

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STERLING MAYBIN

APPELLANT

APPELLATE CASE NO. 2015-001585

AMENDED RECORD ON APPEAL

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) Court of General Sessions
 County of Newberry) 2015-GS-36-121, 122

State of South Carolina)
) Transcript of Record
)
 Sterling Maybin)
) PARTIAL
) DEFENDANT

July 8, 2015
 Newberry, South Carolina

B E F O R E:

Honorable Donald B. Hocker, Judge.

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

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 Taylor Daniel, Assistant Solicitor
 Attorneys for the State

Charles Verner, Public Defender
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

1 A Since I moved there.

2 Q So he is your nextdoor neighbor?

3 A Yes.

4 Q Do you remember December 23rd of 2014?

5 A Yes.

6 Q Were you home that day, at your house that day?

7 A I was back and forth.

8 Q Tell me about what you remember seeing as far as
9 earlier in the day?

10 A I went to the store and I guess I was gone about 20
11 or 30 minutes, came back and when I was leaving I saw a
12 green bicycle go down crossing the street.

13 Q You saw a green bicycle?

14 A And it had a bag on it.

15 Q Somebody was driving the bicycle?

16 A Yes, sir.

17 Q And it was going out across?

18 A Yes.

19 Q And do you know what time of day it was on the 23rd?

20 A In the afternoon, I don't know exactly what time.

21 Q It was daylight?

22 A Yes.

23 Q Describe the person you saw on the bicycle?

24 A I couldn't see the person then.

25 Q Was it a white guy, black guy?

1 A Black.

2 Q What?

3 A Black guy.

4 Q Black guy. Do you remember anything else about him?

5 A I just saw a green bicycle that had a bag on it.

6 Q The bicycle had a bag on it or was the man carrying
7 the bag?

8 A It was hanging on the handlebars.

9 Q Okay. And you noticed the man with a bag on a green
10 bicycle when you were leaving your house to go to the
11 store?

12 A Yes.

13 (Whereupon, State's Exhibit 16 was marked for
14 identification only.)

15 Q All right. I want to show you State's number 16. Do
16 you recognize that?

17 A It was green, I noticed a green bicycle. It caught
18 my eye.

19 Q Okay. Can you say this is the bicycle or it was
20 similar to this?

21 A It was similar to that.

22 Q Now, you went to the store and you were gone about 30
23 minutes or so?

24 A Yes, sir.

25 Q And tell me what happened when you came back to your

1 house?

2 A I pulled in the yard and I kind of made a circle and
3 I backed up to park my truck. And I walked around my back
4 yard and I saw this figure over there, I am used to seeing
5 Walter over there, you know, when I be back there. So I
6 just walked back there and I said, what is up, Walter.
7 And he turned. And I said, oh, he is not Walter so I
8 turned around and left.

9 Q Let me stop you for one second. I want to show you
10 State's number 1. Do you recognize that?

11 A This is Walter's house.

12 Q That is Walter's house.

13 MR. SCOTT: Your Honor, the State offers State's 1
14 for admission.

15 THE COURT: And what says the defense?

16 MR. VERNER: Your Honor, I thought I had agreed for 1
17 through 15, without objection, 1 through 15 photographs.

18 THE COURT: Is 1 through 15 all photographs?

19 MR. SCOTT: Yes, sir.

20 THE COURT: And the defense has indicated they do not
21 object to those coming into evidence.

22 MR. SCOTT: Okay. I am going to publish them then as
23 I show them to the witness.

24 THE COURT: Okay, that's good.
25

1 (Whereupon, State's Exhibits 1 through 15 were
2 admitted into evidence.)

3 Q So, State's number 1, you say that is Walter's house?

4 A Yes, sir.

5 Q And if we are looking at that picture your house
6 would be to the left of it?

7 A Yes, to the left.

8 Q Okay. Let me show you State's number 2 and number 6
9 as well. I will show you number 2, what is number 2?

10 A This is Walter's backyard.

11 Q And I guess if you are looking at his backyard, do
12 you see any part of your house in this picture?

13 A The corner.

14 Q That lighter colored brick, that is your house?

15 A That is my house.

16 Q This would be Walter's backyard facing towards your
17 house, is that right?

18 A Say that again.

19 Q This is if we are, the view we would have if we were
20 in Walter's backyard looking towards your yard?

21 A Yes.

22 Q And now where was the man standing that you saw in
23 Walter's backyard?

24 A Between the storage room door and the
25 air-conditioning.

1 Q Between the storage room door and the
2 air-conditioning. And the storage room door is that dark
3 brown door?

4 A That's correct.

5 Q And then the air-conditioning is right beside that
6 door?

7 A Yes.

8 Q And you are saying the person that you saw was in
9 between that door and that air-conditioning?

10 A Yes.

11 Q And what was that man doing?

12 A He was, he had his back turned and he was doing
13 something, I don't know what he was doing. He was
14 fiddling with something, I don't know what he was doing.

15 Q Fiddling with something?

16 A Yes, he was fiddling with something. I don't know
17 what he was doing.

18 Q All right. Did you notice anything else about the
19 man, did he have anything with him?

20 A I didn't notice anything else.

21 Q What did you do next when you realized that man was
22 not Walter?

23 A I kept walking to him and then he was doing something
24 with his hands. And I said, what's up Walter, and that is
25 when he turned around and looked. And I said, you are not

- 1 Walter. So I turned around and walked away.
- 2 Q Did you see his face when he turned and looked at
3 you?
- 4 A Yes, I seen him.
- 5 Q And after you realized that that wasn't Walter what
6 did you do?
- 7 A I turned around and went in my backyard.
- 8 Q You went back to your backyard?
- 9 A Yes.
- 10 Q What did you do then?
- 11 A I called the police, the city.
- 12 Q You called the police?
- 13 A Yes.
- 14 Q And about how long did it take them to get there?
- 15 A About five minutes.
- 16 Q Five minutes. Where were you, what were you doing
17 while you were waiting for the police to get there?
- 18 A I was standing on the side of my house, I was hidden.
- 19 Q Oh, you were hidden from the guy?
- 20 A Yes.
- 21 Q Okay. And it is daylight you said?
- 22 A Daylight.
- 23 Q And when the police got there what happened next?
- 24 A He took off.
- 25 Q How did he take off?

1 A When the police came he got on his bicycle because he
2 had a bag on the bicycle. He dropped it. He was going
3 away from Walter's house at first when the police got
4 there. And then when he saw the police he turned around
5 and came past me.

6 Q He went past you. Instead of going back up to Hiller
7 Street he rode through the backyards?

8 A He rode through the backyards.

9 Q And he went through your backyard?

10 A Yes.

11 Q State's 10 and 11. Do you recognize those?

12 A Yes, this is the bag that he dropped.

13 Q Those are the bags that he dropped?

14 A Yes.

15 Q Okay. What did you notice about the bike this man
16 was on at this time?

17 A I know it had straight handlebars on it and it was
18 pedaling.

19 Q How close did he get to you as he was leaving?

20 A About right here.

21 Q What color was the bike?

22 A Green.

23 Q It was the same green bike you saw earlier?

24 A Well, when I saw it the first time I just saw a green
25 bike.

1 Q Okay. Well, did you know the man at that time?

2 A I just know of him. I used to coach softball and he
3 had little kids that would come.

4 Q You had seen him before?

5 A Yes.

6 Q Do you see him today?

7 A Yes.

8 Q Where is he?

9 A (The witness points to the defendant.)

10 Q Are you pointing to the man there?

11 A Yes, sir.

12 Q Well, did the police, did you see them run after him
13 that day?

14 A Yes.

15 Q Anything else you remember that you want the jury to
16 hear about?

17 MR. VERNER: Your Honor, that is an improper
18 question.

19 THE COURT: I agree and I think the Solicitor agrees
20 as well.

21 Q Anything else happen with you after that or did you
22 watch the police run after him or did you go back in your
23 house or what did you do next?

24 A I watched the police run after him.

25 Q Okay. And did you see the man again that day?

1 A No.

2 Q Thank you. Mr. Glenn, answer any questions Mr.
3 Verner has for you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 By Mr. Verner:

7 Q Mr. Glenn, have you got a clear recollection of
8 December 23rd of last year?

9 A I remember what happened, but the date I am not sure.

10 Q What was the weather on December 23rd of last year?

11 A It was raining.

12 Q Was it overcast or was it a hard rain, drizzle?

13 A It was just drizzling.

14 Q And when you went to the grocery store a little bit
15 earlier do you remember whether you had to run your
16 windshield wipers?

17 A Yes.

18 Q So it was dark enough or cloudy enough where you were
19 running your windshield wipers and your lights were on
20 too?

21 A It wasn't that dark.

22 Q A constant drizzle?

23 A Yes, kind of.

24 Q Had it rained harder earlier that day or do you
25 recall?

1 A I was standing outside so it wasn't raining that
2 hard.

3 Q Do you remember what you were wearing that day?

4 A No.

5 Q Do you remember whether it was a cold day or a warm
6 day?

7 A Kind of chilly to me.

8 Q When the police arrived, did they arrive with the
9 lights and the sirens on on the vehicle or did they just
10 pull up?

11 A They just pulled up.

12 Q You don't recall lights and sirens?

13 A I don't recall any lights.

14 Q What is behind your house, what would be behind your
15 house?

16 A Trees.

17 Q It is kind of forestry area?

18 A Yes.

19 Q What about across the street, what would be across
20 the street?

21 A A fence and bushes.

22 Q Are there other houses directly across the street?

23 A Yes.

24 Q Do you recall from which, do you recall how many
25 police vehicles arrived?

1 A I think there were three.

2 Q Three. They came all at once, three cars?

3 A I believe behind the other, one before the other.

4 Q Did you call them from a cell phone or from inside
5 your home?

6 A Cell phone.

7 Q Were you standing outside when you called the police
8 or you had gone back inside?

9 A Outside.

10 Q You were in your backyard or front yard, where were
11 you when you called the police?

12 A I was in my backyard beside my deck.

13 Q So you have a deck behind your house?

14 A Yes. It is on the side.

15 Q And they arrived fairly quickly?

16 A Yes.

17 Q Did you see any kind of chase between the suspect and
18 the police?

19 A Yes.

20 Q The man in the backyard had gotten on his bike, did
21 he get on the bike before the police arrived or the time
22 they were pulling in?

23 A When the police arrived he was pushing it up the
24 hill, he was going the other way. When he saw the police
25 I guess he turned around and jumped on his bike and

1 dropped what he had and kept riding.

2 Q Go ahead and tell the jury what you are looking at?

3 MR. VERNER: Your Honor, can the witness step down.

4 Q Can you step down, it is on a big screen right here,
5 Mr. Glenn. It might be easier to do it this way. Use
6 that red pointer so we can see a little more clearly.

7 Where is your house on Hiller Street, Mr. Glenn.

8 A (Witness points to diagram.)

9 Q Is this Hiller Street, do you recognize that?

10 A Right here.

11 Q You need to speak up.

12 THE COURT: You need to speak up so the Court
13 Reporter can hear you.

14 Q The Judge is going to have to hear you, the jury is
15 going to have to hear you, and the lawyers are going to
16 have to hear you. So speak up.

17 A This is mine.

18 Q You got kind of a brown roof on your home?

19 A Yes, sir.

20 Q And you don't have a neighbor to your, looking at
21 your house to your left, it is kind of, there is no
22 neighbor that is close to your house, there is trees and
23 stuff?

24 A Yes.

25 Q And then on the other side of your home there is

1 Walter?

2 A Walter.

3 Q Okay. What, the street that is kind of directly
4 across from your house. Does that street have a name?

5 A Floyd Street.

6 Q That is Floyd. Okay. And this bigger street that
7 goes across there, do you know what that street is?

8 A Crossing.

9 Q Crossing. Okay. Do you remember which direction the
10 police arrived on Hiller Street?

11 A (Witness points at diagram.)

12 Q They would have come from the Crossing Street side
13 towards your house?

14 A I was standing back here and saw.

15 Q Is it possible they could have come from more than
16 one direction?

17 A Possibly.

18 Q And then the man, before then you said you saw a guy
19 riding on a bicycle beforehand. Where was that?

20 A He came close to here on the bicycle.

21 Q So where would you have seen the bicycle, the man on
22 the bicycle earlier, on Crossing Street somewhere?

23 A (Witness points to diagram.)

24 Q Are you pointing kind of towards the intersection of
25 Crossing and Hiller?

1 A Yes.

2 Q When the police arrived you said the man got on his
3 bicycle and left. In which direction did he leave.

4 Towards your house or away from it?

5 A He went this way.

6 Q So he came back across your house?

7 A He went through my backyard and went behind my
8 neighbor's backyard.

9 Q Moving from my right to left, looking at the picture,
10 moving from right to left.

11 A Yes.

12 Q And that is the direction you saw the police chase
13 him?

14 A One police went behind him and the other one got in
15 the car.

16 Q You can have a seat, please, sir. Do you recall what
17 you were doing that day when you were at home?

18 A I just drove up.

19 Q Had you had any alcohol beverages that day?

20 A No.

21 Q At some point did you ever see that the man that the
22 police chased, they never brought him back or you never
23 saw him again?

24 A No.

25 Q Did the police ever produce a photographic lineup of

1 photographs for you to identify the man?

2 A No.

3 Q And have you ever identified Sterling Maybin prior to
4 identifying him here in court today for the police?

5 A No.

6 Q Did the police ask you if you knew who the man was?

7 A Yes.

8 Q Did you tell them I thought that was Sterling Maybin?

9 A No.

10 Q Why not?

11 A I didn't know his name.

12 Q When you came to the man in the back of Mr. Cromer's
13 home, do you recall whether that door was open or closed
14 or can you remember?

15 A It was closed.

16 Q When is the first you learned that the police had
17 identified Sterling Maybin as the person that you saw that
18 day?

19 A I know his brother. And that is what I told, he
20 looked like his brother.

21 Q You told that to the police?

22 A Yes.

23 Q On the day that this happened?

24 A Yes. I knew it wasn't his brother, I said it looked
25 like his brother. That is when, told me the name. And

1 said, yes, that is who it was.

2 Q So the police that day told you it wasn't, they
3 suggested that same day that that was Sterling Maybin to
4 you?

5 A Yes, they gave me his name.

6 Q So, it wasn't you providing the name to the police,
7 it was the police providing the name to you?

8 A I didn't know his name.

9 Q But my question is, it was not you giving the name to
10 the police, it was the police giving you the name?

11 A I didn't know his name.

12 Q But the police told you that it was Sterling Maybin,
13 right?

14 A That that was his brother, Terry's (phonetic)
15 brother. That is how they gave me his name.

16 Q Had they mentioned Sterling Maybin's name before
17 then?

18 A They asked me who it was. I said it looked Terry--

19 THE COURT: Who?

20 Q I guess that would be, T-H-I-E-R--

21 A That is his brother.

22 COURT REPORTER: Wait a minute. Spell that again.

23 MR. VERNER: I would assume he is talking about

24 T-H-I-E-R-R-Y, Thierry Maybin.

25 Q That is who you said it looked like?

1 A Yes.

2 Q You told the police that day?

3 A Yes.

4 Q While they were at the home?

5 A Yes.

6 Q And I am not trying to confuse you up but prior to
7 you saying it looked like Thierry Maybin, had the police
8 said, was it Sterling Maybin or when was it first that you
9 recall the name of Sterling Maybin being brought up to
10 you?

11 A When they asked me who was it. I said, it looked,
12 somebody that looked like Thierry but he is taller.

13 Q And you told them that day?

14 A Yes.

15 Q Do you recall which officer you told that to?

16 A I guess all of them.

17 Q There were several officers that came back to the
18 scene?

19 A Yes.

20 Q But they didn't apprehend anybody to your knowledge
21 and bring any suspect back?

22 A No.

23 Q Okay. And you have lived, I think you testified on
24 Hiller Street about the last 40 years?

25 A Four years.

1 Q Four?

2 A Yes.

3 Q I am sorry. Where did you live prior to Hiller
4 Street?

5 A Silverstreet.

6 Q Silverstreet?

7 A Yes, sir.

8 Q If I suggested that the Hiller Street area, the West
9 End area, there is a fairly large number of black men and
10 women that live in that neighborhood, wouldn't you say?

11 A Yes.

12 Q Okay. Thank you, Mr. Glenn.

13 THE COURT: Redirect?.

14 MR. SCOTT: None from the State, Your Honor.

15 THE COURT: You can step down, sir. Thank you for
16 your testimony. Call your next witness.

17 MR. DANIEL: Your Honor, the State calls Randy
18 Malloy.

19 THE COURT: Who is this? Harold Malloy?

20 MR. DANIEL: Harold Malloy, yes sir, he goes by
21 Randy.

22 HAROLD MALLOY, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Daniel:

1 Q Officer Malloy, you go by Randy?

2 A Yes, sir.

3 Q You are employed as a police officer with the City of
4 Newberry, correct?

5 A Yes sir, I am.

6 Q How long have you been with that agency?

7 A 11 years.

8 Q December 23rd of 2014, were you on duty that day?

9 A Yes sir, I was.

10 Q What hours or what shift were you working?

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

12 Q Did you respond to a call at Hiller Street that
13 day?

14 A Yes sir, we did.

15 Q And what was the call in reference to?

16 A It was referenced to a person behind a house possibly
17 taking items from the home.

18 Q And you received that information from dispatch?

19 A Yes, from the complainant that was talking through
20 dispatch, yes.

21 Q Dispatch was relaying what--

22 A What the complainant that called them was actually
23 seeing at the time.

24 Q Hiller Street, that is in the City of Newberry
25 in Newberry County?

1 A Yes sir, it is.

2 Q Where were you when you first received this call,
3 were you nearby?

4 A I think I was around the Nance Street, Main Street
5 area. I wasn't far from the area when the call came in.

6 Q How long did it take you to respond?

7 A Just a couple of minutes.

8 Q When you arrived at Hiller Street what did you
9 observe?

10 A The gentleman caller was basically standing in front
11 of the house and pointing towards the back of the house.
12 And I was to the, if you are looking at Hiller Street, I
13 come off of Crossing Street so I was closer, I hadn't
14 passed his residence yet, I was on the south side
15 of that residence.

16 Q I want to show you, do you recognize that?

17 A Yes, sir.

18 Q If you could and with the Court's permission, could
19 you kind of step down and point to the jury your route to
20 get to that location just so we have a layout.

21 THE COURT: And, Officer, be sure to speak up loud.

22 A Ladies and gentlemen, this is Crossing Street, this
23 is coming into Hiller Street. I made a right turn onto
24 Hiller Street. The caller was actually between the houses
25 pointing towards the back of the house like someone was

1 back there. I stopped my car along in this area and got
2 out of my car. Another officer was already in the area
3 and he arrived before I did. He was on this side of the
4 street, on this side of the house.

5 Q Thank you. And the caller was pointing, where was
6 the caller pointing, what address and what location?

7 A He was in between the two houses and was basically
8 pointing behind the house like he was back here, he was
9 back here. He was making some statements as well.

10 Q You can have a seat Officer Malloy. I want to show
11 you State's number 9 that has been submitted into
12 evidence. Do you recognize this?

13 A No, sir.

14 Q You said you observed the caller point to a location?

15 A Yes, sir.

16 Q Tell us what else you observed?

17 A He was at the front of the house. I never went
18 behind any of the residence.

19 Q You observed the suspect on the scene?

20 A What happened was, as I was coming around the back of
21 the, the side of one of the houses the suspect come around
22 the back of the same house that I was going around. We
23 were actually meeting around the house on a bicycle.

24 Q And I have my list of pictures here. State's number
25 1, do you recognize this?

1 A I think that is the house I was on the left side of.
2 There were two brick houses that were side by side and I
3 was on the left side of the houses. And the gentleman on
4 the bicycle came around the same side of the house that I
5 was on. And I don't recall the front of the house, I
6 really can't say if this was the actual house. But if
7 this is I am sure that was the house. I didn't look
8 at any house numbers because I was getting out, going
9 towards the back of the house.

10 Q And did you recognize this individual, this suspect?

11 A Well when the suspect came around the house he was
12 pedaling the bicycle fairly fast. And he and I were at a
13 angle, and I couldn't apprehend the suspect but I did see
14 the suspect and it was someone I was familiar with.

15 Q Did you know who the suspect, I am not saying how do
16 you know the suspect but did you know this person?

17 A I have seen him before, yes sir.

18 Q And did you know the name of this individual?

19 A I didn't quite know his name at that time. But I
20 knew, I knew who that guy is. You know how you have a
21 moment in time where, I know who he is, I know who he is.
22 I have seen him around. And then once we started looking
23 for him, the gentleman that, I realized it was Mr. Maybin
24 we were looking for. Because when he came by me I kept
25 thinking in my mind, who is this guy. Because you see

1 people all the time. And in the area you get familiar
2 with them, and I was like, I know this guy. And I
3 realized then Mr. Maybin was who we started looking for.

4 Q You said--

5 A And the reason I say that is because the bicycle was
6 something that he had already been on, we had seen him
7 earlier on as well, the bicycle that he was actually
8 riding on.

9 Q Let me show you that has been marked for ID purposes
10 as State's 16. Do you recognize this?

11 A Yes sir, turquoise bicycle, yes sir..

12 Q Is that the same bicycle that you observed December
13 23rd?

14 A To the best of my knowledge, yes sir.

15 Q All right. Tell us what happened, there are other
16 units on the scene?

17 A Yes, sir. The officers were, like I said, were past,
18 they were a couple of houses past. They see me starting
19 chasing the suspect or Mr. Maybin and they begin to start
20 chasing as well. Officer Mercer and one of the other
21 officers get in the patrol car and we are trying to just
22 apprehend the guy.

23 Q So you are on foot?

24 A I am on foot and another officer is on foot and I am
25 actually trying to run down the bicycle. And then once I

1 see he is basically leaving is when I run back to my
2 patrol car.

3 Q And what direction?

4 A He is headed towards Crossing Street. If I can show
5 you again. Basically the way I came in.

6 Q Is that individual you saw on that bicycle in court
7 today?

8 A Yes, sir.

9 Q Can you identify him for the jury?

10 A Yes, sir. That is Mr. Maybin sitting beside Mr.
11 Verner.

12 Q About how close were you?

13 A Approximately from me to you to where the bicycle is
14 now.

15 Q 15 feet?

16 A 15 to 20 feet roughly.

17 Q What time of day was it when you were dispatched out
18 there?

19 A Early afternoon.

20 Q Daylight?

21 A Yes sir, daylight. It was cold and rainy.

22 Q December 23rd?

23 A Yes.

24 Q Did you notice anything in Mr. Maybin's hands,
25 anything like that?

1 A No, sir. He was just, I mean aggressively pedaling
2 that bicycle and everything happened so fast and I am
3 trying to run after him. And coming around I didn't
4 recognize or see anything in his hands.

5 Q What kind of clothes do you recall him wearing?

6 A I want to say that he had on a dark jacket and it was
7 layered, he had a layer of clothing on. There was more
8 than one layer of clothing on him. He is not a real big
9 individual but you could tell the bulkiness of the
10 clothing that there was more than one layer of clothes.

11 Q Do you attempt to run him down on foot?

12 A Yes, sir.

13 Q About how long did you try to chase him down on foot?

14 A Probably 20 yards. Once he hit the sidewalk, once he
15 got out of the grass, again, like I said, he was
16 accelerating pretty fast. Once he hit the sidewalk there
17 was just no chance. That is why I went toward my patrol
18 car.

19 Q Did other units continue to pursue on foot?

20 A Yes, sir.

21 Q What officer continued on foot?

22 A Patrolman O'dell.

23 Q Teal O'dell?

24 A Yes, sir.

25 Q Was Mr. Maybin taken into custody at that time?

1 A No, sir. We weren't able to locate Mr. Maybin.

2 Q Did you find any, did you find the bicycle or
3 anything like that?

4 A Yes, sir. Mr. Maybin had gotten away from us whether
5 or not at the end of Crossing Street and then we lost him
6 at the intersection of Crossing Street, if I can show
7 again on the map.

8 Q Sure.

9 A I basically stopped running through here. Patrolman
10 O'dell continued to chase, I got on the patrol car, like I
11 said was in this area. Mr. Maybin, the bicycle was found
12 in this area and Mr. Maybin was walking in this wooded
13 area.

14 Q And point to where the bicycle was recovered?

15 A It was recovered in this wooded area.

16 Q And that is when you lost Mr. Maybin, in the wooded
17 area?

18 A Yes, sir. In this wooded area here.

19 Q Did y'all set up a perimeter?

20 A Yes, we did. We searched the area, all through the
21 area. We had patrol cars roaming through the area and
22 never could make any more contact with Mr. Maybin.

23 Q You can take a seat, Mr. Malloy. I guess,
24 approximately what time are you being dispatched. Do you
25 keep records?

1 A Yes, sir. Can I refer to my report?

2 Q Yes sir, absolutely.

3 A The call actually came in at 1:10 and the first unit
4 arrived at 1:12 which is two minutes later. And that is
5 early afternoon.

6 Q Was that the extent of your role in this case?

7 A Basically we set up a perimeter and continued to
8 search the area for probably another, we didn't end the
9 call until 2:20 which gives us another hour of searching
10 for Mr. Maybin before we decided to cancel that portion of
11 it. That was the end of my role in the case.

12 Q Was the homeowner on the scene?

13 A I don't know who the gentleman was that was pointing
14 towards the back of the house. I don't know if he is the
15 homeowner or the, just a concerned citizen. I don't know
16 who, what his role was.

17 Q So your role is just limited to looking for the
18 suspect?

19 A I was actually the shift supervisor so I had to
20 resume duties of other areas of the city as well.

21 Q No further questions. Please answer any questions
22 Mr. Verner may have for you.

23 THE COURT: Mr. Verner, cross-examination.

24 MR. VERNER: Yes, Your Honor. Thank you.

25 CROSS-EXAMINATION

1 By Mr. Verner:

2 Q Officer Malloy, would you put on the aerial, please.
3 On the other side of Crossing Street where you say he was
4 running to, what is across Crossing Street from the Hiller
5 Street side?

6 A We have a park.

7 Q That would be the West End Park?

8 A The actual West End Park would be a block or two
9 further back. This is more of an open area where we have
10 a walking path.

11 Q There are some trees against the road but for the
12 most part that is a big open area with a creek down the
13 middle of it, right?

14 A Yes, sir. That is again about 50 yards away from
15 where these trees are located. That open area is about 50
16 to 75 yards away from where these trees are located.

17 Q Were there tennis courts and basketball courts and
18 playground equipment?

19 A No, sir. That would be, again, approximately two
20 blocks to the, East of our location. It is not actually
21 on the overhead map that we see.

22 Q And can you look at this what I am handing you. Can
23 you orient yourself from that one?

24 A Yes, sir.

25 Q The open area appears to start right behind the back

1 of those houses, there are some trees by the houses but
2 that is when it opens up to a big field?

3 A This area, sir, this photograph and this photograph,
4 if you can see, the trees are move fuller in this
5 particular photograph than they are in this one. It does
6 open up, like you say, into the field leading to the
7 walking path into the creek.

8 Q But there is some distance of trees you have to get
9 through?

10 A Yes, sir. Yes, sir.

11 Q And I think you testified it was cold and rainy?

12 A Yes, sir. Cold and drizzly.

13 Q Were you wearing a cap?

14 A No, sir. No, sir.

15 Q Was the suspect that you chased wearing anything on
16 his head?

17 A I can't recall.

18 Q But it would have been a day where you would have
19 worn a hat ordinarily cold and rainy?

20 A I don't wear a hat, Mr. Verner. Other officers may
21 wear these ball caps but I don't wear one..

22 Q You were blessed with a thick head of hair?

23 A Yes, sir.

24 Q Not all of us have that. Again, just for the record
25 for whoever is writing this down, estimate the distance

1 when you started chasing the man on the bicycle?

2 A I would approximately say probably 7 to 10 yards.

3 Q Okay. So that is about 20 to 30 feet?

4 A 20 to 30 feet.

5 Q Now, it has been a while since I rode a bicycle but
6 typically when you first get on that bicycle and you are
7 trying to go fast, for the first couple of yards it takes
8 you a while to build up momentum with a bicycle, right?

9 A Yes, sir.

10 Q And for particularly when it is a grassy area?

11 A Yes.

12 Q And let me clarify, when you first saw the man pass
13 you on the bicycle were you standing on the front side of
14 the home or the back side of the home?

15 A We basically met coming around the home, in the
16 middle of the home on that, on the left side. He was
17 coming around and it actually sort of startled me because
18 I wasn't expecting a bicycle to come speeding around the
19 back side of the home as I was coming around the same side
20 of the home. And again, that angle that we had, I didn't
21 have a good enough angle to stop him. He was wider out
22 than I was and he was able to continue on further out.

23 Q And he wasn't just starting pedaling it at that time?

24 A No, sir. He was aggressively pedaling that bicycle.

25 Q Did you say anything to him?

1 A Yes, I was yelling stop, police. You know, stop.

2 Q Did he say anything to you?

3 A No, sir.

4 Q His intention was just to ride far and fast away from
5 you?

6 A Yes, sir.

7 Q I think for the Solicitor, you said there was nothing
8 in his hands?

9 A I don't recall seeing anything in his hands.

10 Q Were there any bags hanging down or anything you
11 remember hanging down?

12 A No, sir. Nothing of that sort caught my attention.
13 The only thing that caught my attention more was the bulky
14 clothing.

15 Q And you saw Officer O'dell starting to chasing him
16 too?

17 A Officer O'dell came past me when I was around the
18 house and they heard me yelling. And he came running down
19 the sidewalk in front of the house.

20 Q Was Officer O'dell chasing him before you saw him
21 pass you?

22 A When he heard me yelling as we were coming around the
23 house--

24 Q Who is the he you are talking about?

25 A Mr. Maybin. Mr. Maybin and I met coming around the

1 house and I was yelling for him to stop Officer O'dell, I
2 assuming, the thing I knew was running back past me down
3 the sidewalk because he had already made it to the
4 sidewalk as well.

5 Q That is my question. Was he already pursuing the man
6 on the bicycle at the time you encountered him or he
7 didn't start until you--

8 A --he was coming initially to my command or to my
9 voice, hearing my voice. And then once he saw the
10 gentleman, Mr. Maybin on the bicycle then he began
11 pursuing him down the sidewalk.

12 Q And I think you said Officer O'dell started his
13 pursuit from the far side of the home, the other side of
14 the home that you were on?

15 A Yes, sir.

16 Q From the front on the sidewalk side or from the back?

17 A The front side.

18 Q So he would have had to pass--

19 A Well, I am assuming in front, Mr. Verner, like I
20 said, that patrol car was ahead of me, a couple of houses
21 ahead me. And when I got and the gentleman was pointing
22 behind there, I went around and I don't know where the
23 other officers, where their positions were exactly.

24 Q Do you remember Officer O'dell running past you?

25 A Yes, sir.

1 Q So he is a faster man than you are?

2 A A lot younger too, sir.

3 Q And I think you said at some point you stopped
4 running and just, it was up to Officer O'dell to catch the
5 man--

6 A Well, I ran back to my patrol car to gain advantage.

7 Q And you also have got the benefit of the radio and
8 did you call other units?

9 A Other units were already in the area.

10 Q Do you recall any other officers who were there on
11 the scene?

12 A During this time Officer O'dell was in our field
13 training program which is our FTO program and he was with
14 Corporal Richard Mercer. He was actually the driver of
15 the, or the commanding officer of that first vehicle.
16 There were a two-man unit that pulled up to that
17 residence, on the other side of the resident first.

18 Q Now, were you part of the processing of the scene for
19 evidence or did you go back on to patrol pretty much
20 after?

21 A No, what I did, like I said, the shift supervisor,
22 after the hour and fifteen minutes we were searching for
23 him, basically turned it over to the investigators and the
24 two initial officers which would be Officer O'dell and
25 Officer Mercer. I resumed the duties of shift supervisor

1 throughout the city with other officers.

2 Q Did you go down to the area where the bicycle was
3 found or did you just rely on what Officer O'dell in the
4 general area where he said he found it?

5 A I was behind the house. I had actually taken my
6 patrol car in this area that you said was open that we
7 discussed.

8 Q Yes, sir.

9 A I had driven my patrol car down through there all the
10 way into the, this area we are talking about here, this
11 open area.

12 Q When the man, the suspect got away you got out of
13 your patrol car and then you started driving roads in that
14 general area?

15 A Yes, sir. I actually got on the walking track and
16 actually got into the general area where the walking track
17 and the creek is at.

18 Q And I assume there were other patrol cars doing the
19 same thing?

20 A Other cars in the area as well.

21 Q Did you ever come back to the house to continue the
22 investigation?

23 A No, sir.

24 Q Okay. At some point you called off the search with
25 the suspect and then you went back on regular patrol?

1 A Basically the case was turned over then to the
2 supervisor, excuse me, to the investigators which was
3 Lieutenant Goodman and Sergeant Moore who were also out
4 working.

5 Q And then once the actual investigators come on the
6 scene, they take over the case and you go back to regular
7 patrolling?

8 A Well, they were there as well as responding perimeter
9 officers as well at the time.

10 Q Did you have anything more to do with this case after
11 December 23rd?

12 A No, sir. No, sir.

13 Q When you arrived at the house were the lights and
14 siren on on the vehicle or is this where you would have
15 arrived without?

16 A This would be where we would not have lights and
17 sirens on in our vehicle. We want to come in in a self
18 mode, you know, in this case try to apprehended someone.

19 Q Do you recall whether you would have ordinarily, I
20 think you would have been using your windshield wipers on
21 this day?

22 A I think if they were they were on intermittent, it
23 wasn't raining, it was more of a drizzle.

24 Q Do you recall whether it had been raining or clear
25 that day, or how long it had been raining?

1 A No sir, I can't recall.

2 Q Ordinarily on any kind of arrest or significant
3 incident that the police is involved in, ordinarily they
4 will go back towards the end of their shift or at some
5 point and write a report on what happened that day?

6 A I was the supervisor that approved this report that
7 was written. I actually reviewed this report.

8 Q But before it is submitted you proof read it to make
9 sure that is, if you have any questions about it you will
10 ask the officers?

11 A The only thing that we, when we proof read the report
12 we are checking for grammar, we are checking for mistakes,
13 we are not offering the report at all, we are just
14 checking, just basically the report is factual.

15 Q If you had independent evidence to offer you would be
16 able to write your own report. Often times officers will,
17 several officers will do a report for one particular file?

18 A Yes, sir. They are called supplemental reports, is
19 what Mr. Verner is asking. We have the initial report
20 that was written by Corporal Mercer and then you will have
21 other officers that would write supplemental reports,
22 their involvement in the case.

23 Q And are these reports typically done the day of the
24 incident or fairly close in time?

25 A Yes, sir.

1 Q Okay.

2 MR. VERNER: May I approach, Your Honor?

3 THE COURT: You sure can.

4 Q The last two sentences, can you read the last two
5 sentences of the report you approved?

6 A The suspect was located, was not located but a
7 possible identity was provided due to Cromer sees Sterling
8 Maybin in the area recently, referred to case numbers
9 2014-11160 and 2014-11161 which were two prior property
10 crimes in that same area, on that same street.

11 Q But the report indicates that Mr. Cromer said he had
12 seen Sterling Maybin on his property two days beforehand?

13 A That was from a prior report, yes sir. The reason
14 why we had so many officers--

15 MR. VERNER: Your Honor,--

16 THE COURT: He can explain his answer, go ahead.

17 A The reason why we had so many officers to respond to
18 this is, this is the third incident that we had of theft
19 on that street in the last, in that two-day span,
20 three-day span.

21 MR. VERNER: And, Your Honor, that is not in relation
22 to any kind of question I have asked.

23 A That was the verification of the case numbers that I
24 read.

25 MR. VERNER: I would ask that be stricken.

1 THE COURT: I deny your request.

2 Q On the two reports that you just mentioned, was
3 Sterling Maybin arrested on the other two crimes that you
4 are talking about?

5 A If I can refer to those two reports, sir.

6 Q You got them?

7 A Yes sir, I do. The two reports doesn't show that Mr.
8 Maybin was arrested on either one of these reports.

9 Q Okay. Thank you. Officer, unless the Prosecutor has
10 any more questions.

11 THE COURT: Any redirect?

12 MR. TAYLOR: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 By Mr. Daniel:

15 Q So you had reports on file prior to this December
16 23rd?

17 A Yes sir, we do.

18 Q And that involves Sterling Maybin?

19 A Yes, sir.

20 Q So that was one of the factors in identifying him?

21 A Yes sir, it was.

22 MR. VERNER: Your Honor, I may have missed something.
23 I object, but the officer testified that it was not
24 Sterling Maybin.

25 THE COURT: Let's do this and we are probably going

1 to be finishing up for the day fairly soon. But, Mr.
2 Foreman and ladies and gentlemen of the jury, I am going
3 to ask you to go to the jury room for just a moment and
4 let me discuss this matter a little further with the
5 lawyers. We will get you back out very soon.

6 (Whereupon, the jury was excused from open court at
7 approximately 5:00 p.m.)

8 THE COURT: Okay, Mr. Verner, you want to state your
9 objection for the record.

10 MR. VERNER: Your Honor, respectfully I would ask
11 the, if the State is intending to ask questions about
12 whether Sterling Maybin was identified as a suspect of the
13 other two reports. And that was partly the ground I
14 objected in the past was that this was going to open up
15 Lyles type prior bad acts evidence. I did ask the
16 question but the, it was at the officer, in my opinion he
17 went beyond the question in talking about the report. I
18 am not aware of any prior reports, Your Honor. Mr.
19 Sterling may have been listed as a suspect in this case.

20 THE COURT: Solicitor, what do you intend to elicit
21 through this witness?

22 MR. TAYLOR: Well, Your Honor, that was one of the
23 factors, that is one of the factors used to identify
24 Sterling Maybin. I know this officer had independent
25 knowledge. Mr. Verner ask him to read verbatim this line

1 of this incident report. I am not going beyond the scope
2 of his cross.

3 MR. VERNER: Do those prior reports indicate that
4 Sterling Maybin is a suspect. Because the question
5 clearly implies that Sterling Maybin was a suspect of the
6 prior two thefts.

7 THE COURT: I think that was the question. I am not
8 sure if the officer gave an answer.

9 MR. VERNER: That's correct and the officer didn't.

10 MR. TAYLOR: We would like to proffer that, Your
11 Honor, then because he didn't get a chance to respond.

12 THE COURT: All right. Let's go ahead, let's have
13 some in-camera testimony and let's see exactly where they
14 are coming from. I am a little vague at this point. You
15 may proceed, Solicitor.

16 In-camera Testimony by Mr. Daniel

17 Q Mr. Verner had you read the last lines of the
18 incident report in this case?

19 A Yes, sir.

20 THE COURT: Could you read that again.

21 COURT REPORTER: Can you read it slow.

22 MR. MALLOY: Yes, Ma'am.

23 A He asked me to read the last two lines. The suspect
24 was not located but a possible identity was provided due
25 to Cromer seeing Sterling Maybin in the area recently.

1 And it referenced the case numbers 2014-11160 and
2 2014-11161.

3 THE COURT: All right.

4 Q And do you have those two reports with you?

5 A Yes sir, I do.

6 Q And who is the listed suspect in those reports?

7 A Sterling Maybin.

8 Q And what is the nature of these reports?

9 A 11161 actually happened on the same day of December
10 23rd at 10:16 or 10:28 a.m., where Mr. Cromer, let me read
11 this report. Where Mr. Cromer informed Mr. Glenn that he
12 had noticed Sterling Maybin walking through his yard and
13 Mr. Maybin is known for stealing items previously. Mr.
14 Cromer informed Mr. Glenn to check to make sure he still
15 had property. After receiving this information Mr. Glenn
16 inventoried the items and noticed that socket sets were
17 missing.

18 Q So Sam Glenn was the complainant and victim in that
19 report?

20 A He was the complainant in this report. Yes sir,
21 complainant and victim by the report.

22 Q What is that case number on that one you just read?

23 A 11161.

24 Q And read the nature of 11160?

25 A The nature of 11160 is, the heading is, stolen tools

1 and lawn equipment. The incident location is Hiller
2 Street. The complainant is Gary Darnell Quarles. He has
3 also shown to the victim and that report shows that Mr.
4 Quarles informed the officer that he was missing tools
5 from his truck and thought that his son may have taken the
6 items but did not worry about them. Mr. Quarles later
7 informed by neighbor to look out for his items because
8 they had noticed that Mr. Maybin was in the area walking
9 around and known Mr. Maybin to have a previous history
10 consisting of larceny. Mr. Quarles then called his son to
11 make sure his tools had not been stolen. His son informed
12 him that he had not taken his tools. Mr. Quarles
13 inventoried his items further and then noticed that his
14 leather case that held wrenches was stolen along with
15 Stanley tool box, two socket sets that had GQ initials on
16 them and a steel backpack blower that had a broken cable.

17 MR. VERNER: During proffer can I just ask what time
18 these, both of these reports were made by law enforcement,
19 what time law enforcement actually entered the report.

20 A Both of these reports were made, all three of these
21 reports were actually made on December the 23rd.

22 Q And what time?

23 A 10:28 on 61.

24 Q That is what time they are alleging the larceny
25 happened?

1 A No, sir. The alleged larceny, let me back up then,
2 sir. This is from the time that the officers were given,
3 from 12/21, at 2:00 o'clock in the afternoon to 12/23, at
4 10:49 a.m., is when they cleared the call.

5 Q So it was called in early?

6 A It was actually called in at 10:28 and he is saying
7 from this time period, from two days prior to that or a
8 day and a half prior to that to that morning is when he
9 missed these items. He realized his items were missing.
10 Or in this particular case, this is where they seen Mr.
11 Maybin walking through the neighborhood and missing these
12 items which would be the socket set missing from Mr.
13 Glenn. And the officer took this report which was
14 actually next door, this was at , this is at
15 Hiller Street. The officers took the same report, or took
16 another report from a different complainant and victim,
17 Mr. Gary Darnell Quarles. At the same time, they
18 completed both of these reports at the same time.

19 Q That don't suggest that law enforcement was actually
20 on Hiller Street at 10:30 that morning?

21 A They arrived at 10:34, yes sir. That was prior to
22 the initial call that we got where we found the bicycle,
23 the reason why we are here today.

24 Q Okay.

25 MR. VERNER: Your Honor, I would note that this

1 reports says, that in both cases the victims were later
2 informed by law enforcement that Mr. Maybin had been, or
3 by neighbors, that would be Mr. Cromer or Mr. Glenn, that
4 Mr. Maybin had been in the area.

5 THE COURT: Before you make the argument let's see
6 where, you got any other examination in-camera of this
7 witness?

8 MR. TAYLOR: No sir, Your Honor. I guess I only
9 mentioned because they were, Mr. Verner had him read the
10 case numbers.. Actually Mr. Cromer, we can proffer his
11 testimony because, Mr. Cromer will testify about seeing
12 Mr. Maybin two days prior to this December 23rd date.

13 THE COURT: Is it the State's intention of giving, of
14 getting in evidence about these other break-ins under a
15 Lyle analysis.. Is that the intention of the State.

16 MR. VERNER: Respectfully they have already done it
17 through the testimony of the officer, they have already
18 testified that there were two other larcenies in the area.

19 THE COURT: Did he answer before we excused the jury,
20 if he answered that the defendant was a suspect in both
21 cases.

22 MR. VERNER: I think the Court is right, that was
23 when I objected when the State asked--

24 THE COURT: I don't think the answer came out.

25 MR. VERNER: No, sir. It is not a very long hop to

1 lead to that conclusion at this point and time.

2 THE COURT: Let's go back. Solicitor, what is the
3 position of the State.

4 MR. TAYLOR: Your Honor, I guess it just puts it in
5 context that you have three neighbors on Hiller Street and
6 all of their houses have been tampered with the same day.
7 That explains why officers were in the area and responded
8 so quickly I guess.

9 THE COURT: But is it the position of the State that
10 you are wanting to get in that the defendant is a suspect
11 in those other cases?

12 MR. TAYLOR: No, sir.

13 THE COURT: Okay. I don't think you could. Just
14 being seen in the area in and of itself I don't think
15 would be sufficient to get that in under a Lyle analysis.
16 So, if we leave it where it is you still have a problem or
17 an objection, Mr. Verner, concerning these other two
18 cases. You did ask him to read and they were about two
19 other cases.

20 MR. VERNER: I opened the door but that was only
21 after my objection that the officer should not have been
22 allowed to hear details of those prior incidents without
23 the question being elicited from him about the nature of
24 both priors. Do you remember there was some pause, Your
25 Honor, and then the officer on his own started describing

1 the nature of what those two prior incidents were. I
2 objected that that was not my question. It was allowed
3 in. So, now the jury knows that there were two priors,
4 two other thefts in the neighborhood. The only fair
5 conjecture the jury may have, because he said this was why
6 we think Sterling Maybin was a criminal suspect in this
7 one because of these two other larcenies.

8 THE COURT: I don't remember him saying that.

9 MR. VERNER: What is that, Judge?

10 THE COURT: Did the officer say that we have
11 identified the defendant in this case because of those
12 other two prior cases. I don't remember the officer
13 saying that.

14 MR. TAYLOR: No, sir. He said it was a factor, Your
15 Honor, but he, the officer has independent knowledge of
16 Sterling Maybin.

17 THE COURT: Without giving details the officer did
18 say, I had prior knowledge or whatever with the defendant.
19 Okay. But I haven't heard anything from this officer and
20 you guys correct me if I am wrong, I haven't heard
21 anything from this officer to point the defendant to these
22 other two break-ins. I haven't heard that. Now, you tell
23 me if I am wrong.

24 MR. VERNER: I don't think there is any other way,
25 the only inference--

1 THE COURT: I am not talking about inferences. Okay.
2 I am not talking about inferences. Has there been any
3 testimony from this officer that ties the defendant in to
4 these other two break-ins so far.

5 MR. VERNER: Not without the inference that it is a
6 related factor. No, Your Honor, but I am arguing the
7 inference, it can only lead to one. My solution, Your
8 Honor, is one of two things. I would move for a mistrial.
9 I don't know how the jury can disregard that he was the
10 other suspect in the other two. The alternative is, I
11 would intend to clear it up by arguing that the suspect in
12 the other two larcenies was only identified after this
13 burglary, after they had identified Sterling Maybin as a
14 suspect in the burglary. And this is what the report
15 says, at a later time people said Sterling Maybin had been
16 in the, I think the report said in the neighborhood, it is
17 not law enforcement. But it says at a later time someone
18 had told the, both property owners that Sterling Maybin
19 had been in the area and that is how he was identified as
20 a suspect in these other two crimes.

21 THE COURT: I think what I want to do, I need to
22 logistically discuss this with the Court Reporter, I am
23 not sure if she is going to be here with us tomorrow or
24 not. Because I may want to review this officer's
25 testimony leading up to the objection to see specifically

1 what he has said and to determine whether or not there is
2 enough prejudicial effect that would even justify me
3 considering a mistrial. What I want to avoid is
4 associating him, the defendant with these other break-ins
5 because of all they have got is he was seen in the area,
6 that in and of itself would not come in, or could not come
7 in. I think I will go ahead and recess for today and see
8 if I can review his testimony and then we can deal with it
9 first thing in the morning concerning your motion for a
10 mistrial. And your alternative, Mr. Verner?

11 MR. VERNER: Your Honor, I think I can probably
12 fairly simply clear it up that the officer said that there
13 was reports of two other larcenies in the area on the
14 immediate street, I think. I think a fair reading of the
15 incident report was Sterling Maybin was not identified as
16 a suspect in the two larcenies until after the police had
17 already identified him as a suspect in the burglary. And
18 they went ahead and said, well, these are two adjoining
19 houses, he is likely the suspect and, but we never had
20 enough evidence to charge him.

21 THE COURT: Do I understand that you are now
22 withdrawing your motion for a mistrial or are you still
23 have that on the table?

24 MR. VERNER: No, Your Honor. If the Court doesn't
25 miss-try it that would be how I would intend to cure it by

1 somebody told the people at a later time that Sterling
2 Maybin was in the area.

3 THE COURT: I think all I can do at this stage is go
4 ahead and recess for the day. The Court Reporter will get
5 me the testimony and let me review it and we will go from
6 there. Solicitor, you want to throw anything in the
7 midst?

8 MR. DANIEL: No sir, Your Honor. That last sentence,
9 the suspect was not located but a possible identity was
10 provided due to seeing Sterling Maybin in the area. And
11 it says see cases and then the case numbers. Mr. Verner
12 asked him to read that and I was just, I had to elaborate
13 and that is why I questioned him further on that.

14 THE COURT: And I want a copy of that. We are going
15 to go ahead and bring the jury out and recess for the
16 evening. Bring the jury out, please, ma'am.

17 (Whereupon, the jury came into open court at
18 approximately 5:17 p.m.)

19 THE COURT: Let the record reflect the jury is back
20 in. Mr. Foreman and ladies and gentlemen of the jury,
21 there are some legal matters that I am going to need to
22 deal with and it is probably a good time to go ahead and
23 recess for today as opposed to keeping you back there for
24 me to deal with those legal issues. So, we are going to
25 go ahead and break for the day and ask that you be back at

1 9:30 promptly in the morning. Allow yourself enough time
2 where you can be back on time, mind you to leave your cell
3 phones in the car. And you may be questioned or quizzed
4 by family or friends about what has gone on today. You
5 can tell them you are a member of the trial jury but leave
6 it at that. Don't discuss anything related to this case
7 with anybody that you do come into contact with this
8 afternoon and this evening. And we will see you back in
9 the morning at 9:30. Let me go ahead and tell you, I have
10 a commitment in Columbia or I have got to leave at 12:00
11 so we are going to work real hard from 9:30 up to about
12 12:00 or 12:15 at the latest and then we will have to
13 break for the day. So if you need to make any plans or
14 anything for tomorrow afternoon feel free to because you
15 will be able to. This is a commitment that I can't get
16 out of. Okay. See you in the morning, have a good
17 evening.

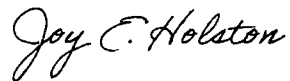
18 (Whereupon, the jury was excused from open court for
19 the day at approximately 5:20 p.m.)

20 THE COURT: Officer, just remind you you are in the
21 middle of your testimony, you can't talk to anybody about
22 it. See you in the morning.

23 (Whereupon, the trial will resume the next morning at
24 9:30.)

25 (Maryann Nevers was the Court Reporter for July 9,

1 2015, for the remainder of the trial.)
2 (END OF REQUESTED PARTIAL TRANSCRIPT)
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 partial transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 8th day of July, 2015.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 June 26, 2016
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF NEWBERRY	) Case No(s): 2015GS3600121;
	) 2015GS3600122
State of South Carolina,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Sterling Maybin,	)
	)
Defendant.	)
	)

July 9 - 10, 2015
Newberry, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

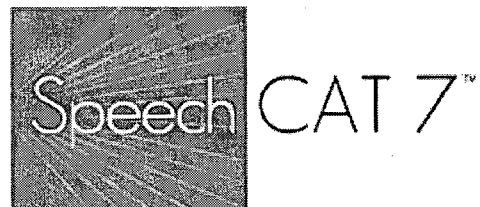
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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 9th day of July, 2015 at approximately 10:26 a.m.)

THE COURT: Okay. We are back on the record in the State of South Carolina versus Sterling Maybin, uh, case. We concluded yesterday, gentlemen, by, uh, Mr. Verner, you had made a motion for a mistrial based upon some testimony that came out yesterday. Uh, I was able to obtain a partial transcript of the, uh, cross-examination and, uh, redirect or part of the redirect before we actually shut down for the night; and, uh, the chronology of what took place, Mr. Verner, is you did ask, uh, this officer to read those two sentences in the incident report about the other two cases. And it was after that that I allowed him to explain his answer. You disagreed that it was a proper explanation of an answer, but I allowed him to do that. Uh, and his explanation that you objected to was just a comment of why there were so many officers in the area on the 23rd, because of some prior thefts on that street. And then, uh, you asked him whether or not Mr. Maybin had been arrested on those other two

1 cases. He indicated that he had not.

2 Hence, Mr. Daniel conducted his redirect
3 and asked did those prior, uh, reports or prior
4 -- two other cases involve the defendant. The
5 officer stated that they did. It was at that
6 time that I went ahead and excused the jury and
7 then we got into a little more dialog and some
8 proffered testimony after that.

9 What I'm going to do is deny your motion
10 for a mistrial. I believe to some extent that
11 you possibly opened the door, uh, for the
12 redirect to come in. But I'm going to prohibit
13 any further testimony concerning these other
14 prior cases. I think I mentioned yesterday that
15 -- the State wasn't trying to get that in under
16 Lyle. I did not believe there was sufficient
17 evidence to get these other break-ins in under
18 Lyle as it relates to the, uh, defendant.

19 So we're just going to kind of shut the
20 door down, nothing further about these other
21 two cases. Now, nothing prohibits, the State, I
22 think through maybe Mr. Cromer, from testifying
23 that he saw the defendant in the area two days
24 prior. I don't think that I can prevent them
25 from getting that in. But I don't want any

1 further testimony from this officer or anybody
2 else relating to these other two cases and
3 whatever, uh, involvement or suspicion of
4 involvement that maybe the police has
5 concerning the defendant in these other two
6 cases. So in effect, I'm splitting the baby.
7 And, uh, that's my ruling. Okay?

8 **MR. VERNER:** Judge, I understand that to
9 be -- my intent -- I do believe that the jury's
10 heard enough of it where there are two other
11 larcenies from the neighbors that he's a
12 suspect in. I know they have to make the
13 inference that he's a suspect, but I do submit
14 that's the only inference they can make.

15 I would intend to -- from my review of
16 those incident reports, the officer said, well,
17 why is he a suspect on the burglary case he's
18 on trial for it today. The officer said, well,
19 he's also a suspect in these two related petty
20 larcenies of neighbors. And the report
21 indicates to me, well, why is he a suspect in
22 those two petty larcenies? Because he's a
23 suspect in this burglary today. That's the only
24 evidence they have is basically Mr. Cromer told
25 the neighbors, well, you know, Sterling Maybin

1 got arrested for stealing stuff from me and
2 that's why he's listed as a suspect.

3 It's kind of a catch-22. He's a suspect in
4 case A because he's a suspect in case B and C.
5 He's a suspect in case B and C because he's a
6 suspect in case A. That's the only evidence. I
7 would try to, uh, argue that to the jury
8 because I do think they already heard enough
9 where it's clear he's a suspect in two
10 neighboring petty larcenies.

11 **THE COURT:** Well, you know, if you want to
12 go down that -- potentially -- I'm certainly
13 not trying to tell you how to try your case
14 because you are a good enough lawyer that you
15 don't need any advice from me, but that could
16 be a slippery slope for you.

17 **MR. VERNER:** I understand.

18 **THE COURT:** But, uh, again, you are a good
19 enough lawyer you can go in whatever direction
20 you need to go in. Of course, the prohibition
21 as far as these other two cases that he's a
22 suspect would be a prohibition against the
23 State for bringing that out. Now, if you want
24 to get into it in whatever fashion, so be it
25 and let's see what happens.

1 I just felt like that possibly the State
2 wouldn't have even mentioned the fact of the
3 other two cases if you had not -- I'm not being
4 critical, but I'm just stating that, in my
5 opinion, they probably wouldn't have got into
6 it if you had not asked the officer, uh, to
7 read those last two sentences of the incident
8 report which alludes to these other two cases.

9 **MR. VERNER:** Well, yes, sir. But the, uh,
10 -- I'm not going to argue with the Court. I
11 understand what the Court's ruling is.

12 **THE COURT:** Okay. All right. So let's, uh,
13 -- anything further before we bring the jury
14 out?

15 **MR. DANIEL:** Well, Your Honor, just
16 briefly. What Mr. Verner had Officer Malloy
17 publish yesterday did say, uh, he read in front
18 of the jury possible identity was provided
19 through Cromer being seen in the area.

20 **THE COURT:** Right. Well, Maybin being seen
21 in the area.

22 **MR. DANIEL:** Excuse me. Maybin being seen
23 in the area.

24 **THE COURT:** Right.

25 **MR. DANIEL:** I guess it seems to be

1 Officer Malloy's testimony was that he
2 recognized the face, just didn't know the name.
3 I believe I asked Officer Malloy was that a
4 factor in how you identified him in front of
5 the jury. That's how the name came up, Sterling
6 Maybin. Officer Malloy had to put a face with
7 the name -- uh, had to put a name with the
8 face. Excuse me.

9 **THE COURT:** Right. He testified on direct
10 that he recognized him and it was one of those
11 situations where I know that guy, know that
12 guy, just can't think of his name. And then at
13 some point in time, he either thought of the
14 name or was told the name.

15 **MR. DANIEL:** And if I ask a question the
16 reason I knew the name is because Sterling
17 Maybin had been seen in the area, is that going
18 to violate the court's prohibition? That
19 question, not even getting into specifics?

20 **MR. VERNER:** I don't have a problem with
21 that, Judge.

22 **THE COURT:** All right. Let's bring the
23 jury out understanding that I probably need to
24 leave here about -- around 12:15. All right.

25 Madam Bailiff.

1 **(WHEREUPON,** the jury enters at approximately
2 10:32 a.m.)

3 **THE COURT:** Let the record reflect the
4 jury's back in.

5 Mr. Foreman, Ladies and Gentlemen of the
6 jury, thank you for your patience. I don't want
7 the jury to think that we've just been kind of
8 sitting around drinking coffee and not doing
9 anything for the last hour. I had several
10 probation matters certainly unrelated to this
11 case that I had to deal with and we had to
12 touch on a couple of legal issues in this case
13 before we brought you out, so we've been
14 working. I've been signing some court orders
15 and some other things, so we have been working.
16 I appreciate your patience.

17 All right. Solicitor, you may proceed with
18 this witness who is still under oath.

19 **HAROLD MALLOY**

20 having previously been sworn, testifies:

21 **REDIRECT EXAMINATION**

22 **BY MR. DANIEL:**

23 **Q** Good morning, Officer Malloy. When we left
24 off, you were in the middle of your testimony. So
25 just to kind of refresh for everyone -- I don't want

1 to reiterate, but I kind of have to -- you were
2 responding to a call at Hiller Street on
3 December 23rd of last year?

4 A Yes, sir. We did.

5 Q Okay. And what was that call in reference
6 to?

7 A In reference to a larceny.

8 Q And your testimony yesterday, I believe,
9 was you did observe the suspect on the scene?

10 MR. VERNER: Your Honor, that's an
11 improper form of the question. He's not allowed
12 to restate the answers of the officer and then
13 get him to corroborate.

14 THE COURT: Right. Uh, I sustain the
15 object. I understand you're trying to kind of
16 bring everybody back up to speed where we were.
17 But try not to state the answer.

18 MR. DANIEL: Yes, sir.

19 BY MR. DANIEL:

20 Q Did you observe the suspect on the scene
21 when you responded to that call?

22 A Yes, I did.

23 Q All right. And a foot chase, uh, ensued?

24 A Yes, sir. There was.

25 Q Was the suspect on foot or a vehicle?

1 **A** No, sir. The suspect was on a bicycle.

2 **Q** Okay. And where did you first observe --

3 **THE COURT:** One second.

4 **(WHEREUPON, Plaintiff's Exhibit 17 is marked for**
5 **identification.)**

6 **BY MR. DANIEL:**

7 **Q** I'm going to hand you a photo. Do you
8 recognize this?

9 **A.** Yes, sir.

10 **Q** What is that?

11 **A** This is the, uh, aerial view of the Hiller
12 Street area.

13 **MR. DANIEL:** This has been marked for ID
14 purposes as State's -- State's number 17. Your
15 Honor, at this time, I offer State's number 17
16 into evidence.

17 **THE COURT:** Okay. What says the defense?

18 **MR. VERNER:** No objection.

19 **THE COURT:** All right. Without objection,
20 17 is in evidence.

21 **(WHEREUPON, Plaintiff's Exhibit 17 is admitted**
22 **into the record.)**

23 **BY MR. DANIEL:**

24 **Q** And, uh, with the Court's permission,
25 Officer, could you step down? We have it fed into the

1 TV here, some aerial footage.

2 A (Witness complies.)

3 Q Once again, describe how you arrived at the
4 location, your route and things of that nature.

5 A Okay. This is Crosson Street. I arrived on
6 Hiller Street from Crosson Street. I positioned my
7 patrol car in this area here. Uh, the complainant
8 that had called the police was motioning us in front
9 of the house and was motioning that there was a
10 suspect behind the house. The first positioned patrol
11 car was up the street a little further than mine. I
12 positioned myself here and begin to, uh, go around
13 this side of this house.

14 Q And where was the complainant standing?

15 A He was in the front area of the house up
16 here.

17 Q Okay. And where was the incident location
18 where the thefts --

19 A I'm assuming it was one of these houses
20 here.

21 Q Okay.

22 A All I know is I was being directed to the
23 back like there was someone in the back.

24 Q All right. And whereabouts did you first
25 observe the suspect?

1 **A** Coming around the width of this house, the
2 suspect comes around on a bicycle, peddling a bicycle
3 around through the side of the house. Basically, we
4 met around the side of the house.

5 **Q** Okay. And about -- distance-wise, how far
6 were you from the suspect?

7 **A** 20 to 30 feet.

8 **Q** Did you recognize the suspect?

9 **A** Yes.

10 **Q** Okay.

11 **A** I'd seen him before. I knew the suspect.

12 **Q** And did you -- you identified the suspect
13 yesterday in court, is that correct?

14 **A** Yes, I did.

15 **MR. DANIEL:** All right. Your Honor, at
16 this point, just for demonstrative purposes, we
17 can transition this aerial into a street view.

18 **THE COURT:** All right.

19 **BY MR. DANIEL:**

20 **Q** Now, take us through what you just said on
21 the aerial and you can direct --

22 **MR. VERNER:** I don't mean to interrupt,
23 Your Honor. Has this been marked into evidence?

24 **MR. DANIEL:** This is demonstrative.

25 **MR. VERNER:** Okay.

1 **MR. DANIEL:** This is a Google street
2 view. It's not something admit.

3 **THE WITNESS:** I stopped my patrol car
4 right here on Hiller Street before reaching
5 Floyd -- the intersection on Floyd Street. Then
6 I proceeded to go behind this house, the width
7 of this house. Uh, as I make my way back there,
8 we're trained to stay as close to the residence
9 as possible.

10 Mr. Maybin came around the house. You see
11 it's a wider area there. He came around the
12 house on the bicycle which created the distance
13 between he and I. I began to yell for him to
14 stop. He continued pedaling on. I think I said
15 yesterday he pedaled really aggressively. He was
16 pedaling really fast trying to get away. I was
17 yelling from him to stop. I gave a little foot
18 pursuit. He began to pull away from me as we're
19 going down Crosson Street.

20 **BY MR. DANIEL:**

21 **Q** Okay.

22 **A** The other officers --

23 **Q** Okay. Now --

24 **A** Uh-huh.

25 **Q** -- you said, does Mr. Maybin get on the

1 road with his bicycle?

2 **A** Mr. Maybin was still through this field
3 there.

4 **Q** Okay.

5 **A** I'm yelling for him to stop. As I'm running
6 back trying to cut him off and then realize I can't
7 cut him off, I'm heading back towards my patrol car.
8 Patrolman O'Dell, who was the house up, come running
9 down and saw -- once he heard me -- running in my
10 direction and began to pursue Mr. Maybin.

11 **Q** Okay. So you terminated your foot chase at
12 that point?

13 **A** To go to my patrol car, yes.

14 **Q** And you said Officer O'Dell --

15 **A** Yes.

16 **Q** --- then took the lead on foot?

17 **A** Yes, sir. He continued to pursue Mr.
18 Maybin.

19 **Q** That -- towards the direction of Crosson
20 Street?

21 **A** Which would be the opposite direction of my
22 patrol car across the street, yes.

23 **Q** Okay. And Officer O'Dell was the other unit
24 on -- he was with another unit on scene?

25 **A** He was, uh, with Corporal Mercer. They were

1 the first unit there on the scene, two houses up or
2 another house between myself and them.

3 Q Okay. All right. And did you lose sight of
4 Mr. Maybin at that point?

5 A Yes.

6 Q Okay. All right. So about where on this
7 street did you stop running?

8 A I basically stopped in the field area and
9 ran back towards my patrol car before reaching the
10 sidewalk.

11 Q Okay. All right. You can have a seat
12 Officer Malloy. At that point, was Officer O'Dell the
13 only person to have a line of sight on, uh, Mr.
14 Maybin?

15 A As far as I know, yes, sir.

16 Q Was he apprehended that day, Mr. Maybin?

17 A No, sir. He was not.

18 MR. DANIEL: No further questions.

19 THE COURT: Any recross, Mr. Daniel?

20 **RECROSS EXAMINATION**

21 **BY MR. VERNER:**

22 Q Officer Malloy, do you remember seeing
23 Officer O'Dell running down the sidewalk chasing him?

24
25 A I can't recall. He ran past me when he was

1 coming -- when he heard me yell, stop, police, he ran
2 past me. He and I basically just crossed and I went
3 back towards my patrol car.

4 Q Are you able to do that Google zoom?

5 If you would, step down Officer Malloy.

6 Can you pull up a little bit towards the
7 house and then turn towards the left? Okay. That's
8 great.

9 The -- there is a sideway on the street but
10 it kind of ends a block before?

11 A Well, it actually -- well, it actually ends
12 at the, uh, vacant lot between where Mr. Maybin was
13 traveling. And that lot there, that's where we
14 started back in this area. He had swung out wide.

15 Q Okay. What's the distance behind these
16 houses to the -- I know we're looking at the
17 photographs but is there kind of a distance between
18 the houses and the treeline behind there?

19 A Uh, you talking about the woodline behind
20 the house there?

21 Q Yes, sir.

22 A There is a distance. I'd probably say 50
23 yards.

24 Q Okay. So there is kind of a backyard area
25 before the woods?

1 **A** Yes, sir. Some of it -- some of it
2 fluctuates. Some may be closer to some back doors
3 than others.

4 **Q** And State's 6 would kind of show the gap
5 between the -- assuming this was Mr. Cromer's house,
6 there would be about that same distance of space
7 between there?

8 **A** Again, as you can see, some of them are
9 closer than others to the -- or further away than
10 others.

11 **Q** Okay. Can you go back to the aerial street
12 view, the Google map?

13 I'm just going to ask you -- the bicycle
14 was back here behind the houses?

15 **A** He came from behind this house.

16 **Q** Yes, sir. And when he got past, was he kind
17 of in --

18 **A** He was still in this area here coming
19 towards the road.

20 **Q** He was coming towards --

21 **A** Yes, sir. He met -- the width of the house
22 is where we met. He was coming around the house as I
23 was heading towards the back of the house.

24 **Q** Right. So he would have -- kind of a dirt
25 flat area. He crossed over to get to the --

1 **A** He continued traveling through here.

2 **Q** Okay. Did you ever see bikes skip to the
3 road or to the sidewalk?

4 **A** No, sir. Again, I was running back to my
5 car once I knew I couldn't gain any ground on him.

6 **Q** By the time he had gotten that far, he was
7 far enough where you couldn't have caught him so
8 that's when you went back ---

9 **A** Right.

10 **Q** But Officer O'Dell was still chasing him?

11 **A** Officer O'Dell continued down behind him.

12 **Q** And Officer O'Dell was pretty much either
13 running on the street or running on the sidewalk?

14 **A** Yes, sir. I couldn't tell you which he
15 used.

16 **Q** Okay. The -- thank you, Officer. You can
17 take your seat.

18 **A** (Witness complies.)

19 **Q** Now, you remember him wearing an oversized
20 jacket?

21 **A** I said he had on a dark jacket, but it
22 looked like he had layered clothing on.

23 **Q** Uh-huh.

24 **A** He's not a big man, but he appeared bigger
25 than he was that day.

1 **Q** Right. Did the jacket have a hood or was he
2 wearing a hoodie underneath?

3 **A** Not that I can recall.

4 **Q** Did you see him holding -- both hands were
5 on the handlebar?

6 **A** As far as I can recall, yes, sir.

7 **Q** And it's relatively flat, but it still
8 would have been kind of choppy -- going through those
9 back yards on a bicycle, it would still be a kind of
10 choppy ride?

11 **A** Yes, sir.

12 **Q** He never said anything to you or you other
13 than to stop?

14 **A** No, sir. We basically startled each other.
15 When he came around, he wasn't expecting me and I
16 certainly wasn't expecting him.

17 **Q** And he was already at full speed?

18 **A** Yes, sir.

19 **Q** Thank you, Officer Malloy.

20 **THE COURT:** Thank you, sir, for your
21 testimony. You can step down.

22 **MR. DANIEL:** Your Honor, I'd ask for
23 Officer Malloy to be excused.

24 **THE COURT:** Certainly. You are excused,
25 Officer. You're welcome to stay with us or

1 **A** Yes, sir.

2 **Q** Okay. Did you ever see him after the bike
3 was dropped?

4 **A** After he dropped the bike, then he fled
5 into that driveway into the woods.

6 **Q** Is that where you lost visual sight of him?

7 **A** Yes, sir.

8 **Q** Okay. Now, did you -- was Officer Mercer
9 also engaged in a foot chase at that point?

10 **A** No, sir.

11 **Q** So it was just two officers initially?

12 **A** Uh, yes, sir. At that point, uh, Lieutenant
13 Malloy had dropped back to get his vehicle.

14 **Q** And then you came back -- are you the one
15 who brought the bicycle back?

16 **A** Yes, sir. I believe myself and Officer
17 Mercer went back.

18 **Q** Who did you turn custody of the bicycle
19 over to?

20 **A** Uh, we put it into evidence. We were in a
21 FTO phase which is --

22 **Q** Which is field training.

23 **A** He was demonstrating how to collect
24 evidence ---

25 **Q** Okay.

1 Q Did you see him throw any items down?

2 A He was at the sidewalk by that point.

3 Q But you would have walked back along the
4 path -- is that something that you're trained to do
5 is when you're chasing somebody and you don't catch
6 him or even if you do, you will walk back to the
7 point of the chase along the same general path of the
8 chase?

9 A I walked back to the bicycle after we
10 basically chased him. We had a strong indication at
11 that time who it was.

12 Q Okay. Did you follow the route back to the
13 house?

14 A I stopped at the bicycle and I stood over
15 it to make sure the evidence didn't get tampered
16 with.

17 Q Is this while it was still laying in the
18 field?

19 A In the roadway.

20 Q In the roadway?

21 A Yes, sir.

22 Q At some point though, you would have picked
23 it up and pushed it back towards the house or did you
24 move the squad car down?

25 A We brought the squad car down.

1 Cromer.

2 **WALTER CROMER**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** Please state your name for
5 the record.

6 **THE WITNESS:** Walter Cromer.

7 **DIRECT EXAMINATION**

8 **BY MR. SCOTT:**

9 **Q** All right. Mr. Cromer, you are the
10 homeowner at Hiller?

11 **A** Correct.

12 **Q** All right. And they've talked about
13 December 23rd, 2014?

14 **A** Yes, sir.

15 **Q** Uh, Tell me -- we heard some testimony that
16 something happened at that house around one o'clock
17 in the afternoon on that date. Where would you have
18 been?

19 **A** I want to say, it was that Sunday. I want
20 to say I was at work.

21 **Q** Okay.

22 **A** When I got the message, I was still at
23 work. He called -- my neighbor called my cell phone.
24 He said I think the dude got you. I said what do you
25 mean. He said I think that your utility building had

1 been broke into.

2 **Q** Okay.

3 **A** So then I told him, I said, man, I'm just
4 getting off work. I'm heading to the house now. Then
5 when I get home, the first thing I thought was my
6 utility building had been broken into.

7 **Q** Okay. And that utility room, where -- as
8 far as position of your house, where is that utility
9 room?

10 **A** It's attached onto the back part of the
11 home.

12 **Q** Let me see State's number 2. That's, I
13 guess, a depiction of the rear of your house. Is that
14 right, Mr. Cromer? That's the back part of your
15 house?

16 **A** Yes.

17 **Q** And I guess the brown door, not the one
18 with the storm doors but this brown one over here by
19 the AC unit, that's the storage room you're talking
20 about?

21 **A** Yes, sir.

22 **Q** And what kind of stuff do you keep in
23 there?

24 **A** I keep my weed eater, blower, air
25 compressor, all my stuff used to clean my car out,

1 tools, just stuff I used like work around the house.
2 I put it in tact into that little building there and
3 I always lock -- lock it up.

4 Q Okay. You keep it locked all the time, is
5 that what you said?

6 A Yes, sir. The only way I unlock it is when
7 I'm out in the yard or going back and forth to that
8 building. But when I'm in the house or I'm done with
9 it, I always lock the door behind me.

10 Q Okay. Uh, when you got home that day, uh,
11 did you find, uh, anything that had been taken out of
12 that room?

13 A Yes, sir.

14 Q What was taken?

15 A It was the -- I had a battery charger, I
16 had an air compressor, I had a leaf blower, I had a
17 radio and I had a, uh, -- this one here was not -- I
18 guess the officer never did find this here. I had a
19 drill and a compactor. I had that but I never did get
20 that back.

21 Q Okay. But the items that --

22 A I wouldn't be on the picture. You don't
23 have a picture of that because I don't know if they
24 ever did find that.

25 Q Walter, can I see State's number 7?

1 That's the battery charger?

2 **A** Correct.

3 **Q** Okay. They recovered that that day?

4 **A** Yeah, I received that back.

5 **Q** Okay. The last place you would have seen
6 that would have been the storage room?

7 **A** Yes, sir.

8 **Q** I need to see number 8. What's that?

9 **A** That's my compressor.

10 **Q** Okay. And that would have been kept in your
11 storage room?

12 **A** Correct.

13 **Q** Number 13.

14 **A** That's the radio.

15 **Q** Okay. And where was the last place you had
16 seen that before --

17 **A** Inside my building.

18 **Q** Okay. Let's see number 14.

19 **A** That's my leaf blower.

20 **Q** And where do you keep that?

21 **A** Inside that same building.

22 **Q** Okay. So when you get home on December 13rd
23 after Sam called you and said there had been an
24 incident that happened at your house, where were
25 these items?

1 **A** I guess the officer had them. Because when
2 I got home -- I called -- I called 911 myself. The
3 officer come out and said, yeah, we had already
4 received a call for this incident. I said I have
5 never called. I guess my neighbor Sam had already
6 called 911 and the officer came out. But when I come
7 home, wasn't no officer out there. So I called
8 myself.

9 **Q** Okay. So when you got home, the officers
10 had already been there and cleared the scene.

11 **A** Yes.

12 **Q** Let me see State's number 4, Walter.
13 What are we looking at there?

14 **A** Well, you're looking at -- this the door of
15 -- the utility building, this the door. And this
16 little piece right here is what's called, I guess,
17 the door jam, what you can use. This is -- I didn't
18 see him do it. My thing is to get into that building,
19 he'd have to take something, pry it, push it in and
20 pull it open. The reason I say that is when I got
21 back and went the building, I had to unlock the door
22 with my key. So I know it locked back when he left.

23 **Q** Come here. Step down and show me something
24 -- or, well, show the jury at least. That mark right
25 there always been there?

1 **A** No, sir.

2 **Q** Step back so they can see you. That right
3 there was not there?

4 **A** No, sir.

5 **Q** But did you notice that when you got back?

6 **A** Yes.

7 **Q** The inside of that -- what do you call
8 those locks? It's one of those ones that you can
9 twist on the inside and it has a little lock
10 mechanism?

11 **A** Yes. Right here. To get into the -- I'm
12 just saying you can take a screwdriver or anything
13 and push that little pin in and you can pull the door
14 and it will automatically come open.

15 **Q** Okay.

16 **A** Actually, he didn't mess with the door
17 thing. It wasn't damaged. He can lock it back and
18 pull it up and it's just like no one had been in
19 there.

20 **Q** Let me see State's number 3. All right.
21 This is the mark I'm talking about.

22 **A** No, that was new. I never did see that
23 until I went back into the back of the home. That
24 wasn't there before then.

25 **Q** All right. Tell me what you think the value

1 of those things that, uh, that the police had to
2 recover, what do you think the value of those things
3 would have been?

4 **A** Right off the top of my head, I don't
5 really know. I mean, I had just bought them but I
6 can't give you a dollar amount.

7 **Q** Leaf blower, give me --

8 **A** I'm going to say the leaf blower, I think I
9 paid about, I'm going to say about 110, 115,
10 somewhere like that.

11 **Q** Okay. But all those things together, they
12 probably been under \$2000?

13 **A** Yeah, under \$2000.

14 **Q** All right. You can sit back in the seat.
15 Let me think about my next question. All right.
16 That's December 23rd at one o'clock. Let me back up
17 two days before that. Let me go back to December
18 21st. You remember that date? You know what I'm
19 trying to ask you about?

20 **A** Yeah, I want to say is that the day that he
21 was trying to -- I don't know. Anyway, when I told --
22 when I come home, I realized a bicycle was in my
23 front yard.

24 **Q** All right. Tell us about that. Was that a
25 -- were you working that day?

1 **A** Yes, sir.

2 **Q** All right. So you get home from work. About
3 what time was it?

4 **A** It had to be between the hour of 5:00 and
5 5:30 because I think I got off work about five
6 o'clock that day. When I got home, you know -- when I
7 got home, I seen the boxes in my front yard. It
8 puzzled me. I mean, why is this bicycle in my front
9 yard. I come on into my home. I went in the kitchen
10 and put my lunch box down and I think I got on the
11 computer. So I had my -- my wood door was open but
12 the storm door was closed.

13 **Q** Let me see State's number 1 while you
14 describe this. Okay. Uh, that's the front of your
15 house?

16 **A** Correct.

17 **Q** And you see the storm door there. You
18 talking about a window, is it window just to the
19 right of your storm door?

20 **A** Yeah, that's the window to right of the
21 storm door, yes.

22 **Q** Whereabouts was the bicycle?

23 **A** The bicycle was sitting right there -- uh,
24 sitting right there in front of the little shrubbery
25 right there.

1 Q Right here in front of your storage?

2 A Yes, sir.

3 Q Just kind of -- how far away from your
4 front porch was the bike laying?

5 A I almost say on the -- before you walk up
6 on the porch, it was standing real close. It wasn't
7 on the porch.

8 Q Okay. It wasn't your bike?

9 A No, it wasn't my bike. I don't own a bike.

10 Q What did it look like?

11 A It was a green bike.

12 Q You see State's 16, do you recognize this
13 bike?

14 A That's it.

15 Q So two days before your shed was broken
16 into or your storage room was broken into, you saw
17 that bike laying in your front yard?

18 A Correct.

19 Q All right. And what did you do?

20 A I told you I seen the bike. I was like
21 wonder who bike that is. I know it wasn't my bike. So
22 I go into my home. I had my lunch box. I went in the
23 kitchen and I sat it down on my counter. I went to my
24 computer. My computer is facing my door. I kind of
25 seen a glare. I see a glare, so I went to the door.

1 When I went to the door, it was Sterling Maybin was
2 out in my yard.

3 Q How do you know Sterling Maybin?

4 A I kind of grew up around Sterling Maybin. I
5 know him when I see him. Without a shadow of a doubt,
6 I know him.

7 Q You've known him for years?

8 A Yes, sir.

9 Q Uh, he was somebody you were familiar with
10 when you saw him face-to-face on your front porch?

11 A Without a doubt.

12 Q All right. You see Sterling here today?

13 A Yes, sir.

14 Q All right. Just point him out to the jury.

15 A The gentleman right there is Sterling
16 Maybin.

17 Q Okay. Any doubt in your mind that day that
18 you saw that green bike in your yard and you saw the
19 man on your porch, any doubt in your mind that man
20 was Sterling Maybin?

21 A Ain't no doubt in my mind. That was
22 Sterling Maybin.

23 Q What did you say to Sterling that day?

24 A I asked, I said Sterling what are you doing
25 in my yard. And he mumbled something. I couldn't pick

1 up nothing he was staying. He got the bike, got into
2 the driveway, got into the main road and drove off.

3 Q Okay. You said what are you doing in my
4 yard and he just mumbled something?

5 A I couldn't pick up nothing he was saying.
6 He was mumbling something, but it wasn't clear to me.
7 I couldn't tell you what he said. I couldn't tell you
8 a word he said.

9 Q And that was it? He just gets on the bike
10 and leaves?

11 A He just drives off.

12 Q Okay. Uh, all right. So then two days later
13 is when you get this call at work that your utility
14 room had been broken into?

15 A Yes, sir.

16 Q All right. And when you start trying to put
17 two and two together, uh, was there a name that you
18 thought the officers should know about?

19 A Yeah, my neighbor, it's me, Sam and I got
20 another neighbor. He always kept a lot of stuff
21 outside. So I know -- I see him and said I seen this
22 guy, Sterling Maybin, in our neighborhood. So if I
23 you know what I know, you need to lock yourself up
24 because he would move some stuff. And Donnell was
25 like do you know the guy. I said yeah, I kind of

1 grew up around him. He said Walt, I appreciate
2 that; I hope he don't get me. And we kind of left it
3 at that.

4 Q Okay. Let's go back to December 23rd
5 though. Did you speak with officers that day?

6 A Yeah, I spoke to a lady. I called. A lady
7 to come out, a lady officer.

8 Q All right. Did you tell them that there was
9 anybody that you had in mind that may have done this
10 to you?

11 A Yeah. I told her I thought it was Sterling
12 Maybin. I said I can't prove it. I didn't see him but
13 if I could call a name, that would be the name I'd
14 call.

15 Q Okay. And were you able to speak with Sam
16 Glenn, your neighbor, about what he had seen that
17 day?

18 A Yes, sir.

19 Q All right. Did he tell you anything that
20 made you think Sterling Maybin --

21 A Yeah, the kind of stuff he was telling me,
22 I --

23 MR. VERNER: Your Honor, he's now asking
24 him to comment on what somebody else told him.

25 THE COURT: Sustained.

1 **BY MR. SCOTT:**

2 **Q** All right. Not -- don't say what he told
3 you, but, uh, after speaking with him, did that --

4 **A** It kind of like leaned towards Mr. Maybin.

5 **Q** Okay. Were you aware of any bicycle used
6 that day that your shed was broken into, the utility
7 room?

8 **A** Say it again?

9 **Q** Were you aware of any kind of bike being
10 used the day your utility room was broken into?

11 **A** No, no. I was at work when the building got
12 broken into so I can't say that.

13 **Q** Okay. Did you ever give Mr. Maybin or
14 anyone really consent to go in that room?

15 **A** No, sir.

16 **Q** Okay. Uh, and the way you got your blower,
17 your battery -- or your battery charger and your
18 radio back, the police had to give it back to you?

19 **A** Yes. Uh, the lady officer, she told me I
20 had to come and talk to Lieutenant Goodman. So I went
21 and talked with -- Lieutenant Goodman card was left
22 in my door. I want to say that's what it was. I
23 called and he told me to come out there. We got stuff
24 and identify and see if some of that stuff yours. And
25 the stuff he showed me, all that basically was mine.

1 Q Okay. All right. Mr. Cromer, answer any
2 questions Mr. Verner has for you.

3 A Okay.

4 **CROSS-EXAMINATION**

5 **BY MR. VERNER:**

6 Q Good morning, Mr. Cromer.

7 A Good morning.

8 Q Mr. Cromer, I -- the solicitor asked you
9 about the bicycle and you said that you don't own a
10 bicycle, is that right?

11 A It is a bicycle back and the time --

12 Q Can you, uh, Number 2 -- the photographs of
13 the scene, is that your bicycle behind your house?

14 A It is not mine. It is my stepdaughter's
15 bicycle.

16 Q So you don't personally own a bicycle but
17 there are bicycles on your property?

18 A It's a bicycle back there. It was my
19 stepdaughter's bicycle.

20 Q There would be a lot of people in the
21 neighborhood who have bicycles?

22 A I mean, I guess. I don't know.

23 Q You haven't seen any other neighbors or
24 people in the area who had bicycles?

25 A I mean riding down the road, I'm sure I

1 seen bicycles down the road. Not in my yard. They
2 don't leave they bicycles in my yard.

3 **Q** Okay. On December 21st, did you call the
4 police when you saw Sterling Maybin on your porch or
5 from your porch?

6 **A** No. When I seen Sterling all my porch, I
7 did not call the police.

8 **Q** Okay.

9 **A** I told him I asked him what he was doing on
10 my yard.

11 **Q** Okay.

12 **A** He mumbled something, got on the bike and
13 rode off. No, I didn't call the police.

14 **Q** You saw him in your front yard, you asked
15 him -- on your porch I thought you said.

16 **A** I said the front yard. I never said he was
17 on the porch.

18 **Q** But you came to your porch?

19 **A** I came to my porch.

20 **Q** And you already knew Sterling?

21 **A** Yes.

22 **Q** Do you know if he is friends with your
23 brother?

24 **A** He know him. I told you, all we grow up
25 together so he know him. I ain't going to say they

1 friends.

2 Q But you knew him well enough where he knew
3 you too and you said, I assume you said what's up,
4 Sterling, what are you doing?

5 A I didn't say Sterling -- I didn't say
6 what's up Sterling. I said Sterling, what are you
7 doing in my yard.

8 Q And he left?

9 A He got on his bike, he went and got on his
10 bike and rode off. He mumbled something but I didn't
11 hear him.

12 Q You couldn't hear what he was saying when
13 he left?

14 A No, sir.

15 Q Okay. And that was on December 21?

16 A I want to say -- yeah, I want to say then.
17 I'm not quoting dates, but I want to say.

18 Q It was about two days roughly before this
19 incident we are here for today?

20 A Yes.

21 Q It could have been maybe a day before but
22 it was roughly two days beforehand?

23 A Yes.

24 Q But you didn't call the police at that
25 time?

1 **A** No, sir.

2 **Q** Okay. Do you recall what Sterling was
3 wearing on the day, on this -- the 21st?

4 **A** I was dark. I want to say it was a blue all
5 over thing. I'm not 100 percent sure. It was -- he
6 had on something dark.

7 **Q** Like a coat?

8 **A** No, like an all over thing. A jumper or
9 whatever you call it.

10 **Q** Okay. The -- uh, you recall whether he had
11 anything on his head?

12 **A** No, he did not have anything on his head.

13 **Q** Okay. Do you recall what the weather was
14 when you saw him in your yard?

15 **A** I want to say it was cold. I want to say
16 it had been raining but I think it had stopped.

17 **Q** Okay. The -- and at that time, you didn't
18 really think too much more of it after he left?

19 **A** No, sir.

20 **Q** Okay. And then two days later, you get a
21 call from Mr. Glenn, your neighbor?

22 **A** Yes.

23 **Q** He said somebody is going in or somebody's
24 in your -- what did he say?

25 **A** Wait a minute. Let me back up.

1 Q Okay.

2 A I didn't get a call from Mr. Glenn. I got
3 a call from Donnell Quarles. That my other neighbor.

4 Q Okay. Mr. Quarles?

5 A Yes.

6 Q On the 23rd?

7 A Yes, sir.

8 Q Looking at your house, who lives to the
9 left? If I am standing in Hiller Street looking at
10 your house, does anybody live to your left?

11 A My left would be -- no. Wait a minute. Let
12 me get this right. To the left of my home?

13 Q You have two neighbors or just one
14 neighbor?

15 A I have a neighbor to the left and I got a
16 neighbor to the right.

17 Q Okay. Looking at your home from Hiller,
18 who lives on your left?

19 A It would be Sam.

20 Q Mr. Glenn. We met Mr. Glenn yesterday?

21 A Yes.

22 Q And then looking at your home to the right

23 --

24 A It would be Davis.

25 Q It would be Davis?

1 **A** Yes. I told you, it would be -- it would
2 be Donnell home, then Mr. Glenn, then my home. And
3 then on my other side, Mr. Davis stay there.

4 **Q** Okay. Mr. Quarles is the direct neighbor
5 of Mr. Glenn?

6 **A** Correct.

7 **Q** Okay. Can you see his home from the aerial?
8 It must be under some trees?

9 **A** The way I look at that picture, it's some
10 trees and then the house. You can kind of like see
11 it.

12 **Q** Okay. The, uh, -- just generally, how old
13 is Mr. Quarles? Is he about your age?

14 **A** He is a little bit older than me. I would
15 say probably mid-50s.

16 **Q** On the 23rd, December 23rd, the, uh, --
17 it's not Mr. Glenn, it is Mr. Quarles who calls you?

18 **A** Yes.

19 **Q** He said somebody is in your backyard?

20 **A** No, he said Walter, I believe the guy that
21 you was telling me about, I said I believe he came
22 and got you.

23 **Q** Okay. When did you tell Mr. Quarles that
24 you had seen Sterling in your front yard?

25 **A** It was that Sunday that I seen him. I told

1 Mr. Quarles that Monday. I told him, you know, he
2 needed to kind of like lock his stuff up because
3 Sterling was in the neighborhood.

4 Q All right. If the 21st was when Sterling
5 was in your front yard --

6 A Yeah. If that's when it was, yes.

7 Q The next day, I assume you're -- are you
8 friends with Mr. Quarles too or just friendly
9 neighbors?

10 A Friends.

11 Q The, uh, -- and you would see him out in
12 the yard?

13 A Yeah. He always do work out in the yard
14 and always kind of like socialize out in the yard.

15 Q And you just said make sure your stuff is
16 secure?

17 A Yes. Yes.

18 Q Had not called the police at that time?

19 A No, sir.

20 Q Have you been aware of anything that had
21 been taken?

22 A No, sir.

23 Q The next day is when you get a call?

24 A Yeah, I'm at work. He called me.

25 Q Where do you work?

1 **A** I work at Georgia-Pacific.

2 **Q** Is that in Prosperity?

3 **A** Yes, sir.

4 **Q** Okay. And you get a call from Mr. Quarles?

5 **A** Yes, sir.

6 **Q** He says what?

7 **A** He said Walter, I believe your utility bill
8 to have been broken into. I said what, he said yeah,
9 I think your utility been broken. I said I'm at work
10 now, I'm just getting off work. I'm on my way to my
11 home now then I could see what's going on.

12 **Q** Did Mr. Quarles said where he got his
13 information from?

14 **A** No.

15 **Q** He said I'm watching the guy right now?

16 **A** No, he never did say.

17 **Q** Had you spoken to him since then?

18 **A** Since that happened?

19 **Q** Yes, sir.

20 **A** Sure.

21 **Q** Did he indicate that he saw what was
22 happening that day or whether he just heard about it
23 because he saw the police or heard the police?

24 **A** I think because he seen the police.

25 **Q** So your best knowledge is he wasn't an

1 eyewitness to what happened, he just became aware of
2 it because the police were there?

3 **A** Yeah.

4 **Q** Okay. The -- uh, then, I think -- did you
5 learn that he indicated that had some items taken
6 too?

7 **A** Correct.

8 **Q** Okay. And you suggested that you think may
9 be Sterling Maybin would have something to do with
10 it?

11 **A** Yes, I did.

12 **Q** The -- at that time, nobody had been
13 arrested or suspected of anything?

14 **A** No, sir.

15 **Q** Okay. So the information that the police
16 have that Sterling maybe the suspect in those crimes
17 come entirely from you saying I saw Sterling here two
18 days beforehand?

19 **A** Yeah, I think that all run together.

20 **Q** And that's also the basis of Sterling being
21 a suspect, uh, that you had identified him from
22 seeing him two days beforehand?

23 **A** Yes, I would say yes.

24 **Q** Because on the 23rd, you were not at the
25 home at all?

1 **A** No, I was at work.

2 **Q** You came home about 5:30, 6 o'clock?

3 **A** 5:00 or 5:30.

4 **Q** It take you about 30 minutes to come home
5 from Prosperity? I assume you came straight home
6 because they had told to the police were at your
7 house?

8 **A** Yes.

9 **Q** Did you speak to the police at all on the
10 23rd?

11 **A** I called them.

12 **Q** Okay.

13 **A** When I got home, wasn't nobody there. So I
14 said let me call 911 myself. So I called myself.
15 They had already been out before I had called.

16 **Q** Does anybody else live with you?

17 **A** No, sir.

18 **Q** But you got family members and friends who
19 come by, you said a stepdaughter leaves a bike there?

20 **A** I said that because her -- I didn't say she
21 leave it there. It was like in the utility building
22 and we cleared it out. She asked me could she keep
23 it at my home; and I told her yes.

24 **Q** Was it dark by the time you came home?

25 **A** It was getting dark. I don't think -- it

1 wasn't dark. It was kind of getting there.

2 Q How did you know which police officer --
3 had they left a card?

4 A Yeah, they left -- I don't know which
5 officer was there. But they left a card and it had
6 Lieutenant Goodman's name on it.

7 Q Okay.

8 A That's when I called him. I don't think I
9 called him the same day. I think I called the
10 lieutenant the next day.

11 Q Okay. Did you go back and look around your
12 house on the day of the 23rd?

13 A Yes.

14 Q Okay. To make sure there was nothing else
15 taken or nothing else disturbed?

16 A Yes, yes.

17 Q The door behind the house, was that closed?

18 A Yes, sir, and locked.

19 Q In fact, you had to use your key to it up,
20 correct?

21 A Correct.

22 Q Okay. The -- these photographs that you
23 were showing the jury, do you know who took any of
24 these photographs?

25 A I wasn't there when they took them. I don't

1 know.

2 Q Has anybody come to your house this week to
3 take more photographs?

4 A Yes.

5 Q Okay. Particularly of the -- 3 please.

6 These pictures of your door was taken just
7 this week before trial, weren't they?

8 A I can't say. Someone called me at work and
9 asked me could they come out and take pictures of my
10 home. I told them yeah. By the time I got home from
11 work, he had already been there so I missed him so I
12 don't know who was it.

13 Q You talking about this week?

14 A Yes.

15 Q Okay. The -- uh, so I get home, I got the
16 call that somebody has been in my property, I've got
17 the card to call the police and I do a, uh, walk
18 around my house to make sure nothing else is missing
19 or anything like that. But there's no one else in
20 your home to speak to the police to let them in or to
21 --

22 A No.

23 Q The, uh, -- what is the -- behind your
24 house, there is a big tarp-type thing ---

25 A Yes.

1 Q --- that the police officer was talking
2 about?

3 A Yes, sir.

4 Q What does that cover up?

5 A It covers up my lawn mower.

6 Q Okay, the riding lawn mower?

7 A The riding lawn mower and push mower.

8 Q Okay. So sometimes you keep yard tools
9 under the tarp?

10 A I don't hide tools under the tarp.

11 Q Okay.

12 A The only thing I keep up under that tarp
13 was a riding mower and a push mower.

14 Q Okay. The, uh, -- you remember what the
15 weather was like on the 23rd?

16 A It was cold and rainy. It had been
17 raining. But when officers come out, it wasn't
18 raining then but it had been raining. It was cold.

19 Q At one o'clock, you're talking about that
20 same day or when they came out the next day? Did
21 they come out another day to see you?

22 A When I got home, I called -- they came out
23 the same day. When I got home, when I got called,
24 they said I believe somebody got you. I called the
25 officer -- I mean, I called 911 and they sent an

1 officer down there. And I talked to a female officer.

2 Q That was after Mr. Quarles had called you?

3 A Yes.

4 Q The evening after you came home from work
5 on the same day that these tools were, the same thing
6 we're here for today, that same day, you called the
7 police ---

8 A Yes.

9 Q --- 911 and said I'm home now?

10 A I called them. They said they'll send an
11 officer out.

12 Q Okay.

13 A They sent an officer out. I talked to her
14 and told her about what had been going on. I got a
15 call that said somebody was back behind my house. I
16 went back behind there and said someone had broke
17 into my building and took stuff out of my building.

18 Q You recall what that officer's name was?

19 A No, sir.

20 Q It was a lady officer?

21 A A lady officer but I don't know her name.

22 Q Could it have been Ms. Siebert?

23 A I can't -- I don't recall.

24 Q Was she aware of the -- what had happened
25 that day or did she --

1 **A** Yeah, I think she talked to Sam, my
2 neighbor, Sam.

3 **Q** Okay.

4 **A** She talked to him.

5 **Q** So she kind of advised you of what had
6 happened ---.

7 **A** Yeah.

8 **Q** --- that day? Okay. At that point, you
9 had not spoken to Lieutenant Goodman at the time?

10 **A** No, sir. I called him the next day.

11 **Q** Okay. Did you tell her about the incident
12 involving Sterling Maybin having been at your house
13 two days beforehand?

14 **A** Yeah, I think I did.

15 **Q** Okay. She basically met with you at your
16 house and left?

17 **A** Yeah, she -- what I told her, she heard me
18 out and say we already got a call. She didn't stay
19 long.

20 **Q** Okay. Did she help secure the house or go
21 to the house to make sure it was safe?

22 **A** No.

23 **Q** She basically was there just to inform you
24 of why the officers had been there earlier?

25 **A** Yes.

1 **Q** Okay. Then the next day was December 24th,
2 Christmas Eve. Do you remember what the weather was
3 like the next day, the 24th?

4 **A** I'm not 100 percent sure.

5 **Q** Okay. At some point you called Kevin
6 Goodman, the investigator at the city police
7 department?

8 **A** Yes.

9 **Q** Did he call you or you called him?

10 **A** I called Mr. Goodman.

11 **Q** Did you talk with him about the case over
12 the telephone or did you go to the police station?

13 **A** I talked to him over the phone. He said
14 you come on out and identify some of the stuff that
15 we have received. I may have some of your stuff.

16 **Q** Okay.

17 **A** If you can come out and identify some of
18 the stuff.

19 **Q** All right.

20 **A** And I did that.

21 **Q** And so you went to the police station?

22 **A** Yes.

23 **Q** Which police station did you go to?

24 **A** The one on Main Street.

25 **Q** Okay. Where the fire department is?

1 **A** Yes, sir.

2 **Q** All right. Where did he have the items for
3 you?

4 **A** Uh, I want to say that he went and got --
5 when I come to his office, he went and bought them
6 into his office. I didn't see them when I first come
7 up. He went back wherever he keep them at. He brought
8 them back into the office and asked me to identify
9 them. I said, yeah, they're mine. Most of the stuff
10 I had, they was marked. I had my name on it. I marked
11 my name on it with a magic marker. I already know it
12 was my stuff anyway.

13 **Q** The -- were they already in his office or
14 did he take you down the hallway like a lab or
15 something.

16 **A** No, he bought things up -- yeah, he bought
17 stuff in his office and let me see them. He asked if
18 it was my stuff.

19 **Q** He turned them back over to you that same
20 day?

21 **A** Yes, sir.

22 **Q** Okay. Did he tell you that he had
23 fingerprinted any of the items?

24 **A** No, he didn't say.

25 **Q** Okay. And then that's the time that you

1 told him that you had seen Sterling Maybin on your
2 property two days beforehand?

3 **A** I don't know if that day I told Mr. --
4 Lieutenant Goodwin. I don't know if I told him that
5 day or not.

6 **Q** Do you recall whether he had you write a
7 statement for him?

8 **A** Yes, he did.

9 **MR. VERNER:** May I approach, Your Honor?

10 **THE COURT:** Yes, you can.

11 **BY MR. VERNER:**

12 **Q** Do you recall -- I'm going to ask you if
13 you can recognize what I've handed you.

14 **A** Yes. Yes, sir.

15 **Q** Is that a fair -- did he asked you to write
16 down about what happened on the 21st?

17 **A** He asked me to write down what happened
18 that day.

19 **Q** Okay. And that -- this -- the day you
20 wrote that statement was on the 24th?

21 **A** Yeah, I want to say the 24th, yes.

22 **Q** The sum and substance of that was that you
23 had seen Sterling Maybin on your property two days
24 beforehand?

25 **A** Yes.

1 Q Okay. Uh, prior to -- thank you. Prior to
2 writing this statement, did Mr. Goodman tell you that
3 Sterling Maybin was the suspect?

4 A He didn't actually say. He said, you know,
5 they got to look into it. He didn't actually say
6 Sterling was the guy.

7 Q Okay. So that was you, I think y'all need
8 to investigate Sterling Maybin because I know for a
9 fact he was on my property two days beforehand?

10 A Correct.

11 Q Okay. And then that's what -- he said you
12 need to write it down for me so we can investigate?

13 A Yeah.

14 Q Okay. The inside of your, uh, utility
15 building --

16 A Yes, sir.

17 Q -- what's the floor?

18 A What's the what?

19 Q What's the floor made out of it? Is it,
20 like, smooth?

21 A Yeah.

22 Q And it was raining?

23 A I want to say it had been raining. During
24 that time, I want to say it was raining. I want to
25 say that.

1 **Q** Okay. How big is the utility -- the inside
2 of the utility building?

3 **A** It's not a big building. I couldn't tell
4 you but it's not real big.

5 **Q** If I started from the door, the outside of
6 the door, but right on the edge of it, how many steps
7 do you think you can take into the building until you
8 touch the back wall?

9 **A** I'm going to say about 50 steps.

10 **Q** 50?

11 **A** 50, 60, I don't exactly know.

12 **Q** I mean, is it bigger -- is it like a big
13 closet type?

14 **A** Yeah, I would say something like that.

15 **Q** But you would have to take -- it would take
16 you more than one step inside of it to touch the
17 back?

18 **A** Yes, sir.

19 **Q** You would have to take several steps into
20 it?

21 **A** Yes, sir.

22 **Q** Is it big enough to keep your riding lawn
23 mower in there?

24 **A** I don't know. I don't keep it in there. I
25 ain't never pulled it in.

1 **Q** That would depend on whether the door was
2 wide enough?

3 **A** I know the door is not wide enough. I
4 never kept it in there anyway.

5 **Q** Okay. But you don't -- would it be -- you
6 don't know if it would be big enough to keep the
7 mower in there?

8 **A** At the door is not wide enough.

9 **MR. VERNER:** Okay. Court's indulgence
10 one moment.

11 **THE COURT:** Sure.

12 **BY MR. VERNER:**

13 **Q** Other than investigator, now, Captain
14 Goodman, did you speak to any other officers?

15 **A** No, I just talked to Lieutenant Goodwin.

16 **Q** Okay. The -- so initially, you spoke to
17 Ms. Siebert or Officer Siebert the night that you
18 came home.

19 **A** Yeah.

20 **Q** But that was just briefly to tell you what
21 was going on?

22 **A** Yes.

23 **Q** Then you spoke to Investigator Goodwin in
24 depth?

25 **A** Yes, the next day.

1 Q Okay. And up until this week, have you done
2 anything else?

3 A No, sir.

4 Q Okay. The length of time that Sterling
5 Maybin was on your property on the 21st, how long
6 before you first saw him and he left?

7 A He didn't stay on the property long.

8 Q Okay.

9 A He didn't stay long.

10 Q Just long enough for you to ask him what
11 he's doing and he said something you couldn't
12 understand?

13 A He mumbled something and rode off on his
14 bike.

15 Q So fairly quickly?

16 A Yes, sir.

17 Q All right. What kind of car do you drive?

18 A I drive a 2010 Nissan Maxima.

19 Q Okay. Is at the same car --

20 A I have a 1983 Cutlass always be parked in
21 my yard, so I have two cars.

22 Q Are those the same cars you would've had
23 back on December 24th -- 3rd of this year?

24 A Yes, sir.

25 Q State's Number 1, that is your Cutlass?

1 **A** Yes, blue Cutlass.

2 **Q** Blue Cutlass?

3 **A** Yes.

4 **Q** Is that the car that you took to work on
5 that day?

6 **A** No, I took the 2010 Nissan Maxima to work
7 that day.

8 **Q** Okay. And they both would be parked --
9 when you are home, ordinarily, there would be two
10 cars parked in the driveway?

11 **A** Yes, sir.

12 **Q** Okay. The -- and the time that you saw
13 Sterling Maybin in your yard, but both cars would've
14 been parked in the parking lot --

15 **A** Correct.

16 **Q** -- driveway? Okay. And again, about what
17 time of day -- I'm not asking you exactly what time
18 of day, but just approximately what time of day on
19 the 21st would you have seen Sterling in your yard?

20 **A** I cannot give you a time to be honest.

21 **Q** Was it daylight?

22 **A** It was daylight.

23 **Q** Okay.

24 **A** But the time frame, I can't give you.

25 **Q** It wasn't nighttime?

1 **A** No, it was daylight.

2 **Q** That was on a weekend?

3 **A** I don't recall.

4 **Q** You don't recall saying it was on a Sunday,
5 you thought?

6 **A** If that's the date that I told you when I
7 got home. I don't know if that's the same day when I
8 got home and I said -- I asked him what happened. It
9 must've been Sunday then.

10 **Q** Okay.

11 **A** It must have been Sunday.

12 **Q** And Sunday would be a day that you stay at
13 home?

14 **A** No, I had to work. I told you I got off
15 work.

16 **Q** Oh, okay. So you sometimes do work on the
17 weekends?

18 **A** Yes, not every weekend but every other
19 weekend I have to work.

20 **Q** Do you know where Sterling Maybin lives?

21 **A** I really don't know.

22 **Q** Okay. Thank you, Mr. Cromer.

23 **THE COURT:** Anything in redirect?

24 **REDIRECT EXAMINATION**

25 **BY MR. SCOTT:**

1 Q Were you surprised to see him in your yard
2 on the 21st?

3 A Yes, I were.

4 Q To your knowledge, does he live in your
5 neighborhood?

6 A No, he don't.

7 Q Thank you.

8 **THE COURT:** All right. Thank you for your
9 testimony. Sir, you can step down.

10 Ladies and Gentlemen of the jury, I'm going
11 to ask you to retire to the jury room for just a
12 moment. We're going to go ahead and break for
13 the day. But I need to kind of figure out
14 scheduling-wise for tomorrow when we are going
15 to start back. So, uh, for just a few moments,
16 go back to the jury room. Again, I remind you
17 don't begin discussing this case among
18 yourselves. We'll get you back out shortly.

19 **(WHEREUPON, the jury exits at approximately**
20 11:59 a.m.)

21 **(WHEREUPON, discussion is held off the record.)**

22 **(WHEREUPON, the jury enters at approximately**
23 12:03 p.m.)

24 **THE COURT:** Okay. Let the record reflect
25 the jury's back in.

1 Ladies and Gentlemen, we're going to start
2 back in the morning at 9:30, so, uh, be here
3 prompt. Allow yourself enough time to get here
4 and be prompt. And uh, again, don't talk about
5 this case with anyone that you come in contact
6 with after you leave here. We'll see you in the
7 morning at 9:30. Have a good afternoon and
8 evening.

9 **(WHEREUPON, the jury exits at approximately**
10 12:04 p.m.)

11 **THE COURT:** Okay. We will be in recess
12 until 9:30 in the morning. Everyone have a good
13 afternoon and evening.

14 **(WHEREUPON, the Court recesses for the day.)**
15
16
17
18

1 **A** Sterling Maybin.

2 **Q** Okay. When did you catch up with Sterling?

3 **A** I never caught up with him.

4 **Q** When did your agency arrest him?

5 **A** The agency, I think, arrested him -- I want
6 to say --

7 **MR. VERNER:** Your Honor, I would ask to be
8 heard. I have never known this to be relevant.

9 **THE COURT:** Let's have a sidebar.

10 **(WHEREUPON, a bench conference is held off the**
11 **record.)**

12 **THE COURT:** Solicitor, you want to just
13 repeat the question?

14 **BY MR. SCOTT:**

15 **Q** Were y'all able to eventually make an
16 arrest?

17 **A** Yes, sir, we were.

18 **Q** To your knowledge, when was that?

19 **A** To my knowledge, the next morning,
20 Christmas Day, that morning some time.

21 **Q** Okay. So the incident occurs on the 23rd.
22 You speak with Sam Cromer on the 24th and you arrest
23 Sterling Maybin on the 25th?

24 **A** To the best of my knowledge, that's right.

25 **Q** Thank you. Any question Mr. Verner has,

1 **A** I was.

2 **Q** --- today too. Was that consistent with
3 what he told you?

4 **A** Basically, yes.

5 **MR. VERNER:** Okay. Thank you, Lieutenant.
6 I'll take my papers back.

7 Your Honor, I will turn him back over to
8 the State.

9 **THE COURT:** Any redirect, Solicitor?

10 **MR. SCOTT:** No, Your Honor. Nothing from
11 the State.

12 **THE COURT:** Thank you for your testimony.
13 Sir, you can step down.

14 Anything further from the State?

15 **MR. SCOTT:** Your Honor, the State rest.

16 **THE COURT:** Okay. Mr. Foreman, Ladies and
17 Gentlemen of the jury, I'm going to ask if you
18 would return to your jury room. I have a few
19 matters to take up with the lawyers. We'll get
20 you back out as soon as we can. Again, I will
21 remind you don't begin any discussions or
22 deliberations related to this case. Thank you.

23 **(WHEREUPON, the jury exits at approximately**
24 10:22 a.m.)

25 **THE COURT:** All right, Mr. Verner,

1 anything you want to put on the record?

2 **MR. VERNER:** Your Honor, I would move for
3 directed verdict on the burglary. The only
4 evidence of the burglary would be the scrape
5 marks outside of the closed door and Mr.
6 Cromer's testimony that I usually keep those
7 tools in the shed. The eyewitness actually said
8 the door was closed. When he confronted the man
9 and he was standing between the door and the air
10 conditioner unit. The officers who arrived on
11 the scene indicated the door was closed when
12 they arrived. Because when they took
13 photographs of it, they said I would not have
14 closed it to take photographs of it.

15 The only evidence of burglary, an actual
16 entry into the building would be the scrape
17 marks on the door and the man saying I typically
18 keep my stuff in that shed. I would ask for a
19 directed verdict on the burglary charge.

20 On the larceny, there is no evidence of
21 anything. I understand there was evidence that
22 items had been moved. There was no evidence
23 that items were kept with the intent to
24 permanently deprive. Then I would also ask for
25 directed verdict on both of them on the

1 insufficiency of the eyewitness identification.

2 **THE COURT:** Okay. Solicitor?

3 **MR. SCOTT:** Your Honor, just, uh,
4 circumstantial evidence to show that he had gone
5 in the outbuilding and taken things out. We got
6 Mr. Cromer not saying that he usually kept the
7 stuff in the shed, he said I had the battery
8 charger, the radio, the leaf blower, all of
9 these things are inside of that outbuilding.
10 That's where I left him. The next thing I know
11 the officer's telling me they were in bags
12 outside in the yard. So circumstantial evidence
13 of that taken with the fact that pry marks were
14 seen at the door. He says those weren't there
15 before.

16 Mr. Glenn does see Mr. Sterling right near
17 the outbuilding. We will make no distinction
18 between circumstantial and direct evidence but
19 there is sufficient circumstantial evidence to
20 show that it was a burglary.

21 The, uh, larceny again, same kind of deal.
22 He's seen with bags by Mr. Glenn. Mr. Glenn
23 sees him drop the bags, uh, at the -- near the
24 air conditioner unit. Those items were later
25 identified again by Mr. Cromer as being his. He

1 didn't give anybody any consent to take them. He
2 didn't give anybody consent to go in the
3 outbuilding to take hold of those items.

4 Again, as Your Honor is well aware, we're
5 dealing with the existence of the evidence and
6 not the weight. I think the weight is pretty
7 hefty, but I think it does go above and beyond
8 directed verdict.

9 **THE COURT:** Thank you very much. Viewing
10 the evidence in the light most favorable to the
11 State, I find that it does suggest, uh, direct
12 evidence as well as circumstantial evidence as
13 to both charges to deny the defendant's motion.

14 **MR. VERNER:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MR. VERNER:** Your Honor, I need just maybe
17 one or two more minutes to, uh, make a final
18 decision on whether he is going to testify.

19 **THE COURT:** Let me go ahead and give him
20 the instruction and I will give you --

21 **MR. VERNER:** Thank you.

22 **THE COURT:** I'll let you talk with him.
23 Let me get the instruction out and y'all can
24 talk. Okay.

25 Madam clerk, would you swear the defendant

1 **THE COURT:** Ladies and Gentlemen, we are
2 now at the stage of the trial where the lawyers
3 will make their closing arguments to you. Once
4 that is done, we'll take a break and then I'll
5 bring you back in for the Court's final
6 instructions on the law. If you will, give
7 these fine attorneys your undivided attention.

8 Solicitor, are you ready sir?

9 **MR. SCOTT:** Yes, Your Honor. May it
10 please the court.

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

12 **MR. SCOTT:** Sterling Maybin is in the
13 neighborhood. Better like your stuff up. Y'all
14 remember Walter Cromer saying that?

15 **MR. VERNER:** Your Honor, that is -- that is
16 improper argument.

17 **THE COURT:** This is closing. I am pretty
18 liberal with closing arguments.

19 You may proceed.

20 **MR. SCOTT:** Walter Cromer made that
21 statement, Sterling Maybin's in the
22 neighborhood. Better like this stuff up. It's
23 kind of funny. It's kind of ironic that Walter
24 Cromer locked all of his stuff up, he put out
25 the warning and he is the one that gets broken

1 into.

2 That's the kind of thing about somebody
3 like Sterling Maybin. You can get security
4 systems and you can get your guard dog and you
5 can put locks up, but he's going to find a way
6 to get what he wants because he is an
7 opportunist. Just like my partner said in his
8 opening, he's an opportunist. That's what most
9 thieves are. I look at what an opportunist is.
10 That's a person who exploits circumstances to
11 gain immediate advantage rather than to be
12 guided by principal. Isn't that what a thief
13 is? Isn't that what a thief does?

14 He goes to Walter Cromer's house on the
15 21st. I submit to you he was scouting the area
16 out. I submit to you that he knew that Walter
17 Cromer would be at work on the 23rd when he
18 returned to the scene. That's what an
19 opportunist does. That's what a thief does.
20 They prey on people like Walter Cromer who
21 spends his days at Georgia-Pacific working a
22 job, adding to this community and he preys on
23 people like that. That is what a thief like
24 Sterling Maybin does.

25 Let's just go back. I know y'all have

1 heard three different law enforcement officers,
2 you've heard two lay witnesses, then you have
3 heard an investigator. The way this thing
4 breaks down, uh, I hope y'all were able to
5 follow it. There's a number of days here and
6 there was a sequence that I just want to go over
7 one more time with y'all so I can hopefully make
8 it crystal clear to y'all. After you'll hear
9 from me and I sit down, that's the last chance I
10 get to explain things to you. The witness have
11 gone about explaining and we have to piecemeal,
12 witness by witness, piece of evidence by piece
13 of evidence. This, the closing argument, is my
14 last chance to kind of streamline it and tell
15 you what I think is important to you, tell you
16 what you need to take away from all of this
17 testimony.

18 So, uh, Walter, let's go back to that
19 street view.

20 What I'm attempting to do through all these
21 pictures -- the best thing I'm going to do, I
22 think I only had one trial where we were allowed
23 to do this is take the jury out to the scene of
24 the crime and you can walk them around here and
25 say this is where this happened. Then he went

1 running that way. Then he went up the street.
2 You can kind of get a real good feel for it.
3 But in a courtroom, we're kind of limited to the
4 diagrams and these pictures and everything. And
5 I realize some of you may not be 100 percent
6 oriented to the location. And that's fine, just
7 so long as you kind of have the general idea.

8 But my recollection of the testimony is
9 December 23rd, you've got Walter Cromer's house
10 here, I think, at Hiller. He's the victim
11 in our case. This is where everything goes down
12 in the back of this home right here.

13 Then the good neighbor who was sitting
14 right here -- y'all remember Sam Glenn? He lives
15 right next door to him. He's the good neighbor.
16 Officers get a call from the good neighbor who
17 says there's somebody back behind my neighbor's
18 house who doesn't belong there; he is got some
19 bags with him. I think you need to come out
20 here.

21 Officers respond. Y'all heard from Teal
22 O'Dell and Richard Mercer. They pull up right
23 along in here. Then you heard from Lieutenant
24 Malloy. He pulls up somewhere right in this
25 vicinity right here. It looks like, to me,

1 that's a vacant lot right next door to Sam
2 Glenn's home. Immediately when he get there,
3 they got Mr. Glenn on his porch pointing to the
4 back. In other words, he already called dispatch
5 and said there's somebody back here that doesn't
6 belong back here. Now, he's motioning to them
7 he's back over yonder. He's back over behind Mr.
8 Cromer's house.

9 Immediately, Malloy comes over here and
10 he's positioned himself close to the house as
11 much as he can. And before he even knows what's
12 going on, here comes the green bike, the green
13 bike that you already heard about a number of
14 times. I think the green bike is important. You
15 can identify the person but you can also
16 identify a green bike, especially if it's a
17 green mountain bike. I don't know how often I
18 see a green mountain bike riding down the road,
19 but there goes Sterling Maybin flying around the
20 corner.

21 He realizes that law enforcement is there.
22 He's pedaling vigorously, I think, is the
23 testimony. He comes and swings wide right here.
24 Right then, as Malloy is at the porch or the
25 side of the house making his way to the rear, he

1 locks eyes with this guy, somebody he's familiar
2 with, somebody he's seen before. He's
3 testified, yeah, I recognize the guy. I've seen
4 him before. I couldn't put his name right then
5 and there. For one thing, it kind of shocked me
6 to see him shoot around the corner like that but
7 I recognized him and I got a good look at him 15
8 or 20 feet away riding by on the bike.

9 He swings wide. Comes up here. Goes towards
10 Crosson. Then you got Teal O'dell running after
11 him. He couldn't identify him because he's
12 behind him. But he would say it was a black
13 male on a green bicycle. Then what Sterling
14 does is he dumps the bike down at the end of the
15 road, runs in the woods, and they don't catch up
16 with him that day.

17 The neighbor, Sam Glenn -- let me get a
18 PowerPoint now. His testimony -- here's the
19 picture we have -- this is Sam Glenn's home.
20 He's in the backyard. He talks about walking to
21 the backyard and looking over there and seeing
22 somebody back behind his neighbor's house. He
23 thinks it's his neighbor at first. What's up,
24 Walt? The guy turns to him. He says that ain't
25 Walter. He kinds of backs away. He sees the man

1 kind of standing in this general vicinity right
2 here and says that he goes back and calls law
3 enforcement and waits for him to get there. He
4 actually witnesses this whole thing where law
5 enforcement comes and sees Mr. Maybin throw the
6 bags down, jump on the bike and take off. He
7 said he knew Mr. Maybin's family, pointed him
8 out in court. That's the guy I saw back there
9 that day. That's the guy I looked in his face
10 and realized it wasn't my neighbor, Walter
11 Cromer.

12 Pry marks, this would have been where
13 Sterling would have taken a screwdriver or
14 spackling knife or whatever he used and pried in
15 here to pop the door, the little latch open and
16 go inside the building which he didn't have
17 consent to go into and take all of those items.
18 That is what an opportunist does. He takes
19 things that doesn't belong to him because he
20 doesn't work himself; he doesn't contribute to a
21 community; he takes from others.

22 This is interesting and this is something I
23 want to explain to y'all. When the cops get
24 there, what do they learn, the homeowner isn't
25 there. They hear from a neighbor who says I see

1 a guy back there and he throws some bags down
2 and runs when y'all get here. He wasn't
3 supposed to be back there. Nobody sees him go
4 into this room. So law enforcement at the time,
5 they looked down at these items and they say I
6 don't know who the stuff belongs to. We'll go
7 ahead and seize it. We're going to take it and
8 see if we can investigate and see who this stuff
9 belongs to.

10 Remember Walter Cromer is at work at the
11 time. He doesn't get there when law enforcement
12 is there. He can't say, man, all of the stuff is
13 mine. I had this in my storage room so law
14 enforcement don't know where the stuff came from
15 at the time. They don't realize they're
16 investigating a burglary. They're pretty sure
17 they're investigating a larceny at the time
18 because why else would this man have these items
19 bagged up and throw them on the ground and then
20 run off?

21 It is only the next day that they talk with
22 Walter Cromer, the homeowner, and who says,
23 yeah, that stuff is mine. The last place I had
24 it was the storage shed that should have been
25 locked. That's the burglary. They realize the

1 way Sterling Maybin had gotten those things is
2 to break into the storage room and grab the
3 items. They can put two and two together and
4 figure out that Sam Glenn caught him in the act
5 and he throws them down and runs when the cops
6 gets there.

7 Again, law enforcement, when they get
8 there, this is kind of what the bags look like.
9 It looks suspicious. They don't quite realize
10 where the items had come from at the time until
11 they could speak with the homeowner. The leaf
12 blower -- let me remember. The leaf blower
13 battery charger, a radio and just a few other
14 items, I guess whatever he could get his hands
15 on the fastest and probably run to the pawn shop
16 and sell. What he probably could have gotten
17 for it was not nearly the value that it would
18 cost somebody like Walter Cromer to obtain these
19 things or to replace them. This is what it cost
20 to recover the battery charger, air compressor,
21 leaf blower and radio.

22 The bike though is so interesting because,
23 uh, the 21st, that was the day that Walter
24 Cromer comes back from work, this is two days
25 before this incident occurs. He sees this green

1 bike laying in his front yard right up near the
2 porch when he gets home from work. He thought
3 that's really weird. I don't know whose bike
4 that is. I don't see anyone around here. That
5 is not my bike. The bike wasn't there when I
6 left to go to work today, but a green mountain
7 bike was laying up on my front porch.

8 He goes inside, goes to the kitchen, goes
9 to his computer and, before he knows it, he sees
10 movement in his front yard. He opens the door
11 and see somebody he's very familiar with,
12 Sterling Maybin, somebody he grew up with,
13 somebody he's known for years and years and
14 years without a doubt, Sterling Maybin who gets
15 on this bike and peddles off without really
16 giving an explanation as to why he is there.
17 Walter says what are you doing in my yard,
18 Sterling. He mumbles something, jumps on the
19 bike, and takes off. He caught him in the act.
20 Sterling knew he wasn't supposed to be there.
21 He was probably up to no good that day. He
22 catches him in the act. He takes off.

23 Then, so December 23rd when all of this
24 happens, you don't think Walter Cromer, when he
25 learns that, yeah, man, they saw somebody in

1 your backyard, he was on a green bike. Then the
2 officer said it was Sterling Maybin. You don't
3 think the wheels started turning in his head and
4 he said he was here two days before, that's why
5 he was here.

6 Now, there's not a -- there's a few moving
7 parts to this thing. I don't think it's a very
8 difficult case. I know this is a very important
9 case for Mr. Maybin. This is a very important
10 case for the State. Anytime you got somebody
11 going around victimizing people in this
12 community, stealing stuff from them that they
13 work so hard to obtain themselves when they go
14 and work 9:00 to 5:00 or whatever hours Mr.
15 Cromer works and make an honest living, it's
16 important to people like him too.

17 That's the case. I don't see it as a lot
18 of difficult issues here. I know Mr. Maybin's
19 lawyer is going to get up here and the defense
20 is it wasn't me; it wasn't me. Don't reward him
21 because he got away that day. Don't reward him
22 because he was able to run from the cops and not
23 get caught that day. Use your logic. Use your
24 reasoning. Put two and two together here.

25 Listen to Mr. Cromer's testimony. It's so

1 important that day the 21st when he sees him on
2 this very distinctive bike in his front yard.
3 And what do you know? Two days later, people
4 ID'd him behind your house throwing bags with
5 your belongings down in the dirt and riding away
6 on this very distinctive bike. Put two and two
7 together. Ask yourself what was Mr. Maybin's
8 intent. His intent was to steal the items that
9 he broke into the outbuilding to get.

10 I got to prove this case to y'all beyond a
11 reasonable doubt. The judge is going to
12 describe to you what beyond a reasonable doubt
13 is. That is whatever prosecutor has to prove a
14 case to a jury, beyond a reasonable doubt.
15 That's not a South Carolina thing, that's a
16 national thing. Every prosecutor from here to
17 Washington state, any time they convict somebody
18 in front of the jury, they have to prove the
19 crime beyond a reasonable doubt.

20 That doesn't mean y'all go back there and
21 just because y'all are discussing the case and
22 one person says what about this, and another
23 person says, well, what about that. Y'all might
24 disagree to some extent on what you heard. That
25 doesn't mean y'all have reasonable doubt that he

1 did it; it doesn't mean you have to be 100
2 percent certain of everything you heard in this
3 case or that you are from the convinced that he
4 did it. If you're firmly commenced of these two
5 crimes that he is charged with, petty larceny
6 and burglary in the third degree.

7 The judge is going to explain to you what
8 reasonable doubt means. It means you are firmly
9 convinced that he did it. He's going to say
10 firmly convinced twice. That's the best way,
11 that's the easiest way to understand the
12 standard of proof I have to prove a case to you
13 beyond a reasonable doubt that you are firmly
14 convinced of his guilt. All right. So the
15 crimes that he's charged with, the judge is
16 going to instruct you on the law.

17 Let me start with the burglary. The
18 burglary is the fact that he went inside this
19 outbuilding without consent and with the intent
20 to commit a crime inside. The building is the
21 shed, outbuilding thing that we looked at with
22 the brown door with the pry marks on it. That
23 would be considered a building under the law.
24 It's not necessarily his house. It's detached
25 from his house. It's a building, like a shed, a

1 storage room or something like that. I have got
2 to show you that it was a building. I've got to
3 show he entered without consent. I've got to
4 show y'all -- I've got to leave y'all firmly
5 convinced that he had intent to commit a crime
6 inside. What crime did he intend to commit
7 inside? He intended to steal Mr. Cromer's
8 belongings, belongings that belong to him.

9 The next charge is kind of linked into the
10 burglary. It's a petty larceny. The petty
11 larceny is the taking and carrying away of goods
12 that belong to somebody else. The fact that he
13 didn't get away with the goods doesn't mean he's
14 not guilty of petty larceny. The fact that he
15 dropped the goods as he was running from the
16 police doesn't mean that he didn't intend to
17 take those items. That's petty larceny.

18 As long as you move something that belongs
19 to somebody else, any distance, whether it be
20 six inches, two feet, three feet, 10 feet or you
21 eventually got home and took it to the pawn
22 shop, that's still petty larceny as long as your
23 intent was to deprive him of those items. Y'all
24 don't think Sterling Maybin's intent was to take
25 those things to get some cash for them or use

1 them himself to get some money some way from
2 them? His intent was most certainly to deprive
3 Mr. Cromer of those goods.

4 Okay. I think that's about it. I want
5 y'all to go back there. I tell juries this all
6 the time. I've never been on a jury. I'd love
7 to. I think it would be fascinating to sit on a
8 jury and kind of hear what goes on back there,
9 but I don't know if I'll ever get that
10 opportunity.

11 But I will tell you this, what's
12 appropriate when you go back there and
13 deliberate is to be respectful of one another
14 and to be respectful of other people's
15 viewpoints and everything. What's appropriate
16 is to consider testimony of Sam Glenn Walter
17 Cromer and Investigator Goodwin and all the
18 other police officers that you heard from. What
19 is appropriate is to consider the evidence, the
20 pictures, the, uh, -- I guess the pictures are
21 the only thing we have as evidence -- the
22 bicycle and the testimony from the stand, that's
23 what is appropriate when you go back to
24 deliberate.

25 Let me tell you what's inappropriate or

1 inappropriate. Excuse me. What would be
2 inappropriate is to consider things outside of
3 this courtroom, things in the news, things that
4 you saw on Law and Order, things that your
5 cousin told you about, that would be
6 inappropriate. All right. If somebody's back
7 there and they start doing that, you remind them
8 -- remind them please that what is appropriate
9 is to consider the facts you heard from this
10 witness stand and the evidence that was
11 presented in this case. All right?

12 At the end of this -- your deliberations
13 and everything, I would just ask you to do what
14 justice calls for. That's really the only
15 verdict that would be just in this case is a
16 verdict of guilt on both charges, the petty
17 larceny and the burglary third degree. Thank
18 you.

19 **THE COURT:** Thank you, solicitor.

20 Mr. Verner, you ready, sir?

21 **MR. VERNER:** May it please the court, Your
22 Honor?

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

24 **MR. VERNER:** Mr. Foreman, Mr. Scott asked
25 you just at the end of his argument, he said use

1 your logic and reasoning. I was just struck by
2 the fact that his opening of his argument is
3 largely the same way the police investigated
4 this case. It's to, uh, -- just attack his
5 character. He is a thief. This is what thieves
6 do. That was the first five minutes of the
7 Solicitor's argument was to bash Mr. Maybin's
8 character and then build his argument around it.
9 That's exactly how this case is put together and
10 this is a criminal trial. We understand this is
11 not an academic debate.

12 There are -- as I saw it, there are three
13 witnesses in this case who offer you any
14 meaningful evidence. It's Mr. Cromer; it's
15 Officer Malloy; and it's Mr. Glenn. Those are
16 the only three officers who offered any kind of
17 substantive testimony.

18 Mr. Cromer's only evidence was this was my
19 property and I saw Sterling Maybin two days
20 beforehand and I told my neighbors Sterling was
21 on my property two days before. He was not
22 there at the scene. That is entirely how
23 Sterling Maybin's name got caught up in this.
24 If you didn't have that, we wouldn't have this
25 case today. I see Sterling Maybin two hands

1 before -- two days before.

2 I don't know if this was a unique bike but
3 you can drive through Drayton Street and seeing
4 men on Drayton Street or all over Newberry on a
5 bicycle is a fairly common occurrence. I would
6 -- y'all look at it. Y'all can determine if
7 that's a unique bicycle that somebody would have
8 remembered exactly seven months later.

9 Mr. Cromer, that's my property, I saw
10 Sterling Maybin two days before and he left.
11 That's his only meaningful testimony to you that
12 Sterling Maybin had been on that property two
13 days before then. Mr. Glenn, he made in court,
14 I assume on Monday, that is his only
15 identification of Sterling Maybin, seven months
16 after the case that he saw the man. If he had
17 identified Sterling Maybin at the time to the
18 police, it would have been in the report. There
19 would've been a photo lineup, there would've
20 been some acknowledgment saying I saw Sterling
21 Maybin.

22 Even in court, his testimony was I kind of
23 remember Sterling from when I used to coach
24 softball when he was young. Well, Sterling is
25 44. How long ago is he basing that memory on?

1 I will submit to you it's pretty daggone easy to
2 point to the guy sitting next to a lawyer in a
3 courtroom and say that's the defendant. That is
4 not a very tough -- if I could get paid to do
5 that, I would do that every day. Who is the
6 defendant in this case? Well, it's probably the
7 guy sitting at the defendant's table next to the
8 lawyer. That is a pretty daggone easy
9 identification to make. I submit to you, the
10 only way you can evaluate that is what did he
11 identify seven months ago. Well, he didn't.

12 The fact that he said at trial that I kind
13 of recognize the man from coaching softball when
14 he was younger, that's the only identification
15 he made at the time. I can't remember what the
16 guy was wearing. I don't know if he had a hat.
17 He was vaguely familiar to me but I didn't know
18 who he was. I told the police that my neighbor
19 said Sterling Maybin was in the neighborhood two
20 days beforehand. That's who the police took off
21 and started running with.

22 Until two days ago, he's never -- seven
23 months that there is no indication that he made
24 any identification of Sterling. He didn't on
25 this day of crime. The officer went to the

1 report. There's no evidence whatsoever until he
2 was called in here as a witness that he's ever
3 identify Sterling Maybin. I submit to you just
4 pointing at the guy sitting next to a lawyer is
5 not a meaningful identification of anybody.

6 There's Officer Malloy. He is the exact
7 same type situation. There is no report that as
8 Lieutenant Goodman said if an officer had
9 identified the man on the day of crime, he would
10 have put that in the report, I saw Sterling
11 Maybin. It's not in the police report. He made
12 the identification for the very first time in
13 court, seven months after the fact.

14 Let's look at the basis of his
15 identification. I'm walking around close to the
16 side of the house. It's raining. The officers,
17 they all agree it was raining, whether it was
18 drizzling. Mercer said it was nasty, it was
19 cold and rainy. O'Dell said there was at least
20 a mist going on.

21 Malloy offered absolutely no identification
22 with what he was wearing. I think he was wearing
23 bulky clothing because it was wet and rainy.
24 Was he wearing a hat? I don't even remember.
25 Did he have hair on his head? I don't remember.

1 What color was he -- was he wearing white
2 clothes or dark clothes? I don't remember. Did
3 he have gloves on? I don't remember. Basically
4 I'm coming around the side of the house. When I
5 get over there, the man has already passed me.
6 He said 20 years. He already was too far for me
7 to catch up with him. He is riding away from
8 the officer.

9 You know for a fact the officer is not
10 looking at him in the face to make the
11 identification. At best, it was a side angle
12 until the distance of a man riding a bicycle
13 full speed is no longer visible to him. He said
14 I ran about 20 yards after him before I gave up.

15 He did not make an identification. He
16 didn't say I recognized him. I understand he
17 said I think that was Sterling. Now that I think
18 about it, it was Sterling. He didn't say that
19 seven months ago. It's only that Sterling has
20 been arrested and on trial that he says I'm sure
21 I saw Sterling Maybin. I submit to you that
22 reasonably the officer probably would have
23 jotted that down that I saw the man. He wouldn't
24 wait seven months later to include that little
25 tidbit in the case file.

1 The officer testified I was startled. He
2 was surprised to see the man. In the rain, I
3 submit to you there is a possible chance that in
4 a predominantly black neighborhood, if somebody
5 passes you at a high speed on a bike, I submit
6 to you there is at least a reasonable
7 possibility that you -- whether you have the
8 best intentions or not you may misidentify him.
9 And if you misidentify him, but somebody tells
10 you, well, that's Sterling Maybin, he can
11 honestly say, yeah, I do think that was Sterling
12 Maybin and he can honestly be wrong.

13 That's the extent of the identification in
14 this case. That is my whole problem with the
15 case. You have got Mr. Glenn who didn't
16 identify him at the time but can come to court
17 and identify him based on maybe coaching him or
18 his aunt in softball 24 years ago, without any
19 testimony or any notice that they identified him
20 in the past. I do believe Mr. Glenn's testimony
21 is tainted by the fact that his neighbor said I
22 think it was Sterling Maybin.

23 I understand that it's a character -- the
24 police said Sterling is the suspect we want,
25 that's the usual suspect, that's the guy -- they

1 made a decision who they were going to charge. I
2 think they might have an honest opinion on who
3 it is. I think they might have an honest
4 mistake.

5 About the burglary, there are absolutely no
6 tools. Mr. Glenn said the man he saw had no
7 tools in his hand. The door was closed when he
8 walked around the corner. The suspect he walked
9 in front of was standing between the closed door
10 and the air conditioning unit. The police
11 officers testify when we arrived there, the door
12 was closed. If it had been opened, we would not
13 have closed it to take the photographs.

14 Mr. Mercer testified it look like the tarp
15 had been disturbed and items had been taken from
16 the tarp behind the house. You're going to be
17 handed these photographs. As an Investigator
18 Goodwin testified, the ones that are on the thin
19 piece of paper those are the photographs I took
20 on that day. I ask you when you are looking at
21 the thin photographs, are there any pictures
22 from the door that you can see marks or anything
23 like that? Then you heard Mr. Cromer say
24 sometime this week somebody asked if I can come
25 on the property and take some more pictures.

1 Lieutenant Goodman says the ones on the hard
2 cardstock, I don't recognize those pictures. I
3 submit to you that it's reasonable to assume
4 that these are pictures were taken this week if
5 Mr. Goodman says these are not the photographs I
6 took.

7 These are pictures taken seven months after
8 this incident. If these pictures are the ones
9 that were taken this week, it is seven months
10 after the incident where you would assume -- we
11 don't know how long these marks have been there,
12 whether they occurred in the last several months
13 or if they were there before this date. If Mr.
14 Cromer hadn't fixed this door for seven months,
15 I think it's reasonable to suspect he would not
16 have fixed this door seven months prior to this
17 incident. That's just a condition of the door
18 today. That's not necessarily the condition of
19 the door seven months ago.

20 I challenge you that if you can find a
21 picture that Lieutenant Goodman took on the day,
22 that is a more fair reference that there were no
23 visible marks of burglary at that time. I
24 submit it's unfair to introduce pictures that
25 were taken several months after an alleged

1 break-in to try to prove that something that
2 happened seven months before without any other
3 evidence whatsoever other than Mr. Cromer saying
4 that's my usual place where I store those tools.

5 No prior testimony from any other source
6 that Sterling Maybin -- the bike that he's seen
7 riding around. I submit to you when Mr. Cromer
8 says I saw a bicycle in the neighborhood, a
9 green bicycle, that's a green bicycle. I submit
10 to you that's not so unique that you can convict
11 a man on a burglary charge. That's the only
12 evidence.

13 No identification at the time. Seven
14 months later said he says it's the guy sitting
15 next to the lawyer. Officer Malloy said I
16 didn't identify him at the time. He looked
17 familiar to me. I thought I knew him. Then
18 somebody said Sterling Maybin had been on the
19 property two days before and the officer goes,
20 ah, that's who I saw. That's the case. That's
21 the case they want you to convict somebody on
22 some very serious charges. I submit there's a
23 reasonable doubt that they may have
24 misidentified the person or there is lack of
25 hard proof to convict somebody.

1 If you want to convict them on character,
2 the Solicitor's closing argument gave you plenty
3 of character attacks to do that. If you want to
4 convict him on the facts, at least acknowledge
5 what the facts are. There's Mr. Glenn's
6 eyewitness testimony. There's Officer Malloy's
7 eyewitness testimony. They are both tainted by
8 the fact that they were told that was Sterling
9 Maybin and they would not have identified that
10 person but for somebody saying Sterling Maybin
11 had been on the property two days before. Thank
12 you.

13 **THE COURT:** Thank you, Mr. Verner.

14 Mr. Foreman, Ladies and Gentlemen of the
15 jury, we're going to take a short break before I
16 bring you back out for the, uh, of course, my
17 charge. Again don't to start deliberations.
18 Don't engage in any discussions about anything
19 related to this case. I'll get you back out
20 shortly. Thank you.

21 **(WHEREUPON,** the jury exits at approximately
22 11:17 a.m.)

23 **THE COURT:** All right, you need a few
24 minutes to look over the charge? Let's take a
25 short recess.

1 **(WHEREUPON, a recess is taken.)**

2 **THE COURT:** Let's bring the jury out
3 please ma'am.

4 **(WHEREUPON, the jury enters at approximately**
5 11:36 a.m.)

6 **THE COURT:** Let the record reflect the
7 jury is back in.

8 Mr. Foreman and Ladies and Gentlemen of the
9 jury, I now will charge you on the law
10 applicable to this case. You must consider the
11 charge as a whole and not focus on some portions
12 to the exclusion of other portions.

13 The indictments charge the defendant with
14 third-degree burglary and petty larceny
15 involving the value of less than \$2000. I
16 remind you that the fact the defendant was
17 arrested, charged and indicted in this case is
18 not evidence in this case and cannot be
19 considered by you as evidence of guilt in this
20 case, nor does it create any presumption or
21 inference of guilt. These documents are simply
22 the formal written instruments which contain the
23 charges made against the defendant. They are
24 the formal documents by which this case is
25 brought into this court.

1 The indictments in this case allege two
2 different offenses against the defendant. The
3 charges are indictment one, 2015-GS-36-121,
4 burglary third-degree, indictment number two,
5 2015-GS-36-122, petty larceny involving a value
6 of less than \$2000.

7 Each indictment charges a separate and
8 distinct offense. You must decide each
9 indictment separately on the evidence and the
10 law applicable to it uninfluenced by your
11 decision as to any other indictment. The
12 defendant may be convicted or acquitted on any
13 or all of the offenses charged. You will be
14 asked to write a separate verdict of guilty or
15 not guilty for each indictment.

16 Mr. Foreman, I will explain it to you at
17 the conclusion of this charge.

18 Now, the defendant has pled not guilty to
19 these indictments. That plea puts the burden on
20 the State to prove the defendant guilty. A
21 person charged with committing a criminal
22 offense in South Carolina is never required to
23 prove himself innocent. I charge you that it is
24 an important rule of law that the defendant in a
25 criminal trial, no matter what the seriousness

1 of the charge may be, will always be presumed to
2 be innocent of the crime for which the
3 indictment was issued unless guilt has been
4 proven by evidence satisfying you of that guilt
5 beyond a reasonable doubt. This presumption of
6 innocence does not end when you begin your
7 deliberations, but it accompanies the defendant
8 throughout the entire trial until or unless you
9 reach a verdict of guilt based on evidence
10 satisfying you of that guilt beyond a reasonable
11 doubt. The presumption of innocence is like a
12 robe of righteousness placed about the shoulders
13 of the defendant which remains with the
14 defendant until it has been stripped from the
15 defendant by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere
18 legal theory. It is not just a legal phrase.
19 It is a substantial right to which every
20 defendant is entitled unless you, the jury, are
21 satisfied from the evidence of the defendant's
22 guilt beyond a reasonable doubt.

23 The State has the burden of proving the
24 defendant guilty beyond a reasonable doubt.
25 Some of you may have served as jurors in a civil

1 case where you were told that it is only
2 necessary to prove that a fact is more likely
3 true than not true, such as by the greater
4 weight or the preponderance of the evidence. In
5 criminal cases, however, the State's proof must
6 be more powerful than that. It must be beyond a
7 reasonable doubt.

8 Proof beyond a reasonable doubt is proof
9 that leaves you firmly convinced of the
10 defendant's guilt. There are very few things in
11 this world that we know with absolute certainty
12 and, in criminal cases, the law does not require
13 proof that overcomes every possible doubt. If,
14 based on your consideration of the evidence, you
15 are firmly convinced that the defendant is
16 guilty of the crime charged, you must find the
17 defendant guilty. If on the other hand, you
18 think there is a real possibility that the
19 defendant is not guilty, you must give the
20 defendant the benefit of the doubt and find him
21 not guilty.

22 Now, I remind you as I told you at the
23 outset of this case, during this trial, you and
24 I have had certain duties to perform. As the
25 trial judge, it has been my responsibility to

1 preside over the trial of this case, and I've
2 also had the duty to rule on the admissibility
3 of evidence offered during this trial. You only
4 to consider the competent evidence before you.
5 You are to consider only the testimony which has
6 been presented from the witness stand and the
7 exhibits which have been made a part of the
8 record in this case and any stipulations of
9 counsel.

10 I have the additional duty to charge you
11 the law applicable to this case. As the
12 presiding judge, I am the sole judge of the law
13 in this case. It is your duty, as jurors, to
14 accept and apply the law as I now state it to
15 you. As I told you at the outset as well, if
16 you already have any idea as to what the law is
17 or what the law to be and it does not agree with
18 what I now tell you the law is, you must abandon
19 your idea because you are sworn to accept the
20 law and apply the law exactly as I state it to
21 you.

22 In every case tried in this court before a
23 jury, the jury becomes the sole and exclusive
24 judge of the facts in a case. The trial judge
25 cannot intimate, state, comment on or make any

1 statement to a trial jury about the facts in a
2 case. Since you, the jury, are the sole judge
3 of the facts in this case, you are not to infer
4 from what I have said during the progress of
5 this trial in ruling upon the admissibility of
6 evidence or otherwise or anything that I say now
7 during the course of this instruction to you
8 that I have any opinion about the facts in this
9 case. The law does not allow me to have an
10 opinion about the facts in this case. This is a
11 matter solely for you, the jury, to determine.
12 As jurors, it is your duty to determine the
13 effect, value, weight and truth of the evidence
14 presented during this trial.

15 Mr. Foreman, Ladies and Gentlemen of the
16 jury, there are two types of evidence which are
17 generally presented during a trial, that being
18 direct evidence and circumstantial evidence.
19 Direct evidence directly proves the existence of
20 a fact and does not require a deduction.
21 Circumstantial evidence is proof of a chain of
22 facts and circumstances indicating the existence
23 of a fact.

24 Crimes may be proven by circumstantial
25 evidence. The law makes no distinction between

1 the weight or the value to be given to either
2 direct or circumstantial evidence. However, to
3 the extent the State relies on circumstantial
4 evidence, all the circumstances must be
5 consistent with each other, and when taken
6 together, point conclusively to the guilt of the
7 accused beyond a reasonable doubt. If these
8 circumstances really portray the defendant's
9 behavior as suspicious, the proof as failed.

10 The State, again, has the burden of proving
11 the defendant guilty beyond a reasonable doubt.
12 This burden rests with the State regardless of
13 whether the State relies on direct evidence,
14 circumstantial evidence or some combination of
15 the two.

16 Necessarily, you must determine the
17 credibility of witnesses who have testified in
18 this case. Credibility simply means
19 believability. It becomes your duty as jurors
20 to analyze and to evaluate the evidence and
21 determine which evidence convinces you of its
22 truth.

23 In determining the believability of
24 witnesses who have testified in this case, you
25 may believe one witness over several witnesses

1 or several witnesses over one witness. You may
2 believe a part of the testimony of a witness and
3 reject the remaining part of the testimony of
4 that same witness. You may believe the
5 testimony of a witness in its entirety or reject
6 the testimony of a witness in its entirety. You
7 may consider whether any witness has exhibited
8 to you any interest, bias, prejudice, or other
9 motive in this case. You may also consider the
10 appearance and manner of a witness while on the
11 witness stand.

12 Mr. Foreman, ladies and gentlemen of the
13 jury, I instruct you and emphasize that the fact
14 that the defendant did not testify is not a
15 factor to be considered by you in any way in
16 your deliberations and in your consideration on
17 the question of the guilt or innocence of the
18 defendant. It must not be considered by you in
19 any manner whatsoever. A defendant has the
20 constitutional right to remain silent; and the
21 assertion of this right must not be considered
22 by you in your deliberations.

23 I repeat, under your oath, you are to draw
24 no conclusion whatsoever from the fact that the
25 defendant in this case did not testify. The

1 fact that this defendant did not testify should
2 not even be discussed in your jury room. The
3 burden of proof, as I have stated to you, is on
4 the State. The defendant is not required to
5 prove his innocence. The burden of proof
6 remains on the State to prove guilt beyond a
7 reasonable doubt.

8 Now an issue in this case is the
9 identification of the defendant as the person
10 who committed the time charged. The State has
11 the burden of proving identity beyond a
12 reasonable doubt. You must be satisfied beyond
13 a reasonable doubt of the accuracy or
14 identification of a defendant before you may
15 convict the defendant.

16 Identification testimony is an expression
17 or belief or impression by a witness. You must
18 determine the accuracy of the identification of
19 the defendant. You must consider the
20 believability of each identification witness in
21 the same way as any other witness. You may
22 consider whether the witness has adequate
23 opportunity to observe the offender at the time
24 of the offense. This would be affected by
25 things like how long or short time was

1 available, how far or close the witness was,
2 whether the person had a chance to see another
3 person in the past. Once again, I instruct you,
4 burden of proof on the State extends to every
5 element of the crime charged. This specifically
6 includes the burden of proof beyond a reasonable
7 doubt the identity of the defendant as the
8 person committed the crimes. If after examining
9 the testimony, you have a reasonable doubt as to
10 the accuracy of the identification, you must
11 find the defendant not guilty.

12 Let me explain to you the two charges that
13 have been made against the defendant, third-
14 degree burglary and petty larceny. Third-
15 degree burglary is set out in the Code of Laws
16 Section 16-11-313. In order to prove third-
17 degree burglary, the State must first prove
18 beyond a reasonable doubt that the defendant
19 entered a building without consent. A building
20 is a structure vehicle, water craft or aircraft
21 or any place a person lodges or lives or people
22 assemble for the purpose of business,
23 government, education, religion, entertainment,
24 public transportation, public use or where goods
25 are stored.

1 In order to prove that the defendant
2 entered the building, the State does not have to
3 show that the defendant's entire body entered
4 the building. The smallest entry is sufficient.
5 It may be any part of the body, such as a hand
6 or foot or even an instrument, such as a hook or
7 other instrument. In addition, the State does
8 not have to prove that force was used to gain
9 entry. If a person enters a building by using
10 deception, artifice, trick, or misrepresentation
11 to get consent to enter, this is an entry
12 without consent.

13 Next, the State must prove beyond a
14 reasonable doubt the defendant intended to
15 commit a crime, either a felony or a
16 misdemeanor, at the time of the entry to be
17 guilty of burglary. The mere entry into a
18 building without consent is not burglary. If
19 the intent to commit a crime is formed after the
20 entry, it is not burglary.

21 On the other hand, if the defendant
22 intended to commit a crime at the time of the
23 entry, it is a burglary even if the intent was
24 abandoned after the entry. It does not matter
25 that the intended crime was not completed.

1 Intent may be shown by action and conduct of the
2 defendant and other circumstances from which you
3 may naturally and reasonably infer intent.

4 Now, petty larceny involving a value of
5 \$2000 or less, that's found in the our Code of
6 Laws 16-13-30 Subsection A. The defendant is
7 charged with petty larceny involving less than
8 \$2000. The State must prove beyond a reasonable
9 doubt that the defendant took, carried away
10 personal property of another against the will or
11 without the consent of the other person. The
12 slightest removal of the property or the
13 complete possession of the property, even for an
14 instant, by the defendant is enough to show a
15 taking and carrying away of the property. The
16 State must also prove beyond a reasonable doubt
17 that the defendant intended to permanently
18 deprive the owner of the property. Finally, the
19 State must prove that the value of the thing or
20 things taken was \$2000 or less.

21 Now, Mr. Foreman and Ladies and Gentlemen
22 of the jury, there are two possible verdicts for
23 each charge, guilty and not guilty. I'll show
24 you the verdict form in just a moment. Your
25 verdict as to each charge has to be unanimous

1 among the 12 of you. If you have reached a
2 verdict as to these charges, knock on the door
3 and notify the bailiff that you have reached the
4 verdict.

5 You will probably be happy to know that a
6 copy of what I have just read to you and charged
7 to you will be provided to you along with the
8 exhibits so you have something to refer back to.
9 Okay?

10 Now, I'm going to step down and show you
11 the verdict form, which is pretty simple to
12 read. The verdict form just shows the case and
13 the two indictment numbers. As to the third-
14 degree burglary charge, we find guilty or not
15 guilty. The order of that guilty and not guilty
16 as on here is of no significance. One has to go
17 before the other. Okay. Then on the petty
18 larceny charge, the same thing. You just put a
19 mark, X or check -- either one is fine -- on
20 each one. Sign it, Mr. Foreman. Then you will
21 put today's date.

22 Now, I'm going to send you back to your
23 jury room. You still can't begin your
24 deliberations yet because I need to talk with
25 the lawyers to make sure that my final charge

1 that I just gave you was correct and we do not
2 need to make any changes or additions to that.
3 When you are brought the exhibits, the verdict
4 form and a copy of my charge, that will be your
5 cue, Mr. Foreman, to begin your deliberations.

6 And the alternate, that will be your cue to
7 leave the room because you cannot participate in
8 the deliberations. I'll give you some further
9 instructions once you leave the jury room.

10 So go back to the jury room. Don't start
11 yet until the exhibits and verdict form and
12 charge are brought to you. Okay?

13 (WHEREUPON, the jury exits at approximately
14 11:53 a.m.)

15 **THE COURT:** Any exceptions or objections
16 to the court's charge from the State?

17 **MR. SCOTT:** No, Your Honor..

18 **THE COURT:** From the defense?

19 **MR. VERNER:** No, Your Honor.

20 **THE COURT:** Thank you very much. We're
21 off the record.

22 (WHEREUPON, deliberation of the jury begins at
23 approximately 11:55 a.m.)

24 (WHEREUPON, the Court resumes at approximately
25 12:55 p.m.)

1 **THE COURT:** Okay, gentlemen, it is my
2 understanding that the jury has reached a
3 verdict. Anything before we bring the jury out?

4 **MR. SCOTT:** Nothing from the State, Your
5 Honor.

6 **MR. VERNER:** No, Your Honor.

7 **THE COURT:** Madam bailiff, if you will,
8 bring the jury out please.

9 **(WHEREUPON, the jury enters at approximately.**
10 1:01 p.m.)

11 **THE COURT:** Okay. Let the record reflect
12 the jury is back in.

13 Mr. Foreman, it is my understanding that
14 you have reached a verdict, is that correct?

15 **THE JUROR:** Yes, sir.

16 **THE COURT:** Okay. Was that -- or is that
17 a verdict unanimous among the 12 of you as far
18 as both charges?

19 **THE JUROR:** Yes, sir.

20 **THE COURT:** If you would hand the verdict
21 form to the bailiff please. She will hand it to
22 me.

23 **(WHEREUPON, the verdict form is passed to the**
24 court.)

25 **THE COURT:** Madam Clerk, will you publish

1 the verdict.

2 Mr. Maybin, would you please stand, sir.

3 **THE CLERK:** The State of South Carolina
4 versus Sterling Maybin. As to indictment 2015-
5 GS-36-121, the charge of third-degree burglary,
6 we, the jury, find the defendant guilty. As to
7 indictment number 2015-GS-36-122 with the charge
8 of petty larceny, \$2000 or less, we, the jury,
9 find the defendant guilty. Signed Henry Senn,
10 foreperson.

11 Ladies and Gentlemen, this is your verdict?
12 Please indicate by raising your right hand.

13 (WHEREUPON, each juror responds.)

14 **THE COURT:** Let the record reflect that
15 all 12 raised their right hand per the
16 instructions of the clerk.

17 Individual polling from the defense?

18 **MR. VERNER:** No, Your Honor.

19 **THE COURT:** Thank you. You can have a
20 seat.

21 Mr. Foreman, Ladies and Gentlemen of the
22 jury, let me thank you once again for your
23 service on this jury. I hope your experience
24 this week has been a good one for you. It is
25 always tough making tough decisions. I

1 understand that. I can appreciate that. I hope
2 your experience has been a good one.

3 This is Friday afternoon. Needless to say,
4 we have no further need for your services. It
5 is my understanding that your check for your
6 service this week is downstairs in the clerk's
7 office. When you leave, you can go down. And as
8 I tell juries, don't make big plans for the
9 check that you are about to receive. Okay?
10 Again, thank you. I hope that some time in the
11 future when you are eligible to be summoned
12 again for jury duty, that you will have a chance
13 to serve on another jury.

14 So I'm going to come down. As you walk
15 out, I'm going to shake your hand. You are free
16 to leave. Again, thank you very much.

17 Mr. Foreman, you need to stay because you
18 need to sign the indictment. If you will, just
19 stay with us.

20 The rest of you are free to go.

21 (WHEREUPON, the jury exits at approximately
22 1:04 p.m.)

23 (WHEREUPON, the Court resumes at approximately
24 2:03 p.m.)

25 THE COURT: Okay. We are on the record

1 in the State versus Sterling Maybin for
2 sentencing proceeding following a guilty verdict
3 on both indictments. I will hear from the State
4 first as to the issue of sentencing.

5 **MR. SCOTT:** Yes, sir, Your Honor. First
6 of all, what I'm going to do is go over his
7 criminal history.

8 **THE COURT:** Yeah.

9 **MR. SCOTT:** Then, I have provided you with
10 some certified convictions. Those are
11 applicable to each charge. It is a burg third,
12 second offense. I have got the requisite
13 certified conviction of the prior burglary.

14 **THE COURT:** Have you seen these, Mr.
15 Verner?

16 **MR. VERNER:** I have. I'm going to speak on
17 those in just a second. I was aware of those
18 both for trial and allowed to at least see them
19 prior to trial. I'm going to address those at
20 the appropriate time.

21 **THE COURT:** Okay, sir.

22 **MR. SCOTT:** On top of that, I have some
23 other property crimes that enhances the petty
24 larceny to an enhancement property crime.

25 **THE COURT:** All right.

1 **MR. SCOTT:** However, he has got 14 prior
2 convictions that I have listed for you. '89,
3 Unlawful Carrying of a Pistol; Assault and
4 Battery, '91; Burglary charge in, '92; Receiving
5 Stolen Goods in '92, Armed Robbery in '93,
6 Shoplifting, 1999; Distribution Crack, 2000;
7 Criminal Conspiracy, 2003; breaking into -- Auto
8 Break-in, 2004, Auto Break-in, 2006; Auto Break-
9 in, 2007; Grand larceny, 2009; Petty Larceny,
10 2009; and Resisting Arrest in 2014.

11 **MR. VERNER:** The only thing I would take
12 exception on, that armed robbery, Your Honor.
13 The record shows an armed robbery. The
14 sentencing sheet shows it more like a strong
15 arm.

16 **THE COURT:** Okay.

17 **MR. VERNER:** I think he pled down. The RAP
18 sheet does show it as an armed robbery. The
19 sentence is more consistent -- it was a youthful
20 offender sentence or it is more consistent with
21 strong arm robbery.

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

23 **MR. SCOTT:** Judge, I just noticed -- I
24 don't think it's fairly obvious but the bulk of
25 the convictions seem to be related one way or

1 another taking things or being places he's not
2 supposed to be. Kevin Goodman, Your Honor, is
3 the investigator or the detective you heard from
4 in trial, has known Sterling Maybin, has dealt
5 with him for a long time. He wishes to address
6 the court. I think at the appropriate time, the
7 victim in this case also would like to address
8 the court.

9 **THE COURT:** I will be glad to hear from
10 you, sir.

11 **SPEAKER:** On behalf of the Newberry City
12 Police Department, again, we have been dealing
13 with Mr. Maybin for some time now. It is to a
14 point now where every time he is out, he starts
15 again. It's like there's no remorse. It is
16 family, friends, people he grew up with. We are
17 getting calls of concern from citizens like what
18 are you going to do, when are you going to do
19 something.

20 It is a safety issue. It is an issue again
21 that is been for -- I know the 20 years that
22 I've been here -- that we've had to deal with.
23 It only gets worse. As in this case, this was a
24 childhood friend that he grew up with that he is
25 taking from. We just don't know what to do. We

1 don't know when he is going to stop. We don't
2 want anyone getting hurt. We don't want Mr.
3 Maybin to get caught on somebody's property and
4 they decide that we're not going to do anything
5 so they are going to do something. Those are
6 the phone calls that we're getting. I just want
7 the court to be aware of that.

8 **THE COURT:** Thank you very much. I will
9 be glad to hear from you also. Let me put you
10 under oath. The officer was already under oath.
11 **(WHEREUPON, is first duly sworn.)**

12 **THE COURT:** Yes, sir, be glad to hear
13 from you.

14 **SPEAKER:** Yes, sir. Like I said, I've
15 known this gentleman for quite a long time. It
16 just seems like he has not learned from his
17 mistake. He is repeatedly doing the same thing
18 over and over. It's like he don't care about
19 his self, but he is hurting other people. I
20 think a person with that kind of attitude, they
21 need to be off the street. I don't mean to make
22 that judgment, but I just feel like it isn't
23 fair to people out there working hard trying to
24 establish things in an honest good way and you
25 got a man to come along and just take you just

1 like that. That is a hurting feeling.

2 For me, I never really had a buddy take
3 nothing from me. But when that did happen, that
4 did harm. I can imagine how other people have
5 felt about being a victim like that. I just
6 feel like he don't care about himself. You know,
7 he just need to be dealt with.

8 **THE COURT:** Thank you very much. Anything
9 further?

10 **MR. SCOTT:** No, Your Honor.

11 **THE COURT:** All right, Mr. Verner?

12 **MR. VERNER:** May it please the court, Your
13 Honor. As the court heard, Mr. Sterling is 44
14 years old. He's been in jail in Newberry since
15 December 25th of last year. Whatever sentence
16 the court imposes, that should be the sentence
17 start date. That was the arrest on these
18 charges.

19 I will say, Your Honor, he has been trying
20 to consistently to work out a plea. He has been
21 willing to plea. I think the issue was the
22 appropriate sentence has been largely disputed.
23 He has tendered his willingness to plea several
24 times prior to today. There was a difference in
25 obviously what would be the appropriate

1 recommendation of the State in getting before
2 the court.

3 I understand it is repetitive stuff but it
4 is a petty larceny type going around type crime
5 rather than something that appears to be a very
6 well planned type crime. I do know that he is
7 recalcitrant, Your Honor, or sorry to be here.

8 My legal concern is this, judge, certainly,
9 the State has made his prior convictions for the
10 larcenies available and shown those prior to
11 trial. My question is whether the State
12 would've had to introduce that or have that
13 stipulated actually during the trial to give the
14 court jurisdiction to enhance the property
15 crime. If it is a sentencing issue, I am
16 certainly aware of it. They presented the
17 appropriate documents where he would qualify
18 under the enhanced statute. My concern is it
19 might be jurisdictional and it should've been
20 introduced in the actual trial to give the court
21 jurisdiction over that offense. We stipulate
22 the court has jurisdiction and that the petty
23 larceny qualify.

24 **THE COURT:** You got anything to --

25 **MR. VERNER:** There was a federal case a few

1 years ago where the federal courts were using
2 things to enhance punishments and the US Supreme
3 Court said that you cannot enhance the
4 punishment for anything that the jury did not
5 have jurisdiction of. I think they were
6 considering -- I don't know the name of the case
7 -- but the US Supreme Court said the federal
8 courts cannot enhance sentencing for things that
9 didn't go through the jury, the court wouldn't
10 have jurisdiction to enhance punishment unless
11 those items have been part of the trial. Now
12 the federal system does have a little bit
13 different sentencing where they do that. But --

14 **THE COURT:** Wouldn't that be applicable to
15 a situation to where a prior offense is an
16 element of the crime?

17 **MR. SCOTT:** The problem I think --

18 **MR. VERNER:** That's my --

19 **MR. SCOTT:** As far as jurisdiction, I can
20 bring up any magistrate level offense and try it
21 along with any felony. This court would
22 certainly have jurisdiction. It's not a matter
23 of jurisdiction. I think what it's dealing with
24 is degrees. This isn't like a question of
25 degrees of an offense. It is strictly a

1 sentencing provision.

2 **MR. VERNER:** I agree it is strictly a
3 sentencing thing but he is indicted for petty
4 larceny, a 30-day offense. Essentially, the
5 court would have jurisdiction to sentence him on
6 a 10-year crime. There is nothing in the record
7 on either a stipulation of prior convictions or
8 introduced as court's exhibits of the prior
9 exhibits.

10 I will say, Your Honor, we have been aware
11 of them prior to going into the trial. The
12 State had concealed it. I would argue that they
13 possibly should have presented it as a court
14 exhibit at least during the trial. That being
15 said, Your Honor, I hope we don't get to the
16 issue anyway.

17 I think a straight sentence is appropriate.
18 I know Sterling wanted a four-year sentence that
19 he was prepared to take. I know the State
20 wanted more than that. I will represent to the
21 court that Sterling has consistently or that he
22 has offered to plead guilty to this charge prior
23 to the trial for four years. He is hoping for a
24 sentence or as much leniency as the court can
25 give him.

1 Anything you want to say, sir?

2 **THE COURT:** I will be glad to hear from
3 you.

4 Madam Clerk, would you swear Mr. Maybin in?
5 **(WHEREUPON, the defendant is first duly sworn.)**

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

7 **MR. MAYBIN:** Your Honor, first -- first
8 of all, I want to let you know that, you know, I
9 don't feel good about the jury's decision, you
10 know what I'm saying, that they made today. But
11 at the same time, I ain't mad. I know now that
12 I'm here and now I have to face you, you know
13 what I'm saying, because you are the sentencing
14 judge, you know what I mean. I just ask, you
15 know what I'm saying, that you be lenient, you
16 know what I'm saying, towards the sentencing.

17 **THE COURT:** Anything further from the
18 State?

19 **MR. SCOTT:** No, Your Honor. I think his
20 comment says it all.

21 **THE COURT:** Everybody be at ease for just
22 a moment.

23 **(WHEREUPON, a recess is taken.)**

24 **THE COURT:** Mr. Maybin, it comes to a
25 point, looking back over your prior record, what

1 will it take for you to quit doing this stuff?
2 I don't know. I just don't know. Even though
3 your excellent attorney objected, I think the
4 statement that the solicitor made at the
5 beginning of his closing probably has some truth
6 to it. When Sterling Maybin is around, lock
7 things up.

8 All right. Both indictments, the sentence
9 of the court is that you be committed to the
10 Department of Corrections for 10 years to run
11 concurrent. 198 days credit. Good luck to you
12 sir.

13 **MR. MAYBIN:** Thank you, Your Honor.

14 **MR. VERNER:** Thank you, Your Honor.

15 **(WHEREUPON,** the proceedings conclude at
16 approximately 2:18 p.m.)

17

18

CERTIFICATE

175
189

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Newberry, South Carolina, on this 10th day of December, 2015.

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

Teresa B. Johnson

Certified Court Reporter

WITNESSES

Kevin Goodman
Newberry Police Department

WARRANT NUMBER

2014A3620200462

TRUE BILL

Rhyllia Sanders

Foreman of the Grand Jury

Date: 4-2-15

VERDICT

Guilty 7-10-15

Henry Lenn

Foreman

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****COURT OF GENERAL SESSIONS**

April Term, 2015

Indictment # 15GS36-0122

THE STATE

vs.

Sterling Maybin

INDICTMENT FOR

Petit Larceny \$2,000 or less

§16-13-0030

CDR: 3419

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF NEWBERRY****Petit Larceny \$2,000 or less****§16-13-0030**

At a Court of General Sessions, convened on the 2nd day of April, 2015, the Grand Jurors of Newberry County present upon their oath:

That Sterling Maybin did, on or about December 23, 2014, in Newberry County, feloniously take and carry away the personal goods of Walter C. Cromer of the value of less than two thousand (\$2,000.00) dollars described as follows: Sony radio, air compressor, Poulan Pro blower and a battery charger with intent to deprive the owner permanently of such goods, in violation of Section 16-13-30(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Kevin Goodman
Newberry Police Department

WARRANT NUMBER

2014A3620200461

TRUE BILL

Rhyllis Sanders

Foreman of the Grand Jury

Date: *4-2-15*

VERDICT

Guilty 7-10-15

Henry Senn

Foreman

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****COURT OF GENERAL SESSIONS**

April Term, 2015

Indictment # 15GS36-0121

THE STATE

vs.

Sterling Maybin

INDICTMENT FOR

Burglary Third Degree

§16-11-0313

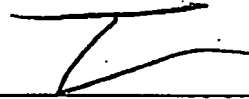
CDR: 0427

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****Burglary Third Degree****§16-11-0313**

At a Court of General Sessions, convened on the 2nd day of April, 2015, the Grand Jurors of Newberry County present upon their oath:

That Sterling Maybin did, on or about December 23, 2014, in Newberry County, willfully and unlawfully enter a building without consent and with intent to commit a crime therein, the said building being owned and/or occupied by Walter Cromer, in violation of Section 16-11-313 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

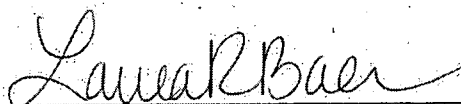


Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended 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."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended 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."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2016.

RECEIVED

DEC 05 2016

SC Court of Appeals