other than the one incident, I have not been
19 to Mr. Goins' residence.

20 Q Did you go inside Mr. Goins' residence?

21 A No.

22 Q Did you later ask him whether it was okay for
23 you to go inside, and for instance, maybe look
24 for fishing rods?

25 A Mr. Goins?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q Yes, Mr. Goins.

2 A I never met Mr. Goins at his residence if
3 that is what you are asking.

4 Q Did you ever on any occasion ask Mr. Goins
5 whether it was okay if you looked for fishing
6 rods at his house?

7 A We had a discussion in the jail about trying
8 to line something up with a friend, I don't
9 recall his name, about going over there looking
10 for fishing rods.

11 Q Because I am looking at your report. Do you
12 have the report with you?

13 A Yes.

14 Q Your report is your detailed recollection of
15 what happened in this case, right?

16 A Right.

17 Q Important details regarding missing property or
18 somebody acknowledging that somebody might know
19 where property was would be things you would put
20 down in the burglary investigation, right?

21 A Sometimes.

22 Q Well, I mean, isn't it important -- you are the
23 chief investigator in this case, right?

24 A I am an investigator, yes, that's correct.

25 Q Is anyone else the chief investigator in this

PETE BRANHAM - CROSS BY MR. WELLBORN

1 case besides you?

2 A My Lieutenant signs off on all of them, yes.

3 Q Your lieutenant didn't do any investigating in
4 this case; is that correct?

5 A That's correct.

6 Q You are the one who did the investigating?

7 A That's correct.

8 Q You are the only detective in this case?

9 A Other than Detective Schettler, yes.

10 Q Who is not here?

11 A Correct.

12 Q You are the only one calling the shots in this
13 case other than Schettler who is not here; is
14 that correct?

15 A Yes.

16 Q You are the one who did the summary in this
17 case?

18 A Yes.

19 Q You are the one who typed this up?

20 A I did.

21 Q The summary is your recollection of what
22 happened as far as how the investigation
23 progressed and the important parts of the
24 investigation; is that correct?

25 A That's correct.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q On June 10th, Brandon Goins is arrested, right?

2 A That's correct.

3 Q Prior to June 10th, you did not interview
4 Brandon Goins?

5 A That is correct.

6 Q You did not recover any property from Brandon
7 Goins?

8 A That is correct.

9 Q In fact, no property was recovered from Brandon
10 Goins?

11 A That's correct.

12 Q You met him here at the Detention Center?

13 A That is correct.

14 Q You asked him about what happened that night?

15 A That is correct.

16 Q He told you about what happened or gave you a
17 statement about what happened that night,
18 correct?

19 A That's correct.

20 Q Nowhere in your summary did he mention anything
21 about maybe having some friend who might know
22 where the fishing rods are, did he?

23 A Not in the statement or in this report, no.

24 Q Do you have any other documents that reflect
25 Mr. Goins saying that to you?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A I do not.

2 Q Okay. That was the important stuff, right,
3 somebody who is potentially a burglary suspect
4 knows where the stolen items are, you would want
5 to know that as a detective because it might
6 help somebody get their property back, right?

7 A If it had been within, let's say, a month or
8 two months or if there was some credible way to
9 say that it was there or an accurate way to get
10 it there, yes.

11 Q Even more important than that, if it was
12 suggested the person actually knew the stuff was
13 stolen because he knew it had gone to somebody
14 else, that would be important to document as
15 well; is that correct?

16 A That's correct.

17 Q It is not in this case at all, is it?

18 A No, it is not.

19 Q We will back to the statement in a minute.

20 As chief investigator, you would be aware
21 of any physical evidence that existed in this
22 case, right?

23 A That's correct.

24 Q You already mentioned the cigarette butt and the
25 whatever those dots were that were swabbed from

PETE BRANHAM - CROSS BY MR. WELLBORN

1 the front of Mr. Smith's door; is that correct?

2 A That's correct, yes.

3 Q You would know where that evidence was

4 collected, yes, as the chief investigator?

5 A If forensics had been called out there, they

6 would have did a detailed report of where

7 exactly everything was at.

8 Q Let me try this: You typed up this summary,

9 right?

10 A Yes.

11 Q In the summary, you mentioned where Deputy Doty

12 recovered the cigarette butt?

13 A That's correct.

14 Q So you are aware where Deputy Doty recovered the

15 cigarette butt?

16 A Inside the residence, that's correct.

17 Q All right. From a specific place inside the

18 residence, yes?

19 A Inside the residence.

20 Q Well, just so we are clear. You typed, correct,

21 "Found partially smoked cigarette butt lying on

22 floor near a desk." Isn't that what you typed?

23 A That's exactly what I typed.

24 Q So it is more than just inside the residence.

25 It is in a specific area of the residence,

PETE BRANHAM - CROSS BY MR. WELLBORN

1 correct?

2 A Correct, from what Deputy Doty said,
3 correct.

4 Q Do you have any reason to disbelieve Deputy
5 Doty?

6 A I wish there had been a forensic report
7 done.

8 Q Understood. Do you any reason to disbelieve
9 Deputy Doty?

10 A I do not.

11 Q You are also aware that Deputy Yates said there
12 were blood stains on the front door and he took
13 the two swabs; is that correct?

14 A That is correct.

15 Q Now, you said the only time you talked to
16 Mr. Smith was on the phone; is that correct?

17 A That is correct.

18 Q How many rods did Mr. Smith tell you were
19 missing?

20 Let's try this: You do recall a minute
21 ago on direct-examination referring to one
22 fishing rod; is that correct?

23 A That's correct.

24 Q Is that what Mr. Smith told you, only one rod
25 was taken?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A I don't recall the conversation over the
2 phone on exactly how many rods were taken.

3 Q Okay. So you really have no -- did you take any
4 notes?

5 A I did not.

6 Q So when you were talking to the victim of the
7 crime about what had been taken, you took no
8 notes?

9 A That's correct.

10 Q Okay. All right. Now, you were talking with
11 the prosecutor a minute ago about the cigarette
12 butt and blood swabs and how those could have
13 been sent to S.L.E.D for DNA; correct?

14 A That's correct.

15 Q The weight might have been as you said anywhere
16 from year to year and a half?

17 A That is correct.

18 Q This incident took place some time presumably on
19 September 6th or September 7th, correct?

20 A Of 2012, yes.

21 Q Of 2012. So it has been over a year and a half
22 since the incident took place, hasn't it?

23 A It has been, yes.

24 Q In all that time potentially something could
25 have been sent to S.L.E.D?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A That's correct.

2 Q While we were waiting for the results, we could
3 have held off on this trial to see whose blood
4 it was, if it is blood at all, and whose DNA was
5 on the cigarette butt, correct?

6 A After the arrest was made and the report
7 reflects that there had been a subject charged,
8 I have to send down a known subject because the
9 report reflects there was unknown for them to do
10 comparisons with. I would have had to have the
11 known subject to send down with it after that
12 time.

13 Q First of all, you would have to see if there was
14 DNA material even on there, right?

15 A Yes. Like I said, once the report reflects
16 there is an arrest, I would have to have the
17 comparison, S.L.E.D requirements from what I
18 understand.

19 Q From what you understand. Did you make any
20 inquiries?

21 A Yes, I talked to my captain about it.

22 Q You have your own DNA person here at the York
23 County Sheriff's Department, right?

24 A Yes.

25 Q They have access to a thing called CODIS; is

PETE BRANHAM - CROSS BY MR. WELLBORN

1 that correct?

2 A No, they do not.

3 Q S.L.E.D has access to CODIS?

4 A Yes.

5 Q CODIS is a national crime information service
6 which they compare DNA and by computer give you
7 a series of matches for that; is that correct?

8 A I agree with that, yes.

9 Q They do that with fingerprints and DNA; is that
10 correct?

11 A Different systems, but yes.

12 Q Did you ever ask Jordan Canupp whether he would
13 volunteer to give up his DNA material?

14 A I did not.

15 Q Did you ever ask Brandon Goins whether he would
16 volunteer to give up his DNA material?

17 A I did not.

18 Q You could have done that?

19 A Through the solicitor, yes, I could have.

20 Q But did anybody ever suggest that to you?

21 A The solicitor and I discussed it at one
22 point, yes.

23 Q A decision was made not to do it.

24 A That's correct.

25 Q Did you make that decision or did the solicitor

PETE BRANHAM - CROSS BY MR. WELLBORN

1 make that decision?

2 A The solicitor made that ultimate decision.

3 Q So the prosecutor decided this stuff shouldn't
4 be tested?

5 A That's correct.

6 Q All right. Moving along. You have a very large
7 Sheriff's Department that you work for in terms
8 of personnel; is that correct?

9 A That's correct.

10 Q About how many employees do you have, do you
11 know?

12 A Sworn or non sworn?

13 Q Let's try sworn?

14 A I think upward 160 officers.

15 Q 160 officers. How many detectives are there?

16 A Just property crime?

17 Q Just property crime.

18 A Property crime is eight nine. I didn't
19 count them all.

20 Q There are nine detectives that specialize in
21 break ins, burglaries, arson, and things when
22 they are investigating property calls?

23 A That's correct.

24 Q You are one of those nine detectives?

25 A That's correct.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q You have a crime lab here that's part of the
2 Multi-Jurisdictional Crime Forensic Unit, yes?

3 A We have a forensic unit, yes. I don't know
4 what you refer to as crime lab.

5 Q You in the Sheriff's Department people who can
6 look at evidence, right? Let's break it down.
7 You have fingerprint people?

8 A Yes.

9 Q You have a detective that is in charge of the
10 fingerprint unit? Specifically, his name is
11 John Williams, does that ring a bell?

12 A John is not in forensics any longer.

13 Q Who is in charge of your fingerprint unit?

14 A I am not sure who does fingerprint analysis.
15 I know George Weekes (phonetic spelling) who is
16 out of the solicitor's office heads up
17 the forensic unit.

18 Q Os somebody in the prosecutor's office heads up
19 the forensic unit?

20 A Yes.

21 Q So somebody from the prosecutor's office is the
22 one that makes the decisions on whether stuff
23 should be tested or not?

24 A I think he is over scheduling. I am not
25 sure what his job title or function is.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q All right. You have video cameras at the
2 Sheriff's Department. If you want to video
3 record something, you can record it, right?

4 A You mean like a camera, video recorder
5 camera?

6 Q Yes.

7 A Yes.

8 Q So if you wanted to video camera somebody giving
9 you a statement, you can do that?

10 A It is not our policy to do so.

11 Q Understood. But if you made a decision, you
12 know, I want to record this so everyone knows
13 what we said, you could do that, correct?

14 A I guess we could.

15 Q You have audio equipment, cassette tapes and
16 stuff where you could audio record what somebody
17 actually said, couldn't you?

18 A Yes.

19 Q You have computers?

20 A That is correct.

21 Q And of course, cameras to take photographs,
22 correct?

23 A That's correct.

24 Q Now, we know what Brandon Goins wrote. I want
25 to talk to you for a minute about your interview

PETE BRANHAM - CROSS BY MR. WELLBORN

1 with him. Who made the decision not to record
2 what Brandon Goins told you so we would know
3 exactly what you asked and exactly what he said
4 in response?

5 A I did, and it is our policy not to do so.

6 Q Why would it be the Sheriff's Department policy
7 not to the preserve evidence of what somebody
8 actually said?

9 A That's a pay grade above me. I do not know
10 how to answer that for you.

11 Q You would agree if we had a recording, we would
12 actually know what he said, right?

13 A To be exact.

14 Q Okay. And what you said, correct?

15 A That's correct.

16 Q So it is the policy of the Sheriff's Department
17 to never record what people say in an interview?

18 A That's what I have been told and what I have
19 seen, yes.

20 Q Now, you said earlier when you spoke with
21 Mr. Smith, he told you what had been taken and
22 he told you where it had been taken from,
23 correct?

24 A Yes.

25 Q So you were aware, in fact, that he mentioned

PETE BRANHAM - CROSS BY MR. WELLBORN

1 that his rolltop desk in the living room had
2 been messed with? He told you that?

3 A Correct.

4 Q He told you that the fishing rod or rods,
5 whatever he said, had been taken from the
6 kitchen area, correct?

7 A I don't recall remembering exactly where the
8 fishing rods were taken from. I do remember him
9 saying they were taken.

10 Q Even if you don't recall about what he said
11 about where they were taken, do you recall him
12 telling you where they were taken from?

13 A No, I do not recall.

14 Q Do you recall him telling you where the bottle
15 of cough medicine was taken from?

16 A I do not recall.

17 Q Okay. Do you recall him telling you where the
18 jewelry was taken from?

19 A Yes. Out of his wife's jewelry box.

20 Q Did he mention that the jewelry box was in the
21 bedroom?

22 A Yes.

23 Q Let's take a minute and go through this. You
24 are an experienced investigator of property
25 crimes?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A Yes.

2 Q You have been trained on how to investigate
3 property crimes?

4 A Yes.

5 Q They didn't throw you out there with no training
6 and say, hey, first day on the job, do you want
7 to be a detective, right?

8 A No.

9 Q You didn't say, cool, sounds good to me. They
10 trained you first, right?

11 A Yes.

12 Q So when you were training you learned about
13 things such as fingerprints?

14 A That is correct.

15 Q And you learned that people leave fingerprints
16 on certain surfaces?

17 A That is correct.

18 Q And those surfaces can include things such as
19 boxes, right?

20 A Yes.

21 Q Like jewelry boxes?

22 A Yes.

23 Q And things such as glass medicine cabinets,
24 right?

25 A Correct.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q Or plastic bottles, yes?

2 A Yes.

3 Q Or door knobs?

4 A Yes.

5 Q Or papers that have been rifled through in a
6 rolltop desk?

7 A That's correct.

8 Q I take it you made a decision it was not worth
9 it when you talked to Mr. Smith on September
10 18th, you didn't feel it was worth while seeing
11 if, perhaps, you could find some fingerprints on
12 the jewelry box, right?

13 A As I stated, it had been almost two weeks.

14 Q I understand, but you didn't think it was worth
15 a try?

16 A That's correct.

17 Q You didn't think it was worth trying to see if
18 you could find any fingerprints on the medicine
19 cabinet or medicine bottles?

20 A That is correct.

21 Q You didn't think it was worth trying to find any
22 fingerprints anywhere in a that house?

23 A That is correct.

24 Q Now, as we have heard, Deputy Doty did not take
25 any photographs?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A That is correct.

2 Q Deputy Yates did not take any photographs?

3 A That is correct.

4 Q But photographs are still, you would agree,
5 could be an important piece of evidence, right?

6 A I would agree.

7 Q You made a decision, even after the fact, not to
8 take any photographs of where items had been
9 taken from, correct?

10 A That's correct. Like I said, when I
11 initially went to see Mr. Smith he was not at
12 home.

13 Q Did you ever say, hey, Mr. Smith, is there a
14 time I can meet you at your house?

15 A I did not.

16 Q You could have done that, right?

17 A I could have.

18 Q Why did you make a decision not to meet
19 Mr. Smith at his house?

20 A I can't honestly give you a good answer for
21 that.

22 Q Fair enough. Why did you make a decision not to
23 take pictures of the outside of Mr. Smith's
24 house?

25 A At the time I was down there, I did not have

PETE BRANHAM - CROSS BY MR. WELLBORN

1 my camera with me.

2 Q But you could have called somebody to come down
3 with a camera, right?

4 A Yes.

5 Q I mean, you are the chief investigator in the
6 case?

7 A That's correct.

8 Q Now, being chief investigator in the case, you
9 are familiar with the case file, correct?

10 A Yes.

11 Q Okay. Things in the file would include evidence
12 sheets, right?

13 A That's correct.

14 Q So you would be familiar with this document
15 which was the evidence sheet reflecting the
16 partially smoked cigarette, yes?

17 A Yes.

18 Q Is that a true and accurate copy of the evidence
19 sheet showing that the partially smoked
20 cigarette recovered by Deputy Doty and placed
21 into evidence?

22 A Yes.

23 MR. WELLBORN: Your Honor, I would like to
24 move this in as Defendant's --

25 THE JUDGE: Haven't you already put that

PETE BRANHAM - CROSS BY MR. WELLBORN

1 in? I am confused.

2 MR. WELLBORN: No, that was the blood
3 swabs.

4 THE JUDGE: No objection?

5 MS. SHELTON: No objection.

6 (Whereupon, Defendant's Exhibit 5, was
7 marked for identification and received in
8 evidence.)

9 BY MR. WELLBORN:

10 Q As you said earlier, the prosecutor in this case
11 made a decision that neither the blood swabs or
12 cigarette butt would be tested for DNA, correct?

13 A That is correct.

14 Q I want to talk to you for a moment about
15 burglary. You are familiar with burglary and
16 investigating burglaries and how it happened,
17 right?

18 A That's correct.

19 Q Because you have been in property crimes for --

20 THE JUDGE: Counsel, get to the question,
21 please.

22 BY MR. WELLBORN:

23 Q How many years have you been in property crime?

24 THE JUDGE: You asked that, move on.

25 BY MR. WELLBORN

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q Would you believe burglary is a crime of
2 opportunity?

3 A In some circumstances, yes.

4 Q With the exception of home invasions or when
5 people are breaking in to want to hurt somebody,
6 or they are breaking into to steal, they are
7 typically doing it when they have an opportunity
8 to do it, right?

9 A Correct.

10 Q Burglars try not to be caught, would you agree
11 with that?

12 A Yes.

13 Q And they typically break in when other people
14 around aren't and people around looking; is that
15 correct?

16 A That's correct.

17 Q When homeowners aren't there?

18 A That's correct.

19 Q In some cases they even watch to see what the
20 homeowners habits are, to learn about when the
21 homeowner is there and is not there?

22 A Correct.

23 Q Most burglars try to get in and get out fast,
24 they don't want to spend a lot of time in a
25 place. Would you agree with that?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A In most circumstances, yes.

2 Q It's easier for a burglar if they know what the
3 victim looks like by sight to know whether they
4 are there or not?

5 A Yes.

6 Q It would be easier for a burglar if they know
7 what the victim drives in terms of automobile,
8 correct?

9 A Correct.

10 Q It's easier for the burglar if the burglar has
11 actually been inside the victim's trailer
12 before, correct?

13 A Yes.

14 Q It is easier for a burglar if the burglar knows
15 what kind of stuff the victim has before they go
16 in?

17 A Yes.

18 Q So it would be easier for a burglar to have that
19 opportunity to break in if they knew when the
20 best time was?

21 A Say that again?

22 Q It would be easier for a burglar to use that
23 opportunity to break in if they knew what the
24 best time to do it was?

25 A Yes. I believe we just covered that, but

PETE BRANHAM - CROSS BY MR. WELLBORN

1 yes.

2 Q All right. Now I am going to talk to you --
3 switch gears a little bit and talk to you about
4 Brandon Goins and his statement. Is this an
5 exact copy, a blown-up copy of the statement
6 Brandon Goins gave you? If you want, please
7 compare the statement in evidence wherever that
8 might be.

9 Is this an exact copy of the statement
10 Brandon Goins gave you?

11 A It appears to be.

12 Q Is there any difference in this statement other
13 than the fact there is some tape at the top?
14 Please take your time.

15 A It doesn't appear to be, no.

16 Q So it is an exact copy?

17 A Yes.

18 Q It is a true and accurate copy of the statement
19 other than the fact it is blown up to exhibit
20 size, correct?

21 A Correct.

22 MR. WELLBORN: Your Honor, I would like to
23 have this marked as Defense Exhibit Number 6.

24 MS. SHELTON: No objection, your Honor.

25 (Whereupon, Defendant's Exhibit 6 was

PETE BRANHAM - CROSS BY MR. WELLBORN

1 marked for identification.)

2 THE JUDGE: I didn't say I was going to
3 admit it. You have the statement already in
4 evidence, is it not?

5 MS. SHELTON: It is, your Honor.

6 THE JUDGE: Why do we need two?

7 MR. WELLBORN: I would like to use it --

8 THE JUDGE: Use it for demonstration then.
9 You don't need to clutter the record then.

10 MR. WELLBORN: Let's use it for
11 demonstration purposes then.

12 BY MR. WELLBORN:

13 Q Would you mind stepping down with me. Brandon
14 Goins wrote this statement, right?

15 A Yes.

16 Q This was his writing?

17 A Correct.

18 Q He told you that on September 12, both me and
19 Jordon was intoxicated, right?

20 A September 6th.

21 Q September 6th, I am sorry. Me and Jordan was
22 intoxicated?

23 A Right.

24 Q Meaning drunk?

25 A I am assuming so.

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q And got to talking about money?

2 A Okay.

3 Q In fact, I don't mean to make you stand here.
4 Why don't you go grab a seat. I apologize for
5 having to make you do that.

6 Now, before Brandon Goins was with Jordon
7 and got intoxicated, where was he on September
8 6th.

9 A Where was he?

10 Q Yes.

11 A At Canupp's residence.

12 Q Before that?

13 A I do not know.

14 Q You didn't ask him, did you?

15 A No.

16 Q You didn't ask him how he got to Canupp's
17 residence, did you?

18 A I don't recall whether I asked that question
19 or not.

20 Q You didn't ask him whether he came in a car or a
21 truck, right?

22 A I don't recall whether I asked him that or
23 not.

24 Q You didn't ask him what time he got to Canupp's
25 residence either, did you?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A I don't recall if I asked him that.

2 Q Whether it was light or dark when he first got
3 there?

4 A I don't recall.

5 Q Or whether anyone else was there when he first
6 got there, you didn't ask him that either, did
7 you?

8 A When he first got there, I don't recall
9 asking him that either.

10 Q Now, he told you that he and Jordon were talking
11 about money. What else did they talk about?
12 What did they talk about when they first got
13 there or when Brandon first got there? They
14 spent hours and hours talking about money? What
15 did they talk about, do you know?

16 A The only recollection I have of that
17 question is about Hannah's dad having surgery
18 that night. I do remember that because I
19 remember that Mr. Smith's brother had his
20 surgery that evening.

21 Q You didn't put that in the incident report
22 either, did you?

23 A No.

24 Q So you don't know if they talked about girls,
25 right?

PETE BRANHAM - CROSS BY MR. WELLBORN

1 A Right.

2 Q Their girlfriends, whether they talked about
3 their girlfriends?

4 A I don't recall.

5 Q Or whether they talked about any other friends,
6 right?

7 A I don't recall.

8 Q You don't know whether they talked about sports?

9 A I do not.

10 Q In fact, you didn't even ask them if they talked
11 about sports because it was not that important
12 to you, was it?

13 A No, it wasn't.

14 THE JUDGE: What is the relevance to this
15 line of questioning about what they didn't talk
16 about? He doesn't ask them what they talked
17 about or didn't talk about. There is nothing to
18 indicate if they did or didn't talk about it.

19 MR. WELLBORN: That's the relevance, your
20 Honor, that they spent hours talking about more
21 than something just about money.

22 THE JUDGE: He doesn't know. Let's move
23 on. We are not going to spend a whole day
24 asking this.

25 BY MR. WELLBORN:

PETE BRANHAM - CROSS BY MR. WELLBORN

1 Q What context did the conversation about money
2 come up? Did it come up when they were talking
3 about jobs? How did the money conversation take
4 place, do you know?

5 A Yes, but I don't know if I am allowed to
6 say.

7 Q Okay.

8 THE JUDGE: Counsel approach just a
9 minute.

10 (Whereupon, a bench conference was held
11 off the record in the presence of the jury, but
12 out of hearing of the jury.)

13 THE JUDGE: Mr. Foreman, ladies and
14 gentlemen of the jury panel, there is matter I
15 need to take up with counsel out of your
16 presence at this time. Please retire to the
17 jury room briefly.

18 (Whereupon, the jury exited the courtroom
19 at 2:17 p.m.)

20 MR. WELLBORN: Judge, I think we need to
21 proffer what we say.

22 THE JUDGE: You know I am still running
23 the Court last time I looked. I am sitting up
24 here on the bench with the robe on. I know you
25 like to run it, but you are not running it.

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1 MR. WELLBORN: Yes, sir.

2 THE JUDGE: We have a couple of steps
3 before we even get to that. What was your
4 question asking?

5 MR. WELLBORN: I asked him -- where I was
6 going was they weren't just talking about -- did
7 they talk about other stuff, did the money thing
8 just come up out of the blue. The next thing
9 was what was the context of talking about money?
10 Were they talking about jobs? That could be
11 either a simple yes or no.

12 THE JUDGE: No. They talked about jobs.
13 So you asked him the question and opened the
14 door.

15 MR. WELLBORN: I asked him if he talked
16 about jobs, not what did --

17 THE JUDGE: You asked him about jobs, he
18 is going to tell you about jobs. If that is
19 what they were talking about, he could tell you.
20 Why couldn't he tell you when you opened the
21 door. I understand before you opened the door.
22 That was my concern. He didn't think he could
23 talk about it, but if you open the door to it,
24 then he can talk about it.

25 MR. WELLBORN: I have no objection to him

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1 talking about what my client said about jobs,
2 but the rest of it --

3 THE JUDGE: You asked him about the
4 conversation not what your client said or was
5 talking about. You asked him what the two of
6 them were talking about.

7 MR. WELLBORN: No, sir.

8 THE JUDGE: What were they talking.
9 about --

10 MR. WELLBORN: I --

11 THE JUDGE: Wait a minute. Don't
12 interrupt me, please. I will give you chance to
13 speak. You know I always do that.

14 You didn't ask him what Mr. Goins said.
15 You asked him what was the conversation between
16 the two of them during that time they were over
17 there.

18 MR. WELLBORN: Yes, sir.

19 THE JUDGE: Now you are trying to tell me
20 you only asked him what Mr. Goins is saying.

21 MR. WELLBORN: No, sir.

22 THE JUDGE: That's not the question you
23 asked him.

24 MR. WELLBORN: I agree, sir.

25 THE JUDGE: So why haven't you opened the

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1 door for him to tell you what Mr. Goins said
2 they were talking about.

3 MR. WELLBORN: If it is within the context
4 of what I asked him about which was jobs, I
5 think perhaps I have.

6 THE JUDGE: You asked him what they were
7 talking about. Why can't he talk about
8 everything they were talking about?

9 MR. WELLBORN: Because I didn't ask him
10 everything they were talking about.

11 THE JUDGE: Excuse me. I think you asked
12 him about 10,000 things, not 10,000, but a bunch
13 of things. Were they talking about this? Were
14 they talking about this? He said, I don't know,
15 I didn't ask him that. You asked him a whole
16 bunch of questions. I finally said, what is the
17 relevance of all this? He didn't ask him these
18 questions and what they were talking about.

19 Finally, you asked him a question that he
20 can answer and that he remembers, and that is
21 what were they talking about.

22 MR. WELLBORN: If he is allowed -- I would
23 simply state if he is allowed to testify as to
24 what a non testifying codefendant said --

25 THE JUDGE: You can't do it unless you

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1 open the door to it.

2 MR. WELLBORN: If he is allowed -- if your
3 Honor rules that I opened the door to everything
4 Mr. Canupp said --

5 THE JUDGE: To answer the question you
6 asked.

7 MR. WELLBORN: Which was did you talk
8 about?

9 THE JUDGE: Not jobs.

10 MR. WELLBORN: I have no objection to the
11 jobs.

12 THE JUDGE: Tell me what you said about
13 jobs. This is a proffer.

14 THE WITNESS: That they were unemployed
15 and they were looking for money to get more
16 drugs.

17 MR. WELLBORN: Okay.

18 THE JUDGE: Did you open the door to that?

19 MR. WELLBORN: I don't think I did.

20 THE JUDGE: You asked him what are they
21 talking about? Are they talking about jobs?

22 MR. WELLBORN: Unemployed would be an
23 answer, that would be jobs. Looking for money
24 to get money for drugs would not.

25 THE JUDGE: What were you asking? They

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1 didn't have a job.

2 MR. WELLBORN: Not having a job is a huge
3 chasm and also looking for money to get drugs.

4 THE WITNESS: I took it as a the drugs
5 answer to be quite honest with you, and that's
6 why I hesitated.

7 MS. SHELTON: Because his specific
8 question was in context to money.

9 THE WITNESS: What was the reason for
10 conversation about money?

11 MS. SHELTON: I am not arguing to allow
12 the question to be answered, but it makes me
13 nervous when opening the questions of what were
14 they talking about, jobs, because the answer is
15 they needed more money to get drugs because they
16 don't have jobs.

17 MR. WELLBORN: Which was never given to me
18 in discovery and my recollection is Mr.
19 Canupp --

20 THE JUDGE: It is not in the statement.
21 You are asking outside of the statement. You
22 are asking him outside of everything. When you
23 do that, Counsel, you open the door to stuff
24 that is outside the discovery and statements and
25 that sort of thing. When you get outside of it,

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1 you open the door to it.

2 I want to be clear on where we are because
3 I also didn't think he could testify or not to
4 answer your question.

5 MR. WELLBORN: I would suggest in all
6 fairness, if there is evidence in this case that
7 my client was having a conversation with
8 somebody in which he indicated he was unemployed
9 and needed money to buy drugs, that should have
10 been provided to me in fairness in discovery at
11 the very beginning of the case and not be
12 hearing about it on cross-examination.

13 THE JUDGE: Wait a minute. There is
14 nothing in the record to indicate that. You
15 asked this officer what the conversation was
16 beforehand while they were sitting there, before
17 he gave the statement.

18 MR. WELLBORN: The officer wasn't there.

19 THE JUDGE: I understand. You are asking
20 him now.

21 MR. WELLBORN: I asked the officer what my
22 client and Mr. Canupp talked about that night.

23 THE JUDGE: Did they talk about that? I
24 don't know. Did he talk about that? I don't
25 know, I didn't ask them that. Did they talk

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1 about girls? I don't know, I didn't ask. You
2 asked him about jobs. Were they talking about
3 jobs? Oh, I can answer that.

4 MR. WELLBORN: But if my client had said
5 this, and bear in mind the officer is not
6 testifying to what Mr. Canupp told him but what
7 my client told him.

8 THE JUDGE: No. No. If you ask him what
9 was the conversation between the two of them,
10 what were they talking about -- you keep asking
11 what were they talking about? What was the
12 conversation? What were they talking about?
13 Were they talking about girls? Were they
14 talking about jobs? Were they talking about
15 whatever? You asked him a whole series of
16 questions and he couldn't answer them because he
17 didn't remember asking any of that. Then you
18 asked him were they talking about jobs, and he
19 does remember that.

20 MR. WELLBORN: The problem is the officer
21 would have no personal recollection of this
22 conversation that took place supposedly on
23 September 6th between my client and Mr. Canupp.

24 THE JUDGE: What about if Mr. Goins told
25 him that?

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1 MR. WELLBORN: Then yes, that would be an
2 admission and that would be fair game to bring
3 in, but that's not what he is getting into. He
4 is getting into what Mr. Canupp supposedly told
5 him, not that my client.

6 THE JUDGE: He was getting into what the
7 conversation was between the two of them
8 according to Mr. Goins.

9 MR. WELLBORN: If he is going to limit it
10 to what Mr. Goins told him.

11 THE JUDGE: You asked him if he could tell
12 you what the conversation was between him.

13 MR. WELLBORN: With that clarification,
14 if he is going to limit it to what Mr. Goins
15 told him regarding employment status and what he
16 and Mr. Canupp discussed regarding employment
17 status, I have no objection. But if he is going
18 to get into what somebody else told him i.e.
19 Mr. Canupp, I do have an objection.

20 THE JUDGE: How about the fact they needed
21 money to buy drugs with?

22 MR. WELLBORN: According to all of the
23 evidence we have been given so far, other than
24 this proffer, there is nothing regarding a
25 conversation from Mr. Canupp that has been given

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1 to me in discovery.

2 THE JUDGE: When you start asking
3 questions, you opened stuff not in discovery.

4 MR. WELLBORN: With all due respect, I
5 disagree and this is why I respectfully
6 disagree. The purpose of discovery is, A, avoid
7 trial by ambush.

8 The second thing with discovery is I am
9 supposed to be given all statements, oral or
10 written, my client gave.

11 THE JUDGE: That is if the solicitor is
12 aware of it.

13 MR. WELLBORN: Presumably, since the
14 solicitor mentioned at the bench what the
15 substance of this conversation was, the
16 solicitor must be aware of it because she
17 mentioned to you, your Honor, at the bench
18 outside the jury's presence, which is why we are
19 having this argument to begin with.

20 MS. SHELTON: Your Honor, I think the rule
21 is anything we intend to introduce. It was not
22 inconsistent with the statement provided to the
23 defense and it was not exculpatory for his
24 client. I never intended to introduce the
25 statement because I never intended to call

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1 Jordon Canupp. It was never conveyed to defense
2 because I did not intend to introduce it.
3 Should Mr. Wellborn in questions open the door
4 by saying what was the conversation in context
5 to money, that is not trial by ambush. That's
6 him opening the door by asking questions which
7 his client should have already told him the
8 answers.

9 THE JUDGE: What is the State's position?
10 What do you want in or not in?

11 MS. SHELTON: Like I said, I would like to
12 keep the record as clean as possible so if the
13 Court is comfortable with it and Mr. Wellborn is
14 comfortable with him just answering they both
15 were talking about they don't have jobs and need
16 money, or leave out money for drugs. I will
17 leave it up to the Court. I do believe he
18 opened up the door, but I would also like a
19 clean record.

20 THE JUDGE: All right. Does that satisfy
21 you, that they have him answer that they both
22 didn't have jobs and needed money?

23 MR. WELLBORN: Yes, your Honor, again,
24 with the caveat this is information Mr. Goins
25 told Detective Branham.

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1 MS. SHELTON: He didn't ask the question
2 of didn't Mr. Goins say. He asked what was the
3 conversation. I don't know that Mr. Goins did
4 tell Detective Branham that. I think Mr. Goins
5 told Detective Branham as little as possible.
6 If that is the argument then I think he opened
7 the door asking the open-ended question what was
8 the conversation. I do think Detective Branham
9 did not answer it because he has been instructed
10 to not discuss anything Canupp said.

11 MR. WELLBORN: And the jury has not heard
12 it at this juncture.

13 THE JUDGE: I know they have not heard it
14 at this juncture. I wanted it clarified before
15 it went any further.

16 MR. WELLBORN: Yes, sir.

17 THE JUDGE: One reason we are having this
18 conversation, I want you to understand that if
19 you are asking open-ended questions that open
20 the door, he is going to be able to answer them
21 even though we agreed he is not going to testify
22 concerning certain things, we agreed at
23 pre-trial if you opened the door to them, they
24 are coming in. I want you to understand that.
25 You cannot can't have it both ways.

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1 MR. WELLBORN: I understand.

2 MS. SHELTON: In reality, your Honor,
3 Detective Branham was not there that night.
4 Other than answering the questions of what is
5 the conversation, he is going to be basing that
6 on something Mr. Goins said or Mr. Canupp said.

7 THE JUDGE: Well, then it doesn't need to
8 be asked what was the conversation. If he was
9 not present or not there, it is going to have to
10 come from one of them. If you are asking the
11 question, I don't know why he cannot answer.

12 MR. WELLBORN: I will stay away from that.

13 THE JUDGE: Not only that, be careful with
14 whatever questions you are going to ask if you
15 don't know the answer to it, or you are not sure
16 you know the answer to it, be careful. I am not
17 trying to control your defense. I am just
18 trying to make sure that I control under the
19 rules what is admissible and what is not
20 admissible and where they can or can't go with
21 the witness. We agreed in pre-trial. We ought
22 to stay with it.

23 MR. WELLBORN: I will limit my questions
24 to Detective Branham's personal knowledge.

25 THE JUDGE: Where are we on this last

PETER BRANHAM - CROSS BY MR. WELLBORN

1 question then? He said he couldn't. He wasn't
2 sure if he could answer that.

3 MR. WELLBORN: I would move to strike and
4 move on.

5 THE JUDGE: Let's move on then.
6 Bring the jury back, please.

7 (Whereupon, the jury came into open court
8 at 2:30 p.m.)

9 THE JUDGE: Counsel, proceed.

10 BY MR. WELLBORN:

11 Q You have no personal knowledge as to how long
12 Brandon Goins was there at Mr. Canupp's trailer
13 that night, do you?

14 A I do not.

15 Q And you have no personal knowledge at what point
16 in the evening anybody talked about money?

17 A I do not.

18 Q You have no personal knowledge of whether people
19 talked about anything at all other than money
20 that evening, correct? Because you weren't
21 there?

22 A I wasn't there, that's correct.

23 Q So you have no personal knowledge?

24 A Personal knowledge, no.

25 Q Brandon Goins told you that Mr. Canupp said, or

PETER BRANHAM - CROSS BY MR. WELLBORN

1 Jordon said he had a few things at his uncle's
2 house, correct?

3 A Correct.

4 Q Now, one thing we do know is this was not
5 Mr. Canupp's uncle's house, right?

6 A Correct.

7 Q It could not have been his uncle's house. It
8 never was Mr. Canupp's uncle's house, correct?

9 A Kinship, yes, you are correct, but there are
10 people that call other people uncle by nature
11 just buy being close to them by family.

12 Q But not Mr. Smith. He testified earlier today,
13 right?

14 A He did.

15 Q You have no personal knowledge as to what
16 Branham was thinking because you weren't there
17 with him when Mr. Canupp said he had some things
18 at his uncle's house, right?

19 A No personal knowledge, correct.

20 Q Whether Brandon Goins believed Jordan Canupp
21 when he said he had a few things at his uncle's
22 house?

23 A No personal knowledge, that's correct.

24 Q By the way, you have no personal knowledge at
25 what point in the evening Jordon Canupp said he

PETER BRANHAM - CROSS BY MR. WELLBORN

1 had things, if he did say that, at his uncle's
2 house?

3 A No personal knowledge, that is correct.

4 Q You have no personal knowledge as to how that
5 came up in conversation?

6 A Other than what is written in the statement,
7 no personal knowledge, that's correct.

8 Q You have no personal knowledge as to what
9 Brandon was thinking when Jordon Canupp went to
10 the house next door which belonged to Darryl
11 Smith?

12 A That's correct.

13 Q You have no evidence that Brandon Goins had been
14 to this location ever before September 6, 2012,
15 correct?

16 A Before.

17 Q Before?

18 A That's correct.

19 Q So the only evidence you have is this was the
20 first time he had ever been there, and if he
21 ever went back it was for who knows what
22 purpose, right?

23 A That's correct.

24 Q But he was with Jordon Canupp?

25 A Correct.

PETER BRANHAM - CROSS BY MR. WELLBORN

1 Q Okay. Who according to go Brandon said he had
2 things at his uncle's house?

3 A That's correct.

4 Q You have no personal knowledge as to whether
5 Brandon knew or didn't know that Jordon was
6 permitted to go inside his uncle's house to get
7 his own things, correct?

8 A No personal knowledge, that is correct.

9 Q So at the time Brandon Goins followed Jordon
10 Canupp over to Mr. Smith's house, you have no
11 knowledge, personal knowledge, as to what he was
12 thinking, do you, meaning Brandon?

13 A No personal knowledge, no.

14 Q Other than the fact that he was intoxicated?

15 A Even still, that's correct.

16 Q You have no personal knowledge as to whether
17 Brandon Goins knew the difference between the
18 front door and the back door of this residence,
19 correct?

20 A I have no personal knowledge, that's
21 correct.

22 Q You have no personal knowledge as to who would
23 know the difference between the front door and
24 the back door between the two of them, Jordan
25 Canupp and Brandon Goins?

PETER BRANHAM - CROSS BY MR. WELLBORN

1 A I can't say I knew what they were thinking,
2 no.

3 Q You did know Jordan Canupp lived next door?

4 A That is correct.

5 Q It is more than likely he would know the
6 difference?

7 A Of the front door and back door?

8 Q Yes.

9 A I would have assume so, yes.

10 Q Now, you have no knowledge what Brandon was
11 thinking when Jordon went in the residence, went
12 in what Brandon thought was the back and let him
13 in?

14 MR. SPRINGS: Objection.

15 THE JUDGE: Sustained, counsel.

16 BY MR. WELLBORN:

17 Q Do you have any personal knowledge of what
18 Brandon was thinking at the time he walked into
19 or --

20 MS. SHELTON: Your Honor, can we move on
21 to this. It is clear.

22 THE JUDGE: There is no way he can know
23 what his frame of mind was, Counselor. That's
24 just shear speculation. Please move on.

25 MR. WELLBORN: Yes, sir. That's all of

PETE BRANHAM - REDIRECT BY MS. SHELTON

1 the questions I have. Thank you.

2 MS. SHELTON: Very briefly, your Honor.

3 REDIRECT EXAMINATION:

4 BY MS. SHELTON:

5 Q You testified you didn't recover any evidence
6 from Brandon Goins. Have you recovered any
7 evidence from anyone in this case?

8 A I have not, no.

9 Q After Mr. Goins' confession, did you still feel
10 you had a mystery to solve to this case?

11 MR. WELLBORN: I object to term
12 confession. I think that is a judgment value.

13 THE JUDGE: You can rephrase the question.
14 I sustain the question.

15 BY MS. SHELTON:

16 Q After Mr. Goins' statement where he admitted
17 being at the trailer and admitted to being in
18 possession of the fishing rods, did you feel
19 there was a mystery to solve as to who was in
20 Mr. Smith's trailer that night?

21 A I did not.

22 Q On the videotaping confessions, is it the
23 department's policy not to do that?

24 A That's correct, yes.

25 Q Are you aware it is also the policy of many

PETE BRANHAM - RECROSS BY MR. WELLBORN

1 departments including the FBI not to record
2 video statements?

3 A Yes, I am aware of that.

4 MS. SHELTON: Thank you, your Honor.

5 MR. WELLBORN: One follow-up on that.

6 RECROSS-EXAMINATION:

7 BY MR. WELLBORN:

8 Q Are you also aware that it is the policy of many
9 departments including the National Association
10 of Police Chiefs to record confessions?

11 A I know it is a two-way street. Some adhere
12 to it, some do not. Yes, I am aware of that.

13 Q You are aware of the benefits of recording the
14 confessions if there such a thing as a
15 confession because we know what somebody
16 actually said, right?

17 A I am aware of both ends of the spectrum,
18 yes, I am.

19 Q Not recording confessions but recording
20 statements which are not necessarily
21 confessions, right?

22 A That's correct.

23 Q Can you see any disadvantage in terms of all of
24 us knowing the truth in this case of not
25 recording the confession?

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1 MR. SPRINGS: Objection. That's
2 argumentative.

3 THE JUDGE: Sustained. You can rephrase
4 it if you want.

5 MR. WELLBORN: Thank you.

6 BY MR. WELLBORN:

7 Q Is there any legitimate reason you can think of
8 why we shouldn't record these things so we know
9 what actually was said?

10 A Can I think of any legitimate reason why we
11 shouldn't?

12 Q Yes.

13 A Not off the top of my head, no.

14 MR. WELLBORN: Thank you.

15 THE JUDGE: Thank you, sir. You can stand
16 down.

17 (Witness excused.)

18 MS. SHELTON: Your Honor, the State would
19 rest at this time.

20 THE JUDGE: Mr. Foreman, ladies and
21 gentlemen of the jury panel, there is matters I
22 need to take up with counsel out of your
23 presence at this time. You may refresh
24 yourselves during the break. It will take about
25 ten minutes.

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1 (Whereupon, the jury exited the courtroom
2 at 2:39 p.m.)

3 THE JUDGE: The gentleman that just left,
4 I will talk to him when he gets back. I do not
5 let anyone move around when the jury is going
6 out or coming in. My policy has always been my
7 policy. So please don't do that anymore. You
8 can get up any other time except for when the
9 jury is going out and coming in.

10 I will hear from you regarding any motion
11 you might wish to make at this time.

12 MR. WELLBORN: Your Honor, I would move
13 for a directed verdict of acquittal on all three
14 charges and I would like to start out with a
15 conspiracy charge. There has been no absolutely
16 no evidence presented by anybody of any
17 agreement between my client and Mr. Canupp. The
18 best that they have been able to say is that at
19 some point during this evening they have talked
20 about money. That's it.

21 The grounding of the conspiracy charge is
22 a crucial element that there be an agreement to
23 commit a crime. The agreement doesn't have to
24 be orally stated, but there has to be some
25 agreement. There has been no evidence of any

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1 agreement, so therefore, as matter of law, it is
2 simply mere suspicion or a hunch there cannot be
3 a conspiracy charge that can go to a jury.

4 I would ask for a directed verdict on
5 that.

6 THE JUDGE: Let's take them one at a time.

7 MS. SHELTON: Your Honor, on the criminal
8 conspiracy, I think taking evidence in the light
9 most favorable to the State, according to his
10 own client they were talking about money and
11 immediately go over to a home, and the home is
12 broken into. From his statement, self-serving,
13 says that he went in, that the codefendant went
14 in the back door and let him in front door. All
15 evidence that has been testified to is that it
16 is the front door that was broken into.

17 So following the evidence in the light
18 most favorable to the State, they were talking
19 about money, immediately went over, the evidence
20 pointing to the fact that the front door is
21 broken into, the door that his client said he
22 went in. I understand that the questions
23 Mr. Wellborn has been asking is that he is going
24 to allege that his client thought the back door
25 was the front door, but until he presents the

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1 case, we won't get to it.

2 As of right now, the front door was broken
3 into. His client's statement says he went into
4 the front door and that immediately followed the
5 conversation about money. Criminal conspiracy
6 doesn't have to be long, drawn out agreement.
7 It doesn't have to be plan. It can be made in
8 an instant before committing the crime.

9 For the purpose of directed verdict, we
10 feel we met our burden.

11 MR. WELLBORN: With all due respect,
12 there is no testimony about immediately going
13 over.

14 THE JUDGE: I didn't ask you for any
15 further comment. You had your argument.

16 MR. WELLBORN: Thank you, sir. I
17 apologize.

18 THE JUDGE: We don't know what went on
19 before they went over there. We know they went
20 over there according to the testimony and
21 evidence.

22 Looking at the motion for directed
23 verdict, I am required to look at the evidence
24 in the light most favorable to the party against
25 who the motion is being made. In this case,

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1 looking at the evidence in the light most
2 favorable to the State, I find there is
3 substantial evidence on which a jury could infer
4 that the State has proven the elements of
5 criminal conspiracy beyond a reasonable doubt.

6 I will read to you part of the instruction
7 with regard to criminal conspiracy. To become a
8 party to a conspiracy, a person must combine
9 with someone else to effect the object of
10 conspiracy by the means agreed upon. A common
11 design or plan is essential to the charge of
12 conspiracy. To establish conspiracy, it is
13 necessary, first, to have an agreement to commit
14 the offense alleged in the indictment to be
15 established.

16 What is required for an agreement is a
17 shared, single criminal objective, not just a
18 similar or parallel objective between similarly
19 situated people. What is needed is proof that
20 they intended to act together for their shared
21 mutual benefit within the scope of the
22 conspiracy charge.

23 The State must prove further that one or
24 more of the parties engaged in an agreement,
25 committed some act to effect the object of the

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1 conspiracy as alleged in the indictment.

2 To constitute conspiracy, it is not
3 necessary that two or more persons meet and
4 enter into or express a formal agreement to do a
5 lawful or an unlawful act, but if they should,
6 directed by words or in writing, ignite between
7 themselves as to what the unlawful act is to be,
8 or what the details of the plan are, or by what
9 means an unlawful combination is to be made
10 effective. It is sufficient if two or more
11 persons in any manner through any contriving
12 positively or passively come to a mutual
13 understanding to accomplish a common unlawful
14 design.

15 In other words, when an unlawful end is
16 sought to be effected and two or more persons
17 get together for a common purpose of
18 accomplishing that end and work together in any
19 way in furtherance of the unlawful scheme, each
20 of those persons become a member of the
21 conspiracy.

22 Now, looking at the facts in this case
23 what we have, we know, based on the testimony
24 and evidence -- we don't know anything. I am
25 pointing out what is on the record is what I am

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1 required to do in the light most favorable to
2 the State. We know that somebody didn't go in
3 and let themselves in with the key to get inside
4 the place whether it be the back door or front
5 door in order to commit this burglary. We know
6 that.

7 We know that the front door was busted in
8 or was broken into and damage was done to that
9 front door and gone into.

10 We also know there was an effort to try to
11 get into the windows also, according to the
12 testimony is what I am going by. There was
13 damage to windows, all of them except one. I
14 believe the testimony was the back door was not
15 broken into. These windows were attempted to
16 get into through the windows and the screen.
17 That was the testimony. The front door was
18 busted up, and testimony is that they went in
19 through the front door and busted that open.

20 We have that. We know that the two of
21 them, at least according to the testimony and
22 evidence, were over there at the place. The
23 testimony indicates the place was dark and
24 nobody was home and no vehicles were there. It
25 would has been obvious nobody was there. It is

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1 obvious it was dark and nobody intended to be
2 there. We have the defendant's statement in
3 this case, Mr. Goins' statement. It is true he
4 made certain statements in there. Some of it
5 may or may not be true. It is going to be a
6 question for the jury to determine what the
7 truth is in this case, but he admits to being
8 over there with him. He says he went over there
9 because Mr. Canupp indicated that he had some
10 stuff over there. Well, I mean, the jury may or
11 may not believe that. Particularly, you don't
12 usually go over there to get the stuff when you
13 have to bust in the house and break in to get in
14 and go in and take jewelry. I mean, I don't
15 think Mr. Canupp had any jewelry in the mobile
16 home. The fact that Mr. Canupp said that he
17 went in the back door and came and let him in
18 the front, it doesn't matter which one is
19 considered front or back. I know you are making
20 a deal out of that. The jury will believe what
21 they want to believe.

22 The Court is looking for evidence most
23 favorable to State. The evidence most favorable
24 to the State is they went over to get it, trying
25 to remember exactly what was in his statement.

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1 MR. WELLBORN: We have a copy if your
2 Honor would like.

3 THE JUDGE: I am trying to remember
4 anything about needing money or anything like
5 that.

6 MR. WELLBORN: He did not.

7 THE JUDGE: In any event, they went over
8 there. He admits going over there with him. He
9 was there. We know that the mobile home,
10 according to the testimony and evidence, was
11 broken into. So, obviously, people don't break
12 into homes to get some items that may belong to
13 them. It is obvious they don't have permission
14 to go in. Two people are there. The jury
15 certainly could find the one that was also there
16 maybe didn't break the door in, I don't know,
17 didn't break the door in, but knew that he
18 wasn't going in there to get something out that
19 belonged to him if he had to break in the place
20 and busted in if nobody was home. So it is
21 going to be a jury issue on that, jury decision
22 as to what they believe and don't believe about
23 the defendant's statement in this case.

24 I think there is sufficient evidence that
25 the two of them were talking. They went over

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1 there to get items out of the mobile home. They
2 went over there. There was nobody home. No
3 vehicles there. The mobile home was apparently
4 dark. There is accurate testimony on that,
5 except we don't know about the wife, she could
6 have left a light on in there. She was going to
7 spend the night somewhere else with a relative
8 that had surgery so there is no indication there
9 was a light on or anything regardless of which
10 door they went in. There is no question the
11 place was broken into and stuff was stolen.

12 Again, normal people don't have jewelry in
13 somebody's jewelry case. If they were going in
14 to get their own items, they would not go into
15 the jewelry case and take jewelry.

16 I think based on his statement, Mr. Goins'
17 statement, and the other testimony and evidence
18 that we got in the case, the jury could find the
19 two of them went there and conspired to go in
20 there and get property out of there for whatever
21 reason. Certainly, he wound up -- according to
22 his statement, he wound occupy with a couple rod
23 and reels he took to his house and had for some
24 time.

25 The Court is satisfied that it is not the

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1 strongest case I have ever seen, but I think
2 there is evidence the jury could infer the State
3 proved the elements of criminal conspiracy
4 beyond a reasonable doubt. The two of them were
5 working together and shared a mutual interest
6 for common scheme and purpose and both of them
7 benefited from it.

8 What else?

9 MR. WELLBORN: Your Honor, I would move
10 for a directed verdict or acquittal on the
11 charge of burglary first degree, and the basis
12 for that is the only evidence that ties my
13 client going into that residence, the only
14 evidence, is my client's statement. In the
15 statement -- and this is the only evidence in
16 the record regarding why he went into the
17 residence is that he went there because Jordon
18 said he had a few things at his uncle's house.
19 There is nothing in there that suggests my
20 client knew that Jordon was going to steal any
21 items that belonged to anybody. In fact, just
22 the opposite, it suggests that Jordon is going
23 to get his own items from his own uncle's house
24 which would not be a crime.

25 Also, there is nothing in this statement

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1 that suggests my client broke in. My client did
2 enter the residence by his own admission after
3 being let in by Jordon who according to the only
4 evidence was going to get his own things from
5 his uncle's residence. That does not constitute
6 an intent to commit a crime as he was going in
7 to Mr. Smith's house.

8 Furthermore, there is no evidence in the
9 record my client went anywhere inside the house,
10 opened up any rolodexes, went down the hall, my
11 client took possession of any jewelry, my client
12 went anywhere. In fact, the only evidence is
13 that once he was inside Jordan, quote, "Jordan
14 went through the back, let me in the front. He
15 began to get a few fishing rods and a gold
16 necklace. He said, 'this should be good.' And
17 we then got in his car."

18 There is no evidence that my client had
19 any intent or knew a crime was going to be
20 committed at the time he entered the residence
21 which is required for a burglary first because
22 he has to have --

23 THE JUDGE: You are talking burglary -- I
24 thought you started out with grand larceny.

25 MR. WELLBORN: Either one. To be guilty

1 of burglary, there has to be some evidence in
2 the record that at the time my client went into
3 Mr. Smith's house, he went in with the intent to
4 commit a crime, and only evidence in the record
5 is a statement, and the statement does not
6 reflect that in the light most favorable to the
7 State. It does not reflect that. There could
8 be a suspicion. It could even be strongly
9 suspicious, but our case law in South Carolina
10 does not allow something to go to the jury
11 because it is strongly suspicious.

12 THE JUDGE: I agree with that. Do you
13 want to be heard on that?

14 MS. SHELTON: Again, going toward the
15 criminal conspiracy, the same evidence. The
16 front door is what is broken into. The only
17 evidence, according to the defendant's
18 statement, is that he went through the front
19 door. So if he went through the front door, he
20 would have knowledge that the front door was
21 broken into. If they want to present a case
22 saying that he got confused and really went
23 through the back door, but as of right now, the
24 evidence presented to the jury is that the front
25 door was broken into and the defendant went in

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1 front door. So he would have had knowledge it
2 was a burglary being committed.

3 Also, his statement is that the
4 codefendant said, "this is good." If he really
5 believed that they had a right to those items
6 what does "this is good" mean other than this is
7 enough for us to get money.

8 Based on those facts and that evidence, we
9 believe there is enough to support a charge of
10 burglary first.

11 MR. WELLBORN: Again, I agreed it is
12 certainly suspicious and strongly suspicious.
13 However, one could envision a circumstance where
14 somebody is able to get or has appropriate
15 access, has permission to go inside someone's
16 residence, and for whatever reason they can't
17 get in so they climb through a window, they
18 jimmy a door, they lost their key. It is not
19 the unusual. It is suspicious, but the issue is
20 what did my client know and the best we can do
21 we can guess, we can presume or we can assume,
22 because there is no presumption, legally, but we
23 can infer or we can suggest that because my
24 client says he was at the front door that, in
25 fact, that was the front door, that he saw

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1 somebody break in the front door, that he knew
2 Mr. Goins was stealing things, that he knew this
3 was not Mr. Goins' uncle's house, and that he
4 knew Mr. Goins did not have anything in the
5 house, and that he went into that house to help
6 Mr. Goins commit this crime.

7 We could infer that, but there is nothing
8 in the record other than that possibility that
9 we could infer it and that is not enough under
10 our case law to move beyond a strong suspicion.

11 There is nothing in the record that shows
12 what my client's intent was other than a mere
13 guess or a strong guess or a pretty good hunch,
14 and that's not enough.

15 THE JUDGE: You can't read somebody's
16 mind, Counsel.

17 MS. SHELTON: That was going to be my
18 argument. In most cases we can't 100 percent
19 say what someone's criminal intent was, and we
20 have no direct evidence that he intended to
21 burglarize this home. It is circumstantial
22 evidence. It is evidence that front door was
23 broken into. It is his statement that he
24 entered through the front door and his statement
25 that he ended up with the items.

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1 If those items belonged to Jordon Canupp
2 and Jordon Canupp was going in there in the
3 middle of the night breaking into it because
4 they needed money, why would the defendant have
5 ended up with those items if it weren't for they
6 were burglarizing the home to get those items to
7 sell.

8 THE JUDGE: We have more than suspicion
9 here. I agree with you. If Mr. Goins was
10 standing outside the mobile home, just standing
11 around out there, and there was a break in in
12 there by someone that was around then you got a
13 suspicion. If he wound up with items after they
14 were stolen, after the place was broken into
15 then you only have a suspicion. You cannot get
16 a conviction based on that.

17 But if he was inside the mobile home that
18 was broken into and the door was busted open,
19 the front door, and there is evidence that he
20 tried to get in through the windows first, all
21 of the windows except one, you a different
22 situation. You have more than just suspicion
23 here. You have him there on the scene
24 observing, according to his own statement.

25 I don't know what the whole truth of the

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1 matter is. I am not required to know the whole
2 truth of the matter in making the ruling. What
3 I have to look at is the evidence most favorable
4 to the State to see if there is any substantial
5 evidence. I find there is substantial evidence.
6 There are two people there. We have his
7 statement and then we have the other evidence in
8 the case. His statement puts him there with
9 Canupp. He was there with Canupp. No question.
10 They came over from Mr. Canupp's mobile home
11 next door that he was staying in, came over
12 there. There were no vehicles there. There was
13 a dark mobile home, obviously nobody there.
14 They come in over there. The front door is
15 busted in, tried to get in the through the
16 windows, damage to some of the windows, all the
17 windows except one, trying to get in there. He
18 is there this whole time. We don't know what
19 his intent or frame of mind is. We have this
20 statement, which obviously could have put him in
21 the light most favorable to him in giving that
22 statement. I don't know. I have no way of
23 knowing. This is a matter for the jury to
24 determine.

25 I do know, according to the evidence,

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1 looking at the light most favorable to the
2 State, that the front door was busted in and it
3 was busted in during the nighttime according to
4 Mr. Goins' statement. That's the only evidence
5 we've got that it was nighttime, that it was in
6 the middle the night. It was broken into in the
7 middle of the night, another telltale sign,
8 another thing that you can look at by way of
9 evidence.

10 Why would somebody go over there in the
11 middle of the night to a mobile home if nobody
12 was home if they were going to retrieve a couple
13 of items that Mr. Canupp had in there. If that
14 was the real purpose of going over there, why
15 would they go over there in the middle of the
16 night when nobody was at home, in the darkness
17 of the night, and break into a mobile home.

18 He puts himself there. There is no
19 question the front door was busted open and
20 attempted entry was made through the windows.
21 There is no question about that. You can be
22 seated, Counsel, I am ruling. You know better.

23 Mr. Goins' own statement says that
24 Mr. Canupp went around to the back door, doesn't
25 know how he got in. He must have had a key. He

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1 got in there in the middle of the night with the
2 place locked up. He got in there without a key,
3 came in the back door and came to the front and
4 let him in. That's his testimony. The front
5 door is busted open. Even if you try to make a
6 case of him being confused about what was the
7 front door and the back door, which you tried to
8 do. All of the officers' testimony was there is
9 no question about where the front door is. You
10 drive right up to it. That's where the driveway
11 ends, right there at the front door. Everybody
12 knows that's the front door, not driving around
13 the back of the place and going around to the
14 back to come in.

15 Here is the key to the thing, it appears
16 to me. That they are both inside the mobile
17 home. There were a couple rod and reels stolen.
18 He came in back door and came and let him in the
19 front, that is to say Mr. Goins was inside the
20 mobile home. Now, there were a couple rod and
21 reels taken which Mr. Goins wound up with by his
22 own statement. He got part of the goods from
23 the burglary and the larceny. He got part of
24 the goods.

25 You got a medicine chest in there where

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1 the drugs were gone through in there and at
2 least some cough medicine. There is conflict
3 testimony when Mr. Smith testified. What he
4 told the officer was basically there was cough
5 medicine or something, maybe some whatever,
6 alcohol or other intoxicating thing by mixture,
7 I guess, testified to that. Then he testified
8 on the stand there was three other bottles of
9 medications that were taken out of there, but it
10 was all moved around in there. So that was
11 done there.

12 Then he went back to the rolltop desk and
13 it was rolled up, and there was all kind of
14 paperwork in there that was shuffled around,
15 moved around, that he was concerned about in
16 there. Then he went in the master bedroom and
17 went in the jewelry box and stole some jewelry
18 out of there, which the jewelry was worth a
19 little over \$2,000, and either way you look at
20 it, whatever statement you look at so far that
21 we have had, he took jewelry out of there.

22 Now, if Mr. Goins was inside the mobile
23 home when all this was going on, moving stuff
24 around, stealing jewelry out of there, and
25 jewelry being taken out of there, I think the

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1 jury can certainly find that Mr. Goins didn't
2 believe that Mr. Canupp was taking some woman's
3 jewelry out of there that belonged to him out of
4 somebody's jewelry case. I think the jury could
5 find that he couldn't reasonably believe that he
6 was going in to the lady that lived there, into
7 her jewelry box, and taking out her jewelry that
8 actually belonged to him, that anybody could
9 really believe that. That will be a question
10 for the jury to determine. It is not a matter
11 for the court.

12 I am looking at all of the evidence in the
13 light most favorable to the State. I see this
14 as much more than suspicion. I think there is a
15 lot of circumstantial evidence, but there is
16 admission from the defendant, Mr. Goins, that he
17 was inside that mobile home. There is also
18 evidence of breaking. There is also evidence of
19 going into certain things and going through that
20 while he, according to him, was inside the
21 mobile home after having been let in, according
22 to him, by Mr. Canupp. He wound up with some of
23 the items that were taken out of it.

24 In looking at all of that, a hand of one
25 is a hand of all regardless of who got the jury

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1 and regardless of who actually busted in the
2 door. They went there with a common purpose and
3 design, to commit a burglary and commit a grand
4 larceny, then certainly, the hand of one is the
5 hand of all. Whatever one did the other is
6 responsible for if it is a common shared
7 purpose.

8 Under all those theories, I find there is
9 substantial evidence from which the jury could
10 infer the State proved the elements of each one
11 of those offenses beyond a reasonable doubt.
12 Whether they will or not, I don't know. Like I
13 said, it is not the strongest case I have seen
14 but there is substantial evidence. We don't
15 just have his statement. Any inferences they
16 can draw from a statement can be also considered
17 as to his credibility and et cetera. So there
18 you go.

19 MR. WELLBORN: Thank you.

20 THE JUDGE: Anything else?

21 MR. WELLBORN: Yes, your Honor. I would
22 point out on the record there is no evidence
23 that Mr. Goins wound up with the fishing rods.
24 All it said was he was asked to hold the fishing
25 rods. There is no evidence that he wound in

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1 possession of the fishing rods. That has not
2 been testified to. The record devoided such.
3 Certainly, that is something the State can argue
4 that he probably did, but there is no evidence
5 in the record that supports it.

6 THE JUDGE: What does the statement say?

7 MR. WELLBORN: The statement said, quote,
8 "He then got in his car and took me home. He
9 told me to hold the fishing rods until tomorrow
10 and I never saw him again after that night." It
11 does not mention that he actually had the
12 fishing rods.

13 THE JUDGE: Well, if he was holding them
14 then that means you could infer from that he had
15 them in his possession.

16 MR. WELLBORN: It doesn't say he held
17 them. It simply said he was told to hold him.

18 THE JUDGE: The jury can infer from that
19 what they want to. There is no need to mention
20 that if he didn't hold them.

21 MR. WELLBORN: That is certainly something
22 the jury could infer, but once again, I simply
23 want the record to reflect what the statement
24 actually said. I think your Honor is under the
25 impression that Mr. Goins acknowledged that he

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1 was in possession of the fishing rods, which
2 actually, there is no evidence --

3 THE JUDGE: Didn't the officer testify,
4 detective testify, that he discussed that with
5 Mr. Goins on how to find them, and he talked
6 about somebody might have them or something like
7 that?

8 MR. WELLBORN: He did, but he also
9 acknowledged that was nowhere in his notes.

10 THE JUDGE: The jury can believe him or
11 not believe him. That's what he testified to.
12 Mr. Goins and him had a conversation about that.

13 MR. WELLBORN: The last motion I have
14 would be regarding the grand larceny. The only
15 evidence in the record is if Mr. Goins took and
16 carried away anything, it was pair of fishing
17 rods which totaled, according to Mr. Smith,
18 amounted to \$300.

19 THE JUDGE: Right, except for the hand of
20 one, the hand of all. That's the only way you
21 can get him in possession of more than \$2,000
22 worth of goods. Hand of one, hand of all, I
23 know you are familiar with that concept.

24 MR. WELLBORN: Yes, but there has to be
25 intent on my client --

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1 THE JUDGE: Sure. I will charge the jury
2 on that.

3 MR. WELLBORN: And there is no evidence to
4 permanently deprive any true owner of anything.

5 THE JUDGE: Well, again, that would have
6 to be inferred from the fact if the jury
7 believes they went into together, conspired to
8 go in there and steal these goods and share in
9 the goods. A hand of one is a hand of all. If
10 one steals \$10,000 and the other gets \$50 worth,
11 they went in there as a shared mutual common
12 design to do that hand of one is hand of all.
13 The one that got the \$50 is just as guilty as
14 the \$10,000. You know that.

15 MR. WELLBORN: I understand. I would
16 simply point out there has been no testimony as
17 to any common design or plan.

18 THE JUDGE: There doesn't have to be other
19 than the facts themselves from which the jury
20 can make an inference, and I have gone over that
21 and I don't think you want to hear it anymore,
22 and I am not going over that again.

23 I think there is substantial evidence on
24 each of these elements. Again, it is not the
25 strongest case I have ever seen, but it will be

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1 a question for the jury what they believe or do
2 not believe or what they infer from the
3 testimony and evidence in the record. I find it
4 is much more than suspicious evidence here. I
5 agree with you that suspicion would not escape a
6 directed verdict, to survive, let's put it that
7 way. I find there is more than suspicion here.
8 Anything else?

9 MR. WELLBORN: Not at this time.

10 THE JUDGE: Thank you. Why don't we take
11 five minutes or so and we will back and start
12 with the defense's case.

13 (Court in recess at 3:25 p.m.)

14 (Court resumes at 3:30 p.m.)

15 THE JUDGE: Yes, sir.

16 MR. SPRINGS: We are getting ready to
17 start the defense case, I assume.

18 THE JUDGE: Yes, sir.

19 MR. SPRINGS: I have a motion to make,
20 your Honor. A motion to preclude any
21 inadmissible character witness where Mr. Goins
22 is naive or easily led. I think this is
23 controlled by Rule 404(a) in our Rules of
24 Evidence, evidence of a person's character or
25 trade of character is not admissible for

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1 purposes of proving an action in conformance
2 therewith on a particular occasion except, and
3 there is an exception, for evidence of a
4 pertinent trait of character offered by an
5 accused.

6 To get the definition of a pertinent trade
7 of character, I have pulled the case State vs.
8 Mizell. The cite is 504 S.E.2d 338, South
9 Carolina Court of Appeals, 1998. I am handing a
10 copy to the defense counsel and to the Court.

11 Basically, Mizell says, "The prevailing
12 view is only pertinent traits of those involved
13 in the offense charged are provable." Just
14 above that, and I put ink asterisks on these for
15 both the Court and Mr. Wellborn. "Pertinent
16 evidence, if existence or nonexistence of that
17 trait would be involved in the commission or the
18 noncommission of a particular crime charged,"
19 and of course, being naive or easily led is not
20 a pertinent trait or character and it would be
21 inadmissible.

22 THE JUDGE: Counsel.

23 MR. WELLBORN: Your Honor, regarding the
24 character evidence, and of course, we saw the
25 proffer coming from the psychologist which would

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1 not be character evidence. But regarding the
2 character evidence, obviously, one of the
3 characters that would be integral to a crime of
4 conspiracy to commit burglary and burglary and
5 grand larceny would be honesty.

6 THE JUDGE: Would be what?

7 MR. WELLBORN: Honesty. So that evolves
8 by the accused showing he has a reputation for
9 being honest. That would be a character that is
10 in question by the State by accusing him of
11 committing a burglary, conspiracy to commit a
12 burglary in grand larceny because an honest
13 person doesn't do those things. So that in and
14 of itself would suggest that my client should be
15 allowed to offer his reputation in the community
16 for honesty.

17 There is some case law on that from South
18 Carolina. I would be glad to pull that. There
19 is a case in the last two years I believe from
20 down in Greenville or Greenwood involving fraud
21 or forgery where an attempt was made to offer
22 the accused reputation for honesty. That was
23 denied and a reversal was made on that issue.

24 THE JUDGE: I would be glad to look at
25 that. Generally, my thoughts were that evidence

SC VS. BRANDON GOINS

1 of a person's reputation for good character is
2 for a person who doesn't live -- at one time you
3 could only do that if the person didn't live in
4 the community in which he ws being tried. I
5 think that has been changed by the rules. To
6 say that was allowed when character is an issue.
7 But there is a standard question you have to ask
8 about that. That is, are you familiar with a
9 person's reputation of being truthful and
10 honesty in the community and the person says yes
11 or no. If they say yes, then you say, well,
12 good is it good or bad. Then they say good or
13 bad and that's it.

14 MR. WELLBORN: That's correct.

15 THE JUDGE: Am I correct about that?

16 MR. SPRINGS: I would agree. In fact, in
17 2014 Edition of the Rules of Court and in the
18 annotations 444 on the next page over, on Page
19 931, it says, "A criminal defendant may
20 introduce evidence of his good character."

21 THE JUDGE: But it is limited to that. It
22 doesn't mean you get to say that he has been a
23 good person all his life or something like that.
24 You can ask him his reputation for truth and
25 honesty, his character, his reputation of

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1 character for truth and honesty is in the
2 community, and that is a yes or no. If they say
3 yes, then you can ask them is it good or bad.
4 And they say good or bad. That's as far as you
5 get.

6 Once you have done that -- of course, if
7 there is anything with which he could be
8 impeached, the witness can be asked about that
9 seeing if they knew anything about that.

10 MR. WELLBORN: I have been provided
11 nothing that would go to my client's reputation
12 for truthfulness or honesty as far as
13 impeachment of a character witness.

14 THE JUDGE: It doesn't just have to be
15 that. It can be anything, crime or bad act.

16 MS. SHELTON: Your Honor, he has no
17 criminal convictions that would go to that.
18 Although, it is my understanding of the rule
19 that if he opens the door with the reputation
20 that we can call witnesses to do crimes or bad
21 acts if there are witnesses within the Chester
22 community or Lancaster community because Mr.
23 Goins has been arrested in both communities.
24 That would be anyone that would be familiar with
25 his reputation in those two communities. We

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1 would seek to call those in rebuttal, if they
2 exist, and I don't know that.

3 THE JUDGE: Are we clear?

4 MR. WELLBORN: We are clear.

5 THE JUDGE: What I don't want you to do is
6 go off on a tangent on what a good person
7 somebody is. You know, I think you can ask it
8 in the proper form.

9 MR. WELLBORN: If the State has such
10 evidence or anything that reflects that my
11 client has been arrested in Chester or Lancaster
12 other than a traffic ticket and one driving
13 under the influence, it would certainly be
14 helpful to be provided that by discovery.

15 MS. SHELTON: I have given him his
16 client's record. I don't know if law
17 enforcement has had other contacts with him I am
18 not aware of at this time. I didn't anticipate
19 the character evidence coming into play as of
20 right now. I have nothing else to provide him,
21 but it won't stop us from looking. Your Honor,
22 to be clear, based on Mr. Wellborn's opening
23 going into his client is gullible and naive,
24 honesty has nothing to do with being gullible or
25 naive.

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1 THE JUDGE: I agree with you. I just said
2 I would accept testimony to the character of
3 honesty and truthfulness.

4 MR. SPRINGS: It wouldn't be truthfulness
5 because Mizell says truthfulness is not a
6 pertinent character trait. That's exactly what
7 Mizell is when you get into this truthfulness.
8 I think honesty is a pertinent trait when you
9 are accused of stealing, and I think general
10 good character is pertinent trait because there
11 is an annotation in the rule book saying of good
12 character but that's not truthfulness.

13 THE JUDGE: Okay.

14 MR. WELLBORN: I beg the Court's
15 indulgence. I was trying to find this one case
16 I mentioned earlier.

17 THE JUDGE: We are talking about Rule 45
18 is what I was quoting you. I was giving it to
19 you from memory. What it says, 45(a) says, all
20 cases which evidence character trait, character
21 person is admissible. Proof may be made by
22 testimony of the reputation or testimony in the
23 form of an opinion. On cross-examination,
24 inquiry is allowable into relevant and specific
25 instances of conduct.

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1 MR. WELLBORN: Yes, sir. As I recall, any
2 query on cross-examination regarding that would
3 be an, "Are you aware of X, Y, and Z, and would
4 that change your opinion?"

5 THE JUDGE: Correct.

6 MR. WELLBORN: Of course, presumably,
7 before you get there, there would be some
8 proffer on X, Y, or Z factually exist.

9 MS. SHELTON: Your Honor, at this time, I
10 have no basis of cross-examining his witnesses
11 on pertinent character trait. I know very
12 little about Mr. Goins and law enforcement here
13 knows very little about Mr. Goins. The
14 codefendant, who I talked about this case, knows
15 very little about Mr. Goins. I have no specific
16 evidence of conduct to cross his witnesses on
17 but what I do reserve the right to do is call
18 witnesses in rebuttal or reply that would
19 testify contrary to his reputation to honesty
20 and good character.

21 THE JUDGE: I think you have a right to do
22 that. They don't know you are going to put it
23 up. If you are going to put it up, whatever it
24 is, they have a right to rebut that.

25 Anything else?

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1 MS. SHELTON: Nothing from the State, your
2 Honor.

3 THE JUDGE: Please bring the jury in.

4 (Whereupon, the jury came into open court
5 at 3:34 p.m.)

6 THE JUDGE: Is counsel ready to proceed?

7 MR. WELLBORN: Yes, sir.

8 THE JUDGE: Call your first witness.

9 MS. SHELTON: Your Honor, can we approach.

10 THE JUDGE: Yes.

11 (Whereupon, a bench conference was held
12 off the record in the presence of the jury, but
13 out of hearing of the jury.)

14 (Whereupon, Court Exhibit 2 was marked and
15 received into evidence.)

16 THE JUDGE: Mr. Foreman, I have your note
17 that you would like to see the statement. It is
18 in evidence and both sides agree it is
19 appropriate to publish it at this time. So you
20 may look at it.

21 Are you ready to proceed?

22 MR. WELLBORN: Thank you, your Honor. We
23 call Hannah Smith.

24 HANNAH SMITH, being duly sworn, testified
25 as follows:

HANNAH SMITH - DIRECT BY MR. WELLBORN

1

2

DIRECT EXAMINATION:

3

BY MR. WELLBORN:

4

Q Hannah, I am going to need you to speak up.

5

Can you first tell us the spelling of your
first name.

6

7

A H-A-N-N-A-H.

8

Q Thank you. Where do you live, Hannah?

9

A [REDACTED]

10

Q Is that next door to anyone else in the
courtroom?

11

12

A Yes, sir.

13

Q Who is that?

14

A My Uncle Darryl Smith.

15

Q Darryl Smith is your uncle? I need you to
answer yes or no because the court reporter has
to take the information down.

16

17

A Okay.

18

Q Is Darryl Smith your uncle?

19

A Yes.

20

Q How long have you lived at that address?

21

A A little over a year.

22

Q Were you living --

23

A Two years.

24

Q I'm sorry, I didn't mean to cut you off. About

25

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 two years?

2 A Yes, sir.

3 Q How long had you been living there as of
4 September 2012?

5 A Less than a year.

6 Q Had you lived there during the summer?

7 A Yes.

8 Q Had you lived there during the spring?

9 A Yes, I think. I am not sure what exact
10 date.

11 Q That's okay. Whatever you remember is what you
12 remember. In 2012 and September of 2012, did
13 you live at that address with anyone?

14 A Yes.

15 Q Who was that?

16 A Jordan Canupp.

17 Q Jordon Canupp no longer lives with you at that
18 address; is that correct?

19 A No.

20 Q On the evening of September 6, 2012, were you at
21 home?

22 A No.

23 Q Where were you?

24 A The hospital.

25 Q Who was at the hospital?

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 A My dad.

2 Q So your dad was at the hospital. So you were
3 with your father?

4 A Yes.

5 Q Sometime after September 6, 2012, did you see
6 any fishing rods or reels in your trailer?

7 A Yes.

8 Q When you saw those fishing rods and reels, and I
9 don't want you to say what anyone else told you,
10 but after you saw those fishing rods and reels
11 in your trailer, did you ask anyone about how
12 they got there without saying what they said?

13 A Yes.

14 Q Who did you ask?

15 A Jordan Canupp.

16 Q Did anyone else live in that trailer beside you
17 and Jordan Canupp?

18 A No.

19 Q After you asked Jordan Canupp about how these
20 fishing rods -- again, without saying what he
21 said, did you ask him how they got there?

22 A Yes.

23 Q Now, without saying what he said, after you
24 asked him that question, what happened to the
25 fishing rods and reels?

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 A They were gone.

2 Q They were gone. Did you ever see them again?

3 A No.

4 Q Did you talk later to Detective Branham in this
5 case?

6 A I am not sure.

7 Q Did you ever talk to Detective Branham about
8 this case?

9 A I talked to two officers that came to my
10 house after the incident.

11 Q All right. Did you ever describe to either of
12 those officers seeing those fishing rods and
13 reels?

14 A No.

15 Q You don't recall doing that?

16 A I don't recall.

17 MR. SPRINGS: Objection. He is leading.

18 THE JUDGE: Please avoid leading,

19 Counselor.

20 BY MR. WELLBORN

21 Q Do you recall seeing those rods and reels
22 though?

23 A Yes.

24 THE JUDGE: Asked and answered. Move on,
25 please.

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 MR. WELLBORN: Please answer any questions
2 the prosecutors might have.

3

4 DIRECT EXAMINATION:

5 BY MS. SHELTON:

6 Q Ms. Smith, you are no longer dating Jordan
7 Canupp; is that correct?

8 A That's correct.

9 Q You knew Brandon Goins before this burglary,
10 correct?

11 A No.

12 Q You didn't know him?

13 A No.

14 Q He never had been at your trailer?

15 A He had been there once.

16 Q So you did know him beforehand?

17 A We were introduced.

18 Q But you knew him?

19 A Yes.

20 Q He wasn't a stranger before the burglary? He
21 had been at your trailer before?

22 A Yes.

23 Q You knew him through mutual friends?

24 A Shelby Estes (phonetic spelling).

25 Q How do you know Shelby Estes?

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 A We went to school together.

2 Q She brought Brandon Goins to your trailer when
3 you were there?

4 A I am not sure how he got there. I think he
5 got dropped off.

6 Q You were asked on direct and you mentioned that
7 you talked with detectives in June of 2013?

8 A I talked to two police officers. I don't
9 know their names.

10 Q Were you ever asked to come to the solicitor's
11 office?

12 A Yes.

13 Q Did you keep those appointments?

14 A No.

15 Q The reels that you saw, you saw them sometime in
16 December?

17 A I am not sure. I think so.

18 Q Did you tell your uncle?

19 A No. We were not on speaking terms.

20 Q Did you tell your dad?

21 A No.

22 MS. SHELTON: Thank you.

23 THE JUDGE: Wait just a minute. Do you
24 have any other questions?

25 MR. WELLBORN: I do not.

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 THE JUDGE: Thank you, ma'am. You may
2 stand down.

3 (Witness excused.)

4 MR. WELLBORN: The next witness I have
5 would be Mr. Marshall Smith.

6 MARSHALL SMITH, being duly sworn,
7 testified as follows:

8 MS. SHELTON: Your Honor, may we approach
9 please.

10 (Whereupon, a bench conference was held
11 off the record in the presence of the jury, but
12 out of hearing of the jury.)

13 MS. SHELTON: Your Honor, just to be clear
14 we will need name, date of birth, social
15 security number.

16 THE JUDGE: Do you have it?

17 MS. SHELTON: I don't have any information
18 about any of his witnesses.

19 THE JUDGE: Let's take a break.

20 Mr. Foreman, ladies and gentlemen, of jury, we
21 will take a break at this time. Please retire
22 to the jury room.

23 (Whereupon, the jury exited the courtroom
24 at 3:48 p.m.)

25 THE JUDGE: Why don't we collect this

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 information and go ahead and check them all so
2 we don't run into this again.

3 Mr. Smith, what I am going to do is allow
4 you to stand down during the break. Since you
5 have been called, you can't discuss the case
6 with anybody, not the attorney or anyone else.
7 It is the same as if you were sitting on the
8 stand. You can't talk about the case.

9 (Witness exiting witness stand.)

10 THE JUDGE: We will take a few minutes.

11 (Court in recess at 3:49 p.m.)

12 (Court resumes 4:15 p.m.)

13 THE JUDGE: Are we ready to go?

14 MS. SHELTON: Yes, your Honor. So
15 Mr. Wellborn is aware, I don't have the actual
16 records at hand for his witness, Marshall Smith.
17 There is a Marshall Smith who had a criminal
18 history but we do not believe it is his witness.

19 For Richard Goins, there is several
20 arrests. I did not see any convictions. I am
21 waiting for them to bring it in to me. We are
22 still waiting for them to check on Ms. Stivers
23 (phonetic spelling). I don't believe even of
24 the arrests it showed on the criminal check, I
25 don't think there is any impeachable offenses.

HANNAH SMITH - DIRECT BY MR. WELLBORN

1 THE JUDGE: Okay. Are you ready to
2 proceed?

3 MS. SHELTON: Yes.

4 THE JUDGE: Mr. Smith, come back on the
5 stand.

6 MR. WELLBORN: Actually, I am going to
7 call Mr. Goins first. I made that decision to
8 call him.

9 THE JUDGE: He has already been called.

10 MR. WELLBORN: All right. That's fine.

11 THE JUDGE: What is the reason? The jury
12 saw him up on the stand. Then we got some issue
13 and now.

14 MR. WELLBORN: Well, my preference would
15 be to call the witness I would like to call
16 first.

17 THE JUDGE: You did call one first.

18 MR. WELLBORN: I understand.

19 THE JUDGE: Do it your way, but the jury
20 saw him on the stand when they went out.

21 MR. WELLBORN: Understood.

22 THE JUDGE: All right. Bring the jury
23 back in.

24 (Whereupon, the jury came into open court
25 at 4:16 p.m.)

RICHARD GOINS - DIRECT BY MR. WELLBORN

1 THE JUDGE: Counsel, proceed.

2 MR. WELLBORN: Thank you. I call Richard
3 Goins.

4 RICHARD GOINS, being duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION:

7 BY MR. WELLBORN:

8 Q Can you tell us your full name and spell your
9 last name for the record, please.

10 A Richard G. Goins -- G-O-I-N-S.

11 Q You go by Rick?

12 A Yes.

13 Q Rick, who are you married to?

14 A Sherry Goins.

15 Q Is she in the courtroom?

16 A Yes, she is.

17 Q Is Brandon your son?

18 A Yes, he is.

19 Q Where do you live?

20 A [REDACTED] Rock Hill.

21 Q It is in Rock Hill?

22 A Yes.

23 Q How long have you lived there?

24 A Approximately, six years.

25 Q Before then, where did you live?

RICHARD GOINS - DIRECT BY MR. WELLBORN

1 A In Chester.

2 Q How long did you live in Chester before you
3 moved to Rock Hill?

4 A I am thinking about ten years.

5 Q Does Brandon live with you?

6 A Yes, he does.

7 Q How long has he lived with you?

8 A All his life.

9 Q He never had his own place?

10 A One time, temporarily.

11 Q When was that? Let's try this: Was it in 2012?

12 A I don't believe so.

13 Q What does Brandon do for a living?

14 A He works for me.

15 Q Was he working for you in 2012?

16 A Yes, he was.

17 Q What do you guys do for a living?

18 A We do welding, fabrication, millwright work.

19 Q Do you have your own company?

20 A Yes, I do.

21 Q When did you start with your own company?

22 A About six years ago.

23 Q So how long has Brandon been working for you?

24 A A couple of years.

25 Q So since Brandon has been working for you, has

RICHARD GOINS - DIRECT BY MR. WELLBORN

1 it always been your company he worked for?

2 A Yes.

3 Q How many people work in your company?

4 A We keep around eight guys.

5 Q Eight guys?

6 A Yes.

7 Q So Brandon was -- would Brandon be one of those
8 eight or would Brandon be on top of those eight?

9 A He would be one of those eight.

10 Q All right. In June of 2013 when Brandon was
11 charged with these offenses, were you home?

12 A No, we went out of town on vacation.

13 Q So you went out of town. You said we, who is
14 we?

15 A Me and my wife.

16 Q Was Brandon working for you at the time?

17 A Yes, he was. Actually, he was taking over
18 for me while I was on vacation.

19 Q So he was going to take over for you while you
20 were on vacation?

21 A Yes, sir.

22 Q In terms of running the company?

23 A Yes, sir.

24 Q Was this his first opportunity to do that?

25 A Yes, it was.

RICHARD GOINS - DIRECT BY MR. WELLBORN

1 Q In September of 2012, nine months before, was
2 Brandon working for you?

3 A Yes, I believe so. Yes.

4 Q When he worked for you, did you pay him?

5 A Yes.

6 Q Describe your work week, what was it like, 9 to
7 5, or how does that go?

8 A 7 to 5.

9 Q So you would start work at 7?

10 A Yes.

11 Q And you would end at 5?

12 A 5 to 5:30.

13 Q Okay. So after that, would you go home?

14 A Yes, sir.

15 Q Did you and Brandon ride together?

16 A Most of the time.

17 Q Were there times when Brandon rode by himself or
18 with someone else?

19 A Yes.

20 Q But most of the time you rode together?

21 A Most of the time.

22 Q Okay. What did Brandon do for you in his daily
23 work for your company?

24 A He did mechanical work, millwright work. He
25 was learning how to weld.

RICHARD GOINS - CROSS BY MS. SHELTON

1 Q Who was teaching him how to weld?

2 A Me.

3 Q How long have you been doing that kind of work?

4 A Probably 30 years.

5 Q Is it a pretty good business?

6 A Oh, yes.

7 Q Does it pay well?

8 A Oh, yes.

9 MR. WELLBORN: Please answer any questions
10 that the prosecutor may have.

11 CROSS-EXAMINATION:

12 BY MS. SHELTON:

13 Q You said the defendant was your son?

14 A Yes, ma'am.

15 Q He was working for you back in 2012-2013?

16 A Yes.

17 Q And you own your own business?

18 A Yes, ma'am.

19 Q What is the name of the business?

20 A Goins Industrial Welding Service.

21 Q Do you have an office or location or do you work
22 out of your home?

23 A My office is in the home.

24 Q You don't actually have a physical building
25 business?

RICHARD GOINS - CROSS BY MS. SHELTON

1 A I have a shop.

2 Q Your home office or your shop at your home?

3 A No. My shop is in Great Falls.

4 Q Your shop is in Great Falls?

5 A But all of the office work gets done at
6 home.

7 Q With welding, I am assuming you go out to jobs.
8 Do you do all of the work at your shop or do you
9 go out to jobs?

10 A Out to jobs mostly.

11 Q You testified that you and Brandon always rode
12 together?

13 A Most of the time.

14 Q Why just most of the time?

15 A Because sometimes I have to go to different
16 places than he is going to.

17 Q So you don't know if he was with you or not on
18 September 6th, 2012?

19 A No, I don't.

20 Q Do you know what day of the week that was?

21 A I don't know what day it was.

22 Q You don't really know where he was that day?

23 A I would assume he would be working with me.

24 Q You just assumed?

25 A Yes.

RICHARD GOINS - CROSS BY MS. SHELTON

1 Q Since it is a business, do you pay payroll tax?

2 Do you do a payroll service?

3 A Yes, I do.

4 Q Does payroll service issue checks?

5 A My wife does the checks.

6 Q Do you pay Mr. Goins by check?

7 A Yes, I do.

8 Q You have to keep a record of that for so many

9 years, right, to run a business?

10 A Correct.

11 Q You think he was living with you in 2012?

12 A Yes, ma'am.

13 Q And in 2013?

14 A Yes, ma'am.

15 Q You don't know where he was the night of

16 September 6th or into the morning of September

17 7th?

18 A No, I don't.

19 Q Would it surprise you to know that September 6th

20 was a Thursday?

21 A No, it wouldn't.

22 MS. SHELTON: I have no further questions,

23 your Honor.

24 MR. WELLBORN: That's all of the questions

25 I have.

RICHARD GOINS - CROSS BY MS. SHELTON

1 THE JUDGE: Thank you, sir. You may stand
2 down.

3 (Witness excused.)

4 MR. WELLBORN: The next witness would be
5 Dr. Rubin Ridgeway.

6 THE JUDGE: Just hold up, sir.
7 Mr. Foreman, ladies and gentlemen of the jury
8 panel, there are some matters that the Court
9 needs to take up with counsel out of your
10 presence. That is going to take a little while
11 to do this afternoon. I have kept you sitting
12 in there a little bit longer than you probably
13 would have liked to. What we are going to do
14 instead of having you sit back there any longer,
15 I will send you home for the day. I am going to
16 ask you to be back in the jury room ready to go
17 in the morning at 9:30. I am going to excuse
18 you until 9:30 in the morning.

19 Overnight, please do not discuss the case
20 among yourselves or with anyone else. Have a
21 good night and we will see you in the morning at
22 9:30.

23 (Whereupon, the jury exited the courtroom
24 at 4:26 p.m.)

25 THE JUDGE: We will take a proffer now of

RUBIN RIDGEWAY - DIRECT BY MR. WELLBORN

1 the witness, Counselor.

2 MR. WELLBORN: Thank you, your Honor.

3 RUBIN RIDGEWAY, being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION:

6 BY MR. WELLBORN:

7 Q Dr. Ridgeway, could you tell us your full name
8 and spell your name for the record, please.

9 A Yes. My full name is Reuben Benjamin
10 Ridgeway -- R-E-U-B-E-N -- B-E-N-J-A-M-I-N,
11 R-I-D-G-E-W-A-Y.

12 Q Sir, where do you -- let's start with: Do you
13 have a practice anywhere?

14 A Yes, I have a part-time private practice in
15 Orangeburg, South Carolina.

16 Q What is that practice in?

17 A Clinical psychology. I have a clinical
18 psychologist license.

19 Q Are you licensed in South Carolina?

20 A Yes, sir.

21 Q Your license is active?

22 A It is active.

23 Q Are you also licensed in any other areas in
24 South Carolina?

25 A I was formally licensed as a licensed

RUBIN RIDGEWAY - DIRECT BY MR. WELLBORN

1 professional counselor but I allowed that to
2 expire because it was redundant to my current
3 licensure. I also have a certification as a
4 certified addiction counselor which I let expire
5 due to the redundancy of my current license.

6 Q I would like to talk to you about your training
7 in psychology. Can you tell us where you went
8 to school and what degrees you obtained?

9 A Yes, sir. I graduated from Presbyterian
10 College with a bachelor of science in psychology
11 in 1985. In 1994, I graduated from Francis
12 Marion University with a masters of science in
13 applied psychology. I graduated from Capella
14 University out of Minnesota in 2005 with a Ph.D
15 in psychology with specialization in clinical
16 psychology.

17 Q Did you serve in any internships, practicum or
18 anything else while you were in school or later?

19 A Yes, sir. I did a master's degree program
20 required internship and some practicum work as
21 did my Ph.D program.

22 Q Your masters of science internship, where did
23 that occur?

24 A That was at Lieber Correctional Institution.

25 Q How many hours was that, approximately, or how

RUBIN RIDGEWAY - DIRECT BY MR. WELLBORN

1 long?

2 A The hours I have listed on my resume reflect
3 it was a six-month internship for a masters.

4 Q Would it help you if I gave you that?

5 A It would.

6 Q How many hours did you do in the internship?

7 A For a master's degree it was 1,100 hours.

8 Q What about for any further degrees. Did you do
9 any internships?

10 A Practicum for 481 hours for the Ph.D and an
11 internship for 1,516 hours.

12 Q Since getting your Ph.D, have you participated
13 in any books, articles, scholar publications
14 regarding clinical psychology and forensic
15 psychology?

16 A It is required to renew your license to have
17 ongoing study, going to a conference or doing
18 reading and answering questionnaires for
19 companies that issue whatever credit you are
20 trying to obtain.

21 Q Since your Ph.D and since becoming licensed as a
22 clinical psychologist in South Carolina, how
23 many hours of advanced training have you had as
24 far as seminars, conferences and the like?

25 A I don't have that listed on my resume. I

RUBIN RIDGEWAY - DIRECT BY MR. WELLBORN

1 don't know exact hours. I met the requirements
2 for relicensure and for initial licensure as
3 well. I do not recall exactly how many hours
4 that is.

5 Q What is your practice currently limited to?

6 A My practice is limited to individual therapy
7 and testing evaluation, disability evaluations,
8 evaluations for individuals who are going for
9 bariatric surgery, they need a psychological
10 exam. Also, attention deficit disorder
11 evaluations.

12 I also work for the Department of Mental
13 Health in South Carolina at Bryan Psychiatric
14 Hospital. I came from my work there to here
15 today. My job involves psychological
16 assessments, formal psychological evaluations
17 including testing, analysis of that testing,
18 development of treatment plans, and recently I
19 was promoted to the position of chief
20 psychologist for acute services, which involves
21 also supervision of other psychologists and Ph.D
22 level and also master's degree level, clinicians
23 in the psychology department.

24 Q This is through the Department of Mental Health?

25 A Correct.

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1 Q Have you ever testified in a court in South
2 Carolina as an expert witness?

3 A Yes.

4 Q Which judges have qualified you?

5 A The time I testified as an expert witness or
6 was qualified as one was in 1993 in the Court of
7 Honorable Ralph King Anderson.

8 Q What were you qualified as an expert in, what
9 area?

10 A For assessment in that situation of
11 diagnosis of post traumatic stress disorder. It
12 was a case involving an uncle who was found --
13 pled no contendere to a molestation charge of I
14 think a 12 year old.

15 Q Have you been qualified as an expert in any
16 other courts other than the Honorable Ralph King
17 Anderson's court?

18 A I have testified in family courts over DSS
19 matters. I was summoned to a criminal court to
20 produce materials, my clinical materials, and
21 the judge ruled it should not be admitted to
22 court because of protection of the defendant.
23 Her history was -- he deemed it not relevant to
24 the case, which was suitable to me as her
25 clinician because I was glad that he protected

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1 her.

2 Q Have you ever on any occasion not been qualified
3 or been ruled by a court to not be qualified as
4 an expert in the area of clinical psychology?

5 A No, sir.

6 MR. WELLBORN: Please answer any questions
7 that either of the solicitor's or Judge Alford
8 may have for you.

9 THE WITNESS: Yes, sir.

10 THE JUDGE: Voir dire?

11 MR. SPRINGS: Dr. Ridgeway's credentials
12 seem quite adequate if not impressive, and we
13 would stipulate he is an expert in clinical
14 psychology.

15 THE JUDGE: May I ask you this question:
16 You have only been qualified one time in any
17 state court in South Carolina for that which was
18 in 1993 for assessment of post traumatic stress
19 disorder. You testified concerning that; is
20 that correct?

21 THE WITNESS: Yes, sir. I was the
22 treating clinician.

23 THE JUDGE: That is the only time you have
24 been qualified?

25 THE WITNESS: Yes, sir.

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1 THE JUDGE: And you have been practicing
2 how many years?

3 THE WITNESS: I was a licensed
4 professional counselor for -- in the '90s and up
5 until this past year I just renewed and I have
6 been licensed in clinical psychologist since
7 2008.

8 THE JUDGE: This testing you do at Bryan
9 Hospital, the short-term acute care facility has
10 an average stay of about 20 days. How much
11 testing assessments do you do there?

12 THE WITNESS: Your Honor, the length of
13 the stay can vary from a few days to a couple of
14 weeks, and we have some people that have been
15 there for years.

16 THE JUDGE: In Bryan Hospital?

17 THE WITNESS: Yes, sir. It was intended
18 to be acute. However, the needs of the patient,
19 sometimes placement issues will keep a person
20 there. Now, the individuals who stay there for
21 years are individuals who Bryan can tend to but
22 there are not any facilities outside of Bryan to
23 accommodate these individuals.

24 THE JUDGE: These patients formally went
25 through the old state hospital? Since they

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1 closed it, they keep them at Bryan?

2 THE WITNESS: There is an individual there
3 over 30 years.

4 THE JUDGE: In other words, when they
5 closed, the former state hospital, when they
6 closed that down, that is where the long-term
7 patient stayed.

8 THE WITNESS: Correct.

9 THE JUDGE: They stayed there or were
10 farmed out to a nursing home somewhere. Bryan
11 was acute care. You are saying now they
12 actually keep them longer than the average
13 stay.

14 THE WITNESS: As I said, there are
15 individuals who are there briefly acute and
16 people who are chronic. Over the acute count,
17 as I said, I was familiar with that.

18 THE JUDGE: My question was: If they were
19 there 20 days, how much assessment and testing
20 do you do?

21 THE WITNESS: When a person comes in, my
22 job is to interview them, clinical interview, by
23 biopsychosocial interview, get information with
24 the psychiatrist, discuss the case, and
25 determine what treatment goals to implement and

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1 the diagnosis or diagnoses, usually multiple
2 diagnoses.

3 There is testing involved when we don't
4 have enough information and the documentation
5 received at their admission. So I have done
6 testing at Bryan. I have done testing as a
7 private practice clinician. My internships
8 involved testing and diagnostics.

9 THE JUDGE: And MMPI.

10 THE WITNESS: MMPI testing, achievement
11 testing, yes, sir.

12 THE JUDGE: Nothing special in the regular
13 course of business of psychology?

14 THE WITNESS: Nothing exotic. I would
15 prefer to stay within the scope of practice that
16 is tried in truth in the profession.

17 THE JUDGE: I understand. I have been
18 there. In thirteen and a half years of a
19 probate job, I have done hundreds if not 1,500
20 hearings at Bryan Hospital and the other
21 hospitals. I know what psychologists do down
22 there and psychiatrists there. A lot are
23 psychiatrists and not medical doctors treating
24 the patients. I understand all that.

25 THE WITNESS: Yes, sir.

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1 THE JUDGE: I find him qualified to
2 testify as a clinical psychologist. What he
3 will be able to testify to depends on what you
4 will proffer.

5 MR. WELLBORN: Thank you, your Honor.

6 BY MR. WELLBORN:

7 Q Dr. Ridgeway, I would like to turn your
8 attention to interactions with Brandon Goins.

9 A Yes, sir.

10 Q At my request, did you perform a series of tests
11 on Mr. Goins?

12 A I did.

13 Q Can you tell his honor which tests you
14 performed?

15 A Yes, I can.

16 Q If we can, let's start with first one and just
17 move down.

18 What was the first test you gave him?

19 A The first test was the Wide Range
20 Achievement Test, Edition 4. The acronym is Rat
21 4 -- R-A-T 4.

22 Q What is the RAT 4?

23 A It is a screening tool for academic
24 achievement, ability to pronounce words, ability
25 to read sentences and discern from a portion of

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1 the sentence what should go in a blank, reading,
2 comprehension, spelling test, math test,
3 computation.

4 Q Would that test also get at understanding
5 context of words and what a word potentially
6 means and how it falls into context with another
7 word?

8 A The sentence comprehension portion of that
9 test is used for that purpose.

10 Q Okay. Who relies or who uses that test or who
11 relies on that test, typically, in your
12 professional experience?

13 A Licensed clinical psychologist, school
14 psychologist would also utilize it. This is a
15 screening tool. There are more complex
16 achievement test tools that you may see in more
17 formal education focused evaluation.

18 Q How long has this test been in existence?

19 A Let's see. It has been in existence since
20 1941 with several revisions and the most recent
21 2006 which is the fourth.

22 Q Okay. So clinical psychologists have been using
23 this test since 1941?

24 A It was developed and has been available
25 since that time.

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1 Q Okay. Is this a test that is commonly used by
2 clinical psychologists, psychiatrists and other
3 mental health professionals for purposes of
4 evaluating?

5 A For those who have been properly trained to
6 use it, all of those categories, yes.

7 THE JUDGE: Actually, psychiatrists don't
8 use this very regularly?

9 THE WITNESS: There are some with
10 training.

11 THE JUDGE: Most of them farm it out?

12 THE WITNESS: Yes. Thank you.

13 BY MR. WELLBORN:

14 Q You said you gave this test to Mr. Goins?

15 A I did.

16 Q When you gave the test to Mr. Goins, were you
17 able to determine anything from that test
18 regarding his comprehension, his ability to
19 construct sentences or understand the context of
20 sentences?

21 A The context. He didn't have to construct a
22 sentence. He had to read a sentence where there
23 was a word missing and he had to determine what
24 word should go into that blank. The nature of
25 the testing is that it starts out with very

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1 simple sentences and simple concepts and becomes
2 more and more difficult as the person taking the
3 test continues. So I was able to find
4 equivalence score for him of about a 6.8 grade
5 level of reading comprehension.

6 Q Mr. Goins is 20; is that correct?

7 A He is 19.

8 Q In terms of the norm or how that fits into the
9 population base, what did that tell you?

10 A As far as the norm, he falls in the low
11 average range in that particular element of
12 reading comprehension.

13 Q What is the next test you gave Mr. Goins?

14 A I also gave him the Wechsler Adult
15 Intelligent Scale, Fourth Edition.

16 Q What is that test?

17 A It is what people know as an intelligence
18 test, test of cognitive skills.

19 Q How long has that particular test been in
20 existence?

21 A The test has been around since it was first
22 published in 1955. The current revision is
23 2008.

24 Q Is this a test commonly used by clinical
25 psychologists and other mental health

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1 professionals?

2 A It is very common when a person wants to
3 find out about a persons cognitive skills.

4 Q Okay. When you say cognitive skills, explain
5 what you mean by cognitive skills?

6 A Thinking ability, problem solving, verbal,
7 expressing yourself verbally, or doing things
8 with your hands and eye coordination, or
9 figuring out problems silently, coming up with
10 relationships and saying, yes, that the answer
11 or pointing to a particular answer.

12 Q Would the cognitive skills area also include
13 such skills as assessing whether a certain
14 decision was a good decision or a bad decision?

15 Let's try this? Would cognitive skills
16 include the ability to perhaps observe or
17 understand the situation as to whether the
18 situation was, in fact, threatening or
19 nonthreatening?

20 A The test itself --

21 THE JUDGE: I don't know where you are
22 going with that. I am going to cut you off from
23 that. That's nonsense. Nothing like that is
24 going to be admissible into evidence and you
25 know it as well as I do.

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1 MR. WELLBORN: Let me try this.

2 BY MR. WELLBORN:

3 Q Would a cognitive skill include whether or not
4 someone is -- or would it impact whether someone
5 is susceptible to being duped, conned, or having
6 their trust abused?

7 A The test comes up with values as to a
8 person's complexity of thinking ability, whether
9 the person is simple in their thinking,
10 concrete, or whether they have the facility to
11 be abstract.

12 Q Okay. So let's talk about that. The ability to
13 be abstract versus concrete. Is concrete what
14 we would refer to as literal, taking words
15 exactly as they are given?

16 A That's within that realm, yes.

17 Q So if somebody says hypothetically, "This item
18 is mine." A person who takes something
19 literally might take that just exactly as it has
20 been stated, correct?

21 A That statement could be taken literally by
22 someone who had the capacity for abstraction or
23 not.

24 THE JUDGE: Let me tell you, I don't know
25 where you are going with this. I don't want to

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1 spend a whole afternoon wasting our time. He is
2 not going to be able to say this guy says on his
3 statement, the defendant, somebody tells him
4 this is mine and he understands what that means.
5 He is not going to be able to testify to that.
6 Those are the factual issues. The jury is going
7 to have to determine in this case what it means.
8 But he can't say he understood when somebody
9 said, "This is mine," that it meant this is
10 mine, it meant something else. He can't say
11 that. I don't know where you are going with
12 this. I want to let you make a proffer and I
13 will, but there is no sense making a proffer if
14 there is nothing that is going to be of
15 admissible value. There is no sense of us
16 staying here all evening if we are getting into
17 things he is not going to be able to testify to.

18 BY MR. WELLBORN:

19 Q What did the results of Mr. Goins' IQ test show?

20 A His overall intellect was at the delineating
21 point between borderline intelligence and below
22 average overall. His verbal comprehension
23 skills were at upper end borderline, close to
24 low average. His nonverbal abstract skills were
25 in the low average range.

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1 His working memory and processing speeds
2 were both in low average. Working memory is the
3 amount of information you can hold into
4 awareness and work with it. He is low average
5 in that amount of information he can work with
6 efficiently. The processing speed is the speed
7 in which the person can process the information
8 as they hold it in their conscious thought of
9 wanting to manipulate it. He tested as a person
10 who has limited working memory and limited
11 processing speed and analogy often used as a
12 computer. The computer has a random access
13 memory which is what you are typing in before
14 you say it.

15 The computer with not enough random access
16 memory for a particular program you loaded up
17 will have problems working as you want it to.
18 The same is true if you have a processor that is
19 not robust enough to handle a complex program,
20 computer program. It will be very slow. We all
21 have had experience of downloading things that
22 take a long time.

23 He is low average on working memory and
24 processing speed. Again, the full scale IQ was
25 right at the delineating point between

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1 borderline and below average, which is 80.

2 THE JUDGE: Okay. That pretty well does
3 it.

4 BY MR. WELLBORN:

5 Q Did you give him any other tests?

6 A I gave him the Minnesota Multiphasic
7 Personality 2.

8 Q Tell us what that does?

9 A It is a test that is designed to assess a
10 number of major personality patterns and
11 emotional disorders.

12 Q All right. You say personality patterns, how
13 did it do that?

14 A It was developed in the 1930s originally at
15 the University of Minnesota. What the
16 developers did is they took over 1,000 items.
17 These items are statements. They had
18 individuals answer true or false to them. What
19 they did is they compared people with known
20 mental health problems, patients, to people who
21 were nonpatients in the general population.
22 They found those questions that were liable and
23 delineated, who was a patient and who wasn't, as
24 far as what they were looking for, say
25 depression. They found from their factor

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1 analysis, from their analysis of the questions,
2 which ones would be telling of whether a person
3 had depression symptoms and how depressed. The
4 more items that loaded onto that, the more
5 intense the depression. That's just an example.

6 So out of these 1,000 items, they reduced
7 it down to 566. They used that as preliminary
8 analysis and they went back to the groups and
9 cross validated and came up with even fewer
10 questions on the actual test for the MMPI.

11 In 1989 the MMPI-2 came out, the revision.
12 It left out some questions, added others that
13 were more in line with the population that we
14 have now compared to the population we had back
15 in 1940s and 1950s. There are now 567 items on
16 that test. It has multiple scales for whether
17 the person you test is valid way or not, whether
18 the person is trying to fake, exaggerate
19 symptoms, either faking bad or faking good.

20 It also has scales to determine whether a
21 person is just obviously lying, and also how
22 defensive a person approaches a test.

23 Q Did you, after giving that test, were you able
24 to obtain any results on Brandon Goins with
25 respect to the MMIP?

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1 A I did obtain those results. He produced a
2 valid profile. All validity scales were within
3 a range that suggested he approached it in a way
4 that was focused with no indications of any
5 attempts to exaggerate or blatantly lie or be
6 defensive to a point where he would not be
7 disclosing.

8 Q Were you able to determine one way or another
9 any traits in him or his personality regarding
10 assertiveness or lack of assertiveness?

11 A Yes.

12 Q Tell us about that?

13 A The different scales measure different
14 things. There were several scales that -- you
15 have a common scale say one for --

16 THE JUDGE: Counsel, I am going to
17 interrupt you a minute. I regret doing this in
18 a sense. All that sounds interesting, and I
19 have heard it a thousand times before. My
20 question to you is how in the world does it
21 relate to a criminal trial. We have plenty of
22 people in prison with 70 IQ, 75 IQ and some type
23 of learning issues. How does that affect this
24 trial is what I want to know?

25 MR. WELLBORN: That's what I was getting

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1 ready to lay the foundation for.

2 THE JUDGE: Because somebody has character
3 traits, I mean, virtually everybody that comes
4 into the courtroom through you, me, and
5 everybody else in here have some personality
6 traits that come out on MMPI-2 and that sort of
7 thing. How does that relate to this case and
8 what is going to be admissible in this case? I
9 guess you could put it in on every case if it is
10 relevant. How is it relevant to this case?

11 MR. WELLBORN: It is relevant to this
12 case because there will be testimony that Mr.
13 Goins did not have any idea what was going to
14 happen regarding this burglary or break in.

15 THE JUDGE: Who is going to testify to
16 that?

17 MR. WELLBORN: There will be testimony to
18 that.

19 THE JUDGE: It has to come from the
20 defendant himself. That is going to be --

21 MR. WELLBORN: But if a foundation is
22 laid for that, and a foundation will be laid or
23 for that and for that proposition, that Mr.
24 Goins did not know what the heck was going on
25 when he walked in there.

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1 THE JUDGE: There is no way anybody knows
2 that.

3 MR. WELLBORN: Yes, there is.

4 THE JUDGE: He has an 80 IQ, which is low
5 average. He is functional. He can do those
6 things. He certainly understands the statement
7 he wrote based on the low average intelligence.
8 I don't know where you are going with this.

9 MR. WELLBORN: Your Honor, if I may, I
10 would be glad to lay the foundation for it or
11 express what the foundation will be. The issue
12 isn't whether Mr. Ridgeway testifies now, it is
13 whether or not if the proper foundation is laid,
14 can Mr. Ridgeway testify and corroborate
15 evidence that will already be in the record.

16 THE JUDGE: Let's say he is easily led,
17 I'm talking Mr. Goins. If he can be easily led
18 or he might be gullible to some extent and that
19 sort of thing, how is that relevant of his guilt
20 or innocence if he was present for the burglary
21 that he participated in.

22 MR. WELLBORN: It is absolutely relevant
23 because Mr. Goins -- the testimony is going to
24 be that Mr. Goins didn't have a clue that there
25 was going to be a burglary. Mr. Goins didn't

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1 know a burglary had taken place unless he was
2 arrested nine months later. Mr. Goins went to
3 somebody's house thinking the person who was
4 going there had every right to go in. Mr. Goins
5 thought that the items that were being taken
6 from the house by this other person --

7 THE JUDGE: He can testify to whatever he
8 thought and whatever he is doing, but it is not
9 going to be corroborated by somebody that did
10 some testing that says that he is not the
11 sharpest person, and as far as the testing is
12 concerned fall into low average. It doesn't
13 mean he is not capable of understanding a
14 burglary was taking place.

15 MR. WELLBORN: I understand, Judge, but
16 what it does mean is that if Mr. Goins has
17 personality trait and has been through a battery
18 of psychological tests that are all recognized
19 tests --

20 THE JUDGE: I don't disagree with it.
21 They run it in schools all the time to tell what
22 a person is capable and what they need to
23 address, what the issues are, and the learning
24 problems, and all of that. That's fine. What
25 place does that have in the courtroom in this

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1 particular case?

2 MR. WELLBORN: That's what I am trying to
3 answer, Judge. It has this place: If the
4 record reflects from Mr. Goins or some other
5 witness where corroborating evidence comes in
6 that Mr. Goins had no clue what was going to
7 take place at the Smith household --

8 THE JUDGE: This witness is going to make
9 it based on his testing that he didn't have a
10 clue? He will not be able to testify to that.

11 MR. WELLBORN: Judge, if I may finish.
12 If this witness has tested him and those tests
13 yield a result that Mr. Goins is, in fact, the
14 kind of psychological profile that would be
15 gullible, easily duped, more likely to be in a
16 circumstance where someone could take advantage
17 of him and put him in that situation, it is
18 absolutely relevant because the issue in this
19 case, the sole issue in this case, is whether
20 Mr. Goins knew that a burglary was going to take
21 place and conspired to get involved in it.

22 All we have is a circumstance to suggest
23 that's true. We don't have any testimony about
24 any agreement. We all agree on it. We simply
25 have circumstances that they were at the house

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1 next door and that later they went to this other
2 house and the door was kicked in and stuff was
3 taken. But the record is devoid of any evidence
4 and any agreement. We assume that.

5 THE JUDGE: The only way you can assume a
6 lot of agreements on a conspiracy --

7 MR. WELLBORN: I understand.

8 THE JUDGE: He is present. He goes in the
9 house, stuff is picked up and taken, and it
10 doesn't belong to this guy. How does that prove
11 he didn't know this burglary was going on?

12 MR. WELLBORN: He has a right to present
13 a defense that he didn't know what was going on
14 even though you or I or other people with more
15 intelligence and a different psychological
16 profile might say, hey, something is really
17 suspicious about that, that Mr. Goins wouldn't,
18 and that's why it is relevant.

19 THE JUDGE: It may be, but so far I have
20 heard nothing to implicate this. I heard an 80
21 IQ, which is low average intelligence, which
22 probably fits a lot of people in this country,
23 many people in this country, and a lot of them
24 are in prison right now. Does that mean they
25 are not responsible because they didn't

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1 understand what somebody else was doing?

2 MR. WELLBORN: We didn't get to that part
3 of the proffer because you wanted to ask me the
4 relevance. I wanted to address your Honor's
5 inquiry.

6 THE JUDGE: I don't think you are making
7 it relevant, that's why I asked you that
8 question. Go ahead. I will allow you leeway.

9 BY MR. WELLBORN:

10 Q Dr. Ridgeway, the tests you gave Brandon Goins,
11 did they yield to you any profile or anything
12 that would suggest one way or other, to a
13 reasonable degree of psychological certainty,
14 that Brandon Goins is less or more susceptible
15 to being duped or having his trust abused or
16 being conned into a situation where he didn't
17 know what was going on?

18 A He answered the inventory in a manner
19 consistent with a person who is shy, low
20 self-esteem, self doubt and submissiveness, and
21 difficulty making decisions, indecisive.

22 Q Is that kind of person that answers in that way
23 and yields those results, is that typically a
24 person who is more likely or less likely to be
25 duped by someone else?

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1 A The combination of his personality traits
2 and his intellectual functioning, cognitive
3 functioning, he would be a person who would be,
4 relative to others, susceptible to being more
5 apt to be a follower instead of a leader,
6 perhaps being more susceptible to being conned
7 than someone who has more intellectual --

8 THE JUDGE: There is no evidence of being
9 conned in this case. So what you are saying,
10 basically, is he would be more susceptible to
11 being led into something? He would not be a
12 leader, he would be the follower. He would be
13 more apt to go along with the leader. We get
14 that all of the time in criminal cases. We got
15 five people in a case and four of them was a
16 follower and one of them a leader, but they are
17 all guilty. I am not saying Mr. Goins is
18 guilty, I am just saying it is not relevant to
19 this case.

20 MR. WELLBORN: I would respectfully
21 disagree because if the reason he was a follower
22 was because --

23 THE JUDGE: Can't you say that about
24 everybody that is a follower? How about a
25 person with 70 IQ who has these same traits, low

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1 self-esteem, wouldn't be they more likely to be
2 led along or be gullible or go along with the
3 crime or group?

4 MR. WELLBORN: Yes.

5 THE JUDGE: So what. He has an 80 IQ. He
6 is low average intelligence.

7 MR. WELLBORN: The reason it is relevant
8 is because the theory of the defense's case, as
9 will be presented by evidence, is that my
10 client -- and the jury may accept it or reject
11 it, but this is the theory -- we have a right to
12 present our defense.

13 THE JUDGE: I don't disagree with you
14 unless it is something not relevant to the case
15 and it is going to mislead the jury. There is
16 no basis for this other than he is going to give
17 us some general things that somebody who tests a
18 certain way is not the sharpest knife in the
19 drawer. He has an 80, low average intelligence.
20 You know, we don't know, maybe the guy he went
21 in there with has a 70 IQ.

22 MR. WELLBORN: The only evidence we have
23 in the --

24 THE JUDGE: I know that. We don't know
25 that this guy is the brilliant leader.

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1 MR. WELLBORN: What we do know is the
2 only evidence in the case so far that has been
3 presented is that Brandon Goins went there
4 because he was told that this person had his own
5 items at his uncle's house. We know that --

6 THE JUDGE: I understand that. I
7 understand that. I also understand the door was
8 kicked in, tried to get in through the windows.
9 He went inside and stole jewelry. You are
10 saying he didn't know what was going on? Well,
11 I don't think a person with an 80 IQ, low
12 average intelligence, I think he certainly
13 understands what was going on if that took
14 place. Whether the jury believes that or not or
15 believes whatever he wrote in his statement --
16 he is perfectly capable of writing a statement.
17 Did you see his statement?

18 THE WITNESS: No, sir.

19 THE JUDGE: Have you looked at it to see
20 if he was capable of writing the statement?

21 THE WITNESS: I have not seen the
22 statement.

23 THE JUDGE: Let him look at it.

24 BY MR. WELLBORN:

25 Q Dr. Ridgeway, you do acknowledge that Mr. Goins

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1 is capable of writing?

2 A Yes, I wouldn't have given the MMPI if I
3 didn't.

4 THE JUDGE: Let him look at the statement.

5 BY MR. WELLBORN:

6 Q Would Mr. Goins be capable of writing that?

7 A Give me time to read it, please. Yes.

8 Q When Mr. Goins wrote that statement, would he be
9 capable of believing someone who said that this
10 is his stuff at his uncle's house?

11 A Yes.

12 Q Would Mr. Goins be capable of going to a house
13 that is next door to where the person lives
14 because he believes this person is getting stuff
15 that belongs to him from his uncle's house?

16 A He could believe someone, yes.

17 Q Without any further information, knowing what
18 Mr. Goins knew about this particular person or
19 whether or not this was his uncle's house, or
20 what he observed in terms of a break in, would
21 Mr. Goins be capable of assuming that afterwards
22 that this person still retrieved his own items
23 from his uncle's house?

24 A Could you restate that again. I distracted
25 myself by looking at the paper in front of me.

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1 Q Read the bottom of the statement. When you have
2 had a chance to read it let me know.

3 A All right. I have read it.

4 Q Would Mr. Goins be perfectly capable, even
5 having experienced this person going into a
6 trailer and coming out with some fishing rods
7 and a necklace, still believing these items
8 belonged to --

9 THE JUDGE: Give him the real facts and
10 scenario. The testimony and evidence shows that
11 these two guys were next door drinking and
12 smoking marijuana, that's not in evidence before
13 the jury, but we know that. Let's assume that
14 they were doing that and they decided they
15 needed some money. They talked about needing
16 money. Then they walked over to the trailer
17 next door. It is in the middle of the night.
18 Nobody is home. The vehicles are not there.
19 One of them are familiar were the vehicles that
20 are usually there. They are not there. This is
21 a dark house in the middle of the night.

22 They go and try to break in the windows
23 and kick in the front door, break it open, bust
24 it open, and they go inside. They are both
25 inside the house. They go through and rifle

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1 through a roll top desk in there and ruffle the
2 papers and go through that. They go into the
3 bathroom and steal some medicine out of there,
4 cough syrup medicine, and move everything around
5 in there. They steal two rod and reels out of
6 kitchen, a storage area in the kitchen, go into
7 the master bedroom and go into a woman's jewelry
8 box and steal jewelry out of there valued at
9 more than \$2,000.

10 Can we assume then that he could not
11 understand, that he would be gullible enough to
12 believe that this guy was getting his own stuff
13 and had the right to be in the place to get
14 this?

15 THE WITNESS: Let me ask you this: You
16 said they. Do we know that they did those
17 actions?

18 THE JUDGE: Yes. We know they were inside
19 the place.

20 THE WITNESS: They?

21 THE JUDGE: They, including this
22 defendant.

23 THE WITNESS: If they were there together.

24 THE JUDGE: According to his statement,
25 he was inside.

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1 THE WITNESS: If they were there together
2 doing those actions you described, the defendant
3 would be capable of understanding that this is
4 not in keeping with the story.

5 BY MR. WELLBORN:

6 Q Let's assume now, because what we have in
7 evidence so far, and there is no evidence that
8 we can stipulate to this, that said Mr. Goins
9 was ever in this bedroom. Let's assume that all
10 we have, because we have no evidence that has
11 been presented that Mr. Goins was inside this
12 bedroom. We have no evidence that Mr. Goins was
13 inside this bathroom. We have no evidence that
14 Mr. Goins went through --

15 THE JUDGE: I don't disagree with that.
16 Here is the thing. According to his statement,
17 the other guy went in and came to let him in.
18 He was inside. We don't know where he went when
19 he was inside, but we know enough time went by
20 inside for somebody, maybe both of them, but we
21 don't know that, to rifle through the stuff, go
22 in the bedroom, go in the bathroom, go through
23 all of the medication, go in the master bedroom.
24 All of this took place while he was inside a
25 little mobile home. So I am saying -- my

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1 question to you is: Can you say that somebody
2 with an 80 IQ, low average intelligence and
3 testing, wouldn't understand while he was in
4 there that all that was going on, there might be
5 a robbery taking place instead of somebody
6 actually getting something that belonged to him,
7 and it is okay to break into the place, bust
8 open the door of a house in the middle of the
9 night with no vehicles there? Obviously, no one
10 was home. Do you think he would understand
11 that?

12 THE WITNESS: Again, if he were present
13 and witnessed it and/or heard what you
14 described --

15 THE JUDGE: His statement says he was
16 inside. The codefendant let him inside. He was
17 there when the door was busted in, obviously.
18 He was there. He was inside while this was
19 going on. Are you saying that he couldn't
20 understand, gullible or not, that a robbery
21 might be going on, that this guy might not be
22 really going in to get something that belonged
23 to him?

24 THE WITNESS: Again, your Honor, if
25 evidence says he was inside, he would have those

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1 cues to discern that. If he were outside while
2 the other person was doing as you described --

3 THE JUDGE: Here is a different situation.

4 THE WITNESS: He would not have the cues
5 to put two and two together.

6 THE JUDGE: But even then if somebody
7 kicks the door in and retrieves something that
8 he says belongs to him and has to jimmy the
9 windows to try to get in those --

10 THE WITNESS: If he has knowledge of those
11 actions, it makes sense. If he didn't have
12 knowledge then...

13 THE JUDGE: He kind of getting all this
14 when you see it?

15 THE WITNESS: If you see it or hear it,
16 yes.

17 THE JUDGE: Absolutely.

18 BY MR. WELLBORN:

19 Q Let's assume, hypothetically, because there is
20 no evidence Mr. Goins witnessed anyone kick a
21 door in. If Mr. Goins did not witness anyone
22 kick a door in or hear somebody kick a door in,
23 would he have picked up on a cue a burglary was
24 taking place simply because somebody said lets
25 go to my uncle's house and get my stuff?

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1 A If he was not aware of the rifling, the
2 kicking of the door, the jimmy or trying to get
3 in the window, those elements that were
4 described to me by your Honor, if he was not
5 aware of that, then he has nothing to base
6 disbelieving his friend --

7 THE JUDGE: Let's be real.

8 THE WITNESS: Yes, sir.

9 THE JUDGE: If the door is kicked in the
10 middle the night, nobody is home, no vehicles
11 there, the door is kicked in, somebody is trying
12 to jimmy the windows out there in the middle of
13 the night out here in the countryside, somebody
14 is going to know something is going on.

15 What I am saying is, defense counsel is
16 trying to show he wouldn't understand, he was
17 not smart enough based on his testing and
18 personality traits and such, that he could not
19 understand a burglary was going on even though
20 somebody was busting in while he was outside in
21 the country with no noise or anything else with
22 these people not home, does that make sense to
23 you?

24 THE WITNESS: The way you described the
25 scene, I believe there would probably be noise

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1 that a person could hear.

2 THE JUDGE: Is there anything about his
3 testing -- I guess we need to keep it relevant,
4 anything about that testing to indicate that he
5 would, any more than a normal person, understand
6 that a burglary was going on if he was outside
7 when all this noise was going on, things were
8 going on if he was inside, even if he didn't
9 participate in rifling through this stuff, that
10 he would understand this is going on? He is
11 smart enough to understand?

12 THE WITNESS: He has the ability to
13 understand, the ability to describe.

14 BY MR. WELLBORN:

15 Q What if there was no noise?

16 THE JUDGE: Come on.

17 MR. WELLBORN: With all due respect, there
18 is no testimony in the record Mr. Goins
19 witnessed anyone kick a door in.

20 THE JUDGE: Counselor, you are sitting out
21 here in the middle of nowhere in the middle of
22 the night, no noise whatsoever, and you are
23 telling me that somebody outside and present is
24 not going to be able to hear when somebody is
25 kicking and breaking the door in and trying to

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1 get in the windows?

2 MR. WELLBORN: We don't know -- Judge,
3 with all due respect, we don't know when the
4 door was kicked in.

5 THE JUDGE: It doesn't matter. There is
6 nothing about him that makes him any different
7 than any other person with an 80 IQ who tests
8 that maybe he is easily led. You can say that
9 about probably the majority of the defendants
10 that get convicted of a crime. It makes him no
11 different than them. I don't think there is
12 anything about this witness' testimony that will
13 be helpful to the jury in understanding whether
14 he was a participant in this burglary or not or
15 conspiracy. I don't think there is anything
16 about this testimony that is going to help.

17 MR. WELLBORN: It would be helpful to the
18 defense.

19 THE JUDGE: Of course. You can come in
20 and say this guy was not the smartest guy out
21 there. You can come in and say that. That
22 might be helpful for the jury. That is a
23 question for the Court. When you get down to
24 sentencing, you can offer that in way of
25 mitigation. It is not something as to whether

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1 his capabilities of him understanding whether a
2 crime is going on.

3 MR. WELLBORN: It does, again, with all
4 due respect, there is nothing that suggests the
5 door was kicked in while Brandon Goins was
6 there. We know a door --

7 THE JUDGE: You mean he did this after he
8 left?

9 MR. WELLBORN: It could have happened. We
10 don't know.

11 THE JUDGE: You had a statement that says
12 he went inside, the codefendant let him in.

13 MR. WELLBORN: That is right. It doesn't
14 say the door was kicked in. In fact, the
15 statement said the codefendant let him in coming
16 in the opposite direction.

17 THE JUDGE: His statement said he had a
18 couple rod and reels?

19 MR. WELLBORN: No, sir.

20 THE JUDGE: He told him he wanted to take
21 a couple of the rod and reels.

22 MR. WELLBORN: Yes, sir.

23 THE JUDGE: It said this should do, isn't
24 that right, when he picked up the stuff, the
25 jewelry and rod and reels?

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1 MR. WELLBORN: I will be glad to answer
2 these questions one at a time. The statement
3 says, "So Jordon went in from the back and let
4 me in the front. He began to get a few fishing
5 rods and a gold necklace and said, 'this should
6 be good.'"

7 It does not say my client picked up any
8 fishing rods. It does not say my client
9 witnessed or heard anybody crashing in a door.
10 It does not say my client witnessed Jordon
11 rifling through anything. It does not say my
12 client heard anything.

13 THE JUDGE: What does it say about him and
14 Jordon going over to the mobile home?

15 MR. WELLBORN: It says, quote, "Jordon
16 said he had a few things at his uncle's house.
17 We then walked down and went to the front door,
18 whatever that was. It was locked. So Jordon
19 went in the from the back and let me in the
20 front." That's all it says. That's all it
21 says.

22 So all these cues my client theoretically
23 should be picking up on in your Honor's
24 rendition, in fact, are not in the statement.
25 This is the only evidence the State has, the

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1 only evidence that my client knew what was going
2 on, and the only thing that they have is from
3 the statement. The only thing they have from
4 the statement is my client went in the house
5 after being told this guy was going to pick up
6 his own stuff at his uncle's house.

7 THE JUDGE: Does he say they got jewelry
8 and the rod and reels and he said this should
9 good?

10 MR. WELLBORN: No, it does not say they
11 got jewelry, rod and reels. It says, "He
12 began," referring to Jordon, "get a few fishing
13 rods and a gold necklace." But again, the query
14 is whether my client, under those circumstances,
15 having earlier been told that this guy had
16 things at his uncle's house might have been
17 duped into thinking those things belonged to
18 Jordon. That's the issue. We have a right to
19 present that to the jury. The jury may reject
20 it.

21 THE JUDGE: Finish up your proffer.

22 BY MR. WELLBORN:

23 Q Under the circumstances where my client did not
24 hear anybody kick in a door, did not witness
25 anybody kick in a door, did not witness anybody

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1 rifling through any rooms in a house but
2 followed somebody up after hearing this guy was
3 going to get a few things from his uncle's
4 house, under those circumstances is Brandon
5 Goins capable of being conned into being
6 involved in a burglary that he didn't know was a
7 burglary?

8 A He is capable of being mislead by the person
9 he is associated with.

10 MR. WELLBORN: Thank you. That would be
11 the proffer.

12 MR. SPRINGS: Your Honor, I am going to
13 lay some law on Mr. Wellborn's table and pass
14 this up to the Court.

15 CROSS-EXAMINATION:

16 BY MR. SPRINGS:

17 Q Dr. Ridgeway, Mr. Goins graduated from high
18 school?

19 A I don't have my report in the front of me
20 about his education.

21 Q Did you inquire?

22 A I did. It is in my report.

23 Q Does anybody in this room have a copy of your
24 report?

25 A I am not certain. I was at work today when

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1 I was called to appear today. I was told
2 earlier that I would be here tomorrow so I
3 didn't have all my materials.

4 MR. WELLBORN: For the record, we
5 provided the tests that were given and the
6 results of each test that was given by Dr.
7 Ridgeway. That has been provided to the State.

8 THE JUDGE: Did he issue a report?

9 MR. SPRINGS: I am wondering if he
10 graduated high school.

11 THE WITNESS: That would have been
12 something that I would have noted in my records,
13 but again, I don't have them with me and I don't
14 want to rely on my memory.

15 THE JUDGE: You did an interview and
16 evaluated Mr. Goins and you don't even know if
17 he graduated from high school or not?

18 MR. WELLBORN: I would know that by my
19 records.

20 THE JUDGE: You don't know it off the top
21 of your head?

22 THE WITNESS: I don't know if he graduated
23 or got a G.E.D. off the top of my head, no, your
24 Honor. Again, I gave him intelligence testing.
25 It would be in the record I wrote. It would be

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1 in my evaluation is what I am saying.

2 BY MR. SPRINGS:

3 Q You are not pointing at Mr. Wellborn insinuating
4 he may have these records?

5 A I am gesturing.

6 Q Now you said --

7 THE JUDGE: Did you provide him with a
8 copy of your report, Mr. Wellborn?

9 THE WITNESS: Yes.

10 MR. SPRINGS: I have the test results. I
11 don't have anything talking about whether he
12 finished high school or not.

13 THE JUDGE: Did you issue a written
14 report?

15 THE WITNESS: I have a written report,
16 yes.

17 THE JUDGE: Did you provide a copy of that
18 to defense counsel.

19 THE WITNESS: I did..

20 THE JUDGE: So he should have it.

21 MR. SPRINGS: Mine starts with Page 4. I
22 don't know what I am missing. Obviously, I
23 don't have the part about his education.

24 MR. WELLBORN: Your Honor, for the record,
25 I do have a copy of the report. The previous

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1 part of the report reflects my client's family
2 background, his prior problems with alcohol,
3 none of which we felt were germane to the actual
4 intelligence test portion of this and/or the
5 MMPI.

6 THE JUDGE: If he issued a written report,
7 don't you think the other side is entitled to it
8 if he is going to testify to it.

9 MR. WELLBORN: If he is going to testify
10 to the items in the written report, and every
11 item that he would testify that is in that
12 report, we have given the State a copy.

13 THE JUDGE: Not quite. The report starts
14 on Page 4.

15 MR. WELLBORN: I am not eliciting
16 testimony regarding my client's family history
17 regarding his prior problems with alcohol.
18 That's not something I was going to elicit from
19 Dr. Ridgeway.

20 THE JUDGE: Don't you think they are
21 entitled to a complete report if he issued a
22 report.

23 MR. WELLBORN: Not if it is something
24 that is going to be brought into evidence, no,
25 sir. Just as if I was issuing medical records

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1 that showed my client had the particular problem
2 with his hand, and therefore, it wasn't usable.

3 THE JUDGE: I will let you make a motion
4 on that. There is rule on completeness. I will
5 leave it up to you. I will leave that up to
6 counsel.

7 THE WITNESS: Your Honor, if I may. I do
8 have notes in my car that I could retrieve that
9 would answer your question.

10 MR. SPRINGS: I would like to just move
11 on.

12 BY MR. SPRINGS:

13 Q You said his IQ, intelligence, was borderline to
14 low average, borderline to what, good solid
15 middle average? Bordering to what?

16 A Borderline intelligence. His full scale IQ
17 is 80. He is in the 9th percentile. That means
18 91 percent of the U.S. scores better than he
19 does on this test.

20 Q So he is in the average range, lower end of the
21 average?

22 A He is at the delineating point of what is
23 called low average and borderline.

24 Q Borderline what?

25 A Is a category, a range name. Below that is

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1 extremely low, which is 70 or below. Someone
2 with 70 and below would be considered mentally
3 retarded as long as they also had functional
4 life skill problems as well before age 18 and
5 they were identified.

6 A person with traumatic brain injury or
7 other injuries can also have a lower IQ but is
8 not considered in category of mental
9 retardation.

10 Q Okay. He is low average?

11 A At the very bottom of low average. He is at
12 the borderline between low average and that 70
13 of mental retardation, yes.

14 Q A little while ago the defense counsel showed
15 you Mr. Goins' statement that he wrote himself.

16 A Yes.

17 Q It is marked State's Exhibit 1. You looked at
18 it. I counted the words. I count 107 words. I
19 don't see a single word out of 107 that is
20 misspelled. Would you agree with that?

21 A I would have to look at each word and spell
22 it.

23 Q Take your time.

24 A The spelling is good.

25 Q Thank you. If you could lay it on the counter.

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1 A The grammar is not, but the spelling is.

2 Q Sure. Doctor, you are an expert in clinical
3 psychology. Would your experience in clinical
4 psychology and your good old common sense tell
5 you that people that are less intelligent are
6 more likely to be fooled than intelligent
7 people?

8 A Yes. By in large, generalization, you can
9 fool a smart person as well.

10 Q In general, somebody with an IQ of 90 would be
11 more likely to be fooled or deceived than
12 somebody with an IQ of 110?

13 A There is so many factors to consider. I
14 don't know if I could say if they would be more
15 likely to be fooled or just based on their
16 influence, but the lack of sophisticated
17 intellect does make a person perhaps more apt to
18 not think through a situation as complexly as
19 somebody who has a higher IQ.

20 Q Have you ever done any criminal/mental
21 evaluations down in Columbia?

22 A No, sir.

23 MR. SPRINGS: That's all I have.

24 MR. WELLBORN: One follow-up question.

25 REDIRECT EXAMINATION:

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1 BY MR. WELLBORN:

2 Q Dr. Ridgeway, it wasn't just the IQ test that
3 was the determining factor regarding your
4 diagnosis of Brandon; is that correct?

5 A My assessment of Brandon was based on
6 cognitive skills, the achievement test, the
7 intelligence test, and the personality
8 inventory.

9 Q All three tests are factored in?

10 A Correct.

11 Q It is not just the IQ?

12 A Right. I also did a mental status exam and
13 he was oriented just fine so that wasn't an
14 issue.

15 MR. WELLBORN: Thank you very much.

16 MR. SPRINGS: Nothing further.

17 THE JUDGE: I am trying to think if I need
18 to ask more questions before you stand down.

19 You may stand down.

20 (Witness excused.)

21 THE JUDGE: I will be glad to hear from
22 you. I think I have heard enough from the
23 defense counsel. Let me hear from the State.

24 MR. SPRINGS: This evidence is not
25 admissible. It is going to confuse the jury.

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1 It is really a diminished capacity defense,
2 talking about he didn't have the mental capacity
3 to commit the crime. The cases I handed to the
4 defense and to the Court, State vs. Santiago 634
5 S.E.2d 23. In that case, they tried to
6 introduce evidence of Santiago's mental
7 situations and drawbacks to show that he didn't
8 have the requisite mental state to commit the
9 crime there, and the Court said the diminished
10 capacity defense is not recognized in South
11 Carolina. The trial judge did not allow him to
12 introduce that evidence. The Court of Appeals
13 upheld the trial for it.

14 They talked about another case in which
15 the defense counsel wanted a forensic
16 psychologist to testify that that defendant had
17 a low IQ so he didn't have the requisite mental
18 state to commit murder. The Supreme Court held
19 the trial judge excluded that testimony because
20 South Carolina does not recognize the diminished
21 capacity defense.

22 That's what this is. This is a mental cup
23 of diminished capacity, that because of his
24 mental situation, mental traits, he could not
25 have committed this crime, didn't have the

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1 requisite mental state. It is inadmissible. It
2 would be extremely misleading to the jury for
3 this doctor to -- really, his testimony would
4 get into -- it is not admissible.

5 I think the case, Santiago, that we handed
6 up nails that and answers that question on all
7 fours.

8 THE JUDGE: Well, I don't think there is
9 any question that diminished capacity is not a
10 defense recognized in South Carolina. There is
11 no question about that. So I think even his IQ
12 -- if his IQ was 75 or something, it still
13 wouldn't make any difference. The fact that you
14 entered some MMPI-2, I mean, you can read all
15 kind of things in that, even the people who
16 interpret those. You didn't really get into the
17 expert witness' training and experiences in
18 analyzing the results of the test. A lot of
19 psychologists, clinical psychologists are not
20 trained to do that. You can't do it.
21 Psychiatrists, most of them, don't do it. It
22 has to be somebody trained. He probably does.
23 I am assuming he does even though he didn't
24 question about what training he had in
25 administering or analyzing the results of the

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1 test, but even those experts will disagree on
2 what the test shows. So that causes me some
3 concern in this case.

4 The other concern I have about his
5 testimony is, we have the defendant's own
6 statement that this is what he was told when he
7 went over it. We don't know if that is true or
8 not. We have all this other evidence which
9 would contradict that, at least when he got over
10 there, if the jury believed that. So then what
11 would you be presenting to the jury with an
12 expert witness who is going to say it was okay
13 for him if, in fact, that is what happened, his
14 codefendant told him, "Look, I have some stuff
15 over there. Let's go get it." It is okay for
16 him to believe that because he is kind of a
17 dependent personality, person of low
18 self-esteem, some diminished capacity, low
19 average intelligence, and so it is okay if he
20 was told that for him to believe. That's
21 basically what he is saying. That he would be
22 more susceptible to believe that than maybe
23 somebody else.

24 We don't know. I think that's a decision
25 the jury is going to make. To have an expert

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1 witness come in and say he would more likely
2 believe that than somebody else who maybe had a
3 higher intelligence or tested differently on
4 this test. I don't think that he can say that.
5 I don't think he can say that because he, you
6 know, then you have conflicts and facts in this
7 case.

8 On the other side, the defense is entitled
9 that there is a defense. I will give you that.
10 I will usually let the defense present their
11 theory and whatever supports that theory as long
12 as it is relevant and not confusing, not
13 misleading to the jury.

14 Basically, what this witness is saying is
15 his testimony is believable because he is more
16 susceptible to believing something that maybe he
17 should not have believed in. Basically, that's
18 what we are saying with this witness.

19 That's not a theory of defense. That's
20 telling the jury that that statement by him is
21 he was more susceptible to believe in that if he
22 was told that than another person might be.

23 MR. WELLBORN: I didn't know if you
24 wanted me to respond or not?

25 THE JUDGE: Well, I will hear from you.

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1 But I don't want to hear the same old thing you
2 told me before. If you got something new to
3 say.

4 MR. WELLBORN: Well, in the theory of
5 relevance portion under 401 is something more or
6 less probable is a fact of issue more or less
7 probable. The issue for conspiracy is it more
8 or less probable than my client formed an
9 agreement or an understanding or a plan that
10 Jordan Canupp burglarized this house.

11 THE JUDGE: I don't think this witness can
12 say that. He can't say it is more likely than
13 not. He can't say that.

14 MR. WELLBORN: I agree with that, but
15 this witness can say that it is more likely than
16 under a circumstance as presented by the
17 defense, or will be presented by the defense,
18 under a circumstance where my client is told
19 this is my stuff. This is my uncle's house.
20 That is more probable my client would believe
21 that. That's what makes it relevant.

22 THE JUDGE: It depends on all of the other
23 things.

24 MR. WELLBORN: Right. That's the issue
25 for the jury. But whether or not we even get to

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1 the jury, whether or not the jury gets to hear
2 that, in fact, there is evidence that makes it
3 more probable my client would believe Jordan
4 Canupp when he says these things, that's all we
5 want to present.

6 The jury can decide, oh, with all this
7 other stuff we don't believe that. Or they can
8 say, we do believe that. But that's our theory
9 of the defense which is why we allege --

10 THE JUDGE: Isn't that diminished capacity
11 defense?

12 MR. WELLBORN: No, sir.

13 THE JUDGE: He was less able because his
14 mental capacity and mental makeup, he is less
15 able to distinguish between what is true and not
16 true if somebody is telling him something.

17 MR. WELLBORN: No, sir.

18 THE JUDGE: He is less likely to question
19 it than somebody else.

20 MR. WELLBORN: Diminished capacity defense
21 would be my client doesn't have requisite mental
22 ability to even form a conspiracy to burglarize
23 someone's home, to come up with the intent to
24 steal. That would be diminished capacity. We
25 are not arguing that.

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1 I firmly believe that my client in certain
2 circumstances is perfectly capable of forming a
3 conspiracy, however hairbrained it may be, and
4 burglarize someone's home and stealing. That's
5 not the issue.

6 The issue is whether in this situation as
7 the evidence that has been presented so far
8 suggests and as we will present it where my
9 client was told by the alleged coconspirator,
10 hey, I am getting my own stuff from my uncle's
11 house. Whether he believes it. That is not
12 proof. That is a different issue than if my
13 client is capable of committing the conspiracy.

14 The issue is, under these circumstances,
15 would my client be susceptible of being duped or
16 conned or mislead, which is our defense. Not
17 that he is incapable of doing these things, but
18 under these circumstances, more likely than not,
19 he didn't have a clue of what was going on.
20 That is not diminished capacity.

21 Again, your Honor doesn't like the theory,
22 I understand that. The State disputes the
23 theory. I get that.

24 THE JUDGE: Aren't you saying so if John
25 Brown over here with a 130 IQ and registers on

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1 this testing is capable of distinguishing more,
2 that person would certainly question whether
3 this was, in fact, he had stuff in this mobile
4 home and he had a right to go in there and get
5 it. Whereas, your client with a diminished
6 capacity and would not. Isn't that what you are
7 saying?

8 MR. WELLBORN: No. I am saying John Brown
9 with a 130 IQ may or may not, if he has all of
10 the other personality traits that have been
11 identified by Dr. Ridgeway, may or may not be
12 able to figure out what is going on, but Brandon
13 Goins with his personal --

14 THE JUDGE: Yes, but you have to have an
15 expert come in and say that based on his
16 testing, he thinks this other person would be
17 more likely to understand what is going on and
18 believe what was said to him than your client.
19 Isn't that diminished capacity?

20 MR. WELLBORN: Diminished capacity offense
21 means he doesn't have the capacity to commit the
22 crime. That's what a diminished capacity
23 offense is. South Carolina does not recognize
24 that. We are not offering diminished capacity
25 defense. I am simply saying, and the witnesses

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1 would testify, that my client is susceptible --

2 THE JUDGE: What you want to do is have an
3 expert tell the jury that your client is not as
4 sharp as some other people, therefore, he might
5 be more likely to believe what he is being told
6 than somebody else. That's what you are saying.
7 That's diminished capacity.

8 MR. WELLBORN: No. My client is still
9 capable of committing the crime. The issue is
10 whether he is capable of being conned or
11 deceived. The crime can still be committed. My
12 client, under other circumstances, can
13 completely commit the crime as testified by Dr.
14 Ridgeway. This is not diminished capacity.
15 This is an issue of my client's psychological
16 makeup and his ability to figure out whether
17 Jordon Canupp was a liar or whether Jordon
18 Canupp was telling the truth.

19 Again, the only testimony we have so far
20 in the record is my client was told this was
21 Jordan Canupp's, this was Jordan Canupp's items,
22 and this was his uncle's house.

23 There is no testimony in the record my
24 client observed, elicited to, or saw physically
25 any break in or any theft. The record is devoid

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1 of that. We can infer that, or some people
2 might infer that, but other people might not
3 infer that. We simply don't know. We don't
4 know.

5 There is going to be evidence that my
6 client was told by Jordon Canupp -- there is
7 already evidence in the record that my client
8 was told by Jordon Canupp that these were his
9 items.

10 Now, a lot of us would say, hey, I don't
11 believe that. That is ridiculous, but my client
12 wouldn't or my client might not, and that's the
13 testimony we want to be able to enter.

14 Again, the jury may reject it. We want
15 the opportunity to present the defense so my
16 client can be fully heard in his defense.

17 I will just note from Article 1 Section 10
18 of the constitution on that. It is a
19 constitutional issue, to be fully heard in his
20 defense. The issue of whether or not he is
21 susceptible to being duped is relevant because
22 it goes to the issue of whether or not he was
23 duped or more likely than not that he was duped,
24 that being the standard for relevance.

25 THE JUDGE: Why would he be duped? How

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1 was he duped? If he was just over there and
2 didn't get anything out of it, how was he duped?

3 MR. WELLBORN: He was duped believing
4 Jordan Canupp was going to his uncle's house.

5 THE JUDGE: He is not being duped. He
6 just went along. He might have been mislead.
7 He wasn't duped.

8 MR. WELLBORN: Mislead.

9 THE JUDGE: Duped took his pocketbook from
10 him when he convinced him to give it to him.
11 That's duped.

12 MR. WELLBORN: I would be glad to use the
13 term mislead for duped. I understand they were
14 synonymous and I understand your Honor has a
15 different --

16 THE JUDGE: I sure do, and it is a
17 different concept with the jury so don't use it
18 with the jury.

19 MR. WELLBORN: All right. Mislead.
20 Fine. I will be glad to use that term. If my
21 client was mislead by someone and my client is
22 susceptible because of his psychological makeup
23 to being mislead by someone who tells him, "I am
24 going over next door to my uncles to get my
25 stuff." It is relevant. It does not mean my

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1 client does not have the capacity to commit a
2 crime. That's different. If he doesn't have
3 the capacity to commit a crime then the jury
4 doesn't get the case.

5 If he doesn't have the capacity to commit
6 a crime, the jury finds him not guilty just
7 based on the fact that he doesn't have a legal
8 capacity, mental capacity, therefore, a legal
9 capacity to commit an offense. That's not what
10 our defense is. My client fully has the
11 capacity to commit a crime. The issue is, in
12 this case, did he commit a crime. In this case,
13 is my client -- is it more likely or less likely
14 that my client formed a plan for Jordon Canupp
15 to steal something. Is it likely or less likely
16 or more likely that my client knew a break in
17 was taking place. Is it more likely or less
18 likely that my --

19 THE JUDGE: That's what is bothering me
20 about it. We will have to put up an expert it
21 is more likely he didn't understand what was
22 going on. That's diminished capacity to me and
23 that is what is misleading to the jury,
24 confusing to the jury, that he didn't have the
25 capacity to understand what was going on if it

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1 all occurred in front of him. That is what this
2 witness is going to testify as an expert
3 witness.

4 MR. WELLBORN: No, sir. In fact, he
5 testified to the opposite.

6 THE JUDGE: I know he did, but that is not
7 what you asked, what you are going to ask him.
8 You are going to ask him would he be capable of
9 being mislead by this other person in believing
10 that and would he be more likely to believe it
11 than some other people.

12 MR. WELLBORN: If the circumstances as
13 laid down by foundation exist. Those
14 circumstances being my client did not observe
15 anybody kick in a door. My client did not hear
16 anybody kicking in a door. My client did not
17 watch anybody rifle through any desks, jewelry
18 boxes, go into a kitchen and steal any rods or
19 reels. If those circumstances exist, which we
20 will lay a foundation for, then the issue
21 becomes whether or not my client would believe a
22 burglary, in fact, had taken place. That's the
23 issue.

24 The issue isn't whether my client heard or
25 saw someone kicking in the door or saw someone

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1 rifling through stuff and participated in it,
2 whether he could believe this was no burglary,
3 that's not the issue. That would be diminished
4 capacity. This is not diminished capacity.
5 This is giving circumstances that will be laid
6 that we have some foundation for based on our
7 client's statement and the complete lack of any
8 evidence that my client observed a door being
9 kicked in or heard a door being kicked in,
10 observed anybody stealing. There is no evidence
11 in the record of that. It can be inferred,
12 arguably, but there is no direct evidence of
13 that.

14 Under the circumstances where the evidence
15 that will be presented by the defense, which is
16 my client didn't see any of this stuff happen,
17 he didn't anticipate --

18 THE JUDGE: That's what bothers me,
19 Counsel. There is going to be two different
20 versions or theories presented to the jury, two
21 different theories. Your expert then comes down
22 on the side that the defendant really didn't
23 understand what was going on, and therefore, his
24 version is more believable.

25 MR. WELLBORN: No, sir.

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1 THE JUDGE: And that's the way it comes
2 down.

3 MR. WELLBORN: No, sir.

4 THE JUDGE: If you interrupt me again we
5 are going to have real problem. I have listened
6 to you drum on for 30 minutes. I try to say one
7 thing, you try to override me. You know that
8 does not work with me. We have tried enough
9 cases to know that.

10 MR. WELLBORN: Whenever, your Honor --

11 THE JUDGE: You are not going to convince
12 me from drumming on and on and on because I am
13 halfway listening to you.

14 MR. WELLBORN: Thank you, your Honor.

15 THE JUDGE: We are just running up a
16 record here. I have heard you and heard you and
17 heard you, and I am trying to look at law.

18 MR. WELLBORN: Your Honor has said my
19 expert will testify that my client is more
20 believable because of this one theory. In fact,
21 that's not what I intend to present. What I
22 simply intend to present is under a particular
23 set of circumstances, obviously, the State can
24 say if the circumstances are different that he
25 would know of what was going on, but we are

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1 simply wanting to present under a particular set
2 of circumstances where my client does not
3 observe the things that the State thinks he
4 observed but they don't have any evidence of
5 him, that my client did not hear or see the
6 things that the State thinks he did see or hear,
7 but they have no evidence that my client was not
8 told in advance or conspired in advance to do
9 anything, which there is no evidence of but the
10 State assumes because they have charged him.
11 Under those circumstances, is my client capable
12 of being duped as --

13 THE JUDGE: I told you I don't want to
14 hear duped anymore.

15 MR. WELLBORN: Excuse me, mislead.

16 THE JUDGE: Or lead or mislead it might
17 be, at most that's what it would be. Not
18 duped. He was not duped out of anything.

19 MR. WELLBORN: Mislead.

20 MS. SHELTON: Your Honor, may I respond?

21 THE JUDGE: Yes.

22 MS. SHELTON: Very, very briefly, your
23 Honor. My understanding of what Mr. Wellborn
24 alluded to is that at sometime his client will
25 testify and will testify and will tell his story

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1 that he was told by Jordan Canupp they knows
2 that they could go to over to his uncle's house
3 and get Jordan Canupp's things, which he has his
4 right to tell the jury that, and the jury can
5 believe it or not believe it based on what makes
6 sense to them. And Mr. Wellborn would like to
7 call a psychologist who would then come in here
8 and bolster his client's testimony to say, yes,
9 he is more likely to be confused, mislead
10 because of his lower IQ and because of his
11 personality traits.

12 The reality is a lot of people can come
13 through this courtroom and have a lower IQ and
14 are follower and not leaders. We don't deal
15 with a lot of high IQs and leaders in this
16 courtroom. And by that argument, it does get
17 duck tailed into a diminished capacity argument.

18 His client can get on the stand and allege
19 whatever he wants to and he can tell the jury he
20 didn't understand what was going on, but I think
21 it is impermissible to allow a psychologist to
22 come in here and bolster his client's testimony
23 and that psychologist has no specific knowledge
24 of Mr. Goins' state of mind that night. He
25 didn't even know anything about the crime. He

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1 didn't read Mr. Goins' statement. He doesn't
2 know if Mr. Goins was mislead that night. He
3 only knows on a personality profile, he is a
4 follower and not a leader and more gullible. A
5 lot of people are. It doesn't necessarily mean
6 that was his mindset that night. And that
7 psychologist cannot testify to that. So to
8 allow him to come in here and bolster Mr. Goins
9 own testimony is impermissible.

10 Your Honor, relevant testimony is up to
11 the Court's discretion, and not all relevant
12 testimony is admissible under Rule 403 if it
13 unduly prejudicial to the State, if it is
14 confusing to the jury or to whichever side that
15 it is being entered against, or if it is a waste
16 of time, the Court can suppress relevant
17 testimony.

18 In this case, I do think it meets all
19 three of those. I think it is waste of time for
20 the psychologist to come in here and tell this
21 jury that Mr. Goins is more likely led. I think
22 it prejudicial to the State when the
23 psychologist has no specific knowledge of Mr.
24 Goins' mindset that night. We would ask the
25 Court not allow his testimony.

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1 THE JUDGE: I am going to think about it.
2 We are keeping everybody here way too late. I
3 will think about it. Really, what I think I am
4 going to do is wait until I hear the rest of
5 defenses' case before I make the decision on
6 whether or not I will let him testify or not and
7 any rebuttal -- well, not rebuttal, they have a
8 right to present it during the case in chief. I
9 will wait until I hear whatever testimony they
10 will have in the case before I make a decision.

11 MS. SHELTON: Thank you, your Honor.

12 THE JUDGE: We will start back at 9:30.

13 (Whereupon, the above-entitled matter was
14 adjourned at 5:54 p.m.)
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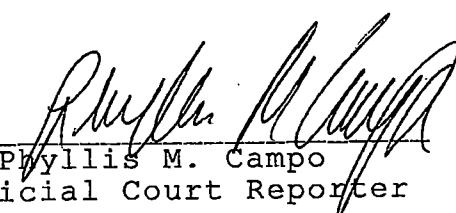
C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA
COUNTY OF YORK

I, Phyllis M. Campo, Official Court
Reporter for the Sixteenth Judicial Circuit of
the State of South Carolina, do hereby certify
that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings
at the time and place herein in the
above-entitled matter.

I do further certify that I am neither of
kin, counsel, nor interest to any party hereto.

September 23, 2014



Phyllis M. Campo
Official Court Reporter

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF YORK

3 _____
4 State of South Carolina,

5 vs.

6 Brandon Goins,

7 Defendant.
8 _____

Transcript of Record

Volume III

2014-GS-46-00432-00434

9 Date: April 2, 2014
10
11

12 BEFORE: The Honorable Lee Alford
13

14 APPEARANCES:

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1 MS. SHELTON: The State is ready.

2 MR. WELLBORN: The defense is ready.

3 THE JUDGE: Please bring in the jury.

4 MR. WELLBORN: Before we begin, have you
5 made a decision one way or another on --

6 THE JUDGE: Let me tell you what I am
7 thinking. I will tell you what my thinking is
8 this morning. Hold on the jury, please.

9 I was willing to listen to whatever
10 testimony you were going to have and see if
11 there is anything about that that might change
12 my mind. Doubtfully, it will, but we will have
13 to see. But my thinking is, and I reflected on
14 this last night and this morning. My feeling is
15 that, and I left that case back there, but in
16 the Gill case, which is a murder case from York
17 County. That issue was really raised. I will
18 quote from it in a minute.

19 While he is getting that, let me state on
20 the record what we didn't have -- there was no
21 testimony that the expert witness, Dr. Ridgeway,
22 was even trained in the protocol for
23 administering the test that he testified about,
24 particularly the MMPI test. There was no
25 testimony that he received or has been trained

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1 or familiar with the protocol, and not all
2 psychologists are trained with the protocol with
3 the understanding of how to do it. There is
4 some disagreement, something about the protocol
5 between them. There is also, once the test
6 results are in, not every psychologist has the
7 ability to interpret those tests. Those that do
8 interpret the test don't always agree on what
9 the certain things mean. Generally, they may.
10 I would say that there is nothing absolute about
11 those tests, and there are some indicators that
12 they are not anything conclusive. So they are
13 just guidance to a psychologist or a person who
14 is providing treatment, deciding what treatment
15 is needed and that sort of thing. So they are
16 not perfect indicators of conduct. In any
17 event, they provide some indication but they are
18 not perfect. I will say that. Not all of them
19 agree.

20 But assuming that Dr. Ridgeway is trained
21 in the protocol in administering the tests
22 properly and properly evaluating the tests,
23 assuming that he is, which there is no testimony
24 that he is, but assuming he is, then still my
25 way of thinking, and I have looked at this, and

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1 also, in the case of Eric Gill vs. State of
2 South Carolina, which I will say is a PCR
3 appeal, collateral appeal, seeking post-relief
4 in 2001. The site is 346 SC 209 552 S.E.2d 26.

5 Chief Justice Toal offered this opinion
6 and said, discussing the diminished capacity.
7 The testimony was that Mr. Gill had a borderline
8 intellectual capacity IQ of 73 and he possessed
9 antisocial personality based on the fact that
10 partially was the result of an absent mother and
11 father which resulted in his inability to handle
12 problems or think of consequences of his
13 behavior.

14 Basically, the theory was that he was not
15 able to mentally form the intent of one of the
16 elements of murder, that being malice. Our
17 Supreme Court said we don't recognize diminished
18 capacity as a defense. Therefore, we don't
19 recognize that.

20 Basically, what they were trying to do is
21 say that he does not have the mental capacity to
22 form the specific intent of malice.
23 Essentially, that's what the defense is saying
24 today with Dr. Ridgeway. Trying to use Dr.
25 Ridgeway to present a defense of diminished

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1 capacity.

2 Of course, the defense says it is not
3 diminished capacity that we are trying to
4 establish, that's not what we are saying. But
5 it is. This is a backdoor way of trying to get
6 the diminished capacity defense into the Court
7 in this Court's opinion, as a backdoor way to do
8 it. I am sure defense counsel has looked at
9 this defense in other jurisdictions, and some
10 jurisdictions recognize it. South Carolina does
11 not recognize diminished capacity.

12 When you say, well, he is easily led and
13 he might have believed, and is more likely to
14 believe, that his codefendant had the right to
15 go in this mobile home and had things in there
16 he could take out, basically, you are saying
17 because of his diminished capacity, he was less
18 able to discern the reasonableness of whether
19 the codefendant had the right to go in the
20 mobile home, or had the ability to go in the
21 mobile home, and had things in there that
22 belonged to him and he could go in and get them.
23 You say it was more likely that he would believe
24 that because of his diminished mental capacity
25 is basically what you are saying. Therefore, he

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1 could not, based on his diminished mental
2 capacity, form the specific intent that's
3 required of an element of each of these three
4 defenses. That's basically what you are saying.

5 So while I want the defense to present
6 whatever theory or defense they might have, and
7 they are entitled to that as you say by South
8 Carolina Constitution and otherwise, but I am
9 always careful to try to let the defense put in
10 their theory of defense even if I don't think it
11 has much merit. I will let them do it. But at
12 the same time, you know, we have to follow the
13 law, and we don't recognize diminished capacity,
14 and that's exactly what the defense is trying to
15 do. They are trying to get it in the back door
16 and getting it into the Court. Although, you
17 are not describing it or labeling it as
18 diminished capacity, that's exactly what it is
19 that you are alleging, that you are trying to
20 set it up.

21 Here is the problem with it, the problem I
22 have with it. If this defendant who has an 80
23 IQ, which is low average. Here you got this
24 defendant with a 73 IQ which is much closer to
25 borderline, 70 is what they go by. But it

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1 depends on a number of other factors. IQ
2 depends also on -- you have a social IQ and then
3 you have a testing IQ. A social IQ is usually
4 higher, and the doctor who sat in the courtroom,
5 he knows I am right because I have heard this
6 many, many times. The closer you get to 70, you
7 know, at 70 is kind of a cut off thing, but this
8 guy had 73. Mr. Gill had a 73 in this case. In
9 this case, 80 is low average. We get a lot of
10 defendants through this court who fall in the
11 70, 80 range who are down in prison.

12 If I allow you now to backdoor the defense
13 of diminished capacity -- the problem I have
14 with it is you are really asking the jury or
15 giving it more credence to say his theory is
16 more likely true than not because he has
17 diminished mental capacity which makes him more
18 believable when he says he didn't know that this
19 defendant didn't have any right to go into in
20 mobile home and had goods in there. That's what
21 you are saying. If I allow that in this case
22 then we open the door to allow every defendant
23 who comes in who has low average intelligence,
24 which is many of them, open it up to say you can
25 also get a psychologist to test you and come in

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1 and say you didn't have a mental capacity to
2 form a representative intent, meet the elements
3 of the offenses. If I open the door to that in
4 this case then it would be opened in other
5 cases.

6 As a matter of fact, then you might get to
7 a point wherein every case in which a public
8 defender or defense attorney did not hire a
9 psychologist or seek public funds through
10 indigent funds to hire a psychologist to examine
11 a person and then come in and testify that they
12 are ineffective in their assistance to that
13 particular defendant if you open the door to it.
14 If it applies in his case, it would apply in
15 every case where somebody has a low average
16 intelligence. So you open the door to create
17 this kind of industry of psychologists who are
18 to do this testing and come into court and
19 testify where the attorneys get the defense that
20 is allowable then why wouldn't an attorney be
21 provided ineffective assistance if they don't
22 hire a psychologist, seek public funds to hire a
23 psychologist to test somebody and come into
24 court and testify. This person has an 80 IQ and
25 doing this testing we find would be a little

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1 more gullible or more likely to be mislead. We
2 would open it up in all of these cases. I don't
3 think that is going on in South Carolina at the
4 present time. I don't think it is a good idea.

5 I think when you have competing theories
6 here, put in the an expert who is going to
7 testify on the defenses theory of the case based
8 on his diminished mental capacity in this case
9 or propensities from the test, that more heavily
10 -- what it does is improperly, in my opinion,
11 bolsters the defense's argument in this case,
12 their theory. The defense is entitled to their
13 theory of the case. The defendant can testify
14 as to what he thought and what he believed and
15 that sort of thing and then the jury can
16 consider both sides and make a decision on
17 truthfulness of it. But this would provide
18 improper bolstering of the defense's defense,
19 provide an expert to say he may have been
20 mislead or he was more easily led to believe
21 something of somebody else. If you get into it
22 in this case, you can get into it, it appears to
23 me, in most cases that come to the Court, an
24 awful lot of them. I will put it that way. I
25 can't give you a figure on it. I think it goes

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1 against the diminished capacity rule. I think
2 it is a backdoor way of doing that.

3 At the moment, unless I hear something
4 that changes my mind in the defense's testimony,
5 I am not going to admit his testimony concerning
6 MMPI-2 testing and what propensities and what he
7 might or might not be mislead to do because I
8 don't think the witness can give us anything
9 other than a test that indicates that he might
10 be more gullible, that he might be more easily
11 led by someone else. As compared to what? The
12 codefendant, we don't know his mental capacity.
13 He might be a 70 IQ. We don't know. He might
14 be the one more easily mislead. I don't know.

15 It is like Judge Hayes says sometimes over
16 in his courtroom when they say he just got with
17 the wrong crowd. Judge Hayes says maybe he is
18 the wrong crowd. Did anybody say that about
19 him? Who knows.

20 In thinking about it, I would allow him to
21 testify that he tested him and what his IQ is if
22 you want to get that in, 80 IQ. He can testify
23 that is a low average intelligence, but that's
24 it. That's all I am going to allow him to
25 testify to, if you want him to testify to that.

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1 I think that may be relevant to the jury in
2 determining at least his intelligence level, but
3 other than that, I don't plan to unless I hear
4 something different and defense's witness'
5 testimony changes my mind.

6 To be clear, I think defense counsel is
7 trying to take a backdoor approach to try to get
8 in diminished capacity through a different way
9 other than calling it diminished capacity. What
10 he is really talking about is him not having the
11 capacity to form the requisites of specific
12 intent to commit these particular crimes or
13 being mislead by the codefendant, and based on
14 that, he didn't have the requisite intent to
15 commit the crime based on being mislead and
16 believing the codefendant.

17 Again, it is little complicated but I
18 think it is a backdoor attempt to establish that
19 defense in South Carolina in a different way
20 than saying -- at any rate, let me read
21 diminished capacity to you according to this
22 case.

23 Diminished capacity allows -- I am reading
24 from the Gill case. The diminished capacity
25 doctrine allows the defendant to offer evidence

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1 of his mental condition with respect to his
2 capacity to achieve the mens rea, that is
3 specific intent, required for the commission of
4 the offense charged. The defense may be invoked
5 to negate specific intent where such intent is
6 an element of the offense charged. Diminished
7 capacity differs from the insanity offense.

8 This is just a backdoor attempt to get
9 that defense into South Carolina Case Law, and I
10 probably would decline to do that unless I hear
11 something in the testimony to change my mind.
12 It is long way of saying that. I need to do
13 that for the record. Does that help?

14 MR. WELLBORN: Your Honor, I think that
15 makes your ruling.

16 THE JUDGE: That's what I am asking you.
17 Does it help you understand where I am at?

18 MR. WELLBORN: Yes, sir.

19 THE JUDGE: Whether you agree with it or
20 not.

21 MR. WELLBORN: I would like to say on the
22 record I certainly understand your Honor's
23 impressions.

24 THE JUDGE: Well, that is an offhand way
25 of slapping me. That's fine.

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1 MR. WELLBORN: I am trying to be
2 respectful.

3 THE JUDGE: Impression is not impression
4 of ruling, it is telling me where my mind set
5 is. It is not an impression.

6 MR. WELLBORN: I understand your Honor's
7 mind set on this issue. I also understand your
8 Honor hasn't ruled. If your Honor ruled --

9 THE JUDGE: I have not ruled yet, but I am
10 telling you that's probably how I am going to
11 rule unless I hear something different. You
12 asked me for that. I am giving you that.

13 MR. WELLBORN: Yes, sir. I understand
14 that.

15 THE JUDGE: Unless I hear something that
16 changes my mind in the defense's testimony,
17 that's where I am right now.

18 MR. WELLBORN: Yes, sir. I simply
19 responded to your query of did that help me.

20 THE JUDGE: Help me is did you understand
21 where I am?

22 MR. WELLBORN: Yes, sir, I understand
23 where you are.

24 THE JUDGE: All right. Please bring the
25 jury in.

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 (Whereupon, the jury came into open court
2 at 9:57 a.m.)

3 THE JUDGE: Good morning, Mr. Foreman,
4 ladies and gentlemen of the jury panel. I
5 apologize for keeping you back there so long.
6 We started and something came up we needed to
7 address. I apologize for that.

8 We are ready to presume with the trial.
9 Counselor, proceed.

10 MR. WELLBORN: The defense would call
11 Detective Pete Branham.

12 PETE BRANHAM, previously sworn, testified
13 as follows:

14 THE JUDGE: He has been previously sworn.
15 You continue to be sworn and under oath for your
16 testimony.

17 DIRECT EXAMINATION:

18 BY MR. WELLBORN:

19 Q Good morning. Very briefly, I want to go over
20 something that came up yesterday.

21 You recall there was a discussion about
22 the items taken into evidence and whether they
23 could be tested for DNA?

24 A Yes.

25 Q Do you recall receiving a correspondence from me

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 representing my client requesting that they be
2 tested for DNA?

3 A Yes. I got that on Friday.

4 Q Let me show you this document. Is this a true
5 and accurate copy of the letter that was sent to
6 you requesting the items be tested for DNA?

7 A That appears to be.

8 MS. SHELTON: Your Honor, I object as to
9 relevance. It was sent on Friday. He received
10 it on Friday.

11 MR. WELLBORN: Actually, it was dated
12 March 25, but we can establish that.

13 THE WITNESS: I agree with you. I didn't
14 get the letter until Friday.

15 BY MR. WELLBORN:

16 Q In fact, it was faxed to you at the Sheriff's
17 fax number on March 25th?

18 A That's correct. My captain asked me Monday
19 of this week about receiving the letter.

20 Q So you received both the fax and a letter?

21 A Yes.

22 Q The fax arrived the day the fax was sent,
23 correct?

24 A I am not sure when, but I got the letter on
25 Friday and my captain told me about the letter

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 on Monday.

2 Q It looks like a copy was sent to Misti Shelton,
3 the assistant solicitor; is that correct?

4 A It says cc to Misti Shelton. I am not sure
5 if she got it or not.

6 Q The letter requested that these two items that
7 had been taken into evidence be tested for DNA
8 against potential suspects in the case, correct?

9 A The request I got was for it to be sent out
10 for DNA analysis, that's correct.

11 Q And to test suspects in the case. Please read
12 the letter.

13 A What you are saying is correct in the
14 letter. What I am saying --

15 MS. SHELTON: Your Honor, I object to
16 relevance. This was sent on Friday after the
17 case had been scheduled for trial for weeks. He
18 sent it on the 25th, which was Wednesday.
19 Detective Branham did not get it to Friday.
20 Detective Branham is not under any position to
21 send evidence off at the request of defendant.
22 It is completely irrelevant. The jury already
23 knows it was not tested. The request was not
24 made to test until a week before trial.

25 MR. WELLBORN: I would argue it is

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 relevant because the State has evidence in its
2 possession that arguably --

3 THE JUDGE: Well, I will admit it into
4 evidence for whatever value it is to be given.
5 I mean, the jury will be aware when the letter
6 was dated, when it was received, and the trial
7 was already set and scheduled for trial. So the
8 jury will be aware of all that. The trial was
9 scheduled to start on Monday of this week. He
10 said he got the letter on Friday and talked to
11 his captain about it on Monday. The jury will
12 be aware of that.

13 MR. WELLBORN: Under those conditions, I
14 would then seek to admit this document into
15 evidence as Defense Exhibit 7.

16 MS. SHELTON: I understand the Court's
17 ruling, but I object.

18 (Whereupon, Defendant's Exhibit 7 was
19 marked for identification and received in
20 evidence.)

21 BY MR. WELLBORN

22 Q Looking at Defense Exhibit Number 7 now in
23 evidence, could you please read this document to
24 us in and the Court. Just read the letter you
25 received.

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 A It says, "Dear Pete, please accept this
2 letter as a request that evidence which was
3 taken into possession by the York County
4 Sheriff's Department in Case Number 201200030453
5 to wit: When partially smoked cigarette and
6 blood swabs can be sent to the South Carolina
7 Law Enforcement Division for testing to
8 determine whether or not there is any DNA
9 material which would be able to be matched
10 against suspects in the case.

11 I received as of today, March 25, 2014,
12 evidence of inventory sheets, copies of which
13 are attached, indicating that on September 7th,
14 2012 Deputy C.J. Doty took into evidence a
15 partially smoked cigarette from the victim's
16 living room from [REDACTED] [REDACTED] [REDACTED] Rock
17 Hill, South Carolina 29730. It appears that
18 this partially smoked cigarette was placed in
19 the evidence drop on September 8, 2012 at 9:47
20 a.m.

21 It furthermore appears that this was
22 received from the evidence drop box by somebody
23 working for your department on September 10,
24 2012 at 7:45 a.m. It also appears that at
25 approximately 11 a.m. on September 13, 2012,

PETE BRANHAM - DIRECT BY MR. WELLBORN

1 blood swabs were taken into evidence from the
2 front door of [REDACTED] [REDACTED] [REDACTED] [REDACTED] by Deputy
3 J.D. Yates.

4 I received an e-mail from Assistant
5 Solicitor Misti Shelton that neither of these
6 items have ever been tested and that a decision
7 was made not to test these items by Ms. Shelton.

8 Please accept this letter as a formal
9 request that these items be sent to S.L.E.D or
10 some other qualified entity for purposes of DNA
11 testing.

12 With kindest regards, I remain sincerely,
13 Christopher A. Wellborn."

14 MR. WELLBORN: Permission to show the
15 jury.

16 THE JUDGE: He just published it. If you
17 want to hand it to them, that's fine. He just
18 read it.

19 MR. WELLBORN: Thank you.

20 BY MR. WELLBORN:

21 Q So, in fact, what the letter indicated is I
22 received on March 25, 2014 for the first time
23 evidence that these items had been taken --

24 MS. SHELTON: Objection, your Honor.
25 Leading. Asking him to stipulate.

PETE BRANHAM - CROSS BY MS. SHELTON

1 THE JUDGE: Sustained, Counselor.

2 BY MR. WELLBORN:

3 Q Was the letter sent to you on the same day that
4 I got the information about the evidence?

5 THE JUDGE: How would he know that,
6 Counselor? I sustain the objection. That's the
7 same question you just asked that I sustained
8 the objection to. Do you want to ask him a
9 third time?

10 MR. WELLBORN: No, sir. That's all of the
11 questions I have. Thank you.

12 CROSS-EXAMINATION:

13 BY MS. SHELTON:

14 Q Detective Branham, and I apologize, I don't have
15 the letter to read. I don't recall the letter
16 saying anything about Mr. Wellborn would present
17 his client to you so you could get a DNA swab so
18 you could send off with the evidence. Did he
19 volunteer to bring his client up here to give a
20 DNA swab?

21 A He did not.

22 Q I believe you previously testified that once you
23 have a known subject, S.L.E.D will not do
24 testing unless they have a DNA sample from the
25 suspect?

PETE BRANHAM - CROSS BY MS. SHELTON

1 A That's correct.

2 Q So it is pretty much department policy that
3 unless you that known suspects DNA, you do not
4 send off the --

5 A It is S.L.E.D's policy that they won't test
6 it without it.

7 Q To your knowledge, are you under any legal
8 obligation to send evidence off at the request
9 of the defense attorney?

10 A I am not.

11 Q Again, Mr. Goins was not presented to you so you
12 could get that DNA sample?

13 A That's correct.

14 Q And no one has ever volunteered to have
15 Mr. Goins give you a DNA sample?

16 A That's correct.

17 Q You previously testified about your case
18 summary, a detailed case summary, of your
19 investigation?

20 A That's correct.

21 Q In that case summary -- I believe it was a
22 three-page case summary?

23 A Yes.

24 Q You put in the there that a cigarette butt was
25 collected and placed into evidence?

PETE BRANHAM - REDIRECT BY MS. SHELTON

1 A Correct.

2 Q And you put in there that a DNA swab was
3 collected and placed into evidence?

4 A Yes.

5 Q And that was in your case summary?

6 A Yes.

7 Q And I believe you testified that you prepared
8 that case summary just a few days after the
9 arrest, so that would have been back in June of
10 2013?

11 A Yes, that's correct.

12 Q And that case summary at some point was provided
13 to the solicitor's office?

14 A Yes.

15 Q And it is part of the solicitor's office policy
16 in preparation for trial to give that discovery
17 over to the defense?

18 A That's correct.

19 Q And you were present in court on Monday when we
20 went over discovery issues and there was no
21 issue raised that the defense did not get that
22 discovery?

23 A That's correct.

24 Q And no issue that he did not get that discovery
25 before March 25th?

PETE BRANHAM - REDIRECT BY MS. SHELTON

1 A That's correct.

2 MS. SHELTON: Thank you.

3 MR. WELLBORN: Just to follow-up.

4 REDIRECT EXAMINATION:

5 BY MR. WELLBORN:

6 Q I believe you also -- you testified about this
7 yesterday, didn't you?

8 A Yes.

9 Q Tell us again who made the decision not to test
10 these items?

11 A The ultimate decision was made by Ms.
12 Shelton with the solicitor's office.

13 Q It was Ms. Shelton's decision that these should
14 not be tested?

15 A That's correct. It was my decision at first
16 because of not having the DNA samples. She said
17 it would be her ultimate decision not to send
18 them down.

19 MR. WELLBORN: Okay. Thank you so much
20 for your time.

21 MS. SHELTON: Nothing further, your Honor.

22 THE JUDGE: Thank you, sir. You may stand
23 down.

24 (Witness excused.)

25 MR. WELLBORN: Your Honor, may we

MARSHALL SMITH - DIRECT BY MR. WELLBORN

1 approach.

2 THE JUDGE: Yes, sir.

3 (Whereupon, a bench conference was held
4 off the record in the presence of the jury, but
5 out of hearing of the jury.)

6 MR. WELLBORN: I call Marshall Smith.

7 MARSHALL SMITH, being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION:

10 BY MR. WELLBORN:

11 Q Mr. Smith, can you tell us your full name?

12 A Marshall Smith.

13 Q Where do you live?

14 A [REDACTED] in Rock Hill.

15 Q How long have you lived there?

16 A Seven years.

17 Q Who do you live with at that address?

18 A My wife, Angelia, and my youngest son,
19 Daniel.

20 Q How old is Daniel?

21 A Seventeen.

22 Q Do you know Brandon Goins?

23 A I do.

24 Q How do you know Brandon?

25 A In the neighborhood, friend of my son, a

MARSHALL SMITH - DIRECT BY MR. WELLBORN

1 family friend.

2 Q How long have you known Brandon?

3 A Between five and a half and six years.

4 Q Has Brandon been to your house?

5 A Yes, sir.

6 Q Some, hardly ever, a lot?

7 A A lot.

8 Q During that time, have you had an occasion to
9 make your own assessment of Brandon?

10 A Yes.

11 Q Are you familiar with Brandon in terms of his
12 character in the community?

13 A Yes.

14 Q Does Brandon have a reputation one way or
15 another for his character, as you are aware of,
16 in the community?

17 A It is good.

18 Q It is a good reputation?

19 A Good reputation.

20 Q Where do you work, sir?

21 A Blue Star Silicone here in York.

22 Q How long have you been there?

23 A Twenty-one years in May.

24 Q Are you familiar one way or another whether
25 Brandon has a job?

MARSHALL SMITH - CROSS BY MR. SPRINGS

1 A He works for his father, as far as I know.

2 Q How do you know that?

3 A He told me.

4 Q Do you know his dad?

5 A Some.

6 Q Have you been to the Goins' home?

7 A Yes, sir.

8 MR. WELLBORN: Please answer any questions
9 that Ms. Shelton may have.

10 CROSS-EXAMINATION:

11 BY MR. SPRINGS:

12 Q Good morning, Mr. Goins. I am not, Ms. Shelton.
13 I am Mr. Springs. You are a Smith but you are
14 not related to Darryl Smith, the victim?

15 A No.

16 Q Your son, Damon, who is 17 is Mr. Goins' friend?

17 A Yes.

18 Q You have known Mr. Goins five or six years
19 because your son is friends with him?

20 A I think that's when they moved into the
21 neighborhood.

22 Q Okay. You are familiar with his character in
23 the community?

24 A Yes, sir.

25 Q So who all have you discussed his character with

MARSHALL SMITH - CROSS BY MR. SPRINGS

1 in the community?

2 A We have a lot of neighbors, my wife.

3 Q So you discussed his character with your wife?

4 A Yes. If he didn't have good character, I
5 would not allow him in my home.

6 Q Who else besides your wife have you discussed
7 his character with?

8 A Just neighbors, I guess.

9 Q You talked to your neighbors and said, hey,
10 let's talk about Goins' character?

11 A Not exactly like that.

12 Q Well, you said his character in the community is
13 good. I mean, you have to talk to people to
14 find out if his character is good?

15 A Nobody said anything bad about him. That's
16 kind of what I am getting on.

17 Q You really haven't discussed with other people
18 outside your home his character, had you?

19 A No, sir, not specifically. It never has
20 come up to do that.

21 Q Now, who asked you to come testify today?

22 A Well, I kind of volunteered to help anyway I
23 could.

24 Q Who did you volunteer to?

25 A Brandon.

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1 Q To Brandon?

2 A Yes.

3 Q Brandon Goins. And your son, where is he?

4 A He is in school.

5 Q Now, what grade is your son in?

6 A Eleventh grade at South Pointe High.

7 Q Do you know how old Mr. Goins is?

8 A How hold? He is 19, I believe.

9 MR. SPRINGS: That's all I have. Thank
10 you, sir.

11 MR. WELLBORN: No further questions.

12 THE JUDGE: Thank you, sir. You may stand
13 down.

14 (Witness excused.)

15 MR. WELLBORN: The defense would call
16 Brandon Goins.

17 THE JUDGE: Mr. Foreman, ladies and
18 gentlemen of the jury panel, there is a matter I
19 need to take up out of your presence. It will
20 be brief. You may retire to the jury room for a
21 brief moment.

22 (Whereupon, the jury exited the courtroom
23 at 10:15 a.m.)

24 THE JUDGE: Counsel, I have to let you
25 know once you made a decision or Mr. Goins made

SC VS. BRANDON GOINS - 4-2-14

1 a decision on whether he was going to testify or
2 not, to let me know so I can question him
3 outside of the presence of the jury on that.
4 Instead, you called him without doing that.

5 Please bring him around and we will place
6 him under oath.

7 BRANDON GOINS, being duly sworn, testified
8 as follows:

9 THE JUDGE: Sir, for the record, you are
10 Brandon Goins; is that right?

11 THE DEFENDANT: Yes, sir.

12 THE JUDGE: Mr. Goins, we have reached the
13 stage of your trial where you may present your
14 defense. You have the right to testify on your
15 own behalf. However, no one can make you
16 testify. In the event you have a record for any
17 conviction involving dishonesty or false
18 statement or for a crime involving punishment of
19 imprisonment for more than one year and this
20 Court determines that the probative value of
21 admitting this evidence outweighs the
22 prejudicial effect to you, the solicitor will be
23 able to introduce this record for impeachment
24 purposes to attack your credibility.

25 If you elect to not take the stand, I will

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1 charge the jury that they are not to give the
2 fact that you did not testify any consideration
3 whatsoever. There is to be absolutely no
4 prejudice to you because you did not testify.
5 It is left entirely up to you whether or not you
6 testify. You may talk with your attorney, your
7 family, friends, or anyone else, but the
8 ultimate decision is left entirely up to you.

9 Do you understand that it is your decision
10 as to whether you will or will not testify in
11 your case?

12 THE DEFENDANT: Yes, sir.

13 THE JUDGE: Have you discussed with your
14 attorney the advantages and disadvantages of
15 testifying?

16 THE DEFENDANT: Say that again, sir?

17 THE JUDGE: Have you discussed with your
18 attorney the advantages and disadvantages of
19 testifying in your case?

20 THE DEFENDANT: Yes, sir.

21 THE JUDGE: Do you wish to testify?

22 THE DEFENDANT: Yes, sir.

23 THE JUDGE: Is that your decision, sir?

24 THE DEFENDANT: Yes, sir, it is.

25 THE JUDGE: Thank you. You may return to

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 your seat.

2 MR. WELLBORN: Can we have a quick
3 bathroom break.

4 THE JUDGE: Let's take about a 10-minute
5 break.

6 (Court in recess at 10:17 a.m.)

7 (Court resumes at 10:29 a.m.)

8 THE JUDGE: Please bring in the jury.

9 (Whereupon, the jury came into open court
10 at 10:30 a.m.)

11 THE JUDGE: Counselor, are you ready to
12 proceed?

13 MR. WELLBORN: Thank you. The defense
14 calls Brandon Goins.

15 BRANDON GOINS, being duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION:

18 BY MR. WELLBORN:

19 Q Brandon, can you tell us your full name and
20 spell your last name for the record.

21 A Brandon Lee Goins, G-O-I-N-S.

22 Q Brandon, where do you live?

23 A [REDACTED].

24 Q Who do you live with?

25 A My parents.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q How long have you lived with your folks?

2 A All my life.

3 Q Who lives with you at that address?

4 A Just my parents.

5 Q Do you a job?

6 A Yes, sir.

7 Q What do you do?

8 A I am a maintenance and pipe fitter for my
9 dad.

10 Q What is your dad's business called?

11 A Goins Industrial Welding.

12 Q I'm sorry?

13 A Goins Industrial Welding Service.

14 Q Where did you go to school?

15 A I went to Chester for a little bit, and when
16 I moved to Rock Hill I went to South Pointe.

17 Q What grade were you in when you left South
18 Pointe?

19 A Ninth grade.

20 Q How old were you when you left?

21 A Sixteen or 17.

22 Q Do you remember?

23 A No, sir. It was 17, I believe, 16 or 17.

24 Q How old are you now?

25 A Nineteen.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Now, tell me about your workday. What time you
2 typically go to work?

3 A Probably around 7 o'clock, 7, 7:30 and get
4 off at like 5 or 5:30.

5 Q How do you typically get to work?

6 A Usually, my dad, but sometimes it varies.
7 It depends.

8 Q So other people pick you up sometimes to take
9 you to work?

10 A Yes, sir. Sometimes.

11 Q How do you get home?

12 A The same way, either my dad or people who
13 pick me up.

14 Q And drop you at the house?

15 A Yes.

16 Q Were you working for your dad back in September
17 of 2012?

18 A Yes, sir, I was.

19 Q Were you living with your dad back in September
20 of 2012?

21 A Yes, sir.

22 Q What part of Rock Hill do you live in with your
23 parents?

24 A Toward McConnells area like closer to York
25 Highway 5.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Okay. At some point did you -- in September of
2 2012, did you meet Jordon Canupp?

3 A Yes, sir.

4 Q Do you remember when that was that you first met
5 Jordon Canupp?

6 A No, sir. It was some time during the
7 summer.

8 Q Do you remember where you first met Jordon
9 Canupp?

10 A Might have been at a party or something,
11 sir. I don't know.

12 Q So you don't know?

13 A No, sir.

14 Q All right. But you think it was sometime during
15 the summer?

16 A Yes, sir.

17 Q I am going to take you to the events of
18 September 6th. Now, September 6th, 2012, that
19 was the night you were at Jordon's trailer with
20 him; is that correct?

21 MR. SPRINGS: I object to leading.

22 THE JUDGE: Avoid leading Counselor.

23 BY MR. WELLBORN:

24 Q Was September 6th, 2012 the night you were at
25 Jordon's house?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 MR. SPRINGS: Objection to leading.

2 BY MR. WELLBORN:

3 Q Do you know what night you were at Jordon's
4 trailer?

5 A Not really, no, sir. I mean --

6 MR. SPRINGS: I cannot understand you.
7 Speak up, please.

8 THE WITNESS: No, sir, not really. The
9 detectives told me what day it was that I was
10 supposedly there.

11 BY MR. WELLBORN:

12 Q When did you first find out the date that you
13 were supposed to have been there at that
14 trailer?

15 A When I was arrested on June 10th.

16 Q Of what year?

17 A 2013.

18 Q So about nine months later?

19 A Yes, sir.

20 Q So was it the detectives that told you the date
21 was September 6th?

22 A Yes, sir.

23 Q Do you have any reason to doubt that that's the
24 date?

25 A No, sir.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Well, I am going to take you back to the events
2 of that night as best you can recall. How did
3 you get to Jordon Canupp's trailer?

4 A He came to pick me up from my parent's
5 house.

6 Q Had you worked that day?

7 A Yes, sir, I believe so.

8 Q So when you get off work at 5 or 5:30,
9 typically, what time --

10 MS. SHELTON: Objection to leading, your
11 Honor.

12 THE JUDGE: Sustained.

13 BY MR. WELLBORN:

14 Q After you get off work, what time approximately
15 do you get home?

16 A What time do I get off work or what time do
17 I get home?

18 Q What time do you get off work?

19 A Around 5 or 5:30.

20 Q What time typically do you get home?

21 A Around 6.

22 Q Do you recall about what time Jordon picked you
23 up?

24 A It had to be right around 6, 6:30.

25 Q But you don't know the exact time?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A No, sir.

2 Q All right. After he picked -- by the way, how
3 did he pick you up? Did he pick you up in a
4 car, truck?

5 A In a car.

6 Q Do you remember anything about the car?

7 A It was a gold kind of color car, champaign
8 color, Buick or something.

9 Q Do you remember anything else about it?

10 A It was kind of cool, you could crank it with
11 a screwdriver I guess --

12 MS. SHELTON: Objection, your Honor. May
13 we approach?

14 THE JUDGE: You may.

15 (Whereupon, a bench conference was held
16 off the record in the presence of the jury, but
17 out of hearing of the jury.)

18 THE JUDGE: I sustained the objection and
19 instruct the jury to disregard the last question
20 and answer and give it no consideration
21 whatsoever in this case.

22 BY MR. WELLBORN:

23 Q After Jordon picked you up at your house in a
24 car -- by the way, whose car was it?

25 A Jordon's.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q How do you know that?

2 A Because that's what he came to pick me up
3 in.

4 Q Where did he take you?

5 A To his house.

6 Q Had you been to his house before?

7 A Not that the I can remember, no, sir.

8 Q Was it dark or light when you got to his house?

9 A It was light outside.

10 Q When you got to his house, was anybody there
11 besides you and Jordon Canupp?

12 A No, sir.

13 Q Can you describe what his house was like?

14 A A single-wide trailer. I mean, it was just
15 a single-wide trailer.

16 Q Did it have any rooms in it?

17 A It had a couple of rooms in it, I guess,
18 like two, three maybe.

19 Q Two rooms?

20 A Yes, sir.

21 Q Did you go into both rooms?

22 A No, sir. I mean, I walked back to the
23 bathroom and I noticed like two other doors
24 besides the bathroom. I assume two bedrooms.

25 Q You don't know what was in the other rooms?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A No, sir.

2 Q Did you stay in the living room or besides the
3 bathroom?

4 A We pretty much stayed in the living room.

5 Q What did you guys do?

6 A We drank and smoked a little weed.

7 Q You drank and you smoked a little weed?

8 A Yes, sir.

9 Q What were you guys drinking?

10 A Tequila, I believe.

11 Q Was it mixed with anything or straight Tequila?

12 A Straight Tequila.

13 THE JUDGE: Sir, if you could speak up a
14 little bit.

15 THE WITNESS: Sorry, sir.

16 BY MR. WELLBORN:

17 Q You said you were drinking Tequila?

18 A Yes, sir.

19 Q And smoking a little weed?

20 A Yes, sir.

21 Q Did you guys talk about anything?

22 A Yes. We talked about a few things.

23 Q I am going to ask you, did you talk about where
24 you were?

25 A Yes, sir.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Did you talk about any plans to do anything?

2 MS. SHELTON: Objection to leading, your
3 Honor.

4 MR. SPRINGS: I am going to object to the
5 hearsay. He can ask him what he said, but he
6 cannot ask him what Jordon Canupp said. That's
7 hearsay.

8 THE JUDGE: Yes, sir. Sustained.

9 BY MR. WELLBORN:

10 Q Without saying what Jordon Canupp said, were you
11 involved in any conversations about future plans
12 to do anything together?

13 A Yes, sir, fishing.

14 Q Okay. Were there any plans made about, without
15 saying what Jordon Canupp said, were there any
16 plans made regarding fishing?

17 A We didn't actually plan plan.

18 Q What do you mean by plan plan?

19 A We didn't actually talk about where we were
20 going to go or nothing. We just talked about
21 fishing, and probably going fishing the next
22 day.

23 Q Okay. Did you have an understanding one way or
24 another whether you were going to be going
25 fishing the next day with Jordon Canupp?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 MR. SPRINGS: Objection. That requires
2 hearsay.

3 MR. WELLBORN: His understanding would not
4 require hearsay, your Honor, for the record.

5 THE JUDGE: I will let him answer. You
6 may answer.

7 BY MR. WELLBORN:

8 Q Did you have any understanding one way or
9 another whether you were going to be going
10 fishing the next day with Jordon Canupp?

11 A I thought we would plan on going fishing.

12 Q Without saying what Jordon said, was that based
13 on any conversation you had with him?

14 A Say that again?

15 Q Without going into any conversation you had, is
16 that based on what you were talking about?

17 A Yes, sir.

18 Q Now, at some point in the evening, did anything
19 come up about going next door to Jordon's --

20 MR. SPRINGS: Objection to the leading.

21 BY MR. WELLBORN:

22 Q Did you ever go next door to Jordon's uncle's
23 house?

24 A Yes, sir.

25 Q Why did you go there?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A To get a few things of Jordon's.

2 MR. SPRINGS: I couldn't hear him. He is
3 mumbling.

4 THE WITNESS: To get a few things of
5 Jordon's.

6 BY MR. WELLBORN:

7 Q So you went next door to Jordon's uncle's house
8 to get what of Jordon's?

9 A A few of his fishing rods and some other
10 stuff. He just said he had few things --

11 MR. SPRINGS: Objection to hearsay. He
12 cannot say what somebody out of court said.

13 THE JUDGE: I sustain the objection.

14 MR. WELLBORN: Your Honor, I think there
15 is an exception, two exceptions. Number one, it
16 is already in evidence by way of statement.

17 Number two, it goes to my client's state
18 mind which is an issue.

19 THE JUDGE: I disagree with the state of
20 mind argument.

21 MR. WELLBORN: It is already in evidence
22 by way of his statement, which the State put it
23 in evidence and now they are objecting.

24 THE JUDGE: Approach just a minute.

25 (Whereupon, a bench conference was held

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 off the record in the presence of the jury, but
2 out of hearing of the jury.)

3 BY MR. WELLBORN:

4 Q Brandon, without saying what Jordon told you,
5 why did you think you were going over to
6 Jordon's uncle's house?

7 A To get some things of Jordon's.

8 Q To get some things of Jordon's. Without saying
9 what Jordon told you, why did you think it was
10 Jordon's uncle's house?

11 A Say what?

12 Q Why did you think it was Jordon's uncle's
13 house -- let me try this: Do you know whose
14 house it was? Of your own knowledge, do you
15 know whose house this was?

16 A Yes, sir.

17 Q You did?

18 A I mean, he said so --

19 Q We can't talk about what Jordon told you.
20 Without any information that Jordon gave you,
21 did you know who the house belonged to?

22 A No, sir.

23 Q What I want to do is take you through walking
24 over to Jordon's uncle's house. Okay.

25 I am going to show you what has been

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 marked as Defendant's Exhibit Number 2. Have
2 you seen this picture before?

3 A Have I seen the picture? I never seen the
4 picture.

5 Q Have you seen what we are talking about? Have
6 you seen what is in the picture before, in other
7 words, the trailer?

8 A Yes, sir.

9 Q Would you please come and step down with me in
10 front of the jury?

11 A Yes, sir.

12 Q I am going to ask you to turn and face the jury.
13 Which one of these two trailers was Jordon's
14 uncle's house, that you recall?

15 A This one (indicating).

16 Q Which one was the trailer where Jordon lived
17 where you were drinking Tequila and smoking some
18 weed?

19 A This here (indicating).

20 Q As you walked out of that trailer -- first of
21 all, who led the way when you walked out, you or
22 Jordon?

23 A Jordon.

24 Q Okay. Now, had you ever been to Jordon's
25 Uncle's house.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 MR. SPRINGS: I object to the reference to
2 Jordon's Uncle's house. The testimony is it is
3 not Jordon's uncle's house.

4 MR. WELLBORN: With all due respect, my
5 client believed it was Jordon's uncle's house.

6 MR. SPRINGS: I object because the
7 evidence is that it is not Jordon's uncle's
8 house.

9 BY MR. WELLBORN:

10 Q As you walk toward this trailer, whose house did
11 you think it was?

12 A Jordon's uncle's.

13 Q As you walk toward this trailer, which you
14 thought was Jordon's uncle's house, which
15 door -- did you both go to the same door?

16 A Yes, sir.

17 Q Which door did you go to first?

18 A This one (indicating).

19 MS. SHELTON: We have no idea what he is
20 testifying to. We cannot see what he is doing.

21 MR. WELLBORN: I am trying to show the
22 jury --

23 THE JUDGE: You can move around to see.

24 BY MR. WELLBORN:

25 Q Can you tell us, again, which door you went to

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 first?

2 A This one (indicating).

3 Q In your mind, was that the front door or back
4 door?

5 A That was the front door.

6 Q Why did you think it was the front door?

7 A That's where me and Jordon went.

8 THE JUDGE: Have him stand on the other
9 side facing the court reporter.

10 BY MR. WELLBORN:

11 Q Sir, you thought this was the front door because
12 that's where you and Jordon went first?

13 A Yes, sir.

14 Q When you went there, what did Jordon do?

15 A He tried to open the door.

16 Q Where were you when he tried to open the door?

17 A Right behind him on the porch.

18 Q Why were you following him?

19 A He asked me to.

20 Q All right. Now, did the front door, what you
21 thought was the front door, open when he tried
22 it?

23 A No, sir.

24 Q Then what happened next?

25 A He told me to wait there and he went around.

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Please resume your seat.

2 When you went around, where did he go?

3 A I am guessing to the back.

4 Q Do you know where he went?

5 A No, sir.

6 Q Did you see him?

7 A No, sir.

8 Q Where were you while he was going around the
9 other side of the trailer?

10 A I was waiting on the steps where he told me
11 to wait at.

12 Q You were waiting on the steps where he told you
13 to wait?

14 A Yes, at the other door.

15 Q How long were you waiting there?

16 A A while. I mean, I don't have a sense of
17 time back then but I mean it had to be a while.

18 Q Okay. After waiting there a while, what
19 happened next?

20 A He finally let me in that door.

21 Q Okay. He let you in the door where you had been
22 waiting?

23 A Yes, sir.

24 Q When he opened the door, was it light inside or
25 dark?

BRANDON GOINS - DIRECT BY MR. WELLBORN

- 1 A It was dark, sir.
- 2 Q Did you know what part of the trailer that door
- 3 opened into as you first looked inside?
- 4 A Not really. I couldn't see. It could have
- 5 been anywhere, sir.
- 6 Q Okay. Did you step inside the trailer?
- 7 A Yes, sir, I did.
- 8 Q After you stepped inside the trailer, what did
- 9 Jordon do next?
- 10 A He grabbed some fishing poles.
- 11 Q Did you see him grab the fishing poles?
- 12 A He had them in his hand when he opened up
- 13 the door.
- 14 Q Okay. Did he have anything else in his hand
- 15 when he opened up the door?
- 16 A No, sir. Not right off.
- 17 Q Okay. So he had some fishing poles in his hand.
- 18 What happened next?
- 19 A He walked down the hall or somewhere.
- 20 Q Could you see where he went?
- 21 A No, sir.
- 22 Q Did you follow him?
- 23 A No, sir.
- 24 Q Where were you as he disappeared with the
- 25 fishing poles?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A At the door that he let me in.

2 Q So you are standing at the door. How long was
3 he gone?

4 A Not very long at all, sir, possibly a
5 minute.

6 Q Was it possible it was less?

7 A Yes, it is possible.

8 Q Were you keeping track of time?

9 A No, sir, I wasn't.

10 Q At this point, how many hours had you been,
11 approximately, or can you guess, had you been
12 drinking Tequila and smoking dope?

13 A I couldn't tell you. I was not keeping
14 track of time, sir.

15 Q Did Jordon come back with anything?

16 A Yes. He had the gold necklace in his hand.

17 Q How do you know it was a gold necklace?

18 A Because he came up to me and I seen it.

19 Q Could you see it was gold?

20 A Not really. I mean, I am assuming that it
21 was.

22 Q Did you find out later from anybody that it was
23 a gold necklace?

24 A The detectives when I was arrested.

25 Q They told you it was a gold necklace?

BRANDON GOINS - DIRECT BY MR. WELLBORN

- 1 A Yes, but I knew he had a necklace.
- 2 Q You knew he had a necklace. Now, after he came
- 3 back, did he leave the trailer?
- 4 A Say what?
- 5 Q After he came back, did you and he leave the
- 6 trailer?
- 7 A Yes, he took me home.
- 8 Q As he left the trailer -- by the way, after you
- 9 left the trailer, did you ever see that gold
- 10 necklace again?
- 11 A No, sir.
- 12 Q Do you know what he did with it?
- 13 A No, sir.
- 14 Q What did he do with the fishing rods?
- 15 A I have no idea, sir.
- 16 Q Well, let's take -- how did you get home?
- 17 A Jordon took me home.
- 18 Q In what?
- 19 A The same gold Buick that he picked me up in.
- 20 Q That you thought was his car?
- 21 A Yes, sir.
- 22 Q Were the fishing rods with you as he took you
- 23 home?
- 24 A Yes, sir.
- 25 Q Where were the fishing rods?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A In the backseat.

2 Q In the backseat. On the way home or at any time
3 on the drive home, did he mention anything about
4 --

5 MR. SPRINGS: Objection to the hearsay.

6 THE JUDGE: Sustained.

7 BY MR. WELLBORN:

8 Q Without saying what anybody said, did the
9 conversation of the two of you fishing the next
10 day come up again on the ride home?

11 A Yes, sir.

12 Q As a result of that conversation, were you asked
13 any -- we will come back to that.

14 After he took you home, what happened
15 next?

16 A I went to sleep, sir.

17 Q Well, did he drop you off?

18 A Yes, sir.

19 Q Then where did you go?

20 A I went to bed, sir.

21 Q Did you have any fishing rods with you when you
22 left his car?

23 A No, sir, I did not.

24 Q Did you have any fishing rods with you at your
25 house?

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 A I mean, I had possibly my fishing rods at my
2 house, but I didn't take any fishing rods with
3 me to my house when I left.

4 Q Now, do you remember as you were standing there
5 at that door -- which door did you think it was
6 again, the door you went into?

7 A The front door.

8 Q As you were standing at what you thought was the
9 front door, did you hear any noises coming from
10 the back of the house?

11 A No, sir.

12 Q Did you ever see a dog there?

13 A No, sir.

14 Q Did you hear a dog?

15 A No, sir. I don't think so.

16 Q When did you first find out that Jordon had been
17 charged with burglary in this case?

18 A When I was arrested.

19 Q How did you find that out?

20 A The detectives told me.

21 Q Did you have any contact with Jordon after that
22 night at that trailer?

23 A No, sir.

24 Q Why didn't you call him the next day and say,
25 hey, we were supposed to go fishing. Where are

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 you?

2 A If he would have planned to go fishing, he
3 would have called me, sir.

4 Q So what did you think when you didn't hear from
5 him?

6 A Maybe he changed plans or something.

7 Q Did you work throughout the month of September
8 for your dad, September of 2012?

9 A Yes, sir.

10 Q Did you work in October?

11 A Yes, sir.

12 Q Did you continue to work for your dad until you
13 were arrested in June of 2013?

14 MS. SHELTON: Objection to the relevance,
15 your Honor.

16 THE JUDGE: What is the relevance,
17 Counselor?

18 MR. WELLBORN: It shows employment.

19 THE JUDGE: Sustained.

20 BY MR. WELLBORN:

21 Q When did you first find out a burglary had
22 occurred?

23 A When I was arrested, sir.

24 Q Who told you that?

25 A The detectives.

BRANDON GOINS - DIRECT BY MR. WELLBORN.

1 Q I am going to go over your statement with you.
2 Would you step down again, please.

3 Do you recognize this?

4 A Yes, sir.

5 Q Is that the statement that you gave in this
6 case?

7 A Yes, sir.

8 Q Is that your signature at the bottom?

9 A Yes, sir.

10 Q Is this a true and accurate copy of your
11 statement?

12 A Yes, sir.

13 Q Please resume your seat.

14 MR. WELLBORN: I would like to move this
15 in as Defendant's Exhibit Number 8.

16 THE JUDGE: Counsel, approach just a
17 minute.

18 (Whereupon, a bench conference was held
19 off the record in the presence of the jury, but
20 out of hearing of the jury.)

21 BY MR. WELLBORN:

22 Q Jordon, I am going to go over your statement
23 with you and ask you if these things are true.
24 That night when you were at Jordon's trailer,
25 were you and Jordon -- you wrote down -- why

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 don't you come down. If you will stand over
2 here so you are closer to the court reporter.

3 THE JUDGE: Why don't you reverse sides.
4 It is easier. He has a softer spoken voice.

5 BY MR. WELLBORN:

6 Q Can you read what you wrote? Let's start with
7 Line 1.

8 A "On September 6th, 2012 me and Jordon was
9 intoxicated."

10 Q Were you intoxicated?

11 A Yes, sir.

12 Q So that's true?

13 A Yes, sir.

14 Q Would you read the next line?

15 A "And got to talking about money."

16 Q Stop. Were you talking about money?

17 A Yes, sir.

18 Q Is that true?

19 A Yes, sir.

20 Q Were you talking about jobs?

21 A Yes, sir.

22 Q Did you talk about anything else that night
23 besides money?

24 A We talked about a few things. We talked
25 about fishing, talked about few different

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 things, sir.

2 Q Can you read the next line?

3 A "Afterwards Jordon said he had a few things
4 at his uncle's house."

5 Q Did Jordon say that?

6 A Yes, sir.

7 Q Was that true?

8 A Yes, sir.

9 Q So when you wrote that, that was also true?

10 A Yes, sir.

11 Q Again, how did you know Jordon had a few things
12 at his uncle's house?

13 A Because he told me so.

14 Q Read the next line.

15 A "We then walked down and went to the front
16 door."

17 Q Okay. Did you walk down to his uncle's house?

18 A Yes, sir, I did.

19 Q Did you go to what you thought was the front
20 door?

21 A Yes, sir, I did.

22 Q Then you said the front door was what?

23 A It was locked.

24 Q And was what you thought the front door, was it
25 locked?

BRANDON GOINS - DIRECT BY MR. WELLBORN

- 1 A Yes, sir, I am sure it was.
- 2 Q Did you test it yourself, by the way?
- 3 A No, sir.
- 4 Q If you would read the next line.
- 5 A "Jordon went and in the back and let me in
- 6 the front."
- 7 Q Did you see Jordon go in from the back?
- 8 A No, sir.
- 9 Q But you were assuming he went in the back?
- 10 A Assuming so, yes.
- 11 Q So as far as you knew, that was the truth?
- 12 A Yes, sir.
- 13 Q Then let's go to the next line.
- 14 A "He began to get a few fishing rods and a
- 15 gold necklace."
- 16 Q Did he get a few fishing rods?
- 17 A Yes, sir, he did.
- 18 Q Did he get a gold necklace?
- 19 A Yes, he did.
- 20 Q Then read the next line.
- 21 A "He said this should be good."
- 22 Q Do you recall him saying that?
- 23 A Yes, sir.
- 24 Q So is that true?
- 25 A Yes, sir.

BRANDON GOINS - DIRECT BY MR. WELLBORN

- 1 Q All right. What happened next?
- 2 A "We then got in his car and he took me
- 3 home."
- 4 Q After he got the fishing rods and necklace, did
- 5 he get in the car?
- 6 A Yes.
- 7 Q Did he take you home?
- 8 A Yes, sir.
- 9 Q So that was true?
- 10 A Yes, sir.
- 11 Q All right. Let's go to the next part.
- 12 A "And took me home. He told me to hold the
- 13 fishing rods until tomorrow."
- 14 Q Did he tell you that?
- 15 A Yes, sir, he did.
- 16 Q When did that come up in the conversation, on
- 17 the drive home, before the drive home, after you
- 18 got home? When did he tell you to hold the
- 19 fishing rods?
- 20 A On the way.
- 21 Q All right. Read the next line.
- 22 A "And I never saw him again after that
- 23 night."
- 24 Q The last line.
- 25 A "It was in the middle the night."

BRANDON GOINS - DIRECT BY MR. WELLBORN

1 Q Do you know what time it was?

2 A No, sir, I don't. I know it was dark
3 outside.

4 Q Okay. Please resume your seat.

5 Do you know why after you got to your
6 house Jordon did not give you the fishing rods?

7 MR. SPRINGS: Objection. That's not in
8 evidence. He is leading.

9 THE JUDGE: Sustained.

10 BY MR. WELLBORN:

11 Q Did Jordon give you the fishing rods when you
12 got to the house?

13 A No, sir.

14 Q Since he didn't give you the fishing rods when
15 you got to the house, do you know why he didn't
16 give you the fishing rods when you got to the
17 house?

18 A No, sir.

19 MR. WELLBORN: I beg the Court's
20 indulgence.

21 BY MR. WELLBORN:

22 Q Did you ever see those fishing rods again?

23 A No, sir.

24 Q Just to be clear, when you were inside the
25 doorway of Mr. Smith's trailer, did you leave

BRANDON GOINS - CROSS BY MS. SHELTON

1 that area while you were waiting on Jordon?

2 A No, sir.

3 Q Where did Jordon get the necklace from?

4 A I am not sure, sir.

5 Q Where did he get the fishing rods from?

6 A I am not sure, sir.

7 Q Where did you go before he opened the door in
8 the trailer?

9 A The what?

10 Q Before he let you in the trailer, where did he
11 go before he opened the door?

12 A I don't know, sir.

13 Q After he dropped you off at your house, do you
14 know where Jordon went?

15 A No, sir, I do not.

16 Q After Jordon dropped you off at your house, do
17 you know what Jordon did?

18 A No, sir, I do not.

19 MR. WELLBORN: Please answer any questions
20 that Ms. Shelton has.

21 CROSS-EXAMINATION

22 BY MS. SHELTON

23 Q Mr. Goins, since the burglary back in September,
24 you have been back out to Jordon Canupp's
25 trailer, right?

BRANDON GOINS - CROSS BY MS. SHELTON

1 A Do what now?

2 Q You have been back out there?

3 A Yes, sir, with my lawyer.

4 Q With your lawyer. That was back in like January
5 or February?

6 A I can't remember, ma'am.

7 Q Do you remember if there was snow on the ground?
8 There was snow on the ground?

9 A Maybe, possibly.

10 Q I am going to have you look at these pictures.
11 That day when you were there with your attorney,
12 he also had an investigator with him, correct?

13 A Yes, ma'am.

14 Q And they were taking pictures that day?

15 A Yes, ma'am.

16 Q And that would have been in January or February
17 of this year?

18 A Yes, ma'am.

19 Q Those were the pictures they took?

20 A Sure.

21 Q Thank you. You can see snow on the ground in
22 these pictures, correct?

23 A Yes.

24 Q There wasn't snow on the ground back in 2012,
25 right?

BRANDON GOINS - CROSS BY MS. SHELTON

1 A 2012, no, ma'am.

2 Q You testified that you never had been to Jordon
3 Canupp's trailer before the evening of September
4 6th, 2012, but yesterday, one of your witnesses,
5 Ms. Smith, said that you had. So what is it,
6 had you been there?

7 A Possibly for a party or something.

8 Q So you had maybe been there?

9 A Not that I remember, but it I could have
10 been there before.

11 Q You testified that you were drinking and smoking
12 weed the night of this incident?

13 A Yes, ma'am.

14 Q But you were not drinking or smoking weed when
15 you gave this statement, correct?

16 A No, ma'am.

17 Q Do you work on Fridays?

18 A Not really.

19 Q You don't work Friday's.

20 A Most of the time not, sometimes I do. It
21 depends.

22 Q What does it depend on?

23 A If we get called into work if something
24 breaks or something.

25 Q How about Thursdays?

BRANDON GOINS - CROSS BY MS. SHELTON

1 A Yes, ma'am.

2 Q So your dad doesn't work Fridays either?

3 A Sometimes he does, yes, ma'am.

4 Q Your testimony was that you had plans with
5 Jordon Canupp to go fishing?

6 A Yes.

7 Q Did you plan where you were going to go?

8 A No, ma'am.

9 Q Did you plan what time you were going to go?

10 A No, ma'am.

11 Q Did you plan what kind of bait you were going to
12 use?

13 A No, ma'am.

14 Q Did you plan on what kind of fish you were going
15 to try to catch?

16 A No, ma'am. We just talked about going
17 fishing.

18 Q So you were just generally saying we are going
19 to go fishing?

20 A We talked about fishing, yes.

21 Q In the middle the night?

22 A Yes, we were hanging out talking.

23 Q You have testified that when you went through
24 the door, when he let you in the door, it was so
25 dark you could not tell where you were, correct?

BRANDON GOINS - CROSS BY MS. SHELTON

1 A I mean, it was so long ago I couldn't
2 remember where the door led me to. I just
3 remember going in the door.

4 Q But you don't remember -- you don't know if you
5 went into a room or hallway or anything?

6 A No, ma'am.

7 Q It was because it was dark. That's what you
8 said when you testified?

9 A Yes, ma'am.

10 Q Mr. Goins, have you met with your attorney
11 before coming to court today?

12 A Have I met with my attorney?

13 Q Yes.

14 A Yes, I have.

15 Q Did he go over the case with you?

16 A We talked about what I remember and what I
17 don't remember, yes, sir.

18 Q Did he talk to you about your testimony?

19 A No. He just asked me what I remember.

20 Q So he didn't talk about your testimony at all?

21 A My testimony?

22 Q Yes, your testimony.

23 A Right now?

24 Q Yes.

25 A No, ma'am.

BRANDON GOINS - CROSS BY MS. SHELTON

1 Q What about testimony that you just gave when he
2 was asking you questions?

3 A No, ma'am. We went over it, but I mean, not
4 like over it, over it like saying what I was
5 going to say. We talked about what I remembered
6 about the night and what happened and stuff.

7 Q Let's talk about your statement for a minute.
8 When you testified, you said that you originally
9 said when Jordon came to the door he then
10 started picking up fishing rods, and when asked
11 again by Mr. Wellborn, you said he had them in
12 his hand. In your statement you say, "He began
13 to get fishing rods." Correct?

14 A Yes, ma'am.

15 Q Not that he had them in his hand?

16 A No, ma'am.

17 Q And you say he got a gold necklace?

18 A Yes, ma'am.

19 Q Not that he had that in his hand when he came
20 back to the door?

21 A He didn't have that in his hand when he came
22 back to the door.

23 Q So you actually went into the trailer?

24 A I was inside the house.

25 Q While you were in there, he went somewhere and

BRANDON GOINS - CROSS BY MS. SHELTON

1 got some things?

2 A Yes, ma'am.

3 Q So you could hear him inside the trailer getting
4 things?

5 A I mean, I heard --

6 Q Yes or no, could you hear him in the trailer?

7 A Could I hear him in the trailer?

8 Q Yes.

9 A I don't recall hearing him ramble through
10 things.

11 Q That's not my we question. Could you hear him
12 in the trailer?

13 A Yes, I could hear him.

14 Q And when he came back, he had a gold necklace in
15 his hand?

16 A Yes, ma'am.

17 Q He said, "This should be good."

18 A Yes, ma'am, he did.

19 Q You saw that necklace?

20 A Yes, ma'am.

21 Q You testified you don't know anything about that
22 necklace or where that necklace went?

23 A No, ma'am.

24 Q You only said one necklace, correct?

25 A Yes, ma'am.

BRANDON GOINS - CROSS BY MS. SHELTON

1 Q Were there any other necklaces taken that you
2 know of?

3 A After the detectives told me, I read what
4 was taken out.

5 Q Any necklace with a heart shape pendant on it?

6 A I don't recall that.

7 Q Diamond earrings?

8 A I don't recall that.

9 Q You don't recall seeing any other necklace than
10 this gold necklace?

11 A No, ma'am, he had one necklace in his hand.

12 Q You did nothing with this jewelry?

13 A No, ma'am, I did not.

14 Q You have a sister?

15 A Yes, ma'am.

16 Q Her name is Heather?

17 A Yes, ma'am.

18 Q Heather Goins?

19 A Yes.

20 Q With a birthday of April 28, 1994?

21 A Yes, ma'am.

22 Q Did you see her sometime after September 6th,
23 within a few hours after when you were all in --
24 look at me when I'm talking to you, please?

25 A Oh, sorry. Possibly, yes, ma'am.

BRANDON GOINS - CROSS BY MS. SHELTON

1 Q She is older than you, right?

2 A Yes, ma'am.

3 Q So she would have been 18 at the time?

4 A Somewhere around there, yes, ma'am.

5 Q You have to be 18 to sell items at pawn shops
6 and things like that?

7 A Yes, ma'am, you do.

8 Q Are you familiar with a Southeast Gold Exchange
9 in Newport?

10 A Near the Newport Walmart. I know there is a
11 jewelry store there.

12 Q Are you aware if your sister is familiar with
13 that store at all?

14 A Possibly.

15 Q Have you ever been there with her?

16 A Possibly.

17 Q Do you remember when that would have been?

18 A No, ma'am.

19 Q Now, you walked over with Mr. Canupp in the
20 middle of the night?

21 A It was sometime in the dark.

22 Q When you come out of Mr. Canupp's trailer, if
23 you walk straight across there is a door to the
24 other trailer, correct?

25 A Yes, ma'am.

BRANDON GOINS - CROSS BY MS. SHELTON

1 Q But you didn't walk straight across?

2 A No, ma'am.

3 Q Where the driveway is?

4 A No, ma'am.

5 Q You went around back, right?

6 A If that's the back, yes, ma'am.

7 Q You just stood there?

8 A Pretty much, yes, ma'am. I walked with
9 Jordon over there.

10 Q You were completely oblivious to screens being
11 cut, screens being pried open, door jams being
12 broken, cabinets being rummaged through? You
13 just stood there in the dead of night for no
14 reason for that long period of time completely
15 oblivious to all those things? Is that your
16 testimony?

17 A Yes, ma'am.

18 Q Do you smoke?

19 A Not really.

20 MS. SHELTON: Court's indulgence, your
21 Honor.

22 BY MS. SHELTON:

23 Q You are well aware because you have been sitting
24 here this whole time, that there was a cigarette
25 butt found inside this trailer. We don't know

BRANDON GOINS - REDIRECT BY MS. WELLBORN

1 whose it is. Was it yours?

2 A No, ma'am, I don't think so.

3 Q You don't think so?

4 A Why would it be mine?

5 Q I don't know. That's why I asked you.

6 A I don't smoke, ma'am, not like that.

7 Q You never smoked?

8 A Yes, I smoked.

9 Q But you were not smoking back in 2012?

10 A I can't remember if I was or not. It has
11 been almost two years ago.

12 Q So you don't know?

13 A No, ma'am, I could have been. I mean, I
14 smoked in my time so.

15 MS. SHELTON: No further questions, your
16 Honor.

17 MR. WELLBORN: Couple follow-ups.

18 REDIRECT EXAMINATION

19 BY MR. WELLBORN:

20 Q Brandon, you would also be aware having sat here
21 that the cigarette butt was found in the living
22 room next to a rolltop desk, correct?

23 A Correct.

24 Q Did you walk into the living room next to
25 rolltop desk?

BRANDON GOINS - REDIRECT BY MS. WELLBORN

1 A Not unless it was besides the door, no, sir.

2 Q Beside the back door or front door, wherever you
3 thought you were going in?

4 A Right.

5 Q You also would be aware that the cigarette butt
6 is in evidence, correct?

7 A Yes, sir.

8 Q You were smoking that night, right?

9 A Possibly could have been.

10 Q Well, you were smoking weed, right?

11 A Oh, yes, sir.

12 Q You were asked questions about how you stood
13 there while screens were cut. Did you know any
14 screens were cut while you were out there?

15 A No, sir, I did not.

16 Q You were asked about what you were doing
17 standing outside while the door was broken into
18 on the other side of the trailer. Did you know
19 if the door was broken into on the other side of
20 the trailer?

21 A No, sir, I did not.

22 Q You were asked about standing there while people
23 were rummaging around in the trailer. Did you
24 hear anybody rummaging around in the trailer?

25 A No, sir, I didn't hear anything like that.

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1 Q Ms. Shelton asked you what you could hear Jordon
2 doing. When you were inside, stepped inside
3 that doorway, what could you hear Jordon doing,
4 if anything?

5 A Walking around.

6 Q How long were you waiting by the door while
7 Jordon walked around?

8 A While I was outside?

9 Q While you were inside.

10 A Say that again.

11 Q After he let you in the door, how long were you
12 in that doorway while he walked around inside?

13 A Not long, sir.

14 Q Why didn't you follow him?

15 A It was not my house to be in, sir.

16 Q I am sorry, what?

17 A It wasn't my house, sir.

18 MR. WELLBORN: That's all of the questions
19 I have.

20 MS. SHELTON: Nothing, your Honor.

21 THE JUDGE: Thank you, sir. You may stand
22 down.

23 (Witness excused.)

24 MR. WELLBORN: Your Honor, I think we have
25 an issue of law that we wanted to address with

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1 your Honor.

2 THE JUDGE: You are talking about a
3 witness?

4 MR. WELLBORN: Yes.

5 THE JUDGE: I don't think we have that at
6 all.

7 Mr. Foreman, ladies and gentlemen of the
8 jury panel, if you would retire to the jury
9 room.

10 (Whereupon, the jury exited the courtroom
11 at 11:17 a.m.)

12 THE JUDGE: Counselor, I have not made a
13 formal ruling, correct? So go ahead.

14 MR. WELLBORN: Thank you, your Honor. My
15 next potential witness would be Dr. Rubin
16 Ridgeway who testified yesterday, a proffer was
17 made, and I would propose to offer Dr. Ridgeway
18 to testify that he has tested my client, that he
19 of course, laid a foundation that he is
20 qualified to give these tests, also laid a
21 foundation that he is qualified to --

22 THE JUDGE: No, you didn't. You qualified
23 him as a clinical psychologist, that's it.

24 MR. WELLBORN: I understand. We would lay
25 the foundation he is qualified to administer the

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1 tests, qualified to analyze the tests and assess
2 them, and that his assessment of my client's
3 testing, both intelligence as well as the
4 Multiphasic Personality Test-2, yielded a
5 psychological profile of someone who is more
6 susceptible to being mislead than someone else
7 in a case where we are presenting a defense of
8 my client being mislead. That's what I would
9 propose to offer Dr. Ridgeway to testify about.

10 THE JUDGE: Doe the State wish to be
11 heard?

12 MS. SHELTON: Your Honor, our argument
13 from yesterday is that it goes to a diminished
14 capacity defense and is an attempt to bolster
15 his client's own testimony of he didn't
16 understand what was going on, and I think it is
17 irrelevant and should be suppressed.

18 THE JUDGE: Well, I have heard nothing in
19 the testimony to change my mind as to what I
20 stated earlier when I was asked to give
21 preliminarily an opinion about what I was going
22 to do. There is nothing to change my mind. I
23 think this is simply a way of looking at a
24 diminished capacity defense, that is allowed in
25 some other jurisdictions, by defense counsel to

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1 try to establish it through a backdoor if you
2 can't get it in the front door, a diminished
3 capacity defense in some form in this trial.
4 South Carolina does not recognize diminished
5 capacity defense. That would be the only
6 relevance to this witness' testimony in my mind
7 and the Court's opinion and it is simply another
8 way to try to get diminished mental capacity
9 into the Court and establish that defense, use
10 that as a defense.

11 I don't think the expert witness after his
12 proffer and the testing, whatever is done -- he
13 can testify, and I will allow him to testify in
14 this case, if he administered an intelligence
15 test and can establish the intelligent level of
16 the defendant and you wish to get that in. I
17 think that may be relevant as to the defendant,
18 but it is not -- it doesn't establish any
19 diminished capacity. It establishes some level
20 of intelligence on behalf of the defendant but
21 it doesn't represent, in my mind, a defense
22 based on diminished capacity. That's exactly
23 where, although defense counsel composites it
24 and presents it in a different way and it goes
25 to the bottom line of trying to establish it

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1 through some diminished mental capacity that the
2 defendant is not as likely to be able to
3 understand or be mislead into something which
4 prevents him from being able to form the
5 requirement of one of the elements of these
6 offenses, which is specific intent to commit the
7 crime which is required on these to negate his
8 ability to perform the specific intent, and
9 that's exactly what diminished capacity defense,
10 mental capacity defense is. I think it is just
11 a backdoor way to try to get that in to the
12 Court in South Carolina.

13 I am not going to allow it for the reasons
14 I gave earlier. Once you open the door to that
15 then you have established, by allowing that
16 testimony and the testimony before the jury and
17 any instruction that might come from that to the
18 jury, then you have established the diminished
19 capacity offense in South Carolina which is not
20 allowed. That will be established in this case,
21 opening up the door to that defense in every
22 other case with anyone who has a below average
23 intelligence, use that as a defense and a
24 requirement. Basically, where a person who is
25 in the lower average intelligence would be faced

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1 with the prospect of postconviction-relief
2 proceeding bringing in ineffective assistance if
3 they don't hire someone to do an evaluation to
4 present that evaluation to the Court in every
5 case where there is some below average
6 intelligence in which you can establish. So we
7 would be opening the door to all of that. It is
8 diminished mental capacity offense anyway you
9 look at in the Court's mind. I am not going to
10 let him testify to diminished mental capacity
11 and that sort of thing which, in my opinion, is
12 not allowed under the rules.

13 There are specific instances in cases
14 where it is allowed, but that has not been
15 raised in this case, presents itself in this
16 case.

17 I will allow him to testify concerning
18 intelligence level if you want to put him up for
19 that purpose. I will let you do that. If you
20 try to go somewhere else, I will cut you off. I
21 have made my ruling. He can testify to that.
22 As I say, basically, most people have two IQs
23 that could be the same. In most cases, they
24 aren't. That is, you know, basically,
25 intelligence test rating based on the testing

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1 has to do with intelligence IQ.

2 Then there is social IQ as well so that a
3 person who was in this case, this defendant,
4 living at home with his parents, working,
5 according to him, in a job that requires various
6 things, social skills, that sort of thing, and
7 living with his parents and growing up in that
8 environment, it certainly would be expected to
9 have a higher social IQ, performance IQ, than a
10 general intelligence IQ. I think certainly the
11 witness can probably testify to that. So his
12 actual social IQ or functioning IQ is probably
13 higher than an 80. If he does testify, you can
14 have him establish his intelligence level of IQ
15 as long as you limit it to that. I have no
16 problems with you calling him for that purpose
17 that's it. That's my ruling.

18 MR. WELLBORN: Thank you, your Honor.

19 THE JUDGE: Do you want to call him?

20 MR. WELLBORN: Can I have a moment to
21 confer with him?

22 THE JUDGE: Yes, sir.

23 MR. WELLBORN: Can we also --

24 THE JUDGE: No, you don't control the
25 courtroom.

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1 MR. WELLBORN: I understand. My client
2 wanted me to ask a question.

3 THE JUDGE: You were going to take a
4 break. Just go talk to him. We are not taking
5 a break.

6 MR. WELLBORN: Thank you.

7 Your Honor, the defense rests.

8 THE JUDGE: Let's do this: While the jury
9 is out, rather than send them right back out
10 again, let me ask, does the State have an any
11 rebuttal?

12 MS. SHELTON: Your Honor, I will say that
13 we are working on -- we have subpoenas out to
14 several witnesses, one being Mr. Goins' sister
15 who I believe may be living in Spartanburg at
16 this time. We have had an officer out all
17 morning trying to locate her in Rock Hill and
18 check four separate addresses.

19 Late last night in investigating character
20 witnesses of the defendant, I spoke with several
21 witnesses who said that he was very close to his
22 sister so I got on Facebook and found out his
23 sister's name. We opted to look through leads
24 online for his sister's name and discovered that
25 his sister pawned several pieces of jewelry

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1 fitting the description that matched jewelry
2 stolen from the residence the day of the
3 burglary. So we are investigating -- that
4 business has closed, but we have tracked down
5 employees from that business. We have subpoenas
6 out to them and are also attempting to get his
7 sister under subpoena. So we may need to take,
8 if the Court would allow, a break to see if we
9 are going to have any luck getting those witness
10 to testify. What we would have those employees
11 -- I think we have the actual sales slips of
12 what was sold.

13 THE JUDGE: Counsel, in light of that, I
14 might take a fairly short recess for that, but I
15 am not going to recess for hours to be able to
16 compensate.

17 MS. SHELTON: Yes, it was 30 minutes ago
18 that the subpoenas were in route to Rock Hill
19 and Chester for the former employees of the
20 business.

21 MR. WELLBORN: Your Honor, may I briefly
22 respond?

23 THE JUDGE: Yes, sir.

24 MR. WELLBORN: We have never this case
25 been provided any information about any alleged

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1 pawning. Obviously, if they were investigating
2 a case --

3 THE JUDGE: They just did it today, isn't
4 that right?

5 MS. SHELTON: Your Honor, it was last
6 night when speaking with witnesses. We checked
7 leads. I called Detective Branham to have him
8 check leads online. He did it from home. It
9 was last night after 7 probably.

10 THE JUDGE: It is not something they had
11 before last night.

12 MR. WELLBORN: Understood. This is an
13 event that took place on September 6, 2012 and
14 they had all that time to check for pawning, and
15 now, suddenly in the middle of trial they are
16 coming up with an alleged -- I just talked to my
17 client. We potentially have witnesses that can
18 identify what was pawned and who it belonged to.
19 In fact, it was my client's mother's jewelry
20 with her permission that it was pawned. Now
21 I've got to deal with this after resting. So I
22 would need to be able to reopen my case to
23 present that testimony as a matter of due
24 process.

25 THE JUDGE: If that was the case, I would

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1 allow you to do that.

2 MR. WELLBORN: Thank you.

3 THE JUDGE: I would not prevent you from
4 doing that. If I would allow them to get that
5 in reply, I would allow you to do that. Let's
6 do this, I am not going to go into late this
7 afternoon on this trial just waiting for that.
8 I realize that you were just getting this
9 information last night and subpoena them, but I
10 am not going to delay this trial for hours.

11 MS. SHELTON: Yes, I just got an e-mail
12 from Ms. Miller who has been diligently working
13 on it all morning. The subpoena was sent with
14 Investigator Martha Parrish could not find that
15 witness. That witness is in Rock Hill. Kevin
16 Holston (phonetic spelling) is in route to
17 Chester and he has an ETA of 15 minutes.

18 THE JUDGE: Let's do this: I am going to
19 give you about 15 or 20 minutes and you let me
20 know if something has been accomplished by that
21 time. If not, we may have to move on.

22 What we will do, you wont rest right now.
23 I would wait. If they are going to have
24 anything, I will allow you to put up on what
25 they got.

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1 THE JUDGE: If somebody could let the
2 jury know that we are going to be longer than
3 expected, probably 20 minutes or so.

4 THE BAILIFF: Yes, sir.

5 THE JUDGE: Thank you.

6 (Court in recess at 11:30 a.m.)

7 (Court resumes at 12:03 p.m.)

8 THE JUDGE: If we could bring the jury in.

9 (Whereupon, the jury came into open court
10 at 12:04 p.m.)

11 THE JUDGE: Mr. Foreman, ladies and
12 gentlemen of the jury panel, a couple of issues
13 have come up that is going to need to be
14 addressed, and we need a little time to be able
15 to look into that. So rather than having you
16 sit back there in the jury room, we hate to do
17 that so I am not going to do that. What I will
18 do is go ahead and send you to lunch at this
19 time. We are going to need a little time in
20 addition to lunch, and we will have to get some
21 lunch as well. I am going to give you a longer
22 than normal lunch hour. I am going to ask you
23 to get lunch and be back in the jury room and
24 ready to go at 2 o'clock. I think you would
25 rather be outdoors in the warm weather. We will

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1 do that.

2 Again, I remind you, don't discuss the
3 case amongst yourselves and enjoy your lunch and
4 be back at 2. Thank you.

5 (Whereupon, the jury exited the courtroom
6 at 12:06 p.m.)

7 THE JUDGE: All right. I think what we
8 will do, Counsel, is I will give you some time
9 to work this out, and let's try to get back
10 together about 1:30. I will release all court
11 personnel until 1:30 or so. Come back and we
12 will try to address these issues and also look
13 at the charge, instruction, at that time as
14 well. I will give you a little time if you need
15 to prepare for your final argument.

16 We will go ahead with recess now. Be
17 available about 1:30 and apprise the Court where
18 we are at that point, if you will.

19 MS. SHELTON: Thank you, your Honor.

20 MR. WELLBORN: Thank you, your Honor.

21 (Court in recess at 12:07 p.m.)

22 (Court resumes at 1:38 p.m.)

23 THE JUDGE: Solicitor, where are we?

24 MS. SHELTON: Your Honor, Krystal Hedgepath
25 was put under subpoena to appear and is here.

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1 She was the manager of Southeast Gold Exchange.
2 To be frank with the Court, she was not working
3 at Southeast Gold Exchange in September of 2012.
4 She is not the clerk who received the items, but
5 she is very familiar with the business records
6 that are kept there. She has identified the
7 records that were entered by the store at Leads
8 Online and can testify to that and the items
9 described are on that form.

10 The way she would describe it, they were
11 required every morning with coming in to log
12 everything on and throughout the day any items
13 that needed to be reported to Leads Online. We
14 also have the forms from the actual sale, sales
15 slip forms, that she could identify from being
16 from her store. She was not the manager then so
17 we would agree that there needs to be a proffer
18 and whatever the Court decides.

19 THE JUDGE: Let's proffer her.

20 MR. WELLBORN: Your Honor, just to be
21 fair, there is one other issue regarding a reply
22 and potential reply involving another potential
23 witness.

24 THE JUDGE: We will deal with that. If
25 this witness is not allowed to testify, the

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 second will probably not be necessary.

2 MS. SHELTON: Yes, your Honor.

3 KRYSTAL HEDGEPATH, being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION:

6 BY MS. SHELTON:

7 Q State your name for the record, please?

8 A Krystal Hedgepath.

9 Q Can you spell first name?

10 A K-R-Y-S-T-A-L.

11 Q Ms. Hedgepath, where do you live currently?

12 A [REDACTED] Chester, South
13 Carolina.

14 Q Were you ever employed with Southeast Gold
15 Exchange in Rock Hill?

16 A Yes.

17 Q Where is that store located?

18 A Suite 105 -- I can't remember the address.
19 It is in Newport straight across from Walmart.

20 Q How long were you there?

21 A For a year.

22 Q When did you start?

23 A In January of 2013.

24 Q When did you leave?

25 A In January of this year.

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 Q Why did you leave?

2 A Just was ready for a change.

3 Q To your knowledge, is that business still open?

4 A No.

5 Q What was the business when it was open when you
6 worked there?

7 A We buy gold.

8 Q Not a pawn shop?

9 A No. We buy gold, platinum, and silver.

10 Q What would you do with the gold once it is
11 bought?

12 A Once I would buy it, I would have to put it
13 in the computer what we bought, and I put it in
14 a safe and it was sent to our home company in
15 Georgia.

16 Q Was it melted down at that point?

17 A Yes.

18 Q How long would you keep it from receiving it?

19 A Usually a week and sometimes two.

20 Q Then it is gone?

21 A Then is gone.

22 Q What do you mean when you put it in the
23 computer?

24 A We have a Leads Online that we have to put
25 in, and we also have SEGA that we put in for the

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 company, and we have to list everything that was
2 bought, who it was bought from, there ID number,
3 description of what we bought from them, how
4 much we paid them for it, the check number, and
5 their name.

6 Q You said in Leads Online. Is that a program
7 that just your company uses?

8 A I am assuming it is. I can't say for sure.
9 I know it is something that we use and it is
10 something that goes straight to the police
11 department. It has to be done with every single
12 sale that we make, and it is something that goes
13 directly to the police at the end of every day.
14 We have to put everything in, in a very
15 descriptively way, of who bought it, our name,
16 the one we bought it from, their ID, their ID
17 number, what we bought from them, how much we
18 paid for it, the check number. At the end of
19 every day, everything we bought goes directly to
20 the police.

21 Q Does the general public have access to that?

22 A No.

23 Q How do you know that?

24 A Because you are given a password and a user
25 name whenever you start working for the company,

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 and you have to sign a confidentiality agreement
2 with the company.

3 Q How often did you have to do this?

4 A Every night.

5 Q With how many of the items that were purchased
6 did do you this?

7 A Every item.

8 Q Was this the policy of the company?

9 A Yes.

10 Q Was this the policy of the company when you
11 started?

12 A Yes.

13 Q Are you aware if that was the policy of the
14 company before you started?

15 A Yes.

16 MR. WELLBORN: Your Honor, I object to
17 that. Lack of foundation. How does she know if
18 it was before she started.

19 THE JUDGE: I would agree.

20 BY MS. SHELTON:

21 Q When you started the company, did someone train
22 you?

23 A They did.

24 Q Did that person work at that company prior to
25 you?

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 A She did. She was the regional manager. She
2 has been with the company for four years since
3 they opened.

4 Q When she trained you, did she train you how to
5 use the system?

6 A Yes, she did. We were also given a
7 manual --

8 MR. WELLBORN: I object as to any hearsay
9 as to what someone else disclosed to her
10 regarding what her previous policy would be.

11 MS. SHELTON: It is proffer, your Honor.

12 MR. WELLBORN: I understand it is proffer,
13 but I wanted to object as to hearsay.

14 MS. SHELTON: If you allow me to
15 rephrase.

16 THE JUDGE: You can rephrase. Otherwise,
17 I will sustain the objection.

18 MS. SHELTON: I will rephrase as
19 Mr. Wellborn in direct of his client.

20 BY MS. SHELTON:

21 Q Based on your conversation with this person, did
22 you have an understanding of what the policy
23 was?

24 A I did. I was also given a manual.

25 Q Based on your conversation with this person, did

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 you have an understanding that was the policy
2 that existed before you started?

3 MR. WELLBORN: I object to leading and
4 also lack of foundation because saying she had a
5 conversation would not lay a foundation. There
6 has to be something more than she had a
7 conversation to understand what a policy would
8 be before she ever started there.

9 THE JUDGE: I think you have to address
10 what she knew was the policy before she started
11 working there and how she knew that other than
12 in hearsay. She would have to lay the
13 foundational basis for that.

14 BY MS. SHELTON:

15 Q You were trained on how to use the system?

16 A Correct.

17 Q The person who trained you worked there for
18 three years before you?

19 A Correct.

20 Q There was a manual?

21 A Correct.

22 Q You were given that manual that day?

23 A Correct.

24 Q From your personal knowledge, without saying
25 what anyone told you, do you know how long the

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 system had been in place?

2 A Since the day the company opened. The
3 manual was dated from the date they were open.

4 MR. WELLBORN: I object because her
5 personal knowledge would be lack of foundation
6 because personal knowledge would start the day
7 she started working there, not months before she
8 worked there. That would not be personal
9 knowledge.

10 THE JUDGE: I don't know if it is or not.
11 Let's let her answer the question.

12 BY MS. SHELTON:

13 Q You said the manual was dated from the day the
14 company started?

15 A Yes.

16 Q Do you remember the exact date of when that was?

17 A Not for sure on the date. I know the
18 company has been in business for four years.

19 Q You know the manual was dated sometime
20 previously before you received it?

21 A Correct.

22 Q The manual is a training manual on how to use
23 the Leads Online?

24 A Correct.

25 MS. SHELTON: Can I have this marked for

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 identification purposes only.

2 (Whereupon, State's Exhibit 2 was marked
3 for identification.)

4 BY MS. SHELTON:

5 Q I am going to show you what has been marked for
6 identification only as State's Exhibit 2. What
7 is that?

8 A The receipt for the Leads Online.

9 Q When you say receipt for Leads Online,
10 specifically, what is the receipt for?

11 A It is for a purchase that Heather Goins had
12 made. She came in and apparently brought in
13 some items to be sold that our company had
14 bought from her. When we buy something from
15 someone, we have to put it in. It tells you how
16 much that we paid her for it, what we bought
17 from her, her name, and our company's name.

18 Q Based on that form, when does it say Ms. Goins
19 came in and what items does it say she sold?

20 A She came in on September 6th, 2012. She
21 sold a heart pendant, 10 karat gold; one
22 necklace, 14 karat; one heart pendant, 14 karat;
23 two earrings with diamonds, two backs of an
24 earring, and seven quantity. They were all gold
25 for \$100.

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 Q The \$100 is how much she was paid?

2 A She was.

3 Q Is that a typical amount that she would be paid?

4 A That is the lowest. She could have gotten a
5 lot more from it. That's the lowest amount we
6 would have paid, yes.

7 Q Does that form reflect who entered that
8 information?

9 A It does.

10 Q Who is that?

11 A Kim Adriano (phonetic spelling).

12 Q Do you know who that person is?

13 A I do.

14 Q Who is that?

15 A She was a clerk that worked at the store
16 before I did. I took over her store because her
17 father got sick and she moved to the mountains
18 to take care of him.

19 Q Is that the form that was part of your regular
20 business activity to enter those items into
21 Leads Online?

22 A Yes, every day.

23 Q You already testified that it is not something
24 that the general public has access to?

25 A No.

KRYSTAL HEDGEPATH - DIRECT BY MS. SHELTON

1 Q You testified that law enforcement has access to
2 it. Do they have the ability to change the
3 information?

4 A No.

5 Q Does anyone other than whoever has possession of
6 the password have the ability to change the
7 information that is logged into that system?

8 A No.

9 Q How that information is entered, is that how you
10 were trained to enter it when you started at the
11 store?

12 A Yes.

13 Q Is that how you continued to enter it throughout
14 your entire time period at the store?

15 A Yes.

16 Q Is Kim Adriano, is she the person that trained
17 you?

18 A No.

19 Q Is her manager the person that trained you?

20 A Yes.

21 Q What was that person's name?

22 A Tara Lang (phonetic spelling).

23 Q Do you know where she currently is?

24 A She is still with the company.

25 Q Do you know where she is currently living?

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 A In Georgia.

2 MS. SHELTON: Your Honor, would you like
3 to see the exhibit?

4 THE JUDGE: Yes.

5 MS. SHELTON: Please answer any questions
6 Mr. Wellborn has for you.

7 MR. WELLBORN: Your Honor, I would need
8 the receipt. I want to give you time to look at
9 the receipt and then I will ask questions.

10 THE JUDGE: Let me ask you this question:
11 This indicates that the ticket date was 9-6-2012
12 at 1:10 a.m. Were you open in the morning or is
13 that mistaken?

14 THE WITNESS: No, that was probably a
15 mistake with the computer.

16 THE JUDGE: Okay. Do you want to look at
17 it and ask questions?

18 CROSS-EXAMINATION:

19 BY MR. WELLBORN:

20 Q Now, you were not working for the company when
21 Ms. Adriano entered this information, correct?

22 A Correct.

23 Q How many people worked at that store?

24 A Just myself.

25 Q Before you got there, how many people worked at

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 the store?

2 A During this time?

3 Q Here is my question --

4 A There is only one clerk in the store at all
5 times, one person at all times.

6 Q Would the clerk also be a manager?

7 A Yes.

8 Q So we would presume that only Ms. Adriano was
9 there at 1:10 a.m. on September 6th, 2012,
10 correct?

11 A Correct.

12 Q We don't know what time she actually entered
13 this document into the computer, do we? We just
14 know that she put 1:10 a.m.

15 A It is done at 5:30 every night.

16 Q So it would have been done 5:30 on September
17 6th?

18 A Yes.

19 Q That's when it would have been entered?

20 A M-m h-m-m.

21 THE JUDGE: Please answer yes or no.

22 A Yes.

23 Q It looks like the ticket itself is described as
24 being given or the purchase was made at 1:10
25 a.m. What time was this purchase actually made,

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 do you know?

2 A No.

3 Q No idea, do you?

4 A No.

5 Q Who was there when the purchase was made besides
6 Ms. Adriano and Heather Goins?

7 A I don't know.

8 Q Looking at the items, if I can, with you. You
9 said that the items were valued at the cheapest
10 amount possible; is that correct?

11 A Correct.

12 Q How much on its own was the gold, 14 karat gold
13 necklace with one heart worth, any idea?

14 A Probably about \$100.

15 Q So that would have been the value of that item?

16 A Probably. It depends on how much it
17 weighed.

18 Q How much would the one heart pendant of 110
19 karats be?

20 A I don't know. It depends on how much it
21 weighed. I know we have given four times that
22 amount.

23 Q \$400 for everything?

24 A Correct.

25 Q Just to be clear -- bear with me one second. If

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 the value of the gold necklace was \$500, would
2 you have given \$100 for it?

3 A Yes, very possibly. It could have been
4 less.

5 Q Could have been more?

6 A Could have been more. It all goes by
7 weight.

8 Q Now, the earrings that you described. It just
9 says what two earrings with diamonds, right?

10 A Correct.

11 Q Is there anything in there that describes the
12 shape of the earrings?

13 A No.

14 Q Is there anything that describes the size of the
15 earrings?

16 A No.

17 Q How much were the earrings worth, any idea?

18 A No.

19 Q Can't tell from this, can you?

20 A No. We don't buy diamonds. We only buy the
21 gold.

22 Q The gold pendant of 10 karats. I will come back
23 to that. It looks like there were two pendants
24 with hearts on them, correct?

25 A Two.

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 Q Two of them, not just one?

2 A Correct.

3 Q What color were the earrings?

4 A I don't know. Usually diamonds don't have a
5 color. They are clear. Gold is yellow.

6 Q Right. But gold can also be white, right?

7 A It can be, but if it was white, it would say
8 that.

9 Q By the way, the pendants, the necklaces that
10 were found or that you guys got, can we tell
11 what shape other than heart they were?

12 A No. That is the shape, heart.

13 Q But not round?

14 A No. If it is heart shape, it is heart
15 shape.

16 Q You would have noted round, correct?

17 A Yes.

18 Q All right. So to sum this up, what we have is a
19 document that says that 1:10 in the morning,
20 Heather Goins came in and sold these items and
21 got \$100?

22 A Correct.

23 Q We don't know the shape of them other than the
24 pendants were heart shaped?

25 A Correct.

KRYSTAL HEDGEPATH - CROSS BY MR. WELLBORN

1 Q It wasn't one but there were two of them,
2 correct?

3 A Correct. And you know what the karat was?

4 Q We know the karat.

5 A Because that's marked on it, the piece.

6 Q Would there be any item on there that would have
7 been worth on its own \$1,500?

8 A In my opinion?

9 Q Yes.

10 A The diamond earrings.

11 Q So the diamond earrings would have been worth
12 \$1.500?

13 A Yes.

14 Q No matter what kind of diamond earrings they
15 were?

16 A Correct.

17 Q All right. But we don't know what shape the
18 diamond earrings were?

19 A Correct.

20 Q So we don't know anything about them?

21 A Correct.

22 Q Okay. By the way, this document, would this
23 reflect September 6, 2012, would that be able to
24 reflect everything that started at midnight and
25 all of the way to 11:30 or 11:59 p.m. on

KRYSTAL HEDGEPATH - REDIRECT BY MS. SHELTON

1 September 6th?

2 A It reflects everything from the time the
3 store opened at 10 a.m. that morning until up to
4 6 o'clock. We start our report at 5:30, but if
5 we have a late customer that comes in at 6, we
6 stay late and put that late receipt in.

7 Q Okay. But there is no way you guys were open at
8 1:10 a.m., correct?

9 A No.

10 Q So we know this document is not correct in that
11 regard?

12 A Correct.

13 MR. WELLBORN: That's all of the questions
14 I have. Thank you.

15 MS. SHELTON: Your Honor, very briefly. I
16 have a document that could potentially clarify
17 the issue on the time. I did not originally
18 introduce it because it wasn't specifically the
19 Leads Online document.

20 (Whereupon, State's Exhibit 3 was marked
21 for identification.)

22

23 REDIRECT EXAMINATION:

24 BY MS. SHELTON:

25 Q Ms. Hedgepath, I am going to give you what has

KRYSTAL HEDGEPATH - REDIRECT BY MS. SHELTON

1 been marked for identification as State's
2 Exhibit Number 3. Do you recognize those
3 documents?

4 A I do.

5 Q To be fair, is there anyway of identifying those
6 documents as belonging to your store? If you
7 didn't know where it came from, is there a way
8 to identify those documents just by a store name
9 or number?

10 A It has Rock Hill as our location. That's
11 what we have to put in.

12 Q But it doesn't have a store number?

13 A Store number, no, ma'am.

14 Q Those forms that you are looking at, what do
15 they appear to be to you?

16 A This is our Leads Online.

17 Q And that would be what you put in at the store?

18 A Yes, this is what actually what the computer
19 would look like when you are typing it in. This
20 is how it would look on our screen when we are
21 typing in the purchase that we have made.

22 Q That information would get sent through the
23 system and into the police department?

24 A Yes.

25 Q And turned into that form?

KRYSTAL HEDGEPATH - REDIRECT BY MS. SHELTON

1 A Yes.

2 Q Since there is no specific identifying in the
3 information next to the store other than Rock
4 Hill, how could you tell that form is relating
5 to that Leads Online form?

6 A Well, first, her identification would match,
7 the driver's license number, her name would
8 match. It has everything on there the same as
9 that one and it has the same description of the
10 items that she purchased. It has the exact same
11 date.

12 Q What about the time?

13 A The time is 14:41.

14 Q Which is?

15 A 2:41.

16 Q So that is the form that is done in the store?

17 A Correct.

18 Q And again, as part as going back to the business
19 activity of the store, why would you or anyone
20 working in the store enter that information?

21 A We have to by law. We have to enter
22 anything that we purchased and comes into our
23 store, it has to be entered on Leads Online.
24 That's the South Carolina State Law.

25 Q It is part of your regular business?

KRYSTAL HEDGEPATH - REDIRECT BY MS. SHELTON

1 A Yes.

2 Q You didn't specifically introduce that
3 information; is that correct?

4 A No, ma'am.

5 Q But it is your testimony that you do recognize
6 that form?

7 A Yes. I have used it many times.

8 Q The information on that form matches the
9 information of Leads Online form except for the
10 time?

11 A Correct.

12 Q Do you know why the time is different?

13 A No. I am assuming it is something to do
14 with --

15 MR. WELLBORN: I object to assumption.

16 THE JUDGE: It is proffer. I will let
17 her testify, but I agree with you.

18 BY MS. SHELTON:

19 Q You don't have to assume. I am just asking do
20 you know why the time is different?

21 A No.

22 MS. SHELTON: I have no further questions,
23 your Honor.

24 MR. WELLBORN: Ma'am, may I see the form.

25 RECROSS-EXAMINATION:

KRYSTAL HEDGEPATH - RECROSS BY MR. WELLBORN

1 BY MR. WELLBORN:

2 Q So this particular form you just looked at does
3 not identify who entered it in, does it?

4 A No. That's the top of that form.

5 Q I'm talking about this one (indicating).

6 A Okay.

7 Q This one that was just referred to. It does not
8 identify who actually typed this information in?

9 A No.

10 Q It does not identify whether when the person
11 typed the information in whether they typed it
12 in exactly at 14:41 and 19 minutes or whether
13 they typed it in later remembering that that was
14 the time, correct?

15 A Correct.

16 Q So it could have been typed in earlier or later,
17 correct?

18 A Correct.

19 Q We just don't know.

20 A Correct.

21 Q Because whoever typed it in isn't here to tell
22 us, correct?

23 A Correct.

24 Q All right. This item, this identifies two heart
25 pendants, correct?

KRYSTAL HEDGEPATH - RECROSS BY MR. WELLBORN

1 A Correct.

2 Q One necklace, correct?

3 A Right.

4 Q Two diamond earrings or earrings presumably, and
5 two backs?

6 A Yes.

7 Q It looks like there was only one necklace,
8 right?

9 A Correct.

10 Q Not two necklaces?

11 A Correct.

12 Q We don't know what the necklaces looked like
13 other than there was one necklace, right,
14 because there is no description of the necklace,
15 is there?

16 A Correct.

17 Q We don't know what the diamond earrings look
18 like other than that they were diamond earrings,
19 correct?

20 A Correct.

21 Q Because there is no description of the diamond
22 earrings?

23 A Yes.

24 Q We don't know what the heart pendants looked
25 like, whether they were big heart pendants,

KRYSTAL HEDGEPATH - RECROSS BY MR. WELLBORN

1 small heart pendants, correct?

2 A Correct.

3 Q We don't know what the color of the heart
4 pendants are, do we, ma'am? Can you see
5 anything about a color on here?

6 A No, but it is gold.

7 Q Because otherwise you wouldn't have bought it?

8 A Right.

9 Q Gold heart pendants. We don't know, and I beg
10 your indulgence, I hate to keep you longer than
11 I have to. We do know that they were not round
12 diamond pendants, we just know that they were
13 gold pendants, right?

14 A Correct.

15 Q So at no point are we talking about round
16 diamond pendants, are we? We are talking about
17 gold pendants, right?

18 A Correct.

19 Q Okay. In fact, we are not talking about any
20 kind of diamond pendant, whether round or any
21 other shape, we are talking about gold pendants,
22 correct?

23 A Correct.

24 Q And specifically, heart shaped?

25 A Correct.

KRYSTAL HEDGEPATH - REDIRECT BY MS. SHELTON

1 MR. WELLBORN: Thank you so much for your
2 time. That's all I have.

3 THE JUDGE: Anything else?

4 MS. SHELTON: I don't think so, your
5 Honor. Just maybe one brief question.

6 REDIRECT EXAMINATION:

7 BY MS. SHELTON:

8 Q From the description of the heart shape pendant,
9 and it is described as gold, right?

10 A No. But if it wasn't gold, we wouldn't have
11 bought it.

12 Q Would you have bought it if it had other jewels
13 in it as long as it has gold?

14 A Yes.

15 Q So just because it is described as a heart shape
16 pendant doesn't necessarily mean it doesn't have
17 other jewels in it?

18 A Correct.

19 Q You buy the gold?

20 A We do. We don't buy diamonds. We pay for
21 the weight, and if you have any jewels in it, we
22 pay you for the weight and gold.

23 MS. SHELTON: I have nothing further, your
24 Honor.

25 MR. WELLBORN: One other question.

KRYSTAL HEDGEPATH - RECROSS BY MR. WELLBORN

1 RECROSS-EXAMINATION:

2 BY MR. WELLBORN:

3 Q But there is no way to tell one way or another
4 from the forms whether there were diamonds in
5 these gold pendants or not, is there?

6 A No.

7 Q So we just don't know?

8 A Right.

9 Q We really don't know any details about what --

10 THE JUDGE: Are you arguing with me or are
11 you asking her? She doesn't know. Go ahead and
12 argue it to me.

13 BY MR. WELLBORN:

14 Q Do we or do we not know any details about
15 whether or not there was anything in these heart
16 shape pendants other than gold?

17 A No, we do not know.

18 MR. WELLBORN: Thank you.

19 THE JUDGE: You already asked her that.
20 Let me see the forms, please.

21 Before you stand down, I want to be sure I
22 understand your testimony. On this form, which
23 is like a computer form?

24 THE WITNESS: Yes.

25 THE JUDGE: So when you pull up the

SC VS. BRANDON GOINS - 4-2-14

1 computer screen to type this in, it creates this
2 -- what do you call this, Leads Online?

3 THE WITNESS: That was the top of our form
4 which you have down there on the computer as
5 well. That comes up for us as well.

6 THE JUDGE: So you type in on the computer
7 but the computer screen comes up with this form.

8 THE WITNESS: Correct.

9 THE JUDGE: And you fill it in?

10 THE WITNESS: Yes.

11 THE JUDGE: It has the same ticket number,
12 correct?

13 THE WITNESS: It does.

14 THE JUDGE: Is that what you fill out for
15 purchase?

16 THE WITNESS: Yes, sir.

17 THE JUDGE: Okay. Thank you, ma'am. Stay
18 with us in case we need you, please.

19 (Witness excused.)

20 THE JUDGE: I will hear from you.

21 MR. WELLBORN: Thank you, your Honor. I
22 don't know if you want to hear from the State
23 first or me?

24 THE JUDGE: The state offered it. Let me
25 hear from you and I will hear from the State.

SC VS. BRANDON GOINS - 4-2-14

1 MR. WELLBORN: Well, first of all, it
2 would not be proper rebuttal because proper
3 rebuttal under State vs. Stewart and other South
4 Carolina cases has to contradict what the
5 defense put in evidence. What the defense put
6 in evidence is my client saw what he thought was
7 a gold necklace. He did not see any other items
8 of jewelry. The fact that on September 5th or
9 6th, and I can't remember the date, on September
10 6th, I believe, at some point between 1:10 a.m.
11 and 2:41 p.m., two gold pendants were taken to
12 this store as well as earrings were taken to the
13 store does not prove or disprove my client did
14 not see any of the items taken in the burglary.

15 What is important to note is the testimony
16 that is in the record, the testimony that is in
17 the record came through two sources regarding
18 these items, one is Detective Branham and the
19 other is Darryl Smith. What we have in the
20 record is the following items were taken: Two
21 gold necklaces with two round diamond pendants.
22 They are nowhere described on either of those
23 two documents. A pair of diamond earrings past,
24 present, and future. Again, we have a pair of
25 diamond earrings but we don't know what kind of