

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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WILLIAM MCCLADDIE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001979

---

APPENDIX

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State of South Carolina  
County of Aiken

Court of General Sessions

State

v.

William H. McCladdie

Defendant.

)  
)  
) Transcript of Record  
) 2015-GS-02-1103  
) 2015-GS-02-1104  
) 2015-GS-02-1105  
)  
)

July 7-8, 2015  
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a  
jury.

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1           (The following proceedings were held July 7-8,  
2           2015.)

3           THE COURT: Good morning, ladies and gentlemen.  
4           Welcome to this -- we got a two-week term of court  
5           starting. I've got this week, and next week you'll  
6           have Judge Tanya Gee coming in. But you'll only be  
7           needed this week. We worked yesterday until after  
8           5:00, we got a lot done. We were here early this  
9           morning getting some stuff done.

10          Let me tell you where we are. We're down, I  
11          think, to one trial. We had a number of cases on  
12          the trial docket that have been resolved. So we're  
13          down to one trial, which is probably a two-day  
14          trial. What we'll do now is pick that jury this  
15          morning and start into the trial of the case, and  
16          then sort of see how we run as the day progresses.  
17          So what we'll do now is select the jury of 12 people  
18          and two alternates. Those who are not selected will  
19          be released for the balance of the day with  
20          instructions to call back, just in case something  
21          else come up. Those who are selected will start  
22          serving with me and we'll go through today and  
23          perhaps into tomorrow, just depending on where we  
24          are in the case.

25          And in order to accomplish that, obviously we

1 have to make sure you're qualified. State law  
2 provides for certain qualifying questions which you  
3 have meet in order to be qualified. Once we go  
4 through the qualifying questions, then I'll have to  
5 ask you some particular questions dealing with the  
6 first trial. Once we do that, then we'll be in a  
7 position to select the jury. And we should have  
8 that jury selected within an hour and get started  
9 with the trial. Those not selected will, obviously,  
10 be allowed to go home.

11 The first process though is to call the roll.  
12 The clerk will call the roll in just a few minutes.  
13 When your name is called, please stand and identify  
14 yourself by name, please tell us where you are  
15 employed, if you are working; if you are married,  
16 please give us your spouse's employment. It's a  
17 simple process. Just stand and, my name is Jack  
18 Early, I'm employed by the Judicial Department, and  
19 my wife is a homemaker. We'll get moving with that  
20 in just a minute.

21 My name is Jack Early. I'm your resident judge  
22 of the Second Circuit, which is Bamberg, Barnwell,  
23 and Aiken. And I have the privilege of being over  
24 here a lot when I'm not else where in the state. We  
25 have a great staff we work with. I'm sure you met a

1 number of people this morning. So without any  
2 further ado, let's start with the process. So if  
3 you would, please stand and raise your right hand,  
4 and let the clerk swear you in and we'll go through  
5 the rollcall.

6 (Jury pool sworn.)

7 (Clerk calls roll.)

8 THE COURT: All right. Ladies and gentlemen,  
9 I'm going to go through the qualifying questions.  
10 If any of these apply to you, please stand, once  
11 again identify yourself by name and number, and  
12 respond to the question.

13 Do I have any member of the jury panel who is  
14 not a citizen of the United States? If so, please  
15 stand.

16 Do I have any member of the jury panel who is  
17 not a citizen and resident of Aiken County, South  
18 Carolina? If so, please stand.

19 Yes, sir. Your name and number?

20 POTENTIAL JUROR: Jeremy Mathis, 102.  
21 Edgefield County.

22 THE COURT: You live in Edgefield County?

23 POTENTIAL JUROR: I do.

24 THE COURT: How long have you lived in  
25 Edgefield County?

1 POTENTIAL JUROR: Five years.

2 THE COURT: All right. You're not qualified to  
3 serve in Aiken County, but you're qualified to serve  
4 in Edgefield County. So I'm going to release you  
5 now. You may leave.

6 Yes, ma'am?

7 POTENTIAL JUROR: April Danko, number 40. I  
8 live in North Augusta.

9 THE COURT: North Augusta is Aiken County,  
10 ma'am.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Whereabouts in North Augusta?

13 POTENTIAL JUROR: It's the City of North  
14 Augusta, Butler's Mill.

15 THE COURT: That's Aiken County. Thank you for  
16 standing.

17 Do I have any member of the jury panel unable  
18 to read, write, speak, or understand the English  
19 language? Please stand.

20 Any member of the jury panel have less than 6th  
21 grade education or its equivalent? If so, please  
22 stand.

23 Any member of the jury charge unable to render  
24 efficient jury service this week because of some  
25 physical or mental infirmity? This normally

1 requires a doctor excuse. If so, please stand.

2 Yes, sir. Your name and number?

3 POTENTIAL JUROR: Johnny Partin, 125. I'm  
4 diagnosed with cluster headaches, and I'm having  
5 them now.

6 THE COURT: If at any time during the trial of  
7 the case, if you're selected, you just tell me if  
8 you're having problems with the headaches and I'll  
9 address the situation. Thank you. You may stay  
10 with us.

11 THE CLERK: Your Honor, he has a doctor's  
12 excuse that's supposed to be faxed in, and we  
13 haven't received it yet.

14 THE COURT: When it comes in, we'll look at it.  
15 Yes, ma'am?

16 POTENTIAL JUROR: 184. My mother-in-law's  
17 funeral is today at 3:00.

18 THE COURT: All right. Ma'am, I'll excuse you  
19 for the balance of the week. I'm sorry for your  
20 loss. You may leave.

21 Do I have any member of the jury panel who has  
22 been convicted by guilty plea or trial in a state or  
23 federal court of record of a crime punishable by  
24 imprisonment for more than one year and your civil  
25 rights have not been restored be pardon nor amnesty?

1 Punishable by more than one year means you could  
2 have received a sentence of more than one year,  
3 regardless of what sentence you actually received.  
4 If so, please stand.

5 Yes, sir. Your name and number?

6 POTENTIAL JUROR: 109, Justin McRae. I was  
7 charged with manufacturing methamphetamine.

8 THE COURT: Were you convicted or pled guilty?

9 POTENTIAL JUROR: I pled guilty.

10 THE COURT: All right. That will disqualify  
11 you. You may leave.

12 POTENTIAL JUROR: May I ask -- I've told y'all  
13 before when y'all have asked me about the jury duty,  
14 and didn't understand why I came in this time. IN  
15 the future if it's --

16 THE COURT: Sir, we'll deal with that in the  
17 future. If you get another subpoena, call the clerk  
18 of court, give them that information.

19 POTENTIAL JUROR: Thank you.

20 THE COURT: Sorry to inconvenience you.

21 Any member of the jury panel who is clerk or  
22 deputy clerk of court, a constable, sheriff or other  
23 commissioned law enforcement officer, probate judge,  
24 county commissioner, magistrate, or other county  
25 officer, or employed within the walls of any

1 courthouse? If so, please stand.

2 Any member of the jury panel who has previously  
3 served this year.

4 Do I have any member of the jury panel who has  
5 previously served on jury duty in Circuit Court  
6 during this calendar year, 2015?

7 Do I have any member of the jury panel who has  
8 served on the Aiken County Grand Jury during the  
9 past several years? If so, please stand.

10 Mr. Slocum?

11 All right. Juror No. 41, Mr. Darby, where are  
12 you? Please come forward.

13 (John Darby comes forward.)

14 THE COURT: Sir, I've got you with a number of  
15 prior offenses. Is that correct?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Why didn't you say something?

18 POTENTIAL JUROR: Didn't think it was more than  
19 a year.

20 THE COURT: Well, you had a robbery back in  
21 1997.

22 POTENTIAL JUROR: That was shoplifting. It was  
23 simple shoplifting.

24 THE COURT: I have to go by what it says on  
25 here. All right. I'll disqualify you. You may

1 leave.

2 Juror No. 70, please. Martha Holiday.

3 (Martha Holiday comes forward.)

4 THE COURT: I've got that you were convicted of  
5 conspiracy back in 1981. Is that right?

6 POTENTIAL JUROR: Uh-huh.

7 THE COURT: Okay. You're disqualified. You  
8 may leave.

9 Ladies and gentlemen, state law also provides  
10 for several exemptions to jury service. An  
11 exemption means, notwithstanding the fact that  
12 you're qualified, you can say, Judge, I just choose  
13 not to serve.

14 The first exemption deals with those of you who  
15 are 65 years of age or older. If you're 65 or  
16 older, you don't have to serve if you don't want to.  
17 Do I have anyone that applies to?

18 You're not required to serve more often than  
19 once every three calendar years. So if I've had  
20 anybody who has served on jury duty in circuit court  
21 the last two calendar years, please stand if you'd  
22 like to be exempt.

23 You're also not required to serve if you've  
24 been on the Grand Jury in the last five calendar  
25 years. You may be exempt and choose not to serve.

1 Do I have anyone who's done that?

2 Yes, ma'am. Your name and number?

3 POTENTIAL JUROR: 167, Theresa Spearmon. I  
4 can't remember what jury it was on, but --

5 THE COURT: What courthouse was it in?

6 POTENTIAL JUROR: This courthouse.

7 THE COURT: When?

8 POTENTIAL JUROR: I can't remember. I know  
9 it's been five years.

10 THE COURT: More than five years ago?

11 POTENTIAL JUROR: Been five years.

12 THE COURT: Within the last five years. Was  
13 that the Grand Jury or this kind of jury?

14 POTENTIAL JUROR: It was criminal. I can't  
15 specify the difference between grand and --

16 THE COURT: Can you tell me when it was?

17 POTENTIAL JUROR: It's been five years.

18 THE COURT: Okay. Well, that one only goes  
19 back three years, so I have to let you stay with me.  
20 The Grand Jury is five years, this kind of jury is  
21 three years. And we like experienced jurors. We  
22 don't have you on the list up here. We just ran you  
23 through the --

24 POTENTIAL JUROR: Okay. Yes, sir.

25 THE COURT: All right. The next exemption

1 deals with those of you who may have a small child  
2 or children. You may be exempt if you have a small ,  
3 child or children, they have to be under the age of  
4 seven, you have to be their legal custodian, and you  
5 are unable to make arrangements for their care if  
6 you have to serve this week. Does that apply to  
7 anyone?

8 Yes, ma'am. Your name and number?

9 POTENTIAL JUROR: Juror No. 9, Stacie Barrett.  
10 I have three small children. It is hard to find  
11 childcare.

12 THE COURT: What are their ages?

13 POTENTIAL JUROR: Ten, eight, and one.

14 THE COURT: Well, the ten and eight --

15 POTENTIAL JUROR: The one-year-old. And my mom  
16 just had surgery, so it's even harder.

17 THE COURT: Do you work, ma'am?

18 POTENTIAL JUROR: I work in the school system  
19 this year for the -- for -- so I'm out for the  
20 summer. So today my baby is with my sister-in-law,  
21 but she has three kids of her own.

22 THE COURT: Well, state law says if you'd like  
23 to be excused, you may.

24 POTENTIAL JUROR: Okay. Thank you.

25 THE COURT: Yes, ma'am, my grandmother. Your

1 name and number, please?

2 POTENTIAL JUROR: 188, Bibian Vega. I babysit  
3 my grandson, he's six months, and my daughter works  
4 every day.

5 THE COURT: Are you the primary custodian?

6 POTENTIAL JUROR: Uh-huh.

7 THE COURT: No, your daughter has custody of  
8 that child.

9 POTENTIAL JUROR: Right. But my daughter works  
10 and I babysit my grand.

11 THE COURT: That does not apply to you. It has  
12 to be the parent or the legal custodian.

13 POTENTIAL JUROR: Okay.

14 THE COURT: Yes, ma'am. Name and number,  
15 please?

16 POTENTIAL JUROR: Ashley Pelton, 126. I have  
17 an eight-week-old. I do not work on Wednesdays  
18 because I keep my child. My grandma has a doctor's  
19 appointment tomorrow, and she takes care of my uncle  
20 that had traumatic brain injury that --

21 THE COURT: So you need to be -- not tomorrow;  
22 right?

23 POTENTIAL JUROR: Right.

24 THE COURT: I'll protect you tomorrow.

25 POTENTIAL JUROR: Thank you.

1           THE COURT: All right. The next exemption  
2 deals with those of you who may be a primary  
3 caretaker of someone who is 65 or older and disabled  
4 and unable to provide for themselves or the primary  
5 caretaker for someone who is severely disabled and  
6 is unable to care for himself or herself and you're  
7 unable to make provisions to provide care of that  
8 person. Does that apply to anyone? Please stand.

9           All right. The next exemption deals with those  
10 of you who may be attending school at this time or  
11 work in some capacity with the school. I know I  
12 have a lot of school people here, but if this  
13 exemption applies to you, I can't excuse you, but I  
14 can transfer you to a term of court which would not  
15 interfere with your school activity. I assume I  
16 have a lot of school people who were transferred  
17 into the summertime.

18           But if I have anyone who is a full-time student  
19 or teacher or who works in some capacity with the  
20 school, such as a crossing guard, bus driver, and  
21 you're unable to serve this week because it would  
22 interfere with that school, I can transfer you.  
23 Please bear in mind you've got a pretty good week  
24 because I'm going to draw one jury and may not need  
25 anybody else. You might get transferred to one week

1 where we start on Monday morning and go to Friday  
2 afternoon. So this is a good week to serve.

3 Does that apply to anyone?

4 Yes, ma'am. Your number and name?

5 POTENTIAL JUROR: Juror 180, Latonia Thomas.

6 I'm a full-time student online and we go straight  
7 through.

8 THE COURT: All right. I can transfer you.

9 When would you like to be transferred to?

10 POTENTIAL JUROR: I have no idea because --

11 THE COURT: Well, if you have no idea, I will  
12 choose a week, and that may be a lot worse than this  
13 week. This is a great week. But it's up to you.

14 POTENTIAL JUROR: Okay. I'll stay.

15 THE COURT: Thank you.

16 Do I have any member of the jury panel who is  
17 employed at the department of corrections at a  
18 penitentiary?

19 Ladies and gentlemen, that concludes the list  
20 of qualifications and exemptions. It may very well  
21 be that you're qualified and no exemptions apply to  
22 you, but this week creates an extreme hardship for  
23 you; you've had something planned, a vacation,  
24 longstanding doctor appointment, any type of  
25 personal hardship. I'll be glad to consider that.

1 You can either stand up and tell me or come up and  
2 tell me in private. But, beware, I cannot excuse  
3 you altogether, I would have to transfer you to  
4 another term. And, believe me, these one-trial  
5 weeks are not that difficult.

6 Okay. Yes, ma'am?

7 POTENTIAL JUROR: 33, Michelle Cook. Can I  
8 come up?

9 THE COURT: You may.

10 (Michelle Cook comes forward.)

11 THE COURT: Good morning.

12 POTENTIAL JUROR: Good morning. I have a  
13 prison tour tomorrow with PTI. I'm going -- I'm in  
14 PTI right now and we're doing the prison tour  
15 tomorrow. I have simple possession of marijuana  
16 and shoplifting.

17 THE COURT: Where?

18 POTENTIAL JUROR: In Aiken. And Mr. Routzong  
19 is my attorney.

20 THE COURT: I'm going to excuse you.

21 All right. Anyone else?

22 All right. Madam Solicitor, you may call your  
23 first case.

24 MS. HALL: The State calls the case of William  
25 Herbert McCladdie, Indictment No. 2015-GS-02-1103

1 for burglary in the first degree; Indictment  
2 No. 2015-GS-02-1104 for possession of implements  
3 capable of being used in a crime; Indictment --

4 THE COURT: Hold on one second, ma'am.

5 Y'all please have a seat while she's calling  
6 her case. We'll get him out here in a second.

7 MS. HALL: Indictment No. 2015-GS-02-1105 for  
8 possession of a stolen vehicle.

9 THE COURT: All right. Mr. McMillian, are you  
10 ready to proceed?

11 MR. MCMILLIAN: I am, Judge.

12 THE COURT: Good morning, Mr. McCladdie. How  
13 are you?

14 THE DEFENDANT: Good, Your Honor. How are you  
15 this morning?

16 THE COURT: I am well. Thank you for asking.

17 Ladies and gentlemen, the State has called for  
18 trial the case of State of South Carolina vs.  
19 William Herbert McCladdie. Mr. McCladdie has been  
20 indicted for the offenses of burglary in the first  
21 degree, possession of implements capable of being  
22 used in a crime, and possession of a stolen vehicle.

23 Is that correct?

24 MS. HALL: Yes, Your Honor.

25 THE COURT: This indictment is not evidence in

1 the case. This indictment is simply a legal  
2 document by way this case comes into the courtroom.  
3 Mr. McCladdie has pled not guilty to each of the  
4 indictments, and by pleading not guilty, he's  
5 afforded the constitutional right of being presumed  
6 to be innocent unless the State is able to prove his  
7 guilt to you beyond a reasonable doubt as to reach  
8 of the separate indictments. So please do not infer  
9 anything or have any presumption from the fact that  
10 he's been indicted. He's pled not guilty. This is  
11 not evidence, this is simply the way we come into  
12 the courtroom.

13 But in order to start the trial of this case, I  
14 have to ask you several questions. And if any of  
15 these questions apply to you, please stand, once  
16 again give me your name and number, and we'll  
17 address the question.

18 First question: Do I have any member of the  
19 jury panel that is -- Mr. McCladdie, would you stand  
20 and face the jury panel, please? Thank you. You  
21 may be seated.

22 Do I have any member of the jury panel that is  
23 related by blood or marriage now or in the past, or  
24 do you now or have you in the past had a close  
25 personal or social relationship with the defendant,

1 William Herbert McCladdie? If so, please stand.

2 I'm going to ask those same questions after I  
3 read the list of potential witnesses in trial of the  
4 case. If you're in the courtroom, please stand.

5 Mike Hess, H-E-S-S. Thank you, sir. You may  
6 be seated.

7 Brent Hess with the New Ellenton Police  
8 Department. This is Mr. Hess over here. Thank you.

9 Tyler Roberts with the Aiken County Sheriff's  
10 Office. Thank you.

11 Wallace (Tommy) Brock with the Aiken County  
12 Sheriff's Office.

13 Michael Douglas Clark. Mr. Clark, thank you.  
14 Face the jury panel.

15 Evelyn Clark.

16 Jerry Ayers, Jr.

17 David Bonner, B-O-N-N-E-R.

18 Do I have any member of the jury panel related  
19 by blood or marriage, or do you now or have you in  
20 the past had a close personal or social relationship  
21 with any of the potential witnesses who I have just  
22 listed in the trial of this case? If so, please  
23 stand.

24 The lawyers involved in the case, representing  
25 the State from the Second Circuit Solicitor's

1 Office, Mrs. Cassie Hall, Mr. Jay Slocum. Thank  
2 you.

3 Mr. McCladdie is being represented by  
4 Mr. McMillian and Ms. Alves; Mr. Bradley McMillian,  
5 Ms. Wallis Alves.

6 Any member of the jury panel now or in the past  
7 related by blood or marriage to any of the lawyers  
8 or do you now or have you in the past had a close  
9 personal or social relationship with any of the  
10 lawyers? If so, please stand.

11 Yes, ma'am?

12 POTENTIAL JUROR: Donna Hattaway, number 66. I  
13 grew up with Cassie.

14 THE COURT: You grew up with Mrs. Hall?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: How close were y'all?

17 POTENTIAL JUROR: Her sister was my best friend  
18 all throughout school, so I grew up pretty close.

19 THE COURT: Okay. Well, one of my main  
20 responsibilities as the trial judge is to ensure  
21 that both the State and the defendant receive a fair  
22 trial. And not saying that you can't be fair and  
23 impartial, but sometimes it's difficult to listen to  
24 one of your best friends be the lawyer, and not be a  
25 little impartial to her growing up in Jackson. So

1 I'll excuse you from the trial of this case. Thank  
2 you. You may stick with us, please. I can't let  
3 you go back to Jackson quite yet.

4 Any member of the jury panel now or in the past  
5 have had legal services performed by you by any of  
6 the four lawyers? If so, please stand.

7 Ladies and gentlemen of the jury panel, let me  
8 explain a little about the process that we're going  
9 to go through and how it works. During the trial of  
10 any case that we try all over the state, during that  
11 trial we have, actually, two judges who participate;  
12 the law makes me in my position the judge of the  
13 law. In other words, I instruct the jurors as to  
14 what the law is and what the State has to prove to  
15 you beyond a reasonable doubt, the various elements  
16 of the various offenses. So I have to tell you what  
17 the law is, and you take an oath to accept the law  
18 as I give it to you, notwithstanding the fact you  
19 may have some preconceived idea of what you think  
20 the law is or what it should be. You have to set  
21 that aside and accept the law as the judge of the  
22 law gives it to you. So I'm the judge of the law,  
23 that's my main responsibility as the judge.

24 I have some collateral responsibilities; one is  
25 to rule on the admissibility of evidence. And when

1 I rule on the admissibility of evidence, I may have  
2 one witness who says it's green, and one witness who  
3 says it's red; one witness may say it's Wednesday,  
4 and one witness may say it's Saturday. That's all  
5 admitted into the trial of the case but, obviously,  
6 they're different. And that's where the most  
7 important judge comes into play, and that's the  
8 judge of the facts. So we have two judges: The  
9 judge of the law and the judge of the facts.

10 The judge of the facts are 12 jurors sitting  
11 collectively in the jury box, acting as the judge of  
12 the facts. So your responsibility is to listen to  
13 the witnesses as they testify, and you have to  
14 determine and judge the credibility of the witnesses  
15 who testify, and that is to determine the  
16 believability or who's telling the truth and what  
17 the true facts are. And once you decide what those  
18 true facts are then, as the judges of the facts, you  
19 have judged the witnesses and you've determined what  
20 the true facts are, you apply those true facts to  
21 the law as I give it to you, and you'll be in a  
22 position to render a true and just verdict.

23 So not withstanding the fact that I stand up  
24 here with a black robe and tell you what the law is,  
25 the most important judge in the trial of the case is

1 the judge of the facts. You determine what the true  
2 facts are in the case.

3 Now, having explained that, my question is  
4 simple: Do I have any member of the jury panel who  
5 is unable to perform that important civic duty of  
6 listening to witnesses and determining the true  
7 facts? Do you have any personal beliefs, religious  
8 beliefs, political beliefs, any kind of belief, that  
9 would keep you from performing that important civic  
10 duty? I need to know now. Please stand.

11 Ladies and gentlemen, this case -- it is  
12 alleged -- and these are allegations. The State has  
13 the burden of proving these allegations to you  
14 beyond a reasonable doubt. It is alleged that here  
15 in Aiken County on or about February 21 of this  
16 year -- back on February 21 of 2015, that the  
17 defendant willfully and unlawfully entered a  
18 dwelling located at [REDACTED] Foreman Street in Jackson  
19 without permission and without consent of the owner  
20 with intent to commit a crime in that dwelling in  
21 which took place during the nighttime. That would  
22 be the crime or the offense of burglary in the first  
23 degree.

24 It's further alleged on that same date,  
25 February 21, 2015, that he had in his possession

1 certain tools or implements capable of being used in  
2 a crime, specifically a pry bar or crowbar. And  
3 last, it's alleged that on that same date, February  
4 21 of 2015, that the defendant had in his possession  
5 unlawfully or had in his possession a stolen vehicle  
6 which was a 2000 Nissan Altima valued at less than  
7 \$2,000 belonging to one Jerry Ayers.

8 So these are allegations. The allegations deal  
9 with an alleged burglary on February 21, 2015 at [REDACTED]  
10 Foreman Street in Jackson, South Carolina. It's  
11 further alleged that he had in his possession a tool  
12 capable of being used in a crime, a pry bar, and  
13 also had in his possession a stolen vehicle.

14 My question is this: Any member of the jury  
15 panel know anything about this case? Have you read  
16 anything about it, seen anything about it on TV,  
17 computer, heard anything about it on the radio?  
18 Anybody discussed it with you? Any independent  
19 knowledge of the facts in this case or the  
20 allegations in this case? If so, please stand.

21 Do I have any member of the jury panel who is a  
22 member of or a contributor to organizations which  
23 have as their primary concern the promotion of law  
24 enforcement or the promotion of certain groups who  
25 promote the enforcement of laws such as SADD, MADD,

1 CAV, those types of organizations? Any members of  
2 the jury panel that belong to those organizations or  
3 a member? If so, please stand.

4 Any member of the jury panel who you or your  
5 immediate family has been the victim of a burglary  
6 or a robbery or some type of theft? If so, please  
7 stand. All right. Please remain standing. We live  
8 in a society today that it's not usual to have been  
9 the victim of a crime. And I ask this question in  
10 all cases. The question is this: The fact that you  
11 have been the victim of some type of criminal  
12 activity, would that in any way preclude or keep you  
13 from being a fair and impartial juror in the trial  
14 of the case? Can you set aside your personal  
15 experience and try this case based solely on  
16 testimony from the witness stand after you decide  
17 what the true facts are and apply those facts to the  
18 law as I give it to you? Are you able to do that?  
19 So that's the question.

20 Ma'am in the blue shirt, your name and number?

21 POTENTIAL JUROR: 74, Lauren Howard. Two cars  
22 at my house were broken into two years ago.

23 THE COURT: Can you set that aside and be a  
24 fair and impartial juror?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you.

2 Ma'am in the pretty dress?

3 POTENTIAL JUROR: Juror No. 112, Brittany  
4 Minor-Taylor. My car was broken into twice.

5 THE COURT: And can you set that aside and be  
6 fair and impartial juror?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Thank you.

9 Ma'am in the blue blouse?

10 POTENTIAL JUROR: 120, Christine Myers. I was  
11 car-jacked in Puerto Rico with a gun to my head. I  
12 don't know if I can be objective in this case.

13 THE COURT: Well, if you don't know, I need to  
14 know. Yes or nor?

15 POTENTIAL JUROR: No, I cannot be.

16 THE COURT: Your name and number?

17 POTENTIAL JUROR: 120, Christine Myers.

18 THE COURT: Ma'am, your name and number?

19 POTENTIAL JUROR: Juror No. 2, Pam Allen. My  
20 vehicles were broken into.

21 THE COURT: And the fact that you endured that,  
22 ma'am, can you set that aside and be fair and  
23 impartial juror in the trial of this case?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Thank you.

1 Ma'am in the sparkly blouse?

2 POTENTIAL JUROR: 126, Ashley Pelton. My  
3 granddaddy was jumped by two males and robbed, and  
4 their house has been broken into several times.

5 THE COURT: The fact that you've gone through  
6 that, ma'am, can you set that aside and be fair and  
7 impartial juror in the case?

8 POTENTIAL JUROR: No.

9 THE COURT: You cannot?

10 POTENTIAL JUROR: No.

11 THE COURT: All right. What's your name and  
12 number?

13 POTENTIAL JUROR: 126, Ashley Pelton.

14 THE COURT: All right. Be seated.

15 Sir in the white t-shirt?

16 POTENTIAL JUROR: Andrew Pigg, 134. A couple  
17 years ago, we had a four-wheeler stolen out of your  
18 front yard.

19 THE COURT: The fact that you had that happen,  
20 can you be a fair and impartial juror in the trial  
21 of this case?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you.

24 Sir in the garnet shirt.

25 POTENTIAL JUROR: 104, Patrick Mcasslin. I had

1 a vehicle stolen.

2 THE COURT: And the fact that you had a vehicle  
3 stolen, would you be able to set that aside and be  
4 fair and impartial?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you. You may be seated.  
7 Ma'am in the peach-colored dress?

8 POTENTIAL JUROR: Latonia Thomas, Juror  
9 No. 180. I was a victim of a home invasion.

10 THE COURT: And the fact that you endured that,  
11 ma'am, would you be able to set that aside and be a  
12 fair and impartial juror in the trial of this case?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: Thank you.

15 Ma'am in the sort of lavender blouse?

16 POTENTIAL JUROR: 142, Linda Reece. In 1975 I  
17 had an apartment break-in, jewelry and cash.

18 THE COURT: The fact that you had that happen  
19 some years ago, ma'am, would you be able to set that  
20 aside and be fair and impartial?

21 POTENTIAL JUROR: Yes, sir. I think it was one  
22 of my husband's friends.

23 THE COURT: I'm sorry. Thank you. You may be  
24 seated.

25 Yes, ma'am, in the pretty sort of red-looking

1 blouse.

2 POTENTIAL JUROR: 136, Shatoya Prescott. I  
3 have had my house broken into in February 2014.

4 THE COURT: And, ma'am, can you set that aside  
5 and be fair and impartial in the trial of this case?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Thank you very much.

8 Ma'am in the black-and-white outfit?

9 POTENTIAL JUROR: 107, Patricia McEachern. My  
10 mother's home was broken into and she was also  
11 robbed in a parking lot.

12 THE COURT: Can you set that aside and be a  
13 fair and impartial juror in the trial of this case?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Thank you.

16 And, last but not least, my gentleman on the  
17 back row?

18 POTENTIAL JUROR: Juror 190, Kenneth Villegas.  
19 On three different occasions I've had a truck stolen  
20 and a couple motorcycles.

21 THE COURT: The fact that you've been the  
22 victim of that, sir, can you set that aside and be  
23 fair and impartial, as we talked about, in the trial  
24 of this case?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you, sir.

2 Do I have any member of the jury panel who  
3 has -- you or your immediate family employed with  
4 law enforcement, sheriff's office, highway patrol,  
5 SLED, FBI, any type of law enforcement agency? If  
6 so, please stand.

7 All right. Starting on my right, your left,  
8 the lady in the Harley Davidson shirt. Name and  
9 number?

10 POTENTIAL JUROR: 200, Vickie Young. My  
11 daughter's live-in is a police officer for New  
12 Ellenton.

13 THE COURT: Your daughter's live-in --

14 POTENTIAL JUROR: Husband-to-be.

15 THE COURT: Police officer for New Ellenton?

16 POTENTIAL JUROR: Yes.

17 THE COURT: All right. The fact that you've  
18 got a police officer in your family, can you be fair  
19 and impartial in the trial of this case?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Thank you.

22 Ma'am in the black-and-tan outfit?

23 POTENTIAL JUROR: My -- 139, Linda Randazzo.

24 My brother is assistant chief in Irving, Texas.

25 THE COURT: Okay. Can you set that aside and

1 be fair and impartial in the trial of this case?

2 POTENTIAL JUROR: Yes.

3 THE COURT: Thank you.

4 Ma'am?

5 POTENTIAL JUROR: April Danko, number 40. My  
6 brother-in-law is an undercover narcotics officer.

7 THE COURT: And you don't have to tell us  
8 where. But the fact that he is an undercover agent,  
9 can you set that aside and be fair and impartial in  
10 the trial of this case?

11 POTENTIAL JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 Ma'am in the flowers?

14 POTENTIAL JUROR: Juror 108, Pamela McKenzie.  
15 I have a family member that is SLED.

16 THE COURT: Okay. And the fact that you --  
17 We don't have SLED in this case, do we?

18 MS. HALL: No, Your Honor.

19 THE COURT: The fact that you have a family  
20 member who is with the South Carolina Law  
21 Enforcement Division, would that in any way keep you  
22 from being fair and impartial in the trial of this  
23 case?

24 POTENTIAL JUROR: No, sir.

25 THE COURT: Thank you.

1 And another bright outfit. Ma'am?

2 POTENTIAL JUROR: Juror 47, Cherie Fay-Jenkins.  
3 My son is a corrections officer in a jail in  
4 Florida.

5 THE COURT: The fact that you have a son in law  
6 enforcement, can you set that aside and be fair and  
7 impartial in the trial of this case?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Thank you, ma'am.

10 Sir in the striped golf shirt?

11 POTENTIAL JUROR: Tyler Hixon, 69. My cousin  
12 is a police officer in North Augusta.

13 THE COURT: And the fact that you have a cousin  
14 with the North Augusta Police Department, would that  
15 in any way keep you from being fair and impartial?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: Thank you.

18 Sir?

19 POTENTIAL JUROR: 134, Andrew Pigg. My uncle  
20 is a cyber detective in Michigan.

21 THE COURT: The fact that you have an uncle in  
22 law enforcement in Michigan, would that in any way  
23 keep you from being fair and impartial?

24 POTENTIAL JUROR: No, sir.

25 THE COURT: Thank you.

1 And, last but not least, in the striped golf  
2 shirt?

3 POTENTIAL JUROR: Steven Wach, 191. My  
4 daughter is employed by the South Carolina  
5 Department of Juvenile Justice as a psychologist.

6 THE COURT: Very well. The fact that you have  
7 a daughter in that position, sir, would that in any  
8 way keep you from being fair and impartial?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you.

11 Ladies and gentlemen of the jury, last catchall  
12 question: Do I have any member of the jury panel  
13 who for any reason whatsoever or know of any reason  
14 whatsoever why you cannot serve as a juror in this  
15 case, with particular emphasis being placed on your  
16 ability to be fair both to the State and to the  
17 defendant? I need to know now. Please stand.

18 Any additional questions by the State?

19 MS. HALL: Nothing by the State.

20 THE COURT: By the Defense?

21 MR. MCMILLIAN: No, Your Honor.

22 THE COURT: All right. The way we -- everybody  
23 okay? We got about five, ten more minutes at the  
24 most. Bathroom? Everybody okay? If we were  
25 trying -- bathroom? Two ladies -- four ladies.

1 We'll stand at ease just for a second.

2 (Brief pause in the proceedings.)

3 THE COURT: All right. Ladies and gentlemen,  
4 let me tell you the way -- in a general sessions or  
5 criminal case, your names have now been entered into  
6 the computer and a random selection has been made.  
7 As your name is called, please come down and stand  
8 in between the two tables where the lawyers are,  
9 turn around and face the lawyers. The State has  
10 five strikes, the defendant has ten. They can  
11 strike you for most any reason or no reason at all  
12 within certain bounds that the lawyers are aware of.  
13 So don't get your feelings hurt if you get struck.

14 We'll go through this process until we get 12  
15 jurors and two alternates. And then once we do  
16 that, we'll be in a position to start the trial of  
17 the case. If you have a pocketbook or any other  
18 belongings, please bring those down with you.

19 Ms. Godard.

20 THE CLERK: As I call your name, please come  
21 forward to the desk, turn and face the rear.

22 Juror No. 56, Claire Godwin.

23 (Ms. Godwin comes forward.)

24 THE CLERK: What say you for the State?

25 MS. HALL: Please seat Ms. Godwin.

1 THE CLERK: What say you for the Defense?

2 MR. MCMILLIAN: Please seat Ms. Godwin.

3 THE CLERK: Have a seat in the jury box, ma'am.  
4 Juror No. 155, Sharon Seawright.

5 (Ms. Seawright comes forward.)

6 THE COURT: What say you for the State?

7 MS. HALL: Please present Ms. Seawright.

8 THE CLERK: What say you for the Defense?

9 MR. MCMILLIAN: Please seat Ms. Seawright.

10 THE CLERK: Have a seat in the jury box, ma'am.  
11 Juror No. 74, Lauren Howard.

12 (Ms. Howard comes forward.)

13 THE CLERK: What say you for the State?

14 MS. HALL: Please present Ms. Howard.

15 THE CLERK: What say you for the Defense?

16 MR. MCMILLIAN: Please excuse this juror.

17 THE CLERK: Return to your seat, please.

18 Juror No. 38, Gloria Dairon.

19 (Ms. Dairon comes forward.)

20 THE CLERK: What say you for the State?

21 MS. HALL: Please present Ms. Dairon.

22 THE CLERK: What say you for the Defense?

23 MR. MCMILLIAN: Please seat Ms. Dairon.

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

25 Juror 89, Teresa Knight.

1 (Ms. Knight comes forward.)

2 THE CLERK: What say you for the State?

3 MS. HALL: Please present Ms. Knight.

4 THE CLERK: What say you for the Defense?

5 MR. MCMILLIAN: Please seat Ms. Knight.

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

8 Juror No. 8, Jonathan Barnett.

9 (Mr. Barnett comes forward.)

10 THE CLERK: What say you for the State?

11 MS. HALL: Please present Mr. Barnett.

12 THE CLERK: What say you for the Defense?

13 MR. MCMILLIAN: Please seat Mr. Barnett.

14 THE CLERK: Have a seat in the jury box,  
15 please.

16 Juror 188, Bibian Vega.

17 (Ms. Vega comes forward.)

18 THE CLERK: What say you for the State?

19 MS. HALL: Please excuse Ms. Vega.

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

21 Juror 111, Tamara Merryman.

22 (Ms. Merryman comes forward.)

23 THE CLERK: What say you for the State?

24 MS. HALL: Please present Ms. Merryman.

25 THE CLERK: What say you for the Defense?

1 MR. MCMILLIAN: Please seat Ms. Merryman.

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

3 Juror No. 47, Cherie Fay-Jenkins.

4 (Ms. Fay-Jenkins comes forward.)

5 THE CLERK: What say you for the State?

6 MS. HALL: Please present Ms. Jenkins.

7 THE CLERK: What say you for the Defense?

8 MR. MCMILLIAN: Please seat Ms. Fay.

9 THE CLERK: Have a seat in the jury box,  
10 please.

11 Juror No. 37, Leah Cutsinger.

12 (Ms. Cutsinger comes forward.)

13 THE CLERK: What say you for the State?

14 MS. HALL: Please present Ms. Cutsinger.

15 THE CLERK: What say you for the Defense?

16 MR. MCMILLIAN: Please seat Ms. Cutsinger.

17 THE CLERK: Have a seat in the jury box,

18 please.

19 Juror 183, Beverly Tools.

20 (Ms. Toole comes forward.)

21 THE CLERK: What say you for the State?

22 MS. HALL: Please present Ms. Toole.

23 THE CLERK: What say you for the Defense?

24 MR. MCMILLIAN: Please seat Ms. Toole.

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

1 Juror No. 14, Jordon Blocker.  
2 (Mr. Blocker comes forward.)  
3 THE CLERK: What say you for the State?  
4 MS. HALL: Please excuse Mr. Blocker.  
5 THE CLERK: Return to your seat, please.  
6 Juror 144, Janice Rolland.  
7 (Ms. Rolland comes forward.)  
8 THE CLERK: What say you for the State?  
9 MS. HALL: Please present Ms. Rolland.  
10 THE CLERK: What say you for the Defense?  
11 MR. MCMILLIAN: Please seat Ms. Rolland.  
12 THE CLERK: Have a seat in the jury box,  
13 please, ma'am.  
14 Juror 180, Latonia Thomas.  
15 (Ms. Thomas comes forward.)  
16 THE CLERK: What say you for the State?  
17 MS. HALL: Please excuse Ms. Thomas.  
18 THE CLERK: Return to your seat, please, ma'am.  
19 Juror 175, Roger Taylor.  
20 (Mr. Taylor comes forward.)  
21 THE CLERK: What say you for the State?  
22 MS. HALL: Please present Mr. Taylor.  
23 THE CLERK: What say you for the Defense?  
24 MR. MCMILLIAN: Please seat Mr. Taylor.  
25 THE CLERK: Have a seat in the jury box,

1       please.

2               Juror 50, Michael Fowler.

3               (Mr. Fowler comes forward.)

4       THE CLERK:   What say you for the State?

5       MS. HALL:    Please present Mr. Fowler.

6       THE CLERK:   What say you for the Defense?

7       MR. MCMILLIAN:   Please seat Mr. Fowler.

8       THE CLERK:   Have a seat in the jury box,

9       please.

10              Alternate No. 1, Juror 181, Jacqueline

11      Timmerman.

12              (Ms. Timmerman comes forward.)

13      THE CLERK:   What say you for the State?

14      MS. HALL:    Please present Ms. Timmerman.

15      THE CLERK:   What say you for the Defense?

16      MR. MCMILLIAN:   Please seat Ms. Timmerman.

17      THE CLERK:   Have a seat in the jury box,

18      please, ma'am.

19              Alternate 2, Juror No. 134, Andrew Pigg.

20              (Mr. Pigg comes forward.)

21      THE CLERK:   What say you for the State?

22      MS. HALL:    Please present Mr. Pigg.

23      THE CLERK:   What say you for the Defense?

24      MR. MCMILLIAN:   Please excuse Mr. Pigg.

25      THE CLERK:   Return to your seat, please, sir.

1 Juror 20, Heather Brewer.

2 (Ms. Brewer comes forward.)

3 THE CLERK: What say you for the State?

4 MS. HALL: Please present Ms. Brewer.

5 THE CLERK: What say you for the Defense?

6 MR. MCMILLIAN: Please seat Ms. Brewer.

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

9 THE COURT: Any motions by the State in  
10 connection with the selection of the jury?

11 MS. HALL: Nothing from the State, Your Honor.

12 THE COURT: Any motions by the defendant in  
13 connection with the selection of the jury?

14 MR. MCMILLIAN: None, Judge.

15 THE COURT: All right. Ladies and gentlemen of  
16 the jury panel, as represented, I'm going to excuse  
17 you now for the balance of the day. I don't think  
18 we may have anything else that requires the presence  
19 of the jury, but we may; outside chance. So,  
20 please, on your information sheet, there's a  
21 call-back number, if you would please call back this  
22 afternoon after 6:00 to see if there's any  
23 additional requirement that you come in and follow  
24 the instructions of the information on the machine.  
25 I'm going -- everybody else remain seated. I'm

1 going to release my jurors for the balance of the  
2 day. If I don't get to see you again, I'm going to  
3 thank you on behalf of the citizens of Aiken for  
4 accepting this strong civic responsibility of being  
5 here today. So have a pleasant summer and a  
6 pleasant week and call back after 6:00. Thank you.  
7 Everybody else remain seated.

8 (Balance of jury pool released at 11:24 AM.)

9 Ladies and gentlemen of the jury, I'm going to  
10 let you step back into the jury room just a second  
11 to see where we are and we're going to go. So  
12 please step back there just a second.

13 (The jury exits the courtroom at 11:26 AM.)

14 THE COURT: Ms. Hall, what do we have to  
15 do before we bring the jury back?

16 MS. HALL: The Jackson v. Denno motion, Your  
17 Honor.

18 THE COURT: Do we need to do that before  
19 openings or can we do that at lunch? Are you going  
20 to mention it in opening statements?

21 MS. HALL: No, Your Honor.

22 THE COURT: All right. Any objection to doing  
23 the Jackson v. Denno over lunch, Mr. McMillian?

24 MR. MCMILLIAN: Judge --

25 THE COURT: They're not going to mention it in

1 opening.

2 MR. MCMILLIAN: No, Your Honor, I don't have  
3 any objection to that.

4 THE COURT: Well, any objection to anything?

5 MR. MCMILLIAN: No, sir.

6 THE COURT: Anything for the record before we  
7 get started?

8 MR. MCMILLIAN: A little break would be nice,  
9 Your Honor.

10 THE COURT: We just had one.

11 MR. MCMILLIAN: I didn't know if we were free  
12 to go also, so I didn't use the restroom.

13 THE COURT: All right. We'll take a little  
14 bathroom break. Everybody can go except for  
15 Mr. McMillian.

16 MR. MCMILLIAN: Thank you, Judge.

17 (Short break.)

18 THE COURT: Is the State ready to proceed?

19 MS. HALL: Yes, Your Honor.

20 THE COURT: Mr. McMillian, are you ready?

21 MR. MCMILLIAN: Yes, sir, Judge.

22 THE COURT: Bring the jury in, please.

23 (The jury enters the courtroom at 11:44 AM.)

24 THE COURT: Ladies and gentlemen of the jury  
25 panel, the first thing we have to do before we start

1 the trial of the case is you have to be sworn in for  
2 this particular trial. So please stand and raise  
3 your right hand, and the clerk will administer the  
4 oath.

5 (Jury sworn.)

6 THE COURT: All right. Ladies and gentlemen,  
7 let me give you a brief overview of where we're  
8 going and a few of the ground rules. First let me  
9 remind you, in this particular case the fact that  
10 Mr. McCladdie has been indicted for burglary in the  
11 first degree, possession of implements capable of  
12 being used in a crime, possession of a stolen  
13 vehicle, please bear in mind this is simply the  
14 formal legal document by way this case comes into  
15 the courtroom. It notifies the defendant of the  
16 charges against him. This is not evidence in the  
17 case, so don't infer anything by the fact that he's  
18 been indicted.

19 He's plead not guilty to all three indictments  
20 and, obviously, a plea of not guilty, as I told you  
21 earlier, he has the presumption of being presumed to  
22 be innocent until the State has been able to prove  
23 him guilty to you beyond a reasonable doubt.

24 And you'll be asked to consider each of the  
25 indictments separate and apart from the other. The

1 State has the burden of proving each indictment to  
2 you beyond a reasonable doubt. And I will explain  
3 the elements of the various offenses, I'll explain  
4 to you presumption of innocence, I'll explain to you  
5 the term reasonable doubt at the conclusion of the  
6 case, along with, as I said, the elements of the  
7 three indictments.

8 Now, the way the case will proceed is, since  
9 the State has the burden of proof, in just a few  
10 minutes when we start, they will call their  
11 witnesses first; they have the burden of proof. At  
12 the conclusion of the State's case, if the defendant  
13 chooses to do so, they can present their side of the  
14 case, their defense. And then at the conclusion of  
15 that, if the State has any reply witnesses, they can  
16 put up their witness, and that will take care of all  
17 of the testimony.

18 Prior to the testimony being given, each side  
19 has a right to make an opening statement. Please  
20 bear in mind that the opening statement is not  
21 evidence in the case; it's simply a roadmap that  
22 each lawyer would give you as to what they intend to  
23 prove, show, what the important facts are, what to  
24 look for, but that is not evidence in the case.

25 Once we do the opening statements, the

1 testimony, then the lawyers will have an opportunity  
2 to make a final argument. And at the conclusion of  
3 that, then I will instruct you or charge you on the  
4 law, and you'll be given the case to start your  
5 deliberations.

6 As I told you earlier, you'll be the judges of  
7 the facts in the case. So it will be up to you to  
8 determine and judge the credibility or believability  
9 of the witnesses who testify in the case. You're  
10 all grown and mature and you've dealt, over your  
11 lives, with husbands, wives, children, husbands,  
12 employees, employers, friends; you know how to judge  
13 when someone is telling you the truth. Please don't  
14 leave that common sense out here when you go into  
15 the jury room to deliberate. Use that common sense  
16 to determining what the facts are in the case. As I  
17 said, you'll take those true facts and apply them to  
18 the law as I give it to you, and you'll be in a  
19 position to render a verdict at the conclusion of  
20 this case.

21 I try to run a very efficient courtroom; I try  
22 to start right on time, I try to limit my breaks to  
23 very short periods of time so we can move along, I  
24 make lawyers call witnesses one after another and  
25 not have to wait on anybody. Not withstanding the

1 fact that we're trying to run an efficient trial in  
2 the courtroom, I'm not trying to run a race. So if  
3 at any time during the trial of the case you need a  
4 break, you need to use the bathroom, you need a  
5 something to drink, you get tired of listening to  
6 me, whatever, raise your hand. I want to make sure  
7 you're comfortable throughout the trial of the case,  
8 so if you need anything at all, raise your hand and  
9 I'll make sure whatever you need is met.

10 I'll ask you each time we take a break or you  
11 leave the courtroom, the rule is this: Please do  
12 not don't start any type of deliberation or  
13 discussion of the case until all of the evidence is  
14 in, the lawyers have made their final arguments, and  
15 I instruct you on the law of the case. So you can  
16 talk about anything you want to in the jury room,  
17 but please don't start discussing the case until  
18 we've concluded everything. It may be that last  
19 witness or that last final argument that has some  
20 bearing on where we're going.

21 When we take our lunch break, we'll take a  
22 lunch break until about 2:15. If we're here  
23 tomorrow at lunch, I'll feed you lunch. I'll get  
24 you some breakfast in the morning or some snacks in  
25 the morning. But at the lunch break, I need one

1 person out of the 12 regular jurors to serve as my  
2 spokesperson, that's the foreperson. So y'all try  
3 to select a foreperson for me and let me know after  
4 lunch.

5 In just a few minutes, the lawyers will make  
6 their opening statements and we'll start with the  
7 testimony. And, like I said, we'll take lunch  
8 around 1:00 til about 2:15, come back and try to go  
9 till around 5:00 this afternoon. Is that an  
10 imposition to anybody? We'll get pretty far down  
11 the road if we can follow that schedule. So I'm  
12 going to turn it over to the lawyers. The solicitor  
13 will go first with their opening statement, followed  
14 by the defendant.

15 Any objections to my opening remarks by the  
16 State?

17 MS. HALL: Nothing from the State, Your Honor.

18 THE COURT: By the Defense?

19 MR. MCMILLIAN: Nothing from the defendant,  
20 Judge.

21 THE COURT: Mrs. Hall.

22 MS. HALL: May it please the Court.

23 THE COURT: Yes, ma'am.

24 MS. HALL: Mr. McMillian, Judge..

25 Ladies and gentlemen of the jury, on the night

1 of February 20th of this year, the defendant in this  
2 case, William McCladdie, broke into Ms. Evelyn  
3 Clark's house just six weeks after her sister died  
4 and left that house to her. And on the night of  
5 this burglary, William McCladdie was found right  
6 outside the burglarized house hiding in the bushes  
7 and laying on top of a crowbar. And in his pocket,  
8 he had a key to a stolen vehicle that had been  
9 backed into the driveway of this house. And in that  
10 stolen vehicle was William McCladdie's driver's  
11 license and William McCladdie's social security card  
12 and multiple items that had been stolen from inside  
13 the house.

14 William McCladdie is charged with burglary in  
15 the first degree, possession of tools capable of  
16 being used in a crime, and possession of a stolen  
17 vehicle. Now, possession of a stolen vehicle and  
18 possession of tools capable of being used in a crime  
19 are exactly what they sound. Burglary in the first  
20 degree occurs when someone enters the dwelling of  
21 another with the intent to commit a crime, without  
22 consent, and when that entering or remaining occurs  
23 in the nighttime.

24 And throughout this trial you're going to hear  
25 a lot of details about this house, and the word

1 dwelling is likely to come up. And a dwelling is  
2 simply a building where a person sleeps. And a  
3 person doesn't always have to be in that house, they  
4 don't even have to be in that house most of the  
5 time, and a person can have multiple dwellings. And  
6 the house burglarized in this case belonged to  
7 Ms. Evelyn Clark.

8 In this case, the State, myself and Mr. Slocum,  
9 we have the burden to prove the defendant's guilt  
10 beyond a reasonable doubt. But that doesn't mean  
11 all doubt. Reasonable doubt is a doubt that would  
12 cause a reasonable person to hesitate to act. In  
13 this case, I ask that you pay close attention as all  
14 of the evidence is presented and you hear from each  
15 of the witnesses. And at the conclusion of this  
16 case, you'll be firmly convinced of the defendant's  
17 guilt. Thank you.

18 THE COURT: Mr. McMillian.

19 MR. MCMILLIAN: Thank you, Your Honor.  
20 Ms. Hall.

21 Ladies and gentlemen of the jury, I spent a lot  
22 of time yesterday and last night thinking about what  
23 to tell y'all, what to come up here and say to you  
24 this morning to give you a roadmap of where we're  
25 going. And I think the judge's opening remarks are

1       probably the best start. He swore you in and you  
2       took an oath that, in spite of the indictment, in  
3       spite of the charge, those were just formal  
4       documents, that my client, seated here with  
5       Ms. Alves and I, Mr. William McCladdie, is innocent  
6       until the State proves him guilty beyond a  
7       reasonable doubt. What does that mean?

8               Ladies and gentlemen, you swore to the judge  
9       and swore to the court that you would give him the  
10      benefit of what we call the presumption of  
11      innocence. That's a really fancy legal term that I  
12      struggle with how to define for people. You know,  
13      my mom always asked me, well, what does that even  
14      really even mean? And I thought about it last  
15      night, and this is where I kind of came to: If  
16      y'all all would, close your eyes with me for a  
17      minute and think about the nicest person you know,  
18      the best person you know, whoever that person may  
19      be. Me personally, it's my grandfather. My  
20      grandfather was a deacon in the church, he sat on  
21      the school board, just a genuinely great man.

22              Now, I want you to imagine when you woke up  
23      this morn ing before you came here to the courthouse  
24      and before you heard anybody's name, that you saw on  
25      the news that whoever your person is, maybe it's

1 your mother or your grandmother or your grandfather,  
2 an old teacher, whoever, imagine their face was on  
3 the news; imagine they were charged with burglary in  
4 the first degree, possession of burglary tools,  
5 possession of a stolen vehicle. I can tell you when  
6 I imagine that, there's an immediate pit in my  
7 stomach, a knot. Something says this just isn't so,  
8 this can't be.

9 That's where we start here today, ladies and  
10 gentlemen. That's why the scales are tipped.  
11 They're tipped in his favor. And you've agreed to  
12 hear both sides of the case, to take all the  
13 evidence into account and then make a determination.  
14 And I'm confident, ladies and gentlemen, at the  
15 close of all this, that you'll go back there and  
16 return a verdict of not guilty. Thank you.

17 THE COURT: You may call your first witness.

18 MR. SLOCUM: Judge, may we approach first?

19 (Sidebar conference.)

20 THE COURT: Some things don't go as --  
21 normally, I run the show. But I gave the lawyers  
22 the impression that we would do opening statements  
23 and then start with the witnesses right after lunch,  
24 and they were relying on me when I said that. So  
25 maybe I'm jumping the gun in trying to do too much

1 before lunch. So we'll have an earlier lunch. It's  
2 now 12:00. We'll take a lunch break until about  
3 1:15 and just have a little longer afternoon.

4 Please don't discuss the case with anyone,  
5 don't let anyone discuss it with you. When you get  
6 back, try to select me a foreperson amongst the 12  
7 of you. And we'll plan to go till about 5:00 this  
8 afternoon. Tomorrow we'll have breakfast for you  
9 and I'll buy your lunch tomorrow. Fair enough?  
10 Don't discuss the case with anyone. Have a pleasant  
11 lunch.

12 Everybody else remain seated, please.

13 (The jury exits the courtroom at 11:58 AM.)

14 THE COURT: All right. The Jackson v. Denno  
15 will take how long?

16 MR. SLOCUM: Ten or 15 minutes max.

17 THE COURT: All right. Be back at 1:00 and  
18 we'll do the Jackson v. Denno. What else do we need  
19 to do?

20 MR. SLOCUM: That's it, Judge.

21 THE COURT: All right. Y'all be back here at  
22 1:00.

23 (Luncheon recess at 12:02 PM.)

24 THE COURT: All right. You may call your first  
25 witness on the Jackson v. Denno.

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 MR. SLOCUM: Thank you, Judge. The State calls  
2 Deputy Tyler Roberts of the Aiken County Sheriff's  
3 Office.

TYLER ROBERTS

4  
5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat in the witness box.  
8 State your full name for the Court and spell your  
9 last.

10 THE WITNESS: Tyler Roberts, R-O-B-E-R-T-S.

## EXAMINATION

11  
12 BY MR. SLOCUM:

13 Q. Deputy Roberts, where are you currently  
14 employed?

15 A. Aiken County Sheriff's Office.

16 Q. In what capacity?

17 A. As a road patrol on the road patrol division.

18 Q. And were you employed with Aiken County on  
19 February 21st of this year, 2015?

20 A. Yes, sir.

21 Q. And did you have a chance to become involved in  
22 the case of Mr. McCladdie here, the defendant?

23 A. Yes, sir.

24 Q. Can you please describe what he's wearing for  
25 the record?

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 A. A blue-and-gray-striped shirt, and I'm unable  
2 to see his pants.

3 MR. SLOCUM: Your Honor, may the record reflect  
4 the witness has identified the defendant.

5 THE COURT: It so reflects.

6 BY MR. SLOCUM:

7 Q. How did you become involved in the case with  
8 Mr. McCladdie on February 21st of this year?

9 A. It was a -- since the other agency called, we  
10 responded to -- it was a break-in in progress. They  
11 gave it to me about a quarter after midnight. And  
12 that's how I got involved. I arrived on the scene.

13 Q. And where was the scene?

14 A. [REDACTED] Foreman Road.

15 Q. And where is that?

16 A. In the city of Jackson in the county of Aiken.

17 Q. And did you have a chance to advise the  
18 defendant, Mr. McCladdie, of his Miranda warnings?

19 A. Yes, sir.

20 Q. Are you familiar with the Miranda warnings --

21 A. Yes, sir.

22 Q. -- someone's constitutional rights?

23 A. Yes, sir.

24 Q. And did you advise him of those rights on that  
25 night?

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 A. Yes, sir.

2 Q. How did you do this?

3 A. By a card that I keep on my at all times when  
4 I'm on shift.

5 MR. SLOCUM: Permission to approach, Judge?

6 THE COURT: Yes, sir.

7 (Court's Exhibit A marked for identification.)

8 BY MR. SLOCUM:

9 Q. Deputy Roberts, I'm showing you what's been  
10 marked as Court's Exhibit A for identification  
11 purposes. Can you please tell me if you recognize  
12 Exhibit A?

13 A. Yes, sir, I do.

14 Q. And what is that?

15 A. That is my Miranda warning.

16 Q. And is that the card you had on your person on  
17 February 21st of this year?

18 A. Yes.

19 Q. Is it the card that you read from when you read  
20 Mr. McCladdie his rights?

21 A. Yes, sir.

22 Q. Has anything been changed to that card --

23 A. No, sir.

24 Q. -- from the date of the 21st of this year?

25 A. No, sir.

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 Q. No alterations or deletions?

2 A. No, sir.

3 MR. SLOCUM: Judge, at this time, the State  
4 moves Court's Exhibit A for purposes of this hearing  
5 only.

6 THE COURT: Any objection?

7 MR. MCMILLIAN: None, Judge.

8 BY MR. SLOCUM:

9 Q. Deputy Roberts, could you please read that card  
10 for us aloud.

11 A. Yes, sir. You have the right to right to  
12 remain silent. Anything you say can and will be  
13 used against in a court of law. You have the right  
14 to talk to an attorney and have them present with  
15 you while you're being questioned. If you can't  
16 afford an attorney, one will be appointed to  
17 represent you before questioning, if you wish. You  
18 can decide at any time to exercise these rights and  
19 not answer any questions or make any statements.

20 Do you understand each of these rights I have  
21 explained to you? Having these rights in mind, do  
22 you wish to talk to us?

23 Q. Did Mr. McCladdie acknowledge he understood  
24 those rights?

25 A. Yes, sir.

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 Q. Did he sign anything?

2 A. No, sir; it was verbal.

3 Q. It was a verbal waiver?

4 A. Yes, sir.

5 Q. Did you ask him any questions after that?  
6 Anything at all?

7 A. I did, yes, sir.

8 Q. What did you ask him?

9 A. What was his purpose being here at the  
10 residence, at the incident location.

11 Q. And what did he tell you?

12 A. First it was that he was walking up and down  
13 the road, which would be Main Street, right in front  
14 of the residence. Next was the vehicle. I asked  
15 him about the vehicle itself that was parked --  
16 backed into the location itself. He told me that he  
17 had driven the vehicle and borrowed it from a friend  
18 over in Augusta that -- he did give me a name, but  
19 it was a street name.

20 Q. Were you able to follow up with anybody based  
21 on what he told you?

22 A. No, sir.

23 Q. Did he ever say he wanted an attorney?

24 A. No, sir.

25 Q. Did he ever say he didn't want to talk anymore?

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 A. No, sir.

2 Q. Did he say anything else to you that you can  
3 remember from that night --

4 A. No, sir.

5 Q. -- other than those two things you just told  
6 us?

7 A. No, sir.

8 Q. As a deputy, have you ever had the chance to  
9 encounter anyone under the influence of alcohol or  
10 drugs?

11 A. Yes, sir.

12 Q. Did Mr. McCladdie give any appearance of being  
13 under the influence of alcohol or drugs?

14 A. He denied --

15 THE COURT: Wait a minute. You're asking him  
16 for an opinion?

17 Q. Did he appear, on that night of the 21st?

18 MR. MCMILLIAN: Judge, I'm going to object to  
19 that.

20 THE COURT: Sustained. He can describe his  
21 demeanor, how he looked and acted, but he can't give  
22 an opinion.

23 BY MR. SLOCUM:

24 Q. Did you smell any alcohol about his person?

25 A. No, sir, no alcohol. No signs of bloodshot

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

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1 eyes, slurred speed, staggered walking; nothing that  
2 appeared to be an indicator.

3 Q. Thank you. Was this Miranda warning given on  
4 audio or video recording?

5 A. Yes, sir, it was.

6 Q. And do you have that video today?

7 A. No, sir, I don't.

8 Q. Why not?

9 A. Our protocol is, when it's to assist another  
10 agency, we do upload all of the videos, but there  
11 is -- if it's not requested by that agency, we --  
12 after a 90-day period, it actually deletes itself  
13 off of our system. And at that time, that's what...

14 Q. When you were dispatched out, what agency were  
15 you dispatched to assist?

16 A. Jackson Police Department.

17 Q. And did anybody from Jackson ever ask you to  
18 send your in-car video over?

19 A. No.

20 Q. Have you since gone back and checked your  
21 evidence inventory to see if your in-car video is  
22 still available?

23 A. Yes, sir, I did.

24 Q. And is it available?

25 A. No, sir.

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. MCMILLIAN

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1 Q. Did you draft a formal report from the  
2 sheriff's office for this incident?

3 A. No, sir.

4 MR. SLOCUM: I beg the Court's indulgence.

5 BY MR. SLOCUM:

6 Q. Deputy Roberts, did you coerce the defendant  
7 into giving you a statement? Did you threaten him  
8 in any way?

9 A. No, sir.

10 Q. That's all of the questions I have for you.  
11 Please answer any questions Mr. McMillian may have.

12 THE COURT: Mr. McMillian, cross?

13 MR. MCMILLIAN: Yes, sir, Your Honor.

14 THE COURT: Stand up, please.

15 MR. MCMILLIAN: Certainly, Judge. I apologize.

16 EXAMINATION

17 BY MR. MCMILLIAN:

18 Q. Deputy Roberts, you say that you were  
19 dispatched out at 12:15. Was that an arrival time?

20 A. Yeah. Well, 88 time is actually when I --

21 THE COURT: What is 88 time?

22 THE WITNESS: I apologize, Your Honor. In the  
23 area, actually arriving on scene at that time.

24 BY MR. MCMILLIAN:

25 Q. And after -- when did you provide Mr. McCladdie

1 his rights?

2 A. After we detained him and I -- when we located  
3 him, detained him, and put him in front of my patrol  
4 car, at that time is when I did it.

5 Q. Why did you put him in front of your patrol  
6 car?

7 A. Protocol.

8 Q. Was the dash cam running?

9 A. Yes.

10 Q. While you gave him his rights?

11 A. Yes.

12 Q. And that's when you claim that he made these  
13 differing statements about why he was on scene?

14 A. Correct; after I Mirandized him.

15 Q. And I just want to be clear, that video was  
16 recorded and did exist?

17 A. Yes, sir.

18 Q. And has sense, what, fallen off the server?

19 A. It erases itself after 90 days. So many videos  
20 are uploaded, and it erases after 90 days.

21 Q. You didn't think it pertinent to pull a copy of  
22 that and provide it to the arrest -- or the  
23 investigating agency?

24 A. Typically they request it through our agency  
25 and then we provide it to them. As far as I know,

## IN-CAMERA EXAMINATION OF TYLER ROBERTS BY MR. MCMILLIAN

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1       there's a process that goes with that.

2               THE COURT: As far as you know, what?

3               THE WITNESS: As far as I know, Your Honor,  
4       there's a process or a form. I'm not 100-percent  
5       sure on that.

6               THE COURT: Don't guess, please.

7               THE WITNESS: Yes, sir.

8               MR. MCMILLIAN: Beg the Court's indulgence just  
9       one moment.

10       BY MR. MCMILLIAN:

11       Q. Did you -- do you have any way of stating with  
12       any sort of certainty when the video was erased?

13       A. No, sir.

14       Q. Do you have an approximation?

15       A. February 21st, 90 days after that.

16       Q. Ninety days. So February, March, April. It  
17       would have been available May 21st-ish?

18       A. Roughly, depending on uploaded videos.

19               MR. MCMILLIAN: I don't have any further  
20       questions. But I would like to be heard at the  
21       appropriate time.

22               THE COURT: Anything on redirect?

23               MR. SLOCUM: Nothing on redirect, Your Honor.

24       We have more witnesses.

25               THE COURT: All right. Thank you. Next

## IN-CAMERA EXAMINATION OF BRENT HESS BY MR. SLOCUM

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1 witness, please.

2 MR. SLOCUM: State calls Officer Brent Hess  
3 from the New Ellenton Police Department.

4 BRENT HESS

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat in the witness box.  
8 State your full name for the Court and spell your  
9 last.

10 THE WITNESS: Brent Wayne Hess, H-E-S-S.

11 EXAMINATION

12 BY MR. SLOCUM:

13 Q. Officer Hess, where are you currently employed?

14 A. City of New Ellenton Police Department.

15 Q. And what are your duties as a police officer?

16 A. I'm a police officer.

17 Q. All right. Were you working for New Ellenton  
18 on February 21st of this year?

19 A. Yes, sir, I was.

20 Q. Did you have a chance to become involved with  
21 the defendant, Mr. McCladdie?

22 A. Yes, I did.

23 Q. Can you point him out and describe him for the  
24 record.

25 A. He's the gentleman wearing the blue and white

## IN-CAMERA EXAMINATION OF BRENT HESS BY MR. SLOCUM

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1 plaid shirt, I believe it's blue jeans.

2 MR. SLOCUM: Your Honor, let the record reflect  
3 the witness has identified the defendant.

4 BY MR. SLOCUM:

5 Q. How did you become involved in this case?

6 A. I responded down there as backup, as signal  
7 one, backup for Officer Hess in reference to a  
8 break-in possibly in progress.

9 Q. And this is in Jackson?

10 A. Yes.

11 Q. Under Jackson PD jurisdiction?

12 A. Yes.

13 Q. So you, like Deputy Roberts, were there to  
14 assist?

15 A. Yes.

16 Q. At what point did you come in contact with the  
17 defendant?

18 A. I was speaking to a deputy on, I believe, Main  
19 Street, the road right in front of the house, and I  
20 heard something moving around in the bushes. When I  
21 focused my attention on the bushes, I saw the  
22 suspect trying to cover himself with leaves from the  
23 bushes.

24 Q. How far away from the house at [REDACTED] Foreman were  
25 these bushes, just guesstimation?

## IN-CAMERA EXAMINATION OF BRENT HESS BY MR. SLOCUM

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1 MR. MCMILLIAN: Objection, Judge; calls for  
2 speculation.

3 THE COURT: Overruled.

4 If you know, how far?

5 THE WITNESS: I can only give a guesstimation,  
6 Your Honor.

7 THE COURT: Don't guess.

8 THE WITNESS: I couldn't tell you exact  
9 distance.

10 BY MR. SLOCUM:

11 Q. To what side of the house, left or right, were  
12 these bushes?

13 A. If you're facing the house, it would be the  
14 left side of the house.

15 Q. Okay. Could you see the house from where the  
16 bushes are?

17 A. Yes, sir.

18 Q. And you said you saw the defendant in the  
19 bushes. What did you do next?

20 A. I advised the defendant to show me his hands.

21 Q. And did he show you his hands?

22 A. No, he did not.

23 Q. What did you do next?

24 A. I advised him a lot louder to show me his  
25 hands.

## IN-CAMERA EXAMINATION OF BRENT HESS BY MR. SLOCUM

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1 Q. Then what happened?

2 A. And about that time, officers, deputies  
3 responded to my location where I was at, and we  
4 started getting hands on the suspect.

5 Q. Was he detained?

6 A. Yes, he was.

7 Q. And at that point, did you ask him any  
8 questions while he was detained?

9 A. No, sir, I did not.

10 Q. Did you read him any Miranda rights at that  
11 point?

12 A. No, sir, I did not.

13 Q. Did he make any statements to you at that  
14 point?

15 A. He made several.

16 Q. What were they?

17 A. It was, what are y'all doing, I'm just walking  
18 around, I'm waiting on a friend. There were several  
19 statements that he was making on the way back to the  
20 patrol car.

21 Q. And at any point in time from the time you  
22 apprehended him as you're going back to the patrol  
23 car, did you ask him any questions or interrogate  
24 him?

25 A. No, sir, I did not.

1 Q. And were you present when Deputy Roberts read  
2 him his Miranda rights?

3 A. I do not believe so, no, sir.

4 Q. But you didn't ask him any further questions  
5 after that point either?

6 A. No, sir.

7 THE COURT: Did you ask him any questions?

8 THE WITNESS: No, sir, I did not -- I'm sorry,  
9 Your Honor. I did ask him to be quiet please.

10 THE COURT: Well, that's not a question.

11 THE WITNESS: That was when we were putting him  
12 in the back of the patrol car. He just wouldn't be  
13 quiet.

14 BY MR. SLOCUM:

15 Q. This all happened on the night of February 20th  
16 into the night of the 21st February, 2015; correct?

17 A. Yes, sir.

18 Q. Did he say anything to you or any other  
19 statements made to you before he left the scene that  
20 night?

21 A. Yes, sir.

22 Q. What were they?

23 A. He made statements in reference to that he was  
24 dropped off there, he was waiting on a friend to  
25 come pick him up. He was asking questions of why

## IN-CAMERA EXAMINATION OF BRENT HESS BY MR. MCMILLIAN

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1 are we in his car. And as he was leaving, being  
2 transported to ACDC, he made the statement, I put on  
3 a good show, don't I?

4 Q. That's all the questions I have for you,  
5 Officer Hess. Please answer any Mr. McMillian may  
6 have for you.

7 THE COURT: Those last statements that you say  
8 he made, were those in response to questions by you  
9 or he was just talking?

10 THE WITNESS: He was just talking, Your Honor.

11 THE COURT: Mr. McMillian.

12 MR. MCMILLIAN: Thank you, Judge.

## EXAMINATION

13  
14 BY MR. MCMILLIAN:

15 Q. You described the bushes. Which side of the  
16 property were you on?

17 A. I was in the front of the property.

18 Q. [REDACTED] Foreman Street or the adjacent property?

19 A. Foreman Street.

20 Q. Okay.

21 MR. MCMILLIAN: I don't have anything further.

22 THE COURT: Thank you.

23 Redirect?

24 MS. HALL: Nothing on redirect.

25 THE COURT: You may step down.

## IN-CAMERA EXAMINATION OF WILLIAM MCCLADDIE BY MR. MCMILLIAN

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1 Any other witnesses?

2 MR. SLOCUM: No, sir. That's all in terms of  
3 Jackson v. Denno.

4 THE COURT: All right.

5 Any witnesses?

6 MR. MCMILLIAN: Yes, sir, Your Honor. We'd  
7 call William McCladdie to the stand.

8 WILLIAM MCCLADDIE  
9 being first duly sworn, testified as follows:

10 THE DEFENDANT: Yes, ma'am.

11 THE CLERK: Have a seat in the witness box.  
12 State your full name for the Court and spell your  
13 last.

14 THE DEFENDANT: William McCladdie,  
15 M-C-C-L-A-D-D-I-E.

## EXAMINATION

16  
17 BY MR. MCMILLIAN:

18 Q. Mr. McCladdie, do you remember February 21st of  
19 2015 --

20 A. Yes, sir, I do.

21 Q. -- when you were taken into custody?

22 A. Yes, sir, I do.

23 Q. Did any deputies or any officers ever read you  
24 your Miranda rights?

25 A. No, sir, they didn't.

## IN-CAMERA EXAMINATION OF WILLIAM MCCLADDIE BY MR. SLOCUM

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1 Q. Do you recall making any statements?

2 A. No. I didn't.

3 MR. MCMILLIAN: I beg the Court's indulgence.

4 BY MR. MCMILLIAN:

5 Q. Did you make any statements regarding that  
6 being your car?

7 A. No, sir, I didn't.

8 MR. MCMILLIAN: Nothing further, Judge.

9 THE COURT: Cross?

10 EXAMINATION

11 BY MR. SLOCUM:

12 Q. Mr. McCladdie, you had the key to that car in  
13 your pocket, didn't you?

14 A. No, sir, I didn't.

15 MR. SLOCUM: Nothing further; Your Honor.

16 MR. MCMILLIAN: No questions, Judge.

17 THE COURT: All right. You may step down.

18 Next witness, Mr. McMillian.

19 MR. MCMILLIAN: I don't have any, Judge.

20 THE COURT: Anything in reply?

21 MR. SLOCUM: State calls Mike Hess with Jackson

22 Police Department.

23 JAMES MICHAEL HESS

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

## IN-CAMERA EXAMINATION OF JAMES MICHAEL HESS BY MR. SLOCUM

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1 THE CLERK: Have a seat in the witness box.  
2 State your full name for the Court and spell your  
3 last.

4 THE WITNESS: Officer James Michael Hess,  
5 H-E-S-S.

## EXAMINATION

6  
7 BY MR. SLOCUM:

8 Q. Officer Hess, were you working with Jackson PD  
9 on February 20th and 21st of 2015?

10 A. Yes, sir, I was.

11 Q. And did you come in contact with the defendant  
12 on that date?

13 A. Yes, I did.

14 Q. How was that -- how did that happen?

15 A. On that particular date and time, prior to that  
16 time at 2355, Mr. Clark came to me and advised me  
17 that he sees a vehicle at his deceased aunt's house  
18 backed up to the door and that no one should be  
19 there.

20 Q. So 2355, that would be 11:55 on the 20th;  
21 correct?

22 A. That's correct. I'm sorry.

23 Q. All right. Please continue.

24 A. Upon arrival, I observed a primer-colored  
25 vehicle backed up to the door --

## IN-CAMERA EXAMINATION OF JAMES MICHAEL HESS BY MR. SLOCUM

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1 THE COURT: What color?

2 THE WITNESS: Primer-colored, sir.

3 THE COURT: I'm sorry?

4 THE WITNESS: Gray.

5 BY MR. SLOCUM:

6 Q. All right. And what did you do after you got  
7 to the house and saw the car?

8 A. I touched the hood, the hood was warm. I went  
9 to the back and got the tag and I started securing  
10 the residence itself. I called the Aiken County  
11 Sheriff's Office dispatcher and advised her of the  
12 tag. As I was walking around, I was checking doors  
13 and windows to see if the house was vandalized or  
14 broken into.

15 As I went around to the back side of it, the  
16 Aiken County Sheriff's Department advised me that  
17 the car came back as stolen out of Richmond County.  
18 I then got on the radio and started requesting for  
19 backup. As I was walking around to the side, I saw  
20 a window that was busted, and that's the reason I  
21 was calling for assistant units.

22 Q. Okay. And what did you do while the assistant  
23 units showed up?

24 A. I sat on the house waiting for them to get  
25 there.

## IN-CAMERA EXAMINATION OF JAMES MICHAEL HESS BY MR. SLOCUM

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1 Q. You waited for them to get there?

2 A. Yes, sir.

3 Q. And when they got there, at what point after  
4 that did you come into contact with the defendant?

5 A. Once they started detaining him, my -- Officer  
6 Hess from the New Ellenton Police Department started  
7 screaming let me see your hands, and we all  
8 proceeded over to him.

9 Q. To the bushes?

10 A. To the bushes, yes.

11 Q. Can you describe what the defendant is wearing,  
12 please.

13 A. Blue shirt, plaid o=in color with little white  
14 stripes on it.

15 MR. SLOCUM: Your Honor, let the record reflect  
16 Officer Hess has identified the defendant.

17 BY MR. SLOCUM:

18 Q. What, if anything, did you find on his person  
19 prior to his arrest?

20 MR. MCMILLIAN: Objection, Your Honor. This is  
21 outside the scope of what we put up with  
22 Mr. McCladdie.

23 MR. SLOCUM: Judge --

24 MR. MCMILLIAN: This doesn't have anything to  
25 do with the Denno hearing. This is strictly --

## IN-CAMERA EXAMINATION OF JAMES MICHAEL HESS BY MR. SLOCUM

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1 MR. SLOCUM: It -- it --

2 THE COURT: Hold on.

3 MR. MCMILLIAN: This is strictly regarding the  
4 statement, Your Honor; whether he was Mirandized,  
5 whether he was questioned, whether he made any  
6 statements.

7 THE COURT: What's this got to do with the  
8 statements?

9 MR. SLOCUM: Judge, for purposes of Denno  
10 hearing itself, we're challenging the credibility of  
11 the witness that they put up on behalf of the  
12 defense and their determination of the Jackson v.  
13 Denno. We're simply attacking the credibility of  
14 the witness for purposes of --

15 THE COURT: You can ask him.

16 BY MR. SLOCUM:

17 Q. What, if anything, did you find on the  
18 defendant?

19 A. I found a flashlight, a pocketknife, and a key.

20 Q. Okay. And a key to what?

21 A. It belonged to the vehicle that was backed in.

22 THE COURT: How do you know it belonged to that  
23 vehicle?

24 THE WITNESS: Because that was the key they  
25 used to get the vehicle out of the area.

## IN-CAMERA EXAMINATION OF JAMES MICHAEL HESS BY MR. SLOCUM

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1 THE COURT: What now?

2 THE WITNESS: When the wrecker service came  
3 up --

4 THE COURT: That key turned the car on?

5 THE WITNESS: Yes, sir. Yes, sir.

6 THE COURT: Anything else?

7 MR. SLOCUM: No, sir.

8 THE COURT: Anything?

9 MR. MCMILLIAN: No, Your Honor.

10 THE COURT: Any additional witnesses?

11 MR. SLOCUM: No, Your Honor.

12 THE COURT: Any argument by the State?

13 MR. SLOCUM: Judge, the statements made after  
14 Deputy Roberts advised Mr. McCladdie of his rights,  
15 they were a complete reading of those rights for  
16 which Deputy Roberts testified he acknowledged, and  
17 he never invoked his right to an attorney, never  
18 invoked his right to silence. He responded to one  
19 question asked by Deputy Roberts, what are you doing  
20 in the area. And the other spontaneous statements  
21 made prior to and after the reading of Miranda are  
22 admissible as they are not of a custodial  
23 interrogation by the law enforcement in this case.

24 THE COURT: He wasn't in custody when he made  
25 those last statements?

1 MR. SLOCUM: He was in custody, he wasn't  
2 interrogated.

3 THE COURT: You said a noncustodial statement.

4 MR. SLOCUM: It was a custodial statement, but  
5 it was spontaneous as he was not being  
6 interrogated --

7 THE COURT: I understand.

8 All right. Mr. McMillian?

9 MR. MCMILLIAN: Judge, I think with first  
10 regarding the voluntariness, we don't believe the  
11 statement was voluntary. He testified that he  
12 didn't say any of these things.

13 Judge, the second ground for my objection would  
14 be a Rule 5 violation. By my records, it appears  
15 that we sent a Rule 5 request on March 5th  
16 specifically requesting any and all statements made  
17 by -- written or recorded statements made by the  
18 defendant.

19 We were not provided any notice of any sort of  
20 statement until, I believe, maybe about a week and  
21 some change ago --

22 THE COURT: Well, what's that got to do with  
23 Jackson v. Denno?

24 MR. MCMILLIAN: Judge --

25 THE COURT: Isn't that the spoliation of

1 evidence?

2 MR. MCMILLIAN: -- I didn't know anything about  
3 the fact that this video existed or that this video  
4 may show Miranda or that this video would contain  
5 any statements he might have made until today.

6 THE COURT: The video is gone.

7 MR. MCMILLIAN: Yes, sir. And that's my issue.  
8 The State had notice because the Solicitor's Office  
9 is presumed to know about everything law enforcement  
10 has.

11 THE COURT: Well, that doesn't have anything to  
12 do with whether or not the waiver was given or  
13 whether or not the statement was voluntary under  
14 Jackson v. Denno. You may move to preclude the  
15 statement because they didn't comply with Rule 5,  
16 but I don't think that's a Jackson v. Denno  
17 violation.

18 MR. MCMILLIAN: Judge, then we'd just argue as  
19 to the voluntariness, that this was not a voluntary  
20 statement, and would like to reserve the Rule 5  
21 objection for the appropriate time.

22 THE COURT: Certainly.

23 I find that by the preponderance of the  
24 evidence that the Miranda warnings were given and  
25 that the statement was voluntary by the

1       preponderance of the evidence, and it will be  
2       admitted subject to your objection under Rule 5.  
3       And the jury can give it whatever weight, if any, it  
4       deserves. And, obviously, they have to find it was  
5       voluntary beyond a reasonable doubt. So I'm going  
6       to allow it at this particular point in time.

7               All right. Mr. Slocum, why was it not turned  
8       over?

9               MR. SLOCUM: Judge, you want me to respond to  
10      that?

11              THE COURT: Yes.

12              MR. SLOCUM: Judge, the statements that were  
13      heard today were discovered by the State the exact  
14      same time Mr. Bradley was notified. We found about  
15      it a week or a week and a half ago and immediately  
16      turned and called him by phone to give him notice.

17              THE COURT: Why didn't you know about it?

18              MR. SLOCUM: When we started preparing this  
19      case for trial, when we started meeting with our  
20      officers, is when we started learning about these  
21      other statements. And we immediately notified  
22      Mr. McMillian upon --

23              THE COURT: So you didn't know about it until  
24      just recently either, and when you found out about  
25      it, they were already erased, by protocol, by 90

1 days?

2 MR. SLOCUM: Yes, sir.

3 THE COURT: When did you find out about it?

4 MR. SLOCUM: The statements?

5 THE COURT: Yes, sir.

6 MR. SLOCUM: The end of last week.

7 THE COURT: So it was more than 90 days?

8 MR. SLOCUM: Yes, sir. More than 90 days after  
9 February 21st of this year.

10 MR. MCMILLIAN: Judge, I'm not alleging any  
11 specific wrongdoing on the part of the Solicitor's  
12 Office, but, I believe, under Rule 5, in the spirit  
13 of discovery, is that the State is presumed to have  
14 knowledge of these things.

15 THE COURT: Do you have a case that says they  
16 presume to have knowledge of a statement that they  
17 didn't have in their file and learned about it when  
18 they interviewed the officer?

19 MR. MCMILLIAN: Judge, I believe -- if you can  
20 give me a few minutes, I may can find something.  
21 But I believe if the officer has it and didn't  
22 include it in the file, that's the State's burden,  
23 Judge, to provide any and all statements, any and  
24 all statements written or recorded that my client  
25 may have made inculpatory or exculpatory. And in

1 failing to, I guess, investigate the case or check  
2 with the other law enforcement agencies, this  
3 spoliation occurred. The video essentially was  
4 erased because something was recorded over it.

5 THE COURT: When was he arrested?

6 MR. MCMILLIAN: He was originally arrested,  
7 Judge, on February 21st --

8 THE COURT: Same night?

9 MR. MCMILLIAN: Yes, sir. And if our -- I  
10 believe we filed our Rule 5 request on March 5th, as  
11 I told you earlier. We held a preliminary hearing  
12 in this matter on May 6th of 2015, just inside the  
13 90-day timeline that Officer Roberts testified to,  
14 and still no mention was made of any of these  
15 statements. There was no mention made of any  
16 statements other than he was Mirandized at that  
17 time.

18 And now, after that video has fallen off of the  
19 server, now that's it's spoliated, we're hearing  
20 about it a week before trial. I just don't think  
21 it's fair to let the statements in, in lieu of this  
22 violation.

23 THE COURT: So all that's going to be precluded  
24 are these statements that he was just walking up and  
25 down the street and made a good showing.

1 MR. MCMILLIAN: Judge, I'd argue that any  
2 statements he made --

3 THE COURT: Well, that's all he testified to.

4 MR. MCMILLIAN: Well, not just Officer Roberts,  
5 but any of the officers, because we didn't find out  
6 about them, literally, until, like Mr. Slocum said,  
7 last week. I believe it's the burden of the  
8 officer, it's the burden of the State, to fill out a  
9 supplemental report, to make --

10 THE COURT: Well, show me a case that says  
11 that.

12 MR. MCMILLIAN: -- to put somebody on notice of  
13 statements.

14 THE COURT: All right.

15 MR. MCMILLIAN: Judge, if we may just have a  
16 few moments to look into it. I wasn't expecting  
17 this issue to come up with the video.

18 THE COURT: All right. We're going to start  
19 the trial of the case. When you get to the point  
20 that you intend to talk about anything that the  
21 defendant said by way of statement, we'll stop right  
22 there and we'll do a proffer. Both of y'all will  
23 have an opportunity while the other is testifying to  
24 do research while you're sitting there.

25 MR. MCMILLIAN: Thank you, Your Honor.

1 THE COURT: Anything else?

2 MR. SLOCUM: Nothing from the State, Judge.

3 THE COURT: Well, I find it odd if you've got  
4 somebody charged with burglary in the first degree  
5 and you give him Miranda warnings and you talk to  
6 them in the police car and got an in-car camera  
7 going on, why in the world would you not reserve it?

8 MR. SLOCUM: Judge, I can clear that up.

9 THE COURT: Well, clear it up.

10 MR. SLOCUM: Deputy Roberts and Officer Brent  
11 Hess with New Ellenton and Aiken County were there  
12 to assist --

13 THE COURT: Well, I understand that. But  
14 they're part of it.

15 MR. SLOCUM: That's right. Because they  
16 weren't the agency handling the case, they don't  
17 fill out the general sessions form report and dump  
18 all their evidence. Pursuant to their protocol,  
19 they put it in evidence, and if requested by the  
20 other agency, it's then sent --

21 THE COURT: Well, that doesn't appeal to me. I  
22 mean, if you've got somebody charged with burglary  
23 in the first degree and they're looking at life in  
24 prison and you've got a video of the statement  
25 in-camera [sic] video of the Jackson v. Denno and

1       you know the case is active and you were part of the  
2       arresting team that took place that night and  
3       assisted, you don't have any duty or any obligation  
4       to maintain that statement?

5           MR. SLOCUM: I can understand that, Judge. But  
6       according to their protocol --

7           THE COURT: What if they were trying to do that  
8       to you? You'd be raising cane and jumping up and  
9       down for keeping it out.

10          MR. SLOCUM: Yes, sir. I'm just relaying what  
11       they told me in terms of what they do when --

12          THE COURT: Well, I understand what they're  
13       telling you, and they're being honest about it, but  
14       it doesn't make it right.

15          MR. SLOCUM: Well, 25, 30 years ago, there was  
16       no such thing as a video or audio recording and we  
17       just --

18          THE COURT: But we aren't 25 or 30 years ago.

19          MR. SLOCUM: Right.

20          THE COURT: And it's something that the police  
21       use as an investigation technique and something --  
22       they asked for all statements. That statement was  
23       in existence when they sent you the material, the  
24       Rule 5 material, and during that timeframe, it just  
25       erases itself or however it goes. That doesn't

1 appeal to me.

2 MR. SLOCUM: Yes, sir.

3 THE COURT: When you get to that point, stop.

4 All right. Call the jury in, please.

5 (State's Exhibit Nos. 1-62 marked for

6 identification.)

7 (The jury enters the courtroom at 1:37 PM.)

8 THE COURT: Okay. Sorry we're running a little  
9 late. But we've been in here since 1:00 trying to  
10 get some matters resolved. I haven't been sitting  
11 back there watching TV.

12 Have y'all selected the foreperson?

13 THE FOREMAN: Yes, sir.

14 THE COURT: Congratulations.

15 All right. You may call your first witness.

16 MR. SLOCUM: Thank you, Your Honor. The State  
17 calls Mr. Jerry Ayers.

18 JERRY AYERS

19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Have a seat in the witness box.  
22 State your full name for the Court and spell your  
23 last.

24 THE WITNESS: Jerry Ayers, A-Y-E-R-S.

25

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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## DIRECT EXAMINATION

BY MR. SLOCUM:

Q. Mr. Ayers, good afternoon, sir. Where are you from?

A. Augusta, Georgia.

Q. And where do you currently live?

A. At [REDACTED] Brendell Drive, Augusta, Georgia.

Q. Who do you live with there?

A. I live with my mother. I'm an in-care home [sic] provider for my mother. I take care of her.

Q. Okay. Do you remember the morning of February 8th of this year, 2015?

A. Yes, sir.

Q. What happened that morning?

A. I came outside and my car was gone.

Q. About what time was this?

A. It was before sunup, I believe. Yeah, it was; right when the sun was coming up.

Q. Was your car locked the night before?

A. No, sir, it wasn't.

Q. Why was that?

A. I just usually didn't lock it, you know. I just didn't lock it.

Q. Where was the key to that car?

A. I keep my key on the inside of the car in the

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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1 top center right of the car, if you're driving like  
2 this. It's a little thing that comes up like that.  
3 And the reason I do it is my key is broken off, the  
4 little latch part, and I can't connect it to another  
5 key ring or anything. And it's small, I always lose  
6 it all the time, so I keep it in my car.

7 (Demonstrating)

8 Q. You keep it in the sunglass thing you flip  
9 down?

10 A. Yes, sir. Yes, sir, the sunglass thing.  
11 That's proven to be a mistake.

12 Q. Did you give anybody permission that morning to  
13 take your car?

14 A. No, sir, I did not.

15 Q. Did you give the defendant, Mr. McCladdie,  
16 permission to take your car?

17 A. No, sir, I did not.

18 Q. Do you know him at all?

19 A. No, sir, I do not.

20 Q. What color was your car on the morning of  
21 February 8th, 2015?

22 A. It was tan, beige -- like a tan color.

23 Q. When did you report that car stolen to the  
24 police?

25 A. A couple of days later.

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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1 Q. Why did you wait?

2 A. I just -- I just couldn't believe it was gone.  
3 I couldn't believe my car was stolen. I park it  
4 right by the window of my house. And I just  
5 couldn't believe it was gone. And I don't drink or  
6 anything like that. And I kept on thinking, maybe I  
7 forgot it somewhere or something or maybe I did let  
8 someone borrow it. And I sat there and I called  
9 around. And then the next day, I did the same  
10 thing, I called around and said, have you seen my  
11 car? Did I leave my car over there or anything like  
12 that?

13 And nobody had saw it or anything, so I decided  
14 that it did get stolen, so I called and made a  
15 police report. I should have done that right away.

16 Q. When did you do that? When did you call the  
17 police?

18 A. A couple days after that.

19 Q. Okay. How long had you had that car?

20 A. Let's see. About six months. Before that, my  
21 father had it for years.

22 Q. Got it from your father?

23 A. Yes, sir. He gave it to me.

24 Q. So you'd been leaving your key inside the car  
25 for six months because you couldn't attach it to

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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1 something else?

2 A. Yes, sir. I kept on losing it.

3 Q. And was it ever taken six months prior to  
4 February 8th?

5 A. No, sir.

6 Q. And how much is that car worth?

7 A. Not much. It's worth about \$580, \$600.

8 Q. Where does that number come from?

9 A. From right here. I've got it in a -- it's a  
10 devaluation from the insurance company or something.

11 Q. Fair enough. Did you get that car back?

12 A. Yes, sir, I did.

13 Q. And how were you notified about getting that  
14 car back?

15 A. A female officer from South Carolina called me  
16 one day and she said that they had recovered my car  
17 in a burglary and told me to go pick it up at the  
18 impound.

19 Q. Did you go pick it up at the impound yard?

20 A. Yes, sir.

21 Q. And where was that? Was that in South  
22 Carolina?

23 A. South Carolina, yes, sir.

24 Q. What color was the car when you got it back?

25 A. It was primer gray.

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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1 Q. Different color than it was on February 8th?

2 A. Yes, sir. It was --

3 THE COURT: What? Primer red?

4 THE WITNESS: Primer gray. And the front end,  
5 when I drove the car, the -- I'm not a mechanic.

6 Excuse my ignorance. It was just click, click,  
7 click, and it just felt like it was going to fall  
8 apart when I got it back.

9 BY MR. SLOCUM:

10 Q. Was it handling different than it was on --

11 A. Completely differently. I thought it was going  
12 to fall apart, literally, going down the road.

13 Q. Mr. Ayers, I want to show you some pictures  
14 here. These are State's Exhibit 31, 32 and 33. If  
15 you could just, first off, tell me, do you recognize  
16 what's in those pictures?

17 A. Yes, sir. That's the back of my car.

18 Q. 32 and 33, please, sir.

19 A. Again, the back of my car, tag.

20 Q. Do those pictures accurately reflect your car  
21 as it was February 20th and 21st of this year?

22 A. You mean, before it was stolen?

23 Q. After.

24 A. Yes, sir. That's what it looks like now.

25 Q. Is that how it was when you got it back from

## DIRECT EXAMINATION OF JERRY AYERS BY MR. SLOCUM

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1 impound yard?

2 A. Yes, sir.

3 Q. Have there been any -- other than the color,  
4 obviously, has anything been doctored on those  
5 photos?

6 A. No, sir. It looks exactly like that now.

7 MR. SLOCUM: Judge, State moves Exhibits 31,  
8 32, 33 in to evidence.

9 THE COURT: Any objection?

10 MR. MCMILLIAN: No objection.

11 (State's Exhibit Nos. 31, 32, 33 admitted in to  
12 evidence.)

13 BY MR. SLOCUM:

14 Q. If you could take a look at those again,  
15 Mr. Ayers. That color is the color of your car  
16 still today?

17 A. Yes, sir. And I forgot to mention the hub caps  
18 are off.

19 Q. Is that your tag on the back of that car?

20 A. Yes, sir.

21 Q. Did you give anyone permission to take your car  
22 into South Carolina?

23 A. No, sir, I did not.

24 MR. SLOCUM: I beg the Court's indulgence.

25 BY MR. SLOCUM:

## CROSS-EXAMINATION OF JERRY AYERS BY MR. MCMILLIAN

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1 Q. That color there was not the color of February  
2 8th; right? What color was your car on February  
3 8th?

4 A. It was tan, like a --

5 Q. Not primer gray?

6 A. No, it wasn't primer gray. No.

7 Q. Did you -- did you get your key back?

8 A. Yes, sir.

9 Q. Where did you get it from?

10 A. From the impound.

11 Q. Same key that was broken on the top?

12 A. Same key.

13 Q. Mr. Ayers, thank you. That's all of the  
14 questions I have. Please answer any Mr. McMillian  
15 may have for you.

16 THE COURT: Any questions?

17 MR. MCMILLIAN: Certainly, Judge.

18 CROSS-EXAMINATION

19 BY MR. MCMILLIAN:

20 Q. Good afternoon, Mr. Ayers.

21 A. Good afternoon.

22 Q. You testified previously that you kept the key  
23 in the car?

24 A. (Nods head.)

25 Q. Did anybody know that you kept the key in the

## CROSS-EXAMINATION OF JERRY AYERS BY MR. MCMILLIAN

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1 car?

2 A. Not that I know of, no, sir.

3 Q. Any family know?

4 A. Possibly.

5 THE COURT: He just said he didn't know.

6 Q. Did your father know?

7 A. Yes, my father knew. Yes, sir.

8 Q. Any other family know?

9 A. No. No one else. I made it a point, of  
10 course, not to let anyone know. Obviously, that  
11 wasn't good enough.

12 Q. And you testified you don't know my client?

13 A. No, I do not.

14 Q. And you don't know who actually stole your car?

15 A. No, I do not.

16 MR. MCMILLIAN: Nothing further, Judge.

17 THE COURT: Anything on redirect?

18 MR. SLOCUM: Nothing from the State, Judge.

19 THE COURT: All right. Mr. Ayers, you may step  
20 down and may go back to Augusta. Thank you for  
21 coming.

22 THE WITNESS: Yes, sir.

23 MR. SLOCUM: Thank you, Judge.

24 THE COURT: Next witness, please.

25 MS. HALL: The State calls Officer Mike Hess.

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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JAMES MICHAEL HESS

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

THE CLERK: Have a seat in the witness box.

State your full name for the Court and spell your last.

THE WITNESS: James Michael Hess, H-E-S-S.

## DIRECT EXAMINATION

BY MS. HALL:

Q. Good afternoon. Officer Hess, where do you work?

A. Jackson Police Department.

Q. And in what capacity?

A. I'm the patrolman, investigator, narcotics officer.

Q. What all does that job entail?

A. I -- traffic enforcement, crime scene investigations.

Q. How long have you been with the Jackson Police Department?

A. Approximately 30 years.

Q. Were you in law enforcement prior to going to the Jackson Police Department?

A. Yes, I was.

Q. When did you start your career in law

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 enforcement?

2 A. In 1987.

3 Q. What law enforcement training have you had over  
4 the years?

5 A. Narcotics investigations, crime scene  
6 investigations, and photography school.

7 Q. Were you working with Jackson Police Department  
8 on the night of February 20th, 2015?

9 A. Yes, I was.

10 Q. How did you become involved in this case?

11 A. At 11:55 on the 20th of February I was sitting  
12 stationary radar on what we call Highway 125 in the  
13 median. That's pretty much where I run my radar.  
14 An individual pulls up in a pickup truck by the name  
15 of Doug Clark. He comes to me and says, Officer  
16 Hess, I've got a vehicle at my deceased aunt's house  
17 that's backed up to the door, and it's not supposed  
18 to be there. I advised him to stay where he's at  
19 and proceeded down to the address [REDACTED] Foreman  
20 Street.

21 Q. Is [REDACTED] Foreman Street within Aiken County?

22 A. It's in the city of Jackson, Aiken County, yes,  
23 ma'am.

24 Q. Okay. Can you explain how that house sits on  
25 Foreman Street and the other streets surrounding the

1 house?

2 A. Foreman Street comes down, Main Street crosses.  
3 The residence we're talking about is on the corner  
4 of Foreman and Main Street.

5 Q. What street does the front of the house  
6 actually face?

7 A. Main Street.

8 Q. Okay. What did you observe when you pulled in  
9 to [REDACTED] Foreman Street?

10 A. When I pulled in to the residence, I observed a  
11 vehicle backed up to the door. I got out of my  
12 vehicle, of course, touched the hood of the car, it  
13 was still warm, walked around --

14 Q. Let me stop you for a second. You said you  
15 touched the hood of the car. What did that indicate  
16 to you?

17 A. That it's freshly been parked there.

18 Q. All right. Please continue. What did you do  
19 next?

20 A. I then walked around the vehicle, saw the tag,  
21 advised Aiken County Sheriff's Department what I had  
22 through our dispatch, and started walking around,  
23 securing the residence itself, checking doors,  
24 windows, shining my flashlight through the house,  
25 seeing if anybody was inside or if there was any

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 forced entry.

2 As I was walking around the residence, Aiken  
3 County Sheriff's Department advised me that the  
4 vehicle was stolen out of Richmond County. I then  
5 proceeded back to my patrol car. As I was going, I  
6 observed a window that looked like it was jimmied or  
7 broke, so I --

8 THE COURT: You observed a window that looked  
9 like what?

10 THE WITNESS: Jimmied or broke.

11 THE COURT: Jimmied or broke?

12 THE WITNESS: Yes, sir.

13 I then called the Aiken County Sheriff's  
14 Department and requested for back-up assistance.

15 BY MS. HALL:

16 Q. Did you notice any other indication of forced  
17 entry to any other parts of the house upon your  
18 initial observation?

19 A. Not in the initial observation, no, ma'am. I  
20 pulled the doors, front door, side door, and walked  
21 around and saw the window. That's when I started  
22 requesting for backup.

23 Q. You said you pulled on the doors. Were both  
24 the front door and the side door locked?

25 A. That's correct.

1 Q. Okay. And what did you do after making your  
2 round? Who did you contact after --

3 A. Aiken County Sheriff's Department, and  
4 requested my closest backup, which would be New  
5 Ellenton Police Department at the time too.

6 Q. Okay. Do you know about how long it was before  
7 backup arrived?

8 A. Roughly 10 or 15 minutes, give or take.

9 Q. Okay. And where were you while you were  
10 waiting on backup?

11 A. I parked my car in front of the vehicle so the  
12 vehicle couldn't leave and just kept my vehicle  
13 there at that location until backup arrived or  
14 assistance came in.

15 Q. Okay. So you stood back on the driveway by the  
16 primer gray car?

17 A. That's correct.

18 Q. What other law enforcement agencies arrived on  
19 scene?

20 A. New Ellenton Police Department and Aiken County  
21 Sheriff's Department pulled up.

22 Q. Okay. And once they arrived, what happened  
23 next?

24 A. I wanted to get in touch with the keyholder of  
25 the house so we could make entry inside the house

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 and see if anybody was in there or if anything was  
2 going on. I had -- New Ellenton and Aiken County  
3 were sitting on Main Street while the other officers  
4 were coming to me, and we were trying get a plan on  
5 how we were going to hit the house.

6 Q. Okay. And where were the other law enforcement  
7 officers positioned once they arrived?

8 A. Aiken County was on the corner of Foreman and  
9 Main; New Ellenton was on Main Street itself. I was  
10 on Foreman and two other officers were with me on  
11 Foreman. And I was getting the keyholder to get me  
12 the key to the residence.

13 Q. And who did you get the key from?

14 A. From Doug Clark, the guy that came to me about  
15 his deceased aunt.

16 Q. Okay. And when you were on scene and the other  
17 officers had arrived, what, if anything, did you  
18 hear?

19 A. As I was trying get a game plan on how we were  
20 going to hit the house, I heard an officer screaming  
21 let me see your hands, let me see your hands. That  
22 was going in front of the residence. Myself and the  
23 other officers took off running towards -- to the  
24 other officer that was screaming. As we were going  
25 into a bushy area adjacent to the house itself,

1       that's when we saw Mr. McCladdie laying down.

2       Q.    Okay. And these bushes, can you explain in  
3       relation to the house, was it more of the front yard  
4       or the back yard?

5       A.    I'd say more of the back yard.

6       Q.    The back yard of the front of the house?

7       A.    Back yard on the front of the house, yes,  
8       ma'am.

9       Q.    Okay. And if you're looking at the house on  
10      Main Street, was he found to the left or right of  
11      the house?

12     A.    To the left of the house.

13     Q.    Okay. What did you observe upon getting over  
14      to the bushes where Mr. McCladdie was found?

15     A.    The officers were still in there hollering let  
16      me see your hands. Mr McCladdie had his hands  
17      underneath like this and wouldn't show his hands to  
18      start off with. The officers then started grabbing  
19      him and getting his hands free. Once they got him  
20      cuffed and stood him up, there was a pry bar laying  
21      underneath him.

22     Q.    Okay. Did you take that pry bar in to  
23      evidence?

24     A.    I did.

25     Q.    Were you wearing gloves at that time?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 A. I was not at that time.

2 MS. HALL: Your Honor, permission to approach  
3 the witness?

4 THE COURT: Yes, ma'am.

5 BY MS. HALL:

6 Q. Officer Hess, I'm showing what's been  
7 previously marked State's Exhibit 45. Do you  
8 recognize that?

9 A. I do.

10 Q. And what is that?

11 A. This is the pry bar that was found at the  
12 location underneath Mr. McCladdie.

13 Q. And that's the pry bar that you took in to  
14 evidence?

15 A. Yes, ma'am.

16 Q. And did it stay in the custody of the Jackson  
17 Police Department until you brought it here today?

18 A. Yes, ma'am.

19 MS. HALL: Your Honor, at this time, the State  
20 would move to enter State's Exhibit 45 in to  
21 evidence.

22 THE COURT: Any objection?

23 MR. MCMILLIAN: No objection.

24 (State's Exhibit No. 45 admitted in to  
25 evidence.)

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 BY MS. HALL:

2 Q. Officer Hess, what was relevant about finding  
3 the crowbar there that night?

4 A. Well, once we started to look at the house, we  
5 realize that the house was burglarized, it was  
6 broken into. The pry bar itself lines up to the  
7 markings of the door itself that was pried open.

8 Q. Okay. Going back to finding William McCladdie  
9 in the bushes, the man you found there, do you see  
10 him in the courtroom today?

11 A. I do.

12 Q. Can you please describe him and what he's  
13 wearing?

14 A. Blue shirt, white stripes, plaid.

15 MS. HALL: Your Honor, please let the record  
16 reflect the witness has identified the defendant.

17 THE COURT: Yes, ma'am.

18 BY MS. HALL:

19 Q. Officer Hess, once William McCladdie was take  
20 into custody, what did you do?

21 A. I was trying to -- well, I patted him down for  
22 weapons, of course; I took several items out of his  
23 pocket --

24 Q. What did you find in his pocket?

25 A. I found a flashlight, a pocketknife, and a key.

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 Q. And what kind of key was it?

2 A. The key that went to the vehicle that was  
3 backed up to the residence.

4 Q. The 2000 Nissan Altima?

5 A. That's correct.

6 Q. Were any of these events captured on the dash  
7 cam of your patrol vehicle?

8 A. My patrol car, since the first of the year,  
9 hasn't had a camera at all. You could -- every  
10 night, I would make sure dispatch was aware I didn't  
11 have a camera on it until we got one back in our  
12 unit.

13 Q. After the defendant was searched, what did you  
14 do next?

15 A. I did -- I Mirandized him and I put him in my  
16 patrol car.

17 Q. Okay.

18 THE COURT: Let's hold on just a minute.

19 Mr. Foreman, ladies and gentlemen, if y'all  
20 would step out just a second, I need to go over a  
21 quick matter outside of your presence. Don't  
22 discuss the case. We'll be back in just a few  
23 minutes.

24 (The jury exits the courtroom at 1:58 PM.)

25 THE COURT: All right. We're at the point of

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 the trial where he's going to talk about Miranda  
2 warnings as we did in the Jackson v. Denno; is that  
3 correct?

4 MS. HALL: Your Honor, Mike Hess actually was  
5 not present for any of the statements. He did  
6 Mirandize the defendant prior to putting him in the  
7 car, even though he had already been Mirandized.  
8 But he was not present when the defendant made  
9 statements. So he would not be testifying as to any  
10 of those statements.

11 THE COURT: So he's just going to testify about  
12 giving him Miranda warnings?

13 MS. HALL: Yes, Your Honor.

14 THE COURT: But he didn't elicit any statement  
15 from him?

16 MS. HALL: That is correct.

17 THE COURT: Any objection to that?

18 MR. MCMILLIAN: Judge, I would just ask why he  
19 didn't testify at the Denno hearing with regard  
20 to --

21 THE COURT: Because they chose not to put him  
22 up, that's why.

23 MR. MCMILLIAN: -- making any Mirandizing --

24 THE COURT: Because the witness they put up was  
25 the one who gave him Miranda and answered the

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 questions, I assume.

2 Is that correct?

3 MS. HALL: Yes, Your Honor. Officer Hess  
4 Mirandized him before he was placed in the vehicle  
5 after all of this occurred.

6 THE COURT: All right. I'm going to allow  
7 that.

8 MS. HALL: Thank you, Your Honor.

9 THE COURT: Bring the jury back in,  
10 Mr. Whittle.

11 MR. MCMILLIAN: Judge, at this point it may be  
12 prudent to find out if they're planning to introduce  
13 any statements he may have made to Officer Hess. We  
14 may have to have a Denno hearing on that.

15 THE COURT: She just said that --

16 MS. HALL: There are no statements from Mike  
17 Hess --

18 THE COURT: She just said that plain as day.

19 MR. MCMILLIAN: I apologize, Judge.

20 THE COURT: Well, pay attention.

21 (The jury enters the courtroom at 2:00 PM.)

22 THE COURT: You may continue.

23 MS. HALL: Thank you, Your Honor.

24 BY MS. HALL:

25 Q. Officer Hess, you stated that you yourself

1 Mirandized the defendant.

2 A. That's correct. Yes, ma'am.

3 Q. Okay. And what does that mean?

4 A. I read him his rights.

5 Q. Okay. And what did you do after you read him  
6 his rights?

7 A. I put him in my patrol car.

8 Q. Okay. And what did you do after he was  
9 apprehended and placed into your patrol vehicle?

10 A. Had an officer watch my patrol vehicle while we  
11 went ahead and searched the house and made  
12 residence -- went inside the residence of the  
13 keyholder.

14 Q. Okay. And once you started going into the  
15 house, did you observe any indication of forced  
16 entry to the house?

17 A. Yes, I did. The door itself --

18 Q. I apologize. Which door?

19 A. The side door of the residence. It had  
20 double-paned glass and it was shattered. The window  
21 itself was shattered. I didn't catch that because  
22 it was still solid; it wasn't broke through or  
23 anything there. The door itself was actually pushed  
24 and locked.

25 Once I got the keyholder, we actually went

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 inside and made sure there was nobody else inside  
2 the residence. As we gained entry, of course we saw  
3 where the door was pried open. As we gained in, we  
4 saw, adjacent to the house, the porch, as we went  
5 into the door, a window was open also that got him  
6 inside the house itself.

7 Q. So a window in the porch that led to the  
8 interior of the house?

9 A. That's correct. Yes, ma'am.

10 Q. Okay. Did you photograph the house as you  
11 walked through?

12 A. I had the photographs -- yes, ma'am. I had  
13 Aiken County Sheriff's Department photograph them  
14 for me.

15 Q. Okay. And after you walked through the house  
16 and photographed and documented that, what did you  
17 do next?

18 A. Well, as we were walking through the house  
19 photographing and gathering the most evidence that  
20 we could as far as that goes, we noticed that the  
21 front door was open. And I explained to him that,  
22 you know, that door was closed when I checked the  
23 house, so that showed me the door was open.

24 Q. Okay. So when you first got to the house, the  
25 front door was shut and --

1 A. Was locked and secure.

2 Q. When you went back through, it was left open?

3 A. Yes, ma'am.

4 Q. Was there anybody else who would have been able  
5 to go through that front door?

6 A. No, ma'am.

7 Q. Did you have the only key -- to your knowledge,  
8 the only key to the house?

9 A. To my knowledge, we had the only key with the  
10 keyholder, yes, ma'am.

11 Q. Did you have an opportunity to look further at  
12 this primer gray car that was in the driveway?

13 A. I did. I looked at this -- a lot of overspray  
14 on the car itself, the primer gray. And I found a  
15 lot of items inside the vehicle itself just  
16 scattered all through the vehicle.

17 Q. Okay. You said overspray. What do you mean by  
18 that?

19 A. If you ever spray anything with a spray can or  
20 anything, the overspray -- it's like if you don't  
21 tape up something, you spray something, the  
22 overspray goes all over whatever you're not trying  
23 to paint.

24 Q. Was there spray paint on the windows of this  
25 car?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 A. Yes, there was. There was spray all over the  
2 vehicle.

3 Q. And you said that you searched this vehicle.

4 A. Well, due to the taking the vehicle into  
5 custody, we inventoried the vehicle. So once we got  
6 inside the vehicle, that's when we found all the  
7 contents that were inside the vehicle.

8 Q. Okay. What were some of the items that you  
9 found that were relevant to your investigation?

10 A. There was a butcher knife that came from the  
11 kitchen. And the reason I know it came from the  
12 kitchen is because there was a set of Farberware  
13 other utensils in there. There was mail inside the  
14 vehicle that came out of the residence that goes to  
15 that address, and also a checkbook that came from  
16 that address.

17 Q. Whose checkbook was that? What name was on  
18 that checkbook?

19 A. Ms. Clark -- I'm sorry. It was Ms. McDaniel,  
20 Mr. Clark's grandmother.

21 Q. All right. And did you find anything of  
22 William McCladdie's inside that vehicle?

23 A. I did. I found a jacket. The jacket itself  
24 had a billfold in it, and the billfold contained his  
25 driver's license, social security, and a credit

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 card.

2 Q. Okay. And what was done with the primer gray  
3 car after y'all were done inventorying it?

4 A. We called the dispatch to have the vehicle  
5 towed and put into impound.

6 Q. And the key that you found on Mr. McCladdie,  
7 was that given to the tow company?

8 A. That was definitely, yes, ma'am.

9 Q. Okay.

10 MS. HALL: Permission to approach the witness,  
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 BY MS. HALL:

14 Q. Officer Hess, I'm showing you what's previously  
15 been marked as State's 1 through 6 and 61 through  
16 62. Can you please take a look at these and tell me  
17 if you recognize them.

18 A. Yes, ma'am. This is showing Foreman Street and  
19 Main Street, the wooded area, the left side of the  
20 house.

21 Q. Okay. If you could just look through them and  
22 tell me if you recognize them.

23 A. I'm sorry. Yes, ma'am, I do recognize them.

24 Q. Do those pictures fairly and accurately depict  
25 the house located at [REDACTED] Foreman Street?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 A. Yes, ma'am.

2 Q. Have they been changed or altered in any way?

3 A. No, ma'am.

4 MS. HALL: Your Honor, at this time, the State  
5 would move to enter State's Exhibit 1 through 6 and  
6 61 through 62.

7 THE COURT: Any objection?

8 MR. MCMILLIAN: No, Your Honor.

9 (State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 61 and  
10 62 admitted in to evidence.)

11 BY MS. HALL:

12 Q. Officer Hess, I'm now showing you what's  
13 previously been marked as State's Exhibits 7 through  
14 15. If you would, please take a look at these and  
15 tell me if you recognize them.

16 A. Yes, ma'am, I do.

17 Q. And do these pictures accurately reflect where  
18 William McCladdie was found the night of February  
19 21st, 2015, and accurately reflect William  
20 McCladdie's appearance on the night of February  
21 21st, 2015?

22 A. Yes.

23 MS. HALL: Your Honor, at this time, the State  
24 would move to enter State's Exhibits 7 through 15.

25 THE COURT: Any objection?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 MR. MCMILLIAN: No objection.

2 (State's Exhibit Nos. 7, 8, 9, 10, 11, 12, 13,  
3 14, and 15 admitted in to evidence.)

4 BY MS. HALL:

5 Q. Now I'm showing you what have been previously  
6 marked as State's Exhibits 16 through 30. If you  
7 would, look through those and tell me if you  
8 recognize them.

9 A. Yes, ma'am, I do recognize them.

10 Q. Do these pictures fairly and accurately depict  
11 the house located at [REDACTED] Foreman Street on the night  
12 of February 21st, 2015?

13 A. Yes, ma'am.

14 Q. Have they been changed or altered in any way?

15 A. No, ma'am.

16 MS. HALL: Your Honor, at this time, the State  
17 would move to enter 16 through 30 in to evidence.

18 THE COURT: Any objection?

19 MR. MCMILLIAN: No objection.

20 (State's Exhibit Nos. 16, 17, 18, 19, 20, 21,  
21 22, 23, 24, 25, 26, 27, 28, 29 and 30 admitted in to  
22 evidence.)

23 BY MS. HALL:

24 Q. Officer Hess, I'm now showing you what's been  
25 previously marked as 31 through 44 and 58 through

DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 59. If you would, take a look at those and tell me  
2 if you recognize them.

3 A. Yes, ma'am, I do.

4 MS. HALL: Your Honor, at this time, State  
5 would move to enter State's Exhibits 31 through 44  
6 and State's Exhibits 58 through 59 in to evidence.

7 THE COURT: Any objection?

8 MR. MCMILLIAN: Judge, I do have an objection  
9 to one of those. I believe you'll need to hear it  
10 outside of the presence of the jury.

11 THE COURT: Show it to me. Which one?

12 MR. MCMILLIAN: 59, Your Honor.

13 THE COURT: Show it to me.

14 MR. MCMILLIAN: May we approach?

15 THE COURT: Just hand it to me, please. Y'all  
16 come up here.

17 (Sidebar conference.)

18 THE COURT: What number was that, please,  
19 ma'am, that he objects to?

20 MS. HALL: State's Exhibit 59.

21 THE COURT: All right. Let the record reflect  
22 we had a sidebar. I'm going to overrule his  
23 objection. He's told me the reasons for the  
24 objection, and I'll let him put it all on the record  
25 at the appropriate time.

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 (State's Exhibit Nos. 31-44, 58, and 59  
2 admitted in to evidence.)

3 MR. MCMILLIAN: Thank you, Your Honor.

4 BY MS. HALL:

5 Q. Officer Hess, do these pictures fairly and  
6 accurately depict the primer gray car found at [REDACTED]  
7 Foreman Street found on the night of February 21st,  
8 2015, and its contents?

9 A. Yes, ma'am.

10 Q. Have they been changed or altered in any way?

11 A. No, ma'am.

12 MS. HALL: Your Honor, at this time, the State  
13 moves enter State's Exhibits 34 through 44 and 58  
14 and 59.

15 THE COURT: All right. Subject to the  
16 objection, which I've overruled.

17 (State's Exhibit Nos. 34, 35, 36, 37, 38, 39,  
18 40, 41, 42, 43, 44, 58, and 59 admitted in to  
19 evidence.)

20 MS. HALL: Thank you, Your Honor. At this  
21 time, permission for the witness to stand down and  
22 explain these photos and publish these photos to the  
23 jury?

24 THE COURT: Yes, ma'am.

25 BY MS. HALL:

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1 Q. Officer Hess, displayed here is State's Exhibit  
2 1. Can you please explain where the house is  
3 located and the streets that are surrounding the  
4 house.

5 A. Yes, ma'am. This road here is Foreman, this is  
6 Main Street. That's the road itself, and that's the  
7 woods adjacent to it. (Indicating)

8 Q. Okay. State's Exhibit 2, please. What is this  
9 a picture of?

10 A. That's the residence of [REDACTED] Foreman Street.

11 Q. The front of the house?

12 A. The front of it from Main Street.

13 Q. Okay. State's 3?

14 A. That is the side on -- from Foreman Road  
15 towards the house itself.

16 Q. Okay. State's 4?

17 A. The side.

18 Q. State's 5?

19 A. That's the front door.

20 Q. And that was the front door that was secured  
21 when you first walked around the house?

22 A. Yes, ma'am.

23 Q. State's 6?

24 A. These -- the side of the -- excuse me. Front  
25 of the house. And these are the woods we were

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 talking about adjacent to the residence itself.

2 Q. Can you point out where the defendant was  
3 located?

4 A. Basically, this area right in here.

5 (Indicating)

6 Q. Okay. And can you explain the -- right here,  
7 does the ground drop off?

8 A. Yes. It's kind of a slump going down. It's  
9 for, I assume, water or -- I not exactly sure; for  
10 drainage or something like that. But it does go  
11 down. Of course this was in February, so it wasn't  
12 as thick as it is now.

13 Q. Okay. State's 7, what is this a picture of?

14 A. This is the location where Mr. McCladdie was  
15 laying down. Right in here is a piece of property  
16 that was found underneath him.

17 Q. Okay. And what piece of property is that?

18 A. It's some type of bracelet.

19 Q. Okay. State's 8?

20 A. That's the bracelet itself.

21 Q. Okay. Did y'all move the leaves from the area  
22 so you could take a picture of it?

23 A. We did.

24 Q. Okay. State's 9?

25 A. Same.

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 Q. Just a close-up?

2 A. Yes.

3 Q. State's 10?

4 A. That was the pry bar that was underneath  
5 Mr. McCladdie.

6 Q. And this is where you found it when William  
7 McCladdie was lifted up off the ground?

8 A. That's correct.

9 Q. Okay. State's 11?

10 A. Same.

11 Q. Close-up?

12 A. Yes.

13 Q. And what did you, if anything, recognize about  
14 the size of this crowbar?

15 A. It was smaller than the average crowbar.

16 Q. Smaller than you're used to seeing?

17 A. Yes, smaller than we're used to.

18 Q. State's 12?

19 A. Mr. McCladdie, the way he was dressed that  
20 night. You see the leaves where he tried to cover  
21 himself when he was laying down.

22 Q. State's 13?

23 A. Same.

24 Q. And these were leaves that were on him when he  
25 was found?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 A. Yes.

2 Q. State's 14?

3 A. Same as the --

4 THE COURT: Hold on one second. Y'all switch  
5 sides so the court reporter can hear you better,  
6 please.

7 BY MS. HALL:

8 Q. All right. This is State's 14. Can you  
9 describe what's on his jacket and his stocking cap?

10 A. Leaves are all over -- debris is all over on  
11 his cap, toboggan, and his jacket itself.

12 Q. Okay. State's 15?

13 A. Same picture of him with more debris on the  
14 other side of him.

15 Q. Okay. State's 16?

16 A. This is the entrance where he -- well, the pry  
17 marks itself were lining up. I took the pry bar  
18 itself, went back to where the break-in was at, and  
19 lined the pry bar up with it and took a picture.

20 Q. Is this the side door on Foreman or the front  
21 door?

22 A. That's the side door on Foreman.

23 Q. Okay. State's 17?

24 A. Same thing where you see the pry mark itself  
25 lines right up to it where he pried himself in.

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1 Q. Okay. State's 18?

2 A. Damage to the door itself.

3 Q. State's 19 -- and, I apologize, go back to 18.

4 Can you explain what this is in the top left corner?

5 A. This is what I was telling you, the double-pane  
6 where it was shattered. It wasn't busted out, it  
7 was just shattered.

8 Q. So it wasn't a hole in the door?

9 A. No, there was no hole in the door. It  
10 shattered.

11 Q. Okay. State's 19?

12 A. Damage to the door.

13 Q. Okay. What does it show on the side of the  
14 door?

15 A. As far as where it was pried open, busted up,  
16 you can tell there was forced entry. You also have  
17 the wood debris down here where it was actually  
18 forced open and freshly committed as far as it was  
19 there.

20 Q. State's 20?

21 A. That was the door itself where I advised y'all  
22 the window was shattered instead of busted out.  
23 That's the shatter of the window itself. First I  
24 thought it was just decoration.

25 Q. And this was the same door that was pried open?

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1 A. That's correct.

2 Q. And no holes in this glass?

3 A. Right.

4 Q. State's 21?

5 A. This is, like I said, freshly committed pieces  
6 of the door, particles coming off of the door where  
7 the door was pried open.

8 Q. State's 22?

9 A. This is the window that came in adjacent to the  
10 house itself. This --

11 Q. What room is this? I apologize.

12 A. This is the room when you first go into the  
13 room itself, the side doors, like a porch, maybe a  
14 laundry room or something there. This screen came  
15 off this window here where that window was open  
16 where he got inside the house itself. Instead of  
17 prying that door open, he went through the window  
18 instead.

19 Q. What's that white object down in the bottom  
20 right corner?

21 A. This is a freezer.

22 Q. Okay. Sitting in the middle of the porch?

23 A. Sitting in the middle of the porch, yes, ma'am.

24 Q. State's 23?

25 A. Same thing. This is your freezer here, door

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 here, and the window that was open where he got  
2 inside.

3 Q. Where does that window open up to?

4 A. Inside the residence itself. I think it's the  
5 living room area, if I'm not mistaken.

6 Q. Okay. State's 24?

7 A. Again, the same thing; the window that he came  
8 through to get inside the house.

9 Q. State's 25?

10 A. This is the window itself going into the living  
11 room.

12 Q. So this is the interior side of the picture we  
13 just showed?

14 A. That's correct.

15 Q. Okay. State's 26?

16 A. This is the front door where you can see it was  
17 opened. The carpet was pulled back so the front  
18 door could be opened so he could get out. The front  
19 door itself -- that's the front door that I tried to  
20 open when I first secured the residence, and it was  
21 secured. And then, of course, you see it was opened  
22 as we went into the house clearing the house.

23 Q. Okay. So what was most relevant about this  
24 picture to you?

25 A. The door being open, because I knew I checked

1 it to secure it.

2 Q. And there was no one else who could have  
3 unlocked that with a key?

4 A. No, ma'am.

5 Q. Okay. State's 27?

6 A. Same.

7 Q. State's 28?

8 A. This is on the outside. This is what made me  
9 call dispatch for backup. I went on the back side  
10 of the house and saw where this was down -- the  
11 screen itself was down. I think we have a picture  
12 of the window I was talking about where it looked  
13 like it was broke or jimmied, however you want to  
14 put it.

15 Q. State's 29?

16 A. Again, this is window here -- I think we have a  
17 close-up on it of where it was actually jimmied up  
18 here on top where the screen was taken off. This  
19 one here has a screen, and this one didn't. And the  
20 screen was bent, and that's what made me call for  
21 backup because I thought somebody was inside the  
22 house.

23 Q. State's 30?

24 A. That's what I was talking about as part of the  
25 jimmied part. They can come up through here to

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1 unlock the window; they jimmy it up and go through  
2 it, crack the window, as they did.

3 Q. State's 31?

4 A. This is a picture of the primered car that we  
5 were talking about. If you notice, the primer  
6 oversprays are all over the taillight, all over the  
7 chrome parts where it should be chrome. The emblem  
8 itself has spray marks, the glass itself's got  
9 overspray on it. Other parts of it where it should  
10 be black has overspray on it. If you ever painted,  
11 you know what I'm talking about with the overspray.

12 Q. State's 32?

13 A. This is the tag. Again, another picture of the  
14 overspray all over the tail end of the vehicle  
15 itself that should be chrome.

16 Q. State's 33?

17 A. This is what the vehicle looked like from the  
18 side view. Again you can see the overspray on the  
19 windows. The hub caps were taken off and there was  
20 spray all over it.

21 Q. State's 34?

22 A. This is the front of it. Overspray on the  
23 headlights, overspray on the grille itself, the  
24 parking lights, the windshield. This is the jacket  
25 I was talking about that was located inside the

1 vehicle and --

2 Q. Where was that jacket located inside the  
3 vehicle?

4 A. In the passenger's side.

5 Q. Okay. State's 35?

6 A. This is the contents inside the vehicle. I  
7 talked about the knife, Farberware, I think, was the  
8 name of it. This is the knife that was found, as  
9 you can see, in plain view.

10 Q. That matched the other utensils in the kitchen?

11 A. That's correct.

12 Q. State's 36?

13 A. Other contents. This is the knife itself from  
14 the other side, and this is just the contents that  
15 were inside the vehicle itself.

16 Q. State's 37?

17 A. More contents that were inside the vehicle.

18 Q. This is the back seat of the vehicle?

19 A. Yes, ma'am.

20 Q. Okay. State's 38?

21 A. Same.

22 Q. Just a close-up?

23 A. Just a close-up.

24 Q. Okay. State's 39?

25 A. Back side of the --

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1 Q. Back left?

2 A. Yeah. I think it's the back left side of it,  
3 straight down into it.

4 Q. State's 40?

5 A. Driver's side.

6 Q. State's 41, what is this?

7 A. This is the billfold that was found in his  
8 jacket. This is his social security card, his  
9 driver's license or ID number, and credit card that  
10 was found inside the jacket itself.

11 Q. Each of these items was found in the billfold  
12 in the jacket in the passenger's seat?

13 A. That's correct.

14 Q. Okay. State's 42?

15 A. Close-up.

16 Q. State's 43?

17 A. This is the clock that Mr. Clark advised me  
18 that belonged to his grandmother and it was inside  
19 the residence. We found this in the trunk of the  
20 vehicle.

21 Q. Okay. State's 44?

22 A. Same picture of the clock.

23 Q. I believe we have a problem with State's 42  
24 matching up with what's on here. So would you  
25 explain what's been entered in to evidence as

1 State's 42 in this picture?

2 A. This was the billfold, his ID, social security  
3 card, and a key that doesn't have a top once you put  
4 it on the key ring itself. That's the key I found  
5 in his pocket.

6 Q. And is that the key you gave to the towing  
7 company?

8 A. That's correct.

9 Q. And we're on State's 44. Where did you find  
10 this?

11 A. In the trunk.

12 Q. Okay. And what was relevant about this clock?

13 A. The keyholder identified it.

14 Q. That it was in the house --

15 A. That it was in the house before the burglary.  
16 Yes, ma'am.

17 Q. All right. You can have a seat. I have a few  
18 more questions for you, but I believe we're done  
19 with this.

20 A. Yes, ma'am.

21 Q. Officer Hess, I'm showing you what's previously  
22 been marked as State's Exhibits 53, 55 and 56. Do  
23 you recognize these items?

24 A. I do, yes, ma'am.

25 Q. Where did you locate these items?

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 A. These were inside the vehicle itself. This was  
2 inside the trunk.

3 Q. Can you open that up so we can see it.

4 A. Okay.

5 Q. What is that black film over the black casing?

6 A. I brought it in to have it fingerprinted for  
7 latents to see if we could get any latents off of  
8 it.

9 Q. Okay. Where did you take that for  
10 fingerprinting?

11 A. To the Aiken County Sheriff's Department, to  
12 their lab. I stayed with it while they were doing  
13 it.

14 Q. Okay. And what did they do? What was the  
15 process?

16 A. They pretty much dusted it up, put graphite  
17 powder on it. And when they put powder on it, they  
18 try to find a latent of your finger. And if they  
19 can find a latent, they'll go ahead and peel it off.  
20 Several attempts were made, but nothing but smudges  
21 were found.

22 Q. So no fingerprints were developed from this  
23 item?

24 A. No, ma'am.

25 Q. Okay. Thank you.

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1 THE COURT: Are you going to introduce any of  
2 those?

3 MS. HALL: No, Your Honor.

4 BY MS. HALL:

5 Q. I'm now showing you State's Exhibits 46, 47 and  
6 48. If you could, identify those.

7 A. This is a can of primer that was found in the  
8 vehicle itself. This is gray primer which goes with  
9 the car itself from it being primed.

10 Q. Where was that item found in the car?

11 A. This was found in the trunk area.

12 Q. Okay. State's 46?

13 A. State's 46 is the flashlight that was found on  
14 his person.

15 Q. And State's 47?

16 A. And a pocketknife that was found on his person.

17 Q. Okay. Were each of these items seized by you  
18 on the night of February 21st of this year?

19 A. Yes, ma'am.

20 Q. Okay. And did they stay in the custody of the  
21 Jackson Police Department until you brought them  
22 here today?

23 A. That is correct. Yes, ma'am.

24 MS. HALL: Your Honor, at this time, the State  
25 moves to enter State's Exhibits 46, 47 and 48.

DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 THE COURT: Any objection?

2 MR. MCMILLIAN: Is that the -- just those items  
3 that you have there?

4 MS. HALL: Just these three items.

5 MR. MCMILLIAN: No objection.

6 THE COURT: Without objection.

7 (State's Exhibit Nos. 46, 47, and 48 admitted  
8 in to evidence.)

9 BY MS. HALL:

10 Q. I'm now showing you State's Exhibits 50, 51,  
11 and 52. Take a look at those and tell me if you  
12 recognize those.

13 A. Yes, ma'am. This is the mail that came out of  
14 the residence itself that was found in the  
15 passenger's side.

16 Q. That was mail found in the passenger's side?

17 A. Yes, ma'am.

18 Q. Whose name is that addressed to?

19 A. Margaret McDaniel.

20 Q. And what address?

21 A. [REDACTED] Foreman Street, Jackson, South Carolina.

22 Q. Okay.

23 A. And a checkbook belonging to the same  
24 individual at [REDACTED] Foreman Street was also found in  
25 the passenger's side of the vehicle.

## DIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 Q. Okay. State's Exhibit 50?

2 A. This was the black jacket that was found in the  
3 passenger's side with the billfold, with his ID,  
4 with his social security and credit card.

5 Q. Did you see each of these items on the night of  
6 February 21st, 2015?

7 A. Yes, ma'am.

8 Q. And have they stayed in your possession at the  
9 Jackson Police Department until you brought them  
10 here today?

11 A. Yes, ma'am.

12 MS. HALL: Your Honor, at this time, the State  
13 would move to enter State's 50, 51, and 52.

14 MR. MCMILLIAN: No objection, Judge.

15 (State's Exhibit Nos. 50, 51, and 52 admitted  
16 in to evidence.)

17 BY MS. HALL:

18 Q. Officer Hess, I'm now showing you State's 49,  
19 60, and 54.

20 A. 49 is the knife that was found on the  
21 passenger's side in the vehicle in plain view.

22 Q. And what inscription is on the handle of that  
23 knife?

24 A. Farberware. That's the name of the utensils  
25 that were found inside the residence itself from ice

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1 cream maker to -- I mean, ice cream scooper to  
2 different types of spatulas and stuff that was in  
3 there.

4 Q. Okay. State's 60?

5 A. This is the chain that was found underneath him  
6 at the sign we -- where we were taking him in.

7 Q. Who is him?

8 A. I'm sorry. Mr. McCladdie.

9 Q. State's 54?

10 A. These are the tools that were found also inside  
11 the vehicle itself.

12 Q. And each of these items were taken in to  
13 evidence by you on the night of this burglary?

14 A. Yes, ma'am.

15 MS. HALL: Your Honor, at this time, the State  
16 would move to enter State's 49, 60, and 54.

17 MR. MCMILLIAN: No objection.

18 (State's Exhibit Nos. 49, 54, and 60 admitted  
19 in to evidence.)

20 BY MS. HALL:

21 Q. Officer Hess, you stated you sent the clock for  
22 fingerprinting at the sheriff's office. Were there  
23 any other items that you tried to have  
24 fingerprinted?

25 A. Yes, ma'am; the knife itself and the pry bar.

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 Q. The knife in the box we just showed?

2 A. Yes, ma'am.

3 Q. I believe it's 54.

4 A. Yes, ma'am.

5 Q. Okay.

6 A. And the pry bar.

7 Q. Were any fingerprints developed off of those  
8 items?

9 A. No, ma'am.

10 Q. I have no further questions for you. Please  
11 answer any Mr. McMillian may have.

12 THE COURT: Hold on just a second.

13 Everybody okay? Need a bathroom break?

14 All right. Please continue.

15 MR. MCMILLIAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MCMILLIAN:

18 Q. Officer Hess, I believe you testified earlier  
19 you've had quite an extensive law enforcement  
20 career; correct?

21 A. Yes, sir.

22 Q. And when did you go through the academy?

23 A. 1991.

24 Q. And at some point during that, you certainly  
25 went through some training about writing police

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 reports?

2 A. Yes, sir.

3 Q. And how important the details are?

4 A. Yes, sir.

5 Q. In fact, specifically on this incident, you  
6 were very particular about the time you arrived;  
7 right?

8 A. Yes, sir. I assume I was, yes, sir.

9 Q. And you arrived on Foreman Street side of the  
10 house?

11 A. That's correct.

12 Q. And you situated your car facing Main Street?

13 A. Yes, sir.

14 Q. Blocking the driveway?

15 A. Yes, sir.

16 Q. Okay. And when you approached the Foreman  
17 Street door, you checked it to verify that it was  
18 secure -- was that the first door you checked?

19 A. It was, yes, sir. First I checked the hood of  
20 the vehicle.

21 Q. But that was the first door you checked?

22 A. That's correct.

23 MR. MCMILLIAN: Permission to approach, Judge?

24 THE COURT: Yes, sir.

25 BY MR. MCMILLIAN:

1 Q. I'll try to keep these in order. I'm showing  
2 you what's been marked as State's Exhibit 3.

3 A. Uh-huh. Yes, sir.

4 Q. Would that have been your approximate view  
5 looking out your passenger's window when you  
6 situated the car?

7 A. No, sir.

8 Q. Would you have been parked further back?  
9 Further forward?

10 A. Going back towards 125 on Foreman Street.

11 Q. Okay.

12 A. Not going towards Main; going the opposite  
13 direction.

14 Q. Okay. Now, it appears from this picture there  
15 was a screen door.

16 A. That's correct. Yes, sir.

17 Q. And did you just check the screen door to see  
18 if it was secured?

19 A. I mean, I grabbed it, it opened, and I went on.

20 Q. And you went around and the windows were  
21 secure? Did you go around the house to the front or  
22 did you go around the Foreman Street side of the  
23 house to the front door?

24 A. I went to the Main Street, going that way.

25 Q. So you came back towards your car and then

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 around the house?

2 A. No, sir. I came straight from the door and --  
3 there's a sidewalk next to the house. I walked down  
4 the sidewalk.

5 Q. Okay. But on the Foreman Street side of the  
6 house?

7 A. That's where I started, yes, sir, and I was  
8 going towards Main Street.

9 Q. Is it this sidewalk here?

10 A. Right here.

11 Q. But this is on the Foreman Street side?

12 A. Yes, sir, going to the Main.

13 Q. Okay. So you proceeded around to the front  
14 door?

15 A. Correct.

16 Q. And I believe -- I'm showing you what's been  
17 marked as State's Exhibit 5. This is the front  
18 porch?

19 A. Yes, sir.

20 Q. And there's a screen door there also?

21 A. Yes, sir.

22 Q. And you checked that screen door and it was  
23 open?

24 A. No, sir. That door was secure.

25 Q. The screen door was secure?

1 A. Yes, sir.

2 Q. So you couldn't tell whether at that point the  
3 interior heavy wood door was secure, the glass door  
4 was secure?

5 A. No, sir. Like I said, I thought it was  
6 decoration the way it was shattered. I mean, it  
7 didn't look -- it looked decorational.

8 Q. I think we're talking about different doors.  
9 This front door here --

10 A. That's the door I pulled on that was secure.

11 Q. Did you secure the glass door as well as --

12 A. I couldn't. The screen door was secure.

13 Q. So you couldn't physically grab the handle to  
14 the actual door, to the main door?

15 A. To the main door, no, sir.

16 Q. So it would be impossible to say whether that  
17 door was secure because you couldn't get through the  
18 glass door?

19 A. Do what now? I'm sorry. I misunderstood what  
20 you're saying.

21 Q. Well, if you walk up and you grab the screen  
22 door --

23 A. Right. Yes, sir.

24 Q. -- you can't get the door --

25 A. To the house --

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 Q. -- the door knob.

2 A. Correct. Yes, sir.

3 Q. Okay. At what point during that, exactly, did  
4 you radio for backup?

5 A. After I grabbed the door, started going around,  
6 when I showed the picture of the window that was  
7 jimmied, that's when I started asking for backup.

8 Q. Okay. And you sat and waited for that backup  
9 on the Foreman Street side?

10 A. Yes, sir.

11 Q. Did you see anybody leave the house?

12 A. No, sir.

13 Q. Nobody came in the house either?

14 A. No.

15 Q. Now, after y'all detained my client, that's  
16 when you started clearing the house, inventorying  
17 the vehicle?

18 A. That's correct, yes, sir.

19 Q. And we talked previously about how important  
20 details are and I -- you used the word keyholder  
21 previously --

22 A. Yes, sir.

23 Q. -- to refer to Ms. Clark?

24 A. Well, Doug first and then --

25 Q. Or Doug first.

1 A. Yes, sir.

2 Q. You used the word keyholder because they didn't  
3 live in that house, did they?

4 A. Well, I knew they had the key to it. I mean, I  
5 knew they had the key to it because Doug told me he  
6 did.

7 Q. To your knowledge, did anybody live in the  
8 house?

9 A. At that time, no, sir.

10 Q. In fact, the lady that owned the house passed  
11 away; correct?

12 A. As far as I know. I mean --

13 Q. About six weeks earlier?

14 A. As far as I know, yes, sir. I understood  
15 Ms. Clark was staying there at the time, but she  
16 wasn't in the residence at the time, is what I'm  
17 trying to say. There was nobody in the house at the  
18 time that the break-in occurred. I just want to get  
19 that cleared up. I apologize.

20 Q. But your testimony here today is on that night,  
21 you understood that Ms. Clark had stayed there?

22 A. I understood that somebody was staying there,  
23 yes, sir.

24 MR. MCMILLIAN: I beg the Court's indulgence  
25 just a moment.

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 BY MR. MCMILLIAN:

2 Q. We had a preliminary hearing in this case,  
3 didn't we?

4 A. Yes, sir.

5 Q. And we held that preliminary hearing back on  
6 May 6th of 2015, didn't we?

7 A. I assume that's when it was. Yes, sir. Right  
8 offhand, I don't know the date.

9 Q. You were the officer that testified at that  
10 though?

11 A. Yes, sir.

12 MR. MCMILLIAN: Judge, may I approach?

13 THE COURT: Yes, sir.

14 (Defendant's Exhibit No. 1 marked for  
15 identification.)

16 BY MR. MCMILLIAN:

17 Q. On May 6th of 2015, do you remember telling me  
18 that, to your knowledge, nobody lived in the house  
19 at the time?

20 A. Yes, sir. There was nobody in the house at the  
21 time.

22 Q. Do you remember also telling me that, to your  
23 knowledge, no one was moving in the house?

24 A. Not to my knowledge. I don't know, sir.

25 Q. Well, you said just a minute ago that they told

1       you that she'd been staying there or that she had  
2       stayed there.

3       A.    I think you're getting confused here as far as  
4       me telling you nobody was -- nobody was in the house  
5       at the time that the burglary occurred.

6       Q.    I'm going to show you what's been marked for --  
7       A.    Okay.

8       Q.    That's a transcript of that preliminary  
9       hearing.

10      A.    Yes, sir.

11      Q.    Would reviewing that refresh your recollection  
12      of what you actually said?

13      A.    Sir, I don't know what you want me to say here.  
14      I don't --

15            THE COURT:  Mr. McMillian, just say, this is  
16      the question I asked you, this is the answer you  
17      gave, and read your question and he can read the  
18      answer.

19      BY MR. MCMILLIAN:

20      Q.    Officer Hess, on page 8, line 19 I asked you:  
21            Okay.  Did anybody live in his house at that  
22      time?

23            And you answered on line 21 of page 8 --

24            THE COURT:  Read his answer and ask him if  
25      that's what he said.

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 Q. According to them, no.

2 THE COURT: Is that what you said at that time?

3 Q. Is that what you said on May 6th?

4 A. You said I did, sir. I can't recollect. If  
5 that's what you say I did, sure.

6 Q. And I asked you: Did anybody -- was anybody  
7 moving into or out of the house?

8 And did you answer: No. Nobody was in the  
9 house, moving in or out, according to them.

10 That's when they saw the vehicle and said it  
11 wasn't supposed to be there.

12 A. Yes, sir. I did say that.

13 MR. MCMILLIAN: I beg the Court's indulgence  
14 just a moment.

15 BY MR. MCMILLIAN:

16 Q. And, in fact, in your report and here today,  
17 you've never used the word resident, have you?

18 A. I don't know. I couldn't tell you that.

19 Q. You called them the keyholder.

20 A. Oh, yes, sir. I called the individual who  
21 owned the house the keyholder. That's standard.

22 THE COURT: That's what?

23 THE WITNESS: Standard, sir. Any residence  
24 we're going to, we ask for the keyholder, especially  
25 when an alarm is going off or what have you.

1 BY MR. MCMILLIAN:

2 Q. But there was nobody living in this residence?

3 A. Not at the time, no, sir, that I know of.

4 Q. Okay. Now, as you went through and took the  
5 pictures, did you note any other property missing  
6 from inside the house?

7 A. Not me, no, sir.

8 Q. Did you notice the missing washer?

9 A. I didn't no, sir, not until prior.

10 Q. I'm sorry?

11 A. Not until prior.

12 Q. Not until prior to...

13 A. Ms. Clark coming and telling me other things  
14 that were missing.

15 Q. Okay. So there was a missing washer and a  
16 missing drying?

17 A. According to Ms. Clark, yes, sir.

18 Q. Now, when you went onto the porch, I believe  
19 you testified on direct about a small chest freezer  
20 that was on the porch.

21 A. Yes, sir.

22 Q. To your knowledge, was that supposed to be  
23 there?

24 A. I couldn't tell you, sir. I mean, I don't know  
25 if it's supposed to be there or not.

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1 Q. Okay. How big was this chest freezer?

2 A. Standard size, roughly about the size of that  
3 little table over there, give or take. (Indicating)

4 Q. About the size -- slightly smaller than a  
5 washing machine?

6 A. I would say it's slightly bigger than a washing  
7 machine, to be honest with you. I mean --

8 Q. Okay. Is it something you could move by  
9 yourself?

10 A. I imagine I could, yes, sir.

11 Q. Could you carry it out, load it up in the  
12 truck?

13 A. I don't know.

14 Q. Okay.

15 A. I haven't done it before. I don't know.

16 Q. You sent several items off for latent prints?

17 A. I did.

18 Q. Things that you found in the car?

19 A. Correct, and on --

20 Q. But you didn't process any of the crime scene  
21 for latent prints?

22 A. No, sir, I didn't.

23 Q. Did you process the doorway on the Foreman  
24 Street side?

25 A. No, sir.

1 Q. The glass door or the screen door handle?

2 A. No, sir.

3 Q. The physical door handle?

4 A. No, sir.

5 Q. What about the window that you determine was  
6 the entryway from the porch?

7 A. No, sir.

8 Q. Did you ask anybody to dust the chest freezer?

9 A. No, sir.

10 Q. What about the front door?

11 A. No, sir.

12 MS. HALL: Objection, Your Honor; asked and  
13 answered. The witness has stated that he didn't  
14 dust anything inside the residence.

15 THE COURT: I'll overrule. He's on  
16 cross-examination. He can explore that.

17 MR. MCMILLIAN: Thank you, Your Honor.

18 BY MR. MCMILLIAN:

19 Q. Did you dust the front screen door?

20 A. No.

21 Q. Not the handle, not the glass. What about the  
22 main door?

23 A. No, sir.

24 Q. The knob on the inside or the outside?

25 A. Nothing was dusted, sir, except for the items

## CROSS-EXAMINATION OF JAMES MICHAEL HESS BY MR. MCMILLIAN

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1       that I took to the sheriff's department. We don't  
2       have the means at our department.

3       Q.   But you could have called the sheriff's  
4       department out to dust for latent prints; right?

5       A.   We tried to call the investigation -- not the  
6       investigations, but the forensics. But they were  
7       not able at the time. This is the second time we've  
8       tried to contact them with different other cases,  
9       and they wouldn't come to us. They were just too  
10      busy and couldn't come to us at the time. So...

11      Q.   The scene could have been secured and they  
12      could have done it later?

13      A.   No, sir.

14      Q.   In looking at the picture of the front porch,  
15      there are two railings that go down from the front  
16      porch; right?

17      A.   Yes, sir.

18      Q.   You didn't dust either of those for latent  
19      prints either?

20      A.   I didn't dust nothing, sir.

21      Q.   Okay. Now, in inventorying the car -- I  
22      believe I left these pictures up here. Y'all took  
23      meticulous photographs of the inside of the car;  
24      correct?

25      A.   Yes, sir. We took pictures of the vehicle.

1 Q. Did you photograph anything that was found  
2 inside the trunk where you found it?

3 A. Well, sir, we did take pictures of the trunk  
4 itself, but they didn't come out, for whatever  
5 reason. I don't know.

6 Q. You took some pictures and never turned them  
7 over to the Solicitor's Office?

8 A. They didn't show up on the camera.

9 Q. Okay. Were any of these goods secured in boxes  
10 or bags or anything like that inside the vehicle?

11 A. Inside the vehicle, no, sir.

12 Q. The mail you found --

13 A. Yes, sir.

14 Q. -- where is the mailbox for [REDACTED] Foreman Street?

15 A. I really couldn't tell you, sir.

16 Q. To your knowledge, is it possible this mail  
17 could have come out of the mailbox?

18 A. I just know the address on it, sir, is all I  
19 can tell you.

20 Q. So it's possible it could have been in his  
21 mailbox on February 20th?

22 A. Unless she got a PO box. I don't know, sir.

23 Q. All right. That's fair.

24 MR. MCMILLIAN: Beg the Court's indulgence just  
25 a moment.

## REDIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 No further questions at this time.

2 THE COURT: Anything on redirect?

3 MS. HALL: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. HALL:

6 Q. When you were reviewing the preliminary hearing  
7 transcript, were your answers at the preliminary  
8 hearing based on your knowledge at the time that you  
9 answered those questions?

10 A. That's correct. Yes, ma'am.

11 Q. And Mr. McMillian spent a great deal of time  
12 talking about the front door of the house and your  
13 first perimeter check of that house. You stated  
14 that the storm door, the glass door, was locked --

15 A. That's correct.

16 Q. -- and you could not actually reach the door to  
17 the house. Could you tell that that door was shut  
18 and latched?

19 A. My flashlight -- I saw that it was latched and  
20 closed.

21 Q. Latched and closed?

22 A. It was secure. Yes, ma'am.

23 Q. All right. And when you were waiting on  
24 backup, you stated earlier that you had sat back by  
25 the car that was backed into the driveway. Could

1       you see the front of the house and the front yard of  
2       the house at the time you were sitting back there?

3       A.    No, ma'am, I couldn't.

4       MS. HALL:  No further questions, Your Honor.

5       THE COURT:  All right.  Sir, you may step down.

6       Mr. Foreman, ladies and gentlemen, we're going  
7       to take about a 15-minute afternoon break.  Please  
8       don't discuss the case, don't start deliberating.  
9       We'll come back and go till about 5:00 and see where  
10      we stand.

11      Everybody else remain seated.

12      (The jury exits the courtroom at 2:52 PM.)

13      THE COURT:  All right.  We're going to take a  
14      real short break.  If y'all have found any cases you  
15      want me to look at over the break, hand them up to  
16      me or give me a cite so we can look them up on the  
17      website.

18      MR. MCMILLIAN:  Judge, if I may, after the  
19      break, can we address the objection to 59 that was  
20      entered in to evidence?

21      THE COURT:  Remind me.

22      MR. MCMILLIAN:  Thank you.

23      (Short break.)

24      THE COURT:  Bring the defendant in, please.

25      (The defendant enters the courtroom.)

## REDIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 THE COURT: All right. Mr. McMillian, you want  
2 to put your objection to Exhibit 59 on the record,  
3 the photograph of some items --

4 MR. MCMILLIAN: The photograph taken back at  
5 JPD. There were several items on the table, one of  
6 which is a stem or a glass pipe used for smoking,  
7 presumably, methamphetamine or cocaine. I think  
8 it's far more prejudicial than probative to put that  
9 in front of the jury. He's not on trial for any  
10 sort of drug possession here, Judge, or any sort of  
11 paraphernalia charge, for that matter.

12 I think looking in -- at the -- at this point,  
13 probably voluminous photographs of different stuff,  
14 it seems excessive to put that one in as well with  
15 that --

16 THE COURT: Cumulative is what you're trying to  
17 say?

18 MR. MCMILLIAN: Yes, sir.

19 MS. HALL: Your Honor --

20 THE COURT: Yes, ma'am. I mean, you've already  
21 put the -- most of the stuff in that picture in  
22 evidence, have you not?

23 MS. HALL: Your Honor, the purpose of that  
24 photograph is to show the green oil lamp. That is  
25 actually not being put in to evidence so that it can

1 be given back to the victim at the conclusion of  
2 this case. The purpose of the picture is so that  
3 the jury can still see it, see what they heard  
4 evidence about. It's not at all clear from the  
5 picture that that is any kind of drug paraphernalia.  
6 It looks like a glass tube. It more looks like a  
7 tube of lip gloss than a crack pipe. There --

8 THE COURT: Well, if the purpose of the picture  
9 is so that you're not putting the actual lamp in  
10 evidence so that it can be returned to the owner,  
11 here's what I'm going to do: I'm going to let that  
12 lamp go to the jury, even though it's just ID, the  
13 picture will not; we'll substitute the picture for  
14 the lamp if you have to go up on appeal; therefor  
15 the jury is not prejudiced by the pipe.

16 MR. MCMILLIAN: I think that's a fair solution,  
17 Judge.

18 THE COURT: No objection?

19 MR. MCMILLIAN: None.

20 THE COURT: All right. 58 is now --

21 MR. MCMILLIAN: It's 59, Your Honor.

22 THE COURT: 59 is now removed from evidence and  
23 will be allowed to be substituted in the event we  
24 need it for appellate purposes.

25 MS. HALL: Your Honor, I'd also ask that the

## REDIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 candlestick also be allowed to go back to the jury  
2 for the same basis.

3 THE COURT: No objection, right? It's in the  
4 picture in 59.

5 MR. MCMILLIAN: I don't have a problem with  
6 that.

7 THE COURT: All right. Why should I  
8 exclude the statement of --

9 MR. MCMILLIAN: Judge, in our research, reading  
10 State v. Gelmege [phonetic]: Upon the request of  
11 the Defense, the Prosecution shall permit the  
12 Defendant to inspect copied books, papers,  
13 documents, photographs, tangible objects, et cetera.

14 There was an exemption --

15 THE COURT: Basic elementary rules; right?

16 MR. MCMILLIAN: Yes, sir. And there is, in  
17 fact, an exception carved out in Gelmege that: If  
18 the Prosecution does not have the material or  
19 evidence sought by Defendant in its possession,  
20 disclosure is not required. But the exception to  
21 that exception is: Except where that evidence is in  
22 possession of another government agency.

23 In this particular case, this was in the  
24 possession of Aiken County Sheriff's Office, another  
25 law enforcement agency, who downloaded the video,

1       presumably put it in their evidence, and just never  
2       made it available.

3               Judge, reading other cases, Kyles v. Whitley  
4       says: The Prosecutor has a duty to learn favorable  
5       evidence acting on the government's behalf,  
6       including the police, including only information  
7       known only to the police and investigators and not  
8       to the prosecutor.

9               In reading the case that I was provided by the  
10      State, Your Honor, the case that they provided me  
11      seems to deal with a due process violation, and  
12      we're not alleging any due process violation --

13              THE COURT: What are you alleging?

14              MR. MCMILLIAN: Strictly a violation of Rule 5;  
15      that they had this, it was in their possession, they  
16      didn't make it available, and the statement should  
17      be suppressed.

18              MR. SLOCUM: Judge, in reference to Rule 5,  
19      this information was provided to Mr. McMillian the  
20      same day it was provided to the State.

21              THE COURT: Well, that's neither here nor  
22      there.

23              MR. SLOCUM: Right. And --

24              THE COURT: The police officers had it the  
25      whole time and it hadn't been provided.

## REDIRECT EXAMINATION OF JAMES MICHAEL HESS BY MS. HALL

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1 MR. SLOCUM: Your Honor, it wasn't, quote,  
2 dropped in evidence, as Mr. McMillian says; it was  
3 put on their server. Nothing goes into evidence for  
4 a general sessions packet unless they have a general  
5 sessions case.

6 THE COURT: I understand that. But it was  
7 evidence in the case.

8 MR. SLOCUM: That's correct, Judge. In terms  
9 of it -- if we're not talking about due process,  
10 then it doesn't really matter about what  
11 Mr. McMillian is saying that -- in terms of  
12 violation issues of Rule 5.

13 But if we are going to go forward on due  
14 process issue, then it has to be shown that it was  
15 done in bad faith.

16 THE COURT: Well, he said it's simply a  
17 violation of Rule 5 and shouldn't be admitted.

18 MR. SLOCUM: Judge, just for -- I haven't read  
19 those cases he's cited. He gave us the cite about  
20 five minutes before we reconvened, and we have not  
21 had a chance to look at them.

22 THE COURT: All right. I'm going to deny the  
23 use of it in the trial. It was, obviously, readily  
24 available. If anybody wanted it, they could have  
25 gotten it, and you chose not to. And I'm not going

1 to penalize the Defense for y'all failing to not use  
2 it. The agency is just failing to make that part of  
3 the case file in this matter. You're dealing with a  
4 guy on trial for burglary first, and it would seem  
5 to me that would heighten everybody's want or need  
6 or responsibility to make sure that they got  
7 evidence of the video of it, they would have turned  
8 it over to you or at least told you about it. You  
9 know, in all honesty, what he says is not  
10 inculpatory or exculpatory. Anyway, I'm not going  
11 to allow it, out of an abundance of caution.

12 Anything else before I bring the jury in?

13 MR. SLOCUM: No, sir.

14 MR. MCMILLIAN: No, sir.

15 (The jury enters the courtroom at 3:20 PM.)

16 THE COURT: Mr. Foreman, ladies and gentlemen  
17 of the jury, we're going til 4:30 today. I have two  
18 different things we need to do. I don't want to  
19 make y'all sit and wait while we do that. And is  
20 9:30 in the morning okay to start? Before we leave  
21 this afternoon, I'll sort of tell you where we are  
22 as far as how far we have to go tomorrow. But I'll  
23 ask the lawyers before we step out.

24 So we'll go til about 4:30. And tomorrow  
25 morning, your choices are sausage biscuits, donuts,

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1 fruit, bananas and stuff, yogurt, power bars,  
2 sausage biscuits. Is that okay?

3 THE FOREMAN: Sausage biscuits.

4 THE COURT: All right. We'll start at 9:30 in  
5 the morning, so if you want to have a sausage  
6 biscuit and coffee, get here a little early because  
7 I can't let you bring it in the courtroom. And if  
8 we're still here at lunchtime, we'll order you  
9 lunch.

10 All right. Next witness, please.

11 MS. HALL: The State calls Michael Douglas  
12 Clark.

13 MICHAEL DOUGLAS CLARK

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness box.  
17 State your full name for the Court and spell your  
18 last.

19 THE WITNESS: Michael D. Clark, Jr., C-L-A-R-K.

20 DIRECT EXAMINATION

21 BY MS. HALL:

22 Q. Good afternoon, Mr. Clark. Mr. Clark, where do  
23 you live?

24 A. I live at [REDACTED] Old Jackson Highway in Beech  
25 Island.

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1 Q. Where are you from?

2 A. I'm originally from Jackson itself.

3 Q. So you're familiar with the Jackson area?

4 A. Yes.

5 Q. Where do you work?

6 A. I work at Southstar EMS in Augusta.

7 Q. Where were you on the night of February 20th of  
8 this year?

9 A. I was at my residence at [REDACTED].

10 Q. And you said that was in Beech Island?

11 A. Yes, ma'am.

12 Q. What do you remember about the night of  
13 February 20th of this year?

14 A. I remember it was a quiet evening. I done  
15 responded to an MVA on Highway 278 earlier that  
16 evening. Laying in bed with my wife, and had this  
17 little voice in the back of my head telling me that  
18 I needed to get up and go ride down to Jackson.

19 Q. Do you do that regularly?

20 A. I do.

21 Q. Why do you do that?

22 A. Security of my family, knowing that everything  
23 was quiet and, you know, just well-being check.

24 Q. Do you have multiple family members that live  
25 in Jackson?

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1 A. I do.

2 Q. Okay. How far is your house from [REDACTED] Foreman  
3 Street?

4 A. Approximately a ten-minute ride.

5 Q. So you stated that you headed towards Jackson.  
6 What did you notice as you got to Jackson?

7 A. As I come into town, you know, the streetlights  
8 was on, everybody was in the bed asleep, I started  
9 my approach on [REDACTED] Foreman Street. And -- with that  
10 residence being my aunt's residence. And normally  
11 when I come into that section of town, I'll slow  
12 down and kind of make a slow pass, get a little  
13 general overview, make sure everything is all right.

14 At the time when I got to Main Street and  
15 across the street to Foreman Street, I noticed a  
16 2000 Nissan Altima sitting there.

17 Q. What color was that car?

18 A. It was primer-gray color.

19 Q. And about what time was it that you noticed the  
20 car there?

21 A. My reference of time, it was around 11:20-ish,  
22 11:25-ish.

23 Q. Sometime before midnight?

24 A. Yes, ma'am.

25 Q. Okay.

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1       A.    As I made my pass by the house, like I said, I  
2       noticed the vehicle was there, knowing there was not  
3       supposed to be anybody that I recollect of being at  
4       that residence. With that being said, I went all  
5       the way down to the next street where there was a --  
6       I made my turnaround, come back down Main Street,  
7       and made a right turn onto Foreman Street; kind of  
8       crept by the residence little bit, noticed wasn't no  
9       lights on in the house.

10       So my first thought was to go see if there was  
11       an officer in the general vicinity of Jackson, and  
12       that's when I rode all the way up Foreman Street and  
13       made a right on to Atomic Road, Highway 125. And  
14       right there at the intersection where the red light  
15       is is where I met up with Officer Hess. I notified  
16       him of the situation, and he told me to sit tight,  
17       he was going to go check it out.

18       Q.    Okay. Did you talk to anybody else while you  
19       were sitting up at the four-lane?

20       A.    Not until Officer Hess of New Ellenton Police  
21       Department come up and told me that I needed to get  
22       ahold of the keyholder.

23       Q.    So that's Officer Brent Hess of New Ellenton,  
24       not Officer Mike Hess?

25       A.    Right.

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1 Q. And he asked you to get in touch with the  
2 keyholder?

3 A. Right.

4 Q. And the who was the keyholder?

5 A. The keyholder at the time was my grandmother,  
6 Evelyn Clark.

7 Q. And what did you do next?

8 A. After that, I left out of the median, made a  
9 right turn at the red light right there, proceeded  
10 all the way down to First Street as I'm dialing her  
11 number, blowing her phone up. Once I got ahold of  
12 her, I was at Second Street. I told her, I need you  
13 to get up, find the key to Aunt Margaret's house,  
14 got a possible break-in in progress, police  
15 department is requesting the keyholder. I'm on my  
16 way to get you, I'll be there in two minutes.

17 Q. Where was your grandmother living at that time?

18 A. At [REDACTED] First Street.

19 Q. How far is that from the incident location  
20 where this burglary occurred?

21 A. Right at about half a block.

22 Q. Okay. Did you go to your grandmother's house?

23 A. Yes, ma'am, I did.

24 Q. Okay. And what did you do once you got there?

25 A. Once I got to my grandmother's house, I exited

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

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1 by personal vehicle, entered her front porch,  
2 knocked on the door, got her to the door, and  
3 proceeded to help her get -- locate stuff she  
4 needed; got her into my vehicle, and we eased on  
5 down to where the incident occurred at.

6 Q. Do you know about how long it was from the time  
7 you reported this suspicious car to Mike Hess to the  
8 time you got to [REDACTED] Foreman Street with your  
9 grandmother?

10 A. Within about a 10- or 15-minute response.

11 Q. What did you see once you arrived at [REDACTED]  
12 Foreman Street?

13 A. Once I arrived on the scene at [REDACTED], there was,  
14 that I could recollect, anywhere between five or six  
15 deputies on scene. And as we set there, we noticed  
16 that there was a lot of action happening towards the  
17 front of the house facing Main Street.

18 Q. Okay. Did you see William McCladdie that  
19 night?

20 A. I caught a --

21 Q. Did you -- did you see law enforcement take  
22 anybody into custody that night?

23 A. That night, I did.

24 Q. Okay. Do you know William McCladdie?

25 A. No, I do not.

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

165

1 Q. Do you know if he was ever given permission to  
2 go into [REDACTED] Foreman Street?

3 A. No, ma'am.

4 Q. Did he have any reason, to your knowledge, to  
5 be at that residence?

6 A. No, ma'am.

7 Q. Who lived at [REDACTED] Foreman Street prior to this  
8 burglary -- six weeks prior to this burglary?

9 A. That would be my aunt, Margaret McDaniel.

10 Q. And when did she pass away?

11 A. She passed away six weeks prior to the  
12 breaking-and-entering. January -- I believe it was  
13 January 11th.

14 Q. Okay. Had you been in the house after  
15 Ms. McDaniel's death and prior to this burglary?

16 A. No, ma'am.

17 Q. Okay. Had you been in the house before  
18 Ms. McDaniel passed away?

19 A. Yes, ma'am.

20 Q. At that time, were all of her personal  
21 belongings in the house?

22 A. Yes, ma'am.

23 Q. Okay. After Ms. McDaniel's death, were you  
24 aware if water or electricity remained on at [REDACTED]  
25 Foreman Street?

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

166

1 A. Yes, ma'am.

2 Q. Did the yard stay maintained, the lawn cut,  
3 after Ms. McDaniel's death?

4 A. Yes, ma'am.

5 Q. Okay. Do you know if anyone had planned to  
6 move in to [REDACTED] Foreman Street?

7 A. At one time there was talk of my grandmother  
8 moving in. But there was -- at the time, there was  
9 really no push or urging for it.

10 Q. It took her some time?

11 A. It did.

12 Q. Okay. Do you have any personal knowledge that  
13 your grandmother stayed at that house after  
14 Ms. McDaniel's death and prior to this burglary?

15 A. Could you repeat the question.

16 Q. Do you remember if your grandmother, Ms. Evelyn  
17 Clark, stayed at the house after Ms. McDaniel's  
18 death and before this burglary, in this six-week  
19 period?

20 A. In that six-week period of time, I know of one  
21 time she did.

22 Q. Okay. And how do you know she did?

23 A. She called me to notify me that she was going  
24 to be staying at that residence, just in case if I  
25 heard on my fire radio a 911 call going out to that

## DIRECT EXAMINATION OF MICHAEL CLARK BY MS. HALL

167

1 general area, I'd know what was going on at that  
2 residence.

3 Q. Okay. Just to let you know where she was at?

4 A. Yes, ma'am.

5 Q. Because you regularly checked up on her?

6 A. Yes, ma'am.

7 Q. Were you familiar with the items at [REDACTED] Foreman  
8 Street, the personal belongings inside the house?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. HALL: Permission to approach the witness,  
12 Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. HALL:

15 Q. Mr. Clark, I'm showing you State's Exhibits 53,  
16 55, and 56. Can you tell me if you recognize these  
17 items.

18 A. May I?

19 Q. Yes, absolutely.

20 A. Yes, ma'am, I do recognize all these items.

21 Q. Okay. And was this clock in the house at [REDACTED]  
22 Foreman Street prior to the burglary?

23 A. Yes, ma'am.

24 Q. What about the oil lamp? Was this in the house  
25 prior to the burglary?

## CROSS-EXAMINATION OF MICHAEL CLARK BY MR. MCMILLIAN

168

1 A. Yes, ma'am.

2 Q. And the candlestick?

3 A. Yes, ma'am.

4 Q. Were you aware any of other items that were  
5 taken from [REDACTED] Foreman Street that were not  
6 recovered by law enforcement?

7 A. The only other items that I recollect would be  
8 a washer and dryer, some mail, and a checkbook.

9 Q. Okay.

10 MS. HALL: I beg the Court's indulgence.

11 I have no further questions for you. Please  
12 answer any Mr. McMillian may have.

13 MR. MCMILLIAN: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. MCMILLIAN:

16 Q. Good afternoon, Mr. Clark. You testified  
17 previously that you rode by shortly before midnight.

18 A. Yes, sir.

19 Q. Because you had a feeling you just needed to go  
20 check on family?

21 A. Yes, sir.

22 Q. How often did you do that?

23 A. I do that anywhere between two and three times  
24 a week.

25 Q. When is the last time you did it prior to

## CROSS-EXAMINATION OF MICHAEL CLARK BY MR. MCMILLIAN

169

1 February 21st, 2015?

2 A. Prior to February 21st, February 18th.

3 Q. Did you always go by at night?

4 A. Yes, sir.

5 Q. Did you ever check the house, check the doors,  
6 go inside?

7 A. No, sir.

8 Q. Did you do a walk-around, inspect the windows,  
9 kind of see if anything was kind of amiss?

10 A. Yes, sir.

11 Q. Was anything amiss on February 18th?

12 A. No, sir.

13 Q. Now, I think you testified you don't live at  
14 Foreman Street.

15 A. No, sir, I don't.

16 Q. And at the time of this incident, your  
17 grandmother didn't live at Foreman Street?

18 A. She does -- yes, sir, she does live at Foreman  
19 Street.

20 Q. She does or did?

21 A. She still does and did.

22 Q. She --

23 THE COURT: Different addresses.

24 MR. MCMILLIAN: I'm sorry?

25 THE COURT: Different addresses.

## CROSS-EXAMINATION OF MICHAEL CLARK BY MR. MCMILLIAN

170

1

2

BY MR. MCMILLIAN:

3

Q. Did Ms. Clark live at [REDACTED] Foreman Street on February 21st, 2015?

4

5

A. On February 21st, at that time, no, she didn't.

6

7

Q. Okay. And, in fact, the last person to reside in the house was, I believe, your great aunt?

8

9

A. Yes, sir.

10

Q. And she passed away some six weeks prior; correct?

11

A. Yes, sir.

12

Q. Who maintained the home?

13

A. A Mr. Don Adams, which was the neighbor.

14

Q. Okay. Whose name were the power and lights in?

15

A. As far as I knew, that was all under my grandma's name.

16

17

MR. MCMILLIAN: I beg the Court's indulgence. Judge, nothing further.

18

19

THE COURT: Anything on redirect?

20

MS. HALL: No, sir.

21

THE COURT: You may step down.

22

Next witness, please.

23

MR. SLOCUM: The State calls Officer Brent

24

Hess.

25

BRENT HESS

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

171

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat in the witness box.

4 State your full name for the Court and spell your

5 last.

6 THE WITNESS: Brent Wayne Hess, H-E-S-S.

7 DIRECT EXAMINATION

8 BY MR. SLOCUM:

9 Q. Officer Hess, good afternoon, sir. Where do  
10 you currently work?

11 A. I work for the city of New Ellenton; New  
12 Ellenton Police Department.

13 Q. And how long have you been with the New  
14 Ellenton Police Department?

15 A. Approximately seven to eight years.

16 Q. Does that encompass your entire time in law  
17 enforcement?

18 A. No, sir.

19 Q. How long have you been involved in law  
20 enforcement all together?

21 A. Approximately nine years.

22 Q. Okay. What is your training that you got to  
23 have to be a law enforcement officer?

24 A. Criminal Justice Academy. I been through  
25 multiple CDV case laws, investigation, crime scene

1 investigations, stuff along that lines.

2 Q. And were you working with New Ellenton Police  
3 Department on the night of February 20th, into the  
4 morning of February 21st, 2015?

5 A. Yes, I was.

6 Q. And tell us how you got involved in this case.

7 A. I was -- I heard the call go out over the radio  
8 that Officer Hess from Jackson needed assistance on  
9 a possible break-in in progress, and I responded  
10 down there to that location.

11 Q. Who is Officer Hess in Jackson to you?

12 A. Officer Hess in Jackson, that's my father.

13 Q. Do you normally get called to back up your  
14 father?

15 A. Yes, sir.

16 Q. Is that something y'all both do?

17 A. Yes, sir.

18 Q. And after you got the call from him, what did  
19 you do?

20 A. I went down there and met up with him to find  
21 out exactly what he had, and we decided that were  
22 going to just wait for a minute, wait for more  
23 officers to get there. One of the deputies parked  
24 on Main Street, I walked out there and started  
25 talking to him.

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

173

1 Q. Before you got down to the house, where did you  
2 meet your dad in Jackson, what area?

3 A. I actually met him on Foreman Road. I pulled  
4 up behind him on Foreman.

5 Q. And then from there, what did you do?

6 A. I walked towards the front of the house and I  
7 met up with Aiken County Sheriff's deputy.

8 Q. And who was that?

9 A. I couldn't tell you that.

10 Q. Okay. What did y'all do then?

11 A. We was talking for a minute, I was giving him a  
12 brief rundown of what we had at that time. And I  
13 kept hearing a noise in the bushes to the left side  
14 of the house. If you're facing the front of the  
15 house, to the left side, I kept hearing a noise in  
16 the bushes. And it attracted my attention.

17 Q. All right. This [REDACTED] Foreman, is that in Aiken  
18 County?

19 A. Yes, sir, Jackson side; the city limits of  
20 Jackson and Aiken County.

21 Q. What did you do when you heard this noise?

22 A. They were going to meet up with the deputies  
23 and Officer Hess was going to meet up to get a game  
24 plan together on how they would go in to clear the  
25 house. And I went over to investigate the noise

1       that I heard from the bushes.

2       Q.    What did you find when you got there?

3       A.    As I was walking up, I shined my flashlight  
4       over underneath the bushes, and I saw something  
5       blue. I thought it was a trash bag or a tarp or  
6       something along those lines. As I kept getting  
7       closer, I noticed it was moving and was moving  
8       leaves on top of itself trying to cover it up.

9       I then advised the suspect to show me his  
10      hands, which he refused. I asked several times  
11      louder, and he still refused.

12      THE COURT: He still what?

13      THE WITNESS: Refused.

14      MR. SLOCUM: Permission to approach the  
15      witness, Your Honor?

16      THE COURT: Yes, sir.

17      BY MR. SLOCUM:

18      Q.    Officer Hess, I'm going to show you State's  
19      Exhibit 1 that's been entered in to evidence. Do  
20      you recognize that aerial picture?

21      A.    Yes, sir, I do.

22      Q.    What is it?

23      A.    This is Foreman and Main.

24      Q.    Is that [REDACTED] Foreman Street?

25      A.    Yes, sir.

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

175

1 Q. Is that the house you responded to on February  
2 20th into the morning of the 21st or 2015?

3 A. Yes, sir.

4 Q. Would you please take this pen and put a mark  
5 on that picture of where you were and where you  
6 apprehended the suspect in the bushes?

7 A. You want from where my patrol car was all the  
8 way to --

9 Q. If this is the house, I want you to put the  
10 mark where the suspect was found in the bushes.  
11 Take your time.

12 MR. MCMILLIAN: Objection, Your Honor.

13 THE COURT: What's your objection?

14 MR. MCMILLIAN: He's marking on a picture  
15 that's in evidence.

16 THE COURT: Well, the picture will remain in  
17 evidence with his mark on it. Overruled.

18 A. You can't really see it, but right there is  
19 where I found the suspect laying in the bushes.

20 Q. Could you put your initials on that, please.

21 A. Yes, sir.

22 Q. Thank you. And do you see that individual in  
23 the courtroom that you found in those bushes?

24 A. Yes, sir.

25 Q. Could you point him out to the jury, please,

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

176

1       sir.

2       A.    The defendant.

3       Q.    What's he wearing?

4       A.    He's wearing a blue shirt, plaid, blue and grey  
5 stripes, and, I believe, blue jeans.

6           MR. SLOCUM: Your Honor, please let the record  
7 reflect that the witness has identified the  
8 defendant.

9       BY MR. SLOCUM:

10      Q.    Were you able to apprehend him immediately when  
11 you got there?

12      A.    I did not, no, sir.

13      Q.    Well, tell us what happened.

14      A.    When I got over there and I advised him to me  
15 show his hands, I saw other deputies and officers  
16 approaching my location. I kept my weapon drawn on  
17 the suspect because I didn't know if he had any  
18 weapons underneath him or what was -- why he was not  
19 responding to commands.

20           When the other officers and deputies got there,  
21 they put hands on him trying to get him out of the  
22 bushes and out from underneath the leaves and get  
23 him out from that area. As they were getting him  
24 up, he kept taking his hand and kind of like shoving  
25 his hand underneath the leaves into the bush area.

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

177

1 I thought that was curious, but at that time,  
2 my main concern was to get the suspect into custody.  
3 Once we got the suspect out of there, I looked down  
4 where the suspect was laying, and there was a  
5 crowbar laying directly up underneath where he was  
6 laying at. They handcuffed the suspect and we ended  
7 up putting him over there in front of the deputy's  
8 car and then eventually into the back of Officer  
9 Hess' patrol vehicle.

10 Q. Officer Hess, I want to show you State's  
11 Exhibits 7, 8, 9, 10 and 11 that have been entered  
12 in to evidence. Do you recognize what those are?

13 A. Yes, sir, I do.

14 Q. What are they?

15 A. 11 is the crowbar that was found underneath the  
16 suspect; 9 -- give me one second. 9 and 8 was the  
17 bracelet that was found where the suspect was  
18 shoving his hand up underneath the leaves; 10 and 11  
19 is the crowbar and 7 is the location where the  
20 suspect was laying at.

21 Q. Do you recognize State's Exhibit 45?

22 A. Yes, I do.

23 Q. And State's Exhibit 60. Can you tell us what  
24 they are, please, sir?

25 A. State's Exhibit 45 is the crowbar that was

## DIRECT EXAMINATION OF BRENT HESS BY MR. SLOCUM

178

1 directly up underneath the suspect, and State's  
2 Exhibit 60 is the bracelet that was found up  
3 underneath the leave where the suspect was shoving  
4 his hand.

5 Q. And, lastly, State's Exhibit 62, do you  
6 recognize what that is?

7 A. Yes, I do.

8 Q. And what is it?

9 A. That's the location.

10 Q. At [REDACTED] Foreman?

11 A. Yes, sir.

12 Q. Is that the front of [REDACTED] Foreman?

13 A. Yes, sir.

14 Q. Could you please mark on that pictures the  
15 bushes where you apprehended the defendant that  
16 night and put your initials, please, sir.

17 A. (Witness complies).

18 Q. Exhibits 12, 13, 14, and 15, lastly, can you  
19 identify those?

20 A. Yes, sir, I can.

21 Q. What are they?

22 A. They are the defendant. They are the suspect I  
23 found laying in the bushes.

24 Q. Taken of Mr. McCladdie on the morning of the  
25 21st of February of this year?

## CROSS-EXAMINATION OF BRENT HESS BY MR. MCMILLIAN

179

1 A. Yes, sir.

2 Q. Is that how he appeared then?

3 A. Yes, sir.

4 MR. SLOCUM: I beg the Court's indulgence.

5 Officer Hess, that's all the questions I have  
6 for you. Please answer any that Mr. McMillian may  
7 have in response.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. McMillian.

10 MR. MCMILLIAN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MCMILLIAN:

13 Q. Officer Hess, you testified you were called out  
14 to back up your dad. Did you --

15 A. Yes, sir.

16 Q. You initially met with him at [REDACTED] Foreman?

17 A. Yes, sir.

18 Q. I wanted to see these -- when you heard the  
19 rustling sound, you secured kind of -- in this

20 picture, you secured the lower end of these shrubs?

21 A. I was -- this over here is going to be Foreman.

22 Q. Yes, sir.

23 A. Can you hand me the other picture, and I can  
24 show you a little bit better.

25 Q. Certainly.

## CROSS-EXAMINATION OF BRENT HESS BY MR. MCMILLIAN

180

1 A. This is Foreman.

2 Q. Yes, sir.

3 A. This over here is going to be Main.

4 Q. Yes, sir.

5 A. Right here is where me and the deputy were  
6 talking, this little section right here  
7 (indicating).

8 Q. Where was your patrol car parked?

9 A. Back here (indicating).

10 THE COURT: What exhibit number, please?

11 MR. MCMILLIAN: State's Exhibit 1, Your Honor.

12 THE COURT: Thank you.

13 BY MR. MCMILLIAN:

14 Q. You were parked behind your father on Foreman  
15 Street?

16 A. Yes, sir.

17 Q. And you walked into the front yard and met with  
18 the sheriff's deputy?

19 A. Yes, sir.

20 Q. You don't recall what sheriff's deputy that  
21 was?

22 A. No, sir, I do not.

23 Q. Where were you standing while the other  
24 officers secured or -- or detained him from -- got  
25 him up from off the ground out of the bushes?

## CROSS-EXAMINATION OF BRENT HESS BY MR. MCMILLIAN

181

1 A. I was standing on the opposite side of the  
2 bushes.

3 Q. So you were, I guess -- I don't know where the  
4 property lines are -- but not in the front yard of  
5 [REDACTED] Foreman, but on the other side of the hedges or  
6 the shrub? I think you noted here (indicating).

7 A. Yes, sir.

8 Q. Okay. And you said you could see him clearly  
9 through the shrub or the hedge?

10 A. No, sir.

11 Q. But you said that he was moving his hands.

12 A. Yes, sir. Oh, when I got on top of -- are you  
13 asking when I approached the suspect, was I able to  
14 see the suspect?

15 Q. Right.

16 A. Yes, sir.

17 Q. And you described that he was moving his hands  
18 and shoving them under the leaves.

19 A. Yes, sir.

20 Q. And you said that was curious?

21 A. Yes, sir.

22 Q. And you went back and found this bracelet?

23 A. Yes, sir.

24 Q. Did you find anything else other than the pry  
25 bar?

## DIRECT EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

182

1 A. I did not, no, sir.

2 MR. MCMILLIAN: I don't think I have anything  
3 further, Judge.

4 MR. SLOCUM: Nothing, Judge.

5 THE COURT: You may step down.

6 Next witness, please.

7 MR. SLOCUM: The State calls Deputy Tyler  
8 Roberts from the Aiken County Sheriff's Office.

9 TYLER ROBERTS

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Please have a seat in the witness  
13 box. State your full name for the Court and spell  
14 your last.

15 THE WITNESS: Deputy Tyler Roberts,  
16 R-O-B-E-R-T-S.

17 DIRECT EXAMINATION

18 BY MR. SLOCUM:

19 Q. Good afternoon, sir. Where do you currently  
20 work?

21 A. Aiken County Sheriff's Office.

22 Q. How long have you been with Aiken County?

23 A. Roughly two and a half years.

24 Q. Were you employed with Aiken County back on  
25 February 20th into the morning of the 21st, 2015?

## DIRECT EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

183

1 A. Yes, sir.

2 Q. How did you become involved in this case with  
3 Mr. McCladdie?

4 A. When Officer Hess called for assistance, I was  
5 dispatched to [REDACTED] Foreman Street in the city of  
6 Jackson. I was working Beech Island that night, so  
7 I responded to his location to assist.

8 Q. That address is in Aiken County?

9 A. It's within the city of Jackson in the county  
10 of Aiken, yes, sir.

11 Q. Same address we've been talking about; right?

12 A. Yes, sir.

13 Q. What did you observe when you got there?

14 A. When I pulled up on scene, [REDACTED] Foreman, I  
15 exited my vehicle. I spoke with other Aiken County  
16 deputies, I believe it was my supervisor at the time  
17 there as well. We were trying to come up with some  
18 type of game plan to be able to secure the residence  
19 and make sure it was safe for everybody. And  
20 that's -- shortly after, I don't know the exact  
21 timeframe, is when I heard Officer Brent Hess start  
22 shouting, let me see your hands, let me see your  
23 hands.

24 I immediately went around the front of the  
25 residence, [REDACTED] Foreman, Main Street side, and that's

1       when I saw him with his flashlight at the bushes  
2       lighting up something. I couldn't see until I got  
3       closer to where he actually was.

4       Q.    When you say him, you mean --

5       A.    Officer Brent Hess.

6       Q.    Okay. What did you observe when you got to  
7       that location?

8       A.    When I got there, I saw that there was an  
9       individual, a subject on the ground, laying in the  
10      bushes. He had hands tucked under him. We were  
11      giving him commands to show your hands, show your  
12      hands. He wouldn't do it. Other officers were  
13      right on my -- right on me. We took his hands,  
14      detained him, lifted him up off the ground.

15            When we lifted him up, I did observe the  
16      crowbar or pry bar in the dirt laying right under  
17      him where he was laying at. And we pretty much  
18      immediately removed him from the bushes and escorted  
19      him to the front of a patrol car.

20      Q.    First off, Deputy Roberts, do you recognize  
21      that individual in the courtroom?

22      A.    Yes, sir.

23      Q.    The one that was on the ground?

24      A.    Yes, sir.

25      Q.    Would you please describe what he's wearing.

## DIRECT EXAMINATION OF TYLER ROBERTS BY MR. SLOCUM

185

1 A. Yes, sir. It's the gentleman to my right here.  
2 He's wearing a plaid -- blue and white and silver  
3 plaid shirt.

4 MR. SLOCUM: Judge, please let the record  
5 reflect Deputy Roberts has identified the defendant.

6 BY MR. SLOCUM:

7 Q. Deputy Roberts, I want to show you State's  
8 Exhibit 45. Do you recognize it?

9 A. Yes, sir, I do.

10 Q. Please tell us what it is.

11 A. This is the pry bar, crowbar that was under the  
12 defendant when we removed him from the bushes.

13 Q. Thank you, sir. And State's Exhibits 12, 13,  
14 14 and 15. Do you recognize those?

15 A. Yes, sir, I do.

16 Q. And what are they?

17 A. These are photos of the individual that we  
18 removed from the bushes.

19 Q. That same day, into the morning hours of  
20 February 21st, 2015?

21 A. Yes, sir.

22 MR. SLOCUM: I beg the Court's indulgence.

23 Thank you. That's all I have for you. Please  
24 answer any questions Mr. McMillian has.

25 THE COURT: Any questions?

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

186

1 MR. MCMILLIAN: I beg the Court's indulgence  
2 just a moment.

3 I don't have any questions for this witness,  
4 Judge.

5 THE COURT: All right. You may step down.  
6 Next witness, please.

7 MS. HALL: State calls Ms. Evelyn Clark.

8 THE COURT: Ms. Clark, come around, please,  
9 ma'am.

10 EVELYN CLARK

11 being first duly sworn, testified as follows:

12 THE WITNESS: Yes.

13 THE CLERK: Please have a seat, and say your  
14 full name and spell your last name.

15 THE WITNESS: Evelyn Clark, C-L-A-R-K.

16 DIRECT EXAMINATION

17 BY MS. HALL:

18 Q. Good afternoon, Ms. Clark. Can you hear me?  
19 You want me to get closer?

20 Ms. Clark, where are you from?

21 A. Originally from Old Ellenton, but for the  
22 last -- since 1951, from Jackson, South Carolina.

23 Q. Where do you currently live in Jackson?

24 A. I live at [REDACTED] First Street.

25 Q. Have you lived in Aiken County all your life?

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

187

1 A. Yes.

2 Q. Are you married?

3 A. I'm widowed since 1988.

4 Q. Okay. Where were you on the night of February  
5 20th of this year when this burglary occurred?

6 A. I was in the bed asleep.

7 Q. What do you remember about that night?

8 A. I remember the phone rang and it was my  
9 grandson Doug. And he said, Grandma, you need to  
10 come down here, there's been a robbery at Nan's  
11 house. He called her Nan. I got dressed and  
12 started down there, and he was outside waiting for  
13 me in his truck.

14 He pulled down about halfway or so on the  
15 opposite side of the road and sat there in the truck  
16 with me. And we saw the policeman come out with  
17 Mr. McCladdie in handcuffs. And he talked with him  
18 for a while outside the police car, and then put him  
19 in the car and drove away.

20 Q. Do you know William McCladdie?

21 A. Do I what?

22 Q. Do you know William McCladdie?

23 A. No, I do not.

24 Q. Did you ever give him permission to be at the  
25 house?

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

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1 A. No. Never heard of him. My sister didn't  
2 trust strangers, so she never had anybody like that  
3 come around.

4 Q. Okay. Did you give anyone other than family  
5 permission to be at that house?

6 A. I never gave anyone permission, no.

7 Q. Okay. And you say this house originally  
8 belonged to your sister?

9 A. It belonged to my sister.

10 Q. Margaret McDaniel?

11 A. Margaret McDaniel, yes.

12 Q. Okay. Did your sister ever indicate who she  
13 wanted to live in that house after she died?

14 A. Yes. She told me very often, will you promise  
15 to move in my house, because --

16 MR. MCMILLIAN: Objection, Judge.

17 THE COURT: Hold on. The objection is what?

18 MR. MCMILLIAN: She's testifying as to what the  
19 deceased plaintiff who lived there -- it's hearsay.

20 THE COURT: Sustained.

21 Disregard that, please.

22 MS. HALL: Your Honor, if I may -- may I argue  
23 over the objection?

24 THE COURT: What is it?

25 MS. HALL: Your Honor, under rule 803-3, this

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1 is a statement declarant's then-existing state of  
2 mind and her intent as to who was to live in the  
3 house after she died.

4 THE COURT: Well, you can ask her if when she  
5 died did she have a will and who she'd leave it to.

6 MS. HALL: Okay.

7 BY MS. HALL:

8 Q. Ms. Clark, did your sister have a will?

9 A. Yes, she did.

10 Q. Do you know who she left the house to in her  
11 will?

12 A. She left it to me and our sister Lucille Brewer  
13 who died in 1996.

14 Q. Okay. So are you the only surviving person  
15 named in the will?

16 A. Yes, I am.

17 Q. Okay. Ms. Clark, I'm showing you what's  
18 previously been marked as State's Exhibit 57. Do  
19 you recognize that?

20 A. This is her will.

21 Q. Who does -- who is the house left to in that  
22 will? Is that the document that left the house to  
23 you?

24 A. Yes.

25 Q. Okay. Has it been changed or altered --

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

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1 A. Well, it was left to me and my sister. And  
2 then of course...

3 Q. And then she passed away. Okay. Has this will  
4 be changed or altered in any way?

5 A. Not that I know of.

6 MS. HALL: Your Honor, at this time, the State  
7 would move to enter State's Exhibit 57 in to  
8 evidence.

9 MR. MCMILLIAN: Without objection, Your Honor.

10 (State's Exhibit No. 57 admitted in to  
11 evidence.)

12 BY MS. HALL:

13 Q. Ms. Clark, at any point had you planned or made  
14 plans to move into the house at [REDACTED] Foreman Street?

15 A. Yes. I'm working on it.

16 Q. It's just taking you some time?

17 A. Yes. It's a slow process. I don't know. I  
18 got some hang-ups. I want to be there. I keep  
19 thinking maybe I'll feel her presence.

20 Q. It's okay. It's okay.

21 A. I don't know.

22 Q. We understand.

23 A. I'm sorry.

24 Q. Ms. Clark, did this house have water and  
25 electricity the whole time after your sister's

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

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1 death?

2 A. Yes. It's still on.

3 Q. Okay. And who pays those bills? That's okay.

4 Take a minute. It's okay.

5 A. I'm sorry.

6 Q. Take as much time as you need.

7 Who pays the water and electric bill at the  
8 house?

9 A. I do.

10 Q. Okay. Was the yard maintained after your  
11 sister died, the lawn care?

12 A. Well, Mr. Don Adams next door, he's always cut  
13 her grass for her. - And I've done what raking needed  
14 to be done. But I haven't done much lately, I'm  
15 afraid.

16 Q. That's understandable. Did anyone check the  
17 mail at [REDACTED] Foreman Street?

18 A. I do daily. Still do.

19 Q. Did you check the mail on February 20th? Would  
20 you have checked it on the Friday this burglary  
21 happened?

22 A. Yes.

23 Q. Do you know what time the mail comes?

24 A. Usually around 11:00. He's pretty punctual.

25 Q. Okay.

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

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1 A. So I kind of know what time to go out. If I've  
2 got it in mine, then I'll go down to hers.

3 Q. Okay. Did you ever stay at the house at [REDACTED]  
4 Foreman Street after your sister died and before  
5 this burglary happened, in that six-week period?

6 A. Yes, once.

7 Q. And why did you stay there that night?

8 A. I think I just wanted to -- wanted to feel  
9 her -- see if I could feel her around.

10 Q. I understand. It's all right. Take a minute.

11 A. I'm sorry.

12 Q. That's okay.

13 Ms. Clark, do you have any of your personal  
14 items or clothes at the house now at [REDACTED] Foreman  
15 Street?

16 A. Any what?

17 Q. Any clothes or personal items?

18 A. Yes, I have some.

19 Q. Were you familiar with the items at your  
20 sister's house prior to this burglary?

21 A. Yes, I was.

22 Q. Okay. I'm showing you what's previously been  
23 marked as State's Exhibit 56. Do you recognize  
24 this?

25 A. That's her clock.

## DIRECT EXAMINATION OF EVELYN CLARK BY MS. HALL

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1 Q. You recognize that as being your sister's?

2 A. Yes.

3 Q. And it was in the house prior to the burglary?

4 A. Yes, it was.

5 Q. Do you know if any other items were taken that  
6 wasn't recovered from law enforcement?

7 A. You know, it's hard to tell at somebody else's  
8 house, even though I was there daily. There was a  
9 washer and a dryer taken, a little rolltop desk, a  
10 vacuum, a large vacuum and a stick vacuum.

11 Q. That's okay if you don't remember.

12 A. I can't remember everything. I'm sorry.

13 Q. That's okay. I'll show you a picture real  
14 quick.

15 I'm showing you what's previously been marked  
16 as State's Exhibit 22. Do you recognize that  
17 picture?

18 A. Yes. This was -- let's see. That was her back  
19 door.

20 Q. Is this the porch?

21 A. Yeah. This is her -- it was a little back  
22 porch and she had had it screened -- had it glassed  
23 in.

24 Q. Okay. What's this item in the bottom right  
25 corner, that big, white --

## CROSS-EXAMINATION OF EVELYN CLARK BY MR. MCMILLIAN

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1 A. That was her little freezer.

2 Q. Okay. Where was that prior to the burglary?

3 A. It was in the laundry room just off the  
4 kitchen. You go into the kitchen and then right of  
5 the kitchen was the laundry room.

6 Q. So it wasn't left in the middle of the porch  
7 the last time you were there?

8 A. Huh?

9 Q. It wasn't left in the middle of the porch?

10 A. Oh, no, no, no.

11 Q. Ms. Clark, that's all the questions I have for  
12 you. Mr. McMillian is going to ask you some  
13 questions. Please answer any he has for you. Okay?

14 A. I certainly will. Thank you.

15 THE COURT: Any questions?

16 MR. MCMILLIAN: Yes, sir, Judge, just a few.

17 CROSS-EXAMINATION

18 BY MR. MCMILLIAN:

19 Q. Good afternoon, Ms. Clark. How are you?

20 A. I'm sorry?

21 Q. I'm sorry. I'll speak up. How are you today,  
22 Ms. Clark?

23 A. Not real good.

24 Q. I could imagine. I just have a few questions.

25 On February 20th or 21st, the date that this

## CROSS-EXAMINATION OF EVELYN CLARK BY MR. MCMILLIAN

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1 incident happened, you were living at [REDACTED] First  
2 Street?

3 A. Yes. I still am.

4 Q. Okay. And I think just a few minutes ago,  
5 Ms. Hall asked you if you had any of your things --  
6 any of your personal belongings at the house now,  
7 and you said yes.

8 A. Yes, I have. I spent the night down there with  
9 my sister before when she wasn't feeling good.

10 Q. Okay. Were your personal things there on  
11 February 20th or 21st?

12 A. I'm sure they were. Probably.

13 THE COURT: Speak up for me, please, ma'am.

14 THE WITNESS: I'm sorry. You know, there's  
15 just some things you leave if you're not going to  
16 use them at home.

17 BY MR. MCMILLIAN:

18 Q. Yes, ma'am. Now --

19 MR. MCMILLIAN: Permission to approach, Judge?

20 THE COURT: Yes, sir.

21 BY MR. MCMILLIAN:

22 Q. -- you and Ms. Hall talked about your sister's  
23 will.

24 A. Yes.

25 Q. Has this been probated yet?

1 A. It will be finished in October, about the 8th  
2 of October, I believe. I went to probate, my  
3 daughter took me, but --

4 Q. So, technically, the house doesn't belong to  
5 you yet, but it will in October?

6 A. I guess.

7 Q. Okay. And you said you were still thinking  
8 about moving in in February?

9 A. Thinking.

10 Q. So you haven't decided that for sure that  
11 you're going to move in there?

12 A. Not completely. I guess.

13 Q. I know the feeling.

14 And to your recollection, you only stayed there  
15 one time since your sister's passing?

16 A. I believe so. I believe it was one time when  
17 she was sick. She was very ill; she was diabetic,  
18 she had lost one of her legs.

19 Q. Yes, ma'am.

20 A. That's why I went down there so many times a  
21 day to check on her.

22 Q. Can you tell me -- speaking of going down  
23 there, you said you checked the mail there pretty  
24 regular?

25 A. I got the mail for her every day. And I still

## CROSS-EXAMINATION OF EVELYN CLARK BY MR. MCMILLIAN

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1 go down and check her mail, even though I have  
2 recently asked them to transfer any mail to my box.  
3 So doesn't get very much and -- so really I haven't  
4 found anything down there.

5 Q. Yes, ma'am. Do you know for sure if you  
6 checked the mail on February 20th?

7 A. Yeah. That was a Saturday, I believe. Yeah.  
8 The only day I didn't check it was Sunday.

9 Q. Okay. Now, Ms. Hall asked you some about  
10 things missing from the house, and you named a  
11 washer and a dryer and a vacuum --

12 A. Two vacuums. One was a small stick.

13 Q. -- and a rolltop desk.

14 A. Yeah, a rolltop desk.

15 Q. Do you recall if you were missing a TV?

16 A. I'm sorry?

17 Q. Do you recall if you were missing a television?

18 A. You know, I was thinking that I did, but come  
19 to find out, I had forgotten that Doug, my grandson,  
20 got the TVs because I told him he could have them.

21 Q. Okay. And talking about that freezer, you  
22 said -- I'm going to show you a couple of pictures.

23 MR. MCMILLIAN: And, Judge, I'll be sure and  
24 call those numbers this time. Permission to  
25 approach?

## CROSS-EXAMINATION OF EVELYN CLARK BY MR. MCMILLIAN

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1 THE COURT: You may, sir.

2 BY MR. MCMILLIAN:

3 Q. I'm going to show you what's been marked as  
4 State's Exhibit 25. Is this your sister's kitchen?

5 A. That's her dining room. The kitchen is right  
6 over here. This is the dining room at the very back  
7 of the house, the porch is just -- back porch is  
8 right behind it, the glassed-in porch.

9 Q. So does this window go to that glassed-in  
10 porch?

11 A. Yes, it does.

12 Q. Okay. This window right here in the center of  
13 the picture, this one with the pink drapes?

14 A. Yes.

15 Q. And you're telling me that the kitchen is over  
16 here to the left in State's Exhibit 25?

17 A. In the back, goes into the kitchen.

18 Q. And that the freezer was in a laundry room  
19 there --

20 A. Just off the kitchen.

21 Q. Okay. So that freezer had been moved a little  
22 bit?

23 A. Yes. It was moved that night. Because I was  
24 there that day and it wasn't moved.

25 Q. Do you happen to know -- is that freezer heavy?

## CROSS-EXAMINATION OF EVELYN CLARK BY MR. MCMILLIAN

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1 A. I would think so.

2 Q. Yes, ma'am.

3 A. Well, to me it would be. I don't know about to  
4 a man, but to me it would be --

5 Q. I'm not that strong, Ms. Clark.

6 A. -- let me clarify.

7 Q. Do you think it would take two people to move  
8 it?

9 A. Depends on how strong a person was, you know.  
10 It would be hard for me to say because some men are  
11 strong. I don't know.

12 Q. Okay. And I don't want to beat a dead horse,  
13 but I just want to ask you two more questions. On  
14 February 20th or 21st, you didn't live at [REDACTED]  
15 Foreman Street?

16 A. No, I didn't.

17 Q. And as of today, you have not decided for sure  
18 that you want to live at [REDACTED] Foreman Street?

19 A. Kinda. Nothing is written in stone with me.

20 Q. Yes, ma'am. And that's good enough. I  
21 appreciate it. Thank you, Ms. Clark.

22 MR. MCMILLIAN: I don't have any further  
23 questions, Judge.

24 THE COURT: Any other questions, Mrs. Hall?

25 MS. HALL: Nothing, Your Honor.

1 THE COURT: All right. You can step down.

2 Next witness, please, ma'am.

3 MS. HALL: Your Honor, at this time, the State  
4 rests and reserves the right to call any rebuttal  
5 witnesses.

6 THE COURT: Mr. Foreman, ladies and gentlemen,  
7 that concludes all the evidence by the State. The  
8 Defense has an opportunity to now put up any  
9 witnesses. But it's 4:15. There's a little bit of  
10 stuff I have to do with them before I start my other  
11 stuff at 4:30, so I'm going to let y'all off a  
12 little early today.

13 Is 9:30 in the morning -- well, first of all,  
14 Mr. McMillian, let me see y'all over here a second.

15 MR. MCMILLIAN: Certainly, Judge.

16 (Sidebar conference.)

17 THE COURT: We'll start right at 9:30 in the  
18 morning, it appears. We got one witness left,  
19 maybe. So we ought to be through with the testimony  
20 around 10:30-ish. The lawyers will do their  
21 arguments, I'll do the charge, so we'll get the case  
22 before lunch. We'll order lunch in. And we should  
23 be in a position to finish it up some time tomorrow.  
24 Should finish the testimony in the morning and  
25 arguments.

1           So have a pleasant evening. Don't discuss the  
2 case, don't let anyone discuss it with you. Don't  
3 start any deliberations until we finish. Please  
4 don't do any independent research tonight on any of  
5 these issues. Have a very pleasant evening. See  
6 you in the morning starting at 9:30. Thank you.

7           (The jury exits the courtroom at 4:16 PM.)

8           THE COURT: All right. Anything from the  
9 State, now that you've rested, before we break for  
10 the evening?

11          MS. HALL: Nothing from the State, Your Honor.

12          THE COURT: Mr. McMillian, any motions?

13          MR. MCMILLIAN: Judge, at this time, Defense  
14 would move for a directed verdict on the charge of  
15 burglary in the first degree. I think the  
16 testimony, virtually across the board, is that  
17 nobody lived in this house on February 20th or  
18 21st --

19          THE COURT: Well, do they have to live in it to  
20 be a dwelling?

21          MR. MCMILLIAN: Well, I certainly don't believe  
22 so, Judge. But in talking with Ms. Hall about the  
23 issues, she cited a couple cases to me Ferebee,  
24 which I have three copies --

25          THE COURT: Pass them up.

1 MR. MCMILLIAN: Certainly.

2 She cited Ferebee, Your Honor, as well as State  
3 v. Moore. State v. Moore is a slip opinion and  
4 doesn't really have any precedential value. So I  
5 didn't shepardize it any further than that. But  
6 under Ferebee, there has to be an identifiable  
7 occupant and the occupant has to have some intent to  
8 return to the dwelling.

9 I think the testimony from Ms. Clark herself  
10 was that she's stayed there once in six weeks and  
11 that she's still not real sure that she wants to  
12 live there or not. She maintained an entire other  
13 residence. She goes down there and checks about the  
14 property from time to time, but she's certainly not  
15 residing there, at least not in the classical sense  
16 of the word reside.

17 I did, for Your Honor as well, shepardize and  
18 print the Shepard's report for Ferebee as well, if  
19 you'd like to see that. It appears to me, Judge,  
20 that the test is whether or not the occupant has  
21 left with the intent to return.

22 THE COURT: Any other cases?

23 MR. MCMILLIAN: Judge, under the Shepard's  
24 report, I'd state State vs. Glenn, State vs. Evans,  
25 and State vs. White. I can provide the Solicitor's

1 Office, obviously, the citations.

2 THE COURT: Tell me what you want me to look at  
3 in State vs. Glenn.

4 MR. MCMILLIAN: Well, those cases, Your Honor,  
5 all follow Ferebee in that it's the occupant's  
6 intent to return to the property that controls. You  
7 know, certainly if this were a vacation house and --  
8 I think -- for what it's worth, I think the other  
9 opinion that Ms. Hall gave me, the unpublished  
10 opinion of State vs. Moore is instructed and that  
11 there, the family that has inherited this house,  
12 which is the decision here --

13 THE COURT: Which case is that?

14 MR. MCMILLIAN: State vs. Moore.

15 THE COURT: Well, you didn't give me that.

16 MR. MCMILLIAN: No, sir. It's an unpublished  
17 opinion. I have a copy of it.

18 THE COURT: You know what precedential value  
19 unpublished opinions have.

20 MR. MCMILLIAN: Yes, sir.

21 THE COURT: But you can argue it.

22 MR. MCMILLIAN: It seems to be the only case  
23 relatively on point with our facts, Judge. There,  
24 the family inherited a house after the owner was  
25 deceased. And for several years, they used the

1 house several -- I believe the direct quote would be  
2 several times a year for two to three weeks at a  
3 time.

4 In this particular case, Judge, this lady  
5 passed away six weeks prior, and the house was used  
6 once. And there was testimony that the yard was  
7 kept up and that the power and the lights remained  
8 on, but this will hasn't even been probated.  
9 Essentially, this house is still owned by the  
10 Estate. And without an identifiable occupant, Your  
11 Honor, this house is just a building and not a  
12 dwelling.

13 THE COURT: Mrs. Hall.

14 MS. HALL: Your Honor, I would argue that the  
15 case most on point would be State v. Evans in which  
16 the Court of Appeals upheld the denial of the  
17 directed verdict motion in which the owner testified  
18 that the house burglarized was a secondary home.  
19 The owner went there every -- once every month or  
20 every two weeks.

21 On cross-examination the owner even admitted  
22 that this house was really just used for storage.  
23 They actually had not stayed in the house in over  
24 three years due to the owner's wife's health. The  
25 Court stated that the test terms on whether the

1       occupant left with the intent to return.

2       Ms. Evelyn --

3       THE COURT: Are you saying that Ms. Clark is an  
4       owner, she's an occupant?

5       MS. HALL: Yes, Your Honor. She would be the  
6       identifiable occupant. She had stayed in this house  
7       in that short six-week period since the house had  
8       essentially --

9       THE COURT: Well, does ownership equate to  
10      occupancy?

11      MS. HALL: Not necessarily.

12      THE COURT: Well, has she ever occupied that  
13      house?

14      MS. HALL: She did. She stayed the night --

15      THE COURT: One night.

16      MS. HALL: One night.

17      THE COURT: But had her own house. So how  
18      could she return to that house to occupy --

19      MS. HALL: Your Honor, this house was left to  
20      her in the will.

21      THE COURT: It was.

22      MS. HALL: The lights and water were left on  
23      the entire time, which would evidence an intent to  
24      return. Why else would the water and electricity  
25      stay on?

1 THE COURT: To keep people from coming in and  
2 breaking in.

3 MS. HALL: That's a hefty bill for Ms. Clark to  
4 pay just to -- just for that purpose. Ms. Clark  
5 checked the mail every day, the lawn was kept up,  
6 the house remained fully furnished. And Ms. Clark  
7 even had her own personal items in this house, which  
8 also shows an intent to return.

9 If the house in State v. Evans in which the  
10 owners hadn't actually stayed the night in three  
11 years qualifies as dwelling, this certainly would  
12 qualify as a dwelling.

13 Furthermore, the case of State v. Ferebee, that  
14 was a case in which an apartment was at issue.

15 THE COURT: I just read it.

16 MS. HALL: And in that case, there had been no  
17 one planning to move in. It was absolutely vacated  
18 by the former tenants, and no one had intended to  
19 move in. There was discussion in the case about  
20 possibly the owner of that apartment complex being  
21 the identifiable occupant. And the Court stated:  
22 There's no evidence indicating that the owner ever  
23 occupied or intended to occupy dwell in the  
24 apartment. Here, there is evidence that the owner  
25 intended to occupy the dwelling.

1           THE COURT: It says: The test whether a  
2 building is a dwelling terms on whether the occupant  
3 has left with the intention to return. Well,  
4 Ms. Clark never has left because she never lived  
5 there. She may have spent one night there. But how  
6 can she leave with the intent to return if she never  
7 had been there?

8           All right. I will take it under advisement and  
9 make a ruling in the morning. If y'all have  
10 anything to add to what you've given me, y'all both  
11 have my e-mail address, send it to me over the  
12 e-mail.

13          MR. MCMILLIAN: Certainly, Your Honor.

14          THE COURT: If I grant your motion for directed  
15 verdict, where does that leave us on the burglary  
16 charge? That leaves us with second degree burglary?

17          MR. MCMILLIAN: Judge, I would argue that the  
18 State indicted it for burglary first, they failed to  
19 meet the elements of that, and we go forward on  
20 possession of burglary tools and possession of a  
21 stolen vehicle less than \$2,000.

22          THE COURT: What's the State's position?

23          MS. HALL: Your Honor, being that burglary  
24 second violent is a lesser included of burglary  
25 first, I think it -- it's allowable for the State to

1 proceed under burglary second violent being that  
2 it's a lesser included of burg first. And we'd also  
3 proceed under the accompanying possession of  
4 burglary tools and possession of stolen vehicle.

5 THE COURT: Find me some case law on that.  
6 Both of you support your positions on that.

7 All right. Mr. McCladdie, would you please  
8 stand for me, raise your right hand.

9 WILLIAM MCCLADDIE

10 being first duly sworn, testified as follows:

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You may have a seat.

13 All right. The State has concluded their  
14 testimony or their evidence. And we're at the stage  
15 now where you have the opportunity to tell your side  
16 of the story -- I think I told you that yesterday --  
17 present whatever witnesses you want to present, or  
18 you can testify and tell your side of the story.

19 If you decide to testify, you will be subjected  
20 to cross-examination on any relevant issues like  
21 anybody else who testifies.

22 Does he have a record that's impeachable?

23 MS. HALL: Yes, Your Honor. The State would  
24 intend to question on a theft without consent out of  
25 Ohio, another theft out of Ohio, and false

1 information to police.

2 THE COURT: It's a possibility -- anything  
3 else?

4 MS. HALL: I apologize. There are three  
5 thefts; two out of Ohio and one out of Georgia.

6 THE COURT: The State would attempt to  
7 introduce, if you testify, your prior convictions  
8 for theft. I would tell the jury that they could  
9 only assume those for determining your credibility  
10 or your believability; in other words, they could  
11 use those to attack your credibility. They  
12 obviously could not use prior convictions as  
13 evidence of guilt in this case. So if you take the  
14 stand, that may come in after I make certain  
15 assessments as to whether or not it's more probative  
16 than prejudicial and that sort of thing.

17 On the other hand, you have the constitutional  
18 right to remain silent. You have absolutely no  
19 burden to prove anything, you're not required to  
20 prove anything. So you don't have to get up and  
21 prove anything; you're presumed to be innocent. And  
22 you have the constitutional right to remain silent.  
23 If you exercise that right to remain silent, I  
24 have -- part of my jury instruction is, he's not  
25 testified in this case, he's exercised his right to

1        remain silent, therefore I tell you, ladies and  
2        gentlemen of the jury, that you cannot hold the fact  
3        that he did not testify against him in any manner  
4        whatsoever, there's nothing to be inferred or  
5        presumed from the fact he didn't testify. You have  
6        that right.

7                And I will tell them that they're not to  
8        consider the fact that you didn't testify, they're  
9        not even to talk about it, it shouldn't enter their  
10       deliberations. And I'll tell the foreperson that  
11       that's one of his duties if anyone says anything  
12       about you not testifying, he has to tell them that's  
13       not proper. So I will instruct them fully and  
14       strongly that you have that right and they can't use  
15       that against you. So if you don't testify I would  
16       tell them that. If you don't testify and you don't  
17       put up any witnesses, you also get the last  
18       argument.

19                So that right is yours and nobody can make you  
20       do it or not make you do it. You have to make that  
21       decision yourself. You can talk to Ms. Alves or  
22       your lawyers and -- Mr. McMillian, and they can have  
23       some input in it, but the decision is solely yours.  
24       I'm not going to make you tell me you wish to or  
25       your don't want to until tomorrow morning. But I

1 wanted to make sure you heard it from me. Do you  
2 understand what I've said?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions you'd  
5 like to ask of me as to anything about that?

6 THE DEFENDANT: No, sir.

7 THE COURT: We'll sort of mull over that over  
8 the evening, and you can tell me in the morning. Is  
9 that fair?

10 THE DEFENDANT: Yes, sir. I appreciate you.

11 THE COURT: Anything else I can do for you?

12 THE DEFENDANT: No, sir. I appreciate you.

13 THE COURT: Okay. We'll stand at ease until  
14 9:30 in the morning.

15 (Court in recess for the evening at 4:31 PM.)

16 THE COURT: All right. The first thing this  
17 morning, on the motion for directed verdict,  
18 obviously at this stage of the game, the Court is  
19 concerned with the existence of evidence, not the  
20 weight of evidence. And, obviously, the defendant  
21 is entitled to a directed verdict when the State  
22 fails to present evidence on a material element of  
23 the offense charged. And, obviously, one of the  
24 material elements of the offense of burglary in the  
25 first degree is to prove that it is a dwelling. And

1 the case law is pretty clear on that and what we  
2 have to look at to determine whether or not there is  
3 in fact -- whether or not the place that was  
4 burglarized is, in fact, a dwelling or simply a  
5 building.

6 Instructive on that were a number of cases  
7 presented to me for review, including State vs.  
8 Ferebee, State vs. Evans. Those cases, obviously,  
9 defines a dwelling house as any house, outhouse,  
10 apartment, building, shed, or box in which there  
11 sleeps a person who lodges there with a view to the  
12 protection of property.

13 The test of whether a building is a dwelling  
14 house terms on when whether the occupant has left  
15 with intention to return. The person can have more  
16 than a single dwelling house, any of which might be  
17 the object of burglary, despite the occupant's  
18 absence for extended periods of time, so long as he  
19 or she had an intention to return. That's pretty  
20 much the language that is cited throughout all of  
21 the cases, including State vs. White, I think I  
22 mentioned State vs. Glenn, the unpublished opinion  
23 of State vs. Moore.

24 So in light of that, I went and reviewed the  
25 testimony of Ms. Clark who testified yesterday.

1 And, obviously, the person who owned the house had  
2 died, she has left it to Ms. Clark in her will, so  
3 Ms. Clark is at least the de facto owner of the  
4 house. The testimony was uncontradicted that she  
5 had spent at least one night in the house subsequent  
6 to her sister's death, which had occurred about six  
7 months [sic] prior to the burglary. The testimony  
8 was that she is, quote, working on it, unquote,  
9 about planning to move into the house at [REDACTED] Foreman  
10 Street. She said it's a slow progress, I know, and  
11 there's some hang-ups, but I want to be there; keep  
12 thinking maybe I'll feel her presence.

13 She's maintained at her own expense the  
14 electricity and water since her sister's death, she  
15 pays for those bills. She maintains the yard  
16 through the help of a neighbor who continues to cut  
17 it and keeps it maintained. She maintains and  
18 continues to get mail, she or her sister, there at  
19 that house, checks on the mail daily. She's stayed  
20 there one night since the sister's death. She  
21 maintains personal items of clothes at [REDACTED] Foreman  
22 Street. In response to cross-examination, she  
23 admitted that she had personal belongings in that  
24 house and she is still considering moving into the  
25 house.

1           So, as I said, at this stage of the game, it's  
2           the existence of the evidence, not the weight of the  
3           evidence. So I find that a jury -- it is a jury  
4           question as to whether or not the premises located  
5           at the address in question is, in fact, a dwelling  
6           or building. That will be a decision for the jury.  
7           I find there's evidence in the record that if they  
8           found she had an intent to return, if that's how  
9           they construe the evidence, that it could be a  
10          dwelling. If they find she does not have any intent  
11          to return, then it could be construed to be a  
12          building. I find that to be a jury question.

13           I will submit to the jury burglary first and  
14          the lesser included offense of burglary second, the  
15          distinction simply being whether it's a dwelling --  
16          the building is a dwelling or simply a building.  
17          And I will advise them accordingly. So motion for  
18          directed verdict is respectfully denied for those  
19          reasons and relying on the cases that I have cited.

20           MR. MCMILLIAN: Judge.

21           THE COURT: Yes.

22           MR. MCMILLIAN: If I may also make a motion  
23          with regard to the other charges. Taking the  
24          evidence in the light most favorable to the State,  
25          we'd also move for a directed verdict of not guilty

1 on the charges of possession of burglary tools and  
2 possession of stolen vehicle.

3 THE COURT: What's the basis for that?

4 MR. MCMILLIAN: I don't believe that there is  
5 sufficient evidence in the record, Judge, that he  
6 was in possession of the tool or that he had  
7 knowledge of -- that the vehicle was stolen.

8 THE COURT: Well, the vehicle was with a warm  
9 engine, had been camouflaged or painted or altered  
10 sitting in the driveway, he had the keys in his  
11 pocket, his jacket was found in the car with his  
12 billfold which contained his social security card  
13 and driver's license. So that's ample evidence that  
14 the jury could find that he was in possession of a  
15 stolen vehicle. And the guy testified -- the owner  
16 of the vehicle testified that it was taken out of  
17 his yard.

18 MR. MCMILLIAN: He testified that he had no  
19 idea who stole it some two weeks prior. Judge, you  
20 mentioned that he had the keys. Certainly the  
21 vehicle was camouflaged, but one may also view  
22 having the key as vehicle is not hot-wired, it's  
23 not -- I mean, usually people who have the keys have  
24 some sort of right to have the vehicle.

25 THE COURT: Well, people who leave their cars

1 in the yard with the keys in it, sometimes they get  
2 stolen. That may not be the smartest thing to do,  
3 but he certainly has the right to have his keys in  
4 the car.

5 There's ample evidence in the record, if they  
6 believe that, to convict him on the possession of  
7 burglary tools. My goodness, when they find him in  
8 the yard covered up with leaves just within a few  
9 feet of the back door of the house, there's a  
10 crowbar up underneath him. And, obviously, that  
11 could be viewed as being in possession of an object  
12 or a tool to commit a crime. And, obviously, they  
13 could find or believe the police officer who showed  
14 the picture of it being -- the crowbar being lined  
15 up with the pry marks on the back door. So  
16 respectfully denied.

17 MR. MCMILLIAN: Thank you, Your Honor.

18 THE COURT: All right. Mr. McCladdie, I need  
19 to inquire as to whether or not you plan to take the  
20 witness stand and testify in your own defense or  
21 whether or not you're going to exercise your right  
22 to remain silent. And before you answer that  
23 question, good morning. How are you?

24 THE DEFENDANT: Good morning.

25 THE COURT: Do you have any questions you need

1 to ask me about anything other than that?

2 THE DEFENDANT: No, sir.

3 THE COURT: Everything okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I just need to know so I can figure  
6 out where we're going on the rest of the trial,  
7 whether you want to testify or whether you're not  
8 going to testify.

9 THE DEFENDANT: No, sir. I don't want to  
10 testify.

11 THE COURT: Well, then you'll be entitled to my  
12 jury instruction about they cannot hold the fact  
13 that you didn't testify in any manner whatsoever.  
14 You'll hear that when I go through it. Thank you.

15 THE DEFENDANT: Thank you, sir.

16 THE COURT: All right. Jury charge, anything  
17 in particular either one of you want? I'm going to  
18 charge the lesser included offense of burglary  
19 second.

20 MR. MCMILLIAN: Judge, I provided the State  
21 with a copy of this with regard to the definition of  
22 dwelling.

23 THE COURT: All right. Well, the first  
24 paragraph is the same, the second paragraph is out  
25 of -- what's your take on that, Mrs. Hall?

1 MS. HALL: The State does not object to the  
2 proposed charge of burglary and dwelling.

3 THE COURT: All right. Anything else we need  
4 to charge?

5 MS. HALL: Your Honor, just the possession of  
6 tools capable of being used in a crime and  
7 possession of stolen vehicle less than 2,000. And,  
8 Judge, just to clarify, in charging the lesser  
9 included offense, we wanted to make sure that that  
10 was burglary second degree violent as opposed to  
11 nonviolent, based on this occurring in the  
12 nighttime.

13 MR. MCMILLIAN: Judge, our only objection to  
14 that would be referring to it as violent. Certainly  
15 don't have any problem with, obviously, charging  
16 burglary second, but referring to it as violent is  
17 prejudicial. The Court could certainly charge it as  
18 burg second, subparagraph B.

19 MS. HALL: Your Honor, so long as it's clear  
20 that the actual elements of the crime are burglary  
21 second degree violent and as long as it's clear on  
22 the verdict form which charge -- which subsection of  
23 burglary second it would be, that would be fine with  
24 the State.

25 THE COURT: Well, all I'd simply do on that

1 would be -- I would simply say if you find the State  
2 has failed to prove beyond a reasonable doubt that  
3 the defendant committed the offense of first degree  
4 burglary, you may consider whether the State has  
5 proved beyond a reasonable doubt that the defendant  
6 committed second degree burglary. Second degree  
7 burglary includes all of the elements of the first  
8 degree, except that the entry was into a building  
9 and not a dwelling. And I would define building as  
10 any structure, so forth and so on.

11 But I would not use the words violent crime. I  
12 would simply say burglary second with the  
13 understanding that if he's convicted, it's burglary  
14 second degree violent. Is that correct,  
15 Mr. McMillian?

16 MR. MCMILLIAN: Yes, sir, Your Honor. Our only  
17 objection would be referring to it as burglary  
18 second violent. And your instruction would remedy  
19 that.

20 THE COURT: Well, the instruction would not  
21 include violent, with the understanding if they  
22 convict him of burglary second degree is violent as  
23 opposed to nonviolent. Stipulate that?

24 MR. MCMILLIAN: Yes, sir, Your Honor. It would  
25 be pursuant to subsection B.

1 MS. HALL: That's fine with the State, Your  
2 Honor. And we could actually, on the verdict form,  
3 include which subsection of the burglary statute  
4 we're referring to, if we can't include the word  
5 violent on the verdict form.

6 THE COURT: I normally don't put the statute on  
7 there, I put it on the sentence sheet. If he's  
8 convicted of burglary second, we're all under the  
9 understanding, notwithstanding, it won't be charged  
10 to the jury as violent and it won't be on the  
11 verdict form as violent, but if he's convicted of  
12 burglary second, it is violent. Correct, by the  
13 State?

14 MS. HALL: Yes, sir, Your Honor.

15 THE COURT: Correct, by Mr. McMillian?

16 MR. MCMILLIAN: Yes, sir, Judge.

17 THE COURT: Anything else in particular?

18 MS. HALL: Nothing from the State, Your Honor.

19 THE COURT: All right. With the defendant not  
20 putting up any witnesses, they get the last  
21 argument. Everybody in agreement with that?

22 MS. HALL: Yes, Your Honor.

23 MR. MCMILLIAN: Certainly, Judge.

24 THE COURT: All right. Y'all ready to start?

25 MS. HALL: Yes, Your Honor.

1 MR. SLOCUM: Judge, we'll have demonstrative.  
2 Would you like us to go ahead and set that up?

3 THE COURT: Please.

4 THE COURT: Anything else before we bring the  
5 jury in?

6 MS. HALL: Nothing from the State, Your Honor.

7 MR. MCMILLIAN: Nothing from the Defense.

8 THE COURT: All right. Bring the jury in,  
9 please.

10 (The jury enters the courtroom at 9:55 AM.)

11 THE COURT: Good morning. Okay. Mr. Foreman,  
12 ladies and gentlemen, we had a few things we had to  
13 do this morning, so I'm sorry for the 30 minutes you  
14 had to wait. But we've completed all of the  
15 testimony now. There will be no more testimony.  
16 And then we had to talk about other things before we  
17 argue. That's what caused the delay. And I  
18 apologize.

19 We're now -- what's left are the final  
20 arguments, as I told you when we stopped yesterday.  
21 The State will go first, Mrs. Hall will present  
22 hers, and Mr. McMillian will go second. Please bear  
23 in mind that you've heard all of the evidence from  
24 which you'll make your decision. The arguments are  
25 simply how the lawyers perceive the evidence and

1        what they think it shows. Please listen carefully.

2                Once they've completed their arguments, I will  
3        instruct you or charge you on the law. That won't  
4        take very long, and then we'll be in a position to  
5        start deliberating. And it depends on what time  
6        we're at at that point as to whether you want to  
7        order some sandwiches. But it takes us about 45  
8        minutes to get everything here. So if you want to  
9        order and while you deliberating it will be sent in  
10       or however you want to do it. Fair enough? Okay.

11               Mrs. Hall.

12               MS. HALL: Thank you, Your Honor. May it  
13       please the Court.

14               THE COURT: Yes, ma'am.

15               MS. HALL: Mr. McMillian, Judge.

16               At the beginning of this case, Mr. McMillian  
17       asked you to close your eyes, use your imagination.  
18       But, ladies and gentlemen, you'd have to close your  
19       eyes to all this evidence to find William McCladdie  
20       not guilty. At this point in the trial, I get to  
21       talk to you about all of the evidence in this case.  
22       But after I sit down,        Mr. McMillian gets to get  
23       up and talk about the case. And I don't get to come  
24       back up before you, so I have to anticipate what Mr.  
25       McMillian might say and what his arguments are might

1 be.

2 Throughout this trial, Mr. McMillian put a lot  
3 of attention on the fact that law enforcement wasn't  
4 able to fingerprint the house. But you heard from  
5 Officer Hess, the resources weren't available for  
6 Jackson Police Department, they weren't able to get  
7 fingerprints, and fingerprints aren't done in every  
8 case. Just because this house wasn't fingerprinted  
9 doesn't mean William McCladdie is not guilty.

10 There was also a lot of questioning about how  
11 many people it would take to move a washer and  
12 dryer, how many people it would take to move a  
13 freezer. Ladies and gentlemen, if someone helped  
14 William McCladdie, that's also irrelevant today.  
15 What we're for today is the actions of William  
16 McCladdie. The person on trial today is William  
17 McCladdie.

18 This case can be boiled down to a few simple  
19 but profound facts. On the night of this burglary,  
20 around midnight, William McCladdie was found right  
21 outside the house, hiding in the bushes, and laying  
22 on top of a crowbar. And in his pocket was a key to  
23 a stolen vehicle that had been backed into the  
24 driveway. And in that stolen vehicle was William  
25 McCladdie's ID, William McCladdie's social security

1 card, and multiple items that had been stolen from  
2 inside that house, to include Margaret McDaniel and  
3 Evelyn Clark's checkbook, address [REDACTED] Forman street,  
4 to include mail for Margaret McDaniel at [REDACTED] Foreman  
5 Street..

6 So let's talk about each of the charges  
7 Mr. McCladdie faces today. We'll start with the  
8 possession of a stolen vehicle. The law says it's  
9 unlawful for someone to be in possession of a  
10 vehicle they know is stolen. And under the law  
11 there are multiple ways that someone can be in  
12 possession of something.

13 Obviously, William McCladdie can't hold a car  
14 in his hand. The law states that someone can be in  
15 constructive possession of an item. And  
16 constructive possession just means dominion and  
17 control over the car. William McCladdie had  
18 dominion and control over the car because he had the  
19 key in his pocket. He was the only one who could  
20 crank that car. You heard from Officer Mike Hess  
21 who said the hood of this car was still warm when he  
22 got there, someone had recently gotten out of that  
23 car. And whose ID was in the car? Whose social  
24 security card was in that car? Ladies and  
25 gentlemen, William McCladdie had possession of that

1 car.

2 Now, how do we know he knew it was stolen?  
3 Well, for starters, this car was backed into the  
4 driveway, which makes for an easy get-away if you're  
5 in a hurry, but it also keeps that license plate  
6 from view of the public street where law enforcement  
7 could run the tag and find out it's stolen. He was  
8 concealing the license plate because he knew it was  
9 stolen. And you heard from Officer Mike Hess about  
10 the over-spray on this car. This car was  
11 hand-spray-painted primer gray. Why would you spray  
12 paint a car unless you're trying to conceal the  
13 identity because it's been reported stolen?

14 And, ladies and gentlemen, if William McCladdie  
15 got this car from somebody else -- he didn't have to  
16 steal it himself. We don't have to prove that he  
17 stole it. But if you get into a car that's  
18 hand-spray-painted primer gray, this can that was  
19 found in the trunk, you know something is not right.

20 Ladies and gentlemen, I also ask that you take  
21 a look at these pictures of the car. You see all  
22 the stuff inside this car. There was no room for  
23 another person to come in this car. All of this  
24 stuff in this passenger's seat, all the shoes, that  
25 wasn't claimed by Ms. Clark or her grandson; this

1       stuff was already in the car. Where is another  
2       person going to fit in that car?

3               Possession of tools capable of being used in a  
4       crime. The law says it's unlawful for someone to be  
5       in possession of a tool that's commonly used in a  
6       burglary under circumstances showing an intent for  
7       it to be used in the commission of a crime. Well,  
8       ladies and gentlemen, William McCladdie was caught  
9       red-handed with that burglary tool. And you heard  
10      from multiple law enforcement officers, he was  
11      laying on the ground hovering over something,  
12      wouldn't show his hands. He was ordered to put his  
13      hands up, and he wouldn't put his hands up because  
14      he had a crowbar under him. He had possession of a  
15      crowbar, a burglary tool.

16             And we know his intent was to use it in the  
17      crime, because his intent had already been carried  
18      out. That crowbar that they found matched and lined  
19      up with the marks on the door frame where the house  
20      had been broken into. His intent had been carried  
21      out. William McCladdie is guilty of possession of  
22      burglary tools.

23             Now we're going to move on to burglary in the  
24      first degree. And I've written this out for you  
25      because there are multiple elements to burglary in

1 the first degree. Someone commits the crime of  
2 burglary in the first degree if they enter a  
3 dwelling without consent, with the intent to commit  
4 a crime in there, and the entering or remaining  
5 occurs in the nighttime. Well, there's no dispute  
6 that William McCladdie was found at this house just  
7 before -- well, it was reported that his car was  
8 reported there just before midnight. He was found  
9 sometime shortly before midnight. It had been  
10 nighttime for a long time at that point. This  
11 element is satisfied.

12 Intent to commit a crime. Ladies and  
13 gentlemen, you know that items were stolen from that  
14 house because items that were identified by  
15 Ms. Evelyn Clark and her grandson were found in the  
16 stolen vehicle. A larceny had already occurred, the  
17 items had already been taken, there was an intent to  
18 commit a crime. This element is also satisfied.

19 Without consent. You heard from Ms. Evelyn  
20 Clark and from her grandson, they didn't give  
21 permission for anybody to be in the house. They  
22 didn't know of anybody else who should have been in  
23 that house. And we know that house was entered  
24 without consent because there were pry marks on the  
25 door, the screens had been prayed off of the back

1 window, the screen on the back had been cracked, and  
2 someone had shattered the door on the side that had  
3 also been pried open. This house was entered  
4 without consent. This element is also satisfied.

5 So we move now to the dwelling. At the  
6 beginning of this trial, I told you Ms. Evelyn  
7 Clark, she didn't have to be in that house that  
8 night, she didn't have to be in that house the  
9 majority of the time. People can have more than one  
10 dwelling. A lot of people have vacation homes. If  
11 a house is burglarized when someone is not at their  
12 vacation home or their beach house, it's still a  
13 dwelling.

14 And the secondary house doesn't have to be a  
15 vacation home. My in-laws, for instance, they have  
16 a house in Jackson, that's where they raised their  
17 children, where they spent most of their adult life,  
18 but they bought a house in Edgefield, South  
19 Carolina. They fell in love with this house. After  
20 their kids were grown, they moved into the house in  
21 Edgefield, South Carolina.

22 But they still have that house in Jackson, it's  
23 fully furnished, the lights are on, the power is on.  
24 And they come to stay in that house in Jackson  
25 periodically because that's where their family is

1 at, that's where their grandson is at. They come to  
2 stay in that house periodically so they can be close  
3 to their family. If either of those houses are  
4 burglarized, regardless of where they're at, both of  
5 those houses are dwellings.

6 The statute for burglary defines a dwelling as  
7 a building, a house, an outhouse, a shed, a box  
8 where someone sleeps with the view to protect the  
9 property. Ladies and gentlemen, if a shed or a box  
10 where someone sleeps is a dwelling, this house, [REDACTED]  
11 Foreman Street, is certainly a dwelling. You heard  
12 from Ms. Evelyn Clark this house was still fully  
13 furnished, she paid for the lights and water to stay  
14 on, the yard was maintained, and this little  
15 77-year-old woman, she raked the yard at this house.  
16 She was at the house every single day, checking the  
17 mail, and she told you she had stayed the night, she  
18 slept in that house.

19 Ladies and gentlemen, this house is either a  
20 dwelling or it's just a building. If it's a  
21 dwelling, William is guilty of burglary in the first  
22 degree. But if this is just a building where no one  
23 sleeps, it's burglary in the second degree.

24 Ladies and gentlemen, Evelyn Clark slept in  
25 that house. That house was fully furnished, the

1        lights were on, she maintained that house. This  
2        element is also satisfied. This house is a  
3        dwelling.

4                At the beginning of this case I told you that  
5        the State, myself, Mr. Slocum, we had the burden of  
6        proving the defendant's guilt beyond a reasonable  
7        doubt. But that doesn't mean beyond all doubt.  
8        Reasonable doubt is the kind of doubt that would  
9        cause a reasonable person to hesitate to act. There  
10       are very few things in life that we know with  
11       absolute certainty. And that's not what the law  
12       requires. The law states that if after seeing all  
13       of the evidence, hearing the testimony, you're left  
14       firmly convinced of the defendant's guilt, we've met  
15       our burden and the defendant is guilty.

16               I'd ask that y'all go through all of this  
17       evidence, look through it; this checkbook, address  
18       [REDACTED] Foreman Street, it's got Margaret McDaniel's  
19       name on it, it's also got Evelyn Clark's name on it,  
20       because that house on [REDACTED] Foreman Street was also  
21       her dwelling.

22               In a few moments you're going to hear from  
23       Mr. McMillian, and it's his job to make you look at  
24       other things, to try and take the focus off the fact  
25       that William McCladdie was found outside this house.

1 on a crowbar. But I ask that you stay focused and  
2 not forget the important facts, the profound facts.  
3 William McCladdie was found right outside this  
4 house, hiding in the bushes, covered in leaves, and  
5 laying on top of a crowbar; he had a stolen car key  
6 in his pocket, and in that car was William  
7 McCladdie's ID, his social security card, and  
8 multiple items that Ms. Clark identified, that her  
9 grandson identified as having come from that house.

10 Ladies and gentlemen, on the night of February  
11 20th, 2015, William McCladdie didn't just steal  
12 stuff from Evelyn Clark; he stole the only thing she  
13 had left of her sister, and that was the peace and  
14 security she felt when she was in the house that her  
15 sister left her.

16 William McCladdie is guilty of burglary in the  
17 first degree. William McCladdie is guilty of  
18 possession of tools capable of being used in a  
19 crime, and William McCladdie is guilty of possession  
20 of a stolen vehicle. Thank you.

21 THE COURT: Mr. McMillian.

22 MR. MCMILLIAN: Your Honor, Ms. Hall.

23 Ladies and gentlemen, we started yesterday and  
24 I reminded you of what your sworn oath was, what you  
25 promised me, Mr. McCladdie, the Judge and, whether

1        they want to admit it or not, what you promised the  
2        State; that you would look at all of the evidence,  
3        or the lack thereof, and make a decision. Has the  
4        State met their burden? That scale is tipped. The  
5        scales of justice are always tipped in the  
6        defendant's favor. And they're not tipped a little  
7        bit. Remember that. They're tipped a lot. The  
8        State's burden is heavy.

9        Ladies and gentlemen, the State entered this  
10       picture of [REDACTED] Foreman Street, a little house in  
11       downtown Jackson. Ms. Evelyn Clark sat right here,  
12       sweet little lady, and she told you that she lived  
13       on First Street, that her sister passed away six  
14       weeks prior, six weeks. Is it odd that Ms. Clark  
15       kept paying the light bill or the power bill? No.  
16       To turn it back on, there's a fee, I'm sure.

17       The important thing to consider: Did she live  
18       there? Was she planning on returning? How many  
19       nights did she stay? One night in six weeks.  
20       Bigger than that, ladies and gentlemen, she sat  
21       right here and told you that she still, to this day,  
22       was not sure she wanted to live at [REDACTED] Foreman  
23       Street. Ladies and gentlemen, what makes a dwelling  
24       a dwelling is the intent to return. And she didn't  
25       have it, and she doesn't have it now.

1           The State made a big deal about the fact the  
2       Ms. Clark's name was on this lady's checkbook. And  
3       I don't know about y'all, but my mother's name is on  
4       my grandmother's checkbook. It's because things  
5       seed through the courts different ways. It doesn't  
6       mean she lived there. Did the State provide any  
7       mail that showed that she got mail there; a power  
8       bill, a light bill showing that they were even in  
9       her name? Nope. They simply asked, did you keep  
10      paying the bill?

11           You know, my granddad has been dead since 1991.  
12      And when I return home to Union, South Carolina, I  
13      stay at my grandma's house with her. And I'll check  
14      her mail for her because it's out by the highway and  
15      she doesn't get around real well. You know whose  
16      name that light bill and the water bill are still  
17      in? Everett Hank, my grandfather, some 25 years  
18      later. He doesn't live there anymore.

19           Ladies and gentlemen, before we even get to  
20      whether this is burglary in the first degree or  
21      burglary in the second degree, you have to determine  
22      that he did this; that he entered a building or a  
23      dwelling, not that he pried on the outside of the  
24      door, not that the windows were broken, not that the  
25      screens were taken out. They have to convince you )

1       beyond a reasonable doubt that he entered.

2               Officer Hess sat up here and Officer Hess  
3       entered a whole bunch of pictures. And Officer Hess  
4       told you that he found several items outside that  
5       came from inside, and that he tested them -- or he  
6       tested them for fingerprints or he sent them to be  
7       tested. Ladies and gentlemen, he admitted to me and  
8       to y'all, never checked that doorway because the  
9       resources weren't available; never checked the glass  
10      door that was there, the handle, the glass, the  
11      doorknob, the shattered window, nothing.

12             Ladies and gentlemen, he said that as he and an  
13      Aiken County Sheriff's deputy cleared the house,  
14      there was a freezer on the porch and there was a  
15      removed screen. He didn't test any of those either  
16      because the resources weren't available. He didn't  
17      test a freezer that had very obviously been moved.  
18      I don't know about y'all, but I've moved large  
19      furniture before, and you put big, oily handprints  
20      on large furniture when you have to spread your  
21      fingers and lift with your legs. But he didn't test  
22      them because the resource s weren't available.

23             Ladies and gentlemen, he told you before backup  
24      got there, he secured the residence, he went around  
25      and looked at all the different stuff, and that he

1 came to the front door and that he couldn't get in,  
2 but he couldn't tell you that door was shut. And on  
3 redirect he said, well, I shined my flashlight and  
4 it looked shut. As he went back through the house,  
5 ladies and gentlemen, this door was open. If you  
6 accept his story that that door was secure, the only  
7 way somebody left that house was through this door.

8 I want y'all to break that down and think about  
9 it with me. How do you -- it seems innocuous. But  
10 think about the little steps that you take to walk  
11 out the door, much less the little steps you take to  
12 walk out the door if you think the police are there.  
13 The shades, maybe you push them open and touch the  
14 window to look and see if anybody is there. You  
15 have to palm that doorknob. You have to unlock it,  
16 palm the doorknob, and open it, and then you have to  
17 push the screen door handle. Maybe you touched the  
18 glass. Ladies and gentlemen, what's more, this  
19 little house [REDACTED] Foreman Street in Jackson has  
20 railings. Did anybody even look? The resources  
21 weren't available.

22 Ladies and gentlemen, the resources aren't  
23 available is something you hear in city hall  
24 meetings when you're talking about the money, time,  
25 expenses. The resources weren't available is not a

1 reason you should accept when a man's life is in the  
2 balance. It's just not. It's just not.

3 Now, regarding the car -- and y'all bear with  
4 me just a minute, I'm kind of shuffling through  
5 these. The State had Mr. Ayers come up here and  
6 testify about his car and that it was missing, and  
7 that it went missing on February 8th, a little  
8 Nissan Altima. And he told you that that car was  
9 tan, I believe, the last time he saw it in Augusta,  
10 Georgia. I don't know exactly how far his house is  
11 or how the car got from there to here. We've never  
12 offered anything on that. But just that he waited a  
13 couple days because he wasn't sure if he left it  
14 somewhere or who knows, needed to call his dad or  
15 friends. We don't know. He doesn't remember.  
16 Maybe they had permission.

17 I'll tell you one thing: Whoever left had the  
18 key. He explained that a ways that the key was just  
19 up here because it was broken. That's a perfectly  
20 reasonable explanation. But let's just say somebody  
21 brings you a car and they've got the key. How often  
22 do you see that? Usually people who have keys have  
23 permission to be in use of the car. Would it be  
24 reasonable for him to think he -- whoever had this  
25 car had permission? Maybe.

1           Have they convinced you that he knew this car  
2 was stolen? Mike Hess got up here and gave a great  
3 speech about over-spray and -- I think this is a  
4 prime example. There's some paint. Who knows? Who  
5 knows? I only offer that, ladies and gentlemen,  
6 because we can't be sure.

7           Ms. Hall talked kind of briefly about what it  
8 meant to be in possession of burglary tools. And  
9 the testimony was that they found him on top of a  
10 pry bar. Was it a burglary tool? The only evidence  
11 we have, if you choose to accept it -- frankly, the  
12 best picture we have, State's Exhibit 17. I think  
13 there were two, but this one actually puts the pry  
14 bar up next to it. If you believe the story that he  
15 had a tool -- but they haven't shown you any intent  
16 to use it, they didn't give you any evidence that he  
17 was the one using this door. They want you to use  
18 your common sense. And you know why? Because the  
19 resources weren't available. Thank you.

20           THE COURT: Mr. Foreman, ladies and gentlemen,  
21 my charge or instructions are about 10 or 15  
22 minutes. Anybody need a bathroom break or are we  
23 okay? Everybody fine?

24           Okay. First of all, let me remind you, the  
25 fact, in this case, that the defendant has been

1 arrested, charged, and indicted, that is not  
2 evidence in the case and cannot be considered by you  
3 as evidence of guilt in the case, nor does it create  
4 any presumptions of guilt or inference of guilt.

5 The indictments are simply the formal instruments by  
6 way this case comes into the courtroom.

7 There are three indictments in the case;  
8 burglary first, possession of burglary tools, and  
9 possession of a stolen vehicle. Each separate  
10 indictment is a separate and distinct offense, and  
11 you must decide each indictment separately on the  
12 evidence applicable to it, uninfluenced by your  
13 decision as to any of the other indictments.

14 You'll have three verdict forms. You'll be  
15 asked to consider each one of those separate and  
16 apart from the other. He may be convicted on one  
17 and acquitted on one, convicted on two, acquitted on  
18 one, any combination. So found not guilty on all  
19 three, found guilty on all three, it's just whatever  
20 combination. You'll have to write a separate  
21 verdict form to each one, and you'll have to decide  
22 each one of those separate and apart from the  
23 others. And I'll give you a verdict form at the  
24 conclusion for you to do that.

25 To these three indictments, the defendant has

1       pled not guilty. And a plea of not guilty obviously  
2       puts the burden on the State of South Carolina to  
3       prove his guilt to you beyond a reasonable doubt. A  
4       person charged with committing a criminal offense in  
5       our state is never required to prove himself  
6       innocent. I charge you that it is an important  
7       constitutional rule of law that the defendant in a  
8       criminal trial, no matter how serious the crimes may  
9       be and the charges may be, will always be presumed  
10      to be innocent of the charges for which the  
11      indictments were issued, unless guilt has been  
12      proven by evidence satisfying you of that guilt  
13      beyond a reasonable doubt.

14           And the presumption of innocence does not end  
15      when you start your deliberations, but it stays with  
16      the defendant throughout the trial until you reach a  
17      verdict of guilt based on evidence satisfying you of  
18      that guilt beyond a reasonable doubt. The  
19      presumption of innocence is not a mere legal theory  
20      or just a legal phrase. As I said, it is a  
21      substantial constitutional right to which every  
22      defendant is entitled, unless you the jury are  
23      satisfied from the evidence of the defendant's guilt  
24      beyond a reasonable doubt.

25           Now, our Supreme Court has defined on many

1 occasions the term reasonable doubt, and they define  
2 it basically two ways. They say a reasonable doubt  
3 is the kind of doubt that would cause a reasonable  
4 person to hesitate to act. It's the kind of doubt  
5 that would cause a reasonable person to hesitate to  
6 act. It's also been said that reasonable doubt is  
7 proof that leaves you firmly convinced of the  
8 defendant's guilt. There are very few things in  
9 this world that we know with absolute certainty.  
10 And in criminal cases, the law does not require  
11 proof that overcomes every possible doubt.

12 If, based on your consideration of the  
13 evidence, you're firmly convinced that the defendant  
14 is guilty of the crimes charged, then you must find  
15 him guilty; if, on the other hand, you think there's  
16 a real possibility that the defendant is not guilty,  
17 then you must give him the benefit of the doubt and  
18 find him not guilty.

19 Let me remind you that during the trial of this  
20 case you and I have had certain duties to perform.  
21 My job has been to rule on the admissibility of  
22 evidence. And there were very few things that were  
23 objected to during the trial, so all that evidence  
24 has come in to the trial of the case. My other  
25 responsibility is to charge and instruct you on the

1 law. And, as I told you in the beginning, if you  
2 have some preconceived idea about what the law is or  
3 should be and it doesn't agree with what I say,  
4 please set that aside and accept the law as I give  
5 it to you, the law of the state. So I'm the judge  
6 of the law.

7 As I told you earlier, the most important  
8 judges in the courtroom are you. The 12 of you  
9 collectively acting as one, you're the judges of the  
10 facts in this case. So it's up to you to determine  
11 and judge what the true facts are. So if at any  
12 time during the trial of the case you've looked over  
13 here at me and I've smiled or frowned or yawned or  
14 made some facial expression, chewed on my glasses,  
15 whatever, and you think I've got some opinion about  
16 the facts, please set that aside. I cannot have any  
17 opinion about the facts in the case. I try cases  
18 all over the state, and I'm not allowed to have any  
19 opinion about the facts. So please don't infer  
20 anything from what I may have done, said, or not did  
21 that I have any opinion about the facts. That is  
22 your job and your job solely. You are the judges of  
23 the facts.

24 And necessarily by being the judges of the  
25 facts, you have to determine the credibility of the

1 witnesses who have testified in this case.  
2 Credibility simply means believability. It becomes  
3 your duty as jurors to analyze and evaluate the  
4 evidence and determine which evidence convinces you  
5 of its truth. In determining the believability of  
6 the witnesses who have testified in the case, you  
7 may believe one witness over several or several  
8 witnesses over one, you can believe a little bit  
9 about what somebody says and disregard the rest, a  
10 part, not the rest, you can disbelieve everything  
11 somebody says, believe everything somebody says. In  
12 other words, you have the right to determine what  
13 the true facts are by judging the credibility.

14 You can consider whether any witness has  
15 exhibited to you any interest, bias, prejudice or  
16 other motive in the case, and you may consider the  
17 appearance and manner of the witness while on the  
18 witness stand. As I said earlier, please use your  
19 everyday common sense dealing with people to  
20 determine what the true facts are. And your duty  
21 is, once you determine what the true facts are, then  
22 you take those true facts and apply it to the law as  
23 I give it to you, and then you determine whether or  
24 not the State has proven its case to you beyond a  
25 reasonable doubt, and then you'll be in a position

1 to render a true and just verdict. Verdict simply  
2 means to speak the truth.

3 Let me further instruct and emphasize to you  
4 that there's an important constitutional right that  
5 in a trial such as this or any trial where the  
6 defendant does not testify, he has the absolute  
7 right, constitutional right to remain silent. The  
8 fact that he's remained silent and did not testify  
9 is not, is not, not, a fact to be considered by you  
10 at all in your deliberation and in your  
11 consideration on the question of the guilt or  
12 innocence of the defendant. It must not be  
13 considered by you in any manner whatsoever.

14 As I said, he has the constitutional right to  
15 remain silent, and the assertion of this  
16 constitutional right must not be considered by you  
17 in your deliberations. Under your oath, you're to  
18 draw no conclusion whatsoever of the fact that the  
19 defendant in this case did not testify. The fact  
20 that he did not testify should not even be discussed  
21 in the jury room.

22 Burden of proof, as I've stated to you, is on  
23 the State. The defendant is not required to prove  
24 his innocence. The burden remains on the State to  
25 prove guilt beyond a reasonable doubt.

1 Now, ladies and gentlemen, that is general law  
2 dealing with criminal cases that we charge all over  
3 the state dealing with all criminal cases. It  
4 applies to all crimes, general -- constitutional,  
5 general law. Let's now talk about the specific  
6 indictments in this case. I'll start with burglary.

7 In our state, burglary is divided in degrees.  
8 And the defendant in this case is charged with  
9 burglary in the first degree. The State must first  
10 prove beyond a reasonable doubt that the defendant  
11 entered a dwelling without consent. Prove to you  
12 beyond a reasonable doubt that he entered a dwelling  
13 without consent.

14 Now, a dwelling is defined in our law as any  
15 building or portion of a building in which a person  
16 ordinarily sleeps. A building is a dwelling even if  
17 the occupants are temporarily absent from the  
18 building. Now, a dwelling is further defined in our  
19 statutes as any house or outhouse or apartment or  
20 building, shed, or box in which there sleeps a  
21 person -- in which there sleeps a person who lodges  
22 there with a view to the protection of that  
23 property. It's further defined as the living  
24 quarters of a building used or normally used for  
25 living or sleeping or lodging by a person.

1           In order for a building to be considered a  
2 dwelling, the building must have an identifiable  
3 occupant sleeping or residing there. While the  
4 temporary absence of occupants will not prevent a  
5 residence from becoming the subject of a burglary,  
6 it is required that the occupant leave with the  
7 intention of returning in order for the building to  
8 be a dwelling, thus the test of whether a building  
9 is a dwelling turns on whether the identified  
10 occupant has left with the intention to return. If  
11 the identifiable occupant or occupant has left with  
12 no intention to return, then the building not a  
13 dwelling. And I'll tell you what the distinction of  
14 that is in just a few minutes.

15           But to prove burglary in the first degree, the  
16 State must prove to you beyond a reasonable doubt  
17 that the defendant entered a dwelling without  
18 consent. And I've defined to you what a dwelling  
19 is.

20           Second, the State must prove to you beyond a  
21 reasonable doubt that the defendant intended to  
22 commit a crime at the time of the entry. Mere entry  
23 into a dwelling without consent is not burglary. If  
24 the intent to commit a crime is formed after the  
25 entry, it is not a burglary; on the other hand, if

1 the defendant intended to commit a crime at the time  
2 of the entry, it's a burglary.

3 And, finally, the third element the State must  
4 prove to you beyond a reasonable doubt is that the  
5 defendant entered or remained in the dwelling in the  
6 nighttime. Nighttime is exactly what it is, the  
7 period between sunset and sunrise during which there--  
8 is not enough daylight to recognize a person's face  
9 except by artificial light or moonlight.

10 Now, I told you we have different degrees of  
11 burglary. We also have what's called a lesser  
12 included offense of burglary; it's second degree  
13 burglary. And if you find that the State has failed  
14 to prove beyond a reasonable doubt that he committed  
15 first degree burglary, then you must consider  
16 whether the State has proved beyond a reasonable  
17 doubt that the defendant committed second degree  
18 burglary.

19 Second degree burglary includes all of the  
20 elements of first degree burglary, except that the  
21 entry was into a building, not a dwelling. A  
22 dwelling is where someone sleeps, and a building is  
23 defined by our statutes as any structure or place  
24 where people assemble for the purpose of business,  
25 government, education, religion, entertainment,

1 public transportation or public use or where goods  
2 are stored. In other words, it's a building where  
3 people don't normally sleep, that's the distinction,  
4 and return to the place where you sleep.

5 So if you find that the place that was entered  
6 was not a dwelling, then you must consider whether  
7 it was a building and whether he entered without  
8 consent and with intent to commit a crime therein in  
9 the nighttime. Those are the two distinctions  
10 between first and second degree burglary.

11 Now let's turn to the other two indictments.  
12 The other indictment that I -- don't put any  
13 significance in the way I'm reading these; one's got  
14 to come before the other one. But let's talk about  
15 possession of a stolen vehicle. He's charged with  
16 possession of a stolen vehicle in which the value of  
17 the vehicle is less than \$2,000.

18 The State must prove to you beyond a reasonable  
19 doubt that the defendant either received or  
20 possessed or concealed or sold or disposed of a  
21 vehicle knowing it to be stolen or converting it  
22 under circumstances constituting a crime. The State  
23 must also prove beyond a reasonable doubt that the  
24 value of the vehicle was less than \$2,000. So they  
25 must prove to you beyond a reasonable doubt that the

1       defendant received, possessed, concealed, sold, or  
2       disposed of a vehicle knowing it to be stolen.

3               And the other indictment is for the offense of  
4       possession of tools capable of being used in a  
5       crime. That's set out in section 16-11-20. In  
6       order to prove that, the State must prove to you  
7       beyond a reasonable doubt that the defendant  
8       possessed any implement or thing adapted, designed,  
9       or commonly used for the commission of burglary,  
10      stealing, safe-cracking, or other crimes under  
11      circumstances evincing and attempt to use, employ,  
12      or allow the same to be used or employed in the  
13      commission of a crime or knowing that the same or  
14      intended it to be so used. That's exactly what it  
15      says; it's being in possession of a tool that's used  
16      to commit a crime. The State must prove that to you  
17      beyond a reasonable doubt.

18             Now, Mr. Foreman, ladies and gentlemen of the  
19      jury, your verdict has to be unanimous on all three  
20      indictments. So you'll have to consider each one of  
21      them separate and apart. And you'll have a verdict  
22      form for possession of a stolen vehicle, possession  
23      of burglary tools, and the burglary. The possession  
24      of the burglary tool s and the possession of a  
25      stolen vehicle is pretty simple, it's either not

1 guilty or guilty. The verdict has to be unanimous,  
2 all 12 of you have to agree on each indictment.

3 Now, on the burglary, that's a little different  
4 because you will first consider burglary in the  
5 first degree to prove -- to find out whether or not  
6 the State has proved to you beyond a reasonable  
7 doubt if he entered a dwelling in the nighttime  
8 without consent with the intent to commit a crime  
9 therein. Dwelling, I've defined that for you.

10 If you fail to -- find that the State has  
11 failed to prove any of those elements of the crime,  
12 then you would consider whether or not he committed  
13 the offense of burglary in the second degree, and  
14 the distinction being building versus dwelling. If  
15 you find that he didn't enter the building or  
16 dwelling at all or didn't enter it with intent to  
17 commit a crime or it wasn't in the nighttime, then,  
18 obviously, you find him not guilty.

19 But if you find that dwelling versus building,  
20 you find him not guilty of burglary first, you have  
21 to consider burglary second. If you find him guilty  
22 of burglary first, then you don't consider the  
23 burglary second. That make sense? Okay.

24 Now, couple last things: As I said, the  
25 verdict has to be unanimous, all 12 of you have to

1       agree. We're not here to punish any enemies or  
2       reward any friends. Your civic duty is to go back  
3       and consider the evidence, deliberate on the  
4       evidence, determine what testimony convinces you of  
5       its truth, apply those true facts to the law as I've  
6       given it to you to determine whether or not the  
7       State has proven their case to you beyond a  
8       reasonable doubt. Once you reach that decision,  
9       mark the appropriate checkmarks, sign it, knock on  
10      the door, Mr. Whittle will tell me when y'all are  
11      ready to come out.

12       Sometimes jurors have questions, that's not  
13      usual. And the protocol is this: If you do have a  
14      question about something, write it out on a piece of  
15      paper or legal pad, knock on the door, and he'll  
16      send it to me. Sometimes I can answer it, sometimes  
17      I can't. It just depends on what the question is.  
18      But you'll have a response back one way or the  
19      other.

20       I'll ask that you to return to your jury room.  
21      It's 11:00. You make the choice, Mr. Foreman, after  
22      talking to your fellow members about what you want  
23      to do about lunch. As I said, it takes about an  
24      hour to get here.

25       Don't start deliberating quite yet. I have to

1 do two things; I have to ask the lawyers if I've  
2 left anything out, and then I have to gather up all  
3 of the evidence. We'll send the evidence back in  
4 the jury room along with the three verdict forms.  
5 Once the bailiff brings the verdict forms and the  
6 evidence to you, then you can start deliberating.  
7 It shouldn't be but about two or three minutes, five  
8 at the most. Okay. Separate my alternates, please.  
9 I'll send this all back to you in just a few  
10 minutes.

11 Mr. Foreman, if y'all want to order lunch, you  
12 need to do that right out the chute. And you can  
13 deliberate shortly or long and wait for your lunch  
14 to get here or however you want to do it.

15 THE FOREMAN: Yes, sir.

16 (The jury exits the courtroom at 10:50 AM.)

17 THE COURT: All right. Any objections,  
18 requested additions or deletions to the charge by  
19 the State?

20 MS. HALL: Your Honor, the only thing that I  
21 noticed that wasn't part of your charge was the  
22 instruction on direct and circumstantial evidence.  
23 I thought that was part of your general charge, and  
24 that's why it was not specifically requested.

25 THE COURT: Okay. I'll stand by it.

1 MR. MCMILLIAN: Judge, I don't have anything to  
2 add.

3 THE COURT: Thank you.

4 All right. Y'all please come up and review the  
5 exhibits to make sure we have everything. You know  
6 we had the agreement that we were going to send the  
7 candelabra and the lamp back and take out that  
8 picture 59, I think. Make sure we do that, review  
9 the verdict form, please.

10 (Brief pause in the proceedings.)

11 THE COURT: Let the record reflect that both  
12 the State and Defense have reviewed all exhibits,  
13 they're in order; they've reviewed all three verdict  
14 forms, have no objections. Is that correct,  
15 Mrs. Hall?

16 MS. HALL: Correct, Your Honor.

17 THE COURT: Mr. McMillian?

18 MR. MCMILLIAN: Yes, sir, Your Honor.

19 THE COURT: All right. It's 10:58. We'll  
20 stand at ease.

21 (The jury begins deliberations at 10:58 AM.)

22 THE COURT: Mr. McMillian, Mr. Slocum, look  
23 here. Any objection to this? I received a note  
24 from the jury: Can we get jury instructions in  
25 written form? I shared this with both counsel. My

1 response is: No. I can reread the charge if you  
2 need me to.

3 Any objection to that by the State?

4 MR. SLOCUM: Nothing from the State.

5 THE COURT: By the Defense?

6 MR. MCMILLIAN: Nothing by the Defense.

7 (Court's Exhibit No. 1 marked for  
8 identification.)

9 (The jury continues deliberations at 11:32 AM.)

10 THE COURT: All right. Next question: Could  
11 we please have the definition of a dwelling versus a  
12 building in writing, two definitions. My response:  
13 I can only recharge; I cannot provide these  
14 definitions in written form.

15 Any objection by the State?

16 MS. HALL: Nothing from the State.

17 THE COURT: By the Defendant?

18 MR. MCMILLIAN: None from the Defense, Your  
19 Honor.

20 (Court's Exhibit No. 2 marked for  
21 identification.)

22 (The jury continues deliberations at 11:37 AM.)

23 THE COURT: We have another one. The question  
24 is: Was the bracelet found with the crowbar stolen  
25 from the house or was it stolen by the suspect? My

1           answer was: I can't answer this question.

2           MS. HALL: No objection from the State.

3           MR. MCMILLIAN: Nothing from the, Defense,  
4           Judge.

5           (Court's Exhibit No. 3 marked for  
6           identification.)

7           (The jury continues deliberations at 11:52 AM.)

8           THE COURT: Is the State ready to receive the  
9           verdict?

10          MS. HALL: Yes, Your Honor.

11          THE COURT: Mr. McMillian, are you ready?

12          MR. MCMILLIAN: Yes, sir, Judge.

13          THE COURT: All right. Bring the jury in,  
14          please.

15          (The jury enters the courtroom at 1:18 PM.)

16          THE COURT: Mr. Foreman, have y'all reached a  
17          verdict?

18          THE FOREMAN: Yes, Your Honor.

19          THE COURT: Pass it to the bailiff, please.

20          Thank you.

21          All right. Stand up please, Mr. McCladdie.

22          THE CLERK: Your Honor, we have the State of  
23          South Carolina vs. William Herbert McCladdie.

24          Indictment 15-GS-02-01105, as to the offense of  
25          possession of stolen vehicle, we the jury find the

1 defendant guilty.

2 Indictment 15-GS-02-01104, as to the offense of  
3 possession of implements capable of being used in a  
4 crime, we the jury find the defendant guilty.

5 Indictment 15-GS-02-01103, as to the offense of  
6 burglary in the first degree, we the jury find the  
7 defendant guilty.

8 All of them signed by Foreman Michael Fowler,  
9 dated July 8th, 2015.

10 Mr. Foreman, ladies and gentlemen of the petit  
11 jury, if this is your verdict, please indicate by  
12 the raising of your right hand.

13 THE COURT: Let the record reflect all have  
14 raised their hand.

15 Anything else for the jury before I release  
16 them, by the State?

17 MS. HALL: Nothing from the State, Your Honor.

18 MR. MCMILLIAN: Nothing, Judge.

19 THE COURT: Mr. Foreman, ladies and gentlemen  
20 of the jury, I can't thank you enough. It was a  
21 short trial, but y'all have paid wonderful  
22 attention, and I've enjoyed having you. I will now  
23 excuse you for the balance of the week and you'll be  
24 exempt for three years.

25 It's an important civic duty. You know, when

1 someone is accused of something, we don't have a  
2 one-man dictator or a firing squad, we have 12  
3 citizens in the community who listen to everything  
4 and make a decision. It's the best judicial legal  
5 system that we have in the world, and I appreciate  
6 y'all participating in it. Y'all did a wonderful  
7 job, and I agree with your verdict. If anyone needs  
8 a work excuse -- nobody needs a work excuse. The  
9 clerk's office will be mailing out checks in the  
10 next day or two; it's not large, but it's a little  
11 something. I'm going to excuse you now. Have a  
12 wonderful summer.

13 (The jury is excused at 1:22 PM.)

14 THE COURT: Okay. We'll delay sentencing until  
15 2:15.

16 (Trial in recess at 1:22 PM.)

17 THE COURT: All right. We're back on the  
18 record with the State vs. William Herbert McCladdie  
19 for sentencing. The jury found him guilty on all  
20 three indictments; burglary in the first degree,  
21 possession of a stolen vehicle enhanced, and  
22 possession of burglary tools.

23 Ms. Hall, anything we need to add to what has  
24 already transpired other than prior record?

25 MS. HALL: Just his prior record. The victim,

1 Ms. Evelyn Clark, is present in court today and  
2 would like to address the Court.

3 THE COURT: Okay. Prior record, please?

4 MS. HALL: 1998, possession of marijuana; 2007,  
5 theft by taking --

6 THE COURT: Theft by taking.

7 MS. HALL: -- out of Georgia. Yes, Your Honor.  
8 2008, obstruction of law enforcement officers; 2012,  
9 possession of cocaine and two counts of possession  
10 of marijuana second or subsequent offenses; 2012,  
11 out of Ohio, a theft without consent; 2013, out of  
12 Ohio, another misdemeanor theft, and in January of  
13 this year, a false information to police.

14 THE COURT: So three thefts, two of them were  
15 misdemeanors. Is that like shoplifting or what is  
16 that?

17 MS. HALL: From looking at the charging  
18 documents from the other states, it appears that at  
19 least two of them were shoplifting, and it's not  
20 clear what the other one was.

21 THE COURT: Do you know the disposition of the  
22 one from '07 was.

23 MS. HALL: A \$400 fine, one year probation, and  
24 community service with restitution.

25 THE COURT: Sounds like a petit larceny or --

1       so, really, no major record other than maybe, I  
2       guess, the drug cases.

3       All right. Mr. McMillian.

4       MR. MCMILLIAN: Thank you, Your Honor.

5       Mr. McCladdie is -- I have 46, but I believe he had  
6       a recent birthday. Right, Will?

7       THE DEFENDANT: October.

8       MR. MCMILLIAN: He's about to be 47, Your  
9       Honor. He's not originally from Aiken County, but  
10      he moved here with his mom to North Augusta some  
11      time ago. Judge, he has a CDL, he's an  
12      over-the-road truck driver by trade. He tells me  
13      that he came off the road sometime back to help with  
14      his mom, to take care of his mom.

15      His mom and a friend of hers have been here in  
16      court for the balance of the trial. Judge, he has a  
17      good family support system. I think his brothers  
18      came to his preliminary hearing.

19      In light of his, with what we do, Judge,  
20      relatively minimal record, we're asking the Court to  
21      consider the minimum sentence and run it concurrent.

22      THE COURT: Well, he realizes it's an  
23      85-percent sentence.

24      MR. MCMILLIAN: He does, Judge. And he and I  
25      discussed that in the back.

1 THE COURT: Mr. McCladdie, anything you want to  
2 tell me?

3 THE DEFENDANT: No, sir.

4 THE COURT: You said Ms. Clark wanted to speak?  
5 She can come on up.

6 MS. CLARK: Your Honor, I just wanted to come  
7 and say that this has renewed my faith, my hope, and  
8 my strength. And I want to thank all the people who  
9 worked so diligently, so hard on this case. I know  
10 how hard you all worked, and it means so much to me.  
11 I'm so grateful.

12 I hope that Mr. McCladdie will see the error of  
13 his ways, he'll have time to think about it, and  
14 turn his life over to God, and God will make a  
15 change in his life, because he will.

16 THE COURT: You're very kind. You know who did  
17 the most work for you?

18 MS. CLARK: I'm sorry?

19 THE COURT: Do you know who did the most work  
20 for you?

21 MS. CLARK: I can't hear him.

22 MS. HALL: He said, do you know who did the  
23 most work for you?

24 MS. CLARK: No, I don't.

25 THE COURT: She's standing right there.

1 MS. CLARK: I thought so. Yes, I do. Thank  
2 you all so much. I owe you my life.

3 THE COURT: Thank you for your forgiveness too.

4 MS. CLARK: Thank you.

5 THE COURT: You're welcome.

6 MR. MCMILLIAN: Judge, I would just add,  
7 Ms. Alves told me that his mother would like to  
8 speak on his behalf if you'd hear from her.

9 THE COURT: Yes, sir.

10 MR. MCMILLIAN: Ms. McCladdie, if you would  
11 come up and stand right here.

12 THE COURT: Yes, ma'am?

13 MS. MCCLADDIE: First I would just like to say  
14 I'm sorry for the inconvenience that has been caused  
15 due to my son since he's been charged guilty of  
16 these crimes that I'm -- this is not his character.  
17 That's number one. And I just -- it's hard for me  
18 to believe it, but it's been done, so I have to go  
19 along with it.

20 Prior to this, him being arrested on February  
21 21st, I think it was, he was left beat up so bad,  
22 left for dead back in January -- I mean, in  
23 December. And it's just been like a cycle with him.  
24 But --

25 THE COURT: What happened with that? What

1 caused that?

2 MS. MCCLADDIE: He was working and he got  
3 robbed. He got jumped on, somebody beat him up real  
4 bad and just left him for dead. Somebody just  
5 happened to see the truck. He was cutting grass and  
6 somebody just happened to see the truck and went to  
7 the truck and find him in there. But ever since  
8 then, it's kind of been a cycle with him.

9 But regardless of the circumstances, sir, I ask  
10 for lenience for my son. He's my son and I love  
11 him, regardless of the circumstances.

12 THE COURT: Nobody loves their children like  
13 their mama.

14 MS. MCCLADDIE: Thank you.

15 THE COURT: And I'll be lenient.

16 All right. Mr. McCladdie, the sentence of the  
17 Court on the burglary first is that you be committed  
18 to the state department of corrections for a period  
19 of 15 years. That's the minimum under the statute,  
20 minimum the law allows me to give. I think we  
21 discussed all of that a couple days ago.

22 On the possession of the vehicle, that's a  
23 ten-year sentence; possession of the burglary tools,  
24 that's a five-year sentence. They'll all run  
25 concurrent. You'll be given credit for the time

1 you've served to date. Good luck to you.

2 MS. HALL: Thank you, Your Honor.

3 MR. SLOCUM: Thank you, Your Honor.

4 MR. MCMILLIAN: Judge, may we approach?

5 THE COURT: Yes.

6 (Sidebar conference.)

7 THE COURT: Mr. McMillian, I'll give you  
8 whatever time the rules allow to file any posttrial  
9 motions.

10 MR. MCMILLIAN: Thank you, Your Honor.

11 THE COURT: You'll be protected.

12 -- END OF TRANSCRIPT OF RECORD --

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 7th and 8th days of July, 2015.

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

March 18, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon  
Circuit Court Reporter

NOTICE OF INTENT TO APPEAL  
THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
FROM AIKEN COUNTY  
THE HONORABLE DOYET A. EARLY, III  
August 6, 2015

Indictment # 2015-GS-02-01103, 2015-GS-02-01104,  
2015-GS-02-01105

THE STATE OF SOUTH CAROLINA -- Respondent

VS.

WILLIAM HERBERT MCCLADDIE -- Appellant

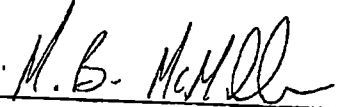
RECEIVED

AUG 11 2015

SC Court of Appeals

NOTICE OF INTENT TO APPEAL

William McCladdie was found guilty and was convicted an Burglary First Degree, Possession of Stolen Vehicle and Possession of Tools of Crime on July 8, 2015 before the Honorable Doyet A. Early, III in Aiken, South Carolina. He appeals his conviction and sentence.

  
M. Bradley McMillian  
Attorney for Defendant

Other Counsel of record is:

Cassie Hall  
Assistant Solicitor  
Post Office Box 3368  
Aiken, South Carolina 29802

**NOTICE OF INTENT TO APPEAL**  
 State of South Carolina

Vs:  
 William Herbert McCladdie  
 2015-GS-02-01103, 2015-GS-02-01104, 2015-GS-02-00=1105

**CERTIFICATE OF SERVICE**

I, Tesa Culbertson, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, copies to the South Carolina Commission of Appellate Defense and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to Cassie Hall, Assistant Solicitor, Second Judicial Circuit by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

South Carolina Court of Appeals  
 Post Office Box 11629  
 Columbia, SC 29211

South Carolina Commission  
 Of Appellate Defense  
 P. O. Box 11589  
 Columbia, SC 29211

Clerk of Court  
 Aiken County Judicial Circuit  
 Post Office Box 583  
 Aiken, South Carolina 29802

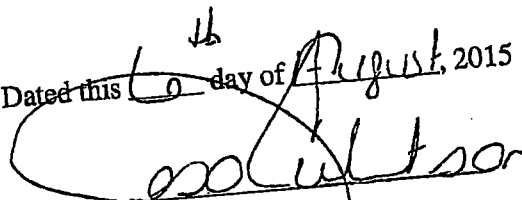
Cassie Hall  
 Assistant Solicitor  
 Post Office Drawer 3368  
 Aiken, South Carolina 29802

**RECEIVED**

AUG 11 2015

SC Court of Appeals

Dated this 16 day of August, 2015



Tesa Culbertson  
 Secretary to Appellant's Attorney.  
 Post Office Drawer 2247  
 Aiken, SC 29802  
 803-642-1732

## The South Carolina Court of Appeals

The State, Respondent,

v.

William Herbert McCladdie, Appellant.

Appellate Case No. 2015-001732

The Honorable Doyet A. Early, III  
Aiken CountyTrial Court Case No. 2015GS0201103, 2015GS0201104,  
2015GS0201105

RECEIVED

AUG 20 2015

ATTORNEY GENERAL'S  
OFFICE

## ORDER of DISMISSAL

William Herbert McCladdie was convicted on July 8, 2015. The proof of service for the notice of appeal states the notice of appeal was served on August 6, 2015. The notice of appeal was not timely served as required by Rule 203(b)(2), SCACR. The time for service of the notice of appeal cannot be extended by the appellate court. Rule 263(b), SCACR. Accordingly, the appeal is Dismissed.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Michael Bradley McMillian, Esquire  
Cassie Weathersbee Hall, Esquire

Alan McCrory Wilson, Esquire  
Salley W. Elliott, Esquire  
Robert Michael Dudek, Esquire  
The Honorable Doyet A. Early, III

**FILED**

August 19, 2015



RECEIVED

SEP 29 2015

*Clouse*

ATTORNEY GENERALS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

September 28, 2015

The Honorable Liz Godard  
PO Box 583  
Aiken SC 29802-0583

REMITTITUR

Re: The State v. William Herbert McCladdie.  
Lower Court Case No. 2015GS0201103, 2015GS0201104, 2015GS0201105  
Appellate Case No. 2015-001732

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Michael Bradley McMillian, Esquire  
Cassie Weathersbee Hall, Esquire  
Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire  
Robert Michael Dudek, Esquire

2015A0210900038  
 2015A0210900039  
 2015A0210900040

STATE OF SOUTH CAROLINA

County of AikenWilliam Herbert McElathie

Full name and prison number (if any) of Applicant

364614

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

10-19-15L. J. Leland  
C.C.P. & C.S.Anna K. Kneese 12-35-15  
Deputy Clerk

APPLICATION FOR

POST-CONVICTION RELIEF

2015CP0202458**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Inst.
2. Name and location of Court which imposed sentence General Session 5  
Aiken, South Carolina
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015GS0201104 - Possession of tools to commit crime.
  - (b) 2015GS0201105 - Possession of a stolen vehicle.

- (c) 2015GS0201103- Burglary 3rd degree
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 8, 2015 - 5 years
- (b) July 8, 2015 - 10 years
- (c) July 8, 2015 - 15 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) ☒ after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Dismissal of Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. 8-19-15
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. NA
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) NA

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Subject Matter Jurisdiction
- (c) Illegal Sentence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to file appeal in time
- (b) Sham Indictments
- (c) Sentence exceeds and/or does not co-inside with charge
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. NA
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. NA
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Trial lawyer failed to file appeal in time.  
 (b) Trial lawyer failed to file appeal in time.  
 (c) Trial lawyer failed to file appeal in time.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes  
 (b) your trial, if any? Yes  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:  
 i. Michael B. McMillian - Public Defender Office  
P.O. Box 2247 Aiken, SC 29802  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. General Sessions for plea.  
 ii. Sentencing  
 iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA )

County of Aiken )

VERIFICATION

I, William H. Weathers, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 16<sup>th</sup>  
day of Oct, 2018

[Signature] (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, William H. McEachern, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William H. McEachern  
Applicant

SWORN or affirmed to and subscribed before me this  
16<sup>th</sup> day of Oct, 2015.

Ludrean Bryant  
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

William H. McCladdie, #364614,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

2015-CP-02-02458

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 19, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the July 2015 term of the Aiken County Grand Jury for burglary – first degree (2015-GS-02-01103); possession of tools capable of being used in crime (2015-GS-02-0104); possession of a stolen vehicle (2015-GS-02-01105). Michael B. McMillian, Esquire represented Applicant. On July 8, 2015, Applicant was found guilty on all charges. The Honorable Doyet A. Early, III. Judge Early sentenced Applicant to fifteen year term of imprisonment for burglary – first degree, five year term of imprisonment for possession of tools capable of being used in a crime, and ten year term of imprisonment for possession of a stolen vehicle with all sentences running concurrently.

Applicant filed a notice of appeal. On August 19, 2015, The South Carolina Court of Appeals dismissed the notice of appeal for untimely service. The remittitur was returned to the circuit court on September 28, 2015.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Failed to file appeal in time.
2. Subject matter jurisdiction
  - a. Sham indictments
3. Illegal sentence
  - a. Sentence exceeds and or does not coincide with charge.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

## IV.

Applicant's allegation regarding subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Thus, an applicant challenging subject matter jurisdiction must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Furthermore, "subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.]" Id. at 101, 610 S.E.2d at 499. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. Id. at 102, 610 S.E.2d at 500. Rather, challenges to the indictment must be raised prior to the swearing of the jury or they are waived. Id. (citing S.C. Code Ann. § 17-19-90). Thus, a PCR applicant may only raise challenges to the sufficiency of an indictment by alleging ineffective assistance of counsel for failing to properly move to quash the indictment in accordance with section 17-19-90. Because Applicant has failed to do so, and because Applicant's attempted robbery plea involved criminal charges in the Court of General Sessions, Respondent contends this subject matter jurisdiction allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

## V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRPC 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the

inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

## VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

## VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

December 18, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

WILLIAM H. MCCLADDIE, #364614,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

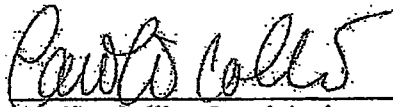
IN THE COURT OF COMMON PLEAS

2015-CP-02-02458

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee Jendrzewski Zmroczek, Esquire  
 A.J.Z. Law Firm, LLC  
 PO Box 11961  
 Columbia, SC 29211

DATED this the 18<sup>th</sup> day of December, 2015.


Caroline Collins, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

2015-CP-02-02458

William H. McCladdie, #364614, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**ORDER OF DISMISSAL AND  
GRANT OF APPEAL PURSUANT TO  
WHITE V. STATE**

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed October 19, 2015. Respondent made its Return on December 18, 2015.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the July 2015 term of the Aiken County Grand Jury for burglary — first degree (2015-GS-02-01103); possession of tools capable of being used in crime (2015-GS-02-0104); possession of a stolen vehicle (2015-GS-02-01105). Michael B. McMillian, Esquire represented Applicant. On July 8, 2015, Applicant was found guilty on all charges. The Honorable Doyet A. Early, III. Judge Early sentenced Applicant to fifteen year term of imprisonment for burglary — first degree, five year term of imprisonment for possession of tools capable of being used in a crime, and ten year term of imprisonment for possession of a stolen vehicle with all sentences running concurrently.

FILED

8.22.16  
*Shirley Goodard*  
Clerk of Court  
*White Knapp*  
SCLC

*MAE*  
#1

Applicant filed a notice of appeal. On August 19, 2015, The South Carolina Court of Appeals dismissed the notice of appeal for untimely service. The remittitur was returned to the circuit court on September 28, 2015.

## II.

This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

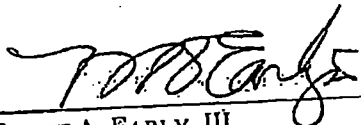
This Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal.

### IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.

3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED

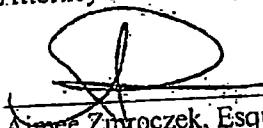
  
 DOYET A. EARLY, III  
 Chief Administrative Judge  
 Second Judicial Circuit

8-10, 2016  
~~County~~ South Carolina

WE CONSENT:

  
 William H. McCladdie  
 Applicant

  
 Julie A. Coleman, Esquire  
 Assistant Attorney General  
 Attorney for the Respondent

  
 Aimée Zimoczek, Esquire  
 Attorney for the Applicant

WITNESSES

Jackson Police Department

Mike Hess

Law Enforcement Case #:

DOCKET NO. 2015GS0201103

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2015

ARREST WARRANT NUMBER

2015A0210900038

FILED

2 July 2015

*L. J. Anderson*  
J.C.C.P. & G.S.

*Deborah M. Bell*  
Deputy Clerk

THE STATE  
vs.

WILLIAM HERBERT MCCLADDIE

ACTION OF GRAND JURY

*True Bill*

*[Signature]*  
Foreperson of Grand Jury *Danny QuatHebaum*  
Date: July 2, 2015

VERDICT

CDR #: 0079

Indictment for

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

Foreperson of Petit Jury  
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

INDICTMENT FOR  
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on July 6, 2015, the Grand Jurors of Aiken County present upon their oath:

That WILLIAM HERBERT MCCLADDIE did in Aiken County on or about February 21, 2015, wilfully and unlawfully enter the dwelling located at 102 Foreman Street, Jackson, South Carolina, without consent and with the intent to commit a crime therein and the defendant entered or remained during the nighttime, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Elizabeth B. Young*  
J. STROM THURMOND, SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF \_\_\_\_\_  
STATE \_\_\_\_\_Aiken  
VS.

## IN THE COURT OF GENERAL SESSIONS

AKA: William Herbert McCladdle

Race: Black

Sex: \_\_\_\_\_

Age: 46

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_

SID# \_\_\_\_\_

\*CDL Yes ☒ No ☐ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes now the Defendant who was  
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2015GS0201103

A/W#: 2015A0210900038

Date of Offense: 2/21/2015

S.C. Code §: 16-11-0311

CDR Code #: 0079

## SENTENCE SHEET

15-lfe

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS

of the S.C. Code of Laws, bearing CDR Code #

0079

☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: \_\_\_\_\_

Hall, Cassie Weathersbee

101417

SC Bar# \_\_\_\_\_

Defendant: \_\_\_\_\_

Attorney for Defendant: \_\_\_\_\_

100386

SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of

15 days/months/years or

and/or to pay a fine of \$ \_\_\_\_\_

; provided that upon the service of \_\_\_\_\_

days/months/years and/or payment

of \$ \_\_\_\_\_

; plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_

plus 20% fee: \$ \_\_\_\_\_

PTUP

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

\_\_\_\_\_ days/hours Public Service Employment

Recipient: \_\_\_\_\_

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel.  
§ 47.12 requires \$500 be paid to Clerk during probation.

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge)

\$ \_\_\_\_\_

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ 100.00

§ 56-5-2993 (DUI Assessment)

\$100

\$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test)

\$12

\$ \_\_\_\_\_

Proviso 47.9 (Public DefProb)

\$25

\$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding)

\$500

\$ \_\_\_\_\_

§ 14-1-213 (Drug Court Surcharge)

\$25

\$ 25.00

§ 50-21-114(BUI Breath Test Fee)

\$150

\$ \_\_\_\_\_

§ 56-5-2942(1) (Vehicle Assessment)

\$50

\$ \_\_\_\_\_

Proviso 90.5 (SCCA Surcharge)

\$40/ea

\$ \_\_\_\_\_

3% to County (if paid in installments)

\$5

\$ 5.00

TOTAL

\$ 3.90

\$ 138.90

Clerk of Court/ Deputy Clerk

Court Reporter: \_\_\_\_\_

SCCA/217 (03/2011)

Thammaso R. Ramey  
Bethanie K. Cremon

Presiding Judge

Judge Code: \_\_\_\_\_

Sentence Date: \_\_\_\_\_

T. O. Brady  
0136  
July 8, 2015

WITNESSES

Jackson Police Department

Mike Hess

Law Enforcement Case #:

DOCKET NO. 2016GS0201104

The State of South Carolina  
County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2015

ARREST WARRANT NUMBER

2015A0210900039

FILED

THE STATE  
vs.

WILLIAM HERBERT MCCLADDIE

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury Danny Quattlebaum  
Date: July 2, 2015

VERDICT

CDR #: 0124

Indictment for

POSSESSION OF IMPLEMENTS  
CAPABLE OF BEING USED IN A CRIME

§ 16-11-0020

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

)  
) INDICTMENT FOR  
) POSSESSION OF IMPLEMENTS CAPABLE OF  
) BEING USED IN A CRIME  
)

§ 16-11-0020

At a Court of General Sessions, convened on July 6, 2015, the Grand Jurors of Aiken County present upon their oath:

That WILLIAM HERBERT MCCLADDIE did in Aiken County on or about February 21, 2015, knowingly and unlawfully have in his possession tools or other implements capable of being used in crime, to wit: a pry bar, commonly used in the commission of the crime of Burglary. All in violation of §16-11-20 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Elizabeth B. Hargis*  
J. STROM THURMOND, SOLICITOR



**WITNESSES**

Jackson Police Department

Mike Hess

Law Enforcement Case #:

DOCKET NO. 2015GS0201105

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2015

ARREST WARRANT NUMBER

2015A0210900040

FILED

*J. July 2015*

*L. Richard*  
C.C.P. & G.S.

*L. Richard*  
Deputy Clerk

THE STATE  
vs.

WILLIAM HERBERT MCCLADDIE

ACTION OF GRAND JURY

*True Bill*

For person of Grand Jury  
Date: July 2, 2015

*Danny Quattlebaum*

CDR #: 3614

Indictment for

POSSESSION OF A STOLEN VEHICLE

§ 16-21-0080

VERDICT

For person of Petit Jury  
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

INDICTMENT FOR  
POSSESSION OF A STOLEN VEHICLE

§ 16-21-0080

At a Court of General Sessions, convened on July 6, 2015, the Grand Jurors of Aiken County present upon their oath:

That WILLIAM HERBERT MCCLADDIE did in Aiken County on or about February 21, 2015, knowingly and unlawfully have in his possession a stolen vehicle which he was not entitled to possess, to wit: a 2000 Nissan Altima valued at less than Two Thousand Dollars and belonging to [REDACTED]. The Defendant having previously been twice convicted of offenses for which the term of imprisonment was contingent upon the value of the property involved. All in violation of §16-21-80 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Elizabeth B. Young*  
J. STROM THURMOND, SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Alcon

VS.

William Herbert McCladdie

AKA:

Race: Black

Sex: M

Age: 46

DOB: [REDACTED]

Address: [REDACTED]

City/State/Zip: North Augusta, SC 29831

DL# [REDACTED]

SID# [REDACTED]

\*CDL Yes ☒ No ☐ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes how the Defendant who was  
TO: Vehicle/Poss stolen vehicle <2000-Enhancement

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS0201105

A/W#: 2015A0210900040

Date of Offense: 2/21/2015

S.C. Code §: 16-21-0080

CDR Code #: 3614

## SENTENCE SHEET

0-10 years

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3614  
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant's initials)  
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cassie Hall

101417

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 15-65-02-1103 (2015-65-02-01103)  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP  
Total: \$ plus 20% fee: \$  
Payment Terms: days/hours Public Service Employment☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |           |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$        |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$ 100.00 |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/cv | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 3.90   |
| TOTAL                                  |         | \$ 133.90 |

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning ☐

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: ☐

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

W. McCladdie

0136

July 8, 2015