

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICHARD EARL TEDFORD,

APPELLANT

APPELLATE CASE NO. 2015-002213

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	
State of South Carolina)	
)	
v.)	Case No. 13-GS-23-10427 et al
)	
Richard Tedford,)	
)	
Defendant.)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on October 13th through October 15th, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

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(STATUTORY QUALIFICATION)

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(DEFENDANT PRESENT)

THE COURT: All right. Let's see.
We are -- we've got the Richard Earl Tedford
case. All right. What have y'all -- and
there were some pretrial Motions.

MR. WARDER: Your Honor.

THE COURT: I'll be glad to hear
from you, Mr. Warder.

MR. WARDER: My client has a couple
of Motions that he feels that he should make.
First of all, Your Honor, that he's charged
with two first degree burglaries. The
aggravating factors is that the State alleges
he has two convictions of prior burglaries.
My client admits that he's pled guilty to
burglary in Spartanburg about twenty-six
years ago. When you examine what he did, he
pled to two indictments at the same time.
They were cases that occurred on the same
day. He thinks those fairly constitutes one
conviction and he should not have these two
enhanced as to separate convictions because

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1 the two cases occurred on the same day. They
2 were next- -- houses that were adjoining each
3 other and next to each other. And he made
4 one plea bargain that took care of them both.
5 And he entered one plea before Judge Epps on
6 the two counts. And it's his position that
7 that does not constitute two prior burglaries
8 as contemplated in the statute, which would
9 take two separate burglaries at separate
10 times and separate convictions. That's my
11 client's position.

12 THE COURT: All right. And I'm trying
13 to pull up the statute. Do you have a copy
14 of the statute?

15 MR. WARDER: (No verbal response).

16 SOLICITOR MOYER: Yes, Your Honor, I do.
17 Your Honor, 16-11-311 only requires that one
18 of the aggravating factors for burglary first
19 degree is that the burglary is committed by a
20 person with a prior record of two or more
21 convictions for burglary or housebreaking or
22 a combination of both.

23 These two convictions were two separate
24 and distinct houses; two separate and
25 distinct charges; two separate and distinct

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1 convictions. And by a plain reading of the
2 statute, Your Honor, I don't think there's
3 any basis to the Defendant's motion.

4 THE COURT: And basically from
5 what you said, Mr. Warder, I assume -- again,
6 I don't have any of the documents before me
7 but that in his plea agreement there was one
8 plea and one sentence; but I assume there
9 were, you know, there were two separate
10 indictments -- or was one indictment
11 dismissed? Do you have that information?
12 And I realize it was all one, you know,
13 probably one day and all that. But, I mean,
14 I'm ---

15 SOLICITOR MOYER: I do have copies
16 of the indictments, Your Honor, if your Honor
17 would like to have them.

18 THE COURT: I mean, is that what
19 happened? He had to actually plead to both
20 indictments if one of them wasn't dismissed?

21 SOLICITOR MOYER: That's correct,
22 Your Honor.

23 THE COURT: All right. And is
24 that what -- I understand your argument but
25 I think, you know, technically, which is what

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1 we have to deal with is technicalities, that
2 would be two previous convictions.

3 MR. WARDER: Your Honor, I don't
4 want to argue with the Court, with your
5 ruling. But I think that the intent of the
6 legislature obviously would have been one man
7 who's brought before the court and pleads on
8 one, then he's put on notice that he'll be
9 treated different if there's another. And
10 suddenly to count it as two defeats that
11 intent.

12 THE COURT: Well, I mean, I think
13 they could have made some -- in looking at
14 legislative intent here, you're convicted of,
15 instead, two convictions. All they had to do
16 was put on separate days or separate
17 incidences or something like that. But it
18 clearly has two convictions so -- I mean, I
19 understand your argument and would have made
20 it as well in your position, but I'm going to
21 have to deny that it needs to be reduced.

22 MR. WARDER: The next position of
23 my client would be that he'd like to get a
24 new lawyer, a better one than myself. He's
25 talked to lawyers who have assured him that

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1 jury downstairs. And, you know, the fact
2 that after a Motion did not go his way he
3 wants a new attorney. I'm going to deny that
4 request.

5 MR. WARDER: His third position
6 would be, his third Motion would be that he
7 be evaluated or get some relief for his
8 competency.

9 DEFENDANT: Mental health.

10 MR. WARDER: He wouldn't take a -- he's
11 receiving disability for mental health
12 issues, schizophrenia is one of them. He was
13 on medication and they wouldn't give him a
14 polygraph because he was taking his
15 medication for his mental condition. They've
16 now denied him his medication.

17 DEFENDANT: I've been locked up for two
18 years.

19 MR. WARDER: He raises the issues that
20 he doesn't feel competent and wants to be
21 evaluated.

22 THE COURT: I'm going to hear from the
23 State on that?

24 SOLICITOR MOYER: Well, Your Honor,
25 our position is we're, you know, we're two

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1 Your Honor, with the *Jackson v. Denno*.

2 JACKSON V. DENNO HEARING

3 SOLICITOR MOYER: The State will
4 start off by calling Jason Bash to the stand.

5 (WITNESS TAKES STAND)

6 JASON BASH, having been duly sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR MOYER:

11 Q. Where are you employed?

12 A. Greer City Police Department.

13 Q. What is your position with the Greer
14 Police Department?

15 A. A detective.

16 Q. How long have you been a detective
17 with the ---

18 A. Since 2005.

19 Q. How long have you been in law
20 enforcement?

21 A. Since 1999.

22 Q. It's all been with the Greer Police
23 Department?

24 A. No, sir. I did two and half years
25 at Greenville Detention.

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1 Q. Okay. And you say you're a
2 detective. Is that in a particular type of
3 crime or ---

4 A. I do a lot of property crimes.
5 However, I do handle everything that comes
6 in.

7 Q. Were you assigned as part of the
8 investigation of the defendant in this case,
9 Richard Tedford, for the charges that are
10 before the Court?

11 A. Yes, I was.

12 Q. Okay. Did that include the burglary
13 that was on Meritage Street in Greer?

14 A. Yes, sir, at .

15 Q. Now, were you aware that there was a
16 corresponding investigation by Greenville
17 County Sheriff's Office of another burglary
18 close to that location?

19 A. I was.

20 Q. And were you aware of who was
21 handling that investigation.

22 A. Yes, sir.

23 Q. Who was that?

24 A. Investigator Gary Gilstrap of the
25 Greenville County Sheriff's Office.

1 Q. And were you two keeping in contact
2 with each other about developments in your
3 cases?

4 A. We were.

5 Q. Okay. Now, what was the date of the
6 burglary that you were handling?

7 A. It was reported on August the 14th,
8 2013 by Mr. Walker. And he had stated that
9 the incident dates were between 8/12/2013 and
10 8/14/2013.

11 Q. Okay. And how was -- why the gap in
12 time?

13 A. It was the weekend and he had
14 returned to the dwelling on the 14th and
15 noticed the incident.

16 Q. Okay. So he'd just been away from
17 home?

18 A. Yes, sir.

19 Q. He had not been at the house in a
20 few days?

21 A. Correct.

22 Q. So did you and Detective Gilstrap
23 develop a suspect in the case?

24 A. I'm sorry?

25 Q. Did you and Detective or

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1 Investigator Gilstrap develop a suspect?

2 A. Yes, we did.

3 Q. And who was that suspect?

4 A. Richard Tedford, the defendant in
5 this case.

6 Q. Okay. What lead to him being
7 developed as a suspect?

8 A. On August 16, 2013, I received
9 notice from Greenville Forensics, the latent
10 print section that three different
11 fingerprints had come back to the Defendant
12 inside Meritage Street.

13 Q. Okay. And that was, that was the
14 burglary that was in your jurisdiction?

15 A. Yes, sir.

16 Q. Okay. Now, did that information
17 lead you to speak to the Defendant?

18 A. Yes, it did.

19 Q. And what day was that?

20 A. August the 19, 2013.

21 Q. And how did you reach him?

22 A. I had received a phone number for
23 him from some prior incident reports. I
24 called the phone number and asked if I could
25 speak with Richard Tedford. And he said it

1 was him. I asked him to come in for an
2 interview.

3 Q. Okay. Now, during that conversation
4 with him, did you tell him your reason for
5 wanting to talk to him?

6 A. I just stated to him that I would
7 like to speak with him about a case.

8 Q. So did you reference the burglary on
9 Meritage Street at all?

10 A. No.

11 Q. Did you tell him he was a suspect
12 either in that case or any other case?

13 A. No.

14 Q. Okay. What was his response when
15 you asked him to come meet with you?

16 A. He told me he was willing to come in
17 and speak with me. And we had set up a time
18 at 2:00 p.m. that day.

19 Q. Okay. Now, did he show up?

20 A. No.

21 Q. Okay. Now, were you then, at a
22 later time, notified that Greenville County
23 Sheriff's Office had arrest warrants for
24 Richard Tedford based on their burglary
25 investigation?

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1 A. Yes, I was notified.

2 Q. When did you receive that
3 information?

4 A. Investigator Gilstrap notified me on
5 August 21st, 2013.

6 Q. Now, were you present when the
7 Defendant was arrested for those charges?

8 A. Yes.

9 Q. Where did that take place?

10 A. Woodcliff Street in Welford,
11 South Carolina.

12 Q. And is that in your jurisdiction?

13 A. No, sir.

14 Q. So for that reason, were there other
15 officers involved in the case as well?

16 A. Yes, sir. I asked for a Spartanburg
17 County deputy to come out to that residence.

18 Q. Okay. And when did this take place?

19 A. That would have been August 22nd,
20 2013.

21 Q. Was the defendant at that location
22 when you arrived?

23 A. Yes, he was.

24 Q. Did you speak to him there?

25 A. I did, outside the residence.

1 Q. Okay. Did you place him in custody?

2 A. I did not.

3 Q. Were you able to recognize him when
4 you saw him?

5 A. He looked exactly like the photo
6 that I had of Richard Tedford.

7 Q. So you had pulled up a photograph of
8 him?

9 A. Yes, I had previously pulled up his
10 driver's license, so I had that photo through
11 the South Carolina Department of Motor
12 Vehicles and also through a photo lineup that
13 I had developed.

14 Q. Okay. Now, before the Defendant was
15 placed under arrested by y'all, you and the
16 Spartanburg deputies, did you do anything to
17 confirm your identification?

18 A. Yes, I'd spoken with Mr. Tedford for
19 quite some time, trying to figure out if
20 that's exactly who he was.

21 Q. Okay. And tell us about the results
22 of that conversation with him.

23 A. When initially speaking with him, I
24 asked him his name. He said he was Waymon
25 Barton Tedford. He supplied a date of birth

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1 and Social. I attempted to find a Waymon
2 Barton Tedford to DMV with negative results
3 through that. He continued to say that's who
4 he was.

5 I also told him, looking at his photo,
6 his facial features, distinctive parts about
7 him, that we believed that was him. And he
8 continued to deny that he was Richard
9 Tedford.

10 Q. Had you told him that you were
11 looking for Richard Tedford?

12 A. Yes.

13 Q. Now, did he eventually admit to
14 being who he was, the Defendant Richard
15 Tedford?

16 A. He did.

17 Q. How long a period of time did it
18 take, and what lead to that?

19 A. We were approximately at the
20 Woodcliff Street for, I'd say, an hour to an
21 hour and a half. He still denied it the
22 whole time.

23 And then back at -- when he was
24 transported to the Greer Police Department to
25 be held for Greenville County, he continued

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1 to deny it until I mentioned to him 'they're
2 going to take your fingerprints and they're
3 going to discover that that's who you are.'
4 And eventually he said, 'yes, I am Richard
5 Tedford.'

6 Q. Okay.

7 SOLICITOR MOYER: I have no further
8 questions for this witness. Thank you.

9 CROSS-EXAMINATION

10 BY MR. WARDER:

11 Q. Officer, you said that you were
12 investigating a break-in that occurred on the
13 13th; is that correct?

14 A. No, sir. Between August 12th and
15 August 14, 2013.

16 Q. Okay. And you said that was because
17 a weekend intervened.

18 A. Yes, sir.

19 Q. Are you aware that the 13th was a
20 Wednesday?

21 A. I was under the impression it was a
22 weekend. But I do know there was a time
23 between the 12th and the 14th that Mr. Walker
24 said he was not at the residence. I guess
25 just the time passed from then to now, I was

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1 assuming it was the weekend. And that's what
2 I thought. But I know from Mr. Walker's
3 statement that between the 12th and the 14th --
4 he left on the 12th and returned the 14th. So
5 it would be my error that it was the weekend,
6 if that's correct.

7 Q. Well, didn't the victim tell you it
8 was because of the weekend?

9 A. I didn't actually take the initial
10 report from him. But I guess it was my error
11 for assuming it was a weekend.

12 Q. Now, Mr. Tedford was not under
13 arrest or there wasn't even any charges when
14 you talked to him on the 16th; was there?

15 A. On the 16th?

16 Q. Yes, sir?

17 A. I didn't speak -- I believe I only
18 spoke with him on the 19th and the 22nd.

19 Q. I thought you called him on the 16th.
20 That was later when you called him?

21 A. The 16th is when -- I believe the
22 only -- and I can refresh my memory in my
23 notes, but I believe it was only on the 19th
24 that I spoke with him.

25 Q. Okay. On the 19th there was no

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1 warrant for him; was there?

2 A. No, sir.

3 Q. And he was under no legal compulsion
4 to come talk to you; is that correct?

5 A. Correct.

6 Q. And the next time you just went out
7 and found him. That was the 21st. And you
8 did have a warrant; is that right?

9 A. The 22nd.

10 Q. And you did have a warrant?

11 A. Greenville County had a warrant. I
12 did not. I didn't, at that time. I believe
13 I got one later in the day. But at that
14 time, I did not have the warrant.

15 Q. Okay. How come you accompanied
16 Greenville County? Did they need you to
17 point him out or something?

18 A. No. I told them that I would go.
19 I attempted to locate Mr. Tedford to talk to
20 him about my case.

21 Q. And when you talked to him, was he
22 in custody?

23 A. No, sir.

24 Q. He was free to leave?

25 A. When I initially got there, yes,

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1 sir.

2 Q. He could have just gotten up and
3 walked off?

4 A. Correct. And at the beginning part,
5 you know, when -- until we figured out who we
6 believed he was. But eventually he was taken
7 into custody.

8 Q. Okay. If he'd said he was Richard
9 Tedford when you first got there, you would
10 have taken him in custody; is that right?

11 A. I would have still had to call
12 Spartanburg County to verify or to have them
13 take him in custody. I couldn't have taken
14 him into custody.

15 Q. Was he in Spartanburg County or
16 Greenville County?

17 A. Spartanburg County.

18 Q. And the Spartanburg County deputy
19 went with you?

20 A. He didn't go with me but he showed
21 up shortly after.

22 Q. Okay. Did you go with the
23 Greenville County deputy?

24 A. No, sir.

25 Q. Thank you.

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1 SOLICITOR MOYER: Nothing further of
2 this witness.

3 THE COURT: All right. You may
4 step down. Thank you.

5 (WITNESS STEPS DOWN)

6 SOLICITOR MOYER: The State would
7 call Investigator Gary Gilstrap

8 (WITNESS TAKES STAND)

9 GARY GILSTRAP, having been duly sworn to
10 tell the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR MOYER:

14 Q. And where are you employed, sir?

15 A. I'm an investigator with the
16 Greenville County Sheriff's Office.

17 Q. How long have you been in law
18 enforcement?

19 A. I've been in law enforcement thirty-
20 five years.

21 Q. Has it all been with the Greenville
22 County Sheriff's Office?

23 A. No.

24 Q. Where else have you worked?

25 A. I began my career with the Liberty

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1 Police Department. I went to Clemson Public
2 Safety, came back to Liberty, came to Easley
3 in '84. In '88 I came to Greenville and in
4 2002 I became an investigator in the property
5 crimes division here.

6 Q. Okay. Now, were you involved in
7 the investigation of this Defendant for a
8 burglary case that's before the Court?

9 A. Yes.

10 Q. What was the address of your case?

11 A. Rayland Place, Greer, South
12 Carolina.

13 Q. Okay. And that's in close proximity
14 to the burglary that Investigator Bash was
15 just talking about?

16 A. Very Close.

17 Q. Okay. Now, did you meet with the
18 Defendant at any point?

19 A. Yes, I did.

20 Q. And what was the date that you met
21 with him?

22 A. I met with him on August the 22nd of
23 2013.

24 Q. And where did you meet with him?

25 A. I met with him at the Greer Police

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1 Department.

2 Q. And at that time was he in custody?

3 A. Yes, he was.

4 Q. And was Investigator Bash there with
5 him at that time?

6 A. Yes, he was.

7 Q. What time of day was it that you met
8 with him?

9 A. I arrived approximately at 11:50 in
10 the morning on the 22nd.

11 Q. Okay. Now, where was he? Where was
12 the Defendant when you first saw him that
13 day?

14 A. I believe they brought him up from
15 the holding cell area and I met with him in
16 the conference room on the second floor.

17 Q. Okay. And you were aware that he
18 was in custody at that time, he was under
19 arrest?

20 A. Yes.

21 Q. Okay. Now, where did you end up
22 meeting with and talking to him there in the
23 Greer Police Department?

24 A. That was there in that conference
25 room that I mentioned.

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1 Q. Okay. And can you just give us a
2 brief description of what that room is like?

3 A. Large table with some chairs sitting
4 around the wall.

5 Q. For how long a period of time would
6 you say you would end up speaking to him?

7 A. Approximately thirty minutes.

8 Q. How many people were present during
9 this?

10 A. Myself and another investigator,
11 David Kahn.

12 Q. Now, were you all -- as investiga-
13 tors, you weren't wearing uniforms?

14 A. No, we were in plain clothes.

15 Q. Did you identify yourselves as
16 officers?

17 A. Yes, we did.

18 Q. Made it clear that y'all were -- who
19 you worked with?

20 A. Yes.

21 Q. Now, during the time you spoke to
22 the Defendant, did he appear comfortable
23 there in that room?

24 A. Yes, he did.

25 Q. Now, before you began interviewing

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1 him, did you advise him of his rights
2 pursuant to *Miranda*?

3 A. Yes, I did.

4 Q. Did you do so with a form?

5 A. Yes, I did.

6 Q. Do you have a copy of that form with
7 you today?

8 A. I have a copy of that.

9 Q. Let me ask you to take it out,
10 please?

11 A. (Complies)

12 SOLICITOR MOYER: Okay. I'm going
13 to take it to the court reporter to have it
14 marked as a State's exhibit.

15 COURT REPORTER: State's Exhibit
16 Number 55 for identification.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR MOYER:

19 Q. Let me hand you State's Exhibit
20 Number 55. Can you recognize what I've just
21 handed you?

22 A. Yes. This is waiver of rights form.

23 Q. Okay. And ---

24 A. And *Miranda*. It's got the *Miranda*
25 at the top and then the waiver of rights at

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1 the bottom.

2 Q. Is that the waiver of rights form
3 that you used with regard to advising this
4 Defendant, Richard Tedford, of his rights?

5 A. Yes, it is.

6 Q. And how were you able to recognize
7 it? What marks or distinguishing features
8 are there?

9 A. My case number that we were
10 investigating is at the top, the date, the
11 time that the *Miranda* began at 11:53 a.m. and
12 my signature as witness at the bottom, along
13 with Investigator David Kahn's signature.

14 Q. Okay. Is it an exact copy of the
15 form that you used with the Defendant?

16 A. Yes, it is.

17 Q. Are there any changes, deletions,
18 additions whatsoever made to that form?

19 A. None.

20 SOLICITOR MOYER: At this time, I
21 would move State's Exhibit Number 55 entered
22 into the record for purposes of this hearing
23 only.

24 THE COURT: Any objection?

25 MR. WARDER: No, Your Honor,

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1 there's no objections.

2 THE COURT: All right. 55 is into
3 evidence.

4 (SO ENTERED AS STATE'S EXHIBIT 55 FOR
5 PURPOSES OF THE JACKSON V. DENNO HEARING)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR MOYER:

8 Q. All right. Would you please tell
9 the Court how it is that you went over that
10 form with the Defendant on this date?

11 A. Just that after introducing
12 ourselves, I told him before I could ask him
13 any questions about the case that I was
14 investigating, that I needed to read him his
15 *Miranda*. And I asked him if he could read.
16 He said "yes." He said, "well, I'll need
17 some glasses." So what I did was first I
18 read the *Miranda* through. Then I handed him
19 the *Miranda* and my reading glasses and he
20 read it back to me.

21 Q. Okay. Now, did the Defendant appear
22 to have any trouble understanding his rights
23 as you went over those rights with him?

24 A. No.

25 Q. Did his answers to your questions

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1 appear to be rational and responsive?

2 A. Yes.

3 Q. No red flags as to his mental
4 competency or ability to understand what
5 you were talking about?

6 A. No.

7 Q. Were any threats, coercion or
8 intimidation used in order to get him to
9 waive his rights and speak to you?

10 A. None whatsoever.

11 Q. Any promises or hope of report held
12 out?

13 A. None.

14 Q. All right. In your opinion, did he
15 understand the rights?

16 A. Yes.

17 Q. Did you do anything to indicate that
18 he understood those rights on the form?

19 A. Yeah. I asked him when he read back
20 the rights to himself to initial at the end
21 of each line. And he wrote his initials at
22 the end of each line of the *Miranda*.

23 And then at the waiver of rights, I asked
24 him to initial the word "coercion", as I
25 explained and asked if he knew what coercion

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1 was. And he initialed that. And he signed
2 his name and then printed his name, and then
3 address, date of birth, Social Security
4 Number.

5 Q. Okay. And the location where he
6 signed his name, does that indicate a
7 willingness to waive his right to speak to
8 you?

9 A. Yes.

10 Q. Now, after he signed that waiver of
11 rights form with you, did you speak to him?

12 A. Yes, I did.

13 Q. Before I get to that, what was the
14 time frame for when you started that, going
15 over his rights and when you finished?

16 A. Okay. We started at 11:53 and
17 completed at 11:58.

18 Q. That's a.m.?

19 A. A.M., yes. On the 22nd.

20 Q. Okay. Did he ever have a statement
21 reduced to writing?

22 A. Excuse me?

23 Q. Was his statement put in writing?

24 A. No.

25 Q. Why was that?

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1 A. We were -- I was questioning him and
2 at one point he requested his right to an
3 attorney.

4 Q. Okay. And then at that point did
5 you end your conversation with him?

6 A. Ended the conversation. Told him if
7 he -- my number would be on the warrants. If
8 he wanted to talk with me he would have to
9 recontact me, that I couldn't contact him any
10 more.

11 Q. Okay. Now, did you then write down
12 in your report the contents of your conversa-
13 tion with him?

14 A. Yes, I did.

15 Q. When did you do that?

16 A. I did that that afternoon when I
17 arrived back at my office.

18 Q. Now, when you did this was this
19 matter fresh in your memory such that you'd
20 be able to reflect that conversation
21 accurately?

22 A. Yes, sir.

23 Q. When you wrote down in your report
24 the contents of that conversation, was it
25 still fresh in your memory?

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1 A. Yes, it was.

2 Q. And would it help you to testify
3 about that conversation accurately by reading
4 your report today, rather than having to
5 recall it by memory?

6 A. Yes, I would.

7 Q. Okay. Well, let me ask you then to
8 refer to your report. And just can you tell
9 the Court what the contents were of your
10 conversation with the Defendant?

11 A. I began with the first question that
12 I asked him:

13 I said, "What's it like to get shot at
14 6:15 in the morning?"

15 Mr. Tedford replied, "I've not been shot
16 at."

17 I asked him if he stole the victim's car
18 from the garage. He said that he "hadn't
19 stole any car." I told him that this theft
20 occurred -- I told him this theft occurred
21 last Tuesday, over a week ago. I asked him
22 if he knew what a Toyota Scion was. He said
23 yes, that he had ridden in one once. I asked
24 him when was that. He said maybe a week ago.
25 I asked him to explain to me how that came

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1 about? He said he was walking on Highway 14,
2 going to see a guy named Robert on River
3 Road. And that this guy named Dirk -- last
4 name unknown. That's what I put in mine
5 because he didn't know his last name --
6 stopped and picked him up. He said he got
7 picked up at the CVS near the Waffle House on
8 Highway 14 in Greer. Dirk had asked him to
9 drive because he was tired. So he drove the
10 car. I asked him where he went from there.
11 He said he drove to the Hot Spot in downtown
12 Greer. Tedford said that he, talking about
13 Dirk, this Dirk guy, met his girlfriend there
14 and that they left. I asked him what time he
15 got picked up on Highway 14. He said between
16 8:00, 9:00 or 10:00. I asked him if he went
17 to someone's home and asked if Dirk lived
18 there. He said that he did not. I asked him
19 where the gun came from that was in the car.
20 He said Dirk had it, that he scored it and it
21 looked expensive.

22 Q. Okay. Now, did the Defendant have
23 anything to say about the incident after
24 that?

25 A. No.

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1 Q. Is that when he asked to terminate
2 the interview and wanted an attorney?

3 A. Yes.

4 Q. And you did so?

5 A. Yes.

6 Q. Okay.

7 SOLICITOR MOYER: I have no further
8 questions for this witness. Thank you, Your
9 Honor.

10 THE COURT: Mr. Warder.

11 CROSS-EXAMINATION

12 BY MR. WARDER:

13 Q. Officer, would it be fair to say the
14 Defendant maintained his innocence all
15 through your questioning?

16 A. Yes.

17 Q. And when asked specific details like
18 "what does it feel to be shot at", he's
19 claimed he'd never been shot at?

20 A. That's what he said to me, yes.

21 Q. And he appeared to be sober and not
22 under the influence of anything?

23 A. Not at that time, no.

24 Q. And tell me about his dress? What
25 did he look like at the time?

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1 A. He was wearing blue jeans and a
2 green shirt with a M.A.S.H., it was a
3 M.A.S.H. TV shirt with a -- a red cross on
4 the front.

5 Q. Looked like somebody that hadn't
6 dressed up but there was nothing particular
7 about him that made you think that that he
8 was -- lack of sleep or under the influence
9 of anything?

10 A. No.

11 Q. And when he answered the questions
12 that he answered, he answered them promptly?

13 A. Yes. Up until about the end there
14 and he got obviously frustrated and said "I
15 want an attorney."

16 Q. And that was his right to do, of
17 course?

18 A. Yes, it was.

19 Q. And he was not an unruly defendant
20 or anything like that?

21 A. No.

22 Q. In fact, would he have been
23 cooperative?

24 A. He was answering our questions up to
25 that point and we felt like we didn't need a

1 uniform unit to transport him to Greenville
2 County Detention Center, so myself and Deputy
3 Kahn transported him.

4 Q. Okay. Did he ride in the back or
5 was he in the front?

6 A. He rode in the back. It was an
7 unmarked car.

8 Q. Thank you.

9 MR. WARDER: That's all the
10 questions I have.

11 THE COURT: Anything further?

12 SOLICITOR MOYER: Nothing further.
13 And I have no further witnesses on the issue
14 of the *Jackson v. Denno*, Your Honor.

15 THE COURT: All right. Mr.
16 Warder, I'll be glad to hear from you.

17 MR. WARDER: Your Honor, there's
18 nothing argue as to the freely or
19 voluntariness of it.

20 THE COURT: Okay. I find based on
21 the -- yeah, you can step down.

22 SOLICITOR MOYER: He'll be the next
23 witness.

24 THE COURT: Oh, okay. I got you.

25 WITNESS: Can I get some water,

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1 please?

2 THE COURT: We'll get you some.

3 I find then on the totality of the
4 circumstances, the evidence presented, I do
5 find that they meet the requirements of
6 *Jackson v. Denno* as set forth in *State v.*
7 *Miller*, that it was voluntary by the
8 preponderance of the evidence.

9 MR. WARDER: Your Honor.

10 THE COURT: All right. I'll
11 accept that as voluntary and I don't think
12 you object to it really, but I'll make a
13 finding of it.

14 All right. What's the next you
15 said?

16 SOLICITOR MOYER: Next would be a
17 *Neil V. Biggers* hearing, Your Honor.

18 NEIL V. BIGGERS HEARING

19 SOLICITOR MOYER: Investigator
20 Gilstrap will be my first witness.

21 THE COURT:

22 GARY GILSTRAP, having been previously
23 sworn to tell the truth, and noting but the
24 truth, testified as follows:

25 DIRECT EXAMINATION

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1 BY SOLICITOR MOYER:

2 Q. Investigator Gilstrap, you're still
3 under oath. I'm not going to go into your
4 history in law enforcement again. So let's
5 go right to the questions. Did your
6 investigation in this matter include you
7 showing any photographic lineups?

8 A. Yes, it did.

9 Q. Did you present one to a woman named
10 Natalie Powell?

11 A. Yes, I did.

12 Q. Where did she live?

13 A. She lives at Jug Factory Road
14 in Greer, South Carolina.

15 Q. Now, when did you meet with her for
16 the purpose of showing the photo lineup?

17 A. I met with her on August 20th, 2013.

18 Q. Okay. And around what time of day?

19 A. I arrived around 11:50 a.m.

20 Q. And where did you meet with here?

21 A. I met with her at her place of
22 employment at 115 Whitsett -- I think that's
23 the correct spelling -- Whitsett Street in
24 Greenville.

25 Q. Now, did you put together the photo

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1 lineup?

2 A. Yes, I did.

3 Q. How many photographs were displayed
4 in that lineup?

5 A. There were six.

6 Q. And this defendant was included in
7 the lineup?

8 A. Yes, he was.

9 Q. What position was he in that lineup?

10 A. He was in the number four position.

11 Q. Now, what date had Ms. Powell come
12 in contact with the defendant?

13 A. On the day of this incident, August
14 the 13th, 2013.

15 Q. And you were meeting with her then
16 exactly a week later?

17 A. Yes. Correct.

18 Q. And were the other five persons in
19 this lineup similar in physical description
20 to the Defendant?

21 A. Yes, their age being close to each
22 other. They were all white males. Facial
23 description, all six were wearing glasses.
24 Because that was a description we had gotten.
25 Same weight, stuff like that. Hair style.

1 Q. Very good. Now, who all was present
2 when you showed the photo lineup to Ms.
3 Powell?

4 A. Just myself.

5 Q. Tell us how it is you go about
6 showing the lineup? How you went about
7 showing her the lineup? What you said to her
8 and how you presented it to her?

9 A. Well, what I did, I met with her or
10 when I meet with anyone I say, 'I have a
11 lineup I'd like for you to look at. This
12 person may or may not be the person you saw
13 that morning. I can't help you in any way at
14 looking at this lineup. But what I do need
15 you to be is one hundred percent sure and to
16 pick only one out of the lineup.' And for
17 her to take her time.

18 Q. Okay. So you didn't lead her then
19 to believe that she should or had to pick
20 someone out of the lineup?

21 A. No.

22 Q. And didn't put any pressure on her
23 or influence her in any way?

24 A. No.

25 Q. All right. Well, tell us what Ms.

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1 Powell did when you showed her the lineup?

2 A. Showed her the lineup. She looked
3 at the lineup and in less than thirty seconds
4 picked out number four, which was Richard
5 Tedford.

6 Q. That was Richard Tedford, this
7 Defendant?

8 A. Yes.

9 Q. What did she say when she picked him
10 out?

11 A. She said, "that's the man that was
12 at my house."

13 Q. All right. Now, how certain or
14 confident did Ms. Powell appear to be with
15 regard to her choice?

16 A. She said she was sure of it.

17 Q. All right. She said that to you,
18 did you have her do anything to your lineup
19 to indicate her choice?

20 A. Yes. I had her sign underneath his
21 picture. And then I turned the photograph
22 over and had her sign the back.

23 Q. Okay. And do you have that photo
24 lineup with you today?

25 A. Yes, I do.

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1 Q. If you would, please hand it to me
2 so we could have it marked as a Court
3 Exhibit, as a State's Exhibit.

4 COURT REPORTER: State's Exhibit Number
5 56 for identification.

6 SOLICITOR MOYER: Thank you.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR MOYER:

9 Q. I hand you State's Exhibit Number
10 56. Do you recognize what I'm handing you?

11 A. Yes.

12 Q. And what is that?

13 A. This is the lineup that I presented
14 Natalie Powell on August the 20th.

15 Q. How are you able to recognize it?

16 A. My case number is at the top. Her
17 signature is at the bottom, along with the
18 date underneath her name. And then you flip
19 it over, her signature is on the back.

20 Q. Okay. Are there any changes,
21 additions, deletions that have been made?

22 A. No.

23 Q. So is it substantially in the same
24 condition now as when you used it back on
25 August the 20th, 2013?

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1 A. Right.

2 SOLICITOR MOYER: At this time, I
3 would move to have State's Exhibit Number 56
4 entered into the record for purposes of this
5 hearing?

6 THE COURT: All right. Any
7 objection, Mr. Warder?

8 MR. WARDER: No, Your Honor.

9 THE COURT: All right. 56 is in
10 without objection.

11 (SO ENTERED AS STATE'S EXHIBIT 56 FOR THE
12 PURPOSES OF THE NEIL V. BIGGERS HEARING)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR MOYER:

15 Q. Now, let me move on. Did you show a
16 photo lineup to anyone else?

17 A. Yes, I did.

18 Q. Who else did you show one to?

19 A. I showed one to Mr. Gerald Lockhart.

20 Q. Where did he live?

21 A. He lived at Berry Pond Road in
22 Greer.

23 Q. When did you meet with him?

24 A. I met with him on the same day,
25 August the 20th, 2013.

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1 Q. Where did you meet with him?

2 A. I met with him at his residence.

3 Q. Did you use the same photo lineup as
4 you used with Ms. Powell?

5 A. No, I did not.

6 Q. Okay. You used a separate lineup?

7 A. Just one with no markings, no other
8 signatures or anything like that.

9 Q. Okay. So, once again, it was
10 basically a duplicate of the one that you had
11 already shown Ms. Powell?

12 A. That's correct.

13 Q. Okay. So now, what date had Mr.
14 Lockhart come in contact with the Defendant?

15 A. On the morning of the incident,
16 August the 13th, 2013, at approximately 6:30
17 in the morning.

18 Q. Okay. So once again, about a week
19 -- it was exactly a week later when you
20 showed you him this lineup?

21 A. I showed him this lineup -- yes,
22 about a week later.

23 Q. Now, was anyone else present when
24 you showed the lineup to Mr. Lockhart?

25 A. No, there was not.

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1 Q. And did you present it to him in the
2 same way that you describe as you presented
3 it to Ms. Powell?

4 A. Yes, I did.

5 Q. Using the same language as you used?

6 A. Yes. Correct.

7 Q. So did you in any way lead him to
8 believe that he had to or he should pick
9 someone out of the lineup?

10 A. No, I did not.

11 Q. Was there any pressure on him to
12 pick someone out of the lineup?

13 A. No, there was not.

14 Q. Did you influence his decision in
15 any way as to which person to pick out?

16 A. No, I did not.

17 Q. All right. Well, tell us what Mr.
18 Lockhart's, what he did when you showed him
19 the lineup?

20 A. I handed him the lineup. He looked
21 at the pictures and then pointed to number
22 four, which was Richard Tedford. And he said
23 "that's the man that was at my house."

24 Q. Now, how certain and confident did
25 Mr. Lockhart appear to be with his

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1 identification?

2 A. He was confident that was him.

3 Q. Okay. And once again, did you ask
4 him to make any markings on that document to
5 indicate his choice?

6 A. Yes, I did. I had him sign his name
7 at the bottom and date it, August 20, 2013,
8 and then had him sign the back of the lineup
9 with his signature.

10 Q. Okay. And do you have that lineup
11 with you now?

12 A. Yes, I do.

13 SOLICITOR MOYER: I would have it
14 marked.

15 COURT REPORTER: State's Exhibit
16 Number 57 for identification.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR MOYER:

19 Q. And I hand you State's Exhibit
20 Number 57. Is that the lineup that you
21 showed to Mr. Lockhart?

22 A. Yes, it is.

23 Q. And I'll ask you the same questions.
24 How are you able to recognize it?

25 A. I recognize it. My case number is

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1 at the top. After he picked out the picture,
2 I put the numbers on the pictures, one, two,
3 three, four, five, six going from right to
4 left like I always do.

5 Q. Okay. Is that document in
6 substantially the same condition now as it
7 was when you showed it to Mr. Lockhart on
8 August 20th, 2013?

9 A. Yes, it is.

10 SOLICITOR MOYER: Your Honor, at
11 this time we'd move State's Exhibit Number 57
12 entered into the record for purposes of this
13 hearing.

14 THE COURT: All right. Any
15 objection, Your Honor.

16 MR. WARDER: No, Your Honor.

17 THE COURT: All right. State's
18 Exhibit 57 is in without objection for the
19 purpose of this hearing.

20 (SO ENTERED AS STATE'S EXHIBIT 57 FOR
21 PURPOSES OF THE NEIL V. BIGGERS HEARING)

22 SOLICITOR MOYER: I have no further
23 questions for this witness.

24 THE COURT: All right. Mr.
25 Warder.

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CROSS-EXAMINATION

BY MR. WARDER:

Q. The description that Ms. Powell gave you about the perpetrator before you made the lineup, what did she tell you the person looked like?

A. The information we had and she told me he was 5'10" to 6'; 180 to 190 pounds. And light colored hair and tall.

Q. What did she say about his age?

A. Excuse me?

Q. What did she say about his age?

A. She said late 30s to early 40s.

Q. What did Mr. Lockhart describe to you as the person he saw?

A. He told me that he also was around 180 pounds, in his 30s. Tall, light-colored hair.

Q. If both people said that the perpetrator was in his 30s, why did you put my client in, in his 50s?

A. We had, through this investigation and recovery of the victim's car that was stolen, his fingerprints were found on the vehicle. And based on that information, I

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1 developed a lineup.

2 Q. Was everybody else's picture in the
3 lineup in their 30s?

4 A. They were close in age, you know,
5 from the time of his age to two or three
6 years, plus or minus.

7 Q. Well, was there anybody as old as he
8 was?

9 A. No.

10 Q. And so he was contrasted as being
11 older ---

12 A. I mean, there could have been a year
13 or two. There's a range that we put in there
14 that we ask for. And that's how we get the
15 pictures to identify him.

16 Q. Okay. And how many pictures were
17 younger than he?

18 A. Not all younger. Like I said, I
19 don't know. They -- I didn't research the
20 ages on all of them. But if you -- when you
21 see it, they're all fairly close.

22 Q. Is that one of those SLED-generated
23 lineups or do you do your own?

24 A. I put his ID in. We get his
25 picture. Then I ask it to match similar

1 pictures.

2 Q. Thank you.

3 SOLICITOR MOYER: Just to cover one
4 matter.

5 REDIRECT EXAMINATION

6 BY SOLICITOR MOYER:

7 Q. As far as the ages, the age range
8 that you got, you've got the other five
9 people in the same age range as this
10 Defendant?

11 A. Yes.

12 Q. And you say you go a period of two
13 or three years before and after his age?

14 A. That is the age range that the, from
15 the way I understand the way the computer
16 gives us that information. Like I said, I
17 pulled his name up, his latest picture. And
18 then we go and ask for similar matches.

19 Q. Okay. Of that same age range?

20 A. Yes.

21 Q. So do you know whether these other
22 people are either older or younger? Do you
23 even know at this point?

24 A. I do not know.

25 Q. Okay. But they're all within a year

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1 or two of his age?

2 A. That's correct.

3 Q. Okay. All right.

4 SOLICITOR MOYER: I have nothing
5 further of this witness.

6 THE COURT: Okay. Let me review
7 those.

8 COURT REPORTER: (Tenders State's
9 Exhibits 56 and 57 to Judge Gravely).

10 (WITNESS STEPS DOWN)

11 THE COURT: All right. Anything
12 further from the State?

13 SOLICITOR MOYER: Yes. The State
14 would now call Natalie Powell to the stand.

15 (WITNESS TAKES STAND)

16 NATALIE POWELL, having been duly sworn to
17 tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR MOYER:

21 Q. All right. Ms. Powell, how old are
22 you?

23 A. I am thirty-four.

24 Q. Okay. And how far did you go in
25 school?

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1 A. I have an associate's degree in
2 accounting.

3 Q. And where do you work?

4 A. I currently work at Innovative
5 Manufacturing.

6 Q. How long have you worked there?

7 A. Ten months, eleven months, something
8 like that.

9 Q. Let me take you to August the 13th
10 of 2013. Did you have any encounter with a
11 person on that date at your home that lead
12 to law enforcement being called out?

13 A. Yes.

14 Q. Okay. I'm not going to ask you all
15 the details about that encounter right now.
16 But let me ask you just several matters.
17 Where did that take place?

18 A. He came up on my front porch.

19 Q. Okay. So it was at your home?

20 A. Yes.

21 Q. And where did you live at that time?

22 A. Jug Factor Road.

23 Q. And around what time of day was
24 this?

25 A. It was early morning, approximately

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1 8:00.

2 Q. Who all was home at that time?

3 A. Myself and my son.

4 Q. Your husband had already left at
5 this point?

6 A. Yes.

7 Q. Okay. So tell -- you said he came
8 to your front door?

9 A. Yes.

10 Q. What notified you or led you to
11 believe that he was ---

12 A. Doorbell.

13 Q. You heard the doorbell ring?

14 A. (Affirmative nod).

15 Q. What did you do when you heard the
16 doorbell ring?

17 A. Well, my son tried to go to the door
18 and I stopped him because I did not recognize
19 the person. So I went to the door.

20 Q. Okay. Did you have anything with
21 you when you went to the door?

22 A. Yes, I did.

23 Q. What did you have with you?

24 A. My gun.

25 Q. Now, when you went to the door, did

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1 you open the door?

2 A. I did.

3 Q. And what did you see?

4 A. I saw him walking off of my porch.
5 He was actually down on the sidewalk by the
6 time I got out on my front porch.

7 Q. Okay. Did he say anything?

8 A. I asked him what he was wanting.

9 Q. Did he face you at that time?

10 A. He did.

11 Q. So you were able to see his face?

12 A. Yes.

13 Q. Did you have a brief conversation
14 with him at time?

15 A. Very brief.

16 Q. Okay. And I'm not going to go into
17 that now. But how long would you say your
18 encounter with him took place?

19 A. Approximately a minute, maybe a
20 little bit longer.

21 Q. Now, how close was he to you when
22 you were talking to him?

23 A. I would say about ten feet away.

24 Q. Okay. I'm going to walk towards
25 you. You need to stop me to when I get to

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1 the ---

2 A. About like that.

3 Q. About this distance right here?

4 A. (Affirmative nod).

5 Q. Okay. And it was light out at this
6 time?

7 A. Yes.

8 Q. Did you have any trouble seeing him
9 at all?

10 A. No.

11 Q. Did you get a good enough look at
12 him at that time to be able to identify him
13 later?

14 A. Yes.

15 Q. Okay. Now, what do you remember
16 about what he looked like?

17 A. He was tall. He had dark clothes
18 on. He had glasses. Looked rather scary.

19 Q. Okay. Do you remember anything
20 about hair color or ---

21 A. It was light-colored.

22 Q. I'm sorry?

23 A. Light-colored.

24 Q. Do you remember anything -- what
25 race was he? Was he white or black,

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1 Hispanic?

2 A. White.

3 Q. So at some point then something
4 alerted you or something about this encounter
5 led you to call law enforcement; is that
6 correct?

7 A. Yes.

8 Q. Well, I did not call the law
9 enforcement, my husband did.

10 Q. Okay. So you called -- when did you
11 call?

12 A. I called my husband and told him of
13 the circumstances that happened after the man
14 left my house. And he called the officers.

15 Q. Okay. Now, let me take you to a
16 week later on August 20th of 2013. Did you
17 meet with Investigator Gilstrap for purposes
18 of looking at a photo lineup?

19 A. I did.

20 Q. Where did that take place?

21 A. At my work.

22 Q. And did you meet with just that one
23 officer or do you remember if there were
24 other officers with him?

25 A. Just him.

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1 Q. And was there anyone else in your
2 presence when he showed you that photo
3 lineup?

4 A. No.

5 Q. Now, when he showed you that photo
6 lineup, did he lead you to believe that you
7 should or that you had to pick somebody out
8 of the lineup?

9 A. No.

10 Q. So if the person you had seen on
11 August the 13th, a week earlier, had not been
12 in that lineup, would you have felt free and
13 comfortable to tell him that?

14 A. Yes..

15 Q. Did he influence your decision at
16 all as to which person to select in that
17 lineup?

18 A. No.

19 Q. So when you were shown that photo
20 lineup by Investigator Gilstrap, did you see
21 the person that had been at your home a week
22 prior, August 13th?

23 A. Yes.

24 Q. Did you look over that lineup
25 carefully?

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1 A. I did.

2 Q. Did you tell the investigator which
3 person you chose?

4 A. I did.

5 Q. And what did the investigator ask
6 you for you to do after you told him?

7 A. Sign under the photograph.

8 Q. Now, how confident were you of your,
9 of the decision you made when you looked at
10 the lineup?

11 A. Very.

12 Q. When you say very ---

13 A. Very confident.

14 Q. Was there any doubt in your mind?

15 A. No.

16 Q. Okay. Let me show you State's
17 Exhibit Number 56. You recognize that?

18 A. I do

19 Q. And does that accurately reflect the
20 person that you chose out of that lineup on
21 August the 20th, 2013?

22 A. Yes.

23 Q. Okay.

24 SOLICITOR MOYER: I have no further
25 questions for this witness at this time.

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1 THE COURT: Mr. Warder, do you
2 have any questions?

3 CROSS-EXAMINATION

4 BY MR. WARDER:

5 Q. You say you saw the Defendant for
6 about a minute?

7 A. Yes.

8 Q. Did you hear his voice? Did he talk
9 to you?

10 A. Yes, he did.

11 Q. What did he say?

12 A. He asked me if my parents were home.
13 And then I said, "This is my house. My
14 parents do not live here. What do you want?"
15 And then he asked me if a person by the name
16 of Derek or Dirk was at my house.

17 Q. Okay. Did you know a Derek or Dirk?

18 A. No.

19 Q. And when you called your husband, he
20 called the police.

21 A. (Affirmative nod).

22 Q. You didn't call the police?

23 A. Correct. I had to go to work.

24 Q. Thank you.

25 SOLICITOR MOYER: Nothing further

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1 for this witness.

2 THE COURT: All right. You may
3 step down.

4 (WITNESS STEPS DOWN)

5 SOLICITOR MOYER: We have one more
6 witness, Your Honor. The State would call
7 Gerald Lockhart to the stand.

8 (WITNESS TAKES STAND)

9 GERALD LOCKHART, having been duly sworn
10 to tell the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR MOYER:

14 Q. All right. Mr. Lockhart, how old
15 are you?

16 A. Seventy-four.

17 Q. Okay. And do you work anywhere
18 right now?

19 A. No, sir.

20 Q. Are you retired?

21 A. I am.

22 Q. Where are you retired from?

23 A. Hoechst Celanese.

24 Q. How long have you been retired?

25 A. Since 1997.

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1 Q. All right. Where did you live in
2 August of 2013?

3 A. Berry Pond Road, Greer.

4 Q. Now, let me take you back to that
5 date, August the 13th, of 2013. Did you have
6 an encounter with a man on that day that led
7 you to call law enforcement?

8 A. That's correct.

9 Q. Okay. So tell me what happened and
10 how you came about with this encounter of
11 this person?

12 A. I got up, went to the kitchen
13 window. Looked out and I see this black
14 Scion -- I didn't know it was a Scion at that
15 particular time -- with all four doors open
16 and the trunk. And it was just -- it was
17 daylight it was about 6:30. And I said, they
18 must be -- to myself, 'there must be more
19 than one person.' And this was not good
20 because I live at the end of the road.
21 There's no way out, except the way you come
22 in. So I slipped on some bedroom shoes and
23 got some reinforcement, went through the
24 basement because I was thinking there may be
25 more than one person.

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1 Q. What do you mean by reinforcement?

2 A. I got my -- got my gun.

3 Q. You got a gun, okay. And what did
4 you do then?

5 A. I went down the steps because I
6 didn't know where the people might be. Went
7 through the basement. The car was parked
8 alongside my pickup truck. So I needed to
9 get something between me and whoever was
10 going to be out there. So I went out the
11 side door, went around my pickup truck. And
12 this person was leaning over, bent over,
13 looking through the trunk; looked like he was
14 looking for something in the trunk.

15 At that time, I pointed the gun at him
16 and asked him what he was doing. He raised
17 up and said, "I just thought it was pretty
18 out here." And I said, "man, you must be
19 crazy." He said, "well, I may be."

20 I asked him then, I said "where do you
21 live?" He said Lyman.

22 I went and got a little closer to him and
23 I told him that he needed to get out of there
24 and not come back. He said 'okay.' He got
25 in the car -- he closed all the doors, got in

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1 the car and sit down in the driver's -- in
2 the driver's seat. And he said, "I can't go
3 anywhere. I left the keys in the trunk." I
4 said, "well, get out and get them. So he
5 did." I was probably as close to him as that
6 pedestal right there, probably seven or eight
7 feet.

8 Q. Okay. And you can use me as a
9 range?

10 A. I was as close to him as you are to
11 me right now.

12 Q. Okay. So you think that is seven or
13 eight feet, okay.

14 A. At that particular point.

15 Q. Okay.

16 A. He got out, raised the trunk and got
17 the keys, got back in the car and left.
18 Backed out.

19 I got in my truck and followed him out to
20 the main road to make sure he was out of the
21 area.

22 Q. Okay. So how long a period of time
23 do you think your interaction was with him?

24 A. Somewhere between five and eight
25 minutes, maybe.

1 Q. Okay. And this was, you said, about
2 6:30 in the morning?

3 A. Yes, sir. Just had broken day good.

4 Q. Okay. Was there enough light for
5 you to be able to see him?

6 A. Yes, sir.

7 Q. Did you have any trouble seeing his
8 face at all?

9 A. No, sir.

10 Q. Did you get a good enough look at
11 him during that period of time to be able to
12 identify him later?

13 A. Yes, sir.

14 Q. Okay. All right. Well, let me take
15 you to a week later, August the 20th of 2013.
16 Do you remember meeting with Investigator
17 Gilstrap for the purposes of looking at a
18 photographic lineup?

19 A. Yes, sir.

20 Q. Where did that take place?

21 A. At my home.

22 Q. Do you remember if anyone else was
23 with Investigator Gilstrap?

24 A. No, sir. There was no one with him.

25 Q. Did the investigator influence your

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1 decision at all as to who to pick out of that
2 lineup?

3 A. No, sir.

4 Q. Did he tell you or lead you to
5 believe that you should pick someone out of
6 the lineup?

7 A. No; sir.

8 Q. If the person you had countered a
9 week prior had not been in the lineup, would
10 you have told the investigator that?

11 A. I would have told him, (affirmative
12 nod).

13 Q. So you -- okay. Now, when you were
14 shown that lineup, were you able to identify
15 a person as being the person ---

16 A. I did identify a person, yes.

17 Q. And how confident were you?

18 A. One hundred percent.

19 Q. Okay. I'm going to show you State's
20 Exhibit Number 57. Can you take a look at
21 that? Do you recognize that?

22 A. Yes.

23 Q. And is that the photo lineup that
24 you were shown?

25 A. Yes, it is.

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1 Q. And does that accurately reflect the
2 person you picked out of that lineup on that
3 day?

4 A. Yes.

5 Q. Okay. Okay. Please answer any
6 questions the Defense may have.

7 THE COURT: Mr. Warder?

8 CROSS-EXAMINATION

9 BY MR. WARDER:

10 Q. You get up pretty early in the
11 morning, I take it?

12 A. Yes, sir, I do.

13 Q. Okay. And what time was it when you
14 first wandered into the kitchen and looked
15 out your window and saw the car there?

16 A. It was approximately 6:30.

17 Q. Okay. It's in August so I guess the
18 sun was up pretty early?

19 A. The sun wasn't up then.

20 Q. It was -- could you see well?

21 A. Yes, sir.

22 Q. Could you see what the Defendant was
23 doing?

24 A. I could after I got outside and back
25 around on the other side of my truck.

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1 Q. Well, could you see a man bent over
2 and looking into the car from the inside of
3 the house?

4 A. No, sir. Not -- from inside the
5 house I saw no one.

6 Q. Okay. You just saw the car there?

7 A. The car, (affirmative nod).

8 Q. Were all the doors open?

9 A. All the doors plus the trunk.

10 Q. Okay. So you could see all that?

11 A. I could.

12 Q. And when you come out you saw the
13 Defendant for the first time?

14 A. Yes, sir. That's correct.

15 Q. And where was he standing when you
16 did that?

17 A. Where was I standing?

18 Q. He standing?

19 A. He was standing at the back of the
20 car, bent over, looking into the trunk.

21 Q. And when you come out of your house
22 how far away from him were you?

23 A. At the very beginning when I come
24 out the door?

25 Q. (Affirmative nod).

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1 A. Probably, between me and him was the
2 Scion and my truck, my pickup truck.

3 Q. About two car lengths?

4 A. Widths not lengths. Widths.

5 Q. Two car widths?

6 A. Yes, sir.

7 Q. A car is about seven or eight feet
8 wide?

9 A. I don't believe they're that wide,
10 sir. I believe the Scion is probably about
11 five feet, and my pickup maybe six feet.

12 Q. Okay. So you were about eleven or
13 twelve feet away?

14 A. Yes, sir.

15 Q. And did that remain the distance
16 throughout the conversation?

17 A. No, it did not.

18 Q. He got farther away?

19 A. No, sir.

20 Q. He got closer?

21 A. Yes, sir.

22 Q. At the closest point, how close were
23 you?

24 A. Probably five feet, five or six
25 feet.

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1 Q. And were you holding your gun at
2 ready or ---

3 A. Sir?

4 Q. You had your gun with you?

5 A. Yes, sir. I did. I had it on him,
6 pointed at him.

7 Q. And did you maintain that throughout
8 the ---

9 A. I did.

10 Q. And did you say this took about five
11 to eight minutes?

12 A. Approximately. No less than five,
13 no more than ten.

14 Q. Okay. And you were shown the lineup
15 all on one sheet of paper?

16 A. Yes, sir. That's correct.

17 Q. And would it be fair to say then
18 that after this was all over, he'd left by
19 6:45?

20 A. Yes, sir. That's fair to say.

21 Q. Thank you.

22 MR. WARDER: That's all the
23 questions I have.

24 THE COURT: All right. Anything
25 further, Mr. Moyer?

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1 SOLICITOR MOYER: No, Your Honor.

2 And no further witnesses on this matter.

3 THE COURT: All right. You may
4 step down. Thank you, sir.

5 All right. Anything else from the
6 State?

7 SOLICITOR MOYER: Not on this
8 matter, Your Honor.

9 THE COURT: All right.

10 (WITNESS STEPS DOWN)

11 THE COURT: From the Defense?

12 MR. WARDER: Yes, sir. Your Honor,
13 the procedure they used in here is inherently
14 suggestive. It suggests that the person is
15 on the page. In a lineup that is properly
16 and correctly done, they offer the pictures
17 in sequential order and don't tell the person
18 how many pictures there are. That way there
19 is no suggestion that any one picture or that
20 somebody has to be picked before the lineup
21 ends. And so in a non-prejudicial lineup an
22 officer would have just a group of single
23 photographs that he would layout and say is
24 that the man. If the fellow said, 'no', well
25 they'd lay down another. But they wouldn't

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1 give us a defined group and the opportunity
2 to choose between. And because they didn't
3 follow the more accepted practice now, a
4 sequential lineup of photographs that are not
5 all displayed at one time, the witness
6 doesn't know how many photographs they looked
7 at to avoid the prejudice, the lineup was
8 tainted and should be excluded.

9 THE COURT: Will there be any
10 response?

11 SOLICITOR MOYER: Your Honor, I
12 would just remark that there is no legal
13 requirement about what type of photographic
14 lineup is used.

15 Both witnesses indicated very clearly
16 that if the person had not been in that
17 lineup, they would have told the officer.
18 They felt no pressure picking one out of the
19 lineup.

20 Your Honor, in looking at the lineups,
21 they are all -- I see actually nothing about
22 the lineups themselves that are suggestive.

23 THE COURT: All right. In
24 reviewing both Exhibits 56 and 57 and
25 listening to testimony, I find that the photo

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1 lineup was not unduly suggestive, so I will
2 allow it.

3 All right. Anything else?

4 SOLICITOR MOYER: Your Honor, the
5 last matter that I would bring up before the
6 Court is that we're going to ask Your Honor
7 to take judicial notice of sunrise and civil
8 twilight. I will pass up to the Court data
9 from the U.S. Naval Observatory Astronomical
10 Application Department that indicate that
11 civil twilight on August the 13th at 2013 in
12 Greer, South Carolina was at 6:21 a.m. and
13 that sunrise was at 6:48 a.m.

14 THE COURT: Well, this is a
15 criminal case so it's criminal twilight.
16 All right. Any comments?

17 MR. WARDER: Yes, sir. Your Honor,
18 the standard of this case isn't sunrise and
19 sunsets. It's usually construed to be a half
20 an hour before and a half an hour after
21 sunset, that period of twilight where you can
22 still see.

23 That information of the exact time the
24 sun comes up and sets doesn't define what's
25 required under the statute. Common law and

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1 THE COURT: All right. I'm going
2 to take this other plea on the other case.
3 It has nothing to do with this one. And
4 we'll just -- let's do opening statements
5 before lunch. And then we'll take a lunch
6 break and then be in testimony.

7 (COURT IN RECESS)

8 (DEFENDANT PRESENT)

9 (JURY IN AT 12:00 P.M.)

10 THE COURT: All right. Ladies and
11 gentlemen, I realize it's already 12:00 and
12 instead of getting opening statements and
13 then having you go to lunch, I might as well
14 just let you go. I'm going to go ahead and
15 have the clerk give you the oath for this
16 case. Then I'll give you a few more comments
17 and then let y'all go to lunch until 1:20.
18 Does that give everybody enough time?

19 All right. If you will administer
20 the oath.

21 (WHEREUPON JURY SWORN)

22 THE COURT: All right. Okay.

23 Now, I'm going to let y'all go to
24 lunch but there's a couple of important rules
25 that we have every time that y'all take a

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1 break.

2 One, you do not need to be
3 discussing the case, okay? You will be able
4 to discuss the case after all the evidence
5 comes in and after I have charged you on the
6 law. It's not appropriate to have any
7 discussions about any part of the trial
8 before that time.

9 You're supposed to keep an open mind
10 until you get everything, okay? And that's
11 real important.

12 The other thing is it's not proper
13 at all to do any independent investigation.
14 You know, it's not proper to *Google* any of
15 the parties involved, the names or anything
16 like that. Because, again, that is informa-
17 tion that's not properly been presented
18 through the court.

19 So, you know, as I tell people, just
20 keep a blank mind except when you're sitting
21 in here.

22 Don't do any independent
23 investigation or anything whatsoever. The
24 only thing that you're supposed to consider
25 when you begin deliberations is testimony

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1 that you get from this stand here or
2 documentary evidence, which has been properly
3 presented.

4 And that's what you took an oath to
5 say that you would follow through with that.
6 So I would ask that you please, you know,
7 abide by that.

8 You should not be contacted by
9 anybody about this case in any way. If you
10 do get contacted, get whatever information
11 you can about the identity of that person and
12 get that information to the bailiff, okay?

13 The bailiffs are your main contact
14 people, okay? Mr. Simms and Mr. Page,
15 they're the people that you need to talk to
16 if you have any questions whatsoever.

17 I'm going to ask you to be back in
18 your jury room at 1:20. And then we'll come
19 in with some additional instructions and
20 we'll get you to pick your foreperson at the
21 first break that you have back there. So
22 y'all have a good lunch and we'll see you
23 back in a little bit.

24 (JURY OUT @ 12:03 P.M.)

25 THE COURT: All right. Anything

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1 else from the break before break?

2 SOLICITOR MOYER: No, Your Honor?

3 THE COURT: Anything else from the
4 Defense?

5 MR. WARDER: No, Your Honor.

6 THE COURT: All right. We'll be
7 back in here at 1:20 and that way we'll be
8 ready to go.

9 (LUNCH RECESS)

10 (DEFENDANT PRESENT)

11 THE COURT: Okay. Y'all ready?
12 Have we got all the jurors back?

13 BAILIFF: Yes, sir.

14 THE COURT: All right. Bring the
15 jury in.

16 (JURY IN @ 1:20 P.M.)

17 THE COURT: All right. I hope
18 everybody had a good lunch. Well, we're
19 ready to proceed with the trial in this case.
20 I want to give you some preliminary remarks
21 before the attorneys have a chance to talk
22 with you. You know, and we had a couple of
23 people that have been on previous juries
24 here, so this will be a repeat.

25 The jury and the judge have two

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1 distinct roles in the trial of the case.
2 You, the jury, are the sole judge of the
3 facts. You know, when it comes time for you
4 to deliberate, you will be the sole
5 determiner of the facts of this case as
6 presented.

7 I, on the other hand, as the judge,
8 have the sole authority on the law of the
9 case. And that means not only I will tell
10 you what the law is at the conclusion of the
11 trial and that's the law that you have to
12 apply. It's not what you think the law is or
13 what you picked up on TV that you think the
14 law is or what the law should be. It is
15 really the law that I tell you at the
16 conclusion. That's called the jury charge.
17 And that's the law that you're to apply to
18 the case.

19 Again, I'm going to -- the trial of
20 this case it's kind of a different levels.
21 The first part is opening statement by the
22 attorneys, then you have presentation of the
23 evidence through witnesses or documentary
24 evidence. And at the conclusion of the
25 trial, you will have a closing arguments by

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1 the attorneys and then the jury charge, which
2 I will present to you. And then at that
3 time, you'll go back to your jury room and
4 deliberate.

5 If anybody needs a break at any
6 point -- I realize that y'all are -- you
7 know, we want to make this as convenient as
8 possible. We realize that y'all didn't ask
9 to be here, but you're providing a very
10 serious and very important service to both
11 the State and the Defendant in this matter.
12 It's a very serious matter anytime you have a
13 jury trial. But if y'all need to take a
14 break, just kind of, you know, signal the
15 bailiff, signal me if you can, and we'll take
16 a break. Normally, we'll take a break every,
17 you know, hour and fifteen, hour and thirty
18 minutes. And a lot of it kind of depends on
19 where the witnesses fall out and stuff like
20 that. But we try to be aware of y'all having
21 to sit there. And maybe occasionally we may
22 need to take a, just a thirty second,
23 everybody stand up and stretch kind of break.
24 And we'll do that as well.

25 All right. One of the things that

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1 you'll be looking at throughout the case is
2 that, you know -- you know, ultimately it
3 will be up to you to determine the
4 believability and the credibility of any
5 witnesses, so that's your job to pay
6 attention to the witnesses and use your own
7 common sense and your own experiences, you
8 know, when you're evaluating that.

9 The next time that y'all do take a
10 break, I will ask that y'all elect a fore-
11 person. And, again, that's not somebody --
12 they don't get paid any more than the rest of
13 you, but they're the person to be kind of in
14 charge of any discussions and for any
15 communication with the bailiff and ultimately
16 provides, you know, communications to me.

17 With those kind of introductory
18 remarks being said, any exceptions from the
19 State?

20 SOLICITOR MOYER: No, Your Honor.

21 THE COURT: Any exceptions from
22 the Defendant?

23 MR. WARDER: None, Your Honor.

24 THE COURT: All right. At this
25 time we will have opening statements.

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1 SOLICITOR MOYER: Thank you, Your Honor.
2 May it please the Court?

3 OPENING STATEMENT

4 BY SOLICITOR MOYER:

5 Good afternoon ladies and gentlemen.

6 As I stated right before we drew this jury,
7 my name is Mark Moyer. I am an Assistant
8 Solicitor. If you are new to our state or
9 perhaps new to the criminal justice system,
10 you may not know, but in South Carolina we
11 call, what just about every other state calls
12 a district attorney we call a solicitor in
13 South Carolina. So Walt Wilkins is the
14 elected Solicitor. I'm one of the assistants
15 who work for him.

16 It is my job as an Assistant
17 Solicitor to prosecute cases that have been
18 indicted by the Grand Jury, which is why we
19 are here today on these four charges that are
20 before us: two counts of burglary first
21 degree and two counts of larceny or stealing.

22 What I'm going to do here is I'm
23 just going to take about five minutes and
24 just give you a brief overview of the
25 testimony that you're going to hear in this

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1 case. We're going to call somewhere in the
2 range of fifteen to seventeen or eighteen
3 witnesses who are going to come before you to
4 paint this picture of what happened on August
5 13th of 2013. That's a little over two years
6 ago.

7 And what you're going to learn
8 ladies and gentlemen is that these two
9 burglaries happened on that date.

10 Let me start off with the first one.
11 It is a woman by the name of Ms. Wilbanks,
12 Melody Wilbanks. She lives out in Greer, in
13 the country north of Greer, kind of an
14 isolated area out in the country.

15 And you're going to hear this
16 incident happened about -- early that
17 morning. You're going to hear that Ms.
18 Wilbanks was in her home and her husband had
19 to get up early, somewhere about 5:45 to go
20 on to work. So she stayed at home. She
21 didn't have to get up until a little bit
22 later.

23 She's lying in her bed and she's
24 still asleep until all of a sudden she hears
25 a crashing sound of glass. Of course, it

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1 woke her up. It startled her. When she
2 hears this noise, she understandably gets up,
3 wonders what in the world has happened.

4 Not knowing that she was about to
5 walk into danger. Walks out and starts into
6 her living room area of her house. She was
7 naked. You will hear that when she got out
8 into the living room in her house, she sees a
9 person literally coming through her window, a
10 side window of her house. And then later,
11 one of those big gas canisters that you use
12 on gas grills had been thrown through the
13 window to make, to break the glass and to
14 make first entry into the house, which is
15 what certainly startled Ms. Wilbanks.

16 Understandably shaken, she turns to
17 get away, to get away from what is going on
18 here in the living room of her house. And
19 she runs to her bedroom. She goes into the
20 bedroom. She closes the door, locks it. She
21 goes to one side of her bed where she has a
22 pistol underneath the mattress. She takes
23 the pistol. She runs to the other side of
24 her bed. She got her phone and her glasses.
25 She then goes into another bathroom. This is

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1 a bathroom they're in. There's a bathroom
2 with a shower on one side and a closet on the
3 other. She goes into that room, again closes
4 the door, locks it and goes into this closet..

5 You will hear that very soon after
6 that, it is unmistakable that this man is
7 coming after her. The bedroom door that she
8 closed first begins to be knocked against.
9 It eventually is knocked right off the
10 hinges, right off the wall, knocked onto the
11 floor.

12 Ms. Wilbanks has never shot a gun
13 before. She's fumbling around with this
14 pistol, knowing that her first -- before
15 calling 9-1-1 her first concern is to protect
16 herself. Trying to figure out how to get
17 this pistol to work.

18 She hears the man in her bedroom
19 moving around. The man then comes to the
20 door where she is in the bathroom. And she
21 is having an unmistakable belief that this
22 man is trying to come into that door after
23 her. So at this point she takes the gun and
24 she fires it. She doesn't fire it into the
25 door. But she fires it into the shower with

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1 the intention of letting that man know that
2 she's armed.

3 Well, fortunately, it does the trick.
4 The man backs away. And when Ms. Wilbanks
5 stops hearing the noises of someone trying to
6 break into the bathroom and the noise of the
7 person begins to dissipate. Her ears are
8 ringing from the sound of the shot, but she
9 thinks at some point she hears a car door
10 slam. And she calls 9-1-1.

11 Of course, like I said she's out in
12 the country. It takes about twenty minutes
13 for the officers to get there. She stays on
14 the phone with them the whole time not sure
15 if this man is still in the house or not,
16 knowing her child is in another room,
17 wondering and worrying about her child.

18 Officers finally get there. They
19 come into the house. They meet with her.
20 The man had indeed gone. They determined
21 shortly thereafter that this man had stolen
22 her car. It's a very distinctive car. It's
23 a Scion, S-C-I-O-N. It's a big, black boxy
24 sort of car, black. It had been in her
25 garage. Her keys had been in her purse,

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1 which had been on the door to her bedroom,
2 which had fallen over when he knocked the
3 door over. So her car's gone.

4 Now, Ms. Wilbanks did not get a good
5 enough look at this man to identify him
6 later. You know, she could tell it was man.
7 She could tell it was -- and she could hear
8 his voice at times talking to her also. So
9 she knew it was a man, but she didn't know a
10 whole lot else, other than that.

11 Over the next several hours,
12 however, this Defendant is spotted in the
13 vehicle several times. The first time, you
14 will hear testimony, it's just about ten to
15 fifteen minutes after this burglary.

16 You're going to hear that a man by
17 the name of Mr. George Lockhart always gets
18 up early in the morning. He's a retired
19 gentleman. Looks out the window to check on
20 his birdfeeders, and when he does so, he sees
21 the black Scion. You're going to hear
22 testimony that he sees all four doors open,
23 the trunk open and he's wondering what in the
24 world is going on. He gets a pistol and he
25 walks downstairs. And you will hear that he

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1 confronts this Defendant, whom he later picks
2 out of a photo lineup and has a conversation
3 with him. It's heated. And he finally tells
4 him that he needs to get out of there and the
5 man does. Mr. Lockhart gets the tag number.

6 And you'll hear that this is
7 repeated several other times over the next
8 couple of hours. Very similar circumstances,
9 an isolated house, you know, a long driveway.
10 And homeowners confront him. Those other
11 times homeowners are armed with pistols as
12 well.

13 Well, later that day, the vehicle is
14 abandoned, is discarded behind an office
15 building in Greer. There's a grassy right-
16 of-way area, I think for power lines and so
17 forth. And the tenant of this office
18 building happens to hear a car spinning tires
19 behind her building. She looks out the
20 window and she sees this black Scion out
21 there. She doesn't see who was in it, but
22 the car gets stuck in the mud. And the
23 person obviously flees.

24 Well, law enforcement officers come
25 out, process the vehicle. It's destroyed at

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1 this point. It's all damaged, things ripped
2 out. It's also full of a bunch of stuff that
3 did not belong to Ms. Wilbanks. Trash cans,
4 speakers, some other property that Ms.
5 Wilbanks didn't own. Well, as I just said,
6 it was processed for fingerprints and later
7 determined that a fingerprint matches this
8 Defendant from that car.

9 You're going to hear the next step in
10 our case happens the following day. So this
11 would be August the 14th. This is when we
12 find out about the second burglary. And we
13 find out about that because the homeowner,
14 Mr. Lockhart is about to move into this
15 house. He hadn't been fully moved into it
16 yet. And he hadn't been there in a couple of
17 days. Well, he comes home early on the 14th
18 and he's going to let in some people to come
19 do some work in the house. And when he
20 drives up he notices something is different.
21 His garage door is part way up. That's odd.
22 He hadn't left it up. Well, he drove into
23 the garage and he sees the door from the
24 garage into his house is open. He walks into
25 the house and sees there's obviously been a

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1 break-in. The front door has been smashed
2 open, the splinters of the frame on the
3 floor. He calls law enforcement.

4 Law enforcement comes out, again
5 processed this house. This house is right
6 across the street from Ms. Wilbanks. It's in
7 Greer City limits, whereas Ms. Wilbanks house
8 is in the county. But they're literally
9 right across the street from one another.
10 Again the officers process this house. At
11 this time, three of this Defendant's
12 fingerprints are found in this house.

13 Well, another piece of evidence that
14 unfolds at this time is while the officer is
15 speaking to the homeowners, one of the
16 homeowners just happened to mention, 'oh, he
17 even stole our matches.' Because they were
18 going through the house trying to determine
19 what property was stolen. Well, that officer
20 remembered that the previous day he had been
21 in the police station, remembered when these
22 officers were bringing in that property from
23 that recovered vehicle, the property that was
24 there that Ms. Wilbanks didn't own. And he
25 remembered, you know, the matches stood out.

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1 told you a story. And you're probably
2 wondering 'well, now what's this lawyer going
3 to get up and say to all of that.'

4 I'm going to tell you that like many
5 dramas, stories, events, half of it does not
6 tell the story. You have to hear all of the
7 evidence before you make up your mind.

8 And that is important in this case
9 because the criminal defense is not the
10 second place team, but we're a second half
11 team because the State always go first. I
12 get up and talk to you after the State's told
13 you its take on all the evidence. I can get
14 up and put up testimony only after the State
15 has put up all its testimony.

16 Now, it's important that you keep
17 an open mind until we get to the second half.
18 If you decide this case on what's already
19 been told or let that influence you, you've
20 already decided it and made up your mind
21 before you heard everything. And I only
22 mention that because there are studies that
23 show two things. First of all, that jurors
24 get impressions and make up their mind very
25 early on when they've heard half of the case.

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1 And, second of all, jurors seldom ever change
2 their mind once it's made up. So, what I'm
3 asking you to do in this case is to keep an
4 open mind.

5 If you feel yourself having decided
6 and saying 'that absolutely proves it' before
7 you've heard everything, I ask you to
8 consciously resist that temptation. Don't
9 make a decision until you've heard all the
10 evidence because there's no other way you can
11 fairly judge this Defendant.

12 You are not allowed, during the
13 period of time where you're receiving
14 evidence to discuss that evidence with your
15 fellow jurors. Your job is to listen to it
16 and carefully and get impressions of what's
17 believable or not. But you can't begin
18 deliberations or discussions with each other
19 until His Honor, at the very end of this
20 case, will instruct you on the law and then
21 tell you for the first time it's okay to
22 discuss it with your fellow juror. That's
23 how important everything is before anybody
24 makes up their mind. Before you start a
25 consensus, you need to talk it over with

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1 Q. How long have you worked with the
2 sheriff's office?

3 A. Twenty-one years.

4 Q. How long have you been in law
5 enforcement for?

6 A. Thirty years.

7 Q. Okay. Where did you work before the
8 sheriff's office?

9 A. Spartanburg County Sheriff's Office.

10 Q. Okay. Now, what are your
11 responsibilities at your current position?
12 What is your title and your responsibilities
13 in that position?

14 A. I'm a research analyst and what I do
15 is any information that comes through our
16 dispatch center, I'm responsible for
17 maintaining those records and researching
18 those for any requests that come through.

19 Q. How long have you held this
20 position?

21 A. I've been in this position four
22 years now.

23 Q. Let me ask you, what do dispatchers
24 at the call center do? So what is the call
25 center and then what do the dispatchers do?

1 A. The 9-1-1 center is the operations
2 for the sheriff's office. All incoming
3 calls, whether it be non-emergency or
4 emergency 9-1-1 lines are received by the
5 call center. It is their responsibility to
6 take this information from the callers and
7 disburse it out to the proper authority to
8 get them the help that they have called and
9 requested for.

10 Q. Now, are all calls that are received
11 at this dispatch center, are they recorded?

12 A. Yes.

13 Q. And how are they recorded?

14 A. They're recorded automatically.
15 They're simultaneously recorded and they're
16 in chronological order by the time that they
17 come in.

18 Q. Okay. So what does that mean when
19 you say automatically and simultaneously?

20 A. We have no choice. Every single
21 phone -- we have no private lines in our
22 dispatch center. Every single phone is
23 recorded. So when the dispatcher picks up it
24 automatically begins recording that call and
25 there's no way for them to stop it. So that

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1 is how it's automatically recorded. And our
2 phone system is a digital system.

3 Q. Now, can a recording be stopped
4 during the recording process? In other
5 words, once a call is started being recorded,
6 can it be stopped?

7 A. No.

8 Q. At what point does a call to 9-1-1
9 begin to be recorded?

10 A. The 9-1-1 calls actually begin
11 recording when the caller dials 9-1-1. After
12 they hit that second 1 (one), it starts
13 recording even though the dispatcher or the
14 call-taker has not picked up in the call
15 center. So anything that's said prior to the
16 dispatcher picking up is recorded as well.

17 Q. Now, do you or the dispatcher
18 receiving a call or anyone else have any
19 control over how the call is recorded or what
20 part of the call is recorded?

21 A. No, we do not.

22 Q. Do the call records accurately
23 reflect the conversations that are taking
24 place between a 9-1-1 caller and the
25 dispatcher?

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1 A. Yes, they do.

2 Q. Now, are these recordings then kept?

3 A. Yes, they are.

4 Q. How are they kept and how long are
5 they kept?

6 A. We have a computer database storage
7 center. And we have a backup storage center,
8 a server there at the dispatch center to
9 maintain these records. And we keep them for
10 three years.

11 Q. Okay. And are they kept in the
12 ordinary course of your operations at the
13 call center?

14 A. Yes, they are.

15 Q. Now, do your duties included the
16 responsibility for maintain the records
17 concerning these calls to 9-1-1?

18 A. Yes, it does.

19 Q. And do they also include coming to
20 court and bringing copies of the 9-1-1 calls
21 to court for the purpose of introducing them
22 into a court of record?

23 A. Yes, it does.

24 Q. And so do you regularly go to court
25 to do that?

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1 A. I do.

2 Q. Now, let me draw your attention to
3 the morning of August the 13th of 2013. Was
4 the recording system working properly on that
5 date?

6 A. Yes, it was.

7 Q. Was a 9-1-1 call made on that
8 morning from Rayland Place?

9 A. Yes, it was.

10 Q. And is that in Greenville County?

11 A. Yes, it is.

12 Q. Okay. Do you have record for what
13 phone number that telephone call came from?

14 A. Yes, I do.

15 Q. What was that?

16 A. That phone call was received phone
17 number -0251.

18 Q. Okay. And does it record the person
19 who made that phone call?

20 A. It will record the person if that
21 person gives the name.

22 Q. Now, have you had the opportunity to
23 review that call since it was recorded then
24 on August the 13th of 2013?

25 A. I have.

1 Q. Okay. And how so?

2 A. I was asked to retrieve a copy of
3 the recording and maintain it and secure it
4 for court purposes.

5 Q. Okay. I'm going to hand you State's
6 Exhibit Number 54 and ask if you would just
7 take a minute to take a look at that and see
8 if you can recognize what that is?

9 A. I do.

10 Q. Okay. And what is that?

11 A. This is a CDR that I prepared on
12 August the 28th, 2014. It's got my name where
13 I signed that I prepared it and made the
14 copy. It's an original and it was placed
15 into evidence under the case number of 13-
16 125727 into evidence.

17 Q. Now, did you make an exact copy of
18 that 9-1-1 call?

19 A. Yes, I did.

20 Q. And did you maintain changes of any
21 sort? Did you add anything or delete any-
22 thing at all?

23 A. No, sir. I did not.

24 Q. Okay. So do the contents of that CD
25 fairly and accurately reflect that 9-1-1 call

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1 on August the 13th of 2013?

2 A. Yes, it does.

3 SOLICITOR MOYER: At this time I'd
4 move to have State's Exhibit Number 54
5 entered into evidence.

6 THE COURT: Any objection?

7 MR. WARDER: No objection, Your
8 Honor.

9 THE COURT: All right. Exhibit 54
10 is in without objection.

11 (SO ENTERED AS STATE'S EXHIBIT 54)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR MOYER:

14 Q. Okay. Let me ask you, what is a CAD
15 report?

16 A. The CAD is the computer aided
17 dispatch system that we use, which is a
18 computer system. So all calls are entered
19 into the computer. We have a specific
20 program that we have and it maintains the
21 address, the caller's name, the telephone
22 number and all remarks of the call. And then
23 it transposes it over as the call is
24 completed into a, maintaining it into the
25 reporting system and can be retrieved. And

1 so a CAD report is a computer aided dispatch
2 system. And an incident recall is an
3 incident and we recall the facts of that case
4 onto that report.

5 Q. Okay. Now, is that information
6 generated for every call for which you
7 dispatch officers?

8 A. Yes, it is.

9 Q. And, once again, are those records
10 kept in the ordinary course of business for
11 the sheriff's office?

12 A. Yes, they are.

13 Q. And it's a regular practice for the
14 sheriff's office to make and keep those
15 records?

16 A. Yes, it is.

17 Q. And you have access to that
18 information in the normal function of your
19 job?

20 A. I do.

21 Q. Did you bring with you the CAD
22 report that was generated from this call?

23 A. I did.

24 Q. Okay. So using that CAD report,
25 would you tell us what time this 9-1-1 call

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1 was made on August 13th of 2013?

2 A. 0620 a.m.

3 Q. Is that the specific time, 6:20?

4 A. That was the time that the call was
5 actually entered into the CAD for dispatch.

6 Q. Okay. And is that the exact time
7 the call was made?

8 A. The phone record for the actual
9 telephone number calling in that 06:19:45.

10 Q. Okay. So 6:19 in the morning and
11 :45 seconds?

12 A. Correct.

13 Q. How long did that telephone call
14 last?

15 A. That call lasted twenty-one minutes
16 and fifty-six seconds.

17 Q. Okay. When were officers
18 dispatched?

19 A. An officer was dispatched at 06:20,
20 right as the call was entered.

21 Q. Okay. And was the 9-1-1 caller, did
22 the 9-1-1 caller remain on the line during
23 that period of time?

24 A. Yes, she did.

25 Q. And time -- was contact made by the

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1 officers who arrived with the 9-1-1 caller?

2 A. The first officer arrived on the
3 scene at 06:30. But she was still -- he was
4 outside the residence at that time.

5 Q. Okay. And several other officers
6 arrived?

7 A. That's correct. He called for
8 additional.

9 Q. Does the report state when those
10 officers actually made contact with the
11 caller?

12 A. At approximately 06:41 he requested
13 the call taker to ask the complainant to step
14 out and speak with him. Come out of the
15 closet.

16 Q. Okay. Thank you. And that's all
17 the questions I have for you right now.
18 Please answer any questions the Defense may
19 have.

20 MR. WARDER: Your Honor, if it
21 please the Court?

22 THE COURT: Yes, sir.

23 MR. WARDER: The Defense has no
24 questions.

25 THE COURT: Okay. Thank you.

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1 WITNESS: Thank you.

2 SOLICITOR MOYER: I have nothing
3 further from this witness.

4 THE COURT: All right. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 SOLICITOR MOYER: The State calls
8 Melody Wilbanks.

9 (WITNESS TAKES STAND)

10 MELODY WILBANKS, having been duly sworn
11 to tell the truth and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR MOYER:

15 Q. All right. Ms. Wilbanks, I ask you
16 to make sure you speak into that microphone
17 so all the jurors can hear you back here as I
18 ask you questions. First off, just a little
19 bit of information about you. How old are
20 you?

21 A. Forty.

22 Q. And are you married?

23 A. Yes.

24 Q. Any children?

25 A. Yeah. I have a three-year-old

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1 daughter.

2 Q. A three-year-old daughter, okay. So
3 how old was your daughter on August of 2013?

4 A. Fifteen months.

5 Q. Now, how far did you go in school?

6 A. I have my master's degree.

7 Q. Where are you employed?

8 A. Resurgent Capital Services in
9 Greenville.

10 Q. Okay. Where did you live in August
11 of 2013?

12 A. At Rayland Place in Greer.

13 Q. Okay. How long had you lived there
14 at that time, August of '13?

15 A. About eight years.

16 Q. Okay. Now, have you had a chance to
17 look at a map that we prepared; an aerial map
18 of your house?

19 A. Uh-huh. Yes.

20 Q. Let me ask you to take a look at
21 State's Exhibit Number 52. Are you able to
22 recognize what is depicted in that map?

23 A. Yes.

24 Q. Okay. What is shown in that map?

25 A. This is my house with the green top.

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1 Q. Okay. So it shows your house in
2 that map?

3 A. Uh-huh.

4 Q. Is that a true and accurate
5 representation of the layout of your house
6 and the roads around your house in August of
7 2013?

8 A. Yes.

9 Q. Okay.

10 SOLICITOR MOYER: Your Honor, at
11 this time I would move to have State's
12 Exhibit Number 52 entered into evidence?

13 THE COURT: All right. Any
14 objection?

15 MR. WARDER: Your Honor, I have no
16 objection at this time.

17 THE COURT: All right. So entered
18 without objection, Exhibit 52.

19 (SO ENTERED AS STATE'S EXHIBIT 52)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR MOYER:

22 Q. Could I ask you to just to step down
23 one minute and just point out to the jury
24 which is your house.

25 A. This one right here.

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1 Q. Okay. And the address was
2 Rayland Place?

3 A. Uh-huh.

4 Q. Okay. Thank you.

5 A. (Resumes seat on witness stand).

6 Q. Now, is that a cul-de-sac there?

7 A. Yes.

8 Q. Okay. So in order to get out of the
9 neighborhood, you can just go directly out
10 onto that main road right there?

11 A. Right.

12 Q. What is the main road that goes
13 along ---

14 A. 101.

15 Q. Highway 101?

16 A. Uh-huh.

17 Q. Okay. Now, let me take you back to
18 the morning of August the 13th of 2013. And
19 were you at your home at Rayland Place on
20 that morning?

21 A. Yes.

22 Q. Who else was in the home with you
23 when the morning started?

24 A. My husband was and my daughter,
25 Carol; my fifteen-month-old daughter.

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1 Q. Okay. Where was your daughter?

2 A. Her bedroom's across the house from
3 us. She was still in a crib at that time, in
4 her bedroom.

5 Q. Okay. So you and your husband were
6 in the bedroom?

7 A. Uh-huh.

8 Q. Did your husband stay in the house
9 or did he leave?

10 A. He left for work.

11 Q. What time did he leave for work?

12 A. Probably quarter of 6:00, between
13 quarter of 6:00 and 6:00 he usually leaves.

14 Q. Okay. Did you get up or wake up
15 when he got up to leave?

16 A. No.

17 Q. Okay. So you stayed in bed?

18 A. Yes.

19 Q. So what woke you up that morning?

20 A. The sound of glass breaking.

21 Q. So you had been asleep at this
22 point?

23 A. Yeah.

24 Q. Can you just give us a description
25 of what the sound was like, what you

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1 experienced?

2 A. I mean, it startled me awake and I
3 started to go out. It was glass breaking but
4 it was for a long time. At first I thought
5 maybe a lighting fixture had fell down in the
6 kitchen or something like that, but then I
7 kept hearing more and more glass so I ran out
8 there to check.

9 Q. So you actually ran?

10 A. Uh-huh.

11 Q. Now, were you clothed?

12 A. No.

13 Q. All right. So where were you
14 heading towards when you heard this glass
15 breaking?

16 A. Into the living room.

17 Q. Is that adjacent to your bedroom or
18 are there any other rooms between it?

19 A. No. It's directly adjacent to the
20 bedroom, you do directly into that room from
21 the bedroom.

22 Q. So there are no hallways or anything
23 away from your bedroom into that room?

24 A. Right.

25 Q. All right. Well, tell the jury what

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1 you saw and experienced when you got to the
2 living room?

3 A. I ran a couple of steps into the
4 living room and then saw to my right, the
5 window to our back yard and there was a man
6 coming in through the window.

7 Q. Okay. Tell us what -- well, what
8 did you think and what did you do when you
9 saw this person coming through the window?

10 A. I turned back around and ran back in
11 the bedroom.

12 Q. Do you remember if you yelled or
13 said anything?

14 A. I don't think I said anything.

15 Q. Now, was he already in the house
16 when you turned to run?

17 A. No. He was about halfway through
18 the window.

19 Q. Okay. Well, do you know if he was
20 facing towards you or away from you, do you
21 even know?

22 A. Sideways. One leg coming in.

23 Q. Okay. Were you able to get a good
24 look at him?

25 A. No. It was still pretty dark. I

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1 could tell it was a white man and had dark
2 clothing on. That's about all I could tell.

3 Q. Okay. You do remember the dark
4 clothing?

5 A. Uh-huh.

6 Q. So you weren't able to get a look at
7 his face to be able to identify him later?

8 A. No.

9 Q. Okay. So you immediately ran. What
10 did you do when -- well, first of off, where
11 did you run to?

12 A. I ran back into my bedroom and
13 closed the door and locked it.

14 Q. What did you do when you got into
15 your bedroom?

16 A. Well, my husband keeps a pistol
17 under the mattress so I went and grabbed
18 that. And then I ran around to my nightstand
19 and got my glasses and my phone.

20 Q. Okay. And what did you do after you
21 got those three items?

22 A. Ran into the bathroom, closed that
23 door and locked it.

24 Q. Locked that one as well?

25 A. Uh-huh.

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1 Q. So tell us a little bit about the
2 bathroom. What is the layout of the bath-
3 room?

4 A. When you walk in on the right is the
5 closet and on the left is the shower stall.
6 And if you kept going there's a bathtub and
7 the sinks and the toilet further back. I
8 just stopped right there and ran in the
9 closet.

10 Q. Okay. So is it a large closet?

11 A. It's not huge.

12 Q. Is it like a walk-in closet?

13 A. Yeah.

14 Q. So you were able to fit in the
15 closet?

16 A. Yeah.

17 Q. Okay. Well, when you got into the
18 closet, what did you do?

19 A. I'd never shot a gun before so I was
20 trying to figure out how to -- I knew that it
21 had a safety on it. I was trying to figure
22 out how to get that off and made sure I had
23 it ready in case he came in.

24 Q. Did you know if it was loaded?

25 A. No.

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1 Q. You didn't even know that?

2 A. Uh-uh.

3 Q. And so you say you'd never shot a
4 gun before?

5 A. Uh-uh.

6 Q. Have you shot one since?

7 A. Yeah. Now I have my concealed
8 weapons permit.

9 Q. Okay. So what kind of gun was this?

10 A. .40 caliber.

11 Q. Is it the revolver kind or the kind
12 that was ---

13 A. Automatic.

14 Q. An automatic with a clip?

15 A. Yeah.

16 Q. Okay. All right. So while you're
17 in the closet and with the gun, could you
18 hear anything going on in the house?

19 A. Yeah. I heard him kick the bedroom
20 door in. And then I could hear him over --
21 if you walked into my bedroom, you know, the
22 bathroom door would be there and past that
23 was a chest of drawers and a TV up on the
24 wall. It sounded like he was messing with
25 the TV or opening the drawers. I could hear

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1 him doing something over there.

2 Q. Okay.

3 A. And then I heard him come to the
4 bathroom door and turn the knob so I shot the
5 gun.

6 Q. All right. Let me back up just a
7 little bit. Did it take a while to knock the
8 door off, the bedroom door?

9 A. I didn't seem like it, no.

10 Q. Okay. And when he got to your
11 bathroom door, what do you recall -- or how
12 did you know who was there and what do you
13 recall about that?

14 A. After the -- I could hear him doing
15 something over with the TV and the
16 nightstand. And then I heard come do the --
17 try the doorknob.

18 Q. Now, up until this point had there
19 been any communication by either one of you?

20 A. I could hear him mumbling kind of
21 words. I couldn't really understand, you
22 know, what was being said.

23 Q. Okay. But he was talking and
24 mumbling?

25 A. A little bit, yeah.

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1 Q. Did you feel like he was talking to
2 you or ---

3 A. I don't know. Maybe he was trying
4 to tell me something but I didn't understand.

5 Q. Okay. Now, so you said you then
6 shot the gun.

7 A. (Affirmative nod).

8 Q. Tell me about where you shot the gun
9 and why you shot it where you shot it. Why
10 you shot the gun?

11 A. I was in the -- well, once I heard
12 the bathroom knob, there was no place else
13 for me to go. So I figured I had to -- maybe
14 if I let him know I had a gun he would go
15 away. The closet's here, the bathroom door
16 is here. And the shower stall is directly
17 across, so I shot it into the shower stall.

18 Q. So did you purposely not shoot into
19 the door?

20 A. Yes.

21 Q. So what happened after you shot the
22 gun?

23 A. I heard him say like "whoa, whoa",
24 or "stop" or something like that. And then I
25 could hear -- my purse had dumped all over

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1 the floor. I could hear my keys and stuff so
2 he was getting my car keys, I guess. And ---

3 Q. Okay. I'm sorry. I didn't mean to
4 talk over you. You said you could hear some
5 noise with your keys?

6 A. Yeah. He was getting my car keys, I
7 think.

8 Q. Now, at that time did it register
9 that ---

10 A. No. It took me a while to even
11 think that it was my car that was gone.

12 Q. Could you hear any other noises?

13 A. After that, well, I guess he went
14 out into the garage. I thought I heard a car
15 door slam.

16 Q. Was there anything making it hard
17 for you to hear at this time?

18 A. Yeah. My ears were ringing from the
19 gunshot in the bathroom. It was very loud.

20 Q. Okay. So what did you do at this
21 point?

22 A. I called 9-1-1 right then.

23 Q. That's when you called 9-1-1?

24 A. Yeah.

25 Q. Now, when you called 9-1-1 did you

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1 know whether or not he really had gone or
2 not?

3 A. No.

4 Q. So did you stay in that closet?

5 A. Yes.

6 Q. How long did you stay in the closet?

7 A. A long time. Probably fifteen or
8 twenty minutes, I guess. The whole call
9 until the cops came.

10 Q. Okay. So you waited until the
11 officers arrived?

12 A. Yeah.

13 Q. Okay. And so you didn't hang up the
14 phone until you met with the officers?

15 A. Right.

16 Q. All right. Now, you said your child
17 was in the back bedroom?

18 A. Uh-huh. She never cried or
19 anything.

20 Q. So you then met with several
21 officers?

22 A. Yes.

23 Q. And you told them what you'd
24 experienced?

25 A. Yes.

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1 Q. Now, did you look to see if anything
2 was missing from your home?

3 A. Yeah.

4 Q. Was anything gone?

5 A. My car. My car keys. There was
6 like a bottle of Claritin and my sunglasses,
7 but I don't know when they taken. I didn't
8 notice that right away.

9 Q. But they may have been taken too?

10 A. Yeah. They were in my car when it
11 was found.

12 Q. Okay. Now, did you figure out that
13 your car was gone right away or did it take
14 ---

15 A. No, by the time we, you know, walked
16 around the house and got my daughter and went
17 outside. And my mother-in-law had pulled up
18 by then. I was telling her what happened.
19 And then she said, "Oh, my gosh. Your car's
20 gone." I didn't even notice. Yeah.

21 Q. Where had it been?

22 A. In the garage.

23 Q. Had the garage door been closed?

24 A. Yeah, it should have been.

25 Q. You had an opener?

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1 A. Yeah.

2 Q. A garage door opener in the car?

3 A. Yeah.

4 Q. Tell me about what kind of car you
5 have?

6 A. It was a 2011 black Scion xB.

7 Q. Okay. What value would you -- how
8 long had you had it?

9 A. Two and a half years, maybe.

10 Q. Okay. What value would you estimate
11 it to be?

12 A. Maybe twenty-six thousand (\$26,000).

13 Q. Okay. Did you own it or were you
14 renting it?

15 A. It was a lease.

16 Q. What was the tag number?

17 A.

18 Q. Okay. Now, did you ever see your
19 car again?

20 A. That afternoon, yeah.

21 Q. You saw it that very afternoon?

22 A. Uh-huh.

23 Q. Where did you see it?

24 A. It was behind a medical park in
25 Greer. The cops had found it and asked us to

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1 come down and identify.

2 Q. Was it still stuck in the mud back
3 there when you saw it?

4 A. Yeah. Uh-huh.

5 Q. Was the condition of your car any
6 different at that point? Had it been
7 trashed?

8 A. It was forty-four hundred dollars
9 (\$4,400), the insurance claim was.

10 Q. Okay. Describe a little bit for us
11 what sort of damage was done to it that you
12 recall or what was different about it?

13 A. The inner console was ripped off.
14 My daughter's car seat was in the back seat.
15 And instead of just unbuckling the seatbelt,
16 they ripped it out. So the whole harness of
17 the seatbelt had come out of the seat. There
18 were actually red ants all in there, red mud.
19 It was just a mess.

20 Q. Okay. Did you look inside the car
21 at some point?

22 A. Yes, I looked in.

23 Q. Did it look any different ---

24 A. It was full of stuff that wasn't
25 mine.

1 Q. That wasn't.

2 A. That wasn't mine.

3 Q. Okay. Did you tell the officers
4 that that stuff wasn't yours?

5 A. Yeah.

6 Q. Okay. Now, when you met with me did
7 you have a chance to look over some
8 photographs that were taken at your house?

9 A. Yes.

10 Q. I'm going to take a minute and show
11 these photographs to you.

12 THE COURT: What numbers are we
13 looking for?

14 DIRECT EXAMINATION CONTINUED

15 BY MR. MOYER:

16 Q. I am going to hand you what have
17 been marked as State's Exhibits Numbers 1
18 through 16. Let me ask you just to --

19 SOLICITOR MOYER: First of all, --
20 I'm not sure. Is there an objection to these
21 photographs?

22 MR. WARDER: No, Your Honor. I
23 take it a foundation will be laid.

24 THE COURT: Okay.

25 SOLICITOR MOYER: Okay. We would

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1 move State's Exhibits 1 through 16 are
2 entered into the record.

3 THE COURT: All right. Without
4 objection? Mr. Warder, I wasn't exactly
5 sure. Were you objecting, consenting or just
6 going to wait until he put them in. I'm
7 sorry. I wasn't -- I'm just clarifying that.
8 Are you -- they're without objection?

9 MR. WARDER: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. WARDER: If that's how the
12 place looked, there's no objection to them.

13 THE COURT: Okay. Well, I guess
14 then I wasn't sure about that. So State's
15 Exhibits 1 through 16 are in without
16 objection.

17 (SO ENTERED AS STATE'S EXHIBIT 1)

18 (SO ENTERED AS STATE'S EXHIBIT 2)

19 (SO ENTERED AS STATE'S EXHIBIT 3)

20 (SO ENTERED AS STATE'S EXHIBIT 4)

21 (SO ENTERED AS STATE'S EXHIBIT 5)

22 (SO ENTERED AS STATE'S EXHIBIT 6)

23 (SO ENTERED AS STATE'S EXHIBIT 7)

24 (SO ENTERED AS STATE'S EXHIBIT 8)

25 (SO ENTERED AS STATE'S EXHIBIT 9)

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1 (SO ENTERED AS STATE'S EXHIBIT 10)

2 (SO ENTERED AS STATE'S EXHIBIT 11)

3 (SO ENTERED AS STATE'S EXHIBIT 12)

4 (SO ENTERED AS STATE'S EXHIBIT 13)

5 (SO ENTERED AS STATE'S EXHIBIT 14)

6 (SO ENTERED AS STATE'S EXHIBIT 15)

7 (SO ENTERED AS STATE'S EXHIBIT 16)

8 SOLICITOR MOYER: Thank you, Your

9 Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR MOYER:

12 Q. Ms. Wilbanks, I'm going to show you
13 -- can you see from where you're seated?

14 A. Yes.

15 Q. Okay. Would you tell the jury what
16 it is you're seeing in State's Exhibit Number
17 1?

18 A. That's our mailbox. That's our
19 neighbor's house behind it.

20 Q. Your neighbor's house behind that?

21 A. Uh-huh.

22 Q. Let me show you State's Exhibit
23 Number 2. Can you tell the jury what is
24 being shown in that photograph?

25 A. This is -- if you were standing in

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1 my kitchen, that's the living room.

2 Q. Okay. And is the window where you
3 saw this person coming through, can you see
4 that in this photograph?

5 A. Yes. It's that one on the right,
6 back right there, uh-huh.

7 Q. Can you see the laser pointer on it?

8 A. Yes.

9 Q. Is that the window right there?

10 A. Yes.

11 Q. I show you State's Exhibit Number 3.

12 What do we see in that photograph?

13 A. The same. But that's my bedroom
14 door there on the right, it's off the hinges.

15 Q. Okay. So did this door look like
16 that before this man broke into your house?

17 A. No.

18 Q. Where is your bedroom? Would it be
19 to the left of this photograph or to the
20 right?

21 A. To the right.

22 Q. And so your bedroom is back this
23 way?

24 A. Yes.

25 Q. I show you State's Exhibit Number 4.

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1 Can you tell the jury what we see in this
2 photograph?

3 A. That's my bedroom.

4 Q. And this is your bedroom back here?

5 A. Right.

6 Q. And what am I pointing to right now?

7 A. That's the bedroom door off the
8 hinges.

9 Q. Okay. State's Exhibit Number 5.

10 A. The same. The bedroom.

11 Q. This is your bedroom?

12 A. Yeah. That looks like my purse down
13 on the floor there.

14 Q. And your purse had been, you said,
15 on this bedroom door?

16 A. Yeah. I had a hook on the back of
17 the door that I hung it on. So it fell out
18 when the door came down.

19 Q. I show you State's Exhibit Number 6.
20 So tell the jury what it is we're seeing
21 here?

22 A. The contents of my purse.

23 Q. Okay. And what is this right here?

24 A. That looks like the actual bag.

25 Q. And I think that State's Exhibit

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1 Number 7?

2 A. The same.

3 Q. That's your purse? A little closer
4 look at your purse?

5 A. Yeah.

6 Q. I show you State's Exhibit Number 8?

7 A. My bed.

8 Q. Okay. Maybe I'll even ask you -- if
9 you don't mind using this laser pointer. Can
10 you, pointing that, using that button right
11 there. Can you point out to the jury where
12 the pistol was that you had talked about?

13 A. Under the mattress on this side
14 right there (indicating with laser).

15 Q. And what about your glasses and
16 phone?

17 A. They were back on my nightstand
18 right there.

19 Q. And what direction would the
20 bathroom be?

21 A. Back this way.

22 Q. Okay. Coming towards us?

23 A. Yeah.

24 Q. I show you State's Exhibit Number 9.
25 Can you tell the jury what it is we see in

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1 that picture?

2 A. Yeah. It's the door to the
3 bathroom.

4 Q. Can you point out -- can you try
5 that again, I'm not sure?

6 A. Yes.

7 Q. Okay.

8 A. That's the bathroom door.

9 Q. State's Exhibit Number 10?

10 A. That's the bathroom. That's the
11 closet that I was in. And then the shower
12 is back over here.

13 Q. Right behind where that television
14 is?

15 A. Right.

16 Q. State's Exhibit Number 11?

17 A. The same, bathroom, closet door and
18 the shower is over here.

19 Q. So the shower would be behind that
20 door?

21 A. Right.

22 Q. On the left there?

23 A. Yes.

24 Q. Okay. Is that the door that you
25 heard being fumbled with before you fired?

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1 A. Yes.

2 Q. I show you State's Exhibit Number
3 12?

4 A. That's my closet that I was in.

5 Q. Okay. State's Exhibit Number 13?

6 A. That's looking out of the closet,
7 across to the shower.

8 Q. Okay. Does the area where you fired
9 the gun, can you see that in that picture?

10 A. And we still have the bullet hole,
11 right there (indicating).

12 Q. Can you point the bullet hole out to
13 me?

14 A. Right there.

15 Q. That's where you fired?

16 A. Yeah.

17 Q. And where is the door that you heard
18 the person fumbling ---

19 A. Right here.

20 Q. Were you in a position where you
21 could have fired through that door if you'd
22 chosen to?

23 A. Yes, I could have.

24 Q. I'm going to show you State's
25 Exhibit Number 14?

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1 A. That's my husband's gun. It's on
2 the safe in the closet.

3 Q. That's in that closet where you were
4 when you fired?

5 A. Yeah.

6 Q. Can you see it in that picture?

7 A. Yeah. It's right -- that's the
8 safe. The gun's sitting on top.

9 Q. I show you State's Exhibit Number
10 15?

11 A. That's our back yard. That's the
12 window that he came through. And the propane
13 tank was sitting right over here.

14 Q. Where had the propane tank been?

15 A. Right over here next to the grill.

16 Q. Okay. State's Exhibit Number 16?

17 A. It's the window.

18 Q. Okay. So where did the propane tank
19 end up?

20 A. It's right in there, I believe.

21 Q. It's inside the house?

22 A. Yeah, behind the chair.

23 Q. Okay. I'm now going to hand you
24 State's Exhibits Number 17 through 28.

25 MR. WARDER: Without objection,

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1 Your Honor.

2 THE COURT: All right. State's
3 Exhibits 17 through 28 are entered without
4 objection.

5 (SO ENTERED AS STATE'S EXHIBIT 17)

6 (SO ENTERED AS STATE'S EXHIBIT 18)

7 (SO ENTERED AS STATE'S EXHIBIT 19)

8 (SO ENTERED AS STATE'S EXHIBIT 20)

9 (SO ENTERED AS STATE'S EXHIBIT 21)

10 (SO ENTERED AS STATE'S EXHIBIT 22)

11 (SO ENTERED AS STATE'S EXHIBIT 23)

12 (SO ENTERED AS STATE'S EXHIBIT 24)

13 (SO ENTERED AS STATE'S EXHIBIT 25)

14 (SO ENTERED AS STATE'S EXHIBIT 26)

15 (SO ENTERED AS STATE'S EXHIBIT 27)

16 (SO ENTERED AS STATE'S EXHIBIT 28)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR MOYER:

19 Q. Okay. Do you still have that laser
20 pointer?

21 A. Yeah.

22 Q. Okay. What I'm going to show you
23 now is State's Exhibit Number 17. Can you
24 tell the jury what it is we see in that
25 picture?

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1 A. That's my car when they called me on
2 it in Greer.

3 Q. That was that afternoon?

4 A. Yeah.

5 Q. That's where it was when you saw it
6 that afternoon?

7 A. Yes.

8 Q. State's Exhibit Number 18?

9 A. The front of it.

10 Q. That's also your car?

11 A. Yes.

12 Q. State's Exhibit 19?

13 A. (Affirmative nod), the license plate
14 is gone.

15 Q. So there was a license -- was there
16 a license plate on the car before?

17 A. Yeah.

18 Q. You've already told us the tag
19 number?

20 A. Right.

21 Q. State's Exhibit Number 20?

22 A. That's the front of the car.

23 Q. I show you State's Exhibit Number
24 21.

25 A. That's the inside, the driver's side

1 of the car.

2 Q. Okay. And State's Exhibit Number
3 22?

4 A. That's the passenger's side.

5 Q. Now, is that property yours?

6 A. I don't think so. There's some --
7 the documents from my glove compartment are
8 dumped out on the floor, a lot of the rest
9 I'd never seen.

10 Q. State's Exhibit 23?

11 A. That's the back. Those are not
12 mine.

13 Q. Okay. So the contents that we see
14 there in the back of that car, had that been
15 in there?

16 A. No.

17 Q. It's not yours?

18 A. No.

19 Q. State's Exhibit Number 24?

20 A. The same, inside.

21 Q. State's Exhibit Number 25?

22 A. That looks like my daughter's car
23 seat.

24 Q. This stereo that I'm pointing to, is
25 that yours?

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1

A. No.

2

Q. Is this toolbox yours?

3

A. No.

4

Q. This trash can?

5

A. No.

6

Q. State's Exhibit 26 did that toolbox

7

belong to you?

8

A. No.

9

Q. State's Exhibit Number 27?

10

A. No.

11

Q. That trash can did not belong to

12

you?

13

A. No.

14

Q. How about this plastic that's back

15

behind there?

16

A. No.

17

Q. And finally State's Exhibit Number

18

28 looks like a recycle, green recycle bin.

19

Was that yours?

20

A. No, that was not mine.

21

Q. Okay -- what is right before that,

22

is that yours?

23

A. That was the car seat, yeah.

24

Q. Okay. Did you have a pistol in your

25

car?

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1 A. No.

2 Q. So there weren't any guns in the
3 car?

4 A. No.

5 Q. And there wasn't any gun stolen from
6 your house?

7 A. No.

8 Q. Now, you've had a chance to listen
9 to the 9-1-1 call ---

10 A. Uh-huh.

11 Q. That you made back on August 13th?

12 A. Yeah.

13 Q. Okay. And the call that you
14 listened to recent, is that a true and
15 accurate recording of the call that you made
16 back in August the 13th of 2013?

17 A. Yes.

18 Q. Okay.

19 SOLICITOR MOYER: Your Honor, at
20 this time the State would publish the 9-1-1
21 call to the jury.

22 THE COURT: All right. That's in
23 already?

24 SOLICITOR MOYER: Yes, sir.

25 COURT REPORTER: Yes, sir.

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1 (STATE'S EXHIBIT 54 PUBLISHED)

2 DIRECT EXAMIATION CONTINUD

3 BY SOLICITOR MOYER:

4 Q. Okay. Please answer any questions
5 that the Defense may have.

6 CROSS-EXAMINATION

7 BY MR. WARDER:

8 Q. Ma'am, didn't your daughter wake up
9 during this?

10 A. She was awake when I went in there,
11 but she never cried.

12 Q. Do you know how long she'd been
13 awake?

14 A. I'm assuming she was asleep and then
15 when woke up when the glass broke or sometime
16 during but, no, I can't say for sure.

17 Q. Now, did you tell the deputies that
18 the keys were in your car?

19 A. I had a keyring -- we had two keys
20 for the Scion. My keyring had one key on it.
21 And then I'd keep one key in the ignition.

22 Q. Well, I guess my question is was the
23 keys in the car or was a set of keys in the
24 car?

25 A. Yes.

1 Q. Okay. And weren't they in the
2 ignition?

3 A. Yes.

4 Q. So your keyring didn't really have
5 anything to getting the car?

6 A. No.

7 Q. Did you tell the officers anything
8 about the voice?

9 A. Not that I recall.

10 Q. Did you tell them it sounded like a
11 black man?

12 A. Not that I recall.

13 Q. You don't recall if you would have
14 said that?

15 A. Uh-uh. No, sir.

16 Q. Did you hear the car door shut?

17 A. Yeah, I think I heard the car door
18 slam.

19 Q. You told us that earlier?

20 A. Uh-huh.

21 Q. You told the police that day you
22 heard two car doors shut; didn't you?

23 A. Yes, but it was hard to tell. My
24 ears were ringing from the gunshot.

25 Q. Was the gunshot on that tape?

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1 A. No.

2 Q. That gunshot took place before the
3 number was dialed for 9-1-1?

4 A. Yes.

5 Q. What kind of dog did you have?

6 A. A Pit Bull.

7 Q. A full-sized Pit Bull?

8 A. She's a mix.

9 Q. How old is she?

10 A. We're not sure. She's a rescue.
11 Maybe nine or ten.

12 Q. Was she in the house?

13 A. Yeah. She was in bed with me.

14 Q. Did she bark?

15 A. No.

16 Q. She wouldn't have known the man
17 coming in, would she?

18 A. No. She was underneath the bed when
19 I came out.

20 Q. You never saw anybody that looked
21 like my client, did you?

22 A. I couldn't say it was him, no.

23 Q. You don't know whether it's him or
24 not?

25 A. No, I don't.

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1 Q. And you're not sure you ever saw him
2 at any time before today?

3 A. No, I couldn't say for sure. It was
4 just a large man coming in my window.

5 Q. Well, how high is that window that
6 this person came through off the ground?

7 A. Two feet.

8 Q. And was there any clothing on the --
9 where clothes had been torn? Any fabric or
10 anything on the window or the glass or
11 anything?

12 A. No.

13 Q. I noticed you had a grill that was
14 sitting a couple three, four feet from the
15 house.

16 A. Yes.

17 Q. And it had a door on the end that
18 the propane tank goes in; is that right?

19 A. Uh-huh.

20 Q. Was that propane tank up in the
21 grill?

22 A. No. It was a spare one. It was
23 still one in the grill.

24 Q. Okay. Was that a full tank or an
25 empty tank?

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1 A. I'm not sure.

2 Q. The car door was opened with an
3 opener. Is that how your car door opens, one
4 of those openers you push the button on?

5 A. Yeah.

6 Q. Was that in the car?

7 A. Yeah. It's on the key ---

8 Q. So there was a key in the car with
9 an opener on it?

10 A. Yes.

11 Q. And it was just those two things on
12 that key ring?

13 A. Yes. I believe so.

14 Q. Was that key ring in the car when
15 you recovered it?

16 A. No.

17 Q. Did you ever get your license plate
18 back?

19 A. No.

20 Q. Thank you.

21 SOLICITOR MOYER: Just a couple
22 follow-up questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY SOLICITOR MOYER:

25 Q. First let me make sure we clarify

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1 about the key. So there were actually two
2 sets of keys then?

3 A. Yeah. There was just -- I think it
4 was just that one key that I always kept in
5 the ignition. It was locked in my garage.
6 And then I had my regular key ring with my
7 house keys and my husband's keys and all in
8 my purse.

9 Q. Both ---

10 A. Both of them were gone.

11 Q. Both of them ended up gone?

12 A. Uh-huh.

13 Q. So there was a single key inside the
14 car?

15 A. Uh-huh.

16 Q. Then there was a larger key ring
17 that had been in your purse?

18 A. Yes.

19 Q. And that was gone?

20 A. Yeah. They were both gone.

21 Q. And you never got it back?

22 A. No.

23 Q. Okay. Now, you were asked about car
24 doors. Can you be certain whether you heard
25 one or two?

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1 A. No.

2 Q. In fact, on the 9-1-1 tape you just
3 mention one; don't you?

4 A. Yeah, I think so.

5 Q. Okay. Now, you said during the time
6 when you heard the car running, you had a
7 little trouble hearing at that point?

8 A. Yeah. My ears were ringing.

9 Q. Okay. You were asked also about a
10 voice. Could you tell anything about the
11 race of this person either by his sight or by
12 voice?

13 A. No.

14 Q. You could not tell?

15 A. No.

16 Q. Okay. So if an officer happened to
17 say that you said it sounded like a black
18 voice, the officer would be mistaken?

19 A. I think so, yeah. I don't recall
20 saying that.

21 Q. You never said that?

22 A. No, sir.

23 Q. Okay. No further questions. Thank
24 you.

25 THE COURT: All right. You may

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1 step down. Since we've been going about an
2 hour and twenty minutes, let's take a break.
3 Everybody's probably ready for a break.

4 And don't forget this is the time
5 that you get to select your foreperson, just
6 someone who can be in charge of deliberations
7 and communicating with the court.

8 So, again, other than that, you're
9 not to talk about the case. We're just going
10 to take about, you know, a ten-minute break.
11 So, get up and stretch and be back in.

12 (JURY OUT @ 2:43 P.M.)

13 THE COURT: All right. We'll take
14 about ten minutes.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: Are we ready?

18 SOLICITOR MOYER: The victim is not
19 quite here -- went to the bathroom.

20 THE COURT: All right. Is the
21 Defense ready for us to bring the jury in?

22 MR. WARDER: Yes, Your Honor.

23 SOLICITOR MOYER: State is ready,
24 Your Honor.

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1 THE COURT: All right. Bring them
2 in. They gave me a note on election of the
3 foreperson. Mr. Dobbs, Kevin Dobbs is the
4 foreperson.

5 (JURY IN @ 2:50 P.M.)

6 THE COURT: All right. Mr. Dobbs,
7 I understand that you have been selected as
8 the foreperson.

9 All right. Mr. Solicitor, you can
10 proceed with your next witness.

11 SOLICITOR MOYER: The State calls
12 Gerald Lockhart to the stand.

13 GERALD LOCKHART, having been duly sworn
14 to tell the truth, and nothing but the truth,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR MOYER:

18 Q. All right. Mr. Lockhart, let me ask
19 you to pull that microphone up just a little
20 bit, make sure we can all hear you. How old
21 are you, sir?

22 A. Seventy-four.

23 Q. Married?

24 A. Yes.

25 Q. Have any children?

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1 A. One boy.

2 Q. Okay.

3 A. Well, he's fifty now. I shouldn't
4 call him a boy.

5 Q. Okay. Are you employed?

6 A. My son?

7 Q. No, are you employed?

8 A. No, sir. I'm retired.

9 Q. Where did you retire from?

10 A. Hoechst Celanese.

11 Q. How long did you work or that?

12 A. Thirty-one years.

13 Q. How long have you been retired?

14 A. Since 1997. What's that --

15 eighteen? Eighteen years.

16 Q. Okay. Let me take you back to
17 August of 2013. Where did you live at that
18 time?

19 A. Berry Pond Road, Greer.

20 Q. And do you remember looking at an
21 aerial map that I showed you at some point?

22 A. Yes, I do.

23 Q. Does that map show you the location
24 where you lived?

25 A. Yes, it does.

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1 Q. Let me show you State's Exhibit
2 Number 53. Will you take a minute to look
3 over that map?

4 A. Yes, sir.

5 Q. Is that a true and accurate
6 representation of the layout of the roads and
7 the houses around where you lived in August
8 of 2013?

9 A. Yes.

10 SOLICITOR MOYER: Okay... Your Honor,
11 at this time I would move that State's
12 Exhibit 53 entered into evidence.

13 THE COURT: All right. Any
14 objection?

15 MR. WARDER: Your Honor, I guess
16 I do have an objection. They are leading,
17 Judge. He's leading all of the witnesses.
18 They're not identifying locations, they're
19 pointing out what the Solicitor's office has
20 put on a map. And the map itself is a
21 leading piece of evidence. It isn't the
22 witnesses identifying it. It's confirming
23 the Solicitor's identification. And it's
24 like a leading question. It's improper.

25 THE COURT: Well, I guess that's

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1 marked for identification. So you can lay
2 the foundation for all of the aerial maps
3 until he lays the foundation.

4 SOLICITOR MOYER: Okay.

5 THE COURT: Therefore, your
6 objection is reserved until there is a full
7 foundation. Okay?

8 MR. WARDER: Thank you.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR MOYER:

11 Q. Okay. Mr. Lockhart, let me ask you
12 if you would, just to step down and show the
13 jury where on this map, the address where you
14 lived in August of 2013?

15 A. (Witness steps down) -- Berry
16 Pond Road.

17 Q. Okay. And it's already labeled; is
18 that correct?

19 A. It is. Right there. It's labeled,
20 yes. But, you know, it almost looks like it
21 comes in from this side. This is -- but
22 that's not correct. You come in this way and
23 there's the driveway that comes into my house
24 right here. This is the end of the road.

25 Q. Okay. Well, this part I'm not

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1 worried about what direction of travel you
2 take. But the roads are accurate; is that
3 correct?

4 A. The roads are accurate, yes.

5 Q. Does that accurately reflect where
6 your house is?

7 A. Correct.

8 Q. Okay. Okay. You can have a seat.
9 Thank you.

10 A. (Witness resumes witness stand)

11 Q. Now, are you familiar with where
12 Rayland Place is, where it's marked on that
13 map?

14 A. Yes.

15 Q. Roughly, what is the distance of
16 that area to where you live?

17 A. Probably two miles; maybe just a
18 little more, but not three.

19 Q. Okay. Now, tell me a little bit
20 about the location where you live? Is it a
21 rural area? Is there a lot of houses around
22 there? Is it isolated?

23 A. It's pretty much isolated. There's
24 only one house that's within, say, a tenth of
25 a mile of me. And then it's another tenth to

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1 the next one. So there's only five, but two
2 of them are mobile homes at the very end of
3 the road. And then there's a brick, and then
4 another brick house and then mine.

5 Q. Okay. So is this your house sitting
6 the farthest off the road?

7 A. It is. It's the end of the road.

8 Q. Okay. Is it a road or a driveway?

9 A. It's a road.

10 Q. Okay. Now, how about your house?
11 Is it right on the road or is ---

12 A. No. No. You have to come up my
13 driveway from the road.

14 Q. Okay. Can you see your house from
15 the road?

16 A. You can, yes. It's up a hill. You
17 can see it but you can't see the complete
18 house.

19 Q. Okay. How long a driveway would you
20 say that you have?

21 A. Well, the front driveway, if you're
22 coming to the front of the house, is probably
23 fifty or sixty yards. If you come in the
24 lower entrance to my house, it's probably a
25 hundred and twenty-five yards because it's

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1 longer and it curves around.

2 Q. Okay. So how long had you been
3 living there in August of 2013?

4 A. Probably thirty-seven years.

5 Q. All right. Now, let me take you
6 back to August the 13th, 2013. Were you at
7 your home on that morning?

8 A. I was.

9 Q. Okay. Did you have an encounter
10 with anyone that morning?

11 A. Yes, sir.

12 Q. Well, tell me about when that took
13 place and how it was that you came in contact
14 with whoever it is you came in contact with?

15 A. I got up early. Well, it wasn't
16 really early. It was about 6:30 and went to
17 my kitchen window, looked out. And when I
18 looked out toward my birdfeeder, down toward
19 the basement, which is a level down and
20 slightly to the left as you look out the
21 window, I saw this black Scion with all four
22 doors open, including the trunk.

23 Q. Okay. Did you ---

24 A. I saw no one. So ---

25 Q. Wait. Let me stop you right there

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1 for a minute. So you didn't see anyone at
2 the vehicle at that point?

3 A. At that point, (negative gesture).
4 While I was in my house, I saw no one.

5 Q. Okay. And what time of day was
6 this?

7 A. Right at 6:30.

8 Q. What was the light situation like?

9 A. The sun was not up but it was
10 getting daylight, good daylight.

11 Q. Okay. So there was some light but
12 the sun wasn't actually risen yet?

13 A. That's correct.

14 Q. Okay. And you said -- okay. Did
15 you see those photographs of the black Scion
16 that we showed to the last witness?

17 A. Yes.

18 Q. Does that -- tell us your impression
19 of how that vehicle looked to the one that
20 you saw?

21 A. The one that I saw looked -- it was
22 clean and neat. It almost looked new or a
23 newer vehicle. I don't know what year, of
24 course, that it was. But -- and I really
25 didn't know that it was a Scion at that

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1 particular time.

2 Q. When did you find out it was?

3 A. When I went downstairs.

4 Q. Okay. So did it look like that
5 vehicle that we had on that?

6 A. Yes, it did.

7 Q. Did it have a tag on it at that
8 time?

9 A. It did.

10 Q. All right. So what did you do?
11 When you looked out your window and you saw
12 that vehicle with all the doors and trunk
13 open, what did you do?

14 A. I went into my bedroom, slipped on
15 some bedroom slippers. I got my gun because
16 I really thought that there may be more than
17 one person. And I knew that if they were
18 there at that particular place they were
19 either lost or something was up, because it
20 was the end of the road.

21 Q. Okay.

22 A. And so I got my pistol.

23 Q. What kind of pistol?

24 A. It's a Glock Model 17, .9mm.

25 Q. What did you do after you got your

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1 pistol?

2 A. I made sure one was in the chamber
3 and made sure it was ready to go.

4 Q. And then what did you do then?

5 A. I went real easy down the stairs
6 through the basement, went through another
7 basement door into another basement. And
8 there's a side door over there where -- the
9 car is here, my pickup truck was right along
10 side the car.

11 Q. Okay.

12 A. So I wanted to make sure that I had
13 something between me and that car or anyone
14 that might be close by. So I got on the
15 other side of my pickup truck with my pistol
16 ready. I went around to the back of my
17 truck. And I see this person leaning over
18 into the trunk, fumbling around like he was
19 looking for something.

20 Q. Okay. And when you saw that person
21 doing that, what did you do?

22 A. I asked him what the heck he was
23 doing there.

24 Q. And you're holding your hand up.
25 You actually had your gun up?

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1 A. Oh, yes. I had it pointed right at
2 him.

3 Q. Okay. How close are you to him at
4 this point?

5 A. At that point, probably fifteen or
6 twenty feet.

7 Q. Okay. So what did this person do
8 when you made that comment to him?

9 A. He raised up. And when I asked him,
10 he said "well, I thought it was pretty out
11 here."

12 And I'm thinking it couldn't be too, you
13 know, he couldn't have thought it was pretty
14 because it was early in the morning and I
15 don't see how he would be just looking
16 around, you know.

17 Q. Okay. So it was really too early to
18 see anything?

19 A. Before he got there, yes.

20 Q. Okay.

21 A. Of course, I don't know exactly how
22 long he had been there.

23 Q. Correct. So when he made that
24 comment about "I thought it was pretty out
25 here", did you say anything back to him at

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1 that point?

2 A. I asked him -- at one point, I asked
3 him where he lived. I don't know if it was
4 right after that or after the next sentence.

5 Q. Okay.

6 A. But I asked him where he lived and
7 he said Lyman.

8 Q. All right.

9 A. That's what he said.

10 Q. Did you have any other conversation
11 with him?

12 A. And I said, "Listen, you need to get
13 out of here and you need to get out of here
14 now." And he said, 'oh, okay', something
15 like that.

16 Q. And did he do anything at that
17 point?

18 A. I told him to get in his car and
19 leave. And I was walking around the whole
20 time. He shut the doors and the trunk. He
21 got underneath the steering wheel and he
22 said, "I can't start the car. The keys are
23 in the trunk."

24 And I said, "Well, get out of the car and
25 get them, by all means." I was standing

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1 pretty close to him then. I was on the
2 driver's side, right where he was.

3 Q. How close would you say you were to
4 him at this point? And you can use me as a
5 reference point. Just tell me to stop when I
6 get close enough -- (approaching witness).

7 A. Stop. About five feet.

8 Q. Five or six feet.

9 Q. And he's sitting in the car?

10 A. Well, he was sitting in the car, but
11 I stood there while he got out, because I
12 didn't know if he could get -- I did glance
13 in the car when I was walking around, but I
14 didn't know what he might try to pick up
15 something while I was standing there. So I
16 stood right there with him. I didn't turn my
17 back on him.

18 Q. Okay. So did he get out of the
19 vehicle?

20 A. He got out of the vehicle. Went
21 back to the trunk and he got the keys. He
22 dove back down in there and got the keys. I
23 noticed there were -- it was a ring of keys
24 that, what I considered a man wouldn't carry
25 in his pocket.

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1 Q. What makes you say that?

2 A. Because it was big. It was a lot of
3 trinkets or keys on it.

4 Q. Okay.

5 A. And so then he took the keys,
6 cranked it up, backed out. I got in my truck
7 and followed him out to the main road to make
8 sure that he left.

9 Q. And ---

10 A. All the ---

11 Q. I'm sorry.

12 A. All the time I'm thinking 'that car
13 may have been stolen.'

14 MR. WARDER: Your Honor, I object
15 to what he's thinking. It's irrelevant.

16 SOLICITOR MOYER: I think he can
17 explain his actions, why he acted the way he
18 did.

19 THE COURT: Yeah. He can explain
20 the way he acted.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR MOYER:

23 Q. So what you were thinking, did that
24 explain what you then later did?

25 MR. WARDER: Judge, he's leading.

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1 Suggesting.

2 THE COURT: All right. Rephrase
3 your question.

4 SOLICITOR MOYER: Okay.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR MOYER:

7 Q. So you mentioned you started to
8 follow the vehicle?

9 A. I did, yes.

10 Q. What was going through your mind at
11 that point, while you were following the
12 vehicle?

13 A. I just wanted to make sure that he
14 got away from the neighborhood. And the
15 keyring rung a bell. And I said, 'I should
16 call the sheriff's office because the car may
17 be stolen.'

18 Q. Okay. Now, did you get the tag
19 number while you were ---

20 A. I did.

21 Q. And did you later the police? Did
22 you later call either 9-1-1 or the police?

23 A. I called the sheriff's office.

24 Q. Okay. And did you give them the tag
25 number at that time?

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1 A. I did.

2 Q. And what was the tag number?

3 A. . . .

4 Q. And you gave that out when you
5 called the police office or when you called
6 law enforcement?

7 A. I did.

8 Q. Okay. Well, let me ask you. How
9 long would you say this encounter with this
10 individual, was -- how long do you think it
11 lasted?

12 A. Five to -- five to eight minutes.

13 Q. Okay. And during that time you were
14 -- how close were you to his face?

15 A. Probably the closest I got was
16 probably five to six feet.

17 Q. Did you look him right in the face?

18 A. I did.

19 Q. Did you look at him well enough to
20 be able to identify him later?

21 A. I did. Yes, sir.

22 Q. Was there enough light out for you
23 to ---

24 A. Oh, yes, sir. Uh-huh, (affirmative
25 nod).

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1 Q. What do you remember about the way
2 he looked at that time?

3 A. He was taller than me.

4 Q. How tall are you?

5 A. I'm 6'1". And weighed probably two
6 fifteen to two twenty.

7 Q. Okay. Now, let me take you to a
8 week later, August the 20th, 2013. Did you
9 meet on that date with a detective for the
10 purposes of looking at a photographic lineup?

11 A. Yes, sir.

12 Q. And where did that take place?

13 A. At my home.

14 Q. Do you remember who showed that to
15 you?

16 A. Yes, sir.

17 Q. Who was it?

18 A. Officer Gillespie.

19 Q. Okay. Gilstrap?

20 A. I mean Gilstrap, yes. Sorry.

21 Q. This gentleman seated right here?

22 A. That's him.

23 MR. WARDER: The Solicitor's
24 correcting his testimony.

25 THE COURT: I'm going to overrule.

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1 He's just pointing out ---

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR MOYER:

4 Q. Do you see the officer who showed
5 the photo lineup to you in the courtroom?

6 A. Yes, sir.

7 Q. Would you point him out?

8 A. Yes, sir. The man in the gray tie
9 and the white shirt.

10 Q. Okay. Thank you. Now, when the
11 detective showed you the photo lineup, did he
12 indicate to you in any way anything to make
13 you feel like you had to or that you should
14 pick somebody out of that photo lineup?

15 A. No, sir.

16 Q. Did he put any pressure on you to
17 pick someone out of the lineup?

18 A. No, sir.

19 Q. Did he or anyone suggest or
20 influence your decision at all when you were
21 shown that photo lineup?

22 A. No, sir.

23 Q. Okay. Now, when you were shown that
24 photo lineup, did you see the person in that
25 lineup whom you had seen a week prior at your

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1 house?

2 A. I did.

3 Q. Did you look at the lineup closely?

4 A. I did.

5 Q. When you made this decision about
6 the person, what did you do?

7 A. I pointed and I said "that's him."

8 Q. How confident or sure were you?

9 A. One hundred percent.

10 Q. All right. I'm going to hand you
11 State's Exhibit Number 57. Can you recognize
12 what I just handed to you?

13 A. Yes, sir.

14 Q. What is that?

15 A. This is the photo lineup that the
16 officer presented to me.

17 Q. Okay. All right. How were you able
18 to recognize it?

19 A. Well, I recognize the person. I
20 recognize my signature and the date.

21 Q. Okay. And did you make any markings
22 on the back of that form?

23 A. Yes, sir. That's my signature and
24 date.

25 Q. Okay. And does that photo lineup

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1 that you're looking at, does that reflect
2 which person you chose out of that lineup?

3 A. Yes, sir, it does.

4 Q. Okay. And can you indicate where on
5 that lineup it is that you chose the person?

6 A. Lower left, number four.

7 Q. Okay. All right. Now, is that
8 lineup in substantially the same condition
9 now as it was when you were shown that lineup
10 in August 20th of 2013?

11 A. Yes, sir.

12 Q. No changes or anything changed about
13 it that you can see?

14 A. I don't see anything that's been
15 changed.

16 SOLICITOR MOYER: At this time, I
17 would to have State's Exhibit Number 57 moved
18 into evidence.

19 MR. WARDER: Your Honor, no
20 objection.

21 THE COURT: All right. State's
22 Exhibit 57 is in without objection.

23 (SO ENTERED AS STATE'S EXHIBIT 57)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR MOYER:

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1 Q. Okay. I'm going to hand you this
2 laser pointer. And if you will, will you
3 just point out to the jury which person it is
4 that you picked out as the person that you
5 saw at your home that morning in the black
6 Scion?

7 A. (Witness complied).

8 Q. Now, are you able to identify that
9 person here in the courtroom today?

10 A. Yes, sir.

11 Q. Okay. Would you point him out to
12 the jury?

13 A. (Pointing to defense table).

14 Q. You're pointing to the Defendant
15 seated across the courtroom?

16 A. Yes, sir.

17 Q. Does he look any different now than
18 he did back then?

19 A. Yes, sir.

20 Q. How does he look -- in what ways
21 does he look ---

22 A. Well, his hair's longer. He's got a
23 ponytail and he's combing it straight back.
24 And he seems to be a little bit -- his color
25 is a little whiter.

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1 Q. Okay.

2 A. Lighter.

3 Q. Did you look inside the vehicle,
4 inside the black Scion when you were standing
5 there?

6 A. The best I could. While I was
7 watching him, I walked -- as I walked around
8 behind it, I looked to see if I could see
9 anything that looked like a weapon.

10 Q. Did you notice anything inside the
11 car at that time?

12 A. No, sir, nothing unusual.

13 Q. Have you seen the pictures that were
14 shown to the prior witness that showed -- for
15 example, I'll show you State's Exhibit Number
16 25?

17 A. Yes, sir. I saw those.

18 Q. Was all that property in the vehicle
19 when he was there?

20 A. I did not see anything like that.
21 The vehicle looked clean to me.

22 Q. State's Exhibit 23, the trash can
23 and all of that other ---

24 A. No. I didn't see any of that.

25 Q. And is that the area where the

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1 Defendant was fumbling around, you said?

2 A. Yes, sir. That cover was up. The
3 carpet cover where the -- I don't -- is that
4 a trash can?

5 Q. Well, whatever it is, do you recall
6 seeing anything like that in there?

7 A. That wasn't there. That was lifted
8 up, like you do -- I guess the spare tire is
9 under there.

10 Q. Okay. So ---

11 A. When I first saw him, yeah, that was
12 raised up. That's where he was fumbling
13 around and whatever.

14 Q. Okay. Please answer any questions
15 the Defense has.

16 CROSS-EXAMINATION

17 BY MR. WARDER:

18 Q. You told us the tag number that was
19 on that car just a minute ago?

20 A. I'm sorry?

21 Q. You told us the tag number that was
22 on that car just a minute ago?

23 A. Yes, sir.

24 Q. Where did you get that number at?

25 A. I got it from the -- well, when I

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1 called it in, I remember it from looking at
2 it.

3 Q. You remembered it all this time?

4 A. No, sir. I didn't say that.

5 Q. One of them gave it to you ---

6 A. I said I remember it from when I
7 called it into the sheriff.

8 Q. Okay. You remembered it for two
9 years, today?

10 A. No, sir.

11 Q. Okay.

12 A. No, sir.

13 Q. Where did you get the memory for
14 today? What refreshed your memory?

15 A. I had this, the tag number written
16 down on some notes that they had.

17 Q. Well, some notes from where?

18 A. From the Solicitor's office.

19 Q. Can I see them?

20 A. Sure, (tendering). This is my --
21 well, actually, this came from the ---

22 Q. Okay.

23 A. That's my notes.

24 Q. Okay. They gave you -- this sheet
25 don't have any on it. They gave you the tag

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1 number to tell them today?

2 A. Yes, sir.

3 Q. So you have no independent
4 recollection of it. But they'd told you that
5 was the tag number you'd given them, so
6 that's why you wrote it down so you could
7 read it out?

8 A. Well, it was on the tape where I
9 called in to report it.

10 Q. Well, did you listen to the tape?

11 A. Yes, sir.

12 Q. Okay. Did they tell you to write it
13 down?

14 A. No, sir.

15 Q. You knew they were going to ask you
16 that?

17 A. I just wrote it down on my own.
18 They didn't tell me to write it down.

19 Q. Why would you write it down?

20 A. So I could know what it is in case
21 they asked me.

22 Q. You went to their office, listened
23 to your tape, went over your testimony, wrote
24 down the serial [sic] number and then gave it
25 to him when he asked?

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1 A. The tag number, yes, sir.

2 Q. Thank you.

3 THE COURT: All right. Any
4 redirect?

5 MR. WARDER: Yes, sir. Real
6 quickly.

7 REDIRECT EXAMINATION

8 BY SOLICITOR MOYER:

9 Q. So did you have a chance to listen
10 back to your 9-1-1 tape?

11 A. Yes, sir.

12 Q. Did you listen to it this morning.

13 MR. WARDER: That's not new --
14 that's asked and answered and it's not new
15 information, and it's improper cross.

16 THE COURT: I think that's
17 information brought out by you.

18 MR. WARDER: Improper redirect.

19 THE COURT: I think it's properly
20 brought up from your cross.

21 REDIRECT EXAMINATION CONTINUED

22 BY SOLICITOR MOYER:

23 Q. Did you have a chance to go back and
24 listen to the 9-1-1 tape?

25 A. Yes, sir.

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1 Q. That you made on August 13th of 2013?

2 A. Yes, sir.

3 Q. Okay. Is that where you got the tag
4 number from?

5 A. Yes, sir.

6 Q. When you gave that out on the 9-1-1
7 tape, was it fresh in your memory?

8 A. Yes, sir.

9 Q. Okay.

10 SOLICITOR MOYER: Nothing further.

11 Thank you.

12 THE COURT: Thank you, you may
13 step down.

14 (WITNESS STEPS DOWN)

15 THE COURT: All right. Call your
16 next witness.

17 SOLICITOR MOYER: The state will
18 call Terry Bishop to the stand.

19 (WITNESS TAKES STAND)

20 TERRY BISHOP, having been duly sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MOYER:

25 Q. Okay. Mr. Bishop, how old are you,

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1 sir?

2 A. I'm fifty-four years old.

3 Q. And where did you live in August of
4 2013?

5 A. Cripple Creek Road, Greer,
6 South Carolina, where I live now.

7 Q. How long had you lived there in
8 August of 2013?

9 A. Me and my son -- my son turned five
10 the first year that we moved there, so I was
11 there thirty-three years at that time --
12 thirty-five now.

13 Q. Okay. I want to ask you to move a
14 little bit closer to that microphone, make
15 sure we can hear you.

16 A. I said about thirty-three years
17 then, thirty-five now.

18 Q. Are you employed?

19 A. Yes, sir.

20 Q. Where do you work?

21 A. BMW Manufacturing.

22 Q. Are you married?

23 A. Married, yes.

24 Q. Any children?

25 A. Yes, I have a son and a daughter.

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1 Q. How long have you worked for BMW?

2 A. Fifteen years.

3 Q. All right. Now, have you had a
4 chance to take a look at the map that is sort
5 of to your side there, previous to this
6 moment?

7 A. Yes, sir, I've looked at it.

8 Q. The location of your home, can that
9 be seen or viewed on that map?

10 A. Yes, sir. It's on it.

11 Q. Would you just please step down and
12 point to the jury where it was that you lived
13 at that time?

14 A. (Witness steps down) Cripple Creek
15 Road is -- from Berry Pond Road and Jug
16 Factory, I'm kind of in the middle of it.

17 Q. Okay. So does that accurately
18 depict where you lived at that time?

19 A. Yes. I'm kinda in the middle of it.

20 Q. Okay. All right. You can have a
21 seat now. Thank you.

22 A. (Witness takes stand)

23 Q. Okay. Now, in August of 2013, who
24 lived there at the house with you on Cripple
25 Creek Road?

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1 A. My wife and my grandson.

2 Q. Okay. Tell me a little bit about
3 that location where you live. Is it -- are
4 there a lot of houses around there or is it
5 more secluded?

6 A. Well, it's a neighborhood but all of
7 us have tracts of land. I have seven and a
8 half acres. Two brothers across from me have
9 about fifteen acres apiece. The gentleman
10 beside me has about four and a half acres.
11 It's spread out like that.

12 Q. Okay. Is your house, is it right on
13 the road or is it set off the road?

14 A. No, sir. It's about three hundred
15 yards off the road. You can't see my home
16 from the road.

17 Q. Okay. So your driveway is about
18 three hundred yards?

19 A. Yeah.

20 Q. Are there any other houses on that
21 driveway?

22 A. No. No.

23 Q. Do you have a mailbox at the end of
24 the driveway?

25 A. Yes, sir.

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1 Q. Okay. Now, let me take you back to
2 August the 13th of 2013. Did you have an
3 encounter with a person on that day that lead
4 you to call law enforcement?

5 A. Yes, sir.

6 Q. Okay. Around what time was that?

7 A. I would say about twenty minutes
8 after seven that morning. I was coming home
9 from work. I worked the night shift at the
10 time.

11 Q. Okay. And what happened when you
12 got home? What did you see?

13 A. I pulled up my driveway to my house,
14 pulled in. And I noticed a black Scion
15 sitting in front of my home. The passenger
16 side door was open and the hatch was open on
17 it. And I said 'that's kind of funny for
18 twenty minutes after seven that morning.' I
19 said, 'well, he may have had an air
20 conditioner problem or something and called a
21 service person.' So I drove up beside him
22 and rolled the window down and asked him if I
23 could help him.

24 Q. Okay. Was there somebody in the
25 vehicle?

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1 A. He was standing on the passenger
2 side with the passenger side door open, like
3 he was getting something out of the
4 floorboard. That's why, it kind of looked
5 like, you know, a service person. Because
6 the way car's built, it's got a hatch on it
7 where you could carry stuff.

8 Q. Okay. Did you see the pictures of
9 the black Scion that we showed a couple of
10 witnesses ago?

11 A. Yes, sir.

12 Q. Okay. Did the vehicle look like
13 that vehicle when you saw it?

14 A. Yes. That's it.

15 Q. Were you able to get a tag number at
16 any point during this?

17 A. No, sir. And I'm sorry I didn't.

18 Q. Yeah. Okay. So when you pulled up
19 then next to him, were you -- and you said he
20 was on the passenger's side. Were you on the
21 driver's side at that point or were you ---

22 A. I pulled in like this and that car
23 was sitting this way.

24 Q. Okay.

25 A. And I was in my pickup truck.

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1 Q. Okay.

2 A. And he was at the right-hand side of
3 the car.

4 Q. Okay. So what it is I'm trying to
5 figure out is when you -- was he on the other
6 side of the Scion from you or were you ---

7 A. No. He was on the same side as I
8 was. He was to the right side of his vehicle
9 and my left side of my vehicle. And I was
10 sitting ---

11 Q. Okay. How close would you say you
12 were to this person?

13 A. At that time, about fifteen feet
14 probably.

15 Q. Okay. And what did you do or say to
16 him when you pulled up next to him?

17 A. I let the glass down and I asked him
18 if I could help him. You know, to find out,
19 you know, what he was doing.

20 Q. Okay. But what happened after you
21 made that comment to him?

22 A. "Naw, I'm just out riding around."

23 Q. That's what the man said?

24 A. Yes.

25 Q. What did you say?

1 A. I said "you're riding around in the
2 wrong area because this is a residence, not a
3 road."

4 Q. Okay. What did the man do at that
5 point?

6 A. He moved back toward the Scion,
7 toward the back of it without saying
8 anything. And I didn't know what he was
9 doing, so -- and I knew my wife and grandson
10 were in the home. So I took off for the
11 house. Opened the door, went in, got my gun
12 and went back out.

13 Q. Okay. And when you got your gun and
14 went back out, what -- was the vehicle still
15 there?

16 A. Yes.

17 Q. Was the man still there?

18 A. Yes.

19 Q. What was he doing at that point?

20 A. He was still at the back of the
21 Scion, at the hatch. Because it didn't take
22 me long to get -- all I did was run in, got
23 my gun, loaded it and told my wife to call
24 9-1-1.

25 Q. Okay. Now, when you came back out

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1 then, did you confront the man again?

2 A. Yes.

3 Q. And what did you say to him at this
4 point?

5 A. I told him I wasn't going to tell
6 him to leave again. He'd better be leaving.

7 Q. And what did he do?

8 A. He walked back around, closed the
9 hatch and walked around to the driver's side
10 of the car.

11 Q. Okay. And what did he do at that
12 point?

13 A. He got in the car and backed out.

14 Q. Okay. Were you able to see inside
15 the car, his car door?

16 A. Yes. I saw parts of it when he had
17 the door open. Not the back end because it
18 was a little farther back from where I was.

19 Q. Do you have any recollection about
20 or does anything stand out about the way it
21 looked inside?

22 A. Well, it looked like he had been
23 rumbling through something in the passenger
24 side there, like CDs or the glove box or
25 something. Stuff was scattered around.

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1 Q. Did you see the photographs that
2 showed -- that have items in the back of the
3 Scion?

4 A. Yeah. I didn't get to see the back-
5 end of the car, all I see was from the side.

6 Q. You saw the front then, you saw the
7 front seat?

8 A. Yeah.

9 Q. Because you don't know whether
10 there's anything in the back or not?

11 A. No. I didn't know what he was going
12 for in the back. That's why I went in my
13 house.

14 Q. Okay. Now, what do you recall about
15 the way this man looked?

16 A. Well, he was a whole lot taller than
17 me. I'm not but 5'8", 5'9". And he was
18 younger than me, looked like he was in his
19 mid-forties. So ---

20 Q. Okay. And did you -- are you able
21 to recognize him in this courtroom?

22 A. Yes.

23 Q. Okay. Would you point him out to
24 the jury?

25 A. He's the Defendant over here, on the

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1 left.

2 Q. You recognize him?

3 A. Yeah. He's changed a little and
4 I've changed a little. I guess we all have
5 in two years.

6 Q. In what ways does he look different
7 now than he did then?

8 A. His complexion is changed. His
9 hair, it's different.

10 Q. Okay. Do you remember anything
11 about the way he was dressed or anything like
12 that?

13 A. I think he had jeans and a dark
14 shirt on. I was worried about my family, was
15 all I was worried about.

16 Q. Okay. Please any questions the
17 Defense may have.

18 THE COURT: Mr. Warder.

19 CROSS-EXAMINATION

20 BY MR. WARDER:

21 Q. What time of day did you say this
22 happened?

23 A. I'd say between fifteen, twenty
24 minutes after seven. The shift I was working
25 at the time was the night shift. And I would

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1 get off about twenty minutes before seven.
2 So it'd usually take me about twenty-five to
3 thirty minutes to get home, so ---

4 Q. Okay. You're driving from where?

5 A. BMW Manufacturing at 101 and 85.

6 Q. And when you got there, the Scion
7 was already parked; is that right?

8 A. Yes.

9 Q. And was this on your property it was
10 parked?

11 A. Yes.

12 Q. Close to your house or anything?

13 A. Yes, right in front of my house.

14 Q. Now, you didn't make a written
15 statement or anything; did you?

16 A. No, I just told the police officer
17 when they got there everything. They wrote
18 down a statement. That's all they did, I
19 never did see a lineup or anything.

20 Q. Okay. Did you see anything wrong
21 going on there?

22 A. Did I see anything wrong going on
23 there?

24 Q. Yeah?

25 A. Yes. At fifteen minutes after seven

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1 in the morning a strange man in my yard?

2 Q. Okay.

3 A. And I've got a wife and grandson in
4 the home? (Affirmative nod).

5 Q. You said he was in the car rummaging
6 around?

7 A. He was outside the car, leaned over
8 in it rummaging around in the right-hand
9 side, passenger side.

10 Q. You don't have any idea what or if
11 anything he was looking for?

12 A. No.. I didn't ask.. I just asked him
13 if I could help him. That's when he said he
14 was just out riding around.

15 Q. Did you ask him why he stopped
16 there?

17 A. No.

18 Q. When you told him to leave he left?

19 A. Once I got my gun and told him again
20 to leave, he left.

21 Q. When was he told the first time?

22 A. I'd already told him to leave the
23 first time, before I went in my home. And
24 that's when he went to the back of the car.
25 So that's when I went to my home.

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1 Q. When you say you could see in the
2 car, could you see in through the back doors;
3 were they open?

4 A. No. The only thing that was open on
5 it in my yard was the hatch and the right-
6 side passenger.

7 Q. Okay. You looked in through the
8 back side passenger door?

9 A. No. I looked in the right-hand
10 side, the only one that was open. That's all
11 I could see inside.

12 Q. Okay. How long did this whole thing
13 took [sic], a couple of minutes?

14 A. I would say seven to ten minutes.

15 Q. Okay. Thank you.

16 SOLICITOR MOYER: Nothing further
17 from him, Your Honor.

18 THE COURT: You may step down.

19 WITNESS: Thank you, sir.

20 (WITNESS STEPS DOWN)

21 SOLICITOR MOYER: The State calls
22 Natalie Powell.

23 (WITNESS TAKES STAND)

24 NATALIE POWELL, having been duly sworn to
25 tell the truth, and nothing but the truth,

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR MOYER:

4 Q. All right. I'm going to ask you
5 questions from over here and -- just speak
6 into the microphone like you just did for the
7 jurors. How old are you, ma'am?

8 A. Thirty-four.

9 Q. Are you married?

10 A. Yes.

11 Q. Any children?

12 A. One.

13 Q. How old was your child in August of
14 2013?

15 A. He would have been four.

16 Q. And are you employed?

17 A. Yes.

18 Q. Where are you employed?

19 A. Innovative Manufacturing.

20 Q. Okay. I'm going to take you back to
21 August the 13th of 2013. Where did you live
22 at that time?

23 A. Jug Factory Road in Greer.

24 Q. Okay. And if you could, could I ask
25 you just to step down to the map and indicate

1 on the map where it is that you live at that
2 time?

3 A. (Witness steps down): Right here.

4 Q. So does that accurately reflect the
5 location, where you lived in August 2013?

6 A. Yes.

7 Q. Okay. So that sign that has your
8 address on it, that's an accurate depiction
9 of where you were living then?

10 A. Yes.

11 Q. Okay. Thank you. You can have a
12 seat again.

13 A. (Witness takes stand)

14 Q. Now, were you home on the morning of
15 August 13, 2013?

16 A. Yes.

17 Q. Was anyone else home with you?

18 A. My son.

19 Q. What about your husband?

20 A. No.

21 Q. What, he'd gone to work or ---

22 A. He'd already left for work.

23 Q. Let me ask you a little bit about
24 where you lived. Is that area rural or is it
25 built up?

1 A. It's very secluded. I live roughly
2 on forty-seven acres of property.

3 Q. Is your house right at the road or
4 is it?

5 A. It's got a pond between the road and
6 my house.

7 Q. Okay.

8 A. It's about five hundred or more
9 yards away from the road. You can't see it
10 from the road.

11 Q. You can't see your house from the
12 road?

13 A. Uh-uh.

14 Q. Is your driveway paved or is it
15 dirt?

16 A. It's gravel.

17 Q. It's gravel?

18 A. (Affirmative nod).

19 Q. Can neighbors see your house from
20 where you are?

21 A. No.

22 Q. You say you can't see your house
23 from the road?

24 A. No.

25 Q. All right. Now, do you remember

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1 around what time it was that your husband
2 left for work that morning?

3 A. He left for work probably around
4 7:15.

5 Q. So at that time it was just you and
6 your son at home?

7 A. Yes.

8 Q. Okay. Do you remember what you were
9 doing after he left?

10 A. I was getting ready to go to work.

11 Q. All right. Did you have an
12 encounter with anybody that morning, after
13 your husband left?

14 A. Yes.

15 Q. Around what time of day was it?

16 A. Around 8:00.

17 Q. So tell us what it was that alerted
18 you to have this encounter with somebody?

19 A. My doorbell rang.

20 Q. When the doorbell rang, what did you
21 do?

22 A. I looked to see who it was. My
23 little boy went to the door, fixing to open
24 the door. I told him not to. I went and got
25 my gun off the 'fridge and I went to the door

1 and opened it.

2 Q. Okay. Now, had you been able to see
3 who was at the door before you went and got
4 the gun?

5 A. Yes.

6 Q. So what prompted you to go get your
7 gun at that point?

8 A. I go get it if there's a stranger at
9 my door, period.

10 Q. So you could tell it was a stranger?

11 A. Yes.

12 Q. Okay. So when you got to the door,
13 what -- you opened the door?

14 A. Yes.

15 Q. What did you see when you opened the
16 door?

17 A. By the time I got the door opened,
18 he had walked off of my porch and was on my
19 sidewalk in front of my porch.

20 Q. Okay. Describe the person you saw.
21 What do you remember about the way the person
22 was dressed?

23 A. He was tall, had a dark tee shirt on
24 and I'm thinking maybe dark gray jeans/pants.
25 He had glasses on.

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1 Q. Okay. You remember glasses. So was
2 the person walking away from you when you
3 opened the door?

4 A. He was until I said something to
5 him. He turned around.

6 Q. What did you say?

7 A. I asked him what he wanted.

8 Q. And what did the person do when you
9 asked him that?

10 A. He asked me if my parents were home.

11 Q. Okay. Had you ever seen this person
12 before?

13 A. No.

14 Q. So that was the first thing this
15 person said was 'are your parents home'?

16 A. Yes.

17 Q. Well, how did you respond to that?

18 A. I said, "No, this is my house. What
19 do you want?"

20 Q. Now were you holding your gun at
21 this time?

22 A. Yes.

23 Q. How were you holding it?

24 A. Right beside me.

25 Q. Was it visible then?

1 A. Yes.

2 Q. Okay. What was his response when
3 you said that?

4 A. He asked me if there was a Dirk or a
5 Derek at my house. I said 'no.'

6 Q. Okay. Did you have any further
7 conversation with him?

8 A. I told him to get off my property.

9 Q. Did you say it in a firm way or ---

10 A. Yes.

11 Q. What tone of voice did you have?

12 A. "Get off of my property!"

13 Q. Okay. And then what did he do at
14 that point?

15 A. He started walking off. And I could
16 tell he was cussing me out.

17 Q. And you could hear it?

18 A. I could hear him.

19 Q. Did you see which direction he went?

20 A. He went towards my garage.

21 Q. Is it an attached garage or an
22 unattached garage?

23 A. It's attached to the side of my
24 house.

25 Q. What did you do when you saw him

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1 walking away?

2 A. Well, I went out on the front porch
3 and watched him leave the sidewalk.

4 Q. Did he leave? Where did you see him
5 go?

6 A. He went to a black Scion that was
7 parked out on the cement in front of my
8 garage.

9 Q. Okay. Did you see the pictures of a
10 black Scion?

11 A. Yes.

12 Q. Did it look like that vehicle?

13 A. Yes.

14 Q. Okay. Did you see him in the
15 vehicle?

16 A. No.

17 Q. What did you do when you saw him?
18 So you just saw him walking towards it?

19 A. Yes.

20 Q. What did you do at that point?

21 A. I went back in my house.

22 Q. So you didn't make sure he had left
23 at that point?

24 A. No.

25 Q. All right. What did you do then,

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1 when you went back into the house?

2 A. I finished getting ready to go to
3 work. I went and got in my car in the
4 garage. I opened the garage door, pulled my
5 car out and I hit something.

6 Q. What did you do when you hit
7 something?

8 A. I looked in my camera in my car to
9 see what was behind my car.

10 Q. What did you see?

11 A. There was a tire and a rim laying
12 behind my car.

13 Q. Had that tire and rim been there
14 prior to ---

15 A. No.

16 Q. So what did you do when your car hit
17 that tire and rim?

18 A. I pulled back in the garage, closed
19 the door, and called my husband.

20 Q. And what made you do that?

21 A. I called him to ask him if he had
22 put the tire there. And he said, no,
23 absolutely not. That it was in a trailer
24 approximately fifty feet away from our house.

25 Q. Tell me a little bit about this tire

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1 and rim.

2 A. It was a trailer tire, an extra
3 spare trailer tire.

4 Q. How big is it?

5 A. Like eighteen, seventeen, eighteen
6 inches round.

7 Q. Would you describe it as heavy or
8 light or ---

9 A. It's relatively heavy. It would be
10 for me.

11 Q. Sure. All right. So you drove back
12 into your garage. You called your husband
13 from your car?

14 A. Yes.

15 Q. Did you close the garage door?

16 A. Yes.

17 Q. Was the black Scion still there?

18 A. No. If it was, I would have hit it
19 because it was right where the tire was
20 placed.

21 Q. Okay. Now, okay, what did your
22 husband do?

23 A. He came home and called the police.

24 Q. All right. Now, how close -- let me
25 back up. You said this was about 8:00?

1 A. Yes.

2 Q. So it was light out?

3 A. It was approximately 8:00 when he
4 came to my door. It was probably, I'd say,
5 fifteen, twenty minutes later when I actually
6 pulled out of my garage.

7 Q. Okay. Let's talk a little bit about
8 how close you were to this person who came up
9 to your house. I'm just going to walk
10 towards you. Just tell me to stop when I get
11 to about the distance you were from him --
12 (approaching witness).

13 A. Stop.

14 Q. Okay. So can you estimate?

15 A. Ten foot.

16 Q. About ten feet or so?

17 A. (Affirmative nod).

18 Q. Could you see this person well?

19 A. Yes.

20 Q. How long would you say you inter-
21 acted with him before he ---

22 A. Possibly a minute.

23 Q. Did you get a good enough look at
24 his face to be able to recognize him later?

25 A. Yes.

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1 Q. In fact, were you asked on a later
2 date to see if you could identify him in a
3 photographic lineup?

4 A. Yes.

5 Q. Do you remember the date?

6 A. The 20th of August, I believe.

7 Q. Just about a week later then?

8 A. Yes.

9 Q. Where were you when that took place?

10 A. My workplace.

11 Q. And that's here in Greenville?

12 A. Yes.

13 Q. Okay. I'm going to hand you --
14 well, let me ask you this. Can you remember
15 who the officer was who came to show you the
16 photo lineup?

17 A. That man sitting right over there.

18 Q. That just took his glasses off?

19 A. Yes.

20 Q. Was there anyone else with him that
21 you recall?

22 A. No.

23 Q. Do you remember what if anything the
24 officer, the investigator said to you when he
25 showed you the lineup?

1 A. He just told me it could be or could
2 not be the person that was at my house, for
3 me to see if I could decide if it was or not.

4 Q. Did you feel any pressure that you
5 had to pick somebody out of that lineup?

6 A. No.

7 Q. Okay. If you had not seen the
8 person in the lineup would you have told the
9 investigator?

10 A. Yes.

11 Q. And after you were shown the lineup,
12 did he influence your decision at all as to
13 who to pick out or whether to pick someone
14 out?

15 A. No.

16 Q. When you saw the lineup, were you
17 able to identify anybody?

18 A. Yes.

19 Q. Did you have any trouble doing that?

20 A. No.

21 Q. I show you State's Exhibit Number
22 56. Can you take a look at that? And are
23 you able to identify what I just showed you?

24 A. Yes.

25 Q. And what is that?

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1 A. My signature under his picture.

2 Q. Okay. Is that the photo lineup the
3 officer showed you on August 20th?

4 A. Yes.

5 Q. Does it have the date that you were
6 shown the lineup?

7 A. Yes.

8 Q. What is the date?

9 A. August 20th.

10 Q. What year?

11 A. 2013.

12 Q. Okay. And when you picked somebody
13 out of the lineup, did you sign your name
14 underneath the person whose picture it was?

15 A. I did, yes.

16 Q. How confident were you that that was
17 the person you saw a week previous?

18 A. A hundred percent.

19 Q. Is that person here in the courtroom
20 now?

21 A. Yes.

22 Q. Can you point him out to the jury?

23 A. He's sitting over there in the
24 yellow shirt.

25 Q. Does he look different now than he

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1 did then?

2 A. Yes. He did not have a ponytail
3 then. And his clothes were obviously
4 different. He was kind of slouchy looking.

5 Q. What do you mean by slouchy looking?

6 A. Not very nicely dressed.

7 Q. Do you remember -- did you say it
8 was dark when -- okay. Please answer any
9 questions the Defense may have.

10 CROSS-EXAMINATION

11 BY. MR WARDER:

12 Q. Did you see the car come up the
13 driveway?

14 A. No, I did not.

15 Q. Okay. And how did it happen that
16 you first saw what happened?

17 A. When he was walking away from my
18 house, I went in the direction that he was
19 walking and the car was parked there.

20 Q. And when he came to the house, he
21 knocked on the door?

22 A. No. He rang the doorbell.

23 Q. Rang the doorbell. Had a bell out
24 there?

25 A. (Affirmative nod).

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1 Q. How long did all of this take?

2 A. About a minute.

3 Q. Okay.

4 A. I very quickly told him to leave.

5 Q. Okay. And I guess he conformed or
6 complied after that?

7 A. Yes, he left.

8 Q. Okay.

9 A. Well, he walked away. At that
10 point, I went back in my house. Obviously
11 he did not leave at that point.

12 Q. The tire, did you ever find out what
13 it went to or what happened to it?

14 A. It was put there after the Scion was
15 moved.

16 Q. What kind of tire was, did you say
17 it was just a trailer tire?

18 A. A trailer tire.

19 Q. What eventually happened to that
20 tire? Do you still have it.

21 A. It's still in my yard.

22 Q. Thank you.

23 A. Yes, sir.

24 SOLICITOR MOYER: Nothing further of
25 this witness.

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1 THE COURT: Now, was this -- 56 in
2 or ---

3 COURT REPORTER: Not yet, Your
4 Honor.

5 SOLICITOR MOYER: The photo lineup.
6 Your Honor, I believe I did forget it. I
7 didn't actually make the Motion. I believe I
8 laid the foundation. But at this time I
9 would move to have State's Exhibit Number 56
10 entered into the record.

11 THE COURT: All right. Any
12 objection?

13 MR. WARDER: No, Your Honor.

14 THE COURT: All right. State's 56
15 without objection.

16 (SO ENTERED AS STATE'S EXIHIBIT 56)

17 SOLICITOR MOYER: At this time, the
18 State would call Joe Seegars.

19 THE COURT: All right.

20 JOE SEEGARS, having been duly sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MOYER:

25 Q. Okay. Sir, where are you employed?

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1 A. Currently I'm employed at Berkeley
2 County Sheriff's Office.

3 Q. How long you been with Berkeley
4 County Sheriff's Office?

5 A. About three and a half months now.

6 Q. And how much law enforcement
7 experience do you have?

8 A. Five years.

9 Q. Where did you work previous to that
10 date?

11 A. I started my career in Greenville
12 County, worked there for the better part of
13 five years.

14 Q. Okay. So you were working at
15 Greenville County Sheriff's Office in August
16 of 2013?

17 A. Yes, sir, I was. I was assigned to
18 uniform patrol, area one.

19 Q. I'm sorry. What was your position
20 at that time?

21 A. I was assigned to the uniform patrol
22 division, Delta platoon. My assigned beat
23 area at that time was area one, which is Blue
24 Ridge, Greer, Taylors, the northern end of
25 the county.

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1 Q. Does it include that area that is
2 displayed on that map that we have been
3 talking about today?

4 A. Yes, sir, it does.

5 Q. Okay. What are your duties as a
6 uniformed officer?

7 A. We observe. We patrol the area and
8 we try to detect crime. We try to deter
9 crime, answer calls for service.

10 I like to kind of get out in the
11 community, talk to them, try to find problems
12 in that area because it was me and one other
13 deputy assigned to the Blue Ridge area. So
14 we kind of went around, knocking on a lot of
15 doors, talking to a lot of people.

16 Q. All right. Well, let me take you
17 back to that timeframe then. Were you
18 working on the morning of August the 13th of
19 2013?

20 A. Yes, sir, I was.

21 Q. And did you receive a callout that
22 morning?

23 A. Yes, sir, I did.

24 Q. What was the location of that call?

25 A. The location was Rayland Place in

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1 Greer.

2 Q. Okay. And is that location in
3 Greenville County?

4 A. Yes, sir, it is.

5 Q. Okay. And let me ask you if you
6 could just to step down to that map and see
7 if that map accurately reflects where
8 Rayland Place is?

9 A. (Witness steps down). Yes, sir.
10 This is Highway 101 right here and it's off
11 into a neighborhood off to the right if you
12 were going north.

13 Q. Okay. So that's accurately reflect
14 where Rayland Place is then on the map?

15 A. Yes, sir.

16 Q. Okay. Thank you.

17 A. (Witness takes stand)

18 Q. What was the nature of the call when
19 it came out?

20 A. When it came out, it was a burglary
21 in progress.

22 Q. Do you know what your approximate
23 time of arrival was?

24 A. The call came out at around 6:20 and
25 we started our shifts at about 6:45. We

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1 would go to the sheriff's office. So I was
2 coming from either North Pleasantburg, so
3 I would guess somewhere around -- it probably
4 took me fifteen minutes to get there so I
5 would say 6:35, 6:40, somewhere in there.

6 Q. Okay. Did you go with lights and
7 sirens activated?

8 A. Yes, sir, I did.

9 Q. Were other officers there when you
10 arrived?

11 A. Yes, sir. Sergeant May was there.
12 And I believe it was Deputy Hodge.

13 Q. Okay.

14 A. I think he was on the back. I can't
15 remember.

16 Q. Now, did you all get together before
17 entering the house?

18 A. I believe Deputy Hodge stood on the
19 back side just to make sure nobody would come
20 out the back. Me and Master Deputy May, at
21 the time, entered the house to clear it.

22 Q. And what does that mean, clearing a
23 house?

24 A. Basically, before we go into a house
25 to make sure that there -- or to conduct an

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1 investigation, we're going to make sure that
2 there are no threats in the house, make sure
3 that there is nobody injured or anything like
4 that. So what we typically do, especially in
5 a case like this where there's forced entry,
6 we're going to go into the house, clear of
7 any obvious threats. And then we're going to
8 go back and do a secondary which is just a
9 little bit better, maybe looking under beds,
10 pulling clothes back, stuff like that to make
11 sure nobody's tucked in there hiding.

12 Q: Okay. And when did you clear this
13 house at Rayland Place, was there anybody in
14 the house?

15 A. Yes, sir, there was the victim,
16 Melody Wilbanks, and her young child.

17 Q. Okay. But other than that, there
18 wasn't anyone else in the house?

19 A. No, sir.

20 Q. All right. Did you observe anything
21 about the house consistent with, in your
22 experience, a forced break-in?

23 A. Yes, sir, I did. On the back side
24 of the house there was a window. The glass
25 was broken and the glass was broken inward,

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1 which tells me that somebody broke it from
2 the outside coming in. If somebody broke it
3 from inside going out, the glass falls that
4 way. There was also a propane tank laying
5 inside in the glass. Also, when we were
6 clearing the house, the bedroom door was
7 knocked or forced off the hinges. To me, I
8 would say there would have been some kind of
9 bodily injury that did it.

10 Q. Okay. Let me show you -- I don't
11 believe you were here this morning when these
12 other photographs were shown. So I'm going
13 to show you State's Exhibits at this time.

14 A. I was. I saw them.

15 Q. You did?

16 A. Yes, sir.

17 Q. Okay. We start off with State's
18 Exhibit Number 3. I'm going to hand you the
19 laser pointer. The window that you mentioned
20 that you'd seen glass broken out of, can you
21 point that out here on this?

22 A. Yes, sir. That's right there and
23 that's what we would refer to as the number
24 three side of the house, which is the rear
25 side of the house, away from the road.

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1 Q. Okay. State's Exhibit Number 15?

2 A. If I could just -- there's that
3 glass I was talking about, how it's inside on
4 the floor. To me that shows that the glass
5 was broken in from the outside going in.

6 Q. Okay. State's Exhibit Number 15?

7 A. That's what we would refer to as the
8 number three side of the home. That's the
9 back side, the rear side.

10 Q. So how do you determine what number
11 is --- ?

12 A. Typically, what we would -- and it's
13 just so we can tell everybody on the radio.
14 We go from the side that faces the roadway.
15 So in this case, the front side facing
16 Rayland Place would be number. Then you go
17 around the house, two, three, four. That
18 way, you can tell somebody on the radio,
19 'hey, I'm on the three/four corner.' Or
20 'there's forced entered on the number three
21 side' of the house and everybody knows what
22 you're talking about. Instead of trying to
23 say, oh, I'm over here by the window next to
24 the grill. Nobody knows where that is.

25 Q. Okay. I show you State's Exhibit

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1 Number 4. Does that show anything that you
2 were just talking about?

3 A. Yes, sir. That right there is the
4 door to the bedroom. And it was forced off
5 the hinges.

6 Q. Okay. Exhibit 5?

7 A. Yes, sir. That's that same door.

8 Q. On State's Exhibit 2, you mentioned
9 a propane tank. Are you able to point out
10 where exactly that was?

11 A. Yes, sir. It's right there, just
12 behind that chair. You can actually see the
13 blue. I think it was Blue Rhino maybe, which
14 is -- I think that's what they have at the
15 Sphinxes.

16 Q. Okay. You mentioned you encountered
17 Ms. Wilbanks there at the house. What do you
18 remember about her demeanor?

19 A. She was terrified from my experience
20 in dealing with people. She was visibly
21 shaken. We probably took five or ten minutes
22 just to calm her down before we actually
23 started getting down to getting her
24 information and stuff like that.

25 Q. Okay. What did she tell you had

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1 happened to her?

2 A. She told me that she was obviously
3 in the house, heard some glass break. She
4 told me that she got scared. She didn't see
5 the subject at that time. She told me that
6 she heard a voice and she knew that it was a
7 man's voice.

8 Q. Let me stop you right there. Did
9 she say anything about, indicate at all about
10 race?

11 A. No, sir. She told me a man's voice.

12 Q. Okay. Never said whether it sounded
13 black, white, Hispanic?

14 A. No. She told me a man's voice.

15 Q. Okay. Okay. What else did she have
16 to say to you?

17 A. She told me at that point she was so
18 scared that she went and locked herself in
19 her bathroom, bathroom closet area. She'd
20 gotten her gun for protection. She told me
21 that she could hear the person in there and
22 that she feared for her safety, feared that
23 he was coming in there, so she fired a shot
24 off to scare him away. I remember that
25 because I told her -- we had a conversation

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1 after that. If you're going to pull a gun on
2 somebody and you think you need to shoot it,
3 then you don't need to shoot to scare them
4 away. I remember us having about a five-
5 minute conversation about that.

6 Q. Okay. What sort of description did
7 she give you of the person?

8 A. She told me she knew it was a man.
9 She couldn't really go any further than that.

10 Q. All right. Did you look in the
11 bathroom?

12 A. I did.

13 Q. What observations at all, if any,
14 did you make?

15 A. I saw that there was a bullet hole
16 going through, into the shower. I think it
17 was a shower, not just a bathtub but the
18 shower area. The only damage I saw was it
19 had gone into there and into the drywall. It
20 didn't damage the house anywhere else, which
21 was consistent with what she'd told me
22 originally.

23 Q. Did you determine whether anything
24 was missing from the home?

25 A. I did. After that, we took some

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1 time, we walked around through the house,
2 throughout the house. Well, let me stop you.
3 Before we did that, we went and checked on
4 the infant. We did that before we did any of
5 this.

6 Q. Was the child okay?

7 A. Yeah. The child was fine. But we
8 walked through the house. I don't think it
9 was until we actually walked out of the house
10 for me to do my paperwork until she realized
11 the car was gone. But that's how visibly
12 upset she was. She didn't even realize her
13 car was gone or her garage was open until we
14 had walked outside.

15 Q. Okay. What kind of vehicle was it?

16 A. It was a -- let me check the year.
17 I know it was Toyota Scion. It was a 2011
18 Toyota Scion displaying tag number

19

20 Q. Okay. Did you do anything with that
21 information that you got about the vehicle?

22 A. Yes, sir. Basically, what we do
23 with that is we'll send out what we call a
24 BOLO, which is a be on the lookout for.
25 We'll give the information to our dispatchers

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1 and then they'll put that out on all four
2 channels. So if anybody sees that car then,
3 because we operate on four channels, they
4 would know that it's stolen. They also
5 placed that vehicles information on NCIC,
6 which is a nationwide database where you can
7 list stolen property, wanted individuals,
8 anything like that. So say a Spartanburg
9 County Deputy runs that tag, it's going to
10 come back stolen out of Greenville County.
11 Same thing with a wanted individual or, say,
12 a stolen gun or anything like that.

13 Q. All right. And so how long after
14 you got there was it that you think y'all
15 discovered that the car was actually gone?
16 It wasn't right away you said; right?

17 A. It wasn't right away. Like I say,
18 we had time to clear the house, secure the
19 house, check on the infant, get the basic
20 story. And then we walked through the house
21 looking for anything else that was obviously
22 missing. So just judging off of my
23 experience on about how long that normally
24 takes, I'd say ten minutes, something like
25 that.

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1 Q. Okay. Did you call for a forensics
2 outfit to come out to the scene?

3 A. Yes, sir, I did.

4 Q. Were you present when the forensics
5 officer arrived?

6 A. I don't remember. I believe I was.
7 I believe we had a short conversation while I
8 was doing paperwork, trying to get every-
9 thing. Typically, we're going to fill out a
10 victim's form, which has the victim's case
11 number, their rights and some resources that
12 they can have. So I was filling that out and
13 on the phone with dispatch, getting all that
14 information placed on the NCIC.

15 Q. Okay. Let me ask you. Did you then
16 go anywhere else in relation to this case?

17 A. To start off with, we went around
18 the neighborhood talking to a bunch of
19 individuals, just knocking on doors. That's
20 typically what we do with any burglary,
21 trying to locate any witnesses, anybody that
22 saw anything that might stand out.

23 While this was going on, we received
24 another call for service at -- I know it was
25 on Graceland. I'm trying to remember the

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1 numerics. Oh, wait. No, it was Cripple
2 Creek.

3 Q. Okay. And what was that call?

4 A. That call was in reference to a
5 white male and a black Toyota Scion that had
6 pulled into somebody's -- or was at
7 somebody's house. And there was a verbal
8 altercation. And that was documented in our
9 case number 13-125742.

10 Q. Did you go to that location?

11 A. Yes, sir. We actually responded to
12 that location lights and sirens too because
13 of this situation.

14 Q. So a vehicle description had been
15 given out?

16 A. Yes, sir.

17 Q. Did you speak to anyone there?

18 A. Yes, sir. I spoke with the
19 gentleman who was just up here. I've got my
20 names. (Upon review), I spoke with Mr.
21 Bishop.

22 Q. Okay. The gentleman who just
23 testified a few minutes ago?

24 A. Yes, sir.

25 Q. Okay. Can you just point out the

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1 location where you went to speak to him?

2 A. It's in this area (indicating). I
3 couldn't point out the house.

4 Q. Okay. All right.

5 A. But that's the road.

6 Q. Okay. Thank you. All right. Was
7 the Scion there when you arrived?

8 A. No, sir. It was gone on our
9 arrival.

10 Q. Do you have a rough timeframe for
11 when it was that you were speaking to Mr.
12 Bishop?

13 A. I do. I would have to review the
14 CAD for that. That's our computer aided
15 dispatch. It basically keeps a log of when
16 we are en route to somewhere, when we get on
17 scene. Getting from there, from the incident
18 location up there, lights and sirens, I'd say
19 seven to eight minutes, something like that.

20 Q. Okay. Now, did you get any other
21 calls related to this incident that day?

22 A. Yes, sir. Later in the morning at
23 around 10:20, somewhere in there, we got a
24 call off of -- I'm trying to remember. It
25 was off of Jug Factor Road. I can't remember

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1 the name.

2 Q. Now if you would look on your third
3 page of your report and see if you -- do you
4 have that information?

5 A. Yes, sir. It was Jug Factor
6 Road.

7 Q. Okay. Who was the person you got a
8 call -- who made the call?

9 A. I spoke with an individual by the
10 name of Joe Powell.

11 Q. Okay. So did you speak to his wife?

12 A. No, sir. She wasn't there. I
13 believe he told me she was at work.

14 Q. Okay. All right. So you spoke to
15 Mr. Powell then?

16 A. Yes, sir, I did.

17 Q. And just heard sort of the details
18 of what his wife had told him?

19 A. Yes, sir.

20 Q. Did you get contact information for
21 Ms. Powell?

22 A. I did. And I listed her in the
23 report as a potential witness. From what he
24 was telling me, it sounded like --

25 Q. Yeah. I don't want you to tell me

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1 what he said.

2 A. Yeah.

3 Q. But you did get the contact
4 information?

5 A. Yeah. It just sounded like she
6 could be a potential witness.

7 Q. Okay. And then you put that in your
8 report for the follow-up investigators?

9 A. Yes, sir.

10 Q. Okay. Please answer any questions
11 the Defense may have.

12 MR. WARDER: I don't have any
13 questions for this witness.

14 THE COURT: You may call your next
15 witness.

16 SOLICITOR MOYER: The State calls
17 Travis Stamey to the stand.

18 (WITNESS TAKES STAND)

19 TRAVIS STAMEY, having been duly sworn to
20 tell the truth, and nothing but the truth,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR MOYER:

24 Q. Okay. Would you tell us where
25 you're employed, sir?

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1 A. With the Greer Police Department.

2 Q. How long have you been in law
3 enforcement.

4 A. For nineteen years now.

5 Q. Has that all been with the Greer
6 Police Department?

7 A. It has.

8 Q. What is your position with the Greer
9 Police Department?

10 A. Patrol officer.

11 Q. What are your duties as a patrol
12 officer?

13 A. To drive around the streets, make
14 sure that people aren't doing traffic
15 violations. I investigate burglaries and
16 shoplifting and things of that nature.

17 Q. Okay. Let me take you now to August
18 the 13th, 2013. Were you working on that day?

19 A. I was.

20 Q. Did you receive a call in relation
21 to this case on that day?

22 A. I did. I received a call that a
23 vehicle had been located behind a business in
24 the city limits of Greer on -- it was 311
25 Bennett Street -- Drive.

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1 Q. Is that in the city limits of Greer?

2 A. It is.

3 Q. That's in Greenville County?

4 A. It is.

5 Q. Okay. So what kind of vehicle was
6 it?

7 A. It was a Scion.

8 Q. Okay. Do you know what color it
9 was?

10 A. I did not note that in my report, I
11 don't believe, as to what color.

12 Q. Okay. Let me -- you have an
13 opportunity to look at the photographs that
14 were taken that day?

15 A. I have.

16 Q. Okay. Let me hand you State's
17 Exhibits 17 through 28. Just take a minute
18 just to look through those. See if it
19 refreshes your memory as to the details of
20 the vehicle that you looked at that day?

21 A. (Upon review), this is the vehicle.

22 Q. Okay. Is that the vehicle you saw
23 then on August 13th?

24 A. Correct.

25 Q. And around what time of day was it?

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1 A. Right around 2:00, 2:30. Somewhere
2 right around 2:30.

3 Q. Okay. Did you speak to anyone when
4 you got there?

5 A. I did. I spoke to an employee of
6 the business, a Denise Crocker.

7 Q. Okay. What kind of business is
8 that, do you know?

9 A. If I'm not mistaken I believe it's a
10 psychiatric, like a -- I don't know how to
11 exactly how to explain exactly what it is.
12 You go there for ---

13 Q. Like a counseling center?

14 A. Counseling center, (affirmative
15 nod), counseling.

16 Q. Okay. Now, tell me what you
17 observed about the vehicle when you arrived.
18 Where it was? What kind of condition it was
19 in?

20 A. When I arrived on scene the
21 complainant basically showed me the vehicle
22 through a window inside the business. It was
23 stuck in the mud, all the way down in -- it
24 was several inches down into the mud. I
25 guess it had been raining and the ground was

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1 very wet at that point. The vehicle was
2 undrivable in that mud. As I walked around,
3 you could tell that somebody had actually
4 tried to back up, forward and back, to try to
5 get out of the mud.

6 Q. Okay. So was it stuck?

7 A. It was.

8 Q. All right. Was anybody with the
9 vehicle when you got there?

10 A. No, there was not.

11 Q. And did you look in the vehicle?

12 A. I did.

13 Q. Did you end up calling for forensics
14 officers to come out there?

15 A. I did.

16 Q. And what was the reason for that?

17 A. To process the scene, which I do for
18 fingerprints and processing any items that
19 was in the vehicle.

20 Q. Okay. Did you do anything with any
21 evidence before the forensics officers
22 arrived?

23 A. I did. There was a pistol, a Ruger
24 .9mm that was located in the door panel. I
25 took that pistol out and secured it and

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1 placed it in the back of my vehicle and
2 unloaded it.

3 Q. Okay. And then you left everything
4 else for the forensics officer when they got
5 there?

6 A. Correct.

7 Q. All right. Let me show you, first
8 off, State's Exhibit Number 19. And can you
9 tell the jury what is, what we're seeing in
10 that photograph? Is that the vehicle that
11 you observed?

12 A. It is.

13 Q. Okay. And I'm going to use this
14 laser pointer. Can you tell me what this is
15 back here?

16 A. That's the building.

17 Q. That's the business you were talking
18 about?

19 A. The business. Uh-huh.

20 Q. Okay. And you looked out one of
21 those windows when you got there?

22 A. Correct.

23 Q. Okay. State's Exhibit 18. Is that
24 the vehicle that you encountered when you
25 arrived there that day?

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1 A. It is.

2 Q. Exhibit 20? I'm sorry. Exhibit
3 Number 17, is that the way the vehicle was
4 when you arrived there?

5 A. It was.

6 Q. All right. Now, did you take a look
7 inside the vehicle?

8 A. I did.

9 Q. Let me show you. And you took a
10 look at these photographs I handed you a few
11 minutes ago?

12 A. Correct.

13 Q. Does that accurately reflect the way
14 that inside of the vehicle looked when you
15 saw it?

16 A. It did.

17 Q. Now, did you collect any of those
18 items?

19 A. I collected them after ID, after
20 Greenville ID actually processed them. We
21 collected all the items and placed them into
22 evidence bags and sealed them. And placed
23 them into our evidence to be held for trial.

24 Q. Okay. And where is your evidence?

25 A. It's 102 South Main Street.

1 Q. Okay. That's in Greer?

2 A. It is.

3 Q. At the Greer Police Department?

4 A. Correct.

5 Q. Did you take it there that day,

6 August 13th?

7 A. I did.

8 Q. And do you -- did you make a list of

9 everything that you collected that day?

10 A. I did.

11 Q. Have you had a chance to look at

12 that list and refresh your memory as to all

13 the items that you took into your custody

14 that day?

15 A. Sure.

16 Q. Take a look at this document I'm

17 handing you. Do you recognize it?

18 A. I do.

19 Q. What is that?

20 A. It's our property and evidence

21 sheet.

22 Q. Okay. Does that reflect all the

23 items of evidence that you took out of the

24 car that day?

25 A. It does.

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1 Q. Okay. Would you just tell the jury
2 what it was that you did take out of the car
3 back to the property and evidence room?

4 A. One pair of jeans,
5 one set of keys,
6 a cellphone case,
7 a knife,
8 a lighter,
9 a Bose speaker,
10 a CD. This was a combo.
11 A tool kit, which was gray.
12 Two swords.
13 A trash can.
14 A box of twenty-four matches.

15 And I'm not sure exactly what the other
16 thing is. My writing is not that great on
17 here. I believe it was a green plain box, I
18 believe is what that was.

19 Q. Okay. Let me just show you some of
20 these other exhibits, see if you can
21 recognize any of these items that were listed
22 in the vehicle.

23 COURT REPORTER: That Exhibit
24 Number? Mr. Moyer, the exhibit number?

25 SOLICITOR MOYER: This is Exhibit

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1 26.

2 COURT REPORTER: Thank you.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR MOYER:

5 Q. Can you see Exhibit 26?

6 A. I believe that's going to be the
7 tool box.

8 Q. Okay. State's Exhibit 24?

9 A. That looks like the Bose speakers.

10 Q. And what about this over here?

11 A. Well that, I believe, is the trash
12 can.

13 Q. Okay. Once again, can you see what
14 is displayed in that?

15 A. It looks like the trash can and the
16 speakers.

17 Q. State's Exhibit 25?

18 A. I believe that is the speakers that
19 are sticking through.

20 Q. Okay. And you mentioned -- this is
21 State's Exhibit Number 28?

22 A. And that's the box, the big green
23 box, a recycle box.

24 Q. Is that like a recycle bin?

25 A. Yeah. I think that's what it was.

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1 The green one was probably a recycle bin.

2 Q. Okay. Please answer any questions
3 the Defense may have.

4 CROSS-EXAMINATION

5 BY MR. WARDER:

6 Q. What time did you arrive there?

7 A. It's -- let me just look at my
8 report. (Upon review), around 2:00, 2:20,
9 somewhere in there.

10 Q. What time did you leave?

11 A. It was probably close to a little
12 after 3:00 by the time I actually drove off
13 with the evidence.

14 Q. And during that time, you didn't see
15 anybody associated with the car or claiming
16 to be associated with the car, did you?

17 A. No, sir.

18 Q. Did you check and see whether the
19 car was warm?

20 A. I don't remember checking that. I
21 think I was more trying to see what all was
22 in the vehicle and if there was anybody
23 around. I don't think I checked the vehicle
24 to see if it was warm.

25 Q. You don't know whether the spare

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1 tire had been taken out of that car or was
2 still in it, or anything like that?

3 A. No, sir, I don't. I didn't look
4 that deep into it. The ID officer would have
5 been the person taking everything out. So
6 they would have saw that.

7 Q. So you didn't see that?

8 A. I was actually in the vehicle,
9 actually starting my report when he actually
10 started doing that, sir.

11 Q. Did you see, at any time that you
12 observed, he had that lid up on the back
13 where the spare tire would go?

14 A. I didn't see that, no, sir.

15 Q. Thank you.

16 SOLICITOR MOYER: No further
17 questions for this witness

18 THE COURT: All right.

19 (WITNESS STEPS DOWN)

20 THE COURT: Is the jury okay.

21 FOREPERSON: (Affirmative response).

22 THE COURT: All right. Next
23 witness.

24 SOLICITOR MOYER: Okay. The State
25 would call Brian Walker.

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1 (WITNESS TAKES STAND)

2 BRIAN WALKER, having been duly sworn to
3 tell the truth, and nothing but the truth,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR MOYER:

7 Q. Mr. Walker, how old are you?

8 A. Fifty-six.

9 Q. Are you married?

10 A. Yes.

11 Q. Who's your wife?

12 A. Arlene Walker.

13 Q. Were y'all married in August of
14 2013?

15 A. No, we were boyfriend and
16 girlfriend.

17 Q. What was her last name at that time?

18 A. Arlene Bruce.

19 Q. Where are you employed?

20 A. North Star Forest Products.

21 Q. How long have you worked there?

22 A. With this company, three years.

23 Q. I'm going to take you back to August
24 of 2013. Where were you living at that time?

25 A. Altacrest Apartments.

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1 Q. Were you planning to move?

2 A. Yes. We had purchased a home
3 Meritage.

4 Q. And is that in Greenville County?

5 A. Yes. It's in Greer off of 101.

6 Q. And have you had a chance to take a
7 look at the aerial map that we've been using
8 in this courtroom?

9 A. Yes, I have.

10 Q. Does that map show where your house
11 is located?

12 A. Yes, it does.

13 Q. And could you step down and just
14 point that out?

15 A. (Complies/indicating).

16 Q. Does that accurately reflect the
17 location where your house is?

18 A. It does.

19 Q. Does that map accurately reflect the
20 layout, the roads and other features of the
21 area as it looked in August of 2013?

22 A. Very much so.

23 SOLICITOR MOYER: Your Honor, at
24 this time ---

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR MOYER:

2 Q. You can have a seat.

3 A. (Witness takes stand)

4 SOLICITOR MOYER: At this time, I
5 would move to have State's Exhibit Number 53
6 entered into evidence.

7 THE COURT: All right. Mr.
8 Warder, any objection?

9 MR. WARDER: I'm sorry, I was ---

10 THE COURT: State's Exhibit 53.

11 SOLICITOR MOYER: I move to have
12 State's Exhibit Number 53 entered into
13 evidence.

14 MR. WARDER: No objection.

15 THE COURT: All right. State's
16 Exhibit 53 is now in.

17 (SO ENTERED AS STATE'S EXHIBIT 53)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR MOYER:

20 Q. And I'm also going to turn your
21 attention to State's Exhibit Number 52.
22 It's already in evidence. Would you just
23 step down?

24 A. (Witness steps down).

25 Q. And point to the jury where the

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1 location of your house is?

2 A. (Indicating).

3 Q. What is that main road that goes
4 along, that Meritage comes off?

5 A. 101.

6 Q. Highway 101?

7 A. Right there.

8 Q. Okay. Okay. And so is that a new
9 development?

10 A. Very. At the time, probably fifteen
11 homes in the development at the time.

12 Q. Okay. All right. You can have a
13 seat.

14 A. (Witness takes stand)

15 Q. Okay. So do you remember when you
16 actually closed on the house?

17 A. July 30th, 2013.

18 Q. And when were you planning on moving
19 in?

20 A. Mid-September of that year.

21 Q. So y'all already owned it?

22 A. We owned it.

23 Q. Did you get a key to it?

24 A. Yes, we did.

25 Q. Had you spent any time at the place?

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1 A. Yes. Every day I would either stop
2 by the house, take some things or my wife --
3 girlfriend at the time -- would drop stuff
4 off.

5 Q. Okay. And so almost every day you
6 said y'all would go in there?

7 A. Just about every day, yes. One of
8 us stopped by the house.

9 Q. So was the house fully -- you didn't
10 have all of your things in the house yet at
11 this point?

12 A. We didn't even have ninety percent
13 of them. We had a washer/dryer, just a few
14 other oddball items.

15 Q. Okay. So you were just slowing
16 moving?

17 A. Slowly moving in.

18 Q. Okay. And you said you were
19 planning on moving in in September?

20 A. Mid-September, yes.

21 Q. About a month after this incident?

22 A. That is correct.

23 Q. Is that about when you did move in?

24 A. Yes.

25 Q. Okay. Now, were there any signs in

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1 front of the house or near the house
2 regarding the state of this house?

3 A. A real estate sign with "SOLD"
4 across it.

5 Q. So that sign was right out -- where
6 was it?

7 A. In the front lawn on the -- if you
8 looked at the house, right-side, front lawn.

9 Q. All right. Let me take you back to
10 the morning of August the 14th of 2013. Do
11 you remember going to your home on Meritage
12 Street?

13 A. Yes.

14 Q. Okay. Do you recall around what
15 time of day it was when you went?

16 A. Approximately 8:30 in the morning.

17 Q. And what took you there on that
18 date?

19 A. I was meeting a subcontractor. We
20 were replacing carpet in one of the bedrooms
21 and making -- putting hardwoods down.

22 Q. Did you notice anything? Did
23 anything stand out about the place when you
24 drove up to it on that day?

25 A. When I pulled up the driveway, the

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1 garage door was one-third of the way up. I
2 walked underneath the garage door and I
3 noticed the garage door opener looked like it
4 had been tampered with.

5 The door going into the mudroom was open.
6 So I was -- I cautiously went inside, saw a
7 mess in the guest bathroom.

8 As I entered the living room, looked to
9 the right, there as a lot of wood splinters
10 from where the door had been either pushed or
11 kicked in. And then the door had been shut
12 and shimmied with a piece of wood to keep it
13 shut.

14 Q. Okay. Did you touch anything or do
15 anything?

16 A. Did not. I walked outside
17 immediately and called 9-1-1.

18 Q. Did officers then respond to the
19 location?

20 A. Very quickly, (affirmative nod).

21 Q. All right. Now, did you go back
22 into the house when the officers arrived?

23 A. Yes, I did.

24 Q. Did you notice any damage or
25 anything wrong or different with the house

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1 when you got inside?

2 A. Yes. You know, the front door jamb
3 was demolished from being pushed in.

4 And there was clay handprints on the wall
5 by the blinds where somebody had leaned
6 against the wall to close the blinds.

7 The guest bathroom was really disheveled.
8 Dirty towels, red clay all over them. It
9 appeared somebody had taken a shower.
10 Underneath the guest bathroom sink it was
11 just -- my wife's -- some of her lotions were
12 squirted, the toothpaste was squirted. The
13 bathroom was just -- it looked like teenagers
14 had just kinda ransacked it.

15 Q. Okay. Had any of those items been
16 in the bathroom prior to your going in and
17 seeing this state of affairs in the bathroom?

18 A. None of them, no.

19 Q. So where had all those items been?

20 A. The towels had been in the linen
21 closet to the right of the bathroom. The
22 other items that were in there were under the
23 sink in our bathroom, in the master bath.

24 Q. Did you notice anything else in the
25 house appearing to have been gone through or

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1 damaged or ---

2 A. Yeah. You know, everything had
3 pretty much been -- all the cupboard doors in
4 the kitchen had been opened and gone through,
5 the pantry. Pretty much every drawer,
6 cupboard, everything had been gone through.

7 Q. Okay. Do you remember anything
8 about a hall closet?

9 A. Yes. The pantry closet, two of the
10 shelves were broke. I don't whether or not
11 they were real sturdy anyway, but they were
12 broke. Other than that, nothing else.

13 Q. Had anything else been in that
14 closet?

15 A. The pantry? I mean, the hall
16 closet, the linen closet?

17 Q. The closet, yes?

18 A. Yes, all of our towels; basically
19 our towels.

20 Q. Okay. The towels that had been used
21 in the bathroom.

22 A. Yes. In the bathroom, probably four
23 or five had been used.

24 Q. Now, what about your pantry?

25 A. It had been gone through, things

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1 were taken out of it.

2 Q. Did anything in particular stand out
3 as having been taken?

4 A. A block of -- my wife did some
5 catering. And she had a big block of wooden
6 matches. They were in a tube, cellophane
7 wrapped. The trash can next to the pantry.

8 Q. And they were missing?

9 A. Gone, yes.

10 Q. Now, do you remember -- now you were
11 going through the house with an officer?

12 A. Yes.

13 Q. Did you make any comments about that
14 to the officer?

15 A. Yes.

16 Q. Okay. Or you or your wife, do you
17 remember what was said?

18 A. She said, my wife said to the one
19 officer, "Yeah whoever took this block of
20 matches, I mean, they're going to be able to
21 light a lot of fires or a lot of cigarettes."
22 And the officer looked at her quizzically
23 like, "Well, that's odd. We have a block --
24 you know, I noticed in the evidence room or
25 whatever at Greer City, that there was a box

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1 of matches. Do you have any of them?'

2 She said, 'yeah, here's one.'

3 He goes, "Well, that's identical to the
4 ones we have, that we confiscated from
5 the scene, from a car."

6 Q. Are there any other bathrooms in the
7 house?

8 A. Yes. There's a master bathroom and
9 a guest bathroom. And the master bath had
10 been gone through and stuff was taken out of
11 the cupboards and taken to the guest bathroom
12 cupboards.

13 Q. Okay. How about the bedrooms? Had
14 anything been the bedroom? Did you notice
15 anything disturbed in the ---

16 A. Yes. In the master bedroom, master
17 closet, my wife had candles, some other
18 little jewelry items that had been
19 transferred to the bathroom, the guest
20 bathroom.

21 Q. Okay. And you went -- now, what
22 about -- did you notice -- you mentioned a
23 washing machine being in the place?

24 A. Uh-huh.

25 Q. Did you notice anything tampered

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1 with or moved or anything?

2 A. The lid was up on it.

3 Q. The lid was up, okay. Had there
4 been anything in that room either above or
5 near the washing machine that was missing or
6 gone?

7 A. I think there was some detergent
8 above it that was missing.

9 Q. Okay. Now, did you -- okay. Now,
10 did you and your wife make a list of the
11 items that you remember having been taken?

12 A. My wife did.

13 Q. Okay. Would it refresh your memory
14 if you had a chance to take a look at that
15 list?

16 A. Yes.

17 Q. Tell the Court what all was taken.
18 I hand you this document. Do you recognize
19 the document?

20 A. Yes, I do.

21 Q. And what is that document?

22 A. My wife typed this up.

23 Q. Okay. And would you just tell us
24 the different items that you were able to
25 determine had been missing from your house

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1 when you got there on the 14th?

2 A. A Bose compact stereo.

3 A new stainless steel trash can.

4 A brand new kitchen tool set.

5 Plastic wrap we used for paint

6 cover.

7 Old family brown Bible.

8 The cube of matches,

9 ruined towels,

10 muddy prints on the wall.

11 You want the repairs?

12 Q. Okay. No, not the repairs.

13 A. Just the things that were missing?

14 Q. Yes.

15 A. The cube of matches was the last

16 one.

17 Q. Okay. I think you've already told
18 us the cube of matches was from the kitchen?

19 A. That's correct.

20 Q. Now, what was the value that y'all
21 would have placed on the Bose stereo?

22 A. Nine hundred dollars (\$900), twelve
23 hundred (\$1,200). Today, it's twelve hundred
24 dollars (\$1,200). I don't know. When she
25 bought it was right at nine hundred (\$900).

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1 Q. Okay. Now, the Bible, where had
2 that been?

3 A. That had been in our master bedroom
4 closet in a brown box.

5 Q. Okay. The painter's plastic roll,
6 where had that been?

7 A. That was in the garage.

8 Q. And what about the tool set?

9 A. In the garage.

10 Q. The trash can?

11 A. Next to the pantry in the kitchen.

12 Q. Do you remember anything about any
13 manuals, you know, to your appliances or
14 anything like that tampered with or gone or
15 anything?

16 A. Yeah. All of our manuals for all of
17 the appliances were taken from the house. I
18 don't understand why, but they were all
19 missing.

20 Q. Do you know where they had been?

21 A. They had been in a kitchen drawer.

22 Q. All right. Now, do y'all remember a
23 forensics officer came to the house?

24 A. Yes.

25 Q. Did you all speak to the forensics

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1 officer as he was going through the house?

2 A. Yes.

3 Q. Do you remember what the reason was
4 for speaking to the officer?

5 A. He was taking pictures and asking a
6 few questions about different parts of the
7 house. And, at the time, he was taking --
8 you know, the main focal point of the house,
9 the worst area was the guest bathroom. And
10 my wife noticed that two of the light or
11 three light bulbs above the sink, two of them
12 had been unscrewed.

13 Q. Did she point that out to the
14 forensics officer?

15 A. She did, yes.

16 Q. Was that at the time the forensics
17 officer was checking for fingerprints?

18 A. Yes. And so he said 'don't touch
19 them, don't screw any' -- he dusted and he
20 received two good fingerprints from those.
21 That's what he told us.

22 Q. Okay. All right. So let me make
23 sure I understand this right. So tell me how
24 many light bulbs were above?

25 A. Three.

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1 Q. When y'all turned the light on, how
2 many lights came on?

3 A. One.

4 Q. Okay. And so that stood out in your
5 ---

6 A. Well, I mean, you know, it was
7 obvious that it being the central-most point
8 of the house, the person who was in there
9 wanted as little ---

10 Q. But had those lights been on
11 previous to y'all being there?

12 A. Yes. They all were..

13 Q. And so that stood out, the fact that
14 two of them weren't working?

15 A. That is correct.

16 Q. Okay. Now, I'm going to hand you
17 State's Exhibits Numbers 29 through 43.

18 SOLICITOR MOYER: And before I do
19 so, I'm submitting them to defense counsel.
20 (Tenders to Mr. Warder).

21 MR. WARDER: (Review)

22 SOLICITOR MOYER: Before I go
23 through all the foundational questions is
24 there objection to the photographs?

25 MR. WARDER: No, Your Honor.

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1 THE COURT: Okay. No objection,
2 Exhibits 29 through 43 are in without
3 objection.

4 SOLICITOR MOYER: Thank you.

5 (SO ENTERED AS STATE'S EXHIBIT 29)

6 (SO ENTERED AS STATE'S EXHIBIT 30)

7 (SO ENTERED AS STATE'S EXHIBIT 31)

8 (SO ENTERED AS STATE'S EXHIBIT 32)

9 (SO ENTERED AS STATE'S EXHIBIT 33)

10 (SO ENTERED AS STATE'S EXHIBIT 34)

11 (SO ENTERED AS STATE'S EXHIBIT 35)

12 (SO ENTERED AS STATE'S EXHIBIT 36)

13 (SO ENTERED AS STATE'S EXHIBIT 37)

14 (SO ENTERED AS STATE'S EXHIBIT 38)

15 (SO ENTERED AS STATE'S EXHIBIT 39)

16 (SO ENTERED AS STATE'S EXHIBIT 40)

17 (SO ENTERED AS STATE'S EXHIBIT 41)

18 (SO ENTERED AS STATE'S EXHIBIT 42)

19 (SO ENTERED AS STATE'S EXHIBIT 43)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR MOYER:

22 Q. Mr. Walker, I'm going to be showing
23 several different State's Exhibits and
24 pointing out several matters with this laser
25 pointer. And I want to ask you some

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1 questions about it. Do you recall taking a
2 look at these photographs before today?

3 A. Yes.

4 Q. Okay. Let's start with State's
5 Exhibit Number 29. Can you recognize what it
6 is that is shown in that picture?

7 A. It's the front of our house.

8 Q. And what is located in this area?

9 A. The front door.

10 Q. That's where the front door is.
11 Okay. State's Exhibit Number 30, are you
12 able to recognize what that is?

13 A. Yes. That's the damage done to the
14 front door.

15 Q. So that's the area that I just
16 pointed out on this previous exhibit?

17 A. That's correct.

18 Q. Okay. And then State's Exhibit 31?

19 A. That's a door view.

20 Q. State's Exhibit 32?

21 A. The same. You have the door jamb
22 that had been kicked in or pushed in.

23 Q. Okay. So what perspective? Are we
24 now on the inside of the house?

25 A. Yes. That's from the inside to the

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1 right. If you're looking out the front of
2 the house, that's on the right-hand side of
3 the door.

4 Q. State's Exhibit 33?

5 A. That's just -- well, there's the
6 pieces of the door jamb and the lock or the
7 deadbolt or ---

8 Q. Had that previously actually in the
9 structure of the house prior to that?

10 A. Yes, it was.

11 Q. State's Exhibit Number 34?

12 A. That's looking from the far end of
13 our living room to the front door.

14 Q. Okay. So what am I ---

15 A. That's the front door there that has
16 been damaged.

17 Q. Okay. And how was that door when
18 you arrived? Was it wide open like that?

19 A. No. When I arrived, it was closed
20 and someone had taken a piece of the broken
21 door jamb and shimmied it to keep the door
22 shut.

23 Q. So did you notice the door was open
24 when you drove -- did you drive by the front
25 of the house before you?

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1 A. No, I always come in around to the
2 back, to the side. And so I didn't see the
3 front until I came in.

4 Q. State's Exhibit 25 [sic]?

5 A. That's the entry of the hallway to
6 where the guest bathroom is to the left.

7 Q. Is this the area of the guest
8 bathroom?

9 A. Yes.

10 Q. Is that the bathroom that you were
11 talking about that had all of the items in it
12 that you were talking about?

13 A. Yes.

14 Q. All right. Now, describe the
15 location of that bathroom in relation to the
16 house. Are there any windows in the bathroom
17 or ---

18 A. No, it's the central most position
19 of the house.

20 Q. Okay. Would that area be difficult
21 to see if someone were outside or driving by?

22 A. You couldn't see it. The only way
23 to see that bathroom is to come in through
24 the mudroom or that side hallway there.

25 Q. All right. State's Exhibit Number

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1 30, is that the bathroom ---

2 A. Yes, it is.

3 Q. --- that we were talking about?

4 A. Yes.

5 Q. All right. State's Exhibit Number

6 37. Okay. Now, you mentioned some things

7 that were in disarray or different about the

8 bathroom. Does that picture reflect any of

9 those items?

10 A. The bathroom didn't resemble any of
11 that the last time I was in the house.

12 Q. Okay. Well, what about what's up in
13 this area?

14 A. There is some toothpaste. She had a
15 box of long candles that you might light a
16 fireplace with that were moved from our
17 bathroom or guest -- master bedroom, our
18 master bedroom closet. There's some body
19 butter, which -- I don't know, I guess, what
20 that is. Just random things that were
21 brought from the other bathroom into there.

22 Q. Okay. Could you tell what this is
23 down here? Do you remember what that is?

24 A. That was a vase or -- (negative
25 gesture).

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1 Q. If you don't remember ---

2 A. No, my wife would, but I don't
3 remember.

4 Q. Okay. All right. Let's go to
5 State's Exhibit Number 38. Can you tell the
6 jury what it is you see in that picture?

7 A. That's the rear entry to our house,
8 the door on the left. And that's the garage.

9 Q. Okay. So is this the garage area
10 that you noticed ---

11 A. Was a third of the way open when I
12 approached the house, yes.

13 Q. State's Exhibit Number 39.. What is
14 showing in that picture?

15 A. There's a stepstool there that was
16 leaning up against the back of the garage on
17 one of the side walls that was used to
18 dismantle or make the garage door opener
19 dysfunctional.

20 Q. So what is directly above that
21 stool?

22 A. That's the garage door opener. The
23 electronics.

24 Q. I show you State's Exhibit Number
25 40. What is that?

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1 A. That's the back of the garage door
2 where it had been destroyed basically so that
3 it didn't work. You had to operate it
4 manually.

5 Q. Okay.

6 A. Because as soon as you did
7 electronically, the light came on.

8 Q. Okay. So if someone had tried to
9 open that door electronically, a light came
10 on?

11 A. The light came on automatically.
12 And it was in working order before.

13 Q. Okay. So if this had been damaged
14 or made dysfunctional, would the light go on
15 if you opened that?

16 A. Absolutely not.

17 Q. I show you State's Exhibit Number
18 41. Can you recognize what that is?

19 A. That's part of the garage door
20 opener.

21 Q. Okay. That would have been directly
22 above the stool?

23 A. That stool, (affirmative nod).

24 Q. Okay. And did that fit anywhere on
25 this garage door opener?

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1 A. The back, (affirmative nod).

2 Q. This area?

3 A. Yes.

4 Q. Okay. And what is behind that?

5 What is in that?

6 A. Wires that are connected to it.

7 Q. I show you State's Exhibit 42. Can
8 you ---

9 A. That's the wire sensor that goes by
10 the garage doors that keep the door from
11 coming down in case there's something
12 obstructing it. That had been ripped out of
13 the wall.

14 Q. State's Exhibit Number 43?

15 A. Yes. There's one there that was
16 left but the other one on the other side had
17 been removed.

18 Q. So had there been any damage to any
19 of those locations prior to you finding the
20 place having been broken into?

21 A. No. Everything was in fine working
22 order.

23 Q. And when had you last been there?

24 A. I had been there -- my wife was
25 there Tuesday night or Tuesday afternoon from

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1 three to five because we had the washer and
2 dryer delivered the 12th. And then the 13th
3 was the only day that I can remember that
4 neither of us had visited the house.

5 Q. Okay. And you went there on the
6 14th?

7 A. (Affirmative nod), on the 14th at
8 8:30 to meet a contractor.

9 Q. Okay. So it would have been between
10 August the 12th and August the 14th?

11 A. We had not been at the home.

12 Q. Okay. Now, did you get any of your
13 stolen property back?

14 A. Yes, we did.

15 Q. Okay. Do you remember the date when
16 that was?

17 A. It was at least two weeks later. My
18 wife had kept checking on it. So within two
19 to three weeks I believe we got it.

20 Q. Okay. Where did y'all go to get it?

21 A. Greer Police Department.

22 Q. Okay. I want to show you several
23 more exhibits. And I'm going to ask you if
24 you can recognize or identify anything in
25 these photographs. We're going to start off

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1 with State's Exhibit Number 20 -- well,
2 let's start with State's Exhibit 28. I
3 think that's good.

4 A. Okay.

5 Q. All right. Do you recognize any-
6 thing in that photograph?

7 A. It's the recycling bin from our
8 garage, the green one, the Greer Recycling
9 bin.

10 Q. This item that I'm pointing to right
11 now?

12 A. Yeah. That's correct.

13 Q. Okay. And so had that been in your
14 garage previous to August the 14th of 2013?

15 A. It was in the front left corner.

16 Q. Of what?

17 A. Our garage.

18 Q. So you got that item back?

19 A. We never did get that back.

20 Q. Okay. Go to State's Exhibit -- but
21 you recognize it?

22 A. Yes, I do.

23 Q. And y'all knew that you had an item
24 missing?

25 A. Yes. We had the trash receptacle

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1 and that delivered the same day from the City
2 of Greer.

3 Q. I'm showing you State's Exhibit 25?

4 A. That's the Bose compact stereo that
5 my wife owned.

6 Q. Is that what I'm pointing to right
7 now ---

8 A. That is correct. And we got that
9 back.

10 Q. Can you see what this is back here?

11 A. That's a trash can I bought from
12 WalMart, and we got that back.

13 Q. All right. Can you tell from this
14 picture what this is?

15 A. Yeah. That's my wife's crescent
16 tool set. We got the case back and few of
17 the tools. The rest of them were gone.

18 Q. The rest of the tools were gone?

19 A. (Affirmative nod).

20 Q. Let's look at State's Exhibit 23.

21 A. That's the Bose stereo on the right,
22 the trash can in the center, and then the
23 plastic paint drop.

24 Q. Okay. Did y'all ever get that back?

25 A. Yes. We got all three of those

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1 items back.

2 Q. And this is the trash can?

3 A. Yes.

4 Q. And this is?

5 A. The Bose stereo.

6 Q. State's Exhibit 24? Does that show
7 the same items that you just described in the
8 previous?

9 A. Yes, it does.

10 Q. State's Exhibit 26?

11 A. And that's the tool set and the Bose
12 stereo.

13 Q. Did y'all know Ms. Wilbanks previous
14 to this incident?

15 A. No, I did not nor -- I did not, no.

16 Q. So was there any reason for any of
17 your property to be in her black Scion?

18 A. No, there was not.

19 Q. Let me show you State's Exhibit 21.
20 The front of the vehicle. Does any of that
21 property look like it belongs to you? This
22 sword?

23 A. That? No, that does not.

24 Q. These jeans?

25 A. No, they do not.

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1 Q. And State's Exhibit 22. Again,
2 these swords that were in the front of the
3 vehicle, did they belong to you?

4 A. None of that material looks
5 familiar.

6 Q. I'm sorry?

7 A. None of the items look familiar.

8 Q. Okay. Thank you. Okay. Please
9 answer any questions Defense has.

10 CROSS-EXAMINATION

11 BY MR. WARDER:

12 Q. On the value of the stuff that was
13 taken, can you tell us how you arrived at
14 that?

15 A. Looking up retail at a shop, a
16 store, Best Buy.

17 Q. You said like the Bose was worth
18 nine hundred dollars (\$900)?

19 A. I'm assuming when she bought it was.
20 But right now they retail for between twelve
21 (\$1,200) and fourteen hundred dollars
22 (\$1,400).

23 Q. Okay. So what were the other items
24 that ---

25 A. A trash can, that was sixty-five

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1 dollars (\$65). I know that for a fact
2 because I bought it.

3 The Crescent tool set, I bought. So she
4 has the price on that.

5 Q. So you don't know about the tool
6 set?

7 A. She would know. I do not know
8 exactly what she paid for it.

9 Q. Okay. What was the other items that
10 you know about?

11 A. Well, the plastic drop roll, twenty-
12 five dollars (\$25), because it was a large
13 roll.

14 And the recycling bin, we had to pay
15 Greer forty-five dollars (\$45) to replace
16 that.

17 Q. They didn't give you credit for the
18 one that was recovered?

19 A. No. It's the City.

20 Q. What else?

21 A. I think those are the only things
22 that are -- that I can recall.

23 Q. Okay.

24 A. As far as what was stolen. The
25 damage was more, but that was the price of

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1 the stolen goods.

2 Q. Certainly the things, the cost to
3 fix the real estate was more, of course, than
4 the things that were taken?

5 A. Yes, it was. That's right.

6 Q. Thank you.

7 SOLICITOR MOYER: Nothing further
8 for this witness, Your Honor.

9 (WITNESS STEPS DOWN)

10 THE COURT: All right. Everybody
11 stand up and stretch for a second.

12 (JURORS STAND FOR STRETCH BREAK)

13 THE COURT: Counsel approach.

14 (OFF RECORD BENCH CONFERENCE)

15 THE COURT: All right. After our
16 stretch we're going to have one more short
17 witness. Everybody okay with that?

18 JURY: (Unanimous affirmative
19 response).

20 THE COURT: Anybody need -- it
21 should be short. Anybody have any problems
22 or need to make any calls or anything like
23 that? (No response). All right.

24 All right. Mr. Moyer, then you'll
25 call your next witness.

1 SOLICITOR MOYER: The State would call
2 Jeff Hemric.

3 (WITNESS TAKES STAND)

4 JEFF HEMRIC, having been duly sworn to
5 tell the truth, and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR MOYER:

9 Q. All right. Please state your name?

10 A. Jeff Hemric.

11 Q. Where are you employed?

12 A. City of Greer Police Department.

13 Q. How long have you been in law
14 enforcement?

15 A. Just under eight years.

16 Q. Has it all been at the Greer Police
17 Department?

18 A. Yes, sir, it has.

19 Q. What is your position with Greer
20 Police Department now?

21 A. Currently investigator/detective.

22 Q. Let me take you to August the 14th of
23 2013. Were you working on that date?

24 A. Yes, sir, I was.

25 Q. Did you receive a call?

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1 A. Yes, sir.

2 Q. What time did you receive a call?

3 A. I believe it was 8:51 a.m.

4 Q. Okay. And what was the location?

5 A. It was Meritage Street within
6 the city limits, Greenville County.

7 Q. So that's in Greer City limits and
8 in Greenville County?

9 A. Yes, sir.

10 Q. Okay. Now, we've been referring to
11 this map. I don't know if you had a chance
12 to see it from where you were seated. Does
13 that accurately reflect the way that layout
14 is?

15 A. Yes, sir, it does.

16 Q. So are you familiar with the other
17 side of that road, Rayland Place?

18 A. I'm sorry?

19 Q. Are you familiar with the other
20 side, Rayland Place?

21 A. Yes, sir, I'm familiar with that.

22 Q. And is that in Greer City limits?

23 A. Yes, sir. Oh, no, no. I'm sorry.

24 On the opposite side of the road, no sir.

25 Q. On the opposite side of the road.

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1 Now, what was the nature of the call?

2 A. It came out as a burglary.

3 Q. Who did you meet upon arrival there
4 at the residence?

5 A. I believe I met with Ms. Arlene
6 Bruce is her name, as well as Mr. Walker.

7 Q. Okay. The gentleman who just
8 testified?

9 A. Yes, sir.

10 Q. Did you observe any damage to the
11 residence consist with a burglary?

12 A. I did.

13 Q. What did you observe?

14 A. I believe when we initially walked
15 in they had already opened the front door.
16 The front door jamb had been split, obviously
17 had been hit pretty heavily with something.

18 Q. Okay. You saw the photographs that
19 we just showed?

20 A. Yes, I did.

21 Q. Is that the way the door looked to
22 you when you saw it that morning?

23 A. Yes.

24 Q. All right. Now, were you able to
25 determine a time frame of when the incident

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1 could have taken place?

2 A. Speaking with Ms. Bruce as well as
3 Mr. Walker, it was sometime between ---

4 MR. WARDER: Objection to hearsay,
5 Your Honor.

6 SOLICITOR MOYER: I think this goes,
7 Your Honor, to explain the officer's actions
8 and nature of his investigation.

9 THE COURT: Yeah. Okay. It's
10 hearsay. I mean, do you have another
11 exception or something?

12 SOLICITOR MOYER: All right. I will
13 withdraw that question.

14 THE COURT: Okay.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR MOYER:

17 Q. All right. Well, did you speak to
18 Ms. Bruce and Mr. Walker in order to
19 determine a time frame for what had happened?

20 A. I did.

21 Q. And did you also take a tally or a
22 list or the missing and stolen items at that
23 time?

24 A. Yes, sir, I did. Well, Officer
25 Santana who was with me was writing down all

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1 the details in his notebook. But, yes, I was
2 present for it.

3 Q. Okay. Now, while you were doing
4 that, was there anything that was mentioned
5 at that time that caught your attention as
6 having any significance, any of the items
7 that were reported stolen.

8 A. Yes, sir, there was.

9 Q. What was that?

10 MR. WARDER: Still some hearsay,
11 Your Honor.

12 SOLICITOR MOYER: Your Honor, this
13 is not going to the truth of the matter.

14 THE COURT: Right. I think --
15 I'll allow it.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR MOYER:

18 Q. What was it that was mentioned that
19 caught your attention of having significance?

20 A. It was a large book or box of
21 matches.

22 Q. Okay. And why did that seem
23 significant to you?

24 A. The day prior -- there's an area
25 within the Greer City Jail. It's basically

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1 a long table that we do a lot of our evidence
2 processing on. I didn't know any
3 significance at the time, but I had noticed a
4 large book of matches sitting on that table
5 the day prior, on the 13th. And then when Ms.
6 Bruce mentioned that book of matches, it kind
7 of jogged my memory. I remember seeing that
8 at the Greer City Police Department.

9 Q. Okay. Now, had you had any
10 involvement in the collection of evidence
11 from that vehicle?

12 A. No, sir.

13 Q. The matches or anything else?

14 A. No, sir.

15 Q. Okay. And so that means you made
16 the connection between the two of them;
17 correct?

18 A. Yes.

19 Q. One moment. All right. Did you
20 call for Greenville Forensics to come process
21 the scene?

22 A. I did. Well, Officer Santana did;
23 yes.

24 Q. Okay. And so the forensics officer
25 did come out then to later process the scene.

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1 A. Yes.

2 Q. Okay. Okay.

3 SOLICITOR MOYER: I have no further
4 questions for this witness.

5 MR. WARDER: No questions, Your
6 Honor.

7 THE COURT: All right. You may
8 step down, officer.

9 (WITNESS STEPS DOWN)

10 THE COURT: All right. Ladies and
11 gentlemen, we're going to take our break for
12 today. We will start back at 9:00 in the
13 morning, okay? So you will need to be in
14 your jury room before that time.

15 MR. WARDER: Your Honor, could we
16 approach please?

17 THE COURT: Yes.

18 (OFF RECORD BENCH CONFERENCE)

19 THE COURT: All right, 9:30. So
20 y'all be ready to go at 9:30 in your jury
21 room.

22 Okay, let me -- as I told you, any time
23 we take a break I'm going to tell you do not
24 discuss the case among yourselves. When you
25 get home don't discuss it with your friends

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1 or family. Don't discuss it at all. When
2 somebody asks you what you did today, say "I
3 can't tell you." "The judge told me I'm
4 prohibited from talking about it." And
5 that's important. You don't need any outside
6 input into this case.

7 Also, do not do any independent
8 investigation. The only thing that the jury
9 is supposed to consider is evidence that's
10 been properly introduced.

11 So just go do anything else tonight, but
12 don't think about this case -- which I know
13 is very difficult to do. Don't talk about
14 it. Don't do any investigation. Otherwise,
15 y'all have a very good evening and we will
16 see you in the morning.

17 (JURY OUT AT 5:00 P.M.)

18 THE COURT: All right. Anything
19 else from the State?

20 SOLICITOR MOYER: No, Your Honor.

21 THE COURT: Anything else from the
22 Defense?

23 MR. WARDER: No, Your Honor.

24 THE COURT: Nine witnesses after
25 lunch. That's pretty good. I commend all of

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1 you.

2 SOLICITOR MOYER: Judge, I think at
3 the latest we will argue and charge after
4 lunch tomorrow.

5 THE COURT: Okay. Well, that was
6 why I was kind of pushing for today, so.

7 SOLICITOR MOYER: Yeah.

8 THE COURT: All right. We will
9 see y'all in the morning.

10 (COURT IN RECESS)

11 (TRANSCRIPT CONTINUED NEXT PAGE)

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1

2

OCTOBER 14, 2015

9:30 A.M.

3

(DEFENDANT PRESENT)

4

THE COURT: Is everybody ready?

5

Is the State ready?

6

SOLICITOR MOYER: Yes, Your Honor.

7

We're ready. I'll just tell the Court we may

8

need a short break after the first two

9

witnesses. My two lay witnesses who are

10

going to testify and then an officer is going

11

to testify after those two witnesses. The

12

officer had to -- I asked the officer to go

13

back to his office and get some notes. He

14

told me this morning he refreshed his memory

15

with some handwritten notes he made at the

16

time. And I know Mr. Warder would have a

17

right to look at those notes.

18

THE COURT: All right. We'll be

19

glad to -- we'll give you the appropriate

20

time to look at that.

21

MR. WARDER: Thank you, Your Honor.

22

THE COURT: All right. Is the

23

Defense ready?

24

MR. WARDER: Yes, sir.

25

THE COURT: All right. If you'll

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1 bring the jury in.

2 (JURY IN AT 9:30 A.M.)

3 THE COURT: Good morning, ladies
4 and gentlemen. I understand that y'all had a
5 little trouble -- some of you had a little
6 trouble getting here. And I'm sure y'all
7 were panicking and, like, 'Oh, my gosh. I've
8 got to get there.' We happily work with any
9 traffic issues. So I'm glad y'all are here
10 now. So we will now begin. The State is
11 still putting up witnesses at this point.

12 So Mr. Moyer you can proceed with
13 your next witness.

14 MR. WARDER: The State would call
15 Arlene Bruce. Arlene Walker.

16 (WITNESS TAKES STAND)

17 ARLENE WALKER, having being duly
18 sworn to tell the truth, and nothing but the
19 truth, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR MOYER:

22 Q. Your name was Arlene Bruce ---

23 A. Yes, it was.

24 Q. -- in 2013; correct?

25 A. Uh-huh.

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1 Q. Okay. So how long have you been
2 married?

3 A. It'll be two years this December.

4 Q. Okay. So back in 2013 is when you
5 got married?

6 A. Yes.

7 Q. All right. And where did you live
8 in August of 2013?

9 A. I owned a home a home on Howell
10 Street in Greer.

11 Q. Okay. And were you familiar with
12 the residence at Meritage?

13 A. Yes. My husband and I bought that.

14 Q. Okay. When did you close on that?

15 A. July 31st, I think, 2013.

16 Q. Okay. And y'all were planning on
17 moving into the house?

18 A. Yes. I had already started moving
19 my stuff.

20 Q. And tell me a little bit about that.
21 How frequently were you going to the house?
22 What would you do there?

23 A. I went every day. I lived about a
24 mile and a half from our new home. And I
25 also worked about a mile and a half from our

1 new home. So I would go by there every day
2 and take a load of stuff and get it nice and
3 organized.

4 Q. Okay. Where did you work?

5 A. I worked at McAbee Tractor in Greer.

6 Q. Still work there?

7 A. No, I retired.

8 Q. So what sort of things were you
9 bringing into the home?

10 A. Towels, candles, just all of my
11 personal things that I didn't need on a day-
12 to-day basis while we were moving.

13 Q. Okay. As opposed to the furniture
14 and ---

15 A. Right. I had not moved furniture
16 in. The washer and dryer had just been
17 delivered on the 12th of August. We had a
18 refrigerator and, you know, major appliances
19 were being delivered.

20 Q. Was the refrigerator hooked up and
21 running?

22 A. Yes.

23 Q. Were utilities on there?

24 A. Oh, yes.

25 Q. So electricity?

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1 A. Yes.

2 Q. Water?

3 A. Yes.

4 Q. Hot water, you could have taken a
5 shower. You had that?

6 A. Yes. Yes.

7 Q. Toilets and everything were
8 functioning?

9 A. Yes.

10 Q. So was the house ready to be moved
11 into to?

12 A. We were moving in, yes.

13 Q. Okay. You could have actually been
14 living there?

15 A. Absolutely.

16 Q. If you'd had all the furniture?

17 A. Yes.

18 Q. Okay. Was it a new house?

19 A. Brand new.

20 Q. Okay. What times of day were you
21 going to that house?

22 A. I would get off work at 2:00 every
23 day so I would generally leave, run to my old
24 house. I would be there maybe fifteen or
25 twenty minutes and then go to the new house.

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1 So before 2:30 every day I was there.

2 Q. Every day except -- and were you
3 there on the 13th?

4 A. No. I had -- the washer and dryer
5 was delivered on the 12th so I stayed a little
6 bit later on the 12th. And then my husband
7 and I were doing something on the 13th. I
8 don't remember what it was but neither of us
9 went on the 13th.

10 Q. Do you remember how late in the day
11 you were there on the 12th?

12 A. I was there until about 6:30.

13 Q. P.M.?

14 A. Yes.

15 Q. And then the next time y'all were in
16 the house was on ---

17 A. My husband went Wednesday morning
18 before he went to work. He went to let a
19 contractor in.

20 Q. Okay. All right. And is that when
21 you found out about the break-in?

22 A. Yeah. He called me. Right after he
23 called 9-1-1, he called me.

24 Q. Did you go to the house?

25 A. Right. Yes.

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1 Q. Were you there when the officers
2 arrived?

3 A. Yes.

4 Q. Did you speak to the officers as
5 they went through the house?

6 A. Yes, I did.

7 Q. Do you remember what their reasoning
8 was for that? What sort of information?

9 A. Well, the police were actually
10 already there when I got there. But, yes, I
11 went in -- I was the one that actually knew
12 what was in the house because my husband had
13 not started moving his stuff in yet. So they
14 were asking me what was missing and what I
15 had in the house.

16 Q. Okay. And were you there when the
17 forensic officer ---

18 A. Yes.

19 Q. --- was trying to look for
20 fingerprints?

21 A. Yes.

22 Q. Were you giving him input or
23 suggestions on that?

24 A. Yes. Because I walked into the
25 bathroom, because everything ---

1 Q. We'll get to that -- actually, we'll
2 get to that in just a minute, but ---

3 A. Everything was in perfect condition
4 before this happened.

5 Q. Okay. Well, tell us what was
6 different about the house when you saw it on
7 the 14th?

8 A. Well, the door was kicked in. The
9 garage was a mess. The garage door opener
10 was broken and parts were laying on the
11 floor. I noticed that my tools were missing.
12 And then I noticed my stereo, the new trash
13 can that we bought and the towels -- the
14 shelves were broken where they'd been
15 ransacked.

16 And on a last note, I almost didn't even
17 mention it. The investigator was standing in
18 the living room. And I was in the kitchen
19 and the pantry door was open. And I said oh,
20 'well, whoever did this won't have any
21 problem starting fires.' And he said, 'why
22 is that?' I said I had a cube of wooden
23 matches. I say cube, it was cellophane
24 wrapped, little boxes of wooden matches. And
25 I said "it's gone." And then he said, 'Well,

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1 wait a minute. Can you describe it?' And I
2 said, 'Yeah. They're little blue boxes of
3 matches and they're in a cellophane
4 wrapping.' And that's when he'd seen the day
5 before on the evidence counter that there was
6 a cube of boxes of matches.

7 Q. Okay. And did you still have some
8 of those matches then?

9 A. I did. I initially had two so I
10 still had a few of them left. But the one
11 who section of the two that I had was gone.

12 Q. Did you show the ones left to the
13 officer?

14 A. I picked them up and showed them to
15 him.

16 Q. Okay. And that's what elicited that
17 response from ---

18 A. Yes.

19 Q. All right now. You mentioned -- let
20 me just go through a few of the different
21 areas of your house. We'll talk about the
22 bathroom last.

23 A. Okay.

24 Q. But you said there was a hall
25 closet. Was there anything missing from that

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1 or damaged in that hall closet?

2 A. Well, I had all new towels and rugs
3 in there. And it had all been pulled out and
4 the shelves were broken. I don't know if
5 somebody stood, tried to stand on them to get
6 up to the top, but the shelves were pulled
7 out of the wall.

8 Q. Okay. There's was a linen closet or
9 is that the ---

10 A. That was the linen closet?

11 Q. In the pantry you mentioned the
12 matches gone.

13 A. Yes.

14 Q. Was there any other indications it
15 had been gone through?

16 A. Oh, yeah. I mean almost everything
17 I had in there -- I had just random things.
18 I had a package of black Solo cups. They
19 were gone. Just, you know, just random ---

20 Q. Things?

21 A. Yeah.

22 Q. Okay. Now, what about your bedroom
23 closet, what was different or ---

24 A. I had candles and things stacked on
25 the shelves in our bedroom walk-in closet.

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1 My Bible. The box the Bible was in was
2 laying in the floor, and the Bible was gone.
3 The candles were gone. Almost everything
4 from my closet had been taken into the spare
5 bathroom.

6 Q. Okay. And that was that one that
7 was in the interior of the house?

8 A. Yes.

9 Q. Okay. Now, you mentioned the
10 washing machine was brought in on the 12th.

11 A. Yes.

12 Q. Did you notice anything different
13 about it?

14 A. Yeah. It was opened up.

15 Q. And why did that catch your
16 attention?

17 A. Because it was closed when I left.

18 Q. You remember that?

19 A. Yes.

20 Q. Okay. You pointed that out to the
21 forensics officer?

22 A. Yes.

23 Q. Now, was there anything around the
24 washing machine missing?

25 A. Yes. I had -- as the new appliances

1 started coming in, I had taken all of the
2 manuals from everything that I had in the
3 house. And I'd put them in a clear
4 Rubbermaid tub that was above the shelf on --
5 it was on the shelf above the washer. It was
6 gone.

7 Q. Okay. Was there just manuals in or
8 was there ---

9 A. No. There were manuals and anything
10 that was left over -- like we have
11 chandeliers, the chains, the additional
12 chains for the chandeliers, those were in the
13 box. Anything that was related to any of the
14 appliances, light fixtures and that type of
15 thing, I had it just all in a central
16 location and it was gone.

17 Q. Okay. Did you ever get that back?

18 A. No.

19 Q. What items did you get back?

20 A. We got back the trash can that was
21 dented and scratched. And we got back my
22 Bose stereo, without the remote. We got back
23 a roll, a large roll of painter's plastic
24 that they put on the floor when they were
25 painting. I can't remember.

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1 Q. Did you get the tool set back?

2 A. I got back the case. And there
3 were, I think, two tools in it. Everything
4 else was gone. And it was brand new, I had
5 never even used it.

6 Q. Okay. How about the matches?

7 A. I did get the matches back.

8 Q. Okay. Now, you saw the pictures
9 that we showed yesterday of the car?

10 A. Yes, sir.

11 Q. Of Ms. Wilbanks' car?

12 A. (Affirmative nod).

13 Q. Did you recognize those items that
14 were in the back of the car?

15 A. Yes. It was my trash can and my
16 stereo and the painter's tape was in there.

17 Q. You got all of that stuff back?

18 A. Yes.

19 Q. Do you remember where you went to go
20 get that?

21 A. I went to the Greer Police
22 Department. The first time I'd ever been in
23 a police department.

24 Q. Okay. Did you meet with a detective
25 when you got the stuff back?

1 A. Yes. They took me back to the back
2 and brought everything out and asked me what
3 was mine.

4 Q. Do you remember who the detective
5 was?

6 A. I wish I could tell you I remember,
7 but I don't.

8 Q. Okay. But it was one of the
9 detectives on the case?

10 A. Yes.

11 Q. All right. Let's talk about that
12 interior bathroom a little bit.

13 A. Okay.

14 Q. What did you notice different or
15 changed or damaged or missing from it?

16 A. Well, it was a mess. Like a
17 disgusting mess. All of my brand new towels
18 were -- they had red dirt on them. They were
19 on the floor. There was one hanging.

20 The doors were open to the vanity and
21 there was just all kinds of stuff that had
22 been taken out of my bedroom and my bathroom
23 were in there. There were candles that had
24 been burnt, some other matches that someone
25 used. Toothpaste, soap.

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1 And I looked up -- while they were taking
2 the fingerprints, I looked up and realized
3 that one of the lightbulbs was not lit. And
4 I knew it was -- everything else was working
5 perfectly. It was all brand new. And that's
6 when I mentioned to the investigator or the
7 police officer that one of the lights was not
8 working. And then that's when they did the
9 fingerprints on it and they found a finger-
10 print on it.

11 Q. Okay. So describe that, those
12 lights?

13 A. It's a fixture with three
14 lightbulbs.

15 Q. Okay. And so when you turn the
16 light on -- they had been all lighting up?

17 A. Yes. Yes. When I walked in or they
18 walked in, somebody walked in and turned the
19 light switch on. I looked up and I said,
20 'wait a minute why is that lightbulb not
21 lit?' And then they thought well, you know,
22 maybe whoever was in there was trying to keep
23 the light down in the house so that nobody
24 saw them. And they unscrewed the light bulb,
25 which was the case because they found his

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1 fingerprint.

2 Q. All right. I'm just going to show
3 you one or two pictures of what we showed
4 your husband. What is --

5 SOLICITOR MOYER: Maybe turn off
6 some of the lights.

7 BAILIFF: (Complies)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR MOYER:

10 Q. Is that the bathroom?

11 A. That is the bathroom, yes. The
12 spare bathroom in the middle of the house.

13 Q. Okay. All right.

14 SOLICITOR MOYER: I think -- can you
15 take it just a little bit darker.

16 COURT REPORTER: Mr. Moyer, what's
17 the exhibit number?

18 BAILIFF: You want to cut these
19 off? We cut those off.

20 SOLICITOR MOYER: Yeah. Leave it
21 like that.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR MOYER:

24 Q. Can you tell us what is shown in
25 that picture?

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1 A. Yes. That is the spare bathroom.
2 And you can see the towels on the floor and
3 the doors are open.

4 Q. Then that was State's Exhibit Number
5 36. Let me show you State's Exhibit Number
6 37. I'm going to point out to you theses
7 items. I want you to tell me what was seen.
8 What was this over here?

9 A. That was a water pitcher that I used
10 to use when I was doing some catering jobs.
11 And that water pitcher had been in the
12 garage. So it was taken into my bathroom and
13 my bedroom and whoever did it put toothpaste
14 and those are long matches right here.

15 Q. Right here?

16 A. Yeah.

17 Q. What are these?

18 A. Those are candles that I had.

19 Q. And what is down ---

20 A. That's the box that the candles came
21 out of. Everything that I had in there was
22 new.

23 Q. All right. What about these items
24 here? Is that a candle too, or what? Do you
25 know?

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1 A. Yes. That's a candle.

2 Q. And they had come from that box?

3 A. Yes.

4 Q. And where had that box been?

5 A. In my, uh, -- in my closet.

6 Q. Back to State's Exhibit 36. Can you
7 tell what that item and that item there are?

8 A. Yeah. Those are my towels.

9 Q. Do you remember what condition they
10 were in when you saw them?

11 A. They were disgusting; filthy, dirty,
12 disgusting.

13 Q. Okay. Okay.

14 A. They had red mud on them.

15 Q. Okay. Do you know this Defendant,
16 Richard Tedford?

17 A. No.

18 Q. Ever met him before?

19 A. Never seen him.

20 Q. Did he have any permission or right
21 to be in your house?

22 A. Absolutely none.

23 Q. Who all had keys to your house?

24 A. I had a key, my husband had a key.

25 Q. Did anyone else?

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1 A. No.

2 Q. Did anyone else have a right to be
3 in your house or to give anyone else
4 permission to be in your house?

5 A. No.

6 Q. Did anyone other than workmen ask to
7 come?

8 A. Yes. If somebody came to do some
9 work, I was there or my husband was there.

10 Q. Other than that, no one else had a
11 right to be there?

12 A. Nobody.

13 Q. All right. Please answer any
14 questions the Defense has.

15 THE COURT: Mr. Warder.

16 CROSS-EXAMINATION

17 BY MR. WARDER:

18 Q. On the 13th there were workmen coming
19 to put in a floor; is that right?

20 A. On the 14th.

21 Q. 14th. Okay. And what room were
22 they putting the floor in?

23 A. In the office. We had three
24 bedrooms. We were changing one of the
25 bedrooms to an office.

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1 Q. And everything in the house was new?

2 A. Yes.

3 Q. The towels were new?

4 A. Yes.

5 Q. There were no old towels there?

6 A. There were no old towels there.

7 Well, there might have been a rag. But the
8 bath towels, all new.

9 Q. Okay. What had happened is, is
10 you'd purchased new items and you'd bring
11 them to the house. Not take the home so you
12 didn't have to bring them back?

13 A. That is correct.

14 Q. And everything was purchased in
15 working for the day you were going to move
16 in about a month down the road?

17 A. Well, I had stuff at my old house
18 that I was bringing there.

19 Q. But the stuff that was in the house
20 on this day was new stuff you'd bought in
21 anticipation?

22 A. My Bose stereo was not new but, yes,
23 everything -- almost everything in the house
24 was brand new.

25 Q. Okay. There were no clothes in the

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1 house?

2 A. There were no clothes in the house.

3 Q. No shoes and things like that?

4 A. No shoes.

5 Q. The garage door opener, had you
6 tried it? Was it working when you last were
7 at the house?

8 A. Yes. I'd be in through the garage.
9 Every time I went to the house, I went
10 through the garage.

11 Q. Okay. Were the workmen that were
12 working on it, in the yard and stuff at the
13 same time at that time?

14 A. We didn't have anybody working in
15 the yard.

16 Q. Okay. Was the area, was it -- the
17 community maintained the shrubs and the
18 stuff?

19 A. The community doesn't maintain the
20 shrubs.

21 Q. Okay. So you purchased an
22 individual lot and you're responsible for all
23 the maintenance on it?

24 A. Yes.

25 Q. There were For Sale signs in front

1 of most of the houses on that street?

2 A. No, we were living next to -- two of
3 the houses next to us had people living in
4 it. The house across the street had sold the
5 same day ours did. And the other one across
6 the street, there was someone living there.
7 Ours was the only one to my knowledge that
8 had a For Sale sign. Actually, it didn't say
9 For Sale. It said SOLD.

10 Q. Well, not more than to split hairs
11 but it said For Sale and then it had a SOLD
12 sign put over it. It actually said for sale
13 and sold both. Is that not that the truth?

14 A. That is correct.

15 Q Thank you.

16 THE COURT: Any redirect?

17 SOLICITOR MOYER: No, Your Honor.

18 THE COURT: All right. You may
19 step down.

20 (WITNESS STEPS DOWN)

21 SOLICITOR MOYER: The State would
22 call Denise Crockett to the stand.

23 THE COURT: All right.

24 (WITNESS TAKES STAND)

25 DENISE CROCKETT, having been duly sworn

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1 to tell the truth, and nothing but the
2 truth, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR MOYER:

5 Q. Ms. Crockett, I'm going to ask you
6 if you would, just make sure you speak into
7 the microphone so we can make sure everybody,
8 all the jurors can hear you. Where are you
9 employed?

10 A. Family Therapy and Trauma Center in
11 Greer, South Carolina.

12 Q. What is the address of that?

13 A. 311 Bennett Center Driver, Greer,
14 29650.

15 Q. How long have you worked there?

16 A. Seven years.

17 Q. What is your position? What do you
18 do there?

19 A. I'm a licensed trauma therapist. I
20 deal with people with PTSD.

21 Q. Okay. Do you own that building?

22 A. No. I'm a partner there.

23 Q. Okay. But that's where you work,
24 you go to work there just about every day?

25 A. Yes. I work many days there a week.

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1 Q. Okay. I'm going to take you back to
2 August the 13th of 2013. The afternoon of
3 that date, do you recall anything of interest
4 happening there at the business on that date?

5 A. Usually, I have people/clients from
6 10:00 to 11:00 and 11:00 to 12:00. And then
7 I take a break for lunch.

8 After that, I went into the bathroom and
9 I noticed out the window there was a vehicle
10 that was fishtailing back and forth and
11 revving up the motor, really, really high.

12 Q. What did this vehicle look like?

13 A. A black SUV. And I don't know that
14 much about cars.

15 Q. Okay. And how close were you to the
16 vehicle when you could see it out the window?

17 A. Maybe at the most fifteen feet.

18 Q. And so could you hear it also?

19 A. Oh, yes.

20 Q. Okay. What made you hear it? What
21 did it sound like?

22 A. Just revving up the motor, trying to
23 spin out of the mud. It sunk into the mud
24 and they were trying to fishtail to get out
25 of it. And the motor was revving to try to

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1 get it out.

2 Q. What did you do after you saw that
3 taking place?

4 A. I went into my boss and said, 'oh,
5 my God, dah, dah, dah.' And he said to call
6 the police. So I immediately called the
7 police.

8 Q. Okay. And then did you ever look
9 back outside the window?

10 A. Yes, I did.

11 Q. What did you see when you looked
12 back out the window?

13 A. The truck had stopped and it was --
14 I don't guess there was anyone in it, but it
15 was completely stopped. No movement.

16 Q. All right. Do you remember if the
17 doors were opened or closed or anything about
18 it?

19 A. They were closed.

20 Q. Did officers come out to the scene?

21 A. Yes, they did.

22 Q. And did you see the officers attend
23 to the vehicle?

24 A. Yes, I did.

25 Q. Did you go out there and look at the

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1 vehicle?

2 A. I'm a trauma therapist so I usually
3 go to the fire. So I was going out the door.
4 Since I saw the door was closed and the motor
5 stopped running, I went through the
6 classroom, walked out the door and thought
7 'this is the stupidest thing I've ever done.'
8 So I walked back inside.

9 Q. Okay.

10 A. And then the officers, after the
11 investigation came in and kind of filled us
12 in.

13 Q. All right. Did you ever see the
14 person who was in the -- person or persons in
15 the vehicle?

16 A. No.

17 Q. Do you know how many people were in
18 that car?

19 A. No.

20 Q. So do you have any identifying
21 characteristics of the person at all?

22 A. No, sir.

23 Q. But when you looked out the window
24 the second time, was the vehicle empty? I
25 mean, as far as empty of persons?

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1 A. Well, the windows were kind of dark
2 and I just wasn't paying any attention. I
3 just knew the probability was that for the
4 truck wasn't running, there wasn't going to
5 be anybody in there. That's a guess.

6 Q. Okay. So at that point it was
7 stopped?

8 A. Uh-huh. Yes.

9 Q. It wasn't running anymore?

10 A. It was not running anymore.

11 Q. Do you remember you taking a look at
12 some photographs of the vehicle?

13 A. Yes, sir.

14 Q. Is that the car that you saw behind
15 your building?

16 A. Yes, sir.

17 Q. Okay. Tell me a little bit about
18 what that area where the car got stuck. Is
19 it a yard or what is it?

20 A. No. It's the back of all our
21 businesses. And it's where people from, I
22 guess, gas companies or -- if there's
23 anything going wrong, they could go back
24 there to check. And right next to it's a
25 hill that goes down and there's a train track

1 down at the bottom. But it's not a road.

2 Q. Okay. Do you get traffic back
3 there?

4 A. No.

5 Q. Had you ever seen a vehicle in that
6 area before?

7 A. Yes.

8 Q. You had?

9 A. Yes.

10 Q. Often?

11 A. No.

12 Q. What sort of vehicles have you seen
13 back there?

14 A. It was one from the, that were
15 working on the water system or something from
16 the City of Greer.

17 Q. Okay. Is that the only vehicle you
18 remember ever seeing back there?

19 A. Yeah.

20 Q. So it was a vehicle that had a
21 reason to be there?

22 A. Yeah. It did. And because it's so
23 swampy back there, there's no way that anyone
24 without good, proper tires could get back
25 there.

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1 Q. So it stays kind of wet back there?

2 A. Yes, sir, it does.

3 Q. Okay. I show you State's Exhibit

4 17. Do you recognize that?

5 A. Yes.

6 Q. And what do you recognize it as?

7 A. It's the vehicle that I was looking
8 at through the window in the bathroom to see.

9 Q. Here's State's Exhibit 19? Do you
10 recognize that?

11 A. That is the vehicle. The window up
12 on the left-hand side is the one that I was
13 looking out of.

14 Q. So that's the back of your building?

15 A. That is the building.

16 Q. And is that the window you were just
17 referring to?

18 A. Yes, sir.

19 Q. Okay.

20 SOLICITOR MOYER: I don't have any
21 further questions for this witness. Please
22 answer any questions Defense may have.

23 CROSS-EXAMINATION

24 BY MR. WARDER:

25 Q. Have you been up here for the

1 testimony that's happened yesterday and
2 today?

3 A. No, sir. I have never been in this
4 courtroom.

5 Q. We have kind of a large map that
6 showed the immediate area. Is that building
7 you have, is it on that map or is it farther
8 away from that?

9 A. I can't see without my glasses to be
10 honest. We're on 311 Bennett Center. Do you
11 see Bennett Center?

12 Q. This is -- it is noted on the map as
13 Highway 14.

14 A. Okay.

15 Q. And this is West Gap Creek Road?

16 A. I don't know that. I don't know
17 that.

18 Q. Okay. I don't see any other roads
19 that -- Mt. Lebanon Church Road, there's 101.
20 Do you know that?

21 A. Vaguely. I don't usually go that
22 way.

23 Q. Are we miles away or are we ---

24 A. We're near the post office, the
25 library and now the -- there's a doctor's

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1 office right next to us.

2 Q. Okay. So you'd be near the Greer
3 Post Office?

4 A. Yes, sir.

5 Q. Thank you.

6 SOLICITOR MOYER: One follow-up
7 question.

8 REDIRECT EXAMINATION

9 BY SOLICITOR MOYER:

10 Q. Did you say around what time of day
11 this was when that vehicle ---

12 A. It had to have been in the afternoon
13 because I had my two clients.

14 MR. WARDER: Your Honor, just for
15 the point, this is beyond the scope of my
16 cross.

17 THE COURT: I'm going to sustain.

18 SOLICITOR MOYER: Okay. No further
19 questions.

20 THE COURT: You may step down.
21 Thank you.

22 (WITNESS STEPS DOWN)

23 SOLICITOR MOYER: Your Honor, I
24 think at this time we need to take a break.

25 THE COURT: All right.

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1 Ladies and gentlemen there's a matter
2 we have to take up outside your presence so
3 we're going to give you an early break. So
4 we should be back -- all right. We'll give
5 you about a fifteen-minute break.

6 So again, I'm going to instruct you do
7 not talk about the case. Don't do any
8 independent research of it while you break.
9 Talk about what you watched on TV last night.
10 So at this time, if you'll go back to the
11 jury room.

12 (JURY OUT AT 10:15 A.M.)

13 (BREIF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: How do y'all plan --
16 I know y'all are not sure of what point you
17 are in your case and stuff, but how do you
18 plan on the prior convictions? Have y'all
19 got it on a stipulation or how are you doing
20 that?

21 SOLICITOR MOYER: Well, I have
22 certified convictions which I was planning
23 to enter into the record.

24 THE COURT: Okay.

25 MR. WARDER: Your Honor, we would,

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1 of course, stipulate -- and I honestly think
2 that prejudicial value of the possible
3 convictions far exceed the probative value.
4 I would ask that we just stipulate that he
5 has a prior record that would entitle the
6 State to seek a burglary first conviction.

7 You know, when it's not in
8 controversy, and there's an offer to
9 stipulate, the only reason to insist on
10 putting the two convictions in is to try
11 and inflame the jury.

12 THE COURT: Well, and he's got a
13 little different situation. It's different
14 than like DUI second because you can have the
15 conviction, and then you just apply it.

16 But, I mean, here the actual element of
17 burglary first is two or more prior
18 convictions. And, say, for instance I know
19 your argument's going to be that it's not at
20 nighttime. Well, I mean, you've kind of
21 indicated that. I mean, you know, and then
22 so the jury has to make the determination
23 that in order for it to be burglary first it
24 either has to be at nighttime or the prior
25 thing. So I'm not sure how you get around

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1 it. I mean, you need to have a curative
2 instruction, I realize that. You know, it's
3 difficult to unring a bell. But I don't know
4 how we can do it any other way.

5 MR. WARDER: Well, it seems to me
6 that if a defendant could plead guilty for
7 the whole crime, he could plead guilty for --
8 the stipulation could satisfy the element.

9 THE COURT: Well, ---

10 MR. WARDER: By stipulating to it,
11 were bound by it.

12 THE COURT: Right. And I realize
13 we're probably not right at that time, but I
14 wanted to sound something out before we got
15 to that point. But, I mean, I'm just -- I
16 don't know how we can -- and I've got an
17 instruction that tends to, I think, you know
18 they've taken an oath. And I realize that
19 may be a difficulty but I don't know how we
20 can.

21 MR. WARDER: I don't know how to
22 get around it either, but assuming -- and I
23 know Your Honor will give a very good
24 instruction, but there's no way that you
25 could give an instruction that would be

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1 powerful enough not to make, to consider, you
2 know, on the issue of innocence and guilt.

3 THE COURT: Well, anyway. Again,
4 I'm not making a final decision now, but I
5 just wanted to throw that out because I
6 figure that's going to be something that will
7 come up.

8 MR. WARDER: And I still think that
9 two convictions that resulted from ---

10 THE COURT: Right.

11 MR. WARDER: The initial incident,
12 a house apart and on the same date. And then
13 are pled to on the same date at the same time
14 before the same Judge.

15 THE COURT: I realize that. And
16 I'm not revisiting that. I'm just saying
17 about the evidence that he's going to be
18 putting in for the second offense. So let's
19 talk further about that then before you get
20 to that point.

21 MR. WARDER: Okay.

22 THE COURT: Great. All right.

23 Are we ready for the jury?

24 MR. WARDER: We are.

25 THE COURT: Is the State ready for

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1 the jury?

2 SOLICITOR MOYER: Yes, Your Honor.

3 THE COURT: All right. Bring them
4 in.

5 (JURY IN AT 10:33 A.M.)

6 THE COURT: All right. We will
7 proceed with the State calling their next
8 witness.

9 SOLICITOR MOYER: The State calls
10 Dar Shaw.

11 (WITNESS TAKES STAND)

12 DAR SHAW, having been duly sworn to tell
13 the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR MOYER:

17 Q. Where are you employed?

18 A. With the Department of Public
19 Safety, the forensic division.

20 Q. What is your position there?

21 A. I'm a sergeant.

22 Q. How long have you been in law
23 enforcement?

24 A. Thirty-eight years.

25 Q. How long have you been with

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1 forensics?

2 A. It'll be seventeen years in
3 December.

4 Q. Where did you work before you were
5 in forensics?

6 A. I was with a police department in
7 Nebraska, seven years as a road officer and
8 fourteen years as an investigator.

9 Q. And so you've been with Greenville
10 County Forensics for seventeen years?

11 A. Seventeen years in December, yes,
12 sir.

13 Q. What are your duties as a forensics
14 officer?

15 A. Respond to crime scenes and to
16 requested agencies throughout the county to
17 collect fingerprints, photographs, collect
18 evidence and then also do a report for court
19 purposes.

20 Q. Okay. Well, let me take you to
21 August the 13th, 2013. Did you receive a call
22 on that date?

23 A. Yes, I did.

24 Q. And what was the time of day that
25 you got that call?

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1 A. It was early in the morning, around
2 6:30, I believe.

3 Q. Okay. If you had a chance to look
4 at your report, would you be able to give me
5 exact times?

6 A. Yes, sir, I would.

7 Q. Do you have your report with you?

8 A. I do.

9 Q. Let me ask you to refresh your
10 memory with your report. Tell us what --
11 well, let's start off with the location.
12 What location did you go to?

13 A. At Rayland Place, Greer, South
14 Carolina.

15 Q. And that's the residence of Melody
16 Wilbanks?

17 A. That's correct.

18 Q. And if you could, and look at your
19 report and tell us what you got the call and
20 what time you ---

21 A. I got the call at ten minutes 'til
22 seven in the morning. I was en route at five
23 minutes 'til. And I got to the scene at
24 7:25.

25 Q. 7:25 in the morning?

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1 A. In the morning, correct.

2 Q. Okay. Were officers there at that
3 time?

4 A. No, sir.

5 Q. Officers had already left?

6 A. Yes, that's correct.

7 Q. Was anyone in the home?

8 A. There was the victim and her
9 husband. And I believe somebody else was
10 there was well. But I met with the victim
11 and her husband.

12 Q. Okay. So you did meet with Ms.
13 Wilbanks?

14 A. Yes.

15 Q. What was the reason for meeting with
16 her afterward?

17 A. Well, we received a call that's on a
18 MDT, which is a computer that gives us the
19 address and gives us the type of crime. When
20 we get there we need somebody to at least
21 talk to find out what the situation is. I'm
22 looking for the elements of the crime,
23 looking for possible items to process for
24 prints. And so the only way to get that is
25 by speaking with the victim to try to

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1 identify items that I might be able to
2 process for fingerprints.

3 Q. Okay. And also to help with your
4 photographs as well?

5 A. That's correct.

6 Q. Or to know what to photograph? To
7 help you to know a little bit about what
8 happened?

9 A. That's right.

10 Q. All right. So you did speak to Ms.
11 Wilbanks about what happened?

12 A. I did.

13 Q. And did you take a statement from
14 her or anything?

15 A. No, sir.

16 Q. Is it just a brief conversation?

17 A. Originally, I spoke to her husband.
18 He walked me around the side of the house,
19 and then around to the back side to show me
20 where the point of entry was at. Then went
21 back in. And, of course, because he was not
22 there at the time, apparently he'd gone to
23 work, I spoke with the victim and asked her
24 to walk me through and point out things that
25 may have been moved, may have been disturbed

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1 so I would have some idea as to where to
2 start.

3 Q. Okay. So it's not your job then to
4 get an official statement from a victim or
5 anything like that?

6 A. That's correct.

7 Q. Okay. So when you spoke to Ms.
8 Wilbanks, as I understand -- well, tell us
9 what it was she told you about what happened
10 to her?

11 A. What she said was that she was --
12 she heard a window smashing in the house and
13 saw somebody climbing through the window into
14 the house. So she retreated to the bedroom,
15 closed the door, locked it. And then
16 retreated later on into the bathroom, locked
17 that door and then into the closet, which was
18 in the bathroom.

19 Q. All right. Did you ask if she could
20 identify this suspect?

21 A. I did.

22 Q. Okay. What's your reasoning for
23 asking that question?

24 A. When fingerprints are recovered at
25 scene, we want to try to get information as

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1 far as the type of person we're looking for,
2 to give our latent examiners a place to start
3 in case it may or may not be -- may not know
4 who the suspect is. So the basic question is
5 there are times when it's a family member.
6 And so it's nice to have that information to
7 know that. So it's basically a question, a
8 fact-finding question that I will ask is,
9 'can you identify' -- 'what did that person
10 look like?'

11 Q. And was she able to do that by
12 sight?

13 A. No.

14 Q. Okay. So she wasn't able to give
15 you -- was she even able to give you, as far
16 as by sight, even what race the person was?

17 A. The information that I ask, I ask
18 specifically if the person was black or
19 white? And she said she didn't have her
20 glasses on and couldn't tell.

21 Q. Okay. So what's your reasoning for
22 wanting to know race at that point? Is there
23 any particular reason for that?

24 A. Again, that's just to help with my
25 investigation because the information the

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1 victims provide to me goes into my report.
2 And so it's -- to me, again, it's just fact-
3 finding to try to find out as much as
4 information as I can so that I can at least
5 relay that information to our latent
6 division.

7 Q. Okay. So after she told you she
8 couldn't see the person by sight or identify
9 the person even by race, by sight, did you
10 follow-up and ask her if she could do so by
11 voice?

12 A. I didn't follow up. The question
13 was if she could identify whether he was
14 black or white. And she said she didn't have
15 her glasses on and couldn't see, but from the
16 sound of his voice, he sounded like he was
17 black.

18 Q. Okay. Now, you didn't -- when did
19 you write that report? That's what you put
20 in the report; right?

21 A. No, I took my notes as the
22 information was being provided. My report
23 was written about four days later on the 19th.
24 And so what I did was one of two things is I
25 relied on my notes. And I'd also go back and

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1 look at the photographs that are taken to
2 assist me when I'm writing my report.

3 Q. And you actually went back and
4 looked at your notes this morning; didn't
5 you?

6 A. Yes, I did.

7 Q. The notes that you took. And you
8 took the notes contemporaneously when
9 speaking to Ms. Wilbanks?

10 A. That's correct.

11 Q. And what did you put as far as race?
12 What did you put in your notes about it?

13 A. I put "possible B/M" which stands
14 for black male.

15 Q. And what did you put right before
16 B/M?

17 A. Possible.

18 Q. Possible?

19 A. Correct.

20 Q. Now, did you follow-up with her,
21 questions about when, about how much of his
22 voice she heard?

23 A. There was no further -- once that
24 answer was given, she didn't elaborate and I
25 didn't ask.

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1 Q. And you didn't follow-up with any
2 questions about that?

3 A. No, I did not.

4 Q. And there's no reason for you to;
5 correct?

6 A. Correct.

7 Q. So you didn't follow-up with
8 questions like at what point during this
9 altercation she heard his voice?

10 A. No, sir, I did not.

11 Q. Or how much he spoke?

12 A. No, I didn't.

13 Q. And you didn't talk to the officers
14 about what she may have said to them?

15 A. There were no officers there for me
16 to speak with.

17 Q. Okay. And you didn't go back to
18 read their reports about what she may have
19 said about that?

20 A. No, I didn't.

21 Q. For there was no reason for you to
22 do so; is that right?

23 A. That's correct.

24 Q. Okay. Well, after speaking to her
25 did you go about your duties as a forensics

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1 officer to process the house?

2 A. I did.

3 Q. Did you take the photographs of the
4 house?

5 A. Yes, I did.

6 Q. And did you then process the scene?

7 A. Yes, sir.

8 Q. What does it mean to process a
9 scene?

10 A. That means using fingerprint powder
11 and processing those areas that are suitable
12 for retaining identifiable ridge detail.

13 Q. Now how do you go about doing that?

14 A. Again, speaking with the victim,
15 identifying items and areas that were known
16 to have been touched or possibly touched.
17 There are times that by sight I can, from my
18 experience, tell whether it's suitable or
19 not. Putting fingerprint powder on those
20 areas that I think are suitable, I then apply
21 fingerprint powder and try to, again, locate
22 identifiable ridge detail.

23 Q. Okay. So did you process any areas
24 of Ms. Wilbanks' house on the 13th?

25 A. I did.

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1 Q. Tell us what all areas you actually
2 looked at to try to get fingerprints?

3 A. The door, the bedroom door was off
4 of the hinges. So that was one area I
5 specifically wanted to deal with.

6 There was a propane tank inside the
7 living room on the floor between a chair and
8 the wall. My understanding that's what was
9 used to break the window, break the screen
10 and the glass, so that I processed.

11 Door knobs, to the bedroom and also
12 leading into the bathroom, processed those.
13 The victim had said that she felt, she
14 believed that the subject or suspect was
15 trying to take the flat screen TV off of the
16 wall. And so I processed the screen from the
17 flat screen television.

18 Q. Okay. Were you able to locate any
19 fingerprints?

20 A. No, sir, I wasn't.

21 Q. So you didn't get any fingerprints
22 at all from any of those areas?

23 A. That's correct.

24 Q. Is that terribly unusual to process
25 a scene like that and especially areas like

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1 that and not get fingerprints, or is that a
2 common ---

3 A. It's common and it can be that way
4 for various reasons. In this particular
5 case, the propane tank had been sitting
6 outside and it was wet. Part of it was wet
7 from the dew. Same with the glass, the glass
8 fragments. The screen was still in the frame
9 and so the propane tank went through the
10 screen, went through the glass, and then onto
11 the floor. And so that's why I didn't
12 process any of those glass fragments. I did
13 not feel that because of it being wet and the
14 extensive damage that was done by the propane
15 tank, that I could get prints off of that
16 glass.

17 Q. Okay. Did you collect -- did you
18 take anything back to your office for further
19 processing?

20 A. Yes, I did.

21 Q. What did you take?

22 A. There was a small flashlight that
23 was on the floor between the chair and the
24 wall. I spoke with Mr. Wilbanks and asked
25 if this flashlight was his. I tried to

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1 determine if it was brought by the suspect.
2 And in this case he said he had not seen it
3 before, so that one was item that I
4 collected.

5 Q. So what did you do with that item?

6 A. Later on I looked at the texture of
7 it. I swabbed it for DNA, took the batteries
8 out and processed the batteries and the
9 inside for possible fingerprints.

10 Q. Okay. How did you process those
11 batteries?

12 A. We fume them with superglue. It's a
13 process that takes maybe ten, fifteen
14 minutes. Fume them and then use fingerprint
15 powder on them and examine them for any ridge
16 detail.

17 Q. Okay. And were you able to get any
18 fingerprints off the batteries?

19 A. No, sir.

20 Q. All right. I want to hand you
21 State's Exhibits Numbers 44 through 57.
22 It'll be just a moment.

23 SOLICITOR MOYER: Is there objection
24 to these items being entered into the record?

25 MR. WARDER: Your Honor, we have no

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1 objection.

2 THE COURT: All right. These are
3 photos what?

4 SOLICITOR MOYER: 44 through 57 ---

5 COURT REPORTER: 51.

6 SOLICITOR MOYER: 51. 44 through
7 51.

8 THE COURT: All right. State's
9 Exhibits 44 through 51 are in without
10 objection.

11 (SO ENTERED AS STATE'S EXHIBIT 44)

12 (SO ENTERED AS STATE'S EXHIBIT 45)

13 (SO ENTERED AS STATE'S EXHIBIT 46)

14 (SO ENTERED AS STATE'S EXHIBIT 47)

15 (SO ENTERED AS STATE'S EXHIBIT 48)

16 (SO ENTERED AS STATE'S EXHIBIT 49)

17 (SO ENTERED AS STATE'S EXHIBIT 50)

18 (SO ENTERED AS STATE'S EXHIBIT 51)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR MOYER:

21 Q. Investigator Shaw, I'm just going to
22 show you a few of the photographs. You say
23 you took those photographs at the location?

24 A. (Affirmative nod)

25 Q. You're the one who took them?

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1 A. Yes, sir, I did.

2 Q. Okay. Let's start with State's
3 Exhibit Number 46. Do you recognize what is
4 shown in that photograph?

5 A. Yes, sir, I do.

6 Q. Okay. Would you tell the jury what
7 it is that we're seeing?

8 A. Now, the photograph shows the broken
9 window. Below the broken window is a propane
10 tank, which we believe was used to break the
11 glass. And, of course, it's just a photo to
12 show the location of the window as well as
13 the propane tank.

14 Q. State's Exhibit Number 47?

15 A. That's just a closer photograph of
16 the propane tank and its location inside the
17 point of entry.

18 Q. Is that the propane tank right
19 there?

20 A. Yes, it is.

21 Q. And is that what you -- that's the
22 one you were talking about that you
23 processed?

24 A. Yes, sir.

25 Q. Okay. I show you State's Exhibit

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1 Number 3. Can you tell the jury what that
2 is?

3 A. That was a photograph taken from the
4 kitchen, looking straight back towards the
5 back of the house. One, it showed the door
6 off of the hinges for the bedroom door. And
7 it also -- it shows the point of entry window
8 as well as the propane tank on the floor.

9 Q. I going to hand you actually this
10 laser pointer so you can point some things
11 out. You mentioned processing the door?

12 A. Uh-huh.

13 Q. Is that door visible in the
14 photograph?

15 A. Yes, it is.

16 Q. Can you point that out?

17 A. (Indicating).

18 Q. And that was the door that lead to
19 what area of the house?

20 A. Master bedroom.

21 Q. State's Exhibit Number 4.

22 A. That, again, is a picture of the
23 door leaning up against the frame of the
24 bedroom.

25 Q. And State's Exhibit 5?

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1 A. Again, it's just a different angle.
2 But it's showing -- it's the same door and
3 the master bedroom is located there.

4 Q. Did Ms. Wilbanks mention to you
5 about the gunshot being fired?

6 A. Yes, she did.

7 Q. Did you do anything to -- did you
8 look at that area where she talked about?

9 A. Yes, I did.

10 Q. And did you see any indications of a
11 gunshot having been fired?

12 A. Yes, I did.

13 Q. Let me show you State's Exhibit
14 Number 13. And ask you if you can actually
15 point out what indication there was?

16 A. This is the shower. This is the
17 door leading from the bedroom into the
18 bathroom. In this corner of the shower stall
19 there's a projectile hole in the corner of
20 the shower stall.

21 Q. And did you follow-up on that and
22 try to determine where the shot ended up?

23 A. I did.

24 Q. And were you able to find it?

25 A. Yes, I could.

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1 Q. I'm going to show you State's
2 Exhibit Number 9. Will that help to sort of
3 show the path of the bullet?

4 A. This is the door, the doorway
5 leading into the bathroom. On the opposite
6 side of this wall is where the projectile
7 entered. It exited into the wall into the
8 bedroom. From what I could determine, the
9 projectile deflected or bounced off the back
10 of the DVD player, struck the wall behind the
11 DVD player below the television, ricocheted
12 off into this wall. And the projectile was
13 later recovered on top of the bed, which is
14 not visible in this photograph.

15 Q. Okay. Did you actually see marks on
16 the wall that lead you to believe that?

17 A. Yes, sir. There were indentations
18 in the drywall.

19 Q. State's Exhibit 49?

20 A. This is a photograph of the hole,
21 the exit hole where the projectile came
22 through. And when that occurred it left
23 drywall dust on the back -- on the top of the
24 dresser as well as on top of the DVD player.

25 Q. State's Exhibit 50? Let me start

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1 off actually with 57. Can you point out to
2 the jury?

3 A. This is the bedspread on the bed and
4 a blanket covering. And I observed a
5 projectile on top of the bedspread in the
6 bedroom.

7 Q. Okay. That's actually 51. So going
8 back to 50.

9 A. Like I say, this was a picture taken
10 farther away, but it shows where the
11 projectile was located.

12 Q. Okay. And then State's Exhibit 45,
13 what ---

14 A. This is a photograph of the flash-
15 light at the bottom of the point of entry
16 that Mr. Wilbanks said was not his.

17 Q. Okay. Now, after -- what time did
18 you depart that location?

19 A. I cleared the scene at about 8:25 in
20 the morning.

21 Q. Did you have further involvement
22 with this case?

23 A. I did.

24 Q. And tell us about that? When and
25 where and what your reason was for the

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1 further involvement?

2 A. A call came in later in the
3 afternoon, I believe about 5:30, indicating
4 that the vehicle that was taken from the
5 Wilbanks' residence had been recovered in
6 Greer. And that Greer Police Department was
7 doing a recovery of the vehicle.

8 Q. Okay. And so were you asked to go
9 out and process that scene as well?

10 A. Yes, I was.

11 Q. Okay. And where did you go?

12 A. The address was 311 Bennett Center
13 Drive in Greer, South Carolina.

14 Q. What did you observe when you got to
15 that location?

16 A. I observed a vehicle parked behind a
17 business, parallel. It looks like it came in
18 off of a dirt road. The vehicle was stuck,
19 probably six inches deep. All four wheels
20 had gone into the yard at the back of the
21 business, where it looked like there had been
22 a lot of watering done. And it had sunk and
23 it was stuck.

24 Q. Okay. Did you take photographs of
25 that location also?

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1 A. I did.

2 Q. I show you State's Exhibit 20. You
3 recognize that?

4 A. I do.

5 Q. And what is that?

6 A. This is a photograph of the Scion
7 and it's showing that it is buried in the
8 yard or the back side. The business is
9 actually to the right of the driver's door.

10 Q. State's Exhibit 19?

11 A. And that's just another photograph
12 showing the vehicle -- the direction in which
13 the vehicle came in. And this was the
14 business, I believe, the individuals that had
15 called the Greer Police Department about the
16 vehicle being at their business?

17 Q. Okay. Now, did you process the
18 vehicle?

19 A. Yes, I did.

20 Q. Did you do so out there at
21 Bennett Center Drive?

22 A. Yes, I did.

23 Q. What all areas of the vehicle did
24 you process?

25 A. The outside of the vehicle was quite

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1 dirty because of being stuck in the mud. The
2 mud was thrown up onto the car. There's also
3 what I call road film. Anytime a vehicle is
4 wrecked, it gets a real heavy film on the
5 vehicle. But I processed the windows that I
6 could process that were suitable. The roof
7 of the vehicle, any area that I felt was
8 conducive for recovering prints that was
9 clean enough to do so.

10 Q. Okay. Were you able to recover some
11 prints from this vehicle?

12 A. Yes, I did.

13 Q. Okay. How many prints?

14 A. I have no idea. Without looking, I
15 couldn't tell you.

16 Q. Well, let me ask you this. When you
17 find a print, when you find a fingerprint,
18 what do you do?

19 A. The first thing you do is you apply
20 fingerprint powder to any clean -- we look at
21 clean, dry and smooth, those three areas that
22 we try to get prints from. We apply
23 fingerprint powder. If ridge detail comes
24 up, then we use a piece of fingerprint tape,
25 apply it to the top of that fingerprint. The

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1 print then is taken off and applied to the
2 back of a latent card or a fingerprint card.
3 And then a description is written on the
4 front side as far as where that print was
5 obtained from.

6 Q. Okay. And you, in fact, you even
7 draw a diagram to show sometimes, don't you?

8 A. That's correct.

9 Q. Okay. So if you had a chance to
10 take a look at the fingerprint cards or
11 latent cards that you took that day, would
12 that help refresh your memory as to where the
13 fingerprints were and how many?

14 A. Yes, sir.

15 Q. All right. Take a look at what I've
16 just handed you and see if you can recognize
17 any of that?

18 A. Yes, sir.

19 Q. And what are they?

20 A. These are fingerprint cards that has
21 the case number, the date. It also has the
22 address I responded to. And a description as
23 to where the fingerprint was collected from.

24 Q. Okay. Well, if you would, just go
25 through each one of those cards and tell us

1 -- well first off, how many fingerprints are
2 there?

3 A. There are ten cards.

4 Q. There are ten cards. So if you
5 would, go through each of those ten and just
6 tell us where in particular in the car each
7 one was located and lifted by you?

8 A. These are not in numerical order but
9 the first one here came from the exterior
10 side of the stainless trash can in the rear
11 cargo area that did not belong to the victim.

12 The second one I have, it was the roof
13 above the front passenger door. And there's
14 a hand-drawn diagram of the passenger door.
15 And then an X placed on the roof where the --
16 in the approximate area where the latent came
17 from.

18 The exterior side of the rear driver's
19 door handle.

20 The exterior side of the rear driver's
21 side door, which was behind the door handle.

22 The back side or underside of the front
23 passenger door handle.

24 The exterior side of the stainless trash
25 can in the rear cargo area that did not

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1 belong to the victim.

2 The exterior side of a stainless trash
3 can in the rear cargo area that did not
4 belong to the victim.

5 Exterior side of the stainless trash can
6 and the rear cargo area that didn't belong to
7 the victim.

8 Exterior side of the stainless trash can
9 and the rear cargo area that didn't belong to
10 the victim.

11 And the last one was the same, the
12 exterior side of the stainless trash can and
13 the rear cargo area that did not belong to
14 the victim.

15 Q. Okay. Now, did you process the
16 steering wheel and places like that?

17 A. No, sir. A steering wheel is not
18 suitable because of it being vinyl or
19 leather. Steering wheels are very difficult
20 to get any kind of ridge detail to come up
21 on.

22 Any area again, under the door handles,
23 on the inside, specifically those things that
24 were suitable, those are areas that I
25 processed.

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1 Q. Okay. This trash can that you're
2 talking about, is that the trash can that was
3 in the back of the truck or the back of the
4 car that's shown in those photographs?

5 A. That's correct.

6 Q. All right. Now, after you take
7 those cards, what do you end up doing with
8 those fingerprint cards?

9 A. Each card is filled out and the
10 description as far as where the print was
11 obtained from gets put on the card.

12 Again, I have to fill out a latent
13 envelope, which also contains the same
14 information as what's on the card as far as
15 the victim's name, the victim's address, the
16 type of crime, the location where the prints
17 were collected from. The officer involved.
18 The latents then get put into the latent
19 envelope. And then we have to seal it with a
20 piece of evidence tape because they're
21 evidence. And we have a drop-box in our
22 office that is secured with a padlock, that
23 we drop it into that box. And then somebody
24 from the latent division has to come over to
25 retrieve those prints daily to take into

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1 their office.

2 Q. Okay. And then what do they do with
3 those print cards once they're taken to that
4 other officer?

5 A. They then do the examinations in an
6 effort to try to identify who the finger-
7 prints belong to.

8 Q. So you don't have any role in that
9 part of the ---

10 A. No, sir, that's not ---

11 Q. You just lift the prints?

12 A. That's correct.

13 Q. And another department does the
14 examination?

15 A. Yes.

16 Q. Okay.

17 SOLICITOR MOYER: One moment,
18 please. Okay. Please answer any questions
19 that the Defense may have.

20 THE COURT: Mr. Warder?

21 CROSS-EXAMINATION

22 BY MR. WARDER:

23 Q. Did you remember seeing any
24 cigarette butts in that car?

25 A. No, sir, I don't recall that.

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1 Q. From the house itself when you were
2 out there, I guess about 7:00 or a little
3 after that morning, did you take any
4 fingerprints?

5 A. I fingerprinted -- I processed for
6 fingerprints but did not collect any
7 fingerprints from the scene.

8 Q. Okay. There was nothing that you
9 collected there?

10 A. That's correct.

11 Q. Wouldn't like a bedroom door,
12 wouldn't somebody's fingerprints always be
13 on that knob?

14 A. No, sir.

15 Q. Well, wouldn't occupants of that
16 house touch and turn that knob multiple times
17 throughout the week?

18 A. I would think so, yes, sir.

19 Q. And there's no fingerprints left on
20 it?

21 A. That's correct.

22 Q. And that would be something in the
23 dry and not exposed to the weather?

24 A. There are various reasons why a
25 fingerprint would not be there.

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1 Q. Why would there never be a
2 fingerprint on a brass knob on a door?

3 A. A lot of times -- potentially, when
4 you turn the doorknob, if it slides back once
5 you turn it to the full extent, and it slides
6 back in your hand, it takes the fingerprint
7 off. You can also get prints over the top of
8 prints where it's unidentifiable, where
9 there's not a ridge detail to separate.
10 There could be prints over the top of each
11 other.

12 Q. Well, did that situation exist
13 there?

14 A. In this case it did not.

15 Q. Is there any evidence anybody wiped
16 the door off after -- before you got there?

17 A. There was nothing that I could
18 determine, where there were wipe marks where
19 it looked like that had happened.

20 Q. And every place you looked out
21 there, there was no fingerprints that you
22 recovered?

23 A. I didn't recover any fingerprints.
24 That's correct.

25 Q. Out of the whole house?

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1 A. Out of the areas that I processed
2 that I had explained earlier, where I had
3 applied fingerprint powder.

4 Q. Now, when it came to the car later
5 in the day and took fingerprints. You said
6 you recovered some on the car?

7 A. Yes, sir, that's correct.

8 Q. That was about 5:30, some ten hours
9 later or about.

10 A. Okay.

11 Q. And how many fingerprints did you
12 take off of the car?

13 A. There were ten fingerprints that
14 were sent up to our latent division.

15 Q. Okay. When you take a fingerprint
16 like off of the car, can you determine how
17 long it's been there?

18 A. No, sir.

19 Q. How long does a fingerprint last
20 somewhere?

21 A. There are various answers to that
22 depending upon temperature. You can't time-
23 date a fingerprint as far as when it has been
24 applied.

25 Q. I guess in some cases there's

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1 fingerprints years old?

2 A. I've had -- documentation is off of
3 paper documents, they've gotten fingerprints
4 as long as fifty years by using different
5 chemical processes. In this case, we use
6 fingerprint powder and it will adhere to the
7 oils that are deposited from the finger-
8 prints.

9 Q. And I guess it depends on where that
10 surface is as to how long a time frame it
11 could stay there?

12 A. Potentially, if it's out in the sun
13 they could dry quicker. If they're not
14 exposed to the sun or to the temperature,
15 they may last longer.

16 Q. Well, like the trashcan that was
17 inside the car, there were no fingerprints
18 on the trash can?

19 A. Yes, sir, there were several finger-
20 prints on the trashcan.

21 Q. And can you tell when those finger-
22 prints were applied?

23 A. No, sir.

24 Q. Or where the can was when they were
25 applied?

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1 A. No, sir.

2 Q. Now, you started off your investiga-
3 tion by, I guess, doing this interview with
4 the victim or the lady that was at the house?

5 A. Basic questioning, yes, sir.

6 Q. Okay. And you took notes down
7 contemporaneously with that?

8 A. Yes, sir, I did.

9 Q. And you wrote a report out a few
10 days after that, when it was fresh in your
11 mind?

12 A. Yes, sir.

13 Q. And in that report you stated that
14 you asked the lady if the subject was black
15 or white?

16 A. That's correct.

17 Q. And you said the response was she
18 said she didn't have her glasses on and
19 couldn't tell from -- couldn't tell. But
20 from his voice, he sounded black. Is that
21 what the answer was?

22 A. That's correct.

23 Q. And that's the answer she gave you;
24 is that right?

25 A. Yes, sir.

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1 Q. Thank you.

2 SOLICITOR MOYER: Nothing further
3 from this witness.

4 THE COURT: All right. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 SOLICITOR MOYER: The State calls
8 Riley Hope.

9 (WITNESS TAKES STAND)

10 RILEY HOPE, having been duly sworn to
11 tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR MOYER:

15 Q. And where are you employed, sir?

16 A. Greenville County Forensics.

17 Q. How long have you been in law
18 enforcement?

19 A. A little over five years.

20 Q. How long have you been with
21 Greenville County Forensics?

22 A. Two and a half.

23 Q. What did you do before you worked
24 forensics?

25 A. I was a deputy in Pickens County.

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1 Q. Okay. So you've been a forensics
2 officer for about two and a half years, you
3 said. You work in the same office with
4 Sergeant Shaw who just testified?

5 A. I do.

6 Q. So your duties, they're the same
7 duties that he has; is that correct?

8 A. Yes, sir.

9 Q. You process scenes?

10 A. Uh-huh.

11 Q. You go to the same crime scenes that
12 he does?

13 A. That's correct.

14 Q. Well, let me ask you, did you have
15 any involvement in this case before the
16 court?

17 A. Yes.

18 Q. Were you called out to process any
19 particular location?

20 A. Yes, it was a residential burglary.

21 Q. Okay. And what was the address for
22 that burglary?

23 A. It was Meritage Street in Greer,
24 South Carolina.

25 Q. So what was the date and time that

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1 you were asked to go to that location?

2 A. It was August 14th. And I received
3 the call at 11:45 in the morning.

4 Q. What time did you arrive?

5 A. I arrived at 11:58.

6 Q. Okay. Now, when you got to that
7 location, were there officers ---

8 A. Yes. The Greer officers were on
9 scene, yes.

10 Q. Okay. So this is actually in the
11 city limits of Greer; is that correct?

12 A. Correct.

13 Q. So your office then will do
14 processing for the municipalities in the
15 county?

16 A. All within Greenville County, yes,
17 sir.

18 Q. Do you remember who the officer was
19 that you spoke to?

20 A. Hemric. Officer Hemric.

21 Q. Okay. Now, were the homeowners
22 present when you were there?

23 A. Yes.

24 Q. Did you speak to the homeowners?

25 A. I did.

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1 Q. What is your reasoning for speaking
2 to the homeowners?

3 A. To determine what was moved. A lot
4 of time the crime's still fresh. So they're
5 discovering things as we walking through the
6 house. You look at what you've discovered
7 already. Once they inform me, that gives me
8 a basis so I can process and photograph.

9 Q. Okay. So did the homeowners then
10 accompany you throughout the house as you
11 tried to determine what areas to process?

12 A. Yes.

13 Q. Okay. So, if you would, tell us
14 what areas of the house that you processed
15 for fingerprints?

16 A. Based on what they had told me.
17 They said the garage door was open and two
18 sensors in the garage were broken and moved.
19 So I processed those.

20 The washing machine lid had been opened,
21 so I processed that as well.

22 As well as like the bedroom doors, the
23 main, front entrance door. There were some
24 doors leading to the laundry room where the
25 machine was. And the bathroom door was

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1 across the hall form the laundry room. They
2 said there was items also moved in there. So
3 I processed that door as well as some of
4 those in that bathroom.

5 Q. Did you process the front door of
6 the house?

7 A. Yes.

8 Q. Did you process -- so did you
9 basically process all of the doors in the
10 house it sounds like?

11 A. Yes. We always try to just -- like
12 I said, the doorknobs just in case there is a
13 print on there.

14 Q. And the way you process for
15 fingerprints, is it the way that Sergeant
16 Shaw testified to a minute ago?

17 A. Yes, sir. It is.

18 Q. What areas of that garage door did
19 you try to process for fingerprints?

20 A. Any kind of smooth, clean, dry
21 surface that may have been touched in the
22 process of somebody possibly entering or
23 exiting the house.

24 Q. Okay. Now, in the bathroom in
25 particular, what areas do you remember

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1 processing?

2 A. I recall they said the doors were
3 opened and then there were some items
4 underneath that I collected. They said there
5 was two of the three lightbulbs were
6 unscrewed, so I processed those two as well.

7 Q. Okay. So why did you do that, why
8 did that seem significant to you as something
9 to process for fingerprints?

10 A. It's just strange to have, you know,
11 a house that's being ready to get moved into
12 to have two of the three lightbulbs
13 unscrewed. And, again, the victim informed
14 me that the last time she saw them they were
15 all screwed in and in working order.

16 Q. So it seemed like something that may
17 have been tampered with?

18 A. Correct.

19 Q. Okay. Now, were you able to lift
20 some fingerprints in the house?

21 A. I was.

22 Q. If you had a chance to take a look
23 at the fingerprint cards that you used to
24 collect them, would that aid in your ability
25 to testify about what areas you lifted the

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1 fingerprints from?

2 A. Yes, sir.

3 Q. Take a look at what I'm handing you.
4 And first off, just see if you can recognize
5 that?

6 A. Yes, sir. I do recognize these.

7 Q. Okay. And what are they?

8 A. This is the fingerprints that I
9 lifted off at the scene and the latent cards
10 that I filled out.

11 Q. Okay. All right. Well, you've seen
12 to refresh your memory. Would you tell us
13 first off, how many fingerprints you lifted?

14 A. A total of eight.

15 Q. All right. And now would you just go
16 through each of those and tell us where
17 particularly in the house you were able to
18 locate the prints?

19 A. The exterior front entrance door
20 handle.

21 The exterior side of the glass candle-
22 holder. It was located in one of the
23 bedrooms.

24 Q. Now, tell us what -- describe that
25 item, that particular item you're talking

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1 about?

2 A. A typical glass candleholder with a
3 base and a top where the candle sits in.
4 There was no candle in it. It was just the
5 candleholder. It was in a closet in one of
6 the bedrooms near the front entrance door.

7 Q. Okay.

8 A. I had another one from the exterior
9 side of that glass candleholder.

10 Also, in that same closet near the
11 candleholder, there was a plastic bracket of
12 sorts. And I was able to obtain a print from
13 that as well, from that closet.

14 Q. A plastic what now?

15 A. Bracket. Like a support bracket for
16 something.

17 I was able to obtain one from the
18 unscrewed light bulb in the bathroom, just
19 from one of the two I processed.

20 I also obtained one from the front left
21 corner of the open washing machine lid.
22 Another one from the exterior front edge of
23 the open washing machine lid, and then a
24 second one from the front edge of the washing
25 machine lid in the laundry room.

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1 Q. All right. Now after -- and so
2 those eight prints were, that was all you
3 were able to find out of all the areas you
4 processed in the house?

5 A. Correct.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. So after you collected those eight
9 fingerprint cards, what did you do with them?

10 A. I obtained the elimination prints
11 from the victims that were on scene. They
12 kind of help our latent division identify the
13 prints. I then filled out these latent
14 cards, sealed them in the latent print
15 envelope with the same information that
16 Sergeant Shaw described pertinent to that
17 case. Then they are then sealed and await
18 to be picked up by the latent division.

19 Q. Okay. And how do they get to the
20 latent division?

21 A. There's a secured dropbox back at
22 our office at Greenville Tech (phonetic).
23 And they're the only ones that have a key to
24 it. So as soon as we seal them and then
25 barcode them with the case information, they

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1 then come by the next day and pick them up.

2 Q. Okay. And so that's the last time
3 you see those prints until you possibly come
4 to court?

5 A. Correct.

6 Q. All right.

7 A. Correct.

8 Q. All right. Okay. Please answer any
9 questions the Defense has.

10 THE COURT: Okay. Mr. Warder.

11 CROSS-EXAMINATION

12 BY MR. WARDER:

13 Q. The only place you took fingerprints
14 was out of that one house?

15 A. Correct. At that residence, yes,
16 sir.

17 Q. And how long were you there?

18 A. Based on the time of my report I was
19 there an hour and twenty minutes, on scene.

20 Q. Okay. Thank you very much.

21 SOLICITOR MOYER: No further
22 questions for this witness.

23 (WITNESS STEPS DOWN)

24 SOLICITOR MOYER: The State calls
25 Chris Gary to the stand.

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1 (WITNESS TAKES STAND)

2 CHRIS GARY, having been duly sworn to
3 tell the truth, and nothing but the truth,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR MOYER:

7 Q. And where do you work, sir?

8 A. I work for the Greenville County
9 Department of Public Safety and I am assigned
10 to the forensic division there.

11 Q. What is your title and position?

12 A. I'm a latent fingerprint examiner.

13 Q. What does that mean? What do you do
14 as a latent fingerprint examiner?

15 A. I receive latent fingerprint
16 evidence from the crime scene section, as
17 well as tire track impression evidence and
18 footwear impression evidence. I examine it.
19 I analyze the quality of it. I compare it to
20 any known standards that we may have. And I
21 issue reports based on my findings.

22 Q. Well, what do you mean by a latent
23 fingerprint?

24 A. On the surface of your hands as well
25 as the bottom of your feet, you have a

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1 specialized skin that is unique to only those
2 two places on your body. In fact, if you
3 look closely enough at your hands or your
4 feet, you can actually see these raised
5 ridges. And that's called friction ridge
6 skin. Now, these ridges that are raised and
7 they act much like a stamp that you may have
8 used in school or at your job. It's like a
9 rubber stamp. And oil, sweat and any
10 moisture acts as an ink for that stamp. So
11 when you come in contact with another object,
12 that moisture remains behind in the stamp of
13 your fingerprint or that specialized skin
14 that's on your hand.

15 Now, the term "latent", it simply means
16 hidden. It's Latin. And that means our
17 forensic investigators have to find that
18 fingerprint. That is when our investigators
19 will go along and they will look for any item
20 that may have been touched or moved by the
21 suspect. Because we anticipate the victims
22 prints being inside their own home, but we're
23 trying to look for things that the suspect
24 must have moved that we can process so that
25 we can possibly find the suspect's

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1 fingerprints. We have dust, as well as
2 chemicals that we can adhere to that moisture
3 and the dust in this case, or the moisture --
4 or the moisture that was left on the object
5 from that stamp fingerprint, it will adhere
6 and we can lift it with something -- it's
7 like specialized Scotch tape. And we can
8 lift it and put it onto a fingerprint card
9 and that is a latent fingerprint.

10 Q. Okay. Now, how long have you been
11 doing this?

12 A. I've been doing this a little over
13 six years full-time for Greenville County.
14 But prior to that I actually had the
15 opportunity while I was in college, I worked
16 in a part-time apprentice-style training
17 program with Greenville County forensics in
18 the latent print section under three senior
19 examiners. And that way whenever I graduated
20 college, I was able to start full-time with a
21 good foundation and knowledge base of the
22 field that I had studied.

23 Q. Tell us about your education and
24 your training in particular for this
25 position?

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1 A. Well, in 2009 I graduated with a
2 bachelor's degree in biology from the College
3 of Charleston.

4 Shortly thereafter, I was selected by the
5 National Institute of Justice, along with
6 fourteen other novice examiners from around
7 the country to attend a special training
8 program in Largo, Florida. This training
9 program was over four hundred hours of
10 classroom training, as well as countless
11 hours of practicals and reading and at-home
12 study materials that we had to do to perform
13 for this class. This class was designed to
14 take novice examiners to expert level in over
15 four hundred hours of that classroom time.
16 And that was over the span of ten weeks.
17 I've also taken part ---

18 In 2013 I went to class in Atlanta,
19 Georgia that was sponsored by Ron Smith &
20 Associates, which is recognized by the
21 International Association for Identification,
22 which is a body of collaborating scientists
23 in our field. And that was in 2013. And
24 that was another forty hours of specialized
25 training.

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1 Q. Okay. Do you receive continuing
2 education for your position?

3 A. Yes. We are annually proficiency
4 tested to make sure that we are still
5 participating to the same standard in our
6 field. As well as we receive from the
7 International Association for Identification
8 journals and articles that apply to our
9 field, so we can continue to keep up with the
10 cutting-edge forensic technology that is
11 dealing with latent fingerprints.

12 Q. Do you have any idea how many
13 fingerprints you have examined over your
14 years doing this?

15 A. I've examined tens of thousands of
16 fingerprints.

17 Q. Have you testified in Court before?

18 A: Yes, I have. I have testified in
19 state and federal court combined a total of
20 fourteen times.

21 Q. Okay. And you've been qualified as
22 an expert?

23 A. Yes, every time.

24 SOLICITOR MOYER: Your Honor, at
25 this time I would move to have Chris Gary

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1 qualified as an expert in fingerprint
2 identification.

3 THE COURT: Any questions from the
4 Defendant?

5 MR. WARDER: We have no questions,
6 Your Honor.

7 THE COURT: Do you have any
8 objection to him?

9 MR. WARDER: We would stipulate
10 that he's qualified.

11 THE COURT: All right. He's
12 qualified as an expert in fingerprints.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR MOYER:

15 Q. Okay, Mr. Gary, you've already told
16 us what a latent print is. Tell us what we
17 mean by a "known print"?

18 A. So a known fingerprint is actually a
19 set of all ten fingers because every finger
20 is actually different.

21 Some of you may have had your
22 fingerprints rolled as part of, you know, a
23 job or any other training opportunity. But
24 it is basically a known record for you as an
25 individual.

1 Everyone on the face of the earth has a
2 different set of fingerprints. And we
3 collect those fingerprints. We apply a thin
4 layer of printer's ink, but today it's mostly
5 done electronically, and it's recorded into a
6 database with your name, your Social Security
7 Number, your birth date, your race, your
8 gender. And in order to identify the person
9 in front of us, it is the person that has the
10 fingerprints on this known fingerprint card.

11 Q. Okay. Now, are fingerprints always
12 left behind when a person touches a surface?

13 A. No, they are not.

14 Q. Can you just explain to the jury a
15 little bit about why that is and what factors
16 come into play that could lead to a finger-
17 print being left behind or not being left
18 behind?

19 A. There are multiple factors why a
20 fingerprint may not be left behind. Let's
21 start back with the stamp analogy that I
22 talked about earlier. Your fingerprints act
23 just as a stamp would that you may have used
24 as a child. And if you remember if you've
25 forgotten to put ink on your stamp before you

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1 stamped it onto an object, you didn't leave
2 anything behind. Those ridges would touch a
3 surface and simply lift. And if there was no
4 moisture on those ridges, you would not leave
5 anything behind for our forensic evidence
6 technicians to recover. It would simply be a
7 blank stamp with nothing left.

8 So the person's moisture -- some people
9 secrete more sweat. Some people, if they're
10 nervous, they secrete more sweat versus a
11 normal atmosphere. Your hands may be dry.
12 And some people have dry hands anyway.

13 If a surface is clean or dirty, that
14 really plays a part. Sometimes when you
15 touch an objection, you may have seen in your
16 own home, where if you touch an object, and
17 you lift -- but when you lift, you're simply
18 pulling the dust away from the surface. It
19 wasn't clean.

20 Whereas, if a surface is clean and you
21 touch it, you leave behind your fingerprint
22 with that moisture on it. Going back to that
23 same example, if I were to touch a surface
24 and someone were to come behind me and touch
25 the same surface or even touch it in a light

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1 motion, they could simply wipe my
2 fingerprints that I left there off. Or
3 distort them so terribly because of over-
4 lapping fingerprints, that that would be a
5 not comparable print that we would not even
6 bother lifting because of the overlapping
7 fingerprints.

8 Q. Okay. Now, can you age a
9 fingerprint?

10 A. You cannot. There is no scientific
11 way to age a fingerprint. It is simply
12 something that cannot be done.

13 Q. Okay. So there's no way for you to
14 tell how long a fingerprint has been on a
15 particular surface?

16 A. That is correct.

17 Q. How long can a fingerprint remain on
18 a surface?

19 A. I've seen certain case studies of
20 fingerprints that have lasted -- I believe
21 the latest I've seen on documentation is
22 around fifty years.

23 But I've also seen people touch a surface
24 and then you dust it, and because their stamp
25 was dry, their skin was dry, and didn't leave

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1 a print, that there was no print left there
2 at all.

3 So there's really -- you have your
4 extreme studies of the prints lasting fifty
5 years, and studies where a print was never
6 left. Any length of time in that is in the
7 realm of possibility.

8 Q. Okay. Well, let me take you to this
9 particular case. Did you do examination of
10 any fingerprints in the case that we're here
11 for?

12 A. Yes, I did.

13 Q. And who were the fingerprints lifted
14 -- what forensics officer lifted the finger-
15 print cards that you examined?

16 A. Sergeant Dar Shaw.

17 Q. Okay. So they're the fingerprints
18 that were taken from the black Scion that he
19 processed?

20 A. Yes. And the latent fingerprint
21 cards that he sent up, it said it was 2011
22 Toyota. And it has the VIN number. I do not
23 know if it was a Scion or any other Toyota.

24 Q. Okay. But they're the ones that
25 Investigator Shaw lifted?

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1 A. That is correct.

2 Q. Okay. Now, did you have a known
3 fingerprint of this Defendant, Richard
4 Tedford, for purposes of your examination?

5 A. Yes, I did.

6 Q. And would you tell us what the
7 result was of your examination of the
8 fingerprints with regard to Richard Tedford?

9 A. Yes, sir. Of the ten latent lifts,
10 latent lift number four, that was from the
11 roof above the front passenger door of a 2011
12 Toyota with VIN Number JTLZE4FE6B1134399 is
13 identified as being made by the number nine,
14 which is left ring finger, of the following
15 individual, Richard Earl Tedford.

16 Q. Okay. And that was again, where?
17 Where was that fingerprint lifted?

18 A. That was on the roof above the front
19 passenger door of a 2011 Toyota.

20 Q. Okay. Now, did you -- let me ask
21 you about the other nine fingerprints. If
22 you could go each one of those and tell us a
23 little bit about the quality of the print and
24 what your examination was regarding the other
25 nine. Would it help you to be able to look

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1 at the cards?

2 A. Yes, it would.

3 Q. I'm going to hand you -- actually,
4 would you tell us what it is that I've just
5 handed you?

6 A. What I've been handed is a latent
7 envelope. And this would be the latent
8 envelope that I was sent on August 15th of
9 2013. This latent envelope was submitted by
10 Sergeant Shaw. It has all of the case
11 information and it was sealed. And I was the
12 one that opened it and broke the seal that
13 was on the envelope. Inside of that envelope
14 were ten latent lift cards from a 2011
15 Toyota.

16 Q. Okay. And if you could just go
17 through those different, those ten different
18 cards and tell us about the fingerprints?

19 A. Yes, I will. Give me one second to
20 organize:

21 Latent lift number one was from the
22 exterior side of the rear driver's side door.
23 And that print, I put in my notes, was from a
24 middle joint, which is typically not recorded
25 on a fingertip card. Typically, the tips of

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1 all ten figures are recorded on a fingerprint
2 card. But this in particular impression came
3 from one of these middle joints and that's
4 typically not recorded onto a fingerprint
5 card.

6 Q. So does that mean that's the sort of
7 fingerprint that you really wouldn't be able
8 to make a comparison on?

9 A. That is correct.

10 Q. Latent lift number two was from the
11 exterior side of the rear driver's door
12 handle.

13 Latent lift number three was from the
14 underside of the front passenger door handle.

15 Q. Well, going back to number two, what
16 can you tell us about that fingerprint?

17 A. I can tell you that that fingerprint
18 was inconclusive for Robert Earl Tedford.

19 Q. What does that mean?

20 A. An inconclusive is assigned as a
21 conclusion that a conclusion is reached
22 rather. And there's not enough quality in
23 the latent -- like I was telling you earlier
24 with a stamp, not ever stamp has that perfect
25 amount of ink on it. And when it comes in

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1 contact, you can read the entire surface.
2 Occasionally, you have more moisture on one
3 side of your finger. Maybe you just picked
4 your finger up off of your clothing where it
5 dried that moisture out and you touched it.
6 So you may have what is called a partial
7 print. Or depending on how a person touched
8 an object, they may have smeared it or
9 pressed too hard or pressed too light and you
10 may not have enough information to have
11 enough quality of that print to identify it
12 or exclude someone. So you have to come to
13 the conclusion of inconclusive. That there's
14 enough that's close enough that that person
15 may have made that fingerprint. And at the
16 same time, there's not enough to say that
17 they did not make that fingerprint.

18 Q. Okay. Moving on then to number
19 three.

20 A. Latent lift number three was from
21 the underside of the front passenger door
22 handle.

23 Q. Okay. And what can you tell us
24 about that?

25 A. That print was determined

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1 elimination only. It was negative for the
2 individuals I compared which were Brian
3 Walker, Arlene Bruce and Richard Earl
4 Tedford.

5 Q. Okay. And moving on to number four?

6 A. Latent lift number four was from the
7 roof above the front passenger door.

8 Q. And tell us about that?

9 A. That print was identified as being
10 the number nine, which is the left ring
11 finger of Robert (sic) Earl Tedford.

12 Q. Okay. All right. Please continue.

13 A. Latent lift number five is from the
14 exterior side of a stainless trash can in the
15 rear cargo area that did not belong to the
16 victim.

17 Q. Okay. What about Richard Earl
18 Tedford?

19 A. It was negative for Richard Earl
20 Tedford.

21 Q. Okay.

22 A. Latent lift number six is from that
23 same trash can. It was from the rear cargo
24 area that did not belong to the victim. And
25 it was negative for Richard Earl Tedford.

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1 BY SOLICITOR MOYER:

2 Q. Where are you employed, sir?

3 A. Greenville County, forensics.

4 Q. What is your position with
5 Greenville County Forensics?

6 A. I'm currently assigned to the latent
7 print division.

8 Q. How long have you been in the latent
9 print division?

10 A. I've been four years full-time in
11 the latent print division.

12 Q. Okay. What is your position? What
13 are your duties in that role?

14 A. Currently, just like Mr. Gary, I
15 examine fingerprints, footwear impressions
16 and tire track impressions that are received
17 from the crime scene unit. And make
18 comparisons to know standards and issue
19 reports based on my findings.

20 Q. How long have you been doing this?
21 You said four years?

22 A. Four years in the latent print
23 division. And two years prior to that, in
24 the crime scene unit.

25 Q. Okay. What did you do in the crime

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1 scene unit?

2 A. The same thing as Officer Hope and
3 Sergeant Shaw. I responded to the scenes,
4 processed them and then collected evidence,
5 documented it, and then issued reports.

6 Q. Okay. Tell the jury about your
7 training and your education for your current
8 position?

9 A. I've had over two hundred and fifty
10 hours of formal classroom training, which is
11 sponsored by various departments such as the
12 FBI, the National Institute of Justice, and
13 also Ron Smith & Associates, and which is
14 also approved by the International
15 Association for Identification.

16 Prior to that, I had or during that I
17 also when I started in the forensic division
18 in the latent print section, I had a year of
19 training, an apprentice-style training where
20 under the three other examiners in the office
21 I worked on casework with their supervision
22 and their review of everything I did.

23 After that year, I was then released on
24 full casework; which everything is still
25 reviewed.

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1 Q. How many -- do you have any
2 estimation as to how many fingerprints you
3 have examined over your years doing this?

4 A. I know in the last -- in the past
5 twelve months I've done over eighty thousand
6 comparisons. And it's around two hundred --
7 it's over two hundred thousand comparisons
8 during the four years that I've kept track.

9 Q. Okay. Do you do this every day?

10 A. Yes.

11 Q. You mentioned you also sometimes
12 will do, I think you said tire tread?

13 A. Yes. It's very rare that we get a
14 tire track impression. More commonly we'll
15 get a footwear impression to examine.
16 Footwear impression cases are probably six,
17 six to ten a year.

18 Q. Okay. So the overwhelming majority
19 of work that you do then is with finger-
20 prints?

21 A. Yes.

22 SOLICITOR MOYER: Your Honor, at
23 this time, I would move to have Tyler
24 Bucholtz qualified as an expert in finger-
25 print identification.

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1 THE COURT: All right. Any issues
2 or questions with this witness?

3 MR. WARDER: No, Your Honor.

4 THE COURT: All right. I will
5 qualify him as an expert in fingerprint
6 identification.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR MOYER:

9 Q. Okay. Mr. Bucholtz, I'm going to
10 ask you did you have occasion to make
11 examination of any fingerprints in the case
12 that we're in court for?

13 A. Yes, I examined the fingerprints
14 that were submitted by Officer Riley Hope.

15 Q. Okay. From what location?

16 A. I believe you have them.

17 Q. Okay. So, yeah, let me ask you the
18 same thing that I asked Mr. Gary. Would it
19 aid in your ability to testify and recall
20 these details if you're able to look at the
21 fingerprint cards that you examined?

22 A. Yes, it would.

23 Q. Just take a look at the contents of
24 that envelope for a minute and see if you do
25 recognize it?

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1 A. Yes, I do.

2 Q. Okay. Are they the fingerprint
3 cards that you received and examined?

4 A. Yes.

5 Q. Okay. When did you receive and
6 examine those cards?

7 A. I received them on August 15th, 2013.

8 Q. When did you do your -- let me ask
9 you this, did you have any known prints of
10 the Defendant in this case, Richard Earl
11 Tedford?

12 A. Yes.

13 Q. Okay. Would you tell us what the
14 results were of your examination with regard
15 to Richard Earl Tedford?

16 A. Latent lift number three, which is
17 from the exterior side of a moved glass
18 candleholder in the closet. And that was
19 identified as being made by the number one,
20 the right thumb, of Richard Earl Tedford.

21 Q. Okay.

22 A. Latent lift number six was from the
23 exterior, front left corner of the open
24 washing machine. That was identified as
25 being made by the number six, left thumb of

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1 Richard Earl Tedford.

2 And latent lift number five from the side
3 of an unscrewed light bulb, the second one
4 that he processed in the bathroom was
5 identified as being made by the number two
6 finger, the right index finger of Richard
7 Earl Tedford.

8 Q. Okay. And were the other finger-
9 prints that you examined, were they all of
10 sufficient quality to do examinations of?

11 A. It's kind of mixed results. I can
12 give you the results on all of the latents
13 that we ---

14 Q. Okay. Who were the other?

15 A. Latent lift number two was from the
16 exterior side of the moved glass candleholder
17 in the closet. That one was an elimination
18 quality only. I determined only a pattern
19 type, that it was a right loop but nothing
20 further. No more data was contained in it
21 that I could sufficiently make a comparison.

22 Q. So basically the same fingerprint.
23 You didn't have enough detail in order for
24 you to make a -- you wouldn't be able to make
25 a match with that one?

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1 A. Right. I can only conclude that it
2 is a right loop, which sixty percent of all
3 fingerprints are loops. So it would include
4 a large majority of the population.

5 Q. Okay.

6 A. Latent lift number one was from the
7 exterior front entrance of the door handle.
8 And that was inconclusive for Richard Earl
9 Tedford, his number six, left thumb.

10 Q. Okay. What does that mean,
11 inconclusive?

12 A. Meaning on this particular finger
13 print I could determine the pattern type,
14 which was consistent with the number six
15 finger of Richard Earl Tedford. I could also
16 see about four different features in sequence
17 that I identified were similar. However,
18 there's not enough there for me to
19 conclusively identify that as being his
20 fingerprint. There's not enough there either
21 for me to conclusively say that he did not
22 make that fingerprint. So it is
23 inconclusive. There can be no conclusion
24 drawn as to whether he did or did not make
25 that fingerprint.

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1 Q. Okay.

2 A. Latent lift number four was from the
3 exterior corner of a moved plastic bracket
4 found in the bathroom. And that was
5 inconclusive for Brian Walker. He is one of
6 the persons who were rolled on the scene with
7 ink for us to compare, as well as Arlene
8 Bruce was also rolled for us to compare.
9 They're elimination prints.

10 Q. Okay.

11 A. Latent lift number seven was from
12 the exterior front edge of the open washing
13 machine lid. And that is a palm. I can tell
14 that it's a partial piece of a palm.
15 However, that was not identified.

16 Latent lift number eight is a -- from the
17 exterior front edge of the open washing
18 machine. The only thing I could tell about
19 it is that it is a right loop. It's very
20 poor quality and it's smeared and it's wiped.
21 You can tell it was in motion when it was
22 applied to the surface. So that one's
23 elimination quality only.

24 Q. Okay. Thank you. Please answer any
25 questions the Defense may have.

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1 THE COURT: Mr. Warder?

2 MR. WARDER: Your Honor, I have no
3 questions of this witness.

4 THE COURT: All right. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 SOLICITOR MOYER: Okay. The State
8 would call Jason Bash.

9 (WITNESS TAKES STAND)

10 JASON BASH, having been duly sworn to
11 tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR MOYER:

15 Q. Okay. Where are you employed?

16 A. With the Greer City Police
17 Department.

18 Q. What is your position in Greer
19 Police Department?

20 A. I'm an investigator.

21 Q. How long have you been in law
22 enforcement?

23 A. Since 1999.

24 Q. Where all have you worked?

25 A. I worked two and a half years at

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1 Greenville Detention, and since 2002 at Greer
2 City.

3 Q. Okay. And what is your position now
4 with Greer City?

5 A. Investigator Detective.

6 Q. How long have you been doing that?

7 A. Since 2005.

8 Q. Okay. What are your duties and
9 responsibilities -- let me ask you move
10 closer to the microphone?

11 A. (Complies).

12 Q. Thank you. What are your duties and
13 responsibilities in that role?

14 A. I investigate different crimes such
15 as burglaries, auto thefts, auto break-ins,
16 anything as serious as murders.

17 Q. Okay. Now, were you assigned to the
18 case involving the burglary at Meritage
19 Street?

20 A. I was.

21 Q. That is in the Greer city limits?

22 A. Yes, it is.

23 Q. Is that also in Greenville County?

24 A. Yes, it is.

25 Q. All right. Now, were you notified

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1 about the fingerprint matches that were made
2 in the residence -- in that particular
3 residence?

4 A. I was.

5 Q. The ones that were just testified
6 about?

7 A. Yes, sir.

8 Q. Where were you given that notifica-
9 tion?

10 A. August 16th, 2013.

11 Q. Okay.. And what did you do in
12 response to that?

13 A. When I receive a fingerprint match
14 to a crime that I'm working, I'll pull all
15 the information I can about the individual
16 they've matched it to. First make sure it's
17 not a victim. And then possibly it's going
18 to be a possible suspect.

19 Q. Okay. And so did you have any
20 contact with the victim in that case?
21 Victims?

22 A. I did.

23 Q. Okay. And what was the reason for
24 that?

25 A. Well, I wanted to make sure that the

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1 fingerprints that they discovered, the ones
2 that were testified about, were not any
3 friends or relatives of the victims, anyone
4 that should have or been allowed into the
5 house.

6 Q. Okay. And did you determine that
7 was not the case?

8 A. Correct. The victim did not know
9 the Richard Tedford at all.

10 Q. Okay. Now, did you then attempt to
11 make contact with Mr. Tedford?

12 A. I did.

13 Q. Okay. And how did you do that?

14 A. By telephone.

15 Q. When did you do that?

16 A. On 8/19/2013.

17 Q. Okay. August the 19th?

18 A. Yes, sir.

19 Q. All right. Now, did you actually
20 get in contact with him?

21 A. I did.

22 Q. And tell me about the conversation
23 you had with him at that time?

24 A. I made a phone call to him and just
25 briefly asked him if he would come in and

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1 speak to me about a case.

2 Q. At that time, did you tell him
3 anything about -- anything else about why you
4 wanted to talk to him?

5 A. No. I just simply told him that I'd
6 like to talk to him about a case that I am
7 currently working.

8 Q. Did you tell him he was a suspect?

9 A. No.

10 Q. Did you tell him the particular case
11 that you were talking about?

12 A. No.

13 Q. Okay. What was his response when
14 you told him that?

15 A. He said he would come in and talk
16 with me and we'd set up a time for 2:00 p.m.
17 that day on the 19th.

18 Q. Okay. And on that same day that you
19 spoke to him?

20 A. Yes, sir.

21 Q. And where did you tell him that you
22 wanted to meet with him?

23 A. He agreed to come to the Greer
24 Police Department.

25 Q. Did he come?

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1 A. No.

2 Q. Did he ever call or have any contact
3 with you?

4 A. No, he did not.

5 Q. Okay. Now, were you notified --
6 well, let me ask you this. Were you aware
7 that Greenville County Sheriff's Office was
8 simultaneously handling another burglary from
9 that same general area?

10 A. I was.

11 Q. And that would be the Rayland
12 Place?

13 A. Yes, sir.

14 Q. Were you in contact with Officer/
15 Investigator Gilstrap?

16 A. I was.

17 Q. Okay. Did you receive notification
18 that Investigator Gilstrap had arrest
19 warrants for the Defendant?

20 A. I did.

21 Q. And when did you get that informa-
22 tion?

23 A. Investigator Gilstrap notified me on
24 August 21st, 2013 stating that he did have
25 arrest warrants for Richard Tedford for that

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1 incident, this incident.

2 Q. Now, was the Defendant arrested on
3 those charges?

4 A. On 8/22/2013.

5 Q. Were you present when that took
6 place?

7 A. Yes, sir.

8 Q. Where did that take place?

9 A. It was at Woodcliff Street in
10 Wellford, South Carolina. And this was what
11 -- I went out there because that was a known
12 address for Mr. Tedford.

13 Q. Where is Wellford?

14 A. I guess it's going to be more north,
15 maybe northeast of Greer, like heading
16 towards Spartanburg.

17 Q. Okay. Is that in Greenville County
18 or Spartanburg?

19 A. That's Spartanburg County.

20 Q. Are there any other close towns to
21 that?

22 A. Lyman, Duncan, Wellford, Greer, it's
23 all kind of within twenty, thirty minutes of
24 each other.

25 Q. So were you able to go out to this

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1 Defendant's residence by yourself or did you
2 have to have other officers with you?

3 A. I went out there with another
4 investigator with Greer City Police
5 Department, detective.

6 And when we got there made contact with
7 who we believed was Mr. Tedford. We waited
8 and called the Spartanburg County Sheriff's
9 Office, had one of their deputies come out
10 because it's in Spartanburg County and not in
11 the city limits of Greer. So I could not
12 actually arrest him for anything. I could
13 simply go out there and talk to him.

14 Q. Okay. And so did you -- was he at
15 the residence when you got there?

16 A. Yes, he was.

17 Q. Do you remember what time of day
18 this was?

19 A. I'm not sure. I believe it was
20 early morning.

21 Q. Okay. So did you have a photograph
22 of him so that you would be able to recognize
23 him?

24 A. I did.

25 Q. And did you see him there when you

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1 got there?

2 A. Yes, sir.

3 Q. Do you remember where you first came
4 in contact with him?

5 A. I remember speaking with him for
6 quite some time outside, right outside the
7 front porch area.

8 Q. Okay. So you said you spoke to him
9 for quite some time. What was your -- what
10 was the reason for having to speak to him for
11 such a long period of time?

12 A. When I spoke with him I initially
13 recognized him as the person in a photo that
14 looked exactly like the two photos that I had
15 of Richard Tedford. I asked him his name and
16 he said he was Waymon Barton Tedford, and
17 that Richard was his brother.

18 Q. Okay. Did he look any different
19 then?

20 A. Than the photographs?

21 Q. Than the photographs, (affirmative
22 nod).

23 A. Yes, sir. His hair was pretty short
24 and it was almost bleached blonde.

25 Q. Okay. Did it look like a natural

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1 color?

2 A No.

3 Q. Okay. So he told you this name of
4 Waymon Tedford, you say?

5 A. Waymon Barton Tedford. He also gave
6 me a date of birth and a Social Security
7 Number for a Waymon Barton Tedford. We
8 attempted to make identification of this
9 person through DMV files. We have access to
10 the South Carolina Department of Motor
11 Vehicles and I can pull up a picture of that
12 person. And we could not locate one.

13 Q. Okay. So how long a period of time
14 was it that he went back and forth about this
15 name?

16 A. Approximately about an hour to an
17 hour and a half, the whole time we were out
18 as his residence, he denied being Richard
19 Tedford.

20 Q. So despite his refusal to identify
21 himself, did you all still place him under
22 arrest?

23 A. Spartanburg County did.

24 Q. Okay. And where was he taken when
25 he was taken and under arrest?

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1 A. He was brought back to the Greer
2 city jail to be held for Greenville County's
3 warrants.

4 Q. Okay. Were you eventually able to
5 make a positive identification for him?

6 A. Yes, sir.

7 Q. And how did that come about?

8 A. Well, back at the scene we did find
9 a pill bottle in his pocket. Spartanburg
10 County found a pill bottle in his pocket that
11 said it was Richard Tedford. Then he still
12 denied it was his. Stated that was his
13 brother's pill bottle. But when we got to
14 the police department, he was still denying
15 it was him. He was standing in front of one
16 of the fingerprint machines. As testified
17 earlier, it's all automatic now. So he was
18 standing in front of it. And I said, 'Look,
19 they're about ready to run your fingerprints.
20 We're going to find out who you are.' He
21 said, 'Yes, that's who I am. I am Richard
22 Tedford.'

23 Q. Okay. So just to be clear this
24 person that you were speaking to on August
25 22nd of 2013, is he here in the courtroom?

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1 A. Yes, sir.

2 Q. Would you identify him?

3 A. The man in the yellow shirt.

4 Q. The defendant in this case?

5 A. Yes, sir.

6 Q. Okay. Now, were you involved in the
7 recovery of that black Scion?

8 A. No, I was not.

9 Q. And the same property that was
10 collected from it?

11 A. I had dealings with the property
12 later but not on scene where it was
13 recovered.

14 Q. Okay. So what dealings did you have
15 with the property?

16 A. I assisted our property and evidence
17 tech on September the 3rd, 2013 to help return
18 the evidence that was collected to the proper
19 owners, the victims Arlene and Bruce Walker.

20 Q. And do you recall what date that
21 was?

22 A. September the 3rd, 2013.

23 Q. Okay. Can you recall what items
24 that you saw to it that were returned to her?

25 A. There were multiple items that were

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1 returned to her. And they were returned to
2 her because initially when the report was
3 taken by Officer Santana and Officer Hemric,
4 her and her husband had mentioned these
5 specific things that were stolen. And they
6 basically matched what was recovered in the
7 Scion. So that's why we were able to return
8 it to them.

9 There was a gray toolbox, a stainless
10 trash can, a green plastic-like recycling
11 bin, and the matches that were described
12 earlier in the case.

13 Q. Okay. Would it refresh your memory
14 if you had a chance to take a look at the
15 property and evidence sheet?

16 A. Yes, sir.

17 Q. (Tenders)

18 A. One other thing was the Bose speaker
19 and it's labeled "Bose speaker/CD." And I
20 believe that's all.

21 Q. Okay. So those items were returned
22 to Ms. Bruce now Walker?

23 A. Yes, correct. I was there assisting
24 the property and evidence tech. And Arlene
25 Bruce, who is now Arlene Walker, signed for

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1 them on 9/3/2013 at 3:40 p.m.

2 Q. All right. Now, were there other
3 items collected from the car that were not
4 returned to Ms. Bruce?

5 A. Yes.

6 Q. And retained by your office?

7 A. Yes. They sat in the property and
8 evidence room.

9 Q. Tell us what those items are?

10 A. There was a pair of jeans, a set of
11 keys, a case -- I believe it was part of a
12 cellphone. A knife labeled Lansky. That's
13 the name of it. A pink lighter. And there
14 should be another property form with a Ruger
15 P95 .9 mm pistol.

16 Q. Okay. Now, what about -- do you
17 remember some swords having been collected?

18 A. Yes, sir. Item I-2 swords. They're
19 long, like you would say Samurai-looking
20 swords.

21 Q. Okay. Yeah. So I was going to ask
22 you what your best description was of those
23 swords.

24 A. Yeah. Like, I guess the only way I
25 could really describe it, describe it like a

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1 Samurai sword. Maybe two, two and a half
2 feet long with a handle on it, and a sheath
3 that you put it into to protect the blade.

4 Q. Did you see when we were showing
5 photographs of the interior of the Scion
6 yesterday?

7 A. I did.

8 Q. Were they those two swords that you
9 could see in the front passenger side?

10 A. Yes, sir.

11 Q. Were you ever able to determine who
12 all those other items belonged to?

13 A. We were not.

14 Q. And so y'all still have all those
15 other items then?

16 A. We still have all the items that
17 were collected and we'll hold onto them. We
18 made attempts to try and figure out who they
19 belong to and they're still unknown.

20 Q. Okay. All right. Please answer any
21 questions from the defense.

22 THE COURT: Mr. Warder.

23 CROSS-EXAMINATION

24 BY MR. WARDER:

25 Q. Did you search all the records to

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1 see if any swords had been reported stolen?

2 A. We checked -- Investigator Gilstrap
3 and I were working closely together in both
4 of the cases. We've worked together for
5 probably eight to ten years as investigators.
6 So when we're having a case with the same
7 possible suspect, we're working together on
8 it. Talking with him, he did not have any
9 other known victims that were missing those
10 types of items that I mentioned, including
11 the swords.

12 Q. I guess there no reason for us to
13 assume then they were stolen?

14 A. They could or could not be stolen,
15 but we're not for sure. Correct.

16 Q. Thank you.

17 SOLICITOR MOYER: Nothing further
18 for that witness.

19 THE COURT: All right. Would the
20 attorneys approach once again.

21 THE COURT: You can step down.

22 (WITNESS STEPS DOWN)

23 (OFF RECORD BENCH CONFERENCE)

24 THE COURT: All right. Ladies and
25 gentlemen, it's noon so we're at a good point

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1 here to break. So I thought we might as well
2 break now. We have a couple of matters we
3 have to address between the attorneys. So
4 what I'm going to let you do is go to lunch.
5 And we'll come back at 1:30, all right?

6 Again, as I've told you every time I was
7 about to let you leave the courtroom, I'm
8 going to tell you my two little warnings:

9 Do not talk about the case amongst
10 yourself or to anyone.

11 Don't do any kind of independent research
12 or anything like that.

13 So if anybody tries to contact you about
14 this case, notify the bailiff and they will
15 get the information to me.

16 Do not look at anything, if there's any
17 media, any press coverage of this. I don't
18 expect that but should there be, do not
19 review that or look at that in any way.

20 So I'm going to let you go to lunch and
21 be back in your jury chambers before 1:30.
22 Thank you.

23 (JURY OUT AT 12:00 P.M.)

24 THE COURT: All right. Anything
25 before we break for lunch?

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1 SOLICITOR MOYER: Nothing from the
2 State?

3 MR. WARDER: Nothing from Defense.
4 Tc. All right. We'll see you
5 back at 1:30.

6 Any additional jury charges that y'all
7 have? Any research? I'm sure y'all can
8 probably know the kind of issues I've been
9 looking at.

10 MR. WARDER: If there's anything
11 unusual ---

12 THE COURT: Okay.

13 SOLICITOR MOYER: Yeah. I'm not
14 sure if your charge includes a definition of
15 nighttime hours or not.

16 THE COURT: I couldn't find it.
17 That's one of the issues that I have is
18 nighttime. And I know that issue was raised,
19 that we need to discuss nighttime.

20 SOLICITOR MOYER: I will have a case
21 on that point. And I would ask, I'm going to
22 ask for jury instruction on that, on the
23 definition. I can give you the case now.

24 THE COURT: Okay.

25 SOLICITOR MOYER: It is *Bannister v.*

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1 State. It is a 1998 case, 333 SC 298. Just
2 very briefly it just defines nighttime, as
3 was held in common law, "that period from
4 sunset and sunrise, during which there is not
5 enough daylight by which to discern or
6 identify a man's face; except by artificial
7 light or moonlight." So that would be the
8 definition that we will request.

9 THE COURT: I think that may trump
10 your pre-Civil War case, Mr. Warder.

11 MR. WARDER: I think there's a case
12 that says it's a period of half an hour
13 before and after.

14 THE COURT: They didn't have
15 clocks back in that case you cited. I'm just
16 kidding. Had to go back to the 1800's for
17 that. So I'll look at both. I'll look at
18 both cases. I'm just kidding you, Mr.
19 Warder.

20 MR. WARDER: I understand.

21 THE COURT: I'll look at your case
22 as well.

23 SOLICITOR MOYER: Thank you, Your
24 Honor.

25 THE COURT: All right. We be at-

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1 ease until 1:30.

2 (LUNCH RECESS)

3 (DEFENDANT PRESENT)

4 THE COURT: All right. Is the
5 State ready?

6 SOLICITOR MOYER: Yes, sir.

7 THE COURT: Defense ready?

8 MR. WARDER: Yes, sir, Your Honor.
9 And I have a little bit of law to pass up to
10 you, Your Honor.

11 THE COURT: A little bit of law.
12 Is this something I need to look at before
13 this witness? Oh, Okay. I see the name.
14 No.

15 All right. Go ahead and bring the
16 jury in.

17 BAILIFF: Yes, sir.

18 THE COURT: All right. Bring them
19 in.

20 (JURY IN AT 1:33 P.M.)

21 THE COURT: All right. I hope
22 everybody had a good lunch. And we will now
23 proceed. The State has some additional
24 witnesses.

25 You may proceed, Mr. Moyer.

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1 SOLICITOR MOYER: Thank you, Your Honor.
2 May it please the Court. The State will call
3 Gary Gilstrap.

4 (WITNESS TAKES STAND)

5 GARY GILSTRAP, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR MOYER:

10 Q. Okay. Where are you employed?

11 A. I'm employed with the Greenville
12 County Sheriff's Office.

13 Q. How long have you been in law
14 enforcement?

15 A. Thirty-five years.

16 Q. How long have you been at the
17 sheriff's office?

18 A. I've been here since 1988.

19 Q. Okay. And what is your position at
20 the sheriff's office now?

21 A. I'm a property crimes investigator
22 with the sheriff's office.

23 Q. How long you been doing that?

24 A. Since 2002.

25 Q. Okay. So you participated in the

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1 investigation of this case?

2 A. Yes, I did.

3 Q. Now, did your investigation in this
4 case include you showing any photograph
5 lineups?

6 A. Yes, it did.

7 Q. Did you present one to Natalie
8 Powell?

9 A. Yes, I did.

10 Q. Where did she live?

11 A. She lived at Jug Factor Road in
12 Greer, South Carolina.

13 Q. Okay. And when did you meet with
14 her?

15 A. I met with her on August the 20th, a
16 Tuesday, 2013.

17 Q. And what time was it that you met
18 with her?

19 A. I arrived at her office at about
20 11:50 in the morning.

21 Q. Okay. Where was her office?

22 A. It was on Whitsett Street here in
23 Greenville.

24 Q. Okay. Did you view a photo lineup
25 together?

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1 A. Yes, I did.

2 Q. How many photographs were displayed
3 in the lineup?

4 A. There were six.

5 Q. Was this defendant included in the
6 lineup?

7 A. Yes, he was.

8 Q. Okay. Now, what date had Ms. Powell
9 come in contact with the Defendant?

10 A. The morning of the incident on
11 August the 13th. I believe it was around 8:00
12 give or take a few minutes.

13 Q. So the week prior to that?

14 A. Yes.

15 Q. Before you met with her?

16 A. I believe it was Tuesday the 13th.

17 Q. So were the other five persons that
18 you put in that lineup similar description to
19 the Defendant?

20 A. Yes, they were.

21 Q. In what way was that?

22 A. Their age was close to the
23 Defendant, give or take one or two years on
24 either side. They were all white males. The
25 Defendant was wearing glasses in the

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1 photograph. So I had to put glasses, make
2 sure the pictures had glasses on them, their
3 hairstyle, facial features, same.

4 Q. Okay. Who all was present when you
5 showed the lineup to Ms. Powell?

6 A. Just myself.

7 Q. Tell us how it is that you went
8 about giving her the lineup, what you said
9 to her before she looked at them?

10 A. Sure. What I did, I met with her,
11 talked with her a few minutes about what
12 she'd seen or heard. And I said Ms. Powell,
13 I have a lineup I would like for you to look
14 at. I said, 'I can't tell you whether the
15 person that you saw is on this photo lineup
16 or not.' I said, 'Take your time. I can't
17 give you any help. But all I'm asking is be
18 one hundred percent sure of who you pick
19 out.' And 'point to that person that you
20 pick out.'

21 Q. And so did you put any pressure on
22 her to pick somebody out of the lineup?

23 A. No, I did not.

24 Q. Okay. Did you influence her
25 decision in any way as to which person to

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1 pick once you asked her to do so?

2 A. No, I did not.

3 Q. All right. Well, what did Ms.
4 Powell do when you asked her to look at that
5 lineup?

6 A. She took the lineup from me. I
7 believe she even held it under a light that
8 was on the table there. And within about
9 thirty seconds she pointed to number four,
10 the Defendant in this case, and said "that's
11 the man that was at my house."

12 Q. Now, how certain or confident did
13 she appear to be with her identification?

14 A. She was sure that it was him.

15 Q. And what did you ask her to do after
16 she told you which person she picked?

17 A. I had her sign her name at the
18 bottom of the picture that she picked. And
19 date it. And then I flipped it over and had
20 her sign the back as well. And then I took
21 it, put my case number at the top.

22 Q. Okay. Did you bring that photo
23 lineup to Court today?

24 A. Yes, I did.

25 Q. And that was the one that was

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1 already entered into evidence?

2 A. Yes.

3 Q. Okay. I'm going show that to you
4 and I would like you just to point out to the
5 jury where the Defendant is in the lineup,
6 and Ms. Powell's signature?

7 A. Yes. It's the one on the bottom
8 left with the number four in the upper left
9 corner with her name.

10 Q. Okay. I think there's a laser
11 pointer. Is there a laser pointer in front
12 of you?

13 A. (Using pointer to indicate), right
14 there.

15 Q. Okay. And whose picture is that in
16 that lineup?

17 A. That's a picture of Richard Tedford.

18 Q. Okay. All right. Now, did you show
19 the lineup to anyone else?

20 A. Yes, I did.

21 Q. And who else did you show the lineup
22 to?

23 A I showed the lineup to a Gerald
24 Lockhart.

25 Q. And where did he live?

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1 A. Berry Pond Road in Greer.

2 Q. And when did you meet with him?

3 A. I met with him on the same day, that
4 afternoon on the 20th of August, 2013. I met
5 with him. I got there probably around 2:00.

6 Q. Okay. And you met with him at his
7 home?

8 A. Yes, I did.

9 Q. Did you use the same photo lineup
10 that you used with Ms. Powell?

11 A. No.

12 Q. Okay. Well, tell me what was ---

13 A. This one here didn't have her
14 signature on it, obviously. And it had no
15 case number on it or anything. It just had
16 pictures and the same lineup. And I told him
17 basically the same thing, that I couldn't
18 help him with it. That he needed to be one
19 hundred percent sure. I said I couldn't say
20 for sure if this person is in the lineup.
21 Only he would know. And then he took the
22 lineup from me.

23 Q. Okay. And so it was the same
24 configuration of people that you used with
25 Ms. Powell?

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1 A Yes, it was.

2 Q. Okay. Well, what was Mr. Lockhart's
3 reaction or response when you showed him the
4 lineup?

5 A. He looked at the lineup, studied it
6 for a second and pointed to number four and
7 said "that's the man."

8 Q. Okay. And how confident or certain
9 did he seem to be with his identification?

10 A. He was sure.

11 Q. Okay. And once again did you take
12 that photo lineup and did you bring it to
13 court here this morning?

14 A. Yes, I did.

15 Q. That was State's Exhibit 56 that I
16 just showed. Now I'm going to show you
17 State's Exhibit 57. And I'd like to ask you
18 to do the same thing. Point out the
19 Defendant and Mr. Lockhart's signature on
20 that document.

21 A. That person right there, and the
22 number four upper right corner, his name at
23 the bottom, with his signature at the bottom.

24 Q. Okay. The one in the number four
25 position?

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1 A. Yes.

2 Q. The lower left?

3 A. Lower left.

4 Q. Okay. Now, did you meet with the
5 Defendant at any point during your
6 investigation?

7 A. Yes, I did.

8 Q. And what was the date of that?

9 A. That was August the 22nd.

10 Q. Of 2013?

11 A. Of 2013. I'm sorry.

12 Q. And around what time of day was it?

13 A. We arrived at the location where
14 we'd meet at around 11:50 that morning.

15 Q. Okay. And where was the location
16 that you encountered him?

17 A. At the Greer Police Department.

18 Q. Now, who all -- where was he in the
19 Greer Police Department and who was he with?

20 A. Okay. I believe he was in a holding
21 cell when we first arrived. Myself and
22 Investigator David Kahn went with me there.

23 Q. Okay. Do you remember Investigator
24 Jason Bash with the Greer Police Department
25 being there?

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1 A. Yes, he was there as well.

2 Q. Okay. So this was the day he had
3 just been arrested as Detective Bash
4 described to us?

5 A. He informed me that they had located
6 him over in Spartanburg County. And he
7 called me and told me that a Spartanburg
8 County Deputy was there with them, and that
9 they had arrested him.

10 Q. Okay. And so he was under arrest at
11 this time?

12 A. On our warrants, (affirmative nod);
13 that's correct.

14 Q. And he was in custody, no question
15 about that?

16 A. Yes.

17 Q. And he was in custody?

18 A. Yes.

19 Q. No question about that?

20 A. No question.

21 Q. Now, over how long a period of time
22 would you say that you met with him?

23 A. Probably thirty minutes.

24 Q. And it was just you and Investigator
25 Kahn who spoke to him?

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1 A. Yes.

2 Q. Did you hear the interview?

3 A. Yes, I did.

4 Q. How were y'all dressed?

5 A. We were in plain clothes. Probably
6 pull-over shirts and our weapon as well.

7 Q. Okay. Did y'all identify yourselves
8 as officers?

9 A. Yes. When he was brought in for the
10 interview, we had told him who we were and
11 who we worked for.

12 Q. Okay. During the time you spoke to
13 him, did the Defendant appear comfortable?

14 A. Yes.

15 Q. Okay. All right. Now, did you
16 advise him of his rights pursuant to *Miranda*?

17 A. Yes, I did.

18 Q. And how did you do that? How did
19 you go about doing that?

20 A. I had the *Miranda* form in front of
21 me and told him I was going to read him his
22 rights. And I asked him if he could read.
23 He said yes. He said, 'but I need my glasses
24 with me.' We said okay. So what I did was
25 is I read the *Miranda* out to him. And then

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1 read the waiver and handed him my glasses so
2 he could read the *Miranda* and the waiver
3 himself.

4 Q. Okay. And did he do so?

5 A. Yes, he did.

6 Q. Did you ask him whether he could
7 read and write?

8 A. I asked him if he could read. He
9 said yes.

10 Q. Okay. And did he do anything on the
11 form to indicate that he could read?

12 A. I wrote it in the upper left-hand
13 corner, "I can read."

14 Q. Okay. I'm going to hand you State's
15 Exhibit Number 55. Can you take a look at
16 that and are you able to identify that?

17 A. Yes. This is a copy of the *Miranda*
18 that I read to him and his waiver of rights.

19 Q. Okay. So is that a copy?

20 A. Yes, it is.

21 Q. Is it a true and accurate
22 representation of the document that you gave
23 to -- went over with and gave to this
24 Defendant to sign on August the 22nd, 2013?

25 A. That's correct.

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1 Q. Is it in substantially the same
2 condition now as it was then?

3 A. Yes, it was.

4 Q. No changes or deletions to it?

5 A. No, sir.

6 SOLICITOR MOYER: Your Honor, at
7 this time the State would move to have
8 State's Exhibit 55 entered into evidence.

9 THE COURT: Any objection?

10 MR. WARDER: No, Your Honor.

11 THE COURT: All right. And that's
12 what number?

13 SOLICITOR MOYER: 55.

14 THE COURT: 55.

15 (SO ENTERED AS STATE'S EXHIBIT 55)

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR MOYER:

18 Q. Okay. Now, after you went over the
19 waiver of rights with the Defendant, did he
20 indicate that he would speak to you about the
21 situation?

22 A. Yes, he did. I asked him to take a
23 pen at the end of each sentence of his
24 *Miranda*, put his initials. That indicated to
25 me that he understood what that sentence was

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1 about. Also, after reading the *Miranda*, the
2 waiver of rights, he signed his name, his
3 signature, printed his name below that with
4 his address his date of birth of Social
5 Security Number. And then Investigator Kahn
6 and I witnessed the *Miranda* at 11:58 a.m.

7 Q. Okay. So did you then immediately
8 begin to interview him?

9 A. Yes, I did.

10 Q. Okay. Was his statement reduced to
11 writing?

12 A. Excuse me?

13 Q. Was his statement put in writing?

14 A. No, it wasn't.

15 Q. Okay. And whose decision was that?
16 Was that yours or his?

17 A. That was his. I took some notes
18 that I transferred over to a supplement
19 report that same day.

20 Q. Okay. You said same day. So you
21 took notes during the interview?

22 A. Yes, I did.

23 Q. But he did not want to give a
24 written statement, just spoke to you?

25 A. That's correct.

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1 Q. Okay. So was this matter fresh in
2 your memory when you took those notes of your
3 interview with the Defendant?

4 A. Yes.

5 Q. And when you wrote it into your
6 report?

7 A. Yes.

8 Q. Okay. So would it help you to
9 accurately convey the contents of that
10 conversation if you were able to review and
11 to read your report with the contents of that
12 conversation?

13 A. Yes, it would.

14 Q. Okay. Let me ask you at this time
15 to go ahead and go to your report and tell us
16 about your conversation with the Defendant?

17 A. I began the interview with Mr.
18 Tedford that morning. I asked him what was
19 it like to get shot at 6:15 in the morning.
20 Mr. Tedford responded, "I've not been shot
21 at."

22 I asked if he stole the victim's car from
23 the garage. He said that he had not stole
24 any car.

25 I told him that this stuff happened last

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1 Tuesday, over a week ago. I asked him if he
2 knew what a Toyota Scion was. And he said,
3 yes, that he had ridden in one once. I asked
4 when that was. He said "maybe a week ago."
5 I asked him to explain to me how that came
6 about. He said I was walking on Highway 14
7 going to see a guy named Robert on River
8 Road. This guy named Dirk -- he didn't know
9 his last name stopped and picked him up. He
10 said he got picked up at the CVS near the
11 Waffle House on Highway 14 in Greer. Dirk
12 had asked him to drive because he was tired,
13 so he drove the car. I asked him where he
14 went from there. Mr. Tedford said he drove
15 to the Hot Spot. Mr. Tedford said, he said I
16 drove to the Hot Spot in downtown Greer.
17 Tedford said he met his girlfriend and then
18 they left. I asked him what time he got
19 picked up on Highway 14. He said between
20 8:00, 9:00 or 10:00. I asked him if he went
21 to someone's home and asked if Dirk lived
22 there. He said he did not. I asked him
23 where the gun came from that was in the car.
24 He said Dirk had it and that he had scored it
25 and it looked expensive.

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1 Q. All right. Did he have anything to
2 say after that?

3 A. No.

4 Q. Okay. All right. Now, I want to
5 ask you some questions about the map that is
6 there to your left. The map that's there to
7 your left -- okay. Have you gone back to
8 look at, to measure the distances between
9 these locations?

10 A. Yes, I have.

11 Q. Okay. I'm going to start off by
12 asking you how far is the distance between
13 Melody Wilbanks' home on Rayland Place from
14 George Lockhart's home on Berry Pond Road?

15 A. I have that written down. Can I
16 read that?

17 Q. Okay.

18 A. From Rayland Place here, to Mr.
19 Lockhart's home is 2.7 miles or five minutes
20 without traffic.

21 Q. So that's about how long it took you
22 to drive there is five minutes?

23 A. Yes.

24 Q. All right. Now, take me from Gerald
25 Lockhart's home on Berry Pond Road to the

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1 home of the Bishop's on Cripple Creek?

2 A. From here to Cripple Creek is 1.5
3 miles.

4 Q. And how long did it take you to
5 drive that?

6 A. A little less than four minutes.

7 Q. Okay. Now, let me take you from the
8 Bishop's home on Cripple Creek Road to the
9 home of Natalie Powell on Jug Factor Road.

10 A. Here?

11 Q. Yes?

12 A. It's 2.8 miles or five minutes.

13 Q. Okay. Now, what about this area the
14 Defendant told you about, this Highway 14 at
15 this Waffle House in Greer and the Hot Spot.
16 Is that even on this map?

17 A. No. It's on Highway 14 from here to
18 the 14 in Greer is probably five miles.

19 Q. To the Waffle House?

20 A. To the Waffle House, the CVS is all
21 there together.

22 Q. Okay. Now, what about the location
23 where the car ended up being found later that
24 day? Where would that be?

25 A. This is like north and east of

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1 Greer. It would be west toward, near the
2 Post Office, Ryan's -- it would have been
3 behind Ryan's steakhouse that area, over in
4 the west side of Greer.

5 Q. Okay. So what sort of distance is
6 that from ---

7 A. I couldn't say. The road miles is
8 probably another -- from the CVS and Waffle
9 House?

10 Q. Sure?

11 A. Three miles.

12 Q. Okay. So this is basically more --
13 this area of the map is basically more north
14 of Greer?

15 A. Yes.

16 Q. Okay. Were you made aware of the
17 flashlight that was found in the home of Ms.
18 Wilbanks' and that was swabbed for DNA for
19 testing?

20 A. Yes, I was.

21 Q. Did you have that sent to the DNA
22 lab for testing?

23 A. Yes, I did.

24 Q. Did anything of value to the
25 investigation come from that?

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1 SOLICITOR MOYER: Your Honor, I
2 object at this time. May we approach?

3 THE COURT: Yes.

4 (OFF RECORD BENCH CONFERENCE)

5 CROSS-EXAMINATION CONTINUED

6 BY MR. WARDER:

7 Q. How long did you talk to Mr.
8 Tedford?

9 A. We started *Miranda* at 11:53. Hold
10 on. Let me double-check that. If I could
11 see the one that's in evidence, I could tell
12 you what time we started the *Miranda*.

13 Q. Thank you.

14 A. We started the *Miranda* at 11:53
15 a.m., finished at 11:58 with *Miranda*. We
16 talked for approximately fifteen minutes
17 after that.

18 Q. Okay. And that was about one week
19 after this happened?

20 A. It's exactly a week.

21 Q. Thank you.

22 SOLICITOR MOYER: No further
23 questions of this witness.

24 THE COURT: All right. You may
25 step down.

1 (WITNESS STEPS DOWN)

2 SOLICITOR MOYER: At this time, I
3 think there's some matters we need to take
4 up.

5 THE COURT: Okay. I'm going to
6 take a short break here ladies and gentlemen
7 to go over some things. So I want you to go
8 back to your jury room. Again, don't discuss
9 the case.

10 (JURY OUT @ 1:55 P.M.)

11 THE COURT: All right.

12 SOLICITOR MOYER: Your Honor, the
13 remaining issues I have before I rest, there
14 are two.

15 First off, I would bring up -- it'll be
16 something that I brought up in pre-trial
17 motions, which will be a -- I'm asking the
18 Court to take judicial notice of both the
19 sunrise and twilight on August the 13th of
20 2013.

21 Then I have the matter of the two
22 convictions for the Defendant for the
23 burglary. I have certified convictions,
24 which are self-authenticating, which can be
25 placed into evidence. However, I will say

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1 that the Defendant would rather not have
2 these go into evidence. And will just
3 stipulate that he has two convictions for
4 burglary. I would consent to doing that as
5 opposed to putting in the convictions. But
6 either one or the other under the statute
7 would be required. And we would move to do
8 that.

9 THE COURT: all right. And I have
10 -- as to the ---

11 MR. WARDER: Your Honor, as to the
12 -- we would just as soon put the indictments
13 in.

14 THE COURT: The previous matter?
15 Okay. In looking at -- after I previous
16 discussion, I found a case of *State v*
17 *Simmons*. And, you know, it allows for them
18 to put that information in. It's 2002 case
19 from the Court of Appeals. That's exactly
20 what you have.

21 All right. What he's got here is
22 State's Exhibit 58 and 59. It's a sentencing
23 sheet. And the front and back pages of an
24 indictment. You know, let's talk this out.
25 Under the case law that I was looking at it

1 has that the State can be limited as to the
2 information that's put in. But they are
3 allowed to put in the convictions. I guess
4 from your standpoint what you want to do is
5 be able to say that these were two
6 convictions way back in '92 or something.
7 I mean, I'm not, you know -- but, you know,
8 based on your consent -- that's more than I
9 will let the State do unless you consent to
10 it. Do you understand what I'm saying?

11 In other words, they're allowed to put in
12 the convictions on a very limited basis. But
13 if you want them to -- I mean, the full
14 extent of it. Then I'll allow these to go
15 in.

16 MR. WARDER: Yes, sir. I think
17 that that our position would be that we want
18 the jury to see them and know that there were
19 crimes that occurred on the same day. That
20 they were pled guilty to on the same day, in
21 the same proceeding.

22 THE COURT: All right. All right.
23 So State's Exhibit 58 -- have you seen both
24 of these?

25 MR. WARDER: Yes, Your Honor. I

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1 think I have a copy of both.

2 THE COURT: All right. So you're
3 basically, you're consenting to 58 and 59
4 going in without objection?

5 MR. WARDER: Yes, sir, Your Honor.

6 THE COURT: I mean, I know that
7 you objected generally to this information
8 coming in. And conditioned upon that ruling,

9 ---

10 MR. WARDER: Yes, sir, Your Honor.
11 I think you've already told me that ---

12 THE COURT: Right. And I found a
13 case that said this was entirely appropriate.
14 Since it's a specific element, it's different
15 than your, you know, consenting to DUI. So
16 subject to your objection, and I understand
17 that. But you still objected to the
18 information coming in. But if it's going to
19 come in, you want it to come in through 58
20 and 59?

21 MR. WARDER: Yes, sir.

22 THE COURT: All right. Okay.
23 Well, that resolved that issue then.

24 SOLICITOR MOYER: Okay. The only
25 thing I would add, Your Honor, though, is I

1 think it would be improper argument for
2 either the State or the Defense to try to
3 make any conclusions drawn on the body of
4 those documents. Whether it was a guilty
5 plea or not, the dates, things like that,
6 because it would be misleading to the jury.
7 This defendant has a conviction for robbery
8 which is more recent. And to argue to the
9 jury, which is not admissible because it has
10 nothing to do with the burglary. But to
11 argue to the jury that -- well, these are
12 just burglaries that happened, you know,
13 twenty years ago would be misleading to the
14 jury to thinking that he's not been into any
15 trouble since then. So I would argue -- Your
16 Honor's going to give a limiting instruction
17 that they can't use these convictions against
18 the Defendant. And so I would -- I think
19 that's sufficient and that any other
20 inferences drawn from those burglaries should
21 be stayed away from by the State and the
22 Defendant.

23 THE COURT: Right. And I guess if
24 anybody testifies or something like, so I'll
25 reserve my ruling with that. There may be --

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1 and any reference would be limited. All
2 right.

3 MR. WARDER: Somehow I think it is
4 relevant because I don't want the jury to
5 think it's part of a continuing crime spree.

6 THE COURT: Okay.

7 MR. WARDER: In other words, if we
8 put in that it was two burglaries, they might
9 think they happened the night before.

10 THE COURT: Well, I mean, you can
11 -- and this is going to be in, but ---

12 MR. WARDER: Yes, sir.

13 THE COURT: All right. But I'll
14 reserve my ruling on that, how much I can
15 limit -- I don't know how I want to rule on
16 that part at this point. And I'll take your
17 motion under reservation at this time.

18 SOLICITOR MOYER: Okay. Or even --
19 we might be able to solve that, you know, a
20 stipulation that the Defendant was convicted
21 of two counts of burglary in 1992, so that is
22 on the record. I don't have a problem with
23 that.

24 I just -- I would just -- my position is
25 just going to be that there should not be any

1 further argument made about the significance
2 of that. The jury will know that that it is
3 from 1992. I don't know -- like I said, I
4 don't have a problem with them knowing the
5 date. But my problem is just argument based
6 -- trying to draw any other inferences from
7 that.

8 THE COURT: Well, I mean, you
9 know, you've got to -- you know, Mr. Warder,
10 you've got to be careful how you address
11 that. I mean, like Mr. Moyer says, you know,
12 I don't think you can make the jury think
13 that -- and, again, this isn't relevant here,
14 but he's had some record since then. And to
15 be able to kind of act like 'well, this guy's
16 been all squeaky clean since '92 and now they
17 want to hold it against him', I don't think
18 that would be proper. I'm not sure if you're
19 headed that way but ---

20 MR. WARDER: We can fashion the
21 stipulation if the State would stipulate to
22 the date of the conviction, that both arose
23 out of one incident. And that he was
24 sentenced before the court on the same day
25 and pled to both of them.

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1 THE COURT: Y'all talk and figure
2 out if you both can resolve that. If you
3 can, then we'll use that. I'm not going to
4 moderate whatever your stipulation is.

5 SOLICITOR MOYER: Well, I'm willing
6 to stipulate that his two convictions ---

7 THE COURT: Well, y'all talk about
8 what you can stipulate.

9 (OFF RECORD CONFERENCE BETWEEN COUNSEL)

10 MR. WARDER: Your Honor?

11 THE COURT: Yes?

12 MR. WARDER: I think we're going to
13 put up the ---

14 THE COURT: You talking about the
15 58 and 59?

16 MR. WARDER: Yes.

17 THE COURT: All right. All right.
18 So 58 and 59, which are three-page documents
19 are in without objection. Okay.

20 (SO ENTERED AS STATE'S EXHIBIT 58)

21 (SO ENTERED A STATE'S EXHIBIT 59)

22 THE COURT: I have been asked
23 previously to take judicial notice of the
24 sunrise/sunset, civil twilight. And the way
25 -- and let me tell you what my thoughts are.

1 I mean, since it's -- my thoughts are to take
2 judicial notice of the times. And then it
3 really almost becomes a factual issue of
4 whether that was nighttime or not. Because
5 of the -- I think if you look at what's
6 quoted in information that you actually
7 presented. It quotes the *Bannister* case
8 which in Mr. Moyer referenced nighttime "as
9 that period between sunset and sunrise during
10 which there is no daylight enough by which to
11 discern or identify a man's face, except by
12 artificial light or moonlight."

13 I think the Court is going to take
14 judicial notice of the times here and then
15 instruct the jury of what nighttime is
16 defined here. And then it's up to them to
17 determine whether it was nighttime or not.

18 SOLICITOR MOYER: Okay.

19 THE COURT: All right. Anything
20 else that you have?

21 SOLICITOR MOYER: They are the two
22 remaining matters, Your Honor, for my case in
23 chief.

24 THE COURT: All right. So just to
25 make sure we're clear and everything, 58 and

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1 59, the two indictments are entered as far as
2 prior convictions. We're going to take
3 judicial notice of this. And we'll take
4 judicial notice of the -- from the National
5 Weather Association?

6 COURT REPORTER: Naval Observatory.

7 THE COURT: Naval Observatory.

8 With an instruction on the definition of
9 nighttime as indicated in the *Bannister* case.

10 MR. WARDER: Okay.

11 SOLICITOR MOYER: So while the jury
12 is out, Your Honor, we could probably look at
13 the directed verdict motions rather than just
14 send them back out again.

15 THE COURT: Well, we need to -- I
16 mean, because you haven't officially closed.
17 I mean, we can ---

18 SOLICITOR MOYER: Okay.

19 THE COURT: I mean, I ---

20 SOLICITOR MOYER: That's fine.

21 THE COURT: And we're going to
22 have to send them out anyway.

23 SOLICITOR MOYER: I understand.

24 THE COURT: Yeah. I hate to do
25 that but -- I guess we should have done this

1 at lunch. That's my fault.

2 All right. Anything else? And,
3 again, that's something else we can do. So I
4 guess come in and present this part and I'll
5 explain to the jury that, you know, we have
6 to send them back out for some other issues
7 that can't be taking place until you've
8 rested.

9 All right. Anything else before we
10 bring in the jury? From the State?

11 SOLICITOR MOYER: No, Your Honor.

12 THE COURT: Anything from the
13 Defense.

14 MR. WARDER: Yes sir. I'm going to
15 have some Motions when they rest.

16 THE COURT: Right. And that's
17 what I'm saying is we'll bring the jury out
18 for one minute and then send them back. You
19 know, because we're -- you know, and then
20 we'll go over anything.

21 All right. Bring the jury in,
22 please?

23 (JURY IN AT 2:15 P.M.)

24 THE COURT: All right. Ladies and
25 gentlemen, we've have now kind of gotten to

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1 the stage where some of the procedures
2 that we have to do kind of dictate our
3 schedule and when we send you in and out. So
4 don't be frustrated if we bring you in here
5 for a few minutes and then send you
6 immediately back out. It just because of the
7 stage of the trial, some of the procedural
8 issues that we have to deal with. So I'm
9 just letting y'all know that, kind of a
10 heads-up on that.

11 So, Mr. Moyer?

12 SOLICITOR MOYER: Thank you, Your
13 Honor. May it please the Court, Your Honor.
14 At this time the State would seek to
15 introduce State's Exhibits Numbers 58 and 59,
16 which are certified convictions of the
17 Defendant, Richard Earl Tedford, each for a
18 count of burglary.

19 THE COURT: All right. And we've
20 discussed this previously and those have been
21 introduced without objection.

22 SOLICITOR MOYER: Your Honor, the
23 final matter would be at this time, as the
24 Court noticed State would ask that the Court
25 take judicial notice of sunrise and twilight

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1 on August the 13th of 2013 in Greer, South
2 Carolina.

3 THE COURT: All right. And we
4 have. And that's Court's Exhibit 1.

5 COURT REPORTER: Yes, sir.

6 THE COURT: And that is from U.S.
7 Naval Observatory civil twilight 6:21 a.m.
8 and sunrise at 6:48 a.m. Is that correct?

9 SOLICITOR MOYER: That's correct.

10 THE COURT: And the Court takes
11 judicial notice of that fact.

12 And ladies and gentlemen what I mean
13 by judicial notice is that we are accepting
14 that as an established fact as far as the
15 time of twilight and sunrise and it does not
16 require additional proof by either party.
17 And we will instruct you further on how
18 you're to consider that in deliberations at
19 the conclusion of the trial.

20 All right. Anything else from the
21 State?

22 SOLICITOR MOYER: No, Your Honor.
23 At this time the State would rests.

24 THE COURT: Okay. Now, that's why
25 I was telling you about, procedural-wise.

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1 purchased that the parties intended to be in
2 the dwelling, but was a house that no one had
3 been living in. As far as we know, no one
4 had ever lived in it. It was not equipped to
5 be lived in yet. It had some kind of floor
6 covering work, being carpet or -- I think she
7 said it was carpet and they were changing it
8 to hardwood. But anyway, there was
9 construction being done. Construction people
10 were coming at that point in time. And all
11 that was there was some new personal products
12 that they were going to use when they
13 occupied the residence. This house stands on
14 the same foot as any other house that has not
15 been lived in. And that, as Your Honor is
16 aware, a dwelling house is one that is
17 regularly occupied. Regularly. And that
18 with the case law the house has to have an
19 identifiable resident. There was no
20 identifiable resident because no one has
21 taken up residency.

22 THE COURT: And I guess you're
23 specifically referring to Indictment 14-00596
24 I believe with Arlene Bruce as the victim?

25 MR. WARDER: Yes.

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1 THE COURT: Okay. The other one
2 is distinct. I'm just making sure we're on
3 the same page. All right. Mr. Moyer?

4 SOLICITOR MOYER: Thank you, Your Honor.
5 May it please the Court. My response to that
6 first would be to refer to the definition of
7 dwelling in South Carolina Code 16-11-310(2).
8 And it's got -- it says dwelling means its
9 definition found at 16-11-10 and also means
10 the living quarters of a building which is
11 used or normally used for sleeping, living or
12 lodging by a person.

13 This house -- there's no dispute that
14 this was a residence that was being built.
15 This is the sort of house, this is the sort
16 of building that that is the normal function
17 and use of this building.

18 We also know that this building had been
19 purchased by Mr. Walker and Ms. Bruce. And
20 we also know that they were the sole persons
21 that had keys to that residence. We know
22 that all utilities were on. We know that the
23 refrigerator had been moved in. We know that
24 they were going to that house almost daily,
25 moving items in. They could have lived in

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1 that house had they chosen to. It was only
2 awaiting the rest of the furniture in order
3 to do so.

4 The fact that they were actually taking
5 up residence in another actual location
6 should not factor into the equation because
7 there's case law. I'm think it was *State v.*
8 *Evans* where a vacation home can also be
9 considered a residence because people will go
10 to that vacation home. There is a case ---

11 THE COURT: But isn't a vacation
12 home one that they've already kind of taken
13 up sleeping there?

14 SOLICITOR MOYER: Yes, I agree.

15 THE COURT: They normally use
16 that. In this case, though you actually have
17 no one -- the victim has never slept there.
18 So they've not normally used that as a
19 sleeping quarters.

20 SOLICITOR MOYER: They had not
21 actually slept there yet. However, they were
22 there continuously. They were there almost
23 daily throughout that period of time. There
24 is case law *State v. Evans*, which is actually
25 a case that was overturned on appeal on the

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1 issue. And in that case the residents of
2 that home had moved out and had no intention
3 to return. The Court stated that a house,
4 although furnished as a dwelling house, loses
5 its character for such if the occupant leaves
6 it without the intention to return. So the
7 distinguishing feature in this case is those
8 people had left this apartment and didn't
9 have an intention to return. In our case,
10 our victims intended to live there. And they
11 were going to live there.

12 THE COURT: Is the distinction not
13 that those other people were already in that
14 house using it to sleep in.

15 SOLICITOR MOYER: Well, that is a
16 particular factor. Well, in that case --
17 well, the case I just quoted the people had
18 moved out. But in *State v. Evans*, yes, the
19 people had previously lived in the home and
20 had temporarily left it. But the Court said
21 -- if I could read the last paragraph. This
22 is *State v. Evans*, a 2008 case, (reading):
23 "Here there's sufficient evidence of the
24 victims intent to return to the mountain
25 properties, the vacation home. As noted by

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1 Mr. Shaw they visit the home about once every
2 two weeks a month. The utilities were all on
3 in the home. It was ready to be lived in."
4 That is the quote. "They had previously been
5 living in the home off and on. And the only
6 reason the Shaws had not been staying
7 overnight in the home the last three years
8 was his wife's current medical condition
9 preventing them to do so." The case goes on
10 to say "a person could have more than a
11 single dwelling house, any of which may be
12 the object of a burglary despite the
13 occupants absence for extended periods of
14 time, so long as he had the intention to
15 return. Consequently, a vacation cottage
16 qualified as a dwelling house, even though
17 the owner had not been there in months. The
18 court can find no error that the trial court
19 denied the Motion for directed verdict."

20 I understand the distinction in this case
21 is that the homeowners had actually lived in
22 the home before. But that case does not
23 limit its ruling to that. And I think the
24 distinguishing feature is the fact that those
25 homeowners in *State v. Evans* had the

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1 intention of going to the home. During those
2 months period of time, they had not been
3 staying there at all, but part -- the fact
4 that the court latched onto was the fact that
5 there was intention to go into the home and
6 stay there.

7 And, in fact, in our case, I would argue
8 that the Walkers had an even greater link to
9 this home in that they were going there every
10 day.

11 The distinguishing features for burglary
12 first degree of a dwelling is that it changes
13 the character of the burglary from one of a
14 property crime to one that is more directed
15 to people, to occupants and to people being
16 there. The victims in this case were going
17 every day. They could have been home when
18 this burglary took place. They did feel
19 personally violated. So I would argue that
20 it is their home.

21 THE COURT: But isn't the whole
22 point of a burglary -- again, I don't think
23 there's any -- I mean, the allegations are a
24 burglary. I guess the distinction here is
25 whether this is a dwelling or is it a

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1 building?

2 SOLICITOR MOYER: Yes.

3 THE COURT: And that's the
4 difference between first and second.

5 SOLICITOR MOYER: Yes, sir.

6 THE COURT: But I mean, the whole
7 purpose of a burglary first is to
8 protect people that are sleeping in the
9 nighttime basically, you know, the
10 nighttime, stuff like that.

11 I mean, you know, the problem is that you
12 -- all of those other cases, they'd already
13 used that facility or that building for
14 sleeping. And then they were with the intent
15 of coming back to it.

16 But, you know, in your case here, you
17 know, at what point do you have from the time
18 your purchase a house does it become a
19 dwelling for burglary first?

20 SOLICITOR MOYER: And I would argue
21 -- and where exactly that starts, you know, I
22 don't know if I can really say. But for this
23 case I think that he'd clearly gone over that
24 line because they were in the process of
25 moving in. As far as a burglary first

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1 degree, it can also happen and usually
2 happens when people aren't home. Most
3 burglary first degrees happen during the day
4 and the person goes in and either steals a
5 gun, which makes it burglary first degree or
6 they have two priors. So I would say the
7 overwhelming majority of burglary first
8 degree cases that come before the Court are
9 situations where the victim isn't home.

10 Here's probably a greater chance for
11 the victims to have been confronted by this
12 Defendant in this case than most other
13 burglary cases.

14 THE COURT: Right. But the
15 definition of dwelling seems to, you know,
16 focus on sleeping. And I don't have the
17 *Evans* case. I could not pull it up but I
18 would be glad to look at it.

19 MR. WARDER: Your Honor ---

20 THE COURT: And I know I kept
21 interrupting you there.

22 SOLICITOR MOYER: Oh, no. I think
23 I got it all on there.

24 THE COURT: All right. Mr.
25 Warder?

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1 MR. WARDER: The State v. Harvey
2 (phonetic) is a good case. It holds that an
3 identifiable occupant must reside and sleep
4 within the dwelling. In other words, it has
5 to be somebody.

6 Mr. Moyer's whole argument is that there
7 might be chance encounter and that's what it
8 is when there are no residents there. And
9 that's not it.

10 There's all kinds of businesses that
11 there might be a great chance running into
12 the owners. There are all kinds of
13 outbuildings that might be it. It isn't that
14 frequency has anything to do with it.

15 This is -- first degree burglary is a
16 crime of the residents, crime against the
17 residents. Some people have more than one
18 residence and so when you go on vacation or
19 are temporarily away it doesn't lose its
20 status as a residence. But it doesn't gain
21 residence status until you take up residence
22 and there is an identifiable occupant, not an
23 owner.

24 It's just not a residence, Your Honor, or
25 a dwelling.

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1 SOLICITOR MOYER: Once again, Your
2 Honor, I think the key language for this
3 analysis is "temporary absence." And I would
4 argue to you, Your Honor, that this period of
5 time when the Defendant committed the
6 burglary at Meritage would be considered
7 temporary absence from the home.

8 THE COURT: Well, looking at your
9 case that you handed up it says -- that
10 refers to 16-11 says "dwelling house as used
11 in arson and burglary statutes are any house,
12 apartment, building erection in which there
13 sleeps a person who lodges there with a view
14 to the protection of the property." And then
15 it says but "then a temporary absence from
16 that dwelling." So you've still got to
17 establish that sleeping before you have
18 temporary, I think.

19 All right. I'm going to take this.
20 I'm going to look at this. Anything else.
21 I'm going to break for a second.

22 Anything else on this issue?

23 Well, let me -- okay. Let me hear
24 your other Motion too.

25 MR. WARDER: Well, Your Honor, I

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1 would move for a directed verdict on the
2 associated larceny or grand larceny. The
3 testimony came in as to the value of the
4 stuff. And he gave two values. One which
5 would make it possibly a grand larceny and
6 one that wasn't. He talked about his wife's
7 used stereo that would have cost thirteen
8 hundred dollars today but only cost her nine
9 hundred dollars. And, of course, obviously
10 in any case they're going to depreciate if
11 someone's used it, and he never testified to
12 what he thought the present value of it was
13 with regard to replacement cost but what
14 initial cost was. Further, it doesn't -- I
15 think his testimony fails to make up the two
16 thousand dollars (\$2,000).

17 THE COURT: I haven't -- I mean, I
18 didn't tally that up. Do you have a tally?

19 SOLICITOR MOYER: Well, Your Honor,
20 my position on that is he has two prior
21 convictions for larceny. So the value of the
22 property is not going to make any distinction
23 as far as sentencing goes. And so if we call
24 this a petty larceny, which the value did not
25 come to two thousand dollars (\$2,000), but

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1 the indictment is indicted under the enhanced
2 statute. It has -- he has two previous
3 convictions for larceny and so if the jury
4 finds him guilty of petit larceny, he still
5 is subject to a ten-year sentence as he would
6 be for grand larceny. So it's really a
7 distinction that's not going -- that's not
8 going to make any difference in the end
9 result.

10 THE COURT: All right. Like I
11 said, I didn't keep a tally on that. So
12 you're saying it does not reach the ---

13 SOLICITOR MOYER: I agree it did not
14 come to two thousand dollars.

15 THE COURT: All right. Mr.
16 Warder, anything further on that?

17 MR. WARDER: Well, I guess we'd
18 have to decide -- that sentencing has not
19 been decided. If it is enhanced, ---

20 THE COURT: Yeah. I mean, if that
21 comes at the appropriate time.

22 MR. WARDER: That petit larceny,
23 the only question would be is it one prior or
24 two prior convictions.

25 THE COURT: So are you amending?

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1 SOLICITOR MOYER: I don't have a
2 problem with amending the indictment to petit
3 larceny. In fact, I would move to do so
4 based on the evidence that came into the
5 record on that particular charge.

6 THE COURT: And since it's just
7 the dollar amount, any response to that -- I
8 mean it just changes the dollar amount.

9 MR. WARDER: I have no argument
10 with that.

11 THE COURT: All right. So based
12 on that then indictment 2014-597, indictment
13 for grand larceny with Arlene Bruce as the
14 victim is amended for petit larceny. Okay,
15 that is granted.

16 All right. Let me look at this,
17 read this case and then we'll be back in just
18 a minute.

19 MR. WARDER: Your Honor, just for
20 the record.

21 THE COURT: Yeah, okay.

22 MR. WARDER: I'm not trying to
23 complicate things.

24 THE COURT: No, that's okay.

25 MR. WARDER: I'm going to make one

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1 more. And that really is for a directed
2 verdict on the other burglary first and
3 larceny. In that there's absolutely no
4 evidence against this defendant except he was
5 in the vehicle at a time close to when it
6 occurred. That's the only piece of evidence
7 and it seems that insufficient. There's no
8 evidence of any sort that he was in there.
9 Nothing to identify him, no trace,
10 fingerprints, DNA. Not recognized, not
11 identified not described.

12 THE COURT: I believe that the
13 circumstantial evidence clearly meets the
14 burden that the State has to overcome a
15 directed verdict. So I'm going to deny your
16 motion on that.

17 MR. WARDER: And that would be to
18 both charges, the larceny and the ---

19 THE COURT: Yes, both the both
20 larceny and the burglary.

21 All right. We'll take just a brief
22 break.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 THE COURT: All right. In

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1 reviewing the case you presented, Mr. Moyer,
2 and in the Verebee (phonetic) case and it
3 talks that the court required the apartment
4 have an identifiable occupant sleeping or
5 residing therein. And then the temporary
6 absence would not prevent it from not fitting
7 into the burglary statute. I just think that
8 without that sleeping or residing, you
9 haven't gotten to that dwelling level for any
10 absence to make a difference.

11 I mean, I don't find that on that
12 particular indictment that even though they
13 were very close to moving in there and the
14 allegations about a burglary in general are
15 there, I just don't believe that it qualifies
16 the way the statute treats "dwelling."

17 SOLICITOR MOYER: So we'll go
18 forward on the burglary second degree then,
19 Your Honor.

20 THE COURT: Yeah. I think -- I
21 will allow you to amend that. And I'll be
22 glad to hear from you on that.

23 MR. WARDER: Wouldn't burglary
24 second refer to a dwelling too?

25 SOLICITOR MOYER: No.

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1 THE COURT: No, it doesn't. I
2 don't think so.

3 SOLICITOR MOYER: A nondwelling if
4 there's an aggravating factor. The same
5 aggravating factors as in first degree. So
6 they were nighttime, there were two
7 convictions. That still makes it burglary
8 second.

9 THE COURT: Under 16-11 and 3-12,
10 burglary second degree enters a building
11 without consent with nighttime or two prior
12 convictions.

13 So on indictment -- I mean, I'll be
14 glad to hear from you, Mr. Warder. I don't
15 mean to cut you off if you want to look at
16 that.

17 MR. WARDER: (No verbal response).

18 THE COURT: All right. So the
19 Motion before the Court is amending that to
20 burglary second. And that's what I said,
21 I'll be glad to hear from you, Mr. Warder if
22 you have any ---

23 MR. WARDER: No. I think that's
24 the appropriate, Your Honor.

25 THE COURT: Okay. So, therefore,

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1 your Motion for -- the Motion to amend
2 burglary of the indictment 2014-GS-23-0596
3 burglary second degree is granted.

4 MR. WARDER: Thank you, Your Honor.

5 THE COURT: All right. Anything
6 else from the Defendant?

7 MR. WARDER: No, sir.

8 THE COURT: Anything else from the
9 State?

10 SOLICITOR MOYER: Nothing else from
11 the State.

12 THE COURT: Mr. Warder, for
13 planning purposes do you want to take a
14 minute? I mean, are you going to be
15 presenting any evidence?

16 MR. WARDER: I am, Your Honor.

17 THE COURT: Okay. We will take a
18 -- are we ready to proceed then?

19 MR. WARDER: Yes, sir.

20 THE COURT: All right. Any
21 questions about -- okay. Then we'll just go
22 through the. We'll take a break and we'll go
23 through the charge. I think I'm pretty much
24 ready for that because I had anticipated my
25 ruling, and your Motion. So I had put second

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degree burglary in there.

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1 MR. WARDER: Okay.

2 THE COURT: All right. Anything
3 further before we bring the jury.

4 SOLICITOR MOYER: I think maybe you
5 should question the Defendant.

6 THE COURT: Yeah. Okay. I knew
7 there was something else. There was
8 something.

9 Okay. Mr. Tedford, if you will
10 rise.

11 DEFENDANT: (Complied)

12 THE COURT: Will you swear him in
13 Madam Clerk?

14 (WHEREUPON DEFENDANT DULY SWORN)

15 THE COURT: Okay. Mr. Tedford, I
16 just want to go over a couple of things with
17 you. And I'm sure our attorney has already
18 talked to you at length about this. But now
19 comes to the ---

20 And well, you know what, I assumed
21 when you said evidence that your client will
22 testify?

23 MR. WARDER: That is true.

24 THE COURT: Okay. I'm going to
25 explain to make sure you understand your

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1 rights on the record before we proceed
2 forward. I mean, as you know, as I'm sure
3 your attorney has explained to you, you have
4 a Constitutional right to remain silent. You
5 know, nobody can make you testify. And if
6 you do not testify then I will instruct the
7 jury that they're not to consider that in any
8 way in their deliberations. And the State
9 would still have the burden of proving you
10 guilty beyond a reasonable doubt as to every
11 element of every charge. So you understand
12 you have that right to remain silent?

13 DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, we've
15 reached the stage in the trial where the
16 State has rested and it's up to you to
17 determine whether you're going to put forth
18 any evidence.

19 In addition to, and I'm sure your
20 attorney has talked with you. In addition to
21 certain strategies that you may have, you
22 also -- I want to make sure you understand.
23 If you decide to testify, you know, then the
24 State may have -- and I don't know anything
25 about your criminal record -- is there a

1 criminal record that would be used?

2 SOLICITOR MOYER: No, Your Honor.

3 THE COURT: Okay. So there's no
4 impeachment evidence against you as far as
5 any prior criminal record, okay?

6 DEFENDANT: (Affirmative nod).

7 THE COURT: So that would not be an
8 issue there. But, I mean, do you understand
9 your right, that you don't have to testify?

10 DEFENDANT: Oh, I understand.

11 THE COURT: Okay. And have you
12 had sufficient time to talk to Mr. Warder
13 about your rights and whether you want to
14 testify and the strategies involved in that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Okay. In light of
17 everything, do you wish to testify?

18 DEFENDANT: Yes, sir.

19 THE COURT: Okay. And do you have
20 any questions of me or do you need any more
21 time to talk to Mr. Warder before that?

22 DEFENDANT: (Negative response)

23 THE COURT: Okay.

24 DEFENDANT: Unless he needs it.

25 THE COURT: Okay. All right. So

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1 you've been properly advised of your rights
2 and you are going to testify.

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. Are we
5 ready for the jury to come in?

6 SOLICITOR MOYER: Yes, sir.

7 THE COURT: I mean, is the State
8 ready?

9 SOLICITOR MOYER: Yes, sir.

10 THE COURT: Is the Defense ready?

11 MR. WARDER: Yes, sir.

12 THE COURT: All right. Bring the
13 jury, please?

14 (JURY IN @ 2:55 P.M.)

15 THE COURT: All right. Ladies and
16 gentlemen, thank you again for your patience
17 and now we will proceed with the defense.

18 MR. WARDER: Your Honor, if it
19 please the Court we would call the Defendant,
20 Richard Tedford, to the stand.

21 THE COURT: All right. If you
22 would come forward.

23 (WITNESS TAKES STAND)

24 RICHARD TEDFORD, having been duly sworn
25 to tell the truth and nothing but the truth,

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WARDER:

4 Q. Richard, where do you live at?

5 A. 161 Woodcliff Drive, Wellford, South
6 Carolina.

7 Q. Okay. And have you always lived in
8 Wellford?

9 A. Yes, sir.

10 Q. How old are you, Richard?

11 A. I'll be fifty-one Saturday.

12 Q. Did you ever go to high school here?

13 A. I actually went to the Decatur High
14 School in Alabama and then moved here after
15 graduation, with my mother.

16 Q. Okay. What did you do after you
17 graduated?

18 A. I went into the Marine Corps.

19 Q. When did you go into the Marine
20 Corps?

21 A. It was '83 to '87.

22 Q. Okay. And what did you do in the
23 Marine Corps.

24 A. I was a helicopter specialist and
25 also an M.P. in Norfolk, Virginia.

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1 Q. Okay. Where did you serve at?

2 A. In Afghanistan.

3 Q. When did you get out of the service?

4 A. Late '87.

5 Q. Okay. And what did you do since
6 then?

7 A. I was an operator and worked for
8 Fluor Daniels for many years.

9 Q. When you got out of the service did
10 you go back to Wellford?

11 A. Yes, sir. My mother lives there,
12 too. She's lived there her whole life.
13 She's a retired librarian in Lyman and in
14 Spartanburg.

15 Q. I want to draw your attention to the
16 dates of August the 12th and August 13th.
17 We've been sitting here all day, heard people
18 talk about that. I want you to tell us what
19 happened to you, what went on those days.
20 What did you do on the 12th?

21 A. The 12th night, me and my fiancé,
22 Donna. I hate to say, we had been to Greer
23 to buy her some methamphetamine.

24 Q. Okay. You went from Wellford to
25 Greer?

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1 A. Yes, sir.

2 Q. And your focus was to buy
3 methamphetamine?

4 A. Yes, sir, for her.

5 Q. What happened while you were there?

6 A. Well, we went there and we purchased
7 it. And then we were going back home. And
8 she's from Landrum and she knew the back way.
9 She says to go -- it'd be quicker than going
10 the way I know to go, to go to Wellford on
11 the backroads. I'd never been on 101 or back
12 there before.

13 And she decided she wanted to do some
14 drugs. And we got in an argument about this
15 because I wouldn't allow it in the car. She
16 pulled over because she got lost on a wrong
17 turn. Well, I got out of the car with her
18 drugs and she took off mad because I wouldn't
19 give them to her.

20 Q. Okay. And you got out and took them
21 with you?

22 A. Yes, sir.

23 Q. Okay. What time of day or night was
24 this?

25 A. It was around 10:30, 11:00.

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1 Q. Okay. When you got out, where were
2 you?

3 A. I just knew I was on 101. It was
4 very dark. And I walked for hours. And I
5 got on the phone to call home where her
6 daughter was, talking to her, trying to get
7 somebody to come pick me up, trying to get a
8 ride out of there.

9 Q. Okay. Did you finally get a ride?

10 A. Well, no one at my home -- there was
11 a lot of people at my house that were waiting
12 on the drugs also. They had no car at this
13 point and her -- she sent her brother on a
14 moped to come get me. I said I didn't care
15 how I got out of there. Just send someone to
16 come get me.

17 Q. Okay. So did her brother on a moped
18 arrive?

19 A. No, he never did arrive. And I
20 walked all the way -- for like hours before
21 dawn. When I got, and I called back and I
22 was cursing them -- 'What the heck?' I
23 needed a ride out of there.

24 And finally there was a man named Derek
25 or Dirk, that's her work friend, and his

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1 black friend, they came in a white van. So
2 I was looking for the white van and I stayed
3 at the neighborhood ---

4 Q. The neighborhood? You're talking
5 about ---

6 A. Outside the neighborhood here, the
7 one on this far side. I don't know anything
8 about the other neighborhoods.

9 Q. Okay. You're saying you stayed on
10 which side of Highway 101?

11 A. With the -- I don't have my glasses
12 to read that. The address where the people
13 were moving in?

14 Q. ---

15 A. That neighborhood, it's a
16 subdivision. I don't know the name of it.
17 But I stayed on the side of that subdivision
18 and -- stayed on the side of that subdivision
19 and on the left side of , trying to go
20 back to Greer.

21 Q. Okay.

22 A. And I waited there until about 6:45
23 still in this black van -- no white van. I
24 got red mud all over my pants and looking
25 terrible walking down .

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1 I see in the back of this new
2 subdivision, there were Mexicans working back
3 there. There was a Port-a-John back there on
4 the back, I think. And I asked them, because
5 they're new houses and they're building new
6 houses. And I asked them 'maybe could I use
7 the facilities?' And I said 'well, I can pay
8 you twenty dollars.' And a Mexican walked me
9 to this address.

10 Q. Okay. Now, the Mexican that was
11 there, what time was he there? What time did
12 you give him twenty dollars?

13 A. I would say the sun had just came up
14 or just coming up. It was 6:40 to 6:50.

15 Q. And you said he took you to the
16 house?

17 A. Yes. And walked me in and said
18 nobody lived there. I didn't -- I knew that I
19 should not be in there. I knew that it was
20 new. I didn't think it belonged to anybody.
21 I took some towels out of the front bedroom
22 because it had a window. And I took the
23 towels to the other bedroom. And I tried to
24 turn the light switch on. I don't think the
25 power was on. And that's why I screwed the

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1 bulbs. And I brought -- so then I saw the
2 candles and I got the candles -- I wasn't
3 trying to hide my prints. I didn't know I
4 was committing a crime that I would have to
5 hide my prints. I then took a bath with the
6 door shut. There were the candles and I
7 didn't have any light in there. There's no
8 window in that bath.

9 Q. Okay. You took a bath and ---

10 A. Yes, sir. There was no shower
11 curtain in there, it was brand new. I'm
12 sorry I did it, but I did take a bath in
13 there and did get the towels dirty.

14 Q. Okay. What did you do about your
15 clothes?

16 A. Well, at one point I thought about
17 going -- and I saw the washing machine. And
18 I lifted the -- grabbed the lid to the
19 washing machine and lifted it up.

20 But I just figured I -- I didn't do that
21 because Derek called said that he was going
22 into the address. He pulled into the address
23 -- and as I assume this is the right -- in
24 the same black Scion that we've been talking
25 about.

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1 Q. Okay. When did you next see anybody
2 else?

3 A. At what point, sir?

4 Q. Well, you are there -- you've taken
5 a bath?

6 A. Yes.

7 Q. Did you get dressed?

8 A. Yes. And that's when I was on the
9 front porch and saw -- they have the steps
10 that come down the front. And I sit on the
11 steps. And I would have sworn that the sign
12 in the front still said that house was for
13 sale. I had no idea it was sold. I didn't
14 know it belonged to anybody.

15 Q. Well, why did you think there was
16 candles and stuff in there then?

17 A. Well, it was just -- I thought it
18 was a show house. Like, I'd just bought my
19 doublewide home in Wellford and ---

20 Q. It only had new towels and stuff
21 like a dealer show house?

22 A. Yes.

23 Q. How long did you sit on the porch?

24 A. Probably -- I'd only just got in the
25 bathtub. And just -- I heard him backing up

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1 because the phone and rang. And they must
2 not have waited very long because I had to --
3 that's why most of the mud was on the towels,
4 because I didn't have time to finish my bath.
5 I'd wiped off quick because he was supposed
6 to be pulling right up.

7 Q. And did you take a shower or bath?

8 A. It was a bath. There was no shower
9 curtain n there. I did not take a shower. I
10 know we have heard they say a shower but I'm
11 sure it was a bath.

12 Q. Okay.

13 A. I went out and sat on the porch and
14 maybe two minutes he pulled up.

15 Q. Okay. When he pulled up he was
16 driving what?

17 A. The black Scion. I'm assuming it's
18 is the same one.

19 Q. Okay. Now, had you ever seen him in
20 a black Scion before?

21 A. No, sir. Matter of fact, I asked
22 him about where his van was. And he said ---

23 Q. You probably can't say what he said.
24 And don't say that because you can't say what
25 other people say. You talked to him and what

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1 did you do?

2 A. I said 'thank goodness.' I didn't
3 care at that point. I wanted a ride home.
4 And then I received a call from my
5 girlfriend, the one who left me. She was
6 over by the Hot Spot in Greer. And so she
7 wanted me to meet her. I told Derek --
8 that's his name, I call him Dirk. Derek.
9 I told him to drive me to Greer. I was wore
10 out, I was mad. I got in the right side of
11 the Scion and lifted the ---

12 Q. That's the passenger's side?

13 A. Side. And the -- laid the seat back
14 and then I locked the front door to the
15 house.

16 Q. Okay.

17 A. Personally.

18 Q. I'm fixing to talk to you about
19 that. I'm going to talk to you about locking
20 the front door. Did you break the front
21 door?

22 A. No. Excuse me, sir. I skipped a
23 part. Derek went in the house.

24 Q. Okay.

25 A. Okay. He wouldn't wait because I

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1 had the drugs. And they'd wanted the drugs
2 all night, so I gave him some. He went into
3 the bathroom but he wasn't in there long. I
4 guess to smoke or whatever. And then he came
5 out and I was already laid back in the seat
6 in the car and then he -- we pulled out and
7 left and I fell asleep.

8 Q. Okay. When did you wake up?

9 A. Well, I woke up to a man -- I just
10 opened my eyes to a man, and Derek was
11 fumbling in the back, I guess, with -- I
12 guess he had the keys back there, I assume.
13 But when I seen the man, I know now and all
14 of that since, because the man said he had a
15 gun. I never knew the man had a gun. So I
16 guess Derek saw the gun and that's why Derek
17 ran and the man came out and talked to me and
18 told me, asked me what I was doing. Well, I
19 had just woke up. I didn't know where Derek
20 was. And he said for me to leave. Well, I
21 got into the car, as he said. And I was
22 going to drive off but there was no keys in
23 the ignition. I told him that, 'there's no
24 keys.' And I was embarrassed. And I had to
25 get out, look for the keys. And luckily they

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1 were in the back. And then when I drove down
2 Derek was at the end of the street. And he
3 got back in and drove. And then I got back
4 in and I went back to sleep.

5 Q. Okay. Where did you go next?

6 A. Well, again, I wake up. It's hot.
7 The back hatch is up. We're at -- there's
8 another lady -- well, anyway, he's not around
9 so I figured we were at one of his friends or
10 somebody he knows. So I get out of the car
11 and I walked to the front door. And I knock
12 on the door, I didn't ring the doorbell. I
13 asked, 'Is Dirk or Derek here?' That's all I
14 asked. I don't remember walking away or
15 saying anything else to that lady. I had
16 just asked for Derek. She said he wasn't
17 there. And I immediately walked back to the
18 car. I can't believe she didn't see him. He
19 was in the walking -- he was in the driveway.
20 And then we left again. And then I went and
21 got back in the passenger's side and went to
22 the Hot Spot.

23 Q. Okay.

24 A. Down 14 past the Waffle House.

25 Q. Okay. Was the car full stuff when

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1 he come out of the house that you'd just
2 left?

3 A. No, sir. There never was anything
4 in the car. And these people that seen me in
5 the car and they were close enough to see
6 there was none of that stuff in the car and
7 the car was never damaged. I don't -- I
8 didn't have any part of that.

9 Q. And when you go to Greer what
10 happens?

11 A. We parked in front of the Hot Spot.
12 He says to me -- 'I have left my phone and
13 stuff I have to go back.' And I said, 'well,
14 I'll see you.' I said, 'I'm going to meet my
15 fiancé here.' And she -- and I got out.
16 That's when we parted ways. This is maybe
17 10:00 or 11:00.

18 Q. Okay.

19 A. Maybe -- yeah, 10:00.

20 Q. Did you go back to Lyman or
21 Wellford?

22 A. Yes, sir. Me and my fiancé, we went
23 straight back there.

24 Q. How did you get back there?

25 A. Oh, she has a car. She's the one

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1 that left me on 101.

2 Q. Okay. She picked you up?

3 A. Yes, sir. She had went back to the
4 drug dealer's house when I took the drugs, I
5 guess, and stayed there and met me at the Hot
6 Spot.

7 Q. Did you ever go to 15 Ryland Place?

8 A. That's with the woman that shot a
9 gun?

10 Q. (Affirmative nod).

11 A. No, sir. I've never been in that
12 house. I just stayed over here. I never
13 went over in that neighborhood.

14 I only went down on the left neighborhood
15 there.

16 I recognize this neighborhood here, but
17 I've never -- I walked past it to this
18 neighborhood. On the left of there's
19 another subdivision.

20 Q. Okay.

21 A. It's a new houses subdivision.

22 Q. And you were never in the house at
23 Ryland Place?

24 A. No, sir. And -- nor had I ever been
25 in this area.

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1 Q. They said somebody threw a canister
2 through the window. Did you do that?

3 A. No, sir. I did not.

4 Q. You didn't do anything over there?

5 A. No, sir, I sure didn't do anything
6 over there. I had no part in that. I do not
7 know what happened.

8 Q. And when Derek picked you up, he had
9 the car?

10 A. Yes, sir.

11 Q. You never saw the car with all that
12 stuff in it?

13 A. No, sir. No, sir. And I never once
14 put my hands on any of that stuff. I never
15 touched it. I don't remember seeing it in
16 the house. I didn't touch the matches, the
17 plastic, my god, I didn't touch any of that.

18 Q. Now, were you under the influence of
19 drugs?

20 A. No, sir. But I drink a pretty good
21 beer and I take prescription medication.

22 Q. Okay. And that night when you got
23 out with the drugs, you didn't take them?

24 A. No, sir.

25 SOLICITOR MOYER: Your Honor, I

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1 would object to the leading.

2 THE COURT: Sustained. Rephrase
3 your question.

4 EXAMINATION CONTINUED

5 BY MR. WARDER:

6 Q. You remember what you were doing?

7 A. Definitely, (affirmative nod), sir.

8 Q. And when you went to that house you
9 said you realized, you knew that was wrong?

10 A. Yes, sir, I did. But I had the
11 drugs on me and I had mud on me and I just
12 knew that surely there'd be a policeman pull
13 me over and ask me what I was doing. And I
14 had no business around there. I didn't even
15 know where I was. So I texted them the
16 address of that bath -- the place where I
17 took the bath to him and I guess that's how
18 -- when he pulled up in there. I don't know
19 -- I guess this is how all this stuff
20 happened.

21 Q. Is there anything else that is
22 significant that happened that morning that
23 you can remember?

24 A. The only thing I could say is, I
25 don't know where Derek's friend was that was

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1 supposed to be with him. And I don't know
2 what ever happened to, uh, Ashley's brother.

3 Q. You realize you're admitting that
4 you were at ?

5 A. Yes, sir. I really didn't -- I did
6 not go in there to burglarize. I went there.
7 I'm embarrassed to what happened. But I just
8 went in there to get clean.

9 Q. Thank you. Will you answer any
10 questions the Solicitor might have?

11 A. Yes, sir.

12 CROSS-EXAMINATION

13 BY SOLICITOR MOYER:

14 Q. Okay. Mr. Tedford, so basically
15 were you living with this guy Derek you were
16 just talking about?

17 A. No. Derek lived with the drug
18 dealer and he dated my fiancé's brother.

19 Q. So how long have you known Derek?

20 A. Probably a year.

21 Q. Okay. Because you said something
22 about everybody was looking for meth that
23 night?

24 A. No, no. We weren't looking for the
25 meth. They were looking -- they were trying

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1 to get me home, to find me because I had it.

2 Q. So you were the courier; is that it?

3 A. No, sir. It was my wife's -- or
4 well, my fiancé. And she wanted to do it in
5 the car before we got home. So I took it.

6 Q. All right. But you said -- when you
7 were testifying you said something about
8 everybody was waiting. Everybody was waiting
9 to get meth. And you were going to bring
10 that meth home to everybody?

11 A. Yes, sir.

12 Q. Is that something you do a lot? Are
13 you the guy who goes out and gets the meth?

14 A. No. I, that night, went with my --
15 she wanted to drive but I wanted to go with
16 her to make sure she -- she does meth. Her
17 daughter is twenty-one and her son's twenty-
18 seven and they do meth with her. I know it
19 is not a good situation -- yes, sir.

20 Q. Okay. Is the real reason you did
21 all of this stuff was because y'all ran out
22 of meth and you needed more money so you
23 could go buy some more meth; is that what you
24 were breaking into these houses?

25 A. Absolutely not.

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1 Q. Is that why you stole that stuff out
2 of that car -- I'm sorry, out of Meritage and
3 put it in the car to go sell that stuff?

4 A. Sir, I did not steal anything.

5 Q. Let's talk a little bit about what
6 you testified to. I want to go over this
7 timeframe with you.

8 So you told us that it was about 10:30 at
9 night when -- Donna's your girlfriend?

10 A. Yes, sir.

11 Q. Where's Donna now?

12 A. Donna -- I just heard from my
13 investigator -- was arrested two days ago.
14 She's in Spartanburg County for a meth
15 charge.

16 Q. Okay. And so you said it was --
17 what kind of vehicle was she driving?

18 A. A black Nissan. It's a little
19 small. I think it's a Civic [sic].

20 Q. Okay. So she -- y'all went and
21 bought this -- where did you buy drugs?

22 A. It's a guy in -- his name is Jason
23 Spearman. He's a drug dealer and he lives in
24 Greer.

25 Q. Okay. And what time did you get to

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1 his house?

2 A. I would say 10:00. And there was
3 some people -- and everybody wanted it. And
4 they were -- she was wanting to rush to get
5 home because she wanted to try some, and
6 that's what caused me to get out of the car.

7 Q. So it was about 10:00 at night?

8 A. That's what I'd say. It was 10:30
9 maybe. Yes, sir, 10:00, 10:30.

10 Q. Okay. So who all was at this drug
11 dealer's house when you got there?

12 A. It was just Jason Spearman and his
13 girlfriend.

14 Q. Okay. And how much drugs did you
15 buy?

16 A. Over two hundred (\$200), maybe three
17 grams. I can't recall. Less than three and
18 a half grams. It wasn't what you would call
19 an eight ball.

20 Q. How much did that cost?

21 A. Two hundred (\$200), two hundred and
22 twenty dollars (\$220).

23 Q. Whose money was it?

24 A. Donna has her own money. She
25 brought the money and that's why the argument

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1 ensued, because I wouldn't give it to her.

2 Q. So you took the drugs because you
3 didn't want her doing it in the car?

4 A. Yes, sir. I don't want her to pull
5 over and the police see us with drugs in the
6 car when I'm trying to go home.

7 Q. Well, how would you get -- I mean,
8 you had a bunch of drugs in the car. Isn't
9 that bad enough?

10 A. Yes, sir, it is.

11 Q. Well, why you worried about her
12 taking drugs? How is that worse than having
13 drugs.

14 A. She wanted to pull off on a strange
15 road. I didn't know where we were or
16 anything. It was dark on this road, 101. If
17 I was a policeman and I pulled up and a car
18 was off the road, I would ask them what they
19 were doing.

20 Q. Well, why didn't you just keep
21 driving? Why did you ---

22 A. She didn't. She would not wait.
23 I don't have any driver's license. I have a
24 moped license so I don't drive a vehicle.

25 Q. Okay. So you weren't driving?

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1 A. No, sir.

2 Q. So how did you get the drugs away
3 from her?

4 A. In the car, in the dash.

5 Q. So she put it in the dash?

6 A. Yes, sir.

7 Q. And then you're saying she stopped
8 on the side of the road?

9 A. Yes, sir. She pulled off on the
10 side of the road.

11 Q. Well, why -- then you said she took
12 off; right?

13 A. When I took the drugs and started
14 walking, she pulled out, kind of following
15 me. And then I told her to get the -- away
16 from me. I seen her pull down maybe two
17 hundred yards. She turned right. I was
18 expecting her to turn around and come get me.
19 I never thought -- and I think she got lost
20 again, to be honest. She never came back. I
21 never saw her or heard from her until the
22 next morning. So she, I assume, went back to
23 Jason Spearman's house.

24 Q. Well, I don't understand. Why did
25 you have to take her drugs from her, though,

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1 if you're just a passenger in the car?

2 A. To keep her from doing it. I took
3 them from her. I wanted her to take me home.
4 I said, "I'll give them back." And she took
5 off.

6 Q. All right. So then she dropped you
7 off. This is about 10:30 at night?

8 A. Sir?

9 Q. Is that about 10:30 at night when
10 you said she left you?

11 A. Yes, sir.

12 Q. Okay. And you had a phone with you?

13 A. Yes, sir.

14 Q. And you said you called your
15 brother?

16 A. No, sir. I called home to her
17 daughter.

18 Q. Okay. I just somehow got your
19 brother was supposed to be coming to get you,
20 you said; right?

21 A. No. No sir.

22 Q. Her brother?

23 A. It was Ashley's brother. These are
24 my fiancé's son -- it's her son and daughter.

25 Q. Okay. What's his name?

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1 A. Jamie.

2 Q. Where's Jamie?

3 A. Jamie, I don't know. I think they
4 looked for him and he says he couldn't find
5 him.

6 Q. I'm not asking what they said. But
7 do you know where Jamie is?

8 A. He was living with me at the time.
9 He was coming to get me on a moped.

10 Q. What's his last name?

11 A. It's Green.

12 Q. It's Green?

13 A. Yes, sir.

14 Q. Okay. Jamie Green?

15 A. Yes, sir.

16 Q. And then tell me about this -- you
17 said you were expecting a white van?

18 A. Yes, sir.

19 Q. Who was going to be in this white
20 van?

21 A. There was a guy named Brent that
22 drives a van. He's a black man and him and
23 Derek are good friends. It's Sakela
24 (phonetic). I use the same -- and I even
25 told the detectives when this first happened

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1 -- his name was Sallic [phonetic] and I was
2 wrong. It was Sakela. He eventually came
3 into jail. I saw him. I wrote a letter to
4 my attorney that I had saw him.

5 Q. All right. And so he's supposed to
6 be coming in this white van; right?

7 A. Yes, sir.

8 Q. And so why was this other guy
9 supposed to be with him?

10 A. It's his van.

11 Q. It's the other guy's van?

12 A. Yes, sir.

13 Q. Okay. And so you talk about -- you
14 said you had mud, red clay on you?

15 A. Yes, sir.

16 Q. How did you get red clay and red mud
17 on you?

18 A. When she pulled off the road and I
19 was walking back on the road, as she was
20 backing out, it was really muddy. It -- I
21 guess, had rained or it was -- I don't know
22 but when the sun was coming up and I looked
23 down, I was a mess.

24 Q. Okay. I see getting red mud on your
25 shoes, but how did you get red mud all over

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1 your body? Well, where was all this red mud?

2 A. It was the lower part of my -- the
3 jeans.

4 Q. Okay.

5 A. Yes, sir.

6 Q. And so that's the reason all -like
7 how far down your jeans?

8 A. Where she pulled off there's like an
9 indentured ---

10 Q. No, I'm talking about your jeans.
11 How much of your jeans were covered?

12 A. I would say a foot of red mud. Not
13 a lot but a good amount.

14 Q. Well, it was enough that you said
15 you wanted to take a shower?

16 A. Yes, sir.

17 Q. Are you sure you didn't get that red
18 mud from crawling around under the Walker's
19 house, under the crawlspace?

20 A. No, sir.

21 Q. Were you looking for cooper to steal
22 or anything like that?

23 A. No, sir.

24 Q. That's not how you got it?

25 A. No, sir. I don't steal copper.

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1 Q. Okay. So you had red mud on you.
2 And you said you were walking around all
3 night. Where all did you go?

4 A. I never walked off 101. I never --
5 I walked 101. I walked forever. And I
6 waited in front of -- right there where -- I
7 mean, this is the first time I'm seeing some
8 of this, is when you have the map in here.
9 Right there at that new neighborhood -- it
10 was new. Everything was new. I waited right
11 there. I kept calling. I never seen
12 anybody. The sun was coming up. That's when
13 I approached the Mexican.

14 Q. Okay. So the sun was coming up is
15 your testimony?

16 A. Yes.

17 Q. Okay. So this had to be somewhere
18 around quarter of seven?

19 A. I would say it was between 6:50 and
20 7:00 -- no, 6:40 and 6:50.

21 Q. Okay. Between 6:40 and 6:50 is when
22 you saw these Mexican gentlemen?

23 A. Yes, sir.

24 Q. I mean, where were they?

25 A. They were -- the house they took me

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1 to, they were behind the house, working on
2 the other lots to build new houses.

3 Q. And what were they doing?

4 A. Working the ground, kind of getting
5 it prepared I guess. Like you lay the
6 concrete before you build the houses.

7 Q. Okay. And so your testimony is that
8 you walked up to one of those guys and asked
9 him where you could take a shower?

10 A. No, sir.

11 Q. Okay. What did you go up and talk
12 to this guy about?

13 A. It looked to me like it was a
14 realtor's -- a bunch of new houses where it
15 looked like they would be empty and I had an
16 idea of cleaning up in one of them.

17 Q. Yeah. I don't mean to interrupt
18 you. Of course, I'm just asking what you
19 went up to this Mexican gentleman and asked
20 him to be able to do?

21 A. Well, I didn't go up at first and
22 ask him to take a bath. I just said, 'how
23 you doing?' And we talked. And I said, "I'm
24 a mess." And he said, "you go in the house
25 and clean." And I gave him twenty dollars

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1 and he walked me to the house and walked me
2 in there.

3 Q. How did you get in the house?

4 A. The front door was open to the
5 house.

6 Q. So your testimony is that front door
7 was open?

8 A. Yes, sir.

9 Q. And this guy let you in?

10 A. Yes, sir.

11 Q. Some guy you had never met in your
12 life took you up to a house someone was
13 living -- that someone owned, and walked you
14 into that house?

15 A. Yes, sir. And I did not know anyone
16 owned it. It was For Sale. I thought it was
17 a show house. It looked like a show house.
18 It had towels like if you would walk in. It
19 had a washer/dryer and refrigerator. There
20 was not a stick of furniture in there. It
21 was nothing like personal of anybody. I did
22 not -- if I would have known somebody was
23 moving in the house or it belonged to
24 somebody, I wouldn't have done what I did.

25 Q. Well, you knew it was -- if it

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1 didn't belong to somebody then, you knew it
2 was going to; right? I mean, they don't just
3 build houses for nothing.

4 A. Yes, sir. I was wrong for that and
5 I know it.

6 Q. When you say a show house, I mean,
7 there wasn't any furniture in the house?

8 A. Well, I bought a double-wide. And I
9 use the word "show house" because when you go
10 to Clayton homes, they have their homes set
11 up nice with decorative stuff that really
12 doesn't belong to anybody. And this house
13 was just like. It looked like everything was
14 pristine. The towels were nice and had stuff
15 of this nature.

16 Q. Well, the towels were in a closet.
17 You had to go get them out of a closet and
18 take them to the bathroom; right?

19 A. I took my towels out of the front
20 bathroom that were hanging on a rack.

21 Q. So you're saying they were already
22 in the bathroom?

23 A. The front bathroom, (affirmative
24 nod). I moved them from the front bathroom

25 Q. And you took them ---

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1 A. To the other bathroom.

2 Q. Well, why did you go to the other
3 bathroom?

4 A. Well, because the front bathroom had
5 no curtains. And it had the bath -- you
6 could me bathe in there from the street and I
7 didn't think that would be smart.

8 Q. So that other bathroom where you
9 went, that was kind of isolated in the middle
10 of the house; wasn't it?

11 A. Yes, sir.

12 Q. Okay. You couldn't really see into
13 that one; right?

14 A. Yes, sir.

15 Q. And so you took those towels had
16 been in -- do you remember them being in a
17 closet and the frame was broken?

18 A. I may have -- you know, I'm not sure
19 about the closet, but there definitely was
20 not nothing broken.

21 Q. So you didn't break the shelving
22 when you got the towels out of there?

23 A. No, I did not.

24 Q. How about going in the pantry?

25 A. That, I did not. I did walk in the

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1 kitchen one time, but I did not open any
2 drawers, I did not touch anything.

3 Q. Well, why is your fingerprint on a
4 candle in the bedroom closet?

5 A. Because when I came out of the front
6 bathroom. There was -- I guess there would
7 be like a bedroom. There was no furniture or
8 anything in there. I did look in there. I
9 seen that it was a brand new box of candles.
10 And the candleholders were in the bathroom
11 that looked like for decoration. And I
12 thought to put the candle in the holder. So
13 I took the holder to bring it up, because the
14 light switch in the bathroom, the light did
15 not work. That's why I messed with the
16 lightbulbs.

17 Q. So it's your testimony that the
18 lightbulbs were not working?

19 A. I don't think the power was on in
20 the house.

21 Q. So there was no power on at all?

22 A. I don't think so.

23 Q. All right. So you're saying you
24 then went into that bedroom closet and you
25 got a candleholder out?

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1 A. The closet had big open doors that
2 are -- you can see into the closet. You
3 don't have to go in there to see what was in
4 there. You can see it from the bedroom.

5 Q. Well, why did you need candles if
6 the sun was coming up?

7 A. Well, I -- the light didn't work and
8 I saw the candles when I walked through the
9 bedroom door to go to the bathroom. And then
10 it just was -- I thought, 'well, I'll light a
11 candle and take a bath in here.'

12 Q. Is that where you and Donna went,
13 into that bathroom to do meth?

14 A. No, sir.

15 Q. You guys didn't go in there and
16 unscrew two of the lightbulbs so it wouldn't
17 be too light in that room ---

18 A. No, sir.

19 Q. --- and light a few candles and have
20 a bath together and do meth?

21 A. No, sir.

22 Q. That's not what happened?

23 A. No, sir, absolutely not.

24 Q. Okay. So you decided you needed not
25 only candles but a candleholder for this

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1 bathroom?

2 A. Yes. The candles fit in a holder.
3 And I don't -- I just moved it. I didn't
4 want to light a candle without the holder and
5 burn or might damage the place.

6 Q. And so why did you have to get so
7 many towels into that bathroom. There were
8 what, four or five?

9 A. Well, there wasn't a shower curtain.
10 And I when I stood up there was water that
11 dripped off of me. And I got more towels and
12 put them on the floor, more than I probably
13 needed. And, yes, because of the water and
14 there not being a shower curtain so I
15 couldn't take a shower. And when I got out
16 the water (sic) would contain the water. I
17 didn't want it to mess the floor up.

18 Q. Well, let's talk a little bit about
19 the shower. I mean, why did you need a
20 shower? You said your pants were dirty. But
21 why in the world do you need to have a shower
22 all of a sudden ---

23 A. Because I ---

24 Q. Hold on, let me finish my question.
25 When you said your buddy was on the way to

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1 come pick you up and you were going to go
2 home anyway. Why all of a sudden at 6:15 in
3 the morning was it so important for you to
4 get a shower?

5 A. Because he was maybe at that time --
6 six hours waiting, so I didn't have any idea
7 he was coming then. I thought I was going to
8 have to hoof it all the way to Greer.

9 Q. So you were going to take a shower
10 and then you were going to walk all the way
11 to Greer?

12 A. Yes, sir.

13 Q. In August and you would get hot and
14 sweaty again?

15 A. Yes, sir.

16 Q. So why was it so important to take a
17 shower at 6:15?

18 A. Well, because I wanted to be more
19 presentable walking down the street with the
20 drugs in my pocket.

21 Q. More presentable to the drug addicts
22 back at the house you're going to?

23 A. Well, one thing that made me want to
24 take a shower and clean myself because police
25 officers were driving up and down 101 as I

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1 was walking. I just knew sooner or later I
2 would be stopped by one.

3 Q. Well, why did you have to keep the
4 meth with you? You said you're not a meth --
5 well, I mean, you said you weren't using
6 meth; right?

7 A. Right.

8 Q. So why did you even have to have the
9 meth with you? Why didn't you ditch it? It
10 was twenty bucks right, you said?

11 A. No it was two hundred (\$200). And
12 my girlfriend would have killed me.

13 Q. What do you mean she would have
14 killed you? Are you exaggerating?

15 A. I'm being -- I mean not really
16 killed me. I mean -- I couldn't have lived
17 with her for getting rid of her drugs.

18 Q. If you got rid of her drugs?

19 A. Yes, sir.

20 Q. Even after what she just did,
21 dropping you off on the side of the road?

22 A. Yes, sir.

23 Q. So you decided you were going to
24 keep the drugs. And you decided you're going
25 to go in that house that you had no right to

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1 be in. You knew you didn't have the right to
2 go get those towels, didn't you?

3 A. Yes, sir.

4 Q. You knew you didn't have a right to
5 go take candles?

6 A. Yes, sir.

7 Q. Okay. So you knew you didn't have a
8 right to go in someone's house with drugs
9 too; right?

10 A. I did not know it was someone's
11 house, sir?

12 Q. Well, let's say it wasn't. Let's
13 say no one moved in it yet. Someone owned
14 it; right?

15 A. It said For Sale, sir.

16 Q. There was a SOLD sticker on the
17 front of it.

18 A. I did not see the SOLD sticker.

19 Q. What? You didn't see a SOLD sticker
20 on top of the For Sale sign?

21 A. No, sir, I did.

22 Q. What, it had fallen off and ---

23 A. No. And the sign was right there at
24 the -- where I sat on porch and waited for
25 Derek. I don't remember seeing anything say

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1 SOLD. I didn't really pay that close
2 attention to the sign. I just first looked
3 at it. It said For Sale.

4 I assumed the Mexicans went in there and
5 used the restroom because they were working
6 around there and knew that this place was
7 okay.

8 Q. So they unlocked the door for you
9 and let you in?

10 A. It wasn't locked, sir.

11 Q. It wasn't locked?

12 A. No, sir.

13 Q. How about the garage door?

14 A. I never went in the garage, sir.

15 Q. So you're saying this house was
16 unlocked?

17 A. Yes, sir.

18 Q. And you just walked in?

19 A. Yeah.

20 Q. Now, so did you take a bath or not,
21 I can't quite ---

22 A. Yes, I did.

23 Q. So I assume you didn't take a cold
24 bath, right?

25 A. No, sir.

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1 Q. It was a hot bath so the hot water
2 heater was working; right?

3 A I assume, but I can't remember.

4 Q. So the electricity was working?

5 A. I don't know, sir.

6 Q. But you took a hot shower or a hot
7 bath; right?

8 A. I put water in the bathtub and took
9 a bath, sir.

10 Q. Okay. And then -- all right. So
11 then why did you have to wipe your pants with
12 these towels? Why did you have to wipe the
13 mud off of your pants onto these towels?

14 A. To try to get the mud off the bottom
15 cuffs so they wouldn't look so bad.

16 Q. So the -- I'm sorry.

17 A. That's one of the other reasons that
18 I used the towels on the floor was to wipe --
19 and that's another reason I know the power --
20 I didn't think the power worked because I
21 looked at the washing machine even, like I
22 had -- where I had my print on the washing
23 machine y'all found because I did touch the
24 washing machine.

25 Q. Yeah. We also got your fingerprints

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1 on the washing machine; right?

2 A. Yes, sir.

3 Q. And are you sure that wasn't from
4 when you leaned on the washing machine to
5 reach up and steal that box of manuals that
6 were up there? Is that how you got your
7 fingerprints on that washing machine?

8 A. I would not need a box of manuals.

9 Q. Well, you may not have known what
10 was in it if you were just trying to grab
11 everything and get out of there; right?

12 A. That was not me, sir. I did not
13 touch any of that stuff. That house was not
14 messed up when I left.

15 Q. Okay. So let's go on. So then you
16 say you went outside and you got ahold of
17 this Derek guy; right?

18 A. Yes, sir.

19 Q. And Derek is supposed to come get
20 you. So let me -- so you were trying to --
21 you took a shower or a bath. I'm sorry. So
22 you had to draw the bath, fill up the tub,
23 take a bath, dry off.

24 A. I didn't even have the time to get
25 the tub all the way full when he called on

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1 the phone. And that's another reason that
2 the towel had mud on them like they did,
3 because I was in a rush. I didn't even get
4 to complete the bath. I wasn't even in that
5 bathtub may be two minutes.

6 Q. But you also had time to walk around
7 the house and find the towels, go into the
8 closet and find candles, ---

9 A. It was ---

10 Q. Hold on. --- go light candles, walk
11 into the kitchen. So you were doing all this
12 stuff. Right? Isn't that what you testified
13 to?

14 A. Yes.

15 Q. All right. And so then this guy
16 Derek, and it's Sakela is what you told us;
17 right?

18 A. I believe is Sakela. Now I know the
19 spelling because I seen him. He was arrested
20 in jail. It's S-A-K-E-L-A.

21 Q. And you saw him in jail and you let
22 everybody know this guy's name; right?

23 A. Yes, sir.

24 Q. Okay. And he's in this black Scion.
25 So tell me a little bit about what does Derek

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1 look like?

2 A. He's 6'1", about 180, blonde, blonde
3 curly hair.

4 Q. Okay. And you are 6'4"; right?

5 A. 6'4", 6'5", closer to 6'5".

6 Q. Okay.

7 A. And Derek is probably thirty.

8 Q. That's Derek Sakela; isn't it?

9 A. Yes, that's him. But he, when he
10 came to jail had a Mohawk, the last I saw
11 him.

12 Q. Okay. But that's Derek. And he has
13 brown hair; doesn't it?

14 A. No, sir. It's blonde.

15 Q. That's blonde in that picture?

16 A. That's not blonde in that picture
17 but it's very blonde. He's from Finland and
18 all his family is really blonde.

19 Q. And he's 5'9", 147 pounds; isn't he?

20 A. 5'9", 6'.

21 Q. So he's not 6'1". He's 5'9"; right?

22 A. If that's what it says, I'll go with
23 it, but I would think he was about to here on
24 me. And I'm 6'4" or 5" and he's about right
25 here.

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1 Q. Okay. So what happens -- where did
2 he pull up to at the house at Meritage?

3 A. He pulled up at the front while I
4 was sitting on the steps.

5 Q. Okay. What did he do when he got
6 there?

7 A. He came out and says, 'You got it?
8 You got it? Donna says you got it.' And I
9 said, 'yeah.' And I gave him some. And he
10 went into the bathroom. And he was in there
11 probably two, three minutes. I was already
12 laying in the passenger's seat of the car.

13 Q. And why were you laying down in the
14 passenger's seat?

15 A. I was wore slap out.

16 Q. You were what?

17 A. I was wore slap out from arguing
18 with them.

19 Q. Okay. Your testimony is you put the
20 seat back while he went inside to do what, to
21 do meth?

22 A. Yes, sir.

23 Q. You let him in the house to go do
24 meth; is that right?

25 A. Yes.

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1 Q. So you gave him the meth ---

2 A. Yes.

3 Q. So you allowed ---

4 A. I showed him where the bathroom was
5 and he went in the bathroom.

6 Q. And you didn't go in there with him
7 and do meth?

8 A. No, sir.

9 Q. So you let some guy go into this
10 house you didn't own, and you had no right to
11 be in go in and do meth; is that right?

12 A. Yes, sir.

13 Q. Okay. So then he comes back out.
14 So he's in there and he does his -- what does
15 he snort or shoot it or what? How do you
16 take meth?

17 A. I don't know, sir.

18 Q. How do people normally take meth?

19 A. Most of them; they smoke it.

20 Q. They smoke it? How do you smoke
21 meth?

22 A. They have these little pipes they
23 smoke it with.

24 Q. You have to light the ---

25 A. You have to light the pipe.

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1 Q. So it takes a little bit of time to
2 do all of that?

3 A. Probably thirty seconds.

4 Q. And now did you ask him where this
5 car came from?

6 A. Yes, I did.

7 Q. Okay. And did he tell you he just
8 stole it?

9 A. No, sir. He did not.

10 Q. He didn't. What did he tell ---

11 A. He told me it was a drug car. Derek
12 sells pistols. Derek is into all kinds of
13 things. He sells drugs. He said it was --
14 what you mean by when you say it is a drug
15 car, that means that it is a rental.

16 Q. Okay. And that's pretty common
17 thing for drug users; isn't it?

18 A. Yes, sir.

19 Q. Is just take a car -- and say
20 somebody wants to buy some drugs they don't
21 have enough money. They'll just say here go
22 use -- they'll go to the drug dealer and say
23 'Use my car for a few hours, go get some
24 drugs. And just bring my car back?'

25 A. Yes, sir.

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1 Q. They call it issue car; is that
2 true?

3 A. No, they just -- he calls it a dope
4 car.

5 Q. A dope car?

6 A. Yes, sir.

7 Q. And so he was the dealer, so people
8 would come let him use their car?

9 A. Yes, sir.

10 Q. And so your testimony is that's what
11 you thought was going on?

12 A. Yes, sir. It had been -- there had
13 been, the last week before a truck. And he
14 had all kind -- he had different vehicles all
15 the time.

16 Q. All right. And so then your
17 testimony is that you laid back down and you
18 fell asleep and you woke up at this other
19 guy's house. You woke up at some house?

20 A. I didn't really sleep that first
21 time. I laid there trying to go to sleep.
22 I almost did. But when I was about two pulls
23 over, I imagine the one man -- I can't
24 remember his name ---

25 Q. Mr. Lockhart, the man who testified

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1 yesterday?

2 A. Yes. He has all the doors open and
3 the back open. He's doing stuff back there.
4 That's when I wake up. And then I turn and
5 look and I didn't see the man. I just saw
6 Derek take off this way. And then I am just
7 laid back in the car. When the man starts
8 walk between me, I guess, and another
9 vehicle, I step out -- I get out. But that's
10 when I walk around. And then he confronts
11 me.

12 Q. Okay. So you got out of the car and
13 you went back to the car?

14 A. Yes, sir.

15 Q. And that's when you say he
16 confronted you. And he pointed a gun at you;
17 didn't he?

18 A. Sir, I never saw a gun.

19 Q. You never saw the gun?

20 A. No, sir.

21 Q. Really?

22 A. I think I -- he had it at his side,
23 like he could have had a gun. I basically
24 was not trying to confront him or look him
25 directly in the face because I knew we

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1 probably wasn't supposed to be there. So
2 that's when I walked around trying to get
3 into the front. He said "you need to leave."
4 I didn't want to really make the man mad or
5 anything. I just wanted to leave. So I got
6 into the driver's side and -- but the keys
7 were not there. I was embarrassed at this
8 point. I looked at the man and said,
9 "There's no keys. I guess they're in the
10 back." That's what made me remember what the
11 situation was.

12 Q. So you didn't tell him about Derek
13 just running away?

14 A. I didn't think he did not see him.
15 I assumed he saw him. And I thought really
16 he did see him, the way he approached the
17 car.

18 Q. And what about the -- how did you
19 know where the keys were going to be?

20 A. Well, that's where -- I didn't not
21 know the keys were back there. That's where
22 Derek was messing with the spare tire. I
23 don't know what his deal was with the spare
24 tire. To this day, I really don't know what
25 he was doing back there with this tire.

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1 Whether he was doing that at two different
2 addresses. I just assumed that's drug use.

3 Q. So your testimony is that Derek goes
4 running away and you go back and start
5 messing around with the car. Why were you
6 messing around the back of the car?

7 A. I was looking for the keys to where
8 I could get out away from that man. And I
9 was -- we were back behind his house and I
10 just wanted to leave. I wanted to leave.
11 And then I left. I never saw the man. He
12 said he followed us. I don't remember that,
13 him following us. But Derek was right there
14 at the end of the street.

15 Q. He's waiting for you and you let him
16 drive again?

17 A. Yes, sir.

18 Q. And now what about -- you mentioned
19 going to that lady's house. But what about
20 that other house, the one on Cripple Creek
21 Road?

22 A. I don't remember that, sir.

23 Q. What was going on then?

24 A. I must have been asleep.

25 Q. So you fell asleep this time, is

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1 your testimony?

2 A. Yes, sir.

3 Q. All right. And then you said you
4 talked about going to the other lady's house.
5 And you got ---

6 A. There was only two people that I
7 remember seeing. And they were both here.

8 Q. The man and the woman?

9 A. Yes, sir.

10 Q. The woman who testified yesterday?

11 A. Yes, sir.

12 Q. So why did you go up to the house?

13 A. Because I assumed that Derek was not
14 around, that this was a person he knew. So I
15 got out and I walked to the front. I rang
16 the doorbell. I asked for him. I did not
17 have any other conversation with her. I
18 asked her if Drake or Derek -- or does he
19 live here. She said, no. It's also, it's
20 Dirk, 'they call him Dirk.' And then she
21 said, 'no, no Dirk either.' I said, 'okay.'
22 And I started walking off. And he is in her
23 driveway at the time. He's right there and I
24 can't believe she didn't see him when we were
25 leaving.

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1 Q. And so your testimony is that he
2 apparently took off again when you got to
3 this woman's house?

4 A. Yes.

5 Q. So why did he take off this time?

6 A. I would imagine drug use.

7 Q. Why would you just run away from
8 your car? Why would you pull up to someone's
9 house and then get out and run away?

10 A. Sir, I sanely cannot explain that.
11 I guess he was looking in the car or he was
12 tweaking in the car.

13 Q. So he's just going to pull up to
14 some random person's house and get out and
15 run?

16 A. That's why I rang the doorbell
17 because I wasn't thinking that he was going
18 to random houses. I thought he was going to
19 somebody's house he knew. That's why I
20 approached the house to ask if he was there.

21 Q. But your testimony is he wasn't in
22 the house. So why is he just pulling up to
23 some random person's house and then running
24 away from it?

25 A. You would have to have Derek here to

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1 ask.

2 Q. I mean, can you think of reason that
3 would make any sense?

4 A. No, sir, I cannot. Of course, I was
5 very dog tired. At this point I told him
6 angrily to take me to the Hot Spot.

7 Q. So why did you ask Ms. Powell if her
8 parents were home?

9 A. I did not, sir.

10 Q. So she made ---

11 A. I only talked to her probably within
12 four or five foot of her front door. I don't
13 remember walking away and then talking to her
14 again.

15 Q. So you admit you were at her house?

16 A. Yes, sir.

17 Q. You admit you walked up to her door?

18 A. Yes, sir.

19 Q. You admit you asked her about Derek
20 or Dirk?

21 A. Yes, sir.

22 Q. But you don't admit that you asked
23 her if her parents were home?

24 A. Absolutely not. I don't know. I
25 don't remember it. I'm sorry.

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1 Q. It seems like some crazy thing for
2 someone just for someone just to make up,
3 right?

4 A. I agree.

5 Q. You sure you were just going to walk
6 up to the house and then just try to think of
7 some excuse for why you were there, just
8 started asking questions.

9 A. No. I -- if you bring her back.
10 Put her on the stand and ask her ---

11 Q. You have to answer my question. You
12 can't tell us what to do, okay?

13 A. Oh, I'm sorry. I didn't mean to.
14 Okay. Sorry.

15 Q. I mean, were you just trying to see
16 if somebody was home there too?

17 A. No, sir.

18 Q. Did you put that tire behind her
19 garage door?

20 A. No, sir.

21 Q. Do you remember seeing a tire there?

22 A. No, sir. When I woke up in the car
23 it was hot. I had the seat back and the back
24 hatch was up again.

25 Q. So it's your testimony that you