

21981

ANDERS

NO DEF. BRIEF

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

ORIGINAL

RECEIVED

MAR 05 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BARRY GLENN MILLWOOD,

APPELLANT

APPELLATE CASE NO. 2014-001430

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated June 23 – 24, 2013)	1
JURY VOIR DIRE.....	7
JURY SELECTION	39
<u>NEIL V. BIGGERS</u> HEARING.....	58
TESTIMONY (IN CAMERA)	
EVERETT WALTER (RHETT) INGRAM, IV.....	60
ROB WILLIAMS.....	72
PRE-TRIAL MOTIONS	81
COURT’S INSTRUCTIONS TO JURY	98
OPENING STATEMENT BY MS. DAVIS	109
OPENING STATEMENT BY MS. FULLWOOD.....	112
TESTIMONY	
KENNETH LEE CATHEY	115
DELL EDWARD DAY	125
EVERETT WALTER INGRAM, IV	130
JULIAN HARRIS	152
ROB WILLIAMS.....	165
ADAM CLAYTON	182
KENNETH DANIEL SHEARER	185

HOPE FRICK.....	191
MOTION FOR A DIRECTED VERDICT.....	200
CHARGE ON THE LAW.....	217
CLOSING ARGUMENT BY MS. RANKIN	227
CLOSING ARGUMENT BY MS. CASTO.....	235
VERDICT	249
MOTION FOR A NEW TRIAL	252
SENTENCING	264
INDICTMENT (AMENDED)	267
SENTENCE SHEET	269
STATE’S EXHIBITS # 18 AND #19 (SENTENCE SHEETS)	270
CERTIFICATE OF COUNSEL.....	274

1 State of South Carolina
 2 County of Lexington Court of General Sessions

3
 4
 5 State of South Carolina) Transcript of Record
 6 vs.) 2013-GS-32-0829
 7 Barry Glenn Millwood,) 2013-GS-32-0830
 8 Defendant.)

9
 10 June 23 - 24, 2014
 11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable Thomas R. Russo, Judge; and a jury.

14
 15 A P P E A R A N C E S:

16 Casey N. Rankin, Assistant Solicitor
 17 Shannon A. Davis, Assistant Solicitor
 18 Attorneys for the State

19 Elizabeth C. Fullwood, Esquire
 20 Bennett E. Casto, Esquire
 21 Attorneys for the Defendant

22
 23 Stacy S. Johnson, RPR
 24 Circuit Court Reporter
 25

1	I N D E X	
2	WITNESS	PAGE
3	Everett (Rhett) Walter Ingram, IV (In Camera)	
	Direct Examination By Ms. Rankin	60
4	Cross-Examination By Ms. Fullwood	63
5	Detective Rob Williams (In Camera)	
	Direct Examination By Ms. Rankin	72
6	Cross-Examination By Ms. Fullwood	76
7	Opening Statement	
	By Ms. Rankin	109
8	By Mr. Casto	112
9	Kenneth Lee Cathey	
	Direct Examination By Ms. Rankin	115
10	Cross-Examination By Ms. Fullwood	123
	Redirect Examination By Ms. Rankin	124
11	Dell Edward Day	
12	Direct Examination By Ms. Rankin	125
13	Everett (Rhett) Walter Ingram, IV	
	Direct Examination By Ms. Davis	130
14	Cross Examination By Ms. Fullwood	150
	Redirect Examination By Ms. Davis	151
15	Julian Harris	
16	Direct Examination By Ms. Davis	152
	Cross-Examination By Ms. Fullwood	163
17	Redirect Examination By Ms. Davis	164
18	Detective Rob Williams	
	Direct Examination by Ms. Rankin	165
19	Cross Examination by Ms. Fullwood	175
	Redirect Examination by Ms. Rankin	179
20	Recross Examination by Ms. Fullwood	180
21	Adam Clayton	
	Direct Examination by Ms. Rankin	183
22	Kenneth Shearer	
23	Direct Examination by Ms. Davis	185
24	Hope Frick	
	Direct Examination by Ms. Davis	191
25		

1		PAGE
2	Charge of the Court	217
3	Closing Argument	
	By Ms. Rankin	227
4	By Ms. Fullwood	235
5	Verdict of the Jury	249
6	Sentence of the Court	263
7	Certificate of Reporter	266
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Aerial Photograph	96	118
4	S-2	Photograph	96	121
5	S-3	Photograph	96	121
6	S-4	Photograph	96	121
7	S-5	Photograph	96	121
8	S-6	Photograph	96	121
9	S-7	Photograph	96	127
10	S-8	Photograph	96	127
11	S-9	Photograph	96	139
12	S-10	Photograph	96	139
13	S-11	Photograph	96	139
14	S-12	Photograph	96	139
15	S-13	Photograph	96	139
16	S-14	Photograph	96	143
17	S-15	Price Quote	97	147
18	S-16	Clothing Items	97	174
19	S-17	Flashlight	97	189
20	S-18	Sentence Sheet	194	195
21	S-19	Sentence Sheet	194	195
22	C-1	Aerial Photo*	58	
23	C-1	Jury Note	247	
24	C-2	Jury Note	247	
25	*(Marked as Court's 1 in Neil v. Biggers Hearing.)			

1 (The following proceedings were held on June 23,
2 2014.)

3 **BAILIFF:** All rise. Court is now in session.

4 **THE COURT:** Thank you, ladies and gentlemen. Please
5 have a seat. Let me get y'all to step up real quick.

6 (Proceedings held at the bench; not reported.)

7 **THE COURT:** All right. Ms. Rankin, if you want to
8 call the first case to trial, ma'am.

9 **MS. RANKIN:** Thank you, Your Honor. The State of
10 South Carolina calls for trial the case of the State
11 versus Barry Glenn Millwood, charged in indictment
12 2013-GS-32-829, burglary second degree; 2013-GS-32-830,
13 grand larceny.

14 **THE COURT:** All right. Can I have those
15 indictments, please?

16 **MS. RANKIN:** (Hanging.)

17 **THE COURT:** Is that the original indictments?

18 **MS. RANKING:** These are.

19 **THE COURT:** Okay. Thank you, ma'am. Ladies and
20 gentlemen, you've just heard the Solicitor call the
21 first case for trial, the State of South Carolina versus
22 Barry Glenn Millwood. Mr. Millwood is charged under
23 what we call an indictment. There are two indictments
24 here.

25 Ladies and gentlemen, an indictment is simply the

1 piece of paper that carries the allegations that are
2 made against a defendant. It is -- it is in no way
3 evidence against a defendant. It is in no way evidence
4 of the allegations it contains. It's just the formal
5 document that brings the case into court. To these
6 charges or to these indictments, Mr. Millwood had pled
7 not guilty and that plea of not guilty places the burden
8 of proof on the State to prove the Defendant guilty of
9 these allegations.

10 Now I'm going to go over with you the contents of
11 the indictments so that you will understand the charge
12 that is made or the allegations that are made against
13 Mr. Millwood. Indictment 2013-GS-32-829, the
14 allegations are as follows: That Barry Glenn Millwood
15 did in Lexington County, South Carolina, on or between
16 the dates of January the 26th, 2013, and January
17 the 28th, 2013, knowingly and willfully enter a building
18 at 1544 Pine Ridge Drive, that being the Dixiana Steel
19 Company slash Rhett Ingram, in West Columbia, South
20 Carolina, without consent, and with the intent to commit
21 a crime therein; to wit, larceny and entering or
22 remaining -- the entering or remaining occurred during
23 the nighttime. This all in violation of Section
24 16-11-312(B) of the South Carolina Code of Laws, 1976,
25 as amended.

1 Indictment 2013-GS-32-830 alleges that Barry Glenn
2 Millwood did in Lexington County, South Carolina, on
3 or between the dates of January 26, 2013, and
4 January 28, 2013, did unlawfully without consent and
5 with the intent to permanently deprive the owner, Rhett
6 Ingram slash Dixiana Steel Company, did take and carry
7 away goods, chattels, instruments and other items; to
8 wit, various tools, such property having a value of
9 more than \$2,000, but less than \$10,000, in violation
10 of Section 16-13-30(B) of the South Carolina Code of
11 Laws, 1976, as amended.

12 Now those are the allegations that the State has
13 made against Mr. Millwood to which he has pled not
14 guilty. Is there any member of the jury panel who knows
15 anything about this case based on what I've just shared
16 with you? If so, please stand.

17 (There was no response.)

18 **THE COURT:** Thank you. There are none. I'm gonna
19 get the attorneys to stand and introduce yourselves. So
20 if you'd please listen carefully, I'll start with the
21 State.

22 **MS. RANKIN:** Good morning. My name is Casey Rankin.
23 I'm the Assistant Solicitor here in Lexington County and
24 I will be trying the case along with Shannon Davis.

25 **THE COURT:** All right. Is there any member of the

1 jury panel who is related by blood, connected by
2 marriage or who has any close business or personal
3 relationship with either Ms. Rankin or Ms. Davis or who
4 has been represented by either one of these ladies? If
5 so, please stand.

6 (There was no response.)

7 **THE COURT:** Thank you. There are none.

8 Ms. Fullwood.

9 **MS. FULLWOOD:** Ladies and gentlemen, I'm Beth
10 Fullwood. Along with Bennett Casto here, we represent
11 Barry Millwood, who is our client.

12 **THE COURT:** All right. Thank you. Ladies and
13 gentlemen, is there any member of the jury panel who
14 is related by blood, connected by marriage or who has
15 any close business or personal relationship with or who
16 has ever been represented by either Ms. Fullwood or
17 Mr. Casto? If so, please stand.

18 (There was no response.)

19 **THE COURT:** Thank you. There are none. You've met
20 Mr. Millwood. Is there any member of the jury panel who
21 is related by blood, connected by marriage or who has
22 any close personal or business relationship with the
23 Defendant in this case, Mr. Barry Glenn Millwood? If
24 so, please stand.

25 (There was no response.)

1 **THE COURT:** Thank you. There are none. Now,
2 ladies and gentlemen, that question that I just asked
3 you as it related to Mr. Millwood; that is, are you
4 related by blood, connected by marriage or have any
5 close business or personal relationship with, that's
6 the question that I'm gonna be asking you as it relates
7 to the names that I am about to call out. The folks
8 whose names I'm about to call out are potential
9 witnesses that may or may not testify during the course
10 of this trial. There's no way for me to know at this
11 point whether all of these folks are gonna testify or
12 not, but these are potential witnesses. So keeping
13 that question in mind, whether or not you're related
14 by blood, connected by marriage or have any close
15 business or personal relationship, keeping that in mind
16 as I go through these names, if you hear a name and that
17 question applies to one of the names I call out, go
18 ahead and stand.

19 Now I'm gonna be calling out several names, so if
20 you do stand continue to listen carefully because it
21 may be that you know more than one of the folks listed
22 on the witness lists, okay?

23 The following are possible or potential witnesses
24 that may testify during the course of these proceedings.
25 Dell Day. And if any of these folks are in the

1 courtroom, I would ask that you stand, face the jury
2 panel for just a moment and then have a seat.

3 All right. Dale Day, Ken Cathey, Rhett Ingram,
4 Julian Harris, Rob Williams, Adam Clayton, Roy Hall,
5 Hope Frick, Kenneth Shearer, Candy Kyzer, Elizabeth or
6 Beth Holliman.

7 (Juror stands.)

8 **THE COURT:** All right, sir. Your name, please?

9 **JUROR:** James Spires.

10 **THE COURT:** All right. Mr. Spires, give me one
11 second, sir.

12 **THE CLERK:** Mr. Spires is 263.

13 **THE COURT:** All right. Mr. Spires, who on that
14 list did you know?

15 **JUROR:** Former Deputy Julian Harris.

16 **THE COURT:** All right. Are you related by blood or
17 connected by marriage or just know?

18 **JUROR:** A close personal friend.

19 **THE COURT:** All right. Now let me ask you, sir,
20 the fact that former sheriff's deputy Harris may appear
21 as a witness in this case, would that in any way affect
22 your ability to be fair and impartial, giving both the
23 State and the defense a fair trial?

24 **JUROR:** No, sir.

25 **THE COURT:** Thank you, sir. You may have a seat.

1 Anyone else?

2 (There was no response.)

3 **THE COURT:** All right. Is there any member of the
4 jury panel who is related by blood or connected by
5 marriage or a close personal friend of any member of
6 any law enforcement agency? If so, please stand.

7 (Jurors stand.)

8 **THE COURT:** All right. And, ma'am, can I get your
9 name, please?

10 **JUROR:** Judy Harriman.

11 **THE COURT:** All right.

12 **THE CLERK:** 120.

13 **THE COURT:** All right. Ms. Harriman, a family
14 member or a friend?

15 **JUROR:** Family member.

16 **THE COURT:** All right. And what department do they
17 work for?

18 **JUROR:** Richland County and Greer.

19 **THE COURT:** Okay. Ma'am, the fact that you have
20 family members that are members of a law enforcement
21 agency, would that in any way affect your ability to be
22 fair and impartial, giving both the State and the
23 defense a fair trial?

24 **JUROR:** I don't believe so.

25 **THE COURT:** All right. Thank you, ma'am. You may

1 have a seat. Your name, ma'am?

2 **JUROR:** Joy Manley, Juror 171.

3 **THE COURT:** All right. 121?

4 **THE CLERK:** 171.

5 **THE COURT:** 171. I'm sorry. Ms. Manley, a friend
6 or family member?

7 **JUROR:** My husband is a former officer of Lexington
8 County and my brother-in-law works with the police
9 department here.

10 **THE COURT:** All right. Ma'am, would that in any
11 way affect your ability to be fair and impartial, giving
12 both the State and the defense a fair trial?

13 **JUROR:** No.

14 **THE COURT:** Thank you, ma'am. You may have a seat.
15 Ma'am, your name, please?

16 **JUROR:** Anne Burkhalter, Juror Number 39.

17 **THE COURT:** Yes, ma'am.

18 **JUROR:** Friends, Jackie -- well, I won't give you
19 the names, but one's a deputy, one is a DEA agent.

20 **THE COURT:** All right. And, Ms. Burkhalter, would
21 that in any way affect your ability to be fair and
22 impartial, ma'am?

23 **JUROR:** No.

24 **THE COURT:** Thank you very much. You may have a
25 seat. Yes, ma'am?

1 **JUROR:** I'm Juror Number 170, Cerese Long.

2 **THE COURT:** Yes, ma'am.

3 **JUROR:** I have a family member who works for the
4 DEA.

5 **THE COURT:** Okay.

6 **JUROR:** And I also have a daughter who works for the
7 bond court at Lexington County Sheriff's Department.

8 **THE COURT:** All right. Ma'am, and would -- either
9 one of those relationships, would that in any way affect
10 your ability to be fair and impartial?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you, ma'am. You may have a seat.

13 **JUROR:** I'm Juror 62, Rebecca Creighton. I have a
14 friend's who's with the FBI and a friend who is with
15 Lexington County Sheriff's Department.

16 **THE COURT:** All right. And would that in any way,
17 Ms. Creighton, affect your ability to be fair and
18 impartial?

19 **JUROR:** No.

20 **THE COURT:** Yes, ma'am?

21 **JUROR:** Rebecca Connelly, Juror 55.

22 **THE COURT:** All right, Ms. Connelly.

23 **JUROR:** I'm a former Lexington County reserve
24 deputy. I served Lexington County, City of Columbia and
25 Chapin.

1 **THE COURT:** All right. Ms. Connelly, would that in
2 any way affect your ability to be fair and impartial?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you very much, ma'am. You may
5 have a seat. Yes, ma'am?

6 **JUROR:** Christine Blum, Juror Number 25.

7 **THE COURT:** All right, Ms. Blum.

8 **JUROR:** My nephew's a Richland County sheriff's
9 deputy.

10 **THE COURT:** All right. Would that in any way affect
11 your ability to be fair and impartial, ma'am?

12 **JUROR:** Absolutely not.

13 **THE COURT:** Thank you very much. Yes, ma'am?

14 **JUROR:** Taylor Gaskins, Juror Number 98.

15 **THE COURT:** All right, Ms. Gaskins.

16 **JUROR:** My step-dad is a K-9 officer at Savannah
17 Police Department.

18 **THE COURT:** All right. Ms. Gaskins, would that in
19 any way affect your ability to be fair and impartial,
20 ma'am?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you. You may have a seat. Yes,
23 ma'am?

24 **JUROR:** Erika Bloome, Juror Number 24. My father
25 is a retired Lexington County deputy.

1 **THE COURT:** Okay. Ms. Bloome, would that in any
2 way affect your ability to be fair and impartial, ma'am?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you, Ms. Bloome. Yes, ma'am?

5 **JUROR:** Dawn McCoy, Juror Number 180.

6 **THE COURT:** Yes, ma'am.

7 **JUROR:** I have family members and friends who are
8 law enforcement officers.

9 **THE COURT:** Ms. McCoy, would that relationship in
10 any way affect your ability to be fair and impartial?

11 **JUROR:** No, Your Honor.

12 **THE COURT:** Thank you very much, ma'am. You may
13 have a seat. Any one else?

14 (There was no response.)

15 **THE COURT:** Is there any member of the jury panel
16 who yourself have been employed in the field of law
17 enforcement? If so, please stand?

18 (Juror stands.)

19 **THE COURT:** I think Ms. Connelly; is that correct?

20 **JUROR:** I volunteered as a reserve deputy.

21 **THE COURT:** All right. And would that in any way
22 affect your ability, ma'am?

23 **JUROR:** No.

24 **THE COURT:** All right. And that's Ms. Connelly,
25 right?

1 **JUROR:** Yes, sir.

2 **THE COURT:** Thank you very much, ma'am. Anyone
3 else?

4 (There was no response.)

5 **THE COURT:** Is there any member of the jury panel
6 who has had either formal or informal legal training?
7 This would include, but not be limited to, either some
8 degree or level of law school, college business law
9 courses, paralegal training or law enforcement training?
10 If so, please stand.

11 (Jurors stand.)

12 **THE COURT:** All right. Sir, your name, please?

13 **JUROR:** Ray Pundt, Juror Number 212.

14 **THE COURT:** All right. Mr. Pundt, what --

15 **JUROR:** Just business law classes in college.

16 **THE COURT:** All right. And would that in any way
17 affect your ability to be fair and impartial?

18 **JUROR:** It would not.

19 **THE COURT:** Thank you, sir. You may have a seat.
20 Yes, ma'am?

21 **JUROR:** Anne Burkhalter, Juror Number 39.

22 **THE COURT:** Ms. Burkhalter, what --

23 **JUROR:** Business law classes.

24 **THE COURT:** All right. And would that in any way
25 affect your ability to be fair and impartial?

1 **JUROR:** No.

2 **THE COURT:** Thank you, ma'am. Yes, ma'am, your
3 name?

4 **JUROR:** Juror Number 157, Jilian Kurka.

5 **THE COURT:** All right, Ms. Kurka. What type of
6 training, ma'am?

7 **JUROR:** I have a paralegal certification. I was a
8 legal assistant at the Richland County Public Defender's
9 Office for five years. I'm a litigation paralegal at a
10 civil defense firm and I've been there for eight years.

11 **THE COURT:** All right. And would that in any way,
12 Ms. Kurka, any of that, in any way affect your ability
13 to be fair and impartial, giving both the State and the
14 defense a fair trial?

15 **JUROR:** No, sir.

16 **THE COURT:** Thank you very much, ma'am. Yes, ma'am?

17 **JUROR:** I've had business law classes and I've also
18 worked at SCDC in the past.

19 **THE COURT:** And your name, ma'am?

20 **JUROR:** Cynthia Walker, Juror Number 54.

21 **THE COURT:** Ms. Walker, would that in any way affect
22 your ability to be fair and impartial, ma'am?

23 **JUROR:** No.

24 **THE COURT:** Thank you, ma'am. You may have a seat.
25 Yes, ma'am?

1 **JUROR:** Helen Bush, Juror Number 40. I've had
2 business law classes and paralegal courses.

3 **THE COURT:** All right. Ms. Bush, would that in any
4 way affect your ability to be fair and impartial?

5 **JUROR:** No, sir.

6 **THE COURT:** Thank you, ma'am. You may have a seat?
7 Yes, ma'am?

8 **JUROR:** Juror Number 132, Crystal Howard. I taught
9 business law in high school a couple of semesters.

10 **THE COURT:** All right. Ms. Howard, would that in
11 any way affect your ability, ma'am?

12 **JUROR:** No, sir.

13 **THE COURT:** Thank you.

14 **JUROR:** Juror Number 171, Joy Manley.

15 **THE COURT:** Yes, ma'am.

16 **JUROR:** A criminal justice minor in college.

17 **THE COURT:** All right. Ma'am, would that in any
18 way affect your ability to be fair and impartial?

19 **JUROR:** (Shakes head.)

20 **THE COURT:** Thank you. And, Ms. Connelly, we know
21 a little bit about your background. Anything beyond
22 what you've already shared with us?

23 **JUROR:** I've also received training in EMT,
24 paramedic for Lexington County.

25 **THE COURT:** All right. Would that in any way

1 affect your ability to be fair and impartial?

2 **JUROR:** No.

3 **THE COURT:** Thank you very much. Yes, sir?

4 **JUROR:** Craig Williams, 292. Just business law
5 courses in college.

6 **THE COURT:** All right. Mr. Williams, would that in
7 any way affect your ability to be fair and impartial,
8 sir?

9 **JUROR:** No.

10 **THE COURT:** Thank you very much. You may have a
11 seat. Yes?

12 **JUROR:** Virginia Asbill, Juror 13. I have a
13 paralegal certificate and have been a paralegal for
14 fifteen years and now twelve years with Nelson Mullins
15 in their litigation support department.

16 **THE COURT:** All right. Ms. Asbill, would that in
17 any way affect your ability to be fair and impartial,
18 ma'am?

19 **JUROR:** No, sir, but I have two cases that are--
20 two incidences that just recently occurred that involved
21 criminal.

22 **THE COURT:** Let me get you to come forward for a
23 minute.

24 (Whereupon, the following bench conference was held
25 on the record.)

1 **JUROR:** While we were on the break, I found out that
2 my backyard neighbors actually committed murder, and
3 just wanted to bring that to y'all's attention, and the
4 wife that was murdered was in the garage for two weeks
5 and a co-worker of mine was just charged with criminal
6 domestic violence and assault of a high and aggravated
7 nature and simple possession -- attempted murder as
8 well. I'm sorry.

9 **THE COURT:** Okay. You just found this stuff out?

10 **JUROR:** Yes.

11 **THE COURT:** You seem rather shaken by it.

12 **JUROR:** Yeah, that's why I'm bringing it up.

13 **THE COURT:** Would you like to have your service
14 transferred to a different term of court?

15 **JUROR:** I think I would at this point. I thought I
16 was coming for CCP and not --

17 **THE COURT:** Okay. All right. We're gonna go ahead
18 and transfer you to a term of civil court and let you
19 just do your service at that point, okay?

20 **JUROR:** Okay.

21 **THE COURT:** And they'll send you another notice.

22 **JUROR:** Okay. Thank you, very much.

23 **THE COURT:** Yes, ma'am. Thank you.

24 (The bench conference was concluded.)

25 **THE COURT:** All right. I'm gonna start on the far

1 end over here. Ma'am, your name, please?

2 **JUROR:** Tracy Ervin, Juror Number 86.

3 **THE COURT:** All right, Ms. Ervin.

4 **JUROR:** Just some business law classes in college.

5 **THE COURT:** All right. And would that in any way
6 affect your ability to be fair and impartial, ma'am?

7 **JUROR:** No, it wouldn't.

8 **THE COURT:** Thank you very much. Yes, ma'am, your
9 name?

10 **JUROR:** Joanna Fulmer, Juror Number 91.

11 **THE COURT:** All right. And, Ms. Fulmer, what kind
12 of education?

13 **JUROR:** Business law and a minor in criminal
14 justice.

15 **THE COURT:** All right. And would that in any way
16 affect your ability to be fair and impartial, ma'am?

17 **JUROR:** No, sir.

18 **THE COURT:** Thank you very much. You may have a
19 seat. Sir, your name?

20 **JUROR:** Fred Bove, Juror 29.

21 **THE COURT:** Yes, sir?

22 **JUROR:** Business law in college.

23 **THE COURT:** All right. And, sir, would that in any
24 way affect your ability to be fair and impartial?

25 **JUROR:** No, sir.

1 **THE COURT:** Thank you, sir. You may have a seat.

2 Is there any member of the jury panel who has ever
3 been a witness or appeared as a witness in a criminal
4 trial or a criminal case? If so, please stand.

5 (There was no response.)

6 **THE COURT:** Thank you. There are none.

7 Is there any member of the jury panel who has
8 served as a juror in either State or Federal court
9 before? And I don't mean just you were called for jury
10 service. I'm talking about actually selected and served
11 on a case. If so, please stand.

12 (Jurors stand.)

13 **THE COURT:** All right. Your name, ma'am?

14 **JUROR:** Dawn McCoy.

15 **THE COURT:** All right, Ms. McCoy, and --

16 **THE CLERK:** She's Number 180.

17 **THE COURT:** Ms. McCoy, with that, I'm not gonna go
18 into details about anything, but is there anything about
19 that experience which would in any way adversely affect
20 your ability to be fair and impartial if you were
21 selected as a juror in this case?

22 **JUROR:** No, Your Honor.

23 **THE COURT:** Thank you very much, ma'am. You may
24 have a seat. Ma'am, your name, please?

25 **JUROR:** I am Elizabeth McKay and my number is 102.

1 **THE COURT:** Yes, ma'am?

2 **JUROR:** I have -- I have served on -- on Lexington
3 County juries, I have served on magistrate's juries in
4 Lexington County and I've also served on juries on the
5 Federal area in Columbia.

6 **THE COURT:** All right. And, Ms. McKay, is there
7 anything about that experience that would affect your
8 ability to be fair and impartial if you were selected in
9 this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, ma'am. You may have a seat.
12 I'm gonna start on this far side and work my way
13 back across. Yes, ma'am?

14 **JUROR:** Juror Number 75, Susan Dill. I've served
15 on a Federal jury and civil for Lexington and magistrate
16 for Lexington.

17 **THE COURT:** All right. And, Ms. Dill, was there
18 anything about that service that would in any way
19 adversely affect your ability to be fair and impartial
20 if you were selected in this case?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you very much, ma'am. Sir, your
23 name, please?

24 **JUROR:** Stanley Butrym, 42.

25 **THE COURT:** Yes, sir.

1 **JUROR:** Lexington County about twenty years ago.

2 **THE COURT:** All right. And is there anything about
3 that service which would adversely affect your ability
4 to serve in this case, sir?

5 **JUROR:** No, sir.

6 **THE COURT:** Thank you very much. You can have a
7 seat.

8 **JUROR:** Greg Porr, Number 210. I was on a
9 magistrate court a month or so ago. I wasn't sure if
10 what you were asking included magistrate court or not.

11 **THE COURT:** Yeah. Yes, sir. Was there anything
12 about that service that would adversely affect your
13 ability to be fair and impartial in this case, sir?

14 **JUROR:** No.

15 **THE COURT:** Thank you very much. Yes, ma'am?

16 **JUROR:** Juror Number 62, Rebecca Creighton.
17 Magistrate court.

18 **THE COURT:** All right. And would anything about
19 that service in any way affect your ability to be fair
20 and impartial?

21 **JUROR:** No.

22 **THE COURT:** Thank you, ma'am. Yes, ma'am, your name
23 again?

24 **JUROR:** Cynthia Connell-Walker, Juror 54. I served
25 on magistrate court in the County of Lexington. It's

1 been years ago.

2 **THE COURT:** All right. And, ma'am, was there
3 anything about that service that would adversely affect
4 your ability to be fair and impartial?

5 **JUROR:** No, sir.

6 **THE COURT:** Thank you very much. You may have a
7 seat. Yes, ma'am?

8 **JUROR:** Rebecca Connelly, Juror Number 55. I've
9 served on a jury years ago.

10 **THE COURT:** Would anything about that experience
11 affect your ability to be fair and impartial, ma'am?

12 **JUROR:** No, sir.

13 **THE COURT:** Thank you. You may have a seat.

14 **JUROR:** Ray Boone, Juror Number 27. Richland
15 County.

16 **THE COURT:** All right, sir. Anything about that
17 service that would affect your ability to be fair and
18 impartial, Mr. Boone?

19 **JUROR:** No, sir, Your Honor.

20 **THE COURT:** Thank you, sir. You may have a seat.
21 Yes, sir, your name, please?

22 **JUROR:** Larry Gaddy. I'm 94. I served on a jury a
23 few years ago. I can't tell you how many years it was.

24 **THE COURT:** Mr. Gaddy, would anything about that
25 service adversely affect your ability to be fair and

1 impartial?

2 **JUROR:** No, sir.

3 **THE COURT:** Thank you, sir. You may have a seat.

4 Sir, your name?

5 **JUROR:** Albert Gino, Juror 100.

6 **THE COURT:** All right, sir.

7 **JUROR:** I served on two juries in New Jersey.

8 **THE COURT:** And, Mr. Gino, would that service in
9 any way affect your ability to be fair and impartial if
10 you were selected in this case?

11 **JUROR:** Other than it was in New Jersey, no. Other
12 than it was New Jersey, no.

13 **THE COURT:** All right. Thank you, sir. Yes, ma'am,
14 your name, please?

15 **JUROR:** M.C. Smith, Juror 256.

16 **THE COURT:** Yes, Ms. Smith?

17 **JUROR:** I served as a juror in Lexington County.

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

20 **JUROR:** (Shakes head.)

21 **THE COURT:** Thank you, ma'am. Yes, ma'am?

22 **JUROR:** Donna Murphy, Number 194. I served on
23 Lexington County many years ago.

24 **THE COURT:** Ms. Murphy, would anything about that
25 affect your ability to be fair and impartial, ma'am?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you. You may have a seat. Yes,
3 ma'am?

4 **JUROR:** Kathy Kyzer. I served in Lexington
5 magistrate court as a juror about three years ago.

6 **THE COURT:** All right. And, ma'am, is there
7 anything about that service that would affect your
8 ability to be fair and impartial?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you. You may have a seat.

11 **THE CLERK:** She was Number 158.

12 **THE COURT:** Yes, ma'am?

13 **JUROR:** Jane Pierce, 206. I served on a jury
14 probably twenty-five years ago in North Carolina.

15 **THE COURT:** All right. And, Ms. Pierce, anything
16 about that service that would affect your ability to be
17 fair and impartial?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you, ma'am.

20 **JUROR:** I'm Pat Dube, Juror 80. I served on a jury
21 in Connecticut twenty years ago.

22 **THE COURT:** All right. And, ma'am, would that in
23 any way affect your ability to be fair and impartial in
24 this case?

25 **JUROR:** No, sir.

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

2 Is there any member of the jury panel who has
3 served on a grand jury in either State or Federal court?
4 If so, please stand.

5 (There was no response.)

6 **THE COURT:** Thank you. There are none.

7 Is there any member of the jury panel who is
8 employed by, related by blood or marriage or a close
9 friend or acquaintance to anyone who is employed by the
10 Attorney General's office, the Solicitor's office or any
11 other prosecuting attorney's office? If so, please
12 stand.

13 (There was no response.)

14 **THE COURT:** Thank you. There are none.

15 Is there any member of the jury panel who is a
16 member of or a contributor to any group whose primary
17 concern is the promotion of law enforcement or victims'
18 rights? Some examples of these types of groups would be
19 MADD, Mothers Against Drunk Drivers; SADD, Students
20 Against Drunk Drivers; CAV, Citizens Against Violence.
21 Those types of organizations.

22 Is there any member of the jury panel who is a
23 contributor to those organizations either by way of
24 financial means or by volunteering of your time? If so,
25 please stand.

1 (Jurors stand.)

2 **THE COURT:** Yes, ma'am. Your name, please?

3 **JUROR:** Courtney Garrison. I'm Juror Number 97. I
4 don't know if this applies, but I coach mock trials for
5 the school.

6 **THE COURT:** No, that's fine. Is there anything
7 about that experience, ma'am, that would in any way
8 affect your ability to be fair and impartial?

9 **JUROR:** No.

10 **THE COURT:** Thank you very much. You may have a
11 seat. Yes, ma'am?

12 **JUROR:** Donna Murphy, Juror Number 194. Contributor
13 of MADD.

14 **THE COURT:** All right. Ms. Murphy, would that in
15 any way affect your ability to be fair and impartial,
16 giving both the State and the defense a fair trial,
17 ma'am?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you very much. You may have a
20 seat.

21 Is there any member of the jury panel or member of
22 your immediate family or close friend or acquaintance
23 who has ever been a victim of a burglary? If so, please
24 stand.

25 (Jurors stand.)

1 **THE COURT:** All right. Let me -- let me do this.
2 I want you to remain standing, but I'm gonna kind of go
3 through -- and for the lawyers' purposes, if y'all want
4 to write down numbers, okay, I'm gonna get your juror
5 number -- your name and your juror number and get you to
6 continue to stand. Don't sit down, stay with me. I'm
7 gonna try to make sure -- I'm gonna get everyone, but
8 I'm gonna start over here and work my way across. Yes,
9 ma'am. Your name?

10 **JUROR:** Amanda Massey, Juror Number 176.

11 **THE COURT:** All right.

12 **JUROR:** Carol Beckwith, Number 19.

13 **THE COURT:** Okay.

14 **JUROR:** Ruth Parrish, 201.

15 **THE COURT:** All right.

16 **JUROR:** Gail Cassese, 47.

17 **THE COURT:** All right.

18 **JUROR:** Fred Bove, Juror 29.

19 **THE COURT:** All right.

20 **JUROR:** Joanna Fulmer, 91.

21 **THE COURT:** And if anyone's not getting these, just
22 let me know, okay?

23 **JUROR:** Katrina Wise, 294.

24 **JUROR:** Pat Dube, Juror 80.

25 **JUROR:** Tammy Marsh, 174.

1 **THE COURT:** Okay. I think I got everybody over
2 here. All right. I'm gonna start over here.

3 **JUROR:** Barbara Airgood. I'm Juror Number 5.

4 **THE COURT:** All right.

5 **JUROR:** Lisa Towe, Juror Number 277.

6 **JUROR:** Ceresse Long, Number 170.

7 **JUROR:** Logan Edge, Juror 82.

8 **JUROR:** Greg Porr, Number 210.

9 **JUROR:** Juror 75, Susan Dill.

10 **JUROR:** Juror Number 212, Ray Pundt.

11 **JUROR:** Crystal Howard, 132.

12 **JUROR:** Joy Manley, 171.

13 **JUROR:** James Spires, 263.

14 **JUROR:** Helen Bush, 40.

15 **JUROR:** Jilian Kurka, 157.

16 **JUROR:** Kathleen Worthy, 295.

17 **JUROR:** Joshua Cromer, 64.

18 **JUROR:** Damesha Cornish, 61.

19 **JUROR:** Rebecca Connelly, 55.

20 **THE COURT:** I can't see everybody, so y'all have got
21 to help me out.

22 **JUROR:** John Diaz, 73.

23 **THE COURT:** Y'all just keep going. If you haven't
24 called out your name and number, just -- because I can't
25 see everybody.

1 **JUROR:** Deidre Urbanek, 283.

2 **JUROR:** Latoya Curry Jones, 68.

3 **JUROR:** Ray Boone, 27.

4 **JUROR:** Bruce Olson, 197.

5 **JUROR:** Kenny Tuten, 280.

6 **JUROR:** Angie Knight, 154.

7 **JUROR:** Cheryl Dodson, 77.

8 **JUROR:** Ann Douglas, 79.

9 **JUROR:** Bobbie McCandlish, 177.

10 **THE COURT:** Is that everybody?

11 **THE CLERK:** We've got another one back --

12 **JUROR:** Brett Thompson, 275.

13 **THE COURT:** I'm sorry, sir?

14 **JUROR:** Brett Thompson, 275.

15 **THE COURT:** All right.

16 **JUROR:** Christine Blum, 25.

17 **THE COURT:** All right. Is that everybody?

18 (There was no response.)

19 **THE COURT:** All right. Now, ladies and gentlemen,
20 those of you standing, it should be obvious to you by
21 now that the question that I need to have answered is
22 this: Whether it was yourself or a family member or
23 friend that has been a victim of a burglary, would that
24 experience in any way affect your ability to be fair and
25 impartial since this trial deals with an allegation of

1 burglary? Is there any way that your ability to listen
2 and to give both the State and the defense a fair and
3 impartial trial, whether or not that ability has been
4 compromised or affected? If it has, I'm gonna ask you
5 to remain standing. If it does not affect your ability
6 to be fair and impartial, I'm gonna get you to have a
7 seat.

8 All right. And, sir, your name again?

9 **JUROR:** Logan Edge, 82.

10 **THE COURT:** All right. 82?

11 **JUROR:** Yeah.

12 **THE COURT:** All right. Come on up here, if you
13 would, Mr. Edge, real quick.

14 (Whereupon, the following bench conference was held
15 on the record.)

16 **THE COURT:** Was it yourself or members of your
17 family?

18 **JUROR:** I've had both happen. Personally the only
19 thing questionable is the Defendant kind of looks like a
20 guy who stole from me one time, so there's a little bit
21 of inborn prejudice there.

22 **THE COURT:** All right. Okay. Well, I appreciate
23 your candor. That's good to know, but I'm gonna excuse
24 you from this case, okay? I'm gonna get you to hang
25 with us because we maybe can use you on another case,

1 but for this one I'm gonna excuse you, okay?

2 **JUROR:** Do you want me to call back or --

3 **THE COURT:** Well, I'm gonna get you to stay with
4 us for right now and then I'll let you know, okay?
5 Thank you, sir.

6 (The bench conference was concluded.)

7 **THE COURT:** Is there any member of the jury panel
8 who has an ownership interest in Dixiana Steel Company?
9 If so, please stand.

10 (There was no response.)

11 **THE COURT:** Thank you. There are none.

12 Is there any member of the jury panel who is
13 presently or formerly an employee of Dixiana Steel
14 Company? If so, please stand.

15 (There was no response.)

16 **THE COURT:** Thank you. There are none.

17 Is there any member of the jury panel who has any
18 type of business or working relationship with Dixiana
19 Steel Company? If so, please stand.

20 (There was no response.)

21 **THE COURT:** Thank you. There are none.

22 Ladies and gentlemen, obviously -- or hopefully it
23 is obvious that it's become apparent to you that the
24 purpose in asking these types of questions is simply to
25 be able to discern as to whether or not any member of

1 the jury panel, whether your ability to be fair and
2 impartial, has been somehow compromised or somehow
3 adversely affected. Every time we pull a jury in this
4 courtroom, whether it be for a criminal case or a civil
5 case, doesn't matter. Every time we pull a jury, our
6 purpose is to impanel folks who can be fair and
7 impartial, putting aside any matters that they may have
8 experienced outside of the court and judge this case
9 solely on the testimony and the evidence that is
10 presented during the course of this trial and to give
11 both the State and the defense a fair and impartial
12 hearing that is based solely on that testimony that
13 occurs during the course of that trial. That is our
14 goal every time we try to select a jury panel.

15 And I guess I could ask you questions all afternoon
16 to try and determine -- to determine if there's an issue
17 or a problem. Maybe the simplest way is to simply ask
18 this. Understanding that that's the goal, and that is
19 to be able to impanel folks that can listen to the
20 testimony and give both the State and the defense a fair
21 and impartial trial, is there any member of the jury
22 panel who knows of any reason why you would not be able
23 to serve on the jury and be fair and impartial both to
24 the State and to the defense? If so, please stand.

25 (Juror stands.)

1 **THE COURT:** Your name, ma'am?

2 **JUROR:** Janet Callahan, Juror 43.

3 **THE COURT:** All right. I'm gonna get you to come
4 forward, please.

5 (Whereupon, a bench conference was held on the
6 record.)

7 **JUROR:** The Defendant --

8 **THE COURT:** All right. I need you to keep your
9 voice down, please.

10 **JUROR:** -- I thought it was my nephew when I came
11 in. It isn't, but I'm sitting here thinking he did it,
12 he did it, you know what I'm saying? Already in my mind
13 I'm thinking he's guilty.

14 **THE COURT:** Well, I know what you're saying. I
15 don't know that I understand it.

16 **JUROR:** I mean, I'm not trying to get out of it,
17 but I'm just saying this is what I've been thinking.

18 **THE COURT:** Because he looks like your nephew?

19 **JUROR:** He looks like my nephew and he steals.

20 **THE COURT:** Oh. Yeah, I understand. Okay. All
21 right. Well, I'm gonna excuse you from this case, okay?
22 I'm gonna get you to stay with us, but I'm gonna excuse
23 you from service on this case, okay?

24 **JUROR:** Okay.

25 **THE COURT:** Thank you.

1 (The bench conference was concluded and a brief
2 conversation was held off the record between the
3 attorneys and the Judge.)

4 **THE COURT:** All right. Any further questions or
5 voir dire for the jury from the State?

6 **MS. RANKIN:** None from the State, Your Honor.

7 **THE COURT:** Anything further from the defense?

8 **MS. FULLWOOD:** No, Your Honor.

9 **THE COURT:** All right. Hope, if you would prepare
10 the juror list.

11 Ladies and gentlemen, let me explain to you real
12 quick how we draw juries in South Carolina with regards
13 to general sessions court. Any jurors that have been
14 excused or transferred to another term of court, those
15 names have all be been removed from the list so the list
16 that remains is the list of you folks that remain in the
17 juror pool. What we do is Madam Clerk has as program on
18 her computer. Now your list of names appears pretty
19 much in alphabetical order. The computer takes the list
20 of the remaining jurors and it completely just randomly
21 reorders that list. So, for example, I may be Tommy
22 Russo, Juror Number 134 on this juror list, but I may
23 appear on this new list as Tommy Russo, Juror Number 14.
24 It just randomly reorders the names. Basically puts
25 them in a hat, shuffles them up and throws them back up

1 on a sheet.

2 What will happen is Madam Clerk will print out
3 that list and she'll then off that new reordered list,
4 she'll start at the top of that list and she'll call the
5 first time. If your name is called, I'm gonna ask if
6 you would to come forward, come through the swinging
7 doors and right up here where the bailiff is stand right
8 where he is just as he's doing and face the back of the
9 courtroom and you'll just remain there. And while
10 you're standing there, and being very uncomfortable
11 because everybody's looking at you, Madam Clerk will
12 then inquire first of the State, words along the affect
13 of "What say you for the State?" The State has two
14 options. They can either excuse you, and if they excuse
15 you you'll go back to your seat, or they can present
16 you. And if they present you, you'll just remain
17 standing and then she'll ask of the defense words along
18 the lines of "What say you for the defense?" The
19 defense has two options. They can either excuse you,
20 and if they excuse you you'll go back and have a seat,
21 or they can seat you and if they seat you, you'll come
22 around and you'll have a seat in the jury box, okay?
23 And we'll go through that process until we've selected
24 our twelve jurors and any alternates we may select.

25 Now there's no way of telling now that if your name

1 is called whether or not you'll be excused or accepted,
2 so I say that to you to tell you this. If your name is
3 called, please when you come forward, bring with you
4 anything you brought to court today, whether it be a
5 pocketbook, a book, an umbrella, a coat or whatever,
6 whatever you may have brought to court today, bring that
7 with you because it may be that you're gonna be having a
8 seat over here and not going back to your seat in the
9 audience, okay?

10 So, Hope, we're five and ten on the strikes?

11 **THE CLERK:** Five and ten.

12 **THE COURT:** And is the State ready to proceed to
13 jury selection?

14 **MS. RANKIN:** Yes, Your Honor.

15 **THE COURT:** Defense ready?

16 **MS. FULLWOOD:** We're ready, Your Honor.

17 **THE COURT:** All right. Please listen carefully.

18 **THE CLERK:** Number 1, Susan Dill. Excuse me,
19 Number 75.

20 (Whereupon, Susan Dill, a white female, was called
21 forward.)

22 **THE CLERK:** What say for the State?

23 **MS. RANKIN:** Please present the juror.

24 **THE CLERK:** What say for the defense?

25 **MS. FULLWOOD:** Please swear the juror.

1 **THE CLERK:** Have a seat in the jury box, ma'am.

2 94, Larry Gaddy.

3 (Whereupon, Larry Gaddy, a white male, was called
4 forward.)

5 **THE CLERK:** What say for the State?

6 **MS. RANKIN:** Please present the juror.

7 **THE COURT:** What say for the defense?

8 **MS. FULLWOOD:** Please swear the juror.

9 **THE CLERK:** Have a seat in the jury box, sir.
10 Number 210, Gregor Porr.

11 (Whereupon, Gregor Porr, a white male, was called
12 forward.)

13 **THE CLERK:** What say for State?

14 **MS. RANKIN:** Please present the juror.

15 **THE CLERK:** What say for the defense?

16 **MS. FULLWOOD:** Please swear the juror.

17 **THE CLERK:** Have a seat in the jury box, sir.
18 47, Gail Cassese.

19 (Whereupon, Gail Cassese, a white female, was called
20 forward.)

21 **THE CLERK:** What say for the State?

22 **MS. RANKIN:** Please present the juror.

23 **THE CLERK:** What say for the defense?

24 **MS. FULLWOOD:** Please swear the juror.

25 **THE CLERK:** Have a seat in the jury box, ma'am.

1 295, Kathleen Worthy.

2 (Whereupon, Kathleen Worthy, a white female, was
3 called forward.)

4 **THE CLERK:** What say for the State?

5 **MS. RANKIN:** Please present the juror.

6 **THE CLERK:** What say for the defense?

7 **MS. FULLWOOD:** Please swear the juror.

8 **THE CLERK:** Have a seat in the jury box, ma'am.

9 279, Kenneth Tucker.

10 (Whereupon, Kenneth Tucker, a white male, was called
11 forward.)

12 **THE CLERK:** What say for the State?

13 **MS. RANKIN:** Please present the juror.

14 **THE CLERK:** What say for the defense?

15 **MS. FULLWOOD:** Please swear the juror.

16 **THE CLERK:** Have a seat in the jury box, sir.

17 282, Christine Unthank.

18 (Whereupon, Christine Unthank, a white female, was
19 called forward.)

20 **THE CLERK:** What say for the State?

21 **MS. RANKIN:** Please present the juror.

22 **THE CLERK:** What say for the defense?

23 **MS. FULLWOOD:** Please swear the juror.

24 **THE CLERK:** Have a seat in the jury box, ma'am.

25 46, Robert Cartner.

1 (Whereupon, Robert Cartner, a white male, was called
2 forward.)

3 **THE CLERK:** What say for the State?

4 **MS. RANKIN:** Please excuse the juror.

5 **THE CLERK:** Return to your seat, please, sir.
6 120, Judy Harriman.

7 (Whereupon, Judy Harriman, a white female, was
8 called forward.)

9 **THE CLERK:** What say for the State?

10 **MS. RANKIN:** Please present the juror.

11 **THE CLERK:** What say for the defense?

12 **MS. FULLWOOD:** Excuse the juror.

13 **THE CLERK:** Return to your seat, please, ma'am.
14 Number 137, Marissa Hyneman.

15 (Whereupon, Marissa Hyneman, a white female, was
16 called forward.)

17 **THE CLERK:** What say for the State?

18 **MS. RANKIN:** Please present the juror.

19 **THE CLERK:** What say for the defense?

20 **MS. FULLWOOD:** Please swear the juror.

21 **THE CLERK:** Have a seat in the jury box, ma'am.
22 Number 80, Patricia Dube.

23 (Whereupon, Patricia Dube, a white female, was
24 called forward.)

25 **THE CLERK:** What say for the State?

1 **MS. RANKIN:** Please excuse the juror.

2 **THE CLERK:** Return to your seat, please, ma'am.

3 Number 149, Virginia Jordan.

4 (Whereupon, Virginia Jordan, a white female, was
5 called forward.)

6 **THE CLERK:** What say for the State?

7 **MS. RANKIN:** Please present the juror.

8 **THE CLERK:** What say for the defense?

9 **MS. FULLWOOD:** Please seat the juror.

10 **THE CLERK:** Have a seat in the jury box, ma'am.

11 271, Douglas Street.

12 (Whereupon, Douglas Street, a white male, was called
13 forward.)

14 **THE CLERK:** What say for the State?

15 **MS. RANKIN:** Please present the juror.

16 **THE CLERK:** What say for the defense?

17 **MS. FULLWOOD:** Please excuse the juror.

18 **THE CLERK:** Return to your seat, please, sir.

19 84, Eugene Epps.

20 (Whereupon, Eugene Epps, a white male, was called
21 forward.)

22 **THE CLERK:** What say for the State?

23 **MS. RANKIN:** Please present the juror.

24 **THE CLERK:** What say for the defense?

25 **MS. FULLWOOD:** Please excuse the juror.

1 **THE CLERK:** Return to your seat, please, sir.
2 176, Amanda Massey.

3 (Whereupon, Amanda Massey, a white female, was
4 called forward.)

5 **THE CLERK:** What say for the State?

6 **MS. RANKIN:** Please excuse the juror.

7 **THE CLERK:** Return to your seat, please, ma'am.
8 293, Barbara Ann Wise.

9 (Whereupon, Barbara Ann Wise, a black female, was
10 called forward.)

11 **THE COURT:** What say for the State?

12 **MS. RANKIN:** Please present the juror.

13 **THE CLERK:** What say for the defense?

14 **MS. FULLWOOD:** Please swear the juror.

15 **THE CLERK:** Have a seat. 155, Sonya Kostadinova.

16 (Whereupon, Sonya Kostadinova, a white female, was
17 called forward.)

18 **THE CLERK:** What say for the State?

19 **MS. RANKIN:** Please present the juror.

20 **THE CLERK:** What say for the defense?

21 **MS. FULLWOOD:** Please excuse the juror.

22 **THE CLERK:** Return to your seat, please, ma'am.
23 Number 14, David Austin.

24 (Whereupon, David Austin, a white male, was called
25 forward.)

1 **THE CLERK:** What say for the State?

2 **MS. RANKIN:** Please present the juror.

3 **THE CLERK:** What say for the defense?

4 **MS. FULLWOOD:** Please swear the juror.

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

6 86, Tracy Ervin.

7 (Whereupon, Tracy Ervin, a white female, was called
8 forward.)

9 **THE CLERK:** What say for the State?

10 **MS. RANKIN:** Please present the juror.

11 **THE CLERK:** What say for the defense?

12 **MS. FULLWOOD:** Please excuse the juror.

13 **THE CLERK:** Return to your seat, please, ma'am.

14 Number 48, Gonzalo Chavarria.

15 (Whereupon, Gonzalo Chavarria, a Hispanic male, was
16 called forward.)

17 **THE CLERK:** What say for the State?

18 **MS. RANKIN:** Please present the juror.

19 **THE CLERK:** What say for the defense?

20 **MS. FULLWOOD:** Please excuse the juror.

21 **THE CLERK:** Return to your seat, please, sir.

22 157, Jilian Kurka.

23 (Whereupon, Jilian Kurka, a white female, was called
24 forward.)

25 **THE CLERK:** What say for the State?

1 **MS. RANKIN:** Please excuse the juror.

2 **THE CLERK:** Return to your seat, please, ma'am.

3 171, Joy Manley.

4 (Whereupon, Joy Manley, a white female, was called
5 forward.)

6 **THE CLERK:** What say for the State?

7 **MS. RANKIN:** Please present the juror.

8 **THE CLERK:** What say for the defense?

9 **MS. FULLWOOD:** Please excuse the juror.

10 **THE CLERK:** Return to your seat, please, ma'am.

11 Number 70, Timothy Deblock.

12 (Whereupon, Timothy Deblock, a white male, was
13 called forward.)

14 **THE CLERK:** What say for the State?

15 **MS. RANKIN:** Please present the juror.

16 **THE CLERK:** What say for the defense?

17 **MS. FULLWOOD:** Please swear the juror.

18 **THE CLERK:** Have a seat in the jury box, sir.

19 Alternates, Your Honor?

20 **THE COURT:** I'll go with two.

21 **THE CLERK:** 236, Robert Roudybush?

22 (Whereupon, Robert Roudybush, a white male, was
23 called forward.)

24 **THE CLERK:** What say for the State?

25 **MS. RANKIN:** Please present the juror.

1 **THE CLERK:** What say for the defense?

2 **MS. FULLWOOD:** Please swear the juror.

3 **THE CLERK:** Have a seat in the jury box. Did you
4 say two, Your Honor?

5 **THE COURT:** Yes, ma'am.

6 **THE CLERK:** Number 3, Linda Adams.

7 (Whereupon, Linda Adams, a black female, was called
8 forward.)

9 **THE CLERK:** What say for the State?

10 **MS. RANKIN:** Please excuse the juror.

11 **THE CLERK:** Return to your seat, please, ma'am.
12 190, Daniel Morrison.

13 (Whereupon, Daniel Morrison, a white male, was
14 called forward.)

15 **THE CLERK:** What say for the State?

16 **MS. RANKIN:** Please present the swear.

17 **THE CLERK:** What say the defense?

18 **MS. FULLWOOD:** Please seat the juror.

19 **THE CLERK:** That's alternate number two, Your Honor.

20 **THE COURT:** All right. Any motions regarding jury
21 selection from the State?

22 **MS. RANKIN:** None from the State, Your Honor.

23 **THE COURT:** And I think you have reserved a motion;
24 is that correct?

25 **MS. FULLWOOD:** That's correct, but we have no motion

1 concerning jury selection.

2 **THE COURT:** All right. Wonderful. Thank you.

3 All right. God has smiled favorably on you people.
4 Not only do you not have to sit through this case, but
5 your service has now concluded. We have this case,
6 ladies and gentlemen. We had some other trials that my
7 understanding from Madam Clerk is that those cases have
8 resolved, so you have concluded your jury service for
9 the week. I would take a bow, but I had nothing to do
10 with it. I'm just the deliverer of good information.

11 I do want to thank you -- in all seriousness, I
12 very much want to thank you. The work that we do here
13 -- I try to lighten the mood a little bit to the extent
14 I can because I have found that some jurors tend to be
15 nervous because they've never been in court before, and
16 it is very serious the work that we do here, but I just
17 want you to understand that this system of justice that
18 we have in this country it's not perfect because it was
19 created by man, but I can tell you this, and there's no
20 doubt about it, it is the best system on the planet.
21 And it's that way because citizens such as yourselves
22 make yourself available to serve on juror duty. I
23 didn't come up with this, but I a hundred percent agree
24 with it. Someone -- some wise person said that second
25 only to serving your country in the military jury

1 service is the highest service you can give to your
2 country, and I agree with that. What goes on in this
3 building is -- it's serious, it's important, and it
4 doesn't function without you. So I want you to know
5 sincerely how much I appreciate your service, your
6 making yourselves available to be here, and I'm --
7 I'm happy for you that your service isn't gonna
8 inconvenience your week any more than it already has.

9 This is the only case that we'll be trying this
10 week, but trust me, Judge Hocker has more than he can
11 say grace over downstairs involved in nonjury matters.
12 So we have a lot of work that we're gonna be doing this
13 week, but that work does not involve the need for a
14 jury.

15 So your service has been concluded. You've earned
16 an exemption. Remember I told you that state law
17 provides you only have to serve on jury duty once every
18 three calendar years. Well, you've done that and so
19 you've earned that exemption. If you get called for
20 jury duty for the balance of this year and the next two
21 years, you may be excused from that service if you
22 choose to be, but I do tell folks all the time it is
23 simply an exemption. It doesn't mean you're not
24 qualified to served, so if you do get another summons
25 for jury duty and you want to serve, I would certainly

1 encourage you to do so.

2 But that does conclude your service on jury service
3 this week. You will be getting a check in the mail.
4 Before you get terribly excited about that, it more than
5 likely doesn't cover your cost of coming here. It's not
6 much money because jury service, it is that. It is a
7 service that you give to your community. What do they
8 pay here, Hope?

9 **THE CLERK:** It's \$15 a day --

10 **THE COURT:** Plus mileage?

11 **THE CLERK:** Yes, sir.

12 **THE COURT:** So it's not that much, but, again, it's
13 not -- this is not a paid gig, it's just -- it's a
14 service, and that will be in the mail to you. There
15 will also be with that a work excuse, so if anyone needs
16 that for your employer, you'll be getting that as well.
17 And they'll be sending those out. You more than likely
18 will have that by the end of the week, okay? So if
19 you'll do so quietly, I'm gonna excuse you, ladies and
20 gentlemen, for the balance of the week. Thank you for
21 your service.

22 (The remaining jury panel was excused.)

23 **THE COURT:** Folks, while they go out, let me
24 address you. In just a moment I'm gonna excuse you for
25 the balance of this day and I'm gonna get you to come

1 back in the morning and we're gonna start this trial in
2 the morning, okay? I have several matters of law that I
3 need to take up and rather than have you just sit back
4 in the jury room while I do that, that's gonna take me a
5 couple of hours, we're gonna go ahead and take care of a
6 bunch of pretrial matters so that when we get started in
7 the morning we'll hit the ground running and we'll be
8 ready to go, okay?

9 So I'm gonna excuse you in just a moment, but I
10 need to send you with some additional instruction.
11 You've been selected to be fair and impartial jurors in
12 this case and the only way you can do that is to judge
13 this case and base this case solely on the evidence that
14 is presented during the course of this trial. So when
15 you leave here, you're -- from this point until the
16 trial's over, you're not allowed to talk with anyone
17 about the case.

18 Now you know very little about it. You know
19 basically what I shared with you, the allegations of the
20 indictments, but when you leave here, family, friends
21 and loved ones, they're gonna be curious as to whether
22 or not you were selected to be on the panel. You can
23 tell them that you were selected and that you have to be
24 back tomorrow, but that's where the conversation needs
25 to stop. Saying something as innocent as yeah, it's

1 some fella that's charged with a burglary and a grand
2 larceny or yeah, it involves a break-in over at Dixiana
3 Steel or something like that, saying something as
4 innocent as that could possibly elicit a response that
5 may affect your ability to be fair and impartial. So
6 what I ask folks to do all the time is this. Simply
7 tell anyone who's curious that you're not allowed to
8 discuss the case, you're not allowed to talk about not
9 even what the charge is, but if they'll be patient that
10 you'll tell them everything they want to know when the
11 trial's over because once -- this is a court of public
12 record. Once the trial is concluded, you're free to
13 talk about anything you want to talk about. So just ask
14 folks if they're curious to please be patient and that
15 you'll share with them whatever it is that they want to
16 know once the trial is concluded and so when you leave
17 here please hold that close that you not have any
18 conversation. It's very important.

19 Another thing that I would caution you is this.
20 We live in a day and an age now where telephones and
21 computers and everything else in the world, Google
22 and all these other search sites, have all type of
23 information and stuff like that. What's incredibly
24 important is this. You are to try this case and base
25 this case solely on the evidence that's presented in

1 this courtroom. In other words, you're not to do any
2 independent investigation. I guess the best way to say
3 this is when you come back in here tomorrow you should
4 know nothing more about this case than you know right
5 now. Please don't do any Google searches or any type of
6 investigation. That would be so highly improper I can't
7 even put it in context. You, as jurors, are gonna take
8 an oath to try this case and decide this case on the
9 evidence that's presented in this courtroom and on
10 nothing else, okay? So please shield yourself from
11 anything -- anything like that.

12 Enjoy your evening -- the rest of your day and your
13 evening. If you can get a good night's rest, try to do
14 that because I think a lot of people find jury service
15 is not physically taxing from a muscular standpoint, but
16 it is from a mental standpoint. So if you get a good
17 night's rest and when you come in tomorrow, you'll be
18 more alert and able to follow along with the testimony.

19 All right. And what I'm gonna do is I'm gonna ask
20 you -- if you would, as I excuse you, I'm gonna get you
21 to follow the bailiff. He's gonna show you where the
22 jury room is. When you come back tomorrow, if you'll
23 have those badges on, that way folks know that you're on
24 the jury, and if you will report back to the jury room,
25 and he's gonna show you that, where it is, and if you

1 would please be there at 9:30, okay?

2 Now don't do like my wife. If we have to be across
3 town and we have to be somewhere at 7:00, she thinks
4 we're on time if we leave the house at 7:00. Now she's
5 the most wonderful woman I've ever met, but she's not
6 perfect and that's one little flaw that she has. Don't
7 make that flaw. If you leave your house tomorrow at
8 9:30, you're late, okay? Don't do that. Allow yourself
9 whatever driving distance you have, a place to park and
10 make your way into the building, okay? But if we could,
11 please have everybody back here at 9:30 and then once
12 everybody's reconvened, we'll get started in the
13 morning, okay?

14 All right. So if you'd follow the bailiff and
15 he'll show you where the jury room is and then we'll
16 see you back here at 9:30 in the morning, ladies and
17 gentlemen.

18 (The jury was excused for the day.)

19 **THE COURT:** All right. Now I know we have some
20 pre-trial matters, but before we -- and we're gonna take
21 those up after lunch, but before we break for lunch we
22 do want to take up -- Ms. Fullwood has a motion with
23 regards to a juror issue earlier and so we'll take that
24 up at this time.

25 **MS. FULLWOOD:** Yes, sir. I brought this matter to

1 the Court's attention prior to the jury actually being
2 called up and selected.

3 **THE COURT:** Right.

4 **MS. FULLWOOD:** It ended up, Your Honor, that there
5 were 110 prospective jurors in the entire pool. Of
6 those, 37 responded to the Court's question as to
7 whether or not they or their family or close personal
8 friend had been a victim of a burglary. Your Honor,
9 that is over one-third of the entire panel. For that
10 reason, I do not believe that Mr. Millwood can get a
11 fair and impartial trial before this panel and I would
12 move that the panel be quashed and, of course, the jury
13 just selected be dismissed.

14 **THE COURT:** All right, ma'am. Ms. Rankin, do you
15 have any position on that?

16 **MS. RANKIN:** Your Honor, the only position is out
17 of the pool that Ms. Frick pulled, I believe there
18 were only maybe two off of that -- off of the list
19 originally, Your Honor, so I do believe that there was
20 a very fair pool drawn. I don't know how that happened,
21 but out of that third only two of those people were
22 drawn onto that panel.

23 **THE COURT:** All right. Well, let me just -- let
24 me just address it in this way. Obviously there were
25 a large number of folks that stood up, which is why I

1 handled that question the way I did, and I think I was
2 very clear in that if that experience, whether it be
3 themselves, family members or friends, if that
4 experience would in any way prejudice or compromise
5 their ability to be fair and impartial for them to
6 remain standing, otherwise have a seat, and out of the
7 30 -- I guess you said 37 -- out of the 37 everyone sat
8 down except -- and I don't remember the young man's
9 name, but one young man did remain standing and I
10 brought him up to question him further and he was just
11 very candid about it; that he had been the victim
12 himself, as well as family members, and that he just --
13 he just didn't feel he could set that aside, and so we
14 did excuse him from the panel. Everyone else indicated
15 that it would not in any way affect their ability to be
16 fair and impartial.

17 And even though there was a substantial number who
18 responded to that question, I think my obligation is the
19 same as it would be whether only one stood up, and that
20 is when a juror informs the Court that a situation or a
21 question that the Court poses that that would not, in
22 fact, affect their ability to be fair and impartial,
23 that the Court takes the juror at their word. We had
24 several questions that jurors did respond to. I asked
25 them if it would in any way affect their ability to be

1 fair and impartial and they said that it would not and
2 they were -- and their service is not questioned.

3 I do understand your question, but I think simply
4 the numbers that stood are not a reflection. The
5 reflection is whether or not that issue would affect
6 their ability to be fair and impartial and they all but
7 one indicated that it would not affect their ability and
8 so I don't think I have any choice other than to take
9 them at their word. I don't think it was any conspiracy
10 or agreement that that many stand up. I just think it
11 happened to be that many that responded to that
12 question.

13 So I'm gonna respectfully deny your motion. I
14 certainly will note your exception to that,
15 Ms. Fullwood, but I believe that -- I think that the
16 Court was satisfied from the response of the jurors
17 that it did not affect their ability to be fair and
18 impartial, or it would not, and so I think I'm obligated
19 to accept them for that answer.

20 **MS. FULLWOOD:** If I may just put one more thing on
21 the record.

22 **THE COURT:** Yes, ma'am.

23 **MS. FULLWOOD:** It's my understanding that of the
24 twelve jurors themselves there were three people who
25 were prior victims of burglaries, not two.

1 **THE COURT:** All right. Okay. All right. We're
2 gonna go ahead then and break at this time. We'll start
3 back at 2:30, all right, and we'll start with whatever
4 you've got pre-trial. Will start at 2:30.

5 **MS. RANKIN:** Thank you, Your Honor.

6 **THE COURT:** Court will be in recess until 2:30.

7 (Whereupon, a luncheon recess was taken.)

8 (Court's Exhibit Number 1, a photograph, was marked
9 for identification.)

10 **BAILIFF:** All rise. Court's now in session.

11 **THE COURT:** Thank you, folks. Please have a seat.
12 Okay. Tell me what we've got and we'll take them in
13 whatever order y'all think appropriate.

14 **MS. FULLWOOD:** Your Honor, first of all, we have a
15 Neil v. Biggers hearing, but let me give you a little
16 bit of background.

17 **THE COURT:** Yes, ma'am.

18 **MS. FULLWOOD:** This is sort of an unusual situation
19 here. A burglary occurred at a steel fabrication
20 business. That business was outfitted with some cameras
21 and so it happened in the nighttime and they were able
22 to get some pictures from the cameras. Now the owner of
23 the store, of course, retrieved the pictures and looked
24 at them and said to the police "I know who that is.
25 That's Barry Millwood". A day or two later then the

1 police came to Mr. Ingram, the owner of the business who
2 made this identification, and showed them a single
3 driver's license photograph of Barry Millwood and said
4 "Is this Barry Millwood?", and he said "Yes". In
5 effect, Your Honor, the business owner, Mr. Ingram, is
6 gonna function as an eyewitness in this case because,
7 in fact, he had a recording of the incident, he looked
8 at the recording, in fact, looked at the crime as it
9 looked on the cameras when it occurred and used that
10 as a basis to make the identification, then was shown
11 that single person photograph, which, of course, is an
12 impermissibly suggestive identification. We think that
13 under State v. Liverman we're, therefore, entitled to a
14 Neil v. Biggers hearing for Your Honor to determine the
15 reliability of Mr. Ingram's identification apart from
16 the suggestive one photo showed to Mr. Ingram.

17 **THE COURT:** Okay.

18 **MS. RANKIN:** All right. Your Honor, the State
19 doesn't contest that. Earlier I'd talked to
20 Ms. Fullwood and I said that we were gonna contest
21 the Biggers, Your Honor, but we won't contest it. We
22 have our witnesses and we're willing to go forward.

23 **THE COURT:** Ready to proceed then?

24 **MS. RANKIN:** Yes, Your Honor.

25 **THE COURT:** All right. Let's proceed with the

1 Biggers hearing.

2 **MS. RANKIN:** The State calls Rhett Ingram.

3 EVERETT WALTER (RHETT) INGRAM, IV,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Once you're seated, state your full
6 name, spelling your last.

7 **THE WITNESS:** My name's Everett Walter Ingram, IV.
8 I-N-G-R-A-M. Rhett Ingram is what I go by.

9 DIRECT EXAMINATION

10 BY MS. RANKIN:

11 Q. Mr. Ingram, you're the victim of this case, correct?

12 A. Yes, I am.

13 Q. And you're the owner of Dixiana-Steel?

14 A. I am.

15 Q. Do you know the Defendant in this case?

16 A. Absolutely.

17 Q. Okay. How do you know him?

18 A. I've been dealing with Mr. Millwood for years.

19 I've had problems with him breaking into my company,
20 breaking in next door. I've kept up with him. There's
21 been countless times. I'm very familiar with him.

22 Q. You've had physical run-ins with him before?

23 A. I've been within six feet of chasing him in the
24 woods and Lexington County picking him up.

25 Q. Okay. So you know his name as well?

1 A. Yeah, I'm very familiar with it.

2 Q. Okay. How do you know his name?

3 A. One of the times he was caught -- and I don't know
4 the exact date, you know. There's been so many
5 instances where he was caught and his name was given.

6 Q. When you learned that your business had been broken
7 into on January 28th of 2013, what did you do?

8 A. I went and retrieved the -- it wasn't a video. It
9 was a camera set up similar to a deer camera. It takes
10 photos on a camera card when it senses motion.

11 Q. And were there photos on that camera?

12 A. There were photos.

13 Q. Okay. And what dates were those from, do you
14 remember?

15 A. It was the night before. I don't remember the exact
16 dates.

17 Q. Okay. Was there a person in these photos?

18 A. There was.

19 Q. Okay. Did you recognize that person?

20 A. I did.

21 Q. Who you did recognize that person to be?

22 A. That person was Barry Millwood.

23 Q. Did you tell law enforcement about the photos?

24 A. I did.

25 Q. Did you tell them who you knew it to be in those

1 photos?

2 A. I did.

3 Q. Okay. And you gave them his name?

4 A. I did.

5 Q. Okay. And did they show you a photograph?

6 A. They did.

7 Q. Did you recognize that person in the photograph as
8 being the same person you know as Barry Millwood?

9 A. Absolutely.

10 Q. I'm handing you what's been marked as Court's
11 Exhibit No. 1. Do you recognize what that is?

12 A. I do.

13 Q. Okay. What is that?

14 A. That's a picture of Barry Millwood. It was the one
15 presented to me by Lexington County.

16 Q. All right. And is that the same person you
17 recognized as being in the surveillance photos --

18 A. It is.

19 Q. -- from your business?

20 A. Yes, ma'am.

21 Q. Did law enforcement make any suggestions to you
22 about that photo?

23 A. They didn't mention his name.

24 Q. Okay. And how certain were you the identification
25 of the Defendant in that photo that you were shown by

1 law enforcement as Barry Millwood is the same person
2 that you recognized on the surveillance photos?

3 A. I was very certain.

4 **MS. RANKIN:** I beg the Court's indulgence. Your
5 Honor, the State has no further questions.

6 **THE COURT:** Ms. Fullwood.

7 **MS. FULLWOOD:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. FULLWOOD:

10 Q. Mr. Ingram, when you say you've been dealing with
11 Barry Millwood for years, what do you mean by dealing
12 with?

13 A. He's been breaking into my business numerous years,
14 so that's what I call dealing with.

15 Q. Okay. How do you know he's been breaking into your
16 business?

17 A. We've had him on video, we've chased him from next
18 door, the business next door where we caught him.

19 He's broken in several times. I just have had past
20 instances. Just never caught him until this one time.

21 Q. Okay. So he has never been convicted of breaking
22 into your business, has he?

23 A. That I don't know.

24 Q. Well, you would know that if --

25 A. Not since I was the owner, no, ma'am.

1 Q. All right. You would know that if it had occurred,
2 right?

3 A. During my ownership, yes, ma'am.

4 Q. Okay. And if you say you in past -- on past
5 occasions you had him on video, then why wasn't he
6 arrested and charged with those burglaries?

7 **MS. RANKIN:** Objection, Your Honor. That's outside
8 of the scope of what we're doing. It's identification,
9 not whether or not he reported a prior crime.

10 **THE COURT:** Well, what's your point, Ms. Fullwood?

11 **MS. FULLWOOD:** Well, it goes to his opportunity to
12 be familiar with Mr. Millwood.

13 **THE COURT:** Whether he reported it or not doesn't
14 speak to his opportunity.

15 **MS. FULLWOOD:** Well, I would think that if he, in
16 fact, had video of prior break-ins, he would have
17 reported them to the police, and I think I can explore
18 that as far as --

19 **THE COURT:** All right. I'll allow it.

20 BY MS. FULLWOOD:

21 Q. Okay. Did you report these prior burglaries to the
22 police?

23 A. I have.

24 Q. And did you give them these photographs that you
25 talked about?

1 A. From my recollection we've given them everything
2 that we possibly can. He wasn't apprehended, not --
3 there was one instance not very long after he was
4 breaking into our place he was apprehended at another
5 place, he was caught. And he has very distinct
6 features, he's very easily recognized and, like I said,
7 we might not have had the exact evidence -- enough for
8 the police or Lexington County to apprehend him at that
9 moment, but he was caught.

10 Q. So you're saying that in previous burglaries --

11 A. I also don't believe he had a permanent residence.
12 He was hard to find.

13 Q. Are you trying to say in these previous burglaries
14 the photographic images weren't sufficient to make an
15 identification?

16 A. I can't tell you exactly why Lexington County
17 didn't -- you know, why he was not caught, convicted or
18 whatnot. I know that Barry Millwood was breaking into
19 my steel business and I know that it caused me and, you
20 know, twenty employees lots of problems. Why he wasn't
21 at that time, I can't tell you that. Like I said,
22 there's been numerous instances. He was caught, like I
23 said, at another steel company five miles down the road.

24 Q. That was in what, about 2007?

25 A. I don't remember the years.

1 Q. It was a few years ago, correct?

2 A. It may have been.

3 Q. Okay. And what personal knowledge do you have that
4 he was caught breaking into that business?

5 A. It was on the news. You could look it up on the
6 Internet. I've tracked his mugshot, you know, on a
7 monthly basis because basically when he's in jail, we're
8 fine, we don't get broken into.

9 Q. Okay. When did you purchase that business?

10 A. 2006.

11 Q. 2006. Okay. And how many break-ins have you had
12 since you bought the business?

13 A. I can't tell you that. I don't know a number.

14 Q. Okay. And when did you become familiar with the
15 name Barry Millwood?

16 A. Again, ma'am, I can't tell you an exact time, but
17 it's been years. If what you're saying happened in
18 2007, then I obviously knew then because I knew of that
19 instance.

20 Q. Okay. Is that when you became familiar with his
21 name?

22 A. Obviously when that happened I knew it. When, the
23 exact day or year or whenever I found out his name, I
24 don't know. If that happened in 2007, I knew him in
25 2007.

1 Q. Okay. And do you have any direct knowledge of him
2 doing something in the business next door or is this
3 something you heard?

4 A. No, I was within six feet of Barry Millwood. Me
5 and my shop foreman chased him through the woods on a
6 dirt road before Lexington County got there. Lexington
7 County went in there and found him and brought him out.
8 I looked him dead in the eye.

9 Q. Okay. And on that occasion, was it nighttime or
10 daytime?

11 A. That was daytime, during the day --

12 Q. Okay. And --

13 A. -- but the business -- go ahead.

14 Q. Go ahead. I didn't mean to cut you off. I thought
15 you had finished.

16 A. No, go ahead.

17 Q. And how did you notice him and then decide you were
18 gonna chase him through the woods?

19 A. How did I notice him?

20 **MS. RANKIN:** Objection, Your Honor. This is --
21 this has gotten way beyond --

22 **THE COURT:** Well --

23 **MS. RANKIN:** We're talking about a completely
24 different burglary years ago.

25 **THE COURT:** Well, we're still dealing with

1 identification --

2 **MS. FULLWOOD:** Yes, sir.

3 **THE COURT:** -- so I'm gonna allow it, but -- well,
4 we'll just have to decide how this is gonna proceed.

5 BY MS. FULLWOOD:

6 Q. About how long were you around Mr. Millwood that
7 day?

8 A. That particular day?

9 Q. Uh-huh.

10 A. I'd say fifteen minutes top. Lexington County came
11 out and --

12 Q. Okay. And do you think that that's probably the
13 day that you became familiar with him?

14 A. No, ma'am. I knew him that day. I knew exactly
15 who he was. We had prior -- like I said, I don't -- I
16 told you if that was 2007, I knew him prior to that
17 because I knew who he was. Right when he came out of
18 the woods, I said his name. Right when Lexington County
19 brought him out of the woods, I said that's Barry
20 Millwood.

21 Q. And that name stemmed from what source?

22 A. The previous break-ins.

23 Q. But how did you attach a name?

24 A. Because if I see you three, four, five, six times
25 and if you're a thief and you're causing me harm, I'm

1 gonna remember your face.

2 Q. All right. But how would you know my name?

3 A. He was caught before. I don't know how -- like I
4 said, I don't know how exactly I came up with his name.

5 Q. Okay. Before that day that you chased him in the
6 woods, had you ever personally been around Mr. Millwood?

7 A. To my knowledge, that was the first day I was
8 personally physically in front of him. To my knowledge.

9 Q. After that day, how many times have you personally
10 been around him?

11 A. None that I can recall have I seen, but laid
12 physical eyes in pictures, yes. Physical, no.

13 Q. Okay. What do you mean when you say physical eyes
14 in pictures?

15 A. We don't hang out at the same restaurants, you know.
16 I don't catch -- see him in the grocery store, you know.
17 I have not seen him physically. Like looking at him
18 right now, I have not done that.

19 **THE COURT:** You've seen photographs?

20 **THE WITNESS:** I've seen pictures, you know, and
21 such, but not physically set my eyes on him.

22 **THE COURT:** He's talking about personally --

23 **MS. FULLWOOD:** I understand what he's saying.

24 **THE COURT:** -- rather than photos.

25 **MS. FULLWOOD:** He's saying that they're not social

1 friends or go to the same church and all that.

2 **THE COURT:** I think the distinction he's making is
3 when you say physically, you're talking about in person.

4 **MS. FULLWOOD:** That's right.

5 **THE COURT:** And I think what he's talking about is
6 he has seen numerous photographs, but only that one time
7 in person. Is that correct, sir?

8 **THE WITNESS:** Yes, sir.

9 **THE COURT:** Okay.

10 BY MS. FULLWOOD:

11 Q. Okay. How many other photographs have you seen of
12 Mr. Millwood?

13 A. That I couldn't tell you. I'd say six or less
14 maybe possibly.

15 Q. Wasn't there once an incident where you caught
16 someone on your camera in your business and I guess --
17 I don't know if you were out there or whatnot, and then
18 grabbed a guy near the business and it wasn't even the
19 right person?

20 A. No, ma'am. I've never grabbed a guy.

21 Q. Well, a guy was taken into custody by police because
22 of --

23 A. Not that I'm aware of.

24 Q. You're not aware of that incident at your business?

25 A. Not that I'm aware of.

1 Q. Okay. So you don't know how many pictures?

2 A. No, ma'am.

3 Q. You don't know how many --

4 A. I don't keep up with picture counts of, you know,
5 how many different pictures I've seen of him.

6 Q. Have you saved any of those pictures?

7 A. Saved as in -- no, I don't have them pinned to my
8 wall or, you know, in my photo album, no. I don't have
9 any saved pictures.

10 Q. But in your business rather.

11 A. I've seen him enough. No, ma'am, I don't have any
12 saved photographs.

13 Q. All right. And you say that in the past you have
14 turned those type of pictures in to the police?

15 A. I'll turn anything and everything I can in to the
16 police to stop him from breaking into my business.

17 Q. Well, do you know why the police, the sheriff's
18 department, doesn't have any incident reports about him
19 specifically breaking into your building?

20 A. I can't speak to what --

21 **MS. RANKIN:** Objection, Your Honor. He has no
22 knowledge of the --

23 **THE COURT:** Sustained.

24 BY MS. FULLWOOD:

25 Q. So we're basically talking about one face-to-face

1 several years ago and then some pictures you personally
2 identified as this individual?

3 A. What are you saying that in reference to?

4 Q. As far as your ability to know who Barry Millwood
5 is.

6 A. Yes, I know who Barry Millwood is.

7 **MS. FULLWOOD:** All right. I beg the Court's
8 indulgence.

9 **THE COURT:** Yes, ma'am.

10 **MS. FULLWOOD:** No further questions, Your Honor.

11 **THE COURT:** All right. Any further questions of
12 this witness?

13 **MS. RANKIN:** No redirect, Your Honor.

14 **THE COURT:** All right. Thank you very much, sir.
15 You may step down.

16 (Witness leaves the witness stand.)

17 **MS. RANKIN:** The State calls Rob Williams.

18 **THE COURT:** All right. Sir, if you'd please come
19 around to be sworn.

20 DETECTIVE ROB WILLIAMS,
21 having been duly sworn, testified as follows:

22 **THE CLERK:** Once you're seated, state your full
23 name, spelling your last, please..

24 **THE WITNESS:** It's Rob Williams, W-I-L-L-I-A-M-S.

25 DIRECT EXAMINATION

1 BY MS. RANKIN:

2 Q. Investigator Williams, you were the investigator on
3 this case?

4 A. Yes.

5 Q. Okay. During the course of your investigation on
6 this case, did you develop the Defendant, Barry
7 Millwood, as a suspect?

8 A. I did.

9 Q. Okay. How were you able to do that?

10 A. When I received the incident report, read the
11 narrative where the owner, Rhett Ingram, identified him
12 as the person from his surveillance, I went out there
13 that same day, January 18, 2013, to view the video,
14 which turns out it was just still photographs, and he
15 pointed him out and said that he had kept up with
16 Mr. Millwood through various websites when he's in jail
17 to make sure he's still in jail and that's how he became
18 more familiar with his looks, I guess.

19 On, I believe it was, the 19th of January, I went
20 back to his business with a DMV photo with the name
21 Barry Glenn Millwood, and also on the 18th he provided
22 the -- the physical address of -- but that would
23 have been on the 28th of January. I confused the dates.
24 Are you okay with that?

25 Q. Do you want to refresh yourself on the dates real

1 quickly?

2 A. Yeah, it was it on the 28th of January, 2013, when
3 I first went out to his business, Dixiana Steel.

4 Q. Okay. And what did you do once you learned the
5 name Barry Millwood?

6 A. Well, sometime between that day and the following
7 day, the 29th, I pulled him on the DMV based on the name
8 and the physical street address, went back out to the
9 Dixiana Steel and showed him the photographs -- a single
10 photograph, just for identification purposes, to make
11 sure --

12 Q. I'll hand you what's been marked as Court's
13 Exhibit 1. Do you recognize that?

14 A. Yes, that's the blown up photo from his DMV.

15 Q. Okay. Is that the photo that you showed to the
16 victim?

17 A. That is.

18 Q. All right. When did you show that photo to the
19 victim?

20 A. On January 29th.

21 Q. And where did that photo come from again?

22 A. DMV Online.

23 Q. Is that a standard procedure to use a photo from the
24 DMV for a suspect?

25 A. Yes. When the Defendant is known by the victim,

1 yes, it is.

2 Q. Okay. So you don't put something in a lineup if
3 the victim --

4 **MS. FULLWOOD:** Objection; leading.

5 **THE COURT:** Sustained.

6 BY MS. RANKIN:

7 Q. Would you generally put someone in a lineup if the
8 victim knows the defendant?

9 A. No.

10 Q. Okay. And why is that?

11 A. Because the victim knows the defendant and it's
12 just to make sure we're talking about the same Barry
13 Glenn Millwood.

14 Q. Okay. So that photo that you showed him was just
15 to confirm that you guys were on the same page?

16 A. Correct.

17 Q. Okay. And what is the time frame between the
18 victim reporting the crime to law enforcement and then
19 you showing him the photograph?

20 A. One day.

21 Q. And did you tell him anything as you showed him the
22 photo?

23 A. No.

24 Q. Did you make any suggestions to him?

25 A. No.

1 Q. Okay. Did the victim make an identification?

2 A. Yes, he did. He said that the photo that I showed
3 him was the same Barry Millwood that he identified from
4 his surveillance shots.

5 MS. RANKIN: I beg the Court's indulgence. No
6 further questions from the State, Your Honor.

7 THE COURT: Ms. Fullwood.

8 MS. FULLWOOD: Thank you.

9 CROSS-EXAMINATION

10 BY MS. FULLWOOD:

11 Q. Mr. Williams, you showed Mr. Ingram this photograph
12 in early 2013?

13 A. January 29th.

14 Q. Okay. And do you know when the photograph in
15 question was actually taken?

16 A. The DMV file, no.

17 Q. I want to show you this ten-year driving record that
18 I got in discovery. Does this look to be the same
19 photograph?

20 A. Yeah, it looks like it could be the same one.

21 Q. And when was the last time his license had been
22 renewed?

23 A. It looks like it was issued January the 14th.

24 Q. 2004?

25 A. 2004.

1 Q. Okay. So that's almost -- that's about nine years
2 old?

3 A. Yeah.

4 Q. All right. Mr. Williams, there's nothing that
5 would prohibit you from using a six-man photo lineup
6 even if a person said they knew who they were trying to
7 identify, is there?

8 A. There's nothing that says you don't have to use it,
9 yeah, so.

10 Q. Okay. And would you agree that that's probably a
11 more reliable way if they can actually pick it out --

12 A. No, I wouldn't.

13 Q. -- of five other individuals?

14 A. No.

15 **MS. FULLWOOD:** No further questions.

16 **THE COURT:** Anything further of this witness?

17 **MS. RANKIN:** Nothing from the State, Your Honor.

18 **THE COURT:** Thank you very much. You may step down.
19 (Witness leaves the witness stand.)

20 **THE COURT:** Anything further, Ms. Rankin?

21 **MS. RANKIN:** Nothing further from the State, Your
22 Honor.

23 **THE COURT:** All right. Ms. Fullwood?

24 **MS. FULLWOOD:** I don't have any evidence to present.
25 I would simply say that this identification is not

1 reliable. Mr. Ingram basically has testified that he
2 has been around Mr. Millwood one time, fifteen minutes
3 tops, several years ago. He then goes on to start to
4 talk about different pictures taken from the security
5 cameras both before and after that incident that he says
6 are Barry Millwood, but I'm gonna tell Your Honor this
7 man has never been convicted of breaking into that
8 business and I can't find any police record that shows
9 he was ever reported as having done that prior to this
10 time.

11 You know, some of this argument really goes to a
12 different issue as far as admission of prejudicial and
13 irrelevant evidence, but I don't believe that they've
14 established that Mr. Ingram had a sufficient basis to
15 identify this man to overcome the prejudicial effect and
16 the likelihood of a reparable misidentification that
17 comes from showing him a driver's license photograph.

18 So I would move to suppress his in-court
19 identification of Mr. Millwood, his identification of
20 Mr. Millwood on these videos and these pictures that the
21 State has. I would move to suppress introduction of the
22 evidence of the pictures of the videos themselves and
23 move to suppress from evidence the old driver's license
24 photograph.

25 **THE COURT:** All right. Thank you, ma'am.

1 Ms. Rankin?

2 **MS. RANKIN:** Thank you, Your Honor. The purpose
3 of the Biggers is to determine whether the Court --
4 whether the identification was tainted by some sort of
5 law enforcement procedure, Your Honor, and in this case,
6 Your Honor, there's a case pretty directly on point
7 with what we have here, and that is the State v.
8 Liverman case, Your Honor. It was a shooting case to
9 where the victim said, you know, I know this person by
10 their street name, here's what they were wearing. The
11 cops did a showup identification, Your Honor, and the
12 court ruled on that case and says the fact that an
13 identification witness knows the accused remains a
14 significant factor in determining reliability and the
15 suggestive nature of a showup is mitigated by the
16 witness's prior knowledge of the accused. The court
17 concurs with those jurisdictions that considers the
18 showup ID procedure normally considered unduly
19 suggestive as merely confirmatory, Your Honor, and
20 that's the case that we have here.

21 The victim knows Barry Millwood. He had
22 interactions with him prior. He testified to that, he
23 knows his name. It really doesn't matter how he knows
24 his name. He knows his name, he knows what he looks
25 like, he's been in front of him before, he's seen

1 photographs of him several times, he knows who he is,
2 and he recognized Barry Millwood on their surveillance
3 videos, told law enforcement who he was. The DMV
4 photo, Your Honor, was merely confirming that they
5 were, in fact, taking about the same person. He wasn't
6 identifying Barry Millwood from that DMV photo. He
7 was confirming that that was, in fact, the same Barry
8 Millwood that he saw, that he knows and that he
9 recognized.

10 Your Honor, for that reason the State doesn't
11 believe that the DMV photo was unduly suggestive. He
12 had plenty of time to review that footage and those
13 photographs and see who that was on there, and he does
14 identify him. He identified him to law enforcement and
15 they showed him that photograph to confirm they were
16 talking about the same person. For that reason the
17 State would -- the State would suggest that it was not
18 unduly suggestive at all, it was merely confirming, Your
19 Honor, which is very much on point with the State v.
20 Liverman.

21 Your Honor, and I have the case if Your Honor would
22 like to read it.

23 **THE COURT:** No, I'm fine.

24 All right. I'm gonna respectfully deny the motion
25 to suppress. I don't find that the -- showing that the

1 driver's license photo was unduly suggestive. If I
2 recall the testimony correctly, the victim in the case
3 had prior information regarding Mr. Millwood, had prior
4 contact with Mr. Millwood to the point that when he saw
5 the photographs taken from the scene of this burglary
6 he immediately identified that person as the person he
7 knows as Barry Millwood and gave that information to
8 the police. That information was given prior to any
9 driver's license photo being shown. The testimony
10 from what I gathered from the victim in this case was
11 based on previous -- the one previous face-to-face
12 confrontation as well as numerous other photographic
13 -- or photos that he saw of Mr. Millwood, and appeared
14 to be familiar with Mr. Millwood, and so I'm gonna
15 respectfully deny the motion and I'm gonna allow the --
16 the photo -- the DMV photo.

17 What else have we got?

18 **MS. FULLWOOD:** Your Honor, I would move at this
19 time to suppress any reference in the testimony here
20 about any prior burglary of another business.

21 **THE COURT:** Well, that's what I was gonna talk to
22 y'all about.

23 **MS. FULLWOOD:** Because I mean, that simply --

24 **MS. RANKIN:** Your Honor, I'm sorry, I don't mean to
25 interrupt. I think I can clear it up real quickly. We

1 don't intend to bring out anything about any prior
2 burglaries or anything of that nature, Your Honor. We
3 plan to limit the testimony to only that he knows him
4 and that he's had run-ins with him before or something
5 of that nature. We don't intend to bring out any sort
6 of prior burglaries.

7 **MS. FULLWOOD:** And would that also include testimony
8 that he's been burglarizing my business for years and
9 that --

10 **THE COURT:** Ms. Fullwood, I can assure you I'm not
11 gonna allow that kind of testimony in.

12 **MS. FULLWOOD:** Okay, sir. Thank you.

13 **THE COURT:** I agree with you. I agree with you on
14 that, you know, and that's what I was gonna speak to
15 y'all about, is the sensitive nature of this because,
16 like it or not, you know, it is what it is. What we
17 have here is what we have and the fact that Mr. Ingram's
18 only encounters with Mr. Millwood have been in the
19 capacity of photos involving break-ins and things of
20 that nature, it's just kind of sensitive, so how you're
21 going to get around that is obviously gonna be
22 important.

23 **MS. DAVIS:** Your Honor, all I plan to ask him
24 regarding that subject is are you familiar with the
25 Defendant from prior dealings with him. That's the

1 language I'm gonna use, prior dealings, and the only
2 other thing he's gonna say is that he's seen him in
3 person when he ran him off his property. That's all I
4 have for him. He's not gonna say burglaries, breaking
5 in, breaking into his neighbor's property. He's just
6 run him off his property before.

7 **MS. FULLWOOD:** I would object to it going that far,
8 Your Honor, because there's --

9 **THE COURT:** What's the need in having to say I've
10 run him off my property?

11 **MS. DAVIS:** Maybe we can take that out. He can just
12 say he's had prior dealings with him, he's seen him in
13 person, he's seen him in photographs.

14 **THE COURT:** I think that would be sufficient.

15 **MS. DAVIS:** I can limit it to that, Your Honor.

16 **THE COURT:** I think that would be appropriate.

17 **MS. FULLWOOD:** And just -- I object to have seen
18 him in photographs because then that raises -- you know,
19 we've got photographs here that raises the implication
20 he's seen him in similar photographs.

21 **THE COURT:** You know, here's the thing. And, of
22 course, obviously you have to be careful as well,
23 Ms. Fullwood, because I don't know -- you know, I can't
24 predict what's gonna come out during the course of a
25 trial and whether certain doors are gonna be opened.

1 For purposes of this hearing, you know, the Court felt,
2 and I still feel, that there was sufficient evidence,
3 you know, to support the identification and that it
4 wasn't tainted by anything that law enforcement had
5 done. And I understand where you're coming from,
6 Ms. Davis, that, you know, you just want to bring out
7 I've had prior dealings with him and that's how I know
8 him, he's not a stranger to me, I've had prior dealings
9 with him.

10 **MS. DAVIS:** Yes, sir.

11 **THE COURT:** Then it's gonna be up to you as to how
12 you, if at all, you want to attack that identification,
13 but you've got to be careful because if you go too far,
14 then there is gonna be a door open where he's gonna be
15 able to explain how he knows him.

16 **MS. FULLWOOD:** I understand. I would hope the
17 State will caution their witness so that if he's asked
18 a yes or no question that's not the time -- that's not
19 opening the door or that's not the time to editorialize.

20 **THE COURT:** Again, I think it's gonna be based
21 on the questioning. I don't know what the questions
22 are gonna be, but Mr. Ingram's an intelligent guy,
23 Ms. Davis, you're an intelligent lady. Explain to him
24 the dangers.

25 **MS. DAVIS:** Your Honor, I have explained to him the

1 dangers. He knows the responses to be prior dealings
2 for me. I don't know what Ms. Fullwood or Mr. Casto
3 plan to ask him, so --

4 **THE COURT:** I understand that, but --

5 **MS. DAVIS:** He's here and he's hearing it.

6 **THE COURT:** -- here's what I hope everybody takes
7 from this. And, Mr. Ingram, I don't know you, sir, so
8 this is not personal to you, I don't know how you would
9 respond, but I've had witnesses who wait for the
10 opportunity to blurt something out like that. That's
11 not what I'm looking for here. If we're gonna err, we
12 need to err on the side of caution. Whether or not
13 Mr. Millwood is convicted or acquitted needs to be based
14 on the evidence in this case involving this break-in,
15 okay? Whether he's convicted or acquitted, it has to be
16 based on that. So I understand what you're saying,
17 Ms. Davis, and, Ms. Fullwood, you know, just -- you and
18 Mr. Casto just choose your questions wisely, but I think
19 everybody understands the sensitivity of it and so
20 hopefully we'll proceed accordingly and if we don't,
21 we'll deal with it, okay?

22 **MS. DAVIS:** Yes, sir, Your Honor.

23 **THE COURT:** All right. What else have we got?

24 **MS. FULLWOOD:** A couple of more things, Your Honor.
25 Your Honor, this morning when the Court read the

1 indictments to the jury --

2 **THE COURT:** Yes, ma'am.

3 **MS. FULLWOOD:** -- specifically the burglary
4 indictment --

5 **THE COURT:** Yes, ma'am.

6 **MS. FULLWOOD:** -- Your Honor did not read that
7 portion of the indictment that alleges that Mr. Millwood
8 has two or more prior convictions for burglary. In
9 light of that, we would ask that the State be limited
10 in its proof of the aggravating or enhancing factor that
11 would bump this up to a burglary second under the B
12 section to it occurring in the nighttime. The reason
13 for that is with the jury not having heard that, if it
14 had heard that, that very well may have affected their
15 answer to some of the voir dire questions, especially
16 the question concerning whether they had been prior
17 victims of burglary or whether there was any reason that
18 they cannot be fair to the State or Mr. Millwood.

19 **MS. RANKIN:** Your Honor, it was contained in the
20 indictment the allegations that we were going forward
21 on, Your Honor. Under the case law, Your Honor, the
22 State shouldn't be compelled to stipulate to his two
23 prior convictions or anything of that nature or going
24 with occurring in the nighttime if, in fact, what we
25 were going with was the two prior convictions.

1 **THE COURT:** Let me ask a question. Under South
2 Carolina law, if a person breaks into a business in the
3 nighttime, I'm just using that scenario, is that not
4 burglary in the second degree under the violent or B
5 section?

6 **MS. RANKIN:** Yes, Your Honor, it would be.

7 **THE COURT:** All right. Why do you feel the need --
8 because I'm just -- I'm making assumptions now, okay,
9 for purposes of this proceeding. I'm assuming you've
10 got plenty of evidence this happened at night.

11 **MS. RANKIN:** Your Honor, the only evidence we have
12 that it happened at night is the time stamp on the
13 photographs and if that is brought into question or
14 anything of that nature, that may bring into question
15 whether or not it was done at nighttime. Your Honor,
16 we felt that the strongest evidence that we had was two
17 prior convictions, Your Honor. We felt that we were not
18 gonna go forward on that due to the time stamping on the
19 photographs. If that for some reason was not correct,
20 if it was, you know, Your Honor, it was five hours off,
21 then that could be the difference between a burg second
22 violent and not, Your Honor. The strongest case that we
23 have was the two prior convictions, Your Honor, and
24 that's what we were going on.

25 **THE COURT:** Well, Ms. Fullwood, so your whole basis

1 is because I didn't read to them that he had two prior
2 convictions? What would have been your motion if I
3 would have read that?

4 **MS. FULLWOOD:** Well, I would not be making this
5 motion then.

6 **THE COURT:** You would have had another one.

7 **MS. FULLWOOD:** I certainly would have, but it
8 wouldn't be the same as this one.

9 **THE COURT:** I understand.

10 **MS. FULLWOOD:** But that's a pretty crucial piece
11 of information for them to have heard during the voir
12 dire panel, I would think, and, you know, Your Honor
13 is correct that proof that it's in the nighttime is
14 sufficient for them to prove burg second under the B
15 section and I would tell the Court that I don't intend
16 to contest the time stamps on the recordings.

17 **MS. RANKIN:** Your Honor, just for argument's sake,
18 just because it's sufficient doesn't mean the State --
19 the State has their case theory and we're basing that
20 burg second violent on those two prior convictions.

21 **THE COURT:** I did not read the information in the
22 indictment about the two prior convictions and it was on
23 purpose --

24 **MS. RANKIN:** I recognize that, Your Honor.

25 **THE COURT:** -- so as to not to taint anything. How

1 does that then preclude the State from producing that
2 evidence? Because I'm confident -- I'm guessing if I
3 were to have read that, there would have been an
4 objection at that point.

5 **MS. FULLWOOD:** No, sir, because that's something
6 they would be proving in the trial anyway. They're
7 entitled to prove it in the trial, but since the jury
8 didn't have that allegation read to them, it could very
9 -- if they had known that, it could very well have
10 affected the way they answered voir dire questions. We
11 had 37 people out there who have been prior victims of
12 burglary and, I mean, it's just human nature if people
13 hear that a person's been convicted of a particular
14 crime and they're charged with that particular crime
15 again, they want to jump to the assumption, well,
16 they've done it before, it must be true this time, and
17 I think if the jury had had that information that it
18 would have affected voir dire answers and we might end
19 up with a panel that was otherwise tainted just because
20 of the fact he had two prior convictions. And, you
21 know, again, it's just one of these things that --

22 **THE COURT:** So you're suggesting had I read that to
23 the jury, they would have responded differently to my
24 questions under voir dire?

25 **MS. FULLWOOD:** Possibly, especially the prior

1 victims of burglaries.

2 **MS. RANKIN:** Your Honor, we had her voir dire this
3 morning with sixteen questions on it. She was aware of
4 the indictment, I sent it to her personally, she's had
5 it, she knew what theory we were going on, that
6 question's not in the voir dire. If she wanted to know
7 the answer to that question, she should have put it in
8 there, Your Honor, or brought it up earlier. I mean,
9 this is -- clearly it's a strategic move at this point
10 trying to force us into this nighttime issue, Your
11 Honor, and I don't believe that we should be forced into
12 that. Our original plan was to go forward on the two
13 priors, she knew that, she should have put it in her
14 voir dire, she didn't, and if the jury was gonna answer
15 differently, well, Your Honor, they would have answered
16 differently based on the questions she wanted asked and
17 she didn't want that question asked.

18 **THE COURT:** All right.

19 **MS. FULLWOOD:** Your Honor?

20 **THE COURT:** Yes, ma'am.

21 **MS. FULLWOOD:** First of all, I didn't put the
22 question in the voir dire because it was an allegation
23 contained in the indictment. It certainly would not be
24 proper for me to rush up to a Circuit Court judge while
25 he's talking to the jury and try to correct him.

1 **THE COURT:** It happens all the time. I get it all
2 the time.

3 **MS. FULLWOOD:** I mean, the point I'm making is
4 this was not a strategic move. It was something that
5 happened.

6 **THE COURT:** That's fine, and I believe that, but I
7 also believe that the State is entitled to prove their
8 case on the elements and I don't believe that -- again,
9 the State didn't ask the Court not to read that portion
10 of the indictment. I chose not to to not create an
11 issue prior to evidence being presented, and so I don't
12 think that's gonna preclude the State from being able to
13 pursue that -- that element if they choose to do so.

14 **MS. FULLWOOD:** Your Honor, I have one more matter.

15 **THE COURT:** Yes, ma'am.

16 **MS. FULLWOOD:** I move to limit the State's proof
17 of the prior burglaries to introduction into evidence
18 of the sentencing sheets. This is why. One of those
19 prior convictions occurred at an address adjacent to
20 Mr. Ingram's and I think that, first of all, the
21 allegations in an indictment are hearsay so it should
22 be excluded on that basis and that any probative value
23 of the body of the allegations -- the bodies of those
24 indictments would have would be outweighed by the
25 prejudicial effect to Mr. Millwood for the jury to have

1 information that a few years ago he was convicted of
2 breaking into the business next door, and I ask that
3 both of them be limited to the sentencing sheets so that
4 the evidence is uniform and the jury doesn't attach any
5 special significance as to why they're different.

6 **MS. RANKIN:** Your Honor, the State intends to
7 actually not introduce the indictments, introduce the
8 sentencing sheets themselves, and actually redact out
9 personally identifying information, Social Security
10 number. We will leave in the birth date verifying it's
11 the same person.

12 **THE COURT:** So all you're gonna do is submit two
13 sentencing sheets showing two prior convictions for
14 burglary?

15 **MS. RANKIN:** That's correct, Your Honor, and we're
16 gonna redact out the sentence that he was given as well.

17 **THE COURT:** Right. And then there's not any
18 reference as to the location or anything like that?

19 **MS. RANKIN:** No, Your Honor.

20 **THE COURT:** All right. I think that's --

21 **MS. RANKIN:** Just the dates and what he was
22 convicted of.

23 **THE COURT:** That's appropriate. All right. That
24 sounds good. Anything further from the defense?

25 **MS. FULLWOOD:** We move to sequester the witnesses

1 in this case.

2 THE COURT: Okay. All right. Any --

3 MS. RANKIN: Your Honor, just my victim and my case
4 officer.

5 THE COURT: You've got your victim and your chief
6 investigator?

7 MS. RANKIN: Yes, sir.

8 THE COURT: Okay. All right. Anything -- now does
9 the State have anything? Do we have any other motions?

10 MS. RANKIN: The State doesn't have any, Your Honor.

11 THE COURT: Defense?

12 MS. FULLWOOD: No.

13 THE COURT: Did somebody say something -- do we have
14 -- what was the other motion I thought we had? There's
15 no Jackson v. Denno thing?

16 MS. FULLWOOD: No, sir.

17 MS. RANKIN: No, sir.

18 THE COURT: All right.

19 MS. FULLWOOD: I would simply inquire on the record
20 about whether the State intends for any other witness to
21 try to make any identification of Mr. Millwood off of
22 those pictures?

23 MS. RANKIN: No, ma'am. The only other one would
24 be Adam Clayton, Your Honor. He was the arresting
25 officer. He's familiar with Mr. Millwood. He knew --

1 he saw a car outside of a person's home that he knew,
2 that he was familiar with the home and knew it didn't
3 belong there, ran the tag, it came back for Mr. Millwood
4 and he went into the house and got him, Your Honor, on
5 that warrant. Now I don't --

6 **THE COURT:** On this warrant?

7 **MS. RANKIN:** Yes, sir.

8 **THE COURT:** The burglary warrant?

9 **MS. RANKIN:** Yes, sir.

10 **THE COURT:** Because they had a warrant out for
11 Millwood for this burglary?

12 **MS. RANKIN:** Yes, sir.

13 **THE COURT:** Okay.

14 **MS. RANKIN:** And he had gone in -- he asked
15 permission for the owner to let him in to go get him and
16 he went in and got him.

17 **MS. FULLWOOD:** Right. Now that officer's report
18 talks about going to a well-known crack house. I assume
19 that would not be part of his testimony.

20 **MS. RANKIN:** No, sir, that will not be part of his
21 testimony. Just that he's familiar with the house and
22 the area.

23 **THE COURT:** Okay. You've got to cover those things.
24 You're exactly right. I agree.

25 **MS. FULLWOOD:** Well, I'd rather talk about it now

1 than have a problem tomorrow.

2 **THE COURT:** And, please, Ms. Rankin, Ms. Davis, talk
3 to your officer because that doesn't need to be a part
4 of the testimony.

5 **MS. RANKIN:** Yes, sir.

6 **THE COURT:** Let's not just assume they know that.
7 Ms. Davis, I think you were involved in that one case.

8 **MS. DAVIS:** I learned from last time, Judge.

9 **THE COURT:** Okay. All right. Anything further that
10 we can take up before tomorrow?

11 **MS. RANKIN:** Nothing from the State, Your Honor.

12 **MS. FULLWOOD:** No, Your Honor.

13 **THE COURT:** All right. Then if there's nothing
14 further, if you've got exhibits that you can pre-mark
15 just for identification purposes. If there is anything
16 that y'all can stipulate to, we can cover that tomorrow
17 morning before we get started, and we'll get started at
18 9:30, okay?

19 **MS. RANKIN:** Thank you, Your Honor.

20 **MS. FULLWOOD:** Thank you, Your Honor.

21 **THE COURT:** All right. Court will be in recess
22 until 9:30.

23 (The proceedings were concluded for June 23, 2014.)

24 (The following proceedings were held on June 24,
25 2014.)

)

1 (State's Exhibit Numbers 1 through 14, photographs,
2 were marked for identification.)

3 **BAILIFF:** All rise. Court is now in session. The
4 Honorable Judge Tommy Russo presiding.

5 **THE COURT:** Thank you, ladies and gentlemen.
6 Please have a seat. Let me just let y'all know this.
7 I was just -- one of the bailiffs was talking to me.
8 One of the jurors has an insulin pump and it might
9 occasionally beep. They're just letting us know if
10 you hear that, that's not a cell phone or anything.
11 It's just that thing going off.

12 Okay. Now we want to -- there have been some
13 stipulations you want to put on the record before we
14 get started as to some exhibits, I think?

15 **MS. RANKIN:** Yes, Your Honor. State's Exhibit
16 Number 1, Your Honor, is an aerial photograph. That has
17 been stipulated to.

18 **THE COURT:** State's 1 is an aerial.

19 **MS. RANKING:** And then 2 through 8, Your Honor, are
20 photographs. Those have also been stipulated to.

21 **THE COURT:** 2 through 8?

22 **MS. RANKIN:** Yes, Your Honor.

23 **THE COURT:** Okay.

24 **MS. RANKIN:** Your Honor, Exhibits 16 and 17 are
25 evidence items. The chain has been stipulated to that.

1 **THE COURT:** All right.

2 (State's Exhibit Number 16, a bag of clothing, and
3 State's Exhibit Number 17, a flashlight, were for
4 identification.)

5 **MS. RANKIN:** Exhibit 15, Your Honor, is a price
6 quote.

7 **THE COURT:** A price quote?

8 **MS. RANKIN:** Yes, Your Honor, for value of the
9 goods.

10 **THE COURT:** All right.

11 **MS. RANKIN:** That has been stipulated to.

12 (State's Exhibit Number 15, a price quote, was
13 marked for identification.)

14 **MS. RANKIN:** And I believe that that is it, Your
15 Honor.

16 **THE COURT:** Okay. All right. Those items have been
17 stipulated to and, Ms. Fullwood, would you concur with
18 that assessment there?

19 **MS. FULLWOOD:** Yes, sir. As far as State's
20 Exhibit 15 goes, it's stipulated to the extent that
21 should a witness testify that they got that quote and
22 that is their opinion or --

23 **THE COURT:** Right.

24 **MS. FULLWOOD:** So as long as it's authenticated
25 through a witness and we don't necessarily stipulate to

1 the contents of the quote.

2 **THE COURT:** Sure. Okay. All right. Is there
3 anything else that we need to take up now before we
4 bring the jury out? Anything from the State?

5 **MS. RANKIN:** Nothing from the State, Your Honor.

6 **THE COURT:** From defense?

7 **MS. FULLWOOD:** No, Your Honor.

8 **THE COURT:** All right. Let's bring the jury out,
9 please.

10 **MS. FULLWOOD:** If I could ask Your Honor real
11 quickly?

12 **THE COURT:** Yes, ma'am.

13 **MS. FULLWOOD:** What is the Court's position about
14 the rising when the jury comes in the room?

15 **THE COURT:** If y'all would just have a seat and I'm
16 gonna explain to them why I do that. That sounds good.
17 Thank you for reminding me, Beth. I forgot about that.

18 (The jury panel enters the courtroom at 9:50 AM.)

19 **THE COURT:** Ladies and gentlemen, I want to welcome
20 you back. I apologize that the jury room is so cold.
21 I'm just kidding. I understand it's hotter than Hades,
22 but we are checking on that and so they're taking care
23 of that. But, anyway, we're all checking on that and
24 hopefully that will get resolved fairly quickly.

25 Let me explain a couple of things before we get

1 started. First of all, this is just kind of a --
2 something that is a holdover from my days when I used to
3 practice law and I've kind of instilled it since I've
4 been on the bench. As you come in and out of the
5 courtroom, I have asked the attorneys and the folks to
6 remain seated when you come in and out. In some --
7 depending on the judge, I guess, sometimes out of
8 respect for you everyone will rise when you come in and
9 what I have found is there are times when -- these folks
10 have a lot going on, as you can imagine, and they may be
11 either conferring with each other or taking notes and
12 when you come in it may be that some folks rise and some
13 don't and then it could be misconstrued by you that
14 they're being disrespectful and so to avoid that
15 confusion, and it goes back to -- I was trying a case
16 many years ago when I was practicing law and I was deep
17 in conversation with my co-counsel and the jury came in
18 and we didn't stand, we were tied up, you know, in doing
19 that and one of the jurors actually made a comment
20 afterwards because -- and I'll tell you this. When the
21 case is over -- I told you this before. When the case
22 is over, you can talk about the case when it's over, you
23 can talk to anybody you want to, and sometimes we would
24 talk with the jury afterwards if they want to talk to us
25 and a couple of the jurors thought it was disrespectful

1 that we didn't stand when they came in and that kind of
2 stuck with me and so I've kind of -- to avoid that
3 problem, I've asked everybody just to remain seated and
4 do your work while the jury comes in and out, so that --
5 just so you'll know that. They have tremendous respect
6 for you, but they're seated because I've asked them to
7 remain seated.

8 The other thing is I know it's not comfortable
9 in the jury room. We're hopefully gonna take care of
10 that. If it becomes uncomfortable out here for any
11 reason, the temperature or whatever, let me know. It's
12 important that you're comfortable. On that note also,
13 during the course of the trial we're gonna take breaks
14 occasionally, but it may be that one of you may need to
15 be excused before we're ready to take a break. If that
16 occurs, don't hesitate to let me know that you need a
17 break. And it doesn't matter -- we may be in the middle
18 of a witness's testimony, but if you need to, raise your
19 hand and get my attention if you need to take a break
20 and we'll stop because we can always start back where
21 we stopped and we'll take a break. It's important that
22 you're comfortable and so I don't want you sitting
23 there sweating about and not being comfortable and
24 needing to take a break and needing to wait for a
25 witness to finish. Don't do that. Just if you need a

1 break, you let me know and we'll take a break, okay?

2 Now before I begin with some preliminary comments,
3 I'm gonna ask that you give Madam Clerk your attention
4 and she's gonna place you under oath for your role as
5 jurors in this case.

6 **THE CLERK:** Please stand and raise your right hand.

7 (Whereupon, the jury panel was sworn in by the Clerk
8 of Court at 9:54 AM.)

9 **THE CLERK:** Be seated, please.

10 **THE COURT:** All right. Ladies and gentlemen, we're
11 about to begin the trial of the case of the State of
12 South Carolina versus Barry Millwood. Before we get
13 started, I wanted to share some thoughts with you.
14 First of all, this case more than likely or probably is
15 gonna be very different from what you might expect. I
16 don't know what your expectations are. I know that most
17 people don't have the opportunity to sit in on actual
18 jury trials such as you're doing here this week. Most
19 people's exposure to jury trials is simply what they've
20 read in books or seen on TV or seen in the movies, and
21 as we all know, those trials are always full of high
22 drama, intense action and riveting circumstances.
23 That's Hollywood.

24 Now during the course of this trial, while any
25 number of those things may occur, what is important

1 for you to understand is that this trial is not for
2 your entertainment. This trial is not for your
3 entertainment. It is a fundamental part of our
4 democracy. It is a search for the truth in an effort
5 to make sure that justice is done between the parties
6 that are before the Court. Making sure that justice is
7 done is oftentimes slow, deliberate. Sometimes it's
8 repetitive. In other words, it's very different from
9 what you've seen in movies or read in books or seen on
10 television. This courtroom is a place of honor that is
11 dedicated to the protection and to the preservation of
12 citizens' rights through what many have called the
13 greatest justice system ever created.

14 The attorneys that appear before you are advocates
15 for the parties that they represent, but
16 first and foremost, they are officers of the court
17 sworn to uphold the integrity and the fairness of our
18 judicial system and to help you in your search for the
19 truth. You should expect them to be professional,
20 competent and ethical in the performance of their
21 duties and their interests.

22 Now you've just taken an oath to try this case and
23 to reach a fair and a just verdict, so you are also
24 expected to be professional, reasonable and ethical in
25 the performance of your duties, which I have absolutely

1 no doubt that you will do, and I want to take this
2 opportunity to thank you again for your contribution to
3 our system of justice here in Lexington County.

4 Now what I'm going to share with you is intended to
5 be an introduction to the trial of the case. This is
6 not a charge on the law. I will charge you on the law
7 that is applicable to this case at the end of the trial
8 before you begin your deliberations, but what I'm gonna
9 do right now is merely go through a brief explanation of
10 the procedures that we're gonna follow so that you can
11 better understand what's happening as the case goes
12 forward.

13 Now the Defendant in this case, Mr. Millwood, is
14 charged by indictments that have been filed with the
15 Court. I read those to you yesterday. He is charged
16 under one indictment for the offense of burglary in the
17 second degree and on the other indictment grand larceny
18 in an amount more than \$2,000, but less than \$10,000.
19 The elements of these charges I will explain to you when
20 I give you a charge on the law. What is important for
21 you to understand, as I told you yesterday, ladies and
22 gentlemen, that these indictments are simply the charge
23 which brings this case into court and they are not in
24 any sense evidence of any of the allegations that they
25 contain.

1 Mr. Millwood has pled not guilty to these
2 indictments and the State, therefore, has the burden
3 of proving each of the elements of these charges beyond
4 a reasonable doubt. It's going to be your duty to
5 determine whether or not the State has met that burden.
6 Your purpose as jurors is to find and determine the
7 facts in this case. You are the sole judges of the
8 facts. If at any time I make any comment regarding the
9 facts, you must disregard those comments because only
10 you, the jury, can decide what the facts are in this
11 case..

12 You are to determine the facts from the testimony
13 that you hear and any other evidence that is introduced
14 during the course of this trial. It is up to you to
15 determine the inferences which you feel may be properly
16 drawn from that evidence. It is especially important
17 that you perform your duty of determining the facts
18 diligently and conscientiously because ordinarily
19 there's no way that we can correct an erroneous
20 determination of facts by a jury.

21 Now on the other hand, but with equal emphasis, the
22 same law that makes you the judges of the facts makes me
23 the judge of the law. The law as given to you by the
24 Court is the only law that you may consider. You must
25 accept and follow it even though you may disagree with

1 it. I'm not allowed to tell you what I think about the
2 facts in this case and you're not allowed to disagree
3 with me about what the law is or what you think the law
4 should be. Your job is to take the law as I give it to
5 you and apply it to the facts as you find the facts from
6 the testimony of the witnesses and any other exhibits
7 that come in during the course of the trial.

8 Now until I advise you to begin your deliberations,
9 you must not discuss this case with anyone, and that
10 includes even amongst yourselves. Sometimes jurors will
11 look at me a little odd when I say that because they
12 think well, aren't we supposed to deliberate and discuss
13 the case? Well you are, but you're not to do that until
14 all of the evidence has been presented, the lawyers have
15 had an opportunity to address you with their closing
16 remarks and I give you the charge on the law. Only then
17 is it appropriate for you to have discussion about the
18 case.

19 Now it's important, ladies and gentlemen, that
20 throughout this trial you keep an open mind and that
21 you do not decide any issues in this case until all of
22 the evidence has been presented. It is going to be
23 your solemn responsibility to determine the guilt or
24 innocence of the Defendant and your verdict must be
25 based solely on the evidence as it is presented to you

1 during the course of this trial and on the law as I
2 instruct it to you at the close of the trial.

3 Now in just a moment the attorneys for the State
4 will have an opportunity to make what is called an
5 opening statement and in that statement they will
6 explain to you what the issues in this case are or at
7 least what they believe the issues in this case are.
8 Once they've concluded their remarks, then the attorneys
9 for the Defendant will have an opportunity to also make
10 an opening statement if they choose to do so; however,
11 they're not required to do that. What is important for
12 you to understand is this, ladies and gentlemen. What
13 the lawyers tell you in their opening statements is not
14 evidence. They are not under oath, they are not
15 testifying. What they share with you in their opening
16 statements is merely their contention as to what they
17 believe the evidence in this case will show. The actual
18 evidence in this case that you will use in deciding the
19 case will be presented to you from witnesses who take
20 the stand and are placed under oath and testify, as well
21 as any exhibits or any other items that may come into
22 evidence during the course of the trial. That's the
23 evidence that you will use in determining the facts of
24 this case.

25 Now from time to time during the course of the trial

1 you may hear one of the lawyers say something along
2 these lines: Judge, we have a matter of law we need to
3 take up with Court or, Your Honor, may we approach the
4 bench. During those times as I have to take up matters
5 of law, I may find it necessary to ask you to step back
6 into your jury room. If I do that, the reason I would
7 do that is simply this. There are times when I'm taking
8 up a matter of law with the attorneys that I have to
9 make a comment about testimony or about some evidence
10 that has been presented in connection with a ruling that
11 I'm required to make. As I told you earlier, I'm not to
12 have any influence over you about the facts or the
13 evidence in this case. So to protect you from those
14 comments, I may ask you to step back into the jury room
15 so that I can address that issue of law and then once
16 I've been able to resolve that issue of law, then I'll
17 bring you back out and we'll proceed with the trial.
18 But if I do ask you to step back into the jury room,
19 that would be the reason, so that I don't interfere with
20 your role as the factfinders.

21 In determining what the true facts are in this case,
22 you're going to have to decide whether or not
23 the testimony of a witness is believable. It's gonna
24 be my responsibility to rule as a matter of law whether
25 certain testimony is admissible at all, but once

1 testimony is admissible whether or not you believe it
2 is solely up to you to decide. In deciding whether to
3 believe a witness, you have the right to consider the
4 interest of any witness, the bias of any witness, the
5 opportunity for the witness to have seen the matters
6 and the things about which that witness testifies, the
7 way a witness acts on the witness stand. You have the
8 right, ladies and gentlemen, to consider anything that
9 is in this record that will help you to evaluate the
10 testimony of witnesses. That means that it is your
11 duty to pay close attention to the witnesses, observe
12 the witnesses, listen carefully to them, pay close
13 attention to the attorneys and to the Court. Please do
14 not let your thoughts wander, but give strict attention
15 to all of the testimony and the evidence in this case
16 so that at the end of all the testimony when the
17 evidence is closed, the lawyers have had an opportunity
18 to address you with their closing remarks and I've given
19 you the law, then you will be in a position to go back
20 into the jury room and at that time discuss the case,
21 deliberate, talk about it and reach a verdict in this
22 case.

23 Now before I turn it over to the attorneys, let me
24 first inquire from the State are there any objections or
25 exceptions to the Court's opening remarks?

1 **MS. RANKIN:** None from the State, Your Honor.

2 **THE COURT:** Anything from the defense?

3 **MS. FULLWOOD:** No, Your Honor.

4 **THE COURT:** Thank you ladies.

5 Ladies and gentlemen, I'm now gonna turn it
6 over to the attorneys for their opening remarks. So,
7 Ms. Rankin, or Ms. Davis.

8 **MS. DAVIS:** Yes, sir, Your Honor. May it please the
9 Court?

10 **THE COURT:** Yes, ma'am.

11 OPENING ARGUMENT

12 **MS. DAVIS:** After a long week of work, the employees
13 of Dixiana Steel Company put away their equipment and
14 went home to enjoy the weekend. They had no clue that
15 when they would return to work on Monday, January 28th
16 of 2013, that the tools that they needed to do their
17 job, to make a living, would be gone. And this is
18 because the Defendant, Barry Millwood, decided he was
19 entitled to other people's property. In the late night
20 of January the 26th of 2013, and in the early morning
21 hours of January the 28th, the Defendant broke into
22 Dixiana Steel and made himself right at home. He took a
23 lot of expensive equipment from the property, equipment
24 that that company needed to function.

25 Now, ladies and gentlemen, this is not gonna be

1 a long trial, but it is a very important one. And as
2 the judge said, I'm sure all of you have seen crime
3 shows on TV like CSI and Law and Order and they have
4 forensic evidence like DNA and fingerprints, and this is
5 not gonna be that type of case, and that's because in
6 this case the Defendant was caught in the act on camera.

7 Now during this trial you're gonna get to hear from
8 the employees of Dixiana Steel, the ones that showed up
9 on that Monday morning to work and their tools were
10 missing. You're also gonna get to hear from the owner
11 of Dixiana Steel, Rhett Ingram, and he's going to tell
12 you that when he realized this expensive equipment was
13 missing, he went and checked the security camera that he
14 had installed at his business and when he checked it not
15 only did he see a man that didn't belong in those
16 photographs, he knew exactly who it was. It was the
17 Defendant, Barry Millwood. A man who had no business
18 being at Dixiana Steel at all, but especially not in the
19 middle of the night when the business wasn't even open.

20 Now during this trial you're gonna get to see those
21 photographs. You're gonna get to see the pictures that
22 came from the security camera from Dixiana Steel and the
23 evidence will show that that is the Defendant caught in
24 the act in those photographs. You're also going to get
25 to see the clothes that the Defendant was wearing when

1 he was arrested in this case and the evidence will show
2 he's wearing some of those same clothes in the
3 photographs from Dixiana Steel.

4 Now, ladies and gentlemen, the Defendant is here
5 today charged with burglary in the second degree and
6 grand larceny for the acts he committed at Dixiana
7 Steel. As the judge told you when he was initially
8 instructing you, and he'll tell you again at the end of
9 the trial, the State has the burden of proof in every
10 criminal case, and we welcome that burden. It is the
11 State's job to leave you, the jury, firmly convinced of
12 the Defendant's guilt and I submit we will do that in
13 this case.

14 Now you as the jury, you're the factfinders. It's
15 your job to listen to all of the evidence that's
16 presented from the witnesses on the witness stand, from
17 exhibits that are introduced and for you to evaluate
18 that evidence using your common sense and your life
19 experiences.

20 Now, ladies and gentlemen, this is a simple case.
21 The Defendant broke into Dixiana Steel; he took
22 expensive equipment and he was caught red-handed on
23 camera, so at the end of this trial we will come back
24 before you and we'll ask you to find him guilty of both
25 charges. Thank you for your attention.

1 **THE COURT:** Thank you, ma'am. Mr. Casto.

2 **MR. CASTO:** Thank you very much, Your Honor. May
3 it please the Court?

4 **THE COURT:** Yes, sir.

5 **MR. CASTO:** Assumptions. That's what this case is
6 about. Assumptions on the part of law enforcement that
7 led them to get the wrong guy. This is a case of
8 mistaken identity that led them to get the wrong guy.

9 Now how did we get here? How did we get here in
10 this courtroom with prosecutors who sit at this table,
11 we're seated here, in front of the judge, within the
12 walls of this courthouse, in this courtroom? Well, in
13 the early morning hours, Mr. Rhett Ingram, the owner
14 of the steel shop, goes into work the morning of
15 January 28th, 2013, and sees that somebody has been in
16 there. He reviews the video footage, and really what
17 we're talking about is not a movie but still pictures,
18 and he sees somebody. Now basically the interesting
19 thing about that is that there are cameras all around
20 and we're just left with just a few stills. We don't
21 see how this person enters, we don't see how they leave.
22 We don't see how or if they used a vehicle whatsoever,
23 and so because of this, because of the appearance of
24 this person wearing this ball cap, assumptions are made,
25 assumptions on the part of law enforcement, that lead to

1 Barry being developed as a suspect.

2 But the thing is it doesn't pan out with the
3 evidence that's left behind. Specifically, there's a
4 flashlight that doesn't belong to Mr. Ingram that's
5 left behind and it doesn't belong to any of the other
6 employees. Mr. Ingram does the right thing and he turns
7 that flashlight in to law enforcement almost as soon as
8 he finds it. Well, that flashlight is not tested for
9 fingerprints for a calendar year after it was found and
10 it was never tested for DNA. The results of those tests
11 are that no fingerprints were able to be lifted and DNA
12 we're without because it wasn't even attempted. You
13 see, those assumptions don't pan out with what was left
14 behind, those assumptions by law enforcement that led to
15 Barry being developed as a suspect.

16 When Barry is eventually arrested, personal effects,
17 personal clothing items, were taken, and a ball cap, and
18 I want you to stare directly at that ball cap and see if
19 it's the same one that appears in those pictures and
20 stare directly at that evidence and decide for yourself
21 whether you think it's the same.

22 How to walk through this evidence? One thing as far
23 as the rules of what we're up to within the walls of
24 this courthouse is that you must, you must, decide this
25 case on the facts of this case alone. It's not really a

1 question of can you. It's a directive. It is this is
2 the rules of the game, this is what we have to do, and
3 you must decide this case on the facts of this case
4 alone.

5 Now there are two charges. There's burglary and
6 there's also grand larceny, and for each charge several
7 elements of that offense exists. The same thing with
8 grand larceny; several elements exist. If you find
9 reasonable doubt exists for just one of those elements
10 or one of those much like puzzle pieces, you must find
11 Barry not guilty of that offense. You must.

12 It won't be a long trial, be of good cheer, but it
13 is an important trial. For instance, this is Barry's
14 day in court. And as it unravels and as we hear the
15 story and as everything is laid out, listen to things
16 said from this witness stand, but then you can also take
17 into account things that aren't said. What are we
18 without? Body language, inflection of voice, all of
19 that's fair game. Keep an open mind as the judge told
20 you about and at the end of the trial we'd simply ask
21 that you find Barry not guilty. Thank you.

22 **THE COURT:** Thank you, Mr. Casto.

23 You may call your first witness.

24 **MS. RANKIN:** Thank you, Your Honor. The State calls
25 Ken Cathey.

1 KENNETH LEE CATHEY,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat, sir. Once you're seated,
4 state your full name, spelling your last on the record,
5 please.

6 **THE WITNESS:** Kenneth Lee Cathey, C-A-T-H-E-Y.

7 DIRECT EXAMINATION

8 BY MS. RANKIN:

9 Q. Mr. Cathey, where do you work?

10 A. Dixiana Steel.

11 Q. And what's your job title there?

12 A. Shop foreman.

13 Q. And what are your normal duties as a shop foreman?

14 A. Overseeing the employees and all shop functions.

15 Q. And how long have you worked there?

16 A. Sixteen years.

17 Q. And what hours do you generally work?

18 A. 7:00 to 5:30.

19 Q. And what time does Dixiana Steel open in the
20 morning?

21 A. 7:00.

22 Q. Is it open on the weekends?

23 A. No.

24 Q. Was it open on the weekend of January 26th of 2013?

25 A. No, ma'am.

1 Q. Think back to January the 28th, 2013, that Monday.

2 Did you work that day?

3 A. Yes, ma'am.

4 Q. And what time did you get to work?

5 A. I get there at 6:00.

6 Q. And when you got there, what happened when you got
7 there? What did you notice?

8 A. I -- I actually didn't notice anything. At 7:00
9 when the employees start up, there were items missing
10 and they could not start their daily function.

11 Q. Okay. And did you verify that information?

12 A. I did.

13 Q. And what items were missing?

14 A. There was a stud gun and all of our copper lead
15 which operates our welding machines.

16 Q. Okay. Was there anything else that was missing?

17 A. Not that I can think of.

18 Q. What did you do after you verified those things were
19 missing?

20 A. I started making arrangements for replacement.

21 Q. And after you made those arrangements, did you tell
22 anyone?

23 A. Yes, I went to Rhett, the owner, and explained to
24 him what was happening.

25 Q. Okay. Can you explain to us what a stud gun is

1 exactly?

2 A. It actually looks like a handheld gun, per se, and
3 it applies a metal rod and it actually fuses it to the
4 steel.

5 Q. Okay. So is it vital to the business?

6 A. Yes.

7 Q. Okay. And can you tell me exactly what welding
8 leads are?

9 A. It is a -- like the size of a finger diameter of
10 copper insulated like an oversized drop cord basically.

11 Q. And is that also vital to the business?

12 A. Yes, definitely.

13 Q. Okay. Would production shut down if you're missing
14 these items?

15 **MS. FULLWOOD:** Objection; irrelevant.

16 **MS. FULLWOOD:** Withdrawn, Your Honor.

17 **THE COURT:** Sustained.

18 BY MS. RANKIN:

19 Q. Are these items, the stud gun and the welding leads,
20 are they something that you noticed missing immediately?

21 A. Yes, ma'am.

22 Q. It wouldn't be two weeks or even two days before you
23 noticed them gone?

24 A. No.

25 **MS. RANKIN:** Your Honor, may I approach?

1 **THE COURT:** Yes, ma'am.

2 BY MS. RANKIN:

3 Q. Mr. Cathey, I'm showing you what's been marked as
4 State's Exhibit No. 1. Do you recognize what this is?

5 A. Yes, ma'am.

6 Q. What is this?

7 A. An aerial view of our plant and facility.

8 **MS. RANKIN:** Okay. At this time, Your Honor, the
9 State would move Exhibit 1 into evidence.

10 **THE COURT:** All right. It's without objection; is
11 that correct? Stipulated to?

12 **MS. FULLWOOD:** No objection.

13 **THE COURT:** All right.

14 (State's Exhibit Number 1, an aerial photograph, was
15 admitted into evidence.)

16 **MS. RANKIN:** Your Honor, can we bring the witness
17 off the stand?

18 **THE COURT:** Yes, sir.

19 (Witness leaves the witness stand.)

20 **THE COURT:** I'd like to ask the witness -- you might
21 want to move that up a little bit so that that podium is
22 not in the way and ask -- if you would, sir, I'm gonna
23 get you to stand on that side and face this way so you
24 can face the court reporter and if you would just keep
25 your voice up so she can hear.

1 **THE WITNESS:** Sure.

2 BY MS. RANKIN

3 Q. All right. Mr. Cathey, what are we looking at here?

4 A. This is our plant.

5 Q. Okay. Looking at this, at this map, kind of -- can
6 you kind of draw a circle around where the plant is on
7 the map?

8 A. All of this right here.

9 Q. Okay. So this kind of triangular area right here?

10 A. Uh-huh. Yes, ma'am.

11 Q. Can you identify on the map where those stud guns
12 would have been located?

13 A. Right here. This is called our plate shop.

14 Q. Okay. And how about the welding leads, where would
15 they have been located?

16 A. Along those back walls in the main fab area.

17 Q. Do you know if there was a surveillance camera on
18 the property?

19 A. There is.

20 Q. Okay. Do you know what building that's located in?

21 A. Uh-huh. This building right here. That's our saw
22 house.

23 Q. Okay. And you know it was located in that building?

24 A. Yes, ma'am.

25 Q. Is that the only one that you're aware of?

1 A. Yes.

2 Q. Okay. Did you look at the camera after you noticed
3 the items were stolen?

4 A. Yes.

5 **MS. RANKIN:** You can have a seat back on the witness
6 stand.

7 (Witness resumes the witness stand.)

8 BY MS. RANKIN:

9 Q. Mr. Cathey, I'm handing you what's been marked as
10 State's 2 through 6. Could you look at those for a
11 minute?

12 A. (Witness complies.) Unh-unh.

13 Q. Do you recognize what those are?

14 A. Yes, I do.

15 Q. Okay. What is that?

16 A. Those are pictures of the saw house.

17 Q. Okay. And that's part of Dixiana Steel?

18 A. Yes, it is.

19 Q. Is that the building where the camera was located?

20 A. Yes, ma'am.

21 **MS. RANKIN:** Okay. Your Honor, at this time the
22 State moves 2 through 6 into evidence.

23 **MS. FULLWOOD:** No objection.

24 **THE COURT:** All right. They're in evidence without
25 objection.

1 (State's Exhibit Numbers 2 through 6, photographs,
2 were admitted into evidence.)

3 **MS. RANKIN:** Permission to publish, Your Honor.

4 **THE COURT:** Yes, ma'am.

5 BY MS. RANKIN:

6 Q. State's Exhibit 4, what is that?

7 A. That is the side view of the saw house.

8 Q. State's Exhibit 6?

9 A. Yes, ma'am. That is the inside of the saw house.

10 Q. State's Exhibit 2?

11 A. Yes, that is the -- the street side of the main --
12 excuse me, the main fab area.

13 Q. And would this be the exterior portion of Dixiana
14 Steel?

15 A. Yes.

16 Q. Mr. Cathey, did you find anything else on the
17 property that you thought law enforcement might need to
18 know about?

19 A. There was a flashlight found.

20 Q. Okay. Do you remember exactly who brought that to
21 you?

22 A. I do not.

23 Q. Okay. So you're not sure?

24 A. Correct.

25 Q. All right. Was it an employee of Dixiana Steel?

1 A. Yes.

2 Q. Okay. But you don't know a name or anything like
3 that?

4 A. I don't remember, no.

5 Q. Okay. Did you give that -- that flashlight, did you
6 give it to law enforcement?

7 A. I did.

8 Q. Okay. And do you know where it was found?

9 A. In -- it was in the main fab area along that back
10 wall.

11 Q. Okay. But you weren't there when it was found?

12 A. No, it was just where it was told to me where it was
13 found.

14 Q. Okay. About how many employees are on the ground of
15 Dixiana Steel at any given time?

16 A. Twelve to fifteen.

17 Q. Okay. Is it only employees or are there other
18 people there?

19 A. We do have truck drivers and such coming through.

20 Q. Okay. So is it safe to say it's a pretty busy area?

21 A. Yes.

22 Q. High traffic?

23 A. Pretty much.

24 Q. Okay. People in and out all the time?

25 A. Yes, ma'am.

1 **MS. RANKIN:** I beg the court's indulgence.

2 BY MS. RANKIN:

3 Q. Mr. Cathey, I think you testified to this before,
4 but what time does Dixiana Steel -- what time does it
5 close?

6 A. 5:30.

7 Q. Okay. Is it the same time now as when it was then?

8 A. No, it's changed now. It's now 3:30.

9 Q. Okay. But in 2013, the time of this incident, it
10 would have been 5:30?

11 A. Yes, ma'am.

12 **MS. RANKIN:** Thank you. No further questions.

13 **THE COURT:** Cross?

14 **MS. FULLWOOD:** Thank you, Your Honor. If I could
15 take this down, Your Honor?

16 **THE COURT:** Yes, ma'am. And you can just move that
17 stand out of your way if it's in your way.

18 **MS. FULLWOOD:** Okay.

19 CROSS-EXAMINATION

20 BY MS. FULLWOOD:

21 Q. Mr. Cathey, how many welding leads did your business
22 have at that time?

23 A. At least twelve.

24 Q. At least twelve?

25 A. (Nods head.)

1 Q. And all of them were taken?

2 A. Yes, ma'am.

3 Q. Okay. And this flashlight, it was given to you that
4 same day you found the welding leads missing?

5 A. Yes, ma'am.

6 Q. That morning?

7 A. Yes, ma'am.

8 Q. Was it shortly after you had noticed that things had
9 gone from the business?

10 A. I'm not exactly sure when, but it was in the AM.

11 **MS. FULLWOOD:** Okay. I beg the Court's indulgence.

12 No further questions, Your Honor.

13 **THE COURT:** Anything further of this witness?

14 **MS. RANKIN:** Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. RANKIN:

17 Q. When the leads were stolen, Mr. Cathey, it was your
18 job to replace them?

19 A. Yes.

20 Q. Okay. And you were very busy doing that that
21 morning, weren't you?

22 A. Yes, ma'am.

23 Q. When that flashlight was given to you, were you in
24 the middle of doing that?

25 A. Yes.

1 **MS. RANKIN:** No further questions, Your Honor.

2 **THE COURT:** Thank you very much, sir. You may step
3 down.

4 (Witness leaves the witness stand.)

5 **THE COURT:** You can call your next witness.

6 **MS. RANKIN:** The State calls Dell Day.

7 DELL EDWARD DAY,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** Have a seat up there, please, sir. Once
10 you're seated, speak up loud and clear, state your name,
11 spelling your last, please.

12 **THE WITNESS:** Dell Edward Day, D-A-Y.

13 DIRECT EXAMINATION

14 BY MS. RANKIN:

15 Q. Mr. Day, where do you work?

16 A. Dixiana Steel.

17 Q. And what is your job title there?

18 A. Machinist.

19 Q. Okay. What are your normal duties as a machinist?

20 A. I run the saw, unload the trucks and run the roll
21 bed.

22 Q. Okay. And how long have you worked there?

23 A. Ten years.

24 Q. What are your normal working hours?

25 A. 7:00 to 5:30.

1 Q. Is there a specific place you work on the property?

2 A. Pretty much the saw house.

3 Q. Okay. I'm showing you State's Exhibit 1. Do you
4 recognize what that is?

5 A. Yes, ma'am. That's our work facility.

6 Q. Okay. And can you point out on this map where the
7 saw house is?

8 A. The saw house is right there.

9 Q. Okay. This middle building right here?

10 A. Yes, ma'am.

11 Q. And that's where you generally work?

12 A. Pretty much where I stay.

13 Q. When you went into that saw house that morning, what
14 did you observe?

15 A. I observed that my hasp had been cut off my cabinet.

16 Q. Okay. When you say a hasp, what do you mean by
17 that?

18 A. It's the eye that the lock goes through to lock it
19 where you can't open it.

20 Q. Okay. It was a locked cabinet?

21 A. Yes, ma'am.

22 Q. Okay. Did you open the cabinet when you saw that it
23 had been cut into?

24 A. Yes, ma'am.

25 Q. Did you notice anything missing out of there?

1 A. Food items.

2 Q. Okay. And when you say food items, what do you
3 mean?

4 A. Crackers.

5 Q. Just kind of snack items that you had?

6 A. Yeah, just kind of snack items.

7 Q. Okay. Did you notice anything that you thought may
8 have been used?

9 A. Well, when I looked around, I noticed I had left my
10 grinder out and I assumed what was used to cut the hasp
11 because of the nature of the cut.

12 Q. Mr. Day, I'm handing you State's Exhibits 7 and 8.

13 A. Yes, ma'am.

14 Q. Do you recognize what those are?

15 A. Yes, ma'am. This is my saw house here and this one,
16 that's my cabinet, and this is the grinder that I use.

17 **MS. RANKIN:** Okay. At this time the State would
18 move to enter State's 7 and 8 into evidence, Your Honor,
19 and publish.

20 **THE COURT:** Any objection?

21 **MS. FULLWOOD:** No, Your Honor.

22 **THE COURT:** Without objection, 7 and 8 in evidence.

23 (State's Exhibit Numbers 7 and 8, photographs, were
24 admitted into evidence.)

25 **THE COURT:** You may publish.

1 BY MS. RANKIN:

2 Q. This is your cabinet and your saw?

3 A. Yes, ma'am.

4 Q. And that is the grinder?

5 A. That's my grinder.

6 Q. Now when you saw -- that grinder, where do you
7 normally keep it?

8 A. It's usually in that cabinet.

9 Q. Okay. But obviously it wasn't?

10 A. Yes, ma'am. I forgot to put it up.

11 Q. Okay. And was that grinder, was it in the same
12 place on Monday that you left it on Friday?

13 A. Yes, ma'am.

14 Q. So you thought maybe it had been used, but it didn't
15 appear that it had moved anywhere?

16 A. No, it was in the same spot.

17 **MS. RANKIN:** I beg the Court's indulgence.

18 BY MS. RANKIN:

19 Q. Mr. Day, that saw house, is -- that building, is it
20 enclosed?

21 A. No, ma'am.

22 Q. Where are the openings on that building?

23 A. There's one on the back side and one on the other
24 end where the material comes in and goes out.

25 Q. I'm showing you State's 5 and 3. Do you recognize

1 those?

2 A. Yes, ma'am.

3 Q. Okay. And what are those?

4 A. Let's see. This is the entrance where the steel
5 comes in over here on the roll bed and comes out over
6 here on this roll bed.

7 Q. And what is that?

8 A. That's the entrance to where the steel comes in and
9 that's the door that I go in and out of.

10 Q. Okay. So when you say that it's not enclosed, you
11 just mean that there's holes in both sides?

12 A. Yes, ma'am.

13 Q. And what's the purpose of those holes?

14 A. For the steel to come in and to exit out the other
15 side.

16 Q. Okay. But it does have a door?

17 A. Yes, ma'am.

18 Q. And that's for you?

19 A. Yes, ma'am.

20 **MS. RANKIN:** No further questions.

21 **THE COURT:** Cross-examination?

22 **MS. FULLWOOD:** No questions, Your Honor.

23 **THE COURT:** Thank you, sir. You may step down.

24 **THE WITNESS:** Thank you.

25 (Witness leaves the witness stand.)

1 **MS. RANKIN:** Your Honor, may the witness be excused?

2 **THE COURT:** Any objection to this witness being
3 excused?

4 **MS. FULLWOOD:** No, sir.

5 **THE COURT:** Thank you very much. Sir, you're free
6 to go.

7 All right. You may call your next witness.

8 **MS. DAVIS:** Thank you, Your Honor. The State calls
9 Rhett Ingram.

10 **THE COURT:** Mr. Ingram, if you'd please come around
11 and be sworn, sir.

12 EVERETT WALTER INGRAM, IV,
13 having been duly sworn, testified as follows:

14 **THE CLERK:** Once you're seated, please speak up loud
15 and clear and state your full name, spelling your last
16 on the record, please.

17 **THE WITNESS:** Everett Walter Ingram, IV.
18 I-N-G-R-A-M.

19 DIRECT EXAMINATION

20 BY MS. DAVIS:

21 Q. Mr. Ingram, where are you employed?

22 A. Dixiana Steel.

23 Q. And what does that business do?

24 A. We fabricate and erect structural and miscellaneous
25 steel.

1 Q. And where is that business located?

2 A. 1544 Pine Ridge Drive.

3 Q. And is that in Lexington County?

4 A. Yes, ma'am.

5 Q. And what is your position at that business?

6 A. I'm president.

7 Q. What do you do as the president there? What are
8 your duties?

9 A. I oversee the entire operation from the financial
10 aspect to managing the office to just general overseeing
11 the entire operation.

12 Q. And tell me about the setup of the business. Are
13 there multiple buildings?

14 A. Yes, ma'am, there are several buildings as you saw
15 on the layout. There's a plate shop, saw house, main
16 fab building, paint area.

17 Q. And this is State's Exhibit 1. Can you point out to
18 the jury which buildings are which?

19 A. This is the clerical office, this is the main shop
20 building, miscellaneous shop, angle area, saw house,
21 plate shop. Those are the buildings.

22 Q. Okay. So all of these buildings are Dixiana Steel
23 property?

24 A. That's correct.

25 Q. Okay. And is this property enclosed by a fence?

1 A. Yes, ma'am.

2 Q. Is it all around the property?

3 A. Yes, ma'am.

4 Q. Does it have barbed wire on it?

5 A. In most areas I believe so.

6 Q. And why do you have a fence around your property?

7 A. Security.

8 Q. At some point, did you purchase a security camera
9 for your property?

10 A. Yes, ma'am.

11 Q. And when was that?

12 A. Sometime in January, 2013.

13 Q. Okay. And which building did you put this camera
14 in?

15 A. That particular camera was put in the saw house.

16 Q. And that would have been where Dell worked most of
17 his time?

18 A. Yes, ma'am.

19 Q. Okay. And where did you place that camera in the
20 saw house?

21 A. It was up approximately ten feet off the ground
22 enclosed in a steel -- we fabricated a little steel
23 casing to make it inconspicuous and drilled a hole where
24 it wouldn't be seen.

25 Q. So you put the camera in a box so you couldn't tell

1 that it was a camera there?

2 A. That's correct.

3 Q. Okay. And if you're the camera, what can you see?

4 A. You can see a portion of the big saw that does most
5 of our fabrication. You can see -- I don't know if you
6 can actually see the cabinet, but you can -- it's right
7 below. If you can't see it, you can see the door where
8 Dell walks in and out of, Dell's desk, the roller table
9 coming in, you can see the other end where the steel
10 comes in on one side. I believe that's the general area
11 that you can see.

12 Q. Okay. And explain to the jury how this particular
13 security camera worked.

14 A. It's set up pretty much similar as a deer camera.
15 It's much smaller. It's an indoor camera, it's not
16 really made for outdoor, but when it senses infrared
17 motion you can set it to take pictures and it snaps
18 pictures. Once it sees movement, it snaps a series of
19 three -- I think three to five pictures on movement.

20 Q. So it's not a videocamera?

21 A. No, ma'am.

22 Q. It's a camera that takes pictures based on movement?

23 A. Yes, ma'am. Once it senses infrared, I think it
24 senses heat, it starts taking pictures.

25 Q. And does it work in the dark?

1 A. No, ma'am, it does not. To my knowledge, that one
2 does not.

3 Q. So you would have to have a light on in there?

4 A. That's why we -- yes, ma'am. We chose that saw
5 house because that is the smallest enclosed building on
6 our property. It wasn't feasible to light up the main
7 area, the plate shop. Like I said, the saw house is
8 probably, I don't know, fifteen by fifteen, and it's
9 cheaper to light that area up and put the camera in
10 there rather than, you know, lighting the entire
11 premises.

12 Q. So you kept that saw house lit for the purposes of
13 that camera?

14 A. Yes, ma'am. That's the only reason that saw house
15 was lit at night.

16 Q. Okay. And did this camera have a date and time
17 stamp?

18 A. It did.

19 Q. And did you set it whenever you installed the
20 camera?

21 A. I did.

22 Q. And was it working properly?

23 A. It was.

24 Q. I want you to think back to January 26th through
25 28th of 2013. Do you remember anything significant

1 about that time?

2 A. Yes, ma'am. That's when I came into work on one of
3 those days, I believe it was a Monday, and Ken had
4 approached me and told me that we were hit again last
5 night.

6 Q. By hit again, you mean property was taken?

7 A. We were broken into and stolen goods.

8 Q. And were you informed of what property was missing
9 at that time?

10 A. I was.

11 Q. And what was that?

12 A. My welding leads and a stud gun.

13 Q. As a result of that, what did you do?

14 A. I called Lexington County.

15 Q. Did you check your security camera at any time?

16 A. Absolutely.

17 Q. Okay. And what did you see on that security camera?

18 A. I saw Barry Millwood in the saw house.

19 Q. Okay. And did you check to see if the camera was
20 still working properly at that time?

21 A. I did.

22 Q. Okay. And was the date and time stamp correct on
23 the photographs it had taken?

24 A. Yes, ma'am.

25 Q. And you said that you saw the Defendant, Barry

1 Millwood, in those photographs?

2 A. I saw Barry Millwood in those photographs.

3 Q. Are you familiar with Mr. Millwood from prior
4 dealings with him?

5 A. I'm very familiar with Barry Millwood.

6 Q. Have you seen him in person before?

7 A. I have.

8 Q. Does he have any distinct facial features?

9 A. He normally would have a big, unkept, bushy beard.
10 Unkept, it was very pronounced, and not easily mistaken.

11 Q. Okay. And you said you reviewed this security
12 footage from your camera, these pictures, and you called
13 law enforcement?

14 A. I did.

15 Q. At any time did you give them those photographs?

16 A. I did. The deputy that responded, I told him who he
17 was. I said here's the pictures. I burnt a DVD, put
18 the pictures on the DVD. I don't know if that happened
19 when he was there, but he was -- Lexington County was
20 given the DVD with those pictures.

21 Q. So you provided law enforcement with the photographs
22 from the security camera?

23 A. Yes, ma'am.

24 Q. Okay. And when you spoke to that officer that
25 responded, did you tell him that you knew who the person

1 was in those photographs?

2 A. Yes, ma'am. I immediately told him who he is.

3 Q. Did you tell him his name?

4 A. I told him his name.

5 Q. Okay. And at that time did law enforcement show you
6 any photographs?

7 A. That particular deputy didn't know -- he didn't have
8 any photographs to show. He didn't -- like I said, I
9 initiated -- I told the deputy that's Barry Millwood on
10 my property, in my saw house.

11 Q. So you did that all on your own from your
12 familiarity with Mr. Millwood?

13 A. Yes, ma'am.

14 Q. Okay. At some time later, did law enforcement come
15 back out to the property and show you a photograph?

16 A. Yes, ma'am. I believe it was Detective Rob came out
17 and brought a picture and he wanted to confirm that it
18 was the same Barry Millwood; you know, is this the guy
19 you were talking about, Barry Millwood.

20 Q. So this encounter where law enforcement showed you
21 the picture, that was after you had already named Barry
22 Millwood as the person?

23 A. Right. The first person to respond was a deputy.
24 Later, I don't know if it was the same day or -- later
25 the detective came out and showed a picture.

1 Q. And that was just to confirm you all were talking
2 about the same Barry Millwood?

3 A. Right, that was to confirm that was the guy that I
4 was referring to.

5 Q. Okay. I'm showing you what's been entered as
6 State's Exhibit 6. Can you tell me if this indicates
7 where the camera was in the saw house?

8 A. Yes, the camera is -- you can kind of see the
9 outline of the little box we fabricated. It's right
10 there on that --

11 Q. Okay. So about right here?

12 A. Yes, ma'am.

13 Q. And this would have been where that camera was
14 in the box?

15 A. Yes, ma'am.

16 Q. All right. Now I'm gonna show you some photographs
17 that have been marked for identification as State's
18 Exhibits 9 through 13, if you will take a look at these.
19 Do you recognize those?

20 A. I do.

21 Q. And what are those?

22 A. Those are the pictures that I retrieved from the
23 camera.

24 Q. These were the photographs taken from your security
25 camera?

1 A. Yes, ma'am.

2 Q. Okay. And do they look the same as they did when
3 you took them off of the camera and gave them to law
4 enforcement?

5 A. Yes, ma'am, they do.

6 Q. Have they been altered in any way?

7 A. No, ma'am.

8 Q. Are they a fair and accurate representation of what
9 you saw on your security camera when you checked it?

10 A. Yes, ma'am.

11 **MS. DAVIS:** Your Honor, at this time the State would
12 move Exhibits 9 to 13 into evidence.

13 **THE COURT:** Any objection?

14 **MS. FULLWOOD:** That would be subject to my prior
15 objection and motion, Your Honor.

16 **THE COURT:** All right. I'll overrule and allow them
17 in.

18 **MS. DAVIS:** Thank you, Your Honor.

19 (State's Exhibit Numbers 9 through 13, photographs,
20 were admitted into evidence.)

21 BY MS. DAVIS:

22 Q. I'll show you State's 9, if you'll take a look at
23 that.

24 A. Okay.

25 Q. What you do see in that photograph?

1 A. I see Barry Millwood up in the property. He appears
2 to have gloves on, K-Swiss shoes, camo pants, hat,
3 looking toward -- he's looking toward the cabinet that
4 was broken into. It looks like something's in his right
5 hand. I can't tell what it is.

6 Q. Okay. And does that picture have a day and time
7 stamp on it?

8 A. Yes, ma'am.

9 Q. Can you tell me what that would be?

10 A. January 26, 2013, 22:05.

11 Q. Okay. And would this be the view that you would see
12 from the security camera in the saw house?

13 A. Yes, ma'am.

14 Q. Let me show you State's Exhibit Number 10. Is that
15 also a photograph from the camera?

16 A. Yes, ma'am.

17 Q. Do you see the same individual in that photograph?

18 A. I see the same person.

19 Q. Okay. And is that the same view as the last
20 picture, State's Exhibit 9?

21 A. Yes, ma'am. The camera's fixed. What is happening
22 is he's moving, so it's snapping a series of pictures.

23 Q. So the camera stays still?

24 A. The camera stays still, but it continues to snap
25 when it sees movement. So the longer he's in there, the

1 more pictures it's gonna take.

2 Q. Okay. And what's the day and time stamp on that
3 photograph?

4 A. January 26, 2013, 22:05.

5 Q. So 22:05, so this is 11:00 at night?

6 A. 10:05.

7 Q. I'm sorry, 10:00 at night. Is your business open
8 then?

9 A. No, ma'am.

10 Q. Should anybody be in there at this time?

11 A. No, ma'am.

12 Q. And do you have any doubt who this is in this
13 photograph?

14 A. No doubt whatsoever.

15 Q. Okay. I'm gonna show you State's Exhibit 11. Is
16 this photograph taken on a different day?

17 A. January 28, 2013.

18 Q. And what time?

19 A. 02:14.

20 Q. So that would be 2:00 AM?

21 A. 2:14 AM.

22 Q. Okay. I'll have you look at State's Exhibit
23 Number 12. What's the day and time of that photograph?

24 A. That one's January 26th at 22:31.

25 Q. Okay. And State's 13?

1 A. January 28th, 02:34.

2 Q. Okay. So January 28th at 2:00 AM, is your business
3 open?

4 A. No, ma'am.

5 Q. Should anybody be in there at this time in the saw
6 house?

7 A. No, ma'am.

8 Q. Do you know who it is in this photograph?

9 A. I do.

10 Q. Who is it?

11 A. It's Barry Glenn Millwood.

12 Q. And is he wearing a similar outfit as he was on the
13 26th?

14 A. It appears to be identical clothes.

15 Q. And, Mr. Ingram, I'll ask you to look at State's
16 Number 14 for identification. Do you recognize this?

17 A. I do.

18 Q. And what is that?

19 A. It's a picture of Barry Glenn Millwood that the
20 deputy had brought to confirm that we were talking about
21 the same guy.

22 Q. Has that photograph been altered in any way?

23 A. No, ma'am.

24 Q. Does it fairly and accurately represent the
25 photograph that you were shown by law enforcement?

1 A. Yes, ma'am.

2 MS. DAVIS: Your Honor, at this time the State would
3 move to admit State's Number 14 into evidence.

4 MS. FULLWOOD: That would be subject to my
5 prior motion and objection and I raise the additional
6 grounds that that particular photograph hasn't been
7 authenticated.

8 MS. DAVIS: Your Honor, I believe he just
9 authenticated that it's the same.

10 THE COURT: All right. I'm gonna allow it.
11 Overruled.

12 MS. DAVIS: Thank you, Your Honor.

13 (State's Exhibit Number 14, a photograph, was
14 admitted into evidence.)

15 BY MS. DAVIS:

16 Q. And this State's Exhibit Number 14, is this the
17 photograph that law enforcement showed you when they
18 came back to have you confirm you were talking about the
19 same Barry Millwood?

20 A. Yes, ma'am.

21 Q. And is this the same man you saw in those
22 photographs?

23 A. Yes, ma'am.

24 Q. And is this the man you identified to law
25 enforcement prior to them showing you this photograph?

1 A. Yes, ma'am.

2 Q. Now, Rhett, is that the only camera that you had in
3 your business in all those buildings?

4 A. We had previously installed a DVR camera system.
5 The cameras themselves were still up in the big white
6 housings, you know, but the DVR had broken or been hit
7 by lightning or something, so it wasn't operable. As a
8 matter of fact, the DVR was not even in there. I think
9 we trashed it and it just never had been replaced and
10 at the time that was the cheapest route, to purchase
11 that little game-type camera rather than buy a DVR and
12 hook the whole -- not to mention the camera that -- or
13 the video, the ones that weren't operating, we would
14 have had to light up the entire premises and from an
15 economical standpoint it would cost -- you know,
16 obviously the electricity would have been a lot more
17 if we had to light up the whole plant, so it was more
18 feasible to just get a small game camera and stick it
19 in the smallest building we have and capture pictures.

20 Q. Okay. So just to clarify, you did have other
21 cameras on your property at that time, but this camera
22 was the only one that was operating?

23 A. We did and still do, but, like I said, it's not
24 hooked up to a DVR, so virtually there's a camera and a
25 housing, but it's not operable.

1 Q. So this is the only camera that you would have taken
2 photographs from?

3 A. That is the only camera on the property that worked.

4 Q. So there's not any other cameras that could have
5 captured someone breaking in at any other place?

6 A. No, ma'am, there are no other cameras on the
7 property that were working.

8 Q. That's the only one?

9 A. Yes, ma'am.

10 Q. Okay. Now, Rhett, do you recall what items were
11 taken from the business?

12 A. I know our welding leads were taken and Ken had told
13 me a stud gun.

14 Q. Okay. And are those something that are used daily
15 in the operation of your business?

16 A. Absolutely.

17 Q. Did you have to replace those as a result?

18 A. Yes, ma'am.

19 Q. Okay. And are these cheap items that you can go
20 pick up at Lowe's down the street?

21 A. No, ma'am. The stud gun's, I think, Atlanta and it
22 was -- it's not a common item. You're not gonna find
23 that locally anywhere. It's a very unique item, a
24 specific thing for the steel industry. The welding
25 leads are local, but we get them on a -- you know, a

1 100, 200-foot roll. Basically it's a solid copper, you
2 know, welding lead. You cannot weld anything without a
3 welding lead.

4 Q. Okay. And are these cheap items?

5 A. No, ma'am, they're not cheap.

6 Q. How much do they cost?

7 A. Off the top of my head, I don't -- I don't
8 know. I know we -- the people we deal with for the
9 stud gun, Perry Stud Welding or whoever it was, we got
10 a quote from them to replace it. The welding lead,
11 Ken purchases that, I'm not in purchasing, but, no,
12 nothing's cheap at all.

13 Q. And these welding leads, I think that Ken described
14 them as a giant extension cord, why are they so
15 expensive?

16 A. It's solid copper, you know, that can be stripped
17 and taken to a recycling place. It's just solid copper,
18 which, you know, copper is not a cheap item to buy.

19 Q. Okay. Now, Rhett, I'm gonna show you what's been
20 marked as State's Exhibit 15, if you'll take a look at
21 this. Do you recognize that?

22 A. That's a quote from the people that we buy stud guns
23 from.

24 Q. Okay. And has it been changed in any way?

25 A. No, ma'am.

1 Q. Does it fairly and accurately represent the quote
2 that you got to replace your equipment?

3 A. It is.

4 **MS. DAVIS:** Your Honor, at this time the State would
5 move to admit State's Exhibit Number 15?

6 **MS. FULLWOOD:** No objection.

7 **THE COURT:** Without objection.

8 (State's Exhibit Number 15, a price quote, was
9 admitted into evidence.)

10 BY MS. DAVIS:

11 Q. Now, Rhett, are you in charge of replacing
12 equipment?

13 A. No, ma'am, I don't replace equipment.

14 Q. Okay. And that business on the quote that you have
15 in State's Exhibit Number 15, which business is that?

16 A. This is Image Stud Welding Bluearc. I think
17 they were previously called Perry Stud Welding out of
18 Atlanta, then they got bought out. Like I said, there's
19 not very many companies. You're not gonna call a
20 hardware store or Lowe's or Northern Tool or anybody
21 and find a stud welding gun. You're just not.

22 Q. Is this business that you got the quote from a
23 business that you've worked with in the past?

24 A. For years.

25 Q. Are they reputable in the industry?

1 A. Very reputable.

2 Q. And the welding leads that you had to replace, how
3 much did those cost from the quote?

4 A. This -- the 25-foot cable was \$795 just for the
5 cable.

6 Q. Okay. And how many did you have to get?

7 A. I don't remember the -- well, that's two, but I
8 don't remember the amount of welding leads that were cut
9 off each machine. Ken, can -- you know, a couple of
10 hundred feet, I would imagine at least, with twelve
11 machines. I don't know the exact figure. Like I said,
12 Ken handles -- the shop foreman handles that more so
13 than I would.

14 Q. Okay. And the stud gun, how much did that cost to
15 replace?

16 A. \$2,995 each.

17 Q. So to replace all of the welding leads that had been
18 taken and the stud gun, was that over \$2,000?

19 A. Easily. Not to mention the down time that I had
20 employees standing around that can't work.

21 Q. And the quote that you received in State's
22 Exhibit 15, this would be a reasonable amount from a
23 reputable company?

24 A. Yes, ma'am.

25 Q. Now, Rhett, you stated that you knew who was in

1 those photographs from your security camera. Did you
2 give Barry Millwood any permission to be in your
3 business?

4 A. None whatsoever.

5 Q. Did he or anybody else have any business being in
6 your property in the late night hours of January 26th of
7 2013?

8 A. No, ma'am.

9 Q. How about January 28th at two in the morning?

10 A. No, ma'am.

11 Q. Is he an employee of your business?

12 A. No, ma'am.

13 Q. Does he have a key to your business?

14 A. No, ma'am.

15 Q. In the courtroom today, do you see the person that
16 was in those photographs that broke into your business?

17 A. Absolutely.

18 Q. Can you point him out to the jury, please?

19 A. (Indicating.)

20 Q. What's he wearing?

21 A. The gentleman in the white shirt with the purple,
22 blue, brown, whatever color tie that is.

23 Q. You're pointing to the Defendant?

24 A. Yes, ma'am.

25 Q. Does he look the same as he did back then?

1 A. No, ma'am, not at all.

2 Q. What's changed?

3 A. He's shaved his beard small, brushed his hair, clean
4 cut. Not the same guy at all.

5 Q. Do you have any question in your mind that he is the
6 same person that you saw in those photographs that broke
7 into your business?

8 A. No question at all.

9 **MS. DAVIS:** Your Honor, I beg the Court's
10 indulgence.

11 **THE COURT:** Yes, ma'am.

12 BY MS. DAVIS:

13 Q. Rhett, were you able to recover any of the items
14 that were stolen from your property?

15 A. No, ma'am.

16 Q. You had to replace all of those?

17 A. Yes, ma'am.

18 **MS. DAVIS:** Okay. Your Honor, no further questions.
19 Please answer any questions defense counsel has for you,
20 Rhett.

21 **THE COURT:** All right. Cross?

22 **MS. FULLWOOD:** Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. FULLWOOD:

25 Q. Mr. Ingram, you didn't go to school with Barry

1 Millwood, did you?

2 A. I did not what?

3 Q. Go to school with Barry Millwood.

4 A. I don't know where Barry Millwood went to school.

5 Q. Well, did you go to school with him?

6 A. I went to school with four or five hundred people.

7 I don't know who all --

8 Q. Well, how old are you?

9 A. Thirty-five.

10 Q. Okay. He's never worked for you before, has he?

11 A. No, ma'am.

12 Q. You've never socialized with him before, have you?

13 A. No, ma'am.

14 Q. In fact, you've never even sat down and eaten a meal
15 with him, have you?

16 A. No, ma'am.

17 **MS. FULLWOOD:** No further questions.

18 **THE COURT:** Anything else?

19 **MS. DAVIS:** Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. DAVIS:

22 Q. Rhett, are you familiar with who Barry Millwood is?

23 A. I am very familiar with who Barry Millwood is.

24 **MS. DAVIS:** No further questions.

25 **THE COURT:** All right. Thank you, sir. You may

1 step down.

2 (Witness leaves the witness stand.)

3 **THE COURT:** You may call your next witness.

4 **MS. DAVIS:** Thank you, Your Honor. The State calls
5 Julian Harris.

6 JULIAN HARRIS,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat right up there, sir. Once
9 you've had a seat, state your full name, spelling your
10 last on the record, please.

11 **THE WITNESS:** Yes, ma'am. I'm Julian Harris,
12 spelled H-A-R-R-I-S.

13 DIRECT EXAMINATION

14 BY MS. DAVIS:

15 Q. Mr. Harris, where are you currently employed?

16 A. I am a private consultant at Blue Cross Blue Shield
17 of South Carolina.

18 Q. Okay. And how long have you been at that job?

19 A. I've been there since October of 2013, so
20 approximately eight months.

21 Q. Where did you work before there?

22 A. I worked at the Lexington County Sheriff's
23 Department.

24 Q. And what was your position there?

25 A. I was a deputy assigned to a patrol region in the

1 south region of Lexington County.

2 Q. And how long did you work at Lexington County
3 Sheriff's Department?

4 A. I worked there a year and six months approximately.

5 Q. And you said that you were a deputy there?

6 A. Correct.

7 Q. What are your duties as a deputy?

8 A. In the specific role I was in, I was assigned to
9 foxtrot shift, which covered a specific area, a specific
10 region within the county, and I responded to emergency
11 calls, 9-1-1 calls and calls for service.

12 Q. Were you working at Lexington County Sheriff's
13 Department on January the 28th of 2013?

14 A. Yes.

15 Q. On that day, did you receive a call to respond to
16 Dixiana Steel company?

17 A. I did.

18 Q. Okay. And what was the nature of that call?

19 A. The radio dispatcher informed me that a larceny had
20 occurred on the previous night.

21 Q. And do you recall what time you responded to that
22 location?

23 A. Approximately 8:00 or 8:30 in the morning.

24 Q. And is this a business, the place you responded?

25 A. Yes.

1 Q. And do you recall the address of that business?

2 A. 1544 Pine Ridge Drive, which is located in Lexington
3 County, South Carolina.

4 Q. And when you arrived at that address, was that
5 business open and running that day?

6 A. It was open, yes, ma'am.

7 Q. Were multiple people there?

8 A. There were many people there, yes, ma'am.

9 Q. And when you arrived at Dixiana Steel, did you speak
10 with anyone?

11 A. I did. I immediately spoke with the man who
12 identified himself as the owner of Dixiana Steel, Rhett,
13 I believe.

14 Q. Rhett Ingram?

15 A. Rhett Ingram, yes.

16 Q. Okay. And as a result of your conversation with
17 him, were you informed that any items had been stolen
18 from the business?

19 A. Yes, he did indicate that several items had been
20 stolen from the business.

21 Q. And do you recall what those items were?

22 A. I believe he said approximately eight copper leads,
23 two stud guns and various grocery and food items that
24 belonged to some of the employees who worked for him.

25 Q. Okay. So equipment from the business and food?

1 A. Yes.

2 Q. Okay. After your conversation with Mr. Ingram, were
3 you shown any surveillance footage?

4 A. I was.

5 Q. Okay. Tell the jury about what that was.

6 A. He showed me several still film images that he had
7 on a computer that he said were connected to
8 surveillance cameras that he had set around the property
9 because he had issues with property crimes occurring
10 there in the past.

11 **MS. FULLWOOD:** Your Honor, I have a matter of law.

12 **THE COURT:** All right. Ladies and gentlemen; let me
13 get you to step back into your jury room. Please have
14 no conversation about the case or anything you've heard
15 and if you need anything while you're back there, just
16 let the bailiff know.

17 (Whereupon, the jury exits the courtroom.)

18 **THE COURT:** Yes, ma'am.

19 **MS. FULLWOOD:** Your Honor, at this point I'd move
20 for a mistrial. We've been trying to be really careful
21 for them not to be talking about property crimes in the
22 past and the way this has sort of shaped up is we have
23 Mr. Ingram testifying I'm really, really familiar with
24 him and then we have the officer coming in and saying he
25 told me there had been property crimes in the past. I

1 believe that's gonna raise an inference that Barry
2 Millwood has engaged in past misconduct in connection
3 with this business. It -- it puts his character into
4 evidence and it's unduly prejudicial. Certainly more
5 prejudicial than probative. Any probative value to what
6 the man said is greatly outweighed by the prejudicial
7 effect this evidence would have, so at this point I
8 would move for a mistrial.

9 **MS. DAVIS:** Your Honor, the witness testified that
10 cameras were put up, that they had had past property
11 crimes. He didn't indicate in any way that it was
12 the Defendant who had done those property crimes.
13 Mr. Ingram never testified how he knew the Defendant.
14 He never said it was past property crimes that he had
15 committed. Your Honor, I feel like we've been trying
16 to follow strictly with the lines of saying that he
17 didn't know him from any of the past burglaries at all
18 and it is gonna come out in the evidence as part of our
19 elements anyway that he has committed prior burglaries.
20 There is no evidence that it was at those locations and
21 I believe if she wants to ask on cross if Mr. Millwood
22 was identified as being the person that had broken into
23 it previously to fix that, I think she could do that on
24 cross if she wants to go into that, but I don't believe
25 that there's been anything on the -- in testimony that

1 would cause a mistrial.

2 **THE COURT:** All right.

3 **MS. FULLWOOD:** Your Honor, I simply think that when
4 you combine what this witness just said with not only
5 the words Mr. Ingram said, but with the tone of voice in
6 which he said it and the body language he used when he
7 was saying those words, that inference very well arises
8 and is prejudicial, it puts his character into evidence,
9 it just sort of blows out of the water what Your Honor
10 tried to put in place yesterday.

11 **THE COURT:** I disagree. I'm gonna deny your motion
12 for mistrial. The question, I believe, was the officer
13 asked the owner, you know, why he had those cameras
14 installed. He indicated because of prior activity or
15 whatever. In no way did he connect that to Mr. Millwood
16 when he did testify. All he said was that he was
17 familiar with Mr. Millwood. He never made any reference
18 to any prior burglaries, any prior incidences, and I
19 just -- I don't find that it rises to the level of a
20 mistrial.

21 You can -- and, again, it is my understanding, y'all
22 can correct me if I'm wrong, you could certainly on
23 cross ask if this officer -- if this complainant has
24 ever complained about Mr. Millwood in the past breaking
25 in because my understanding is that he has no -- no

1 evidence of that. So, I mean, you can -- you can
2 address it if you'd like or you can leave it alone, but
3 as it is right now I don't think there's been anything
4 that rises to the level of a mistrial. I'm gonna deny
5 your motion.

6 **MS. FULLWOOD:** Well, if I could inquire -- thank
7 you, Your Honor, but if I could inquire, is Your Honor
8 gonna allow this witness to continue in this vein about
9 property -- property crimes in the past?

10 **MS. DAVIS:** Your Honor, I'm gonna move on from that.

11 **THE COURT:** I think that was just in relation to why
12 cameras were installed, that's been answered, and then
13 you just move on.

14 **MS. FULLWOOD:** I'm not even sure that was the
15 question, but --

16 **MS. DAVIS:** I think I asked him to tell me about the
17 surveillance footage that he saw and he said that the
18 camera had been put up there because of past property
19 crimes.

20 **THE COURT:** Right.

21 **MS. FULLWOOD:** So it wasn't even in response to the
22 question that was asked.

23 **THE COURT:** All right. I've made my ruling, but
24 you can move on. I don't think there's any reason to
25 continue down that road.

1 **MS. FULLWOOD:** Yes, sir.

2 **THE COURT:** All right. I tell you what. The jury
3 is out. If anyone wants to take a short break, let's do
4 that, go ahead and do that now, and then we'll start
5 back in just a few minutes, okay?

6 (Recess taken.)

7 **THE COURT:** All right. Is the State ready?

8 **MS. RANKIN:** Yes, sir.

9 **THE COURT:** Ms. Fullwood?

10 **MS. FULLWOOD:** Yes, Your Honor.

11 **THE COURT:** All right. Let's bring the jury back
12 out, please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. You may proceed with your
15 questioning.

16 **MS. DAVIS:** Thank you, Your Honor.

17 BY MS. DAVIS:

18 Q. Mr. Harris, did Rhett Ingram show you the
19 photographs from his security camera?

20 A. Yes.

21 Q. I'm gonna show you what's been entered as State's
22 Exhibits 9 through 13. If you'll take a look at these.

23 A. (Witness complies.)

24 Q. And are these the photographs that Mr. Ingram showed
25 you from his security camera?

1 A. Yes.

2 Q. And did he provide you a copy of these photographs?

3 A. He did on a DVD-R.

4 Q. Okay. And what did you do with that DVD?

5 A. I secured it in my patrol vehicle and I took it to
6 Lexington County Sheriff's Department headquarters where
7 I turned it into the evidence room where the clerks
8 securely store the evidence.

9 Q. And is that normal procedure for you to do with
10 evidence?

11 A. Yes.

12 Q. Did Mr. Ingram identify the man in the photographs
13 to you?

14 A. Yes.

15 Q. Are you the officer that came back and showed him a
16 photograph of Barry Millwood?

17 A. No.

18 Q. That was not you?

19 A. That was not me.

20 Q. That was another officer?

21 A. That was a detective, I believe, yes.

22 Q. While you were out on the property, did you walk
23 around the entire property?

24 A. Yes.

25 Q. Did you do that with Mr. Ingram?

1 A. Yes, for portions of it.

2 Q. Okay. And did you notice if the property was
3 enclosed?

4 A. It was enclosed by a fence with barbed wire on their
5 perimeter.

6 Q. I'm gonna show you State's Exhibit 1. Is this the
7 property that you walked when you went out on the call
8 to Dixiana Steel?

9 A. Yes.

10 Q. And this is the property you responded to?

11 A. Yes, it is.

12 Q. Did you take any photographs or fingerprints or
13 collect any other evidence besides the DVD of photos?

14 A. I did not.

15 Q. And why didn't you do that?

16 A. It's standard procedure at the sheriff's department
17 that during the daytime when property crimes
18 investigators are working normal hours for me to contact
19 a supervisor, let them know what I've got on-scene and
20 they essentially have us complete a brief narrative of
21 what I responded to, process the evidence, which in this
22 case was the DVD, take it to headquarters and a property
23 crimes investigator would be immediately assigned to the
24 case to investigate it further and then I would go back
25 on patrol responding to calls.

1 Q. Okay. So to clarify, after you take this
2 initial call and do the initial investigation, walk
3 the property, talk to the people there, it's your
4 understanding that an investigator was going to be
5 assigned immediately to the case?

6 A. Yes.

7 Q. And would that be their job to come out and do the
8 actual investigation, collect evidence, if any, at that
9 time?

10 A. In a circumstance like this, yes.

11 Q. Okay. And would you have been able to get any
12 footprints, fingerprints, anything of the business at
13 that time?

14 A. I did not observe any footprint impressions at the
15 time. A large portion of the property had sand
16 and dirt. There was sawdust because I believe it is a
17 steel facility, so physical evidence of that kind was
18 compromised and was not able to be collected.

19 Q. So this business was open and people were there at
20 the time?

21 A. Yes.

22 Q. So that makes it more difficult for you to be able
23 to collect evidence from that?

24 A. It made it not possible.

25 Q. Okay. And is it typical procedure for an

1 investigator to be assigned to these types of cases?

2 A. Absolutely it is.

3 Q. And did you do a written report in this case?

4 A. I did. I did a brief narrative and sent it to
5 my supervisor so he could approve it as quickly as
6 possible so that a detective could then be assigned to
7 the case.

8 Q. And did you write your report the same day that you
9 went out to Dixiana Steel?

10 A. I wrote it on-scene while I was at Dixiana Steel on
11 the computer that was in my patrol vehicle and I
12 submitted it electronically for approval.

13 Q. So you would have submitted your report of what you
14 saw when you went out there that same day?

15 A. Immediately while I was still on-scene. I believe I
16 submitted it at 9:05.

17 Q. Mr. Harris, was that the extent of your involvement
18 in this case?

19 A. Yes, it was.

20 **MS. DAVIS:** I have no further questions. Please
21 answer any the defense may have.

22 CROSS-EXAMINATION

23 BY MS. FULLWOOD:

24 Q. You submitted your report at 9:05?

25 A. Yes.

1 Q. Do you remember what time you actually got out
2 there?

3 A. Approximately 8:00, 8:30.

4 Q. Okay. And do you know about what time the call came
5 in?

6 A. I don't recall specifically, no.

7 Q. Okay. But it was earlier in the morning that you
8 actually went out there?

9 A. Yes.

10 Q. Okay. And you were out there what -- how long do
11 you think you were out there?

12 A. About an hour. Typically property crime initial
13 reports in these situations are investigated within
14 forty-five minutes to an hour and then a property crimes
15 detective will follow-up.

16 **MS. FULLWOOD:** Thank you.

17 **THE WITNESS:** Thank you.

18 REDIRECT EXAMINATION

19 BY MS. DAVIS:

20 Q. Mr. Harris, did you get that time, 9:05, from the
21 report that you submitted?

22 A. I did, and that is a verifiable time stamp that is
23 used by the sheriff's department.

24 **MS. DAVIS:** Your Honor, I have no further questions.

25 I ask that this witness be excused.

1 **MS. FULLWOOD:** Without objection.

2 **THE COURT:** All right. Without objection. Thank
3 you, sir.

4 **THE WITNESS:** Thank you, Your Honor.

5 **THE COURT:** You're free to go.

6 (Witness leaves the witness stand.)

7 **THE COURT:** You may call your next witness.

8 **MS. RANKIN:** The State calls Rob Williams.

9 **THE COURT:** Mr. Williams, if you'll, please, come
10 around and be sworn, sir.

11 DETECTIVE ROB WILLIAMS,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Have a seat, sir. Once you're seated,
14 state your name, spelling your last name for the record,
15 please.

16 **THE WITNESS:** Rob Williams, W-I-L-L-I-A-M-S.

17 DIRECT EXAMINATION

18 BY MS. RANKIN:

19 Q. Mr. Williams, where do you work?

20 A. Lexington County Sheriff's Department.

21 Q. What's your rank there?

22 A. Detective, property crimes division.

23 Q. How long have you worked for the sheriff's
24 department?

25 A. Eleven years.

1 Q. What area do you work in?

2 A. South region. I'm assigned to the property crimes
3 division.

4 Q. Okay. You're in investigations?

5 A. Correct.

6 Q. How long have you been in investigations?

7 A. Six years.

8 Q. Tell me a little bit about your background and your
9 education in law enforcement.

10 A. I started my career with the Los Angeles County
11 Sheriff's Department where I received my police
12 certification after the 21-week academy and then when I
13 moved back to South Carolina, I received my Class I
14 certification from the South Carolina Criminal Justice
15 Academy.

16 Q. Okay. And you were the investigating officer on
17 this case?

18 A. I was.

19 Q. How did you become involved in the case?

20 A. Sergeant Brian Anderson assigned that case to me the
21 same day, January 28, 2013. I read the narrative,
22 contacted the owner, Rhett Ingram, set up a time to come
23 out and review the video or the still photographs and
24 just walk around the facility.

25 Q. Okay. And did you view those photos when you went

1 out there?

2 A. I did. Later on that day, Sergeant Anderson and I
3 went out to the scene at Dixiana Steel, 1544 Pine Ridge
4 Drive, in the West Columbia area of Lexington County,
5 South Carolina.

6 Q. Okay. And did the victim make an identification?

7 A. He did. When we were in his office, he pulled up
8 the still photos on his laptop and identified Barry
9 Glenn Millwood as the subject in the photos.

10 Q. Okay. And once he identified Barry Millwood as the
11 subject in the photos, what did you do?

12 A. I -- well, at some point I went back to the office
13 and searched that name on DMV Online and pulled
14 a DMV record on a Barry Glenn Millwood.

15 Q. Okay. And what is the date of birth that you pulled
16 along with that Barry Glenn Millwood?

17 A. I pulled up of '59 and that person had a South
18 Carolina DL Number .

19 Q. I'm handing you what's been marked State's
20 Exhibit 14 and entered. Do you recognize that?

21 A. Yes, I do.

22 Q. Is this the photograph that you showed to the
23 victim?

24 A. Yes, it is.

25 Q. Okay. And this photograph came from where?

1 A. That came from the South Carolina DMV.

2 Q. And this is the same photograph you showed the
3 victim?

4 A. It is.

5 Q. And you said you also looked at the surveillance
6 shots?

7 A. Yes.

8 Q. I'm handing you what's been entered as State's
9 Exhibits 9 through 13. Are those the same photographs
10 you saw that day?

11 A. Yes, they are.

12 Q. And those are the surveillance stills?

13 A. Correct.

14 Q. From Dixiana Steel?

15 A. Yes.

16 Q. Did you go into the building where the security
17 camera was located originally?

18 A. Yes, we ended up in the saw house.

19 Q. Okay. And who were you with when you went in there?

20 A. Rhett Ingram and another employee. I'm not sure who
21 the other employee was, but I met Dell Day in there. He
22 was in the saw house as well.

23 Q. And through your investigation, did you learn of
24 some items that were stolen from that building?

25 A. Yes, they showed me the cabinet where the -- I

1 guess, the U-bolt or I-bolt that the padlock goes to had
2 had been cut off and there were food items taken out of
3 the cabinet.

4 Q. So the cabinet was damaged?

5 A. Yes.

6 Q. Okay. Did that damage appear to be fresh?

7 A. Yes.

8 Q. Were you aware of anything that could have been used
9 to open that cabinet?

10 A. The employee in there told me that he normally puts
11 all of his tools up, but on this occasion he left his
12 grinder out, which is a corded grinder, it's not a
13 battery-operated one, and he said it was just as he had
14 left it on, I guess, the Friday before he left work.

15 Q. Did you look at the grinder?

16 A. I did.

17 Q. And what did you notice about it?

18 A. The condition of it was dirty and I didn't see any
19 smooth surfaces on it that you could potentially test
20 for latents.

21 Q. I'm handing you State's Exhibit 7.

22 A. That's it.

23 Q. Is this the grinder?

24 A. That is.

25 Q. And why didn't you take any latent prints off of

1 this grinder?

2 A. It's not a suitable surface for that.

3 Q. And why is it not suitable?

4 A. It's dirty and there's not enough flat surface. You
5 need something very flat and clean.

6 Q. And this wasn't it?

7 A. No.

8 Q. What was the texture of it?

9 A. It had a patterned texture to the surface.

10 Q. During the course of your investigation, did you
11 believe that that grinder was used?

12 A. No, it was -- according to Dell it was put back, it
13 was exactly as he had left it, and the way that shop was
14 set up it's probably 12 to 15 feet from where he kept it
15 by the machine that he uses it for and then the cabinet
16 is maybe, like I said, 10 to 15 feet from that.

17 Q. Okay. And you didn't mention a grinder in your
18 report, did you?

19 A. No.

20 Q. And why is that?

21 A. I typically don't speculate in my supplementals.

22 Q. And an employee's opinion, would that have been
23 speculation?

24 A. Yes.

25 Q. Was there any other evidence that you collected

1 during your investigation?

2 A. Right before we left, we were in a parking lot, and
3 Rhett told us that one of his employees had found a
4 small flashlight. I think it was laying on someone's
5 desk, so he had to go back inside the facility to
6 retrieve it, and he handed that to my sergeant.

7 Q. I'm handing you what's been marked as State's
8 Exhibit 17 for identification. Do you recognize that?

9 A. Yes, I do.

10 Q. And what is that?

11 A. It's the little mini Maglite that Rhett or his
12 employee handed to my sergeant.

13 Q. Okay. And you were with him?

14 A. Yes.

15 Q. Okay. Who gave that flashlight to Sergeant
16 Anderson?

17 A. It was either Rhett or the employee that was with
18 Rhett.

19 Q. Okay. And are you aware of who gave it to either
20 one of them?

21 A. No. I know it had passed several hands before it --
22 and a desk before it had got to us.

23 Q. And did you have that flashlight processed for
24 prints initially?

25 A. No, I did not.

1 Q. And why didn't you?

2 A. There was no chain on the evidence or item.

3 Q. And what do you mean by chain?

4 A. There's no constant chain on it. If it had been
5 recovered, let's say, when the responding officer had
6 arrived, we would have had a chain on it from that point
7 on, but from what I was told and can remember --

8 **MS. FULLWOOD:** Objection to the hearsay.

9 **THE COURT:** Sustained as to any hearsay.

10 BY MS. RANKIN:

11 Q. From what you can remember, are you aware of who
12 gave that to the employee that gave it to y'all?

13 A. No.

14 **MS. FULLWOOD:** Objection based on hearsay.

15 **THE COURT:** Sustained.

16 BY MS. RANKIN:

17 Q. In order to have a proper chain, you're talking
18 about physical custody of an item?

19 A. Correct.

20 Q. Okay. And -- and what's the common goal of a chain
21 of custody?

22 A. To -- to be able to account for its whereabouts from
23 the moment that it's found.

24 Q. Okay. And were you able to do that with that
25 flashlight?

1 A. No.

2 Q. Once you had the confirmation of the identity of the
3 Defendant from Mr. Ingram, what did you do then?

4 A. I went back and pulled that DMV photo.

5 Q. Okay. And once you confirmed that, did you secure
6 warrants in this case?

7 A. Yes, I did.

8 Q. When you learned the Defendant had been arrested on
9 those warrants, what did you do?

10 A. I'll typically go to the jail, our jail, and attempt
11 to interview the subject, which I did.

12 Q. Okay. Did you take anything -- did you collect any
13 further evidence?

14 A. I did. We went to the booking area to look at what
15 property Mr. Millwood had when he was booked in, and we
16 didn't have the photos with us at the time, but just
17 from memory we collected the items that we --
18 that looked similar to what he was wearing in the
19 surveillance photos, which was a hat, a jacket and a
20 pair of K-Swiss tennis shoes.

21 Q. I'm handing you State's Exhibit 16. Can you look in
22 that bag and tell me if you recognize what's in there?

23 A. Yes, it's the blue jacket, a ball cap and a pair of
24 tennis shoes.

25 Q. Are those the same clothes that you got from the

1 jail that day?

2 A. Yes, they are.

3 Q. Okay. Have they been altered or tampered with in
4 any way?

5 A. No, they haven't.

6 **MS. RANKIN:** Thank you. Your Honor, at this time
7 the State would move to enter and publish State's
8 Exhibit 17 {sic}.

9 **THE COURT:** Any objection?

10 **MS. FULLWOOD:** No, Your Honor.

11 **THE COURT:** Without objection, State's 17 {sic} is
12 in evidence.

13 (State's Exhibit Number 17 (16), clothing items, was
14 admitted into evidence.)

15 BY MS. RANKIN:

16 Q. Can you go ahead and pull out what's in that bag?

17 A. (Witness complies.)

18 Q. What do we have here?

19 A. A pair of K-Swiss tennis shoes, a jacket and cap.

20 Q. And all of these are items that he was wearing on
21 the day that he was arrested?

22 A. Correct.

23 **MS. RANKIN:** Thank you, Investigator Williams. I
24 don't have any other questions. Please answer any the
25 defense might have.

1 CROSS-EXAMINATION

2 BY MS. FULLWOOD:

3 Q. Mr. Williams?

4 A. Hey.

5 Q. Hey. Concerning this clothing, I'd first like to
6 show you this jacket, okay?

7 A. Uh-huh.

8 Q. And I know you're in law enforcement and you wear a
9 uniform, but could you tell us the manufacturer of this
10 jacket?

11 A. It's a Dickies.

12 Q. Okay. And are you somewhat familiar with that brand
13 of clothing?

14 A. I mean, I know it exists, yes.

15 Q. Right. And is it more or less a manufacturer of
16 sort of work wear like work jackets, pants and -- for
17 different types of industry?

18 A. Uh-huh, yes.

19 Q. Okay. And when you went to look at that clothing
20 that had been taken from Mr. Millwood when he was
21 arrested, there weren't any camouflage pants there, were
22 there?

23 A. No.

24 Q. It was --

25 A. What we did was we -- when we went back there, we

1 didn't have the photographs with us, so we were going
2 off of memory as to what we recalled him wearing.

3 Q. Well, you certainly would have collected the
4 camouflage pants if they were in there.

5 A. I would have.

6 Q. And they were just blue jeans, correct?

7 A. I believe so.

8 Q. Okay. And concerning this flashlight, you actually
9 collected that flashlight that day, correct?

10 A. It was on the 28th, yes.

11 Q. And you went further and you logged that flashlight
12 into evidence at the evidence room at the sheriff's
13 department, right?

14 A. Correct.

15 Q. All right. And that flashlight was eventually
16 processed for fingerprints, wasn't it?

17 A. It was.

18 Q. But that wasn't until January of this year; is that
19 right?

20 A. It was sometime later it was.

21 Q. Okay. And that flashlight has never been processed
22 for DNA, has it?

23 A. No.

24 Q. All right. Did you dust anywhere in that business
25 for fingerprints?

1 A. No, I didn't.

2 Q. Okay. And when you went out to Dixiana Steel that
3 day, you didn't just look at the saw house, did you?

4 A. No, we -- he walked us through the whole facility.

5 Q. All right.

6 A. But basically from the areas from where items were
7 stolen.

8 Q. All right. And you went into, I believe, two
9 buildings out there with Mr. Ingram?

10 A. I believe so. One was a rather large building and
11 it was like a shed type of building, just a roof.

12 Q. Okay. And that was -- things had been stolen from
13 that shed?

14 A. Correct.

15 Q. And then you went into the saw shop?

16 A. Right.

17 Q. So you didn't fingerprint the interior or the
18 exterior of the shed?

19 A. No. Typically when -- my purpose for going out that
20 day was to look at the video because I knew the officer
21 had taken it, but for me to see it it's a lot easier to
22 go to the scene because the victim normally will have it
23 still on their system. Once the primary officer leaves,
24 if there were any prints that needed to be collected, it
25 would have been done at that time.

1 Q. By the primary officer?

2 A. Yes.

3 Q. Okay. Now when you were out there, did you make any
4 attempt to look for any shoe prints?

5 A. No.

6 Q. Or is that the job of the primary officer?

7 A. Well, at that time there was so many people out
8 there. The best time to do that is when no one's there
9 if you could be on the scene at that point, but --

10 Q. As soon as it's reported and your officer gets
11 out --

12 A. Right.

13 Q. -- is that the best time to do it?

14 A. Yes. I mean, it just depends on the circumstances.
15 It sounds like when he arrived the business was full of
16 people anyway, so.

17 Q. Okay. And would the responding officer also
18 be responsible for seeing if there were any tire
19 impressions or anything like that?

20 A. The initial officer would be, yes. That would be
21 the one to check for those sort of things.

22 Q. All right.

23 A. Because a lot of times those cases may not be
24 assigned until the next day. It just depends. I looked
25 at it and saw that there was a video, so I wanted to get

1 out there and review that.

2 Q. So they're not assigned immediately?

3 A. Well, once it's approved by his supervisor, it goes
4 to -- it's a paperless system, electronic, so it goes
5 into what we call our dashboard and my supervisor would
6 look at it periodically throughout the day, normally in
7 the morning, and approve it, so you might get assigned
8 that case that afternoon or the following day.

9 Q. All right. And there is absolutely no -- nothing in
10 the way of fingerprints or DNA that ties Mr. Millwood to
11 the scene of Dixiana Steel, is there?

12 A. No.

13 Q. All right.

14 **MS. FULLWOOD:** I beg the Court's indulgence.

15 **THE COURT:** Yes, ma'am.

16 **MS. FULLWOOD:** No further questions, Your Honor.

17 **THE COURT:** Anything on cross -- I mean, redirect?

18 **MS. RANKIN:** Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. RANKIN:

21 Q. Investigator Williams, what is -- what is the nature
22 of Dixiana Steel? What is the nature of their business?

23 A. It's a -- it's not a very clean environment. I
24 mean, it's -- there's a lot of welding. Mostly outside
25 type of plant or facility.

1 Q. Were there a lot of people milling around at that
2 business?

3 A. Oh, yes. Yes.

4 Q. Were there a lot of vehicles in and out?

5 A. A lot of trucks, big heavy trucks, in and out.

6 Q. Okay. And I think you testified earlier that in
7 order to dust for prints you need a clean surface?

8 A. Correct.

9 Q. Would you say that Dixiana Steel is full of clean
10 surfaces?

11 A. No, it's not.

12 Q. Okay. So that wouldn't really be conducive to --

13 **MS. FULLWOOD:** Objection; leading.

14 **THE COURT:** Sustained.

15 BY MS. RANKIN:

16 Q. Would the surfaces at Dixiana Steel be conducive to
17 dusting for prints?

18 A. No.

19 **MS. RANKIN:** Nothing further, Your Honor.

20 **MS. FULLWOOD:** If I may briefly.

21 **THE COURT:** Yes, ma'am.

22 RECROSS EXAMINATION

23 BY MS. FULLWOOD:

24 Q. Investigator, you're not trying to tell this jury
25 that the only way you can ever lift a print is if a

1 surface is pristinely clean, are you?

2 A. It needs to be clean. I mean, if it's got dust on
3 it -- if you touch something, people will think that
4 leaves a print, but it's just the oil on your fingers
5 that you're lifting the dirt up, so if it's dirty you
6 wont get a print off of it.

7 Q. So it's your testimony that there could be no dirt
8 at all on the surface in order for a fingerprint to be
9 lifted?

10 A. It just depends upon circumstances.

11 Q. Okay.

12 A. There are cases where you can. I mean, it might not
13 be involving dust, but you could photograph a print if
14 it's on a surface, but you'd have to have a surface
15 conducive to -- to at least, you know, determine a
16 print.

17 Q. So sometimes it can, sometimes it can't. It depends
18 on the circumstances?

19 A. It just depends on -- right.

20 Q. Okay. And in this particular circumstance, you
21 decided not to dust and so did the responding officer;
22 is that right?

23 A. Well, when I went back, I went back there for the
24 purpose of reviewing the video, but when I'm there I'll
25 look at the surfaces of other items. That's the reason

1 I go back is to find out if there's anything else
2 missing, anything else to observe and to go from there,
3 but I didn't seen anything that was there that day that
4 could be tested.

5 Q. And about what time did you go back?

6 A. I want to say it was probably right around maybe
7 11:00 or 12:00 because I was thinking I might have
8 missed them because I know I had told him before lunch,
9 and it was between 11:00 and 1:00. Because I know when
10 I got back to the office I want to say it was -- it was
11 3:08 because that's when I printed out Mr. Millwood's
12 DMV on the same day.

13 **MS. FULLWOOD:** Okay. No further questions.

14 **THE COURT:** Anything further?

15 **MS. RANKIN:** Nothing further, Your Honor.

16 **THE COURT:** Thank you very much, sir. You can step
17 down.

18 (Witness leaves the witness stand.)

19 **MS. FULLWOOD:** No objection.

20 **THE COURT:** Okay. You're free to go. You can call
21 your next witness.

22 **MS. RANKIN:** The State call Adam Clayton.

23 ADAM CLAYTON,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Have a seat, sir. Once you're seated,

1 state your full name, spelling your last, please.

2 **THE WITNESS:** Adam Clayton, C-L-A-Y-T-O-N.

3 DIRECT EXAMINATION

4 BY MS. RANKIN:

5 Q. Mr. Clayton, where do you work?

6 A. Lexington County Sheriff's Department, K-9 Unit.

7 Q. What is your rank there?

8 A. K-9 officer.

9 Q. All right. And what are your duties?

10 A. I respond to various K-9 calls, missing child,
11 someone trying to flee, drug sniffs, vehicle searches,
12 that kind of thing.

13 Q. How long have you been on K-9?

14 A. A total of thirteen years.

15 Q. How did you become involved in this case?

16 A. I was on patrol in the Dixiana area of Lexington
17 County and observed a blue Chevrolet -- what is it --
18 Cheyenne pick-up truck at a residence, and I'm familiar
19 with this residence and I noted that vehicle does not
20 belong there, and so I ran the tag.

21 Q. And when you ran that tag, who did you run it
22 through?

23 A. Our dispatch.

24 Q. And did that tag come back to anyone?

25 A. It did.

1 Q. And who was that?

2 A. Mr. Millwood.

3 Q. And did you make contact with the owner of that
4 residence?

5 A. I did.

6 Q. And what was the nature of that contact?

7 A. That the owner or the person that's usually at that
8 residence is James Gillings and I'm familiar with him
9 also, and he just came out and started talking to me and
10 so I initiated a conversation, which I asked him if I
11 could go in his house and see if Mr. Millwood was in
12 there because I knew he was wanted.

13 Q. Okay. And how did you know that he had warrants?

14 A. When I ran his tag, there was a deputy that was out
15 that told me that he was on our hot sheet, our current
16 wanted list, and that's how I knew that he was wanted.

17 Q. Did you take him into custody for those warrants?

18 A. Yes, I did.

19 Q. Did you have any conversations with Mr. Millwood?

20 A. No.

21 Q. All right. Is that -- is that the extent of your
22 involvement in this case, the arresting officer?

23 A. Yes, ma'am.

24 **MS. RANKIN:** Nothing further, Your Honor.

25 **THE COURT:** Cross?

1 **MR. CASTO:** No questions for this witness, Your
2 Honor.

3 **THE COURT:** Thank you, sir. You may step down.
4 (Witness leaves the witness stand.)

5 **THE COURT:** Any objection to the officer being
6 excused?

7 **MS. FULLWOOD:** No, Your Honor.

8 **THE COURT:** Thank you very much for being here.

9 **THE WITNESS:** Yes, sir. Thank you.

10 **THE COURT:** You can call your next witness.

11 **MS. DAVIS:** Your Honor, may we approach?

12 **THE COURT:** Yes.

13 (Proceedings held at the bench; not reported.)

14 **MS. DAVIS:** Your Honor, the State calls Daniel
15 Shearer. His name is Kenneth on the sheet.

16 KENNETH DANIEL SHEARER,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat. Once you're seated, state
19 your full name, spelling your last on the record,
20 please.

21 **THE WITNESS:** My full name is Kenneth Daniel
22 Shearer, S-H-E-A-R-E-R.

23 DIRECT EXAMINATION

24 BY MS. DAVIS:

25 Q. Mr. Shearer, where do you work?

1 A. South Carolina Criminal Justice Academy.

2 Q. And how long have you been there?

3 A. About three months now.

4 Q. Okay. Where did you work prior to that job?

5 A. Lexington County Sheriff's Department.

6 Q. And how long had you been with Lexington County
7 Sheriff's Department?

8 A. A little close to six years.

9 Q. Okay. And what was your position at Lexington
10 County Sheriff's Department?

11 A. Crime scene investigator.

12 Q. And were you a crime scene investigator the entire
13 time you were with Lexington County?

14 A. No, ma'am.

15 Q. And what other jobs did you hold there?

16 A. I also did road patrol, assisted with explosive
17 ordnance disposal and warrant division.

18 Q. In January of this year, were you a crime scene
19 investigator at Lexington County Sheriff's Department?

20 A. Yes, ma'am.

21 Q. Okay. Were you asked to do -- to process any
22 evidence in this case?

23 A. Yes, ma'am.

24 Q. And what were you asked to do?

25 A. I was asked to process a flashlight for latent

1 prints.

2 Q. Okay. And as a crime scene investigator, is lifting
3 latent prints or fingerprints part of your duties?

4 A. Yes, ma'am.

5 Q. What other things do you do as a crime scene
6 investigator?

7 A. I respond to any call where I am requested to take
8 photographs, swab for DNA, tire and footwear impression
9 analysis, cell phone forensics, just to name a few.

10 Q. Okay. And can you tell the jury what process you
11 use to test an item for fingerprints?

12 A. The process I use is called cyanoacrylate fuming,
13 which is kind of like using super glue. You heat up
14 super glue and it will cover the piece of evidence and
15 from there it will make the latent prints stick and pop
16 up to me and I can use a black powder to cover the print
17 and then lift it using a tape.

18 Q. And you said in this case you were asked to process
19 a flashlight for prints?

20 A. Yes, ma'am.

21 Q. Do you have any knowledge where that flashlight came
22 from?

23 A. No, ma'am.

24 Q. Did you just pick it up at the evidence room at
25 Lexington County?

1 A. Yes, ma'am.

2 Q. And is it your job to determine when and what
3 evidence is processed?

4 A. No, ma'am.

5 Q. That's someone else's job?

6 A. Yes, ma'am.

7 Q. And in this case, when were you asked to process
8 this flashlight?

9 A. On January 9th of 2014.

10 Q. And who asked you to do that?

11 A. Mr. Matthew Martin.

12 Q. And do you know where he is employed?

13 A. The Solicitor's office.

14 Q. I'm gonna show you what's been marked for
15 identification as State's Exhibit 17 and see if you
16 recognize that?

17 A. Can I open it?

18 Q. Yes.

19 **MS. DAVIS:** Your Honor, I beg the Court's
20 indulgence.

21 **THE COURT:** Yes, ma'am.

22 BY MS. DAVIS:

23 Q. (Handing.)

24 A. Thank you. Yes, ma'am.

25 Q. Okay. And State's Exhibit 17, is this the

1 flashlight that you processed that day for fingerprints?

2 A. Yes, ma'am.

3 Q. Did you just get dust on your hands?

4 A. Yes, ma'am.

5 Q. Has this been changed in any way?

6 A. No.

7 **MS. DAVIS:** Your Honor, at this time the State would
8 move to admit State's Exhibit 17 into evidence.

9 **THE COURT:** Any objection?

10 **MS. FULLWOOD:** No, Your Honor.

11 **THE COURT:** Without objection, State's 17 is
12 admitted.

13 (State's Exhibit Number 17, a flashlight, was
14 admitted into evidence.)

15 BY MS. DAVIS:

16 Q. Now the process that you just explained to the jury,
17 did you use that same process to test this flashlight
18 for prints?

19 A. Yes, ma'am.

20 Q. Okay. And when you were done testing it, what would
21 you have done with it?

22 A. I would have packaged it and sealed it as it was
23 sealed and submitted it back to the evidence room.

24 Q. Now when you processed this flashlight, were you
25 able to lift any prints off of it?

1 A. No, ma'am.

2 Q. Does the surface of an item that's been taken into
3 evidence, does that have any bearing on whether or not
4 you're able to lift prints off of it?

5 A. No, ma'am.

6 Q. When you picked that up from evidence, you went
7 through that same procedure, tested it and took it back
8 to evidence?

9 A. Yes, ma'am.

10 Q. Did you do a written report to that effect?

11 A. I did.

12 Q. And when was that report done?

13 A. That was done on the same day.

14 Q. Okay. And is it typical for evidence to be stored
15 at the evidence room in Lexington County for a long
16 period of time before it's tested?

17 A. Yes, ma'am.

18 Q. And does that lapse in time cause any change to
19 whether or not fingerprints are on an item?

20 A. No, ma'am.

21 **MS. DAVIS:** I beg the Court's indulgence, Judge.

22 **THE COURT:** Yes, ma'am.

23 **MS. DAVIS:** No further questions. Please answer any
24 the defense has for you.

25 **MS. FULLWOOD:** No questions, Your Honor.

1 **THE COURT:** All right. Thank you, sir. Any
2 objection to this officer being excused?

3 **MS. FULLWOOD:** No, Your Honor.

4 **THE COURT:** Thank you. You're free to go.

5 (Witness leaves the witness stand.)

6 **THE COURT:** You may call your next witness.

7 **MS. DAVIS:** Thank you, Your Honor. The State calls
8 Hope Frick.

9 **THE COURT:** Ms. Frick, if you would please come
10 around and place your left hand on the Bible and raise
11 your right hand.

12 HOPE FRICK,

13 having been duly sworn, testified as follows:

14 **THE COURT:** If would you, please, take the stand and
15 spell your last name for the record, please.

16 **THE WITNESS:** Yes, sir. My name is Hope Frick.
17 Last name is F-R-I-C-K.

18 DIRECT EXAMINATION

19 BY MS. DAVIS:

20 Q. Ms. Frick, where are you employed?

21 A. I'm Deputy Clerk for Lexington County Clerk of
22 Court's Office.

23 Q. And how long have you been in that position?

24 A. In this position, twenty-one years.

25 Q. And how long have you been with the Clerk of Court's

1 Office?

2 A. Twenty-nine years.

3 Q. What is your -- what are your duties as a deputy
4 clerk?

5 A. I'm responsible for anything and everything to
6 do with General Sessions court. I supervise four staff
7 members of the Clerk's office. All documents that come
8 in for General Sessions court, I'm responsible for
9 them being entered, all dispositions coming in. I'm
10 responsible for all bonding companies being licensed to
11 operate in Lexington County and confirm they stay in
12 compliance with the law. I'm responsible for issuing
13 bench warrants per court order from the circuit court
14 judge for the defendants who do not appear, for
15 recalling them, issuing -- doing estreatments, making
16 sure companies are suspended for that. I'm responsible
17 for maintaining any and all records related to General
18 Sessions court, that they are maintained and kept in the
19 proper area and proper files.

20 Q. Okay. So you're in charge of all the paperwork for
21 General Sessions or criminal court?

22 A. Correct. If it gets messed up, I'm responsible.

23 Q. Okay. So you are the custodian of records for
24 General Sessions court?

25 A. Correct.

1 Q. Okay. And is one of your duties as a deputy clerk
2 to generate true certified copies of criminal documents?

3 A. Correct.

4 Q. Okay. And can you explain to the jury what a
5 certified conviction is?

6 A. What that is, is upon request of a law enforcement
7 agency, an attorney, solicitor, defense, request, a
8 record of a defendant for it to be validated as being a
9 factual, actual copy, just as good as the original, we
10 make a copy of the indictment, the arresting paper,
11 whether it's a ticket or a warrant, and the sentence
12 sheet. We then have a stamp that is -- it says
13 certified true copy. I stamp it with that and then we
14 have the Clerk of Court seal. We emboss the true copy
15 stamp. If that true copy stamp is not embossed with
16 that seal, it's not a certified true copy that can
17 actually be treated as the real document.

18 Q. And do you do this, make certified true copies,
19 because members of the public, attorneys, aren't allowed
20 to take the original documents from the Clerk's office?

21 A. That is correct. The only way a case can ever be
22 removed from the Clerk's office, any original work, it's
23 by a court order by a circuit court judge stating who's
24 to get it, where it's to go and when it's to be back in
25 my possession.

1 Q. Now these documents, are they public record?

2 A. Yes.

3 Q. So anyone can come in and request to see them?

4 A. Yes, ma'am.

5 Q. Okay. I'm gonna show you what has been -- excuse
6 me.

7 (State's Exhibit Numbers 18 and 19, sentence sheets,
8 were marked for identification.)

9 BY MS. DAVIS:

10 Q. I'm gonna show you what's been marked as State's
11 Exhibits 18 and 19. If you'll look at these for me. Do
12 you recognize those?

13 A. Yes, ma'am.

14 Q. And what are those?

15 A. These are copies made from the original certified
16 true copies that I made.

17 Q. Okay. And are those sentence sheets?

18 A. Yes, they are. They're the sentence sheets of two
19 cases.

20 Q. Okay. And have they been altered in any way?

21 A. Just a little bit of redaction, but as far as the
22 judge, the date, the Defendant's information, a little
23 bit of his information has been redacted and the
24 sentence has been redacted.

25 Q. So these are copies of your true copy just redacted?

1 A. Correct.

2 Q. Okay. Are they fair and accurate representations of
3 your true copies?

4 A. Yes, ma'am.

5 Q. Minus the redactions, of course?

6 A. Correct.

7 **MS. DAVIS:** Okay. Your Honor, at this time the
8 State would move to admit State's Exhibits 18 and 19.

9 **THE COURT:** Any objection?

10 **MS. FULLWOOD:** Not other than my prior motion and
11 objection.

12 **THE COURT:** All right. Those are 18 and 19 you
13 said?

14 **MS. DAVIS:** Yes, Your Honor.

15 **THE COURT:** Those are in evidence.

16 (State's Exhibit Numbers 18 and 19, sentence sheets,
17 were admitted into evidence.)

18 BY MS. DAVIS:

19 Q. Now, Ms. Frick, what are these entitled?

20 A. They're entitled in the court of general sessions
21 sentence sheets.

22 Q. Okay. And what is a sentence sheet?

23 A. It is the document that -- that we have at the top
24 of it -- can I? We have at the top of it the
25 Defendant's information, the information of the charge

1 and then below that what the charge is that's being
2 disposed of, what's being -- the Defendant's being
3 sentenced to, signature lines for prosecution, defense
4 and defense counsel to sign, then you have the sentence
5 area that is filled out strictly by the presiding judge
6 and then at the bottom myself or my staff, we have to
7 sign off the Clerk of Court's name on it, the court
8 reporter's name, the judge signs it and dates it and
9 puts his judge code. Only the judge can fill in the
10 sentencing area.

11 Q. Okay. So is the purpose of the sentence sheet
12 to keep up with convictions of defendants in general
13 sessions court?

14 A. Correct.

15 Q. Okay. And if you will look at Exhibit 18 for me.

16 A. Yes, ma'am.

17 Q. If you could tell me, who is the defendant in that
18 sentence sheet?

19 A. Barry Glenn Millwood.

20 Q. What is the date of birth given?

21 A. .

22 Q. And the driver's license number?

23 A. .

24 Q. And the indictment number on that sentence sheet?

25 A. The indictment number on this one is 2008-GS-32-680.

1 Q. And are there separate indictment numbers for each
2 individual charge?

3 A. Yes. A case can only have one indictment number.

4 Q. Okay.

5 A. You can't use the same number for everyone.

6 Q. Okay. And on State's Exhibit 18, what is the
7 charge?

8 A. Burglary in the third degree.

9 Q. And what is the date of that conviction?

10 A. March 13, 2008.

11 Q. Okay. And that would be a conviction for burglary
12 in general sessions court in Lexington County?

13 A. Yes, ma'am.

14 Q. Okay. And if you will look at State's Exhibit
15 No. 19.

16 A. Yes, ma'am.

17 Q. Who is the defendant on that sentence sheet?

18 A. Barry Glenn Millwood.

19 Q. And the date of birth?

20 A. .

21 Q. And the driver's license number?

22 A. This one has two zeros in front. .

23 Q. Okay. So the same date of birth, same name and same
24 driver's license number on both sentence sheets?

25 A. Correct.

1 Q. Okay. Does this one have a different indictment
2 number?

3 A. Yes, ma'am.

4 Q. Okay. And would that indicate a different charge?

5 A. Yes, ma'am.

6 Q. Okay. And what is the charge on State's Exhibit
7 No. 19?

8 A. Burglary third degree, first offense. Effective as
9 of June 20, 1985 is the statute.

10 Q. Okay. And what is the date of that conviction?

11 A. This conviction was October 4, 2010.

12 Q. Okay. And that would also be in general sessions
13 court in Lexington County?

14 A. Yes, ma'am.

15 Q. So in State's Exhibits 18 and 19, would those be the
16 same defendant?

17 A. Same defendant, just different charges.

18 Q. Two separate charges?

19 A. Yes, ma'am.

20 Q. So those would be two separate convictions for
21 burglary?

22 A. Correct.

23 **MS. DAVIS:** Ms. Frick, I have no further questions
24 for you. Please answer any of the defense.

25 **THE WITNESS:** Thank you.

1 **MS. FULLWOOD:** No questions, Your Honor.

2 **THE COURT:** All right. Thank you very much, ma'am.

3 You may step down and you are not free to go.

4 **THE WITNESS:** I know I can't.

5 (Witness leaves the witness stand.)

6 **MS. RANKIN:** Your Honor, may we approach?

7 **THE COURT:** Yes, ma'am.

8 (Proceedings held at the bench; not reported.)

9 **MS. RANKIN:** Your Honor, for purposes of the
10 record, earlier I had introduced -- the clothing I had
11 identified it as State's Exhibit Number 16 and asked
12 that it be entered at State's Exhibit 17. Your Honor, I
13 would like to correct that for the record and enter it
14 as Exhibit 16, Your Honor, the clothing items.

15 **THE COURT:** All right.

16 **MS. RANKIN:** And State's Exhibit 17 for the record,
17 Your Honor, is the flashlight.

18 **THE COURT:** Okay. We kind of keep track of that and
19 we noticed there was a discrepancy there. So, for the
20 record, the clothing items will be entered as State's
21 Exhibit Number 16 and the flashlight is State's 17,
22 okay?

23 Anything further, Ms. Rankin?

24 **MS. RANKIN:** Nothing further from the State, Your
25 Honor. At this time, we rest.

1 **THE COURT:** All right. Ladies and gentlemen,
2 the State has rested their case, and I see from the
3 clock back there on the wall it's noontime. This is
4 probably a good time to break for lunch. I'm gonna ask
5 you that when you leave to go to lunch to keep the same
6 instructions in your mind as far as not having any
7 conversation with anybody about the case. Just go and
8 enjoy your lunch, kind of put your minds in neutral for
9 the trial, enjoy your lunch, and when we come back we'll
10 resume.

11 I would ask, if you would, to please be back at
12 1:30. That gives you an hour and a half for lunch. And
13 so if everyone else will remain seated, ladies and
14 gentlemen, I'm gonna excuse you at this time for lunch
15 and we'll see you back at 1:30.

16 (The jury was excused for lunch.)

17 **THE COURT:** All right. At this time I'll take
18 up any motions at the close of the State's case.

19 **MS. FULLWOOD:** Your Honor, at this time I'd move for
20 a directed verdict on both charges. The grounds for
21 this motion are that there is no credible evidence that
22 would reasonably tend to prove every element of each
23 offense charged.

24 **THE COURT:** All right. Ms. Fullwood, I'm gonna
25 respectfully deny the motion. I think it's a jury

1 issue and whatever weight or credibility the jury may
2 give the testimony. I think there's testimony in the
3 record, depending on how the jury views it, that could
4 support a verdict either of guilt or acquittal, but I
5 think the evidence is there, it just depends on how the
6 jury views it, and so I'm gonna respectfully deny your
7 motion.

8 Have you discussed with Mr. Millwood whether or not
9 the defense is gonna put up a case?

10 **MS. FULLWOOD:** Yes, sir, I have.

11 **THE COURT:** All right. And what have y'all decided?

12 **MS. FULLWOOD:** We will not.

13 **THE COURT:** Okay.

14 **MS. FULLWOOD:** Your Honor, may I move this because
15 it difficult looking at you through a triangle.

16 **THE COURT:** Yeah, thank you. I appreciate it.

17 Mr. Millwood, let me -- let me just address you with
18 regard to that issue, sir, if I may.

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** You've talked with Ms. Fullwood and
21 Mr. Casto about your constitutional rights regarding
22 either testifying or not testifying?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And you understand that every citizen
25 has the right either -- to testify, but they also have

1 the right to remain silent. You understand that?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Okay. Now let me first address the
4 right to testify. You understand that if you did decide
5 that you wish to testify, that you would have to answer
6 any questions posed by your attorneys, but you would
7 also be required to answer questions posed by the
8 State's attorneys. Do you understand that, sir?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. And I know that with regard
11 to the previous testimony, there's some evidence in
12 the record that you may have prior convictions. You
13 understand that if you were to take the stand, I would
14 not allow anybody to question you in detail about your
15 prior criminal history. They would be able to simply
16 ask whether or not you had been convicted and that's as
17 far as it would be able to go. In other words, they
18 would not be able to go into any details about those
19 convictions or sentencing or anything like that. You
20 understand that?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Now with regards to your right to remain
23 silent, you understand that a person also has the right
24 to remain silent. You've discussed that with your
25 attorneys?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Now when a person exercises their
3 right to remain silent, I instruct the jury when I
4 give them the charge on the law that that is your
5 constitutional right and that in this case you have
6 no burden of proof. The burden of proof rests on the
7 State and the fact that you've chosen to exercise your
8 constitutional right to remain silent cannot in any way
9 be considered by the jury as to the question of your
10 guilt or innocence. I would instruct the jury that they
11 could not consider that at all in their deliberations.
12 Do you understand?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** As a matter of fact, I would actually
15 take it a step further and instruct them that the fact
16 that you chose to remain silent is not even allowed to
17 be discussed in the jury room. You understand, sir?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Now it is -- Ms. Fullwood indicated that
20 pursuant to your conversations that you have decided to
21 exercise your right to remain silent; is that correct?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And Mr. Fullwood -- excuse me,
24 Mr. Millwood, you understand that any time any person
25 decides to either exercise or give up a constitutional

1 right it's important -- at least from my standpoint --
2 it's important that that is a decision that was made by
3 you and that you weren't forced or coerced or threatened
4 in any way in making that decision. It's important also
5 -- you have two outstanding lawyers with you and I'm
6 glad to hear that y'all have talked about that because
7 it is important that you discuss those things with your
8 attorneys, get their thoughts and opinions on it and
9 then, of course, you have your own opinions regarding
10 it. But what's important, and what I want to make sure,
11 is that even though you've got two good lawyers and
12 you've talked with them about this and I'm sure that
13 they've given you their thoughts regarding it, the
14 decision to remain silent, has that been your decision,
15 sir?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Has anyone else promised you anything or
18 threatened you in any way to get you to make that
19 decision?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** All right. And is that a decision that
22 you've made of your own free will?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** All right, sir. All right. And I
25 certainly respect that decision and I will instruct the

1 jury as I indicated to you earlier with regards to that
2 decision.

3 Now let me -- let me address -- and other than
4 Mr. Millwood, there are no other witnesses then?

5 **MS. FULLWOOD:** That's right.

6 **THE COURT:** All right. I don't know -- Beth,
7 I'm not sure if you were involved in that trial -- were
8 you involved in the trial we did a while back with a
9 Mr. Seay, S-E-A-Y?

10 **MS. FULLWOOD:** Was that the defendant?

11 **THE COURT:** That was defendant.

12 **MS. FULLWOOD:** No, sir.

13 **THE COURT:** The reason I'm asking is this. In
14 that case, it was the first time I've ever done it, but
15 there seems to be a move among courts here in South
16 Carolina. You know, traditionally what I've always done
17 is let the lawyers give their closing arguments and then
18 I give the charge on the law and then we send the jury
19 out, but in that case, and I'm seeing it around the
20 State now, some lawyers prefer that the Court instruct
21 the jury on the law first and then the lawyers do their
22 closing arguments. And their theory behind that is if
23 the judge gives the jury the law, then their closing
24 arguments make more sense because they argue the law,
25 whereas if they have to argue first and then I give the

1 charge on the law, it just seems to make their argument
2 more effective. There are some lawyers that prefer
3 that, other lawyers prefer the old way where you argue
4 and then I charge. And I mention that to y'all because
5 I've kind of made a decision that I throw that out to
6 the parties. If y'all don't have a preference, that's
7 fine. If you have a preference, I would do whatever
8 y'all want to do because I -- it doesn't matter to me.

9 Do y'all have any thoughts regarding whether or not
10 you want to argue first and then I charge or whether you
11 want me to charge and then you argue?

12 **MS. RANKIN:** Your Honor, the State does not have a
13 preference on that.

14 **THE COURT:** Ms. Fullwood, do you have any
15 preference?

16 **MS. FULLWOOD:** I really don't know what to say.
17 I've never even thought about that.

18 **THE COURT:** I didn't mean to throw that out of
19 no where. I should have probably told you yesterday
20 that I'm starting to at least give that option to the
21 lawyers.

22 **MS. FULLWOOD:** May I reserve the right to think
23 about it over the lunch break?

24 **THE COURT:** Yeah, yeah. We're gonna take a
25 lunch break, so you can go ahead and think about it.

1 Now regardless of whether I go first or y'all go first,
2 regarding the charge, are there any specific requests to
3 charge by the State or the defense?

4 **MS. RANKIN:** Your Honor, just that -- I mean, just
5 the usual. I mean, burglary, grand larceny. Just the
6 normal charges.

7 **THE COURT:** There's no lesser included here that
8 I'm aware of, so all I have is the standard charge on
9 burglary second and the charge on grand larceny. And
10 with regards to the charge that I have on burglary
11 second, because of the -- because of the elements --
12 one of the elements being the prior offense, what I have
13 regarding that is -- just real quick, I've got the
14 language that the State must prove beyond a reasonable
15 doubt that either the Defendant entered or remained in
16 the building in the nighttime, and I explain nighttime,
17 or the Defendant -- or find that the Defendant has a
18 prior record of two or more convictions for burglary
19 and/or housebreaking, then I go further to then discuss
20 that the evidence of any prior offenses committed by
21 the Defendant is not offered to prove that the Defendant
22 has a bad character or to prove that the Defendant
23 committed the burglary in this occasion. These prior
24 convictions may be considered by you only for the
25 purpose of determining whether or not it satisfies the

1 element of the offense that makes it a second degree
2 burglary, if you enter a building without consent to
3 commit a crime and you have two prior convictions.
4 Before you could even consider the evidence of the
5 Defendant's prior burglaries -- or prior convictions,
6 you must first find that the State has proved beyond a
7 reasonable doubt that a burglary was committed by the
8 Defendant. If you find beyond a reasonable doubt that
9 the burglary was committed, then you may consider the
10 evidence of prior convictions as evidence of one of the
11 circumstances which would make the burglary a second
12 degree burglary. If you do not find beyond a reasonable
13 doubt that the Defendant committed the alleged prior
14 offenses, then you cannot return a verdict of second
15 degree burglary.

16 **MS. FULLWOOD:** I would simply ask that you add to
17 that limiting instruction language to the effect that
18 you must not consider this evidence for any other reason
19 during your deliberations.

20 **THE COURT:** And I will -- I will make this
21 observation. When I went to the -- our judicial site
22 where we have all these charges and stuff, I went under
23 the burglary second and this -- you know, it defines
24 burglary second as the breaking into either a dwelling
25 or a building without consent to commit a crime therein

1 and then it defines dwelling and then it defines
2 building, but then this last sentence -- this last line
3 causes me concern because it said -- it was using the
4 burglary first as the aggravating circumstance. In
5 other words, the last sentence where I have if you do
6 not find beyond a reasonable doubt that the Defendant
7 committed these alleged prior offenses, in our charges
8 it says then you cannot return a verdict of first degree
9 burglary. But second degree burglary is the breaking
10 and entering into a building either in the nighttime or
11 with two prior convictions.

12 **MS. RANKIN:** That's correct, Your Honor.

13 **THE COURT:** So you've got to have -- when it's a
14 building, you've got to have one of those requirements,
15 correct?

16 **MS. FULLWOOD:** Correct.

17 **MS. RANKIN:** That's correct, to be a second B, a
18 second violent.

19 **THE COURT:** Well, I think it's second period, right?
20 Because if it's just the breaking into a building and
21 you don't have that offense, it's a third.

22 **MS. RANKIN:** It's a third degree, that's correct.
23 For the second violent it's just a building with the
24 aggravated circumstances --

25 **THE COURT:** In the nighttime or with the prior --

1 **MS. RANKIN:** -- with the first degree and then the
2 A, the nonviolent, is the dwelling in the daytime.

3 **THE COURT:** Right, right. And I eliminated that
4 altogether because that's not in the evidence, so I'm
5 just dealing with the building. Okay. And I will add
6 that language that for the purposes -- that for the
7 purposes of this trial, you may only consider those
8 prior offenses -- you may only consider them as to
9 whether or not they meet the element of having two prior
10 convictions and for no other reason.

11 **MS. FULLWOOD:** Yes, sir.

12 **THE COURT:** Okay. And then the grand larceny is
13 just the standard grand larceny charge. I have a -- I
14 have the charge for a defendant who exercises his right
15 to remain silent, I have a direct and circumstance
16 charge. There was no expert testimony in this case,
17 there's no statements or anything of that nature, so I
18 think the rest of it is just the boilerplate language
19 unless you have anything else.

20 **MS. FULLWOOD:** I would ask for an identification
21 charge, just the standard one, the eyewitness
22 identification charge, which I think is tantamount to
23 what we have in this case. Also I'd ask for a charge,
24 and it may be in your standard charge, language to the
25 effect that the State has the burden of proving the

1 identity of the Defendant as the perpetrator of the
2 crime beyond a reasonable doubt.

3 **MS. RANKIN:** Your Honor, the only thing that we
4 would say on that is that it's not -- technically he's
5 not an eyewitness in the sense that he wasn't there when
6 it happened.

7 **THE COURT:** Well, let me read you my charge on
8 identification and it may cover that. It says that
9 an issue in this case is the identification of the
10 Defendant as the person who committed the crime charged.
11 The State has the burden of proving identity beyond a
12 reasonable doubt. You must be satisfied beyond a
13 reasonable doubt of the accuracy of the identification
14 of the Defendant before you may convict the Defendant.
15 Identification testimony is an expression of belief
16 or impression by a witness. You must determine the
17 accuracy of the identification of the Defendant. You
18 must consider the believability of each identification
19 witness in the same way as any other witness. You may
20 consider whether the witness had an adequate opportunity
21 to observe the offender at the time of the offense.
22 This will be affected by things like how long or short
23 a time was available, how far or close the witness was,
24 the lighting conditions and whether the witness had the
25 chance to see or know the person in the past. Once

1 again, I instruct you the burden of proof -- I instruct
2 you the burden of proof on the State extends to every
3 element of the crime charged, and this specifically
4 includes the burden of proving beyond a reasonable
5 doubt the identify of the Defendant as the person who
6 committed the crime. If after examining the testimony,
7 you have a reasonable doubt, you would find the
8 Defendant guilty -- or, excuse me, not guilty. If you
9 have no reasonable doubt, you'd find him guilty. That's
10 basically the --

11 **MS. FULLWOOD:** That's exactly what I want, Your
12 Honor.

13 **THE COURT:** Okay. And I think that covers
14 everything regarding that.

15 **MS. FULLWOOD:** Yes, sir, it does.

16 **THE COURT:** Okay. All right. Well, I'll put that
17 together.

18 How about y'all go ahead and go to lunch. If
19 you would, if you don't mind, let's get back about 1:15,
20 then you can let me know, Ms. Fullwood, what y'all
21 prefer because I'll have to make a little bit of change
22 to the charge depending on what we decide, okay?

23 **MS. FULLWOOD:** Yes, sir.

24 **THE COURT:** All right. We'll see everybody -- and
25 when you get back at 1:15, just come on back to chambers

1 and we'll talk about that.

2 (Whereupon, a luncheon recess was taken.)

3 **BAILIFF:** All rise. Court is now in session.

4 **THE COURT:** Thank you, ladies and gentlemen.
5 please have a seat.

6 All right. While the jury is out, and so that we
7 don't have to kind of yo-yo them back and forth,
8 Ms. Fullwood, I'm gonna go ahead and recognize you for
9 any motions at the close of all the evidence now.

10 **MS. FULLWOOD:** Yes, sir. The defense rests and at
11 this time we'd renew our motion for directed verdict on
12 the same grounds as stated before.

13 **THE COURT:** All right, ma'am. Thank you very much.
14 And I will respectfully deny that motion on the same
15 grounds as earlier.

16 What I'm gonna do then is when the jury comes out,
17 I'll explain to them that we've taken up all the matters
18 of law that we need to take up and then I'll -- well,
19 first I'll bring them out and I'll recognize you,
20 Ms. Fullwood, on behalf of the defense and you can then
21 rest on the record before the jury and then I'll explain
22 to them what we're getting ready to do and I'll give
23 them the charge and then after that would recognize the
24 State and then the defense, okay?

25 Let's bring the jury in, please.

1 (Whereupon, the jury enters the courtroom.)

2 **THE COURT:** All right, folks. Before we go any
3 further, is Mr. Kenneth Tucker -- Mr. Tucker, would you
4 be so kind as to serve as the foreman of the jury for
5 me?

6 **FOREPERSON:** Yes, sir.

7 **THE COURT:** All right. I'm gonna get you, if you
8 would, to swap seats with this young lady right here,
9 and while they're doing that let me explain something
10 to you. Ladies and gentlemen, I've asked Mr. Tucker to
11 serve as the foreman of the jury, and let me just give
12 you some instruction regarding that. A foreman or
13 forelady, whoever it is, the foreperson, is basically
14 the person that the Court deals with in dealing with the
15 jury. Any time you deal with a group of folks, it's
16 easier to deal with one person on behalf of the group
17 rather than deal with everybody individually. So if
18 while you're back in deliberations or whatever, if
19 there's any questions, if you have any questions for the
20 Court or anything, if anybody does, you just, you know,
21 let Mr. Tucker know, he'll write that question out on a
22 piece of paper, pass it out to me, I'll either respond
23 by writing my response on the piece of paper and send
24 it back to you or I'll bring you out as a panel and
25 give you my response, but that's the main role of the

1 foreperson is to be the communicator between the jury
2 panel and the Court.

3 The other thing is when you do begin your
4 deliberations, any time as a group you get together
5 to deliberate, there needs to be somebody to start
6 and stop the deliberations. I will tell you that
7 while you're deliberating everyone must be present for
8 the deliberations. So that if someone has to excuse
9 themselves to use the restroom or something like that,
10 Mr. Tucker, you would then ask for the deliberations to
11 stop until that person returns and then when that person
12 returns, start back.

13 What's important for everyone to understand is this.
14 Your verdict in this case must be unanimous. You must
15 all agree on the verdict. So having said that, the
16 foreperson's vote or the foreperson's opinion carries no
17 more weight than anyone else. You're all equal members
18 of the jury. And so the fact that someone serves as the
19 foreperson doesn't give that person any more weight or
20 authority than anyone else. I tell juries all the time
21 you should all be open-minded and listen to everybody's
22 thoughts and opinions and consider those as you arrive
23 at your decision. So thank you, Mr. Tucker, for your
24 willingness to do that.

25 Now, ladies and gentlemen, if you recall, when we

1 broke for lunch the State had rested their case and so
2 now I would recognize Ms. Fullwood on behalf of the
3 defense.

4 **MS. FULLWOOD:** Your Honor, the defense rests.

5 **THE COURT:** All right. Ladies and gentlemen, when
6 we broke for lunch, Ms. Fullwood was kind enough to let
7 the Court know that the defense would be resting their
8 case and so at the close of the State's case, I took up
9 matters of law, which I am required to do, but she let
10 me know during the break that the defense was going to
11 rest because at the close of all the evidence I have to
12 take up other motions and so because she was kind enough
13 to give me that information ahead of time, I've already
14 gone ahead and taken up those motions so we don't have
15 to send you back out while I do that.

16 So we're now ready to proceed to the instruction
17 on the law and the closing arguments of the attorneys,
18 okay? So we're gonna start now with that and I'm gonna
19 come down.

20 Ladies and gentlemen, during the -- during the
21 course of the trial, I've been up at the bench, which
22 is appropriate because as I told you when we started,
23 you are the judges of the facts of this case and I'm
24 not supposed to have any influence over you with
25 regards to that duty. So the fact that I'm up there

1 and out of the way is appropriate, but we've now reached
2 the portion of the trial where you and I are in this
3 together. You as the judges of the facts and me as the
4 judge of the law, so I come down here to be with you as
5 I give you the charge on the law. I'm gonna read this
6 verbatim so that I don't misquote anything or leave
7 anything out.

8 CHARGE OF THE COURT

9 Mr. Foreman and members of the jury, it is now my
10 duty as the trial judge to instruct you on the law
11 applicable to this case. After doing so, the lawyers
12 will address you in presenting their closing statements
13 or their closing arguments. As I told you about their
14 opening statements, what the lawyers tell you in their
15 closing arguments is not evidence. The evidence in
16 this case is closed. It is the testimony from the
17 witnesses that testified from the witness stand and
18 any exhibits and stipulations or agreements of counsel
19 that came in during the trial. It is your duty as
20 jurors to accept and to apply the law as I now state
21 it to you. Furthermore, it is your exclusive duty to
22 decide all issues of fact in this case and to determine
23 the effect, value, weight and truth of the evidence.

24 Now the indictments charge the Defendant, Barry
25 Glenn Millwood, with the offenses of burglary in the

1 second degree and grand larceny over \$2,000, but less
2 than \$10,000. I remind you the fact that the Defendant
3 was arrested, charged and indicted in this case is not
4 evidence in this case and it cannot be considered by
5 you as evidence of guilt. Nor does it create any
6 presumption or inference of guilt. The indictments are
7 simply the formal written instruments which contain the
8 charges that are made against the Defendant. They are
9 the formal documents by which this case is brought into
10 court.

11 Now I'm going to give you a copy of these
12 instructions in written form to have with you in the
13 jury room. During your deliberations, you may refer to
14 these instructions to guide you in your decision-making.
15 You must consider these instructions as a whole and not
16 follow some parts and ignore others.

17 Now the Defendant has pled not guilty to these
18 charges and that plea puts the burden on the State to
19 prove the Defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove him or herself innocent. I charge you
22 that it is an important rule of law that the defendant
23 in a criminal trial, no matter what the seriousness of
24 the crime may be, will always be presumed to be innocent
25 of the crime for which the indictment was issued

1 unless guilt has been proven by evidence satisfying
2 you of that guilt beyond a reasonable doubt.. This
3 presumption of innocence does not end when you begin
4 your deliberations, but it accompanies the Defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt. The presumption of innocence is not
8 a mere legal theory, it is not just a legal phrase, but
9 it is a substantial right to which every defendant is
10 entitled unless you, the jury, are satisfied from the
11 evidence of the Defendant's guilt beyond a reasonable
12 doubt.

13 Now the State, as I said, has the burden of proving
14 the Defendant guilty beyond a reasonable doubt. Some
15 of you may have served as jurors in civil cases where
16 you were told that it is only necessary to prove that a
17 fact is more likely true than not true, such as by the
18 greater weight or the preponderance of the evidence. In
19 criminal cases, the State's proof must be more powerful
20 than that. It must be beyond a reasonable doubt. Proof
21 beyond a reasonable doubt is proof that leaves you
22 firmly convinced of the Defendant's guilt. There are
23 very few things in this world that we know with absolute
24 certainty and in criminal cases the law does not require
25 proof that overcomes every possible doubt. If based on

1 your consideration of the evidence you are firmly
2 convinced that the Defendant is guilty of the crimes
3 charged, you must find the Defendant guilty. If, on
4 the other hand, you think there's a real possibility
5 that the Defendant is not guilty, then you must give
6 the Defendant the benefit of that doubt and find him not
7 guilty.

8 I remind you that during this trial you and I have
9 certain duties to perform. As the trial judge, it's my
10 responsibility to preside over the trial of this case
11 and I also have the duty to rule on the admissibility
12 of the evidence offered during the trial. You are to
13 consider only the competent evidence that's before you.
14 You are to consider only the testimony which has been
15 presented from the witness stand, any exhibits which
16 have been made a part of this record and any
17 stipulations or agreements of counsel.

18 I have the additional duty to charge you the
19 law that is applicable to this case. As the presiding
20 judge, I am the sole judge of the law in this case and
21 it is your duty as jurors to accept and to apply the
22 law as I now state it to you. If you already have an
23 idea as to what the law is or what the law ought to be
24 and it does not agree with what I now tell you the law
25 is, you must abandon your idea because you are sworn to

1 accept the law and apply the law exactly as I state it
2 to you. In every case tried in this court before a
3 jury, the jury becomes the sole and exclusive judge of
4 the facts in this case. A trial judge cannot intimate,
5 state, comment on or make any statement to a trial jury
6 about the facts of a case. Since you, the jury, are the
7 sole judge of the facts in this case, you are not to
8 infer from what I have said during the progress of this
9 trial in ruling on the admissibility of evidence or
10 otherwise or anything that I say now during the course
11 of this instruction to you that I have any opinion about
12 the facts in this case. The law does not allow me to
13 have an opinion about the facts. This is a matter
14 solely for you, the jury, to determine.

15 As jurors, it is your duty to determine the effect,
16 value, weight and truth of the evidence presented during
17 this trial, so necessarily you must determine the
18 credibility of the witnesses who have testified in this
19 case. And, ladies and gentlemen, credibility simply
20 means believability. It becomes your duty as jurors to
21 analyze and to evaluate the evidence and determine which
22 evidence convinces you of its truth. In determining the
23 believability of witnesses who have testified in this
24 case, you may believe one witness over several or
25 several witnesses over one. You may believe a part of

1 the testimony of a witness and reject the remaining part
2 of that testimony. You may believe the testimony of a
3 witness in its entirety or reject that testimony in its
4 entirety. You may consider whether any witness has
5 exhibited to you any interest, bias, prejudice or other
6 motive in this case. You may consider whether a witness
7 is seeking a personal gain as well as the appearance and
8 the manner of a witness while on the witness stand.

9 Now I instruct you, and I emphasize, that the fact
10 that the Defendant did not testify is not a factor to
11 be considered by you in any way in your deliberations
12 and in your consideration on the question of guilt or
13 innocence of the Defendant. It must not be considered
14 by you in any manner whatsoever. A defendant has the
15 constitutional right to remain silent and the assertion
16 of this right must not be considered by you in your
17 deliberations. I repeat. Under your oath, you are to
18 draw no conclusions whatsoever from the fact that the
19 Defendant in this case did not testify. The fact that
20 this Defendant did not testify should not even be
21 discussed in the jury room. The burden of proof, as I
22 have stated to you, is on the State. The Defendant is
23 not required to prove his innocence. The burden of
24 proof remains on the State to prove guilt beyond a
25 reasonable doubt.

1 Now to prove second degree burglary, the State must
2 prove beyond a reasonable doubt that the Defendant
3 entered a building without consent with the intent to
4 commit a crime in that building. A building is any
5 structure, vehicle, watercraft or aircraft where a
6 person lodges or lives or where people assemble for the
7 purpose of business, government, education, religion,
8 entertainment, public transportation or public use, or
9 where goods are stored. Finally, the State must prove
10 beyond a reasonable doubt that either, number one, the
11 Defendant entered or remained in the dwelling in the
12 nighttime, and nighttime is the period between sunset
13 and sunrise, during which there is not enough daylight
14 to recognize a person's face except by artificial light
15 or moonlight. Or, number two, that the Defendant has a
16 prior record of two or more convictions for burglary
17 and/or housebreaking.

18 Now evidence of prior offenses committed by the
19 Defendant was not offered to prove the Defendant has a
20 bad character or to prove that the Defendant committed
21 the burglary on this occasion. The prior convictions
22 may be considered by you only for the purpose of
23 determining whether or not it satisfies that element of
24 the offense that makes it a second degree burglary; that
25 is, if you enter a building without consent to commit a

1 crime and you have two prior convictions for burglary
2 and/or housebreaking, and for no other reasons.

3 Before you can even consider the evidence of the
4 Defendant's prior burglary and/or housebreaking
5 convictions, you must first find that the State has
6 proved beyond a reasonable doubt that the burglary was
7 committed by the Defendant. If you find beyond a
8 reasonable doubt that the burglary was committed, then
9 you may consider the evidence of the prior convictions
10 as evidence of one of the circumstances which would
11 make the burglary a second degree burglary. If you do
12 not find beyond a reasonable doubt that the Defendant
13 committed these allegations -- or excuse me. If you do
14 not find beyond a reasonable doubt that the Defendant
15 committed these alleged prior offenses or that the
16 offense occurred in the nighttime, then you cannot
17 return a verdict of second degree burglary.

18 Now the Defendant is also charged with grand
19 larceny in an amount over \$2,000, but less than \$10,000.
20 The State must prove beyond a reasonable doubt that the
21 Defendant took and carried away the property of another
22 against the will or without consent of the other person.
23 The slightest removal of the property or the complete
24 possession of the property even for an instant by the
25 Defendant is enough to show a taking and carrying away

1 of the property. The State must also prove beyond a
2 reasonable doubt that the Defendant intended to
3 permanently deprive the owner of the property. Finally,
4 the State must prove that the value of the thing or
5 property taken was valued at over \$2,000, but less than
6 \$10,000.

7 Now an issue in this case is the identification of
8 the Defendant as the person who committed the crime
9 charged. The State has the burden of proving identity
10 beyond a reasonable doubt. You must be satisfied beyond
11 a reasonable doubt of the accuracy of the identification
12 of the Defendant before you may convict the Defendant.
13 Identification testimony is an expression of belief or
14 impression by a witness. You must determine the
15 accuracy of the identification of the Defendant. You
16 must consider the believability of each identification
17 witness in the same way as any other witness. You may
18 consider whether the witness had an adequate opportunity
19 to observe the offender at the time of the offense.
20 This will be effected by things like how long or how
21 short a time was that available, how far or how close
22 the witness was, the lighting conditions, whether the
23 witness had a chance to see or to know the person in the
24 past. Once again, I instruct you that the burden of
25 proof is on the State and it extends to every element of

1 the crime charged, and this specifically includes the
2 burden of proving beyond a reasonable doubt the identity
3 of the Defendant as the person who committed the crime.

4 Now, Mr. Foreman and ladies and gentlemen of the
5 jury, as you retire to begin your deliberations, I
6 wish to express to you the hope that each of you will
7 keep -- will keep and be mindful of the importance of
8 your responsibility. You're not called upon to serve
9 as jurors very often and the proper performance of the
10 duty requires each of you to reach the height of
11 freeing your mind of all improper influences. As the
12 presiding officer of this court, I am vitally concerned
13 that whatever verdict you find will be the result of
14 your going into the jury room and confining your
15 consideration to the evidence and to the law that you
16 have heard in this courtroom, weighing it fairly and
17 impartially, as I have every confidence you will do.

18 Your verdict in this case cannot be based on
19 sympathy, compassion, prejudice or emotion or some other
20 consideration that's not found in the evidence. And
21 remember, as I told you earlier, your verdict must be
22 unanimous.

23 Now in a minute -- in just a moment, I'm gonna step
24 aside and allow the attorneys to address you with their
25 closing arguments, but before I do that I'm gonna go

1 over quickly, Mr. Tucker, in the front of this notebook,
2 which will be back there with you, I've placed the
3 verdict form. And, ladies and gentlemen, it's a simple
4 form. You will simply consider each indictment
5 separately and as to burglary in the second degree your
6 choices would be either the Defendant is not guilty or
7 guilty, and then as to grand larceny the same two
8 choices, either not guilty or guilty. And, if you
9 would, Mr. Tucker, when the jury has reached a unanimous
10 verdict, if you'll just take the verdict form and mark
11 the appropriate selection and then you can sign it as
12 the foreman once you've arrived at a unanimous verdict.

13 Now, ladies and gentlemen, as I told you, that's
14 the law applicable to this case. I am going to place
15 this notebook in with the evidence and when you receive
16 the evidence, you'll have that notebook with you as
17 well, and you're not to begin your deliberations until
18 you have the notebook and all the evidence, but right
19 now I'm gonna turn it over now and recognize Ms. Rankin
20 on behalf of the State.

21 CLOSING ARGUMENT

22 **MS. RANKIN:** Thank you, Your Honor. May it please
23 the Court.

24 **THE COURT:** Yes, ma'am.

25 **MS. RANKIN:** Ladies and gentlemen, you guys just

1 heard a lot of law. I want to talk to you guys a little
2 bit about that, but I'm gonna break it up for you and
3 kind of talk about the testimony and the evidence that
4 you saw today.

5 Late at night on January 26, 2013, early in the
6 morning, 2:00 AM, January 28, 2013, the Defendant,
7 Barry Millwood, entered into Dixiana Steel into several
8 buildings and he stole welding leads, stud guns, food
9 items. The victim, Rhett Ingram, he owns Dixiana Steel.
10 You heard him testify he didn't give Barry Millwood
11 permission to be there. The business wasn't open at
12 2:00 in the morning, 10:00 at night. No one was
13 supposed to be there. Now you saw the surveillance
14 stills and you'll have these back in the jury room with
15 you. You'll be able to look at it. You'll be able to
16 look at the dates and the times. You heard the victim
17 say that he set it himself and that it was working
18 properly.

19 You heard Ken Cathey testify that the employees at
20 Dixiana Steel they can't work without what the Defendant
21 stole. That's something they noticed immediately gone.
22 They can't start work. You heard Rhett Ingram testify
23 that these things are solid copper almost, these welding
24 leads, and it's not something you can just run down to
25 Lowe's or Home Depot and put them in your cart and run

1 back to work and get started. You've got to buy new
2 ones and you've got to go through a dealer and that
3 there's not many of them. Now there's a quote that
4 you'll have back there. It's around \$7,000 to replace
5 what the Defendant stole.

6 Now he put a camera in the saw house and you heard
7 him say it's not feasible to light up the entire
8 operation. It's just not. He put it in the one
9 building that it was feasible. He put it in the saw
10 house, put it in a little box and no one could see it
11 was there, put it in the corner, flipped on the light
12 and they went home. When they got to work on January
13 28th, all of a sudden things were missing. They go --
14 they check the surveillance stills and the owner, Rhett
15 Ingram, the victim, immediately recognizes who's on the
16 stills. I think he testified that he was very, very
17 familiar with the Defendant and that he was -- no doubt
18 in his mind that that was who was on those stills.

19 Now Dell Day testified that he had a cabinet in
20 his saw house that had been broken into, the lock had
21 been damaged, and that he also had a grinder that he
22 usually kept in there, but he didn't put it in there
23 that weekend. He thought maybe that had been used. He
24 saw some food items that were missing out of it, but
25 it didn't appear to have been moved. He told law

1 enforcement about that. Investigator Williams talked
2 to Mr. Day about that grinder. He looked at it, said
3 it was dirty, it was grimy. In his professional
4 opinion, it was not suitable to lift any prints off of,
5 and that also coupled with Mr. Day saying yeah, maybe it
6 had been used, but it hadn't been -- it doesn't look
7 like it had been moved, he decided he wasn't gonna pull
8 prints, it wasn't suitable for that, and decide not to
9 include it in his report, that it was speculation, an
10 opinion by the employee.

11 Now you heard Kenneth Shearer say -- from Lexington
12 County Sheriff's Department CSI, you heard him say that
13 surface doesn't matter, but he wasn't there. His only
14 function was that flashlight. He had no function on
15 that grinder. He wasn't there, he didn't see it. He
16 wasn't on-scene, no one brought it to him, no one said
17 can you process this. Investigator Williams was
18 on-scene. He's the one that looked at it, he's the one
19 who made the decision that he didn't believe it was
20 suitable for prints, not Mr. Shearer.

21 Now the matter of the flashlight also came up.
22 Ken Cathey testified that he got that flashlight from
23 an employee, but he's not sure who it was. He testified
24 that he was very busy trying to replace the items that
25 the Defendant stole and that someone had brought it

1 to him and said that they found it somewhere on the
2 property and he told law enforcement about it. Law
3 enforcement, they don't know where he got it from
4 either. You heard Investigator Williams. He can't
5 testify to the chain. He can't say where it came from.
6 You heard Ken Cathey say that there are a lot of people
7 walking around this property all the time; employees,
8 non-employees, trucks in and out.

9 Julian Harris said that he didn't lift any prints.
10 He didn't even look for shoe prints, he didn't look for
11 tire tracks. It's a steel mill. There are people in
12 and out all the time. Tire tracks everywhere, shoe
13 prints everywhere. It's really not feasible to do that.

14 As it turns out in this case though, we don't
15 really need those things. We don't need fingerprints,
16 we don't need DNA. We don't need that CSI effect. What
17 we have is the Defendant on camera in the building at
18 10:00 at night and at 2:00 in the morning. That's what
19 we have. We've got a victim who's very familiar with
20 the Defendant, recognizes this man immediately, confirms
21 that identity.

22 You heard Investigator Williams give date of birth
23 for this driver's license photo and you heard the victim
24 verify that this is, in fact, the Barry Millwood that
25 he's talking about. He knows it. And he didn't give

1 him permission to go in that building, he didn't give
2 him permission to take his things. He didn't get any
3 of that stuff back. He had to pay to replace it all.

4 The clothing the Defendant was wearing at the time
5 of his arrest, dark navy blue jacket, white K-Swiss
6 tennis shoes. 10:00 at night January 26, 2013, dark
7 navy blue jacket, white K-Swiss tennis shoes. He wasn't
8 wearing the same hat several days later when he's picked
9 up, but those tennis shoes and that jacket, they're the
10 same. You'll have that stuff in the jury room with you.
11 You'll be able to look more closely at those photos than
12 what I've just shown you. You guys in the back might
13 not be able to see it very well, but you'll be able to
14 look at it and you'll be able to see and compare.

15 Now I told you that I was gonna talk to you a
16 little bit about the law. I'm not gonna talk that long
17 about it, but I do want to go over some things with you.
18 Burglary second degree. It's one of the charges in this
19 case. A person is gonna be Barry Millwood. He's the
20 Defendant in this case, the guy that's charged. Guilty
21 of burglary in the second degree if the person enters a
22 building. Now we've got surveillance photos that show
23 him inside a building. The Defendant's sure -- the
24 victim's sure of it. No doubt in his mind that that's
25 who's inside his building. Without consent. You heard

1 the victim testify he didn't give anybody consent to
2 be in that building. He didn't give Barry Millwood
3 permission to be in there at 10:00 at night, 2:00 in
4 the morning. With the intent to commit a crime therein.
5 He went in and he took welding leads, food, stud guns.
6 \$7,000 worth of equipment. The burglary is committed by
7 a person with a prior record of two or more convictions
8 for burglary or housebreaking or a combination of
9 either.

10 Now you heard Hope Frick from the Clerk's office on
11 the stand. She's one of the custodians of records for
12 this -- for this courthouse. She's the one who -- she
13 keeps the records. She testified that a burglary third
14 degree in 2010 is a conviction. She testified to the
15 date of birth on it, . The same date of birth
16 that Investigator Williams used and pulled up that DMV
17 photo with. The same driver's license number, ,
18 matches up. Barry Glenn Millwood, the Defendant.
19 There's a second conviction, 2007, of burglary third
20 degree. Same date of birth, , same driver's
21 license number. There are two of these convictions.

22 A building, what is it? Any person lodges or lives
23 or where people assemble for the purpose of business.
24 Dixiana Steel. It's a business. That's where people
25 are gathering for that. That is a building for purposes

1 of this burglary.

2 Grand larceny, two to \$10,000, another charge in
3 this case. The taking and carrying away. When they got
4 there on Monday morning, they didn't have the equipment
5 they needed. The Defendant took it. He took it between
6 January 26th, 10:00 at night, and January 28th, 2:00 in
7 the morning. He took that. Goods valued more than
8 2000. And this one is valued two to \$10,000. You heard
9 Rhett Ingram testify and you'll have the quote. It's
10 about \$7,000 to replace what he took.

11 Without the owner's consent. The owner is gonna be
12 the victim, Rhett Ingram. He owns Dixiana Steel. He
13 was the one that could give permission. You heard him
14 testify that he didn't. With the intent to permanently
15 deprive the owner. Nothing was returned. He got
16 nothing back. He paid to replace it.

17 You've seen the elements, you've seen the clothes,
18 you've seen the surveillance, you've heard the
19 testimony, you heard the victim say that there was no
20 doubt in his mind that it was Barry Millwood in his
21 building on January 26th and January 28th of 2013. The
22 State believes that it's met its burden. We've met
23 every element beyond a reasonable doubt.

24 When you go back into that jury room, I ask that --
25 that you carefully consider all of the evidence and you

1 use your common sense, your life experience. Those are
2 some of the most valuable things that you bring to the
3 table. Look closely at the clothes. Compare them to
4 those shots. Remember the victim's testimony how sure
5 he is. He's very familiar with the Defendant. Knows
6 him immediately. All of the evidence and all of the
7 testimony, I believe that you will be firmly convinced,
8 that you will think beyond a reasonable doubt, and the
9 State asks that you find the Defendant, Barry Millwood,
10 guilty of burglary in the second degree and grand
11 larceny two to \$10,000. Thank you for your time.

12 **THE COURT:** Thank you, ma'am. Ms. Fullwood.

13 **MS. FULLWOOD:** May it please the Court, Your Honor.

14 **THE COURT:** Yes, ma'am.

15 **MS. FULLWOOD:** If I could take a second to move
16 these things out of the way.

17 **THE COURT:** Yeah, sure.

18 **MS. RANKIN:** I'll grab them, Beth.

19 **MS. FULLWOOD:** Thank you. I appreciate it.

20 Mr. Foreman, ladies and gentlemen of the jury, when
21 Mr. Casto spoke to you this morning, he told you that
22 this case is based on a bunch of presumptions, and I'm
23 here to tell you that I think the evidence has shown
24 that he was right about that. They -- the assumptions
25 started from the time the police arrived at Dixiana

1 Steel. One branch of the police department -- the
2 sheriff's department, the road branch, assumed that the
3 investigative division was gonna process that place for
4 evidence. In fact, the -- the responding officer said
5 yes, that's our standard operating procedure. We go,
6 we write a report on the scene, we send it in to our
7 boss and an investigator is assigned immediately.
8 Mr. Williams, the investigator, came up and testified
9 oh, no, that's not how it's done. It's up to the
10 responding officer to look for evidence, to -- not to
11 exactly process the scene, but to see -- examine the
12 scene to see if there's any evidence to be found.

13 They're pointing the finger at each other because each
14 made assumptions and the bottom line is that the work
15 wasn't done and if, in fact, there was any evidence to
16 bring to you, it wasn't because nobody did that job.

17 There are a few pieces of evidence that they point
18 to, but they really don't mean anything, and I think the
19 State realizes it because part of the State's closing
20 argument was to try to convince you that those pieces of
21 evidence weren't important. Like the flashlight. Now
22 why in the world would an employee of that company go
23 out of their way to give it to their boss and their boss
24 to turn it over to the police unless they thought it
25 meant something? Well, they're trying to say there

1 was no chain of custody on that item, so it wasn't
2 important. Well, if that's the case, then why in the
3 world did Mr. Williams put it into evidence over at the
4 sheriff's department? And if that's the case, what in
5 the world is it doing in the evidence at this trial if
6 it means nothing? Mr. Williams wanted you to think
7 about that flashlight. It's no surprise that there are
8 no fingerprints on it because that surface is no good,
9 it's dirty, it's not clean, you couldn't get prints.
10 The fingerprint examiner said it didn't make a
11 difference, you could still get prints. The fact is
12 there are none. There are none. And in addition to
13 that, concerning that piece of evidence, if there is
14 the chance that that did belong to the burglar, isn't
15 there the possibility that the burglar's DNA is on it?
16 But was it ever tested for that? No.

17 The State put in evidence about a grinder that was
18 in the -- in the shop and then they turn around and
19 they're trying to tell you the police shouldn't have
20 had to process it because they couldn't have gotten
21 anything off of it anyway, it was dirty. They didn't
22 have to process the plant, the inside or the outside of
23 that cabinet that was broken into. Do you think the
24 inside of that cabinet was dirty? The point is this
25 just wasn't done and they want you to believe that they

1 assumed it couldn't be done to justify their failure to
2 do that.

3 They didn't look for footprints. They're trying to
4 tell you now well, my goodness, it was dirty, there was
5 sawdust, there was sand. Sand? My goodness. Don't you
6 think sand would be a good surface for a foot print to
7 be found in? The fact is they just didn't do it. And
8 probably part of the reason they didn't do it is they
9 both fell for well, I know who this person is.

10 The State has talked to you about these video
11 pictures and about this clothing they put into evidence.
12 Well, I tell you that I don't think that clothing means
13 a thing. They put this hat into evidence. And when
14 you have a chance to take that hat back in the jury
15 room and compare it with that hat that's in these still
16 photographs, it is not the same. It's a different hat.
17 Even if we're the same kind, so what? Don't you think
18 probably 80 percent of the people in this room own a
19 baseball hat? What's the correlation? What about that
20 hat points to Mr. Millwood? Nothing. Nothing at all.

21 Ms. Rankin told you when she was arguing well,
22 you've heard testimony that there are K-Swiss shoes in
23 these stills. I don't recall any testimony identifying
24 the brand of shoes, but you're the judges of the facts
25 regarding the evidence, so you take what you heard,

1 but in any event, you've got these shoes and you can
2 look at them and you can look at the photos and make
3 up your mind. The person in this photograph has on
4 camouflage pants. Now don't you know that the day that
5 Mr. Millwood was arrested if he had on camouflage pants
6 they would have been confiscated, but they weren't. So
7 that's a piece of -- that's something there that doesn't
8 even match up. The only thing that arguably is similar,
9 I won't even go so far as to say it's the same, but
10 similar, is this jacket. Now you've heard testimony
11 this is a Dickies jacket, a lot of people wear Dickies.
12 It's a popular brand of work clothes, casual clothes.
13 They're sturdy, they hold up. A lot of people like
14 them. Just like a baseball hat. How many people do you
15 think are running around this area with various kinds of
16 Dickies clothes on, including jackets just like this?
17 And besides -- a couple of things I want you to notice
18 in these photos. First of all, it looks like there's a
19 very, very similar blue jacket over the back of that
20 chair that's depicted in that office. I mean, that
21 just sort of goes to show how ubiquitous that type of
22 clothing is.

23 But another thing I'd ask you to notice is when
24 this jacket is in the area of that shop where it's --
25 where there's more light, it's a pretty vivid blue.

1 It's not like this faded out, frankly, kind of grungy
2 jacket here. It's a pretty -- almost indigo type of
3 blue. Ask yourself is it this kind of jacket at all
4 or is it maybe a denim jacket? That's something that
5 you're going to have to decide, but I would submit to
6 you here there is nothing in these clothes that should
7 allow you to think that they've corroborated in any way
8 Mr. Ingram's so-called identification of Mr. Millwood.

9 And they sort of say oh, well, look at his
10 appearance. He has the long hair, he has a bushy beard.
11 Well, I mean, use your common sense. That's a fairly
12 popular style for people. I mean, that's a style and
13 probably each and every one of you know or is acquainted
14 with somebody that has that style, there's nothing
15 wrong with it, and they try to corroborate that with a
16 driver's license picture of a guy who was born in 1959.
17 Ask yourself is this a recent photograph? If they had
18 really had something good to corroborate as far as his
19 appearance with the appearance in that video, don't you
20 think they would have corroborated with a photo taken
21 closer in time to the time this supposedly happened?

22 I mean, he was arrested, he was booked into the
23 jail. Where's that picture? The prosecution seems
24 to be saying to you Mr. Ingram's sure of his
25 identification, so, by golly, you ought to be, too.

1 How do you know? I mean, how do you know how good
2 this identification is? Mr. Millwood never worked for
3 Mr. Ingram, they don't socialize together, they've never
4 had a meal together. Mr. Ingram's 35, 36. Mr. Millwood
5 is born in 1959. He's 55. I'm pretty sure they didn't
6 go to school together. The State hasn't shown you any
7 basis for Mr. Ingram to have the opinion that he has.

8 But you know what? In the end, it's the twelve of
9 you who are going to have to decide beyond a reasonable
10 doubt who is the person in that picture. And I'd ask
11 you this. Would a series of blurry photographs convince
12 any of you beyond a reasonable doubt that Bigfoot or the
13 Loch Ness monster existed? I think not. And by the
14 same token, I think that these blurry photographs that
15 were taken from this camera could give you a reasonable
16 doubt and lead you to conclude that Mr. Millwood is
17 entitled to a verdict of not guilty.

18 **THE COURT:** Thank you, ma'am.

19 **MS. FULLWOOD:** Thank you, Your Honor.

20 **THE COURT:** All right. Now, ladies and gentlemen,
21 I'm gonna get you to step back into the jury room, but
22 do not begin your deliberations. I just need to confer
23 with the attorneys to make sure that the charge is
24 complete. If it is, I'll send the evidence back along
25 with the notebook and that will be your cue to begin.

1 If there's anything I need to correct or re-charge you
2 on, I'll bring you back out and do that, okay? So go
3 ahead and step back into the jury room while I take up
4 a couple of matters.

5 (The jury retires to the jury room.)

6 **THE COURT:** All right. Are there any objections or
7 exceptions to the charge from the State?

8 **MS. RANKIN:** None from the State, Your Honor.

9 **THE COURT:** Anything from the defense?

10 **MS. FULLWOOD:** No, Your Honor.

11 **THE COURT:** Okay. Folks, if y'all will get with
12 Stacy to go over and make sure that all the exhibits
13 that are supposed to be here are here and make sure
14 everything that is -- if there's anything that's not
15 supposed to go back, that we keep it.

16 **MS. FULLWOOD:** Did the circumstantial evidence
17 portion of the charge get removed from the charge?

18 **THE COURT:** Yes, it's gone.

19 Make sure they send the alternates out.

20 All right. We'll be at ease then while the jury
21 is working.

22 (The jury commenced its deliberations at 2:48 PM.)

23 (Recess taken.)

24 **BAILIFF:** All rise. Court is now in session.

25 **THE COURT:** Thank you. Please have a seat. All

1 right. Let's bring the jury in, please.

2 (The jury returns to the courtroom.)

3 **THE COURT:** All right. Ladies and gentlemen, I
4 received your questions. First, I'm gonna deal with --
5 one sheet has one question, the other one has four. I'm
6 going gonna deal with the one question first, and it is:
7 It is customary to redact the information on the prior
8 sentencing sheets? The answer to that is not only, yes,
9 it is customary to do that, but it's appropriate to do
10 it. There are certain documents that are entered into
11 evidence in various trials and the documents are
12 relevant -- depending on the document sometimes it's
13 relevant for a purpose and there's information that's
14 on a sheet that has other things on it that are not
15 admissible or not relevant and so it is appropriate to
16 redact or to block those out. So the sentencing sheets
17 that were received into evidence have been appropriately
18 redacted so that the information that's left on the
19 sheet is the information that was entered into evidence,
20 and that's what you'll consider.

21 Now on the other sheet where you have four
22 questions, three of these questions are basically asking
23 about the facts of the case, and as I told you when we
24 started the trial, I can't tell you about the facts of
25 the case, I can't give you or make comment on the facts.

1 Your first question was when was Mr. Millwood arrested
2 question mark and then the date question mark and then
3 you asked how did the victim and the Defendant know each
4 other and then you asked was he found in possession of
5 any of the items? Those all are questions about the
6 facts in the case that were either covered or not
7 covered through the testimony of the witnesses, and all
8 I can tell you is that you have to go off of your
9 collective recollection of the testimony to know the
10 answer to these questions.

11 Now I will say if you think it would be helpful, we
12 can replay certain testimony for you. We -- obviously
13 we're not gonna replay the entire trial, but if you
14 think there is a witness whose testimony you would like
15 to re-hear, we can do that. We have the capability to
16 do that, but I'm not really at liberty to answer those
17 questions for you because those are questions of fact
18 which were, as I said, either were covered or not
19 covered through the testimony that was presented. So
20 you'll need to, you know, either re-hear certain
21 testimony if you think it will be helpful or go off
22 your collective recollection of what the testimony was.

23 There's another -- then the last matter here, I'm
24 gonna actually re-charge you on this, and I want to
25 reiterate to you. I send my charge back -- not all

1 judges do is this, but I do. I sent my charge back with
2 you into the jury room and I sent that back so that if
3 you needed to review it and to use it, I want you to do
4 that, but you have a question and it says on his prior
5 two convictions what items were stolen and I'm gonna
6 re-charge you the law and I want you to listen carefully
7 because the law is very clear on the prior convictions,
8 and it's in the section on second degree burglary.

9 The first part of it talks about a burglary being
10 entering without consent with the intent to commit a
11 crime, but for it to be found in the second degree it
12 goes on to state that the State must prove beyond a
13 reasonable doubt that either one of the two, or both,
14 either way, either one of the two or both occurred.
15 Either, one, that the Defendant entered or remained in
16 the dwelling in the nighttime. Nighttime is the period
17 between sunset and sunrise during which there is not
18 enough daylight to recognize a person's face except by
19 artificial light or moonlight. Or they have to prove,
20 two, that the Defendant has a prior record of two or
21 more convictions for burglary and/or housebreaking, and
22 then I want to continue on with that charge because this
23 is what's important as it relates to that element.
24 Evidence of prior offenses committed by the Defendant
25 was not offered to prove that the Defendant has a bad

1 character nor to prove that the Defendant committed the
2 burglary on this occasion. The prior convictions may be
3 considered by you only for the purpose of determining
4 whether or not it satisfies the element of the offense
5 that makes it a second degree burglary. That is, if you
6 enter a building without consent to commit a crime and
7 you have two prior convictions for burglary and/or
8 housebreaking and for no other reasons, before you can
9 even consider the evidence of the Defendant's prior
10 burglary and/or housebreaking, those -- before you can
11 consider those convictions, you must first find that the
12 Defendant -- or, excuse me, that the State has proved
13 beyond a reasonable doubt that the burglary was
14 committed by the Defendant. If you find beyond a
15 reasonable doubt that the burglary was committed, then
16 you may consider the evidence of the prior convictions
17 as evidence of one of the circumstances which would make
18 this burglary a second degree burglary. If you do not
19 find beyond a reasonable doubt that the Defendant
20 committed these alleged prior offenses or that the
21 offense did not occur in the nighttime, then you would
22 not return a verdict of second degree burglary.

23 And that is, I think, the only way I can properly
24 respond to that question that you asked in Number 3
25 there, okay? So I'm gonna ask you to step back into

1 your jury room and to continue your deliberations and,
2 like I said, if -- you can just let me know if there's
3 any testimony you would like to re-hear or you can go
4 off your recollection, your collective recollection,
5 okay? So I would ask, if you would then, ladies and
6 gentlemen, return to your deliberations.

7 (Whereupon, the jury retires to the jury room to
8 continue its deliberations at 3:59 PM.)

9 **THE COURT:** Are there any exceptions or objections
10 to the Court's response to these questions from the
11 State?

12 **MS. RANKIN:** None from the State, Your Honor.

13 **THE COURT:** Anything from the defense?

14 **MS. FULLWOOD:** No, Your Honor.

15 **THE COURT:** All right. I'm gonna have these marked
16 as Court's exhibits, and we'll, just make them 1 and 2,
17 Stacy. Even though they sent them both out, they're two
18 separate pages, so we'll just mark them 1 and 2.

19 (Court's Exhibit Numbers 1 and 2, jury questions,
20 were marked for identification.)

21 **THE COURT:** All right. We'll remain at ease while
22 the jury continues to work.

23 (Recess taken.)

24 **BAILIFF:** All rise.

25 **THE COURT:** There was a knock and they just said

1 they had a verdict.

2 **THE CLERK:** Yes, sir. That was my understanding.

3 **THE COURT:** Let me just make the same little
4 comments I make at all cases, whether they be criminal
5 or civil. I don't know what the verdict of the jury is.
6 I just -- we were just told they had a verdict and so I
7 sit here just as you do and have no idea what it is,
8 but I do ask that the jury's verdict be received in a
9 professional manner. I don't ever ask anyone to agree
10 with the jury's verdict. I just ask you to receive it
11 in a professional manner. Now whether you agree with
12 it or whether you don't agree with it, it's just they
13 deserve to have their verdict received properly and
14 without any outbursts or any type of disturbance, so if
15 you'd, please, honor that, I would appreciate it.

16 Is the State ready to receive the jury's verdict?

17 **MS. RANKIN:** Yes, Your Honor.

18 **THE COURT:** Is the defense ready?

19 **MS. FULLWOOD:** Yes, Your Honor.

20 **THE COURT:** All right. If you will ask the members
21 of the jury to join us, please.

22 (The jury returns to open court to report its
23 verdict at 4:16 PM.)

24 **THE COURT:** Mr. Tucker, has the jury reached a
25 unanimous verdict, sir?

1 **FOREPERSON:** Yes, Your Honor.

2 **THE COURT:** All right. If you would, please, pass
3 that over to the Clerk.

4 **FOREPERSON:** (Hanging.)

5 **THE COURT:** All right, Madam Clerk.

6 VERDICT OF THE JURY

7 **THE CLERK:** Indictment 2013-GS-32-829 and
8 2013-GS-32-830, the State of South Carolina versus
9 Barry Glenn Millwood. As to the charge of burglary in
10 the second degree, we, the jury, find the Defendant,
11 Barry Glenn Millwood, guilty of burglary second degree.
12 As to the charge of grand larceny over 2000, but less
13 than 10,000, we, the jury, find the Defendant, Barry
14 Glenn Millwood, not guilty of grand larceny over 2000,
15 but less than 10,000.

16 They are both so signed by the foreperson, Kenneth
17 Tucker.

18 Mr. Foreman, ladies and gentlemen of the jury, if
19 this is your verdict, please indicate each of you by
20 raising your right hands.

21 All hands raised, Your Honor.

22 **THE COURT:** All right. Thank you very much, ladies
23 and gentlemen. I want to thank you for your service
24 this week. Oh, are there any -- any motions to take up
25 from the State or the defense?

1 **MS. RANKIN:** None from the State, Your Honor.

2 **MS. FULLWOOD:** There would be from -- from the
3 defense prior to sentencing.

4 **THE COURT:** All right. And I'll hear those in just
5 a moment.

6 **MS. FULLWOOD:** Yes, sir.

7 **THE COURT:** Ladies and gentlemen, I want to thank
8 you for your service this week. It wasn't a lengthy
9 case, but -- and it's like I told you when we started.
10 I don't know how many of you have ever sat in on an
11 actual jury trial, but it is different from what we see
12 on television. This is the real world, these are real
13 folks, and it's -- it's just different. And a lot of
14 people sometimes get a little bit surprised by the
15 difference, but I hope you do understand that whether a
16 trial lasts a day or a week or two weeks, it's still
17 very important to the parties, to the folks that are
18 here, to the Court, and your assistance with this case
19 -- these cases just don't get resolved without your
20 help, and so I want to tell you how much I appreciate
21 your work on the case.

22 As I told the group the other day, and as you know
23 now, this was the only case we had for trial, so this
24 will conclude your service and so you won't have to come
25 back any more this week. They will be sending you an

1 envelope that will include your check and a work excuse,
2 so if you need that for your employer you'll have that.
3 And as I told the other folks, if you get a summons for
4 jury duty in the next -- balance of this year or the
5 next two years, you have that exemption. If you wish to
6 be excused, you can exercise that exemption, but it's
7 only an exemption. It doesn't mean you're not qualified
8 to serve, so if you choose to serve again if you get a
9 summons, I would encourage you to do so.

10 I appreciate your work and I always -- I always tell
11 juries this because I'm about to excuse you and you can
12 do one of two things. You can leave and go about your
13 business or if you would like to, you can remain. I'm
14 going to take up some motions in just a bit, but then
15 we're gonna proceed to sentencing. And you are the ones
16 that worked the case. If you would like to remain and
17 be present for the sentencing, you're welcome to do
18 that, but if you're ready to leave and want to go about
19 your business, you're welcome to do that as well, okay?

20 So, ladies and gentlemen, what I'm going to do is
21 I'm gonna excuse you at this point. If you would like
22 to stay for sentencing, the bailiff can show you where
23 you can go around the hallway here and you can come back
24 in the back and have a seat. We're gonna take a few
25 minutes and then we're gonna proceed to sentencing. If

1 you want to be present for that, we welcome you to come
2 back into the court and listen to that, but if you're
3 ready to leave, you're welcome to do that as well, okay?

4 And, Mr. Tucker, if you don't mind I'm gonna get
5 you to meet with Hope out here so you can sign those
6 indictments, okay?

7 (Whereupon, the jury exits the courtroom at
8 4:21 PM.)

9 **THE COURT:** Ms. Fullwood, I'll be happy to hear
10 from you with regard to the motions at the close of
11 jury's verdict.

12 **MS. FULLWOOD:** Yes, sir. At this time, Your Honor,
13 I would move for a new trial. One ground for that
14 motion is all the objections I made and motions I made
15 during the course of the trial. I'd also ask to move
16 for a new trial on the grounds that the verdict in this
17 case is inconsistent. The only evidence of any intent
18 to commit a crime in the building was evidence of a
19 larceny and the testimony that was not disputed was that
20 goods exceeding the statutory amount of \$2,000 were
21 taken. By finding him not guilty of the larceny, that,
22 in fact, shows that the jury could not have found an
23 intent to commit a crime inside because that was the
24 only evidence of intent to commit a crime inside.

25 In addition to that, Your Honor, I think that the

1 fact of inconsistent verdict is instructive of the
2 manner in which this jury adhered to the Court's
3 instructions. You will recall that they asked whether
4 or not he had been -- they wanted to know what had been
5 stolen during his prior commissions for burglary --
6 prior convictions for burglary and, of course, you told
7 them that -- you re-instructed them.

8 **THE COURT:** Uh-huh.

9 **MS. FULLWOOD:** I think that indicates that perhaps
10 the conviction was -- for burglary was based on their
11 improper use of the evidence of his prior convictions,
12 not to satisfy the element of second degree burglary
13 that would make it a burglary under the B section of
14 the statute, but simply because he had these prior
15 convictions. They were interested in the larceny as to
16 the first burglary. There was no evidence of larceny,
17 then they found him not guilty of this larceny. So I
18 think there is some evidence, some indication, that
19 they were using his prior burglary convictions in an
20 improper manner; not to satisfy the elements, but as
21 propensity to find him guilty of the burglary charge in
22 this indictment.

23 **THE COURT:** Okay. Yes, ma'am.

24 **MS. RANKIN:** Your Honor, the element of the
25 burglary second is the intent to commit a crime. It's

1 not necessary for him to be convicted of that grand
2 larceny in order for them to find him guilty of the
3 burglary. They're not -- they're not on track with one
4 another. You don't need one and another. You don't
5 need that grand larceny as a conviction. Your Honor,
6 for that reason I think that the verdict is fair and
7 true on the burglary second and grand larceny because
8 you don't need that grand larceny in order to convict
9 the burglary. It's the intent to commit a crime, not
10 that he actually committed it.

11 Your Honor, as far as them using the charge in the
12 wrong way, the convictions in the wrong way, Your Honor,
13 they had a question about that, you re-charged them on
14 that. Other than questioning them as to how they used
15 it, there's no other way to do that. You re-charged
16 them on it correctly. They wanted to know what they
17 were -- what he had stolen in the prior burglaries and
18 you re-charged them emphasizing that they were to use
19 those convictions purely for those elements in the
20 burglary second, Your Honor, and there's been no
21 indication that they used them for any other purpose.
22 Just because they had a question to begin with doesn't
23 automatically streamline it into them going against what
24 you said a second time of only using it for purposes of
25 elements of that burglary second and not as -- because

1 he committed those he committed this one.

2 **THE COURT:** Okay. All right. I'm gonna
3 respectfully deny the motions for a new trial. I agree
4 with the Solicitor. The -- a jury could find that
5 someone broke into an establishment with the intent to
6 commit the larceny or whatever the crime is, but yet
7 find that the State failed in its evidence with regards
8 to the actual taking of the items. I don't think that
9 the two are mutually exclusive. I think you can -- or
10 you can have a guilty and a not guilty and I don't think
11 that indicates an inconsistent verdict.

12 As to the use of the prior convictions, again, I
13 would concur with the State's position, you know, that
14 the jury asked the question. I brought them out and I
15 re-charged them emphasizing the charge that it is only
16 to be used to determine whether or not the elements have
17 been met as to burglary and the jury then took that and
18 went back into their deliberations and found that the
19 evidence did meet that criteria and so I don't find that
20 there's any evidence in the record that the jury misused
21 that information or -- or handled it inappropriately. I
22 think it is appropriate and, therefore, I'm gonna deny
23 your motions for a new trial.

24 Anything else, ma'am?

25 **MS. FULLWOOD:** That's all, Your Honor.

1 **THE COURT:** All right. Is the State ready to
2 proceed to the sentencing portion?

3 **MS. RANKIN:** We are, Your Honor.

4 **THE COURT:** All right. And I'll be happy to hear
5 from the State with regards to sentencing, any other
6 prior history, if there is any, or any comments you wish
7 to make regarding sentencing.

8 **MS. RANKIN:** Your Honor, I think that you've heard
9 enough of the facts over the past day and a half. His
10 prior record, Your Honor, he has a 1994 criminal
11 conspiracy and a simple possession of marijuana; a 1996
12 breach of trust with fraudulent intent, value greater
13 than one thousand; a 2003 possession of drug
14 paraphernalia; 2007 burglary third degree and grand
15 larceny, 1,000 to 5,000; a 2008 criminal conspiracy;
16 2010 burglary third degree.

17 Your Honor, as far as recommendations on sentencing,
18 Your Honor, he has quite a lengthy history of breaking
19 into places and stealing things. He's got two prior
20 convictions of it. He's got grand larceny, breach of
21 trust. Your Honor, it seems to be a pattern of behavior
22 for him. The State would recommend on sentencing a
23 range somewhere between twelve and fifteen years on this
24 case, Your Honor.

25 At the appropriate time, I think the victim would

1 like to speak on sentencing and on this case, but as far
2 as the sentencing we would ask for twelve to fifteen
3 years, Your Honor.

4 **THE COURT:** All right. Ms. Fullwood, I would be
5 happy to hear from you and anyone that may wish to speak
6 on behalf of Mr. Millwood.

7 **MS. FULLWOOD:** If Your Honor please, first of all,
8 as I understand what Ms. Rankin was saying, she was
9 trying to say he had three prior burglary convictions?

10 **THE COURT:** Two.

11 **MS. FULLWOOD:** Two, yes, sir? Only two?

12 **THE COURT:** Yeah.

13 **MS. FULLWOOD:** Your Honor, as you heard,
14 Mr. Millwood is 55 years old. He is from this area.
15 He was born and raised here I think up in the Springdale
16 area. He described it to me as living out there at
17 the time when it was mostly rural and he almost led a
18 childhood like a person who grew up on a farm or
19 something. He has a brother here. His brother is a
20 law abiding citizen, never been in trouble with the law.

21 Of course, you have heard the facts of this case.
22 Your Honor, he's sort of a jack-of-all-trades. He's
23 done a variety of different types of work in
24 construction and remodeling, things of that nature.
25 The last place he worked before his arrest was at the

1 His House Ministry Thrift Store -- U-Turn for Christ
2 Thrift Store. I'm sorry. Until about a couple of
3 months before this incident he had been living out at
4 U-Turn for Christ and, you know, that's a faith-based
5 substance abuse treatment center, and then -- and then,
6 of course, he no longer lived there at the time of his
7 arrest.

8 I'd ask for a sentence substantially less than what
9 the State is recommending. I point out to Your Honor
10 that apart from some minor convictions, this man did not
11 really start getting into serious trouble with the law
12 until approximately 2007, I believe, and so, you know,
13 he was well into his forties before all this trouble
14 begins, so when you take that and the fact that he was
15 living out at U-Turn for Christ, I think it sort of
16 tells you something.

17 I will say that we have represented him -- my
18 office has represented him before on these prior
19 burglaries, and I think on probation violations, and
20 everybody at my office likes Mr. Millwood. He's always
21 very nice, he's very polite, he obviously was raised
22 well. He is well-spoken and he's just pleasant to
23 represent. It's a lot different from a lot of what we
24 see. I wouldn't presume to try to tell Your Honor a
25 range because that's within the discretion of the Court,

1 but I do think in light of the fact that while it's
2 never good to have a criminal history, in light of all
3 the cases that come before the Court his really isn't
4 that long and we'd ask for something substantially less.

5 **THE COURT:** Anything further, ma'am? Anyone else?

6 **THE DEFENDANT:** Yes, sir, may I?

7 **THE COURT:** Yes, sir. I'd be happy to hear from
8 you, Mr. Millwood.

9 **THE DEFENDANT:** Like Ms. Fullwood said, I'm 55
10 years old. I was born and raised in South Carolina in
11 Springdale. I've been a lifetime resident of Lexington
12 County. I've lived and worked here all my adult life.
13 I am a recent graduate of the U-Turn for Christ program
14 here in Lexington County. I --

15 **THE COURT REPORTER:** I'm sorry, you're gonna have
16 to --

17 **THE COURT:** If you could speak up a little louder
18 and slow down just a little bit so the court reporter
19 can hear you, okay?

20 **THE DEFENDANT:** I am a recent graduate of the
21 U-Turn for Christ program. I was there for
22 approximately two years. The program is only eight
23 months long. I've been clean and sober since April
24 of 2011. I was an overseer in the program. I was a
25 teacher in the program. I left there in November of

1 last year and then had this unfortunate episode come
2 about. I have nothing else to say. Thank you.

3 **THE COURT:** Is it a relapse?

4 **THE DEFENDANT:** No, sir. I've been clean and sober
5 since 2011. April of 2011.

6 **THE COURT:** Well, what -- I mean, how do you explain
7 this behavior?

8 **MS. FULLWOOD:** Your Honor, I would ask that in light
9 of the fact that he still has appellate rights that he
10 has to decide whether or not to exercise, I would ask
11 that --

12 **THE COURT:** You can instruct him not to answer that.
13 That's fine.

14 **MS. FULLWOOD:** Unless he wants to, I'd ask that he
15 not get into that.

16 **THE COURT:** I would not hold that against him a bit.
17 As a matter of fact, I'll -- I'll withdraw the question.
18 I was just curious.

19 **THE DEFENDANT:** I would like to say one more thing.

20 **THE COURT:** Sure. I'll hear from you, but --

21 **THE DEFENDANT:** I feel the jury was wrong. I'm not
22 guilty of this charge. That's why I pled not guilty.
23 That's why I sat in the jail for the past five hundred
24 days, today is Day 500, because I knew I was not guilty.

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

1 **THE DEFENDANT:** Thank you, Your Honor.

2 **THE COURT:** I'll be more than happy to hear from
3 Mr. Ingram or anyone else on behalf of the --

4 **MR. INGRAM:** Your Honor, I've got -- the best way
5 to put it is mixed emotions. While I do agree with the
6 jury's verdict based on what was presented, they're
7 right. There was no evidence that he actually took
8 that, but this man and his brother have plagued my
9 company for years. Since 2006 time. I've got video of
10 him and his brother going through cutting my welding
11 leads. He's reeked havoc. I've -- you know, I've
12 installed security cameras. I've done everything I
13 can lawfully to try to catch this man to stop him and
14 nothing seems to stop him. When he's in jail, my
15 business is fine, I have no problems. When he's out,
16 problems start. And he's got a past, he's got a history
17 and, I mean, I'm to my wit's end.

18 But, like I said, I don't understand -- I do
19 understand it, but your average person isn't gonna
20 understand why I can't talk about history, you know,
21 and I'll tell my wife -- or anybody's like what do you
22 mean you can't talk about the past, why can't you say
23 yeah, he -- it's almost like from a juror's standpoint
24 they think I'm hiding something, like it's fishy, like
25 why doesn't he say how he knows him, what happened, and

1 no disrespect at all, but I think the law is wrong in
2 that regard.

3 **THE COURT:** Well, I understand.

4 **MR. INGRAM:** Again, I agree with the decision
5 based on the trial and, like I said, I just got twenty,
6 twenty-five employees and when I get to work and, you
7 know, everybody's off, you know, can't do anything and
8 it just continues to happen by the same person, I just
9 -- I just want it to stop. That's all.

10 **THE COURT:** Sure. Well, and I completely understand
11 your -- your feelings on that, Mr. Ingram, and I don't
12 know that it will help, but the reason that the law is
13 the way it is, and I -- I agree with the way the law is,
14 and it's for this reason. It's meant to protect folks.
15 If you or I or Mr. Millwood and Ms. Fullwood, any of us,
16 if we're charged with a criminal offense, all of us want
17 to be judged based on the facts of that offense. Now I
18 may commit two or three burglaries in my life and be
19 guilty of those and be convicted and then on a third or
20 fourth time I may get accused again and it may not be
21 me, and I wouldn't want a jury to go well, you know
22 what, if he did it two or three times, he probably did
23 it this time, too, because the law requires that the
24 burden of proof is on the State to prove this case --

25 **MR. INGRAM:** Yes, sir, and I agree. I'm sorry.

1 **THE COURT:** -- and that's the danger in allowing
2 people's criminal histories to come out during a trial
3 because then you don't want a jury to convict somebody
4 based on past history because they're -- the charge that
5 is before the court is the one that needs to be proven,
6 and so that's the reason behind it. I understand how
7 you feel.

8 **MR. INGRAM:** I understand that. I just think that
9 should be explained to the jury. Like they should
10 understand that I'm not allowed to talk about the past.
11 Like your average person isn't gonna know that and
12 that's all I'm saying.

13 **THE COURT:** Sure. Yeah.

14 **MR. INGRAM:** I think they should be allowed to be
15 explained, you know, this guy can't talk about what's
16 happened in the past at all and they don't know that.

17 **THE COURT:** Yeah, and I understand that, and I --
18 and I appreciate you understanding it, and it's hard to
19 accept.

20 **MR. INGRAM:** And I didn't understand it until, you
21 know, what do you mean I can't tell them about anything?

22 **THE COURT:** Right. Yeah, but -- and just -- and,
23 you know, just...

24 SENTENCE OF THE COURT

25 Mr. Millwood, I appreciate your position, sir. You

1 know, I've seen the evidence, I heard what the jury
2 heard. I absolutely have no problem with their result,
3 and with all due respect, I think they did get it right.
4 I think the evidence was pretty overwhelming with
5 regards to the burglary and I understand their -- the
6 verdict that they reached with regard to the grand
7 larceny. I think they got it right is all I can say.

8 The concern the Court has is, and this is where a
9 prior history comes into play, Mr. Ingram, one of the
10 things the Court does consider when I consider a
11 sentencing range is someone's prior history because
12 until someone either pleads guilty or is found guilty,
13 that person is innocent, but once a person pleads guilty
14 or is found guilty, then I believe it's up to the Court
15 to consider all factors in sentencing and what an
16 appropriate sentence is. I don't -- just as I don't ask
17 people to accept a jury's verdict or to agree with a
18 jury's verdict, I don't ever ask anyone to agree with my
19 sentencing. I just -- all I can tell people is that
20 when I do impose a sentence I take into consideration a
21 lot of factors and at least in this one man's eyes I
22 impose a sentence that I think is appropriate for the
23 situation.

24 And everyone's different, all cases are different.
25 I'm not one of those judges that has a set sentence for

1 every burglary case that comes through because I think
2 all cases should be based on their own merit, but I've
3 got a criminal history dating back to 1994, I've got
4 prior burglaries, I've got criminal conspiracies and I
5 just think that, Mr. Millwood, you're a threat to the
6 community.

7 And on indictment 2013-GS-32-829, on the charge of
8 burglary in the second degree under the B section of
9 that statute, the sentence of the Court is that you be
10 committed to the State Department of Corrections for a
11 period of fifteen years. You're to be given credit for
12 any time that you have served on this sentence.

13 Good luck to you, sir.

14 **THE DEFENDANT:** Thank you.

15 **MS. FULLWOOD:** Thank you, Your Honor.

16 **MS. RANKIN:** Thank you, Your Honor.

17 **MS. DAVIS:** Thank you, Your Honor.

18 (End of proceedings.)
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 23rd - 24th day of June, 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 3, 2014

s/Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

Lexington County Sheriffs Department

Roy B Williams

Law Enforcement Case # 13001665

DSG

ARREST WARRANT NUMBER

2013A3211000023 (AMENDED)

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date 1/13/14**VERDICT**

GUILTY

Foreperson of Petit Jury
Date: 6/24/2014DOCKET NO. 2013GS3200829**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

THE STATE

vs.

Barry Glenn Millwood

CDR #: 0086

Indictment for

BURGLARY SECOND DEGREE
(AMENDED)

§ 16-11-0312(B)

DONALD V. MYERS, SOLICITOR**A TRUE COPY**

Lex. Co. C.C.P., C.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
BURGLARY SECOND DEGREE

§ 16-11-0312(B)

At a Court of General Sessions, convened on January 13, 2014, the Grand Jurors of Lexington County present upon their oath.

That Barry Glenn Millwood did in Lexington County, South Carolina on between the dates of January 26, 2013, and January 28, 2013, knowingly and willfully enter a building at 1544 Pine Ridge Drive (Dixiana Steel Company/Rhett Ingram), West Columbia, SC, without consent and with the intent to commit a crime therein; to wit: Larceny and the entering or remaining occurred in the nighttime and/or the Defendant has two prior convictions for burglary or housebreaking or a combination thereof, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided


ASSISTANT SOLICITOR

0-15

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VSBarry Glenn Millwood

AKA:

Race: White Sex: M Age: 55

DOB

Address

City, State, Zip West Columbia, SC 29170DL# 1 SID# 00384173*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO Burglary / Burglary (Violent) (After 06/20/85) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2013GS3200829A/W# 2013A3211000023Date of Offense 1/26/2013S.C Code § 16-11-0312(B)CDR Code # 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0312(B) of the S C Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

Cathy Roub
Solicitor78939
SC Bar#

Defendant

James C. T. ...
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C Code §17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION. ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ Set by SCDPPPS _____

Recipient. _____

*Fine

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv Surcharge)

\$100

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

§ 56-5-2995 (DUI Assessment)

\$12

§ 56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

§ 14-1-212 (Law Enforce Funding)

\$25

§ 14-1-213 (Drug Court Surcharge)

\$150

§ 50-21-114 (DUI Breath Test Fee)

\$50

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCA Surcharge)

\$5

3% to County (if paid in installments)

TOTAL

\$130.00

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd in equal, consecutive weekly/monthly
pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel§ 47-12 requires \$500 to be paid to Clerk
during probation

Presiding Judge

Judge Code

Sentence Date

2141
6-24-2014

TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF

Lexington

STATE

Barry Glenn Millwood

AKA:

Date:

Sex:

M

Age:

49

SS#:

Address:

City, State, Zip:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08-GS-32-680

A/W#: J-810051

Date of Offense: 7/19/07 - 7/20/07

S.C. Code §: 16-11-313

CDR Code #: 0427

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Burglary 3rd Degree

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code #

0427

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. B.M. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

D.M.S. [Signature]
SolicitorBarry G. Millwood [Signature]
Defendant[Signature]
Attorney for Defendant

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$15.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$125.00

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 11 14 10/4
March 13, 08

Court Reporter:

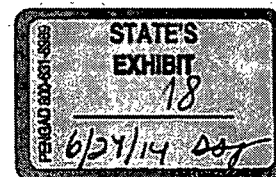
Clerk of Court/Deputy Clerk

Katharine Richardson

A TRUE COPY

[Signature]

TAX CO. C.O.P., G.S. & F.C.



STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2010GS3202651

VS.
Barry Glenn Millwood

A/W# M300933

AKA:

Date of Offense: 6/22/2010

Race: Sex: M Age: 51

S.C. Code §: 16-11-0313

SS#:

CDR Code #: 0427

Address:

City, State, Zip:

SID# 00384173

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Burglary / Burglary (After June 20, 1985) - Third degree - 1st offense

In violation of § 16-11-0313 of the S.C. Code of Laws, bearing CDR Code # 0427

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charges: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State,

ATTEST:

[Signature] 064062 *[Signature]* *[Signature]*
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

☒ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge *[Signature]*

Judge Code: 054

Sentence Date 10/4/10

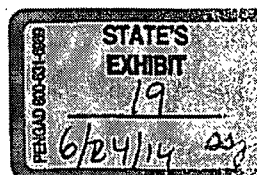
*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-288 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
\$44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 1130.00

Clerk of Court/Deputy Clerk *[Signature]*

Court Reporter: *[Signature]*

SCCA/217 (08/2010)

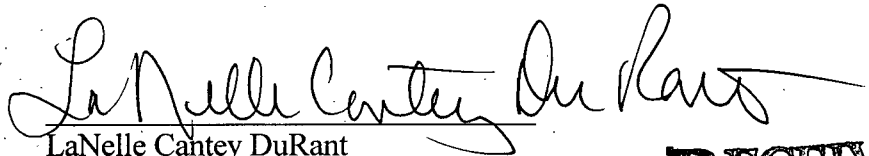
A TRUE COPY



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 5th, 2015


LaNelle Cantey DuRant
Appellate Defender

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

RECEIVED

MAR 05 2015

SC Court of Appeals

ATTORNEY FOR APPELLANT

3

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

RECEIVED

MAR 05 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

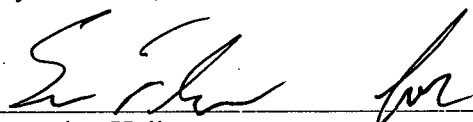
V.

BARRY GLENN MILLWOOD,

APPELLANT

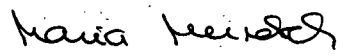
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Barry Millwood, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 5th day of March, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of March, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.