

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Abbeville County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED

JUL 31 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICKEY SANTOINE HENLEY,

APPELLANT

APPELLATE CASE NO 2016-000844

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT NOS. 11-12 (photographs of cigarette butt)**

State of South Carolina

County of Abbeville

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Rickey Henley,

Defendant.

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2012-GS-01-348, 349

April 8, 2015

Transcript of Record

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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1 April 8, 2015

2 (WHEREUPON, court convened and the following
3 proceedings were had commencing at approximately
4 9:18 a.m.)

5 MS. BOLEN: Your Honor, my client is on his
6 way. Nicole who works with our office is driving him
7 here. He didn't have transportation. I just -- I spoke
8 with her about ten minutes ago. And he is on his way.
9 She picked him up and is bringing him.

10 THE COURT: And do you have proper attire
11 planned for him, et cetera, et cetera? He's on bond?

12 MS. BOLEN: Yes, sir.

13 THE COURT: Okay.

14 MS. BOLEN: Yeah. He was in charge of that
15 himself, but in the event that he is not properly
16 dressed, we have clothes in the office. And I can run to
17 my house and get him something.

18 THE COURT: Very good. Okay. And I assume you
19 want to wait till he gets here. I think it would be
20 better.

21 MS. BOLEN: I spoke with her. When I spoke
22 with her, she said they'd be here in a minute. That was
23 about ten minutes ago. So if we could wait just a few
24 more minutes.

25 THE COURT: Tell me the pre-trial motions, and

1 I'll be glad to wait.

2 MS. BOLEN: Yes, sir, Your Honor. We have a
3 motion on the lineup. It is under Neil v. Biggers, but
4 it's based on reliability. We have a Jackson v. Denno.
5 We have the bifurcation motion, and we have the
6 suppression of ---

7 THE COURT: Bifurcation? Tell me -- remind me
8 what the bifurcation is for?

9 MS. BOLEN: Your Honor, we're just asking that
10 the jury not hear about his prior convictions until after
11 determining the substantive ---

12 THE COURT: I'm going to let you put that on
13 the record, but I'm going to deny that motion. I can
14 tell you now. Okay. Go ahead. And what's the other?

15 MS. BOLEN: The last one, Your Honor, is the
16 suppression of lost evidence.

17 THE COURT: That's the cigarette butt?

18 MS. BOLEN: Yes, sir.

19 THE COURT: Okay. When your client gets here,
20 would you let me know?

21 MS. BOLEN: Yes, sir. Absolutely.

22 MR. ANDREWS: Your Honor, just one thing. It's
23 not a particular motion. It's just something I did want
24 to air out on the record. Mr. Henley was evaluated for
25 competency in this case. He did come back competent from

1 the Department of Mental Health. I just wanted to make
2 sure that we noted on the record that there had indeed
3 been a competency evaluation.

4 THE COURT: Does the State have a copy of that
5 evaluation?

6 MR. ANDREWS: We do, Your Honor.

7 THE COURT: Let's make it a court exhibit to
8 this trial.

9 MR. ANDREWS: Yes, sir.

10 THE COURT: Okay, sir.

11 (WHEREUPON, Court's Exhibit Number 1 was marked for
12 identification only.)

13 MS. BOLEN: And, Your Honor, if I can just --
14 we got the -- and I know this will be part of the court's
15 exhibit. But the ruling from the evaluators was that he
16 had the capacity to be competent. I think when Your
17 Honor sees him, you'll know what I mean. But Ms. Patel
18 and I met with him a few weeks ago, and both of us felt
19 at the time that he was able to understand the charges
20 against him and would assist, however slight, in his own
21 defense. So we're not challenging competency at this
22 time.

23 THE COURT: Very good. I'm thinking more for
24 P.C.R. purposes.

25 MS. BOLEN: Yes, sir.

1 THE COURT: Okay. Very good. Well, if you'd
2 let me know.

3 MS. BOLEN: Yes, sir.

4 (WHEREUPON, court stood at recess for a short break
5 during which State's Exhibit Number 1 was marked for
6 identification only.)

7 (WHEREUPON, court convened with all parties present
8 and the following proceedings were had beginning at
9 approximately 9:40 a.m.)

10 THE COURT: All right. You want to start with
11 the Biggers?

12 MS. BOLEN: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. BOLEN: Your Honor, it's just come to my
15 attention -- and I think it just maybe also came to the
16 solicitor's office's attention this morning -- there was
17 a lineup in this case. And I was told this morning that
18 the original lineup has actually been lost, and all they
19 have is a fairly poor quality black and white photo.

20 THE COURT: So we have a cigarette that was
21 lost and a lineup that was lost?

22 MR. ANDREWS: It would appear that way, Your
23 Honor.

24 THE COURT: Were those things stored together?
25 Were they were misplaced or what?

1 MR. ANDREWS: Your Honor, I'm not really sure.
2 It's my understanding they would have been -- that the
3 lineup would have been in the original case file. The
4 cigarette butt would have been in an evidence locker.
5 You know, there have been very significant personnel
6 changes at the sheriff's office since that case was
7 completed and today. So I'm not exactly sure what kind
8 of reorganization has gone on since, Your Honor.

9 THE COURT: All right. Do you have the xerox
10 copies of what the lineup was?

11 MS. BOLEN: We do have a xerox copy, Your
12 Honor. It's about -- if I can approach, they've got one
13 marked. We have the same copy that the State has. But,
14 Your Honor, in our Neil v. Biggers, we are actually
15 making our argument to suppress the I.D. based on the
16 second prong of Neil v. Biggers, that the identification
17 was inherently unreliable because the witness in this
18 case, a Mr. Ricky Culbreth, did not actually pick our
19 client out of the lineup. He selected two people and
20 said it could be either one of them, but he couldn't
21 determine between the two. Statistically, Your Honor,
22 that means he picked thirty-three percent of the people
23 in the lineup as possibly being the person he saw.

24 THE COURT: So let me make sure the record is
25 clear. You don't contend that the procedure used was

1 unduly suggestive. You're saying that the identification
2 is unreliable because he did not pick the defendant but
3 picked two out of -- what? -- six?

4 MS. BOLEN: Yes, sir. Yes, sir, that is our
5 position, that it's inherently unreliable and under a 403
6 analysis, that allowing the lineup in would be unduly
7 prejudicial to our client.

8 In addition, Your Honor, we ask that there not be
9 any in-court identification made by Mr. Culbreth since
10 three years ago, you know, just a few days after this
11 allegedly occurred, he was unable to pick our client out.
12 It's our position three years later when our client is
13 obviously the only person on trial, he should not be
14 permitted to make an in-court identification when he
15 couldn't make an out-of-court identification.

16 THE COURT: Do you have any case law to support
17 a contention -- and it sounds reasonable. But is there
18 any case law that you're aware of that says that
19 inability to identify one out of a lineup makes it
20 unreliable?

21 MS. BOLEN: Well, Your Honor -- and I wasn't
22 able to find anything exactly on point, but I did find a
23 few cases that require that the Court had to find that
24 the identification was reliable before allowing an in-
25 court identification. And those cases are State v.

1 Moore, 343 S.C. 282, and ---

2 THE COURT: South Carolina what?

3 MS. BOLEN: 282. And State v. Patterson, 337
4 S.C. 215.

5 THE COURT: 337 S.C. ---

6 MS. BOLEN: Yeah, 215.

7 THE COURT: Okay.

8 MS. BOLEN: And, Your Honor, again, the Neil v.
9 Biggers test is whether the identification was so
10 reliable that no substantial likelihood of
11 misidentification occurred. Here where he didn't make an
12 identification, our position is that it is inherently
13 unreliable because he could not identify our client.

14 THE COURT: Okay.

15 Anything from the State?

16 MR. ANDREWS: Your Honor, obviously we've not
17 had a chance to review these two cases. Before we
18 address any of the ---

19 THE COURT: But you knew the issue was there
20 prior to today that you had the eyewitness unable to
21 identify one out of the lineup; correct?

22 MR. ANDREWS: Yes, sir, Your Honor. Yes, sir,
23 we did.

24 THE COURT: Okay.

25 MR. ANDREWS: I guess what were dealing with

1 would go to the Defense's 403 argument. We think the
2 fact that he picked two and not one out of the six
3 doesn't make it unduly prejudicial. I mean, that would
4 seem to help the Defense, Your Honor. We think that it
5 is relevant, and that's why we're trying to get this
6 photo lineup in.

7 THE COURT: Well, in anticipating what's going
8 to happen during this trial, when you have a
9 identification where the witness is unable to identify
10 the alleged perpetrator or narrow it down to more than
11 just two, and then one of those two are in the courtroom,
12 then you have an in-court identification of that person,
13 why is that not inherently unreliable or unduly
14 suggestive? Well, that doesn't matter at this point.
15 But under 403, you wouldn't expect a witness to do
16 anything but identify the person who was sitting in the
17 courtroom.

18 MR. ANDREWS: Correct. But we're not going to
19 ask a particular witness, Mr. Culbreth, to identify the
20 defendant in this case.

21 THE COURT: In court?

22 MR. ANDREWS: Correct. That's correct, Your
23 Honor.

24 THE COURT: All right. So let me ask you this.
25 I'm going to take this under advisement. I want to look

1 at the cases.

2 MS. BOLEN: Yes, sir.

3 THE COURT: But if there is not going to be an
4 in-court identification ---

5 MS. BOLEN: Yes, sir.

6 THE COURT: --- and you have the scenario where
7 you have an out-of-court limited identification, i.e.
8 between one of the two, it seems like that I tend to
9 agree with the State. That seems to militate in favor of
10 the defendant in some way because it makes it
11 questionable.

12 MS. BOLEN: Yes, Your Honor.

13 THE COURT: Think about it. I'm not going to
14 rule right now.

15 MS. BOLEN: All right.

16 THE COURT: I think it's an interesting issue
17 though.

18 MR. ANDREWS: And before you rule on this, I
19 just wanted to make one thing clear.

20 THE COURT: Hold on. Let me ask you this. I
21 didn't mean to interrupt you.

22 MR. ANDREWS: Yes, sir.

23 THE COURT: But you're stipulating right now
24 for the record that the State does not intend to attempt
25 an in-court identification of the defendant through this

1 witness?

2 MR. ANDREWS: Correct, yes, sir.

3 THE COURT: Okay.

4 MR. ANDREWS: And I don't believe I'm showing
5 any cards. It's my understanding -- what we anticipate
6 is that the lead investigator on this case, Mr. Thompson,
7 is going to be the one who's going to do the in-court
8 identification of Mr. Henley. But, no, thorough this
9 witness on this lineup, Rick Culbreth, Mr. Culbreth, we
10 are not going to ask him to do an in-court identification
11 of Mr. Henley.

12 THE COURT: Okay.

13 MR. ANDREWS: I guess just for purposes of this
14 particular hearing, it sounded like Ms. Bolen agreed that
15 the procedures were not unduly suggestive.

16 THE COURT: She did say that, I thought.

17 MR. ANDREWS: Okay.

18 MS. BOLEN: Yes.

19 MR. ANDREWS: And then if that's true, I just
20 thought part of what we thought this morning's
21 presentation was going to be was calling Mr. Thompson to
22 discuss that. And so since ---

23 THE COURT: Well, since the Defense has
24 stipulated that it's not unduly suggestive, the fact that
25 you do not have the original lineup photographs are

1 immaterial to me. Now, it may be, if you start trying to
2 admit it during the trial, an authentication problem.
3 But as far as the identification issue itself, that would
4 be irrelevant. Do you disagree?

5 MS. BOLEN: No, sir. I agree.

6 THE COURT: Okay.

7 MR. ANDREWS: Now, does that mean that there is
8 not to be any mention of any photo lineup during the
9 trial, or just ---

10 THE COURT: No.

11 MR. ANDREWS: Okay.

12 THE COURT: I mean, at this point, I haven't
13 ruled on the out-of-court identification. Quite frankly,
14 it's been my understanding -- and I might be just wrong
15 on this -- I thought you had a two-pronged analysis with
16 the first prong being that you have to determine whether
17 or not there was an unduly suggestive lineup procedure.
18 If it's not, then the credibility of the identification
19 is just something that goes to credibility as opposed to
20 whether or not its admissible. Or the reliability of the
21 identification goes to credibility, not to whether it's
22 admissible.

23 MS. BOLEN: And, Your Honor, I must have
24 misunderstood. But I thought that went also to
25 admissibility, whether it was ...

1 THE COURT: Well, there's ---

2 MS. BOLEN: Well, I guess our ---

3 THE COURT: Let me look at my notes. Let me
4 tell you what my notes say.

5 MS. BOLEN: Okay.

6 THE COURT: And granted, I don't pretend not to
7 be, you know, infallible at all. But step one, was out-
8 of-court identification procedure unduly suggestive.
9 Okay. If it was unduly suggestive, then you go to step
10 two. Was the identification nonetheless so reliable that
11 no substantial misidentification existed? So if it's not
12 unduly suggestive, you don't get to step two. And then
13 you have the factors which you look at, the five factors,
14 as to determine whether or not the identification was
15 reliable notwithstanding the suggestive nature of the
16 procedure used.

17 MS. BOLEN: Yes, sir. And I think that's why.
18 we're also arguing to ---

19 THE COURT: Otherwise, it would seem that if
20 you have a good procedure, this identification -- like in
21 this case, we have two people. And I'm again saying this
22 without ruling that they should be allowed to bring that
23 up. It goes to credibility, not admissibility.

24 MS. BOLEN: I understand what you're saying,
25 yes, sir.

1 THE COURT: Okay.

2 MS. BOLEN: And, Your Honor, that's why we
3 brought up the 403 analysis that it is unduly prejudicial
4 without being probative because it doesn't prove anything
5 since he wasn't able to pick our client out. Our
6 position is that it's prejudicial since he ---

7 THE COURT: It's probative. It's not as
8 probative as it would be if one out of six was
9 identified, and that being the actual alleged defendant.

10 MS. BOLEN: Yes, sir.

11 THE COURT: Not alleged defendant, the
12 defendant. Alleged perpetrator.

13 MS. BOLEN: Yes, sir.

14 THE COURT: Okay. That's what I'm looking at.
15 And if y'all come up with any other issues with that
16 topic, I'll be glad to look at them. We don't start
17 until two o'clock. We'll go in there and start trying to
18 do our research on it too. But that's -- my initial
19 impression is that it's an issue of credibility, not
20 admissibility. Okay?

21 MS. BOLEN: Yes, sir.

22 THE COURT: All right. Now, next I have is a
23 Jackson Denno?

24 MS. BOLEN: Yes, sir.

25 THE COURT: All right. Just one second. Let

Patrick Thompson - In-camera Direct Examination by Mr. Andrews

17

1 me get to my notes on Jackson Denno, please. Although

2 I've done a million, I like to look at them.

3 Do we need to take testimony on this?

4 MS. BOLEN: I believe on this one we will, yes,
5 sir.

6 THE COURT: I would think so too.

7 All right. Since it's the State's burden, would you
8 call your first witness, please?

9 MR. ANDREWS: Thank you, Your Honor. The State
10 calls Patrick Thompson.

11 **PATRICK THOMPSON,**

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 IN-CAMERA DIRECT EXAMINATION

14 BY MR. ANDREWS:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. Sir, please state your name for the record.

18 A. Patrick Thompson.

19 Q. Who are you currently employed with?

20 A. I'm currently employed with the Anderson County
21 Sheriff's Office.

22 Q. At the time of this incident in February of 2012,
23 who were you working for?

24 A. I was an investigator for Abbeville County Sheriff's
25 Office.

1 Q. Okay. Did you have an occasion to work on this
2 particular case?

3 A. Yes, I did.

4 Q. Okay. Sir, were you able at any point during this
5 case to talk with the defendant, Mr. Henley?

6 A. Yes, I did, on, I believe, two occasions.

7 THE COURT: I'm sorry. What did you say, sir?

8 THE WITNESS: I believe I did on two occasions.

9 Q. Okay. Do you remember what the dates of those
10 occasions were?

11 A. The first time I spoke with the defendant was, I
12 believe, approximately a week after the incident.

13 Q. Okay. Do you remember the exact date?

14 A. I'm unsure of the exact date I spoke with him, but
15 it was approximately a week after.

16 Q. Okay. Sir, if I showed you a document, do you think
17 it would refresh your recollection?

18 A. Yes, sir, if you have something more than what I
19 have here.

20 Q. Sir, I believe you and I are looking at the same
21 thing. And what I'm looking at, sir, is your
22 supplemental report?

23 A. Yes, sir. I met with him on February 22nd.

24 THE COURT: What year was that, please?

25 MR. ANDREWS: I'm sorry, Your Honor.

1 THE COURT: What was the year?

2 MR. ANDREWS: It was February 22nd -- I'm
3 sorry.

4 Q. Mr. Thompson, what year was that?

5 A. February 22nd, 2012.

6 THE COURT: '12. Thank you.

7 Q. Now, before we get into the content of that meeting,
8 you said you had another opportunity to meet with the
9 Defendant?

10 A. On his arrest, I attempted to speak with the man,
11 and he requested legal counsel.

12 Q. Okay. What was the date of the arrest?

13 A. I don't have a booking document with me of the
14 actual arrest.

15 Q. The date of the arrest, did he give you any kind of
16 statement?

17 A. No, sir.

18 Q. So let's go back to February 22nd, 2012. Did you
19 have an opportunity to speak with the defendant on that
20 date?

21 A. Yes, I did.

22 Q. Okay. Sir, do you remember around what time on
23 February 22nd that statement was taken?

24 A. I spoke with him, I would say, probably mid-morning.

25 Q. Mid-morning. Can you give me a ballpark time?

1 A. Say, ten o'clock, eleven o'clock, somewhere in that
2 time frame.

3 Q. Okay. Who was present?

4 A. I believe it was myself and at the time Sergeant
5 Belcher.

6 Q. Okay. Is that Michael Belcher?

7 A. Yes, sir.

8 Q. At the time, was he also an employee of the
9 Abbeville Sheriff's Office?

10 A. Yes, sir.

11 Q. Where was he?

12 A. It was on New Prospect Church Road at the registered
13 address that came back to the tag.

14 THE COURT: I'm sorry. Could you pull that a
15 little bit closer? I'm having a hard time hearing.

16 A. It was on New Prospect Church Road in Anderson
17 County.

18 Q. Is that Mr. Henley's residence?

19 A. It was where he was located at the time, yes, sir.

20 Q. And did you have any reason to believe it was not
21 his residence?

22 A. No, sir.

23 Q. So when you got to that residence when you initially
24 arrived there, was anyone at home?

25 A. I believe when I arrived at the residence, I spoke

1 -- his mother answered the door. And then she in turn
2 stepped back inside and had Mr. Henley come to the door
3 for us.

4 Q. Where did the interview -- if you can be precise,
5 where did the interview take place?

6 A. On the front steps of the residence.

7 Q. So you were outside of the residence?

8 A. Yes, sir.

9 Q. So did Mr. Henley appear to be under the influence
10 of any drugs or alcohol or combination?

11 A. No, sir.

12 Q. Did he appear to be upset or have some kind of
13 emotional problem?

14 A. No, sir.

15 Q. Did it look to you like he had any other mental or
16 physical disability?

17 A. No, sir.

18 Q. So do you remember how long this interview took?

19 A. Five to ten minutes, briefly just speaking with him
20 in reference to the vehicle.

21 Q. Okay. I think you said -- I think your last
22 statement was in reference to the vehicle?

23 A. Yes, sir.

24 Q. So we'll get back to that. During that five or ten
25 minutes, did he express any desire to stop talking with

1 you?

2 A. No, sir.

3 Q. Did he ask for a lawyer?

4 A. No, sir.

5 Q. At any point during that interview, did you ever
6 give him his Miranda warnings?

7 A. No, I did not.

8 Q. Did you ever place him under arrest or anything?

9 A. No, I did not.

10 Q. Would he have been free at any time to terminate the
11 interview and walk away?

12 A. Yes, sir.

13 Q. So what did Mr. Henley tell you?

14 A. I asked him about -- the vehicle that we were there
15 in regards to was present, and I asked him if that was
16 his vehicle.

17 Q. Hold on a minute. Let me back you up. If you
18 would, just so everybody's got kind of a clear picture.
19 Up to this point, can you give us a quick little summary
20 of what was going on with the investigation?

21 A. During the course of the investigation, all we had
22 was a description of the suspect and a tag number. And
23 the tag number did not correctly match the model and make
24 of the vehicle described. And we were basically
25 following up on a partial tag search of vehicles between

1 make and models and partial tags of those and this
2 process of elimination of age, ethnicity and location of
3 those partial tags of the vehicles within the adjoining
4 counties.

5 Q. Okay. During the course of your investigation, did
6 you eventually find what you thought was a possible
7 suspect vehicle?

8 A. Yes.

9 Q. After finding the address, did that lead you to Mr.
10 Henley's house?

11 A. Yes, it did.

12 Q. So were you there to ask him about the suspect
13 vehicle?

14 A. Yes, sir.

15 Q. And on February 22nd of 2012, was that vehicle there
16 at Mr. Henley's residence?

17 A. Yes, sir.

18 Q. I'm sorry. Now I interrupted you about nine times.
19 What was the substance of your conversation with Mr.
20 Henley?

21 A. Was that his vehicle? The answer was, yes. Did you
22 happen to be in Abbeville County on such and such date?
23 Yes. Did you travel down 28? Yes. Did you happen to
24 stop at a house or anything? Yes, I stopped at ---

25 THE COURT: What was that one? I'm sorry.

1 THE WITNESS: Excuse me, Your Honor.

2 THE COURT: I'm sorry. I didn't hear your last
3 comment.

4 THE WITNESS: Was he traveling? Did he happen
5 to be on Highway 28? The answer was yes. Did you stop
6 at any houses or talk to anyone while you were down
7 there? Yes. He stated he got out to use the bathroom.

8 Q. And did he admit to having spoken with someone while
9 there?

10 A. Yes, he did.

11 Q. Based on what you knew about the case, did you have
12 an idea about who he was talking about?

13 A. Yes, sir. During the course of that, I think he
14 said he spoke to someone in a white truck. And that's
15 what Mr. Culbreth was driving the day I spoke -- during
16 the day of the incident and what he was operating.

17 Q. Okay. Do you remember what he was wearing during
18 your interview with him?

19 A. During the course of the interview, I noticed that
20 he had on a pair of work boots. And just out of
21 curiosity, I asked him could I see the soles of his boot
22 due to the fact of they recovered a faint shoe impression
23 from inside the house in the carpet. And he obliged and
24 showed us the bottom of his boot. And it was similar to
25 that what was noted as being in the house.

1 Q. Now, sir, I think -- did you recover a cigarette at
2 the scene of the burglary?

3 A. Yes, I did.

4 Q. Do you remember what brand cigarette that was?

5 A. Yes, sir. It was a Newport.

6 Q. All right. And during your conversation with Mr.
7 Henley on this date, did you discuss the cigarette?

8 A. Yes, I did. During the course of the interview, he
9 was actually smoking a cigarette -- or a cigar. And I
10 asked him if he smoked cigarettes. And he said, yes, he
11 did. And what brand do you smoke? Newports was his
12 answer.

13 Q. Sir, do you remember if during the course of the
14 conversation you gave him the exact address of the
15 residence that had been burglarized during this incident?

16 A. I don't believe I gave him the exact address. I
17 just -- it just came up that he spoke to someone. Where
18 was it at? And he said he got out at a house on 28 to
19 use the bathroom.

20 Q. Was there any doubt in your mind that he was talking
21 about the incident location for this case?

22 A. No, sir.

23 Q. And, again, who do you believe that Mr. Henley was
24 talking about when he said he spoke with someone at the
25 incident location?

1 A. Mr. Culbreth.

2 Q. And, again, who is Mr. Culbreth?

3 A. Rick Culbreth. He was a witness to the actual
4 burglary itself.

5 MR. ANDREWS: Your Honor, if we can beg the
6 Court's indulgence briefly.

7 THE COURT: Sure.

8 Q. And so once again, was he placed under arrest at
9 this time?

10 A. No, sir, he wasn't.

11 Q. Was he then free to leave at any point during this
12 interview?

13 A. Yes, sir, he was.

14 Q. All right. Let me back up just a minute. I believe
15 you said that you and Mr. Belcher were present?

16 A. Yes, sir.

17 Q. At the time, do you remember what kind of vehicle
18 you were driving?

19 A. We were in an unmarked patrol car.

20 Q. And what time did you say it was?

21 A. Mid-morning, around ten o'clock.

22 Q. Did you have your blue lights on or any kind of
23 emergency signals on?

24 A. No, sir.

25 Q. It was just the two of you?

Patrick Thompson - In-camera Cross-examination by Ms. Bolen

27

1 A. Yes, sir.

2 Q. How were you dressed?

3 A. The uniform of the day at that time was a polo shirt
4 and cargo pants.

5 Q. Thank you, sir. Please answer any questions that
6 defense counsel may have for you.

7 THE COURT: Cross-examination?

8 MS. BOLEN: Thank you, Your Honor.

9 IN-CAMERA CROSS-EXAMINATION

10 BY MS. BOLEN:

11 Q. Officer Thompson, I want to go back through some of
12 your testimony. You stated you spoke with Ricky on
13 February 22nd?

14 A. Yes.

15 Q. And that was about a week after the alleged
16 incident?

17 A. Yes, ma'am.

18 Q. And just going back to some things that have
19 previously happened in this case, do you remember the
20 preliminary hearing in this case?

21 A. No, ma'am, I don't recall actually conducting a
22 preliminary hearing on this one.

23 Q. And you said that you went to my client's residence
24 in Anderson; correct?

25 A. Yes, ma'am.

1 Q. And it was you and one other officer; right?

2 A. Yes, ma'am.

3 Q. And you identified yourself as police officers?

4 A. Yes, ma'am.

5 Q. And at this point, you at least had already

6 developed Rickey as a suspect; correct?

7 A. We were just attempting to locate a suspect. Like I

8 say, we were following up on just the basic information

9 of tracking down possible tags and people who matched --

10 who maybe they matched the description.

11 Q. But you went there -- you went there for the purpose

12 ---

13 THE COURT: I'm sorry.

14 Would you bring that forward, please, sir?

15 I'm going to let you finish.

16 (Off record discussion)

17 THE COURT: Go ahead.

18 MS. BOLEN: Thank you, Your Honor.

19 Q. You went there for the purpose of talking to him

20 about this burglary; correct?

21 A. Yes, ma'am.

22 Q. Were you trying to get information from him about

23 the burglary; correct?

24 A. Well, we were locating the car and who the

25 registered owner of the vehicle was.

1 Q. All right. And at that point, he was no -- you were
2 not going to talk to him as a potential eyewitness;
3 right? Or as a victim; correct?

4 A. No. We were just talking to the registered owner
5 about the vehicle. Like I said, we was following up on
6 very vague information that we were accumulating.

7 Q. This was very vague information you had accumulated
8 at that point about a week later?

9 A. Yes, ma'am.

10 Q. And then you also -- you say you spoke with Rickey
11 sometime later after he turned himself in and when he was
12 arrested; right?

13 A. Yes, ma'am.

14 Q. And that was back at the detention center?

15 A. Yes, ma'am.

16 Q. And you -- at that point, you gave him Miranda
17 warnings; correct?

18 A. Yes. And I'm not -- I don't have any notes exactly
19 what transpired then. But if there's no notes, I'm
20 assuming he requested legal counsel because there's
21 nothing to annotate about that. So ...

22 Q. So you don't have any notes about the second time
23 you talked to him; you really just have notes about the
24 first time?

25 A. Yes, ma'am.

1 Q. Okay. And the first time, you did not read him his
2 Miranda warnings; correct?

3 A. No, ma'am, because at that point, we didn't
4 necessarily even have him as a possibility. The legal
5 term, maybe a person of interest, but not necessarily a
6 suspect.

7 Q. Okay. But yet you went there to question him about
8 some things that had come up during your investigation;
9 is that right?

10 A. Yes, ma'am.

11 Q. And at that point, you told him why you were there;
12 right? To talk to him about this?

13 A. Excuse me?

14 Q. At that point, you told him why you were there;
15 right? You told him, we're here to talk to him about
16 this incident?

17 A. No, ma'am. We began the questioning about the car.
18 Is this your car? And we started from there. I didn't
19 announce myself as investigating a burglary in Abbeville
20 County.

21 Q. But you were clear that you were an officer and that
22 Sergeant Belcher was an officer?

23 A. Yes, ma'am.

24 Q. And you started questioning him about property of
25 his and his whereabouts; right?

1 A. Yes, ma'am.

2 Q. Okay. And then you said you talked to him about
3 whether that was his car and whether he happened to be in
4 Abbeville on, you said, such and such date. Did you give
5 him the specific date?

6 A. Maybe not a specific date. I might have, where was
7 you maybe like last Tuesday, or something like that. But
8 ...

9 Q. You didn't actually tell him the date in question
10 that you were asking him about?

11 A. (No verbal response)

12 Q. There's nothing in your notes about that; right?

13 A. No, ma'am.

14 Q. Okay. And this again was, I believe, you were
15 talking at least a week out; correct?

16 A. Yes, ma'am.

17 Q. I don't want to put words in your mouth. But you
18 essentially asked him about a week ago or at some point,
19 were you in Abbeville; right?

20 A. More than likely, yes, ma'am.

21 Q. And Anderson County abuts Abbeville; right? They're
22 right next to each other?

23 A. Yes, ma'am.

24 Q. And Highway 28 runs from Anderson through Abbeville,
25 and I think it actually goes down to McCormick; correct?

- 1 A. Yes, ma'am.
- 2 Q. So Highway 28 is a large, long road; correct?
- 3 A. Yes, ma'am.
- 4 Q. And there's a lot of houses on 28?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And you asked him -- you stated already you
- 7 didn't give him a specific date, didn't give him a
- 8 specific address; correct?
- 9 A. Yes, ma'am.
- 10 Q. When you were asking about it? You just said a
- 11 house on 28?
- 12 A. Yes, ma'am.
- 13 Q. Okay. And this is both you and Sergeant Belcher;
- 14 right?
- 15 A. Yes, ma'am.
- 16 Q. And then it was just Rickey. There was no one --
- 17 was there anyone with Rickey outside?
- 18 A. No, ma'am.
- 19 Q. And I think you said -- your testimony was that his
- 20 mother answered the door?
- 21 A. Yes, ma'am.
- 22 Q. And then she went back inside?
- 23 A. Yes, ma'am.
- 24 Q. Okay. Neither you nor Sergeant Belcher recorded
- 25 Rickey's statement at that time; right?

- 1 A. No, ma'am.
- 2 Q. You did not use your body cam or a cell phone camera
3 or anything like that?
- 4 A. No, ma'am.
- 5 Q. And neither of you asked him to reduce it to
6 writing? The statement?
- 7 A. No, ma'am.
- 8 Q. And that's something you sometimes do, right, get
9 written statements from witnesses?
- 10 A. Yes, ma'am.
- 11 Q. And that's something you could have done in this
12 situation; correct?
- 13 A. Yes, ma'am.
- 14 Q. And right now, what we have of that conversation
15 from three years ago is your notes; correct?
- 16 A. Yes, ma'am.
- 17 Q. There's no notes from Sergeant Belcher?
- 18 A. No, ma'am.
- 19 Q. Okay. And there's nothing from Rickey about exactly
20 what was said; correct?
- 21 A. No, ma'am.
- 22 Q. And there's no recording?
- 23 A. No, ma'am.
- 24 Q. And you came up in an unmarked police car?
- 25 A. Yes, ma'am. A black Crown Vic.

1 Q. Okay. And it was two of you and one of him;
2 correct?

3 A. Yes, ma'am.

4 Q. Okay. And you stated on your direct that you asked
5 him to see his work boots. I think you said out of
6 curiosity, you asked to see them; correct?

7 A. Yes, ma'am.

8 Q. But you were looking at them not out of curiosity,
9 but to see if they matched a foot impression you had
10 seen; correct?

11 A. Yes, ma'am.

12 Q. So you were actually looking at them for evidentiary
13 value?

14 A. Yes, ma'am. If they were similar ---

15 Q. Okay.

16 A. --- in tread pattern.

17 Q. And this questioning, you went to his apartment;
18 correct?

19 A. Yes, ma'am.

20 Q. And you started the questioning?

21 A. Yes, ma'am.

22 Q. This is not a situation where he came to you; right?

23 A. Yes. Correct.

24 Q. He did turn himself in later; right?

25 A. I'm not sure what the circumstances of how he come

1 into custody.

2 Q. And you've already testified you didn't give him
3 Miranda rights. You also didn't tell him that he was
4 free to leave or free to go back in his apartment; right?
5 There's nothing in your notes that you told him that?

6 A. Yes, ma'am. We were standing on the front stoop of
7 the apartment.

8 Q. But you didn't expressly tell him, you're free to
9 leave or you're free to not talk to me anymore?

10 A. No, ma'am.

11 Q. Okay. And you're on the front steps of the
12 apartment. Is it like an apartment building or a house
13 that's divided into apartments?

14 Q. It's a little set of duplexes. And there's about --
15 from the front door, there's probably a ten-foot sidewalk
16 leading from the front door to the sidewalk and then the
17 parking lot. So you've got about a fifteen-foot space
18 in-between the apartment and the parking lot. And we
19 were just standing right off the front step of the
20 apartment.

21 Q. So he was on the steps?

22 A. Well, it's ground level. There's not a change in
23 elevation.

24 Q. All right. Okay. So he was basically between the
25 door and you; correct?

1 A. Yes, ma'am.

2 Q. Okay. And you were the ones to be asking him
3 questions; right? He wasn't asking you things or -- you
4 were controlling how the questioning went; right?

5 A. Yes, ma'am. We were asking him questions.

6 Q. I don't have anything further. Thank you.

7 THE COURT: Any redirect?

8 MR. ANDREWS: Your Honor, we do have a brief
9 redirect. If you wanted to handle the jury ...

10 THE COURT: Let's go ahead and let's do that.

11 MR. ANDREWS: Okay.

12 IN-CAMERA REDIRECT EXAMINATION

13 BY MR. ANDREWS:

14 Q. Sir, have you had prior dealings -- before this
15 case, had you had prior dealings with Rickey Henley?

16 A. No, sir.

17 Q. So his name wasn't familiar to you when it came up
18 on this -- when you were searching for this vehicle?

19 A. No, sir.

20 Q. So before today, did you know who Rickey Henley was?

21 A. Before that night with him, no, sir. I had no idea
22 who he was.

23 Q. Had you ever heard his name before?

24 A. No, sir.

25 Q. Now, I believe in your supplemental report, it says

1 he denied breaking into the house? And feel free to
2 review it.

3 A. Yes, sir.

4 Q. Okay. So do you remember if you told him -- gave
5 him specific details about the burglary?

6 A. No, sir. My recollection in the course of the
7 questioning was, "Is this your vehicle?" And he gave me
8 an affirmative answer. "Did you go down 28? Were you in
9 Abbeville County last week?" "Yes, sir." "Did you
10 happen to stop at a house?" "Yes, sir." "What were you
11 doing at that house?" "I had to use the bathroom."
12 "That house got broke into. Did you break into it?" The
13 answer was no for that.

14 Q. Okay. Sir, at the time, were body cameras issued to
15 Abbeville County deputies?

16 A. No, sir.

17 Q. Were smart phones issued to Abbeville deputies?

18 A. No, sir.

19 Q. Did you have a personally-owned phone?

20 A. Yes, sir.

21 Q. Sir, have you conducted interviews before where
22 you've recorded people?

23 A. Yes, I have.

24 Q. Does a recording make people uncomfortable?

25 A. In most circumstances, yes, very uncomfortable.

1 Q. Okay. Thank you, sir.

2 THE COURT: Okay. Thank you, Officer. You may
3 step down.

4 Let's take a quick break and go back on the record
5 in this other case, please.

6 (WHEREUPON, court stood at recess for a short
7 break.)

8 THE COURT: Okay. Had you finished with
9 Officer Thompson? Had you finished with him?

10 MR. ANDREWS: We had, Your Honor.

11 THE COURT: Okay. Call your next witness,
12 please, sir.

13 MR. ANDREWS: Your Honor, we don't have any
14 additional witnesses.

15 THE COURT: All right.

16 Ms. Bolen, do you have any -- do you want to put
17 your client on the stand for this limited purpose of this
18 Jackson Denno hearing?

19 MS. BOLEN: No, sir.

20 THE COURT: Okay. All right. Ms. Bolen, tell
21 me why this statement should be suppressed under Jackson
22 Denno.

23 MS. BOLEN: Thank you, Your Honor. Your Honor,
24 under State v. Williams, which would be cite 405 S.C.
25 263, that lists out some of the factors to be considered

1 including the factor that if someone knows that they're a
2 suspect, if that's conveyed to them somehow through the
3 police officer, then that can be taken into account in
4 determining whether that person was in custody. Our
5 argument here, Your Honor, is that for the purposes of
6 Miranda, Mr. Henley was actually in custody at the time.
7 In looking at some of the factors cited in Williams ---

8 THE COURT: Give me some of those factors.

9 MS. BOLEN: Yes, sir. In determining whether
10 an interrogation was custodial, courts have considered
11 the following factors: one, whether the contact with law
12 enforcement was initiated by the police or the person
13 interrogated, and if by the police, whether the person
14 voluntarily agreed to interview; two, whether the
15 expressed purpose ---

16 THE COURT: Just one second. Do you have a
17 copy of that?

18 MS. BOLEN: Your Honor, I can print one out. I
19 don't have one here, but I could print one out.

20 THE COURT: Okay. Just go slowly.

21 MS. BOLEN: Okay. I'm sorry.

22 THE COURT: And if by police, whether ...

23 MS. BOLEN: Whether the contact was initiated
24 by the police.

25 THE COURT: And if by police, whether it was

1 voluntary?

2 MS. BOLEN: Yes, sir.

3 THE COURT: Okay.

4 MS. BOLEN: Whether the purpose of the
5 interview was to question the person as a witness or a
6 suspect.

7 THE COURT: Okay.

8 MS. BOLEN: Where the interview took place.

9 THE COURT: The location?

10 MS. BOLEN: Yes, sir.

11 THE COURT: Okay.

12 MS. BOLEN: Whether the officer informed the
13 person he was under arrest or in custody.

14 THE COURT: Okay.

15 MS. BOLEN: Whether police informed the person
16 that they could terminate the interview and leave at any
17 time. Whether there were restrictions on the person's
18 freedom of movement during the interview. And, Your
19 Honor, I'm sorry. We actually do have a copy of State v.
20 Williams. I can pass it up to Your Honor.

21 THE COURT: That'd be great.

22 MS. BOLEN: Yes, sir.

23 (WHEREUPON, Ms. Bolen handed up document to the
24 Court.)

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

1 MS. BOLEN: And, Your Honor, looking
2 specifically in this, there's some more factors as well
3 including how long the interrogation lasted, how many
4 officers participated, whether the officers dominated and
5 controlled the course of the investigation, whether they
6 had a belief that the person was culpable and had
7 evidence to prove it. Basically, the manner, whether
8 they were aggressive, whether they used interrogation
9 techniques, and whether the person was arrested at the
10 end of the interrogation.

11 THE COURT: All right.

12 MS. BOLEN: And, Your Honor, it is our position
13 that several of these factors go in favor of Mr. Henley
14 having been in custody for the purposes of Miranda.

15 THE COURT: So would you identify those
16 factors?

17 MS. BOLEN: Yes, Your Honor. Obviously, the
18 officer initiated the interrogation, made contact with
19 Mr. Henley. It was not something Mr. Henley initiated.
20 The purpose of the interview was to question him as at
21 least a suspect. The officer admitted that he was not
22 there to talk to him about being an eyewitness or a
23 victim. It took place at his residence but outside. The
24 two officers in fairly close quarters, Your Honor. Mr.
25 Henley was not informed that he could either not talk to

1 them or end the interview at any time. Again, there were
2 two officers present. They were the ones to control the
3 course of the investigation. I believe it was clear to
4 Mr. Henley that he was at least a suspect or a person of
5 interest by the questions being asked and by them asking
6 to look at his shoes. And the officer had to believe
7 that he could have been the person to do it.

8 Your Honor, again, the interrogation is not really
9 the issue. I think it's clear from the record that he
10 was being interrogated. I think a reasonable person in
11 his circumstances where there's two officers who come up,
12 take him out of his home, have him in fairly close
13 quarters and are questioning him about a crime, they're
14 not just there to shoot the breeze with him. He knows
15 he's being questioned about a crime. They're asking him
16 questions that would elicit incriminating information
17 that they are then now trying to use against him. And he
18 was not warned that that information would be used
19 against him. I think a reasonable person under those
20 circumstances would not have felt either free to leave or
21 free to not answer the officer's questions. And,
22 therefore, he should have been read his Miranda rights.
23 So we are, therefore, asking that his statement be
24 suppressed as being not voluntarily -- not voluntarily
25 given because he was not given the opportunity to waive

1 his Miranda rights.

2 THE COURT: Okay.

3 MR. ANDREWS: Your Honor, this was an interview
4 that was conducted during the course of an investigation.
5 Officers were led to Mr. Henley's residence because they
6 were able to find what they believed was a suspect
7 vehicle. They went to Mr. Henley's residence. They
8 knocked on the door. The mother answered. They did not
9 have an arrest warrant. They didn't enter the home. Mr.
10 Henley came out, spoke with the officers outside the
11 home. The officers were in an unmarked vehicle. There
12 weren't lights flashing. I believe Patrick Thompson
13 testified that the uniform of the day, I think as he put
14 it, was a polo shirt and cargo pants. They were not in
15 any kind of tactical gear. There wasn't a large number
16 of officers waiting there to make an arrest.

17 The interview lasted approximately five to ten
18 minutes. I think I've already said this, but Detective
19 Thompson even said I'd never heard his name or knew him
20 before this day. And, furthermore, he was not arrested
21 at the end of this interview. The officers asked to see
22 the bottom of his boots. Our wish would have been that
23 they would have seized the boots so that they could
24 actually compare it to the carpet impression, but they
25 weren't in a position to be able to take that boot. They

1 didn't take him under arrest. So in our view, Your
2 Honor, this was not a custodial interrogation.

3 THE COURT: All right. From a totality
4 analysis of this and based on the case that was handed up
5 to me by defense counsel, number one, they note that the
6 inquiry into whether the interrogating officers had
7 focused their suspicions upon the individual being
8 questioned. Assuming those suspicions were made
9 undisclosed, it's not even relevant for Miranda purposes
10 as to whether or not he's their suspect. It's not
11 necessarily relevant.

12 Looking at the factors as outlined to me, it's clear
13 that what was going on is that the defendant was not in
14 custody for purposes of Miranda. Officers went to his
15 door. His mother answered the door. He voluntarily came
16 to the door upon being summoned by his mother. The
17 officers identified themselves as officers. There was no
18 coercion that was used. There's no threats. It was, we
19 want to talk to you, ask you some basic questions, at his
20 home. And that the duration was very short.

21 And looking through the State v. Williams factors,
22 clearly it was initiated by the law enforcement, but then
23 the defendant voluntarily talked to them. Although he
24 was not a suspect, the idea that he potentially was a
25 suspect would militate in his favor. Location would not

1 because he's at his house and certainly was not -- his
2 movement was not restricted. The entranceway into his
3 home remained unimpeded to where he came out from. The
4 law enforcement was down on the ground. He could have
5 turned around and walked inside anytime. There's no
6 indication that that was in any way restricted. Two law
7 enforcement doesn't make it coercive in nature. And the
8 officer testified that while we had some -- you know, we
9 had a partial description, we were trying to develop a
10 suspect as opposed to had him as a prime suspect in mind.
11 And then the fact that they left the scene and he was not
12 placed in custody at that point in time. So, therefore,
13 Miranda was not required under the circumstances of this
14 case. So I'm going to deny your motion as to Jackson
15 Denno.

16 Can y'all just wait for one second?

17 MS. BOLEN: Yes, sir.

18 (WHEREUPON, court stood at recess for a short
19 break.)

20 THE COURT: All right. You guys ready to
21 resume on the Henley case?

22 MS. BOLEN: Yes, sir. Let me just get my
23 client.

24 THE COURT: That would be a good idea.

25 MS. BOLEN: Your Honor, there is actually one

1 additional matter which I haven't given Your Honor a
2 heads-up about because it just came out in testimony.
3 The officer testified that he looked at my client's boots
4 and had gotten a -- they'd already collected a foot
5 impression.

6 THE COURT: Yes.

7 MS. BOLEN: I was aware that they'd gotten
8 pictures of the foot impression. In some pretrial talks
9 with Solicitor Brown, I was under the impression that the
10 solicitor's office was not going to try to elicit any
11 testimony about any comparison between the mark on the
12 carpet and my client. However, now it seems that they
13 are perhaps going to elicit that testimony. Our
14 position, Your Honor, is that, first of all, it would be
15 an opinion offered by the officer who is not an expert.

16 Second of all, they did not collect the boot. So
17 there's absolutely no way for us to do any sort of
18 comparison. All they've got is this picture of a foot
19 impression with a ruler and an officer going on memory
20 from three years ago. There will be no boot in evidence
21 for us to look at, for the jury to look at, for me to run
22 any kind of test on, so we'd ask that there not be any
23 testimony in front of the jury on the specific issue of
24 the impression on the carpet as compared with any boots
25 my client had on.

1 THE COURT: Where's the boot or boots?

2 MS. BOLEN: I don't know, Your Honor.

3 THE COURT: Were they ever taken from the
4 defendant?

5 MS. BOLEN: No, sir.

6 THE COURT: So he has the boots?

7 MS. BOLEN: I haven't ask him if he still has
8 them. I don't know if he still has them.

9 THE COURT: They certainly -- if they weren't
10 taken by law enforcement, the assumption would be that
11 they were available to him at all times; right?

12 MS. BOLEN: I suppose so, yes, sir, unless he's
13 gotten rid of them in the past two years.

14 THE COURT: All right. As far as the control
15 aspect of the boots, that would be it's equally available
16 to him. My concern, however, is that you're trying to
17 proffer non-scientific testimony as scientific testimony.

18 MR. BROWN: Judge ...

19 THE COURT: If that's the case, then we're
20 going to have a little problem.

21 MR. BROWN: ... what I anticipated doing or Mr.
22 Andrews on questioning Mr. Thompson, Officer Thompson, is
23 during his investigation he went to the house. He took
24 photographs and saw the door had been broken in, and he
25 saw a footprint on the carpet inside the house.

1 THE COURT: Sure.

2 MR. BROWN: And while he -- as he was trying to
3 gather evidence and also trying to pin down the suspect,
4 pretty much the only testimony he could do is say, when I
5 went to talk to him in Anderson, he had on a pair of
6 boots. And that coupled by, I guess, with everything
7 else they had, with the license plate, the witness,
8 eyewitness ---

9 THE COURT: Well, hang on. Let me go by -- and
10 I'm not against you.

11 MR. BROWN: Yes, sir.

12 THE COURT: I'm not against you or for you, but
13 I'm not disagreeing with you that Officer Thompson said,
14 you know, "Let me -- how about take a look at your
15 tread." And his perception was that it was similar to
16 the photograph. If that's where you're limited, then
17 under Rule 701 ---

18 MR. BROWN: Yes, sir.

19 THE COURT: --- it comes in because that would
20 be something that would be reasonably perceived by a non-
21 expert witness. And I have no problem with that.

22 MR. BROWN: That is where we ---

23 THE COURT: If you go further beyond that ---

24 MR. BROWN: Yes, sir.

25 THE COURT: --- then there very well may be

1 some problems if you're trying to proffer it as some type
2 of scientific testimony ---

3 MR. BROWN: No, sir.

4 THE COURT: --- and it's not.

5 MR. BROWN: We're not trying to proffer it as
6 scientific testimony. That's what we were looking at
7 under Rule 701.

8 THE COURT: Preliminarily, without prejudice to
9 Ms. Bolen ---

10 MS. BOLEN: Yes, sir.

11 THE COURT: --- if you perceive, you know,
12 improper testimony, just object. Okay?

13 MS. BOLEN: Yes, sir.

14 THE COURT: But right now under 701, looking at
15 a tread mark, it would seem to me to be something that
16 could be perceived by any lay witnesses just without need
17 for the expert-type training or experience. Do you
18 disagree with that?

19 MS. BOLEN: Yes, sir. As long as -- yeah.
20 Looking at Rule 701, it's limited to his perception, yes,
21 sir. I think, yes, sir, looking at Rule 701, if the
22 testimony they intend to elicit is limited to his
23 perception at that time, I think it would fall under 701.

24 THE COURT: Okay. So I'm not ruling on that.
25 I'm just giving you my preliminary thoughts. So your

1 motion is denied without prejudice for you to renew your
2 motion during the trial testimony. Okay?

3 MS. BOLEN: Yes, sir. Thank you.

4 THE COURT: Now, do you see any need -- no,
5 never mind. Never mind. Okay.

6 Next we'll do the bifurcation of the charges.

7 MS. BOLEN: Yes, Your Honor. I'll just put it
8 on the record ---

9 THE COURT: Put it on the record. I mean, I
10 think there are a lot of cases that, you know, go against
11 you on that. But I want you to be ---

12 MS. BOLEN: Yes, sir. And, yes, sir, we are
13 making a motion to bifurcate the what we're seeing as
14 sort of a sentencing enhancement. Mr. Henley is charged
15 under burglary first degree. The element that would make
16 it a first degree -- it's not in the nighttime. There's
17 no weapon alleged. It's the fact that he's got two or
18 more prior convictions.

19 Your Honor, under the old chief case Supreme Court
20 as well as the State Supreme -- case of State v. James,
21 355 S.C. 25, we would make a motion that to allow the
22 jury to hear during the State's case-in-chief -- to allow
23 them to hear of his prior convictions would be unduly
24 prejudicial under 403. It would also be evidence of
25 prior bad acts under 404. I understand the courts have

1 ruled that when it's an element to the convictions, it
2 can be admitted in. If I can just flesh out for the
3 record, Your Honor, our position on that.

4 The State v. James case is one where higher courts
5 have recognized that allowing in prior convictions can be
6 prejudicial. In that case there were, I believe, seven.
7 And the court recognized that there is prejudice. Our
8 position would be if there's prejudice for seven, there's
9 prejudice for one. That a jury, when they hear that he's
10 got even one prior conviction, it'll be virtually
11 impossible for them to separate in their minds that and
12 exactly the same offense he's on trial for. So we think
13 under 403 it's unduly prejudicial.

14 In addition, Your Honor -- and I understand the
15 State's position on this. But I did offer to stipulate
16 with Mr. Brown that if the jury would consider just the
17 substantive offense of burglary, just the unlawful entry
18 with the intent to commit a crime, without looking at any
19 of the factors, if they were to -- if that were to go to
20 the jury and they were to find that he was guilty of a
21 burglary, we would then stipulate that the two priors
22 made it -- made it a first degree.

23 Mr. Brown -- and again, I understand his position.
24 But he was not able to stipulate. And, Your Honor, I
25 think that actually goes to our argument that it's unduly

1 prejudicial because here where we are offering to give
2 them the proof beyond a reasonable doubt of an element
3 and they're preferring instead to prove that to a jury, I
4 really think the only reason they can be making that
5 decision is because they know that those priors will
6 prejudice the jury against Mr. Henley.

7 So our motion, Your Honor, is to exclude the mention
8 of the two priors in the case-in-chief and to essentially
9 have that come out at a second phase which would, in my
10 mind, sort of look like a sentencing phase. Kind of
11 making an analogy between the enhancement on a burglary
12 and things like C.V.D. or drugs where the number of
13 offenses is not given to the jury, but is rather used in
14 sentencing.

15 So that is our motion, Your Honor, that it's unduly
16 -- despite the prior Court rulings, that it is unduly
17 prejudicial, that especially where we're willing to
18 stipulate that if a conviction on the substantive
19 offense, it would be a first. I believe that shows that
20 they're using it specifically for prejudice. And we'd
21 ask that the two issues be separated and the jury not
22 hear about the priors.

23 THE COURT: I am denying that motion ---

24 MS. BOLEN: Yes, sir.

25 THE COURT: --- number one. I don't need to

1 hear any argument from the State. The cases are clear
2 that the State doesn't have to stipulate the admission of
3 the statutory required number of convictions, and limited
4 to those numbers. Now, you're not going to be able -- if
5 he has more than that, they obviously cannot come in to
6 evidence.

7 MR. BROWN: Judge, we have -- he's pled guilty
8 to a 2002 charge, burglary charge. And then there are
9 also three other ones from '04. We would take one from
10 the '04 to make the two, put those in.

11 THE COURT: Right. And the cases are equally
12 clear. You can't stack all of them in there.

13 MR. BROWN: Yes, sir.

14 THE COURT: So you're not going to be allowed
15 to do that.

16 MR. BROWN: Yes, sir.

17 THE COURT: I would point out on the record
18 that while you would agree to stipulate to the two being
19 when you charge the jury on what constitutes burglary
20 first, if you take out the evidence that would constitute
21 burglary first, the jury could never find him guilty of
22 burglary first because there's no evidence of there being
23 a nighttime break in, armed, et cetera, et cetera, under
24 the statute. So I would add that on the record.

25 MS. BOLEN: Yes, sir.

1 THE COURT: You're asking the jury to make a
2 decision when the law requires them to make a finding on
3 evidence that wouldn't be before them, and that would be
4 problematic in and of itself.

5 MS. BOLEN: And I guess if I can just add in
6 just to make a clear record.

7 THE COURT: Sure. I want you to ...

8 MS. BOLEN: We would -- given Your Honor's
9 statement, we'd ask that the jury first consider whether
10 there was an entry without consent with the intent to
11 commit a crime. And if they found there was ---

12 THE COURT: I got you. I see what you're
13 saying. Okay.

14 MS. BOLEN: --- and then decide ---

15 THE COURT: Then you would stipulate that that
16 would constitute burglary first.

17 MS. BOLEN: Or then, yeah, that they'd be able
18 to decide on -- if they decide that first.

19 THE COURT: Oh, you wouldn't stipulate. Then
20 they'd have to come back ---

21 MS. BOLEN: On, no. I would. I would, yes,
22 sir.

23 THE COURT: All right. I'm not going to do it
24 anyway, but ---

25 MS. BOLEN: Yes, sir.

1 THE COURT: --- I hear you for the record.

2 Okay.

3 MR. ANDREWS: And just so we're clear about
4 what our plan is, we were not attempting to introduce
5 details of those prior burglaries ---

6 THE COURT: You don't get to.

7 MR. ANDREWS: --- pursuant to 902. We're just
8 going to get the indictments and sentencing sheets in as
9 self-authenticated documents.

10 THE COURT: Okay. Now, the more thorny motion
11 that we have to me -- and I've met with, just for the
12 record, counsel, when we were doing some planning of
13 these trials, the scheduling this week -- that this
14 motion to suppress a cigarette butt would be an issue.
15 Mr. Brown let me know that, and Ms. Bolen was present.
16 My understanding is that a cigarette butt was found at
17 the location. It was gathered, put into evidence, taken
18 to SLED, tested for D.N.A., brought back to Abbeville
19 County. And at that juncture, the link between SLED and
20 Abbeville County, there is a disconnect.

21 MR. BROWN: Judge, it would actually be a
22 disconnect between Abbeville County and court today.

23 THE COURT: Well, that makes it -- that is a
24 different story to me.

25 MR. BROWN: Yes, sir. We have the chain from

1 when it's collected at the house to the Abbeville County
2 Sheriff's Office, the sheriff's office down to SLED, the
3 internal chain to SLED, who was the intake, who tested
4 it, who took it back to Abbeville County. We have the
5 documentation from Abbeville County. When Sheriff Watson
6 actually took over as sheriff here in Abbeville, SLED
7 came and did an audit of all the items in evidence. That
8 item was on the ledger then. Since that time, after they
9 did the audit, there were some other cases that were
10 closed out, drug cases. This is assumed -- we're
11 assuming that this was also destroyed along with those
12 drug cases.

13 THE COURT: Let -- go ahead.

14 MR. ANDREWS: So it's now a disconnect between
15 the sheriff's office after it was brought back ---

16 THE COURT: Back to the court?

17 MR. BROWN: Back after the testing to court
18 today.

19 THE COURT: All right. Ms. Bolen, if you
20 would, take a few minutes, review the chain of custody
21 documents and see if you agree or disagree. Or have you
22 had a chance to review them to this point?

23 MS. BOLEN: I believe I have what Mr. Brown
24 has.

25 (WHEREUPON, Ms. Bolen reviewed documents.)

1 MS. BOLEN: Thank you, Your Honor. Your Honor,
2 it's our position that the cigarette butt should be
3 excluded from evidence because it's not ---

4 THE COURT: Well, I hear you. And I'm going to
5 let y'all argue that. First, so I can get my mind
6 wrapped around where the issues are in this case ...

7 MS. BOLEN: Yes, sir.

8 THE COURT: ... my first concern was the actual
9 chain of custody. Have you had a chance to review that?

10 MS. BOLEN: Yes, sir. There's one document
11 that Mr. Brown tells me the sheriff would have that we
12 don't have yet. Apparently, this document shows that
13 there is a changeover in sheriffs. And Sheriff Watson, I
14 believe, took office in April or so of 2013. And at that
15 time, he apparently did an audit with SLED of everything
16 in evidence. And the cigarette butt was marked as being
17 in evidence at that point.

18 THE COURT: How long will that take to get that
19 document, Mr. Brown?

20 MR. BROWN: It shouldn't take very long. I can
21 get him to call and see if he can bring it back up here.

22 THE COURT: Let's do that.

23 MR. BROWN: Yes, sir.

24 THE COURT: I mean, you can't ask defense
25 counsel, especially with looking at burglary and

1 everything ---

2 MR. BROWN: Yes, sir.

3 THE COURT: --- to stipulate until they look at
4 it and see. And I'm not asking you to stipulate now.
5 I'm just curious -- the way I was looking at it, based on
6 our in-chambers meeting, was that the State was giving me
7 cases and the Defense was giving me cases on destruction
8 of documents. You know, I think you have to have a
9 willful destruction or the exculpatory nature of the
10 evidence has to be apparent on the face of the evidence
11 and they can't find it from any other means -- and that's
12 paraphrasing analysis -- versus whether or not we have a
13 chain of custody problem because those are two different
14 issues and animals to me. And so if the chain of custody
15 is not a problem, then the willful destruction, the
16 exculpatory nature analysis is the way to go. If it is a
17 chain of custody, then that willful destruction analysis
18 is not the way to go. Okay?

19 MR. BROWN: Yes, sir.

20 THE COURT: That's the way I'm considering it.
21 Now, Ms. Bolen, I've cut you off twice now, so go ahead.

22 MS. BOLEN: That's all right, Your Honor. I
23 haven't seen that document from Sheriff Watson. But just
24 based on Mr. Brown's telling us what it said, our
25 position is that there still would be a chain problem

1 because we don't know what happened to that cigarette.
2 We don't even know that it's been destroyed. We don't
3 know if it's lost. We don't know -- we can't even speak
4 to whether it was bad faith or willful destruction
5 because there's no mention of what happened to it.

6 THE COURT: Well, let me ask you this. If you
7 assume for the sake of our argument and the sake of the
8 documents to be provided ...

9 And I assume that is being done now?

10 MR. BROWN: Yes, sir.

11 THE COURT: ... that we can establish from the
12 first gathering to Abbeville, to SLED, back to Abbeville
13 to await trial ...

14 MS. BOLEN: Yes, sir.

15 THE COURT: ... then if you -- if that is
16 established, then where would the willful destruction
17 cases ever come into play? There would always be a chain
18 case; correct?

19 MS. BOLEN: Yes, sir. Our first position is
20 that it's still a chain issue. That the chain is
21 completed when it's here in court. If it's not here in
22 court, there is a broken link in the chain.

23 THE COURT: Okay. I'm going to not rule until
24 I see and you have a chance to look at the documents.

25 MS. BOLEN: Yes, Your Honor.

1 THE COURT: Let me hear you on the willful
2 destruction. And let's assume that the willful
3 destruction exculpatory nature is the way to look at it.
4 And tell me what your argument would be.

5 MS. BOLEN: Yes, Your Honor. And, Your Honor,
6 as Your Honor's aware, the cases do have that two-prong
7 test of that there either needs to be bad faith on behalf
8 of the police or that there needs to be exculpatory
9 nature apparent before the destruction. In looking at
10 these cases, Your Honor, there's a number of distinctions
11 between the cases that seem to control this issue in the
12 current case. In looking at the Cheeseboro case, which I
13 know the solicitor handed up previously, in that case
14 there was a gun. It was a murder trial. The gun was
15 destroyed prior to trial.

16 THE COURT: The gun was destroyed?

17 MS. BOLEN: Yes, sir.

18 THE COURT: The facts of the case were that the
19 gun was seized apparently due to some miscommunication
20 between two different agencies who were working on the
21 murder. It was not apparent to the officer who ended up
22 with custody of the gun -- it was not apparent to her
23 that it was likely the murder weapon in a murder case.
24 And she apparently followed procedures of her department
25 with seized evidence. Apparently in that department,

1 when there are items such as guns that are seized, if
2 they're not connected to a case, they're sold or then
3 destroyed. She followed those procedures, again, without
4 realizing that another agency -- I think it was another
5 department -- had identified this gun as being the murder
6 weapon. And so she followed the procedures of the
7 department. And that's the reason the gun was destroyed.

8 In this case, Your Honor -- and again, our position
9 is that we don't know what procedures were followed. We
10 don't know what happened to this. And in all of the
11 cases that I found that discuss lost evidence in which
12 there's not a due process violation, all those cases, law
13 enforcement followed procedures. And there was some sort
14 of inadvertent mistake made along the way.

15 With one of them, I think the Breeze case, State v.
16 Breeze, 379 S.C. 538, that was a case involving drugs
17 that were destroyed. In that case, Your Honor, the
18 defendant had not shown up for a court appearance. A
19 bench warrant was issued. I believe this case was then
20 moved to something like failure to appear. But for some
21 reason, it showed up in the sheriff's case log as closed
22 because of the bench warrant status. So he then followed
23 their procedures and destroyed the drugs. But the case
24 was not, in fact, actually closed. In that case, again,
25 law enforcement followed procedures that were in place

1 and could track exactly what happened and when.

2 My understanding here is that we don't know if
3 procedures were followed. We don't know when this
4 cigarette butt was lost or destroyed. We don't know if
5 it actually has been destroyed or if it's lost. We don't
6 know if someone took it. There's no paper trail about
7 where that cigarette butt could be and what's happened to
8 it.

9 THE COURT: So let me ask you this. Would you
10 agree with me that a cigarette butt in and of itself does
11 not have the exculpatory nature that's apparent on its
12 face to be applicable to the second part of that test?

13 MS. BOLEN: I don't know that there's any way
14 that on its face it could be seen to be inculpatory or
15 exculpatory.

16 THE COURT: I'm with you. It has to be tested
17 and et cetera, et cetera.

18 MS. BOLEN: It has to be tested.

19 THE COURT: So we're looking at a willful
20 destruction?

21 MS. BOLEN: Yes, sir.

22 THE COURT: Okay.

23 MS. BOLEN: And, Your Honor, if I could just
24 speak to that. In reading the cases, some of these cases
25 dealt with additional jury instruction on whether the

1 defendant was entitled to the spoliation charge. And the
2 spoliation charge would be that where there's lost
3 evidence, there can be an adverse inference against the
4 party who lost it if the evidence is not favorable to
5 them. We're not asking for that jury instruction. We're
6 just asking for the cigarette butt to be excluded from
7 mention at trial.

8 And, Your Honor, in reading that line of cases, I
9 think most of these issues come up in the form of jury
10 instructions because -- and this is what I couldn't quite
11 get my head around. And I consulted with my boss, Ms.
12 Nelson, about it to see if I was missing something. And
13 she had the exact same issue. That if there's a lost
14 piece of evidence, whether it's a drug or gun or a
15 cigarette butt, and it is destroyed or lost, and it had
16 exculpatory value to the defendant, we can't imagine a
17 position in which a defense attorney would ask for that
18 to be excluded. If evidence were lost and it helped
19 clear my client, I would not be asking for that evidence
20 to be excluded.

21 So it's a little unclear to me on that second prong
22 what the relief being sought at the trial level was
23 because if there was exculpatory value, it would seem
24 that Defense would want that to come in despite the fact
25 that it was lost and that the State wouldn't.

1 But, Your Honor, we are alleging that there is a due
2 process violation based on this lost evidence. Our
3 client and us and the jury cannot see this evidence.
4 There can be no visual comparison between the picture
5 taken and the actual evidence itself.

6 I think there's also a Rule 901 problem, that
7 authenticity without a chain and without the evidence in
8 front of us, there's really no way to say ---

9 THE COURT: Well, let me ask you this. And
10 this is preliminary. But some of the -- I was reading a
11 case -- and I don't have the name of it in front of me --
12 yesterday for the other trial during a break. But there
13 was a case -- I believe it was drugs that were destroyed.
14 And the issue was whether the chemist's analysis of those
15 drugs, the weight, et cetera, would be admissible. And
16 they said in that case there's been no showing of willful
17 destruction. I haven't looked at it as to following
18 procedures or non-following procedures. And I will. But
19 notwithstanding that fact, that the test was allowed to
20 come in although the drugs weren't there to be introduced
21 into evidence. Now, how do you reconcile -- I'm
22 assuming, because I don't know, that that cigarette butt
23 was sent down to SLED and was tested for D.N.A., and the
24 D.N.A. had certain percentages that doesn't rule out the
25 defendant in this matter. Is that kind of what's going

1 on?

2 MS. BOLEN: Yes, sir.

3 THE COURT: And what you're really asking me to
4 do is not exclude the cigarette butt but exclude the
5 D.N.A. testing?

6 MS. BOLEN: Yes, sir.

7 THE COURT: Okay.

8 MS. BOLEN: Under the -- you know, that it
9 can't be authenticated under 901, that there's not a
10 complete chain.

11 THE COURT: But the test is being
12 authenticated, not the cigarette butt. I mean, I don't
13 -- and I'm not sure. Maybe you can help me. But how do
14 you reconcile the fact that that's is not relevant?
15 That's Mabe, State versus Mabe, M-A-B-E.

16 MS. BOLEN: Yes, Your Honor. Yes, sir. That's
17 the one where I think he pled guilty, evidence was
18 destroyed. He then he won a P.C.R.

19 THE COURT: Okay. And that was post -- and
20 that's right. I remember that. That was post-plea
21 destruction as opposed to pre?

22 MS. BOLEN: Yes, sir. That was a post ---

23 THE COURT: So you wouldn't necessarily
24 introduce it at the plea anyway?

25 MS. BOLEN: No, sir. My understanding from

1 State v. Mabe is he pled guilty. Evidence was then
2 destroyed as it often is after a plea. He then filed a
3 P.C.R. which he successfully won.

4 THE COURT: Okay. State versus Reeves is a
5 drug case; is that right? That's what my notes just
6 indicate.

7 MS. BOLEN: Breeze? Yes, sir, that's also a
8 drug case.

9 THE COURT: And the drugs were destroyed?

10 MS. BOLEN: Yes. There was -- in that one, the
11 defendant hadn't shown for a court appearance. A bench
12 warrant was issued. Apparently, there was a
13 misunderstanding in the coding used.

14 THE COURT: What was the ultimate ruling by the
15 court as to whether or not the testing analysis would be
16 admissible?

17 MS. BOLEN: I believe that the -- I didn't look
18 at the results of the test. In that case, the drugs were
19 admitted, but that was a -- I'm sorry. I'm miss-
20 speaking. That was actually a jury instruction case, and
21 so I believe that they did not get the spoliation
22 instruction.

23 THE COURT: They did not get the spoliation?
24 Do you think there is a distinction between your not
25 requesting the spoliation charge and the relief you're

1 seeking here and the cases where there was spoliation
2 being requested? I mean, do you think that makes a
3 difference whatsoever in the analysis we look at, or is
4 that basically the same?

5 MS. BOLEN: I think there is because I think
6 with the spoliation charge, we're basically -- we would
7 basically be instructing the jury that the evidence can
8 be assumed to be against the State. And in here, we're
9 really arguing a due process violation. It goes to
10 fundamental fairness that if they want to introduce
11 evidence against him, they need to have that evidence.
12 And they don't have it.

13 THE COURT: Do you have any cases to support
14 your argument that I can look at and the basis where --
15 you know, factual scenarios that would be similar or the
16 rationale would be applicable in this case?

17 MS. BOLEN: Your Honor, I didn't find -- again,
18 I didn't find anything exactly on point. But primarily
19 because one of the distinctions in the cases I read in
20 this case is that there was -- the court was able to rule
21 on whether evidence was willfully destroyed or not
22 because there was documentation as to what happened with
23 that evidence.

24 THE COURT: May I stop you right there?

25 MS. BOLEN: Yes, sir.

1 THE COURT: Mr. Brown?

2 MR. BROWN: Yes, sir.

3 THE COURT: Are you arguing this motion?

4 MR. ANDREWS: I am.

5 THE COURT: You are? Okay.

6 MR. ANDREWS: We're kind of tag-teaming.

7 THE COURT: Okay. You have your chain
8 documents that you're getting ready to bring up?

9 MR. ANDREWS: Yes, sir.

10 THE COURT: The final document, I assume, that
11 you're getting ready to bring it up. What other
12 documents do you have that would show, you know, how this
13 got destroyed, whether it was misplaced, whether the
14 procedure was followed or not followed?

15 MR. ANDREWS: Your Honor, to my knowledge,
16 there are no additional documents that would show what
17 ultimately happened to the cigarette butt.

18 THE COURT: Well, I'm not asking -- I would
19 assume that every agency, law enforcement agency, in the
20 state has procedures to follow.

21 MR. ANDREWS: Yes, sir.

22 THE COURT: What can you show or can you show
23 that the procedures in this case were followed and
24 ultimately the reason this isn't here is because we had
25 it registered as X where was really Y. And therefore,

1 under our procedures, this evidence was destroyed as
2 opposed to what Ms. Bolen is saying? Look, they're just
3 saying, we don't have it. We didn't meant to do it.
4 You're just leaving it up to fate for them to accept your
5 explanation. And I don't think when you're looking at a
6 case of the magnitude of -- whether or not it's this
7 magnitude, but this is a burglary first case -- that
8 anybody should be required whether it's a more minimal
9 case to anybody involved in the system without a further
10 showing.

11 MR. ANDREWS: And I agree with you, Your Honor.
12 And this is ---

13 THE COURT: I'm not saying bad faith on law
14 enforcement. I would doubt seriously there is. That's
15 not the point. The point is we have somebody that's
16 about to be deprived potentially their liberty, and
17 substantial deprivation.

18 MR. ANDREWS: Yes, sir, Your Honor. Without
19 having spoken with the Abbeville Sheriff's Office about
20 this particular issue, I don't want to speak for them.
21 But I think the testimony would bear that there's not --
22 this isn't a case like Breeze or Cheeseboro where
23 something was destroyed because they believed it was ripe
24 for destruction and there was kind of a clerical error.

25 THE COURT: Sure.

1 MS. BOLEN: I don't believe that's the case
2 here.

3 THE COURT: That's what I'm gathering. I think
4 that what I'm hearing from what you've been telling me is
5 that you just don't know where it is.

6 MR. ANDREWS: Yes, sir. But, now, what I also
7 want to address, though, is -- and, again, I don't want
8 to minimize a missing piece of evidence like this. But
9 it's our view that to suppress any mention of the
10 cigarette butt or any result of D.N.A. testing, I think,
11 is too severe a sanction against the State.

12 THE COURT: I mean, I hate that for you. But I
13 want to hear more about, you know, what -- there's got to
14 be somebody at the sheriff's office that's familiar with
15 procedures ---

16 MR. ANDREWS: Yes, sir.

17 THE COURT: --- that could show me -- show not
18 me, but show defense counsel how those were followed and
19 support those with what you've got and then show where
20 the disconnect occurs. I mean, I would assume that's
21 been done already.

22 MR. ANDREWS: Yes, sir. And that's kind of
23 what I envisioned happening was that -- for a lack of a
24 better explanation, there would be ---

25 THE COURT: Well, there's not been a good

1 explanation yet that I've heard. But go ahead.

2 MR. ANDREWS: Well, is that, you know, there
3 would be evidence in this pile, let's say, if it's ready
4 for destruction and evidence here that shouldn't be
5 destroyed. And this cigarette butt somehow mistakenly
6 got into the destruction pile. I don't ---

7 THE COURT: Well, that's just speculation.

8 MR. ANDREWS: Yes, sir. And without having --
9 getting any testimony from any evidence custodians ...

10 THE COURT: I mean, had y'all -- have y'all
11 gone to the sheriff's office and asked these specific
12 questions?

13 MR. BROWN: Yes, sir. I've been over there.
14 I've been with Sergeant Singleton. She's the evidence
15 custodian. And she's actually the one who went over
16 there this morning to get the documentation from SLED
17 that the cigarette butt was there when they did the
18 audit. And I can -- we can have her take the stand if we
19 need to. Based on what I was told is -- and what I found
20 out from SLED is this item was sent back from SLED with
21 seven other packs of ---

22 THE COURT: But you said -- oh, okay.

23 MR. BROWN: --- with seven other packs of what
24 all that was brought back. It's not only -- the officer
25 that brought it back didn't bring this one back

1 individually; he brought it back with other items that
2 were tested at SLED to be brought to Abbeville County
3 Sheriff's Office. At that time, it was put back into
4 evidence. Those cases ---

5 THE COURT: Well, stop right there.

6 MR. BROWN: Yes, sir.

7 THE COURT: When they were put back into
8 evidence, I assume they didn't say we got a bulk package
9 from SLED. They identified each individual package;
10 correct?

11 MR. BROWN: I would assume so. I can't say.

12 THE COURT: Well, y'all need to do more than
13 just assume.

14 MR. BROWN: Yes, sir.

15 THE COURT: Do me favor. We're not starting
16 until two o'clock. I know y'all have trial materials and
17 preps to do, but I want somebody to answer some of these
18 questions.

19 MR. BROWN: Yes, sir.

20 THE COURT: Because at some point, just to
21 leave the burden on the defendant to make a showing which
22 is impossible to make is not a fair burden. And that is,
23 number one, she's stipulated that this is not in and of
24 itself a cigarette butt exculpatory on it's face. So,
25 therefore, we're looking at a willful destruction

1 situation.

2 MR. BROWN: Yes, sir.

3 THE COURT: But what I'm hearing you say and
4 what I'm hearing her tell me is they just tell me it's
5 not here. I don't know anything that's going on or what.
6 And so we're supposed to take that at face value. And
7 how is she supposed to be able to make a showing one way
8 or the other as to any willful destruction?

9 MR. BROWN: Yes, sir.

10 THE COURT: And so it would seem to me that we
11 start coming back to the log in, which you tell me you
12 have, from SLED back to Abbeville County. From that
13 point forward, there needs to be some analysis done to
14 see what, when, how and procedurally what was met or what
15 was deviated from. Okay?

16 MR. BROWN: Yes, sir. And I'll call down there
17 during the break.

18 THE COURT: I want you guys to make a personal
19 look down there. I mean, you're the lawyers.

20 MR. BROWN: Yes, sir.

21 THE COURT: And that's no disrespect to law
22 enforcement, but you walk them through it with defense
23 counsel in tow.

24 MS. BOLEN: Yes. I was going to say we can
25 actually go together, Your Honor.

1 THE COURT: Absolutely. I'm going to give you
2 that right to go down there ---

3 MS. BOLEN: Okay.

4 THE COURT: --- because it's a very significant
5 issue in this case to me.

6 MR. BROWN: Yes, sir.

7 THE COURT: Okay? Just keep in touch with us,
8 and let us know where you are. I'm going to hold that
9 under advisement.

10 The first issue we had, I'm denying your motion.

11 MS. BOLEN: Yes, sir.

12 THE COURT: And I'll tell you why. Let me go
13 back and identify what that issue is. That's on the
14 Biggers identification.

15 MS. BOLEN: Yes, sir.

16 THE COURT: Give me that language you showed
17 me.

18 This is United States versus Sanders.

19 LAW CLERK: It's actually State v. Dukes.

20 THE COURT: Okay. This is State versus Dukes,
21 404 S.C. 553.

22 MS. BOLEN: Yes, sir.

23 THE COURT: And they cite United States versus
24 Sanders which is 708 F.3rd 976, which is a Seventh
25 Circuit 2013 case. It says this -- and this is

1 paraphrased based on my law clerk's notes. If the Court
2 finds the identification did not result from
3 impermissibly suggestive police procedures, the inquiry
4 ends there and the court does not need to consider the
5 second prong. Okay? And so that goes back to what I was
6 saying earlier. I think it's a matter of credibility,
7 the weight, in other words, not it's admissibility as to
8 the double identification. Okay?

9 MS. BOLEN: Yes, sir.

10 THE COURT: But that's still with the
11 understanding there's the in-court identification.

12 MR. BROWN: Yes, sir. And that -- again, we're
13 not asking for that witness that saw him out there ---

14 THE COURT: I don't think you're necessarily
15 precluded, but you've already made that stipulation on
16 the record. And I'm going to hold you to it.

17 MR. BROWN: Yes, sir. We're not going to ask
18 him to identify him in the courtroom. That's going to be
19 for the officer.

20 THE COURT: All right. Let's take a break.
21 Let's get back around ...

22 Ma'am?

23 MS. BOLEN: May I just put one more thing on
24 the record?

25 THE COURT: Absolutely.

1 MS. BOLEN: I understand your ruling. We would
2 just renew our 403 objection to the lineup that it's
3 unduly prejudicial.

4 THE COURT: All right. Thank you.

5 MS. BOLEN: Thank you.

6 MR. BROWN: Judge, before we break, Sergeant
7 Singleton came back. I believe this is their log. I
8 don't know if you want us to make a copy and make it a
9 ---

10 THE COURT: I want y'all to get together, put
11 your heads together, walk through it. You understand --
12 and, again, here's my understanding. We have step one,
13 procurement of the evidence, step two, the logging-in at
14 the Oconee [sic] County Sheriff's Department, step three,
15 the trip to SLED, the log-in to SLED, the check-out and
16 analysis by SLED, back to the log at SLED, back to Oconee
17 [sic] County. And that's all been established by your
18 paper trail or your chain of evidence. And from that
19 point until today's date is where the disconnect comes.

20 MR. BROWN: That's right.

21 THE COURT: Right.

22 MR. BROWN: Yes, sir.

23 THE COURT: And so, number one, the procedure
24 for storage awaiting trial and, number two, any documents
25 that would occur that may reflect on the disposition of

1 it to show whether or not procedures were met or not met
2 or some other explanation.

3 MR. BROWN: Yes, sir.

4 THE COURT: Okay. Thank you, gentlemen.

5 MS. BOLEN: Thank you, Your Honor.

6 (WHEREUPON, court stood at recess for a lunch break
7 during which State's Exhibits Number 2 through 18
8 were marked for identification only.)

9 THE COURT: All right. This is the matter of
10 State versus Rickey Santwan Henley. We went off the
11 record. We were having pretrials. The trial -- today is
12 Wednesday, the 8th, about five after two. This trial is
13 actually going to start in just a few minutes. The jury
14 is waiting in the jury room. But we had several pretrial
15 matters, one of which was Mr. Henley's contention that a
16 cigarette butt was willfully or destroyed in bad faith.

17 MS. BOLEN: Yes, sir.

18 THE COURT: And such should be suppressed at
19 trial while not seeking to have a spoliation to the jury.
20 Is that a fair statement?

21 MS. BOLEN: Yes, sir.

22 THE COURT: And at the end of the hearing, I
23 asked the parties to stop, go in tandem with each other
24 to check out where we were. Basically, the parties
25 reported back to me very briefly that there's really no

1 new information. Is that a fair statement, Ms. Bolen?

2 MS. BOLEN: Yes, sir. We did go to the
3 sheriff's office. I can elaborate on that at the
4 appropriate time or now if you wish.

5 THE COURT: I'd rather you make the record you
6 think you need to make, and I would ask the State to do
7 the same. Okay?

8 MS. BOLEN: All right. Thank you, Your Honor.
9 We did go to the sheriff's office. We met with Sheriff
10 Watson as well as Deputy Sheriff Singleton. It's my
11 understanding that Ms. Singleton is now the evidence
12 custodian and has been since Sheriff Watson took office
13 in the spring of 2013. Prior to that, the sheriff's
14 office -- the head sheriff was Charles Goodwin. And my
15 understanding is that the evidence custodian before
16 Sheriff's Goodwin's holding of the office was a gentleman
17 named Marion Johnson. This case would have fallen under
18 both administrations where the evidence would have been
19 under the control of evidence custodian Johnson from
20 about August 2012 until whenever Ms. Singleton took over
21 in the spring.

22 When we went to the evidence room, Sheriff Watson
23 explained that he had made a number of fairly substantial
24 changes to how evidence was managed. That when he got
25 there, basically things were in a mess. And there was

1 some evidence outside the evidence room. That Mr.
2 Johnson was the only one with a key to the evidence room.
3 That things were not -- things were in the evidence room
4 that were not evidence such as uniforms, but that he has
5 straightened out the evidence room and has a new
6 procedure in place where there are drop boxes -- there's
7 one drop box for BEST packs, and then there's little
8 lockers for items that are larger. And that Ms.
9 Singleton, from my understanding, is the person on the
10 other side who can use the key to unlock an evidence
11 locker.

12 While we were there, Ms. Singleton looked through
13 some of the evidence. Was not able to find the cigarette
14 butt. The State did have the -- SLED basically did an
15 inventory in, I think, January 2013. This lab number was
16 listed on the inventory. For whatever reason, although
17 the SLED report was done in 2013, the actual printout
18 report has a date June 2005. I'm not sure why that date
19 is there. But this lab number is recorded in that
20 inventory that SLED did. There is also in the inventory
21 a list of evidence to be destroyed. And I went through
22 that list, and this is not listed as something to be
23 destroyed.

24 So all we can really take from that is that in early
25 2013 this evidence was still in the sheriff's office. It

1 was not marked to be destroyed, and yet somehow between
2 then and now it has been lost or destroyed.

3 Your Honor, apparently when this evidence was
4 returned by SLED, it was returned with some other
5 evidence as well, I think drug evidence. And that has
6 been destroyed. I have asked for any kind of report on
7 which drugs ---

8 THE COURT: That evidence has been destroyed?

9 MS. BOLEN: I think that's the assumption. And
10 Mr. Brown can maybe speak to that.

11 MR. BROWN: Judge, prior to this, before this
12 trial, I had talked with Sergeant Singleton about that.
13 And we were able to identify the drug evidence brought
14 back from SLED at the time that the cigarette butt was
15 brought back from SLED on 8/10/2012. This cigarette butt
16 was brought back with six or seven drug packets. Those
17 cases were all resolved, and ultimately Ms. Singleton,
18 Sergeant Singleton, said those drug cases -- that
19 evidence has been destroyed.

20 THE COURT: So let me make sure. As I recall
21 before we left for the lunch break that we had a chain of
22 custody from the gathering of the evidence on site, to
23 the Oconee [sic] County Sheriff's Office, to SLED,
24 checked in to SLED, checked out for testing, checked back
25 in to the depository at SLED. Then it came back to

1 Abbeville bundled with other non-related drug evidence
2 that was picked up. Checked in. The report is checked
3 in for chain purposes. Then what you're saying is that
4 bundle of drugs, which was non-related drugs, were
5 destroyed because those cases were resolved. But when
6 were those drugs destroyed compared to when this SLED ---

7 MR. BROWN: Judge, I could not say for certain
8 when those drugs were destroyed. We know that those were
9 ---

10 THE COURT: Can you say that it was after SLED
11 did its audit after the change of administration?

12 MR. BROWN: That's my understanding.

13 THE COURT: Do you have anything to challenge
14 that?

15 MS. BOLEN: I don't have anything to challenge
16 it, Your Honor. But again, I don't know the lab numbers
17 for the drugs, so I can't cross-reference them with
18 whether they're on the list of things in the SLED audit
19 to be destroyed or not.

20 THE COURT: Well, shouldn't there be a record
21 of destruction of those drugs? Right?

22 MR. BROWN: I would hope so, but I'm not sure
23 there is one.

24 THE COURT: Then why do you ---

25 MR. BROWN: And I don't believe there is a

1 record of the destruction of those drug cases.

2 THE COURT: Well, how do you base your response
3 then that you think it came after the SLED audit on the
4 change of administration?

5 MR. BROWN: Well, I would base -- on those
6 drugs, they're no longer in the evidence room. And
7 that's based on what Ms. Singleton told me, that those
8 cases were disposed of.

9 THE COURT: Were those drugs identified in the
10 SLED audit?

11 MS. BOLEN: I don't -- I don't think we have a
12 way of knowing that. I haven't been given ---

13 MR. BROWN: I can call back down to SLED and
14 get those numbers, and then we can flesh that out. But
15 we do know that this lab number L1203811, which is the
16 cigarette butt from this case of State versus Rickey
17 Henley, was on that SLED audit as being there.

18 THE COURT: The date of that audit was when?

19 MR. BROWN: That was June of 2013, I believe.

20 MS. BOLEN: I have it. It can run get it.

21 It's right in the office right here.

22 THE COURT: If y'all could just -- because
23 you've made a comment that there was a report that didn't
24 come out until 2015. Okay.

25 Mr. Brown?

1 MR. BROWN: Judge, this is the South Carolina
2 Law Enforcement Division file. The date on this is
3 February 14, 2013, from Steve Gambrell, who's the SLED
4 officer. Evidence Inventory, Abbeville County Sheriff's
5 Office. And the interim sheriff at that time was Sheriff
6 Ronnie Ashley, who is the coroner here. And it basically
7 says on January 16th they received a request from Ronnie
8 Ashley to have a SLED audit. And during this time, I
9 guess during the month of January, they began doing the
10 audit. They did bank records of drug money, evidence
11 inventory and photocopies of these things.

12 What Ms. Bolen is referring to -- this was obviously
13 done all in 2013 based on the report. At the heading of
14 these pages where it does show the lab number in this
15 case, L1203811, at the top -- it looks like an Excel
16 spreadsheet -- it's got June 2005. Obviously, that's a
17 scrivener's error. This case came out in 2012.

18 THE COURT: Okay.

19 MR. BROWN: So that's what it does show that
20 that was -- that this case number and this item, the
21 cigarette butt, was in the Abbeville County Sheriff's
22 Office at that time. And that would have been after it
23 was brought back based on our SLED chain of history or
24 custody where it was sent back to the Abbeville County
25 Sheriff's Office on August 10th of 2012.

1 THE COURT: All right.

2 Ms. Bolen?

3 MS. BOLEN: Yes, sir.

4 THE COURT: What evidence of bad faith can you
5 urge me to consider?

6 MS. BOLEN: Well, Your Honor, any evidence I
7 have would actually be sort of a lack of evidence.
8 Everything I'm hearing is basically based on assumptions.
9 They're assuming that it was destroyed with these other
10 drugs. We don't have the numbers of those drugs.
11 There's no way to cross-reference and check if those
12 drugs were included on the SLED inventory that was done
13 in January, if they were on the list to be destroyed, if
14 they were destroyed, when they were destroyed, by whom.
15 If the State's assumption is correct, we have no way of
16 verifying that. And, again, that's an assumption.
17 We could just as easily assume that someone came in
18 and purposely destroyed the cigarette butt for some
19 reason. And I think without any sort of policy in place,
20 any kind of written policy, any kind of written
21 documentation, anyone could come in and say, I had a
22 stack of cases that were closed. I destroyed the
23 evidence on this date. These were kept very closely to
24 this, and so it got mixed in there. We don't have
25 anything to document even the State's theory. That's all

1 based on an assumption.

2 So I think without any evidence that these were
3 destroyed in good faith, I think the inference must be
4 given to the benefit of the defendant that they were
5 destroyed in bad faith and that, therefore, they should
6 be suppressed.

7 THE COURT: I'm going to deny your motion. Let
8 me say this. While it is a tough burden ---

9 MS. BOLEN: Yes, sir.

10 THE COURT: --- for the defendant to establish
11 -- but everybody agrees that this type of evidence, the
12 cigarette butt in particular, is not exculpable on its
13 face. So, therefore, you're looking at the bad faith
14 standard under the way we look at it. And how you prove
15 bad faith from your perspective when the evidence is
16 controlled by the State is a tough burden.

17 MS. BOLEN: Yes, sir.

18 THE BAILIFF: But everything I've heard in this
19 case was that from gathering, step one, to step two to
20 the lockup at the locker at Abbeville County, to SLED,
21 transported to SLED receipt, removal for testing, back to
22 lockup, reported back or transferred back to Abbeville
23 and to the lockup is documented. And so there's an
24 appropriate chain of custody.

25 Also, during this period, there appears to be have

1 been a transfer in leadership. In fact, I know part of
2 it because I dealt with Sheriff Goodwin myself up in
3 Greenville.

4 MS. BOLEN: Yes, sir.

5 THE COURT: And so during that transition --
6 which is not necessarily part of the procedure, but it
7 certainly is prudent -- there was an audit done of the
8 evidence room to make sure that everything's accounted
9 for, taken care of. Backing up, when the evidence was
10 picked up from Columbia, there were other non-related
11 drug articles picked up at that time. It doesn't appear
12 to be necessarily distinguished the way it was packaged.
13 But anyway, those documents -- evidence was destroyed
14 because cases were resolved.

15 Now, what I gather from that was an inadvertent
16 destruction of this piece of evidence based on the other
17 evidence being in close proximity or something to it,
18 although we don't have any proof of that. There's
19 certainly not been a showing of bad faith and bad intent
20 on behalf of the State to keep Mr. Henley from being able
21 to evaluate this evidence. So, therefore, I'm going to
22 deny your motion to suppress that.

23 The question as to the photograph of the cigarette,
24 you're going to have to lay a proper foundation pursuant
25 to any other evidence requirements.

1 MR. BROWN: Yes, sir.

2 THE COURT: And then we'll see at that point.

3 So you will object if you think it is appropriate, then
4 that's what we'll do.

5 Any other matters before we get the jury in here?

6 MR. ANDREWS: I can wait for Ms. Bolen. I just
7 wanted to make sure that I had all the Court's rulings
8 down before I said something in opening.

9 THE COURT: Well, the Court's rulings are like
10 this. And I'll tell you, I've got them written down.
11 The Biggers issue is denied. That was it goes to the
12 weight not the admissibility. Jackson Denno denied as
13 being non-custodial. Bifurcation is denied in that the
14 Defense seeks to prohibit the introduction of prior
15 convictions. But the State is expressly limited to two.
16 The suppression of the cigarette butt is denied. The
17 boots I.D. to the extent that they have been testified to
18 that is consistent with Rule 701, the perception of the
19 witness as to tread, subject to contemporaneous
20 objection, I'm not excluding. Okay? That's my rulings.

21 MR. ANDREWS: Okay. And, Your Honor, I may be
22 taking this from Ms. Bolen. But I think we very briefly
23 discussed the chain of custody issue.

24 THE COURT: Well, I asked Ms. Bolen, and they
25 said that they didn't have any new evidence. I said,

1 "Are you going to be able to stipulate chain custody?"
2 And she said, "I don't think necessarily I can," is my
3 understanding.

4 MS. BOLEN: Yes, Your Honor. At this point, we
5 are not able to stipulate to internal chain witnesses. I
6 understand the Hatcher ruling. But in this case, we're
7 not able to stipulate.

8 MR. ANDREWS: Well ---

9 THE COURT: Well -- go ahead.

10 MR. ANDREWS: Well, I guess that's my concern,
11 I mean. The way that -- again, I know the Court kind of
12 picked on me a little bit for quoting Hatcher. But the
13 way I understand Hatcher is we don't have to bring
14 everybody; we just have to make it clear that nobody's
15 guessing ---

16 THE COURT: You've got to try your case. We're
17 not doing it in pretrial. If you ain't got it to my
18 satisfaction, then we'll know about it soon enough.
19 Okay?

20 MR. ANDREWS: Okay.

21 THE COURT: Let's do this right quick. And I'm
22 not -- and you're right about Hatcher. I mentioned the
23 fact that we had a chambers conference in here. I always
24 loathe to have those conferences because people think all
25 kind of nefarious things go on. I'm going to give Ms.

1 Bolen first, since she represents the Defendant, a chance
2 to add or clarify anything stated that occurred in my
3 chambers before we came out here for the hearing.

4 MS. BOLEN: Your Honor, I think everything's
5 been covered other than that we had asked -- in Officer
6 Thompson's testimony, he'd mentioned an Officer Michael
7 Belcher that was not mentioned in any discovery I've
8 gotten. I believe the State first heard about him today
9 or yesterday. And we're just asking that we be permitted
10 to add him to our witness list.

11 THE COURT: Sure.
12 Anything further than that?

13 MR. BROWN: I don't have an objection to that.

14 THE COURT: And my understanding is Mr. Belcher
15 is being presently subpoenaed.

16 MS. BOLEN: Pardon?

17 THE COURT: And Mr. Belcher is presently being
18 subpoenaed?

19 MS. BOLEN: He's in the process of that. And,
20 Your Honor, along with that, we would ask since we now
21 have a lost line of a lost cigarette butt and an office
22 that we're finding out about today, we would ask for a
23 chance to review Officer Thompson's actual -- any file
24 that the sheriff's office has, their actual physical
25 file. We ask to review it just to make sure there's

1 nothing else.

2 THE COURT: Any problem with that?

3 MR. BROWN: Not from the State?

4 THE COURT: All right. Well, go ahead and
5 let's do that.

6 I want to get this jury in here and started.

7 MS. BOLEN: Yes, sir.

8 THE COURT: If we do that -- how much time are
9 you going to need to review that information?

10 MS. BOLEN: Probably need ten minutes.

11 THE COURT: Okay. Let's do this. Let's bring
12 them in here, do my preliminary charge to them, do your
13 opening statement -- are you going to make an opening
14 statement?

15 MS. BOLEN: Ms. Patel will.

16 THE COURT: You're going to make an opening
17 statement? Okay.

18 After that, we might take a quick break and let you
19 look at it and then bring the first witness in. How
20 about that?

21 MS. BOLEN: Yes, sir. Thank you.

22 THE COURT: All right. Would you bring the
23 jury in, please?

24 And meanwhile, we're going to pick a foreman. I
25 might just pick a foreman today since we're twenty-five

1 minutes behind. Does the State or the Defense have any
2 problem with me picking the jury foreman in this matter?

3 MS. BOLEN: No, sir.

4 MR. BROWN: No, sir.

5 THE COURT: I normally let them pick it
6 themselves, but I'm going to do it. Best way to speed it
7 up.

8 (WHEREUPON, the jury entered the open court at
9 approximately 2:25 p.m.)

10 THE COURT: The lady in the stripe who was our
11 alternate yesterday, I'm going to ask you to sit there in
12 the foreman's chair, foreperson's chair.

13 THE JUROR: All right.

14 THE COURT: And who is our alternate in this
15 trial? Do you know? Who was the alternate in the second
16 case?

17 THE CLERK: Michael Cummings.

18 THE COURT: Ma'am?

19 THE CLERK: Michael Cummings.

20 THE COURT: Marshall?

21 THE CLERK: Michael.

22 THE COURT: Michael?

23 THE CLERK: Cummings.

24 THE COURT: Okay.

25 Sir, would you come around there and sit in this --

1 and everybody else can sit ...

2 I'm going to ask that you serve as our foreperson.

3 Will that be acceptable to you?

4 THE JUROR: Yes, sir.

5 THE COURT: Ma'am?

6 THE JUROR: What you say?

7 THE COURT: I was going to get you to be the
8 foreperson of this jury. The foreperson presides over
9 deliberations at the end of the case and communicates
10 with the Court. Would you rather not do that?

11 THE JUROR: No, sir.

12 THE COURT: Who was on the other jury? You
13 were the foreperson before?

14 THE JUROR: Yes, sir.

15 THE COURT: You were on the other jury. Come
16 on down here. You want to be foreperson?

17 THE JUROR: That'll be fine.

18 THE COURT: Okay. I'm going to mix up -- okay.
19 Now, if you would, each time you come and out of the
20 courtroom, would you use that seat?

21 THE JUROR: Yes, sir.

22 THE COURT: And would you use that seat?

23 THE JUROR: Yes, sir.

24 THE COURT: The rest of you can sit wherever
25 you like. Okay? And I didn't mean to put you on the

1 spot. I'm sorry.

2 THE JUROR: It's okay.

3 THE COURT: Would anyone on the jury like to
4 have a pad and pencil to take notes with? If you would,
5 raise your hand. Five? Six? Okay.

6 While he's doing that, would you mind swearing the
7 jury for me, please, ma'am?

8 (WHEREUPON, the jury was duly sworn.)

9 THE COURT: All right. Ladies and gentlemen,
10 I'm going to go ahead while the bailiffs ...

11 If you would go ahead, bailiffs, and just hand out
12 ...

13 Raise your hand if you want the pad and pencil.

14 (WHEREUPON, pads and pens were distributed to
15 jurors.)

16 THE COURT: And I'm going to go ahead and start
17 giving you some preliminary remarks while they're handing
18 them out.

19 PRELIMINARY CHARGE

20 BY THE COURT:

21 As you heard during the jury selection yesterday,
22 this is the case of the State versus Rickey Santwan
23 Henley who is charged with burglary and larceny.

24 Now, I don't know if any of you, other than some of
25 you jurors who are returning, have ever been involved in

1 a trial before. Whether you've been a participant, a
2 witness, a juror or a spectator. I would suspect that
3 each one of you have in the past watched what purports to
4 be a trial on TV. Let me let you know now that the trial
5 that you're about to watch is not entertainment. It's
6 not like TV. Trials are very slow. They're very
7 methodical. They're very deliberate. Sometimes you're
8 going to feel like cattle being herded in and out of this
9 courtroom because of the fact that what we're trying to
10 do is a search for the truth to try to see that justice
11 is done.

12 Trials are a fundamental part of our democracy or,
13 as I hear some people like to say, a republic. It
14 doesn't matter. It's a fundamental aspect of what we, as
15 Americans, enjoy, and particularly South Carolinians.

16 Now, these attorneys that you have in the courtroom,
17 when they are sworn, as is any attorney, they're sworn to
18 be advocates for their client. The terms that we use is
19 that they will be zealous advocates for their client.
20 And you can expect that they will aggressively pursue
21 their client's interest in this case.

22 But they're also officers of this court. So what
23 that means is you can reasonably expect these attorneys
24 to be ethical and competent and courteous with one
25 another, with me, with any witness that may come to this

1 court and with their dealings throughout the course of
2 this case.

3 Now, you just took an oath where you said you would
4 be fair and impartial. Throughout the jury selection
5 process, you represented you can be fair and impartial
6 and base your decision based on the testimony and
7 evidence in this courtroom and according to the law as I
8 give it to you. I asked that question at least two dozen
9 times during jury qualification. That means that these
10 parties, these witnesses, the Court has a right to expect
11 of you that you will be fair, that you will be impartial,
12 and you will be ethical in your dealings with the Court
13 in this case and with one another.

14 Now, what I'm about to tell you is not the
15 substantive law of burglary or larceny or any other
16 matter that will come before you. That will be charged
17 at the end of the case. What I'm about to give you is
18 just a basic outline of what you can reasonably expect,
19 some basic concepts for you to keep in your mind while
20 you're listening to the evidence so you are able and
21 prepared to do your job as jurors.

22 Number one, five of you have elected to take notes.
23 Forewarning about notes: just because something appears
24 in somebody's notes does not mean that it prevails over
25 somebody's memory of that particular fact or testimony.

1 Mr. Foreman, at the end of the day when you begin
2 your deliberations, if something appears in somebody's
3 notes, and somebody says, well, I remember it being
4 another way, those differences are what we call
5 deliberations. You will just have to hash them out to
6 come up to a finding on that issue. Okay? But needless
7 to say, just because it's written doesn't mean it's gold
8 as opposed to somebody's memory.

9 Also, when you judge the facts in this case, you
10 have to determine which testimony you want to believe and
11 which testimony you wish not to believe. Part of
12 performing that task is to watch somebody's reactions
13 while they're on the stand. It may be some subtle
14 reaction. It may be something that's more noticeable.
15 But if you're so engrossed in taking your notes that you
16 miss somebody's reaction, you may miss something about
17 their demeanor that may be indicative to you, as the
18 juror, as to whether or not they're telling the truth or
19 whether they're not telling the truth in this matter.

20 Now, as I told you during the jury qualification and
21 selection, the fact that Mr. Henley has been arrested,
22 charged and indicted on both of these charges is not
23 evidence of his guilt. It does not raise an inference of
24 his guilt nor to any presumption of his guilt. These
25 documents are simply the charging mechanisms by which the

1 State of South Carolina will bring a person before a jury
2 for a trial in the determination of guilt or innocence.
3 In fact, Mr. Henley has said, "I'm not guilty," to both
4 these indictments. So what that means is the burden is
5 on the State of South Carolina to prove each and every
6 element of burglary and each and every element of larceny
7 by proof beyond a reasonable doubt in order for Mr.
8 Henley to be convicted in this case.

9 Each one of these indictments are freestanding. And
10 I will tell you more about that at the end. In other
11 words, at the end of the day when you go back to your
12 jury room, you will consider the charge of burglary
13 independent of the charge of larceny and vice versa.

14 Now, it will be your job at the end of the day to
15 determine whether or not the State has proven its charge
16 or charges by proof beyond a reasonable doubt. In other
17 words, whether or not it's meet its burden of proof. So
18 let me give you a quick definition of what reasonable
19 doubt is. A reasonable doubt is the kind of doubt that
20 would cause a reasonable, honest and sincere person to
21 hesitate to act in an important matter in their own
22 affairs.

23 Now, the State has the burden of proving the
24 defendant guilty beyond a reasonable doubt. Now, if any
25 of you have ever sat on a civil case where people are

1 asking for money, the burden is by a preponderance or the
2 greater weight of the evidence. In those cases, the
3 trial judge will say, if the scales tilt ever so slightly
4 in favor of one side or the other, that burden has been
5 met or not. That's the greater weight of the evidence.

6 Now, in criminal cases, the beyond a reasonable
7 doubt is a much higher burden. It's the highest burden
8 that we recognize in the state of South Carolina. That
9 being said, there's nothing in this world that we know
10 with absolutely certainty. And in criminal cases, the
11 law does not require that the State overcome every
12 possible doubt that may occur in this case.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the defendant's guilt of the
15 crime charged. At the end of the day, ladies and
16 gentlemen, when it becomes time for you to deliberate
17 when you are given expressed word to begin your
18 deliberations, if you find the defendant is guilty of one
19 or both of these charges, then it'll be your duty find
20 him guilty.

21 On the other hand, if you have a reasonable doubt or
22 you think there's a real possibility that the defendant
23 is not guilty, then you will be required to give him the
24 benefit of the doubt and find the defendant not guilty.
25 And that's just an idea about what reasonable doubt is.

1 And I'll tell you more at the end of the day. At the end
2 of this trial. Excuse me.

3 Now, ladies and gentlemen, your purpose as a juror
4 is to be the finders of fact. We call that the judges of
5 the fact. In fact, lawyers say that jurors are the sole
6 judges of the facts. You'll determine what they are.
7 And you'll determine what the facts are by listening to
8 the testimony and the evidence from this witness chair or
9 from people who have been sworn in who'll be subject to
10 direct examination and cross-examination.

11 You may not make your decision based on anything you
12 hear outside of this courtroom. And remember the
13 prohibitions I gave you before that while you're sitting
14 as jurors you may not engage in independent jury research
15 about any party, issue, or matter involved in this case.
16 You may not speak with one another or anyone else about
17 this case during the trial or during breaks in this
18 trial. And you may only speak with each other about this
19 case once you are given clear instructions to begin your
20 deliberations.

21 Also, if I've done anything throughout the course of
22 this trial or if I do anything throughout the course of
23 this trial that indicates to you how you are to find
24 facts -- in other words, what verdict you're to bring
25 back -- I'm going to ask you to disregard that. I have

1 no feelings with that regard. Our constitution does not
2 allow any trial judge to comment or have a feeling about
3 what the facts are in this case.

4 The law, ladies and gentlemen, that makes you the
5 sole judges of the facts makes me the sole judge of the
6 law. You will be required as part of your duties as
7 jurors to honor and follow the law as I give it to you at
8 the end of this case. You shall not and you may not be
9 influenced with what you would like it to be or what you
10 wish it would be, but only what it is. I can't invade
11 your providence of being fact finders and you cannot
12 invade my providence as being the instructor on the law.

13 I will tell you this. Most often there is -- if I
14 make a statement in law, there's groups down in Columbia
15 who can correct my legal mistakes. But, on the other
16 hand, there's not usually a methodology by which you can
17 correct incorrect findings of fact. Therefore, it will
18 behoove you to pay close attention throughout all phases
19 of this trial so that you're able to listen to the law
20 and deliberate when you're asked to begin at the end of
21 this case.

22 Now, in every case, there will be five phases. In
23 just a minute, the State is going to give you an opening
24 statement. They will tell you about what they contend
25 the case is about. What these lawyers tell you is not

1 evidence. It's not testimony. They won't be up here on
2 this witness stand, and they won't be subject to cross-
3 examination. It's helpful and it's designed to tell you
4 about what the case is, explain to you their theory of
5 the case and what you can reasonably expect, but it's not
6 evidence.

7 Also, the defense has a right, but has no
8 requirement, to give an opening statement because the
9 burden of proof remains on the State to prove Mr.
10 Henley's guilt at all times. He can sit there and not
11 say anything throughout this case. And the State has the
12 burden at all times to prove his guilt by proof beyond a
13 reasonable doubt.

14 If they take advantage or decide they want to have
15 an opening statement, then that opening statement will be
16 under the same rules as with the State. It's not
17 evidence. Mr. Henley's lawyers won't be subject to
18 cross-examination. It's just designed to help you. At
19 the end of the day, if what you remember in your
20 collective memories differs from what either or both of
21 these lawyers tell you, then your memory will prevail on
22 that issue or on all issues.

23 In every case, I anticipate there will be
24 objections. The fact that there are objections shall not
25 be considered by you in your deliberations. Let me just

1 say to you that that's just a process that goes on in
2 every case. Mr. Foreman, if one of your jurors at the
3 end of the day starts saying, well, how about the fact
4 that there was an objection and the Judge didn't let this
5 in, you will stop that. You can't talk about it during
6 breaks in the case. That is simply the process that goes
7 on through every case. Okay? And it's not a big coverup
8 or to hide any type of situation. That is simply the
9 process that goes on in every trial.

10 Now, ladies and gentlemen, other than that, I'm
11 going to meet with these attorneys to see if I've
12 neglected to tell you something that I should have told
13 you or if I told you something that I should not have.

14 Mr. Foreman, throughout the course of this trial, if
15 you ever need to communicate with the Court for any
16 reason, if you'd write it down, write down what the issue
17 is, sign your name to it, knock on that door, and our
18 bailiffs will get it from you.

19 Also, if I start to call you back before you're
20 ready to come, just say we're not ready. If you need to
21 take a break before I'm ready to send you, indicate it.
22 If you can't hear testimony or if your sight is blocked,
23 raise your hand. We want you and need you to be able to
24 watch all the testimony and hear all the evidence. Okay?

25 With that being said, I'm going to send you back to

1 your jury room. In just a moment, we'll begin with
2 opening statements. Very good.

3 (WHEREUPON, the jury exited the open court at
4 approximately 2:41 p.m.)

5 THE COURT: All right. Any additions or
6 exceptions from the State?

7 MR. BROWN: None from the State.

8 THE COURT: From the Defense?

9 MS. BOLEN: No, sir, Your Honor.

10 THE COURT: You want a quick minute to go do
11 your -- heads together before you do opening statements
12 to get your head together, or are you ready to go?

13 Ms. Patel, you're doing opening?

14 MS. PATEL: I'm ready, yes.

15 THE COURT: Are you? I like that. Okay.

16 MR. ANDREWS: We're ready, Your Honor.

17 THE COURT: All right. Would you bring the
18 jury out when they're ready?

19 (WHEREUPON, the jury entered the open court at
20 approximately 2:43 p.m.)

21 THE COURT: Is the State ready to proceed?

22 MR. ANDREWS: The State's ready, Your Honor.

23 THE COURT: Is the Defense ready to proceed?

24 MS. PATEL: Yes, Your Honor.

25 THE COURT: All right.

1 MR. ANDREWS: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

4 BY MR. ANDREWS:

5 You know, unless it was your birthday or an
6 anniversary or some other special occasion, you may not
7 remember February 15th of 2012. Amanda Moss, she
8 remembers February 15, 2012. That was the day she became
9 a victim of a burglary.

10 Her door was kicked down. She had personal property
11 taken. But more importantly, the sanctity of her home
12 had been violated. After the damage had been repaired
13 and after she had replaced her other property, the one
14 thing she will never be able to replace is the safety and
15 security that her home offers her. On that day, her home
16 went from being her castle to just a place.

17 Now, what happened in this case? Like the Judge
18 told you, you are the judge of the facts, the finders of
19 fact. And what happened is just another way of saying
20 what are the facts. And here is what the State, we
21 believe, the evidence is going to show you the facts are.

22 On February 15th, 2012, Rick Culbreth, who is a
23 neighbor of Amanda Moss, happened to drive by the Moss
24 home. He saw a strange car he didn't recognize at the
25 Moss home. It appeared to have been backed up to one of

1 the doors.

2 Now, Rick Culbreth is a good neighbor. He's been
3 there for a while. He's known the Mosses for a while.
4 And the Mosses' address is here in
5 Abbeville. And he sees a person inside the house, and he
6 knows that's not a member of the Moss household. This
7 person comes out. This person actually has a brief
8 conversation with Mr. Culbreth. And then this person
9 leaves.

10 Mr. Culbreth is able to get a look at the vehicle
11 and get kind of a partial license tag written down. Or
12 at least he remembers a partial license tag.

13 Amanda Moss is contacted. Obviously, she's not
14 given anyone any consent to be in her home.

15 Law enforcement is contacted. Investigator Patrick
16 Thompson, who was at the time with the Abbeville
17 Sheriff's Office and is now with the Anderson County
18 Sheriff's Office, responds. And he has a chance to talk
19 with Mr. Culbreth about what Mr. Culbreth saw that day.
20 And after getting Mr. Culbreth's statement, Investigator
21 Thompson is able to match up what he believes to be a
22 suspect vehicle. He finds a mid-nineties Pontiac
23 Bonneville with the tag number HSM 455. Which the
24 numbers weren't right in Mr. Culbreth's rendition of the
25 license tag number, but the letters were very close. I

1 believe Mr. Culbreth said "H.S.N." instead of "H.S.M."

2 Investigator Thompson continues. Ultimately, he's
3 able to track the vehicle to a registered owner and an
4 address in Anderson. The address in Anderson -- and the
5 vehicle is registered to Mr. Rickey Henley, who is the
6 defendant in this case and seated right over there at the
7 end of the table.

8 Investigator Thompson and another investigator with
9 the Abbeville Sheriff's Office are able to have a
10 conversation with Mr. Henley. Mr. Henley admits that he
11 had been in the area recently and admits to having spoken
12 with someone. But the conversation was fairly short.
13 Investigators leave.

14 Now, backing up a little bit -- and I should have
15 told you this before. It was important. There is a
16 cigarette butt that is recovered at the Moss residence.
17 That cigarette butt is sent to SLED. SLED tested it for
18 the presence of D.N.A. Ultimately, that D.N.A. comes
19 back to Rickey Henley.

20 And ladies and gentlemen, that's a pretty decent
21 thumbnail sketch of the State's case. Now, the Judge is
22 going to charge you on the law in this case. And that's
23 going to come right at the end.

24 Mr. Henley has two indictments pending against him.
25 One of them is for larceny; the other one is for burglary

1 in the first degree. The elements of larceny are a
2 taking of property from another person with the intent to
3 permanently deprive that person of that property. And in
4 this case, that would be the personal property taken from
5 Amanda Moss.

6 The elements of burglary are entry into a dwelling
7 without the owner or the occupant's consent with the
8 intent to commit a crime therein. And in this case, our
9 theory is that Mr. Henley went into Ms. Moss' home, did
10 so without consent, took personal property. And that was
11 the crime he intended to commit.

12 As to the burglary case, as to the burglary
13 indictment rather, this is a charge of burglary first.
14 And an additional element is that the person charged with
15 burglary has been convicted of two prior burglaries. And
16 there will be evidence about those two prior burglaries.

17 Now, the Judge briefly mentioned reasonable doubt.
18 And he's going to charge you on this at the end of the
19 case when he gives you a charge on the law. Again, he's
20 going to charge you. But reasonable doubt is a doubt
21 that would make a reasonable person hesitate to act. But
22 if you are certain of something beyond a reasonable
23 doubt, that means that you are firmly convinced of it.

24 Here's what I want you to think of as far as
25 reasonable doubt goes. Just because you have to think

1 about something, just because you take a moment to
2 reflect, that's not reasonable doubt. That is not a
3 hesitancy to act.

4 Here's an example I can give you. If you're at an
5 intersection and you have a green light, it means you can
6 go, but it's a good idea to look both ways. Now, did you
7 take a little time to look both ways to make sure it was
8 safe? Yeah, you did. But you knew beyond a reasonable
9 doubt you could go. I think that's a helpful little way
10 to think about reasonable doubt. Again, just because you
11 have to think about something, just because you have to
12 consider something, it doesn't mean that a reasonable
13 doubt exists. To look at it from the other definition,
14 once that light is green and the way is clear, you are
15 firmly convinced that it's safe to proceed.

16 Now, to touch on another thing the Judge mentioned,
17 this is not television. All right? And for prosecutors,
18 I guess television has become kind of an extra hurdle
19 because it seems like there's a lot of television shows
20 that deal with the investigation and the prosecution of
21 crimes. And, you know, I'm thinking of kind of the
22 alphabet soup sort of shows like C.S.I., N.C.I.S. Please
23 keep in mind all of those things are fiction. For one,
24 in real life, not everything's concluded nice and cleanly
25 in an hour. And two, a lot of that technology doesn't

1 even exist.

2 But I don't tell you that to in some way make you
3 think that this isn't going to be interesting. This is
4 extremely interesting and important because this is where
5 disputes between citizens and the State are resolved.
6 Second only to military service, this is the highest
7 civic duty a person can have. So keep that in mind.

8 Listen carefully to all of the words coming out of
9 that witness stand and carefully examine any exhibits
10 that might be put before you. And at the end of this
11 case, after all of the evidence has come in, you will be
12 convinced beyond a reasonable doubt that Rickey Henley is
13 guilty of petit larceny and burglary in the first degree.
14 Thank you.

15 THE COURT: Ms. Patel, does the Defense wish to
16 have an opening statement?

17 MS. PATEL: Yes, Your Honor. Thank you, Your
18 Honor. May it please the Court.

19 THE COURT: Yes, ma'am.

20 OPENING STATEMENT

21 BY MS. PATEL:

22 Y'all remember those connect-the-dot drawings? The
23 page would be filled with closely arranged dots. There
24 would be a small illustration in the middle. And you
25 have to go around the page to connect the dot one-by-one-

1 by-one. And you end up with this wonderful drawing at
2 the end.

3 I want you to think about the evidence in this case
4 as those dots. And in this case, if you begin to connect
5 the dots, you're not going to end up with this beautiful
6 perfect drawing as the State has painted for you.

7 The evidence in this case is going to be fuzzy, and
8 it's going to be unclear. And if you end up connecting
9 those dots, you're going to end up with an unclear
10 picture. Why? Because the State's got the wrong guy
11 here.

12 On February 15th, three years ago, an unknown man
13 stood in front of Amanda Moss' door hoping that she
14 wouldn't open that door. Two hours away in Beach Island,
15 Rickey Henley, my client, sat at his mother's breakfast
16 table hanging out with her. The State's trying to tell
17 you that Rickey Henley was in Abbeville. How can one man
18 be in two places at the same time? It just doesn't make
19 any sense.

20 In this case, I'm asking you to embrace your role as
21 jurors. And when you hear evidence from the chair today,
22 I'm asking you to evaluate it, to critique it. You're
23 going to hear evidence from an eyewitness today. Pay
24 very close attention to what he sees. He's talking to
25 this unknown man. What should he have seen? What should

1 he have paid attention to? What does he remember telling
2 law enforcement? All these little details matter.

3 I also want you to pay attention to the
4 investigation in this case. What did the law enforcement
5 do in this case to make sure that they thoroughly found
6 the right person?

7 At the end of this case, I'm going to ask you to
8 hold the State's feet to fire. I'm going to ask you to
9 protect Rickey Henley. I'm going to ask you to protect
10 him under the Constitution. I'm going to ask that you no
11 longer leave him at the mercy of the State. I'm going to
12 ask you to rescue him because that is the great calling
13 and the great function of the American jury. And that's
14 why we're here today, to do justice.

15 Thank you.

16 THE COURT: Will the State call your first
17 witness?

18 MR. ANDREWS: Judge, might we take one moment

19 ---

20 THE COURT: That's correct. All right.

21 MR. ANDREWS: --- to make sure one of our
22 witnesses is here?

23 THE COURT: I'm sorry.

24 Mr. Foreman, ladies and gentlemen, let's take about
25 a ten-minute break. We'll get a couple of things in

1 order, and then we'll bring you back in here for the
2 beginning of testimony. Go to your jury room, please.

3 (WHEREUPON, the jury exited the open court at
4 approximately 2:57 p.m.)

5 MS. BOLEN: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 (WHEREUPON, court stood at recess for a short break
8 during which State's Exhibit Number 19 was marked
9 for identification only.)

10 THE COURT: Ms. Bolen, did you have sufficient
11 time to review those documents?

12 MS. BOLEN: Yes, Your Honor, I did.

13 THE COURT: Very good.

14 Are you ready for your first witness from the State?

15 MR. ANDREWS: Yes, Your Honor.

16 THE COURT: Is the Defense ready?

17 MS. BOLEN: Yes, sir. We just renew our prior
18 objections at this time.

19 THE COURT: Those are noted for record, and
20 they're denied.

21 MS. BOLEN: Thank you.

22 THE COURT: All right. Would you bring the
23 jury in, please, sir?

24 (WHEREUPON, the jury entered the open court at
25 approximately 3:13 p.m.)

Sharmel Miller - Direct Examination by Mr. Brown

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- 1 THE COURT: Would you call your first witness?
- 2 MR. BROWN: Yes, Your Honor. The State calls
- 3 Sharmel Miller.
- 4 SHARMEL MILLER,
- 5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
- 6 DIRECT EXAMINATION
- 7 BY MR. BROWN:
- 8 Q. Good afternoon, Ms. Miller.
- 9 A. Hey. How are you?
- 10 Q. Ms. Miller, please state your full name for the
- 11 record.
- 12 A. Sharmel Lynn Miller.
- 13 Q. And Ms. Miller, where do you work?
- 14 A. Abbeville County 9-1-1.
- 15 Q. How long have you been there?
- 16 A. Since 1998.
- 17 Q. And what are your job duties at the Abbeville 9-1-1?
- 18 A. I'm the 9-1-1 director. I oversee the operations of
- 19 the 9-1-1 center and also any records management.
- 20 Q. So being records management, you'd be the custodian
- 21 of records?
- 22 A. That's correct.
- 23 Q. And how long have you been in that capacity?
- 24 A. Since 2003.
- 25 Q. And before coming out here today, were you able to

- 1 review a 9-1-1 recording from February 15th, 2012?
- 2 A. Yes, that's correct.
- 3 Q. Specifically at ?
- 4 A. That's correct.
- 5 Q. I'm going to show you what's been marked for State's
- 6 I.D. purposes as State's I.D. 19. Can you recognize that
- 7 disk?
- 8 A. Yes, that's correct.
- 9 Q. What is that?
- 10 A. That is the disk that we -- anytime we get a request
- 11 for a 9-1-1 recording, we put these on the C.D.s, and we
- 12 put the date and time along with the address and our
- 13 initials on the C.D.
- 14 Q. Are your initials on that C.D.?
- 15 A. Yes. S.M.
- 16 Q. Now, is this an accurate recording of the call made
- 17 February 15th of 2012?
- 18 A. That is correct.
- 19 Q. And you've had the opportunity to listen to it?
- 20 A. Yes.
- 21 Q. And was it kept in the ordinary and regular course
- 22 of business?
- 23 A. That is correct. We maintain all the recordings
- 24 confidential, password protected.
- 25 Q. Now, on this particular disk, are there -- how many

Sharmel Miller - Cross-examination by Ms. Bolen

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1 calls are on that disk?

2 A. Just that particular 9-1-1 call along with a hangup
3 call that initially come in.

4 Q. Okay.

5 MR. BROWN: Your Honor, at this time the State
6 moves State's I.D. 19 in to State's Evidence 19.

7 THE COURT: Any objection?

8 MS. BOLEN: No, sir.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit Number 19 was admitted
11 into evidence.)

12 MR. BROWN: Permission to publish?

13 THE COURT: Yes, sir.

14 (WHEREUPON, State's Exhibit Number 19 was played in
15 open court.)

16 MR. BROWN: No further questions from this
17 witness.

18 THE COURT: Cross-examination?

19 MS. BOLEN: Very briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. BOLEN:

22 Q. Ms. Miller, you were not the one to actually take
23 this call; correct?

24 A. That is correct.

25 Q. And the first call came in at eleven thirty-nine in

1 the morning, and then the call that we just heard was at
2 about eleven forty-three in the morning; correct?

3 A. Yes.

4 Q. Thank you.

5 THE COURT: Redirect?

6 MR. BROWN: No redirect.

7 THE COURT: May this witness be excused?

8 MR. BROWN: Yes, Your Honor.

9 MS. BOLEN: Yes, sir.

10 THE COURT: Thank you, ma'am.

11 THE WITNESS: Thank you.

12 THE COURT: Would you call your next witness,
13 please?

14 MR. BROWN: The State calls Rick Culbreth.

15 **RICHARD K. CULBRETH,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. BROWN:

19 Q. Mr. Culbreth, good afternoon.

20 A. Good afternoon.

21 Q. Please state your full name for the record.

22 A. Richard K. Culbreth.

23 Q. Mr. Culbreth, where do you live?

24 A.

25 Q. And Mr. Culbreth, how long have you lived there?

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1 A. Well, I've lived there basically all of my life. I
2 was gone twenty-one years, and I moved back in 1996.

3 Q. And you live there by yourself?

4 A. No. I have a -- I stay with my elderly mother. I
5 take care of her.

6 Q. Now, Mr. Culbreth, do you know Amanda Moss?

7 A. Yes, I do.

8 Q. Who is she?

9 A. She was Hershberger before. And I was affiliated
10 with her through Harris Funeral Home where she used to
11 work.

12 Q. And do you know where she lives?

13 A.

14 Q. And what county and state is that in?

15 A. That's Abbeville County, South Carolina.

16 Q. Mr. Culbreth, do you remember an incident at her
17 house that took place that you witnessed?

18 A. Yes, sir, I do.

19 Q. Do you remember the date that took place?

20 A. February the 15th of 2012.

21 Q. And what time of day was it?

22 A. I'm going to say it had to be around eleven thirty
23 because I usually go home to eat between eleven and
24 eleven thirty.

25 Q. And where were you going home from?

1 A. I'm the caretaker of Long Cane Cemetery right there
2 on Beltline Road. And I usually leave there and go to my
3 house to make sure my parents has got dinner.

4 Q. On that particular day when you were going home,
5 what did you notice?

6 A. Do what?

7 Q. When you passed by Ms. Moss' house, what did you
8 notice?

9 A. Well, I'm all the time looking at peoples' houses
10 when I always ride anywhere. But that day I noticed that
11 a silver car was backed in her carport, the back door
12 open toward the house. When I first went by, I saw a
13 black man run from the front of the house to around to
14 the side. And I said, "Something's not right." And I
15 noticed he had a scarf on his head, went down his back.
16 And I think they call that a do-rag thing. But I went
17 down the road, turned around and came back and parked on
18 the side of the road at their driveway at the mailbox.

19 Q. At the Moss' driveway?

20 A. Yeah. The driveway is there, and the mailbox is
21 right on the other side.

22 Q. How far away is their house sitting off the road?

23 A. Approximately fifty to sixty yards to the carport.

24 Q. I show you what's been marked as State's I.D. Number
25 2. See if you recognize this picture.

Richard K. Culbreth - Direct Examination by Mr. Brown

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1 A. That's the Moss' house.

2 Q. And you know that from riding by and knowing that

3 ---

4 A. I ride by it probably two or three times a day.

5 MR. BROWN: Your Honor, the State moves the --

6 moves State's Exhibit 2 as State's Evidence 2.

7 THE COURT: Any objection?

8 MS. PATEL: No, sir.

9 THE COURT: Admitted.

10 (WHEREUPON, State's Exhibit Number 2 was admitted

11 into evidence.)

12 Q. Now, Mr. Culbreth, after you turned around and came

13 back to the driveway and parked at the driveway, what

14 happened next?

15 A. When I pulled up on the side of the road at the

16 driveway, I did not see the gentleman. But when I

17 stopped to get out, he came to the rear door -- I mean

18 that side door that was open. I just immediately turned

19 around, pointed my finger to him. I saw him make two

20 gestures. One, like he threw something down and then did

21 this. He stood there maybe four or five seconds, came

22 down the steps, slammed the door, got in the car and

23 proceeded to drive out.

24 Q. Now, when you saw him, you said he came to the door.

25 Did he come to the door being outside the house, or was

1 he inside the house?

2 A. He was actually standing in the doorway when I saw
3 him.

4 Q. And before he came to stop in the doorway, where was
5 he? Or could you tell?

6 A. Well, I didn't see him until after I had stopped.
7 And like he was coming out of the house, and he stopped
8 right there at the doorway and looked at me.

9 Q. So he was in the house?

10 A. That's where I saw him coming out that way.

11 Q. Yes, sir. Now, after he came down the stairs from
12 the back door and got in his car, what happened next?

13 A. Well, that's when he -- I saw him slide down in the
14 seat. And when he got right in front of my truck in the
15 driveway, he had the window down or rolled it down. I
16 can't remember if it was already down. Turned around and
17 looked me and asked me did I need any yard help. And I
18 told him, "No, I don't. I do everything myself." After
19 that, he turned left to go back toward Anderson. That's
20 when I got to my truck -- got out of my truck, started
21 walking to the house. And that's when he turned around
22 and came back by there. And when I walked to the house,
23 I called 9-1-1. I was excited. I could not remember the
24 number, so I had to walk back to the mailbox to tell the
25 9-1-1. And by the time I walked back to the house, the

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1 deputies were there. That quick.

2 Q. What deputy showed up? Do you remember?

3 A. I cannot remember his name, no, sir.

4 Q. Does Patrick Thompson ring a bell?

5 A. I think I talked to him one time.

6 Q. Well ---

7 A. You know, I was -- you know, there was a lot going
8 on that day. I just ...

9 Q. When talking to the deputy working this case, what
10 information did you give the deputy?

11 A. Basically the same thing that I stated to start
12 with. I gave him a description of the car. I told him
13 the color, that it was dirty. I said when I caught him
14 turning left, that I looked in my rearview mirror and got
15 a partial tag number. And one thing I did notice was
16 that round oval glass in the back. And I told him -- I
17 said, "I believe it's a Pontiac."

18 Q. Was it a newer car or an older car?

19 A. No, sir. It was an older car. It was maybe late
20 '80s or early '90s.

21 Q. It wasn't a 2012?

22 A. No, sir.

23 Q. Okay.

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

25 Q. Now, after you talked with the officer, did you have

1 anything else to do with this case, or did you tell them
2 pretty much everything you knew at that time?

3 A. He showed me a photo lineup. I mean, he showed ---

4 MS. BOLEN: Your Honor, at this time ---

5 A. --- me some photos of people that ---

6 THE COURT: Just one second.

7 MS. BOLEN: At this time, we'd just renew our
8 prior motion.

9 THE COURT: It's noted for the record.
10 Overruled.

11 Go ahead.

12 Q. Go ahead.

13 A. He showed me some photos, and, you know, I could not
14 positively say which one it was, but I narrowed it to
15 two.

16 Q. To two?

17 A. I did narrow it to there.

18 Q. But, again, this -- what date do you remember this
19 taking place on?

20 A. When he came to see me?

21 Q. No, sir. The actual, when you saw the person
22 leaving Ms. Moss' house?

23 A. February 15th, 2012.

24 MR. BROWN: No further questions.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION.

2 BY MS. PATEL:

3 Q. Mr. Culbreth, I want to go over a few points that
4 you just discussed with Mr. Brown. Okay? You told us
5 earlier that you saw the unknown man; correct?

6 A. Yes.

7 Q. And that you talked to him?

8 A. He spoke to me first, and then I replied.

9 Q. And so you two engaged in a conversation?

10 A. It was a short -- he started the conversation; I
11 ended it.

12 Q. And the window was down; correct?

13 A. Yes.

14 Q. So there was nothing ---

15 A. His window was down, yes.

16 Q. And your window?

17 A. Mine was partially open, you know.

18 Q. So you could see his face?

19 A. Right, through my front windshield.

20 Q. And it was during the day, so it was bright outside?

21 A. But I only saw like this much of him.

22 Q. But you could see. It wasn't night; correct?

23 A. Oh, it was not night.

24 Q. Okay. Now, let's talk about the tag that you saw,
25 the car plate tag. You saw this from looking in your

1 rearview mirror; is that right?

2 A. That's correct.

3 Q. And you also told law enforcement later there was a
4 tint cover on the license plate?

5 A. I do remember that it was -- you know, you couldn't
6 see the whole thing. It happened real fast.

7 Q. Okay.

8 A. And I got a partial.

9 Q. You got a partial; correct? Is that right?

10 A. That's what I said, yes.

11 Q. Okay. And you were very certain that you were
12 correct about the numbers, but you weren't so sure about
13 the letters; is that right?

14 A. I was not sure about one of them. I don't remember
15 exactly.

16 Q. Okay. Let's talk about the 9-1-1 call. Okay? You
17 called 9-1-1 twice?

18 A. I called and I think I didn't get to them the first
19 time. And then they called back. And then that's when I
20 actually talked to them. I was real excited.

21 Q. Okay. And this was right after you saw this unknown
22 man ---

23 A. Right after I pulled -- right after I got out of my
24 truck and was walking toward the house.

25 Q. So you called 9-1-1 right after all of this

1 happened; is that right?

2 A. Yes. Yes.

3 Q. And you felt like you had a good look at him; is
4 that correct?

5 A. I didn't say that.

6 Q. Okay. You don't remember saying on the 9-1-1 call
7 if you see him again, you'll know who it is?

8 A. No, I don't remember that.

9 Q. Okay. And do you remember on your 9-1-1 call giving
10 any descriptions of items of clothing this unknown man
11 was wearing?

12 A. All I remember is the do-rag, a light colored shirt,
13 dark pants.

14 Q. So you did not give a color of a shirt?

15 A. I just said a light colored shirt, I think.

16 Q. You did not give a color of the pants he was
17 wearing?

18 A. No. I just said a dark color.

19 Q. You did not give a color of the do-rag he was
20 wearing?

21 A. No, I didn't give a color of that. Not to my
22 knowledge.

23 Q. You never told 9-1-1 that you spoke with this man?

24 A. I only told the officer that.

25 Q. Let's talk about what you told law enforcement.

1 Okay? You gave a written statement in this case; is that
2 right?

3 A. That's correct. I said it, and they wrote it down
4 and I signed it.

5 Q. Okay. All right. So you believed everything that
6 you wrote down -- or sorry. You allowed the law
7 enforcement agent to write down everything.

8 A. But I have not seen that statement since that day.

9 Q. You signed it at the time; correct?

10 A. Yes.

11 Q. And you reviewed it at the time?

12 A. Yeah. But I have not seen it since.

13 Q. Okay. And they didn't rush you to write this
14 statement; is that right?

15 A. No.

16 Q. And they asked you to remember everything, every
17 detail that you remembered; is that right?

18 A. Anything that I could possibly remember.

19 Q. Okay. And they asked you to write this statement
20 not too long after this incident happened; is that right?

21 A. Maybe forty-five minutes to an hour. I mean, that's
22 -- by the time everyone got there.

23 Q. Okay. So the details were still fresh in your mind?

24 A. Yes.

25 Q. Okay. You described the suspect as being tall; is

- 1 that correct?
- 2 A. As tall as I am probably, you know.
- 3 Q. Okay. And you described him as being black?
- 4 A. Yes.
- 5 Q. Light-skinned?
- 6 A. Yes.
- 7 Q. And he was wearing an open shirt?
- 8 A. I think I said a light colored shirt and dark
- 9 colored pants.
- 10 Q. You never described him as wearing an open shirt?
- 11 A. That, I do not remember.
- 12 Q. Okay. And in your statement, you also said that he
- 13 wore a do-rag; is that correct?
- 14 A. Yes. The only way I knew that is when I saw him
- 15 running around from the front of the house. That's when
- 16 I saw it.
- 17 Q. Okay. And in your statement you never included any
- 18 types of colors that this person was wearing?
- 19 A. Not to my knowledge.
- 20 Q. Like red? Blue? Green?
- 21 A. Not to my knowledge.
- 22 Q. Okay. In your statement, you never said that you
- 23 spoke to the suspect; is that correct?
- 24 A. I told the officer that I spoke to him, that he
- 25 spoke to me and I replied.

1 Q. But in your statement, you don't remember stating
2 that you spoke with the suspect?

3 A. It should be in there.

4 Q. Okay. You didn't describe any facial features, did
5 you?

6 A. I just said he had some facial hair. That's all.

7 Like which I have too, you know.

8 Q. So it's your testimony today that he did have facial
9 hair?

10 A. Yeah. I mean, he had facial hair.

11 Q. And you didn't describe the way his nose was;
12 correct?

13 A. His what?

14 Q. His nose. His nose, his facial features.

15 A. No.

16 Q. You didn't describe his eyes?

17 A. No.

18 Q. You didn't describe his eyebrows?

19 A. No.

20 Q. You didn't describe maybe the shape of his face?

21 A. I don't remember doing that.

22 Q. Okay. Let's talk a little bit about when the
23 sheriff's office called you to come down to the station
24 and come in and take a look at a lineup. Okay? Some
25 potential suspects. And you went to the sheriff's office

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1 a few days after this incident took place; is that right?

2 A. No, sir. They came to my house.

3 Q. Okay. And they showed you at your house a lineup;
4 is that right?

5 A. Correct.

6 Q. You weren't able to pick anyone out, any one person
7 out of that lineup; is that correct?

8 A. Not any one. I narrowed it to two.

9 Q. Okay. But you weren't able to definitively choose
10 one person out of that lineup; is that correct?

11 A. That is correct. I just narrowed it to two.

12 Q. Okay. You didn't tell law enforcement when they
13 first arrived that you saw this individual drop
14 something; is that correct?

15 A. I don't remember every detail. I don't remember
16 that exactly. Probably because I didn't think it was
17 important.

18 Q. A man was leaving the neighbor -- your neighbor's
19 home, and he dropped something. You don't think that's
20 important to tell law enforcement at that time?

21 A. I mean, they made notes, and I made notes later on
22 that evening. And that was in my note.

23 Q. When you saw this individual had dropped something
24 -- you stated earlier that you were around your car near
25 the mailbox; is that correct?

1 A. I was parked on the side of the road at the side of
2 her driveway.

3 Q. Okay. And isn't it true that Ms. Moss' home isn't
4 directly off of the highway; correct?

5 A. It faces Highway 28.

6 Q. Correct. But I can't just walk up two steps and be
7 in front of her front door; is that correct?

8 A. You can walk up over there and walk up two steps and
9 be there.

10 Q. Okay. If I walk from the highway, it's about fifty
11 yards, like you said earlier; is that correct?

12 A. Yes, approximately.

13 Q. Okay. And were you wearing your glasses? I see
14 that you have glasses?

15 A. These are reading glasses only.

16 Q. Okay. Did you have those reading glasses on that
17 day?

18 A. I was not reading.

19 Q. Okay. People wear their glasses and don't read.

20 A. No, I don't. These tops are clear, and it's just
21 for reading only.

22 Q. Now, you didn't tell the officers also that you saw
23 him throw his hands up in the air; is that right?

24 A. Like this, standing in the doorway.

25 Q. You didn't give them that detail either; is that

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1 correct?

2 A. I thought I did.

3 Q. It's just three years later, and we are just now
4 hearing about this.

5 A. It is hard to remember after three years.

6 MS. PATEL: Your Honor, may I have a moment to
7 review my notes?

8 THE COURT: Yes, ma'am.

9 Q. Mr. Culbreth, let's go back to that statement. You
10 said that you didn't write the statement yourself, but
11 you had law enforcement write it for you; is that
12 correct?

13 A. They wrote it as I spoke.

14 Q. And if I give that to you, will that refresh your
15 memory? If I give you your statement ---

16 A. Like I say, I have not seen it since that day.

17 Q. Okay.

18 MS. PATEL: Your Honor, may I approach?

19 THE COURT: Yes, ma'am.

20 Q. This is the statement. And I'll just give you a few
21 moments to take a look at that.

22 (Pause while the witness reviewed document.)

23 Q. Now, Mr. Culbreth, do you see on your statement
24 anywhere where you told law enforcement that you spoke
25 with Mr. Henley -- I'm sorry -- with the suspect that

1 day?

2 A. No. It's got my name here.

3 Q. Okay. You said that he was a tall black man; is
4 that correct? You see it on the bottom of the statement?

5 A. Tall, black. Yeah.

6 Q. And you don't give any other identifying information
7 except the do-rag and that he was wearing an open shirt
8 as far as his clothing goes; is that right?

9 A. At the time, that's all I gave because I was really
10 excited.

11 Q. Okay. I know you were excited, but you're supposed
12 to include important details in your statement; is that
13 right?

14 A. Yes.

15 Q. And you don't see anywhere in your statement where
16 you told law enforcement that you saw him drop something;
17 is that correct?

18 A. It's not in this one here, no, sir [sic].

19 Q. Okay. Do you remember when you saw the lineup at
20 your home you wrote on your lineup any notes that would
21 help you remember what this suspect looked like? Do you
22 remember writing any notes?

23 A. I didn't write no notes on that, no.

24 Q. Okay.

25 A. I didn't personally.

1 MS. PATEL: I don't have any other questions,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. BROWN: Yes, Your Honor.

5 THE COURT: May this witness be excused?

6 MR. BROWN: Oh, I do.

7 THE COURT: Oh, you do?

8 MR. BROWN: Yes, sir.

9 THE COURT: I'm sorry.

10 REDIRECT EXAMINATION

11 BY MR. BROWN:

12 Q. Mr. Culbreth, she was asking you a lot of details
13 about the color of his eyes, the width of his nose and
14 all of that. Did he sit on a stool and let you -- and
15 model for you?

16 A. No.

17 Q. How long was your encounter with him out on the
18 road?

19 A. Maybe four to five seconds standing in the doorway
20 and maybe that much longer in front of me.

21 Q. But you were able to give a description of a tall
22 black man with light skin; is that right?

23 A. Yes.

24 Q. Mr. Culbreth, what you're telling the Court here
25 today, the jury here today, is that what you saw that

- 1 day?
- 2 A. That's exactly what I saw.
- 3 Q. And when you saw him at Ms. Moss' house, what was
- 4 the first thing you did?
- 5 A. When I saw him ---
- 6 Q. When you saw this person there at Ms. Moss' house?
- 7 A. Well, that's when I pulled up the side of the road.
- 8 And when he came out of the house and stopped at the
- 9 door, that's when I pointed my finger at him.
- 10 Q. And then you did what after that, after he left?
- 11 A. And that's when he -- when he first left, I got out
- 12 of my truck, was walking to the house. And he come back
- 13 again. Calling 9-1-1. I had to walk back to the mailbox
- 14 to get the number because I did not know the 9-1-1
- 15 number. And by that time, law enforcement was there.
- 16 Q. You were excited enough that you forgot the address
- 17 of the house you've passed by for many years?
- 18 A. I actually really never knew the address until then.
- 19 All I just know where people live.
- 20 Q. But you said you were real excited?
- 21 A. Oh, I was.
- 22 Q. And these were the main items or main descriptions
- 23 that you gathered from your short encounter with this
- 24 fellow; right?
- 25 A. Because I've never had anything like this to happen

1 to me.

2 MR. BROWN: No further questions.

3 MS. PATEL: I don't have any other questions,
4 Your Honor.

5 THE COURT: Thank you, sir. You may be
6 excused.

7 MR. ANDREWS: The State calls Amanda Moss.

8 **AMANDA HERSHBERER MOSS,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. ANDREWS:

12 Q. Good afternoon, ma'am. Please state your name for
13 the record.

14 A. Amanda Hershberger Moss.

15 Q. Okay. Where do you live?

16 A. in Abbeville.

17 Q. Where were you living on February 15th, 2012?

18 A.

19 Q. Okay. Who lives in your home with you?

20 A. My husband.

21 Q. Okay. Is that the only other occupant?

22 A. Yes, sir.

23 Q. On that date, did you give Mr. Henley permission to
24 be inside your home?

25 A. No, sir.

1 Q. What was taken from your home that day, ma'am?

2 A. A laptop computer.

3 Q. Do you remember what the value of that item was?

4 A. I think around five hundred dollars.

5 Q. Was there any damage done to the inside of the home?

6 A. To -- the door was broken in, so the frame of the
7 door and the door itself were both damaged when they were
8 ...

9 Q. Did you have those repaired?

10 A. We did, yes.

11 Q. Do you remember how much it cost you to have those
12 items repaired?

13 A. I think around twelve hundred.

14 Q. So total for repair and replacement, how much would
15 you say?

16 A. Seventeen hundred.

17 MR. ANDREWS: Your Honor, I beg the Court's
18 indulgence briefly.

19 Q. Ma'am, let me show you what's been marked as State's
20 Exhibit for I.D. purposes 5, 8 and 9. All right. Now,
21 I'm just going to show them to you. And all I want is a
22 yes or no answer of do you recognize these items.

23 A. Okay.

24 Q. And, again, do you recognize what's in these
25 photographs?

1 A. Yes.

2 Q. Okay.

3 A. Yes. Yes.

4 Q. So you recognize everything in State's Exhibits for
5 I.D. purposes 5, 8 and 9?

6 A. Yes, sir.

7 Q. Okay. This is State's 9. What was located here?

8 A. The -- our laptop computer was on top of that, the
9 bench.

10 Q. And is State's 9 a fair and accurate representation
11 of the scene as it appeared that day?

12 A. Yes, sir.

13 Q. Okay. Now, I'm going to show you State's 5 and 8.
14 What are these pictures of?

15 A. That was the doorframe or what's left of it.

16 Q. Okay. Is that both pictures?

17 A. Yes, sir.

18 Q. Okay. And are those a fair and accurate
19 representation of those items as they appeared that day?

20 A. Yes, sir.

21 MR. ANDREWS: Your Honor, the State moves to
22 admit into evidence State's 5, 8 and 9.

23 THE COURT: Any objection?

24 MS. BOLEN: No, sir.

25 THE COURT: Admitted.

1 (WHEREUPON, State's Exhibit Numbers 5, 8 and 9 were
2 admitted into evidence.)

3 MR. ANDREWS: Your Honor, permission to publish
4 to the jury.

5 THE COURT: Yes, sir.

6 MR. ANDREWS: Thank you.

7 (WHEREUPON, State's Exhibit Numbers 5, 8 and 9 were
8 published to the jury.)

9 Q. Now, please excuse me for asking what's going to
10 wind up kind of a silly question. But what was your
11 address again?

12 A. in Abbeville.

13 Q. Okay. Now, that was my question. What county is
14 that in?

15 A. Abbeville.

16 Q. Okay. Ma'am, are you or your husband smokers?

17 A. No, sir.

18 Q. Okay. Thank you, ma'am. Please answer any
19 questions the Defense may have for you.

20 THE COURT: Cross-exam?

21 MS. BOLEN: Very briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. BOLEN:

24 Q. Ms. Moss, your house is on Highway 28 North; right?

25 A. Yes, ma'am.

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- 1 Q. In the county?
- 2 A. Yes, ma'am. Uh-huh (affirmative).
- 3 Q. And it is outside the city limits; right?
- 4 A. Yes, ma'am.
- 5 Q. And Highway 28 at that point is a double-lane,
- 6 double yellow-lined road; right?
- 7 A. I believe so. I'm not sure about the yellow.
- 8 Q. But it's essentially a country highway?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And you're not in a city neighborhood; right?
- 11 A. No, ma'am.
- 12 Q. And your house is a good bit set back from the road?
- 13 A. Fifty to sixty, seventy-five yards.
- 14 MS. BOLEN: Thank you, Your Honor.
- 15 MR. ANDREWS: No additional questions, Your
- 16 Honor. Thank you.
- 17 THE COURT: All right. May this witness be
- 18 excused?
- 19 MR. ANDREWS: Yes, sir, she may.
- 20 THE COURT: Thank you, ma'am.
- 21 How long is your next witness?
- 22 MR. BROWN: Judge, we could take some out of
- 23 order. The next one will be very quick.
- 24 THE COURT: Mr. Foreman, check with your jury
- 25 to see if they'd like a short break or if they want to

1 keep on going.

2 MR. FOREMAN: We can keep on going.

3 THE COURT: Keep on going?

4 MR. FOREMAN: Uh-huh (affirmative).

5 THE COURT: Good Abbeville County jury.

6 Call your next witness.

7 MR. BROWN: Judge, we're going to take one out
8 of order. The State calls Ryan Abernathy.

9 **RYAN ABERNATHY,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 Q. Mr. Abernathy, state your full name for the record.

14 A. It's Ryan Abernathy.

15 Q. And Mr. Abernathy, where do you work right now?

16 A. Department of Natural Resources.

17 Q. How long have you been with D.N.R.?

18 A. Just over two years.

19 Q. Where did you work before you went to D.N.R.?

20 A. Abbeville Sheriff's Department.

21 Q. And how long were you there?

22 A. Around twelve years.

23 Q. What were your duties at Abbeville County Sheriff's
24 Office?

25 A. When I left, I was a narcotics investigator. I

Ryan Abernathy - Direct Examination by Mr. Brown

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1 worked the road probably seven years prior to that.

2 Q. As part of working at the Abbeville County Sheriff's
3 Office, did you at some times take items submitted down
4 -- or submitted into evidence down to SLED?

5 A. Yes, sir, I did.

6 Q. And in this particular case ---

7 MS. BOLEN: Your Honor, at this time, we just
8 renew our prior motion on this issue.

9 THE COURT: Noted for the record.

10 Q. In this particular case, did you take an item down
11 to SLED for analysis?

12 A. I did, yes, sir.

13 Q. What did you take down to SLED?

14 A. It was a sealed package containing a cigarette butt.

15 Q. And other than knowing you were taking that
16 cigarette butt down, did you have any other investigative
17 role in this case?

18 A. No, sir.

19 Q. Where did you retrieve that cigarette butt?

20 A. I picked it up from Marion -- Chief Johnson out of
21 the evidence locker.

22 Q. And the evidence locker, where is that located?

23 A. It was at the sheriff's office.

24 Q. And an evidence locker, is that something that
25 anybody has access to?

1 A. No, sir. I believe Chief Marion Johnson was the
2 only one that had a key to the locker.

3 Q. And is it -- you say locker. And so is it a locked
4 room?

5 A. Yes, sir. A locked room. That's correct.

6 Q. And who gave you that item, that cigarette butt,
7 that day?

8 A. Chief Marion Johnson.

9 Q. And what did you do with it?

10 A. I took it, along with some other drug evidence to
11 SLED and handed it to the technician in the -- the lady
12 that takes in the drugs and evidence at SLED.

13 Q. Do you know what day you took that piece of evidence
14 down to SLED?

15 A. Yes, sir. I took it down on March the 29th, 2012.

16 Q. And do you see who you gave that item to?

17 A. Technician Ms. Doris Yarborough is what it looks
18 like.

19 Q. Now, Mr. Abernathy, after -- did you also have
20 occasion to pick that item back up from SLED?

21 A. I did, yes, sir.

22 Q. What date was that picked back up?

23 A. On August the 10th.

24 Q. Of what year?

25 A. 2012.

Ryan Abernathy - Cross-examination by Ms. Bolen

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1 Q. And when you picked that up, what would you have
2 done with it once it came back in your custody or
3 control?

4 A. I would have brought it back and turned it back over
5 to Chief Marion Johnson.

6 Q. And then it'd be locked up in the evidence room?

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

8 Q. When you first retrieved it from Chief Johnson at
9 the time, did you notice any type of defects or any type
10 of -- any problems with the bag that the cigarette butt
11 was sealed in?

12 A. No, sir.

13 Q. So it looked like it was securely placed in the
14 plastic bag?

15 A. Correct.

16 Q. And other than being the courier or taking down this
17 cigarette butt to SLED and picking it up and bringing it
18 back to the Abbeville County Sheriff's Office, did you
19 have any other role in this case?

20 A. No, sir. I don't believe so.

21 MR. BROWN: No further questions.

22 THE COURT: Cross-examination?

23 MS. BOLEN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. BOLEN:

1 Q. Officer Abernathy, so you've been in law enforcement
2 for a total of about eleven years? Longer?

3 A. Twelve or thirteen, I believe.

4 Q. Okay. And two at D.N.R., which is where you are
5 now; right?

6 A. Yes, ma'am.

7 Q. And then the rest was with Abbeville County
8 Sheriff's Office; correct?

9 A. That's correct.

10 Q. And you were a road officer. And as a road officer,
11 you would respond to calls; right?

12 A. Yes, ma'am.

13 Q. And then you were a narcotics officer; right?

14 A. Yes, ma'am.

15 Q. And as a narcotics officer, you've probably had the
16 occasion before to handle evidence; right? Drugs, that
17 kind of thing?

18 A. Yes, ma'am.

19 Q. Drugs? Money?

20 A. (Nodded head up and down in the affirmative)

21 Q. Okay. And so part of your job both as a road
22 officer and also as a narcotics officer was the
23 collection and preservation of evidence; right?

24 A. Yes, ma'am.

25 Q. And you worked in the Abbeville County Sheriff's

Ryan Abernathy - Cross-examination by Ms. Bolen

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1 Office for a total of, you think about ten or eleven
2 years?

3 A. Somewhere around there. Yes, ma'am.

4 Q. Okay. And in that time, it's fair to say you worked
5 probably hundreds of cases; right?

6 A. I would say so, yes, ma'am.

7 Q. And in many of those cases, there would have been
8 some sort of evidence; right? Some physical evidence to
9 be logged in some way?

10 A. Yes, ma'am.

11 Q. Okay. And you mentioned under direct that at the
12 time that you were with Abbeville County Sheriff's
13 Office, I believe it was Deputy Marion Johnson was in
14 charge of the evidence room; right?

15 A. Yes, ma'am.

16 Q. So I'm just going to kind of have you walk through
17 the procedures you would take at that time. And I
18 understand you're not there anymore. But you would
19 collect some physical evidence during your investigation
20 of a case; right? For example, if you're a narcotics
21 officer, you might seize some drugs; right?

22 A. Yes, ma'am.

23 Q. And then you would put the drugs in a sealed pack;
24 right?

25 A. Correct.

1 Q. And these packs are called BEST packs; right? And
2 they have all sorts of notations and such on them; right?

3 A. Yes, ma'am.

4 Q. Okay. And they're provided for you by SLED; right?

5 A. Yes, ma'am.

6 Q. They provide law enforcement agencies with these
7 basically heat-sealed -- thick plastic sealed packs;
8 right? For evidence collection?

9 A. For drug evidence, yes, ma'am.

10 Q. Okay. And when you would put something in the BEST
11 pack, your procedure was then to put it in the sealed
12 evidence room that was at the sheriff's office; right?

13 A. With the drug evidence, we had an actual locker that
14 we just slid our evidence into. That's where I put the
15 drug evidence, yes, ma'am.

16 Q. And you couldn't actually open the locker on the
17 other side to get ---

18 A. No, ma'am.

19 Q. --- the evidence out; right?

20 A. Right.

21 Q. So the control of the evidence room was by Chief
22 Marion Johnson? Then Chief Marion Johnson; correct?

23 A. Yes, ma'am.

24 Q. And he was the only person with access to any of
25 these -- any evidence that was submitted whether it was

Ryan Abernathy - Cross-examination by Ms. Bolen

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1 physical evidence of a gun or money or drugs or what have
2 you; right?

3 A. Correct.

4 Q. And the collection of evidence was something that
5 you and presumably all officers were trained on at the
6 academy; right?

7 A. Yes, ma'am.

8 Q. And you had to go to the academy to become a law
9 enforcement officer with Abbeville and also with D.N.R.;
10 right?

11 A. Yes, ma'am.

12 Q. And it's fair to say that the collection and
13 preservation of evidence is a very important part of a
14 law enforcement officer's job; right?

15 A. Yes, ma'am.

16 Q. Okay. And I understand that you did not collect any
17 evidence in this case; right?

18 A. Correct.

19 Q. Your job was transporting it -- I'm sorry. Not your
20 job, but your role in this case was transporting the
21 evidence to SLED in Columbia; correct?

22 A. Correct.

23 Q. And then back to the sheriff's office; right?

24 A. Yes, ma'am.

25 Q. And the entire time, it would have -- should have

1 been in this thick plastic bag called a BEST pack?

2 A. Not necessarily. Drug evidence always went in the
3 BEST packs.

4 Q. Okay.

5 A. Other types of evidence could be packaged
6 differently.

7 Q. Okay. But they're usually packaged in such a way
8 that people would sign -- whoever touched it, analyzed it
9 would sign over the seal; right?

10 A. Correct, yes, ma'am.

11 Q. And then your role in this also was to take it back
12 from SLED to the sheriff's office; right?

13 A. Yes, ma'am.

14 Q. And at that time, you would have clocked it back in;
15 right?

16 A. Right.

17 Q. And then you would not have had any further
18 involvement; correct?

19 A. No, ma'am.

20 Q. But, again, going back to the basic procedures of
21 the sheriff's office and law enforcement agencies, when
22 you clocked it back in, then it would be under the
23 custody and control of the sheriff's office; correct?

24 A. Yes, ma'am.

25 Q. And it would have been in that room where evidence

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1 is stored; right?

2 A. Yes, ma'am.

3 Q. And it's stored there, and it's labeled and it's
4 organized; correct?

5 A. Correct.

6 Q. And Officer Abernathy, I know we've had cases
7 together. I'm not sure if I've ever had you as a witness
8 before. But you've testified in court before; right?

9 A. Yes, ma'am.

10 Q. And you've testified in cases where there's actual
11 evidence being produced; right?

12 A. Yes, ma'am.

13 Q. And normally when you testify, you would have the
14 evidence with you; correct?

15 A. On drug cases, yes, ma'am, we would usually bring
16 it.

17 Q. The State would pass up -- but you don't -- the
18 State has not passed up any actual evidence in this case;
19 right?

20 A. I do not know.

21 Q. Okay. And that's because the actual cigarette butt
22 in this case has been lost; correct?

23 A. I have ---

24 Q. You don't have any personal knowledge of that?

25 A. No, ma'am, I do not.

1 Q. Okay. Nothing further.

2 MS. BOLEN: Thank you, Your Honor.

3 THE COURT: Redirect?

4 MR. BROWN: Just one short thing, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Officer Abernathy, you took the cigarette butt down
8 to SLED?

9 A. Yes, sir.

10 Q. Was it sealed up?

11 A. Yes, sir.

12 Q. Was the integrity of the bag compromised in any way?

13 A. I do not recall anything such as that.

14 Q. While it was at SLED, to your knowledge, what was
15 done there?

16 A. I guess they just analyzed it for the D.N.A. and
17 then packaged it back and sent it back with us.

18 Q. Did they send it back through you ---

19 A. Through me. Yes, sir.

20 Q. --- to the Abbeville County Sheriff's Office?

21 A. Correct.

22 Q. How was the cigarette butt packaged on the way back?

23 A. I can't specifically recall.

24 Q. Did they give you a cigarette butt, just the
25 cigarette butt ---

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1 A. No.

2 Q. --- or was it in something?

3 A. It would have still been packaged in something. And
4 there would have been paperwork showing the results, what
5 they may have later sent or at a separate time showing
6 the results of what they got from it.

7 Q. And once you got that, brought it back to SLED, you
8 then entered it into evidence?

9 A. Yes.

10 Q. Put it in the evidence room?

11 A. Right. Turned it back over to Chief Johnson to go
12 in the evidence room.

13 Q. And that's the last time you saw it?

14 A. Correct.

15 Q. While you had it going down and coming back from
16 SLED, it was secured?

17 A. Yes, sir. Straight down there, straight back.

18 MR. BROWN: No further questions.

19 MS. BOLEN: Very briefly, redirect [sic], Your
20 Honor, if I may.

21 RECROSS-EXAMINATION

22 BY MS. BOLEN:

23 Q. Officer Abernathy, it's your testimony you didn't
24 recall the packaging that the cigarette butt was in
25 either on the way to SLED or on the way back; correct?

1 A. I couldn't tell you exactly how it was packaged.

2 No, ma'am.

3 MS. BOLEN: Thank you, Your Honor. I have
4 nothing further.

5 THE COURT: May this witness be excused?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: Thank you, sir.

8 Mr. Foreman, ladies and gentlemen, let's take about
9 a ten-minute break. And then we'll come back with some
10 other witnesses and we'll get some logistics and figure
11 out the case. Okay. If you need anything, let the
12 bailiff know.

13 (WHEREUPON, the jury exited the open court at
14 approximately 4:06 p.m.)

15 THE COURT: How many more do you think we can
16 get through today?

17 MR. BROWN: Judge, I believe -- I will step
18 back here to make sure our D.N.A. analyst is here. If
19 she's here, again, I will probably -- I would imagine
20 Officer Thompson's testimony is going to take a little
21 longer than hers. I might again take her out of order.

22 THE COURT: Are you going to have a problem
23 with the conclusions before the chain's in?

24 MS. BOLEN: I think as long as I keep renewing
25 my objection, I -- since my objection is the same, I ---

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1 THE COURT: Well, I tell you this. And you do
2 -- it'd probably be out of an abundance caution to raise
3 it. But I will tell you if they don't connect up the
4 chain to my satisfaction, then I will exclude the
5 evidence and direct -- and tell the jury the same. Okay?

6 MS. BOLEN: Yes, sir.

7 THE COURT: All right. Let's take a five-
8 minute break.

9 MR. ANDREWS: Your Honor, just for planning
10 purposes, I do think if we go with the D.N.A. witness and
11 then Investigator Thompson, I mean, I think we're going
12 to wind up going past five, maybe five-thirty. I mean,
13 do you want to maybe -- we can start with Mr. Thompson
14 tomorrow.

15 THE COURT: That's fine with me. I just want
16 to get as far along as we can. And then if we need to
17 break a little bit before five, it doesn't bother me. I
18 just want to knock it out. If we can, I just don't want
19 to break at four o'clock.

20 MR. BROWN: Yes, sir. One question that I
21 have, I can -- the only other one I think on the chain
22 here would be Marion Johnson. I can try to get him here.
23 Would that be -- since they've identified him as being
24 the person they logged it in to and also gave it from
25 Abernathy -- or given it to Abernathy, do we necessarily

1 need him here pursuant to Hatcher, or do you think we're
2 good on that?

3 THE COURT: You know, I can't advise you ---

4 MS. BOLEN: Your Honor, I feel like he's asking
5 you how to try his case.

6 THE COURT: Yeah, I agree.

7 MR. ANDREWS: I think we can probably -- we
8 could raise the issue though. I mean, our argument
9 pursuant to Hatcher would be that we've proven the chain
10 as far as practicable. We've not left any links in the
11 chain to conjecture. So I don't think ---

12 THE COURT: With what you've done now?

13 MR. ANDREWS: Or at least with Marion Johnson,
14 with calling former Chief Deputy Marion Johnson.

15 MR. BROWN: That's assuming Mr. Thompson
16 testifies that he collected it, submitted it into
17 evidence, and then it went down from there from the
18 sheriff's department through Abernathy.

19 THE COURT: Well, you know, I think that you
20 don't get out of having your critical links in the
21 evidence as part of the chain.

22 MR. BROWN: Yes, sir.

23 THE COURT: With that being said, let's take
24 five minutes.

25 MS. BOLEN: Thank you, Your Honor.

Marion Johnson - Direct Examination by Mr. Brown

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1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: Now, Mr. Brown, you're ready with
4 your next witness?

5 MR. BROWN: Yes, Your Honor. We are going to
6 take this witness out of order, and then we'll be able to
7 finish up the chain in the morning.

8 MS. BOLEN: Your Honor, if I can just do this
9 outside the jury's presence. Once again, since it's a
10 chain witness concerning the cigarette butt, we're just
11 renewing our motion on that matter.

12 THE COURT: Very good. That's overruled.
13 Noted for the record.

14 All right. Would you bring the jury in?

15 (WHEREUPON, the jury entered the open court at
16 approximately 4:24 p.m.)

17 THE COURT: Call your next witness, please,
18 sir.

19 MR. BROWN: The State calls Marion Bowen.

20 **MARION BOWEN,**

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION.

23 BY MR. BROWN:

24 Q. Ms. Bowen, please state your full name.

25 A. My name is Marion E. Bowen.

1 Q. And where do you work?

2 A. I work for the South Carolina Law Enforcement
3 Division, commonly known as SLED.

4 Q. How long have you worked there?

5 A. Approximately nine and a half years.

6 Q. And what are your duties at SLED?

7 A. I am assigned to the D.N.A. case work department. I
8 analyze evidence for D.N.A., and I compare it to known
9 standards submitted for that case.

10 Q. Now, give me a little information on your
11 educational background.

12 A. I received a bachelor of science from James Madison
13 University -- and that's in Harrisonburg, Virginia -- in
14 biotechnology or integrated science and technology with a
15 concentration in biotechnology.

16 Q. And after you finished your undergraduate degree,
17 when did you begin working at SLED?

18 A. I began working at SLED in 2005.

19 Q. And have you had any other training since being with
20 SLED?

21 A. Yes. I was trained by a court-qualified analyst
22 upon my employment at SLED for approximately a year on
23 the specific procedures and instrumentation used in our
24 lab. I am also required to take eight hours of
25 continuing education each year on specific instruments

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1 and procedures used in a laboratory.

2 Q. And you've already mentioned that you do D.N.A.
3 analysis. What is D.N.A.?

4 A. D.N.A. stands for deoxyribonucleic acid. It is a
5 chemical found within all the cells of our body except
6 for red blood cells. It is important for giving us our
7 physical features such as our height and our hair color.
8 It's also important for passing along traits from
9 generation to generation. We get half of our D.N.A. from
10 our mother and half from our father. With the exception
11 of identical twins, no two individuals have the same
12 D.N.A. In forensic science, we're interested in the
13 portions of D.N.A. that differ between individuals which
14 has fifteen different locations. The combination of
15 these test results make up a D.N.A. profile.

16 Q. And when you perform an analysis, what do you -- how
17 do you perform an analysis? What do you do?

18 A. I first will receive evidence from a local law
19 enforcement agency. I will look at the paperwork to
20 determine what kind of evidence and what kind of request
21 is on it. If they just want a certain body fluid, such
22 as blood or saliva, I then will cut a portion of that
23 evidence into a tube. And using specific protocol of
24 adding chemicals and specific instrumentation, I develop
25 a D.N.A. profile. I will do this same process to known

1 standards, which are, you know, Buccal swabs or blood
2 from a known individual, a known source, and compare the
3 D.N.A. profile developed from the known source to the
4 evidence.

5 Q. And Ms. Bowen, have you ever testified or been
6 qualified as an expert in the Court of General Sessions
7 in South Carolina in the field of D.N.A. analysis?

8 A. Yes, I have.

9 Q. And when you're doing D.N.A. analysis, are you also
10 -- how do you come up with a result, or how would you put
11 a D.N.A. result into words so common people like me could
12 understand the probability of hitting that D.N.A.?

13 A. All right. I issue a report based on my findings.
14 And if there is a match from a piece of evidence to a
15 known individual, we are required to state how rare that
16 match is. And by doing this, we generate a frequency of
17 how often you would expect to find that match in the
18 population.

19 Q. Okay. And do you do this for pretty much every
20 D.N.A. analysis you do at SLED?

21 A. Yes. Or whenever there is a match in the case.

22 MR. BROWN: Your Honor, at this time, the State
23 offers Marion Bowen as an expert in D.N.A. analysis and
24 population frequencies.

25 THE COURT: And what was the second ---

Marion Johnson - Voir Dire Examination by Ms. Bolen

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1 MR. BROWN: Population frequencies.

2 THE COURT: Any voir dire?

3 MS. BOLEN: Just very briefly, Your Honor.

4 THE COURT: Yes, ma'am.

5 VOIR DIRE EXAMINATION

6 BY MS. BOLEN:

7 Q. Ms. -- is it Bowen?

8 A. Yes, ma'am.

9 Q. Okay. With respect to some of the C.L.E.s, you said
10 you -- or the continuing education you had taken, are any
11 of those specifically within population frequency?

12 A. I have taken a course in population frequencies as
13 it relates to forensic science.

14 Q. And when was that course?

15 A. I believe it was 2006.

16 MS. BOLEN: Thank you, Your Honor.

17 THE COURT: Do you have any objection to her --
18 do you stipulate to her expertise in both areas?

19 MS. BOLEN: We have no objection to her
20 qualifications, Your Honor.

21 THE COURT: Very good.

22 All right. Mr. Foreman, ladies and gentlemen of the
23 jury, normally witnesses are only allowed to testify as
24 to what they see, they smell, they feel, they hear.
25 Their senses basically. They're not allowed to give

1 their opinion but in very limited circumstances.
2 However, a person that is qualified as an expert because
3 of their education or their experience or a combination
4 of the two, they're allowed to give their opinion in the
5 area of their expertise.

6 Now, in this case, the Defense stipulates that this
7 witness is an expert, number one, in the field of D.N.A.
8 analysis; number two, in the field of population
9 frequencies. She'll be allowed to give her opinion in
10 those areas of her expertise. I'll tell you that an
11 expert opinion is like any other testimony you'll hear in
12 this case. You may accept it, you may reject it or give
13 it as much weight as you believe it deserves.

14 Yes, sir.

15 MR. BROWN: Thank you, Your Honor.

16 Q. Ms. Bowen, with regard to this case, did you have an
17 occasion to test a cigarette butt submitted in relation
18 to this case?

19 A. Yes, sir, I did.

20 Q. And when that item was submitted to SLED or when an
21 item is submitted to SLED, how does SLED track this? Do
22 they get a lab number?

23 A. Yes, sir. When a local law enforcement agency
24 brings a case to SLED, they go to our evidence control
25 department. There they are logging in the evidence.

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1 They have paperwork affiliated with that case on specific
2 requests, if it's D.N.A., trace, firearms. The lady in
3 evidence control will check the paperwork versus what is
4 being submitted, and then the person who is bringing the
5 evidence will place it into a heat-sealed pouch. It is
6 then sealed, and the initials of the person submitting
7 the evidence and the date that it was sealed is written
8 on that pouch. The pouch is then stored in a secure
9 location.

10 Q. And for this case, what was the lab number given for
11 this particular item?

12 A. The lab number was L1203811, and item one was the
13 cigarette butt.

14 Q. When was this submitted to SLED?

15 A. Can I see the chain of custody?

16 Q. Let you see if you can just refresh your memory.

17 A. Okay. This is our internal chain of custody at
18 SLED. Once the evidence is brought in to SLED, it is
19 recorded in the computer system. There is generated a
20 unique lab number to that case, and each item of evidence
21 gets a unique item number. It also will track any kind
22 of transfer of the evidence from the person that is
23 receiving the evidence to the secure location or to
24 another person. It tracks the time as well as the date.
25 Q. And based off that chain of custody that is

1 generated by SLED, can you tell who submitted that piece
2 of evidence to SLED?

3 A. Yes. Investigator Ryan Abernathy of the Abbeville
4 County Sheriff's Office submitted it on March 29th, 2012.

5 Q. And who did he submit that item to?

6 A. To Evidence Control Technician Doris Yarborough.

7 Q. And did anybody have that, or was it in the custody
8 of anybody else before it became in your possession?

9 A. Yes. Doris Yarborough placed it on a D.N.A. intake
10 shelf that is in a secured room until I requested the

11 D.N.A. evidence. Then a different evidence control

12 technician, Amy Stevens, picked up that piece of

13 evidence, put it in her custody and then transferred it

14 to me. And then I took it into my custody.

15 Q. Now, once it became or got in your custody, what did
16 you do? Or when it came into your custody, how did the
17 cigarette butt come to you? Was it just in its un-

18 neutralized form, or was it packaged?

19 A. It was packaged, and then that packaging was placed
20 into a heat-sealed pouch that was generated by SLED.

21 Q. Now, when you get a package for an item to analyze,
22 what do you look for in the packaging to make sure that
23 it is what it -- or that's it's not -- the integrity of
24 the bag has not been compromised?

25 A. There's several things we look for. First, I look

1 for the labeling of the bag, make sure it is the correct
2 item with the agency's description or case number or
3 whatever identifying marks they have on it. I also make
4 sure that it is sealed and that that seal has not been
5 tampered with at all.

6 Q. And in this case, did you make any notes that this
7 seal was tampered with at all?

8 A. No, I did not.

9 Q. And if you did not make any notes, would that make
10 you believe that it was not tampered with and that the
11 integrity of the bag was still intact?

12 A. Right. That is correct. I would make notes if
13 there was something off, if the seal was tampered with in
14 any sort of way. I may not have done any kind of D.N.A.
15 analysis on it if it was tampered with. And in this
16 case, I made no notes. So I believe that it was sealed
17 and not tampered with before I received it.

18 Q. Now, looking -- when you did your analysis, could
19 you tell what kind of cigarette it was, what brand the
20 cigarette was?

21 A. Yes, I could.

22 Q. What brand was that?

23 A. It was a Newport cigarette butt.

24 Q. And were you able to do an analysis for D.N.A. on
25 that cigarette butt?

1 A. Yes, I did.

2 Q. And were you able to get a D.N.A. profile off of
3 that cigarette butt?

4 A. I did.

5 Q. And what were your results on that?

6 A. I developed a partial D.N.A. profile. That means
7 that there was a low amount of D.N.A. where I did not get
8 results for every location that we test. The partial
9 D.N.A. profile developed from item one, which was the
10 cigarette butt, was from an unidentified individual. I
11 later then compared it to a standard submitted in that
12 case. And the partial D.N.A. profile developed from item
13 one, which was the Newport cigarette, matches the D.N.A.
14 profile of Rickey Henley. The probability of randomly
15 selecting an unrelated individual having a D.N.A. profile
16 matching this item is approximately one in one point five
17 billion.

18 Q. Now, after you got done with your analysis, what did
19 you do with that cigarette butt?

20 A. I packaged it back up. I sealed it back in the
21 heat-sealed pouch and put it in a bin in the D.N.A.
22 department. It's called a return bin. Our evidence
23 technician will then take that bin, scan the evidence
24 into her custody, and bring it to our evidence control
25 department for return.

Marion Johnson - Direct Examination by Mr. Brown

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1 Q. And who was that technician after you were done with
2 the D.N.A. analysis?

3 A. From the return bin, Sherry Brown, which is a
4 forensics technician within the casework department,
5 brought it down to Doris Yarborough.

6 MS. BOLEN: Your Honor, I'm going to have an
7 objection unless she actually witnessed this. I don't
8 believe she's got any personal knowledge.

9 THE COURT: Overruled. Go ahead.

10 Q. Based on the chain generated by SLED, who else after
11 Sherry Brown dealt with this?

12 A. Sherry Brown gave it to Doris Yarborough. She then
13 placed it on a shelf in the secured evidence room. It
14 will sit there until the agency comes to pick it up.
15 When the agency came, Amy Stevens, another evidence
16 control technician, took that into her custody and
17 returned it to the agency in person.

18 Q. And who was the officer from the agency, the
19 Abbeville County Sheriff's Office, that retrieved that
20 from SLED?

21 A. Ryan Abernathy.

22 Q. And what date was that?

23 A. On August 10th, 2012.

24 Q. Thank you, Ms. Bowen. No further questions.

25 THE COURT: Cross-examination?

1 MS. BOLEN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. BOLEN:

4 Q. All right. Ms. Bowen, I've just got some followup
5 questions for you. You testified that when you're
6 testing D.N.A., you look at fifteen different locations;
7 correct?

8 A. Yes, ma'am.

9 Q. Okay. But that's not the full amount of locations
10 that are available; right?

11 A. That is correct.

12 Q. And how many are there available total?

13 A. I don't know off-the-top-of-my-head. There is
14 probably hundreds of thousands of locations.

15 Q. So out of these hundreds of thousands of possible
16 matches, you're just looking at only fifteen to determine
17 whether someone matches or not?

18 A. Could you repeat that question?

19 Q. Out of the hundreds of thousands of points you could
20 be looking at to determine a match, you're just looking
21 at fifteen; right?

22 A. That is correct.

23 Q. And you talked a little bit about getting a blood or
24 Buccal swab from a known source; correct?

25 A. That is correct.

1 Q. Okay. And you testified that when you analyzed this
2 particular piece of evidence, you said there was a low
3 amount of D.N.A.; right?

4 A. That is correct.

5 Q. And that you didn't -- out of the fifteen that you
6 were looking at, you didn't get data on all of them;
7 correct?

8 A. That is correct.

9 Q. And you -- looking at your chain of custody, you
10 analyzed this -- it went to you in June of 2012; right?

11 A. Yes, ma'am.

12 Q. And then you testified you returned it late July of
13 2012 to someone else in SLED?

14 A. I put it in that D.N.A. return bin at that time.

15 Q. And then you have testified that it was returned to
16 the Abbeville County Sheriff's Office in August of 2012;
17 right?

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

19 Q. So your analysis of the cigarette butt would have
20 been done prior to being returned in August of 2012;
21 correct?

22 A. That's correct.

23 Q. Okay. And you issued a report in this case; right?

24 A. Yes. I actually issued two reports in this case.

25 Q. And the report you reference in which you said that

1 the D.N.A., partial D.N.A., profile matched Mr. Henley's
2 actually was not issued until January 2013; correct?

3 A. That is correct.

4 Q. So that's about five months after you actually did
5 the analysis; correct?

6 A. Well, I did the initial analysis. I did not receive
7 the blood standard until September 2012.

8 Q. And that would be that known standard you were
9 talking about?

10 A. Yes, ma'am.

11 Q. And you didn't receive that until after you had
12 returned the cigarette butt; correct?

13 A. That's correct.

14 Q. Okay. Ms. Bowen, you testified you've testified
15 before in cases in court; right?

16 A. Yes, ma'am.

17 Q. You've been with SLED almost ten years?

18 A. Yeah. Approximately nine and a half years.

19 Q. Can you estimate how many times you would have
20 testified in court, family court, general sessions?

21 A. It's somewhere between forty-five and fifty times.

22 Q. Okay. And you also testified about a number of the
23 procedural safeguards that are taken with this evidence;
24 right? With all evidence?

25 A. That's correct.

1 Q. You talked about receiving evidence in a sealed
2 pouch; right?

3 A. That's correct.

4 Q. And I believe you testified you would have put it in
5 what's called a BEST pack usually?

6 A. That's what the, I believe, drug pouches are called
7 at SLED. They're just SLED heat-sealed pouches.

8 Q. So it's a heat-sealed pouch; correct?

9 A. Yes, ma'am.

10 Q. Okay. Can you explain a little bit what is a heat-
11 sealed pouch? How does it work?

12 A. A heat-sealed pouch is a plastic pouch, and it has
13 to be sealed by heat. And the only way to open the pouch
14 would be to cut into it. So you can easily tell if
15 someone has tampered with it because either it would be
16 cut open and not resealed or there would be another
17 additional seal. You can't just open that original seal
18 without someone being able to determine that it was
19 tampered with.

20 Q. Okay. And the -- I'm sorry. I kept saying BEST
21 pack. This heat-sealed pack that you use for non-drug
22 evidence, you would -- typically after you analyze you
23 would write your initials over the seal; right?

24 A. Right. The standard procedure is to write our
25 initials and the date that we sealed it.

1 Q. And that's to make sure that if someone were to open
2 it, those initials would be stretched out or broken;
3 right? Indicate ---

4 A. Right. Well, just to indicate where I have opened
5 it and when I sealed it. Typically, we will cut from a
6 different area on the heat-sealed pouch. So if it's
7 sealed at the top, I'll cut from the bottom or one of the
8 sides to leave that seal intact of the original person
9 who sealed it.

10 Q. And I believe your testimony was that you don't
11 believe that this was tampered with, but you couldn't say
12 for certain, right?

13 A. Right. I would write down and notate if there was
14 anything tampered or not sealed or something like that.
15 If there was tampering with, I would make a phone call to
16 the agency. And most likely a D.N.A. analysis would not
17 have been performed on it. And there was no such
18 notations within the case file.

19 Q. And so after you did this analysis and you did the
20 heat sealing, these are all procedures that SLED has in
21 place; correct?

22 A. That's correct.

23 Q. And not only you follow them, but every forensic
24 scientist at SLED follows them; correct?

25 A. Yes, ma'am.

1 Q. And there are procedures that law enforcement then
2 also follows in terms of getting that heat-sealed package
3 back; correct?

4 A. I believe so.

5 Q. Okay. And so your testimony is that this particular
6 heat-sealed package was returned to the sheriff's office
7 in August of 2012; correct?

8 A. Yes, ma'am.

9 Q. Okay. And I know you said you testified somewhere
10 in the forty-five to fifty times in court?

11 A. Yes, ma'am.

12 Q. And most of the time when you testify, you have a
13 chance to look at the actual evidence; correct?

14 A. That is correct.

15 Q. And you don't have it with you here today; right?

16 A. That is correct.

17 Q. Were you shown it anytime prior to your testimony
18 today?

19 A. Not since I received it to do the testing on.

20 Q. And why would you typically want to look at the
21 evidence prior to testifying or during your testimony?

22 A. The only reason why I feel like I look at it is to
23 identify it so that it is entered into the court system.
24 Other than that, I don't need it. I did my testing with
25 it. I have my results. I don't need to look at it again

1 only for court purposes.

2 Q. But in your forty-five to fifty times testifying as
3 an expert, you'd say it's unusual not to have the
4 evidence for you to either look at prior to testimony or
5 given to you to look at while you're testifying; correct?

6 A. That is correct.

7 Q. Okay.

8 MS. BOLEN: I don't have anything further.

9 Thank you, Your Honor.

10 THE COURT: Redirect?

11 MR. BROWN: No further questions.

12 THE COURT: May this witness be excused?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: Ms. Bolen, any problem with this
15 witness being excused?

16 MR. BROWN: No, sir.

17 THE COURT: Thank you.

18 Thank you, ma'am. You may be excused.

19 Let me see the lawyers up here for a moment.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: Ladies and gentlemen, I was just
23 conferring with the attorneys. They know what they have
24 better than I do, so I'm trying to get scheduling. Is
25 there any reason why the jury or any member of the jury

1 can't be back in the jury room by nine twenty-five in the
2 morning?

3 (No verbal response)

4 THE COURT: Very good. We will excuse you for
5 the day. It's quarter to five. And I think another
6 witnesses would be awhile, so let's go ahead and let you
7 be excused. If you'll be back in your jury room at nine
8 twenty-five. Remember, don't read, hear or listen to
9 anything about the case if it happens to be out there or
10 speak with anybody about the case including yourselves.
11 Good night.

12 (WHEREUPON, the jury exited the open court at
13 approximately 4:47 p.m.)

14 THE COURT: Is Mr. Henley out on bond?

15 MS. BOLEN: He is, yes, Your Honor.

16 THE COURT: Okay.

17 Mr. Henley, I'm going to let you continue out. Just
18 to let you know, I tell this to all the people, not just
19 you. But your bond that you were given in this case has
20 a requirement that you must return to court for the
21 hearing. But if you do not, the trial will continue in
22 your absence. Okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I'm not saying that just to you. I
25 say it to everyone.

1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 8th day of April 2015.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 October 9, 2015

15

16

S/ Renee H. Tollison

17

18

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

RICKEY S. HENLEY,)

DEFENDANT.)

2012-GS-01-00348

APRIL 9, 2015

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

APPEARANCES:

PATRICIA A. BOLEN, ESQUIRE
YASHA PATEL, ESQUIRE
ATTORNEY FOR THE PLAINTIFFDEMETRI ANDREWS, ESQUIRE
YATES BROWN, ESQUIRE
ATTORNEY FOR THE DEFENDANT_____
DANETTE P. HANKS
CIRCUIT COURT REPORTER

State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)
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1 April 9, 2015

2 (WHEREUPON, court convened with all parties present and
3 the following proceedings were had)

4 THE COURT: Please be seated. All right. Is the
5 State ready to proceed, Mr. Brown?

6 MR. ANDREWS: Yes, sir, Your Honor.

7 THE COURT: Ms. Bolen, is the Defense ready?

8 MS. BOLEN: Yes, sir. Just to put on the record
9 the things that Mr. Brown and I discussed. We are redacting
10 -- by agreement redacting the sentence on the two priors.
11 Of course, subject to our pre-trial motion on that issue.
12 But I think they've agreed to redact it and have marked out
13 those sentences.

14 THE COURT: Very good. Otherwise, everybody
15 ready?

16 MS. BOLEN: Yes, sir.

17 MR. BROWN: Yes, Judge.

18 THE COURT: All right. Would you bring the jury
19 in..

20 (WHEREUPON, the jury entered the open court at
21 approximately 9:38 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.
23 I hope y'all had a nice evening. Before we get started, let
24 me ask if anyone has read, heard or seen anything about this
25 case during the break or if you've spoken with anybody the

1 case. If so, would you raise your right hand?

2 (No response).

3 THE COURT: Very good. Let the record reflect
4 that no one responded in the affirmative.

5 Is the State ready to proceed?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: Call your next witness, please.

8 MR. BROWN: The State calls Marion Johnson.

9 THE CLERK: Put your left hand on the Bible and
10 raise your right.

11 The evidence you're about to give the Court will be the
12 truth, the whole truth and nothing but the truth?

13 THE WITNESS: So help me God.

14 MARION JOHNSON,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q. Good morning, Mr. Johnson?

19 A. Good morning.

20 Q. Please state your full name for the record?

21 A. Marion Johnson.

22 Q. And Mr. Johnson, where do you work now?

23 A. I'm retired.

24 Q. And before you were retired, where were you employed?

25 A. Previously the Abbeville Police Department and the

State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)
Marion Johnson - Direct Examination by Mr. Brown

7

1 Abbeville County Sheriff's Office.

2 Q. How long were you with the Abbeville County Sheriff's
3 Office?

4 A. Twenty-four and a half years.

5 Q. And while you were there at the sheriff's department,
6 what was your title?

7 A. I was the chief deputy from 1989 to 2013.

8 Q. And as chief deputy, what were your duties?

9 A. I wore many hats. I was an evidence custodian over day
10 to day functions, things of that nature, investigations and
11 so forth.

12 Q. And as being evidence custodian, who all had keys to
13 the evidence room there at the sheriff's department?

14 A. I was the only one.

15 Q. And the evidence room, what other things there in the
16 evidence room that you would only have the key for?

17 A. Other than the evidence room, we had a evidence drop
18 box that was located in the uniform patrol squad room.
19 There was a drop box in the squad room.

20 Q. And who had a key to that?

21 A. I did.

22 Q. Now, where did they -- on the trial, the burglary that
23 took place back in February 15th of 2012, do you remember
24 that particular burglary?

25 A. I do.

1 Q. Where did that take place?

2 A. Just outside of Abbeville on Highway 28 North, heading
3 toward Anderson.

4 Q. And with that case, was any evidence submitted to the
5 evidence room at the sheriff's department?

6 A. Yes.

7 MS. BOLEN: And, Your Honor, we'd just renew our
8 pre-trial motion on this matter.

9 THE COURT: It's noted for the record.

10 A. Yes, sir. It was.

11 Q. What was submitted?

12 A. The item I remember is a cigarette butt that was
13 recovered from the scene.

14 Q. And who submitted that item to the evidence room?

15 A. At that time, it was Detective Patrick Thompson.

16 Q. And he was employed with Abbeville County Sheriff's
17 Office at that time?

18 A. Yes, sir.

19 Q. Now, Chief Johnson, after it's submitted to the
20 evidence room at the sheriff's department, how is that kept?

21 A. Once it's received, it's kept in the evidence room
22 until we make a trip to Columbia to submit the items to SLED
23 and it's kept locked in the evidence vault, which is a room
24 about thirty foot long and twelve foot wide.

25 Q. And when this item was submitted or taken down to SLED,

1 how would that item be taken out of the evidence room?

2 A. I would take it out. I was the only one in the
3 sheriff's office that had a key to it.

4 Q. And in this particular case, do you remember who you
5 gave it to, to take it down to SLED?

6 A. I'm going to say it was Ryan Abernathy.

7 Q. And was he the one that regularly took evidence down to
8 SLED for the sheriff's department?

9 A. Yes, sir. He did on many occasions. There were other
10 people, but he did on many occasions take it.

11 Q. And when that item came back from SLED, when it's
12 submitted back into the Abbeville County Sheriff's Office
13 evidence room, where would that item be submitted to, who
14 would that be submitted to?

15 A. All the items were always brought back to me and I put
16 it back into the evidence vault.

17 Q. In this case did Ryan Abernathy also bring that back
18 from SLED?

19 A. I don't recall who brought it back. I know Mr.
20 Abernathy took it, but I don't recall who brought it back.

21 Q. Okay. But if it was brought back, it was brought back
22 for this case and put in the evidence room, it would go
23 through you?

24 A. It sure would.

25 Q. And once it's submitted back in the evidence room, is

1 it in a secure place? Is it locked?

2 A. Yes, sir. In that same vault where I had the only key.

3 MR. BROWN: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 Q. Chief Johnson, you were the evidence custodian at the
6 time this case was being investigated and would have been
7 submitted into evidence?

8 A. That's correct.

9 Q. No further questions.

10 THE COURT: Cross-examination.

11 MS. BOLEN: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MS. BOLEN:

14 Q. Chief Johnson, I've just got a couple of follow-ups
15 with you. You were the chief deputy from the late '80s
16 until 2013; right?

17 A. That's correct.

18 Q. And during that entire time, you were the evidence room
19 custodian?

20 A. Yes, ma'am.

21 Q. Okay. And the evidence room is in the sheriff's
22 office; right? It's a room that's part of y'all's office;
23 right?

24 A. As a matter of fact that was the first thing that was
25 built when they built the new complex. They built the

State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)
Marion Johnson - Cross Examination by Ms. Bolen

11

1 evidence vault first. But it is connected. Yes, it's
2 inside.

3 Q. Okay. And you testified that you were the evidence
4 custodian for a period of, did you say twenty-four years
5 about?

6 A. Twenty-four and a half years.

7 Q. Okay. And during that time you were the only with a
8 key to that room?

9 A. That's correct.

10 Q. And you were pretty high up in the sheriff's office;
11 right? You were basically second to the sheriff?

12 A. That's correct.

13 Q. So it's fair to say that taking care of the evidence is
14 an important job; right?

15 A. Yes, ma'am.

16 Q. And it's important to take care of evidence because
17 evidence becomes important in cases; right?

18 A. It sure is.

19 Q. Okay. So you'd agree that an important function of law
20 enforcement is keeping up with evidence that is submitted in
21 relation to cases that are being prosecuted; right?

22 A. It is important, yes.

23 Q. Okay. And you also said that you were the only person
24 with the key to that room; right?

25 A. While I was at the sheriff's office, yes, ma'am.

1 Q. Okay. And part of the reason there's only one person
2 with access is to help keep that evidence intact; right?

3 A. That is correct.

4 Q. You don't want a lot of people in and out, taking it,
5 moving it around; right? You just want one person who's
6 responsible and ---

7 A. In control.

8 Q. --- in control; right?

9 A. (Nods head affirmatively).

10 Q. Okay. Going back to what you actually did with this
11 case. In this case your role is fairly limited; right? You
12 weren't an investigator in this case?

13 A. I was involved a little bit. Not a whole bunch, but I
14 did assist Investigator Thompson.

15 Q. You didn't take the cigarette butt down to SLED; right?

16 A. No, I didn't.

17 Q. And you didn't take it back; right?

18 A. No, I didn't.

19 Q. Okay. I believe you said, your testimony was that it
20 was submitted to you by -- you think by Patrick Thompson;
21 right?

22 A. Who, the officer who gave me the evidence?

23 Q. Yes?

24 A. I know it was Patrick Thompson.

25 Q. Okay. And did he hand it to you in person or did he

- 1 put it in the drop box or ---
- 2 A. I can't recall whether it was through the drop box or
- 3 in person. Well, that's the two methods.
- 4 Q. And do you recall what date Patrick Thompson gave you
- 5 the cigarette butt?
- 6 A. No, ma'am, I don't.
- 7 Q. You don't? Okay. But you know that Ryan Abernathy was
- 8 the one to take it to SLED; right?
- 9 A. I do.
- 10 Q. And he took it on March 29th of 2012?
- 11 A. I don't recall the date.
- 12 Q. Okay. But you have no reason to think it wouldn't have
- 13 been March 29th, 2012?
- 14 A. Not at all.
- 15 Q. Okay. But yet you can't say when it was given to you
- 16 by Officer Thompson?
- 17 A. More than likely, it was probably that day or the next
- 18 date that I got it. But, again, if I got it out of the drop
- 19 box, it may have been the next morning after this happened.
- 20 If he gave it to me in person later that day, it could be
- 21 the same day.
- 22 Q. You don't have any sort of paper trail showing when you
- 23 received it; right? You don't have any document that shows
- 24 when you received it?
- 25 A. There was documentation at the sheriff's office.

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Marion Johnson - Cross Examination by Ms. Bolen

14

1 Q. Okay. But you don't have that with you; right?

2 A. No, ma'am. I didn't keep anything when I left.

3 Q. Okay. And you don't have the actual cigarette butt
4 with you; right?

5 A. No.

6 Q. And are you aware that the cigarette butt has been
7 lost?

8 A. No.

9 Q. But you haven't been shown it by anyone; right?

10 A. It was at the sheriff's office when I left May 17th,
11 2013. It was in the sheriff's office evidence vault. I
12 know that for a fact.

13 Q. Did you see it on your last day?

14 A. That last week.

15 Q. Okay. So you know it was there and you haven't seen it
16 since.

17 A. Because I knew I was leaving and I made sure that
18 everything that I was in control of was in that vault.

19 Q. Okay. And obviously since you've been in law
20 enforcement for, let's see, twenty-four and a half years
21 with the sheriff's office and how much with the police
22 department?

23 A. Thirty years altogether.

24 Q. Thirty years altogether. Okay. You've testified in
25 court before; right?

State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)
Marion Johnson - Cross Examination by Ms. Bolen

15

1 A. Many times.

2 Q. And you've -- as the evidence custodian, you probably

3 testified exactly as you're doing now in terms of chain of

4 custody and establishing evidence; right?

5 A. That's correct.

6 Q. And it's fair to say that it is very unusual not to

7 have that evidence that you're talking about with you in

8 court?

9 A. Yes.

10 Q. Okay. It is very unusual not to have it?

11 A. Well, I guess unusual's the word. Unfortunate, I

12 guess.

13 Q. Unfortunate.

14 MS. BOLEN: I don't have anything further. Thank

15 you, Your Honor.

16 THE COURT: Redirect.

17 MR. BROWN: No redirect, Your Honor.

18 THE COURT: May this witness be excused?

19 MR. BROWN: Yes, Your Honor.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness, please, sir?

23 MR. ANDREWS: Patrick Thompson.

24 THE CLERK: Put your left hand on the Bible and

25 raise your right.

1 The evidence you're about to give the Court will be the
2 truth, the whole truth and nothing but the truth?

3 THE WITNESS: I swear to God.

4 - PATRICK THOMPSON,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. ANDREWS:

8 Q. Good morning, sir?

9 A. Good morning.

10 Q. Please state your name for the record?

11 A. I'm Patrick Thompson.

12 Q. Sir, who do you currently work for?

13 A. Currently, I work for Anderson County Sheriff's Office.

14 Q. At the time of this incident, who did you work for?

15 A. I was a detective for the Abbeville County sheriff's
16 Office.

17 Q. Sir, could you tell us a little bit about your
18 background?

19 A. Approximately ten years law enforcement experience,
20 numerous classes and training when it comes to forensics and
21 investigations.

22 Q. Where did you start your law enforcement career?

23 A. I started my law enforcement career in Honea Path
24 Police Department. I was there approximately a year. And
25 then I left that agency and come to Abbeville. And was at

- 1 Abbeville, I believe, for about seven years.
- 2 Q. Okay. How long were you in Abbeville? Can you give us
- 3 that span?
- 4 A. I think it was 2007 through -- well, it would be five
- 5 years, 2007 through 2012.
- 6 Q. Okay. Sir, did you have an opportunity to get involved
- 7 in the case we're dealing with today?
- 8 A. Yes, sir. I was the primary investigator on that one.
- 9 Q. Okay. How did you find out about this incident?
- 10 A. Actually, I overheard it on the radio as a burglary in
- 11 progress come in. And I believe I was coming down Highway
- 12 20 from Due West. And I was just a couple of miles away
- 13 from it when the call came out.
- 14 Q. Sir, on the way to the incident location, did you
- 15 search for a suspect vehicle?
- 16 A. Yes, sir. We started canvassing the area as soon as
- 17 the call came out, given it was -- when the call come in, it
- 18 was a burglary in progress and they had just left the scene.
- 19 Q. Did you have any success finding that suspect vehicle
- 20 at that time?
- 21 A. No, sir.
- 22 Q. Did you head to the house?
- 23 A. Yes, I did.
- 24 Q. Did you process the scene at the house?
- 25 A. Yes, sir.

1 Q. Now, by processing the scene, what do we mean when we
2 say processing the scene?

3 A. Processing a scene, you arrive at a scene. You would
4 begin to evaluate what's evidence, what's not. Talk with
5 the property owner, get an evaluation of what's going on,
6 what occurred. Then you proceed to go in from there, like
7 the scene here, establish where their point of entry was at,
8 what occurred, and then start from the roadway and work in,
9 making sure you collect everything that's applicable and
10 don't destroy or damage anything on the way in. Which,
11 basically find out what's going on beforehand as much as you
12 can. That way you don't tear anything up and you collect
13 everything that needs to be collected.

14 Q. Okay. Did you look for any fingerprints?

15 A. On this scene, the back door was pried open, forced
16 open. And no signs of entry could be found inside the house
17 of things being tampered with. And only one item was
18 missing that was just right inside of the doorway. And no
19 fingerprints were found at the point of entry.

20 Q. Okay. Had you processed other crime scenes before?

21 A. Yes, sir, numerous.

22 Q. Would you say it's common or uncommon to find usable
23 fingerprints?

24 A. It's not TV. You don't find fingerprints on every
25 scene. It's very -- it's a very finicky type thing. It

1 depends on the surfaces that were touched and how they
2 touched them. But finding fingerprints is, I would say,
3 thirty percent chance of finding AFIS quality fingerprints.

4 Q. Let me back up. Based on your investigative
5 experience, were you surprised or unsurprised that you
6 didn't find any fingerprints?

7 A. It's very common not to be able to locate or retrieve
8 any usable prints.

9 Q. Okay. Sir, as part of processing this scene, did you
10 take photographs?

11 A. Yes, I did.

12 MR. ANDREWS: I beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Yes, sir.

15 Q. Sir, I'm going to show you what has been marked as
16 State's Exhibit for ID purposes 4, 6, 7, 10, 11, and 12.
17 And all I'm looking for is a yes or a no answer. Do you
18 recognize what has been depicted in these photographs?

19 A. Yes, sir. That would be yes to all.

20 Q. Sir, is this a fair and accurate representation of the
21 scene as it appeared that day?

22 A. Yes, sir.

23 Q. Okay. Sir, if you could just very briefly just
24 describe what is State's 4?

25 A. This is the point of entry. This is the carport door

1 to

2 Q. And we don't even need that much detail. You can just
3 very briefly, I mean, for example you could say interior of
4 the home, exterior of the home?

5 A. Okay.

6 Q. This is State's 6?

7 A. This is just the interior of the home, right inside the
8 door.

9 Q. This is State's 7?

10 A. This is another interior of the home, right inside the
11 door.

12 Q. State's 10?

13 A. That's a footwear impression inside that same room?

14 Q. State's 11?

15 A. That is a photo of a cigarette butt at the point of
16 entry.

17 Q. State's 12?

18 A. A scale photo of the same cigarette butt.

19 MR. ANDREWS: Your Honor, the State moves to
20 admit State's Exhibits marked for ID 4, 6, 7, 10, 11, and
21 12.

22 THE COURT: Any objection.

23 MS. BOLEN: No, sir.

24 THE COURT: Admitted.

25 (WHEREUPON, State's Exhibit Numbers 4, 6, 7, 10, 11,

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1 and 12 were admitted into evidence.)

2 Q. Now, so we're going to go over these in a little bit
3 more detail. All right, sir. This is State's 4. What is
4 this?

5 A. That is the carport door to

6 Q. Okay. And I don't know if we'll be able to see this.
7 Okay. There is a little white speck right here. Do you
8 know what that is?

9 A. Yes, sir, that is the cigarette butt from the other
10 photos.

11 Q. Okay. Now, this is State's 11. Is this just a closeup
12 on that cigarette butt lying right there?

13 A. Yes, sir.

14 Q. All right. And this is State's 12. What is that?

15 A. It's a -- just another more detailed picture of the
16 cigarette butt.

17 Q. Okay. Is it common to take measurements of items that
18 you find on crime scenes?

19 A. Yes, sir. It is a procedure that we do on all
20 photographs. If it's a small item or anything that needs to
21 be put into scale, it is taken this way; one without, one
22 with.

23 Q. Okay. This is State's 7. Tell me what we're seeing
24 here?

25 A. This is a photo of the den area. The point of entry is

1 the door to the right. The items taken -- the single item
2 taken from the residence was located on the stool just on
3 the left-hand side of the screen behind the couch; you can
4 see the stool there, just the edge of it from behind the
5 couch.

6 Q. Okay. Now, there's a white fragment in the lower right
7 part of the photograph.

8 A. Yes, sir.

9 Q. What is that?

10 A. That is actually a piece of the doorframe itself.

11 Q. Okay. And so what is that?

12 A. Yes, sir. That's another photo of the piece of
13 doorframe that was damaged.

14 THE COURT: What exhibit number is that, please,
15 sir?

16 MR. ANDREWS: I apologize, Your Honor. This one
17 is Exhibit 6. And I was going to go back and clear that up.

18 Q. So this is State's 6. And so really that's just a
19 closeup on this fragment that we saw in State's 7?

20 A. Yes, sir.

21 Q. And so finally I'm going to put State's 10 up. I know
22 it doesn't really translate too well on this overhead, but
23 can you tell us what that is?

24 A. That was a footwear impression. That was approximately
25 within a foot of the stove where the laptop was taken. And

1 just given -- it appeared that the carpet in the house had
2 recently been vacuumed. And it appeared to be as evidence
3 in this case so it was documented.

4 Q. Okay. In other words, did you believe this to be the
5 boot print of the burglar?

6 A. Yes, I did.

7 Q. All right, sir. Now, we saw photographs of that
8 cigarette butt?

9 A. Yes, sir.

10 Q. Did you collect that cigarette butt?

11 A. Yes, I did.

12 MS. BOLEN: Your Honor, at this time, I'd just
13 renew my pretrial motion.

14 THE COURT: Noted for the record.

15 Q. Okay. So tell me about the process of collecting that
16 cigarette butt. What -- did you just pick up the cigarette
17 butt with your bare hands or did you use gloves ---

18 A. No, sir.

19 Q. --- did you put it in some kind of packaging?

20 A. Any item that we're going to process for DNA, we take
21 care and caution with the collection of it. Most items of
22 that nature we make sure that after processing the rest of
23 the scene, we will put new gloves on if we've got to handle
24 that piece of evidence. And then when we do have to handle
25 it, we make sure that we do not touch it as much as

1 possible. Like collecting that piece of evidence, I would
2 use my finger to rake it into an evidence bag, instead of
3 actually picking it up. Just touch it as least as possible.

4 Q. Now, when you say use your finger, would that be a
5 gloved finger?

6 A. A new gloved finger, yes, sir.

7 Q. Okay. Sir, how did you package that cigarette butt for
8 collection?

9 A. That would have been packaged in a paper envelope or a
10 paper bag with it being a DNA sample, so it does not --
11 packaged in plastic if it has moisture on it, it would
12 destroy the DNA and mold and mildew. So it's packaged in
13 some type of paper container and sealed.

14 Q. This paper container, is this something that you
15 provide, is it provided by SLED? Can you describe this
16 paper container for me? I mean, is it just an envelope that
17 you pick up and use?

18 A. Yes, sir. Just plain manilla envelopes and plain brown
19 paper bags. That's what we use for evidence collection.

20 Q. I mean, are these marked so that you know these are
21 going to be used for evidence?

22 A. Yes, sir. They're specialty -- not specialty bags but
23 they've got a chain of custody printed on the outside of the
24 evidence and places for case numbers for the evidence
25 tracking and that kind of stuff on it.

1 Q. So are these bags specifically used for evidence
2 collection?

3 A. Yes, sir.

4 Q. Now, you said -- I believe you said that you sealed it
5 with tape?

6 A. Yes, sir.

7 Q. What kind of tape did you seal it with?

8 A. It's evidence tamper tape. And what it is, it's a very
9 delicate tape. You seal a piece of evidence up in it. And
10 once you initial it and everything, if anybody attempts to
11 open it or tamper with it, the tape falls apart basically
12 and shows that it's been tampered with.

13 Q. Okay. So it would be clear if someone had tried to
14 open that bag?

15 A. Yes, sir.

16 Q. Once you put it in the envelope, where did you take it
17 next?

18 A. It got taken to the sheriff's office and turned into
19 evidence.

20 Q. Okay. At any point before you put it in the bag that
21 you sealed with tamper evident tape, did anyone else handle
22 it?

23 A. No, sir.

24 Q. Do you remember what brand of cigarette it was?

25 A. A Newport.

1 Q. I'm sorry?

2 A. A Newport.

3 Q. Okay. Did you have a chance to speak with the
4 residents of the incident location on Highway 28?

5 A. Yes, sir. I spoke with Ms. Moss.

6 Q. Hold up before you tell me anything she said. Based on
7 your investigation, did the occupants of that home smoke?

8 A. No, sir.

9 Q. Now, sir, before I forget. I'm sure the jury's tired
10 of me asking this question and you're probably tired of
11 hearing it, but do you remember the address of this incident
12 location?

13 A.

14 Q. Okay. Sir, is that in Abbeville County?

15 A. Yes, sir.

16 Q. Okay. All right, sir. Did you -- now I guess we're
17 kind of going backward because did you have a chance to
18 speak to the neighbor, Rick Culbreth?

19 A. Yes, sir. When I first arrived on scene, I spoke with
20 him, got a general idea of -- had him fill me in on what he
21 saw, what transpired and how he saw it. At that time, he
22 handed me a small paper slip that he had jotted the tag
23 number down on.

24 Q. Was he able to give you a description of the vehicle?

25 A. Yes, sir.

1 Q. At first, what make and model vehicle did you believe
2 it was?

3 A. At first from his descriptions we believed it was
4 Pontiac Parisienne because he stated that on the back of the
5 car that it began with a P, but it wasn't the make.

6 Q. Okay. Did you ever come up with any other models of
7 Pontiac?

8 A. Yes, sir. Went through a process of talking with SLED
9 Fusion Center.

10 MS. BOLEN: Your Honor, at this point we have a
11 matter of law to take up.

12 THE COURT: Mr. Foreman, would you take your jury
13 to the jury room, please, sir?

14 (WHEREUPON, the jury exited the open court at
15 approximately 10:05 a.m.)

16 THE COURT: All right. Ms. Bolen?

17 MS. BOLEN: Thank you, Your Honor. I believe
18 what Officer Thompson, just based on his report, was about
19 to start talking about was that he did a -- apparently he
20 talked with the SLED Fusion Center. They generated a report
21 for him of -- it's a fairly lengthy report. It's maybe
22 twelve pages long containing a bunch of data about car
23 models between a certain date, license plates, addresses,
24 the racial and gender of the person that it's registered to
25 them. It's my understanding that this was all done not by

1 Mr. Thompson but through SLED Fusion Center and so we'd
2 object that that is all hearsay. That any testimony about
3 the report that he got from the Fusion Center should be
4 stricken as hearsay. That a match that they gave him back
5 with respect to this particular car would also be hearsay.
6 That there's not -- he's not the evidence custodian. He
7 didn't compile the report. He merely apparently looked at a
8 report that was prepared by means that we don't -- I don't
9 know how the report was prepared. I don't know who prepared
10 it. I don't know how those records were kept.

11 Your Honor, just to put in a little bit of case law. I
12 wasn't able to find anything exactly on point in terms of
13 the Fusion Center. But I did find a few cases that discuss
14 other similar sorts of records, mostly fingerprint cards.
15 And there's a number of cases that state that NCIC reports,
16 as well as fingerprint cards, those are both hearsay. And
17 that a proper foundation would need to be laid with proper
18 authentication. It's our position that that foundation, and
19 that authentication can only be provided by the person at
20 SLED who prepared this report; not by Officer Thompson. So
21 we would object to his testifying about any of this
22 conversation or report or evidence that he obtained from the
23 SLED Fusion Center.

24 MR. ANDREWS: Your Honor, we're not attempting to
25 introduce this out-of-court statement to prove the matter

1 that is stated within the out-of-court statement. I'm just
2 setting up some background to show how Mr. Thompson got from
3 a description of the vehicle to Mr. Henley's house. So this
4 is background.

5 MS. BOLEN: If I can respond, Your Honor.

6 THE COURT: Yes, please do.

7 MS. BOLEN: I don't see how this goes to anything
8 but the truth of the matter because we've had testimony from
9 Mr. Culbreth about the license plate. And that license
10 plate is the only way that they end up even talking to my
11 client. Without that, they have absolutely nothing to tie
12 to him on -- I don't see how it's offered for anything but
13 the truth.

14 THE COURT: Well, I would agree with you if they
15 were trying to introduce the report itself. Clearly, that
16 would be hearsay. I mean, you would have to authenticate it
17 through another witness since he didn't do it. However, if
18 he is saying based on his investigation this is what he did
19 and this is what he received, and from that this is where he
20 went, there may not be hearsay implications, I don't think.
21 It's going to be depending on the question I hear and how he
22 frames it with this witness, I believe. I don't know, Ms.
23 Bowen, that I'm capable of making that carte blanche ruling
24 without hearing the question. I mean, I'd love to be able
25 to not make you have to object on an ongoing basis.

1 MS. BOLEN: Right.

2 THE COURT: But I think that's probably what
3 we're going to have to do; okay.

4 MS. BOLEN: Okay. And, Your Honor, I know I
5 objected a little bit early, but I wanted to try to get this
6 out before any testimony came out inadvertently.

7 THE COURT: Sure. And I think that's smart.

8 MS. BOLEN: Okay. I just want to make sure I
9 understand Your Honor's ruling. So he can talk about that
10 through this investigation with SLED, he went to talk to my
11 client, but it would still be our position that he couldn't
12 testify about the contents of the report or any actual
13 license plates; correct?

14 THE COURT: I think that when he starts trying to
15 say the specifics of the report, the contents of the report,
16 then you're going to have a hearsay problem. I think that
17 if the testimony is based on my investigation, I did this.
18 And then based on what I received, I did this. Then you
19 don't necessarily implicate hearsay. He's testifying to
20 what he did. But, again, Ms. Bowen, I'm not smart enough to
21 be able to figure it out until I hear it. And then
22 sometimes some people question that even then. But just
23 object along the way, if you don't mind. I'm sorry I can't
24 be more specific at this juncture.

25 MS. BOLEN: I understand, Your Honor. I just

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1 want to make sure I'm clear for the record then.

2 THE COURT: Okay. You are.

3 MS. BOLEN: But our objection would be a
4 continuing objection as to hearsay.

5 THE COURT: Do you guys if I take about two
6 minutes break right quick?

7 MR. ANDREWS: No, sir.

8 MS. BOLEN: No, sir.

9 THE COURT: Okay. Officer, you can step down but
10 you can't speak to anybody; okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: Let's take about a five minute break.

13 (WHEREUPON, court stood at recess for a short break.)

14 THE COURT: All right. Everybody ready?

15 MR. ANDREWS: We're ready.

16 THE COURT: Ms. Bolen, you ready?

17 MS. BOLEN: Yes, sir, Your Honor.

18 THE COURT: Would you bring the jury in please?

19 (WHEREUPON, the jury entered the open court at
20 approximately 10:15 a.m.)

21 THE COURT: All right, sir.

22 MR. ANDREWS: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 Q. Mr. Thompson, let me back up just a little bit before
25 we get too far away from it. Earlier, you and I were

- 1 talking about the cigarette butt?
- 2 A. Yes, sir.
- 3 Q. I believe when we left, you had put it in a tamper
- 4 evident packaging?
- 5 A. Yes, sir.
- 6 Q. Where did you take it next?
- 7 A. Then it was taken and delivered to the law enforcement
- 8 center and turned into either evidence locker or handed to
- 9 Chief Johnson.
- 10 Q. Okay. Yeah. I think we just heard Chief Johnson
- 11 testify, but I want to go over it with you some more. Other
- 12 than Chief Johnson, who has access to the evidence locker at
- 13 the time?
- 14 A. No one that I knew of.
- 15 Q. Okay. So if someone wanted to take out a piece of
- 16 evidence, would they have to go through Chief Johnson?
- 17 A. Yes, sir.
- 18 Q. Okay. And, again, was that cigarette butt in tamper
- 19 evident packaging?
- 20 A. Yes, sir.
- 21 Q. So if Chief Johnson had tried to get into it, would
- 22 someone have known?
- 23 A. Yes, sir.
- 24 Q. Do you know who took the evidence to SLED?
- 25 A. By the paperwork provided Ryan Abernathy.

1 MR. ANDREWS: Beg the Court's indulgence briefly.

2 Q. All right, sir. Going forward again in your
3 investigation, based on your investigation were you able to
4 identify a potential vehicle?

5 A. Yes, sir. We followed the information and came up
6 with a possible suspect vehicle.

7 Q. Okay. What make and model was that vehicle?

8 A. It was a mid-2000s Pontiac Bonneville.

9 Q. Okay. Sir, if you could maybe bring that microphone up
10 a little bit so we can hear you a little better. Again,
11 what date did you say it was?

12 A. The date?

13 Q. No, no. The vehicle model, year?

14 A. Mid-2000 -- a mid-'90s Pontiac Bonneville.

15 Q. Did you have a tag number?

16 A. Had a partial tag number.

17 Q. Okay. Now, I mean as to -- you said you found a
18 vehicle that matched the vehicle. You found a suspect
19 vehicle. What was the tag number for that suspect vehicle.

20 MS. BOLEN: And, Your Honor, at this time we just
21 renew our previous objection.

22 THE COURT: Noted for the record.

23 A. That tag number was HSM 455, Hotel, Sierra, Mike 455.

24 Q. The partial tag that the witness was able to give you,
25 Mr. Culbreth earlier, what was that partial tag?

1 A. That partial tag that he provided was HSN 454, Hotel,
2 Sierra, November 454.

3 Q. Who was the registered owner of -- we'll just call it
4 the suspect vehicle.

5 MS. BOLEN: And, Your Honor, at this time we
6 would just object as to hearsay, lack of foundation.

7 THE COURT: Overruled.

8 A. That vehicle was registered to one Rickey Henley.

9 Q. Okay. What was his address?

10 A. At that time it was off of -- I believe it was
11 off of New Prospect in Anderson.

12 Q. Okay. Sir, did you have an opportunity to visit this
13 incident location on February 22nd?

14 A. Yes, sir, I did.

15 Q. When you got to that address, was there a vehicle
16 there?

17 A. Yes, sir, there was.

18 Q. What kind of vehicle was that? What was the make and
19 model?

20 A. It was a Pontiac Bonneville displaying that Hotel,
21 Sierra, Mike, 454 parked in front of the apartment.

22 Q. Did you attempt to talk to the occupants of the
23 apartment?

24 A. Yes, sir, I did.

25 Q. Who answered the door?

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1 A. I knocked on the door and I believe she identified
2 herself as Mr. Henley's mother came to the door.

3 Q. Okay. Was Mr. Henley there?

4 A. Yes, sir, he was.

5 Q. Sir, did you have an opportunity to speak with Mr.
6 Henley?

7 A. Yes, I did.

8 MS. BOLEN: Your Honor, we'd just renew our
9 pretrial motion on this issue.

10 THE COURT: Noted.

11 Q. Sir, is Mr. Henley in this courtroom today?

12 A. Yes, sir, he is.

13 Q. Okay. Sir, could you please point him out for me?

14 A. Mr. Henley's seated at the defense table.

15 Q. Okay. And he's sitting on, it would be all the way to
16 your right at the defense table; is that correct?

17 A. Yes, sir. In the yellow and black shirt.

18 Q. Okay. Sir, I know I keep doing this. I know I keep
19 jumping around. In your -- in speaking with Mr. Culbreath,
20 did you ever show him a photo lineup?

21 A. Yes, sir, I did.

22 MS. BOLEN: And Your Honor, we'd just renew our
23 pretrial again.

24 THE COURT: Noted for the record.

25 Q. Okay. Now, tell me something, how is a photo lineup

1 prepared?

2 A. A photo is, once you have a suspect in place, you
3 compile like images and present them to someone to see if
4 they can positively identify that person with other persons
5 of similar description as them.

6 Q. Do you prepare the photo lineup or is it another
7 agency?

8 A. It's prepared through SLED.

9 Q. Okay. Now, before you ask a potential witness to pick
10 somebody out of a photo lineup, what instructions do you
11 give them?

12 A. If they can positively identify the person, be sure of
13 that. If you're without certainty, if you're not a hundred
14 percent sure that that person is here on this sheet, then
15 don't take a guess. But if they're not here point out
16 similarities of persons on this page. If there's any
17 physical characteristics that are similar to the suspect,
18 then we can use those to further our investigation and use
19 those physical descriptions to gain identification on a
20 suspect.

21 Q. Okay. Sir, I'm going to show you what's been marked
22 as State's 1 for identification purposes. Do you know what
23 this is?

24 A. Yes, sir.

25 Q. Sir, what is this?

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1 A. That is the photo lineup I presented to Mr. Culbreth.

2 Q. All right. Was he able to identify anyone on this
3 photo lineup?

4 A. Not positively.

5 Q. Okay. Did he identify -- how many people did he
6 identify possibly?

7 A. He narrowed the four out. He was certain that four
8 people on that lineup were not the suspect.

9 Q. Okay. So he identified two people?

10 A. Yes, sir.

11 Q. Okay. Of the two people who identified, do you know
12 the identity of one of those people he identified?

13 A. Yes, sir, the Defendant.

14 Q. When you say the Defendant, meaning Mr. Rickey Henley?

15 A. Yes, sir.

16 Q. Okay.

17 MR. ANDREWS: Your Honor the State moves to admit
18 State's Exhibit marked for ID Number 1 into evidence.

19 THE COURT: Any objection?

20 MS. BOLEN: I just object on my pretrial motion
21 and I think we -- under Rule -- well, I'll address that
22 later. Just subject to our pretrial.

23 THE COURT: I'm sorry.

24 MS. BOLEN: Just subject to our pretrial motion,
25 Your Honor.

1 THE COURT: Noted for the record. Admitted.

2 MR. ANDREWS: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit Number 1 was admitted into
4 evidence.)

5 MR. ANDREWS: Thank you, Your Honor. Permission
6 to publish to the jury?

7 THE COURT: Yes, sir.

8 (WHEREUPON, State's Exhibit Number 1 was published to
9 the jury.)

10 Q. And just because I phrased it pretty awkwardly, was one
11 of the people identified the Defendant, Mr. Henley?

12 A. Yes, sir, he was.

13 Q. All right. Before we get into your meeting with Mr.
14 Henley, this cigarette butt that we've been talking a lot
15 about, do you know where it is?

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

17 Q. When did you leave the Abbeville Sheriff's Office?

18 A. I left in September of 2012.

19 Q. Okay. Do you wish we had that cigarette butt?

20 A. Yes, sir.

21 Q. All right. Going forward to your investigation about
22 Mr. Henley. Now, I believe you said Mr. Henley, you found
23 him at an address at Anderson?

24 A. Yes.

25 Q. Okay. And I think where we left off, you were just

- 1 about to talk with him?
- 2 A. Yes, sir.
- 3 Q. Okay. Was anybody else with you when you went to talk
- 4 to Mr. Henley?
- 5 A. I believe Sergeant Belcher was with me just for officer
- 6 safety type situation.
- 7 Q. Okay. You mean Michael Belcher?
- 8 A. Yes, sir.
- 9 Q. Was he an investigator in the Abbeville Sheriff's
- 10 Office at the time?
- 11 A. Yes, sir.
- 12 Q. Around what time of day was this interview?
- 13 A. Around mid-morning, approximately ten o'clock maybe.
- 14 Q. Okay. Was it just you and Mr. Belcher?
- 15 A. Yes, sir.
- 16 Q. What kind of car were you driving?
- 17 A. I was probably in my white unmarked Crown Vic.
- 18 Q. You say it was unmarked?
- 19 A. Yes, sir.
- 20 Q. Did you have your sirens flashing?
- 21 A. No, sir.
- 22 Q. How were you dressed?
- 23 A. The uniform that day was a polo shirt and cargo pants.
- 24 So it would have been just a polo shirt and cargo pants.
- 25 Q. There wouldn't have been any doubt you were a law

- 1 enforcement officer; is that correct?
- 2 A. Yes, sir. All of our uniforms had an embroidered
- 3 sheriff's star on the chest.
- 4 Q. Do you remember what Detective Belcher was wearing?
- 5 A. The same uniform, just probably a different color.
- 6 Q. Okay. There were no other officers there; correct?
- 7 A. No, sir.
- 8 Q. Did you have an arrest warrant?
- 9 A. No, sir.
- 10 Q. Did Mr. Henley speak with you?
- 11 A. Yes, he did.
- 12 Q. Okay. Where did you conduct this interview?
- 13 A. Just right on the sidewalk in front of his apartment.
- 14 Q. About how far out away from his door were you?
- 15 A. Ten feet. Just ask him to, if he would, step outside
- 16 and speak with us.
- 17 Q. Okay. What did he tell us?
- 18 A. He come outside and we began to speak about the
- 19 incident and had some questions for him.
- 20 Q. Okay. Did you talk with him about the incident on
- 21 February 15th?
- 22 A. Yes, sir.
- 23 Q. At any point did he ever tell you that he had been in
- 24 Abbeville recently?
- 25 A. Yes, sir.

1 Q. Did he tell you about speaking with anyone in
2 Abbeville?

3 A. Yes, sir.

4 Q. In your mind was there any doubt that he was talking
5 about ---

6 MS. BOLEN: Your Honor, that calls for his
7 personal opinion as to someone else's state of mind.

8 THE COURT: Sustained.

9 Q. So basically what did he tell you?

10 A. Just had some quick questions for him. I asked him if
11 he was the owner/operator of the vehicle. He responded in
12 the affirmative. Asked him if he'd been on 28 the week
13 prior. And he stated yes. I asked him if he talked to a
14 guy in a white truck? He stated yes. And I asked him was
15 he at a house on Highway 28? And he said that he had pulled
16 over to use the bathroom and that's when he spoke with Mr.
17 Culbreth.

18 Q. Okay. Based on your investigation were you able to
19 find out about any other residences that Mr. Henley had?

20 A. Through the course of it, background information, and
21 just tallying information up, we found that we had prior
22 addresses for him in Aiken County and an address in
23 Anderson.

24 Q. Okay. The Aiken County address, can you narrow that
25 down a little bit? Where in Aiken County?

- 1 A. Beech Island.
- 2 Q. Sir, do you know how to get to Beech Island from that
- 3 address that you were speaking with Mr. Henley at in
- 4 Anderson?
- 5 A. The quickest route would be straight down 28.
- 6 Q. Okay. You say 28?
- 7 A. Yes, sir.
- 8 Q. You mean Highway 28?
- 9 A. Yes, sir.
- 10 Q. And what's the incident location in this case?
- 11 A.
- 12 Q. Okay. Would that be on the way?
- 13 A. Yes, sir.
- 14 Q. Did you notice anything about Mr. Henley's footwear?
- 15 A. Yeah. When we were speaking with him he had on some
- 16 work boots. And just out of curiosity just, can I see the
- 17 bottom of your boot? And he obliged and lifted his boot up
- 18 and it appeared to be similar to that of the photograph
- 19 taken of the crime scene.
- 20 Q. Sir, had you ever had any prior dealings with Mr.
- 21 Henley?
- 22 A. No, sir.
- 23 Q. Before this, did you know who Mr. Henley was?
- 24 A. No, sir.
- 25 Q. Have you ever heard Mr. Henley's name before?

- 1 A. No, sir.
- 2 Q. For the time you worked at the Abbeville Sheriff's
- 3 Office, did they issue body cams?
- 4 A. No, sir.
- 5 Q. Did they issue smart phones?
- 6 A. No, sir.
- 7 Q. Did you have a smart phone?
- 8 A. My personal smart phone, yes.
- 9 Q. By personal, you mean you personally owned it?
- 10 A. Yes, sir.
- 11 Q. Was this interview recorded in any way?
- 12 A. No, sir.
- 13 Q. In the course of your experience, are people more or
- 14 less forthcoming when they're being recorded?
- 15 MS. BOLEN: Your Honor, I'm objecting as it calls
- 16 for speculation.
- 17 THE COURT: Sustained.
- 18 MR. ANDREWS: I beg the Court's indulgence,
- 19 briefly.
- 20 THE COURT: Yes, sir.
- 21 Q. At a later time did you eventually arrest Mr. Henley?
- 22 A. Yes, sir. Warrants were signed for Mr. Henley.
- 23 Q. I'm sorry. Say that again?
- 24 A. Yes, sir. Warrants were signed.
- 25 Q. Okay. Sir, please answer any questions the defense may

1 have for you.

2 MS. BOLEN: Thank you, Your Honor. I'm going to
3 take a minute to make sure I have everything in order.

4 CROSS-EXAMINATION

5 BY MS. BOLEN:

6 Q. Officer Thompson, you testified that you had worked at
7 Abbeville County Sheriff's Office for about seven years,
8 thereabout?

9 A. From 2007 to 2012, so five years.

10 Q. Okay. Were you an investigator the whole time?

11 A. No, sir. I mean, no, ma'am. I was on ---

12 Q. You were an investigator the last ---

13 A. --- uniform patrol then transferred to investigations.

14 Q. Okay. And I think you testified you left in September
15 2012; right?

16 A. Yes, ma'am.

17 Q. Okay. So you left about a half a year after this
18 investigation?

19 A. Yes, ma'am.

20 Q. And you've been with Anderson since then; right?

21 A. Yes, ma'am.

22 Q. Okay. And your total time in law enforcement is you
23 were at Honea Path for how many years?

24 A. Just one year.

25 Q. One year. And then about five, six at Anderson and

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- 1 Abbeville; right?
- 2 A. Yes, ma'am. I'm coming up on the ten-year mark.
- 3 Q. Okay. And you talked a little bit about when you first
- 4 responded and you followed certain procedures; right? You
- 5 talked -- Mr. Andrews asked you about the measuring tape or
- 6 measuring ruler that was by the cigarette butt. You stated
- 7 that was procedure; right?
- 8 A. Yes, ma'am.
- 9 Q. So there are procedures that you are trained to follow
- 10 and are supposed to follow in investigating; right?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And one of those procedures is if there's
- 13 evidence that can be measured, you try to measure it; right?
- 14 A. Yes, ma'am.
- 15 Q. And some of the other procedures would be some of these
- 16 safeguards you talked about in collecting evidence; right?
- 17 A. Yes, ma'am.
- 18 Q. Then you talked about these evidence bags that have --
- 19 they're not just regular brown paper lunch bags; right?
- 20 They've got, you said, a chain of custody form on them?
- 21 A. Yes, ma'am.
- 22 Q. They've got this tamper evident seal and all of that;
- 23 right?
- 24 A. Yes, ma'am.
- 25 Q. And you know that you don't have the cigarette butt

1 anymore; right?

2 A. No, ma'am.

3 Q. It's not in evidence; it is lost or destroyed? No one
4 really knows; right?

5 A. Correct.

6 Q. Okay. So you are not able to look at that bag and look
7 at exactly when it was handed to who; right? Because that
8 all would have been written down?

9 A. There's chain of custody on the bags themselves and
10 there is also property sheets that accompany with it. So
11 once, depending on the circumstances, there could be a
12 separate property sheet.

13 Q. But you don't have a separate property sheet in this
14 case; right?

15 A. No, ma'am. That was a SLED version of that that they
16 use, that's ---

17 Q. And the testimony from yesterday is that the first date
18 on the SLED form was when Ryan Abernathy took it from
19 Abbeville County Sheriff's Office to SLED on March 29th;
20 right?

21 A. I believe so.

22 Q. But there's no other documentation prior to then of
23 where this cigarette butt was; right?

24 A. No, ma'am.

25 Q. Okay. And you cannot locate any piece of paper and say

- 1 definitively when you brought it to the box drop; correct?
- 2 A. No, ma'am.
- 3 Q. Okay. You also talked a little bit about looking for
- 4 fingerprints. You weren't able to get any fingerprints;
- 5 right?
- 6 A. No, ma'am.
- 7 Q. And you talked a little bit about fingerprint
- 8 collection and that they can be collected in, I think you
- 9 said about one-third of cases, thirty percent?
- 10 A. If you're lucky.
- 11 Q. Okay. And if someone touched a door like this, you
- 12 could get some fingerprints from that potentially; right?
- 13 A. Potentially. It depends on the surface.
- 14 Q. Okay. And you talked a lot about when you were
- 15 collecting the cigarette that you -- that the words you used
- 16 were you used a lot of care and caution in the collection of
- 17 that evidence; correct?
- 18 A. Yes, ma'am.
- 19 Q. And that same care and caution should follow the
- 20 evidence throughout the process; right?
- 21 A. Yes, ma'am.
- 22 Q. So it's unusual that this evidence is not here now;
- 23 right?
- 24 A. Yes, ma'am.
- 25 Q. The typical procedures followed in the care and caution

1 that is used typically would ensure that evidence is in the
2 courtroom for trial; right?

3 A. Yes, ma'am.

4 Q. Let's talk a little bit about -- I'm not sure where it
5 is now, but the lineup. Thank you. And you testified that
6 you showed this lineup to Mr. Culbreth; right?

7 A. Yes, ma'am.

8 Q. And you didn't prepare this yourself; right?

9 A. No, ma'am.

10 Q. You basically give SLED a general description and they
11 ---

12 A. They populate the lineup for us.

13 Q. Okay. And this is a black and white copy; right?

14 A. Yes, ma'am.

15 Q. And you didn't say anything in your direct testimony
16 about this being put in that same sort of bag with a chain a
17 custody that's then put in the drop box; right? You don't
18 do that with lineups?

19 A. No, ma'am.

20 Q. Lineups are typically kept in your investigative
21 folder?

22 A. Yes, ma'am.

23 Q. Okay. And this is not the original; right?

24 A. No, ma'am.

25 Q. And the original is lost; right?

- 1 A. Yes, ma'am.
- 2 Q. And it's not lost with the cigarette butt because they
3 were in two separate ways of being stored; right?
- 4 A. Yes, ma'am.
- 5 Q. Okay. But you obviously saw the original at some point
6 before it was lost; right?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And you'd agree that in that original all six of
9 the people -- it's hard to tell on this copy because it's a
10 black and white copy. But all six of the individuals had
11 facial hair; right?
- 12 A. I believe it was noted that they did or didn't, I'm not
13 sure.
- 14 Q. No, I'm not asking about the notes. I'm asking about
15 the original lineup itself, when you talked to SLED, all six
16 of the people in the lineup had facial hair; correct?
- 17 A. Yes. If it was noted they did, I can't recall whether
18 or not they all did or did not.
- 19 Q. But without the original to look at -- the original
20 would show; right, whether all six of them had facial hair?
- 21 A. Yes, ma'am.
- 22 Q. And to your recollection all six of these people in the
23 original had facial hair; right?
- 24 A. I can't recall. If you'd allow me to see it, I could -
25 - there was a note on the lineup.

1 Q. Okay.

2 MS. BOLEN: If I could approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 A. All right. By the notes on the lineup, everyone did
5 have facial hair in the photos provided in the lineup. And
6 Mr. Culbreth, in my handwriting, he noted that the suspect
7 did not -- had no facial hair.

8 Q. Okay. So let me see if I can use this. Okay. Here we
9 go. So these are notes -- that's your handwriting and
10 that's Mr. Culbreth's initials; right?

11 A. Yes, ma'am.

12 Q. And it says number two or number three and no facial
13 hair. So that's his notation or your notation that two and
14 three have facial hair. And that he said the person he saw
15 did not; correct?

16 A. He narrowed it down. He eliminated one, four, five,
17 and six.

18 Q. Yes, sir.

19 A. And was caught between two and three. And he said the
20 suspect that he spoke with did not have facial hair.

21 Q. Okay. Let's talk a little bit about your testimony
22 about speaking with Rickey. You say you went out, you
23 think, about February 22nd; right?

24 A. Yes, ma'am.

25 Q. And you had an Anderson officer meet you there, an

- 1 officer from Anderson County, since it was Anderson County?
- 2 A. I don't believe so.
- 3 Q. You don't believe so, okay? And this was about a week
- 4 after the alleged incident?
- 5 A. Yes, ma'am.
- 6 Q. Okay. You said you talked with Rickey; right?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And you said that you think his mother answered
- 9 the door, but you're not really sure?
- 10 A. Well, a female answered the door and we asked for
- 11 Rickey.
- 12 Q. Okay. And he came out and talked to you; right?
- 13 A. Yes, ma'am.
- 14 Q. And he knew y'all were officers; right?
- 15 A. Yes, ma'am.
- 16 Q. You were in your investigative uniform?
- 17 A. Yes, ma'am.
- 18 Q. And your guns?
- 19 A. Gun, badge, everything.
- 20 Q. Badge, guns, everything; right?
- 21 A. Yes, ma'am.
- 22 Q. And he came out and talked to you; right?
- 23 A. Yes, ma'am.
- 24 Q. And you asked him about having been on Highway 28 in
- 25 Abbeville County; right?

- 1 A. Yes, ma'am.
- 2 Q. And you did not tell him a specific date; right? You
3 didn't say on February 15th. You said about a week ago?
- 4 A. Yeah, last whatever day of the week it was.
- 5 Q. Okay. So you didn't give him a specific date; correct?
- 6 A. No, ma'am.
- 7 Q. Okay. And you asked him if he had been on Highway 28
8 in Abbeville County; right?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And it's fair to say Highway 28 runs from
11 Anderson County through Abbeville County through McCormick;
12 correct?
- 13 A. Yes, ma'am.
- 14 Q. And it probably goes beyond that and beyond that on the
15 other side as well. But it goes all the way through
16 Abbeville, through McCormick, through Anderson; right?
- 17 A. Yes, ma'am.
- 18 Q. So there's a good number of miles of Highway 28 in
19 Abbeville County; correct?
- 20 A. Yes, ma'am.
- 21 Q. Estimate maybe thirty or hard to say?
- 22 A. That's close enough.
- 23 Q. Okay. And you -- when you asked him if he had been on
24 Highway 28 in Abbeville, he said yes; right?
- 25 A. Yes, ma'am.

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- 1 Q. Okay. And then you also testified that, although he
2 lived in Anderson when you went to talked to him, he'd also
3 had addresses in Beech Island in Aiken County; correct?
- 4 A. Yes, ma'am.
- 5 Q. And, in fact, he had family in Beech Island; correct?
- 6 A. Yes, ma'am.
- 7 Q. Okay. So the most efficient way to get from Anderson
8 to Beech Island would be just straight down 28; right?
- 9 A. Yes, ma'am.
- 10 Q. And it's fair to say if he had family there he might be
11 going to visit on a regular basis; correct?
- 12 A. Yes, ma'am.
- 13 Q. Okay. So it wasn't really unusual that he was on
14 Highway 28 in Abbeville; right? If he had family in Aiken
15 County?
- 16 A. No, ma'am.
- 17 Q. Okay. In addition to not directly asking him about a
18 specific date, you also didn't say, did you go specifically
19 into this address; correct?
- 20 A. Yes, ma'am, he was asked. He was asked ---
- 21 Q. You didn't tell him -- you didn't say right?
- 22 A. No, not I didn't ask him, but I asked him did he
23 go in the house?
- 24 Q. Okay. You asked him if he went in the house?
- 25 A. Yes, ma'am.

1 Q. Okay. And your notes, in your hand here, you wrote a
2 report as a result of this investigation; correct?

3 A. Yes, ma'am.

4 Q. Okay. And you do that with every investigation; right?

5 A. Yes, ma'am.

6 Q. And a report's written shortly after or during your
7 investigation; right?

8 A. Yes, ma'am.

9 Q. And in it you include details about what you did and
10 any conversations you had with whoever your suspect is;
11 correct?

12 A. Yes, ma'am.

13 Q. And now it's a little bit more than three years later;
14 right?

15 A. Yes, ma'am.

16 Q. So it's fair to say that what's in that report is
17 probably -- that was written when things were fresher in
18 your mind than now; right?

19 A. Yes, ma'am.

20 Q. Okay. And in that report you don't say that you asked
21 him specifically about this particular address; correct?
22 You never stated that you asked him that?

23 A. No, ma'am. It was never provided the actual numerics
24 for the house.

25 Q. Okay. And in the report there's no mention of you

1 giving him any description of what the house looked like;
2 correct?
3 A. No, ma'am.
4 Q. Okay. And, again, Highway 28 in Abbeville goes for a
5 good number of miles; right?
6 A. Yes, ma'am.
7 Q. So your basic question was at some point, were you at a
8 house in Abbeville County on 28?
9 A. Yes, ma'am.
10 Q. Okay. And he told you that he stopped at a house to
11 use the bathroom; right?
12 A. Yes, ma'am.
13 Q. But he never stated he went inside any house; correct?
14 A. Yes, ma'am, he stated -- was adamant about not being
15 inside the house.
16 Q. Okay. He was adamant about not going inside any house?
17 A. Yes, ma'am.
18 Q. And when you asked him about that, he denied going into
19 any house at all; correct?
20 A. Yes, ma'am.
21 Q. Okay. And, again, when you asked him about speaking
22 with someone in a white pickup truck, you did not give him
23 any sort of specifics about who he -- you didn't ask him
24 specifically who he might have talked to or what model of
25 pickup truck or anything like that; right?

1 A. No, ma'am. Did he pass him? Did he speak with someone
2 at a white pickup truck at that house where he was using the
3 bathroom and he said, yes.

4 Q. And, again, it's fair to say that there's more than one
5 pickup truck in Abbeville County probably; right?

6 A. Yes, ma'am.

7 Q. Okay. And you testified that you asked to look at the
8 work boots he was wearing; right?

9 A. Yes, ma'am.

10 Q. But you didn't take them into evidence or anything like
11 that; correct?

12 A. No, ma'am.

13 Q. And, in fact, he offered to give them to you; correct?

14 A. Well, I don't recall that.

15 Q. And this conversation with Rickey was not recorded in
16 any way; right?

17 A. No, ma'am.

18 Q. And I know you didn't have body cams back then, but --
19 and, again, just going on your experience and training as an
20 officer, you were trained to have people give written
21 statements; correct?

22 A. Yes, ma'am.

23 Q. In fact, I think there's been previous testimony that
24 you helped Mr. Culbreth write his statement; correct?

25 A. I didn't prepare Mr. Culbreth's statement.

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1 Q. Okay. But you are -- in the course of your many years
2 of investigations, you have often asked people to write
3 written statements; right?

4 A. Yes, ma'am.

5 Q. And yet you did not get a written statement from Rickey
6 in this case?

7 A. No, ma'am.

8 Q. And that's something you could have done there; right?

9 A. We attempted to at a later time.

10 Q. When you went to the apartment that Rickey was living
11 at the time where you spoke with him, he and the woman you
12 met there offered to let you search the apartment; correct?

13 A. I don't believe we asked for consent to search the
14 apartment.

15 Q. And you never got a search warrant; right?

16 A. No, ma'am.

17 Q. So you never recovered the computer in this case;
18 correct?

19 A. Correct.

20 Q. And, again, based on your training and your experience
21 as an investigator, it's customary when property's missing
22 to try to find it; correct?

23 A. Yes, ma'am.

24 Q. And you sometimes do that by getting a search warrant;
25 right?

- 1 A. Yes, ma'am.
- 2 Q. You sometimes do that by getting consent to search
3 someone's residence or car; right?
- 4 A. Yes, ma'am.
- 5 Q. You sometimes do that by searching local pawn stores or
6 things like that; right?
- 7 A. Yes, ma'am.
- 8 Q. And sometimes you would do all three; correct?
- 9 A. Yes, ma'am.
- 10 Q. And yet you didn't get a search warrant in this case;
11 right?
- 12 A. No, ma'am. We did not conduct a search warrant.
- 13 Q. And you didn't look at any sort of pawn stores to try
14 to track down this computer; right?
- 15 A. That's an on-going thing in investigations. You keep
16 track of looking for items in pawn shops weekly.
- 17 Q. And wouldn't it have been helpful to try to recover
18 this computer by getting a search warrant? Wouldn't that
19 have been helpful to your investigation?
- 20 A. Yes, ma'am.
- 21 Q. You also didn't recover -- in addition to not
22 recovering the laptop or not trying to recover the laptop,
23 you also didn't recover any sort of burglary tools from
24 Ricky; right?
- 25 A. Correct.

1 Q. You didn't recover any sort of do-rag or bandana from
2 him?

3 A. No, ma'am, we did not.

4 Q. And you didn't -- I think you testified you didn't
5 arrest Rickey that day; right?

6 A. Correct.

7 Q. And, in fact, he turned himself in later?

8 A. I'm assuming so. I know he was taken into custody.

9 MS. BOLEN: If I may have a moment, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. BOLEN: I don't have anything further. Thank
12 you, Your Honor.

13 THE COURT: Redirect?

14 MR. ANDREWS: Thank you, Your Honor.

15 **REDIRECT EXAMINATION**

16 **BY MR. ANDREWS:**

17 Q. Sir, the original photo lineup, the one that you would
18 have shown the witness, was that in color?

19 A. Yes, sir, it was.

20 Q. Okay. I believe just now you testified about the way
21 you framed a question to Mr. Henley. I think you said the
22 last whatever day of the week?

23 A. Yes, sir.

24 Q. Is that what you said?

25 A. Yes, sir.

1 Q. So I guess what I'm trying to clarify is when you spoke
2 with Mr. Henley, did you say, by saying the last of whatever
3 day of the week, did you name the actual day of the week
4 that February 15th was? It was a Wednesday?

5 A. Yes, sir, it would have been the question of were you
6 in Abbeville last Wednesday.

7 Q. Okay. All right. Now, Ms. Bolen talked with you about
8 a search warrant?

9 A. Yes, sir.

10 Q. Do you have to go to a judge to get a search warrant?

11 A. Yes, sir.

12 Q. Before you go to the judge, do you make a determination
13 about whether you feel like you have enough evidence before
14 you can get a search warrant?

15 A. Yes, sir.

16 Q. That day, did you feel like you had enough evidence for
17 a search warrant in the Anderson address?

18 A. No, sir.

19 Q. I asked you earlier, that day when you spoke with him
20 on February 22nd, did you have an arrest warrant?

21 A. No, sir.

22 Q. Had you even attempted to get an arrest warrant?

23 A. No, sir.

24 Q. And backing up a little bit. I don't know if the
25 jury's familiar, but don't you have to go and ask a judge

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1 for an arrest warrant?

2 A. Yes, sir.

3 Q. And, again, like a search warrant, don't you have to
4 make a determination that there is enough evidence that
5 satisfies you before you even ask the judge?

6 A. Yes, sir.

7 Q. Based on what you knew on February 22nd, did you think
8 there was enough for an arrest warrant?

9 A. No, sir.

10 Q. Did you know anything about the DNA results?

11 A. No, sir.

12 Q. In your talk with Mr. Henley, did he ever talk about
13 what he smoked?

14 A. Yes, sir. He was asked -- during the interview with
15 him, I think he was smoking a cigar. And I asked him did he
16 smoke cigarettes and he stated he smoked Newports.

17 Q. Okay.

18 MR. ANDREWS: Thank you, Your Honor.

19 MS. BOLEN: I do have some recross, Your Honor,
20 if I may.

21 THE COURT: Yes, ma'am.

22 **RECROSS EXAMINATION**

23 **BY MS. BOLEN:**

24 Q. Officer Thompson, so he just responded to -- Solicitor
25 Andrews, he asked you about the procedures for getting a

1 search warrant and an arrest warrant; right?

2 A. Yes, ma'am.

3 Q. And he asked you about whether you had probably cause
4 on February 22nd to get an arrest warrant; correct?

5 A. Yes, ma'am.

6 Q. And probable cause is the standard you need to ask a
7 judge for an arrest warrant; right?

8 A. Yes, ma'am.

9 Q. And it's also the standard for a search warrant;
10 correct?

11 A. Yes, ma'am.

12 Q. And he asked you if you had probable cause on the 22nd
13 to get a search warrant as well; correct?

14 A. Yes, ma'am.

15 Q. And your answer to both of those was no; correct?

16 A. Yes, ma'am.

17 Q. And then he asked you, you hadn't gotten any DNA back
18 yet; right?

19 A. Yes, ma'am.

20 Q. So it's your position that on the 22nd, after speaking
21 with Rickey, you didn't have probable cause for a search

22 ~~warrant or arrest warrant; correct?~~

23 A. After speaking with the Defendant, yes, for an arrest
24 warrant.

25 Q. But you told Mr. Andrews that ---

1 A. Well, I was under the assumption that he was asking
2 before when we made contact, during his line of questioning.

3 Q. Okay. And he asked you at that point you had not
4 gotten any kind of DNA; right?

5 A. Yeah.

6 Q. Okay. And you actually got an arrest warrant the very
7 next day, February 23rd; correct?

8 A. Yes, ma'am.

9 Q. And at that time you felt you had probable cause to get
10 an arrest warrant; correct?

11 A. Yes, ma'am.

12 Q. And yet you did not go and get a search warrant at the
13 same time; correct?

14 A. No, ma'am.

15 MS. BOLEN: That's all I have.

16 Thank you, Your Honor.

17 THE COURT: All right. Thank you, sir. You may
18 step down. How long is your next witness?

19 MR. BROWN: Judge, that was the last witness. At
20 this time, we'd move to introduce -- let me pre-mark these
21 first.

22 (WHEREUPON, State's Exhibit Numbers 20 and 21 were
23 marked and admitted into evidence.)

24 MR. BROWN: Judge, at this time we would move, as
25 a self-authenticating record, two certified convictions from

1 Aiken County for two prior burglaries.

2 THE COURT: What are the exhibit numbers?

3 MR. BROWN: State's Exhibit 20 and State's
4 Exhibit 21.

5 THE COURT: Subject to prior objection.

6 MS. BOLEN: Subject to prior objection. Also,
7 Your Honor, it's our position that we would need a custodian
8 of records to properly introduce those, to lay a foundation.

9 THE COURT: I'm sorry?

10 MS. BOLEN: We'd also argue that these are being
11 introduced without the proper foundation. He would need a
12 custodian of records. Subject to those two objections.

13 THE COURT: Noted for the record.

14 (WHEREUPON, State's Exhibit Number 20 and 21 were
15 admitted into evidence.)

16 THE COURT: All right. Ladies and gentlemen of
17 the jury, I'm going to charge your more fully on the law of
18 burglary first. But at this point in time, the evidence of
19 the prior offenses that were committed by the Defendant is
20 not being offered in this case to show that Mr. Henley has a
21 bad character or to prove that Mr. Henley committed the
22 burglary on this occasion. Prior convictions may be
23 considered by you only, only for the purpose of determining
24 whether or not it satisfies an element of what you will hear
25 in just a minute of the offense that makes it first degree

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1 burglary if you enter a dwelling without consent to commit a
2 crime and you have two prior convictions for burglary and/or
3 housebreaking. So you are limited to considering those
4 prior convictions for that only. And I will charge you more
5 about that at the end of this case. Okay, sir. Mr. Brown?

6 MR. BROWN: Judge, the State rests.

7 THE COURT: Okay. Ladies and gentlemen, the
8 State rests, which means they have presented their case in
9 chief. At this juncture I have some administrative matters
10 to take up.

11 Mr. Foreman, if you'd go back to your jury room. And
12 I'll get you back here in a little bit; okay, sir?

13 (WHEREUPON, the jury exited the open court at
14 approximately 10:55 a.m.)

15 THE COURT: All right. Motions?

16 MS. BOLEN: Thank you, Your Honor. At this time
17 we renew all of our pretrial motions and objections as well
18 as all of our trial motions and objections. Specifically,
19 we renew our objection to the lineup, objection to the
20 cigarette butt, objection to the pretrial -- to the prior
21 convictions. And our objection to his statement being
22 admitted into evidence, as well as any objections we made
23 during the trial or prior to trial.

24 We're also moving for directed verdict of not guilty on
25 the basis of the State has not provided evidence sufficient

1 for this to get to a jury on the issue of whether he
2 committed the burglary and larceny.

3 THE COURT: Thank you, ma'am. That motion is
4 denied.

5 Now, Ms. Bolen, have you had a chance to speak with
6 your client about whether or not he wishes to testify?

7 MS. BOLEN: We have spoken with him, Your Honor.
8 I believe he was sort of in the process of making up his
9 mind.

10 THE COURT: Well, let me do this. Let me go over
11 with him his Fifth Amendment Rights.

12 MS. BOLEN: Yes, sir.

13 THE COURT: We'll take a break. And I'm not
14 going to have him make his decision right this moment.

15 MS. BOLEN: Thank you.

16 THE COURT: But I want to give him his rights.

17 MS. BOLEN: Yes, sir.

18 THE COURT: Can you stand up, Mr. Henley, please,
19 sir? Would you raise your right hand?

20 THE DEFENDANT: (Complied)

21 THE COURT: Do you swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay, sir. Mr. Henley, at this time
25 I have to explain to you certain of your rights. If you do

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1 not understand anything that I tell you, and you want me to
2 give you further and more complete explanation, let me know;
3 okay, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Now, we've reached that stage
6 in this trial where the State has ended its case in chief.
7 And that means you have the right at this juncture to put up
8 a defense. You have a right to claim the protections that
9 are provided to you under the Fifth Amendment to the United
10 States Constitution, which in part, reads as follows. And
11 I'm going to read it to you; okay, sir? It says that no
12 person shall be compelled in any criminal case to be a
13 witness against himself. Now have your clients [verbatim]
14 explained to you your rights under the Fifth Amendment?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand those rights?

17 THE DEFENDANT: Not everything, but they told me
18 ---

19 THE COURT: Well, let me go over it with you. Do
20 you understand that neither Ms. Patel or Ms. Bolen can force
21 you to take this stand and testify. The State can't force
22 you to take the stand and testify. I can't force you to
23 take the stand and testify. No one can make you testify
24 against yourself because that is your right under the United
25 States Constitution. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay, sir. Now, at the same time
3 that no one can force you to testify, you have a right to
4 testify because you have a right to put up a defense.
5 However, the decision as to whether or not you wish to
6 testify or whether or not you wish to claim the privilege
7 afforded to you under the Fifth Amendment is a personal
8 right. You have to decide this by yourself. You have to do
9 so knowingly, intelligently and voluntarily, knowing your
10 rights under the Fifth Amendment and also knowing the
11 consequences if you decide to testify.

12 So let me tell you a little bit about that, okay, sir?
13 If you do decide to testify, you'll be subject to the same
14 rules as any other witness on the stand. You'll be examined
15 by your attorneys, but you'll also be cross-examined by the
16 State's attorneys. If you have any convictions involving
17 dishonesty or for crimes punishable by imprisonment for more
18 than one year, and I find that the probative value of those
19 prior charges outweighs the prejudice to you, then the State
20 may be allowed to cross-examine you as to your prior record.
21 And the reason they'd want to do that would be to impeach
22 your credibility. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you understood everything that
25 I've gone over with you thus far?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions for me?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay, sir. Again, if you decide you
5 do want to take the stand and testify, you must make that
6 decision freely, voluntarily and intelligently, knowing your
7 rights under the Fifth Amendment and the consequences of you
8 testifying. I'm going to give you some reasonable time to
9 consider whether or not you wish to testify. You may
10 consult with your attorneys. You may reasonably consult
11 with people, such as family or friends who may be available
12 to you. But ultimately the decision as to whether or not
13 you wish to testify has to be made by you and you alone;
14 okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: If you decide that I do not wish to
19 testify this case, when I instruct the jury on the law, I
20 will charge them that they cannot and they shall not
21 consider your failure to testify whatsoever because that is
22 your rights under the Fifth Amendment to the United States
23 Constitution, and further that the burden remains at all
24 times on the State to prove your guilt by proof beyond a
25 reasonable doubt. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay, sir. Now, at this juncture do
3 you have any questions of me?

4 THE DEFENDANT: No. But I ---

5 THE COURT: I need you to speak up.

6 THE DEFENDANT: No, sir. But can I take another
7 couple of minutes because I have ADHD and bipolar and PTSD
8 and sometimes when I get upset, Your Honor, I have a
9 tendency to talk too much. So I don't know ---

10 THE COURT: Let me ask you this, Mr. Henley. Are
11 you under the influence of any alcohol today?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: And are you under the influence of
14 any of drugs, prescription or otherwise?

15 THE DEFENDANT: No, not that I know of.

16 THE COURT: Sir?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: And have you take any medications
19 this morning before trial.

20 THE DEFENDANT: I didn't have anything.

21 THE COURT: Have you taken any within the last
22 twenty-four hours?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are there medications that you should
25 have taken that you didn't take that may affect your ability

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1 to comprehend and understand?

2 THE DEFENDANT: I got to get some more, but not
3 right now I don't have them.

4 THE COURT: Do you understand and comprehend what
5 I'm saying to you and what you're doing?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: And you comprehend the decision that
8 you must make as to whether or not you wish to testify; is
9 that correct?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Okay. Do you have any questions you
12 want to ask your attorney? You don't have to ask her out
13 loud, but you'll have a right to speak with her or both hers
14 in just a minute; okay, sir?

15 THE DEFENDANT: Okay.

16 THE COURT: Ms. Bolen, anything further on the
17 record from you as far as his being advised of his Fifth
18 Amendment rights?

19 MS. BOLEN: No, sir. I believe that was all
20 covered, including the fact that the State would have the
21 right to cross-examine him.

22 THE COURT: Ma'am?

23 MS. BOLEN: I said I think that was all covered.

24 THE COURT: Well, the only concern I have, I feel
25 like the rights were covered, but he raised the issue of

1 medications at this juncture.

2 MS. BOLEN: Yes, sir.

3 THE COURT: Do you feel that Mr. Henley remains
4 competent not only to participate in his case but also to
5 make a decision as to whether or not to testify?

6 MS. BOLEN: I believe he is, yes, sir.

7 THE COURT: Okay. And if you had any reservation
8 would you bring that up?

9 MS. BOLEN: Yes, sir.

10 THE COURT: All right. Thank you. Let's take
11 about a fifteen minute break.

12 Are your witnesses ready to testify?

13 MS. BOLEN: They are here, Yes, sir. I think
14 we're going to have Mr. Henley talk to his family.

15 THE COURT: Absolutely. Okay. Thank you.

16 (WHEREUPON, court stood at recess for a short break.)

17 THE COURT: All right. Ms. Bolen, have you had
18 sufficient opportunity to speak with your client about
19 whether or not he wishes to testify?

20 MS. BOLEN: Yes, Your Honor. Ms. Patel and I
21 have been over that with him some more and he's also met
22 with various family members. And I believe he's decided not
23 to testify.

24 THE COURT: And is that correct, Mr. Henley?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: So you're exercising your rights
2 under the Fifth Amendment not to testify?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you making that decision of
5 your own merit?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you're doing so freely and
8 voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand the benefits or
11 the protections of the Fifth Amendment and the consequences
12 of testifying; is that correct?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Thank you very much. All right. Are
15 you ready with your first witness?

16 MS. BOLEN: Yes, sir, Your Honor, we are.

17 THE COURT: Okay. Is the State ready?

18 MR. ANDREWS: The State's ready, Your Honor.

19 THE COURT: Would you bring the jury in, please,
20 sir?

21 (WHEREUPON, the jury entered the open court at
22 approximately 11:35 a.m.)

23 THE COURT: Ms. Bolen, is the Defense ready with
24 its case?

25 MS. PATEL: Yes, Your Honor, we are.

1 THE COURT: Would you call your first witness?

2 MS. PATEL: Yes, sir. Defense calls Jolene Gray.

3 THE CLERK: Place your left hand on the bible and
4 raise your right.

5 The evidence you're about to give the Court will be the
6 truth, the whole truth and nothing but the truth?

7 THE WITNESS: Yes, ma'am. I do.

8 JOLENE GRAY,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. PATEL:

12 Q. Ms. Gray, can you please state your name for the
13 record?

14 A. My name is Jolene Clardy Gray.

15 Q. And where are you from?

16 A. I'm from Anderson, South Carolina.

17 Q. Are you working anywhere right now?

18 A. No, ma'am, I've been retired since thirty, about thirty
19 years now.

20 Q. Are you married?

21 A. No, ma'am. I'm divorced.

22 Q. Do you have children?

23 A. Yes, I have three kids.

24 Q. And do you know Mr. Henley?

25 A. Yes, I know Rickey.

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- 1 Q. And how do you know Mr. Henley?
- 2 A. Rickey and I had a relationship. We lived together
- 3 about three years.
- 4 Q. How long were you two dating?
- 5 A. About a year before we lived together.
- 6 Q. And were you two living together?
- 7 A. Yes, ma'am.
- 8 Q. Describe to the jury how you two were living together?
- 9 A. Well, we shared an apartment. We shared a townhouse.
- 10 Rickey had odd jobs and I was at home, you know.
- 11 Q. Is it safe to say that he kept his belongings at your
- 12 home?
- 13 A. Yes. He had his clothes there; everything that he
- 14 owned was there, you know.
- 15 Q. Do you remember when you two broke up?
- 16 A. We broke up last year around April.
- 17 Q. Okay. And do you two still speak to one another?
- 18 A. No. This is the first time I've saw him in a year.
- 19 Q. I want to direct your attention to something that
- 20 happened about three years ago in 2013; okay? Do you
- 21 remember Valentines Day, February 14th, 2013?
- 22 A. Yes, yes. I remember it clearly.
- 23 Q. Okay.
- 24 A. I went shopping, bought him a pair of brand new boots.
- 25 That night we went out Break Time. We had a good time and

- 1 came back home. He fixed dinner and we had -- and then that
2 morning he got up to go to visit his mom.
- 3 Q. And just to be clear, who were you with?
- 4 A. Excuse me?
- 5 Q. Who were you with? Who did you spend Valentine's Day
6 with?
- 7 A. I spent it with Rickey.
- 8 Q. And you said you two went out together?
- 9 A. Yes, ma'am.
- 10 Q. And what did you do?
- 11 A. We went dancing, Break Time. And we had a couple beers
12 and played pool and we came back home.
- 13 Q. Do you remember what you had for dinner?
- 14 A. We had lobster, shrimp, a salad, because Rickey fixed -
15 - he fixed dinner that night.
- 16 Q. Do you like lobster?
- 17 A. No, I like shrimp. He liked lobster.
- 18 Q. Okay. Did you have a lot of leftovers that night?
- 19 A. Yes, we did. Especially the lobster because he made
20 some extra. And I don't eat it and we was talking about.
21 And I said -- he said his mom likes lobster. I said, well,
22 take it to her. Take it to her. He said, I'm going to see
23 her for Valentines, which was after Valentines. I said,
24 well, take it to her.
- 25 Q. Did Rickey stay with you that night?

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- 1 A. Yes, that night. Yes, he did.
- 2 Q. Okay. Now, let's move to the next morning; okay?
- 3 A. Okay.
- 4 Q. Describe to the jury what happened when you woke up,
- 5 when you two both woke up?
- 6 A. We woke up that morning and we was sitting at the table
- 7 having coffee, you know, just sitting talking. We have a
- 8 glass door because it's a townhouse. And the glass door was
- 9 open. And he got up. He got his stuff together and he
- 10 said, well, I'm going to visit mom. I said, okay. Well, go
- 11 take the lobster to her.
- 12 Q. Okay. So he took the leftovers?
- 13 A. Yes, he took the leftovers.
- 14 Q. And did you see Rickey right before he left?
- 15 A. Yes, I did.
- 16 Q. Can you describe to the jury, if you remember, what he
- 17 was wearing?
- 18 A. He had on the boots that I bought, a pair of khaki
- 19 pants. I want to say a striped plaided shirt. And he
- 20 didn't have anything on his head.
- 21 Q. Do you remember -- why do you remember what he was
- 22 wearing that day?
- 23 A. Because specifically I dressed him that night. And he
- 24 wanted to wear it that next day to show his mom what he had
- 25 got.

- 1 Q. Okay. So he wore the same thing ---
- 2 A. Yes, he wore the same thing. Uh-huh (affirmative).
- 3 Q. Okay. And was he wearing anything on his head?
- 4 A. No. He didn't have anything on his head when he left.
- 5 Q. You don't remember him wearing a do-rag?
- 6 A. No. No.
- 7 Q. So it's your testimony here today that you never saw
- 8 him wearing a do-rag on February 15th; is that correct?
- 9 A. No. Yes.
- 10 Q. Does Rickey ever wear a do-rag?
- 11 A. He has one that he wears when he take a shower, to let
- 12 his hair go flat.
- 13 Q. Uh-huh (affirmative)?
- 14 A. Yeah. That's the only time I've seen him wear it.
- 15 I've never seen him wear it outside.
- 16 Q. Okay. And around what time did Rickey leave the house?
- 17 A. Well, I want to say between eight and nine, you know.
- 18 I could be wrong. It's been a minute. So I'm going to say
- 19 between eight and nine.
- 20 Q. And after he left the home, did you hear from him that
- 21 day?
- 22 A. Later on. He told me he had arrived at his mom's
- 23 house.
- 24 Q. Okay. Now, I want to fast forward a few days; okay?
- 25 A. Okay.

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- 1 Q. Did law enforcement ever come to your home?
- 2 A. Yes, ma'am, they did. They came -- I can't remember
- 3 exact dates, but they came three times.
- 4 Q. Okay. Well, I want to focus on the first time?
- 5 A. Okay.
- 6 Q. Did you answer the door?
- 7 A. Yes, I did.
- 8 Q. Did you tell law enforcement who you were?
- 9 A. Yes, I did.
- 10 Q. Okay. What did you tell law enforcement?
- 11 A. When they came to the door I asked them who was they
- 12 looking for? And they said they was looking for Rickey
- 13 Henley. Asked me was he here? I said, yes, he's here. But
- 14 at the time, I don't think he asked me who I was.
- 15 Q. Okay.
- 16 A. Yeah. He asked for Rickey. And I said, yes, he's
- 17 here. So Rickey stepped outside.
- 18 Q. Can you describe to the jury what happened after law
- 19 enforcement came and Rickey went outside?
- 20 A. When Rickey went outside, I could hear -- because I
- 21 never stepped outside. I could hear a conversation, you
- 22 know, they were talking to him. I could his voice getting a
- 23 little pitch up, you know, high. So I stepped to come out.
- 24 And the detective from Abbeville said, you can't come out.
- 25 He said this is -- this doesn't concern you. So I stood

1 back for a minute. I'm like, well, I live here. I should
2 be able to come out. So I tried it again to step outside.
3 And the county policeman from Anderson County, he done like
4 this. So that's when I stepped outside.

5 Q. Okay. And what happened after that?

6 A. When I stepped outside, the detective was questioning
7 Rickey about a house being broke into in Abbeville. He was
8 asking him was he there. He was telling him, no, he was not
9 there. He was telling him that we got a number of your tag.
10 You know, we know it's you. He told him when he come back
11 that he found a cigarette butt. He told him he found a
12 cigarette butt. And that when it come back and his DNA is
13 on it, he said I'm coming back to get you.

14 Q. Did you notice what Rickey was wearing?

15 A. When they came to the house?

16 Q. Uh-huh (affirmative)?

17 A. No, because it was like nine that morning. It was
18 early.

19 Q. Did they ask Rickey to take any items of clothing off
20 to give them for any reason?

21 A. No.

22 Q. Did Rickey offer anything?

23 A. Not at that time he didn't.

24 Q. Let's fast forward, some more time forward. Let's talk
25 about when you went with Rickey to the sheriff's office to

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1 turn himself in. Were you there?

2 A. Yes. I'm the one that took him there, yes. Well,
3 really, I picked him up. But I took him there, yes. When
4 we arrived inside the Abbeville County Detention Center, the
5 detective that came to the house, he was in the hallway.
6 And I asked him, because I remember him saying if he get the
7 DNA back, he going to come get Rickey. But I asked him, I
8 said, did you get the DNA back? He said yes, we did. We
9 done a few phone calls and done a few things and he say we
10 got it back. So I'm like, okay. I didn't say anything
11 else.

12 Q. And I'm sorry to do this. I'm going to take you back a
13 few days to that day we were talking about when law
14 enforcement came and Rickey talked to them. How many law
15 enforcement agents came to your home that day?

16 A. The first time he came it was only two. I want to say
17 two.

18 Q. And do you remember if on the first day if the other
19 officer was white or African American or ---

20 A. No, they all was white. Even the county policeman from
21 Anderson County.

22 MS. PATEL: Your Honor, if I may have a moment.

23 Q. Okay. I want to still talk about that same day when
24 law enforcement were talking to Rickey. Did he offer his
25 boots to the agent who was questioning him? Do you remember

14 BY MR. BROWN:

15 Q. Ms. Gray, Ms. Patel asked you the day, that Valentine's
16 Day, February 14th. What year are you referring to?
17 A. What year I'm referring to?
18 Q. Yes, ma'am?
19 A. The date of three years ago.
20 Q. Three years ago?
21 A. Yeah.
22 Q. 2012 or 2013?
23 A. It's 2012, I think.
24 Q. Okay. It sounded like she said 2013, but it was 2012?
25 A. I think it's 2012.

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- 1 Q. Okay.
- 2 A. It's been a minute.
- 3 Q. It was three years ago from this year?
- 4 A. Yeah. Yeah.
- 5 Q. Okay. That would be 2012?
- 6 A. 2012.
- 7 Q. Ms. Gray -- and you say you and Rickey were dating?
- 8 A. Yes, sir. We were living together.
- 9 Q. Living together in Anderson?
- 10 A. Yes.
- 11 Q. And what was the address of that apartment?
- 12 A.
- 13 Q.
- 14 A. Uh-huh (affirmative). Anderson, South Carolina 29621.
- 15 Q. And where did Rickey's mother live?
- 16 A. Rickey's mother is from Augusta, Georgia.
- 17 Q. Augusta, Georgia?
- 18 A. Uh-huh (affirmative). Well, Aiken, South Carolina,
- 19 that -- yeah.
- 20 Q. Okay. Is it Beech Island?
- 21 A. Yes, it is.
- 22 Q. Which is right outside of Aiken?
- 23 A. Yes.
- 24 Q. What route would Rickey take to get down to Beech
- 25 Island?

- 1 A. He would have had to, well, come down Abbeville
2 Highway.
3 Q. 28?
4 A. Yes.
5 Q. Now, you said that Rickey was with you on Valentines of
6 2012, that would be February 14th?
7 A. Yes.
8 Q. And he was in Anderson with you; right?
9 A. Yes.
10 Q. Y'all ate shrimp and lobster and things of that nature?
11 A. Yes.
12 Q. And he spent the night in Anderson; right?
13 A. Yes.
14 Q. And the next morning y'all got up together?
15 A. Yes.
16 Q. Drank coffee together?
17 A. Yes.
18 Q. And then he left about nine o'clock?
19 A. Between eight and nine. I'm not sure.
20 Q. Between eight and nine?
21 A. Yes.
22 Q. And left to go down to see his mother?
23 A. Yes.
24 Q. And he was wearing boots when he left?
25 A. Yes. The boots I bought for Valentines.

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- 1 Q. Did Rickey smoke?
- 2 A. Yes.
- 3 Q. Did he smoke Newport cigarettes?
- 4 A. Yes.
- 5 Q. And jumping forward to when officers with Abbeville
- 6 County showed up. You said they came twice. The first
- 7 time, did they see Rickey or was Rickey there? They came
- 8 and then left?
- 9 A. The first time they saw Rickey. The second time they
- 10 didn't see Rickey. He was gone to work. He was working for
- 11 a construction company out of town. So they didn't see him.
- 12 They didn't see him the second time or the third time they
- 13 came, but they searched my home.
- 14 Q. They searched your home?
- 15 A. Yes.
- 16 Q. Did you say that to Ms. Patel?
- 17 A. Yes.
- 18 Q. They searched your home?
- 19 A. Yes, they searched my home.
- 20 Q. Did they take anything?
- 21 A. No. They told me they was looking for Rickey.
- 22 Q. And he wasn't there?
- 23 A. Uh-uh (negative).
- 24 Q. Now, when they came back they did talk to Rickey;
- 25 right?

- 1 A. No.
- 2 Q. Did they ever talk to Rickey outside your condo, your
- 3 townhouse?
- 4 A. The first time they came.
- 5 Q. The first time they came?
- 6 A. Uh-huh (affirmative).
- 7 Q. Did they come in the house then?
- 8 A. No, they stood outside.
- 9 Q. Stood outside?
- 10 A. Uh-huh (affirmative).
- 11 Q. Did they bang on your door?
- 12 A. The second time they did.
- 13 Q. But the first time when they talked to Rickey?
- 14 A. No, they didn't bang on it. They knocked. But see we
- 15 could see them because the door was open.
- 16 Q. You said they had a conversation outside the front door
- 17 of your townhouse?
- 18 A. Yes.
- 19 Q. How long did that conversation last; five or ten
- 20 minutes?
- 21 A. I'm not sure.
- 22 Q. It wasn't that long though?
- 23 A. I'm not sure.
- 24 Q. But from your testimony, Rickey left -- on February
- 25 15th of 2012, Rickey left your house between eight and nine

1 in the morning in Anderson?

2 A. Yes.

3 Q. And he was driving down Abbeville Highway, which is
4 Highway 28, towards his mother's house around Aiken?

5 A. Yes.

6 Q. And he left about eight or nine that morning?

7 A. Yes.

8 Q. So he was on that path?

9 MR. BROWN: No further questions.

10 THE COURT: Redirect?

11 MS. PATEL: Very briefly, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MS. PATEL:**

14 Q. Ms. Gray, when we were talking earlier, I was talking
15 about the first time that law enforcement came to your home;
16 correct?

17 A. Correct.

18 Q. Okay. So the second time law enforcement came, did you
19 see the agents doing anything around your house?

20 A. The second time they came, it was five of them, I
21 think. One was at the back, four in the front. My son was
22 living with me at the time. Rickey car be there. My car
23 there and my son's car. They was walking around the
24 grounds, you know, picking up. What they were picking up, I
25 have no idea. But they was walking around. Yes.

1 MS. PATEL: I don't have any other questions,
2 Your Honor.

3 THE COURT: May this witness be excused?

4 MS. PATEL: Yes, Your Honor.

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: Thank you, ma'am. You may be
7 excused.

8 Would you call your next witness, please?

9 MS. BOLEN: Yes, Your Honor. Defense calls Ms.
10 Ella Johnson. I'll have to get her, Your Honor.

11 THE CLERK: Place your left hand on the bible and
12 raise your right.

13 The evidence you're about to give the Court will be the
14 truth, the whole truth and nothing but the truth?

15 THE WITNESS: Yes.

16 THE CLERK: You may be seated.

17 MS. BOLEN: Thank you, Your Honor.

18 ELLA JOHNSON,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. BOLEN:

22 Q. Ms. Ella, can you please state your full name for the
23 record?

24 A. Ella Louise Johnson.

25 Q. Okay. And Ms. Johnson, do you know Rickey Henley?

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- 1 A. That's my next to the oldest son.
- 2 Q. So he's your son?
- 3 A. Yes.
- 4 Q. Ms. Johnson, where do you live now?
- 5 A. In Beech Island, South Carolina.
- 6 Q. What county is that in?
- 7 A. Well, not North Augusta.
- 8 Q. But it's in the ---
- 9 A. North Augusta or Aiken, you can use either one.
- 10 Q. How long have you lived in Beech Island?
- 11 A. Fifty-two, fifty-three years.
- 12 Q. Does Rickey live with you right now?
- 13 A. No, ma'am.
- 14 Q. Has he lived with you in the past few years?
- 15 A. Yes.
- 16 Q. Was he living with you back in February of 2012?
- 17 A. No.
- 18 Q. Where was he living at that time?
- 19 A. He was living with his fiancé, Jolene.
- 20 Q. Do you know where?
- 21 A. Anderson, South Carolina.
- 22 Q. Have you ever lived in Anderson?
- 23 A. No, ma'am.
- 24 Q. I want to direct your attention back to Valentine's Day
- 25 of 2012. Do you remember that time period?

- 1 A. Yes.
- 2 Q. How do you remember it?
- 3 A. I remember Valentine night. My son, Rickey, called me
4 up and he was like what are you doing? I said, I'm cooking
5 dinner for me and my husband. And he said, well, me and
6 Jolene, we having shrimp and lobster. I said, well, I'm
7 having shrimp and snow crab. So we was talking about the
8 recipe and everything, how good his was. And he wanted me
9 to taste it. So he told me, he said, the next day,
10 tomorrow, he said, I'm going to bring you some. So he did.
- 11 Q. Okay. And the next would be February ---
- 12 A. The day after Valentine's Day.
- 13 Q. Okay. So that would be February 15th?
- 14 A. Yes.
- 15 Q. Okay. And what did you do the morning of February
16 15th?
- 17 A. February 15th, that morning, I got up and took my
18 husband to work. He have to be to work at eight o'clock.
- 19 Q. Okay. Where does your husband work at?
- 20 A. He work at Barrett Supply on Highway 56 in Augusta,
21 Georgia.
- 22 Q. How long has he worked there?
- 23 A. Ever since 1977.
- 24 Q. And you typically drive him to work ---
- 25 A. Yes.

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- 1 Q. --- or you did back then?
- 2 A. Yes.
- 3 Q. And then you would -- would you go back later and pick
- 4 him up?
- 5 A. Yes.
- 6 Q. What time did you usually pick him up?
- 7 A. I pick him up like four-thirty. He gets off at five
- 8 o'clock. But sometime like that day when Rickey came to
- 9 visit me, I left right about two o'clock to head toward
- 10 Augusta because of shopping and other things I did before I
- 11 picked him up from work.
- 12 Q. Okay. So that morning, you dropped your husband off at
- 13 work about eight?
- 14 A. Yes.
- 15 Q. How far was it from your house to his work?
- 16 A. I'm going to take a guess and say like twenty miles or
- 17 so. I'm not sure.
- 18 Q. After dropping him off to work, where did you go then?
- 19 A. Back home.
- 20 Q. Did Rickey come to your house that day?
- 21 A. Yes, he did.
- 22 Q. Do you know about what time?
- 23 A. It was around about ten, about ten o'clock. Somewhere
- 24 along in there.
- 25 Q. Did Rickey stay at your house?

1 A. Yeah, he stayed to my house up until around about two.
2 When I left to go leave to do other things and pick my
3 husband up, we both followed each other to a convenience
4 store in Beech Island, South Carolina, which is Moe's
5 Convenience Store. And he purchase a item and we departed
6 from there and went our separate ways after that.

7 Q. Okay. And that was about two?

8 A. Yes, ma'am.

9 Q. And after the convenience store, you went to get your
10 husband from work at some point; right?

11 A. Not really. Like I said, I would either go to the bank
12 or shopping or whatever and do what I have to do before I
13 pick him up. So that's why I left right about two o'clock.

14 Q. And after two o'clock, did you see Rickey at all again
15 that day?

16 A. No, ma'am.

17 Q. And your testimony is that Rickey came to your house at
18 about ten?

19 A. Yes, ma'am.

20 Q. When he came to your house, do you remember if he was
21 wearing do-rag or any kind of bandana on his head?

22 A. Not really.

23 Q. You don't remember if he had a computer with him?

24 A. No, ma'am. The only thing he had when he came in the
25 house was a clear container with shrimp and lobster.

1 Q. So he brought you the food he'd cooked the night
2 before?

3 A. Yes, he had.

4 Q. And he stayed with you for about four hours?

5 A. Yes.

6 Q. And how far is Beech Island from Abbeville? I know you
7 had to do that drive today?

8 A. I'm not sure.

9 Q. Did it take over an hour or under an hour?

10 A. Yeah. It was over an hour. Maybe an hour and a half,
11 I would guess. I don't know. My son did the driving.

12 Q. Okay.

13 MS. BOLEN: If I may just have a moment, Your
14 Honor. I don't have anything further.

15 Ms. Ella, please answer any questions the Solicitor may
16 have for you, okay?

17 THE WITNESS: Okay.

18 CROSS-EXAMINATION

19 BY MR. ANDREWS:

20 Q. We still have a little time. Good morning, I think.

21 A. Good morning.

22 Q. Now, you go by Ms. Johnson?

23 A. Ella.

24 Q. Okay, Ms. Ella. How is Rickey related to you again?

25 A. He's my son.

- 1 Q. And what's his date of birth?
- 2 A. August the , 1981.
- 3 Q. Do you remember the day he was born?
- 4 A. Yes. Not the exact day. I mean ---
- 5 Q. Right. So do you have a recollection in your mind,
- 6 though?
- 7 A. Yeah. I remember when he was born, yeah.
- 8 Q. Did he -- as a child, did he live with you?
- 9 A. Yes.
- 10 Q. When did he eventually move away?
- 11 A. He really never left and went away. He stayed with me
- 12 up until like, it was about -- he was about in his twenties
- 13 before he even left me.
- 14 Q. Okay. But it sounded like he lived in Anderson for
- 15 about three years?
- 16 A. I think -- I'm not sure how long they was together.
- 17 Q. But when you say he left when he was in his twenties --
- 18 -
- 19 A. Right.
- 20 Q. --- he went and got a separate residence?
- 21 A. Yes. He went and stayed with his fiancé Jolene.
- 22 Q. Currently, where does he live?
- 23 A. Now?
- 24 Q. Yes, ma'am?
- 25 A. I haven't -- he recently moved. I haven't been to his

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- 1 house.
- 2 Q. Okay. Do you know his address?
- 3 A. No, I don't.
- 4 Q. You don't know his current address?
- 5 A. No, I do not.
- 6 Q. During the time that he was living with -- I'm sorry.
- 7 I just don't want to use anybody's first name -- with Ms.
- 8 Gray, how often would you and Rickey talk?
- 9 A. I mean, he would call me up very often to see how I'm
- 10 doing or if I needed anything.
- 11 Q. Every day?
- 12 A. Not every day.
- 13 Q. How many times a week would you say he calls?
- 14 A. Maybe every other week.
- 15 Q. Every other week?
- 16 A. Every other week, yeah. He didn't call like a everyday
- 17 thing.
- 18 Q. Okay. How often would he visit you?
- 19 A. When he visit me, Jolene would visit me. So they would
- 20 come down whenever they had the money to. If I needed them,
- 21 they could come and visit.
- 22 Q. When you say I needed them, what do you mean by that?
- 23 A. I mean, like if I had anything for Rickey to do ---
- 24 Q. Uh-huh (affirmative)?
- 25 A. --- because he'll call all the time and say do you need

1 me to do anything for you. And if I had a project or
2 something that needed to be done, he'll come and do it.

3 Q. I guess when you said -- just now you said he called
4 about every other week.

5 A. Yeah.

6 Q. But then you said he called all the time? Did you mean

7 ---

8 A. He constantly kept in touch with me. And as far as
9 every day or other day, no, he didn't do that.

10 Q. But you said he constantly kept in touch with you ---

11 A. Yes, he did.

12 Q. --- checked on you ---

13 A. Yes, he did.

14 Q. --- making sure you're doing okay?

15 A. Yeah.

16 Q. He's a good son; right?

17 A. Yes, he is.

18 Q. How many other children do you have?

19 A. I have four living sons.

20 Q. Four other sons?

21 A. Yes. We have four in all.

22 Q. Okay. And Mr. Henley is one of your sons?

23 A. Yes.

24 Q. Do they all live in South Carolina?

25 A. My oldest son live in Augusta. Rickey live in South

1 Carolina. Charles Johnson, Jr. live in Newberry. And
2 Kendrick live in California.

3 Q. Okay. Is Mr. Henley the one you see the most often?

4 A. Mr. Henley and Charles, Jr., I see them often. But my
5 son that live in California, he came down just for my
6 surgery and so happened he was here, you know, today. He
7 was subpoenaed to come to court too.

8 Q. Okay, now you live in Aiken; is that correct?

9 A. Yes.

10 Q. How long have you lived there?

11 A. Fifty-three years; all my life.

12 Q. Okay. And you said for a lot of that Rickey lived with
13 you; right?

14 A. Yes.

15 Q. You said you don't know Rickey's current address. Do
16 you know what county Rickey lives in? I'm sorry. And I
17 apologize. Do you know what county Mr. Henley lives in?

18 A. He was living in Clearwater, South Carolina. I don't
19 know if he's living in Clearwater at the time, now. Like I
20 said, I haven't been to his house and I don't know his
21 address.

22 Q. Okay. Before today, when was the last time you spoke
23 with Mr. Henley?

24 A. Yesterday morning.

25 Q. Okay. I'm assuming you've known about this trial for a

1 while?

2 A. Yes, I knew when it first began. I mean, even when he
3 was so-called accused of doing what he had done. I knew it
4 from the beginning up until now.

5 Q. I hate to rehash what Ms. Bolen's already gone over,
6 but tell me a little bit about that day again, about
7 February 15th?

8 A. February 15, like I said, my son came to my house right
9 about ten o'clock, between ten and two. I ate my food and
10 we spent time together. And anything I needed him to do, he
11 was willing to do it, which wasn't very much. Like take out
12 the trash or feed the dogs or something like that. Two
13 o'clock, we went to the store, convenience store in Beech
14 Island, South Carolina, Moe's Convenience Store. And he
15 purchase an item. And we left there and departed and went
16 our separate ways.

17 Q. Do you remember what he purchased?

18 A. Yeah. He bought a Budweiser, I believe. I'm not sure.
19 Budweiser or Natural Ice, something like that.

20 Q. Okay. And I'm just curious ---

21 A. And that was the only thing he purchased.

22 Q. Did he leave it at your house or did he take it back
23 with him?

24 A. He took it with him, yeah.

25 Q. Ma'am, I notice you're not wearing a watch today?

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1 A. I'm allergic to jewelry.

2 Q. Okay. Do you ever wear a watch?

3 A. No.

4 Q. How are you sure what time he came to your house on the
5 15th?

6 A. Because I know what time I took my husband to work,
7 which was eight o'clock. And I knew right about the time
8 that he came, which was around about ten.

9 Q. Which was around about ten?

10 A. Round about ten o'clock.

11 Q. Okay. I asked you earlier if Mr. Henley was a good
12 son. And I don't think there's any question about this, but
13 you love Mr. Henley; don't you?

14 A. I love my son.

15 Q. Okay. Thank you, ma'am.

16 MS. BOLEN: Very brief recross [verbatim], Your
17 Honor, if I may.

18 THE COURT: Certainly.

19 **REDIRECT EXAMINATION**

20 **BY MS. BOLEN:**

21 Q. Ms. Johnson, you stated that you don't actually know
22 Mr. Henley's current address; right?

23 A. No, ma'am, I don't. I haven't even been to his house.

24 Q. You haven't been to his house?

25 A. Not yet. He recently moved and I had surgery.

1 Q. Recently; right?

2 A. Ma'am?

3 Q. You had surgery recently?

4 A. Yes, ma'am.

5 Q. And you also mentioned one of your other son's being
6 under subpoena. Are you also under subpoena to be here?

7 A. Yeah. I have my paperwork.

8 Q. Do you have any clocks in your home?

9 A. I have one in every other room.

10 Q. Thank you.

11 A. Uh-huh (affirmative).

12 THE COURT: May this witness be excused?

13 MS. BOLEN: Yes, sir.

14 MR. ANDREWS: Yes, Your Honor.

15 THE COURT: Thank you, ma'am.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness, please.

18 MS. BOLEN: Your Honor, at this time I need a
19 very brief moment to just check to see if he's here.

20 THE COURT: Okay. Mr. Foreman, would you take
21 the jury to the jury room. We're going to take a break.

22 (WHEREUPON, the jury exited the open court at
23 approximately 12:05 p.m.)

24 THE COURT: Let's take a quick break.

25 MS. BOLEN: I just want to see if he's here.

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1 Thank you, Your Honor.

2 THE COURT: Thank you, ma'am.

3 (WHEREUPON, court stood at recess for a short break.)

4 THE COURT: Are you ready for your next witness?

5 MS. BOLEN: Yes, sir, Your Honor.

6 THE COURT: Is the State Ready?

7 MR. BROWN: Yes, Your Honor.

8 MR. ANDREWS: Yes, sir.

9 THE COURT: Will you bring the jury in, please?

10 (WHEREUPON, the jury entered the open court at

11 approximately 12:14 p.m.)

12 THE COURT: Ms. Bolen, will you call your next
13 witness, please?

14 MS. BOLEN: Thank you, Your Honor. The defense
15 calls Officer Michael Belcher.

16 THE CLERK: Place your left hand on the bible and
17 raise your right.

18 The evidence you're about to give the Court will be the
19 truth, the whole truth and nothing but the truth?

20 THE WITNESS: I do.

21 MS. BOLEN: Thank you, Your Honor.

22 MICHAEL BELCHER,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. BOLEN:

- 1 Q. Officer Belcher, can you please state your full name
2 for the record?
- 3 A. Michael Belcher, B-E-L-C-H-E-R.
- 4 Q. Where do you work now?
- 5 A. I work with Greenwood County.
- 6 Q. How long have you worked at Greenwood County?
- 7 A. I've been at Greenwood right at approximately three
8 years.
- 9 Q. And that would be Greenwood County Sheriff's ---
10 A. Sheriff's office.
- 11 Q. Okay. Prior to that, where did you work?
- 12 A. Prior to that I worked at Abbeville County Sheriff's
13 Office.
- 14 Q. How long did you work with Abbeville?
- 15 A. Probably sixteen, seventeen years.
- 16 Q. Were you there in -- were you at Abbeville in February
17 of 2012?
- 18 A. Yes.
- 19 Q. At that time were you the only Michael Belcher at the
20 Abbeville County Sheriff's Office?
- 21 A. Yes. Yes, I was the only one.
- 22 Q. Okay. Do you recall going with -- let me back up for a
23 second. When you worked at Abbeville County Sheriff's
24 Office, did you know a Patrick Thompson?
- 25 A. Yes.

- 1 Q. Did you work together?
- 2 A. Yes.
- 3 Q. Do you recall -- so when did you actually leave
- 4 Abbeville Sheriff's Office?
- 5 A. I think I left Abbeville in August. August of ---
- 6 Q. 2012?
- 7 A. Uh-huh (affirmative).
- 8 Q. Do you recall in February of 2012 traveling to a
- 9 location in Anderson County with Officer Thompson?
- 10 A. I don't recall that one. There's been plenty we've
- 11 went to Anderson and all, but I don't recall that one.
- 12 Q. Okay. And do you recall speaking with Rickey Henley?
- 13 A. Not right off I don't.
- 14 Q. So the name doesn't ring a bell?
- 15 A. No, ma'am.
- 16 Q. Okay. Do you recognize him as being someone you would
- 17 have spoken with?
- 18 A. Not right off. I mean, we had so many cases together.
- 19 Not right off it don't.
- 20 Q. You don't remember going to Anderson with Officer
- 21 Thompson?
- 22 A. I mean, there's been times we went -- I went to
- 23 Anderson with him, I just don't recall this particular one.
- 24 Q. Okay. That's all I have.
- 25 MS. BOLEN: Thank you, Your Honor.

1 Please answer any questions the State may have.

2 THE COURT: Cross-Examination.

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 Q. Officer Belcher, you're not saying you didn't go with
6 Thompson on that day?

7 A. Right. No, sir.

8 Q. You just don't recall going?

9 A. I just don't recall it.

10 MR. BROWN: No further questions.

11 THE COURT: May this witness be excused?

12 MS. BOLEN: Yes, sir.

13 THE COURT: All right. Thank you, sir.

14 Call your next witness?

15 MS. BOLEN: Your Honor, at this time, Defense
16 rests.

17 THE COURT: All right. Mr. Foreman, again, we
18 have some administrative matters. The Defense says they
19 have presented their defense in this case. I have matters
20 to take up and then we'll bring you back shortly; okay, sir?

21 (WHEREUPON, the jury exited the open court at
22 approximately 12:18 p.m.)

23 THE COURT: Motions from the State?

24 MR. BROWN: None from the State, Your Honor.

25 THE COURT: Motions from the Defense?

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1 MS. BOLEN: Your Honor, we again move for a
2 directed verdict of not guilty based on the State not
3 presenting sufficient evidence to meet the elements of these
4 charged offenses. We'd also at this time renew all of our
5 pretrial and trial objections and motions. I can list them
6 specifically, but we've given you ever objection we made,
7 any motion made pretrial or during trial.

8 THE COURT: All right. Those are denied. Any
9 reply anticipated from the State?

10 MR. BROWN: Judge, I don't believe so.

11 THE COURT: What if we do this. What if we go
12 ahead and let the jury go for lunch, bring the jury back
13 about one-thirty, let's hold a quick charge conference.

14 MS. BOLEN: Yes, sir.

15 THE COURT: Come back and do argue and charge at
16 one-thirty?

17 MR. BROWN: Yes, sir.

18 MS. BOLEN: Yes, sir.

19 THE COURT: Will that work?

20 MS. BOLEN: Yes, sir.

21 THE COURT: I gave the other folks -- I always do
22 in all cases, civil and criminal. I will charge first if
23 that's what both of you agree upon or we'll do it the
24 traditional way where you close and I charge. You don't
25 have to make your decision now. It's just food for thought.

1 MR. BROWN: Yes, sir.

2 THE COURT: All right. Let me try to get some
3 information together over here. I'm going to have my clerk
4 show y'all the charge on first degree burglary, larceny,
5 alibi, statement of the defendant. And then otherwise, I
6 have a general structure of my charge. Ms. Bolen, I know
7 you've tried cases with me. I'm not sure if I've had other
8 trials with you before. Let me -- have y'all tried cases
9 with Judge Hill in Greenville?

10 MR. BROWN: Yes, sir.

11 THE COURT: Before we do that, let me bring the
12 jury in and let's let them go so we don't have them sitting.

13 (WHEREUPON, the jury entered the open court at
14 approximately 12:22 p.m.)

15 THE COURT: All right. Ladies and gentlemen, if
16 you recall at the beginning of this case, I told you there
17 are five phases in every case. You have the opening
18 statements, the presentation of the evidence. Then we will
19 have closing arguments by the attorneys, I'll charge you on
20 the law and you'll begin your deliberations. At this
21 juncture the State and the Defense has rested. That means
22 that we are finished with the second phase of the case.
23 That would lead us into the closing arguments and charge on
24 the law.

25 What I'm going to do is go ahead and dismiss you for

1 lunch. We'll be having a conference as to the appropriate
2 law I'm going to charge in this matter. If you'll be back
3 in your jury room about one thirty, then we'll have closing
4 statements and charge on the law, okay? I remind you not to
5 speak amongst yourselves or with anybody during the lunch
6 break. See you back at one thirty.

7 (WHEREUPON, the jury exited the open court at
8 approximately 12:23 p.m.)

9 THE COURT: All right. Y'all be seated. I'm
10 going to give you a minute before we come back, but let me
11 go over my basic charge for you. And then we can come back
12 and do the other.

13 My charge is in three sections. The first part of my
14 charge tells the jury about the duties and their obligations
15 as jurors. The next phase would be the law that I've handed
16 up to you. And I may -- I've got to look at it myself. But
17 I may put the statement of the Defendant; well subject to
18 Anyway, then I have a charge about their deliberations
19 and I go over the verdict form. As an overview, I remind
20 the jury that they have to make their decision about what
21 the facts are in this case based solely on the evidence and
22 the testimony presented here in this courtroom and according
23 to the law as I give it to them. They can't change the law
24 or think or wish it could be something else. They have to
25 apply the law as I give it to them. They may not be

1 influenced by any personal likes or dislikes of one side or
2 the other. They have no friends to reward to enemies to
3 punish. And that's what their oath -- that's what they said
4 they'd do in their oath. Also, these instructions, they
5 have to follow all aspects of it and not take out parts they
6 like and disregard others. Also, if I've done anything that
7 seems to suggest how they're to find, you know, facts or
8 what verdict they're to reach, they're to disregard that
9 because I have no such feelings. But they are the sole
10 judges of the fact and they'll determine what they are, what
11 those facts are by evaluating and weighing the evidence.
12 Evaluating and weighing the evidence, I can't give them a
13 set of scales in a literal sense, but it's a mental process
14 that they use bringing their common sense and sound judgment
15 to bear. I define for them or point out what is testimony -
16 - I mean, what is evidence, testimony and exhibits. I tell
17 them what's not; your opening and closings, your questions
18 or your objections or anything that might -- nothing's been
19 stricken from the record in this case, has it?

20 MS. BOLEN: I don't believe so.

21 THE COURT: I don't think so, either. Anything
22 they heard when court's not in session. Then I give them
23 the direct and circumstantial evidence charge that is State
24 versus Clarence Logan. You're familiar with that?

25 MS. BOLEN: I'm assuming it's the standard.

1 THE COURT: To the extent the State relies on
2 circumstantial evidence all the circumstances must be
3 consistent with one another and when taken together point
4 conclusively to the guilt of the accused beyond a reasonable
5 doubt. If these circumstances merely portray the
6 defendant's behavior as suspicious, that proof has failed.
7 So that's the language that most defense lawyers request to
8 be charged in a case. And it's approved under the State v.
9 Logan case.

10 Next, go into credibility of the witnesses and then go
11 over the list of things they can consider, but they don't
12 add up the number of people who appear for one side or the
13 other in making their determination. I also tell them, you
14 know, the same charge I gave about expert testimony. I tell
15 them again that the indictment or indictments in this case
16 do no raise presumption or inference of guilt. And I also
17 charge them that each indictment stands on its own. They
18 have to consider each free of their decision of the other.
19 I charge them on the presumption of innocence; what
20 reasonable doubt is, intent, failure of the Defendant to
21 testify. Let me see those real quick.

22 I'll probably go ahead and -- that'll be the general
23 charge. Then I go to the substantive part. I charge them
24 on first degree burglary. We've doctored it so it only
25 included the two priors. I'm going to let you look at it.

1 I'm not asking for comments at this point. The law of
2 larceny. I will charge them about the statement of the
3 Defendant under Jackson v. Denno. Also, the fact that he's
4 raised an alibi defense, but that the State has to disprove
5 that by proof beyond a reasonable doubt.

6 Then my verdict form will just simply be the first
7 degree burglary, not guilty, guilty. Larceny, not guilty,
8 guilty. You have that. Okay. Deliberations; I just point
9 out to the jury that they're not to be partisans or
10 advocates for one side or the other. They are judges of
11 fact and they are to go through and -- if they're doing
12 something deliberately they shouldn't be in a hurry in this
13 case. Also, I forgot in this case identification is an
14 issue. And I charge that in my first part of my charge. I
15 also tell them regardless of what they think about our jury
16 system, that I would submit that the genius is it allows
17 twelve people from different backgrounds, different
18 perspectives and different walks of life to get together and
19 listen to a trial, listen to evidence, listen to the law to
20 get together and come up and discuss thoroughly and comment
21 on the evidence and hopefully reach a verdict. And they are
22 not partisan or advocates but sole judges of the facts and
23 their sole interest is to try to find the truth from the
24 evidence presented. They're to listen to points and points
25 of view. And in order for their verdict to be valid it must

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1 be unanimous. But with that said, each one has to decide
2 the case on their own. Don't be afraid to change your
3 opinion of the weight of the evidence if the conversation
4 convinces you that that's the right thing to do. On the
5 other hand, don't change a firmly held belief just to
6 appease your fellow jurors to reach a verdict.

7 Then I go over with the Foreman communicating with the
8 Court, verdict form, give y'all a chance to give me a hard
9 time, and then we let them have it; okay?

10 Now, the other question for you to consider is do it
11 right after lunch. In other words, I go first, you go
12 second or I go second.

13 MR. BROWN: Judge, I think we discussed that.
14 We, I guess, we'd like to do it traditional; you charge
15 after we close.

16 THE COURT: That's fine with me. That's fine
17 with me. Okay. I'll give y'all some time to look at those
18 -- the substantive law I gave you. I'll tell you that it's
19 right out of the charge book.

20 So does anybody have any requests to charge for me to
21 look at?

22 MR. BROWN: No, sir. Judge, I think that we've
23 looked at it and we don't have a problem with it.

24 THE COURT: Okay. Just let me know.

25 MS. BOLEN: Yes, sir.

1 THE COURT: All right. Guys, I'll see y'all
2 after lunch.

3 (WHEREUPON, court stood at recess for a lunch break.)

4 THE COURT: Thank you. Be seated. All right.
5 Is the State ready for closing arguments?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: All right. Is Defense ready?

8 MS. BOLEN: Yes, sir.

9 THE COURT: Is the State opening on the law and
10 then rebuttal to closing?

11 MR. BROWN: Yes, we are, Your Honor.

12 THE COURT: Okay. Anything else before we bring
13 the jury in?

14 MR. BROWN: Not from the State?

15 MS. BOLEN: No, sir.

16 THE COURT: Thank you.

17 (WHEREUPON, the jury entered the open court at
18 approximately 1:37 p.m.)

19 THE COURT: All right. Ladies and gentlemen, we
20 are now going to the closing argument portion of this case.
21 So the State will open up with the law, then the Defense
22 will go, and the State will go last since they have the
23 burden of proof. After that, I will charge you on the law.
24 And then we'll have a brief meeting with the attorneys and
25 then you'll begin your deliberations.

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1 Now, Mr. Foreman, ladies and gentlemen, if at any time
2 during the closing arguments by the attorneys or my charge
3 on the law, if you want to take a break or if you want to
4 take a break in between, just let us know. This is not an
5 endurance contest; okay?

6 Is the State ready?

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: Is the Defense ready?

9 MS. BOLEN: Yes, sir.

10 THE COURT: Very good.

11 MR. BROWN: May it please the Court?

12 THE COURT: Yes, sir.

13 CLOSING STATEMENT

14 BY MR. BROWN:

15 Ladies and gentlemen, let me first thank you again for
16 being here all week. I know many of you have been here
17 every day this week. The remainder of you have been every
18 day except one so far. So we appreciate your attention to
19 detail, listening to all the people on the stand. Right
20 now, I'm just going to talk to you about the law in this
21 case, what Mr. Henley's charged with. Mr. Henley's
22 charged with burglary in the first degree. He's also
23 charged with larceny. So what is it we have to prove to you
24 to be a burglar first degree? Burglar is breaking and
25 entering the dwelling of another with the intent to commit a

1 crime inside that house, or inside that dwelling. In this
2 case the dwelling of Amanda Moss and the intent to commit a
3 crime in breaking and entering that dwelling. In this case,
4 he's charged with larceny. Larceny is the taking and
5 carrying away the goods of another with the intent to
6 permanently deprive that person of those goods. In this
7 case, a laptop. So those are the -- that's the law of the
8 case. The burglary, going back to burglary first, to make
9 it a burglary first is two prior convictions. And we'll
10 deal with that a little bit later, but that makes it a
11 burglary first.

12 The State has the burden of proof. The burden of proof
13 is on us to prove to you beyond a reasonable doubt that Mr.
14 Henley committed these two offenses. Now, proof beyond a
15 reasonable doubt is proof that leaves you firmly convinced
16 of Mr. Henley's guilt. Firmly convinced. It's not all
17 doubt; it's not every doubt; it's not any doubt; but leave
18 you firmly convinced that Mr. Henley committed these two
19 acts, burglary first and also the larceny charge. In a
20 moment, I'm going to sit down and Ms. Bolen's going to be up
21 here to talk to you. And then I'll get back up after she's
22 done and go over a little bit further the last two days.
23 Thank you so much.

24 MS. BOLEN: Thank you, Your Honor, may it please
25 the Court?

1 THE COURT: Yes, ma'am.

2 CLOSING STATEMENT

3 BY MS. BOLEN:

4 I just want to make sure I have everything I'll need.
5 And I know I use a notepad but that's to make sure I don't
6 forget anything, because what's been happening over the past
7 couple of days is important. I know it's important to the
8 State and it's certainly important to Rickey. So I just
9 want to make sure I don't miss anything. This will be my
10 last chance to talk to you. And I just want to make sure I
11 don't leave out anything that's important in this case.

12 Yesterday afternoon, Ms. Patel opened and said to you
13 that this case was like one of those connect the dot puzzles
14 that you did when you were a little kid. My kids do them
15 sometimes. Depending on the level of the connect the dots,
16 sometimes you can see the picture without connecting the
17 dots. Sometimes they're a little harder. But she said
18 yesterday this case is like one of those puzzles where the
19 State wants you to see this as a clear picture, where all
20 these dots, all the evidence that they want you to consider,
21 leads to a clear picture. Our position is that those dots,
22 first of all, there's not many of them. This is not a
23 situation where you've got this clear picture you can see
24 without even connecting the dots. There's two or three dots
25 that are far apart and they're fuzzy. And there's no

1 connections between them. And the picture is not clear the
2 way the State wants you to think it is.

3 Now, when you first look at what the State wants you to
4 think the evidence is, it looks all right for the State,
5 right? They say, okay, we've got this eyewitness. We've
6 got this eyewitness who was there and saw this happen. And
7 then we've got this cigarette butt with Rickey's DNA on it.
8 And then they say we've got this confession, got this great
9 confession. All those together, that just creates this
10 clear picture of guilt that creates this clear picture that
11 he's guilty of these things.

12 But I'm asking you to look critically at the evidence
13 that the State has presented to you. I think when you look
14 at it carefully you'll see that there really isn't the
15 evidence that the State wants you to think there is. That
16 there's not a clear picture. That these very few dots don't
17 connect to make any picture at all, let alone a picture of
18 guilt.

19 So let's look a little bit about the evidence they've
20 presented, okay? Mr. Brown just spoke to you about the
21 elements that they need to prove. One of them is through
22 these two packets of paper that he introduced at the very
23 last part of his case. Okay, one of the elements that the
24 State needs to prove is that Rickey's got two prior
25 convictions for burglary. And these are documents that the

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1 State introduced, okay? You want to look carefully at them.
2 You'll have these back there with you. You can look
3 carefully at them, okay? And one of the pieces of paper in
4 each packet that the State introduced, you can read it for
5 yourself. And I'm going to draw your attention to part of
6 it where it says that he pled to these two prior offenses.
7 And I just want you to take that into account when you're
8 considering the evidence and when you're considering what
9 really happened here. On these two priors it's clear with
10 what the State introduced that he pled guilty to these,
11 okay? I'm going to go through the evidence that the
12 State has presented and the evidence that we the Defense
13 have presented. And what I want you to see is that the
14 evidence that the State has shown you is simply not good
15 enough. They have this very high burden. The highest
16 burden in our courts, proof beyond a reasonable doubt, and
17 every single thing that they've introduced falls short.
18 It's not good enough. Their evidence isn't good enough.
19 Their investigation isn't good enough. It's not good enough
20 to find him guilty beyond a reasonable doubt. I'm going to
21 go through each piece of that evidence, okay?

22 First of all, we've got this big elephant in the room
23 of the lost evidence. And remember, we're not just talking
24 about one piece of lost evidence or two pieces of evidence
25 that are lost or even arguably three, okay? Number one, we

1 have the lost lineup. It's not -- it was supposed to be in
2 that investigative file. It's gone. No one knows where it
3 is. That is simply not good enough to convict someone. And
4 what we're talking about someone's liberty and life on the
5 line. It's not good enough to lose a crucial piece of
6 evidence. Then we've got the lost evidence of the cigarette
7 butt. I'll go in to more depth about that later, but again,
8 that is just not good enough. It's not good enough to allow
9 the State to lose evidence that they're trying to use
10 against someone to convict them of a crime, to deprive them
11 of their liberty. It's not good enough to say, well, it's
12 okay; you can lose that. And then we've got a piece of
13 evidence that isn't exactly -- it's not lost but it was
14 never part of the case because, again, the investigation
15 just wasn't good enough. And that's this laptop. You heard
16 from the investigating officer he didn't do a search
17 warrant. Didn't find it. Didn't really make any attempts
18 to find it. Again, when they're trying to prove him guilty
19 of these two crimes, that's just not good enough to leave it
20 kind of halfway, and not do all the steps that should be
21 taken in a thorough investigation. It should bother you.
22 It should bother you that there's this lost evidence in this
23 case. In fact, it should terrify you. Because it's
24 terrifying to think that the State -- they're the ones with
25 the burden of proof, and they're trying to prove someone

1 guilty, and they're trying to take away that person's
2 liberty, but they think it's okay to just lose this
3 evidence, that they have all these procedural safeguards to
4 keep in tact. And that they all admitted was important, but
5 yet it's not important enough to actually keep track of it.
6 That is, quite frankly, terrifying.

7 Let's look at some of the evidence that the State's
8 presented. And let's go over why it's not good enough. Why
9 it's not good enough to give you that clear picture, okay?
10 Number one, let's talk about the neighbor, Mr. Culbreth. If
11 I remember from his testimony that what he said yesterday on
12 the stand was not the same as what he put in his statement.
13 In fact, he gave more details yesterday, three years later,
14 than he put in his statement and that he told the officer
15 about and that he said on 9-1-1, all of which happened right
16 after he witnessed this. Pretty common sense to think that
17 your memory is better right after something than three years
18 later. And yet some of the things he talked about yesterday
19 that we heard about for the first time, we didn't hear on 9-
20 1-1 or in his statement or what he told the officer that he
21 saw this suspect slam the door, put his hands up, throw
22 something down. You didn't hear that until yesterday. That
23 wasn't in the 9-1-1 call. In the 9-1-1 call and in the
24 written statement, you didn't hear that he talked to the
25 suspect. That's not on the 9-1-1 call. That's not in the

1 statement he wrote. That's something that he testified to
2 yesterday, that he talked to this suspect.

3 Now, let's talk a little bit about his written
4 statement. We're not even sure who wrote it; right? He
5 says the officer wrote it for him. And the officer said, I
6 didn't write that. Again, that's just not good enough.
7 This is his statement he can use to try to convict someone.
8 And no one knows who wrote it. Also, think about what he
9 actually said he saw. Think about the time, his description
10 of him talking to this suspect. First of all, he said the
11 suspect was tall. That's something that stayed consistent,
12 right. He said that at the time. He's a tall, thin, light-
13 skinned black male wearing a do-rag. And then on the stand
14 he said, well, he's tall. He's about my height. Well,
15 you've seen Mr. Culbreth and you've seen Rickey. Rickey's a
16 good bit taller than Mr. Culbreth. The first thing Mr.
17 Culbreth saw was his height, they had the wrong person. He
18 also said yesterday when Ms. Patel asked, the person I saw
19 had facial hair. And then he said actually he had a beard
20 like me. And he gestured. Mr. Culbreth had a full beard.
21 Yet three years ago when he looked at this lineup that the
22 State introduced and that the officer confirmed every single
23 one of these people in the lineup had facial hair, what does
24 he write? Could be number two, could be number three.
25 Person didn't have facial hair. But yet yesterday, the

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1 person had a full beard. Also think about what he said in
2 the 9-1-1 call. One of the things he said was, I would know
3 him if I saw him. I would know him if I saw him. What
4 happens? He's shown a lineup. The officer said, Mr.
5 Henley's in this lineup. He does not pick Mr. Henley out.
6 And yet he said, I would know him if I saw him; and he does
7 not pick him out of a lineup. He picks it out to either
8 number two or number three. Well, ladies and gentlemen,
9 that's thirty-three percent of the people. Thirty-three
10 percent? An identification of thirty-three percent? That's
11 just not good enough. He's got to be absolutely certain;
12 and he's not. He's not close to being certain. And yet he
13 says he would have known him again, which leaves you the
14 inference the person he saw is not in this lineup. Because
15 the person he saw at Ann Moss's house is not Rickey Henley.

16 Also think about the fact that when he talked to the
17 suspect at this house, he drives by, circles back, parks at
18 the top of the driveway. The suspect comes out of his car -
19 - I'm sorry -- gets in his car, drives up the driveway and
20 they kind of pull up and talk to each other. He said the
21 suspect's window is rolled down and his is halfway. We know
22 from the 9-1-1 call and from Mr. Culbreth's testimony, it's
23 eleven forty-four in the morning. It's broad daylight. He
24 talks to that person and is just feet away, and yet can't
25 pick Rickey out of a lineup. Also, think about the fact

1 that in that 9-1-1 call and his statement and what he tells
2 the officer, he never mentioned talking to the suspect.
3 That's not something he tells us.

4 Let's start to pick through some of the rest of the
5 investigation and see what is not good enough to meet the
6 State's burden of proof beyond a reasonable doubt. Let's
7 look at Rickey's statement, okay? Rickey talks to Officer
8 Thompson. And the State's classified this or wants you to
9 think of it as a confession. He confessed. In fact, Mr.
10 Thompson says, well, prior to going out there, I didn't have
11 enough for probable cause. But heck, at the end of that, I
12 had enough for probable cause. So he considers this a
13 confession. Let's look at what he actually asked Rickey and
14 what Rickey responded and what Jolene heard because she was
15 there too. Okay. So the State wants you to think Rickey
16 confessed to this crime. That Rickey confessed to going in
17 Ms. Moss's house. He confessed to prying open that side
18 door, going in, taking the laptop, coming out, talking to
19 Mr. Culbreth, leaving. That is not at all, that is not at
20 all what Rickey told Officer Thompson, okay? And when I
21 questioned Officer Thompson about it, really the question he
22 gave Rickey was extremely vague. He said, all right, about
23 a week ago were you in Abbeville County? Abbeville is a big
24 county, folks. Were you on Highway 28 in Abbeville County?
25 Again, Highway 28 doesn't just cut across a little corner.

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1 It goes all the way through Abbeville, from Anderson to
2 McCormick. That is miles and miles of road, with tens if
3 not hundreds of houses on it. And then he asked him did you
4 stop at a house? He doesn't say did you stop at or did
5 you stop at this brick house with white trim? Did you stop
6 at a house? That is just vague. That's not a specific
7 question. That's not a confession. And what does Rickey
8 tell him? Yeah, I stopped at a house. I got out to use the
9 bathroom. He adamantly denies -- both Officer Thompson and
10 Jolene confirmed that Rickey adamantly denied going into any
11 house. There are plenty of houses along 28 he could have
12 stopped at to use the restroom. He adamantly denies going
13 into any house, so that's not a confession. What he said
14 was not a confession to this specific crime. What he said
15 was, yeah, I was in Abbeville County about a week ago, no
16 specific date, no specific place. And he got out to use the
17 bathroom. But he denied perpetrating this crime. Also,
18 it should bother you and it should be not good enough that
19 that statement he gave wasn't put down or recorded in any
20 way. I know they didn't have body cams back then. But they
21 had pen and paper. And they could have gotten him to write
22 this down. They could have asked him more specifics. They
23 were at his apartment. They'd driven all the way to
24 Anderson to talk to him and they don't ask him more
25 specifics than that. They don't say, okay, well, tell me

1 about this house. What does it look like? Where was it in
2 Abbeville? Was it close to town or was it on the McCormick
3 side? They didn't ask anything like that. And they could
4 have. They could have gotten more detail. And yet they
5 left it open. And that statement, that's just not good
6 enough. The investigation behind it, and the content of the
7 statement, also, just not good enough to meets the State's
8 burden of proof beyond a reasonable doubt.

9 Also, look at the investigation, this lineup, the
10 lineup that Mr. Culbreth cannot pick Rickey out of; this
11 lineup is lost. Okay, it's gone. The reason you have this
12 black and white copy is the State lost the original. Losing
13 a piece of evidence like a lineup, that is just not good
14 enough to convict someone. Also think about the fact that
15 Mr. Culbreth gives one plate number and Rickey's license
16 plate is a different number. And then they say, oh, it was
17 close enough. It was close enough. Well, it's not close
18 enough. It is not close enough when they have to prove
19 their case beyond a reasonable doubt and when they're trying
20 to convict someone of a crime. Close enough is not good
21 enough. It's got to be the same.

22 And speaking of the lineup, Mr. Culbreth said it could
23 be number two or number three. We did not hear anything
24 from any of the State's witnesses about any investigation
25 into number three. So there's this person, number three,

1 that their eyewitness says that could be him. And you
2 didn't hear anything about them taking any steps to find out
3 this persons name, where he lives, what he drives, what kind
4 of car it is, what license plate it has, nothing. He's just
5 as much of a suspect as number two; right? And yet they
6 don't do anything. There's no testimony before you to say
7 that they did a thorough investigation and tried to find out
8 about that person. Why not? That's not good enough either.
9 But they don't thoroughly investigate.

10 There's also no recover or no even attempt to recover
11 this laptop. You heard Officer Thompson say, yeah, it would
12 have been a good idea. When I asked him, would it have been
13 a good idea to get a search warrant? They don't get one.
14 They don't have a laptop in evidence not because they lost
15 that particular piece of evidence, because they never got it
16 and they never tried to. Again, that's just falling short.
17 That's an investigation that is just way below the standard
18 that we should hold the State to when it's trying to convict
19 someone and take away their liberty. There's no
20 fingerprints. You heard testimony from Mr. Culbreth that he
21 saw the suspect with his hand on the door and slam it. No
22 fingerprints recovered. Okay? Law enforcement didn't seize
23 the boots that Rickey was wearing even though Rickey tried
24 to give them to them. Had they, maybe they could have done
25 an analysis between that and the tread marks that they

1 marked according to their procedures. And you'll note that
2 law enforcement involved, they all acknowledged that they
3 had procedures to follow; right? Procedures that govern,
4 you know, marking, measuring evidence, seizing evidence,
5 taking care of it. And yet many of those procedures weren't
6 followed. They clearly didn't follow procedure when they
7 lost the lineup and when they lost the cigarette butt. They
8 also fell short in other areas such as not taking down
9 Rickey's written statement.

10 Now, let's talk a little bit about -- oh. Not only did
11 they not recover the laptop and they didn't make any
12 attempt, but they also didn't recover any sort of burglary
13 tools from Rickey. They didn't recover a do-rag from him.
14 They didn't try to do any of this corroborating evidence
15 that would have helped to give you, the jury, a clearer
16 picture. They don't have it. They didn't try to get it.
17 That picture is not clear because the evidence is not there
18 to support that Rickey is guilty of this.

19 Let's talk a little bit about the cigarette butt.
20 Okay? A cigarette butt which comes back they say with
21 Rickey's DNA on it. That looks bad, right? That looks bad
22 for Rickey. But what looks really bad for the State, that
23 they don't have that cigarette butt. They lost it or it's
24 been destroyed. No one can even say. No one knows where it
25 is. We had multiple witnesses up here telling you how all

1 of these procedures that they go through, the SLED
2 witnesses, law enforcement witnesses, the marking, the
3 sealing, the tamper proof, everything, all to ensure that
4 things like this don't happen. And yet, here we are. We
5 don't have this crucial piece of evidence. And I wanted to
6 look at what we know about this, this cigarette butt, okay?
7 There was a picture taken of a cigarette butt that day. And
8 we have that picture. It's been introduced into evidence.
9 And then the testimony from Ryan Abernathy that he took it
10 down to SLED on March 29th, 2012. So there's a period of
11 six weeks where there's no documentation, no testimony, no
12 knowledge of where this cigarette butt is. Normally, law
13 enforcement would be able to say, well, I dropped it in the
14 drop box on X day at X time and then the person on the other
15 side, in this case Chief Johnson, would say I picked it up
16 on this day and time and moved it. We don't have any of
17 that because the supporting documentation paperwork is gone
18 and the butt itself is gone. So we don't know where it was
19 during that six weeks.

20 And you heard testimony from Ms. Gray, from Jolene.
21 Now, let's talk about her for a minute. She said she and
22 Rickey used to date. They're not together anymore. In
23 fact, she said she hadn't seen him in, I think, over a year
24 before today. She came here to testify for him. She talked
25 about the conversation that Officer Thompson had with

1 Rickey. She had some differences about who was there. You
2 also remember Officer Thompson isn't really sure what other
3 officers were there. And that's another thing that's not
4 good enough. He doesn't know which officers were there. An
5 officer he says was there doesn't remember being there. But
6 Jolene said that one of the times the officers came to talk
7 to Rickey, there were some cars parked out and she saw the
8 officers picking stuff up. She didn't know what they were
9 picking up. It may seem crazy, crazy for us to ask you to
10 draw an inference they were picking up a cigarette butt.
11 But what is equally crazy, is that we've got all this lost
12 evidence in this case and we know it's lost. You would
13 think, you know, that things like this don't happen, but
14 they really do. And the State acknowledges that these
15 things happen. So it's really not that far of a stretch to
16 say, well, maybe, maybe they picked something up that day.
17 Because we don't know where that cigarette butt was until
18 March 29th of 2012. And, again, you heard from the SLED
19 agent all the care that they take. And that they had that
20 cigarette butt from March 29th until sometime in August of
21 2012. They tested it in August. They sent it back to the
22 agency in 2012. But yet she doesn't return her actual
23 analysis until January 2013. And then you hear Chief
24 Johnson say, yes, that cigarette butt was there when he left
25 in, I think, May of 2013. He made sure everything that he

1 was like in charge of was there. And yet everyone
2 acknowledges it's not here now.

3 Let's talk a little bit about Ms. Johnson's testimony.
4 One person obviously can't be in two places as once, okay?
5 You heard from Jolene that Rickey, they were dating at the
6 time, not dating anymore, haven't been for a while. But
7 they were dating at the time. Had been dating for about a
8 year. They spent Valentine's together. They cooked food.
9 She remembers this because it was Valentine's Day. I think
10 it was Mr. Brown in opening said you might remember certain
11 days -- I'm sorry. It was Mr. Andrews. You might remember
12 certain days, your birthday, your anniversary. A lot of
13 people remember Valentine's Day. So she remembers it
14 because it was Valentine's Day. And her memory is that they
15 hung out, they had this dinner, he cooked some food. He's
16 apparently a very good cook. They wake up the next morning
17 in Anderson. They have some coffee. And some time between
18 eight and nine, he leaves to take his mother some leftovers.
19 He leaves to go to Beech Island. She acknowledges, and Ms.
20 Ella acknowledges, yeah, the way you get from Anderson down
21 to Beech Island is by Highway 28. So it makes sense that
22 when the officer ask Rickey have you ever been on Highway 28
23 in Abbeville? Yeah, of course he has. That's how he visits
24 his family. So that's Jolene's testimony. And then you get
25 to Ms. Ella, Rickey's mom. All right. She says, nope. In

1 the morning she takes her husband to work at eight. She
2 gets back. She had talked to Rickey the night before. He
3 told her about what he was making. She was making something
4 similar. He said, I'll bring you some leftovers. And he
5 gets there around ten o'clock in the morning. And again she
6 knows this because there was an occasion. There was
7 Valentine's Day. She remembered. When the Solicitor asked
8 her about it, she said, well, I've been telling this all
9 along. It's not something she's saying for the first time
10 today. She says, yeah, Rickey came at about ten. He stayed
11 until two and he went to a convenience store. So from ten
12 to two they were together. Beech Island, near Aiken. It's
13 a good hour and a half, two hours from here. We know from
14 Mr. Culbreth's testimony, as well as the 9-1-1 testimony,
15 that this burglary happened around eleven-thirty, eleven-
16 forty-five. He was an hour and a half to two hours away
17 between ten and eleven. You cannot be in two places at
18 once.

19 Chief Johnson in his testimony when I asked him about
20 this evidence being missing, the cigarette butt being
21 missing, the lineup -- well, I didn't ask him about the
22 lineup being missing. But I asked him about, you know, most
23 of the time when you testify you have the evidence in front
24 of you. And every witness agreed, yes, if they're in a case
25 and there's evidence, they have the evidence in the

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1 courtroom. And I think I asked him if it was unusual. And
2 he said it was unfortunate. It was unfortunate that the
3 evidence wasn't here. I submit it is more than that. It is
4 more than unfortunate. It is terrifying that the State
5 would present to you a case with all of this evidence
6 missing, with all of these pieces just not matching up when
7 an investigation is just simply not good enough, with pieces
8 of evidence that are not good enough. With a statement that
9 is vague, that is given in response to questions that are
10 vague and not specific, for the lineup that's been lost, the
11 cigarette butt that's been lost or destroyed; who knows.
12 None of that is good enough. They have got to meet their
13 burden of proof beyond a reasonable doubt. And having an
14 investigation where you don't get a search warrant, you
15 don't take down a statement, you have a lineup where your
16 sole eyewitness can't pick the person you think committed
17 it. You have another person they pick out of a lineup and
18 you don't investigate them at all. You don't even look into
19 who they are or what kind of car they might drive. Ladies
20 and gentlemen, I submit to you that, all of that together is
21 just not good enough to reach the State's burden of proof
22 beyond a reasonable doubt. There's not a clear picture
23 here. There's no picture at all. If anything, the picture
24 that the State has painted to you is a picture of an
25 investigation that is just shoddy. So we're asking you to

1 not let them get away with that. We're asking you to tell
2 them this is not good enough. This evidence is not good
3 enough and find Rickey not guilty. Thank you.

4 THE COURT: Mr. Brown?

5 MR. BROWN: Thank you, Your Honor.

6 CLOSING STATEMENT

7 BY MR. BROWN:

8 Ladies and gentlemen, you've heard Ms. Bolen and also
9 Ms. Patel, and noting also just now in the closing, saying
10 the State's evidence is not good enough. That in Ms.
11 Patel's opening they asked you to rescue Rickey. Folks,
12 Rickey's not the victim in this case. Ms. Moss is the
13 victim in this case. Ms. Moss's house is the one that was
14 broken into on February 15th, 2012, when she wasn't there.
15 It just so happens her neighbor, who happened to be coming
16 home to check on his parents, saw a car backed up to her
17 door, door open, coming out of her door and he sees him.
18 Just so happens. Without his eyewitness testimony, Mr.
19 Thompson couldn't have started his investigation. Ladies
20 and gentlemen, again, Rickey's not the victim in this case.

21 So what did -- what's the defense telling you? That we
22 lost a cigarette butt. Yeah, in a perfect world the
23 cigarette butt wouldn't have been lost. Yeah, I would
24 rather have it here. I'd rather show it to the DNA analyst.
25 It's not here. There's been testimony to that. The problem

1 is that that argument the defense is trying to put before
2 you, the problem would be if they lost the cigarette butt
3 before it went to DNA testing. What? Didn't know where it
4 was. You've heard where it was. Detective Thompson
5 collected it, gloved-hand glove-fingered, raked it into the
6 bag, sealed it up. It was a paper bag so if there's
7 moisture it wouldn't damage the integrity or the DNA that
8 could possibly be on that cigarette butt. He sealed it up.
9 You heard next from Marion Johnson who is the custodian of
10 all this evidence. Patrick Thompson submitted it into
11 evidence. It was behind lock and key, behind the door where
12 Mr. Johnson had the key. It was then taken out of that
13 evidence by Mr. Abernathy, who went down to SLED, March 29th
14 of 2012. Folks, that's pretty quick that it was taken out
15 of that custodian room over here behind lock and key and
16 taken down to SLED. And then who did you hear from? You
17 heard from the DNA analyst herself, Maryann Boland. One of
18 the questions I asked her, I said, what would you have done
19 if you'd known or you saw that the integrity of that bag,
20 the integrity of that seal had been broken for that
21 particular item, the cigarette butt? I'd have made a note
22 of it. I probably wouldn't even done the testing on it.
23 Her recollection was there was no tampering on that bag
24 containing that cigarette butt.

25 Now, ladies and gentlemen, you have the cigarette butt

1 here in this picture. Granted, I'd like to have the
2 physical thing right here in front of you as well. That
3 wouldn't change the fact -- we couldn't do an analysis right
4 here on the DNA of that cigarette butt. That was already
5 done. That was done by Maryann Boland. So what do we have?
6 We have this cigarette butt. It was there. You can see it.
7 The picture was taken the day that Mr. Thompson went out
8 there and did his investigation. That was State's ID Number
9 12, State's ID Number 11. It's a cigarette butt on that
10 side door, going in the side door, the same door that was
11 kicked open and Mr. Henley went walking through to go get
12 that laptop. State's ID 8, what is that? That's the broken
13 door that he kicked down to go into their house. Folks,
14 they want to make a big to-do that the cigarette butt's not
15 here. Folks, it was there. It was tested and Mr. Henley's
16 DNA was found on there. It was one out of one point five
17 billion -- the probability of randomly selecting an
18 unrelated individual having a DNA profile matching this item
19 is approximately one in one point five billion. You've got
20 a better chance to win the lottery the next time it gets up
21 here. You've got an eight and a half chance better time to
22 win the lottery than to find another guy with the same DNA
23 as Mr. Henley. And it just so happens that cigarette butt
24 is at a house that he wasn't suppose to be at, Ms. Moss.
25 Yet, he's down at his mama's house, down in Beech Island,

1 South Carolina. You can't be at two places at once, folks.
2 There is no explanation. Everybody that's been up on this
3 stand, Defense and all, no explanation of why that cigarette
4 butt with his DNA is sitting on that door unless he put it
5 there.

6 His mama said from her own mouth up here she loves her
7 son. I wouldn't expect anything less than a mother that
8 comes up here and doesn't want to have her son get in
9 trouble. He got there at ten she says. Well, his ex-
10 girlfriend said he left between eight and nine from
11 Anderson. That's no hour drive from Anderson down to Beech
12 Island, South Carolina going down Highway 28. It's forty-
13 five minutes to get from Anderson down to Abbeville. But
14 during that trip from Anderson down to Aiken, Beech Island,
15 perfect route; he swung by Ms. Moss's house and decided he
16 wanted to take advantage of what she had inside while she
17 was at work. What did he take? A laptop. Mr. Culbreth,
18 again, luckily comes home that day. He comes home to check
19 on his parents to make sure they had dinner on the table for
20 lunch. What does he see? I saw an older model Pontiac. At
21 that time, he was a little fuzzy on if it was a Bonneville
22 or another make. But it was an old 1990s model Pontiac,
23 dirty in color, backed up there. He knew that car didn't
24 belong there. So what did he do? He turned around and came
25 back like any good neighbor you'd hope to do if they saw a

1 car parked up in your neighbor's house. He saw a guy come
2 out of the house, step out the door and drop something.
3 Well, what would he drop? Folks, I submit to you he dropped
4 the cigarette butt. And then gets in his car, comes down
5 and approaches Mr. Culbreth. Mr. Culbreth admitted up on
6 the stand he was excited. It was only about a couple of
7 second encounter they had. He said it was a taller black
8 male, light colored skin, old model Pontiac, Gray. And the
9 other thing he did, he looked through his rearview mirror of
10 his car as Mr. Henley was driving down the road. He gave a
11 tag number that, again, he might need to start playing that
12 lottery, because he came awfully close to the real tag
13 number. Said that tag number was HSN 454. Luckily, through
14 Mr. Thompson's investigation, HSM 455 is pretty close.
15 Pretty close.

16 Now, these dots that they keep referring to on this
17 connect-the-dot, they're starting to connect up right now.
18 You've got a cigarette butt with DNA on there he can't
19 explain or they can't explain through his mom and all that
20 why it was there. You've got Mr. Culbreth identifying a man
21 leaving that house with a license plate that was ultimately
22 registered to Mr. Henley, lived in Anderson. These dots are
23 connecting up.

24 So with this information, this information that Mr.
25 Culbreth did, not only did he call 9-1-1, but he talked to

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1 Mr. Thompson and gave him that identifying aspect to this
2 case. Mr. Thompson, in his investigation, found a license
3 plate that matched up with that identified car, an old 1990s
4 model Pontiac, HSM 455, and he went to go talk to Mr.
5 Henley. At that time, he's just trying to identify a
6 suspect. Yeah, he didn't have a search warrant. He didn't
7 have an arrest warrant that day. He was just going to try
8 to fill -- connect the dots. And when he did that he went
9 up there and he talked to Mr. Henley. Mr. Henley said that
10 about a week ago -- or when questioned, about a week ago
11 were you down in Abbeville County? Yeah, I was down there.
12 I stopped to use the bathroom. Isn't that an odd place to
13 stop; in front of somebody else's house and use the bathroom
14 when you just left Anderson and you're going down to Aiken?
15 Yeah, I stopped by there to use the bathroom. I talked to a
16 man in a white truck. Folks, this isn't just a huge
17 coincidence that you've got Mr. Culbreth saying he saw
18 somebody leaving a house. He talked to him as he left Ms.
19 Moss's house. There's DNA on a cigarette butt. There's a
20 license plate with a tag number very close to what Mr.
21 Culbreth saw. These aren't coincidences, folks. These dots
22 are connecting up. They want to send you down a rabbit
23 trail and so, oh, they needed a search warrant.

24 Folks, look what you do have. It's not beyond all
25 doubt. Firmly convinced. What else did Mr. Henley say when

1 Mr. Thompson was talking to him? Yeah, I was down there but
2 I didn't break into that house. Well, also, you remember
3 Mr. Thompson saying Mr. Henley was smoking a cigar. He
4 asked him, said, do you smoke Newports? Yeah, I smoke
5 Newports. Folks, the cigarette butt was a Newport. What
6 did his girlfriend say when I asked her? Yeah, Mr. Henley
7 smokes Newports. That's not a coincidence, folks. The dots
8 are connecting up.

9 Also when Mr. Thompson was talking to Mr. Henley that
10 day, he noticed these boots. The same boots that his
11 girlfriend talks about that she gave Mr. Henley at the time.
12 He lifts them up; they have some tread on there. Very
13 similar to the ones that Mr. Thompson saw in the house that
14 day when he first processed the scene, the State's Evidence
15 10. A shoe impression. Miraculously close to that pedestal
16 where that laptop was taken from that day. Folks, this is a
17 huge coincidence if we go by what the Defense is saying.
18 Folks, they want you to think that the evidence isn't good
19 enough. That the evidence is shoddy, the investigation's
20 shoddy. Like I said, in a perfect world, yeah, we wanted to
21 have that cigarette butt here. The problem is the exam was
22 done prior to that. The exam was done, as Ms. Boland said -
23 - when I asked that question yesterday, is it unusual not to
24 have it? Yeah, it's unusual, but I don't need it. I know
25 what my results are. I know what I found on that cigarette

1 butt. I know whose DNA was on that. One in one point five
2 billion do you find somebody else's DNA on that, other than
3 Mr. Henley, another person have the same DNA. Folks,
4 we've got a puzzle here; connect the dots. We've got a
5 cigarette butt, we've got Mr. Culbreth's ID, we've got a
6 license plate, got a shoe impression. What we've got is
7 we've got his girlfriend's testimony saying that, yeah, he
8 left on that 15th going down to his mom's. He left to go
9 down there. And folks, they want you to say that the search
10 warrant, all those things are not there. We have on that
11 cigarette butt the DNA analysis clearly points -- that's one
12 thing I can't get over, one thing the state, in addition to
13 all this other evidence, has the license to Mr. Culbreth, to
14 Mr. Thompson's investigation, one thing that puts him there,
15 puts him at that house is that DNA on that cigarette butt.
16 Can't get over that.

17 Folks, that's beyond a reasonable doubt. It's firmly -
18 - that's proof that leaves you firmly convinced of Mr.
19 Henley's guilt. You heard that chain; it started with Mr.
20 Thompson, went to the sheriff's office, Mr. Abernathy down,
21 Ms. Boland had it. The bag was sealed up. She did her
22 testing. Sent it back with Mr. Abernathy and it was entered
23 into evidence. Folks, it's not a coincidence all these
24 things adding up. Mr. Culbreth's statement, the tag, the
25 boots. His own girlfriend saying he left that morning going

1 down Highway 28. And the cigarette butt with his DNA on it.
2 Folks, that's beyond a reasonable doubt. All that adds up.
3 It's connecting the dots which add up to guilty. And that's
4 what we ask you to do when you deliberate. Thank you.

5 **CHARGE**

6 **BY THE COURT:**

7 All right. Mr. Foreman, ladies and gentlemen, that
8 will end the closing statement phase of the case. I
9 anticipate my charge will be somewhere in the neighborhood
10 of about twenty-five minutes. Check with your jury and see
11 if they'd like to take a quick break or they'd like to
12 continue with my charge; okay, sir? If you would check with
13 them now, please.

14 **MR. FOREMAN:** You can go ahead.

15 **THE COURT:** I knew you were going to say that.
16 Okay. Let me point out something to you. I'm not as smart
17 or as eloquent as these lawyers. Some of this is going to
18 be read to you. I apologize in advance. But these are
19 important legal principals and so I don't trust myself to
20 try to paraphrase them to you. And to the extent I read, I
21 apologize to you in advance.

22 My charge is going to be in three phases. The first
23 part will be the duties that define and control your role as
24 jurors in this case. After that, I will give you the
25 substantive law of first degree burglary, larceny, the

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1 defense of alibi and the law on a statement by a defendant.
2 Then I'll give you some thoughts about your deliberations.
3 I'll give you a chance, Mr. Foreman, after the first aspect
4 of my charge to stop again, stand up and move around, go
5 take a break or get some water if you'd like to; okay, sir?
6 Keep that in mind. It may help you get through. All right.

7 Now, if you'll recall at the beginning of this case, I
8 told you that you are the finders of the fact. You are the
9 sole finders of the facts of this case. And it is your duty
10 to find those facts on the testimony and evidence that you
11 heard here in this courtroom from this witness stand. And
12 to the facts as you find them, it's your duty also to apply
13 the law as I give it to you in this case. You shall not be
14 concerned with what you think the law should be but only as
15 I give it to you; i.e., what it is.

16 All right. Also, you may not and shall not be
17 influenced by any personal likes or dislikes, opinions,
18 prejudice or undue sympathy that you may have for one side
19 or the other in this case. What that simply means is you
20 have no friends to reward, you have no enemies to punish.
21 You are to decide this case solely on the evidence presented
22 to you and that has been presented to you in accordance with
23 the law as I give it to you now. And if you will recall at
24 the beginning of this case, you took an oath where you swore
25 or affirmed to do just that.

1 Now, with that being said, in following these
2 instructions, as I give them to you now, besides the
3 substantive law, all my instructions are equally important.
4 You can't pick out certain aspects of it and apply those and
5 disregard certain aspects of my instructions that you may
6 not like. They're all equally important. Also, if I have
7 done anything by gesture, comment or otherwise that suggests
8 to you how you are to find facts in this case; i.e., the
9 verdict you are to reach, I'm going to ask you but I'm also
10 going to instruct you, to disregard that. I do not and am
11 not allowed to have any opinion. I'm not allowed to make a
12 comment on the facts. So to the extent you think I have,
13 please disregard that because I can assure I have no such
14 opinion. I essentially look at my role as being a referee
15 to make sure that both sides have a fair and impartial
16 trial. And then an instructor on the law so you understand
17 the law that you must apply to the facts. You and you alone
18 are the judges of the facts in this case. And you will
19 determine those facts by evaluating and weighing the
20 evidence that's been presented to you thus far. There will
21 be no more presentation -- no more testimony of any further
22 evidence. Any evidence that you will receive has been given
23 to you right now. So when I say weigh the evidence, it's no
24 way for me to give you a set of scales for you to weigh the
25 evidence. It's entirely a mental process. But when you go

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1 back in the back and begin to deliberate the facts of this
2 case, I'm going to ask that you use your good common sense
3 and your sound judgment when you go through and talk about
4 the evidence and hopefully come up with a verdict.

5 Now, what the true evidence in this case is, and it's
6 only this, it is the sworn testimony of the witnesses,
7 whether it be on direct examination or cross-examination.
8 Also, exhibits that have been placed into trial, that is the
9 evidence. That is the only evidence that we have before
10 you. Certain things are not evidence. Number one, the
11 arguments, opening and closing and statements of the
12 attorneys during the course of this trial is not evidence.
13 It's designed to help you understand the case and give you a
14 roadmap of their contentions and issues, but it is not
15 evidence. They're not sworn. They're not subject to cross-
16 examination. So if your collective memories differed from
17 either or what both these attorneys tell you, then your
18 memory will control. Questions and objections by the
19 attorneys is not evidence. Number one, objections are in
20 every case. Mr. Foreman, as I told you at the beginning of
21 this trial in the event someone tries to bring up a fact
22 that there was an objection and to the extent I let you stay
23 in here and listen to my ruling on that, it would be
24 improper. And it would be your job to stop that type of
25 deliberation. Just understand that that is the process that

1 goes on in any trial. And any lawyer has an ethical duty to
2 object when he or she thinks that's the right thing to do.
3 Also, ladies and gentlemen, anything that you have not heard
4 when court is not in session is not evidence; okay?

5 We've got the ground rules. So we'll go into what type
6 of evidence does South Carolina recognize? We recognize two
7 types of evidence. We have direct evidence and
8 circumstantial evidence. Direct evidence is very simple.
9 It is this; it is evidence that directly proves the
10 existence of a fact and does not require deduction or
11 inference. For example, if I were to testify that my law
12 clerk ran a stop sign and the issue was whether or not he
13 ran the stop sign. That would directly and immediately
14 establish that fact. You don't have to infer or deduce
15 anything from that testimony. Now, circumstantial evidence,
16 it's a little more tricky but it's this. It's evidence of a
17 -- it's proof of a chain of facts and circumstances
18 indicating the existence of a fact. In other words, you
19 have to deduce or infer a fact from what you heard. Crimes
20 may be proven by circumstantial evidence, ladies and
21 gentlemen, just like it may be proven by direct evidence.
22 And our laws of South Carolina make no distinction between
23 the weight or value to be given either direct or
24 circumstantial evidence. However, to the extent that the
25 State relies on circumstantial evidence, all of the

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1 circumstances must be consistent with each other and when
2 taken together point conclusively to the guilt of the
3 accused beyond a reasonable doubt. If these circumstances
4 merely portray the Defendant's behavior as suspicious, then
5 the proof has failed. The State, again, has the burden of
6 proving the Defendant -- proving him guilty by proof beyond
7 a reasonable doubt. And this burden rests with the State
8 regardless of whether they prove their case by direct
9 evidence, circumstantial evidence or a combination. So
10 before I leave this, let me give you an example of
11 circumstantial evidence. If each of you were to go to bed
12 tonight and have a fresh sheet of snow in your yard and you
13 would wake up in the morning and see tracks through that
14 yard, you may deduce or infer that someone or some thing
15 walked through your yard in the night although you didn't
16 directly see it. The only prohibition is you may not, by
17 your inference or deduction, come up with something that is
18 speculation or surmise or conjecture.

19 Okay. Now, in deciding what the facts are in this
20 case, ladies and gentlemen, it will be necessary for you to
21 decide which testimony you want to believe and which
22 testimony you don't want to believe. You as the jury have a
23 right to disbelieve all or part of any witness's testimony.
24 You may believe all of any witness's testimony. In making
25 this decision on believability or what we call the

1 credibility of the witnesses, you may take into account the
2 following factors. Number one, was the witness able to hear
3 or see or know the things about which they testified? How
4 well was that witness able to recall the things about which
5 they testified? What was their manner or their demeanor
6 while they're on the stand; how did they act? Also, was
7 there some reason that a witness would want to give
8 testimony that would help or hurt one side or the other. Do
9 they have an interest in the outcome of the case or any bias
10 or prejudice towards any person or object in the case. You
11 can ask yourself how reasonable the witness's testimony was
12 in light of all the evidence in the case and whether that
13 witness's testimony had been contradicted by what they said
14 at another time, by other witnesses in the case or by the
15 other exhibits in the case. And Mr. Foreman, ladies and
16 gentlemen, those are just some of the factors that you may
17 consider in making this determination of the believability
18 of the witnesses and the evidence. But you don't check your
19 common sense at the door when you become jurors. And you
20 should use those things that in your day to day lives you
21 find indicative of truthfulness and also indicative of lack
22 of truthfulness when you make this determination.

23 One thing, however, you may not and shall not do is add
24 up the number of witnesses that appear on behalf of one side
25 or the other in deciding the credibility of these witnesses.

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1 It doesn't matter from you if the truth comes from the
2 testimony from a witness from the State, testimony from a
3 witness for the Defense or a combination of that. But your
4 sole interest is to try to find the truth from the evidence
5 presented to you here in this courtroom.

6 Also, ladies and gentlemen, you've heard testimony from
7 persons who've been qualified as expert witnesses. And
8 normally people are not allowed to give their opinions
9 unless they have been qualified as an expert because of
10 their education or experience or a combination. Expert
11 testimony is just like any other testimony you have heard in
12 this case. You may accept it, you may reject it or give it
13 as much weight as you think it deserves considering the
14 person's education, their experience, the basis they give
15 for their opinions and all the other testimony and evidence
16 in this trial. Mr. Foreman, ladies and gentlemen of
17 the jury, I will remind you, the fact that Mr. Henley has
18 been arrested, charged and indicted is not evidence of his
19 guilt. Does not raise an inference of his guilt nor a
20 presumption of his guilt. These are simply the charging
21 mechanisms by which he was brought here today or these last
22 few days for a trial and your determination as to whether or
23 not the State has met its burden of proof. Also, Mr.
24 Foreman, each one of these charges are independent. When
25 you go back and you begin your deliberations, the jury has

1 to consider one charge independently of its decision on the
2 other. And once you make a decision as to one, you will
3 then move to the other. You have a right to find the
4 Defendant guilty on both charges, not guilty on both charges
5 or any combination of that; okay, sir? Just understand that
6 each one is independent and unrelated.

7 Now, as I told you the Defendant in this case has said
8 I'm not guilty to either one of these indictments.
9 Therefore, the burden is on the State of South Carolina to
10 prove his guilt. Now, I will tell you that a person in
11 South Carolina who has ever been charged with a criminal
12 offense, they're never required to prove their innocence.
13 The State is always required to prove their guilt. And that
14 is an important rule of law that any and all criminal
15 defendants enjoy no matter how serious the crimes or the
16 charges may be. They will always be presumed innocent until
17 proof has been established that proves to you the
18 Defendant's guilt beyond a reasonable doubt.

19 Now, this presumption won't end at the end of my charge
20 and when you go back to your room to begin your
21 deliberations, but it remains with this Defendant until you,
22 the jury, unanimously determine that he is guilty of one or
23 both of the charges by proof beyond a reasonable doubt.
24 It's been said it's like a robe of righteousness that stays
25 upon the shoulders of the Defendant until it has been.

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1 stripped by the sufficient amount of proof. And that's not
2 just a mere legal phrase, ladies and gentlemen. It's not
3 just a legal theory. But it is a fundamental and a
4 substantial right which every citizen enjoys and every
5 defendant enjoys until proof has been provided satisfying
6 you of the proof beyond a reasonable doubt.

7 Now, proof beyond a reasonable doubt is this. It is
8 the kind of doubt that would cause a reasonable, sincere,
9 honest and conscientious person to hesitate to act in an
10 important matter in your own affairs. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the Defendant's guilt. There are very few things in this
13 world that we know with absolute certainty. And ladies and
14 gentlemen, in criminal cases, the law does not require that
15 the State overcome every possible doubt. If, based on your
16 consideration of the evidence, you are firmly convinced of
17 the Defendant's guilt, then it will be your duty to find him
18 guilty of the crime or crimes for which he's been charged.

19 On the other hand, if you think that there is a real
20 possibility that the Defendant is not guilty to one or both
21 of the charges, then it will be your duty to give the
22 Defendant the benefit of the doubt and find him not guilty.
23 A reasonable doubt may arise from the lack of evidence or
24 from the evidence. I further instruct you that a defendant
25 in every criminal case is entitled to any reasonable doubt

1 that may arise as to any issue. And what that simply means
2 is if upon a fact that is essential to a conviction of an
3 offense charged you have a doubt as to how that fact should
4 be resolved, it is your duty to resolve it in favor of the
5 Defendant.

6 Now, in this case, in order to establish criminal
7 liability, criminal intent must be proven. For example, the
8 type of intent may be mental state. The mental state
9 required to be proven by the State for a particular crime
10 might be purpose, intent, knowledge, recklessness or
11 criminal negligence. Criminal intent must be proven by the
12 State beyond a reasonable doubt. Criminal intent is always
13 a matter that must be determined by you, the jury, based on
14 the circumstances shown to have existed.

15 Now, there's no way that mathematically science can
16 prove to a certainty what the Defendant had in mind. We
17 can't dissect his brain to determine what he wanted to do at
18 the time of the alleged incident. So the law says that
19 criminal intent may be inferred from the circumstances shown
20 to have existed. And that is how, ladies and gentlemen, you
21 make the determination of whether or not the element
22 requiring intent is present and has been proven. And it is
23 not necessary to prove intent by direct or positive
24 evidence. But you may establish intent -- or the State may
25 establish intent by inference in the same way as any other

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1 fact by taking in consideration the acts of the parties and
2 all the facts and circumstances of the case.

3 Criminal intent is a mental state. It is a conscious
4 wrongdoing. And it's up to you to determine what the
5 Defendant intended to do based on the circumstances shown to
6 have existed. Criminal intent can arise from action or from
7 a failure to act. It may arise from negligence,
8 recklessness or indifference to a duty or to consequences
9 that's considered by law to be equivalent to criminal
10 intent.

11 Now, ladies and gentlemen, I instruct you and I
12 emphasize to you, the fact that the Defendant did not
13 testify may not and shall not be considered by the jury
14 whatsoever in its deliberations. The burden remains on the
15 State of South Carolina to prove his guilt by evidence
16 satisfying you of his guilt beyond a reasonable doubt. Each
17 and every citizen of the United States is protected by the
18 United States Constitution, the Fifth Amendment, which says
19 that nobody can be required to testify against themselves.
20 So Mr. Foreman, if anybody tries to bring that issue up, you
21 must stop that conversation. Excuse me. I need a little
22 water over here.

23 Okay. There's an issue about the identification of the
24 defendant in this case; an issue in this case as to the
25 identification of the Defendant who has committed a crime --

1 excuse me. Let me start that again. All right. There is
2 an issue in this case of the identification of the Defendant
3 as the person who committed the alleged crimes. The State
4 of South Carolina has the burden of proving the identity of
5 the Defendant beyond a reasonable doubt. You must be
6 satisfied beyond a reasonable doubt of the accuracy of that
7 identification of the Defendant before you may convict the
8 Defendant. Identification testimony is an expression of
9 belief or impression by a witness. You must determine the
10 accuracy of the identification of the Defendant. You must
11 consider the believability of each identification witness in
12 the same way as any other witness. You may consider whether
13 the witness had an adequate opportunity to observe the
14 offender at the time of the offense. This will be affected
15 by things like how long or short of a time that was
16 available, how far or close the witness was, the lighting
17 conditions and whether the witness had a chance to see or
18 know the person in the past. Now, it is not essential that
19 the witness himself be free from doubt as to the correctness
20 of his statement. But once again, I instruct you the burden
21 of proof on the State extends to every element of the crime
22 charged. And this specifically includes the burden of
23 proving beyond a reasonable doubt the identity of the
24 Defendant as the person who committed the crime. If, after
25 examining the testimony, you have a reasonable doubt as to

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1 the accuracy of the identification, you must find the
2 Defendant not guilty.

3 All right. Mr. Foreman, ladies and gentlemen of the
4 jury, that's the first phase and the longest phase of my
5 charge. If you would like to get up and move about, take a
6 break, get some water, please do so. If nothing else, I can
7 see your eyelids getting heavy from my point. So why don't
8 you stand up, move around, at least get your blood flowing
9 so I don't do any more damage than I already have. Would
10 anybody like to take a break or does everybody want to go
11 forward? I'd say we're close to about maybe ten more
12 minutes. Keep going. Very good. I knew that's what you
13 were going to say again.

14 All right. Ladies and gentlemen, this is the
15 substantive law or the second phase of my charge to you.
16 The first part of which is burglary first degree, which is
17 spelled out in our codes as 16-11-311. In this case the
18 Defendant is charged with first degree burglary. The State
19 must first prove beyond a reasonable doubt that the
20 Defendant entered a dwelling without consent. A dwelling is
21 any building or portion of a building in which a person
22 ordinarily sleeps. A building constructed as a dwelling
23 that has never been occupied cannot be considered a dwelling
24 for purposes of burglary. But a building is a dwelling even
25 if the residents are temporarily absent from the building.

1 In order to prove that the Defendant entered the dwelling,
2 the State does not have to show that the Defendant's entire
3 body entered the dwelling. The smallest entry is
4 sufficient. It may be any part of the body such as a hand
5 or a foot or even an instrument such as a hook or other
6 instrument. In addition, the State does not have to prove
7 that force was used to gain entry. If a person enters a
8 building by using deception, artifice, trick or
9 misrepresentation to get consent to enter, this is an entry
10 without consent.

11 Next, the State must prove beyond a reasonable doubt
12 that the Defendant intended to commit a crime, either a
13 felony or misdemeanor, at the time of the entry. The mere
14 entry into a dwelling without consent is not burglary. If
15 the intent to commit a crime is formed after the entry, it
16 is not burglary. On the other hand, if the Defendant
17 intended to commit a crime at the time of the entry, it is a
18 burglary even if the intent was abandoned after the entry.
19 It does not matter that the intended crime was not
20 completed. Intent may be shown by acts and conduct of the
21 Defendant and other circumstances from which you may
22 naturally and reasonably infer intent.

23 Finally, the State must prove beyond a reasonable doubt
24 that the Defendant has a prior record of two or more
25 convictions for burglary and/or housebreaking. Now, as I

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1 told you earlier, evidence of prior offenses committed by
2 the Defendant were not offered to prove that the Defendant
3 has a bad character or to prove that the Defendant committed
4 the burglary on this particular occasion. The prior
5 convictions may be considered by you only for the purpose of
6 determining whether or not it satisfies that element of the
7 offense that makes it first degree burglary; if you enter a
8 dwelling without consent to commit a crime and you have two
9 prior convictions for burglary and/or housebreaking. Before
10 you can even consider the evidence of the Defendant's prior
11 burglary and/or housebreaking convictions, you must first
12 find that the State has proved beyond a reasonable doubt
13 that a burglary was committed by the Defendant. If you find
14 beyond a reasonable doubt that the burglary was committed,
15 then you may consider the evidence of the prior convictions
16 as evidence of one of the circumstances which would make the
17 burglary first degree burglary. If you do not find beyond a
18 reasonable doubt that the Defendant committed these alleged
19 prior offenses, then you cannot return a verdict of first
20 degree burglary. That is the law on burglary.

21 The next is larceny. The Defendant is charged with
22 larceny. The State must prove beyond a reasonable doubt
23 that the Defendant took and carried away the property of
24 another against the will or without the consent of the other
25 person. The slightest removal of the property or the

1 complete possession of the property even if for an instance
2 by the Defendant is enough to show a taking and carrying
3 away of the property. The State must also prove beyond a
4 reasonable doubt that the Defendant intended to permanently
5 deprive the owner of the property.

6 Ladies and gentlemen, in this case the Defendant has
7 raised the defense of alibi. In order to establish alibi it
8 must be shown that the Defendant was at another specified
9 place at the time the crime was committed. And that it was
10 therefore impossible for the Defendant to have been at the
11 scene of the crime. Mere denial of presence at the scene of
12 the crime does not constitute an alibi. Now, there is no
13 burden on the Defendant to prove an alibi. The burden is on
14 the State to prove beyond a reasonable doubt that the
15 Defendant was actually present at the scene of the crime,
16 actually participated in it and was not somewhere else. In
17 other words, the State has the burden of disproving the
18 Defendant's alibi defense.

19 Now, ladies and gentlemen, statements alleged to have
20 been made by the defendant have been admitted into evidence.
21 While the Court has determined that the statements are
22 admissible, I instruct you that you make the ultimate
23 decision of whether or not the Defendant made the statement.
24 If the Defendant did make the statement, you must determine
25 whether the statement was made by the Defendant voluntarily

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1 and of his own free will. This means that the statement was
2 not caused by pressure, force, fear, threats, coercion or
3 intimidation or by hope or promise of leniency or reward of
4 any kind. In determining whether the statement was
5 voluntary, you should consider both the characteristics of
6 the defendant and the details of the question. Some of the
7 factors you must consider are the age of the Defendant, the
8 Defendant's education or lack of education, the Defendant's
9 mental ability or capacity, the Defendant's IQ or
10 intelligence, the Defendant's background and environment,
11 the place and length of detention, the nature of the
12 question and the advice or lack thereof to the Defendant of
13 his or her constitutional rights, including but not limited
14 to the right to remain silent, that any statement could be
15 used against him in a court of law, the right to lawyer
16 present, that if he could not afford a lawyer, a lawyer
17 would be appointed to him to represent him without any
18 costs. And that he could stop making his statement at any
19 time. You must carefully consider all of the surrounding
20 circumstances before you give any weight to the alleged
21 statement. Now, the State has the burden of proving the
22 statement beyond a reasonable doubt, that the alleged
23 statement was voluntary. If you determine that it was, you
24 may give the statement any further consideration you deem is
25 proper. You must decide what weight if any should be given

1 to the Defendant's alleged statement. If you determine the
2 alleged statement was not the free and voluntary statement
3 of the defendant, you should not consider the statement at
4 all.

5 Now, ladies and gentlemen that is the substantive law
6 that you will apply in this case. That leads me to the last
7 few of my comments and that is, I will remark about your
8 deliberations. Number one, you don't serve as jurors to be
9 advocates or partisans for one side or the other. In fact,
10 throughout the selection process you represented to both the
11 State and Defense and this Court that you could be fair and
12 impartial and make your decision based on the testimony and
13 the evidence and according to the law.

14 Now, in just a minute I'm going to send you back there,
15 after we have a brief meeting, to begin your deliberations.
16 When you begin I'm going to ask you to call upon your
17 experiences in life, your good sense of judgment and common
18 sense and logic when you go through and talk about the facts
19 and apply the law as I'm giving it to you now. Remember,
20 you don't have any friends to reward or any enemies to
21 punish.

22 Looking up deliberation, this is the definition that I
23 want you to keep in mind. It is a careful consideration
24 weighed up with a view to a decision. Now, regardless of
25 what any of you may consider or think about the judicial

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1 system, I would submit to you that the genius of this system
2 is it allows twelve men and women such as yourselves who
3 come from different walks of life, who bring with them
4 different perspectives and different points of view, to
5 listen to the trial and the testimony and the arguments and
6 the law, to go back and discuss the case courteously and
7 calmly and thoroughly, and to ultimately reach a verdict.
8 Remember, you're not partisan or advocates. You're the
9 judges of the facts. And your sole interest in this case is
10 to try to find the truth from the evidence that has been
11 presented to you thus far and according to the law. When
12 you begin your deliberations I'm going to ask and also
13 instruct you that you must listen to everyone's points and
14 their points of view. Talk through all the different points
15 of view there are. Talk through all the evidence. In doing
16 something deliberately, you should not be in a big hurry. I
17 will tell you that this is the State's only day in court.
18 This is the Defendant's only day in court. And this is an
19 important case to both the State and to the Defendant. They
20 will not have another time to come back here to have a
21 second bite at the apple. In order for your verdict to
22 stand, it has to be unanimous. But with that being said,
23 each one of you must decide this case on our own, but you
24 should do so only after you have impartially listened to
25 everyone's points and their points of view and talked

1 through all the evidence and you've listened to everybody's
2 perspectives. If the conversation and your deliberations
3 convinces you that you should change your mind based on the
4 weight of the evidence, then you should do so. On the other
5 hand, you can only make a decision once you've reached your
6 own conclusion as to the weight of the evidence in this
7 case. Do not change your opinion as to the weight of that
8 evidence simply to satisfy your fellow jurors such that you
9 will have a unanimous verdict.

10 Now, that being said, Mr. Foreman, if there's anytime
11 for your to have any questions, write it down on a piece of
12 paper, sign your name, knock on the door and we'll receive
13 that question here and react accordingly. If you need
14 anything the bailiff's will provide it to you. Once the
15 jury has reached a verdict, I'm going to ask that you sign
16 the bottom of the form, after I go over it with you. Fold
17 it, and crease it. Knock on the door and we'll receive it
18 here in the courtroom; okay, sir?

19 Now, the options on this verdict form have to be put in
20 some order so the order they appear is of no consequence.
21 But your options are this. As to first degree burglary, we,
22 the jury, as to the charge of first degree burglary find the
23 Defendant unanimously not guilty. And if that's your
24 decision, you're to check the appropriate location and then
25 you'd move to larceny. You'll consider larceny, remember,

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1 unaffected by your decision for first degree burglary. On
2 that second aspect of first degree burglary, we unanimously
3 find the Defendant guilty. If that's it, you'll check that.
4 Again, go to larceny and consider it separately. The
5 options there are not guilty and guilty. Check the
6 applicable box, sign it, fold it, knock on the door and
7 we'll receive it back here in the courtroom. If you have
8 any questions about anything, I'll send it back to you. I
9 will not send the indictments with you. I will not send my
10 jury charge back with you. I'll give it to you as much as
11 you want to. The common question from me as I travel around
12 the State is will they give us this? Will they give us
13 this? In other words request additional exhibits or
14 evidence that has not already been admitted. At this point
15 the admission of all evidence has stopped and you must base
16 your decision on the record you have before you; okay? I'm
17 going to ask that you to go back to your jury room.

18 Mr. Alternate, would you get your personal belongings
19 and come back out here.

20 I'm going to check with these attorneys to see if I
21 need to correct any statement I've made or omit something I
22 said to you. If so, I'll bring you back. If not, we'll
23 send back the verdict form and the exhibits before you begin
24 your deliberations; okay?

25 (WHEREUPON, the jury exited the open court at

1 approximately 2:55 p.m.)

2 THE COURT: Any additions or exceptions from the
3 State?

4 MR. BROWN: Not from the State.

5 THE COURT: From the Defense?

6 MS. BOLEN: No, sir.

7 THE COURT: Very good. Except for you renew your
8 objections made previously?

9 MS. BOLEN: Yes, Your Honor. I'd renew my
10 previous motions and objections made pretrial and during
11 trial.

12 THE COURT: I don't think you need to but just in
13 case.

14 MS. BOLEN: Yes, sir.

15 THE COURT: All right. Thank you, guys. I want
16 to commend all the lawyers in this case. You've done a fine
17 job and you've represented your respective interest very,
18 very well and very professionally. So thank you very much.

19 (WHEREUPON, the verdict forms and exhibits were
20 delivered to the jury at 3:00 p.m., at which time the
21 Court stood in recess awaiting the verdict of the
22 jury.)

23 THE COURT: We have a note from the jury. Here's
24 the jury's question. It says, the jury is currently unable
25 to unanimously agree upon a verdict. In this case, what

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1 would be next? And the foreperson asked for damages. So
2 let me just -- I think we can say fill out the verdict form
3 appropriately at the place indicated, sign it, fold it. Any
4 objection to that?

5 MR. BROWN: Not from the State.

6 MS. BOLEN: None.

7 (WHEREUPON, the jury entered the open court at
8 approximately 4:39 p.m.)

9 THE COURT: All right. Mr. Foreman, if you will
10 bear with me one second. I called for you and the Defendant
11 had not gotten back yet from lunch. So he's on his way.

12 MR. FOREMAN: All right.

13 THE COURT: Okay. Ladies and gentlemen, Mr.
14 Foreman, the jury has a question. And I think this is the
15 question. The jury is currently able to unanimously agree
16 upon a verdict in this case. What would be next? I thought
17 what you had written was damages. But you wrote, Demarcus
18 Robinson, Foreperson; right?

19 MR. FOREMAN: Uh-huh (affirmative).

20 THE COURT: Okay. What you do, you have that
21 verdict form in there. And for each separate cause you
22 would check or put an X on the line next to the appropriate
23 decision by the jury, which is unanimous. And then you go
24 to the next charge, do the same thing. Then you would sign
25 where it indicates Foreperson. Fold it over and let us know

1 and we'll receive it back in the courtroom; okay, sir?

2 MR. FOREMAN: Yeah. And I think I maybe wrote
3 that wrong. It was unable.

4 THE COURT: Unable.

5 MR. FOREMAN: Yes, sir.

6 THE COURT: Okay. Then I'm going to send you
7 right back for a minute. And do you feel like you are
8 making any progress at all?

9 MR. FOREMAN: To be honest with you, no, sir. I
10 don't want anyone to feel that they have to be persuaded.
11 Like you said, they have any reasonable doubt. You
12 understand, we don't want to have any type of reasonable
13 doubt. So I don't want anyone to feel like they're being
14 persuaded into a decision.

15 THE COURT: Okay. Well, I'm going to ask that
16 you go back to your jury room then we'll bring you back out
17 in just a few minutes. I'm going to give you some further
18 instructions.

19 MR. FOREMAN: All right. Thank you.

20 (WHEREUPON, they jury exited the open court at
21 approximately 4:42 p.m.)

22 (WHEREUPON, Court's Exhibit Number 2 was marked for
23 identification.)

24 THE COURT: What's the State's position with
25 regard to an Allen Charge at this juncture?

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1 MR. BROWN: Judge, I would say go ahead.

2 THE COURT: I mean, normally an hour and a half
3 isn't very long for deliberating.

4 MS. BOLEN: Your Honor, we ---

5 THE COURT: That's why I asked him if he felt
6 like they were making any progress and he said, no.

7 MS. BOLEN: I wasn't able to fully hear what he
8 was saying. So I kind of misunderstood.

9 THE COURT: The way it's written, the way it's
10 written is the jury is currently able to unanimously agree
11 on a verdict. He meant to say unable.

12 MS. BOLEN: Okay.

13 THE COURT: And he said in this case what is
14 next? I asked him does he feel like they're making any
15 progress at all. And he said, no, not really because we
16 don't want to feel like -- force anybody to do something
17 that they have a reasonable doubt. And that's essentially
18 what he said. I'm paraphrasing. So my thoughts at this
19 juncture would be to send them back in here, discuss with
20 the State and you and give them the Allen Charge. I
21 generally don't like to do it too soon, but at this juncture
22 I don't see any reason why not.

23 MS. BOLEN: Well, Your Honor, I think our
24 position would be that they've already been instructed how
25 to deliberate and it has been only an hour and a half. So

1 we'd ask for there not to be an Allen Charge at this point.

2 THE COURT: I hate that. I'm going to give an
3 Allen Charge.

4 MS. BOLEN: I understand, Your Honor. I just
5 wanted to put that down.

6 THE COURT: That's my prerogative. And under the
7 circumstances, I think it's the appropriate thing to do.
8 Okay. I'm going to bring the jury out, do an Allen Charge
9 and I understand your objection.

10 MS. BOLEN: Thank you, Your Honor.

11 THE COURT: Would you hand that to the Court
12 Reporter, please.

13 And I assume by not giving an Allen Charge you are
14 asking for an immediate mistrial; right?

15 MS. BOLEN: I was actually just asking for them
16 to continue to deliberate.

17 THE COURT: Oh, you think I'm giving it too soon.
18 Well, let me try something. Bring them back out.

19 (WHEREUPON, the jury entered the open court at
20 approximately 4:45 p.m.)

21 THE COURT: Okay. Mr. Foreman, a couple of
22 things. Number one, I never let myself, the bailiffs or
23 anybody know where the jury stands numerically; okay, you
24 know, seven to five, eight four, whatever, six six. But I'm
25 just curious. You know, in my charge to you earlier I was

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1 asking that deliberation be a fairly slow continuous process
2 where you go through all the evidence and you listen to
3 everybody's points and their points of view. And you listen
4 courteously and you go through everything on a full-time
5 basis. Do you feel like the jury's doing that?

6 MR. FOREMAN: Yes, sir.

7 THE COURT: Do you feel like the jury is
8 continuing to do that?

9 MR. FOREMAN: Yes, sir.

10 THE COURT: So if I give the jury an opportunity
11 to go back and talk further, do you think you can make some
12 progress and listen to everybody's different ideas about
13 things and their perspectives and viewpoints on what that
14 evidence is and talk through it and see why they're there.
15 And then, you know, what do they base that belief on versus
16 what somebody else believes that on and maybe hopefully get
17 towards a unanimous verdict?

18 MR. FOREMAN: Do we believe that we have come to
19 a unanimous verdict with more discussion among ourselves.

20 THE COURT: I tell you what, you don't have to
21 answer in front of us. Go talk to your jury. I'm going to
22 talk to these lawyers. If you would write your answer and
23 send the word out on a note. That way, you don't have us
24 breathing us breathing down your backs with people trying to
25 respond; okay, sir?

1 MR. FOREMAN: Okay.

2 (WHEREUPON, the jury exited the open court at
3 approximately 4:48 p.m.)

4 THE COURT: For the record, I thought Ms. Bolen
5 was asking for an immediate mistrial.

6 MS. BOLEN: No, sir, I'm sorry. I should have
7 been more clear.

8 THE COURT: That's all right. That's all right.

9 MS. BOLEN: I'm sorry.

10 THE COURT: I think now if they send back word
11 that they will not make progress that it would be
12 appropriate to give the Allen Charge. Just sitting them
13 back there is not going to do any good without doing it.
14 But if they say they think they can make progress then,
15 obviously, I'm not.

16 MR. BROWN: Yes, sir.

17 MS. BOLEN: Thank you, Your Honor.

18 (WHEREUPON, Court's Exhibit Number 3 was marked for
19 identification.)

20 THE COURT: Mr. Brown, would you have anything on
21 that response?

22 MR. BROWN: No, sir.

23 THE COURT: Thank you, sir.

24 (WHEREUPON, court stood at ease awaiting the verdict of
25 the jury.)

1 THE COURT: All right. Guys, no surprise. They
2 said we are not able to further discuss the situation and
3 come to a unanimous verdict. At that stage, Ms. Bolen, I
4 think I'm pretty much -- my hands are tied about giving the
5 Allen charge..

6 MS. BOLEN: I understand. Yes, sir, Your Honor.

7 THE COURT: Give that to the Court Reporter.

8 (WHEREUPON, Court's Exhibit Number 4 was marked for
9 identification.)

10 THE COURT: Any disagreement from the State, Mr.
11 Brown?

12 MR. BROWN: No, Your Honor.

13 THE COURT: Will you bring the jury in, please,
14 sir?

15 (WHEREUPON, the jury entered the open court at
16 approximately 4:56 p.m.)

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen, my understanding is based on your recent
19 conversation the jury does not feel like they can reach a
20 unanimous verdict; is that correct?

21 MR. FOREMAN: That's correct.

22 THE COURT: Okay. Well, at this stage in the
23 case when we have a situation like this, I'm going to give
24 you a further instruction on the law, if you'll bear with
25 me. Now, you've stated that you've been unable to reach a

1 verdict in this case. You were instructed earlier, in order
2 for your verdict to stand it has to be unanimous. I like to
3 point out to you, though, that whenever there's a matter of
4 dispute it isn't always easy for even two people to agree to
5 a matter, and you have twelve people. It becomes that much
6 harder. In most cases absolute certainty cannot be reached.
7 And it's really not expected. However, as a jury and based
8 on your oaths, you have a duty to make every reasonable
9 effort to try to reach a unanimous verdict if you can.

10 Now, in doing this you should consult with each other.
11 You should express your own views about the case, listen to
12 everyone's opinions, tell each other how you feel, why you
13 feel that way and discuss your differences with open minds
14 about the evidence. And although a verdict has to be
15 unanimous for it to stand, every one of you has a right to
16 your own opinion in this matter. The verdict you agree upon
17 must be your verdict, the result of your convictions, and
18 you should not give up a firmly held belief solely to
19 appease the jury. With that being said, the majority of the
20 jurors should consider the minority's position. And
21 likewise the minority should consider the majority's
22 position. You should carefully consider and respect the
23 opinions of each other and reevaluate and consider the
24 opinions of each other and their positions and their reasons
25 given for the positions. Consider the reasonableness, the

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1 correctness and impartiality for which those reasons were
2 given. You should lay aside any and all outside matters and
3 reexamine the question before you based on the testimony and
4 evidence in this case and according to the law as I give it
5 to you.

6 Now, that being said, if you cannot reach a verdict
7 which is unanimous, that doesn't mean anybody wins in this
8 case. That means I've got to declare a mistrial. And what
9 that simply means is that at some future point myself or
10 another Circuit Court Judge will come here in Abbeville
11 County with some other jury sitting where you are. The same
12 participants will come in with the same lawyers and have
13 basically the same questions and get basically the same
14 answers and we'll go through the whole process again. Now,
15 you were selected in this matter from the same source as the
16 future jury will be. And there will be no reason for me to
17 suppose that any future jury will ever be more intelligent,
18 impartial, conscientious, or competent than you are. And
19 that more clearer evidence will ever be presented in the
20 future than has been done in this case.

21 So with that being done, I'm going to ask you to go
22 back and resume your deliberations; okay? If you'll go back
23 now, please, sir.

24 (WHEREUPON, the jury exited the open court at
25 approximately 5:02 p.m.)

1 THE COURT: Any additions or exceptions from the
2 State?

3 MR. BROWN: None from the State?

4 THE COURT: From the Defense?

5 MS. BOLEN: No, sir.

6 THE COURT: Y'all be at ease, please.

7 (WHEREUPON, court stood at ease awaiting the verdict of
8 the jury.)

9 THE COURT: All right. The note we have is after
10 further discussion we are unable to reach a unanimous
11 verdict on First degree burglary. Now, I don't know if they
12 found a not guilty or guilty on the larceny. If they found
13 him guilty, that would be an inconsistent verdict and I'd
14 have to talk to you about what you think the appropriate
15 course of conduct would be. If it's not guilty, it would be
16 a mistrial as to the charge of first degree burglary and
17 they'd be barred from retrying him on the larceny charge.
18 That's my thoughts.

19 Mr. Brown, what would be your idea if they had larceny
20 -- a guilty verdict on larceny?

21 MR. BROWN: I would agree. I think if there's a
22 guilty verdict on the larceny, it's an inconsistent verdict.

23 THE COURT: Well, it certainly would be, but the
24 process of handling it, do you send them back. Or if they
25 say they can't, they're tied, just declare a mistrial. Ms.

State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)
Charge

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1 Bolen, what do you think?

2 MS. BOLEN: Your Honor, this is actually the
3 first time I've been in this particular situation. It would
4 seem that a guilty on the larceny would be an inconsistent
5 verdict. I haven't actually dealt with that issue, so I'd
6 need to look ---

7 THE COURT: Let's see the verdict form, then
8 we'll send them back.

9 MS. BOLEN: Okay. Thank you, Your Honor.

10 (WHEREUPON, the jury entered the open court at
11 approximately 5:44 p.m.)

12 THE COURT: All right. Mr. Foreman, the jury had
13 sent out a note that says after further discussion, we're
14 unable to reach a unanimous verdict on first degree
15 burglary. Is that the word from the jury?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Without telling me what the jury's
18 decision, has the jury reached a unanimous decision as to
19 the charge of larceny?

20 MR. FOREMAN: Yes, sir.

21 THE COURT: Have you filled out the verdict form
22 accordingly?

23 MR. FOREMAN: Yes, sir.

24 THE COURT: Do you have that with you?

25 MR. FOREMAN: No, sir.

1 THE COURT: Do you mind -- have you signed it?

2 Would you get that and sign it and pass it forward to me?

3 MR. FOREMAN: Yes, sir.

4 THE COURT: Just one second before you go. Any
5 objection to me letting the foreman go get the verdict form
6 by himself?

7 MR. BROWN: Not from the State?

8 MS. BOLEN: No, sir.

9 THE COURT: Thank you, sir.

10 (WHEREUPON, the jury foreman exits the open court to
11 retrieve the verdict form from the jury room and
12 returned.)

13 THE COURT: So on the verdict form, Madam Clerk,
14 do you mind if I just read it out under these unique
15 circumstances?

16 THE CLERK: Uh-uh (negative).

17 THE COURT: On the first degree burglary based on
18 the note the jury is hung and cannot reach a decision.
19 Under larceny, the finding is not guilty. Is that correct?

20 MR. FOREMAN: Yes, sir.

21 THE COURT: Is that unanimous for all jurors? If
22 you'll raise your hands if it's unanimous amongst all
23 jurors.

24 (WHEREUPON, all jurors's hands were raised.)

25 THE COURT: And was that your decision in the

Charge

1 jury room and is that the decision still here in the
2 courtroom? If it is, raise your right hand.

3 (WHEREUPON, all jurors's right-hands were raised.)

4 THE COURT: Let the record reflect that all
5 jurors answered in the affirmative to both questions. Very
6 good.

7 Okay. Counsel, what I will do is declare a mistrial as
8 to the first degree burglary charge. That'll be set for a
9 new trial at some date in the future. The larceny is not
10 guilty. So that will be the order of the jury and the
11 Court.

12 MS. BOLEN: Yes, sir.

13 THE COURT: Now, ladies and gentlemen, I know
14 it's no fun having to sit here and watch a trial and sit in
15 judgment of your fellow man. But you at least got here and
16 you paid attention to the testimony, the law and we thank
17 you for your service, not for your verdict or for your lack
18 of your verdict. But we thank you for your service because
19 without folks like yourselves who are willing to do their
20 civic duty and serve, the system breaks down and we have no
21 rule of law. So thank you. Does anybody need a
22 statement for their employer? Okay. The clerk will meet
23 you in the back of the courthouse. You will probably
24 receive a check in the mail in the short future. Don't
25 spend it all in one place. You're done for the rest of the

1 week. No more trials. The better thing is you can't be
2 called back for Circuit Court jury service for three more
3 years. Thank you very much. You're dismissed.

4 (WHEREUPON, the jury exited the open court at
5 approximately 5:48 p.m.)

6 THE COURT: All right. Anything further from the
7 State?

8 MR. BROWN: Not from the State.

9 THE COURT: Anything further from the Defense?

10 MS. BOLEN: No, sir, Your Honor. I don't believe
11 so. No.

12 THE COURT: I'm just trying to think. At this
13 point there's no motions for you to make.

14 MS. BOLEN: I don't believe so.

15 THE COURT: I tell you what. I'll give ten days
16 in case you think of something you need to file.

17 MS. BOLEN: Okay. Thank you, Your Honor.

18 THE COURT: Just in case. If you do, send a copy
19 to my law clerk and to the State by way of email, please?

20 MS. BOLEN: Okay. Yes, sir.

21 THE COURT: All right. Guys, thank you.

22

23 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Family
8 Court of Greenville County, South Carolina, on the 9th day
9 of April, 2015.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin, counsel,
13 nor interest to any party hereto.

14 August 16, 2015

15

16

17

A handwritten signature in cursive script, reading "Danette P. Hanks", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ABBEVILLE)
)
 State of South Carolina,)
)
)
 Vs.)
)
)
 Rickey Henley,)
 Defendant)
 _____)

IN THE COURT OF GENERAL SESSIONS
 FOR THE EIGHTH JUDICIAL CIRCUIT

INDICTMENT NOS.
 2012-GS-0100348
 2012-GS-0100349

Motion to Quash Indictment
 Based on Double Jeopardy

Defendant moves this court to dismiss the remaining indictment against him (2012-GS-0100348) on the basis that further prosecution of this indictment violates the Double Jeopardy clause, pursuant to *Ashe v. Swenson*, 397 U.S. 436 (1970) and *Yeager v. U.S.*, 129 S.Ct. 2360, 174 L.Ed.2d 78 (2009).

Procedural History

Defendant Rickey Henley was charged on or about February 29, 2012 with one count of burglary, 1st degree, and one count of petit larceny. Both charges stemmed from the same set of allegations; namely, that Mr. Henley went into the home of Amanda Moss during the day on February 15, 2012 and took a laptop computer. The warrant for the burglary charge (warrant M511171, attached as Exhibit 1) alleges that Mr. Henley went inside of Ms. Moss's home without consent and that he 'did take, steal and carry away one Dell laptop'. The warrant for the larceny charge (M511172) alleges that Mr. Henley did take a Dell laptop computer. Mr. Henley was indicted by the grand jury on both the burglary 1st degree and the larceny on July 27, 2012. The indictment for burglary 1st degree alleged that Mr. Henley had two prior convictions for burglary and/or housebreaking.

The State tried Mr. Henley on both indictments on April 6 (jury selection), 8, and 9, 2015. After approximately an hour and a half of deliberation, the jury sent a note to the judge that it was deadlocked. The judge gave the jury an *Allen* charge. After approximately another half hour, the jury

sent a note saying that they had reached a verdict on the larceny charge but not on the burglary charge. The jury found Mr. Henley not guilty of the larceny charge. The jury hung on the burglary charge, and the judge declared a mistrial as to the burglary charge.

Facts

Mr. Henley, at the time of the allegations, lived in Beech Island (near Aiken, SC) and had a girlfriend who lived in Anderson, SC. Mr. Henley did not live in Abbeville. He and the victim of the burglary, Amanda Moss, did not know each other. At the April 2015 trial, the State proceeded on a theory that Mr. Henley, while driving from Anderson to Beech Island, drove through Abbeville, SC on Highway 28. The State alleged that Mr. Henley broke into Ms. Moss's house, which is located on Highway 28, during day time hours and that he took a laptop computer from her house. In his opening statement, the solicitor told the jury that the evidence would show that Mr. Henley broke into Ms. Moss's house and took her Dell laptop. In his opening statement, the solicitor stated '[t]he elements of burglary are entry into a dwelling without the owner or occupant's consent with the intent to commit a crime therein. *And in this case, our theory is that Mr. Henley went into Ms. Moss' home, did so without consent, took personal property. And that was the crime he intended to commit.*' Transcript I, pg. 107 (emphasis added).

The State produced a witness, Mr. Rick Culbreth, who testified that he was a neighbor of Ms. Moss and that he saw an unfamiliar car at her house on February 15, 2012. Transcript I, pg. 118 and pg. 121. He testified that he drove by Ms. Moss's house and then stopped to see what was going on. *Id.* He testified that he had a brief conversation with the driver of the car, who asked him if he needed any yard work done. Transcript I, pg. 120. Mr. Culbreth provided a brief description of the person he saw in the car; he stated the individual was black, and was wearing a do-rag. Transcript I, pg. 118. Mr. Culbreth then testified that the individual with whom he spoke drove off in a dirty, Pontiac-type silverish car. Transcript I, pg. 120. Mr. Culbreth then called the police. *Id.*

Law enforcement responded and saw that Ms. Moss's side door was open. Transcript II, pg. 18. Ms. Moss told law enforcement that the only thing missing from her house was her Dell laptop, valued at \$500. Transcript I, pg. 136. Investigator Thompson, who was the responding investigator, testified that only a "single item" was taken from the residence. Transcript II, pg. 22. Additionally, witness Culbreth was shown a lineup by Officer Thompson but was not able to clearly identify Mr. Henley in the lineup. Transcript II, pg. 37, and Transcript I, pg. 122.

Law enforcement found a cigarette butt outside of Ms. Moss's house, on the stoop leading up to the door. Transcript II, pg. 20. This cigarette butt was collected and analyzed by SLED; it was found to have Mr. Henley's DNA on it. Transcript I, pgs. 163-64. However, this cigarette butt had been lost by the State by the time of trial. Investigator Thompson testified that he spoke with Mr. Henley and that Mr. Henley told him that he had been in Abbeville that day. Transcript II, pg. 41. Investigator Thompson further testified that Mr. Henley said he had pulled over at the house to use the bathroom and that he had spoken with someone. *Id.* Investigator Thompson testified that Mr. Henley adamantly denied going inside the house. Transcript II, pg. 55. Investigator Thompson also testified that there was a footprint inside the house but that he did not collect Mr. Henley's boots from him. Transcript II, pg. 22-23 and pg. 56. Investigator Thompson testified that the footwear impression was "approximately within a foot of the stove where the laptop was taken". Transcript II, pg. 22. Investigator Thompson further testified that he never recovered, or even sought to recover, the Dell laptop. Transcript II, pgs. 57-58. Finally, Investigator Thompson testified that no burglary tools were collected from Mr. Henley or his residence, and that no do-rag was ever collected. Transcript II, pgs. 57-59.

Ms. Moss testified that the only thing missing from her house was the Dell laptop. Transcript I, pg. 136. Law enforcement testified that they never recovered the laptop. Transcript II, pgs. 57-58. The solicitor stated to the jury in opening that the crime they believed Mr. Henley intended to commit inside Ms. Moss's house was the larceny of the laptop. Transcript I, pg. 107. The solicitor also argued

to the jury in closing that Mr. Henley went into Ms. Moss's house and stole a laptop. The solicitor stated, in talking about the door to the house, that it was '...the same door that was kicked open and Mr. Henley went walking through to go get that laptop.' Transcript II, pg. 134. He also argued in closing that Mr. Henley 'swung by Ms. Moss's house and decided he wanted to take advantage of what she had inside while she was at work. What did he take? A laptop.' Transcript II, pg. 135. The solicitor further argued in closing that the footprint noted by Investigator Thompson was 'miraculously close to that pedestal where that laptop was taken from that day.' Transcript II, pg. 138. No testimony was offered about any other crime or any other intended crime, other than the larceny of the laptop. Additionally, the warrant for the burglary specifically stated that Mr. Henley was charged with entering into Ms. Moss's house and taking the Dell laptop.

Statement of the Law

It is well settled that "the Double Jeopardy Clause precludes the Government from relitigating any issue that was necessarily decided by a jury's acquittal in a prior trial." *Yeager v. U.S.*, 129 S.Ct. 2360, 2365 (2009). This principle was first recognized in *Ashe v. Swenson*, 397 U.S. 436 (1970). In recognizing that the doctrine of collateral estoppel (more commonly called 'issue preclusion') applied in criminal cases, *Ashe* held that "the rule of collateral estoppels in criminal cases is not to be applied with the hyper-technical and archaic approach of a 19th century pleading book, but with realism and rationality". *Ashe* at 444.

In *Ashe*, "six poker players were robbed by a group of masked men. Ashe was charged with—and acquitted of—robbing Donald Knight, one of the six players. The State sought to retry Ashe for the robbery of another poker player only weeks after the first jury had acquitted him." *Yeager*, 129 S.Ct. at 2366. "Because the only contested issue at the first trial was whether Ashe was one of the robbers, [the Supreme Court] held that the jury's verdict of acquittal collaterally stopped the State from trying him for robbing a different player during

the same criminal episode.” *Id.* 129 S.Ct. at 2366-67. “[W]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.” *Ashe v. Swenson*, 397 U.S. 436 (1970) at 443.

The *Yeager* case involved the criminal prosecution of one of the Enron executives. Yeager was charged with 126 counts of federal securities offenses, including conspiracy to commit securities and wire fraud, securities fraud, wire fraud, insider trading, and money laundering. *Yeager* at 2363-64. The Court grouped the charges into two general categories: the ‘fraud’ charges and the ‘insider trading counts’. *Yeager* at 2364. Ultimately, the jury acquitted Yeager on the fraud counts but did not reach a verdict on the insider trading counts. *Id.* At the re-trial, the government sought a new indictment that charged only Yeager, rather than several other previous co-defendants, and further refined the charges against him. *Yeager* at 2364. Yeager moved the trial court to dismiss the indictments based on issue preclusion and the Double Jeopardy Clause, on the basis that the insider trading counts necessarily required a factual finding that was decided in his favor by virtue of the acquittal on the fraud charges. His motion was denied at the trial court level and he was convicted. *Id.*

The question presented (and holding) in *Yeager* was “whether an apparent inconsistency between a jury’s verdict of acquittal on some counts and its failure to return a verdict on other counts affects the preclusive force of the acquittals under the Double Jeopardy Clause of the Fifth Amendment. We hold that it does not.” *Yeager* at 2362-63. The Supreme Court, in reviewing the case, found that there are two ‘vitally important’ interests embodied in the Double Jeopardy Clause: the first is the principle that the State should not be permitted to make repeated attempts to “convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal”, and the second is the “preservation of

the 'finality of judgments'". *Yeager* at 2365-66. The Court found that it was the second interest implicated by the question presented in *Yeager*'s case, that of finality of judgment. The Court looked to *Ashe* as the basis for its reasoning in *Yeager*. *Ashe* held that "the Double Jeopardy Clause precludes the Government from relitigating any issue that was necessarily decided by a jury's acquittal in a prior trial". *Yeager* at 2366, emphasis added.

The Court also looked at its decisions in *Richardson v. United States*, 468 U.S. 317, and *United States v. Powell*, 469 U.S. 57. Distinguishing the *Yeager* situation from that in *Richardson*, the Court reasoned that although *Richardson* held that a failure to reach a verdict did not terminate jeopardy, that holding did not "open the door to using a mistried count to ignore the preclusive effect of a jury's acquittal". *Yeager* at 2369. Thus, the effect of an acquittal on issue preclusion cannot be ignored when there is a hung count. The Court also rejected the government's argument that an acquittal cannot preclude retrial on a mistried count because doing so would violate the rule in *Powell*, in which the Court held that issue preclusion is based on the assumption that a jury acted rationally. The Court reasoned that *Richardson* and *Powell* required the Court to not ignore the preclusive effect of an acquittal on a mistried count. Thus, the fact that *Yeager* was acquitted of the fraud counts worked in his favor with respect to issue preclusion on the insider trading counts.

The Court also reasoned that the hung counts were 'nonevents', and that the acquittals on the fraud charges were entitled to the same preclusive effect as the single acquittal in *Ashe*. *Yeager* at 2367. The Court found that the hung counts were not to be considered relevant parts of the record, because there is no way to determine what the hung count represents or why the jury hung; to do so would be mere speculation, rather than a definite decision, as an acquittal or conviction represents. *Yeager* at 2367-68. The Court

reasoned that an actual decision of the jury, found through its verdict, was to be considered in an issue preclusion analysis, but the non-decision of a hung jury was not. *See Yeager* at 2367, “[b]ecause a jury speaks only through its verdict, its failure to reach a verdict cannot – by negative implications – yield a piece of information that helps put together the trial puzzle”. “Such conjecture about possible reasons for a jury’s failure to reach a decision should play no part in assessing the legal consequences of a unanimous verdict that the jurors did return.” *Yeager* at 2368. Thus, consideration of the hung counts does not enter into the issue preclusion analysis with respect to the Double Jeopardy Clause. *See Yeager*, page 2368. “To identify what a jury necessarily determined at trial, courts should scrutinize a jury’s decisions, not its failures to decide.... Thus, if the possession of insider information was a critical issue of ultimate fact in all of the charges against petitioner, a jury verdict that necessarily decided that issue in his favor protects him from prosecution for any charge for which that is an essential element”. *Yeager* at 2368-69.

Yeager argued that in order to be convicted of the insider trading counts, a jury would have to find that he possessed material, non-public information about a project at Enron, and that a jury, by acquitting him of the fraud charges, had already made the factual determination that he was not in possession of such material. *Yeager* at 2364. Basically, a fact that was essential to the insider trading counts was necessarily decided by the first jury; that fact became the basis for Court’s determination that issue preclusion applied and jeopardy had attached. The Court rejected the notion that the jury would have acquitted on all counts if it truly thought Yeager did not have any insider information. *See Yeager* at 2367. The Court determined instead that the failure of the jury to reach a decision is a non-event for issue preclusion analysis; the unanimous decision by the jury is what it is to be considered. *See*

Yeager at 2367-68. ("To identify what a jury necessarily determined at trial, courts should scrutinize a jury's decisions, not its failures to decide". *Yeager* at 2368.) Thus, the controlling fact in *Yeager* was the acquittal on the fraud charges. The Court overturned *Yeager*'s convictions, because the first jury necessarily resolved a fact (whether *Yeager* possessed non-public information) in *Yeager*'s favor; this fact was one that the government would have had to have proven in the subsequent trial for insider trading. Since that fact was necessarily decided in *Yeager*'s favor, and was a fact that the government needed for the insider trading counts, the Court found that issue preclusion applied and that Double Jeopardy prohibited further prosecution.

Analysis and Argument

Yeager controls and protects Mr. Henley from a second, subsequent trial for the same conduct on which he was tried in April, 2015. In *Yeager*, the controlling fact that the jury made a decision on was the possession of non-public information; in *Henley*, the analogous fact is the taking of the laptop. The *Yeager* Court based its reasoning and holding on a discussion of the facts decided, rather than statutory elements. The first jury in *Yeager*, by acquitting him of the fraud charge, made a factual determination that he did not have non-public information. This fact (rather than element) precluded any subsequent prosecution for charges that required the government to prove that *Yeager* did possess non-public information. It is important to note that it was the jury's necessary determination of an ultimate fact, not an element, that the Court found as the essential event in the issue preclusion analysis. A jury found that *Yeager* did not possess non-public information; he could not therefore be prosecuted for any other charges that would require a factual finding that he possessed non-public information.

Similarly, the jury in *Henley*'s April 2015 trial found *Henley* not guilty of larceny. In so doing, the jury necessarily decided, in *Henley*'s favor, that he did not take the laptop. That fact – the taking of the laptop – is an essential fact to the prosecution of *Henley* for the burglary. The testimony

at trial was clear that the State was prosecuting Mr. Henley on a theory that the two indictments, larceny and burglary, arose out of the same alleged incident and conduct. Further, the State even told the jury in opening statements that the larceny was the crime that Mr. Henley intended to commit upon entry without consent into Ms. Moss's home. The burglary warrant charged Mr. Henley with entering a dwelling and taking away a Dell laptop (see Exhibit 1). The relevant testimony from witnesses all supported that the only crime which Mr. Henley was alleged to have committed or had the intent to commit was a larceny. The victim testified that the only thing missing was her Dell laptop. Law enforcement testified that a single item was taken from the home. There was no testimony of any other crime inside the home other than the taking of the laptop.

The intent to commit a crime is an element of burglary. Although the intent must be present before the entering, the intent must be to commit a crime "once inside". *State v. Gilliland*, 402 S.C. 389 (2012) at 398. Intent to commit a crime therein can be inferred from conduct. Here, the only reasonable inference that can be drawn from the testimony presented at trial regarding the 'intent to commit a crime' element is that the crime intended was larceny. There are factual scenarios for burglary cases in which other crimes could be intended; for example, a person could enter a dwelling without consent with the intent to physically assault a person in the home; or to harass or bother a person in the home with whom the defendant has relationship; or to cause injury to physical objects or property within the home. In this case, no testimony was offered regarding any sort of crime inside the home other than larceny. From the testimony at trial, no inference can be reasonably drawn from the evidence presented that a crime other than the inference that larceny was the crime intended. There was no testimony of any sort of assault, harassment, or damage done to property. The only evidence of any crime committed inside the home, and of any intent to commit a crime, pointed to larceny as the crime. From the testimony and evidence presented, there is no other crime that could reasonably be inferred to have been actually committed or to have been intended to be committed.

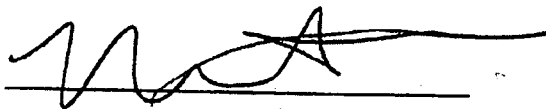
The jury decided that Mr. Henley was not guilty of larceny. In so doing, it necessarily decided a fact that is essential to the state's burglary case. The state has no evidence of Mr. Henley committing or attempting to commit any crime inside the home other than larceny. Under *Yeager* and *Ashe*, the state cannot relitigate an issue that has already been decided. In order to convict Mr. Henley of burglary, the state must prove that he entered the house with the intent to commit a crime inside. The State already established that its theory was that Mr. Henley went into the house to steal. The State first established this as its theory in the warrant it obtained, charging Mr. Henley with burglary and referencing the taking of the laptop as the crime committed as part of the burglary. The State further established that the crime intended was larceny in both in its opening statement and closing argument, as well as its presentation of the case to the jury through witness testimony. The jury has already established, by its acquittal, that Mr. Henley did not take the laptop. Similar to the possession of non-public information in *Yeager*, the taking of the laptop is a fact (not an element) that the State would have to prove in order to secure a conviction on the burglary. The preclusive effect of the acquittal on the larceny charge extends, via *Yeager* and *Ashe*, to the hung count. Since the jury already necessarily decided that fact in Mr. Henley's favor, *Yeager* requires that the State be precluded from prosecuting Mr. Henley for the burglary.

Conclusion

Yeager is the applicable controlling authority in this case, in which the jury has spoken on one issue that is essential to the State's prosecution on an un-decided count. Pursuant to *Yeager*, the Court should consider only the jury's acquittal, rather than speculating about why the jury hung, as the hung count should be seen as a non-event. Since the acquittal was on a charge that required a factual finding that is also required for the burglary, the jury's determination of that fact should be considered final and should preclude any further prosecution that relies on that fact. Prosecution of Mr. Henley for the burglary charge should be prohibited on the basis of the Double Jeopardy Clause, as well as *Yeager*

and *Ash*. Mr. Henley therefore respectfully asks this Court to quash the remaining indictment against him as being in violation of the Double Jeopardy Clause.

Respectfully submitted,



Patricia Bolen

Assistant Public Defender

Abbeville, South Carolina

April 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed April 4, 2016 A.D. 2nd
10:08 AM
Shanda B. Boop
Deputy Clerk of Court

State of South Carolina)
) Court of General Sessions
 County of Abbeville)

2012-GS-01-348

State of South Carolina)
) vs.) Transcript of Record
)
 Rickey Santoine Henley)
)
) Defendant)

April 4-6, 2016
 Abbeville, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Yates Brown, Deputy Solicitor
 Demetrious G. Andrews, Deputy Solicitor
 Attorneys for the State

Patricia A. Bolen, Assistant Public Defender
 Yasha Patel, Assistant Public Defender
 Attorneys for the Defendant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

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Court's

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1 THE COURT: We are ready to call the first case.
2 Solicitor, do you have the indictment?

3 MR. BROWN: Yes, Your Honor, I do. This is the State
4 versus Rickey Henley, indictment 12-GS-01-348, charged
5 with burglary in the first degree.

6 THE COURT: Ladies and gentlemen, the first
7 indictment called by the State, that was by the Solicitor,
8 Mr. Yates Brown, he handed the indictment to the Court.
9 It is for the offense of burglary in the first degree.
10 Now, I tell you this indictment is number 12-, indictment
11 number 348. This is a document, notification, if you
12 will, it is not proof of anything. But it is a notice
13 from the State of South Carolina, the Prosecutor, charged
14 in Abbeville County to Mr. Rickey Henley of what to be
15 prepared to come to court to respond to or prepared to
16 defend himself against. An indictment is notice, it is
17 not proof, meaning he is notified to what he is charged
18 with, nothing more, nothing less. This indictment, it
19 reads in part, I am going to read the dates of the event,
20 what he is accused of and then I will ask does anybody
21 know much about it. It reads that Mr. Henley, on the 15th
22 day of February of 2012 did enter a dwelling without
23 consent with the intent to commit a crime, the dwelling
24 being owned by a Amanda Moss in violation of code section
25 16-11-311. Now, I ask this jury panel, I am going to

1 caution jurors, I can use the gentleman who stood up and
2 says he went to church with some of the parties. I don't
3 need information volunteered, it could be misconstrued one
4 way or the other, good and bad. What I need is you to let
5 me ask the questions, I will ask yes or no questions.
6 What I am looking for is 13 jurors, 12 jurors and 1
7 alternate who can be good listeners and who know very
8 little about the case and have no preconceived notion
9 about anything involving the case. So, most of my
10 questions will be directed toward the end, can you be fair
11 and impartial and sit as a good juror and listen and then
12 accept the law as instructed by the Court and reach a fair
13 and unanimous and just verdict. Those will be my
14 questions. Thus, if you need to respond to any of my
15 questions let me call upon you and let me ask you direct
16 questions. If I need an explanation it will be much
17 simpler for me to call you up, make a record with my court
18 reporter and let you give a full explanation. And I give
19 you a for instance. There was a gentleman in Newberry one
20 time and he did not serve on a jury and if y'all don't
21 understand, this is very rare we have people to volunteer
22 and try to get to the court house early and serve as
23 jurors. It is a very important function of our society as
24 serving as a juror for your fellow people. This gentleman
25 stood up and said, I don't like the court system and I

1 think insurance companies are all a bunch of crooks and
2 this and that. It was a car wreck caese but you are not
3 suppose to talk about insurance. He just went on and on
4 and on and I just about had to hold him in contempt. He
5 almost ended up in jail for telling me too much. He ended
6 up getting to sit throughout the week watching the trial,
7 he wanted to leave but I just made him stay with me and
8 watch the trial. Back to my first statement. This is
9 alleged to have occurred on the 15th day of February of
10 '12. The house being owned or occupied by one Amanda
11 Moss. The accused in this case is Rickey Santoine Henley.
12 Is there any member of the jury panel know anything
13 whatsoever about the allegations I just read in the
14 indictment, if so please stand. Tell me your name.

15 JUROR: Cheryl Kolb.

16 THE COURT: You have heard something about this case
17 prior to coming here today?

18 JUROR: That's correct.

19 THE COURT: Would that information you possess, would
20 that create an issue for you to be fair and impartial to
21 both the State, the victims and Mr. Henley in this case?

22 JUROR: Yes.

23 THE COURT: I am going to stand you aside from this
24 case and remain with me because you will need to hear my
25 instructions for the second trial. Ladies and gentlemen,

1 I am going to allow the attorneys to introduce themselves
2 and the parties seated at their table. Then I am going to
3 ask them, does anybody know them, related by blood or
4 marriage to the parties inside the railing. Mr. Brown,
5 you first.

6 MR. BROWN: Thank you, Your Honor. Good afternoon,
7 my name is Yates Brown, I am Deputy Solicitor here in
8 Abbeville and Greenwood for the Eighth Circuit. The
9 Eighth Circuit encompasses Abbeville, Greenwood, Laurens
10 and Newberry. To my left is Demetrios Andrews, he is also
11 a Deputy Solicitor in our office, in the Eighth Circuit.
12 Also we have Amanda Moss and J.B. Moss who are the alleged
13 victims in this case.

14 THE COURT: Ms. Bolen.

15 MS. BOLEN: Thank you, Your Honor. My name is
16 Patricia Bolen, I am a Defense Attorney in Greenwood.
17 With me is Yasha Patel, we are representing Rickey Henley
18 who is the defendant in this case.

19 THE COURT: Mr. Henley, if you will stand and face
20 the jury so they can see you too. All right, thank you,
21 sir. Any member of the jury panel related by blood,
22 marriage, close personal friends with any of the parties
23 introduced just now, please stand. In the front, tell me
24 your name.

25 JUROR: Sharon Anderson.

1 THE COURT: All right, which of the parties are you
2 related by blood or marriage or close friends?

3 JUROR: Friendship with the Moss'.

4 THE COURT: Would your friendship create an issue for
5 you being fair and impartial in this case to both the
6 State and the defense?

7 JUROR: Yes, sir.

8 THE COURT: Okay, I will set you aside for this trial
9 so you stay with me to hear instructions for the second
10 trial. All right, your name.

11 JUROR: Robert Busbee, number 29.

12 THE COURT: Which of the parties do you know.

13 JUROR: The Moss', I work with J.B.

14 THE COURT: How long did you work with him?

15 JUROR: About a few years.

16 THE COURT: Would your working relationship with him,
17 would that create an issue for you being fair and
18 impartial in this case to both he and Mr. Henley?

19 JUROR: No, sir. I don't think so.

20 THE COURT: Thank you. The gentleman in blue.

21 JUROR: Charles Addis, number 5.

22 THE COURT: Which party?

23 JUROR: Moss.

24 THE COURT: The fact that you are friends?

25 JUROR: Friends.

1 THE COURT: Would the fact that you are friends with
2 them, would that affect your ability to be fair and
3 impartial to both they and Mr. Henley?

4 JUROR: I don't think so.

5 THE COURT: Can you be fair and impartial?

6 JUROR: I can.

7 THE COURT: Okay. Any member of the jury panel ever
8 been represented by any of the four attorneys that just
9 introduced themselves, that being Mr. Andrews, Mr. Brown,
10 Ms. Patel and Ms. Bolen. If so please stand.

11 (No response.)

12 THE COURT: No one is standing. Potential witnesses,
13 I am going to read the list. The same question, related
14 by blood or marriage, close personal friends. Mike
15 Belcher, Joleen Gray, Ella Johnson, Ryan Abernathy,
16 Maryann Boehm, Windy Chappell, Rick Culbreth, Marion
17 Johnson, Amanda Moss, Patrick Thompson, Kimberly Wells,
18 Sharmel Miller, Johnny Newton, Courtney White, Amy
19 Stephens, Sheree Brown, Doris Yarborough. Any of those
20 who answered the questions for the Moss' need not stand
21 again. Is there any member of the jury panel related by
22 blood, marriage, close personal friends to any of those
23 potential witnesses. If so, please stand. Tell me your
24 name..

25 JUROR: Merritt McNair, juror number 101.

1 THE COURT: Which of the potential witnesses do you
2 know?

3 JUROR: I know Marion Johnson and Johnny Newton.

4 THE COURT: Would that create an issue for you being
5 fair and impartial to both sides?

6 JUROR: No sir, it would not.

7 THE COURT: Any member of the jury panel ever been
8 the victim of a crime of burglary or robbery or a crime of
9 that type or a member of your immediate family. If so
10 please stand. Tell me your name.

11 JUROR: Machelie Gray, juror number 63.

12 THE COURT: Ms. Gray, you or a member of your family,
13 it does not matter to me. But the fact that you or your
14 family has been a victim to a crime of that type, would
15 that affect your ability to be a fair juror in this case?

16 JUROR: No, sir.

17 THE COURT: Okay. Thank you. Is that case now
18 resolved?

19 JUROR: Yes.

20 THE COURT: Any member of this jury panel, member of
21 your immediate family work in the law enforcement
22 provision or is an investigator of any type, if so please
23 stand. All right. Tell me your name.

24 JUROR: Charles Flemming. My brother-n-law works for
25 Abbeville County.

1 THE COURT: Is he involved in the case at all?

2 MR. BROWN: No, sir.

3 THE COURT: Would that affect your ability to be fair
4 and impartial in this case?

5 JUROR: No, sir.

6 THE COURT: Thank you. Tell me your name.

7 JUROR: Julie Fleming, number 52.

8 THE COURT: And you or a member of your family in law
9 enforcement field?

10 JUROR: Family.

11 THE COURT: How close in family?

12 JUROR: My brother-n-law works for the County. And
13 an uncle that works for Abbeville County..

14 THE COURT: Would that affect your ability to be fair
15 and impartial in this case?

16 JUROR: No, sir.

17 THE COURT: Thank you. Any member of the jury panel,
18 a member of your immediate family a member of any type of
19 organization which primary focus is to assist victims of
20 crimes, crimes against violence, bikers against child
21 abuse, MADD, SADD, organizations of that type. Anybody a
22 member of those types of groups or a member of your
23 family. If so please stand.

24 (No response.)

25 THE COURT: No one is standing. Any member of the

1 jury panel know any reason whatsoever they can't give
2 either side and both sides a fair trial in this matter,
3 please stand.

4 (No response.)

5 THE COURT: Any other voir dire?

6 MR. BROWN: Not from the State.

7 MS. BOLEN: No, sir.

8 THE COURT: Come up here real quick.

9 (Whereupon, a bench conference was held in the
10 presence of the jury panel but out of the hearing of
11 the jury panel.)

12 THE COURT: Madam Clerk, generate a list, please.

13 CLERK OF COURT: When I call your name please come
14 forward and stand beside the bailiff. 26, Helen Brownlee.
15 What say you for the State?

16 MR. BROWN: Please present Ms. Brownlee.

17 THE COURT: What say you for the defense?

18 MS. PATEL: Please seat the juror.

19 CLERK OF COURT: You may take a seat in the jury box.
20 Number 105, Charity Mitchell. What say you the State?

21 MR. BROWN: Please present Ms. Mitchell.

22 CLERK OF COURT: What say you for the defense?

23 MS. PATEL: Please seat the juror.

24 CLERK OF COURT: You may take your seat in the jury
25 box. 29, Robert Busbee, III. What say you the State?

1 MR. BROWN: Please present Mr. Busbee.

2 CLERK OF COURT: What say you the defense?

3 MS. PATEL: Please excuse the juror.

4 CLERK OF COURT: You may take a seat back in the
5 courtroom. 33, Elizabeth Cape. What say you for the
6 State?

7 MR. BROWN: Please present Ms. Cape.

8 CLERK OF COURT: What say you for the defense?

9 MS. PATEL: Please seat the juror.

10 CLERK OF COURT: You may take a seat in the jury box.
11 21, Clarice Bolden. What say you for the State?

12 MR. BROWN: Please present Ms. Bolden.

13 CLERK OF COURT: What say you for the defense?

14 MS. PATEL: Please seat the juror.

15 CLERK OF COURT: You may take a seat in the jury box.
16 92, Tekoshia Lyons. What say for the State?

17 MR. BROWN: Please present Ms. Lyons.

18 CLERK OF COURT: What say you for the defense?

19 MS. PATEL: Please seat the juror.

20 CLERK OF COURT: You may take a seat in the jury box.
21 88, Melissa Ann Lee. What say you for the State?

22 MR. BROWN: Please present Ms. Lee.

23 CLERK OF COURT: What say you for the defense?

24 MS. PATEL: Please seat the juror.

25 CLERK OF COURT: You may take a seat in the jury box.

1 135, Steven Taylor. What say you for the State.

2 MR. BROWN: Please present Mr. Taylor.

3 CLERK OF COURT: What say you for the defense?

4 MS. PATEL: Please seat the juror.

5 CLERK OF COURT: You may take a seat in the jury box.

6 125, Derrek Robinson. What say you for the State?

7 MR. BROWN: Please excuse Mr. Robinson from the trial
8 of this case.

9 CLERK OF COURT: You may take a seat back in the
10 courtroom. 99, Chandra Mcduffie. What say you for the
11 State?

12 MR. BROWN: Please seat Ms. Mcduffie.

13 CLERK OF COURT: What say you for the defense?

14 MS. PATEL: Please seat the juror.

15 CLERK OF COURT: You may take a seat in the jury box.

16 46, Jan Everett. What say you for the State?

17 MR. BROWN: Please present Ms. Everett.

18 CLERK OF COURT: What say you for the defense?

19 MS. PATEL: Please excuse the juror.

20 CLERK OF COURT: You may take a seat back in the
21 courtroom. 54, Harriet Fossett. What say you for the
22 State?

23 MR. BROWN: Please present Ms. Fossett.

24 CLERK OF COURT: What say you for the defense?

25 MS. PATEL: Please seat the juror.

1 CLERK OF COURT: You may take a seat in the jury box.

2 129, Sherry Sanders. What say you for the State?

3 MR. BROWN: Please present Ms. Sanders.

4 CLERK OF COURT: What say you for the defense?

5 MS. PATEL: Please seat the juror.

6 CLERK OF COURT: You may take a seat in the jury box.

7 124, Molly Roberts. What say you for the State?

8 MR. BROWN: Please present Ms. Roberts.

9 CLERK OF COURT: What say you for the defense?

10 MS. PATEL: Please seat the juror.

11 CLERK OF COURT: You may take a seat in the jury box.

12 2, Michael Abrams, Jr. What say you for the State?

13 MR. BROWN: Please seat Mr. Abrams.

14 CLERK OF COURT: What say you for the defense?

15 MS. PATEL: Please seat the juror.

16 THE COURT: We will have two alternates.

17 CLERK OF COURT: You may take a seat in the jury box.

18 37, Ericca Crawford. What say you for the State?

19 MR. BROWN: Please present Ms. Crawford.

20 CLERK OF COURT: What say you for the defense?

21 MS. PATEL: Please seat the juror.

22 CLERK OF COURT: You may have a seat in the jury box.

23 65, Peggy Gunnels. What say you for the State?

24 MR. BROWN: Please seat Ms. Gunnels.

25 CLERK OF COURT: What say you for the defense?

1 MS. PATEL: Please seat the juror.

2 CLERK OF COURT: You may take a seat in the jury box.

3 THE COURT: Are there any matters of law the Court
4 needs to take up regarding the selection process employed,
5 the composition of this jury from the State or the
6 defense?

7 MR. BROWN: Not from the State.

8 MS. PATEL: None from the defense.

9 THE COURT: Okay. Y'all as a group, you have a juror
10 information card with a phone number. It will have a
11 recording on it tomorrow after 6:00, call that number and
12 listen to the instructions carefully. If it says call
13 back after a certain time, do so. If it says please come
14 in at a certain time do so. Now, don't call before 6:00
15 because the Clerk of Court is up here and the ones
16 downstairs don't know what is going on. Wait to call
17 after 6:00. Thank you and you are excused.

18 (Whereupon, the remaining jury panel was excused from
19 open court.)

20 THE COURT: A couple of important things. Y'all are
21 the jury, the 14 of you. As y'all saw earlier, we were
22 doing some other work, there is a lot of things going on.
23 A lot of moving parts in the court system. Part of the,
24 what I did before lunch involved cases unrelated to this
25 one. I have a little bit of pretrial to do on this one,

1 and one of my witnesses worked all night and I tried to
2 get it done before lunch but he was so sleepy I sent him
3 home. I need to hear what he has got to say and I can
4 only hear him in the morning. So, in order to accomplish
5 these pretrial things I think I want y'all to come in
6 tomorrow at 1:00 and then we will start the case at that
7 time. The parties will give the opening summaries, will
8 take some testimony. I want you to come in having eaten
9 lunch, we are not going to take a break at 1:30 and eat
10 lunch. We are going to eat early lunch, come ready to
11 work. I am told it is about a day or day and a half.
12 Okay. Now, this is important. Everything y'all need to
13 decide this case you will hear in this courtroom. You
14 don't need to go outside the courtroom looking for
15 anything or asking anybody about anything. Part of your
16 oath you will take at 1:00 tomorrow afternoon is I will
17 listen to the testimony, make a just verdict and I will
18 accept the law as instructed by the Court. One of my
19 biggest tasks as a Judge is to explain what the law of
20 South Carolina is to jurors. There is a huge amount of
21 misunderstanding about what the law is because of the
22 internet and television. People think, I understand what
23 the law is, it is this and that. Many times it is not.
24 And so, part of what I do is say, the law of South
25 Carolina says. That is what I do. I also rule on the

1 admissibility of evidence and rules of court and things
2 like that. Y'all will get to decide a question of fact, a
3 question of law versus fact is a little different. Now,
4 what I don't want you to do, in doing your job, is to get
5 information when all you as a group are not together. All
6 of you are here at the same time y'all can talk about it,
7 when I say talk about it. But two of you go to lunch over
8 at the restaurant and talk about the case and somebody
9 else went home and this one did a little work during a
10 lunch break, well I heard on the street corner this and
11 that. You have got to disregard everything you think
12 about the law or know about the law and listen in here,
13 listen to the testimony, take instructions on what the law
14 is when I give it to you and then discuss the case. Don't
15 make up your mind ahead of time, don't make up your mind
16 half way through. You wait until I say you can discuss
17 the case. That is how it works. Another thing is,
18 Facebook, Instagram, all of the social media, please don't
19 put on there I am on a jury, you are inviting
20 conversations starting up. I don't want you to start up a
21 conversation with anybody outside the courtroom about the
22 case because it is not fair. You don't know who is trying
23 to influence you or what to say. Don't need to do any
24 independent research. I don't need you to get on social
25 media and say I am on the jury. The answer is, somebody

1 asked you, the Judge told me not to talk about the case.
2 Y'all know very little about it for now. The testimony
3 and evidence will come in and then I will give you my
4 instructions on the law. Another thing, as you are coming
5 in and out of the Court House, not even me, are allowed to
6 try to influence you about the case outside the courtroom.
7 They can influence you in here because it is on the
8 record. But as you are coming in, good morning, good
9 afternoon is all you get from any of these people. They
10 are not being rude, they are just being rule followers.
11 The rule is, don't talk to the jurors. The bailiffs and
12 the deputies can speak to you and here is the jury room,
13 that is their job. If the newspaper comes out tonight and
14 the newspaper can be wrong. We had a case in Laurens and
15 they had the wrong Judge, it was Judge Addy instead of me.
16 So don't read the newspaper. You are free to go, see you
17 tomorrow at 1:00.

18 (Whereupon, the jury was excused from open court
19 until the next day at 1:00 p.m.)

20 THE COURT: Let's take a couple of minutes break.

21 (Whereupon, a short break was taken.)

22 THE COURT: All right. We've talked briefly
23 in-chambers about some of the pre-trial motions and
24 counsel from both sides kind of agreed that the double
25 jeopardy motions was filed, I think, by the Defendant's

1 teams this morning would be the most appropriate to hear
2 first.

3 MS. BOLEN: Yes, sir.

4 THE COURT: Okay. Ms. Bolen, it's your motion.

5 MS. BOLEN: Thank you, Your Honor. As Your Honor
6 just referenced, I did clock in a brief with the Clerk's
7 office and did give both the Solicitor and Your Honor a
8 copy of the brief and the relevant case law this morning.
9 I believe the, you know, the majority of the argument is
10 in the brief, Your Honor. But to explain it for the
11 record procedurally where we are on this case, Your Honor.
12 Mr. Henley was charged with these, there were two charges
13 back from 2012, larceny and burglary, petty larceny and a
14 burglary first. Both of the charges arose out of the same
15 allegations that he went to the home of Ms. Moss and took
16 a Dell laptop from inside.

17 THE COURT: Hang on. Hang on one second, Ms. Bolen.
18 Let's make sure. Can y'all verify there's no jurors left
19 in here?

20 CLERK OF COURT: They are all gone.

21 THE COURT: They're all gone. Okay. For the record,
22 the juror, the courtroom is free of all the jurors during
23 the hearing of this motion. I just thought of that, and I
24 wanted to make certain that's clear. All right. Ms.
25 Bolen, continue on.

1 MS. BOLEN: Thank you, Your Honor.

2 THE COURT: I'm sorry about that.

3 MS. BOLEN: The case went to trial actually right
4 about a year ago, April 2015, on both counts and there
5 were witnesses offered by the State, as well as witnesses
6 offered by the Defense. The State's theory as presented
7 in both of their opening and closing, as well as by their
8 witness testimony, the theory was that Mr. Henley went
9 into this home and took a Dell laptop computer. At the
10 trial, Your Honor, the jury ended up ultimately acquitting
11 Mr. Henley of the petty larceny charge. The jury hung on
12 the burglary charge. It's our position, Your Honor, that
13 under the United Supreme Court of Yeager, the cite is 129
14 Supreme Court 2360. And I believe it was decided in 2009
15 that the issue preclusion part of the double jeopardy
16 clause applies in this case and should preclude the State
17 from further prosecuting Mr. Henley. To talk a little bit
18 about Yeager, Your Honor, Yeager was one of the Enron
19 executive cases where Mr. Yeager was an employee of the
20 Enron. Was one of the individuals accused of some of the
21 insider trading and securities fraud that was part of the
22 larger Enron scandal. He was charged, I think, with 129
23 counts. They were grouped into fraud counts and insider
24 trading counts. He went to trial. Was acquitted of the
25 fraud charges. The jury hung on the insider trading. The

1 United States sought to retry him, which he objected to.
2 He was convicted at the retrial of the case. Made its way
3 up to the Supreme Court where the very narrow issue, Your
4 Honor, and it's a narrow issue in that it's very
5 technical. But the holding itself is actually very broad.
6 And I know, obviously, we're dealing with different
7 charges, this is not an insider-trading case, but the way
8 the Supreme Court reasons its decision in Yeager and the
9 way it states its holding makes it clear that their
10 holding applies to the principal at issue not to, you
11 know, when this acquittal hung jury thing happens
12 specifically with respect to securities fraud charges.
13 But, Your Honor, what the Supreme Court looked at were the
14 two interests that are basically at issue with double
15 jeopardy, you know, the first one being that the State
16 shouldn't be allowed to retry someone because of issues,
17 that the State has so many resources and if they're
18 allowed to keep retrying someone, that it basically
19 eventually wears them down. They identified that as the
20 first interest under double jeopardy. And the second one
21 was the preservation of the finality of judgments. And
22 it's that second interest that identified as being the key
23 interest in the Yeager analysis. Basically, what they
24 did, Your Honor, what the Supreme Court did in Yeager was
25 make this analysis that if there's a fact that was

1 necessarily determined by a jury in a first trial and that
2 fact is something that is essential in the State's second,
3 were the State to have a second trial and it was
4 necessarily decided that that fact becomes what jeopardy
5 attaches to and prevents the State from going forward on
6 this, the hung counts in a second trial. And the way it
7 kind of makes sense to me is if you think of a venn
8 diagram, you've got these, you know, these two charges.
9 In Yeager, it's securities fraud, insider trading. There
10 they have different elements, they're different crimes,
11 but there is a fact that was being used in both of them
12 and it's an overlapping fact in a sort of venn diagram
13 sort of situation. In this case, you've got the, you
14 know, the circle of the larceny and the circle of the
15 burglary. And there is a fact that was necessarily
16 decided by the jury last April that would, our position is
17 essential to the State's prosecution of him in this case.
18 Your Honor, the Supreme Court did find that this, a jury's
19 determination by virtue of some sort of verdict is not
20 just worth more consideration, but it's the only thing
21 that is worth consideration in this sort of analysis that
22 the fact that a jury hung is what they call a non-event.
23 That it's not something you need any sort of information,
24 because it is basically a non-entity. So they say you
25 look at what the jury did decide, whether it's a guilty or

1 not guilty. An actual verdict is an actual decision and
2 that's the controlling thing, not the fact that they hung.
3 And the Supreme Court brings that up in the context of the
4 District Court. Before it had upheld Yeager's conviction
5 on basically speculating why a jury might have hung, and
6 the Supreme Court said it was improper to engage in that
7 sort of analysis. That the proper thing is to look at
8 what a jury did decide. So both in Yeager and in Mr.
9 Henley's case, the jury made a decision as to one of the
10 charges that there was a finding of not guilt, Your Honor.
11 It's our position and one of the things that Yeager
12 requires and, of course, it references back to the double
13 jeopardy case of Ashe v. Swenson, which is also referenced
14 in the brief and which I didn't hand up a copy of. And
15 that's a case where Ashe was accused of being one of
16 multiple people who robbed a number of people who were
17 engaged in, I think, it was a poker game and he was tried.
18 I think there were like six people playing poker and a
19 bunch of people come in and robbed them. He was tried
20 with respect to one of the poker players. He was
21 acquitted, and so then they retried him a few weeks later
22 with respect to another poker player. And he brought up
23 the double jeopardy issue and the Supreme Court in that
24 case said the, you know, the issue in the first trial was
25 he there. And the jury decided, no, he wasn't, because

1 they found him not guilty. So the State can't then say,
2 well, we'll just try again with a second person who was
3 there. It's still the same set of facts. And Yeager
4 built on that with the added, again, very technical added
5 wrinkle that you've got an acquittal and a hung count
6 which a, I think, a fairly unusual situation, Your Honor.
7 There aren't many cases where you get an acquittal and a
8 hung count. I think there might be more where you get a
9 guilty and a hung count or something like that, but Yeager
10 deals specifically with this acquittal and a hung count.
11 In Mr. Henley's trial last year, Your Honor, and the
12 reason I go into the transcript and the brief and why I
13 just want to touch on it now is the Ashe and Yeager
14 analysis requires a looking at what facts were presented
15 at the prior trial. Because, again, double jeopardy
16 applies to the actual conduct being tried. You're not
17 supposed to be put on trial for the same offense twice.
18 So what offense was actually tried? And in the trial last
19 year, Your Honor, again, I give a summary of this in the
20 brief, but to sort of just touch on the, the highlights.
21 The testimony, as well as the way the case was framed for
22 the jury by the Solicitor, the testimony was that the
23 State's theory was that Mr. Henley went to the house and
24 took the Dell computer and that was it. There's no
25 testimony and no offering by the State that any other

1 items were taken, that any other crime was committed
2 inside the home. There's no other evidence that any other
3 crime was intended to have been committed inside the home.
4 And the reason that's important, Your Honor, is because
5 it, that is the conduct for which he would be on trial
6 again now. We have not, he's not been given any other
7 sort of other indictment for any other sort of crime. And
8 we were not put on any notice for any other sort of crime.
9 And, Your Honor, to speak to sort of anticipating what the
10 State may respond with that it's, obviously the State does
11 not need to prove a crime in order to prove the burden,
12 that the elements of the burglary are, you know, unlawful
13 entry with the intent to commit a crime therein. The
14 State doesn't need to actually prove the crime inside, but
15 they do need to prove the intent to commit a crime inside
16 and there is case law and, again, it's in the brief. It's
17 the State v. Gilliland case that requires that that crime
18 be, the crime or the crime that's intended happened inside
19 the house, and I don't see how when he has been acquitted
20 of the larceny and that's the only thing that there's been
21 any sort of record of being in a crime, that's it. That's
22 the only crime that he can either be accused of or have
23 had the intent to commit from all the discovery given and
24 all the testimony in this trial that we had last year.
25 They can't, since he has actually been acquitted of that

1 under Yeager, they can't come back and try to find him
2 guilty of that burglary, because he's been acquitted of
3 the crime which they even said, this is the crime he went
4 inside to commit. They said that in their opening and
5 that's in their warrant. That was clear from their
6 testimony. So it's our position, Your Honor, that under
7 the Supreme Court case of Yeager that because of this
8 overlap in facts that jeopardy attaches because he was
9 acquitted of full larceny that there is, in order for them
10 to prove their case at all for a burglary, they need to
11 reference some sort of crime and the only one they can
12 reference is larceny. He's been acquitted of that
13 larceny. So it's our position that under Yeager and Ashe
14 that the issue preclusion analysis offered there and done
15 under the double jeopardy clause of the Fifth Amendment
16 would prevent the State from prosecuting him again on this
17 case. I believe I've hit everything I wanted to hit and,
18 again, I did submit the briefs and I want to make sure
19 that it's a part of the record. But I'd also like to
20 reserve the opportunity to respond after the State, if
21 possible.

22 THE COURT: Okay. Let's hear from the State.

23 MR. ANDREWS: Thank you, Your Honor. While Ms. Bolen
24 does note that the warrant identifies that petty larceny,
25 we would note that the indictment does not identify that a

1 petty larceny was committed inside. It merely restates
2 the elements of burglary in that Mr. Henley entered with
3 the intent to commit a crime therein. We didn't say there
4 was larceny in the indictment. And to quote Yeager,
5 because a jury speaks only through its verdict, it's
6 failure to reach a verdict cannot by negative implications
7 yield a piece of information that helps put together the
8 trial puzzle. Such conjecture about possible reasons for
9 a jury's failure to reach a decision should play no part
10 in assessing the legal consequences of a unanimous verdict
11 that the jurors did return. Your Honor, we will certainly
12 concede that the not guilty on the larceny puts us in a
13 much tougher spot with regard to proving the burglary.
14 But again we would note the elements of burglary of Code
15 16-11-311(a). A person who is guilty of burglary in the
16 first degree if a person enters a dwelling without consent
17 and with intent to commit a crime in the dwelling. It
18 doesn't say enters without consent and commits a larceny.
19 Again, it is something that I said in opening. Mr. Brown
20 mentioned in closing. There was testimony about a stolen
21 lap top. Mr. Brown and I have pretty much resigned
22 ourselves to the fact that any mention of that lap top
23 will be gone from this trial. But to say that Yeager
24 precludes us from going forward on this case because of
25 double jeopardy is to just read Yeager too broad. Ms.

1 Bolen did mention Gilliland. Your Honor, all I can say is
2 that was starting to sound like a motion for a directed
3 verdict, and we're just not at the directed verdict stage.
4 This is a motion to quash the indictment. Also, I'd like
5 to, I did give the Court a copy of State vs. William
6 Peterson.

7 THE COURT: I have got it.

8 MR. ANDREWS: And it's not exactly on point. It is
9 not a case of a mistrial as to one count and a verdict as
10 to another count. But it is an assault with intent to
11 commit CSC, along with a burglary case. The Defendant in
12 the assault with intent to commit CSC was found not guilty
13 of the assault with intent to commit CSC but found guilty
14 of the burglary first degree. Defendant appealed and the
15 Court reasoned basically the same reason that there is no
16 requirement that the Defendant has to be found guilty of
17 the underlying crime. Once again to sum it up, Your
18 Honor, the elements of burglary do not require us to prove
19 the underlying larceny. They merely require the State to
20 prove that there is an intent to commit a crime in the
21 dwelling. Also, Your Honor, there is, we would cite to a
22 Supreme Court of Appeals of West Virginia. It is State of
23 West Virginia, that cite is 693 S.E.2d 82. Again, Your
24 Honor, this is murder and conspiracy to commit murder. If
25 I can beg the Court's indulgence briefly. That was a

1 trial for murder and conspiracy. Acquitted on the
2 conspiracy to commit murder, a mistrial on the murder, and
3 then the State was allowed to come back and retry on the
4 murder.

5 MS. BOLEN: What year was that?

6 MR. ANDREWS: The year was April 5th, 2010 and,
7 again, the cite is 693 S.E.2d 82.

8 THE COURT: All right. Are you ready to go back?
9 You, you done?

10 MR. ANDREWS: Yes, sir, Your Honor.

11 THE COURT: Great. Ms. Bolen, you want any short
12 reply?

13 MS. BOLEN: Yeah, if I can, I do want a short reply,
14 Your Honor. I'm just looking at the West Virginia case
15 that they've pulled up.

16 THE COURT: All right. As I understand the facts of
17 this case, y'all are going to be able to present witnesses
18 and testimony showing whatever you can, but you're not
19 going to be able to present testimony that he committed a
20 specific crime.

21 MR. BROWN: That's correct, Your Honor..

22 MR. ANDREWS: Yes, sir.

23 MR. BROWN: We'd present as our witnesses find him
24 and find his car backed up under the Moss' garage with the
25 backdoor open. He rode by, saw the man inside the house,

1 came out. He probably caught him right at the beginning
2 of his burglary. Didn't really have the time to get into
3 it that much, and startled him and he came down and had a
4 conversation with the witness and then drove off.

5 MR. ANDREWS: And, obviously, this is the testimony
6 we anticipate and I'm assuming we'll go back over this at
7 the directed verdict stage.

8 THE COURT: Yeah, y'all got a tough row to hoe. The
9 law, and I want to hear Ms. Bolen again, but the law seems
10 to be--

11 MS. BOLEN: And, Your Honor, I'm sorry. I'm still
12 reviewing this.

13 THE COURT: Y'all's elements y'all are quoting are
14 consistent with the evidence as I understand it. I'll put
15 it that way.

16 MS. BOLEN: Your Honor, if I could respond and I've
17 read, I think I've read enough of the West Virginia case
18 to be able to respond about it. In that case, it is a
19 murder and a conspiracy to commit murder set of charges,
20 and it looks like the facts are basically that Mr. Taylor,
21 along with a number of other individuals were accused of,
22 I think, shooting into a car and killing someone. They're
23 originally charged with murder, and then there is an
24 indictment for conspiracy. That indictment looks like
25 it's procedurally dismissed at some point, because the

1 indictment didn't allege the overt act required for a
2 conspiracy. And the State gets another indictment for
3 conspiracy that basically alleges there's some kind of
4 drug thing going on between the five individuals involved
5 in the shooting and the victim of the murder. And Mr.
6 Taylor was acquitted of the conspiracy and it is
7 determined that he is the shooter acquitted of the
8 conspiracy. The first jury hangs on the murder and they
9 do bring up double jeopardy. It doesn't look like they
10 bring up Yeager specifically.

11 MR. BROWN: They do.

12 MS. BOLEN: Oh, they do? Okay. And, I guess, they
13 do later before. Yeah. Your Honor, I think the big
14 difference there is that you don't have this overlapping
15 set of facts. What's required to prove the conspiracy you
16 can, you could be guilty of a murder without being
17 involved in any sort of conspiracy. There's no fact in
18 the conspiracy that would be required in order to prove
19 the murder. Many murders would happen without any sort of
20 conspiracy and I think that's the difference with this
21 case is that the State needs to prove the intent to commit
22 a crime therein. He's been found not guilty of the only
23 crime they could possibly try to prove therein. That's a
24 necessary fact for them. Whereas, conspiracy is not any
25 sort of necessary fact for a murder conviction. Your

1 Honor, also to respond, it is true that, you know, the
2 reason I attached the warrant to the brief, the indictment
3 does not reference the larceny. But I believe from
4 working closely with the Solicitor's office and having
5 worked there myself a number of years ago that their
6 indictments are pretty much form, just copy the language
7 of the statute. So it would not all be unusual that it
8 didn't reference any specifics. Solicitor Andrews also
9 said that I was reading Yeager too broadly, Your Honor.
10 Just, and, again, this language is actually quoted in the
11 brief that I presented. But looking at the first
12 paragraph of the Court's opinion in Yeager, this is not a
13 situation where they're limiting the holding to something
14 involving these particular sets of charges. It is, again,
15 it is both a very narrow and a very broad holding. It's
16 narrow in that it's a very technical issue, but it applies
17 whenever you've got this hung and acquittal where there's
18 this sort of overlapping venn diagram of facts. And what
19 the Court says is the question presented in this case is
20 whether an apparent inconsistency between a jury's verdict
21 of acquittal on some counts and its failure to return a
22 verdict on other counts affects the preclusive force of
23 the acquittals under the double jeopardy clause of the
24 Fifth Amendment. We hold that it does not. And so,
25 obviously, the acquittals preclude the State from going to

1 trial on Mr. Henley again for the larceny. And what the
2 Supreme Court is saying in Yeager is the fact that there's
3 a hung jury does not negate that preclusive effect of the
4 acquittals. It is our position that the acquittals
5 actually have a preclusive effect and prevent the State
6 from going forward. Finally, Your Honor, in the West
7 Virginia case, as well as I believe Yeager does not
8 specifically say this, but the West Virginia case does.
9 Says that deciding whether issue preclusion applies
10 requires the Court to look at the record and all the
11 findings. Again, I tried to put the relevant parts of the
12 record into the brief, but I do have the trial transcripts
13 that I can hand up to Your Honor to review if you wish.
14 There's actually two, simply because we had two different
15 court reporters, but I think looking at the West Virginia
16 case, that might be something that is required for a full
17 finding, Your Honor.

18 THE COURT: All right. Here's what I think. I
19 understand your argument. I think it's a directed verdict
20 to fact question as to whether they conclude and get past
21 directed verdict stage. With the intent to commit a crime
22 therein is one of the elements of burglary first and
23 second and third. The State's got that burden of proving
24 with the intent to commit a crime. I don't believe the
25 acquittal of the larceny precludes them from presenting

1 facts which the jury could prove intent to commit a crime
2 therein. They have not had that opportunity yet. So I
3 think your motion should be denied right now, but I feel
4 confident you will most likely renew it at the directed
5 verdict stage in a similar-worded argument if the State's
6 failed to prove anything beyond a suggestion of intent to
7 commit a crime therein. So I don't believe jeopardy
8 attaches to the burden charge since it's not a specific
9 crime. The indictment does not get quashed at this point,
10 but the Court will be listening.

11 MS. BOLEN: Yes, sir.

12 THE COURT: All right.

13 MS. BOLEN: Thank you.

14 THE COURT: Understood?

15 MR. ANDREWS: Yes, sir, Your Honor.

16 THE COURT: All right. And I'm going to read these
17 cases very closely, too.

18 MS. BOLEN: Your Honor, did you want the transcripts
19 to review?

20 THE COURT: No, let's just wait and see if we need
21 those. Why don't you just hang onto it.

22 MR. BOLEN: Okay.

23 THE COURT: All right. What time y'all want to start
24 in the morning.

25 MR. BROWN: Judge, we'll be here at 8:45 or whenever

1 you want to get started.

2 THE COURT: Let's start at 9:30. I think what I want
3 to do is I want to make sure we can get the pretrial stuff
4 done, and then if we have a little extra time at least
5 we'll get to eat lunch, too.

6 MR. BROWN: Judge, last time we had Jackson v. Denno,
7 prior convictions, which is bifurcations, the cigarette
8 butt,--

9 MS. BOLEN: Uh-huh.

10 MR. BROWN: --boots. They said that y'all were not
11 going forward with the Biggers?

12 MS. BOLEN: Right, no Biggers.

13 MR. BROWN: Did I say that right?

14 MS. BOLEN: And former testimony. We were trying to
15 admit part of the transcript.

16 MR. ANDREWS: And I think there's only going to be
17 one witness here that actually testifies as part of these
18 hearings.

19 THE COURT: Okay. I think we'll be good at 9:30.
20 All right.

21 MS. BOLEN: Thank you, Your Honor.

22 THE COURT: See y'all later.

23 April 5, 2016

24 THE COURT: All right. What motions are we going to,
25 what order are we going to hear the motions?

1 MS. BOLEN: Your Honor, I just, if I could, I know
2 that Your Honor has already ruled on our double jeopardy
3 motion. I just wanted to add one more thing just for the
4 record to make sure the record is complete which I
5 neglected to mention yesterday, which is that the case the
6 State relied on, I think it was Taylor. I just wanted to
7 note for the record that that is a West Virginia State
8 case, and our position is that it's, therefore, not
9 binding authority on South Carolina.

10 THE COURT: They didn't rely on that case.

11 MS. BOLEN: Okay. Yes, Your Honor. I just wanted to
12 note that for the record.

13 THE COURT: Okay.

14 MR. ANDREWS: And, Your Honor, just to make it clear
15 that there isn't any issue with our candor toward the
16 Court. I did say that it was a Virginia Court of Appeals
17 case and our view was that it was possibly persuasive but
18 not binding.

19 THE COURT: All right. I liked the State versus
20 Peterson case that was handed up. That seemed to be, on
21 point also.

22 MR. ANDREWS: And that was the one we were relying
23 on.

24 THE COURT: All right. Very good. All right. So
25 now my question is which motions, what order?

1 MS. PATEL: I think we can proceed with the Jackson
2 v. Denno hearing, Your Honor.

3 THE COURT: Let's do that.

4 MR. ANDREWS: The State calls Patrick Thompson.

5 PATRICK THOMPSON, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Andrews:

9 Q Good morning, sir.

10 A Good morning.

11 Q Please state your name.

12 A I'm Patrick Thompson.

13 Q Who do you work with?

14 A I work for Abbeville County Sheriff's Office.

15 Q Do you remember being involved in a case against Mr.
16 Henley?

17 A I do.

18 Q At that time, what was your position within the
19 Abbeville Sheriff's Office?

20 A I was a detective with the Sheriff's Office.

21 Q Okay. What was your role in this case, sir?

22 A I was the primary investigator.

23 Q Did you have an opportunity to talk with Mr. Henley
24 on February 22nd of 2012?

25 A I did.

1 Q Please tell us about that talk, sir?

2 A We responded to Tabitha Court in Anderson County and
3 following up on some of the leads that we had made in the
4 case in reference to the vehicle, and went and talked to
5 Mr. Henley about him being the registered owner of one of
6 the possible vehicles in the case.

7 Q Let me ask you, sir, you talked about and the leads
8 about the vehicle. How did you develop the leads about
9 the vehicle?

10 A We had a partial tag. We had a tag from a witness
11 on-scene. And the tag did not match the vehicle
12 description given. So we had the Fusion Center with SLED
13 compile a list of all the possible tags throughout the
14 State and just the process of elimination. And then the
15 adjoining counties in the areas started following up on
16 the leads with the vehicles.

17 Q Okay. And you developed what you believed was a
18 matching vehicle, was that correct?

19 A A possible vehicle. It was the right color, the
20 right body type, and it was within Anderson County,
21 adjoining county.

22 Q As developing, as finding an address for this person
23 and a name, did you run a DMV registration inquiry on that
24 vehicle?

25 A Yes, I did.

1 Q Okay. And, again, what address did you say it came
2 back to?

3 A I believe it was Tabitha Court off of New Prospect
4 Road up in Anderson County.

5 Q Are you sure about that?

6 A I'm not one-hundred percent sure. There's several
7 little small roads right there off of there.

8 Q Okay. Can I show you a document that might refresh
9 your recollection?

10 A Yes, sir.

11 MR. ANDREWS: Your Honor, it's my understanding there
12 is an objection to the document that I want to use to
13 refresh Mr. Thompson's recollection. I'm not trying to
14 introduce the document at this point. I just want to use
15 it to refresh his recollection as to the address that he
16 searched. He ran this registration. This is what he
17 relied on to go to the particular address.

18 MS. PATEL: Your Honor, and I believe what the
19 Solicitor is trying to hand up is, looks like a DMV
20 report. I don't know if the officer pulled this report. I
21 think it would be an inappropriate document that he's
22 using to refresh his recollection.

23 MR. ANDREWS: Your Honor, I did just ask him if he
24 ran a DMV inquiry as to the vehicle.

25 THE COURT: I thought that is what he said he did,

1 partial tags and the locations.

2 MS. PATEL: I don't know. I think this is a license
3 plate. What is that?

4 THE COURT: Isn't that the same thing?

5 MR. ANDREWS: It would describe the vehicle. It has
6 the vehicle identification number and the make and model.

7 MS. PATEL: We would just object to this, Your Honor.

8 THE COURT: I'm going to allow it for the purposes of
9 this hearing. I'm not sure I'd let it in front of a jury.
10 I'm not sure I'd let it in front of a jury but go ahead.
11 Somehow he started a conversation with Mr. Henley. He
12 can't remember the address. I don't see that being a huge
13 fact. I mean this house in Anderson County is not part of
14 the crime scene, but it's in Abbeville, right?

15 MR. ANDREWS: Yes, sir.

16 THE COURT: And this is where he was located in the
17 first conversation he had? I mean it seems to me it would
18 be appropriate to say, I got an address and went and I
19 talked to Mr. Henley. And that would be sufficient for
20 purposes of this hearing. I don't see that being a fact
21 that's in dispute that they talked.

22 MR. ANDREWS: Okay. Right.

23 THE COURT: All right. We used to do that, but I
24 just don't see the address being a big deal.

25 MS. PATEL: Yes, Your Honor.

1 A Yes, sir. Glory Lane and Tabitha Court are two roads
2 that run into this larger apartment complex.

3 Q Did you go to the apartment that was listed?

4 A Yes, sir.

5 Q And what did you do there?

6 A Knocked on the front door. A female came to the
7 door. And I asked her if Mr. Henley was there. And Mr.
8 Henley stepped out and spoke to us.

9 Q Okay. Was anybody with you?

10 A Sergeant Belcher was.

11 Q Okay. How were you guys dressed?

12 A Oh, the uniform of the day is usually going to be a
13 polo shirt and cargo pants.

14 Q What were you guys in as far as your vehicle?

15 A I'm not sure which vehicle we rode in but myself and
16 Belcher both had unmarked vehicles.

17 Q And that's what I was getting at, was it an unmarked
18 vehicle?

19 A Yes, sir.

20 Q Did you have your blue light or siren on?

21 A No, sir.

22 Q And around what time of day was this?

23 A Midmorning.

24 Q Do you remember what time?

25 A I would say and before lunch, probably 10:00 o'clock

1 or so.

2 Q Okay. And let's back up a little bit. Did you say
3 Mr. Henley came to the door?

4 A No. A female came to the door.

5 Q Okay. Were you able to eventually talk with Mr.
6 Henley?

7 A I did. I asked if he was there and she said yes.
8 And we ended up speaking with Mr. Henley on the front
9 steps of the apartment there.

10 Q Did he voluntarily come out?

11 A Yes, sir.

12 Q As far as where you were in relation to his door, how
13 far away were you from the door of the residence?

14 A Oh, we spoke, the way the apartments are set up.
15 He'd come straight out of the apartments and there's a
16 little sidewalk, and then straight into the parking lot.
17 So there's probably 10 or 15 feet between the front of the
18 cars and the front of the apartments. And just right in
19 that little common area right outside the front door.

20 Q So you were outside?

21 A Yes, sir.

22 Q Did Mr. Henley appear to be under the influence of
23 any drugs or alcohol?

24 A No, sir.

25 Q Did he appear to be suffering from any other kind of

1 mental or physical problem?

2 A No, sir.

3 Q Was he under arrest at the time?

4 A No, sir.

5 Q What did you guys talk about?

6 A The conversation started off with who was the
7 registered owner of the vehicle and where the vehicle was
8 the week prior, if anybody else had been driving your
9 vehicle, so on and so forth.

10 Q Did he admit to having been in Abbeville County
11 recently?

12 A He did.

13 Q Do you remember what exactly he said about being in
14 Abbeville County?

15 A The questions were left kind of open and open-ended,
16 you happen to be in Abbeville last week? He responded
17 yes. Did you happen to stop anywhere in Abbeville? Yes.
18 And from there, did you happen to speak with a guy in a
19 white truck? Yes. And that was the course of the
20 conversation.

21 Q And do you remember how he was dressed at the time?

22 A Just normal street clothes.

23 Q Did he appear to be alert?

24 A Yes, sir.

25 Q Did you take a look at his boots?

1 A I did.

2 Q Were those significant or noteworthy in any way?

3 A On-scene there was a faint impression in the carpet.
4 And then while speaking with him, we noticed that he was
5 wearing work boots at that time. And do you mind if I see
6 the bottom of your boot and he obliged us.

7 Q Was he smoking when you were talking with him?

8 A Yes, he was.

9 Q What was he smoking?

10 A I believe he was smoking a cigar at the time.

11 Q Did you and he discuss whether he smoked cigarettes?

12 A Yes, I did.

13 Q And what did he tell you about smoking cigarettes?

14 A I asked him if he happened to smoke cigarettes and he
15 stated he did. I asked him what brand he smoked and he
16 stated Newport's.

17 Q At any time during your conversation did he tell you
18 that he wanted to terminate the conversation?

19 A No, sir.

20 Q Did he ever attempt to walk away from you?

21 A No, sir.

22 Q Did you ever place him under arrest?

23 A No, sir.

24 Q Did you give him his Miranda warnings?

25 A No, sir.

1 Q Were you threatening in any manner to him?

2 A No, sir.

3 Q And based on what you were able to observe about
4 Detective Belcher, was Detective Belcher threatening in
5 any way?

6 A No, sir.

7 Q How long did your conversation last?

8 A I was probably on-scene maybe 15, 20 minutes. It was
9 just a brief follow-up of what was going on and about the
10 whereabouts of the car and it just evolved into him
11 admitting to being on the scene.

12 Q So just to clarify that question, your conversation
13 lasted about 15 or 20 minutes?

14 A Thereabouts.

15 Q Okay.

16 MR. ANDREWS: Your Honor, if we could beg the Court's
17 indulgence just briefly.

18 THE COURT: Okay.

19 Q Do you remember what the weather was like that day?

20 A It wasn't rainy. It might have been clear and sunny.
21 I don't remember, but it wasn't inclement. It was pretty
22 weather.

23 Q Do you remember anything about the temperature?

24 A Not offhand.

25 Q All right. Other than the three of you, was anyone

1 else there?

2 A Other than the female and she was in the house, and I
3 think she came to the door looking out one time.

4 Q Do you remember if anybody around the apartment
5 complex was being nosey for lack of a better term?

6 A Not offhand.

7 Q Okay. Thank you, sir. Please answer any questions
8 the Defense may have for you.

9 A Okay.

10 CROSS-EXAMINATION

11 By Ms. Patel:

12 Q Officer Thompson, you met with Rickey on February
13 22nd, 2012?

14 A Yes, ma'am.

15 Q And that was about six to seven days after the
16 incident took place?

17 A Yes, ma'am.

18 Q And you went to Rickey's apartment, right?

19 A Yes, ma'am.

20 Q And when you got there, you identified yourself as an
21 officer?

22 A Yes, ma'am.

23 Q Okay. And you did not go alone?

24 A No, ma'am.

25 Q And you arrived there with another officer?

- 1 A Yes, ma'am.
- 2 Q And both of you were in police cars?
- 3 A We were in an unmarked; one unit.
- 4 Q Okay. So there were two cars?
- 5 A No, just one.
- 6 Q Okay. And this was a case where you approach, you
- 7 and your officer approached Rickey for questioning, is
- 8 that right?
- 9 A Yes, ma'am.
- 10 Q It's not where Rickey called the station to say, hey,
- 11 come and talk to me, is that right?
- 12 A Yes, ma'am.
- 13 Q Okay. And when you were at Rickey's house, you were
- 14 there to question him about the burglary, is that right?
- 15 A We were following up on the vehicle.
- 16 Q Okay. And the vehicle was related to a burglary that
- 17 occurred?
- 18 A Yes, ma'am.
- 19 Q Okay. So it's safe to say that you were going to
- 20 talk to him about a burglary?
- 21 A Yes, ma'am.
- 22 Q Okay. And you weren't going to talk to him as a
- 23 witness, is that right? He wasn't a witness to a
- 24 burglary?
- 25 A No.

1 Q And he wasn't a victim of a burglary?

2 A No, ma'am.

3 Q Okay. And, eventually, after questioning, a few days
4 later he turned himself into the Detention Center?

5 A Yes, ma'am.

6 Q Okay. And you talked to him at that point?

7 A Yes, ma'am. I believe we attempted to interview him
8 after the arrest was made.

9 Q Okay. And at the Detention Center, did you read him
10 his Miranda rights?

11 A I think he was Mirandized and requested legal
12 counsel.

13 Q Okay. But you never read him his Miranda rights on
14 February 22nd, is that right?

15 A No, ma'am.

16 Q And you actually questioned him about certain facts
17 that you learned as a part of your investigation of this
18 case?

19 A Yes, ma'am.

20 Q And so you had developed him as a suspect when you
21 went to speak with him on February 22nd?

22 A We were looking for the vehicle, not necessarily him
23 as a suspect.

24 Q And the vehicle that was involved in the burglary, is
25 that right?

- 1 A Yes, ma'am.
- 2 Q Okay. And you asked about him, you asked about his
3 whereabouts, is that right?
- 4 A Yes, ma'am.
- 5 Q And you didn't give a specific date?
- 6 A No, ma'am.
- 7 Q You asked him if he was ever on Highway 28?
- 8 A Yes, ma'am.
- 9 Q And you were questioning him about his boots, right?
- 10 A Yes, ma'am.
- 11 Q Okay. And because you were trying to figure out if
12 that can, if that would lead to any further, sorry. If
13 that would further your investigation in the burglary?
- 14 A Yes, ma'am.
- 15 Q Okay. You would say the purpose of getting the boots
16 would be for evidentiary value?
- 17 A Yes, ma'am.
- 18 Q Okay. And so you're saying that Rickey wasn't a
19 suspect at the time?
- 20 A When we first arrived on the scene, we were there to
21 investigate and it evolved into, during the course over
22 the conversation, that he became a suspect.
- 23 Q And but you never read him his Miranda rights?
- 24 A No, ma'am.
- 25 Q Okay. So this conversation that you had with Rickey,

1 it was never recorded?

2 A No, ma'am.

3 Q And back in 2012, you didn't have body cams?

4 A No, ma'am.

5 Q You did have a pen and paper, right?

6 A Yes, ma'am.

7 Q Okay. And it's customary that you would let a
8 witness or a suspect or someone would write a statement?

9 A If they wished to do so.

10 Q Okay. Did you ever offer this to Mr. Henley?

11 A No, ma'am.

12 Q But the eyewitness in this case gave a statement,
13 right?

14 A Yes, ma'am.

15 Q A written statement?

16 A Yes, ma'am.

17 Q So it's possible that Mr. Henley could have wrote a
18 statement?

19 A Yes, ma'am.

20 Q Okay. I just want to kind of touch on where you and
21 Officer Belcher and Mr. Rickey were speaking. This was
22 between, I guess, the front door, Rickey was standing in
23 front of the door?

24 A Yes, ma'am.

25 Q And then it was you and Officer Belcher?

1 A Yes, ma'am.

2 Q It was an apartment complex, so there wasn't that
3 much space, is that right?

4 A It is approximately 10-15 foot thereabouts. There's
5 a, the edge of the parking lot, a walkway, a small grass
6 spot, and then the buildings.

7 Q Okay. And there was always two officers, and then
8 Rickey, is that right?

9 A Yes, ma'am.

10 Q Okay. And did anyone ever tell Rickey that he could
11 leave?

12 A No, ma'am.

13 Q Was he free to leave?

14 A Yes, ma'am.

15 Q Okay. And then so just to confirm, you went to
16 Rickey's house on the 22nd of February, is that right?

17 A Yes, ma'am.

18 Q And this incident happened on the 16th of February,
19 I'm sorry.

20 A The 15th, I believe.

21 Q 15th. I'm sorry. And then you and Officer Belcher
22 thought that Rickey was a suspect in this case?

23 A Yes, ma'am. During the course of the conversation,
24 he became a suspect.

25 Q Okay. But before you went to see Rickey, you pulled

1 his criminal history, is that right?

2 A Yes, ma'am.

3 Q Okay. And you wrote an affidavit in this case?

4 A Excuse me?

5 Q You wrote an affidavit in this case as to your
6 investigation?

7 A There's a supplemental to the--

8 Q Okay. You wrote it on August 27, 2012. If I hand it
9 up to you, would that refresh your memory?

10 A Yes, ma'am.

11 Q Okay. Did the Solicitor ever hand you a report based
12 on your findings, he typed it up?

13 A I couldn't tell you. It's been four years.

14 Q I'm going to hand up an affidavit that you signed,
15 just to refresh your memory, okay?

16 A Okay.

17 Q And just take a look at it. I want you to focus on
18 the, kind of the investigation part before you go and
19 speak with Mr. Henley. You said that you had ran some
20 license plates after you spoke with the eyewitness, is
21 that right?

22 A Yes, ma'am.

23 Q And it was at that point where you then pulled the
24 criminal history of Mr. Henley, is that right?

25 A Yes, ma'am.

1 Q Okay. And then you said you found out that Mr.
2 Henley fit the description of the eyewitness' description
3 that he gave as the suspect in this case?

4 A Yes, ma'am.

5 Q Okay. So it's safe to say that Mr. Henley was a
6 suspect before you went to go see him on the 22nd?

7 A He was one of several people, but he was the closest
8 one in our investigation to start following up on.

9 Q Okay. Is it safe to say when you generate a lineup,
10 you usually include suspects in the lineup?

11 A Yes, ma'am.

12 Q Okay. And you generated a lineup in this case on
13 February 17th, 2012 and that's two days after this
14 incident took place?

15 A I'm not sure of the dates.

16 Q Okay. As a part of your investigation in this file,
17 you gave the Solicitor's Office your investigative file,
18 is that correct?

19 A Yes, ma'am.

20 Q And in that file you included photographs, different
21 vehicles you were using to present to the eyewitness to
22 identify--

23 A Yes, ma'am.

24 Q --the suspect vehicle? In that file you included a
25 lineup that you generated?

1 A Yes, ma'am.

2 Q If I hand you that lineup would that refresh your
3 recollection?

4 A Yes, ma'am.

5 Q I just want you to take a look at the date on the
6 bottom of the page. That was two days after the incident
7 occurred?

8 A Yes, ma'am.

9 Q And is, does that lineup include Mr. Henley?

10 A Yes, ma'am.

11 Q Okay. So Mr. Henley was a suspect before you went to
12 go talk to him on the 22nd?

13 A Yes, ma'am. And Mr. Culbreth could not pick him out
14 of the lineup.

15 Q Okay.

16 MS. PATEL: Beg the Court's indulgence, Your Honor.

17 Q Officer Thompson, I just want to redirect your
18 questioning to when you were actually speaking with
19 Rickey. Did you ever tell him that you collected a
20 cigarette butt in this case?

21 A Yes, ma'am.

22 Q Did you ever tell him that it was going to come back
23 with his DNA on it?

24 A No, I told him that it was going to be analyzed and
25 he'd already, he was in the CODIS database. So he did

1 have a sample on file for a comparison.

2 Q And did you ever tell him that if the DNA came back
3 you would come back and arrest him?

4 A Yes, ma'am.

5 Q And you also stated that you had several other
6 suspects in this case. Did you ever follow up with those
7 other suspects in this case?

8 A No, ma'am. Not after the conversation.

9 Q Okay.

10 MS. PATEL: Your Honor, those are the questions that
11 the Defense has.

12 MR. ANDREWS: Just brief redirect, Your Honor.

13 THE COURT: All right. I want a fact question. The
14 boots, he had boots and we can see the bottom of his
15 boots. Did he take the boots away?

16 MR. ANDREWS: He did not. I was just about to ask
17 him.

18 THE COURT: Okay. That's where I kind of lost the
19 factual pattern of that issue. So the boots were on his
20 feet, we can see the bottoms and that's about as far as I
21 can remember the facts being developed.

22 MR. ANDREWS: That's correct and I was just about to
23 clear that up.

24 REDIRECT EXAMINATION

25 By Mr. Andrews:

1 Q So, sir, did you take a look at the bottom of Mr.
2 Henley's boot treads?

3 A I did.

4 Q Did you collect those boots?

5 A No, sir.

6 Q So just to be absolutely clear. When your 15 to 20
7 minute conversation ended, Mr. Henley walked back into his
8 apartment still wearing his boots?

9 A Yes, sir.

10 Q Okay. Now, at some point during your
11 cross-examination, Ms. Patel touched on an identification
12 made by, or not made by Mr. Culbreth?

13 A Yes, sir.

14 Q Did Mr. Culbreth pick anybody out of that lineup?

15 A No, sir.

16 Q Did he pick multiple people out of the lineup?

17 A After he was unable to pick anyone out of the lineup
18 of normal course of action, narrow it down to a couple of
19 people, pull if there is any characteristic of each person
20 that would help us in identifying the person, note those
21 out to the side. If it's got a similar hairline, a

22 similar type eyes, similar facial features and if he can
23 narrow it down to two possibilities or so on and so forth.

24 Q Let me stop you. You testified in a prior proceeding
25 that he picked two people out of that lineup?

1 A Yes. He picked two possible people out of the
2 lineup.

3 Q Okay. All right. And I asked you this on direct but
4 just to be certain. Was there at the time that you
5 interviewed Mr. Henley on August 22nd, I'm sorry, on
6 February 22nd of 2012, was there an arrest warrant
7 pending?

8 A No, sir.

9 Q Okay. So did you have an arrest warrant in hand?

10 A No, sir.

11 Q Did Detective Belcher?

12 A No, sir.

13 Q In fact, during your cross, Ms. Patel developed that
14 during the course of your conversation with Mr. Henley,
15 did you say to him if we get a DNA hit on this cigarette,
16 I'm coming back to arrest you?

17 A Yes, sir.

18 Q Thank you, sir.

19 THE COURT: All right. Anything else?

20 MS. PATEL: Just one question, Your Honor.

21 THE COURT: Go ahead. You can go.

22 RECROSS-EXAMINATION

23 By Ms. Patel:

24 Q So there were two lineups generated in this case?

25 A No, just one lineup, I believe.

1 Q Earlier you just, when I had showed you the first
2 lineup and you said that Mr. Culbreth did not identify
3 anybody from that lineup?

4 A He did not positively identify anybody.

5 Q Okay. So that lineup was presented to Mr. Culbreth?

6 A Yeah, the one, this is not the exact profile or the
7 type lineup as the larger set that was actually given to
8 Mr. Culbreth. I don't, the one that was actually
9 presented is similar to this, but this is not the actual
10 one that was presented.

11 Q Okay. So there were two lineups that were presented.
12 I'm not asking if he picked anybody out of the first or
13 second. There were two lineups?

14 A No.

15 Q Two different lineups that were shown to the witness?

16 A There was only one lineup. The one that you gave me.
17 There's the way the computer generates it, it's just like
18 there's two. It presents it in a format like this, and
19 then a larger format with larger pictures. This is more
20 than likely the same lineup. The one that was presented
21 to him was just in a different format, but he was only
22 presented one lineup.

23 Q If I gave you the second lineup or the lineup that I
24 have, the color lineup, would that help you compare the
25 lineup--

1 A Yes, ma'am.

2 Q --you have in front of you, so you can determine
3 whether it's the same one?

4 A Yes, ma'am. No, these are two different lineups.

5 Q So is it your testimony that you presented Mr.
6 Culbreth with two lineups?

7 A I presented him with one lineup, and this is the
8 actual lineup that was presented with his initials.

9 Q Okay. And you have no idea where that lineup came
10 from that I first handed you?

11 A This one that you just gave me appears to be the
12 actual--

13 THE COURT: Well, let's, just so the record is clear.
14 I want you to re-ask the question, but I want these marked
15 first. That way Ms. Holston and I know what we're talking
16 about, because y'all are more familiar with them. So take
17 them from him.

18 MS. PATEL: Oh, I'm sorry.

19 THE COURT: Let her mark them, and then you can ask a
20 question with the parts.

21 REPORTER: All right. Be they, they sound the same
22 thing. Okay. This one is already marked, Judge, as
23 State's number 19.

24 THE COURT: All right. Whatever you want to do to
25 mark them for the purposes of this hearing and do so.

1 REPORTER: Okay. We're going to do this as
2 Defendant's 1 as identification only.

3 MS. PATEL: Yes.

4 (Whereupon, Defendant's No. 1 was marked for
5 identification only.)

6 THE COURT: All right. Now, Ms. Patel, go back and
7 start back over from like where your question was but was
8 there more than one lineup. It's something along those
9 lines.

10 Q Officer Thompson, I'm going to hand up to you State's
11 Exhibit 19.

12 A Okay.

13 Q What I'm also going to do is hand to you Defense
14 Exhibit 1.

15 A Okay.

16 Q You stated earlier that only one lineup was presented
17 with the witness in this case?

18 A Yes, ma'am.

19 Q But there were two lineups in your file, is that
20 correct?

21 A Yeah. If this is what you have that was turned over,
22 then if it's in the file, then it was in the file.

23 Q Okay. So two lineups were presented in this case to
24 the witness?

25 A No, ma'am. One lineup was presented.

1 Q Okay.

2 A We might have two lineups generated, but one was
3 presented.

4 Q Okay.

5 MS. PATEL: Beg the Court's indulgence. I have no
6 further questions, Your Honor.

7 THE COURT: All right. You can step down.

8 MS. PATEL: Your Honor, may we take a quick recess?

9 THE COURT: Sure. Let's take a short break.

10 (Whereupon, a short break was taken.)

11 THE COURT: All right. Currently, y'all called your
12 witness.

13 MR. ANDREWS: Yes, sir.

14 THE COURT: The statements you are trying to
15 introduce and they are trying to prohibit are those half a
16 dozens questions, you been to Abbeville last week, did you
17 stop anywhere, did you speak to the guy in the white
18 truck. What brand of cigarettes do you smoke. Basically
19 those questions, that is what y'all were trying to
20 prohibit?

21 MR. ANDREWS: And the shoes, Your Honor. Our view is
22 all of what we believe is admissible is the conversation
23 that occurred in front of the apartments in Anderson on
24 February 22nd, 2012.

25 THE COURT: And show me your boots?

1 MR. ANDREWS: Yes, sir. That would include show me
2 your boots.

3 THE COURT: And he did?

4 MR. ANDREWS: Yes, sir.

5 THE COURT: I mean he complied with showing the
6 bottom of the boots, so there was no response other than
7 action.

8 MR. BROWN: Judge, it actually kind of goes on in the
9 other. He said that during the investigation he saw a
10 boot impression in the house. And this is when he just
11 said, can you show me the boots. And then, ultimately,
12 later on the question is going to be, well, did they look
13 similar? Well, yeah. They looked similar.

14 THE COURT: The boot impression in the house that was
15 burglarized?

16 MR. ANDREWS: Yes, sir.

17 MR. BROWN: Burglarized.

18 THE COURT: All right.

19 MR. BROWN: And then just his impression on that.

20 THE COURT: Well, I just wanted to know where y'all
21 were going and what they're after before they do their
22 next move. All right. Ms. Patel, that's what I wanted to
23 find out is what, since there's no written statement or
24 something, I'm trying to make certain I have kind of--

25 MS. PATEL: Yes, Your Honor. I think the responses

1 that he gave in his statement was that he was in Abbeville
2 the week prior which means he was in Abbeville during the
3 time of the incident. That he spoke to somebody and that
4 he was driving his vehicle that matched the license plate
5 given by the eyewitness. Those would be the statements
6 that we would want to suppress.

7 MR. ANDREWS: And smokes Newport cigarettes.

8 MS. PATEL: And the boot testimony.

9 THE COURT: All right. Are you going to present
10 anything, Ms. Patel? I mean, I'm not sure you have to.

11 MS. PATEL: I'm sorry, Your Honor?

12 THE COURT: Are you going to present any testimony
13 from your client?

14 MS. PATEL: No, Your Honor.

15 THE COURT: Okay. Well, let me hear your argument
16 then.

17 MS. PATEL: Thank you, Your Honor. The Defense
18 looked at State v. Williams in this case. I can hand that
19 case up, Your Honor. I think this case set forth the
20 Jackson v. Denno factors. When determining whether a
21 person is in custody for the purposes of Miranda, we
22 believe that some of these factors play into Mr. Henley's
23 favor., I could just go down the different factors that
24 apply in this case, Your Honor. The first one is whether
25 the contact was made by law enforcement and whether the

1 person voluntarily agreed to interview. Your Honor, Mr.
2 Henley did not initiate contact with the police in this
3 case as we heard from testimony. Officer Thompson and
4 Sergeant Belcher showed up to Rickey's house and told him
5 to come out onto the front porch and speak with both of
6 the officers. At no point was Rickey made aware that he
7 could leave. The second factor is whether the expressed
8 purpose of the interview was to question the person as a
9 suspect, a witness or a suspect. Judge, we heard earlier
10 that before Officer Thompson went to Rickey's house, he
11 was in a lineup. He had pulled his criminal history.
12 There's really no other reason why officer went to
13 Rickey's house other than talking to him about where he
14 was, what he did a week ago at the time of the burglary.
15 So it's our position that the expressed purpose of Officer
16 Thompson's interview with Mr. Henley was, is to formulate
17 further that Mr. Henley was a suspect in the case. The
18 third factor is where the interview took place. Again,
19 this interview took place on the front porch of Mr.
20 Henley's house is where, very small quarters. It was
21 always two officers and Rickey the entire time. The other
22 factor, Your Honor, is whether the individual was
23 informed, whether they could terminate the interview,
24 leave at any time. And the individual indicated an
25 awareness of such freedom. I think I spoke on this

1 earlier, that it was never indicated to Mr. Henley that he
2 was free to leave. Also, one of the factors is the amount
3 of police officers that participated in this questioning
4 and in this case, there were two officers that were
5 present. The next factor, Your Honor, is whether law
6 enforcement dominated and controlled the course of the
7 interrogation. We heard testimony from the officer that
8 he was the one asking the questions, where Rickey was the
9 week prior, whether he was driving his vehicle. Although,
10 there was no specific date and address given, clearly the
11 officer was trying to figure out if Rickey would admit to
12 being at the incident location. I believe also one of the
13 factors is whether the officers manifested a belief that
14 the person was culpable and they had evidence to prove it.
15 Here, we heard some testimony that there was DNA on the
16 cigarette butt and that if it came back, you know, the
17 officers would return to arrest Mr. Henley. We would also
18 see that as a threat. Judge, when applying these factors
19 to our case, we believe that the reasonable person would
20 have believed that they were in custody. Again, here,
21 Rickey was called out to his front porch. The female was
22 not allowed to come outside and stand with Rickey while
23 this questioning was going on. He was clearly asked
24 questions that would illicit incriminating statements and,
25 therefore, he should have been Mirandized before any

1 questioning. Under that theory, Your Honor, we ask that
2 any statements that he made to law enforcement on February
3 22nd, 2012 should be suppressed.

4 THE COURT: All right. Mr. Andrews.

5 MR. ANDREWS: Thank you, Your Honor. Your Honor, we
6 would just note the interview was very short and the
7 interview took place at Mr. Henley's residence. It took
8 place outside his residence. Officers did not have an
9 arrest warrant, they did not arrest him at the time.
10 Whether a suspect was in custody is determined by an
11 objective analysis of whether a reasonable man in the
12 suspect's position would have understood himself to be in
13 custody. That is within State v. Williams, but that is
14 quoting State v. Ledford. To determine whether a suspect
15 is in custody, the trial court must examine the totality
16 of the circumstances which include factors such as the
17 place, purpose, length of the interrogation, as well as
18 whether the suspect was free to leave the place of
19 questioning. Ms. Patel did reference that Mr. Henley was
20 never told he was free to leave. We would disagree with
21 that. As elicited by Ms. Patel in her cross-examination,
22 the conversation that Detective Thompson and Mr. Henley
23 had was something along the lines of, if I find your DNA
24 on that cigarette, I'm coming back to arrest you. Which
25 in and of itself implies, I'm not arresting you today; I'm

1 arresting you at another time which, again, is an
2 implication that Mr. Henley was free to leave. All right.
3 Taking everything into account, Your Honor, when you
4 examine the totality of the circumstances, Mr. Henley was
5 not in custody. Miranda requires custody and
6 interrogation. We're not going to dispute there was
7 interrogation in this case, but our position is that there
8 was not custody, Your Honor.

9 THE COURT: All right. Understanding the factors
10 which were gone through by Ms. Patel, which I believe was
11 a citation within the case of State vs. Williams and part
12 of the Court of Appeals analysis for other states and
13 other articles or it was a AOL article written by Mr.
14 George Bloom, outlines 13 factors, which I believe that's
15 what you were going through, Ms. Patel. I was following
16 through those, which those factors are factors the Courts
17 can use, but those aren't adopted by this case I don't
18 believe. How our State has analyzed the Miranda warning
19 with, and there's several Supreme Court cases to analyze
20 Miranda, Maryland versus Shatzer and Stansbury versus
21 California which are also in State v. Williams. For my
22 record the cite for Williams is 405 S.C. 263 and 747
23 S.E.2d 194. It's my understanding that those other
24 factors are part of the factors the Courts and the trial
25 Judge can evaluate and determine whether or not if Miranda

1 is required. But primarily whether or not a person is in
2 custody, I think is the primary focus. And the testimony
3 that I heard was Mr. Henley was approached at the
4 apartment which he shared with some other lady, I'm not
5 sure who she was. He came to the door after the police
6 knocked on the door and he spoke to her. He stepped
7 outside. The conversation was 15 to 20 minutes. At the
8 end of the conversation, he went back in. He was asked
9 questions, do you own this car? You been to Abbeville?
10 Did you meet up with somebody? Can I see the bottoms of
11 your boots. And considering the testimony from the
12 officer as to how the questions that were asked and
13 there's one other police officer there. It's clear to me
14 had he been in custody or been under arrest, he would not
15 have gone back inside. But also clear to me is that he
16 wasn't a suspect when they went there, because there were
17 no reason to go ask him. He wasn't a witness, so he was
18 otherwise, meaning a suspect. So I think the statements
19 are voluntary and Miranda warnings. He was not in
20 custody. He was not under arrest at that time. I think
21 they'd be allowed. Now, as far as those statements are
22 allowed, now, y'all told me in chambers about an issue
23 with the boots and comments by the officers as to the
24 similarities of the boots. And we did not get into that
25 issue in this hearing, so I'm not ruling on that. I just

1 want to be clear that I'm not ruling on the admissibility
2 of any other testimony about the boots or a footprint or
3 that type of thing. It's the boot, are those your boots?
4 Yes. Can you show me the bottom? Sure. I'm not certain
5 how much further that goes, but I'm not ruling on whether
6 or not those comments or any follow-up comments are going
7 to be allowed. I'm not ruling on that. Y'all talked to
8 me about that, but I'm not, this ruling does not affect
9 that. I've not heard that issue yet.

10 MS. PATEL: Your Honor, yes, sir. And I, as this
11 hearing was proceeding, I was thinking we may have, there
12 may have been enough testimony elicited from Officer
13 Thompson for us to make the motion. I don't know if we
14 necessarily need to recall him, but we would want to make
15 a motion on the admission of any statements by Officer
16 Thompson about the comparison of the boots.

17 THE COURT: Y'all want to, tell me, Ms. Bolen. I'm
18 going to let you, are you going to argue the boot motion?

19 MS. BOLEN: Yes, sir.

20 THE COURT: All right. Y'all want to call him back
21 if we go into the second part?

22 MR. ANDREWS: I think it's pretty, we may be able to
23 just consent. Basically, it's anticipated that Detective
24 Thompson would just testify that the boots that he showed
25 us on February 22nd resemble the boot imprint I saw on

1 February 15th. Basically, it looks like it's the same
2 boot.

3 THE COURT: And y'all, what I don't want is the boot
4 print I saw, all of that. They weren't analyzed?

5 MR. ANDREWS: Correct.

6 THE COURT: All right. What I don't want or I don't
7 think we allowed him to say I'm absolutely certain the
8 boots in the print I saw were identical. He had on boots.
9 I saw a boot print at the scene of the crime. I think
10 that's about as far as you can go, you know, without
11 anymore analysis, because a layman can recognize the
12 difference between a flip-flop, tennis shoe and a boot
13 print. And that's a common observation. I mean, I don't
14 think that's improper for him to say there was a boot
15 print.

16 MR. BROWN: Judge, I think the last time he testified
17 in court he said found boot print in the house and then
18 once you saw Mr. Henley's boot, he said it looked like the
19 same kind of boot. And that was the extent of it, or the
20 same type of tread and that was it.

21 MS. BOLEN: Your Honor, we'd object to any sort of, I
22 mean, I'd agree with Your Honor that, you know, a boot
23 looks different from a flip-flop looks different from a
24 high heel. But we'd object to anything further than that
25 under, on the basis that it would be impermissible opinion

1 testimony by a non-expert witness. Rule 701 which, I
2 believe,--

3 THE COURT: Okay. I think I am ruling with you. I
4 think it looked like a boot print and he had on boots is
5 kind of where I want to stop.

6 MS. BOLEN: Yeah, and I think we would object to
7 anything about the tread being similar or anything like
8 that, which is I think what he testified to prior and what
9 Solicitor Brown was just talking about.

10 THE COURT: I think you could limit it to, he had on
11 boots, I saw his treads and showed them to me. I saw a
12 boot print at the house and that's about where it stops or
13 resembled each other. I don't think you can go any
14 further than that. I'm kind of agreeing, anything further
15 is kind of getting into expert testimony because they
16 weren't analyzed.

17 MR. BROWN: But if he said they resembled each other
18 that's fine?

19 THE COURT: Resembled.

20 MR. BROWN: Well, that's as far as I think we went
21 the first time.

22 THE COURT: It resembled the boot print in the house;
23 he had on boots. About where I want to go. I think
24 that's appropriate considering what he did, and I think
25 it'd be inappropriate to go any further than that, because

1 was no analysis taken of it and he's not an expert
2 witness.

3 MR. BROWN: I think that is exactly what we did the
4 last time, he said they resembled each other and that was
5 the extent of it.

6 MS. BOLEN: And just to make sure I'm just covered in
7 full on the record, can I just put a little bit more on
8 that argument.

9 THE COURT: Sure.

10 MS. BOLEN: I think under Rule 701, which is the rule
11 that addresses opinion testimony by lay witnesses, that it
12 doesn't meet the requirements of 701. That any sort of
13 testimony by Investigator Thompson about resemblance
14 wouldn't meet what's required by 701. That rule requires
15 that opinions by lay witness are limited to opinions which
16 are rationally-based on a perception of the witness are
17 helpful to a clearer understanding of the witnesses
18 testimony for the determination of a fact in issue. And I
19 think also a third requirement that it doesn't require any
20 special knowledge, skill, experience or training. It's
21 not the third one I'm after. It's the first two. That I
22 think his testimony is going to be based on what he said
23 today and in prior hearings that the photograph of the
24 boot print on February 15th. There's no analysis of it
25 that a week later he looks at Mr. Henley's boot print. I

1 think given that, you know, there's a weekend between
2 those two, that he doesn't have any sort of specialized
3 knowledge in analyzing these things. That that's not
4 something that is helpful to a clearer understanding of
5 his testimony, because there is this gap in time. And I
6 don't believe there is going to be any testimony that he
7 had the photograph of the boot print with him when he was
8 talking to Mr. Henley. I think that would be a different
9 situation.

10 THE COURT: Wait a minute, now. I'm going to allow
11 you to cross-examine him on the issue, but I don't think
12 or at least my ruling now is that I want him limited to
13 found a boot print, photographed it at the scene. I
14 talked with Mr. Henley and he showed me or I saw him in
15 boots. He showed me his tread, a boot tread. You know,
16 that's where I want to stop it. He had on boots. There
17 was a boot print there. They resembled each other. They
18 were not analyzed. They weren't measured. They weren't
19 tested. They weren't compared.

20 MS. BOLEN: Yes, sir.

21 THE COURT: There's a photograph with the boots.
22 They resembled each other. A boot print resembles a boot
23 print.

24 MS. BOLEN: Okay. Yes, sir.

25 THE COURT: But that's where I want to confine the

1 testimony. I don't want him to say anything past they
2 resembled each other.

3 MS. BOLEN: Okay. Yes, sir.

4 THE COURT: All right. Okay.

5 MS. BOLEN: I just wanted to make sure our objection
6 was clear on the record. Thank you.

7 THE COURT: Because I don't believe seeing a boot
8 print of some type at a scene takes specialized knowledge.
9 I think that is common knowledge of a police investigator
10 or the lay person that a boot print from a tennis shoe
11 print from a high heel is as easy as--

12 MR. BROWN: For anybody that wears boots.

13 THE COURT: Right. That's where I'd limit it. If
14 the boots he had on and the tread mark I saw resembled.
15 And y'all may ask him, did you analyze it? Did you take
16 the boots from him? Anything you'd like in that regard is
17 free game.. Okay?

18 MS. BOLEN: Yes, sir.

19 THE COURT: All right. Now, what else we got, we got
20 the cigarette butt?

21 MR. BROWN: Yes.

22 MS. PATEL: We have a motion to suppress any
23 testimony or mention of the cigarette butt in this case.
24 It's our position that any mention of this butt would be a
25 violation of Mr. Henley's due process rights.

1 Specifically, we looked at State v. Cheeseboro and State
2 v. Breeze. I have an extra copy for Your Honor.

3 THE COURT: Thank you.

4 MS. BOLEN: And, Your Honor, just we may be somewhat
5 tag-teaming in this motion, which I think is permitted
6 pretrial. I know it's not permitted in trial, but we
7 might both be speaking a little bit on this one.

8 THE COURT: All right. Well, I'll let y'all do that
9 as long as everybody doesn't interrupt, and the State is
10 allowed the same benefit, so y'all be kind to Ms. Holston.
11 All right. I'll tell you what, let's take, I want to step
12 in and use the restroom. I want to read this case real
13 quick and then I'll listen to you. I think it will help
14 me.

15 MS. PATEL: Okay.

16 (Whereupon, a short break was taken.)

17 THE COURT: Okay, Mr. Brown.

18 MR. BROWN: Judge, I can kind of lay out what, the
19 facts and the scenario of the cigarette butt. At the
20 time, February 15th, 2012 there was a call initiated and
21 Officer Thompson came out of the house. During the
22 investigation on the side doorstep, coming up to the
23 carport area, to the side door of the house Officer
24 Thompson noticed a Newport cigarette lying on the top
25 stairs. At that time during his investigation, he bagged

1 it up as their, as they normally do, put it in a, gloved
2 his hand, put it in a paper bag, sealed it up and got it
3 in the Best Evidence Kit. After his investigation at the
4 house, he takes it back to Abbeville County Sheriff's
5 Office. Enters it into evidence through Chief Deputy at
6 the time, Marion Johnson. They enter that into evidence
7 or into the evidence room. So this is February 15th, 2012
8 when it was collected. On March 29th, 2012, Chief Deputy
9 Marion Johnson then got the Newport cigarette out of the
10 Abbeville County evidence locker room and gave that to
11 Ryan Abernathy who was a Deputy with Abbeville County.
12 Mr. Abernathy took it down to SLED that morning on March
13 29th. Checked it into SLED to Doris Yarborough, a SLED
14 technician there, and then ultimately it was tested by
15 Maryann Boehm. Her last name is B-O-E-H-M. And so the
16 cigarette butt, we can have, you know, we'll go through
17 testimony that the chain up until Maryann Boehm when it
18 was tested, she testified that the bag was intact. That
19 the integrity of the evidence was intact. There was no
20 tampering with it and ultimately she did do a DNA test on
21 that cigarette butt which did come back to match Mr.
22 Henley's DNA. Then, a standard test was sent to, blood
23 work was sent down for Mr. Henley which was also compared
24 to what was retrieved off the cigarette butt. After Ms.
25 Boehm did her analysis on June 6th, 2012, ultimately it

1 was returned back to Abbeville County Sheriff's Office.
2 Again, Ryan Abernathy on August 10th, 2012 collected it
3 from SLED, brought it back to Abbeville. And at that
4 time, he also collected other drug evidence, bringing back
5 to Abbeville County. It was brought back to Abbeville
6 County. It was resubmitted to Chief Deputy Marion Johnson
7 at that time, and it was put in the evidence locker at the
8 Abbeville County Sheriff's Office. Shortly thereafter in
9 2013, I believe, had the transition from Sheriff Goodwin's
10 administration to, you had an interim sheriff. The
11 coroner, Ronnie Ashley, was the interim sheriff at that
12 time. At that time, Sheriff Ashley asked SLED to do
13 basically an audit of all the items in the evidence locker
14 at the Abbeville Detention Center. At that time, the
15 cigarette butt was in there, it was accounted for in the
16 evidence locker room in Abbeville County. After that, we
17 came and presented this case at trial last year.
18 Somewhere in between the time SLED did their audit and
19 last year, the cigarette butt is not in evidence anymore.
20 We believe it was inadvertently disposed of when other
21 drug evidence was, when drug evidence was disposed of at
22 that time. We went back last year during the trial before
23 the ruling was even ruled on by Judge McIntosh. The four
24 of us went into the evidence room with Sergeant Singleton
25 to look for it and, again, we do not see it in the

1 evidence room. Judge, it's, we do have pictures of the
2 crime scene of the Newport cigarette butt on the stair, so
3 we do have proof that it was there. I have the testimony
4 from the witnesses showing that they did have custody of
5 it and control of that cigarette butt up until it was
6 tested and even after it was tested and the integrity of
7 the bag was, you know, it was not tampered with or
8 hampered in any way. So, Judge, that kind of lays out the
9 facts about the cigarette butt surrounding that and I'll
10 let them have it.

11 THE COURT: All right. Ms. Bolen.

12 MS. BOLEN: Thank you, Your Honor. To sort of fill
13 in some of the facts, Your Honor. The cigarette butt that
14 was collected was sent to SLED and was, apparently, at
15 some point sent back to the Sheriff's Office. The last
16 time there is any real record of it is 2013 and something
17 I'd want to bring to the Court's attention and this,
18 again, came up in the prior proceeding that there's
19 speculation by law enforcement and the Solicitor's Office
20 that the cigarette butt must have been destroyed with the
21 drug evidence that it came back with. There is absolutely
22 no documentation of that. There is no sort of law saying,
23 you know, and, hey, we destroyed, you know, these drugs
24 from these cases because these cases are resolved and the
25 cigarette butt was included in it. Nor do we have any

1 documentation of when that drug evidence was destroyed.
2 It is entirely speculation that, that just because the
3 cigarette butt was picked up at the same time as some
4 drugs, all of the sudden there is this, oh, it must have
5 been destroyed when those were destroyed. But there's no
6 records to support that. I don't believe there's even any
7 records to support that the drugs were destroyed. There
8 is no log entry of that. What we have is an absolute
9 absence of documentation. There was a lot of upheaval in
10 the Sheriff's Office at this time or during this
11 time-period, and we did go last year. It was about a year
12 ago and the four of us did go to the evidence room with
13 Sergeant Singleton and Sheriff Watson was there as well.
14 Did not find a cigarette butt. Did not find any sort of
15 documentation showing where it may have gone, nor did we
16 find any sort of log or documentation showing what had
17 happened to the other evidence, the drug evidence that it
18 was picked up with from SLED. So it's our position that
19 to say it must have been destroyed inadvertently when
20 these drugs were destroyed is basically two layers of
21 speculation that, first of all, there is not a clear
22 record when these drugs were destroyed. And second of
23 all, there's nothing to indicate that the cigarette butt
24 would have been there. When we met with Sheriff Watson
25 and Sergeant Singleton last year in going over the

1 evidence room, I distinctly remember Sheriff Watson saying
2 this, I can't say whether Sergeant Singleton said this or
3 not but that Sheriff Watson said that when he took over as
4 Sheriff that the evidence room became one of his top
5 priorities, because it was a mess. And I believe it was,
6 Your Honor, and I think, you know, we didn't have time in
7 the lunch break that we used to go over there, we didn't
8 have time to go through every single nook and cranny of
9 that room or of the, you know, Sheriff's Office in
10 entirety. But I think we have more than just a sort of
11 inadvertent, you know, whoops, we must have destroyed this
12 by mistake. I think there's a lot more at play here than
13 that. I think what we have is negligence rising to the
14 level that it deprives Mr. Henley of his constitutional
15 right under the Fourteenth Amendment to due process and to
16 a fair trial and that's why we're asking for the cigarette
17 to be excluded. And, Your Honor, it all does come down to
18 that Fourteen Amendment right, that he's entitled to due
19 process. He's entitled to a fair trial. The State wants
20 to use this evidence against him, but they cannot tell the
21 Court where it is and what happened to it and that is just
22 simply not fair to be able to say we want to use it, but
23 we don't know where it is, we don't know what happened.
24 Your Honor, the line of cases and I'm just going to
25 briefly touch on them. I'm sure Your Honor is familiar

1 with most of these. It's State v. Breeze, State v.
2 Cheeseboro, and then there's another one that came out
3 after the first trial in this case which is State v.
4 Reaves, R-E-A-V-E-S. The cite on that is 414 SC 118 and
5 that was decided September of 2015. Your Honor, looking
6 at the Breeze case, that's a distinguishable case from
7 this situation. In that case, some drugs were entered
8 into evidence and they were destroyed. First of all, it's
9 distinguishable because the issue that the Appellate Court
10 was considering was not suppression but rather a jury
11 instruction. The attorney, defense attorney had asked for
12 a jury instruction, and I think it was the adverse
13 inference jury instruction and that was the issue in the
14 Breeze case. But, additionally, that case involved a
15 situation where, I think, it can be construed and I think
16 it's clear from the Appellate Court's decision that the
17 defendant in that case was partially at fault for the
18 drugs having been destroyed. It was a situation where the
19 defendant did not show up for a court date.

20 THE COURT: Yeah, and there was a--

21 MS. BOLEN: Yeah. Bench warrant. There is a bench
22 warrant issued. His case was inadvertently moved to
23 failure to appear because of the bench warrant.
24 Apparently, the Sheriff's Office in that county
25 inadvertently misunderstood failure to appear and thought

1 the case was closed and destroyed the drugs. So there
2 was, first of all, there was a good faith reliance and
3 second of all, that defendant had done something to create
4 the situation by not showing. So I think it's
5 distinguishable on that grounds as well, Your Honor. The
6 Cheeseboro case, this is the case and this is 346 SC 526.

7 THE COURT: And y'all handed that one up, didn't you?

8 MS. BOLEN: I believe so.

9 THE COURT: You did?

10 MS. BOLEN: Yes, sir. This is a case where a gun was
11 destroyed in a murder trial and the reason the Cheeseboro
12 case is distinguishable, Your Honor, is the procedure in
13 that case, law enforcement was faulted. The gun was
14 mistakenly labeled and they had documentation of exactly
15 what had happened to it. They knew when it had been
16 destroyed.

17 THE COURT: All right. Well, let me ask you this.
18 The cigarette butt was found at the scene and taken into
19 the custody and sent to SLED, analyzed, sent back and
20 lost. The State wouldn't have needed the cigarette to
21 prove its case. Isn't it the DNA analysis you're trying
22 to prevent come in?

23 MS. BOLEN: Yes, sir.

24 THE COURT: All right.

25 MS. BOLEN: And it's really under a Rule 901

1 analysis, an authentication that can't be authenticated,
2 because it's not here, jury can't look at it.

3 THE COURT: All right. Well, distinguish that as a
4 small amount of drugs found on some object and it's sent
5 for analysis and it's positive or negative for drugs. But
6 the drugs are consumed by the test, therefore, there's
7 nothing to come in. Is that distinguishable?

8 MS. BOLEN: I think it is, Your Honor, because then
9 there is an explanation of what happened. You know, the
10 SLED analysis can say, you know, this was .01 grams of
11 meth. In order to test it, we had to use the entire .01,
12 that's why I don't have it to show you. And I think that
13 the big difference here, Your Honor, and it really goes to
14 the newer, some of the newer lines of cases where, and
15 normally, traditionally courts look at this under a
16 two-prong test of bad-faith, and then exculpatory value,
17 and we'd argue that this falls under bad-faith. And it's
18 basically the lack of any sort of knowledge of what
19 happened rises to a level of negligence that becomes
20 bad-faith.

21 THE COURT: I mean, the only thing, the sheriff
22 change and there's sheriff, sheriff, and then a current
23 sheriff. There was three sheriffs in the time, window of
24 time over this case, the investigation and now the trial.

25 MS. BOLEN: Yeah, and I don't remember the exact

1 dates, but I know that Sheriff Goodwin left office,
2 midterm sheriff.

3 THE COURT: There were three sheriffs, Sheriff
4 Goodwin, interim Sheriff, election for Sheriff, Watson.
5 What part of that is, point to a specific thing you think
6 is bad-faith on the part of the Sheriff's Department?

7 MS. BOLEN: Right. I think losing the cigarette butt
8 and being unable to, yeah, to show any kind of path of
9 where it went is negligence, and I think that negligence
10 rises to the level of bad-faith.

11 THE COURT: Well, one of these cases talk about
12 carelessness versus intentional bad-faith, too. I don't
13 know which one.

14 MS. BOLEN: It may have been Reaves, Your Honor, it
15 may have been.

16 THE COURT: It may be Reaves.

17 MS. BOLEN: And, Your Honor, now, what we would
18 distinguish in Reaves, because Reaves brought up the
19 careless negligence as being bad-faith. One of the, I
20 think, very distinguishing characteristics or facts in
21 that case that distinguishes it from this case is in that
22 case, they're talking about some evidence that was never
23 actually collected. There were a number of pieces of
24 evidence in the Reaves case that were collected but not
25 tested, and then there were three pieces of evidence that

1 were collected, but were missing in the time of trial.
2 And then there was a piece of evidence which was collected
3 but was lost or destroyed, and then some witness
4 statements in that case were unaccounted for at trial.

5 THE COURT: All right. Well, tell me this. How is
6 the cigarette butt exculpatory for your client?

7 MS. BOLEN: I don't believe it is, Your Honor. I
8 don't believe it falls under that second prong.

9 THE COURT: Right.

10 MS. BOLEN: I think it falls under the first prong of
11 the various courts analyzes that it would be bad-faith.
12 And it hits our argument that the losing it without any
13 sort of documentation and, again, some of the other cases
14 where there is evidence that's lost, there's at least an
15 explanation of what happened to it. The gun was
16 mislabeled and destroyed or, A) we thought this case was
17 dismissed, because it said FDA, so we destroyed the drugs.
18 There is just no documentation here. In fact, we don't
19 even really know that it's lost. It could be in there
20 somewhere.

21 THE COURT: Well, it's lost. It just could be
22 misplaced?

23 MS. BOLEN: Yes, sir.

24 THE COURT: Okay. No one knows where it is right
25 now?

1 MS. BOLEN: No one apparently knows where it is.
2 And, Your Honor, just to bring Your Honor's attention,
3 another, and I think this becomes a pertinent fact when
4 dealing with the issue of negligence and carelessness and
5 whether that rises to bad-faith. At the prior trial of
6 this case, we made this motion on both the cigarette butt
7 and the lineup, because the lineup was also lost. And
8 then about four days after the trial, the lineup was
9 found. And so and you can, I think, understand our
10 concern that, you know, where are the recordkeeping
11 procedures? How is evidence lost, and then found, and
12 popping up and, you know, what happened to this and where
13 is the documentation of it? I think I've put on the
14 record the case law that we are using. I just wanted to
15 make sure I've gotten everything from the Reaves case,
16 Your Honor.

17 THE COURT: Are you calling the Breeze case the
18 Reaves case?

19 MS. BOLEN: Reaves, I'm sorry. Reaves, R-E-A-V-E-S.

20 THE COURT: Okay.

21 MS. BOLEN: That's the one I was looking at, Your
22 Honor.

23 REPORTER: What was that first case, Patricia, that
24 you were talking about?

25 THE COURT: Cheeseboro?

1 REPORTER: The one before that.

2 MS. BOLEN: Reaves.

3 THE COURT: State vs. Breeze like a cool breeze.

4 MS. BOLEN: I'm sorry. But there's a Reaves with an
5 R and a Breeze with a B-R.

6 THE COURT: Will y'all hand up Cheeseboro and Breeze.

7 MS. BOLEN: Okay. And I think I've been, I've been
8 talking most recently about Reaves with an R. And, Your
9 Honor, the Reaves case, and I'll talk about it as the 2015
10 case to distinguish it, does, in that case, the Court does
11 talk about how some other states have abandoned the
12 bad-faith analysis, which I think, again, goes to argument
13 that the negligence and the carelessness should be enough
14 to meet that first prong. And it should be enough under
15 the Fourteenth Amendment and Mr. Henley's constitutional
16 right to due process and a fair trial, to not allow the
17 State to use evidence against him which they can't account
18 for and can't locate. The one of the differences in
19 Reaves is the Appellate Court basically says, well, we
20 know there's not enough there for it to be negligence
21 whereas here, I think there is enough. Your Honor, I
22 think with them having all these procedures in place, at
23 some point here, the procedure wasn't followed. Because
24 if the procedures had been followed, we would have a
25 cigarette butt. And I think, you know, for a law

1 enforcement agency, this is one of their most important
2 things is preserving evidence if they're going to try to
3 deprive someone of their liberty, they need to follow all
4 the procedures with respect to that. And if they don't, I
5 think, that person should be given the benefit of that.
6 And under the Fourteenth Amendment should be able to have
7 that evidence suppressed when the procedures to maintain
8 it are not followed. And I think that's one of the
9 differences with Reaves is that they found there wasn't
10 enough to equate to negligence, and I think here there is.
11 And we know that the Sheriff's Office had procedures in
12 place, because of former testimony, as well as they were
13 keeping logs on the evidence. So they had procedures and,
14 and at some point, they stopped following that, Your
15 Honor.

16 THE COURT: Okay. I understand your argument. I
17 just don't find it intentional or in bad-faith by the
18 Sheriff's Department and seeing how the sheriff changed
19 over. And it was the sequence of events, retrieved, put
20 into evidence, it was taken to SLED, analyzed, collected
21 back, put in the evidence locker. And there's a record of
22 that chain of custody for the analysis of the cigarette
23 butt, and then it's lost sometime. I just don't find that
24 there's any indication of bad-faith on the part of the
25 Sheriff's Department to lose it. Now, I don't thing that

1 prevents the Defense from saying this was a careless and
2 negligent handling of evidence by the Sheriff's
3 Department. I think that's allowed.

4 MS. BOLEN: Yes, sir.

5 THE COURT: I don't think it's suppressed, though.
6 Now, on that, I'm going to leave it more or less a motion
7 in limine, because the summary by both of y'all as to the
8 facts, because a summary of facts is not sworn testimony.
9 If we get in trial and I hear something different, I may
10 change my mind.

11 MS. BOLEN: Yes, sir.

12 THE COURT: It seems more to be a motion in limine
13 and that's how I'm ruling on it. Assuming everything
14 comes in as y'all outlined it; that will be my findings.
15 It will be a careless or negligent losing of the evidence
16 but will be admitted; the DNA result will be. Assuming
17 the foundation for all the others can be met, but if the
18 testimony doesn't support what y'all have outlined, then I
19 may change my ruling and you can renew that motion and
20 suppress. That make sense? I think that's the best way
21 to handle it.

22 MS. BOLEN: Yes, sir.

23 THE COURT: And so my indication of admissibility or
24 not is it'll be admissible but subject to
25 cross-examination. All right. Anything else?

1 MS. BOLEN: Your Honor, we just had a, you know, a
2 very standard motion to sequester witnesses.

3 THE COURT: I've got that.

4 MS. BOLEN: I think that Ms. Moss as the victim can
5 be present, but I believe her husband was with her
6 yesterday. I believes he's on their witness list, which
7 he wasn't last year.

8 THE COURT: I always sequester witnesses when either
9 side asks. I mean, it's just easier.

10 MR. BROWN: Even the victims in the case?

11 THE COURT: Well, the victim, she can come in, sure.

12 MR. BROWN: Yeah. And the husband, presumably?

13 MS. BOLEN: He wasn't a victim at the time.

14 MR. BROWN: It's his house, too. His name's not only
15 on the indictment, and I would say he's a victim.

16 MS. BOLEN: Was he living there at the time?

17 MR. BROWN: Yeah, I believe they were together.

18 THE COURT: What's he going to testify if he didn't
19 testify last time, just so they know?

20 MR. BROWN: That he also didn't know Mr. Henley.

21 THE COURT: A stranger.

22 MR. BROWN: A stranger.

23 THE COURT: I mean, if that's all.

24 MR. BROWN: He didn't give him permission to be.

25 THE COURT: Are you going to call him or is he just a

1 potential witness?

2 MR. BROWN: I am going to call him.

3 THE COURT: Well, if he's a victim, the spouse and a
4 victim, then he can sit in here.

5 MS. BOLEN: Yes, sir.

6 MR. BROWN: Your Honor, we just got to put this on
7 the motion. We're moving to bifurcate, based on Mr.
8 Henley's charge. He's charged with first degree under the
9 element of two or more offenses. He's not charged under
10 the night factor or whether there was a weapon involved.
11 And so we're asking if, we're suggesting to the Court to
12 allow the State to introduce evidence about the
13 substantive law which is he entered into this house
14 without permission with the intent to commit a crime. And
15 if the jury were to find guilt based on that part of the
16 statute that we would then stipulate to the two prior
17 offenses. We're looking at State v. James in this case,
18 Your Honor. That court, as well as the old Chief Supreme
19 Court case said that it would be unduly prejudicial under
20 403 if the jury heard any previous convictions. I think
21 in that case, the State introduced seven previous
22 convictions. And, Your Honor, it's our position that if
23 the jury hears seven and they would be prejudice, if they
24 would be prejudice after hearing two convictions. So we
25 would just ask that, first, the State would introduce

1 evidence as to the actual burglary, and then allow us to
2 stipulate to the two offenses. In the alternative, I am
3 asking, if you rule against us I'm asking that the State
4 limit their conviction to only two and instruct the jury
5 on the limited purpose for which the prior crime of the
6 evidence can be used.

7 THE COURT: How was the verdict form done in the last
8 trial, was it burglary first, guilty or not guilty,
9 nothing lesser included?

10 MR. BROWN: Judge, it just went before the--

11 MS. PATEL: No, sir.

12 MR. BROWN: On larceny and the burglary first.

13 THE COURT: It was all or nothing for you on burglary
14 first.

15 MR. BROWN: And, Judge, he does have other
16 burglaries, multiple, all we're doing is limited to show
17 those two priors which the statute requires us to prove
18 beyond a reasonable doubt. And so that's what we intend
19 is to put it in the Court's record. It's been or as a
20 self-authenticating record, it's been certified out of
21 Aiken County. The last time we did have the sentencing
22 sheet redacted on the sentencing or the amount of time he
23 was sentenced to, but it just shows the indictment and the
24 sentencing sheet. And we did limit those just to the two
25 priors and not, again, with what he's actually been

1 convicted of.

2 MR. ANDREWS: And we would be requesting a limiting
3 charge to the jury that those prior convictions could only
4 be considered for the fact that they are elements of
5 burglary.

6 MS. BOLEN: Your Honor, I might be mistaken, but I
7 think I heard them say that they were going to try to
8 introduce the indictments, as well as the sentencing
9 sheets. Assuming Your Honor rules against us on this
10 issue, we'd ask that only the indictments be submitted. I
11 don't know what relevancy the sentencing sheets would
12 have. I mean, it's duplicative and I don't understand the
13 purpose if they've got the indictment.

14 MR. BROWN: Judge, the purpose of the indictment
15 doesn't show convicted, the sentencing sheet, so it
16 actually shows that he pled guilty to it. The indictment
17 alone just says he's indicted for it and it doesn't show
18 one way or the other if he's been convicted of it. So
19 that'd be the reason why the sentencing sheet should go
20 back with the jury, as well.

21 MS. BOLEN: We would ask that any sentence
22 information--

23 MR. BROWN: And that has been redacted already.

24 MS. BOLEN: It'll be redacted?

25 MR. BROWN: Yes.

1 THE COURT: Let me see those indictments.

2 MS. PATEL: And, Judge, we would just ask that for 15
3 years on this indictment be redacted.

4 THE COURT: Sentencing sheets have been redacted and
5 they're certified. Is there any objection in using those
6 as proof by the State of the two convictions to burglary
7 second which is what they are but non-violent. And an
8 instruction saying these are two prior convictions,
9 indictments 202 for County 02, with 202 for County 02
10 meaning for purposes of proving the prior record and just
11 that? And we don't want to comment on the facts, but I
12 mean burglary is breaking into a house with intent to
13 commit a crime, either the indictment which is the same
14 instruction and the same code section. So I'll do both
15 the indictment and the sentencing sheets with that limited
16 instruction.

17 MR. BROWN: Yes, sir.

18 MS. PATEL: Yes, Your Honor.

19 MR. BROWN: Yes, sir.

20 THE COURT: All right. That's what I'm going to do.
21 I want to do both, the indictment and the sentence sheet
22 and my instruction.

23 MR. BROWN: Yes, sir. And, Judge, all I'll do is
24 I'll just want, at the time, I'll just say, Judge, at this
25 time, I'm moving it in as a self-authenticating document

1 with two priors and that's all I'm saying.

2 THE COURT: Okay. And she does not have to, in order
3 to not waive her request to stipulate, she doesn't have to
4 agree to that. She can just say exactly what you said.

5 MR. BROWN: Yes, sir.

6 THE COURT: No response needed. Now, she can object
7 if she wants to based upon this hearing as to my handling
8 of the matter here and refer back to this hearing.
9 That'll be fine, too.

10 MR. BROWN: Yes, sir.

11 THE COURT: All right.

12 MR. BROWN: Your Honor, I think the Defense also
13 mentioned something about prior testimony.

14 MS. PATEL: Yes, Your Honor. That one last motion
15 before the Court--

16 THE COURT: Okay.

17 MS. PATEL: --and that's to admit former testimony
18 from a previous trial, which is the previous trial in this
19 case. The Defense had one witness, actually, no. We have
20 got two witnesses. One is the Defense's witness, Jolene
21 Gray and the second one is Officer Belcher. Ms. Gray was
22 the client, my client's girlfriend. She had some
23 testimony, and we have been unable to locate her. I can
24 have our investigator come up and we can have her testify
25 as to all of the efforts that she made to try to locate

1 Ms. Gray. But we would ask under Rule 804 (b) (1), which
2 is the hearsay exception where declarant is unavailable to
3 introduce Ms. Gray's testimony from the previous trial.

4 THE COURT: Is there any objection to using her
5 testimony? I mean, it's in the record. I mean, it's kind
6 of like a deposition in a civil case.

7 MR. BROWN: Judge, I really don't have an objection
8 to it. If we were in the same boat, I'd be asking the
9 same thing.

10 THE COURT: All right. Well, can they present it
11 similar to the way deposition testimony is presented and
12 you want all of it or just a portion of it?

13 MS. PATEL: All of it. There's not much testimony.

14 THE COURT: Okay.

15 MR. BROWN: Judge, I guess, we'd just have, just some
16 witness or somebody come read her testimony, and then we
17 would cross-examine and doing the same, just reading out
18 the portion of the transcript.

19 THE COURT: All right. Well, y'all select an
20 appropriate actress. And what I do in civil cases, and
21 y'all have never been there with me, but this person is
22 going to read some prior testimony which was taken under
23 oath; that witness is not available. Question, answer,
24 question or cross-examination answer; that's how it will
25 be presented and consider it.

1 MR. BROWN: Yes, sir.

2 MS. PATEL: Judge, I'm having the same problem with
3 our second witness which is Officer Belcher. He was under
4 subpoena, but I believe he's going to be out of town in
5 Texas tomorrow.

6 THE COURT: Any problem with him?

7 MR. BROWN: No, sir.

8 THE COURT: The same deal.

9 MS. PATEL: Okay.

10 THE COURT: All right. So you'll be allowed the same
11 liberties with the same instructions from the Court. The
12 witnesses aren't available and this is what--

13 MS. PATEL: Yes, sir.

14 THE COURT: --we've got to do and that it was
15 testimony taken under oath on a prior date. Just like we
16 do in civil cases.

17 MS. PATEL: Okay. Thank you, Your Honor.

18 THE COURT: And that's how I will instruct it.

19 MS. PATEL: Okay.

20 THE COURT: Did you get both of them?

21 MS. PATEL: Yes, thank you.

22 THE COURT: Motion granted.

23 MS. PATEL: Thank you.

24 MR. BROWN: And, Judge, we are going to probably try
25 to ask our investigator if he can find Ms. Jolene Gray

1 just to see if there is a reason why she's not showing,
2 though.

3 THE COURT: Okay. If you can find her, get her.

4 MR. BROWN: Yes, sir. We'll do that.

5 THE COURT: That's fine.

6 MS. PATEL: I'm fine with that.

7 MR. ANDREWS: Your Honor, we do have one motion and
8 it was something that in a prior trial I was picked on
9 for, I guess, for basically the State to try my case for
10 me. We've got concerns about the, I guess, what's known
11 as the eternal chain of custody at SLED. I handed your
12 clerk this morning a case on State vs. Brockmeyer. And,
13 basically, Your Honor, that case stands for the
14 proposition that all of these internal witnesses at SLED
15 who, basically, don't do anything but move a piece of
16 evidence from one shelf or one room to another one don't
17 have to come as witnesses and it's not a confrontation
18 issue.

19 THE COURT: It's like filling in some obvious gaps
20 that Stave v. Ballentine, when it first came out or
21 something?

22 MR. ANDREWS: I guess, Hatcher was the one that we
23 used to refer to--

24 THE COURT: Hatcher?

25 MR. ANDREWS: --and then Brockmeyer was more helpful.

1 THE COURT: Right. I am really inclined to fill in
2 those small gaps by a witness who is just more or less a
3 courier from one area of the building to the next area of
4 the building, I generally allow that to fill in the gaps.

5 MR. ANDREWS: What we were going to ask, was or try
6 to get a ruling in advance so we didn't have to bring
7 additional witnesses was have--

8 THE COURT: Who do you intend to, who are you
9 intended to use so that the Defense can argue whether or
10 not that gap is too wide of a gap for me, for you to
11 request to hop over it?

12 MR. ANDREWS: What we were going to intend to do was
13 bring just Maryann Boehm, who's the SLED analyst. Now,
14 and I may be reading too much into this and getting us
15 into the weaves, but Brockmeyer, to my understanding, is a
16 case about confrontation. And I think there is even a
17 piece in there where the Court says, look, this isn't a
18 confrontation thing, this is a Rules of Evidence issue.
19 And in my view, the Rules of Evidence, this would come in
20 as a business record. However, a business record would
21 require a custodian of records. Yesterday, I had had a
22 lengthy chat with SLED's general counsel and a captain
23 over Forensic Services and my concern was I don't want to
24 bring a SLED Analyst to be a custodian of records, because
25 the DNA analyst is just not a custodian of records. What

1 SLED replied to me was listen, we have a self-maintaining
2 computer system. Everyone has equal access to this
3 computer system. There is not a human custodian of
4 records. And so really what I'm seeking from the Court is
5 an advance ruling that we could have our DNA analyst, in
6 addition to the testimony that she renders about her DNA
7 analysis read the internal chain into the record to
8 satisfy Rule 6. And, I believe, it's 803 of the business
9 records exception, of the hearsay exception, of the
10 business records exception to hearsay. And we'd certainly
11 be willing to make this as a Court's exhibit. Because,
12 again, it's not just a logistical issue for us, it just
13 means additional witnesses who have to spend State time
14 and State dollars driving State cars up here really just
15 to do nothing more than read names off a page.

16 THE COURT: All right. So who do you intend to call
17 from the time the officer picked up the cigarette butt till
18 the time you try to introduce the DNA evidence?

19 MR. ANDREWS: We will have the officer who picked up
20 the cigarette butt. But, basically, Maryann Boehm will be
21 the one who reads off the internal chain. For example, it
22 says that Doris Yarborough collected, was the who that got
23 the bagged up cigarette butt from Ryan Abernathy, who is
24 also a witness. Then, that went to Amy Stephens, who is
25 also another evidence clerk at SLED. And, eventually,

1 Maryann Boehm is the analyst who analyzed the cigarette
2 butt for the presence of DNA.

3 THE COURT: All right. Ms. Bolen or Patel which, any
4 of y'all want to comment to this?

5 MS. PATEL: Judge, I mean, obviously, we would object
6 to stipulate to anything in this case given that the
7 evidence was lost. We would ask the State have all of
8 their witnesses here to prove the chain of custody in this
9 case.

10 MR. BROWN: Judge, I believe Maryann Boehm will just
11 be testifying about two chain, Doris Yarborough and Amy
12 Stephens and then by that time she got it in, she tested
13 it. Then all of the other witnesses leading up to the
14 time we got it to SLED, they'll all be here testifying as
15 to how they handled it.

16 THE COURT: All right. To my understanding it's
17 allowable to fill in small gaps of custodial handling
18 within a department. And so if the two, once the evidence
19 was turned over to SLED and placed in an evidence locker
20 or whatever the magic term is at SLED or reception area,
21 it's surrendered by, to someone at SLED. And those
22 internal couriers from the front office to the testing
23 laboratory, I don't think they're required. I think that
24 can be done via, it's the State vs. Ballentine case. I
25 thought that was the first case that said you can fill in

1 small gaps for the chain.

2 MR. ANDREWS: I believe that is the chain of custody,
3 because I think we just would rely on Hatcher for a long
4 time, because Hatcher followed Ballentine.

5 THE COURT: Okay. And then those two witnesses are
6 not going to testify to any facts other than their moving
7 the Best Evidence Bag to another room within SLED
8 headquarters or testing in the lab on Broad River Road?

9 MR. ANDREWS: Correct, and we anticipate that all the
10 testimony would be, this evidence they're moving is placed
11 within tamper-resistant packaging. They never even opened
12 up those packages. All they did was take these sealed
13 packages and basically moving them from one to another,
14 just moving them from one shelf to another.

15 THE COURT: And, I believe, the SLED witness who did
16 the analysis can testify as to whether or not the bag had
17 been opened or not based upon her observation in handling
18 the bag herself?

19 MR. ANDREWS: Yes, sir. And that was her prior
20 testimony.

21 THE COURT: If she can do that, then I don't think
22 the absence of the two courier witnesses would be
23 necessary and I would allow it to be handled in that way.

24 MR. ANDREWS: Okay. Thank you.

25 THE COURT: Now, the Abbeville witnesses, I'm not

1 ruling on them. I think they've got to be here.

2 MR. ANDREWS: Yes, sir.

3 THE COURT: But once the bag is sealed, surrendered
4 to SLED until it gets analyzed, those two small gaps, I
5 would let, those are short steps and I would let the facts
6 fill those in.

7 MR. ANDREWS: Thank you, Your Honor.

8 THE COURT: Y'all had more motions than y'all told
9 me.

10 MR. ANDREWS: You know, I think we've all agreed to
11 this. We just did want to let the Court know and this is
12 Court's Exhibit 1. Mr. Henley was evaluated for
13 competency.

14 THE COURT: Any question about that?

15 MS. PATEL: No, Your Honor.

16 MR. ANDREWS: And this is a copy of the competency
17 evaluation. Be happy to make it a Court's exhibit, Your
18 Honor.

19 THE COURT: Okay. It'll be admitted as Court's
20 exhibit. It'll be No. 1.

21 (Whereupon, Court's Exhibit No. 1 was marked for
22 identification only.)

23 THE COURT: Anything else?

24 MS. PATEL: Nothing from the Defense, Your Honor.

25 THE COURT: The State?

1 MR. BROWN: No, Your Honor.

2 THE COURT: Good. So we got a good hour for lunch,
3 so I commend you for your efficient use of the morning.

4 MR. BROWN: Judge, I could just say one other thing,
5 this kind of gives us a change. But this is more of a DMV
6 record. We have a certified copy of his license plate.
7 It's been certified by a custodian.

8 MS. PATEL: I'm just going to object for the record--

9 THE COURT: Okay.

10 MS. PATEL: That the State would have to lay the
11 proper foundation witness.

12 THE COURT: All right. And, I believe, the
13 foundation is something akin to when you use the radio and
14 call in and run a driver's license and receive information
15 back from a person trained to utilize. That's allowed so
16 if it's a certified copy, I'd allow it as a public record.

17 MR. BROWN: Yes, sir.

18 THE COURT: Because I believe that is a public
19 record.

20 MR. BROWN: It is.

21 THE COURT: Okay. All right. We'll stand at ease.

22 (Whereupon, a lunch break was taken.)

23 THE COURT: Y'all ready? Anything for the jury,
24 anything before we bring the jury in?

25 MR. ANDREWS: No, sir. Well, I don't really want to

1 put it on the record. I think I might have mentioned it
2 in passing, but just to be absolutely clear, there is to
3 be no mention by anyone of the property that was stolen
4 that he was acquitted of in the last trial, correct?

5 THE COURT: I wouldn't think anybody would want to
6 mention, but if the door gets opened, the door gets
7 opened, so I would steer clear of that.

8 MR. ANDREWS: And really I was just thinking for the
9 benefit of our witnesses.

10 THE COURT: Okay. Have y'all spoken to your law
11 enforcement group?

12 MR. ANDREWS: We have and Mr. Thompson is here.

13 THE COURT: All right. We are good. All right.
14 Bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 1:07 p.m.)

17 THE COURT: All right. Folks, welcome back. We
18 worked this morning to get all the pretrial matters done.
19 I brought y'all some candy. I always feed the jurors
20 candy. That's normal practice and I adopted that when I
21 first became a Judge since advice from a Judge from
22 Washington State. I like to eat a piece of hard candy
23 when I'm listening, so I allow the jury to do the same
24 thing. As long as you don't make a mess, we're all good.
25 In a moment, I'm going to let you stand. The Clerk is

1 going to place you under oath. I want you to remember a
2 couple of things from my instructions. The State goes
3 first. They sit closer to you because they have the
4 burden to prove the case. The Defense generally reacts as
5 to what's presented in deciding what they're going to
6 present. Sometimes, they don't decide what they're going
7 to do or what their exact strategy is, because it is
8 dependent on what the State does. I tell you that,
9 because the Defense has nothing to prove or disprove nor
10 does Mr. Henley have to testify. He may not testify, but
11 he may. He has to decide that sometime during the trial
12 and it may be right before he testifies if he makes that
13 decision with talking to his lawyers. If he chooses to
14 not, there are certain instructions I give you as to
15 whether or not discuss his failure to testify. You
16 generally don't say a word about it. You got assign the
17 case with what's presented, not on what's not presented or
18 left out. The State's got to prove their case. They got
19 a standard of proof called beyond reasonable doubt. I
20 will define that term for you at the end. Now, for our
21 purposes thus far, y'all have to resolve or answer a
22 question of fact in the trial, and y'all figure out
23 exactly what it is. And in a civil case, it's two cars
24 wrecked, both claimed to have a green light and one did
25 and one didn't. That's a question of facts, who had the

1 green light. You know, whether a person has broke the law
2 in running the red light, that's a legal question. But
3 which person had what color light is the factual question,
4 so that's kind of the difference. It's not a red light
5 case in this case. This is something different. This is
6 a criminal case. So y'all will listen carefully to the
7 testimony presented and you don't get to ask questions,
8 you just get to listen. That's just how it works. Now,
9 y'all don't get to discuss the case with one another until
10 all the testimony has been presented. So at each break,
11 we take a break, I'm going to say please don't discuss the
12 case and I mean that. Don't discuss the case, because the
13 next witness may give you something else. Sometimes
14 different witnesses say different things. This one says
15 the light was green, that one says the other person's
16 light was green. Well, that's conflicting testimony. So
17 if you made up your mind on the first witness without the
18 benefit of the second testimony that you may find more
19 believable, don't know. The first time, I'm hearing this
20 testimony for the first time just like you. And so
21 because of that, certain things may come up on-the-fly and
22 one side, and, Judge we talked about it in pretrial. I
23 didn't anticipate this, but I've got a issue of law, a
24 legal issue. Something along those lines. That's code to
25 me that I've got something to do on my side, a legal

1 question, I've got to resolve the legal question. Well,
2 lawyers like to, and I like to hear it in a little greater
3 detail, what rule are you talking about. This Rule 802,
4 there's a Rule 804, there's a Rule 6. What rule are we
5 talking about? Well, when the lawyers start talking the
6 legal side for my issues, I don't want y'all to hear it
7 but sometimes, I got to hear what we're talking about. I
8 got to hear the testimony to decide whether it's good or
9 bad. Well, I got to see the piece of evidence, admissible
10 or inadmissible. Part of my job is a gatekeeper to decide
11 is it in or is it out. Well, y'all get to see what gets
12 admitted. Okay? Y'all get to evaluate what's submitted.
13 If something is legally not allowed to come into trial,
14 you don't get to see it. So you don't just sit here and
15 listen when I'm doing my job. Just like when y'all
16 resolve the facts in the jury room, I won't be able to
17 listen to y'all talk about the witnesses and who you
18 didn't believe and whatever y'all want to discuss. I do
19 my job without your help and y'all do y'all's job without
20 my help, but we kind of work together. I do my part.
21 Y'all listen when I give you my instructions and y'all
22 make a decision. That sounds like it's that simple and it
23 really is, but it's really not. So that's just how it
24 goes. This is how it's going to be presented, on the fly,
25 we got to do our jobs, like playing a basketball game last

1 time. Sometimes, we got to have a instant replay to find
2 out who the ball went out on and who gets the ball and
3 jump ball, whatever. The instant replay is the lawyers
4 arguing to me and y'all don't have to sit there, because
5 we didn't get to see it on TV to see the instant replays.
6 That's kind of a simplified explanation of what I do
7 versus what y'all do. Y'all just got to listen carefully,
8 and then take my instructions as given because remember
9 what I said, there's some misinformation on the Internet
10 and television as to what the laws are, my job is to give
11 you the law of South Carolina as I understand it to be
12 right now. All right. Now, I think those are all my
13 preliminary instructions. I'm going to hand y'all that
14 candy as soon as y'all take your oath, but Ms. McMahon's
15 going to place you under oath and y'all pass that around
16 and pass it back around, down this side and come back up,
17 y'all eat it all. Ms. McMahon?

18 (WHEREUPON, the jury was sworn at 1:13 p.m.)

19 THE COURT: All right. One of the things, I don't
20 think there's any sugarless in there. I'm sorry. One
21 thing we did agree to earlier, the lawyers agreed and I
22 agreed, as a general practice and most court's do, is the
23 witnesses are sequestered meaning they're not in the
24 courtroom. They don't get the benefit of hearing
25 everybody else's testimony, they get called in here to

1 testify. The next person gets called in here and
2 testifies. Now, the Defendant and the victims get to sit
3 in here, because they're involved in participation of the
4 trial, but they're not participants as the witnesses and
5 they're all either out back. I don't exactly know where
6 they are, but they're not in the courtroom. They'll be
7 called as we need them, so just so y'all will know that.
8 All right. Time for openings. Mr. Andrews?

9 MR. ANDREWS: Thank you, Your Honor. May it please
10 the Court?

11 THE COURT: Yes.

12 MR. ANDREWS: Ladies and gentlemen of the jury, a
13 man's home is his castle. Everybody looks forward to
14 quitting time at the end of the day. You can go home,
15 take off your shoes, put your feet up on the coffee table
16 and just wonder what's on television. Your home is where
17 you get away from all the stresses of your day to day
18 existence, it's where you feel safe. For Amanda and J.B.
19 Moss, their home is no longer a castle. It's just a
20 house. On February 15th of 2012, Rick Culbreth was on his
21 way home for lunch. Now, he's a neighbor to Amanda and
22 J.B. Moss. They live at North here in
23 Abbeville County. As Rick Culbreth is driving past the
24 house and it's about 11:45 in the morning, he notices a
25 strange vehicle. That vehicle is backed into the

1 driveway. It's right in front of the door of the Moss
2 home and one of the car doors is open. Mr. Culbreth was
3 also able to notice that there is a strange person inside
4 the house. He knows them all. He's a good neighbor, and
5 Rick Culbreth doesn't recognize this person, he is a
6 stranger in the Moss home. Rick Culbreth has a brief
7 conversation with this stranger. The stranger leaves.
8 Mr. Culbreth is so shaken by this, he immediately calls
9 911. Deputies respond. Investigator Patrick Thompson
10 with the Abbeville Sheriff's Office responds to the scene.
11 Investigator Thompson notes that the door has been kicked
12 in. There's a cigarette butt right in front of one of the
13 doors of the Moss' home and there is what appears to be a
14 boot print in the freshly vacuumed carpet. Investigator
15 Thompson talks with Mr. Culbreth for a little while and
16 Mr. Culbreth is able to give a description of a vehicle
17 and give what he believes to be the tag number.
18 Investigator Thompson does some good old-fashioned
19 nuts-and-bolts police work and he's able to develop, for
20 lack of a better term, a person of interest. Investigator
21 Thompson is able to trace what he believes to be the
22 suspect vehicle owned by a person matching the description
23 given by Mr. Culbreth to an apartment in Anderson.
24 Investigator Thompson and another investigator from the
25 Abbeville County Sheriff's Office, Detective Michael

1 Belcher, go to this apartment. It's about a week later.
2 It's about 10:00-11:00 in the morning. There at this
3 apartment, they have a talk with a person they believe is,
4 that they believe was involved in this burglary. That
5 person is Mr. Rickey Henley, who's a defendant in this
6 case. Detective Thompson has a brief conversation with
7 Mr. Henley, and Mr. Henley says that a few days ago he'd
8 been in Abbeville. Remember, this conversation is taking
9 place in Anderson. Anyway, Mr. Henley says that he had
10 been in Abbeville a few days ago. He stopped at a house.
11 Had a talk with someone at the house. Investigator
12 Thompson asks Mr. Henley about whether he smokes, and Mr.
13 Henley admits that he does smoke and sometimes he smokes a
14 Newport. And to take it back for you a little bit, the
15 cigarette that was found in front of the door of the Moss'
16 home was a Newport cigarette. Investigator Thompson also
17 asks to look at the bottom of Mr. Henley's boot. Mr.
18 Henley shows the bottom of his boot and Investigator
19 Thompson sees that the tread on the boot resembles the
20 print or the, what appeared to be a boot print found on
21 the carpet. Sometime later, that cigarette, that Newport
22 cigarette butt comes back from SLED and SLED found the
23 presence of Defendant Rickey Henley's DNA on that
24 cigarette butt. And, unfortunately, ladies and gentlemen,
25 sometime between the analysis of the DNA on that cigarette

1 butt and today, that cigarette butt is gone. It has been
2 misplaced. No one knows where it is. But what you should
3 focus on is this. It's not the cigarette butt, it's what
4 was on it and what was on it was the DNA of the defendant,
5 Rickey Henley. Now, ladies and gentlemen, for many of
6 you, this may be your first actual experience with the
7 criminal justice process. For many, if not all of you,
8 probably what you know about this whole process is what
9 you see on television and in movies or maybe what you've
10 seen in documentaries and news programs about famous
11 cases. Even in news programs and documentaries, those are
12 edited in such a way to make them seem more exciting or to
13 accentuate certain elements. But what I'm getting at is
14 movies, television, documentaries and news programs, that
15 stuff is make believe. That is fun. That's exciting.
16 That's something to escape. It's drama. But it's
17 pretend. This is real-life. There are real stakes here
18 and the parties in this courtroom, just like they are in
19 thousands of courtrooms across this country, are playing
20 for keeps and because this is real-life, this is more
21 exciting and dramatic than anything you'll see on movies
22 or television. Now, in this case, Mr. Henley is charged
23 with burglary. The elements of burglary are entering the
24 dwelling without the permission of the owner or the
25 occupant and with the intent to commit a crime therein.

1 Now, as the Judge told you at the end of this case, he's
2 going to explain the elements of the crime more fully.
3 The Judge also mentioned to you reasonable doubt. Now,
4 when we brag about your criminal justice system, when we
5 say it is the best in the world and it is, reasonable
6 doubt plays a big part of that. In order to prove this
7 case to you, the State must convince each one of you
8 beyond a reasonable doubt that the Defendant is guilty.
9 That is an enormous burden. That is a monumental burden,
10 but it is a burden that every prosecutor is glad and is
11 honored to bear. Now, what is a reasonable doubt? To be
12 convinced of a fact beyond a reasonable doubt means to be
13 firmly convinced of some fact. To put it a different way,
14 a reasonable doubt is a doubt that would make a reasonable
15 person hesitate to act. Now, that's a little bit
16 confusing. Hesitate to act, what does that mean? Does
17 that mean if you don't make a decision instantly or as a
18 reflex, you've hesitated to act? No, that is not what it
19 means. You're the jury. As the Judge explained to you,
20 you are the judge of the facts. It is your job to weigh
21 the facts, to consider these facts. So just because you
22 think about something doesn't mean you hesitated, it just
23 means you are doing your job. And here's an example.
24 You're stopped at a red light. You see the green light,
25 what do you do? You stomp on the gas and immediately fire

1 through the intersection? No, that's not safe to do.
2 What you should do is you see the green light, you look
3 left, you look right. Why? Because people run red lights
4 all the time. In other words, it is reasonable to doubt
5 that people stop at red lights. Some people just don't
6 stop at red lights. People run red lights all the time.
7 So when you see that green light, you take half a
8 heartbeat to look left, look right and you make sure
9 there's nothing coming. You've eliminated reasonable
10 doubt and you're safe to proceed through the intersection.
11 Similarly, when you look at all the evidence in this case
12 at the end after it's been submitted for your examination,
13 you will also be able to eliminate reasonable doubt. And
14 as to the charge of burglary, you will be firmly convinced
15 that the defendant, Rickey Henley is guilty. Thank you.

16 THE COURT: Ms. Patel?

17 MS. PATEL: Thank you, Your Honor. Rickey Henley did
18 not burglarize the home of Amanda Moss and the State of
19 South Carolina, well, they've got it all wrong and I'm
20 confident at the end of this trial you'll understand why
21 that is. Mr. Henley, my client, has maintained his
22 innocence throughout this case and he has left his life in
23 your hands. I think Solicitor Andrews touched on this
24 earlier. Our American criminal justice system is admired
25 all over the world and it's admired for the protections

1 that it affords each one of our citizens should we ever
2 find ourselves in Mr. Henley's shoes. And at the heart of
3 this system is you all, the jury, because you guys are
4 charged with making sure that Mr. Henley is provided these
5 protections. Now, in many aspects your job is very hard,
6 because Mr. Henley's life rests in your hands. But your
7 ultimate responsibility in this case is to make sure that
8 the State of South Carolina has done their job and also to
9 judge the evidence in this case. You're going to hear
10 from all sorts of different testimony from this witness
11 stand. Today, you're going to hear from an eye witness.
12 You'll hear from the investigating officer. You'll hear
13 from a band of law enforcement agents who handled the
14 evidence in this case, and I'm going to ask you to
15 consider when you're listening to this evidence what the
16 law enforcement agents did. How did they handle the
17 evidence in this case? I'm going to ask that you hold the
18 State's feet to the fire. I'm going to ask you to
19 consider, when listening to this evidence, is how low are
20 we willing to set the bar for the State of South Carolina
21 to deprive another man, and that's Mr. Henley, of his
22 liberty. And I'm confident at the end of this trial
23 you'll understand why the State of South Carolina has it
24 all wrong. Thank you.

25 THE COURT: All right. Mr. Brown?

1 MR. BROWN: The State calls Kimberly Wells.

2 Kimberly Wells, being first duly sworn, testifies as
3 follows:

4 DIRECT EXAMINATION

5 By Mr. Brown:

6 Q Ms. Wells, please state your full name for the record
7 and spell it for me?

8 A Kimberly Ann Wells, K-I-M-B-E-R-L-Y, A-N-N,
9 W-E-L-L-S.

10 Q Ms. Wells, where do you work?

11 A Abbeville 911.

12 Q How long you been with Abbeville 911?

13 A Fifteen years.

14 Q And as part of your job duties there, what is your
15 job duty at 911?

16 A I am 911 supervisor. I take 911 calls. I do some of
17 the clerical work which includes making copies of
18 recordings that come through our 911 center.

19 Q Working on clerical work, does that include being a
20 custodian of the records?

21 A Yes, sir.

22 Q And in this case, particular case, did 911, Abbeville
23 911 receive a call concerning a burglary on February 15,
24 2012?

25 A Yes, sir.

1 Q At the location of North in Abbeville?

2 A Yes, sir.

3 Q I want to show you what's been previously marked
4 State's ID No. 1. Take a look at that and see if you
5 recognize it?

6 A Yes, sir.

7 Q And what is that?

8 A It's a copy of the recording from the call that
9 happened on February 15th.

10 Q And how do you know that's a copy of it?

11 A It's my handwriting and my initials.

12 Q And did you listen to it before you came to court
13 today?

14 A Yes, sir.

15 Q And when keeping these calls at Abbeville 911, was
16 this call kept in the ordinary regular course of business?

17 A Yes, sir.

18 Q Does this call capture everything that was called
19 that day?

20 A Yes, sir. Hang up call, and then they called back.

21 MR. BROWN: Judge, at this time, the State
22 introduces, moves State's ID 1 into State's evidence 1.

23 THE COURT: Any objection?

24 MS. PATEL: And no objection, Your Honor.

25 THE COURT: All right. Identified and it's to be

1 admitted.

2 (Whereupon, State's Exhibit No. 1 was admitted into
3 evidence.)

4 MR. BROWN: Permission to publish?

5 THE COURT: Yes, you can publish it.

6 (Whereupon, State's Exhibit No. 1 was published for
7 the jury.)

8 Q And you said during this, there was a call, a hangup
9 call and then 911 call back?

10 A Well, we called the caller back.

11 (Whereupon, State's Exhibit No. 1 continued to play
12 for the jury.)

13 Q Now, Ms. Wells, you stated that that recording was
14 done on February 15th, 2012?

15 A Yes, sir.

16 Q Do you know what time that call came in?

17 A No, sir.

18 Q If I showed you a document, perhaps it'll refresh
19 your memory.

20 A It's 11:39 a.m.

21 Q 11:39 a.m. on February 15th, 2012?

22 A Yes, sir.

23 MR. BROWN: No further questions.

24 THE COURT: Any cross?

25 MS. PATEL: No cross from the Defense, Your Honor.

1 THE COURT: All right, ma'am. You may step down.

2 MS. WELLS: Okay.

3 MR. BROWN: The State calls Rick Culbreth.

4 THE COURT: Mr. Culbreth.

5 RICK CULBRETH, being

6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Brown:

9 Q Good afternoon, Mr. Culbreth. Will you please state
10 your full name and spell your last name for me?

11 A Rick Culbreth, C-U-L-B-R-E-T-H.

12 Q Now, Mr. Culbreth, where do you live?

13 A , Abbeville.

14 Q And, Mr. Culbreth, do you know these folks sitting on
15 the front row?

16 A Yes, I do.

17 Q Who are they?

18 A J.B. and Amanda Moss.

19 Q And were they previously neighbors of yours?

20 A They live in the same Edgewood Community that we live
21 in, but they're not neighbors.

22 Q Do you know them?

23 A Yes, sir.

24 Q Where was their address of their house?

25 A

1 Q And what county is that in?

2 A Abbeville.

3 Q And state?

4 A South Carolina, here.

5 Q Now, Mr. Culbreth, how long have you lived in that
6 community?

7 A I moved back here in 1996, and I've been at ever
8 since.

9 Q Do you live in that home alone or do you?

10 A No, I have a house, a trailer behind where my mother
11 and father live and I--

12 Q And now--

13 A --recently sold that trailer when my father passed
14 away. I had to move in with my mother to take care of
15 her.

16 Q Is that what you're currently doing--

17 A Yes, sir.

18 Q --you're still at that location? Mr. Culbreth, on
19 February 15, 2012, do you remember that date?

20 A Yes.

21 Q And, Mr. Culbreth, that day, what were you doing that
22 morning?

23 A I am a contractor and I provide lawn maintenance for
24 various people and that's what I was doing that morning,
25 cutting grass.

1 Q Where were you cutting grass?

2 A Long Cane Cemetery right there on, off Beltline Road,
3 Highway 20, Beltline Road.

4 Q And were you driving by the Moss' house at some point
5 that morning?

6 A I usually try to leave there around 11:00, because I
7 need to get home to make sure my mother has, gets her
8 dinner. I usually leave at, I try to leave there around
9 11:00 or so and that morning, I did. Was going to the
10 house.

11 Q And the route to get to your mother's home was to
12 pass by the Moss' house?

13 A I passed by there to Highway 28 North. That's where
14 I was going to where my mother's house is, where my house
15 is now.

16 Q Now, Mr. Culbreth, when you were riding by the Moss'
17 house that day, did you see anything out of the norm?

18 A Yes, I did. I'm always, just because of we're
19 friends or that, I was riding by there and I just happened
20 to look over there at the house, because they've done a
21 lot of work. And I just like to look and see what new
22 they've done. Just as I got past the driveway, I looked
23 and saw a gray car backed under the carport, the side
24 carport, the door open. And when I realized, noticed that
25 it was a black male that I saw, he was running from the

1 front door around to the side door and that's when I went
2 down to like the next driveway, turned around and come
3 back and parked at the driveway on the southbound side,
4 at the mailbox.

5 Q When you came back and turned around and were on the
6 side of the road, what'd you see then?

7 A As I got stopped, I looked up and I saw a black male
8 standing in the doorway in the house.

9 Q Standing in the house?

10 A In house, in the doorway.

11 Q So the door was opened at that point?

12 A The door, the side door was opened then.

13 Q And he had made entry into the house?

14 A That's what it appeared to me.

15 Q Now, when you pulled back, pulled back up, what door
16 did he have open on his car?

17 A The best I can recall is the passenger side back door
18 and it was open.

19 Q And it was open, and he was backed into that?

20 A He was backed in the carport.

21 Q And based on what you saw, what did it appear was
22 going on?

23 MS. PATEL: Your Honor, objection; calls for
24 speculation.

25 THE COURT: He can testify to what he observed, but

1 he can't speculate. You're correct. So ask your
2 question, what'd you see and not what you're guessing he
3 was.

4 A Well, what I saw is a black male standing in the
5 doorway. The car backed in, the door opened, and I knew
6 that in my mind that he wasn't supposed to be there.

7 Q Now, after you saw him there, what did you do next?

8 A I just made a notion that I pointed my finger like I
9 see you there, and I do not recall if he pointed back or
10 anything like that but that's what I did. He stood there
11 a few seconds. Come down the steps, but as he was coming
12 down the steps, he looked like he was going to throw
13 something down. I don't know what it was and he shut the
14 door and went around and got in the driver's side, pulled
15 out of the driveway, stopped in front of my truck. And
16 just asked me do I need any help with lawn care and I said
17 no, I don't.

18 Q Now, what kind of car are you driving at that point?

19 A It was a silver, I know it was a Pontiac.

20 Q That he was driving?

21 A Yes, he was driving, yes.

22 Q What kind of, what color truck were you driving?

23 A I had a white Ford pickup truck pulling a lawn mower
24 trailer.

25 Q Now, when he pulled up to ask you about if you need

1 any lawn care or any help doing lawn work, how long did
2 this conversation last or these words exchanged, how long
3 did that last?

4 A Probably anywhere from five to ten seconds, because I
5 mean it was very quick. And when I said no, that's when
6 he went out and pulled out and got on Highway 28 North.

7 Q Now, were you able to get a look at him to, did he
8 have any kind of identifying marks on him or were you able
9 to get an idea of what he looked like from that short of
10 time?

11 A I mean, I looked at him but, you know, it was, I
12 guess, I was real upset about what was going on. I just
13 remember he had a bandanna tied tightly around his head.
14 It went down the back of his neck. Light-skinned from
15 what I could tell. But I do not remember any, you know,
16 marks, facial scars or anything.

17 Q After you saw him and he passed by you, did you make
18 a call to 911?

19 A When he passed, when he went down on Highway 28
20 North, when he first went out and that's when I looked in
21 the rearview mirror and got a partial tag number. And he
22 went down, I don't know how far down north and turned
23 around and came back by me and that's when I turned into
24 the driveway and called 911.

25 Q So Highway 28 North, he went initially Highway 28

1 North. That would go in what direction?

2 A That would go toward where I live.

3 Q And if you remained on Highway 28 North, what's the
4 next town or next county you run into?

5 A That would be a little town called Antreville, South
6 Carolina.

7 Q What's the next county over?

8 A From Antreville, Anderson.

9 Q So if he went up Highway 28 North, initially he'd go
10 toward Anderson?

11 A Yes, sir.

12 Q And then you saw him a second time after you got his
13 tag?

14 A Yes.

15 Q Which way was he going?

16 A Highway 28 South then. He went up, turned around and
17 come back.

18 Q And if you go Highway 28 South, where does Highway 28
19 South lead you?

20 A McCormick, Augusta.

21 Q Now, I want to show you what's been marked for ID
22 purposes as State's number 2, number 3. I ask you to take
23 a look at State's ID's 2 and 3 and see if you recognize
24 those photos.

25 A Yeah, this is the house at

1 Q And the house that belonged to?

2 A J.B. and Amanda Moss.

3 MR. BROWN: Judge, at this time, the State moves
4 number 2 and 3 ID into State's Evidence 2 and 3.

5 MS. PATEL: No objection.

6 THE COURT: No objection to State's 2 and 3,
7 photographs of the home.

8 (Whereupon, State's Exhibit Nos. 2 and 3 were
9 admitted into the evidence.)

10 Q Mr. Culbreth, I want to show you State's Exhibit
11 number 2 and you've previously said that's the house at
12 ?

13 A Yes.

14 Q Is this how it appeared that day?

15 A Huh?

16 Q Is this how the house appeared that day?

17 A I mean, the best I can tell, yes.

18 Q I'm also going to show you State's evidence number 3.

19 A That's the carport the car was backed up.

20 Q Now, so you said the car was backed up into that
21 carport. I guess the trunk of the car would have been
22 facing toward that door in the picture?

23 A Now, what? Repeat that, please.

24 Q Where would the hood of the car be facing?

25 A Toward Highway 28.

1 Q Okay. And his, you say there was a door opened in
2 the car?

3 A Yes, sir. It was.

4 Q Which door would that have--

5 A The passenger side. I was toward the house.

6 Q Mr. Culbreth, do you remember what license plate
7 number you gave to law enforcement?

8 A Right offhand, I do not remember it. I wrote it
9 down, but I don't remember it.

10 (Whereupon, State's Exhibit No. 23 was marked for
11 identification.)

12 Q Mr. Culbreth, I want to show you what's been marked
13 for ID purposes, State's 23. Do you recognize?

14 A That's my handwriting.

15 Q That's your handwriting?

16 A Yes, sir.

17 Q Are those notes from that day?

18 A Yes, sir.

19 Q Do you remember the license plate number you gave him
20 that day? Would you like to refresh your memory?

21 A It was HSN or something. Yeah, HSN 454.

22 Q And you also gave a description of the car. What,
23 what make and model or what make car did you tell law
24 enforcement that day?

25 A At first, I thought it was a, I knew it was a

1 Pontiac. But it, from what I could see, I thought it was
2 a Parisian, but it kind of, it was a Bonneville.

3 Q In kind of what timeframe, what year make did you
4 think it was?

5 A Anywhere '87-89 or something. I don't remember. I
6 mean, I--

7 Q Up into the nineties?

8 A It could have been. They made a very, a lot of those
9 that year.

10 Q Now, Mr. Culbreth, when you talked to law
11 enforcement, did you tell them this information of what
12 you saw that day?

13 A Yes, I told them as much as I could remember, because
14 like I say, I was very upset with all of this going on.

15 Q Now, after you talked with law enforcement, did you
16 have an occasion to talk with Officer Patrick Thompson?

17 A Yes, sir; I did. He came to my house.

18 Q And during that time, did he show you a photo lineup?

19 A Yes, he did.

20 Q And out of that photo lineup, were you able to
21 identify anybody?

22 A I've got it down to two people. I couldn't be sure
23 of which one.

24 Q I want to show you State's ID number 19. If you can
25 recognize, see if you recognize that?

1 A I remember the two that I pointed out.

2 Q Is that the photo ID--

3 A Yes.

4 Q --that Patrick Thompson showed you?

5 A Yes.

6 Q And out of this photo ID, which two did you pick out?

7 A Number 2 and 3.

8 Q And are those your handwritten notes on there?

9 A That is correct.

10 Q Now, on the photo ID--

11 MR. BROWN: Judge, at this time I'll move the State's
12 ID 19 as State's Evidence 19.

13 MS. BOLEN: Judge, could we have just a very brief,
14 sidebar for a minute?

15 THE COURT: Sure.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 MR. BROWN: And, Your Honor, State moves State's ID
20 19 into evidence at this time.

21 THE COURT: And that's without objection?

22 MS. PATEL: No objections, Your Honor.

23 THE COURT: No objection. 19 is in.

24 (Whereupon, State's number 19 is admitted into
25 evidence.)

1 Q Now, Mr. Culbreth, No. 2 or 3 said, no facial hair.
2 Had on a doo-rag.

3 THE COURT: All right. Hang on just one second.
4 Just so the jury understands. A lot of the pictures and
5 things the lawyers and people are familiar with and they
6 went through and numbered a good many of them this
7 morning. That's part of what we did. That's why they're
8 not numbered 1, 2, 3, 4. They're just numbered the way
9 they had them stacked up, but Ms. Holston keeps up with
10 the ones that are admitted and y'all get to see these in
11 the jury room as long as you want and y'all don't have to
12 see them over there and y'all can see them again. Y'all
13 will have them in the jury room, just so you understand.
14 All right.

15 Q Mr. Culbreth, you indicated that you picked out, it
16 was either number 2 or number 3?

17 A Yes, sir.

18 Q And below it said, no facial hair?

19 A At the time, I mean, that's what I remember.

20 Q From what you remember did he, was he completely
21 shaven or did he have some hair on his face from what you
22 remembered?

23 A What do you call it when you have just a little bit
24 right here?

25 Q A goatee?

1 A Okay. But that is all I remember.

2 Q So you're not saying he was completely clean-shaven?

3 A Not completely clean-shaven. I mean, he didn't have
4 as much as I have.

5 Q All right. Now, and again you said the make and
6 model of that car was a Pontiac, late eighties, nineties
7 car, gray color?

8 A Yeah, gray.

9 Q And this was at the home of Amanda and J.D. Moss?

10 A Yes, sir.

11 MR. BROWN: Beg the Court's indulgence. No further
12 questions at this time.

13 THE COURT: Ms. Patel?

14 CROSS-EXAMINATION

15 By Ms. Patel:

16 Q Good afternoon, Mr. Culbreth. I just want to go over
17 a few points that we just talked about, that you talked
18 about with the Solicitor on direct examination. You told
19 us that you spoke with the suspect in the case, is that
20 right?

21 A Correct.

22 Q Okay. And you said you talked to him, I know it was
23 short, but you talked to him, you exchanged words with
24 him?

25 A All I said was, no, I did not.

1 Q Okay. And this was, this conversation happened while
2 you were sitting in the car?

3 A Yeah, I was sitting in my truck.

4 Q And the suspect's vehicle pulled up next to your car?

5 A In front of my truck.

6 Q Okay. So you were able to have a conversation?

7 A Just a few words that we did speak.

8 Q Okay. And while this short conversation was going
9 on, was the window pulled down?

10 A Mine was and his was.

11 Q Okay. And this is around 11:30 a.m.?

12 A Not to be exact about the time. I just know what
13 time I leave to go home.

14 Q Okay.

15 A I do not wear a watch.

16 Q So, I guess, what I'm trying to say it was in the
17 afternoon time? There was daylight out?

18 A And daylight out, yes.

19 Q Okay. And during your conversation, you were able to
20 see the suspect's face?

21 A Just for a few seconds.

22 Q Okay. But you were able to see a tag, is that right?

23 A In my rearview mirror as he was going by.

24 Q Okay. Did you ever tell law enforcement that there
25 was a tent cover on the tag?

1 A I do not remember that.

2 Q Okay. And so you're saying that you were able to
3 read a suspect's tag number in your rearview mirror as he
4 drove off?

5 A Off my side mirror.

6 Q Okay. And your side mirror.

7 A Yes.

8 Q And you said that the plate was HSN 454, is that
9 right?

10 A That was the best of my knowledge, yes.

11 Q Okay. And you said that you were certain about the
12 numbers but not the letters? Did you ever tell law
13 enforcement that?

14 A That was, you have to repeat that, please.

15 Q Did you ever tell law enforcement that you were
16 certain about the numbers but not the letters?

17 A I don't remember that.

18 Q Okay. Well, let's talk about when you called 911 in
19 this case. You called two times?

20 A Yes, because the first time, it was, I hung up, and
21 then they called back the second time.

22 Q And when you called 911, this was right after this
23 interaction that you had with the suspect?

24 A After I had pulled into the driveway up toward the
25 house.