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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Appeal from Pickens County

Honorable John C. Hayes, Circuit Court Judge

KARL RYAN LANE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000258

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF PICKENS) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 KARL LANE,) 2011-GS-39-1496
7 DEFENDANT.) 2011-GS-39-1497
8) JANUARY 25, 2012
9) PICKENS, SOUTH CAROLINA

10 (VOLUME I)

11 B E F O R E:

12 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 JENNIE BARWICK, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 JOHN DEJONG, PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT

19 MICHAEL R. WATTS
20 CIRCUIT COURT REPORTER
21
22
23
24
25

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(JANAURY 25, 2012)

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1 (PROCEEDINGS, JANUARY 25, 2012)

2 (Slip of Paper marked as State's Exhibit No. 1 for
3 identification)

4 (Drawing marked as State Exhibit No. 2 for
5 identification)

6 (Drawing marked as State's Exhibit No. 3 for
7 identification)

8 (Property Estimate marked as State's Exhibit No. 4
9 for identification)

10 (Photograph marked as State's Exhibit No. 5 for
11 identification)

12 (Photograph marked as State's Exhibit No. 6 for
13 identification)

14 (Photograph marked as State's Exhibit No. 7 for
15 identification)

16 (Photograph marked as State's Exhibit No. 8 for
17 identification)

18 (Photograph marked as State's Exhibit No. 9 for
19 identification)

20 (Mapquest Map marked as State's Exhibit No. 10 for
21 identification)

22 (Photographs marked as State's Exhibit No. 11 for
23 identification)

24 (Photographs marked as State's Exhibit No. 12 for
25 identification)

1 THE COURT: Ladies and gentlemen, we are now ready
2 to select a jury for the trial of the next case that has
3 been presented.

4 The indictments that are placed before me charge
5 Mr. Karl Ryan Lane with two offenses.

6 One indictment says that on or about the 21st of
7 April of last year, 2011, that Mr. Lane willfully and
8 unlawfully entered certain property of Mark Todd McSwain on
9 [REDACTED] [REDACTED] in Liberty, [REDACTED] [REDACTED] without
10 consent and with the intent to commit a crime therein, and
11 that he had armed himself with a firearm. That's
12 constituting burglary in the first degree.

13 He's also charged on that same day of April 21st,
14 2011, with feloniously taking and carrying away certain
15 personal property of Mr. McSwain, that being firearms, total
16 value more than \$10,000, with the intent to permanently
17 deprive the lawful owner of the use of that property
18 permanently.

19 Mr. Lane, he's entered a plea of not guilty to
20 both of these charges. And, of course, that places the
21 burden on the State to prove his guilt beyond a reasonable
22 doubt. He is, as other all individuals charged with any
23 crime in Pickens County, in South Carolina, and America,
24 presumed innocent until the State meets that burden of proof
25 beyond a reasonable doubt.

1 While I'm assigned to this courtroom this week to
2 be the judge of the law, we need to find twelve fair and
3 impartial jurors to judge the facts in this case, determine
4 what the facts are.

5 I need to ask you some additional questions. You
6 know the protocol. I qualified you on Monday, but even
7 though you are qualified to serve as a juror, I need to ask
8 you some additional questions to determine your eligibility
9 to serve on this particular case. Some of the questions
10 I'll ask you may be redundant to what I have already asked.
11 It's not that I have forgotten. It's that we want to
12 preserve a record on this case, as we do on all cases, so if
13 you will just respond as these questions apply to you.

14 Is there any member of the jury panel that has any
15 prior knowledge about this case? I have recited to you
16 briefly what is stated in the indictments, the allegations,
17 but if you have any prior knowledge about this particular
18 incident that happened on [REDACTED] -- or, excuse me,
19 [REDACTED] here in Pickens County back in April of
20 2011, heard about it through media coverage, or otherwise,
21 would you please stand, if you have prior knowledge from
22 whatever source?

23 Thank you. There is no response.

24 Is there any member of the jury panel related by
25 blood or marriage to Mr. Karl Ryan Lane? If so, would you

1 please stand?

2 Mr. Lane, you are standing over here.

3 Thank you, sir. You may be seated.

4 Is there any member of the jury panel related by
5 blood or marriage to Mr. Lane? If so, would you please
6 stand?

7 (No response)

8 THE COURT: Is there any member of the panel have
9 a close business, a social, or a personal relationship with
10 Mr. Lane? If so, would you please stand?

11 Thank you. There is no response.

12 Among potential witnesses who may testify in this
13 case, from the Pickens County sheriff's office would be
14 Detective Ben Dow.

15 Sergeant Brian Gibson.

16 Deputy Michael Torres.

17 Additionally Mr. Mark McSwain may be testifying.

18 Pamela Holladay.

19 Kenneth Cole.

20 Kimberly Cole.

21 Shae Rozakos, R-A-Z-A-K-O-S, Rozakos.

22 Is there any member of the jury panel related by
23 blood or marriage to any of these potential witnesses? If
24 so, please stand.

25 (No response)

1 THE COURT: Does any member of the panel have a
2 close business or a social, a personal relationship with any
3 of these potential witnesses? If so, would you please
4 stand?

5 Thank you. There is no response.

6 Is there any member of the jury panel expressed or
7 formed an opinion in any way about the facts in this case?
8 If so, would you please stand?

9 (No response)

10 THE COURT: Is there any member of the jury panel
11 aware of any bias or prejudice that you have concerning this
12 particular incident that would prevent you from serving as a
13 juror? If so, would you please stand?

14 (No response)

15 THE COURT: Is there a member of the jury panel
16 who has you, yourself, or a member of your immediate family
17 involved in law enforcement in any way? If so would you
18 please stand?

19 Yes, ma'am, if you would state your name, please?

20 JUROR NUMBER 16: My name is Angie Case and my
21 brother-in-law is a warrant officer with the Pickens County
22 sheriff's department.

23 THE COURT: And your name, please, ma'am?

24 JUROR NUMBER 111: Elizabeth Velez. My husband
25 Justin Velez is a deputy for Anderson County.

1 THE COURT: Those of you who are standing that
2 have relatives in law enforcement, neither of them, of
3 course, are going to be testifying in this case, but the
4 fact that you have a law enforcement -- a relative in law
5 enforcement, would that affect your ability to be a fair
6 juror? If you have any hesitancy whatsoever about serving,
7 or if you feel this would impair you in any way, we have
8 other jurors available to serve and certainly they could do
9 that.

10 If either of you believe this relationship with
11 your relatives would interfere with your ability to be fair
12 and just in this case, to both the State and to the
13 defendant, I'm going to ask if you would remain standing.
14 If you believe that you could be a fair juror, you may be
15 seated.

16 Thank you. Let the record reflect that both
17 jurors have been seated.

18 Is there any member of the jury panel who is a
19 contributing member of any organization whose primary
20 concern is that of the promotion of law enforcement or the
21 protection of victims rights, such as MADD, or SADD, an
22 organization known as PARR, CAVE, the Sheriff's Association.
23 If you are a contributing member of any such organization,
24 would you please stand?

25 Your name, please, ma'am?

1 JUROR NUMBER 119: Tina Whitlock. I'm a member of
2 MADD.

3 THE COURT: All right. The fact that you
4 contribute to this organization, do you believe that would
5 have an influence on you, as far as being a fair juror in
6 this case? Would it affect your ability to be fair to both
7 the State and to the defendant?

8 JUROR NUMBER 119: Yes.

9 THE COURT: Do you believe it would affect your
10 ability to be fair?

11 JUROR NUMBER 119: No, sir, I can be fair.

12 THE COURT: You can be fair to both sides?

13 JUROR NUMBER 119: Yes, sir.

14 THE COURT: Thank you very much. You may be
15 seated.

16 Is there any member of the jury panel or a member
17 of your immediate family who has ever been the victim of a
18 property crime against your home, your business, your
19 automobile, or -- I'll ask a two-part question. If you have
20 ever been accused of committing a property crime, or a
21 member of your immediate family been accused or been -- that
22 event has happened to you, would you please stand? If you
23 have been the victim of a property crime or if you have been
24 accused of that.

25 All right, as I go through, I'll just ask, if you

1 would, tell me your name. And if you would remain standing
2 after I get the information from you.

3 We'll start over here to my left.

4 Your name, please, ma'am?

5 JUROR NUMBER 62: Betty Ledbetter.

6 THE COURT: And were you the victim of a property
7 crime?

8 JUROR NUMBER 62: Yes, I was.

9 THE COURT: How long ago was it?

10 JUROR NUMBER 62: My husband and I, our business,
11 we had a truck that was broken into just this past summer.

12 THE COURT: All right. If you would just remain
13 standing just a moment.

14 Your name, please, sir?

15 JUROR NUMBER 37: James Foster.

16 THE COURT: And were you the victim or accused of
17 a --

18 JUROR NUMBER 37: Victim, burglary of a house in
19 1993.

20 THE COURT: 1993.

21 All right, sir.

22 Your name, please, sir?

23 JUROR NUMBER 56: Joe Howard. A victim.

24 THE COURT: How long ago was it?

25 JUROR NUMBER 56: About five years ago.

1 THE COURT: Was it your home, a car, or --

2 JUROR NUMBER 56: It was at home. A trailer was
3 stolen.

4 THE COURT: Okay. Please remain standing, please.
5 When we go in the front. Your name, please,
6 ma'am?

7 JUROR NUMBER 97: Stacie Simpson.

8 THE COURT: All right.

9 JUROR NUMBER 97: I was the victim. It was
10 probably about four or five months ago. We were using my
11 fiance's house and storage and --

12 THE COURT: So a storage area?

13 JUROR NUMBER 97: Yes.

14 THE COURT: All right. Your name, please, ma'am?

15 JUROR NUMBER 103: Jeannette Taylor. It's been
16 approximately ten, twelve years ago. The employee of a
17 logging company came on our property and cut trees without
18 our permission.

19 THE COURT: All right.

20 Your name, please, ma'am?

21 JUROR NUMBER 113: Dare Ward. My son had a bobcat
22 stolen about four years ago.

23 THE COURT: Your name, please, ma'am?

24 JUROR NUMBER 123: Sandra Wimphrie. A car broken
25 into twice, and my home and my garage broken into.

1 THE COURT: How long ago was that?

2 JUROR NUMBER 123: About five years ago.

3 THE COURT: Your name, please, sir?

4 JUROR NUMBER 125: Donald Wygand. Victim, about
5 three years ago. Property stolen off of our grounds.

6 THE COURT: Your name, please, sir?

7 JUROR NUMBER 116: Robert Wheaton.

8 THE COURT: And were you --

9 JUROR NUMBER 116: The victim.

10 THE COURT: Okay. And.

11 JUROR NUMBER 116: My automobile was broken into
12 in my driveway.

13 THE COURT: How long ago was that?

14 JUROR NUMBER 116: Three years and four months.

15 THE COURT: Your name, please, ma'am, in the back?

16 JUROR NUMBER 127: Cindy Yother. My home was
17 broken into on two occasions. It has been about ten years
18 ago.

19 THE COURT: Two years ago?

20 JUROR NUMBER 127: Ten, I'm sorry.

21 THE COURT: Ten years ago. Excuse me.

22 All right. Those of you who are standing, you --
23 excuse me, I'm sorry I missed you.

24 JUROR NUMBER 7: My name is George Bowers. A
25 victim. I had equipment stolen off my property at my mom

1 and dad's house, the adjoining property, was broken into
2 last year.

3 THE COURT: Last year?

4 JUROR NUMBER 7: Yes.

5 THE COURT: Okay. Are any of those that have had
6 your property broken into, is there an on-going
7 investigation, as far as you know, as to finding this, or
8 are you being interviewed by anyone now about that, in the
9 last month or so?

10 All right, there is no positive responses.

11 Those of you who are standing, all of you have
12 indicated that sometime in your past you have been
13 victimized by a property offense. This, of course, concerns
14 a property offense. If you believe that because of that
15 event that happened in your life, some more recently than
16 others, that that would interfere with your objectivity in
17 this case, that you believe that you could not be fair to
18 the State of South Carolina because of the way it was
19 investigated, or to the defendant because of it happening to
20 you, I need to hear from you now if you believe that you
21 can't be fair.

22 I'm going to ask those of you that believe that
23 you can be fair in this case, set aside whatever event
24 happened to you and listen to the evidence that's presented,
25 the law that I give you and make a just decision on that

1 alone, the law and the evidence, if you believe you can be
2 fair, I'm going to ask if you would be seated.

3 If you have any hesitancy at all, please remain
4 standing.

5 Okay. Thank you very much, ladies and gentlemen.

6 Let the record reflect that all the jurors have
7 been seated.

8 At this time I'll ask the attorneys if you would,
9 please, to stand and introduce yourselves to the jury panel.

10 Ms. Barwick.

11 MS. BARWICK: Good afternoon. My name is Jennie
12 Barwick and I represent the State of South Carolina and I
13 work with the 13th Circuit Solicitor's Office.

14 THE COURT: Mr. DeJong?

15 MR. DEJONG: Thank you, Your Honor.

16 May it please the court, I'm John DeJong. I
17 practice law here in Pickens County. Today I have the
18 pleasure of representing Mr. Karl Lane.

19 Also seated at counsel table with me is my
20 investigator, who may be in and out during the course of
21 this trial, whose name is Mr. Johnny Duncan.

22 THE COURT: Thank you.

23 Is there any member of the jury panel related by
24 blood or marriage to any of these folks who have been
25 introduced, or related by blood or marriage to anyone

1 related in the solicitor's office of the 13th Circuit? If
2 you are related by blood or marriage to any of these
3 individuals, would you please stand?

4 (No response)

5 THE COURT: Is there any member of the panel who
6 has a close business, or a social, or a personal
7 relationship with any of these individuals? If so, would
8 you please stand.

9 Thank you. There is no response.

10 Is there any member of the jury panel who has ever
11 been involved in any litigation represented by either of
12 these attorneys, members of their staff or organization, or
13 been on the opposing side of either of these attorneys or
14 their staff? If you have been involved in such litigation
15 and either of them were representing you or representing the
16 opposition, would you please stand?

17 Thank you. There is no response.

18 It bears repeating, I have said it before to many
19 of you, ladies and gentlemen. The law in which we operate
20 demands that fair jurors be selected for cases such as this.
21 If you believe that in this particular case you could not be
22 fair to both the State of South Carolina to the defendant,
23 Mr. Karl Ryan Lane, and render a verdict based on the law
24 and the evidence, and that alone, I need for to you stand at
25 this time.

1 If you believe for any reason whatsoever you could
2 not be fair in this particular case, please stand.

3 Thank you. There is no response.

4 Any other questions from the State?

5 MS. BARWICK: No, sir, Your Honor.

6 THE COURT: From the defense?

7 MR. DEJONG: No, Your Honor.

8 THE COURT: All right. Could I see the attorneys
9 just for a moment?

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: All right, Ms. Clerk, let's impanel a
13 jury. We will have one alternate.

14 (Off the record)

15 (Back on the record)

16 THE COURT: All right, ladies and gentlemen, you
17 again know the protocol. We will have your names randomly
18 selected here in a moment and be ready to call your name.

19 THE CLERK: Please stand as I call your name.

20 Juror Number 74, John P. Murphy.

21 What says the State?

22 MS. BARWICK: Please present the juror.

23 THE CLERK: And the defense?

24 MR. DEJONG: Please swear the juror.

25 THE CLERK: If you would come forward, please,

1 sir.

2 Juror Number 42, Eleanor T. Garrett.

3 What says the State?

4 MS. BARWICK: Please present the juror.

5 THE CLERK: And the defense?

6 MR. DEJONG: Please swear the juror.

7 THE CLERK: If you would come forward, please,

8 ma'am.

9 Juror Number 115, Phillip S. Wells.

10 What says the State?

11 MS. BARWICK: Please present the juror.

12 THE CLERK: And the defense?

13 MR. DEJONG: Please excuse this juror from the

14 trial of this case.

15 THE CLERK: If you will have a seat, please, sir.

16 Juror Number 37, James C. Foster, Jr.

17 What says the State?

18 MS. BARWICK: Please present the juror.

19 THE CLERK: And the defense?

20 MR. DEJONG: Please excuse this juror from the

21 trial of this case.

22 THE CLERK: If you will have a seat, please, sir.

23 Juror Number 22, David H. Chastain.

24 What says the State?

25 MS. BARWICK: Please present the juror.

1 THE CLERK: And the defense?

2 MR. DEJONG: Please swear the juror.

3 THE CLERK: If you would come forward, please, sir,
4 and have a seat in the jury box.

5 Juror Number 48, Reggie D. Grant.

6 What says the State?

7 MS. BARWICK: Please seat the juror.

8 THE CLERK: And the defense?

9 MR. DEJONG: Please swear the juror.

10 THE CLERK: If you will come forward, please, sir,
11 and have a seat in the jury box.

12 Juror Number 113, Dare B. Ward.

13 What says the State?

14 MS. BARWICK: Please seat the juror.

15 THE CLERK: And the defense?

16 MR. DEJONG: Please excuse this juror from the
17 trial of this case.

18 THE CLERK: If you will have a seat, please.

19 Juror Number 105, Oscar A. Thorsland.

20 What says the State?

21 MS. BARWICK: Please present the juror.

22 THE CLERK: And the defense?

23 MR. DEJONG: Please excuse this juror from the
24 trial of this case.

25 THE CLERK: If you will have a seat, please, sir.

1 Juror Number 103, Jeannette G. Taylor.

2 What says the State?

3 MS. BARWICK: Please present the juror.

4 THE CLERK: And the defense?

5 MR. DEJONG: Please excuse this juror from the
6 trial of this case.

7 THE CLERK: If you will have a seat, please,
8 ma'am.

9 Juror Number 114, Tracy Washburn.

10 What says the State?

11 MS. BARWICK: Please present the juror.

12 THE CLERK: And the defense?

13 MR. DEJONG: Please swear the juror.

14 THE CLERK: If you would come forward, please,
15 ma'am.

16 Juror Number 47, Everett L. Gragg, Jr..

17 What says the State?

18 MS. BARWICK: Please present the juror.

19 THE CLERK: And the defense?

20 MR. DEJONG: Please swear the juror.

21 THE CLERK: If you would come forward, please,
22 sir.

23 Juror Number 29, Brenda G. Duncan.

24 What says the State?

25 MS. BARWICK: Please present the juror.

1 THE CLERK: And the defense?

2 MR. DEJONG: Please swear the juror.

3 THE CLERK: If you would come forward, please,
4 ma'am.

5 Juror Number 123, Sandra D. Wimphrie.

6 What says the State?

7 MS. BARWICK: Please present the juror.

8 THE CLERK: And the defense?

9 MR. DEJONG: Please excuse this juror from the
10 trial of this case.

11 THE CLERK: Juror Number 15, Rickey E. Carver.

12 What says the State?

13 MS. BARWICK: Please present the juror.

14 THE CLERK: And the defense?

15 MR. DEJONG: Please swear the juror.

16 THE CLERK: If you would, come forward, please,
17 sir.

18 Juror Number 31, Nathan H. Edmond.

19 What says the State?

20 MS. BARWICK: Please present the juror.

21 MR. DEJONG: Mr. Clerk, what number?

22 THE CLERK: 31.

23 MR. DEJONG: Thank you, sir.

24 THE CLERK: And the defense?

25 MR. DEJONG: Please swear the juror.

1 THE CLERK: If you would, come forward, please,
2 sir.

3 Juror Number 9, William D. Brackett.

4 What says the State?

5 MS. BARWICK: Please present the juror.

6 THE CLERK: And the defense?

7 MR. DEJONG: Please swear the juror.

8 THE CLERK: If you would, come forward, please.

9 Juror Number 44, Richard O. Gilbert.

10 What says the State?

11 MS. BARWICK: Please present the juror.

12 THE CLERK: And the defense?

13 MR. DEJONG: Please swear the juror.

14 THE CLERK: If you would, come forward, please,
15 sir, and have a seat in the jury box.

16 Juror Number 73, Tanis N. Mullinax.

17 What says the State?

18 MS. BARWICK: Please present the juror.

19 THE CLERK: And the defense?

20 MR. DEJONG: Please excuse this juror from the
21 trial of this case.

22 THE CLERK: Juror Number 56, Joe K. Howard.

23 What says the State?

24 MS. BARWICK: Please present the juror.

25 THE CLERK: And the defense?

1 MR. DEJONG: Please excuse this juror from the
2 trial of this case.

3 THE CLERK: Juror Number 97, Stacie M. Simpson.
4 What says the State?

5 MS. BARWICK: Please present the juror.

6 THE CLERK: And the defense?

7 MR. DEJONG: Please excuse this juror from the
8 trial of this case.

9 THE CLERK: Juror Number 68, John C. McGuire.
10 What says the State?

11 MS. BARWICK: Please present the juror.

12 THE CLERK: And the defense?

13 MR. DEJONG: Please excuse this juror from the
14 trial of this case.

15 THE CLERK: Juror Number 116, Robert L. Wheaton,
16 Jr..

17 What says the State?

18 MS. BARWICK: Please present the juror.

19 MR. DEJONG: Please swear the juror.

20 THE CLERK: If you would, come forward, please,
21 sir.

22 This will be for the alternate.

23 Juror Number 7, George K. Bowers.

24 What says the State?

25 MS. BARWICK: Please present the juror.

1 THE CLERK: And the defense?

2 MR. DEJONG: Please excuse this juror from the
3 trial of this case.

4 THE CLERK: Juror Number 88, Virgil H. Pressley.
5 What says the State?

6 MS. BARWICK: Please excuse the juror.

7 THE CLERK: If you will have a seat, please.
8 Juror Number 26, Donna T. Cothran.

9 What says the State?

10 MS. BARWICK: Please present the juror.

11 THE CLERK: And the defense?

12 MR. DEJONG: Please swear the juror.

13 THE CLERK: If you would, come forward, please,
14 ma'am, and have a seat in the jury box.

15 THE COURT: Any legal matters from the State, as
16 far as the selection of the jury in this case?

17 MS. BARWICK: No, sir, Your Honor.

18 THE COURT: From the defense?

19 MR. DEJONG: Not on behalf of Mr. Lane, Your
20 Honor.

21 THE COURT: To the ladies and gentlemen who were
22 not selected, I can excuse you for the day. Thank you for
23 your patience in coming back for us this afternoon.

24 Please call back tonight after six o'clock. There
25 will be a message on the answering machine as to whether you

1 either need to call back tomorrow or when you might need to
2 come back. If you will just listen carefully to that
3 message, it will give you further instructions for the week.
4 You are excused at this time.

5 Everyone else please remain seated while the jury
6 departs.

7 (Whereupon, the jury venire panel left the
8 courtroom)

9 THE COURT: Ladies and gentlemen, you have seen
10 the process by which you were selected. Some of you have
11 had an opportunity to serve on juries already this week.
12 Perhaps some of you served downstairs on the trial that took
13 place yesterday, but either way, I wanted to give you some
14 preliminary instructions. This is not an instruction on the
15 law in any way, just to let you know a little bit about the
16 procedures we will be operating under while we conduct this
17 trial.

18 I'm honored to be working with you and have this
19 opportunity. I'm going to endeavor to minimize your down
20 time. Whenever we are not taking care of matters here in
21 the courtroom, hopefully you will be free to go about your
22 every day activities, but while this trial is going on,
23 sometimes there will be some inconveniences, unfortunately,
24 while we take care of legal matters and so forth, but I'm
25 going to try to be time conscious for you.

1 Normally we will go an hour, hour and a half at a
2 time before we take a break. That's part of my job to
3 designate when we start and when we end and when we take
4 breaks.

5 Your job in this case is to be the judge of the
6 facts, as I told you in the qualification process. To be a
7 judge of the facts you are going to have to pay attention to
8 what's going on, to be focused on the trial, listening to
9 the testimony, watching the actions of the parties, the
10 lawyers, what's taking place here in the courtroom.
11 Obviously if you are not alert to what's going on, you are
12 not going to be able to fulfill your job very well. So if
13 at any time I haven't called for a break and you feel
14 uncomfortable and need to take a break, please get my
15 attention. I'll try to be looking at you some. If you
16 can't get my attention, we certainly have the bailiffs here
17 to assist me and assist you. Mr. Schumacker to your left,
18 he can certainly let me know that you need a break. Mr.
19 Wilson in the back of the room.

20 Other folks that are being participating in the
21 course of the trial, Mr. Wellborn, you obviously met him
22 earlier this week, our fine Clerk of Court. He will be here
23 in the courtroom or his assistant, Ms. Garrett, who worked
24 through the selection process.

25 Seated beside me is Sean Hinton, my law clerk, and

1 he will certainly be of assistance to you, if he can. You
2 may see him coming and going during the process of the
3 trial, taking care of other matters we have back in the
4 office.

5 The gentleman seated directly in front of you with
6 his back towards you is Mr. Mike Watts. He's the court
7 reporter. He's taking down everything that I say,
8 everything that a witness says and the lawyers say and the
9 proceedings of the court, to keep a good record. If there
10 is exhibits that may be offered into evidence, he will be
11 marking those and keeping up with those kind of things. A
12 valuable important job that he has.

13 Any of these folks, of course, will give you any
14 help that they can as we progress.

15 You are going to be needing to apply the every-day
16 experiences that you have enjoyed in your life, the life
17 experiences, those things that you pick up at work, family
18 and social endeavors, whatever you may be doing. That's the
19 life experiences that you are going to use to be a good
20 juror, to be the judge of the facts, to apply the good
21 common sense with which you have been blessed. You may have
22 some apprehension about being a judge in this case, but I
23 assure you that if you utilize those skills that you have,
24 you will be able to fulfill the task that is before you and
25 be the fact finders that you need to be to determine just

1 what the facts are in this case.

2 I'm the law giver and I'll explain the law to you
3 as to the elements of the crime and everything that
4 addresses to these matters. I'll give you the law at the
5 end of the case, after all the evidence is in, and I'll
6 instruct you on the law. Until the evidence is in and I
7 have given you the law, you shouldn't be discussing the
8 case, one with another, or with anyone else. I know that
9 sometimes we start forming those impressions, but it would
10 be improper for you to discuss it while you are back taking
11 a break or any other time during the course of the trial.
12 Only when you start your deliberations should you discuss
13 the facts of the case, because you really don't know the
14 facts until all the facts are in.

15 As we come and go during the day, we will try to
16 go until five o'clock, 5:30 this afternoon. We will
17 hopefully be able to start around nine o'clock in the
18 morning. I believe we will be able to finish the case
19 tomorrow.

20 As you come and go sometimes in the courthouse and
21 once we can get in a trial, you may see either of these
22 attorneys in the hallway, in the elevator, or somewhere, and
23 if this afternoon or in the morning you see either of them
24 and they seem to be a little distant or high at you in some
25 way, that's not to be taken personally in any manner. These

1 lawyers are trained to avoid even an appearance of
2 impropriety. They want to make sure that while you may be
3 talking about some innocent matter of a sporting event, or
4 the weather, or anything else, it could give the appearance
5 of an impropriety, because they are talking with the jurors.
6 So if they seem a little distant and removed from you seeing
7 you around, please don't hold that against them. That's
8 their training to do that, and they want to make sure that
9 there is no appearance in any way of any impropriety.

10 Cases will take place in stages, normally. The
11 attorneys are going to have a chance in a few moments to
12 make an opening statement to you. They will give you an
13 overview of what they expect to be presented during the
14 course of the trial.

15 After that, then evidence will be offered, either
16 documents or tangible evidence, testimony would be given.
17 Lawyers will have a chance to examine that witness under
18 oath.

19 Frequently during the course of a trial there is
20 an objection made. A lawyer may object to a question, or a
21 document, or whatever it may be. Some cases have trials or
22 trials are such that there is no objections at all, but --
23 of course, if there are objections from one of the lawyers
24 based upon the rules of evidence or rules of procedure, the
25 legal matters that we follow, then my job is to rule on that

1 objection. I can often say sustained or overruled and we
2 can go to the next question or the next item. Sometimes, as
3 you have already seen, I may call them up here to the bench
4 and we can whisper and decide about alternate jurors, or
5 decide timing about how many more witnesses, or perhaps we
6 can resolve a legal issue that comes up.

7 Sometimes in the course of a trial there is times
8 in a trial there might be other occasions that may arise
9 where one of the lawyers, or either I on my own, will just
10 say we need to take care of a matter of law. You will need
11 to be back in your jury room at that time. I'll be
12 listening to the lawyers, perhaps checking some law books,
13 or doing some study, or hearing some testimony that wouldn't
14 even be presented before a jury. Obviously I want to make
15 the very best decision I possibly can as the judge of the
16 law, hopefully applying the law in the proper manner. It's
17 not that I'm hiding things from you. It's just that I need
18 to be focused on that. You are going to be focusing on the
19 facts, listening to the trial develop and also when you
20 start your deliberations. And just as sometimes you are not
21 with me while I wrestle with those legal issues, I won't be
22 with you back when you are doing your deliberations and
23 deciding what the facts are in the case. So I hope you
24 understand the different roles that we have in those
25 different aspects.

1 After all the evidence is in the lawyers will
2 again have a chance to address you in their closing
3 statement. Then, and only then, will you start that
4 deliberation process.

5 You have committed through this selection process
6 to do justice to both sides, to be fair and impartial, and
7 I'm grateful that you have made that commitment to both of
8 these parties in the course of this trial.

9 We have selected an alternate to the trial, the
10 last juror selected. She will always occupy one of those
11 seats on the end. As the alternate, you are every bit as
12 much a part of the jury as anyone else. We select an
13 alternate when the trial might extend sometimes. In case an
14 emergency were to come up overnight from one of the first
15 twelve selected, or an illness befalls upon one of you,
16 hopefully it won't, but if that were to happen, then the
17 alternate juror would step into the shoes of one of those
18 others. We won't have to start the trial all over again.
19 We will be ready to proceed with the next witness, or
20 whatever stage we are at, but she will be occupying that
21 seat.

22 There is another designated seat, and that's the
23 first seat on the front row, the one closest to the witness
24 stand here. I'm going to appoint Mr. Murphy as the
25 foreperson of the jury. He will be occupying that seat when

1 you come back in. That doesn't mean by being the foreperson
2 that you have more votes than anyone else, but when you are
3 back in your jury room, sometimes you have a need. You may
4 have a question to ask of me about the law; you may have a
5 question or a comment for the clerk's office; or one of you
6 may need to call and check on a child, make sure a child is
7 picked up; or whatever the need may be. Your foreperson is
8 going to be the liaison with the court to make sure that
9 whatever need that you have is hopefully resolved for you by
10 one of us. Your foreperson will just write out whatever
11 need it is on behalf of whatever juror signed his name. Get
12 it to the bailiff and the bailiff will get it to the
13 appropriate person.

14 Sometimes in the course of a trial an exhibit is
15 offered into evidence and one of the lawyers may want to
16 pass it around to the jury and they will hand it to the
17 foreperson and examine it. Move on to the next juror.
18 That's some of the roles the foreperson will have.

19 Ultimately when all the evidence is in and I have
20 instructed you on the law, of course, what the foreperson
21 will do will be to facilitate that discussion, make sure
22 everyone one their say to the facts as each juror sees them,
23 and on behalf of the fellow jurors will fill out the verdict
24 form that would be provided at that time. He will always
25 occupy that seat on the front row closest on the witness

1 stand, and the alternate will always occupy the seat that
2 she's in, or the one next to it, if she chooses, to her
3 left. The rest of you, as you come and go, you may want a
4 front row seat, or a back row seat, or one end or the other.
5 You are certainly welcome to sit anywhere you would like.

6 Before I have the clerk administer an oath to you,
7 we are going to see if we can get some matters taken care of
8 to hopefully expedite this case. If there is any exhibits,
9 perhaps we can get those marked; take care of any
10 preliminary legal matters that we may have. I don't think
11 we will be very long, but we need to take just a short break
12 and then we will be ready for the opening statements with
13 the attorneys shortly.

14 I'm going to let you go back to your jury room
15 now. Don't discuss the case, of course, in any manner. We
16 will call you back in just a few moments. We will take a
17 short break. You may retire to your jury room.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: Are there any -- before we take a
21 short break, are there any matters we need to take care of? Of
22 at the bench you had mentioned a Jackson v. Denno hearing.
23 Maybe we can do that first thing in the morning. That would
24 work. How long do you foresee that would take?

25 MR. DEJONG: It depends upon what time you get me

1 up, Your Honor.

2 THE COURT: Is it ten minutes, or so?

3 MR. DEJONG: I think even with a lot or a little
4 coffee it would be more than ten minutes, Your Honor. I
5 would say it probably wouldn't exceed an half hour, though.

6 THE COURT: Thirty minutes?

7 MR. BARWICK: I would guess five minutes, Your
8 Honor, so I don't know.

9 THE COURT: Well, how many witnesses do you
10 anticipate for that?

11 MS. BARWICK: For the Jackson v. Denno?

12 THE COURT: Yes.

13 MS. BARWICK: Just one, Your Honor.

14 THE COURT: Okay. Maybe we could even do it at
15 the end of the day today. We will see how the witnesses
16 flow.

17 Are there any other matters we need to take care
18 of before we --

19 MR. DEJONG: Your Honor, one for the record. I
20 think it has been agreed by Madam Solicitor that there will
21 be no in-court identification of the defendant in this case.
22 Is that correct, Ms. Barwick? I mean, he could be
23 identified as being the person arrested, not the person that
24 was at the scene, and that's what I mean by in-court
25 identification.

1 MS. BARWICK: That's correct, Your Honor.

2 Detective Dow would just say that the defendant is the
3 person he spoke with after the whole incident, but not the
4 person anyone actually found at the scene.

5 THE COURT: All right. Does that apply to all
6 witnesses?

7 MS. BARWICK: That applies to all the witnesses.

8 THE COURT: Okay. Anything else, Mr. DeJong?

9 MR. DEJONG: Yes, Your Honor.

10 Of course, you were not privy to the incident
11 report, I understand that, but I'm referring, Madam
12 Solicitor, to page four of eight. I'm not -- I believe this
13 is Detective Dow's report. A statement was made in that
14 report, Your Honor, which reads, and I quote from the
15 report, "after seeing the residence, I realized some
16 associations that had with other individuals who have been
17 reported in the past. I then went to a location where those
18 individuals live in Liberty."

19 I have no objection to testifying that he went to
20 a resident in Liberty. I do object to and would object to
21 and move that it not be allowed into evidence any statement
22 about other individuals who may have lived at any of these
23 residence who that my client may or may not have had contact
24 with who had involvement with law enforcement in the past.

25 MS. BARWICK: Your Honor, the State agrees not to

1 even bring up that portion of the incident report, as long
2 as Mr. DeJong doesn't use that against Mr. Dow and say "is
3 that all you did" type thing.

4 MR. DEJONG: Well, if all he did was went by the
5 residence, I don't think that's opening the door.

6 MS. BARWICK: We won't even bring up residence
7 situation about Detective Dow going to the residence house
8 looking for them. Just the initial residence.

9 MR. DEJONG: Okay. All right.

10 MS. BARWICK: Where the defendant was living or
11 not living. It's [REDACTED] [REDACTED] [REDACTED]

12 MR. DEJONG: Right.

13 MS. BARWICK: Right.

14 MR. DEJONG: Now, do you want to talk -- well, we
15 might talk a little bit about Liberty, but not in that
16 context.

17 MS. BARWICK: Correct.

18 THE COURT: Okay.

19 MS. BARWICK: Your Honor, I'm sure you don't know
20 what we are even agreeing to, but we have an understanding.

21 THE COURT: As long as y'all have an understanding
22 and y'all are agreeing.

23 Anything else, Mr. DeJong?

24 MR. DEJONG: That's all I got today, Your Honor.

25 THE COURT: Let's see if we can't get the

1 Jackson-Denno in. Y'all don't want to do it right now, do
2 you?

3 MR. DEJONG: What I would really like to do right
4 now --

5 THE COURT: Yes, sir, you need a break. I can
6 tell by the look in your eyes.

7 MR. DEJONG: Yes, sir.

8 THE COURT: All right. We will either try to do
9 it at the very end of the day or the very first thing in the
10 morning. I would sort of prefer to do it this afternoon
11 before we finish. We can send the jury home and we will do
12 it.

13 MR. DEJONG: We quit early.

14 THE COURT: If possible if all the people are
15 here.

16 Let's take about a ten minute break.

17 MR. DEJONG: Thank you, Your Honor.

18 THE COURT: Y'all be ready for your opening
19 statements.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: Ready to proceed?

23 MS. BARWICK: Yes, sir, Your Honor.

24 MR. DEJONG: Ready for the defense, Your Honor.

25 THE COURT: Have the jury come in, if they are

1 ready, please.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right, Mr. Clerk, if you would
5 administer the oath to the jury at this time.

6 After the oath is administered, ladies and
7 gentlemen, the attorneys will have a chance to address you
8 in their opening statement. While this is not evidence that
9 they present to you, I urge you to listen carefully. They
10 will address you, after which the State will present its
11 case.

12 Mr. Wellborn?

13 THE CLERK: If you would please stand.

14 Again, after the oath is administered, answer by
15 saying I will. Raise your right hand.

16 You shall well and truly try the issues joined in
17 this case of the State versus Karl Ryan Lane and a true
18 verdict render according to the law and evidence, so help
19 you God.

20 JURY PANEL: (Collectively said I will)

21 THE CLERK: Thank you. You may be seated.

22 THE COURT: Solicitor, you may address the jury in
23 your opening statement.

24 MS. BARWICK: Thank you, Your Honor.

25 Mr. DeJong.

1 It looks like some of y'all won the lottery twice,
2 but I'm glad to see that you are here. And I do want to in
3 all seriousness thank you for your time. We know that y'all
4 probably have a million other things that you would rather
5 be doing and probably need to be doing rather than coming
6 here, so thank you for your time in doing your service
7 today.

8 This courtroom is not the best courtroom, as far
9 as the acoustics go. I actually prefer the one downstairs.
10 If for some reason during the trial you can't hear what
11 myself, or Mr. DeJong, or anyone in this courtroom, the
12 witness, has to say, please feel free to nod to the bailiff
13 or to the judge and they will take care of that for you,
14 because we don't want you to miss anything. This case is
15 very important.

16 I have already introduced myself to you. My name
17 is Jennie Barwick. I work for the solicitor's office. The
18 word solicitor doesn't probably ring a bell to some of you.
19 Basically we are the D.A., the district attorney. We are
20 the prosecutor. It's our job to prosecute the criminals in
21 the State of South Carolina, and we represent the people in
22 Pickens County.

23 Getting that out of the way, the defendant has
24 been charged with two charges. He's been charged and
25 indicted. The two charges are burglary first and grand

1 larceny over \$10,000.

2 Burglary first -- we have three types of
3 burglaries in this state; burglary first, burglary second,
4 burglary third.

5 Burglary first happens when somebody enters your
6 home without permission. This is the most serious in this
7 state. It's someone's private property and their home is
8 especially protected, as it should be.

9 He's charged with burglary first. Burglary first
10 is you breaking into someone's dwelling and there is
11 aggravating factors. So you enter someone's dwelling,
12 without permission, with the intent to commit a crime
13 inside, such as grand larceny, and you have an aggravating
14 factor.

15 I'm not going to go through all those aggravating
16 factors with you, but one of them, and this is the one we
17 are basing this trial on, is that he armed himself with a
18 deadly weapon; guns in this case.

19 Grand larceny over 10,000. He's also charged and
20 indicted with that. He stole several guns from the
21 victim -- sorry about that, Mr. McSwain. These are guns
22 that were in the family for a long time and meant a lot to
23 him and the value of those guns are over \$10,000.

24 So burglary first, grand larceny over \$10,000.

25 To be armed with a deadly weapon doesn't

1 necessarily mean that you have to go into the residence with
2 a gun. It just means a gun has to be available to you while
3 you are inside that residence, or while you are leaving, or
4 while you are entering.

5 Those guns can be something that you actually
6 steal, which is what this case is about. Because he stole
7 guns in this case, it bumps it up to burglary first.

8 The State has the burden in these cases. We must
9 prove the defendant guilty beyond a reasonable doubt.

10 A lot of you already know what beyond a reasonable
11 doubt is, as you have already sat on juries this week, but
12 reasonable doubt just means that you feel so confident, that
13 you would not hesitate to act, even in the most important of
14 your own affairs.

15 Now, when I say don't hesitate to act, I don't
16 mean you sit here and you hear all the evidence and before
17 you go back to the jury room you say "I'm not real sure or
18 I'm absolutely sure." It means when you go back to the jury
19 room and you talk to all twelve of -- well, eleven of your
20 fellow jurors and come together and discuss the case and go
21 through it, twelve minds are definitely better than one, and
22 say "I'm confident and I'm not hesitating to act" and
23 marking that box marked guilty. That's what the State has
24 to prove to you in order for you to convict this defendant.

25 The judge kind of told you a little bit about the

1 structure of the trial. He is to determine the law. You
2 are to determine the facts. The reason why we do that is
3 because you come in here with something that we need. It's
4 called common sense. You know you can look someone in the
5 eye and you can say "this person is telling me the truth,"
6 or you can say "this person is telling me a lie." And you
7 can do that just by looking at them sometimes. We make
8 judgments every day, and you have to come in here making a
9 judgment "is this person telling me the truth or is this
10 person telling me a lie?"

11 The judge also spoke about objections. Before law
12 school I didn't really know what overruled and sustained
13 meant. Overruled means it comes in. Sustained means it
14 stays out. So I just wanted to make this clear with y'all.

15 And I'm going to give you a little bit about the
16 facts, some information about the facts of the case and what
17 the evidence is going to prove.

18 The evidence is going to prove that back on April
19 21st of this year this defendant entered Mr. McSwain's home
20 and stole some guns.

21 The evidence is going to prove that Mr. McSwain,
22 he was unemployed, he had just been laid off, but he was
23 working some side jobs. And on his way to the side job in
24 the morning, probably like many of you, couldn't resist the
25 urge to go back to his house and grab a gun to shoot some

1 turkeys he saw out on some property. He was given
2 permission by his boss to go ahead and do that. He shot
3 some turkeys. He came home, had to change back into his
4 work clothes. In his excitement he left his gun safe open.
5 He went to work. He got home at five, opened up the front
6 door and noticed his back door was open. That's when his
7 stomach sunk and his heart broke, because he realized that
8 those family heirlooms were no longer there.

9 The State is confident at the end of the trial you
10 will be left firmly convinced that this defendant is guilty.

11 Thank you for your time.

12 THE COURT: Mr. DeJong, you may address the jury
13 in your opening statement.

14 MR. DEJONG: Thank you, Your Honor.

15 May it please the court.

16 Madam Solicitor.

17 Ladies and gentlemen of the jury.

18 This is an adversarial process, so normally me and
19 the solicitor don't agree on much, if anything. I can agree
20 with her on one thing, and that is thank you so very much
21 for your time and your jury service. I'll come back to that
22 point.

23 Number two, the solicitor said she prosecutes
24 criminal in Pickens County. Ladies and gentlemen, she does
25 not. There is not a criminal in Pickens County until a jury

1 of twelve people say they are criminals. She doesn't
2 prosecute criminals.

3 Fact. There is not a fact in this case until the
4 twelve, now thirteen of you, say it is a fact. Period.
5 That's it. There are no facts in this case right now.

6 His Honor introduced to you and I think introduced
7 to you my client today; Karl Ryan Lane. Let me re-introduce
8 him, if I may. I have the pleasure today, ladies and
9 gentlemen, of representing the innocent Karl Ryan Lane. I
10 say that emphatically, without hesitation and without doubt.

11 Now, you could very well say, I trust you
12 wouldn't, but you could very well say "innocent? "Wasn't he
13 arrested for these cases, these charges?" Absolutely.
14 There is copies of the arrest warrant. You know what we do
15 with them? We tear them up. Why do we tear them up?
16 Because that is not evidence, ladies and gentlemen. It is
17 not a fact. There is nothing in this warrant that concerns
18 you factually in this case.

19 Secondly, you could say "the innocent Karl Lane?
20 His Honor read us indictments. Obviously the Pickens County
21 Grand Jury indicted him." Indictments. We do the same
22 thing. We tear them up. Why? Because they are not
23 evidence in this case. It has nothing to do with evidence
24 in this case. They are merely charging documents. They are
25 a paper trail. Surprised we still have them with all the

1 computers we have in this country, but, nonetheless, we
2 still have to have a paper trail. That's all that is.

3 Thirdly, how can I say without a doubt, without
4 hesitation, the innocent Karl Ryan Lane? Very easy. A
5 substantial right, not legal mumbo jumbo, not words tumbling
6 across my lips as you sit here forced to listen to me at
7 almost four o'clock in the afternoon. A substantial right
8 that belongs to all of us, and, in particular, people who
9 are charged with crimes. And what is that substantial
10 right? That substantial right, ladies and gentlemen, is the
11 presumption of innocence. And as I said, that's not legal
12 mumbo jumbo. It's not legal theory. It's not things we
13 talk about. That is a substantial right. And in this case
14 that substantial right belongs to Karl Ryan Lane. And you
15 as the jurors, under the oath that you just took, are
16 required to uphold that right of presumption of innocence.

17 Sometimes we talk about presumption of innocence.
18 Sometimes we say it's kind of like a cloak of righteousness
19 that is draped about the shoulders of somebody that is
20 charged with a crime. I prefer to think more of it as
21 plastic wrap. "Have you lost your mind?" No. I like to
22 think of it as plastic wrap. Look at Mr. Lane over there
23 and envision him wrapped in plastic wrap from the very soles
24 of his feet to the very top of his head, and call that
25 plastic wrap presumption of innocence, because that's what

1 it is. It is wrapped about him, that right. And that stays
2 there, ladies and gentlemen. And that presumption of
3 innocence goes hand in hand with something Madam Solicitor
4 touched on and that is burden of proof.

5 Let me share with you right now that Mr. Karl Ryan
6 Lane has absolutely nothing to come in here and prove to you
7 today. That's not because I said so. That's because what
8 the law says, and that's part of that presumption of
9 innocence. He's presumed innocent. That's the --

10 It's almost like if you watch football and one of
11 the coaches supposedly throws the red flag out challenging a
12 call. What are the standards that they have to look at to
13 overturn the call on the field? Irrefutable evidence. Mr.
14 Lane has thrown out the red flag in this case. Mr. Lane has
15 the presumption of innocence. The call on the field is
16 innocent, and the State has to bring you irrefutable -- we
17 don't call it irrefutable evidence. It's beyond a
18 reasonable doubt. We will talk more about beyond a
19 reasonable doubt when we get together at the end of this
20 case, but I ask you to remember those two very important
21 principles as we go through this case.

22 Evidence? Again, there is no evidence until you
23 find it to be evidence, what you hear. I don't know what
24 you are going to hear. But look at this -- look at it two
25 ways, and this is kind of like we have all heard it, you put

1 a glass up here and there is water up to the midline. Is it
2 half full or is it half empty? As you go through this case,
3 don't look at just what is presented to you. Remember and
4 think about in this case what you do not hear from this
5 stand and from what you do not see by way of any evidence in
6 this case. It's kind of like the two ladies on the
7 hamburger commercial, "where is the beef?" Well, sometimes
8 in the course of this case ask yourself "where is the beef?
9 Where is the evidence?"

10 I'm not going to get into all that right now, but
11 I would ask you to remember that as we go through this case.
12 Presumption of innocence; reasonable doubt. I ask you to
13 remember both of those, because those two principles in any
14 criminal trial are as much the cornerstone of our system as
15 the thirteen of you sitting in this jury box this moment in
16 time on January the 25th, 2112.

17 The great late Winston Churchill one time said, or
18 given credit for saying, the jury service is the highest
19 service you can render to your community in peacetime. It's
20 questionable whether we are at peacetime right now. Maybe
21 we could paraphrase the late great Winston Churchill and say
22 jury service is the highest service you can render to your
23 community as a noncombatant, because it is that in the
24 courtroom. You are the triers of fact. You do use your
25 common sense. You use your day-to-day experiences as you

1 come in here, but not just to focus on one thing. Focus on
2 the big picture. As I said, don't look at just what is
3 presented. Look at what is not presented to you.

4 I do thank you for your time. It's a burden.
5 Times are tough. Probably everybody would rather be in a
6 different place, but as I just said, your service is so
7 tremendously important, and today your service is
8 tremendously important to Mr. Karl Ryan Lane.

9 And I would ask you, ladies and gentlemen, to
10 remember again, and I know I'm hammering and hammering and
11 hammering on it, but remember that plastic wrap that covers
12 Mr. Lane. Remember what you don't hear in this case.

13 When this trial is over, bring back verdicts of
14 not guilty on both charges.

15 Thank you so very much for your time and
16 attention.

17 THE COURT: Solicitor, you may call your first
18 witness.

19 MS. BARWICK: The State would call Mark McSwain to
20 the stand.

21 MARK MCSWAIN, having been first duly sworn,
22 testified as follows:

23 THE CLERK: If you will have a seat and state your
24 name for the record, please.

25 THE WITNESS: Mark McSwain.

1 DIRECT EXAMINATION BY MS. BARWICK:

2 Q. Mr. McSwain, where do you live?

3 A. I reside at [REDACTED] in Liberty.

4 Q. How long have you lived there?

5 A. Approximately eighteen years.

6 Q. Would that be in Pickens County?

7 A. Yes, it is.

8 Q. Okay. And your house, tell me about that a little bit.
9 Who lives there with you?

10 A. My wife and I live at the house by ourselves. We have
11 no children.

12 Q. Okay. Would you consider your house out in the country
13 or in town?

14 A. Probably out in the country.

15 Q. Okay. What about your neighbors, are they close or far
16 away?

17 A. We have a few close neighbors, but relatively out in
18 the country, though.

19 Q. About how far away do you think that your closest
20 neighbor would be?

21 A. Probably maybe a hundred yards at the most. Maybe
22 fifty yards, something like that.

23 Q. Right.

24 If you would, tell the jury a little bit about your
25 morning on April 21st of 2011.

1 A. That morning I was preparing to go to a part-time job
2 and I had called -- I left my home around 8:30 or so. I
3 noticed some turkeys out in the field. I had permission to
4 hunt that land. I called my boss to see if it would be okay
5 if I came in a little bit late, because I wanted to try to
6 hunt, so I went back to my home and changed into my clothes.
7 As you can imagine, I was very excited to get out into the
8 field. I grabbed my shotgun, went down to the field. I was
9 probably in the field for about an hour. I was able to
10 harvest two birds.

11 Of course, realizing I needed to get back to work as
12 soon as I could, I was excited to get back home. I put the
13 birds in the back of my truck, along with my shotgun into my
14 truck, and hurriedly went back in the house, stripped off my
15 camo gear, put on my work clothes and basically ran out of
16 the house that morning to go back to work.

17 Q. Where do you keep your guns normally?

18 A. I have a safe that is located in a spare bedroom and
19 that's where I keep all of my firearms and ammunition.

20 Q. Okay. When you went back to the house initially to get
21 changed to go turkey hunting, did you lock your safe?

22 A. Unfortunately I did not. I was in quite a bit of a
23 hurry to leave. Also I was very excited about harvesting
24 two birds, so it was just a mistake on my behalf and I just
25 walked right out the door and didn't lock my safe.

1 Q. Okay. When you got done hunting and you came back in
2 to change, did you lock your safe before going to work?

3 A. I did not.

4 Q. Okay. Let's talk about your house a little bit. Do
5 you have a garage or anything?

6 A. I do not have a garage, just a driveway that goes up to
7 the side of my home.

8 Q. You went to work about what time? When you went to
9 work, was everything in your house normal?

10 A. As far as I could tell, everything was just fine.

11 Q. Okay. Nothing out of the ordinary with your back door?

12 A. No, everything was as normal. Just normal every-day
13 appearances.

14 Q. What time did you get home from work?

15 A. I came in around 4:30 or so.

16 Q. Did you come in through the front door or the back
17 door?

18 A. Typically when I come home I just pull right into the
19 driveway beside my home, park my truck and walk into the
20 front -- walk in the front door. That's how I always enter
21 my home.

22 Q. And that day, is that how you entered your home?

23 A. I did.

24 Q. When you came through the front door, did you notice
25 anything?

1 A. Yes, right off the bat I noticed that my back door was
2 open and there was a number of pieces of wood and I guess
3 you could call it door casing lying on the floor in the
4 kitchen.

5 Q. When you saw that, what did you do?

6 A. Well, I almost got sick physically, but I realized
7 something bad had happened. And, of course, searching
8 through my mind is all my valuables, so I basically walked
9 through the house real quickly just to see what, if
10 anything, had been taken. And when I walked into my back
11 bedroom, I noticed that my -- the closet door where my safe
12 is located was open. And as I rounded the corner, I saw
13 that my safe door was open. And, of course, it was empty.

14 Q. What did you do in response to that?

15 A. I immediately called the sheriff's department, dialed
16 9-1-1.

17 Q. What is that?

18 A. That appears to be a basic layout plan of my home.

19 Q. It's not to scale or anything?

20 A. Not to scale.

21 Q. Okay.

22 MS. BARWICK: Your Honor, at this time the State
23 would like to introduce State's Exhibit No. 3 into evidence.

24 THE COURT: Any objection?

25 MR. DEJONG: Without objection, Your Honor.

1 THE COURT: Exhibit 3 is admitted into evidence
2 without objection. It may be published.

3 BY MS. BARWICK:

4 Q. Which side is the front of your house?

5 A. The front is -- that's my front door right there.

6 Q. Okay. And where is the bedroom where the safe was
7 located?

8 A. It's right there. That's the -- that would be the
9 closet.

10 Q. Okay. And the bedroom?

11 A. The bedroom is right there.

12 Q. Okay. And is that the front door?

13 A. The front door is right there.

14 Q. And the back door?

15 A. Is right there.

16 Q. Okay. Which room is your front door located in? Is
17 that the living room?

18 A. The living room, yes.

19 Q. When you go through the front door, can you see -- is
20 there a straight sight to the back door?

21 A. It's almost exactly straight. Certainly you can see
22 straight through. There is a doorway, if you will, right
23 here that joins the kitchen and dining room area, with the
24 living room area right here.

25 Q. Do you recognize these photos?

1 A. Yes, I do.

2 Q. And what are those photos of?

3 A. Exhibit 11 is a picture of the front of my home.

4 The stair -- the walkway going to the front door. And
5 you see the porch.

6 There is also a picture of the kitchen area with the
7 door frame. It's there lying on the floor.

8 There is a picture of showing the front door actually
9 opened and you can see directly from standing on the front
10 porch to the back door.

11 And then there is a more close-up photo of the door
12 frame where everything was broken in.

13 Q. And the next?

14 A. Exhibit 12 has three photos. One photo is taken from
15 the back porch and shows a side view of where the damage
16 occurred on the back door.

17 There is a photo of the back bedroom with the closet
18 door open, and the -- you can see directly into the safe and
19 the safe door is open.

20 And then there is a close-up photo of the safe itself
21 with the door open.

22 Q. Is that how your home looked when you came in that day
23 from work?

24 A. It is.

25 Q. Okay.

1 MS. BARWICK: The State would like to introduce
2 Exhibits No. 11 and 12 into evidence.

3 MR. DEJONG: Without objection, Your Honor.

4 THE COURT: Without objection, 11 and 12 are
5 admitted and may be published.

6 MS. BARWICK: If we could dim the lights a little
7 bit.

8 Thank you.

9 BY MS. BARWICK:

10 Q. Is that the front door to your house?

11 A. It is.

12 Q. Is that the back door to your house?

13 A. It is.

14 Q. Can you show the jury where the damage was done to your
15 frame?

16 A. Yes. Of course, the length of the door frame to the
17 side here and along the top had been forced off and the most
18 of the damage occurred in this area. Of course, that's
19 where the dead bolt and the lock was.

20 Q. Is that basically what you saw when you came in through
21 the front door?

22 A. Yes, it is.

23 Q. Can you show the jury the damage?

24 A. Yes. If you can, lying right here is a length of the
25 door frame here, as well as right here.

1 Q. Okay. And that wasn't like that when you left for
2 work, was it?

3 A. No, it was not.

4 Q. What is that a picture of?

5 A. That's the back door. And, of course, you see the
6 deck. The stepping stones along the back of the house.

7 Q. Speak up a little bit more. I'm sorry about that.

8 A. Then you can also see -- this is the area that the
9 major damage occurred when the door was broken into or the
10 locks. Everything broke all the wood out.

11 Q. What's that a picture of?

12 A. That is a picture of my safe.

13 Q. And that's how it looked --

14 A. Yes.

15 Q. -- when you came home from work?

16 A. Yes.

17 Q. And is this the same?

18 A. The exact same, just standing in the middle of the back
19 bedroom looking into the closet.

20 Q. Okay. Thank you.

21 Did you keep a record of the guns that you had in that
22 safe?

23 A. Yes, I did.

24 Q. Okay. Will you tell the jury which guns were missing?

25 A. Yes. I have a number of firearms that are missing. A

1 Mossburg 12-gauge shotgun. A Savage .22 magnum rifle. A
2 Marlin 30/30 lever action. Remington Model 11, 20-gauge
3 shotgun. Remington Sportsman Model 48, a 20-gauge. Ithaca
4 double barrel shotgun. A Ruger, single six handgun. A
5 Mauser broom handle 9-millimeter handgun. And a Marlin
6 30/30 lever action, along with some other accessories,
7 scopes, holsters, etcetera.

8 Q. How many holsters were missing?

9 A. The two -- two were missing. Those were -- both had
10 firearm each in them.

11 Q. What about a leather sling for your shotgun?

12 A. Leather sling was on one of my hunting rifles, as well
13 as a scope was on my hunting rifle.

14 Q. Okay. What about cash? Were you missing any cash?

15 A. Originally -- originally we thought we had \$3,100 in
16 cash missing, and just probably thirty minutes after the law
17 enforcement folks processed the home, my wife was picking up
18 a few odds and ends in the back bedroom and apparently the
19 envelope that had the cash in it had been dropped on the
20 floor and was covered up by an empty gun case. So we
21 initially thought the money was missing, but we were able to
22 recover that.

23 Q. Where had the cash been before it was on the floor with
24 the stuff over it?

25 A. The cash was on the very top shelf in the very, very

1 back of the safe. And when we found it, it was lying in the
2 floor with the gun case, the empty gun case, kind of folded
3 up over top of it.

4 Q. Did you notify law enforcement that you found the
5 money?

6 A. We did immediately.

7 Q. If you would, tell the jury a little bit about these
8 guns. How did you come to collect all these guns and that
9 sort of thing?

10 A. I have been very fortunate. My parents and
11 grandparents have all been outdoor enthusiasts. And as such
12 over the years, literally the past ninety years, some of
13 those firearms have been purchased by my family and passed
14 down to me.

15 I was -- I received my firearms when my father passed
16 away in 2004, and that was the only thing that was left to
17 me, along with the gun safe, but several of these firearms
18 have been in my family for ninety plus years.

19 Q. Did one of the firearms mean something special to you
20 more than the rest?

21 A. Well, other than obvious the value of it and the
22 condition, my grandfather was in the Marines and had the
23 good fortune of picking up this firearm while in actual
24 combat and was able to bring that firearm home and that's
25 how we -- that came into our family.

1 Q. Okay. Did you speak with Deputy Torres when he came
2 out to your residence?

3 A. Yes, I did.

4 Q. Did you show him around your house?

5 A. Yes.

6 Q. Did Sergeant Gibson also come out to your house to
7 process the scene?

8 A. Yes.

9 Q. The same day as the incident?

10 A. Yes.

11 Q. After they processed the scene, did you notice any
12 other items missing?

13 A. At the time I didn't, but I later discovered that not
14 only did all my firearms were taken, but I also had a BB gun
15 taken as well.

16 Q. Okay. What was the name of that? What kind of gun was
17 it?

18 A. It was a Daisy.

19 Q. Okay. Did you also report that to law enforcement?

20 A. I did not report that. It's a BB gun that I had since
21 I was like thirteen and the value was very minimal and I did
22 not want to burden the county or the State with processing,
23 spend a lot of time on processing something that had such a
24 minimal value.

25 Q. Were you able to keep some of your guns?

1 A. Fortunately, yes. As I was telling you earlier, in my
2 excitement of hunting that day I had an 85 year old 16-gauge
3 shotgun that I had in my possession and that was with me
4 throughout the day. I also had a handgun under my bed and
5 my wife also had a handgun as well.

6 Q. Did you report these items to your insurance company?

7 A. I did, yes.

8 Q. Okay. What did they assess the value to be?

9 A. The assessment of value came out to be \$11,107.44.

10 Q. How much did they reimburse you?

11 A. I was reimbursed \$2,000.

12 Q. How come so little?

13 MR. DEJONG: Your Honor, I'm going to object to
14 that. I don't see any relevancy in that whatsoever. I
15 realize she has to prove value. We got what he didn't get.
16 I don't see any relevance for this jury in that.

17 THE COURT: What is the relevance?

18 MS. BARWICK: Your Honor, if we can approach?

19 THE COURT: Yes, ma'am.

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion)

22 BY MS. BARWICK:

23 Q. How much did your insurance policy allow, your
24 coverage?

25 A. Only the \$2,000.

1 Q. Okay. Is that what Allstate sent you for your claim?

2 A. Yes, it is.

3 MR. DEJONG: I don't object to pages one through
4 three. Again, I object to page four as to relevancy, Your
5 Honor.

6 THE COURT: Can I look at the document?

7 MS. BARWICK: Yes, sir.

8 THE COURT: It's admitted into evidence.

9 MS. BARWICK: State's Exhibit No. 4, Your Honor.

10 THE COURT: Exhibit 4.

11 MS. BARWICK: Thank you, Your Honor

12 BY MS. BARWICK:

13 Q. Besides the additional guns that you noticed that were
14 gone and besides the money that you found, did you notice
15 anything else after law enforcement left your residence?

16 A. I did. It was approximately I would say maybe twenty
17 or thirty minutes after the last law enforcement officer
18 left my home, I was basically kind of just walking around to
19 see if there was anything else that I may be missing. Quite
20 frankly I keep my yard in very, very clean, trimmed, and I
21 noticed that there was a piece of paper folded up just
22 beside my driveway lying in some grass and I knew that that
23 was out of place, because I just don't -- I don't have trash
24 and stuff like that in my yard. So I immediately went over,
25 as I was curious, and I picked up the piece of paper and

1 that is -- it had a name and a password on it. I felt that
2 it may be relevant to the case, so I immediately called law
3 enforcement and notified them that I had found something
4 else that may be of interest, and then an officer was
5 dispatched back to my residence and I handed over what I had
6 found.

7 Q. Is this the paper that you found?

8 A. It is, yes.

9 MR. DEJONG: Without objection, Your Honor.

10 MS. BARWICK: Exhibit No. 1, Your Honor.

11 THE COURT: Exhibit No. 1 is admitted without
12 objection. It may be published.

13 BY MS. BARWICK:

14 Q. When you found this paper in your yard, was it flat
15 like this or folded up?

16 A. It was folded up into a small square. It appeared that
17 it may have been folded up five or six times.

18 Q. Okay. Do you recognize this?

19 A. This appears to be a sketch of my driveway and home.

20 Q. It's not to scale again, right?

21 A. Not to scale.

22 MR. DEJONG: Without objection, Your Honor:

23 MS. BARWICK: State's Exhibit No. 2.

24 THE COURT: Exhibit 2 is admitted without
25 objection. It may be published.

1 BY MS. BARWICK:

2 Q. What is this right here?

3 A. That would be the -- that would be the boundary of

4 [REDACTED] [REDACTED] [REDACTED]

5 Q. Okay. This way would be which town?

6 A. I'm sorry, I can't see where your pen is pointing.

7 Q. This side, that would go towards which town?

8 A. If you go in that direction, you would be going towards
9 Liberty.

10 Q. This direction?

11 A. You would be essentially going towards Six Mile.

12 Q. Where on this map, if you can show the jury, did you
13 find that piece of paper?

14 A. Okay. Right on that corner right there. It was like
15 right up against the driveway. And where I had last
16 trimmed, trimmed my grass, so there was a space of about
17 maybe three inches, or so, and that's where I found the
18 folded up piece of paper.

19 Q. This piece of paper?

20 A. That's correct.

21 Q. Do you recognize this man?

22 A. Yes, sir. Excuse me.

23 Q. That's okay.

24 A. I always say yes, sir when I see somebody that large.

25 Q. And is his name Detective Dow?

1 A. It is.

2 Q. Did he ever come out to your residence?

3 A. Yes, he did number of times.

4 Q. Okay. Would that have been the same day of the
5 incident, or after the incident?

6 A. To be honest with you, I don't recall it.

7 Q. Okay. That's fine.

8 Did you ever get your guns back?

9 A. No, I have not.

10 MS. BARWICK: That's all the State has for this
11 witness at this time.

12 THE COURT: Mr. DeJong, you may cross-examine the
13 witness.

14 MR. DEJONG: Thank you so much, Your Honor.

15 CROSS EXAMINATION BY MR. DEJONG:

16 Q. Mr. McSwain, do you have TV's in your house?

17 A. Yes.

18 Q. Do you have stereo equipment in your house?

19 A. Yes.

20 Q. Do you have jewelry in your house?

21 A. Yes.

22 Q. And there was money in the house, correct?

23 A. That is correct.

24 Q. And yet whoever burglarized your home --

25 Well, let me ask it a different way.

1 Was anything taken other than guns?

2 A. Not that I recall, no.

3 Q. I see. And you have described certainly some of those
4 guns as being collectors -- well, would you say they were
5 collectors items?

6 A. Not all, but most, yes, sir.

7 Q. All right. So certainly -- well, being collectors
8 items, they would be fairly -- what's the word I'm looking
9 for. I guess distinguishable. People would recognize them
10 as collectors items?

11 A. For those who were familiar with firearms --

12 Q. Yes.

13 A. -- that would be correct.

14 Q. Yes, sir.

15 And that type of weapon really to you and other people
16 is more valuable as a collectors items than anything else,
17 correct?

18 A. It has a -- they had practical uses and they were used
19 practically, but --

20 Q. Yes, sir. But, again, basically a collectors item?

21 A. They could be, yes, sir.

22 Q. Yes, sir.

23 Now, none of those guns were ever recovered, correct?

24 A. That's correct.

25 Q. All right. And, again so that I'm clear, whoever did

1 this came in the back door, right?

2 A. I don't know how they gained entrance. I'm assuming
3 the back door.

4 Q. The back door was the one that was all bugged up,
5 wasn't it?

6 A. Yes, sir.

7 Q. There was no damage to the front door, was there?

8 A. Not that I'm aware of, no.

9 Q. And so that I'm clear -- I'll try this, but I'm not
10 good with this, so bear with me. Well, I guess that's
11 covered up. Okay.

12 Now, would this be the front of your house?

13 A. That's correct.

14 Q. So the front of the house would face [REDACTED] [REDACTED] [REDACTED]

15 A. It does, yes.

16 Q. All right. Now, you said I believe this way is going
17 towards Liberty, correct?

18 A. Yes, sir.

19 Q. And going towards Liberty, if you went down there
20 probably a little less than three miles you would find the
21 unemployment office, wouldn't you?

22 A. I would say that's accurate, yes.

23 Q. And actually the unemployment office is actually on
24 Summit Drive, I believe.

25 A. That's correct, yes.

1 Q. But Summit Drive -- as you are coming back towards your
2 house from the unemployment office, Summit Drive basically
3 turns into [REDACTED] [REDACTED] [REDACTED]

4 A. It does, yes.

5 Q. Right.

6 So in front of your house is [REDACTED] [REDACTED] [REDACTED] You go
7 down the road a little bit it turns into Summit Drive,
8 correct?

9 A. Correct.

10 Q. Now, so you have TV's in your house. They weren't
11 stolen? No TV's were stolen?

12 A. I had one television, not stolen, correct.

13 Q. Pardon me?

14 A. One television not stolen.

15 Q. Right.

16 You had other stereo equipment, other jewelry in the
17 house, none of that was stolen?

18 A. Correct.

19 Q. And not even money was stolen? It was left in the
20 house, right?

21 A. It was on the floor, correct.

22 Q. Yes. Okay.

23 Now, do you remember what the weather was like this
24 day?

25 A. As I recall, it was a -- being a mid April day

1 typically is sunny, fair weather, no rain, and probably a
2 slight breeze from the west.

3 Q. Okay. You say no rain? Are you sure about that?

4 A. No, I am not.

5 Q. Okay. Could there have been rain and thunderstorms
6 that day?

7 A. I don't recall.

8 Q. Okay. How about the wind? How was the wind? Do you
9 remember that?

10 A. Very light.

11 Q. All right. If I shared with you, would you agree with
12 me that there were gusts of wind up to 38 miles per hour
13 that day?

14 A. Would I agree with you?

15 Q. Uh-huh.

16 A. I would neither agree or disagree.

17 Q. You couldn't say?

18 A. I could not say for certain, no.

19 Q. All right. Would you agree or disagree that the wind
20 was blowing at ten miles per hour that day, normally?

21 A. I wouldn't be able to say one way or the other.

22 Q. And with gusts up to 38 miles an hour? You already
23 said you couldn't say one way or the other?

24 A. Correct.

25 Q. Now, your house -- this picture is not to scale? How

1 far is your house off of [REDACTED] [REDACTED] [REDACTED]
 2 A. I would say fifty to seventy yards.
 3 Q. All right. Fifty to seventy yards?
 4 A. Correct.
 5 Q. Okay. So the you are saying some 210 feet?
 6 A. Anywhere from 150 to 210 feet, correct.
 7 Q. What is the composition of your driveway? Is it
 8 concrete, asphalt? What is it?
 9 A. Concrete.
 10 Q. Okay. Now, [REDACTED] [REDACTED] [REDACTED] is that a fairly traveled
 11 road?
 12 A. I would say so, yes.
 13 Q. Quite a view vehicles come through there, correct?
 14 A. Yes.
 15 Q. And although you keep an immaculate yard, you have a
 16 problem with people throwing garbage out, don't you?
 17 A. Not a lot, no, sir.
 18 Q. But it's happened?
 19 A. It does happen, yes.
 20 Q. Papers, bottles, cans, whatever?
 21 A. Yes.
 22 Q. All right. And the area surrounding --
 23 Well, maybe I need to put the picture back up.
 24 Okay. [REDACTED] [REDACTED] [REDACTED] driveway concrete. What's on
 25 each side of the driveway?

1 A. Well, right where [REDACTED] [REDACTED] is, there is a state
2 maintenance ten to fifteen feet leeway that the state is
3 responsible for taking care of. So there are deep ditches
4 on each side of my driveway. There is a culvert and there
5 is a ditch that dips down and then goes up to my yard, and
6 on either side is grass.

7 Q. Okay. You said that you kept an immaculate yard, so
8 I'm presuming that grass was fairly short, was it not?

9 A. Actually it had not been recently cut. I would say it
10 was probably a couple of -- maybe three or four inches high.

11 Q. But certainly if there were gusts of wind at 38 miles
12 an hour, paper could be blowing across your yard?

13 A. Not from the road.

14 Q. Well -- now you came in -- you went to work. What time
15 did you go to work?

16 A. I initially started around 9:00, 9:30.

17 Q. Okay. And when did you come back in?

18 A. Well, that's when I went down the road a little piece,
19 saw the turkeys and returned back to my home.

20 Q. So that would have been between 9:00 and 9:30 then?

21 A. Approximately.

22 Q. Okay. So did you hunt all day?

23 A. Actually the hunt lasted for about thirty-five minutes,
24 or so.

25 Q. So you came back in about ten?

1 A. That's accurate, around ten.

2 Q. Okay. And what time did you leave again?

3 A. Probably within -- within five to ten minutes. Very
4 quickly.

5 Q. So you were out of the house again by 10:15?

6 A. I would say so, yes.

7 Q. All right. Now, you said that you returned about 4:30.
8 Are you sure of that?

9 A. That's pretty accurate. I got off work at I think
10 around five after four. It's about a twenty-five minute
11 drive for me.

12 Q. All right. Well, how long after you got home was it
13 before you called law enforcement?

14 A. I called law enforcement immediately.

15 Q. All right. The back door of your house --

16 And I realize this is obviously a flat drawing, so it's
17 a little bit hard to get the picture here, but your back
18 door, you would have to walk off of the driveway and then
19 back around the house to get to the back door, is that
20 correct?

21 A. Correct.

22 Q. All right. What is behind you, your property?

23 A. My property? My property is essentially one -- a
24 little over one acre, but directly behind my home a couple
25 of hundred yards or so, and you really can't see it even

1 during the wintertime with the leaves off it, but there is
2 another home further back in the woods.

3 Q. So that home back in the woods is about 200 yards away?

4 A. I would say 200 to 250, and that's from the back of the
5 house.

6 Q. Okay. So whoever removed those guns --

7 Well, let me back up. The front door when you got home
8 was still intact?

9 A. To my knowledge, yes.

10 Q. To your knowledge.

11 Was it locked?

12 A. I don't recall.

13 Q. All right. But no damage?

14 A. No damage that I could see, no.

15 Q. Right.

16 How far from the back end of the driveway to the back
17 door is it?

18 A. I would say fifteen, twenty feet.

19 Q. Okay.

20 A. The door is located approximately halfway between one
21 end of the house and the other. And so with the driveway
22 being on one end to say half way back is say fifteen, twenty
23 feet.

24 Q. And how many guns did you say were stolen?

25 A. I believe I have nine.

1 Q. It's a pretty good arm load, isn't it?

2 A. Pretty fair.

3 Q. Now, as far as who broke into your house, you don't
4 know, do you, Mr. McSwain?

5 A. I do not.

6 Q. Well, let me ask you this. Before April the 21st, or
7 on April the 21st, did you know Karl Lane?

8 A. No, sir.

9 Q. Had you ever laid eyes on him?

10 A. Not that I know of.

11 Q. Had he ever been in your house, to your knowledge?

12 A. Not to my knowledge, no.

13 Q. And I believe you said you don't -- or there are no
14 children living with you and your wife?

15 A. That's correct.

16 Q. Correct.

17 So no reason -- well, again, you just -- he was never
18 in your home, right?

19 A. No, sir.

20 Q. Actually I believe you shared with law enforcement that
21 there was a couple gold rings sitting out in plain view in
22 the house?

23 A. If you knew where they were, you could see them, but if
24 you didn't know where they were, you would walk right by
25 them.

1 Q. They were on an entertainment shelf, right?

2 A. That's correct.

3 Q. Is that where the TV was?

4 A. Yes.

5 Q. Okay. They weren't -- they didn't get gone?

6 A. No.

7 (Off the record)

8 (Back on the record)

9 BY MR. DEJONG:

10 Q. So law enforcement came out there. I guess Deputy
11 Torres was the first one that came out there?

12 A. Correct.

13 Q. All right. Did he walk around your house?

14 A. I don't recall that he walked to one side of the house,
15 but, yes, he did survey the area.

16 Q. All right. Well, in surveying that area, did he go to
17 the front door?

18 A. Pardon me?

19 Q. Did he go to the front door?

20 A. Yes.

21 Q. Did he pull his car in the driveway?

22 A. Yes.

23 Q. Did he pull the car in the driveway all the way up?
24 Did you have a vehicle in that driveway?

25 A. I did. I was parked -- I was parked right up next to

1 the house, and --

2 Q. You were parked next to the house.

3 I guess this is kind of a turnaround right in here?

4 A. Yes, it is.

5 Q. Okay. So you would have been parked here next to the
6 house?

7 A. I was actually parked right here. It allows for two
8 vehicles to be parked. And traditionally I park in this
9 area and my wife parks in that area. Detective -- excuse
10 me, Officer Torres parked somewhere in this area right here.

11 Q. Okay. All right.

12 Well, when -- on April the 24th -- excuse me, April the
13 21st of 2011, did any officers come to your home that day,
14 other than Deputy Torres?

15 A. Officer Gibson did too.

16 Q. Pardon?

17 A. Officer Gibson came in to process the scene.

18 Q. All right. And I note in some of the pictures --

19 Well, let me get a little more specific for the record
20 here.

21 What has been marked as State's Exhibit No. 12, and I
22 will show it to you, Mr. McSwain, the bottom lower left hand
23 picture, that is a copy of the -- or, excuse me, that is a
24 picture of your gun safe, right?

25 A. Correct.

1 Q. And that's how you found it?

2 A. Correct.

3 Q. You didn't bother it? You didn't tamper it?

4 A. No.

5 Q. You didn't do anything to it?

6 A. No.

7 Q. All right. Now, I think there was another picture of
8 the gun safe on that exhibit as well, is there not?

9 A. Yes, sir, right here.

10 Q. And that one appears the door has been closed?

11 A. Well, actually -- are you referring to the closet door
12 itself?

13 Q. Well, I'm talking about the safe door.

14 A. The safe door was open as well.

15 Q. Okay. It's still open in that picture as well?

16 A. Yes, sir, it is.

17 Q. And that was in a closet, right?

18 A. Correct.

19 Q. All right. And I believe you have already testified
20 that the -- you didn't lock the gun safe, correct?

21 A. That is correct. I was kind of wound up over the
22 hunting and all of that stuff and in a hurry to get back to
23 work and I just forgot to lock it.

24 Q. All right. And then the closet door. Was the closet
25 door closed when you left?

1 A. I do not recall.

2 Q. Well, when good Officer Gibson came out to your
3 property, did he walk around the property?

4 A. I was introduced to Officer Gibson when he came in
5 through the front door. I did not know that he had arrived.
6 And he had introduced himself and he indicated what his
7 purpose there was he was there for. And I think we both
8 walked back to where the gun safe -- I showed him where the
9 gun safe was in the room, and then he told me he was going
10 to start his processing. So in order to allow him to do his
11 job, I exited my home and went out on the front porch or
12 walkway.

13 Q. Well, from the time Officer Torres got there to the
14 time Officer Gibson got there, how much time went by?

15 A. I don't recall exactly.

16 Q. Okay. Well, while Officer Torres was waiting for
17 Officer Gibson, did Officer Torres do anything to secure
18 this area, your house, inside, the outside, or anything
19 else?

20 A. There was -- I didn't -- I don't -- I mean, it was just
21 myself and he, so, no, there was no roping off or anything,
22 if that's what you are suggesting.

23 Q. Right, that's what I'm asking.

24 There was -- there was no -- nothing secured. It was,
25 like you say, you and him, but nobody went around trying to

1 see what was there or what wasn't there, especially on the
2 outside, right?

3 A. At that time we were just concentrating on the contents
4 of the safe, what had been taken, etcetera.

5 Q. Okay. Now, you say the officers left.

6 And then you went walking around your yard and that's
7 when you say you found State's Exhibit No. 1, correct?

8 A. Yes.

9 Q. All right. So what time did you supposedly find
10 State's Exhibit No. 1?

11 A. I would say it was within twenty minutes, or so, after
12 the last officer left.

13 Q. How long were they there?

14 A. I don't remember how long they were there.

15 Q. Let's talk about your neighbors just a little bit.

16 How close is your closest neighbor?

17 A. Within fifty yards.

18 Q. 150 feet?

19 A. Approximately, yes.

20 Q. Okay. Almost as far away from your house as your house
21 is from [REDACTED] [REDACTED] [REDACTED]

22 A. I would say that's reasonable, yes.

23 Q. All right. Now, is that on the same side of the

24 [REDACTED] [REDACTED] [REDACTED] as you are or on the opposite side, or what
25 side?

1 A. It's on the Stewart Gin side, on the west -- excuse me,
2 the east side of the home. There is a --

3 Q. Would that be towards the Liberty side or towards the
4 Six Mile side?

5 A. That's towards the Liberty side.

6 Q. All right.

7 Now, between -- and that would be your closest.

8 What's your next closest one out there after that one?

9 A. Almost directly and to the right of my home across the
10 street of Stewart Gin.

11 Q. And how far is that from your house?

12 A. Probably seventy-five to a hundred yards.

13 Q. I'm sorry?

14 A. Seventy-five to a hundred yards.

15 Q. Okay. Roughly 300 feet?

16 A. I would say so.

17 Q. About a football field?

18 A. (Shaking head yes).

19 Q. Okay.

20 (Off the record)

21 (Back on the record)

22 BY MR. DEJONG:

23 Q. Thank you so much, Mr. McSwain.

24 THE COURT: You may redirect the witness.

25

1 REDIRECT EXAMINATION BY MS. BARWICK:

2 Q. Was the paper wet or dry when you found it?

3 A. The paper was dry.

4 Q. Can you see your neighbors behind you from your
5 residence?

6 A. Only in the wintertime.

7 Q. And why is that?

8 A. That's when all of the foliage from the trees is down.

9 And, again, you can barely see the house even in the
10 wintertime.

11 Q. What about in April?

12 A. April --

13 Q. April 21st.

14 A. By that time there is so many leaves on the trees you
15 can't see the home.

16 MS. BARWICK: No further questions.

17 MR. DEJONG: Just one followup, Your Honor, if I
18 may.

19 RECROSS EXAMINATION BY MR. DEJONG:

20 Q. If it wasn't raining that day, what is the significance
21 of that paper being dry when you found it?

22 MS. BARWICK: Your Honor, I'm going to object. He
23 doesn't have to know the significance of my question.

24 MR. DEJONG: Well, they are making a big deal that
25 the paper is dry. I want to know why that's such a big

1 deal. If it wasn't --

2 THE COURT: If he knows. The solicitor asked the
3 question. If he knows the answer to that, I'm allow him to
4 answer the question.

5 BY MR. DEJONG:

6 Q. Why did you take note that the paper was dry if it
7 wasn't raining that day?

8 A. I'm sorry?

9 Q. Why did you take note that that paper was dry if it
10 wasn't raining that day?

11 A. I'm not quite sure I understand your question, sir.

12 Q. She asked you if the paper was dry.

13 A. Yes, sir.

14 Q. You said it was dry.

15 A. Correct.

16 Q. Well, if it hadn't been raining, it would be dry,
17 wouldn't it?

18 A. I assume so.

19 Q. Well, the point of that is then if it hadn't been
20 raining, why did you make a point to say the paper was dry?

21 A. I was asked if it was dry and I stated that it was.

22 MR. DEJONG: All right. Thank you, sir.

23 THE COURT: Thank you, sir. You may step down.

24 MS. BARWICK: Judge.

25 THE COURT: Yes, ma'am.

1 MS. BARWICK: Briefly.

2 REDIRECT EXAMINATION BY MS. BARWICK:

3 Q. I think Mr. DeJong --

4 Did you testify that you knew it didn't rain, or that
5 you didn't know if it rained or didn't rain?

6 A. I believe I testified that I didn't know if it had
7 rained or not.

8 MS. BARWICK: Thank you, Your Honor. Nothing
9 further.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 MR. DEJONG: No objection to him being excused,
13 Your Honor.

14 THE COURT: Without objection, he may be excused,
15 if he chooses to stay.

16 Mr. Foreman, ladies and gentlemen, we may have
17 time for another witness, but there is a -- during our
18 preliminary discussions there is a brief matter of law that
19 we need to take care of sometime during the course of the
20 trial. I think now would be the time to take care of that,
21 so I'm going to excuse you now while we work a little
22 longer.

23 We will be ready to start back at nine o'clock in
24 the morning. If you will be in your jury room then, we will
25 be ready to proceed and the State can call its next witness.

1 Some of you have had service on a trial already
2 this week, and some of you haven't. Let me impress upon you
3 again the importance of your remaining silent about what's
4 going on this trial. You are going to go home this evening
5 and your family is going to want to know what your day was
6 like, and what kind of trial you are on now, and did you get
7 picked, and how long did it take, and what's it all about.
8 You will have an opportunity when this trial is over to
9 share your experiences with your loved ones and talk about
10 the experience of serving as a juror and the matters that
11 you have heard in the courtroom, but while the trial is
12 going on is not the time to be doing that. You can
13 certainly tell them that you are in a trial and it's going
14 to continue tomorrow and that you will certainly be through
15 in plenty of time for any weekend plans that you may have,
16 but it would be improper for you to talk about what the
17 witnesses said and what the lawyers have said and those kind
18 of things. That would not be proper while you are serving,
19 just as it wouldn't be proper for you to talk to anyone
20 else. You may go out and have an engagement tonight or meet
21 with friends socially and they will want -- they will be
22 asking you the same questions. Just refrain from doing
23 anything that would jeopardize this case.

24 We have a process that is now started. You have
25 been sworn to be a juror in this case, to be the fact

1 finder, to be the judge, and it's vitally important that you
2 maintain the purity of the process that we are now in. I
3 instruct you to do so.

4 Also I need to instruct you, based upon the Chief
5 Justice of the South Carolina Supreme Court, that I need to
6 instruct you of the impropriety of you doing any kind of
7 independent research. We are curious by nature and some of
8 you may want to get on the Internet or go by the library and
9 check some archives out and find out what happened in April.
10 That would be improper for you to do that. These attorneys
11 are going to give you everything that you need to have by
12 way of their questions and otherwise to make a good sound
13 decision about this case and it shouldn't come from outside
14 sources.

15 By the same token, you shouldn't do any kind of
16 social networking and discuss over the Internet, or
17 Facebook, or any other social media your experiences or
18 what's happening in this trial. That would be in violation
19 of the order of our Supreme Court of South Carolina. We
20 have been instructed as trial judges to emphasize that to
21 you and I hope that you will understand the importance of
22 that.

23 Have a good evening, ladies and gentlemen. We
24 will be ready to start back at nine o'clock in the morning.

25 Everyone else please remain seated while the jury

1 departs.

2 (The following takes place outside the presence of
3 the jury panel)

4 MR. DEJONG: Would Your Honor entertain a short
5 break before we start this?

6 THE COURT: Very short. Let's see if we can't --

7 MR. DEJONG: Yes, sir.

8 THE COURT: -- get started about five after five,
9 okay?

10 MR. DEJONG: Thank you.

11 THE COURT: Have the witness ready to go then.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: All right. We are now ready to have a
15 hearing, a Jackson v. Denno, as to the admissibility of the
16 statement, I understand. I will be glad to hear whatever
17 witnesses that you have, Ms. Barwick.

18 MS. BARWICK: Thank you, Your Honor.

19 The State would call Detective Ben Dow to the
20 stand.

21 DETECTIVE BEN DOW, having been first duly sworn,
22 testified as follows:

23 THE CLERK: If you would have a seat and state
24 your name for the record.

25 THE WITNESS: Benjamin Dow.

1 DIRECT EXAMINATION BY MS. BARWICK:

2 Q. Detective Dow, where do you work?

3 A. The Pickens County sheriff's office.

4 Q. Did you have the chance to speak with the defendant
5 about this incident?

6 A. I did.

7 Q. Where did this conversation take place?

8 A. At [REDACTED] [REDACTED] [REDACTED]

9 Q. Is that the address on his driver's license?

10 A. That's the address that's listed on his driver's
11 license.

12 Q. Okay. Where did the conversation take place, inside or
13 outside?

14 A. Outside in the yard.

15 Q. Was he under arrest at that time?

16 A. No, he was not.

17 Q. Did you tell him he was not free to go?

18 A. No, I did not.

19 Q. Did he -- was he outside when he start started --

20 I'm sorry, when you arrived at that location, was he
21 already outside, or where was he?

22 A. No, he was inside.

23 Q. Okay. Did he voluntarily come outside to speak with
24 you?

25 A. He did, yes.

1 Q. Did you explain to him why you were there?

2 A. I did.

3 Q. What were you wearing?

4 A. I was just wearing my regular work attire, khakis and a
5 button-up shirt.

6 Q. You told him who you worked for?

7 A. I did, and I had my badge and gun on.

8 Q. Okay. Was any other law enforcement officer there at
9 the time that you started to speak with him?

10 A. No, there were not.

11 Q. Did any show up later?

12 A. They did.

13 Q. Was it during the conversation or after the
14 conversation?

15 A. It was during the conversation.

16 Q. Who was that?

17 A. I believe that would have been Captain Hudson.

18 Q. Would he have been dressed like yourself?

19 A. He was.

20 Q. Guns, badge?

21 A. Yes.

22 Q. When y'all spoke with him -- or did Captain Hudson
23 speak with him, or was he just there?

24 A. He was just mostly just there as backup.

25 Q. Towards the beginning of the conversation, towards the

1 end, or halfway through?

2 A. As far as him arriving?

3 Q. Yes, sir.

4 A. I would say it would be towards the end of the
5 conversation, middle to the end.

6 Q. Did you ever threaten the defendant?

7 A. No, I did not.

8 Q. How long did this conversation take place?

9 A. I believe we spoke for ten to fifteen minutes.

10 Q. Did you make him any promises?

11 A. No.

12 Q. Did he appear to be under the influence of anything?

13 A. No, he did not.

14 Q. Did he, in fact, speak with you?

15 A. He did.

16 Q. What did he tell you?

17 A. I explained to him why I was there. I told him I was
18 investigating the burglary that took place. I asked him
19 where the guns were. I explained why I was there and I
20 asked him where the guns were, and he said he didn't know
21 what I was talking about. He denied knowing any knowledge
22 of the incident.

23 Q. Okay. And did you question him further?

24 A. I did. I questioned him about the piece of paper that
25 was found there, and also questioned him if he had been to

1 the unemployment office on the date of the incident. I
2 questioned him -- which he did confirm he had been there.

3 I asked who was driving the car that was in the drive.
4 He said that it was -- that he had the car that day.

5 Q. The day of the incident?

6 A. The day of the incident and was driving it.

7 Q. What about the One Stop slip? Did he admit that being
8 him?

9 A. He did. I took it from my car and showed it to him.
10 He looked at it and he did say that was his slip.

11 Q. So you went back to your car to get this piece of paper
12 and came back and spoke with him about it?

13 A. Yes.

14 Q. Did you question him about how the slip got in the
15 victim's yard?

16 A. I did, and he said he didn't know how the slip got
17 there.

18 MS. BARWICK: Nothing further at this time.

19 THE COURT: You may cross-examine.

20 MR. DEJONG: Thank you, Your Honor.

21 May it please the court.

22 CROSS EXAMINATION BY MR. DEJONG:

23 Q. So you went out to -- what was it, [REDACTED] [REDACTED]?

24 A. Yes, sir.

25 Q. This was on the 22nd?

1 A. Yes, sir.

2 Q. Of April, 2011?

3 A. That's correct.

4 Q. Okay. Open collar shirt, khakis, you. Had your
5 sidearm on, all that other good stuff --

6 A. Yes.

7 Q. -- that y'all wear.

8 Handcuffs and all of that kind of stuff, right?

9 A. Yes.

10 Q. Now, somewhere in the course of all of this
11 conversation then Captain Hudson came out?

12 A. Uh-huh.

13 Q. How was he dressed?

14 A. He was dressed similar to the way I was.

15 Q. Okay. Did you drive an unmarked or a marked car?

16 A. I drive an unmarked car.

17 Q. What was he driving?

18 A. He was in an unmarked car.

19 Q. Okay. Did he identify himself as a police officer?

20 A. I don't know whether he did or not.

21 Q. Well, he was certainly in close proximity while you
22 were questioning Mr. Lane, wasn't he?

23 A. He was.

24 Q. Did you ever mirandize Mr. Lane?

25 A. No, I did not.

1 Q. And certainly when you went out there, he was a suspect
2 in this case?

3 A. He was. He was a person of interest.

4 Q. Right.

5 And then indeed after this conversation you arrested
6 him?

7 A. I did.

8 Q. On the spot?

9 A. I did.

10 Q. All right. And that was based upon what you said was a
11 probable cause in the investigation, right?

12 A. Yes.

13 Q. And the probable cause in the investigation was
14 basically that piece of paper and the car?

15 A. Yes.

16 Q. Right?

17 A. Yes.

18 Q. So that you already had before you went out there on
19 the 22nd, didn't you?

20 A. Yes.

21 Q. All right. So you didn't gain anything more once you
22 got out there?

23 A. No, but he was not under arrest when I was there when I
24 was asking him questions.

25 Q. Well, you say he wasn't under arrest. He wasn't free

1 to leave.

2 A. He could have left.

3 Q. You went out there to arrest him.

4 A. Based on what he was going to tell me when we first
5 started -- when I first started questioning him, I did not
6 know what kind of answers he would give me.

7 Q. You just testified --

8 A. He may have given me logical explanations of the
9 questions I had.

10 Q. Well, he did. He denied it.

11 A. Yes.

12 Q. After you talked to him did you question him any more?

13 A. I did question him back at the jail.

14 Q. Did he ever give a written statement?

15 A. No, he did not.

16 Q. You asked him a series of questions?

17 A. (Shaking head yes).

18 Q. He gave you the answers and you arrested him?

19 A. Yes.

20 MR. DEJONG: One moment, please, Your Honor.

21 (Off the record)

22 (Back on the record)

23 BY MR. DEJONG:

24 Q. Thank you, Detective Dow.

25 THE COURT: Any redirect?

1 MS. BARWICK: No, sir, Your Honor.

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

4 Any other witnesses?

5 MS. BARWICK: No, sir, Your Honor.

6 THE COURT: Anything?

7 MR. DEJONG: One moment, please, Your Honor.

8 THE COURT: Yes.

9 (Off the record)

10 (Back on the record)

11 MR. DEJONG: Are you through, Ms. Barwick?

12 MS. BARWICK: Yes, sir.

13 MR. DEJONG: Thank you, ma'am.

14 Defense would call for the purpose of the Jackson
15 v. Denno hearing only Mr. Karl Ryan Lane.

16 THE COURT: Come around and be sworn, please.

17 KARL LANE, having been first duly sworn, testified
18 as follows:

19 THE CLERK: If you would have a seat and state
20 your name for the record.

21 THE WITNESS: Karl Ryan Lane.

22 DIRECT EXAMINATION BY MR. DEJONG:

23 Q. Mr. Lane, do you remember talking to Detective Dow?

24 A. Yes, sir, I do.

25 Q. Where was it that you talked to him?

1 A. In the driveway at [REDACTED] [REDACTED] [REDACTED].

2 Q. When you -- he hash described how he was dressed.
3 Without going through all of that, was that pretty much
4 accurate?

5 A. Yes, sir.

6 Q. Did he have his gun on?

7 A. Yes, sir.

8 Q. Have handcuffs and all of that stuff?

9 A. And a badge on, like he said.

10 Q. I'm sorry?

11 A. And a badge, like he said.

12 Q. Okay. Get a little closer to the microphone. This
13 courtroom is horrible for acoustics.

14 Did he ever give you your Miranda Warnings?

15 A. No, sir, he did not.

16 Q. All right. And do you remember another police officer
17 coming out there when you talked to him?

18 A. Yes, sir, I do.

19 Q. Okay. And --

20 Well, let me ask you this. Did you ever tell Detective
21 Dow or the other police officer you were driving this
22 vehicle, that Mitsubishi, on the day before?

23 A. No, sir, I did not.

24 Q. Okay. How long was it --

25 Well, let me ask this. Let's start out here.

1 How long had you talked to Detective Dow before the
2 other police officer came out?

3 A. I would say five or seven minutes.

4 Q. Okay.

5 A. It was fairly fast.

6 Q. How long did the whole conversation last?

7 A. After the other officer showed up, I would say no more
8 than three minutes.

9 Q. Were you scared?

10 A. At first, because I didn't know exactly what it was
11 about --

12 Q. Okay.

13 A. -- you know.

14 Q. Did you feel free to leave?

15 A. No, sir, I definitely did not.

16 Q. All right. Well, let me ask you. Before the other
17 police officer arrived, did you feel free to leave?

18 A. No, sir, I did not.

19 Q. Did you feel any more free to leave after the second
20 officer arrived?

21 A. No, sir.

22 Q. After the conversation ended, how soon was it before
23 you were arrested?

24 A. He was -- he was actually on the phone. And as soon as
25 he hung up the phone, he told me to put my hands behind my

1 back, I was under arrest.

2 MR. DEJONG: The witness is with you, Ms. Barwick.

3 CROSS EXAMINATION BY MS. BARWICK:

4 Q. Did Detective Dow force you to speak with him?

5 A. No, but he did ask me to step out of the residence, if
6 I was in there, and I went out there willingly. I did.

7 Q. Okay. So he didn't force you to speak with him?

8 A. No, sir -- no, ma'am, but he also did not let me leave.
9 I actually stated something about that to him.

10 Q. Okay. What did you state?

11 A. I said I couldn't help him and I was going to go back
12 inside and he told me I was going to stay right there.

13 Q. He didn't put handcuffs on you until after the
14 conversation, right?

15 A. Yes, ma'am.

16 Q. And he never told you that you weren't free to leave,
17 did he?

18 A. No, but when I stated something about leaving, he
19 brought up the fact that I was under arrest right then when
20 I had said something about that.

21 Q. But you voluntarily kept speaking with him?

22 A. No, ma'am, I did not. After that I was in handcuffs.
23 I was placed in another officer's car.

24 Q. I'm sorry, at what point in this conversation did
25 Detective Dow tell you you can't leave?

1 A. When I had stated something to him right before he had
2 got on the phone. I said I don't know -- "I can't help you
3 you. I'm going to go back inside." He told me I was going
4 to stay where I was.

5 Q. But you admitted the slip was yours, right?

6 A. Oh, yes, ma'am, I did go to the One Stop.

7 Q. Okay.

8 A. Yes.

9 Q. And you said that to Detective Dow, right?

10 A. Yes, ma'am.

11 Q. And was that before or after he told you you couldn't
12 leave?

13 A. All that I do believe -- I can't -- honestly I can't be
14 sure about that, to tell you the truth.

15 Q. And he didn't threaten you in any way, did he?

16 A. No, but he came off like that, in that way. He made me
17 feel as though I was already under arrest, if that makes
18 sense.

19 Q. And you said before that you voluntarily came out of
20 the house?

21 A. Because I was asked to.

22 Q. Didn't you tell Ms. Cole to tell Detective Dow that you
23 weren't there?

24 A. No, ma'am, actually I had not talked to Ms. Cole. She
25 was sleeping when I came to the residence.

1 MS. BARWICK: Nothing further, Your Honor.

2 THE COURT: Redirect?

3 MR. DEJONG: Nothing further, Your Honor.

4 Step down, please, Mr. Lane.

5 THE COURT: Thank you. You may step back to the
6 table, please.

7 Any other witnesses?

8 MR. DEJONG: For purposes of the Jackson v. Denno,
9 no further testimony, Your Honor.

10 THE COURT: All right. I'll be glad to hear any
11 argument you have as far as why it should not be --

12 MR. DEJONG: Your Honor -- I'm sorry, I did not
13 mean to interrupt, Your Honor.

14 This case is to me very reminiscent of the case of
15 Missouri v. Siebert. I think it's S-I-E-B-E-R-T, or the I
16 and the E may be reversed. I'm not a hundred percent sure.
17 It's a United States Supreme Court case. That was an
18 enhancer and then mirandize. Well, in this case they didn't
19 even bother to MIRANDIZE.

20 I think it is very clear from the officer's
21 testimony, Your Honor, when he went out there to [REDACTED]
22 on April the 22nd of 2011, he was going to arrest this young
23 man. I don't think there is any doubt about that. Then he
24 says based on what the investigation revealed by his own
25 testimony. The investigation didn't reveal any more when he

1 went out there on April the 22nd and he arrested him.

2 So it boils down to they were searching for
3 information without the benefit of mirandizing this young
4 man. They come out there. They have guns, handcuffs.
5 Ultimately two officers say he was free to leave. He wasn't
6 free to leave, Your Honor. They came out there to arrest
7 him. They knew it. That was the plan from the get-go.

8 I simply submit he should have been mirandized,
9 Your Honor, before he was questioned. And all of those
10 questions, none of these were voluntary statements, Your
11 Honor. None of them were spontaneous statements. All of
12 these statements were as a result of police questioning. No
13 doubt about it. It was a police agency, Your Honor.

14 I simply submit he should have been mirandized.
15 He was not mirandized, and I respectfully submit that the
16 statement should be suppressed, or not allowed in I guess is
17 the proper motion, Your Honor.

18 THE COURT: Ms. Barwick?

19 MS. BARWICK: Thank you, Your Honor.

20 Detective Dow did testify that he did not know if
21 he was going to arrest the defendant that day. Throughout
22 the conversation he had admission from the defendant that he
23 was driving the car the day before. He had admission from
24 the defendant that he had been to the unemployment office on
25 the day before, and the defendant hesitated before giving

1 his answer as to the One Stop slip, the unemployment slip.
2 Your Honor, those are all things that Detective Dow gained
3 through that conversation, and then that's when he arrested
4 the defendant.

5 Your Honor, the defendant was not in custody. By
6 his own admission, he voluntarily left the residence and
7 came out -- and come out to speak with Detective Dow.
8 Detective Dow did not use force. Detective Dow -- and this
9 is what Detective Dow testified to. He did not tell him he
10 couldn't leave at any point and did not use any kind of
11 threats.

12 Anything the defendant says at this point is
13 simply a self-serving statement after he had the benefit of
14 counsel. At no point was the defendant told he was in
15 custody and could not leave before the statements were
16 given. So he was not in custody and Miranda was not
17 required to make the statement admissible.

18 As far as whether or not the jury believes
19 Detective Dow did not use force, did not use threats, or did
20 not advise the defendant he was not allowed to leave, that's
21 a jury question as to whether or not they believe Detective
22 Dow.

23 THE COURT: All right. Thank you, Ms. Barwick.

24 All right. I'll study this and try to look at
25 that case overnight. Certainly I'll let you know something

1 in the morning before we start back.

2 I'll see you at nine o'clock.

3 MS. BARWICK: Thank you, Your Honor.

4 MR. DEJONG: Thank you, Your Honor.

5 (Whereupon, proceedings were adjourned to January
6 26, 2012)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF PICKENS) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 KARL LANE,) 2011-GS-39-1496
7 DEFENDANT.) 2011-GS-39-1497
8) JANUARY 26, 2012
9 PICKENS, SOUTH CAROLINA

10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 JENNIE BARWICK, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 JOHN DEJONG, PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT

19
20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, JANUARY 26, 2012)

2 THE COURT: Any matters we need to take care of
3 before the jury comes in?

4 MR. DEJONG: Is Your Honor going to rule on the
5 statement?

6 THE COURT: Yeah, I wondered if there was any
7 more?

8 MR. DEJONG: No, sir, I don't have any.

9 THE COURT: See if we can get them all done at the
10 same time.

11 Yeah, I have reviewed my notes and reviewed the
12 law that each of you submitted.

13 I find the statement was voluntarily given and I
14 will admit it. The preponderance of the evidence --
15 obviously I need to look at the totality of the
16 circumstances and one of the factors that I'm weighing is
17 showing the voluntariness of it.

18 I think it was -- obviously any time that you have
19 differences between testimony, you are going to have
20 different ideas about what was said and when it was said,
21 but I think there was consistent testimony from both the
22 officer and the accused that the meeting was brief. I think
23 even the extra officer there, even by the defendant's
24 testimony, was not more than three minutes before the end of
25 the discussion.

1 I don't find there was any coercion. He testified
2 that he was not forced outside, that it was an open setting
3 rather than a closure where it was.

4 Even the defendant, when he said that he was told
5 he wasn't free to go, that was after the statements were
6 given relating to the operation of the motor vehicle the day
7 before and the slip from the unemployment, and that was when
8 the arrest was made.

9 I find by the preponderance of the evidence that
10 it was a free and voluntary statement given.

11 I'll let the jury decide and I'll certainly charge
12 them on the statement. They can decide whether or not it's
13 beyond a reasonable doubt was it not a voluntary statement,
14 so I will allow it in.

15 All right. The jury is ready. We can have them
16 come in, Mr. Schumacker.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Good morning, ladies and gentlemen.
20 We are now ready to proceed with the trial of the case.

21 Solicitor, you may call your next witness.

22 MS. BARWICK: The State would call Pamela
23 Holladay.

24 PAMELA HOLLADAY, having been first duly sworn,
25 testified as follows:

1 THE CLERK: If you would, have a seat and state
2 your name for the record, please.

3 THE WITNESS: Pam Holladay.

4 DIRECT EXAMINATION BY MS. BARWICK:

5 Q. Ms. Holladay, do you know the victim Mr. McSwain?

6 A. Yes, he's my neighbor.

7 Q. Okay. How long has he been your neighbor?

8 A. We moved to the area in January of 2010.

9 Q. Okay. So -- well, two years?

10 A. Uh-huh.

11 Q. Pretty much.

12 Back in April, April 21st of 2011 to be exact, were you
13 Mr. McSwain's neighbor?

14 A. Yes.

15 Q. Where did you live in relation to him?

16 A. I live across the street from him.

17 Q. I don't know if you are good with distances or not, but
18 if you had to guess the distance between your house and his
19 house, would it be bigger or smaller than a football field?

20 A. Bigger.

21 Q. How far do you think it would be?

22 A. I'm not really sure. I'm not good with distance.

23 Q. Less than two football fields?

24 A. I would say so.

25 Q. Do you remember anything unusual happening that

1 afternoon?

2 A. I do. That afternoon -- well, I had taken the day off
3 work because my kids were out of school for teacher
4 in-service, and they each had friends over, and I had
5 decided I would go outside and cut grass.

6 So I went outside and in the front yard I was cutting
7 grass. And as I was cutting grass, I noticed a car pull in
8 his driveway. And it's very rare that you see many cars
9 over in their driveway, especially when they are not home,
10 and I thought it was odd, so I just kind of kept my eye on
11 it. I noticed that the car had a paper tag and I thought
12 that maybe his wife had purchased a new vehicle.

13 Q. You said you were not at work that day. Are you
14 currently working?

15 A. Yes.

16 Q. Did you have to take off work to come in here and
17 testify today?

18 A. Yes.

19 Q. When you saw the car pull into the driveway, can you
20 describe to the jury what that car looked like?

21 A. Yes, it was a red to burgundy colored four-door car
22 with a paper tag. And on the front passenger panel it was
23 like a gray primer panel.

24 And I -- we play this game with our kids all the time
25 in the car when we are traveling. We say identify the car,

1 and so I feel like I'm pretty good at doing that and I could
2 tell it was a Mitsubishi Gallant-type car.

3 Q. And you kept mental note of all of this?

4 A. Yes.

5 Q. Well, what else did you --

6 Well, when you were cutting your lawn, were you up by
7 your house or further down toward the victim's home?

8 A. Up by my house.

9 Q. And what did you see?

10 A. I saw a person going from the front door of his
11 residence to the vehicle, back to the front door. And I
12 thought it was odd, but I didn't know them that well at the
13 time. I knew that they didn't have children. And like I
14 said, they usually don't have people there, so in my gut I
15 felt like something could be going on, but I didn't want to
16 be the nosey neighbor that called on cops on the whim, so I
17 decided to drive my lawnmower down the driveway where I have
18 grass, continuing to cut the grass and observing what was
19 going on.

20 Q. Okay. And did you -- when you drove down the driveway,
21 is that going towards the victim's residence?

22 A. Yes.

23 Q. And what did you see when you drove your lawnmower down
24 the driveway?

25 A. They continued going from the vehicle to the front

1 door. And then as I got down to the edge of the driveway
2 and turned left to go down [REDACTED] [REDACTED] [REDACTED] towards the
3 house, that's when I observed them getting in their vehicle
4 and backing out and leaving towards Six Mile.

5 Q. Well, let me just clarify this a little bit for the
6 jury. When you say them, were there -- was there more than
7 one person?

8 A. There was.

9 Q. Was there more than one person you saw go into the
10 house and to the car and to the house and to the car?

11 A. I believe that when -- when I first observed, there was
12 just one person. At the end when the car was getting ready
13 to leave, there were two people in the vehicle, getting in
14 the vehicle.

15 Q. When did you first see that second person?

16 A. When they were getting in the vehicle.

17 Q. Okay. Did that second person come out of the front
18 door or the back door, did you notice?

19 A. I couldn't say for sure.

20 Q. Were you close enough to see their faces?

21 A. No, all I could tell was that the person that I
22 observed was wearing a black shirt and blue jeans and had a
23 smaller build.

24 Q. What about the other person, were you able to tell from
25 that?

1 A. No.

2 Q. Did you ever tell law enforcement what you saw?

3 A. I didn't. I was waiting for my husband to get home
4 from work and I was going to run it by him.

5 When that was happening, I stopped and went inside and
6 got my cell phone and Googled their home phone number
7 thinking if they had someone in their house doing some work,
8 maybe they would pick up the phone and that could ease my
9 mind, but the home phone had been disconnected, and I didn't
10 have any other contact for them, because we really
11 weren't -- you know, we really hadn't associated that much
12 at that time.

13 Q. Okay. So you and Mr. McSwain were neighbors, but not
14 friends, or not even really acquaintances?

15 A. Right. I mean, we had talked, like, you know, if we
16 were down at our driveways, we had spoken previously, but
17 not anything outside of that.

18 Q. All right. Did you ever see law enforcement show up at
19 the victim's residence?

20 A. I did. About the time that my husband got home from
21 work and I was going to tell him what I saw to get his
22 opinion, I looked out the window. We have a big bay window
23 in our kitchen and I noticed that there was law enforcement
24 there with his truck.

25 Q. Did you go speak with them at that point?

1 A. I did. I got in my car and drove over there to talk to
2 them.

3 Q. And what did you -- did you tell law enforcement what
4 you saw?

5 A. Uh-huh, I walked up to the front door and they were
6 observing the damage and all, and I said "I'm really sorry,
7 but I can give you a description of the vehicle was here and
8 I can tell you what I saw."

9 Q. Did you give that description to Deputy Torres?

10 A. I did.

11 Q. Later on did you ever see Detective Dow?

12 A. I did.

13 Q. Was that the day of the incident, or later?

14 A. The next morning -- or next evening.

15 Q. Did he show you a photo lineup?

16 A. He did.

17 Q. In that photo lineup were you able to identify the
18 defendant?

19 A. I was not.

20 Q. That red Mitsubishi Gallant that you were talking
21 about --

22 I'm sorry, let me get this loaded up. You should have
23 a little clicker there. The red button that says laser on
24 it, if you will point up here where their vehicle was
25 parked.

1 A. It was just right in the driveway right in here.

2 Q. Okay. All the way up there?

3 A. Not to the end of the concrete, no.

4 Q. Okay. About right there?

5 A. Uh-huh.

6 Q. And when they drove off, which way did they drive in?

7 A. This way, towards Six Mile.

8 Q. When they drove off, would you -- I know this sounds
9 like a silly question, but did you see the passenger side or
10 the driver's side?

11 A. The passenger.

12 Q. Did you ever have a really good look at the driver's
13 side?

14 A. No.

15 Q. How many doors does that vehicle have?

16 A. Four.

17 MS. BARWICK: No further questions.

18 THE COURT: Mr. DeJong, you may cross-examine the
19 witness.

20 MR. DEJONG: Thank you, Your Honor.

21 May it please the court.

22 CROSS EXAMINATION BY MR. DEJONG:

23 Q. So I realize that you play this game with your
24 children, Ms. Holladay, but as I heard your testimony, you
25 said it was a Mitsubishi Gallant-type car, correct?

- 1 A. That's correct.
- 2 Q. So even when you talked to Mr. Torres or Mr. Dow, it
- 3 was a Mitsubishi Gallant-type car. You could not definitely
- 4 say it was a Mitsubishi Gallant?
- 5 A. Well, at the time I believe I did say it was a
- 6 Mitsubishi Gallant.
- 7 Q. Yes, ma'am, I think you probably did, but today you
- 8 said Mitsubishi Gallant-type car.
- 9 A. Uh-huh, that's correct, I did state that.
- 10 Q. So in your own mind you are not sure whether it was a
- 11 Mitsubishi Gallant or a Mitsubishi Gallant-type car?
- 12 A. No, I feel certain it was a Mitsubishi Gallant.
- 13 Q. Now, your house I guess is on [REDACTED]
- 14 A. Yes.
- 15 Q. And I gather it faces [REDACTED] [REDACTED] [REDACTED]
- 16 A. Yes.
- 17 Q. And probably -- I believe you said less than two
- 18 football fields away?
- 19 A. As a guesstimate, yes. I'm not very good with
- 20 distances, but I would say yes.
- 21 Q. That would be from your front door to the front door of
- 22 your neighbor, correct?
- 23 A. Correct.
- 24 Q. All right. Now, how far does your house sit off of
- 25 [REDACTED] [REDACTED] [REDACTED]

1 A. A pretty good ways. It's a clear shot. There are no
2 trees. There is pasture in front. We are up on the hill.
3 Pretty long driveway.

4 Q. All right. So when you first say that you observed
5 this vehicle, you were some football and a half field --
6 let's start over on that one.

7 Football field and a half, or more, away from where
8 that car was, correct?

9 A. If -- like I said, I'm not good with distances, but
10 based on what I can tell, yes.

11 Q. By the way, do you remember what the weather was like
12 that day?

13 A. That morning I don't. I stayed in, but that afternoon
14 I cut the grass and it was -- I don't recall it being sunny,
15 but it wasn't raining. It was I would say partly cloudy.

16 Q. Do you recall whether it had rained in the morning or
17 not?

18 A. I don't. We slept in late that morning.

19 Q. All right, ma'am.

20 How about the wind? Do you remember what the wind was
21 like?

22 A. I don't, but that's because I live on the hill and the
23 wind is always blowing.

24 Q. All right, ma'am.

25 Now, when you got basically to the end of your

1 driveway, how far away were you from where you say that you
2 saw this vehicle?

3 A. When I got to the end of my driveway and went to turn
4 left to go down [REDACTED] down the side of the road,
5 I mean, I was pretty close to their driveway. I couldn't --
6 I'm not -- again, I'm not good with distances, but I would
7 say, I don't know, twenty, twenty-five feet. Again, I'm not
8 really good with distances. It was close.

9 Q. But the up-shod of all of that, who are the two people
10 you say were in that car, you do not know who they were?

11 A. No, I do not.

12 Q. The vehicle that you say you saw, you said it was not
13 pulled up all the way into the driveway, correct?

14 A. It was not.

15 Q. And the -- was it in the driveway? Was it closer to
16 the house side or closest to the yard side?

17 A. To the house side.

18 Q. All right.

19 MR. DEJONG: One moment, please, Your Honor.

20 (Off the record)

21 (Back on the record)

22 BY MR. DEJONG:

23 Q. I believe you said this was in the afternoon, did you
24 not, Ms. Holladay?

25 A. That's correct.

1 Q. Do you recall what time in the afternoon it was?

2 A. I want to say that I started cutting grass around 1:30
3 or 2:00. It may have been 2:30, but I believe that this had
4 happened around 3:00 or 3:30. I had cut some grass, went in
5 to check on the kids, come back out.

6 Q. I believe when you -- and if you need to see a copy of
7 it, I will show it to you, but you told law enforcement it
8 was 3:20'ish, did you not?

9 A. If I can see a copy of the statement, please?

10 Q. Yes, ma'am, certainly be happy to provide it to you.

11 A. Thank you.

12 Yes, I put around 3:20'ish.

13 Q. Thank you, ma'am.

14 A. You are welcome.

15 (Off the record)

16 (Back on the record)

17 BY MR. DEJONG:

18 Q. You said one of the people had on black shorts, blue
19 jeans, and was a white male, is that correct?

20 A. A black T-shirt I believe is what I stated, and blue
21 jeans.

22 Q. All right. How about the other person?

23 A. I don't know.

24 Q. Well, the person that you said had on a black T-shirt,
25 blue jeans, was that the passenger, or driver, or who was

1 it?

2 A. I don't recall.

3 Q. Thank you, Ms. Holladay.

4 A. You are welcome.

5 THE COURT: Any redirect?

6 MS. BARWICK: No, sir.

7 THE COURT: All right. Thank you, Ms. Holladay,
8 you may step down.

9 MR. DEJONG: No objection to her being excused,
10 Your Honor.

11 THE COURT: She may be excused, if she desires.
12 You may call your next witness, please.

13 MS. BARWICK: The State would call Deputy Michael
14 Torres to the stand.

15 DEPUTY MICHAEL TORRES, having been first duly
16 sworn, testified as follows:

17 THE CLERK: If you would have a seat and state
18 your name for the record, please, sir.

19 THE DEFENDANT: Master Deputy Michael Torres.

20 DIRECT EXAMINATION BY MS. BARWICK:

21 Q. Deputy Torres, where do you work?

22 A. Pickens County Sheriff's Office.

23 Q. How long have you worked there?

24 A. Since July of 2007.

25 Q. What are your duties at the sheriff's office?

1 A. Answer calls to service. Also handle traffic calls
2 when needed.

3 Q. Are you considered road patrol?

4 A. Yes, sir.

5 Q. Okay. Are you normally the first one that responds to
6 a scene?

7 A. Normally.

8 Q. If followup investigation is needed on a case, how does
9 that happen?

10 A. Normally if -- from a road parole perspective, we will
11 be the initial officer. We will take the report. Normally
12 it will go down to Criminal Investigations Division.

13 Sometimes we may follow up, small follow-ups, as far as
14 picking up paperwork and things like that.

15 Q. So you are not the investigator?

16 A. No.

17 Q. Okay. Back on April 21st, 2011, did you respond to

18 [REDACTED]

19 A. I did.

20 Q. The victim's residence?

21 A. Yes.

22 Q. Is that in Pickens County?

23 A. Yes, ma'am.

24 Q. When you responded there, do you remember about what
25 time that was?

1 A. We were dispatched shortly after five o'clock in the
2 evening.

3 Q. Okay.

4 A. I arrived at the victim's residence I believe just
5 before 5:30.

6 Q. When you got there what did you do?

7 A. I met the victim at the front of his house. He stated
8 that someone had --

9 MR. DEJONG: Objection to what he stated, Your
10 Honor.

11 THE COURT: Sustained.

12 BY MS. BARWICK:

13 Q. What kind of call was this that you were responding to?

14 A. A burglary had already occurred.

15 Q. And when you got there, did you look in the residence?

16 A. I did.

17 Q. Did the victim point out any damage to you?

18 A. Yes.

19 Q. Did you see the gun safe?

20 A. Yes.

21 Q. At that point did you call any other law enforcement to
22 come in?

23 A. I did.

24 Q. Who did you call?

25 A. I called in our investigation division who processes

1 scenes.

2 Q. What do you mean by processing a scene?

3 A. They will -- they will look for latent prints. We will
4 show them if there is a point of entry found. They will
5 also examine that for latent prints.

6 Q. What are latent prints?

7 A. Latent prints are any prints left behind. If someone
8 were to touch a piece of glass, the latent print would be
9 the fingerprint that was left behind.

10 ID is what we refer to that unit as. When they come
11 out there, ID will look and see if there is anything there
12 that can be developed and lifted off those items that may be
13 touched.

14 Q. Which ID officer responded?

15 A. Sergeant Gibson.

16 Q. Did you show him the point of entry?

17 A. I did.

18 Q. What was the point of entry?

19 A. Point of entry was the rear french door.

20 Q. The back door?

21 A. Yes, the back door.

22 Q. How did you know that was the point of entry?

23 A. From the front door of the house you have a clear view
24 of the back door. The casing or molding or frame of the
25 door was pushed inwards. There was pieces of wood laying

1 throughout the kitchen floor dining area. The dead bolt was
2 still in the locked position. And where the dead bolt was
3 was completely busted inwards from the outside of the house.

4 Q. Do you drive by the victim's house normal every day
5 activity?

6 A. I do.

7 Q. Did you do that the morning of this incident?

8 A. Yes.

9 Q. When you drove by, do you happen to remember what the
10 weather was like?

11 A. It was raining on and off that morning.

12 Q. Okay. That afternoon?

13 A. That afternoon it wasn't raining, but it was overcast.

14 Q. When you -- about how long do you think that you were
15 at the scene?

16 A. Probably close to an hour.

17 Q. Once you left the scene, did you return that same day?

18 A. I did, yes.

19 Q. About what time?

20 A. Probably between six and eight o'clock that evening.

21 Q. Why did you return?

22 A. The victim had found money that he had reported missing
23 out of the safe, was found in the bottom in one of the gun
24 bags. Also he had found something out and around the
25 driveway. He wanted me to look at it.

1 Q. Had he already picked it up?

2 A. Yes.

3 Q. Did he show you that piece of paper?

4 A. Yes.

5 Q. Did he show you where he got it from?

6 A. Yes.

7 Q. I'm referring to State's Exhibit No. 1. Is that this
8 piece of paper that he showed you?

9 A. It is.

10 Q. And did you gather this?

11 A. I did.

12 Q. What did you do with it?

13 A. I made a photocopy of it to go into the -- to our scan
14 documents section of our report. Also I attached it to the
15 report to go to investigations to follow up.

16 Q. Who did the report? Did you do it?

17 A. The initial report I did.

18 Q. Okay. And you attached that piece of paper to your
19 report?

20 A. Yes.

21 Q. Did you turn in your report to the investigative -- I'm
22 sorry, the Criminal Investigations Division?

23 A. The way -- when we do our reports --

24 Q. Right.

25 A. -- we will print it out and it will get turned over to

1 our supervisors and they will do their checks and balances
2 to make sure that everything in the report is done correctly
3 before it goes to investigations.

4 Q. Okay. Did you speak with Pam Holladay, who just
5 testified?

6 A. I did.

7 Q. Was that the same day as the incident?

8 A. Yes.

9 Q. About what time did you speak with her?

10 A. Probably about quarter to six.

11 Q. On your initial visit to the residence?

12 A. Yes.

13 Q. Did she give you a description of a vehicle?

14 A. She did.

15 Q. The same as she described to you today?

16 A. Yes.

17 Q. I'm sorry, to the jury today.

18 After that -- was that about the extent of your
19 involvement?

20 A. Yes.

21 Q. Did you know the victim before this incident?

22 A. I did not.

23 MS. BARWICK: No further questions.

24 THE COURT: You may cross-examine, Mr. DeJong.

25 MR. DEJONG: Thank you, Your Honor.

1 May it please the court.

2 CROSS EXAMINATION BY MR. DEJONG:

3 Q. So Mr. Torres, you are -- and I don't mean it in any
4 pejorative sense, but you are road patrol, right?

5 A. Yes, sir.

6 Q. Do you patrol this area regularly?

7 A. Yes.

8 Q. So that's kind of, for want of a better term, your
9 beat, right?

10 A. Yes.

11 Q. Now, on April the 21st of 2011, it had been raining off
12 and on through the morning, right?

13 A. Yes, sir.

14 Q. And the ground was wet, was it not?

15 A. Yes, sir.

16 Q. And the ground was certainly still wet when you went
17 out and responded to this call?

18 A. Yes, sir.

19 Q. And I believe in your report you say that you were
20 dispatched at 5:17 in the afternoon, is that correct?

21 A. Yes, sir.

22 Q. Do you need to see a copy of your report?

23 A. No, sir.

24 Q. And you arrived at 1727, or 5:27, correct?

25 A. Yes, sir.

1 Q. And then you left at 1810, or 6:10 in the evening?

2 A. Yes, sir.

3 Q. Right?

4 A. Yes, sir.

5 Q. So you were the initial officer there.

6 You say that you had responded to a burglary. What did
7 you do to preserve where you say this burglary had occurred?
8 And in that I'm talking about crime scene preservation, what
9 did you do?

10 A. The victim had already been home.

11 As far as the inside of the house where the crime
12 occurred would be contaminated crime scene, since he had
13 already been there, he had unlocked the front door, been in
14 the house.

15 Whatever -- when I arrived on the scene and came in
16 through the front door where he showed me and we found where
17 the point of entry was and he showed me where the safe was,
18 part of my initial questions was "have you touched
19 anything?" And depending on that answer, he was told not to
20 touch anything and everything was to be left as it was until
21 our ID unit arrived on the scene.

22 Q. What about the outside, what did you do to preserve
23 that?

24 A. There was nothing to be done on the outside.

25 Q. Tire tracks, footprints, papers?

1 A. There was none, as far as tire tracks or footprints.

2 Q. Did you even look?

3 A. I did.

4 Q. All right. And didn't find anything?

5 A. No footprints or tire marks.

6 Q. Well, did you find anything else on the outside?

7 A. I did not.

8 Q. All right, sir.

9 Now, you say the point of entry was the back door?

10 A. Yes, sir.

11 Q. Were there any pry marks?

12 A. No.

13 Q. Anything to indicate how entry was made?

14 A. It was -- it appeared to have been an abrupt force
15 entry against the door.

16 Q. And it was a dead bolt lock?

17 A. Yes, sir.

18 Q. Take a fair amount of force to rip that dead bolt lock
19 out of the door frame, wouldn't it?

20 A. Yes, sir.

21 Q. Well, let me ask you this. Other than Brian Gibson
22 from what you call ID coming out there, did any other police
23 officers come out?

24 A. Not that day.

25 Q. Okay. So it was you and Brian Gibson, right?

1 A. Yes.

2 Q. I know you are not the ID man, but I'm going to ask you
3 anyway. To your knowledge, were any fingerprints recovered?

4 A. To my knowledge, I do not know.

5 Q. All right. So once you made the initial contact, you
6 just -- you were done with the case, is that what you are
7 telling me?

8 A. I remained on the scene until Sergeant Gibson arrived.
9 At that time once he was on the scene and took over, I had
10 left and went to go answer other calls.

11 Q. [REDACTED] --

12 Well, let me back up a little bit.

13 Are you familiar with what I'm going to call the
14 unemployment office?

15 A. I am.

16 Q. Okay. That is actually on Summit Drive?

17 A. Yes, sir.

18 Q. And since you patrol that area, Summit Drive actually
19 just runs in or turns into [REDACTED] at some point in
20 time, correct?

21 A. Summit Drive actually turns into Liberty Highway, and
22 Stewart Gin branches off right there where it turns into
23 Liberty Highway.

24 Q. Okay. Now, from the unemployment office to where this
25 alleged burglary occurred, do you know how far that is, Mr.

1 Torres?

2 A. It could be approximately about two miles.

3 Q. All right. So it would be a very short distance,
4 correct?

5 A. Yes, sir.

6 Q. Travel time would be just a matter of minutes, right?

7 A. Yes, sir.

8 Q. Okay. Now, we have established that it had been
9 raining off and on. Do you recall what the wind conditions
10 were that day?

11 A. Very light, if any.

12 Q. All right. Is that your guess, or is that your
13 recollection?

14 A. My recollection.

15 Q. All right. Could have been wind gusts?

16 A. There may have been.

17 Q. It was a rainy day, right?

18 A. Yes, sir.

19 Q. Now, when you left somewhere around between 6:00 and
20 6:15 on the 21st, that's when you left [REDACTED] [REDACTED] [REDACTED]

21 A. Yes, sir.

22 Q. Now, did you go back out to [REDACTED] [REDACTED] [REDACTED] that
23 night?

24 A. I did.

25 Q. What time?

1 A. I want to say between 6:30 and 8:00.

2 Q. All right. Now, I'm not asking you what the reply may
3 have been, but I am asking you did you ask Mr. McSwain if
4 that piece of paper was dry?

5 A. No.

6 Q. You did not?

7 A. No.

8 Q. Okay. Well, when you got the paper, was it dry?

9 A. It was.

10 Q. All right. And the paper we are talking about, so the
11 record is clear, is what has been marked State's Exhibit 1,
12 correct?

13 A. Yes, sir.

14 Q. All right. And it was dry?

15 A. Yes, sir.

16 Q. And as to how it -- well, you know how you got it. You
17 got it from Mr. McSwain?

18 A. Yes, sir.

19 Q. Right?

20 When you say when you went out and looked, you didn't
21 find -- you didn't find that, did you?

22 A. No, sir.

23 Q. So certainly that could have gotten there after you
24 left at six o'clock, correct?

25 A. Possibly.

1 Q. Right.

2 And certainly when you got out there, it had been
3 raining off and on during the day, the ground was still wet,
4 wasn't it?

5 A. Yes, sir.

6 Q. Were you able to determine what time that piece of
7 paper was recovered?

8 A. It would be closer to probably I believe eight o'clock.

9 Q. Okay. So a dry piece of paper was found in the
10 driveway around eight o'clock is what you are telling this
11 jury, right, to the best of your knowledge?

12 A. The paper was found close to eight o'clock?

13 Q. Right.

14 A. I can't say that for certain, because I didn't find the
15 paper.

16 Q. When you went into this house out there on [REDACTED]
17 [REDACTED] did you look around the house?

18 A. I did.

19 Q. Did you see any televisions?

20 A. There was an entertainment unit.

21 Q. Did you see any computers?

22 A. Not that I recall.

23 Q. Stereo equipment?

24 A. Not that I recall.

25 Q. Jewelry?

1 A. Yes.

2 Q. The point of it is, Mr. Torres, did you see anything
3 disturbed in that house other than the gun safe?

4 A. No.

5 Q. From all appearances of what you saw, whoever went into
6 that house went straight to the gun safe?

7 A. Yes, sir.

8 Q. Now, that gun safe was in a closet, correct?

9 A. Yes, sir.

10 Q. All right. And to get to the gun safe, you had to
11 presumptively open a closet door and then the gun safe was
12 in there?

13 A. Yes.

14 Q. Was there any clothing or anything in that closet?

15 A. There were other items on the shelves and around the
16 safe.

17 Q. Okay. The point is, entering either the front door or
18 the back door, that gun safe would not have been visible,
19 would it?

20 A. No.

21 Q. That would have -- well, strike that.

22 Did you go in the front door or the back door?

23 A. Front door.

24 Q. And other than what's been marked State's Exhibit No.

25 11 -- or, excuse me, 1, you recovered nothing else?

1 A. No, sir.

2 Q. Thank you, Mr. Torres.

3 THE COURT: Any redirect?

4 MS. BARWICK: No, sir, Your Honor.

5 THE COURT: Thank you, Officer Torres, you may
6 step down.

7 You may call your next witness.

8 MS. BARWICK: Your Honor, may we approach?

9 THE COURT: Yes, ma'am.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: Mr. Foreman, ladies and gentlemen, we
13 need to take care of a matter and I'll ask you, if you will,
14 just to go back to your jury room. We won't keep you very
15 long, but don't discuss the case. We will take care of this
16 matter and then we will call you right back. Take a short
17 break, if you would, please.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right. We will be at ease for
21 about a ten minute break.

22 MS. BARWICK: Thank you, Your Honor.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Has your witness arrived, solicitor?

1 MS. BARWICK: Yes, sir. Thank you, Your Honor.

2 THE COURT: All right.

3 Have the jury come in, Mr. Schumacker.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Solicitor, you may call your next
7 witness.

8 MS. BARWICK: The State would call Mr. Kenneth
9 Cole to the stand.

10 KENNETH COLE, having been first duly sworn,
11 testified as follows:

12 THE CLERK: If you would, take a seat and state
13 your name for the record.

14 THE WITNESS: Kenneth Cole.

15 DIRECT EXAMINATION BY MS. BARWICK:

16 Q. Mr. Cole, where do you live?

17 A. [REDACTED]

18 Q. Who lives there with you?

19 A. Me and my wife now.

20 Q. Back in April did the defendant live there with you?

21 A. No, ma'am.

22 Q. Where did he live?

23 A. He lived in Liberty.

24 Q. Would it surprise you to know that his driver's license
25 listed your address as his home address?

1 A. No.

2 Q. Why wouldn't it?

3 A. His license I believe read [REDACTED] which is down the hill
4 in the mobile home where him and my daughter resided at one
5 time.

6 Q. Back in April of 2011?

7 A. No.

8 Q. He wasn't behind you in that mobile home?

9 A. No.

10 Q. Okay. Do you remember Detective Dow coming out to your
11 house on the 22nd of April?

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

13 Q. Did -- how did you see him?

14 A. He knocked on my door. I went out, spoke to Officer
15 Dow. He asked for Karl, and I had never -- I didn't know
16 Karl was there.

17 Q. Okay. How come you didn't know he was there?

18 A. I just woke up. I'm disabled, and when the weather is
19 bad, it rains, sometimes I sleep until one or two in the
20 afternoon.

21 Q. Okay. Where were you sleeping that day?

22 A. In my bedroom.

23 Q. Did you have to come out to the living room to come out
24 to the door?

25 A. Yes, ma'am, I had to come through the kitchen and the

1 living room.

2 Q. Okay. And you didn't see the defendant in either of
3 those rooms?

4 A. No, ma'am.

5 Q. When he came outside to speak with Detective Dow --
6 Actually I'm going to back up a little bit.

7 Can you describe the car that the defendant drives?

8 A. He don't have a car.

9 Q. Back in April what car was he driving?

10 A. I don't know him to have a car.

11 Q. How would he get around?

12 A. He used to use my wife's cars, my son-in-law's cars.
13 He's borrowed several people's car. He didn't have his own
14 car.

15 Q. He didn't drive a red Mitsubishi Gallant?

16 A. I have seen him drive that car. That's one of my
17 daughter's car.

18 Q. Okay. It's your daughter's car?

19 A. Yes, ma'am.

20 Q. Where was your daughter that day?

21 A. On the 22nd, I'm not real sure.

22 Q. Okay. Let's talk about this Mitsubishi Gallant, this
23 red Mitsubishi Gallant. How many door does it have?

24 A. I believe it's four doors.

25 Q. Does it have any gray primer paint on it?

1 A. Yes, ma'am.

2 Q. And where was that paint primer located?

3 A. I want to say on one of the fenders.

4 Q. Okay. Was it on the passenger's side at all?

5 A. I'm not sure.

6 Q. Did it have a paper tag?

7 A. I think so. I'm not a hundred percent positive.

8 Q. Was your daughter in the house?

9 A. No, ma'am.

10 Q. Was she at the house at all?

11 A. No, ma'am.

12 Q. So if your daughter's car was at the house and your
13 daughter wasn't there, wouldn't you expect the defendant to
14 have been driving the car?

15 MR. DEJONG: Objection, Your Honor. That calls
16 for speculation on the part of the witness.

17 THE COURT: I sustain the objection as to the
18 question as asked. You may rephrase your question.

19 BY MS. BARWICK:

20 Q. Who do you think was driving that car that day?

21 A. I don't know. My daughter could have been down the
22 hill at the -- at my other daughter's house having her
23 baby-sit while she went to work.

24 Q. After you spoke with Detective Dow, where did you go?

25 A. I stayed in the yard.

1 Q. You stayed in the yard?

2 A. Yes, ma'am.

3 Q. What were you doing in the yard?

4 A. Picking up trash, cleaning the yard my wife had been
5 asking me to do for days.

6 Q. With your arthritis acting up the way it was?

7 A. Yes, ma'am.

8 Q. So you just woke up from your nap and decided to start
9 picking up some trash?

10 A. It wasn't a nap. It was actually I just woke up for
11 the day.

12 Q. About what time of day was that?

13 A. One, two o'clock in the afternoon.

14 Q. It was just you and your wife in the house that day?

15 A. Yes, ma'am.

16 Q. Well, how would you know that your daughter wasn't in
17 the house, it was just you and your wife, if you didn't know
18 for sure that Karl was there?

19 A. I didn't see no one else in the house when I woke up.
20 Just me and my wife. Me and my wife were still in bed --

21 Q. Okay.

22 A. -- in my room.

23 Q. Okay. But didn't you just testify that nobody else was
24 in the house?

25 A. I didn't see no one else in the house.

1 Q. So when the officer asked you -- when Detective Dow
2 asked you if the defendant was in the house --

3 A. I said no.

4 Q. -- I thought you just said that you didn't -- you said
5 that you didn't know.

6 A. I didn't see no one else in the house.

7 Q. Okay. Did you ever volunteer to go back in the house
8 and look for the defendant for Detective Dow?

9 A. No, ma'am.

10 Q. How come? Why was that?

11 A. I just didn't go back in the house. I was picking up
12 trash in the yard.

13 Q. Okay. But you could have went back in the house and
14 looked for the defendant?

15 A. Oh, yes, ma'am.

16 Q. But you didn't want Detective Dow to find the
17 defendant, did you?

18 MR. DEJONG: Objection, Your Honor.

19 MS. BARWICK: Hostile witness.

20 THE COURT: I'll allow the question.

21 A. Ma'am, it wouldn't have mattered to me. If he had been
22 there, I would have said he was there. I didn't know he was
23 there.

24 BY MS. BARWICK:

25 Q. Right. You didn't know he was there?

1 A. No, ma'am.

2 Q. And you didn't offer to go look for him?

3 A. I didn't know he was there. I didn't see no one in the
4 house.

5 Q. Sir, just -- if you answer yes or no, then you could
6 explain your answer first. Just say yes or no and then you
7 can explain it.

8 Did you ever offer to go look in the house for the
9 defendant?

10 A. No, ma'am.

11 Q. And you have said you decided to start picking up trash
12 with your arthritis?

13 A. Yes, ma'am.

14 Q. And was that because you didn't want Detective Dow to
15 find the defendant?

16 A. No, ma'am.

17 Q. How are you related to the defendant?

18 A. The defendant is my oldest granddaughter's dad.

19 Q. Okay. I want to just be clear. Does the defendant and
20 your daughter have a child in common?

21 A. Yes.

22 MS. BARWICK: No further questions.

23 THE COURT: You may cross-examine.

24 MR. DEJONG: Thank you, Your Honor.

25

1 CROSS EXAMINATION BY MR. DEJONG:

2 Q. Mr. Cole, how did you come about coming to court today?

3 A. I have been subpoenaed by the State attorney.

4 Q. All right. So how many children do you have in all?

5 A. I have five children.

6 Q. How many boys, how many girls?

7 A. Three boys, two girls.

8 Q. Where do they live?

9 A. A couple of them live in the mobile home down below. I
10 have a son that lives in Liberty. Another son that stays in
11 Six Mile.

12 Q. All right, sir.

13 Well, when Madam Solicitor was asking you questions,
14 did one of your daughters baby-sit for the other daughters?

15 A. Yes, sir.

16 Q. Okay. Which daughter did the baby-sitting?

17 A. My daughter Candice usually watches a lot of kids. She
18 don't work and she has two kids of her own.

19 Q. Now, is Candice the daughter that has the child with
20 Mr. Lane?

21 A. No. No, sir.

22 Q. That's a different one?

23 A. Yes, sir.

24 Q. Okay. All right.

25 Well, on April the 21st you got up about between one

1 and two o'clock in the afternoon, right?

2 A. I don't recall April 21st.

3 Q. I'm sorry, April the 22nd. I beg your pardon.

4 A. Okay.

5 Q. April the 22nd you got up between one and two o'clock
6 in the afternoon?

7 A. Yes, sir.

8 Q. Were you home on April the 21st?

9 A. No, sir.

10 Q. All right. Now, you live on [REDACTED] [REDACTED]?

11 A. Yes, sir.

12 Q. Where is that in relationship to [REDACTED] [REDACTED] [REDACTED] if
13 you know?

14 A. I don't really know where [REDACTED] [REDACTED] [REDACTED] is.

15 Q. All right, sir. So Detective Dow --

16 Well, let me ask you this.

17 Were you up when Detective Dow came on April the 22nd,
18 or did he awaken you?

19 A. I was up, but I had just woke up within five or ten
20 minutes.

21 Q. Okay. And so you got up, went from your bedroom to the
22 kitchen, correct?

23 A. Yes, sir.

24 Q. Did you see anybody else?

25 A. No, sir.

- 1 Q. So then within five to ten minutes of you getting up, I
2 gather Detective Dow is knocking on the door, right?
- 3 A. Yes, sir.
- 4 Q. Do you go outside? Does he come in?
- 5 A. I went outside.
- 6 Q. And he asked you if Karl Lane was there?
- 7 A. Yes, sir.
- 8 Q. And you said?
- 9 A. I said no.
- 10 Q. All right. Was that an honest answer at the time?
- 11 A. Yes, sir, I didn't see Mr. Lane.
- 12 Q. And if I understand you correctly, Mr. Lane really
13 didn't live in your residence at that point in time?
- 14 A. No, sir.
- 15 Q. Did he come from time to time to spend time?
- 16 A. Yes, sir.
- 17 Q. Now, did he and your daughter live together at that
18 point in time?
- 19 A. Yes, sir.
- 20 Q. And where did they live?
- 21 A. In Liberty.
- 22 Q. So once you told Detective Dow that Mr. Lane wasn't
23 there, you just kind of went about your business, correct?
- 24 A. Yes, sir.
- 25 Q. Going back if we can just for the day before for just a

1 moment, do you remember what the weather was like on April
2 the 21st?

3 A. No, sir.

4 Q. Okay. Once you made that statement to Detective Dow,
5 did he try to carry on any other conversation with you?

6 A. No, sir, but then my wife had come out.

7 Q. So in a very short span of time he talked to you and
8 then your wife came out the door, is that --

9 A. Yes, sir.

10 Q. -- a fair statement.

11 Okay. Did Dow ever ask you to go back in to look in
12 the house?

13 A. No, sir.

14 Q. Did he ever ask to go in the house?

15 A. No, sir.

16 Q. Did you have any more contact with Mr. Dow after that
17 brief conversation?

18 A. Yes, sir.

19 Q. When was that?

20 A. After Karl had come out of the house.

21 Q. All right. Were you present when Mr. Dow was asking
22 Karl questions?

23 A. No, sir.

24 Q. Well, did you have any more conversations with Mr. Dow?

25 A. Yes, sir.

1 Q. What was that conversation?

2 A. After they had arrested Karl, he was saying that that
3 car was used in the crime. And I said the keys were on the
4 see, that he could feel free to look through it.

5 Q. Did he?

6 A. Yes.

7 Q. And by -- when you say look through it, look through
8 the car?

9 A. The trunk.

10 Q. Did he look in the trunk?

11 A. Yes, sir.

12 Q. Were you there when he looked in the trunk?

13 A. Yes, sir.

14 Q. How many guns did he find in that trunk?

15 A. None.

16 Q. None?

17 A. None.

18 Q. What was in the trunk?

19 A. Clothes. My daughter's and granddaughter's clothes.

20 Q. Were there any tools in that trunk?

21 A. No, sir.

22 Q. Sledgehammers?

23 A. No, sir.

24 Q. Crow bars?

25 A. No, sir.

1 Q. Any kind of ramming -- anything you could use to ram?

2 A. No, sir.

3 Q. Is Karl about the same size now as he was on April the
4 21st of 2011?

5 A. Yes, sir.

6 Q. On April the 21st of 2011, did you see Karl at all?

7 A. No, sir.

8 MR. DEJONG: One moment, Your Honor.

9 (Off the record)

10 (Back on the record)

11 BY MR. DEJONG:

12 Q. Thank you, Mr. Cole.

13 THE COURT: Redirect?

14 MS. BARWICK: No, sir, Your Honor.

15 THE COURT: Thank you, sir. You may step down,
16 Mr. Cole.

17 Without objection, this witness may be excused.

18 MR. DEJONG: Without objection, Your Honor.

19 THE COURT: Thank you, sir.

20 You may call your next witness, solicitor.

21 MS. BARWICK: The State would call Kimberly Cole
22 to the stand.

23 KIMBERLY COLE, having been first duly sworn,
24 testified as follows:

25 THE CLERK: If you would, have a seat and state

1 your name for the record. Slide up close to the microphone.

2 THE WITNESS: Kimberly Cole.

3 DIRECT EXAMINATION BY MS. BARWICK:

4 Q. Ms. Cole, where do you live?

5 A. [REDACTED]

6 Q. With your husband Mr. Duncan -- or Mr. Cole? I'm sorry
7 about that.

8 A. Yes, ma'am.

9 Q. Do you remember Detective Dow coming out to your house
10 on the 22nd of April?

11 A. Yes, ma'am.

12 Q. What were you doing before he got there?

13 A. Sleeping.

14 Q. How did you know to come outside?

15 A. I had just got up. I heard somebody knocking at the
16 door.

17 Q. So your husband had already gone outside?

18 A. Yes, ma'am.

19 Q. Who was knocking at the door?

20 A. Detective Dow.

21 Q. After he got done speaking with your husband?

22 A. I don't think he was knocking again. I heard him the
23 first time, but I had to get up and put some clothes on.

24 Q. All right. Did you come outside?

25 A. Yes, ma'am.

1 Q. Did you speak with Detective Dow?

2 A. Yes, ma'am.

3 Q. Did he ask you if Karl Lane was inside?

4 A. Yes, ma'am.

5 Q. What did you say?

6 A. I told him no.

7 Q. After you told Detective Dow that Karl Lane wasn't
8 inside, did Detective Dow ask you where he was?

9 A. Yes, ma'am.

10 Q. Where did you say that he was?

11 A. I didn't know where he was. That's what I told him.

12 Q. Did Detective Dow ask you if you about that red
13 Mitsubishi Gallant with the gray primer in your driveway?

14 A. I didn't -- can you say that question again?

15 Q. The -- was there a -- that day was there a red
16 Mitsubishi Gallant in your driveway?

17 A. Yes, ma'am.

18 Q. With gray primer?

19 A. Yes, ma'am.

20 Q. Did Detective Dow ask you who drove that vehicle?

21 A. Yes, ma'am.

22 Q. Who did you tell him drove that vehicle?

23 A. Most of the time my daughter drove it.

24 Q. Where was your daughter that morning?

25 A. I really don't know. I don't know if -- I didn't know

1 if she had to work, you know, if she was dropping the kids
2 off. I had just woke up.

3 Q. Okay. Didn't you tell Detective Dow that she was at
4 work?

5 A. I don't recall.

6 Q. You don't recall if you told Detective Dow if she was
7 at work?

8 A. I'm not sure. It was almost a year ago.

9 Q. Well, if your daughter was at work, how would your --
10 how would that vehicle be in your driveway?

11 A. I really don't know. I don't remember telling him she
12 was at work.

13 Q. Okay.

14 A. I know she drove the car to work.

15 Q. Who drove the car the day before on the 21st?

16 A. I have no idea.

17 Q. Didn't you tell Detective Dow that it was the defendant
18 and your daughter who drove the vehicle the day before?

19 A. No.

20 Q. You didn't tell Detective Dow that?

21 A. No.

22 Q. Do you understand that you are under oath?

23 A. Yes, I do.

24 Q. Okay. Did you tell Detective Dow that the defendant
25 had been at the unemployment office the day before?

1 A. I believe so.

2 Q. Okay.

3 A. Actually he showed me a piece of paper that said he
4 was.

5 Q. Okay. Did you tell Detective Dow that the defendant
6 had been at the unemployment office the day before?

7 A. I believe after he showed me the paper, I believe he
8 told me that he was there.

9 Q. All right. The defendant's residence, where did you
10 tell Detective Dow that was?

11 A. Well, he lived in Liberty.

12 Q. You didn't tell him that it was Bridwell Court located
13 in Six Mile?

14 A. No.

15 Q. You never told Detective Dow that?

16 A. Not that I recall.

17 Q. When Detective Dow -- did he tell that you he still
18 needed to speak with the defendant?

19 A. Yes.

20 Q. Did you go back inside and get the defendant?

21 A. When I went back inside -- I told him I didn't know if
22 he was there, but I went back inside. The defendant came
23 out willfully. When I went back inside he was in the living
24 room.

25 Q. He was inside the living room?

1 A. Yes.

2 Q. Did you tell the defendant that Detective Dow needed to
3 speak with him?

4 A. Yes, I did.

5 Q. Did Detective Dow, in fact, speak with the defendant?

6 A. Yes, he did.

7 Q. Did Detective Dow arrest the defendant at that point?

8 A. Yes, ma'am.

9 Q. After he arrested the defendant, did he ask you why you
10 had lied for the defendant?

11 A. He did ask me that.

12 Q. He did or did not?

13 A. He did.

14 Q. And what did you say?

15 A. I didn't lie. I didn't know he was there.

16 Q. Did you not tell Detective Dow that the defendant said
17 he was scared and did not want to talk to Detective Dow?

18 A. No, ma'am.

19 Q. Did you not tell Detective Dow that the defendant told
20 you to tell Dow that he was not there?

21 A. No, ma'am.

22 Q. You never told Detective Dow that?

23 A. No, ma'am.

24 Q. You are saying that under oath?

25 A. Yes, ma'am.

1 MS. BARWICK: No further questions.

2 THE COURT: You may cross-examine the witness.

3 MR. DEJONG: Thank you, Your Honor.

4 May it please the court.

5 CROSS EXAMINATION BY MR. DEJONG:

6 Q. Ms. Cole, how did you come about being here today?

7 A. I was subpoenaed.

8 Q. Who subpoenaed you?

9 A. Detective Dow.

10 Q. All right. So you were subpoenaed by the State in this
11 case, right?

12 A. Yes, sir.

13 Q. Now, Karl and your daughter have a baby in common,
14 right?

15 A. Yes, sir.

16 Q. In April of 2011, were they living together?

17 A. I believe so. They were on and off a lot --

18 Q. Okay.

19 A. -- to be honest.

20 Q. Fair enough.

21 Well, on April the 21st, 22nd, do you remember if they
22 were on or they were off?

23 A. I believe they were living together.

24 Q. All right, ma'am.

25 And when they lived together, did they live in your

1 residence?

2 A. No, sir.

3 Q. Okay.

4 A. Not at that time.

5 Q. All right. Would they come and go from your residence?

6 A. Very often.

7 Q. Now, this Mitsubishi that we have been batting around
8 here, do you remember when that car was purchased?

9 A. I don't know the exact month.

10 Q. Okay. Well, let me ask you this. To the best of your
11 memory, was Karl even in South Carolina when that car was
12 purchased?

13 A. No, sir.

14 Q. So that car was purchased for your daughter?

15 A. Yes, sir, at an auction.

16 Q. And that was her vehicle?

17 A. Yes, sir.

18 Q. Now, did -- going back to April the 21st of 2011, you
19 indicated that there was talk about Karl going to the
20 unemployment office, correct?

21 A. Yes, sir.

22 Q. Do you know what kind or whose vehicle he drove to get
23 to the unemployment office?

24 A. He borrowed mine.

25 Q. And what kind of car was that?

1 A. I drive a '99 Yukon.

2 Q. Okay. Fairly large vehicle?

3 A. It's a very big vehicle.

4 Q. Was that car in good mechanical condition?

5 A. Yes, sir.

6 Q. Pardon me?

7 A. Yes, sir.

8 Q. How about the body, was it in good condition or was
9 there anything wrong with the body at all?

10 A. No, sir.

11 Q. All the doors closed properly?

12 A. Well, the driver's door -- the passenger door doesn't
13 want to close all the way. I thought you meant like
14 grinding like --

15 Q. And in the course of that passenger door not closing
16 really good, can paper slide out of there?

17 A. Yeah, a small piece.

18 Q. Okay.

19 A. Maybe straws.

20 Q. All right, ma'am.

21 Do you -- were you home when Karl came back from the
22 unemployment office?

23 A. Yes, he had my car.

24 Q. Do you recall what time he came home?

25 A. It was early afternoon.

1 Q. Okay. Well, when he came home, did you see any guns?

2 A. No.

3 Q. Did you ever see any guns in your car?

4 A. No.

5 Q. Did you ever see him bring any guns in the house?

6 A. I have never seen him with a gun, ever.

7 Q. To your knowledge, does he own a gun?

8 A. No.

9 Q. Is he a gun collector?

10 A. No.

11 Q. When -- well, on April the 22nd, when Mr. Dow came out,

12 I gather your husband got up before you did?

13 A. Yes.

14 Q. And then you got up shortly after he got up?

15 A. Yes.

16 Q. Did your husband --

17 Well, let me ask it this way.

18 Did you see your husband walk out of the house?

19 A. No.

20 Q. Okay. So was he in the house when you got up?

21 A. No, I heard somebody banging at the door.

22 Q. Okay. And who was banging at the door?

23 A. Mr. Dow.

24 Q. And do you know where your husband was at that point in
25 time?

1 A. I think he had just walked out.

2 Q. I'm sorry, just walked out?

3 A. Yeah.

4 Q. Okay. Did you step outside of the house?

5 A. Yes, after I put my clothes on.

6 Q. Well, once you put your clothes on, did you step out of
7 the house?

8 A. Yes.

9 Q. When you put your clothes on, did you come directly
10 from your bedroom to the front door?

11 A. Yes. You have to pass -- yeah.

12 Q. Okay. And to get from your bedroom to the front door,
13 you had to walk from your bedroom I guess through a living
14 room and then to the front door?

15 A. Yeah, you come through the kitchen and then the living
16 room and then there is the door.

17 Q. Did you see anybody else there when you walked through?

18 A. No.

19 Q. Now, Mr. Dow is banging on the door. And, again, I'm
20 not quite clear. Do you go outside to talk to him?

21 A. Yes.

22 Q. Okay. Once you go outside and talk to him, do you go
23 back into the house?

24 A. No.

25 Q. All right. Well, once you first make that conversation

1 with Mr. Dow, after that do you have any conversation with
2 Karl?

3 A. Not until he asked me to go back in and see if he was
4 there. When I did he came out.

5 Q. All right. When you say he asked you to go back in,
6 was that Mr. Dow?

7 A. Yeah.

8 Q. And did you do that?

9 A. Yes, sir.

10 Q. And when you got back in, did you see Karl?

11 A. Yes.

12 Q. Okay. Let me ask you this, if I may, Ms. Cole. What
13 kind of home -- how large a home do you live in?

14 A. It's not very big. It's a mill house.

15 Q. How many bedrooms?

16 A. Two.

17 Q. One bath?

18 A. Yes.

19 Q. Does sound travel through that house pretty good?

20 A. It depends on where you are. I mean, if you are in the
21 laundry room, no, you wouldn't hear someone knock at the
22 door.

23 Q. Well, let me ask it this way. So there is two
24 bedrooms?

25 A. Yes.

1 Q. You and your husband share a bedroom, and then there is
2 one other bedroom, correct?

3 A. Yes.

4 Q. Are those bedrooms fairly close together?

5 A. Yes, they are back to back.

6 Q. Okay. So Detective Dow's banging on the door awakened
7 you, right?

8 A. Yes.

9 Q. And -- well, strike that.

10 So when you go out and talk to Dow and you come back in
11 and Karl is in the living room at that point in time, right?

12 A. Yes.

13 Q. Had you seen him before that?

14 A. No, sir.

15 Q. Okay. Did Karl then go speak to Detective Dow?

16 A. Yes, he did.

17 Q. All right. Did he lollygag around, or did he just go
18 straight out the door and talk to Detective Dow?

19 A. He come right out.

20 Q. Did you go out with him?

21 A. Yes, I did.

22 Q. Were you present when Mr. Dow was questioning Karl?

23 A. Yes.

24 Q. Pardon?

25 From the time -- I believe you said Mr. Dow arrested

1 Karl, right?

2 A. Yes.

3 Q. How long was Mr. Dow actually there that morning, or
4 afternoon, excuse me?

5 A. After he arrested him?

6 Q. No, ma'am, from the time he got there until the time he
7 arrested Karl.

8 A. I don't know. Maybe a half hour.

9 Q. Okay.

10 A. Maybe a little more.

11 Q. All right. Ma'am.

12 Once Karl came home early afternoon on the 21st, to
13 your knowledge, did he leave again?

14 A. Not until after dinner.

15 Q. What time is dinner?

16 A. Usually around six.

17 Q. All right. So he was in the house that whole period of
18 time, right, as far as you know?

19 A. As far as I know.

20 Q. On the 21st, April the 21st of 2011, were you home all
21 day?

22 A. Yes.

23 Q. On that day, Ms. Cole, did you ever know Karl to drive
24 that burgundy Mitsubishi?

25 A. No, he had my car.

1 Q. And could he use your car pretty much?

2 A. Anytime he asked.

3 Q. Was your car in better condition than that Mitsubishi?

4 A. Yes.

5 Q. Is the Mitsubishi still around?

6 A. No, it's been totalled.

7 Q. Okay.

8 (Off the record)

9 (Back on the record)

10 BY MR. DEJONG:

11 Q. Do you know where Karl and your daughter lived in
12 Liberty? I'm not asking the exact address. Did you know
13 where it was?

14 A. Yes.

15 Q. Did you ever go see them over there?

16 A. Yeah.

17 Q. About how long a -- how far of a drive was that?

18 A. For me, I don't drive very fast. I would say probably
19 about twenty-five or thirty minutes.

20 Q. All right. Thank you so much, Ms. Cole.

21 THE COURT: Any redirect?

22 MS. BARWICK: No, sir.

23 THE COURT: Thank you, ma'am. You may step down,
24 Ms. Cole.

25 Without objection you may be excused.

1 MR. DEJONG: Without objection, Your Honor.

2 THE COURT: You may call your next witness,
3 please.

4 MS. BARWICK: The State would call Sergeant Brian
5 Gibson to the stand.

6 SERGEANT BRIAN GIBSON, having been first duly
7 sworn, testified as follows:

8 THE CLERK: If you would, have a seat and state
9 your name for the record.

10 THE WITNESS: BRIAN Edward Gibson.

11 DIRECT EXAMINATION BY MS. BARWICK:

12 Q. Sergeant Gibson, where do you work?

13 A. Pickens County sheriff's office.

14 Q. How long you have you worked there?

15 A. June of this year will be twenty years.

16 Q. Which division do you work in?

17 A. I work in the crime scene or the forensics division.

18 Q. How long have you worked there?

19 A. July will be seventeen years.

20 Q. Fingerprint comparison, is that part of your duties?

21 A. Yes, it is.

22 Q. Am I saying it right? Is it comparison or analysis?

23 A. Either -- either one.

24 Q. Did you respond to the victim's residence on April
25 21st, 2011?

1 A. Yes, I did.

2 Q. When you got there what did you do?

3 A. When I first arrived on the scene I met with Deputy
4 Michael Torres, who was the responding officer, and was
5 advised that we had had a burglary in which several firearms
6 were taken out of the residence.

7 Q. What did you see?

8 A. Deputy Torres and I went inside and he showed me where
9 there was a safe that was open and where the guns were
10 supposed to be were no longer there. And then he pointed
11 out the rear door had been damaged in order to gain entry.

12 Q. Did you take pictures of that rear door?

13 A. Yes, I did.

14 Q. Did you take pictures of the safe?

15 A. Yes, I did.

16 Q. I'm going to show you what's already been marked into
17 evidence as State's Exhibits 11 and 12. Were you the one
18 who took these pictures?

19 A. Yes, I am.

20 Q. Thank you.

21 Did you look for fingerprints at the scene?

22 A. I did.

23 Q. Where did you look?

24 A. The primary area that we were focusing on was the safe,
25 because, according to the victim, he advised us that that

1 was the main and the only area that had been disturbed, that
2 had been messed with, inside the residence that he could
3 determine while we were at the scene.

4 Q. That door that was broken, the back door, did you
5 notice the deadlock still being in the locked position?

6 A. I -- I can't recall, but it may be in the pictures. It
7 was a little bit -- if I could take a look at it again, or
8 if there was a picture of it.

9 Q. I'll just leave these up here with you.

10 A. I'm going to say that I believe it was, but I'm not one
11 hundred percent sure.

12 Q. Okay. Let's suppose it was in a locked position.

13 A. It was or was --

14 Q. Was, okay?

15 A. Was, okay.

16 Q. Let's suppose it was. Did you see any pry marks?

17 A. No, I didn't.

18 Q. How would one open that door? Does it open from the
19 outside in?

20 A. Yes, it opens into the residence.

21 Q. Okay.

22 A. I guess what you call the dining area, kitchen table --

23 Q. Okay.

24 A. -- there.

25 Q. So if I were to walk through the back door, it would be

1 like this and it would swing open?

2 A. Correct.

3 Q. If one were not to pry open the door with a lock on it,
4 the dead bolt like that, how would one open that door?

5 A. Without the dead bolt.

6 Q. With the dead bolt.

7 A. With the dead bolt, generally it's harder to get into a
8 residence with a dead bolt on it. Usually you see kicking,
9 shouldering, some kind of blunt force onto the door.

10 Q. Would somebody of my size and stature be able to kick
11 open that door?

12 A. You could. I mean, if you really got into it, yeah.

13 Q. What about the defendant's size and stature?

14 A. Yes, he could.

15 Q. With that being said, did you take any fingerprints off
16 the door frame or anything like that, or attempt to?

17 A. No, I did not.

18 Q. Just from the safe area?

19 A. The safe area, yes.

20 Q. Okay. How long have you been doing fingerprint
21 analysis, did you say?

22 A. I went to the South Carolina Criminal Justice Academy
23 back in 1995. I joined the ID Division or Crime Scene
24 Division and I took the basic fingerprint comparison and
25 analysis course.

1 Q. Have you ever had any other specialized training in the
2 fingerprint area?

3 A. Yes, I have. I have taken an ID or crime scene
4 technician class, which shows you how to develop
5 fingerprints, lift them, general knowledge of fingerprints,
6 as well as taking a crime scene photo class at the South
7 Carolina Criminal Justice Academy in Columbia.

8 Q. Okay. About how many times do you think that you have
9 attempted to lift fingerprints from a crime scene?

10 A. In seventeen years, a lot.

11 Q. More than a thousand, less than a thousand?

12 A. Well over a thousand.

13 Q. Okay. How many times have you done a fingerprint
14 comparison or analysis?

15 A. Anytime that we develop a fingerprint from a crime
16 scene, we look at it. If we have a victim, we try to get --
17 we do get the victim's fingerprints; compare the victim's
18 fingerprints to make sure what we have is not the victim.
19 That way we can go forward.

20 And if we have a suspect, we can look at the suspect.
21 If we do not have a suspect, then we send them out to
22 Greenville County that has has an AFIS, or an Automated
23 Fingerprint Identification System, which is a computerized
24 system, and it goes through a databank of anyone who has
25 ever had their fingerprints taken for any reason, they will

1 be on file with the FBI, and we try to match the
2 fingerprints through that system.

3 What you see on TV, when they put them in there, you
4 see it going all over the screen and it automatically pops
5 it. It does not work that way. Sometimes we can send
6 something over there and it will take two, three, four
7 weeks, longer, to get back.

8 Once we have a possible match, we have to get what we
9 call a 10 print card, which is the actual fingerprint card
10 that's been rolled, and we take that fingerprint and then
11 match it to that fingerprint card, and then, and only then,
12 will we call it a confirmed matched fingerprint.

13 Q. Okay.

14 MS. BARWICK: Your Honor, at this time --

15 BY MS. BARWICK:

16 Q. Well, actually how many times have you testified in
17 General Sessions Court as a fingerprint --

18 A. As a fingerprint expert?

19 Q. Yes, sir.

20 A. The first time that I know of.

21 MS. BARWICK: Your Honor, the State would like to
22 enter him as an expert in the collection of fingerprints and
23 the analysis of fingerprints.

24 THE COURT: Any voir dire or any objection?

25 MR. DEJONG: May we approach, Your Honor?

1 THE COURT: Yes, sir.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 BY MS. BARWICK:

5 Q. Sergeant, I'm going to ask your opinion about a few
6 things and your experience in the last twenty years of doing
7 this.

8 A. Okay.

9 Q. Do you always find fingerprints at a crime scene?

10 A. No, we do not, unfortunately.

11 Q. And why would that be?

12 A. Several different reasons. One reason, your suspect
13 may be wearing something on their hands, either gloves, or I
14 have had incidents where our suspect was wearing socks on
15 their hands. They may pull their shirt sleeve over their
16 hand, or something like that. Some sort of covering on
17 their hand.

18 Q. On this particular incident did you find any
19 fingerprints?

20 A. No, I did not.

21 Q. Was that surprising to you?

22 A. No, it was not surprising.

23 I couldn't really give you a percentage of how many
24 times in the seventeen years that I have been doing this
25 that we have actually found fingerprints, but we have found

1 them -- I have found them, compared them, confirmed them,
2 and actually made convictions on them. So we do find them,
3 but not always. There are several different circumstances
4 that a fingerprint will not be developed.

5 MS. BARWICK: Nothing further at this time.

6 THE COURT: Any cross-examination.

7 MR. DEJONG: Thank you, Your Honor.

8 May it please the court.

9 CROSS EXAMINATION BY MR. DEJONG:

10 Q. So you have been doing this for seventeen years?

11 A. Yes, sir.

12 Q. And when you went out to [REDACTED] -- we
13 used to call it dusting for fingerprints. I'm not sure
14 that's the exact terminology anymore.

15 What do you do to try to get a fingerprint?

16 A. I didn't go out to [REDACTED]

17 Q. Where did you go?

18 A. I went to [REDACTED]

19 Q. Well, I stand corrected. We will make it [REDACTED]

20 [REDACTED] Is that the right one?

21 A. Yes, sir. According to my photographs yes, sir.

22 Q. [REDACTED] Did you dust out there? What
23 did you do?

24 A. Yes, sir, I did dust for fingerprints. That's what we
25 still call it is dusting for fingerprints.

1 Q. The back door?

2 A. No, sir, I did not dust the back door.

3 Q. Do you see any footprints on that back door?

4 A. No, sir, I did not.

5 Q. Do you see any damage to the back door, other than it
6 was -- that the dead bolt was out of it?

7 A. I saw severe damage to the door frame, around the door
8 itself, the door casings, yes.

9 Q. Madam Solicitor may have asked you, but I don't
10 remember, was the dead bolt still in place?

11 A. That I do not remember.

12 Q. Okay. All right.

13 Aside from the dead bolt, was there another lock as
14 well, or do you know?

15 A. It was just -- it was a dead bolt and a regular
16 doorknob lock.

17 Q. Did you check to see if that one was locked?

18 A. I did not physically turn it or check it. No, sir, I
19 did not.

20 Q. Did you dust the doorknob?

21 A. No, sir, I did not.

22 Q. Okay. The front door, did you dust the front door?

23 A. No, sir, it was -- it had already been opened and
24 everything when I had gotten there.

25 Q. So you didn't even make an effort to dust?

1 A. No, sir, not on the -- not on that area, no, sir.

2 Q. Either the inside or the outside?

3 A. No, sir.

4 Q. You said obviously that it had been opened. That would
5 presumptively or -- well, I don't want to use the word
6 presumptively, but that could have contaminated prints on
7 the outside doorknob, right?

8 A. That is correct.

9 Q. But you didn't dust the inside doorknob either, did
10 you?

11 A. I didn't know if anybody had touched the inside
12 doorknob either, other -- if the victim may have touched the
13 inside of the doorknob also in some shape, form, or fashion
14 prior to responding officer's first arrival.

15 Q. You have been doing this for seventeen years?

16 A. Yes, sir.

17 Q. And you are a forensic ID person, right?

18 A. Yes, sir.

19 Q. And you don't even attempt?

20 A. I didn't see a need at this point to attempt to process
21 the doorknobs at this time.

22 Q. Well, isn't the doorknob where you would typically find
23 fingerprints?

24 A. No, sir, not always.

25 Q. Not always?

1 A. You would be surprised how many fingerprints you would
2 not find on a doorknob. When you consider how you open a
3 doorknob, you don't hold your fingers and turn it gently.
4 You grab the doorknob like this and you twist.

5 Q. How about the door facing itself?

6 A. The door -- of which door?

7 Q. The front door.

8 A. No, sir, I did not.

9 Q. Inside?

10 A. I did not process anything around the front door, no,
11 sir.

12 Q. You have described how people open doors, but is it not
13 equally that we don't use the knob when we pull a door
14 closed many times? We reach up and pull the door closed by
15 the facing?

16 A. It depends on the individual. I mean, when I close my
17 door at my house I use the doorknob.

18 Q. The only place that you really looked for prints in
19 this, at [REDACTED] [REDACTED] (sic), was basically on the
20 gun safe, right?

21 A. Correct. [REDACTED] [REDACTED] yes, sir.

22 Q. Thank you. I'll get it right before we are through
23 here, okay?

24 Now, there is a closet door going into the -- where the
25 gun safe was, right?

1 A. Yes, sir.

2 Q. A kind of -- the gun safe is actually in a closet?

3 A. Correct.

4 Q. How about the closet door?

5 A. If you -- can I look at my photographs for just a
6 minute?

7 Q. Absolutely.

8 A. I do not recall if I did. I don't -- I do not remember
9 if the victim had told me that that door was closed or
10 opened when he came in, so I do not recall if he left it
11 closed or if he left it open in his hurried state trying to
12 get to work.

13 Q. Well, let's cut through the chase -- to the chase.

14 What you have checked for fingerprints on, that you
15 remember, was on the gun safe?

16 A. The outside of the gun safe, top of the gun safe, side
17 of the gun safe, the front of the gun safe, inside door of
18 the gun safe, yes, sir.

19 Q. The bottom line is you found no fingerprints?

20 A. I did not find any fingerprints at this crime scene,
21 no, sir.

22 Q. And when you find no fingerprints, that doesn't, no pun
23 intended, point the finger at somebody saying they did the
24 crime, does it? Or you can't say because you didn't find
25 fingerprints somebody did the crime?

1 A. And I can't say that somebody did not do the crime
2 either.

3 Q. Well you can't be precise in saying that there is
4 somebody's fingerprints there that matches somebody's
5 fingerprints, right?

6 A. Correct. If I develop a fingerprint, it is easier to
7 pin down exactly who you are -- who you have, correct.

8 Q. Well, certainly we are going to say that, based on Mr.
9 McSwain's statement, a burglary occurred. We can agree on
10 that, right?

11 A. Yes, sir, you can.

12 Q. But beyond that, we can't say anything, based on your
13 investigation, of who did it or who didn't do it?

14 A. Not based on the crime scene or any physical evidence
15 that was collected.

16 Q. Now, I think --

17 A. From me, physical evidence collected from me.

18 Q. Yes, sir. Yes, sir, I understand.

19 Now, I think you actually looked at one other item in
20 this case, did you not, Mr. Gibson?

21 A. Yes, sir, I did.

22 Q. And that was an envelope that had -- that supposedly
23 had some money in it at one point in time?

24 A. Yes, sir, that's correct.

25 Q. You didn't check the money, did you? You never got the

1 money, did you?

2 A. No, sir, I never received the money, no, I did not.

3 Q. You got an envelope?

4 A. I received a -- just a regular white envelope.

5 Q. Like we mail letters in?

6 A. Yeah.

7 Q. Did you check it?

8 A. Yes, sir, I did.

9 Q. Nothing there?

10 A. No, sir. I used a process with -- a chemical process
11 on this. The chemical is called an inhydrant. Basically it
12 turns the amino acids that you leave behind, which we all do
13 if we touch something. If I touch the paper and spread it,
14 it will turn it to purple, if it is -- if the right
15 conditions are there.

16 Q. And nothing happened?

17 A. The paper turned purple, so it had been touched at some
18 point in time over certain periods of time.

19 Q. But you couldn't determine who touched it or when it
20 was touched even?

21 A. That's right, there was no different latent
22 fingerprint, any kind of ridge detail, or anything like that
23 on the paper.

24 Q. So the bottom line of all of this interesting treatise
25 we have been through, you have nothing to share with this

1 jury that would point to Karl Lane?

2 A. No, sir, I do not.

3 Q. Thank you, sir.

4 MR. DEJONG: No further questions.

5 THE COURT: Anything on redirect?

6 MS. BARWICK: No, sir, Your Honor.

7 MR. DEJONG: No objection to him being excused,
8 Your Honor.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Let's take a short break before the
12 next witness is called. Ladies and gentlemen, I will let
13 you go back to your jury room. Don't discuss the case.
14 I'll remind you each time. We'll call you back in just a
15 couple of minutes.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: Solicitor, do have one more witness?

19 MS. BARWICK: Two more, Your Honor.

20 THE COURT: Two more. Okay. What kind of length
21 do you think that they will be?

22 MR. DEJONG: One shorty, one longy, Your Honor.

23 THE COURT: I didn't know which one that you had
24 next. One of our jurors has -- needs a bathroom
25 periodically, so that's -- I thought we would take a break

1 now. I didn't know whether the long one was going to come
2 next, or the short one, but we will have time to put them
3 both in before lunch. Okay.

4 Let's take a real short break. Ten minutes.

5 MR. DEJONG: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: Ready to proceed?

9 MR. DEJONG: Ready for the defense, Your Honor.

10 MS. BARWICK: Yes.

11 THE COURT: If the jury is ready, you can have
12 them come in.

13 THE BAILIFF: All right.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: Solicitor, you may call your next
17 witness.

18 MS. BARWICK: The State would call Shae Rozakos to
19 the stand.

20 SHAE ROZAKOS, having been first duly sworn,
21 testified as follows:

22 THE CLERK: If you will, have a seat and state
23 your name for the record, please.

24 THE WITNESS: Shae Rozakos.
25

1 DIRECT EXAMINATION BY MS. BARWICK:

2 Q. Do you mind if I call you Shae, because I'm having a
3 hard time with your last name, obviously.

4 I'll just call you Ms. Shae, if that's okay?

5 A. That's fine.

6 Q. Where do you work?

7 A. I'm the executive director of the Work Link Work Force
8 Investment Corporation.

9 Q. How long have you worked there?

10 A. I began in July of 2011.

11 Q. And you said that you are the director?

12 A. Yes.

13 Q. According to your business record, was the defendant by
14 the unemployment office in Liberty on April 21st, 2011?

15 A. Yes, according to our computer records he was in the
16 facility that's referred to commonly as the unemployment
17 office.

18 Q. I'm sorry if I missed -- what do you call it, Work
19 Link?

20 A. Work link is the organization that oversees those
21 facilities.

22 Q. Okay.

23 A. The State has re-branded them. They are referred to as
24 S.C. work centers, previously called One Stops, but commonly
25 referred to as the unemployment office.

1 Q. Did the defendant, Karl Lane, come by that office on
2 April 21st?

3 A. According to our computer records, he did, yes.

4 Q. At what time?

5 A. He -- I don't know what time he entered.

6 Q. Okay.

7 A. He did self-register in our computer system and the
8 computer stamp time that he completed the self-registration
9 was 1:21 p.m..

10 Q. Okay. Would he have had to register with an address?

11 A. Yes.

12 Q. AND what address did he register with?

13 A. [REDACTED], South Carolina.

14 Q. You said Six Mile?

15 A. Yes.

16 Q. Not Liberty?

17 A. No.

18 Q. I'm going to show you State's Exhibit No. 1. Would
19 that be something your office would supply to people who
20 came into the unemployment office?

21 A. Yes, it would.

22 Q. Okay. Do you happen to know if that's the defendant's
23 user name and password?

24 A. I have not checked personally, so I don't know that.

25 Q. Okay. Would you know about what time he left?

1 A. He completed being referred to two jobs at 1:32 p.m..
2 Presumably he left after that.

3 Q. But you don't know for sure?

4 A. No.

5 MS. BARWICK: No further questions at this time.

6 THE COURT: You may cross-examine, Mr. DeJong.

7 CROSS EXAMINATION BY MR. DEJONG:

8 Q. I'm going to make one try at it. Ms. Rozakos?

9 A. Correct.

10 Q. Thank you, ma'am.

11 So on April the 21st of 2011, were you on site on the
12 facility?

13 A. I was not.

14 Q. Okay. So you are only here to testify as to what the
15 records would show, is that correct, ma'am?

16 A. That is correct.

17 Q. How he got there, what kind of vehicle he came in, you
18 would have no idea about any of that, would you?

19 A. I would not have an idea, no.

20 Q. Okay. And when he left, you would have no idea where
21 he went, would you?

22 A. I would not.

23 Q. Thank you, ma'am.

24 MR. DEJONG: No further questions.

25 THE COURT: Thank you, ma'am. You may step down.

1 Without objection, this witness may be excused.

2 MR. DEJONG: Without objection, Your Honor.

3 THE COURT: You may call your next witness,
4 please.

5 MS. BARWICK: The State would call Detective Ben
6 Dow to the stand.

7 DETECTIVE BEN DOW, having been first duly sworn,
8 testified as follows:

9 THE CLERK: If you would, have a seat and state
10 your name for the record.

11 THE WITNESS: Benjamin Dow.

12 DIRECT EXAMINATION BY MS. BARWICK:

13 Q. Detective Dow, where do you work?

14 A. With the Pickens County sheriff's office.

15 Q. How long have you worked there?

16 A. In March it would have been seven years.

17 Q. Which division do you work in?

18 A. I am with the Criminal Investigations Division.

19 Q. How long have you been with that division?

20 A. I have been with the Criminal Investigations Division
21 probably since '06.

22 Q. What are your duties in that division?

23 A. My duties are to take the reports that are completed by
24 the road patrol. They pass it to us. We follow up with any
25 investigation that needs to be done and try to complete the

1 investigation.

2 Q. Were you the lead detective in this case?

3 A. I was.

4 Q. Did you get a report from Deputy Torres?

5 A. I did.

6 Q. Attached to it was that slip of paper, Exhibit No. 1?

7 A. Yes. When I received the report the follow morning I
8 just flipped through the report, read the report, flipped
9 through and saw that the paper was attached that was from I
10 believe it was the One Stop.

11 Q. Okay. Was there a statement from the victim's neighbor
12 Pamela Holladay?

13 A. There was.

14 Q. Did you go over that?

15 A. I did. I read the statement just to look to see what
16 it said. It gave the description of the car that she stated
17 to earlier and then went from there.

18 Q. Okay. What would have been one of your first steps in
19 the investigation?

20 A. One of my first steps would have been taking the slip
21 with the password and the information that was on the paper,
22 logged onto my computer. Typed -- I went to the website
23 that's listed on the slip of paper. I went to the user
24 password and the address on it and received information that
25 the account belonged to a Karl Lane.

1 Q. Once you found out that account belonged to Karl Lane,
2 what did you do next?

3 A. Once I found out the account belonged to --

4 Q. Sorry, go ahead.

5 A. Once I found out the account belonged to Karl Lane, I
6 then checked the DMV records to see if there were any Karl
7 Lanes in the area. I did find a Ryan Karl -- or a Karl Ryan
8 Lane, I believe it is, with the address listed at [REDACTED]
9 [REDACTED] in Six Mile.

10 Q. And that was his address listed on DMV records?

11 A. That was his address on the DMV record, yes.

12 Q. Is that Mr. And Mrs. Cole's address?

13 A. I believe so. It's -- I believe their's is [REDACTED] and
14 his is [REDACTED] but they are basically on the same piece of
15 property.

16 Q. Okay. The trailer behind --

17 A. Yes.

18 Q. -- the Cole residence?

19 A. Yes.

20 Q. After you found out what his address was, what did you
21 do?

22 A. After I found out what the address was, I tried to see
23 if we had any information on Mr. Lane in our computer. I
24 don't recall whether if we did or not, but then I went by
25 the address, just for ride-by, to see if I saw any cars

1 there that matched the description of the vehicle that was
2 seen by the neighbor.

3 Q. Did you see a description of that vehicle?

4 A. That morning.

5 Q. Or that vehicle that matched that description?

6 A. That was in the morning. I did not at that time see
7 the description -- or a car matching that description. I
8 didn't stop. From there I went on.

9 Q. Where did you go?

10 A. After going there, I went to the -- well, we will call
11 it the unemployment office. I'm not really sure what it's
12 called now. I went to the unemployment office. I took the
13 slip with me. I spoke with an employee there, and I had a
14 picture of Mr. Lane. I asked her if she knew if he had been
15 in --

16 MR. DEJONG: Your Honor, I'm going to object to
17 that. There is no foundation.

18 If it was the prior witness he spoke to, I will
19 withdraw my objection, but if it's somebody totally
20 unrelated, I am objecting to this whole line of testimony as
21 hearsay.

22 THE COURT: Well --

23 MR. DEJONG: He's getting ready to get into it.

24 THE COURT: Well, I'll --

25 MS. BARWICK: Your Honor?

1 THE COURT: Yes, ma'am.

2 MS. BARWICK: He's allowed to testify, even if it
3 would be technically hearsay. It's not for the truth of the
4 matter asserted. It's just why he took the next step in his
5 investigation.

6 THE COURT: All right. Let me let you ask the
7 question and then I'll rule on the objection.

8 BY MS. BARWICK:

9 Q. When you went to the One Stop office, what did you do?

10 A. When I got to the One Stop office, I asked the lady at
11 the front desk, or the employee at the front desk, if she
12 had recognized Mr. Lane. I had the DMV photo with me. She
13 said she didn't know.

14 I then showed her the slip of paper and she confirmed
15 that it was a slip of paper that they issue out to someone
16 that they have registered in their system.

17 Q. And then after you spoke with that lady, what did you
18 do?

19 A. After I spoke with that lady, she put me in touch with
20 someone else there at the unemployment office, and they
21 logged onto his account and confirmed that he was in there
22 on the date of the incident.

23 Q. All right. Then what did you do?

24 A. They were able to advise me that he applied for I think
25 two positions with Central Textiles. They gave me a

1 printout of where he had logged on and it was the same
2 printout with the information that was just testified to a
3 few moments ago.

4 Q. All right. Where is the unemployment office located?
5 Do you have an actual address for that office?

6 A. I don't know the actual address. It's on Summit Drive
7 in Liberty.

8 Q. Okay. Did you -- after you got done at the
9 unemployment office, where did you go?

10 A. After I left the unemployment office, I went by Mr.
11 McSwain's house to make contact with him. There he showed
12 me, explained to me, how he found things when he had gotten
13 home, where things were laying when he made the report. He
14 walked me through his house, showed me where his gun safe
15 was. He then took me outside and showed me where he found
16 the slip of paper.

17 Q. Did you also speak with Pamela Holladay as well, the
18 neighbor?

19 A. Not at that time I did not.

20 Q. After you got done at Mr. McSwain's house, what did you
21 do?

22 A. After I left Mr. McSwain's house, I went back to Duncan
23 Road just to do a ride-by to see if I saw a car there. This
24 was after lunch in the afternoon. As I rode by, the last
25 car in the drive was a burgundy four-door Mitsubishi

1 Gallant.

2 When I approached -- when I was driving by I was going
3 to see the driver's side. As I passed by, I looked back and
4 saw it had a primer gray fender on the passenger side. I
5 went down, turned around and contacted someone more, for
6 officer's safety issue, just to come out stand by while I
7 was trying to make contact with somebody.

8 I then went back up to the residence and got out and
9 attempted to make contact with Mr. Lane.

10 Q. When you came down and swung around, was that car
11 matching the description, was that in the Cole's residence
12 driveway?

13 A. It was, yes.

14 Q. Did you take pictures of that vehicle --

15 A. I did.

16 Q. -- that was in their driveway on the 22nd?

17 A. I did.

18 Q. Is that the vehicle -- did you take those pictures?

19 A. I did.

20 Q. Do they clearly and accurately reflect how the vehicle
21 looked on that 22nd?

22 A. Yes. It even had the paper tag that the neighbor had
23 said in her statement was on the vehicle.

24 Q. Okay.

25 MR. DEJONG: Without objection, Your Honor.

1 MS. BARWICK: State's Exhibit 5 through 9, Your
2 Honor.

3 THE COURT: All right, exhibits 5 through 9 are
4 admitted into evidence without objection and may be
5 published.

6 BY MS. BARWICK:

7 Q. Is that the vehicle that you saw?

8 A. It is.

9 Q. What type of vehicle was it?

10 A. It's a Mitsubishi Gallant.

11 Q. How many doors?

12 A. Four.

13 Q. Driver's side, passenger side?

14 A. That's correct.

15 Q. Is that the paper tag?

16 A. It is.

17 Q. The passenger's side or driver's side?

18 A. That's the passenger's side.

19 Q. What about there?

20 A. That's the same car.

21 Q. These were taken in the Coles' yard?

22 A. They were.

23 Q. About what time do you think that you drove back past
24 their house the second time?

25 A. It was -- I believe it was early to mid afternoon. I

1 can't give you an exact time.

2 Q. Okay. Once you pulled into the driveway, what did you
3 do?

4 A. As I pulled into the driveway, or into the driveway,
5 there was an individual coming into the yard headed towards
6 the house. I had passed him up the street walking in that
7 direction. I didn't think anything about it, but as he was
8 walking towards the house I asked him if Karl was there. He
9 stated he didn't know and then he went into the house.

10 Q. That individual wasn't Mr. And Mrs. Cole?

11 A. No, it wasn't.

12 Q. So then what happened?

13 A. As he went in, Mr. Cole came out, and I asked Mr. Cole
14 if Karl was in the house. He said he wasn't. He stated he
15 had just woke up, and then that was pretty much my extent of
16 the conversation with Mr. Cole. He walked on into the yard.

17 Q. What's the address that you went to, again, for the
18 Coles?

19 A. It was [REDACTED] but they shared the same drive for [REDACTED] and
20 [REDACTED]

21 Q. What is this a map of?

22 A. This is a map of a direction to be taken to go from [REDACTED]
23 or [REDACTED] [REDACTED] to the unemployment office on Summit.
24 Drive passing Mr. McSwain's house.

25 MR. DEJONG: Without objection, Your Honor.

1 MS. BARWICK: Exhibit 10, Your Honor.

2 THE COURT: Without objection, Exhibit 10 is
3 admitted into the record and may be published.

4 BY MS. BARWICK:

5 Q. Now, this map, we will take a look at it. What's point
6 A?

7 A. Point A is the unemployment office.

8 Q. Point B?

9 A. That's Mr. McSwain's house.

10 Q. Would his house have been on this side or this side of
11 the road?

12 A. It would have been on the lower side, yes.

13 Q. And what is C?

14 A. That is the address that was listed for Mr. Lane.

15 Q. On his driver's license?

16 A. On his driver's license, yes.

17 Q. From A to B to C, is that -- how would you consider
18 that direction? Would that be the direction most people
19 would take?

20 A. That would be the most -- based on my experience of the
21 area, that would be the most direct route to get from C to

22 A.

23 Q. From C to A?

24 A. Yes.

25 Q. And the most direct route from C to A, would that take

1 you past Mr. McSwain's house?

2 A. It would.

3 Q. So when Mr. Cole walked out of the house as the other
4 guy was walking in the house, what happened -- and after Mr.
5 Cole was out in the yard, what happened after that?

6 A. After Mr. Cole went onto the yard, Ms. Cole came from
7 the house.

8 Q. Okay. And did you speak with her?

9 A. I did. I asked Ms. Cole if Karl was inside. She
10 stated he wasn't. I asked her if she knew where he was.
11 She stated she didn't.

12 I asked her if she knew she went to the unemployment --
13 or if he went to the unemployment -- excuse me, if he want
14 to the unemployment office the day before. She stated he
15 did.

16 I asked her who was driving the car the day before.
17 She stated that Mr. Lane and her daughter were in the car.

18 And I asked the relationship between Mr. Lane and her
19 daughter, and she said that they had a child in common.

20 I asked her again if Karl was inside. She stated that
21 he was not inside.

22 I asked her where her daughter was. She stated her
23 daughter was at work.

24 Q. And then after she stated the daughter was at work,
25 what did she say?

1 A. After she stated the daughter was at work, I explained
2 to her that I was conducting this investigation, this is why
3 I needed to talk to Karl. I just needed to talk to Karl.
4 At that time she said hang "on one minute." She went back
5 inside. Probably a minute or so passed, because I was
6 trying to figure out what was going on. I was getting a
7 little uneasy feeling, and then Mr. Lane came from the
8 house.

9 Q. This conversation that you are having with Mrs. Cole,
10 was it -- where was it?

11 A. It was outside by the car, the red Mitsubishi Gallant.

12 Q. So she saw the Mitsubishi Gallant?

13 A. She did.

14 Q. Did she say he drove the Mitsubishi Gallant?

15 A. She stated that her daughter and Karl drove the
16 Mitsubishi Gallant.

17 Q. Did you question her why the car would be there?

18 A. I did. I asked her -- I explained to her I had been by
19 earlier that day and the car was not there. And I asked her
20 "if your daughter is at work, well, how did the car get
21 here?" She stated she didn't know.

22 Q. Did you speak with the defendant?

23 A. I did.

24 Q. When you spoke with the defendant, were you the only
25 law enforcement officer there?

1 A. To begin with, yes.

2 Q. What were you wearing?

3 A. I was just wearing regular attire, business -- I mean
4 khakis, a button-up shirt. I had my gun on, had my badge on
5 my belt.

6 Q. Is that what you normally wear?

7 A. It is.

8 Q. What do you normally drive?

9 A. I normally drive an unmarked car.

10 Q. When you spoke with the defendant, did you tell him who
11 you were and why you were there?

12 A. I did. I explained to him what I was working on. I
13 asked him -- I told him why I was there, explained to him
14 what I was working on.

15 Q. About how long did that conversation take place?

16 A. My total conversation with Mr. Lane lasted probably
17 about ten minutes.

18 Q. Did another officer show up while you were speaking
19 with the defendant?

20 A. Yes, Captain Hudson showed up probably halfway through
21 our conversation.

22 Q. At any point during your conversation with the
23 defendant did you threaten him or force him to stay there?

24 A. No, I did not.

25 Q. Did you ever tell him he had to stay there?

1 A. No, I did not.

2 Q. How was your tone with him?

3 A. My tone with him was just normal talking, asking
4 questions.

5 Q. Had you promised him anything in exchange for him
6 telling you?

7 A. No, I hadn't.

8 Q. If he wanted to leave, was he free to leave before he
9 started talking to you?

10 A. Of course, yes. He didn't even have to talk to me.

11 Q. When you are speaking with him, how did that -- tell
12 the jury about that conversation. What was said between the
13 two of you?

14 A. When I started speaking with Mr. Lane -- he came out.
15 I started asking him about the car, if he had driven the
16 car. He stated that him and his girlfriend -- or he had
17 driven the car the day before, which confirmed what Mrs.
18 Cole had told me, that him and his girlfriend were in the
19 car the day before.

20 As we were speaking, I asked him if he had been to the
21 unemployment office. I believe I asked him if he had been
22 to the unemployment office, and I believe he stated he had.

23 I then showed him the slip of paper that was found at
24 Mr. McSwain's house. I asked him if he knew what that was
25 or -- and he stated he did. And I said -- and I believe I

1 asked "whose is it," and he hesitated and he said it was
2 his.

3 Q. He hesitated before he said that?

4 A. Yes, he did.

5 Q. Did you ask him how it got there?

6 A. I did. The only thing he would tell me was "I don't
7 know."

8 Q. Okay. At that point what, if anything, did you do?

9 A. Based on the answers he gave me about being in the car
10 and the slip being his and not having an explanation or good
11 explanation of why the slip was where it was, I contacted
12 Judge Gillespie, who was the judge on call at that time,
13 explained to him what I was investigating, the circumstances
14 I had. He said --

15 MR. DEJONG: Objection to what he said, Your
16 Honor.

17 THE COURT: Sustain the objection.

18 A. Okay. He was placed under arrest.

19 BY MS. BARWICK:

20 Q. After he was placed under arrest, did you transport him
21 to the LEC?

22 A. No, I did not. We asked for a marked unit to come,
23 because they do have a cage in their car, and transported
24 him to the LEC.

25 Q. After he left did you again have any conversations with

1 Ms. Cole?

2 A. After he left, I asked Ms. Cole flat out, I asked her
3 "why did you lie for him," or "why did you tell me what you
4 said?" She said -- let's see. Or I asked her --

5 MR. DEJONG: Your Honor, I'm going to object to
6 this, because we are getting hearsay into hearsay here.

7 MS. BARWICK: Impeachment, Your Honor.

8 MR. DEJONG: Well, it could be impeachment, but it
9 still can't be hearsay. He's going --

10 She is asking him to get into a conversation
11 between another witness and my client.

12 THE COURT: Maybe I misunderstood the question. I
13 thought it was between Ms. Cole and the officer.

14 MR. DEJONG: It is a conversation --

15 THE COURT: All right.

16 MR. DEJONG: -- at this point in time between Ms.
17 Cole and the officer, but he's asking about a conversation
18 that Mrs. Cole had with my client outside of his presence.

19 THE COURT: I sustain the objection on that.

20 I'll allow him to testify as to what his
21 conversation was with Ms. Cole.

22 MS. BARWICK: Your Honor, can we approach?

23 THE COURT: Yes, ma'am.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 MR. DEJONG: Please note my objection for the
2 record, Your Honor.

3 THE COURT: Yes.

4 BY MS. BARWICK:

5 Q. Detective Dow, when you asked Mrs. Cole why she had
6 lied to you, what did she respond?

7 A. She stated that while she was inside that Mr. Lane was
8 scared and didn't want to talk to me.

9 Q. Is that what --

10 I'm sorry, let's be clear. She said that she lied
11 because why?

12 A. He told her he was scared and he did not want to talk
13 to me.

14 And she also told me that he said for her not to -- for
15 her to tell me that he was not there.

16 Q. And when you first met with Mrs. Cole before the
17 defendant came out, did she say "I don't know if Karl Lane
18 is inside," or did she say "no, he is not inside"?

19 A. No, she stated he was not inside.

20 Q. She didn't say she didn't know?

21 A. No.

22 Q. Let's talk about the guns a little bit.

23 How many cases do you investigate, if you had to guess,
24 in a year's time?

25 A. I believe I had three hundred and some cases last year.

1 Q. And you have been in CID again for how long?

2 A. Since '06.

3 Q. You are testing my math here.

4 A. It's a lot.

5 Q. Okay. We will just go with a lot.

6 Do a lot of your cases involve stolen guns?

7 A. They do.

8 Q. Why are guns something that people kind of aim for?

9 A. Guns are easy to conceal. They are easy to move. You
10 can sell guns for a good amount of money.

11 Q. Are guns traceable all the time?

12 A. Guns are not always traceable. Guns are very hard to
13 track, once they are stolen, and they have a tendency to
14 disappear.

15 Q. In fact, have you ever been able to find Mr. McSwain's
16 guns?

17 A. No, I haven't.

18 Q. Have you tried?

19 A. I have.

20 Q. How hard do you think your efforts have been?

21 A. Well, I know earlier this week I checked with leads on
22 line with the serial numbers to see if there had been any
23 hits nationwide. We still hadn't gotten any hits.

24 Q. I understand.

25 MS. BARWICK: Nothing further at this time.

1 THE COURT: You may cross-examine, Mr. DeJong.

2 MR. DEJONG: Thank you, Your Honor.

3 May it please the court.

4 CROSS EXAMINATION BY MR. DEJONG:

5 Q. So you had three hundred cases last year, right?

6 A. Yes, sir.

7 Q. Give or take a few.

8 And you obviously have enough many cases that you have
9 to work on more than one case at a time, right?

10 A. Yes, sir.

11 Q. Now, you don't --

12 Well, you went out to [REDACTED] or [REDACTED] whatever
13 it was, on April the 22nd?

14 A. Yes, sir.

15 Q. When did you actually file your report?

16 A. As far as the report being filed, or the supplement?

17 Q. The supplement. And I'm looking at --

18 A. On the 25th.

19 Q. On the 25th?

20 A. Yes.

21 Q. So you are working on three hundred cases and you don't
22 do your report until three days after the fact of going out
23 to [REDACTED] or [REDACTED] [REDACTED]?

24 A. Let me be clear. The date this happened was a holiday.
25 I had weekend duty. I only work on the cases that come in

1 over the weekend. All the other three hundred or so cases
2 are put aside to work on what comes in over the weekend, to
3 try to clear up as much as possible before it goes to other
4 detectives.

5 On this date, no matter what I'm doing, I'm making
6 scribble notes and everything else about what had happened.

7 Q. May I see your scribble notes?

8 A. Unfortunately they are on the folder that this is not
9 in, because it was torn and everything else.

10 Q. You have no scribble notes to show this jury?

11 A. Well, over a one to two day period it's still fresh in
12 my mind.

13 Q. And you hadn't worked on any other cases, you hadn't
14 gotten any other case reports in, or anything else between
15 the time of April the 22nd and April the 25th, when you
16 actually prepared this report?

17 A. Other than trying to obtain the photo lineup to show
18 the neighbor, everything was pretty much working on this
19 report trying to track where the guns went to.

20 Q. When you went out there on April the 22nd of -- yeah,
21 April the 22nd of 2011, did you ask to look in this
22 Mitsubishi?

23 A. I did.

24 Q. Did you?

25 A. Yes, I did.

1 Q. What did you find?

2 A. Nothing.

3 Q. Well, this is now -- in common parlance, I guess, this
4 is a fairly fresh burglary that had been committed, right?

5 A. Close to I would say twenty-four hours -- approximately
6 twenty-four hours between when it actually happened until I
7 actually made contact.

8 Q. Well, let's talk about that for a moment and then we
9 will come back to where we are.

10 The best -- what was the best time that you could
11 determine that this burglary occurred?

12 A. Based on the statement from the neighbor, I believe it
13 was around 3:20, 3:30 in the afternoon.

14 Q. Correct.

15 And that's the time we have, correct?

16 A. Yes.

17 Q. You don't have anything else?

18 A. No.

19 Q. Now, coming back to the 22nd, about a twenty-four hour
20 period, I note in these pictures that Madam Solicitor
21 introduced, and I'm referring specifically to State's
22 Exhibit number -- is that your handwriting? 8? I think I
23 need to ask the court reporter. I think it's an 8.

24 Court's Exhibit No. 8 (sic), there is certainly other
25 cars in that driveway, right?

1 A. Yes.

2 Q. Did you search any of them?

3 A. No, I did not.

4 Q. Did you ask permission to search any?

5 A. No, I didn't.

6 Q. Did you ask permission or ever attempt to search the
7 house at [REDACTED] or [REDACTED] [REDACTED]?

8 A. No, I did not.

9 Q. How about -- what is it Briddle, or Birdwell Court, out
10 in Six Mile, or Liberty, or wherever it is?

11 A. No, I did not.

12 Q. Nothing?

13 A. Nothing.

14 Q. Oh.

15 So you first see some unknown individual that you had
16 seen walking up the road, you spoke to that person and they
17 didn't know?

18 A. No, they were coming into the yard, as I was pulling
19 in, headed towards the house.

20 Q. You don't know who that was?

21 A. I don't know his name.

22 Q. Did he go into the residence?

23 A. He did.

24 Q. Okay. Did you ever take him out and talk to him?

25 A. No, I didn't.

1 Q. Now, he was walking? He wasn't driving, right?

2 A. That's right.

3 Q. Okay. And so the first person, other than that, you
4 see is Mr. Cole, right?

5 A. Yes.

6 Q. And Mr. Cole couldn't shed any information --

7 A. No, sir.

8 Q. -- any light on it.

9 Okay. So did you knock on the door?

10 A. I don't recall knocking on the door. I believe Mr.
11 Cole was coming out after the person walked through the yard
12 and went in.

13 Q. Well, how was it, if you knew, then, Mr. Dow, that Ms.
14 Cole came outside of the home?

15 A. Excuse me?

16 Q. What brought Ms. Cole outside, if you know?

17 A. That I don't know.

18 Q. Okay.

19 A. She came out -- after I talked with Mr. Cole, she came
20 out from the residence.

21 Q. Was there some time lapse between you speaking to him
22 and Ms. Cole coming out of the residence?

23 A. No, not that I know of. Maybe a few seconds, but after
24 he walked off, she pretty much came out the door.

25 Q. So basically you don't remember is what you are telling

1 us, is that right?

2 A. No, I do remember. There is not a huge time lapse.

3 Q. All right. Well, when Ms. Cole came out, you asked her
4 about the vehicle, right?

5 A. Yes.

6 Q. And according to you, she said that her daughter and
7 Karl had driven the car the day before, right?

8 A. That's correct.

9 Q. Now, other than the --

10 Oh. Well, did she say anything about the unemployment
11 office?

12 A. I asked if he had been to the unemployment office. I
13 believe I asked her if she had been to the unemployment
14 office. Either way she either confirmed he had been there,
15 or I asked if she stated he had been to the unemployment
16 office.

17 Q. But that was not in the same context as the car, right?
18 Those were two separate questions, right?

19 A. Well, she indicated they had been to the unemployment
20 office in the car. She stated her -- that Karl and her
21 daughter drove that car and he had been to the unemployment
22 office the previous day.

23 Q. Looking at State's Exhibit No. 8 one more time, in the
24 forefront of that picture is what appears to be, what you
25 say, is the Mitsubishi, correct?

1 A. Yes, right here.

2 Q. What is that vehicle right there? Can you tell?

3 A. It looks to be a Chevy Yukon.

4 Q. All right. Was that vehicle there when you drove --
5 well, was it there when you went there in the afternoon?

6 A. Yes, it was in the picture.

7 Q. Okay. So certainly there was a black Yukon there,
8 right?

9 A. Yes.

10 Q. Okay. Now, the information that you got at the
11 unemployment office, did that have basically a depart time
12 from the unemployment office?

13 A. No, it just had the time that he had logged onto the
14 computer.

15 Q. So you don't know what time he would have left the
16 office?

17 A. No, I don't.

18 Q. So we would be at the mercy of Ms. Shae?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. That's fine.

23 Now, on this -- we are talking about some distances
24 here. You -- Madam Solicitor put a map up. I'm not going
25 to put it back up. From 317 Summit Drive to [REDACTED] [REDACTED] [REDACTED]

1 [REDACTED] how far?

2 A. It's probably two to three miles. Two to four miles.

3 Q. Driving time?

4 A. Yes, it's a short distance.

5 Q. I'm sorry, I was asking --

6 A. Oh, driving time. Driving time.

7 Q. Driving time.

8 A. Driving time, less than five minutes.

9 Q. All right. From 317 Summit Drive to [REDACTED] or [REDACTED]
10 [REDACTED]?

11 A. Uh-huh.

12 Q. How far?

13 A. It's probably close to about seven miles.

14 Q. Driving time?

15 A. Driving time, ten, fifteen minutes.

16 Q. I note you said when you were speaking with Madam
17 Solicitor, that Mitsubishi has the same paper tag that the
18 neighbors said was on the car?

19 A. No, I believe I said a paper tag that the neighbor said
20 was on the car.

21 Q. I must have misunderstood what you said. So it was
22 just the --

23 A. Because we don't have a -- we didn't get a tag number.

24 Q. Right.

25 A. Yeah.

1 Q. And you didn't get any description of the paper tag
2 either, did you?

3 A. No, it was just a paper tag.

4 Q. Paper tag.

5 Now, burgundy vehicles are not that unusual?

6 A. Correct.

7 Q. And we love Pickens County, but gray primer isn't that
8 unusual, is it?

9 A. In this combination it is.

10 Q. All right. So when you first get to [REDACTED] --

11 Well, let me back up here.

12 You talked to Ms. Cole on the 22nd?

13 A. Yes.

14 Q. And you actually typed the report three days later?

15 A. Yes.

16 Q. Okay. I just want to be clear about that.

17 Now, your testimony is that Ms. Cole told you that Karl
18 wasn't there?

19 A. Correct.

20 Q. Now, at what point in time did you ask her to look into
21 the vehicle?

22 A. I don't believe I ever asked her to look into the
23 vehicle.

24 Q. You just did it on your own?

25 A. No. Are you asking -- I asked if I asked Ms. Cole to

1 look into the vehicle?

2 Q. No.

3 A. Oh, for me?

4 Q. What time did you ask Ms. Cole to look in the vehicle?
5 Where were you in the scenario, in the sequence of events?

6 A. It was at the end of being out there. I believe Mr.
7 Cole said the keys were in the front seat. And I said,
8 "well, do you mind me taking a look in the car?"

9 Q. Was that before or after you had arrested Karl?

10 A. I believe that was probably after.

11 Q. All right. Now, once Ms. Cole said he wasn't there,
12 did you ask her to go back in the house, or did you ever ask
13 to go into the house?

14 A. No, I did not.

15 Q. Did you ask her to go back into the house?

16 A. I didn't -- no, I did not.

17 Q. So you were just standing out in the front yard doing
18 nothing?

19 A. No, I asked where Karl was. She said he wasn't there.

20 I asked who was driving the burgundy Mitsubishi and how
21 it had gotten -- or she stated that's the car her daughter
22 and Karl drive.

23 I asked well, "where is your daughter? I would like to
24 talk to her." She said she was at work. I said "well, if
25 she's at work and Karl is not here, how did it get in your

1 drive from the first time I drove by." She stated she
2 didn't know.

3 I asked her again "is Karl here?" She stated no.

4 Then I explained to her I needed to talk to her about
5 why what I was investigating, and I believe I just basically
6 said "just go get Karl," and she said "hang on," and then
7 she went back in.

8 Q. She went in and Karl came out?

9 A. Yes.

10 Q. You didn't have to go in and get him?

11 A. No, I did not.

12 Q. He came out and talked with you?

13 A. He did.

14 Q. The long and short of it is, Mr. Dow, you went out
15 there to [REDACTED] [REDACTED] [REDACTED] to arrest Karl Duncan (sic), didn't
16 you?

17 A. Not to begin with. He was a good person of interests,
18 but I didn't know what I would find when I got there.

19 Q. So Karl said he didn't know what you were talking
20 about?

21 A. Uh-huh.

22 Q. He said he couldn't help you?

23 A. Uh-huh.

24 Q. And that, yes, that was his piece of paper?

25 A. Yes.

1 Q. So basically you didn't gather anything out there on
2 April the 22nd, other than what you already had, did you?

3 A. Karl confirmed he was driving the vehicle on the 21st,
4 and he did confirm that that was his piece of paper, but he
5 claims he didn't know how it got in the victim's driveway.

6 Q. Well, how is it that he can confirm something you would
7 like -- and you just say with this tone in your voice that
8 he didn't know how the paper got there. Is that one equally
9 as plausible as the other?

10 A. I would say so.

11 Q. Certainly.

12 It's certainly plausible he didn't know how the paper
13 got there.

14 Did you ever mirandize him?

15 A. Not when I first got there, no.

16 Q. Did you ever mirandize him?

17 A. Oh, yes, back at the jail. When I tried to talk to him
18 again he was mirandized.

19 Q. So when you went out there on the 22nd, you already had
20 the piece of paper?

21 A. Uh-huh.

22 Q. You already had that he was at the unemployment office?

23 A. Uh-huh.

24 Q. And the only other thing that you say that you gathered
25 was that he was driving the vehicle that day?

1 A. Yes.

2 Q. That's it?

3 A. Yes.

4 Q. Why didn't you mirandize him?

5 A. Because at that time I was trying to find if he had any
6 plausible explanations for the paper and the vehicle. At
7 that time I didn't know what he would tell me, and I didn't
8 see a need to make him feel like a suspect, if he wasn't a
9 suspect, and he was not under arrest.

10 Q. But that's what you went out there for.

11 A. No, if I went out there strictly to arrest him, I would
12 have had a warrant in my hand.

13 Q. Well, you did arrest him.

14 A. Yes, I did.

15 Q. And when you went out there, you shared you had on
16 khakis, a button-up shirt. You had your weapon on you. You
17 had your badge on you.

18 A. Uh-huh.

19 Q. Correct?

20 A. Correct.

21 Q. You had handcuffs on you?

22 A. I believe I did, yes.

23 Q. Well, you cuffed him, didn't you?

24 A. Yes, I did.

25 Q. All right. And somewhere during all this another

1 officer comes up?

2 A. Uh-huh.

3 Q. Dressed the same way?

4 A. Uh-huh.

5 Q. Now, are you saying this was where Karl lived?

6 A. This is the address that was given on his driver's
7 license.

8 When I asked where he lived, she stated "he lived at
9 [REDACTED] [REDACTED] in Six Mile." I don't know the exact
10 address. It's what's listed on his unemployment
11 application. I believe it says [REDACTED] [REDACTED].

12 Q. All right. So when the other officer comes up, he's
13 got on a gun?

14 A. Yes.

15 Q. Handcuffs?

16 A. Yes.

17 Q. Badge?

18 A. Yes.

19 Q. And you say that he was free to go?

20 A. Yes.

21 Q. If he lived there, where was he going to go? You were
22 on his property.

23 A. He could go back inside.

24 Q. At one point in time you told him he couldn't go back
25 inside, didn't you?

1 A. That was after I had spoken with him and learned and
2 confirmed he was in the car; confirmed the paper was his. I
3 developed more probable cause.

4 Q. You are pretty good sized man, aren't you?

5 A. Yes, sir, I am.

6 Q. You are what, about six what?

7 A. I'm about 6'8".

8 Q. Rather imposing figure, aren't you?

9 A. I believe so.

10 Q. I believe so too.

11 The point of that is, Mr. Dow, oftentimes people don't
12 rush out to talk to a police officer for any reason, do
13 they?

14 A. That's correct.

15 Q. And especially an imposing one like you?

16 A. That's correct.

17 Q. All right. So certainly there is a "I don't want to
18 talk to a police officer", that really doesn't say anything.
19 People say that all the time, "I don't want to a police
20 officers," right?

21 A. That's correct.

22 Q. But he did come out and talk to you?

23 A. He did.

24 Q. Voluntarily?

25 A. Yes.

1 Q. And the bottom line was he said "I don't know what you
2 are talking about"?

3 A. That is what he told me, yes.

4 Q. You went to the residence at [REDACTED] right?

5 A. Yes.

6 Q. And you looked at the gun safe?

7 A. Oh, wait a minute.

8 Q. I'm sorry.

9 A. [REDACTED]?

10 Q. [REDACTED]

11 A. Okay, yes.

12 Q. I got it right, okay.

13 And, of course, it was some hours after this burglary
14 had occurred?

15 A. It was the next day.

16 Q. Right.

17 But in terms of that, did you see anything in that
18 house disturbed at all?

19 A. By that time everything had been cleaned up.

20 Q. Okay. So you didn't see anything disturbed?

21 A. No.

22 Q. Never got any report of anything other than guns being
23 stolen?

24 A. No, he did report an additional gun after that, but I
25 don't know if that's what you are asking about.

1 Q. Well, I take that it back. Initially he also reported
2 money stolen, right?

3 A. Yes. Yes.

4 Q. But then the money --

5 A. It was found, yes.

6 Q. The money wasn't stolen. Okay.

7 So from all appearances, whoever did this burglary
8 basically went straight to the gun safe?

9 A. That's what it appears to be.

10 Q. All right.

11 Let's recap here. I'm about done.

12 What you say you have by way of evidence in this case
13 is that he went to the unemployment office on April the 21st
14 of 2011?

15 A. Yes.

16 Q. Conflicting testimony, but there was some burgundy
17 Mitsubishi that was seen in the driveway of Mr. McSwain?

18 A. Yes.

19 Q. No one ever identified who was in that vehicle?

20 A. No, they did not.

21 Q. Period?

22 A. That's correct.

23 Q. No fingerprints?

24 A. That's correct.

25 Q. Nothing in that residence to say that Karl Lane did it?

1 A. That's correct.

2 Q. You have a piece of paper that was found out in the
3 yard?

4 A. Yes.

5 Q. By the way, do you remember what the weather was like
6 on April the 21st of 2011?

7 A. I have it noted in here that Mr. McSwain said it rained
8 that morning.

9 Q. All right.

10 A. And the paper was dry.

11 Q. Well, let's talk about that for a minute. Since you
12 bring it up, thank you.

13 The paper -- well, let's back up.

14 The best time you can say that the burglary occurred
15 was 3:20, 3:30 on April the 21st?

16 A. Yes. Based on the witnesses, yes.

17 Q. The paper wasn't found until sometime after Officer
18 Torres left after -- sometime after six o'clock?

19 A. That's correct.

20 Q. He says it was around eight o'clock when he got back
21 there?

22 A. Okay.

23 Q. And the paper was dry?

24 A. Yes.

25 Q. Well, it had rained, correct, that day?

1 A. Apparently that morning, yes.

2 Q. The ground was wet?

3 MS. BARWICK: Your Honor, I'm going to object to
4 this line of questioning. He's asking Detective Dow to
5 speculate to things he has no personal knowledge of.

6 THE COURT: Well, I'll allow the question. He can
7 ask them, if he's able to.

8 BY MR. DEJONG: If it rained --

9 MR. DEJONG: I apologize, Your Honor, I did not
10 mean to interrupt you.

11 BY MR. DEJONG:

12 Q. If it rained, the ground was wet?

13 A. I guess it depends upon what time of day it is. If
14 it's sunny, it's going to dry.

15 Q. Well, was it sunny or was it overcast?

16 A. I believe it was overcast.

17 Q. Right.

18 So it wasn't sunny then, was it?

19 A. Not if it's overcast, no.

20 Q. Right.

21 So if it doesn't dry quite as fast, does it?

22 A. No.

23 Q. So you make -- we seem to have made a ta-do out of this
24 piece of paper, but if you are trying to say that Karl Lane
25 dropped that paper at 3:30 in the afternoon and it was found

1 after six o'clock on the same day and it's still dry on a
2 rainy, overcast day, would not that indicate that it had not
3 been there very long?

4 A. No, it hadn't been there very long.

5 Q. Right.

6 The paper had not been there very long, has it?

7 A. Well, how long are we -- what we talking about long?

8 Q. Three, four hours. Well, not quite that long. Two to
9 three hours.

10 A. Two to three hours?

11 Q. Yeah.

12 A. I can't answer that.

13 Q. Absolutely.

14 And you don't know how the paper got there, do you?

15 A. No, I do not.

16 (Off the record)

17 (Back on the record)

18 BY MR. DEJONG:

19 Q. Thank you, Mr. Dow.

20 THE COURT: Any redirect?

21 MS. BARWICK: Yes, sir.

22 REDIRECT EXAMINATION BY MS. BARWICK:

23 Q. Detective Dow, when are you required to Mirandize
24 someone?

25 A. Once they are in custody and under arrest.

1 Q. Was the defendant in custody when you spoke with him?

2 A. No, he was not.

3 Q. Were you required to give him Miranda at that point?

4 A. No, I was not.

5 MS. BARWICK: No further questions.

6 THE COURT: Thank you, sir. You may step down.

7 MR. DEJONG: No objection to him being excused,
8 Your Honor.

9 THE COURT: The State may call its next witness.

10 MS. BARWICK: At this point in time, Your Honor,
11 the State rests.

12 THE COURT: Mr. Foreman, ladies and gentlemen, you
13 have heard the evidence presented by the State. We need to
14 take care of some legal matters at this time. I'm going to
15 let you go to lunch. It might be a little earlier, but we
16 will resolve some of these matters that we need to take care
17 of. If you will be back at 1:30, I believe we will be ready
18 to start then.

19 I'll remind you again you have not -- the case has
20 not concluded. Don't discuss the case with anyone. Don't
21 let anyone discuss the case with you. If you are out for
22 lunch and someone might be in an adjoining table talking
23 about the case, might be one of the witnesses, or family, or
24 whoever, you take the initiative to move to a different
25 table or tell those folks that you are a juror and you can't

1 be overhearing any of those things. I'll depend on you to
2 do as I have asked you to do so often, to maintain the
3 purity of the process we are in. It's very important that
4 you make a decision on this case on what takes place here in
5 the courtroom, not in the restaurant, or from any other
6 communications with anyone.

7 If you will be back at 1:30. Hopefully we will be
8 ready to start then. Have a good lunch, ladies and
9 gentlemen.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Are there any legal
13 matters we need to take care of before I address the
14 defendant and his right to testify?

15 MR. DEJONG: There is, Your Honor.

16 At this point in time I would move for a directed
17 verdict on behalf of Mr. Karl Lane.

18 I realize, Your Honor, looking at a directed
19 verdict, we have to look at the evidence in the light most
20 favorable to the State.

21 This is purely a circumstantial evidence case,
22 Your Honor. I have just handed Ms. Barwick and handed up to
23 Your Honor, although I'm sure you have it, the recent South
24 Carolina Supreme Court case of Kevin Odems, O-D-E-M-S. That
25 came down on December the 28th of last year. A fascinating

1 case, especially with regard to this case for two reasons.

2 First, I find the facts of the Odems case, as set
3 forth by the South Carolina Supreme Court, to be fairly
4 similar to the facts in this case. In Odems -- actually in
5 my humble opinion, I think in Odems the State probably had
6 more evidence in that case than they do in this case. In
7 that case Odems was a passenger in a vehicle, that various
8 items in the trunk of that vehicle were found to have been
9 stolen.

10 About the only distinguishing thing in that case,
11 as I see it from this case, is that one of the other persons
12 charged in Odems case said they had picked Odems up at a gas
13 station some point after the other two individuals, as I
14 recall, did the burglary. I believe it was a burglary and
15 malicious injury to a power meter, and a larceny, I believe.

16 Aside from what I consider the close similarity
17 between the facts of Odems and this case is certainly the
18 language and the legal part of the Supreme Court's decision
19 in reversing the Court of Appeals. Of course, they go
20 through an analysis of two prior cases on circumstantial
21 evidence.

22 And even though they don't go into all of the
23 facts of those two cases, I would submit, Your Honor, that
24 certainly in the one case, the Bostic case, where Bostic was
25 accused of killing his neighbor and then burning her house

1 down, there they found a burn pile with the victim's keys in
2 it, shoes contained a pattern of matched gasoline. Gasoline
3 was the accelerant. Investigators found blood on the
4 clothes of Bostic, even though that blood did not match in a
5 DNA test. But in that case there were certainly, I contend
6 and submit to the court, greater circumstantial evidence in
7 this case, and in Bostic that was not sufficient to pass the
8 test.

9 And then you have the other case. That was
10 Lollis. I think that was a husband and wife, that they had
11 charged one or the other with conspiracy to arson. There
12 was some circumstantial evidence in that case. I would
13 submit not as strong as in the Bostic case, but in the
14 Lollis case there was allegation of financial trouble; the
15 fact that Lollis had placed his personal values from the
16 home in a storage room one day prior to the fire; Lollis
17 possession of the storage room key on the date of the fire,
18 and so on. And even in light of that, the Supreme Court
19 held that that evidence did not reasonably tend to prove
20 Lollis' guilt. And I believe it was still in the Lollis
21 case where they said that a mere arousal of suspicion is an
22 improper basis to deny a motion for a directed verdict.

23 Well, in this case, Your Honor, I submit that
24 there could be an arousal of suspicion. I'm not even sure
25 if it goes that far, but for the purposes of argument let's

1 say there is an arousal of suspicion, at most. And, of
2 course, that is not sufficient to deny a directed verdict.

3 But basically, and I'm sure Your Honor heard it,
4 we went over the evidence with Mr. Dow the State says they
5 have in this case, and also what they don't have. I didn't
6 go over that. They have no one, no person, no evidence that
7 can place Karl Lane in that house at [REDACTED]
8 Liberty, South Carolina. There is no evidence to that.
9 None whatsoever. There is no fingerprint, no eyewitness ID,
10 nothing at all.

11 What they say they do have is Karl Lane went to
12 the unemployment office on April the 21st of 2011, got there
13 at approximately 1:21, and presumptively left -- we cannot
14 say at this time, but presumptively left after having
15 applied for two jobs at 1:32 in the afternoon.

16 Now, please keep in mind, Your Honor, that the
17 allegation in this case is that this alleged burglary
18 occurred at between 3:20 and 3:30 in the afternoon.

19 Ms. Cole, who was a State's witness, testified
20 that Karl Lane got home early afternoon. I don't know that
21 there was ever a time there, but we do know based on the
22 Detective Dow's testimony that the driving time from 317
23 Summit Drive, Liberty, the unemployment office, to [REDACTED] or
24 [REDACTED] I believe the testimony was approximately
25 seven minutes.

1 Now, the State's witness, Ms. Cole, said he got
2 home early afternoon, she sees no gun, she sees nothing, and
3 that Karl Lane did not leave.

4 I agree there is a dispute in the testimony
5 between the State's witnesses as to the vehicle driven to
6 the unemployment office. Ms. Cole says it was an SUV.
7 Detective Dow says there were statements made that it was a
8 Mitsubishi, or could have been a Mitsubishi. I'm not even
9 sure if that is clear to say that -- let's for purposes of
10 an arguments say the statement was made that Mr. Lane drove
11 that Mitsubishi on the 21st, be it to the unemployment
12 office, or wherever. I would submit, Your Honor, that that
13 is not proof of any sort of this burglary.

14 Now, what else they have is there is a piece of
15 paper that was found in the yard. It had been raining that
16 day. We finally determined that it had been a rainy, I
17 believe overcast day. This piece of paper was finally, I
18 believe, turned in to Detective Torres. He gave us a pretty
19 large window. I think he said between 6:30 and 8:00 and it
20 was dry. There is no explanation of how that paper got
21 there. It is not disputed that it is Karl Lane's paper, for
22 purposes of this motion, but there is no indication how it
23 got there. According to Ms. Cole, he was driving a vehicle
24 that paper could have floated out of. But, again, what I
25 bring to the court's attention, you have a rainy overcast

1 day. This paper was found. A burglary allegedly occur at
2 3:30. The paper wasn't found until after six o'clock, six
3 o'clock at night, and it's the State that says the paper was
4 dry. That, Your Honor, and how it got there, whether it was
5 windy or not windy, I don't know, but I do know based on the
6 testimony that that road was fairly heavily traveled. I
7 believe Deputy Torres testified to that, and certainly
8 motion of vehicles will move paper and everything else.

9 The other thing that they say they have is a
10 statement by Karl Lane, and obviously Your Honor allowed
11 that statement to come in. I'm not arguing that at this
12 point in time. But even if he was driving that vehicle, and
13 let's assume for the moment, Your Honor, that he drove it to
14 the unemployment office. So assume that for purposes of
15 this argument. The only proof that I submit that the State
16 has presented in this case is that Karl Lane was in the
17 vicinity on April the 21st where this alleged burglary -- or
18 this burglary occurred. I think the State has to prove more
19 than the fact that he was simply in the vicinity. He
20 obviously was in the vicinity, because he only -- well,
21 depending on where you want to take that he lived, in
22 Liberty, or Six Mile, or [REDACTED] [REDACTED] [REDACTED], was just a
23 hop, skip and a jump from where McSwain said he lived. The
24 neighbor could not make any identification. Nobody has made
25 any identification. There is nothing in this case. What

1 they have, Your Honor, at best arises to a mere suspicion,
2 and I would submit that that is not sufficient for this case
3 to go to the jury.

4 THE COURT: All right. Thank you, Mr. DeJong.

5 Ms. Barwick, I'll be glad to hear you from the
6 State's position.

7 MS. BARWICK: Your Honor, the State would like
8 some time to read over this case before it were to try to
9 intelligently discuss this case with Your Honor. But
10 setting this case aside, because the State has not read it
11 at this point in time, I have listened to Mr. DeJong's
12 argument to Your Honor. What he's forgetting to tie in
13 there is that Pamela Holladay, an uninterested witness,
14 found the defendant's vehicle that the defendant admitted to
15 driving, that Ms. Cole admitted that he drove, and then took
16 her statement back today, probably to protect the defendant,
17 was all the way not at the end of driveway, not driving past
18 the residence, pulled up in the spot next to the residence
19 all the way up the driveway. That vehicle is not just a red
20 Mitsubishi Gallant. It's a red four-door Mitsubishi Gallant
21 with gray primer on the passenger side -- passenger front
22 passenger side with a paper tag, just like Pamela Holladay
23 said it was.

24 Then to have that folded up piece of paper, which
25 is obviously in the defendant's possession less than two

1 hours before this burglary happened, is found in the
2 driveway, right in the same vicinity that the vehicle was
3 parked.

4 Your Honor, that not only takes us past mere
5 suspicion and past probable cause, the jury would more than
6 likely find that it takes us beyond a reasonable doubt as
7 well.

8 THE COURT: All right. Any other motions from the
9 defense?

10 MR. DEJONG: Not from the defense.

11 THE COURT: Any further directed verdict?

12 Well, I have had the opportunity last month to
13 read over the Odems case. In fact, Mr. DeJong, you may be
14 aware I relied on it on the case that was before me just
15 before this one this week in granting a directed verdict.

16 I have carefully tried to listen to the evidence
17 here, and I disagree with you that that case was more
18 substantial than this case.

19 I believe weighing all the evidence, as I must, in
20 the light most favorable to the nonmoving party, that being
21 the State, I think there is certainly a case that there is a
22 nonexistence of that, I don't believe that -- there is
23 certainly the existence of evidence, and I believe there is
24 sufficient and substantial circumstantial evidence and with
25 the direct evidence that we have to allow this case to go to

1 the jury, so I respectfully deny your motion. Your points
2 are well taken, though, Mr. DeJong.

3 I believe my analysis of the Odems case would show
4 this case to be different based upon the evidence. Even you
5 have articulated as to what could have been there. I know
6 we have heard a lot about rain and wind and things of that
7 nature, but I believe this is a case for the jury, so I will
8 deny your motion.

9 MR. DEJONG: Thank you, Your Honor.

10 THE COURT: If you would come forward with your
11 client, we will see if we can't get the record settled and
12 also have a chance to talk to him about his right to
13 testify.

14 Mr. Lane, if you would, please, raise your right
15 hand.

16 KARL LANE, having been first duly sworn, testified
17 as follows:

18 THE COURT: Mr. Lane, I need to explain to you
19 certain rights that you have. I'm confident your attorney
20 has explained these to you, but I want to be satisfied in my
21 own mind that you understand the rights that you have.

22 We have reached the stage in the trial where you
23 have a right to put up a defense.

24 You have a right to claim the protections that you
25 enjoy under the Constitution of the South Carolina, Article

1 of our state Constitution, as well as the Fifth Amendment
2 to the United States Constitution. Both of those documents
3 basically say that no person can be compelled in any
4 criminal case to be a witness against himself. That means
5 you can't be required to testify in this case. You have a
6 right to testify in your own behalf, but nobody can make you
7 testify. The personal right that you enjoy, nobody can
8 waive that right except you.

9 You may decide to testify. And if you do, you
10 will be subject to the same rules that govern any other
11 witness. You can be examined and cross-examined on any
12 relevant issue in the case.

13 Furthermore, if you have any convictions in the
14 past involving dishonesty, or false statements, or for a
15 crime that's punishable by imprisonment for more than one
16 year and I determine that the probative value of admitting
17 that evidence outweighs its prejudicial effect, then the
18 solicitor would be able to introduce your criminal record to
19 attack your credibility.

20 A decision to whether to testify must be made
21 voluntarily by you, must be freely made by you, and
22 intelligently made by you, with the knowledge of the
23 protections you enjoy under our Constitution, as well as the
24 consequences if you choose to testify.

25 You may make the decision not to testify. And if

1 you do that, I will tell the jury they cannot give the fact
2 that you did not testify any consideration whatsoever.
3 There is not to be any prejudice to you because you chose to
4 exercise that right not to testify. That decision is left
5 entirely up to you, sir. And while you may talk to your
6 family, friends, your attorney, you, and you alone, have to
7 make that decision as to whether or not you desire to
8 testify.

9 Do you understand what I have explained to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions of me?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are there any impeachable offenses
14 that the State would offer against this individual?

15 MS. BARWICK: The State does not intend to offer
16 any, Your Honor.

17 THE COURT: Okay. All right, sir, you may return
18 to your chair --

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: -- with your attorney.

21 We have about an hour for lunch.

22 For scheduling purposes -- well, I'll let them
23 know about the plea.

24 Do you know now whether you plan to put up a
25 defense?

1 MR. DEJONG: I don't know yet, Your Honor.

2 THE COURT: All right. Well, if there is any
3 request for charge -- I will have a verdict form available.
4 I know that the State has got a plea that they want to get
5 done, but we will let them wait. We will be ready to start
6 back at 1:30.

7 MR. DEJONG: Thank you, Your Honor.

8 THE COURT: We will be ready at that time.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Ready to proceed, Mr. DeJong?

12 MR. DEJONG: Ready to proceed, Your Honor.

13 THE COURT: Do you intend to call any witnesses?

14 MR. DEJONG: I do not, Your Honor.

15 THE COURT: All right. When the jury comes back,
16 I'll let you rest on the record before the jury, and then we
17 will be ready for our --

18 MR. DEJONG: Before you bring them in, Your Honor,
19 I would like to renew my motion for a directed verdict.

20 THE COURT: All right. Again I respectfully deny
21 it.

22 MR. DEJONG: Thank you, Your Honor.

23 On charges, do you want to talk about those now,
24 Your Honor?

25 THE COURT: We have talked briefly about the

1 charges on the requests. I don't know if you wanted to talk
2 about generally the charges. I'll charge what I typically
3 charge, but on the burglary, the admission made by the State
4 mentioned to each of you I'm not going to charge it in
5 total, but I will explain to the jury that being armed you
6 only need to have physical control over the deadly weapon,
7 either in entry, or while in the dwelling, or immediate
8 flight therefrom. And how that person acquired the weapon
9 is really not an issue as to how it was acquired, if the
10 person does have the armed weapon while in the structure.

11 MR. DEJONG: I do have a request for charge, Your
12 Honor.

13 THE COURT: All right, sir, what is it?

14 MR. DEJONG: I'm going back to the Odems case that
15 we talked about in my motion for a directed verdict. And
16 I'm quite familiar with the line of cases - Cherry, Edwards,
17 Grippon - and those cases, and I think it was finally -- and
18 Grippon, I believe that's G-R-I-P-P-O-N, where the Supreme
19 Court said okay, judges, you don't have to give the charge
20 "every circumstance relied upon by the State be proven
21 beyond a reasonable doubt and all the circumstances proven
22 be consistent with each other and taken together point
23 conclusively to the guilt of the accused, to the exclusion
24 of every other reasonable hypothesis."

25 I understand that Cherry, Edwards, and Grippon

1 took that language out of the judge's charge. I'm asking
2 you to charge that, Your Honor, because as I read the Odems
3 case and the language I just quoted with regard to that
4 charge came directly out of the Odems case. And I find it
5 very fascinating that on the one hand several years ago the
6 Supreme Court said no, we are going to take that out of the
7 charge, but yet in the Odems case -- and I'm quoting now
8 from the Odems case, page 5 of 6 on mine, but that's the
9 computer printout, it says "the traditional circumstantial
10 evidence definition illustrates the deficiency of the
11 State's evidence against the petitioner." I'm talking about
12 Odems. "This definition provided that if the State relies
13 on circumstantial evidence to prove its case, the jury may
14 not convict the defendant, unless every circumstance relied
15 upon the State to be proven beyond a reasonable doubt and
16 all the circumstances proven be consistent with each other
17 and taken together point conclusively to the guilt of the
18 accused, to the exclusion of every other reasonable
19 hypothesis."

20 Now comes the fascinating part. And the court
21 acknowledges in Odems that that had been abandoned, but yet
22 as I read this decision, they, the Supreme Court, I mean no
23 disrespect to the Supreme Court, but they relied on that
24 language that came out of the old pre-Cherry, Edwards,
25 Grippon charge. And, again, I mean no disrespect to the

1 Supreme Court, Your Honor, but if it's good enough for the
2 Supreme Court to use in their opinion, isn't it good enough
3 to go to the jury for their consideration in determining
4 guilt or innocence on a case? And I would simply ask that
5 you charge that the language under the circumstantial
6 evidence charge, Your Honor.

7 And very candidly, they didn't -- the Odems -- the
8 Supreme Court in Odems did not put it back in, but I find it
9 very fascinating their language when they talk about that
10 particular charge, that it's no longer given.

11 THE COURT: All right. Ms. Barwick, be glad to
12 hear from the State about that.

13 MS. BARWICK: Again, Your Honor, I thought we were
14 done with the Odems case here, but I would also like to go
15 back at the appropriate time, as far as the State's proposed
16 charge for armed robbery, because if we are to use Mr.
17 DeJong's logic, if it's good enough for the Supreme Court,
18 it's good enough for the jury. Well, it was certainly good
19 enough for the Court of Appeals to do the armed one.

20 THE COURT: Did they do that in a charge, or is
21 that just their analysis of the law?

22 MS. BARWICK: That's their statement of the law,
23 Your Honor.

24 THE COURT: All right. But I don't believe that
25 was put in a charge. In that case was it put in a charge?

1 MS. BARWICK: I'm not sure if it was or not, Your
2 Honor. But as far as the armed language --

3 Let's talk about Mr. DeJong's first.

4 If the courts aren't using it, the courts aren't
5 using it. I know Your Honor does give an instruction that
6 you could believe some of the evidence -- or some of the
7 testimony and you could disbelieve other parts. It's up to
8 you to believe which parts you want and which parts you
9 don't, and then you can come to a verdict as to that.

10 What Mr. DeJong is asking is that each piece of
11 evidence be proved beyond a reasonable doubt. Well, they
12 could choose to believe some parts of our circumstantial and
13 not believe other portions and still come up with a guilty
14 verdict.

15 THE COURT: All right.

16 MS. BARWICK: And at the appropriate time the
17 armed charge.

18 THE COURT: Yes, I'll be glad to hear from you on
19 that now.

20 I mentioned to you I was going to charge probably
21 half of what you requested me about the have physical
22 control over the deadly weapon affecting the entry while in
23 the dwelling or immediately flight therefrom; it doesn't
24 matter how the person acquired the deadly weapon. Do you
25 want me to charge more than that?

1 MS. BARWICK: Yes, Your Honor. More specifically
2 I suppose it's the portion that you marked out, "a person
3 can become armed with a deadly weapon even if the weapon is
4 the one taken during the course of the burglary." The jury
5 is not full of attorneys. The jury does not know that that
6 is the law. The jury could be left supposing, well, he
7 didn't bring the gun to the residence, so he didn't arm
8 himself when affecting entry. And the fact that he took it
9 was not arming himself. They could draw that position and
10 it's -- that's to clarify the law for the jury before we
11 send them out and they have to decide something that's so
12 important to the State.

13 THE COURT: What about that, Mr. DeJong? Will
14 that clarify it for the jury, do you think? Let them know
15 that it can be acquired, as the law says, during the course
16 of the burglary?

17 MR. DEJONG: Unfortunately I'm a little
18 compartmentalized, so I take it in steps, Your Honor.

19 The part that Your Honor said you would charge
20 prior to Ms. Barwick's argument, I don't have a problem with
21 that.

22 THE COURT: Okay. What about the phrase "the
23 person can become armed with a deadly weapon, even if the
24 weapon is acquired during the course of a burglary."

25 MR. DEJONG: I won't object to that on this basis.

1 As long, and I'm sure Your Honor will charge, that they
2 still have to look at both indictments separately and come
3 to a separate decision on each particular indictment. And
4 that becomes a little fuzzy in the language Ms. Barwick
5 wants to have charged, because the larceny and the burglary
6 are totally distinct. I understand what she's asking you to
7 charge, but the larceny and the burglary are totally
8 distinct charges. And that charge I think could be
9 confusing to the jury and whether or not they have to make
10 that independent decision on each one, or what order they
11 would have to make it in.

12 I don't -- I can't honestly stand here and frame
13 an argument saying that it's almost a comment on the facts,
14 but when you look at the independent and the separateness
15 and distinctness of the two indictments, I have a problem
16 with lumping that particular language into the burglary
17 first charge.

18 MS. BARWICK: And, Your Honor, the State wouldn't
19 be opposed to you giving a special instruction that the two
20 charges have to be decided independently of each other
21 beyond a reasonable doubt.

22 THE COURT: Well, I'll certainly be charging that.
23 And on the grand jury or -- the grand larceny charge, of
24 course, I'll give them a full and complete charge on that;
25 you know, the slightest removal, permanently deprivation,

1 the State must prove the value being taken was more than
2 \$10,000. I believe that's what the indictment shows.

3 All right, let's jump back to the Grippon, Cherry,
4 and Edwards matters.

5 (Off the record)

6 (Back on the record)

7 THE COURT: Mr. DeJong, I had the same thought
8 that you had in reading the Odems case analysis that you had
9 of Grippon and some of the other cases.

10 As I read State v. Cherry, I believe the holding
11 in that case on a split decision pretty much to the effect
12 that trial judges are to follow the Grippon charge.

13 I'll do -- I'll uphold the law as I understand it
14 based on those cases. Having this fresh case they didn't
15 say that we have a new date, so your request is well noted
16 and I'll not charge that. However, I wanted you to know
17 that before you made your argument to the jury.

18 MR. DEJONG: Thank you, Your Honor.

19 THE COURT: All right, sir.

20 MR. DEJONG: I believe, Your Honor, I did renew my
21 motion for a directed verdict?

22 THE COURT: You did. I denied it.

23 All right. So when the jury comes back, I'll let
24 you rest on the record and then we will be ready for our
25 closing statement.

1 MS. BARWICK: Judge, I just wanted to make sure I
2 knew what your ruling was before I started my closing as
3 well. Did you say that you will charge that they can arm
4 themselves?

5 THE COURT: Yes.

6 MS. BARWICK: I'm sorry, Your Honor. Thank you.

7 THE COURT: Yes, ma'am. Okay.

8 If they are ready, you can have them come in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: Thank you very much for being patient
12 with us, Mr. Foreman, ladies and gentlemen. We are now
13 ready to proceed with the trial of the case.

14 The defense may present its case, Mr. DeJong.

15 MR. DEJONG: Thank you, Your Honor.

16 The defense rests.

17 THE COURT: Ladies and gentlemen, you have heard
18 all the testimony now in the case. That means we are at the
19 stage where the attorneys will have a chance to address you
20 in their closing statements.

21 I told you at the beginning what the lawyers have
22 to say to you, that's not evidence. The evidence you have
23 heard from the witness stand, the documents that have been
24 presented into evidence are part of the record.

25 These attorneys will now have a chance to address

1 you in their closing, before I instruct you on the law. I
2 urge you to listen carefully as each of the lawyers address
3 you. While it's not evidence, I'm confident they can give
4 you valuable insight to perhaps help you as you start your
5 deliberations soon.

6 Ms. Barwick, you may address the jury in your
7 closing statement.

8 MS. BARWICK: Thank you, Your Honor.

9 Mr. DeJong.

10 Good afternoon.

11 Before I get into the State's case a little bit, I
12 want to talk about what the defense did throughout this
13 trial. I don't know if you have ever heard of the term red
14 herring. It's a deliberate attempt to divert attention.
15 That's what a red herring is. That's what we call it. The
16 defense, a lot defense attorneys use this tactic when they
17 have nothing else. Why do you think they went into thirty
18 minute cross-examination on the victim about whether it was
19 windy, or whether it was raining, or what was going on
20 there?

21 Why do you think the defense attacked the deputies
22 testimony? He asked Sergeant Brian Gibson, "well, why
23 didn't you take fingerprints of the back door?" He asked
24 Ben Dow, "do you have your scribbly scraggly notes for you
25 to show to the jury today?" He asked "you don't walk around

1 the property and find that paper."

2 Ladies and gentlemen, the Pickens County sheriff's
3 office is not on trial today. I'm sure that they had more
4 time and more resources in looking back at things, they
5 would have done every one of those things. Hindsight is
6 20/20. We have all heard that. Detective Dow is not on
7 trial. The sheriff's office is not on trial. This
8 defendant is on trial for burglary first and grand larceny
9 of the victim's home.

10 Now that we are clear about that, the reason why
11 we divert attention is because we don't want you to focus on
12 what you are here to answer; did this defendant commit the
13 crime. The same reason why magicians have a very lovely
14 assistant next to them; so you can look at the assistant and
15 not see what the magician is doing right in front of you.
16 They don't have the cable guy assistant or anyone looking
17 like him. They have a very lovely female assistant, so you
18 pay attention to her.

19 Let's talk about some other things Mr. DeJong did.
20 He said to each of the witnesses, try to get them to commit
21 to the things that they already said they didn't know. "It
22 was about 8:30, wasn't it?

23 "I'm not really sure.

24 "It was about 8:30, right?"

25 Or "it was about fifty yards, wasn't it?" Instead

1 of saying how far it was, "it was this, wasn't it?"

2 He was preying on people's natural wantings to
3 please people, to give them the answers that they want.

4 Something else I noticed, and this is the last
5 thing I will bring up, as the victim said, he didn't
6 remember if it rained. Mr. DeJong in the second
7 cross-examination said "well, you already said it wasn't
8 raining. So why does it matter about this dry slip of
9 paper?" That's putting words into his mouth. He said he
10 don't remember if it rained. Fair enough. It has been a
11 year ago.

12 Those are tactics, and people use tactics when
13 they don't have the truth behind them. That's when they use
14 it.

15 The judge is going to instruct you on the law
16 after I get done speaking, after Mr. DeJong gets done
17 speaking. The judge will tell you that there is a
18 difference between circumstantial evidence and direct
19 evidence. But despite their differences, they are to be
20 weighed equally, the same.

21 Something -- an example I like to use when
22 describing the difference between circumstantial versus
23 direct evidence. Say there is a red car and a blue car and
24 you are standing at a street corner, and you turn your back
25 to the traffic and you are looking at a shop window. And

1 you hear tires squealing. You hear car horn honk. You
2 smell the burnt rubber from the tires. And you turn your
3 back and you see the bumper of the blue car is dented in and
4 the fender of the red car is dented in. And you say "well,
5 man, that must have been a car accident." All that stuff is
6 circumstantial evidence that a car accident happened.

7 The direct evidence would be the person next to
8 you who didn't have their back turned to traffic say "I saw
9 that car accident happen." That's direct evidence, when
10 someone saw it, saw the issue that's in question.

11 I apologize. My throat is getting really dry in
12 the courtroom.

13 It's also a good example to use to explain beyond
14 a reasonable doubt to you. When you heard those sounds and
15 you turn around and you saw what you saw and you smelled the
16 burnt rubber, it's logical for you to put your common sense
17 together, piece all of that evidence, that sensory evidence
18 together and say a car accident just happened; that car
19 rear-ended the blue car.

20 But the defense wants you to believe is no, a car
21 accident didn't happen. That blue car or that red car,
22 whichever car was in the back already had that dent in the
23 fender and the car in front of it already had the dent to
24 the bumper and that car stopped right before it impacted and
25 never struck that vehicle. You know beyond a reasonable

1 doubt that a car accident happened. Do not let him take
2 your common sense away from you today.

3 Let's talk about credibility a little bit. As I
4 said in the beginning, you judge people and their
5 credibility on a daily basis. You are an expert on
6 credibility.

7 All the evidence that came from this stand, you
8 have to think "did they lie to me, or did they tell me the
9 truth?"

10 Why do people lie? Two reasons, and two reasons
11 only; get what they want, or to get out of trouble. Okay?
12 What does the victim want? He's not in trouble. What he
13 wants is to go about his business and have his guns back.
14 He does not want, just like you don't want, to have to come
15 in here and take days off of your daily lives and come
16 testify a year after it happened, after he still doesn't
17 have his guns. He has no reason to lie. He only got \$2,000
18 for family heirlooms that were well worth over \$11,000. No
19 reason to lie. In fact, he was completely honest. \$3,100
20 at first he thought was missing, but then he found it and he
21 reported it that same day. He found it and reported it. He
22 didn't claim it on his insurance, like he could have.

23 Let's talk a little bit about Pam, the neighbor's
24 testimony. She has no reason to lie. She didn't know the
25 victim, barely. She might have said hi to him at the

1 mailbox. She didn't know the defendant. She was off with
2 her kids because it was a holiday. No reason to lie.

3 And what did she testify to? She testified in
4 very great detail, just like she gave her statement in very
5 great detail that same day. How many red Mitsubishi
6 Gallants, four-doors, with primer on the front passenger
7 side, with a tag have you ever seen in your lifetime? None?
8 They don't come around very often. She testified
9 truthfully. She had nothing to gain. She wasn't in
10 trouble.

11 Torres, Deputy Torres, what does he have to lose
12 or gain? Nothing. This happened two year ago. I'm sure he
13 has plenty of other duties to go through and figure out. As
14 Detective Dow testified, he does over 300 investigations a
15 year.

16 The same with Sergeant Gibson and Detective Dow.
17 They have plenty of other things they could probably be
18 doing today, too, but they are in here. They have nothing
19 to gain and they are not in trouble.

20 The same as the unemployment office lady. She's
21 just telling you what's in her record; that the defendant
22 listed his address as being right behind the Cole's
23 residence. It was not in Liberty. It was right there in
24 Six Mile, the same direction that Pam saw the defendant
25 travel in after he left the victim's residence.

1 You are probably asking yourself why the Coles say
2 Liberty. They didn't want you to know that he went on to
3 Six Mile, just like that map shows you. Unemployment
4 office, victim's residence, the Cole's house with the
5 trailer behind it that the defendant listed as being his.

6 Let's talk about the Coles a little bit and their
7 credibility. They lied to you. They looked at you in your
8 eyes today and lied to you. That's what they did. They
9 lied to me and they lied under oath.

10 Let's think about this for a second. They sure do
11 have a lot that they want, and they want to get the
12 defendant out of trouble. Their daughter's child is the
13 defendant's child. I'm sure many of you have children, some
14 of which are grown. I'm not trying to comment on any ages
15 here, and they probably have children. You have done your
16 job and you have raised your children. I'm sure you don't
17 want to raise your children's children. It's time for you
18 to live your life. They have a lot to lose, because
19 basically he's kind of like their son-in-law.

20 Notice what Mr. Cole said. He said he did not
21 cooperate with Detective Dow. Never once offered to go
22 inside and look for Karl Lane, but he told you when he was
23 up in bed until about one o'clock or two o'clock in the
24 afternoon because the rain messes up with his arthritis.
25 Well, as he said, he just comes to the door and starts

1 digging around the yard and starts picking up a bunch of
2 stuff with all this arthritis acting up. Never once does he
3 go inside to look for Karl Lane.

4 Let's talk about Mrs. Cole. What does she do?
5 She comes outside. Detectives asks her "is Karl Lane
6 inside?

7 "No." She said no. She did not say "I don't know
8 because I was sleeping." She said "no, he's not inside,"
9 and later told them that he was inside.

10 She also said to Detective Ben Dow the defendant
11 was driving the vehicle yesterday and he went to One Stop.
12 At that time she did not know what kind of harm it would
13 cause her son-in-law. She didn't know, and that's why she
14 said it.

15 Let's think a little bit more. Detective Dow says
16 that some suspect came walking into the house. Suspect?
17 Well, we can't call him a suspect, but a person. We don't
18 know who he is. A person comes walking into the Cole's
19 house. People come walking into your house when you are
20 sleeping? The defendant comes in and hang out in their
21 house when sleeping? Not in the living room, not in the
22 kitchen, according to what Mr. Cole said. Where is he.
23 They were not sleeping in that house. When that second --
24 when that first person came walking to the house, that's
25 what caused them to come out. Detective Dow didn't knock on

1 the door. They came out because they knew that the
2 detective was out there. You don't think that first person
3 didn't come through that house and say "well, there is
4 someone from the sheriff's office out here."

5 MR. DEJONG: Objection, Your Honor. She's arguing
6 facts not in evidence.

7 THE COURT: Stay with the record, if you would
8 then. I'll allow her leeway to argue the case.

9 MS. BARWICK: You don't think that they already
10 knew that Detective Dow was already outside? That's why Mr.
11 Cole came out, to see what was going on. Said he didn't
12 know if the defendant was inside.

13 Then Ms. Cole comes out. Why does Ms. Cole come
14 in here and lie today and say that the defendant was not
15 driving the vehicle the day before? She's trying to get him
16 out of trouble. Think about it. When Detective Dow was
17 speaking with her, she was right next to the vehicle in
18 question. Right there. Daughter is off at work is what she
19 told the detective. She said she knows her daughter is not
20 there, but the vehicle is there. Obviously he drives that
21 vehicle more than she's letting on, because he drove it that
22 day, because the daughter wasn't there, but the vehicle was,
23 when it wasn't there earlier.

24 Finally the defendant told Mrs. Cole. What did
25 she say? He said he was scared and to tell Detective Dow he

1 was not there. Why would someone do that? Would you do
2 that if the detective came to your house asking for you?
3 No, you wouldn't, because you aren't guilty of something.
4 When you are guilty of something, you tell the detective you
5 are not there.

6 Their job is not just to prosecute. Their job is
7 to serve and protect. The only time that you would think
8 that the detective being at your house was a bad thing is if
9 you are guilty of something.

10 Let's talk about the defendant's credibility. He
11 didn't have to testify today. And, in fact, you are not
12 even allowed to consider the fact that he did not testify,
13 but he did talk to Detective Dow that day before he had an
14 opportunity of ten months to make up what was going to be a
15 story. He didn't know that Detective Dow already had that
16 piece of paper, and he didn't know that Pam, the neighbor,
17 already had a very accurate description of that vehicle and
18 had given it to police. So at the time he admitted "yup, I
19 was driving the car the day before and I went to the One
20 Stop office." He hesitated though when Detective Dow said
21 "how did that unemployment slip get in the victim's yard?"
22 Hesitation is because he got caught and he didn't have an
23 answer that day. That's why. Then immediately starts
24 patting his pockets or say it flew out the window.

25 And it doesn't even matter if the wind carried it

1 or what the weather was that day. It doesn't matter a
2 single bit. We know how that slip got up there. When he
3 got out of his car -- just like Pam said, the car was parked
4 all the way up the driveway and the spot closest to the
5 house. Closest to the house. And this little piece of
6 paper that you can take back in the jury room with you, you
7 could see all the little folds and creases in it. When does
8 somebody fold and put creases on pieces of paper? When they
9 are just going to sit it on their center console and drive
10 off and let it fly off into the wind? No, when they fold it
11 and put it in their pocket. There is tons of tiny squares
12 on this. Look at this. Look at this back in the jury room.
13 There is squares on it for a reason. He had it in his
14 pocket. It fell out of his pocket when he was getting out
15 of the vehicle.

16 What are the chances -- what are the chances that
17 the defendant, that this same vehicle that Pam described
18 perfectly, of there being another single one of these in
19 Pickens County? In South Carolina? Heck, even in the
20 entire southeast? What are the chances of that?

21 You are hearing the tires squeal. You are seeing
22 the dented bumper and fenders. They are right here. They
23 are right here. Do not let the defense tell you otherwise.
24 Do not.

25 What are the chances of that? Pam saw that car

1 there. The defendant's information was there. This is as
2 good as a driver's license being found at a crime scene. It
3 was there.

4 No, we don't have a video of the defendant
5 breaking into the residence, but we don't always have video
6 of everything. And, no, Pam couldn't see his face. She was
7 being honest with you. It was way too far away for her to
8 see his face, but that's what we have.

9 And, no, the guns are not going to be in his
10 vehicle the next day. What did Detective Dow tell you?
11 People steal guns because they are easily moveable, easy to
12 hide and uneasy to track and easy to sell. Probably already
13 sold. Can't track them.

14 The defendant made five major mistakes that day
15 and that's why he's sitting in that chair.

16 Number one, this was a paper. It fell out of his
17 pocket.

18 Number two, he broke in broad daylight entering
19 through the front door. Probably wearing gloves. At least
20 he did that right, so you don't leave any fingerprints.

21 The third major mistake. He asked Mrs. Cole and
22 Mr. Cole to lie for him. You would not do that if you were
23 not guilty.

24 Number four, he admitted being at the unemployment
25 office. What time? It was at 1:30.

1 Fifth and final, he made the biggest mistake of
2 all, he admitted to driving that vehicle the day before.

3 What reason does the Detective Dow have to lie
4 about that? None.

5 Let's talk about the elements a little bit and
6 then I'm going to talk to you about really happened that
7 day.

8 As I said in the beginning, I have to prove for
9 burglary first that the defendant entered the victim's home,
10 without permission, with the intent to commit a crime
11 inside, which was grand larceny, while armed with a deadly
12 weapon.

13 The judge is going to instruct you what being
14 armed means. Being armed means that at some point a gun was
15 easily accessible and readily available to the defendant,
16 and that could be because he stole a gun. Having the guns
17 in his possession, even if they are stolen, is being armed.

18 Grand larceny is taking away someone's property
19 over 10,000. You will have the insurance paperwork back in
20 the jury room. You can look at that.

21 This is what happened on April 21st of 2011. The
22 defendant wanted to go to the unemployment office. He drove
23 past the victim's home; no garage, no car in the driveway.
24 It looks pretty good to him if you are going to steal
25 something. Drives on to the unemployment office. He's

1 there at 1:30. Who knows if he eats lunch or visits
2 somebody who is over in Liberty. Who knows what he's doing.
3 3:30 he comes back by the victim's house. No car in the
4 driveway, no garage. Perfect target.

5 He and his buddy, who we don't know who that is,
6 go in the house through the back door. You saw the force
7 used. You can look at the force that was used, especially
8 if the dead bolt was in. Kicked it open. Shoved it open
9 with his shoulder, who knows what. Enters the home.

10 Somebody is on the lookout up front, one of the
11 two people, because Pam told you one person kept going the
12 front door to the car, to the front door to the car putting
13 stuff in. Those were guns. The person inside is bringing
14 guns from the back bedroom, that little side bedroom, you
15 will have a map of the house, to the front door. They are
16 trying to do it in what? They are trying to do it in a
17 hurry so they don't get caught, because they see Pam up on
18 that hill mowing her lawn. They are doing it as quickly as
19 possible. Guns are valuable, easily able to hide, easy to
20 sell. Going back and forth, going back and forth.

21 Pam comes down the driveway to get a better view.
22 What do they do? They get nervous, because there is a
23 lookout, the guy out front. He says "let's go. She's
24 coming down the hill. We got to get out of here." What do
25 they do? They get out of there. When they are rushed they

1 leave the \$3,100. You didn't think they wanted to leave
2 that? No, the only reason any robber would leave \$3,100 is
3 because they are in a rush. That would explain why the
4 rings hadn't been taken yet. That explains why the TV
5 hadn't been taken yet.

6 As unlucky as the victim seems to be to you,
7 probably a little bit lucky in that everything wasn't taken
8 and that Pam did come down that hill.

9 Then, as Pam said, they went towards Six Mile or
10 to straight to the defendant's residence. C. They go to
11 the residence, they get rid of the guns, and they are
12 surprised when Detective Dow is able to run this name in the
13 system. He did not intend to leave this behind. Detective
14 Dow is able to find his address, which is C, right up there,
15 was able to come by the house, and, lo and behold, the car
16 accident is right there. A car accident happened. Don't
17 let the defense tell you that those dents were already
18 there.

19 What are the chances that all of this would
20 happen? Slim to none that the defendant didn't do it.

21 You go back into that jury room and after you
22 talk, and twelve minds are better than one, if you come back
23 and you say "I'm not quite convinced after talking to all my
24 peers that he's guilty," turn him lose. Turn him lose. We
25 are not in the business of convicting innocent men.

1 But if you are convinced beyond a reasonable
2 doubt, after speaking with everyone, you don't have a
3 decision. You must return a verdict of guilty.

4 This case reminds me a lot of a rope. What is a
5 rope? A rope are a bunch of fibers, weak by themselves.
6 Twined together, braided together, they become stronger.
7 Stronger than they are standing alone.

8 Sorry y'all.

9 Each piece of evidence is a part of that twine.
10 It's a fiber.

11 Detective Dow testified last. I'm sure throughout
12 the trial you are a little bit lost with we were are going
13 and what we are getting at. He took each piece of evidence
14 and brought it together for you. He twined that rope.

15 Yesterday Mr. DeJong says the defendant was
16 clothed with a cloak of righteousness. Today he's left
17 before you naked of that cloak, is sitting before you
18 guilty. That the cloak has been shredded with each piece of
19 evidence, with each piece of testimony, one by one, and you
20 can link all those fibers together into a rope that is
21 strong, very strong, strong enough for you to return a
22 verdict of guilty today.

23 Thank you for your time.

24 THE COURT: Mr. DeJong, you may address the jury
25 in your closing statement.

1 MR. DEJONG: Thank you, Your Honor.

2 May it please the court.

3 Madam Solicitor.

4 There is little dispute, ladies and gentlemen,
5 that Mr. McSwain's house was burglarized on April 21st of
6 2011. The point of that is is the State is asking you to
7 make a quantum leap on what they say the evidence is that
8 they have provided. And they say they have braided a rope.
9 Well, you can't have one strand here and another strand five
10 miles away and another strand five miles away and braid any
11 kind of rope.

12 What the State says they have presented to you is
13 sufficient circumstantial evidence to return a verdict of
14 guilty.

15 I'm not going to stand here and rehash the entire
16 case with you. You have been more than attentive and you
17 have heard the testimony and the evidence in this case, and
18 I would like to tell you what I consider to be the high
19 points.

20 Before doing that, it is obvious right now that
21 Mr. Lane did not testify in this trial. His Honor is going
22 to give you the law. I will talk to you about the law,
23 Madam Prosecutor has talked to you about the law. Don't
24 take the law from us. Take the law from His Honor. But in
25 taking the law from His Honor, that is the law, and that is

1 the law that you must apply to this case under your oath.

2 And in speaking of Mr. Lane not testifying, the
3 law is, ladies and gentlemen, that you cannot take that into
4 consideration in your deliberation. It should not even tip
5 toe across your mind. It should not be talked about by you
6 in your deliberations, because as I shared with you about 24
7 hours ago, Mr. Lane has nothing to prove to you in this
8 case. The burden of proof is solely, absolutely, one
9 hundred percently on the State.

10 And in a situation where the person accused does
11 not testify, it would be very easy to say "well, boy, if I
12 was accused, I would take the witness stand." That thought
13 shouldn't even cross your mind under the law that His Honor
14 will charge you. That should not come into your mind, into
15 your deliberations at all. That is the law. That is as
16 much the law as reasonable doubt, or any other element of
17 the law that His Honor will charge you.

18 Now, I would also submit to you that there's very
19 little dispute that Karl Lane went to the unemployment
20 office on April the 21st of 2011. There is a dispute over
21 what car he drove.

22 Now, I find it fascinating, ladies and gentlemen,
23 and I would ask you to recall. The witnesses that you saw
24 on the witness stand, they were called by the State. They
25 were subpoenaed by the State. And for whatever reason I

1 guess Ms. Barwick didn't like what they had to say, so now
2 they are liars, but they were called by the State to come
3 and testify in this case under the oath that they took, and
4 they took the oath.

5 So there is a dispute by the State over which car
6 was driven. Ms. Cole came before you and testified that he
7 drove her Yukon to the unemployment office. Well, whether
8 it was a Yukon or whether it was a Mitsubishi Gallant, if he
9 went to the unemployment office. Remember the burden of
10 proof is on the State to prove beyond a reasonable doubt.
11 He left the unemployment office approximately 1:32. Pretty
12 good specific approximation, but an approximation,
13 nonetheless. The house he lived in or went to, according to
14 the State's witnesses, Ms. Cole, was some -- I believe
15 Detective Dow testified some seven minutes away. When he
16 got home early afternoon she saw no gun, nothing else, and
17 he did not leave again for the rest of the afternoon. Well,
18 I take that back. I think she said he did not leave until
19 after dinner. So the State has to do more than put an
20 individual in the vicinity of where a crime has occurred.

21 Now, in this case they want you to make the
22 quantum leap for them. They want you to fill in the gaps,
23 fill in the holes that they could not provide you evidence
24 on. Those gaps and those holes are he was in the vicinity,
25 so, therefore, because he was in the vicinity, he

1 burglarized this house.

2 Let's see if I can get the road right. I think it
3 was [REDACTED] [REDACTED] [REDACTED] By both Officer Torres' testimony and
4 I believe Mr. Dow's testimony, but I'm not a hundred percent
5 sure about that, [REDACTED] [REDACTED] [REDACTED] is a fairly well traveled
6 road. So Madam Solicitor would say well, he drove by it,
7 there was nobody in there, or no cars in the driveway and he
8 targeted that. Well, think about this. Anybody else could
9 have targeted it too. It's a well traveled road.

10 This house was vacant from approximately, as
11 memory serves me, from 10:15 until when Ms. Holladay says
12 she saw this vehicle with occupants she could not identify
13 in the driveway. Now, we don't know. She slept in. I
14 think she said her children were out of school, they slept
15 in that day, what time they got up I don't know.

16 Now, there is also a back door to this residence,
17 obviously, that Ms. Holladay could not see. There obviously
18 was a residence that is behind Mr. McSwain's residence, so
19 certainly the back of his house is accessible from more than
20 one direction. It's certainly accessible from the back, as
21 I believe he said you could even see this other house,
22 although it was some distance away.

23 Now, Ms. Holladay said she sees this car and she
24 cannot identify anybody. But assume for the moment -- and I
25 submit that Mr. Lane was not driving that car that day, but

1 assume for the moment that he was. I would ask you to
2 recall Ms. Holladay's testimony, as I recall it. You take
3 it the way that you heard it, but here is what I recall.
4 She saw on that day she said Mitsubishi Gallant, and today
5 she said it was a Mitsubishi Gallant-type car. But be that
6 as it may, she saw two white males in that vehicle. As I
7 recall her testimony, she never said that she saw anybody
8 going into that house. She saw a person go to the front
9 door, come back, go back to the front door, come back and
10 they left. I heard no testimony, even her testimony, that
11 anyone was carrying anything, anything being placed into the
12 car. All I recall her testimony being was someone went to
13 the front door, came back, went to the front door, came back
14 and left.

15 Now, again, ladies and gentlemen, the State must
16 prove beyond a reasonable doubt that Mr. Lane in this case
17 entered that house without permission or consent and took
18 guns.

19 So at 1:32 -- before I go back to 1:32 -- oh, the
20 guns. That is a fascinating element in this case. The
21 person that broke into Mr. McSwain's house, they bypassed
22 televisions, they bypassed jewelry, they bypassed
23 everything, and from all appearances, according to the
24 testimony that you heard, went directly to the gun safe.

25 Now, also please remember this. According to Mr.

1 McSwain, he didn't know Karl Allen (sic -- oh, I apologize,
2 Karl Lane. He didn't know Karl Lane. He had never seen
3 Karl Lane. Karl Lane has never been in his house. How is
4 it, ladies and gentlemen, if you are randomly selecting a
5 house to burglarize that you immediately upon entry into
6 that house go to a gun safe and steal guns? Would that not
7 lead you to believe that was somebody that was familiar with
8 that house, who knew where the guns were, went directly and
9 stole the guns and got the heck out of Dodge?

10 Why just guns? There was jewelry, there were gold
11 rings out there, I believe, items very easily disposed of, I
12 would submit to you, if you were burglarizing. There is
13 money.

14 Now, the other things about guns that I find
15 fascinating, a couple of things, one is some of those guns
16 were collectors items. I would submit that your run of the
17 mill burglar doesn't look for things that sticks out when
18 they have to go sell them. They don't want those things. I
19 submit to you that the person that broke into this house
20 knew those were collectors items, guns, and wanted them
21 either for themselves or for somebody they knew. These guns
22 have never surfaced. Never, not even until I think as late
23 as yesterday. So I find that to be a fascinating element in
24 this case.

25 Now, so we have Ms. Holladay that she says she saw

1 this car. Identifiable occupant, as I recall her testimony,
2 went to the front door, and rehash that again. You heard it
3 the first time. So that's her. And that was some 3:20,
4 3:30 in the afternoon.

5 Mr. Lane, according to the unemployment records,
6 was finished with his business there at approximately 1:32.
7 He was seven minutes, approximately, away from his house, is
8 where he was going. He went back to the Cole house.

9 So I would submit to you that the solicitor's
10 theory on pegged the house going to the unemployment office
11 and you broke into it on the way back doesn't hold water.
12 It doesn't hold water. And, again, remember that that house
13 was vacant from 10:15 in the morning. And what happened on
14 the back side, nobody knows. The State certainly hasn't
15 told us what happened on the back side, so we don't know.
16 Now, they are asking you to speculate.

17 And in this case, ladies and gentlemen, you have
18 no friends to reward, no enemies to punish. You must look
19 at it from the point of view as to whether or not the State
20 has met their burden of proof, proving their case against
21 Mr. Lane beyond a reasonable doubt.

22 Now, so we have Ms. Holladay, you have the
23 unemployment office, you have the car, at least what they
24 say was that car in the driveway.

25 The other thing they have, they say they have a

1 piece of paper with Karl Lane's name on it, and you will
2 have it back there. You can see it. But it had been
3 raining that day. We finally established that it had rained
4 that day. The ground was wet. I don't know that we ever
5 came to the point of where the wind was blowing, or how the
6 wind was blowing, or whatever. But what I find fascinating,
7 a couple of things about that. You have a trained police
8 officer that goes to a crime scene and just goes in the
9 house says yup, the guns were stolen, call ID, call
10 forensics, we are out of here. I think he did say at one
11 point in time he may have walked around the property.
12 Ladies and gentlemen, he is a trained police officer. I'm
13 not trying to try the Pickens County sheriff's office, but
14 they are trained police officers.

15 So now this piece of paper, on a rainy day, was
16 found. We are not sure when, but between sometime after
17 roughly 6:15, 6:30, and eight o'clock. And the piece of
18 paper -- granted, I made a ta-do out of it, but they started
19 the ta-do, because when that happened somebody asked Mr.
20 McSwain was it dry. Well, it was dry.

21 Now they want to say that piece of paper on a
22 rainy overcast day was dropped by Karl Lane at 3:00 or 3:30
23 in the afternoon on a rainy day, overcast day, was still
24 dry, laying in the driveway, or beside the driveway and it
25 wasn't wet.

1 Now, let's kick in the common sense there, shall
2 we? That doesn't really happen. If it was a rainy overcast
3 day and that paper had laid there for some two -- 7:30 would
4 be four hours. So let's say three to four hours, isn't it
5 logical and common sense that the paper would be wet?

6 How the paper got there, we don't know. There
7 again, the State wants you to make the quantum leap for you;
8 Mr. Lane dropped the paper. There could be any number of
9 explanations for how the paper got there. For one, the wind
10 blowed across the road, the wind blowed, all of those
11 things. But they want to say oh, no, no, no, no, because
12 that piece of paper was there and found even after the cops
13 left, that makes Mr. Lane guilty. Well, that's where you
14 have a little braid over here and a little braid over here,
15 but you can't braid them together and make them into a rope.

16 Now, I do you find it fascinating about this car.
17 Well, Mr. Dow went out there on April the 22nd. Take it the
18 way you heard it, but I heard that the keys were laying on
19 the front seat of that vehicle. They weren't in Mr. Lane's
20 pocket. They weren't in Mr. Cole's pocket. They weren't in
21 Ms. Cole's pocket. Where were they? They were in the front
22 seat of the car. Who had access to the car? I don't know.
23 Was it a community car? I don't know. It wasn't Mr. Lane's
24 car. We do know that. It was the daughter's car. It was
25 Cole's daughter's vehicle. There was no dispute about that,

1 but the keys were in the front seat of the vehicle. So,
2 again, who had access, who didn't have access, I don't know.

3 I'm going to get to Mr. Dow's visit out to [REDACTED]
4 [REDACTED] [REDACTED] here in a moment, but yesterday when I spoke to
5 you about 24 hours ago, I asked you not only to look at what
6 the State brought you, but what they didn't bring you. What
7 they didn't bring you, they brought you no identification
8 of any person, albeit there was supposedly someone -- excuse
9 me, there was somewhat of an eyewitness. No identification.

10 They didn't bring you fingerprints. We had a
11 lovely lesson in fingerprints, only to find out we have no
12 fingerprints. So you don't have that.

13 So you don't have an identification. You don't
14 have fingerprints. Actually I think in talking with Mr. Dow
15 on the witness stand, "what do you have that put him in the
16 house?"

17 "Nothing."

18 Absolutely nothing to put him in the house. So
19 they want you to take these little pieces and say oh, that's
20 enough for a guilty verdict. I submit to you it is not.
21 Again, we will talk about reasonable doubt in just a minute.
22 I'm not going to hold onto you too much longer.

23 So now Mr. Dow goes out to [REDACTED] [REDACTED] [REDACTED] on
24 April the 22nd of 2011, I gather sometime in the afternoon.
25 My understanding. So he is a pretty big guy. I wouldn't

1 want to tangle with him. I can assure you of that. So he
2 goes out and oh, well, Mr. Lane over there, he's free to
3 leave. I have got my gun and I have got my handcuffs and I
4 have got my badge, but he's free to leave. He's not in
5 custody. I don't have to give him his Miranda Warnings.
6 The Miranda Warnings are the right to remain silent, the
7 right to the counsel, and all those things. Probably y'all
8 have seen them on television a thousand times. He says I
9 don't have to do that because he wasn't in custody. They
10 arrested him before he ever left the premises. I submit to
11 you that he went out there to arrest Karl Lane. He can sit
12 here and say all day he didn't, but I submit to you that he
13 did. I submit to you he should have had his Miranda
14 Warnings, but he didn't.

15 So you have this very large imposing police
16 officer talking to a very little old guy, and maybe -- Karl
17 thought he was free to leave. I don't know that he thought
18 he was free to leave.

19 Now you get another cop up there. It goes
20 basically the same way. Gun, handcuffs, badge, and all that
21 good stuff.

22 Also think about this, ladies and gentlemen. The
23 information that Mr. Dow said he gathered, it was not a
24 voluntary spontaneous statement by Mr. Lane. It was a
25 result of police questioning. And, again, I submit to you

1 that based on all of that, they want to say it was a
2 voluntary statement. Well, it may have been a voluntary
3 statement, but I submit to you that without being afforded
4 his Miranda Warnings. His Honor I think will charge you on
5 that. You take the law the way that you hear it from His
6 Honor.

7 So, again, I ask you the same thing I asked you
8 yesterday afternoon. Don't look at just what the State has
9 given you. Look at what they haven't given you.

10 And in looking at what they haven't given you,
11 look at what the State is asking you to do. They are asking
12 you to convict somebody on basically, my opinion,
13 nonexistent evidence; well traveled road, many, many
14 explanations, many, many, many things.

15 And even in -- going back to the statement
16 momentarily, what did Karl Lane say when Dow was out there?
17 Mr. Dow says "where is the gun?"

18 Karl Lane said "I don't know what you are talking
19 about.

20 "Well, what about the burglary?

21 "I don't know what you are talking about. Yeah
22 that is my card. Yeah, I did go to the unemployment
23 office."

24 Again, the vehicle is in dispute, and take our
25 version or you can take the other State's witnesses version.

1 Again, it was their witness that they called. You take
2 which version you want to take.

3 Reasonable doubt. Take what His Honor gives us as
4 a charge on the law on reasonable doubt, as the rest of the
5 charge.

6 A reasonable doubt, ladies and gentlemen, is such
7 a doubt that would cause you to hesitate to act in the
8 management of your day to day affairs.

9 And if there is a reasonable doubt, if there is a
10 hesitation to act, if you say maybe he didn't do it,
11 reasonable doubt. And if there is a reasonable doubt, if
12 there is that hesitation, then you must, under the law, give
13 Mr. Lane the benefit of that doubt and find him not guilty.

14 So, again, I ask you to go back, look at what you
15 have heard, what you have not heard.

16 Y'all are getting ready to go under the hood. The
17 red flag is still on the field. You are going under the
18 hood. The red flag on the field, the call on the field is
19 not guilty. You go under the hood. Is there irrefutable
20 evidence to overturn the call on the field? I submit to
21 you, ladies and gentlemen, there is not, and ask you to
22 bring back verdicts of not guilty on both charges.

23 Again, I thank you for your time and your
24 attention and your patience.

25 (Whereupon, at 2:50 p.m., the Court instructed the

1 jury panel)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 it's now my responsibility to instruct you on the law of
4 this case.

5 The indictments that I have before me charge Mr.
6 Lane with burglary in the first degree, as well as grand
7 larceny.

8 Let me remind you the fact that he has been
9 arrested and charged, indicted, that's not evidence in this
10 case, cannot be considered by you as evidence of guilt in
11 the case. It doesn't create any presumption or inference of
12 guilt. The indictments are merely the formal written
13 instruments by which the charges are brought against the
14 defendant and processed through this court.

15 As I stated, there are two indictments. Each of
16 those indictments charges a separate and a distinct offense.
17 You must decide each indictment separate on the evidence and
18 the law applicable to it, uninfluenced by your decision as
19 to the other indictment. In other words, the defendant may
20 be convicted or acquitted on either or both of the offenses.
21 You will be asked to write a separate verdict of guilty or
22 not guilty for each of the indictments.

23 Now, by entering a plea of not guilty to these
24 indictments, that plea places the burden on the State to
25 prove the defendant guilty.

1 A person charged with committing a criminal
2 offense in South Carolina is never required to prove himself
3 innocent. That's an important rule of law, that no matter
4 how serious the charge may be, that one charged with that
5 that will always be presumed innocent of the crime for which
6 that indictment was issued, unless guilt has been proven by
7 evidence satisfying you of that guilt beyond a reasonable
8 doubt.

9 Presumption of innocence doesn't end when you
10 begin your deliberations. It accompanies the defendant
11 throughout the trial, until you have reached a verdict of
12 guilt, based on the evidence satisfying you of that guilt,
13 beyond a reasonable doubt.

14 Presumption of innocence isn't a mere legal
15 theory. It's not a legal phrase. It is a substantial right
16 to which every defendant is entitled, unless you, the jury,
17 are satisfied from the evidence of the defendant's guilt
18 beyond a reasonable doubt.

19 You may ask yourself what is a reasonable doubt in
20 the law? A reasonable doubt is the kind of doubt that would
21 cause a reasonable person to hesitate to act.

22 The State has the burden of proving guilt beyond a
23 reasonable doubt. And some of you may in the past have had
24 an opportunity to serve on a jury in a civil case,
25 Magistrate's Court, or Circuit Court here, and you were told

1 it was only necessary to prove that a fact was more likely
2 true than not true by what was called the preponderance of
3 the evidence, or the greater weight of the evidence. In
4 criminal cases the State's proof is more powerful than that.
5 It must be proof beyond a reasonable doubt. That would be
6 proof that leaves you firmly convinced of the defendant's
7 guilt.

8 Now, there are very few things in this world that
9 we know with absolute certainty, and in criminal cases the
10 law does not require proof that overcomes every possible
11 doubt.

12 If, based upon your consideration of the evidence,
13 you are firmly convinced that the defendant is guilty of the
14 crime charged, then you must find the defendant guilty.

15 If, on the other hand, you think there is a real
16 possibility that the defendant is not guilty, you must give
17 the defendant the benefit of the doubt and find him not
18 guilty.

19 You and I have had certain duties to perform
20 during the trial. It's been my responsibility to preside
21 over the trial of the case, rule on the admissibility of
22 evidence that's been offered during the course of the trial.
23 You are to consider only the competent evidence before you,
24 the testimony which has been presented from the witness
25 stand, the exhibits that have been made a part of the record

1 and that alone.

2 I also have the job of charging you the applicable
3 law in the case. It's your duty as jurors to accept the law
4 and apply the law just as I state it to you. If you already
5 have an idea of what the law is or even a notion about what
6 the law ought to be in a case such as this, and that idea is
7 in conflict with what I now tell you the law is, then you
8 must abandoned such a notion, because under your oath you
9 have agreed that you will accept the law and apply the law
10 just as I state it to you now.

11 Every case that's tried in this courtroom before a
12 jury, that jury becomes the sole and exclusive judge of the
13 facts in a case. A trial judge can't intimate, or state, or
14 comment on, or make any statement whatsoever to a trial jury
15 about the facts in a case.

16 Since you, the jury, are the sole judges of the
17 facts, you are not to infer from what I have said during the
18 course of the trial, any rulings I have made on the
19 admissibility of evidence, or otherwise, anything that I say
20 to you now by way of this instruction to you that I have an
21 opinion about the facts of the case. I don't have an
22 opinion about the facts. Our law of South Carolina, even
23 our Constitution, speaks to that and says that a trial judge
24 cannot have an opinion about the facts. That's a matter
25 solely for you, the jury, ladies and gentlemen, and you make

1 a determination of the effect, the value, the weight, and
2 the truth of the evidence that's been presented during the
3 trial.

4 Normally in trials there is two types of evidence
5 presented. There is direct evidence and circumstantial
6 evidence.

7 Direct evidence is the testimony of a person who
8 claims to have actual acknowledges of a fact, such as an
9 eyewitness. It would be evidence which immediately
10 establishes the main fact to be proved.

11 Circumstantial evidence is proof of a chain of
12 facts and circumstances that indicate the existence of a
13 fact. It's evidence, in other words, which immediately
14 establishes collateral facts from which the main fact may be
15 inferred. It's based on inference and not on personal
16 knowledge or observation.

17 The law makes absolutely no distinction between
18 the weight or the value to be given either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than of direct
21 evidence.

22 You should weigh all the evidence in the case.
23 And after weighing that evidence, if you are not convinced
24 of the guilt of the defendant beyond a reasonable doubt,
25 then you must, of course, find the defendant not guilty.

1 Of necessity you are going to need to determine
2 the credibility of witnesses who have testified in the case.
3 Credibility simply means believability. It becomes your
4 duty as jurors to analyze and evaluate the evidence and
5 determine which evidence convinces you of its truth.

6 In determining believability of witnesses who have
7 testified in the case, you can believe one witness over
8 several witnesses. You can believe several witnesses over
9 one witness. You can believe part of the testimony of a
10 witness testimony and you can reject the remaining part of
11 the testimony of that very same witness.

12 You can believe the testimony of a witness in its
13 entirety, or you can reject the testimony of a witness in
14 its entirety.

15 You can consider whether a witness had any bias or
16 prejudice.

17 You can determine the appearance, the manner of
18 that witness while on the witness stand, was he or she
19 straightforward or hesitant in answering? Was the testimony
20 of that witness consistent or inconsistent? Had the witness
21 come to know the facts to which he or she testified to? Was
22 the testimony of that witness strengthened or weakened by
23 other testimony of other witnesses and other evidence that
24 you received in the case?

25 It's totally up to you, ladies and gentlemen, to

1 determine the credibility of witnesses.

2 Now, ladies and gentlemen, in this case the
3 defendant did not testify. You are to draw no conclusions
4 whatsoever from the fact that he chose to exercise that
5 right to testify. The burden of proof is on the State. The
6 State has that burden of proof. The defendant has an
7 absolute right to choose not to testify. And the fact that
8 he exercised that right here and chose not to testify should
9 not even be considered by you in any way. It should not
10 even be talked about by you in the jury room.

11 I'll remind you, the State has the full burden of
12 proof. And the fact that the defendant in this case chose
13 not to testify is not to be considered by you in any way
14 whatsoever in your deliberations.

15 In order to establish criminal liability, criminal
16 intent is required, and it must be proven by the State
17 beyond a reasonable doubt.

18 Criminal intent is always a matter that must be
19 determined by a jury from the circumstances surrounding the
20 situation. There is no way, of course, to prove intent to a
21 mathematical certainty. The law says that criminal intent
22 may be inferred from the circumstances shown to have
23 existed. It's not necessary to establish intent by direct
24 and positive evidence, but intent may be established by
25 inference, in the same way as any other fact, taken into

1 consideration the acts of the parties and all the facts and
2 circumstances of the case. Criminal intent is a mental
3 state. It's a conscious wrongdoing. It's up to you to
4 determine what the defendant intended to do based upon the
5 circumstances shown to have existed.

6 Now, in this case a statement allegedly had been
7 made by the defendant has been admitted into evidence. The
8 court determined the statement is admissible, but I instruct
9 you that you make the ultimate decision of whether or not
10 the defendant made the statement.

11 If the defendant did make the statement, you must
12 determine whether the statement was made by the defendant
13 voluntarily and of his own free will. This means that the
14 statement was not caused by pressure or force, fear or
15 threats, coercion or intimidation, by hope of or a promise
16 of leniency or reward of any kind.

17 In determining whether the statement was
18 voluntary, you should consider both the characteristics of
19 the defendant and the details of the questioning. Among the
20 factors you can consider would be the age of the defendant,
21 and any education, or lack thereof; the background; the
22 environment; the place and the length of the detention; the
23 nature of the questioning; the advice, or lack thereof, of
24 the defendant of his Constitutional Rights to remain silent;
25 that any statement could be used against him in a court of

1 law; the right to have a lawyer present; if he could not
2 afford a lawyer, then a lawyer could be appointed for him to
3 represent him without costs; that he could stop making a
4 statement at any time.

5 You must carefully consider all the surrounding
6 circumstances before you give any weight to the alleged
7 statement.

8 The State has the burden of proving beyond a
9 reasonable doubt that the alleged statement was voluntary.

10 If you determine that it was, then you may give
11 the statement any further consideration that you deem
12 proper. You must decide what weight, if any, should be
13 given the alleged statement.

14 If you determine that the statement was not free
15 and voluntarily made, you should not consider the statement
16 at all.

17 Now, as I told you, there is two separate charges
18 in this case. The defendant has been charged with the first
19 degree burglary.

20 The State must prove beyond a reasonable doubt
21 that the defendant entered a dwelling without consent.

22 Now, a dwelling is any building or a portion of a
23 building in which a person ordinarily sleeps.

24 A building constructed as a dwelling that has
25 never been occupied cannot be considered a dwelling for

1 purpose of a burglary, but a building is a dwelling, even if
2 the residents are temporarily absent from the building.

3 In order to prove that the defendant entered the
4 dwelling, the State does not have to show that the
5 defendant's entire body entered the dwelling. The smallest
6 entry is sufficient. It may be any part of the body, such
7 as a hand, or a foot, or even an instrument, a hook, or
8 other instrument.

9 In addition, the State does not have prove that
10 force was used to gain entry.

11 Next, the State must prove beyond a reasonable
12 doubt that the defendant intended to commit a crime, either
13 a felony or a misdemeanor, at the time of the entry.

14 The mere entry into a dwelling, without consent,
15 is not burglary. If the intent to commit a crime is formed
16 after the entry, it's not burglary.

17 On the other hand, if the defendant intended to
18 commit a crime at the time of the entry, it is burglary,
19 even if the intent was abandoned after the entry. It does
20 not matter that the intended crime was not committed.

21 Intent may be shown by acts and conduct of the
22 defendant, other circumstances from which you may naturally
23 and reasonably infer intent.

24 Finally, the State must prove beyond a reasonable
25 doubt that when entering, or while in the dwelling, or when

1 fleeing the defendant or an accomplice was armed with a
2 deadly weapon or explosive.

3 Now, to be armed with a deadly weapon, the State
4 need only show that there was physical control over the
5 deadly weapon, and effecting the entry, or while in the
6 dwelling, or immediate flight therefrom. It doesn't matter
7 how the person acquired the deadly weapon or for what
8 purpose the person took possession of a deadly weapon. A
9 person can become armed with an a deadly weapon, even if the
10 weapon is one taken during the course of a burglary.

11 Now, a deadly weapon is any article or instrument
12 or a substance which is likely to cause death or great
13 bodily harm. Examples of a deadly weapon, of course, would
14 be a pistol, a shotgun, or a rifle.

15 The defendant is also charged in this case with
16 grand larceny.

17 The State must prove beyond a reasonable doubt
18 that the defendant took and carried away the property of
19 another against that person's will or without the consent of
20 that other person.

21 The slightest removal of the property, or the
22 complete possession of the property, even for an instant by
23 the defendant, is enough to show a taking and a carrying
24 away of the property.

25 The State must also prove beyond a reasonable

1 doubt that the defendant intended to permanently deprive the
2 owner of the property.

3 Finally, the State in the case must prove that the
4 value of the thing taken was more than \$10,000.

5 Now, Mr. Foreman, I have prepared a verdict form.
6 I believe it will be self-explanatory for you. Again, there
7 is two separate charges listed. You are to consider them
8 separate and distinct, one from another.

9 If you find the State has met its burden of proof
10 beyond a reasonable doubt as to the burglary charge, then
11 you would simply check guilty.

12 If you find the State has failed in any way in not
13 proving that case, then your verdict would be not guilty.

14 The same on the charge of grand larceny. If the
15 State has met its burden, your finding would be guilty.

16 If the State has failed, your finding would be not
17 guilty.

18 There is no significance in the order in which
19 these options are listed. One had to be listed before the
20 other.

21 After you have reached your decision on each of
22 the charges, Mr. Foreman, you would simply sign your name as
23 foreperson, date the verdict form. We will receive it back
24 here in the courtroom.

25 Your verdict must be a unanimous one. All twelve

1 of you must agree upon the verdict. It cannot be based upon
2 sympathy, or passion, prejudice, or emotion, or any other
3 consideration not in evidence in the case.

4 I'll remind you, Mr. Foreman, ladies and
5 gentlemen, you are free to ask me any questions concerning
6 the law of the case, but it's impermissible for me to answer
7 any questions you have regarding the facts of the case. The
8 facts are part of the record now. It's your duty to
9 determine the facts as the sole fact finders.

10 I'm going to ask, if you will, please, go to back
11 to your jury room. Don't discuss the case just yet. There
12 is a final matter of law that I need to take care of with
13 the attorneys in a few moments. I'll have further
14 instructions for you to begin your deliberations or to come
15 back. I'll ask you to retire to your jury room. Don't
16 discuss the case just yet.

17 (Whereupon, at 3:08 p.m., the jury retired to the
18 jury room, awaiting instructions to begin deliberations)

19 THE COURT: Exceptions to the charge from the
20 State?

21 MS. BARWICK: Your Honor, briefly. In your
22 description of burglary, it was entering this dwelling, even
23 if it's just your hand. There is testimony from the
24 neighbor that one of the suspects walked up to the front
25 door, got stuff, brought it back, walked up, brought it back

1 while the other one was inside the house. And I hate to do
2 this. I normally don't. Could Your Honor give them an
3 instruction as to hand of one hand of all? It would have
4 brought it up if I even thought it about, Your Honor.

5 THE COURT: I don't believe that's appropriate in
6 this case.

7 Anything from the defense?

8 MR. DEJONG: I have no exception to the charge as
9 given, Your Honor. However, I would renew my request at
10 this point in time on the circumstantial evidence that I
11 made prior to your charge.

12 THE COURT: Well, looking again at Odems, I think
13 they certainly addressed that, but not maybe as clearly as
14 you would like. I will stand by my previous ruling on that.

15 MR. DEJONG: Thank you, Your Honor.

16 THE COURT: Y'all make sure all the evidence is
17 available.

18 Let me show you a verdict form. I don't believe
19 that you have looked at it yet. Make sure it's in proper
20 form,

21 MR. DEJONG: I don't particularly like the use of
22 and in here, Your Honor. The reason being that could
23 connote that the verdict would have to be the same,
24 unanimous on both of them.

25 THE COURT: I don't like to use the and/or much.

1 Why don't we just leave and out.

2 MR. DEJONG: I would just say take -- I will be
3 more comfortable if you just took the and out.

4 THE COURT: We will do that.

5 MR. DEJONG: I'm sorry?

6 THE COURT: We will just --

7 MR. DEJONG: Did you have a chance to look at it?

8 MS. BARWICK: I did and I'm fine with it.

9 (Whereupon, at 3:13 p.m., the jury panel was
10 instructed to begin deliberations)

11 (Whereupon, at 3:14 p.m., the alternate juror was
12 brought into the courtroom and dismissed)

13 (Whereupon, at 3:15 p.m., proceedings were
14 recessed, pending the verdict of the jury panel)

15 (Whereupon, at 4:30 p.m., proceedings were
16 reconvened)

17 THE COURT: All right. I understand the jury has
18 reached a verdict in the case.

19 Is there any matters we need to take care of
20 before the verdict is received, from the State?

21 MS. BARWICK: No, sir, Your Honor.

22 THE COURT: From the defense?

23 MR. DEJONG: None on behalf of Mr. Lane, Your
24 Honor.

25 THE COURT: All right. If the jury is ready, Mr.

1 Schumacker, you can have them come in.

2 THE BAILIFF: All right, sir.

3 (Whereupon, at 4:31 p.m., the jury panel returned
4 to open court to report its verdict)

5 THE COURT: Mr. Foreman, I understand that the
6 jury has reached a verdict, is that correct?

7 JURY FOREMAN: Yes, sir.

8 THE COURT: Is it a unanimous verdict as to both
9 charges?

10 JURY FOREMAN: Yes, sir.

11 THE COURT: If you would, please, hand the verdict
12 forms to the bailiff.

13 All right, Mr. Clerk, you may publish the
14 verdicts.

15 THE CLERK: This is indictment number
16 2011-GS-39-1496 and 2011-GS-39-1497, State versus Karl Ryan
17 Lane, we, the jury, unanimously find the defendant Karl Ryan
18 Lane as to the charge of burglary, first degree, guilty.

19 As to the charge of grand larceny, not guilty.

20 Is this your verdict and still your verdict, say
21 so you all by raising your right hand.

22 Thank you very much.

23 THE COURT: Thank you.

24 Is there anything we need to take care of with
25 this jury before they are discharged in this case? Any

1 matters we need to cover, from the State?

2 MS. BARWICK: No, sir, Your Honor.

3 MR. DEJONG: Not on behalf of Mr. Lane, Your
4 Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 thank you very much for your service on this trial. You
7 have been a conscientious group. I have enjoyed working
8 with you. Thank you for your attention throughout the
9 trial. You have done a valuable service for your community.

10 You have been a part of the judicial system this
11 week. You don't often get an opportunity to directly serve
12 in one your branches of government. You remember from times
13 gone by in school the executive branch, the legislative
14 branch, and the judicial branch. That executive branch
15 carries out the laws. One day maybe you will be fortunate
16 enough to be mayor of your town, or governor of South
17 Carolina, or president, and execute those laws that our
18 legislature passes. By the same token, you may get elected
19 to the legislative division, be it city counsel, or go to
20 the Columbia to the state house or to the senate, or go to
21 Congress. You could pass the laws as the legislator. You
22 could execute the laws as an executive of being the
23 governor, or mayor, of other position, but we as citizens
24 don't get a chance to actually do that. We could petition,
25 we could call our legislators and tell them we ought to have

1 this law, or not have that law, or write our governor and
2 send a letter about things that should be done differently,
3 but we can't just directly participate. This week you have
4 directly participated by being a judge. I told you that you
5 were going to be judges of the facts, and you have fulfilled
6 that duty well and I'm grateful that you have participated
7 in the trial this week.

8 I hope it doesn't happen, but one day you may find
9 yourself not sitting in the jury box, but sitting at one of
10 the tables. Someone had brought a lawsuit against you on a
11 contract dispute, or a car wreck, or property line dispute,
12 or someone has accused you of a crime. I'm confident if you
13 are sitting on either of those tables, you will certainly
14 want good conscientious jurors, such as yourself, to decide
15 the facts for you.

16 I understand from the work that we have on our
17 docket this week that tomorrow is going to be a busy day,
18 but it's not going to involve a jury. Therefore, you will
19 be dismissed for the rest of the week. We won't need you to
20 call back tonight. We won't need you to come back tomorrow.

21 Some of you may need a statement for your
22 employer. If you do, the clerk's office downstairs has
23 those and you can pick them up on your way out.

24 And hopefully your time as a juror this week in
25 serving has been an enjoyable week for you and an

1 educational week and I hope that if you get called again in
2 the next couple of years, that even though you have that
3 exemption of not serving, that you have served this time, I
4 hope that you will waive it and you will want to serve
5 again.

6 Thank you for your help this week. You are
7 dismissed at this time.

8 I will ask the foreman, if you would, please, to
9 meet the clerk in the hallway back there. There is an
10 additional document that I need to have you sign.
11 Otherwise, you are dismissed at this time. Thank you for
12 your service this week, ladies and gentlemen.

13 (Whereupon, at 4:37 p.m., the jury panel was
14 discharged)

15 THE COURT: Any matters we need to take care of
16 before sentencing is imposed in this case? Anything that
17 the State has?

18 MS. BARWICK: No, sir, Your Honor.

19 THE COURT: From the defense?

20 MR. DEJONG: Yes, Your Honor.

21 May it please the court, if I understood the
22 verdicts, it was a guilty on the burglary first and a not
23 guilty on grand larceny, which mentally I'm really
24 struggling with at the moment.

25 What I'm struggling with is this. The evidence

1 that was presented by the State, the only evidence of intent
2 to commit a crime or a crime that was allegedly committed
3 was a grand larceny. There was nothing else. The jury
4 finds him not guilty of the grand larceny, but yet guilty of
5 the burglary.

6 I would request that the court grant a new trial.
7 I know compromised verdicts are okay. I know even
8 inconsistent verdicts can be okay, but this is one of those
9 cases, Your Honor, that I don't think an inconsistent
10 verdict can be okay. I don't see anything in the evidence,
11 in the testimony or evidence in this case, that would
12 warrant -- I certainly see plenty to warrant the not guilty
13 on the grand larceny. But taking the grand larceny out,
14 anything to warrant a guilty on the burglary first.

15 It smacks of a compromised verdict. I'm not
16 arguing that. I understand about compromised verdicts, but
17 the verdict in this case is under the law so inconsistent
18 that I would submit, Your Honor, the defendant is entitled
19 to a new trial.

20 THE COURT: Thank you, Mr. DeJong.

21 Ms. Barwick?

22 MS. BARWICK: Your Honor, the State doesn't have
23 to prove that the defendant actually committed a crime, just
24 that the defendant intended to commit a crime, and that's
25 what the jury found him guilty of.

1 Who knows what the jury was thinking back in the
2 jury room. We weren't privy to it. Maybe they thought that
3 the defendant wasn't the one who actually went inside to get
4 the guns. Who knows. But at this point, as long as the
5 State proved that the defendant went inside the home, the
6 jury found that he was guilty of going inside the home with
7 the intent to do a crime inside. They do not have to
8 convict him of the crime inside.

9 THE COURT: Mr. DeJong, I can't get behind the
10 jury's thought process.

11 Obviously the elements of grand larceny are vastly
12 different from the burglary, the basis upon which I think
13 there is sufficient evidence upon which the jury could have
14 found a not guilty verdict on that. No speculation. They
15 might have found that the State did not meet the burden of
16 the value, just on the insurance statement or it was under
17 10,000. I don't know how they came about that, but, of
18 course, the State is right that the larceny does not have to
19 take place if the burglary takes place. He had committed
20 there where he had to flee the scene because the lawnmower
21 got too close to the roadway and movement was taking place,
22 I don't know, but I can't look behind their thought process,
23 but I believe as far as the guilty verdict, the evidence was
24 sufficient to establish that.

25 I think in light of the charge that was given on

1 the burglary first,, and obviously the jury had no questions
2 about the charge, assuming I told them they were a
3 conscientious group, I thought they listened well to the
4 charge, that the circumstances that constitute a burglary
5 first degree I think have been met. I'll respectfully deny
6 your motion, Mr. DeJong.

7 MR. DEJONG: Thank you, Your Honor.

8 All right. Anything else we need to take care of
9 before the sentencing?

10 MR. DEJONG: Not on behalf of Mr. Lane, Your
11 Honor.

12 Come around.

13 I don't see restitution as an issue right now.
14 I'll advise my client not to sign that.

15 THE COURT: Is there anything the State wishes to
16 offer?

17 MS. BARWICK: Your Honor, he does have a prior
18 record and it comes out of Florida.

19 The defendant is twenty-three now.

20 His prior record started in 2007 when he was
21 eighteen. Domestic violence.

22 Battery.

23 Harassment of a witness, a victim or informant.

24 Battery.

25 Violation of domestic violence, pretrial release.

1 Criminal mischief, less than \$200 damage.

2 2008, obstruction of justice by harassing a
3 witness or victim or informant.

4 Battery, prior offense.

5 2010, probation violation.

6 Your Honor, I can't tell from the NCIC. It says
7 three probation violations or not, so we will just stick
8 with one.

9 And the victim does wish to speak at the
10 appropriate time.

11 THE COURT: All right, I'll be glad to hear from
12 the victim now.

13 MARK MCSWAIN: Your Honor, if it please the court.

14 THE COURT: Yes, sir.

15 MARK MCSWAIN: I would like to respectfully ask
16 that the maximum penalty be imposed against the defendant,
17 please.

18 THE COURT: All right. Thank you, sir.

19 Mr. DeJong, I'll be glad to hear from you and
20 certainly your client.

21 MR. DEJONG: Your Honor, may it please the court,
22 obviously the jury has spoken.

23 Mr. Lane is twenty-three years of age. He is
24 originally from Florida, Your Honor. He met a Trisha
25 Millburn up here. That is the young lady that is the

1 daughter of Mr. And Mrs. Cole. Ms. Millburn and Mr. Lane
2 share a baby in common. That baby is about eighteen months
3 old now. How old? Oh, just turned five. I'm sorry. I was
4 looking at my numbers wrong. Almost five years old when I
5 opened your file.

6 He had been in jail, Your Honor, since April the
7 22nd of 2011, but obviously he has not worked since that
8 point in time. He last worked for an Olive Garden in
9 Florida. He has a 10th grade education. He does have his
10 GED.

11 I will say this for the young man. From my
12 perspective, Your Honor, he's been a very pleasant young
13 fellow to represent. I couldn't ask for a nicer client. He
14 always seems to be well spoken. Of course, Your Honor saw
15 him a little bit on the witness stand yesterday during the
16 Jackson v. Denno hearing.

17 Your Honor, on sentencing in this case, it's
18 another one of those puzzlements in my mind. I have been
19 doing defense work for a couple of years now, and I believe
20 it was up until last year at some point in time when the
21 Supreme Court, I believe, finally ruled on a case that on
22 burglary first the fifteen years was a minimum mandatory.
23 And I understand they did that. I don't know the exact date
24 when they did that. Of course, this offense occurred on
25 April the 21st of 2011. Of course, legislation has been in

1 place on burglary first for a number of years, but I
2 certainly struggle with the Supreme Court's decision on
3 saying that is a minimum mandatory. I have read the
4 decision. No disrespect meant to the South Carolina Supreme
5 Court, I certainly don't agree with the opinion. I do not
6 think that was the legislature's intent. But, nonetheless,
7 they said it was.

8 If Your Honor sees it that way -- of course, this
9 carries a maximum of life, I understand that, but standing
10 before you is a twenty-three year old young man. He does
11 have a child. Actually his child and Ms. Millburn are in
12 Florida, I believe, and have been for quite some time.
13 Prior to his arrest it was my understanding that Mr. Lane
14 planned to return to Florida with his wife and child.

15 Nonetheless, he is a young man, Your Honor. I
16 don't think this case, and even the way that the jury came
17 back, that it is a matter of throwing this young man on the
18 garbage heap. And to give him a life sentence would, in my
19 opinion, would be throwing him out on the garbage heap. We
20 certainly recognize, whether outright or implicitly, that
21 imprisonment doesn't do anything for people, so we throw
22 them on the garbage heap.

23 If Your Honor sees this as a fifteen year minimum
24 mandatory, I think that is a gracious plenty. He's going to
25 have to serve eighty-five percent of it. He will still come

1 out on community supervision at that point in time. He has
2 an opportunity, even at that, Your Honor, that's a long
3 time. I don't know what eighty-five percent of fifteen is
4 off the top of my head, but probably thirteen or fourteen
5 years. He would come out at almost forty years old on that,
6 and then still have part of his sentence hanging over his
7 head.

8 So I understand Your Honor has to sentence him and
9 I mean no disrespect in that, but I would certainly ask Your
10 Honor to consider giving him the minimum, if that's the way
11 that you interpret the burglary first degree statute.

12 THE COURT: Thank you, Mr. DeJong.

13 Mr. Lane, anything that you want to tell me?

14 THE DEFENDANT: No, sir.

15 MR. DEJONG: Your Honor, even though while you
16 were looking at the computer, Mr. Lane asked me if he could
17 still speak.

18 THE COURT: Yes, sir, Mr. Lane.

19 THE DEFENDANT: I say I do sympathize for the
20 victim and what happened to him. You know, I hope one day
21 he does recover his stuff who actually took it. I want him
22 to know that that was not -- I'm not him. I'm not that guy.
23 That's it.

24 THE COURT: All right.

25 Case 2011-GS-39-1496, the sentence of the court is

1 that the defendant be committed to the State Department of
2 Corrections for a period of 215 months.

3 He will be given credit for the time served.

4 Good luck, sir.

5 MR. DEJONG: Thank you, Your Honor.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for PICKENS County, South Carolina, on the 25th and 26th days of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MARCH 21, 2012



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
G. Edward Welmaker, Circuit Court Judge

Appellate Case No: 2012-207787

THE STATE,

RESPONDENT,

v.

KARL RYAN LANE,

APPELLANT.

SUPPLEMENTAL RECORD ON APPEAL

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1 come in here, but not just to focus on one thing. Focus on
2 the big picture. As I said, don't look at just what is
3 presented. Look at what is not presented to you.

4 I do thank you for your time. It's a burden.
5 Times are tough. Probably everybody would rather be in a
6 different place, but as I just said, your service is so
7 tremendously important, and today your service is
8 tremendously important to Mr. Karl Ryan Lane.

9 And I would ask you, ladies and gentlemen, to
10 remember again, and I know I'm hammering and hammering and
11 hammering on it, but remember that plastic wrap that covers
12 Mr. Lane. Remember what you don't hear in this case.

13 When this trial is over, bring back verdicts of
14 not guilty on both charges.

15 Thank you so very much for your time and
16 attention.

17 THE COURT: Solicitor, you may call your first
18 witness.

19 MS. BARWICK: The State would call Mark McSwain to
20 the stand.

21 MARK MCSWAIN, having been first duly sworn,
22 testified as follows:

23 THE CLERK: If you will have a seat and state your
24 name for the record, please.

25 THE WITNESS: Mark McSwain.

1 DIRECT EXAMINATION BY MS. BARWICK:

2 Q. Mr. McSwain, where do you live?

3 A. I reside at 725 Stewart Gin Road in Liberty.

4 Q. How long have you lived there?

5 A. Approximately eighteen years.

6 Q. Would that be in Pickens County?

7 A. Yes, it is.

8 Q. Okay. And your house, tell me about that a little bit.
9 Who lives there with you?

10 A. My wife and I live at the house by ourselves. We have
11 no children.

12 Q. Okay. Would you consider your house out in the country
13 or in town?

14 A. Probably out in the country.

15 Q. Okay. What about your neighbors, are they close or far
16 away?

17 A. We have a few close neighbors, but relatively out in
18 the country, though.

19 Q. About how far away do you think that your closest
20 neighbor would be?

21 A. Probably maybe a hundred yards at the most. Maybe
22 fifty yards, something like that.

23 Q. Right.

24 If you would, tell the jury a little bit about your
25 morning on April 21st of 2011.

1 A. That morning I was preparing to go to a part-time job
2 and I had called -- I left my home around 8:30 or so. I
3 noticed some turkeys out in the field. I had permission to
4 hunt that land. I called my boss to see if it would be okay
5 if I came in a little bit late, because I wanted to try to
6 hunt, so I went back to my home and changed into my clothes.
7 As you can imagine, I was very excited to get out into the
8 field. I grabbed my shotgun, went down to the field. I was
9 probably in the field for about an hour. I was able to
10 harvest two birds.

11 Of course, realizing I needed to get back to work as
12 soon as I could, I was excited to get back home. I put the
13 birds in the back of my truck, along with my shotgun into my
14 truck, and hurriedly went back in the house, stripped off my
15 camo gear, put on my work clothes and basically ran out of
16 the house that morning to go back to work.

17 Q. Where do you keep your guns normally?

18 A. I have a safe that is located in a spare bedroom and
19 that's where I keep all of my firearms and ammunition.

20 Q. Okay. When you went back to the house initially to get
21 changed to go turkey hunting, did you lock your safe?

22 A. Unfortunately I did not. I was in quite a bit of a
23 hurry to leave. Also I was very excited about harvesting
24 two birds, so it was just a mistake on my behalf and I just
25 walked right out the door and didn't lock my safe.

1 Q. Okay. When you got done hunting and you came back in
2 to change, did you lock your safe before going to work?

3 A. I did not.

4 Q. Okay. Let's talk about your house a little bit. Do
5 you have a garage or anything?

6 A. I do not have a garage, just a driveway that goes up to
7 the side of my home.

8 Q. You went to work about what time? When you went to
9 work, was everything in your house normal?

10 A. As far as I could tell, everything was just fine.

11 Q. Okay. Nothing out of the ordinary with your back door?

12 A. No, everything was as normal. Just normal every-day
13 appearances.

14 Q. What time did you get home from work?

15 A. I came in around 4:30 or so.

16 Q. Did you come in through the front door or the back
17 door?

18 A. Typically when I come home I just pull right into the
19 driveway beside my home, park my truck and walk into the
20 front -- walk in the front door. That's how I always enter
21 my home.

22 Q. And that day, is that how you entered your home?

23 A. I did.

24 Q. When you came through the front door, did you notice
25 anything?

1 A. Yes, right off the bat I noticed that my back door was
2 open and there was a number of pieces of wood and I guess
3 you could call it door casing lying on the floor in the
4 kitchen.

5 Q. When you saw that, what did you do?

6 A. Well, I almost got sick physically, but I realized
7 something bad had happened. And, of course, searching
8 through my mind is all my valuables, so I basically walked
9 through the house real quickly just to see what, if
10 anything, had been taken. And when I walked into my back
11 bedroom, I noticed that my -- the closet door where my safe
12 is located was open. And as I rounded the corner, I saw
13 that my safe door was open. And, of course, it was empty.

14 Q. What did you do in response to that?

15 A. I immediately called the sheriff's department, dialed
16 9-1-1.

17 Q. What is that?

18 A. That appears to be a basic layout plan of my home.

19 Q. It's not to scale or anything?

20 A. Not to scale.

21 Q. Okay.

22 MS. BARWICK: Your Honor, at this time the State
23 would like to introduce State's Exhibit No. 3 into evidence.

24 THE COURT: Any objection?

25 MR. DEJONG: Without objection, Your Honor.

1 THE COURT: Exhibit 3 is admitted into evidence
2 without objection. It may be published.

3 BY MS. BARWICK:

4 Q. Which side is the front of your house?

5 A. The front is -- that's my front door right there.

6 Q. Okay. And where is the bedroom where the safe was
7 located?

8 A. It's right there. That's the -- that would be the
9 closet.

10 Q. Okay. And the bedroom?

11 A. The bedroom is right there.

12 Q. Okay. And is that the front door?

13 A. The front door is right there.

14 Q. And the back door?

15 A. Is right there.

16 Q. Okay. Which room is your front door located in? Is
17 that the living room?

18 A. The living room, yes.

19 Q. When you go through the front door, can you see -- is
20 there a straight sight to the back door?

21 A. It's almost exactly straight. Certainly you can see
22 straight through. There is a doorway, if you will, right
23 here that joins the kitchen and dining room area, with the
24 living room area right here.

25 Q. Do you recognize these photos?

1 A. Yes, I do.

2 Q. And what are those photos of?

3 A. Exhibit 11 is a picture of the front of my home.

4 The stair -- the walkway going to the front door. And
5 you see the porch.

6 There is also a picture of the kitchen area with the
7 door frame. It's there lying on the floor.

8 There is a picture of showing the front door actually
9 opened and you can see directly from standing on the front
10 porch to the back door.

11 And then there is a more close-up photo of the door
12 frame where everything was broken in.

13 Q. And the next?

14 A. Exhibit 12 has three photos. One photo is taken from
15 the back porch and shows a side view of where the damage
16 occurred on the back door.

17 There is a photo of the back bedroom with the closet
18 door open, and the -- you can see directly into the safe and
19 the safe door is open.

20 And then there is a close-up photo of the safe itself
21 with the door open.

22 Q. Is that how your home looked when you came in that day
23 from work?

24 A. It is.

25 Q. Okay.

1 MS. BARWICK: The State would like to introduce
2 Exhibits No. 11 and 12 into evidence.

3 MR. DEJONG: Without objection, Your Honor.

4 THE COURT: Without objection, 11 and 12 are
5 admitted and may be published.

6 MS. BARWICK: If we could dim the lights a little
7 bit.

8 Thank you.

9 BY MS. BARWICK:

10 Q. Is that the front door to your house?

11 A. It is.

12 Q. Is that the back door to your house?

13 A. It is.

14 Q. Can you show the jury where the damage was done to your
15 frame?

16 A. Yes. Of course, the length of the door frame to the
17 side here and along the top had been forced off and the most
18 of the damage occurred in this area. Of course, that's
19 where the dead bolt and the lock was.

20 Q. Is that basically what you saw when you came in through
21 the front door?

22 A. Yes, it is.

23 Q. Can you show the jury the damage?

24 A. Yes. If you can, lying right here is a length of the
25 door frame here, as well as right here.

1 Q. Okay. And that wasn't like that when you left for
2 work, was it?

3 A. No, it was not.

4 Q. What is that a picture of?

5 A. That's the back door. And, of course, you see the
6 deck. The stepping stones along the back of the house.

7 Q. Speak up a little bit more. I'm sorry about that.

8 A. Then you can also see -- this is the area that the
9 major damage occurred when the door was broken into or the
10 locks. Everything broke all the wood out.

11 Q. What's that a picture of?

12 A. That is a picture of my safe.

13 Q. And that's how it looked --

14 A. Yes.

15 Q. -- when you came home from work?

16 A. Yes.

17 Q. And is this the same?

18 A. The exact same, just standing in the middle of the back
19 bedroom looking into the closet.

20 Q. Okay. Thank you.

21 Did you keep a record of the guns that you had in that
22 safe?

23 A. Yes, I did.

24 Q. Okay. Will you tell the jury which guns were missing?

25 A. Yes. I have a number of firearms that are missing. A

1 Mossburg 12-gauge shotgun. A Savage .22 magnum rifle. A
2 Marlin 30/30 lever action. Remington Model 11, 20-gauge
3 shotgun. Remington Sportsman Model 48, a 20-gauge. Ithaca
4 double barrel shotgun. A Ruger, single six handgun. A
5 Mauser broom handle 9-millimeter handgun. And a Marlin
6 30/30 lever action, along with some other accessories,
7 scopes, holsters, etcetera.

8 Q. How many holsters were missing?

9 A. The two -- two were missing. Those were -- both had
10 firearm each in them.

11 Q. What about a leather sling for your shotgun?

12 A. Leather sling was on one of my hunting rifles, as well
13 as a scope was on my hunting rifle.

14 Q. Okay. What about cash? Were you missing any cash?

15 A. Originally -- originally we thought we had \$3,100 in
16 cash missing, and just probably thirty minutes after the law
17 enforcement folks processed the home, my wife was picking up
18 a few odds and ends in the back bedroom and apparently the
19 envelope that had the cash in it had been dropped on the
20 floor and was covered up by an empty gun case. So we
21 initially thought the money was missing, but we were able to
22 recover that.

23 Q. Where had the cash been before it was on the floor with
24 the stuff over it?

25 A. The cash was on the very top shelf in the very, very

1 back of the safe. And when we found it, it was lying in the
2 floor with the gun case, the empty gun case, kind of folded
3 up over top of it.

4 Q. Did you notify law enforcement that you found the
5 money?

6 A. We did immediately.

7 Q. If you would, tell the jury a little bit about these
8 guns. How did you come to collect all these guns and that
9 sort of thing?

10 A. I have been very fortunate. My parents and
11 grandparents have all been outdoor enthusiasts. And as such
12 over the years, literally the past ninety years, some of
13 those firearms have been purchased by my family and passed
14 down to me.

15 I was -- I received my firearms when my father passed
16 away in 2004, and that was the only thing that was left to
17 me, along with the gun safe, but several of these firearms
18 have been in my family for ninety plus years.

19 Q. Did one of the firearms mean something special to you
20 more than the rest?

21 A. Well, other than obvious the value of it and the
22 condition, my grandfather was in the Marines and had the
23 good fortune of picking up this firearm while in actual
24 combat and was able to bring that firearm home and that's
25 how we -- that came into our family.

1 Q. Okay. Did you speak with Deputy Torres when he came
2 out to your residence?

3 A. Yes, I did.

4 Q. Did you show him around your house?

5 A. Yes.

6 Q. Did Sergeant Gibson also come out to your house to
7 process the scene?

8 A. Yes.

9 Q. The same day as the incident?

10 A. Yes.

11 Q. After they processed the scene, did you notice any
12 other items missing?

13 A. At the time I didn't, but I later discovered that not
14 only did all my firearms were taken, but I also had a BB gun
15 taken as well.

16 Q. Okay. What was the name of that? What kind of gun was
17 it?

18 A. It was a Daisy.

19 Q. Okay. Did you also report that to law enforcement?

20 A. I did not report that. It's a BB gun that I had since
21 I was like thirteen and the value was very minimal and I did
22 not want to burden the county or the State with processing,
23 spend a lot of time on processing something that had such a
24 minimal value.

25 Q. Were you able to keep some of your guns?

1 A. Fortunately, yes. As I was telling you earlier, in my
2 excitement of hunting that day I had an 85 year old 16-gauge
3 shotgun that I had in my possession and that was with me
4 throughout the day. I also had a handgun under my bed and
5 my wife also had a handgun as well.

6 Q. Did you report these items to your insurance company?

7 A. I did, yes.

8 Q. Okay. What did they assess the value to be?

9 A. The assessment of value came out to be \$11,107.44.

10 Q. How much did they reimburse you?

11 A. I was reimbursed \$2,000.

12 Q. How come so little?

13 MR. DEJONG: Your Honor, I'm going to object to
14 that. I don't see any relevancy in that whatsoever. I
15 realize she has to prove value. We got what he didn't get.
16 I don't see any relevance for this jury in that.

17 THE COURT: What is the relevance?

18 MS. BARWICK: Your Honor, if we can approach?

19 THE COURT: Yes, ma'am.

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion)

22 BY MS. BARWICK:

23 Q. How much did your insurance policy allow, your
24 coverage?

25 A. Only the \$2,000.

1 Q. Okay. Is that what Allstate sent you for your claim?

2 A. Yes, it is.

3 MR. DEJONG: I don't object to pages one through
4 three. Again, I object to page four as to relevancy, Your
5 Honor.

6 THE COURT: Can I look at the document?

7 MS. BARWICK: Yes, sir.

8 THE COURT: It's admitted into evidence.

9 MS. BARWICK: State's Exhibit No. 4, Your Honor.

10 THE COURT: Exhibit 4.

11 MS. BARWICK: Thank you, Your Honor

12 BY MS. BARWICK:

13 Q. Besides the additional guns that you noticed that were
14 gone and besides the money that you found, did you notice
15 anything else after law enforcement left your residence?
16 A. I did. It was approximately I would say maybe twenty
17 or thirty minutes after the last law enforcement officer
18 left my home, I was basically kind of just walking around to
19 see if there was anything else that I may be missing. Quite
20 frankly I keep my yard in very, very clean, trimmed, and I
21 noticed that there was a piece of paper folded up just
22 beside my driveway lying in some grass and I knew that that
23 was out of place, because I just don't -- I don't have trash
24 and stuff like that in my yard. So I immediately went over,
25 as I was curious, and I picked up the piece of paper and

1 that is -- it had a name and a password on it. I felt that
2 it may be relevant to the case, so I immediately called law
3 enforcement and notified them that I had found something
4 else that may be of interest, and then an officer was
5 dispatched back to my residence and I handed over what I had
6 found.

7 Q. Is this the paper that you found?

8 A. It is, yes.

9 MR. DEJONG: Without objection, Your Honor.

10 MS. BARWICK: Exhibit No. 1, Your Honor.

11 THE COURT: Exhibit No. 1 is admitted without
12 objection. It may be published.

13 BY MS. BARWICK:

14 Q. When you found this paper in your yard, was it flat
15 like this or folded up?

16 A. It was folded up into a small square. It appeared that
17 it may have been folded up five or six times.

18 Q. Okay. Do you recognize this?

19 A. This appears to be a sketch of my driveway and home.

20 Q. It's not to scale again, right?

21 A. Not to scale.

22 MR. DEJONG: Without objection, Your Honor.

23 MS. BARWICK: State's Exhibit No. 2.

24 THE COURT: Exhibit 2 is admitted without
25 objection. It may be published.

1 BY MS. BARWICK:

2 Q. What is this right here?

3 A. That would be the -- that would be the boundary of

4 Stewart Gin Road.

5 Q. Okay. This way would be which town?

6 A. I'm sorry, I can't see where your pen is pointing.

7 Q. This side, that would go towards which town?

8 A. If you go in that direction, you would be going towards

9 Liberty.

10 Q. This direction?

11 A. You would be essentially going towards Six Mile.

12 Q. Where on this map, if you can show the jury, did you

13 find that piece of paper?

14 A. Okay. Right on that corner right there. It was like

15 right up against the driveway. And where I had last

16 trimmed, trimmed my grass, so there was a space of about

17 maybe three inches, or so, and that's where I found the

18 folded up piece of paper.

19 Q. This piece of paper?

20 A. That's correct.

21 Q. Do you recognize this man?

22 A. Yes, sir. Excuse me.

23 Q. That's okay.

24 A. I always say yes, sir when I see somebody that large.

25 Q. And is his name Detective Dow?

1 A. It is.

2 Q. Did he ever come out to your residence?

3 A. Yes, he did number of times.

4 Q. Okay. Would that have been the same day of the
5 incident, or after the incident?

6 A. To be honest with you, I don't recall it.

7 Q. Okay. That's fine.

8 Did you ever get your guns back?

9 A. No, I have not.

10 MS. BARWICK: That's all the State has for this
11 witness at this time.

12 THE COURT: Mr. DeJong, you may cross-examine the
13 witness.

14 MR. DEJONG: Thank you so much, Your Honor.

15 CROSS EXAMINATION BY MR. DEJONG:

16 Q. Mr. McSwain, do you have TV's in your house?

17 A. Yes.

18 Q. Do you have stereo equipment in your house?

19 A. Yes.

20 Q. Do you have jewelry in your house?

21 A. Yes.

22 Q. And there was money in the house, correct?

23 A. That is correct.

24 Q. And yet whoever burglarized your home --

25 Well, let me ask it a different way.

1 Was anything taken other than guns?

2 A. Not that I recall, no.

3 Q. I see. And you have described certainly some of those
4 guns as being collectors -- well, would you say they were
5 collectors items?

6 A. Not all, but most, yes, sir.

7 Q. All right. So certainly -- well, being collectors
8 items, they would be fairly -- what's the word I'm looking
9 for. I guess distinguishable. People would recognize them
10 as collectors items?

11 A. For those who were familiar with firearms --

12 Q. Yes.

13 A. -- that would be correct.

14 Q. Yes, sir.

15 And that type of weapon really to you and other people
16 is more valuable as a collectors items than anything else,
17 correct?

18 A. It has a -- they had practical uses and they were used
19 practically, but --

20 Q. Yes, sir. But, again, basically a collectors item?

21 A. They could be, yes, sir.

22 Q. Yes, sir.

23 Now, none of those guns were ever recovered, correct?

24 A. That's correct.

25 Q. All right. And, again so that I'm clear, whoever did

1 this came in the back door, right?

2 A. I don't know how they gained entrance. I'm assuming
3 the back door.

4 Q. The back door was the one that was all buggered up,
5 wasn't it?

6 A. Yes, sir.

7 Q. There was no damage to the front door, was there?

8 A. Not that I'm aware of, no.

9 Q. And so that I'm clear -- I'll try this, but I'm not
10 good with this, so bear with me. Well, I guess that's
11 covered up. Okay.

12 Now, would this be the front of your house?

13 A. That's correct.

14 Q. So the front of the house would face Stewart Gin Road?

15 A. It does, yes.

16 Q. All right. Now, you said I believe this way is going
17 towards Liberty, correct?

18 A. Yes, sir.

19 Q. And going towards Liberty, if you went down there
20 probably a little less than three miles you would find the
21 unemployment office, wouldn't you?

22 A. I would say that's accurate, yes.

23 Q. And actually the unemployment office is actually on
24 Summit Drive, I believe.

25 A. That's correct, yes.

1 Q. But Summit Drive -- as you are coming back towards your
2 house from the unemployment office, Summit Drive basically
3 turns into Stewart Gin Road?

4 A. It does, yes.

5 Q. Right.

6 So in front of your house is Stewart Gin Road. You go
7 down the road a little bit it turns into Summit Drive,
8 correct?

9 A. Correct.

10 Q. Now, so you have TV's in your house. They weren't
11 stolen? No TV's were stolen?

12 A. I had one television, not stolen, correct.

13 Q. Pardon me?

14 A. One television not stolen.

15 Q. Right.

16 You had other stereo equipment, other jewelry in the
17 house, none of that was stolen?

18 A. Correct.

19 Q. And not even money was stolen? It was left in the
20 house, right?

21 A. It was on the floor, correct.

22 Q. Yes. Okay.

23 Now, do you remember what the weather was like this
24 day?

25 A. As I recall, it was a -- being a mid April day

1 typically is sunny, fair weather, no rain, and probably a
2 slight breeze from the west.

3 Q. Okay. You say no rain? Are you sure about that?

4 A. No, I am not.

5 Q. Okay. Could there have been rain and thunderstorms
6 that day?

7 A. I don't recall.

8 Q. Okay. How about the wind? How was the wind? Do you
9 remember that?

10 A. Very light.

11 Q. All right. If I shared with you, would you agree with
12 me that there were gusts of wind up to 38 miles per hour
13 that day?

14 A. Would I agree with you?

15 Q. Uh-huh.

16 A. I would neither agree or disagree.

17 Q. You couldn't say?

18 A. I could not say for certain, no.

19 Q. All right. Would you agree or disagree that the wind
20 was blowing at ten miles per hour that day, normally?

21 A. I wouldn't be able to say one way or the other.

22 Q. And with gusts up to 38 miles an hour? You already
23 said you couldn't say one way or the other?

24 A. Correct.

25 Q. Now, your house -- this picture is not to scale? How

1 far is your house off of Stewart Gin Road?

2 A. I would say fifty to seventy yards.

3 Q. All right. Fifty to seventy yards?

4 A. Correct.

5 Q. Okay. So the you are saying some 210 feet?

6 A. Anywhere from 150 to 210 feet, correct.

7 Q. What is the composition of your driveway? Is it
8 concrete, asphalt? What is it?

9 A. Concrete.

10 Q. Okay. Now, Stewart Gin Road, is that a fairly traveled
11 road?

12 A. I would say so, yes.

13 Q. Quite a view vehicles come through there, correct?

14 A. Yes.

15 Q. And although you keep an immaculate yard, you have a
16 problem with people throwing garbage out, don't you?

17 A. Not a lot, no, sir.

18 Q. But it's happened?

19 A. It does happen, yes.

20 Q. Papers, bottles, cans, whatever?

21 A. Yes.

22 Q. All right. And the area surrounding --

23 Well, maybe I need to put the picture back up.

24 Okay. Stewart Gin Road, driveway concrete. What's on
25 each side of the driveway?

1 A. Well, right where Stewart Gin Road is, there is a state
2 maintenance ten to fifteen feet leeway that the state is
3 responsible for taking care of. So there are deep ditches
4 on each side of my driveway. There is a culvert and there
5 is a ditch that dips down and then goes up to my yard, and
6 on either side is grass.

7 Q. Okay. You said that you kept an immaculate yard, so
8 I'm presuming that grass was fairly short, was it not?

9 A. Actually it had not been recently cut. I would say it
10 was probably a couple of -- maybe three or four inches high.

11 Q. But certainly if there were gusts of wind at 38 miles
12 an hour, paper could be blowing across your yard?

13 A. Not from the road.

14 Q. Well -- now you came in -- you went to work. What time
15 did you go to work?

16 A. I initially started around 9:00, 9:30.

17 Q. Okay. And when did you come back in?

18 A. Well, that's when I went down the road a little piece,
19 saw the turkeys and returned back to my home.

20 Q. So that would have been between 9:00 and 9:30 then?

21 A. Approximately.

22 Q. Okay. So did you hunt all day?

23 A. Actually the hunt lasted for about thirty-five minutes,
24 or so.

25 Q. So you came back in about ten?

1 A. That's accurate, around ten.

2 Q. Okay. And what time did you leave again?

3 A. Probably within -- within five to ten minutes. Very
4 quickly.

5 Q. So you were out of the house again by 10:15?

6 A. I would say so, yes.

7 Q. All right. Now, you said that you returned about 4:30.
8 Are you sure of that?

9 A. That's pretty accurate. I got off work at I think
10 around five after four. It's about a twenty-five minute
11 drive for me.

12 Q. All right. Well, how long after you got home was it
13 before you called law enforcement?

14 A. I called law enforcement immediately.

15 Q. All right. The back door of your house --

16 And I realize this is obviously a flat drawing, so it's
17 a little bit hard to get the picture here, but your back
18 door, you would have to walk off of the driveway and then
19 back around the house to get to the back door, is that
20 correct?

21 A. Correct.

22 Q. All right. What is behind you, your property?

23 A. My property? My property is essentially one -- a
24 little over one acre, but directly behind my home a couple
25 of hundred yards or so, and you really can't see it even

1 during the wintertime with the leaves off it, but there is
2 another home further back in the woods.

3 Q. So that home back in the woods is about 200 yards away?

4 A. I would say 200 to 250, and that's from the back of the
5 house.

6 Q. Okay. So whoever removed those guns --

7 Well, let me back up. The front door when you got home
8 was still intact?

9 A. To my knowledge, yes.

10 Q. To your knowledge.

11 Was it locked?

12 A. I don't recall.

13 Q. All right. But no damage?

14 A. No damage that I could see, no.

15 Q. Right.

16 How far from the back end of the driveway to the back
17 door is it?

18 A. I would say fifteen, twenty feet.

19 Q. Okay.

20 A. The door is located approximately halfway between one
21 end of the house and the other. And so with the driveway
22 being on one end to say half way back is say fifteen, twenty
23 feet.

24 Q. And how many guns did you say were stolen?

25 A. I believe I have nine.

1 Q. It's a pretty good arm load, isn't it?

2 A. Pretty fair.

3 Q. Now, as far as who broke into your house, you don't
4 know, do you, Mr. McSwain?

5 A. I do not.

6 Q. Well, let me ask you this. Before April the 21st, or
7 on April the 21st, did you know Karl Lane?

8 A. No, sir.

9 Q. Had you ever laid eyes on him?

10 A. Not that I know of.

11 Q. Had he ever been in your house, to your knowledge?

12 A. Not to my knowledge, no.

13 Q. And I believe you said you don't -- or there are no
14 children living with you and your wife?

15 A. That's correct.

16 Q. Correct.

17 So no reason -- well, again, you just -- he was never
18 in your home, right?

19 A. No, sir.

20 Q. Actually I believe you shared with law enforcement that
21 there was a couple gold rings sitting out in plain view in
22 the house?

23 A. If you knew where they were, you could see them, but if
24 you didn't know where they were, you would walk right by
25 them.

1 Q. They were on an entertainment shelf, right?

2 A. That's correct.

3 Q. Is that where the TV was?

4 A. Yes.

5 Q. Okay. They weren't -- they didn't get gone?

6 A. No.

7 (Off the record)

8 (Back on the record)

9 BY MR. DEJONG:

10 Q. So law enforcement came out there. I guess Deputy
11 Torres was the first one that came out there?

12 A. Correct.

13 Q. All right. Did he walk around your house?

14 A. I don't recall that he walked to one side of the house,
15 but, yes, he did survey the area.

16 Q. All right. Well, in surveying that area, did he go to
17 the front door?

18 A. Pardon me?

19 Q. Did he go to the front door?

20 A. Yes.

21 Q. Did he pull his car in the driveway?

22 A. Yes.

23 Q. Did he pull the car in the driveway all the way up?
24 Did you have a vehicle in that driveway?

25 A. I did. I was parked -- I was parked right up next to

1 the house, and --

2 Q. You were parked next to the house.

3 I guess this is kind of a turnaround right in here?

4 A. Yes, it is.

5 Q. Okay. So you would have been parked here next to the
6 house?

7 A. I was actually parked right here. It allows for two
8 vehicles to be parked. And traditionally I park in this
9 area and my wife parks in that area. Detective -- excuse
10 me, Officer Torres parked somewhere in this area right here.

11 Q. Okay. All right.

12 Well, when -- on April the 24th -- excuse me, April the
13 21st of 2011, did any officers come to your home that day,
14 other than Deputy Torres?

15 A. Officer Gibson did too.

16 Q. Pardon?

17 A. Officer Gibson came in to process the scene.

18 Q. All right. And I note in some of the pictures --

19 Well, let me get a little more specific for the record
20 here.

21 What has been marked as State's Exhibit No. 12, and I
22 will show it to you, Mr. McSwain, the bottom lower left hand
23 picture, that is a copy of the -- or, excuse me, that is a
24 picture of your gun safe, right?

25 A. Correct.

1 Q. And that's how you found it?

2 A. Correct.

3 Q. You didn't bother it? You didn't tamper it?

4 A. No.

5 Q. You didn't do anything to it?

6 A. No.

7 Q. All right. Now, I think there was another picture of
8 the gun safe on that exhibit as well, is there not?

9 A. Yes, sir, right here.

10 Q. And that one appears the door has been closed?

11 A. Well, actually -- are you referring to the closet door
12 itself?

13 Q. Well, I'm talking about the safe door.

14 A. The safe door was open as well.

15 Q. Okay. It's still open in that picture as well?

16 A. Yes, sir, it is.

17 Q. And that was in a closet, right?

18 A. Correct.

19 Q. All right. And I believe you have already testified
20 that the -- you didn't lock the gun safe, correct?

21 A. That is correct. I was kind of wound up over the
22 hunting and all of that stuff and in a hurry to get back to
23 work and I just forgot to lock it.

24 Q. All right. And then the closet door. Was the closet
25 door closed when you left?

1 A. I do not recall.

2 Q. Well, when good Officer Gibson came out to your
3 property, did he walk around the property?

4 A. I was introduced to Officer Gibson when he came in
5 through the front door. I did not know that he had arrived.
6 And he had introduced himself and he indicated what his
7 purpose there was he was there for. And I think we both
8 walked back to where the gun safe -- I showed him where the
9 gun safe was in the room, and then he told me he was going
10 to start his processing. So in order to allow him to do his
11 job, I exited my home and went out on the front porch or
12 walkway.

13 Q. Well, from the time Officer Torres got there to the
14 time Officer Gibson got there, how much time went by?

15 A. I don't recall exactly.

16 Q. Okay. Well, while Officer Torres was waiting for
17 Officer Gibson, did Officer Torres do anything to secure
18 this area, your house, inside, the outside, or anything
19 else?

20 A. There was -- I didn't -- I don't -- I mean, it was just
21 myself and he, so, no, there was no roping off or anything,
22 if that's what you are suggesting.

23 Q. Right, that's what I'm asking.

24 There was -- there was no -- nothing secured. It was,
25 like you say, you and him, but nobody went around trying to

1 see what was there or what wasn't there, especially on the
2 outside, right?

3 A. At that time we were just concentrating on the contents
4 of the safe, what had been taken, etcetera.

5 Q. Okay. Now, you say the officers left.

6 And then you went walking around your yard and that's
7 when you say you found State's Exhibit No. 1, correct?

8 A. Yes.

9 Q. All right. So what time did you supposedly find
10 State's Exhibit No. 1?

11 A. I would say it was within twenty minutes, or so, after
12 the last officer left.

13 Q. How long were they there?

14 A. I don't remember how long they were there.

15 Q. Let's talk about your neighbors just a little bit.

16 How close is your closest neighbor?

17 A. Within fifty yards.

18 Q. 150 feet?

19 A. Approximately, yes.

20 Q. Okay. Almost as far away from your house as your house
21 is from Stewart Gin Road?

22 A. I would say that's reasonable, yes.

23 Q. All right. Now, is that on the same side of the
24 Stewart Gin Road as you are or on the opposite side, or what
25 side?

1 A. It's on the Stewart Gin side, on the west -- excuse me,
2 the east side of the home. There is a --

3 Q. Would that be towards the Liberty side or towards the
4 Six Mile side?

5 A. That's towards the Liberty side.

6 Q. All right.

7 Now, between -- and that would be your closest.

8 What's your next closest one out there after that one?

9 A. Almost directly and to the right of my home across the
10 street of Stewart Gin.

11 Q. And how far is that from your house?

12 A. Probably seventy-five to a hundred yards.

13 Q. I'm sorry?

14 A. Seventy-five to a hundred yards.

15 Q. Okay. Roughly 300 feet?

16 A. I would say so.

17 Q. About a football field?

18 A. (Shaking head yes).

19 Q. Okay.

20 (Off the record)

21 (Back on the record)

22 BY MR. DEJONG:

23 Q. Thank you so much, Mr. McSwain.

24 THE COURT: You may redirect the witness.

25

1 REDIRECT EXAMINATION BY MS. BARWICK:

2 Q. Was the paper wet or dry when you found it?

3 A. The paper was dry.

4 Q. Can you see your neighbors behind you from your
5 residence?

6 A. Only in the wintertime.

7 Q. And why is that?

8 A. That's when all of the foliage from the trees is down.
9 And, again, you can barely see the house even in the
10 wintertime.

11 Q. What about in April?

12 A. April --

13 Q. April 21st.

14 A. By that time there is so many leaves on the trees you
15 can't see the home.

16 MS. BARWICK: No further questions.

17 MR. DEJONG: Just one followup, Your Honor, if I
18 may.

19 RECROSS EXAMINATION BY MR. DEJONG:

20 Q. If it wasn't raining that day, what is the significance
21 of that paper being dry when you found it?

22 MS. BARWICK: Your Honor, I'm going to object. He
23 doesn't have to know the significance of my question.

24 MR. DEJONG: Well, they are making a big deal that
25 the paper is dry. I want to know why that's such a big

1 deal. If it wasn't --

2 THE COURT: If he knows. The solicitor asked the
3 question. If he knows the answer to that, I'm allow him to
4 answer the question.

5 BY MR. DEJONG:

6 Q. Why did you take note that the paper was dry if it
7 wasn't raining that day?

8 A. I'm sorry?

9 Q. Why did you take note that that paper was dry if it
10 wasn't raining that day?

11 A. I'm not quite sure I understand your question, sir.

12 Q. She asked you if the paper was dry.

13 A. Yes, sir.

14 Q. You said it was dry.

15 A. Correct.

16 Q. Well, if it hadn't been raining, it would be dry,
17 wouldn't it?

18 A. I assume so.

19 Q. Well, the point of that is then if it hadn't been
20 raining, why did you make a point to say the paper was dry?

21 A. I was asked if it was dry and I stated that it was.

22 MR. DEJONG: All right. Thank you, sir.

23 THE COURT: Thank you, sir. You may step down.

24 MS. BARWICK: Judge.

25 THE COURT: Yes, ma'am.

1 MS. BARWICK: Briefly.

2 REDIRECT EXAMINATION BY MS. BARWICK:

3 Q. I think Mr. DeJong --

4 Did you testify that you knew it didn't rain, or that
5 you didn't know if it rained or didn't rain?

6 A. I believe I testified that I didn't know if it had
7 rained or not.

8 MS. BARWICK: Thank you, Your Honor. Nothing
9 further.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 MR. DEJONG: No objection to him being excused,
13 Your Honor.

14 THE COURT: Without objection, he may be excused,
15 if he chooses to stay.

16 Mr. Foreman, ladies and gentlemen, we may have
17 time for another witness, but there is a -- during our
18 preliminary discussions there is a brief matter of law that
19 we need to take care of sometime during the course of the
20 trial. I think now would be the time to take care of that,
21 so I'm going to excuse you now while we work a little
22 longer.

23 We will be ready to start back at nine o'clock in
24 the morning. If you will be in your jury room then, we will
25 be ready to proceed and the State can call its next witness.

1 departs.

2 (The following takes place outside the presence of
3 the jury panel)

4 MR. DEJONG: Would Your Honor entertain a short
5 break before we start this?

6 THE COURT: Very short. Let's see if we can't --

7 MR. DEJONG: Yes, sir.

8 THE COURT: -- get started about five after five,
9 okay?

10 MR. DEJONG: Thank you.

11 THE COURT: Have the witness ready to go then.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: All right. We are now ready to have a
15 hearing, a Jackson v. Denno, as to the admissibility of the
16 statement, I understand. I will be glad to hear whatever
17 witnesses that you have, Ms. Barwick.

18 MS. BARWICK: Thank you, Your Honor.

19 The State would call Detective Ben Dow to the
20 stand.

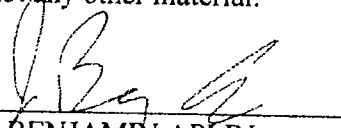
21 DETECTIVE BEN DOW, having been first duly sworn,
22 testified as follows:

23 THE CLERK: If you would have a seat and state
24 your name for the record.

25 THE WITNESS: Benjamin Dow.

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 

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ATTORNEY FOR RESPONDENT

February 26, 2013

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KARL RYAN LANE,

APPELLANT

Appellate Case No. 2012-207787

SECOND SUPPLEMENTAL
RECORD ON APPEALDAYNE C. PHILLIPS
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1 THE COURT: Ladies and gentlemen, we are now ready
2 to select a jury for the trial of the next case that has
3 been presented.

4 The indictments that are placed before me charge
5 Mr. Karl Ryan Lane with two offenses.

6 One indictment says that on or about the 21st of
7 April of last year, 2011, that Mr. Lane willfully and
8 unlawfully entered certain property of Mark Todd McSwain on
9 in Liberty, without
10 consent and with the intent to commit a crime therein, and
11 that he had armed himself with a firearm. That's
12 constituting burglary in the first degree.

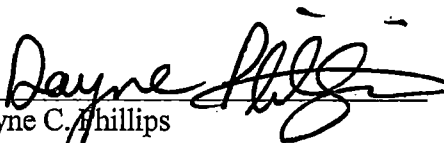
13 He's also charged on that same day of April 21st,
14 2011, with feloniously taking and carrying away certain
15 personal property of Mr. McSwain, that being firearms, total
16 value more than \$10,000, with the intent to permanently
17 deprive the lawful owner of the use of that property
18 permanently.

19 Mr. Lane, he's entered a plea of not guilty to
20 both of these charges. And, of course, that places the
21 burden on the State to prove his guilt beyond a reasonable
22 doubt. He is, as other all individuals charged with any
23 crime in Pickens County, in South Carolina, and America,
24 presumed innocent until the State meets that burden of proof
25 beyond a reasonable doubt.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 15th, 2013


Dayne C. Phillips
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KARL RYAN LANE,

APPELLANT

Appellate Case No. 2012-207787

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in refusing to grant a directed verdict where the evidence merely raised the suspicion of Appellant's guilt, and the State failed to present substantial circumstantial evidence that Appellant was guilty of first-degree burglary?
- II. Did the trial court err in refusing to charge the jury on the traditional circumstantial evidence definition as provided in *State v. Edwards*,¹ thereby confusing the jury as to the relation of circumstantial evidence to the determination of Appellant's guilt?

¹ *State v Edwards*, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989) *abrogated by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004).

STATEMENT OF THE CASE

On January 24, 2012, Appellant Karl Ryan Lane was indicted by the Pickens County Grand Jury for (1) first-degree burglary and (2) grand larceny. R. 165-166.

On January 25, 2012, Appellant proceeded to trial before the Honorable G. Edward Welmaker and a jury. R. 1. Appellant was represented by John Dejong, and the State was represented by Jennie Barwick.

On January 26, 2012, the jury found Appellant (1) guilty of first-degree burglary and (2) not guilty of grand larceny. R. 148, ll. 15-23. The trial court then sentenced Appellant to 215 months imprisonment. R.153, l. 24 – 154, l. 2.

This appeal follows.

STATEMENT OF FACTS

Relevant Facts

At trial, the State sought to prove that on April 21, 2011, Appellant “willfully and unlawfully entered certain property of Mark Todd McSwain . . . without consent and with the intent to commit a crime therein, and that he had armed himself with a firearm.” Second Supplemental Record on Appeal (Supp. II R.) 1, ll. 7-11. The State also intended to prove that Appellant had “feloniously [taken] and carr[ied] away certain personal property of Mr. McSwain, that being firearms, total value more than \$10,000, with the intent to permanently deprive the lawful owner of the use of that property permanently.” Supp. II. R. 1, ll. 13-18.

Mark McSwain

Mark McSwain stated that he lives “relatively out in the country” and that his closest neighbor lives “maybe a hundred yards [away from his house] at the most.” Supplemental Record on Appeal (Supp. R.) 2, ll. 17-22. McSwain recalled that on April 21, 2011, he forgot to lock the safe in his home, which contained “all of [his] firearms and ammunition.” Supp. R. 3, ll. 17-25. McSwain further noted that he came home from work “around 4:30 [p.m.] or so” and “right off the bat [he] noticed that [the] back door was open and there was a number of pieces of wood . . . lying on the floor in the kitchen.” Supp. R. 4, l. 14 – 5, l. 4.

McSwain then revealed that he “walked through the house real quickly just to see what, if anything, ha[d] been taken” and that he “immediately called the sheriff’s department” after finding his gun safe empty. Supp. R. 5, ll. 5-16. McSwain maintained that he had “a number of firearms” stolen along with two holsters, a leather sling, and a scope. SUPP. R. 9, l. 21 – 10, l. 13. McSwain noted that his insurance company assessed the value of the stolen items at “\$11, 107.44.” Supp. R. 13, ll. 6-9. McSwain further noted:

It was approximately I would say maybe twenty or thirty minutes after the last law enforcement officer left my home . . . I noticed that there was a piece of paper folded up just beside my driveway lying in some grass . . . So I immediately went over, as I was curious, and I picked up the piece of paper and . . . it had a name and a password on it. I felt that it maybe relevant to the case, so I immediately called law enforcement and . . . an officer was dispatched back to my residence and I handed over what I had found.

Supp. R. 14, l. 16 – 15, l. 6.

On cross-examination, McSwain admitted he did *not* know who broke into his home and that the police have not recovered any of the stolen guns. Supp. R. 18, ll. 1-2; SUPP. R. 26, ll. 3-5. McSwain also admitted that his closest neighbor lives is approximately one-hundred and fifty feet away from his house. Supp. R. 31, ll. 9-17. McSwain indicated that the guns in the safe were the only items taken from the home and that an unemployment office is located less than three miles from his home. Supp. R. 18, l. 1 – 19, l. 22.

Pamela Holladay

Pamela Holladay, McSwain's neighbor, admitted that she lives more than a football field away from McSwain's house. R. 7, ll. 15-20. Holladay stated, "[A]s I was cutting grass, I noticed a car pull in [McSwain's] driveway . . . it's very rare that you see many cars over in their driveway, especially when they are not home, and I thought it was odd, so I just kind of kept my eye on it." R. 8, ll. 7-12. Holladay asserted that she saw "a red to burgundy colored four-door car with a paper tag" and "on the front passenger panel it was like a gray primer panel." R. 8, ll. 19-23. Holladay also claimed that she "could tell it was a Mitsubishi Gallant-type car." R. 9, ll. 1-2.

Furthermore, Holladay maintained, "I saw a person going from the front door of [McSwain's] residence to the vehicle, back to the front door." R. 9, ll. 10-13. Holladay

recalled, “I believe that when - - when I first observed, there was just one person [in the car, and] . . . when the car was getting ready to leave, there were two people in the vehicle, getting in the vehicle.” R. 10, ll. 11-14. Holladay admitted that she “*couldn’t say for sure*” whether the second person even went to the front or back door of the home. R. 10, ll. 17-19 (emphasis added).

The Solicitor also asked Holladay, “Were you close enough to see their faces?” and Holladay replied, “*No, all I could tell was that the person that I observed was wearing a black shirt and blue jeans and had a smaller build.*” R. 10, ll. 20-23 (emphasis added). Notably, Holladay was unable to identify Appellant from a photo lineup the day after the incident occurred. R. 12, ll. 3-19.

On cross-examination, Holladay admitted that her house is located on a hill “[a] pretty good ways” from the main road and has a “[p]retty long driveway.” R. 15, ll. 1-3. Holladay reiterated that she does *not* know who the two people were in the red car. R. 16, ll. 9-11. Holladay further noted that she told law enforcement the red car pulled partially into McSwain’s driveway around 3:20 p.m. on the day the guns were stolen. R. 17, ll. 1-12.

Deputy Michael Torres

Deputy Michael Torres of the Pickens County Sheriff’s Office recalled that he arrived to McSwain’s house at approximately 5:30 p.m. on April 21, 2011. R. 18, l. 15 – 20, l. 5. Deputy Torres confirmed that whoever broke into McSwain’s house entered through the back door of home. R. 21, ll. 16-25. Deputy Torres also stated that he returned to McSwain’s house around 8:00 p.m. because McSwain found a piece of paper in his yard. R. 22, ll. 17-25.

On cross-examination, Deputy Torres admitted that he did *not* find any tire tracks, footprints, or papers when he searched McSwain's property. R. 26, l. 22 – 27, l. 7. Deputy Torres also admitted that the paper could have arrived in McSwain's yard *after* 6:00 p.m. because he did not see the paper during his search for evidence. R. 30, ll. 20-25. Deputy Torres then agreed that the unemployment office is located "approximately about two miles" away from McSwain's house and that "[t]he paper was found close to eight o'clock [at night]." R. 28, l. 13 – 31, l. 13.

Kenneth Cole

Kenneth Cole, the Grandfather of Appellant's child, testified that Detective Dow came by his house on April 22, 2011, and that he was not surprised the address Appellant had listed with the DMV is "the [neighboring] mobile home where [Appellant] and [his] daughter resided at one time." R. 35, ll. 3-12. Mr. Cole also revealed that Appellant did *not* own a car and that he had seen Appellant driving his daughter's red Mitsubishi Gallant on occasion. R. 36, ll. 5-17. Mr. Cole was "not real sure" where his daughter had been April 22, 2011, and agreed the red car had gray primer on the fenders and possibly a paper tag. R. 36, l. 20 – 37, l. 7.

On cross-examination, Mr. Cole stated that Detective Dow did *not* find any guns or tools commonly used in burglaries during his search through the car and its trunk. R. 41, ll. 2-3; R. 45, ll. 1-25.

Kimberly Cole

Kimberly Cole, Kenneth Cole's wife, also recalled that Detective Dow came to her home on April 22, 2011, looking for Appellant and that she initially believed Appellant was not inside the home. R. 48, ll. 1-11. Mrs. Cole testified, "Most of the time my daughter

drove [the red Mitsubishi Gallant that was in her driveway to work].” R. 48, ll. 15-23. Mrs. Cole also testified that she believed Appellant went to the unemployment office on April 21, 2011, but that she had “no idea” who drove the red car on April 21, 2011. R. 49, l. 15 – 50, l. 1. Mrs. Cole further stated that she later informed Appellant that Detective Dow wanted to speak with him. R. 50, ll. 17-24.

On cross-examination, Mrs. Cole revealed that Appellant drove her “’99 Yukon” to the unemployment office. R. 53, l. 18 – 54, l. 3; R. 59, ll. 23-25. Mrs. Cole also testified that she was home in the early afternoon when Appellant returned from the unemployment office driving the ’99 Yukon. R. 54, ll. 21-25. Mrs. Cole further recalled that she *never* saw any guns in her car and that she has *never* seen Appellant with a gun. R. 55, ll. 1-10.

Sergeant Brian Gibson

Sergeant Brian Gibson of the Pickens County Sheriff’s Office testified that he works in the crime scene division and that he responded to McSwain’s home on April 21, 2011. R. 61, l. 6 – 62, l. 1. Officer Gibson testified that he failed to find any fingerprints after he searched McSwain’s home. R. 62, l. 21 – 67, l. 20. Officer Gibson admitted during cross-examination that the only place he “dusted” for fingerprints at McSwain’s house was the gun safe. R. 69, l. 1 – 72, l. 21.

Shae Rozakos

Shae Rozakos, “the executive director of the Work Link Work Force Investment Corporation,” stated that the “computer records [indicate Appellant] was in the facility that’s referred to commonly as the unemployment office [on April 21, 2011].” R. 77, ll. 6-17. Rozakos revealed that Appellant completed the self-registration in the unemployment office at 1:21 p.m. and logged out of the computer after “being referred to two jobs at 1:31 p.m.”

R. 78, l. 6 – 79, l. 1.

On cross-examination, Rozakos admitted that she did not know what vehicle Appellant drove to the unemployment office, or where Appellant went after he left the unemployment office. R. 79, ll. 14-22.

Detective Benjamin Dow

Detective Benjamin Dow of the Pickens County Sheriff's Office indicated that he works in the criminal investigations division and that he was the lead detective in this case. R. 80, l. 7 – 81, l. 3. Detective Dow stated that he went to the unemployment office and confirmed that the paper found in McSwain's yard came from that office. R. 83, l. 9 – 84, l. 22. Detective Dow recalled that he went to the address listed on Appellant's DMV records and saw "burgundy four-door Mitsubishi Gallant" with "a primer gray fender" in the driveway. R. 85, l. 20 – 86, l. 4.

Detective Dow maintained that Mr. Cole came out of the house and told him that Appellant was not inside the home. R. 88, ll. 13-16. Detective Dow stated that he then spoke to Mrs. Cole and she also told him that Appellant was not inside the home. R. 90, ll. 8-11. Detective Dow maintained Mrs. Cole informed him that Appellant and her daughter drove the red car to the unemployment office the previous day. R. 90, ll. 12-17. Detective Dow further claimed that after Appellant came outside to speak to him, Appellant "stated that him and his girlfriend . . . had driven the car the day before[.]" R. 93, ll. 5-17.

Furthermore, Detective Dow revealed that Appellant admitted the unemployment paper was his, but denied any knowledge of how the paper was found in McSwain's yard. R. 93, l. 20 – 94, l. 7. Detective Dow stated that he then arrested Appellant based on this information. R. 94, l. 18. In contrast to Mrs. Cole's testimony and over defense counsel's

objection, Detective Dow claimed that Mrs. Cole told him Appellant did initially come outside because Appellant “was scared and didn’t want to talk to [him].” R. 96, ll. 5-13.

On cross-examination, Detective Dow admitted that a black Yukon was in the Cole’s driveway along with the red car. R. 104, ll. 2-9. Detective Dow also admitted that he did *not* know what time Appellant left the unemployment office and that the unemployment office is located approximately two-to-three miles away from McSwain’s home. R. 104, l. 10 – 105, l. 4. Detective Dow agreed that McSwain’s neighbor failed to provide a description of the paper tag on the red car and that the only other evidence linking Appellant to the crime was the paper found in McSwain’s yard approximately five hours after the incident occurred. R. 106, ll. 1-3; R. 114, l. 16 – 115, l. 4.

Motion for a Directed Verdict

At the close of the State’s case, defense counsel moved for a directed verdict. R. 119, ll. 16-17. Defense counsel argued, “This is purely a circumstantial evidence case” and cited *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011), as controlling authority. R. 119, l. 18 – 120, l. 21. Defense counsel also cited *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011) and *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001), in support of his motion. Defense counsel also argued that the State failed to present *any* evidence placing Appellant inside McSwain’s home on April 21, 2011. R. 122, ll. 6-10. Defense counsel further argued:

The only proof that I submit the State has presented in this case is that [Appellant] was in the vicinity on April the 21st where this alleged burglary - - or this burglarly occurred. I think *the State has to prove more than the fact that he was simply in the vicinity*. . . . The neighbor could not make any identification. . . . Your Honor, *at best [the evidence] arises to a mere suspicion*, and I would submit that [] is not sufficient for this case to go to the jury.

R. 124, l. 15 – 125, l. 3 (emphasis added).

The trial court denied the motion for a directed verdict and stated: “I disagree with you that [*State v. Odems*] was more substantial than this case. . . . I believe there is sufficient and substantial circumstantial evidence with the direct evidence that we have to allow this case to go to the jury[.]” R. 126, l. 11 – 127, l. 8. Defense counsel subsequently renewed his motion for a directed verdict, and the trial court denied the motion. R. 128, ll. 18-21.

Circumstantial Evidence Jury Instruction

In light of *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011), defense counsel challenged the validity of the language in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which states the “law makes absolutely no distinction between direct and circumstantial evidence” based on the South Carolina Supreme Court’s reliance on “the traditional circumstantial evidence definition.” R. 129, l. 11 – 131, l. 10. Specifically, defense counsel argues that the trial court should charge the jury with the following:

[I]f the State relies on circumstantial evidence to prove its case, the jury may not convict the defendant, unless every circumstance relied upon [by] the State to be proven beyond a reasonable doubt and all the circumstances proven be consistent with each other and taken together point conclusively to the guilt of the accused, to the exclusion of every other reasonable hypothesis.

R. 130, ll. 12-19.

In response, the trial court denied the defense counsel’s request to charge the traditional language regarding the relation of circumstantial evidence to the determination of a defendant’s guilt and stated:

I had the same thought that you had in reading the *Odems* case analysis that you had of *Grippon* and some of the other cases. As I read *State v. Cherry*, I believe the holding in that

case on a split decision pretty much to the effect that trial judges are to follow the Grippon charge. I'll do - - I'll uphold the law as I understand it based on those cases. Having this fresh case [the South Carolina Supreme Court] didn't say that we have a new date, so your request is well noted and I'll not charge that.

R. 132, ll. 7-17. After instructing the jury on direct evidence, the trial court charged the jury on circumstantial evidence:

Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It's evidence, in other words, which immediately establishes collateral facts from which the main fact may be inferred. It's based on inference and not on personal knowledge or observation. *The law makes absolutely no distinction between the weight or the value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.*

R. 137, ll. 11-21 (emphasis added). When the trial court finished charging the law, defense counsel renewed his request for the circumstantial evidence charge. R. 146, ll. 8-11.

Motion for a New Trial

The jury ultimately found Appellant guilty of first-degree burglary and not guilty of grand larceny. R. 148, ll. 15-19. Defense counsel subsequently moved for a new trial. R. 149, l. 20 – 150, l. 19. The State replied, "Your Honor, the State doesn't have to prove that the defendant actually committed a crime, just that the defendant intended to commit a crime, and that's what the jury found him guilty of." R. 150, ll. 22-25.

This appeal follows.

ARGUMENT

- I. The trial court erred in refusing to grant a directed verdict where the evidence merely raised the suspicion of Appellant's guilt, and the State failed to present substantial circumstantial evidence that Appellant was guilty of first-degree burglary.**

At the close of the State's case, defense counsel moved for a directed verdict. R. 119, ll. 16-17. Defense counsel argued, "This is purely a circumstantial evidence case" and cited *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) as controlling authority. R. 119, l. 18 – 120, l. 21. Defense counsel also cited *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011) and *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) in support of his motion. Defense counsel also argued that the State failed to present *any* evidence placing Appellant inside McSwain's home on April 21, 2011. R. 122, ll. 6-10. Defense counsel further argued:

The only proof that I submit the State has presented in this case is that [Appellant] was in the vicinity on April the 21st where this alleged burglary - - or this burglarly occurred. I think *the State has to prove more than the fact that he was simply in the vicinity*. . . . The neighbor could not make any identification. . . . Your Honor, *at best [the evidence] arises to a mere suspicion*, and I would submit that [] is not sufficient for this case to go to the jury.

R. 124, l. 15 – 125, l. 3 (emphasis added).

The trial court denied the motion for a directed verdict and stated: "I disagree with you that [*State v. Odems*] was more substantial than this case. . . . I believe there is sufficient and substantial circumstantial evidence with the direct evidence that we have to allow this case to go to the jury[.]" R. 126, l. 11 – 127, l. 8. Defense counsel subsequently renewed his motion for a directed verdict, and the trial court denied the motion despite the State's failure to present substantial circumstantial evidence of Appellant's guilt. R. 128, ll. 18-21.

The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *see also In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”). When considering a motion for directed verdict of acquittal, “the trial court is concerned the existence or non-existence of evidence, not its weight.” *Brown*, 360 S.C. at 586, 602 S.E.2d at 395.

The South Carolina Supreme Court “has repeatedly affirmed the principle that when the State fails to produce *substantial circumstantial evidence* that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (emphasis added). In *Odems*, the Court cited *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), and *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001), as “jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence.” *Id.* Specifically, the trial court “should grant a directed verdict motion when the evidence *merely raises a suspicion* that the accused is guilty.” *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (emphasis added) (citation omitted).

“Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *Lollis*, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only “if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the

accused or from which his guilt may be fairly and logically deduced.” *Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

In this case, the evidence merely raised the suspicion of Appellant’s guilt, as the evidence against Appellant was entirely circumstantial. Notably, there is no physical evidence to support the offense charged, and McSwain’s neighbor admitted she was not close enough to see the faces of the two people in the red car and she was unable to identify Appellant from a photo lineup. R. 10, ll. 20-23; R. 12, ll. 3-19; R. 16, ll. 9-11; R. 166, l. 21 – 171, l. 20. McSwain also admitted he did *not* know who broke into his home and that the police had not recovered any of the stolen guns. Supp. R. 18, ll. 1-2; Supp. R. 26, ll. 3-5. Similar to the defendant’s fingerprint in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the paper found in McSwain’s yard established *only* that Appellant had been to the unemployment office two miles away from McSwain’s home on April 21, 2011, because the State failed to present *direct* evidence that Appellant was at the scene of the crime.

The responding officer, Deputy Torres, admitted that he did *not* find any tire tracks, footprints, or papers when he searched McSwain’s property. R. 26, l. 22 – 27, l. 7. Deputy Torres also admitted that the paper could have arrived in McSwain’s yard *after* 6:00 p.m. because he did not see the paper during his search for evidence. R. 30, ll. 20-25. Deputy Torres then agreed that the unemployment office is located “approximately about two miles” away from McSwain’s house and that “[t]he paper was found close to eight o’clock [at night].” R. 28, l. 13 – 31, l. 13.

Mrs. Cole testified that she believed Appellant went to the unemployment office on April 21, 2011, but that she had “no idea” who drove the red car on April 21, 2011. R. 49, l. 15 – 50, l. 1. Mrs. Cole also revealed that Appellant drove her “’99 Yukon” to the unemployment office. R. 53, l. 18 – 54, l. 3; R. 59, ll. 23-25. Mrs. Cole recalled that Appellant returned home from the unemployment office early in the afternoon driving the ’99 Yukon. R. 54, ll. 21-25. Mrs. Cole further noted that she *never* saw any guns in her car and that she has *never* seen Appellant with a gun. R. 55, ll. 1-10.

Officer Gibson testified that he failed to find any fingerprints after he searched McSwain’s home. R. 62, l. 21 – 67, l. 20. “[T]he executive director of the Work Link Work Force Investment Corporation,” Rozakos, admitted that she did not know what vehicle Appellant drove to the unemployment office, or where Appellant went after he left the unemployment office. R. 77, l. 6 – 79, l. 22. The only relevant information Rozakos revealed was that Appellant completed the self-registration in the unemployment office at 1:21 p.m. and logged out of the computer after “being referred to two jobs at 1:31 p.m.” R. 78, l. 6 – 79, l. 1.

Detective Dow recalled that Appellant admitted the unemployment paper was his, but denied any knowledge of how the paper was found in McSwain’s yard. R. 93, l. 20 – 94, l. 7. Detective Dow agreed that a black Yukon was in the Cole’s driveway along with the red car. R. 104, ll. 2-9. Detective Dow also admitted that he did *not* know what time Appellant left the unemployment office and that the unemployment office is located approximately two-to-three miles away from McSwain’s home. R. 104, l. 10 – 105, l. 4. Detective Dow further agreed that McSwain’s neighbor failed to provide a description of the paper tag on the red car and that the only other evidence linking Appellant to the crime was

the paper found in McSwain's yard approximately five hours after the incident occurred. R. 106, ll. 1-3; R. 114, l. 16 – 115, l. 4.

In sum, the evidence against Appellant is unequivocally circumstantial and does nothing more than raise the mere suspicion of Appellant's guilt. *See Odems*, 395 S.C. at 586, 720 S.E.2d at 50. The evidence relied upon by the State does not amount to substantial circumstantial evidence reasonably tending to prove Appellant's guilt, or from which his guilt may be fairly and logically deduced. *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777. Accordingly, the trial court erred in refusing to grant a directed verdict where the evidence merely raised the suspicion of Appellant's guilt, and the State failed to present substantial circumstantial evidence that Appellant was guilty of first-degree burglary. *See In re Winship*, 397 U.S. at 364, 90 S.Ct. at 1073.

II. The trial court erred in refusing to charge the jury on the traditional circumstantial evidence definition as provided in *State v. Edwards*, thereby confusing the jury as to the relation of circumstantial evidence to the determination of Appellant's guilt.

The purpose of jury instructions is to enlighten the jury as to applicable law so that a just, fair and proper verdict can be reached. See *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987); see also *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) ("The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict."). The South Carolina Supreme Court has held that it is error to give instructions which are calculated to confuse or mislead a jury. *Blurton*, 352 S.C. at 208, 573 S.E.2d at 804 (quoting *Leonard*, 292 S.C. at 137, 355 S.E.2d at 273). The law to be charged must be determined from the evidence presented at trial. *Id.*; see also *State v. Lindler*, 276 S.C. 304, 307, 278 S.E.2d 335, 337 (1981).

In a criminal case, the judge must charge on all material issues raised by the indictment and evidence. See *State v. Fair*, 209 S.C. 439, 445, 40 S.E.2d 634, 637 (1946). It is reversible error to decline a criminal defendant's requested jury instruction where it (1) is a correct statement of the law, (2) was not substantially covered by other instructions, and (3) was important enough to the case that its omission impaired the defendant's ability to defend himself. *United States v. Frazier-El*, 204 F.3d 553, 562 (4th Cir. 2000) (quoting *United States v. Queen*, 132 F.3d 991, 1000 (4th Cir. 1997)); see also *United States v. Dornhofer*, 859 F.2d 1195, 1199 (4th Cir. 1988), *cert. denied*, 490 U.S. 1005 (holding that a trial court may not refuse a defense theory instruction if it has evidentiary support and is an accurate statement of the law).

In this case, in light of *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011), defense counsel challenged the validity of the language in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d

462 (1997), which states the “law makes absolutely no distinction between direct and circumstantial evidence” based on the South Carolina Supreme Court’s reliance on “the traditional circumstantial evidence definition.” R. 129, l. 11 – 131, l. 10. Specifically, defense counsel argues that the trial court should charge the jury with the following:

[I]f the State relies on circumstantial evidence to prove its case, the jury may not convict the defendant, unless every circumstance relied upon [by] the State to be proven beyond a reasonable doubt and all the circumstances proven be consistent with each other and taken together point conclusively to the guilt of the accused, to the exclusion of every other reasonable hypothesis.

R. 130, ll. 12-19. *See State v Edwards*, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989) *abrogated by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) (holding the “language in *Grippon* is the sole and exclusive charge to be given in circumstantial evidence cases in this state.”).

In response, the trial court denied the defense counsel’s request to charge the traditional language regarding the relation of circumstantial evidence to the determination of a defendant’s guilt and stated:

I had the same thought that you had in reading the Odems case analysis that you had of Grippon and some of the other cases. As I read *State v. Cherry*, I believe the holding in that case on a split decision pretty much to the effect that trial judges are to follow the Grippon charge. I’ll do - - I’ll uphold the law as I understand it based on those cases. Having this fresh case [the South Carolina Supreme Court] didn’t say that we have a new date, so your request is well noted and I’ll not charge that.

R. 132, ll. 7-17. After instructing the jury on direct evidence, the trial court charged the jury on circumstantial evidence:

Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It’s

evidence, in other words, which immediately establishes collateral facts from which the main fact may be inferred. It's based on inference and not on personal knowledge or observation. *The law makes absolutely no distinction between the weight or the value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.*

R. 137, ll. 11-21 (emphasis added). When the trial court finished charging the law, defense counsel renewed his request for the circumstantial evidence charge. R. 146, ll. 8-11.

In *Odems*, 395 S.C. 582, 720 S.E.2d 48, the South Carolina Supreme Court acknowledged its prior abandonment of the traditional circumstantial evidence language used in the *Edwards* charge, but noted that “the definition illustrates the lack of evidence against petitioner.” *Id.* 395 S.C. at 590, 720 S.E.2d at 52. The Court provided further insight on this issue in footnote four of *Odems*:

However, the evaluation of circumstantial evidence requires the connection of collateral facts in order to reach a conclusion, and this process is not required when evaluating direct evidence. Thus, the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. The definition does not, however, change the standard evaluating evidence: every circumstance must be proved beyond a reasonable doubt.

Id., 395 S.C. at 591 n.4, 720 S.E.2d at 53 n.4. Therefore, despite its holding *Cherry*, 361 S.C. 588, 606 S.E.2d 475, the Court has acknowledged: (1) that proper evaluation of circumstantial evidence requires connection of collateral facts to reach a conclusion; (2) that the traditional circumstantial evidence language is informative regarding the relation between circumstantial evidence and guilt; and (3) that this process is not necessary for evaluating direct evidence.

Notably, the *Odems* Court clearly stated that such an understanding of the law regarding circumstantial evidence does not change the reasonable doubt standard, thereby abrogating the Court's rationale in *Cherry* for excluding such a charge. Accordingly, charging the jury on the traditional circumstantial evidence definition would not confuse the jury as to the relation of circumstantial evidence to the determination of Appellant's guilt. Instead, the traditional circumstantial evidence instruction would aid the jury in arriving at the correct verdict. *See Blurton*, 352 S.C. at 207, 573 S.E.2d at 804; *see also Leonard*, 292 S.C. at 137, 355 S.E.2d at 273; *accord Hampton v. State of Indiana*, 961 N.E.2d 480, 486-87 (Ind. 2012) (“[P]roviding the jury with an additional cautionary instruction in evaluating circumstantial evidence not only supports but further enhances the concept of requiring proof beyond a reasonable doubt. It admonishes the jury to tread lightly where the evidentiary gap between logical certainty and guilt is more tenuous.”).

Here, Appellant was prejudiced because the evidence against Appellant was entirely circumstantial. This is the precise case that demands the traditional circumstantial evidence charge. Thus, the trial court erred in refusing to charge the jury on the traditional circumstantial evidence definition provided in *Edwards*, 298 S.C. at 275, 379 S.E.2d at 889, thereby confusing the jury as to the relation of circumstantial evidence to the determination of Appellant's guilt.

CONCLUSION

For the foregoing reasons, Appellant Karl Lane respectfully requests that this Court issue an Order of acquittal (Issue I), or in the alternative, reverse Appellant's conviction and remand this case to the Pickens County Court of General Sessions (Issue II).

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

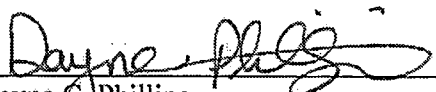
ATTORNEY FOR APPELLANT

This 28th day of March, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

March 28, 2013


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

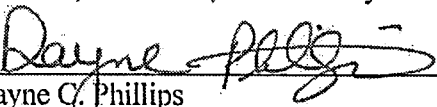
KARL RYAN LANE,

APPELLANT

Appellate Case No. 2012-207787

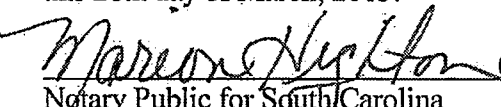
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of March, 2013.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of March, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2012-207787

THE STATE, ...RESPONDENT

v.

KARL RYAN LANE, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Lane's motion for a directed verdict where there was substantial circumstantial evidence presented by the State from which the jury could fairly and logically find Lane guilty of committing first-degree burglary?
2. Whether the trial judge properly denied Lane's motion for a "traditional" circumstantial evidence jury charge and instead gave the "standard" circumstantial evidence charge where the jury instructions as given included the exact instruction on circumstantial evidence that has expressly been adopted by the South Carolina Supreme Court as the only appropriate jury instruction to be given in cases involving circumstantial evidence, and where the jury instructions as a whole fully explained to the jury the correct reasonable doubt standard to be used in deciding the case?

STATEMENT OF THE CASE

Appellant (Lane) was indicted by the grand jury of Pickens County for burglary in the first degree (2011-GS-39-1496) and grand larceny greater than \$10,000 (2011-GS-39-1497). He was represented by John W. DeJong, Esquire, of the Thirteenth Circuit Public Defender's Office. (R.p.1). On January 25-26, 2012, Lane proceeded to trial by jury pursuant to which he was found guilty of first degree burglary, but acquitted of grand larceny. He was sentenced by the Honorable G. Edward Welmaker to two hundred and fifteen (215) months imprisonment. (R.p.148, line 3-p.154, line 6). Lane timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief of Appellant. This Brief of Respondent follows.

STATEMENT OF FACTS

At trial, Mark McSwain testified that he and his wife live on Stewart Gin Road in Pickens County. He considers the house as being “out in the country,” but his closest neighbor is no more than 100 yards away. On the morning of April 21, 2011, McSwain left for work at 8:30 but on his way out he noticed turkeys in a field where he had been given permission to hunt. He called his boss and asked to come in a little late so he could have a chance to hunt. McSwain returned home, changed clothes, grabbed his shotgun, and went down to the field for about an hour, where he was able to “harvest two turkeys.” (SROA.p.2, line 1-p.3, line 10).

McSwain normally keeps his guns in a safe, but because he was in a hurry to get to work after hunting, he did not lock the safe when he left. When he returned home at 4:30 that afternoon, McSwain came in the front door and immediately noticed that his back door was open and that there were pieces of wood from the door casing lying on the floor. He did a quick walk through the house to see if any valuables were missing and discovered the closet door where the safe is kept was open. The safe was also open and was empty. McSwain called 9-1-1 to report the burglary. (SROA.p.3, line 17-p.5, line 16). He testified there was significant damage to the back door where it had been forced open, and that an assortment of weapons and equipment was missing from the safe, including some guns which were family heirlooms. The assessed value of the stolen items was \$11,107.44. (SROA.p.8, line 14-p.13, line 9).

Officers from the Pickens County Sheriff's Department came to McSwain's house to investigate, but about twenty to thirty minutes after the last law enforcement officer left, McSwain discovered a “piece of paper folded up” in the grass beside his driveway. He picked up the paper and discovered it had a name and a password on it. (SROA.p.14,

line 13-p.16, line 20). On cross-examination McSwain testified his neighbor from across the street lives about 75 to 100 yards away. (SROA.p.31, line 15-p.32, line 19). When McSwain finished testifying, the court conducted a Jackson v. Denno hearing regarding the admissibility of a statement Lane made to the police. The court ruled Lane's statement was voluntarily given and admissible. (SROA.p.36, line 14; R.p.6, line 14).

Pamela Holladay testified she is McSwain's across-the-street neighbor and had known him about two years prior to the burglary. She estimated the distance between the houses is more than a football field but less than two football fields. On the afternoon of April 21, 2011, Holladay was in her front yard cutting grass when she noticed a burgundy colored four door car pull into McSwain's driveway. It had a paper tag and gray primer paint on the front passenger side panel, and it was a "Mitsubishi Gallant-type car." (R.p.7, line 4-p.9, line 4). Holladay saw a person going back and forth between the front door of McSwain's house and the car. She thought this was odd, so she drove her mower down the driveway to get a closer look and noticed two people getting into the car before it backed out and left towards Six Mile. Holladay didn't see whether the second person came from the front door or the back door of the residence. Later that afternoon Holladay saw law enforcement officers at McSwain's house so she went and told them what she had seen earlier that day. She was not able to identify anyone from a photo line-up. (R.p.9, line 9-p.12, line 19). On cross-examination Holladay testified she felt certain the car in McSwain's driveway was a Mitsubishi Gallant. (R.p.13, line 22-p.14, line 12).

Deputy Michael Torres of the Pickens County Sheriff's Office testified that as a "road patrol" officer, he is normally the first officer to respond to a crime scene and take

a report, but that he is not an actual “investigator.” On April 21, 2011, he responded to McSwain’s residence at just before 5:30 in the afternoon. Torres talked to McSwain, looked at the damage to the back door and the empty gun safe, and then called in the investigative division. (R.p.18, line 21-p.20, line 25). He also spoke to Holladay at about 5:45 and got a description of the vehicle she saw in McSwain’s driveway. (R.p.24, lines 4-20). Torres testified that although it had been raining on and off that morning, it did not rain on the afternoon of April 21, 2011. (R.p.22, lines 9-14).

Torres testified he returned to McSwain’s house between 6:00 and 8:00 the same evening to retrieve the piece of paper McSwain discovered beside his driveway. (R.p.22, line 17-p.24, line 3). On cross-examination Torres acknowledged the ground was still wet from the morning rain when he initially responded to McSwain’s house at 5:27, but the piece of paper he retrieved from McSwain between 6:30 and 8:00 was dry. (R.p.25, lines 11-25; p.30, lines 1-15). He further testified that the unemployment office is approximately two miles from McSwain’s house, but that the wind conditions were very light on the day of the burglary. (R.p.29, lines 8-14).

Kenneth Cole is the father of Lane’s girlfriend and the maternal grandfather of Lane’s child. (R.p.40, lines 19-21). He testified that although Lane does not have a car, he would often borrow cars from members of Mr. Cole’s family, and that he had seen Lane drive his daughter’s car in the past. Mr. Cole confirmed his daughter’s car is a red, four-door Mitsubishi Gallant with gray primer paint on one of the fenders, and that he thinks it had a paper tag in April of 2011. (R.p.36, line 7-p.37, line 7). He claimed Lane lived in Liberty rather than in or near the Cole residence, and claimed his daughter was not home when a police detective came to the house on April 22, 2011, looking for Lane,

despite the fact that her red Mitsubishi was in the driveway, and the daughter was at work. Mr. Cole also claimed he did not know Lane was in his house when the police came looking for Lane. (R.p.34, line 10-p.36, line 4; p.37, lines 8-23). On cross-examination, Mr. Cole acknowledged that shortly after the police arrived, Lane came out of the residence. (R.p.44, lines 16-20).

Kimberly Cole, Kenneth Cole's wife, the mother of Lane's girlfriend, and the maternal grandmother of Lane's child, testified she was also home on April 22, 2011, when the police came to the Cole's house looking for Lane. She said she woke up, got dressed, and went outside to talk to the detective. Mrs. Cole told the detective that Lane was not inside the house, but acknowledged her daughter's red Mitsubishi Gallant with gray primer paint was in the driveway. She told the detective her daughter drove the red Gallant most of the time, but didn't know where her daughter was that morning. She testified she had no idea who drove the car on April 21, 2011, and denied telling the detective on April 22, 2011, that Lane and her daughter had driven the car on the date of the burglary. (R.p.47, line 3-p.49, line 23).

Mrs. Cole testified that when she went back inside, Lane was in her living room, so she told him a detective was outside and wanted to talk. (R.p.50, line 17-p.51, line 6). She said that after Lane emerged, the detective asked her why she had lied for Lane. Mrs. Cole testified she did not lie, and insisted she did not know Lane was in her house when she first talked to the detective. She denied telling the detective on April 22, 2011, that she knew Lane was in the house, but Lane told her he was scared and did not want to talk to the police. She also denied previously telling the detective that Lane told her to lie and say Lane was not at the house. (R.p.51, lines 9-25). On cross-examination, Mrs.

Cole testified that Lane borrowed her '99 Yukon to drive to the unemployment office on April 21, 2011, and that she was home when he returned early in the afternoon. (R.p.53, line 18-p.54, line 25). She also testified that to her knowledge, Lane did not leave again on the April 21, 2011, until after dinner, around 6 o'clock. Mrs. Cole claimed she never knew Lane to drive the Mitsubishi and that he could drive her Yukon anytime he asked. (R.p.59, line 12-p.60, line 2).

Sargent Brian Gibson works in the crime scene or forensics division of the Pickens County Sheriff's Department. He testified that he investigated the burglary at McSwain's house but did not find any fingerprints. (R.p.61, line 6-p.68, line 4). On cross-examination he was asked: "Well, certainly we are going to say that, based on Mr. McSwain's statement, a burglary occurred. We can agree on that right?" Gibson responded: "Yes, sir, you can." (R.p.73, lines 8-11).

Shae Rozakos, the director of the "Work Link Work Force Investment Corporation," better known as the unemployment office, testified that according to her business records, Lane came to her office and completed self-registration at 1:21 pm on April 21, 2011. She confirmed that State's Exhibit # S-1 was a piece of paper her office would have supplied to a person who came into her office. Rozakos also confirmed that Lane completed a referral to two possible jobs as of 1:32 pm on April 21, 2011. (R.p.77, line 6-p.79, line 2).

Detective Benjamin Dow of the Pickens County Sheriff's Office testified he works in the Criminal Investigations Division and was the lead detective in Lane's case. On April 22, 2011, he received and reviewed an incident report completed by Torres, which had a copy of the paper from McSwain's driveway, and a written statement from

Holladay attached. Using the password on the paper, he logged onto the unemployment office website and determined the account belonged to Lane. Dow then looked in Department of Motor Vehicles records and discovered Lane had listed an address for a trailer on the same piece of property as the Cole's residence. (R.p.80, line 7-p.82, line 19). Next Dow drove to the unemployment office and confirmed Lane had been there on April 21, 2011. (R.p.83, line 9-p.84, line 22).

Later Dow drove by the Cole's residence and saw a burgundy four-door Mitsubishi Gallant with "primer gray fender" on the passenger side, parked in the driveway. Dow parked and approached the house, looking for Lane. Mr. Cole exited the house and told Lane was not inside. He testified that shortly thereafter, Mrs. Cole also exited the house. She told Dow Lane was not inside, and said she didn't know where Lane was. Dow testified he asked Mrs. Cole if Lane had been to the unemployment office the day before. She responded yes, and said Lane and her daughter were in the Mitsubishi that day. Mrs. Cole said her daughter was at work, and that she didn't know how the car got in her driveway, but confirmed that her daughter and Lane both drove the Mitsubishi Gallant. Dow testified that after he explained why he needed to talk to Lane, Mrs. Cole went back into the house, and a minute or so later, Lane emerged. (R.p.85, line 20-p.91, line 21). Dow testified he talked to Lane, and that that Lane stated he and his girlfriend had driven the car the day before, which confirmed what Mrs. Cole had said. Lane also admitted he had been to the unemployment office, but said he didn't know how his slip of paper had ended up on McSwain's property. (R.p.91, line 22-p.94, line 7).

After placing Lane under arrest, Dow had another conversation with Mrs. Cole.

Dow's trial testimony was as follow:

Q: Detective Dow, when you asked Mrs. Cole why she had lied to you, what did she respond?

A: She stated that while she was inside that Mr. Lane was scared and didn't want to talk to me.

Q: Is that what - - I'm sorry, let's be clear. She said that she lied because why?

A: He told her he was scared and he did not want to talk to me.

And she also told me that he said for her not to -- for her to tell me that he was not there.

Q: And when you first met with Mrs. Cole before the defendant came out, did she say "I don't know if Karl Lane is inside," or did she say "no, he is not inside"?

A: No, she stated he was not inside.

Q: She didn't say she didn't know?

A: No.

(R.p.96, lines 5-21) (emphasis added). On cross-examination, Dow repeated his testimony about his conversation with Mrs. Cole, and testified that a burgundy vehicle with gray primer in the combination exhibited on the Cole's vehicle was unusual in Pickens County. (R.p.103, lines 3-22; p.106, lines 1-8; p.107, line 11-p.108, line 13).

At the conclusion of the State's case, Lane moved for a directed verdict. He argued the State had presented a purely circumstantial evidence case, and relying on State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), and a line of cases reference therein, contended the State's evidence raised only a mere suspicion of guilt, and was not sufficient for submission to the jury. (R.p.119-p.125). The trial judge advised he had

read over the Odems case, had carefully listened to the evidence, and denied Lane's motion, finding there was sufficient and substantial circumstantial evidence of guilt requiring submission of the case to the jury. (R.p.126-127). Lane chose not to call any witnesses in his defense and renewed his motion for a directed verdict. The motion was again denied. (R.p.128, lines 10-22; p.132, lines 20-22). Following deliberations, the jury convicted Lane of first-degree burglary. (R.p.147, line 9-p.148, line 23).

At the conclusion of the evidentiary phase of trial, the trial judge discussed the instructions he intended to present to the jury. Relying again on Odems, Appellant asked that the court give the "traditional" circumstantial evidence charge¹ in lieu of the "standard" circumstantial evidence charge² currently in use in South Carolina with endorsement of the Supreme Court. Appellant acknowledged the Supreme Court in Odems did not specifically reinstate the "traditional" circumstantial evidence charge, but nonetheless argued that such an instruction was valid in light of Odems and the Supreme Court's use of the language when addressing circumstantial evidence in the context of directed verdict motions. The trial judge denied Lane's motion, finding that despite the language in Odems, Cherry was still the controlling law and that as a result he would give the standard circumstantial evidence charge to the jury. (R.p.129, line 11-p.132, line 18).

Thereafter, the trial judge charged the jury on the applicable law. (R. pp. 133-145). Specifically, the trial judge instructed the jury that the burden of proof was on the

¹ "[I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." See State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989); State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955).

² "The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence." (R.p.137, lines 17-21). See State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004); State v. Grippon, 327 S.C. 79, 81, 489 S.E.2d 462, 462-463 (1997).

State, that Lane was presumed to be innocent and was not required to prove himself innocent, that the State was required to prove Lane's guilt beyond a reasonable doubt, and the jury was tasked with assessing the credibility of the witnesses and weighing the evidence. (R.p.133-p.135; p.138-p.139). In instructing the jury on the State's burden of proof, the trial judge explained:

The State has the burden of proving guilt beyond a reasonable doubt. And some of you may in the past have had an opportunity to serve on a jury in a civil case, magistrate's court, or circuit court here, and you were told it was only necessary to prove that a fact was more likely true than not true by what we called the preponderance of the evidence, or the greater weight of the evidence. In criminal cases the State's proof is more powerful than that. It must be proof beyond a reasonable doubt. That would be proof that leaves you firmly convinced of the defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty.

If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

(R.p.134, line 22-p.135, line 18). Furthermore, regarding circumstantial evidence, the trial judge instructed:

Normally in trials there is [sic] two types of evidence presented. There is direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It would be evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It's evidence, in other words, which immediately establishes collateral facts from which the main

fact may be inferred. It's based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in this case. And after weighing that evidence, if you are not convicted of the guilt of the defendant beyond a reasonable doubt, then you must, of course, find the defendant not guilty.

(R.p.137, lines 4-25). Lane took exception to the charge and renewed his request for the traditional charge on circumstantial evidence. The trial judge stood by his previous ruling, finding the charge given complied with Odems. (R.p.146, lines 7-15). Subsequently, at the conclusion of trial, the jury convicted Appellant first-degree burglary. (R.p.148, lines 15-23). The trial judge then sentenced Appellant to a term of imprisonment of two hundred and fifteen (215) months. (R.p.153-p.154).

ARGUMENT

I. The trial court properly denied Lane's motion for a directed verdict where there was substantial circumstantial evidence presented by the State from which the jury could fairly and logically find Lane guilty of committing first-degree burglary.

Lane contends the trial court erred in refusing to grant his motion for a directed verdict. He maintains the evidence merely raised a suspicion of his guilt for first-degree burglary. The State disagrees and submits substantial circumstantial evidence was presented from which the jury could find Lane guilty of each element of first-degree burglary based on the natural and logical inferences to be drawn from the evidence. There was no dispute that the victim's house was burglarized and that the burglar or burglars became armed with deadly weapons stolen in the course of the burglary. The State presented evidence that a four-door car in a specific make, model and color, with an unusual combination of primer paint on the fender and a "paper tag" was in the victim's driveway on the day of the burglary, and that Lane was driving an identical four-door car in regard to make, model, color, primer paint combination, and "paper tag" that very same day. The State also presented evidence that a "folded up" slip of paper from the local unemployment office, which belonged to Lane, was discovered on the ground next to the victim's driveway late in the afternoon on the day of the burglary. Finally, evidence was presented that Lane made efforts to avoid the police the day after the burglary by initially trying to hide inside his girlfriend's mother's house (Mrs. Cole), and asking Mrs. Cole lie to the detective by telling him Lane was not inside. These pieces of circumstantial evidence constituted strong evidence of Lane's guilt for the first-degree burglary of the victim's residence. Accordingly, viewing the evidence in a light most favorable to the State and focusing on the existence of evidence and not its weight, the

trial judge correctly denied the directed verdict motion and submitted the case to the jury to allow for proper resolution of any factual disputes created by the evidence and testimony. Lane's conviction should be affirmed.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004).

When an appellate court is reviewing the denial of a directed verdict motion in a case solely involving circumstantial evidence, this Court has instructed:

When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

Id. at 594, 606 S.E.2d at 478 (citations omitted) (emphasis in original). Accordingly, an analysis of the trial judge's ruling hinges on whether all of the circumstantial evidence taken together was sufficient for the jury to reasonably infer the defendant's guilt for the crimes beyond a reasonable doubt. Id. at 595, 606 S.E.2d at 478.

Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). “[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law.” State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

Here, Lane was indicted for first-degree burglary and grand larceny, and was convicted of the burglary charge. In order to support a conviction for first-degree burglary, the State must prove the defendant: (1) entered the dwelling of another; (2) without consent; (3) with the intent to commit a crime therein; (4) with at least one aggravating circumstance present. State v. Cross, 323 S.C. 41, 43, 448 S.E.2d 569, 570 (Ct. App. 1994). One such aggravating circumstance is the defendant or another participant in the crime is armed or becomes armed with a deadly weapon while effecting entry, while inside the dwelling, or during immediate flight from the dwelling. S.C. Code Ann. § 16-11-311.

During Lane's trial, the State presented substantial circumstantial evidence establishing Lane's guilt for each element of first-degree burglary beyond a reasonable doubt. This evidence created factual questions regarding Lane's guilt that could only be properly resolved by the jury. Based on the existence of the evidence in this case along with the logical inferences of guilt to be drawn from that evidence, the trial court properly denied Lane's directed verdict motion.

Viewing the evidence in a light most favorable to the State, the evidence showed:
(1) the back door to the victim's house was forced open and the house was burglarized;

(2) the burglar or burglars became armed with deadly weapons stolen in the course of the burglary; (3) a burgundy/red four-door Mitsubishi Gallant with an unusual combination of primer paint on the front passenger side fender and a “paper tag” was in the victim’s driveway on the day of the burglary; (4) Lane was driving a burgundy/red four-door Mitsubishi Gallant with an identical primer paint combination on the front passenger side fender and a “paper tag” the day of the burglary; (5) a folded up slip of paper from the local unemployment office, which belonged to Lane, was discovered on the ground next to the victim’s driveway late in the afternoon on the day of the burglary; and (6) Lane made substantial efforts to avoid talking to the police the day after the burglary by initially hiding inside his girlfriend’s mother’s residence and asking her to lie to the detective by saying he was not inside.

Two particular pieces of circumstantial evidence alone combined to constitute substantial circumstantial evidence that Lane participated in the burglary of the victim’s home. When taken in a light most favorable to the State, the evidence shows Lane was driving the car used in the burglary on the day the burglary was committed, and that he dropped a slip of paper he had obtained from the unemployment office that day, next to the victim’s driveway. Such evidence can lead to a reasonable inference that Lane was the burglar. To the extent Lane contends he should have been granted a directed verdict because there was conflicting evidence in regard to whether he was driving the red Mitsubishi Gallant on the day of the burglary, the State submits that issue goes to the credibility of the witnesses and therefore was properly left for determination by the jury. See State v. Pitts, 296 S.C. 420, 427, 182 S.E.2d 738, 742 (1971) (“A motion for a directed verdict of acquittal is properly refused where the determination of guilt is

dependent upon the credibility of a witness, as this is a question that goes to the weight of evidence and is clearly for determination by a jury.”); see also State v. Strickland, 389 S.C. 210, 215, 697 S.E.2d 681, 684 (Ct. App. 2010) (“While we acknowledge that Wife testified Appellant came in and politely asked for the key to their trailer and did not address Victim, Father’s contrary testimony created an issue of credibility and, at least, created a situation where the State produced enough evidence to survive a directed verdict motion.”).

In addition, Lane’s efforts to hide from the police, including asking a third party to lie on his behalf, constitute strong circumstantial evidence of his guilt for the crimes. See State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (“Flight from prosecution is admissible as evidence of guilt.”). Lane’s actions supported a clear and logical inference he hid from the officer based on his guilt for the wrongdoing the preceding day and his desire to avoid punishment for that wrongdoing. See State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (“It is sufficient that circumstances justify an inference that the defendant’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury.”). Furthermore, the fact Lane not only hid from officers but also tried to obtain help from a third-party in concealing his whereabouts from law enforcement was strong evidence of his guilt for something. See State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (“As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.”). Therefore, Lane’s evasive actions and constituted strong proof of his guilt for the underlying crimes and

created a factual question that could only properly be resolved by the jury. See State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (“Flight or evasion of arrest is an issue for the jury to consider”).

Finally, in regard to Lane’s reliance on Odems and the line of cases cited therein, the State submits a direct comparison between the circumstantial evidence in Odems and the circumstantial evidence against Lane supports the trial judge’s comment that:

Well, I have had the opportunity last month to read over the Odems case. In fact, Mr. DeJong, you may be aware I relied on it on the case that was before me just before this one this week in granting a directed verdict.

I have carefully tried to listen to the evidence here, and I disagree with you that that case was more substantial than this case.

I believe weighing all the evidence, as I must, in the light most favorable to the State, I think there is certainly a case that there is a nonexistence of that, I don’t believe that – there is certainly the existence of evidence, and I believe there is sufficient and substantial circumstantial evidence and with the direct evidence that we have to allow this case to go to the jury.

(R.p.126, line 12-p.127, line 1). In Odems, the evidence established Odems’ cousins, the other men who fled into the woods after the traffic stop, both admitted guilt for committing the robberies. Although one cousin, Bell, refused to offer any testimony about Odems’ involvement in the crimes or how Odems came to be in the vehicle connected to the incident shortly after the burglary was committed, his other cousin, Dawkins, attempted to shield Odems from any responsibility for the crimes through his trial testimony. Dawkins claimed he burglarized the victims’ home with the assistance of Bell after they planned to commit the crime together, left the scene after stealing items from the victim’s home, saw police officers who he believed had been alerted of the crime, stopped to refuel his vehicle at a gas station, encountered Odems while he was

pumping gas into the car, and granted a ride to Odems before being stopped and later arrested. Odems at 588, 720 S.E.2d at 51. Here, there was no evidence presented during the State's case that any specific individual other than Lane committed the burglary.³

Also in Odems, a forensic investigator was able to collect fingerprints from the scene of the burglary, and those fingerprints matched the two men who confessed, but not Odems. Here, investigators found no fingerprints at the scene of the burglary, from Lane or anyone else. In Odems, the State relied on a familial relationship between the confessors and Odems to argue he participated in the burglary. Here, the State made no such argument in regard to Lane. In Odems, the evidence presented a plausible explanation for Odems' flight from the police other than his guilt of the burglary. Here, there is no evidence to explain Lane's efforts to hide from police except for the reasonable inference that he was guilty of the burglary. Finally, and most critically, in Odems there was no evidence placing Odems at the crime scene. Here, both the matching vehicle and the unemployment paper, when viewed in a light most favorable to the State, placed Lane at the crime scene.

Thus, viewing all of the evidence presented in a light most favorable to the State as required, and considering only its existence and not its weight, the evidence established Lane's guilt for the first-degree burglary and required the trial judge to submit the case to the jury. Based on the logical and reasonable inferences to be drawn from this evidence, the jury could convict Lane of each element of first-degree burglary. Furthermore, the questions as to whether the evidence presented supported an inference of guilt and what weight should be assigned to that evidence rested solely with the jury as

³ Similarly in Lollis, *supra*, evidence was presented that another person committed the crime rather than the defendant. In fact, Burgess confessed to setting fire to the home and claimed that Lollis had no knowledge of her plans, Lollis at 581, 541 S.E.2d at 255.

the fact-finder. Therefore, the trial judge properly submitted the case to the jury to allow them to resolve any of the factual disputes raised by the evidence and the inferences to be drawn from it. Lane's arguments improperly focus on the weight of the evidence as opposed to its existence, but the weight of the evidence is not an appropriate consideration for the trial judge when reviewing a directed verdict motion.

Viewing the evidence in a light most favorable to the State, the following substantial evidence of Lane's guilt for the offenses was presented: (1) the back door to the victim's house was forced open and the house was burglarized; (2) the burglar or burglars became armed with deadly weapons stolen in the course of the burglary; (3) a burgundy/red Mitsubishi Gallant with an unusual combination of primer paint on the front passenger side fender and a "paper tag" was in the victim's driveway on the day of the burglary; (4) Lane was driving a burgundy/red Mitsubishi Gallant with an identical primer paint combination on the front passenger side fender and a "paper tag" the day of the burglary; (5) a folded up slip of paper from the local unemployment office, which belonged to Lane, was discovered on the ground next to the victim's driveway late in the afternoon on the day of the burglary; and (6) Lane made substantial efforts to avoid talking to the police the day after the burglary by initially hiding inside his girlfriend's mother's residence and asking her to lie to the detective by saying he was not inside.

Viewing all of this evidence together with the natural and logical inferences to be drawn from it, the jury could rationally conclude Lane was guilty of each element of first-degree burglary.

In Lane's case, the factual issues raised by the evidence could only appropriately be resolved by the jury. See State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541

(1971) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. Among other considerations is the credibility of the witnesses, including that of the appellant himself.”). Contrary to what is required before a directed verdict should be granted, Lane’s case did not present a complete failure of evidence of his guilt. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) (“Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury.”). Instead, substantial circumstantial evidence of Lane’s guilt for first-degree burglary was presented. Therefore, the trial judge properly denied Lane’s directed verdict motion, and Lane’s conviction should be affirmed.

ARGUMENT

- II. The trial judge properly denied Lane's motion for a "traditional" circumstantial evidence jury charge and instead gave the "standard" circumstantial evidence charge where the jury instructions as given included the exact instruction on circumstantial evidence that has expressly been adopted by the South Carolina Supreme Court as the only appropriate jury instruction to be given in cases involving circumstantial evidence, and where the jury instructions as a whole fully explained to the jury the correct reasonable doubt standard to be used in deciding the case.**

Lane contends the trial judge erred in refusing to charge the jury with the "traditional" circumstantial evidence charge as provided in State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989) rather than the "standard" circumstantial evidence charge as provided in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997). He maintains the standard circumstantial evidence charge from Grippon, which was the charge presented to the jury in Lane's case, was confusing to the jury as to the relation of circumstantial evidence to the determination of his guilt. Lane further asserts instructing the jury in accordance with the traditional circumstantial evidence jury charge from Edwards would have demonstrated the lack of evidence establishing his guilt for first-degree because the evidence presented was entirely circumstantial. Lane argues the Grippon charge is no longer an appropriate jury instruction in light of the recent decision of our Supreme Court in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). The State disagrees and submits the trial judge properly instructed the jury on the law regarding circumstantial evidence because he used the exact jury instruction expressly adopted by our Supreme Court as the only appropriate instruction to be given in cases involving circumstantial evidence. However, even if the trial judge somehow erred in instructing the jury on circumstantial evidence despite the fact that he did so in the manner approved by the Supreme Court,

there is no basis to reverse Lane's conviction based on the jury instructions because the trial judge's jury instructions as a whole properly explained the State's burden of proof to the jury and correctly defined reasonable doubt. Accordingly, the trial judge committed no error in instructing the jury in Lane's case, and Lane's convictions should be affirmed.

Standard of Review

In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

Analysis

Nearly sixty years ago in State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955), the South Carolina Supreme Court addressed the distinction between a trial judge's consideration of circumstantial evidence at the directed verdict stage of a trial and

a jury's consideration of circumstantial evidence during deliberations. Regarding the jury's consideration of circumstantial evidence, the Court instructed:

[I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused **to the exclusion of every other reasonable hypothesis**. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Id. (emphasis added). Regarding the trial judge's consideration of circumstantial evidence at the directed verdict stage, the Court explained:

But on a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.

Id. at 329, 89 S.E.2d at 926. Thereafter, in State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989), the Supreme Court adopted the "reasonable hypothesis" language from Littlejohn as the appropriate standard to be charged to juries in cases involving circumstantial evidence.

Subsequent to the decision in Edwards, the Supreme Court considered the question of whether a trial judge committed reversible error in omitting the "reasonable hypothesis" language from a circumstantial evidence jury instruction. State v. Grippon, 327 S.C. 79, 81, 489 S.E.2d 462, 462-463 (1997). During Grippon's trial, the trial judge refused Grippon's request to instruct to the jury on the "reasonable hypothesis" language because he interpreted that language as shifting the burden of proof from the prosecution to Grippon. Id. at 81, 489 S.E.2d at 463. On appeal, the Court concluded the trial judge

erroneously determined he was required to omit the “reasonable hypothesis” language from his jury charge and noted that it had recently approved the use of such language in instructing a jury. Id. However, the Court ruled the trial judge did not err in instructing the jury in Grippon’s case because the jury instructions as a whole adequately apprised the jury of the proper legal standard to be applied in deciding the case. Id. at 83, 489 S.E.2d at 463. The Court further determined the omission of the “reasonable hypothesis” language did not affect the burden of proof. Id. at 83, 489 S.E.2d at 463-464. Significantly, the Court then addressed the propriety of the “reasonable hypothesis” language itself and concluded the charge was unnecessary in cases where the jury had been properly instructed on the reasonable doubt standard. Id. at 83, 489 S.E.2d at 464. Thereafter, the Court recommended the following jury charge for use in cases where circumstantial evidence was presented and the jury was properly instructed on reasonable doubt:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Id. at 83-84, 489 S.E.2d at 464.

Subsequently, following the decision in Grippon, the Supreme Court again considered the issue of the propriety of a trial judge’s jury charge on circumstantial evidence. State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In Cherry, the trial

judge instructed the jury on circumstantial evidence in a manner consistent with the recommended charge from Grippon and denied Cherry's request to instruct the jury on the "reasonable hypothesis" language from Littlejohn and Edwards. Cherry, 361 S.C. at 591-592, 606 S.E.2d at 476-477. On appeal, the Court noted that the decision in Grippon clearly determined the "reasonable hypothesis" language was not a **required** jury instruction on circumstantial evidence. Cherry, 361 S.C. at 597, 606 S.E.2d at 480. The Court then determined the charge from "Grippon is the sole remaining charge to be utilized by the courts of [South Carolina] in instructing juries in cases relying, in whole or in part, on circumstantial evidence." Id. In reaching that conclusion, a majority of the Court concluded "the reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not." Id. at 601, 606 S.E.2d at 482; see also Holland v. United States, 348 U.S. 121, 139-140 (1954) ("The petitioners assail the refusal of the trial judge to instruct that where the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. There is some support for this type of instruction in the lower court decisions, but the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect[.]" (citations omitted)); see, e.g., State v. Adcock, 310 N.C. 1, 36, 310 S.E.2d 587, 607 (N.C. 1984) ("We are of the opinion that the reasonable doubt instruction and the 'moral certainty' circumstantial evidence instruction encompass the same measure of proof. Therefore, recognizing that the purpose of a charge to the jury is to clarify the issues and apply the law to the evidence, we conclude that the giving of the

‘moral certainty’ or the ‘reasonable hypothesis’ instruction in addition to the reasonable doubt instruction would tend to confuse the jury by requiring them to engage in an unnecessary and repetitious application of the same measures of proof to the evidence in the case. We hold that an instruction on circumstantial evidence to the effect that a conviction may not be based upon it unless the circumstances point to guilt and exclude to moral certainty every reasonable hypothesis except that of guilt is unnecessary when a correct instruction on reasonable doubt is given.”).

In the case now before this Court, the trial judge committed no error in charging the jury on the applicable law. In instructing the jury on circumstantial evidence, the trial judge explained the relevant law to the jury in the manner specifically recommended by our Supreme Court in Grippon and expressly adopted as the only appropriate charge on circumstantial evidence by our Supreme Court in Cherry. See Cherry, 361 S.C. at 601, 606 S.E.2d at 482 (“[W]e hold that the recommended language in Grippon is the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction.”). Therefore, by instructing the jury in the only manner expressly recognized by our Supreme Court as an appropriate statement of the law, the trial judge properly instructed the jury in regards to the law on circumstantial evidence. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472 (“[T]he trial court is required to charge only the current and correct law of South Carolina.”).

Furthermore, even if the trial judge somehow erred in instructing the jury on circumstantial evidence, the trial judge fully and completely instructed the jury on the State’s burden of proving Lane’s guilt beyond a reasonable doubt. Specifically, the trial judge instructed the jury that the burden of proof was on the State, that Lane was

presumed to be innocent and was not required to prove himself innocent, that the State was required to prove Lane's guilt beyond a reasonable doubt, and the jury was tasked with assessing the credibility of the witnesses and weighing the evidence. (R.p.133-p.135; p.138-p.139). See Grippon, 327 S.C. at 82-83, 489 S.E.2d at 463-464 ("[T]he instruction actually given by the trial judge, as a whole, adequately conveyed the level of proof required to find appellant guilty. The trial court repeatedly charged the State had the burden of proving the defendant guilty beyond a reasonable doubt, and reasonable doubt was correctly defined. Therefore, the jury was adequately apprised of the proper legal standard, and the omission of this 'reasonable hypothesis' phrase from the circumstantial evidence charge did not affect the burden of proof."). Accordingly, the trial judge properly instructed the jury in Lane's case, and there is no basis to reverse Lane's convictions based on the trial judge's jury instructions. See State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

In challenging the propriety of the trial judge's jury instructions, Lane contends that the portion of the circumstantial evidence charge from Grippon instructing the jury that the law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence is no longer a valid statement of the law in light of the Supreme Court's decision in State v. Odems, 395 S.C. 582, 582, 720 S.E.2d 48, 53 (2011), and several other recent cases, and would confuse the jury as to the relationship between circumstantial evidence and the determination of guilt. However, in Odems and its predecessors, the Supreme Court addressed a challenge to the trial judge's denial of a

directed verdict motion as opposed to a challenge to the trial judge's jury instructions on circumstantial evidence. Id. at 582, 720 S.E.2d at 53 (reversing Odems' convictions after finding the evidence warranted the granting of a directed verdict); see also State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011) (finding the trial judge erred in failing to direct a verdict in favor of Bostick due to the insufficiency of the circumstantial evidence of Bostick's guilt); State v. Hernandez, 382 S.C. 620, 625-626, 677 S.E.2d 603, 605-606 (2009) (reversing the convictions of Hernandez and his co-defendant after determining the trial judge should have granted a directed verdict due to the insufficiency of the circumstantial evidence of guilt). Critically, in those cases, the Supreme Court did not overrule its earlier decisions in Cherry or Grippon and did not address the merits of the trial judges' jury charges on circumstantial evidence. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)). In fact, the Supreme Court readily acknowledged in several of the cases that the "reasonable hypothesis" language from Edwards had expressly been rejected as an appropriate charge on circumstantial evidence. See Odems, 395 S.C. at 590, 720 S.E.2d at 52 ("Despite the Court's abandonment of the use of [the 'reasonable hypothesis'] definition as a jury charge in State v. Cherry, the definition illustrates the lack of evidence against Petitioner."); Hernandez, 382 S.C. at 620, n. 2, 677 S.E.2d at 606 (acknowledging the Court abandoned the "reasonable hypothesis" language in State v. Cherry while noting it illustrated the lack of evidence against Hernandez and his co-defendant). Accordingly, the decisions in the Odems case relied upon by Appellant did not establish the

circumstantial evidence jury instruction from Grippon was no longer a valid statement of the law, and the trial judge committed no error in refusing Lane's motion to give the traditional circumstantial evidence charge in its place.

Appellant further maintains that the trial judge should have included the "reasonable hypothesis" language in his jury instructions because such a charge would have illustrated the lack of evidence of Appellant's guilt. The State submits the trial judge correctly chose not to instruct the jury on the "reasonable hypothesis" language due to the clear requirements of the Supreme Court's decision in Cherry. See Cherry, 361 S.C. at 601, 606 S.E.2d at 482 ("[W]e hold that the recommended language in Grippon is the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction."). Moreover, the circumstantial evidence presented by the State was not lacking⁴ and did establish Appellant's guilt to the exclusion of any reasonable hypothesis, particularly in light of the absence of any specific exculpatory evidence presented during the State's case.⁵ See State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.").

⁴ (1) the back door to the victim's house was forced open and the house was burglarized; (2) the burglar or burglars became armed with deadly weapons stolen in the course of the burglary; (3) a burgundy/red Mitsubishi Gallant with an unusual combination of primer paint on the front passenger side fender and a "paper tag" was in the victim's driveway on the day of the burglary; (4) Lane was driving a burgundy/red Mitsubishi Gallant with an identical primer paint combination on the front passenger side fender and a "paper tag" the day of the burglary; (5) a folded up slip of paper from the local unemployment office, which belonged to Lane, was discovered on the ground next to the victim's driveway late in the afternoon on the day of the burglary; and (6) Lane made substantial efforts to avoid talking to the police the day after the burglary by initially hiding inside his girlfriend's mother's residence and asking her to lie to the detective by saying he was not inside.

⁵ In Lollis, Burgess confessed to setting fire to the home and claimed that Lollis had no knowledge of her plans, Lollis at 581, 541 S.E.2d at 255, and in Odems, Dawkins testified during the State's case-in-chief and explained how Odems ended up in the car with the stolen goods even though he did not participate in the burglary, Odems at 588, 720 S.E.2d at 51.

In Lane's case, the trial judge properly and completely instructed the jury on the applicable law. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). In doing so, the trial judge charged the jury on the law regarding circumstantial evidence in a manner consistent with the instructions of our Supreme Court and correctly defined reasonable doubt for the jury. Nothing more was required of the trial judge. See State v. Rayfield, 357 S.C. 497, 505, 593 S.E.2d 486, 490 (Ct. App. 2004) ("The trial court is required to charge the correct law of South Carolina."). For the foregoing reasons, the jury instructions presented in Lane's case do not warrant a reversal of Lane's conviction. See Ezell, 321 S.C. at 425, 468 S.E.2d at 681 ("A jury charge which is substantially correct and covers the law does not require reversal."). Accordingly, Lane's conviction and sentence should be affirmed.

CONCLUSION

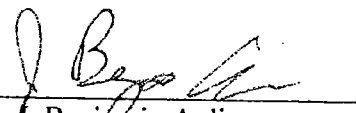
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
February 26, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2012-207787

THE STATE, ...RESPONDENT

v.

KARL RYAN LANE, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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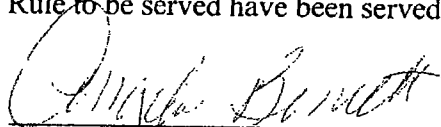
KARL RYAN LANE, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Executive Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent* and *Supplemental Record on Appeal*, both dated February 26, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Dayne C. Phillips, Appellate Defender
S.C. Commission on Indigent Defense
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I further certified that all parties required by Rule to be served have been served.
This 26th, day of February, 2013.



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Karl Ryan Lane, Appellant.

Appellate Case No. 2012-207787

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APPELLATE CLERK

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5175
Heard September 11, 2013 – Filed October 9, 2013

REVERSED

Appellate Defenders Dayne C. Phillips and Carmen V.
Ganjehsani, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General J. Benjamin Aplin, both of Columbia,
for Respondent.

PIEPER, J.: This appeal arises out of Karl Ryan Lane's conviction for first-degree burglary. On appeal, Lane argues the trial court erred (1) by refusing to grant a directed verdict when the evidence merely raised the suspicion of his guilt and the State failed to present substantial circumstantial evidence that he was guilty of first-degree burglary and (2) by refusing to charge the jury on the circumstantial evidence instruction he requested. We reverse.

FACTS

On April 21, 2011, firearms were stolen from a gun safe in Mark McSwain's house. Pamela Holladay, McSwain's neighbor, testified a car pulled into McSwain's driveway around 3:20 p.m. on the day McSwain's guns were stolen. According to Holladay, the car was a red or burgundy four-door car with a paper tag, and the front passenger panel appeared to be a gray primer panel. Holladay testified the car appeared to be a "Mitsubishi Gallant-type car." According to Holladay, she saw a person approach the front door of McSwain's residence, return to the car, and then approach the back door. Holladay testified at least one person approached the doors of the home but two people were in the car when it left McSwain's property. Holladay explained she was unable to see the individuals' faces.

McSwain testified he discovered firearms were stolen from the safe in his house at approximately 4:30 p.m. McSwain explained he called the police after he noticed his gun safe was empty. According to McSwain, shortly after the police left his house after processing the scene, he noticed a folded piece of paper in the grass beside his driveway and notified the police. Deputy Michael Torres testified he was part of the investigation at McSwain's house and returned to McSwain's house at approximately 8:00 p.m. after McSwain found the piece of paper in his yard. According to Deputy Torres, the paper could have arrived in McSwain's yard after 6:00 p.m. because he did not see the paper during his original search for evidence. The paper was determined to be from an unemployment office, which Lane had visited the day of the burglary, located approximately two to three miles from McSwain's house.

Detective Benjamin Dow also testified at trial and acknowledged no eye witnesses identified who was in the car that pulled into McSwain's driveway. Detective Dow also acknowledged no fingerprints identified who went into McSwain's residence. At the conclusion of the State's case, a motion for a directed verdict was made and denied by the trial court. Lane was convicted of first-degree burglary and sentenced to 215 months' imprisonment. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless the findings are clearly erroneous." *State v. Spears*, 403 S.C. 247, 252, 742 S.E.2d 878, 880 (Ct. App. 2013).

LAW/ANALYSIS

Lane argues the trial court erred by refusing to grant a directed verdict because the evidence merely raised a suspicion of his guilt and the State failed to present substantial circumstantial evidence that he was guilty of first-degree burglary. We agree.

A defendant is guilty of burglary in the first degree if the defendant "enters a dwelling without consent and with intent to commit a crime in the dwelling" and "when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime . . . is armed with a deadly weapon or explosive." S.C. Code Ann. § 16-11-311(A)(1)(a) (2003). In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Id.* On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. *State v. Sterling*, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012). If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, an appellate court must find the trial court properly submitted the case to the jury. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes. *See Gibbs v. State*, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013); *see also State v. Jackson*, 656 A.2d 1056, 1060 (Conn. App. Ct. 1995) ("Identity of a defendant as the one who committed the crime is an element common to proof of all crimes, which the state must prove beyond a reasonable doubt."); *Brooks v. United States*, 717 A.2d 323, 327 (D.C. 1998) ("The identity of the defendant as the person who committed the charged crime is an essential element that the government must always prove beyond a reasonable doubt."); *Akridge v. State*, 970 So. 2d 917, 918 (Fla. Dist. Ct. App. 2007) ("The burden is upon the State to prove beyond a reasonable doubt all of the elements of the alleged crime including the identity of the defendant."); *People v. Burson*, 308 N.E.2d 200, 202 (Ill. App. Ct. 1974) ("[O]ne of the essential points which the State must prove beyond a reasonable doubt is the identity of the accused as the one who committed the crime charged."); *Commonwealth v. Brooks*, 7 A.3d 852, 857 (Pa. Super. Ct. 2010) ("In addition to proving the statutory elements of the crimes charged beyond a reasonable doubt, the Commonwealth must also establish the identity of the defendant as the perpetrator of the crimes."). The trial court should grant a

directed verdict when the evidence merely raises a suspicion that the defendant is guilty. *Odems*, 395 S.C. at 586, 720 S.E.2d at 50.

The State's case against Lane consisted solely of circumstantial evidence. The State presented the following evidence to establish Lane committed first-degree burglary: (1) the testimony of McSwain's neighbor that a burgundy/red "Mitsubishi Gallant-type car" with a paper tag and primer painted panel was in McSwain's driveway the day of the theft; (2) testimony that, at times, Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend that matched the description given by McSwain's neighbor; (3) testimony that Lane drove the Gallant the day of the theft; (4) testimony that a folded piece of paper belonging to Lane was found in McSwain's driveway that was not originally found by the police but found later outside; and (5) testimony that Lane did not want to talk to police officers the day after the theft and asked his girlfriend's mother to lie to officers concerning his whereabouts.

Viewing the foregoing evidence in the light most favorable to the State, we find the State did not present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary. At most, the evidence the State presented raises only a mere suspicion that Lane committed the crime. Accordingly, we find the trial court erred by failing to grant Lane's directed verdict motion. *See Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (providing "when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict"); *State v. Bostick*, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011) ("Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.").¹

CONCLUSION

For the aforementioned reasons, the judgment of the trial court is hereby

¹ We decline to address Lane's second issue on appeal, as the directed verdict issue is dispositive. *See State v. Hercheck*, 403 S.C. 597, 605, 743 S.E.2d 798, 802 (2013) (declining to reach a remaining issue on appeal when the court's decision on a prior issue is dispositive).

REVERSED.

FEW, C.J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

Opinion No. 5175 (S.C. Ct. App. filed October 9, 2013)
Appellate Case No. 2012-207787

State of South Carolina, ...Petitioner,

v.

Karl Ryan Lane, ...Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals err in reversing Respondent's conviction where, after correctly reciting the standard for reviewing a trial court's denial of a motion for a directed verdict, the Court of Appeals misapplied that standard?

STATEMENT OF THE CASE

Karl Ryan Lane (Respondent) was indicted by the grand jury of Pickens County for burglary in the first degree (2011-GS-39-1496) and grand larceny greater than ten thousand dollars (\$10,000) (2011-GS-39-1497). He was represented by John W. DeJong, Esquire, of the Thirteenth Circuit Public Defender's Office. (App.p.4). On January 25-26, 2012, Respondent proceeded to trial by jury pursuant to which he was found guilty of first degree burglary, but acquitted of grand larceny. He was sentenced by the Honorable G. Edward Welmaker to two hundred and fifteen (215) months imprisonment. (App.p.151, line 3-p.157, line 6). Respondent timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a brief in support of his appeal. Petitioner (the State) filed a brief in response. (App.p.220-p.283). On October 9, 2013, the Court of Appeals issued a published opinion which reversed Respondent's conviction for first degree burglary. State v. Lane, Op. No. 5175 (S.C. Ct. App. filed Oct. 9, 2013) (Shearouse Adv. Sh. No. 43 at 17). The State submitted a petition for rehearing on October 22, 2013, and by order filed November 22, 2013, the petition was denied. (App.p.289-p.301). This Petition for a Writ of Certiorari to the Court of Appeals, submitted on behalf of the State, now follows.

STATEMENT OF FACTS

At trial, Mark McSwain testified that he and his wife live on Stewart Gin Road in Pickens County. He considers the house as being "out in the country," but his closest neighbor is no more than 100 yards away. On the morning of April 21, 2011, McSwain left for work at 8:30 a.m. but on his way out he noticed turkeys in a field where he had

been given permission to hunt. He called his boss and asked to come in a little late so he could have a chance to hunt. McSwain returned home, changed clothes, grabbed his shotgun, and went down to the field for about an hour, where he was able to “harvest two turkeys.” (App.p.176, line 1-p.177, line 10).

McSwain normally keeps his guns in a safe, but because he was in a hurry to get to work after hunting, he did not lock the safe when he left. When he returned home at 4:30 that afternoon, McSwain came in the front door and immediately noticed that his back door was open and that there were pieces of wood from the door casing lying on the floor. He did a quick walk through the house to see if any valuables were missing and discovered the closet door where the safe is kept was open. The safe was also open and was empty. McSwain called 9-1-1 to report the burglary. (App.p.177, line 17-p.179, line 16). He testified there was significant damage to the back door where it had been forced open, and that an assortment of weapons and equipment was missing from the safe, including some guns which were family heirlooms. The assessed value of the stolen items was \$11,107.44. (App.p.182, line 14-p.187, line 9).

Officers from the Pickens County Sheriff’s Department came to McSwain’s house to investigate, but about twenty to thirty minutes after the last law enforcement officer left, McSwain discovered a “piece of paper folded up” in the grass beside his driveway. He picked up the paper and discovered it had a name and a password on it. (App.p.188, line 13-p.190, line 20). On cross-examination McSwain testified his neighbor from across the street lives about 75 to 100 yards away. (App.p.205, line 15-p.206, line 19). When McSwain finished testifying, the court conducted a Jackson v. Denno hearing regarding the admissibility of a statement Respondent made to the police. The court

ruled Respondent's statement was voluntarily given and admissible. (App.p.210, lines 14-25).

Pamela Holladay testified she is McSwain's across-the-street neighbor and had known him about two years prior to the burglary. She estimated the distance between the houses is more than a football field but less than two football fields. On the afternoon of April 21, 2011, Holladay was in her front yard cutting grass when she noticed a burgundy colored four door car pull into McSwain's driveway. It had a paper tag and gray primer paint on the front passenger side panel, and it was a "Mitsubishi Gallant-type car." (App.p.217; App.p.9 line 4-p.12, line 4). Holladay saw a person going back and forth between the front door of McSwain's house and the car. She thought this was odd, so she drove her mower down the driveway to get a closer look and noticed two people getting into the car before it backed out and left towards Six Mile. Holladay didn't see whether the second person came from the front door or the back door of the residence. Later that afternoon Holladay saw law enforcement officers at McSwain's house so she went and told them what she had seen earlier that day. She was not able to identify anyone from a photo line-up. (App.p.12, line 9-p.15, line 19). On cross-examination Holladay testified she felt certain the car in McSwain's driveway was a Mitsubishi Gallant. (App.p.16, line 22-p.17, line 12).

Deputy Michael Torres of the Pickens County Sheriff's Office testified that as a "road patrol" officer, he is normally the first officer to respond to a crime scene and take a report, but that he is not an actual "investigator." On April 21, 2011, he responded to McSwain's residence at just before 5:30 in the afternoon. Torres talked to McSwain, looked at the damage to the back door and the empty gun safe, and then called in the

investigative division. (App.p.21, line 21-p.24, line 25). He also spoke to Holladay at about 5:45 p.m. and got a description of the vehicle she saw in McSwain's driveway. (App.p.27, lines 4-20). Torres testified that although it had been raining on and off that morning, it did not rain on the afternoon of April 21, 2011. (App.p.25, lines 9-14).

Torres testified he returned to McSwain's house between 6:00 and 8:00 the same evening to retrieve the piece of paper McSwain discovered beside his driveway. (App.p.25, line 17-p.27, line 3). On cross-examination Torres acknowledged the ground was still wet from the morning rain when he initially responded to McSwain's house at 5:27 p.m., but the piece of paper he retrieved from McSwain between 6:30 p.m. and 8:00 p.m. was dry. (App.p.28, lines 11-25; p.33, lines 1-15). He further testified that the unemployment office is approximately two miles from McSwain's house, but that the wind conditions were very light on the day of the burglary. (App.p.32, lines 8-14).

Kenneth Cole is the father of Respondent's girlfriend and the maternal grandfather of Respondent's child. (App.p.43, lines 19-21). He testified that although Respondent does not have a car, he would often borrow cars from members of Mr. Cole's family, and that he had seen Respondent drive his daughter's car in the past. Mr. Cole confirmed his daughter's car is a red, four-door Mitsubishi Gallant with gray primer paint on one of the fenders, and that he thinks it had a paper tag in April of 2011. (App.p.39, line 7-p.40, line 7). He claimed Respondent lived in Liberty rather than in or near the Cole residence, and claimed his daughter was not home when a police detective came to the house on April 22, 2011, looking for Respondent, despite the fact that her red Mitsubishi was in the driveway, and the daughter was at work. Mr. Cole also claimed he did not know Respondent was in his house when the police came looking for Respondent.

(App.p.37, line 10-p.39, line 4; p.40, lines 8-23). On cross-examination, Mr. Cole acknowledged that shortly after the police arrived, Respondent came out of the residence. (App.p.47, lines 16-20).

Kimberly Cole, Kenneth Cole's wife, the mother of Respondent's girlfriend, and the maternal grandmother of Respondent's child, testified she was also home on April 22, 2011, when the police came to the Cole's house looking for Respondent. She said she woke up, got dressed, and went outside to talk to the detective. Mrs. Cole told the detective that Respondent was not inside the house, but acknowledged her daughter's red Mitsubishi Gallant with gray primer paint was in the driveway. She told the detective her daughter drove the red Gallant most of the time, but didn't know where her daughter was that morning. She testified she had no idea who drove the car on April 21, 2011, and denied telling the detective on April 22, 2011, that Respondent and her daughter had driven the car on the date of the burglary. (App.p.50, line 3-p.52, line 23).

Mrs. Cole testified that when she went back inside, Respondent was in her living room, so she told him a detective was outside and wanted to talk. (App.p.53, line 17-p.54, line 6). She said that after Respondent emerged, the detective asked her why she had lied for Respondent. Mrs. Cole testified she did not lie, and insisted she did not know Respondent was in her house when she first talked to the detective. She denied telling the detective on April 22, 2011, that she knew Respondent was in the house, but Respondent told her he was scared and did not want to talk to the police. She also denied previously telling the detective that Respondent told her to lie and say Respondent was not at the house. (App.p.54, lines 9-25). On cross-examination, Mrs. Cole testified that Respondent borrowed her '99 Yukon to drive to the unemployment office on April 21,

2011, and that she was home when he returned early in the afternoon. (App.p.56, line 18-p.57, line 25). She also testified that to her knowledge, Respondent did not leave again on the April 21, 2011, until after dinner, around 6 o'clock p.m. Mrs. Cole claimed she never knew Respondent to drive the Mitsubishi and that he could drive her Yukon anytime he asked. (App.p.62, line 12-p.63, line 2).

Sergeant Brian Gibson works in the crime scene/forensics division of the Pickens County Sheriff's Department. He testified that he investigated the burglary at McSwain's house but did not find any fingerprints. (App.p.64, line 6-p.71, line 4). On cross-examination he was asked: "Well, certainly we are going to say that, based on Mr. McSwain's statement, a burglary occurred. We can agree on that right?" Gibson responded: "Yes, sir, you can." (App.p.76, lines 8-11).

Shae Rozakos, the director of the "Work Link Work Force Investment Corporation," better known as the unemployment office, testified that according to her business records, Respondent came to her office and completed self-registration at 1:21 p.m. on April 21, 2011. She confirmed that State's Exhibit # S-1 was a piece of paper her office would have supplied to a person who came into her office. Rozakos also confirmed that Respondent completed a referral to two possible jobs as of 1:32 p.m. on April 21, 2011. (App.p.80, line 6-p.82, line 2).

Detective Benjamin Dow of the Pickens County Sheriff's Office testified he works in the Criminal Investigations Division and was the lead detective in Respondent's case. On April 22, 2011, he received and reviewed an incident report completed by Torres, which had a copy of the paper from McSwain's driveway, and a written statement from Holladay attached. Using the password on the paper, he logged onto the

unemployment office website and determined the account belonged to Respondent. Dow then looked in Department of Motor Vehicles records and discovered Respondent had listed an address for a trailer on the same piece of property as the Cole's residence. (App.p.83, line 7-p.85, line 19). Next Dow drove to the unemployment office and confirmed Respondent had been there on April 21, 2011. (App.p.86, line 9-p.87, line 22).

Later, Dow drove by the Cole's residence and saw a burgundy four-door Mitsubishi Gallant with "primer gray fender" on the passenger side, parked in the driveway. Dow parked and approached the house, looking for Respondent. Mr. Cole exited the house and told Dow that Respondent was not inside. He testified that shortly thereafter, Mrs. Cole also exited the house. She also told Dow Respondent was not inside, and said she didn't know where Respondent was. Dow testified he asked Mrs. Cole if Respondent had been to the unemployment office the day before. She responded yes, and said Respondent and her daughter were in the Mitsubishi that day. Mrs. Cole said her daughter was at work, and that she didn't know how the car got in her driveway, but confirmed that her daughter and Respondent both drove the Mitsubishi Gallant. Dow testified that after he explained why he needed to talk to Respondent, Mrs. Cole went back into the house, and a minute or so later, Respondent emerged. (App.p.88, line 20-p.94, line 21). Dow testified he talked to Respondent, and that that Respondent stated he and his girlfriend had driven the car the day before, which confirmed what Mrs. Cole had said. Respondent also admitted he had been to the unemployment office, but said he didn't know how his slip of paper had ended up on McSwain's property. (App.p.94, line 22-p.97, line 7).

After placing Respondent under arrest, Dow had another conversation with Mrs. Cole. Dow's trial testimony was as follow:

Q: Detective Dow, when you asked Mrs. Cole why she had lied to you, what did she respond?

A: She stated that while she was inside that Mr. Lane was scared and didn't want to talk to me.

Q: Is that what - - I'm sorry, let's be clear. She said that she lied because why?

A: He told her he was scared and he did not want to talk to me.

And she also told me that he said for her not to - for her to tell me that he was not there.

Q: And when you first met with Mrs. Cole before the defendant came out, did she say "I don't know if Karl Lane is inside," or did she say "no, he is not inside"?

A: No, she stated he was not inside.

Q: She didn't say she didn't know?

A: No.

(App.p.99, lines 5-21) (emphasis added). On cross-examination, Dow repeated his testimony about his conversation with Mrs. Cole, and testified that a burgundy vehicle with gray primer in the combination exhibited on the Cole's vehicle was unusual in Pickens County. (App.p.106, lines 3-22; p.109, lines 1-8; p.110, line 11-p.111, line 13).

At the conclusion of the State's case, Respondent moved for a directed verdict. He argued the State had presented a purely circumstantial evidence case, and relying on State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), and a line of cases reference therein, contended the State's evidence raised only a mere suspicion of guilt, and was not sufficient for submission to the jury. (App.p.122-p.128). The trial judge advised he had

read over the Odems case, had carefully listened to the evidence, and denied Respondent's motion, finding there was sufficient and substantial circumstantial evidence of guilt requiring submission of the case to the jury. (App.p.129-130). Respondent chose not to call any witnesses in his defense and renewed his motion for a directed verdict. The motion was again denied. (App.p.131, lines 10-22; p.135, lines 20-22). Following deliberations, the jury convicted Respondent of first-degree burglary. (App.p.150, line 9-p.151, line 23).

At the conclusion of the evidentiary phase of trial, the trial judge discussed the instructions he intended to present to the jury. Relying again on Odems, Respondent asked that the court give the "traditional" circumstantial evidence charge¹ in lieu of the "standard" circumstantial evidence charge² currently in use in South Carolina with endorsement of the Supreme Court. Respondent acknowledged the Supreme Court in Odems did not specifically reinstate the "traditional" circumstantial evidence charge, but nonetheless argued that such an instruction was valid in light of Odems and the Supreme Court's use of the language when addressing circumstantial evidence in the context of directed verdict motions. The trial judge denied Respondent's motion, finding that despite the language in Odems, Cherry was still the controlling law and that as a result he would give the standard circumstantial evidence charge to the jury. (App.p.132, line 11-p.135, line 18).

¹ "[I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." See State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989); State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955).

² "The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence." (R.p.137, lines 17-21). See State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004); State v. Gripton, 327 S.C. 79, 81, 489 S.E.2d 462, 462-463 (1997).

Thereafter, the trial judge charged the jury on the applicable law. (App.p.136-p.148). Specifically, the trial judge instructed the jury that the burden of proof was on the State, that Respondent was presumed to be innocent and was not required to prove himself innocent, that the State was required to prove Respondent's guilt beyond a reasonable doubt, and the jury was tasked with assessing the credibility of the witnesses and weighing the evidence. (App.p.136-p.138; p.141-p.142). In instructing the jury on the State's burden of proof, the trial judge explained:

The State has the burden of proving guilt beyond a reasonable doubt. And some of you may in the past have had an opportunity to serve on a jury in a civil case, magistrate's court, or circuit court here, and you were told it was only necessary to prove that a fact was more likely true than not true by what we called the preponderance of the evidence, or the greater weight of the evidence. In criminal cases the State's proof is more powerful than that. It must be proof beyond a reasonable doubt. That would be proof that leaves you firmly convinced of the defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty.

If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

(App.p.137, line 22-p.138, line 18). Furthermore, regarding circumstantial evidence, the trial judge instructed:

Normally in trials there is [sic] two types of evidence presented. There is direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It would be evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It's evidence, in other words, which immediately establishes collateral facts from which the main fact may be inferred. It's based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in this case. And after weighing that evidence, if you are not convicted of the guilt of the defendant beyond a reasonable doubt, then you must, of course, find the defendant not guilty.

(App.p.140, lines 4-25). Respondent took exception to the charge and renewed his request for the traditional charge on circumstantial evidence. The trial judge stood by his previous ruling, finding the charge given complied with Odems. (App.p.149, lines 7-15). Subsequently, at the conclusion of trial, the jury convicted Respondent first-degree burglary. (App.p.151, lines 15-23). The trial judge then sentenced Respondent to a term of imprisonment of two hundred and fifteen (215) months. (App.p.156-p.157).

CERTIORARI

The State submits there are special and important reasons for this Court to exercise its discretion to grant certiorari and to review the decision of the Court of Appeals in this matter pursuant to Rule 242(b), SCACR. Specifically, the State submits the decision of the Court of Appeals is in conflict with prior decisions of this Court in that the Court of Appeals misapplied the standard of review. After correctly reciting the general standard of review in criminal cases, as well as the specific standard for reviewing a trial court's denial of a motion for a directed verdict, the Court of Appeals

misapplied those standards when conducting its review of the evidence supporting the trial court's decision to submit Respondent's case to the jury. For this reason, the State respectfully asks this Court to grant this petition for a writ of certiorari and issue an opinion which reverses the Court of Appeals' decision reversing the trial court's denial of Respondent's motion for a directed verdict.

ARGUMENT

The Court of Appeals erred in reversing Respondent's conviction where, after correctly reciting the standard for reviewing a trial court's denial of a motion for a directed verdict, the Court of Appeals misapplied that standard.

In reversing Respondent's conviction, the Court of Appeals recognized that it sits to review only errors of law and is bound by the trial court's factual findings unless those findings are clearly erroneous. It also acknowledged that on appeal from the denial of a directed verdict it must view the evidence in the light most favorable to the State and must find the case was properly submitted to the jury if there is any direct evidence, or substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt. However, the Court of Appeals then misapplied the standard of review based in part on a misapprehension of the scope of this Court's decisions in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) and State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011).

In its published opinion, the Court of Appeals focused on the State's "burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime." It then found "the State did not present substantial circumstantial evidence to reasonably prove Respondent was the person who committed

the burglary.” Despite describing the substantial circumstantial evidence tending to link Respondent to the burglary of Victim’s house, the Court of Appeals found such evidence raised “only a mere suspicion that Respondent committed the crime.” Relying on Odems and Bostick, the Court of Appeals held the trial court erred by failing to grant Respondent’s directed verdict motion. The State disagrees and submits the Court of Appeals’ expansive reading of Odems and Bostick, and its improper focus on the burden of proof required to sustain a conviction rather than the level of evidence required to sustain a challenge at the directed verdict stage, led it to misapply the standard of review for the trial court’s denial of a directed verdict.

As explained by this Court: “It must be remembered . . . that there is one test by which circumstantial evidence is to be measured by the jury in its deliberations, and quite another by which it is to be measured by the trial judge in his consideration of the accused’s motion for a directed verdict.” State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955). Indeed, the more stringent test by which circumstantial evidence is to be measured by the jury is illustrated by the modified circumstantial evidence charge recently approved by this Court, which provides:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) (emphasis added). A similarly stringent standard, and one nearly identical to South Carolina's previously abandoned circumstantial evidence requirement that "all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis,"³ is set forth by statute in our sister state of Georgia.⁴ Yet, even under this strict test by which the jury must measure circumstantial evidence, the Georgia Court of Appeals has held: "It is not necessary that circumstantial evidence exclude every other hypothesis except that of guilt, but, rather, only reasonable inferences and hypotheses, and it is for jury to decide whether all reasonable hypotheses have been excluded." Wooten v. State, 507 S.E.2d 202, 203 (Ga. Ct. App. 1998) (emphasis added). It further explained:

Questions as to the reasonableness of hypotheses are generally to be decided by the jury which heard the evidence and saw the witnesses, so where the jury is authorized to find that the evidence, although circumstantial, was sufficient to exclude every reasonable hypothesis save that of guilt, that finding will not be disturbed on appeal unless the verdict of guilty is insupportable as a matter of law.

Ross v. State, 524 S.E.2d 255, 256 (Ga. Ct. App. 1999) (emphasis added) (citations omitted).

³ Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926.

⁴ "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." Ga. Code Ann. § 24-14-6 (2013).

By comparison, when an appellate court is reviewing the denial of a directed verdict motion in a case solely involving circumstantial evidence, this Court has instructed:

When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) (citations omitted).

Accordingly, an analysis of the trial judge's ruling hinges on whether all of the circumstantial evidence taken together was sufficient for the jury to reasonably infer the defendant's guilt for the crimes beyond a reasonable doubt. Id. at 595, 606 S.E.2d at 478. Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

Here, the Court of Appeals seems both: (1) to have applied the wrong, more stringent, test identified by Littlejohn to Respondent's case, and (2) to have substituted its own judgment in place of the jury to conclude that because some other hypothesis could possibly explain the circumstantial evidence tending to prove Respondent's identity as the burglar, a directed verdict should have been granted. The State submits this

constituted a misapplication of the standard of review in both instances. The appellate court should not weigh the substantial circumstantial evidence reasonably tending to prove the burglar's identity to determine if it actually proved Respondent was the burglar beyond a reasonable doubt to the exclusion of every other reasonable hypothesis.

Likewise, weighing circumstantial evidence should be conducted by the jury which heard that evidence and saw the witnesses, not by the appellate court. The Court of Appeals supports its analysis with a reference to Odems and Bostick; however, both cases, as well as the seminal South Carolina cases upon which they are based, are distinguishable, particularly in regard to the proof of identity the Court of Appeals found lacking against Respondent.

A comparison of the circumstantial evidence in Odems, Bostick, and their predecessors, against the circumstantial evidence presented against Respondent, supports the trial judge's finding that:

I believe weighing all the evidence, as I must, in the light most favorable to the State . . . there is certainly the existence of evidence, and I believe there is sufficient and substantial circumstantial evidence and with the direct evidence that we have to allow this case to go to the jury.

(R.p.126, line 12-p.127, line 1). In Odems, the evidence established Odems' cousins, the other men who fled into the woods after the traffic stop, admitted guilt for committing the robberies. Although one cousin, Bell, refused to offer any testimony about Odems' involvement in the crimes or how Odems came to be in the vehicle connected to the incident shortly after the burglary was committed, his other cousin, Dawkins, attempted to shield Odems from any responsibility for the crimes through his trial testimony. Dawkins claimed he burglarized the victim's home with the assistance of Bell after they planned to commit the crime together, left the scene after stealing items from the victim's

home, saw police officers who he believed had been alerted to the crime, stopped to refuel his vehicle at a gas station, encountered Odems while he was pumping gas into the car, and granted a ride to Odems before being stopped and later arrested. Odems, 395 S.C. at 588, 720 S.E.2d at 51. Also in Odems, a forensic investigator was able to collect fingerprints from the scene of the burglary, and those fingerprints matched the two men who confessed, but not Odems.

In Bostick, the victim's body was found in her kitchen on Sunday afternoon when the fire department was called to extinguish a fire at her house. She had been struck in the head with a blunt force object, but actually died as a result of carbon monoxide from the fire. Rudy Polite, the victim's son, lived with the victim, and would have known that she typically brought a briefcase containing money from the church on Sunday for deposit at the bank on Monday. Bostick, 392 S.C. at 136-37, 708 S.E.2d at 775. Thus, Rudy had both motive and opportunity. Also, two witnesses provided testimony specifically casting suspicion on Rudy as a person other than Bostick who might have murdered the victim on the day of the fire. Sarah Howell overheard an argument between Rudy and the victim the day of the fire, and Gladys Polite described Rudy's demeanor on the night of the fire, saying he did not express any emotion or feeling as his mother's body was carried out of the house. Id. at 137-38, 708 S.E.2d at 776. Combined with the fact that there was no direct evidence linking Bostick to the crime scene and no evidence Bostick had knowledge the victim would have had money, this Court held the trial court erred in failing to direct a verdict in favor of Bostick. Id. at 141-42, 708 S.E.2d at 778.

The Bostick court reached this conclusion after considering "three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial

evidence.”⁵ This Court noted that in Schrock and Arnold, there was no evidence placing the defendant at the scene of the crime. In Mitchell, a fingerprint placed Mitchell at the scene of the crime; however, he had been in and around that scene at least three times prior to the burglary, providing a reasonable explanation for the fingerprint. Bostick, 392 S.C. at 139-41, 708 S.E.2d at 777-78. Thus, the common denominator in Odem, Bostick, Arnold, Mitchell, and Schrock, was the State’s failure to produce substantial circumstantial evidence that the defendant was the person who committed the crime.⁶ That failure to prove identity, however, was due to a combination of: (1) the complete absence of evidence placing the defendant at the scene of the crime, (2) the existence of substantial evidence explaining the defendant’s presence at the scene other than his or her commission of the crime, and/or (3) the existence of substantial evidence implicating specific individuals, other than the defendant, who might have committed the crime. These factors were simply not present in Respondent’s trial.

The evidence viewed in a light most favorable to the State in regard to the identity of the burglar consisted of: (1) a burgundy/red four-door Mitsubishi Gallant with an unusual combination of primer paint on the front passenger side fender and a “paper tag” parked in Victim’s driveway during the commission of the burglary; (2) Respondent being located at the residence where a burgundy/red four-door Mitsubishi Gallant with an identical primer paint combination on the front passenger side fender and a “paper tag” was parked the day after the burglary; (3) Respondent driving that same burgundy/red

⁵ State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); & State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

⁶ The same holds true in an opinion filed by this Court yesterday which reversed the trial court’s refusal to direct a verdict of acquittal on a charge for homicide by child abuse because the State did not put forward sufficient direct or circumstantial evidence of Appellant’s guilt. State v. Hepburn, Op. No. 27336 (filed December 11, 2013) (Shearouse Adv. Sh. No. 52 at 17). This Court found: “the State did not present substantial evidence that [Hepburn] killed the victim.” Id. at 40.

four-door Mitsubishi Gallant the day of the burglary; (4) Respondent's folded job referral paper, issued by the local unemployment office the day of the burglary, being discovered on the ground next to Victim's driveway that afternoon;⁷ and (5) Respondent making substantial efforts to avoid the police the day after the burglary by initially hiding inside the residence and asking his girlfriend's mother to lie to the detective by saying he was not inside.

Thus, the evidence shows Respondent was driving the car used in the burglary on the day the burglary was committed and that he dropped a slip of paper he had obtained from the unemployment office that day next to Victim's driveway. Such evidence can lead to a reasonable inference that Respondent was the burglar. Unlike in Odems and Bostick, evidence exists placing Respondent at the scene of the crime. Also unlike Odems and Bostick, there is no evidence implicating specific individuals, other than Respondent, who might have committed the burglary.⁸ Indeed, unlike in Odems where the co-defendant's fingerprints were found, investigators found no fingerprints at the scene of the burglary, from Respondent or anyone else.

In addition, Respondent's effort to hide from the police, including asking a third party to lie on his behalf, constitutes strong circumstantial evidence of his guilt for the crimes. Respondent's actions supported a logical inference he hid from the officer based on his guilt for the wrongdoing the preceding day and his desire to avoid punishment for

⁷ Respondent and the Court of Appeals seemed to emphasize the fact that the paper was not discovered by the police during their initial investigation; however, this goes to the weight of the evidence, and should have only been considered by the jury. In any event, since the initial investigation focused heavily on the interior of the residence and the damage caused by the forceful entry, the subsequent discovery of the paper outside by Victim is of no moment.

⁸ Similarly in State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001), evidence was presented that another person committed the crime rather than the defendant. In fact, Burgess confessed to setting fire to the home and claimed that Lollis had no knowledge of her plans. Lollis, 343 S.C. at 581, 541 S.E.2d at 255.

that wrongdoing. In Odems, the evidence presented a plausible explanation for Odems' flight from the police other than his guilt of the burglary. Here, there is no evidence to explain Respondent's efforts to hide from police except for the reasonable inference that he was guilty of the burglary.

Thus, viewing all of the evidence presented in a light most favorable to the State as required, and considering only its existence and not its weight, the evidence established Respondent's guilt for the first-degree burglary and required the trial judge to submit the case to the jury. Based on the logical and reasonable inferences to be drawn from this evidence, the jury could identify Respondent as the burglar and could convict him of each element of first-degree burglary. Furthermore, the questions as to whether the evidence presented supported an inference of guilt and what weight should be assigned to that evidence rested solely with the jury as the fact-finder. Therefore, the trial judge properly submitted the case to the jury to allow it to resolve any of the factual disputes raised by the evidence and the inferences to be drawn from it. The State respectfully submits the Court of Appeals misapprehended Odems and Bostick and misapplied the standard of review by improperly focusing on the weight of the evidence as opposed to its existence. Respondent's case did not present a complete failure of evidence of his guilt. Instead, substantial circumstantial evidence of Respondent's guilt for first-degree burglary was presented. Therefore, the trial judge properly denied Respondent's directed verdict motion, and Respondent's conviction should have been affirmed by the Court of Appeals.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari and issue an order reversing the decision of the Court of Appeals and affirming Respondent's conviction and sentence. If the Court grants the petition for a writ of certiorari, Petitioner would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Columbia, South Carolina
December 12, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

Opinion No. 5175 (S.C. Ct. App. filed October 9, 2013)
Appellate Case No. 2012-207787

State of South Carolina, ...Petitioner,

v.

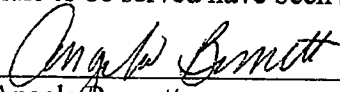
Karl Ryan Lane, ...Respondent.

PROOF OF SERVICE

I, Angela Bennett, Executive Legal Assistant, hereby certify that I have served the within *Petition for a Writ of Certiorari*, and the *Appendix*, both dated December 12, 2013, on Respondent by depositing two copies of the Petition and one copy of the Appendix in the United States mail, postage prepaid, addressed to his attorney of record:

Carmen V. Ganjehsani, Appellate Defender
South Carolina Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 12th, day of December, 2013.


Angela Bennett
Executive Legal Assistant

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

PETITIONER,

V.

KARL RYAN LANE,

RESPONDENT.

APPELLATE CASE NO. 2013-002606

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

CARMEN V. GANJEHSANI
Appellate Defender

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ATTORNEY FOR RESPONDENT

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CONCLUSION 24

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

The Court of Appeals correctly reversed Respondent's conviction for first degree burglary where the State's entirely circumstantial evidence, none of which even placed Respondent inside the burglary victim's home, was not substantial and merely raised a suspicion of Respondent's guilt.

COUNTERSTATEMENT OF THE CASE

On January 24, 2012, Respondent Karl Ryan Lane was indicted by the Pickens County Grand Jury for (1) first-degree burglary and (2) grand larceny. App. 168-169.

On January 25, 2012, Lane proceeded to trial before the Honorable G. Edward Welmaker and a jury. App. 4. Lane was represented by John Dejong, and the State was represented by Jennie Barwick. Id.

On January 26, 2012, the jury found Lane (1) guilty of first-degree burglary and (2) not guilty of grand larceny. App. 151, ll. 15-23. The Trial Court then sentenced Lane to 215 months imprisonment. App. 156, l. 24 – 157, l. 2.

Lane filed an appeal with the South Carolina Court of Appeals. On October 9, 2013, the Court of Appeals reversed Lane's conviction, holding the State did not present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary. App. 284-288; Opinion No. 5175.

The State filed a Petition for Rehearing on October 22, 2013, which was denied by the Court of Appeals on November 22, 2013. App. 289-301. The State has now filed a Petition for Writ of Certiorari to which Lane responds.

COUNTERSTATEMENT OF FACTS

On April 21, 2011, firearms were stolen from a gun safe in Mark McSwain's house.

Pamela Holladay

Pamela Holladay was McSwain's neighbor and lived across the street. She lived more than one football field but less than two football fields away from McSwain's house. App. 10, ll. 12-24. On the afternoon of April 21, 2011, Holladay decided to go outside to cut the grass. Around 3:20 p.m., she noticed something unusual while she was cutting the grass: "[A]s I was cutting grass, I noticed a car pull in [McSwain's] driveway . . . it's very rare that you see many cars over in their driveway, especially when they are not home, and I thought it was odd, so I just kind of kept my eye on it." App. 10, l. 25 – 11, l. 11; 20, ll. 1-12. Holladay asserted that she saw "a red to burgundy colored four-door car with a paper tag" and "on the front passenger panel it was like a gray primer panel." App. 11, ll. 21-23. Holladay claimed that she "could tell it was a Mitsubishi Gallant-type car." App. 12, ll. 1-2.

Holladay observed "a person going from the front door of [McSwain's] residence to the vehicle, back to the front door." App. 12, ll. 10-12. She drove her lawnmower down her driveway closer to McSwain's house where she saw someone continuing to go from the vehicle to the front door. She then saw the vehicle leave. App. 12, l. 16 – 13, l. 4.

When asked whether she saw more than one person, Holladay replied, "I believe that when - - when I first observed, there was just one person. At the end when the car was getting ready to leave, there were two people in the vehicle, getting in the vehicle." App. 13, ll. 11-14. She said she first saw the second person when they were getting in the vehicle to leave. App. 13, ll. 15-16. Holladay "couldn't say for sure" whether the second person came out of the front door or the back door. App. 13, ll. 17-19.

Holladay was not close enough to see their faces and “all [she] could tell was that the person that [she] observed was wearing a black shirt and blue jeans and had a smaller build.” App. 13, ll. 20-23. She could not give any descriptive information about the other person. App. 13, l. 24 – 14, l. 1; 20, ll. 22-23.

Later that afternoon, Holladay observed law enforcement arrive at McSwain’s residence, and she gave them a description of the vehicle that she saw. App. 14, l. 18 – 15, l. 10. Notably, Holladay was unable to identify Lane from a photo lineup the day after the incident occurred. App. 15, ll. 3-19.

On cross-examination, Holladay admitted that her house is located on a hill “[a] pretty good ways” from the main road and has a “[p]retty long driveway.” App. 18, ll. 1-3. Holladay reiterated that she did not know who the two people were in the red car. App. 19, ll. 9-11.

Mark McSwain

On the morning of April 21, 2011, Mark McSwain was preparing to leave for work around 8:30 a.m. App. 176, l. 24 – 177, l. 2. He noticed some turkeys out in the field and as a hunter, he was very excited to go out and try to hunt these birds. He called his boss to ask if he could come in a little bit late so he could hunt. He changed clothes and went out into the field for about an hour. McSwain was able to harvest two birds. App. 177, ll. 1-10.

After hunting, McSwain was in a hurry to change back into his work clothes and get to work. His gun safe was located in a spare bedroom. Because he was so excited about harvesting two birds and because he was in a hurry to get to work, McSwain put his guns back in the safe but did not lock it. App. 177, ll. 11-25; 178, ll. 1-3.

McSwain arrived home from work around 4:30 p.m. App. 178, ll. 14-15. He entered through his front door and noticed right off the bat that his back door was open and there were a number of pieces of wood and door casings lying on the kitchen floor. App. 178, l. 24 – 179, l. 4. McSwain ran through the house quickly to see if anything had been taken. He walked into his back bedroom and noticed the closet door where his gun safe was located was open. The gun safe door was also open and it was empty. Nine firearms were missing. App. 179, ll. 5-13; 199, ll. 24-25. McSwain immediately called the sheriff's department. App. 179, ll. 15-16.

Nothing other than the firearms was stolen from McSwain's home. No televisions, stereo equipment, jewelry or cash were taken from the home even though McSwain also owned these items and had \$3,100.00 in cash at the home on the top shelf in the back of the gun safe. App. 184, l. 15 – 185, l. 6; 191, l. 16 – 192, l. 2; 194, ll. 10-22. The only damage to the house was the back door. The front door to the home was not damaged. App. 193, ll. 4-8.

Approximately twenty to thirty minutes after the last law enforcement officer left McSwain's home, McSwain walked around to see if there was anything else that he might be missing. In his clean and trimmed yard, he "noticed that there was a piece of paper folded up just beside [his] driveway lying in some grass and [he] knew that that was out of place, because [he did not] have trash and stuff like that in [his] yard" App. 188, ll. 16-24. McSwain picked up the piece of paper. The paper had a name and password on it. The paper was dry. McSwain thought the paper might be relevant, so he notified law enforcement and an officer was dispatched back to his residence. App. 188, l. 25 – 189, l. 6; 207, ll. 2-3.

At trial, McSwain testified that he had never met Lane, had never seen him, and had no knowledge of Lane ever being in his house. App. 200, ll. 6-12.

Deputy Michael Torres

Deputy Michael Torres of the Pickens County Sheriff's Office recalled that he arrived to McSwain's house at approximately 5:30 p.m. on April 21, 2011. App. 21, l. 15 – 23, l. 5. He confirmed that whoever broke into McSwain's house entered through the back door of home. App. 24, ll. 16-25. Deputy Torres returned to McSwain's house around 8:00 p.m. to look at the piece of paper that McSwain found in his yard. App. 25, ll. 17-25. Deputy Torres gathered the piece of paper and attached the paper to the initial police report. App. 26, ll. 1-20.

On cross-examination, Deputy Torres testified that it had been raining off and on the morning of April 21, 2011 and that the ground was still wet when he initially responded to the call at 5:17 p.m. App. 28, ll. 11-21.

Deputy Torres admitted that he did not find any tire tracks, footprints, or papers when he searched McSwain's property. App. 29, l. 22 – 30, l. 7. Deputy Torres also testified on cross-examination that from the appearances of McSwain's home, whoever went into the house went straight to the gun safe which was kept in a back bedroom closet. App. 35, ll. 2-13. Nothing else in McSwain's house other than the gun safe was disturbed. App. 35, ll. 2-4. Deputy Torres completed the first investigation at McSwain's home around 6:00 p.m. and left McSwain's house at that time. App. 32, ll. 19-21.

When Deputy Torres returned to McSwain's home around 8:00 p.m. to look at the slip of paper McSwain found, he noticed that the paper McSwain found was dry. Deputy

Torres agreed that the paper could have arrived in McSwain's yard after 6:00 p.m. because he did not see the paper during his search for evidence. App. 32, l. 22 – 33, l. 25.

Detective Benjamin Dow

Detective Benjamin Dow worked in the Criminal Investigations Division of the Pickens County Sheriff's Office. App. 83, ll. 11-21. He was the lead detective investigating the burglary of McSwain's home, and he received the initial report from Deputy Torres. App. 84, ll. 2-5. When he flipped through the report the morning following the incident, he saw the slip of paper attached to the report. App. 84, ll. 7-10. The paper had a notation on it that indicated it was from the One Stop unemployment office. Deputy Dow went to the website listed on the piece of paper and entered the user name and password on the paper and received information that the account belonged to Lane. App. 84, ll. 7-25.

Detective Dow checked the DMV records to find an address for Lane. He located an address and rode by that house to see if he saw any vehicle matching Holladay's description of the vehicle she saw at McSwain's house. When he rode by the house, he did not see such a vehicle at that time. App. 85, l. 5 – 86, l. 8.

Detective Dow then went to the unemployment office, taking the slip of paper with him. When he arrived, he spoke to the employee at the front desk and asked if she recognized Lane from his DMV photograph. She did not recognize Lane. Detective Dow then showed the employee the slip of paper, and she confirmed that it was a slip of paper that the unemployment office issues out to someone registered in their system. App. 86, l. 10 – 87, l. 16.

Detective Dow was then put in contact with another employee of the unemployment office. This person logged into Lane's account and confirmed that he was there on April 21, 2011. The employee was able to advise Detective Dow that Lane applied for two positions. App. 87, ll. 19-25.

After Detective Dow left the unemployment office, he stopped by McSwain's home and then he drove back by the home where he believed Lane was staying. This time he saw a vehicle matching Hollaway's description in the driveway. App. 88, l. 10 – 89, l. 7. Detective Dow decided to try to make contact with Lane. App. 89, ll. 8-9.

Detective Dow said a Kenneth Cole came out of the house. Detective Dow asked Mr. Cole if Lane was in the house and Mr. Cole said that Lane was not there. Mr. Cole also explained that he had just woken up. Mr. Cole then walked on into the yard. App. 91, ll. 13-16.

According to Detective Dow, a Kimberly Cole then walked out of the house. Detective Dow asked her if Lane was inside, and she stated that Lane was not inside. She also apparently said that she did not know where Lane was at the moment. When Detective Dow asked her if Lane had been to the unemployment office the day before, Ms. Cole replied that he had. App. 93, ll. 3 – 15.

Detective Dow also asked Ms. Cole who had been driving the red sedan the day before, and Ms. Cole said that Lane and her daughter had been driving the car. Ms. Cole explained to Detective Dow that Lane and her daughter had a child together. App. 93, ll. 16-19.

Detective Dow told Ms. Cole he was conducting an investigation and needed to speak to Lane. Ms. Cole went back inside, and a few minutes later, Lane came outside.

Detective Dow spoke with Lane and explained to Lane why he was there. App. 94, l. 1 – 95, l. 14.

According to Detective Dow, Lane stated that he and his girlfriend had driven the car the day before and that he had been at the unemployment office. Lane said the slip of paper with his name and password on it did belong to him. Lane informed Detective Dow that he did not know how this slip of paper ended up in McSwain's yard. Based upon this information, Detective Dow placed Lane under arrest. App. 96, l. 14 – 97, l. 18.

After Lane was arrested, Detective Dow asked Ms. Cole why she lied for Lane. She responded that Lane told her he was scared and did not want to speak to Detective Dow. App. 98, l. 2 – 99, l. 15.

Detective Dow further testified that the McSwain's stolen guns were never located. App. 100, ll. 15-19. He also believed that whoever committed the burglary went straight to the gun safe. App. 117, ll. 7-9.

On cross-examination, Detective Dow stated that a black Yukon was in the Coles' driveway along with the red car. App. 107, ll. 2-9. Detective Dow admitted that he did not know what time Lane actually left the unemployment office and that the unemployment office is located approximately two-to-three miles away from McSwain's home. App. 107, l. 10 – 108, l. 4. Detective Dow agreed that McSwain's neighbor failed to provide a description of the paper tag on the red car and that the only other evidence linking Lane to the crime was the paper found in McSwain's yard found hours after the incident occurred. App. 109, ll. 1-3; 117, l. 16 – 118, l. 4. He further concurred that no one had ever identified the occupants of the vehicle seen in McSwain's driveway. App. 117, ll. 19-20. There were

also no fingerprints found and nothing found in the McSwain home pointing to Lane. App. 75, ll. 14-21; 117, l. 23 – 118, l. 1.

Detective Dow additionally agreed that the slip of paper, which was found sometime after 6:00 p.m. on the day of the incident and after law enforcement already searched and left McSwain's property, was dry even though it had been raining earlier in the day and the ground was wet. App. 118, l. 17 – 119, l. 2. Detective Dow acknowledged that he had no idea how the slip of paper ended up on McSwain's property. App. 120, ll. 14-15.

Kenneth Cole

Kenneth Cole, the maternal grandfather of Lane's child, testified that Detective Dow came to his house on April 22, 2011 and asked to speak to Lane. App. 38, ll. 10-16; 43, ll. 17-21. Mr. Cole had just woken up and did not know if Lane was there at the house. App. 38, ll. 17-20. When Mr. Cole answered the door, he came out of his bedroom and walked through the kitchen and the living room. He did not see Lane in either of these rooms as he walked to answer the door. App. 38, l. 21 – 39, l. 4. Therefore, when Detective Dow asked Mr. Cole if he could speak to Lane, Mr. Cole told Detective Dow that Lane was not there because he did not see Lane in the house and honestly believed Lane was not there. App. 46, ll. 1-11.

Mr. Cole further testified that Lane did not have his own car. Mr. Cole acknowledged that his daughter owned a red Mitsubishi Gallant and that Lane sometimes drove that car. App. 39, ll. 7-17. Mr. Cole described his daughter's car as a four door vehicle with gray primer paint on one of the fenders. He believed the car had a paper tag, but he was not hundred percent positive. App. 39, l. 22 – 40, l. 7.

Kimberly Cole

Kimberly Cole, Kenneth Cole's wife, also recalled Detective Dow coming to their home on April 22, 2011 looking for Lane. App. 50, l. 4 – 51, l. 6. She told Detective Dow that Lane was not inside and that she did not know where Lane was at the time. App. 51, ll. 3 – 11. Detective Dow asked her to go back inside and when she did, she found Lane in the living room and told Lane that Detective Dow needed to speak with him. App. 53, l. 17 – 54, l. 6; 60, ll. 5-11.

Detective Dow also asked Ms. Cole about the red Mitsubishi Gallant in the driveway, and she explained that her daughter usually drove that vehicle. App. 51, ll. 12-23.

Ms. Cole did not know who had driven the Mitsubishi Gallant the day before on April 21, 2011. App. 52, ll. 15-16. When questioned by Detective Dow, she said that Lane had been to the unemployment office on April 21, 2011. App. 52, l. 24 – 53, l. 1. Ms. Cole testified that Lane had driven her 1999 Yukon to the unemployment office. App. 56, l. 22 – 57, l. 3. She recalled that the passenger door of this vehicle did not close all the way and small pieces of paper or small items like straws could easily slide out of the Yukon's passenger door. App. 57, ll. 1-19.

Ms. Cole said Lane arrived home early in the afternoon of April 21 after going to the unemployment office. App. 57, ll. 21-25. She never saw any guns with Lane when he arrived home and never saw any guns in her car. App. 58, ll. 1-6. Lane did not leave the house again on April 21 until after dinner around 6:00 p.m. App. 62, ll. 12-19.

Shae Rozakos

Shae Rozakos, the executive director of the Work Link Work Force Investment Corporation, testified that computer records indicated that Lane was at the unemployment

office on April 21, 2011. App. 80, ll. 6-17. Rozakos revealed that Lane completed the self-registration in the unemployment office at 1:21 p.m. and logged out of the computer after “being referred to two jobs at 1:32 p.m.” App. 81, l. 6 – 82, l.1.

On cross-examination, Rozakos admitted that she was not in the unemployment office on April 21, 2011 and therefore, she did not know what vehicle Lane drove to the unemployment office or where Lane went after he left the unemployment office. App. 82, ll. 14-22.

Motion for a Directed Verdict

At the close of the State’s case, defense counsel moved for a directed verdict. App. 112, ll. 16-17. Defense counsel argued, “This is purely a circumstantial evidence case” and cited State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), as controlling authority. App. 122, l. 18 – 123, l. 21. Defense counsel also cited State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) in support of his motion. Defense counsel asserted the State failed to present any evidence placing Lane inside McSwain’s home on April 21, 2011. App. 125, ll. 6-10. Defense counsel argued:

The only proof that I submit the State has presented in this case is that [Lane] was in the vicinity on April the 21st where this alleged burglary - - or this burglary occurred. I think *the State has to prove more than the fact that he was simply in the vicinity*. . . . The neighbor could not make any identification. . . . Your Honor, *at best [the evidence] arises to a mere suspicion*, and I would submit that [] is not sufficient for this case to go to the jury.

App. 127, l. 15 – 128, l. 3 (emphasis added).

The Trial Court denied the motion for a directed verdict and stated: “I disagree with you that [Odems] was more substantial than this case. . . . I believe there is sufficient and

substantial circumstantial evidence with the direct evidence that we have to allow this case to go to the jury[.]” App. 129, l. 11 – 130, l. 8. Defense counsel subsequently renewed his motion for a directed verdict, and the Trial Court denied the motion. R. 131, ll. 18-21.

Motion for a New Trial

The jury ultimately found Lane guilty of first-degree burglary and not guilty of grand larceny. App. 151, ll. 15-19. Defense counsel subsequently moved for a new trial. App. 152, l. 20 – 153, l. 19. The State replied, “Your Honor, the State doesn’t have to prove that the defendant actually committed a crime, just that the defendant intended to commit a crime, and that’s what the jury found him guilty of.” App. 153, l. 22-25.

Opinion of the Court of Appeals

The Court of Appeals reversed the Trial Court’s denial of Lane’s motion for a directed verdict, holding the State failed to present substantial circumstantial evidence reasonably proving Lane was the person who committed the burglary. App. 284-288.

ARGUMENT

The Court of Appeals correctly reversed Respondent's conviction for first degree burglary where the State's entirely circumstantial evidence, none of which even placed Respondent inside the burglary victim's home, was not substantial and merely raised a suspicion of Respondent's guilt.

The Court of Appeals correctly reversed Lane's conviction for first degree burglary where the evidence presented by the State merely raised a suspicion of Lane's guilt and there was no substantial circumstantial evidence that Lane was guilty of first degree burglary.

A defendant is guilty of burglary in the first degree if the defendant "enters a dwelling without consent and with intent to commit a crime in the dwelling" and "when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime . . . is armed with a deadly weapon or explosive." S.C. CODE ANN. § 16-11-311(A)(1)(a). To sustain a conviction against Lane, the State must therefore present sufficient evidence establishing that Lane entered the McSwain home without consent.

The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. See State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); see also In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

When considering a motion for directed verdict of acquittal, "the trial court is concerned the existence or non-existence of evidence, not its weight." Brown, 360 S.C.

at 586, 602 S.E.2d at 395. On appeal from the denial of a directed verdict, the court must view the evidence in the light most favorable to the State. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

The South Carolina Supreme Court “has repeatedly affirmed the principle that when the State fails to produce *substantial circumstantial evidence* that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” Odems, 395 S.C. at 583, 720 S.E.2d at 50 (emphasis added). In Odems, the Court cited State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) as “jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence.” Id. Specifically, the trial court “should grant a directed verdict motion when the evidence *merely raises a suspicion* that the accused is guilty.” Odems, 395 S.C. at 586, 720 S.E.2d at 50 (emphasis added) (citation omitted).

“Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” See State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing Lollis, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only “if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” Bostick, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

The State’s case against Lane consisted entirely of circumstantial evidence. The only evidence presented by the State to establish that Lane committed first degree burglary was the following: (1) the testimony of McSwain’s neighbor that a burgundy/red Mitsubishi

Gallant with a paper tag and primer painted panel was in McSwain's driveway the day of the theft; (2) Lane was located at a residence where a red/burgundy Mitsubishi Gallant matching the description given by the neighbor was parked; (3) testimony that, at times, Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend which matched the description by the neighbor and that Lane drove this Gallant on the day of the theft; (4) testimony that a folded piece of paper belonging to Lane was found in McSwain's driveway after law enforcement investigating the burglary had already left McSwain's house; and (5) testimony that Lane did not want to talk to police officers the day after the theft and asked his girlfriend's mother to lie to officers about his whereabouts.

There is a complete lack of evidence placing Lane inside the McSwain home. While McSwain's neighbor saw a car matching the description of Lane's girlfriend's car in McSwain's driveway, McSwain's neighbor could not identify the occupants of the vehicle and could not identify Lane in a photo lineup. App. 13, l. 20-14, l.1; 20, ll. 22-23; 15, ll. 3-9; 117, ll. 19-20. Even if the car McSwain's neighbor saw did in fact belong to Lane's girlfriend, that does not constitute proof or create a reasonable inference that Lane was in that vehicle. It could have been someone else in the vehicle that Lane's girlfriend knew.

There was additionally no evidence that McSwain's neighbor saw the occupants of the burgundy/red car enter or leave from the back door of McSwain's home – the door where forced entry was made. App. 12, l. 10 – 13, l. 19; 24, ll. 16-25. McSwain's neighbor did not testify that she observed the occupants of the car carrying any items from the house, much less the nine firearms that were stolen from McSwain's gun safe.

The slip of paper belonging to Lane that was found in McSwain's yard after law enforcement had already conducted their investigation does not create a reasonable

inference that Lane entered McSwain's home. This slip of paper was found dry even though the ground was wet from earlier rains, indicating the paper had not been on the ground very long. App. 28, ll. 11-21; 32, l. 22 – 33, l. 25; 118, l. 17 – 119, l. 2; 188, l. 16 – 189, l. 6. There is no evidence as to how this piece of paper ended up in McSwain's yard. App. 120, ll. 14-15. There is certainly no evidence that Lane himself dropped this piece of paper while burglarizing McSwain's home. Lane could have driven by McSwain's home, which was only a short distance from Lane's home and in between Lane's home and the unemployment office, and this piece of paper could have easily blown away from the inside of the car out an open window. App. 92, l. 5 – 93, l. 2; 167.

Finally, the fact that Lane initially did not want to speak to Detective Dow and asked Kimberly Cole to tell Detective Dow that Lane was not home is not evidence that Lane committed the burglary at McSwain's home. Lane did not make substantial efforts to hide. He came out of the house voluntarily after only a few minutes. App. 94, l. 1 – 95, l. 14. The State presented no evidence that Lane knew authorities were seeking him for the McSwain burglary. There is no nexus between the flight and the offense charged. Flight alone, without anything more, is not substantial circumstantial evidence of a defendant's guilt. State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52 (2011).

The State's evidence at the most establishes that Lane was in the vicinity of McSwain's home when he went to the unemployment office located two to three miles away from McSwain's home. App. 107, l. 23 – 108, l. 4. Being in the vicinity of a crime is not evidence that one committed a crime. The Court of Appeals therefore correctly held that the State failed to present substantial circumstantial evidence that Lane was guilty of first degree burglary.

The State's evidence in this case is much less than the evidence presented in other cases where this Court has found a lack of substantial circumstantial evidence. In Odems, the State's circumstantial evidence that defendant committed burglary in the first degree, grand larceny, criminal conspiracy, and malicious injury consisted only of the following: (1) the fact that less than ninety minutes after the burglary, police located the defendant in the getaway car with the burglars and the stolen goods; (2) defendant fled from law enforcement; and (3) defendant asked an uninvolved person to lie for him. Odems, 395 S.C. at 588, 720 S.E.2d at 51. This Court held this evidence did not satisfy the standard adopted by this Court regarding the proof necessary in a circumstantial evidence case and failed this Court's "well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury." Id. at 592, 720 S.E.2d at 53.

In Odems, there was evidence that the defendant was found in the getaway car with the stolen goods and yet that was not sufficient for submission of the case to the jury. Here, Lane was never placed in the burgundy/red vehicle seen by McSwain's neighbor in McSwain's driveway. There was also no evidence that anyone saw Lane with the stolen guns. There was a complete dearth of evidence placing Lane inside McSwain's home. The circumstantial evidence presented by the State against Lane is even less than the circumstantial evidence the State presented against the defendant in Odems.

Where the evidence in Odems was not substantial enough to warrant submission of the case to the jury, the State's evidence against Lane likewise fails this Court's requirement that a circumstantial case cannot be submitted to the jury unless there is substantial circumstantial evidence. See also State v. Bostick, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011) (holding evidence was insufficient to submit murder charge to the jury where

the State presented only the following evidence against the defendant (1) investigators found personal items belonging to the deceased, including a watch and two sets of car keys, in a burn pile located on the defendant's family property; (2) the defendant's shoes contained a pattern that matched gasoline, and gasoline was the accelerant used to start the house fire; and (3) investigators found blood on the clothes the defendant was wearing the day of the murder, although the evidence could not be matched to the deceased's DNA); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004) (holding Court of Appeals properly reversed denial of directed verdict of acquittal where evidence against defendant charged with murder only established that (1) victim's body was found off a dirt road in South Carolina after he had borrowed a friend's car and the car was later found in Tennessee; (2) defendant's fingerprint was found on a coffee cup lid in the car; and (3) a State's witness testified that defendant had called him from an area near where the car was found in Tennessee).

In State v. Mitchell, this Court affirmed the Court of Appeals' reversal of the trial court's denial of a directed verdict on the first degree burglary charge against defendant. 341 S.C. 406, 535 S.E.2d 126 (2000). The State's case against the defendant was entirely circumstantial as in this case. The State's evidence established that the victim came home for lunch and noticed ten bottles of beer in the refrigerator at noon but when he came home that night, the beer was no longer there. The victim's children said they had nothing to do with the missing beer. A few days later, the victim went into a spare room of his house and noticed a hole in the window glass and that the window was unlocked. The victim checked his valuables and noticed two guns missing. Law enforcement was

later able to obtain an identifiable fingerprint from the window screen. This fingerprint matched the defendant. Id. at 408, 535 S.E.2d at 126-27.

The defendant had actually been over to the victim's residence on a couple of occasions. The defendant helped the victim's son unload furniture and had attended a social gathering at the victim's home which lasted about forty-five minutes to an hour. Id. at 408, 535 S.E.2d at 127.

This Court held that where the only evidence linking the defendant to the burglary was the fingerprint on the screen that was propped up against the house beside the broken window, the State had not proven entry where the defendant had been around the house other times. The State had failed to present evidence as to when the screen had actually been removed. Id. at 409, 535 S.E.2d at 127.

In Mitchell, even though the defendant had been in the victim's house before and was presumptively familiar with the house, the evidence was insufficient to reach the jury even though the defendant's fingerprint was found on a screen propped up beside the broken window. In Lane's case, not only is there no evidence placing him inside the McSwain home, there is a complete lack of evidence that he might have been familiar with the McSwain home to go straight into a spare bedroom and into the closet to the gun safe without disturbing anything else in the home. App. 35, ll. 2-13; 117, ll. 7-9. The one day that McSwain decides to turkey hunt in the morning before work and forgets to lock his gun safe because he is in a hurry to get to work after hunting is the one day that McSwain's guns are stolen. The State presented no evidence that Lane would have been privy to the fact that McSwain left his gun safe unlocked.

The Court of Appeals properly reversed Lane's first degree burglary conviction where the evidence against Lane was unequivocally circumstantial and did nothing more than raise the mere suspicion of Lane's guilt. The evidence relied upon by the State did not amount to the proof required by this Court in circumstantial evidence cases – that the circumstantial evidence be substantial. Odems, 395 S.C. at 592, 720 S.E.2d at 53.

The State argues that the Court of Appeals misapplied the standard of review when conducting its review of the Trial Court's denial of Lane's directed verdict motion. In criminal cases, the appellate court sits to review only errors of law and is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Spears, 403 S.C. 247, 252, 742 S.E.2d 878, 880 (Ct. App. 2013). The appellate court must view the evidence in the light most favorable to the State when reviewing the denial of a directed verdict. Odems, 395 S.C. at 586, 720 S.E.2d at 50. In holding that the Trial Court erred failing to grant Lane's directed verdict motion where the State failed to present substantial circumstantial evidence of Lane's guilt, the Court of Appeals correctly applied the standard of review where the State failed, as a matter of law, to present evidence satisfying the proof necessary in an entirely circumstantial case for submission of the case to the jury.

In an entirely circumstantial case, the State must present substantial circumstantial evidence before the case can be submitted to the jury. When there is an absence of evidence, "it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on [the appellate courts.]" State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984).

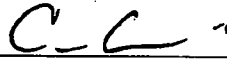
The circumstantial evidence presented by the State against Lane was not substantial, and a jury would be forced to engage in pure speculation to determine if Lane was guilty or not. The State's evidence must be sufficient to enable a jury to reasonably infer from the evidence that Lane entered the McSwain home, not merely speculate that he did. The law does not allow a defendant to be convicted on pure speculation. See e.g., Odems, 395 S.C. at 586, 720 S.E.2d at 50. By reversing the Trial Court's denial of a directed verdict, the Court of Appeals did not invade the province of the jury where, as a matter of law, the evidence was legally insufficient to sustain jury verdict of guilty against Lane for first degree burglary. Accordingly, the Court of Appeals properly reversed Lane's conviction for first degree burglary.

CONCLUSION

The Opinion of the Court of Appeals correctly held that the Trial Court erred in denying Lane's motion for a directed verdict where the State did not present substantial circumstantial evidence to prove Lane was the person who committed the burglary. The Opinion of the Court of Appeals is supported by well-established law and the facts present in this case. There are no special or important reasons why this Court should grant certiorari in this case, and there is no error in the Opinion for this Court to correct.

For the reasons set forth herein, Respondent Karl Ryan Lane requests this Court to deny the State's Petition for a Writ of Certiorari.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 13th day of March, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

PETITIONER,

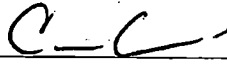
V.

KARL RYAN LANE,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that a true copy of the return to petition for writ of certiorari to the Court of Appeals in this case had been served on J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Karl Ryan Lane #349514, Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 13th day of March, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 13th day
of March, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner,

v.

Karl Lane, Respondent.

Appellate Case No. 2013-002606

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 27464
Submitted August 20, 2014 – Filed November 12, 2014

REVERSED

Attorney General Alan M. Wilson and Assistant Attorney
General J. Benjamin Aplin, both of Columbia, for
Petitioner.

Appellate Defender Carmen V. Ganjehsani, of Columbia,
for Respondent.

PER CURIAM: The State seeks a writ of certiorari to review the court of appeals' decision in *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013). We grant the petition, dispense with further briefing, reverse the court of appeals' decision, and reinstate Respondent's conviction and sentence.

Respondent was convicted of first-degree burglary and sentenced to 215 months' imprisonment in connection with the theft of several firearms from the victim's home. The court of appeals reversed the trial court's refusal to direct a verdict of acquittal for Respondent, finding that the State did not present substantial circumstantial evidence to prove that Respondent committed the burglary. We disagree, for in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt.

On the afternoon of the burglary, the victim's neighbor observed a red Mitsubishi Gallant with gray primer paint on the front fender and a paper license plate parked in the victim's driveway. The neighbor observed two people in the vehicle, one of whom walked back and forth from the vehicle to the victim's front door. Later that evening, following the burglary, the victim found a piece of paper with a unique username and password printed upon it lying next to his driveway. Officers determined that the piece of paper was issued to Respondent by the local unemployment office. Suspecting Respondent's involvement in the burglary, an investigator went to interview Respondent at his girlfriend's parents' home. When the investigator arrived, he observed a red Mitsubishi Gallant with gray primer paint on the front fender and a paper license plate in the driveway. Respondent was initially evasive, asking his girlfriend's mother to lie to the investigator and state that he was not home. Eventually, however, Respondent spoke with the investigator and acknowledged driving the Mitsubishi Gallant on the day of the burglary and receiving the piece of paper from the unemployment agency.

We find that the aforementioned evidence was sufficient to withstand Respondent's motion for a directed verdict. *See State v. Weston*, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (citations omitted)).

Accordingly, we reverse the decision of the court of appeals and reinstate Respondent's conviction and sentence.

REVERSED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

FORM 5

STATE OF SOUTH CAROLINA)

County of PICKENS)Karl R. Lane #349514)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-39-

129

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 JUN 10 AM 9 01

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst. 430 Oaklawn Rd., Pelzer,
SC. 29669
2. Name and location of Court which imposed sentence Pickens County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-39-1496 burglary first degree
 - (b) 2011-GS-39-1497 grand larceny over \$10,000

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 26, 2012 (18-years)
- (b) same as above
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. reversed the conviction remand for new trial
- ii. however the S.C. Court reversed on certiorari
- iii. _____
- (c) the date of each such result:
- i. October 9, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: Op. No. 5175
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Denial of Due Process
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached Memorandum in Support
- (b) see attached Memorandum in Support
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. n/a
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) first filing for Post Conviction Relief
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? n/a
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. John W. DeJong, Esquire
Pickens County Bar
 ii. same as above
 iii. Dayne C. Phillips and Carmen V. Ganjehsani
Columbia Bar
 (b) the proceedings at which each such attorney represented you:
 i. trial/sentencing
 ii. appeal/certiorari
 iii. _____

19. State clearly the relief you seek in filing this application:

~~vacate sentences and convictions and remand for new~~
~~trial~~

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

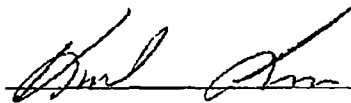
County of GREENVILLE)

VERIFICATION

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2015 JUN 10 AM 9 01

I, Karl Lane, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 6th
 day of May, 2015.

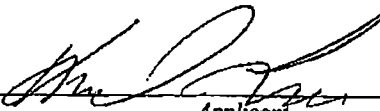
Lemarcus Conwell (L.S.)
 Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Karl R. Lane, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

6 day of May, 2015.


Notary Public

My Commission Expires

My Commission Expires: September 25, 2023

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 JUN 10 AM 9 01

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS

Indict.No.2011-GS-39-1496 and 1497

Karl Lane -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF
BROUGHT PURSUANT TO S.C. CODE ANN.
§§17-27-20 THROUGH 17-27-160

Karl Lane
SCDC# 349514
PCI
430 Oaklawn Rd.
Pelzer, SC. 29669

Petitioner, pro-se

2015 JUN 10 AM 9 01
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF COMMON PLEAS

)

2015-CP-39-129

Karl Lane #349514

Petitioner,

-Vs-

State of South Carolina

Respondent,

) Indict.No.2011-GS-39-1496;1497

) MEMORANDUM OF LAW IN SUPPORT OF

) APPLICATION FOR POST CONVICTION

) RELIEF BROUGHT PURSUANT TO:S.C.

) CODE §§17-27-20 through 17-27-160

CLECK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 JUN 10 AM 9 01

COMES NOW, Karl Lane, pro-se, herein after Petitioner, seeking relief in this Honorable Court claiming that his constitutional rights were violated at trial in a number of ways, including, but not limited to his Sixth Amendment Right to the Effective Assistance of Counsel, as well as his right to fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Petitioner presents this application and memorandum of law in support pursuant to S.C. Code Ann. §17-27-20 through §17-27-160.

The issues included herein along with Petitioner's statement of facts, will show unto this Honorable Court that Petitioner is entitled to the requested relief stated herein.

Respectfully Submitted,

/s/

Karl Lane
Karl Lane, pro-se

ISSUE (A)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S JURY INSTRUCTIONS THAT IMPERMISSIBLY COMMENTED ON THE FACTS OF THE CASE AND PREMATURELY DIRECTED A VERDICT FOR THE STATE?

FACTS

Petitioner submits he was denied the effective assistance of counsel as counsel utterly failed to lodge an objection to the trial court's jury instructions on first degree burglary that impermissibly commented on the facts and resolved an issue that was to be determined [by the jury].

During the Trial Court's instructions regarding first degree burglary the following colloquy was recorded:

Now, to be armed with a deadly weapon, the State need only show that there was physical control over the deadly weapon, and effecting the entry, or while in the dwelling, or immediate flight therefrom. It doesn't matter how the person acquired the deadly weapon or for what purpose the person took possession of a deadly weapon. A person can become armed with a deadly weapon, even if the weapon is one taken during the course of a burglary.

Now, a deadly weapon is any article or instrument or a substance which is likely to cause death or great bodily harm. Examples of a deadly weapon, of course would be a pistol, a shotgun, or a rifle.

(Tr.p.282, L.3-14).

As is seen in the above underlined portions of the trial court has clearly used hypothetical examples of the facts of Petitioner's case in instructing the jury regarding first degree burglary. Petitioner was no doubt on trial accused of first degree burglary. The first instance occurred when the trial court was describing how one could possess a deadly weapon, i.e. "even if the weapon is one taken during the course of a burglary." Interestingly, Petitioner was being accused of taking weapons during the

course of a burglary. The second incident occurred directly after , as the trial court used "hypothetical [examples]" of Petitioner's case in charging the jury when the Court instructed: "Examples ", of a deadly weapon of course would be a pistol, a shotgun, or a rifle.

Clearly, these examples directly mirrored the facts of Petitioner's case. Petitioner would submit the Court's instructions impermissibly commented on the facts and determined a factual issue that was to be decided by the jury.

DISCUSSION

In State v. Hartley, 307 S.C. 239, 414 S.E.2d 182 at 183, Our Supreme Court recognized that South Carolina Constitution art. V, §21 holds (judges shall not charge juries in respect to matters of fact * * * but shall declare the law); State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244 (1942)(a judge cannot express in his charge, or intimate any opinion as to the weight or the sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts). 75A Am.Jur.2d Trial §1203 at 693 (1991)(the trial court may not instruct the jury what weight should be given [to the evidence], or even that any particular evidence is or is not entitled to receive weight or consideration from them). Cf. State v. Edwards, 127 S.C. 116, 120 S.E. 490(1923 0, wherein our Supreme Court held the absence of motive is a mere circumstance to be considered by the jury and rejected an instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts. Id

In *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970), the U.S. Supreme Court proclaimed that the Due Process Clause mandates that the government prove each and every [fact] necessary to prove every element of the charged offense beyond a reasonable doubt.

In the instant matter it was essential that the State "prove beyond a reasonable doubt that when entering, or while in the dwelling, when fleeing, the defendant or an accomplice was armed with a deadly weapon or explosive." (Tr.p.281, L.24-p.282, L.1-2).

Directly after this instruction the Court told the jury "A person can be armed with a deadly weapon, even if the weapon is one taken during the course of a burglary, (Tr.p.282, L.8-10. The Petitioner submits a reasonable jurist could have easily taken instruction as a comment on the facts finding for the State.

Petitioner was denied the effective assistance of counsel and a fair trial when counsel failed to lodge an objection and preserve this issue for appellate review. At the very minimum counsel should have objected and requested a curative instruction in order to remove any prejudice incurred.

Clearly this was not a case of overwhelming evidence, and in fact the Court of Appeals reversed the conviction on the insufficiency of the evidence. Ultimately after analyzing the Court of Appeals decision the S.C. Supreme Court reversed the Court of Appeals decision. But, nonetheless, there was no overwhelming evidence, therefore this error surely had a substantial and injurious effect on the jury's verdict. Petitioner would submit that, but for, this error the results of the trial would have been different. Petitioner is entitled to a new trial on this issue.

ISSUE (B)

WAS COUNSEL INEFFECTIVE FOR FAILING TO CONDUCT ANY PRETRIAL INVESTIGATION IN REGARDS TO RETAINING AN EXPERT WITNESS TO REBUT THE STATE'S ONLY PIECE OF "CIRCUMSTANTIAL EVIDENCE" THAT VERY REMOTELY AT LEAST SUGGEST SUSPICION OF PETITIONER'S PRESENCE IN THE VACINITY OF THE INCIDENT IN QUESTION?

FACTS

Petitioner submits he was denied his Sixth Amendment right to the effective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668 (1984), when counsel failed to conduct investigation in regards to hiring an expert witness to refute the State's only piece of evidence.

During Petitioner's trial the State called Deputy Michael Torres ("Torres") of the Pickens County Sheriff's Office as witness. Torres testified that as a "road patrol" officer, he is normally the first officer to respond to a crime scene and take a report, but he is not an actual investigator. Torres testified that on April 21, 2011 he responded to McSwain's residence just before 5:30 in the afternoon. Torres said he spoke to McSwain, looked at the damage on the back door and the empty gun safe, and then called in the investigative division, Tr.p.18, L.21-p.20, 1.25.

Torres said he spoke to Holladay at about 5:45 and got a description of the vehicle she previously saw in McSwain's driveway, Tr.p.24, L.4-20. Torres further testified that although it had [been] raining off and on that morning, it did not rain on the afternoon of April 21, 2011, Tr.p.22, L.9-14.

Torres testified he return[ed to] McSwain's house between six (6) and eight (8) pm. the same evening to retrieve "the piece" of paper McSwain discovered beside his driveway, Tr.p.22, L.17-p.24, L.3. On cross-examination Torres acknowledged the ground was still wet from the morning rain when he initially responded to McSwain's house at 5:27, but "the piece of paper" he retrieved from McSwain between 6:30 and 8:00 was dry, Tr.p.25, L.11-25; p.30, L.1-15. Torres further testified that the unemployment office is approximately two miles from McSwain's house, but the wind conditions were very light on the day of the burglary, Tr.p.29, L.8-14

Petitioner would submit the above underlined testimony was placed before the jury unchallenged. Had counsel of investigated the fact the State had this "piece of paper" evidence tending to place Petitioner in the vicinity of the incident, counsel should have consulted with an expert witness to rebut the State's testimony regarding "wind conditions". Had counsel of placed reliable expert testimony regarding wind calcuations etc., then counsel could have explained to the jury a reasonable hypothesis as to how and the possibilities of how "the piece of paper" could have blown overtime from the unemployment office landing near the scene and implicating Petitioner as a suspect.

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right.. ..to have the assistance of counsel for his defense" U.S. Const. amend VI. The right to the effective assistance of

of counsel means the right to "effective" assistance of counsel , Cuyler v. Sullivan, 446 U.S. 335, 344, 352 (1980); Also see U.S. v. Morrison, 449 U.S. 361, 366 (1981); Tollet v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794 805 (11th Cir.), cert. denied ___U.S.____, 103 S.Ct. 1798. Therefore permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland the Court identified two components to any ineffective assistance claim. (1) deficient performance; and (2) prejudice. Under that decision, a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial, Id at 687, see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional errors so upset the adversarial balance between the defense and prosecution that the trial was rendered unfair and the verdict rendered suspect).

Preparation and investigation "must be more than perfunctory. Counsel has an affirmative legal duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224 ,226 (4th Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation, See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolopy of issues -- to which the defendant, a laymanm, will be oblivious, See *Garland v. Cox*, 472 F.2d 875, 979 (4th Cir).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution & Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore [all] avenues leading to facts relevant to the merits of the case and the penalty in the event of a conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement. See ABA Standards from Criminal Justice 4-4.1 (2nd ed 1982 Supp). The newer version of the Standards now reads: "any investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities, ABA Standards for Criminal Justice, Prosecution & Defense Function 4-4.1 (3rd ed 1993).

Petitioner would submit that counsel was well aware of the existence of the "piece of paper" and the strong possibility that the State would no doubt use the paper with the intentions of placing Petitioner at the scene. Therefore, counsel knew before the

trial of the possibility of the State's intent to use this piece of evidence. It should be noted this is the State's key piece of evidence so the State was able to capitalize on Torres' unchallenged testimony. Had counsel of retained an expert this testimony could have been challenged and properly refuted by wind and weather conditions. But due to counsel's failure to investigate the piece of paper and consult with an expert regarding this evidence was placed before the jury completely unchallenged.

Had counsel of placed expert witness testimony before the jury to explain this critical evidence away there is a reasonable probability the results of the proceeding would have been different.

Petitioner is entitled to a new trial on this issue.

CONCLUSION

Petitioner believes that through the issues presented, citations of authorities relied on, that he has shown unto this Honorable Court that he was denied his Sixth Amendment right to the Effective Assistance of Counsel that is guaranteed by the Sixth Amendment, as well as Petitioner was also denied his right to a fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution.

Due to the complexity of the issues involved, Petitioner being a layman, not represented by counsel, therefore any issue not raised herein is not waived, expressed, or implied. Petitioner would respectfully ask to be appointed PCR counsel as soon as possible to research and amend [any and all] remaining issues that might arise out-side the record. Petitioner hereby reserves that right.

Petitioner respectfully asks this Honorable Court to grant the requested relief of a new trial in the instant matter.

Respectfully Submitted,

/s/ 
Karl Lane, pro-se

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-39-0729
COUNTY OF PICKENS	)	
	)	
Karl Ryan Lane,	)	
S.C.D.C. No. 349514,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed June 10, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the January 2012 term of General Sessions for first-degree burglary (2011-GS-39-1496) and grand larceny (2011-GS-39-1497). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary. On January 26, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to 215 months imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire and Carmen V. Ganjehsani, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented the Applicant on appeal. The Court of

Appeals reversed the Applicant's conviction and sentence on October 9, 2013. State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (S.C. Ct. App. 2013). The Respondent filed a petition for writ of certiorari to the South Carolina Supreme Court, the petition was granted, and the parties submitted briefs. On November 12, 2014, the Supreme Court reversed and reinstated the Applicant's conviction and sentence. State v. Lane, 410 S.C. 505, 765 S.E.2d 557 (2014). The Remittitur was sent on December 2, 2014.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to object to the trial judge's jury instructions "that impermissibly commented on the facts of the case and prematurely directed a verdict for the State."
 - b. Failure to conduct any pretrial investigation and to retain an expert witness "to rebut the State's only piece of 'circumstantial evidence' that very remotely at least suggest suspicion of Petitioner's presence in the vicinity of the incident in question."
2. Denial of due process.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

January 12, 2016

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

KARL RYAN LANE, 349514

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-39-0729

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Karl Ryan Lane, 349514
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669

DATED this 12th day of January, 2016.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

KARL LANE,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2015-CP-39-00729

TRANSCRIPT OF RECORD

DECEMBER 5, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **MR. SCHMECKPEPER:** Your Honor, this is Karl Lane versus
2 the State of South Carolina, 2015-CP-39-0729. The Applicant
3 was indicted in Pickens County in January 2012 for first
4 degree burglary and grand larceny and was represented by
5 John DeJong.

6 The Applicant proceeded to trial where he was found
7 guilty of first degree burglary and acquitted of grand
8 larceny. Judge Welmaker sentenced the Applicant to two
9 hundred and fifteen months imprisonment.

10 Following a notice of appeal South Carolina reversed
11 the Applicant's convictions and sentences. The Respondent
12 or the State filed a petition for writ of certiorari to
13 the South Carolina Supreme Court, which was granted.
14 Parties submitted briefs.

15 On November 12th, 2014 the Supreme Court reversed and
16 reinstated the Applicant's convictions and sentences. The
17 remittitur was sent on December 2nd, 2014. And this
18 application was filed on June 10th of 2015.

19 Your Honor, at this point I'll turn matters over to
20 opposing counsel.

21 **THE COURT:** All right. Mr Ariail.

22 **MR. ARIAIL:** Thank you, Your Honor. We're ready to
23 proceed. And I would call Mr. Lane to the stand.

24 **THE COURT:** All right.

25 **MADAME CLERK:** Mr. Lane, please place your left hand on

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

5

1 the Bible and raise your right hand.

2 **Karl Lane**, being duly

3 sworn testified as follows;

4 **MADAME CLERK:** Thank you. You may be seated. Please
5 state your full name for the record.

6 **MR. LANE:** My name is Karl Ryan Lane.

7 **Direct Examination by Mr. Ariail:**

8 Q. All right, Mr. Lane. How you doing today?

9 A. Doing good, sir.

10 Q. Good. This is your PCR hearing. And I want to go
11 through and just get a little background so Judge Hayes kind
12 of knows a little bit about your case. You were -- you
13 heard the charges that you were indicted for, is that
14 correct?

15 A. Yes, sir.

16 Q. And Mr. DeJong represented you on those, is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. Now, did you get out on bond at any time during
20 this case?

21 A. No, sir.

22 Q. Okay. So when you were arrested you stayed, I guess,
23 in the Pickens ---

24 A. It was ---

25 Q. --- LEC, is that right?

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

6

1 A. Til trial, yes, sir.

2 Q. Okay. And --

3 **MADAME COURT REPORTER:** I need you to pull up to the
4 microphone.

5 **MR. ARIAIL:** I'm sorry.

6 Q. Pickens LEC, you met with Mr. DeJong, is that correct?

7 A. Yes, sir.

8 Q. Okay.

9 **MR. ARIAIL:** Is that better?

10 **MADAME COURT REPORTER:** Yes.

11 Q. You might need to get a little bit closer, if you can.

12 A. Soft spoken, sorry.

13 Q. That's okay. If she can't hear, we'll figure it out.

14 Mr. DeJong represented you. How many times did y'all meet
15 to discuss this case?

16 A. I seen Mr. DeJong two times while incarcerated in the
17 County.

18 Q. Okay. Did y'all discuss the case while you -- when you
19 met?

20 A. Not in any real detail, no.

21 Q. I mean, did he talk to you about what the evidence was
22 against you?

23 A. There was really no evidence. This was a
24 circumstantial case, sir.

25 Q. Okay. But did y'all go over what the facts in the case

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

7

1 were and what the evidence they had in the case?

2 A. Yes, sir.

3 Q. Okay. And did y'all -- the main thing in this case

4 which I'm understanding was -- is it was a, I guess, a

5 burglary of a house where guns were taken from a house and

6 there was apparently a witness who saw a car drive away.

7 And there was a One Stop slip from the employment office

8 that was found with your name or your information on it, is

9 that correct?

10 A. Yes, sir, in the driveway.

11 Q. In the driveway? Okay. So did y'all discuss all that

12 information beforehand and were you aware that's the

13 information they had against you?

14 A. No. I didn't -- I knew they had found the piece of

15 paper because I asked on the site by Detective Dowd

16 (phonetics), but other than that we didn't really go into

17 any detail on how it was gotten onto the property, into the

18 driveway, none of that.

19 Q. Okay. Did you -- did you discuss with Mr. DeJong about

20 the -- about the piece of paper? About it being located at

21 the scene?

22 A. To what extent?

23 Q. Well, that they found it there?

24 A. I mean, it's obvious they found it there. I mean, you

25 know, ---

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

8

1 Q. I'm just trying to understand if you talked with him
2 about that.

3 A. I talked to him twice in LEC. And it was at a bare
4 minimum.

5 Q. Okay. You're not answering my question. Did you talk
6 with him about the slip that was found at the residence?

7 A. Yes, sir.

8 Q. Okay. Did you discuss with him and tell him, well, I
9 was at the employment office down the road ---

10 A. Yes. I filed for two jobs at that -- at 1:30 pm.

11 Q. Okay. Did you tell him that I wasn't there and that
12 slip couldn't have been -- I didn't drop it there or
13 anything like that?

14 A. No. I applied for two jobs two miles away from this
15 residence.

16 Q. Okay. What I'm trying to figure out is the slip was
17 found there and you're saying that you didn't drop it there,
18 correct?

19 A. Correct.

20 Q. Okay. Did you talk with him about how that slip could
21 have gotten there?

22 A. No, sir. No, not really.

23 Q. Okay. Well, one of your issues that you want to raise
24 was -- can an expert witness determine how that got there?

25 A. Right, to get -- yes.

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

9

1 Q. Did you have a discussion with him about that?

2 A. No, sir.

3 Q. Okay. Well, what -- what are you saying he did that
4 was ineffective in regards to not hiring an expert witness?

5 A. Okay. We had Deputy Torres (phonetics) who testified
6 about wind conditions who was a road officer. He is not a
7 investigator of any type. He does initial reports on
8 response to the scene. With a expert witness we could have
9 gave more hypothetical examples of how that paper could have
10 got to the scene over time with the weather, the rain.

11 He made a big deal about this paper being dry when it
12 had been wet all day. Deputy Torres stated that when he
13 responded to the scene and canvassed the area the paper was
14 not there and that it was still dry, the ground was wet
15 indicating that it hadn't been there long. And if we had a
16 expert witness they could have finalized that point.

17 Q. Okay. Well, let me go through first of all, are you
18 saying that Mr. DeJong did anything ineffective in his cross
19 examination or inquiry with the officers regarding the piece
20 of paper?

21 A. Yes. He did not object to Mr. Torres stating these
22 issues about the wind conditions being -- like he is not an
23 expert in that field. And I think if we would have had
24 expert testimony, they could have refuted that.

25 Q. Did y'all discuss that you don't have to have expert

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

10

1 knowledge to be able to testify about what the wind
2 conditions are on that day?

3 A. From a year later they had no weather reports, no
4 nothing. They had contradicting statements. He's saying it
5 rained that morning, but it wasn't raining that afternoon,
6 but the ground was wet. I mean, it was difficult.

7 Q. Did y'all go over the -- any discussions about cross
8 examination and him going into the credibility of Deputy
9 Torres about his testimony, about the wind and all that?
10 Did y'all have any discussion about that?

11 A. No, sir.

12 Q. Okay. So -- but I'm trying to understand. You wanted
13 an expert witness ---

14 A. Right. To refute the fact that he was testifying on
15 weather conditions from a year ago, which were not in any of
16 his initial reports that he wrote, you know?

17 Q. Okay. So what -- what I'm understanding you wanted was
18 an expert witness to testify about what the weather
19 conditions were on the day of the alleged crime?

20 A. Yes, because this is the only piece of -- this is the
21 State's main piece of evidence. And at the -- at the most
22 it suggests that I was in the vicinity. They cannot put me
23 in this house. They cannot connect me to any of these
24 weapons, this car, description of this car.

25 And I willingly came out and talked to the detectives.

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

11

1 I willingly let them search this vehicle. I gave my consent
2 for that. No guns. I mean, ...

3 Q. Okay. So maybe I -- I want to make sure of this. Not
4 only are you saying you wanted an expert witness, but you
5 might wanted some additional witnesses to testify about what
6 the conditions were on that day. Is that what you're
7 looking at?

8 A. It's everybody that testified gave a contradicting
9 statement on the conditions of that day.

10 Q. Okay. And you just wanted something from Mr. DeJong
11 ---

12 A. I wanted to have the expert ---

13 Q. --- to say what the weather conditions were on that
14 day?

15 A. I wanted the expert to be able to explain how that
16 piece of paper could have ended up from two miles away to
17 this area on an overcast day with wind gusts up to thirty-
18 eight miles an hour because that's what the weather report
19 stated on-line. We had a printout from off-line that gave
20 all the weather conditions.

21 Q. I'm -- I'm trying to figure this out. Do you have an
22 expert that you're aware of that can testify to that?

23 A. No. That's why I asked for a motion for a expenditure
24 of funds for the expert witness.

25 Q. I mean, but what I'm asking is did you discuss that --

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

12

1 so you asked for a motion for expenditure of funds, so you
2 had to discuss it with Mr. DeJong, correct?

3 A. No, that was actually one of the questions I had for
4 you.

5 Q. You -- what I'm saying is -- okay. Did you discuss it
6 with Mr. DeJong before the trial ---

7 A. No, sir.

8 Q. So you ---

9 A. Never came into play.

10 Q. So you never asked him, hey, hire me an expert to be
11 able to disclose -- find this out ---

12 A. I'm a layman. If I'd been aware of that, I would have
13 brought it up. But this law is not my area of expertise.

14 Q. Okay. So that's -- you wanted him to handle that to
15 basically find out how that piece of paper could have got
16 there?

17 A. As my lawyer that's -- he's, ---

18 Q. Okay.

19 A. --- you know, by standard that's what he's supposed to
20 be proving.

21 Q. Okay. Now you also say that he failed to object to the
22 trial -- court's jury instructions and impermissibly
23 commented on the facts of the case.

24 A. Yes, sir.

25 Q. Now how -- when I read this in your PCR application

KARL LANE - DIRECT EXAMINATION BY MR. ARIAIL

13

1 indicating that there was some -- I think you're saying
2 there's some reference to a firearm, pistol or a shotgun.

3 A. Yes, sir.

4 Q. How is what the judge did in this case ---

5 A. The judge is not there to comment on facts of the case,
6 the facts, you know? He is -- he gave example --
7 hypothetical examples, and he commented directly on the
8 facts of my case.

9 Q. So you're saying his comment on about what the examples
10 of deadly weapons were ---

11 A. Yes, sir. Pistol, shotgun, rifle, that directly
12 mirrored my case. I was currently on trial for burglary of
13 rifles, shotguns, pistols. That commented on the facts of
14 my case.

15 Q. So you're saying that there should have been no
16 discussion or ---

17 A. And there was no objection to it.

18 Q. That there should have been an objection by him to
19 leave out what a deadly weapon -- a definition of a deadly
20 weapon or an example of a deadly weapon?

21 A. The example.

22 Q. Okay. Now these are the issues we've discussed. Are
23 there other things that you want to raise? I think you said
24 there were only two issues you had. And I want to make sure
25 I've put -- and your application is part of the record for

KARL LANE - CROSS EXAMINATION BY MR. SCHMECKPEPER

14

1 Judge Hayes to review.

2 A. Yes, sir.

3 Q. Are there other things that you want to raise to make
4 sure they're made a part of the record?

5 A. No, sir.

6 Q. Okay.

7 MR. ARIAIL: Those are all the questions I have, Your
8 Honor.

9 THE COURT: All right. Cross, please.

10 **Cross Examination by Mr. Schmeckpeper:**

11 Q. Good morning, Mr. Lane. So the only allegations you
12 have are, one, counsel didn't call an expert to discuss how
13 the paper had gotten there?

14 A. Yes. To give a reasonable hypothesis, yes.

15 Q. And, two, counsel was ineffective for failing to object
16 to the judge saying an example of a deadly weapon is rifle,
17 or a shotgun, or a pistol?

18 A. Yeah. He commented on the facts of my case when he
19 explained and gave examples of a deadly weapon. And he went
20 on to say that even if it was one taken during the
21 commission of a crime, which directly mirrored what happened
22 in my case.

23 Q. With regard ---

24 A. He took away -- he took away from the -- that was
25 supposed to be decided by the jury themselves.

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

15

1 Q. Okay.

2 MR. SCHMECKPEPER: I don't have any further questions,
3 Your Honor.

4 A. He took out any room for reasonable doubt.

5 THE COURT: Redirect?

6 MR. ARIAIL: No. No, Your Honor.

7 THE COURT: All right. Thank you, Mr. Lane. You can
8 have a seat with your attorney. Thank you.

9 A. Thank you, Your Honor.

10 THE COURT: All right. Call your next witness.

11 MR. ARIAIL: We have no further witnesses, Your Honor.
12 That's our case.

13 THE COURT: All right. The State have any witnesses?

14 MR. SCHMECKPEPER: Yes, Your Honor. The State calls
15 John DeJong, the Applicant's trial counsel.

16 THE COURT: You know the drill.

17 MADAME CLERK: Please place your left hand on the
18 Bible, raise your right hand.

19 John DeJong, being duly
20 sworn testified as follows;

21 MADAME CLERK: Please state your full name for the
22 record.

23 MR. DeJONG: John, J-o-h-n, William, W-i-l-l-i-a-m,
24 DeJong, D-e-J-o-n-g.

25 **Direct Examination by Mr. Schmeckpeper:**

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

16

1 Q. Good morning again, Mr. DeJong.

2 A. Good morning.

3 Q. If you would, just for the Court, for the record, go
4 over your experience in the practice of criminal law.

5 A. I prosecuted juveniles for eleven or twelve years in
6 Greenville County. I was an assistant solicitor for
7 approximately two years in Pickens County. I have now been
8 the public defender in Pickens County -- now one of the
9 public defenders in Pickens County for seventeen plus years.

10 Q. Now how much do you remember about this specific case?

11 A. I remember a fair amount about this case simply because
12 sometimes you remember cases because of the wealth of
13 evidence against your client. This one I recall because
14 there really wasn't that much, if any, evidence against my
15 client.

16 Q. In fact, the Court of Appeals actually overturned it
17 saying there wasn't enough evidence?

18 A. I believe the Court of Appeals said that my directed
19 verdict motion should have been granted.

20 Q. And the Supreme Court ended up reversing the Court of
21 Appeals?

22 A. They disagreed with the Court of Appeals, yes, sir.

23 Q. Now, bearing in mind that there wasn't very much
24 evidence in this case did you go over that with the
25 Applicant?

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

17

- 1 A. Yes, sir.
- 2 Q. Do you -- do you remember approximately how many times
3 you met with the Applicant?
- 4 A. I do not.
- 5 Q. Do you remember how long you represented the Applicant
6 prior to trial?
- 7 A. I'm sure I was appointed to represent him shortly after
8 he went into jail. As he indicated, he did not make bond.
9 So I'm sure the clerk's office appointed very shortly after
10 he went into jail. Don't remember the exact date.
- 11 Q. Did you meet with him enough to explain the facts, the
12 details and evidence ---
- 13 A. I know we went over his discovery at least once, if not
14 more than once.
- 15 Q. Now, this may seem like an odd question or not. Did
16 you look at hiring an expert in this case?
- 17 A. Candidly, no. The thought never occurred to me. Are
18 you talking about the piece of paper now?
- 19 Q. Yes, sir.
- 20 A. No, sir. The thought never occurred to me. I'm not
21 sure where I would have found such an expert, actually.
- 22 Q. And having practiced criminal law for a number of years
23 you have had -- you've sought the testimony of experts
24 before, right?
- 25 A. Oh, absolutely.

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

18

1 Q. If you thought you could find an expert to match this
2 -- if you thought an expert would have helped in this case
3 would you have looked into hiring one?

4 A. Yeah. Again, I'm not sure where I would have found
5 such an expert, but certainly would have looked into it.

6 Q. Did you find anything objectionable about the judge's
7 instructions to the jury?

8 A. I did not personally, no, sir.

9 Q. Thank you, Mr. DeJong.

10 MR. SCHMECKPEPER: I have no further questions.

11 MR. ARIAIL: Thank you, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 **Cross Examination by Mr. Ariail:**

15 Q. Mr. DeJong, how you doing today?

16 A. I am well -- well, almost well. Still fighting a sinus
17 infection, but that's neither here nor there.

18 Q. It's going around.

19 A. 'Tis the season.

20 Q. Now in regards to Mr. Lane's allegations, the expert
21 witness, did you have a discussion with him prior to the
22 trial about how that piece of paper could have gotten there?

23 A. Well, I think we discussed via wind. As I recall, he
24 had been to the unemployment office, whatever you call them
25 nowadays, sometime not too long before this alleged offense

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

19

1 occurred. I think we talked about it going out the window,
2 flying out the window, any number of things that we talked
3 about.

4 Q. Okay. But did -- and I guess inquiring about it did he
5 ever ask you, well, hey, I think we need a wind expert or an
6 expert meteorologist -- somebody to be able to testify about
7 that?

8 A. To the best of my recollection he did not.

9 Q. Okay. To the best of your understanding now do you
10 know of an expert who could have helped you in any way in
11 regards to what he's alleging today?

12 A. I do not.

13 Q. Okay. Now the jury instructions, I mean, you've done
14 this for a number of years. The issue he has is that the
15 judge used example of what a deadly weapon is. Is that
16 commonplace when you do these cases?

17 A. Yes, sir.

18 Q. Okay. And, I mean, it's not, I mean, sometimes they
19 add in a knife or some other different ---

20 A. Surely, but usually by way of explanation. And the
21 charge to the jury they're going to talk about weapon -- on
22 a burglary, first, now is what I'm talking about, obviously.

23 Q. Right.

24 A. But, yes, the judge is going to in their charge give
25 examples of weapons.

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

20

1 Q. Did you see anything prejudicial or think there was
2 anything prejudicial about them referencing pistol, shotgun,
3 things that were taken in this case?

4 A. No.

5 Q. Okay. And if you did you would have objected, correct?

6 A. I would have.

7 Q. Okay. And I guess this was appealed, but that wasn't
8 an appellate issue, was it, that was raised?

9 A. I honestly don't know, Mr. Ariail. Normally when I
10 file my intention -- my notice of intent to appeal I just
11 lose all contact with the case.

12 Q. But you're not aware of that?

13 A. I'm not aware of that, no, sir.

14 Q. Okay.

15 **MR. ARIAIL:** Your Honor, I have no further questions.

16 **MR. SCHMECKPEPER:** Nothing from the State, Your Honor.

17 **THE COURT:** All right. You can step down.

18 A. Thank you, Your Honor.

19 **THE COURT:** Unless you've got another one, you can be
20 excused.

21 A. I believe I have another one, Your Honor.

22 **THE COURT:** All right.

23 **MR. SCHMECKPEPER:** Your Honor, that's the State's case.

24 **THE COURT:** All right. Well, I'll take this one under
25 advisement. Mr. Lane, I'll study the file and issue an

1 order.

2 **MR. LANE:** Thank you, sir.

3 **THE COURT:** Thank you.

4 (Hearing Ended at 11:19 am)

5 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 5th day of December 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 31, 2017

S/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Karl Ryan Lane,
SCDC No. 349514,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-39-0729

ORDER

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2017 JAN 4 PM 9 17

Applicant filed this application for Post-Conviction Relief June 10, 2015. This matter was heard December 5, 2016. Applicant was represented by Mills Ariail, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the January 2012 term of General Sessions for first-degree burglary (2011-GS-39-1496) and grand larceny (2011-GS-39-1497). John W. DeLong, Esquire represented the Applicant at trial.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary. On January 26, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to 215 months imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne G. Phillips, Esquire and Carmen V. Ganjehsani, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented the Applicant on Appeal. The Court of

Appeals reversed the Applicant's conviction and sentence on October 9, 2013. *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (S.C. Ct. App. 2013). The Respondent filed a petition for writ of certiorari to the South Carolina Supreme Court. This petition was granted, and the parties submitted briefs. On November 12, 2014, the Supreme Court reversed the decision of the Court of Appeals and reinstated the Applicant's conviction and sentence. *State v. Lane*, 410 S.C. 505, 765 S.E.2d 557 (2014). The Remittitur was sent on December 2, 2014.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to object to the trial judge's jury instructions "that impermissibly commented on the facts of the case and prematurely directed a verdict for the State."
 - b. Failure to conduct any pretrial investigation and to retain an expert witness "to rebut the State's only piece of circumstantial evidence that very remotely at least suggest suspicion of Petitioner's presence in the vicinity of the incident in question."
2. Denial of due process.

This Court will address grounds for relief as they were presented at the post-conviction relief hearing. Any grounds mentioned in the Application and not addressed at the post-conviction relief hearing are deemed abandoned.

Applicant alleges ineffective assistance of counsel as a ground for relief. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

gaf

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

Applicant testified, first, that he only met with Trial Counsel twice prior to trial. Applicant further testified that Trial Counsel discussed the facts of the case and the evidence the State would present to prove the charges against him. While he could not recall the exact dates or duration of his representation of Applicant, Trial counsel testified that he met with Applicant at least once, and possibly more than once, to go over discovery with Applicant. Trial Counsel also testified that he discussed the elements of the charges with Applicant during these pre-trial meetings.

JAN 15 1993

As to the allegations that Trial Counsel was ineffective for failing to call an expert witness to explain how a piece of paper implicating Applicant made its way to the alleged crime scene, the Court finds this argument without merit. A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence. *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). A finding of prejudice due to counsel's failure to offer expert testimony is merely speculative, and thus not grounds for ineffective assistance of counsel, where Applicant does not have an expert testify at his post-conviction relief hearing. See *id.* at 370, 458 S.E.2d at 814-15.

Both Applicant and Trial Counsel testified that Applicant did not discuss hiring an expert to explain the piece of paper's presence prior to trial. Trial Counsel further testified that the thought of hiring an expert witness to address the issue never crossed his mind, as he knew of no such expert that could testify as to how a piece of paper made its way from Point A to Point B under a particular set of circumstances. Admittedly, this Court likewise knows of no such expert witness. However, Trial Counsel did testify that, had he thought an expert would have been beneficial, that he would have hired one. Applicant did not offer any evidence as to what area of expertise the purported expert would be qualified under, nor did Applicant testify as to the existence of any such witness. Further, Applicant did not bring an expert witness to testify as to the issue at the PCR hearing. As such, there was not a sufficient showing that failing to call an expert witness to address this issue constitutes ineffective assistance of counsel.

Applicant also takes exception to the testimony of a Deputy Torres, of the Pickens County Sheriff's Department, concerning the weather conditions on the day of the alleged

crimes. Specifically, Applicant believes that Deputy Torres should not have been allowed to testify as to the weather conditions because Deputy Torres was not an expert in the field of weather and because a substantial amount of time had passed between the incident in question and the time at which Deputy Torres offered the testimony. Deputy Torres did, in fact testify as to the weather conditions on the day of the incident in question. (Trial Record p. 126, ll. 9-13; p. 129, ll. 11-18; p. 133, ll. 8-18). At no point did Deputy Torres's testimony go beyond general descriptions of the weather on the day in question. As Rule of Evidence 701 and Bob Dylan remind us, "you don't need a Weatherman to know which way the wind blows." See S.C. Rule of Evidence 701; Bob Dylan, Subterranean Homesick Blues (Columbia 1965). Further, the amount of time that elapsed between the incident in question and the date of Deputy Torres's testimony would go to weight, not admissibility, with the jury being the arbiter of the Deputy Torres's credibility. Therefore, this argument does not provide grounds to support a claim of ineffective assistance of counsel.

Next, Applicant claims ineffective assistance of counsel, alleging that Trial Counsel should have objected to the Trial Judge's jury charge. Specifically, Applicant claims that the Trial Judge's use of examples of deadly weapons - including firearms - was an improper comment on the facts of the case. This Court finds this argument without merit. Trial Counsel testified that he found nothing objectionable about the Trial Judge's charge. It is commonplace for judges to give examples when charging the jury on the law. Providing examples does not, on its own, transform a charge on the law into a comment on the facts of the case. Further, the fact that the examples included firearms does not change the Trial Judge's charge into an improper comment on the facts of the case - firearms are obvious and reliable examples of deadly

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weapons. Therefore, Trial Counsel's failure to object to the Trial Judge's jury charge does not serve as a ground for ineffective assistance of counsel.

Based on the above, the Court finds that Trial Counsel represented Applicant well within prevailing professional norms and that Applicant has failed to carry his burden of proof as to his claim of ineffective assistance of counsel.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

December 7th 2016
Greenville, South Carolina

John C. Hayes III
John C. Hayes III
Presiding Judge #6

2017 JAN 4 PM 9 17
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.2015-CP-39-729

Karl Ryan Lane,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this February 10, 2017, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Patrick Schmeckpeper, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

Karl Lane SCDC# 349514
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

February 10, 2017

WITNESSES

Benjamin Dow

Pickens County Sheriff's Office

4/22/2011

ARREST WARRANT NUMBER

1688913

ACTION OF GRAND JURY

FILED

RECORDED

JAN 24 2012

Forfeiture of Grand Jury

John R. Murphy
VERDICT

Guilty

John R. Murphy
Forfeiture of Petit Jury

1-26-12
Date:

DOCKET NO. 2011-GS-39-^{JLB} 1496
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

'JAN 24 2012' TERM 2011

THE STATE

vs.

KARL RYAN LANE

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

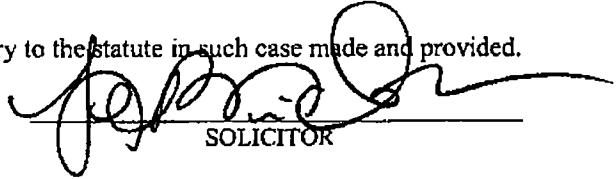
STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **JAN 24 2012** the Grand Jurors of Pickens County present upon their oath:

That KARL RYAN LANE did in Pickens County, on or about the 21st day of April, 2011, willfully and unlawfully enter the dwelling of MARK TODD MCSWAIN located at [REDACTED] Road, Liberty, South Carolina without consent and with the intent to commit a crime therein and defendant armed himself with firearms. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Benjamin Dow

Pickens County Sheriff's Office

4/22/2011

ARREST WARRANT NUMBER

1688912

ACTION OF GRAND JURY

TRUE BILL

Date

JAN 24 2011

Foreperson of Grand Jury

VERDICT

Not Guilty

John Amey

1-26-12

Date:

DOCKET NO. 2011-GS-39-
JLB

1497

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JAN 24 2011

TERM 2011

THE STATE

vs.

KARL RYAN LANE

Indictment for

3421

GRAND LARCENY

VIOLATION § 16-13-0030(B)

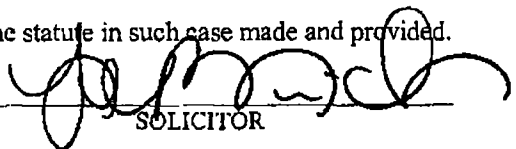
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on **JAN 24 2012** the Grand Jurors of Pickens
County present upon their oath:

That KARL RYAN LANE did in Pickens County on or about the 21st day of April, 2011, feloniously
take and carry away the personal property of MARK TODD MCSWAIN to wit: firearms, with a total
value of more than Ten Thousand Dollars with the intent to deprive the owner permanently of such
property. This is in violation of §16-13-0030 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR