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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDEN JOSHUA KIRBY,

APPELLANT

APPELLATE CASE NO. 2016-001406

RECORD ON APPEAL

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STATE’S EXHIBIT NOS. 1-9 (Photographs)**

)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA)

5 STATE,)

6 TRANSCRIPT OF RECORD
13-GS-45-218

7 v.)

8 BRANDEN J. KIRBY,)

9 DEFENDANT.)

10 October 20, 2014
11 Kingstree, South Carolina

12 **BEFORE :**

13 THE HONORABLE CLIFTON B. NEWMAN, JUDGE;
14 AND JURY

15 **APPEARANCES:**

16 TYLER B. BROWN, ESQ.
17 Assistant Solicitor

18 M. AMANDA SHULER, ESQ.
19 Attorney for Defendant

20
21 FRANCES B. RAY, RPR
22 Circuit Court Reporter
23
24
25

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1 MR. BROWN: May it please the Court, Your
2 Honor, before you is, the next case before this
3 Court is the matter of the State of South Carolina
4 versus Mr. Branden Joshua Kirby. It's under true
5 bill indictment 2013-GS-45-218, one charge of grand
6 larceny value more than two thousand but less than
7 ten thousand and one count of possession of burglary
8 tools. The State is ready for trial. Permission to
9 approach?

10 THE COURT: Yes, sir. Ladies and
11 gentlemen, the State has called for the trial the
12 case of the State versus Branden Joshua Kirby. He's
13 been indicted by the grand jury of Williamsburg
14 County charging him with taking of goods belonging
15 to Michael Lane and the, including bolt, and also
16 possession of burglary tools consisting of bolt
17 cutters, welding machine, ax, and chainsaw on or
18 about April 4th, 2013, here in Williamsburg County.
19 What area of the county would that be in, Mr. Brown?

20 MR. BROWN: Your Honor, it would be off
21 Manning Highway in Kingstree, South Carolina.

22 THE COURT: Off Manning Highway. If
23 anyone on the jury knows Mr. Branden Joshua Kirby or
24 Michael Lane, if so please stand. If you know
25 Branden Kirby or Michael Lane, if so please stand.

1 there, Johnnie Mae Canty, the bailiff, will take
2 your contact numbers. We will have you come back in
3 a few minutes. Please do not discuss the case.
4 Please go that way with Ms. Canty.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 12:30 p.m., and the following
7 proceedings commenced in open court.)

8 THE COURT: Any preliminaries?

9 MS. SHULER: Your Honor, I would just like
10 to put on the record my attempts to contact
11 Mr. Kirby.

12 THE COURT: Okay. What were those
13 attempts?

14 MS. SHULER: I attempted to contact Mr.
15 Kirby for the term of court in May, and that was
16 unsuccessful. I sent letters to Mr. Kirby's at this
17 last known address, both of which were returned to
18 me. On May 4th, 2013 I sent a letter to Branden
19 Joshua Kirby at Santee River Road, Saint
20 Stephens 29479. That letter was returned to me. It
21 says return to sender, do not live at this address.
22 I would like to make that a Court's exhibit.

23 THE COURT: All right.

24 MS. SHULER: Just the envelope. And I
25 again tried to contact Mr. Kirby at another address

1 that I found at Dawsey Drive, D-A-W-S-E-Y,
2 Bonneau, South Carolina 29431. That was also
3 returned to me. It was undeliverable as addressed
4 and unable to forward. Don't know what happened
5 with that address, that was another address that was
6 provided to me. I have contacted him in -- when --
7 the letter got returned to me back in May of 2013.
8 I tried to call and nobody returned my call. The
9 numbers have been disconnected. With the number
10 disconnected I've attempted to call again.
11 Sometimes they, these phones that people have, the
12 burner phones, that have money on them. Sometimes
13 they re-charge the phone with minutes. I've
14 attempted to call him back in October, on
15 October 14th which was last week I tried to call.
16 September 15th I tried to call. Whenever I could
17 not get in touch with him I contacted his bondsman
18 which was Freedom Bail Bondsman, and he indicated to
19 me that he thought that he was in SCDC. I looked on
20 the South Carolina Department of Corrections website
21 and he was not listed as an inmate at SCDC so I've
22 done what I could do to locate him and I cannot find
23 Mr. Kirby. I never talked to him about this case so
24 I have, I have made a diligent effort to try to
25 locate him but I cannot find him.

1 THE COURT: All right, Mr. Brown.

2 MR. BROWN: And Your Honor, we have been
3 trying to get Mr. Kirby some time now. In January a
4 bench warrant was taken out for him. Like
5 Ms. Shuler, we also contacted Freedom Bail Bonding.
6 I spoke with Murrell over there. He actually came
7 and talked to me about the case, and he indicated to
8 me that Mr. Kirby was down in the Berkeley County
9 area of South Carolina and that any attempts that he
10 made to get in contact with him have been fruitless.
11 That he indicated to him that, in fact, the
12 defendant was at least to some degree potentially
13 avoiding him and so I think both the State and
14 Defense have sought out the defendant and he's not
15 responding, he's not coming in so the State is ready
16 to proceed with trial.

17 Your Honor, at the appropriate time, of
18 course, we'll want to put the defendant's right to
19 be present at trial on the record based on the fact
20 this is going to be a trial in absence. But we do
21 believe all efforts have been made and the defendant
22 has a right not to be present at trial; and by them
23 not showing up, the State is ready to proceed.

24 THE COURT: All right. Do you want us to
25 have a hearing with the bail bondsman?

1 MS. SHULER: I would request that that be
2 done, Your Honor.

3 THE COURT: All right. Then we'll have
4 the clerk contact the person who, company who's got
5 him out of jail, who is responsible for him being
6 present during trial, and we'll schedule a hearing
7 on that for 4:00 today.

8 MR. BROWN: Yes, sir, Your Honor.

9 THE COURT: Are the clerks listening?

10 THE CLERK: Yes.

11 THE COURT: Okay. All right, so that's
12 that on that. So with this jury what time you want
13 them to come?

14 MR. BROWN: Your Honor, if they were to
15 come in at 10:00 in the morning we'll be ready to
16 proceed at that point.

17 THE COURT: All right. How about it,
18 Ms. Shuler?

19 MS. SHULER: That's fine.

20 THE COURT: Freedom Bail Bonds, with or
21 without their attorney, Cezar J. McKnight.

22 All right, yes, ma'am.

23 THE BAILIFF: Juror 45, Nathaniel Cumbie,
24 he said he has a cold and he does not feel good.

25 THE COURT: You think that's -- when I say

1 do you have any reason whatsoever why you should not
2 be selected to be on this jury, you think that
3 qualifies for him standing up, feel good?

4 THE BAILIFF: That qualifies him.

5 THE COURT: Let's have him step out here
6 for a second.

7 (Juror is returned to the courtroom.)

8 THE COURT: Mr. Cumbie, you got troubles?

9 THE JUROR: I had a cold this week. I
10 thought I can make it this morning. I feel worse
11 and worse.

12 THE COURT: Well, you heard when I asked
13 the jurors ---

14 THE JUROR: Yes, sir.

15 THE COURT: ---about ten minutes ago, do
16 you have any reason whatsoever why you should not be
17 selected. While we had everybody here who could ---

18 THE JUROR: I apologize.

19 THE COURT: You heard that question?

20 THE JUROR: Yes, sir.

21 THE COURT: You also heard the one that
22 said part of your oath you must give complete and
23 truthful responses to all questions I asked during
24 this process, and that pertains not only to jury
25 qualification but your entire service this week.

1 You heard that one too?

2 THE JUROR: Yes, sir, I'll go back. I'll
3 make the best of it, sir.

4 THE COURT: You don't have to. We don't
5 want you to give everybody a cold.

6 THE JUROR: I'm not ---

7 THE COURT: I don't want ---

8 THE JUROR: I appreciate it, but I have it
9 contained. I have no fever.

10 THE COURT: Well, I mean, are you able to
11 serve or no?

12 THE JUROR: I'll serve, sir.

13 THE COURT: All right. We're about to let
14 the jury go and come back 10:00 in the morning. So
15 you'll, you know, you, hopefully you'll be rested up
16 and in better shape tomorrow.

17 THE JUROR: Thank you, sir. I thank you,
18 sir.

19 THE COURT: You can go back. In fact,
20 bring them all out.

21 Mr. Cumbie can come out with them when
22 they come.

23 (Court's Exhibit Number 1 and 2 were
24 marked and made a part of the record.)

25 (WHEREUPON, the jury was returned to the

1 courtroom at approximately 12:38 p.m.,
2 and the following proceedings commenced
3 in open court.)

4 THE COURT: Welcome back, ladies and
5 gentlemen. As I said, we're going to let you all go
6 for the rest of the day. We're gonna start this
7 case at ten tomorrow morning, ten a.m. tomorrow
8 morning. You all are through for this day. Have a
9 good evening. We'll see you all back tomorrow
10 morning. Please, when you come back don't come
11 through the courtroom. Come through the back
12 hallway directly into the jury room. Be there
13 tomorrow morning at what time?

14 (Jurors respond.)

15 THE COURT: See you then. Good evening.
16 (WHEREUPON, the jury was removed from the
17 courtroom at 12:39 p.m., and the following
18 proceedings commenced in open court.)

19 MR. BROWN: Earlier this morning we can
20 selected a jury on the State of South Carolina
21 versus Brandon Joshua Kirby. This is true billed
22 indictment 2013-GS-45-218 charging grand larceny two
23 to ten thousand dollars, as well as possession of
24 burglary tools. Your Honor, during the selection
25 Ms. Shuler requested Your Honor grant her the

1 ability to put on the record her attempt to contact
2 her client to which she informed the Court that had
3 been to no avail. She asked the Court to allow her
4 to get, or to have the Court get the bondsman for
5 Mr. Kirby here today and present here in court is
6 Murrell McKnight with Freedom Bail Bonding. He's
7 the person who bonded Mr. Kirby out. We're here on
8 that matter and then also to put on the record
9 anything about trial in absence.

10 THE COURT: All right. Ms. Shuler.

11 MS. SHULER: Your Honor, Mr. McKnight is
12 here. I think that he's made contact with
13 Mr. Kirby's mother, and it's also stated
14 -- Mr. Kirby's mother stated that Mr. Kirby has
15 retained an attorney by the name of William J.
16 Thrower and I was gonna try to make contact with
17 Mr. Thrower. I don't think that the Solicitor's
18 Office has any notice of that from that attorney at
19 all. But I'll let Mr. McKnight update the Court
20 with what he has found out.

21 THE COURT: All right. Mr. McKnight.

22 BONDSMAN: Your Honor, I spoke with
23 Mr. Kirby's mother Ms. Bridgett who is the
24 indemnitor on the bond. She informed me that
25 Mr. Kirby will be here in the morning. Those are

1 her exact words. I informed his mother how serious
2 the matter was, informed her that the jury had
3 already been selected and that Mr. Kirby needed to
4 make himself present as soon as possible. She
5 informed me that the nearest, closest time that he
6 could get here being that he's in Summerville, etc.,
7 would be first thing in the morning. I, myself,
8 have gone to Summerville twice in search of
9 Mr. Kirby, and I got close to him one time at his
10 girlfriend's house, was not able to apprehend him.
11 I was gonna arrest him early because I had word that
12 he was getting in trouble in Summerville so I was
13 just going to go off his bond early, was not unable
14 to catch up with him. But according to his mother,
15 he signed the contract with me to get him out of
16 jail, he will be present in the morning.

17 THE COURT: All right. Did she give
18 indication she'd been in touch with him concerning
19 your trying to let him know what's going on here in
20 Kingstree?

21 BONDSMAN: We did not discuss whether she
22 spoke with him yet. She just basically assured me
23 that he would be present. She did indicate that she
24 felt like it would be an issue also with getting his
25 attorney on such short notice, that he was, that the

1 trial was about to go on, that getting his attorney
2 here so quickly. That's another reason why she
3 stated in the morning, first thing in the morning.
4 But I assured her that he needs to be here, that if
5 he's not, he will be tried in his absence, you'll
6 have a sealed sentence, and after it's sealed
7 there's nothing that can be done about it.

8 THE COURT: Okay. Well, thank you very
9 much. Anything else that needs to be stated for the
10 record coming in?

11 MR. BROWN: If I can just briefly, Your
12 Honor. Mr. McKnight has indicated that Mr. Kirby
13 has provided, or his mother has provided he's hired
14 a private attorney. We currently do not have a
15 letter of representation from anybody other than
16 Ms. Shuler. We were able to, both Ms. Shuler and
17 myself, found that information out right before you
18 came on the bench when you might have noticed me and
19 Ms. Shuler was coming back, about to go call, check
20 on that. We don't, we just don't have any letter of
21 the representation so we're at this point assuming
22 Ms. Shuler will be the attorney on this case. But,
23 if he comes tomorrow, then he certainly has the
24 right to be here. He probably would be benefiting
25 his attorney if he were here, but that's all I'd

1 like to put on the record.

2 THE COURT: All right. Ms. Shuler,
3 anything else on that regarding you versus
4 Mr. Thrower?

5 MS. SHULER: No, Your Honor. I'm gonna go
6 try to call in a few minutes to see if I can find
7 out the status with his representation. I think
8 that he probably had some Berkeley County charges
9 too. He may represent him in Berkeley County. A
10 lot of times that's —

11 THE COURT: Well, we can hold tight right
12 here while you try to call and see what's what
13 because if we're gonna have some issue, then we need
14 to resolve it as much as we can today.

15 MS. SHULER: Okay.

16 THE COURT: All right, we'll just hold
17 tight right here.

18 (Pause.)

19 (Court's Exhibit Number 3, bond paperwork,
20 was marked and made a part of the
21 record.)

22 MS. SHULER: I called Bill Thrower. I
23 called his office and his cell phone. His cell
24 phone number gave me a fast busy signal, but I left
25 a message at his office. When I spoke to, and

1 then -- I called Mr. Kirby's mother whose name is
2 Bridgette, and Ms. Bridgett told me that she paid
3 Mr. Thrower a thousand dollars and that he got all
4 of Mr. Kirby's charges dismissed. I looked on the
5 public index and Mr. Kirby had charges in Berkeley
6 County that were, in fact, dismissed so I don't
7 think that he -- either he didn't know about
8 Williamsburg County, or it's likely that his
9 contract didn't include the Williamsburg County
10 charges.

11 Mr. Branden Kirby is also out on bond for
12 charges in Berkeley County from March of this year.
13 His bonding company in that case is 843 bonding. I
14 just spoke to that lady and I don't remember what
15 her name was, but she indicated to me that she had
16 spoken to Mr. Kirby in August of this year. That's
17 the last contact that she had with him, that he was
18 living in a hotel at that point, and has not had any
19 further contact with him so she's looking for him as
20 well. I asked the mother to give me the phone
21 number to Mr. Kirby, and she gave me a phone number,
22 the name of voice mail is a Santiago. You know, it
23 rings, then it's, you've reached the voice mail box
24 of Santiago, so I don't know that we've actually got
25 Mr. Kirby's phone. I am doubtful that we do.

1 THE COURT: All right.

2 MS. SHULER: But she said that she was
3 going to call him. And then I explained to her,
4 please have him dressed ready for court, and she
5 said, well, I'm in another state. So you know,
6 where we are at this point with Mr. Kirby, I don't
7 know.

8 THE COURT: All right.

9 BONDSMAN: Your Honor, the number that's
10 in my phone, it's called White Pages. And if I
11 manually type a random number, for example, the
12 Solicitors Office in Florence County, 665-3091, it
13 will, when the phone is ringing it will pop up and
14 let me know it's Florence County Solicitor's Office
15 even if I don't have it saved as contacts in my
16 phone. When I dial the number that Ms. Branden's
17 mother gave me that was for him, the one that the
18 voice mail came back as Santiago, I immediately
19 noticed that when I dialed the number it came, the
20 White Pages application showed up and it said
21 Branden Kirby. So I'm thinking that it's the
22 correct number, but he's a young guy on the wrong
23 side of the law; and a lot of times that I find in
24 bail bondsmen, that they will not put, they will not
25 say a direct name on their voice mail. So that

1 phone according to the white pages and the app that
2 I have is registered to Branden Kirby.

3 THE COURT: Okay. Well, I think it
4 appears we're still on go for the first thing in the
5 morning with his trial.

6 BONDSMAN: Yes, sir.

7 THE COURT: And I appreciate the efforts
8 of everyone. I feel fairly certain Mr. Thrower, if
9 he calls back, his deed is done and he is not
10 looking to come to Kingstree and we have no record
11 of him in this case so we'll press on tomorrow
12 morning.

13 MR. BROWN: And Your Honor, we can do this
14 tomorrow morning or we can do this now. We need to
15 put on the record his bond paperwork and the right
16 to try him in his absence at this point.

17 THE COURT: You're ready to proceed with
18 that. Ms. Shuler, would you rather do it in the
19 morning?

20 MS. SHULER: Let's see if he comes in the
21 morning and certainly we can do that at 9:30 if Your
22 Honor wishes to do that.

23 THE COURT: Let's do it in the morning.

24 MR. BROWN: It's a five minute hearing so
25 I don't think -- I think that would be appropriate,

1 Your Honor?

2 THE COURT: Okay, we'll do that. We will
3 quit for the day then.

4 (WHEREUPON, the proceedings were concluded
5 for the day to be reconvened on October
6 21st, 2014.)

7 (WHEREUPON, State Exhibits Nos. 1 through
8 16 were marked for identification only.)

9 MR. BROWN: Your Honor, to my knowledge
10 Branden Kirby has not come in this morning so the
11 State is ready to proceed at trial. Before we
12 begin, we'll go ahead and put on the record his bail
13 proceeding forms, things of that nature, just to
14 qualify that.

15 THE COURT: Ms. Shuler, anything?

16 MS. SHULER: No, Your Honor, I thought
17 that Freedom Bail Bonding was gonna be here this
18 morning. Whenever he asked me if he needed to be
19 here I told him that I thought he did and that he
20 needed to bring his attorney with him, but I guess
21 maybe he didn't take that advice.

22 THE COURT: All right, you may proceed.

23 MR. BROWN: At this time the State would
24 call Ms. Sharon Richardson to the stand.

25 WHEREUPON,

SW - S. RICHARDSON - PROFFER

1 **SHARON RICHARDSON,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 **DIRECT EXAMINATION**

5 BY MR. BROWN:

6 Q Good morning, Ms. Richardson.

7 A Good morning.

8 Q Please tell the Court where you're employed.

9 A Williamsburg County Clerk of Court.

10 Q And what division of the Clerk of Court's office
11 do you work?

12 A Warrants division.

13 Q Is one of the duties with the warrants division
14 under your control the maintaining bail forms when
15 people are bonded out?

16 A Yes.

17 Q And prior to this hearing today did you pull the
18 bail proceeding form number two for a Mr. Branden
19 Kirby?

20 A Yes.

21 Q You have that with you today?

22 A I do.

23 Q Does it appear that Mr. Kirby was bonded out on
24 the particular case that's been called to trial?

25 A Yes.

SW - S. RICHARDSON - PROFFER

1 Q And does it appear on that form that he was given
2 a time to come back to the court?

3 A According to the form he was due back in court
4 7/26/13 at 9:00 a.m.

5 Q And does it give further instructions on that
6 same line?

7 A At the beginning, "The defendant shall appear the
8 term of Court of General Sessions beginning
9 7/26/2013 at 9:00 a.m. at the Complex Building,"
10 which was next door. During renovation we were over
11 there. "And remain there throughout the term of
12 court. If no disposition is made during that term
13 the defendant shall appear and remain throughout
14 each succeeding term of court until final
15 disposition is made of his case unless otherwise
16 ordered by the Court."

17 Q Thank you. And on the back of that form are
18 there some acknowledges made by defendant in regards
19 to his rights? At the very top.

20 A Yes.

21 Q Can you please tell the Court what
22 acknowledgments are listed there.

23 A Starting at the beginning?

24 Q Specifically I'm looking at paragraph number two.

25 A "I understand and have been informed that I have

SW - S. RICHARDSON - PROFFER

1 the right and obligation to be present at trial and
2 should I fail to attend for the trial, the trial
3 will proceed in my absence."

4 Q Okay. There's — is there a signature there on
5 that line?

6 A It is.

7 Q Is it listed as the signature of the defendant?

8 A It is.

9 Q Does he give his address in that line?

10 A His address is Santee River Road, Saint
11 Stevens 29479.

12 Q And did he date that?

13 A 4/19/2013.

14 MR. BROWN: Your Honor, I offer this list
15 as Court Exhibit number 2.

16 THE COURT: Okay. Any objection?

17 MS. SHULER: No objection, Your Honor.

18 THE COURT: It's admitted.

19 MR. BROWN: Your Honor, that's it for the
20 State.

21 THE COURT: Any questions for this
22 witness?

23 MS. SHULER: No, Your Honor.

24 THE COURT: Thank you, you may step down.
25 Next witness.

SW - W. FRAZIER - PROFFER

1 MR. BROWN: No other witness on this
2 matter, Your Honor.

3 THE COURT: We'd have the bailiff call his
4 name three times outside and let us know whether he
5 is around the courthouse steps.

6 (Pause.)

7 MR. BROWN: Your Honor, Mr. Frazier is
8 back.

9 THE COURT: Call him as a witness.
10 Did you call his name out three times?

11 BAILIFF FRAZIER: Yes, sir.

12 THE COURT: You —

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand.

15 WHEREUPON,

16 **WILLIAM FRAZIER,**
17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE CLERK: Step around to the witness
20 box.

21 **DIRECT EXAMINATION**

22 BY MR. BROWN:

23 Q Mr. Frazier, you're one of the bailiffs in this
24 courthouse?

25 A Yes, sir.

SW - W. FRAZIER - PROFFER

1 Q At the request of the Court have you gone to the
2 front of the courthouse and called the name of the
3 defendant three times?

4 A Yes, sir.

5 Q That name being Branden Kirby?

6 A Yes, sir.

7 Q Did you receive any response to those calls?

8 A No response.

9 Q All right. Thank you, no further questions.

10 THE COURT: Any question by the Defense?

11 MS. SHULER: No, Your Honor.

12 THE COURT: Thank you. Anything further
13 by the State or the Defense?

14 MR. BROWN: Nothing from the State, Your
15 Honor.

16 THE COURT: Ms. Shuler, anything?

17 MS. SHULER: Your Honor, I would ask the
18 case be continued. I have not been able to talk to
19 Mr. Kirby at all, never made contact with him. I
20 tried to contact him. I placed on the record my
21 attempts to make contact with him. It's my
22 understanding he is okay. I was hopeful that he was
23 going to be here today so I would ask the case be
24 continued so that I could adequately defend
25 Mr. Kirby.

1 THE COURT: All right. Mr. Solicitor.

2 MR. BROWN: Thank you, Your Honor. May it
3 please the Court, I certainly am sympathetic to the
4 position Ms. Shuler has been put in with this; but
5 her client was adequately warned that he would be,
6 trial would proceed in his absence. He has been
7 notified this was going on. I believe it was put on
8 the record yesterday. Phone calls were made to him,
9 not only by the bail bondsman but also by defense
10 counsel, and the State itself also tried getting him
11 to the courtroom. I don't think a continuance would
12 serve any means of justice. The State is ready to
13 proceed at trial.

14 THE COURT: All right. Rule 16 of the
15 Rules of Criminal Procedure states that except in
16 capital cases, a person indicted for misdemeanors or
17 felonies may voluntarily waive his right to be
18 present and may be tried in his absence upon a
19 finding by the Court that says person has received
20 notice of his right to be present and that a warning
21 was given that the trial would proceed in his
22 absence upon a failure to do so. The case of State
23 versus Castineira also says that the judge must
24 determine whether the defendant voluntarily waived
25 his right to be present and make a finding that on

1. the record that the defendant received notice of his
2. right to be present and was warned he would be tried
3. in his absence should he fail to attend. I find the
4. State has made such a showing in this case and that
5. the defendant has waived his right to be present and
6. the case can proceed to trial in his absence. It
7. seems to be clear to the Court from all that has
8. been presented and attempted that the defendant
9. simply doesn't want to come and he cannot thwart the
10. court system by avoiding coming to court. That's
11. the purpose of the rule. We will proceed in his
12. absence.

13. MR. BROWN: Thank you, Your Honor.

14. THE COURT: All right. Anything else
15. before the jury comes in? With regard to the motion
16. to sever, I'm gonna have a written order concerning
17. the motion to sever, and I'll have the details of it
18. in the order that I'm issuing. In effect, the
19. primary gist of the order would be that the
20. statements by co-defendants during the commission of
21. the crime does not rise to the level of Bruton or
22. Crawford issues, and it's not a basis for severance.

23. MS. SHULER: Judge, the one thing I would
24. ask, the witnesses be sequestered.

25. THE COURT: All right, how many witnesses

1 do you have?

2 MR. BROWN: Your Honor, I think it's
3 ultimately maybe four. Mr. Cannon, he's already in
4 the holding cell back there. Officer Jenkins,
5 Officer McCants. I imagine, of those, I'll probably
6 just call Officer McCants. I can simply ask both of
7 them to step out. I would offer to the Court that
8 Chief Graham would probably be the lead investigator
9 based on the facts of this case. Then my victim, of
10 course, has the right to be present so we would just
11 request that the people allow to stay. The rest of
12 them I ask to, can be sequestered.

13 THE COURT: All right, the motion is
14 granted.

15 MS. SHULER: Thank you, Your Honor.

16 THE COURT: If you'd bring the jury.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 10:35 a.m.,
19 and the following proceedings commenced
20 in open court.)

21 THE COURT: Good morning, ladies and
22 gentlemen, if you all will stand at this time to be
23 sworn.

24 (WHEREUPON, the jury panel was sworn.)

25 THE CLERK: Okay, be seated.

1 THE COURT: Ladies and gentlemen, you just
2 took an oath to well and duly try this case and
3 render a true verdict according to the evidence so
4 help you God. As long as you do that you will have
5 complied with your oath as jurors, and no one will
6 have any basis to criticize whatever decision that
7 you made. We're here today concerning the case of
8 the State versus Branden Joshua Kirby. He was
9 indicted by the grand jury of Williamsburg County
10 and charged with grand larceny and possession of
11 burglary tools. He has pled not guilty to the
12 charges and he's presumed to be not guilty of
13 charges. You may note that he is not here. The
14 fact that he is not here does not change the fact
15 that he's presumed to be not guilty and cannot be
16 found guilty unless the State proves his guilt
17 beyond a reasonable doubt. His absence cannot be
18 taken into consideration in any form or fashion.
19 The State will present to you opening statement in
20 just a few minutes; and the Defense will have an
21 opportunity to do so as well, then we will hear
22 testimony of witnesses and receive any evidence the
23 State may have to offer.

24 Your role as jurors is to judge the
25 credibility, that is, the believability of the

1 witnesses who testify and of the evidence that is
2 presented and make a determination at the end of the
3 case as to whether the defendant is guilty or not
4 guilty. As to each charge I look forward to working
5 with you on that. I will appoint one of you in a
6 few minutes or a few hours to serve as the
7 foreperson of the jury. That person will have a
8 responsibility of serving as the spokesperson for
9 the jury presiding over the jury deliberations and
10 completing the verdict form representing the
11 unanimous verdict of the jury. Now until I tell you
12 that it's time to do so, you are not to discuss the
13 case with each other or with anyone else or to allow
14 anyone to discuss the case in your presence. Under
15 our system the jury is to listen to the entire case
16 as well as the instructions of law and deliberate
17 and decide the case so I ask that you follow through
18 with that responsibility as well. We'll proceed now
19 to opening statements.

20 Mr. Brown.

21 MR. BROWN: Thank you, Your Honor, may it
22 please the Court.

23 THE COURT: Yes, sir.

24 MR. BROWN: Ms. Shuler. Good morning,
25 ladies and gentlemen of the jury. I hope y'all had

1 a restful night since we picked the jury last night.
2 We appreciate y'all being here promptly this
3 morning. For any delays, we certainly apologize for
4 that. The bottom line, and we don't like wasting
5 y'all's time. We don't like spending a lot of time,
6 we know it's precious to y'all. But today we're
7 here for an important case, an important case for
8 the State, important case for the defendant,
9 important case for everyone. And today we're here
10 to address a case about theft that without y'all we
11 would not be able to resolve.

12 I want to start before I get into what
13 you're going to hear about today just to thank y'all
14 for y'all's service. It's now awesome, I think, on
15 the State or the Defendant — and this might be the
16 only thing we agree about today, but it's how
17 awesome on us how valuable y'all's time is, how
18 precious y'all's time is and how this is not
19 voluntary for y'all, how it's probably not where
20 y'all want to be this morning. But that being said,
21 you're going to hear what will probably be a
22 relatively short trial, probably a couple of hours;
23 and it's up to y'all to be able to decide whether or
24 not we have met our burden.

25 Now as I indicated initially, the case

1 we're here about today is a case about theft. It's
2 a case about grand larceny. The case you're gonna
3 hear today is a case about on April 4th of 2013, how
4 at Manning Highway here in Williamsburg, South
5 Carolina, two men tried to steal some property from
6 Mr. Michael Lane, the victim in this case. You're
7 gonna hear in this case is testimony about how those
8 men came in the dead of night around 1:00 at night
9 to load up property of his that was on his property,
10 items such as a saw, items such as transients, items
11 such as heavy angle irons. And you're gonna hear
12 about how Michael Lane was concerned this was about
13 to happen and so he had Chief Graham out there
14 watching the property. You're gonna hear from Chief
15 Graham as he testifies about how that night he sat
16 out on patrol. Off duty that night he sat out there
17 on patrol to help watch his property, and he watched
18 as a car loaded up items from Mr. Lane's property.
19 You're gonna hear testimony about how he approached
20 that vehicle who was about to leave; and as he shown
21 his flashlight at them and drew his service weapon,
22 how that car drug straight out and he had to fire
23 his weapon into the head lamp of the car to get it
24 to stop. You're gonna hear how both those
25 individuals in that truck, Tim Cannon and Branden

1 Kirby, were arrested. And you're also gonna hear
2 testimony about how Branden Kirby originally gave a
3 false name of Dennis Kinon, and it wasn't but for a
4 couple of days later they finally figured out that
5 the person before them was Branden Kirby who had
6 done this.

7 This case isn't just about theft though.
8 This case is also about possession of burglary
9 tools. Now I kind of hate the headline of that;
10 that's what the charge is called. Because a lot of
11 people hear that headline and think that a burglary
12 has to take place for that. But what you're gonna
13 hear, you're gonna hear about possession of some
14 tools that were inside the truck that was stopped by
15 Chief Graham. When they searched the car
16 afterwards, they led them to that they had tools to
17 help them facilitate this theft. At the end of this
18 case you're gonna hear the law. Judge Newman, when
19 he gives you the law he'll tell you that possession
20 of burglary tools doesn't just incapsulate a
21 particular. It encapsulates larceny, safe cracking,
22 anything you're trying to steal. And if you have
23 these tools to help facilitate this theft, then that
24 in and of itself constitutes a crime.

25 You're gonna hear how they pulled axes out

1 of the car, welding machine, bolt cutters. You're
2 gonna hear how they pulled all these items out of
3 the same vehicle that they managed to stop. And all
4 this happened right here on Manning Highway not too
5 far from the courthouse where we sit today.

6 Now, it is the burden of the State to
7 prove this case and we welcome that burden. It is
8 our job to prove this case beyond a reasonable
9 doubt. You're gonna only hear from about three or
10 four witnesses because honestly I frankly offer to
11 you that's the number of witnesses it will take to
12 prove this case. You're gonna hear from them at the
13 end of this case when it come to you, and we're
14 gonna give our closing argument at that time. I'm
15 gonna ask you based upon the facts and the evidence
16 you're gonna see, the testimony you're gonna listen
17 to, that you convict Mr. Branden Kirby for charges
18 of grand larceny, two to ten thousand dollars, and
19 for the charge of possession of burglary tools.
20 Thank you.

21 THE COURT: Ms. Shuler.

22 MS. SHULER: Thank you, Your Honor, may it
23 please the Court, Mr. Solicitor. Good morning.
24 Thank you all for being here this morning and sorry
25 we kept you waiting. Sometimes we lawyers have a

1 tendency to talk and can get things held up, keep
2 you guys held up in the jury room waiting on us, and
3 we certainly apologize for that; but again, we thank
4 you. During the jury selection process yesterday
5 I'm sure you guys were wondering what exactly we
6 were doing and what we were thinking as we were
7 seating you guys in the jury box and asking some
8 other people to sit back down out in the audience.
9 And what our goal is, is to get twelve people and
10 two alternates that are gonna give us a fair and
11 impartial trial. We want twelve people that are
12 gonna look at the State's evidence and give it a
13 critical look and make sure that the defendant is
14 given a fair shake at this process.

15 Now Mr. Kirby is charged with grand
16 larceny and possession of burglary tools, and the
17 State has to prove these two crimes beyond a
18 reasonable doubt. And so what you guys are probably
19 wondering is, well, what does that mean, what does
20 beyond a reasonable doubt mean? And Judge Newman at
21 the close of the case will charge you on the law.
22 But what that means is, is proof that will make,
23 that makes you hesitate to act. So what I explain
24 to people with that is, you know, when you get up on
25 Sunday morning and you get everybody ready for

1 church, you iron, iron your baby's clothes and you
2 iron your husband's shirt, iron your wife's clothes,
3 everybody is ready, get in the car, and you think,
4 did I unplug that iron. And you go get out your car
5 and you go back inside and you check and make sure
6 you unplugged the iron so you don't burn down the
7 house. Well that hesitation to act, that hesitation
8 to leave and go to church without checking to make
9 sure you've unplugged that iron is the reasonable
10 doubt. So look at this evidence as presented in
11 this case and make sure that the State has proved
12 its case beyond a reasonable doubt, make sure that
13 they have met their burden in proving their case.

14 Now what they're gonna have to prove to
15 you is that there was an unlawful taking of
16 another's property and that Mr. Kirby was a part of
17 this unlawful taking. So let's look at the evidence
18 as it's presented and let's make sure that they
19 prove this. Let's make sure that they prove that
20 the value of this property is worth two to ten
21 thousand dollars. Now why is all of that important?
22 Well, all of that is important because it's proof
23 beyond a reasonable doubt. The State has to make,
24 meet their burden of each and every element of this
25 crime. So listen to the evidence, listen to it

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1 carefully, think credibly, and we're gonna ask for
2 you to come back at the end of this case with a
3 verdict of not guilty in favor of Mr. Kirby.

4 THE COURT: Your first witness.

5 MR. BROWN: Thank you, Your Honor, may it
6 please the Court. The State at this time will call
7 Chief Michael Graham from the Greeleyville Police
8 Department.

9 THE CLERK: Place your left hand on the
10 Bible, raise your right hand.

11 WHEREUPON,

12 **MICHAEL GRAHAM,**

13 having been duly sworn by the Clerk, testified as
14 follows:

15 THE CLERK: Have a seat in the witness box
16 please.

17 **DIRECT EXAMINATION**

18 BY MR. BROWN:

19 Q Good morning, Chief.

20 A Good morning.

21 Q These ladies and gentlemen of the jury, please
22 let them know who you are. Just tell them who you
23 are, where you're from, where you grew up, what you
24 do now.

25 A I'm Joseph Michael Graham. I'm chief of police

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1 in Greeleyville, South Carolina. I worked Kingstree
2 for 27 years, retired. I worked for Santee Police
3 Department for two years, and now I'm at the
4 Greeleyville Police Department. I've been chief
5 over there approximately two years now.

6 Q You've been in law enforcement your whole life?

7 A Yes, sir.

8 Q You've been in Williamsburg most of your life?

9 A Yes, sir, born and raised.

10 Q And do you know the victim in this case,
11 Mr. Michael Lane?

12 A Yes, sir, I do.

13 Q Please tell these ladies and gentlemen of the
14 jury how.

15 A I stay approximately two miles from where this
16 property is at, and he wanted me to watch. And I
17 met him through his daughter who's actually cleaned
18 up some of the property near there and just knew who
19 he was.

20 Q Where is this property located?

21 A It's on 261 like you're going toward Manning.
22 And the property we're talking about is on the right
23 before you get to the crossroads where the store is.

24 Q Okay. Now you mentioned when you just now
25 indicated you knew Michael Lane, you mentioned him

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1 asking to watch the property. Can you please tell
2 us about the background to that.

3 A Yes, sir. He called me and said that he had had
4 some trouble on his property. Some people had moved
5 some stuff around. He thought they were going to
6 come back and try to pick up some metal type items.
7 He had had people watching the property, and he
8 wanted to know if I would watch it because he was
9 getting different people to watch it at different
10 times, and I told him I will be glad to do it.

11 Q So you agreed you would watch that property?

12 A Yes, sir, I did.

13 MR. BROWN: Court's indulgence.

14 Permission to approach, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. BROWN:

17 Q I'm having a little trouble hearing you back
18 here. I'm gonna turn this mic on. Just try and
19 speak up so all the ladies and gentlemen of the
20 jury, especially way back here, will be able to hear
21 you.

22 A All right.

23 Q So you were asked to watch that property?

24 A Yes, sir, I was.

25 Q And do you know the address of that property?

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1 A I know it's on Manning Highway. I'm not sure the
2 exact address. It's on Manning Highway in
3 Williamsburg County.

4 Q If I told you Manning Highway, would that
5 sound right?

6 A Yes, sir, that sounds correct.

7 Q You said you live two miles away?

8 A Yes, sir.

9 Q Do you remember the day he asked you to watch
10 that property?

11 A Yes, sir, I do.

12 Q And what date was that?

13 A I'm not sure the exact date, but I know when he
14 called me and asked me he had somebody that couldn't
15 be there that night. I went down there that night
16 about 11:30 to start watching the property.

17 Q Was it in -- do you know what month it was in?

18 A I think it was April.

19 Q Okay. Of last year or this year?

20 A 2014 I believe.

21 Q And you got there around 11:00?

22 A Yes, sir.

23 Q Tell me what you did when you got to that
24 property. Where did you set up?

25 A There was a house across the street, and he had

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1 talked to the people, told them I'd be parked over
2 inside their house in the yard. I was going to be
3 watching the property across the street so that's
4 where I went and set up at.

5 Q And you started watching that property?

6 A Yes, sir, I did.

7 Q What, if anything, did you notice as you watched
8 that property?

9 A After I was there about an hour or so I noticed
10 some flashlights in the back edge of the property so
11 I got out my vehicle, called 9-1-1 on my cell phone,
12 and informed them that I was checking on some
13 suspicious people on the property that I was
14 watching. And I started down the wood line towards
15 where these lights were.

16 Q Okay. Now, and you said you saw those
17 flashlights near the back edge of the property,
18 correct?

19 A Yes, sir, I did.

20 Q Now where was the property located that y'all
21 were concerned that Mr. Lane had expressed concern
22 about?

23 A Right there where the lights were flashing out by
24 the back of the property by the woods.

25 Q Okay. What happened next?

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1 A I went down the road and through the wood line
2 and stopped to watch what they were doing, and I
3 hear clinging and clanging like they were, like
4 metal banging together.

5 Q Okay.

6 A So I got 9-1-1, called for Sheriff's Office to
7 come meet me out there. I was informed they were in
8 Hemingway. They were in route to where I was so it
9 would take them a little while to get there.

10 Q Okay.

11 A So I watched them for a while and ---

12 Q When you say a while, about how long were you
13 watching them?

14 A Probably 15 or 20 minutes from the time I saw the
15 lights. And a truck cranked up, drive up the dirt
16 road. Like, there's a little grass dirt road back
17 to back field, drive up right behind the house there
18 and stop. They got out of the vehicle and I could
19 hear more metal clanging together like they were
20 loading something on the back.

21 Q Okay.

22 A So what I did then was call the Sheriff's Office
23 and found out that he was about 10 or 15 more
24 minutes away, they were coming. I said, we need to
25 hurry, you know, they, I think they're fixing to

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1 leave. So by the time they got the truck, cranked
2 it up, cut the headlights on. I was probably from
3 here to Mr. Lane there at the desk, from the wood
4 line. So I stepped out in the road, put the
5 flashlight on, told them, you know, police, cut your
6 vehicle off. At that time the vehicle revved up and
7 started driving right towards me.

8 Q And I'm gonna pause you right there a moment
9 'cause just so our court reporter can take this
10 down. You said you were from about the distance of
11 you to Mr. Lane, the gentleman in the tan, green
12 color shirt there?

13 A That's correct.

14 Q About how far would you estimate that to be?

15 A Probably about 15 yards or so.

16 Q Okay. And so at that point you saw the vehicle
17 put his headlights on and you were about 15 yards
18 away. What happened next?

19 A He comes driving straight towards me with the
20 engine revved up real high.

21 Q What happened next?

22 A At that point I fired my duty weapon into the
23 left headlights of the vehicle, and I stopped and
24 then begin to put it in reverse.

25 Q Okay. Now did you say anything as this car was

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1 revving up towards you?

2 A Told them to stop, Sheriff's Office, and they
3 kept coming, and I fired, then they stopped. And
4 then they put it in reverse; and at that point I
5 went up to the driver's side and at that point the
6 passenger was diving out of the passenger window.

7 Q Okay.

8 A I pulled the driver out, went around the vehicle,
9 and caught up where the passenger was, and had both
10 hands and handcuffed them together at that point.

11 Q You had both of these individuals at this point
12 stopped there with you handcuffed right in front of
13 you?

14 A That's correct.

15 MS. SHULER: Objection, Your Honor,
16 leading.

17 THE COURT: Don't lead the witness.

18 BY MR. BROWN:

19 Q What happened next?

20 A As soon as I got them handcuffed together on the
21 ground Sheriff's Office pulls up. Robert Shear from
22 the Sheriff's Office, the first deputy to me, and we
23 begin -- he begin to pat the guys down for me and
24 whatnot.

25 Q Do you remember who else came up?

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1 A Branden McCants was one of the officers that came
2 up. I can't remember her name, of the officer at
3 the moment.

4 Q Okay. Was Johnny Jenkins there?

5 A Johnny Jenkins was there and there was also some
6 highway patrolman came up on the scene.

7 Q Okay. What happened next?

8 A At that point I got them up and they were
9 transported to the Sheriff's Office, to the jail.

10 Q Did you go with them or did you stay behind?

11 A No, I stayed there at the scene.

12 Q Okay.

13 A And the sheriff's deputy and all got there and
14 starting checking vehicle.

15 Q But were you there present when they were doing
16 this?

17 A Yes, sir, I was.

18 MR. BROWN: Beg the Court's indulgence.
19 Permission to approach the witness, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. BROWN:

22 Q Prior to coming into court today did you look at
23 these pictures?

24 A Yes, sir, I did.

25 Q And are those, do those appear to be pictures

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1 taken on the night that this event occurred?

2 A Yes, sir, they are.

3 Q And are those accurate reflections of what
4 occurred that night?

5 A Yes, sir, they are.

6 MR. BROWN: Your Honor, permission to
7 enter State's 9, 8, 7, 6, 5, 4, 3, 2 and 1, so 1
8 through 9 into evidence, Your Honor.

9 THE COURT: Any objection?

10 MS. SHULER: May I see the pictures.

11 (Pause.)

12 MS. SHULER: No objection, Your Honor.

13 THE COURT: Admitted without objection.

14 MR. BROWN: Permission to publish?

15 THE COURT: Yes.

16 (WHEREUPON, State Exhibits Nos. 1 through
17 9 were admitted into evidence.)

18 BY MR. BROWN:

19 Q Chief Graham, if you'd look to your left you'll
20 see the TV screen there. I'm gonna publish these
21 pictures. I'm gonna ask you questions as we go,
22 okay.

23 A Okay.

24 Q Sir, do you recognize this picture right here?

25 A Yes, sir, I do.

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1 Q What is that a picture of?

2 A That's a picture of the headlight I shot at when
3 they was coming.

4 Q Does that appear to show the bullet entrance?

5 A Yes, sir, it does.

6 MR. BROWN: And Your Honor, for the record
7 that was State's Number 1.

8 BY MR. BROWN:

9 Q You recognize this picture right here? I publish
10 State's Number 2.

11 A Yes, sir, I do.

12 Q What is that picture there?

13 A That's some pictures of the items that that was
14 inside the vehicle that were taken out and put on
15 the hood of the truck.

16 Q And who is that, who is the person in that
17 picture there?

18 A That is myself on the left-hand side.

19 Q Okay. And you earlier indicated that the truck
20 was driving toward you. Is this the same truck or
21 different truck?

22 A Yes, sir, that is the same one.

23 Q Okay. Publishing State's Number 3. Is this a
24 closeup of the same items we were talking about?

25 A Yes, sir.

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1 Q What does that appear to be in that picture?

2 A A set of bolt cutters, an ax, and chain saw.

3 Q Publishing State's Number 5, is this the back
4 edge of the same truck?

5 A Yes, sir, it is.

6 Q Okay, and what is that hooked to that truck?

7 A That's the trailer that was hooked behind the
8 truck, sir.

9 Q Okay. Is that an accurate reflection of how it
10 was the night that you made the stop on that
11 vehicle?

12 A Yes, sir, it is.

13 Q Publishing State's Number 6. Is this that
14 trailer?

15 A Yes, sir.

16 Q And State's Number 7, is this a view of the
17 trailer and the contents inside of it?

18 A Yes, sir, it is.

19 Q And do you remember what all was inside that
20 trailer that particular night?

21 A Some real heavy pieces of metal. I remember tire
22 rims and stuff. I don't remember exactly everything
23 that was in there.

24 Q Okay. I show you State's Number 8. Is that
25 another view of those same items?

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1 A Yes, sir.

2 Q And do you see rims in that particular picture as
3 well?

4 MS. SHULER: Objection, Your Honor,
5 leading.

6 THE COURT: The objection is sustained.

7 BY MR. BROWN:

8 Q What do you see in that picture right there?

9 A I see like what is part of a rim and axle and
10 some other metal items.

11 Q Okay. And State's Number 9, is this another
12 image of that same trailer?

13 A Yes, sir.

14 MS. SHULER: Objection, Your Honor,
15 leading.

16 THE COURT: Objection sustained.

17 BY MR. BROWN:

18 Q What is this an image of?

19 A That same trailer ax.

20 Q And publishing State's Number 4. Can you please
21 tell the ladies and gentlemen of the jury what this
22 is.

23 A That was a welding machine, an ax, a small set of
24 bolt cutters, and a chain saw that was inside the
25 vehicle.

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1 Q Okay. And where did y'all retrieve these items
2 from?

3 A They were in the vehicle, in the back of the
4 vehicle.

5 Q Were you present as they retrieved these items
6 that you just now indicated?

7 A Yes, sir, I was.

8 MR. BROWN: And permission to approach
9 opposing counsel.

10 THE COURT: Yes.

11 (Pause.)

12 BY MR. BROWN:

13 Q Without picking them up, do you see items below
14 you right here on this little area right here?

15 A Yes, sir.

16 Q And do you recognize those items from anywhere?

17 A Yes, sir, I do.

18 Q Where do you recognize those items from?

19 A They were from the scene that night, sir.

20 Q And do they appear to be in the same shape that
21 you saw them that night?

22 A Yes, sir, best I can recollect.

23 Q Were you present as these items were removed from
24 the truck?

25 A I was present when they were taking them out and

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1 putting them on the hood of the truck. I was not
2 present when they removed everything at the scene.

3 Q But you were present as these items right here
4 were taken out of the truck?

5 A Yes, sir.

6 MR. BROWN: And Your Honor, at this time
7 the State would move to offer State's Exhibits
8 Number 11, 12, 16, 14, 13, and I think 15, so 11
9 through 15.

10 THE COURT: Any objection?

11 MS. SHULER: Your Honor, yes. The
12 Solicitor failed to establish proof of chain of
13 custody to those things.

14 THE COURT: I admit them over objection.

15 (WHEREUPON, State Exhibits Nos. 11 through
16 16 were admitted into evidence.)

17 MR. BROWN: Thank you, Your Honor.
18 Permission to publish the items, Your Honor?

19 THE COURT: Yes.

20 BY MR. BROWN:

21 Q Offering State's Number 11, do you recognize this
22 item right here?

23 A Yes.

24 Q And what is this item?

25 A A chain saw.

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1 Q And where do you recognize this item from?

2 A It was in the vehicle that night.

3 Q This was removed from the vehicle?

4 A Yes, sir.

5 Q I show you State's Number 16. You recognize
6 these items right here?

7 A Yes, sir, I do.

8 Q And what are those items there?

9 A These are gloves and whatnot they had that night,
10 sir.

11 Q Okay. You were present when these items were
12 also removed from the vehicle?

13 A Yes, sir.

14 Q I'm showing you State's Number 15. You recognize
15 this?

16 A Yes, sir, I do.

17 Q And where do you recognize it from?

18 A It was, I think it was in the back floorboard of
19 the vehicle. I'm pretty sure that's where it was
20 at.

21 Q And what is this item?

22 A The set of bolt cutters.

23 Q Is this the one you earlier indicated was a small
24 set of bolt cutters?

25 A That's correct.

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1 Q All right. Moving on to item number 14, you
2 recognize this item?

3 A Yes, sir, I do.

4 Q And where do you recognize this item from?

5 A From the vehicle also.

6 Q And what is this item right here?

7 A It's a large heavy duty set of bolt cutters.

8 Q Did you see where they were removed this item
9 from?

10 A Yes, sir, it was in the vehicle also.

11 Q Okay. And when you say the vehicle, are we
12 talking about the same vehicle that you saw that
13 night?

14 A Yes, sir.

15 Q The same vehicle those two boys jumped out of?

16 A Yes, sir.

17 Q You recognize this item right here?

18 A Yes, sir, that was also in the vehicle.

19 Q What is this item?

20 A It's an ax.

21 Q And this is State's Number 13. And finally, do
22 you recognize item number 12 right here?

23 A Yes, I do.

24 Q And what do you recognize this item as?

25 A It's a welder. It was in the back. When you

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1 open up the back glass that's where that was at.

2 Q Okay. And this was also removed from the
3 vehicle?

4 A Yes, sir.

5 Q Did you know the two boys that were in that
6 vehicle that night?

7 A I did not know them, no, sir.

8 Q Were you present when they were arrested though?

9 A Yes, sir, I was.

10 Q And earlier who was it that originally handcuffed
11 these boys?

12 A I did.

13 Q Did you get a good look at them?

14 A Yes, sir, I did.

15 MR. BROWN: Permission to approach
16 opposing counsel, Your Honor.

17 THE COURT: Yes.

18 (Pause.)

19 MR. BROWN: Permission to approach the
20 witness?

21 THE COURT: Yes.

22 BY MR. BROWN:

23 Q You recognize the person in this picture here?

24 A Yes, sir, I do.

25 Q And how do you recognize the person in that

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1 picture?

2 A That's the gentleman that was the passenger that
3 jumped out of the passenger window that night.

4 Q He was the passenger?

5 A Yes, sir, he was.

6 Q And you recognize him clearly as the person that
7 was there that night?

8 A Yes, sir, no doubt about it.

9 MR. BROWN: Your Honor, I offer State's
10 Number 10 into evidence.

11 THE COURT: Any objection?

12 MS. SHULER: No objection.

13 THE COURT: It's admitted.

14 (WHEREUPON, State's Exhibit

15 No. 10 was admitted into evidence.)

16 MR. BROWN: Permission to publish, Your
17 Honor?

18 THE COURT: Yes.

19 BY MR. BROWN:

20 Q And the person shown here in this picture, the
21 same person that jumped out the passenger side you
22 said?

23 A Yes, it is.

24 MS. SHULER: Objection, leading. Again, I
25 ask that he, the Solicitor be instructed to ask

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1 questions that are not leading.

2 THE COURT: Don't lead the witness.

3 MR. BROWN: Yes, Your Honor.

4 BY MR. BROWN:

5 Q Who is this person in this picture here?

6 A That's the gentleman on the passenger side of the
7 vehicle that was there that night that jumped out
8 the passenger side.

9 Q And was this provided, a name that law
10 enforcement was given that night?

11 A Yes, sir, that's what he stated his name was that
12 night. It seem like I seen him somewhere before,
13 and it just didn't seem like he was straight up with
14 us.

15 Q Okay. And what name is that provided on this
16 form?

17 A Dennis Leroy Kinon.

18 Q Dennis Leroy. This all happened in Williamsburg
19 County?

20 A Yes, sir.

21 Q And you were present when all that occurred that
22 night?

23 A Yes, sir, I was.

24 Q About what time was it?

25 A Somewhere around one a.m. in the morning.

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1 Q And everything you testified to here today is
2 true?

3 A That's true.

4 Q Please answer any questions from opposing
5 counsel.

6 THE COURT: Ms. Shuler.

7 MS. SHULER: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MS. SHULER:

10 Q Chief, what is this?

11 A It's a chainsaw.

12 Q What's a chainsaw used for?

13 A Cutting limbs and trees.

14 Q Okay. So a chainsaw is used to cut limbs and
15 trees much like an ax, right?

16 A That's right.

17 Q Okay. And a welding machine is used to weld
18 things back together, right?

19 A That's correct.

20 Q Now typically a welding machine would have a
21 torch to it, right?

22 A Not a torch, I don't believe. It's normally a...

23 Q Some piece of something that gets hot, right?

24 A Yes, sir — yes, ma'am.

25 Q And this has, it looks like, some sort of jumper

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- 1 cable to it, right?
- 2 A Yes, sir -- yes, ma'am.
- 3 Q Now you said that you were off duty watching this
- 4 property for Mr. Lane?
- 5 A That's correct.
- 6 Q None of these items here were Mr. Lane's items?
- 7 A No, ma'am, I don't think so.
- 8 Q On the floor none of these, not the chainsaw, the
- 9 ax, the welding machine, the bolt cutters, the
- 10 gloves, none of that was Mr. Lane's, was it?
- 11 A No, sir.
- 12 Q No, ma'am.
- 13 A Not that I know of, no, ma'am. No, ma'am.
- 14 Q Okay. I don't look like a sir, do I?
- 15 A No, ma'am.
- 16 Q You said earlier that the vehicle came towards
- 17 you.
- 18 A That's correct.
- 19 Q And you shot at the left headlight?
- 20 A That's correct.
- 21 Q And that's the left headlight?
- 22 A Yes, ma'am.
- 23 Q Okay. That's the bullet hole. Is this picture
- 24 upside down?
- 25 A I'm not sure. I don't think it is.

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1 Q Okay. Well, right here, would that not be the
2 turn signal where my pen is?

3 A Yes, ma'am, it may be.

4 Q So then that would be the right headlight; would
5 it not?

6 A No, it was definitely the left headlight.

7 Q Okay.

8 A Facing the vehicle it's the left headlight or the
9 passenger side headlight.

10 Q And this right here is the picture of everything
11 that was loaded up from Mr. Lane's property?

12 A Yes, ma'am.

13 Q Some pieces of scrap metal?

14 A That's correct.

15 Q That golf cart in the back, is that your golf
16 cart?

17 A No, ma'am.

18 Q You were out there in your personal vehicle?

19 A Yes, ma'am.

20 Q You were doing this off duty; ---

21 A Yes, ma'am.

22 Q ---is that right? And you fired your duty
23 weapon?

24 A My personal weapon.

25 Q Okay. Earlier you said you fired your duty

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1 weapon.

2 A Well, it was my personal weapon.

3 Q You said you didn't know these, Tim Cannon,
4 right?

5 A No, ma'am.

6 Q You don't know Branden Kirby?

7 A No, ma'am.

8 Q And you don't know Dennis Leroy Kinon?

9 A No, ma'am.

10 Q Beg the Court's indulgence one moment. And the
11 driver of the vehicle was Tim Cannon?

12 A That's correct.

13 Q And he drove the vehicle towards you?

14 A Yes, ma'am.

15 Q Until you fired the vehicle?

16 A Yes, ma'am.

17 Q And he puts it in reverse?

18 A Yes, ma'am.

19 Q And then you got them to stop somehow?

20 A They put it in reverse, and I approached the
21 vehicle to the driver's side and ordered him out of
22 the vehicle and took him out of the vehicle and took
23 him out from the passenger side where I apprehended
24 the other suspect.

25 Q Okay. The other, the other suspect got out of

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1 the vehicle though; is that right?

2 A That's right.

3 Q And he ran?

4 A He jumped out of the passenger side window of the
5 vehicle. He jumped out of the window.

6 Q And he didn't return?

7 A Well, he was on the ground when I got around
8 there with the other guy and laid him down beside
9 him and handcuffed them together.

10 Q You laid down the passenger on the ground?

11 A No, I laid the driver, took the driver out -- I
12 ran around the vehicle and laid him down beside
13 where he jumped out and went on the ground and
14 handcuffed them both together.

15 Q The passenger just got and jumped out of the
16 vehicle and laid down on the ground?

17 A That's correct.

18 Q Okay.

19 MS. SHULER: I have no further questions
20 of this witness.

21 THE COURT: Anything further?

22 MR. BROWN: Briefly.

23 **REDIRECT EXAMINATION**

24 BY MR. BROWN:

25 Q Chief Graham, you were asked about the chainsaw

1 and the ax, correct?

2 A That's correct.

3 Q What is this right here?

4 A Bolt cutters.

5 Q And what is it used for?

6 A Cutting bolts, locks, and wires, and any type of
7 metal items you need cut.

8 Q And what is this item right here?

9 A Same thing, sir.

10 Q Okay. No further questions.

11 THE COURT: Anything else?

12 MR. BROWN: Nothing from the State, Your
13 Honor.

14 **RECROSS-EXAMINATION**

15 BY MS. SHULER:

16 Q Chief, there were no locks on Mr. Lane's property
17 that had been cut, were there?

18 A No, ma'am, but there was a cable across the road
19 direction they was coming toward when I stepped out
20 to stop.

21 Q I ask my question again. There were no locks on
22 Mr. Lane's property that had been cut, were there?

23 A No, ma'am, not that I know.

24 Q No further questions.

25 THE COURT: Okay, you may step down.

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1 You may call your next witness.

2 MR. BROWN: The State will call

3 Mr. Michael Lane.

4 WHEREUPON,

5 **MICHAEL LANE,**

6 having been duly sworn by the Clerk of Court,

7 testified as follows:

8 THE CLERK: Step around to the witness
9 box.

10 **DIRECT EXAMINATION**

11 BY MR. BROWN:

12 Q Good morning, Mr. Lane.

13 A Good morning.

14 Q I'm gonna start you up the same way I did Chief
15 Graham. Please tell these ladies and gentlemen of
16 the jury a little bit about yourself, tell them who
17 you are, where you're from, where you grew up, and
18 where you live now.

19 A Well, I've been a farmer most of my life. I went
20 to Clemson, graduated Clemson in 1973, came home and
21 farmed. This particular place where this happened
22 was on my grandfather's farm I inherited, and I've
23 been in the area for all my life.

24 Q Were you living there on or around April 2013?

25 A I didn't live on this property. I lived about

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1 three-and-a-half, four miles from it.

2 Q Did you own this property in April 2013?

3 A I did.

4 Q And can you please tell this Court the
5 circumstances that led up to why we're here today?

6 A Approximately a week prior to that my
7 brother-in-law had stopped by the property that he
8 had some stuff stored down there, and he noticed it
9 was gone so my sister called me and told me about it
10 so I called the police department, Sheriff's
11 Department. We made a report. They sent an
12 investigator out the next day I think it was, and we
13 reported what was stolen. And about, it's probably
14 about a week later we had noticed, my brother-in-law
15 had noticed some metal that had been stacked and put
16 in a place on the back of the property that we
17 figured somebody was coming back to get it so we had
18 contacted another gentleman to sit and watch the
19 property. The first night I watched the property.
20 The second night he watched it and noticed activity
21 on it, and he called Sheriff's Department.

22 MS. SHULER: Objection, Your Honor,
23 hearsay.

24 THE COURT: All right, he's talking about
25 who did -- who's acting at this point?

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1 MS. SHULER: His brother-in-law.

2 THE COURT: All right, Mr. Solicitor.

3 MR. BROWN: I'll offer to the Court it
4 doesn't go to the truth of the matter asserted.
5 It's just background leading up to what happened.

6 THE COURT: All right, Ms. Shuler.

7 MS. SHULER: Your Honor, but it does go to
8 the truth of the matter asserted that there
9 apparently was something there that somebody was
10 coming to get and they called the Sheriff's
11 Department as a result of that so I would submit
12 that it is hearsay. His brother-in-law was ---

13 THE COURT: All right, ask the question
14 again and let me focus on it.

15 BY MR. BROWN:

16 Q What led up to the night in question? What
17 exactly, what events were transpiring that led y'all
18 to ask Chief Graham to watch this property?

19 A That's what I was trying to explain.

20 THE COURT: That's why she objected and
21 I'm the judge and have to rule so go ahead.

22 THE WITNESS: Do you want me to go all the
23 way back from the very first where the incident
24 happened where we noticed stuff was stolen, my
25 brother-in-law caught that. And then the second

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1 time she caught it, my sister and my brother-in-law
2 caught the stuff that were piled and we asked
3 somebody to watch the property. We called a
4 gentleman to watch it. I watched the first night.
5 He watched the second night. The third night the
6 other gentleman, neither nor I could watch it so we
7 contacted Chief Graham which does this on the side.
8 So he was there that night that this happened. The
9 night prior to it, there was activity —

10 BY MR. BROWN:

11 Q I'm gonna stop you right there real quick.

12 MR. BROWN: I think that was essentially
13 the testimony that was put that was objected to.

14 THE COURT: All right, you may proceed.

15 MR. BROWN: All right.

16 BY MR. BROWN:

17 Q So you were about to say Chief Graham, you asked
18 him to watch it. What happened next?

19 A Okay. He told me he couldn't get there until
20 probably about 11---

21 MS. SHULER: Objection, hearsay.

22 THE COURT: All right. Objection is
23 overruled.

24 BY MR. BROWN:

25 Q Go ahead please.

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1 A He said he couldn't get there till about 11:30 so
2 I said, that's fine. I said, just let me know when
3 you're set up. So sometime before 12:00 I texted
4 him and asked him if he was set up where I
5 instructed him to sit across the road at the
6 neighbor's house that I contacted and asked if he
7 could sit there, and they said it was fine. It was
8 directly across the road from the property where
9 this incident happened. And he was already set up.
10 I got a call somewhere around 1:00 and said that he
11 had two suspects in handcuffs and come on down. I
12 immediately ---

13 Q Did you go down at that point?

14 A What?

15 Q Did you go down at that point?

16 A I immediately put on my clothes and went straight
17 there.

18 Q When you arrived at the location -- and do you
19 remember the date that all this took place?

20 A It was April, but I can't, I can go back to my
21 cell phone and look at my text message and I can
22 tell you exact date, but it was April.

23 Q Was it in the earlier part of April or later
24 part?

25 A The earlier part. I think it was the 9th, but

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1 I'm not completely sure.

2 Q So when you got out to the location who all was
3 out there?

4 A Chief Graham was there, a couple of deputies, a
5 couple of highway patrolman. The suspects had
6 already been transported to the Sheriff's
7 Department.

8 Q So you didn't see the suspects?

9 A I didn't see them.

10 Q Okay. Was your stuff still there?

11 A It was on the trailer, yes, sir.

12 Q And did you have a chance to look at the stuff
13 that was there?

14 A I did.

15 Q All right. Before we get on to that, this may
16 sound like a silly question, but had you given
17 anybody permission to be on your property that
18 night?

19 A No, sir.

20 Q Had you given anybody permission to take stuff
21 from your property that night?

22 A No, sir.

23 Q Had you given anybody permission to load anything
24 off the trailer that night?

25 A No, sir.

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1 Q Do you know Tim Cannon or Branden Kirby?

2 A I don't.

3 Q So you get off to that location and there's this
4 trailer here. What did you observe on that trailer?

5 A It was a lot of heavy angle iron that belonged to
6 my uncle and a part of saw mill track that my
7 grandfather owned and some rims and other
8 miscellaneous iron.

9 Q Okay.

10 MR. BROWN: Your Honor, publishing State's
11 Number 8.

12 THE COURT: Yes, sir.

13 BY MR. BROWN:

14 Q Do you recognize this picture right here?

15 A Yes, sir.

16 Q And what is that a picture of?

17 A It's the stuff that was on the trailer that
18 night, the heavy iron, metal, and rims, and it's
19 hard to see. And you can't really tell it in this
20 picture, but when we unloaded the trailer the next
21 day, the actual part of the saw mill was underneath
22 all the iron.

23 Q Say that again, I'm sorry.

24 A You can't hardly see it in this picture, it's
25 hard to tell, but the part of the saw mill was up

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1 underneath that heavy angle iron and stuff.

2 Q Okay. And I'm gonna show you State's Number 7.

3 If you can, tell me if this gives you any better
4 view of that.

5 A It's a better view but you can't really tell the
6 piece of the saw mill and stuff, but it's the heavy
7 angle iron and stuff.

8 Q Did you have the occasion at some point to
9 receive your property back?

10 A I did.

11 Q Tell me about the circumstances around that.

12 A That night after they had towed the car the
13 impacts of a rollback I got the car, or SUV. The
14 trailer was left there and they wanted to know if it
15 was all right to leave it there, and I said yes, but
16 I wasn't sure if they had another accomplice or
17 whatever to come back to get it. I said, do you
18 mind if I carry it to my house and they said no, so
19 I hooked it to my truck and I pulled it to the house
20 and parked it in my backyard that night.

21 Q Okay. And did you ultimately unload the items
22 from that trailer?

23 A We did. And that's when we found the rest of the
24 stuff that was up underneath the iron.

25 Q Please tell these ladies and gentlemen of the

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1 jury what all was there in that trailer and what its
2 value was.

3 A Well, the stuff that was on the top was the heavy
4 angle iron. It's probably, I think I measured half
5 inch thick, pretty thick angle iron. It was 6 to
6 8-foot long and it's 8-inches wide. And it was odd
7 and ends, old car rims and stuff, and then two
8 pieces that went to the saw mill that was my
9 grandfather's. One was about a 20-foot section of
10 track where they used to run the logs on it with
11 their carriage. And the other piece was part of the
12 belt pulley that they used to run the belt pulley to
13 pull the saw mill. And when we unloaded it we
14 counted pieces of iron and I'm not sure now exactly
15 how many it was; it was a lot. They were -- I
16 called Keith Gentry who works at Watford
17 Incorporated up here which is a welding shop, and I
18 asked him what the welding ---

19 MS. SHULER: Objection, Your Honor.

20 THE COURT: Objection overruled.

21 THE WITNESS: I asked him to, if he could
22 tell me the weight of the iron and then give me a
23 price for the iron if I were to purchase it that
24 day, and he did. And I said, well, we need to
25 discount it because it's not a hundred percent new

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1 although it's not rusted to pieces like I have seen
2 a lot of scrap iron that's sold. So we got through
3 with our pricing and the weight of it that he told
4 me it was, the price was around 2,800-dollars which
5 didn't include the part of the saw mill, the pulleys
6 and scrap rims and odds and ends.

7 MS. SHULER: Again, Your Honor, I renew my
8 objections, it's hearsay. I move to strike.

9 THE COURT: All right, overruled. The
10 owner can give his view of the value of his property
11 and the basis for him having that opinion.

12 MR. BROWN: Thank you, Your Honor.
13 Permission to proceed?

14 THE COURT: Yes.

15 BY MR. BROWN:

16 Q You said there were some other items on top of or
17 underneath the angle irons. What else was in that?

18 A There was a part of the tractor saw mill that was
19 my granddaddy's that I don't, couldn't put a price
20 on it. They don't make it anymore that I think of.
21 And it was actually two parts. They only took one
22 part; I guess they didn't see the other part and it
23 was on there. And a pulley, a big pulley, that's
24 probably about that big, there's on that belt on it
25 to pull the saw mill.

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1 Q Do you have an approximate value to that
2 property?

3 A Well, I can't replace it. I don't know what kind
4 of value to put on it. It's hard to put a value on
5 it.

6 Q How about the rims?

7 A I mean, car rims, I mean, I don't know, whatever
8 they are worth. I don't know what they went. One
9 of them was an old spoke car probably came off a
10 model 8 I'm guessing. It could be a model T, I
11 don't know, it was old. I never, you know, you
12 don't see those with spokes on them anymore, like
13 say, a bicycle.

14 Q So going back to where the property was taken
15 from, can you please tell us about where that metal
16 had been stacked up, what was going on around that?

17 A Well, the heavy angle iron was stacked behind a
18 ditch and when they came in -- I'm gonna interject.
19 If I get overruled or whatever, I'm still going to
20 interject. They didn't come in the same way they
21 were going to exit.

22 MS. SHULER: Judge.

23 THE WITNESS: Because the sheriff's
24 department ---

25 MR. BROWN: Just one second. I think the

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1 judge is ---

2 THE COURT: Yes, ma'am.

3 MS. SHULER: I'm not exactly sure if
4 Mr. Lane understands the process of how this works.
5 I have a job to do, and Your Honor has a job to do
6 and the extra commentary from him is certainly not
7 appropriate.

8 THE COURT: All right, ask a specific
9 question.

10 BY MR. BROWN:

11 Q Going specifically to where these items were
12 taken, please describe the surroundings around them
13 and any observations you had about that?

14 A Okay. The angle iron was behind a ditch and
15 there were trees around it with vines growing over
16 the heavy angle iron that had been stacked out a
17 while. It was in good shape. The saw mill track
18 was up close to the old house where my grandmother
19 and grandfather lived, and it had grass and kind of
20 stuff but it was sticking up so they could see the
21 front part of it so, you know, it was kind of grown
22 over somewhat, but I assume.

23 Q Going and looking at that, did you ever go and
24 look at the location where the items were taken from
25 after they had been taken?

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1 A I did.

2 Q Did you have any observations about that?

3 A It was vines and limbs cut and, you know, had
4 been cleaned up around it where they could load it.

5 Q This all happened at your mother's farm on
6 Manning Highway?

7 A My grandmother's.

8 Q Your grandmother's? What was that address again?

9 A Manning Highway.

10 Q And that falls in Williamsburg, South Carolina?

11 A It does.

12 Q Did you give anyone permission to go on your
13 property and take these items?

14 A I didn't.

15 Q Are the pictures shown an accurate representation
16 of what was taken that night?

17 A Yes, sir.

18 Q And the value of the items taken, is that an
19 accurate representation of the value of the property
20 that night?

21 A Yes, sir.

22 Q Please answer any of Ms. Shuler's questions.

23 THE COURT: Ms. Shuler.

24 MS. SHULER: Your Honor, may I have a few
25 minutes?

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1 THE COURT: All right, ladies and
2 gentlemen, take a break now. Please go to the jury
3 room. Please do not discuss the case.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 11:27 a.m., and the following
6 proceedings commenced in open court.)

7 THE COURT: All right, we'll take a break.
8 Mr. Lane, you cannot discuss your testimony with
9 anyone during the break.

10 How much time you need?

11 MS. SHULER: Just five, ten minutes,
12 Judge.

13 THE COURT: All right.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Anything else before the jury
17 comes?

18 MR. BROWN: Nothing from the State, Your
19 Honor.

20 THE COURT: Let's bring them on.

21 (WHEREUPON, the jury was returned to the
22 courtroom at 12:00 p.m., and the
23 following proceedings commenced in open
24 court.)

25 THE COURT: Mr. Tisdale, if you will

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1 change seats with the lady right here. Mr. Tisdale,
2 I'm appointing you to be the foreperson of the jury.
3 As foreman you will serve as the spokesperson for
4 the jury, presiding over the jury deliberations, and
5 write the verdict form representing the unanimous
6 verdict of the jury. Can you handle that?

7 THE FOREMAN: Yes, sir.

8 THE COURT: All right.

9 Cross-examination, Ms. Shuler.

10 MS. SHULER: Thank you, Your Honor, may it
11 please the Court.

12 **CROSS-EXAMINATION**

13 BY MS. SHULER:

14 Q Mr. Lane, you hired Chief Graham to come out and
15 watch your property; is that correct?

16 A That's correct.

17 Q So you paid him?

18 A Yes, ma'am.

19 Q How much did you pay him?

20 A I think it was ---

21 MR. BROWN: Objection, Your Honor.

22 Objection to relevance.

23 THE COURT: Objection is overruled.

24 BY MS. SHULER:

25 Q How much did you pay him?

SW - M. LANE - CROSS

1 A I think it was a hundred dollars.

2 Q You paid him a hundred dollars to watch over your
3 property that night?

4 A Yes, ma'am.

5 Q And you said that your brother-in-law had some
6 items out there too?

7 A Correct.

8 Q And your sister had some stuff out there?

9 A Correct.

10 Q So a bunch of people had stuff out at the
11 property?

12 A Just our family.

13 Q Your family's stuff?

14 A Uh-huh.

15 Q Okay. So everything that was on that, in that
16 picture that was on that trailer, was just your
17 stuff?

18 A Correct.

19 Q Okay. Now you testified that the value of this
20 stuff right here was 2,800-dollars?

21 A Correct, plus the stuff that we couldn't really
22 put a value on.

23 Q Okay. These items on this trailer were worth
24 2,800-dollars?

25 A Correct.

SW - M. LANE - CROSS

- 1 Q Plus whatever you couldn't put a value on?
- 2 A Correct.
- 3 Q It's rusty scrap metal?
- 4 A I wouldn't say it's rusty, no, 'cause it was
- 5 good, it was good iron. It wasn't scrap metal.
- 6 Some of it is rusty stuff, but not all of it.
- 7 That's a very poor picture if I must say so.
- 8 Q Okay. And you just left that sitting out in the
- 9 field?
- 10 A Well, it was actually beside an old barn that my
- 11 uncle had that he had torn down, but it was stacked,
- 12 and the iron was stacked one on top of another.
- 13 Q Out in the open though, right?
- 14 A Uh-huh.
- 15 Q Is that a yes?
- 16 A Yes, ma'am.
- 17 Q Okay. You didn't take that property to somebody
- 18 to look at, did you?
- 19 A I didn't, but the deputies were out there, and
- 20 counted it when we unloaded it.
- 21 Q But you didn't take that to anybody to show them?
- 22 A I —
- 23 Q The property, right?
- 24 A I didn't.
- 25 Q And you didn't show them, this is what I'd like

SW - M. LANE - CROSS

1 for you to put a value on, was it?

2 A Actually, Mr. Gentry came by and looked at it.
3 He didn't count each piece, but he came by and
4 looked at it because I wanted him to see that it was
5 just not rusty stuff that couldn't be used. It
6 would have been scrap. That was good angle iron.

7 Q Okay, so he came by and looked at it?

8 A He looked at it.

9 Q I thought you said earlier you called him?

10 A I did, and asked him to come by and look at it.
11 And he came by and looked at it, but he didn't sit
12 there and count it. I counted it, gave him the
13 list. It was all stacked in one pile on my farm.

14 Q That's not —

15 A —when we unloaded it.

16 Q That's not what you told the Solicitor earlier,
17 was it?

18 A I told him we called him and I called him back
19 and got the prices from him; I did. That's exactly
20 how that went.

21 Q You didn't tell him that — you didn't tell the
22 Solicitor that Mr. Gentry came by your place though,
23 did you?

24 A I don't remember him asking me that.

25 MS. SHULER: No further questions.

SW - B. MCCANTS - DIRECT

1 THE COURT: Redirect?

2 MR. BROWN: No further questions, Your
3 Honor.

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

6 Next witness.

7 MR. BROWN: We will call Deputy Brandon
8 McCants of the Williamsburg County Sheriff's
9 Department.
10 WHEREUPON,

11 **BRANDON MCCANTS,**
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 THE CLERK: Step around to the witness
15 box.

16 MR. BROWN: May it please the Court, Your
17 Honor.

18 **DIRECT EXAMINATION**

19 BY MR. BROWN:

20 Q Deputy McCants, I'm gonna ask you the same
21 question I start everybody off with. Please let
22 these ladies and gentlemen of the jury know who you
23 are, where you're from, what you do for a living.

24 A Brandon McCants, I'm from Kingstree. I work with
25 the Sheriff's Office in the patrol division.

SW - B. MCCANTS - DIRECT

1 Q How long have you been with the Sheriff's
2 Department?

3 A 2008.

4 Q And you said you're at the patrol division?

5 A Yes, sir.

6 Q Please tell the ladies and gentlemen of the jury
7 what the patrol division of the Williamsburg County
8 Sheriff's Department does.

9 A Basically we respond to calls for service,
10 domestics, larcenies, occasionally crimes in
11 progress. We do a little bit of traffic. That's
12 mainly it.

13 Q Were you working the day or night of April 4th,
14 2013?

15 A I was.

16 Q And please tell the ladies and gentlemen of the
17 jury what you were doing that night.

18 A I was actually leaving the Hemingway area on a
19 domestic call, myself, Sergeant Sheer, Corporal
20 Jenkins. While in route back from the Hemingway
21 area we got a call from Chief Graham needing an
22 officer to respond for assistance.

23 Q You were in Hemingway at the time?

24 A I was just outside of Hemingway around about the
25 Cades area.

SW - B. MCCANTS - DIRECT

1 Q Do you remember what time this was?

2 A I know it was dark.

3 Q Okay.

4 A I'm not a hundred percent sure on the time.

5 Q All right. After y'all received that phone call
6 what did y'all do?

7 A We responded what we call code three, lights and
8 sirens. Before we ever got there we were advised by
9 dispatch that shots were fired at the location of
10 Chief Graham so we addressed our response time even
11 more after that.

12 Q What do you mean when you say you addressed your
13 response time?

14 A Pretty much we went faster.

15 Q Fair enough. Did you make it to the location?

16 A Yes, we made it there.

17 Q Do you remember where that location was?

18 A I don't know the specific address, but it was on
19 the Manning Highway around about the, like I call it
20 Mount Vernon area, Manning Highway.

21 Q Okay. What did you see once you arrived on the
22 location?

23 A When I arrived there I saw two white males that
24 were handcuffed, a red, I think a Jeep Cherokee with
25 a trailer on the back with some scrap metal on it.

SW - B. MCCANTS - DIRECT

1 Q I'm showing you Court's Exhibit, or State's
2 Exhibit Number 5. Is this the truck and the trailer
3 that you saw?

4 A Yes, sir, that's it.

5 Q What else did you observe?

6 A Basically I was pretty much briefed at that point
7 on why Chief Graham was where he was at. Apparently
8 there had been several larcenies throughout the week
9 at that location, and he was staking it out pretty
10 much.

11 Q What did you do after you found out what had gone
12 on that night?

13 A I was instructed by Sergeant Sheers to take one
14 of the individuals. Corporal Jenkins took the other
15 and transported them to the detention center.

16 MR. BROWN: Permission to approach the
17 witness, Your Honor. Well, actually permission to
18 approach opposing counsel.

19 THE COURT: Yes.

20 MR. BROWN: Permission to approach the
21 witness.

22 THE COURT: Yes.

23 BY MR. BROWN:

24 Q I'm gonna show you what is in evidence as State's
25 Exhibit Number 10. You recognize the person in that

SW - B. MCCANTS - DIRECT

1 picture?

2 A Yes, sir, that's the other suspect.

3 Q Is this the person that you transported or the
4 other one?

5 A I think I transported Mr. Cannon.

6 Q Okay.

7 MR. BROWN: Permission to publish, Your
8 Honor.

9 THE COURT: Yes, sir.

10 BY MR. BROWN:

11 Q How do you recognize this individual in this
12 picture?

13 A He was actually on scene when I got there.

14 Q What do you mean on scene?

15 A He was one of the subjects that was in handcuffs.

16 Q Do you have any independent recollection of what
17 name he provided to law enforcement?

18 A I can't exactly remember the name, but I know it
19 wasn't Branden Kirby.

20 Q Okay.

21 A There was a discrepancy between the two suspects.
22 I can't remember actually which one were giving a
23 false name, but we were later to find out that one
24 of the subjects were actually was wanted out of
25 Berkeley County.

SW - B. MCCANTS - CROSS

1 Q And that wasn't this suspect?

2 A To my knowledge I don't think so. I believe it
3 was Mr. Cannon.

4 Q Okay. And you see that name printed there?

5 A Yes, sir.

6 Q Do you recall if that's approximately the name
7 that was given to y'all that night?

8 A The last name brings a big -- I'm not familiar
9 with the first and middle but, Kinon.

10 Q This person shown in this picture was the person
11 who you or Corporal Jenkins took to the, or to the
12 jail that night?

13 A Yes, sir. Yes, sir.

14 Q He was already handcuffed when you arrived on
15 scene?

16 A He was.

17 Q And this all happened in Williamsburg County?

18 A Yes, sir, on Manning Highway.

19 Q Thank you. No further questions.

20 THE COURT: Ms. Shuler.

21 **CROSS-EXAMINATION**

22 BY MS. SHULER:

23 Q Deputy McCants, the name -- you're familiar with
24 the booking reports from the Detention Center,
25 right?

SW - B. MCCANTS - CROSS

1 A Yes, ma'am.

2 Q And that's what this appears to be; am I right.

3 A Yes, ma'am.

4 Q Okay. And so the name on that booking report is
5 Dennis Leroy Kinon. Am I right?

6 A Yes, ma'am.

7 Q And so this is supposedly an individual by the
8 name of Dennis Leroy Kinon?

9 A Supposedly, yes, ma'am.

10 Q Okay. This individual was booked under the name
11 of Dennis Leroy Kinon; is that right?

12 A Yes, ma'am.

13 MS. SHULER: And I have no further
14 questions.

15 THE COURT: Anything further?

16 MR. BROWN: Not from the State, Your
17 Honor.

18 THE COURT: Thank you, you may step down.

19 MR. BROWN: I ask the witness be able to
20 be excused.

21 THE COURT: All right, he's excused.

22 MR. BROWN: Thank you, Your Honor. May it
23 please the Court, the State will call Mr. Tim
24 Cannon.

25 THE COURT: All right. Come around, sir.

SW - T. CANNON - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible and raise your right hand.

3 WHEREUPON,

4 **TIM CANNON, JR.,**
5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK: Just step around to the
8 witness box.

9 **DIRECT EXAMINATION**

10 BY MR. BROWN:

11 Q Mr. Cannon, for this court reporter please state
12 your name and spell your last name.

13 A Tim Cannon, Jr., C-A-N-N-O-N.

14 Q Mr. Cannon, for these ladies and gentlemen of the
15 jury, please tell them who you are, where you're
16 from, and where you are now.

17 A My name is Tim Cannon. I'm currently a resident
18 at South Carolina Department of Corrections. What
19 else?

20 Q Where are you from?

21 A I'm from Saint Stevens, ain't too far from here.

22 Q How old are you, Tim?

23 A Twenty-eight.

24 Q And why are you in the Department of Corrections?

25 A For drug possession and grand larceny.

SW - T. CANNON - DIRECT

1 Q Where did you steal stuff from?

2 A From just an abandoned farm where, you know,
3 nobody lived. Nobody ever did any work around there
4 or anything.

5 Q And are you talking about the case of
6 Williamsburg County, South Carolina?

7 A Yes, sir.

8 Q The one we're here about today?

9 A Yes, sir.

10 Q Have you pled guilty to that offense?

11 A Yes, sir.

12 Q And is that why you're in prison now?

13 A Yes, sir.

14 Q Tim, I want you to take us to the date of
15 April 4th, 2013, and tell us what was going on.

16 A Well, we —

17 Q Who is we?

18 A Me and my co-defendant Branden Kirby, we passed
19 by, like I said, abandoned farm, you know, where,
20 you know, trees growing through the house, you know,
21 just, you know, trash all in the yard, you know,
22 appliances just laid over, bushes and stuff growing
23 out of them. And we pulled up in there and started
24 loading stuff on the trailer.

25 Q What happened next?

SW - T. CANNON - DIRECT

1 A The next thing I know a man come running up with
2 a flashlight and a pistol, and we jumped in the
3 truck to leave and he shot at my truck, shot at my
4 headlights and I stopped. And he come running to
5 the truck was Williamsburg County sheriff's officer
6 and I cut the truck off and he got me out, put me on
7 the ground and arrested us.

8 Q Who was the driver and who was the passenger?

9 A I was the driver. Branden was the passenger.

10 Q And before the man came, approached you with the
11 flashlight and his pistol, what had y'all been doing
12 before that?

13 A We were loading up junk scrap metal.

14 Q The person who was the passenger of the vehicle,
15 do you remember what name he provided to law
16 enforcement was his name?

17 A Dennis something, Dennis Kinon or something like
18 that.

19 Q And I'm gonna show -- show to opposing counsel.

20 MR. BROWN: State's number 10. Permission
21 to approach.

22 THE COURT: Yes, sir.

23 BY MR. BROWN:

24 Q Do you recognize the person in this booking
25 photo?

SW - T. CANNON - DIRECT

1 A Yes, sir.

2 Q And do you recognize the name at the bottom of
3 that booking photo?

4 A That's the name he give when we got arrested.

5 MR. BROWN: Permission to publishing, Your
6 Honor, State's 10.

7 THE COURT: Yes.

8 BY MR. BROWN:

9 Q The picture — the person in the picture in this
10 booking photo, is that Dennis Kinon?

11 A That's the name he gave, but that's not his name,
12 no.

13 Q How do you know the person in this booking photo?

14 A I've known him since we was about 13 years old.

15 Q You said you're 28 now?

16 A Yes, sir.

17 Q What do you know him as?

18 A Branden.

19 Q Branden?

20 A Branden Kirby.

21 Q Okay. Was that the same person that went with
22 you on the night of April 4th, 2013?

23 A Same man.

24 Q It was over on Manning Highway?

25 A Same person.

SW - T. CANNON - DIRECT

1 Q Any doubt in your mind on that?

2 A No, sir.

3 Q What did y'all intend to do with that scrap
4 metal?

5 A Sell it.

6 Q Did y'all plan on giving it back to the owner of
7 it?

8 A No, sir.

9 Q Did y'all plan to keep it?

10 A Every bit of it.

11 Q And y'all had some tools in the back of your
12 truck?

13 A Yes, sir.

14 Q What were those for?

15 A Actually, those tools, well, along with the
16 stealing we were doing, you know, I actually had a
17 legitimate kind of like a business going, you know.
18 I would post on Craig's List yard cleanup or, you
19 know, any kind of removal debris or anything like
20 that. And actually, those tools, some of those
21 tools were purchased, you know, legally for
22 legitimate, you know, work.

23 Q Did y'all use them to help y'all that night
24 though?

25 A No, sir, not at all.

SW - T. CANNON - CROSS

1 Q Not at all. Did y'all intend to keep this
2 property that night?

3 A Yeah, we did.

4 Q All right, no further questions.

5 THE COURT: Ms. Shuler.

6 **CROSS-EXAMINATION**

7 BY MS. SHULER:

8 Q Mr. Cannon, you aren't in SCDC just for these
9 Williamsburg County charges, right?

10 A No, sir -- no, ma'am.

11 Q You're in SCDC for Berkeley County charges as
12 well, right?

13 A Yes, ma'am.

14 Q Now along with these Williamsburg County charges,
15 you also have another Williamsburg County charge as
16 well; isn't that right?

17 A What you mean?

18 Q You had a second, second grand larceny charge in
19 Williamsburg County that was dismissed, right?

20 A Two of them at the same time, yes, ma'am.

21 Q Okay. You came in here and you pled guilty to
22 this charge, right?

23 A Yes, ma'am.

24 Q You pled guilty to a drug charge and grand
25 larceny?

SW - T. CANNON - CROSS

1 A Yes, ma'am.

2 Q And you agreed to come back here and testify; and
3 because of that they dismissed that other grand
4 larceny, right?

5 A Well, and the lack of evidence; but yes, I did,
6 you know, that was the deal.

7 Q Okay, so you've been given a benefit for you
8 coming back here and testifying already?

9 A Well, yes, and no, you know. First there was no
10 evidence on the second grand larceny; and yes, they
11 did tell me if I pled guilty and came back that they
12 would not charge me of second grand larceny.

13 Q Okay. Now you're aware of a rule that we have in
14 South Carolina that if you provide substantial
15 assistance to the State that they can come back and
16 reduce your sentence, right?

17 A I've heard it.

18 Q Okay. So you're here testifying today against an
19 individual you say is Branden Kirby, right?

20 A Yes.

21 Q And you hope that that's gonna be deemed
22 substantial assistance, right?

23 A Yes.

24 Q So that your sentence will be reduced again,
25 right?

SW - T. CANNON - CROSS

1 A My sentence will not be reduced again.

2 Q It won't?

3 A No, not at all.

4 Q You don't think that you'll get credit for your
5 substantial assistance here today?

6 A No more credit than what I've already received.

7 Q Okay. Now the night that this happened you were
8 charged with having a second suspended driver's
9 license, right, and you tried to tell the officer
10 that you weren't driving; didn't you?

11 A Well, on the highway I wasn't driving, but
12 whenever we were in that field I was behind the
13 wheel.

14 Q You told the officer you weren't driving, right?

15 A Yes, I did.

16 Q And you were charged with false information to
17 police?

18 A Yep.

19 Q And the vehicle that you were driving also wasn't
20 registered to you either, was it?

21 A No, we had just bought it.

22 Q So you were charged with that and you were
23 charged with no insurance?

24 A No insurance.

25 Q And you drove that truck towards the man that was

SW - T. CANNON - CROSS

1 shining the light at you, right?

2 A Well, actually no, I wasn't driving. I mean, I
3 was driving that way when he come out from behind
4 the building; but when I seen the flashlight I was
5 actually trying to turn and go the opposite
6 direction, but I didn't have a chance. He -- as
7 soon as I heard gunshots I quit the thing.

8 MS. SHULER: Beg the Court's indulgence
9 one moment.

10 BY MS. SHULER:

11 Q Now you lied to the officers again after you
12 tried to tell them you weren't driving the car,
13 right? Whenever you got to the jail you lied to
14 them one more time, right?

15 A It's been a long time. You have to refresh my
16 memory if I did lie to them.

17 Q You told them about a guy, a guy by the name of
18 Dean, right?

19 A Yeah.

20 Q You told them that Dean works for you, right?

21 A Naw, I never told them Dean worked for me.

22 Q You didn't?

23 A No.

24 Q You didn't tell them that Dean works for y'all
25 and sets it up so that you can go in and take steal

SW - T. CANNON - CROSS

1 stuff and he buys the scrap metal for you?

2 A No, I know I didn't say that. I said sometimes
3 he buys stuff from us, you know what I'm saying,
4 from me and Branden; but he never set anything up or
5 you know, that he was, just bought stuff.

6 Q You didn't tell the officers that Dean works on
7 houses?

8 A No, I didn't tell them that, no.

9 Q Okay. Now we're here and you're in court; you
10 swore to tell the truth. You want this jury to
11 believe you, right?

12 A I mean, honestly it doesn't matter to me, but I
13 will tell the truth.

14 Q Okay. But you have several convictions on your
15 record for theft, right?

16 A No, I have, I have just a grand larceny from
17 Berkeley County, a grand larceny from Williamsburg
18 County.

19 Q You have a receiving stolen goods in Berkeley
20 County too as well, right?

21 A Yeah, yes, ma'am, but that's not theft. I mean,
22 that's just, I was in possession of something
23 stolen, but I didn't steal it and that was when I
24 was like 18 years old, maybe 17.

25 Q How old are you now?

SW - T. CANNON - CROSS

1 A 28.

2 Q You don't have a conviction for receiving stolen
3 goods in 2012?

4 A I don't believe. I don't believe I have a
5 conviction of it, no, ma'am.

6 Q Your -- in SCDC you're eligible for parole
7 already, right?

8 A Yes, ma'am, I believe I go up next month.

9 Q You go up for your parole hearing next month?

10 A Yes, ma'am.

11 Q This will help you on that parole hearing, right?

12 A I doubt it, but...

13 Q I'm sure you'll tell them about it; won't you?

14 A If somebody tells me to help me I will, but I'm
15 unaware that it will at this time, you know. Nobody
16 told me that's gonna help me. Nobody, you know,
17 told me they were gonna help me to come here and do
18 this, you know.

19 Q And nobody told you that testifying on behalf of
20 the State in order to get a conviction can reduce
21 your sentence?

22 A I was only told that due to lack of evidence and
23 also if I testified that my conviction here, the
24 time get ran concurrent time that I already
25 received. Nothing extra would get dropped or

SW - T. CANNON - REDIRECT

1 anything like that, anything special.

2 MS. SHULER: I have no further questions.

3 MR. BROWN: Briefly, Your Honor.

4 **REDIRECT EXAMINATION**

5 BY MR. BROWN:

6 Q Grand larceny that Ms. Shuler keeps bringing up
7 the name Smith, when was that case dismissed?

8 A Here.

9 Q But when?

10 A Whenever I come to court, right?

11 Q How long ago did you plead guilty?

12 A Maybe 13 months ago.

13 Q So to your knowledge has that case been pending
14 for any point in time in the past 13 months?

15 A No.

16 Q And was this ever made, any threats to you that I
17 reopen that case if you didn't testify today?

18 A No.

19 Q Before you came out here today you and I talked
20 in the back, correct?

21 A Yep.

22 Q Tell these ladies and gentlemen of the jury
23 exactly what we talked about.

24 A All he did was just, you know, ask me would I
25 tell the jury the same thing that I said in my own

SW - T. CANNON - REDIRECT

1 court case and that's it. And he asked me who was
2 the guy in the picture. I said Dennis Leroy Kinon
3 on it. I told him that was my friend Branden Kirby
4 and that's the only thing we talked about.

5 Q Ms. Shuler keeps talking about how you can get a
6 reduction in sentence for cooperating. In the law
7 that's called a downward departure, correct?

8 A You say so.

9 Q I'm saying so.

10 A Okay.

11 Q Did you ever hear me say the words downward
12 departure back there?

13 A Never.

14 Q Did you ever hear me say anything about trying to
15 get SCDC reduce your sentence?

16 A No.

17 Q You have any expectation I'm gonna do that?

18 A No.

19 Q If I were to tell you right now I'm probably not
20 going to do it, I'm probably not going to, you'd
21 understand that's true?

22 MS. SHULER: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 BY MR. BROWN:

25 Q Which county were you sentenced more time to,

SW - T. CANNON - REDIRECT

1 Berkeley County or Williamsburg County?

2 A The same thing for both.

3 Q Okay. And do you know whether or not I have any
4 control over Berkeley County's dockets?

5 A I would seriously doubt you had any control.

6 MR. BROWN: I have no further questions.

7 THE COURT: Ms. Shuler.

8 MS. SHULER: I have no further questions,
9 Your Honor.

10 THE COURT: All right, thank you, sir.

11 Your next witness.

12 MR. BROWN: At this time the State rests,
13 Your Honor.

14 THE COURT: Ladies and gentlemen, that's
15 the State's case. I need you to go to jury room for
16 a few minutes. Please do not discuss the case.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 12:32 p.m, and the following
19 proceedings commenced in open court.)

20 THE COURT: Any matters of law at this
21 time?

22 MS. SHULER: Your Honor, at this time I
23 would move for directed verdict on the charge of
24 possession of burglary tools. The defendant Tim
25 Cannon, Jr., testified that there was absolutely no

1 intent whatsoever in using those items to effectuate
2 the crime of grand larceny. He testified that he
3 had a legitimate side job of doing yard work, things
4 of that nature, that on this night in question that
5 there was no intent to use those tools to effectuate
6 the crime of grand larceny. The mere presence of
7 the tools in and of itself is not enough to meet the
8 elements of the crime of possession of burglary
9 tools so, Your Honor, we would ask that you direct a
10 verdict in favor of the defendant, Mr. Branden
11 Kirby.

12 In addition, quite notably there was no
13 evidence that Major Graham heard the chainsaw turn
14 on. He said that he heard clanging as in the
15 loading of the scrap metal, but did not hear any,
16 did not mention that he heard any of those tools
17 being used.

18 THE COURT: Mr. Brown.

19 MR. BROWN: Your Honor, obviously
20 Mr. Cannon did testify they did not intend to use
21 them for that purpose. And as I'm sure Ms. Shuler
22 will do, she's probably going to attack his
23 credibility along with everything else that's pretty
24 extensively. What I would point out to the Court is
25 that Mr. Lane in testifying also provided to the

1 Court and to the jury that he noticed that debris
2 had been cleared out around it, directly contradicts
3 Ms. Shuler's question about the action, the use of
4 any of the tools to clean out that item, those
5 items. So I certainly think that although it's not
6 strongest of the two charges, there is evidence to
7 take to the jury.

8 THE COURT: What did he say about it?

9 MR. BROWN: That it appeared that debris,
10 bushes or brush had been cleared out away from it,
11 had been cut away from, is how I recollect the
12 testimony.

13 THE COURT: All right, Ms. Shuler.

14 MS. SHULER: Your Honor, Mr. Cannon
15 testified that the tools were his. There was no
16 evidence to testify that the tools were my client's,
17 my client had any intent to use the tools or did, in
18 fact, use the tools. Mere presence, my client, mere
19 presence the location of these burglary tools is not
20 sufficient to evidence no present to the jury to
21 find him guilty of possession of burglary tools. I
22 just don't think there's sufficient showing to
23 submit that charge to the jury.

24 THE COURT: All right, Mr. Brown.

25 MR. BROWN: Your Honor, hand of one hand

1 of all, these are coconspirators working together to
2 effectuate the completion of a crime. I believe
3 there's testimony out there, again, that there was,
4 that there had been clearing of debris that I think
5 support the notion that these tools were used or
6 were there to be implemented or potentially
7 implemented in the completion of the grand larceny.
8 Whether it was Tim Cannon's tools, Branden Kirby's
9 tools, they were acting as one and their intent to
10 steal the property of Mr. Michael Lane and so we,
11 again, would offer that there is evidence that makes
12 it a jury question.

13 THE COURT: All right.

14 MS. SHULER: Your Honor, again, I would
15 submit that Mr. Cannon himself testified that there
16 was no intent to use those tools at all and that is
17 an essential element of the crime itself. Without a
18 showing of each and every element of the crime
19 itself, then the State has failed to show their, to
20 meet their burden.

21 THE COURT: Well, if the evidence
22 conflicts then it's a jury question. If the --
23 Mr. Lane testified that there is evidence that the
24 land was cleared and that somehow or another assist
25 in committing the crime, then it makes it a jury

1 issue on that point. And Mr. Brown is correct, the
2 hands of one is the, hand of one is the hand of all
3 and if either one of them used the tool to assist in
4 committing the crime, then the jury could determine
5 that their burglary tools. And certain my first
6 inclination was to agree with you that burglar tools
7 is just, you know, just people just, I guess any and
8 everything can probably be called burglary tools if
9 they're in possession of someone committing a crime,
10 if there are no evidence, if there's no evidence
11 that those tools are being used to commit the crime.
12 But if there is evidence that they, direct or
13 circumstantial evidence, that they were used to
14 assist in any way in committing a crime, then it can
15 be burglary tools so I think it's a jury issue,
16 however slight perhaps, and I deny the motion for
17 directed verdict.

18 MS. SHULER: Your Honor, I — the
19 testimony was that there were vines growing over
20 these scrap metals that was there were obviously if
21 somebody goes and picked up scrap metal where the
22 vines were growing it's gonna appear as these vines
23 have been cut, so I just, I just don't think that
24 there's sufficient showing of. There's not enough
25 evidence to submit this issue to the jury. It's

1 much like the case Judge Cothran -- and I can't
2 recall the name that Judge Cothran had in Manning
3 where there was a fingerprint on the bumper of the
4 car. Although there was a fingerprint of the
5 defendant's fingerprint was on the bumper of the
6 car, it was the next day whenever Mr. Lane went back
7 and saw that the vines were cut. That could have
8 happened during the middle of the night. I mean,
9 there was a gap in time in which they went back and
10 saw this, I mean.

11 THE COURT: I understand your argument.
12 Maybe you'll win that count with the jury, but I'm
13 gonna submit it to the jury for their decision.

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: All right. What else we have?

16 MR. BROWN: Your Honor, when the time
17 comes talking jury charges I did have --

18 THE COURT: You can talk about them right
19 now.

20 MR. BROWN: Your Honor, of course, this
21 has already been hinted to in my argument against
22 directed verdict, I would certainly ask the Court to
23 consider hand of one hand of all charge. And the
24 second charge I'll request, candidly my concern with
25 grand larceny is that because they did not get off

1 the property, the jury, even though I think it still
2 satisfies the law for grand larceny, may have
3 concerns with that. The State would request
4 respectfully that you also charge a lesser included
5 of attempted grand larceny. I would point the Court
6 to the case of State v. Green 406 SC 589. I have a
7 copy for the Court. If it please the Court, and
8 opposing counsel.

9 THE COURT: Yes, sir.

10 MR. BROWN: Your Honor, this is a case out
11 of Sumter County. I'm trying to find who — the
12 Honorable Judge King, John Meadors, and I actually
13 helped out with it, where the court considered a
14 charge of burglary first degree where it was not
15 proven that they actually broke the plane and the
16 judge granted a directed verdict on grand larceny
17 but did submit a lesser included of attempted, I'm
18 sorry, burglary first, but did submit the lesser
19 included of attempted burglary first degree. The
20 Court of Appeals has upheld that and Supreme Court
21 denied cert on that case so it is good law in South
22 Carolina. And while certainly the grand larceny in
23 this case is — there's been no directed verdict, I
24 just have candidly concerns that they may have issue
25 with them not getting off the property. I just

1 think it will be appropriate that there is evidence
2 that just attempt, just to that charge.

3 THE COURT: Ms. Shuler.

4 MS. SHULER: If I may have one moment.

5 (Pause.)

6 THE COURT: Ms. Shuler, what are you
7 doing?

8 MS. SHULER: Your Honor, I, I would --
9 that's what State v. Green states. And assuming
10 it's still good law, I would say that I guess an
11 attempt would be an appropriate charge.

12 THE COURT: Well, you know, actually I did
13 the PCR hearing on this case a few weeks ago and
14 I've had this same issue come up before me where a
15 person was, person was charged with first degree
16 burglary and they were found underneath the house
17 and so, at the end of the State's evidence I
18 directed a verdict of not guilty on the first degree
19 burglary because it requires some type of entering
20 with the intent to commit a crime. And of course
21 the State argued vigorously to the contrary and then
22 they later tried to amend the indictment and all
23 that.

24 Now this case here is quite interesting to
25 me. In this case the guy Mr. Green, who was known

1 to the neighbor, went knocking on her door
2 attempting to break in her house, and she -- her
3 husband wasn't at home. I think he was at work at
4 the time. So she finally after seeing him there and
5 knowing about him -- in fact, she knew he'd been in
6 trouble most of his life 'cause he grew up in the
7 neighborhood. She noticed him trying to break in
8 her house, and she finally ran out the back door and
9 got away and so called the police and all and they
10 came and they arrested him and charged him with
11 first degree burglary 'cause it happened in the
12 night time.

13 So the whole question during the trial
14 was, well, he didn't get in the house so it could
15 not be first degree burglary so Judge King went
16 through his process and also construing the attempt
17 statute I believe. And in the, in deciding that not
18 only was, it would have been first degree burglary
19 if he got in the house but if he attempted to get in
20 the house, that that's included in the definition of
21 first degree burglary in fact. Or, I may not have
22 that exactly right the way he did it, but yeah, all
23 right. Now he ruled that it was a lesser included
24 offense; that was the whole issue. That attempted
25 first degree burglary is a lesser included offense

1 of first degree burglary. I was thinking that they
2 also dealt with that statute regarding intent to
3 commit a crime. A felony is the same as completing
4 committing the crime. It says to prove attempt the
5 State must prove that defendant committed an overt
6 act beyond mere preparation in furtherance of the
7 intent to commit the crime. Where an attempt crime
8 exists it is proper to consider a lesser included
9 offense of a completed offense so long as the
10 completed offense is a felony. So in this case, the
11 completed offense of grand larceny, is that a
12 felony?

13 MR. BROWN: Yes, sir, Your Honor, I
14 believe it is. Yes, sir, Your Honor.

15 THE COURT: Grand larceny is a felony?

16 MR. BROWN: It carries up to five years.
17 It carries five, Your Honor, I think it's a low
18 level felony.

19 THE COURT: Then it's denoted in Hyatt.
20 our supreme court found no logic in the defendant's
21 position that an attempted offense is not a lesser
22 included offense in the completed offense because in
23 completion of the offense is in itself a separate
24 and distinct crime. So they affirmed Judge King in
25 this case.

1 MS. SHULER: Your Honor, did he charge
2 just the attempt and not ---

3 THE COURT: It appeared that sort of the
4 ground was there so.

5 MR. BROWN: Just the full case history,
6 what happened in that case was I believe directed
7 verdict was granted on the burglary first, but they
8 went ahead and charged the lesser included. In my
9 request right now I'm requesting to charge both
10 because I believe there's evidence potentially of
11 both, even though I think the law supports the grand
12 larceny.

13 THE COURT: What is the penalty for
14 attempted grand larceny?

15 MR. BROWN: Same thing, Your Honor.

16 THE COURT: And what was the penalty for
17 attempted first degree burglary?

18 MR. BROWN: Same thing, Your Honor, he
19 got ---

20 THE COURT: I know the fella was in prison
21 a long time.

22 MR. BROWN: He got 20 on that one, Your
23 Honor. Or 25 maybe.

24 THE COURT: But the grand larceny, within
25 the definition of what is grand larceny I think the

1 removal of -- where is the definition?

2 MR. BROWN: 16-13-30(b)(1).

3 THE COURT: The slightest removal of the
4 property or the complete possession of property even
5 for an instant by the defendant is enough to show a
6 taking and carrying away of the property. So if you
7 have it where the defendant removed it and puts it
8 on a trailer, it's slight removal even for an
9 instant is enough to complete the offense of grand
10 larceny.

11 MR. BROWN: If your charge is going to
12 include moving it just for, as you just now worded
13 it, then that should be sufficient then, Your Honor,
14 I'll withdraw that motion. I just want to make sure
15 for that purpose.

16 THE COURT: All right. Same thing in
17 someone shoplifting, if they put it in a pocket it's
18 stealing it even though they don't get out the
19 store. And I had a great deal of interest in this
20 one. I did this PCR because I had, I ruled just the
21 opposite in a case that I had. But again, my guy
22 was under the house, he wasn't trying to break in
23 the door. And of course, if the defendant was
24 there, you know, his lawyer was I guess trying to
25 argue he was just knocking on the door real hard;

1 but he had done a lot more, tried to get in this
2 lady's house. It's an interesting case on the
3 issue. When I, particularly considering how often
4 the Supreme Court contends to reverse the Court of
5 Appeals on decisions I felt that they might have
6 taken advantage of this opportunity to give more
7 clarity to this type of situation than they did and
8 they, but they decided not to hear it. But it's
9 only about three weeks ago we had the PCR on this
10 case.

11 But he's withdrawing his request based on
12 the definition of grand larceny. How about that,
13 Ms. Shuler?

14 MS. SHULER: That is fine with me.

15 THE COURT: Okay. Well all right.

16 MS. SHULER: Judge, with the charge of the
17 hand of one the hand of all theory, what I find
18 interesting about the State's request is that
19 Mr. Cannon did not plead guilty. And in fact, the
20 charge of possession of burglary tools was dismissed
21 against Mr. Cannon so I'm not so sure about how we
22 can get to the hand of one hand of all theory on
23 possession of burglary tools whenever that case was
24 dismissed against Mr. Cannon.

25 THE COURT: Well, of course, each case is

1 a separate and independent case and but that's more
2 of an argument of the abuse of prosecutorial
3 discretion or something as opposed to legal
4 argument. I mean, you can argue that that's
5 evidence, or lack of evidence, the fact that they,
6 he never pled guilty, just it was dismissed. So you
7 have many avenues of possible victory; but legally
8 speaking, the fact that they dismiss one count for
9 him to plead, negotiation does not entitled a
10 separate co-defendant to it being dismissed against
11 that person as well. But the, on the issue of the
12 two people acting together in the commission of a
13 crime the hand of one is the hand of all and there
14 are more than -- and there are two people here the
15 evidence would suggest, so that would be a proper
16 charge.

17 All right, the plan is that we -- y'all
18 ready to do closing arguments and let the jurors
19 deliberate over lunch? We're ordering them
20 something to eat.

21 MS. SHULER: I'm ready, Your Honor.

22 MR. BROWN: I'm ready, Your Honor.

23 THE COURT: All right. We're gonna take a
24 few minutes to bring the jury out for closing
25 arguments. Let's find someone to bring the jury.

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 1:00 p.m., and
3 the following proceedings commenced in
4 open court.)

5 THE COURT: All right, very good, ladies
6 and gentlemen, you have heard all of the evidence.
7 I'm sorry, it's defendant's turn.

8 MS. SHULER: The Defense rests.

9 THE COURT: The Defense rests meaning
10 you've heard all the evidence. Now it's time for
11 closing arguments, Mr. Brown and then Ms. Shuler.
12 You may proceed.

13 MR. BROWN: May it please the Court, Your
14 Honor.

15 THE COURT: Yes.

16 MR. BROWN: Ms. Shuler, ladies and
17 gentlemen. I can almost say it's still a good
18 morning, not quite, but I'm almost still there but I
19 guess good afternoon. I want to start off by
20 thanking y'all for your patience, for watching this
21 case, for listening to this case. Like I said in
22 the beginning, this case is important to a lot of
23 people. It's important to the defendant. It's
24 important to Mr. Lane. It's important to the State
25 of South Carolina. And as I indicated earlier and

1 as I'll echo now, I think that the one thing Ms.
2 Shuler and I are gonna agree on throughout this
3 entire thing is that without y'all here, without
4 your dedication, without your time, and without
5 y'all paying attention to the way we watched y'all
6 do, we wouldn't be able to be able to do our jobs so
7 and we appreciate that.

8 Now ladies and gentlemen, at the beginning
9 of this case I told that you were going to hear a
10 case about a theft, that you were going to hear
11 evidence and a case about two people stealing
12 another man's property. And ladies and gentlemen,
13 you've now heard the evidence. You've now heard the
14 testimony. You've now seen the pictures and all of
15 the other items that we brought in here so now it's
16 my turn as prosecutor for the State of South
17 Carolina to get up before you and tell you what I
18 think the evidence has shown in this case, what I
19 believe that we have proven in this case, and to
20 ultimately ask what I hope y'all will rule in this
21 case.

22 On April 4th, 2013, two men tried to steal
23 Michael Lane's property, property that did not
24 belong to them, property they did not have
25 permission to take, property that they did not have

1 the right to remove from Mr. Lane's land. On
2 April 4th, 2013, at his own expense — now I'll
3 remind you, that was brought out by defense counsel,
4 at his own expense he had to hire Chief Graham to
5 come out there to watch that property. Now I'll
6 submit to you, they only charged a hundred dollars
7 at his expense, but at the owner's expense he had to
8 hire people to come out and look after his property
9 because people coming in and trying to steal stuff.
10 And on April 4th, 2013 at 1:00 in the morning, two
11 people were caught.

12 Today we're here about a grand larceny.
13 In South Carolina grand larceny is broken into
14 values. When it's less than two thousand dollars
15 it's candidly not handled in this courtroom, this
16 crime is handled in Magistrate Court. But when it's
17 over two thousand dollars it comes up to us. And
18 ladies and gentlemen, what you've heard today is
19 testimony that on April 4th, 2013, Timothy McCants
20 and you know Mr. Kinon, or as we now really know him
21 as Branden Kirby, went on to the property of
22 Mr. Michael Lane who lives on Manning Highway here
23 in Williamsburg, South Carolina, not a couple of
24 miles down the road from where we sit right here
25 right now, to load up property that belonged to him.

1 They loaded it up, turned on the car, and started to
2 try and driving off. And candidly, I'll tell you,
3 they would have got away with it but for the fact
4 Michael Lane had hired Chief Graham to come out
5 there and watch that property and get them stopped.

6 In South Carolina grand larceny requires
7 the State to prove that the person took or -- and
8 you'll hear the judge charge -- attempted to take or
9 removed it from its original spot with the intention
10 of taking and permanently depriving the owner of the
11 property, that they did that action in a particular
12 county and that it exceeded a particular dollar
13 value. What's the testimony y'all heard? Y'all
14 heard they came on to that property at 1:00 in the
15 morning and they loaded all that metal up into that
16 trailer. They got stopped and caught with that
17 metal in that trailer. You've heard from his
18 co-defendant. Mr. Cannon comes in and told you
19 that's exactly what they plan on doing with it.
20 They weren't moving it so it wouldn't rust. They
21 weren't moving it so it would be under some shelter.
22 They were taking it with the intent to sell it so
23 that they could profit.

24 Now without getting into reading tea
25 leaves too much I can kind of take a guess at what

1 Ms. Shuler is going to argue in this case. She's
2 going to argue to you, ladies and gentlemen of the
3 jury, that we have not proven that this property is
4 valued at two thousand dollars. She's probably
5 going to say that this metal is rusted, wasn't worth
6 nothing. I tell you that's hog wash. I would tell
7 you that you heard from the victim as he is -- at
8 his own time and had to go get somebody to tell him
9 exactly what that property was worth. This wasn't
10 scrap metal. It was, I believe he said 8-inch by 4
11 or 6-inch steel, 8-feet long. The amount they had
12 loaded up was valued just in the long pieces of
13 metal alone valued at \$2,800. It's not counting the
14 parts and the saw mill. That's not counting the
15 parts to the rims. It's just the long pieces of
16 metal alone. If you saw these pictures you'll get
17 taken aback. Look at it. The picture will go back
18 in the evidence room. Just in that alone it's
19 valued 2,800-dollars.

20 But ladies and gentlemen, I tell you that
21 I think that's what Ms. Shuler is going to argue
22 because you heard it from the stand. You heard
23 Mr. Cannon took the stand and said it was just a
24 bunch of junk, that it was abandoned property.
25 Well, to them it was. To them it didn't cost them

1 anything. It cost them their time to go on that
2 property at 1:00 in the morning to try and steal it.
3 If they were taking it to a scrap metal yard I don't
4 know how much they would get for it, nowhere near
5 the value amount. So the thing was, it wasn't
6 theirs for them to take. It wasn't theirs to decide
7 what the value of it was. It wasn't theirs to
8 decide what it was worth. You've heard what I would
9 offer to you is a pretty reasonable estimate value
10 of this property. And you will hear the judge
11 charge that as long as the State has proven that
12 Branden Kirby or Dennis Kinon; but Branden Kirby, so
13 long as he loaded that property up and moved it with
14 intent to permanently deprive the owner of that
15 property and the value was over two thousand
16 dollars, which I submit to you we've proven, then we
17 have proven our case.

18 Now ladies and gentlemen, there's also a
19 charge of possession of burglary tools which I told
20 you earlier I don't necessarily like how that
21 normally is written at the top of the indictment.
22 This obviously wasn't a burglary. I don't submit to
23 you for half a second this was a burglary, no
24 building entered or anything of that nature. But
25 you will hear the judge charge in the law. He is

1 the law; he'll tell you that in a little bit. But
2 you'll hear the judge charge you the law that it is
3 whenever you possess tools used for implementation
4 or that can be used in furtherance of the burglary
5 so as long as the State proves that they intended to
6 do that or that they did that.

7 I'm not gonna lie to you. I don't contend
8 that's our strongest case. I'm not going to contend
9 that's the strongest grand larceny. I submit to you
10 we, I think we have beyond a reasonable doubt, but I
11 would submit to you also that the grand larceny is
12 candidly the crux of the two cases. But ladies and
13 gentlemen, you heard from Tim Kinon as he said they
14 aren't using it for that. What you also heard was
15 from Mr. Lane as he testified that when he went out
16 to that property he saw branches cut, vines cut
17 around where that property was. Ladies and
18 gentlemen, how do you think they did that? There
19 was an ax sitting right over there. It was found
20 right in the truck; they'd just now stole a bunch of
21 stuff. I offer to you, ladies and gentlemen, that
22 the evidence is there to that charge and we would be
23 asking to find guilty.

24 Now the State's burden in this case is to
25 prove beyond a reasonable doubt. That is a high

1 burden. But I will caution you, ladies and
2 gentlemen of the jury, to remember that we are not
3 required to prove beyond any and all doubt. You
4 know, we always hear on TV how they always talk
5 about beyond a reasonable doubt and whether
6 circumstantial evidence or direct evidence and
7 things of that nature. And ladies and gentlemen,
8 what I offer to you is that in my young career as a
9 prosecutor I've talked to a number of other
10 prosecutors, and there is one who always likes to
11 tell war stories like most of us do. And he talks
12 about when he was a young prosecutor. And as he was
13 trying cases he would put evidence forward and he
14 would try cases in front of the jury and the jury
15 would come back and say not guilty. And so as is
16 allowed and after the jury is released, he sometimes
17 allowed to call them and so he would call the juror
18 just to see how he can improve, how he can be a
19 better attorney in the future. And he would call
20 them and they would say, well, we believed the
21 person did it, we just, we didn't think there was
22 enough evidence there. And so he would hang up the
23 phone saying, well, I proved it, I left them firmly
24 convinced. That's what the law is. That's what
25 you're gonna hear the law is, is whether the State

1 leaves you firmly convinced as to the defendant's
2 guilt in a case. Because have we left you firmly
3 convinced, do you believe beyond a reasonable doubt
4 this person committed the act.

5 Let's go through the evidence in this
6 case. You heard Chief Graham, the first witness,
7 chief of Greeleyville Police Department, a law
8 enforcement officer for the better part of almost 30
9 years as he testified that he was out there that
10 night. He was off duty. He was out there requested
11 by Mr. Lane so he could watch his property 'cause
12 there was some concern there might be some theft
13 there. He went out there and he saw a flashlight
14 behind the building. He heard the clanging of
15 metal. He got closer. He'd already called 9-1-1.
16 He'd already asked them to come out there anyway,
17 it's going to take a minute or two. Y'all remember
18 all that, how long that drive is. And as he got
19 there he watched them, he watched what they were
20 doing, he saw them turn the headlights on. He saw
21 them turn the car. Called them again, hurry up, how
22 far away, five minutes away, ten minutes away. Then
23 that person, the driver who was later identified as
24 Tim Cannon who you heard from, turned the car on.
25 Chief Graham saying I just had the flashlight out,

1 pointed his gun, told them to stop, he was with the
2 Sheriff's Department. They revved the car up,
3 started driving, he fired one round into the front
4 of the car, they stopped. He was able to apprehend
5 them very quickly thereafter. What did he tell you
6 after that? That man sitting in that picture right
7 there, on every one of these cameras in front of
8 you, that was one of the two men that was there.
9 That was the passenger. That person was right
10 there.

11 What was in the back? Metal, rims, parts
12 of a saw mill. The trailer was loaded up with stuff
13 had just gotten off that property. And you heard me
14 call Michael Lane. Michael Lane was my next
15 witness. I know y'all probably thought it was a
16 silly question, but I still had to ask him. And he
17 sat there and told y'all he didn't give anybody
18 permission to come on that property. He didn't give
19 anybody permission to take his stuff. He didn't
20 give anybody permission to go sell his stuff down at
21 the scrap metal yard at who knows where. He didn't
22 give anyone permission to do that. There was not
23 consent. If anybody did that, it was a theft.
24 What'd you also heard from him? The identification
25 of the stuff that was taken. Heavy angles, the part

1 from the saw, the rims. And ladies and gentlemen,
2 you'll be able to take the picture back there. He
3 told you the pictures aren't that great. Candidly,
4 I went out there that night, I don't know how great
5 they were or were not. But what you did hear from
6 him as you heard him talk to you about how he valued
7 the property, who he talked to find out about the
8 value of that property, I offer to you that he
9 provided reason why his estimate was fair and
10 reasonable. They gave the first estimate, he said
11 well, the stuff had a little rust on it, so it needs
12 to be devalued some. Y'all heard him say that.
13 Y'all were all sitting in here when he said that.
14 Based on that they brought the value just for those
15 heavy angles, not even getting into the rims, not
16 even getting into the parts of the saw mill. The
17 2800-dollars, 800-dollars value over the two
18 thousand dollar mark the State has to prove.

19 Who do we offer next? Brandon McCants.
20 By the way, if I can back up to Michael Lane. He
21 told you that the defendants were already gone, he
22 didn't see the person. I'm not gonna sit there and
23 come in here and tell you that he did. He didn't
24 see them. But Brandon McCants did, our next
25 witness. Brandon McCants gets out there; he heard

1 shots fired. I hope y'all noticed that he wasn't in
2 here when Chief Graham testified. He wasn't in here
3 when Michael Lane testified. He wasn't in here when
4 anybody who talked about the shots being fired
5 testified or any of that other stuff that got
6 corroborated by Brandon McCants' observations. He
7 had been in the back; we brought him out here. He
8 had been sequestered. But he came in here
9 independent recollection that he got a call to come
10 out to this Manning address, Manning Highway
11 address, that he came out there and they hurried up,
12 especially when they heard shots fired. They got
13 out there and they saw a trailer full of metal.
14 They also saw two individuals that were handcuffed
15 as Chief Graham has already indicated. And he and
16 Johnny Jenkins both took those two individuals in.
17 He indicated he thinks he took Tim Cannon in, but he
18 remembers seeing that individual there. He also, I
19 believe he was one of the ones who said that he
20 remembers that name given was that Mr. Kinon by the
21 way.

22 Who was our final witness? Tim Cannon.
23 There's a lot to say about Tim Cannon. There is a
24 whole lot to say about him. But what is important
25 is that he committed this act too, and he has been

1 convicted of this act. Now Ms. Shuler is gonna get
2 up and she's going to probably try attacking his
3 credibility to all ends of the earth. He is a
4 thief. I am not going to pretend for a second he's
5 not. I know that, you know it. He's probably going
6 to get up and try offering to y'all that I've given
7 him some grand deal if he testified. Y'all heard
8 his testimony. Candidly I haven't. He's already
9 been sentenced. The case is already resolved.
10 Candidly, y'all, his case had been resolved
11 somewhere close to 13 months based on what he
12 provided to you. What's the most important things
13 that he proved to you? He provided they didn't have
14 permission to take that stuff. They went on there
15 and that man sitting in that picture right there,
16 the picture right in front of you, may have given
17 the name Kinon and he may have heard him say that,
18 that's not Mr. Kinon. This is his friend since he
19 was 13 years old. That's Branden Kirby. Are you
20 firmly convinced? You believe beyond a reasonable
21 doubt, 'cause that's our burden.

22 On April 4th, 2013, Branden Kirby along
23 with Tim Cannon — I don't care what other names he
24 gave, but Branden Kirby along with Tim Cannon went
25 on to Michael Lane's property over on Manning

1 Highway here in Williamsburg County to steal, to
2 steal his property, and then they want to come in
3 and act as if the property isn't as valuable as the
4 State offers. I'm sure they stole it. To them it
5 wasn't worth anything.

6 But ladies and gentlemen, the case before
7 you today, I offer that while we only had to prove
8 beyond a reasonable doubt, especially that grand
9 larceny, not only have we proven that, we've proven
10 it beyond any and all doubt. It's not our burden
11 but I offer to you, I don't know how we haven't.
12 Now next, soon, the obligation is going to be on
13 you, ladies and gentlemen of the jury, to
14 deliberate. The twelve of you, I think two of y'all
15 probably not get this opportunity, but twelve of you
16 will get to go back in that jury room. The judge is
17 gonna tell you what the law is and you're gonna go
18 back there and consider that law and you're going to
19 deliberate. Y'all are gonna hear each other out and
20 whether or not you think the State has proven it or
21 we haven't.

22 And ladies and gentlemen, I'm gonna close
23 soon and what I'll ask is that you deliberate and at
24 the end of this case after you deliberate, after
25 you've looked at it, that you find that the man who

1 told law enforcement his name is Kinon, Mr. Branden
2 Kirby, I ask that you find him guilty of the
3 offenses. I'd ask you to come back with a guilty
4 verdict on these offenses because I believe the
5 State has proven this beyond a reasonable doubt and
6 I ask you to do it quickly. Thank you.

7 THE COURT: Ms. Shuler.

8 MS. SHULER: Thank you, Your Honor, may it
9 please the Court. Ladies and gentlemen, thank you
10 so much for your attention today. Mr. Solicitor.

11 What I'm always troubled by whenever the
12 State gets up here and gives the closing statement
13 is the fact they really gloss over this reasonable
14 doubt burden that they have. And I know that you
15 guys are very smart people and I'm not gonna hammer
16 this fact home, but reasonable doubt is that doubt
17 that would cause a reasonable person to hesitate to
18 act. It's that doubt that will cause you to
19 hesitate to act so, you know, what is that and how
20 does that apply in this case. And the reasonable
21 doubt comes into play in that the State has to prove
22 each and every element of each charge in this case
23 beyond a reasonable doubt. They've got to prove
24 each element of grand larceny beyond a reasonable
25 doubt and each element of possession of burglary

1 tools beyond a reasonable doubt.

2 So, I'm gonna talk about first this grand
3 larceny. Now, first of all, to go on to somebody's
4 property and take something that's theirs is wrong;
5 we all know that. It's not fair, it's not right,
6 and it's definitely not something that anybody
7 should do, it's against the law. But what the State
8 has to prove is that it was unlawful taking of the
9 property of another, and he's going to charge you on
10 the law on that. And but what the State is gonna
11 have to show you is that the, that property itself
12 had a value that was greater than two thousand
13 dollars. Now the testimony that was offered about
14 that was offered by Mr. Lane.

15 Now, the judge is going to talk to you
16 about the credibility of the witnesses and about how
17 you're to assess the credibility of the witnesses
18 because that's your job. You heard them. You
19 witnessed their demeanor from the witness stand.
20 You saw how they acted from the witness stand and
21 how they responded to questioning and how they
22 answered each question so remember that whenever you
23 get back to the jury room and you deliberate over
24 these charges. And look at these pictures and ask
25 yourself, is that really worth more than two

1 thousand dollars? Now Mr. Lane, I'm not exactly
2 sure what to believe with this. He said that he had
3 some guy give him the price of the property and then
4 he said he had some guy that came out to it and
5 looked at it so I'm not really sure what to believe
6 in that because the story kind of, his story did
7 change on that. It didn't kind of change; it did
8 change on that. So I'm gonna just say y'all are the
9 people to assess the credibility, and y'all are the
10 people to determine what to believe on that. But
11 I'm gonna ask y'all, do y'all believe that's worth
12 than more than two thousand dollars? Do y'all
13 believe that this trailer of rusty scrap metal is
14 worth more than two thousand dollars?

15 Now what I like to think about is this.
16 What's two thousand dollars? Two thousand dollars
17 is a 62-inch flat screen TV. You leave that sitting
18 outside unguarded, uncovered out in the open? You
19 leave those half carat diamond studs sitting outside
20 unguarded uncovered? If this stuff was really worth
21 two thousand, more than two thousand dollars, you
22 leave it there sitting there unguarded, uncovered,
23 without protection there? You heard Chief Graham
24 say there wasn't even a gate out there. So ask
25 yourself, has the State proven that this property

1 was worth more than two thousand dollars? Ask
2 yourself, is there proof sufficient to not cause you
3 to hesitate to act. Are you gonna hesitate to act
4 to convict Mr. Kirby of this crime? I would
5 hesitate to act to convict him of this crime because
6 I'm telling you that the State has not proven that
7 that property was worth more than two thousand
8 dollars. Rusty scrap metal on the back of a
9 trailer, what's that worth?

10 Now the State wants you to believe
11 Mr. Cannon's testimony and there's — there are
12 certain things that you can believe about
13 Mr. Cannon's testimony, and I'll tell you for sure
14 to take it home with you and believe it. Now Chief
15 Graham said that he heard clanging like there were
16 people loading up scrap metal. Without a doubt I
17 can tell you you can believe that. Did he hear
18 chainsaws running? No, he sure didn't. Did he hear
19 anything like that? Now you might say, Mr. Lane
20 said it looked like that there was some weeds and
21 grass that was cut like they had used these things
22 to cut to get to the scrap metal. Now you men would
23 know this better than I would, but this is where I
24 really appreciate the fact that you have your good
25 old common sense that you can take back there to the

1 jury room. The end of this ax is nice and rusty.
2 If they had been cutting weeds, cutting limbs,
3 clanging up against that scrap metal with this here
4 ax, there'd be some nice shiny silver at the end of
5 this ax where it's been clanged up against that
6 other silver metal pieces. These things weren't
7 used. These tools down here were used for
8 Mr. Cannon's business. You heard him. You heard
9 him testify that I cleaned up yards. I had a
10 legitimate business on the side where I go and clean
11 up yards and that's what those tools were used for.
12 So you heard that from the witness stand. You heard
13 him say that, that was what it was used for. You
14 heard him say that there was no intent whatsoever to
15 use those tools in connection with the grand larceny
16 that night.

17 Now the judge is gonna charge you on the
18 law, and again, I'm going back to this reasonable
19 doubt thing and how the State has to prove each and
20 every element of their case beyond a reasonable
21 doubt. And the thing that they have to prove about
22 those burglary tools is, that the tools were used or
23 were intended to be used in connection with a
24 burglary or grand larceny. There's been absolutely
25 no evidence whatsoever that these things were used.

1 The State just wanted to parade these things in
2 here, let you see them, and make you believe that
3 these guys had some big, bad organization going on,
4 stealing, and taking things, when they actually had
5 a legitimate use for those.

6 Now you heard me ask Mr. Cannon about this
7 substantial assistance law that they've got.
8 There's a law that says if you provide substantial
9 assistance to the State in the prosecution of a case
10 that the State can come back and reduce their
11 sentence. You heard him say that he knew about
12 that. He knows about that because he's sitting in
13 SCDC with other inmates that know about that. That
14 goes towards his motive to not tell the truth. So
15 think about that whenever you assess each and every
16 person's credibility from the witness stand because
17 that is one of the things that the judge is gonna
18 ask you to do is to assess the credibility and the
19 motive for the witnesses. Think about his prior,
20 Mr. Cannon's, prior criminal history. He's got two
21 grand larcenies. He's got two receiving stolen
22 goods. He's got false information to police. He's
23 got all these other things in his record and think
24 about that as you're assessing this case. Think
25 about that as you assess his credibility. So there

1 are certain things of course that you can believe
2 and there are certain things you need to think about
3 credibility. The one thing that he said without
4 hesitation was that I had a business on the side,
5 and that's what those burglar tools, or that's what
6 those tools were used for. They're not burglary
7 tools. If those tools were used that night this
8 would be nice and bright and shiny on the end, or it
9 would have been — they would have clanged up
10 against those metal pieces whenever, it was used to
11 cut those vines growing over the metal, that's what
12 would be on the end and you can see it's rusty on
13 the end. There's no pictures of that. Mr. Lane is
14 the only person that talked about that. There's a
15 whole period of time that passed by between the
16 night and the next morning somebody could have come
17 in and things could have changed. There's nothing
18 here for you to see for you to determine that that
19 has, in fact -- there was some, that those were used
20 or those were intended to be used in connection with
21 the grand larceny.

22 You heard the Solicitor say that it's not
23 his strongest case. They don't have a case. They
24 have no case whatsoever with those tools. These
25 tools were used in connection with Mr. Cannon's

1 business. Mr. Cannon's case with that was
2 dismissed; he didn't plead to that. He was not
3 convicted of that. So use that, think about that,
4 and return a verdict of not guilty on that. And
5 think about the value of that property. Think about
6 the value of what that rusty scrap metal really is;
7 and if it was worth more than two thousand dollars,
8 would it be sitting out there in the open? Thank
9 you.

10 THE COURT: Mr. Foreman, members of the
11 jury, you've heard the testimony, received the
12 evidence, and heard the arguments of the State and
13 the Defendant. I will now explain to you the law
14 that applies to this case. Under the Constitution
15 and laws of South Carolina you are the finders of
16 the facts in this case. I do not have the right to
17 pass upon the facts or to even express any opinion
18 that I might have as to them because this is a
19 matter solely for you, the jury, to determine. As
20 jurors then, it is your duty to determine the
21 effect, the value, and the weight, and the truth of
22 the evidence presented during this trial.

23 Now as the trial judge it is my
24 responsibility to preside over the trial of this
25 case and to rule upon the admissibility of the

1 evidence offered during this trial. You are to
2 consider only the testimony which has been presented
3 from this witness stand together with any exhibits
4 which have been made a part of the record.
5 Additionally, I have a duty to charge you the law
6 applicable to this case. And as the trial judge,
7 presiding judge, I am the sole judge of the law of
8 this case. It is your duty as jurors to accept as
9 correct and apply the law as I now state it to you
10 and then reach your verdict. Finally I charge you
11 in this regard that you shall not be concerned about
12 what you think the law ought to be, but rather, what
13 I charge you the law is.

14 You are also the judges, the sole judges
15 of the credibility, that is, the believability of
16 the witnesses who have testified and of the evidence
17 which has been presented during this trial. In
18 evaluating credibility you may take into
19 consideration many things such as the demeanor or
20 manner of testifying, whether the witness had reason
21 to be biased or prejudiced, or whether the testimony
22 of a witness was contradicted on the one hand or
23 supported and corroborated on the other hand. All
24 these things you will consider bearing in mind that
25 you should give the defendant the benefit of any

1 reasonable doubt. It becomes your duty as jurors to
2 analyze and to evaluate the evidence and determine
3 that evidence which convinces you of its truth.

4 Now a person who has a past criminal
5 record is competent to testify during a trial. A
6 past record does not affect the ability of that
7 witness to testify. The past record may be
8 considered by you, if at all, only in determining
9 the witness' believability. Remember, you are the
10 sole judges of the facts in this case and of the
11 believability of any and all of the witnesses. I
12 instruct you and emphasize that the fact that the
13 defendant did not testify is not a factor to be
14 considered by you in any way in your deliberations
15 and in your consideration on the question of the
16 guilt or the innocence of the defendant. It must
17 not be considered by you in any manner whatsoever.
18 A defendant has a constitutional right to remain
19 silent, and the assertion of this right must not be
20 considered by you in your deliberations. I repeat,
21 under your oath you're to draw no conclusion
22 whatsoever from the fact that the defendant in this
23 case did not testify. The fact that the defendant
24 did not testify should not even be discussed in the
25 jury room.

1 The burden of proof, as I have stated to
2 you, is on the State. The Defendant is not required
3 to prove his innocence. The burden or proof remains
4 on the State to prove guilt beyond a reasonable
5 doubt. I instruct you and emphasize the fact that
6 under the laws of this state a defendant may be
7 tried even if the defendant does not attend trial,
8 but the fact that the defendant is not present may
9 not be considered against the defendant in any
10 manner whatsoever.

11 There are two types of evidence which are
12 generally presented during a trial, direct evidence
13 and circumstantial evidence. Direct evidence is the
14 testimony of a person who asserts or claims to have
15 actual knowledge of a fact, such as an eyewitness.
16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a
18 fact. The law makes absolutely no distinction
19 between the weight or value to be given either
20 direct or circumstantial evidence; nor, is a greater
21 degree of certainty required of circumstantial
22 evidence than of direct evidence. You should weigh
23 all of the evidence in this case. After weighing
24 all of the evidence if you're not convinced of the
25 defendant's guilt beyond a reasonable doubt, you

1 must find the defendant not guilty. On the other
2 hand, if you are convinced of the guilt of the
3 defendant beyond a reasonable doubt, then you must
4 find him guilty.

5 The fact that the defendant Branden Joshua
6 Kirby was charged and indicted in this case is not
7 evidence in this case and cannot be considered by
8 you as evidence of guilt in this case; nor, does it
9 create any presumption or inference of guilt. This
10 indictment is simply the formal written instrument
11 which contains the charges made against the
12 defendant. This indictment is a formal document by
13 which the case is brought into court. The defendant
14 has pled not guilty to the charges alleged against
15 him. The burden is on the State to prove the
16 defendant guilty. A person charged with committing
17 a criminal offense in South Carolina is never
18 required to prove himself innocent. I charge you
19 that it is an important rule of the law that the
20 defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be
22 presumed to be not guilty of the crime for which the
23 indictment was issued unless guilt has been proven
24 by evidence satisfying you of that guilt beyond a
25 reasonable doubt. Now this presumption does not end

1 when you begin your deliberations, but it
2 accompanies the defendant throughout the trial until
3 you reach a verdict of guilt based on evidence
4 satisfying you of that guilt beyond a reasonable
5 doubt.

6 The presumption of innocence is like a
7 robe of righteousness placed about the shoulders of
8 the defendant which remains with the defendant until
9 it has been stripped from the defendant by evidence
10 satisfying you of the defendant's guilt beyond a
11 reasonable doubt. The presumption of innocence is
12 not a mere legal theory; it's not just a legal
13 phrase. It is a, it is a substantial right to which
14 every defendant is entitled unless you, the jury,
15 are satisfied of the defendant's guilt beyond a
16 reasonable doubt.

17 The State must prove the defendant guilty
18 beyond a reasonable doubt so what is a reasonable
19 doubt in the law? A reasonable doubt is a doubt
20 which makes an honest, sincere, conscientious juror
21 in search of the truth to hesitate to act. Proof
22 beyond a reasonable doubt must therefore be proof of
23 such a convincing character that a reasonable person
24 would not hesitate to rely and act upon it in the
25 most important of his or her own affairs. Proof

1 beyond a reasonable doubt can also be described as
2 proof that leaves you firmly convinced of the
3 defendant's guilt.

4 Now in this world there are very few
5 things that we know with absolute certainty, and in
6 criminal cases the law does not require proof that
7 overcomes every possible doubt. If based on your
8 consideration of the evidence you are firmly
9 convinced of the defendant's guilt, then you must
10 find him guilty. If on the other hand you think
11 that there's a real possibility that he is not
12 guilty, then you must give him the benefit of the
13 doubt and find him not guilty.

14 The defendant is charged with grand
15 larceny. The State must prove beyond a reasonable
16 doubt that the defendant took and carried away the
17 property of another against the will or without the
18 consent of the other person. The slightest removal
19 of the property or the complete possession of the
20 property, even for an instant, by the defendant is
21 enough to show a taking and carrying away of the
22 property. The State must also prove beyond a
23 reasonable doubt that the defendant intended to
24 permanently deprive the owner of the property.
25 Finally, the State must prove that the value of the

1 property taken was more than two thousand but less
2 than ten thousand dollars. An owner of personal
3 property may provide an opinion as to the value of
4 his property. You are to weigh this testimony for
5 credibility as you do all other testimony.

6 The defendant is charged with possession
7 of burglary tools. The State must prove beyond a
8 reasonable doubt that the defendant had in his
9 possession any tools designed or commonly used for
10 the commission of burglary, larceny, or other crime
11 under circumstances evidencing an intent to use them
12 in the commission of a crime.

13 Now if a crime is committed by two or more
14 people who are acting together in committing a
15 crime, the act of one is the act of all. A person
16 who joins with another to commit an unlawful act is
17 criminally responsible for everything done by the
18 other person which happens as a probable or natural
19 consequence of the acts done in carrying out the
20 common plan and purpose. If two or more people are
21 together acting together, assisting each other in
22 committing the offense, the act of one is the act of
23 all, or as it is sometimes called, the hand of one
24 is the hand of all. The State must prove these
25 elements beyond a reasonable doubt.

1 Now each count charged as a separate and
2 distinct offense. You must decide each count
3 separately on the evidence and the law applicable to
4 it uninfluenced by your decision as to any other
5 count. The defendant may be convicted or acquitted
6 on any or all of the offenses charged. You'll be
7 asked to write a separate verdict of guilty or not
8 guilty for each count.

9 Now while argument of counsel is a
10 beneficial part of every trial, you should remember
11 that the statements made by counsel are not
12 evidence. In presenting arguments counsel often
13 refer to the evidence; however, you should base your
14 verdict on the evidence as you remember it.
15 Therefore, if there are any conflicts between the
16 recollection of counsel about the evidence and your
17 own recollection, you should rely upon your own
18 understanding of the evidence. Now you've been
19 chosen and sworn to give the parties in this case a
20 fair and impartial trial. When you've done so you
21 will have complied with your oath and no one will
22 have a right to criticize your verdict. You must
23 not be influenced by opinions or expressions of
24 opinions you may have heard outside of the
25 courtroom, but rather should base your verdict

1 solely on the testimony of the sworn witnesses who
2 took the stand, exhibits received in the evidence,
3 and the law which I stated. You should not be
4 swayed by caprice, passion, prejudice, or improper
5 sympathy for or against anyone in this case.
6 Remember, you have no friends to reward or enemies
7 to punish and all parties are entitled to a fair and
8 impartial trial.

9 It is your duty as jurors to consult with
10 one another and to deliberate in an effort to reach
11 an agreement. Each of you must decide this case for
12 yourself, but only after an impartial consideration
13 of all of the evidence with your fellow jurors. In
14 the course of your deliberations do not hesitate to
15 re-examine your own views and change your opinion if
16 you become convinced that it is erroneous. However,
17 do not surrender your honest conviction as to the
18 weight or the effect of the evidence solely because
19 of the opinion of your fellow jurors or for the mere
20 purpose of returning a verdict. As I stated
21 earlier, you are the judges, the judges of the
22 facts. Your sole interest is to seek the truth from
23 of the evidence in this case. Your verdict must
24 represent the considered judgment of each juror. In
25 other words, your verdict must be unanimous.

1 Now you may have noticed I have read these
2 instructions. I do so to give you the law as
3 accurately as possible. I will give you a copy of
4 these instructions to have in your jury room. You
5 may refer to these instructions to assist you in
6 your deliberation. You must consider the
7 instructions as a whole and not follow some and
8 ignore others.

9 Now Mr. Foreman, it is your duty to
10 preside over the deliberations of the jury. During
11 your deliberations if you should desire to
12 communicate with the Court, please reduce your
13 message or question in writing signed by your
14 foreperson and pass the note to the bailiff who will
15 bring it to my attention. I will then respond as
16 promptly as possible either in writing or by having
17 you return to the courtroom. I caution you,
18 however, with regard to any message or question you
19 might send, you should never state or specify your
20 numerical division at that time.

21 You heard the evidence and now you have
22 heard the law. Whatever your verdict on each count,
23 guilty or not guilty, Mr. Foreman, you will indicate
24 it on the verdict form which is this form right
25 here, then sign and date the verdict. Remember,

1 that although the foreperson is the only juror who
2 writes the verdict, it is not his alone. The
3 verdict has to be unanimous. And Mr. Foreman,
4 you're not authorized to write the verdict until all
5 of you have agreed on the verdict. And the verdict
6 lists as to grand larceny either not guilty or
7 guilty; as to the burglary tools, as not guilty or
8 guilty, sign, date.

9 Ladies and gentlemen, I'm gonna send you
10 to your jury room. Now we picked 14. How many we
11 got over there? 14. We picked 14 but we can only
12 use 12. Out of the first 12 I notice some of y'all
13 look like y'all are getting hungry, sleepy, or
14 something. Out of the first 12, if any of you
15 cannot continue with the deliberations, let me know
16 by raising your hand, either because you're hungry,
17 sleepy, sick, or got something else to do this
18 afternoon. If you cannot participate further,
19 please let me know by raising your hand.

20 (There was no response.)

21 THE COURT: All right, you cannot
22 participate because of what reason?

23 THE JUROR: I'm hungry but I'll still do
24 it.

25 THE COURT: We're gonna take care of that.

1 We've ordered food.

2 THE JUROR: Plus I have, I'm having to do
3 some school assignments too.

4 THE COURT: All right. Well, we've -- I
5 had anticipated a question such as that. I'm hungry
6 too. We've ordered lunch for you. It's already
7 here, already here. And Mr. Foreman, you can eat,
8 talk, talk, eat, eat, talk. I mean, it's entirely
9 up to you how you decide to do that. But we've had
10 14 jurors and if you cannot participate in
11 deliberations we'll use one of the alternates. If
12 you can, you are selected as one of the main jurors,
13 first 12, we want you to continue with
14 deliberations.

15 Can you continue with deliberations?

16 THE JUROR: Yes, sir.

17 THE COURT: Very good. That means that
18 when the others go back, the last jurors who were
19 selected, Mr. Brown and Mr. Brockington, you all
20 will stay while the others go back. Now, so ladies
21 and gentlemen, I'm going to send you to your jury
22 room but do not begin deliberations until you
23 receive a copy of this jury charge the verdict form
24 and exhibits. Once you receive these things, that
25 will be your signal to begin your deliberations.

1 Once you begin deliberations you will deliberate
2 until you have reached a verdict. After you've
3 reached a verdict, you will knock on the door,
4 advise the bailiff, and we will bring you out to
5 receive your verdict. So please go to the jury room
6 at this time everyone except Mr. Brown and
7 Brockington.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 1:51 p.m, and the following
10 proceedings commenced in open court.)

11 THE COURT: Any additions or exceptions to
12 the charge?

13 MR. BROWN: Not from the State, Your
14 Honor.

15 MS. SHULER: No, Your Honor.

16 THE COURT: If you all will take a look at
17 the exhibits and go over those, then the jury can
18 start deliberating. Give them their food and let
19 them eat. Let's get the jury deliberating.

20 (WHEREUPON, a recess was taken from the
21 proceedings and jury began deliberations
22 at 1:55 p.m.)

23 THE COURT: Good afternoon. I understand
24 the jury has a verdict. Bring them in.

25 (WHEREUPON, the jury was returned to the

1 courtroom at 2:45 p.m., and the
2 following proceedings commenced in open
3 court.)

4 THE COURT: All right, Mr. Foreman, if you
5 would stand for me. Have you reached a verdict?

6 THE FOREMAN: Yes, sir.

7 THE COURT: All right, is it unanimous?

8 THE FOREMAN: Yes.

9 THE COURT: All right. If you'd look on
10 there and read it to me.

11 THE FOREMAN: We, the jury, by unanimous
12 consent find the defendant Branden Joshua Kirby as
13 to grand larceny, not guilty. We, the jury, by
14 unanimous consent find the defendant Branden Joshua
15 Kirby as to burglar tools, guilty.

16 THE COURT: All right, thank you. If
17 you'd pass it up, you may be seated. If that is
18 the verdict of each and every juror, please let me
19 know by raising your right hand.

20 (All jurors complied by raising their hand.)

21 THE COURT: Thank you very much. Any
22 additional polling requested?

23 MR. BROWN: None by the State, Your Honor.

24 MS. SHULER: Please, Your Honor.

25 THE COURT: Madam Clerk, if you will poll

1 the jurors individually.

2 THE CLERK: Juror number 21, Alicea Brown,
3 is this your verdict and still your verdict?

4 JUROR BROWN: Yes.

5 THE CLERK: Juror number 72, Bobby L.
6 Fulton, is this your verdict and still your verdict?

7 JUROR FULTON: Yes, ma'am, it is.

8 THE CLERK: Juror number 45, Nathaniel
9 Cumbie, is this your verdict and still your verdict?

10 JUROR CUMBIE: Yes.

11 THE CLERK: Juror number 139, Naja
12 Nesmith, is this your verdict and is still your
13 verdict?

14 JUROR NESMITH: Yes, ma'am.

15 THE CLERK: Juror number 138, Jefferey A.
16 Nesmith, is this your verdict and is still your
17 verdict?

18 JUROR NESMITH: Yes, ma'am.

19 THE CLERK: Juror number 82, Liza Hammond,
20 is this your verdict and is still your verdict?

21 JUROR HAMMOND: Yes, ma'am.

22 THE CLERK: Juror number 193, Felix J.
23 Wilson, is this your verdict, is it still your
24 verdict?

25 JUROR WILSON: Yes, it is.

1 THE CLERK: Juror number 176, Aaron L.
2 Tisdale, is this your verdict and is still your
3 verdict?

4 JUROR TISDALE: Yes, ma'am.

5 THE CLERK: Juror number 173, Leon Thomas,
6 is this your verdict and is still your verdict?

7 JUROR THOMAS: Yes, ma'am.

8 THE CLERK: Juror number 150, Jerry L.
9 Pressley, is this your verdict and it's still your
10 verdict?

11 JUROR PRESSLEY: Yes, ma'am.

12 THE CLERK: Juror number 1 — I'm sorry,
13 juror number 93, Tonya D. Joe, is this your verdict
14 and still your verdict?

15 JUROR JOE: Yes.

16 THE CLERK: Okay. Juror number 187,
17 Latisha N. White, is this your verdict and it's
18 still your verdict?

19 JUROR WHITE: Yes.

20 THE COURT: Anything else for the jury?
21 No additional polling requested, unanimous verdict
22 of the jury so. No additional motions, being any
23 post-trial motion by either side?

24 MS. SHULER: Your Honor, I would move for
25 judgment notwithstanding the verdict as to the

1 conviction on burglary tools. There was not
2 sufficient evidence to sustain a conviction on that
3 charge. There was no evidence to tend to suggest
4 that those tools were intended to be used in
5 connection with any burglary. That was testified to
6 on behalf of, or by the co-defendant Mr. Cannon, so
7 we'd ask that Your Honor find in favor of Mr. Kirby.

8 THE COURT: All right. Mr. Brown.

9 MR. BROWN: Your Honor, as was argued in
10 directed verdict motion, I will just point the Court
11 to testimony of the victim that not only were all
12 these tools found which included an ax, welding
13 machine, bolt cutters, everything of that nature;
14 but also, he observed what appeared to be the debris
15 and vines and branches that had been cut away from
16 around the area where the items were stolen. I
17 certainly think the Court made correct ruling at the
18 directed verdict stage where it found there was
19 evidence that the jury could find that on. The jury
20 has deliberated and came to a unanimous verdict. We
21 would ask the verdict stand.

22 THE COURT: All right, Ms. Shuler.

23 MR. BROWN: Your Honor, there were no
24 pictures taken as to the supposed cutting of the
25 vines. I would suggest that if there were vines

1 grown over these, the metal pieces that were put on
2 the back of the trailer, that that would have been
3 as a result of picking up and putting the metal in
4 the back of the trailer. There were not pictures
5 taken. There was delay in time in going out and
6 looking at the vines, that there was a
7 suggestion ---

8 THE COURT: How long was the delay?

9 MS. SHULER: She said he went out there
10 the next day. No law enforcement officer said they
11 heard a chainsaw or anything like that so there was
12 no testimony or evidence that tools were actually
13 used or no evidence or testimony that there was an
14 intent to use those tools, especially on behalf of
15 my client.

16 THE COURT: All right. Well, the jury was
17 given the case based on the testimony of the victim
18 that it appeared the area had been cleaned off, and
19 the jury was given the charge on direct and
20 circumstantial evidence which could easily lead them
21 to conclude that the tools were used or were
22 intended to use in assisting in the commission of
23 the crime. Pictures aren't necessary and testimony
24 is sufficient if believed by the jury, and I
25 respectfully deny the motion.

1 Now ladies and gentlemen, if you all have
2 the option of deciding if the defendant was guilty
3 of petit larceny, meaning guilty of stealing but
4 that the value was less than two thousand dollars,
5 who all would say he was guilty of stealing but the
6 value was than two thousand dollars? Show me your
7 hands if you would made a decision.

8 (All jurors raised their hands.)

9 THE COURT: All right, very good. So as
10 we were comparing the jury charges I told my clerk
11 over there to prepare the lesser included offense of
12 petit larceny; but the argument of the State wasn't
13 -- for the Defense, wasn't for the jury to consider
14 the lesser included so that's sort of all or nothing
15 type of request. And the, so therefore, we deleted
16 that from the charge because neither side requested
17 that you consider that. But the offense is petit
18 larceny, not grand larceny, so the jury made a well
19 reasoned decision considering all the evidence. I
20 want to thank you for your consideration of the
21 evidence and for your verdict, so thank you very
22 much.

23 (Whereupon, the jury was excused and court was
24 resumed on October 22, 2014.)

25 THE COURT: Is there anything else anyone,

1 by the State or Defense, on this other case Brandon
2 Kirby? He's gonna get a sealed sentence.

3 MS. BARR: Your Honor, his criminal
4 history, we can put that on record. Other than that
5 we leave it up to the Court. May it please the
6 Court.

7 THE COURT: Yes, sir.

8 MR. BROWN: And just his criminal history
9 is 2007, he had a grand larceny conviction where he
10 received probation. 2008, he got a possession of
11 stolen vehicles where he received two years
12 suspended, one year probation and assessments. 2010
13 he had a shoplifting where he received a fine.
14 2011, driving under suspension, minimal jail time.
15 And that's the entire criminal history.

16 THE COURT: All right. Anything else you
17 want to say about him, Ms. Shuler?

18 MS. SHULER: Your Honor, he does not have
19 a significant criminal history. I just ask that
20 Your Honor take that into consideration in imposing
21 an appropriate sentence. And I'd also like to renew
22 my motion for a judgment notwithstanding the verdict
23 on the burglary tools issue. The law states that
24 the mere presence of a defendant where the burglary
25 tools were found or the mere association by the

1 defendant with people who possess the burglary tools
2 is insufficient proof that the defendant himself
3 possessed the burglary tools. Much like drug
4 possession law, there's actual and constructive
5 possession. The State must show that the defendant
6 had dominion or control over the thing possessed or
7 the right to exercise dominion or control. We would
8 again assert that the State did not prove that the
9 defendant had any dominion or control over those
10 items; and that based on that the hands of one or
11 the hand of all theory, it would not apply.

12 THE COURT: All right. What you say about
13 that, Mr. Solicitor?

14 MR. BROWN: Your Honor, again, going
15 through the same argument we've already gone
16 through, the two individuals were found caught at
17 the scene where a number of items were being taken
18 from the homeowner. There was indications by the
19 owner of the property that the next day he did see
20 indications that shrubbery and bushes, things of
21 that nature had been cleared out so they can get to
22 the items that were stolen that night. Your Honor
23 heard the testimony. I certainly think that there's
24 evidence there that these tools were used in that
25 the two individuals acted in concert taking these

1 items; and in doing so, any actions by one in
2 furtherance of the crime, that specifically being
3 the stealing these items, would be the action of all
4 which would encapsulate whether it was Tim Cannon or
5 his co-defendant, Mr. Kirby. Either one of them
6 using those tools in furtherance of trying to get
7 those items would be use of burglary tools. We
8 would ask the Court once again uphold the conviction
9 in this case.

10 THE COURT: All right. With the offense
11 of possession of criminal tools is the possession of
12 tools with the intent to use them in the commission
13 of a crime and this matter of intent, possession
14 coupled along with intent must be all considered in
15 light of the evidence presented and there's evidence
16 that supports the jury's verdict. I deny the
17 motion.

18
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21 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
22
23
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

State of South Carolina)

vs.)

Branden Joshua Kirby,)

Defendant.)
_____)IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

2013-GS-45-0218

VERDICT

We, the jury, by unanimous consent find the Defendant, Branden Joshua Kirby:

1. As to Grand Larceny:

☒ Not Guilty☐ Guilty

2. As to Burglary Tools:

☐ Not Guilty☒ GuiltyKingstree, South Carolina
October 21, 2014
Foreperson

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

COURT OF GENERAL SESSIONS

Branden Joshua Kirby,

PLAINTIFF,

v.

The State of South Carolina

DEFENDANT.

TRANSCRIPT OF SEALED SENTENCE

2013-GS-45-00218

Williamsburg County Courthouse
June 29, 2016

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Julie Swilley
Attorney for The State of South Carolina

Public Defender Amanda Shuler
Attorney for Branden Joshua Kirby

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

PAGES

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EXHIBITS

(There were no exhibits marked during this hearing)

State of South Carolina vs. Branden Joshua Kirby 3

1 The Court: Good-morning. This is a sealed sentence?

2 Ms. Shuler: It is, Your Honor.

3 The Court: Branden Joshua Kirby.

4 Mr. Kirby: Yes, Your Honor.

5 The Court: Judge, C. Newman. That's me, okay. Let
6 me see what I gave you, Mr. Kirby.

7 **(Sealed sentence opened)**

8 The Court: Wherefore, the Defendant is committed to
9 the State Department of Corrections for a determinative
10 term of five (5) years. Credit for time served. October
11 22, 2014. We the Jury, by unanimous consent, find the
12 Defendant, Branden Joshua Kirby not guilty as to grand
13 larceny and guilty as to burglary tools. Signed by the
14 jury foreperson involving this particular case. All
15 right. Ms. Shuler.

16 Ms. Shuler: Thank you, Your Honor. May it please The
17 Court, at this time, I would, on behalf of Branden Joshua
18 Kirby, move to ask the Court to reconsider Mr. Kirby's
19 sentence.

20 The five (5) years on the burglary tools is, for
21 somebody that had an extensive record would certainly be
22 fair and reasonable. Mr. Kirby does not have much on
23 his record. He has a 2006, I'm sorry, a 2007 conviction
24 for grand larceny and a 2008 conviction of possession of
25 a stolen vehicle and then just two little magistrate

1 level offenses, one from 2010 and one from 2011.

2 He does not have an extensive record. In fact, has
3 never been in the Department of Corrections at all. He
4 is married. He and his wife Ashley live in Moncks Corner
5 and they have a two year old daughter that he needs to
6 provide for. He does have a job waiting for him whenever
7 he is released. He works for the State Road Truck Repair
8 in Summerville. His boss is Wayne Driggers and he tells
9 me that Mr. Driggers comes and visits him every other
10 weekend there in Berkeley County. He does have some
11 charges that he needs to dispose of there in Berkeley
12 County. So, I ask that, Your Honor, reconsider the
13 sentence of five (5) years based on Mr. Kirby's record.

14 The Court: All right. Ms. Swilley.

15 Ms. Swilley: Your Honor, this case was tried by my
16 predecessor, Tyler Brown in 2014. You heard the
17 Defendant's record. The State would oppose any reduction
18 in his sentence. He didn't bother to come to Court, even
19 though he knew he was supposed to come to Court and he
20 stayed gone for almost two years afterwards. Only
21 because he's in Berkeley County Detention Center that we
22 were able to bring him here. So, Your Honor, the State
23 would respectfully ask that you deny the request.

24 The Court: Why is he at the Berkeley County
25 Detention Center?

State of South Carolina vs. Branden Joshua Kirby 5

1 Ms. Swilley: I was just looking that up, Your Honor.
2 He has malicious injury to property, \$2000 or less, a
3 probation violation, \$50,000 bond. Criminal conspiracy,
4 grand larceny \$10,000 or more, grand larceny two to
5 \$10,000, resisting arrest. Trafficking in meth and
6 cocaine base, 10 grams to 28 grams and a bond revocation.

7 The Court: Those are the current charges?

8 Ms. Swilley: Yes, sir.

9 The Court: What are you on probation for?

10 Mr. Kirby: The grand larceny. No, the possession of
11 a stolen motor vehicle.

12 The Court: Do you have his file here from the trial?

13 Ms. Swilley: No, Your Honor, I do not. I can go get
14 it.

15 The Court: I need to kind of remember what it is all
16 about. It's not the one that Michael Graham was a
17 witness on, was it?

18 Ms. Shuler: It was, Your Honor.

19 The Court: I kind of remember it then. The people
20 out on Sandy Bay or some place ... 2 ...

21 Ms. Shuler: It was 261 ... Michael Lane.

22 The Court: Yes. I mean, they were having trouble
23 with people stealing stuff so they kind of hired, they
24 didn't hire him but they know Michael Graham, who is the
25 Chief of Police in Greelyville to kind of come out and be

1 surveillance or be a night watchman for him because
2 things were being stolen out of the field, combines or
3 whatever implements, farm stuff. So, he was set up out
4 there in the field and low and behold these guys appeared
5 to steal stuff. So, Michael then seeks to apprehend them
6 and they take off, I guess they start coming after him or
7 coming at him or whatever and he got out of the way and
8 they got away, I think. I'm just trying to bring it in
9 my memory bank. I don't have all the details.

10 Ms. Swilley: Your memory sounds pretty great to me,
11 Your Honor.

12 The Court: So, they ended up being charged and they,
13 you know, I guess the stuff that they stole, because of
14 the stuff that they stole, you know because it's farm
15 stuff, something old or rusted or whatever, things that
16 they might have been trying to steal, the jury didn't
17 find him guilty of that but found him guilty of having
18 the burglary tools to cut the stuff or do whatever to
19 steal the stuff.

20 Ms. Swilley: I believe that he was bench warranted
21 in January of 2014 and he was tried eventually in his
22 absence later on that year.

23 The Court: Okay.

24 Ms. Shuler: He was. And, Your Honor, I think my
25 client was not the ring leader, I guess, so to speak.

1 The co-Defendant, Tim Cannon was the driver of the
2 vehicle that day and had knowledge about the area and
3 somewhat brought him there. I'm certainly not saying
4 that he admits to the charge and was found guilty by the
5 jury, but he was not driving the car that day and from
6 the witness stand Mr. Cannon did say those tools in the
7 car were his and that he had those tools for his job.
8 So, of course, I explained to Mr. Kirby that at this
9 point that does not matter but I wanted to bring that to
10 the Court's attention.

11 The Court: Burglary tools, bolt cutters, welding
12 machine, an axe, chain saw. Sometimes screw drivers can
13 be a burglary tool depending on what you are going to do
14 with it.

15 Ms. Shuler: A wire cutter has been used before.

16 The Court: Yes. To cut something that is chained
17 down. Do you want to say something?

18 Mr. Kirby: Yes, sir. Whenever we was arrested, the
19 arresting officer said he would talk on my behalf because
20 I never actually exited the vehicle or help them load it
21 up or nothing. I was given a ride from Greelyville to
22 Moncks Corner. And Tim rerouted to come down a long
23 highway and on the right side of the road he pulled off
24 and I was in the vehicle and he started loaded stuff up
25 without my knowledge. When I realized what he was doing,

1 the police were already out there. I asked him what was
2 I being charged with and he said the tools and grand
3 larceny, but I never help him or anything and just called
4 him for a ride, actually.

5 The Court: So, why didn't you come to Court.

6 Mr. Kirby: I was in Berkeley County. I moved from
7 Gardenia Street, Summerville, South Carolina to
8 Grimm Street, Lot 5 and never got my address changed on
9 my (p license.

10 The Court: What about the cases you had on you, you
11 just kind of blew it off or ...

12 Mr. Kirby: The case I had on me?

13 The Court: Yes. This trial. What about the case you
14 had.

15 Mr. Kirby: Oh, yes, sir. I wasn't --- well, they
16 sent a letter but I didn't receive the letter and I
17 called the bondsman to make sure what my court date was
18 and he didn't have any idea when I had court, he just
19 knew I was out on bond and he had posted a bond for the
20 charges.

21 The Court: And since that time, you've ...

22 Mr. Kirby: Yes, sir. I called him to see if I had
23 warrants and I have a paid attorney, Mr. William J.
24 Thornal(ph) and he had told me and my mother that he had
25 gotten the charges run with my previous charges that I

State of South Carolina vs. Branden Joshua Kirby 9

1 got stuck on probation for.

2 The Court: All right. That's what he told you?

3 Mr. Kirby: Yes, sir.

4 The Court: What else, Ms. Swilley?

5 Ms. Swilley: Just the obvious, that when he was
6 arrested for trafficking meth and possession of a weapon
7 during the commission of a violent crime that was October
8 2015 and he violated his probation at that time as well.
9 Had he been in court, had he been in trial, it's likely
10 he wouldn't have picked up more serious charges.

11 The Court: Yes, sir.

12 Mr. Kirby: Those are pending charges due to I was
13 just in the wrong place at the wrong time and the other
14 person that came to jail with me didn't want to claim
15 their stuff, Your Honor.

16 The Court: I'll take it you're a innocent victim in
17 some bad circumstances all the time, you must be a pretty
18 unlucky guy. Ms. Shuler, anything else?

19 Ms. Shuler: I just ask that, Your Honor, to consider
20 a sentence that would be less than five (5) years. He's
21 got some more serious charges to deal with down in
22 Berkeley County.

23 The Court: All right. Anything else from anyone
24 else?

25 (No responses)

1 The Court: I've modified the sentence from five (5)
2 years to four (4) years. That's the sentence of the
3 court.

4 Ms. Shuler: Credit for time served?

5 The Court: I don't know what time he's entitled to
6 but he gets credit for time served.

7 Ms. Shuler: I've called Ms. Easley at the jail to
8 verify that date. The bond paperwork is not legible
9 enough.

10 The Court: Credit for time served.

11 Ms. Shuler: Thank you, Your Honor.

12 The Court: All right. Good luck to you, sir.

13 **(End of sealed sentencing)**

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WITNESSES

Robert Shearer
Williamsburg County Sheriff

ARREST WARRANT NUMBER

2013A4510100246 2013A4510100244
2013A4510100247

2013A4510100267 2013A4510100268

ACTION OF GRAND JURY

TRUE BILL

Date: _____

Foreperson of Grand Jury
Date: 7-25-13

VERDICT

Foreperson of Petit Jury
Date: _____

DOCKET NO. 2013-GS-45-0218

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2013

THE STATE

vs.

TIM MCNEIL CANNON JR

BRANDEN JOSHUA KIRBY

Indictment for

Grand Larceny, Value More than \$2,000 but Less than
\$10,000; Possession of Burglary Tools; Possession of
Methamphetamine

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

SHAW
CLERK
13 JUL 25 PM 3:09
FBI

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT ~~112~~

Grand Larceny, Value More than \$2,000 but Less than \$10,000;
 Possession of Burglary Tools; Possession of Methamphetamine

At a Court of General Sessions, convened on July 25, 2013, ~~the~~ Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - GRAND LARCENY (VALUE OVER \$2,000 BUT LESS THAN \$10,000)

That Tim Mcneil Cannon, Jr. and Branden Joshua Kirby did in Williamsburg County on or about April 4, 2013, take and carry away the personal goods of ~~the~~, valued at more than two thousand (\$2,000.00) dollars, but less than ten thousand (\$10,000.00) dollars, described as follows: metal items valued at \$3,000, with the intent to deprive the owner permanently of such property and to convert the goods to his own use, in violation of Section 16-13-0030(B)(1), S. C. Code of Laws, 1976, as amended.

COUNT TWO - POSSESSION OF BURGLARY TOOLS

That in Williamsburg County, South Carolina, on or about April 4, 2013, the Defendants, Tim Mcneil Cannon Jr. and Branden Joshua Kirby did have in his possession bolt cutters, a welding machine, an ax, and a chainsaw, adapted, designed or commonly used for burglary, larceny, safecracking or other crime, under circumstances evincing an intent to use the same in the commission of a crime or having knowledge that they are intended to be used in the commission of a crime; all in violation of Section 16-11-20, Code of Laws of South Carolina (1976, as amended).

COUNT THREE - POSSESSION OF METHAMPHETAMINE

That in Williamsburg County, South Carolina, on or about April 4, 2013, the Defendant, Tim Mcneil Cannon Jr., did possess a controlled substance or a controlled substance analogue, to wit: Methamphetamine, in violation of 44-53-375 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

Ernest A. Finney III

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

1079

COUNTY OF Williamsburg

STATE VS.

Branden Joshua Kirby

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Tools / Possession, makin g tools implementation of Burglary

in violation of § 16-11-0020 of the S.C. Code of Laws, bearing CDR Code # 0124

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brown, Tyler

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 4 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 733.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013-GS-45-0218

A/W#: 2013A4510100268

Date of Offense: 4/4/2013

S.C. Code § : 16-11-0020

CDR Code #: 0124

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

Setled Sentence imposed June 29, 2016

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script, reading "Laura R. Baer", written over a horizontal line.

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of June, 2017.

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of June, 2017.

RECEIVED
JUN 23 2017
SC Court of Appeals