

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 17 2016

Appeal from Horry County
Deadra L. Jefferson, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

XAVIER HEMINGWAY,

APPELLANT

APPELLATE CASE NO. 2014-002603

RECORD ON APPEAL

BENJAMIN R. MATTHEWS
Matthews and Megna, LLC
3400 West Avenue
Columbia, SC 29203
803-799-1700

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

JOHNNY E. JAMES, JR.
Staff Attorney
PO Box 11549
Columbia, SC 29211
803-734-3727

ATTORNEYS FOR APPELLANT

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
PO Box 1276
Conway, SC 29529
843-915-5460

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED DECEMBER 2, 2014.....	
TESTIMONY	
TERRY ELLIOTT (JACKSON V. DENNO HEARING)	
Direct examination by Mr. Richardson.....	1
Cross examination by Mr. Joye.....	26
Court Ruling.....	34
SUSAN JACKSON FORD	
Direct examination by Mr. Richardson.....	46
Cross examination by Mr. Joye.....	73
Redirect examination by Mr. Richardson.....	76
BRANDY CAUSEY	
Direct examination by Mr. Richardson.....	77
Cross examination by Mr. Joye.....	92
SHAWN CAUSEY	
Direct examination by Mr. Richardson.....	95
Cross examination by Mr. Joye.....	104
TAREEK HEMINGWAY	
Direct examination by Mr. Richardson.....	106
LISA LIVINGSTON	
Direct examination by Mr. Richardson.....	164
Court Ruling.....	166
TERRY ELLIOTT	
Direct examination by Mr. Richardson.....	182
Cross examination by Mr. Joye.....	227
Redirect examination by Mr. Richardson.....	255
DIRECTED VERDICT.....	263
CLOSING ARGUMENT BY MR. RICHARDSON.....	264
CLOSING ARGUMENT BY MR. JOYE.....	288
CHARGE ON THE LAW.....	297

VERDICT.....	316
MOTION FOR NEW TRIAL.....	322
SENTENCING.....	325
TRUE BILLED INDICTMENTS.....	327

1 just need to know if there are any exhibits that have
2 been agreed to so I can mark and admit them.

3 MR. JOYE: Yes. I believe three through ten are
4 all the photographs from the home of the victim. And
5 we certainly don't contend that they're not -- am I
6 right in that, solicitor?

7 (Discussion off the record.)

8 MR. JOYE: I don't have any problems with three
9 and four. I think my only problem would be with one
10 and two.

11 THE COURT: So three through ten are marked and
12 admitted without objection; correct?

13 MR. JOYE: That's correct, Your Honor.

14 (WHEREUPON, State's Exhibit Nos. 3 through 10 were
15 admitted in evidence.)

16 THE COURT: One and two are marked for ID only.

17 (Discussion off the record.)

18 THE COURT: The State ready to proceed?

19 MR. RICHARDSON: Ready to go forward.

20 THE COURT: Is the Defense ready to proceed?

21 MR. JOYE: Yes, Your Honor.

22 THE COURT: Okay. You may call your first
23 witness.

24 MR. RICHARDSON: Your Honor, with regard to the
25 Jackson v. Denno hearing, the State would call

1 Detective Terry Elliott of the Horry County Police
2 Department.

3 TERRY W. ELLIOTT, after being duly sworn,
4 testified as follows:

5 CLERK OF COURT: Please be seated. Please state
6 your full name and spell your last name.

7 THE WITNESS: Terry Elliott, E-L-L-I-O-T-T.

8 THE COURT: You may proceed.

9 MR. RICHARDSON: Thank you.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q Detective Elliott, would you please tell the Court
14 where you're employed, how long and in what capacity.

15 A I work with Horry County Police Department. I've
16 been with them 29 years, and I've worked out of the
17 West Precinct in CID, criminal investigations, property
18 crimes.

19 Q Criminal investigations division, property crimes?

20 A That's correct.

21 Q And you've been in law enforcement 29 years?

22 A That's correct.

23 Q Okay. How many of those years have you been in
24 investigations?

25 A About six.

1 Q About six years in investigations. And you said
2 you were in the Western Precinct; correct?

3 A That's correct.

4 Q Could you tell us the area that encompasses.

5 A That's up around Green Sea, Mt. Olive. It's a
6 very rural area, northwestern part of the county.

7 Q Okay. With regard to that precinct, as a property
8 crimes detective, what type of crimes do you
9 investigate?

10 A House break-ins, larcenies, any property that's
11 stolen.

12 Q Okay. And these investigations, were you so
13 employed and working in your capacity working as a
14 detective in the property crimes division back in
15 April 2013?

16 A That's correct. I was working in the
17 investigation -- the investigator.

18 Q Working as an investigator, okay. In the course
19 of your duties as an investigator with the Horry County
20 Police Department, did you have the opportunity to
21 respond to --

22 MR. RICHARDSON: Court's indulgence, Your Honor.

23 Q -- to the home of -- or with regard to burglaries
24 of Susan Jackson Ford and Shawn and Brandy Causey?

25 A Yes, sir, I did.

1 Q Can you tell us where their homes are located.

2 A The Causey home is located on -- at 2551 Mt. Olive
3 Church Road in the Nichols section of Horry County.

4 And the Ford residence is located at 3618 Highway 430,
5 also in the Nichols section of Horry County.

6 Q Okay. And these were burglaries; could you tell
7 us when the -- to your knowledge, when did the
8 burglaries take place?

9 A They took place on 4/5.

10 Q April 5th, 2013?

11 A '13, that's correct.

12 Q Okay. Did you respond that day?

13 A I did not.

14 Q Okay. And so we can all be on the same page, how
15 do those types of investigations evolve, how do they
16 begin and when do you get ahold of them?

17 A Well, when a burglary, the patrol officer, the one
18 working that sector, goes to the location. And these
19 burglaries happened on, like I say, April 5th, 2013,
20 between the hours of -- they were very close together
21 -- between 11 -- the one on Mt. Olive Church Road was
22 between 11 and 3.

23 Q Okay.

24 A And the one on -- was between 11 and 4, the one on
25 Highway 430.

1 MR. JOYE: Your Honor, may I have one second with
2 the solicitor?

3 THE COURT: Yes, um-hum.

4 (Discussion off the record.)

5 MR. JOYE: Thank you, Your Honor.

6 THE COURT: Um-hum.

7 Q I apologize.

8 A Okay. Getting back to where usually the one
9 officer, officer that's working the sector that day
10 answers the alarm, or people come home and find their
11 house broken into, whichever one; whichever way it's
12 found. And normally, normally it's two or three days,
13 it might be two or three days before it gets to -- gets
14 assigned to us. But one of these residents was not a
15 mile from the precinct.

16 Q Okay.

17 A So I was assigned to it the next day.

18 Q And where is the precinct in the north end?

19 A It's at 5527 Highway 9, it's Mt. Olive Crossroads.

20 Q Okay. So it's right down the road?

21 A Right down the road from --

22 Q The Causey residence?

23 A That's exactly right.

24 Q Now, when was this case -- you said normally it
25 would be first responders that -- patrol officers that

1 initiate the case?

2 A That's correct.

3 Q And then if there are no immediate suspects, what
4 happens with the case?

5 A It's assigned. Well, if there's anything -- or
6 the property is assigned to the CID.

7 Q Okay. And how did you become associated with this
8 case and when?

9 A On the 6th it was assigned to me by Lieutenant
10 McCullough. He assigns cases.

11 Q Okay. So Lieutenant McCullough assigned this case
12 to you on or about the 6th?

13 A On the 6th.

14 Q In the course -- and the purpose of your
15 involvement was for the investigation, to determine if
16 you could find any viable suspects?

17 A That's correct.

18 Q What efforts did you take in attempting to -- and
19 briefly summarize what efforts you took.

20 A I just got to working the area around. And
21 through my investigation -- you want to learn what I
22 found or?

23 Q Yes, sir, if you could just summarize it.

24 A Just, I been working that area for 25 years, if
25 not a little bit longer. And I just, through my

1 investigation I learned Xavier Hemingway had been
2 trying to sell some guns.

3 Q Okay. And what did that tell you with regard to
4 these burglaries?

5 A Well, the house just been broken into. And the
6 only two houses in our area, and they happened the same
7 date within a couple hours of one another if not an
8 hour of one another, we don't know exactly. But, you
9 know, it's a normal thing if you get a lot of guns, you
10 be trying to sell guns.

11 Q Okay.

12 A And so...

13 Q Okay. So you used your experience that told you
14 that maybe this had something to do with the burglary?

15 A Correct.

16 Q After you heard word on the street, whatever, that
17 Xavier might be involved or your attention was drawn to
18 him, what efforts did you take to locate Xavier
19 Hemingway?

20 A Through my investigation, I learned that he had
21 been staying sometime in his father's house at this
22 address on 50 -- I think it's 5071, but let me find it
23 here and make sure. 5071 McCullough Drive.

24 Q Okay.

25 A And I asked assistance of Patrol Officer Baker to

1 go with me to the residence.

2 Q Okay. Did you find Xavier Hemingway that day?

3 A No, we didn't.

4 Q Okay. What day was that?

5 A That was on the 11th. And I went up, knocked on
6 the door, and we were getting ready to leave. And then
7 Ms. Lisa Hemingway drove up, she wanted to know what
8 was going on. And I told her what was going on, and
9 just I learned through an investigation that Xavier was
10 trying to sell some guns. We got two houses broken
11 into in the area, guns were stolen.

12 And she said that Xavier wasn't even supposed to
13 be staying there, but she had heard that he was staying
14 there some. And it was her -- it was her trailer and,
15 you know, she wanted me to search it. I said, well,
16 you know, I'll get you to sign a consent to search
17 form. But she not only wanted me to, she said if
18 there's anything stolen in her trailer, she wanted the
19 police to have it.

20 Q Okay. And we'll move on past that search that
21 day. But that was April 11th, you said?

22 A That's correct.

23 Q At any point after that search did you develop any
24 other suspects?

25 A I did. During the investigation of just on the

1 street and just around, I got information that Tareek
2 and Xavier were trying to sell a Charles Daly .45
3 caliber pistol at Charles Billings' residence in Tabor
4 City.

5 Q And certainly we couldn't talk about what you
6 heard on the street in front of the jury, but that took
7 you to Tareek Hemingway?

8 A It did.

9 Q Okay. Did you ever have the opportunity to meet
10 with Tareek Hemingway?

11 A I did.

12 Q And when and where did that take place?

13 A On 4/16.

14 Q 4/16?

15 A That's correct.

16 Q Now, and we don't need to go into everything that
17 Tareek said, he'd have to testify. But after speaking
18 with Tareek Hemingway, did he give you a statement?

19 A He did.

20 Q Implicating himself?

21 A Yes, sir.

22 Q And others?

23 A Yes, sir.

24 Q Now, and did you get warrants for Tareek
25 Hemingway?

1 A Yes, sir.

2 Q And what were those warrants for?

3 A Burglary first, grand larceny, safecracking, two
4 counts of burglary first, and I'm sure it would be two
5 grand larceny and one safecracking.

6 Q Okay. And there were -- and that happened on
7 April 16th?

8 A No. On April 17th I presented it to Judge
9 Harrelson, and he seen follow up calls for it.

10 Q Okay. So you spoke with Tareek on April 16th, and
11 on April 17th you got warrants for Tareek. Did you get
12 warrants for anybody else that day?

13 A I got warrants for all of -- for all five
14 suspects.

15 Q Okay. And was the Defendant Xavier Rayshawn
16 Hemingway one of those suspects?

17 A Yes, sir, he was.

18 Q Okay, so you obtained warrants. Same types of
19 warrants?

20 A Same for all.

21 Q Two counts first degree burglary, two counts of
22 armed robbery, one count of safecracking?

23 A That's correct.

24 Q Now, at some point after the 17th, did you have
25 the opportunity to serve those warrants on Xavier

1 Hemingway?

2 A Yes, sir. On 4/22, April the 22nd, 2013, I
3 arrested Xavier Hemingway at his -- or at 5071
4 McCullough Drive.

5 Q Okay. That's the residence you'd been to earlier?

6 A That's the residence he had been staying at some
7 time.

8 Q Now, you were there during his arrest?

9 A I was.

10 Q Did you have an opportunity to speak with him?

11 A I did.

12 Q Okay. And was he in custody at this point?

13 A Yes, sir.

14 Q No doubt about it, he was in custody?

15 A Yes, no doubt.

16 Q Y'all put cuffs on him?

17 A Yes, sir.

18 Q Okay. Now, did you have the opportunity to
19 interview him?

20 A I did.

21 Q Where did that interview take place?

22 A That took place at the West Precinct.

23 Q Okay. Now, can you -- did anybody talk with him
24 prior to getting to the West Precinct?

25 A No, sir.

1 Q To your knowledge, did anybody threaten him in any
2 way, make any promises?

3 A No, sir. There's nobody except me and him.

4 Q Just you and him?

5 A (Nodding affirmatively.)

6 Q And so you escorted him the whole way?

7 A I did.

8 Q And he was handcuffed. How was he escorted to the
9 precinct?

10 A In handcuffs.

11 Q And how far away is McCullough Drive to the West
12 Precinct?

13 A A half a mile.

14 Q Half a mile. So maybe a five-minute ride?

15 A Yes, sir, at the most.

16 Q So you arrived pretty quickly?

17 A (Nodding affirmatively.)

18 Q And this interview at the West Precinct, what type
19 of room did it take place in?

20 A It was in the courtroom. Up at the West Precinct
21 the magistrate's office and the West Precinct share the
22 same buildings. And most time we go to the courtroom,
23 you got more privacy than you have in -- because
24 there's very little bit of room in the West Precinct,
25 so we go to the courtroom.

1 Q All right. During the course of the interview,
2 was anybody else present?

3 A Curtis, Lance Corporal Curtis Thompson.

4 Q Okay. And did you or, to your knowledge, anybody
5 say or do anything to coerce this Defendant or threaten
6 him in any way?

7 A No, sir.

8 Q Make any promises of leniency or reward in any
9 such fashion?

10 A No, sir, not when I was there.

11 Q In exchange for a statement?

12 A No, sir.

13 Q Prior to speaking with the Defendant, did you take
14 any effort to figure out if he spoke the English
15 language? Did you take -- did you make any effort to
16 insure that he understood what you were saying?

17 A Oh, there's no doubt about that, we spoke the same
18 language.

19 Q Okay. Did he seem to answer your questions
20 appropriately?

21 A Yes, sir.

22 Q All right. Did the -- and you've been in law
23 enforcement 29 years?

24 A Yes, sir.

25 Q I'm assuming you've encountered people intoxicated

1 before?

2 A Yes, sir.

3 Q All right. From your years of experience, did the
4 Defendant appear to be under the influence of anything?

5 A No, sir, none whatsoever. He was -- he was
6 working on his vehicle.

7 Q He had been working on his vehicle at the time?

8 A Well, he was -- when I drove up he was up under
9 his vehicle working on it.

10 Q Okay.

11 A Or working on a vehicle.

12 Q Okay.

13 A Not sure it was his.

14 Q Okay. And did you make any efforts to figure out
15 what his mental capacity was with regard to -- did he
16 seem to be of sound mind?

17 A He -- yes, sir. I mean, he knew what was going on
18 and...

19 Q Now, prior to actually beginning the interview,
20 did you take any efforts to advise the Defendant of his
21 rights?

22 A Yes, sir, I did. I read him his Miranda rights.

23 Q All right. I'm going to provide to you what's
24 been marked as State's Exhibit 1, and you tell me if
25 you recognize State's Exhibit 1.

1 A That's the Miranda rights form that I read him,
2 and Lance Patrolman Thompson is the witness.

3 Q Okay. Keep that for a second. So this is -- no
4 doubt about it, this is the rights form that you read
5 to the Defendant?

6 A Yes, sir.

7 Q And can you demonstrate to the Court how this was
8 read to him.

9 A I always read each sentence and have them to put
10 their initials after each sentence was read. And then
11 also it has, do you understand your rights as I have
12 read them to you. And I ask them to put their initials
13 in either the yes or the no, okay. There's no doubt
14 that he understood his rights.

15 Q Okay. And can you just go through those rights,
16 and tell us what rights you advised him of.

17 A I advised him that you have the right to remain
18 silent, anything you say can be and will be used
19 against you in a court of law. And he put his initials
20 at the end of that sentence.

21 You have the right to talk to a lawyer and have
22 him present while you are being questioned. And he put
23 his initials at the end of that. If you cannot afford
24 to hire a lawyer, one will be appointed to represent
25 you before any questioning if you so desire. He

1 initialed that.

2 If you make a statement or answer any questions,
3 you have the right to stop at any time. He initialed
4 that. Then, do you understand your rights as I have
5 read them to you, and he put his initials in the yes
6 box.

7 Q Okay. And did he sign it?

8 A He did. He signed it and printed his name.

9 Q And it's dated?

10 A Dated 4/22/13 at 4 point -- 4:20 p.m. in the
11 evening. And it's got Mt. Olive magistrate's office.

12 Q Okay. And you witnessed him doing this?

13 A Yes, sir.

14 MR. RICHARDSON: Your Honor, at this time the
15 State would seek to introduce at least for the purposes
16 of this hearing --

17 THE COURT: Any exception?

18 MR. JOYE: For the purpose of this hearing, no,
19 Your Honor.

20 THE COURT: Marked and admitted without objection.
21 What number is that?

22 MR. RICHARDSON: State's No. 1, Your Honor.

23 (WHEREUPON, State's Exhibit No. 1 was admitted in
24 evidence.)

25 THE COURT: What basis would there be for an

1 objection in the State's case in chief?

2 MR. JOYE: Yes, Your Honor. As I look at the
3 statement from --

4 THE COURT: Not the statement, the form.

5 MR. JOYE: No objection to the form, Your Honor.
6 But as to the entirety of the --

7 THE COURT: Yeah, I haven't got to that point --

8 MR. JOYE: Yes, ma'am.

9 THE COURT: I'm taking it one step at a time. Is
10 there an exception -- I guess I'm trying to figure out,
11 is there an exception to the advisement of rights form?

12 MR. JOYE: No, ma'am.

13 THE COURT: Either for this hearing or for trial?

14 MR. JOYE: No, ma'am. We think the statement was
15 absolutely voluntary.

16 THE COURT: Okay. So both for the State for trial
17 and this en camera hearing; correct?

18 MR. JOYE: Well, Your Honor, that goes to the
19 whole purpose of the hearing. I don't think that would
20 come in if in fact the Court rules on the statement
21 itself and excludes it.

22 THE COURT: All right, I got you. Continue.

23 Q Now, after you advised the Defendant of his
24 rights -- and he initialed that he understood his
25 rights; correct?

1 A That's correct.

2 Q At any point did the Defendant tell you he did not
3 wish to talk to you?

4 A No, he did not.

5 Q At any point did the Defendant tell you he wanted
6 to speak to a lawyer?

7 A No, sir.

8 Q At any point did he say anything with regard to a
9 lawyer?

10 A No, sir.

11 Q Now, and you did all this prior to interviewing
12 him?

13 A That's correct.

14 Q Now, prior to reading him his Miranda rights, did
15 you tell him anything, did you speak tough to him or
16 anything like that?

17 A I just told him what we were looking at, and this
18 was very serious.

19 Q What do you mean by what we were looking at?

20 A Well, the burglary charge is -- the burglary
21 first, safecracking, grand larceny all was very serious
22 crimes, and that he needed to be truthful because it
23 weren't going to go away.

24 Q And after he signed his Miranda rights, he agreed
25 to give you a statement?

- 1 A If you call that a statement that he give, yeah.
- 2 Q Yes, sir. Yes, sir.
- 3 A That's what he wrote down.
- 4 Q Yes, sir, yes, sir. He did speak to you, though?
- 5 A Well...
- 6 Q Okay.
- 7 A He did. I'll answer that question, he did.
- 8 Q Okay. And while you were speaking with him, did
- 9 you read any other codefendant statements or anything
- 10 to him?
- 11 A I did not.
- 12 Q Okay. Did you tell him who was talking about him?
- 13 A I did not.
- 14 Q And you didn't threaten him in any way?
- 15 A I did not.
- 16 Q Okay. And was this interview, was it recorded in
- 17 any fashion?
- 18 A It was not.
- 19 Q Not audio or video?
- 20 A No, sir.
- 21 Q Did he give a handwritten statement?
- 22 A He did.
- 23 Q Okay. And you witnessed him write this?
- 24 A Yes, sir.
- 25 Q Allow me to show State's No. 2 to you. Do you

1 recognize State's No. 2?

2 A I do.

3 Q And how do you recognize State's No. 2?

4 A Because I usually filled out the top of it. And
5 then they -- they write.

6 Q Okay. And what is State's No. 2? What is State's
7 No. 2, what's that document?

8 A That's a Horry County Police Department voluntary
9 statement.

10 Q Okay. And whose statement is that?

11 A That's the statement of Xavier Rayshawn Hemingway.

12 Q And that's the written statement he gave you on
13 that day of the interview?

14 A Yes, sir, it is.

15 Q Okay. That being 4/22/2013 at 4:20?

16 A 4:30.

17 Q 4:30, okay.

18 A Yeah. I failed to sign the witness or Corporal
19 Thomas, either one.

20 Q Okay. And this is the Defendant's handwriting?

21 A He wrote it his self.

22 Q Okay. And so this is it.

23 MR. RICHARDSON: Your Honor, at this time the
24 State would seek to introduce for purposes of this
25 hearing State's No. 2 and then publish.

1 THE COURT: Any objection?

2 MR. JOYE: Your Honor, for the purpose of this
3 hearing, no. For purposes of trial, absolutely.

4 THE COURT: Um-hum, marked and admitted without
5 objection.

6 (WHEREUPON, State's Exhibit No. 2 was admitted in
7 evidence.)

8 Q Detective Elliott, could you please read the
9 entire statement for us.

10 A I'll do the best I can.

11 Q Yes, sir. Yes, sir.

12 A Don't -- don't nothing about no break-ins or no
13 robberies or whatever they say took place. Don't know
14 the name of the person I bought the -- I don't know
15 whether that's a two or three -- Xboxes from, but the
16 laptops come from a flea market in Florence. And I
17 found the three or four chokes on the side of the road
18 down the road from my -- I'm going to assume -- grand
19 momma's house in Green Sea.

20 Q Okay.

21 A And everywhere he made a mistake, I always had him
22 to put their initials over it, and in several places
23 that he...

24 Q He initialed the corrections?

25 A He initialed the corrections. And if you see the

1 corrections where he put about four places over here, I
2 was telling him they were two or three places he needed
3 to put initials, and he just went to putting them
4 straight down the line there instead of over the --
5 over the corrections.

6 Q Okay. Now, when he's talking about -- in his
7 statement he's talking about Xboxes and laptops and
8 chokes, prior to him giving this statement, what
9 information did you provide to him? You talked earlier
10 about going into a house where he had been living. Did
11 you find anything in that house?

12 A I did.

13 Q What was it you found in that house?

14 A They were three Xboxes. Let me find it on here.
15 Three black Xboxes, three laptop computers, one mini
16 motorcycle and two chokes from a 12-gauge shotgun.

17 THE COURT: And three what? I didn't understand
18 the last what you said.

19 THE WITNESS: Two chokes that go in a shotgun.

20 THE COURT: What is -- can you spell that for the
21 court reporter, please.

22 THE WITNESS: Ma'am?

23 THE COURT: Can you spell that for the court
24 reporter, please.

25 THE WITNESS: Okay. Chokes...

1 THE COURT: Because I know she's going to ask me
2 later.

3 THE WITNESS: C-H-O-K-E-S, chokes. One of them
4 was a turkey choke.

5 THE COURT: Okay.

6 THE WITNESS: It just -- it just holds a pattern
7 to your shotgun. Sometimes can hold it closer, and a
8 turkey holds -- turkey choke holds it real close.

9 THE COURT: Thank you, sir. You may continue.

10 Q And you spoke to Xavier about these. What was the
11 importance of the laptops and the Xboxes?

12 A Well, there was Xboxes and laptops stole out of
13 the burglaries. But the report didn't have what color
14 they were.

15 Q Okay.

16 A And I couldn't get up with the homeowners, at that
17 time of the day no one would answer the phone. Myself
18 and Officer Baker run all the serial numbers, but
19 nothing come back. But very seldom anybody has serial
20 numbers for their Xboxes or a lot of times TVs or
21 anything like that. Now, guns, most of the time people
22 will have the serial numbers for guns.

23 Q Okay. So the victims didn't provide you the
24 serial numbers for the property that was stolen prior
25 to this?

1 A That's correct. And they didn't even put the
2 color on the report. I wish I would have took
3 pictures, but I don't know, I didn't take pictures. I
4 wish I had, I wish I could go back and take pictures.

5 Q Okay, so you didn't take photographs. And that
6 was on the 11th of April; correct?

7 A That's correct.

8 Q And so you didn't take down serial numbers, you
9 didn't take photographs?

10 A Well, we run the serial numbers. I'm sure
11 dispatch, you know, probably we could get them from the
12 conversation.

13 Q Okay. Now, and you spoke with Xavier about the --
14 you know, you had two or three Xboxes and some laptops?

15 A Yes, sir.

16 Q At a place he identified as being where he was
17 staying?

18 A Yes, sir.

19 Q Now, when you went back to arrest him on the, was
20 it the 22nd you were at this house again on McCullough
21 Drive?

22 A Yes, sir.

23 Q Did you search the house that day?

24 A No, sir, I didn't.

25 Q Okay. Did you ever enter that house again?

1 A I did.

2 Q All right. Do you know when that was?

3 A I don't have that date in the -- Ms. Hemingway,
4 Lisa was there. And I told her that I had got the
5 colors of the things, and some of them -- some of them
6 had -- I say match the description of coming -- I ain't
7 going to say came from the burglary. Some of them
8 matched the description of the ones that had come from
9 some of the burglaries. But everything was gone.

10 Q Okay. And that was after the 11th?

11 A That was after -- that was after the 11th, that's
12 correct.

13 Q Okay. So these items were there on the 11th, they
14 were gone by the time you returned?

15 A (Nodding affirmatively.)

16 Q Now, and basically Xavier stated that he had some
17 laptops and some Xboxes at his place; correct?

18 A Correct.

19 Q That's what he said to you?

20 A That's correct.

21 Q All right. Did he make any further statements to
22 you that morning?

23 A No. What he -- what he wrote there is he didn't
24 know nothing about nothing about the break-ins.

25 Q Okay. And after he made the statement, what

1 happened to the Defendant?

2 A He was taken to jail.

3 Q Okay. And once again, prior to him giving this
4 statement, did anybody threaten him in any way?

5 A No, sir.

6 Q Prior to him giving the statement, did anybody
7 make him any promises, any promises of award or
8 leniency?

9 A No, sir.

10 Q Coerced in any way?

11 A No, sir.

12 Q Withhold bathroom breaks or food?

13 A No, sir.

14 Q Did he ever ask for an attorney?

15 A No, sir.

16 Q Did he ever ask to cease talking?

17 A No, sir.

18 MR. RICHARDSON: Thank you, Detective Elliott.

19 Please answer any questions Mr. Joye may have.

20 THE COURT: Any questions for the witness?

21 MR. JOYE: Yes, Your Honor.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. JOYE:

25 Q Do you have your list, do you have your incident

1 report?

2 A I do.

3 Q Now, from Ms. Ford's house a Toshiba laptop was
4 stolen?

5 A Let me find it. I got all these.

6 MR. JOYE: Your Honor, if I may, maybe I can help
7 him a little bit.

8 THE WITNESS: I think I got what I need to get.

9 Okay, I'm at point one.

10 Q All right. And a Toshiba laptop was stolen from
11 Ms. Ford's on the 5th?

12 A Well, let me look here and see. Because she kept
13 finding different things, because her house was a
14 rummage, and she kept finding different things. Let me
15 look and see what was reported. Okay, on the point
16 one, a Toshiba Satellite, 16.5-inch lap computer,
17 that's correct.

18 Q And I believe she gave you, either
19 contemporaneously or later, she gave you a serial
20 number on that laptop, that would be the next day, on
21 the 6th?

22 A I don't see nothing on that on the 6th. The
23 report's -- report on the 6th, if she reported
24 anything, was to Officer Williams which was the
25 responding officer that day, the day on the field. And

1 I don't see where she's provided him with no -- other
2 than -- no, no additional serial numbers was provided.

3 Q Yeah. But on the 5th she provided that -- if
4 you'll look at page three of the packet.

5 MR. JOYE: Your Honor, if I may.

6 THE COURT: Um-hum.

7 Q This would be --

8 A I'm familiar with it.

9 Q Yes, sir. All right. This is the initial report;
10 correct?

11 A That's the point one, okay, That's the point one.

12 Q All right. A Toshiba laptop computer with serial
13 number provided on that date; correct?

14 A According to that, let me make sure. I mean, I'm
15 sure it's there, but I just want to make sure.

16 Q Sure, I understand that. And I don't want you --

17 A Okay, it is on that, it is on that. But I didn't
18 do that, Officer Williams done that.

19 Q No. But clearly, that's what she reported as
20 being stolen?

21 A Correct.

22 Q A Toshiba laptop with serial number?

23 A Um-hum.

24 Q She also reported money being stolen?

25 A That's correct. That was on the first morning.

1 Q Right. And she reported Acer notebook computer;
2 in other words, another laptop, an Acer computer?

3 A What point have you got there? I don't see it
4 here.

5 Q I just actually wrote down a list, so I apologize,
6 but I did go --

7 A Okay. I mean, the reason I say, I don't have
8 nothing else on the point one. The point two, now let
9 me see if I can find that on the point two. Okay, it's
10 on the point two, a Acer, that's right.

11 Q And that was when he took -- that was on the 6th
12 when she got back in touch with a more exhaustive list?

13 A Well, that's when she had some more property
14 that --

15 Q Right. She came back to you and said, okay, I've
16 done a real inventory, and not you personally but
17 another officer of Horry County Police?

18 A Well, Larry was the responding officer, and he
19 worked the 5th and the 6th. And then after he was off
20 and I had -- she realized I had been assigned the case,
21 then she started calling me and adding the stuff to it
22 instead of the officer because she knew --

23 Q Okay. But on the 6th, that was Larry Williams?

24 A That's correct.

25 Q And she reported an Acer notebook computer. That

1 would be a laptop; wouldn't it?

2 A I'm going to say it would.

3 Q Okay. And she also reported a Kindle Fire?

4 A That's what the report says.

5 Q And Apple iPod?

6 A That's on the report.

7 Q A cell phone, an iPhone 4 cell phone?

8 A That's on the report.

9 Q A Remington 243 with a scope?

10 A Correct.

11 Q Another Marlin rifle?

12 A 444 with a scope.

13 Q Right. A Remington .22 long rifle?

14 A That's right. One of these -- I believe that was
15 the gun when she went to get the serial number for it,
16 I believe she found out it was a Marlin. I believe I
17 was reading some reports.

18 Q Okay.

19 A I believe a report I done later I changed it in
20 RMS to a Marlin, I think.

21 Q Okay. A Canon camera EOS-DSLR?

22 A Yeah.

23 Q A 55-inch VIZIO TV?

24 A Correct.

25 Q A Sanyo 50-inch flat screen TV?

1 A Um-hum.

2 Q A Sanyo 26-inch TV-DVD?

3 A Correct.

4 Q A VIZIO 32-inch TV?

5 A Correct.

6 Q A VIZIO Blu-ray player?

7 A Yes.

8 Q Miscellaneous collectible knives, she had a knife
9 collection; didn't she, or she is and her husband,
10 or -- they had a knife collection she reported stolen;
11 didn't she?

12 A I assume, it's on the report, I assume that, you
13 know.

14 Q Yeah, okay. Smokey topaz ring?

15 A That's on the report.

16 Q A Citizen watch?

17 A That's correct.

18 Q Silver key necklace?

19 A That's correct.

20 Q A silver turtle Abalonian shell necklace?

21 A Okay, that's correct. That's on the report.

22 Q Pearl necklace?

23 A Um-hum, that's right.

24 Q Silver cultured pearl necklace, starfish, I think
25 it said?

1 A Starfish, that's right.

2 Q An Xbox 360 with a controller?

3 A That's correct.

4 Q A second Xbox 360 with connecting controllers? I
5 don't know what that is, but I'm sure my 16-year-old
6 does, though.

7 A If you'll notice here, for some reason the color
8 of it was not put in the report, that's what I was
9 telling you earlier.

10 Q Yes.

11 A There's no color put in the report.

12 Q Right, right.

13 A Okay.

14 Q You would agree with me there were two Xbox 360's,
15 or that's what the report tends to say?

16 A That's what my paper says.

17 Q Yeah, okay. I just want to make sure we are on
18 the same page. A Wii game system?

19 A Correct, that's what the paper says.

20 Q Miscellaneous Xbox games?

21 A Correct, that's what's on the report.

22 Q A PSE compound hunting bow?

23 A That's correct.

24 Q A Fossil Gamecock watch?

25 A You must be somewhere else now.

1 Q Yeah, I think that's that she came back another
2 time and reported more stuff.

3 A Yeah, we getting to the report here where I done
4 this report, okay. Yeah, two Gamecock watches, that's
5 right.

6 Q Now, that started the third time she came back to
7 you; didn't it?

8 A It's the first time that --

9 Q That you took a report?

10 A This is the first time I done the report.

11 Q And what date was that?

12 THE COURT: Mr. Joye, I'm going to -- I don't mean
13 to interrupt you, but this is a Jackson versus Denno
14 hearing, so I'm trying to figure out what is this line
15 of --

16 MR. JOYE: Well, Your Honor, the first thing, I
17 guess, that I'm trying to get to is this. If you look
18 at --

19 THE COURT: I need to know about the voluntariness
20 of the statement. That is the purpose of this hearing.

21 MR. JOYE: Yeah, well, I said the voluntariness
22 statement. But the statement itself is not in
23 admission, so I don't know on what grounds they are
24 trying to offer it into evidence.

25 THE COURT: Then I need you to stick to those

1 questions, because the purpose of this hearing is not
2 discovery, so we need to wrap it up. These questions
3 may be germane to another issue in another motion.

4 MR. JOYE: Okay.

5 THE COURT: But we're doing a Jackson versus Denno
6 right now. I need you to stay on target.

7 MR. JOYE: Okay. All right, Your Honor. I'm
8 sorry, I thought I would lay all these grounds for
9 later, but that's fine. Your Honor, I certainly say
10 that the statement is voluntary, I've never contested
11 that.

12 THE COURT: I don't need you to make argument. If
13 you have more questions for the witness, I need you to
14 ask them.

15 MR. JOYE: No, I have no further questions, if
16 that's where the Court's...

17 THE COURT: Is there any redirect of the witness?

18 MR. RICHARDSON: No, ma'am, Your Honor.

19 THE COURT: And what was the purpose of this line
20 of questioning, Mr. Joye?

21 MR. JOYE: Your Honor, they want -- the State
22 wants to offer this statement, this voluntary
23 statement, in as a statement against interest. But
24 quite clearly they are trying to do it under character
25 evidence and test his character based on the fact.

1 that --

2 THE COURT: Let me cut to the chase for you. Can
3 the victims identify these items and tie them to the
4 robberies that occurred at their houses?

5 MR. RICHARDSON: Your Honor, they --

6 THE COURT: Did you all have them look at the
7 items and identify them?

8 MR. RICHARDSON: They did not have the items, Your
9 Honor.

10 THE COURT: Who did not have the items?

11 MR. RICHARDSON: The items, Detective Elliott
12 didn't take them that day.

13 THE COURT: So what happened to them?

14 MR. RICHARDSON: He didn't feel he had sufficient
15 information. When he got a more full description that
16 they were actually black Xboxes that were taken from
17 Ms. Ford --

18 THE COURT: Well, I never knew Xboxes came in any
19 other color.

20 MR. RICHARDSON: They do. They come in white and
21 gray, Your Honor.

22 THE COURT: Do they really?

23 MR. RICHARDSON: Yes.

24 THE COURT: I just learned something new today.
25 All right. Xbox 360 comes in three different colors?

1 MR. RICHARDSON: That is my understanding, yes,
2 ma'am. I've seen them in white, I know that.

3 THE COURT: Okay.

4 THE WITNESS: So that's why I wish I would have
5 took pictures of them.

6 MR. RICHARDSON: I just know because I been
7 looking.

8 THE COURT: All right. I had no idea. I thought
9 Xbox and Xbox One only comes in black.

10 MR. RICHARDSON: Xbox One, I don't know.

11 THE COURT: That's the newest one that everybody
12 wants. And the Xbox 360 I thought only came in black,
13 but maybe it comes in other colors, I don't know. My
14 knowledge is limited.

15 MR. RICHARDSON: Yes, ma'am. I believe Detective
16 Elliott went back and spoke with her, and I've spoken
17 to Ms. Ford, and she says that --

18 THE COURT: So back to the original question,
19 where are the items in question that supposedly were
20 seen at this residence?

21 MR. RICHARDSON: As Detective Elliott said, he
22 went back to try and locate them after getting a more
23 full description, these are black Xboxes.

24 THE COURT: Um-hum.

25 MR. RICHARDSON: He thought he had probable cause

1 to take them at that point. And they were gone at that
2 point, Your Honor.

3 THE COURT: Okay. So tell me why any of what he
4 said would be relevant.

5 MR. RICHARDSON: They do match up with the
6 description of what was stolen seven days before from
7 doing the math, six days before, Your Honor. The house
8 in question the Defendant was staying in is within
9 three miles of where the property was stolen. And I
10 believe testimony will become relevant during the
11 course of the trial after Mr. Tareek Hemingway
12 testifies about what happened with the property and how
13 it got divided up, Your Honor, and what was stolen.

14 THE COURT: If Mr. Tyreek Hemingway testifies, in
15 other words, he provides the causal link --

16 MR. RICHARDSON: Yes, ma'am.

17 THE COURT: -- between the property and the
18 statement?

19 MR. RICHARDSON: Yes, ma'am.

20 THE COURT: Okay.

21 MR. RICHARDSON: Because that's...

22 THE COURT: All right. In light of that, Mr.
23 Joye, do you have any additional questions regarding
24 the admissibility of the statement?

25 MR. JOYE: No, Your Honor. But clearly the

1 statement itself is not a statement against the people
2 interest.

3 THE COURT: It's a statement against interest if
4 Mr. Tyreek Hemingway testifies and provides the causal
5 link that he and your client stole the stuff.

6 MR. JOYE: Yeah. But the statement, his
7 statement -- they are putting his character in evidence
8 under 404(b), and clearly that --

9 THE COURT: They are not putting his character in
10 evidence. If they could not provide a causal link
11 between the items, yes, because that would be a prior
12 bad act and not the subject of a conviction, which they
13 would have to prove by clear and convincing evidence,
14 which is a separate incident.

15 But if Tyreek testifies and says that my cousin
16 and I went to these houses, and this is what we stole,
17 and this is where we stored it, and this is where we
18 took it from these houses, and this officer saw it,
19 your client inculcates himself by that statement, and
20 it becomes relevant. But it would have to -- we'd have
21 to go down that road if Mr. Tyreek testifies, as the
22 State has represented.

23 MR. JOYE: Well, the State -- I guess my point is
24 this, judge. The statement says, I don't know anything
25 about it. So if he doesn't know anything about it,

1 then I don't know how it's a statement against
2 interest.

3 THE COURT: Well, that's taking -- that's
4 isolating one sentence and taking it out of context
5 from the State.

6 MR. JOYE: Well, judge, if you don't mind, Your
7 Honor --

8 THE COURT: Sure.

9 MR. JOYE: Where is that -- his statement?

10 THE COURT: Sir, you may step down. The attorneys
11 don't have any further questions of you at this time.

12 (Witness excused.)

13 MR. JOYE: Your Honor, the statement says, I don't
14 know anything about break-ins or no robberies or
15 whatever they say took place. Don't know the name or
16 the person I bought the Xbox from or the laptops came
17 from.

18 In fact, they had a serial number on one laptop.
19 They didn't -- they can't even say the name brand of
20 the X -- of the laptops, they never took pictures of
21 them, they never had anybody identify them. And now
22 we're going to try to use that to tie them to an --

23 THE COURT: I understand that. But my ruling
24 stands, which is if Tyreek testifies that he and his
25 cousin took these items, that they stored them at this

1 trailer and the officer says, we saw them there, and he
2 can sufficiently identify them, irregardless of the
3 list, Tyreek Hemingway provides the causal link that
4 ties them to your client. And your client's statement
5 says, I bought them someplace else, that's how that
6 they came into my possession. That inculpatates him.
7 That leaves for the jury to determine whether he was
8 being truthful or not, which is an inference. People
9 often say I didn't do something when they did in fact
10 do it. So at this point --

11 MR. JOYE: Okay.

12 THE COURT: -- it is not admissible subject to
13 Mr. Hemingway testifying that he and his cousin took
14 these items. Without that causal link, there is no
15 relevance --

16 MR. JOYE: Thank you, Your Honor.

17 THE COURT: -- and it is not inculpatory.
18 However, we do anticipate that Mr. Hemingway is going
19 to testify consistently, although we never know how
20 people are going to testify when they get on the stand,
21 I stopped trying to -- half the time people don't
22 testify the same way in the case in chief as they did
23 in camera. I don't know why that is, I guess just the
24 nature of human beings.

25 But at this point without that link, we don't know

1 where the property came from, we don't know who it
2 belonged to. But if Mr. Hemingway testifies that he
3 and his cousin took this property and that they stored
4 it at this trailer, it is relevant. And it is a
5 statement against interest, and it does inculcate him,
6 and it does come in. Because you all don't contest the
7 voluntariness of the statement and that he was
8 appropriately Mirandized.

9 MR. JOYE: Yeah, I don't -- we don't -- we don't
10 challenge the voluntariness of the statement. I would
11 ask that we have an in camera hearing to see what --

12 THE COURT: I'm not having another in camera
13 hearing, I've already had an in camera hearing.

14 MR. JOYE: Well, Your Honor, I think we're going
15 to have to proffer that testimony so that we don't
16 know -- we don't know where Mr. Hemingway --

17 THE COURT: Oh, no, you don't get to do discovery
18 on a witness. It comes out as it comes out, you make a
19 contemporaneous objection. I'm not proffering his
20 testimony as to what he's going to say against your
21 client.

22 MR. JOYE: Well, that was the purpose of my moving
23 to exclude any reference because we can't un-ring that
24 bell if he says something, and --

25 THE COURT: That's the purpose of codefendant and

1 accomplice liability, they are going to say something
2 that's going to hurt you. Otherwise, they wouldn't be
3 calling him to testify.

4 MR. RICHARDSON: Your Honor, it was my intention
5 to call Mr. Tareek Hemingway prior to calling Detective
6 Elliott.

7 THE COURT: Oh, I misunderstood, were you -- I
8 already -- I thought I was clear. Until they can
9 provide some causal link, it can't come in.

10 MR. JOYE: Right, right, right. Well, I just --

11 THE COURT: You confused me, I thought you were
12 talking about something else.

13 MR. JOYE: No, ma'am, no, ma'am. I just wanted to
14 make sure that if this detective testifies --

15 THE COURT: I don't think I was vague. I think I
16 was very clear, unless there is some causal link, it
17 doesn't come in.

18 MR. JOYE: Thank you, Your Honor.

19 THE COURT: Yeah. All right, we ready to go
20 forward? Are there any other pretrial motions that
21 require testimony that we need to explore before
22 proceeding?

23 MR. RICHARDSON: I do not believe so, Your Honor.

24 THE COURT: From the Defense?

25 MR. JOYE: No, Your Honor.

1 THE COURT: Now, there was some reference to -- I
2 think that takes care of both pretrial motions; doesn't
3 it, because you were talking about not making reference
4 to these items as they would not be relevant?

5 MR. JOYE: Right.

6 THE COURT: As we discussed earlier.

7 MR. JOYE: Because no one can -- no one can
8 identify --

9 THE COURT: I just want to make sure we've covered
10 every pretrial matter prior to openings that we
11 discussed before we broke for lunch. I want to make
12 sure we didn't miss anything.

13 MR. JOYE: I can't think of anything else, I
14 mean --

15 THE COURT: Because there's no Biggers issues on
16 identification; correct?

17 MR. RICHARDSON: No, ma'am, Your Honor.

18 MR. JOYE: No, ma'am.

19 THE COURT: So only thing we have is the statement
20 and the fruit basically of the search of this trailer,
21 that the owner basically requested the police make a
22 search?

23 MR. JOYE: That's correct.

24 THE COURT: All right. Now, when do you plan to
25 call Mr. Hemingway as a witness?

1 MR. RICHARDSON: I will probably call him tomorrow
2 morning, Your Honor.

3 THE COURT: Is he in custody?

4 MR. RICHARDSON: He is in custody. And I was
5 trying to get up, Mr. Caraker went back, I was trying
6 to get my first responding officer so that it would
7 make some chronological sense to the jury. So as not
8 to confuse the jury, I want to call the responding
9 officers first. As I stated, Your Honor, it is my
10 error for not having them here this afternoon. I was
11 under the assumption we would not begin until tomorrow.
12 And I understand that is my error, I apologize to the
13 Court for that.

14 THE COURT: Let's take a quick restroom break, and
15 then we'll start with opening arguments and opening --
16 well, opening instruction and opening arguments. I
17 would caution you all to make no reference to his
18 statement until the appropriate foundation is laid and
19 the Court has made a contemporaneous ruling as to the
20 admissibility of the statement.

21 MR. RICHARDSON: Yes, ma'am, Your Honor.

22 MR. JOYE: Yes, Your Honor.

23 THE COURT: All right. We'll be out for as long
24 as it takes y'all to refresh yourselves.

25 (WHEREUPON, a brief recess was taken at 2:12 p.m.)

1 also.

2 THE COURT: 28 is without objection.

3 (WHEREUPON, State's Exhibit No. 28 was marked for
4 identification only.)

5 (WHEREUPON, State's Exhibit No. 28 was admitted in
6 evidence.)

7 THE COURT: State ready?

8 MR. RICHARDSON: The State's ready, Your Honor.

9 THE COURT: Is the Defense ready to go forward?

10 MR. JOYE: I'm sorry, Your Honor.

11 THE COURT: That's okay. Ready to go forward?

12 MR. JOYE: Yes, Your Honor.

13 THE COURT: Okay. And just so that counsel is
14 aware, I do not take speaking objections which means if
15 you have an objection, you should be able to state it
16 succinctly for me whether it's foundation, relevance,
17 the myriad of objections that we have available. If I
18 need argument, I will excuse the jury and take up
19 argument; otherwise, I'll rule contemporaneously with
20 the objection.

21 MR. RICHARDSON: Thank you, Your Honor.

22 THE COURT: All right. Please bring in the jury.

23 (WHEREUPON, the jury came into open court at
24 approximately 9:48 a.m.)

25 THE COURT: Good morning, ladies and gentlemen. I

1 hope everyone had a pleasant and restful evening.

2 We're now going to resume testimony. I would ask that
3 you give the attorneys your attention. The State may
4 proceed.

5 MR. RICHARDSON: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. RICHARDSON: The State would call Susan
8 Jackson Ford.

9 SUSAN JACKSON FORD, after being duly sworn,
10 testified as follows:

11 CLERK OF COURT: Please be seated. Speak into the
12 microphone, state your full name and spell your last
13 name.

14 THE WITNESS: Susan Jackson Ford, F-O-R-D.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q Ms. Ford, could you please tell us a little bit
19 about yourself, where you're from, where you live, what
20 you do, so forth.

21 A Susan Jackson Ford. I grew up in Mullins, South
22 Carolina, moved over to the Duford section of Horry
23 County in 2000 with my late husband and our first son.
24 I'm a nurse by trade, and after the passing of my
25 husband decided to be a stay-at-home mom with my two

1 kids, two boys. And I have recently remarried and
2 still a homemaker.

3 Q So your main focus is on your children now, taking
4 care of them at home?

5 A Correct, yes.

6 Q Okay. Well, I appreciate you being here today and
7 taking time away from that.

8 A Thank you.

9 Q And when you say Duford, that's Duford, Nichols?

10 A It's Nichols for postal purposes, Duford
11 community. My children go to Green Sea, so most of the
12 time I'm asked I'm from Green Sea.

13 Q Okay. I just know some people may not be familiar
14 with the west part of the county. I just want to make
15 sure we all knew what we're talking about.

16 A That's right, that's right.

17 Q Now, your home Nichols for postal purposes?

18 A Um-hum.

19 Q Where is that located?

20 A I'm off of 430 which is right off of nine, about a
21 mile off of Highway 9.

22 Q And you said you moved there in 2000?

23 A Moved there in 2000.

24 Q Okay. So you've been there for about 14 years?

25 A Um-hum.

1 Q Now, you live there, you're remarried now?

2 A I am remarried, um-hum..

3 Q How about back in April of 2013?

4 A Okay. I was not remarried. I was about two,
5 three weeks away from getting married.

6 Q Okay. So at that time who all was living at your
7 house?

8 A Just me and the two sons.

9 Q Okay, your two boys and yourself?

10 A Right.

11 Q And could you describe the house for us.

12 A Brick home, one story, three bedrooms, two baths.

13 Q Let me show you what's been previously marked and
14 admitted into evidence State's-17 through 27, see if
15 you recognize those photographs, please, ma'am.

16 A Yes, sir. This is the home that we built.

17 Q And that's just from different areas?

18 A Front and back, sides, yes, sir.

19 Q Different aspects, I guess I should say?

20 A Right.

21 Q And these are more recent photographs; correct?

22 A Correct.

23 Q These were taken just last week on Thanksgiving?

24 A Yes.

25 Q Now, is the house as it sat, well, a week ago

1 tomorrow, is it pretty much in the same state as it was
2 back in April of 2013?

3 A Yes.

4 Q With regard to the layout and whatnot?

5 A Yes, yes. Everything is the same, yes.

6 Q So as we look at State's-17, what are we seeing
7 here?

8 A This is a, I guess you'd call it a side angle of
9 the house and carport.

10 Q Okay. Is that -- the side angle, is that the
11 front door there or the side door?

12 A This is the front door (indicating).

13 Q Okay, that is the front door?

14 A Yes, sir.

15 Q Okay. And then on State's-19, what do we see?

16 A Um-hum. This is a back angle looking across the
17 carport in the back of the house.

18 Q Okay. And there appears to be a stairwell there?

19 A There is.

20 Q Where does that stairwell lead to?

21 A It goes up onto a screen porch which has French
22 doors that lead to the inside of the home.

23 Q This a little bit better photograph on No. 20?

24 A Correct, um-hum.

25 Q Now, and you said that that screen porch is on the

1 back side of the home?

2 A Right, yes.

3 Q Now, as we go through, we got 21, fingers are a
4 bit thick, I believe. As we look at State's-22, what
5 are we seeing there?

6 A It's a back angle of the house.

7 Q Okay. And this pavement, what is that?

8 A That's a driveway.

9 Q Okay. So you have driveway wrapping around the
10 back side of your house?

11 A Um-hum.

12 Q And going all the way down the side of your house?

13 A Right. Pretty much a circular drive.

14 Q Okay.

15 A You can drive all the way around.

16 Q And the Highway 430, where is that with relation
17 to State's No. 22?

18 A To 22?

19 Q To State's No. 22. This photograph --

20 A Right.

21 Q -- where would we see -- where is Highway 430?

22 A Highway 430 is in the front of the house.

23 Q In the front of the house, okay.

24 A Yes.

25 Q As we look at State's No. 23, what is that?

1 A Right. This is a barn, used to be a old pack
2 house barn that we've over time vinyl sided and kind of
3 fixed up. My boys use it as a little boys man cave.

4 Q Okay.

5 MR. RICHARDSON: Your Honor, permission to publish
6 to the jury at this time?

7 THE COURT: Any objection?

8 MR. JOYE: No, Your Honor.

9 THE COURT: You may proceed.

10 Q Here you go. Now, these photos accurately depict
11 maybe not the condition of the house, but the -- how
12 the house was set up back in 2000 --

13 A Correct.

14 Q -- 13? Driveway was the same?

15 A Correct.

16 Q That pack house was the same?

17 A Correct.

18 Q Only difference, there were three people living
19 there, now there's four?

20 A That's right.

21 Q Okay. Now you were living there back April 5th,
22 2013?

23 A Correct.

24 Q Now, on that particular day, April 5th, can you
25 tell us how you remember that day?

1 A I can. It was a Friday, and it was spring break
2 for the Green Sea area school, we had been out on
3 spring break. Like I said, with the marriage coming up
4 in about three weeks, we did not go off. We normally
5 try to go off spring break, take some type of vacation,
6 we stayed home. I spent the week kind of getting
7 things in preparation for the upcoming marriage and
8 getting the house, you know, ready for the fourth
9 person, etcetera.

10 So my boys had helped me that week, we had done
11 chores and I promised them, you know, a Friday out.
12 Got up that morning, had breakfast, got ready and were
13 going off to the movies for the day.

14 Q Okay. So you hadn't been able to do a whole lot
15 over spring break?

16 A Correct.

17 Q Didn't get to go travel or anything?

18 A Correct.

19 Q So you were trying to do something special with
20 your boys on the last day of spring break?

21 A Right, right.

22 Q And you said y'all were going to the movies. Now,
23 we're on the western side and there's Highway 9; where
24 were y'all heading to the movies?

25 A We were going down to Coastal Grand. We can from

1 430 can get -- take the back roads, get on 22, 31, in
2 probably 35 minutes, 40 minutes, to Coastal Grand.

3 Q So you were going to go to the mall at Coastal
4 Grand?

5 A Right.

6 Q And go see a movie. So, I mean, it's a little bit
7 of a trip, 35 minutes there, you said?

8 A 35, 40, yeah.

9 Q And something I neglected to ask, how is your
10 house set up, how close is your nearest neighbor?

11 A I have a neighbor that -- there's a house right
12 beside me, the yards kind of run together. There is a
13 tree line between us, with the exception of a small
14 gap, it's kind of a walk through. She's an elderly
15 lady, late seventies, early eighties. She's had health
16 problems in the past couple years, and you don't see
17 her very much.

18 Q Okay. So she's not one of those nosey neighbors
19 always looking out to see what's going on at your
20 house?

21 A No.

22 Q Okay. And did you know if she was in her home
23 that day?

24 A Not even sure if -- at the time she had had some
25 health problems and had been staying with her children

1 some to get the extra medical help that she needed. So
2 I'm not even sure she was there at the time.

3 Q And your neighbor that's behind the treeline
4 behind your house, are there any other neighbors in
5 close proximity?

6 A Across the road, but not -- not directly across
7 the road, more at a dangle -- diagonal, excuse me,
8 across the field.

9 Q Okay. So a little bit of distance away?

10 A Yes, um-hum.

11 Q And from that next neighbor, would they be able to
12 see the back side of your house?

13 A No.

14 Q Now, you and your boys go to the movies. When
15 y'all leave for the movies, do you have any kind of
16 alarm system or anything?

17 A I do.

18 Q Did you attempt to activate it that day?

19 A It was originally activated, yes.

20 Q Tell us about that.

21 A Let's see, he's 12 minus almost two years, ten,
22 ten-and-a-half-year-old typical boy, all boy, decides
23 he left headphones inside. So I give him the key, go
24 in and get your headphones, hurry up, you know, the
25 movie starts 30 minutes. So he goes in, gets

1 headphones, comes out, did not set an alarm.

2 Q Okay. And you didn't ask him about it?

3 A Didn't ask.

4 Q Okay. So that's why the alarm wasn't on?

5 A Correct.

6 Q So you go, you drive 35 minutes; do you know what
7 time you left approximately?

8 A Approximately 11 o'clock.

9 Q And so you're 35 minutes there, 11:30, quarter of
10 12. Do you remember what movie it was?

11 A Oh, gosh. No, I don't.

12 Q Okay. But you watched the movie. After the movie
13 do y'all immediately return home?

14 A It was not long after. Do not remember, we
15 probably got something to eat, something. My mom at
16 the time was leaving, and she's passed away now, and
17 she -- she was up in age, she was 80, and she had not
18 spent time with the boys for spring break and wanted
19 them to spend the night. So I wanted to get there
20 before dark, you know, before it got her bedtime, you
21 know. And so I took them to Mullins to spend the night
22 with her.

23 Q Okay. So you took the boys from Coastal Grand to
24 Mullins?

25 A Right, right. Came down 501, took the long way

1 into Mullins and dropped them off with her.

2 Q Long way from Nichols, not a long way from Coastal
3 Grand; right?

4 A From Coastal Grand, yeah.

5 Q Okay. So you get to Mullins; hour away from
6 Coastal Grand?

7 A Yeah, yeah, pretty much.

8 Q And then from Mullins to your home on Highway 430,
9 how long was that?

10 A Correct. From where she lived out in the country,
11 15, 20 minutes.

12 Q Okay. So it was later on in the afternoon when
13 you returned home?

14 A Correct.

15 Q Now, when you returned home on April 5th, 2013,
16 you're coming in from Mullins, drive through Mullins,
17 through Nichols on to Duford; when you pull in the
18 driveway, what do you notice, if anything?

19 A I actually didn't notice anything at first. I had
20 gotten my mail out of my mailbox. Before I pulled in I
21 pulled up to the mailbox. And I was also on my cell
22 phone talking, so I had one hand on the phone, one hand
23 on the wheel.

24 That particular day I had gotten several pieces of
25 mail and also the Horry County telephone book. And it

1 was in my lap. And as I go around to the back of my
2 house, you have to turn toward the right, you know, to
3 take a -- take the curve. And as I did the telephone
4 book went sliding in my lap. So I was still on my
5 phone and trying to get the telephone book from falling
6 out of the floor. So never looked up as I pulled under
7 my carport.

8 Q Okay. And after you pulled into your carport,
9 what do you do?

10 A Pulled in the carport, still on the cell phone,
11 distracted, preoccupied. Go to the door and attempt to
12 unlock the door that we as a family go in and out of
13 the most. It's not really the door for company but the
14 door that we go in at which comes right off of the
15 carport. Attempted to open the door, and went to push
16 it open and met some resistance, couldn't really push
17 it. And I thought, you know, what's going on.

18 So when I pushed it good enough to get a crack
19 open, I saw all kinds of stuff on the floor. And it
20 just kind of triggered, you know, I thought,
21 something's happened.

22 Q That door you were attempting to enter or you did
23 enter, it's on the side of the house?

24 A It's on the back of the house, actually.

25 Q On the back of the house. Is it inside the screen

1 porch?

2 A No, it's the one outside. There's a door outside
3 and a door inside.

4 Q I got you. Now, where does that door lead to?

5 A That door leads right into this back entryway. If
6 you walk in at the laundry room is in front of you and
7 the kitchen is right off it.

8 Q Okay. So kind of like a laundry room, mudroom
9 type thing?

10 A Um-hum.

11 Q So you enter there, you meet resistance, there's
12 stuff in the floor?

13 A Um-hum.

14 Q You said that triggered it that something's
15 happening?

16 A Something wasn't right, yeah.

17 Q What were your next steps?

18 A Hung up the telephone, you know, got to go,
19 something is not right. Ran back to my car because at
20 that point I was, well, if anybody is here, you know,
21 if I walked in on anything. So I got in the car and
22 was dialling 911 as I was leaving explaining, you know,
23 what I found.

24 Went to the closest neighbor which is the diagonal
25 across the road. And they were home, and it was a man

1 and a woman, and told them, you know, I'm on the phone
2 with 911, I've been broke into.

3 Q Did you ask them if they had seen anybody?

4 A Not at that point, no.

5 Q Did they volunteer they had seen anybody at your
6 home?

7 A No.

8 Q Okay. Now, you called 911 trying to get the
9 police there?

10 A Yes.

11 Q Now, how soon after you called 911 did the police
12 arrive?

13 A I do remember him saying that he was at a call in
14 North Myrtle Beach and apologized for taking so long.
15 I don't -- it was less than an hour, I think.

16 Q And so they got there within an hour. And it was
17 Officer Baker?

18 A As far as I know.

19 Q Okay. So the police arrive. Now, when the Horry
20 County Police arrive, where are you?

21 A Actually, when I got to the neighbor's, the
22 husband of that family, he says, well, I'll go over and
23 I'll check things out. So we had actually got back in
24 the car and drove back over to my home, and he had
25 called -- you know, went up the door and kind of right

1 inside the door making sure he didn't see anybody. And
2 then we waited in the driveway.

3 Q When the police arrived, did you speak with them?

4 A Yes.

5 Q Spoke with the officer?

6 A Yeah.

7 Q And what did you tell him?

8 A I was a mess. So I really don't know what I told
9 him. Just, you know, that I had came home and found it
10 the way that I found it.

11 Q Okay. So you were distraught that day?

12 A I was.

13 Q Upset, enough to where you ran to your neighbor,
14 you were scared?

15 A Um-hum, yes.

16 Q Now, after -- and you said you don't know exactly
17 what you told the police that day?

18 A No.

19 Q I understand. But did you observe the police do
20 anything at your house?

21 A They collected evidence. I mean, they went in,
22 and we kind of walked from room to room and assist, you
23 know, what all went on.

24 Q So they go off from room to room; the police clear
25 it first?

1 A Yes.

2 Q Go through to make sure it's safe?

3 A Yes.

4 Q And then you went through room to room?

5 A Yes.

6 Q Now, you're still upset at this point. Did you
7 give the police a list of stolen items at that point?

8 A Some items, you know, TV's and stuff that was very
9 visible you could, you know, right off the bat name.
10 Did not give them a complete list at the time, just
11 what we were visibly, you know, aware of at the time.

12 Q The stuff you saw ripped off?

13 A Right.

14 Q The big stuff?

15 A Right.

16 Q And do you remember some of those items?

17 A TV's, game systems, that was the biggest of the
18 items --

19 Q Of that day?

20 A -- right away that we named.

21 Q Did you have any weapons at the house of any sort?

22 A I did. I had guns that had belonged to my late
23 husband that were for my boys.

24 Q Do you remember, were they long guns, pistols?

25 A I'm not a gun enthusiast. I know they were

1 shotgun or rifle of that type, whichever of the two.

2 Q It was a long gun, I mean --

3 A Right, they were long, yes.

4 Q They are not pocket pistols?

5 A No.

6 Q Okay. And you gave a description back then to law
7 enforcement; correct?

8 A Yes.

9 Q And they took it down?

10 A Yes.

11 Q Now, were you able to provide the police with any
12 serial numbers for the TV's, the game system or
13 anything?

14 A I had one computer that was a newer computer, I
15 had only had it a weeks, still had the box and I got
16 rid of the box. So that had the serial number, but
17 pretty much everything else I had not saved serial
18 numbers.

19 Q That was that Acer laptop?

20 A Correct.

21 Q Now, we talked about the stuff that you saw
22 missing from inside the house. Talking about this barn
23 out behind the house, was that disturbed in any way?

24 A It was. There was a TV and game system out there
25 that had also been taken.

1 Q Okay. And do you remember what kind of game
2 systems they were?

3 A They were Xbox 360's, I think, and there was a Wii
4 game system.

5 Q And who would know more about those, you or the
6 kids?

7 A The children.

8 Q I'm sorry?

9 A The children.

10 Q The children. So that day you just knew that they
11 were game systems?

12 A Right.

13 Q Xboxes. So you couldn't give a description of
14 exactly what they looked like?

15 A No, sir.

16 Q Okay. And at some point in the future, did
17 Detective Terry Elliott call you and ask you for a
18 better description of those Xboxes?

19 A I'm pretty sure, yes, sir.

20 Q And what did you tell him?

21 A I had to ask my children. I had to get the
22 children to describe them.

23 Q And after speaking with the children, do you
24 remember...

25 A They -- it's your typical, I think they were black

1 360 game systems.

2 Q Okay. So you're missing TV's, guns, game systems.

3 Now, did other officers arrive after the initial
4 officer?

5 A There were two that came that day.

6 Q Okay.

7 A Yeah. I think one had to -- one left, and then I
8 was just left with the one, I think, is how it was.

9 Q And you were emotionally distraught during the
10 time?

11 A I was.

12 Q Now, after the police searched your home, after
13 you went through just trying to find out the immediate
14 things that were stolen, the guns, the TV's, the game
15 systems, whatnot, did the police ever ask you just try
16 and go through and see if anything else was stolen?

17 A They did.

18 Q And did you take efforts to give them additional
19 items that --

20 A I did.

21 Q And do you know when that occurred?

22 A It was really over time. Some stuff we may not
23 have realized right away until we go to get it, or you
24 don't realize right away what's missing.

25 Q And I think initially you may have told the police

1 that there was a Remington .22 that was stolen?

2 A Um-hum.

3 Q Did you ever change that?

4 A I don't know.

5 Q Did you make any trips to any stores to get --

6 A Oh.

7 Q -- try and get serial numbers?

8 A Yeah. There was one that was a -- I had -- one of
9 my sons, was between a Marlin and a Remington or
10 something. And there was confusion if it was Marlin,
11 Remington, and which store it had come from.

12 Q Okay. But you were able to find out that it was a
13 different gun than you originally described?

14 A Yeah, we got it straight.

15 Q And you told police about that?

16 A Correct.

17 Q Now, you said that it took time. So did you make
18 one or more than one contacts with police, say, hey, I
19 noticed some more stuff is missing?

20 A I'm sure it was numerous. We kept in touch, we
21 kept, you know, trying to make sure we got everything
22 on the list right and come up with everything.

23 Q Now, the -- you told them that day it was TV's,
24 guns, game systems. What are some of the other items
25 you discovered had been stolen over time?

1 A There was jewelry, some that I knew right away
2 because I have a bad habit of coming in and taking
3 stuff off and just laying it on the dresser top and not
4 putting it up. That stuff was visible that you could
5 tell. There were other jewelry in the drawers that you
6 could -- you know, after -- when you got ready for it,
7 that's when you knew that it was missing. Clothing
8 items, when my children get ready to put on their
9 little jerseys, they would get ready to put on a jersey
10 and the jersey would be gone. Overnight bags,
11 pocketbooks, you get ready to use that pocketbook, the
12 pocketbook's gone.

13 Q Watches?

14 A Watches.

15 Q I'm going to ask you to take a look, I believe
16 these may be in evidence, Your Honor, State's-5 through
17 10?

18 MR. JOYE: Yeah. That's the interior pictures?

19 MR. RICHARDSON: Yes.

20 MR. JOYE: Yeah.

21 MR. RICHARDSON: I believe we talked about them
22 yesterday, but I don't know if the jury's seen them.

23 Q State's-5 through 10, if you could take a look at
24 that real quick.

25 A Thank you.

1 Q Would you tell us what we're seeing here.

2 A These are TV cabinets and furniture in the main
3 living room where they pulled out for TV's and game
4 systems, kitchen desk where they had went through the
5 cabinets, the barn where they had opened the door to
6 that. My bedroom where they had went through drawers
7 and file cabinets. Master closet where they had went
8 through. More bedroom pictures, master bath. All of
9 those were the master bedroom.

10 Q This photograph on State's No. 6 appears to be a
11 box. Is that the serial number for the computer?

12 A That should be, yes.

13 Q And I can't read it, but...

14 A Yes.

15 Q That shows the box you were talking about?

16 A Correct.

17 Q Now, does this show all the damage that was done
18 to the house?

19 A No, sir.

20 Q Okay. But does it show -- is it fairly accurate
21 to some of the damage that was done to the house?

22 A It's a good -- it's a good description, but
23 nothing like the total picture of the house. Every
24 room, and even when I rounded the driveway missing the
25 door, the door was only hanging by a hinge where they

1 had taken the door down.

2 Q That was the screen porch door?

3 A The screen porch door was hanging by a hinge. And
4 had I not been on the phone or getting the phone book,
5 I would have probably seen that and never even stopped,
6 you know. But the door that going into the house was
7 kicked in. It broke the molding loose from the door
8 when was kicked in, so the molding was all off the
9 wall.

10 Q Is that the door inside the screen porch?

11 A Correct.

12 Q So the screen door porch is hanging by a hinge?

13 A Right.

14 Q And then the door immediately in front of it has
15 been kicked in?

16 A Correct.

17 Q Okay.

18 MR. RICHARDSON: Your Honor, may I publish these
19 pictures to the jury so they could see the damage?

20 MR. JOYE: Without objection, Your Honor.

21 THE COURT: Proceed.

22 MR. RICHARDSON: Thank you.

23 Q So the house was generally torn to pieces?

24 A Correct.

25 Q Now, you claim insurance on the stolen property?

1 A We did.

2 Q And I'm not going to ask you to take a calculator
3 and add up everything today, but do you know
4 approximately how much insurance paid on these items?

5 A I want to say it was around 13,000. I was --
6 didn't realize that I was very efficient with keeping
7 receipts as I was. But I probably provided 95 percent
8 of my receipts to the insurance company. And they came
9 up with a total based on the receipts that I had
10 supplied.

11 Q Okay. So the value of the property is well in
12 excess of \$10,000?

13 A Correct.

14 Q And how did you know this property was there; had
15 you taken any efforts to clean the house or anything
16 prior to that?

17 A Say again, before that was the house clean?

18 Q Did you do any spring cleaning before the
19 burglary?

20 A Yes, sir.

21 Q Okay. So it was a pretty clean house?

22 A It was a pretty clean house, yes, sir.

23 Q And seems like a overly simple question, but I'll
24 just hit it to make sure we hit the elements. Did you
25 give permission to for anybody to break into your

1 house?

2 A No, sir.

3 Q Did you give permission for anybody to take all of
4 this property?

5 A No, sir.

6 Q And no doubt about it, this is your home where you
7 live, where you sleep?

8 A Yes, sir.

9 Q Did you have any types of compartments in the
10 house that you kept valuables in?

11 A I did. I had a safe in the master bedroom closet.
12 And the guns were in, you know, the gun boxes and so
13 forth as that.

14 Q Talk to me about the safe, what kind of safe was
15 it?

16 A Sentry brand.

17 Q Okay. I mean, was it a big floor safe?

18 A It was not a floor safe. It sat on a shelf in the
19 closet, but it was -- it was a right hefty size safe.
20 I could not personally lift it.

21 Q It is heavy, but it's mobile?

22 A Yes, yes.

23 Q And it's not fixed to anything?

24 A No, sir, it was not bolted or anything.

25 Q Do you remember what color it was?

1 A It was black.

2 Q Now, you had the safe. Whenever you inspected
3 your home, did you find the safe?

4 A No, sir. It was gone.

5 Q It was gone. The safe, did you say what color it
6 was?

7 A Black.

8 Q Okay, black. And was there anything of value in
9 that safe?

10 A I had put money away on the side. I do weddings,
11 and I had been paid by a client and had put money from
12 the wedding in there.

13 Q And how much was that?

14 A 5,000.

15 Q The insurance pay on that?

16 A No. You can't claim that on the insurance. It
17 was just a loss to me.

18 Q The insurance paid 13,000, plus there's 5,000
19 missing?

20 A Right.

21 Q And everything that you found that had been stolen
22 you reported to the Court?

23 A Correct.

24 Q Are you still finding things missing today?

25 A Believe it or not, yes.

1 Q Little things?

2 A Little things, um-hum.

3 Q Now, the money that you had, the \$5,000, was it in
4 an envelope, was it --

5 A No, just a rubber band.

6 Q -- a stack of hundreds?

7 A It was just a rubber band.

8 Q One rubber band. How big, was it a knot, was it
9 folded out bills flat?

10 A No, it was straight.

11 Q Straight?

12 A Um-hum.

13 Q All right. And it was just rubber banded?

14 A Right.

15 Q Do you remember if it was hundreds, I guess?

16 A Pretty much, yes. There were some twenties, but I
17 don't know the exact denomination of each.

18 Q So a decent size stack?

19 A Correct.

20 Q Could you have picked that up with one hand?

21 A Yeah, sure.

22 Q Okay. Did you ever recover any of your property?

23 A I did not get anything, nu-uh.

24 Q Susan, I appreciate you coming in today.

25 A Thank you.

1 MR. RICHARDSON: I know you got to get back to
2 your kids, but if you'll answer any questions Mr. Joye
3 may have.

4 THE WITNESS: Sure.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. JOYE:

8 Q Good morning.

9 A Good morning.

10 Q I also appreciate you being here today.

11 A Thank you.

12 Q Just to go over a little bit, I think you
13 testified that there was an Acer notebook computer,
14 which you had provided the serial number for, but that
15 was actually a Toshiba; was it not?

16 A Could have been, could have been. There were two.

17 Q Two laptops?

18 A Correct. One was more of a net book, smaller
19 size.

20 Q Okay.

21 A And one was a newer. And I am not tech savvy, so
22 I couldn't...

23 Q Neither am I. But let's suffice to say a number
24 of things were stolen, but including a Toshiba laptop
25 and an Acer notebook as well as a Kindle Fire?

1 A Correct.

2 Q And I'm just going to go through really quick.

3 Can you tell me how many Xboxes were stolen?

4 A I believe there were a total of two Xbox and one
5 Wii.

6 Q Okay. And as far as you know, they were black?

7 A As far as I know.

8 Q And when you gave a list of these items, did you
9 describe them, did you give them some type of
10 description?

11 A I may have said black Xbox, or I don't -- plain,
12 to me they all look the same.

13 Q How about when you did the Toshiba laptop, would
14 you have told them what color it was or just this is
15 what got stolen?

16 A I told what got stolen, but I don't know that I
17 gave a description of the color.

18 Q Did they ask you what color, you know, can you
19 describe this item?

20 A For both police and insurance purposes, you had to
21 be as detailed as you could be. So I tried to be as
22 detailed as I could be.

23 Q So it's likely that they would have asked you, you
24 know, to describe a little bit of what was -- not, you
25 know, not simply, hey, I had a notebook stolen but

1 brand name --

2 A Um-hum.

3 Q -- perhaps color?

4 A Um-hum, size, dimension, that kind of thing, yes,
5 sir.

6 Q Okay. And I'm going to -- you probably had,
7 probably reported to them 20, 25, 30 different items
8 that had turned up missing over the next three or four
9 days; did you not?

10 A Correct.

11 MR. JOYE: Beg the Court's indulgence one minute.

12 Q I did want to visit one final thing. As I look at
13 this list, there were four separate TV's stolen; does
14 that -- that sound correct?

15 A Sounds correct. Pretty much one in every room and
16 also one that was in the barn for the boys' man cave.

17 Q And a really, really nice Canon camera?

18 A Yes.

19 Q When you said you do weddings, is that -- you mean
20 photo shoot?

21 A I have for some of the weddings, it's actually the
22 decorating and the planning and so forth. But for some
23 weddings I have been asked to do the pictures, and I
24 have done that.

25 Q And you gave some pretty, pretty extensive -- I

1 mean, particularly when it comes to jewelry, I mean,
2 you had some very particular specific items?

3 A Correct.

4 Q And you described those. Like a smokey topaz
5 ring?

6 A Correct.

7 Q And I think a cultured pearl starfish necklace?

8 A Correct.

9 MR. JOYE: Ma'am, thank you so much for being here
10 today.

11 THE WITNESS: Thank you.

12 THE COURT: Any redirect?

13 MR. RICHARDSON: Real quick.

14 REDIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Susan, just so that -- you gave some general
17 descriptions on April 5th?

18 A Correct.

19 Q And you were distraught then?

20 A I was.

21 Q Okay. And then you followed up later on?

22 A I did.

23 Q The stuff you had already told them about, did you
24 give them any further description after you called them
25 back?

1 A I'm sure in the course of time as we were talking,
2 I'm sure I did.

3 Q But on that April 5th and the next couple days,
4 maybe not?

5 A No.

6 MR. RICHARDSON: Your Honor, I have no further
7 questions.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. JOYE: None, Your Honor.

11 THE COURT: From the Defense?

12 MR. RICHARDSON: None from the State, Your Honor.

13 THE COURT: From the Defense?

14 MR. JOYE: No, none, Your Honor.

15 THE COURT: Ma'am, you're Excused.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MR. RICHARDSON: The State would call Brandy
21 Causey.

22 BRANDY CAUSEY, after being duly sworn, testified
23 as follows:

24 CLERK OF COURT: Please be seated. Please state
25 your full name, spell your last name.

1 THE WITNESS: Brandy Causey, C-A-U-S-E-Y.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q Mrs. Causey, thank you for being here this
6 morning. Could you please tell us a little bit about
7 yourself, where you live, what you do for a living and
8 whatnot.

9 A Yes, sir. I've always lived in the Mt. Olive
10 Green Sea area. We live on Mt. Olive Church Road. I'm
11 a pharmacist, I work about 20 hours a week, and then
12 the rest of the time I stay at home with my two
13 children.

14 Q All right. Ms. Causey, I'm going to adjust the
15 microphone for you real quick.

16 A Can't hear, okay, sorry about that.

17 Q You're soft spoken. Okay. So you've always lived
18 in the Mt. Olive, Green Sea, Nichols area?

19 A Yes, sir.

20 Q And Nichols is for mailing purposes; correct?

21 A Nichols is for mailing purposes, yes.

22 Q I don't mean to offend people. Now, you've always
23 lived there. Where were you living back April 2013?

24 A At the time of the break-in, we were living on Mt.
25 Olive Church Road.

1 Q 2551?

2 A Um-hum. That's the house we'd been in for about
3 seven years.

4 Q And that's here in Horry County?

5 A Yes.

6 Q All right. Now, you said we were living in it at
7 that point?

8 A That would be my husband, Shawn, and my two
9 children.

10 Q Okay. Now, y'all were living back in there
11 April 5th, 2013?

12 A Yes, sir.

13 Q And you're a pharmacist; were you working that
14 day?

15 A I was not working that day. As Susan was saying,
16 our kids were out of school so we were just kind of
17 enjoying spring break. And that day it was just me and
18 my daughter Jenna.

19 Q You and Jenna. And young; right?

20 A Yes. She was three at the time.

21 Q All right. Tell us, what were your plans with
22 Jenna that day?

23 A Jenna and I did not have a lot going on that day,
24 we were just kind of hanging out. We had decided to
25 run to my mom's, which was about three miles down the

1 road. And then we were going to go over to Loris to
2 run a couple errands, and then we were coming right
3 back home.

4 Q So do you have an alarm system?

5 A We do.

6 Q Did you set it that day?

7 A We did not. We did not set it that day.

8 Q You were heading to your momma's. Do you remember
9 what time you were heading over to your momma's?

10 A I would say it was probably around maybe
11 lunchtime, maybe a little bit before.

12 Q Maybe a little bit before lunchtime?

13 A Um-hum.

14 Q So it was a little bit before noontime?

15 A Right.

16 Q And I know the term is lunchtime, but somewhere
17 around noon. So the alarm wasn't activated because you
18 were just going to be a short distance away?

19 A Right, right. And we go to my mom's or she comes
20 to my house frequently during the day. She usually
21 checks in on our house several times during the day.

22 Q But she was with y'all that day?

23 A Well, she -- we just went to her house, she didn't
24 go to Loris with us, but...

25 Q How long were you at your mom's; do you remember?

1 A I would say maybe 20 minutes.

2 Q 20 minutes. And then you went to Loris. How far
3 is Loris from Nichols and Green Sea?

4 A Loris is about ten miles from our house.

5 Q Okay. Once you got to Loris, what were y'all
6 doing?

7 A I think we had to go to the bank, and we might
8 have stopped in at one store. We weren't gone any
9 longer than probably 30, 45 minutes.

10 Q Okay. Total time of 30, 45 minutes from the time
11 you left the house to momma's, to Loris and back?

12 A Well, from in Loris, we were probably in Loris
13 around 30, 45 minutes.

14 Q Oh, I apologize.

15 A No.

16 Q I want to make sure you understood. So you were
17 in Loris, you went to momma's house for about 20
18 minutes or so, drove ten minutes away to Loris. Stayed
19 there 30, 35 minutes, run the errands. Y'all pick up
20 anything for lunch, or did you eat at mom's?

21 A We had something at my mom's.

22 Q Okay. Now, after y'all get done in Loris, what do
23 y'all do?

24 A We return back to our house.

25 Q All right. So when you return back to your house,

1 you come back via Highway 9?

2 A We came back Highway 9, yes.

3 Q Okay. And Mt. Olive Church Road, where is that
4 with regard to Highway 9?

5 A Mt. Olive Church Road is, you take a right off of
6 Highway 9. We're approximately three, four miles from
7 Green Sea-Floyds High School and then the local store
8 there that's Sugar Eaters.

9 Q Okay. So you get back to your house one, 1:30, I
10 guess?

11 A I would say so.

12 Q Somewhere in there. And whenever you get back to
13 your house, what's the first thing you notice as you
14 pull in the driveway?

15 A We don't really notice anything because we pulled
16 under the garage. We pulled under the garage. And as
17 we pulled under the garage, I noticed that the door
18 from the garage into the house was open. And from time
19 to time as the wind blows through the garage, it may
20 like crack open. So when we first got there, I said,
21 Jenna, I think the door is blown open. So we didn't
22 notice anything initially.

23 Q Okay. You said whenever you entered the garage.
24 Now, when you left the house, did you close the garage
25 door?

1 A Yes.

2 Q Let me show you some photographs that are already
3 entered into evidence but State's No. 11 through, I
4 believe, 16. Tell me if you recognize them, those
5 photographs.

6 A Yes, sir. This is our house.

7 Q Okay. And that first photograph, seven -- I'm
8 sorry, 11, that's -- is that the front, back, side?

9 A This is the side of our house.

10 Q That's the side?

11 A Um-hum.

12 Q Okay. And that's where the garage is?

13 A That's where we entered the garage.

14 MR. RICHARDSON: Permission to publish, Your
15 Honor?

16 THE COURT: You may proceed.

17 Q Okay. So on State's No. 11 we see the side of the
18 house with the garage; and that's the garage you
19 entered?

20 A Um-hum, that's where we entered.

21 Q You can go count my right to left, one, two,
22 three; do you remember which?

23 A We went in through the middle stall.

24 Q Middle. And that would have been easy enough.

25 A Um-hum.

1 Q So you went in through the middle stall. So
2 that's the side of the house. Now, as we look at
3 State's No. 12, what aspect of the house are we looking
4 at?

5 A That's the back of our house.

6 Q Okay. And that's the same on State's-13?

7 A Um-hum.

8 Q All right. And I see a pool there. Was that pool
9 in place back April 5th, 2013?

10 A No, sir.

11 Q Okay. Then we have 14, another side view?

12 A It's the opposite side of our house.

13 Q The opposite side from the garage?

14 A Um-hum, yes.

15 Q And then 15 and 16?

16 A It's the front of our house.

17 Q And this driveway, this long driveway, where does
18 that lead from?

19 A That's off of Mt. Olive Church Road. So the
20 highway is Mt. Olive Church Road.

21 Q Good distance from the road?

22 A It is.

23 Q Okay. Now, you've heard testimony about Nichols,
24 Green Sea, all a pretty rural area?

25 A It is.

1 Q How close is your nearest neighbor?

2 A Our -- probably our closest neighbor is about a
3 half a mile, and it is -- it's separated by a line of
4 trees. And then our next closest neighbor would be in
5 the opposite direction, probably a half a mile on Mt.
6 Olive Church Road.

7 Q Okay. So quite a distance away from you?

8 A It is.

9 Q Okay. Now, you come in through the garage, you
10 notice the door is open. But you're not overly
11 concerned at this point?

12 A No, sir.

13 Q Because the door is blown open when you open the
14 garage door?

15 A Right.

16 Q After you enter through that door, the side of the
17 house, what room are you stepping into at that point?

18 A When we enter through the garage, that door leads
19 into the side of our house which leads into the
20 kitchen.

21 Q Now, once you entered the house, little girl in
22 hand?

23 A Yes.

24 Q Okay. And what if anything strikes you?

25 A Well, the moment we enter, we look up and you can

1 see the TV as you enter the kitchen, and it was gone.
2 And there was just stuff everywhere. So I started to
3 scream, and from that my little three-year old daughter
4 Jenna started to cry. So we just automatically ran out
5 of the house and got back in the car.

6 Q Okay. So your immediate reaction was?

7 A We were just really frightened.

8 Q You were distraught?

9 A Yes, we were distraught and frightened.

10 Q And you ran back to the car. And the car is in
11 the garage at this point?

12 A Um-hum.

13 Q What do you do once you were in the car?

14 A Once I get in the car I call Shawn, which is my
15 husband, and let him know that the house had been
16 broken into. He says he's on his way, and then I
17 called 911.

18 Q And how far away does Shawn work, time wise, how
19 far would -- how long would it take him to get to the
20 house?

21 A Ten minutes.

22 Q Ten minutes?

23 A Um-hum.

24 Q So I mean, that's -- you call your husband first?

25 A Right.

1 Q Crying?

2 A Yes.

3 Q Now, after you talk to Shawn, I mean, he said, I'm
4 on my way, and he gets in the car, do you stay in the
5 garage or?

6 A We back out of the garage, but we just sit there
7 with the car running. I guess, if we need to leave
8 we're ready. We were kind of just waiting for him, the
9 police or my dad. My mom and dad are only three miles
10 down the road, so we were just waiting for the next
11 person to come.

12 Q So you called your parents too?

13 A Um-hum.

14 Q Now, while you were waiting, and you're waiting
15 out there ready to move if you have to, don't know
16 what's going on -- bless you -- you call Shawn. And
17 prior to leaving for the day, did you see any
18 suspicious cars in the neighborhood?

19 A I didn't.

20 Q Or around your house, I guess. It's not really a
21 neighborhood.

22 A I didn't. But we're pretty far from the road, and
23 there's -- you know, you can't really see in the back
24 of our house. So I didn't -- I didn't notice anybody
25 like turning in our driveway or anything.

1 Q So after you set in your truck waiting for Shawn,
2 who's the first person that arrives?

3 A Shawn arrived first.

4 Q Shawn got there. And then who was next?

5 A I think my dad came next. And it was probably the
6 next was the police officer.

7 Q How quick did all that take place?

8 A Pretty quickly. I would say the police officer
9 was there within, you know, 30, 45 minutes.

10 Q Now, what your was your emotional state as
11 everybody is around; had you calmed down, were you
12 still crying?

13 A We were in shock, we were upset. My little girl
14 was upset, just trying to figure out what was going on.
15 So I was pretty much just trying to console her and
16 make her feel okay.

17 Q Okay. Once the police arrived, who dealt with the
18 police, did you, did Shawn?

19 A Both of -- both Shawn and myself did. Because we
20 were both trying to tell him, okay, this is missing,
21 this is missing.

22 Q Now, so you were there the whole time?

23 A Um-hum. Yes, sir.

24 Q How long did the police stay on the scene?

25 A At least an hour.

1 Q At least an hour?

2 A Um-hum.

3 Q What's the first thing you observed the police
4 doing whenever they arrived?

5 A Just he was pretty much asking us questions about,
6 can you show me what's missing. So he went room to
7 room with us.

8 Q Did you see him process the scene or anything?

9 A Did I see a what? I'm sorry.

10 Q Do some of that crime scene stuff, try and look
11 for evidence?

12 A Yes.

13 Q And can you just describe the condition of the
14 house for us.

15 A Sure. Just as you walk in like in our room with
16 the TV, just the shelves and things were pulled out,
17 papers are everywhere. As you walk into my bedroom the
18 mattress is turned over, the sheets are ripped off, our
19 drawers are empty. You go into the closets, like
20 clothes are torn down, everything is emptied out. Same
21 thing as you go upstairs to the other bedrooms. And
22 just, you know, just throughout the house.

23 Q Do you recall what types of property was stolen,
24 other than -- I know you've identified one TV. How
25 many TV's were taken?

1 A There were three TV's, four, I think, shotguns,
2 two pistols, jewelry, clothes, a computer.

3 Q Shawn might be able to flesh out some of that too?

4 A Yeah.

5 Q I know it was a difficult day. Did you give all
6 that information to police that day, or did you
7 discover anything after that?

8 A I think we gave a good bit of it to him that day.
9 But then Mr. Terry Wayne followed up with us so that we
10 can give him specifics on each item, like the serial
11 numbers from the guns, the description of the computer,
12 you know, the description of the watch, just, you know,
13 more details.

14 Q Okay. Were you able to provide serial numbers on
15 any of the other items?

16 A Um-hum, yes.

17 Q Okay. I'm sorry, y'all didn't have any game
18 systems; right?

19 A We just had the kids' portable like DVD players.
20 But they didn't have -- they didn't have a game system
21 at that time.

22 Q The serial numbers you provided, for computer
23 or --

24 A Mostly the shotguns, pistols, the computer. I
25 think we had maybe like the ID, it was like a Dell

1 computer, so we gave him some of that information.

2 Q Okay. But that was to Detective Elliott later on?

3 A Right.

4 Q Terry Wayne Elliott?

5 A Yes, sir.

6 Q And you just didn't have serial numbers on a bunch
7 of the items; correct?

8 A Right.

9 Q And you said there was jewelry missing, TV's,
10 computers, shotguns. Did you have any idea of the
11 value of the property that was stolen?

12 A I would estimate between ten and \$15,000.

13 Q So over \$10,000?

14 A Um-hum.

15 Q Including the jewelry, the shotguns, TV's, the
16 computer?

17 A Right. And just damage to the house as far as
18 doors being kicked in and molding being torn apart and
19 things like that.

20 Q Okay. And you know this because you paid for
21 everything to be replaced; correct?

22 A We did.

23 MR. RICHARDSON: And Ms. Causey, I know you've got
24 to return to take care of your duties, but if you'll
25 answer any questions Mr. Joye may have.

1 THE WITNESS: Sure.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. JOYE:

5 Q Thank you for being here today, Ms. Causey.

6 A You're welcome.

7 Q Now, my understanding is that, and I'm going to
8 trying to go through a few of the things that were
9 taken, but there was a 52-inch flat screen TV?

10 A I think it was a 52-inch, I'm pretty sure.

11 Q Were you able to supply them with the brand name
12 of that TV?

13 A We did. And I think we had gotten it at Sam's, so
14 we pulled up a, you know, something that was very
15 similar to the TV, and so we had pictures and things
16 like that.

17 Q You tried to give pretty extensive descriptions of
18 the property that was taken?

19 A Yes, sir, to the best of our ability we did.

20 Q And as best I can see, you had three, three TV's,
21 all flat screen TV's that were stolen?

22 A Yes, sir.

23 Q And you had a 17-inch Dell computer, that would
24 have been a laptop?

25 A Yes, sir.

1 Q And did you give a description of that as to
2 color, anything like that; did you say you had the
3 serial number on that computer?

4 A We had -- Shawn can also probably correct me on
5 this -- we had like when you get the, I guess, the
6 information packet when you get the computer, we had
7 that. I'm not sure that we actually had the serial
8 number off the computer.

9 Q But you had the packet of everything that would
10 have come with that computer?

11 A Yes, sir.

12 Q Now, would it have been quite possible that the
13 serial number would have been in that packet?

14 A Maybe so. The warranty information was in there.
15 I would think maybe from that it could have been in
16 there.

17 Q Okay. And just looking through things, it looks
18 to me like there were three TV's, a computer and maybe
19 five or six guns. Did you give them an extensive
20 description of the jewelry, etcetera, that was stolen?

21 A I think it was a watch that there was the one that
22 Shawn was able to give more of a description of. That
23 was the main piece of jewelry.

24 Q And whose watch was that?

25 A That was Shawn's watch.

1 Q And do you know what kind of watch it was?

2 A I don't. Not offhand, I don't.

3 Q Okay. Did -- and you said some clothes were
4 stolen?

5 A None of my clothes. His clothes were stolen.

6 Q Okay. Anything else that you could think of?

7 A I think -- I think that's all.

8 Q Okay. Did you ever recover any of your property?

9 A No, sir, we did not.

10 MR. JOYE: Thank you, Ms. Causey.

11 Your Honor, I have nothing further.

12 THE COURT: Any redirect of the witness?

13 MR. RICHARDSON: No, ma'am. I just asked that Ms.
14 Causey be excused.

15 THE COURT: Defense?

16 MR. JOYE: Without objection, Your Honor.

17 THE COURT: Ma'am, you're excused.

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MR. JOYE: Your Honor, can I get five minutes.

21 THE COURT: Um-hum. Madam forelady, ladies and
22 gentlemen, we're going to take a brief restroom break.
23 During the break please do not discuss the case, and
24 please leave your notepads in your seats. We should be
25 about five minutes.

1 (WHEREUPON, the jury exited the courtroom at
2 10:39 a.m.)

3 THE COURT: We'll be at ease for about five
4 minutes.

5 (WHEREUPON, a brief recess was taken at
6 10:40 a.m.)

7 THE COURT: State ready to proceed?

8 MR. RICHARDSON: Yes, Your Honor.

9 THE COURT: See if the jury is ready.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:48 a.m.)

12 THE COURT: The State may proceed.

13 MR. RICHARDSON: We are, Your Honor. The State
14 would call Mr. Shawn Causey:

15 SHAWN CAUSEY, after being duly sworn, testified as
16 follows:

17 CLERK OF COURT: Please be seated. Please state
18 your full name and spell your last name.

19 THE WITNESS: Shawn Causey, C-A-U-S-E-Y.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q Good morning, Mr. Causey.

24 A Good morning.

25 Q Could you tell us a little bit about yourself,

1 where you live, what you do for a living whatnot.

2 A Well, I'm married to Brandy Causey, have two kids,
3 one is seven, one's five. I sell insurance and I buy
4 and sell grain.

5 Q I'm going to ask you to scoot a little closer to
6 the microphone, Mr. Causey.

7 THE COURT: Yes, sir, if you can talk directly
8 into the microphone for us, please.

9 Q All right, thank you, Shawn. Mr. Causey, you
10 originally from the Nichols Green Sea area?

11 A Yes, I am.

12 Q So you've lived there your whole life?

13 A My whole life.

14 Q How about 2551 Mt. Olive Church Road, I believe
15 Ms. Causey told us, about how long y'all live there?

16 A About seven years.

17 Q So you were living there back April of 2013?

18 A Correct.

19 Q And we know from what we've already heard that you
20 were a victim of a burglary?

21 A Right.

22 Q Okay. You recall that day, April 5th, 2013?

23 A Yes, sir.

24 Q Do you recall how you first discovered or how you
25 first learned about this burglary?

1 A Well, my wife called approximately probably about
2 12:30, 1 o'clock, somewhere around in there. She was
3 real upset saying that she thinks we've been broken
4 into. So I hurried home. And then I told her to call
5 the police, and she did. And I got home, the garage
6 door was cracked open.

7 Q You talking about the door inside the garage?

8 A Going inside the garage.

9 Q And it was cracked open. What did you do whenever
10 you discovered that?

11 A Well, I'd opened the door and I walked on in.
12 Well, first of all, I walked around the house, made
13 sure nobody was around outside the house. Then I
14 walked on in and checked, made sure nobody was inside.

15 Q Well, I know it was dangerous, did you have a
16 weapon or anything?

17 A No, I didn't.

18 Q You were just upset?

19 A Yeah.

20 Q Okay. Now, your wife called you first?

21 A Right.

22 Q And how long did it take you to get there?

23 A About ten minutes.

24 Q Ten minutes. And then I believe your
25 father-in-law showed up?

1 A Yeah.

2 Q And then the police arrived. Do you remember
3 about how long it took the police to get there?

4 A I would say 45 minutes.

5 Q 45 minutes?

6 A Within an hour.

7 Q Within an hour they were there?

8 A Right.

9 Q So prior to the police arrival, had y'all
10 disturbed anything, done anything to the property?

11 A No.

12 Q Had y'all done a walk-through of the house then?

13 A We just gradually walked towards the kitchen, then
14 we decided to walk back out.

15 Q Okay. So y'all entered into the kitchen and then
16 back out?

17 A Right.

18 Q How was Brandy at this point?

19 A Very upset.

20 Q Very upset.

21 A She was trying to console my little girl because
22 she was real upset.

23 Q And your boy, was he -- he wasn't home at that?

24 A He wasn't at home.

25 Q All right. Now, when the police did arrive, what

1 was the first thing y'all did with the police?

2 A We did a walk-through and see if we noticed
3 anything missing right offhand. We just took notes
4 what was missing.

5 Q Okay. And you gave that list to the police?

6 A Correct.

7 Q Now, that list you gave to the police, was that an
8 all-inclusive list, was that everything that was stolen
9 that day?

10 A Everything that we seen that day.

11 Q Okay.

12 A I mean, there was a couple things in there
13 afterwards that we come up with that, you know, that we
14 didn't notice that day, but...

15 Q So you noticed the big stuff that day?

16 A The big stuff, yeah.

17 Q Can you just run through some of the stuff that
18 was missing that day.

19 A There was three TV's, the kids' DVD player,
20 firearms that we had in the house, clothes, some
21 jewelry that was missing, just different things like
22 that.

23 Q Okay. And were there two shotguns?

24 A There was four shotguns and two pistols.

25 Q I'm sorry. Those shotguns, when was the last time

1 you had seen those shotguns?

2 A Probably a week or two before.

3 Q Okay. Had you been hunting anytime recently with
4 them?

5 A No.

6 Q And the shotguns, what kind were they?

7 A There were -- the four of shotguns were 12-gauge
8 shotguns. There was one Browning, one Charles Daly, a
9 Mossberg and a Beretta. And the two pistols was a
10 Kimber and a Charles Daly.

11 Q Now, you noticed these guns missing, noticed the
12 TV's are missing, the big stuff?

13 A Right.

14 Q Any kind of computers, laptops or anything?

15 A The laptop was missing.

16 Q And were you able to provide serial numbers on the
17 laptop to the police?

18 A Yes.

19 Q And you gave it to them that day?

20 A Yes. Well, it was either that day or like a day
21 or so afterward, once we come up with everything.

22 Q Okay. So you came up with the serial numbers
23 maybe a few days later?

24 A Right.

25 Q So you didn't have it written down; right?

1 A No, not writing.

2 Q And what was your main concern that day as you
3 were going through?

4 A Well, my main concern was my child and my wife.
5 They -- Jenna Grace was so upset, and until today she's
6 still upset. I mean, she don't want to go upstairs by
7 herself, she wants somebody to go upstairs with her
8 because she thinks somebody is in the house. But my
9 main concern was just with them.

10 Q Okay. So your main focus was on your family, not
11 on what these thieves took?

12 A Not on -- right.

13 Q And y'all didn't grant consent for anybody to come
14 in y'all's house; is that right?

15 A No, sir. No, sir.

16 Q And Shawn, it might be a little bit difficult, you
17 said you did a walk-through with the police?

18 A Right.

19 Q Can you just basically describe for us, room by
20 room, what you saw, how y'all went through the house
21 and what you saw.

22 A Well, when we went through, the mattresses were
23 turned upside down, the drawers was pulled out,
24 everything was emptied out, clothes was laying in the
25 floor of the closet. The -- when you go upstairs,

1 there's two doors that was upstairs, they were kicked
2 in off the hinge. The back door was kicked in going
3 into the back of the garage. It's -- the French doors
4 was kicked. It was just total chaos.

5 Q Okay. So the house was destroyed?

6 A It was destroyed, yeah.

7 Q And you said you did note some stuff two days
8 later; did you have any clothing that was stolen?

9 A Yes, sir.

10 Q What type of clothing?

11 A Just dress shirts, a couple coats, just stuff like
12 that, pants.

13 Q All right. Now, you said that you were able to
14 provide some of the serial numbers on the guns?

15 A Right.

16 Q And you may have provided the serial number on the
17 computer a day or two later?

18 A Right.

19 Q And the damage done to the house was extensive?

20 A Pretty much, yes.

21 Q Did you watch the officers as they processed the
22 crime scene?

23 A Um-hum, yeah.

24 Q About how long were the officers there?

25 A Probably an hour or so.

1 Q An hour or so?

2 A Yeah. You kind of lose track of time when
3 everything is going on so...

4 Q And, once again, your main focus was on your
5 family that day?

6 A Right.

7 Q After the police left -- at some point they left?

8 A Right.

9 Q What did you and your family do?

10 A Well, we started picking up things and just trying
11 to clean up, just try to pick ourselves up and keep
12 going.

13 Q Now, did you ever personally recover any of these
14 items that were stolen?

15 A No.

16 Q And all of the things you noticed that were
17 missing, all the things you noticed that were stolen,
18 you gave that list to the police?

19 A Right.

20 MR. RICHARDSON: Mr. Causey, I do appreciate you
21 being here. I know you got to return to your job, but
22 if you can answer any questions Mr. Joye may have.

23 THE WITNESS: Okay.

24 THE COURT: Any questions for the witness?

25 MR. JOYE: Yes, thank you, Your Honor.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. JOYE:

4 Q Mr. Causey, I appreciate you being here also. I'm
5 going to be very brief. You've never seen any of your
6 property again since this time?

7 A I've had a phone call from the Tabor City that
8 they recovered one of the pistols that was involved
9 in --

10 Q But you haven't seen it?

11 A Well, I did.

12 Q Okay.

13 A They called me up there and I've ID'ed it. And
14 they said it was involved in a shooting.

15 Q Okay. You said you -- did you tell the officers
16 that day that you and your son had been turkey hunting
17 the day before?

18 A I cannot recall if I did or not. That might have
19 been about the time.

20 Q When you say that -- can you describe the
21 processing of the crime scene for us, please.

22 A It was just pictures, took pictures, looked at
23 tire tracks, just went through, just made a list of the
24 things that were missing.

25 Q Let me ask you this. The door, you say at least

1 what, two doors were kicked in?

2 A Um-hum.

3 Q Could you see a footprint on those doors?

4 A Yes.

5 Q Do you know if they took pictures of those?

6 A I do not.

7 Q Was it -- was that clear? I mean, you could
8 clearly make out a shoe print?

9 A I couldn't tell you if it's a hundred percent
10 clear or not that you could get one. But you can tell
11 it was a footprint.

12 Q Were there any tracks inside the house that you
13 could see?

14 A Yes. There was -- yeah.

15 Q And do you know if they took pictures of those?

16 A I don't know.

17 MR. JOYE: Thank you, Mr. Causey. I appreciate
18 you being here today.

19 THE COURT: Any redirect?

20 MR. RICHARDSON: No, ma'am. Your Honor, I'd ask
21 that Mr. Causey be excused to return to his job.

22 THE COURT: Any exception?

23 MR. JOYE: Absolutely none, Your Honor.

24 THE COURT: Sir, you're excused.

25 (Witness excused.)

TAREEK HEMINGWAY-DIRECT BY MR. RICHARDSON

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q Mr. Hemingway, if you'll speak up into the
6 microphone so the jury can hear you. I'm going to give
7 you some water in case you get thirsty, okay. Here you
8 go. Mr. Hemingway, could you tell us a little bit
9 about yourself. Where are you from?

10 A Tabor City, North Carolina. I'm 19 years old.

11 Q 19 years old, you're from Tabor. Did you grow up
12 in Tabor?

13 A Yes, sir.

14 Q And did you go to Tabor High School?

15 A Yes, sir.

16 Q Did you graduate?

17 A No, sir.

18 Q When did you leave Tabor High School?

19 A Ninth grade.

20 Q Ninth grade. So you're were about 14, 15 at that
21 point?

22 A No. 16, 15.

23 Q 16. So you dropped out at 16?

24 A Yes.

25 THE COURT: Sir, if you could say yes or no,

1 please.

2 THE WITNESS: Yes.

3 Q Okay. And that's right, when you answer you got
4 to do it with yes or no instead of nodding your head;
5 okay?

6 A Yes, sir.

7 Q Thank you, Tareek. Now, and what's your full
8 name?

9 A Tareek Dashawn Hemingway.

10 Q Tareek Dashawn Hemingway. Do you know Xavier
11 Rayshawn Hemingway?

12 A Yes, sir.

13 Q And how do you know Xavier Hemingway?

14 A He's my cousin.

15 Q He's your cousin. Your first cousin, second
16 cousin, what?

17 A Second.

18 Q Second cousin. And how long have you known Xavier
19 Hemingway?

20 A Three years.

21 Q Three years from today or?

22 A Ever since 2012.

23 Q Ever since 2012. And back in 2012 how tight were
24 you with Xavier Hemingway?

25 A Pretty tight.

1 Q Pretty tight. Can you describe that relationship.

2 A We hung out, stay over each other house.

3 Q Daily basis?

4 A Yes, sir.

5 Q And where --

6 THE COURT: Excuse me.

7 MR. RICHARDSON: Bless you, Your Honor.

8 THE COURT: Thank you.

9 Q To your knowledge, where did Xavier Hemingway grow
10 up?

11 A Tabor City.

12 Q Tabor City. How about back in 2012, 2013, where
13 was he living?

14 A In Green Sea area.

15 Q Okay. So he moved from Tabor City over into Green
16 Sea?

17 A Yes, sir.

18 Q Do you remember about when he did that?

19 A Ending of 2012.

20 Q So sometime around December 2012?

21 A Yes, sir.

22 Q Around Christmastime?

23 A Yes, sir.

24 Q Okay. And do you see Xavier Rayshawn Hemingway
25 here in the courtroom today?

1 A Yes, sir.

2 Q Could you point him out for us.

3 A (Indicating.)

4 Q He's the Defendant sitting over at the defense
5 table?

6 A Yes, sir.

7 Q Now, you all, you said you were pretty tight back
8 in 2012, 2013?

9 A Yes, sir.

10 Q Hung out on a regular basis?

11 A Yes, sir.

12 Q Now, you said y'all would sleep over each other's
13 houses?

14 A Yes, sir.

15 Q Now, whenever he would -- did you ever sleep over
16 at his house in Green Sea?

17 A No, sir.

18 Q Okay. That was just when he was living in Tabor
19 City?

20 A Yes, sir.

21 Q Now, when he lived in Tabor City, where was he
22 living, or who was he living with?

23 A He was living with his mom.

24 Q He was living with his mom over there. To your
25 knowledge, whenever he moved over to Green Sea, where

1 was he living?

2 A Over by the Floyds school house.

3 Q Okay. And was anybody living there with him?

4 A I think his dad.

5 Q You think his dad, that was his dad's?

6 A His dad.

7 Q His dad stayed there?

8 A Yes, sir.

9 Q Okay. Now, so he was living there, moved there
10 December or so, 2012. Was he still living there
11 April 2013?

12 A Yes, sir.

13 Q And you were out of school at this point; were you
14 working anywhere?

15 A No, sir.

16 Q And, well, let's just go ahead and get this off
17 the bat. You've been charged with two counts of first
18 degree burglary; correct?

19 A Yes, sir.

20 Q You've been charged with two counts of grand
21 larceny over \$10,000; correct?

22 A Yes, sir.

23 Q And you've been charged with safecracking?

24 A Yes, sir.

25 Q No doubt about it?

1 A Yes, sir.

2 Q And these are the exact same charges for which
3 Xavier has been indicted and he stands trial today?

4 A Yes, sir.

5 Q The same crimes?

6 A Yes, sir.

7 Q And no doubt about it, you took part in these
8 crimes; correct?

9 A Yes, sir.

10 Q And you owned up to your part?

11 A Yes, sir.

12 MR. JOYE: Your Honor, I'm going to --

13 THE COURT: Basis of the objection?

14 MR. JOYE: Leading.

15 THE COURT: Sustained leading. Proceed.

16 Q Describe for us any attempt you made to downplay
17 your involvement in these crimes.

18 A Enlighten me.

19 Q Describe for us anything you did to say basically,
20 I wasn't -- I wasn't really involved, describe for us
21 any attempts you made to say I was just a lookout.

22 A I can't.

23 Q Describe for us any attempts you made to say, I
24 was just the driver of the car.

25 A I can't.

1 Q Now, all these occurred April 5th, 2013, these
2 burglaries?

3 A Yes, sir.

4 Q And have there been any promises of reward or
5 leniency in exchange for your testimony?

6 A No, sir.

7 Q But you're hopeful, you're hopeful that something
8 good will happen?

9 A Yes, sir.

10 Q Now, back in April 5th, 2013, do you remember that
11 day?

12 A Yes, sir.

13 Q Now, when you woke up that morning, April 5th,
14 2013, where were you?

15 A I was home.

16 Q And who do you live with?

17 A I just stay at my cousin.

18 Q You stay with your cousin?

19 A Yes, sir.

20 Q Was it just your cousin, did he have his parents
21 there, or she?

22 A It was she. She owned a house.

23 Q Your adult cousin?

24 A Yes, sir.

25 Q Okay, that's where you live?

1 A Yes, sir.

2 Q She had care and custody of you back then?

3 A No, sir.

4 Q How old were you back in April 2013?

5 A 17.

6 Q You were 17. Now, you woke up that day in your
7 cousin's house. How old is she now?

8 A She -- I can't say.

9 Q About, she my age?

10 A About 26.

11 Q A lot younger than me?

12 A Yes, sir.

13 Q Okay. Now, you wake up over there. What do you
14 do that day?

15 A Woke up, brushed my teeth. Then I got a phone
16 call.

17 Q Who did you get the call from?

18 A Rodney. Rodney.

19 Q Rodney. who?

20 A Gore.

21 Q Okay. Rodney Gore calls you on the phone. Now,
22 what do you and Rodney talk about?

23 A Talk about running into some houses.

24 Q Okay. So you and Rodney talk on the phone about
25 running in some houses. Houses in Tabor City in Myrtle

1 Beach, where?

2 A Green Sea, Nichols area.

3 Q Okay. So what plans do you make at that point?

4 A I grab my ski mask, my gloves.

5 Q Now, you grab your ski mask and gloves. How you
6 going to get to Green Sea?

7 A Rodney. Rodney came and picked me up.

8 Q Now, when Rodney came and picked you up, what kind
9 of car was he in?

10 A A Nissan Altima.

11 Q Okay. And whose car was that?

12 A His girlfriend's.

13 Q Do you remember a color?

14 A Silver.

15 Q Silver Nissan Altima belonged to Rodney's
16 girlfriend. And Rodney, is he your age, older,
17 younger, what?

18 A He's around my age.

19 Q He's around your age. And did he -- to your
20 knowledge, where did he grow up?

21 A Tabor City.

22 Q So he's from Tabor City. Was it just you and
23 Rodney, or was there anybody else in the vehicle?

24 A Rodney, Avery and Rayquan.

25 Q Rodney, Avery and Rayquan. Avery who?

1 A Avery Norris.

2 Q And Rayquan who?

3 A Gore.

4 Q Okay. Are Rayquan and Rodney related?

5 A They are brothers.

6 Q Okay. And Avery and Rayquan, older or younger
7 than you and Rodney?

8 A Rayquan younger.

9 Q And how about Avery?

10 A Around the same age.

11 Q About the same age. Y'all had all gone to school
12 together?

13 A Yes, sir.

14 Q And you said Rodney's from Tabor City, so I assume
15 Rayquan is from Tabor City as well?

16 A Yes, sir.

17 Q How about Avery, is he from Tabor City, Myrtle
18 Beach, where?

19 A Tabor City.

20 Q Now, prior to that April 5th -- now, y'all get
21 together. And when they pick you up, you said
22 Rodney -- who's driving?

23 A Rodney.

24 Q Rodney's driving. Rayquan is with him already and
25 Avery Norris is with him already?

1 A Yes, sir.

2 Q What do y'all talk about in the car?

3 A Talk about running into some houses.

4 Q Okay. And by running in some houses, what do you
5 mean?

6 A Taking anything and get money.

7 Q Take anything and get money. When you're talking
8 about running in some houses, it's like a burglary, a
9 breaking and entering?

10 A Yes, sir.

11 Q And while we're on the subject, you have been
12 convicted on some breaking and enterings; correct?

13 A Yes, sir.

14 Q Three of them?

15 A Yes, sir.

16 Q And that was over in Tabor City?

17 A Yes, sir.

18 Q And that was September 2013?

19 A Yes, sir.

20 Q Now, whenever you -- where are you in the car, you
21 in the back seat, front see, where?

22 A In the back seat.

23 Q So you're in the back seat. Rayquan in the front
24 seat with his brother?

25 A Yes, sir.

1 Q And Avery is in the back seat with you. Y'all
2 leave Tabor City, and y'all are heading to Green Sea
3 Floyds?

4 A Yes, sir.

5 Q What road do you take?

6 A Green Sea Road.

7 Q Green Sea Highway?

8 A Yes, sir.

9 Q So you take Green Sea Highway from Tabor over to
10 Green Sea Floyds. When you arrive in Green Sea Floyds
11 in Horry County, where do you go first?

12 A Go to Xavier house.

13 Q And can you describe where Xavier was living.

14 A It was somewhere like in a trailer park area.

15 Q And how did you know that to be his house; had you
16 been there previously?

17 A Yes, sir.

18 Q How many times had you been there?

19 A Probably like one.

20 Q One. At any point during the time could you tell
21 us if y'all ever made any attempts -- describe any
22 attempts you made to call Xavier prior to arriving.

23 A No, sir.

24 Q Y'all just showed up?

25 A Just showed up.

1 Q So you personally did not call Xavier?

2 A No, sir.

3 Q When y'all show up at Xavier Hemingway's house,
4 tell us what happens.

5 A We got out the car. He was standing by --
6 standing outside fixing on his car. We went over
7 there, we asked him was he trying to run into some
8 houses, and he say, yeah.

9 MR. JOYE: Your Honor?

10 THE COURT: Yes.

11 MR. JOYE: Objection --

12 THE COURT: Basis?

13 MR. JOYE: -- as to unless he stated.

14 THE COURT: No speaking objections. What is the
15 basis of the objection?

16 MR. JOYE: Hearsay, unless he said it.

17 THE COURT: He hasn't said what anyone said yet.
18 He said what he said.

19 MR. JOYE: He said what he said. Well, I think
20 that's --

21 THE COURT: That includes him, he said what he
22 said. Overruled. Sir, you're not allowed to say what
23 anyone said to you. You can only say what you did as a
24 result, unless, of course, it comes within an
25 exception. You may proceed.

1 MR. RICHARDSON: Yes, ma'am.

2 Q Now, what did y'all say to Xavier, or what did you
3 say to Xavier?

4 A Well, I don't really know who said it, but one of
5 us ask him, we were trying --

6 THE COURT: Sustained, unless he said it.

7 Q Did you personally take part in a discussion with
8 Xavier --

9 A No, sir.

10 Q -- to any degree? Did you hear Xavier say
11 anything or make any statements?

12 A Yes, sir.

13 Q And what did you hear Xavier say?

14 A He say he know some houses that we can go into.

15 Q Did he tell you anything about these houses, any
16 types of property or anything?

17 A No, sir.

18 Q So you're saying that Xavier Hemingway said he
19 knew where?

20 A He knew where.

21 Q Knew what houses to hit?

22 A Yes, sir.

23 Q Now, when you all hear this, you're working as a
24 group?

25 A Yes, sir.

1 Q You all hear this, how long were y'all at Xavier's
2 house before he says, I know where we can go hit these
3 houses?

4 A Probably like 15 minutes.

5 Q 15 minutes. And what steps does Xavier take that
6 you observed to prepare for these crimes?

7 A He went inside and grabbed a ski mask and some
8 gloves.

9 Q He grabbed a ski mask and some gloves. And I
10 believe you said you had a ski mask and some gloves or
11 something?

12 A Yes, sir.

13 Q How about the other three individuals?

14 A I'm not sure, but I know they had something
15 covering their face and hands.

16 Q Okay. So they had something covering their face
17 and hands?

18 A Yes, sir.

19 Q Okay. So y'all were taking precautions?

20 A Yes, sir.

21 Q Had this been discussed in the vehicle?

22 A Yes, sir.

23 Q And this isn't your first rodeo on this; right?

24 A No, sir.

25 Q Okay. So you knew what precautions to take?

1 A Yes, sir.

2 Q And did you have to tell Xavier, hey, run in and
3 get some gloves or anything?

4 A No, sir.

5 MR. JOYE: Objection, leading.

6 THE COURT: Sustained, leading.

7 Q What if anything did you tell Xavier with regard
8 to requiring gloves or a mask?

9 A I don't remember.

10 Q Okay. Now, y'all are there at his house. And you
11 said Xavier was working on his car; is that correct?

12 A Yes, sir.

13 Q Okay. What kind of car was that; do you remember?

14 A No, sir.

15 Q Okay. So y'all get to Xavier Hemingway's house,
16 y'all discuss the robbery, Xavier says, hey, I know
17 some houses we can hit. And you're there for about 15
18 minutes, and he runs in and grabs a ski mask and
19 gloves. After he grabs the ski mask and gloves, what
20 do y'all do?

21 A Got into Rodney car, Rodney girlfriend car.

22 Q All right, you got in Rodney's girlfriend's car.
23 Who's driving?

24 A Rodney.

25 Q Rodney. Rodney Gore is driving?

1 A Yes, sir.

2 Q Now, at this point you're looking at him.

3 Describe for us, you talked about these masks. Are
4 they on, are they off, are the gloves on or off at this
5 point?

6 A They off at that point.

7 Q Okay. And what's the plan as far as when to apply
8 the mask and gloves?

9 A Right before we go in the house.

10 Q Okay. So Rodney's driving. Who's sitting where
11 in the vehicle, where are you?

12 A I'm in the back seat.

13 Q How about Xavier?

14 A I think he was in the back seat too.

15 Q Rayquan up front again?

16 A Yes, sir.

17 Q And Avery is in the back seat with y'all?

18 A Yes, sir.

19 Q Now, when you had been in Xavier's house -- prior
20 to this, had you ever seen Xavier hanging out with any
21 of the other three?

22 A Yes, sir.

23 Q How often?

24 A On a daily basis.

25 Q So he hangs out with all three of these other

1 people on a daily basis as well as you?

2 A Yes, sir.

3 Q Okay. So everybody is pretty tight?

4 A Yes, sir.

5 Q And I think this question may come up. Are you a
6 member of a street gang?

7 A Yes, sir.

8 Q And what street gang is that?

9 A Blood.

10 Q Okay. And is Rodney, Rayquan, Xavier and Avery
11 that you hang out with everyday?

12 A Yes, sir.

13 Q Now, as y'all get in Rodney's car, or Rodney's
14 girlfriend's car and he's driving, do you remember the
15 name of the highway y'all driving down?

16 A No, sir.

17 Q Do y'all -- where do y'all head, do y'all head
18 back to North Carolina, back towards Horry, where?

19 A Back to Horry County.

20 Q And how -- where are you going?

21 A I really don't know. All I know, we took a road.

22 Q Who's directing you where to go?

23 A Xavier.

24 Q Okay. Do you recall what Xavier says?

25 A No, sir.

1 Q You don't recall specifically what he said, but
2 he's the one directing where to go?

3 A Yes, sir.

4 Q And you're sitting right beside him?

5 A Yes, sir.

6 Q So Xavier directs you to where you're going.
7 Where do you arrive?

8 A We arrive at a house surrounded by pavement with
9 Gamecock symbols on it.

10 Q Okay, a house surrounded by pavement with Gamecock
11 symbols on it. Do you remember if it was a one-story
12 house, two story?

13 A I don't remember.

14 Q Do you remember anything about any other out
15 buildings, sheds, barns or anything around the house?

16 A Yes, sir. It was like a shed on the side.

17 Q Okay. So the first house y'all went to, there's a
18 shed over on the side?

19 A Yes, sir.

20 Q And when you say shed, are you talking about just
21 like a carport type shed, are you talking about like a
22 barn type thing, what?

23 A Like a type barn.

24 Q Did you go in that barn?

25 A Yes, sir.

1 Q Do you remember what was in there?

2 A A game system, a TV, pool table.

3 Q So it was kind of a man cave, I guess?

4 A Yes, sir.

5 Q All right. So y'all get to this first house, it's
6 got a barn out back. How far away from Xavier's house
7 is this house?

8 A I don't -- I can't remember.

9 Q Do you remember about how long it took y'all to
10 get there?

11 A Probably like 30 minutes.

12 Q Took about 30 minutes, okay. Now, on that day,
13 were y'all drinking anything, smoking anything,
14 anything like that?

15 A No, sir.

16 Q And what was the purpose of going to this first
17 house?

18 A To get anything that bring money.

19 Q So y'all arrive at this first house. What do
20 y'all do?

21 A We go in. We go -- first we ride past and we came
22 back. We pull into the driveway, we knock on the door,
23 nobody came.

24 Q So you park. Did you go to the door?

25 A I can't remember who.

1 Q You just remember somebody went to the door,
2 knocked on it (indicating)?

3 A Yes, sir.

4 Q And do you recall if there was an answer?

5 A No, sir.

6 Q Once there was no answer at the door, what was the
7 next thing your group did?

8 A We got out, went to like a sliding door in the
9 back, and one of us kicked it in.

10 Q Okay. And where did y'all park Rodney's
11 girlfriend's car?

12 A On the side of the road.

13 Q Right in front of the house?

14 A Like right by some woods right down the road.

15 Q Down the road by some woods?

16 A Yes, sir.

17 Q And why were y'all parking it down there?

18 A To be cautious.

19 Q To be cautious?

20 A Yes, sir.

21 Q So nobody else could see?

22 A Yes, sir.

23 Q Now, I think you described -- did you kick the
24 door in?

25 A I can't recall, but I don't think I did.

1 Q Okay. What kind of shoes you have on that day; do
2 you remember?

3 A I had some boots.

4 Q You had on some boots?

5 A Yes, sir.

6 Q So you didn't have on tennis shoes, no Air Force
7 1's?

8 A No, sir.

9 Q Now, so somebody kicks that door in. And that's
10 on the back side of the house?

11 A Yes, sir.

12 Q And how many people go inside the house?

13 A Everybody.

14 Q When you say everybody, can you name them one more
15 time.

16 A Rodney, Rayquan, Avery, Tareek Hemingway, Xavier.

17 Q Xavier Hemingway?

18 A Yes, sir.

19 Q This Defendant. Now, y'all go inside this house,
20 you enter through that back door. What's the plan when
21 you get inside the house, or is there one?

22 A There really ain't no plan.

23 Q There's no plan inside the house. So what do you
24 personally do when you get inside the house?

25 A Go my own way.

- 1 Q Okay. Do you remember where you went to?
- 2 A No, sir.
- 3 Q All right. Do you remember what types of property
- 4 you got out of the house?
- 5 A Well, TV, Xbox and some more stuff.
- 6 Q TV's, Xboxes. Do you recall any guns of any sort?
- 7 A Yes, sir. There were some guns in there.
- 8 Q Okay. And these guns, long guns, rifles?
- 9 A Yes, sir.
- 10 Q Now, did you get all this stuff all by yourself?
- 11 A No, sir.
- 12 Q And y'all parked the car around. Now, while
- 13 you're going about your way, going to your own rooms to
- 14 get stuff --
- 15 A Yes, sir.
- 16 Q -- what do you see everybody else doing?
- 17 A The same thing.
- 18 Q The same thing. So they are spreading out?
- 19 A Yes, sir.
- 20 Q The masks, are they on, off, what at this point?
- 21 A They on.
- 22 Q You got them down?
- 23 A Yes, sir.
- 24 Q Gloves on or off?
- 25 A On.

1 Q Gloves are on. How about everybody else?

2 A Same thing.

3 Q Same thing. And you saw them; correct?

4 A Yes, sir.

5 Q Now, y'all were running around the house, and I
6 think you said Xavier went in there?

7 A Yes, sir.

8 Q Even with the mask on, could you tell who Xavier
9 was?

10 A Yes, sir.

11 Q Okay. What if anything did you witness him
12 personally do?

13 A Really same thing everybody else did.

14 Q Okay. You don't know exactly what he was doing,
15 but --

16 A No. But I know he was doing the same thing
17 everybody else was doing.

18 Q And y'all parked this car down the road. Once
19 y'all got this property in your arms, what did you do
20 with it?

21 A We took it outside like on the edge of the grass,
22 by the corner of the house.

23 Q Okay. You put it on the outside corner of the
24 house?

25 A Yes, sir.

- 1 Q Where somebody from the road could see it?
- 2 A No, sir.
- 3 Q Behind the house where y'all entered?
- 4 A Yes, sir.
- 5 Q So y'all take the property y'all took, and is this
- 6 the only time y'all entered the house, just one time?
- 7 A Two times.
- 8 Q So after you dropped this first bit of property
- 9 off, you go back in the house?
- 10 A Yes, sir.
- 11 Q So you make two trips?
- 12 A Yes, sir.
- 13 Q And do you get anything on the second trip?
- 14 A Yes, sir.
- 15 Q What did you get?
- 16 A TV, a Wii and a safe.
- 17 Q You got a safe. Do you remember what the safe
- 18 looked like?
- 19 A It was black, was kind of short.
- 20 Q And did you pick the safe up by yourself?
- 21 A You can, but it going to be heavy.
- 22 Q Okay. So did you have any help?
- 23 A Yes, sir.
- 24 Q Who helped you with that safe?
- 25 A Xavier.

1 Q Xavier. So Xavier helped you take that safe out.
2 And you take it outside as well?

3 A Yes, sir.

4 Q Now, after y'all have this pile of property
5 outside, guns, TV's, game systems including a Wii and
6 some Xboxes, did you ever go in that barn and steal
7 anything?

8 A Yes, sir.

9 Q And how many people went in that barn?

10 A Three.

11 Q Three. Who all was that?

12 A That was myself, Tareek Hemingway, Rodney, Rayquan
13 and Avery.

14 Q Okay. So it was four of y'all that went in the
15 barn?

16 A Yes, sir.

17 Q Okay. So Xavier didn't go in the barn?

18 A No, sir.

19 Q Okay. And so what did y'all get out of the barn?
20 I think you said there was a TV --

21 A A TV.

22 Q -- a pool table, there was a game system in there;
23 what did you get?

24 A There was a TV, a Wii and some like bookbags.

25 Q So y'all got more property out of there?

1 A Yes, sir.

2 Q Piled that up?

3 A Yes, sir.

4 Q And once y'all had this pile of stolen property,
5 what happens?

6 A One of us went to get the car, pull it back in the
7 driveway and load up the car.

8 Q So one of you. Do you remember who went to get
9 the car?

10 A No, sir.

11 Q But it was Rodney's girlfriend's car?

12 A Yes, sir.

13 Q Okay. So somebody goes and gets the car and
14 brings it back to the house?

15 A Yes, sir.

16 Q When you get back to the house or whenever they
17 get back to the house, where do you see the car parked?

18 A In the back, in the back area behind the house.

19 Q Okay. Now, y'all got five people in an Altima. I
20 mean, that's not a huge car; right?

21 A No, sir.

22 Q How do y'all pack the stuff in the car?

23 A Put everything in the trunk.

24 Q Everything in the trunk. So all the property goes
25 in the trunk?

1 A Yes, sir. Except for some of the stuff that we
2 could have inside the car with us.

3 Q Okay. The smaller stuff you can put inside the
4 car, the guns and whatnot?

5 A Yes, sir.

6 Q So y'all load up the trunk, and y'all load up
7 yourselves and some more property?

8 A Yes, sir.

9 Q Now, after y'all load up this property, how long
10 are y'all in the house?

11 A No more than 20 minutes..

12 Q 20 minutes or so?

13 A Yes, sir.

14 Q No more than 20 minutes?

15 A Yes, sir.

16 Q So, I mean, this is a pretty quick tactical
17 strike?

18 A Yes, sir.

19 Q I mean, y'all hit it and get it (indicating);
20 right?

21 A Yes, sir.

22 Q Y'all load this car up with the property y'all
23 dumped outside, you, Rodney, Rayquan, Avery, Xavier?

24 A Yes, sir.

25 Q And how's the seating situation this time?

1 A It was tight. I sat in the middle with the safe
2 on my lap.

3 Q You sat in the middle with the -- middle of the
4 back seat?

5 A Yes, sir.

6 Q Okay. When I was growing up we called that the
7 hump seat. So you sit back there with the safe in your
8 lap. Who's in the front seat at this point?

9 A I think Xavier.

10 Q You think Xavier is in the front at this point?

11 A I think Xavier and Rodney.

12 Q Xavier. And Rodney driving?

13 A No. Xavier driving, I think.

14 Q Xavier is driving?

15 A Yes, sir.

16 Q Okay. And do you know the Green Sea, Floyds,
17 Nichols area pretty well?

18 A No, sir.

19 Q Because you grew up in Tabor. And once again, who
20 had been living over in Green Sea since December?

21 A Xavier.

22 Q Xavier. And so Xavier is driving at this point.
23 When y'all leave that house with the shed behind it --
24 do you know who lives at the house?

25 A No, sir.

1 Q At that point did you care who lived at that
2 house?

3 A No, sir.

4 Q Now, y'all leave this house. And where do you go?

5 A We went back to Xavier house to drop everything
6 off.

7 Q That's back in the mobile home park?

8 A Yes, sir.

9 Q And whenever you dropped this property off at
10 Xavier's house, now, you leave it in the yard, you
11 leave it in the back, what do you do with it?

12 A Take it inside into a bedroom.

13 Q Okay. You take this property back inside to a
14 back room. Does that include -- what if anything does
15 that include with regard to the game systems?

16 A Took everything back there.

17 Q Everything went back in that back room?

18 A Yes, sir.

19 Q And can you tell us how many closets were in that
20 back room?

21 A I can't recall. I think one.

22 Q Okay. So there's at least one closet in that back
23 room?

24 A Yes, sir.

25 Q Is it a bedroom, living room, bathroom; what is

1 it?

2 A A bedroom.

3 Q A bedroom. And this is where Xavier's been
4 staying?

5 A Yes, sir.

6 Q Now, y'all dump everything in that back bedroom
7 there. Well, we'll call it a bedroom for the sake of
8 this. And what about the safe, where is that?

9 A In the back room too.

10 Q Okay. Do y'all do anything with the property at
11 this point?

12 A No, sir.

13 Q Why not?

14 A We went -- we all wanted to go do another one.

15 Q Okay. And who led y'all to the next house?

16 A I guess our instincts.

17 Q I mean, you stated previously, I believe, that
18 Xavier said he knew some houses to hit.

19 A Yes, sir.

20 Q Correct? And he led y'all to the first house?

21 A Yes, sir.

22 Q And on the second house, how did that happen?

23 A Just same thing.

24 Q So Xavier led the way on the second?

25 A No, sir. We just -- our instinct.

1 Q Okay. And how close was this second house to
2 Xavier's house?

3 A It was much closer.

4 Q Much closer?

5 A Yes, sir.

6 Q Now, do you remember what this house looked like?

7 A Kind of have white siding around it.

8 Q Big house, small house, what?

9 A Big.

10 Q Big house. One, two stories?

11 A I think two story.

12 Q Two stories. And when y'all get to this house,
13 it's a little bit closer to Xavier's house; right?

14 A Yes, sir.

15 Q Y'all get there, you drive up, do y'all park in
16 the driveway or what?

17 A First we rode past it, see was anybody home.
18 Didn't look like anybody home. So I don't really know
19 who was driving, but they drop four people off, all
20 four of us off.

21 Q Okay. Y'all knocked on the door at the first
22 house. What steps do y'all take for a precaution here?

23 A We just rode past.

24 Q Just rode past?

25 A Yes, sir.

1 Q And did y'all ever gain entry to that house?

2 A Yes, sir.

3 Q And how did y'all gain entry?

4 A We went on the side of the grass all the way to
5 the back and busted the sliding door open, I think.

6 Q Is that the same way y'all got back out?

7 A Yes, sir.

8 Q Okay. Now, once y'all were inside the house, do
9 you remember who kicks the door?

10 A No, sir.

11 Q And you had boots on that day; right?

12 A Yes, sir.

13 Q Now, you said four of y'all got dropped off and
14 one is driving?

15 A Yes, sir.

16 Q Do you remember who's in the house with you?

17 A Yes, sir.

18 Q Who's in the house with you?

19 A It was Avery, Rayquan and Rodney.

20 Q Okay. So Xavier is driving the car around?

21 A Pretty much, yes, sir.

22 Q Okay. And why is he driving the car around?

23 A I really don't know.

24 Q I mean, is he going to the movies, is he going to
25 get something to eat. What's the plan for after y'all

1 hit this house?

2 A He come back and pick us up.

3 Q So the plan is that after y'all are done taking
4 stuff from the house, Xavier is going to pick you up?

5 A Yes, sir.

6 Q How were y'all going to contact him?

7 A Cell phone.

8 Q Okay. So somebody inside the house is going to
9 call Xavier and say, we're done, come get us?

10 A Yes, sir.

11 Q So when y'all get inside this second house, the
12 two-story house that's closer to Xavier's mobile home,
13 what do y'all do when you get inside the house?

14 A Go our own way.

15 Q Just like before?

16 A Yes, sir.

17 Q And are there any out buildings at this house, any
18 sheds or anything behind there?

19 A I think it was built onto it.

20 Q Okay. So like a garage?

21 A Yes, sir.

22 Q Okay, built onto it. So where did -- do you
23 remember where you went in the house?

24 A No, sir.

25 Q Do you remember what you got in the house?

- 1 A Yes, sir.
- 2 Q What did you get?
- 3 A TV, game system.
- 4 Q Okay. Any weapons?
- 5 A Yes, sir. There was rifles.
- 6 Q You got rifles?
- 7 A Pistols.
- 8 Q You got pistols. Did you get any pistols?
- 9 A When we got back to the house.
- 10 Q So y'all go in here, and it's you, Avery, Rodney,
- 11 Rayquan in there, Xavier is driving around, and y'all
- 12 snatch a bunch of stuff again?
- 13 A Yes, sir.
- 14 Q How many trips do y'all make in and out of the
- 15 house this time?
- 16 A One.
- 17 Q So y'all get everything in one fell swoop this
- 18 time?
- 19 A Yes, sir.
- 20 Q And what do y'all do while inside the house? I
- 21 mean, how long are y'all inside there?
- 22 A Probably no more than 20 minutes.
- 23 Q Okay. Describe how careful y'all are searching.
- 24 A We weren't careful. We were just trying to get it
- 25 and go.

1 Q So you're not careful, you're tossing stuff
2 around?

3 A Yes, sir.

4 Q Is that the same thing y'all did at the other
5 house?

6 A Yes, sir.

7 Q So y'all tear through the house, y'all make one
8 trip in and out and y'all get, I think you said, guns,
9 pistols, games, TV's?

10 A Yes, sir.

11 Q Any types of computers or anything?

12 A A laptop.

13 Q A laptop, all right. Now, y'all get all this
14 property, and do y'all ever make that call to Xavier?

15 A Yes, sir.

16 Q And after y'all make the call, do you remember who
17 made the call to Xavier?

18 A No, sir.

19 Q Was it you?

20 A No, sir.

21 Q Did you have a cell phone at that time?

22 A I think I did.

23 Q But you didn't call your cousin, somebody else
24 did?

25 A Yes, sir.

1 Q So if I understand your testimony, no doubt about
2 it, you went in both these houses; correct?

3 A Yes, sir.

4 Q And you and your buddies got guns out of both
5 these houses?

6 A Yes, sir.

7 Q Along with other stuff?

8 A Yes, sir.

9 Q And do you remember what time of day this was?

10 A No, sir. But I know it was before lunch.

11 Q Before lunch?

12 A Yes, sir.

13 Q All right. So y'all hit these houses before
14 lunch, y'all get guns, y'all go in these houses and
15 y'all come back. Now, let's go back. Somebody calls
16 Xavier after you hit the second house. How quick did
17 he get there?

18 A Pretty quick.

19 Q Pretty quick. And where are y'all standing when
20 Xavier arrives back in Rodney's girlfriend's car?

21 A At the back.

22 Q Standing at the back of the house?

23 A Same way we came in.

24 Q Okay. Away from the road?

25 A Yes, sir.

1 Q And are there any neighbors around or anything?

2 A No, sir.

3 Q Okay, so no neighbors around. Y'all are in the
4 back; why are y'all in the back?

5 A So we won't be seen.

6 Q Okay. Because you didn't want to get caught?

7 A No, sir.

8 Q And in all this planning and scheming for these
9 burglaries, did y'all ever discuss -- tell us what if
10 anything y'all discussed with regard to what to do if
11 you're caught.

12 A No, sir.

13 MR. JOYE: Objection.

14 THE COURT: Basis?

15 MR. JOYE: I believe he's going to call for
16 hearsay, y'all --

17 THE COURT: Well, hearsay within a --

18 MR. JOYE: He can say what he said.

19 THE COURT: Don't speak over the Court. There's
20 an exception when it deals with co-conspirators. It's
21 not hearsay. It's not being offered for its truth and
22 in furtherance of the conspiracy, citing State versus
23 Sims. You may proceed.

24 MR. RICHARDSON: Thank you, Your Honor.

25 THE COURT: You're welcome. You may answer the

1 question, sir. Do you need it repeated?

2 THE WITNESS: Yes, sir -- yes, ma'am.

3 THE COURT: Please repeat the question.

4 Q What if anything did you and your fellow burglars
5 discuss with regard to --

6 THE COURT: And please no editorial comments.

7 MR. RICHARDSON: Yes, ma'am.

8 THE COURT: Just ask a direct question, please.

9 Q The people you were with, what if anything did
10 y'all discuss with regard to what to do if you were
11 caught?

12 A We didn't discuss nothing.

13 Q Y'all didn't discuss anything about what to do if
14 you were caught.

15 A No, sir.

16 Q So Xavier comes back and y'all got one load of
17 property. What do y'all do with this property this
18 time?

19 A Well, he drove onto the back grass, all the way to
20 the back, and we loaded the car up and left.

21 Q Okay. So he drove all the way to the back on the
22 grass?

23 A Yes, sir.

24 Q And y'all loaded the car up. How did y'all load
25 the car up this time?

1 A The same way.

2 Q Okay. So y'all loaded it up the same way. So
3 stuff in the trunk, stuff in your laps?

4 A Yes, sir.

5 Q Where are you sitting this time?

6 A Probably in the back seat somewhere.

7 Q Probably in the back seat, you just don't recall?

8 A Yes, sir. Yes, sir.

9 Q Did you have any safes this time?

10 A No, sir.

11 Q Okay. And so y'all get back in the car; Xavier is
12 still driving at this point?

13 A Yes, sir.

14 Q Okay. Now, whenever y'all leave this second
15 house, where do y'all go?

16 A Back to Xavier house.

17 Q And when you get to Xavier's house, what if
18 anything do y'all do?

19 A He -- we bust the safe open.

20 Q Now, who bust the safe open?

21 A Me and Xavier.

22 Q How do y'all do this?

23 A With a crowbar.

24 Q With a crowbar. And where does this take place?

25 A In the back yard.

1 Q In the back yard, so y'all go in the back yard.

2 Anybody else around whenever y'all do this?

3 A No, sir.

4 Q Nobody. So Avery is not around, Rayquan is not
5 around, and Rodney is not around?

6 A No, sir.

7 Q It was just you and Xavier?

8 A Yes, sir.

9 Q And y'all used a crowbar. Whose actually got
10 ahold of the crowbar?

11 A Probably both of us.

12 Q Both of y'all. Okay, took both of y'all to break
13 it open?

14 A Yes, sir.

15 Q So y'all did break it open?

16 A Yes, sir.

17 Q What if anything did y'all find in there?

18 A It was empty.

19 Q It was empty?

20 A Yes, sir.

21 Q So you didn't see anything in there?

22 A No, sir.

23 Q Now, and I'll come back to all the other property.

24 But after y'all busted this safe open, what did y'all
25 do with it?

1 A We threw it on the side of the road by like a
2 little bridge.

3 Q At Xavier's house?

4 A It was like close by his house.

5 Q Okay. So down the road a little bit?

6 A Yes, sir.

7 Q Not right out in front of it?

8 A No, sir.

9 Q You didn't put it out with the trash?

10 A No, sir.

11 Q Okay. Now, this other property, you told us
12 before that the property from the first house y'all
13 took back to the bedroom?

14 A Yes, sir.

15 Q In Xavier's house. How about the second load of
16 property?

17 A Same thing.

18 Q Same thing. So once it's in the bedroom, what if
19 anything do y'all do with the property?

20 A Start negotiating about what we want. We split
21 everything up.

22 Q Okay. So that's the plan, y'all are splitting up
23 what y'all got?

24 A Yes, sir.

25 Q And who all is in the room wherever y'all are

1 discussing who gets what?

2 A Everybody.

3 Q Everybody. And when you say everybody, you mean?

4 A Xavier, Rodney, Avery, Rayquan and me.

5 Q Okay, so all five of y'all are in there?

6 A Yes, sir.

7 Q Is there anybody else in the house while you were
8 there?

9 A No, sir.

10 Q Okay. So nobody else in the house, so it's just
11 you five?

12 A Yes, sir.

13 Q Now, y'all start splitting this property up. And
14 I think you've listed out TV's and computers and game
15 systems and guns, other stuff?

16 A Yes, sir.

17 Q Do you remember exactly what you got?

18 A Rifle, probably two rifles, TV, game system.

19 Q What kind of TV was it?

20 A I really can't remember, I know it was a flat
21 screen.

22 Q A flat screen TV. You don't remember how big?

23 A No, sir.

24 Q How about the game system, do you remember what
25 kind it is?

1 A It was a Wii.

2 Q So you got a Wii? And you said you got two
3 rifles; you get any handguns?

4 A Yes, sir.

5 Q What kind?

6 A Like it was like a .45.

7 Q Some people may not be familiar with guns. Is
8 this a revolver or automatic?

9 A Automatic.

10 Q Okay, so it was automatic. Do you remember what
11 color it was?

12 A I think it was black.

13 Q So you personally got from these burglaries two
14 rifles, a Wii system?

15 A Yes, sir.

16 Q A TV?

17 A Yes, sir.

18 Q And a handgun?

19 A Yes, sir.

20 Q Possibly black in color?

21 A Yes, sir.

22 Q Now, once you got this property -- were you the
23 only one that got property that day?

24 A No, sir.

25 Q So everybody got their piece?

1 A Yes, sir.

2 Q After y'all divide up the spoils, I guess, what
3 time is it?

4 A Probably little bit after lunch now.

5 Q Okay, so it's after lunch now?

6 A Yes, sir.

7 Q Okay. Because y'all been riding, you come back,
8 you ride, you come back?

9 A Yes, sir.

10 Q And trying to crack the safe open?

11 A Yes, sir.

12 Q It was after lunch sometime?

13 A Yes, sir.

14 Q Now, once you have all the spoils, where do you
15 stay that night?

16 A At my cousin house.

17 Q So you go back to your cousin's house where you
18 been living?

19 A Yes, sir.

20 Q Right. And did you see what Xavier did with his
21 property?

22 A No, sir. Everybody went their own ways.

23 Q Okay. Everybody went their own ways. But Xavier
24 was at his house?

25 A Yes, sir.

1 Q So the other four of y'all took property back to
2 Tabor City?

3 A Yes, sir.

4 Q And Xavier stayed behind with his?

5 A Yes, sir.

6 Q Now, you get back to your cousin's house where you
7 been living in Tabor City, you got two rifles, a Wii, a
8 TV, the handgun. What do you do with these items?

9 A Start calling around trying to sell them.

10 Q Okay, you call around. Do you remember who all
11 you called?

12 A No, sir.

13 Q Do you remember what happened with the two rifles?

14 A All I know, I sold them.

15 Q How much you get for each rifle?

16 A Probably like a hundred dollars.

17 Q Probably like a hundred dollars. You don't recall
18 specifically?

19 A No, sir.

20 Q How about the Wii, do you remember that?

21 A Probably like 50.

22 Q 50. And the TV, the flat screen?

23 A Like 150.

24 Q 150 for a flat screen. And how about the handgun?

25 A Like a hundred.

1 Q A hundred. So the three guns, you got \$300 on
2 them, maybe another 200 on the Wii and the TV?

3 A Yes, sir.

4 Q So about \$500 is what you sold all this property
5 for?

6 A Yes, sir.

7 Q Now, did you go to sell it at -- where did you go
8 sell it?

9 A In Tabor City, like in the Bottom area.

10 Q In the Bottom. And having described where Duford
11 and Green Sea is, I dare say we won't describe -- what
12 type of area is the Bottoms of Tabor City?

13 A Like a drug-related area.

14 Q Drug-related area?

15 A Yes, sir.

16 Q Easy to find buyers?

17 A Yes, sir.

18 Q Do you remember who you sold that pistol to?

19 A No, sir.

20 Q Okay, you don't remember who you sold the pistol
21 to. That's a year and a half ago?

22 A Yes, sir.

23 Q Now, you're selling this property down at the
24 Bottoms. Do you know a Charles Billings?

25 A Yes, sir.

1 Q Do you know where he lives?

2 A Yes, sir.

3 Q Where is that?

4 A Tabor City.

5 Q In the Bottoms or ---

6 A The Bottom.

7 Q So he lives in the Bottom?

8 A Yes, sir.

9 Q And, once again, do you remember what kind of
10 property Xavier kept?

11 A No, sir.

12 Q You were more than concerned on your own?

13 A Yes, sir.

14 Q Now, how soon after these burglaries did you start
15 selling this property?

16 A Time I got back to my house.

17 Q Time you got back. Did you sell it all that day?

18 A Yes, sir.

19 Q You did. Now, and that was all on April 5th?

20 A Yes, sir.

21 Q Now, April 5th happens, y'all commit these
22 burglaries. You're selling this property. Do you
23 think any more about these crimes on that day?

24 A No, sir.

25 Q At some point during the next week and a half,

1 what happened to you?

2 A I got locked up.

3 Q Locked up here in Horry County?

4 A North Carolina.

5 Q North Carolina. And when you got locked up in
6 North Carolina, April 16th sound about right?

7 A Yeah, April 13th.

8 Q April 13th you got locked up. Now, at some point
9 while you were locked up over in Tabor City, is that
10 Columbus County?

11 A Yes, sir.

12 Q Over in Columbus County. I guess you were over at
13 the Columbus County jail?

14 A Yes, sir.

15 Q All right. Did you have an opportunity to meet
16 with Horry County police officers?

17 A Yes, sir.

18 Q And do you remember with whom you met?

19 A I know it was Terry Elliott.

20 Q Detective Terry Elliott?

21 A Yes, sir.

22 Q Now, when you first met with Detective Terry
23 Elliott, of course you can't tell us exactly what he
24 said, but what was your understanding as to why he was
25 there to talk to you?

1 A That he heard I was -- I had something to do with
2 a crime.

3 Q I mean, what types of crimes?

4 A First degree burglary, safecracking, grand
5 larceny.

6 Q Okay. And when he first -- so he had gotten your
7 name somehow, some way?

8 A Yes, sir.

9 Q And whenever he first comes in there, tell us how
10 surprised you were.

11 A Very surprised.

12 Q And why?

13 A Because I already knew.

14 Q You already knew --

15 A Yes, sir.

16 Q -- you had done it?

17 A Yes, sir.

18 Q Were you surprised that he had an idea you had
19 done it?

20 A Yes, sir.

21 Q Because y'all had taken precautions with the
22 gloves and the masks and whatnot. When Detective Terry
23 Wayne Elliott comes and talks to you over at Columbus
24 County, before he talks to you, does he ever tell you
25 about your rights?

1 A Yes, sir.

2 Q And what does he tell you?

3 A Tell me that I got a right to remain silent,
4 anything I say could be used against me in a court.

5 Q Describe to us any types of threats Terry Wayne
6 made to you.

7 A Can you repeat that.

8 Q Could you tell us about any threats Terry Wayne
9 made to you.

10 A No, sir.

11 Q And why not?

12 A Because he didn't.

13 Q So he didn't threaten you in any way?

14 A No, sir.

15 Q Now, when Detective Elliott, he read you your
16 Miranda rights?

17 A Yes, sir.

18 Q This might be a little bit easier.

19 MR. RICHARDSON: If I could have this marked for
20 identification.

21 (WHEREUPON, State's Exhibit No. 29 was marked for
22 identification only.)

23 Q Tareek, let me show you what's been marked State's
24 No. 29 for identification.

25 A Yes, sir.

1 Q Do you recognize State's-29?

2 A Yes, sir.

3 Q And what do you recognize this as being?

4 A My rights.

5 Q These are your Miranda rights?

6 A Yes, sir.

7 Q These are the same rights that Detective Terry
8 Wayne Elliott gave you, I believe, the 16th?

9 A Yes, sir.

10 Q And you signed the form?

11 A Yes, sir.

12 Q Okay. So at the time you were making a statement
13 to Terry Wayne, you knew you didn't have to talk to him
14 and you had a right to a lawyer before you talked to
15 him?

16 A Not really.

17 Q But you signed off on the Miranda form; correct?

18 A Yes, sir.

19 Q And I believe you said that Terry Wayne didn't
20 threaten you in any way?

21 A No, sir.

22 Q Did he make any kind of promises to you?

23 A No, sir.

24 Q Did -- at any point did -- did he serve arrest
25 warrants on you that day?

1 A I'm not sure. I think so.

2 Q But he's there to talk to you about these crimes;
3 correct?

4 A Yes, sir.

5 Q Now, when Terry Wayne Elliott is talking to you
6 about these crimes, these burglaries that took place on
7 April 5th, 2013, does he mention any names?

8 A Yes, sir.

9 Q Whose name does he mention?

10 A Charles Billings.

11 Q Charles Billings. Does he mention any of your
12 codefendants?

13 A Yes, sir.

14 Q Who does he mention?

15 A Rodney, Avery, Rayquan and Xavier.

16 Q Okay. So he's the first one that brings those up?

17 A Yes, sir.

18 Q And at first do you -- at first do you speak with
19 Detective Elliott about this?

20 A No, sir.

21 Q And why not?

22 A Didn't want to come out and say it.

23 Q Now, after you don't come out and say it, tell us
24 how Detective Elliott reacts.

25 A Start telling me about how much -- how much he

1 faces -- how much I'm facing.

2 Q How much time you're facing?

3 A Yes, sir.

4 Q And he told you it was 15 years to life in prison;
5 correct?

6 A Yes, sir.

7 Q On first degree burglary.

8 A Yes, sir.

9 Q So at that point you knew it was serious. After
10 he tells you about what you're facing on these crimes,
11 what if anything did you do?

12 A Started telling him.

13 Q And what did you tell him?

14 A Told him that me, Xavier, Rodney, Avery, Rayquan,
15 we did it.

16 Q And you give a written statement about that;
17 correct?

18 A Yes, sir.

19 Q And everything that you told us today, is that
20 included in your written statement?

21 A Yes, sir.

22 Q Yes, it is?

23 A Yes, sir.

24 Q Your written statement is about one page?

25 A I think two.

1 Q Two, okay. All right. Now, why did you -- why
2 did you tell Detective Terry Wayne Elliott that Xavier
3 Hemingway was involved in these burglaries?

4 A Because he was with me when I committed the crime.

5 Q And that's your cousin?

6 A Yes, sir.

7 Q Okay. And why did you tell Terry Wayne Elliott
8 the other three were involved?

9 A Because they was with me when I committed the
10 crime.

11 Q And that is the sole reason you told him they were
12 involved?

13 A Yes, sir.

14 Q Now, you're arrested, you're in Tabor City;
15 correct?

16 A Yes, sir.

17 Q And that's on your other charges; right, your
18 North Carolina charges?

19 A Yes, sir.

20 Q All right, you're there. Now, after you're
21 arrested, after you speak with Detective Terry Wayne
22 Elliott, do you encounter any of your codefendants?

23 A No, sir.

24 Q You don't see them again?

25 A No, sir.

1 Q Now, after you got arrested in North Carolina, did
2 you speak with any of your codefendants?

3 A Yes, sir. We went for a bond hearing.

4 Q When you went for a bond hearing. Where did that
5 occur?

6 A In Columbus County, the court.

7 Q Columbus County. And whenever you went to
8 Columbus County, what if anything did you all discuss
9 about the burglaries?

10 A We didn't discuss nothing.

11 Q Okay. Did you tell them -- what if anything did
12 you tell your codefendants about you making a
13 statement?

14 A Told them I didn't.

15 Q And why did you tell them that?

16 A Because I didn't want them to know.

17 Q You didn't want them to know. And why didn't you
18 want them to know?

19 A I'm a sellout.

20 Q You're a sellout. And did anyone at any point
21 tell you what to say?

22 A No, sir.

23 Q In your statement to Detective Elliott?

24 A No, sir.

25 Q And what you're telling the jury today?

1 A The truth.

2 Q Telling them the truth?

3 A Yes.

4 MR. RICHARDSON: Thank you. Thank you, Tareek.

5 If you'll answer any questions Mr. Joye may have.

6 THE COURT: We're going to take a brief recess.

7 Ladies and gentlemen, we're going to take a brief
8 restroom break because you all have been sitting quite
9 a substantial amount of time.

10 During this break please do not discuss the case,
11 and please leave your notepads in your seats. We might
12 break for lunch since it's ten of one, but I'll let you
13 all know in a moment. Will you go with the bailiffs,
14 please, and please leave your notepads in your seats.

15 (WHEREUPON, the jury exited the courtroom at
16 12:50 p.m.)

17 THE COURT: How long do you anticipate your
18 cross-examination will be, Mr. Joye?

19 MR. JOYE: Your Honor, I would say probably
20 hopefully I'll be done in 30 minutes, and it may be
21 quicker than that. Judge, kind of got a lot of
22 information.

23 THE COURT: I don't want you to feel compressed
24 about time. I'm just trying to figure out for lunch.

25 MR. JOYE: Yeah. Judge, I would request that we

163
1 break for lunch at this point in time.

2 THE COURT: Any exception from the State?

3 MR. RICHARDSON: It's only fair to the jury, Your
4 Honor.

5 THE COURT: Yeah, because it's ten of one.
6 They've had a long morning. I just don't see starting
7 and stopping. I think they are ready to go to lunch.
8 So why don't we break for lunch until 2 o'clock, and
9 then we'll resume the witness' testimony.

10 MR. RICHARDSON: Certainly.

11 MR. JOYE: I think that's probably pretty good.
12 Because I would assume that the State probably has two
13 more witnesses, one is going to be extremely short.

14 THE COURT: Please get the jury. We need order,
15 the jury's coming back in. Thank you.

16 (WHEREUPON, the jury came into open court at
17 approximately 12:53 p.m.)

18 THE COURT: Madam forelady, ladies and gentlemen,
19 we're going to take advantage of this break in
20 testimony to take our lunch recess. During the break
21 please do not discuss the case among yourselves or
22 anyone else. Please don't have any contact with anyone
23 in or about the courthouse when you return from lunch,
24 and come directly to your jury room under the direction
25 of the bailiffs. And also, please don't make any

1 A Correct.

2 Q Did you grant any permission to Detective Elliott
3 that day?

4 A Yes.

5 THE COURT: Please approach.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Madam forelady, ladies and gentlemen,
10 I have a brief matter of law to take up with the
11 attorneys. During this break, please do not discuss
12 the case, and please leave your notepads in your seats.

13 (WHEREUPON, the jury exited the courtroom at
14 2:43 p.m.)

15 THE COURT: You may proceed with the line of
16 questioning.

17 MR. RICHARDSON: Yes, ma'am, Your Honor.

18 Q For the purposes of this hearing, Ms. Livingston,
19 you said you spoke with Detective Terry Wayne Elliott;
20 is that correct?

21 A Yes.

22 Q And what if any request did he make of you?

23 A None.

24 Q Did you tell him anything with regard to his
25 ability to go into that residence?

1 A He just said that he wanted to -- he learned that
2 Xavier was living here and some stuff was missing or
3 something, and he wanted to know could he search the
4 house.

5 Q And what did you tell him?

6 A I told him, sure.

7 Q Allow me to show you State's No. 28. And do you
8 recognize State's No. 28?

9 A Yes.

10 Q And to your knowledge, what is State's No. 28?

11 A Consent to search.

12 Q Okay. Is this what was provided to you by
13 Detective Elliott?

14 A Yes.

15 Q And you signed this?

16 A Yes.

17 Q What was your understanding of permission being
18 given to Terry Elliott by your signature?

19 A That I gave him permission to the search the
20 house.

21 Q Sure, okay.

22 MR. RICHARDSON: The State would seek to
23 introduce, at least for purposes of this hearing,
24 State's-28, Your Honor.

25 THE COURT: Which is?

1 MR. RICHARDSON: This is the consent to search.

2 THE COURT: Did you show it to Mr. Joye?

3 MR. RICHARDSON: Yes.

4 MR. JOYE: Your Honor, I don't think we have
5 standing to argue that she had every right to give
6 consent. Our issue is what's purported to have been
7 seen there and the admissibility of that in this trial.
8 And if this is the appropriate time, if this is the
9 time of the Court to take that issue up, then I
10 certainly, you know, since the jury's --

11 THE COURT: What are you going to elicit from her
12 other than her consenting to the search?

13 MR. RICHARDSON: Just that she allowed that
14 permission. And that would be my intent, Your Honor,
15 at the hearing to try and -- that would be basically
16 it, Your Honor. Just trying to get that she allowed
17 him permission being there, and she allowed them to
18 search.

19 THE COURT: Are you stipulating that they have the
20 right to consent to search the --

21 MR. JOYE: Well, I think she does, Your Honor.
22 The problem is then it becomes an issue of relevance
23 because it's kind of like a dangling participle.

24 THE COURT: Well, I got to take it one at a time.
25 Is the search of the residence a nonissue?

1 MR. JOYE: Well, it clearly is a nonissue. But it
2 has to come into context within the trial itself.

3 THE COURT: You need to follow the lead I'm
4 taking. Y'all, I have a method to everything I do.

5 MR. JOYE: Yeah, okay.

6 THE COURT: I don't do anything haphazardly.

7 MR. JOYE: I understand that, judge.

8 THE COURT: There's a method to everything I do.
9 And if I ask a question, there's a reason I've asked
10 it.

11 MR. JOYE: Yes, Your Honor.

12 THE COURT: Don't try to get ahead of the train.
13 We all going in the same direction.

14 MR. JOYE: Okay.

15 THE COURT: But it has several different layers,
16 one of which is there's no issue about the search, no
17 argument about a reasonable expectation of privacy or a
18 necessity of a warrant, then it's a nonissue. Because
19 then you can stipulate that --

20 MR. JOYE: It's a nonissue, Your Honor.

21 THE COURT: -- the search was reasonable and she
22 had the right to consent to the search. We then move
23 to the fruits of the search, whole different issue.
24 Because if the causal link has been laid, it comes in.
25 Then we deal with -- which deals with your argument

1 about relevance. So we're onto a different issue now.

2 So now that we've resolved that issue, it would
3 seem to me, then, that there really is no need to
4 elicit anything further from this witness because you
5 don't have any argument about whether the search was
6 reasonable or not. You have an argument about the
7 fruits of the search?

8 MR. JOYE: Yes, Your Honor. But the problem I had
9 was putting this witness up to testify that she gave
10 permission to search, and then that in context in front
11 of the jury.

12 THE COURT: Well, foundationally he'd have to do
13 that if you didn't concede that the search was
14 reasonable. I mean, he didn't have a choice, he would
15 have to establish that there was foundation for the
16 search.

17 What is your -- do you have a new argument other
18 than what you've already argued pretrial regarding the
19 admissibility of the items that were found in the
20 residence?

21 MR. JOYE: Yes, Your Honor, I do.

22 THE COURT: Um-hum.

23 MR. JOYE: In fact, if we boil all this down to,
24 we've got a list of some, and I never got completely
25 through it, but using the incident reports and the

1 evidence -- the inventory of what was taken from the
2 two homes that were burglarized, we had arguably three
3 laptops, two of which had serial numbers, and that's
4 been testified to by the victims, and that they ran the
5 serial numbers through the system some ten days later,
6 and nothing came back stolen.

7 THE COURT: That just means they weren't pawned.
8 That's the purpose they have it in that system.

9 MR. JOYE: Right. And then the second issue is
10 three Xboxes, when the testimony is that they weren't
11 but two stolen. There were two stolen from Ms. Ford's
12 residence, no one else said anything about Xboxes, and
13 the testimony of Tareek Hemingway, and Tareek says, I
14 don't know who got what, but we divvied all the stuff
15 up.

16 THE COURT: That's an unfair interpretation of
17 what he said.

18 MR. JOYE: He said what he got. The State would
19 have then had to lay the foundation --

20 THE COURT: He said what he got he sold in Tabor
21 City. The only thing the State has to establish with
22 his testimony is that they stole these items and that
23 they did whatever they did with them. He said he took
24 his portion and sold it. I think the State is only
25 trying -- I need to see Mr. Hemingway's statement that

1 the State would be seeking to introduce.

2 MR. RICHARDSON: I don't think I was seeking to
3 introduce that --

4 THE COURT: Well, I need to see it.

5 MR. RICHARDSON: Yes, ma'am.

6 THE COURT: If you want to publish it, that's the
7 same thing as introducing it; is there any difference?
8 You want the investigator to testify about his
9 statement; don't you?

10 MR. RICHARDSON: You talking about Mr. Xavier
11 Hemingway's statement?

12 THE COURT: Yes.

13 MR. RICHARDSON: Okay. I thought you said Tareek
14 Hemingway. I'm sorry, Your Honor.

15 THE COURT: No, his statement's been presented.
16 It's for ID only.

17 MR. RICHARDSON: Oh, yes, ma'am. That's --

18 THE COURT: Yes, um-hum, thank you. Bear with me
19 one moment, Mr. Joye.

20 MR. JOYE: Yes, Your Honor.

21 (Discussion off the record.)

22 THE COURT: Okay. The statement says he doesn't
23 know anything about any break-ins or robberies,
24 whatever they say took place. That would be
25 admissible. Don't know the name or the person I bought

1 the two Xboxes from. How is that inconsistent with the
2 testimony?

3 And then I can't read this word, it's in --
4 honestly, I don't know whether that's from or what that
5 word is. By the laptops -- oh, but the laptops, I
6 guess that's a but -- but the laptops came from a flea
7 market in Florence. That's consistent with testimony,
8 there's more than one laptop. Laptops is plural,
9 doesn't specify in his statement how many he's
10 referring to. And I found -- I don't know what, part
11 of that's cut off -- I found whatever that says, three
12 or four chokes on the side of the road down from
13 something house in Green Sea.

14 MR. JOYE: Your Honor, the chokes don't tie --

15 THE COURT: Let me finish my statement.

16 MR. JOYE: Yes, I'm sorry.

17 THE COURT: The chokes would be irrelevant because
18 there's no testimony tying him to any chokes, so that
19 portion would have to be redacted.

20 MR. RICHARDSON: Yes, ma'am.

21 THE COURT: The statement wouldn't come in anyway.
22 The only portion that would come in as an admission
23 against interest is what he said to the investigator.
24 I need to know, Mr. Joye, what argument you have
25 regarding the remainder of the statement.

1 MR. JOYE: I guess the problem that I have, judge,
2 is this. We've got three laptop computers, there's
3 three laptops stolen, two of which they had serial
4 numbers that were in the NCIC computer and that they
5 didn't match. So now we got three computers --

6 THE COURT: That's not a correct characterization.
7 When you put a serial number in NCIC, it's a
8 centralized system, it's only going to pop up if it's
9 been pawned or somebody found it.

10 MR. JOYE: Your Honor, Detective Elliott's going
11 to testify he ran those three serial numbers, and the
12 witness, one of the witnesses, already said that they
13 put -- that they had the serial numbers from the
14 computers, from two of the three computers. In their
15 incident report Detective Williams was turned over the
16 Toshiba serial number. Mr. Causey testified he gave
17 them the Dell computer serial number. The State
18 doesn't have make, model, anything.

19 THE COURT: They don't have to.

20 MR. JOYE: Three computers. Your Honor, the
21 problem I have is this. The State had every ability to
22 get descriptions to tell what kind of computers,
23 they're specific computers. Mr. Hemingway has got
24 three computers at his house. That's like saying I got
25 three cars on my car lot, and three cars were stolen so

1 therefore these three cars --

2 THE COURT: It's not the same. You got a hundred
3 different models of cars in this country, and that's a
4 gross underestimate. Ain't but one way a Xbox is made,
5 the Xbox One and Xbox 360. Both look the same unless
6 it's a different color. And these witnesses have
7 already testified as to what was taken from their
8 house.

9 I'm not aware of a Wii being made in but one
10 color, white. Everything with a Wii is in white,
11 unless the little controllers have different little
12 colors with the little knobs, have different colors. I
13 admit, my knowledge is limited, I have very little to
14 no interest in video games. But having young children
15 in my family --

16 MR. JOYE: Your Honor?

17 THE COURT: -- I am forced upon to look at these
18 things so I have to go to stores. But I'm not aware
19 of -- I mean, everybody -- I think it's within common
20 parlance to know what Xbox and Wii looks like. It's
21 not specialized knowledge. If you go to the paper,
22 what's today, Wednesday, it's sale day, if you open
23 that Wal-Mart circular, there's a picture of a Xbox in
24 there, there's a picture of a Wii in there.

25 Q That's the problem, judge. Almost every home in

1 America has got Xboxes.

2 THE COURT: I don't think to tie it to your client
3 they have to have a serial number. Frankly, most
4 people don't have -- if you ask me the serial numbers
5 to my property, I don't have it. If somebody robbed my
6 house right now, God forbid, while I'm not home, I
7 guess I'd just be out because I don't have serial
8 numbers to anything. And everything is so old,
9 although I'm a pack rat, I probably have the receipt
10 somewhere.

11 I don't think that has anything to do with if they
12 go to money man, and somebody says they got a Samsung
13 whatever whatever, and I go and say, you know what,
14 this is my TV because it has a chip in this right
15 corner, or it's my TV because I recognize it. I don't
16 know that that is required to tie this property.
17 There's enough inferences and circumstances to tie him
18 inferentially to this property. I don't think the
19 State -- all these things are great arguments you make
20 as to the sufficiency of their burden of proof, but
21 that don't make it inadmissible.

22 MR. JOYE: Well, I just -- I just feel like it's
23 highly prejudicial in this respect, judge, because they
24 didn't -- Tareek said basically everybody split up
25 whatever property's there. He doesn't say, Xavier

1 Hemingway got those Xboxes or laptops.

2 THE COURT: I don't think he has to. All he has
3 to testify to is that we all stole this property, we
4 all divvied it up, I went to Tabor City and sold mine,
5 I don't know what they did with theirs. It is a
6 reasonable inference. So that if your client had
7 dominion and control in a trailer that he frequented
8 off and on, and his aunt says the property didn't
9 belong to her, it is a reasonable inference for a jury
10 to draw the conclusion that it belonged to him, or his
11 daddy. Those are the only other two people that we are
12 aware of that frequented that trailer.

13 Now, if you want to argue to the jury that all
14 those things, there are no serial numbers, they don't
15 match, how can you tie this to my client, all those
16 things are really wonderful factual arguments that you
17 would make in a closing argument. But they certainly
18 do not determining by a preponderance of the evidence,
19 which is more likely than not, that it's admissible.

20 And I listened very carefully to Tyreek -- and I
21 hope I'm pronouncing his name correctly -- or Tareek
22 Hemingway's testimony. The only thing he had to
23 testify to is that we all went and robbed these
24 residences, and these are the class of items that we
25 took, televisions, computers, video games. And then

1 you have the victims, and I hate to use that word, but
2 the --

3 MR. JOYE: Well, I think it's clear these folks
4 are the victims, Your Honor.

5 THE COURT: -- the Fords and the Causeys testified
6 that these particular items were taken from my house.
7 I think that's all you need. For him to then say to
8 the officer, I don't know anything about any break-ins,
9 that's clearly, that's admissible, I don't -- as a
10 matter of fact, it helps your client, I don't see how
11 it's prejudicial to him.

12 Or no robberies, that's beneficial to him as well,
13 or whatever they're saying took place. Don't know the
14 name of person or the person I brought the two Xboxes
15 from -- oh, now I understand -- I bought the two Xboxes
16 from, but the laptops came from a flea market in
17 Florence, and I found -- the rest of that is irrelevant
18 because it's not tied causally to anything. Nobody can
19 testify that chokes -- I mean, there's no testimony in
20 the record that any chokes were taken. And so that
21 portion of it would be inadmissible, and I agree.

22 But the other portions of it are inculpatory, and
23 they are admissions against interest. He admits that I
24 have these -- although he gives an alternative
25 explanation as to why I have them. And you could argue

1 that, that in fact my client did buy these things in
2 Florence, or he did buy them someplace else. And
3 reasonably so, you can argue that the State has no way
4 of proving that he didn't do that, because they don't
5 have -- they had serial numbers, and they never took
6 the time to have these people identify this property or
7 be able to say that in fact this is my property. And
8 for whatever reason they didn't do that, and that
9 enures to your benefit and you certainly can argue it.

10 But it does not inferentially and from a
11 circumstantial standpoint, they're dots. The Causeys
12 and the Fords said, these things were taken from my
13 house. Mr. Hemingway says, we took these things from
14 their house. He says, we then split it up and went
15 different directions.

16 You now have his aunt saying, I didn't give him
17 permission to be in my residence, but I have -- you
18 know, somebody told me he was coming and going from
19 there. And then the police go there and see these
20 items there. It's a sufficient amount of bread crumbs
21 to connect the dots.

22 Now, you can argue all those other things as to
23 sufficiency, that they have haven't proven beyond a
24 reasonable doubt that he didn't buy it from a flea
25 market or that he didn't come about it some other way

1 or that he was in fact involved. But it doesn't make
2 the statements inadmissible. And, again, it enures to
3 your benefit that they don't actually have the items
4 here. You can argue all that.

5 MR. JOYE: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. JOYE: Your Honor, in -- at the appropriate
8 time, does the Court wish me to just simply get up and
9 say relevance.

10 THE COURT: I think you've already -- I think
11 there's a long line of precedent that says once you do
12 something -- this is a final ruling, it's not in
13 limine.

14 MR. JOYE: Okay.

15 THE COURT: I ruled on it, so it's preserved.

16 MR. JOYE: Okay. Thank you, Your Honor. I just
17 wanted to make sure of that.

18 THE COURT: You're welcome. And we've already had
19 a pretrial hearing on it. I told you all that at the
20 time it was not admissible subject to the State proving
21 foundation and a causal link between this property,
22 they have. And I've already looked through the
23 statement, and I've told you what's admissible and
24 what's not.

25 MR. RICHARDSON: Yes, ma'am.

1 MR. JOYE: So I won't need to contemporaneously
2 object --

3 THE COURT: I think we've already --

4 MR. JOYE: -- when Detective Elliott seeks
5 to introduce the statement --

6 THE COURT: Well, if you want to.

7 MR. JOYE: Yeah, I'll just get up.

8 THE COURT: I mean, if it makes you feel more
9 comfortable, I'll say it's preserved for the record.

10 MR. JOYE: That's all I need, judge. Yes, that's
11 fine, Your Honor.

12 THE COURT: Yes, sir.

13 MR. RICHARDSON: Your Honor, if I may have a
14 minute, I can take the exhibit and actually make a
15 redacted copy, that's plan it, so if they have it back
16 in the jury room, they could --

17 THE COURT: I don't think this -- well.

18 MR. RICHARDSON: It being a handwriting statement,
19 that's the only protection I wanted to take, Your
20 Honor.

21 MR. JOYE: Your Honor, I think that kind of
22 prejudices my client that if we've redacted something
23 out of it.

24 THE COURT: It becomes cumulative. Your witness
25 can testify to it.

1 MR. RICHARDSON: Yes, ma'am. Yes, ma'am.

2 THE COURT: And just leave it at that.

3 MR. RICHARDSON: Yes, ma'am, Your Honor.

4 THE COURT: It will be marked -- what we'll do
5 is -- that actually doesn't have to come in because
6 he's testified to it. Once he testifies, he has, yes.

7 MR. RICHARDSON: Can I publish the portion that is
8 allowed, Your Honor?

9 THE COURT: Yes, um-hum. But the rest of that
10 doesn't come in that deals with the chokes and whatever
11 else I've already said is inadmissible. Now, are we
12 going to need anything further from this witness since
13 Mr. Joye basically has stipulated to the --

14 MR. RICHARDSON: And the consent's in there, Your
15 Honor.

16 THE COURT: No, because if he stipulates to the
17 search, why do you need a consent in there?

18 MR. RICHARDSON: Okay. Well, I had it marked,
19 just --

20 THE COURT: Yeah, it could be marked for ID.

21 MR. JOYE: I certainly content my client didn't
22 have any standing to argue.

23 THE COURT: Are you stipulating that the search
24 was appropriate and that she consented to the search?

25 MR. JOYE: Yes, Your Honor.

1 THE COURT: You don't have any issue with the
2 search itself?

3 MR. JOYE: No, Your Honor. I don't believe
4 there's any issue there.

5 THE COURT: All right. Then, we'll bring back the
6 jury and you can -- I mean, I would imagine if there
7 are other questions that you need to ask other than the
8 consent issue.

9 MR. RICHARDSON: No, ma'am. I can let it go at
10 that.

11 THE COURT: Okay. Please bring in the jury.

12 (WHEREUPON, the jury came into open court at
13 approximately 3:04 p.m.)

14 THE COURT: Ladies and gentlemen, we'll now resume
15 with the witness' testimony. You may proceed.

16 MR. RICHARDSON: Thank you.

17 Q Ms. Livingston, you already established that you
18 granted consent to search at 5071 McCullough Drive.

19 MR. RICHARDSON: The State has no further
20 questions.

21 THE COURT: Any questions for the witness, Mr.
22 Joye?

23 MR. JOYE: No. Thank you, Ms. Livingston.

24 THE COURT: Any objection to the witness being
25 excused from the State?

1 MR. RICHARDSON: No, ma'am, Your Honor.

2 THE COURT: From the Defense?

3 MR. JOYE: No, Your Honor.

4 THE COURT: Ma'am, you're excused.

5 (Witness excused.)

6 THE COURT: You may call your next witness.

7 MR. RICHARDSON: The State would call Detective
8 Terry Wayne Elliott.

9 TERRY W. ELLIOTT, after being duly sworn,
10 testified as follows:

11 CLERK OF COURT: State your full name and spell
12 your last name.

13 THE WITNESS: Terry Elliott, E-L-L-I-O-T-T.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q Detective Elliott, tell us about yourself, where
18 you're employed, how long, what capacity.

19 A I've been employed by Horry County Police
20 Department. I have been with them 29 years, possibly
21 23 as a patrol officer and six as an investigator.

22 Q And where are you from originally?

23 A I'm from the Duford Nichols section of Horry
24 County.

25 Q Okay. So you know this area pretty well?

1 A I do. I was born and raised in Horry County in
2 the Duford area.

3 Q Okay. And for madam court reporter, that's Duford
4 with a D; correct?

5 A Duford with a D.

6 Q Now, whenever you're on patrol, what areas did you
7 patrol?

8 A I patrolled that area.

9 Q Okay. So you've always been in the western
10 district or the Western Precinct?

11 A Yes, sir.

12 Q And you were in patrol for 23 years, and how long
13 in investigations now?

14 A Six years.

15 Q Six years in investigations. So year and a half
16 ago you would have been four and half years in
17 investigations?

18 A That's correct.

19 Q And as a -- in investigations, that's criminal
20 investigative division?

21 A That's right.

22 Q Now, as a member of the criminal investigation
23 division, what are your typical duties?

24 A I work property crimes --

25 Q Okay.

1 A -- that involve -- that involves larceny of the
2 property that's outside, if your house gets broken into
3 or whatever, just any property you might have that's
4 stolen, or this is what I would...

5 Q Okay. And so in the course -- so you're familiar
6 with policies and procedures for Horry County Police
7 Department with regard to burglaries; correct?

8 A Yes, sir, I am.

9 Q All right. And can you just tell us about the
10 evolution of the investigation of a burglary, what
11 happens first step, so on and so forth.

12 A First step you have a responding officers that go
13 to the scene at the time. Say when someone comes home
14 and finds their either alarm goes off and they get
15 there and find the house has been broken into, they do
16 the reasonable report. They look for any evidence they
17 might find, fingerprints, blood that they can get DNA
18 from or just anything that might be of helpful in
19 solving this case, find out who may have done this.

20 And then when -- what they can do is they have
21 other calls they had to go to. Then it goes -- it's
22 turned into their supervisor, their supervisors turn it
23 to -- get together with my supervisors, and then they
24 assign to another detective in that area.

25 Q Okay. And back in April of 2013, you were working

1 the criminal investigation division's property
2 division; correct?

3 A That's correct.

4 Q Over mainly in the Western Precinct?

5 A Correct.

6 Q In course of your duties, did you happen to become
7 involved in the investigation of the burglaries of
8 Shawn and Brandy Causey and Susan Jackson Ford's homes?

9 A I did.

10 Q And those homes, I know we've been over it before,
11 but what county are they in?

12 A Horry County.

13 Q Horry County. Got to get the jurisdiction in.
14 Now, those homes are located in Horry County over in
15 Duford, and Nichols mailing area; correct?

16 A Nichols as far as postal area.

17 Q About how far apart are these homes?

18 A About four and a half miles.

19 Q About four and a half miles.

20 A Maybe five, four and a half to five.

21 Q Okay. Not five minutes apart?

22 A No, no. You're in a rural area, five minutes,
23 five, six minutes.

24 Q Now, when did you first become involved in the
25 investigation of these two burglaries?

1 A On the 6th, the day after the burglary. The
2 reason so fast, one of them was probably not a half a
3 mile, three fourths of a mile, from the West Precinct.
4 And so, you know, you just -- I found out about it that
5 night, it was about time I was getting off. And I know
6 it was going to be assigned to me. And so --

7 Q The Western Precinct, where is that central office
8 located?

9 A That's in Mt. Olive.

10 Q Mt. Olive.

11 A That's on Highway No. 9.

12 Q Okay. Mt. Olive Church Road?

13 A Well, it's just a little piece of where Mt. Olive
14 Church Road crosses No. 9 --

15 Q Okay.

16 A -- is where the West Precinct is located.

17 Q Okay. That would have been near the Causeys?

18 A Maybe a tenth of the mile from Crossroads where
19 Mt. Olive Church Road crosses No. 9. The West Precinct
20 is on No. 9.

21 Q Right near the Causey residence? Right near the
22 Causey residence?

23 A Yes, sir.

24 Q Okay. Or is that out of the question. Now, this
25 precinct, how many police officers are at the precinct

1 throughout the day?

2 A We have five officers that work sectors, most of
3 the time two supervisors. But normally somebody is out
4 in court or traffic court or something, you know,
5 during the day. So that's seven, and then we have a
6 lieutenant and a captain there, and we have two
7 detectives that work that area, so what's that, seven.

8 Q During the day, though, how many are in the
9 building at any given time?

10 A Most of the time, not over five or six.

11 Q Not over five or six, so not that many people
12 there?

13 A No, not that many people.

14 Q Now, when you first got assigned these cases on
15 April 6th, 2013, what were your first steps in the
16 investigation?

17 A My first step was to just get out and talk to the
18 people.

19 Q That was the victims?

20 A Well, I talked with the victims, that was my first
21 step to call the victims.

22 Q Did you do anything with regard to Officer
23 Williams or Officer Baker's reports?

24 A They was -- well, I looked over their reports.

25 Q Okay.

1 A I mean, that's the first thing I do. Maybe I got
2 ahead of myself. First thing you do is when you're
3 assigned the case, you get familiar with the cases.
4 But these cases was kind of like unusual because it had
5 happened right at the West Precinct and, you know, you
6 knew -- everybody knew about it.

7 Q Now, you read over these reports, and then you
8 contacted the victims?

9 A That's correct.

10 Q Mr. Causey and Ms. Causey and Ms. Ford?

11 A And Ms. Ford.

12 Q And were you able to speak with them that day?

13 A I don't -- I think so, but I'm not sure.

14 Q Okay. Was this the only case you were working at
15 that time?

16 A Oh, no, sir.

17 Q Okay. And did you prepare a report in this
18 investigation?

19 A I did.

20 Q And if you get foggy or forgetful or anything,
21 would it be helpful to review your report for your
22 recollection, not now but --

23 A Okay. Well, the reason I say that, Ms. Ford
24 called me on several occasions adding more property to
25 it. And Mr. Causey had called me once he had found the

1 serial number to another gun, but I don't remember
2 whether it was the next day or maybe a day or two
3 later.

4 Q Now, you said Mr. Causey called maybe a serial
5 number for a gun?

6 A Yes, yes, sir.

7 Q From your review of your reports and your review
8 of the other reports given by officers, the information
9 you had available, on the 6th, whenever you began your
10 investigation, how many serial numbers did you have?

11 A I think for one laptop and one gun.

12 Q One laptop and one gun. And you said Ms. Ford
13 called you several times over the ensuing few days.
14 What was the purpose of those calls?

15 A To add items that they had found. And that's not
16 unusual because most time people -- I mean, for weeks,
17 you know, until they go to look for a specific thing
18 and find it's not there, that's just normal.

19 Q Now, how about Mr. Causey, did he add onto any
20 property that he found was missing?

21 A I'm not sure. I know I added the serial number.
22 I can look at the reports and tell, you know.

23 Q That's all right, that's all right. Now, when Ms.
24 Ford talked to you, was she able to give you any more
25 serial numbers?

1 A The rifle that she had reported as a Remington.
2 You know, I encourage them to go where they got the
3 guns and try to get these serial numbers because the
4 serial numbers are very important in having these guns.
5 But when she got down to the Bass Pro Shop where she
6 had bought the gun from, she found out it was a Marlin
7 and not a Remington.

8 Q Okay.

9 A So I was able to go into...

10 Q In your experience, how much easier is it to get
11 serial numbers for guns than it is for, say, computers
12 or games?

13 A You can get serial numbers for guns most time.
14 It's almost impossible, if when you bring it home from
15 the store and you don't write it down, it's almost
16 impossible to get serial numbers.

17 Q Okay. So once it's out the door, good luck?

18 A And on your computers, if you go home and look at
19 them, it would be hard to find which one is the serial
20 number on it, there are so many numbers on the back of
21 it.

22 Q Now, in your review of Officer Baker and Officer
23 Williams' reports, how specific were the descriptions
24 of the computers; do you recall?

25 A It was pretty good, it was pretty good.

1 Q All right. But you only had serial numbers for
2 one that was stolen?

3 A For one computer, that's correct.

4 Q All right. Might have been Mr. Causey. Now,
5 the -- how specific was the description of the Xboxes
6 that you got?

7 A The color was missing. And, you know, the only
8 two I'm aware of is -- I take that back, I believe
9 there have been some other colors, normally it's black
10 and white. But I believe I was running into some
11 instances where it was a different color, but black and
12 white mostly is the...

13 Q Now, black or white?

14 A Yeah, black or white. Not two colors.

15 Q Okay.

16 A Some is black and some is white.

17 Q All right. So that was -- it wasn't particularly
18 identified in that first report?

19 A No, sir, it wasn't.

20 Q Now, and the descriptions are lacking in certain
21 information; is that uncommon in a burglary
22 investigation?

23 A It's not. People, when they go there and their
24 home has been broken into, really if someone is in
25 question -- when I was on the road, when someone was in

1 question of giving me a description, I said, don't give
2 me the wrong description, just tell me you don't know.

3 And when you've had time to think, or in the case
4 of the Xbox, talk with your children and see what color
5 they were, then call me and I just add it to the
6 report. Because once you get a report and you got
7 something wrong, then you -- you know, it looks bad
8 anytime when you go back and change something.

9 Q Now, Ms. Ford described a -- earlier described
10 that a safe had been missing. Did you get a report on
11 that safe being missing?

12 A I did.

13 Q A Sentry safe?

14 A I did.

15 Q And what did you find out about that safe?

16 A Lieutenant McCullough got a call from West
17 Precinct that somebody had come by on a tractor and
18 seen it laying over the ditch west of the strawberry
19 patch, which is next to a bridge on the west side of
20 the strawberry patch, maybe a quarter mile, half mile.

21 And he knew that I was working the case, and he --
22 I don't know whether he knew there was a safe or he
23 asked me was there a safe. We probably talked about it
24 and discussed the safe being taken, because he wanted
25 me to go check it out. When I went and checked it, had

1 rained on it, it was dirty then thrown in the ditch,
2 part of it was in the water. But I did get it, take it
3 by and let Ms. Ford look at it and see -- now, she
4 couldn't say it definitely was her safe, but she said,
5 it's just exactly like mine.

6 Q Okay. And the strawberry patch, how close is that
7 in proximity to the precinct?

8 A Strawberry patch is about a mile west of the
9 precinct.

10 Q Mile west. So that is?

11 A It's towards Nichols, towards Marion County.

12 Q Back towards Nichols, not towards Loris?

13 A Yeah, back towards Marion County.

14 Q Okay. So about mile down the road from the
15 precinct, in between, I guess, the Causey residence and
16 the Ford residence that --

17 A In between there.

18 Q -- a safe was found?

19 A A safe was found, that's correct.

20 Q And what efforts did you take to process that
21 safe; any?

22 A Well, I didn't feel like there was no use of
23 taking it, but I called Robbie Caulder to send a crime
24 scene, and he said bring it and we'll do all that we
25 can. So I took it. It was late and they were getting

1 ready to leave the office, so the next morning I had it
2 down there. And they did fumigate it, and they could
3 get nothing off it.

4 Q And it had been rained on?

5 A Oh, it had been rained on, part of it was laying
6 in the water.

7 Q But you made an effort?

8 A Sir?

9 Q You made an effort?

10 A I did. I did.

11 Q Now, so you've got this safe down and you got a
12 list, you've got reports from your officers that were
13 on the scene on April 5th, 2013. You're at almost a
14 dead end at that point?

15 A I did.

16 Q What were your next steps in the investigation?

17 A I just, through my investigation over the years, I
18 have different individuals that I talk with. And
19 through the investigation and talking with them, I've
20 learned that Xavier Hemingway --

21 MR. JOYE: Objection, Your Honor.

22 THE COURT: Basis? Please approach.

23 (WHEREUPON, a bench conference was held off the
24 record in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: Sustained. Please proceed. Rephrase
2 the question.

3 MR. RICHARDSON: Certainly, Your Honor.

4 Q Detective Elliott, you said that you were
5 conducting your investigation, talking with people. As
6 a result of your investigation, did you develop a
7 person of interest?

8 A I did.

9 Q And who was that?

10 A That was Xavier Hemingway.

11 Q Now, you developed Xavier Hemingway as a person of
12 interest. What efforts did you take to further
13 investigate Xavier Hemingway?

14 A I went to Xavier Hemingway's residence where I
15 learned through the investigation he was staying
16 part-time, to talk with him.

17 Q And what is that address?

18 A That's 51 -- 5071 McCullough Drive. Let me make
19 sure. 5071 McCullough Drive, Green Sea.

20 Q Allow me to show you what's been marked as State's
21 No. 3. State's No. 3, do you recognize this,
22 detective?

23 A I do.

24 Q And what do you recognize this as being?

25 A This is a map of the Mt. Olive section. And that

1 being a mile off Church Road, that being the Causey
2 residence (indicating), this being the Ford residence
3 (indicating) and --

4 Q How about right down in that corner (indicating)?

5 A Right here is 5071 McCullough Drive. That's the
6 residence that Xavier Hemingway had been staying.

7 Q Okay. And is this a fair and accurate depiction
8 of -- a fair and accurate map of that area?

9 A It is.

10 Q And the points that are marked on there, are those
11 fair and accurate positions for where those actually
12 are?

13 A Yes, sir.

14 MR. RICHARDSON: Your Honor, the State would seek
15 to introduce No. 3. It may be in.

16 THE COURT: It's already admitted.

17 MR. RICHARDSON: If I could have Detective Elliott
18 come down just so he could walk us through this, Your
19 Honor.

20 THE COURT: Um-hum.

21 MR. JOYE: Your Honor, may I?

22 THE COURT: Yes, sir.

23 Q Detective, if you'll step towards that microphone
24 so madam reporter can --

25 THE COURT: Actually, y'all need to switch spaces

1 so that he can --

2 MR. RICHARDSON: Yes, ma'am.

3 THE COURT: -- be speaking towards the court
4 reporter.

5 MR. RICHARDSON: Yes, ma'am.

6 THE COURT: You may proceed.

7 Q Detective Elliott, you were just showing me up
8 there when I had this on State's No. 3, could you point
9 out for us where Ms. Ford's residence is.

10 A Ms. Ford's residence is right here on Highway 430
11 (indicating).

12 Q Okay. And where is Highway 9 related to that?

13 A This is Highway 9 right here (indicating).

14 Q So Highway 9 takes us down. This next right here
15 (indicating)?

16 A That's the Causey residence on Mt. Olive Church
17 Road.

18 Q And it's testified previously Mt. Olive comes
19 right off of Highway 9?

20 A That's right. Right across here is -- right
21 across here is No. 9.

22 Q And could you show us where McCullough Drive is.

23 A McCullough Drive is right here (indicating), right
24 off of No. 9.

25 Q That's 5071 McCullough Drive?

1 A That's correct.

2 Q And how close is that to Highway 9?

3 A Tenth of a mile.

4 Q Tenth of a mile, okay. So nine is basically the
5 road interconnecting all those addresses?

6 A It is.

7 Q And I believe you testified earlier that the
8 distance between this, the Causey residence and the
9 Ford residence?

10 A Would not be over four and a half, five miles.

11 Q And how about between the Causey residence and the
12 McCullough Drive residence?

13 A Probably a mile.

14 Q Probably a mile.

15 A No more than mile and a half.

16 Q All right. And you're familiar with this area?

17 A Yes, sir.

18 Q All right. Please resume your seat.

19 A (Witness complied.)

20 Q Now, when you got to 5071 McCullough Drive, were
21 you by yourself?

22 A No. I had asked Officer Baker to go with me.

23 Q And when you got to that address, what if anything
24 did you find, or what steps did you take when you got
25 to that address?

1 A Knocked on the front door and back door, no one
2 come. And we were getting ready to leave when Ms.
3 Livingston drove up.

4 Q Okay. Were there any other cars in the driveway
5 or anything or in the yard?

6 A There was another -- there was a car sitting in
7 front of the house, a white one or something. Looked
8 like it wasn't running.

9 Q But nobody came to the house, or nobody came to
10 the door?

11 A That's correct. We went to the front and back,
12 and no one came to the house -- to the door.

13 Q And after you got no answer, I think you just
14 stated that Ms. Livingston drove up?

15 A As we were leaving the residence.

16 Q And did you have any discussions with Ms.
17 Livingston?

18 A I did.

19 Q And did you seek any permissions from -- what did
20 you learn from Ms. Livingston with regard to the
21 ownership of that mobile home?

22 A I learned that she owned the mobile home and that
23 her brother had stayed in it, but he was in jail at
24 this time, and that she stated that Ray-Ray, which is
25 Xavier, was staying there in and out staying there

1 sometime.

2 Q And you requested permission to enter that?

3 A I did.

4 Q And why did you tell her you wanted to enter that
5 residence?

6 A I told her through the investigation found that
7 they, you know, possibility could be some stolen
8 property there, and...

9 Q Now, after she granted permission to enter the
10 home to you, to, I assume, Officer Baker?

11 A That's correct.

12 Q How did y'all enter; I mean, you bust the door
13 down, you pick the lock?

14 A She opened the door for us.

15 Q She had a key?

16 A She had a key.

17 Q And she opened the door and let y'all in?

18 A That's correct.

19 Q Can you describe the search of this residence.

20 A We went in and just we were mainly looking for
21 items that had been stolen out of the residence, TV's,
22 Xboxes, computers, guns and searched through, seen
23 nothing until we got to the back bedroom. And in the
24 closet there was a bag that had a couple of computers
25 in, a bag that had a couple of Xboxes in it.

TERRY W. ELLIOTT-DIRECT BY MR. RICHARDSON

1 Q And did you document these items photographically?

2 A No, I didn't. I wish I had, but I didn't.

3 Q Did you include this information in your report?

4 A Did I include what, now? I included --

5 Q What you saw.

6 A I included what I saw, I did. It was three

7 Xboxes.

8 THE COURT: Please approach.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Ladies and gentlemen, you are to
13 disregard the witness' last response. You are to
14 disregard it and to give it absolutely no consideration
15 in your deliberations. It's not to be discussed in any
16 manner whatsoever. You may proceed.

17 MR. RICHARDSON: Your Honor, if we may approach
18 one more time?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury but out of the
22 hearing of the jury.)

23 THE COURT: You may proceed.

24 Q Without any more description --

25 MR. JOYE: I'm sorry, judge, I got to come up.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: You may proceed.

5 Q And Detective Elliott, if you're nervous right
6 now, I understand. Detective Elliott, going back, and
7 I think we can get this answered now, you've taken the
8 time to review your report? You've taken the time to
9 review your report?

10 A I have.

11 Q And you mentioned, you actually started off by
12 saying you saw a couple of Xboxes and a couple of
13 laptops.

14 A I saw --

15 Q After reviewing your report, what did you see with
16 regard to laptops and Xboxes?

17 A We found three black Xbox 360's and three laptop
18 computers.

19 Q Okay. Now, at that point you see these, they're
20 back in the closet; they're in, did you say a bag or
21 what?

22 A They were in a black bag.

23 Q A black bag. And now, you have reports of Xboxes
24 being stolen, you have reports of laptops being stolen.
25 What did you do with this property now that you have

1 actually seen Xboxes, you have seen laptops; what do
2 you do?

3 A Officer -- we took the serial numbers down, and
4 Officer Baker had dispatched the numbers.

5 Q Okay. So you took the serial numbers down, you
6 wrote down the numbers you found?

7 A Yes, sir.

8 Q And you just ran through?

9 A Through dispatch, yes.

10 Q Dispatch.

11 A And nothing come back stolen. But if you don't
12 have serial numbers, they can't come back stolen.

13 Q Okay. So basically garbage in, garbage out?

14 A Yeah.

15 Q If you didn't have matching serial numbers that
16 somebody had entered, my serial number is X12114, if I
17 don't give that to you, you can't put it in that
18 criminal -- crime computer?

19 MR. JOYE: Objection as to leading.

20 THE COURT: Basis? What's the basis of your
21 objection?

22 MR. JOYE: Leading, Your Honor.

23 THE COURT: Sustained leading.

24 Q Have you entered information into NCIC in the
25 past?

1 A I have.

2 Q With regard to stolen property?

3 A Yes.

4 Q And for everyone's education, what is NCIC?

5 A That's the National Information Crime Center.

6 Q Now, whenever you have items that are stolen, what
7 information do you need to input it into NCIC?

8 A You have to have the serial number.

9 Q And if you don't have the serial number, what do
10 you do?

11 A You don't do nothing, it's not in there.

12 Q Okay. And so if you find property in a house and
13 you can see a serial number now, what happens if you
14 punch that serial number in?

15 A It won't show nothing, I mean, because it's not --
16 it's not in the system.

17 Q In this case did you actually input some item, in
18 the case of the Causeys' residence and the Ford
19 residence, did you actually input serial numbers of
20 stolen property into NCIC?

21 A I know I did in the Causey residence on the gun.
22 And I -- what I did in the Ford residence too was she
23 went to Bass Pro Shop, Bass Pro Shop and got the serial
24 numbers.

25 Q But that was just for the guns?

1 A Yeah.

2 Q You were already given a serial number on a
3 computer. To your knowledge, did you get any other
4 serial numbers?

5 A No.

6 Q From your review of the reports, were there any
7 other serial numbers on the other computers?

8 A On the other computers, no, there was not.

9 Q How about on the Xboxes, did you ever get any kind
10 of serial numbers on the Xboxes?

11 A Did not.

12 Q Now, you take these down and you try and run
13 serial numbers. At that point did you take any
14 property into custody?

15 A I didn't.

16 Q Why not?

17 A It's our policy that you don't take property that
18 you don't know is stolen. I...

19 Q Did you ever call the Causeys or the Fords down to
20 come take a look at these computers?

21 A No. While I was on the scene, I called them
22 trying to get a description, a better description of
23 them. But I could get neither one of them on the
24 phone.

25 Q Okay. So if I understand your testimony, you

1 didn't have a -- you didn't have any identifying marks
2 on the Xboxes that were stolen other than they were
3 Xbox 360's?

4 A That's correct.

5 Q So you didn't know color?

6 A (Shaking head.)

7 Q Didn't tell you about any nicks or cuts or
8 anything on them?

9 A That's correct.

10 Q So you couldn't distinguish these Xboxes from any
11 other ones?

12 A That's right.

13 Q So with that, you didn't take any property into
14 evidence?

15 A That's correct.

16 Q And why didn't you photograph?

17 A That's just my -- I should have. I wish I had.

18 Q You admit your mistake?

19 A Yeah.

20 Q Now, what day was that again?

21 A That was on the 16th.

22 Q It was on the --

23 A Or might have been 11th, wait just a minute. That
24 was on the 11th.

25 Q Okay, so that was on the 11th. Did you take any

1 other steps to try and look at these computers, open
2 them up, boot them up, anything else?

3 A I did not.

4 Q Fingerprint, DNA?

5 A I did not.

6 Q And the house you were in, how did it appear, did
7 it appear to be lived in, did it appear to be vacant,
8 or what?

9 A It just appeared like someone might be coming in
10 just staying occasionally.

11 Q Now, did you ever encounter the Defendant that
12 day?

13 A I did not.

14 Q So how long were you at this mobile home?

15 A From the time we got there to all of it, I would
16 say an hour.

17 Q Hour or so?

18 A An hour, hour and a half.

19 Q And during that entire time the Defendant never
20 showed up?

21 A He didn't, he did not.

22 Q Now, this was on the 11th. After that search,
23 after the 11th, you didn't collect any property, were
24 you able to develop any more leads?

25 A I was.

1 Q And can you tell us about that.

2 A Through investigation I got enough information to
3 get another suspect, a person of interest.

4 Q And who was that?

5 A That was Tareek Hemingway.

6 Q And when did you develop that information?

7 A When I learned through my investigation that he
8 was trying to sell a Charles Daly .45 caliber pistol
9 over at Charles Billings' residence in Tabor City.

10 Q And have you been to Tabor City before? Have you
11 been to Tabor City before?

12 A Yes, sir. The area I work joins the state line,
13 and I spend as much time probably at the pawn shop in
14 Tabor City as I do at the pawn shops in Horry County.

15 Q Okay. The Billings residence, did you have an
16 address on that?

17 A I went to this residence, but I don't have the
18 address. It's in the Bottom.

19 Q It's in the Bottom?

20 A It's in the Bottom in Tabor City.

21 Q And you've been in law enforcement for a while?

22 A Yes, sir.

23 Q What kind of area is the Bottom?

24 A It's a drug-related area.

25 Q High drug area. Now, you said you got this

1 information about Tareek on what date again?

2 A On the 15th.

3 Q And did you ever have the opportunity to meet with
4 Tareek anywhere?

5 A I did. After talking with Tabor City PD, I was
6 able to learn that he had been arrested and was in
7 Columbus County jail.

8 Q And when did you have the opportunity to speak
9 with Tareek Hemingway?

10 A On the 16th myself and Detective Wilson. He
11 wanted to investigate on some other things he was
12 working on, so we went together to talk with Tareek.

13 Q Okay. So y'all both went over to Tabor City,
14 Columbus County Detention Center?

15 A Well, that's in Whiteville.

16 Q In Whiteville, I'm sorry.

17 A Whiteville.

18 Q So over to the jail?

19 A Yes, sir.

20 Q And that's when you first encountered Tareek
21 Hemingway, no doubt about it?

22 A No, sir.

23 Q And Tareek Hemingway, no doubt about it he was in
24 custody at that time?

25 A He was in jail, in the Columbus County jail.

1 Q He wasn't leaving anytime soon. Now, when you
2 went to go see Tareek Hemingway, did you have warrants
3 in hand?

4 A No, sir.

5 Q Did you have enough information at that point to
6 get a warrant?

7 A I did not.

8 Q All right. Without telling us what Tareek said,
9 describe the room in which you met with Tareek.

10 A It was in one of the detectives' office in
11 Columbus County detective division. It was just a desk
12 with three chairs, a desk and three chairs that was in
13 the room. It was not a very big room, and it wasn't a
14 small, small room, you know, ain't like you -- we
15 weren't crowded in there, it was comfortable.

16 Q What -- did you or anyone in your presence or to
17 your knowledge make any threats to Tareek Hemingway?

18 A No, sir.

19 Q Did you make any promises to Tareek Hemingway --

20 A No, sir.

21 Q -- in exchange for a statement? Did you coerce
22 him in any way?

23 A No, sir.

24 Q Did you take any steps to advise Tareek Hemingway
25 of his rights?

1 A I read him his rights, I read him his Miranda
2 rights.

3 Q Okay. He signed off on a Miranda form; correct?

4 A Yes, sir, he did.

5 Q And after doing that, were you able to speak with
6 Tareek Hemingway?

7 A I was.

8 Q Once again, without telling us what he said, prior
9 to Tareek speaking to you, tell us how the interview
10 evolved.

11 A Well, I just told him what information I had, and
12 to start with he said he didn't know nothing about
13 nothing. And, you know, we just kept on, and I told
14 him these are very serious crimes that we were looking
15 at, two burglary first, grand larceny, safecracking,
16 and that he was a young man, and I got -- his name had
17 come up and it probably weren't going to go away.

18 And, you know, the best thing for him to do would
19 be to tell the truth to start with up front. And him
20 being a young man, you know, things might be better at
21 the end of the line.

22 Q And so you told him how serious the charges were?

23 A I told him definitely how serious. It was 20, 20
24 to life and for each charge.

25 Q And it's actually 15 to life; correct?

1 A 15 to life.

2 Q Now, you told Tareek about that. Did you tell him
3 about the gun with Charles Billings?

4 A I did.

5 Q So you told him about that. And at first he
6 denied it?

7 A He did.

8 Q Now, after you confronted him with this isn't
9 going away, these are serious crimes, how long did his
10 denials last?

11 A I'd say 10 or 15 minutes.

12 Q 10 or 15 minutes. And after that 10 to 15
13 minutes -- were you wearing a watch that day?

14 A No.

15 Q You keep up with time, though?

16 A I do not. I'm probably bad at time, but...

17 Q Okay. 10 to 15, could have been up there to 45
18 minutes?

19 A What, the denial?

20 Q Yes.

21 A I don't think so. I don't think I'm that bad off.

22 Q Okay, all right. So it was a short period of time
23 where he kept denying?

24 A Yeah.

25 Q Now, once you confronted him with the seriousness

1 of these crimes, the fact they weren't going away, even
2 though you didn't have warrants, you told him you
3 wanted the truth?

4 A Yeah.

5 Q And at that point without telling us what he said,
6 what was Tareek Hemingway's reaction?

7 A He just kind of dropped his head like a fellow
8 would normally do when he's getting ready to tell you
9 the truth.

10 Q Now, after he did that --

11 MR. JOYE: Your Honor, I'm going to object to the
12 characterization.

13 THE COURT: No speaking objections. What is the
14 objection?

15 MR. JOYE: Well, it would be more prejudicial than
16 prohibitive.

17 THE COURT: Sustained.

18 MR. RICHARDSON: Yes, ma'am.

19 THE COURT: Proceed.

20 MR. JOYE: And, Your Honor, I think the jury needs
21 to know what I've objected to and what you said --

22 THE COURT: The jury doesn't need to know what you
23 object to. I need to know what you object to so I can
24 make a contemporaneous ruling. It's really not within
25 the jury's purview, and I have sustained your objection

1 to bolster him.

2 MR. JOYE: Well, I would ask that the Court ask to
3 strike the last portion of that answer, that's the
4 problem.

5 THE COURT: You may take your seat. Ladies and
6 gentlemen, you are to disregard the witness' last
7 answer and disabuse it from your mind, give it no
8 consideration in your deliberations. You may proceed,
9 Mr. Richardson.

10 Q Without any characterization of his motion, just
11 the actual action, he dropped his head, how long did he
12 keep his head dropped?

13 A Two or three, two or three minutes.

14 Q Two or three minutes he's sitting there with his
15 head dropped. After he raised his head back up, what
16 happened?

17 A He told what had took place on the 5th.

18 Q Okay. So he began to talk to you?

19 A He began to talk to me.

20 Q Now, prior to him beginning to talk to you, did
21 you or Detective Wilson or anyone to your knowledge
22 give him any names?

23 A I had no other names except his and Xavier
24 Hemingway's at that time.

25 Q Didn't have any other names at that time?

1 A That's the only name I had.

2 Q Had you ever heard of Rayquan, Rodney Gore, Avery
3 Norris?

4 A Never heard that.

5 Q Now, did you record this statement in any way?

6 A No, I didn't.

7 Q And why not?

8 A Columbus County don't have the facilities that we
9 have, and my batteries were out of my recorder.

10 Q Okay. So you didn't have your digital recorder
11 with you?

12 A I didn't. Now we have a phone that has it on it,
13 but I didn't have that at that time.

14 Q Okay.

15 A We didn't have the new phones.

16 Q Now, how long did -- from the time Tareek
17 Hemingway dropped his head till he began to speak, how
18 long did he speak after that?

19 A How long?

20 Q Yes, sir.

21 A Probably, I'm going to say, 20 or 30 minutes.

22 Q Does that include the time where he's handwriting
23 his statement?

24 A Probably not. Probably he talked about 30 minutes
25 about what had happened, you know, what had happened.

1 Q And he gave a written statement; correct?

2 A He did.

3 Q So at this point...

4 MR. RICHARDSON: Court's indulgence.

5 THE COURT: Um-hum.

6 Q Now, you've spoken with Tareek, he's on his head,
7 you talk to him about 30 minutes or so, and he gives a
8 written statement. Without telling us what it said,
9 after he gives his statement, do you obtain arrest
10 warrants for Tareek Hemingway?

11 A The next day I present the probable cause to Judge
12 Harrelson, and he issues warrants for not only Tareek
13 but four others.

14 Q And who else did he issue arrest warrants for?

15 A On Xavier Hemingway, Rayshawn, Rodney and Avery
16 Norris.

17 Q Now, the warrants on the rest of them, Rodney
18 Gore, Rayshawn Gore, Avery Norris, Xavier Hemingway,
19 were those served?

20 A All of them had been served, but they weren't --
21 like you could get all of them at one time. They was
22 -- they'd all have been served at different times.

23 Q So eventually you served the arrest warrants on
24 Xavier Hemingway?

25 A Well, Xavier -- Xavier was served on -- Xavier was

1 served on the 22nd.

2 Q Okay. So on the 22nd -- whenever you went to
3 serve those warrants, who served them; you?

4 A Corporal Thompson, Curtis Thompson with the county
5 police.

6 Q Okay. Who effected the arrest that day?

7 A I did.

8 Q And where did that take place?

9 A At 5071 McCullough Drive.

10 Q Okay. So back at the same address you searched
11 before?

12 A That's correct.

13 Q At any other time did you have the opportunity to
14 search that address?

15 A Yes, sir.

16 Q Do you remember when that occurred?

17 A I do not.

18 Q Was it secondary from the April 11th date, was it
19 after?

20 A It was after that. The property was already gone.

21 Q Okay. So the Xboxes and laptops you saw before,
22 they were gone?

23 A They were. I -- for some reason I didn't put when
24 it was that they were gone. But if I would have found
25 them there would have been paperwork done, it would

1 have showed when it was done. But when they were gone,
2 they were gone.

3 Q They were gone. Nothing else put in there?

4 A No. I didn't take pictures.

5 Q Now, whenever you effected the arrest on Xavier
6 Hemingway, who was with you?

7 A No one was with me.

8 Q So no doubt at this point when you placed him
9 under arrest, he's in handcuffs, he's in custody?

10 A Correct.

11 Q Now, whenever you take him into custody, what
12 happens with him?

13 A We left there and rode to -- went to the West
14 Precinct.

15 Q The West Precinct which is how far away, a mile?

16 A Half a mile.

17 Q Half a mile. So a short ride?

18 A Yes, sir.

19 Q On the way there did y'all talk or anything?

20 A I'm sure we did but never about the case because
21 the rights has got to be read before. We might have
22 talked about the weather or something, but we didn't
23 talk about the case.

24 Q Okay, so nothing germane to the case. Upon
25 arrival at the West Precinct over off Mt. Olive Church

1 Road, what steps did you take to advise the Defendant
2 of his rights?

3 A I read him his Miranda rights.

4 Q What care did you take to insure he is of a sound
5 mind; did he appear intoxicated to you?

6 A No, he didn't. He was working on his car when I
7 drove up.

8 Q Did he answer your questions appropriately?

9 A He did.

10 Q When you spoke to him, did he seem -- did he seem
11 incoherent in any manner?

12 A No, none whatsoever.

13 Q Did he seem to understand English?

14 A Yes, sir.

15 Q Once again, he responded appropriately?

16 A Yes, sir.

17 Q Now, whenever you begin giving him his Miranda
18 rights, was he handcuffed in any way?

19 A I'm sure he was probably still handcuffed. But, I
20 mean, a lot of times we'll take them off. I don't know
21 if there's two officers, but a lot of time we'll take
22 them off, but I'm not sure.

23 Q And during the course of this interview, did you
24 make any promises of undue hope or reward to him?

25 A I did not.

1 Q Did you threaten him in any way?

2 A No.

3 Q Did you make any attempts to coerce him?

4 A No, I did not.

5 Q Did you take any steps to advise him of his
6 rights?

7 A I read him his rights before any questions
8 whatsoever.

9 MR. JOYE: Without objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (WHEREUPON, State's Exhibit No. 1 was admitted in
12 evidence.)

13 Q Let me show you State's No. 1. Do you recognize
14 State's No. 1?

15 A Yes, sir.

16 Q What is State's No. 1?

17 A That's Miranda rights form.

18 Q Now, whose Miranda rights form?

19 A Xavier Hemingway.

20 Q Okay. So that's the one you presented to him on
21 April 22nd, 2013?

22 A That's correct.

23 Q And could you demonstrate for us how you
24 administered the Miranda rights to Xavier?

25 A I read each sentence to him and, as I read it,

1 asked him to sign his initials at the end of each
2 sentence.

3 Q Okay. And so could you read that document for us.

4 A You have the right to remain silent, anything you
5 say can and will be used against you in a court of law.
6 You have the right to talk to a lawyer and have him
7 present while you are being questioned. If you cannot
8 afford to hire a lawyer, one will be appointed to
9 represent you before any questioning if you so desire.

10 If you make a statement or answer any questions,
11 you have the right to stop at any time. And then, do
12 you have -- do you understand the rights as I've read
13 them to you. And he put his initials at the end of
14 each sentence as well as in the block where he -- the
15 yes block that he understood his rights as I read them
16 to him.

17 Q Okay. So you told him that he had the right to
18 remain silent?

19 A I did.

20 Q Told him he had a right to a lawyer?

21 A Yes, sir.

22 Q All right. Anything that he said could be used
23 against him in court?

24 A Yes, sir.

25 Q And that a lawyer would be provided if he couldn't

1 afford one?

2 A That's right.

3 Q And he has a right to stop at any time during his
4 statement?

5 A Yes, sir.

6 Q Now, after you presented State's No. 1 to Xavier
7 and he signed it, actually initialed each line saying
8 that he understood it, at any point did he tell you he
9 didn't want to talk to you?

10 A No, sir.

11 Q At any point did he tell you he wanted a lawyer
12 before he talked to you?

13 A I don't remember whether he did or not, but if he
14 did it was after -- when he said that I quit.

15 Q Okay. So to your knowledge, no? To your
16 knowledge, no?

17 A No, to my knowledge, no.

18 Q And at any point while he was giving you his
19 statement, did he say, hey, I'm done, I don't want to
20 make any more statement?

21 MR. JOYE: I'm going to object to the leading,
22 Your Honor.

23 THE COURT: Sustained.

24 MR. JOYE: I'm letting him go.

25 THE WITNESS: That was no.

1 Q Now, after you administered the Miranda rights to
2 the Defendant, did you discuss with him these crimes?
3 What if anything did you discuss with him?

4 A Well, the warrants were served on him, and I just
5 asked him what he knew about them.

6 Q Okay. So what warrants were they, what crimes?

7 A Two burglary first, two grand larceny and one
8 safecracking, safecracking.

9 Q And so you served them on him, and you asked what
10 he knew about these crimes?

11 A That's correct.

12 Q And what was his response?

13 A His response was he didn't know nothing about
14 nothing.

15 Q Okay.

16 A Or nothing about no burglaries, I believe is the
17 exact.

18 Q Nothing about no burglaries. At any point in time
19 did you discuss with him what you had seen with regard
20 to the Xboxes and laptops in -- at 5071 McCullough
21 Drive?

22 A I asked him where he got the three Xboxes and
23 three laptop computers.

24 Q And what did he say?

25 A He said that he had bought the Xboxes from

1 someone, but he couldn't produce the name who he got
2 them from. And on the computers, he said he had bought
3 them from the flea market in Florence.

4 Q Allow me to show you what's been marked State's
5 No. 2.

6 THE COURT: Just show it to me.

7 MR. JOYE: And all of this is subject to previous
8 objections, Your Honor.

9 THE COURT: I've already ruled on it
10 contemporaneously. It's marked for ID only.

11 Q With regard to -- that's the Defendant's
12 statement? That's the Defendant's statement?

13 A This is the Defendant's statement.

14 Q Just review that real quick, please.

15 A You said review it or read it?

16 Q Just review it.

17 A Okay.

18 Q After reviewing that, how many Xboxes does he talk
19 about in his statement?

20 A Talks about two.

21 Q He says two Xboxes. And where did he say he got
22 those two Xboxes from?

23 A Bought them from someone, but he didn't know his
24 name.

25 Q Bought them from somebody, he didn't know his

1 name. And the laptops, how many laptops does he talk
2 about?

3 A He said laptops, he didn't say a number, laptops.

4 Q He said laptops. What does he say about those
5 laptops? What does he say about those laptops?

6 A He said he bought them from the flea market in
7 Florence.

8 Q Okay. Basically he told you the Xboxes he got
9 from somebody, and then the laptops from the flea
10 market. And that's the extent of his statement?

11 A That's correct.

12 Q Anytime did you give him anyone else's statement
13 to review?

14 A Oh, no.

15 Q Detective Elliott, other than the pistol that we
16 heard about from Mr. Causey, do you know if any of the
17 guns that were stolen were ever recovered?

18 A None of them was ever recovered.

19 Q Okay. And in your law enforcement experience,
20 if -- you had serial numbers for some of the guns;
21 correct?

22 A That's correct.

23 Q If these guns were found, what would happen when
24 those serial numbers hit NCIC?

25 A They would flash that they were stolen.

1 Q Okay. And who would they contact at that point?

2 A They would contact our police department.

3 Q County police department?

4 A Yes.

5 Q And y'all have not been contacted on any other
6 stolen weapon?

7 A Other than -- other than the one.

8 Q And that was just this past November 6th?

9 A That was on the 6th of November.

10 Q Okay, so that just happened. How about the other
11 property, are you aware of any of the other property
12 which has been recovered?

13 A No, sir, I'm not.

14 Q Just the safe?

15 A Just the safe, sir.

16 MR. RICHARDSON: Detective Elliott, I appreciate
17 it. If you'll answer any questions Mr. Joye may have.

18 THE COURT: Madam forelady, ladies and gentlemen,
19 we're going to take a brief restroom break. During the
20 break please do not discuss the case, and please leave
21 your notepads in your seats.

22 (WHEREUPON, the jury exited the courtroom at
23 3:58 p.m.)

24 (Discussion off the record.)

25 THE COURT: Sir, you can go to the restroom as

1 well if you'd like. Please don't discuss your
2 testimony with anyone during the break. We may as well
3 all take a bathroom break. We'll be out five minutes.

4 (WHEREUPON, a brief recess was taken at 3:59 p.m.)

5 THE COURT: We had a conference regarding the
6 reference this witness made to the number of Xboxes.
7 And I had struck the statement, but at the bench the
8 Defense made me aware that he felt it was beneficial to
9 his client to have it in.

10 So I sort of, I guess, reversed myself and allowed
11 that testimony in at the request of Defense counsel.
12 And I just wanted to make sure of that because I wasn't
13 sure the court reporter was able to hear us. All
14 right. We ready.

15 MR. JOYE: Yes, ma'am.

16 THE COURT: Please bring in the jury.

17 (WHEREUPON, the jury came into open court at
18 approximately 4:08 p.m.)

19 THE COURT: Ladies and gentlemen, we'll now resume
20 with the cross-examination of the witness. You may
21 proceed when you're ready, Mr. Joye.

22 MR. JOYE: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 CROSS-EXAMINATION

25 BY MR. JOYE:

1 Q Detective Causey, you made a report in this case?

2 A I made several reports in it.

3 Q Several reports?

4 A I had added to -- if you look on EMS, I made
5 several reports in there.

6 Q All right. I guess I'll ask it this way. It
7 appears from what I have that really the only report
8 you have is the report of investigation; is that right?
9 And that would be -- have entries; right?

10 A I have several entries in RMS --

11 Q Right.

12 A -- yes, that's correct.

13 Q Right. And does that kind of look kind of like
14 what you've got, is that the report of your
15 investigation?

16 A That's correct.

17 Q And do you have a copy, your own copy of that
18 report?

19 A I do.

20 Q And it appears to be one, two, three, four, four
21 and about three quarter pages?

22 A Mine got five pages.

23 Q Well, but the fifth page, it's not a full page; is
24 it?

25 A No, sir.

1 Q And, in fact, the first page itself really isn't
2 but about a half a page?

3 A That's correct.

4 Q So literally we're not talking about but a little
5 over four pages of a report; right?

6 A That's probably right.

7 Q With respect to this investigation into two
8 burglaries, safecracking, grand larceny and all that,
9 we got basically about a four-page report that's yours;
10 right?

11 A That's correct.

12 Q And if you would, if you look, it appears to me
13 that the first two and a half pages, in the middle of
14 page three where you become involved in this. And it
15 says, Detective Elliott was assigned this case;
16 correct?

17 A Correct.

18 Q So we've got half a page three, a full page on
19 four and three quarters of a page on five. So really
20 when we're talking about your portion of the report and
21 what was done, we're talking about just barely over two
22 pages; right?

23 A That's correct.

24 Q Because first two and a half pages are a rehash of
25 what Officer Baker and Officer Williams did?

1 A That's correct.

2 Q And in a lot of the -- a lot of the entries here
3 are just where you're talking to the victims; correct?

4 A A lot of it's just what I done. All of it's what
5 I done.

6 Q All of it's what you did, but a lot of it's just
7 that I talked to the victims and they told me this,
8 etcetera, kind of thing. You're just getting up to
9 speed on the --

10 A I'm just doing the investigation, yeah.

11 Q Right. And now, in talking with the -- excuse me,
12 I'm sorry, solicitor -- in talking with the victims --
13 sorry, I'm not going to hit you again -- in talking
14 with the victims, it appears that Ms. Ford told the
15 initial officer, Officer Williams, that she had a
16 Toshiba laptops with the serial number stolen; right?

17 A I can't elaborate on what she told Officer
18 Williams.

19 Q Okay. Well, if you refer to the reports that you
20 have, do you understand, I mean, if you look at Officer
21 Williams' report and a list of the properties that were
22 stolen, a Toshiba laptop was reported in the initial
23 report?

24 A That's correct.

25 Q And you had that serial number?

1 A That's correct.

2 Q And she reported \$5,000 in money?

3 A That's correct.

4 Q An Acer brand computer notebook, meaning laptop;
5 right?

6 A Okay. That's on this point two. On the original
7 point one, he didn't but on point two I see the Acer.
8 And I'll lead you that.

9 Q But I think she reported that maybe the next day,
10 or was that initial day?

11 A It appears it was on the 7th.

12 Q Okay. So two days out.

13 A But a lot of times if these officers do something
14 and it's time to get off, they won't do it until the
15 next morning so, I mean, it says it was on the 7th.

16 Q So within 48 hours of -- within 48 hours of the
17 burglary this was reported stolen?

18 A Correct.

19 Q And a Kindle Fire?

20 A Yes, sir.

21 Q Laptop. Would you characterize that as a laptop?

22 A It says Tindle, doesn't it -- I mean tablet, it
23 says tablet.

24 Q Okay.

25 A I'm not familiar with all of this computer

1 equipment. I don't even know what it is.

2 Q An Apple iPod?

3 A That's correct.

4 Q An iPhone 4?

5 A Yes, sir.

6 Q Remington 243 with a scope?

7 A Yes, sir. I believe that's the one that was later
8 changed, it was a Marlin when she went to get the
9 serial number for it. I'm not sure about that, but I
10 believe.

11 Q Well, there were two rifles stolen from Ms.
12 Ford's; correct? There was a 243 and a .22 long?

13 A Well, this says here a Marlin .44 rifle with a
14 scope and a Remington 243, but I think -- I believe I
15 changed that to a 240.

16 Q Okay. In other words, two rifles?

17 A Well, really three rifles.

18 Q Three rifles, okay. A .22, a 243 and a .44?

19 A And one of these in a different report, I changed
20 the name on it.

21 Q Sure.

22 A But it was three rifles.

23 Q I knew that. But basically there weren't four
24 rifles, there were three rifles, and there was just
25 some confusion about what the brand name was?

- 1 A That's correct.
- 2 Q And Canon EOS DSLR camera?
- 3 A Yes, sir.
- 4 Q A 55-inch VIZIO TV?
- 5 A Yes, sir.
- 6 Q A 50-inch flat screen Sanyo?
- 7 A Yes, sir.
- 8 Q 26-inch TV-DVD that was also a Sanyo?
- 9 A Yes, sir.
- 10 Q A VIZIO 32-inch TV?
- 11 A Yes, sir.
- 12 Q A Blu-ray player by VIZIO?
- 13 A Yes, sir.
- 14 Q A number of miscellaneous collectible type knives?
- 15 A Yes, sir.
- 16 Q Smokey topaz ring?
- 17 A Yes, sir.
- 18 Q Citizen watch?
- 19 A Yes, sir.
- 20 Q Silver key necklace?
- 21 A Yes, sir.
- 22 Q Silver turtle Abalonian shell necklace?
- 23 A Yes, sir.
- 24 Q Pearl necklace?
- 25 A Yes, sir.

1 Q I believe that's shell -- yeah, okay, and a pearl
2 necklace. Also a silver cultured pearl necklace?

3 A Yes, sir.

4 Q Two Xboxes?

5 A Yes, sir.

6 Q A Wii game system? And I realize some of these
7 were reported later. Wii game system, miscellaneous
8 Xbox games?

9 A Yes, sir.

10 Q PSE compound bow?

11 A Yes, sir.

12 Q That would be a hunting bow, kind of a -- one of
13 those nice ones with the pulleys and all that?

14 A I don't have one, so it's just a bow is all I
15 know.

16 Q Okay. A Fossil Gamecock watch?

17 A What point you on now, is that point three?

18 Q Yes, sir, I think that starts point three, and a
19 Fossil Gamecock watch.

20 A That's right.

21 Q An unknown -- another unknown Gamecock watch?

22 A Yes, sir.

23 Q Sentry safe?

24 A I don't see that; which one you on now?

25 Q I actually took these notes down from your -- the

1 reports there.

2 A I thought the Sentry safe was back on point one,
3 but anyway there was a Sentry safe stolen.

4 Q Okay. A Nintendo 3-DS?

5 A I don't -- I don't see it on the report, sir.

6 Q Okay. There was some other miscellaneous things
7 that you know were in the report; right?

8 A Yes, sir. Yes, I see the Nintendo, yeah, it was
9 added, it was added later.

10 Q And after that, Nintendo 3-DS, a Nintendo DLXS
11 whatever, I don't even know, but another Nintendo game?

12 A That's correct, that's correct, I see it.

13 Q Coach purses?

14 A Yes.

15 Q A dark green backpack?

16 A That's correct.

17 Q And a radio with Carolina headphones?

18 A Correct.

19 Q That's just from Ms. Ford's house; correct?

20 A Yes, sir.

21 Q All right. If you would, please, can you pull the
22 property inventory from the Causey residence.

23 A Okay.

24 Q 52-inch flat screen TV?

25 A Yes, sir.

- 1 Q 42-inch flat screen TV?
- 2 A Yes, sir.
- 3 Q 40-inch flat screen TV?
- 4 A Yes, sir.
- 5 Q A 17-inch Dell computer?
- 6 A Correct.
- 7 Q 12 gauge Browning?
- 8 A Yes, sir.
- 9 Q 12 gauge Mossberg?
- 10 A Yes, sir.
- 11 Q 12 gauge Beretta?
- 12 A Yes, sir.
- 13 Q .45 caliber Charles Daly?
- 14 A Yes, sir.
- 15 Q A Kimber .45 caliber pistol?
- 16 A That must be on the next one. That's correct.
- 17 Q Charles Daly camo shotgun?
- 18 A Yes, sir.
- 19 Q Miscellaneous clothes and jewelry?
- 20 A Okay.
- 21 Q Miscellaneous clothes and jewelry?
- 22 A I didn't find it, but I'm sure it's probably
- 23 there.
- 24 Q All right. Now, when you went to
- 25 Mr. Hemingway's -- Mr. Xavier Hemingway's residence,

1 you didn't find any of those TV's?

2 A No.

3 Q Any of those guns?

4 A No.

5 Q Any of that jewelry?

6 A No.

7 Q Anything that you can definitively say came from
8 Mr. Causey's or Ms. Ford's?

9 A No, sir.

10 Q And, in fact, the best you can say is that there
11 were three Xbox 360's at Mr. Xavier Hemingway's
12 residence?

13 A Yes, sir.

14 Q And three laptops?

15 A Yes, sir.

16 Q And one -- and one laptop we know was already in
17 NCIC, and you ran that through the system, and it
18 didn't show up as stolen?

19 A That's right.

20 Q So if Ms. Ford's laptop, Toshiba, which you had
21 the serial number to, had been run through the system
22 and it had -- that would have been a hit, you would
23 have known, you would have said, I got it?

24 A Yes, sir.

25 Q So we would know that that property was stolen

1 from that residence?

2 A That's correct.

3 Q But when you went there -- you know, I did a
4 little preliminary search. Are you familiar with an
5 Acer laptop computer?

6 A There was one stolen.

7 Q No, no, no, sir. I mean just in general, are you
8 familiar with the brand Acer?

9 A I do.

10 Q Are you familiar with the brand Dell?

11 A Yes.

12 Q Are you familiar with the brand Hewlett Packard,
13 or HP?

14 A Yes. Yes, I am.

15 Q Apple?

16 A Yes.

17 Q Lenovo?

18 A No.

19 Q Asus? A-S-U-S.

20 A Yes.

21 Q Toshiba?

22 A Yes.

23 Q Microsoft?

24 A Yes.

25 Q Samsung?

1 A Yes.

2 Q AMD?

3 A Yes.

4 Q Sony?

5 A Yes.

6 Q This one is new one on me; Alienware?

7 A I don't believe so.

8 Q No, I'm not familiar with that either.

9 A No.

10 Q Gateway?

11 A Yes.

12 Q Envision?

13 A Yes.

14 Q MSI?

15 A Yes.

16 Q And there are probably several others out there;
17 aren't there?

18 A Could be.

19 Q Could be. So when you went there and you knew
20 that you at least -- you at least knew, at that point
21 you had a copy of the report, what you had already been
22 reported as being stolen; correct?

23 A Correct.

24 Q So if you looked at a -- if they had said a

25 17-inch Dell computer, and you had found a 17-inch Dell

1 computer, you would have made those notes; wouldn't
2 you?

3 A I would have.

4 Q You would put those two together; right?

5 A I would have.

6 Q All right. And if there had been -- excuse me one
7 second -- and if you knew that you had seen at
8 Mr. Xavier Hemingway's home an Acer notebook computer,
9 you would have kind of -- two and two would have come
10 together there too; wouldn't it?

11 A Yes.

12 Q So it's safe to say that any one of those three
13 laptop computers that you saw, you didn't put two and
14 two together as being stolen?

15 A That's correct.

16 Q And, in fact, the truth of the matter is we don't
17 know what kind of laptop computers were at Mr. Xavier
18 Hemingway's?

19 A That's correct.

20 Q And we don't know that they worked?

21 A I didn't turn them on. They appeared to be -- you
22 know, look like they would work, but they didn't look
23 like junk.

24 Q But we don't know?

25 A Oh, no.

1 Q And we don't know that Mr. Xavier Hemingway
2 doesn't work on laptop computers?

3 A That's correct.

4 Q And, in fact, Mr. Xavier Hemingway could have
5 bought laptops to refurbish or get re-going; couldn't
6 he have?

7 MR. RICHARDSON: Objection, Your Honor, calls for
8 speculation.

9 THE COURT: I'm sorry, repeat the question.

10 MR. RICHARDSON: Calls -- oh, sorry.

11 THE COURT: Repeat the question.

12 MR. JOYE: Yes, Your Honor. I said we don't -- he
13 doesn't know that Mr. Xavier Hemingway didn't purchase
14 these to work on.

15 THE COURT: I'm going to give you a little
16 latitude, but it does border on being speculative.
17 Sir, you may answer the question.

18 THE WITNESS: That's correct.

19 Q So the simple fact that he had three laptop
20 computers that don't seem to match up to anything that
21 was stolen, we can't make anything out of that; can we?

22 A That's correct.

23 Q Now, you have kids or grand kids, detective?

24 A I do.

25 Q How old are your grand kids?

1 A Nine and fifteen.

2 Q Nine and fifteen. I bet they got Xbox 360's;
3 don't they?

4 A I don't know.

5 Q Wouldn't surprise you, though; would it?

6 A It wouldn't surprise me, but I don't know.

7 Q Most young people got them. Mr. Xavier Hemingway
8 is not an old man; is he?

9 A No, he's not.

10 Q As a matter of fact, he would be in those perfect
11 years to play on Xbox 360's?

12 A You would think so.

13 Q So the fact that he had three computers and three
14 Xboxes -- by the way, how many Xboxes did you -- did
15 Ms. Ford say was stolen?

16 A Two.

17 Q Two. But he had three?

18 A That's correct.

19 Q How many did the Causeys say were stolen? In
20 fact, they said none were stolen; right? They didn't
21 even have them.

22 A I don't believe they had Xbox, they had some other
23 things.

24 Q No. At best, at best, we've got a codefendant who
25 says we split up all this stuff that was stolen, and we

1 split it up at Xavier's house; right?

2 A Correct.

3 Q I'm sorry. And we all took our individual share?

4 MR. RICHARDSON: Your Honor, at this time I object
5 to pitting.

6 THE COURT: Basis?

7 MR. RICHARDSON: Pitting.

8 THE COURT: He hasn't asked him to comment on
9 voracity, he's asking him to comment on his
10 investigation and what it revealed.

11 MR. RICHARDSON: Certainly.

12 THE COURT: Overruled. You may proceed.

13 Q So they split up the stuff. You would have done
14 that in your questioning of him, what happened to the
15 stuff? I mean, I know it's not in your report, but --
16 you didn't put anything in your report about what
17 happened to the stuff once you met with Xavier?

18 A That's correct.

19 Q I mean, not -- excuse me, I say Xavier, Tareek.
20 My apologies. Now, and in fact, when we look at the
21 whole of your investigative report with respect to
22 Tareek Hemingway, basically it says that you and
23 Detective Wilson went to Columbus County sheriff's
24 office to interview Tareek, and you did that, no
25 question about that?

1 A Yes.

2 Q You read Tareek Hemingway his Miranda rights, and
3 he gave a voluntary statement of him and four other
4 codefendants breaking into the Causey and Ford houses
5 and taking long guns, pistols, TV's, games and a safe.
6 Now, you had a pretty extensive interview with him;
7 didn't you?

8 A Not no longer than a normal -- a normal interview.

9 Q Well, it would have been helpful if you had a
10 report that detailed a great detail of what y'all
11 talked about that day; wouldn't it?

12 A I read him his rights.

13 Q You read him his rights, and he just simply went
14 ahead and wrote this statement; correct?

15 A No. I've already testified to that we had a
16 conversation a little bit before he had given his
17 statement.

18 Q Okay. Y'all had a conversation. You told him he
19 was facing 15 years to life?

20 A On each charge.

21 Q On each of the burglary first charges?

22 A That's correct.

23 Q And he was upset by that; right?

24 A Well, he was already in jail, I don't know to say
25 he was upset. But he might not have did but 15 or 20,

1 you know, I don't see nobody would like that.

2 Q Nobody. And, in fact, you didn't necessarily
3 threaten him, but you told him the only way he was
4 going to ever -- ever help himself was right then and
5 there?

6 A I told him right now was a good time to let's do
7 the right thing.

8 Q Implying that if he ever wanted to get help, he
9 needed to cooperate with you?

10 A No. I just told him at his young age, that there
11 might be help at the end of the tunnel for him.

12 Q And by that you meant help in court at some point?

13 A I can't -- I can't tell you how he interpreted
14 what --

15 Q No. I'm asking you how you interpreted it.

16 A How I interpreted it, exactly like I said, that
17 there might be some light at the end of the tunnel at
18 his age if he wanted to tell the truth.

19 Q And if he told what you thought was the truth,
20 then you would be willing to try to help him; right?

21 A I can't help nobody.

22 Q You've never said, solicitor, I believe we need to
23 help this person, he helped us make this case. You
24 never said that to any solicitor?

25 A I have not.

1 Q You never tried to help those who've helped you?
2 What advantage is it for someone to help them self?

3 A To hopefully get some help on the back end.

4 Q That's exactly my point, detective. But in terms
5 of whatever y'all said on that date at the jail in
6 Columbus County, it ain't in here; is it, other than
7 you telling him his Miranda rights and he gave a
8 statement implicating himself and four others?

9 A That's correct.

10 Q And that's all that's in here?

11 A That's all that's in there.

12 Q And I believe he testified it took about 45
13 minutes before he ever gave you anything other than, I
14 don't know nothing about nothing; is that right?

15 A I don't remember what he testified. But he did
16 tell me, it wasn't that long.

17 Q He started out by telling you he didn't know
18 nothing about nothing?

19 A That's correct.

20 Q And I assume he continued that for a little bit?

21 A I'm not going to speculate and tell you how long
22 it was, but it was not very long, I mean.

23 Q And but it isn't in your report -- it doesn't say
24 anything in your report about he said he didn't know
25 nothing about nothing. That ain't in here; is it?

1 A You got it right there before you.

2 Q Yes, sir.

3 A I know it's not in there, but --

4 Q Okay, well, that's fine.

5 A It's not in there.

6 Q It's not in there.

7 A It's not in there.

8 Q Now, you went to the police academy; did you not?

9 A Do what?

10 Q You went to the police academy and got training?

11 A I did.

12 Q And I imagine you've had subsequent training over
13 the years being with the police a number of years?

14 A I have.

15 Q And at the police academy and in your training
16 you're taught to make reports?

17 A That's correct. Who, what, when and where.

18 Q Who, what, when and where?

19 A The plain facts.

20 Q And you want to make a full report; right?

21 A We just need the who, what, when and where.

22 Q You want a complete report?

23 A You want the who, what, when and where, that is a
24 complete report.

25 Q Complete report, accurate report?

1 A That's an accurate report.

2 Q It's accurate in here, it's accurate that it
3 doesn't say anything about he denied any involvement at
4 first?

5 A Yes.

6 Q And when you're doing an investigation, you want
7 to preserve evidence; don't you?

8 A If you can.

9 Q Well, photographs would be evidence in a number of
10 cases; wouldn't they?

11 A It would.

12 Q And when you were at Xavier Hemingway's house, you
13 could have chosen to photograph those items but chose
14 not to?

15 A I did.

16 Q You could have --

17 A Wish I had of, wish I had of, but I didn't.

18 Q In other words, that was a mistake not to do so?

19 A That's right.

20 Q Because that evidence could work just as much to
21 exonerate Xavier Hemingway as to convict him; couldn't
22 it?

23 A I don't think so.

24 Q If you took it and showed it and they said, no,
25 this is not anything of ours, that would work to help

1 exonerate Xavier Hemingway; wouldn't it?

2 A Yeah. But he wouldn't have done that because if
3 I -- if they would have done that when I went back,
4 I've learned --

5 MR. JOYE: Your Honor, I object. I didn't ask
6 that question.

7 THE WITNESS: You brought it up.

8 THE COURT: Sir, you don't -- the two of you don't
9 speak to one another. Ask your next question, please.

10 Q If you had taken photos of the property that was
11 there and Ms. Ford or Mr. and Mrs. Causey said, none of
12 that's ours, that would have worked to exonerate, could
13 have worked to exonerate Xavier Hemingway; could it
14 not?

15 A But they would have said two of them was theirs,
16 because I found out what color they --

17 MR. JOYE: Object.

18 THE COURT: You're the architect of your own
19 dilemma. The question had already been asked and
20 answered, move on. You're not going to get a different
21 answer, move on.

22 Q You are assuming, you're asking this jury to
23 assume because that property wasn't there that it was
24 stolen from their houses?

25 A No, sir.

1 Q Wasn't that just what you just answered? Didn't
2 you just say, no, it wouldn't have because if he had
3 photographs it would have showed it.

4 A I don't have the pictures.

5 Q Sir?

6 A I don't have the pictures.

7 Q You don't have the pictures. But if you had
8 pictures and they said, it's not ours, that could work
9 to exonerate him; correct?

10 A That's correct.

11 Q Thank you. But we won't ever know because you
12 chose not to take pictures?

13 A That's correct, I made a mistake.

14 Q Now, let me ask you something. The car that was
15 in the front yard when you got there the first time,
16 you talked about a white car being in the front yard;
17 right?

18 A I said I thought there was one.

19 Q Thought there was one?

20 A I'm not sure.

21 Q That would be the same car that Xavier was working
22 on when you came to arrest him; wasn't it?

23 A If it was the same car, that was there when I went,
24 it was still sitting there. When I went to arrest him,
25 it was sitting there.

1 Q It was sitting in the same exact place; wasn't it?

2 A I think it was, but I'm not sure.

3 Q If it was broken down there, clearly he was
4 working on it when you came the second time; right?

5 A That's right.

6 Q Now, you don't know whether or not he'd been
7 thrown out of that mobile home of his aunt's; do you?

8 A That's right.

9 Q She was pretty angry at the fact that he was there
10 when you went the first time; right?

11 A No.

12 Q No? She told you if there was stolen property in
13 there, she wanted it out of there?

14 A When she learned my investigation had uncovered
15 there might be some stolen stuff, that's when she got
16 mad and she wanted it out of there.

17 Q Right.

18 A If it was in there.

19 Q She wanted it out of there. And she said that he
20 didn't have permission to live there to begin with;
21 didn't she?

22 A That's what she said. But she wasn't really upset
23 about that. What she was upset about, that possibly
24 being some stolen property in her house.

25 Q Well, the truth is you don't know that she didn't

1 throw him out, because clearly she's already testified
2 that he wasn't living there -- I mean, he shouldn't
3 have been there or he wasn't supposed to be there, his
4 daddy was supposed to be there?

5 A That's correct.

6 Q So if he been thrown out in his car, he would have
7 taken his stuff; wouldn't he?

8 A You would think so.

9 Q Except if your car is broken down in the front
10 yard, you can't very well take that; can you?

11 A Not unless you get it towed.

12 Q Right. So it would make sense that if he had
13 moved out, his stuff would be gone?

14 A I believe the tag was there on the car anyway, I
15 don't believe he could have drove it on the highway.
16 It would had to been towed, so wouldn't have made no
17 difference if it was tore up or not.

18 Q Okay. So the car was -- the car might have been
19 stuck there; and he might not have been living there
20 anymore?

21 A That's possible.

22 Q So if the stuff was gone out of there, it doesn't
23 mean anything about it being stolen, just simply means
24 it was moved because he had moved?

25 A That's correct.

1 Q And he told you he didn't know anything about it?

2 A That's right.

3 Q And you guys had -- you know, in your training,
4 aren't you trained to inter -- in interview techniques?
5 Aren't you trained to interview subjects and elicit
6 confessions?

7 A Yeah, to somewhat.

8 Q Okay. So no question but that you've interviewed
9 many subjects over the course of your training?

10 A That's correct.

11 Q But you didn't elicit anything out of Xavier
12 except for the fact that he didn't know anything about
13 any burglaries?

14 A That's right, except telling me about the two, and
15 he said two, Xboxes. And I found three there.

16 Q Yeah. But y'all had some conversation before he
17 ever wrote that down; didn't you?

18 A I'm sure we did. Normally you have a conversation
19 with somebody.

20 Q And you could have told him, say, look, I'm
21 looking for two Xboxes. You don't know that you
22 didn't. Certainly not in your report, how about that?

23 A Not in my report, that's right.

24 Q Not in your report. In fact, in your report all
25 you did was say you investigated, and he didn't know

1 anything about it. Or he claimed not to know anything
2 about it.

3 A I told him I had found three Xboxes and three
4 laptop computers, where did he get them from.

5 Q You told him that?

6 A Yeah. I told him that, and that was at his house.

7 Q Well, you could have possibly told him that you
8 had a report that two Xboxes had been stolen, he got
9 three?

10 A I could have.

11 Q You could have told him that?

12 A I don't think so, but I could have.

13 Q And, in fact, he may have already had one and then
14 bought two more?

15 A He could have.

16 Q Truth is we can't make a whole lot of anything
17 about that because he had three computers and three
18 computers were stolen, but none of them matched any of
19 the descriptions of anything you had; did they?

20 A Not at that time when I was there.

21 Q Yeah. But you had -- you had those descriptions,
22 you had those descriptions when you went there and
23 looked at those computers?

24 A I didn't have the color of the Xbox.

25 Q Got you. Xboxes come in three colors; correct?

1 A I'm not sure. I know they come in two colors,
2 maybe three. I believe I've known one to be red or
3 something, I don't know.

4 Q And in your experience, most of them you've seen
5 have been black; haven't they?

6 A Black and white, most of them.

7 Q And less white ones than black ones?

8 A I can't agree with you on that. They probably
9 half and half, the ones I've ever had dealings with.

10 MR. JOYE: Beg the Court's indulgence. Thank you,
11 detective. No further questions.

12 THE COURT: Any redirect of the witness?

13 MR. RICHARDSON: I'll try and be very brief, Your
14 Honor.

15 REDIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q Detective Elliott, you're working in property
18 crimes almost four years now?

19 A No, six.

20 Q Almost six years now, I'm sorry. Almost four
21 years at the time of this crime?

22 A Yes.

23 Q You familiar with how sold -- property is sold
24 commonly?

25 A Yes.

1 Q I'm going to ask you, some items sell quicker than
2 others? Do some items sell quicker than others?

3 A Yes. Yes.

4 Q Could you tell us about how quickly guns are able
5 to be sold on the street?

6 A Within hours.

7 Q Pretty quick?

8 A Very quick.

9 Q How about TV's?

10 A TV's, very quickly.

11 Q How about jewelry?

12 A Jewelry is very quickly.

13 Q So that moves quickly. Have you had any
14 experience with Xboxes or laptops?

15 A Xbox and laptops are quick items too.

16 Q Okay. But the quickest items are guns, jewelry,
17 TV's?

18 MR. JOYE: Objection, Your Honor.

19 THE COURT: Basis?

20 MR. JOYE: Yeah, that would be leading. He says
21 the quickest items.

22 THE COURT: No speaking objections. Is the
23 objection leading?

24 MR. JOYE: Yes, Your Honor.

25 THE COURT: Sustained, leading. Rephrase.

1 Q What are the three quickest selling items?

2 A Guns, TV's and jewelry.

3 Q Thank you. And when you visited -- the burglaries
4 took place on the 5th of April; correct?

5 A That's right.

6 Q And when was it you first went to the home where
7 Xavier Hemingway was?

8 A On the 11th.

9 Q Six days later?

10 A Yes.

11 Q Almost a week later. And then you returned to
12 that address again; do you know when that was?

13 A I don't. Well, I went and arrested him on the --
14 I think it was the 22nd, on the 22nd.

15 Q Okay. And so that's 11 days after your search;
16 correct?

17 A That's correct.

18 Q And the secondary search after the 11th, was that
19 between the arrest date, after the arrest date?

20 A That was between the 11th and the 22nd.

21 Q Okay. And how did you gain entry on that day?

22 A Well, I think Ms. -- I think Ms. Livingston was
23 there again.

24 Q And you couldn't find the laptops or the games?

25 A No, they were gone. And I -- and the Court, I

1 don't have no date on that. If I would have found
2 anything, there would have been paperwork done, and it
3 would be on record.

4 Q And Mr. Joye asked you about you had descriptions
5 of computers, I think you listed off 11, 12 different
6 types of computers. And you didn't mention in your
7 report -- did you mention in your report what types of
8 laptops these were?

9 A I did not. When we run the serial number, I know
10 it didn't came back stolen, and I didn't...

11 Q So what was the particular identifying information
12 you were looking for on these computers?

13 A I was looking for the serial numbers, hoping to
14 match something up in the...

15 Q Mr. Joye ask you something about you had
16 descriptions of 17-inch Dells and everything and this
17 and that. But if I understand, you were looking
18 particularly for serial numbers?

19 A That's right.

20 Q Not make and model?

21 A That's right.

22 Q Okay. Once you got a better description of the
23 Xboxes, they were black in nature, the ones from Ms.
24 Ford's residence?

25 A That's correct.

1 Q What did you do with that information? What did
2 you do with that information?

3 A When I got the information back is when I -- now,
4 all this is speculation, and I don't have a date -- I'm
5 sure that's when I went back, and Ms. Livingston --

6 MR. JOYE: Your Honor?

7 THE COURT: Basis?

8 MR. JOYE: Objection.

9 THE COURT: Basis of the objection?

10 MR. JOYE: Yes. He says all this is speculation,
11 if he doesn't know, then he --

12 THE COURT: I said no speaking objections. Is the
13 objection speculation?

14 MR. JOYE: Yes, Your Honor.

15 THE COURT: Lack foundation. The objection is
16 overruled. However, the witness is instructed not to
17 speculate but to answer based on his own rational
18 perception and personal knowledge based on his
19 investigation of the case. You may proceed.

20 MR. RICHARDSON: Yes, ma'am.

21 THE COURT: Sir, do you need the question
22 repeated?

23 MR. RICHARDSON: I think I can clarify it, Your
24 Honor.

25 THE COURT: Um-hum. Rephrase.

1 Q You searched the McCullough Drive address on the
2 11th. At some point after that date, did you receive a
3 better description of the Xboxes?

4 A I learned that these Xboxes was talking with
5 the -- finally getting up with the victims, that they
6 were black. And when I returned back at this location
7 to recover the property, then it was gone.

8 Q Okay. Now, Mr. Joye asked, he was asking about
9 Ms. Livingston being upset. And I believe you said she
10 was upset about the stolen property. But Mr. Joye is
11 asking about how do you know that she didn't kick him
12 out. Describe any event where she asked you to stick
13 around and evict her nephew.

14 MR. JOYE: Objection, Your Honor.

15 THE WITNESS: She did not.

16 THE COURT: I didn't even understand the question,
17 it was very convoluted. Could you please rephrase it.

18 MR. RICHARDSON: I apologize.

19 Q At any point did Ms. Livingston ask you to stick
20 around to kick her nephew out of that apartment?

21 A He did -- she did not.

22 THE COURT: Is there an objection?

23 MR. JOYE: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. JOYE: Yeah, the basis would be that that

1 would be hearsay as to Ms. Livingston to this
2 defendant.

3 THE COURT: Is the objection hearsay? Is the
4 objection hearsay?

5 MR. JOYE: Yes, yes, yes.

6 THE COURT: Sustained, hearsay.

7 Q Did Ms. Livingston ask you to perform any duties?

8 MR. JOYE: Objection, did Ms. Livingston ask.

9 THE COURT: Sustained. You're asking for out of
10 court statement not related to this investigation.
11 Offer it for its truth. Sustained.

12 MR. RICHARDSON: Yes, ma'am, Your Honor.

13 THE COURT: You can ask him what he did as a
14 result.

15 MR. RICHARDSON: Yes, ma'am.

16 Q After speaking with Ms. Livingston, what did you
17 do?

18 A I just left the residence.

19 Q You left the residence, you didn't have to stick
20 around?

21 A I didn't.

22 Q Now, you said you were trained at the academy 29
23 years ago?

24 A 28.

25 Q 28, okay, going on 29 now.

1 A Right.

2 Q Mr. Joye was asking about report writing, you said
3 who, what, when, where, the basic facts?

4 A The basic facts.

5 Q And that's for particularly if you're on patrol.
6 And the majority of your career was spent where?

7 A On patrol.

8 Q And Detective Elliott, would you say that report
9 writing is your strongest skill as an officer?

10 A Not at all.

11 Q With regard to details, are all the details that
12 are part of your investigation, are they all contained
13 in your report?

14 A They are.

15 Q The main points?

16 A Yes.

17 MR. RICHARDSON: No further questions, Your Honor.

18 THE COURT: Any objection to the witness stepping
19 down?

20 MR. JOYE: None, Your Honor.

21 THE COURT: And from the State?

22 MR. RICHARDSON: No, ma'am, Your Honor.

23 THE COURT: Sir, you may step down.

24 (Witness excused.)

25 THE COURT: The State may proceed.

1 MR. RICHARDSON: Your Honor, at this juncture the
2 State rests its case.

3 THE COURT: Ladies and gentlemen, the State has
4 rested their case. There's some brief matters of law
5 that I need to take up with the attorneys. After doing
6 that, I'll let you know how we will be proceeding for
7 the rest of the trial. I'll tell you in advance we
8 appreciate your patience as you indulge us.

9 I'm thinking it may be about ten minutes, so it
10 will probably bring us close to 5 o'clock. Please do
11 not discuss the case during this break, and please
12 leave your notepads in your seats.

13 (WHEREUPON, the jury exited the courtroom at
14 4:52 p.m.)

15 THE COURT: Are there any motions now that the
16 State has rested its case?

17 MR. JOYE: Yes, Your Honor.

18 THE COURT: You may proceed.

19 MR. JOYE: I would move for a directed verdict on
20 the basis of the fact that I don't believe that --

21 THE COURT: Wait one second for me. That door is
22 open, I apologize. Thank you, you may continue.

23 MR. JOYE: Yes, Your Honor. For a directed
24 verdict on the basis of the fact that I don't believe
25 that there's enough evidence for any reasonable jury to

1 But you talking about 45 minutes for you?

2 MR. RICHARDSON: Well, the burden is on the State.

3 THE COURT: We should probably plan to have lunch
4 for the jury. How early do we need to make
5 arrangements for that?

6 CLERK OF COURT: I would say about an hour.

7 THE COURT: So we can make that decision on the
8 way.

9 CLERK OF COURT: Yes, ma'am.

10 THE COURT: Okay. Please bring in the jury.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:46 a.m.)

13 THE COURT: Good morning, ladies and gentlemen. I
14 hope y'all had a pleasant evening. As I explained on
15 yesterday, we have now reached the stage of the trial
16 where we will have closing argument and instruction
17 from the Court on the law of this case. I would ask
18 that you give the attorneys your undivided attention.
19 You may proceed, Mr. Richardson.

20 MR. RICHARDSON: There's no honor among thieves.
21 I told y'all that from the get go, and in my years of
22 prosecution I don't know that that statement's ever
23 been truer than in this case. There is no honor among
24 thieves. And I believe Mr. Joye picked up on that
25 during opening and was saying that because they have no

1 honor, you can't trust anything a thief says. But
2 that's not exactly what no honor among thieves means.

3 It's been a theory, it's been an sold song
4 centuries ago. Millenia ago, it's always held true.
5 And what it means is thieves by their very nature, they
6 are willing to turn on one another. They'll turn on
7 each other, cutting each other out of cuts of the
8 spoils, trying to bargain for I get this, you get that,
9 I get the bigger piece of the pie.

10 But even though there's no honor among thieves,
11 there can be truth coming from their mouth, because
12 they will turn on one another. They will try to better
13 their position. And when the chips are down, they'll
14 tell on one another. And that's what we have here.
15 That saying is old. It was self-evident back in the
16 days of John Dillinger and Bonnie and Clyde because
17 that was what undid them, and in this case it's what
18 undid Xavier Hemingway.

19 No criminal goes into a conspiracy with the others
20 saying, hey, this is what's going to happen when you
21 get caught, everybody hold tight. They all trust each
22 other every time they optimistically go into this with
23 their nefarious deeds. And I can almost guarantee that
24 whenever Rodney and Tareek started talking over in
25 Tabor City, let's go pull some robberies, as Avery

1 Norris and Rayquan rode and picked up Tareek, and as
2 they went over to Green Sea, mask and gloves ready to
3 do their dirt, as they picked up Xavier, and Xavier
4 said, I know where we can go get this stuff, I know
5 what houses to hit, not once did they think that they
6 would get caught.

7 They were being cautious, they were taking all due
8 diligence and care, gloves, masks, ride past the house,
9 come back and knock on, make sure nobody is there, no
10 witnesses around. We're good. And they didn't leave
11 any evidence, we know that. No fingerprints, no blood,
12 nothing, just some shoe prints we can't match up with
13 anything. And so they were cautious. And so they
14 didn't plan on what would happen if one got caught.

15 But the inevitable did happen. Detective Terry
16 Wayne Elliott rolled up his sleeves and went about it
17 in his old-fashioned way, 29 years on the force. He
18 rolled up his sleeves, hit the streets and started
19 solving this crime. And when he got that call that
20 Tareek Hemingway had been picked up over in Tabor City,
21 possibly with some stolen property, might have been
22 saying something, he went to talk to him, nothing more
23 than his investigation. Not probable cause, not with
24 warrants, so he went and he confronted Tareek.

25 And Tareek began by saying, wasn't me, I deny it,

1 10, 15 minutes, I believe Terry Wayne said. Tareek
2 said 45, maybe he's lost on time, I don't know. I'm
3 sure it seemed long to him. And Terry Wayne didn't
4 say, I've got warrants and I'm going to take you back
5 to Horry County now, he said, we're going to keep on
6 working, we don't have enough for you right now, but
7 we're going to keep on working. And if you want to
8 tell the truth, now is the time. And that's when
9 Tareek hung his head for two to three minutes. And
10 when he picked it back up, he started talking.

11 He told him -- now, Terry Wayne Elliott did not
12 have the names of Rodney, Rayquan Gore, Avery Norris at
13 that time, and those are the names that Tareek gave.
14 Not because he's pulling them out of thin air. He
15 didn't try to absolve himself of his guilt. He didn't
16 say, hey, I picked these guns up from somebody at the
17 flea market, he didn't say I got them from some dude, I
18 didn't know his name. He didn't even say, I was just
19 the getaway driver, I was the lookout, or even that
20 Xavier brought them to me and he told me he broke in.

21 He said, I went in these homes, but I wasn't
22 alone. And we know he wasn't alone by the damage done
23 to the home, by the amount of property that got taken
24 from that home, from both homes. That's not a one-man
25 job. And he let it go, he turned on his own cousin

1 because there is no honor among thieves.

2 But there can be truth in what they say. And the
3 truth here is, as he said, Tareek Hemingway is guilty,
4 he's guilty of both burglaries, both grand larcenies,
5 both safecrackings. No doubt about it. But he's not
6 alone. Rodney Gore, Rayquan Gore, Avery Norris,
7 guilty.

8 In the focus of our case here, the truth is Xavier
9 Hemingway is guilty. He went with them, he was the
10 getaway driver at the second one, he pointed out the
11 houses because he's the man in Green Sea, he knows the
12 layout. He's been over here for three or four months,
13 he knows where to go, he directs it. And so the truth
14 is he's guilty. And your verdict must speak the truth.
15 Find him guilty of both those burglaries, both the
16 grand larcenies and the safecracking.

17 Now, in a short while, Her Honor is going to talk
18 to you again. And she's going to begin by reminding
19 you that from the time you swore your oath that you
20 became the sole and only judges of the facts and
21 evidence in this case. Every bit of testimony, every
22 bit of evidence that has been introduced in this trial,
23 you get to judge that. You get to bear out its weight.

24 But she's going to tell you, she is the judge of
25 the law. She's the judge of the law, so she'll give

1 you the law to apply to those fact, the ground rules,
2 the borders. She'll talk to you about credibility of
3 witnesses, and it simply means believability. And
4 that's something you judge everyday in your life when
5 you talk to people. Who should I believe, why should I
6 believe it. Something you read, why should I believe
7 this over something else. You do it everyday, use
8 common sense.

9 She'll tell you that you can take all of what a
10 witness says, part of what they say, or you can
11 discount everything a witness says. But it's your
12 choice. You choose what to believe, what is credible,
13 who's got friends to reward, who's got enemies to
14 punish, who's got something to gain.

15 And I say this because I know Mr. Joye is going to
16 attach Tareek, and rightfully so, Tareek's a thief. He
17 didn't shy away from that, he is a burglar. Told you
18 he was found guilty over in Tabor City at something,
19 and certainly he told you he did these.

20 But that doesn't make his story incredible, it
21 makes it more credible, because birds of a feather
22 flock together. Who else is he going to know about, he
23 is going to know about other thieves. He's going to
24 know about who he's pulling burglaries with.
25 Credibility, folks.

1 His story is the one that makes sense. His story
2 is the only one that does make sense. The judge will
3 talk to you about direct and circumstantial evidence
4 and tell you that direct evidence is testimony of
5 someone who claims to have actual knowledge of a fact.
6 I saw this, I heard that. I was with Xavier when he
7 pointed out the houses to drive to. I was with him, I
8 was in the house after we kicked the door in, and he
9 ran in with me.

10 I was with him when we took the property back to
11 his house and we popped that safe open, we put it in
12 the back bedroom. I was there when he drove us and
13 dropped us off at the second house that he picked out.
14 I was there, I saw. I saw games -- or Xboxes, I saw
15 laptops at Xavier Hemingway's house in a gunny sack or
16 some sort of sack. Direct evidence.

17 But circumstantial evidence is a little different.
18 It's the proof of a chain of facts or circumstances
19 that lead -- that infer the existence of another fact.
20 It is evidence that -- it's evidence that -- I'm sorry,
21 it's evidence of collateral facts which immediately --
22 immediate collateral facts which establish an inference
23 of yet another fact. It's built off of inferences.
24 It's like puzzle pieces, it's built off inferences.
25 And any single piece by itself, alone, is meaningless,

1 just like if I picked up one puzzle piece and then say,
2 I don't know if this is a puppy, a landscape or
3 anything else.

4 But as these pieces come together along with the
5 direct evidence, a picture starts to form. And even
6 though there may be missing pieces, even though the
7 picture is not a hundred percent complete, you look
8 down and you see what the picture is. You can tell
9 what it is. In this case, the picture is all five of
10 those young men are guilty of these burglaries, all
11 five are guilty of the grand larceny, all five are
12 guilty of the safecracking.

13 The judge will talk to you about the statement of
14 the Defendant. She'll tell you that before you can
15 even consider the Defendant's statement, you have to
16 determine that statement was given voluntarily, that it
17 wasn't the product of duress, that it wasn't the
18 product of coercion, it wasn't beaten out of him.

19 You do that in a few different ways. Once you
20 determine -- or you can look to see did he understand
21 the questions, where it happened, what was going on.
22 And most importantly, was he advised of his Miranda
23 rights. And we have all that here. It was the product
24 of a voluntary statement, so examine that statement.

25 And talking about credibility, let's determine the

1 credibility of that statement. He says to Terry Wayne
2 Elliott, I got two Xboxes from some guy, don't know
3 who. Now, Terry Wayne tells him, I saw three Xboxes.
4 Why does he say, I got two Xboxes from some guy I don't
5 know, I can't remember who it is?

6 Because he knows that two Xboxes were stolen.
7 He's got to give an answer in case Terry Wayne -- he
8 doesn't know if Terry Wayne pulled anything off serial
9 numbers or what happened with it, but he's got to give
10 an answer for why he's got those two Xboxes. The third
11 one he's not that worried about. The laptops, oh, I
12 got them at a flea market, doesn't say when. Does it
13 make sense?

14 The judge will talk to you about the prior record
15 of the witness. And as I said, Tareek's got a criminal
16 record. You can use it to determine his believability.
17 And would you trust him with your daughter, would you
18 trust him in your house? No, he's a burglar. But
19 birds of a feather flock together. And when these
20 birds all got together and they committed their crimes,
21 where'd they fly back to? They flew back not to Tabor
22 City, but to Xavier's nest. Because he led them to the
23 burglaries, and he led them back to divide the spoils.

24 The judge will talk to you about the hand of one
25 is the hand of all. And that just simply means that

1 when two or more engage in a criminal conspiracy, an
2 agreement to commit a criminal act, and they are
3 together in committing that criminal act, then the act
4 of any one person is the act of them all. So that it
5 doesn't matter who grabbed the gun, it doesn't matter
6 who was the getaway driver.

7 If they are there during the commission of a crime
8 actively assisting and abetting in that crime during
9 the crime, then the act of any one is the act of them
10 all. So whether or not Xavier and Tareek are the ones
11 that actually popped that safe open, everybody owns a
12 piece of it because we know that safe was popped open.
13 Whether all five of them went in one house or it was
14 only four, everybody owns a piece because they are
15 actively engaged in that crime.

16 So let's examine the crimes. Because the judge is
17 going to tell that you that first degree burglary is
18 the entering of a dwelling of another without
19 consent -- no doubt we have that here -- with the
20 intent to commit a crime therein. No doubt that they
21 had went in those homes with intent to rob them.
22 Tareek told you that, that was the plan, we're going to
23 pull some rips.

24 And that during the commission of that crime,
25 either they went in armed or they became armed. And

1 they became armed in this case. At Susan Ford's house
2 they got three rifles. And the Causey residence I
3 believe they got five guns total, a couple pistols and
4 some shotguns. Might have been five shotguns, maybe
5 seven guns total. But they became armed, and so that's
6 a first degree burglary.

7 Grand larceny is taking another's property without
8 content with intent to deprive them. You've got that.
9 And is the value over \$10,000? The only testimony you
10 have to the value is that Susan Ford said it was
11 between ten and \$15,000 worth of property, and the
12 Causeys said it was \$13,000 worth that got taken from
13 them. So it's over \$10,000.

14 And safecracking, using tools around -- around the
15 safe used to keep valuables. So that's why they busted
16 that safe open, they were hoping to get something. And
17 did they get the \$5,000 out? I don't know. Did Tareek
18 take it, I don't know. Tareek says he didn't. You can
19 believe all, part or none.

20 So we've got the crimes there, but how does the
21 State prove its case? Because you're going to hear the
22 judge say again and again, beyond a reasonable doubt.
23 And we've all heard that term, whether it's in the
24 movies, TV, books, magazines. What does that term
25 mean, beyond a reasonable doubt?

1 And I think Mr. Joye said that the State would --
2 in his opening stated that the State would have to
3 remove a hundred percent of your doubt. The judge will
4 tell you nothing like that. The judge will tell you
5 what beyond a reasonable doubt is, that it means that
6 to prove someone guilty the State must give you
7 evidence that leaves you firmly convinced of the
8 Defendant's guilt. And that's all. That after the
9 viewing of the evidence and taking all of the
10 testimony, everything admitted here in court, that
11 you're firmly convinced of the Defendant's guilt, you
12 got to find him guilty.

13 And we do that by the presentation of the
14 evidence, the competent evidence, the admissible
15 evidence, the relevant evidence. That's the State's
16 only job. My job is not to talk about the touch DNA
17 that's irrelevant in this case or footprints we
18 couldn't match up to any shoes because we didn't have
19 the shoes to match until they were taking you down
20 little dirt roads and hope you get off the beaten path
21 and get lost and get strung out in the woods and just
22 throw up your hands and give it up.

23 The State's only job is to give you that competent
24 evidence, the admissible evidence, the relevant
25 evidence that will help you, the triers of fact, in

1 rendering a true and just verdict. And the verdict in
2 this case is the Defendant's guilty.

3 So let's examine that evidence. First of all,
4 let's look to that day of the crime. We know that Ms.
5 Causey left her house, she granted nobody permission to
6 be in there. We know that Susan Ford left her house,
7 and it was in good condition when they left.

8 They came back after these quick, tactical strikes
9 and they found the house had been busted open,
10 vandalized, property stolen. They were in shock, they
11 were in harm, they were beside themselves. They had
12 been violated.

13 They called the police. Ms. Causey called Shawn.
14 Everybody rushes to come and see what happened. The
15 police get there. And you saw pictures of Ms. Ford's
16 house, you heard the descriptions of what happened in
17 the house of the Causeys. It's not a one-man job. All
18 that property got taken, that ain't one man doing it
19 when they had time -- couldn't have done all that
20 damage by themselves, they'd be passed out from the
21 sheer exertion. And what happened is exactly as Tareek
22 said, he said they tore through everything quick,
23 tactical, 10 to 20 minutes in each house.

24 But the police get there, and they try to examine
25 the home, they process it for forensic purposes. And

1 you heard Officer Williams and Officer Baker, they took
2 different methods to look for fingerprints, couldn't
3 find anything. Larry Williams, with his flashlight,
4 and he's been working a little bit longer than Brad
5 Baker. Brad Baker goes to areas that are uncommon
6 doing lots of stuff. He goes to where property's been
7 moved and he tries to dust, couldn't get up anything,
8 sees smudges. And what Tareek tell you, they had on
9 gloves. What did Brad Baker say, smudges could have
10 come from gloves.

11 They see a boot print, they say they're Air Force
12 1. Mr. Joye talked ad nauseam about these Air Force
13 1's, but even Brad Baker had a pair of Air Force 1's.
14 I don't know how many pair in Horry County, but I know
15 Officer Baker has one. It's a common shoe, he told you
16 that.

17 And the boot print outside, Tareek told you he had
18 on a pair of boots. So we know the burglaries took
19 place, and we know they started taking down
20 information. It's a confused situation. Your home has
21 been violated, property's been taken, do you have
22 serial numbers. Shawn Causey can get a serial number
23 on a shotgun. And at some point he may have given one
24 on a computer, but we don't know when. We know it
25 wasn't that day. But Terry Elliott says he didn't get

1 that information, at least not whenever he was doing
2 his searches.

3 Susan Ford had a serial number on one computer.
4 But that's all of the serial numbers we had. And we
5 know the property got divided up. So the officers end
6 up and they transfer that list, and the victims were
7 calling over the next few days, hey, we see this and
8 this and that's missing.

9 But the case goes cold, and so it's turned over to
10 investigations. Terry Elliott picks it up, he looks at
11 forensics, where do I go. He calls the victims. No
12 more evidence, where do I go. So he did the
13 old-fashioned police work, a man who's been on the
14 force going on 29 years, and he begins hitting the
15 streets the way he was trained almost three decades
16 ago.

17 And he knows how to work the streets. He'll tell
18 you that report writing is not his strong suit. He
19 does the who, what, when and where, just like he did
20 for 23 years on patrol, short and sweet. But he knows
21 how to work a case, and so he hits the streets and he
22 turns up information that turns him on to Xavier
23 Hemingway.

24 And so he goes over to where he learns that Xavier
25 may be staying, off McCullough Drive, I believe it's

1 5071. Knocks on the door, he didn't burst in with a
2 search warrant. He doesn't pop the door open, he
3 knocks on the back. He's just trying to do an
4 investigation. As he goes to leave, Lisa Livingston
5 comes up and says, hey, I've heard the same thing,
6 Xavier's been staying here, but he ain't supposed to
7 be. And if there's any stolen property in there, I
8 want you to go in. She unlocks the door and they go
9 in.

10 Detective Elliott, Officer Baker, they go in
11 together, and they see the three Xboxes, black in
12 color. All Terry's got is another Xbox is stolen, I
13 don't know if they are white or black yet. And so he
14 tries to call, and he gets no answer from Susan Ford.
15 The laptops don't have serial numbers. They run the
16 serial numbers they got, and the victims could never
17 get serial numbers on those except for one computer.
18 So obviously Susan's computer isn't there.

19 But we have three other laptops. We have at least
20 two. Actually three Xboxes, but there were two stolen.
21 And whenever Terry Elliott does learn that they were
22 black Xboxes at some point before arresting Xavier, he
23 goes back to look and say, okay, I think I've got
24 enough to seize this property now. And they're gone,
25 the gunny sacks are gone, this property is gone. After

1 he searched the first time, after someone would know he
2 had been there, that property has got to go.

3 Did he take photographs, no. Could he have done a
4 better job of documenting, yes, it was sloppy. I don't
5 think he backed away from that, I should have done
6 better. But he knew what had been stolen, he knew how
7 it had been stolen, he knew when, he knew where, who
8 did it, and he continued his investigation. He didn't
9 throw up his hands, he did his job, and he hit the
10 streets. And he learned about Tareek Hemingway,
11 learned about it ten days after the burglary, the 15th.
12 And then on the 16th he went over to the -- to Columbus
13 County, went to the detention facility and said, let's
14 talk.

15 Tareek agreed to talk to him. And he denied it at
16 first. I believe Terry Elliott said he talked to him
17 about something about selling a gun where Charles
18 Billings lives, down in the Bottoms. Tareek hangs his
19 head after he denies it for a while. No, no, I didn't
20 do it. No, no, no, no. And Terry tells him, son, this
21 ain't going away. I'm dogged, I'm determined, I'm
22 going to keep working this thing. And if you ever want
23 to tell the truth, now is the time to do it.

24 And when the weight of what he has done and the
25 weight of the investigation bears down on him, it's a

1 heavy weight. He knows he's facing stiff penalties.
2 He's been told, it's an extreme amount of time and
3 you're a young man, you need to help yourself out, you
4 need to tell the truth. And that weight settles down
5 on him and he bows his head.

6 And when he comes up, he's ready to let go. And
7 he does. And, once again, he doesn't try to escape
8 what he did. He doesn't say, I got that gun off
9 somebody off the street, and then I was trying to turn
10 around and sell it. Doesn't say I got it at a flea
11 market, some guy I don't know. Doesn't say, I was just
12 a lookout man and only at the Causey residence where
13 that gun would have been taken. Doesn't say, I was
14 just driving. But he starts to tell the full story and
15 includes himself. I went in both houses.

16 And that short statement that he gave to Terry
17 Elliott that was written is basically the same thing
18 that he told you. Did he get mish-mashed on who took
19 the safe actually out of the house, possibly. Well,
20 either he was wrong when he said it was Avery and
21 Xavier that took it out, or he was wrong whenever he
22 said that he took it out with Xavier.

23 But he does know that whenever they were loading
24 that property up in Rodney's girlfriend's car, the
25 weight of that safe was sitting on his lap in the hump

1 seat. And it's sitting in his lap after they go in
2 that house. And he describes those houses to a T. And
3 naturally they go to the furthest away house first.
4 They got to get there, they snatch and grab. And who
5 knows the area? Xavier.

6 But he tells us how the day started. He's up to
7 no good, he gets a call from Rodney. Rodney says,
8 let's go break in some houses. He says, oh, yeah, we
9 can go to Green Sea, oh, yeah, we can go. And whenever
10 Rodney shows up in his girlfriend's car, and he's got
11 his little brother Rayquan with him, and he's got Avery
12 Norris, all these Blood men, including Tareek.

13 And they go to a house they know well, because
14 Tareek tells you he hangs out with Xavier almost
15 everyday, that's his second cousin. They didn't grow
16 up together, but they been hanging tight at least
17 since December, and they've been tight.

18 And so they go to his house. And he tells you we
19 was just going over there, but who knows the lay of the
20 land, who knows Green Sea Floyds, who knows Nichols,
21 who's been living in that area. And so they tell him,
22 they are ready, they are ready to do their crime. They
23 have their gloves, they have their masks, they're
24 taking their precautions. And Xavier says, y'all are
25 ready, I know where to go.

1 And he directs them, he directs them four or five
2 miles down the road to Susan Ford's house. They take
3 precautions there, they drive by, they come back
4 around. They knock on the door, no answer. Then they
5 run to the back, park in the back -- or no, they park
6 down the road on that one, I'm sorry. But they go in
7 the back door and they kick it in.

8 And we saw the damage, we heard about it. They
9 kick it in and they run in. And they make two trips.
10 Tareek tells you, I don't remember exactly what I got.
11 He does talk about the safe, he remembers they take
12 property out, guns, game systems, and they set them
13 outside, TV's. They go back in, they grab more
14 property and they set it outside. They go in the barn,
15 they get the TV, they get the game system out there,
16 another Xbox. They begin to load the car, they bring
17 the car back up and they begin to load it, put stuff in
18 the trunk, lay it in their laps, and that safe is
19 sitting in Tareek's lap.

20 Now, they can't get into that thing there, so they
21 take it on back to Xavier's house. They take it inside
22 where they can't be exposed, and they put it in that
23 back bedroom. But they're not done, they hadn't gotten
24 enough. Let's get one more quick job in.

25 And so Xavier directs them to the next house. And

1 this time he's driving the car. It's got to be quick,
2 so he's got to drive this time. He can't just tell
3 directions, he's got to be the man, the GPS, the Garmin
4 saying, let's go here. And it's a new plan, we got to
5 be quicker now. We've already committed one burglary,
6 we got to be quicker. So y'all call me when y'all are
7 done. I'm going to drop you off, and y'all run in and
8 smash it and grab it.

9 And this time we know it was quick because they
10 only made one trip. They got all those guns, the TV's,
11 the computer. And they grab it all up. And when they
12 are done, they call Xavier and he pulls back up to the
13 backyard. And they load it up, and they take it all
14 back. They take it all back to Xavier's house. These
15 birds of a feather all flock back to Xavier's nest.
16 And they go in that back bedroom, and they take the
17 safe. They want to see what's in there because safes
18 have good stuff in there.

19 And it's Xavier and Tareek, Tareek didn't shy away
20 from that. I grabbed a crowbar and we popped that safe
21 open. We pop it open. We don't find anything. And
22 then we dump it out on a bridge down a mile from where
23 Xavier lives. That's where that safe's planted, ajar,
24 nothing in it.

25 And he tells you how they divide up the spoils.

1 And, folks, that just makes plain common sense. He
2 doesn't shy away from that, he doesn't say, I never got
3 my cut. He doesn't say, all I got was a pistol. He
4 says, I got a pistol, I got a Wii, maybe that's why we
5 didn't find a Wii over at Xavier's house. I got a long
6 gun, he said a rifle. I think in his earlier statement
7 Mr. Joye asked him about saying a shotgun. If you
8 don't hunt, maybe you don't know the difference, but he
9 got a long gun, he got a TV, and he hit the streets
10 with it. He's sober.

11 Quick as he got them, they hit the streets. You
12 heard Terry Wayne Elliott, he said guns, TV's, jewelry,
13 those things hit the street and they move, like that
14 (indicating). Those are the fastest movers. And so he
15 gets rid of them.

16 And you got to ask yourself, why. Well, yeah,
17 he's hoping to help himself out, but why, why not name
18 some mysterious person that you don't know, why not say
19 Bo Diddley, Rerun, Fat Albert were with him? Why not
20 say, I got this stuff from somebody else off the
21 street, I bought it down in the Bottoms, you ain't got
22 nothing on me.

23 That's because the weight of what he had done set
24 in on him. The weight of what him and his cousin and
25 his buddies had done sets in on him, and he's got to

1 unburden. He's a thief, but even thieves can feel
2 remorse. There's no honor among thieves, but they can
3 speak the truth.

4 Now, you compare that statement, Mr. Joye may call
5 it incredible, illogical. But look at it, it is
6 credible, it makes sense. It's the only story that can
7 make sense. We know Tareek was there because he gave
8 too many details about what happened inside. And why
9 rat out anybody else, why rat out your cousin you been
10 hanging tight with for five months, your buddies that
11 you're hanging out with everyday, but for the fact that
12 they were there.

13 And he told you, why did you put Xavier's name in
14 there? Because he was there with me. Why did you tell
15 these people, these people, about all of this? Because
16 it's the truth. Now, you compare that against Xavier's
17 statement, and that's the one that's incredible. Mr.
18 Joye wants to talk about, oh, he's a young man that
19 can -- that might enjoy playing video games. Well, he
20 got to be real quick to play three video games at one
21 time, not hooked up to a TV. Three laptops, and they
22 are all gone when the detectives go back.

23 Folks, it's simple, it's very simple. While
24 there's no honor, thieves can speak the truth. And the
25 truth is Tareek Hemingway is guilty, Rodney Gore is

1 guilty, Rayquan Gore guilty, Avery Norris guilty. But
2 they're not the focus of our trial, they are not the
3 focus of what's before you. Their day in court will
4 come at a later time, they'll face justice.

5 But our focus is Xavier Hemingway and his actions,
6 his planning, his leading, his pointing out the houses,
7 driving to the first and busting into that one, his
8 leading to the second one and saying, I'll be the
9 getaway driver, and I got the place where we can split
10 up the loot. And the truth is he is guilty. He made
11 his choices that day. He chose to go with these
12 fellows from Tabor City. He chose to point out the
13 houses where they can get guns and TV's, the land that
14 he knew, and he chose to do his evil little job.

15 So now I'm going to ask that you do your job. You
16 weigh out that evidence, you let your verdict speak the
17 truth. Xavier Hemingway is guilty of breaking into,
18 burglarizing in the first degree, the home of Susan
19 Jackson Ford, tearing it up, taking property over
20 \$10,000, grand larceny, taking her safe and busting
21 into it with his group.

22 And most certainly he's guilty. He's the getaway
23 driver, he's the delivery man, he's the man that points
24 out the home of the Causeys, and he shares in the
25 spoils. He is guilty of first degree burglary, he is

1 guilty of grand larceny there. Let your verdict speak
2 the truth, he's guilty.

3 THE COURT: Mr. Joye, are you ready to proceed?

4 MR. JOYE: I am, Your Honor. Thank you.

5 THE COURT: You're welcome.

6 MR. JOYE: Credibility, believability,
7 trustworthiness. Ladies and gentlemen, that's the
8 basis of the State's case. Solicitor Richardson said
9 the truth will come out. And I promise you it did.
10 The truth is Tareek Hemingway is a member of the
11 Bloods gang. The truth is he is an admitted thief of
12 five separate residences, three of which he's admitted
13 to in North Carolina, two here, and God only knows how
14 many others that he had never admitted to.

15 Ladies and gentlemen, I want to talk to you about
16 what I call prosecutorial truth. Now, what do I mean
17 by that? What I mean by that is simply this, that when
18 you have a thief and a liar, and Lord knows we have
19 established that, the State established it for us, they
20 will tell you what you want to hear.

21 The judge will talk to you about bias, and when
22 she's talking to you -- well, Detective Elliott told
23 Tareek Hemingway, look, son, you're looking at a long,
24 long, long time in prison and maybe the rest of your
25 life. What Tareek tell you, who suggested Xavier

1 Hemingway's name, Tareek. Detective Elliott. And if
2 we don't believe anything he says, you can believe the
3 fact, did you see any remorse out of Tareek Hemingway.
4 You know what kind of remorse he has, he's remorseful
5 he got caught.

6 I don't know what kind of techniques Detective
7 Elliott used to elicit Tareek's confession. But I can
8 tell you he admitted he's got training in it, he's got
9 29 years of experience sitting down across from young
10 men just like Tareek Hemingway, 29 years, I think he
11 said five as a detective.

12 Tareek Hemingway couldn't even keep his story
13 straight. He wanted to tell Solicitor Richardson that
14 he carried the safe out along with Xavier Hemingway.
15 His statement, which is in evidence, says that Avery
16 and Xavier took it out. When he couldn't get any of
17 that straight, he said, I don't know. What was it, it
18 was a lie.

19 My father used to say, son -- when he'd catch me
20 in a lie, he'd say, son, what you are speaks so loudly,
21 I can't hear a word you say. I see some of you
22 smiling, I think you know what I mean by that. When
23 you are a liar and you've got every reason in the world
24 to lie to try to help yourself, you'll tell anybody
25 whatever they want to hear. I like to say that

1 somebody that's caught, they'll admit to killing
2 President Kennedy 40 years ago when they were only 20
3 years old if he thinks it will help him get out of
4 prison sooner.

5 Detective Elliott believed Xavier was involved,
6 Detective Elliott suggested Xavier was involved. He's
7 a perfect little parrot. Now, I'm going to tell you
8 the truth, Detective Elliott closed his investigation
9 when he talked to Tareek. He closed his investigation,
10 got my guys, let's do it (indicating). Let's arrest
11 them, let's put them in jail, let's convict them,
12 everybody goes home, end of the day. I'm telling you
13 this, the investigation should have started, should
14 have started, after Detective Elliott took Tareek's
15 statement.

16 Ladies and gentlemen, Mr. and Ms. -- Mr. and Mrs.
17 Causey, Ms. Ford, their houses were robbed. I don't
18 think there's much doubt that Tareek was involved, I
19 don't think there's any doubt Tareek was involved.
20 That I can't imagine having your life -- because when
21 someone comes in and into your home, the old line from
22 the Godfather, in my bedroom where I sleep, where my
23 wife sleeps and my children come to play -- to violate
24 that sanctity, that I can't even imagine. Thank you,
25 God, I've never had to experience that.

1 And I feel terribly for them. There's no question
2 but someone committed a burglary on both residents,
3 there's no question but that grand larceny was
4 committed, and there's no question that a safe was
5 cracked. We concede everything in this case. What we
6 don't concede is this, Xavier Hemingway had anything to
7 do with it.

8 Ladies and gentlemen, at the crime scenes,
9 Lieutenant Williams, he dusts nothing and takes dozens
10 of pictures. Then you go to Investigator Baker, he
11 dusts everything and takes no pictures. You know, one
12 thing we could do is if we had measured those shoes, we
13 could tell at least what size shoe somebody has on,
14 Xavier, Tareek, whomever. And we said, well, I tell
15 you what, we found a size ten and a half footprint at
16 the scene, it was an air whatever. And Xavier
17 Hemingway wears a size ten and a half. We don't have
18 that. We didn't -- how simple would it have been to
19 take a footprint, a muddy footprint off the door, lay a
20 ruler beside it and take a picture. I said that the
21 investigation should have started with Tareek -- at
22 Tareek Hemingway's statement.

23 But actually, let's back up a little bit.
24 Detective Elliott gets in his mind Xavier Hemingway is
25 involved. He goes over, he spends 45 minutes, is there

1 an audio tape, videotape so you folks could have the
2 benefit of seeing -- I will guarantee you, I will
3 guarantee you, there is audio and video equipment at
4 Horry County Police Department. I don't think there's
5 a single person in the county that wouldn't believe
6 that. That way you could see, you could understand,
7 you could get what was told to you in context. You
8 don't have that.

9 Ladies and gentlemen, when Detective Elliott goes
10 to Xavier's house, did he tell you that he saw -- look,
11 he already knew he had at least one serial number off
12 of a Toshiba laptop computer. Well, clearly one of
13 those three was not that computer. It's questionable
14 of whether or not he had a second serial number because
15 Mr. Causey had said from the stand that he had given it
16 to him, that they still had the box. And he said he
17 had given it to him, so you knew it was a Dell 17-inch
18 computer, laptop computer.

19 The third was an Acer. We went through the list
20 with Detective Causey of 15 different name brand
21 computers. Detective Causey knew what brands and knew
22 at least one of them was a 17-inch and had -- and knew
23 on the Toshiba serial number. I would submit to you,
24 any 19-year-old -- and, well, now 19 -- but any 18 year
25 old almost in America probably got Xbox at home, if he

1 doesn't have two or three.

2 Now, he told you, detective -- you know, what
3 didn't you see? If they went to Xavier's house and
4 popped open a safe, did he tell you anything about a
5 crowbar? Nope. Did he tell you anything about the
6 shoes? Nope. Did he tell you about finding a ski
7 mask? Nope. Did he tell you about finding gloves?
8 Nope. Ladies and gentlemen, he didn't tell you about
9 that stuff because he didn't find it.

10 Now, if somebody is going to be smart enough to
11 get rid of that stuff, my God, wouldn't they get rid of
12 every bit of the property that literally a serial
13 number could trace exactly back to. Ladies and
14 gentlemen, this is a list of the property. Three
15 laptops, 5,000 in cash. Tareek said, no cash. Do you
16 believe him when he says no cash? He says, I popped
17 open the safe, no cash.

18 Ms. Ford said \$5,000 in cash. You know what, I
19 believe her. She's got no reason to come up here and
20 lie. Hey, she said, I don't even get insurance money
21 for that. A notepad, an iPod, an iPhone, three rifles,
22 four shotguns, two handguns, various jewelry,
23 miscellaneous clothing, seven TV's, two Xboxes, one
24 Wii, one Blu-ray DVD player, a miscellaneous knife
25 collection, count down boat, two Gamecock watches, two

1 Nintendo handheld games, purses, backpack and radio.

2 None of it, none of it, none of it at Xavier's
3 house. Clearly, clearly if -- you know, Detective
4 Elliott, his job is at least as much to clear someone
5 who's guilty -- I mean, to clear someone who's innocent
6 as to convict someone who's guilty. He could have
7 cleared Xavier Hemingway, he could have taken pictures
8 of the two, three Xboxes, three computers. He didn't
9 do it. He did not do it, he chose not to do it. He
10 didn't even write down what kind of computers he found.

11 You know why? They didn't match that property
12 list, they didn't match that property list, the
13 property list he already had. No crowbar, no gloves,
14 no ski mask, nothing to tie Xavier Hemingway there to
15 any criminal act, nothing.

16 And, in fact, no honor among thieves. The only
17 person we found that wasn't honorable was Tareek
18 Hemingway, Tareek Hemingway. You know, I love what
19 Solicitor Richardson said. He said, you don't have to
20 have every piece of the puzzle to prove beyond a
21 reasonable doubt. And let me go back and say this, I
22 said the State has to remove 100 percent of your
23 reasonable doubt.

24 Now, it's a different way of saying it. I didn't
25 say 100 percent of your doubt. Reasonable doubt. You

1 as reasonable people who have a doubt about whether
2 Xavier Hemingway is guilty of the litany of crimes that
3 we're talking about here today. Ladies and gentlemen,
4 the puzzle is almost complete. I'll tell you what's
5 not complete. We got a picture of a whole of
6 pictures -- when we put our puzzle together, we got a
7 picture of the whole entire criminal act minus one
8 piece, minus one piece. We don't have the face of
9 Xavier Hemingway in this puzzle. Ladies and gentlemen,
10 that's reasonable doubt, that's not guilty.

11 The State says, believe me, believe Tareek
12 Hemingway. Tareek is hoping that someday some
13 prosecutor, Mr. Richardson probably, will stand up and
14 say, judge, he helped us in the conviction of Xavier
15 Hemingway, Rayquan and Rodney Gore and Avery Norris. I
16 don't know where they are. No honor among thieves.
17 Tareek Hemingway tells you it's Detective Elliott who
18 tells you -- tells him about Xavier Hemingway.
19 Reasonable doubt.

20 You folks go back in your jury room, and you are
21 not firmly convinced Xavier Hemingway is guilty of
22 these crimes, you've got but one verdict. One of the
23 ways I've heard reasonable doubt explains this. Many
24 of us, many times we see the scales of justice, and
25 they're out like this (indicating). And if one side

1 tilts ever so slightly, such as in a civil case, we
2 believe one side more probable than not, then you find
3 for one party or the other.

4 Ladies and gentlemen, when you're talking about
5 reasonable doubt, one side's got to go (indicating).
6 Like football, you can take the football from one end
7 of the field to the other, and you can go 99.99 yards.
8 You've got to put it in the end zone. The State of
9 South Carolina cannot put it in the end zone here today
10 because Xavier Hemingway is not guilty.

11 When you go back in your jury room, you carry with
12 you -- and you're not judging Xavier Hemingway today,
13 your sworn duty is to judge the State of South
14 Carolina's case, the State of South Carolina's case.
15 That is what you're judging. Because if they don't
16 remove all of your reasonable doubt, it's not guilty.
17 And I submit to you here today, they cannot and will
18 not remove your reasonable doubt.

19 THE COURT: Madam forelady and ladies and
20 gentlemen, I'm going to give you a brief restroom
21 break. During the break, please do not discuss the
22 case, and please leave your notepads in your seats.
23 You may go with the bailiff, please.

24 (WHEREUPON, the jury exited the courtroom at
25 10:38 a.m.)

1 THE COURT: We'll be at ease for about ten
2 minutes.

3 (WHEREUPON, a brief recess was taken at
4 10:55 a.m.)

5 THE COURT: You can get the jury for me, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 10:56 a.m.)

8 JURY CHARGE.

9 THE COURT: Ladies and gentlemen, during this
10 trial, you and I have certain duties to perform. As
11 the trial judge, it is my responsibility to preside
12 over the trial of this case. I also have the duty to
13 pass upon and rule upon the admissibility of the
14 evidence offered during this trial. You are to
15 consider only the competent evidence that is before
16 you, and you are to disregard and disabuse your mind of
17 any testimony which has been ordered stricken from the
18 record in this case during the progress of this trial
19 if there has been any. You are to consider only will
20 testimony which has been presented from the witness
21 stand together with any exhibits which have been made a
22 part of the record -- excuse me -- in this case.

23 I have the additional duty to charge or instruct
24 you on the law applicable to this case. As the
25 presiding judge, I'm the sole judge of the law of this

1 case, and it is your duty as jurors to accept and apply
2 the law as I now state it to you. If you have a
3 preconceived idea as to what the law is or what the law
4 ought to be in a case or in this case, and it should
5 not agree with what I now tell you the law is, you are
6 obligated under the oath which you have taken to
7 abandon this preconception on your part, because you
8 are sworn to accept the law and apply the law precisely
9 as I now state it to you.

10 In every case tried in this court before a jury,
11 the jury becomes the sole and exclusive judges of the
12 facts. You are the judges of the facts in this case,
13 this Court is the judge of the law. The constitution
14 of our state has declared that a trial judge shall not
15 intimate, state, comment upon or make any statement to
16 a trial jury about the facts in a case.

17 Since you, the jury, are the sole judges of the
18 facts in this case, you are not to infer anything from
19 what I've said during the progress of this trial in
20 ruling upon the admissibility of evidence or otherwise
21 or anything that I say now to you during the course of
22 this instruction that I have any opinion about the
23 facts. The law does not allow me to have an opinion
24 about the facts.

25 This is a matter solely for you, the jury, to

1 determine. And as a result it is your responsibility,
2 as I've instructed you, to determine the effect, the
3 value, the weight and the truth of the evidence
4 presented during this trial. Excuse me. Necessarily,
5 you must assess the credibility of witnesses who have
6 testified in this case. Credibility is simply a
7 legalistic term meaning believability. It becomes your
8 duty as jurors to analyze and to evaluate the evidence
9 and determine that evidence which convinces you of its
10 truth.

11 Some of the things you may consider as you decide
12 whether or not to believe a witness' testimony about a
13 particular matter include, what was the manner and
14 appearance of the witness who testified, was he or she
15 straightforward or hesitant in answering, was the
16 testimony of a witness consistent or inconsistent. How
17 did the witness come to know the facts that he or she
18 testified to, or what was his or her ability to know
19 these facts?

20 Is there some reason a witness would want to give
21 testimony which would help or hurt one side or the
22 other; in other words, was the witness biased or
23 prejudiced? And was the testimony of a witness
24 strengthened or weakened by other testimony or
25 evidence?

1 I further instruct you that in determining the
2 question of the credibility or believability of
3 witnesses who have testified in this case, you may
4 believe one witness as against several witnesses or
5 several witnesses as against one witness. You may
6 believe a part of the testimony of a witness and reject
7 the remaining part of the testimony of that same
8 witness.

9 If you have a good and sound reason, you may
10 believe the testimony of a witness in its entirety or
11 reject the testimony of a witness in its entirety. You
12 can believe as much or as little of each witness'
13 testimony as you think proper. You may consider the
14 demeanor of a witness, that is the manner and
15 appearance of a witness, from the witness stand.

16 Ladies and gentlemen, throughout this process you
17 have but one objective, to seek the truth regardless of
18 its source. I further instruct you that a person who
19 has a past criminal record is competent to testify
20 during a trial. A past record does not affect the
21 ability of that witness to testify. The past record
22 may only be considered by you if at all in determining
23 the witness' believability. Remember, ladies and
24 gentlemen, you are the sole judges of the facts in this
25 case and of the believability of any and all of the

1 witnesses.

2 I further instruct you that a statement is alleged
3 to have been made, or statements have been alleged to
4 have been made by the Defendant, which have been
5 admitted into evidence in this case. While this Court
6 has determined that the statement or statements were
7 admissible, I instruct you that you make the ultimate
8 decision of whether or not the Defendant made the
9 statements.

10 If the Defendant did make the statements, you must
11 determine whether the statements were made by the
12 Defendant voluntarily and of his own free will. This
13 means that the statement was not caused by pressure,
14 force, fear, threats, coercion or intimidation or by a
15 hope or a promise of leniency or reward of any kind.

16 In determining whether the statement was
17 voluntary, you should consider both the characteristics
18 of the Defendant and the details of the questioning.
19 Some of the facts you must consider are the age of the
20 Defendant, the Defendant's education or lack of
21 education, the Defendant's mental ability or capacity,
22 the Defendant's IQ or intelligence, the Defendant's
23 background and environment, the place and length of
24 detention, the nature of the questioning, and the
25 advice or lack thereof to the Defendant of his

1 constitutional rights, including but not limited to the
2 right to remain silent, that any statement could be
3 used against him in a court of law, the right to have a
4 lawyer present, that if he could not afford a lawyer, a
5 lawyer would be appointed to represent him without any
6 cost, and that he could stop making a statement at any
7 time.

8 You must carefully consider all of the surrounding
9 circumstances before you give any weight to an alleged
10 statement. The State has the burden of proving beyond
11 a reasonable doubt that the alleged statement was
12 voluntary. If you determine it was, you may give the
13 statement any further consideration that you deem
14 proper. You must decide what weight, if any, should be
15 given to the alleged statement. If you determine that
16 the alleged statement was not the free and voluntary
17 statement of the Defendant, you should not consider the
18 statement at all.

19 I instruct you, ladies and gentlemen, and
20 emphasize that the fact that the Defendant did not
21 testify is not a factor to be considered by you in any
22 way whatsoever in your deliberation and in your
23 consideration on the question of the guilt or innocence
24 of the Defendant. It must not be considered by you in
25 any manner whatsoever.

1 A defendant has the constitutional right to remain
2 silent, and the assertion of this right must not be
3 considered by you in your deliberations. I repeat,
4 under your oath, you are to draw no conclusion or
5 inference whatsoever from the fact that the Defendant
6 in this case did not testify. The fact that this
7 defendant did not testify should not be discussed in
8 any manner whatsoever in the jury room and during your
9 deliberations.

10 The burden of proof, as I have stated to you, is
11 on the State. The Defendant is not required to prove
12 his innocence. The burden of proof remains on the
13 State to prove the Defendant's guilt beyond a
14 reasonable doubt.

15 There are two types of evidence that are generally
16 presented during a trial, direct evidence and
17 circumstantial evidence. Direct evidence is the
18 testimony of a person who asserts or claims to have
19 actual knowledge of a fact, such as an eye witness.
20 Circumstantial evidence is proof of a chain of facts
21 and circumstances indicating the existence of a fact.
22 The law makes absolutely no distinction between the
23 weight or value to be given to either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than of

1 direct evidence.

2 Crimes may be proven by circumstantial evidence,
3 and again, as I've instructed, the law makes no
4 distinction between the weight or value to be given to
5 either direct or circumstantial evidence. However, to
6 the extent that the State relies on circumstantial
7 evidence, all of the circumstances must be consistent
8 with each other and when taken together point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely
11 portray the Defendant's behavior as suspicious, the
12 proof has failed.

13 The State has the burden of proving the Defendant
14 guilty beyond a reasonable doubt, and this burden rests
15 with the State regardless of whether the State relies
16 on direct evidence, circumstantial evidence or some
17 combination of the two.

18 Ladies and gentlemen, you should weigh all of the
19 evidence in this case. After weighing all of the
20 evidence if you're not convinced of the guilt of the
21 Defendant beyond a reasonable doubt, you must find the
22 Defendant not guilty. Conversely, if you are convinced
23 of the guilt of the Defendant beyond a reasonable
24 doubt, then you must find him guilty.

25 I instruct you that the fact that the Defendant

1 was arrested, charged and indicted is not evidence in
2 this case and cannot be considered by you as evidence
3 of guilt in this case, nor does it create any
4 presumption or inference of guilt. This documentation,
5 ladies and gentlemen, is simply the formal written
6 instruments which contain the charge or charges made
7 against a defendant. They simply serve as the formal
8 documents by which this case is processed or brought
9 into this court.

10 The Defendant has pled not guilty to the
11 indictments, and that plea casts the burden on the
12 State to prove the Defendant guilty. Because a person
13 charged with a criminal offense in South Carolina is
14 never required to prove himself innocent. I instruct
15 you, madam forelady, ladies and gentlemen of the jury,
16 that it is a cardinal and important rule of the law of
17 evidence that the Defendant in a criminal trial, no
18 matter what the seriousness of the charge or charges
19 made against him may be, will always be presumed to be
20 innocent of the crimes for which he is indicted, unless
21 his guilt has been proven by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 This presumption of innocence does not cease when
24 you retire to deliberate, but it accompanies the
25 Defendant from the time of his appearance throughout

1 the trial until you reach a verdict in this case. Our
2 Supreme Court has said that the presumption of
3 innocence is like a robe of righteousness placed about
4 the shoulders of the Defendant, and it remains with him
5 and assigns him to that class, the innocent, until that
6 presumptive robe of righteousness has been stripped
7 from his person by evidence satisfying you of that
8 guilt beyond a reasonable doubt.

9 Ladies and gentlemen, the presumption of innocence
10 is not mere legal theory, it is not just a legal
11 phrase. It is a substantial right to which every
12 defendant is entitled unless you, the jury, are
13 satisfied from the evidence of his guilt beyond a
14 reasonable doubt.

15 The State has the burden of proving the Defendant
16 guilty beyond a reasonable doubt. Some of you may have
17 served as jurors in civil cases where you were told
18 that it is only necessary to prove that a fact is more
19 likely true than not true, such as by the greater
20 weight or preponderance of the evidence. In criminal
21 cases the State's proof must be more powerful than
22 that. It must be beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the Defendant's guilt.

25 There are very few things in this world that we

1 know with absolute certainty. In a criminal case the
2 law does not require proof that overcomes every
3 possible doubt. If based on your consideration of the
4 evidence you are firmly convinced that the Defendant is
5 guilty of the crime charged, you must find the
6 Defendant guilty. If, on the other hand, you think
7 there is a real possibility that the Defendant is not
8 guilty, you must give him the benefit of that doubt and
9 find him not guilty.

10 The Defendant is charged with first degree
11 burglary. The State must first prove beyond a
12 reasonable doubt that the Defendant entered a dwelling
13 without consent. A dwelling is any building or portion
14 of a building in which a person ordinarily sleeps. A
15 building constructed as a dwelling that has never be
16 occupied cannot be considered a dwelling for purposes
17 of burglary. But a building is a dwelling even if the
18 residents are temporarily absent from the building.

19 In order to prove that the Defendant entered the
20 dwelling, the State does not have to show that the
21 Defendant's entire body entered the dwelling. The
22 smallest entry is sufficient. It may be any part of
23 the body such as a hand or foot or even an instrument
24 such as a hook or other instrument.

25 In addition, the State does not have to prove that

1 force was used to gain entry. If a person enters a
2 building by using deception, artifice, trick or
3 misrepresentation to get consent to enter, this is an
4 entry without consent. Next, the State must prove
5 beyond a reasonable doubt that the Defendant intended
6 to commit a crime, either a felony or misdemeanor, at
7 the time of the entry. The mere entry into a dwelling
8 without consent is not burglary.

9 If the intent to commit a crime is formed after
10 the entry, it is not a burglary. On the other hand, if
11 the Defendant intended to commit a crime at the time of
12 the entry, it is a burglary even if the intent was
13 abandoned after the entry. It does not matter that the
14 intended crime was not completed. Intent may be shown
15 by acts and conduct of the Defendant and other
16 circumstances from which you may naturally and
17 reasonably infer intent.

18 Finally, the State must prove beyond a reasonable
19 doubt that when entering, while in the dwelling or when
20 fleeing, the Defendant or an accomplice was armed with
21 a deadly weapon or explosive. A deadly weapon is any
22 article, instrument or substance which is likely to
23 cause death or great bodily harm. Whether an
24 instrument has been used as a deadly weapon depends on
25 the facts and circumstances of each case.

1 The following are examples of instruments which
2 may be deadly weapons: A pistol, a shotgun, a rifle, a
3 dirk, a dagger, a knife, a slingshot, metal knuckles, a
4 razer, gasoline, a fire bomb or Molotov cocktail, and
5 lighter fluid. A gun may be a deadly weapon even if it
6 is not operating. These are simply evidentiary facts,
7 ladies and gentlemen, to be considered by you along
8 with the other evidence in this case. And it is for
9 you, the jury, to give it the weight, value and effect
10 you decide it should receive.

11 The Defendant is also charged with grand larceny.
12 The State must prove beyond a reasonable doubt that the
13 Defendant took and carried away the property of another
14 against the will or without the consent of the other
15 person. The slightest removal of the property or the
16 complete possession of the property, even for an
17 instant by the Defendant, is enough to show a taking
18 and carrying away of the property.

19 The State must also prove beyond a reasonable
20 doubt that the Defendant intended to permanently
21 deprive the owner of the property. Finally, the State
22 must prove that the value of the property, that the
23 value of the thing or things taken was \$1,000 or more.

24 The Defendant is charged with safecracking. The
25 State must prove beyond a reasonable doubt that the

1 Defendant used explosives, tools or any other implement
2 in or about a safe used for keeping money or other
3 valuables with intent to commit larceny or any other
4 crime. Intent may be shown by acts and conduct of the
5 Defendant and other circumstances from which you may
6 naturally and reasonably infer intent. Larceny is the
7 taking and carrying away of the goods or personal
8 things of another person with the intent to permanently
9 deprive the owner of the property and to convert it to
10 the taker's use. The Defendant does not have to
11 succeed in breaking into the safe for the conduct to be
12 safecracking.

13 I further instruct you that if a crime is committed
14 by two or more people who are acting together in
15 committing the crime, the act of one is the act of all.
16 A person who joins with another to commit an unlawful
17 act is criminally responsible for everything done by
18 the other person which happens as a probable or natural
19 consequence of the acts done in carrying out the common
20 plan and purpose.

21 For example, two people can be guilty of killing
22 another person when only one of the two had a gun,
23 there was only one bullet, and only one of the two
24 fired the shot that caused the death. If two or more
25 people are together, acting together, assisting each

1 other in the committing -- in committing the offense,
2 the act of one is the act of all. Or as it is
3 sometimes said, the hand of one is the hand of all.

4 Prior knowledge that a crime is going to be
5 committed without more is not sufficient to make a
6 person guilty of that crime. Mere knowledge that
7 another person is going to commit a crime even if the
8 Defendant is present when the crime is committed is not
9 sufficient to convict the Defendant as a principle.
10 Guilt as a principle is shown by actual or constructive
11 presence at the scene as a result of prior arrangement.
12 Therefore, a finding of a prior arranged plan or common
13 scheme is necessary for a finding of guilt as a
14 principle.

15 The State must prove beyond a reasonable doubt by
16 competent evidence the theory of the hand of one is the
17 hand of all. A principal in a crime is one who either
18 actually commits the crime or who is present aiding,
19 abetting or assisting in the commission of the crime.
20 When a person does an act in the presence of and with
21 the assistance of another, the act is done by both.
22 Where two or more acting with a common plan or intent
23 are present at the commission of a crime, it does not
24 matter who actually commits the crime, all are guilty.
25 The hand of one is the hand of all.

1 Present at the commission of a crime means to be
2 sufficiently near to aid and abet and assist in the
3 commission of the crime. However, mere presence at the
4 scene of a crime is not sufficient to convict one as a
5 principal on the theory of aiding and abetting. Intent
6 is also a necessary element, for there must have been a
7 common design or common intent to commit the crime.

8 And the crime must have been committed pursuant thereto
9 with the person aiding and abetting by some overt act.

10 Intent means intending the result which actually
11 occurs, not accidentally or involuntarily. Intent may
12 be shown by acts and conduct of the Defendant and other
13 circumstances from which you may naturally and
14 reasonably infer intent. The State must prove these
15 elements beyond a reasonable doubt.

16 Ladies and gentlemen, you have heard testimony
17 concerning the potential penalty a person can serve for
18 the crimes alleged in the indictments. In determining
19 the guilt or innocence of the Defendant, you cannot
20 consider any potential or possible penalty for any
21 particular crime. The punishment for the crimes is a
22 matter of law for the Court to determine and should
23 never be considered by you in any manner whatsoever in
24 arriving at a fair and impartial verdict in this case
25 as to the guilt or innocence of the Defendant.

1 The indictments in this case allege several
2 different offenses against the Defendant. And those
3 charges are as to Indictment 2013-GS-26-0344 and 3423,
4 burglary in the first degree, Indictments 2013-4352 and
5 4353 grand larceny, and Indictment 2013-4354
6 safecracking. Each indictment, ladies and gentlemen,
7 charges a separate and distinct offense. You must
8 decide each indictment separately on the evidence and
9 the law applicable to it, uninfluenced by your decision
10 as to any other indictment.

11 The Defendant may be convicted or acquitted on any
12 or all of the offenses charged, and you will be asked
13 to write a separate verdict of guilty or not guilty for
14 each indictment. Ladies and gentlemen, there are two
15 possible verdicts for each indictment, and you don't
16 have to try to write any of this down because it will
17 go into the jury room with you, and I will go over
18 these with you.

19 There's absolutely no significance whatsoever to
20 the order in which I state these potential verdicts, it
21 is simply that one must be stated first. And in order
22 for you all to reach a verdict, your verdict must be
23 unanimous, which means all 12 of you must agree in
24 order to reach a verdict on each of the indictments.

25 And they are as follows: As to Indictment

1 2013-GS-26-4354 and 4353, we, the jury, by unanimous
2 consent find the Defendant -- and actually, I went
3 backwards, I apologize, turned myself around. Let's
4 start over.

5 As to Indictment 2013-GS-26-3422 and 3423, we, the
6 jury, by unanimous consent, find the Defendant guilty
7 of burglary first agree or not guilty.

8 As to Indictments 4352 and 4353, we, the jury, by
9 unanimous consent find the Defendant guilty of grand
10 larceny or not guilty.

11 And as to Indictment 4354, we, the jury, by
12 unanimous consent, find the Defendant guilty of
13 safecracking or not guilty.

14 Again, there is absolutely no significance
15 whatsoever to the order I have stated these potential
16 verdicts. And, again, ladies and gentlemen, in order
17 to reach a verdict, it means the 12 of you must agree
18 in order for there to be a unanimous verdict.

19 Madam forelady, once the jury has reached a
20 verdict on each indictment, it is your responsibility
21 to fill out the verdict forms, to sign and date the
22 forms, and once the jury has reached a unanimous
23 verdict on all indictments for you to knock on the door
24 and advise the jury -- I mean, advise the bailiffs that
25 the jury has reached a verdict. And at that time we'll

1 receive you all back into the courtroom.

2 Also, if you have any questions during
3 deliberations, you will have to write those out and
4 follow the same procedure by knocking on the door and
5 advising the bailiffs that the jury has a question.
6 Ladies and gentlemen, please know if you have any
7 questions during deliberations, there will be a delay
8 in our response, and that is because there is a
9 procedure that we must follow in answering your
10 questions. So if you have a question, know that there
11 will be a delay because we are following that
12 procedure. Again, ladies and gentlemen, your verdict
13 must be a unanimous one, which means that all 12 of you
14 must agree to reach a verdict on each of the
15 indictments.

16 I'm going to ask that you return to your jury
17 room, but do not yet begin your deliberations. I have
18 some matters of law I need to take up with the
19 attorneys that may require further instruction or
20 clarification of an instruction. However, if there's
21 no further instruction, we will send in the evidence,
22 and at that time we will excuse the alternates. And we
23 will bring in the evidence and your notebooks, and at
24 that time you'll be allowed to begin your
25 deliberations.

1 to the written response and have it marked as a Court's
2 Exhibit, send it back to the jury, and they'll be
3 instructed not to dispose of it.

4 MR. JOYE: That's fine, Your Honor.

5 THE COURT: All right. We will await further
6 instructions from our panel.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification only.)

9 (The hearing resumed at approximately 1:58 p.m.)

10 THE COURT: You may be seated. The State ready to
11 proceed?

12 MR. RICHARDSON: Yes, ma'am, Your Honor.

13 THE COURT: Defense ready to proceed?

14 MR. JOYE: Yes, Your Honor.

15 THE COURT: Please bring in the jury.

16 (WHEREUPON, the jury came into open court at
17 approximately 2:00 p.m.)

18 THE COURT: Madam forelady, is it correct that the
19 jury has reached a verdict?

20 THE FOREPERSON: Yes, it is, Your Honor.

21 THE COURT: If you would give the verdict forms to
22 the bailiff for me, please. Thank you.

23 Madam clerk. Sir, if you would stand for the
24 publication of the verdicts.

25 CLERK OF COURT: Indictment No. 2013-GS-26-3422,

1 State of South Carolina versus Xavier Rayshawn
2 Hemingway, as to Indictment No. 2013-GS-26-3422, we,
3 the jury, by unanimous consent find the Defendant
4 guilty.

5 As to Indictment No. 2013-GS-26-3423, we, the
6 jury, by unanimous consent find the Defendant guilty of
7 burglary first degree.

8 As to Indictment No. 2013-GS-26-4352, we, the
9 jury, by unanimous consent find the Defendant guilty of
10 grand larceny, value over \$10,000.

11 As to Indictment No. 2013-GS-26-4353, we, the
12 jury, by unanimous consent find the Defendant guilty of
13 grand larceny, value over \$10,000.

14 As to Indictment No. 2013-GS-26-4354, we the jury,
15 by unanimous consent find the Defendant guilty of
16 safecracking. Signed by foreperson Kay Hungerford,
17 juror number 171.

18 Ladies and gentlemen of the jury, if this is your
19 verdict, so signify by raising your right hand.

20 (WHEREUPON, all jurors' right hands were raised.)

21 CLERK OF COURT: Thank you.

22 THE COURT: Any request to poll the jury from the
23 State?

24 MR. JOYE: I would, Your Honor.

25 MR. RICHARDSON: No, ma'am, Your Honor.

1 THE COURT: From the Defense?

2 MR. JOYE: I would, Your Honor.

3 THE COURT: Please poll the jury. Ladies and
4 gentlemen, if you would give the clerk your attention.

5 CLERK OF COURT: When I call your juror number, if
6 you'll please stand.

7 THE COURT: You may take your seats.

8 CLERK OF COURT: Juror number 171, is this your
9 verdict?

10 JUROR #171: Yes, it is.

11 CLERK OF COURT: Is this still your verdict?

12 JUROR #171: Yes, it is.

13 CLERK OF COURT: Thank you. 376, is this your
14 verdict?

15 JUROR #376: Yes.

16 CLERK OF COURT: Is this still your verdict?

17 JUROR #376: Yes.

18 CLERK OF COURT: Thank you. 57, is this your
19 verdict?

20 JUROR #57: Yes, ma'am.

21 CLERK OF COURT: Is this still your verdict?

22 JUROR #57: Yes, ma'am.

23 CLERK OF COURT: Thank you. 352, is this your
24 verdict?

25 JUROR #352: Yes.

1 CLERK OF COURT: Is this still your verdict?

2 JUROR #352: Yes.

3 CLERK OF COURT: Thank you. 110, is this your
4 verdict?

5 JUROR #110: Yes.

6 CLERK OF COURT: Is this still your verdict?

7 JUROR #110: Yes.

8 CLERK OF COURT: Thank you. 397, is this your
9 verdict?

10 JUROR #397: Yes.

11 CLERK OF COURT: Is this still your verdict?

12 JUROR #397: Yes.

13 CLERK OF COURT: Thank you. 63, is this your
14 verdict?

15 JUROR #63: Yes.

16 CLERK OF COURT: Is this still your verdict?

17 JUROR #63: Yes.

18 CLERK OF COURT: Thank you. 95, is this your
19 verdict?

20 JUROR #95: Yes.

21 CLERK OF COURT: Is this still your verdict?

22 JUROR #95: Yes.

23 CLERK OF COURT: Thank you. 213, is this your
24 verdict?

25 JUROR #213: Yes, ma'am.

1 CLERK OF COURT: Is this still your verdict?

2 JUROR #213: Yes, ma'am.

3 CLERK OF COURT: Thank you. 318, is this your
4 verdict?

5 JUROR #318: Yes.

6 CLERK OF COURT: Is this still your verdict?

7 JUROR #318: Yes.

8 CLERK OF COURT: Thank you. 297, juror number
9 297, Robson?

10 JUROR #297: Oh, that was me. I got up on the
11 wrong number. I'm 297.

12 CLERK OF COURT: Okay.

13 THE COURT: Yes, ma'am, if you would stand. Oh,
14 you stood on the wrong number.

15 CLERK OF COURT: Well, do you remember what number
16 you stood on?

17 JUROR #379: Probably mine, 379.

18 JUROR #297: Yeah.

19 CLERK OF COURT: All right. 379, is this your
20 verdict?

21 JUROR #379: Yes.

22 CLERK OF COURT: Is this still your verdict?

23 JUROR #379: Yes.

24 CLERK OF COURT: Thank you. 297, do you want
25 stand again, is this your verdict?

1 JUROR #297: Yes.

2 CLERK OF COURT: Is this still your verdict?

3 JUROR #297: Yes.

4 CLERK OF COURT: Thank you. 76, is this your
5 verdict?

6 JUROR #76: Yes, ma'am.

7 CLERK OF COURT: Is this still your verdict?

8 JUROR #76: Yes, ma'am.

9 CLERK OF COURT: Thank you.

10 THE COURT: Did we call everyone's name? Ma'am,
11 did we call your name, in the leather jacket? Okay, we
12 called everybody. Okay, I just wanted to double check
13 and make sure. Ladies and gentlemen, we thank you for
14 your time and your attention to the this case.

15 I know that jury service is basically thankless,
16 but please know how very valuable you are to us. Most
17 counties in South Carolina hold jury trials every week
18 with the exception of holidays. So we do this quite
19 regularly, and we would not be able to do it. Although
20 there are lots of things that judges hear nonjury, in
21 other words, where the judge is the fact finder, most
22 of the bulk of our work deals with jury trials. So we
23 would not be able to dispose of our docket without your
24 willingness to come and really donate your time to us.

25 Our system is the only kind in the world where 12

1 THE COURT: While we're reviewing the sentence
2 sheets, are there any post trial motions, Mr. Joye?

3 MR. JOYE: Yes, Your Honor.

4 THE COURT: You may proceed.

5 MR. JOYE: Based on all the previously stated
6 grounds and objections, we would ask the Court for a
7 new trial. Even in the light most favorable to the
8 State, we don't believe the State has made its burden
9 to put this in front of a jury.

10 THE COURT: Would the State like to respond?

11 MR. RICHARDSON: Your Honor, the facts were
12 sufficient, and they passed directed verdict. And the
13 verdict of the jury sworn should remain in tact. Thank
14 you.

15 THE COURT: You're welcome. Anything further, Mr.
16 Joye?

17 MR. JOYE: No, Your Honor.

18 THE COURT: Okay. Considering the motions as they
19 have been propounded for the Court, the motion is, or
20 motions, I guess I should say plural, because there are
21 several indictments, are denied. There is sufficient
22 evidence to support the jury's verdict. The Court is
23 bound, if there's any evidence to support a jury's
24 verdict, to sustain it.

25 Based on the Court's previous rulings, I can't

1 recall anything that would rise to the level of a new
2 trial. And considering the evidence as it was
3 presented, there is direct evidence in the testimony of
4 Tareek Hemingway as well as substantial circumstantial
5 evidence that reasonably tended to prove the
6 Defendant's guilt in this case. The jury deliberated
7 just shy of -- well, a little -- just a couple minutes
8 beyond two hours. They asked one question during
9 deliberations. It's clear to me that they gave careful
10 thought and consideration to their verdict.

11 This case came down to credibility, whether the
12 jury believed the eye witness or first-person account
13 of Mr. Hemingway's cousin, that being Tareek Hemingway.
14 And as we all discussed in pretrial, it was all -- it
15 was basically, you know, there was really no middle
16 ground in this. Either the jury was going to believe
17 him and the circumstances surrounding this event to
18 believe that Mr. Xavier Hemingway was a co-conspirator
19 and was involved in these burglaries, or they were
20 going to totally discount his testimony, in which case
21 they would have found Mr. Xavier Hemingway not guilty.

22 And they apparently gave weight to Mr. Tareek
23 Hemingway's testimony and his basic eye witness account
24 of the conspiracy basically to have robbed these houses
25 and Mr. Xavier Hemingway's knowledge of the area. And

1 while they had a short relationship as cousins, it was
2 a destructive one. And as we know, young men tend to
3 develop what we call a pack mentality. Even a person
4 who is not inclined to certain behavior will become
5 inclined to it.

6 It's that old adage one bad apple can ruin the
7 whole bunch, and good never run -- I watched a movie
8 one time, and the quote was -- and it was really quite
9 profound, I'm going to paraphrase it because I can't
10 remember it exactly -- but of gist of it was as
11 unfortunate in life as it is, good never rubs off on
12 evil, evil always rubs off on the good. And as
13 unfortunate a statement and as, I'm sure, profoundly
14 distressing that can be to all of us, it unfortunately
15 is true. And I think that's basically what happened in
16 this situation.

17 So based on what has been presented to the Court,
18 there is no basis for a new trial, and the motion is
19 denied.

20 Now, are the sentence sheets signed? We just need
21 to double check them against the indictments. How is
22 your client's name actually spelled, Mr. Joye? Is it
23 X-A-V-I-E-R or X-A-V-I-A-R?

24 MR. JOYE: E-R.

25 THE COURT: That's what I thought. And I think

1 that will resonate with this Defendant and will speak
2 as to the magnitude of the crime, Your Honor.

3 THE COURT: Mr. Joye?

4 MR. JOYE: Yes, Your Honor. Your Honor, I think
5 the Court hit the nail on the head when it said that
6 Xavier is a young man. Even if the Court imposes the
7 absolute minimum sentence that he can get, it's going
8 to be a long time before he gets out. And, Your Honor,
9 he doesn't have any adult record. We would just ask
10 the Court to consider sentencing him to the minimum
11 under the statute. And he...

12 THE COURT: Sir, is there anything you'd like to
13 state for the record on your own behalf?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Okay. Any of his family members wish
16 to be heard?

17 MR. JOYE: No, Your Honor.

18 THE COURT: Thank you, sir. You can take your
19 seats.

20 SENTENCE

21 THE COURT: Sir, if you would stand for
22 sentencing. On safecracking you're sentenced to the
23 State Department of Corrections for a period of five
24 years. On each of the grand larcenies, you're
25 sentenced to a period of five years. On each of the

1 burglary in the first degrees, you are sentenced to a
2 period of 15 years. These sentences are concurrent
3 with one another, you'll get any credit for any time
4 pursuant to 24-13-40 to be calculated -- excuse me --
5 and applied by the Department of Corrections.

6 I did not discern, Mr. Joye, that your client
7 needed services at the ATU?

8 MR. JOYE: No, ma'am, I didn't gather any of that.

9 THE COURT: Okay. And just so the record is
10 clear, for the benefit of the victims who are absent,
11 and I can think of no greater disruption of the peace
12 and quietude of your life than someone coming into your
13 home. And Mr. Joye articulated that quite well in his
14 closing argument. I don't think there's anything
15 worse, and I think anybody who's ever experienced that
16 knows that.

17 At the same time, I needed to balance, I would
18 like to think as I've gotten older I've gotten wiser,
19 whether that's a folly on my part or whether it's
20 accurate we'll never know, but the bottom line becomes
21 at some point, and I reinforced this with both counsel
22 during the course of this week, that I don't have any
23 axe to grind, I don't have anybody to reward, I don't
24 have anybody to punish. My only job is to make sure
25 that we have a clean record, there's an even and level

WITNESSES

Karen Baker Loris Police Department

DOCKET NO. 2012-GS-26- 04932

The State of South Carolina

County of Horry

Bradley C. Richardson
12H03914

COURT OF GENERAL SESSIONS

December, 2012 TERM

REST WARRANT NUMBER

M973995

CDR: 0549 16-23-0490

DOA: 8/20/2012

THE STATE

vs.

ACTION OF GRAND JURY

Xaviar Hemingway

B/ M

SSN:

ATTORNEY: Joye, R. Scott

Indictment for

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME**

J. Gregory Hembree, Solicitor

ORIGINAL

TRUE BILL

Foreperson of Grand Jury

DEC 13 2012

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

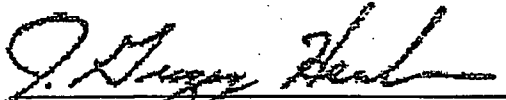
At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Xavier Hemingway and/or his Co-Defendant(s) did in Horry County, on or about August 9, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Karen Baker Loris Police Department

DOCKET NO. 2012-GS-26-04931

The State of South Carolina

County of Horry

Bradley C. Richardson
12H03914

COURT OF GENERAL SESSIONS

December, 2012 TERM

TEST WARRANT NUMBER

M973994

CDR: 0052 16-23-0440

DOA: 8/20/2012

THE STATE

vs.

ACTION OF GRAND JURY

Xaviar Hemingway

B/ M

TRUE BILL

SSN:

Foreperson of Grand Jury

DEC 13 2012

ATTORNEY: Joye, R. Scott

VERDICT

Indictment for

**DISCHARGING FIREARM
INTO DWELLING**

ORIGINAL

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
DISCHARGING FIREARM INTO
DWELLING

At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

DISCHARGING FIREARM INTO DWELLING

CDR: 0052 16-23-0440

That Xaviar Hemingway and/or his Co-Defendant(s) did in Horry County on or about August 9, 2012, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; or into a vehicle, aircraft, watercraft or other conveyance or equipment while it was occupied, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Karen Baker Loris Police Department

DOCKET NO. 2012-GS-26-04930

The State of South Carolina

County of Horry

Bradley C. Richardson
12H03914

COURT OF GENERAL SESSIONS

December, 2012 TERM

EST WARRANT NUMBER

M973993

CDR: 3410 16-03-0029

DOA: 8/20/2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury DEC 13 2012

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Xavlar Hemingway

B/ M

SSN:

ATTORNEY: Joye, R. Scott

**Indictment for
ATTEMPTED MURDER**

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

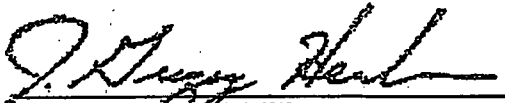
INDICTMENT
ATTEMPTED MURDER

At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER
CDR: 3410 16-03-0029

That Xaviar Hemingway and/or his Co-Defendant(s) did in Horry County on or about August 9, 2012 with intent to kill Ernest Lashawn Jordan, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Gregory C Dewitt Loris Police Department

AFFIDAVIT WARRANT NUMBER

M973992

CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

DEC 13 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-26-04929

The State of South Carolina

County of Horry

Bradley C. Richardson
12H03914

COURT OF GENERAL SESSIONS

December, 2012 TERM

THE STATE

vs.

Xaviar Heminway

B/ M

SSN:

ATTORNEY: Joye, R. Scott

Indictment for

ATTEMPTED BURGLARY 1ST DEGREE

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
ATTEMPTED BURGLARY 1ST DEGREE

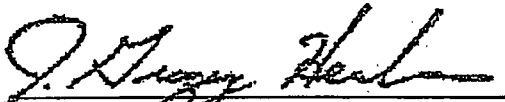
At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED BURGLARY 1ST DEGREE

CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

That Xavier Hemingway and/or his Co-Defendant(s) did in Horry County on or about August 9, 2012, willfully and unlawfully attempt to enter the dwelling of Ernest Lashawn Jordan located at 4644 Watson Street, Loris, without consent and with the intent to commit a crime therein, and the defendant and/or Co-Defendant(s) entered or remained during the nighttime and/or were armed with a deadly weapon (or caused physical injury to a person or threatened the use of or displayed what appeared to be a knife or firearm), in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

RECEIVED

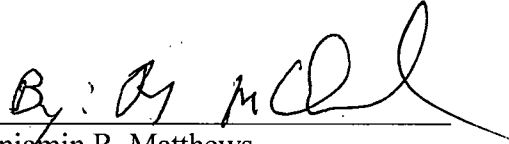
JUN 17 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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."

June 17th, 2016



Benjamin R. Matthews
Matthews and Megna, LLC
3400 West Avenue
Columbia, SC 29203
803-799-1700

Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT