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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHNNIE LEE LAWSON,

APPELLANT

APPELLATE CASE NO. 2015-0002467

RECORD ON APPEAL

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**THE FOLLOWING EXHIBTS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 16 (TEN PRINT CARD OF DEFENDANT), AND COURT'S
EXHIBIT # 2 (UNREDACTED TEN PRINT CARD OF DEFENDANT).**

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions

3
4 Indictment No.: 2015-GS-32-00107

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Johnnie Lawson,)
Defendant.)

11
12
13 November 17-20, 2015
14 Lexington, South Carolina

15
16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge and a jury.

18
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21 Robert Elam, Assistant Solicitor
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24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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TUESDAY, NOVEMBER 17, 2015

THE COURT: All right. Solicitor, call your next case for trial please.

MS. RADLEIN: Thank you, Your Honor, may it please the Court.

The State calls Mr. Johnny Lee Lawson under Indictment 2015-GS-32-00107 and he is charged with breaking into a motor vehicle.

THE COURT: All right. And, Ms. Zmroczek, you represent Mr. Lawson?

MS. ZMROCZEK: I do, Your Honor.

THE COURT: Mr. Lawson is present?

MS. ZMROCZEK: He is, Your Honor.

THE COURT: Ready for trial?

MS. ZMROCZEK: Yes, sir.

THE COURT: All right. Thank you. Thank you very much.

MS. ZMROCZEK: Thank you.

THE COURT: Again, ladies and gentlemen of the jury panel, please consider yourselves still under oath for having been administered the oath by Judge Newman 16 of November, 2015, yesterday.

JURY VOIR DIRE

THE COURT: Again, the State has called the case for trial and we're going through the procedures whereby we

1 select the trial jury for the trial of this case, for this
2 specific case. I believe most, if not all of you, have
3 been through this procedure before. This would be the
4 second, perhaps the third time for some of you.

5 The first thing I'm going to do is I'm going to
6 read the indictment. The indictment is the formal charging
7 document by which an individual is placed on notice of
8 charges that have been brought against him or her. The
9 indictment contains mere allegations and is no way evidence
10 of any of the allegations contained therein. I read it to
11 you because of certain questions I will ask you to
12 determine your qualifications to serve as fair and
13 impartial jurors in the trial of the case of Mr. Lawson.

14 Indictment No. 2015-GS-32-00107 reads that Johnny
15 Lee Lawson in Lexington County, South Carolina on or about
16 March 14th, 2014, did break or attempt to break into a
17 motor vehicle belonging to Jessica Wilbanks at Holland
18 Avenue, Cayce, South Carolina, with the intent to steal the
19 same or anything of value therefrom in violation of Section
20 16-13-160(a)(1) of the Code of Laws of South Carolina,
21 1976, as amended.

22 The State is represented by Assistant Solicitor's
23 of the Eleventh Circuit Solicitor's Office.

24 Solicitor Radlein, would y'all please stand and
25 introduce yourself to the jury panel.

1 the jury and the court reporter.)

2 THE COURT: All right. Thank you. Thank you very
3 much.

4 Madam Clerk, swear our jury please.

5 THE CLERK: If you'll stand and raise your right
6 hand please.

7 (The jury was sworn at 2:28 p.m.)

8 THE CLERK: Thank you.

9 **OPENING REMARKS BY THE COURT**

10 THE COURT: Ladies and gentlemen of the jury panel,
11 the case we are about to try is the case of the State
12 versus Johnny Lee Lawson. Mr. Lawson is seated to my front
13 left, the defendant. What I now say is intended to serve
14 as an introduction to the trial of this case. These
15 remarks are not an instruction on the law applicable to
16 this case. I will charge or instruct you on that at the
17 end of the trial before you retire to consider your
18 verdict. This is merely an explanation of the procedures
19 that we will follow in the trial so that you may better
20 understand what may be happening.

21 The defendant is charged by indictment filed in
22 this court for the crime of breaking into a motor vehicle,
23 the elements of which will be explained to you later.
24 Again, the indictment is simply the charge, the formal
25 charging document by which the case is brought before the

1 Court and it is not in any sense evidence of any of the
2 allegations contained therein. Mr. Lawson has pled not
3 guilty to the indictment. The State therefore has the
4 burden of proving each of the elements of the indictment
5 beyond a reasonable doubt and it will be your duty, ladies
6 and gentlemen, to decide whether the State has met that
7 burden.

8 Your purpose as jurors is to find and determine the
9 facts. You are the sole judge of the facts. If at any
10 time I make any comment regarding the facts, you must
11 disregard it. You are to determine the facts from the
12 testimony you hear and the other evidence, if any,
13 introduced into court. It is up to you to determine any
14 inferences which you feel may properly be drawn from the
15 evidence. It is especially important that you, the jury,
16 perform your duty of determining the facts diligently and
17 conscientiously because ordinarily, there is no way to
18 correct an erroneous determination of the facts by a jury.

19 On the other hand and with equal emphasis, the same
20 law that makes you the judges of the facts makes me the
21 judge of the law. The law as given by the Court is the
22 only law you may consider. You must accept it and follow
23 it even though you may disagree with it. I cannot tell you
24 what the facts are and you cannot disagree with me about
25 what the law is or should be. Your job is to take the law

1 as I give it to you and apply it to the facts as you find
2 them from the testimony of the witnesses testifying under
3 oath and any other evidence that may be introduced. After
4 doing that, you will retire to consider your verdict and
5 render your verdict, a true and just verdict, under the
6 solemn oath that you have taken as jurors.

7 Until I advise you to begin your deliberations, you
8 must not discuss this case with anyone. That includes your
9 fellow jurors, friends, family members or anyone involved
10 in the case. You may not ask each other questions about it
11 during the course of the trial. During breaks you may not
12 discuss the facts as you hear them with anyone else at any
13 time until you've heard all the evidence, all the
14 testimony, closing arguments by the attorneys, instruction
15 by the Court on the law and then directed by the Court to
16 begin your deliberations with your fellow jurors in your
17 jury room.

18 After the case is submitted to you, that is only
19 when you may discuss it with anyone and that would be your
20 fellow jurors.

21 The attorneys and the parties in this case have
22 been advised and they will not speak with you in any
23 manner. You may see them in your comings and goings. You
24 may see some of the parties and some of the witnesses in
25 your comings and goings. They may not even say hello.

1 They're not being rude or unmannerly; that protects the
2 process. Even innocent conversation can be easily
3 misconstrued.

4 During the trial, should there be any, do not read,
5 listen to or watch any news accounts about the case. This
6 includes anything that may be in the newspaper, on the
7 internet, radio, or television. You must not consider
8 anything you may have read or heard about the case in the
9 past outside the courtroom whether before or during the
10 trial. It is important that you keep an open mind and not
11 decide any issue in the case until all of the evidence has
12 been presented, the parties have made their closing
13 arguments and I have instructed you on the law. It is your
14 solemn responsibility to determine the guilt or the
15 innocence of Mr. Lawson and you must. Your verdict must be
16 based solely on the evidence as it is presented to you in
17 this trial and on the law as I instruct you during and at
18 the close of the trial.

19 In just a moment, the Solicitor will make what is
20 called an opening statement in which the Solicitor will
21 explain to you the issues in the case or at least what the
22 solicitor thinks the issues are in the case.

23 Ms. ZMROCZEK, the attorney for the defendant, may
24 also make an opening statement although she is not required
25 to do so. A criminal defendant in South Carolina,

1 regardless of the seriousness of the charges, is always
2 presumed to be innocent and has no burden to prove
3 innocent -- himself innocent. The State has the burden and
4 the burden remains on the State to prove the defendant
5 guilty beyond a reasonable doubt.

6 Now, ladies and gentlemen, what the attorneys tell
7 you during their opening arguments is not evidence in the
8 case. What the attorneys say during closing -- excuse me,
9 opening statements, what they say during the closing
10 arguments is not evidence in the case. Their questions
11 aren't evidence in the case. Their questioning of the
12 witnesses are the framework by which the sworn testimony
13 comes from the mouth of those witnesses testifying before
14 you. Please, please keep that in mind. It is their
15 contention in their opening statements as to what the
16 issues are. The evidence is presented to you by the
17 testimony of the sworn witnesses from the witness stand and
18 by any exhibits that may be introduced.

19 From time to time during the trial, you may hear
20 one of the attorneys say, Your Honor, I believe we have a
21 question of law or a matter of law to discuss with you or,
22 Your Honor, may we approach the bench or sometime I,
23 myself, might find it necessary to excuse you from the
24 courtroom for a while so the attorneys and I can discuss a
25 matter of law. This is not to hide anything from you. The

1 reason for this is because again, you are the judges of the
2 facts in this case and sometimes when I am discussing
3 matters of law with the attorneys, it may be necessary for
4 me to make some comment as to the facts in connection with
5 ruling whether or not the particular law applies. I am not
6 supposed to tell you and I will not tell you and I will not
7 have an opinion on what I think the facts are. So I will
8 excuse you from the courtroom while these discussions take
9 place so that in no way will you be influenced by anything
10 that I might say or do in connection with the facts.

11 In determining what the true facts are in this
12 case, using your individual and collective good judgment
13 and common sense, you must decide whether or not the
14 testimony of the witness or witnesses is believable. It
15 will be my responsibility to rule as a matter of law as to
16 whether certain testimony is admissible at all or not.
17 Admissible means whether you hear it or not, but once the
18 testimony is admitted, whether or not you believe it is
19 solely for you to determine.

20 In deciding whether to believe a witness, you have
21 a right to consider the interest of any witness, the bias
22 of any witness, the prejudice of any witness, the
23 opportunity for the witness to have seen the matters and
24 things about which the witness may testify and the
25 demeanor, the appearance, the way the witness acts on the

1 witness stand. You have a right to consider anything that
2 is in the record that will help you evaluate the testimony
3 of the witnesses. That means it will be your duty to pay
4 close attention to these witnesses, to observe them, to
5 listen to them, to pay close attention to the attorneys and
6 to the Court. Don't let your thoughts wonder, but give
7 strict attention to the testimony in this case so that at
8 the end of the testimony after the arguments by the
9 attorneys and the instruction on the law by the Court, you
10 will then be in that position to determine what the true
11 facts are and to apply those true facts as you find them to
12 be to the law as you have been instructed and render a true
13 and just verdict.

14 Just administratively, ladies and gentlemen, we're
15 in, of course, the smaller courtroom. You should not have
16 any trouble hearing or seeing, but if you do, particularly
17 those further away from the witness stand, please get my
18 attention or the attention of one of our fine bailiffs and
19 certainly I'll have the witness speak up.

20 I don't know what may be offered into evidence,
21 charts, diagrams, pictures, I have no idea. Many times,
22 well nowadays, they're offered by screens and such. At one
23 time the photograph was handed to the jury foreperson and
24 passed among members of the jury while out here in the jury
25 room. Either way, keep in mind, if I allow an item into

1 evidence, photograph or what have you, you will have that
2 item with you in the jury room at the time of your
3 deliberations. I only tell you that, if items are passed
4 among you, it will not be the only opportunity you'll have
5 to see it. Look at it all you wish here in the courtroom
6 in the jury box, but it will not be the only final
7 opportunity you will get to view those, to view those
8 items.

9 From time to time, you may see me on the computer.
10 I don't tweet, I don't repeat, I don't know what Instagram
11 or hashtag's are. I stay focused on the trial. These are
12 experienced trial attorneys. I may see what I think is a
13 legal issue down that dusty trail and I will do some
14 research in that regard. I don't divide my attention in
15 that regard.

16 Also, ladies and gentlemen, you may not think that
17 it doesn't matter the seriousness of the charge, whether
18 it's a most serious, average serious, or less. The trial
19 is just as important. It might not a lengthy trial, but
20 the importance of the trial is not measured by the charges
21 or by the length of the trial or by the number of
22 witnesses. It's an important case. It's an important case
23 to Mr. Lawson. It's an important case to the State of
24 South Carolina. I know you will give them your best
25 efforts in that regard.

1 Finally, ladies and gentlemen, what am I in charge
2 of? I'm in charge of taking breaks. It's a real simple
3 ruling. When I want to take a break; we take a break and
4 everybody's happy. If you sit out here too long, your
5 thoughts start to wander. If you need a break, you want be
6 able to process the true facts and render a true and just
7 verdict. Cases are replete with jurors that fall asleep
8 when you sit like that. Mr. Lawson deserves alert,
9 focused, attentive jurors. The State deserves alert,
10 focused, attentive jurors. If you need a break, please,
11 raise your hand. Y'all are probably not the only one that
12 does; y'all will take your break; we'll take our break.
13 This is not some type of judicial marathon.

14 All right. With that being said, any objection to
15 anything I've told the jury from the State, Solicitor?

16 MR. RADLEIN: Nothing from the State, Your Honor.

17 THE COURT: And the defense?

18 MS. ZMROCZEK: No objection from the defendant,
19 Your Honor.

20 THE COURT: All right. Thank you very much.

21 Solicitor, you may address the jury.

22 **OPENING STATEMENTS**

23 MR. ELAM: Thank you, Your Honor, if it please the
24 Court?

25 THE COURT: Yes, sir.

1 MR. ELAM: Ladies and gentlemen, thinking about how
2 to address you this afternoon concerning this case, an idea
3 occurred to me; call it fate; call it karma, but this is
4 the idea. What we do in life reverberates behind us. Even
5 if we try to do something in a stealthy, sneaky manner, we
6 sometimes end up inadvertently leaving our mark behind and
7 that's what this case is all about.

8 Let me explain. We need to go back to March 14th
9 of 2014, Friday evening, late Friday evening about 10:30
10 p.m. Jessica Wilbanks and her husband, Blake Wilbanks were
11 excited. They're also tired. It's a big day for them
12 because they're moving into a new home. It's late at
13 night. They're moving from out of town. They are moving
14 into a nice little house and you'll see pictures of it at
15 Holland Avenue in Cayce, South Carolina in a
16 neighborhood called the Avenue. Some of you may be
17 familiar with that neighborhood; some may not, but we'll
18 try to describe it to you during the course of this trial.

19 And as they're moving into the house, something
20 unusual happens to them and this is it: Jessica Wilbanks
21 comes outside to get a load to take into the house and
22 again, as I said, it's 10:30 p.m., but you'll hear the
23 witnesses testify that there's some light sources. They
24 can certainly see what they're doing out there. She hears
25 scraping sounds. She'll tell you that they have two cars;

1 one's pulled up on the driveway with a trailer behind it
2 with their stuff in it; one's out on the curb. She hears
3 scraping sounds from the curb and she approaches and she
4 sees, she'll tell you, somebody up against her car with
5 their back to her wearing a hoodie with the hood up and
6 that's where the scraping sounds are coming from. She'll
7 tell you she realizes this is not her husband up against
8 the car and she hollers out her husband's name; the person
9 who is up at her car throws up their right hand and she can
10 see two things instantly; she will tell you. She can see
11 there's no glove on that right hand and in the existing
12 light, she can see that it's a black male at the car. The
13 person who is at her car runs off.

14 Jessica will tell you she runs into the house, she
15 gets her husband, just the time it takes to get her husband
16 to come back outside and they call the police and they stay
17 at the car outside the entire evening until the police
18 arrive and you'll hear about the police arriving. You'll
19 hear that Officer Rhett Kelly came and took pictures
20 because this is what's significant about that car, this
21 Volvo that's out here on the curb sustained damage; damage
22 that wasn't there moments ago when Jessica Wilbanks had
23 left the car earlier. She will tell you that she left the
24 door locked and she left the window up on the car. She'll
25 tell you she left her purse inside the car and that it was

1 visible from outside.

2 She will tell you that after this stranger ran away
3 from the car, the window was partly down and there was
4 damage around the window. And again, remember she's going
5 to talk about some scraping sounds that she heard. You'll
6 hear that the police came to the scene, Officer Rhett
7 Kelly, took pictures of the scene and you're going to hear
8 that Jason Merrill came from Cayce Department of Public
9 Safety and they notice something and this gets back to what
10 I said about what we do in life reverberates behind us. It
11 seems like perhaps the perpetrator of this damage to the
12 car; you'll hear that there was damage done to the window,
13 the person who tried to break into the car apparently left
14 their calling card behind -- visible even to the naked eye
15 that night.

16 You will hear and you'll see pictures of it;
17 fingerprints. And you'll hear how Jason Merrill collected
18 fingerprints, called latent prints, from the scene and how
19 he took them and he processed them and you'll hear the
20 whole story. They've got Seraphim Haftoglou from SLED
21 here, who talks about fingerprint records and a system
22 called AFIS, you'll get to know. You'll be experts in
23 fingerprints by the time this is over.

24 But long story short, these folks were just moving
25 into the Avenue, someone tries to break into their car,

1 does damage to their car. Welcome to the Avenues. What --
2 what a welcoming present, right? You will hear about the
3 trail and that a fingerprint led back to the defendant in
4 this case, Mr. Johnny Lee Lawson.

5 Now, Mr. Lawson, is charged in this case with
6 breaking into a motor vehicle, it's also known as auto
7 breaking. Sometimes that's our slang term for it. And we
8 do have -- as the State, we do have to prove the elements
9 of auto breaking to you. I submit to you that you will
10 here the elements covered in this case.

11 South Carolina Code of Laws Title 16, Chapter 13,
12 Section 160 tells you what auto breaking is. If you break
13 or try to break into a motor vehicle within an attempt to
14 steal that motor vehicle or something from inside the motor
15 vehicle, then you've committed the crime of auto breaking.

16 And breaking is simply using force, however slight, in this
17 case we submit to you there was a great deal of force used,
18 but force, however slight, to remove an obstruction to
19 getting into the automobile. So if you break or attempt to
20 break into a motor vehicle, you've committed the crime of
21 auto breaking.

22 Now the elements of the crime are going to come
23 from the witnesses who take the stand right here in the
24 courtroom. Welcome to Courtroom 3-C. It's probably one of
25 the smaller courtrooms in the courthouse. It's very

1 intimate and I'll try not to get in your face too much, but
2 it's like we are a bit cramped here. But I guess one of
3 the good things is you are literally at a ring-side seat to
4 hear the witnesses as they testify about what they
5 experienced on that night and later and you'll hear about
6 the fingerprint experts too. When they talk about how they
7 came to, finally after months, tracked down Mr. Lawson in
8 this case and finally give the victim some closure in this
9 case and identified who it was that damaged their car. You
10 get to hear all that here from the witness stand. You're
11 uniquely situation to hear the testimony of the witnesses
12 and that's the evidence that you're going to use. Y'all
13 are the judges of the facts in the case. Judge McMahon is
14 the judge of the law of the case. But y'all are judges
15 too. You judge the facts and the facts are based on the
16 evidence that you're going to hear from this stand from
17 witnesses and based on any exhibits that get entered,
18 excuse me, get entered or introduced through those
19 witnesses through their testimony.

20 That's the evidence that when Judge McMahon tells
21 you're allowed to start deliberating, when he sends you
22 back for the final time to the jury room and you start
23 talking about the case. You'll have those pictures to take
24 back with you and other exhibits and you'll have your
25 memory of the oral testimony that you heard. So again,

1 y'all are judges of the facts of this case.

2 Some of you may be a bit apprehensive. You may
3 say, you know, they didn't teach us Juror 101 in high
4 school or in college. I submit to you, you're going to do
5 a good job because it's hardly possible to communicate with
6 a single individual without judging that person for
7 honesty, for sincerity, for forthrightness and that's
8 exactly what you're going to be doing as jurors here as you
9 listen to the witnesses testify.

10 You, I ask that you keep two things in mind as you
11 do this job. One very important, don't make up your mind
12 about anything too soon. Keep an open mind. Because you
13 see if you make up your mind about something too soon, you
14 might stop listening and you might miss something
15 important. So please keep an open mind until you're told
16 that you can start deliberating, number one. Number two,
17 remember that the most important tool that you've brought
18 with you here today as jurors in this case, is your common
19 sense. We can't overemphasize that. Common sense helps
20 you determine what's reasonable and reasonableness is the
21 hallmark on this and in indeed every criminal case. Even
22 the State's burden of proof is phrased in terms of
23 reasonableness. We have to prove our case beyond a
24 reasonable doubt, not all doubt, not a shadow of a doubt,
25 but a reasonable doubt and we gladly embrace this burden.

1 Ladies and gentlemen, I was introduced a little bit
2 earlier, but once again, my name is Robert Elam. I'm the
3 Assistant Solicitor here in the Eleventh Judicial Circuit.
4 Seated at counsel table with me is Ms. Sutania Radlein.
5 She is also an Assistant Solicitor and she's actually lead
6 counsel on this case. It is our privilege to present the
7 evidence in this case to you. I trust that you will keep
8 an open mind and that you will use your common sense and
9 that at the end of this trial, you'll agree with us beyond
10 a reasonable doubt that on March 14, 2014, Johnny Lee
11 Lawson, was guilty of breaking into a motor vehicle. Thank
12 you.

13 THE COURT: Thank you, Solicitor.

14 Ms. ZMROCZEK.

15 MS. ZMROCZEK: Thank you, Your Honor, may it please
16 the Court?

17 Johnny Lee Lawson is not guilty. Not only is he
18 not guilty, the State won't be able to even prove to you a
19 close reasonable doubt. I want to touch a little bit
20 briefly on what Mr. Elam said. Mr. Elam said listen to the
21 witnesses and look at the evidence and use your common
22 sense. It is 2014, ladies and gentlemen, it was; it's 2015
23 now. It was 2014. We have crime labs, we have policies,
24 we have procedures, we have DNA, we have fingerprints, and
25 these are not infallible. And the reason that we don't

1 just rely on those is because there are little differences
2 and the State wants to bring you a case with one
3 fingerprint that's a 9 point match that doesn't meet any of
4 the standards. They follow no policies, no guidelines, and
5 they want you to convict Johnny Lawson.

6 Picture March 14th, 2014, they're moving into their
7 nice house, it's late at night, it's dark, there are some
8 street lights, and Ms. Wilbanks sees someone she says
9 breaking into her car. You'll hear evidence that this is
10 not the only time her car gets broken into. But on this
11 night, she describes vaguely an individual and she tells
12 you where -- she tells the police where he goes and they
13 collect not only fingerprints. What Mr. Elam didn't tell
14 you is they collect a crowbar too. And he told you very
15 clearly, he held up his right hand so she could see that
16 there were no gloves on it.

17 In this day of DNA and fingerprints, there's no
18 excuse to not collect and present the evidence to you.
19 There's no excuse not to follow policies. Ladies and
20 gentlemen, we have the best system in the world because
21 what injustice looks like, Mr. Lawson can tell you what it
22 looks like. It looks like someone who walks the street of
23 Cayce, someone who gets presented with a case where they
24 don't provide a crowbar or they don't get any DNA testing
25 done, or they won't give you their qualifications and they

1 just say convict.

2 And, ladies and gentlemen, Mr. Elam talked about
3 their standard of proof, or their requirement. I was
4 appointed. I'm a private attorney, but I do contract work.
5 So I'm a public defender in this case and the reason that I
6 do contract and take these cases is because I'm so
7 passionate about the constitution. Mr. Elam and Mr. --
8 excuse me, and Ms. Radlein represent the State of South
9 Carolina and I often tell people, I represent the
10 constitution.

11 I represent Mr. Lawson as well and I represent that
12 you, as the finders of fact, hold the State to that burden
13 because you have to ask them, have you proven to us beyond
14 a reasonable doubt, that that one fingerprint, one
15 fingerprint, was a 9 point match, which you'll hear doesn't
16 even meet the standards. Is that enough? Is there any
17 reasonable alternative? Do we have any reason to doubt
18 that that's Mr. Lawson?

19 Ladies and gentlemen, I'll submit that you will
20 have a reason to doubt. But the reason to doubt is because
21 Mr. Lawson is not guilty and at the end of this case, I'll
22 be asking you to find that verdict and do justice. Thank
23 you.

24 THE COURT: Thank you, Ms. Zmroczek.

25 Solicitor, you may call your first witness.

1 MR. RADLEIN: Your Honor, we have a matter.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury panel, we'll take a brief recess. I think there's a
4 matter of law. I would ask you during this recess, if you
5 would please select one of your number to serve as the
6 foreperson of the jury. It can be anyone but our
7 alternate, Mr. Mikulecky; is that close enough?

8 THE JUROR: Yes, sir.

9 THE COURT: Thank you very much. It can be anyone
10 but that gentleman, although I think he would make a fine
11 jury foreperson, right now he is in the status of an
12 alternate juror. So if y'all would make that selection
13 among yourselves. It can be, as I told the frequent flyers
14 that heard this, it can be prior juror service; it can be
15 whoever walks in the jury room last, whoever walks in
16 first; it can be whatever criteria any of your number will
17 make an excellent jury foreperson. If you would select one
18 of your number to be that person, write down the number and
19 the name of who is selected and when you come back out
20 after this brief recess, just give that information to the
21 bailiff.

22 Do not discuss the case during this brief recess.
23 Thank you very much. You may now go with your bailiff.

24 (The jury left the courtroom at 2:42 p.m.)

25 THE COURT: All right. Solicitor.

1 MR. RADLEIN: Thank you, Your Honor. I probably
2 should have mentioned this prior to the start of this case.
3 This trial was scheduled last term of court.

4 THE COURT: Was what?

5 MR. RADLEIN: This case was scheduled for trial the
6 last term of court, well multiple times prior, but we did
7 have an opportunity to have some pretrial hearings before
8 Judge Early. And one of the issues, one of the defendant's
9 page-and-a-half motion included to suppress testimony
10 regarding the victim's subsequent victimization, another
11 car that she owned was victimized after this incident
12 occurred.

13 THE COURT: All right.

14 MR. RADLEIN: And counsel referenced it in
15 openings. I didn't take the opportunity to, she made the
16 motion to keep that testimony out and I didn't want to
17 object during her openings, but I did want to address the
18 Court and put that on the record, Your Honor, that those
19 matters were taken up and she's essentially going against
20 the ruling that had taken place. I'm just seeking some
21 clarification on where this is going throughout this trial.

22 MS. ZMROCZEK: Your Honor, there was no, there was
23 no ruling on that issue. Judge Early said he wouldn't hear
24 either of my motions and then he said any improper
25 testimony regarding Mr. Lawson's arrest, he hasn't been

1 arrested or even charged in these other burglaries. And,
2 Your Honor, I think that it goes to their credibility. You
3 asked if we had any pretrial issues. I didn't bring any
4 pretrial issues up; it was strategy that I had for last
5 week. I changed my strategy this week; it wasn't brought
6 up. There were no rulings made on that case and, and they
7 didn't bring any issues up, Your Honor, so it's, I mean, I
8 think third-party guilt is certainly, we're entitled to,
9 one of the statements that's made is she thinks that the
10 person that broke in a month later was the person that
11 broke in on this month. And, Your Honor, I think that
12 we're entitled to argue third-party guilt.

13 THE COURT: What are you asking me to do?

14 MR. RADLEIN: Nothing, Your Honor. I just, I just
15 wanted some clarification if the defense intends to go into
16 it, that's -- I just wanted to go over, Your Honor, because
17 we did address this.

18 THE COURT: Are you objecting to that?

19 MR. RADLEIN: I was objecting to that reference,
20 Your Honor, because my understanding was that, was that we
21 agreed to keep that out based on the hearing that we had
22 two weeks ago, but if defense now wants to go into it --

23 MS. ZMROCZEK: My client hasn't been arrested, so I
24 mean, for those charges.

25 THE COURT: I have an issue if -- if -- if it's

1 improper testimony.

2 MR. RADLEIN: I don't believe it's relevant to this
3 case, Your Honor, and that's what was discussed before
4 Judge Early. I believe Judge Early's position was her
5 pretrial motions were more appropriate throughout testimony
6 because he was, she was essentially asking the State what
7 we planned to offer as testimony, but since we, she brought
8 that up in the motion, it was addressed that it was not
9 relevant testimony, that one, Lawson was not charged with
10 the two subsequent victimizations. The victim, it was her
11 other vehicle that was broken into. The glass was
12 completely knocked out. No charges came from that. It's
13 not related to this case, this break-in that happened on
14 March 14th. And Judge Early made it clear that the only
15 case being tried and the only testimony is regarding the
16 events that happened on March 14th, 2014 and defense
17 counsel is now going against that.

18 MS. ZMROCZEK: Again, Your Honor, I wasn't aware of
19 any ruling that came down. I'm just going off an incident
20 report that they provided to me that says she believes it
21 was the same person. So I think I'm entitled --

22 THE COURT: This is no -- no -- no whatsoever, no
23 disrespect to Ms. Wilbanks whatsoever. Is she a forensic
24 investigator; does she have any expertise in the field of
25 law enforcement.

1 MR. RADLEIN: No, Your Honor.

2 THE COURT: That's pure speculation. Your close
3 reading of State v. Parker, State v. Gay, State v.
4 Williams. Williams is where the wife and the son's body
5 was found and they tried to say that it was a marijuana
6 deal because there was marijuana in the area. That doesn't
7 meet the standard of third-party guilt. State v. Gay, that
8 doesn't meet the standard of third-party guilt even when
9 there was other forensic evidence. State v. Parker, the
10 victim of a homicide in Charleston; the codefendant, not a
11 codefendant, a third party came along and found the body
12 and had a psychiatric history; that's not third-party
13 guilt.

14 The homicide over there off of South Holly and
15 Rosewood where -- on Pennington Street, a name I can never
16 forget, a death penalty case out of Richland County.
17 That's not third-party guilt. The fact that she had
18 another vehicle that was broken into and then said I
19 believe the same person did it, it's not -- it's not
20 competent evidence, it's not third-party guilt.

21 MR. ZMROCZEK: Okay, Your Honor. And, Your Honor,
22 just to preserve the record, I would be arguing that under
23 Holmes v. South Carolina, United States --

24 THE COURT: Bobby Holmes out of Union, that's --
25 that's -- that's very different.

1 MR. RADLEIN: Right, Your Honor.

2 THE COURT: That's out of the Sixteenth Circuit.

3 MR. RADLEIN: Right, but the description that she
4 gives of the -- of the two people is the same. I agree,
5 she is not a forensic expert, but --

6 THE COURT: Well, all you told me a minute ago, Ms.
7 Zmroczek, is she said I believe the same person did it.

8 MS. ZMROCZEK: Based on the description. I'm
9 sorry. Maybe I left that out.

10 THE COURT: Please don't interrupt me again.
11 Nobody has even asked for identification pretrial motion.
12 I don't even know that identification is going. All I -- I
13 was born a few minutes ago in this case. All I know is
14 there's a fingerprint; it's an old science, old technology.
15 Nobody asked for the identification hearing a Neil v.
16 Biggers hearing. So how, how do I get then to say well,
17 she identified the same person. Why is that; I'm not
18 tracking y'all.

19 MR. RADLEIN: And, Your Honor, I can clarify. The
20 two subsequent incident reports that we turned over to the
21 defendants in no way indicates that she saw this person.
22 It was break-in in the motor vehicle that occurred
23 overnight. She came out and saw that her car was broken
24 into, the window had been smashed out. She didn't see the
25 person in this situation. Therefore, there was no, there

1 was nothing the police could go on in that case. So what
2 defense counsel is referencing in these reports, I do not
3 know because it's not what I turned over.

4 THE COURT: And, and well explain it to me, Ms.
5 Zmroczek?

6 MS. ZMROCZEK: Well, and, Your Honor, if they're,
7 if they're now making a motion for me to not be able to ask
8 her about her other break-ins, then I won't and you just
9 tell the jury what we said in evidence is not -- or what we
10 say in opening is not evidence and so, you know, if you
11 instruct me not to mention it again, I will not mention it
12 again.

13 THE COURT: If at any point, you think it may be
14 admissible, Ms. Zmroczek, all you have to do is what the
15 solicitor did and say, Your Honor, we -- I don't like
16 suggestions, you know you can say whatever. I have a
17 matter of law and I'd be delighted to take it up outside of
18 the presence of the jury because as you know, it may not be
19 admissible at this point, but you don't know how, the way
20 the evidence develops and what may be inadmissible at this
21 point in time, may become admissible at a later point in
22 time. All right.

23 MS. ZMROCZEK: Thank you.

24 THE COURT: And you're not asking me to do
25 anything?

1 MR. RADLEIN: Your Honor, it was just
2 clarification. When we left it two weeks ago, we weren't
3 talking about anything but March 14, 2014, and I got
4 blind-sighted this morning, I mean this afternoon.

5 THE COURT: Dial is the name I was thinking of.

6 MR. RADLEIN: Thank you, Your Honor.

7 THE COURT: You ready to bring them in. They got
8 a -- they got an election; they have an election?

9 THE BAILIFF: Sir?

10 THE COURT: They had an election?

11 THE BAILIFF: I'll find out.

12 THE COURT: If they have, bring them on.

13 MS. RADLEIN: Your Honor, I'm sorry, my witness
14 just had to use the bathroom; is that okay?

15 THE COURT: It's fine with me. Is he your first
16 witness?

17 MR. RADLEIN: No, Your Honor.

18 THE COURT: It's fine with me, of course.

19 (The jury entered the courtroom at 3:10 p.m.)

20 THE COURT: Is this our foreperson?

21 THE JUROR: 172.

22 THE COURT: 172. Thank you for volunteering. Do
23 you demand a recount? Thank you. Thank you very much.
24 You'll be the jury spokesperson here in the courtroom and
25 responsible for writing and signing the verdict.

1 Also, ladies and gentlemen, now that we have our
2 foreperson in place and our alternate, if you would always
3 maintain those two, those seats for me. The others, the
4 others, you may sit wherever you like within the jury box.
5 Having, having observed jurors over many years, I've found
6 that they're, they can be very territorial. They want to
7 sit in the same seat every time, have the same view of the
8 witness stand and the same view of the courtroom. I do
9 too; I like that and I'm used to it. But you can sit
10 anywhere you like. You can maintain the same seat if you
11 like. Thank you very much.

12 All right. Solicitor, you may call your first
13 witness.

14 MR. ELAM: Thank you, Your Honor, if it please the
15 Court, the State calls Jessica Wilbanks.

16 THE COURT: All right. Ms. Wilbanks, if you'd come
17 around and be sworn for us please.

18 JESSICA WILBANKS,
19 having been duly sworn, testified as follows:

20 THE CLERK: Thank you. If you'll have a seat over
21 here. If you'll state your name, please, and spell your
22 last for the record.

23 THE WITNESS: My name is Jessica Wilbanks and
24 should I spell?

25 THE CLERK: Please.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 THE WITNESS: Jessica is spelled J-E-S-S-I-C-A.

2 Wilbanks is W-I-L-B-A-N-K-S.

3 DIRECT EXAMINATION

4 BY MR. ELAM:

5 Q Ms. Wilbanks --

6 THE COURT: Solicitor?

7 MR. ELAM: Thank you, Your Honor.

8 BY MR. ELAM:

9 Q Ms. Wilbanks, I've been told that I'm a bit soft in
10 my voice and I'm going to have to remember to keep it up so
11 all the jurors can hear us. If you'll help with that by
12 keeping your voice up, I'll really appreciate it.

13 A Okay.

14 Q Talk a little bit louder than you're used to
15 talking.

16 A Okay.

17 Q Okay.

18 A Yes, sir.

19 Q All right. Now, could we start by telling the
20 jurors where you, just generally, where you live now.

21 A I live in Cayce.

22 Q All right. And how long have you been in Cayce?

23 A We moved to Cayce in March of 2014.

24 Q All right. Do you currently live at Holland
25 Avenue?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A No, sir, we moved.

2 Q All right. Tell me have you ever lived at
3 Holland Avenue?

4 A Yes.

5 Q And as you mentioned that's in the town of Cayce?

6 A Yes, sir.

7 Q And in what county is that in?

8 A Lexington.

9 Q And I ask you that for venue purposes. When did
10 you live at Holland Avenue?

11 A We lived there from March 2014 through the first of
12 August in 2014.

13 Q And you said we?

14 A Blake and I and we have a teenager, Michael, who
15 lives with us.

16 Q All right. Tell me something about Blake; who is
17 Blake?

18 A Blake is the gentleman in the bow tie. He's my
19 husband. We've been married for almost eight years.

20 Q Okay. And who is Michael?

21 A Michael is a teenager from Williston, South
22 Carolina that moved to live with us when we moved to
23 Columbia. He's a senior in high school. He's just turned
24 eighteen.

25 Q And just turned eighteen?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Uh-huh (affirmative response).

2 Q Anybody else besides the three of you living at
3 Holland Avenue at the time you lived there?

4 A No, sir.

5 Q What do you do for a living?

6 A I'm the Director of Barnwell County United Way.

7 Q Okay. How long have you done that?

8 A I worked four consecutive years, took a nine month
9 break when we moved to Columbia and I just took my job back
10 in June.

11 Q Okay. Do you recall the day that you moved into
12 Holland Avenue?

13 A Yes, sir, it was the week of March the 14th. So we
14 had gone and seen the property and picked up some paint
15 colors, pulled out some carpet, and then we moved -- we
16 were going to spend the weekend, the 14th, moving in.

17 Q And that's March 14th?

18 A Yes, sir.

19 Q 2014?

20 A Uh-huh (affirmative response).

21 Q All right. What kind of house is there at
22 Holland Avenue?

23 A It's red brick with windows across the front and
24 there are green and white awnings.

25 Q All right. Now what's around that house?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Across the street to the right is the First Baptist
2 Church of Cayce and then I had neighbors on either side and
3 across the street.

4 Q All right. So you said you had neighbors on either
5 side. I take it this is a suburban type neighborhood; is
6 that right or am I --

7 A The end of our street is residential, yes, sir.

8 Q Residential?

9 A Uh-huh (affirmative response).

10 Q Okay. So it's all houses around you except the
11 church across the street?

12 A Uh-huh (affirmative response). Yes, sir.

13 Q And what's the area called?

14 A The Avenues.

15 Q So Holland Avenue?

16 A Yes, sir.

17 Q I guess everything else is Avenue there too?

18 A Yes, sir.

19 Q All right. Now when you were moving in, where were
20 you moving from?

21 A Barnwell, South Carolina.

22 Q All right. So is this your first time living in
23 Cayce?

24 A Yes, sir.

25 Q All right. And what kind of, what kind of

Jessica Wilbanks - Direct Examination by Mr. Elam

1 arrangements did you make for moving; did y'all have Atlas
2 Vans or what?

3 A Initially we were just bringing the beds to sleep
4 in for the weekend while we made repairs on, as a rental
5 property, it had been vacant for a while. Like I said, we
6 had to pull some carpet out. So we just brought just the
7 basics. So we brought the truck, our truck and trailer and
8 had it loaded with just some kitchen necessities, bathroom
9 items, cleaning supplies and, and the bed we were going to
10 sleep in.

11 Q All right. What kind of truck was that?

12 A It's an older Land Rover.

13 Q A Land Rover?

14 A Gold. Uh-huh (affirmative response).

15 Q What about the trailer, what kind of trailer are we
16 talking about?

17 A It's a small trailer, probably the length from one
18 of the marble slabs to the other. So it's not a very large
19 trailer.

20 Q One marble slab to the other?

21 A Yes, sir. One of the, one column to the next, yes,
22 sir.

23 Q On the jury bench right here?

24 A Yes, sir.

25 Q Okay. I'm not gonna try to estimate that distance

Jessica Wilbanks - Direct Examination by Mr. Elam

1 for the record. Let it be known that you pointed to one
2 column to the next on the jury bench. And other than the
3 truck and trailer, what else did you have out there for
4 transportation?

5 A The car. It's a 2001 C70 Volvo convertible. It's
6 silver with a black top and it was parked on the street
7 facing State Street.

8 Q All right. So if you're at your house looking out
9 at the curb, is the car facing to the right or to the left?

10 A The car's facing to the right.

11 Q To the right. All right. So what kind of lighting
12 existed out there -- let me ask you what time first. What
13 time were you moving in?

14 A Well it was, it was late at night because Blake had
15 gotten off work and then we went for supper and came home
16 and started unloading the truck. So it was around 10:30.

17 Q Okay.

18 A It's when I called an incident, but we had probably
19 been working for about an hour.

20 Q All right. Yes, let's, what was the weather like
21 that night at 10:30 or ten o'clock?

22 A Clear and mild probably much like it is today.

23 Q All right. And you could see what you were doing
24 when you went outside and got stuff from the car to bring
25 it in?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Yes, sir, we had the porch lights on. Our
2 neighbor's porch light was also on and then there's also a
3 street light at the church.

4 Q All right. And later I'm going to show you a plat
5 and see if you can identify it, but if you do, if we're
6 allowed to show it to the jury, at that point, I'll ask you
7 to identify some light sources. Do you feel like you'd be
8 able to do that?

9 A Yes, sir.

10 Q So tell me did anything unusual happen this night
11 while you're moving into this new house; new -- new for
12 you; maybe not a new house, but new to you?

13 A Yeah. So we were moving in. We had taken the box
14 spring in the house and I was coming back outside just to
15 get some more items and heard a noise, thought maybe it was
16 Blake unloading something from the truck, but we were
17 coming out to get the mattress was the next thing we were
18 going to take in. And so I heard a loud noise and so I
19 stand at the back of the trailer and so I head a loud noise
20 closer to the front, closer to the street --

21 Q Okay.

22 A -- at the car and, and so I called, I said, you
23 okay. Blake, is that you and I was walking closer like to
24 see if I could help and it was, it was not Blake. There is
25 a man standing over my car.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q All right. So where were you standing when you, or
2 were you moving when you first saw that there was a man
3 standing at the car?

4 A It was probably a distance from where, from where I
5 am to you are.

6 Q Okay. About this distance right here?

7 A Yes, sir. Uh-huh (affirmative response).

8 Q Again, I don't want to estimate the distance for
9 the record, but it's, it apparently is from I couldn't get
10 the windows down until about the end of the jury box here;
11 is that right?

12 A Yes, sir. So the distance of the trailer and the
13 truck parked in the driveway was the distance from the end
14 of the carport to the street itself.

15 Q All right. And what, you said you originally
16 thought it might be your husband?

17 A Uh-huh (affirmative response), because we were
18 moving things in and out and I heard a noise and that's the
19 way I assumed the noise would be, would be that he was
20 unloading the truck and all. Anyway and we're normally
21 pack things pretty, pretty tight, like you know, so I
22 thought maybe he needed help.

23 Q All right. So when you first perceived this
24 person, did you stand still or are you still moving towards
25 this person?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A I was still moving towards the person because I
2 didn't realize, I didn't realize there was a situation.

3 So --

4 Q Okay. And when did you realize there was a
5 situation?

6 A As I got closer, so Blake wears a uniform to work
7 and that wasn't, that wasn't who I was looking at. This
8 was a different person so I was startled.

9 Q What did you do when you realized it wasn't your
10 husband?

11 A I -- I turned around and went back around the
12 trailer into the house to go get Blake.

13 Q Okay. Did you say anything?

14 A I didn't -- I don't think I said anything. I think
15 I went like straight in the house and then like called
16 Blake's name when I got in the house.

17 Q Okay. Describe as best you can this person that
18 you saw on the street and tell me what this person was
19 doing.

20 A Okay. So the car was, you know, parked at the curb
21 and so I walked up close to the tree and the man was
22 standing over the car so because it's a convertible, it's
23 lower so my chin is actually over the car also, but the
24 individual was taller than myself.

25 Q Let me back up a little bit again, just to make

Jessica Wilbanks - Direct Examination by Mr. Elam

1 sure we get everything clear. What car are we talking
2 about?

3 A The silver Volvo.

4 Q That's the second car that y'all had to transport
5 stuff in?

6 A That day, yes.

7 Q Okay. Just being clear. Now you said it's a
8 convertible?

9 A Uh-huh (affirmative response).

10 Q Was the top up or down?

11 A The top was up.

12 Q The top was up. You say it's a lower profile car;
13 is that right?

14 A Yes.

15 Q All right. And your head can clear it?

16 A Yes.

17 Q Now, this person that you saw standing up against
18 the car, describe how they appeared in comparison to the
19 car; let's start with that.

20 A Okay. So taller than the car; full -- full head
21 taller, shoulders -- shoulders above the car.

22 Q All right.

23 A And --

24 Q Taller than you or --

25 A Taller than me.

Jessica Wilbanks - Direct Examination by Mr. Elam

- 1 Q Okay.
- 2 A Back to me and I could hear noises.
- 3 Q Was this person a child or an adult?
- 4 A Adult.
- 5 Q Male or female?
- 6 A Male.
- 7 Q And what was this person; do you remember what the
8 person was wearing?
- 9 A A dark hoodie sweatshirt and either very dark blue
10 jeans or, or black jeans.
- 11 Q All right. Did you hear anything as you observed
12 this person up against your car?
- 13 A I heard the noise of the metal, like metal against
14 metal and so like if you were pulling, you know, or
15 scraping on something. There was a, there was a metal,
16 like a friction kind of a noise.
- 17 Q Have you described it as a scraping sound before?
- 18 A Yes.
- 19 Q Okay. So you hear the noise. Now where exactly at
20 your car is this person in the hoodie?
- 21 A Standing in front of the passenger side door.
- 22 Q In front of the passenger side door. How many
23 doors on one side of the car?
- 24 A Just one door.
- 25 Q Okay. So it's a two-door, not a four-door?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Right.

2 Q Okay. They're right at the passenger door,
3 passenger window?

4 A Yes, sir.

5 Q Okay. Can you see what's going on with the hands
6 at that point?

7 A I could not see in front of him. Just like he
8 startled me, I -- I startled him and he left pretty
9 quickly. So as I was going in the house, he was leaving
10 the street. So --

11 Q Okay. And we'll pick back up there in just a
12 minute now. Who drove that car to the scene and parked it
13 at the curb?

14 A I believe Blake drove.

15 Q All right. And who ultimately left the car there
16 at the curb because I want to ask about the condition it
17 was left in?

18 A We probably both went in, went inside to move
19 things in and out together. So I would say we both would,
20 we both left it, but I was riding in the passenger side
21 seat. So I would have been the person who was last on that
22 side of the car.

23 Q Okay. Did you leave anything in the car?

24 A Yes.

25 Q And this is before you got out and started bringing

Jessica Wilbanks - Direct Examination by Mr. Elam

1 stuff in the house?

2 A Yes, I left everything from the day that I had
3 previously, like my work bag; I left my purse in the car.
4 So everything that had been with me that day, I left it in
5 the car because the car was locked, the house was not
6 because we were moving things in and out. So --

7 Q Okay. So when you originally parked this car by
8 the curb while you were moving stuff into your house, you
9 just said you locked the car?

10 A Yes.

11 Q All right. And were the windows of the car up or
12 down?

13 A Up.

14 Q Why so?

15 A Because, well, actually the convertible top doesn't
16 work in the car and so we don't roll the windows down
17 usually like unless we're going through a drive through or,
18 or some reason like that. Otherwise we don't usually ride
19 with the windows down.

20 Q All right. And you're positive the windows were up
21 on this occasion?

22 A Yes, sir.

23 Q All right. Now when you saw this stranger up
24 against the car, did the person just stay there and keep
25 scraping away or what did they do?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A After I called Blake's name the first time, they,
2 they remained. It wasn't until we saw each other that he
3 left. So he kept working until he saw me and then he left.

4 Q To be clear on that, when you say until we saw each
5 other that he left; who is we?

6 A He and I kind of disturbed each other. Like he
7 realized there was someone behind him and I realized there
8 was someone in front of me.

9 Q Okay. And did, did you see a face?

10 A I didn't, no, sir.

11 Q All right. And I just want to be clear on that.
12 You said he saw you?

13 A I mean to say that --

14 Q Perceived you or what?

15 A Perceived is probably a better word. So if you
16 walk up behind somebody and you know, you know there's
17 somebody there, I'm probably making noise because I'm
18 moving things and he was making noise at my car.

19 Q Right.

20 A So -- so I knew someone was there, but wasn't
21 expecting someone to be breaking into my car.

22 Q All right.

23 A That isn't what I was expecting.

24 Q And when you perceived that this stranger noticed
25 you, what did the stranger do?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A He stopped touching my car and ran around the front
2 towards the church.

3 Q Okay. Did you see any particular part of this
4 person's feature?

5 A I did see his right hand and noticed that he was
6 thin and broad shouldered --

7 Q All right.

8 A -- but -- and then he, he went around the front of
9 the car and then I turned to go around the back of the
10 trailer.

11 Q To go where?

12 A Into the house.

13 Q Okay. Presumably to get your husband?

14 A Yes.

15 Q All right. Well, this hand that you saw, what
16 did -- I mean, you mentioned you saw a right hand; what,
17 tell us more specifically what you perceived?

18 A He pulled, he pulled his hand up and then started
19 running. So his right hand came up and then he started
20 running.

21 Q What, if anything, could you tell from looking at
22 his right hand?

23 A He was a black man.

24 Q All right. Was there a glove on that hand?

25 A No, sir.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q And there -- there was enough light for you to be
2 able to tell that?

3 A Yes, sir.

4 Q And about how close were you at that point; you
5 want me to walk towards you?

6 A Probably this distance because where you are now,
7 because I was closer to the back, I had surpassed the
8 trailer thinking it was Blake, so I was approaching the
9 truck at this time. So I was closer at that time.

10 Q Okay. Are you any good at estimating distances;
11 how far do you think we are apart?

12 A We are twenty feet apart.

13 Q I may differ in my opinion, but I'm not going to --

14 A I'm not sure, but I think fifteen to twenty feet,
15 yes, sir.

16 Q So the jurors can see. All right. So you -- what
17 happens when the stranger throws the hand up and goes
18 around the car, then what does the stranger do?

19 A He started running and went down the side of the
20 church building and I was trying to pay attention to
21 where -- to where he was going to make sure that I was
22 running away from him, you know, that I was being safe. So
23 I was kind of like looking over my shoulder as I was
24 running in the house and you can see the street light at
25 the church, I could see that he ran past the bricks. I

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1 could see the shadow of him running past the bricks.

2 Q Briefly, just briefly, recount for us where all the
3 different lights are that are located outside that you're
4 recall --

5 A Okay.

6 Q -- that you remember.

7 A There is light by the side door where we were
8 loading in. There is a light at the corner of my
9 neighbor's house and there is the tall-like street light
10 across the street at the church.

11 Q Okay. When you went into the house, what did you
12 do?

13 A I ran kind of into the house and called for Blake
14 and, like, he wasn't in the side den. So I ran through the
15 living room to the bedroom where he was putting the bed
16 together and I said there's someone breaking in the car,
17 you know, and so he stopped what he was doing and we both
18 turned around and went back through the house outside.

19 Q Okay. Did you say it in just casual conversation
20 with him or did you --

21 A No, I was like, There's, There's someone breaking
22 in the car, you know.

23 Q You were excited?

24 A I was startled. Like, I was still startled from
25 encountering a stranger, yeah, so, yeah, I would say I was

Jessica Wilbanks - Direct Examination by Mr. Elam

1 excited.

2 Q Okay.

3 A Louder than usual.

4 Q Did y'all stay inside or did you go back outside?

5 A We went outside.

6 Q How long did that take from the time that you ran
7 in to get Blake?

8 A Probably thirty seconds. Yeah, I think because I
9 just, I went directly to find him and then we came directly
10 back outside.

11 Q Did it take you long to find him?

12 A No, he wasn't like in the doorway when I walked in,
13 so I, like, went across the house until I did find him.

14 Q Okay. Is this a two-story house or a one-story
15 house?

16 A No, it's a one-story.

17 Q All right. Did you both go back outside together?

18 A Yes.

19 Q All right. When you went back outside, did you see
20 anybody?

21 A No.

22 Q Did you hear anybody?

23 A No, sir.

24 Q Footsteps or running or anything like that; did you
25 see any people moving around?

Jessica Wilbanks - Direct Examination by Mr. Elam

- 1 A No, sir.
- 2 Q Was the street deserted when you went back out?
- 3 A Yes, sir.
- 4 Q Okay. At what point -- or did you ever, did you
5 ever call for help?
- 6 A Yes, we, we called 911.
- 7 Q With what?
- 8 A Huh?
- 9 Q With what?
- 10 A My cell phone. So it was in the truck. I had sat
11 it down while we were moving things and so, so I was able
12 to use the phone outside.
- 13 Q So you called from outside?
- 14 A Uh-huh (affirmative response).
- 15 Q The only time you were inside the house was just to
16 get your husband and come back out?
- 17 A Yes.
- 18 Q All right. Did you get a response to your 911
19 call?
- 20 A Yes, someone answered the phone and said that they
21 would send a police officer and then a few minutes later,
22 the police officer came.
- 23 Q All right. Did you all stay outside the whole
24 time?
- 25 A We did, yes, sir.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q Did you stay near the Volvo involved in the -- the
2 incident the whole time?

3 A Yes, sir, we could see the Volvo the whole time,
4 but we did continue to pull some things out of the truck,
5 but we were right, we were right there near both cars.

6 Q During the time that it took the police to come to
7 the scene, did anybody touch the car?

8 A No, sir.

9 Q Yourself included?

10 A No, sir.

11 Q Or your husband?

12 A We -- I showed -- I showed Blake where the man had
13 been standing and we could see that the window was pushed
14 down and we did not touch the car. We just waited for the
15 police to come.

16 Q Now, you mentioned that you left something in the
17 car earlier?

18 A Yes, I left my work bag and my purse were both in
19 the car and I imagine Blake's work bag was probably in the
20 car also.

21 Q All right. Can you describe your purse you left in
22 the car?

23 A Yes, it's a -- a small, about this size and this
24 tall. It has black handles and a leopard print leather
25 case.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q All right.

2 MR. ELAM: Your Honor, I beg the Court's indulgence
3 just a moment.

4 THE COURT: Yes, sir.

5 BY MR. ELAM:

6 Q I'm going to hold up an object and ask you, is this
7 the purse that you're referring to?

8 A Yes, sir.

9 Q Okay. That's what you had in the car?

10 A Yes, sir.

11 Q All right. Was that purse visible from outside the
12 car?

13 A Yes, sir.

14 Q And was there any damage done to your car?

15 A Yes, the window was not broken, but it was pushed,
16 down. The damage that was done was to the exterior of the
17 car. There are scratches where the two windows come
18 together and then at the base of the window where the door
19 locking mechanism and window buttons are, inside the --
20 inside the door, all of those parts, the motor and pieces
21 that hold the window in tact were all damaged.

22 Q Okay. And, I'm going to jump ahead a little bit and
23 then come back, but did you ultimately ever have a reason
24 to try to shut the window later that night; let's go way
25 forward now later?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A No. We -- after the police were finished, we
2 didn't move the car that night, but from the driver's side
3 you can try to roll the window up and it didn't, it
4 wouldn't go up so what we eventually did was just took it
5 to the mechanics to get an estimate and we decided not to
6 repair, not to spend the money that it was going to take to
7 make the repairs. Instead he used a shim just to hold the
8 window in place.

9 Q So you fixed it with a wood block or something?

10 A Yes, sir. So it never went up and down again.

11 Q And that problem with the window did not exist
12 before --

13 A No, sir.

14 Q -- you saw the stranger at the window making the
15 scraping sounds?

16 A No, sir.

17 Q Okay. And again, just for clarity, you had left
18 the car with the window up?

19 A Yes, sir.

20 Q But when you came back after the stranger ran away,
21 the window was down?

22 A Yeah, and about half way.

23 Q Okay. When -- how many police officers arrived
24 initially?

25 A One initially.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q All right.

2 A And then later on the gentleman came to take
3 fingerprints. I believe, I know another police officer
4 kind of stopped by, but he didn't get out of the car. I
5 think they were just exchanging like having a conversation.

6 Q Okay.

7 A But the only two that I remember that were actually
8 involved.

9 Q And you don't remember the name of the officer that
10 arrived first, do you?

11 A Officer Kelly arrived first.

12 Q Okay.

13 A He actually has done, like, some neighborhood
14 patrol and like come by and introduced himself.

15 Q Okay.

16 A So that's why I remember him specifically.

17 Q Okay. And what, if anything, did you observe him
18 do when he reported to the scene after you called 911?

19 A Well he drove -- first he drove around looking like
20 with his lights to see if he could see anyone and then he
21 came back and took the statement and then while the
22 gentleman was there taking the fingerprints, Officer Kelly
23 had walked the area.

24 Q Okay. You said took the statement, what do you
25 mean by that?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Took my statement about what happened.

2 Q Oh, just asked you what happened?

3 A Yes, sir.

4 Q All right. Did Officer Kelly, to your
5 recollection, do anything to preserve any evidence at the
6 scene? Did he --

7 A He asked if we had, he asked if we had touched the
8 car and we told him that we had not touched the car and he
9 asked us to -- to leave it alone until the investigator
10 could get there.

11 Q Okay. Now did anybody take any pictures of the
12 car?

13 A Yes.

14 Q Who was that?

15 A I believe it was both Officer Kelly and the
16 investigator that took pictures of the car.

17 Q Okay. All right. I'm going to show you some items
18 that have been pre-marked of State's Exhibits 1 through --
19 1 through 6.

20 MS. ZMROCZEK: Those are without objection, Your
21 Honor.

22 THE COURT: State's 1 through 6 is in evidence
23 without objection.

24 MR. ELAM: Well, thank you.

25 (State's Exhibits Number 1, Number 2, Number 3,

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Number 4, Number 5, and Number 6 were entered into
2 evidence.)

3 THE WITNESS: In order

4 BY MR. ELAM:

5 Q Yeah, just take a look at them real quick.

6 A Okay.

7 MR. ELAM: If I may approach the witness, Your
8 Honor?

9 THE COURT: Of course.

10 MR. ELAM: Thank you.

11 BY MR. ELAM:

12 Q Have you seen these before?

13 A Yes, sir.

14 Q Okay. Let's hold up -- can you step down?

15 A Uh-huh (affirmative response).

16 MR. ELAM: Is it okay for the witness to step down,
17 Your Honor?

18 THE COURT: Sure. Yes, sir.

19 BY MR. ELAM:

20 Q This is Exhibit No. 1, it's already in evidence.
21 So tell the ladies and gentlemen of the jury what that
22 shows in that picture?

23 A So this is the passenger side seat of the car and
24 the door of the Volvo and this is the piece of metal where
25 the two windows come together; they join and so you can see

Jessica Wilbanks - Direct Examination by Mr. Elam

1 here where the door locking mechanism is and you can see
2 that the window is halfway down and there is damage to the
3 center portion of the car.

4 Q So when you say damage, you're pointing to this
5 white area?

6 A Yes.

7 Q All right. And the window, you didn't, you didn't
8 put the window in that position?

9 A No, sir, the window would have been all the way up
10 when we -- when we left it.

11 Q Okay. Thank you.

12 State's Exhibit No. 2, tell us what that shows?

13 A This shows the side of the car with the windows
14 down.

15 Q All right. And definitely your car?

16 A Yes, sir.

17 Q All right. State's Exhibit No. 3?

18 A This shows more of the damage where the door facing
19 has been pulled away and you can see also on the interior
20 where it's been pushed away and yeah, and just a different
21 angle how the window has been lowered.

22 Q Okay. So the bottom line is it just shows damage?

23 A Uh-huh (affirmative response).

24 Q Okay. State's No. 4?

25 A It's an angle from the back of the car. Just it's

Jessica Wilbanks - Direct Examination by Mr. Elam

1 parked on the street and you can see the church across the
2 street.

3 Q All right. And the distance that it is from the
4 curb, is that how it was originally parked --

5 A Yes.

6 Q -- before the incident happened?

7 A Yes.

8 Q So the car hasn't been touched --

9 A It has not been.

10 Q -- or moved?

11 A No, sir.

12 Q Okay. State's Exhibit No. 5?

13 A This picture is very similar to the first one.

14 Q Okay.

15 A It shows the damage on the side and at that the
16 window has been lowered.

17 Q Okay. It shows, you say damage and that the window
18 has been lowered from the original raised position?

19 A Yes, sir.

20 Q Okay. And finally, State's Exhibit No. 6?

21 A These look like fingerprints.

22 THE COURT REPORTER: I can't hear her.

23 THE WITNESS: These look like fingerprints on the
24 glass.

25 ///

Jessica Wilbanks - Direct Examination by Mr. Elam

1 BY MR. ELAM:

2 Q Did you notice these objects, fingerprints,
3 apparent fingerprints on the glass the night of the
4 incident?

5 A Yes.

6 Q So what's this yellow stuff?

7 A Well there's a, there's a, there's a tree right
8 there, so it may be pollen or it could just be dirt because
9 we didn't wash this car very often.

10 Q Okay. So it could be pollen you say?

✓11 A Yes, sir.

12 Q And this happened March?

13 A Uh-huh (affirmative response). March 14th.

14 Q Thank you. While you're down, I think I want to go
15 ahead and engage in some high tech here.

16 Now, I'm going to set this up so you stand where
17 I'm standing right now and you're talking right towards the
18 Court Reporter.

19 MS. ZMROCZEK: All of these are in without our
20 objection. The big ones.

21 MR. ELAM: Thank you.

22 THE COURT: Thank you, Ms. Zmroczek.

23 BY MR. ELAM:

24 Q Since it is without objection, I don't need to ask
25 the special questions, so I'll get right to it. Now what

Jessica Wilbanks - Direct Examination by Mr. Elam

1 I'd like to do and make sure everybody in the jury can see
2 it. I'm going to push it back far enough so you can past
3 the exhibit to the Court Reporter and if you want, you can
4 use this fancy little pointer.

5 A Okay.

6 Q There's that button.

7 A Thank you.

8 Q I'll get on this side of you. Now have you had a
9 chance to look at this exhibit; it State's Exhibit No. 10
10 for the record.

11 (State's Exhibit Number 10 was entered.)

12 THE WITNESS: Yes, sir.

13 BY MR. ELAM:

14 Q All right. Tell -- tell us what that depicts?

15 A So this is the house at on Holland Avenue.

16 THE COURT: Hold up there for just a minute,
17 Solicitor. I'm going to walk around:

18 MR. ELAM: Yes, Your Honor.

19 THE COURT: Hold on a minute:

20 (The Court walked around to see what was being
21 shown to the jury.)

22 THE COURT: Thank you, Solicitor.

23 BY MR. ELAM:

24 Q All right. Let's -- let's start over. Is, is this
25 Holland Avenue?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A Yes, sir.

2 Q Okay. That's the house you were moving into?

3 A Yes, sir.

4 Q Use the pointer please and show us the driveway?

5 A Okay. This is the driveway here.

6 Q All right. And show us where the truck and the
7 trailer were parked just to get those out of the way.

8 A All right. The trailer was parked right up against
9 like where this bush is. So I had, we had just enough room
10 like to walk through there because there's a staircase that
11 goes into a side door. Just above this carport is where
12 the steps on the side door are and then the trailer comes
13 out to like right here and the truck comes out to the
14 street.

15 Q Okay. And where was the Volvo?

16 A The Volvo is parked where this SUV is, but it was
17 facing the opposite direction.

18 Q So it was facing away from us?

19 A Yes.

20 Q And it was -- was it along that curb?

21 A It was on the same curb, yes, sir, in front of the
22 tree.

23 Q All right. So when I earlier asked the question
24 about this man you saw at the street before we had
25 reference, that wasn't quite accurate was it?

Jessica Wilbanks - Direct Examination by Mr. Elam

- 1 A Sir.
- 2 Q He wasn't near the street was he?
- 3 A No, he was like maybe standing at or on the curb.
- 4 Q Okay.
- 5 A Right there.
- 6 Q Now, show us where the light sources were if you're
- 7 able to.
- 8 A Uh-huh (affirmative response). There's a light
- 9 source on here, there's one on the side of the house that
- 10 you can't see right there where the door is and then back
- 11 across the street where the church is there's a big street
- 12 light.
- 13 Q Did you have lights on inside the house itself at
- 14 the time?
- 15 A Yes, all of the lights were on.
- 16 Q Okay. And again was it bright enough to see what
- 17 you were doing as you unloaded your car?
- 18 A Yes.
- 19 Q All right. Now the stranger that you saw at your
- 20 Volvo, we'll just pretend this SUV is your Volvo; is that
- 21 about the right position?
- 22 A Yes, sir, I believe so because it would have been
- 23 parked equal with the curb.
- 24 Q Would it have blocked the truck from pulling out
- 25 with the trailer?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A No.

2 Q It would have been back from it a bit?

3 A Yes, sir.

4 Q Okay. Now the stranger is on which side of the
5 car; can you show us with your pointer?

6 A He's standing here.

7 Q Okay. And where are you when you first perceive
8 there's something wrong?

9 A I was here at the end of the trailer when I heard
10 the noise and probably here when I saw him.

11 Q Okay. And when the stranger reared the right hand
12 up and ran off, where were you?

13 A I was here.

14 Q Okay. You didn't get any closer after you
15 perceived --

16 A No, I stopped right there and then I turned back
17 around and walked across and up the stairs and into the
18 house.

19 Q You walked?

20 A I didn't -- I was fast. I wouldn't say I ran,
21 because I was trying to get around the trailer, so --

22 Q Okay.

23 A -- anyway.

24 Q But were you calm and casual about this?

25 A No, I was moving.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q Okay.

2 A I was trying to get away.

3 Q All right. And you did say that you saw this
4 stranger take off and you actually mentioned the stranger
5 went to the church yard --

6 A Yes.

7 Q -- so what route did --

8 A From here he went around the car and across --
9 whoop, I'm sorry. Anyway, he went across the street.

10 Q I'll try not to block the sound. All right.
11 Across the street?

12 A Across the street to the church, yes, sir.

13 Q All right. Is that the First Baptist Church?

14 A Of Cayce.

15 Q Of Cayce.

16 A Uh-huh (affirmative response).

17 Q All right. Let me show you State's Exhibit No. 11,
18 which I believe --

19 MS. ZMROCZEK: Without objection.

20 MR. ELAM: Thank you very much.

21 (State's Exhibit Number 11 was entered into
22 evidence.)

23 BY MR. ELAM:

24 Q And have you had a chance to look at this?

25 A Yes, sir.

Jessica Wilbanks - Direct Examination by Mr. Elam

1 Q Tell us what are we looking at.

2 A So this is Holland Avenue and we lived in this
3 house and this is our neighbor's house and this is the
4 church.

5 Q All right. Let's take that real slow because it is
6 kind of hard to see what we're looking at here. Is this a
7 bird's eye view of your section of the street?

8 A Yes, sir.

9 Q All right. And point out your house again.

10 A Here.

11 Q Okay. So what's this real bright light?

12 A That's the carport.

13 Q That's your carport.

14 A Uh-huh (affirmative response).

15 Q Well, I will say it makes it kind of stand out.

16 Show us where your Volvo was parked at the time of
17 the incident.

18 A It was parked right here.

19 Q All right. And show us where the stranger was?

20 A He was standing right here.

21 Q On the curb?

22 A Uh-huh (affirmative response).

23 Q And where were you?

24 A I moved from right here to right here.

25 Q Okay. And again once more, the light sources?

Jessica Wilbanks - Direct Examination by Mr. Elam

1 A The light sources are here and here and over here
2 there's a -- I believe that's the pole right there.

3 Q Plus the lights being on inside your house?

4 A Yes, sir.

5 Q Okay. And the path that you saw the stranger take?

6 A So he went around the car and across the street and
7 down the wall of the church.

8 Q How far did you see it?

9 A Past the wall of the church and then I was in the
10 house.

11 Q Show us the wall just so we're clear on that?

12 A There's the wall.

13 Q Oh, you're talking about the side?

14 A The side of the church.

15 Q Where the windows and doors and things were?

16 A Yes, so I was just trying to make sure I wasn't
17 being followed.

18 Q Okay. What -- what's this; do you know?

19 A That is the across the street neighbors property
20 his fence where he backs his work trucks in and out of.

21 Q Okay. All right. Have a seat.

22 A Okay.

23 Q At some point, you said more than one police
24 officer came out. I want to kind of pick up that thread
25 there and make sure that's all clear. At some point, did

Jessica Wilbanks - Direct Examination by Mr. Elam

1 you see anybody in this courtroom come to the scene to --
2 to investigate this case?

3 A I believe this is the gentleman that came and took
4 pictures and fingerprinted the car.

5 Q I think you're indicating the gentleman here in the
6 suit and --

7 A Yes, sir, in the red tie.

8 Q -- in the reddish tie. All right. And he did what
9 now?

10 A He came with a kit and he had brushes and a camera
11 and a light and he kind of worked the car over for
12 evidence.

13 Q And the report -- did you see them do that?

14 A Yes, sir, I was standing there.

15 Q And before he did that, did anybody touch the car?

16 A No, sir.

17 Q Okay. Now, Jessica, how tall are you?

18 A I'm 5'5".

19 Q 5'5". And was this person who was up against your
20 car making the scraping sounds taller or shorter than you?

21 A Taller than me.

22 Q Okay. Do you know which person in this courtroom
23 is the defendant?

24 A Yes, sir.

25 Q I'm not asking you to identify anybody. Did you

Jessica Wilbanks - Direct Examination by Mr. Elam

1 see the face of the person that did this?

2 A I did not.

3 Q Okay. Do you know who's the defendant in this
4 case?

5 A Yes, sir.

6 Q All right. Can you point him out so we can be sure
7 about that?

8 MS. ZMROCZEK: Objection, Your Honor.

9 THE COURT: This isn't for purposes of
10 identification?

11 MR. ELAM: No, not at all.

12 THE COURT: So what's the relevancy?

13 MR. ELAM: Opposite of identification.

14 THE COURT: Ask your next question.

15 BY MR. ELAM:

16 Q Do you know a Johnny Lee Lawson?

17 A I do know him.

18 Q Okay. Have you ever given Johnny Lee Lawson
19 permission to touch your car?

20 A No, sir.

21 Q To enter your car?

22 A No, sir.

23 Q Or to work on your car?

24 A No, sir.

25 Q And the person that you see sitting in here as the

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 defendant, have you ever given that person permission to
2 enter your car?

3 A No, sir.

4 Q Or to touch it?

5 A No, sir.

6 Q Or work on it in any way?

7 A No, sir.

8 Q And again, before you moved to Cayce, where did you
9 move from?

10 A Barnwell.

11 Q Okay. So it's not like you're moving from one
12 address in Cayce to another?

13 A No, sir, it's an hour and twenty minutes.

14 Q Okay.

15 MR. ELAM: Your Honor, I beg your indulgence.

16 THE COURT: Yes, sir.

17 MR. ELAM: All right. Ms. Wilbanks that's all the
18 questions I have. If you would answer any questions please
19 that Defense counsel has.

20 THE COURT: Thank you, Solicitor.

21 Ms. Zmroczek?

22 MS. ZMROCZEK: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Good afternoon, Ms. Wilbanks.

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 A Thank you.

2 Q I want to just clear up a few questions.

3 A Okay.

4 Q You just moved there that -- you were just moving
5 in that night?

6 A Yes.

7 Q Had you been to the neighborhood before?

8 A Only that week before when we had -- we -- we
9 rented the house from a co-worker of my husbands and so he
10 had shown it to us and we had made financial arrangements
11 and come to an agreement about the lease and then I had
12 gone in to take some measurements for paint and taking
13 carpet out and then we were coming there after eating
14 supper to begin cleaning and painting over the weekend.

15 Q And where did you eat supper that weekend?

16 A I don't -- I think actually we went to I
17 think that's where we went.

18 Q And which car did you drive to eat supper?

19 A We drove the Volvo.

20 Q And who was in the Volvo when you went to go back
21 to to eat supper?

22 A Blake was driving and I was in the passenger seat.

23 Q And the juvenile?

24 A He was not with us.

25 Q And the dog?

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 A She was not with us either.

2 Q Were they at the location that evening at all?

3 A Michael was not with us. The dog was probably
4 inside like locked up in the bedroom so she couldn't get in
5 and out.

6 Q What time did you return from supper?

7 A Probably like 8:45, nine o'clock.

8 Q When were you gone from -- how long -- poorly asked
9 question, let me try it again.

10 The trailer and the truck, were they already at the
11 house before you left for supper?

12 A They were already at the house, yes.

13 Q And they were -- what was on the trailer?

14 A The mattress and box spring and bed frame and I
15 believe like the vacuum cleaner, like bigger, bigger items.

16 Q Bigger household items. How were they secured?

17 A They were tied down with bungee's and the trailer
18 was backed up close to the house, it -- so, anyway it
19 wasn't really obvious like because the truck was in, the
20 truck was in front of it because of how it was backed in.
21 It wasn't really obvious from the street, but there weren't
22 valuables, they were like furniture, so --

23 Q When did you turn the lighting sources on?

24 A When we got home after eating supper.

25 Q So when you got home, you kind of lit everything

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 up?

2 A Uh-huh (affirmative response).

3 Q And you said that, you described, it's not in
4 evidence, but I believe this -- this that's the bag that
5 was in the car?

6 A That's the bag that was in the car.

7 Q And where was this bag located in your car?

8 A It was low was at my feet; there's not much room
9 inside that car, so it sits like just to left of my feet,
10 so it would have been very close to the console in the
11 center.

12 Q Close to the console in the center. And you said
13 that you had another bag?

14 A A work bag.

15 Q And where was that located?

16 A In the back seat.

17 Q On the back seat?

18 A Uh-huh (affirmative response).

19 Q You have to say yes or no.

20 A Yes, on the back seat.

21 Q And where was your husband's work bag?

22 A Probably also on the back seat, but sometimes he
23 would sit it behind the driver's side seat.

24 Q Okay. Do you recall where it was that evening?

25 A I'm guessing, I can't say for sure for sure, but I

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 put mine on the seat; he puts his on the floor.

2 Q And when you put yours on the seat, is it on the
3 seat directly behind where you were sitting or directly
4 behind where the driver was sitting?

5 A Probably kind of in the middle just because that's
6 where I would have reached.

7 Q Okay. I want to talk to you a little bit about
8 your car. What year was it?

9 A 2001.

10 Q And it's a convertible?

11 A Uh-huh (affirmative response). Yes, it's a Volvo
12 C-70.

13 Q What does all that mean?

14 A The C I think stands for convertible and the 70 is
15 the series. So Volvo makes 40's, 50's, 60's, 70's and I
16 think 80's and 90's.

17 Q So it kind of, the numbers go up?

18 A They do, yes according to size and features.

19 Q Okay. Automatic locks?

20 A Yes.

21 Q Alarm?

22 A Yes.

23 Q Were they set?

24 A Yes.

25 Q The alarm and the locks?

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 A Yes, I locked the car, but the alarm did not go off
2 when I was walking outside. I did not hear the alarm.

3 Q Okay. And I imagine since it's a 70 series that,
4 did you have to push and pull the locks or did you --

5 A We have the button.

6 Q The button --

7 A Uh-huh (affirmative response).

8 Q -- that popped up and down?

9 A They do pop up and down, yes.

10 Q Down when they're locked; up when they unlocked?

11 A Yes.

12 Q Mr. Elam asked you about these pictures that, that
13 you showed the jury and I just want to ask a couple of
14 questions?

15 Defendant's Exhibit, excuse me, State's Exhibit --

16 MS. ZMROCZEK: Your Honor, it's Exhibit 6.

17 BY MS. ZMROCZEK:

18 Q You said that there was yellow stuff on the
19 windows?

20 A Uh-huh (affirmative response).

21 Q And tell us again what that yellow stuff is?

22 A Either pollen or dirt.

23 Q When these pictures were taken, they were taken
24 that night?

25 A Yes, ma'am.

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 Q Nothing had been removed from the vehicle?

2 A No.

3 Q Nobody had touched the vehicle after you called
4 911?

5 A No, ma'am.

6 Q Okay. You said that -- you indicated that there
7 was damage to the side -- and I'm showing State's Exhibit
8 5.

9 A Okay.

10 Q Did you, did you see what caused that damage?

11 A I did not see what caused it. The person was
12 standing in front of the car where I could not -- I didn't
13 see the damage happening; I heard it happening.

14 Q Okay. So if we are looking at State's Exhibit 4,
15 your house would be --

16 A Where your hand is.

17 Q Where my hand is and the person that you saw was
18 standing?

19 A In front of the door handle, yes, right there.

20 Q And where's the tree that you went to?

21 A Like where the jurors are sitting.

22 Q The first row or the second row?

23 A The second row.

24 Q The second row?

25 A From the distance of the car, the tree is at the

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 second row.

2 Q Okay. And that person that, that was breaking into
3 your vehicle, they had their back to you?

4 A Yes..

5 Q Okay. You never saw their face?

6 A I did not.

7 Q Nothing was taken out of the vehicle that evening?

8 A No, ma'am.

9 Q Do these pictures reflect -- do they indicate what
10 the lighting was or did y'all turn off the lights when the
11 police got there?

12 A No, I think that's the flash that we're, that we're
13 seeing there is the flash of the car, so -- but you can see
14 the street -- the street light would have been like
15 parallel with the hood across the street, the big tall
16 street light.

17 Q And that was State's 2. You indicated on State's
18 11, you indicated that you startled the individual?

19 A Uh-huh (affirmative response).

20 Q And if you can come down so you can do it, I'm
21 sorry. We just need to make sure everybody can see.

22 A Yes, ma'am.

23 Q Your house was here?

24 A Yes.

25 Q The vehicle was here?

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q This is the tree that you were talking about?

3 A Yes.

4 Q The vehicle was parked with the passenger side to
5 the --

6 A Street.

7 Q Is that a sidewalk?

8 A Yeah.

9 Q Okay. To the sidewalk and then the driver side was
10 to the seat?

11 A Was to the street, yes.

12 Q Street?

13 A Yes, ma'am.

14 Q And you indicated that once you startled the
15 person, they ran this way?

16 A Yes, ma'am.

17 Q Which would be towards --

18 A Towards State Street.

19 Q Okay.

20 A Towards the church.

21 Q Towards the church and you watched them jump a
22 fence?

23 A He ran down here and there is a fence here.

24 Q And you watched him jump that fence?

25 A Yes, he went -- he went -- he went through there.

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 Q So he went around the car and jumped this fence and
2 at that point, you went inside to get your husband?

3 A I was here when he was going here.

4 Q Okay.

5 A Yes, I went inside to get Blake.

6 Q Okay. But you were still able to see him jump this
7 fence?

8 A Yes.

9 Q Okay. State's 10, the truck was pulled out to the
10 street?

11 A Uh-huh (affirmative response).

12 Q Was the hood, was the front of the truck facing the
13 street?

14 A Yes.

15 Q Were there items of value in the truck?

16 A They're all household items in the truck. So no
17 electronics, just cleaning supplies, paint, dishes and
18 basic necessities for the weekend.

19 Q And were they just strewn around or were they in
20 boxes?

21 A They were packed. They weren't in boxes, but they
22 were like, you know, kind of methodically set in order.

23 Q Okay. Do you know the distance from the -- I'm
24 going to put back up State's 11. Do you know the distance
25 from the tree or from the parking area to the --

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 A I don't know the distance. I don't know.

2 Q Okay. I imagine this was scary for you, yes?

3 A Yes.

4 Q And you -- did you call 911 or did your husband
5 call 9-1-1?

6 A I called 9-1-1.

7 Q And the description that you gave that evening --
8 to whom did you give that?

9 A Well, I gave it the dispatcher and then I gave it
10 to Officer Kelly.

11 Q How long did it take Officer Kelly to arrive?

12 A It was about fifteen minutes, not longer than
13 fifteen minutes.

14 Q Not longer?

15 A Not longer.

16 Q At what point did the other officers, who you
17 pointed out, arrive?

18 A That was a little while longer. Probably like
19 another, another fifteen or twenty minutes afterward I
20 think because we had -- we were waiting.

21 Q When you got home at around nine o'clock and turned
22 on all the lights, explain to the jury how you were kind of
23 moving things in.

24 A Okay. We kind of took things that -- things that
25 we could carry by ourselves inside first off the end of the

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 truck and trying to get them out of the way so we could
2 move the bed frame inside and then we moved the box spring
3 in first because it goes on first and then we were coming
4 outside for the mattress when this happened.

5 Q And the person, so you were coming outside together
6 for the mattress when this happened?

7 A No, I came out by myself and so Blake was still in
8 the house. He was trying to put the bed rail together to
9 put the box spring in place before we brought the mattress
10 in.

11 Q Okay. So you knew he was in the house?

12 A I didn't know. I was -- I was startled and
13 thinking is that Blake; is he doing something and then it
14 wasn't Blake and he -- and I was looking for him and he was
15 in the house.

16 Q How would you describe the -- regardless of the
17 lights, how would you describe the lighting, I mean was it
18 light or was it getting dark or --

19 A It was dark.

20 Q It was dark?

21 A Yes.

22 Q Okay. So the only light sources were the ones
23 that, that Mr. Elam had you point out?

24 A Yes.

25 Q Okay. Now that evening when you spoke with

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 Detectives Kelly and Merrill, you told them everything you
2 could remember, right?

3 A Yes.

4 Q You told them everything that was in the vehicle?

5 A Uh-huh (affirmative response), yes.

6 Q You described the -- the person as best as you
7 could?

8 A Yes.

9 Q Well, did they ever show you a photo lineup?

10 A No.

11 Q Did they ever talk to you about all the evidence
12 that they located?

13 A No, I never got any followup until the phone call
14 about the fingerprint and that was several months later in
15 the fall.

16 Q Seven months?

17 A Several, I don't know how many months. I think it
18 was either late September or early October before I got the
19 phone call.

20 Q So you had no followup until several months later?

21 A Right.

22 Q Had you any -- when was the last time you had taken
23 your car to the shop; did you have any problems with it?

24 A That was the car that Blake used to drive back and
25 forth for so many years from Barnwell. We just did routine

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 maintenance, oil changes, tire rotations, there had not
2 been any major work done and like I said, we didn't, we
3 didn't wash the car because it had to be hand washed
4 because it was a convertible top and it was a work car.
5 So...

6 Q So you kept it up pretty well?

7 A We maintained for safe driving, yes.

8 Q Okay. That evening when you saw that person, the
9 only thing you heard was that scraping noise you described?

10 A Yes.

11 Q You never heard the car alarm?

12 A No.

13 Q You continued to unload items after?

14 A Yeah.

15 Q While you were waiting for the police?

16 A Yeah, we were like taking things out of the truck
17 and setting them on the ground.

18 Q Did you ever see anybody running?

19 A Not, not afterwards.

20 Q Did it scare you?

21 A It did. It did scare me.

22 Q Ms. Wilbanks, you're here because you want the
23 right to person who committed this crime to be punished,
24 correct?

25 THE COURT: No, ma'am, that's not, that's not a

Jessica Wilbanks - Cross-Examination by Ms. Zmroczek

1 proper question.

2 MS. ZMROCZEK: Okay.

3 THE COURT: That's not a proper question at all.

4 MS. ZMROCZEK: I'll withdraw the question, Your
5 Honor.

6 THE COURT: You may ask your next question.

7 BY MS. ZMROCZEK:

8 Q Ms. Wilbanks, when your husband parked the vehicle
9 that night, y'all left your items inside, is it an
10 electronic lock? Did he use the key?

11 A We don't have it. We only the -- the -- we lock it
12 with the key on the driver's side. We don't have the
13 clicker.

14 Q Okay. To your knowledge --

15 A It's locked.

16 Q --- it was locked?

17 A Yes.

18 Q The alarm was set?

19 A Yes.

20 Q And the windows were up?

21 A Yes.

22 Q Thank you.

23 THE COURT: Redirect, Solicitor?

24 MR. ELAM: A very few questions, Your Honor, on
25 redirect.

Jessica Wilbanks - Redirect Examination by Mr. Elam

REDIRECT EXAMINATION

BY MR. ELAM:

Q Ms. Wilbanks, Mr. Lawson's lawyer said, I imagine you were scared and you said yes. Tell me a little about your feelings while you were seeing this stranger up against your car?

A Well, it's just startling to -- to have someone there that you're not expecting. So we were working -- working, busy doing things, I'm not thinking about having someone in my presence; and so I was looking for Blake and that's not who I found. So -- and I was looking for Blake because we were busy like coming in and out of the house moving things. So we were the only two people there to my knowledge, so that's why I was startled.

Q And what degree of scared were you; were you paralyzed by fear?

A I -- when I realized that there was a person there, like, Oh, you know, like, you're not Blake and so I went like away, like I backed up and went around the trailer and in the house. So and you asked me if I was running in there, I was maybe more like skipping, like you know, like trying not to trip, trying to get around the trailer. Yeah, trying to get in the house safely and also maintain eye contact with where the individual was because I felt like maybe I was in danger. So...

Jessica Wilbanks - Redirect Examination by Mr. Elam

1 Q All right. And clarify this point, when you
2 mentioned that initially you thought Blake, you out there?

3 A Yes.

4 Q Was that based on visual or was that based on
5 auditory?

6 A Auditory.

7 Q Okay. Sounds that you heard?

8 A Yes.

9 Q Like my husband might be outside somewhere?

10 A Yes.

11 Q Once you saw the person at the car, was there any
12 doubt in your mind it was your husband or not your husband?

13 A I knew it was not Blake.

14 Q All right. Once you saw that stranger at your car,
15 your attention level, was it raised or was it lowered?

16 A Raised.

17 Q All right. A point was made that nothing was taken
18 out of the car. Now, you testified that your purse was in
19 the car and you testified in some detail in cross
20 examination about where it was in the car. Was it visible
21 to you from the outside of the car?

22 A Yes.

23 Q That is -- could you see it afterwards when you
24 approached the car?

25 A Yes.

Jessica Wilbanks - Recross-Examination by Ms. Zmroczek

1 Q That's all I got. Thank you.

2 THE COURT: Recross, Ms. Zmroczek?

3 MS. ZMROCZEK: Thank you. One briefly.

4 **RECROSS-EXAMINATION**

5 BY MS. ZMROCZEK:

6 Q Mr. Elam asked you about the visibility of your
7 purse?

8 A Uh-huh.(affirmative response).

9 Q Also the bag was also visible?

10 A Yes.

11 Q In the, on top of the back seat?

12 A Yes.

13 Q Thank you.

14 THE COURT: Thank you. Thank you very much, Ms.
15 Wilbanks. You may step down.

16 All right. Madam Forelady, ladies and gentlemen of
17 the jury panel, we're now going to take our evening recess.
18 I remind you during this recess, you may not discuss this
19 case with others. That includes your fellow jurors,
20 family, friends, or anyone else. You may not read, watch,
21 or listen to any news accounts about the case, should there
22 be any. You may not use your computer, cellular phone or
23 any other electronic device with communication capabilities
24 to research or look up any information that is prohibited.
25 Information that is prohibited is information about a

1 We're not putting up a case.

2 THE COURT: Well, we started back at two o'clock.

3 We started back at two o'clock; I know that they had a
4 break. Nobody in here had a break and I wasn't going to
5 give them a fifteen minute break and then start back at
6 4:30, 4:35. I don't know who might have childcare issues
7 and such like that. Yes, Ms. Zmroczek, they will have to
8 get them another speaker.

9 MS. ZMROCZEK: Okay. I will let them know.

10 THE COURT: All right. Thank you. Thank you very
11 much.

12 Anything further?

13 WEDNESDAY, NOVEMBER 18, 2015

14 THE COURT: Okay. All right. The jury here?

15 THE BAILIFF: The jury is ready, Your Honor.

16 THE COURT: Anything from the State before we bring
17 in our jury?

18 MR. ELAM: Just briefly, Your Honor, we completed
19 the stipulation and we put it on the edge of the bench
20 there for you.

21 THE COURT: What I just picked up?

22 MR. ELAM: Yes, sir.

23 THE COURT: All right. All right. One of y'all
24 going to read it or you want me to read it or -- to the
25 jury or --

1 MR. ELAM: I'm perfectly fine with Your Honor
2 reading it if you don't mind.

3 MS. ZMROCZEK: We are fine with you reading it,
4 Your Honor. We don't really understand what the relevance
5 is, but we, you know, there's an address in there; they can
6 have this address in there.

7 I think there was one other matter, Your Honor,
8 State's 16 is a finger -- ten print fingerprint card and I
9 believe they have someone here from SLED to authenticate it
10 under the business record exception. We're -- we'll
11 stipulate to that as well. We do -- I do have an issue
12 with the hearsay of what he was arrested for on the back.
13 I'm fine with the rest of it, but I think that that's
14 improper.

15 THE COURT: All right. Solicitor.

16 MR. RADLEIN: Your Honor, just -- well one -- Your
17 Honor, if the Court wants to address this now or at the
18 appropriate time when that witness is called, that's one
19 point; and two, Your Honor, I don't believe that the item
20 needs to be redacted. I think the Court's have allowed the
21 entire document as a business record, as an exception to
22 hearsay.

23 THE COURT: I do not think the prior criminal
24 history is admissible. You can redact it or you can offer
25 it through the authenticating witness and then substitute a

1 copy and I will advise the jury that it had been redacted
2 because -- the reason they have a copy, because of
3 information that is not relevant. I don't know of a case
4 that says you can put in a fingerprint card. I know -- I
5 know the case that you have to authenticate. I don't know
6 of a case and maybe there is one. Perhaps, I learn things
7 every day. I don't know where you can put in three counts
8 of operating underinsured motor vehicles, two counts
9 failure to appear for uniform traffic citations, one count
10 of driving under suspension, DUI, another count of driving
11 under suspension, another count of miscellaneous traffic
12 and another count of failure to appear. As I say, you can
13 authenticate the original and then substitute the copy.
14 Okay?

15 MR. RADLEIN: Thank you, Your Honor.

16 MS. ZMROCZEK: And, Your Honor, again if they, I'll
17 stipulate -- if they -- I'll stipulate to it just to save
18 time if they --

19 THE COURT: I don't think they have to stipulate to
20 it if they're going to offer the document. It's just like
21 a burglary first case with. You want to stipulate,
22 Solicitor?

23 MR. RADLEIN: No, Your Honor.

24 MS. ZMROCZEK: As long as his prior record, none of
25 his prior arrests are not there.

1 THE COURT: All right.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Good morning, Mr. Lawson.

4 THE DEFENDANT: Good morning.

5 THE COURT: I guess you're thankful I didn't know
6 you had prior issues with failure to appear in Court, but
7 thank you for being here this morning. All right.

8 THE DEFENDANT: Okay.

9 THE COURT: All right.

10 Anything else before we bring in our jury, Ms.
11 ZMROCZEK.

12 MS. ZMROCZEK: Not that I can think of, Your Honor.

13 THE COURT: Solicitors?

14 MR. RADLEIN: Not at this time, Your Honor.

15 THE COURT: Ma'am.

16 MR. RADLEIN: Nothing at this time, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. ELAM: This is not the original so we will need
19 to redact that.

20 THE COURT: Good morning.

21 THE JURY: Good morning.

22 THE COURT: Y'all changed places except for two.
23 Some of you may be in the same seat. Y'all are trying to
24 trick me, right?

25 All right. I hope you all had a pleasant evening.

1 Welcome back. We're going to continue the trial by the
2 continuing presentation of evidence and testimony by the
3 State in its case in chief, but before I have them call
4 their next witness, I'm going to read to you a stipulation
5 between the parties, between the State and Mr. Lawson.

6 The defendant, Mr. Lawson, and the State stipulate,
7 they agree, that Mr. Lawson, the defendant, resides at
8 Charlotte Street, Cayce, South Carolina and he has resided
9 there since 2006. The stipulation is an agreement between
10 the parties. That fact is in evidence that he resides at
11 Charlotte Street, Cayce, South Carolina and has
12 resided there since 2006.

13 All right. With that being said, Solicitor, you
14 can call your next witness.

15 MR. ELAM: Thank you, Your Honor. If it please the
16 Court, the State calls Ryan Blake Wilbanks to the stand.

17 THE COURT: All right. Mr. Wilbanks, come around
18 and be sworn for us please.

19 THE CLERK: Raise your right hand please.

20 RYAN BLAKE WILBANKS,
21 having been duly sworn, testified as follows:

22 THE CLERK: If you'd have a seat over there please.
23 State your name and spell your last name.

24 THE BAILIFF: Speak nice and clear right into the
25 microphone.

Ryan Blake - Direct Examination by Mr. Elam

1 THE WITNESS: Yes, sir. My name is Ryan Blake
2 Wilbanks. Last name, W-I-L-B-A-N-K-S.

3 DIRECT EXAMINATION

4 BY MR. ELAM:

5 Q And you go by Blake?

6 A I do, yes, sir.

7 Q Where do you work, sir?

8 A I work for Chick-Fil-A.

9 Q And what do you do there?

10 A I'm the training director, so I'm in charge of on
11 boarding and training new team members and existing team
12 members as well.

13 Q Is that one store or several stores?

14 A Two restaurants; one is West Columbia and one in
15 Lexington.

16 Q Okay. How long have you been there?

17 A Six years.

18 Q And did you hear Jessica Wilbanks testify
19 yesterday?

20 A Yes.

21 Q And what's your relationship to her?

22 A She's my spouse.

23 Q And so did you reside with her at Holland
24 Avenue in Cayce when she lived there?

25 A Yes, I did.

Ryan Blake - Direct Examination by Mr. Elam

1 Q Okay. Who else resided there?

2 A Michael Lee, who, a student who lives with us was
3 moving in as well.

4 Q All right. Now I'm gone ask you this out of an
5 abundance of caution; can you describe Michael Lee for us?

6 A Yes, he is a senior here in the area. He's a
7 black, black male eighteen years old.

8 Q All right. And is -- can you describe his height
9 and his build?

10 A Oh yes. Michael is shorter in stature. He's about
11 5'1" to 5'3".

12 Q All right. Is he, when you say shorter, shorter
13 than whom?

14 A Shorter than my wife, Jessica, whose about 5'5".

15 Q All right. Was he helping you move in on March
16 14th, 2014?

17 A He was not.

18 Q Was he even there at his home that night?

19 A No, sir, he was actually in Barnwell County.

20 Q All right. Now do you recall the events that
21 occurred when you moved into Holland Avenue?

22 A I -- I do, yes, sir.

23 Q Do you recall about what time of day it was that
24 you were moving in?

25 A Yes, sir, we -- it was in the evening. After it

Ryan Blake - Direct Examination by Mr. Elam

1 had gotten dark, we had gone to dinner, moving in after
2 dinner.

3 Q Okay. And at some point that night, did you have
4 occasion to call the police?

5 A Yes. Well actually Jessica, my wife, called the
6 police.

7 Q What were you doing when you first realized there
8 was a problem that night or there?

9 A Jessica and I had moved the box spring into the
10 bedroom and as we had propped it against the wall and I was
11 putting the, or the box spring, we moved the box spring in
12 and I was putting the frame together to put the box spring
13 on when she was outside.

14 Q You were inside the house in the bedroom?

15 A Yes, sir.

16 Q All right. And so what indication did you get that
17 there was a problem?

18 A I -- I heard her yelling my name frantically, very
19 excited and she was moving rather quickly and so I knew
20 something was wrong right away.

21 Q Did you hear her moving quickly?

22 A Yes, I could hear her running through the house or
23 moving, shuffling maybe is a better term.

24 Q All right. And words -- was she hollering?

25 MS. ZMROCZEK: Objection, Your Honor, hearsay.

Ryan Blake - Direct Examination by Mr. Elam

1 THE COURT: Overruled.

2 BY MR. ELAM:

3 Q What words was she hollering?

4 A She was yelling my name trying to get my attention
5 and find me; Blake, yelling Blake, Blake and then when she
6 got into the room, she explained what was happening.

7 Q She explained -- was she -- was she calm; was she
8 excited?

9 A No, it was, it was someone trying to break in the
10 car, very excited and so by the time she had gotten in
11 there, I had stopped what I was doing and so she, she
12 yelled out someone is breaking into the car.

13 Q And when you, what was your response to hearing her
14 run through the house and calling your name and saying
15 someone is trying to, someone is breaking into the car; did
16 you stop working on the bed frame; did you keep working on
17 it?

18 A No, I had already stopped and we immediately began
19 to move outside.

20 Q Okay. Did you waste any time?

21 A No, sir.

22 Q Did she holler anything else as you were going
23 outside?

24 A I asked, is your purse in the car and she said yes,
25 it's in the car.

Ryan Blake - Direct Examination by Mr. Elam

1 MS. ZMROCZEK: Objection, Your Honor, again
2 hearsay.

3 THE COURT: Overruled under 803(1) and (2).

4 MR. ELAM: Thank you, Your Honor. The excited
5 utterance exception?

6 BY MR. ELAM:

7 Q So did you have a particular concern in your mind
8 as you were rushing out of the house to the car?

9 A Yes, I was worried about her, her purse being
10 stolen. I knew her wallet was in there with credit cards
11 and identification.

12 Q All right. And did you -- did you find the car
13 outside where it had been left originally?

14 A Yes, it was where I had left, left it where I had
15 parked it.

16 Q And did you find any relief or did you find more
17 anxiety as you got to the car?

18 A I was relieved because I could, I could see the
19 purse was in the car, but I was pretty anxious because I
20 could tell, I could see damage to the car.

21 Q Okay. To see the purse, did you have to put your
22 face up to the window or could you see it from the back?

23 A No, it was, it was right in the, next to the
24 console so you could see it without having to press up
25 against the car. You could see it through the glass.

Ryan Blake - Direct Examination by Mr. Elam

1 Q All right. And you mentioned damage to the car,
2 was that something different about the car than when you
3 left it there?

4 A Yes, the -- the surrounding area around the window,
5 you could tell it had been damaged and pulled away and the
6 glass was about halfway down.

7 Q Backing up a little bit, when you first hurried
8 outside the house with Ms. Wilbanks, did you see anyone
9 else outside?

10 A I did not.

11 Q I mean anywhere on the street or surrounding yards?

12 A No, sir, there was no one else around.

13 Q Did you hear any footsteps or any running?

14 A I did not. Though I was certainly aware, I was
15 looking around to make sure to see if anybody was around.

16 Q And upon seeing damage to the car, did you or -- or
17 your wife call the police?

18 A She -- Jessica called the police.

19 Q How?

20 A She used her cell phone.

21 Q And during this time, did you ever lose sight of
22 the car, the Volvo, out on the curb --

23 A No, sir.

24 Q -- while the call was being made?

25 A No, sir, we were out there with the car.

Ryan Blake - Direct Examination by Mr. Elam

1 Q And during this same interval, did anyone touch the
2 Volvo?

3 A No, sir.

4 Q All right. As you waited for the police to arrive,
5 did you see anyone at all out on Holland Avenue?

6 A The only person was my neighbor, Shawn, who I got
7 to meet that night. He came out due to, actually he came
8 out once the police arrived; he saw the blue lights.

9 Q But not while you were waiting?

10 A Not while I was waiting, no, sir.

11 Q So while you're waiting for the police to come, did
12 you see anybody cross?

13 A No, sir, no one came across.

14 Q All right. And during the time you were waiting
15 for the police to arrive, again, did anyone touch the Volvo
16 during this interval?

17 A No, sir.

18 Q And did you yourself touch the Volvo, for example,
19 to retrieve the purse?

20 A No, not until the police got there and I only
21 unlocked the car from the other side.

22 Q Why didn't you touch it?

23 A Because it looked like there were fingerprints on
24 the glass.

25 Q All right. So what was the initial police

Ryan Blake - Direct Examination by Mr. Elam

1 response; what was that like?

2 A He -- he came up and examined, used his flashlight
3 to -- to look at all the damage, he looked, he walked
4 around the car looking for anything. And then he -- once
5 he saw what he thought were fingerprints, he went and got a
6 camera to take pictures and the damage and also radioed
7 another officer.

8 Q You said he, who was he?

9 A Officer Kelly, I believe is his name.

10 Q Do you remember his name?

11 A Yes, sir.

12 Q All right. Was he alone; was the sole first
13 responder?

14 A Yes, sir. He was, he was the only one there at
15 first.

16 Q Did he come in an unmarked car or squad car?

17 A He was in a squad car, had his lights on and also
18 had big spotlight. He was coming down the street, I assume
19 looking for someone.

20 Q All right. When you say he had his lights on, are
21 you talking about the blue light or headlights or what?

22 A He had blue lights on, yes, sir.

23 Q Okay. And when officer Kelly showed up, did you
24 continue to stay outside with him?

25 A Yes, I did.

Ryan Blake - Direct Examination by Mr. Elam

1 Q All right. And did you mention other officers
2 arriving?

3 A Yes, sir.

4 Q Do you recall whether Detective Jason Merrill was
5 among those officers?

6 A Yes, sir.

7 Q All right. And do you see Detective Merrill in the
8 courtroom?

9 A Yes, sir, he's over your left shoulder.

10 Q Okay. Up until the time Detective Merrill arrived,
11 did you ever lose sight of your Volvo?

12 A I did not.

13 Q And during this time interval, did anyone touch the
14 Volvo?

15 A Except for Officer Kelly, no, sir.

16 Q You said Officer Kelly touched it?

17 A Yes, at one point, he opened the door to just to
18 look inside at the damage.

19 Q Was that the door that was damaged or the opposite,
20 the driver's door?

21 A The door that was damaged.

22 Q Okay. And let me ask you, who parked the Volvo at
23 the curb that evening?

24 A I did.

25 Q Originally when you parked it, did you make sure

Ryan Blake - Direct Examination by Mr. Elam

1 the doors were locked?

2 A Yes, sir.

3 Q Were the windows up?

4 A Yes, sir.

5 Q Was it your habit to do these things?

6 A Yes, sir.

7 Q And do the windows in the Volvo often get lowered?

8 A No, sir, the convertible top didn't actually work
9 and so -- and also I drove the car. It was a car drove
10 back and forth. It's about an hour and twenty minutes and
11 there was no point in rolling down the windows.

12 Q Okay. When you parked the car, let me ask you
13 this. Was the Volvo equipped with an alarm?

14 A It was, yes, sir.

15 Q And when you originally parked at the curb that
16 night, had the alarm been set?

17 A Yes, it -- it -- it was a type alarm that comes
18 standard with the vehicle that when you lock the car, it
19 sets the alarm, so it was on.

20 Q Okay. So when you went outside to respond to Ms.
21 Wilbanks cries that someone was breaking into the car, did
22 you hear the alarm sounding?

23 A No, it did not go off.

24 Q Okay. But to your knowledge, did the alarm sound
25 at any time that night?

Ryan Blake - Direct Examination by Mr. Elam

1 A I know it did not and that --

2 Q I'm sorry, do you know why?

3 A Yes, it -- it's just a cheaper alarm, standard
4 alarm, and it only, it only goes off when the car is opened
5 without -- while it's still locked.

6 Q Okay. When you parked the Volvo on the curb that
7 evening, where were you coming from?

8 A We were coming from dinner.

9 Q Earlier when you parked at wherever you were eating
10 dinner, did you lock the doors in the car?

11 A Yes, sir.

12 Q Were the windows up?

13 A Yes, sir.

14 Q And after you finished your meal, when you returned
15 to the car, did you see anything wrong with it then?

16 A There was no damage, no, sir.

17 Q Okay. Mr. Wilbanks, do you know a Johnny Lee
18 Lawson?

19 A I do not.

20 Q Have you ever given Johnny Lee Lawson permission to
21 touch or injure your Volvo?

22 A No, sir.

23 Q Do you know the man seated at defense table over
24 here?

25 A I do not.

Ryan Blake - Direct Examination by Mr. Elam

1 Q Have you ever given him permission to enter or
2 touch your Volvo?

3 A No, sir.

4 MR. ELAM: Your Honor, I beg the Court's
5 indulgence.

6 THE COURT: Yes, sir.

7 MR. ELAM: That's all the questions I have, Mr.
8 Wilbanks. If you'll answer any questions Ms. Zmroczek has
9 for you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you, Solicitor.

12 Ms. Zmroczek.

13 MS. ZMROCZEK: Thank you, briefly, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MS. ZMROCZEK:**

16 Q Good morning, Mr. Wilbanks.

17 A Good morning.

18 Q I want to make sure that I heard you correctly.
19 You told Solicitor Elam that -- the easel is in the way.

20 You told Solicitor Elam that Officer Kelly opened
21 the door?

22 A Yes, I think he may have opened the door.

23 Q Okay. At what point did that happen?

24 A It would have been after he had, he had taken
25 pictures of the damage on the outer --

Ryan Blake - Direct Examination by Mr. Elam

1 Q After he took pictures.

2 And where was Detective Merrill during that time?

3 A I'm not sure if Merrill -- Detective Merrill was
4 there yet or not.

5 Q You had indicated that you unlocked the door?

6 A Yeah, the way I would have unlocked it, we had to
7 unlock it via the key, a manual turn and it would have had
8 to happen on the driver's side, on the opposite side of the
9 break-in.

10 Q But none of that was done until after the photos
11 were taken?

12 A I believe so.

13 Q And the purse, when you say console, help the jury
14 out there. It's a two door car, correct?

15 A It's a coupe. The seats are low so the console
16 is -- it's -- the carpet comes up to the console. So
17 there's no -- there's no gaps or room underneath the
18 console like you would find in a larger car.

19 Q So if I'm in the driver's seat here and this is the
20 passenger seat, when I think of a console, I think of the
21 little thing in the middle, right?

22 A When I say console, from -- from the armrest
23 through to the transmission shifter to the radio area, yes,
24 sir (sic).

25 Q And it was, and the purse was right there?

Ryan Blake - Direct Examination by Mr. Elam

1 A It was on the driver or the passenger side on the
2 floorboard.

3 Q And you could see it without looking in?

4 A Yes.

5 Q And your -- and what items were located in the
6 back?

7 A Jessica, Jessica's work bag and then my work bag.

8 Q And her work bag is right, we're back at the
9 console and her purse is here; where would her work bag be?

10 A It would have been in the back seat behind the
11 console.

12 Q Almost directly behind it?

13 A Yes.

14 Q Laying on the seat?

15 A Yes.

16 Q And could you see that too?

17 A Yes, I'm sure you could have.

18 Q I'm asking you, did you see it?

19 A I don't remember seeing it. I wasn't worried about
20 her work bag.

21 Q And your work bag was in there as well?

22 A It was.

23 Q How long did it take for the officers to respond?

24 A From the initial call, ten to fifteen minutes for
25 the first officer, Officer Kelly.

Jason Merrill - Direct Examination by Ms. Radlein

1 Q Thank you.

2 A My pleasure.

3 MR. ELAM: No redirect, Your Honor.

4 THE COURT: Thank you. Thank you very much, Mr.
5 Wilbanks. You may step down.

6 MS. RADLEIN: Thank you, Your Honor. The State
7 call Detective Jason Merrill.

8 JASON MERRILL,
9 having been duly sworn, testified as follows:

10 THE WITNESS: My name Jason Merrill. Last name
11 spelled M-E-R-R-I-L-L.

12 **DIRECT EXAMINATION**

13 **BY MS. RADLEIN:**

14 Q Thank you, Sergeant Merrill. Where are you
15 currently employed?

16 A I'm currently employed at the Cayce Department of
17 Public Safety.

18 Q And how long have you been employed there?

19 A Since January of 2004.

20 Q How long have you been in law enforcement?

21 A Since March of 2001, so I'll guess it will be
22 approaching fifteen years.

23 Q Where did you begin your career in law enforcement?

24 A I started at the University of South Carolina
25 Police Department.

Jason Merrill - Direct Examination by Ms. Radlein

1 Q And what is your current position at Cayce Public
2 Safety?

3 A Currently I'm assigned to the Investigations
4 Division. I've worked in that division since January of
5 2007. My current responsibilities include not only
6 investigating cases that come into our division, I'm also a
7 first line supervisor. I supervise five other
8 investigators and I also conduct firefighting duties as
9 well, being that we are a Public Safety Department.

10 Q You wear many hats, Sergeant Merrill. In your --
11 as an investigator, what type of cases do you typically
12 respond to or work?

13 A Potentially I could be assigned to investigate any
14 case that would happen or any crime that would happen
15 inside the city limits of Cayce. Over the years, I've
16 worked everything from, you know, minor theft such as a
17 larceny of a bicycle or something of that nature, all the
18 way up to -- I've been involved in homicide investigations.

19 Q And what type of training do you have as a law
20 enforcement officer and investigator?

21 A Well, I've got -- I went to the basic Police
22 Academy here in Columbia back when I was hired by the
23 University of South Carolina Police Department. Every
24 police officer in the state has to go through that training
25 before they're certified as a police officer in this state.

Jason Merrill - Direct Examination by Ms. Radlein

1 Along with that, over the years I've had opportunity to
2 take some advance training in many different areas.

3 Relevant to this case specifically is some training
4 in how to identify and process latent fingerprints and also
5 crime scene investigation.

6 Q And specifically about your training in terms of
7 latent prints, what type of training specifically in that
8 regard, what type of courses?

9 A Well, one course I recall dealt specifically with
10 lifting fingerprints or what we call lifting fingerprints
11 from different surfaces using a variety of methods and to
12 do that in a manner that can be used for, by an examiner to
13 make a comparison later on in a case. I've also taken some
14 general crime scene training that, that handles or
15 addresses how to, how to look at crime scenes and how to
16 focus your energies on gathering evidence in that case,
17 different forms of evidence.

18 Q Okay. And we keep focusing on latent prints, what
19 exactly are latent prints?

20 A Well fingerprints in general, as everybody knows,
21 you have ridges on your fingers and we call them friction
22 ridges and anytime you touch something, there's a
23 possibility that you leave behind traces of oils, dead skin
24 cells, and other natural substances that, that you secrete
25 that are found on your skin and there's a potential for

Jason Merrill - Direct Examination by Ms. Radlein

1 that to be left behind on a surface and all. When we
2 process for fingerprints, latent prints is just a fancy way
3 of saying hidden, they're not visible and when we deal with
4 latent prints, all we do is apply substances or powders to
5 make them more visible to the naked eye for further
6 examination. Sometimes prints are already visible on a
7 scene and they don't need any further processing.

8 Q Okay. Let me back up for a second. You mentioned
9 surfaces. What type of surfaces can you, I guess take a
10 latent print from?

11 A Potentially just about any surface. It's kind of
12 creating a gradient of possibilities of the most ideal
13 surface is nice, smooth, non-porous; that would be your
14 easiest surface to get fingerprints off of. It gets more
15 difficult as you move into the porous materials like woods,
16 things of that nature. You have to use a chemical process
17 to have any possibility of getting prints off of those
18 things.

19 Q Okay.

20 A But there's a lot of factors in there. Potentially
21 you can find fingerprint evident -- evidence in a lot of
22 places, but a lot of it's very difficult when you start
23 talking about other substances other than smooth non-porous
24 substances.

25 Q And what exactly is the importance of fingerprints?

Jason Merrill - Direct Examination by Ms. Radlein

1 A Well, in law enforcement it's important because
2 fingerprints are unique to individuals. In fact, in one of
3 the training classes I took, I was told it's more unique
4 than DNA because identical twins can have the same DNA, but
5 they won't have the same fingerprint. So it's useful in
6 law enforcement. It can be used to identify people that
7 might have been involved in the crime or at least present
8 on the scene.

9 Q Okay. And in terms of -- you mentioned the cases
10 that you've worked, I don't know if you know the number,
11 but how often would you say you've collected latent prints
12 at a crime scene or --

13 A Over the course of my career as both a patrol
14 officer and investigator, I'd have to estimate it's in the
15 hundreds.

16 Q Do you remember where you collected your first
17 latent print?

18 A The first one that I got a match on through an
19 examiner as part of a criminal case was in 2002, roughly.
20 I was a patrol officer at the University of South Carolina
21 and I happened to witness a person with the hood up on a
22 pickup truck in a parking garage while I was patrolling and
23 when he saw me, he took off running. We weren't able to
24 catch him right then, but I remembered where he was
25 touching on the hood and I went and processed that hood

Jason Merrill - Direct Examination by Ms. Radlein

1 with fingerprint powder and was able to lift a good
2 fingerprint that was later matched to a subject that was
3 later convicted, to the best of my recollection, for
4 attempting to steal that motor vehicle.

5 Q And when you -- when you collect a fingerprint, can
6 you explain to the jury the general process, you mentioned
7 the powder, explain the importance of the powder.

8 A Yeah, generally on a non-porous smooth surface,
9 like in this case, glass, I would use a powder, a
10 contrasting powder, which simply means, if you're working
11 with a light surface, you want to use a darker powder. If
12 you're working with a dark surface, then you want to use a
13 lighter powder. Glass is kinda tricky because there's not
14 much that contrasts with glass so you could use a light or
15 a dark powder on glass.

16 In this case, I chose a darker powder. In general
17 I would use the appropriate powder and all you do is use --
18 there's several different types of dusting brushes,
19 depending on the surface and what you want to accomplish,
20 but it all boils down to you use a brush to apply the fine
21 powder to the area where you believe there's fingerprints
22 and you'll be able to see the powder stick to the
23 fingerprints. You know, the stuff that's left behind on
24 the friction ridges, and you'll be able to see them with
25 your naked eye and then from that point, you would use a

Jason Merrill - Direct Examination by Ms. Radlein

1 method to lift the prints and preserve those prints for
2 future comparison examination.

3 Q Okay. And that would be your standard procedure?

4 A Yes, in a nutshell, yes.

5 Q In a nutshell. So referring to the incident that
6 occurred that we're here today for on March 14th, were you
7 on duty that day or on call?

8 A I was. At the time of the, I was on duty earlier
9 in the day as far as my normal duty, but I was on call
10 after hours. When this incident occurred, I was actually
11 called. I was at home at the time and I responded from my
12 house.

13 Q Okay.

14 A As part of my duties as investigator is to maintain
15 call time after hours.

16 Q Do you recall what time you responded on this
17 evening, this night?

18 A Yeah, if I may refer to my notes for a minute, I
19 believe my dispatch noted that the time that I arrived on
20 the CAB Report. According to the CAB Report, I responded
21 and arrived approximately 11:11 p.m.

22 Q Okay. And what is the incident location that you
23 responded to; what's the address?

24 A It was Holland Avenue, which is in Cayce in
25 Lexington County.

Jason Merrill - Direct Examination by Ms. Radlein

1 Q Thank you. And what, if anything -- who did you
2 meet with when you arrived on the scene?

3 A When I arrived, I noticed or I talked to Officer
4 Kelly, who was on the scene and also I remember Ms.
5 Wilbanks and I believe Mr. Wilbanks and also outside at
6 that time.

7 Q Okay. Officer, now you heard Jessica and Blake
8 reference Officer Kelly, who is Officer Kelly?

9 A He was the officer that took the initial report and
10 gathered the initial information in this case from -- from
11 Mr. And Ms. Wilbanks.

12 Q And do you know where Officer Kelly is today?

13 MS. ZMROCZEK: Objection, Your Honor, may we
14 approach.

15 THE COURT: Step out please, ladies and gentlemen.

16 Do not discuss the case during this brief recess.

17 (The jury left the courtroom at 10:05 a.m.)

18 THE COURT: All right. Ms. Zmroczek?

19 MS. ZMROCZEK: Thank you, Your Honor. Officer
20 Kelly was the officer that was involved in an officer
21 shooting a few days ago. I have no intention of -- after
22 re-reading the discovery, I was going to have an issue with
23 one of the items that was collected, but it turns out it
24 was collected by this detective. So all of my
25 cross-examination will be with this detective. It's

Jason Merrill - Direct Examination In Camera by Ms. Radlein

1 improper I think and highly prejudicial to -- to indicate
2 that Mr., Officer Kelly is not here because he was shot in
3 the line of duty. I feel like that drums up some emotion
4 and -- and -- and I understand how important law-
5 enforcement is, but I think that has no relevance to this
6 case and I do not plan on mentioning that they didn't call
7 him. I just, I think that that's highly improper. I
8 believe that -- and I'm speculating, but I believe that's
9 where we were going with that next question, which is why I
10 stopped before he answered.

11 THE COURT: I don't know where we were going. I
12 don't predict anything, particularly in the future.

13 Ask your question, Solicitor and we'll hear the
14 response.

15 **DIRECT EXAMINATION - IN CAMERA**

16 **BY MS. RADLEIN:**

17 Q Do you know where Officer Kelly is today?

18 A I believe he's recovering at home from an injury he
19 sustained in an on duty incident.

20 THE COURT: All right. Solicitor, I'll be glad --
21 is that all.

22 MR. RADLEIN: That would be it, Your Honor.

23 THE COURT: All right. I'll be glad to hear from
24 you, Solicitor.

25 MR. RADLEIN: I believe it's important for the jury

1 to know. We've mentioned Officer Kelly several times and
2 but for being shot yesterday in Cayce, I'm sure you've
3 heard it all on the news, he would have been here to
4 testify and we've mentioned him so much and I don't want
5 the jury to think he's just not here and we're hiding
6 something from them and at the end of the case, if they did
7 intend to make a motion that defense counsel couldn't
8 reference our failure to call a witness. So I just thought
9 it would the appropriate time to explain and I don't
10 believe it's prejudicial. I believe it's a perfectly
11 reasonable question and limited to his answer that he just
12 gave.

13 THE COURT: Ms. Zmroczek? Your Honor, I believe
14 that under 403, the relevance -- If they want to -- if he
15 wants to -- I'm okay with him answering the question. He
16 is unavailable and couldn't be here, but wanted to be;
17 that's fine. Again I have no, you know, I have no issue
18 with his hearsay or his reports, but I think to explain
19 that he was involved in an officer shooting is -- is highly
20 prejudicial, more prejudicial than probative as to why he's
21 not here. Again I'm not going to ask about it. As an
22 officer of the court, I mean, I've said that I'm not going
23 to say anything that they didn't comment and we didn't hear
24 from Officer Kelly. I'm not -- I have no intention -- I
25 have no need for Officer Kelly. I think that it's

1 appropriate if he wants to -- to say that he was
2 unavailable for trial, but wanted to be here. I believe
3 that -- that he, this witness, is the case -- the lead
4 agent on the case. So it's appropriate that he's here
5 instead of just the responding officer, but I'm fine
6 with -- with them saying that he could not be here, but
7 wanted to be, but I believe it's highly prejudicial and
8 more prejudicial than probative that -- that he was shot in
9 the -- in the course of his employment.

10 THE COURT: Solicitor?

11 MR. RADLEIN: Thank you, Your Honor. I understand
12 that that's counsel's point, but to simply state that he's
13 not available and doesn't have a good basis for not being
14 in court today, I think that's -- that's not the impression
15 I want to leave with the jury and I do not believe it's a
16 403 question in terms of prejudice or inappropriate in any
17 way.

18 THE COURT: Unavailable does give the jury a very
19 wide range to afford them. Of course this would not have
20 been part of the State's case day before yesterday at 1:30
21 in the morning, would it Detective Merrill?

22 THE WITNESS: I'm sorry, what, Your Honor.

23 THE COURT: It would not have been part of the
24 State's case day before yesterday prior to 1:30 in the
25 morning?

1 MR. RADLEIN: It would not have.

2 THE COURT: It would not have happened, correct?

3 THE WITNESS: Correct.

4 THE COURT: I think it is important for the State
5 to explain the lack of presence, as I've always called
6 those witnesses, the first badge on the scene.

7 MS. ZMROCZEK: And, Your Honor, are you ready for
8 me.

9 THE COURT: Yes, ma'am.

10 MS. ZMROCZEK: I'm checking my rules again. Also
11 just under Rule 401, under the test of relevance --

12 THE COURT: That's to relevance, right?

13 MS. ZMROCZEK: Right. And the evidence, it has a
14 tendency to make a fact more or less probable than it would
15 be without the evidence and the fact is of consequence in
16 determining the action. Again, I haven't -- I've stated to
17 the Court, I don't intend to -- to insinuate that he
18 doesn't care in that he's not here. I don't believe that
19 that information has any bearing on the evidence that's
20 being presented here today.

21 THE COURT: Solicitor?

22 MR. RADLEIN: Your Honor, I think it's, it's
23 definitely relevant where you have, you've had two
24 witnesses now that's referenced Officer Kelly that he was
25 the first responder, that he was at the crime scene, that

1 he secured the crime scene, all that testimony is relevant
2 and to simply leave it as he's unavailable and for no good
3 reason doesn't want to be here today, it's definitely
4 relevant to explain why he's not here. He was just shot
5 yesterday. If this case was called another time, this
6 wouldn't be an issue, but I believe the jury -- I think
7 it's important for the State's case to explain why a
8 witness, who is key to this case or would have been
9 important in this case, isn't here.

10 THE COURT: I think the quality of an investigation
11 is always relevant to both the State and the defense, the
12 quality or lack of quality. And I think the fact that an
13 officer who first responded to the scene, whose name the
14 victims testified to, they called his name; I think it's
15 relevant as to why he's not here. I can't think of the
16 name of the case, but I can think of -- the witness was
17 Bean. It's one of the progenies of the Brady case which
18 United States Supreme Court has said the quality of
19 investigation is always proper product of a discovery case
20 or an exculpatory or inculpatory case, but that's always
21 properly before the jury. And I'm not going to -- of
22 course 403 analysis also requires that the jury not be
23 misled that he's unavailable, but wanted to be here. I
24 don't know if he wanted to be here or not.

25 It's irrelevant whether he wanted to be here or not

1 because he could be subpoenaed to be here, but I don't know
2 that fact. I'm sure he would be delighted to be here and
3 not in whatever hospital he's in. Common sense tells me
4 that.

5 Solicitor, you can, you can ask about, of course
6 Officer Kelly and I think more appropriate proper response
7 would be due to the -- due to being out with a work related
8 injury. Now, if you call him as a witness, he's obviously
9 available, but rather than get into the officer involved
10 shooting, if he's unavailable without medical, work related
11 injury. That's truthful. It takes the officer involved
12 shooting out of it and the jury doesn't have to speculate
13 why he is or is not here nor do they get the impact of
14 having been a work related injury due to sustaining a
15 gunshot wound.

16 MR. RADLEIN: Okay. Your Honor, just one point of
17 clarification. Are we restricted to indicating the time
18 because we just simply state he's out due to a work related
19 injury, I think that just --

20 THE COURT: If you say -- excuse me, I interrupted
21 you. I apologize. I fuss at people for interrupting me
22 and then I interrupt them. Go right ahead, Solicitor.

23 MR. RADLEIN: Just request information for the
24 officer to indicate that this was a sudden or recent or
25 yesterday or within this week, a work related injury, not

1 leave the jury to wonder that it was three months ago.

2 THE COURT: Why you -- why you think that's
3 necessary, Solicitor?

4 MR. RADLEIN: Because we, there's some officers
5 who, you know, there's a process with a work related
6 injury. You go through a recovery then you're on light
7 duty and then you're back, but to be simply just stated
8 he's unavailable due to a work related injury, that could
9 just be almost anything. If I can give just one word to
10 indicate that this isn't an old injury; this is something
11 that recently happened.

12 THE COURT: Doesn't that point, the fact that he's
13 not here, relate back to the incident that occurred on what
14 was that, Laurel (Phonetic) Street?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Laurel Street case? Doesn't it just
17 focus it in a different direction.

18 MR. RADLEIN: And if it does, Your Honor --

19 THE COURT: He's certainly not, I mean it goes to
20 the quality of the investigation, which always goes to the
21 guilt or innocence of Mr. Lawson or whoever, whoever the
22 defendant is. I mean that's the reason and, of course, I
23 know you don't want to have the jury think that an officer
24 doesn't take the case important and just not show up.
25 Doesn't that still, if not point directly to that incident,

1 at least lays the hand in that direction?

2 MR. RADLEIN: Your Honor, and of course that is my
3 intent. What I don't want to be is that the jury tries --
4 because you're just left guessing and I don't want to, of
5 course I don't want to tell them it's gunshot wound or that
6 type of thing. I understand the Court's ruling in that
7 aspect, but I don't want them to think that it maybe it was
8 a mental issue that he possibly had back on March 14th,
9 2014. I just want to be able to narrow the time period so
10 they know that he's just unable to attend for the course of
11 this trial due to a recent work related injury. I'm not
12 sure exactly how to do that, but I don't want them to think
13 it's an ongoing issue that he's had, like he can't be here
14 today.

15 THE COURT: Ms. Zmroczek?

16 MS. ZMROCZEK: Thank you, Your Honor. I thought, I
17 thought that your -- your original -- more appropriate
18 answer was, was more, I think that that was the most
19 appropriate way to respond. I think anything else is just,
20 it's not relevant. I think that -- I mean, I think that
21 it's very clear that he couldn't be here due to a work
22 related injury and, and we would accept that. We would be
23 okay with that. And as an officer of the court, I can tell
24 you we're not going to attack him, attack that he wasn't
25 here.

1 My cross examination of this detective is limited
2 to, he signed all the reports, he's written his notes and
3 provided them to me and his name is on all of the reports
4 that I have. So there's no need for me even question what
5 Officer Kelly did or didn't do and up to this point, I
6 hadn't thought of asking for quality or quality of the
7 investigation jury charge, but if we go there.

8 THE COURT: There's not a quality of investigation
9 jury charge so you don't have to bother to ask for it.
10 It's always harder for a case where from the State's point
11 of view, the quality of investigation than from the defense
12 point of view, there's not a quality of investigation.
13 That comes from cases we see every day throughout our
14 courtrooms and watch every night on our televisions. I
15 mean the fact they're missing a witness, State v Dominick,
16 I think it was written by the Honorable Alec Sanders, but I
17 cannot find a copy of it for some reason.

18 MR. RADLEIN: Are you talking about State v.
19 Charping, Your Honor.

20 THE COURT: That's much more recent.

21 MR. RADLEIN: That's the 80's.

22 THE COURT: Sometime I go down memory lane. I'll
23 see if I can find it. Was that Charping 1 or Charping 2.

24 MR. RADLEIN: Your Honor, I haven't pulled it up
25 yet. That's just the missing witness case that comes to

1 the top of my head.

2 THE COURT: That was a great case though.

3 MR. RADLEIN: I'm sorry, Your Honor?

4 THE COURT: That was a great case.

5 MR. RADLEIN: Lexington or is that --

6 THE COURT: Yes, ma'am.

7 MR. ELAM: Your Honor, while you're looking at
8 that, might the witness, Mr. Wilbanks, be excused; he's
9 finished testifying.

10 THE COURT: I don't know. What's for lunch?

11 THE WITNESS: Chicken.

12 THE COURT: Thank you. Of course, he may be
13 excused. Thank you. Thank you for being with us, Mr.
14 Wilbanks.

15 THE WITNESS: Thank you very much, Your Honor.

16 THE COURT: Yes, sir.

17 MS. ZMROCZEK: And, Your Honor, while reviewing
18 Charping, in the cheat sheet book that Honorable Sanders
19 and John Nichols wrote, I'm reading that that dealt with a
20 decision of whether or not the defense could comment on the
21 missing witness and again, as an officer of the court --

22 THE COURT: And I think you can, correct?

23 MS. ZMROCZEK: If it were appropriate.

24 THE COURT: Does Charping say that; Dominique did.

25 MR. RADLEIN: I believe it leaves it to the Court's

1 discretion.

2 MS. ZMROCZEK: It does.

3 THE COURT: But there's no charge on it.

4 MR. RADLEIN: No.

5 THE COURT: That's right. All right. Here's all
6 I'm looking up. This is the definition of recent. Having
7 happened, begun or been done not long ago or not long
8 before, belonging to a past period of time comparatively
9 close to the present. And of course you could then look up
10 comparatively, the past. The only word I had said was
11 unavailable due to a work related injury. I would find
12 that he couldn't respond unavailable due to a recent work
13 related injury. All right. Ms. Zmroczek.

14 MS. ZMROCZEK: Your Honor, as long as it, as long
15 as that unavailable to due a recent work related injury is
16 the -- covers all the questions with that, then I'm fine.
17 I think it was --

18 THE COURT: All right. Solicitor?

19 MR. RADLEIN: Thank you, Your Honor.

20 THE COURT: Charping and Whitlock, right? There
21 was a third buy that testified that Charping's girlfriend's
22 brother, right.

23 MR. RADLEIN: Donnie still has the box in his
24 office.

25 (The jury entered the courtroom at 10:26 a.m.)

Jason Merrill - Direct Examination by Ms. Radlein

1 THE COURT: All right. Welcome back, ladies and
2 gentlemen. Thank you very much for your patience.

3 Solicitor, you may proceed.

4 MR. RADLEIN: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MS. RADLEIN:

7 Q Detective Merrill, you mentioned that you arrived
8 on the scene at 11:11; is that correct?

9 A That's correct.

10 Q And who was present upon your arrival?

11 A Officer Rhett Kelly and Mr. and Ms. Wilbanks, to
12 the best of my recollection.

13 Q Okay. And Officer Rhett Kelly is not present
14 today; do you know -- do you know why?

15 A Yes, he's unavailable due to a recent work related
16 injury.

17 Q And I'm going to hand you what's been entered into
18 exhibit -- into evidence State's Exhibit 1, 2, 3, 4, 5, and
19 6. Do you recognize those items?

20 A Yes, I do. They appear to be photographs from that
21 night, from March 14th, 2014, showing the vehicle, Mr. and
22 Ms. Wilbanks' vehicle that was broken into.

23 MS. RADLEIN: I apologize, Your Honor, permission
24 to move about the courtroom?

25 THE COURT: Yes. Yes, ma'am, certainly.

Jason Merrill - Direct Examination by Ms. Radlein

1 BY MS. RADLEIN:

2 Q And upon your arrival, is this the condition that
3 you saw the vehicle in?

4 A Yes.

5 Q Were you able to determine through your
6 investigation, that the vehicle wasn't moved, that it was
7 in the condition that it was in?

8 A Yeah, in speaking with the persons on the scene it
9 was made obvious to me that the vehicle had been there for
10 quite some time. It was stationary and hadn't been messed
11 with.

12 MS. ZMROCZEK: And, Your Honor, I have no problem
13 with him talking about the conversations he had with
14 Officer Kelly. I think that's part of his investigation.
15 He can -- he can refer to that just so it's more clear for
16 the record.

17 THE COURT: Thank you, Ms. Zmroczek.

18 Solicitor, you may continue.

19 MR. RADLEIN: Thank you, Your Honor.

20 BY MS. RADLEIN:

21 Q And were you able to determine that no one had
22 touched the window in the vehicle prior to your arrival?

23 A Yes, that's what I was told and lead to believe.

24 Q Okay. And was the car secured?

25 A I don't recall.

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1 Q Were you present when those photographs were taken?

2 A Yes, I believe I was.

3 Q Okay. Do you normally take photographs when you
4 arrive on scene?

5 A I do if I'm going to process a scene, normally I'm
6 the one that would take the pictures of the scene that I'm
7 gonna process. On this occasion, there was an issue with
8 my camera, so I asked Officer Kelly to take the photos for
9 me with his department issued camera.

10 Q Okay. And did you also tell him what photographs
11 to take?

12 A Not, not exactly. I kind of left that up to his
13 discretion. I just did confirm with him, I said, you know,
14 did you get some pictures of the glass showing where the
15 fingerprints are. That's the only thing I -- my main
16 concern with the photographs.

17 Q Referencing State's Exhibit 6, do you recognize
18 that specifically?

19 A Yes, that's a photograph showing the parts of the
20 fingerprints that were visible before I even processed them
21 or made them more visible.

22 Q Okay. Now I'm going to show you State's Exhibit
23 12. Is that the same photograph?

24 A Yes, it appears to be.

25 Q Okay.

Jason Merrill - Direct Examination by Ms. Radlein

1 MS. RADLEIN: Your Honor, the State requests to
2 move State's Exhibit 12, an enlargement, into evidence?

3 MS. ZMROCZEK: Without objection, Your Honor.

4 THE COURT: State's 12 is in evidence without
5 objection.

6 (State's Exhibit Number 12 was entered into
7 evidence.)

8 BY MS. RADLEIN:

9 Q Officer Merrill, earlier you referenced -- you
10 described your general procedure.

11 MS. RADLEIN: Request permission of the witness to
12 step down?

13 THE COURT: Will you hand me those photographs
14 before you step down, sir. And certainly you may step
15 down. Thank you.

16 BY MS. RADLEIN:

17 Q And I'm not sure if this laser pointer will assist
18 you, but if you can take the jury through your process and
19 procedure using this enlargement?

20 A Well, in this case, you can already see, if I
21 recall correctly from this night, there was a heavy pollen
22 in the air. I have allergies. Of course, you might be
23 able to tell by the way I'm talking right now. My voice is
24 a little different than it usually is due to some allergies
25 and sinus issues, but I'm real sensitive to pollen so I

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1 usually pay attention to mid-March when it starts warming ---
2 up as we all know, pollen kind of gets heavy in the air and
3 the pollen was already starting to stick to some of the,
4 the oils and stuff behind those ridges.

5 So I knew immediately when I looked at it that
6 there was most likely going to be some fingerprint evidence
7 there. Generally what I would do in this case is carefully
8 open the door after the photographs were taken of course,
9 open the door, get my fingerprint powder, apply powder to
10 the whole are of the inside and outside of the glass.
11 Sometimes with glass it's hard to tell which side of the
12 glass it's on if you look at it closely with a flashlight.
13 In this case I applied the powder using what we call a
14 hinge lifter, which is simply an adhesive strip that's
15 already got a light colored backer attached to it and once
16 you lift the print with the adhesive side, then you press
17 the adhesive down on the backer and it's -- it's an all in
18 one. There's also another way you can do it. You can use
19 regular clear fingerprint tape, lift that tape up, put it
20 on your own backer of your choosing. In this case, the
21 hinge lifters had the backer on it.

22 Q And backing up for a moment, you testified that
23 sometimes it's difficult to tell what side of the glass the
24 fingerprint is on so you use a flashlight. In this case,
25 looking at this door, from your investigation, what were

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1 you able to determine about these visible fingerprints that
2 you pointed out to the jury?

3 A What I found by looking more closely, when you use
4 a flashlight and shine it at a very oblique angle to the
5 glass, you'll be able to tell whether -- what surface of
6 the glass the prints on in relation to where you are. In
7 this case, I observed it looked like approximately three
8 fingerprints on the inside of the glass where I had the
9 door open looking and it looked like one on the outside of
10 the glass about the same position as the other three in the
11 relative position on the glass.

12 Q Okay. And in just pointing here, you said you
13 notice about three; can you point to the actual three that
14 you -- if you can?

15 A They are hard to see. I hadn't developed them at
16 this point, but they would be roughly in this area right
17 here.

18 Q Okay. And then you mentioned there was one. What,
19 explain to me that one other fingerprint you may have seen?

20 A Yeah, it was on that same general area as the three
21 fingerprints on the inside except his was on the outside of
22 the glass.

23 Q Okay.

24 A What it appeared to me, based on my experience, it
25 was common sense, is it looked like it would have been

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1 consistent with somebody placing their hand over the top of
2 the glass with their fingers on the inside and possibly a
3 thumb on the outside and they were trying to push the
4 window down or jiggle it off the, what do you call it, the
5 track underneath, but manipulating the window with their
6 hand up here.

7 Q Okay. And you're making this motion and you're
8 making it with your right hand. Is that what it appeared
9 to be that day; could it have been the left hand or you
10 were unable --

11 A To me that would be the most reasonable explanation
12 would be somebody standing with their hand like this and
13 their thumb with their right hand manipulating that window.

14 Q Okay. And you also testified about hinge lifters.
15 Referencing State's -- what's previously marked
16 collectively as State's Exhibit 15, I'm going to hand these
17 to you. Do you recognize these items?

18 A Yes, I do.

19 Q And how do you recognize them?

20 A They're the three hinge lifters that I lifted, I
21 used to lift the fingerprints off the glass. They bear my
22 initials as well as the case information. I initial them
23 shortly after I do them and mark the case information. One
24 thing to note with these hinge lifters is two of them are
25 duplicates. This is because the first time that I dusted

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1 the inside prints, the prints that were on the inside --

2 MS. ZMROCZEK: Your Honor, I would just ask if I
3 could review those before they're shown to the jury.

4 THE COURT: I didn't know they'd been offered yet.

5 MR. RADLEIN: They're not offered yet.

6 MS. ZMROCZEK: Your Honor, I have no objection to
7 them.

8 MR. RADLEIN: Your Honor, at this time, the State
9 requests to move collectively three hinge lifters in as
10 State's Exhibit 15.

11 THE COURT: State's 15 is in evidence without
12 objection.

13 (States Exhibit Number 15 was entered into
14 evidence.)

15 BY MS. RADLEIN:

16 Q Detective Merrill, you were referencing two of the
17 hinge lifters.

18 A Yes, there are two of them are duplicate lifts,
19 what we call duplicate lifts and that's simply because the
20 first time that I applied powder and did the first lift, it
21 wasn't quite dark enough or contrasting enough and I
22 thought I could do better by applying, reapplying powder to
23 that same print area. That's a common technique that I've
24 been shown and trained on. Sometimes you can do a
25 duplicate lift. Sometimes you run the risk of, and luckily

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1 in this case, I was able to do a duplicate lift, but
2 sometimes you do, when you do the original lift, it does
3 pull up everything, powder, including the oils and
4 everything and you don't get that second chance. In this
5 case, I was lucky and was able to get a second chance in
6 getting a slightly higher quality print.

7 Q Now, I want to clarify, ask you a question about
8 that. Did re-lifting and re-dusting impact any of the
9 prints in this case; would it have damaged it or distorted
10 it in any way?

11 A No, it doesn't change the original print. If it's
12 still there, it would be there. The same print would still
13 be there. It doesn't alter it in any way. The only
14 possibility, like I said, on the first one, when I did the
15 first lift, it could have removed or destroyed the print at
16 that point, but in this case it was still there and it
17 accepted powder on the second try.

18 Q Okay.

19 A It came out a little darker.

20 Q And I'd like to try to ask questions that the jury
21 would like to ask. If you lifted the print, because
22 mentioned that glass inside was hard to determine if the
23 prints are on the inside or the outside. For example,
24 looking at the, since you've marked them; this is Lift
25 Number 3, which has -- it looks like four impressions on

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1 it. If you had attempted to lift this from the outside,
2 would you have been able to lift the print?

3 A No, not those prints.

4 Q And referencing what looks like an impression,
5 parts of State's Exhibit 15, but Lift Number marked as 1;
6 if you would have attempted to lift this, which I believe
7 you testified you believe was the thumb, would you have
8 been able to lift it from the inside?

9 A No, if it was on the outside, it would only be able
10 to be lifted from the outside.

11 Q So if originally you -- on your first approach, if
12 you had thought that the print was on the outside and you
13 attempted to lift it, how would the lift look?

14 A I'm sorry, can you rephrase that?

15 Q Or -- what, if anything would be on the hinge
16 lifter if there were no prints on the outside?

17 A You might see some scattered dust. Dust does
18 adhere to things other than fingerprints. Sometimes if
19 there's any dirt or any other foreign substances on the
20 glass, but it wouldn't, you wouldn't see any ridge detail,
21 you know the typical characteristic that makes it a
22 fingerprint. You'd just see a dirty, smudgy area, sort of
23 like the outside around the frame area is what you'd see
24 throughout that whole thing.

25 Q In referencing your, in trying to point to it,

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1 you're referencing this area?

2 A Yeah, it would be kind of like, that's like
3 background noise. It would just be a non-specific pattern,
4 residue, powder, foreign substances that might have been on
5 the surface.

6 Q Okay. And so based on your investigation and what
7 you're telling the jury today is that these two lifts
8 marked as 2 and 3 in State's Exhibit 15 were on the inside
9 of the car?

10 A Yes, they were.

11 Q And how many impressions are on these lifts?

12 A If I recall correctly, there's three that I
13 identified as possible fingerprints. There's a fourth that
14 most likely is a probably a fingerprint, but it just didn't
15 come through very clear. It's very smudged. I mean it's
16 likely a fingerprint though I can't say for sure.

17 MS. RADLEIN: And, Your Honor, may I approach for
18 the exhibit?

19 THE COURT: Yes, ma'am.

20 MR. RADLEIN: Thank you.

21 BY MS. RADLEIN:

22 Q State's 12, this enlargement, is just the portion
23 of the window. Looking at the car, it's not an
24 enlargement, but is this the same window positioning? I
25 apologize, referencing State's Exhibit 2.

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1 A I believe so, but it's hard to tell because it's --
2 the top of the door frame is cut off in this picture, but
3 from my recollection, the window was about halfway down,
4 yes.

5 Q And it's not on this photograph, but would this be
6 the end; I'm not sure what you call it, but the column
7 where the window would be?

8 A Yeah, we would refer to that -- to that as the B
9 Pillar; it's the second pillar back from the, from where
10 the windshield meets the window.

11 Q Okay. And this is referencing State's Exhibit 5.
12 What, if anything, did you notice about the pillars?

13 A There was significant damage. It appeared to have
14 occurred through some unnatural means. It was some tool or
15 implement.

16 Q You said it could have been some tool or implement?

17 A Yeah, to me that's what it looked like, some tool
18 was used to make that damage. It wasn't somebody's hand or
19 a natural occurrence.

20 Q Okay. And referencing State's Exhibit 3, the door,
21 do you see that same impression going down into the actual
22 door?

23 A Yeah, it appears the -- the door may have been
24 pried as well, the outside skin of the door beneath the
25 window. I can't say for sure, it just looks like they're

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1 pushed out where it's outside of where it should be.

2 Q Okay. And based on your training and experience in
3 law enforcement, were you able to determine that an auto
4 break-in did occur?

5 A Yes, in my judgment and based on what I know of the
6 law and the elements of the crime, the fingerprints being
7 on the inside of the glass, there was entry into the
8 vehicle, which is a requirement, to my understanding that's
9 a requirement of the law and also there was a force,
10 however slight, was used to gain that entry.

11 Q And to the best of your knowledge and based on your
12 investigation, were you under the belief that the prints
13 that you lifted, the four -- or three impressions on the
14 inside and the one from the outside would have belonged to
15 the person who was -- who broke into this car?

16 A Yes, most likely.

17 Q You can take your seat.

18 Now you mentioned that there were tool marks. Did
19 you ever recover a tool in this case?

20 A Oh, yes we did. Officers that were circulating the
21 area shortly after the call, did notify me that they
22 located a, a pry bar or what's commonly known as a crow bar
23 probably 100, 150 feet away near the church that was across
24 the street from the victim's house.

25 Q And I'm assuming through your, not assuming, but

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1 through your investigation, did you determine that --

2 MS. ZMROCZEK: Objection, Your Honor, leading.

3 THE COURT: Overruled.

4 BY MS. RADLEIN:

5 Q -- the significance of the church?

6 A Yes, the church was where I was told was the
7 direction that the suspect fled towards when, when the
8 crime was interrupted, I guess for lack of a better term.

9 Q Okay. I'm going to show you what's been marked
10 as -- for ID, as State's Exhibits 7, 8 and 9?

11 MS. ZMROCZEK: It is again without objection, Your
12 Honor.

13 THE COURT: I'm sorry?

14 MS. ZMROCZEK: Without objection.

15 THE COURT: State's 7, 8 and 9.

16 MR. RADLEIN: That's correct, Your Honor.

17 (State's Exhibits Number 7, Number 8, and Number 9
18 were entered into evidence.)

19 BY MS. RADLEIN:

20 Q Do you recognize these items?

21 A I do. These were photos I took at a later date to
22 show in better lighting and to kind of show the area of the
23 church where he -- or it was my understanding where the
24 suspect fled towards and through.

25 Q And referencing those photographs, State's, I

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1 believe 6?

2 A 7, 8, 9.

3 Q Oh, 7. So referencing 7, what exactly are we
4 seeing in this picture?

5 A That is looking from Holland Avenue, along the left
6 side of the church back in towards the left side of the
7 church.

8 Q Okay. And referencing 8?

9 A Same thing, it's just stepping in a little closer
10 from the road walking along the left side of the church and
11 the picture shows a little bit further in and a little bit
12 closer up of what's back there.

13 Q And referencing 9?

14 A Same thing. I walked in a little bit further and
15 to show what's kind of, I think, you can kind of see
16 through the gate. That's kind of around the little bit of
17 a corner in that little shed or carport for lack of a
18 better term.

19 Q Okay. And what's significant about the view on
20 State's 9?

21 A That was the area where the -- the pry bar was
22 found.

23 Q And what exactly is a pry bar?

24 A In this case it was maybe 3 to 4 feet long and it's
25 got a kind of a forked thing on one end and then it's

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1 straight and it curls at the other end and it has another
2 kind of forked in. It's used for applying force to -- in
3 many different things. It's used in construction and all
4 kinds of different trades.

5 Q Do you recall what color the pry bar was?

6 A Yeah, it was a combination; it wasn't in very good
7 condition. The combination of kind of bare metal and it
8 looked like some yellowish paint on parts of it.

9 Q Okay. And did you take that pry bar into evidence?

10 A Initially I did, yes.

11 Q And what, if anything, did you do with the pry bar?

12 A Over the weekend -- this occurred on a Friday, over
13 the weekend I had weekend duty and I had a chance to bring
14 it into our lab and actually look at it closely under
15 better light and some magnification and I determined that
16 the surface and the makeup of the crow bar is not suitable
17 for any further fingerprint testing or processing.

18 Q Okay. And you -- you talked about some surfaces
19 earlier. What exactly -- can you describe this surface;
20 why wasn't it suitable?

21 A Because there was a lot of bare metal exposed and
22 there's obviously a lot of oxidation or rust on areas. The
23 general shape of it, it was either a hexagon or octagon
24 shaped metal, which left very little surface area for --
25 for stuff to be, for fingerprints to be transferred. So

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1 the totality of the circumstance, based on all that and it
2 wasn't small enough to fit in our fuming chamber either.
3 We have some chemical methods to try to get fingerprints
4 off of surfaces, but we're limited in size. Our fuming
5 chamber is only about 2 feet wide. So it wouldn't fit in
6 our fuming chamber for me to attempt that.

7 Q Okay. So --

8 A But I don't think that would have been successful
9 even if I had fumed it just based on the surface and what
10 was present.

11 Q Okay. So based on your investigation and your
12 followup in looking at and examining the crow bar, were you
13 able to determine if it was used in this crime?

14 A Not definitively. Based on the circumstances, the
15 best I can say is it was likely used and I didn't have any
16 witnesses that I was aware of that told me I saw him, you
17 know, the suspect with the crow bar in his hand or anything
18 like that. So I believe it was likely used, but I can't
19 say for sure.

20 Q Okay. Is the crow bar still in evidence at Cayce
21 Public Safety?

22 A No, it's not.

23 Q Okay. And the reason being what you stated that
24 you couldn't link it to this crime?

25 A Yeah -- well, I made the decision that it wasn't,

Jason Merrill - Direct Examination by Ms. Radlein

1 wasn't likely to yield any evidence after I examined it.

2 It really had no, no value anymore in this case.

3 MS. RADLEIN: And request the Court's permission to
4 have the witness step down again, Your Honor? ---

5 THE COURT: Yes, of course, you may step down.

6 BY MS. RADLEIN:

7 Q Referencing State's Exhibit 11, do you see the
8 church on this overhead view?

9 A Yeah, it would be this building here and that would
10 be like a little brick wall with the gate that you see in
11 the other picture leading around back. This is where those
12 other pictures were taken.

13 Q Okay. And --

14 A That --

15 Q Then referencing 7, 8 and 9, 7 first; is that what
16 you're referencing, the little gate?

17 A Yeah, when I took this picture I was standing right
18 about here taking that picture back towards the back gate.

19 Q And you said this and you're pointing at State's
20 Exhibit 7; and State's Exhibit 8?

21 A Yeah, I'm sorry, that would have been just stepping
22 a little closer in from the road looking at that same gate.

23 Q And then 9?

24 A Same thing, walking, that would have been probably
25 walking around this corner a little bit into this little

Jason Merrill - Direct Examination by Ms. Radlein

1 courtyard.

2 Q Okay. And do you see the incident location on this
3 overhead as well?

4 A Yes, if I recall correctly, this house right here
5 with the carport; I recognize it.

6 Q Okay. And while I have you up here, do you
7 recognize State's Exhibit 13?

8 A I do.

9 MS. ZMROCZEK: That would be, excuse me, without
10 objection, Your Honor.

11 MR. RADLEIN: Your Honor, I beg the Court's
12 indulgence so we can move it into evidence. I have some
13 questions, prior.

14 THE COURT: All right.

15 MS. RADLEIN:

16 Q How do you recognize this?

17 A It appears to be a map of a portion of Cayce, the
18 jurisdiction which I've worked for more than ten years.

19 Q Okay. And I'm going to hand you two labels, the
20 Wilbanks, do you see the incident location on this?

21 A Yeah, approximately. I could narrow it down to a
22 pretty narrow spot, but obviously it doesn't show houses
23 like to narrow it down to a house, but --

24 Q Can you label it?

25 A (Witness is placing label on Exhibit 13.)

Jason Merrill - Direct Examination by Ms. Radlein

1 Q And do you know if the defendant, Mr. Johnny
2 Lawson.

3 A I do.

4 Q And it's previously been stipulated to, but do you
5 know his address?

6 A Yes, Charlotte Street, Cayce.

7 Q And do you see this on this map?

8 A I do.

9 Q Can you laser it?

10 MS. RADLEIN: At this time, Your Honor, the State
11 requests to move State's Exhibit 13 into evidence.

12 MS. ZMROCZEK: Without objection.

13 THE COURT: State's 13 is in evidence without
14 objection.

15 (State's Exhibit Number 13 was entered into
16 evidence.)

17 BY MS. RADLEIN:

18 Q And you testified that this is a map of a certain
19 part of Cayce; is this referred to as part of the Avenues?

20 A Very little bit. This is like the, this would be
21 the southern kind of end of the Avenues. Holland Avenue is
22 about the southern boundary.

23 Q Okay. And this area down here?

24 A Yeah, this shows a different area. It's an area
25 referred to as Pokomo, a neighborhood area...

Jason Merrill - Direct Examination by Ms. Radlein

1 Q Okay. And approximately how far does Mr. Lawson
2 live from this location?

3 A I would estimate --

4 Q Based on your experience and knowing the area?

5 A Yeah, less than a mile, give or take, a small
6 amount.

7 Q And this is all in Cayce?

8 A Yes.

9 Q And do you know if Mr. Lawson was living there on
10 March 14th, 2014?

11 A He was.

12 Q Thank you.

13 After -- after you took these lifts on these hinge
14 lifters, what did you do next?

15 A Much like the crow bar -- over that weekend, I was
16 able to get some time to look at them more closely under
17 better lighting and magnification and I was, made the
18 determination that they were likely candidates for a -- to
19 submit for further examination to a latent print examiner.
20 So once I made that determination, I then submitted them
21 into our evidence room for that to happen.

22 Q Okay. And when you submitted them to the evidence
23 room, did you have a suspect to submit with the request for
24 examination?

25 A I did not at that time.

Jason Merrill - Direct Examination by Ms. Radlein

1 Q Okay. And that night on the evening of March 14th
2 and throughout the weekend when you were conducting your
3 investigation, was there anything else or any other
4 witnesses that you could have spoken to about this case?.....

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

6 Q Did you have any leads on this case?

7 A None whatsoever other than a very, very, very vague
8 physical description, which could fit thousands or millions
9 of people.

10 Q Okay. And do you recall when the examination was
11 performed?

12 A I can tell you when I submitted it to evidence and
13 I can tell you, I should be able to tell you the date that
14 it was brought by our evidence custodian out to Lexington
15 County Sheriff's Department for examination.

16 Q Okay.

17 A I submitted it to evidence on March 17th of 2014,
18 which was the Monday following the incident and according
19 to my records, it was brought to Lexington County Sheriff's
20 Department on August 4th, 2014, and signed over to
21 Investigator Jim Hickman with that agency.

22 Q And did you receive results in this case?

23 A Yes, on or about September 15th or 16th -- I don't
24 recall the exact date -- it was around that time, give or
25 take a day or two, I received a report from the Lexington

Jason Merrill - Direct Examination by Ms. Radlein

1 County Sheriff's Department Fingerprint Examiner, which was
2 Hickman, identify, stating that a match was made on one of
3 the fingerprints that I submitted in this case and it was
4 made, it was a match to a Johnny L. Lawson and it had some
5 other identifying information in the report.

6 Q And at that time, what did you do?

7 A At that time, I reviewed the case, went back and
8 refreshed my memory, because it had been six or so months
9 long and just made sure that I was comfortable and
10 confident that based on the positioning of the
11 fingerprints, that the person who left those fingerprints
12 was the person responsible for breaking into the car in
13 which this case, I believe it to be Johnny Lawson based on
14 the report.

15 Q And you said based on the case and after reviewing
16 the case, you were able to determine. Are there any
17 other -- are there situations or circumstances where you
18 receive a hit on a print and not issue a warrant for
19 someone?

20 A Yes, it's actually quite common. The positioning
21 or the relative location of a fingerprint is key for using
22 it as evidence of guilt. There's times when we've gotten
23 fingerprint matches on say the outside of a car. It really
24 at that point doesn't have much probative value, just
25 because, you know there's several plausible explanations of

Jason Merrill - Direct Examination by Ms. Radlein

1 why someone's fingerprints would be on the outside of a
2 car. There can even be some plausible explanations for the
3 inside of the car. When you bring your car to a mechanic
4 and they move their car in and out of their bay. If
5 they're in the car they could leave a fingerprint on the
6 mirror as they're adjusting things, car washers that go
7 inside your car. I mean there are several legitimate
8 reasons for fingerprints to be where they are.

9 So that's our job as investigators to kind of
10 explain or -- or -- or look at how those fingerprints would
11 have gotten there. And like I said, in this case, the
12 positioning of those fingerprints I'm quite confident
13 that's the person who was breaking into the car. It wasn't
14 a -- a mechanic, it wasn't a car wash person, things of
15 that nature.

16 Q In terms of breaking into motor vehicle cases,
17 approximately how many of them have you worked?

18 A In my career?

19 Q Yes.

20 A I can't really put a number on it, but I know it's
21 in the hundreds.

22 Q And do they largely go solved or unsolved?

23 A It's actually very rare that we, we're able to
24 solve those type of cases.

25 MS. RADLEIN: I beg the Court's indulgence.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 THE COURT: Yes, ma'am.

2 BY MS. RADLEIN:

3 Q You mentioned that you -- the report indicated Mr.
4 Lawson. Do you see Mr. Lawson in the courtroom today?

5 A I do. He's seated at the defendant's table in a
6 suit.

7 Q And can you describe Mr. Lawson?

8 A His physical descriptors? Yeah, I know him to be
9 approximately 5'10" or so, slender build, black male, I
10 don't know how much more you want than that.

11 MS. RADLEIN: No further questions, Your Honor.

12 THE COURT: Thank you, Solicitor.

13 Ms. Zmroczek?

14 MS. ZMROCZEK: Thank you, Your Honor, may it please
15 the Court?

16 **CROSS-EXAMINATION**

17 BY MS. ZMROCZEK:

18 Q Good morning, how are you Detective Merrill?

19 A Good morning.

20 Q I want to talk a little bit about your background
21 first. You said that you have several years of law
22 enforcement experience?

23 A Correct.

24 Q Uniform Patrol for six years?

25 A Yeah, approximately.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q Approximately. At least eight years in criminal
2 investigations?

3 A Yes.

4 Q You provided me, upon request, you provided me with
5 a summary and a background, correct?

6 A Yes.

7 Q You stated on there that you had personally
8 investigated 2,700 cases since 2007?

9 A Yes, that sounds about right.

10 Q You consider yourself a professional?

11 A I do. I strive to be every day.

12 Q You received training in investigations?

13 A I have.

14 Q In fact, you graduated with honors from the --

15 A From the basic academy, yes.

16 Q You received training in writing reports?

17 A Yeah, that's part of the basic training and also on
18 the job training.

19 Q You've testified in court, correct?

20 A Yes, I have.

21 Q You use reports to reflect your recollection about
22 a particular case before you go to trial?

23 A Oftentimes, yes.

24 Q In fact, you met with the solicitor several times
25 prior to this trial, correct?

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 A Yes, correct.

2 Q And that would be the solicitor seated at this
3 table?

4 A Yes, correct.

5 Q And in fact, I tried to speak with you prior to
6 this case; do you recall that?

7 A Yes, I did receive an e-mail sometime over this
8 past weekend.

9 Q You declined to answer it though, right?

10 A Circumstances dictated I didn't quite have time.

11 Q Okay. You know that these reports that you rely on
12 are provided to me and Mr. Lawson and that we used them to
13 understand the charges, correct?

14 A Correct.

15 Q You know that they'll be referenced in court?

16 A Correct.

17 Q You want to make sure they're accurate?

18 A Yes, correct, to the best of my ability.

19 Q Complete?

20 A Correct.

21 Q Detailed?

22 A Correct.

23 Q And you did that in this case?

24 A Yes, I believe I -- I -- I was reasonably accurate,
25 complete and detailed.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q That reports help keep facts straight?

2 A Yes, they do.

3 Q What information was provided to you at the time?

4 A Correct.

5 Q You indicated that you responded that evening on
6 March 14th?

7 A Yes.

8 Q 2014?

9 A That's correct.

10 Q And may I ask you, if you referenced the CAD
11 report? May I quickly look at that?

12 MS. ZMROCZEK: May I approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. ZMROCZEK:

15 Q Explain to the jury what a CAD report is?

16 A I'm sorry?

17 Q I'm sorry. Explain to the jury what a CAD report
18 is?

19 A It's a record kept by our dispatcher, whatever
20 dispatcher is on duty. It shows the nature of calls we
21 receive at the dispatch center and it kind of keeps track
22 of what units assigned to that call and, you know, the
23 responding units. It generally shows what time units
24 arrive on scene, what time they were dispatched, things of
25 that nature.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q And each unit has a different number?

2 A Yeah, our records manager system assigns a unique
3 number to each officer in that system.

4 Q So every -- every officer has their own just --
5 call number basically?

6 A Yes, you could call it a badge number. It's not --
7 it's not associated with our actual badge, but it's a
8 unique number that an officer that's in our records
9 management system would have. No two officers would have
10 the same number. That's the number that they put in
11 anytime they attach their name to a report.

12 Q And what's your number?

13 A It's 36.

14 Q I just want to ask you some questions about that.

15 Tell the jury what time it indicates that the -- let me
16 rephrase the question. What the CAD report -- the -- what
17 did you call it Computer --

18 A Computer Aided Dispatch is what it stands for, yes.

19 Q Is that like 9-1-1?

20 A Yes, we have a 9-1-1 dispatch center in our
21 headquarters.

22 Q Do you often get 911 cases?

23 A It depends. We, I know just from my personal
24 knowledge, our system has been kind of up and down over the
25 last several years, but our, when it's up, we have the

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 capability of recording 9-1-1 calls that do come in.

2 Q And that's important because we know exactly who
3 called, correct?

4 A Yes, it can be important.

5 Q And exactly what they said?

6 A Yes.

7 Q But what we do have here, we don't have an 9-1-1
8 tape in this case?

9 A No, not in this case, no.

10 Q Okay. But we do have the CAD report?

11 A Yes, we do.

12 Q And that CAD report is accurate?

13 A To the best of my knowledge. I don't have any
14 information that would indicate it's not.

15 MS. RADLEIN: Objection, Your Honor.

16 THE COURT: Ma'am?

17 MR. RADLEIN: He's not the record keeper for the
18 CAD report. I believe the line of questioning is going
19 into questions about the accuracy --

20 THE COURT: Excuse me a minute. Step out please,
21 ladies and gentlemen. Do not discuss the case during this
22 brief recess.

23 (The jury left the courtroom at 11:05 a.m.)

24 THE COURT: All right. Solicitor.

25 MR. RADLEIN: Thank you, Your Honor. I would

Jason Merrill - Cross-Examination In Camera by Ms. Zmroczek

1 object to this line of questioning regarding the accuracy
2 of the CAD report. I believe Detective Merrill cannot
3 testify to that. I believe she would have to subpoena the
4 custodian or someone in care of dispatch.

5 THE COURT: All right. Ms. Zmroczek?

6 MS. ZMROCZEK: Your Honor, my line of questioning
7 goes to -- in fact when the solicitor asked him what time
8 he arrived, he referred to the CAD report. I believe that
9 it's a report and it's an item that he uses in his
10 investigation. He's already used it to refresh his
11 recollection. I'm simply going to ask about the times;
12 that's all.

13 THE COURT: Ask him what you're going to ask him,
14 Ms. Zmroczek.

15 CROSS-EXAMINATION - IN CAMERA

16 BY MS. ZMROCZEK:

17 Q At what time does the CAD report indicate that
18 y'all were notified -- you are notified of an incident?

19 A The best I can tell from the form would be the
20 start time of the call would be 10:35 p.m.

21 Q And what time was Officer Kelly dispatched?

22 A That appears to be, I don't have a list of officer
23 numbers, but --

24 THE COURT: That was my question. Do you know
25 Officer Kelly's number on 14 March, '14?

Jason Merrill - Cross-Examination In Camera by Ms. Zmroczek

1 THE WITNESS: Not offhand, Your Honor.

2 MS. ZMROCZEK: It's been testified to, Your Honor,
3 that --

4 THE COURT: Mr. Kelly's number?...

5 MS. ZMROCZEK: No, no, no. I'm sorry, I wasn't
6 finished. What's been testified to is he was the first
7 responder. So maybe I can ask a question --

8 MR. RADLEIN: Well --

9 THE COURT: Go right ahead, go right ahead. Answer
10 that question.

11 BY MS. ZMROCZEK:

12 Q Can you tell me what time the first responder --

13 A I can deduce his number based on the times being
14 that he was the first officer on the scene, based on my
15 understanding and according to this, the first officer on
16 the scene was dispatched at, at 10:37.

17 Q And what time did that officer arrive?

18 A He arrived at 10:41.

19 MS. ZMROCZEK: And, Your Honor, those would be the
20 questions that I would have.

21 THE COURT: Any objection, Solicitor.

22 MR. RADLEIN: Your Honor, again, he's -- my
23 questioning on direct regarding his arrival time was a
24 question about his arrival time and he relied on records
25 that he has to refresh his memory. I don't believe he can

1 testify to other information on the CAD report. It's not
2 entered into evidence and he's not the custodian of the
3 record.

4 THE COURT: So let me make sure I'm tracking
5 correctly. The State objects to this officer testifying to
6 the time on the CAD report when assuming Mr. Wilbanks
7 called at 10:35 and when Officer Kelly was dispatched at
8 10:37 and when Officer Kelly arrived at 10:41; that's what
9 you object to --

10 MR. RADLEIN: Your Honor --

11 THE COURT: I'm asking a question. Yes or no.

12 MR. RADLEIN: No, Your Honor.

13 THE COURT: I don't quite, I'm not tracking you.

14 MR. RADLEIN: I apologize, Your Honor. My initial
15 objection is to her question as to the accuracy of the
16 contents of the entire report.

17 THE COURT: And I would sustain your objection in
18 that regard.

19 MR. RADLEIN: Okay.

20 THE COURT: He's already testified that many times
21 their 9-1-1 is up and down, number one. Number two, he
22 would have to know the dispatcher, the accuracy of the
23 dispatcher and that's -- that's not within this officer's
24 knowledge.

25 MR. RADLEIN: Correct.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 THE COURT: I would agree. I would sustain that
2 part, but you have objections to those questions just about
3 the time.

4 MR. RADLEIN: Not specifically to those questions,
5 but if she's going to go into anything else on the CAD
6 report, I would object.

7 THE COURT: All right. Ms. Zmroczek?

8 MS. ZMROCZEK: Those questions that I asked, Your
9 Honor, would be the questions that I will ask.

10 (The jury entered the courtroom at 11:13 a.m.)

11 THE COURT: Again, Thank you. Thank you very much,
12 ladies and gentlemen for your patience.

13 Ms. Zmroczek, you may ask your next question.

14 MS. ZMROCZEK: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MS. ZMROCZEK:

17 Q Detective Merrill, what time does, what time does
18 it indicate that the 9-1-1 call came in?

19 A The best I can tell, the start time of this entry
20 indicates 10:35 p.m. or 2235 is actually listed in military
21 time, but that would be 10:35 p.m.

22 Q And -- and officers -- or is military time commonly
23 used in this line of work?

24 A Yeah, my understanding it is. I know it's
25 definitely used in our department.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q Okay. And what time does it indicate that the
2 first responder was dispatched?

3 A 10:37 p.m.

4 Q And did -- tell the jury what dispatched means?

5 A You want me to walk you through the general
6 process. I've worked dispatch before so I can, I have a
7 little knowledge of it, but basically a call would come in
8 either through a 9-1-1 line or a regular seven digit phone
9 number line. Somebody would be requesting service or
10 making us notified of a situation. The dispatcher would
11 answer that call and try to get the relevant information
12 from the caller and then while doing so, some of the better
13 ones can do it simultaneously that as they're on the phone,
14 they'll be typing in the information and notes on what the
15 caller is saying as far as what they're describing is
16 happening or the situation that they're calling about. And
17 then after they, depending on the nature of the call, they
18 may stay on the line with the person or they may go ahead
19 and hang up and dispatch officers.

20 I don't know which is the case in this one, whether
21 they stayed on the line or not, but the, the CAD report
22 indicates that the dispatcher typed in, he dispatched the
23 first unit at 10:37 p.m.

24 Q So the first unit was alerted at, at 10:37?

25 A Yeah, it's not common to have a couple minute

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 delay. By the time that, especially if the dispatcher's
2 typing as he's talking on the phone because at this time,
3 the start time is going to log as soon as he starts typing
4 in that call and if he's on the phone for a minute or two
5 with the caller getting that information and then by the
6 time he can break free from that to actually dispatch the
7 patrol unit, it's usually a minute or two.

8 Q And what time does it indicate that that first
9 responder arrived?

10 A The report indicates 10:41 p.m.

11 Q I want to talk a little bit briefly -- and we'll
12 come back to this, but I wanted to -- as investigators and
13 it's -- are you issued equipment?

14 A Yes.

15 Q Cameras?

16 A Yes, I am issued a camera.

17 Q And I believe you testified that Officer Kelly had
18 a camera?

19 A Yes, he was also issued a camera.

20 Q The -- it's important that those cameras are
21 maintained, correct?

22 A It's important that they're functioning when you
23 need them to function, yes. There's only so much
24 maintenance you can do on a camera.

25 Q Do they record dates?

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 A I can speak to mine I know does. You input the
2 date and time that you want it to show.

3 Q And you want that to be an accurate reflection of,
4 of --

5 A Yeah, we try to. Not every camera compensates for
6 Daylight Savings Time. Sometimes when the battery goes
7 dead, it will forget the time and date setting and you
8 don't always know to reset it right away. So it does
9 happen that the date and time is not accurate that's listed
10 on the photo.

11 Q As a professional, you try to check your equipment
12 when you get to work every day?

13 A I don't have time every day to check every piece of
14 equipment that I'm issued, no. I try to periodically check
15 it, but I can't do it every day.

16 Q You would agree with me that the date reflected on
17 the photos is actually March 13th, 2014?

18 A Yes, I did notice that earlier.

19 Q So but you're unaware of why that is, it just --

20 A I could speculate.

21 Q I don't want you to speculate because that wasn't
22 your camera, right?

23 A Correct.

24 Q So you don't -- do you know if the time is correct
25 on those photos?

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 A The time appears to be, I mean roughly correct
2 based on the arrival time and everything, it would make
3 sense that these photos were taken, you know, within four
4 to five minutes of them getting on scene.

5 Q You indicated that you asked him to take, you asked
6 him, Detective Kelly, to take those pictures for you?

7 A That's my recollection. I'm not positive on that.

8 Q You talked about, I want to talk a little bit about
9 what you observed when you got there that evening. There
10 were already several officers on scene?

11 A I remember Officer Kelly actually on the scene. I
12 know there was other officers in the area searching for the
13 person who ran off.

14 Q And you would agree with me that the pictures
15 indicate how dark or how, or what the lighting was at the
16 time?

17 A I don't, I personally don't depend on pictures to
18 really give an accurate representation of the lighting
19 because there's so many variables; there's the flash,
20 there's the exposure, there's -- so lighting as far as a
21 picture goes is -- is -- it's hard to say.

22 Q You indicated that the church across the street was
23 approximately 150 to 175 feet?

24 A No. Where the crow bar was found was approximately
25 that distance away from, from the incident area. The

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 actual front of the church is much closer.

2 Q The front of the church is much closer?

3 A Yes.

4 Q And then there's -- I believe that you went back
5 and took pictures, State's 7, 8 and 9. Now, I'm putting up
6 on the screen State's, what's been admitted as State's 8.
7 When you say the front of the church, are you referring to
8 this little fence area --

9 A No, that's actually on the side of the church. The
10 front would be back kind of behind that point of view over
11 where I was standing for that picture and to the right.

12 Q And actually, this is actually not a fence is it,
13 it's kind of just a barrier, isn't that right?

14 A Yeah, I mean, you could call it any number of
15 things, but it's not complete. I think there's some gaps
16 on the side and it's just kind of standing alone by itself.

17 Q I'm showing Defendant's Exhibit 7, a little
18 difficult to see, but you, that would indicate, I mean
19 that's how it would indicate that it wasn't maybe a
20 complete enclosure?

21 A Correct.

22 Q And you took these pictures as you were trained,
23 right, as you were trained to take pictures of a crime
24 scene?

25 A They didn't really show us how to take pictures of

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 outside scenes like that. I mean given the --

2 Q Not just crime scenes. Let me ask it this way, how
3 about, you've investigated, I think you testified over 2700
4 crimes?

5 A I haven't testified in 2700 crimes.

6 Q No, no, no, you've investigated?

7 A Okay. Yes, that's correct.

8 Q It's important for a jury to -- to be able, because
9 they're not there that night, to be able to, to understand
10 what they're looking at, right?

11 A Yes, I believe so.

12 Q And in fact, in State's 7, 8 and 9, you took a wide
13 angle picture of the scene, correct?

14 A Yes, correct.

15 Q And then in 8, you take a little bit closer?

16 A Yeah, I stepped in from the road closer.

17 Q And in 9, you take a little bit closer?

18 A Yeah.

19 Q That helps the jury have an overall understanding
20 of the scene, correct?

21 A Yes, correct.

22 Q That's what you were trained to do?

23 A Yes, in most cases, yeah, you want to start with a
24 wide-angle shot and kind of work your way in showing more
25 detailed photos. That's generally true.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q We have State's 1 through 6, the close-ups of the
2 car and some of the faraway of the car, correct?

3 A (The witness nodded.)

4 Q Were there any pictures taken of the driver's side
5 of the vehicle?

6 A I don't believe so, no; not that I've seen from
7 Rhett Kelly's camera.

8 Q Any pictures taken of the view of the house,
9 including the car and the truck and the trailer?

10 A No, I don't believe so.

11 Q Any pictures of the crow bar?

12 A No.

13 Q And I want to talk about this crow bar for a
14 minute. Cayce Department of Public Safety has policies and
15 procedures?

16 A Yes, we do.

17 Q On evidence collection?

18 A Yes, generally speaking, yes.

19 Q And it's retention?

20 A Yes.

21 Q It's important that an accused be afforded the
22 opportunity to -- to also test and look at the evidence?

23 A Yes, generally.

24 Q And in fact, your policy in evidence collection and
25 preservation indicates that you're supposed to retain all

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 items collected?

2 A I don't have the policy in front of me. It's been
3 a while since I looked at it, but, yeah, that sounds right.

4 Q You're familiar with it, correct?

5 A Yes.

6 Q Okay. Because that guides what you do every day,
7 right?

8 A Yes.

9 Q That all evidence should be controlled within the
10 policy, within the department?

11 A Yes.

12 Q You have an evidence room?

13 A Yes, we do.

14 Q But you testified that it -- it was your decision
15 to not retain this crow bar?

16 A Yes, it was.

17 Q What did you do with the crow bar?

18 A It sat in our lab for a couple of weeks just to
19 make sure that it wasn't recently stolen or somebody
20 claimed it and then I threw it in the dumpster.

21 Q You indicated that you tried to get prints off of
22 it?

23 A Right, I looked at it as far as examining the
24 possibility of getting prints off of it. I never actually
25 did any process to try to get prints off of it.

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1 Q You would agree that metal is also considered a
2 non-porous surface?

3 A Yes, it is, generally.

4 Q Generally.

5 A To my knowledge, generally, it's non-porous.

6 Q Okay. You don't necessarily, you don't have any
7 expertise in forensic examinations?

8 A Define expertise.

9 Q Training?

10 A I have some training, yes.

11 Q Have you ever completed or done any testing?

12 A I've -- I've done chemical development of
13 fingerprints on paper and cardboard, such as check in cases
14 that involved possibly a counterfeit or forged check. I've
15 developed prints using cyanoacrylate, which is a fancy word
16 for super glue. That's the fuming process I referred to
17 earlier. I've done stuff like that. Most, I've had on the
18 job training and a lot of it is just trial and error.

19 Q You indicated that in order -- the super glue
20 machine or thing that y'all use is too small for this crow
21 bar; is that correct?

22 A Yes, that is correct, I'm sorry.

23 Q You have other facilities available to you for
24 testing evidence?

25 A Yes, we -- we routinely use other agencies to

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1 assist that have other equipment that we might not have.

2 Q Lexington County Sheriff's Department?

3 A That would be one, yes.

4 Q SLED?

5 A Yes, we've used them in the past as well.

6 Q And tell the jury what SLED stands for?

7 A State Law Enforcement Division.

8 Q The State Law Enforcement Division. And you didn't
9 send this crow bar off to either of those labs, did you?

10 A No, I did not.

11 Q And there's no picture?

12 A No, I did not take a picture of it that night.

13 That, that was an oversight on our part. I thought between
14 Rhett Kelly taking the pictures that he might have also
15 gotten a picture of that, but apparently not.

16 Q In addition to fingerprints, Detective Merrill,
17 there are other forensic tests and examinations that can be
18 done on items?

19 A In some cases, yes.

20 Q DNA?

21 A That would be one possibility.

22 Q You didn't do any DNA testing in this case, did
23 you?

24 A No, not in this case.

25 Q You indicated that the crow bar was likely used in

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1 what caused the damage, which we've heard so much about, on
2 the -- I forgot what you call it, the little --

3 A The B Pillar.

4 Q The B Pillar. You can leave fingerprints by
5 touching things?

6 A Yes.

7 Q And DNA by touching things?

8 A Yes, sometimes.

9 Q I want to talk a little bit about reports that were
10 taken into case. Cayce uses a form?

11 A Yes, that's correct.

12 Q There's a standard form?

13 A Yes.

14 Q And you've been trained on that?

15 A Yes.

16 Q And it, it's generally created soon after an event
17 occurs?

18 A Yeah, usually within, we try to do it as quick as
19 possible. A lot, oftentimes there's intervening factors
20 and we don't do it immediately after, but a lot of us
21 investigators take handwritten notes and then as soon as we
22 get a chance, we'll come back to the office and kind of
23 transfer those handwritten notes into the computer notes,
24 report.

25 Q Information that you receive is the most accurate;

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1 what is given to you at the time, right?

2 A Yes, for the most part, I will agree with that.

3 Q You reviewed -- there was a report created in this
4 case?

5 A Yes.

6 Q And you have put down important information that
7 was provided to you that evening?

8 A Can you indicate which information you're speaking
9 about.

10 Q There's a narrative section?

11 A Are you looking at the actual Incident Report.

12 Q I am, yes.

13 A Okay.

14 Q There's a narrative section, correct?

15 A Yes.

16 Q And the narrative section is where you put all the
17 information that you get that, that evening?

18 A I wouldn't say all. For practical purposes, the
19 officers, just generally speaking, they tend to narrow it
20 down to what they believe to be the relative important
21 pieces of information. There's no way to exhaustively put
22 everything, every word that was ever spoken or every little
23 action that you ever did on the scene. That's impossible
24 to -- to document that. It would be a ten page report just
25 on -- this would usually be a ten page report.

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1 Q All right. Well let's talk about the relative
2 information. It's important, it would be important and
3 relevant to know if someone described the height of -- of
4 a -- of a suspect?

5 A Yeah, most likely.

6 Q It would be important and relevant information to
7 include what the suspect was wearing?

8 A Yes, if that information was available that usually
9 gets put in the report.

10 Q It would be important and relevant information to
11 know whether or not they were wearing gloves?

12 A Yes, that could be pertinent.

13 Q You reviewed the report in this case?

14 A Yes.

15 Q Tell the jury where the report indicates that the
16 suspect was tall?

17 MR. RADLEIN: Objection, Your Honor.

18 THE COURT: Step out, please, ladies and gentlemen.
19 Do not discuss the case during this brief recess.

20 (The jury left the courtroom at 11:32 a.m.)

21 THE COURT: All right, Solicitor?

22 MR. RADLEIN: Thank you, Your Honor. Defense
23 Counsel is referencing Officer Kelly's report and
24 soliciting information from that and that's the State's
25 objection. I don't believe she's, her line of questioning

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1 is essentially, it's not typically pitting because Kelly is
2 not here to testify, but all her questions are going
3 towards Kelly's report and I don't believe that's proper
4 through this witness.

5 THE COURT: All right. Thank you.

6 Ms. Zmroczek.

7 MS. ZMROCZEK: Your Honor, the report that I'm
8 referencing has Detective Merrill's name on it.

9 THE COURT: May I see it?

10 MR. RADLEIN: I'll had up the original --

11 THE COURT: I want to see what she's referencing,
12 whatever that is. If that's what you have, Solicitor, I'll
13 take that.

14 MR. RADLEIN: Your Honor, she's referencing after
15 the suspect was identified report. This is the first
16 report with Officer Kelly's name. This is redacted.

17 THE COURT: Now tell me the redacted report, who
18 handed that up.

19 MR. RADLEIN: Defense Counsel.

20 THE COURT: And then the -- I'm not through with it
21 yet. And then the other report, this would be the same
22 report except yours is redacted, Ms. Zmroczek?

23 MS. ZMROCZEK: That's my understanding, Your Honor.

24 MR. RADLEIN: Your Honor, may I approach? They are
25 almost the same, Your Honor. The difference is her report

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1 includes the suspect name. That was un-redacted, but the
2 narrative and everything is the same from the original
3 incident, but Defense Counsel has both copies.

4 THE COURT: Well the un-redacted report has the
5 race, the sex, approximate age, the ethnicity, height,
6 weight, the hair color and the eye color on it. So I
7 thought the question was tell me on the report.

8 MR. RADLEIN: Her question was tell me on the
9 report where it says --

10 THE COURT: His height.

11 MR. RADLEIN: No, she's referenced gloves as well
12 and she's going into the narrative.

13 THE COURT: I thought it was one question. She
14 referenced gloves earlier, I thought. Read me back the
15 question, Madam Court Reporter, the last question.

16 MR. RADLEIN: I apologize.

17 THE COURT: Just read me back the last question,
18 Madam Court Reporter, please?

19 THE COURT REPORTER: Tell the jury on your report
20 where it indicates that the suspect -- or how tall the
21 suspect was.

22 THE COURT: Well do you, that's on this report, but
23 you still object to her using this report.

24 MR. RADLEIN: That's correct, Your Honor. She says
25 your report and that is not Detective Merrill's report.

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1 THE COURT: All right. That would be, that would
2 be hearsay at this point, Ms. Zmroczek. It has his name on
3 there as the followup investigating officer.

4 Bring us our jury please.

5 I would sustain the objection.

6 (The jury entered the courtroom at 11:37 a.m.)

7 THE COURT: Thank you again for your patience.

8 Ms. Zmroczek, you may ask the next question.

9 MS. ZMROCZEK: Thank you, Your Honor.

10 BY MS. ZMROCZEK:

11 Q Detective Merrill, would you consider yourself the
12 case agent?

13 A Yeah, as far as responsible for the investigation.

14 Q Being responsible for the investigation, do you
15 rely on all the notes accumulated in this case?

16 A Yes, I do rely on the initial report oftentimes and
17 any notes taken by other officers involved in the case,
18 perhaps responding officers and officers of that nature.

19 Q And you reviewed those?

20 A Yes, I have.

21 MS. ZMROCZEK: Your Honor, at this time, I would
22 like to be able to ask a question?

23 THE COURT: I'm sorry?

24 MS. ZMROCZEK: At this time, I'd like to be able to
25 ask the question that I previously asked.

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1 THE COURT: I've already ruled on that.

2 BY MS. ZMROCZEK:

3 Q I'll ask it this way. Do you take your notes?

4 A Yes, oftentimes I do.

5 Q Did you generate your own investigative report in
6 this case?

7 A Yes, I do have some investigative notes that I did
8 take and recorded.

9 Q You had indicated that you spoke with Ms. Wilbanks?

10 A Very briefly, yes.

11 Q You indicated that, in addition to your
12 investigative notes, you also provided and presented kind
13 of a case summary, correct?

14 A Yes, I -- generally we provide that to the
15 solicitor's office when we forward a case file so they can
16 kind of have a, in layman's terms, kind of a summary of our
17 case, you know, here's what the case involves; here's what
18 we did kind of in general layman's terms. It's not usually
19 a detailed, exhaustive listing of everything.

20 Q And that's the report you generated?

21 A Yes, I did type that.

22 Q And in that report, you typed and indicated that
23 Ms. Wilbanks was unable to provide much of a description of
24 the person she saw due to the darkness and distance from
25 her?

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1 A That was my understanding, yes, based on
2 everything.

3 Q In your investigative notes, you also indicated
4 that you generated the -- the prints -- the hinge prints or
5 you --

6 A Yes, I processed and lifted them.

7 Q Processed that. You indicated that to you that
8 they were made by someone trying to push or pull down the
9 window?

10 A Yes, that's what it looked like to me, somebody
11 trying to manipulate the window.

12 Q You took a lift and that was Lift Number 2 from the
13 inside of the window?

14 A That is correct.

15 Q And it's part of State's Exhibit 15, and the
16 numbers are, where it says Lift No. --

17 A Can you bring it closer.

18 Q -- those are the ones I referred to?

19 A Yes, lift Number.

20 Q So I'm going to put Lift Number 1 up on the screen
21 and that was the lift that you indicated was on the outside
22 of the window?

23 A That is correct.

24 Q Then Lift Number 2 is the ones that you indicated
25 were on the inside?

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1 A That's correct.

2 Q Then you told this jury that you re-dusted?

3 A Yes.

4 Q And took another lift?

5 A Yes.

6 Q And it's your testimony that in no way was that
7 original, in no way did the third lift change?

8 A You mean the second lift.

9 Q From the second lift to the third lift after you
10 took the second lift and then you re-dusted and took the
11 third lift, correct?

12 A Yeah, my recollection of the order I think is --
13 may I see the lifts again?

14 Q Sure. Can you see them from here or do you want --

15 THE COURT: Hand them to him please.

16 THE WITNESS: I'm confusing myself a little bit on
17 the order. Okay. Yeah, two and three were from the
18 inside.

19 BY MS. ZMROCZEK:

20 Q Okay. So two and three are from the inside?

21 A Yeah.

22 Q I'm sorry, I wasn't trying to confuse you.

23 A When you said third lift, I didn't know whether you
24 meant the third lift total or the third lift of that set,
25 which there wasn't a third lift of that set, but I was

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1 making sure you weren't confused.

2 Q Now I am, no. The -- the second lift that you put,
3 would be inside of the window?

4 A Yes, the Lift Number 2 was the first time that I
5 made the lift on that.

6 Q And then lift -- then you re-powdered and did lift
7 No. 3?

8 A Yes.

9 Q And it's your testimony that Lift Number 2 and Lift
10 Number 3 are the exact same?

11 A As far as the subject of the lift, yes. They came
12 out a little differently due to the amount of powder that
13 adhered to the lift. I was able to get a little bit more
14 powder to get a little bit more darkness and more contrast.

15 Q You testified that you had training in -- in -- in
16 doing fingerprint lifts?

17 A Yes.

18 Q You -- you're aware that they can -- that they can
19 smudge?

20 A Yes, they can be smudged, destroyed, obliterated,
21 removed; yes.

22 Q Even altered a little bit?

23 A Altered in as a smudge or a smear or something like
24 that, yes, but you can't put ridge detail where there's not
25 ridge detail.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q Okay. You indicated that used -- which powder did
2 you use?

3 A I don't recall specifically, but based on looking
4 at the lifts, it was a grayish, possibly a dual purpose
5 powder, what we call dual purpose. It's kind of a gray.
6 It works on light and dark surfaces.

7 Q Typically with, with these window prints, you want
8 to use a -- a -- a black granular, aluminum, or black
9 magnetic powder, correct?

10 A You could use any one of those, yes.

11 Q And they help, like you said, define the ridges?

12 A Yes.

13 Q Powder can contaminate and ruin the opportunity to
14 perform other kind of examinations for example, DNA?

15 A I think that's a possibility. I don't have a lot
16 of training or experience in fingerprints interfering with
17 DNA or whether that's possible or not. I can't speak to
18 that.

19 Q That's not part of your knowledge?

20 A Yes.

21 Q Okay. There's no scientific way to know or
22 determine when a print is lift -- is left?

23 A Not to my knowledge, yeah, there's no way to put a
24 time or a date on a fingerprint. Looking at the print by
25 itself, there's no way.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q In reviewing and preparing for this case in your
2 notes, you never wrote down that Ms. Wilbanks saw someone
3 with there hand in the vehicle do you, did you?

4 A No, I don't believe I wrote that. I don't remember
5 her saying that to me.

6 Q That would be relative, that would have been an
7 important fact?

8 A It would. I believe she testified that she
9 couldn't see the -- the suspects hand due to his back being
10 to her and his hands being shielded by his body.

11 Q Fingerprints can't determine the sex of the
12 suspect?

13 A Not to my knowledge, no.

14 Q It can't determine the age of the suspect?

15 A Not by looking at the print by itself. Obviously
16 when there's a match made, you can determine those things.

17 Q But the fingerprints can't determine it?

18 A No, not by itself, no. Not that I'm aware of.

19 Q It can't determine the race?

20 A No, not that I'm aware of.

21 Q You've been trained on how to collect and preserve
22 those items?

23 A Yes.

24 Q The fingerprint lifts?

25 A Yes.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q You would agree with me that one of the worse
2 things you can do is to put fingerprints evidence into a
3 plastic bag because of the moisture that collects?

4 A No, I don't agree with that. I don't know where
5 you heard that or got that from.

6 Q Would you agree that plastic bags promote
7 condensation?

8 A They can if you put something that has moisture, a
9 significant amount of moisture in it, into a plastic bag,
10 it can under circumstances, promote condensation and mold.
11 That's why when we take like bloody clothing from a scene,
12 we either dry that in a secure area in a drying rack or we
13 package it into paper bags, which breathe and allow air
14 flow that would allow that moisture to dissipate.

15 Fingerprints generally don't have, they might have
16 nominal trace amounts of moisture, but not enough to ever
17 cause condensation that I've ever heard or seen.

18 Q You were trained at the Criminal Justice Academy?

19 A Yes.

20 Q You would agree that their recommendation is that
21 fingerprints should be stored in paper envelopes?

22 A That might be their recommendation based on an
23 abundance of caution, but like I said, in my experience and
24 training, I've never seen or heard of any moisture issues
25 on a plain fingerprint. I could see if it was a

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1 fingerprint impression in a liquid or something like a
2 blood impression or something like that. That would be a
3 concern and obviously the academy teaching to every officer
4 in the state might, in an abundance of caution, instead of
5 separating out those different types of prints. They just
6 make a general recommendation of packaging everything in
7 paper, but I don't see any mold or any moisture issues on
8 these lifts.

9 Q I want to talk about the chain of custody. Tell
10 the jury what a chain of custody is?

11 A It's just a record that tracks evidence as it moves
12 to different officers or personnel or different departments
13 in some cases. It just keeps a record of which officer had
14 it at what date and time.

15 Q You indicated that you collected these prints on
16 March 14th?

17 A I did.

18 Q You provided a chain of custody along with this --

19 A Yes.

20 Q -- all the --

21 A I do.

22 Q -- reports that you submitted. The first date that
23 you identified in your chain of custody for these
24 fingerprints is what date?

25 A The -- March 14th, 2014, it's listed as time, date

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1 obtained.

2 Q And then the next day indicates March 17th?

3 A Yes, that's the date that I actually submitted it
4 to our evidence room so they could then in turn transport
5 it for examination at some point.

6 Q Where were they kept for those three days in
7 between?

8 A To the best of my recollection, they were secured
9 in my patrol vehicle.

10 Q In March?

11 A Yes, ma'am.

12 Q Were they in a temperature controlled area?

13 A They were in a vehicle.

14 Q Were they in a box?

15 A I don't recall. They -- they were probably in my
16 kit that I have.

17 Q And you indicated you went to examine them in your
18 lab over the weekend?

19 A Yes.

20 Q Did you take notes of those?

21 A No.

22 Q There aren't any notes from that?

23 A No, I just brought them inside and looked at them
24 under some magnification and some further lighting. There
25 wasn't really much to take notes. It's a quick decision of

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 yeah, they look good enough to submit for further testing
2 or nah, those look terrible and there's not enough ridge
3 detail to do any further examination.

4 Q You're not a forensic expert?

5 A Define forensic expert; I've been to a one-week
6 training course on fingerprint comparison.

7 Q A one-week training course?

8 A Yes.

9 Q Okay. Would you consider, would you consider
10 that -- when was that course?

11 A Several years ago, I don't remember the exact
12 dates, but, no, to answer your question that you're getting
13 to, I don't consider myself an expert in comparison, but I
14 know enough to look at a print and make a determination of
15 whether it warrants further examination for possible
16 comparison or not.

17 Q You would agree though that there is a whole area
18 of forensic science and scientists available to the Cayce
19 Department of Public Safety to determine whether or not
20 they can get any evidentiary value off of them?

21 A Available, yes; it's just not practical.

22 Q You would agree that when charging someone with a
23 crime, it would be practical to have the best information?

24 A That's a very complicated question. Yes, you
25 always want the best evidence, but best is a qualified term

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1 and there's a lot of factors involved in best evidence.

2 Q You would agree to this jury, you would want this
3 jury when making factual determinations to have the best
4 evidence available?

5 A Yes, I would agree.

6 THE COURT: That's not a proper question. The jury
7 determines the facts based on the testimony. That's a
8 jury; they're the judges of the fact. Ask factual
9 questions.

10 MS. ZMROCZEK: I'll move on. Thank you, Your
11 Honor.

12 BY MS. ZMROCZEK:

13 Q You indicated that you were familiar with the Cayce
14 area?

15 A Yes, I believe I'm reasonably familiar with most of
16 the streets and areas.

17 Q How large would you say it -- the jurisdiction
18 covers?

19 A Last I checked it was somewhere in the neighborhood
20 of fifteen square miles.

21 Q I know I should know the answer to this, but I
22 don't. Explain when you say fifteen square miles, is that
23 like actually thirty miles?

24 A That would be the --

25 Q I'm terrible at math?

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 A That would be -- it could be, if it was a perfect
2 square, it would be five miles by five miles. I'm sorry,
3 that would be twenty-five square miles. Fifteen is, my
4 math is a little rough on that, but that's the area of how
5 it would be displayed is my understanding. It's
6 approximately fifteen square miles if you include every
7 piece of jurisdiction in Cayce because we have some
8 property over on the other side of the river off of Bluff
9 Road.

10 We have some subdivisions and areas in Three
11 Fountains Area over by the skating rink and McDonalds. If
12 you include all that, my understanding is it's about
13 fifteen square miles.

14 Q Okay.

15 A It's a very irregular shaped city.

16 THE COURT: Hold up. Did you say Cayce goes into
17 Richland County?

18 THE WITNESS: Yes, Your Honor.

19 MS. ZMROCZEK: That's what I heard.

20 THE COURT: I never knew. I thought I knew about
21 Columbia and Cayce and West Columbia. I'm going to do a
22 selfie of that this weekend.

23 Go right ahead, Ms. Zmroczek. I didn't mean to
24 interrupt.

25 ///

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1 BY MS. ZMROCZEK:

2 Q And the area we're talking about here is in
3 Lexington County, no question about that?

4 A Yes....This is all entirely within Lexington County.

5 Q Okay. And I'm pulling up State's 13 and it
6 indicates you, you put the location of, approximate
7 location of the incident?

8 A Yes.

9 Q And the approximate location of where Mr. Lawson
10 has lived since 2006?

11 A Yes.

12 Q You estimated it to be about, about a mile?

13 A Rough estimate, as the crow flies. Of course, you
14 know, if he followed roads and pathways and stuff, it might
15 be a little bit more.

16 Q Okay.

17 A I would roughly estimate about a mile.

18 Q And the Wilbanks house, you indicated was around
19 here?

20 A Yes.

21 Q The church and the area where the crow bar is
22 located, is that above or below?

23 A That would be above from that perspective.

24 Q Above in the opposite direction of Mr. Lawson's
25 house?

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1 A Yes.

2 Q Lastly, I want to talk about just the pictures that
3 were taken of the vehicle that evening?

4 A Yes, ma'am.

5 Q It was indicated to you that nothing had been
6 altered prior to you getting there?

7 A Sort of the reverse of that. There was no
8 indication that anyone had. I wasn't specifically told,
9 nobody has touched it; nobody has tampered with it, but one
10 of my typical questions before I start processing is to
11 kind of ask, you know, the general circumstances of, has
12 the owner been in the car since, you know, they called and
13 best of my recollection, that was a negative on that, that
14 nobody had. So based on my understanding was nobody had
15 messed with the car.

16 Q The -- they hadn't taken anything out of the
17 vehicle?

18 A Not that was indicated to me, no.

19 Q Nobody had opened the door?

20 A Not that was indicated to me, no.

21 Q Because that would be important so that we knew
22 about the integrity of the investigation?

23 A It could be; although like in this case it was
24 testified to that Rhett Kelly possibly opened the door
25 prior to my arrival. I would have liked to have known that

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1 at the time, but that's not a serious thing as long as I
2 know about where he touched the car. Worst case scenario,
3 I lift his prints and will get a match on him instead of,
4 you know, somebody else that might be affiliated with the
5 case.

6 Q Did you check the top of the -- the car right above
7 the window?

8 A You talking about the convertible top area?

9 Q Correct.

10 A I remember looking at it, yes.

11 Q Well did you notice any damage to that?

12 A I didn't note or notice any damage, but I'm not, I
13 can't say that there wasn't damage there. I didn't pay
14 that close attention to the cloth top because it's usually
15 not very conducive to processing for fingerprints or
16 anything. I was more concerned about looking for
17 fingerprints.

18 Q The window, it's been testified to that it was
19 rolled all the way up?

20 A That's my understanding and it's based on the
21 testimony I've heard.

22 Q And -- and you've got fingerprints where you
23 indicated based on your training that someone tried to push
24 the window down?

25 A Manipulate the window is the term I used, but yes.

Jason Merrill - Cross-Examination by Ms. Zmroczek

1 Q Manipulated the window?

2 A That would be a form of manipulation, yes.

3 Q Manipulate the window. Did you do any
4 investigation as to how they got to that part?

5 A They most likely used some sort of tool to create a
6 little bit of an opening or manipulate the door frame to
7 separate that window a little bit. It's my understanding
8 on those convertible Volvos, there's no top metal door
9 frame. I think the window, if I'm right from the pictures,
10 it just basically ends into the top. That way when the top
11 is down, there's no ugly metal door frame. So I would
12 imagine it wouldn't be hard to get something in there to
13 get your fingers behind that glass.

14 Q Based on your training and experience, how long
15 would you imagine that would take?

16 A Huh, I'm sorry.

17 Q How long, based on your training and experience,
18 would you imagine that would take?

19 A Not long. Based on my experience with these type
20 of incidences, they don't take long at all; they happen
21 very quick. When I say quick, it's within a minute or two
22 in some cases I've seen them, but there's a lot of factors
23 involved in that. It depends on their method, it depends
24 on time of day and all that stuff.

25 Q And you never heard a car alarm go off?

Jason Merrill - Redirect Examination by Ms. Radlein

1 A I didn't, no. I was at home when this call
2 happened.

3 Q And prior to carefully opening the door and dusting
4 for powder, did Mr. Wilbanks unlock the car for you?

5 A It's possible. I don't recall specifically, so I
6 can't say for sure that he did while I was there. He may
7 have done it prior to my arrival.

8 Q But it's been testified to it's your, it's your
9 understanding in your testimony that the pictures were
10 taken before anybody did anything to any part?

11 A That's my understanding, yes.

12 Q Thank you. That's all the questions I have.

13 THE COURT: Redirect, Solicitor?

14 MR. RADLEIN: Thank you, Your Honor.

15 **REDIRECT EXAMINATION**

16 BY MS. RADLEIN:

17 Q Detective Merrill, I am holding the hinge lifters,
18 I'm rubbing on them. Am I distorting prints that were
19 lifted on March 14th, 2014?

20 A No, I'm pretty confident you're not.

21 Q And why are you confident that I'm not?

22 A Just merely rubbing on them or them rubbing
23 together in a package is not going to be sufficient to
24 distort them there. They're covered underneath that layer
25 of plastic, through a layer of plastic and then they have

Jason Merrill - Redirect Examination by Ms. Radlein

1 the background on the backside that protects them from all
2 sides, from reasonable manipulation.

3 Q Okay. And looking at the hinge lifters, what would
4 happen if I opened it?

5 A In my experience, it would completely destroy, if
6 you've ever ripped like duct tape off of cardboard or
7 something like that, you know how it brings up the
8 cardboard and the paper and everything. That would be my
9 guess. I don't think I've ever tried it.

10 Q Maybe we'll test it today. Looking at the prints,
11 looking at the hinge lifters, I guess, do they appear to
12 have ever been opened?

13 A No, they do not.

14 Q Do they appear to be in the same condition as they
15 were back on March 14th, 2014?

16 A Yes, they do, other than I think there's a fold in
17 one, but that is going to be explained by the examiner.
18 I'm sure that's a common technique when they do
19 comparisons.

20 Q I placed the hinge lifters, back of the 1, 2 and 3
21 are in order. Can you read the information on the back of
22 them or do you need me to zoom in?

23 A I can make out for the most part especially what I
24 wrote on there, I'm familiar with.

25 Q Okay. What did you write on the back of them?

Jason Merrill - Redirect Examination by Ms. Radlein

1 A The case number, the date that I collected them,
2 the location, just a general location of the lift, my
3 initials where it says print lifted by and then the lift
4 number.

5 Q 1, 2 and 3, what's the date?

6 A March 14th, 2014.

7 Q And when would you have written that date?

8 A March 14th, 2014.

9 Q Do you record that date simultaneously with
10 lifting?

11 A Pretty much. As soon, usually within minutes if I
12 can. I'm writing that information on the back of the lift.
13 Sometimes I write it as I go, as I do each lift. I at
14 least record the lift number as I'm going just to keep them
15 in order and then when I get time, shortly after the
16 processing of the scene, then I'll sit down and write the
17 case number, date and initial and all that, but it's
18 definitely done before the prints leave my, my possession.

19 Q Okay. And also on the hinge lifters underneath the
20 1, 2 and 3, there are, well there is one date, two dates on
21 1 and two dates -- and one date on 2 and 3. Did you record
22 those?

23 A No, that doesn't appear to be my writing and I
24 don't recall writing those.

25 Q Okay. So to the best of your knowledge, do you

Jason Merrill - Redirect Examination by Ms. Radlein

1 know why there are other dates written on the hinge
2 lifters?

3 A Most likely from the, the examiner that received
4 the subsequent to me.

5 Q And flipping over on the back of indicated Lift
6 Number 1 and I apologize to the Court Reporter, this is
7 State's Exhibit 15. Flipping that, again what's Lift
8 Number 1, where was that lifted from?

9 A The outside of the, the passenger side window.

10 Q And you're positive?

11 A Yes.

12 Q And flipping over Lift Number 2, where was that
13 lifted?

14 A That was inside of the passenger side window..

15 Q And would this have been what you testified to
16 earlier, the first lift of the inside that was light in
17 color or a little bit lighter than you would have
18 preferred?

19 A Yes, it was.

20 Q And flipping over Lift Number 3, is that the second
21 lift of the inside that you performed?

22 A Yes, it was.

23 Q And earlier when you testified, you indicated that,
24 of course, you obtained an arrest warrant in this case for
25 Mr. Lawson based on a fingerprint hit. 1, 2, 3, which lift

Jason Merrill - Redirect Examination by Ms. Radlein

1 came back positive or did all three come back?

2 A No it wasn't all three. I believe the report
3 indicated lifts designated No. 2 and 3.

4 Q And 2 again, he inside?

5 A Correct.

6 Q And 3, the outside -- I mean the inside?

7 A Inside, correct.

8 Q And so he was probably identified twice?

9 A Yeah, you would say that.

10 Q Okay. And as I was holding the hinge lifters,
11 Defense Counsel suggested moisture impacting the lifts.
12 Was moisture an issue in this case?

13 A No, I don't believe so. There was no, the area
14 where I took the fingerprints on the car, there was no
15 observable condensation or moisture anywhere on the car.
16 General humidity in the air is not really going to be a
17 factor. If there was moisture on the outside of the
18 vehicle, it wouldn't be conducive to fingerprint powder at
19 that point. I'd have to either dry it off or use an
20 alternate method. So, no, moisture is not an issue.

21 Q And you testified that you never practiced or
22 attempted to open a hinge lifter after you lifted a print?

23 A Not that I recall, no, I can't say that I have.

24 Q Since you've also testified that that was not the
25 case with these prints that are in evidence. Is there any

Jason Merrill - Redirect Examination by Ms. Radlein

1 indication of any manipulation to the print?

2 A No, not that I've observed. They look to be the
3 same as when I submitted the -- like I said, other than the
4 crease where it was folded. -- I believe that can be
5 explained.

6 Q Okay. I just want to go over a couple of things
7 that Defense Counsel questioned you regarding -- Looking at
8 the photographs on State's Exhibits 1 through 6, I believe.
9 Defense Counsel questioned you about the date and the time
10 on the camera?

11 A Yes.

12 Q Can you actually testify with knowledge regarding
13 the setting on the camera that took those photographs?

14 A No, I cannot.

15 Q Do you have any knowledge if the date and the time
16 on there was accurate?

17 A It does not appear to be. It doesn't appear to be
18 accurate.

19 Q But you -- so you don't have personal knowledge
20 whether the time was even accurate?

21 A Yeah, I do not.

22 Q Okay. So basically according to your notes, you do
23 know that the incident occurred on March 14, 2014?

24 A I do.

25 Q And based on your records, you do know what time

Jason Merrill - Redirect Examination by Ms. Radlein

1 you arrived on the scene?

2 A Yes, within a few minutes, give or take a minute or
3 two.

4 Q On cross, you testified regarding the prints and
5 you indicated that the -- looking at the print itself, you
6 can't date the print?

7 A Correct.

8 Q And you also -- you were attempting to -- you
9 didn't have the opportunity to explain, but through the
10 circumstances of the print, where it's found, help you or
11 assisted you in this case in identifying when that print
12 was made?

13 A Yes, it did. Like I said, previously the -- the
14 position of the prints on the glass relative to the top of
15 the glass and the way the hand would have had to have been
16 orientated to make those prints, indicated to me or
17 strongly indicated to me that was the person that was
18 breaking into the car.

19 Q Okay. So just to make sure it's clear, although
20 from looking at the individual detail on the lift, you
21 can't sit here and say that was done yesterday or 30 years
22 ago, but you can say based on the circumstances of the door
23 and the window in this case, but that was a fresh print
24 that you were lifting?

25 A Correct, but yeah, using the circumstances, it

Jason Merrill - Redirect Examination by Ms. Radlein

1 could be inferred.

2 Q Regarding your -- your training and your method.
3 You described -- you testified on direct about your
4 procedure, your standard procedure in lifting prints?

5 A Yes.

6 Q And you described your training. Again, how many
7 times have you lifted prints in your career?

8 A I can't put an exact number, but I know it's in the
9 hundreds.

10 Q And you have years of on-the-job training regarding
11 lifting prints?

12 A Yes, I've had several more senior investigators to
13 me both at my job at the University and my current position
14 that have taken me aside and shown me tips and pointers
15 that they've learned over their decades of experience.

16 Q So would you qualify yourself as experienced in
17 lifting?

18 A Yes, I would say I'm experienced in lifting prints.

19 Q Can you do it with your eyes closed?

20 A No, definitely not, but I wouldn't want to.

21 Q The -- in terms of your method and your accuracy,
22 depending on the surface I believe you testified to, your
23 method of lifting prints would have changed and that would
24 be based on your view of the surface, correct, at the time
25 that you arrived on the scene or in any case?

Jason Merrill - Redirect Examination by Ms. Radlein

1 A Yes, the surface can always dictate or change what
2 method you would use or what substances you might use to
3 develop that print.

4 Q But due to your training, your education and your
5 experience, you're able to know that that is a factor?

6 A Yes.

7 Q So you wouldn't go to, for example, I just touched
8 this wood surface; what type of powder would you use on
9 this surface?

10 A You could use just about any powder. A magnetic
11 powder would work being that it's a wood core table and
12 it's a non-porous surface. A gray powder would work; a
13 black powder would work; a white powder would work. You
14 could use a florescent powder. That's a very simple and
15 easy problem.

16 Q Okay. But you know all this because of your
17 training and experience?

18 A Yes.

19 Q Defense Counsel questioned you about the 911 tape
20 in this case. When did this incident occur again?

21 A March 14th, 2014.

22 Q And when did you identify the person that committed
23 this crime?

24 A Middle of September of 2014.

25 Q At that time, would the 9-1-1 audio still be

Jason Merrill - Redirect Examination by Ms. Radlein

1 available?

2 A No, it would not.

3 Q And why is that?

4 A Because my understanding is we have a retention
5 period; I think it's 90 days at the most.

6 Q Okay.

7 A If we don't request it within 90 days, it gets --
8 recordings get recycled.

9 Q So by the time you obtained an arrest warrant in
10 this case, the warrant was served and the case file came to
11 the Solicitor's Office, could we have now gone back and
12 requested that 9-1-1 audio?

13 A No, it's too late.

14 Q Defense Counsel also questioned you regarding, why
15 didn't you do other forensic evidence; I don't know who
16 wrote this down, but what exactly is forensic evidence?

17 A Just --

18 Q I apologize, collect other forensic evidence?

19 A What is forensic evidence?

20 Q Yes.

21 A Basically forensic is just a fancy term for
22 associated or attached to a legal proceeding or a court
23 proceeding. So any evidence that we can find at a crime
24 scene that we can collect in a manner that allows us to
25 present it in court and it tends to speak to what happened,

Jason Merrill - Redirect Examination by Ms. Radlein

1 who did something, that sort of thing, it's just a term
2 that we use.

3 Q What are some examples of forensic evidence?

4 A You might have blood spatter, you might have broken
5 glass, you might have, of course, fingerprints is the
6 obvious one we've been talking about, you may have DNA,
7 both transferred through touch; you might have DNA from
8 bodily fluids left at a scene, it runs the gamut. Almost
9 anything can be evidence. It just depends on its
10 relationship to the crime.

11 Q Okay. In this case, Defense Counsel really focused
12 on your cross, did you ever request any DNA testing; the --
13 considering the nature of the crime and what had occurred,
14 was there any other possible forensic evidence that you
15 could have collected?

16 A Possibly, yeah, I mean there's always a possibility
17 of DNA. However, we typically don't collect DNA in a car
18 break-in case. It's just a matter of time and resources,
19 not only our agency, but the other agencies, like SLED that
20 tests the DNA. If every agency in the State collected DNA
21 on every auto break-in case that they had, and I would
22 conservatively estimate at least one in a day in any county
23 in the State, you know, per day; that's 46 a day. At the
24 end of a year, that would just be, you know, hundreds and
25 thousands of DNA's that we're throwing at SLED. It would,

Jason Merrill - Redirect Examination by Ms. Radlein

1 it would overload the system. There's already a year, a
2 one to two year back log for DNA on violent crimes. That
3 would just make it even worse.

4 Q So we possibly wouldn't be trying the case today?

5 A What's that.

6 Q We possibly would not be here trying the case today
7 if you had submitted DNA testing?

8 A Yeah, most likely we'd still be waiting and plus
9 DNA is not the perfect answer either. The DNA match would
10 be dependent on a suspect sample being in the system in
11 order to match it to or we'd have to know a suspect in
12 order to get a Court Order to collect a sample and in that
13 case, we'd have to have enough information.

14 In this case I wouldn't have been able to get a
15 sample from Mr. Lawson based on the evidence I had before
16 the fingerprint match.

17 Q And that would be because you didn't have a suspect
18 on March 14th, 2014?

19 A Correct, I didn't have any suspect.

20 Q In terms of fingerprints and DNA, which do you
21 believe is more reliable?

22 A I can't speak to reliability of either one. I can
23 only restate that fingerprints can be more individualized
24 than DNA based on the whole identical twin thing. So I can
25 speak as far as that goes, but reliability would get into

Jason Merrill - Redirect Examination by Ms. Radlein

1 testing methods and auditing methods and everything that
2 I'm not familiar with.

3 Q Understandable. There's a couple more things I
4 wanted to clear up.

5 Defense Counsel on cross, indicated smudging on the
6 window or there was possibly for that, anything of that
7 sort. What smudging from another person or the person
8 themselves distort the ridge detail that you were going to
9 collect?

10 A It could if it was done prior to collection, it
11 could distort or obliterate or otherwise conceal what was
12 there previously.

13 Q And in this case, since you were able to lift the
14 prints and successfully it was tested and came back to an
15 individual, is there any indication that smudging distorted
16 the ridge detail in this case?

17 A No, I don't have any indication that's the case in
18 this case.

19 Q When you arrived on scene, did you see any items in
20 the vehicle that you recall?

21 A I can't really say with certainty. That wasn't my
22 focus at the time. I believe there was something in the
23 front passenger's floorboard, but I can't be certain about
24 that.

25 Q And whether or not anything was still in the car,

Jason Merrill - Redirect Examination by Ms. Radlein

1 whether or not someone else opened the door, all of that
2 information goes back to my question, would it have changed
3 the positive ridge detail that was matched to Johnny Lawson
4 in this case?

5 A No, somebody grabbing the door handle and opening
6 the door wouldn't have affected the fingerprint up on the
7 glass, not in this case.

8 Q And lastly, regarding the tool that Defense Counsel
9 referenced, were you able to determine that that tool was
10 definitely used in the commission of this crime?

11 A No, I was not.

12 Q So based on your experience, would you been able to
13 definitely enter it into evidence under this case and say
14 that that tool was part of this incident?

15 THE COURT: That's an improper question.

16 MR. RADLEIN: I apologize, Your Honor.

17 THE COURT: He doesn't do the gateway of what is or
18 is not able to be introduced into evidence. That's a
19 function of the Court.

20 BY MS. RADLEIN:

21 Q Do you have any evidence that linked that specific
22 tool to this crime?

23 A No, I did not.

24 Q Were you able to determine that a tool was used to
25 cause the damage, however, that some other kind of --

Jason Merrill - Recross-Examination by Ms. Zmroczek

1 A Yeah, just using my common sense and experience, it
2 appeared that the damage was caused by some sort of tool?
3 It obviously wasn't somebody's fingers that are strong
4 enough or hard enough to, to bend that; it was some sort of
5 implement.

6 MS. RADLEIN: No further questions at this time,
7 Your Honor?

8 THE COURT: Recross?

9 MS. ZMROCZEK: Just very briefly, Your Honor.

10 **RECROSS-EXAMINATION**

11 BY MS. ZMROCZEK:

12 Q Ms. Radlein said that the fingerprint -- that Mr.
13 Lawson was identified twice; but that's an inaccurate
14 statement you would agree?

15 A It -- it's kind of a bad way to put it. He was
16 identified twice from the same set of prints I guess is a
17 better way to characterize it.

18 Q One print?

19 A Yeah, they're the same print, yes.

20 Q Okay. I just wanted to make sure that that was
21 clear. She asked you about the timing and that it could be
22 inferred that it was recently left. You have no basis or
23 scientific ability to say when that print was left?

24 A A scientific basis, no, but just like I said, the
25 totality of the circumstances based on combining Ms.

Jason Merrill - Recross-Examination by Ms. Zmroczek

1 Wilbanks seeing the suspect right there at that position or
2 near that position where the prints were found and the
3 relative positioning of the prints on the window.

4 Q And I wanted to ask you about that. You're basing
5 that on what you were, on what you were told that night,
6 where the suspect was seen or found, right?

7 A Yes.

8 Q And -- and your report indicates that she told you
9 that upon coming outside of her residence and seeing a
10 person that she called Cayce Police Department upon coming
11 outside of her residence and seeing a person at her
12 vehicle?

13 A Yes, Officer Kelly's report indicates that she told
14 Officer --

15 MS. ZMROCZEK: You can't talk about --

16 THE COURT: Wait a minute. Wait a minute. Show
17 him the report you're referring to please.

18 THE WITNESS: Okay. This is the case I'm reading
19 off the report.

20 BY MS. ZMROCZEK:

21 Q Right. That's your report?

22 A Yes, this is the case handwritten by me.

23 Q So your case summary --

24 THE COURT: Is that the case summary that went to
25 the solicitor; is that the same one we're talking about

Jason Merrill - Recross-Examination by Ms. Zmroczek

1 that she referred to earlier? Is that correct?

2 THE WITNESS: No, I believe earlier she was
3 referring to the actual police incident report. Now she's
4 referring to the case summary that I wrote in preparation
5 of submitting the case to the Solicitor's Office.

6 THE COURT: Okay. I just wanted to make sure I was
7 tracking. Thank you. You may ask the question now, Ms.
8 Zmroczek.

9 BY MS. ZMROCZEK:

10 Q You want me to ask it again?

11 A Yeah, please.

12 Q Okay. I'm sorry. The information that you
13 obtained and you based your investigation on was that that
14 Cayce Police Department was called because of Ms. Wilbanks,
15 upon coming outside of her residence, saw a person breaking
16 into her vehicle?

17 A Yes.

18 Q Upon coming outside of her residence?

19 A That was my understanding and again, this is just
20 kind of a broad, general summary to provide the Solicitor's
21 Office with basically what happened.

22 Q You testified you believed that he saw something on
23 the front passenger floorboard?

24 A I vaguely recall, but I can't be certain. I didn't
25 note anything so I mean I can't say for certain that I

Jason Merrill - Recross-Examination by Ms. Zmroczek

1 observed anything.

2 Q And that would be irrelevant to, that would be
3 relevant to an investigation of an auto break-in?

4 A It would, but my assumption was that Officer Kelly
5 had already covered that with the victim and established
6 what was in the car and what might have been attempted to
7 be taken. My focus on that at that time was on the
8 processing of the vehicle for fingerprints.

9 Q And you would agree with me that the pictures would
10 most accurately reflect what can be or cannot be seen
11 inside the vehicle that evening?

12 A They could show, yes. I mean it's possible that
13 they would show what's in there. Just depends on the angle
14 of the photograph and everything.

15 Q Thank you.

16 THE COURT: Thank you, Detective Merrill, you may
17 step down.

18 All right. Perhaps now would be a good time to
19 take our morning recess. We're going to take a 10 minute
20 recess and go right back to work and our clerk has
21 graciously ordered y'all's lunch today. So lunch will here
22 by one o'clock. Whenever lunch is here, I would ask you to
23 please eat in and as soon as you finish, when y'all are
24 ready, rested, to start our afternoon session, all you have
25 to do is knock on the door and tell the bailiff and we'll

1 start back. So we're going to take, it's 12:21; we're
2 going to take a recess until 12:31 and call the next
3 witness.

4 When lunch gets here, we're going to take a break
5 and go right back to work. Suit? Problems? Great. Thank
6 you very much. Do not discuss the case during this brief
7 recess.

8 Court will be in recess for 10 minutes.

9 (The jury left the courtroom at 12:21 p.m.)

10 THE COURT: Bring us our jury please, sir.

11 THE BAILIFF: Yes, sir.

12 (The jury entered the courtroom at 12:36 p.m.)

13 THE COURT: All right. Welcome back, ladies and
14 gentlemen. Please continue to give the parties your
15 complete and undivided attention.

16 Solicitor, you may call your next witness.

17 MR. RADLEIN: Thank you, Your Honor. The State
18 calls Agent Seraphim Haftoglou.

19 THE COURT: All right. If you'd come around and be
20 sworn for us please.

21 SERAPHIM HAFTOGLOU

22 having been duly sworn, testified as follows:

23 THE CLERK: If you'd have a seat for us please over
24 here. State your name and spell your last for the record?

25 THE COURT REPORTER: And first. And first.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 THE WITNESS: My name is Seraphim Haftoglou.

2 S-E-R-A-P-H-I-M, H-A-F-T-O-G-L-O-U.

3 **DIRECT EXAMINATION**

4 BY MS. RADLEIN:

5 Q Thank you. What name do you go by?

6 A Sammy.

7 Q Can I call you Sammy?

8 A Yes.

9 Q Thank you.

10 A I'm sorry.

11 Q Sammy, where are you currently employed?

12 A I work for SLED, State Law Enforcement Division.

13 Q And where is SLED located?

14 A Broadriver Road.

15 Q And what is your current employment; what's your
16 current position?

17 A I am the AFIS Supervisor there at SLED.

18 Q What is AFIS?

19 A It is the Automated Fingerprint Identification
20 System. That's where we store all fingerprints in the
21 state record.

22 Q So that's the state, not nationwide?

23 A Yes, correct, just state. Whatever happens in the
24 State of South Carolina is submitted to us and we store it.

25 Q Okay. And what is the purpose of AFIS?

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 A AFIS is a way to identify people. It's a keeper of
2 the record as well, how to create the Criminal History
3 Database.

4 Q The -- how long have you been in this division?

5 A I've been in, as the AFIS Supervisor, for three
6 years now.

7 Q And how long have you worked at SLED?

8 A Total eight years.

9 Q And what department did you used to work in before
10 you became the supervisor?

11 A I was a Fingerprint Examiner for five years prior
12 to being the supervisor.

13 Q What type of training do you have?

14 A Most of my training was actually on duty training,
15 on job. My prior supervisors trained us to, how to read
16 and identify fingerprints and compare fingerprints. I've
17 also done some classes through our vendor that we have.

18 Q And what type of education do you have?

19 A I am a graduate from the University of South
20 Carolina in Criminal Justice.

21 Q And do you have any other continuing education or
22 in terms of training or just all on the job training?

23 A All on the job training.

24 Q Okay. And you mentioned you're a supervisor with
25 AFIS. Can you explain to the jury what your day-to-day job

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 functions are, your responsibilities?

2 A So being the supervisor of AFIS, I'm the keeper of
3 the records, which means all fingerprints are coming into
4 the system from arrests mainly that are coming from our
5 live scan machines, which are machines at detention centers
6 that capture the person's demographics and fingerprints and
7 submit it to us through SLED pretty immediately. So that
8 way we have an up to date as possible criminal history on
9 that individual.

10 MS. ZMROCZEK: Your Honor, I'm sorry. May we
11 approach briefly.

12 THE COURT: Yes, ma'am.

13 (There was a bench conference out of the hearing of
14 the jury and the court reporter.)

15 BY MS. RADLEIN:

16 Q And who is the -- just to clarify, AFIS maintains
17 all types of prints that are submitted --

18 A Yes.

19 Q -- in South Carolina?

20 A These are criminal and some applicant, but
21 applicants based on the State statute that allows us to
22 store them. So particular jobs require you to have a
23 fingerprint background check for State and National, we do
24 that, we process it, but based on that statute, allows us
25 to store that print or not.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q Okay. So if I can clarify for the jury to
2 understand, so also AFIS is authorized by statute?

3 A Yes.

4 Q So would the records that you maintain also be
5 public record?

6 A The information is, but the prints are not.

7 Q Okay. Now how exactly does AFIS obtain the prints?

8 A Okay. Prints are submitted to us, the majority of
9 them, about 90 percent of them nowadays, are submitted to
10 us by a live scan machine. It is submitted to us
11 electronically and comes through us, our AFIS identifies
12 it, reads it, it establishes a SID number if one is not
13 created for it already. A SID number is basically a unique
14 identifying number for that individual. Under that
15 individual's unique number is a list of transaction
16 numbers. Each transaction number is correlated with that
17 fingerprint card that's submitted that day. So basically
18 that day, fingerprint submitted to us and it has a unique
19 transaction number, which tells me where that transaction
20 came from.

21 Q Okay. And so just to clarify, so you, it comes in
22 a live scan, then you mentioned cards. Is there a
23 difference?

24 A Well, yes. Some of them are mailed to us, some are
25 done on live scans that are not connected to us so they

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 just print them out and mail them to us, some agencies
2 can't afford a live scan machine so they still do the old
3 fashioned inking way. We also get applicant cards that are
4 mailed to us, such as your concealed permits and security
5 officers, they're mailed to us and we receive them by
6 inking and we manually enter them into the system.

7 Q I'm sorry, I'm going to try to break this down for
8 myself as well as the jury. So the live scan machine and
9 you mentioned the ink rolling. So you only roll in the ink
10 and you just place your hand as evidence for a live scan?

11 A So a live scan is very similar to inking except
12 there's no ink involved. You would still roll the person's
13 print on a flat screen that digitizes that print through
14 heat sensors and it captures it on the machine, on the
15 screen and it tells you which finger to do in order. You
16 start with your right hand, your thumb and move down to
17 your pinky and then you do your left hand. You also
18 capture what we call slaps, which is you take your four
19 individual fingers and you just place them down and then do
20 your thumbs. It helps capture the order of the prints.

21 Live scan machines nowadays are very smart and they
22 kind of tell you when you're doing them out of order or if
23 it's not a good quality or not matching what they got down
24 below in slaps.

25 Q So speaking specifically about the live scan

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 machine, does SLED maintain each individual live scan
2 machine?

3 A No, it's up the agency. We certify live scan
4 machines. So a company would basically come to us and we
5 have a live scan machine, we look at that company, see if
6 they're certified and approved by the FBI. If they are,
7 then we just make sure that they can connect to our bank in
8 our IT Department and make sure that they connect to us
9 securely to our banking system.

10 Q So does the FBI also rely on the live scan
11 machines?

12 A Yeah, well they rely on us to submit them to them.

13 Q Okay. We'd understand that. And how often are the
14 live scan machines certified?

15 A The vendors certify as they come in with the --
16 with the machine. So if you buy one and certify then, at
17 that time the vendor is certified with us as long as they
18 can continue to be approved by the FBI and they haven't
19 been removed from the FBI's certification list then they
20 are fine with us as long as they continue to connect to us
21 properly without us making any major changes.

22 Q And you mentioned that the live scan machines are
23 sophisticated enough to be able to give the individual roll
24 prints and then what did you refer to the four slaps?

25 A The flaps or slaps, when they lay the hand down.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q Okay. And you said they're sophisticated enough to
2 tell if you now slaps, is that the term --

3 A Yes.

4 Q -- the wrong print?

5 A Yeah, if you roll the wrong print, it can tell you
6 that when you're rolling someone's hand that, let's say
7 that individual actually rolls the index finger twice and
8 say going to the middle finger. They'll let it show a red
9 box saying it does not match slap and then the officer or
10 the correction officer should know or the individual should
11 know to hit rescan and rescan the proper finger.

12 Q Okay. And is that a built in mechanism for the
13 live scan?

14 A Yes, as far as I'm aware of, yes, ma'am.

15 Q Okay. And you mentioned that you work for SLED...
16 The prints come from all over the State of South Carolina,
17 correct?

18 A Yes, that's correct.

19 Q And you mentioned that they're unique SID numbers
20 and you mentioned transaction numbers. So is it, I'm
21 trying to picture, is it like for example, Person A and
22 then each time a scan is done there's many folders under
23 that person's name?

24 A Yeah, to a degree. Basically what you would see in
25 our system was when you see the SID number and then

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 underneath that, as you open the folder down, you see
2 multiple different, in some cases, multiple or one or two
3 different transaction numbers from when they send into us.

4 Q And again, that's something that you maintain in --

5 A Yes.

6 Q -- for all prints submitted?

7 A Yeah.

8 Q The live scans, the ones that were specifically,
9 they're scanned in and I'm guessing, electronically
10 submitted to AFIS for storage. What would you refer to as
11 the original?

12 A The original is a digitized copy that we can
13 produce upon request.

14 Q So would each printout of a card, what is a card
15 called?

16 A A ten-print card, a fingerprint card.

17 Q Okay. So a ten-print card or ink-print card is the
18 printout. Is each printout considered original?

19 A Yeah, if it's an electronic submission, yes.

20 Q And if it's not electronic submission?

21 A We do have the original hard copy, which we do
22 store, but we are making them all digitized now.

23 Q So the State is moving towards a completely
24 digitized method --

25 A Yes.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q -- of storing or collecting, I guess is what --

2 A Collecting and storing.

3 Q Collecting and storing. Is this something just
4 South Carolina does?

5 A No, all states, I'd say have their own AFIS system
6 and store their own data base with their fingerprints
7 inside.

8 Q And do you know this first-hand?

9 A Yeah, with our vendor, they do a conference every
10 year and you know, we get to meet multiple states that have
11 this and dealing with the FBI from time to time, we do
12 know, I believe all states do submit electronically to the
13 FBI.

14 Q And in terms of the integrity of the prints, do
15 AFIS and you as the supervisor of AFIS, can you testify to
16 the, I guess a better way to ask that question, are all the
17 prints maintained in the condition that they were
18 submitted, whether electronically?

19 A Yes, they are. We do not alter the fingerprints at
20 all.

21 Q Would you be able to tell if a fingerprint was
22 altered?

23 A From one of my employees.

24 Q Correct?

25 A Yeah. I would be able to.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q With absolute certainty?

2 A Yeah, it's pretty obvious if something's been
3 altered or not.

4 Q And -- and just to make it clear for the record,
5 would you be the custodian of all fingerprint cards in the
6 State of South Carolina?

7 A Yes, I am.

8 MS. RADLEIN: Your Honor, may I approach?

9 THE COURT: Yes, ma'am.

10 BY MS. RADLEIN:

11 Q I'm going to hand you what's previously been marked
12 for identification as State's Exhibit 16. Do you recognize
13 that item?

14 A Yes, it's a ten-print fingerprint card that I
15 certified to bring here for court today.

16 Q And you said you certified; so you actually
17 certified that record?

18 A Yes.

19 Q And how do you know that is the -- in addition to
20 certifying it, are all ten-print cards maintained in that
21 manner or appear to be in that manner?

22 A Yes, ma'am.

23 Q And so that's a ten-print card that you're familiar
24 with?

25 A Yes.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q And I asked you earlier if it's an original or a
2 copy; what would this item be?

3 A I would consider this original because it was
4 originally -- it's a digitized. The original is a
5 digitized so we can reproduce as it was submitted to us.

6 Q And so you can also, you can reproduce live scans
7 that are electronically submitted and reproduce print
8 cards, regular rolled print cards that are electronically
9 submitted. Would the rolled print ink prints be considered
10 originals?

11 A For us, yeah, because we can reproduce them, yes.

12 Q Okay. So if you print a copy of that one and
13 brought it to court today, would you be able to tell by
14 looking at the actual ten-print card whether it was a
15 rolled print or live scan?

16 A Yeah, there's two things; one you can kind of tell
17 which one is ink versus a live scan print; also the
18 transaction number tells me if it was a card that we
19 scanned in at SLED or if it was a live scan submission.

20 Q In referencing the ten-print card that I handed
21 you, did that actual ten-print card have an identifying
22 characteristic that tells you it's a live scan or an ink
23 rolled print?

24 A Yes, there's a number at the top left corner; it's
25 twelve digits. It starts with 5002; that tells me it came

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 from a particular live scan agency.

2 Q Thank you.

3 MS. RADLEIN: Your Honor, at this time the State
4 requests to move State's Exhibit 16 into evidence?

5 MS. ZMROCZEK: I would object, Your Honor, to what
6 we said previously.

7 THE COURT: Okay. Subject to a previous objection.
8 State's 16 will be introduced into evidence based on the
9 Court's previous ruling.

10 (State's Exhibit Number 16 was entered into
11 evidence.)

12 MS. RADLEIN: Thank you, Your Honor.

13 MS. ZMROCZEK: I'll ask my questions about the
14 card.

15 MR. RADLEIN: May I proceed.

16 THE COURT: Yes, ma'am.

17 MR. RADLEIN: Thank you, Your Honor..

18 BY MS. RADLEIN:

19 Q In referencing that specific ten-print card, whose
20 ten-print card is that?

21 A On the fingerprint card it says it belongs to a
22 Johnny L. Lawson.

23 Q Is there a State ID or SID number. Located on that
24 card?

25 A Yes, there is.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 Q And what is that number?

2 A It is SC00330637.

3 Q And that would be the Group A or person that I
4 described; that would be the SID number for this
5 individual?

6 A Yes, ma'am.

7 Q And you mentioned transaction number, is that
8 reflected on this card?

9 A Yes, it is.

10 Q And what is the transaction number?

11 A It is 500200032524.

12 Q Are there other identifying characteristics or
13 detailed information about Johnny Lawson on that card?

14 A It has his Social Security Number, date of birth,
15 sex, race, height, weight, eyes, color, hair color and also
16 has his FBI number.

17 Q And can you publish that information?

18 A Yes. His FBI number is . His date of
19 birth is ; sex, male; race, black; height, 5'10";
20 weight, 169 pounds; eyes, brown; hair color, black; and his
21 Social Security number is [REDACTED].

22 Q And all this information belongs to Johnny Lawson?

23 A Yes, according to the fingerprint card, yes.

24 MS. RADLEIN: Permission to approach, Your Honor,
25 the witness?

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 THE COURT: Yes, ma'am.

2 BY MS. RADLEIN:

3 Q The, I'm not sure if you can see it clearly.

4 Underneath the identifying information, I'm going to hand
5 you this laser pointer, if you can --

6 A Okay.

7 Q -- can you indicate the prints, in order, what
8 prints are we looking at?

9 A So right here is your right thumb print. This is
10 your right index, your right middle, your right ring finger
11 and your right pinky; and we go to -- which is 1, 2, 3, 4,
12 5. Finger 6 is your left thumb print, 7 is your left
13 index, finger 8 is your left middle finger, finger 9 is
14 your left ring finger and finger 10 is your left pinky and
15 then down here is what we call the slaps. This is your
16 left hand, left 4 fingers and then your left thumb, your
17 right thumb and then your right 4 fingers.

18 Q And you indicated that this was a live scan
19 machine. Where on the ten-print card indicates that?

20 A Right up here it indicates the transaction number
21 that was submitted to us.

22 Q And referencing the slaps at the bottom, that would
23 have been done from simultaneously pressing down your hand?

24 A Depending on the live scan machine.

25 Q Okay.

Seraphim Haftoglou - Direct Examination by Ms. Radlein

1 A Some live scan machines do right hand first; so you
2 would do your right slap, right thumb, roll your right hand
3 and then you would do the left slap, left thumb and then
4 roll your left hand. Depending on the vendor you're using,
5 it could go different ways.

6 Q But in terms of the -- what are the four your
7 referencing? I think you said--

8 A Slap.

9 Q -- slap?

10 A Slap or flats.

11 Q And just that portion of taking the print, is that
12 just simply pressing it down?

13 A Yes, ma'am.

14 Q So that would be an accurate reflection of that
15 individual's shape and outline of his hands?

16 A Yes, as the way the officer put their hand down on
17 top to capture it, yes.

18 Q Okay. And I'm going to hand you back the exhibit?
19 Referencing the top portion of the back of the exhibit,
20 when was this print collected?

21 A The print was collected on 7/23/2003.

22 Q And where did this print originate?

23 A Department of Corrections, Kirkland Correctional
24 Institute.

25 MS. ZMROCZEK: Your Honor, we have a matter of law.

1 THE COURT: All right. Ladies and gentlemen, I'm
2 going to take up this matter of law. However, your lunch
3 is here. So why don't you go on and take your luncheon
4 recess. I'll deal with this. Whenever you're finished,
5 just knock on the door and if any of you want to go outside
6 and get some fresh air, anything of that nature, you may
7 certainly do so. The bailiffs, the bailiff will escort you
8 outside.

9 All right. Thank you very much. Do not discuss
10 this case during the recess and remember to keep an open
11 mind. Thank you very much.

12 (The jury left the courtroom at 12:56 p.m.)

13 THE COURT: All right. Ms. Zmroczek?

14 MS. ZMROCZEK: Your Honor, it's my understanding of
15 your previous ruling, when I brought this up before the
16 jury came in this morning that any information regarding
17 arrests or criminal history was to be redacted before
18 entered into evidence and --

19 THE COURT: The criminal history is. I don't
20 understand what you're saying.

21 MS. ZMROCZEK: Okay. The criminal history is not
22 redacted from that.

23 THE COURT: It is redacted. He didn't say anything
24 about the criminal history. Her question was where was the
25 prints taken from?

1 MS. ZMROCZEK: Right, and he indicated Kirkland,
2 which is, he said Kirkland Correctional.

3 THE COURT: He did.

4 MS. ZMROCZEK: Which indicates he's been arrested,
5 but -- but my other issue, Your Honor, is the card as it is
6 has not been redacted.

7 THE COURT: I understand that, but she's not
8 showing the back of the card.

9 MS. ZMROCZEK: I don't --

10 THE COURT: I assume we could take that up before
11 whatever document actually goes to the jury, but she's only
12 shown the front of the card and then when she asked him
13 where it was taken, I assume he had to look at the back.

14 MR. RADLEIN: That's correct, Your Honor.

15 THE COURT: But did not, she did not display the
16 back of the card.

17 MS. ZMROCZEK: I understand, but my -- my -- my
18 original objection -- that was the part that I said I
19 wanted to address later and now I'm clear on that, but my
20 original objection was Kirkland Correctional Institute
21 indicates -- institution indicates that it was made at a
22 prison.

23 THE COURT: I agree.

24 MS. ZMROCZEK: And -- and that, Your Honor, we
25 would argue is improper because now they know that he's

1 been arrested before.

2 THE COURT: Well, that wasn't your objection,
3 number one. Number two, under State v. Anderson 687 S.E.
4 2d, 35, 2009, South Carolina Supreme Court case penned by
5 Justice Beaty, then AFIS Director, the then AFIS Director
6 testified first that the -- the defendant testified --
7 excuse me, the individual testified that when a person is
8 arrested, the police or jail personnel rolled the person's
9 fingerprint onto a ten-print card. Further it says that
10 AFIS stores all the digital fingerprint images of every
11 ten-print card in South Carolina. In order to positively
12 identify each person who has been arrested, a unique state
13 identification number is assigned to the person at the time
14 of the person's arrest.

15 The identification, the identifying number remains
16 constant regardless of the number of times a person is
17 arrested. Further if you go on through, through the
18 decision, the testimony of Gause and Means, I believe Joe
19 Means was the director at that time, Gause was the
20 fingerprint man that worked the AFIS and Joe Means is the
21 man with the local police. The State provided evidence
22 that Anderson's known ten-print card was taken at a
23 correctional facility on April 12. It was submitted to
24 SLED. It was maintained in the condition in which it
25 arrived and it was stored in AFIS.

1 It's my understanding from the reading of Anderson
2 and explanation of Rich that the State has to lay that
3 foundation of when the -- when the prints were taken, where
4 they were taken, on what specific date and if they were
5 assigned a unique state identification, identifying number
6 or it wouldn't be admissible.

7 MS. ZMROCZEK: Your Honor, I have a copy and I'm
8 reading Anderson. My understanding of Anderson is that the
9 issues that that case is -- and that the Court was focusing
10 on primarily dealt with the authenticity of it and maybe
11 I'm making, maybe I wasn't clear to what I was objecting
12 to. What I was trying to object to was the -- was the
13 improper hearsay about or the improper character evidence
14 associated with the location. We don't, as I stated
15 earlier, I would stipulate to the ten-print card. We have
16 no problem with the authenticity; it's the manner in which
17 it was collected that now the jury is aware that he has at
18 least been to prison.

19 THE COURT: They didn't accept the stipulation.
20 Therefore, they have to authenticate it. His prior
21 criminal history has not come into evidence, but they have
22 to show that it's authentic and they have to show the
23 location and the time and that it's assigned a unique
24 identification, identifying number.

25 MS. ZMROCZEK: And I guess, Your Honor, as long as

1 I can just preserve that. I understand that they didn't
2 accept my stipulation and I believe that they didn't accept
3 my stipulation because they wanted the opportunity to let
4 the jury know that he had been at a correctional facility
5 and that is what my objection was.

6 THE COURT: That they wanted the jury to know that?

7 MS. ZMROCZEK: Of course.

8 THE COURT: Well, I, you know, still if you read
9 the burglary first, and I'm sure you have, the burglary
10 first degree cases where the aggravating factor is two
11 prior burglaries. The State does not have to stipulate.
12 What they want or what they don't want is not relevant to
13 the Court or to the jury. They've got to comply with the
14 law.

15 MS. ZMROCZEK: I would agree with that, Your Honor,
16 but in this case, I would submit that it, that a prior
17 enhancement or some sort of requirement that they establish
18 that is not an element for this case and that would be my
19 argument.

20 THE COURT: I, all right. I'm not, I didn't
21 understand that to be your argument in my, my pretrial
22 ruling, the previous ruling as to State's 16. I understood
23 it to be the prior criminal history and I ruled the prior
24 criminal history would be redacted. In fact, it wouldn't
25 be admissible, but I, I didn't rule that they had to, that

1 they didn't have to authenticate it and they don't have to
2 accept the stipulation.

3 All right.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 THE COURT: All right. All right. The jury is
6 taking its luncheon recess. I intend to start back as soon
7 as I hear word that they've knocked on the jury room, so --
8 jury room door, so if y'all want to post a sentinel there,
9 you may be welcome to do so. I do -- I do intend to start
10 back within 30 seconds of when I'm notified that the jury
11 is ready to start back.

12 You certainly may step down and refresh yourself
13 during this recess. You may not discuss the case, excuse
14 me. You may not discuss your testimony with anyone as
15 you're subject to continued direct and cross, perhaps
16 redirect and recross.

17 MS. ZMORCECK: And just for your procedure, Your
18 Honor. I had filed a pretrial motion and Judge Early said
19 that -- that it was premature, which is why he didn't rule
20 on any of the motions regarding -- I -- I'm going to object
21 to Investigator Hickman being qualified as an expert and I
22 didn't know if we wanted to proffer that and you make a
23 determination or is that something that we, you want me to
24 challenge in front of the jury.

25 THE COURT: Typically the State would call their

1 witness and do voir dire and when he's offered as an
2 expert, I'll give you the opportunity to do whatever voir
3 dire you would, you know, subject to the rules of course as
4 to his expertise.

5 MS. ZMORCECK: Thank you, Your Honor.

6 THE COURT: All right.

7 MS. ZMORCECK: I just wanted to clarify that.

8 THE COURT: Thank you very much. All right. We'll
9 be in awaiting our jury's knock.

10 (A break for lunch was observed.)

11 THE COURT: All right. Anything from the State
12 before we bring in our jury, Solicitor?

13 MS. RADLEIN: Nothing from the State, Your Honor.

14 THE COURT: Defense, Ms. Zmroczek?

15 MS. ZMORCECK: Nothing from the defense.

16 (The jury entered the courtroom at 1:43 p.m.)

17 THE COURT: Welcome back. I hope y'all had a
18 pleasant lunch. Thank you. Thank you very much for your
19 patience with the Court and your work ethic. With that
20 being said, if you would continue to give the parties your
21 complete and undivided attention.

22 Solicitor, you may continue your direct
23 examination.

24 MR. RADLEIN: Thank you, Your Honor.

25 ///

Seraphim Haftoglou - Direct Examination by Ms. Radlein

DIRECT EXAMINATION

1
2 MS. RADLEIN:

3 Q Taking up where we left off referencing State's
4 Exhibit 16?

5 A Uh-huh (affirmative response).

6 Q When did the ten-print card originate?

7 A It originated 7/23/2003.

8 Q And where did it originate?

9 A Kirkland Correctional Institute.

10 Q And is this ten-print card, you testified earlier
11 that there's an identifying number on there, I believe on
12 the front of the card?

13 A Uh-huh (affirmative response). Yes, ma'am.

14 Q Would this be the same ten-print card that was
15 submitted on or about that date, the date it was taken --

16 A Yes.

17 Q -- to AFIS?

18 A Yes, it is.

19 Q And would it be in the same, is the ten-print card
20 in the same condition; were the prints in the same
21 condition as they would have been submitted back on that
22 date?

23 A Yes.

24 Q Has it been manipulated in any way?

25 A No, they have not.

Seraphim Haftoglou - Cross-Examination by Ms. Zmroczek

1 Q And do those prints on that ten-print card, I
2 believe you testified ten-print transaction number
3 500200032524; do they belong to Johnny Lawson?

4 A That is correct.

5 Q Can a fingerprint ever legally be changed?

6 A Not to my knowledge, no.

7 Q Can it be transferred from one person to another?

8 A No.

9 Q In your experience, your prior experience, your
10 current position as supervisor of AFIS, has two people ever
11 been identified by the same print?

12 A No.

13 MS. RADLEIN: I believe that is it at this time,
14 Your Honor.

15 THE COURT: Thank you. Thank you, Solicitor.

16 Ms. Zmroczek.

17 MS. ZMROCZEK: Briefly, Your Honor.

18 **CROSS-EXAMINATION**

19 BY MS. ZMROCZEK:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Is it okay if I call you Sammy too?

23 A That's fine.

24 Q Thank you. My name is Zmroczek so I -- I feel the
25 pressure at times.

Seraphim Haftoglou - Cross-Examination by Ms. Zmroczek

- 1 You testified you're the supervisor of AFIS?
- 2 A That is correct.
- 3 Q And prior to that, you worked --
- 4 A I worked with SLED as a fingerprint examiner.
- 5 Q As a fingerprint examiner?
- 6 A Yes.
- 7 Q As a fingerprint examiner, did you have training?
- 8 A Yes.
- 9 Q Hold certifications?
- 10 A I was trained and certified at SLED.
- 11 Q Maintained that?
- 12 A Yes.
- 13 Q Updated it regularly?
- 14 A There's really no updating your certification.
- 15 Q You would agree that there are changes that occur
- 16 within the field?
- 17 A There are some changes, yes, but dealing with
- 18 ten-print cards, there's not really a very large change
- 19 that's going to happen.
- 20 Q Right, not dealing with ten-print cards. When you
- 21 were, prior to becoming a supervisor, did you only deal
- 22 with ten-print cards?
- 23 A Yes, I was ten-print fingerprint examiner. So is
- 24 what I --
- 25 Q Okay. Oh, so you were just a ten-print fingerprint

Seraphim Haftoglou - Cross-Examination by Ms. Zmroczek

1 examiner?

2 A Yes.

3 Q Okay. Which is a different kind of sub-specialty
4 than latent print examiner?

5 A Yeah, they're very different from one another.

6 Q Okay. Well then that makes sense. You indicated
7 that fingerprints can't be changed or altered?

8 A Right, you can't change your prints.

9 Q But you would agree that there are standards that
10 are required to be used to make identifications?

11 A It depends on your policies and procedures.

12 Q Does SLED have policies and procedures that would
13 have standards?

14 A Yeah, we -- we process prints a certain way, yes.
15 Some agencies do it, each state or agency does it
16 differently.

17 Q But SLED has policies and procedures?

18 A Yes.

19 Q And SLED also has quality assurance procedures?

20 A Yes.

21 Q Those are important?

22 A Correct.

23 Q Thank you.

24 THE COURT: Redirect.

25 MR. RADLEIN: Thank you, Your Honor.

Seraphim Haftoglou - Redirect Examination by Ms. Radlein

REDIRECT EXAMINATION

BY MS. RADLEIN:

Q Just for the jury's clarification so they can completely understand, you supervise a team of what type of people?

A Ten-print fingerprint examiners.

Q A position that you previously held?

A Yes.

Q And what's the role of a ten-print examiner?

A Their role is to deal with any issues that pop up dealing with live scans. We have a couple of people that handle those issues that may pop up that could be dealing with demographic issues, such as a CDR code not entered in correctly. We have to correct that or we also have people who work on the, the fingerprint cards that are mailed into us so they have to manually scan those cards in and enter all the information into the system.

Q So there is checks and balances in place when defense counsel was referencing policies and procedures in place to ensure the integrity of the prints?

A That's correct.

Q You wouldn't enter -- would you or would you not enter a faulty print into AFIS?

A No, not knowingly.

Q Because there's levels and checks and balances in

1 place?

2 A Yes.

3 MS. RADLEIN: I believe that's it, Your Honor.

4 THE COURT: Recross?

5 MS. ZMROCZEK: No recross, Your Honor.

6 THE COURT: Thank you. Thank you very much. Thank
7 you for being with us today. You may step down.

8 Any objections to the officer being excused.

9 MR. RADLEIN: None from the State, Your Honor.

10 MS. ZMROCZEK: None from the defense.

11 THE COURT: And you may be excused.

12 THE WITNESS: Thank you, sir.

13 THE COURT: All right. Solicitor, you may call
14 your next witness.

15 MR. RADLEIN: Thank you, Your Honor. The State
16 calls Latent Print Examiner, James Hickman.

17 THE COURT: All right. Officer Hickman you can
18 come up and be sworn please.

19 JAMES L. HICKMAN,
20 having been duly sworn, testified as follows:

21 THE CLERK: Thank you. If you'll have a seat over
22 here and state your name for the record please.

23 THE WITNESS: My name is James L. Hickman. That's
24 H-I-C-K-M-A-N.

25 ///

James L. Hickman -Direct Examination by Ms. Radlein

DIRECT EXAMINATION

BY MS. RADLEIN:

Q Thank you, Mr. Hickman. Where are you presently employed?

A Lexington County Sheriff's Department.

Q And how long have you been employed there?

A About 28 years.

Q How long have you been in law enforcement?

A Forty-some.

Q Where were you employed previous, prior to Lexington County Sheriff's Department?

A I started my career in Orangeburg Police Department and I left Orangeburg Police Department after about 13 years. I came to Lexington Sheriff's Department. I left Lexington I think it was in '78, no, '88 and went to Camden Police Department as Lieutenant in charge of investigations there and then I came back to Lexington and I've been here ever since.

Q And again, what's your current position?

A I'm Latent Fingerprint Examiner, AFIS Operator.

Q And can you explain to the jury exactly what is a Latent Fingerprint Examiner/AFIS Operator?

A My job consists of taking the latent prints that are lifted and turned into the property room from Lexington Sheriff's Department and the outlying -- different

James L. Hickman -Direct Examination by Ms. Radlein

1 locations around the county, I take that latent, I examine
2 it, I analyze it, determine whether it's any good or not or
3 the quality is good enough in it and then I enter it into
4 the AFIS System and also if there is a suspect or person...
5 they want me to compare the prints to, I'll do a one to one
6 print, a side-by-side examination to determine if the
7 latent print matches their suspect.

8 Q Okay. And to clarify some things that you just
9 mentioned. You mentioned that would first examine the
10 print and determine if it can be entered into AFIS; what
11 exactly are you looking for when you examine a print?

12 A I'm looking for three different things. They've
13 got them classified now as Level 1, Level 2 and Level 3.
14 In Level 1, I'm looking for the quality of the print; does
15 it look okay; is there something there I can see; is there
16 ridge formations; does the ridge formation flow in a good
17 direction that I can see it.

18 If that's there, I go on to the next level which
19 is, you know, the type of print; are there any identifying
20 characteristics and identifying characteristics would be
21 different points; we call the minutia points now like where
22 the ridge ends, it's called a ridge ending. Another one
23 would be where the ridge runs down and it forks into two
24 different ridges; it's a bifurcation. You know, are they
25 dots there where just a real small ridge or islands or

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1 things like this.

2 If that's there, then I go ahead and look for Level
3 3. And Level 3 would be like a the ridges themselves, the
4 sweat pores, the shape of the sweat pores, you know,
5 different shapes; how is the ridge shaped, is irregular, is
6 it smooth and then other things like scars, things like
7 this to look at that I can see and if all this is there,
8 then I continue on it to the next step, which would be
9 enter it into the AFIS System itself.

10 Q And you also mentioned Latent Print Examiner/AFIS
11 Operator; do those go hand in hand?

12 A Yes, ma'am.

13 Q And as an AFIS Operator, do you have to be
14 certified to be an AFIS Operator?

15 A Yes, ma'am.

16 Q How long have you been a Latent Print Examiner/AFIS
17 Operator?

18 A I've been a Latent Examiner for about 36 years.
19 I've been an AFIS Operator for probably 10 or 15 years.

20 Q And why the difference in the time period, 36 years
21 versus 10?

22 A Well. We didn't have AFIS when I started.

23 Q Okay. So when was AFIS created?

24 A Well we, I don't know when it was created, but we
25 started it at the Sheriff's Department about 2002.

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1 Q And would you please let the jury know, what's your
2 educational background and your training in the area of
3 fingerprint analysis?

4 A Yes, ma'am. I received my basic training at South
5 Carolina Criminal Justice Academy. I also have an
6 Associate's Degree in Police Administration, which I
7 received from Midland's Technical Institute here in
8 Columbia. I have been to a fingerprint recognition class
9 at Midland's Tech which included 8 hours. I've done a
10 Basic Fingerprint Comparison 40 class at South Carolina
11 Criminal Justice Academy. I've done an Advanced Latent
12 Print Comparison 40 hours at the Criminal Justice Academy.
13 I also attended an Advanced Administrative Latent Print
14 Examiner's Course which is a 120 hours at Quantico,
15 Virginia, with the FBI and I also took a course in Criminal
16 Investigations through the Institute of Applied Science in
17 Chicago, which included latent prints and fingerprint
18 identification and I've also did an OJT Program with a
19 supervisor in Orangeburg when I first started.

20 Q Some of your experience and training, is that
21 continuing -- continuous training; are you constantly
22 keeping up to date with fingerprint and latent print
23 analysis?

24 A Yes, ma'am.

25 Q And what you described to the jury your training

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1 included some of that as well?

2 A Yes, ma'am, I try to keep up with things that's
3 going on. It -- it's a lot of the fingerprint examiners
4 now have website's. As we all know, the internet is taking
5 over everything, so it took over us too. So I check with
6 them each -- every now and then and make sure everything is
7 going all right. I communicate with them, different
8 people, and I also keep a small library of books that I
9 keep up to date and several of the trade magazines comes in
10 and I keep up to date with those too.

11 Q And switching to the actual fingerprints, can you
12 explain to the jury what is an inked fingerprint?

13 A An inked fingerprint is one that -- well it used to
14 be that we put ink on it like printer's ink or just like
15 ink from your ball point pen or something like that and
16 then we'd take the finger and roll it. It's a known print.
17 I know who that print belongs to. Nowadays it's done with
18 no ink, through the live scan which you, Jimmy or Sammy
19 just explained to you.

20 Q And we've heard the word latent mentioned
21 throughout this trial. What exactly is a latent print?

22 A A latent print is a -- of course the word latent
23 normally says it's invisible, but it's a print that you
24 leave somewhere where you touch. It can be visible or
25 invisible, but we just use the term latent for -- to -- to

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1 cover all of them. If you touch something, the ridges on
2 your fingers, your hands, your feet, your toes. They
3 are -- our sweat pores are in those, so we secrete stuff
4 out. It's amino acids and sweat oils and things like this.
5 come out and when you touch it, you leave that image there
6 and by taking certain powders and chemicals and things, we
7 have been able to develop those and make them stand out so
8 we can see them.

9 Q And how exactly do people leave behind latent
10 prints?

11 A It's a -- any time you touch something, you're
12 going to leave some type of mark. The oils that come out
13 of your sweat pores, they form those lines that runs around
14 the ridges and by applying the powder to those, area that
15 you touch, then the powder adheres to that oil and makes a
16 visible fingerprint come up where you can see it.

17 Q So are there distinguishing characteristics of a
18 fingerprint?

19 A Yes, ma'am. Generally speaking, fingerprints are
20 divided into three different categories; there are whirls
21 and it looks sort of like a target. You can look at your
22 finger and see those and then there's loops, which is a one
23 that the ridge runs in from one side and loops around and
24 comes back out the other side and then there is an arc,
25 which is basically like an ocean wave. The ridges come in

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1 on one side and flow up and then go out the other side.
2 Everybody has those, but it's the individual
3 characteristics that I was talking about a while ago like
4 your bifurcations, your ridge endings, trifurcations,
5 islands and things like that and their particular location
6 in reference to other things. In other words, whenever I
7 find a bifurcation and I find it on a rolled print and a
8 latent print and then are both of them three ridges over,
9 you know, are they in the same general location; they have
10 to be.

11 Q And these ridges and the bifurcations you
12 referenced, is that what you use to compare fingerprints
13 and -- let me rephrase that question. I'll move on from
14 there. He's answered it already, I apologize.

15 Do you -- do you make these comparisons and do that
16 during the regular course of your duties?

17 A Yes, ma'am, I do.

18 Q And how often?

19 A Every day. It's 100 percent of my job. Well,
20 we'll say 90 percent; the other 5 percent is entering them
21 into AFIS.

22 Q Okay. And I don't know if you'll know, but how
23 many latent prints have you examined throughout your
24 career, 36 years?

25 A Let's say in the thousands. I want to say

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1 millions, but I don't want to get that high.

2 Q And have you ever testified in court before as an
3 expert witness in fingerprint analysis?

4 A Yes, ma'am.

5 Q And how many times?

6 A Approximately five times.

7 Q And those five times, were you qualified as an
8 expert in South Carolina?

9 A Yes, ma'am.

10 MS. RADLEIN: At this time, Your Honor, the State
11 would move Mr. Hickman as, I don't know for sure -- That he
12 be qualified as an expert witness in the field of
13 fingerprint analysis?

14 THE COURT: All right. Ms. Zmroczek, any voir
15 dire?

16 MS. ZMROCZEK: Thank you. Yes, please.

17 THE COURT: All right.

18 MS. ZMROCZEK: I'll do it from here.

19 VOIR DIRE EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Mr. Hickman, are you a member of any professional
22 organizations?

23 A No, ma'am. Excuse me; I am a member of the South
24 Carolina Law Enforcement Association.

25 Q And you previously provided me your resume; is that

James L. Hickman - Voir Dire Examination by Ms. Zmroczek

1 correct?

2 A Yes, ma'am.

3 Q Are you, on there you put that you were a member of
4 the IAI?

5 A I was before I retired, I was a member of South
6 Carolina Division of the International Association of
7 Identification and the International Association for
8 Identification, but since I've come back as a part-time
9 person, no, I'm not anymore.

10 Q Okay. So you're not a member anymore. When did
11 you receive these certifications in fingerprint analysis?
12 What year?

13 A It would be some -- now let's see, law enforcement
14 would be in 1971, Midland's Tech the Police Administration
15 would be in the late '70's. Fingerprint Recognition would
16 be in, the remaining would be in the 80's and the 90's.
17 The exact date I'm not familiar; I don't know right now.

18 Q Okay. That's fine. When was the last time that
19 you updated your certifications; would that be in the
20 '90's?

21 A Actually I don't have a certification, but the last
22 school I went to was in -- that dealt with fingerprints was
23 in the late '90', early 2000's.

24 Q Okay. Do you have -- do you conduct technical
25 procedures under clearly define policies and procedures?

James L. Hickman - Voir Dire Examination by Ms. Zmroczek

1 A No, ma'am.

2 Q So you don't have any policies or procedures that
3 you follow in your examination?

4 A Not written policies, no, ma'am.

5 Q Do you know what a Peer Review Journal is?

6 A Yes, ma'am.

7 Q Why is that important?

8 THE COURT: No, ma'am, ask the question?

9 MS. ZMROCZEK: I'll move on.

10 BY MS. ZMROCZEK:

11 Q Do you regularly read any Peer Review Journals?

12 A No, ma'am.

13 Q Do you have any information regarding error, the
14 error rates, error rates in your examinations?

15 A Are you asking me do I know anything about error
16 rates.

17 Q Right?

18 A Yes, ma'am, I know what you're talking about and I
19 have read some error rating reports.

20 Q And do you apply those to your examinations?

21 A No, ma'am.

22 Q Do you have any or do you rely on any validation
23 studies?

24 A I don't rely on any validations studies, but we do
25 a validation on each examination. When I finish the

James L. Hickman - Voir Dire Examination by Ms. Zmroczek

1 examination and say, make a match and my report is done, I
2 give it to another examiner and he validates what I have
3 done. If he doesn't agree with me, there's no
4 identification; if he agrees with me there's a report
5 issued and it's sent out.

6 Q And you use equipment to run these examinations?

7 A I use a magnifying loop.

8 Q And do you keep a maintenance log of that?

9 A It's just a magnifying glass.

10 Q It's just a magnifying glass?

11 A I clean it every now and then.

12 Q Do you know what S-W-G-F-A-S-T is?

13 A SWGFAST.

14 Q Yes?

15 A Yes, ma'am, I do.

16 Q Explain to the --

17 A It's a scientific group of latent examiners that
18 get together and have formed an organization and they put
19 out information as to suggestions on how to operate a
20 latent unit, how to make latent examinations, what you
21 should do or what is good to do; it's a -- and how to issue
22 a report, how to word the reports and things like this.

23 Q Do you -- do you follow those guidelines?

24 A No, ma'am, there's no requirement to follow it.

25 It's just a offering of, you know, this is a good way to do

James L. Hickman - Voir Dire Examination by Ms. Zmroczek

1 it; if you want to follow us you can.

2 Q Is your department using any AS -- A-S-E hyphen V
3 methodologies?

4 A No, ma'am.

5 Q What methodologies do you use?

6 A --I use the ACE-V methodology. The ACE-V is a --
7 it's something I started, I was using it when I first
8 started doing latent exams. Didn't know what it was and
9 somebody's put a name to it. It's ACE-V? A is for analyze
10 the latent and the rolled print. In other words, I look at
11 it to make sure it's good and like you would look at your
12 photographs, you know, you take some that's out of focus
13 and you throw them away. That's exactly what I'm doing
14 with ACE and determine what is wrong the print and where
15 it's any good or not.

16 And then -- then I take the latent, the second
17 part, and I put it side by side to the rolled print and
18 examine it and try to determine if they are both the same.
19 And then once I have done all that, I -- I evaluate my
20 information and determine if I can make a report or make an
21 identification.

22 And then once that is over, the V method or the V
23 method is where I give it to another examiner, he does the
24 same thing again to determine if I'm doing it properly?

25 Q And -- and do either of y'all use any quality

James L. Hickman - Voir Dire Examination by Ms. Zmroczek

1 assurance guidelines?

2 A No, ma'am.

3 Q So there are no protocols?

4 A No, ma'am.

5 Q No manuals?

6 A No, ma'am.

7 Q No way to identify any quality control issues?

8 A Yes, ma'am. The ACE-V method is a quality control
9 method. If the second examiner does not agree with what I
10 did, that's a checks and balances is what we're talking
11 about and that's a check and a balance.

12 Q And is the Lexington County Sheriff's Department
13 accredited to do fingerprints?

14 A I'm not, we do fingerprints; I don't know about
15 accreditation to do them or not. I don't know anybody that
16 accredits anyone to do latent prints. The Lexington County
17 Sheriff's Department is -- is accredited through a credit
18 organization like everybody else is.

19 MS. ZMROCZEK: Your Honor, at this time, we would
20 like to make an argument. We can do that outside of the
21 juries' presence or --

22 THE COURT: Go to your jury room please, ladies and
23 gentlemen. Do not discuss the case during this brief
24 recess.

25 (The jury left the courtroom at 2:10 p.m.)

1 THE COURT: All right. Ms. Zmroczek?

2 MS. ZMROCZEK: Thank you, Your Honor. At this time
3 we would oppose Mr. -- Investigator Hickman being
4 qualified as a fingerprint or latent print examiner and our
5 basis would be the following, Your Honor. As you're aware,
6 under Watkin v. Ford Motor Company, though the case law
7 makes you the gatekeeper, we object to his qualifications
8 as an expert under South Carolina Rule 702, which only
9 allows for an expert qualified by knowledge, skill,
10 experience, training and education. Your Honor, the
11 testimony here is that although he had been doing this for
12 a long time, but since the 90's, he has not kept updated or
13 gone to any trainings, he doesn't read any Peer Review
14 Manuals.

15 The case law, Your Honor, starting with State v.
16 Jones, Jones, yeah, 273 S.C. 723, 1979. South Carolina
17 Supreme Court ruled that scientific evidence was admissible
18 depending on which degree the trier of fact relied on. The
19 scientific hypothesis whether it is proved or disproved or
20 it's generally accepted outside of the courtroom.

21 We agree that fingerprint evidence is accepted
22 outside of the courtroom, but our argument really falls
23 under State v. Council which is 335 S.C. 1, it's 1999 case
24 that finds that, that we're not arguing that fingerprint
25 evidence isn't admissible, we're arguing that this person

1 isn't qualified. In Council, Your Honor, the Court said
2 that a trial judge must find the evidence because it's the
3 trier of fact, the expert is qualified and the underlying
4 science is reliable. In determining the reliability, the
5 Court should consider the publication and peer review of
6 the technique, prior applications of the method to the type
7 of evidence involved, the quality control procedures used
8 to ensure reliability and the consistency of the method and
9 recognized law and procedures.

10 Your Honor, our concern is that although
11 Investigator Hickman has a long and distinguished career in
12 law enforcement and in this evaluation, he has not kept up
13 his certifications there. I requested in discovery all of
14 the policy and procedure manuals so that I could have them
15 reviewed by an expert and I was told that they didn't have
16 any. I asked for quality control; I asked for explanations
17 on methodology; all of that I was -- the response from Mr.
18 Hickman was that, or Investigator Hickman, was that those
19 don't exist. And obviously it's within the Court's
20 discretion, but there are several cases including Tapp and
21 Council and other cases that -- that outline specifically
22 that it's not just what goes to the weight of the evidence
23 versus the admissibility.

24 Your Honor, the concern is that he's going to
25 testify that one fingerprint makes a match and that's --

1 that's the entire evidence in this case and the reliability
2 on that as an expert lacking the policies procedures
3 manuals, methodology, error rate, quality control, we argue
4 is a reason he should not be certified as an expert.

5 THE COURT: Thank you.

6 Solicitor?

7 MR. RADLEIN: Thank you, Your Honor. In reading
8 Rule 702, which Defense Counsel cited, if scientific,
9 technical or other specialized knowledge will assist the
10 trier of facts to understand the evidence or to determine a
11 fact at issue, the witness qualified as an expert by
12 knowledge, skill, experience, training or education may
13 testify thereto.

14 Defense Counsel keeps referencing the policy
15 manuals for Lexington County Sheriff's Department, the
16 quality control procedures for the Lexington County
17 Sheriff's Department, the manuals; none of that goes
18 directly to the expert here, Mr. Hickman's, knowledge,
19 skill, experience, training or education. I believe
20 there's sufficient testimony that was elicited by me, by
21 the State in this case, Your Honor, in terms of his
22 knowledge.

23 He testified regarding fingerprints, the difference
24 in the loops, the ink versus latent. In terms of his
25 skill, experience and training, Your Honor, he has been in

1 law enforcement for 40 years and primarily focused on
2 latent prints for the last 36 years. He testified that he
3 has years of on the job training and has, and has
4 participated, I believe at the FBI for Advanced
5 Administration of Latent Prints, Criminal Identification
6 Courses, Latent Print Comparison. He also testified that
7 he, until this, day continuously keeps up with the changes
8 in fingerprints. I don't believe defense counsel's
9 position that -- or position that since there's a lack of
10 manuals and training policies and certifications, which I
11 don't believe is required, that a fingerprint lab being
12 certified goes to whether or not this witness can be
13 qualified as an expert in this case. And specifically,
14 Your Honor, looking at State v. Anderson, which is 407 S.C.
15 278, and this is a case which I'm sure Your Honor is aware
16 of where the Crime Scene Investigator was properly
17 qualified as an expert.

18 This is a Court of Appeals Opinion. And he was
19 properly qualified as an expert in fingerprint analysis
20 based on his education and training. The trial court was
21 able to determine that he had sufficient practical
22 experience, on the job training and education and the Court
23 of Appeals upheld that -- upheld that on appeal.

24 It's the State's position that Mr. Hickman is an
25 expert and, therefore, should be qualified as an expert,

1 Your Honor.

2 THE COURT: Thank you. As far as Watson v. Ford
3 Motor Company that was a expert in which the expertise was
4 not relevant in that particular civil case. It did make us
5 the gatekeeper and also Council had to do with
6 admissibility of scientific evidence and those four
7 factors, the publication, peer review, prior application of
8 method, quality control procedures and consistency in
9 methodology. The science of fingerprints, you can look at
10 probably the cites and/or footnotes in State v. White and
11 many, many other cases that fingerprints is a recognized
12 scientific, scientific field in the court's in South
13 Carolina. As far as his expertise, I'll look at it and
14 determine if he has a sufficient training or experience or
15 education in a particular field that is recognized as a
16 field of expertise.

17 The solicitor outlined many of those qualifications
18 that one would look to; 42 years of law enforcement
19 experience, 36 years as a latent print examiner, 10 to 15
20 years as an AFIS Operator, graduate of the South Carolina
21 Criminal Justice Academy, graduate in two specific fields
22 of study at Midland's Technical College, both Police
23 Administration and Fingerprint Recognition, a basic
24 fingerprint class, advanced fingerprint class, Advanced
25 Administrative Latent Print at Quantico, Virginia, graduate

1 of a class of Scientific Evidence, which also included
2 fingerprints in Chicago, on-the-job training since
3 employment with the Orangeburg Police Department that would
4 have been his first post in the 70's, review on the
5 internet and website's as to other experts in the field,
6 also his explanations of fingerprints, further the number
7 of prints he estimates he examined. He is a member of the
8 South Carolina Law Enforcement Officer's Association; being
9 retired, but still employed, he is no longer a member of
10 the International Association of Identification and South
11 Carolina Associations Identification.

12 Further, as far as peer review, if I would even
13 care to touch that subject, he's validated on each
14 examination; there is a check and balance in that regard .
15 and if I did not mention it, perhaps I did; he has
16 testified in courts of record in South Carolina in the past
17 as an expert in the field of fingerprint analysis. I would
18 also cite State v. Myers, where the nurse was qualified as
19 a blood expert and had a six-week course and that was all.
20 In State v. Goode where an officer was qualified as an
21 expert

22 So he is qualified to testify as an expert in the
23 field of, what field, fingerprint analysis?

24 MS. RADLEIN: That's correct, Your Honor.

25 THE COURT: Thank you. Thank you very much.

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1 MS. ZMORCECK: Thank you, Your Honor, and I just
2 want to make sure that, I'll obviously question him, I just
3 want to make sure that that argument is preserved for the
4 record.

5 THE COURT: All right. Thank you.

6 MS. ZMORCECK: Thank you.

7 (The jury returned to the courtroom at 2:23 p.m.)

8 THE COURT: Madam Forelady, ladies and gentlemen of
9 the jury, normally a person cannot give opinion testimony.
10 Normally when a person testifies, they must testify as to
11 either what they saw, heard or sensed by smell or something
12 of that nature. However, there is an exception when
13 someone is qualified because of training, experience or
14 education. They are permitted to give their opinions in
15 certain areas if the Court qualifies them that way.

16 This witness, Detective James Hickman, will be
17 qualified to testify in the area of fingerprint analysis to
18 give opinion testimony in that area. That does not mean
19 that you must accept the opinion, but it is evidence for
20 you, the jury, to use in any way you see fit. Thank you.

21 Solicitor, you may continue.

22 MR. RADLEIN: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 **BY MS. RADLEIN:**

25 Q Mr. Hickman, Defense Counsel has questioned you

James Hickman - Direct Examination by Ms. Radlein

1 regarding certain names, fancy titles and names. Are there
2 any requirements for the Lexington County Sheriff's
3 Department to adhere to any of those standards?

4 A No, ma'am.

5 Q In terms of your experience, 36 years of doing
6 latent prints, what are the personal standards, your
7 personal procedure in checks and balances that you have in
8 place?

9 A My -- what I have to do is whenever I pick up a
10 latent print, I want to make sure that there is good
11 quality and quantity there. When I say quality; is there
12 something there that I can see and I referenced the
13 photographs while ago. Whenever y'all take a photograph of
14 something, you look at it, if you can tell right away it's
15 fuzzy, out of focus; it's no good. So we usually just
16 throw them away or nowadays we hit a button and delete
17 them.

18 If there's something there, then how much is it
19 there; you know, is there enough lines, is there enough
20 ridges, is there enough minutia points in there for me to
21 do something with and, and again in photographs, you may
22 take a picture of the wall and there's plenty of stuff
23 there, but it's just no good. So if it's there, then these
24 are my checks and balances to make sure they're done and
25 then my last one is always have someone else followup

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1 behind me to determine that I am doing a good job and that
2 I am correct in what I do.

3 Q And with -- you mentioned thousands, I'm not going
4 to say millions. With each case that you've been assigned
5 to, would that be your method and procedure each and every
6 time?

7 A Yes, ma'am.

8 Q Has there ever been a situation where you
9 approached a case differently or didn't follow the same
10 procedures you set for yourself?

11 A No, ma'am.

12 Q What, it seems like a basic question, but what
13 exactly are fingerprints?

14 A Fingerprints are the ridge formations that's on
15 your -- we call it fingerprints; it's a print image that's
16 on any place where you have ridges. Ridges are put there
17 by one person that made us be able to grab hold of
18 something and we call it friction ridges, where we can hold
19 on to something. These ridges just form a design and that
20 is your fingerprint pattern or -- or --

21 Q And in terms of the history of fingerprints, I
22 don't know where the fingerprints began, but when did they
23 start becoming -- at what point in history did they become
24 recognized?

25 A We first -- fingerprints in -- in France and some

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1 of the cave dwellings back from the cave man. In China in
2 200 B. -- yeah, B.C. Chinese people were using fingerprints
3 to seal civilian documents like land deeds and divorces and
4 things like that. Persia made it's reference to
5 fingerprints in 1400 A.D. and referenced to how we could
6 use them to identify people. In the 1880's there was
7 several discussions by scientific people in journals on how
8 we could use fingerprint ink to ink prints, develop them
9 and identify them as who they belong to. And then we have
10 Henry come up and did a lot of measurements and things and
11 a lot more studies were done during that time. In 1902 the
12 United States first started using them. They used them in
13 the New York Civil Service adopted fingerprints. In the
14 following year in 1903, New York State Prison System
15 started using them. Leavenworth in 1904, all this came
16 about from the World's Fair in 1902, 1901, I believe it
17 was. In Chicago, the Army, 2005; the Navy in 2007 and in
18 2000, in 19, I'm saying 2000, it's 1907, okay. I'm sorry
19 about that.

20 In 1924 the FBI started their identification system
21 using fingerprints. The first recorded incident of
22 fingerprints used in a criminal investigation, was in
23 Argentina in 1891 and 1892. There as a conviction where a
24 lady was convicted of homicide with a latent print. The
25 first recorded case in the United States was in 1910 in

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1 Illinois, Illinois People v. Jennings in another homicide
2 investigation. And since then we've progressed to where we
3 are today.

4 Q And in general in fingerprints, why -- why
5 fingerprints? Why are they important?

6 A Fingerprints is the most positive means of
7 identification that we have. There is no other way that I
8 can, when I match a fingerprint to someone, I can say that
9 it was him; there's no way that, that he kept, it's the
10 most positive means of identification. When I say it's
11 him; it's him. It's that print. There's no way, like DNA
12 is, is great and it's coming along and it's a good thing to
13 have, but DNA gives you a ratio, like it's 10 million to 1
14 that it could be you, but whenever I match a fingerprint up
15 and make a positive identification, it is you; it is no one
16 else.

17 Q So in terms of reliability, how reliable is
18 fingerprint evidence in a criminal case, in your opinion?

19 A Very reliable. Like I say, you know, fingerprint
20 evidence points directly at one person and one person only.

21 Q Specifically in this case, were you the examiner
22 assigned to this case?

23 A Yes, ma'am.

24 MS. RADLEIN: Permission to approach the witness,
25 Your Honor?

James Hickman - Direct Examination by Ms. Radlein

1 THE COURT: Yes, ma'am.

2 BY MS. RADLEIN:

3 Q I'm going to hand you State's Exhibit 15 and I'm
4 also going to leave with you State's Exhibit 16. Do you
5 recognize State's Exhibit 15?

6 A Yes, ma'am, I do.

7 Q And how do you recognize it?

8 A At the bottom, it's three cards, and at the bottom
9 of each card, you'll see my initials and the date that I
10 received it. Also on the other side, there's my initials
11 and the date I received it. I received these twice.

12 Q You indicate you received those twice?

13 A Yes, ma'am.

14 Q What does that mean?

15 A That means I received them the first time when the
16 officer brought them to me and I run them through AFIS and
17 we got a hit. So to get ready to come to trial, I
18 requested the latents back so I could photograph them and
19 prepare them for court.

20 Q So referencing the initial date, when's the first
21 date that you received them?

22 A The first date I received them was August 4th,
23 2014.

24 Q And placing -- State's Exhibit 15, lift 1; is that
25 the date that you indicated?

James Hickman - Direct Examination by Ms. Radlein

1 A Yes, ma'am.

2 Q And did you receive all three of the lifts at the
3 same time?

4 A Yes, ma'am.

5 Q When Detective Merrill testified, he testified that
6 this one was in the same condition, but slightly bent; is
7 that something you would have done?

8 A Yes, ma'am.

9 Q Take the jury through your typical process, in this
10 case, I guess specifically, when you received these prints?

11 A The first thing I do is I take the prints out and
12 put my initial and date on them so that I know when I got
13 them and it was me. You'll see -- you may not be able to
14 see it, but over one side you'll see a J and an H. You'll
15 see along here.

16 Q You want me to flip it over?

17 A No, that's fine. You'll see right here is a J and
18 a H and then the date. You'll see it on each one of them.
19 That mark is my initials made in a particular way that I
20 started in 1970 and I've used it continuously through that.
21 So that mark would be on everything that I have.

22 Q And what's the purpose of marking individuals?

23 A So I know I handled the evidence.

24 Q And that's your standard procedures?

25 A Yes, ma'am.

James Hickman - Direct Examination by Ms. Radlein

1 Q And in this case you received the prints on August
2 4th, 2014?

3 A Yes, ma'am.

4 Q And what's the first thing you did when you
5 received these prints?

6 A After I get -- after I mark them and make sure that
7 everything is there, what he's telling me is there, in
8 other words, they come in and say I got three latent print
9 cards. I'll go back and count them one, two, three, make
10 sure they're there. And then I'll mark each one and then
11 after I do the appropriate paperwork with them, I will
12 start my examination on them. It may be at that particular
13 time or it may later on, but my particular examination is
14 I'll start to analyze them.

15 I'll start to determine if there's enough quality
16 there, you know, does it look okay, is there enough
17 quantity there, is there enough minutia points, galton
18 points and all that there and then if I determine that is
19 true, I'll go back and I'll make a copy, a photostatic,
20 I'll just go to the copy machine and make a copy and I will
21 record that information on that copy is like, this is a
22 latent print; it's a fingerprint, not a palm print, not a
23 footprint or a toe print; it is a fingerprint. Then I'll
24 determine if it's -- if it's no value like it's no good,
25 there's nothing there, I'll just put N/V next to it, no

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1 value.

2 If there's some value to it, I will go along and
3 I'll write down it's a loop pattern, whirl pattern, arch,
4 if I can see it. I'll determine what type of material was
5 used to develop it, like, you can actually look at it and
6 say it was powder and it's black and white so it's usually
7 black powder. You know, I might say it's the lift medium
8 is tape or a hinge lifter. This is hinge lifter. And then
9 I'll look at it and say have I got the level 1, 2, or 3 in
10 it's like I explained to you a while ago about the levels.
11 And then I'll ask myself, is this AFIS quality. I'll put
12 yes or no on it. If it's AFIS quality, it's there. I'll
13 also go back and look can I determine which finger it is,
14 which hand it is; these all come in effect because if I can
15 reduce it down, you imagine if you're sitting there and
16 examining latent prints, there's ten prints on here and you
17 got one latent print. So you got to examine that thing ten
18 times.

19 Now AFIS that does that and examines every
20 fingerprint card that's ever been put into them since they
21 first started it. I don't know how many that is, but it's
22 more than one or two. So if I can reduce it down to say
23 only just examine finger number 3, then it makes a faster
24 and a better quality type print. So I try to determine
25 that. In this particular one, I could determine it was

James Hickman - Direct Examination by Ms. Radlein

1 either finger 3 or finger 8.

2 Q In referencing, are you referring, which of these
3 lifts are you referring to?

4 A Number 2, this one and this one and you'll look at
5 them, you'll see impression here, impression here, and a
6 impression here, and sort of a faint one here and they're
7 in the same order here. So by just using my common sense,
8 you know, you can look at your hand; what's the tallest one
9 there? See, that's the tallest one; the next one to it,
10 there. So now by just looking at the print, I've
11 eliminated how many fingers; I've eliminated eight of them.
12 I'm not going to turn that one up, it can only be two
13 fingers. So that helps me when I do my examination. So
14 what's that I determine.

15 Q And you refer to the prints or fingers by number.
16 You said it could be one or the other; what numbers did you
17 indicate?

18 A Three or an eight and that would be the right
19 middle or the left middle.

20 Q And in counting the fingers?

21 A We count the fingers, right hand, 1, 2, 3, 4, 5, 6;
22 7, 8, 9 and 10 (indicating).

23 Q In this case, while we have these slides up, this
24 is the first lift?

25 A Yes, ma'am.

James Hickman - Direct Examination by Ms. Radlein

1 Q You had mentioned this one. What, if anything,
2 were you able to determine if that was a fingerprint?

3 A Yes, ma'am, it appears to be a fingerprint to me.
4 It appears where somebody might have touched it. If you'll
5 look real close whenever y'all are able on this one here,
6 you can see right in this area here, you can see a little
7 bit of the ridge detail. It's small enough and you can
8 actually take your finger and place over it where it looks
9 like an image where a finger was at. There's a lot of
10 movement in here. You can see on the print itself, you may
11 be able to see from there, but you can see along in here
12 where it moved. There was something moving in here. Along
13 on this side here, you can see where there's moving.

14 There's little striation marks where I believe the
15 print, the finger itself had moved, but there was no
16 quality, there is no quantity there or quality to help me
17 in any identification. So I just merely marked it no
18 value.

19 Q And you mentioned movement. Is the print, the
20 fingerprint making the movement or some other object making
21 the movement that you pointed to?

22 A I believe it was the finger making the movement.
23 Most of the time it is the finger; however, they could be a
24 slight possibility that something moved. The object moved
25 and you stayed still would cause the movement, but in this

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1 particular one it was the finger itself that moved.

2 Q So in this case, we're dealing with a glass
3 surface, a window, so typically you're indicating that
4 you're either moving your thumb, I apologize. You're
5 either moving that fingerprint up and down as you indicated
6 this with your motion or the window itself is moving up and
7 down?

8 A Yes, ma'am.

9 Q But based on your examination of Lift Number 1, you
10 were able to determine that it's actual some sort of finger
11 print, not a palm print, not a toe print, not anything
12 else, but a finger print?

13 A Yes, ma'am. If it had been a palm print, it would
14 have been a whole lot bigger. Palms, you can look at your
15 palm; this is your palm here. There's a whole lot more
16 surface area as versus your finger and I believe it's a
17 finger print or a finger impression.

18 Q And referencing Lifts number 2 and 3, you indicated
19 that those are the same prints, just a different lifts,
20 being the finger three or eight and at this point in your
21 procedure that you determine it to be, would the person
22 that you have identified and noticed there would be ridge
23 detail, would the person that made that impression been
24 responsible for the finger on the left and the two on the
25 right as well; it would be the same hand?

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1 A Yes, ma'am, I believe so.

2 Q And what do you base that opinion on?

3 A I just base it mainly on just looking at the print
4 and if you can actually get your hand and lay your hand down on
5 it, your hand fits almost perfectly to the positions that
6 they are. In my experience, that finger is the longest one
7 no matter what. So if this is upright, if this is the top,
8 then this is your longest finger and the longest finger
9 would be in the middle. So this one, all 3 of these would
10 be a little bit shorter.

11 Q And specifically --

12 MS. RADLEIN: Request permission for the witness to
13 step down, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. RADLEIN:

16 Q In looking at State's Exhibit 12, this would be a
17 blowup of the car window where there's physical prints
18 that's been previously testified to, hypothetically because
19 I know you weren't here on scene, previously in past
20 testimony that Lift 2 and 3 were from the inside of this
21 vehicle. Are you able, looking at that photograph, to
22 tell, to also see that same image, the same print, imprints
23 on that glass?

24 A Yes, ma'am, if you look here, here, and over here,
25 this looks like the center one here or these are images

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1 here, these two here, you'll be able to see them here and
2 here.

3 Q Can you tell if the hand for example is -- and I'm
4 indicating with my right hand, facing up or down?

5 A Yes, ma'am.

6 Q And in that photograph, which direction is the hand
7 facing?

8 A The fingers are facing downward. This one here is
9 downward. In other words, the hand is like this.

10 Q Okay. And we received previous testimony that the
11 imprint, the fingerprint is on the inside of the vehicle,
12 would that be consistent with a downward positioning on the
13 glass?

14 A Yes, ma'am.

15 Q You can please take your seat. After you narrowed
16 it down that it's finger three or eight, what's your next
17 step?

18 A My next step would go to the computer and the
19 latent there is photographed and entered into the AFIS
20 system. It does the search and then I set back and wait
21 for it to come back.

22 Q And about approximately how long does it take for
23 it to come back?

24 A It depends on how much -- how many people are using
25 the system. It's like anything else, if a lot of people is

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1 using it, it's slow. If nobody's using it, it's fast. So
2 on this particular incident, where it come back ten
3 minutes, fifteen or two hours. But usually it's maybe
4 thirty minutes.

5 Q So the image that you scanned in is scanning every
6 print in AFIS?

7 A Yes, ma'am.

8 Q And do you know approximately how many prints are
9 in AFIS?

10 A No, but they's a bunch.

11 Q In this case, how many prints are returned to you
12 once there's a match -- well actually, generally, in this
13 case we know we got a hit, but when you enter a print, what
14 would happen if there was no match?

15 A Usually the computer -- well no. It always makes
16 some type of match.

17 Q Okay.

18 A Now what it does, it comes back and gives me twenty
19 candidates. In other words, it gives me twenty fingerprint
20 cards that says this could be your person and what I have
21 to do is I have to start with number one and compare it. I
22 do the comparing of them. The computer just gives a
23 candidate list. I do the comparing them. Look at number
24 one, if it's a match, I stop right there; if it's not, I go
25 to number two, and go all the way through all twenty of

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1 them. If all twenty of them doesn't match, then I will
2 just save the match and it will remain in the computer, in
3 the AFIS System until I take it out. Each time it will go
4 back and do another search and it can keep on doing
5 searches forever. This particular one, I got a match out
6 of the first one.

7 Q You received a match out of the twenty candidates?
8 First of all, what were the twenty candidates submitted to
9 or the report, how did it appear to you?

10 A It comes back in numbers. I have no earthly idea
11 who they are. It's just a number. It's usually either --
12 I think this one was the, it come back as the SID number.

13 Q And do they come back in a particular order?

14 A Number one is number one most likely and then it
15 goes, progresses down to number twenty.

16 Q And in this case, you were able to determine a
17 match on which one out of the twenty?

18 A The first one.

19 Q What SID number was the first one?

20 A SC00330637, finger number three.

21 Q So you were close?

22 A Yes. Yes, ma'am.

23 Q Referencing State's Exhibit 16, what's the SID
24 number on that?

25 A SC00330637.

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1 Q And that's the same; who does that SID number
2 belong to?

3 A Johnny L. Lawson.

4 Q And that was the number one hit that came back from
5 AFIS?

6 A Yes, ma'am.

7 Q At that point do you solely rely on the AFIS?

8 A No, ma'am.

9 Q In preparation for court today, did you prepare a
10 presentation?

11 A Yes, ma'am.

12 MS. RADLEIN: I beg the Court's indulgence for a
13 brief moment?

14 THE COURT: Yes, ma'am.

15 MS. ZMROCZEK: Your Honor, may we approach briefly.

16 THE COURT: Yes, ma'am.

17 (There was a bench conference out of the hearing of
18 the jury and the court.)

19 MS. ZMROCZEK: No objection, Your Honor. I didn't
20 receive it this morning.

21 THE COURT: All right. Thank you. Thank you very
22 much.

23 You may continue, Solicitor.

24 MR. RADLEIN: I beg the Court's indulgence. Thank
25 you, Your Honor.

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1 THE COURT: You're doing something technical?

2 MR. RADLEIN: It takes two seconds.

3 THE COURT: You want me to come down there and do
4 it for you; it will take a lot longer than that.

5 MR. RADLEIN: I understand it takes two seconds,
6 but -- Sorry -- No.

7 THE COURT: Well, I didn't see that.

8 MR. RADLEIN: Okay. Y'all close your eyes. I
9 promise it's not on that screen. I was using my personal
10 laptop. Okay. I think it's here. Okay. Your Honor, can
11 we just dim the lights for a brief moment?

12 THE COURT: All right.

13 BY MS. RADLEIN:

14 Q Mr. Hickman, is this the presentation you prepared
15 for the Court for your testimony here today?

16 A Yes, ma'am.

17 Q And you prepared this in preparation of your, of
18 testifying?

19 A Yes, ma'am.

20 Q If you could you take the jury through your process
21 in analyzing the latent prints to I believe what you
22 referenced earlier as known prints.

23 A Yes, ma'am. It's the first slide here this is a
24 slide presentation. The first slide is just general
25 information on it's a latent print examination and the case

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1 number is the Cayce's case number. That's the one they
2 assign to each one of the cases and of course my name and
3 the Lexington County Sheriff's Department.

4 This is the known print. This is the print that's
5 come off of State's Exhibit -- I can't see it -- but I
6 think it's 16. This would be finger number three. This
7 would be the latent print, the one that was on the lift.
8 This would be off of Number 2 I believe it is. It is the
9 center one. You can look here and remember us -- we
10 talking about the minutia points. This is a bifurcation
11 here. This is where we're going to start. This is on the
12 ink print. If you'll look over onto the latent print, you
13 will see in the same general location a -- a bifurcation.
14 I marked it Number 1.

15 Then we'll come over onto the known print again and
16 count down four ridges that's almost straight down, you'll
17 see another bifurcation. You come over to the latent
18 print, you count 4 ridges down, you'll see the same
19 bifurcation. Remember these are in the same general
20 location, not general, but same location. Then over the
21 known print again, Number 3, you count two ridges down and
22 there is a bifurcation, which is Number 3.

23 Now Number 3 on the latent print is in this same
24 location three ridges down is the bifurcation, the same
25 thing. On the known print you count down 4 ridges and

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1 there is a bifurcation. You count from Number 3 down 4
2 ridges and there will be the bifurcation. You look over on
3 the latent print and you count down 4 ridges, and there it
4 is again, the same thing. Number 5, you look over and it
5 is a bifurcation. If you go up one ridge and come over to
6 the left, you'll see the bifurcation and come on, where did
7 it go.

8 MR. RADLEIN: I apologize, Your Honor, he appears
9 to be done.

10 THE WITNESS: Oh, there it is. It's the same
11 things. It's Number 5 you just count up one ridge and come
12 over to the left and you'll see number 5. Over on the
13 known print, you'll come up, count 3 ridges up, straight up
14 or almost straight up, sort of slanting to the left a
15 little bit, you'll see the bifurcation. Whenever you come
16 over to the latent print, you'll do this same thing. Three
17 ridges up and it's a bifurcation.

18 Then Number 7 is just 1 ridge of it. One ridge of
19 it and you'll see a ridge ending. That's where the ridge
20 ended. And again, just for your information, a bifurcation
21 is where one ridge comes in forks like that and ridge
22 ending is where a ridge ends. And then we'll come over to
23 the latent print which is the unknown and do the same
24 thing. It's one ridge up.

25 And Number 8, you'll count up one ridge up and

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1 there's a bifurcation and again over here you'll see the
2 same. And as you get to looking at this a little bit
3 closer, you'll see that I just marked 8, 8 characteristics
4 and you'll probably be able to find some more yourself once
5 you get, get to looking at it.

6 Q Okay. So can I borrow that laser for one moment.
7 And you mentioned that you only marked 8 points?

8 A Yes, ma'am.

9 Q And that's the 8 that we see marked. Were there
10 more that you did find?

11 A Yes, ma'am, I found approximately, I think there
12 was 15.

13 Q And it would be the same thing just moving about
14 finding different bifurcations on the known print and
15 comparing them to the latent print?

16 A Yes, ma'am. The same procedures. I'll come over
17 to the known print and I'll find a bifurcation or a ridge
18 ending or something like this and then I'll come over and
19 you'll see it there, same location. It will be three
20 ridges up, four ridges up, over to the right, but it is in
21 the same location.

22 MS. RADLEIN: I beg the Court's indulgence.

23 BY MS. RADLEIN:

24 Q And in looking at the prints, is there, is there a
25 reason why you stopped at 8?

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1 A Yes, ma'am, I usually stop at a smaller number
2 because if I put 15 up there, you can see how cluttered
3 it's going to be. It'll be where you can't see things.
4 I'll start these lines here where I showed the points,
5 they'll start running on top of each other and it'd just be
6 cluttered and not neat. It's easier to see this and it
7 would be 15 or 20 points.

8 Q Is there standards regarding how many points you
9 have to identify?

10 A Not in the United States.

11 Q Do you have a personal standard for yourself?

12 A Yes, ma'am, I usually, 8.

13 Q That's -- is that the lowest you would go in a
14 case?

15 A I wouldn't say it's the lowest, but that's my
16 standard right now. If there's something or other in the
17 latent print that would do, if, if your name was written
18 across of it or you had a big superman emblem with only
19 three points, yeah, I might say or identify it there, but
20 it would have to be different ones, and sometimes we do
21 get -- Whoa, I didn't mean to do that.

22 Q I'm embarrassed.

23 A I hit the wrong button; I'm sorry.

24 Sometimes in the middle of the print itself -- make
25 sure I hit the right button this time -- is in this area,

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1 you'll have some type of design. It can be, I've seen
2 smiley faces, I've seen eyes, I've seen, you know different
3 things like that. So you could run into an instance where
4 there would be more than, less than 8 that I might
5 identify, but generally speaking 8 is it.

6 Q Okay. And -- and you mentioned it's less than 8 if
7 there's something else significant I guess or some other,
8 like a smiley face?

9 A Yes, ma'am.

10 Q Or a heart loop?

11 A Yes, ma'am.

12 Q Okay. Looking at the latent print while we have it
13 up here, there's some motion here and you previously
14 testified to, in your opinion, when we looked at State's
15 Exhibit 12, we know that's finger Number 3 and you
16 indicated on the window, you can tell that it's pointed
17 down?

18 A Yes, ma'am.

19 Q What, if anything, is telling about the movement
20 around the print?

21 A When I first started looking at the print whenever
22 I was talking about analyzing to see what was, what the
23 print could tell me, I could look in this area right here
24 and you can see that there is up and down movement; I call
25 it up and down. It comes up this way. You can see that

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1 movement there in this, what you can't see in the
2 photograph here, but this would be the other latent that's
3 right next to it. You can see there's movement there.

4 Look up at the top; see these voids here, streets
5 here; it looks like this finger or something moved up and
6 down in this direction here.

7 Q And again, that movement would have been made by
8 the person who left that print?

9 A Yes, ma'am.

10 Q And that's your opinion today?

11 A Yes, ma'am.

12 Q And hypothetically -- hypothetically if an
13 individual has their hand and are trying to get into a
14 motor vehicle and they are wrestling with the window,
15 wrestling it down, would you see similar up and down
16 movement?

17 A I believe so, yes, ma'am.

18 Q I'm going to show you State's Exhibit 14?

19 MS. ZMROCZEK: Without objection, Your Honor.

20 Subject to my previous objection.

21 THE COURT: All right. 14 is in evidence subject
22 to the previous objection.

23 (State's Exhibit 14 was entered into evidence.)

24 BY MS. RADLEIN:

25 Q Do you recognize this?

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1 A Yes, ma'am.

2 Q And what exactly is this?

3 A It would be the same slide that I showed you except
4 in one form. It would be just like the ending with all the
5 lines drawn in it and everything.

6 Q So referencing State's 14 --

7 MS. RADLEIN: Permission for the witness to step
8 down, Your Honor?

9 THE COURT: Yes, ma'am. You may step down.

10 THE COURT REPORTER: Speak up.

11 THE COURT: Yes, ma'am.

12 BY MS. RADLEIN:

13 Q Is this the same Power Point that we just observed,
14 just the print format?

15 A Yes, ma'am.

16 Q And are the same points that you've identified in
17 there also on this exhibit?

18 A Yes, ma'am.

19 Q And this where we referenced up there, that would
20 be the same motion that we also saw in the projector?

21 A Yes, ma'am.

22 Q So is it your opinion that the latent print that
23 was submitted to you for testing, is it your opinion that
24 that print belongs to Johnny Lawson?

25 A Yes, ma'am.

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1 Q And which finger did you identify it to be?

2 A Number 3.

3 Q All right. I just want to ask some general
4 questions. In this case that you received two prints, two
5 identical prints or two identical lifts?

6 A Yes, ma'am.

7 Q The Detective Merrill testified he re-dusted and
8 re-lifted the print. In your opinion, would that have
9 destroyed the image in any way?

10 A No, ma'am.

11 Q Would it have changed any of the ridge detail that
12 you were able to identify?

13 A No, to what you're asking, but yes, it would change
14 the quality of the print. In other words, it would make it
15 better so I could probably see more detail than I would
16 have been able to see in the other one. So --

17 Q I apologize for the poorly asked question. But you
18 said -- so, you were going to elaborate?

19 A Yeah, it would make it better than the -- the first
20 one because it would give me more contrast, it would give
21 me more detail and then that's what I need is detail and
22 it's not a unusual practice to do that.

23 Q And the bifurcation that you referenced, it
24 wouldn't have added or necessarily taken away from the
25 actual bifurcations or anything associated to the actual

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1 print itself?

2 A No, ma'am, it would not.

3 Q Now --

4 MS. RADLEIN: Your Honor, may I approach briefly?

5 THE COURT: Yes, ma'am.

6 (There was a bench conference out of the hearing of
7 the jury and the court reporter.)

8 THE COURT: All right. Solicitor, you may proceed.

9 MR. RADLEIN: Thank you, Your Honor. At this time,
10 the State requests that the defendant please stand and
11 stand in front of the jury and show his hands.

12 MS. ZMROCZEK: Actually, Your Honor, may we
13 approach?

14 THE COURT: Yes, ma'am.

15 (There was a bench conference our of the hearing of
16 the jury and the court reporter.)

17 THE COURT: All right. Thank you. You may
18 proceed, Solicitor.

19 MR. RADLEIN: Thank you, Your Honor. The State
20 requests that the defendant please stand in front of the
21 jury --

22 THE COURT: Where would you like Mr. Lawson to
23 stand, please?

24 MR. RADLEIN: Right here, Your Honor.

25 THE COURT: Mr. Lawson, will just stand up and walk

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1 over there and just stand, well what if -- between the
2 machine and the jury panel.

3 MR. RADLEIN: Yes, Your Honor. And please show the
4 jury your right hand, the front and the back. You may sit
5 down.

6 THE COURT: Thank you. Thank you very much, Mr.
7 Lawson. You may return to your seat.

8 BY MS. RADLEIN:

9 Q And lastly, but not least, I think I would like to
10 put this in the record. The transaction number, the
11 State's Exhibit 16, is that the same print card that you
12 relied on in your analysis?

13 A Yes, ma'am.

14 Q And how do you know it to be?

15 A I just compared it to the numbers.

16 Q And what number of the, what number is it?

17 A It's 500200032524.

18 Q And that's the same number of the known print that
19 we have?

20 A Yes, ma'am.

21 Q Okay.

22 MS. RADLEIN: No further questions at this time,
23 Your Honor.

24 THE COURT: All right. Before cross examination, I
25 think we'll take a brief recess. Mr. Hickman, you may step

1 down and refresh yourself. You may not discuss your
2 testimony with anyone during this brief recess.

3 THE WITNESS: Yes, sir.

4 THE COURT: Madam Forelady, ladies and gentlemen of
5 the jury, we're going to take about a fifteen minute
6 recess. I'll remind you during this recess, do not discuss
7 this case with your fellow jurors or anyone else. Thank
8 you. Thank you very much. You may now go to your jury
9 room.

10 (The jury left the courtroom at 3:10 p.m.)

11 THE COURT: Court will be in recess 15 minutes.

12 (A brief recess was observed.)

13 THE COURT: All right. Anything from Defense, Ms.
14 Zmroczek, before we before we bring in our jury?

15 MS. ZMROCZEK: No, Your Honor, just I was trying to
16 figure out the rest of the day. I had e-mailed your clerk
17 and I spoke with them about two specific jury charges that,
18 two specific jury charges that I was requesting and I just,
19 I guess just trying to figure out as far as a time line
20 what you were thinking. I just, I'm not a fan obviously of
21 giving jurors cases at 4:45 or --

22 THE COURT: Is this your last witness?

23 MR. RADLEIN: Yes, Your Honor.

24 THE COURT: All right. Can you tell me and you
25 don't have to now, Ms. Zmroczek, do you intend to present

1 any evidence or testimony?

2 MS. ZMROCZEK: I don't. I have a -- I have a -- a
3 fairly at least four-page argument for directed verdict
4 that I plan on arguing plus I want to discuss charges so
5 that I know what to -- what to be able to argue. My
6 concern is just we're going to get push, push, push and
7 then it'll be almost five and I know that they'll maybe
8 want to stay, but it's my --

9 THE COURT: Most likely I'll bring them back in the
10 morning.

11 MS. ZMROCZEK: Okay. That's my question.

12 THE COURT: It's 3:30. I don't know how long
13 you're gone be with your Detective Hickman. I'll let them
14 come back and get it fresh in the morning. I still have to
15 advise Mr. Lawson of his right to testify or not testify.

16 MS. ZMROCZEK: That was just my concern, Your
17 Honor.

18 THE COURT: And I assume -- I haven't ruled
19 obviously on the directed verdict motions, but if I do not,
20 I mean if I deny the motion, I have found attorneys are --
21 let me rephrase that. I have experientially realized that
22 when I was given over the evening to think about a closing
23 argument or arguments are not necessarily better, but it
24 was more --

25 MS. ZMROCZEK: More organized.

James Hickman - Cross-Examination by Ms. Zmroczek

1 THE COURT: -- precise. And so I can say it was a
2 more kindly manner. It doesn't mean it was good; it was
3 just, it wasn't as bad as it could have been. All right?

4 MS. ZMROCZEK: Thank you. That would definitely be
5 my preference.

6 THE COURT: I'll most likely do that.

7 (The jury entered the courtroom at 3:30 p.m.)

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen, we'll continue the trial of the case by the
10 cross examination of Detective Hickman by Ms. Zmroczek.

11 Ms. Zmroczek, you may cross examine the witness.

12 MS. ZMROCZEK: Thank you, Your Honor, may it please
13 the Court?

14 **CROSS-EXAMINATION**

15 **BY MS. ZMROCZEK:**

16 Q I just obviously -- I don't want to start here, but
17 I -- I -- I wanted to just ask you a few questions about
18 your presentation. Do you have the -- or number 8 or the 8
19 point. Okay. Thank you.

20 My questions surround -- okay -- I want to make
21 sure first I understand this -- the latent print -- the one
22 that we're looking at, you said is number 2, is Lift, Lift
23 identified as Number 2?

24 A Yes, ma'am.

25 Q Okay. And these areas in -- within the print that

James Hickman - Cross-Examination by Ms. Zmroczek

1 don't appear over here, what did -- what can you attribute
2 those differences?

3 A I'm not quite sure I know what you're asking, but
4 are you talking about areas like this that doesn't show up
5 here or are you talking about the ridge detail that's not
6 over here?

7 Q Correct, the ridge detail.

8 A This could be by movement -- movement here.
9 Whereas this print here was rolled, a rolled print; it was
10 rolled on either live scan or ink print, so whoever rolled
11 it had control of the finger. This one here is movement
12 here so it destroyed this part of the print and it wouldn't
13 show up here because of that. This up here is some other
14 distortions that would do the same thing. The reason it
15 didn't show up here is because it was put here at the time
16 the latent was put there.

17 Q And these areas right here, they appear here; would
18 you attribute that to movement as well?

19 A I see it here. I'm not sure what you're --

20 Q Oh, I'm sorry. Here --

21 A Oh, here, yes, ma'am. Yes, this is movement here.
22 It comes almost all the way over to here and here and then
23 there's more movement here and this is just like a smudge
24 across the top and then there's more movement on this side.

25 Q And the identification that you made, you said that

James Hickman - Cross-Examination by Ms. Zmroczek

1 you create a personal Number of 8; that's just a
2 subjective, that's just what you choose?

3 A Yes, ma'am.

4 Q And you said that you found up to 15?

5 A Yes, ma'am.

6 Q But really you just didn't want to -- to crowd --
7 crowd these numbers, right?

8 A Yes, ma'am.

9 Q You would agree with me that you could show this
10 exact same screen with 9, 10, 11, 12, 13, 14 and 15,
11 correct?

12 A Yes, ma'am.

13 Q Okay. But that wasn't done? That wasn't done in
14 this case?

15 A No, that wasn't done.

16 Q Thank you. Thank you?

17 THE COURT: Can you explain that last question to
18 me, Ms. Zmroczek? That wasn't done for demonstrative
19 purposes, is that the question?

20 MS. ZMROCZEK: Well actually I was about to
21 followup.

22 THE COURT: All right. You got followup?

23 MS. ZMROCZEK: I do. I do.

24 THE COURT: Go right ahead.

25 MS. ZMROCZEK: I was trying to get this.

James Hickman - Cross-Examination by Ms. Zmroczek

1 THE COURT: All right. Thank you.

2 BY MS. ZMROCZEK:

3 Q So to followup on my last question, the -- the 15
4 points of -- the first time --- the 15 points certainly
5 weren't done for demonstrative purposes, correct?

6 A Correct.

7 Q And they also were never referenced in any report
8 that you generated?

9 A No, ma'am.

10 Q Okay. So the first time you've ever said a 15
11 point match was today here in court?

12 A Yes, ma'am.

13 Q Okay. But you provided discovery and bench notes
14 and everything that you worked on, you provided that in
15 preparation for trial?

16 A Yes, ma'am.

17 Q And in all of those, the highest match, you never
18 said anything about 15; it was only 8, correct?

19 A Correct.

20 Q Okay. I was just making sure I didn't miss getting
21 something.

22 I want to go back briefly, you provided me your,
23 your CV?

24 A Yes, ma'am. Yes, ma'am.

25 Q Just recently, correct, when I requested it?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q Okay. And so even though it has the certified
3 by -- I am certified by -- you're saying that that's just
4 not current; you just didn't update your, your resume?
5 That certification is not current -- you're not currently a
6 senior, a certified senior?

7 A Oh, yes, ma'am, there's no current on that. Once
8 you get certified, you're sort of certified the rest of
9 your life. It's --

10 Q With the, with the International Association?

11 A Yes, ma'am.

12 Q Are you familiar that they have a website?

13 A Yes, ma'am.

14 Q And you're familiar that they list all the people
15 who are certified?

16 A Yes, ma'am.

17 Q All right. Have you checked that website?

18 A No, ma'am.

19 Q You'd agree with me that they identify all the
20 people who are certified?

21 A I can't answer that; if you say so, I'll agree with
22 you.

23 Q Okay. And that they have a certification number;
24 you have a certification number?

25 A No, ma'am, I was certified a long time before they

James Hickman - Cross-Examination by Ms. Zmroczek

1 started that.

2 Q So when was the last time you updated that?

3 A It's never been updated.

4 Q Okay. You would agree with me that there are
5 certified, current certified latent print examiners with
6 the International Association for Identification currently
7 in South Carolina?

8 A Yes, ma'am.

9 Q And that's a Specialized Latent Print Certification
10 that's the IAI?

11 A It's a certification through the International
12 Association of Identification which is the IAI.

13 Q Okay. And to get that certification, it requires
14 different amounts of testing or -- or proficiency?

15 A It requires a test.

16 Q Okay. If told you that there were currently twelve
17 Certified Latent Print Examiners with the IAI in South
18 Carolina, would you know that to be true?

19 A No, ma'am.

20 Q If it was posted on their website, would you
21 disagree with that?

22 MR. RADLEIN: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MS. ZMROCZEK:

25 Q You do not have a degree in forensic science?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A No, ma'am.

2 Q Have you ever conducted any research in any print
3 comparisons?

4 A Not in print comparisons, I've done some research
5 in the history of fingerprints and published an article at
6 one time with that. I also did a research paper when I was
7 going to the FBI Academy at Quantico with the
8 Administrative Class.

9 Q And what -- what year was that?

10 A That was 1980, it was in the mid-80's.

11 Q The mid-80's?

12 A Yes, ma'am.

13 Q You indicated that you had been keeping up with
14 website's?

15 A Yes, ma'am.

16 Q What website's do you follow to -- to keep updated?

17 A There's a Latent Fingerprint Examiner, the IAI, the
18 WHORL, which is worldwide; I think it's WHORL with the
19 world, the -- there's a couple of others that I just can't
20 bring up on my mind right now.

21 Q And you do that so that you remain proficient?

22 A Yes, ma'am.

23 Q And you do that because you want to follow their
24 recommendations?

25 A No, ma'am.

James Hickman - Cross-Examination by Ms. Zmroczek

1 Q Okay. You're familiar -- are you familiar with the
2 National Academy of Science Report entitled Strengthening
3 Forensic Science A Path Forward?

4 A No, ma'am.

5 Q Do you know what the National Academy of Science
6 is?

7 A Basically, yes, ma'am.

8 Q You testified earlier that you know that the
9 scientific working group of friction ridge analysis study
10 technology?

11 A Yes, ma'am.

12 Q And you're familiar that they have guidelines for
13 quality assurance in making identifications?

14 A Yes, ma'am.

15 Q Knowledge of various methods used to identify ridge
16 impressions is -- is an important -- is an important thing
17 when you're presenting it and it's an important -- it's
18 important information when you're presenting it in a court
19 case, correct?

20 A Yes, ma'am.

21 Q And it's important for attorneys who are
22 representing people and who are prosecuting cases to
23 understand the process?

24 A Yes, ma'am, it is.

25 Q And -- but in order to understand the process, we

James Hickman - Cross-Examination by Ms. Zmroczek

1 have to kind of be inside your brain because the process
2 isn't written down anywhere, right; it's just based on what
3 you testified?

4 A It's not written down in our department, but the
5 process is, SWNGFAST writes the process down, some of the
6 other organizations write it down and I even write it down
7 myself, but it's not an official document like an SOP or
8 something like that.

9 Q And I -- specifically you were asked about if, if
10 you and your unit follows the SWNGFAST Guidelines, right?

11 A Yes, ma'am, there's some of the guidelines we do
12 follow, but, I mean, it's not written; and some of them we
13 don't.

14 Q So your -- your response when asked was that you
15 don't follow those?

16 A Right, yes, ma'am.

17 Q I was just making sure. Thank you.

18 You were asked about accreditation. The print unit
19 is not accredited, but the Lexington County Sheriff's
20 Office is, correct?

21 A Yes, ma'am.

22 Q And that's accredited or accredited, excuse me,
23 through ASCLD?

24 A I believe so.

25 Q The American Society of Crime Lab Directors?

James Hickman - Cross-Examination by Ms. Zmroczek

- 1 A I --
- 2 Q Okay.
- 3 A I don't know.
- 4 Q Oh, that's okay. So you don't know whether the
5 accreditation required you to have standard operating
6 manuals or procedures?
- 7 A No, ma'am, I don't.
- 8 Q Do you know if it requires you to take proficiency
9 tests every year?
- 10 A No, ma'am.
- 11 Q You said that already your unit lacks a policy
12 manual, so there's no policy regarding what happens if two
13 examiners disagree?
- 14 A No, ma'am.
- 15 Q You said that you were, your work was reviewed by
16 another analyst?
- 17 A Yes, ma'am.
- 18 Q And who is that analyst?
- 19 A On this particular case, I think it was Glenn Ross.
- 20 Q Did Mr. Ross produce any reports to your knowledge?
- 21 A No, ma'am.
- 22 Q Does your unit have a policy for when there is an
23 error or a discrepancy between opinions?
- 24 A No, ma'am.
- 25 Q You -- are you aware that the South Carolina Crime

James Hickman - Cross-Examination by Ms. Zmroczek

1 Lab Review, the SLED Crime Lab Review recommends that all
2 forensic examiners be certified?

3 A No, ma'am.

4 Q You talked a lot -- you talked about the
5 fingerprint basics. You start from the premise that
6 everybody has different characteristics on their fingers?

7 A Yes, ma'am.

8 Q You have names for the different characteristics?

9 A Yes, ma'am.

10 Q Ridge?

11 A Ridge, bifurcations, dots, islands, trifurcations.

12 Q Do you know how many points or characteristics the
13 average complete fingerprint has?

14 A You're probably going to get different answers from
15 different people, but I -- I would say, no, I don't know,
16 but I would say some 150, 200.

17 Q Okay. So a high number?

18 A Yes, ma'am.

19 Q So the average full fingerprint has a 100 to 150
20 points. Those are different characteristics that you can
21 compare to latent prints or unknown?

22 A Yes, ma'am.

23 Q So -- and what I understood to -- to be what you
24 testified to, is when you do your job you look at a print
25 that somebody else collected, in this case, the Detective

James Hickman - Cross-Examination by Ms. Zmroczek

1 for Cayce, and he collected three prints and two of them --
2 is it your testimony that two of them are the exact same?

3 A Yes, ma'am.

4 Q Okay. Lift Number 3 was maybe a little, had a
5 little more color than Lift Number 2?

6 A I -- I think that's right, but I wouldn't swear to
7 that right at this moment without looking at it again.

8 Q Okay. But did you, I'll let you look at it. I
9 thought y'all put them up here. No, that's fine. That's
10 fine. I'll hand you all three.

11 A Okay. Yes, ma'am, Number 3 appears to have a
12 little, a little more contrast to it than Number 2.

13 Q But Number 2 is the one that you ran through your
14 machine?

15 A Yes, ma'am.

16 Q Explain how that machine works.

17 A I take the latent print and it is photographed,
18 it's digitized through the machine itself. The machine has
19 a camera and it's digitized and then it's entered into the
20 system. In the system it goes to SLED and at SLED it takes
21 that finger, latent print and checks it against all the
22 records they have and then once if they make, when they
23 make a hit, they will send those back, like I said earlier,
24 there's twenty candidates and they will send those twenty
25 candidates back to me. It'll come up on the screen and

James Hickman - Cross-Examination by Ms. Zmroczek

1 then I have to check each one of those candidates to
2 determine if the AFIS is correct or not correct.

3 Q And why would it come back with twenty candidates?

4 A That's what we have; that's what I have it set on
5 is twenty.

6 Q Okay.

7 A It could come back with two. I'm assuming I could
8 set it on two, I don't know.

9 Q But you set it on, on twenty?

10 A Yes, ma'am.

11 Q And if there were only three candidates, only three
12 would come back, not twenty?

13 A No, twenty would come back.

14 Q Twenty would come back?

15 A Yes, ma'am.

16 Q And then you would need to compare each and every
17 one of those to find points?

18 A Yes, ma'am.

19 Q But since you found some, you found eight and as of
20 today, you found fifteen points on the first one, you
21 didn't check any of the other ones?

22 A No, ma'am. Once I make an identification, I stop
23 there. There's no reason to go any further.

24 Q Is it -- and I'm unclear. Are there no way that a
25 fingerprint can have the same point as another fingerprint?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A There are -- there are times when there's maybe two
2 or three points that are the same on different fingerprints
3 and it's not a match. I have never heard or read anything
4 that say there was more than I think five or six is what it
5 is points of identification on a unknown print that had not
6 made the identification.

7 Q But -- but you didn't check any of the other ones
8 that came back --

9 A No, ma'am.

10 Q -- it was just the first one?

11 A No, once I made the identification, there was no
12 reason to go any further.

13 Q Basically you looked at the two prints that are
14 like prints and you look back and forth for the
15 similarities?

16 A Yes, ma'am.

17 Q Sometimes you know information about the case?

18 A Yes, ma'am.

19 Q Like why the police believe somebody is a suspect?

20 A Most of the time, no. I usually get from like from
21 Cayce, I just get a copy of the incident report and I read
22 the incident report. Sometimes in an incident report,
23 there's some information in there that helps me to identify
24 which hand, you know, if it was a driver's side and the
25 fingerprint was taken off the door handle, I can say well

James Hickman - Cross-Examination by Ms. Zmroczek

1 it may probably the right hand. Most people open the door
2 with their right hand. Things like that, but as far as any
3 of the other information, no, ma'am.

4 Q Okay. And I'm glad you brought that up. Talking
5 about, tell the jury what handedness is?

6 A Ma'am.

7 Q Like handedness, the dominant hand?

8 A Oh.

9 Q I'm sorry.

10 A That's whether you're right-handed or left-handed.

11 Q Okay. And, and you said most people are right
12 handed?

13 A Yes, ma'am.

14 Q And if someone is trying to push and pry a window
15 down, would they be more likely to use their dominant hand
16 or their less dominant hand, in your experience?

17 A I would say most people would use their right hand
18 for -- well if they were dominant right hand, they would
19 use the right hand for most everything, but I -- there's
20 always the chance that you, they're ambidextrous or use two
21 hands, either one or they were in a position where they
22 could only use the left hand. So I don't think I can
23 answer that question.

24 Q Would you -- when you reviewed the document in this
25 case, did you know -- you knew -- what did you know from

James Hickman - Cross-Examination by Ms. Zmroczek

1 the report that you reviewed?

2 A That there was a car break-in and that's about all
3 I got out of the report.

4 Q So there was no information to you that someone had
5 their hand up in the air with no glove on?

6 A No, ma'am.

7 Q And or that someone had their hand in a car?

8 A No, ma'am.

9 Q Okay. Would you happen to know whether Mr. Lawson
10 is right-handed or left-handed?

11 A No, ma'am.

12 Q It's -- it's your decision whether a characteristic
13 on the point, I mean on the print from the crime scene is
14 similar to the one of the -- of the suspect, correct?

15 A I wouldn't use the word similar, but yes, ma'am.

16 Q What you do is subjective is --

17 A Yes, ma'am.

18 Q Okay. So there's nothing really scientific about
19 it?

20 A Yes, ma'am, it is a scientific method.

21 Q Are you familiar with -- with -- with the one
22 discrepancy or one difference rule?

23 A Yes, ma'am.

24 Q Tell the jury about that?

25 A One -- one difference is, it's not identification.

James Hickman - Cross-Examination by Ms. Zmroczek

1 If I find one difference that I cannot explain to you, it's
2 not an identification. That's as simple as it is.

3 Q So if you see one real difference between the known
4 print and the latent print, it's your testimony that you
5 have to call it an exclusion?

6 A It's not an exclusion; it's not an identification.

7 Q It's not an identification?

8 A Yes, ma'am. I think an exclusion is probably a
9 newer word they're using now.

10 Q So if you saw one, if you see one difference in the
11 known print or Mr. Lawson's print and the latent print, if
12 you see that, then you would have had to say it's not a
13 match?

14 A As long as I can't explain the difference. The
15 difference could be explained away as like a water spot or
16 movement in the hand or something like that. If I can
17 explain the difference, no it's not; it will still be an
18 identification. If I cannot explain the difference, it
19 wouldn't be an identification.

20 Q And those explanations, are those some things
21 that -- that you come up with?

22 A I don't quite follow you on that. No, I don't come
23 up with them.

24 Q Okay.

25 A They're reasons that I can look at something and

James Hickman - Cross-Examination by Ms. Zmroczek

1 say well this was caused by something so it's changed from
2 here. It's like a -- a -- on the rolled print, you see a
3 rolled print just like you saw up here and on the latent
4 print, you see a slash mark across it, which would be a
5 scar or something like that. That's a difference. And in
6 the one-rule procedure, I still can match those prints up
7 because I can explain that that is a surgical scar or a
8 scar.

9 Q And -- and so scars can affect how a latent print
10 appears?

11 A Yes, ma'am.

12 Q Did you see scars in the latent print here?

13 A No, ma'am.

14 Q Have you examined Mr. Lawson's hands?

15 A No, ma'am.

16 MS. ZMROCZEK: And, Your Honor, at this time, I
17 know he's already done it once, but I want to ask that Mr.
18 Lawson come up and just show his right hand again? Come
19 forward?

20 THE COURT: Well, all right. Yes, ma'am, you may
21 do so.

22 MS. ZMROCZEK: Okay. Just your right hand. Thank
23 you. Have a seat.

24 THE COURT: Thank you. Thank you, Mr. Lawson.

25 ///

James Hickman - Cross-Examination by Ms. Zmroczek

1 BY MS. ZMROCZEK:

2 Q Sometimes when you decide that there are
3 differences and you -- you have like a certain, I'm just
4 confused about these explanations. You have a certain list
5 of explanations or -- or is just something that you try to
6 make sense as to why there's a difference?

7 A There's probably a list that some other people have
8 found. I don't have one. It's just when I see something,
9 I try to explain why it's there and if I can't explain why
10 it's there, then it --

11 Q But if you can just come up with something, any
12 reason, any logical reason, then -- then -- then -- then
13 you don't worry about that discrepancy?

14 A Yes, ma'am.

15 Q Okay. You talked a little bit about that, I
16 believe in this case, it was possibly Mr. Ross who reviewed
17 your work?

18 A Yes, ma'am.

19 Q And do they review, do they -- how do they do that
20 review; how is that review done?

21 A There's two types of reviews. One is called a
22 blind review; that's where I just -- I don't give him any
23 information as to what I did or what my conclusions were; I
24 just give him all three latent prints and he does an
25 examination. The other one is just a -- where I give him

James Hickman - Cross-Examination by Ms. Zmroczek

1 my reports and I tell him this is what I done, this is what
2 I matched it to; do you agree and he just looks at that one
3 print.

4 Most of the time, they go ahead and -- most of the
5 examiners will go ahead and examine everything, but in this
6 particular -- the way we do it is they just examine the one
7 print.

8 Q Okay. So -- so he knew that you found a match?

9 A Yes, ma'am.

10 Q And he was just reviewing that?

11 A Yes, ma'am.

12 Q He did not do an independent examination?

13 A No, he did not. Well I'm not going to say he did
14 not do a blind examination; he may have. I have no
15 knowledge if he did.

16 Q And there's no report from him?

17 A Right, yes, ma'am.

18 Q Okay. And typically when you are reviewing
19 something and, and presenting it in evidence, you do a
20 report?

21 A Yes, ma'am.

22 Q Okay. How many times has your reviewed work been
23 disagreed with?

24 A Never.

25 Q Never?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A Never, to my knowledge.

2 Q Would you be told?

3 A I certainly hope so.

4 Q The sole identification was based on that number
5 three fingerprint on the inside of the window, that came
6 off an AFIS hit, correct?

7 A Yes, ma'am.

8 Q And that was given to you August 4th?

9 A Yes, ma'am.

10 Q And were you provided any -- you don't tell me what
11 the explanation was, but were you provided any explanation
12 as to why seven months or five months went by before you
13 were --

14 A No, ma'am.

15 Q You stated that you were familiar with the National
16 Academy of Science?

17 A I'm familiar with the name.

18 Q Okay. You've done history on fingerprints
19 throughout the years -- I mean the history of fingerprints?

20 A Yes, ma'am.

21 Q That organization is used to help take these kinds
22 of sciences where people are being identified and provide
23 some -- some norm -- some requirements --

24 MR. RADLEIN: Objection, Your Honor.

25 THE COURT: What Rule.

James Hickman - Cross-Examination by Ms. Zmroczek

1 MR. RADLEIN: Rule Number -- I don't know what the
2 Rule number is, Your Honor, but she's testifying; I haven't
3 heard a question; it goes to the form.

4 THE COURT: Restate your question again.

5 MS. ZMROCZEK: I'll restate it.

6 BY MS. ZMROCZEK:

7 Q Why are -- why are norms -- why are norms or normal
8 or policies or procedures or scientific steps important
9 when making identifications?

10 A I'm not -- I'm still not quite sure what you're
11 talking about, but I think it is a scientific method. As
12 long as there's a scientific method, more than one person
13 can complete the action again and again and again and
14 that's the scientific principal. I'm not sure if that's
15 what you're asking me though.

16 Q That is exactly what I was asking. You talked
17 about how fingerprints are even more identifiable or make
18 more of a match than DNA; is that, did I say that
19 correctly?

20 A Yes, ma'am.

21 Q Since you're an expert in this -- in this field,
22 would it be your responsibility or your ability to
23 determine whether or not something could generate a print?

24 A Yes, it could be.

25 Q Were you ever provided a crow bar in this case?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A No, ma'am.

2 Q Uniqueness in fingerprints does not guarantee that
3 the prints are from two different people, that they're
4 always sufficiently different; they're going to be some
5 similarities; you'll be able to see some similarities in
6 various fingerprints, correct?

7 A Yes, ma'am. As far as the -- the design, let's say
8 design or the picture of the fingerprint, like it's a
9 whorl, everybody in this room could have a whorl on their
10 left thumb finger now or and they still not be the same
11 print.

12 Q But they had similarities, but yet you have to do
13 this comparison to make sure that they're a match?

14 A Yes, ma'am.

15 Q Okay. And out of the 100 or 150 points on a -- on
16 a normal fingerprint, you testified today and that you,
17 that you found 15, but prior that you found 8?

18 A When I made the identification I had 8 and at some
19 time later on, I go back and count the rest of the points
20 in the latent print and I can't tell you when I did that,
21 but it was at a later time.

22 Q Okay. And that -- and -- and but -- the -- the --
23 you had -- you also previously testified there were about
24 100 or 150 points that you could identify?

25 A No, ma'am.

James Hickman - Cross-Examination by Ms. Zmroczek

1 Q On a -- on a normal fingerprint?

2 A On a normal fingerprint, I testified that they
3 could be 150 to 200 points of identification on it. On
4 this latent print, there was only 15 points of
5 identification and that's because of the movement in the
6 finger, the amount of ridge detail that was left on it.
7 When we're talking about 100, 200 points of identification,
8 we're talking about a rolled print that's, well say it's a
9 perfect print and you can see the whole print. The print
10 starts at the edge of your finger where your fingernail's
11 at and it rolls all the way around. You look at the latent
12 and compare it to the area that we had, which is very
13 small.

14 Q And when you ran that latent through AFIS, did it
15 identify the points?

16 A Ask me again please.

17 Q When you ran the latent print through AFIS, does it
18 mark or indicate where you should look or what points are
19 identifiable?

20 A Yes, ma'am, it has the points marked on there for
21 you.

22 Q And how many points, when you ran through AFIS,
23 were noted or indicated?

24 A 10.

25 Q And how were they identified?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A They're identified by either a small round circle
2 with a tail on it or a square with a tail on it.

3 Q And so there were 10 that the computer marked on
4 the latent print?

5 A Yes, ma'am, I believe that was, that's correct.

6 Q Would it -- would it refresh your recollection if I
7 show you -- if I showed you the printout?

8 A Yes, ma'am.

9 Q Okay. I'm sorry.

10 A This is the printout you just showed me. I
11 recognize it as the printout, a copy of the screen that it
12 give back to me. It does not show the points that the
13 computer made; it's the points that I made on here.

14 Q Okay. So the points that the computer made, would
15 those be identified as maybe little square boxes?

16 A Yes, ma'am.

17 Q Okay. And do you have that in front of you or, I
18 believe I have it someplace.

19 A I have a --

20 Q Are we looking at the same one?

21 A Yes, ma'am.

22 Q Okay.

23 A This is the one that when I entered it, you'll
24 notice down at the bottom it says create search, this is
25 the one that myself and the computer identified. You'll

James Hickman - Cross-Examination by Ms. Zmroczek

1 see the, the yellow ones, well you can't see the yellow
2 ones, excuse me. But they are 1, 2, 3 yellow squares.
3 These are the ones that I picked out. They are 1, 2, 3, 4,
4 5, 6, 7 round green ones, either squares or round; that's
5 what the computer picked out. With a combination of the
6 two is whenever I made, created the search and entered it
7 into the computer.

8 Q Okay. Did the computer identify the squares that
9 you had or the computer didn't identify those; those were
10 the ones you identified? You said that you did the squares
11 and the computer did the dots?

12 A Okay. Sometimes what I do and sometimes the
13 computer, if I understand it right and I may be totally
14 wrong on this one, it makes three different types of
15 searches. One search is it does if the computer does
16 itself it searches one way. If I mark everything, which I
17 have the option of marking every point, it searches another
18 way and then the third way is that if I mark some and the
19 computer does, I combine both of us, it makes a search and
20 I was taught that it makes a better search if I mark some
21 and the computer marks some. So what I do is I go back, I
22 may mark some; these three that I marked, may have been the
23 computer may have marked them to start with, but I go back
24 and mark 3 or 4 myself and it could be, like I say,
25 sometimes it's the same one the computer marks or it's some

James Hickman - Cross-Examination by Ms. Zmroczek

1 that I pick out that the computer didn't mark.

2 Q And the way that I understand it is you get to set
3 the parameters as far as there are three different ways to
4 search --

5 A Yes, ma'am.

6 Q -- and you get to set -- you get to choose the
7 parameters?

8 A Yes, ma'am.

9 Q Okay. And then they're just based on your
10 personal --

11 A That's what I was taught when I went through the
12 class.

13 Q And are you familiar with whether or not that has
14 been, that -- that method has been updated in the last
15 since the 80's; is that the last time you were taught?

16 A The -- the software of this system has been updated
17 a couple of times. We're in the process of updating it
18 again. I can't tell you what -- what it was -- the updates
19 are.

20 Q So in this case, you had, you examined the first
21 print, there were 19 other hits that you did not examine?

22 A Yes, ma'am.

23 Q Those candidates weren't even looked at, those
24 fingerprint candidates were not even looked at?

25 A No, ma'am.

James Hickman - Cross-Examination by Ms. Zmroczek

1 Q Okay. You'd agree you're only human?

2 A Yes, ma'am.

3 Q And in your 38 years or so, you've never been
4 wrong?

5 THE COURT: That's not what he testified to.

6 BY MS. ZMROCZEK:

7 Q Okay. And that's what I was clarifying. Is that
8 what you said or was that --

9 A No, ma'am.

10 Q Okay. Tell me --

11 A I said I've never been misidentified anyone.

12 Q Never misidentified anyone?

13 A Yes, ma'am.

14 Q When you create reports and -- and I believe you
15 said that you looked at -- if you look at a print and you
16 just find it has no value, you write N/V?

17 A Yes, ma'am.

18 Q And you did that in this case, right?

19 A Yes, ma'am.

20 Q On the first latent print or latent print 1?

21 A Yes, ma'am.

22 Q The one that was on the outside?

23 THE COURT: Is that Lift 1?

24 BY MS. ZMROCZEK:

25 Q Lift 1 -- I'm sorry?

James Hickman - Cross-Examination by Ms. Zmroczek

1 THE COURT: State's 15; is that right.

2 MR. RADLEIN: State's 15, Your Honor.

3 MS. ZMROCZEK: State's 15.

4 BY MS. ZMROCZEK:

5 Q Lift 1, I'll try to keep that straight?

6 THE COURT: I just wanted to make sure I was
7 tracking.

8 BY MS. ZMROCZEK:

9 Q The Lift 1, you marked as no value?

10 A Yes, ma'am.

11 Q Okay. And then Lifts 2 and 3 you said were
12 identical?

13 A Yes, ma'am.

14 Q Okay. But when you -- you created the AFIS
15 worksheet?

16 A Yes, ma'am.

17 Q And you identified Number 1 as your fingerprint?

18 A Yes, ma'am.

19 Q Okay. Was that just an oversight or, or did you
20 just, was it Lift 2?

21 A I think it's Lift 2 and I just hand slipped or
22 something, but it's Lift 2.

23 Q Okay. And you received this on August 4th and then
24 when did you run it through the computer; do you do the
25 comparisons before you run it through the computer?

James Hickman - Cross-Examination by Ms. Zmroczek

1 A No, ma'am.

2 Q Okay.

3 A I run it through the computer. I finished running
4 it through the computer on August the 20th.

5 Q On August the 20th?

6 A Yes, ma'am.

7 Q And then after that is when you do the side-by-side
8 comparison?

9 A Yes, ma'am.

10 Q And how long does that generally take, the
11 side-by-side comparison?

12 A It depends on the latent itself and it depends
13 on -- I could do it in ten minutes sometimes; sometimes
14 it'd take me an hour.

15 Q Really you don't know how long it took in this
16 case?

17 A No, ma'am.

18 Q Okay. You would agree that -- that the best latent
19 or the highest quality latent print would make
20 identifications easier?

21 A Yes, ma'am.

22 Q Thank you.

23 THE COURT: Redirect, Solicitor.

24 MR. RADLEIN: Yes, Your Honor. Thank you.

25 ///

James Hickman - Redirect Examination by Ms. Radlein

REDIRECT EXAMINATION

1
2 BY MS. RADLEIN:

3 Q Mr. Hickman, do you generate reports in all your
4 cases?

5 A Yes, ma'am.

6 Q What type of report do you generate?

7 A It's a just a standard report that we use on the
8 letterhead stating the date that I -- the date that I
9 finished the report, the case number, whichever department
10 it is. I have a position on there that who's the name of
11 the person that gets it, the investigator in charge of the
12 case; what I -- what I found, what I received, like in this
13 instant was 3 lifts and then the results of my examination.

14 Q And is this something you do in every case?

15 A Yes, ma'am.

16 Q In the original case file, would this be the report
17 that you returned to Cayce Public Safety or any --

18 A Yes, ma'am.

19 Q -- I apologize. Any requesting agency?

20 A Yes, ma'am.

21 Q And is that standard?

22 A Yes, ma'am.

23 Q Do you usually turn over your worksheets and other
24 accompanying items or documents that you reviewed or
25 received?

James Hickman - Redirect Examination by Ms. Radlein

1 A No, ma'am.

2 Q So the original Latent Print Examination Report,
3 the results, what did you indicate on the report?

4 A I said on the report as a result of Automatic
5 Identification System Search, 2 latent fingerprints are
6 present on lift, lifts designated 2 and 3. Both marked
7 front passenger window have been identified to the right
8 middle finger of Johnny L. Lawson, date of birth and
9 SID number SC00330637.

10 Q And what else did you indicate?

11 A And I indicated on the next line it says no latent
12 prints are of value or present on the remaining lift.

13 Q And then did you sign that report?

14 A Yes, ma'am.

15 Q The other worksheets and the items that Defense
16 Counsel referenced, was that part of your original case
17 file that was turned over?

18 A Yes, ma'am.

19 Q The original, when you first turned it over to
20 Cayce?

21 A Oh, no, ma'am. When I turned it over to Cayce, no,
22 it's in our original case file at the Sheriff's Department.

23 Q And again -- poor form, I apologize. When did you
24 provide the solicitor's office with your case file; would
25 it have been after --

James Hickman - Redirect Examination by Ms. Radlein

1 A It was -- it was after -- I don't remember when it
2 was exactly. It was at some point in time later, I think I
3 got the request for it and I sent it on at that time.

4 Q And is it standard to turn that over upon request?

5 A Yes, ma'am.

6 Q And referencing the AFIS worksheet that Defense
7 Counsel referenced on cross, the chart that's in the center
8 of the worksheet, where it lists an item number?

9 A Yes, ma'am.

10 Q 1, 2, 3, the 5th column over, what column is that?

11 A It says fingerprint number searched.

12 Q Yes?

13 A Yeah, that's the column where I put if I know which
14 fingerprint, which finger to search, I put that in there.
15 If I don't know, I just put a question. In this particular
16 one, I put 3/8. That would mean when I go to the AFIS
17 System and enter the information I'm going to search finger
18 number 3 and finger number 8.

19 Q So in terms of limiting the search that you entered
20 into AFIS, you're referring to, or not limiting so to
21 speak, entering parameters that defense was referring to,
22 you're talking about after you review a print and determine
23 what the potential print finger is then you limit it in
24 AFIS?

25 A Yes, ma'am.

James Hickman - Redirect Examination by Ms. Radlein

1 Q So it's not that you're just out of nowhere
2 limiting the search?

3 A No, ma'am.

4 Q And what is the purpose of limiting the search?

5 A It makes a better search. It's a, you know --
6 you're looking for something -- you know -- it's easier to
7 look in a place where there's only 5 items as versus 500
8 items and that's what we're talking about. SLED has all
9 the fingerprints and there's 10 fingerprints on each card.
10 So if you've got a thousand fingerprints, you can imagine
11 how many a thousand cards, you can imagine how many
12 fingerprints you got. So it's just a much faster search
13 and a better search you'll get if they're looking at a
14 smaller number than what they normally would look at.

15 Q And the next column over, what column is that?

16 A It says number of minutia.

17 Q And you entered a value; what value did you enter?

18 A 10.

19 Q And where did you get that value from?

20 A That's off of the -- at the end just before I
21 create, whenever we mark the minutia, I talked about it
22 while ago, the computer marks what it wants to. I go back
23 and check each one to make sure it is correct and then I'll
24 go back and mark a couple of more. Whenever I entered it,
25 when I hit the button and say entered, there was 10 points

James Hickman - Redirect Examination by Ms. Radlein

1 of identification marked.

2 Q And so again that 10 was what the computer returned
3 to you?

4 A Yes, ma'am.

5 Q Did you tell the computer you only wanted 10
6 points?

7 A No, ma'am.

8 Q Do you control the number of points the computer
9 returns?

10 A No, ma'am.

11 Q In terms of the AFIS hit, when the computer or AFIS
12 returns, we're talking about this number 1 through 20. Is
13 there a specific rank order as far as number 1 more likely
14 or less likely that this is the match to a latent print you
15 entered?

16 A Number 1 would be the most likely, Number 2 would
17 be the next in line. It goes in line 1 through 20. Number
18 20 would be the least likely, but and number 1 would be the
19 most likely.

20 Q And in this case, does it give you percentages in
21 terms of likely, most likely?

22 A It gives a score.

23 Q Okay.

24 A And most of the time, the highest score would be
25 number 1. I can't tell you how it makes that score, it's

James Hickman - Redirect Examination by Ms. Radlein

1 just a score.

2 Q And in looking at the results of scores, what is
3 the difference between the number 1 score and the number 2
4 score, roughly?

5 A Let's see, about 800 points or somewhere
6 thereabouts. The number 1 score is 5,163 and the number 2
7 is 4,571.

8 Q And how about the number 3 score?

9 A That drops down to 4,539. So that's another 40, 40
10 points.

11 Q And the 4th score?

12 A It's 4,422 and the next one is 4,416.

13 Q Would you agree that the point difference between
14 the first score and the second score is approximately, I
15 can't do math at the moment, but it's several times more
16 than the difference between each subsequent score?

17 A Yeah, yes, ma'am, I concur.

18 Q Would you say that scores 2 through 20 are closer,
19 tighter in range compared to score 1?

20 A Yes, ma'am.

21 Q So in this case, would it be your opinion that the
22 computer can generate a most likely score significantly
23 separating the other possible, the other SID numbers that
24 it returned?

25 A Yes, ma'am.

James Hickman - Redirect Examination by Ms. Radlein

1 Q And in returning twenty scores, twenty possible
2 SID's, is the computer saying that the other people could
3 be possible, could be responsible for making this print?

4 A I don't know whether I'd put it that way or not,
5 but the computer, all the computer does is it sees the
6 points period. It'll see a ridge in it, a bifurcation in
7 it. So it may say that there is 5 points of identification
8 up in the top right hand corner of the print whereas you
9 can't even see that in the latent. The other points are
10 down below. So I'm not quite sure how to answer the
11 question.

12 Q That's completely understandable. I'll move on
13 from there. Defense Counsel questioned about verification
14 and discrepancies and you testified that the Sheriff's
15 Department doesn't have written policies?

16 A Yes, ma'am, we do not.

17 Q But you've been doing this for how many years,
18 latent print examinations?

19 A About 36, 38 years.

20 Q And about -- approximately how many cases have you
21 served as the verification person, if that's the right way
22 to ask the question?

23 A How many cases have I made identifications or how
24 many cases I have verified someone else?

25 Q You've verified someone else's work.

James Hickman - Redirect Examination by Ms. Radlein

1 A Oh, okay.

2 Q Approximately.

3 A Hundreds.

4 Q And in those cases, do you generate reports?

5 A No, ma'am.

6 Q And in the 36 years when you found a discrepancy
7 between the initial examiner's report and your report, what
8 is your standard procedure?

9 A Tell them I don't see it and we talk about it. It
10 may be an area that I -- I just can't see and he points it
11 out to me and then I can see it, then we agree with it. If
12 I don't agree with it, he generates a report with no
13 identification.

14 Q Is it that simple?

15 A Yes, ma'am.

16 Q So in this case, you testified that you were the
17 actual examiner; someone else verifies your report,
18 correct?

19 A Yes, ma'am.

20 Q If the verifier, I believe that's the better term;
21 I'll call him a verifier. If the verifier told you, no,
22 Hickman, I don't see the points of minutia you're
23 indicating, what would your report reflect?

24 A After we sat down and talked about it and he
25 explained to me and my report would have said no

James Hickman - Redirect Examination by Ms. Radlein

1 identification. There had been no identification made at
2 all.

3 Q So if you did not identify a print and your
4 verifier didn't verify that you've identified a print,
5 would you have issued a report identifying Johnny Lawson as
6 the person who made that latent print?

7 A No, ma'am, I would not have.

8 Q And, Your Honor, if I could have the witness step
9 off the witness stand -- request permission?

10 THE COURT: You may step down.

11 BY MS. RADLEIN:

12 Q Thank you. And I apologize for what I'm about to
13 ask you to do because I didn't tell you I was gonna do
14 this. Now, for the Court's purposes, you created this
15 demonstrative piece and identified 8 points for purposes in
16 court, correct?

17 A Yes, ma'am.

18 Q On your report that you issued, did you indicate
19 that you only found 8 points?

20 A No, ma'am.

21 Q In looking at this print in your field notes, not
22 part of your worksheet on the case, on the original case
23 file, but on your notes, you indicate that you found 15
24 points. 15 points on the latent print?

25 A I don't think I indicated it on my, I might have

James Hickman - Redirect Examination by Ms. Radlein

1 written it down somewhere, but I'm not sure.

2 Q But that's what you testified to --

3 A Yes, ma'am.

4 Q -- today that you found --

5 A Yes.

6 Q -- 15 points on the latent print?

7 A Yes, ma'am.

8 Q And you said it could take you under ten minutes or
9 possibly up to an hour to identify points of minutia and I
10 don't know if anyone else has made you do this in court
11 before. In your opinion, can you look at the known print
12 and the latent print in its condition and this enlargement,
13 I'm not sure you need a magnifying glass. Can you identify
14 another point that's not identified in those 8?

15 A Yes, ma'am, if you'll look out here where Number 2
16 is, it's -- this is a -- excuse me. Number 2, you'll see
17 this bifurcation here. Directly above it, you'll see
18 another bifurcation in the opposite direction. If you'll
19 look at Number 2 here, you'll see the same thing and up
20 above you'll see the second bifurcation.

21 Q Do you see another one?

22 A If you'll look at Number 1 here, you'll count 1, 2
23 ridges up and there's a bifurcation here slightly to the
24 left. If you'll look over at Number 1 here and count 1, 2
25 up, you can see and I might not be pointing to the right

James Hickman - Redirect Examination by Ms. Radlein

1 direction, but you'll see another bifurcation just like
2 this one.

3 Q Don't send me a bill. Okay?

4 THE COURT: He might return to the stand if he's
5 finished and continue your examination, Solicitor. Retake
6 the stand, okay.

7 MR. RADLEIN: Thank you, Your Honor.

8 BY MS. RADLEIN:

9 Q All right. And --

10 THE COURT: Ask you next question, Solicitor.

11 MR. RADLEIN: Thank you, Your Honor. Thank you for
12 the Court's indulgence.

13 BY MS. RADLEIN:

14 Q On cross-examination, you testified that points can
15 be the same in reference to response to a question the
16 defense counsel asked you. Can you elaborate on that; you
17 indicated that the points, bifurcation points can be the
18 same; can the entire fingerprint ever be the same as
19 between one person and another?

20 A No, ma'am, I think, I'm not sure, but what the
21 question was, but when I'm referring to the points are the
22 same, we can 2 or 3 points on one finger is the same as
23 someone else and it not be an identification of them, but
24 I'm lost. I'm not sure what we want.

25 Q Okay. So when you indicated points, are those the

James Hickman - Redirect Examination by Ms. Radlein

1 bifurcation points that you're referencing that could be
2 similar between person and another; I just want some
3 clarification on that testimony?

4 A Okay. Yes, ma'am. Some people, the reason I go to
5 a larger number than 3 or 4, say you and I could have a on
6 our index finger on our left hand, I could find 3 points on
7 here that would match 3 points on hers just like I did on
8 that and still be an identification. That's the reason
9 examiners don't go with 3 or 4 points. We go with a higher
10 number. Also like I explained earlier, it could be that I
11 would go with 3 if it was like a superman or something like
12 that written in there or smiley face, I believe is the way
13 you put it.

14 Q So -- so that testimony, you're not saying that
15 someone else made that print?

16 A No, ma'am, I am not.

17 Q And in terms of when you received this case, did
18 you receive a suspect name in this case?

19 A No, ma'am.

20 Q And if you had, would your analysis and your
21 examination been different?

22 A As far as enter it into AFIS, yes, I wouldn't have
23 entered it into AFIS. I'd have just examined it and but
24 the examination would have been the same.

25 Q You'll just examine it and now you're referring to

James Hickman - Recross-Examination by Ms. Zmroczek

1 how you examined it today in court?

2 A Yes, ma'am.

3 Q A one-to-one comparison?

4 A Yes, ma'am.

5 Q And when you testified about no value versus no
6 identification, can you explain to the jury what exactly
7 the difference between those two are?

8 A What I'm looking at is that I'm looking at the
9 ridge detail and the minutia points or the points of
10 identification. If there's not enough of that in there,
11 it's of no value for an identification so I don't use it.

12 Q And lastly, when did you become AFIS certified?

13 A Somewhere around 2002, 2003.

14 Q And did the Sheriff's Department have AFIS in the
15 1980's?

16 A No, ma'am.

17 MS. RADLEIN: Thank you. No further questions,
18 Your Honor.

19 THE COURT: Redirect, Ms. Zmroczek?

20 MS. ZMROCZEK: Thank you.

21 **RECROSS-EXAMINATION**

22 BY MS. ZMROCZEK:

23 Q She asked you -- you were asked about the no value
24 versus the no identification and you -- your response was
25 if there's not enough. How much is enough?

James Hickman - Recross-Examination by Ms. Zmroczek

1 A How much is enough for anything? I mean, I can't
2 answer that without looking at the particular one. How
3 much is enough to say it's no good? If I don't see any
4 minutia points, which I didn't in this one; I don't see any
5 ridge detail; where I just saw just slightly ones, that's
6 not enough. I could see complete ridge detail in one and
7 no identification points and that would still not be
8 enough. So it -- it depends on the individual one and just
9 depends on me looking at it and determine.

10 Q And she asked you about your report and you
11 actually, in your handwritten report, you generated eight
12 identification points which would be the same you presented
13 on this board in your handwritten notes; she said fifteen
14 or sixteen, but I wanted to clarify that I wasn't missing a
15 report?

16 A Oh, yes, ma'am, those are the, that particular
17 thing you're looking at is just my notes where that I would
18 be able to go back over and explain to you that it was a
19 bifurcation, Number 1 was a bifurcation and 2 ridges down
20 was another one and there was only eight points on that.

21 Q Okay. And she asked you about the scores?

22 A Yes, ma'am.

23 Q What are those scores based on?

24 A I have no earthly idea.

25 Q Okay. So when you're saying that Number 1 is

James Hickman - Recross-Examination by Ms. Zmroczek

1 significantly more times than Number 2, you don't what
2 that's based on, do you?

3 A No, ma'am. All I know is the bigger score, the
4 more chances are it's an identification.

5 Q So -- and it's based on the three squares that you
6 put in and the seven that the computer put in?

7 A Yes, ma'am.

8 Q Okay. Did you ever run with just the computers?

9 A Yes, ma'am.

10 Q Did you present that in your report?

11 A Excuse me -- not in this case, no. No, not in this
12 case.

13 Q And so this 5,163 and then 4,571, you have no idea
14 what those scores are based off of?

15 A No, ma'am, I do not.

16 Q Okay. But you do know that twenty hits came back
17 with at least a thousand being the score; what was the
18 lowest on that twenty; what was number twenty?

19 A I don't have the list, the candidate list. I only
20 have the first, I think it's 10, maybe 11. The lowest one
21 on that was 4,167.

22 Q Okay. So, so at least half way through we're still
23 talking a score of 4,000 something and but you don't know
24 what that's based off of?

25 A Yes, ma'am.

James Hickman - Recross-Examination by Ms. Zmroczek

1 Q Okay. So -- so you -- to say that it's most likely
2 a match when you don't know what the score is based on,
3 how -- how -- how can you scientifically say that?

4 A It's a bigger number; it's more likely to be hit;
5 it's on top of the list; it's what the computer's saying it
6 is; I don't know how the computer comes up with that score.
7 It's the same as I don't know how the radio operates
8 inside, but I can cut that sucker on.

9 Q Right.

10 A Excuse me.

11 Q And you can change the dial.

12 A And I can change stations on it.

13 Q You can change the dial to what you want to listen
14 to?

15 A Yes, ma'am.

16 Q Just like in this case, you can change if a print
17 comes back in a first position versus a 19th position, if
18 you took your three points out and just relied on the
19 computer points, that could change the position?

20 A You're asking a question I don't know. I can't
21 answer.

22 Q You didn't do that?

23 A No, ma'am.

24 Q You did it sometimes?

25 A No, ma'am. I have run examinations with only the

1 computer picking out the points and I have run examinations
2 where I only picked out the points. As far as any
3 difference in them, I haven't seen any.

4 Q But the computer generated or at least the first 10
5 scores between 4100 and 5100 thereabouts and the computer
6 is telling you it would be reasonable to look at these?

7 A Yes, ma'am.

8 Q Okay. Thank you very much.

9 THE COURT: You may step down, Detective.

10 Madam Forelady, ladies and gentlemen of the jury,
11 perhaps now would be a good time to take our evening
12 recess. I remind you during this recess, do not discuss
13 this case with others, that includes your fellow jurors,
14 family, friends or anyone else. Do not read, watch or
15 listen to any news accounts about the case. Please recall
16 my instructions, do not do any independent investigation or
17 any investigation on the internet. Remember to keep an
18 open mind. Do not begin your deliberations until you've
19 heard all the evidence, all the testimony, closing
20 arguments by the attorneys and the instruction on the law
21 by the Court.

22 I would ask you to please be back, note this, at
23 10:30 in the morning. Please be back promptly at 10:30 in
24 the morning. Any questions? Thank you very much. You're
25 excused for the evening. I hope you all have a pleasant

1 evening.

2 (The jury left the courtroom for the day at 4:38
3 p.m.)

4 **QUESTIONING OF THE DEFENDANT BY THE COURT**

5 THE COURT: All right. Mr. Lawson, if you'd come
6 around please.

7 Madam Clerk, will you swear Mr. Lawson.

8 JOHNNY LAWSON,

9 having been duly sworn, testified as follows:

10 THE COURT: Mr. Lawson, I want to go over a few
11 things with you. I do this with everyone who is on trial
12 and I need your responses to be under oath. That is why I
13 had the clerk place you under oath; do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: We are reaching the stage of the trial
16 where the State will most likely rest and your side, the
17 defense, now has the opportunity to present evidence for
18 the jury to consider. You understand where we're at in the
19 trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In that regard, you may call witnesses
22 to testify on your behalf or if you choose to testify
23 yourself, you may do so; do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: No one can force you to testify. You

1 have an absolute right to remain silent and if you choose
2 not to testify, I will tell the jury that they cannot hold
3 your silence against you in any way. I will tell them they
4 cannot even consider or discuss that in the jury room; do
5 you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If your side offers no evidence at all,
8 in other words, if neither you nor anyone on your behalf
9 testifies or offers any exhibits, then your attorney will
10 get to make the last argument to the jury. Otherwise, the
11 prosecutor gets to make the last argument; do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Solicitor, Ms. Zmroczek, does Mr.
15 Lawson have any criminal history that would subject him to
16 impeachment under 609?

17 MR. RADLEIN: Yes, Your Honor.

18 THE COURT: All right. And what would that be.

19 MR. RADLEIN: Your Honor, he has four counts of
20 receiving stolen goods and a shoplifting and I believe he
21 has two counts of ABHAN.

22 THE COURT: And they're within the proper dates.

23 MR. RADLEIN: Yes, Your Honor.

24 THE COURT: Is that correct, Ms. Zmroczek?

25 MS. ZMROCZEK: I know the receiving stolen goods

1 and the shoplifting are; I don't believe the ABHAN is, Your
2 Honor.

3 THE COURT: When was the ABHAN's.

4 MR. RADLEIN: Your Honor, I have a 2008 ABHAN where
5 he received a six year sentence suspended on service of
6 five years with one year probation and he has a 2004 ABHAN,
7 five year sentence, maximum of ninety day service and three
8 years probation.

9 THE COURT: And when did the 2004 happen in 2004.

10 MR. RADLEIN: The conviction date is December 9th,
11 2004.

12 THE COURT: When did it happen?

13 MR. RADLEIN: I do not have the warrant for the
14 actual incident location, incident date. I have the
15 conviction.

16 MS. ZMROCZEK: He certainly agrees he has one of
17 those, Your Honor, and maybe the other one. I think the
18 other one would be outside the scope, but --

19 MR. RADLEIN: I believe the arrest date, Your
20 Honor, the arrest date is showing January 19th of 2004 and
21 the conviction --

22 THE COURT: Well let's see. 609(b) Evidence of
23 conviction under this rule is not admissible. A period of
24 more than ten years has lapsed since the date of the
25 conviction or of the release of the witness from the

1 confinement imposed for that conviction, whichever is the
2 later date unless the Court determines in the interest of
3 justice the probative value of the conviction supported by
4 the specific facts and circumstances substantially outweigh
5 the prejudicial value.

6 However, evidence of a conviction more than ten
7 years old as calculated herein is not admissible unless the
8 proponent gives to the adverse party sufficient advance
9 written notice of the use of the evidence providing the
10 party a fair opportunity to examine it. So if it says the
11 date of the conviction that was December of '04?

12 MR. RADLEIN: Yes, Your Honor, and he would have
13 been released when, the State's position would be when he
14 completed his probationary sentence, which would be within
15 the ten year time period.

16 THE COURT: All right. Ms. Zmroczek?

17 MS. ZMROCZEK: Your Honor, I believe that the point
18 is moot, but that's my --

19 THE COURT: If you were to testify, Mr. Lawson, the
20 prosecutor could ask you if you had a conviction for four
21 counts of receiving stolen goods, one count of shoplifting
22 and two counts of assault and battery of a high and
23 aggravated nature. If that were to happen, I would tell
24 the jury that they could only consider that evidence
25 against you, if at all, only on the issue of whether or not

1 your testimony was believable and for no other purpose
2 whatsoever; do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The decision about whether you testify
5 or not is your decision to make and yours alone. I expect
6 that you have conferred with your attorney and perhaps
7 others who's opinions you value on important life
8 decisions, but the decision of whether you testify or not
9 is your call to make and your decision; do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has anyone exercised any undue
12 influence over you to get you to choose to testify or not
13 testify?

14 THE DEFENDANT: No.

15 THE COURT: Today are you under the influence of
16 any drugs, alcohol, medication or anything that negatively
17 affects your thinking ability?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you suffer from any physical or
20 mental problems that affect your thinking today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any questions you'd like to
23 ask me about your right to testify or not to testify.

24 THE DEFENDANT: No, sir.

25 THE COURT: How old are you?

1 THE DEFENDANT: 54.

2 THE COURT: How much education you have?

3 THE DEFENDANT: To the 11th.

4 THE COURT: What type of work you do?

5 THE DEFENDANT: I'm disabled.

6 THE COURT: What type of work did you do before you
7 become disabled?

8 THE DEFENDANT: Landscaping.

9 THE COURT: Landscaping.

10 THE DEFENDANT: I worked for Green Earth.

11 THE COURT: I'm going to give you over the evening
12 to think about your right to testify or not testify.

13 Perhaps you have some additional time to speak with your
14 attorney, Ms. Zmroczek, and we'll discuss it again
15 tomorrow. All right?

16 THE DEFENDANT: All right.

17 THE COURT: You may return to your seat.

18 All right. Anything further from the State before
19 we take our recess.

20 MR. RADLEIN: Nothing, Your Honor. Would you want
21 to handle the motions in the morning, the motion in the
22 morning.

23 THE COURT: That's what I intend to do. That's why
24 I told the jury to come back at 10:30.

25 MR. RADLEIN: That's what I thought, Your Honor,

1 but I just wanted to be sure.

2 THE COURT: From the defense?

3 MS. ZMROCZEK: No, Your Honor, and in fact, to
4 streamline the motions, because I've actually had to work
5 out that. I plan to orally make the motion for directed
6 verdict, but I'll send the memo with my case law just so
7 I'm not, I'll still argue it, but just so the Court has
8 some time to read what my position is and then I believe
9 that I submitted the only two specific requests that I had
10 for jury charges and I don't believe that I have any more
11 specific ones. I e-mailed them to both you and your clerk
12 and to the solicitor's office. And then the last thing
13 that if the Court would consider, some judges, I've had the
14 benefit of trying a lot of cases this year and some judges
15 elect to charge prior to argument just so --

16 THE COURT: I do not.

17 MS. ZMROCZEK: Okay. That's fine, I just wanted to
18 make sure I knew your position. Thank you. And then as
19 long as we make sure that that redaction on State's 16 gets
20 handled before we send anything back.

21 THE COURT: All right.

22 MS. ZMROCZEK: Thank you. I think that's all. And
23 what time would you like us here?

24 THE COURT: Ma'am?

25 MS. ZMROCZEK: What time would you like us here.

1 THE COURT: 9:30.

2 MS. ZMROCZEK: 9:30.

3 THE COURT: My law clerk tells me the e-mail you
4 sent only has one of the two requested charges.

5 MS. ZMROCZEK: Okay. I -- I'll send it.

6 THE COURT: All right. Thank you very much. Court
7 will be in recess until 9:30 in the morning.

8 (Court was in recess until the following morning.)

9 THURSDAY, NOVEMBER 19, 2015

10 THE COURT: All right. Anything from the State,
11 Solicitor?

12 MR. RADLEIN: Your Honor, I just wanted to give the
13 Court an opportunity to review the redacted version of --

14 THE COURT: All right. Have you reviewed it, Ms.
15 Zmroczek?

16 MS. ZMROCZEK: I have, Your Honor, and I have no
17 objection in the form that it's in.

18 THE COURT: All right. May I see it please?

19 MR. RADLEIN: Yes, Your Honor, and for the record,
20 I know Defense Counsel didn't -- it was -- and yesterday I
21 noticed that on the back of the ten print card, it says
22 date of arrest and date of charge, so I went ahead and
23 redacted that as well. Would you like a copy of the
24 original one so you can compare?

25 THE COURT: Yes, ma'am.

1 MR. RADLEIN: Here you go, Your Honor.

2 THE COURT: All right. State's 16 as redacted is
3 in evidence. The original State's 16 will be marked as,
4 what's the next Court Exhibit?

5 THE COURT REPORTER: Court's Exhibit No. 2.

6 THE COURT: Court's Exhibit No. 2?

7 THE COURT REPORTER: Yes, sir.

8 (State's Exhibit Number 16 is entered into
9 evidence.)

10 (Court's Exhibit Number 2 was marked.)

11 THE COURT: All right. Thank you.

12 All right. Anything further, Solicitor?

13 MR. RADLEIN: Nothing from the State, Your Honor.

14 THE COURT: Does the State intend to rest.

15 MR. RADLEIN: That's correct, Your Honor.

16 THE COURT: All right. And with that being said,
17 Ms. Zmroczek, although they have not rested formally in
18 front of the jury, do you have any matters for the Court?

19 MS. ZMROCZEK: I do, Your Honor, and I have
20 submitted to the Court, to the State, attorneys for the
21 State, and I have a copy on the Court Reporter's desk that
22 I would like to go ahead and mark as a Court Exhibit. It's
23 a very lengthy motion for directed verdict.

24 THE COURT: All right. It'll be Court's Exhibit
25 No. 3?

1 (Court's Exhibit 3 was marked.)

2 MID-TRIAL MOTIONS

3 MS. ZMROCZEK: And, Your Honor, at this time, on
4 behalf of my client, Johnny Lawson, and pursuant to Rule
5 19, I would move for a directed verdict in this case. I
6 cited extensive case law, Your Honor, but generally, the
7 basis of the motion is this.

8 THE COURT: Yes, ma'am.

9 MS. ZMROCZEK: The evidence is, there was no direct
10 testimony that linked or identified my client. The
11 evidence that, that has been presented and that the State
12 relied on and we knew they would rely on it; they said it
13 in opening and we said it in opening and, and it came in
14 due to the expert being qualified was the, was the partial
15 latent print and it was just one print. Although there
16 was, it seemed to be that there was some confusion because
17 they kept saying that there were two matches. It was
18 actually just one print. It was two cards of the same.

19 THE COURT: I understand that. I tracked that, Ms.
20 Zmroczek.

21 MS. ZMROCZEK: And -- and, Your Honor, other than
22 that, that's the, that's what connects Mr. Lawson to the
23 scene that evening. The match obviously, the science is
24 what it is and I believe it is good science. The testimony
25 from the expert yesterday indicated that his reports all

1 said eight points and so that's kind of what I was basing
2 everything on yesterday. I believe he said fifteen and
3 then from the witness stand pointed out two. So I guess
4 the testimony or the evidence in front of the jury
5 regarding the latent print and the match to the known print
6 is a ten -- or ten points and part of the problems that we
7 have that I raised with the science is that we don't know
8 if what's the cut off number, but -- but that being the
9 point, Your Honor, that's the only circumstantial evidence
10 in this case. And the case law that I cited -- and it
11 mostly deals, Your Honor, with murders and burglary cases
12 and -- and I appreciated what you said at the beginning of
13 this trial that even though this is an auto break-in, it,
14 it's still an important matter and -- and it was just when
15 I was researching and preparing the memo, the cases that
16 were granted directed verdicts based on no -- no
17 substantial circumstantial evidence, Your Honor, were
18 murder cases, there were, there are some fingerprints,
19 there are some DNA, there are some with actual direct
20 evidence and as well --

21 THE COURT: What was the first thing you said; you
22 said fingerprints, DNA, what was the other thing you said?

23 MS. ZMROCZEK: And -- and then some with actual
24 direct evidence that were all granted directed verdict
25 motions, Your Honor. Well actually they weren't granted;

1 they were denied.

2 THE COURT: They were reversed on appeal?

3 MS. ZMROCZEK: Yes.

4 THE COURT: Salt, Bostic --

5 MS. ZMROCZEK: Yes.

6 THE COURT: -- that line of cases.

7 MS. ZMROCZEK: And there was a long line of cases
8 and -- and what I did in the memo, Your Honor, in trying to
9 save time so I didn't read it all, but I -- I outlined the
10 basic facts in those cases and what I -- what I found, Your
11 Honor, was that there -- there were a lot more
12 circumstances that were identified. There were a lot more
13 circumstantial circumstances that were identified that
14 still the Court said that that's just not enough and -- and
15 beginning on page 3, I believe, where it's entitled the
16 sufficiency of the circumstantial evidence, is kind of --
17 where I did the outlines of the cases and -- and there are
18 some that they said that there were purely circumstantial
19 cases that -- that -- that were allowed and that should go
20 to the jury and that should go to the jury, but -- but what
21 this Court and what the Supreme Court has adopted with
22 these cases and what I find is that they look at the
23 totality of the circumstances.

24 They look at the initial circumstantial evidence
25 and then they say, okay, what else is there; and that's --

1 and that's the issue that we have here, Your Honor, is what
2 else is there. There was an a -- there was an attempt to,
3 to identify a person by height and weight. They kept
4 saying maybe that they were taller than the car or taller
5 than the victim who testified, but there -- that was never,
6 ever in any way linked to Mr. Lawson.

7 Also I think what would have been another piece of
8 circumstantial evidence would have been the crow bar, but
9 the detective testified yesterday that in his opinion,
10 although it was likely related to the case, he just tossed
11 that out. So we don't even have that. Your Honor, we have
12 one print and even if that print were to match, Your Honor,
13 even if I throw out the technical argument and say that
14 print matches, what the evidence shows in the pictures that
15 they put in is -- and I'll refer to them by exhibit
16 numbers. I think I probably should, State's 1 probably
17 shows it best, Your Honor, is that -- and I asked both of
18 the victims, when the door is locked, is the knob up or
19 down; down, both of them testified to that and, and, Your
20 Honor, it was testified numerous times that this car was
21 not altered when, prior to these photos being taken and if
22 I could hand up State's Exhibit 1, I can show you what I'm
23 talking about. Thank you.

24 THE COURT REPORTER: Uh-huh (affirmative response).

25 MS. ZMROCZEK: That -- that indicates that the --

1 that the -- the door was unlocked or the lock was up.
2 There was extensive questioning, Your Honor, about the
3 purse. There was never ever mention of a purse in any
4 police report or any bag. They were, I believe the State
5 was trying to establish a motive as to why someone would be
6 breaking into the car and the testimony was, and I made it
7 very clear especially with the husband, Mr. Wilbanks, I'm
8 sorry, the name was escaping me, and I asked him, tell me
9 and show me where the purse was and he says it was right on
10 the console, right at the end. And, Your Honor, again I'll
11 hand up State's Exhibit 6, which indicates that -- that,
12 there's no purse in there and then I asked specifically
13 where was the bag, the work bag and he said hers was
14 directly on the seat in the back and I'll hand up State's
15 Exhibit 5 and, Your Honor, will see again that the door is,
16 the lock is up and there's no bag. So -- so even,
17 assuming -- and I'm not conceding this -- but assuming
18 arguendo that that's his fingerprint, Your Honor, there's
19 no, there's nothing to break into the car.

20 Her testimony, Ms. Wilbanks testimony, was what she
21 saw was the back of someone and a right hand in the air.
22 There was never any testimony that, that she saw somebody
23 in the car. Now he saw damage to the car, but -- but that,
24 that's not been linked to Mr. Lawson and so under those
25 lines, under those line of cases, Your Honor, it -- it's,

1 it's defense's position that this case is not only a -- a
2 purely circumstantial case and we understand that -- that
3 circumstantial cases go forward to juries all the time, but
4 our courts have said there's a good reason why they
5 shouldn't and -- and, Your Honor, this case is full of good
6 reasons.

7 A couple of the cases that I cited, the murder
8 cases that I cited also relied on their granting of the
9 directed verdict to not having anyone identify the
10 defendant at the scene at the time. Not only was Mr.
11 Lawson not identified at the scene at the time, he was
12 never identified anywhere near. They were no phone
13 records. Their -- they established, Your Honor, with
14 State's 13 where the Wilbanks' house was and I believe it's
15 1.3, depending on which route you take, it's a little over
16 a mile to Mr. Lawson's house where he's lived since 2006.
17 the proximity is in a 15 square mile area, not relevant to
18 this.

19 There was never any indication that he was walking
20 down the street, that he was seen. Had they collected or
21 they did collect, had they saved that crow bar and we were
22 able to get some DNA or maybe some more fingerprints or
23 some something, Your Honor, I believe that there would be,
24 I would be able to list more examples of just the purely
25 circumstantial evidence. But that's all I have, Your

1 Honor, is that someone broke into a car and five months
2 later a match came back to a fingerprint to Mr. Lawson.

3 The testimony also, Your Honor, was that, from both
4 of the victims, that they regularly took their car to be
5 maintained and I understand how this case differs from the
6 main, from the Perkins, the main fingerprint case, is that
7 this case is on the -- in -- there's fingerprints on the
8 inside and not on the outside and I believe that's a
9 distinction without a difference though, Your Honor,
10 because the -- that -- that's all they have is the
11 fingerprint on the inside and -- and -- and that's not me
12 conceding; it's a personal fingerprint, which the expert
13 testified yesterday was smudged and smeared because there
14 was movement, so it's not even a -- a great latent print
15 and he had two latent prints that were the exact same one;
16 Lift Number 2 and Lift Number 3 and Lift Number 3 was
17 actually more detailed, but he didn't test that one. The
18 one that he used for the comparison, it's not even tested.
19 That's not the one that he used for his comparison. He
20 used latent, he used Lift Number 2.

21 THE COURT: I understand that. Lift Number 2 and
22 State's 15.

23 MS. ZMROCZEK: Yes, and, and that was it, Your
24 Honor. Mr. Lawson, the other distinction with those cases
25 is that the -- the -- the defendant had testified in those

1 cases and had given a reason to be in that area. I don't
2 believe that the Supreme Court is going to, in order to
3 have a directed verdict motion granted, require a defendant
4 to waive a constitutional right to remain silent,
5 especially with being unable to -- to -- he was arrested
6 seven months after this happened. His ability to -- to --
7 to even remember where he was that night or generate an
8 alibi because of -- of the length of time and the testing
9 or find -- or and we never got an explanation as to that.

10 Your Honor, he -- he wasn't able, he was unable to
11 provide an alibi because he just didn't know where he was
12 because it was -- so long had past and I don't think that
13 that -- that's the other major distinction is that there
14 were some reasons why the defense, in some of these cases,
15 why the defendant was there or -- or -- or could have left
16 blood or fingerprints or something, but I don't think that
17 the Supreme Court is going to require in order for a
18 directed verdict motion to be granted that the defendant
19 waive his -- his right to testify.

20 THE COURT: That's not in the -- I'm not going to
21 consider whether he testifies or not.

22 MS. ZMROCZEK: And so for those reasons, Your
23 Honor, and the reasons that I outlined, we would ask that
24 the motion be granted.

25 THE COURT: Thank you.

1 Solicitor?

2 MR. RADLEIN: Thank you, Your Honor. The State's
3 position is that this case is -- should probably be
4 submitted to the jury. I'll begin with trying to focus on
5 the legal argument and what was presented to the Court and
6 to the jury in this case and distinguish it from the case
7 law.

8 Your Honor, in this case you've heard from the
9 victim. She testified that she did not know the defendant
10 and that the defendant had no reason to be inside of her
11 car. He's never worked on her car. You heard the victim's
12 husband and the second victim in this case, Blake Wilbanks,
13 testified that he had never come in contact with the
14 defendant and never gave him permission to be in the car.
15 The victim testified that she came outside and she saw the
16 defendant and she could tell that it was a male. She
17 described herself as being 5'5" and when she stands at the
18 car she's above the car with her chin. When she saw the
19 defendant, he had broad shoulders and he was thin and his
20 shoulder was above the car.

21 She also described seeing his right hand as if she
22 startled him and suddenly moved her hand up, moved his hand
23 up away from the vehicle seeing that he was a black male
24 and he took off running.

25 Your Honor, the victim also testified that she

1 heard scratching noises consistent with the damages that we
2 see in State's Exhibit 1 through 6. Law enforcement
3 arrived and they were able to determine that the vehicle
4 had, the window where the prints were visible to both
5 victims and law enforcement upon arrival at the point of
6 entry where the tool mark scratches were on the vehicle.
7 They, we also, the testimony was established that no one
8 touched the vehicle. The incident location is the car.
9 The incident location is Holland Avenue here in Cayce
10 here in Lexington County. The only person coming in
11 contact with the vehicle to test the window for
12 fingerprints to collect the prints was Detective Merrill.

13 And in terms of timing, Your Honor, we put in
14 testimony that I believe the 9-1-1 call came in around
15 10:30, 10:35 when the incident occurred when the victim
16 also testified and Detective Merrill testified that he
17 arrived on the scene at 11:11 limiting that timing to
18 approximately 45 minutes after the incident occurred. The
19 fingerprint, Your Honor, did come back positive testing,
20 did come back with a match to the defendant, Johnny Lawson,
21 in this case.

22 Distinguishing it from the case law which Defense
23 Counsel cited in her memo and relied on, Your Honor, first
24 of all in State v. Pearson, she did acknowledge that in
25 that case, the fingerprint, I believe in that case the

1 print was left in a cup in the vehicle. Another underlying
2 case is State v. Lane, the fingerprint was left on the
3 outside of the car. In State v. Mitchell, it was on a
4 screen on the outside of the car.

5 And in distinguishing those cases, you couldn't
6 place the fingerprint at the time of the incident and the
7 Court did say that the defendant was entitled to a directed
8 verdict. I believe we are in a different situation here.
9 Where the crime occurred -- where the crime occurred is the
10 incident location. Defendant's print was found inside the
11 vehicle where the auto break-in occurred and placed him at
12 the scene. Defense Counsel also cited State v. Arnold a
13 2004 case throughout her memo, in that case again is
14 factually different. That situation the vehicle was
15 found -- the crime occurred in Colleton County and the
16 vehicle was found out of state and in that case all they
17 had was the defendant's fingerprint was on a top of a
18 coffee mug inside or a coffee lid inside --

19 THE COURT: That was a Colleton County case; was
20 that Colleton County?

21 MS. RADLEIN: Yes, Your Honor.

22 THE COURT: That's the vehicle from Tennessee.

23 MR. RADLEIN: Yes, Your Honor.

24 THE COURT: All right.

25 MR. RADLEIN: I believe that's the case that

1 Defense Counsel relied primarily on her leading in her memo
2 and again, this was a completely different case. The car
3 was found abandoned in another state. The victim's vehicle
4 with the fingerprint in it and the Court said you could not
5 place that defendant at the scene of the crime. Again this
6 case, the scene of the crime is the car on Holland Avenue
7 where the defendant's fingerprint was found. It wasn't
8 that the car was moved to another part of the county or it
9 was discovered in a parking lot down the street; this was
10 at the incident location and we have seen numerous people
11 testify -- well three specifically testify that the vehicle
12 was not touched, the fingerprints were not touched. And
13 you had Mr. Hickman testify that in his expert opinion,
14 which Defense Counsel mischaracterized, yes, it's a latent
15 print. He did not reference as a partial latent print;
16 it's a latent print period. The movement was on the other
17 fingers of the hand. He could see ridge detail and he
18 testified that the person who made the right-hand middle
19 finger impression made the other remaining impressions. He
20 cannot, he testified that there Level 1 and could not make
21 an identification on that. It did not mean that there
22 wasn't a print; it means that there was movement going up
23 and down which he testified is consistent, could be
24 consistent with someone moving up and down glass attempting
25 to get into the vehicle.

1 Your Honor, I believe that we're in a totally
2 different situation. The case law the courts were looking
3 for some type of timing element where you could place the
4 defendant at the scene. And several of the cases, the
5 issues there was the defendant had frequented a scene prior
6 or previously; that there was, they couldn't say when the
7 print occurred. Yes, looking at a latent print you can't
8 say when; you can't date a print, but you had testimony
9 from Detective Merrill, who stated that based on the
10 circumstances and his opinion that it was consistent with
11 someone attempting to go in the vehicle that the
12 circumstances around when he collected the print was that
13 was a fresh print and the person who made the print would
14 have been the person breaking into the car.

15 Your Honor, I believe at this time this time, the
16 Court is concerned with when we have circumstantial
17 evidence. I believe the court has said relying on
18 circumstantial evidence, the judge could send a case to the
19 jury if there's substantial circumstantial evidence that
20 reasonably tends to prove the defendant's guilt or from
21 which his guilt may be fairly and logically deduced.

22 Further, circumstantial evidence gains its strength
23 from its combination with other evidence. Defense Counsel
24 negates all the testimony which is evidence in this case of
25 the person who attempted to break into the vehicle, the

1 timing situation, the fact they don't know the defendant,
2 the defendant should have not been in the car, had no
3 reason; and primarily that the print was downward inside
4 the car at the scene, at the point of entry in this case.

5 I believe that the case at this time should be
6 properly submitted to the jury and that the motion be
7 denied.

8 THE COURT: Ms. Zmroczek?

9 MS. ZMROCZEK: Briefly, response, Your Honor. I
10 wanted to clarify a few things and I'm sure everybody heard
11 different things in this courtroom, but when I asked
12 Detective -- when I asked Investigator Hickman about the
13 print on the inside, and he even -- because we were playing
14 laser tag because he was showing areas that -- that -- that
15 weren't on the other print and he said that's because
16 there's movement as well. So there was movement also on
17 the print on the inside. But that's neither here nor there
18 because there's been no testimony that Mr. Lawson, there
19 was testimony that Mr. Lawson did not know the Wilbanks.

20 There has been no testimony one way or the other
21 that he didn't perform maintenance, that he, that he didn't
22 have an occasion to touch the vehicle, but that's not in
23 the evidence. That's not in evidence and I don't believe
24 that they, they can insinuate that. There was no, there
25 was testimony that the car was regularly maintained. Never

1 was it testified to that he wouldn't have occasion to be
2 there and as far as the other issue she addressed was the
3 timing. And, Your Honor, one thing that both of the
4 victims who were in that vehicle said is that they never
5 cleaned it or washed it. They maintained it, but it was
6 dirty all the time. There was no testimony as to whether
7 that fingerprint was there before or after and -- and that
8 question was never asked and we can't speculate. So to
9 limit the time based on the CAD reports, I think is
10 speculation and improper. All that being said, Your Honor,
11 even with all the evidence taken in the light most
12 favorable to the State, at this stage, the State fails to
13 provide a basis for the jury to find the defendant guilty
14 beyond a reasonable doubt and that's what's required in
15 Jackson v. Virginia and I put -- I cited this case on my
16 last page and, and the Supreme Court addressed this in
17 State v. Stokes and what that issue is, the issue is not so
18 much quantitative as any evidence standard that applies at
19 the directed verdict stage as it is the lack of qualitative
20 parameters to that standard.

21 In re: Winship is another case that I did not
22 cite, but In re: Winship and its progeny, demand that the
23 qualitative aspect, that whether evidence is fair and is to
24 be convincing beyond a reasonable doubt is the standard.
25 It -- it's -- the court is moving away from any evidence

1 and I think especially with the, the, the several recent
2 reversals beginning in 2013 and continuing. I think that
3 the court is heavily relying on Jackson v. Virginia and
4 that it's not just any evidence, Your Honor, that evidence
5 enough to find, it can't just be possible or probable or
6 make it suspicious. And they cite that in several cases.

7 THE COURT: All right.

8 MS. ZMROCZEK: Thank you.

9 THE COURT: Thank you. Thank you, Ms. Zmroczek.

10 As it is has been pointed out by both the defense
11 and the prosecution on the standard that I must apply as
12 the light most favorable to the State, if there is
13 substantial circumstantial evidence and it goes to the
14 presence or absence of that evidence, not the weight or
15 value to be given that evidence.

16 First beginning with the print. The location of
17 the print was on the vehicle inside the vehicle as if the
18 human hand and fingers that have been inside the window
19 down in position, a position reaching in and down. There
20 is timing as to the print. No, the print cannot be timed
21 forensically. However, on the CAD report the call came in
22 at 10:35. Officer Kelly responded at 10:37 and arrived at
23 10:41. Detective Merrill arrived at 11:11 and there was
24 testimony as to the security of the vehicle during that
25 period of time.

1 Further there's testimony that Officer Kelly did
2 open the door; this of course the location, the position of
3 the -- of the print and the observations by Detective
4 Merrill with an ALS along with the photographs show the
5 print inside the vehicle.

6 Next there is the victim's testimony that as she
7 went outside, she heard the scraping noise, which of course
8 would be the circumstantially and reasonably inferable to
9 the marks on the vehicle and the movement up and down of
10 the window, which further gives time to the timing because
11 the individual had her back -- had his back to Ms. Wilbanks
12 at that time and she heard the scraping noise and be
13 inferentially inferred that that was from a tool or a tool
14 along the window being pulled in an up and down manner.

15 Further there is a lack of knowledge by either Mr.
16 or Mrs. Wilbanks as to knowing Mr. Lawson, having any
17 contact with Mr. Lawson, Mr. Lawson ever having any contact
18 with those people. Additionally, it was their day of
19 moving from Barnwell County to Cayce so they were never,
20 ever in that area before. Her observations are further
21 that this individual is a male with a, she sees a black
22 hand. She talks about his height and build. If you look
23 at State's Exhibit No. 15, it also has height and weight
24 consistent with Ms. Wilbanks' testimony.

25 The location is also important. After the print

1 was lifted and forwarded to the Lexington County Sheriff's
2 Department and found to be of a quality as to AFIS
3 examination, then they get the twenty back and the hit.
4 The individual who was matched to the print being Mr.-----
5 Johnny Lee Lawson happens to be a black male, 5'10", slim
6 in build, and from Cayce.

7 All this -- all of this is clearly either a
8 breaking and entering a motor vehicle and/or an attempt to
9 break and enter a motor vehicle.

10 In State v. Bennett, 758 S.E. 2d 743, a case, a
11 burglary case that was reversed by the Court of Appeals,
12 which now cert has been granted by our Supreme Court. In
13 that case, the Court of Appeals reversed the burglary
14 conviction saying that we cannot say this individual, Mr.
15 Bennett, they found at the site of this burglary at the CC
16 Woodson Community Center in the City of Spartanburg where a
17 window had been smashed in the area referred to as the
18 Community Room.

19 The Court ultimately says we cannot say it would be
20 unexpected to find Bennett's DNA in the computer room and
21 his fingerprint in the Community Room. The evidence
22 undoubtedly placed Bennett at the location where a crime
23 ultimately occurred. However, it is undisputed that
24 Bennett was a frequent visitor to the location prior to the
25 crime and we disagree with the State's assertion that the

1 evidence placed him at the scene of the crime.

2 Of course no DNA in this case, however, there is no
3 showing that Mr. Lawson had ever been placed at the scene
4 of the crime prior to the night of this incident.

5 Citing State v. Mitchell, 508 S.E. 2d 523, which is
6 a burglary first degree case. The Court reversed that
7 conviction and held that the State failed to prove the
8 defendant unlawfully entered the victim's residence. There
9 was a fingerprint found outside a dwelling near the point
10 of entry. It is not substantial circumstantial evidence
11 that would permit submission of the burglary to the jury.
12 The question presented was whether or not a fingerprint
13 found outside a dwelling near the point of entry is
14 substantial circumstantial evidence to present a jury, to
15 permit a jury to receive the case.

16 It cites a number of cases and then goes on to say,
17 on the -- and the Court reversed the conviction and then in
18 the case says on the other hand, cases upholding
19 convictions on circumstantial fingerprint evidence are
20 distinguishable. In Mitchell the State's only evidence
21 linking Mitchell to the alleged burglary was a single
22 thumbprint found on the outside of the window screen. The
23 State offered no evidence as to its age of the thumbprint.

24 I think there is reasonable inferential testimony
25 of a circumstantial nature of aging this fingerprint. The

1 Court goes to footnote 3, in citing two cases. Arizona v.
2 Coleman 711 P. 2d 1251, in that case, it was a burglary
3 second degree charge, when I say footnoted by our Court in,
4 in Mitchell indicating the evidence of entry is -- is the
5 defendant's fingerprints found on both sides of a piece of
6 glass with the same shape and size of the piece missing
7 from the victim's broken window. Though the glass was
8 found outside of the victim's townhouse, some form of
9 unauthorized entry necessarily occurred in the act of
10 breaking and removing the glass.

11 Our Court also footnoted Missouri v. Lane, which
12 held the evidence that defendant's fingerprint was found on
13 both sides of the broken glass, removed from the overhead
14 door of the service station to effect illegal entry
15 together with evidence that the pane and glass was intact.
16 The station was closed prior to the burglary and at that
17 the defendant was on unknown to the persons who worked at
18 the station was sufficient to sustain a conviction. Those
19 cases, as I say, are footnoted.

20 In that particular case, the Missouri case, the
21 question before that Court was whether the presence of the
22 defendant's fingerprints at the scene of the crime is
23 sufficient evidence to sustain a conviction. They cite
24 annotations which discuss -- discussions of the issue of
25 proof when fingerprints are found in a place where a crime

1 has been committed under circumstances that they could have
2 been impressed only at the time the crime was committed.
3 It concludes that if the prints found correspond to those
4 of the accused, this evidence may be sufficient proof of
5 identity to sustain a conviction.

6 It was the Court's opinion that under the facts of
7 that case, the Defendant's fingerprints could have been
8 impressed on the broken glass only at the time the crime
9 was committed.

10 It's this Court's opinion there is substantial
11 circumstantial evidence in the case based on the standard
12 of Cherry and the standard that I must apply at this time.
13 So defendant's motion for directed verdict is respectfully
14 denied.

15 All right. Anything further, Ms. Zmroczek? You
16 had some requests for charges I believe; the Logan charge.

17 MS. ZMROCZEK: I do. I printed those as well, Your
18 Honor.

19 THE COURT: All right.

20 MS. ZMROCZEK: And if I can make that Court's
21 Exhibit 4.

22 THE COURT: All right. Yes, ma'am.

23 MS. ZMROCZEK: Thank you.

24 THE COURT: Yes, ma'am, and may I have a copy of
25 it?

1 (Court's Exhibit Number 4 was marked.)

2 THE COURT: I just want the Logan charge. I'm
3 going to charge my standard charges. I -- I'll charge
4 Logan.

5 All right. Solicitor, any objection to the Logan
6 charge?

7 MR. RADLEIN: No objection to the Logan charge,
8 Your Honor.

9 JURY CHARGE CONFERENCE

10 THE COURT: I will charge that. All right. Any
11 others, Ms. Zmroczek?

12 MS. ZMROCZEK: Yes, Your Honor. I started with the
13 presumption of innocence, I don't know if you, I don't know
14 if you standard -- use that as one of your standard
15 charges, but --

16 THE COURT: I do. I use charge, arrest, indictment
17 not evidence, presumption of innocence, reasonable doubt,
18 and both State versus Maine and Victor versus Nebraska,
19 duties of jury and trial judge, direct and circumstantial
20 evidence under Logan, credibility of witnesses, expert
21 witnesses. I discuss although I haven't followed up with
22 that this morning, the right of the defendants, defendant
23 to testify or not testify, I charge intent, I charge -- she
24 wants a charge, Solicitor on prior bad acts.

25 MR. RADLEIN: Your Honor, the State would object to

1 that charge. I don't believe there was any testimony of
2 prior bad acts and I believe in her request for charge, she
3 included the actual name of the facility and the State
4 would feel that that would be improper to even reference
5 the facts in the case. And I'll just limit the charge, I
6 believe a standard charge of the general jury verdict
7 charge considering the facts and circumstances of this
8 case, should be sufficient --

9 THE COURT: I'm sorry, I couldn't quite understand
10 you.

11 MR. RADLEIN: I guess the standard charge
12 regarding -- I believe that you charge towards the end
13 about regarding the jury verdict that solely, they're
14 supposed -- the jury is to consider the facts and
15 circumstances -- the facts and the evidence presented in
16 this case. I don't believe there should be anything
17 additional to the statement about prior bad acts.

18 THE COURT: Ms. Zmroczek?

19 MS. ZMROCZEK: Your Honor, the State in fact did, I
20 offered to stipulate to the ten-print card --

21 THE COURT: I understand --

22 MS. ZMROCZEK: And --

23 THE COURT: -- I understand that, but several times
24 I have noted, the State cannot be required to accept a
25 stipulation.

1 MS. ZMROCZEK: I agree. So what they --

2 THE COURT: We've been over that.

3 MS. ZMROCZEK: -- so what they did is they
4 identified Kirkland Correctional and it's actually still
5 listed on the corrected Defendant's 16. So, Your Honor,
6 that's -- that was the request for the prior bad act is
7 solely for Number 5 to be considered or addressed for
8 identity and for no other reason.

9 MR. RADLEIN: And if, Your Honor, if I could
10 clarify. I neglected to mention on the redacted copy and I
11 believe on the original all it stated on the original was
12 Kirkland C-O-R-R. I also went ahead and redacted the
13 C-O-R-R so they couldn't be any additional inference. I
14 don't believe that carried necessary weight for the jury.
15 There was not emphasis on it. I believe it was just for
16 authenticating that this record was made and reflected at a
17 facility and it was the actual record of the defendant.
18 The State did not push any prior bad act and took extra
19 care to insure the jury did not even see the record that
20 was on the original State's Exhibit 16.

21 THE COURT: Ms. Zmroczek, I would not charge
22 anything as to the facts as far as specifically that the
23 fingerprints were captured at Kirkland Correctional
24 Institution. That's a charge having to do with the facts
25 of the case. With that, I must say I'm going to charge

1 this, but you would be left in regard to the evidence for
2 any alleged bad act on another occasion, this evidence is
3 limited to consideration by you as it relates to the
4 identity of the purpose charged with the commission of the
5 crime. Again, I think that's not a proper part of the
6 prior bad act charge.

7 I think you get, if I decide to do it, that the
8 evidence is limited to those purposes and uses. This
9 evidence cannot be used for any other purpose. This type
10 of evidence must not be considered in any other fashion.

11 I don't understand why the State cannot highlight
12 it as a prior bad act. It's only in there for one purpose
13 and one purpose only, authentication for State's Exhibit
14 Number 16. There's no allegation of a bad act and it
15 highlights in my mind, that he committed a bad act.

16 So quite frankly, I mean it's, the only reason it's in
17 there is they had to authenticate the place, time and the
18 date that the prints were taken.

19 MS. ZMROCZEK: I agree and the only reason I put
20 that in there, Your Honor, is because I just, I remember it
21 was asked where they were located and he said Kirkland
22 Correctional and then, we approached and then when we came
23 back she said again, where were they collected and that was
24 the only reason. And so --

25 THE COURT: I'm not complaining. I understand why

1 you put it in there and I, I agree that was a kind of --
2 but reading Anderson, State v. Anderson, it indicates that
3 to authenticate they have to put up the place, the time and
4 date. So then it highlights inference that he has a prior
5 bad act and there's no testimony whatsoever that he has a
6 prior bad act.

7 MS. ZMROCZEK: Correct. And my concern was just
8 the, the statement and then Mr. -- or Investigator Merrill
9 was asked do you know Johnny Lawson and he said I know him
10 well.

11 THE COURT: They may be friends. Mr. Lawson, quite
12 frankly, Mr. Lawson has been very likeable.

13 MS. ZMROCZEK: They may be, Your Honor.

14 THE COURT: And I appreciate that and they may be
15 friends.

16 MS. ZMROCZEK: But I -- I --

17 THE COURT: Police officers and citizens can be
18 friends.

19 MS. ZMROCZEK: My brother in-law is one, yes. But
20 that's the only reason I put it in there. I'm not as
21 concerned with that.

22 THE COURT: I decline to charge that. All right.
23 And what about spoliation evidence, Solicitor.

24 MR. RADLEIN: Your Honor, the State would object to
25 this charge. I believe the testimony from Detective

1 Merrill was that he could not link that crow bar to the
2 crime. The only testimony and the victims' testimony --

3 THE COURT: Well, why was it relevant; why was it
4 even offered.

5 MR. RADLEIN: It was brought up because I knew the
6 defense was going to harp on it and I wanted to, I didn't
7 want the jury to believe that we were hiding that because
8 it was mentioned in his report.

9 THE COURT: Well, how could the defense harp on it
10 if it's not even relevant. If it's not relevant for the
11 State, it's not -- well be that as it may. Go right ahead.

12 MR. RADLEIN: Be that as it may, Your Honor, we
13 did -- we did mention it and the issue with that is that --
14 we cannot link it to the actual crime and I believe if we
15 had the crow bar, it would be the opposite. The defense
16 would be moving to exclude it because we couldn't link it
17 to the crime. I don't believe there was any spoliation of
18 evidence in this case and from any of the case law on
19 spoliation requires that the evidence, the case law deals
20 with forensics or delay in testing of latent prints or of
21 the sort of forensic that was destroyed intentionally by
22 law enforcement that could have been linked exculpatory to
23 the defendant in this case and that is not the situation we
24 have here. I think it would be improper to charge the jury
25 on spoliation at this time.

1 THE COURT: Well here's my spoliation charge. I
2 haven't decided whether I'm going to charge it or not. In
3 this case there are allegations of spoliation or
4 destruction of evidence. The State not only has the burden
5 to prove guilt, but also has the burden of producing
6 evidence which could establish the innocence of the
7 defendant. When evidence is lost or destroyed by a party,
8 you may infer that the evidence which was lost or destroyed
9 by that party would have been adverse to that party. If
10 you find first that the evidence was spoiled or destroyed
11 and if you further find that the evidence could help
12 establish the innocence of the defendant, you may then
13 consider those facts in deciding whether or not the State
14 has met its burden. In Cheeseborough the spoliation of the
15 evidence of course was negligence by the police. Here
16 there was, it wasn't necessarily destroyed or lost, it was,
17 it was thrown away.

18 If it's not relevant, it should not have been
19 admitted into evidence or even in the testimony. Of course
20 nobody objected, but it could have been tested.

21 MR. RADLEIN: Your Honor, there was testimony that
22 it couldn't have been tested. It was --

23 THE COURT: Am I to forget all of the evidence I
24 hear about on Forensic Files; am I to forget all of the
25 evidence in State v. Council and State v. Cheeseborough and

1 State v. Parker; you can't get evidence off a crow bar; you
2 can't get DNA off a crow bar?

3 MR. RADLEIN: DNA possibly, Your Honor, but the --
4 it was examined for latent prints and that was not
5 determined. It was determined that you couldn't take
6 latent prints from it.

7 THE COURT: I -- I don't dispute y'all's testimony
8 as to that.

9 Ms. Zmroczek?

10 MS. ZMROCZEK: Thank you, Your Honor. My concern
11 is two-fold. One because now that the directed verdict
12 motion has been denied and, and there's one of the
13 information that you cited for the circumstantial evidence
14 was the scraping noise and Detective Merrill, I believe,
15 finally relented and said it most likely was that crow bar
16 and -- and --

17 THE COURT: I don't -- go right ahead.

18 MS. ZMROCZEK: He said he couldn't link it for
19 sure, but he just tossed it in the garbage and -- and, Your
20 Honor, what concerns me that there's a policy. Cayce has a
21 policy of evidence that's collected. So even if there
22 wasn't, even if he didn't there were fingerprints on it,
23 Your Honor, it's still evidence that should have been made
24 available to -- to be tested.

25 THE COURT: That may just go to the quality of the

1 investigation as far as the policy is concerned.

2 MS. ZMROCZEK: My concern is the scraping noise,
3 the crow bar 150 feet away, exactly where she testified
4 that she saw this person run off to and we have no pictures
5 of it and -- and -- and just testimony that in his opinion
6 and he was not qualified as any type of expert, in his
7 opinion, it wasn't going to yield any information so he
8 just threw it in the dumpster.

9 THE COURT: Solicitor?

10 MR. RADLEIN: Your Honor, the State should have
11 probably just kept that testimony out. The -- when the
12 victim testified, she did not testify seeing a crow bar.
13 Detective Merrill testified that the crow bar that was
14 recovered was 3 or 4 feet long. There was not testimony of
15 an individual at the car with that long of a crow bar or
16 tool being used on the vehicle. I don't believe it has any
17 relevance in this case and again, it should have been kept
18 out, but we are here now and I do not believe spoliation
19 charge is appropriate in this case and no destruction of
20 any evidence, any exculpatory evidence to the defendant;
21 there's no prejudice in not having that crow bar here.

22 THE COURT: It wasn't destroyed; it was thrown
23 away. It wouldn't have been thrown away in a murder case,
24 would it.

25 MR. RADLEIN: I would hope not.

1 THE COURT: And there's no different constitutional
2 standards in a murder case than there are in a breaking and
3 entering a motor vehicle.

4 MR. RADLEIN: I understand that.

5 THE COURT: I have -- I have no -- I have no
6 opinion of the facts, but if I did, I would say that crow
7 bar was what used whether Ms. Wilbanks saw it or not and it
8 wasn't fully and completely forensic tested. How many
9 thousands and thousands of breaking in motor vehicles cases
10 are there in this country every day? I understand the
11 martialing of -- of resources for law enforcement, that the
12 investigation of a breaking and entering a motor vehicle,
13 but I think he did an outstanding job with the
14 fingerprinting. It's not going to be at the same level of
15 the investigation of a homicide case. That's, we all know
16 that. That's common sense.

17 But still it's an issue, there was testimony that
18 she heard a scraping sound and he had type of instrument;
19 his fingers didn't do that, not that type of scraping sound
20 that's been described. Then he runs in a particular
21 direction and then they, they find this item there. I
22 don't think the State can have it both ways. I'm going to
23 charge spoliation of evidence. It comes in evidence; it's
24 thrown away. It's, that's just -- that's just a fact on
25 the, on the platter.

1 Were there any other specific requests for charge;
2 I'm going to charge breaking and entering a motor vehicle;
3 I'm gone charge the definition of attempt; I'll charge
4 attempt of course and the form of verdict.

5 Any others, Ms. Zmroczek?

6 MS. ZMROCZEK: None, Your Honor. I believe you
7 said you were, you were doing the expert witness.

8 THE COURT: Yes, ma'am.

9 MS. ZMROCZEK: I just was, I took the language from
10 the State v. Anderson case, the fingerprint case.

11 THE COURT: I use the standard language.

12 MS. ZMROCZEK: Okay. And so will it just --

13 THE COURT: Read her the, excuse me -- I didn't
14 mean to interrupt.

15 MS. ZMROCZEK: -- that's okay. I just wanted to
16 make sure I reserved my objection that, if that expert
17 witness charge isn't being charge.

18 THE COURT: All right. Thank you. Any request to
19 charge from the State, Solicitor?

20 MR. RADLEIN: Your Honor, just a point of
21 clarification. The statute for the breaking into motor
22 vehicles includes the to break or the intent to break.
23 When you stated you were going to charge the attempt
24 language, is that a separate, the attempted charge, the
25 attempt to break into a motor vehicle or it's just a

1 definition of the word attempt.

2 THE COURT: It's a charge defining what an attempt
3 is; it's not the, just the definition of the attempt charge
4 reads that an attempt is an effort to accomplish a crime
5 which does not succeed. An attempt includes a specific
6 intent to do a particular criminal act along with an act
7 falling short of the act intended. The State must show
8 more than mere preparation and intent. There must be some
9 overt act committed in an effort to commit the crime.
10 Intent means intending the results which actually occurred,
11 not accidentally or involuntary. Intent may be shown by
12 the act and conduct of the defendant in other circumstances
13 to which he may naturally and reasonably infer intent.

14 MR. RADLEIN: Your Honor, I guess my question, I
15 haven't tried one of these cases before, but since the
16 language of the statute includes the attempt to break in so
17 you have the crime. You know, it's not like murder where
18 there's the intent to commit a murder, but this is to break
19 or attempt to break is breaking and so the standard charge
20 in attempt suggested there's something that falls short of
21 the breaking into a motor vehicle, but I may be reading too
22 much into it and it may be a moot point, but I did just
23 want to clarify that and make sure the jury understands
24 that to break or attempt to break is breaking.

25 THE COURT: I was going to read the indictment, but

1 the only reason I'm charging attempt is because he's
2 indicted to break or attempt to break.

3 MR. RADLEIN: That's correct, Your Honor, and
4 that's the statute.

5 THE COURT: So you don't want me to charge attempt.

6 MR. RADLEIN: I do want attempt to be clarified,
7 but I don't want it to be confusing to the jury that it's a
8 separate crime from the actual breaking because the
9 legislature included it to break or attempt to break in.

10 THE COURT: It is a separate crime because it says
11 he did break or attempt to break.

12 MR. RADLEIN: Okay, Your Honor.

13 THE COURT: I mean to me it is, but I, if y'all
14 don't want me to charge attempt, I will charge attempt.
15 It's not my case.

16 MR. RADLEIN: No, Your Honor. I do want to charge
17 attempt.

18 THE COURT: If you want me to consider a different
19 charge, I'll be delighted to do so, Solicitor.

20 MR. RADLEIN: I beg the Court's indulgence.

21 THE COURT: All right. Do you have anything
22 further, Ms. Zmroczek?

23 MS. ZMROCZEK: No, just in light of that, Your
24 Honor, I would ask that the verdict form be guilty of auto
25 breaking or attempted auto breaking.

1 THE COURT: The verdict form is guilty or not
2 guilty --

3 MS. ZMROCZEK: Okay.

4 THE COURT: -- of auto break-in or attempted
5 break-in. It's going to be one form.

6 MS. ZMROCZEK: Okay.

7 THE COURT: It's gone be guilty of auto break-in or
8 guilty of attempted auto break-in, but if you want me to
9 consider a different language on the attempt, I'll be
10 delighted to do that.

11 MR. RADLEIN: Your Honor, I think we're just --
12 it'll suffice, Your Honor. I think that'll be fine. I
13 apologize.

14 THE COURT: Oh, no, no, no. You don't need to
15 apologize. The only reason I charge it is because it's in
16 the indictment.

17 MR. RADLEIN: That's correct, Your Honor, it is.
18 The statute is a little different, I haven't worked on a
19 jury charge on that one specifically before. And, Your
20 Honor, while we have time, in terms of closing argument, I
21 do you want to make a motion because in defense's argument
22 for directed verdict, there was some slight
23 mischaracterization of some testimony in the case and I
24 don't want to object during her closing argument if she
25 states that fingerprints were moving.

1 Mr. Hickman's testimony was that the motion around
2 the latent print; there was motion around the latent print,
3 not the latent print itself and that might be, that's a
4 slight mischaracterization as well as some other things and
5 I do want to put that on the record to make a motion now
6 that she cannot mischaracterize the evidence which is a
7 blatant violation.

8 THE COURT: Solicitor, you know I never predict
9 anything, particularly the future.

10 MR. RADLEIN: Yes, Your Honor.

11 THE COURT: During the course of her argument, you
12 hear something that you think is objectionable, object:

13 MR. RADLEIN: Thank you.

14 THE COURT: I don't know what you or Mr. Elam may
15 or may not say or what she may or may not say and my stand
16 in response to such as that to a jury is you, ladies and
17 gentlemen, are the judges of the facts of the case. It is
18 up to you to recall the evidence, to recall the testimony
19 and determine what you think the facts are. So, you know,
20 that's, that's kind of my standard response to that unless
21 there's additionally a motion for a mistrial.

22 I mean y'all have done an excellent job both Ms.
23 Zmroczek, Solicitor, and Solicitor Elam in the presentation
24 of the evidence and testimony before the jury. You object;
25 I respond.

1 MR. RADLEIN: Thank you, Your Honor. And the last
2 thing regarding closing is terms of the order of this case,
3 Your Honor. In order of closing, it's the State's position
4 that the State would be closing -- should be closing last..
5 The defendant, the defense during cross examination called
6 on her client to display --

7 THE COURT: Solicitor, I thought a lot about that.
8 I thought that was a very interesting issue. However,
9 however, that evidence had already been introduced into
10 evidence by the State. She can comment on the evidence
11 that has been introduced. I do not think that was improper
12 testimony by the defense. I tried to find some cases in
13 that regard, but I was hesitant and my hesitancy to allow
14 Ms. Zmroczek to do that quite frankly had to do with
15 whether or not she would be waiving her right to the final
16 argument. I do not think she has.

17 MS. ZMROCZEK: Your Honor, if I can be heard?

18 THE COURT: No, ma'am.

19 MS. ZMROCZEK: If I may explain, Your Honor?

20 THE COURT: I've ruled.

21 MS. ZMROCZEK: Thank you.

22 THE COURT: I don't understand, y'all read the
23 rules that once a judge has ruled --

24 MS. ZMROCZEK: Yes, Your Honor.

25 THE COURT: I don't want to hear it. I'll quote

1 Judge Walter Briscoe; I've heard enough.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Read Rule 611; who controls the
4 courtroom; it's whoever is sitting up here in this and I
5 ruled on that. Like I say, I thought of that and it's no
6 different than if State's Exhibit 15 put into evidence and
7 she uses 15 in cross-examination. She can do the same
8 thing. So with that, with that being said, of course
9 you're protected on the record, Solicitor, you can appeal
10 my decision because I'd love to know the answer to that. I
11 know my answer to it.

12 In this particular judicial seat, there have been
13 three judges that have held this seat. The Honorable Judge
14 Jay Baggett, The Late Honorable Judge Marc Westbrook and
15 myself. Judge Baggett of course is alive and doing very
16 well living in McCormick County and Judge Westbrook of
17 course was tragically taken from us, but I am channeling my
18 inner Judge Baggett today.

19 Closings do not need to be lengthy. Judge Baggett
20 had a habit that I still hear from time to time when he
21 heard my voice for too long that he would start (makes a
22 sound) and it would get louder and louder and louder and it
23 would grate and grate and grate. So please, please be
24 organized to the extent that you can efficiently deliver
25 your argument to the jury.

1 Anything further Ms. Zmroczek?

2 MS. ZMROCZEK: Nothing further Your Honor.

3 THE COURT: Solicitor?

4 MR. RADLEIN: Nothing further, Your Honor.

5 THE COURT: All right. Thank you. Thank you very
6 much.

7 We'll take about a 10 minute recess and we'll start
8 with the State's closing.

9 (A brief recess was observed.)

10 THE COURT: Yes, ma'am.

11 MS. ZMROCZEK: Judge, I just thought of something.
12 This happens -- two things. One they're going to object to
13 my boards, so I thought we could address that first. I may
14 need just a minute to -- to arrange some things in between
15 and if before we start, because he needs to colloquy -- if
16 we could --

17 THE COURT: Yes, I've got it right down here. Yes,
18 if you'd come back around for me please, Mr. Lawson, and
19 there was several things I did want to revisit on that
20 solely for the record.

21 **QUESTIONING OF THE DEFENDANT BY THE COURT**

22 THE CLERK: Mr. Lawson, if you'd raise your right
23 hand?

24 JOHNNY LAWSON,
25 having been duly sworn, testified as follows:

1 THE COURT: Before, yesterday afternoon, of course,
2 me and you discussed your right to testify or not testify.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I made certain rulings concerning
5 your prior criminal history; do you recall that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: As I thought about it and read on it a
8 little bit last night, under 609(a)(1), it says evidence
9 that the accused has been convicted of a crime shall be
10 admitted if the Court determines the probative value of
11 admitting this evidence outweighs the prejudicial effect
12 and further, I make that balancing decision as far as the
13 four receiving stolen goods and one shoplifting.

14 However, Solicitor, the one ABHAN was in '04?

15 MR. RADLEIN: That's correct, Your Honor.

16 THE COURT: And when was the other?

17 MR. RADLEIN: I believe 2008, Your Honor.

18 THE COURT: The other one was in '08. I, I would
19 find that those two offenses would be more prejudicial than
20 probative as far as both the age of them and the -- this
21 being a crime of dishonesty as far as what he's now on
22 trial for. So if you were to testify, the solicitor could
23 ask you about the four prior receiving stolen goods and one
24 prior shoplifting; do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Lawson, did you get the opportunity
2 last night to discuss or yesterday evening to discuss your
3 right to testify or not testify with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you need any more time to talk with
6 your attorney about that?

7 THE DEFENDANT: No, sir..

8 THE COURT: You understood your talks with your
9 attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions you would
12 like to ask me about your right to testify or not to
13 testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you made your decision?

16 THE DEFENDANT: I have made my decision.

17 THE COURT: And what is your decision?

18 THE DEFENDANT: Not to testify.

19 THE COURT: Not to testify; that's your decision,
20 that's your call?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Made of your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Thank you. Thank you very much. You
25 may be seated.

1 All right. Now, what next, Solicitor? Ms.
2 Zmroczek?

3 MR. RADLEIN: Your Honor, I believe Ms. Zmroczek
4 mentioned that I was planning to object during the
5 closings. She intends to use this board during her closing
6 argument and it's the State's position that it's a
7 mis-statement of the law.

8 THE COURT: Bring it up here closer, Mr. Sheriff.

9 I would agree to that. You got to give beyond a
10 reasonable doubt, you've got preponderance of the evidence
11 of course, you've got clear and convincing evidence and you
12 can talk about that, but that would not be appropriate Ms.
13 Zmroczek.

14 MS. ZMROCZEK: Thank you, Your Honor.

15 MR. RADLEIN: Thank you, Your Honor.

16 THE COURT: All right. When we bring the jury in,
17 the State, I take it, will formally rest.

18 MR. RADLEIN: That's correct, Your Honor.

19 THE COURT: And I'll note your motions for the
20 record and protect you on the record to protect you on the
21 record in that regard. And I'll say a little spiel and
22 then I'll ask if you're going to present any evidence and
23 testimony and you rest and we'll crank up.

24 (The jury entered the courtroom at 10:57 a.m.)

25 THE COURT: Good morning.

1 THE JURY: Good morning.

2 THE COURT: I apologize for the delay. I assure
3 you it had nothing to do with the parties. They have been
4 here. They wasn't on time; they were early. They have
5 been here working very diligently before the Court to
6 continue the trial of the case. If you would please
7 continue to give the parties your complete and undivided
8 attention.

9 Solicitor, you may call your next witness.

10 MR. RADLEIN: Thank you, Your Honor. The State
11 would rest its case at this time.

12 THE COURT: Thank you. Thank you very much.

13 Motions are noted for the record.

14 MS. ZMROCZEK: Thank you, Your Honor.

15 THE COURT: Give me just a moment. Give me just a
16 moment.

17 MS. ZMROCZEK: Okay.

18 THE COURT: Ladies and gentlemen, you've now heard
19 that the State has rested. You've heard all the evidence
20 and all the testimony you're going to hear from the State
21 in its case in chief. The defendant may now present
22 evidence and testimony, if the defendant chooses to do so.
23 However, a criminal defendant in South Carolina is never
24 required to prove himself or herself innocent. The State
25 always bears the burden of proving its case beyond a

1 reasonable doubt and a criminal defendant always presumed
2 innocent. However, as I say, the defendant can present
3 evidence and testimony if he or she chooses to do so. So
4 we'll turn our attention to Ms. Zmroczek.

5 Ms. Zmroczek, does the defendant intend to present
6 any evidence or testimony?

7 MS. ZMROCZEK: Thank you, Your Honor. The defense
8 does not.

9 THE COURT: The defense rests?

10 MS. ZMROCZEK: The defense rests and we renew our
11 motions.

12 THE COURT: Thank you and your motions are renewed.
13 I renew all my previous trial rulings and rulings on all
14 motions.

15 We have now come to the point in the trial, the
16 closing arguments by the attorneys. You've heard all the
17 evidence and all the testimony you're going to hear in the
18 trial of the case. The procedure we follow is you will
19 hear from the solicitor first on behalf of the State, being
20 the party bearing the burden of proof. Thereafter,
21 followed by Ms. Zmroczek on behalf of her client, Mr.
22 Lawson.

23 Closing arguments are different from opening
24 statements. The attorneys may comment on the facts,
25 reasonable inferences to be drawn from the facts, the law

1 and the interplay of the law and the facts from both the
2 solicitor and Ms. Zmroczek.

3 I would ask you, this will be the final opportunity
4 the attorneys will get to address you as a jury. After the
5 closing arguments, I'll instruct you on the law and the
6 case will be submitted to you for your deliberation and for
7 your verdict.

8 I would ask you, as you have done throughout the
9 trial of the case to give the parties your complete and
10 undivided attention. For those in the gallery, I do not
11 allow movement in or out of the courtroom while the
12 attorneys are addressing the jury. You can certainly leave
13 between the arguments. You can certainly leave after the
14 argument before I instruct the jury, but please, please
15 keep that in mind.

16 Again, please give the parties your complete and
17 undivided attention.

18 Solicitor?

19 MR. RADLEIN: Thank you, Your Honor, may it please
20 the Court.

21 THE COURT: Yes, ma'am.

22 **CLOSING ARGUMENTS**

23 MR. RADLEIN: Good morning, ladies and gentlemen.

24 THE JURY: Good morning.

25 MR. RADLEIN: Two days ago, my counsel stood before

1 you, my co-counsel stood before you, and told you that some
2 things we do, catch up with us. We always leave something
3 behind. And you sat through this case and you received all
4 the testimony in this case and the evidence and you saw
5 that Johnny Lawson left something behind on March 14th,
6 2014.

7 Around 10:30 that night, Ms. Jessica Wilbanks and
8 her husband, they were moving into Cayce. Welcome to the
9 Avenues and that's what happened. They were greeted by a
10 man at their vehicle breaking into the vehicle. You
11 received testimony from Jessica that they had just gotten
12 home from supper at approximately 9:30. She thought it was
13 safe to leave the personal items in the vehicle since she
14 could lock the vehicle versus in the home where they were
15 constantly moving back and forth in and out, setting up the
16 bed, moving in items, bringing in the vacuum, things that
17 you would normally do while you're moving into your home.
18 They thought it was safe. They loved their new home;
19 that's what they were doing that day, moving.

20 She come back outside to get another load or to
21 meet her husband to grab something else from the truck.
22 She hears a scratching noise and she thinks, could that be
23 her husband. Only because that's who she would expect to
24 be in her yard right outside of her home, but instead it
25 was a man, Mr. Lawson, who was up to no good that night; up

1 to no -- to no good, wanting to take something that didn't
2 belong to him and that's what this case is about. He had
3 no right to be in that vehicle. You heard testimony after
4 testimony from both Mr. and Ms. Wilbanks that they didn't
5 know Mr. Lawson, that he had never been in their vehicle.
6 They had just moved up from Barnwell and she testified that
7 it was approximately an hour, an hour and a half. They
8 were new to the area. That Friday was moving day.

9 She began to walk to the vehicle thinking maybe he
10 was getting something and needed help because she heard
11 some scratching. She described the light sources. The
12 lights were on in the home; the lights were on right
13 outside; and there was a streetlight across the street, but
14 this bold person, bold, what is it like standing there and
15 she said he appeared startled. He's standing at the car,
16 standing at the car window and I hate to turn my back to
17 you, but she hears scratching and this man's back is to her
18 and then all of a sudden, she said it felt like they both
19 startled each other. He stops, throws his hands up, his
20 right hand. She saw that he wasn't wearing any gloves.
21 She couldn't tell exactly what he was doing to the vehicle,
22 but knew that he was at her car window. She knew she heard
23 some scratching.

24 Then he takes off running. It's basically this 1
25 through 6. You'll see photos of the vehicle. You'll see

1 where it was parked, where it was positioned. You heard
2 testimony that they always kept it closed. Further,
3 because the convertible top was broken, that was one of the
4 only things keeping it up is the window being closed. They
5 occasionally rolled down the driver's side window when
6 they'd go through drive-through's. You'll have all of this
7 with you in the jury room during your deliberations.
8 You'll see the damage. You see that there was some type of
9 object, some tool he used because you'll see the scratch
10 marks on this one there. You'll see the damage, the damage
11 that she testified. She received an estimate and decided
12 just to put a block in the window just to keep it from
13 opening altogether. You'll see the scratches.

14 You heard from -- you also heard Mr. and Ms.
15 Wilbanks testify. They may have possibly only taken their
16 eyes off the vehicle for those five seconds that she ran
17 inside to get her husband. Other than that, they were
18 outside the entire time, eyes on their vehicle. It's now
19 open, the window is popped down, where they testified they
20 left it closed and locked.

21 Shortly thereafter within less than 10 to 15
22 minutes, the first officer arrives. You didn't get to hear
23 from him. He's unavailable due to a recent work related
24 injury, but he arrived and there was some testimony that he
25 secured the scene, but no one walked by that vehicle, no

1 one else had an opportunity to touch that window until the
2 hinge lifters were applied to the window to lift the
3 prints. They were very apparent.

4 So we have photographs here today that you can see
5 for yourself. No one else had access to that window after
6 the man, Mr. Lawson, was breaking into the vehicle.

7 You heard from Detective Merrill in this case and
8 he described his method of using these hinge lifters. He
9 described the different powders you used and went through
10 all of that. What it boils down to is he was able to
11 determine that the prints you see that are State's Exhibit
12 15, Lifts 2 and 3, were on the inside of the vehicle, on
13 the inside of the window. Lift 1, what he presumed was the
14 thumb, was on the outside of the vehicle consistent with
15 Jessica's account, that a man, she heard scratching noises,
16 was doing something to her car. Of course, she didn't have
17 to see the act; his back was covering the window, and when
18 she came out and saw it well he threw his hand up and he
19 took off running.

20 But when she got her husband and they came back and
21 they looked at the car, they saw that it was not in the
22 condition that it was. They don't, they both testified
23 that that damage was not there, that it was caused in
24 those -- we don't know how long it took, maybe a minute,
25 less than a minute -- that Mr. Lawson was on this window

1 with something or actually breaking into the car.

2 There was some suggestion that the prints could
3 have been manipulated and you heard testimony that, not
4 suggested that you open these prints once they're lifted
5 because it would destroy the lift. You received testimony
6 that the lifts, the hinge lifters are still in the exact
7 same condition they were in on March 14th, 2014 with the
8 exception of the bend which was for testing purposes, but
9 the prints that are on here were the exact same prints that
10 were collected that date and the match came to the inside
11 of the window.

12 You heard from, I'm going to call him Sammy, but
13 the SLED Agent, who testified that these prints belong to
14 the defendant. He described how they're stored, he
15 testified about their liability, that they had measures to
16 ensure that these were the actual prints, that the system
17 is built in to kick out if for example one print didn't
18 match the other print that was already the individual
19 prints if the flat prints didn't match one of them. I
20 commit to you that these are Mr. Lawson's prints.

21 And then you heard from Mr. Hickman. He's been
22 doing this for 36 years, the expert in the case. He
23 testified that the transaction number on the top, that this
24 was the actual ten-print card that he used and his
25 analogous, in his examination. He testified that he

1 received these prints and he knew that these were the ones
2 he received because he initialed them and he dated them.

3 He further testified that he first inspects,
4 visually inspects the prints. He determined that these two
5 were one print, but two separate lifts; one just lighter
6 than the other. And he testified regarding Lift Number 1,
7 but you can see and when get an opportunity to examine
8 them, you'll see what he was referencing, some type of
9 finger impression. The fingerprints were in there. He
10 couldn't say what finger it was and he said it was
11 distorted because there was up and down movement and he
12 showed it to you on the day when he put it up there and he
13 showed you what he meant. And I specifically remember I
14 questioned him, could anything else make that impression,
15 that movement, which would be consistent, what the
16 detective believed in this case, that the hand was there
17 wiggling, moving about, moving that window down.

18 Further he testified about these two, that he found
19 one latent print, the middle finger. He couldn't tell you
20 on first examination before entering AFIS what actual hand
21 it was, but he narrowed it down to 3 and 8. As he counted
22 on his hand, which would be the middle finger of either
23 hand. So as an AFIS operator, he then takes the print,
24 photos it, scans it into AFIS and AFIS does its thing. It
25 scans through all of the fingerprints stored in the State

1 of South Carolina, all been submitted on ten-print cards
2 and it scanned through. He did scan the parameters 3 and 8
3 as he testified, it's easier and it's quicker, the search,
4 if you've narrowed it down versus searching all ten
5 fingers.

6 He knew, based on his training and experience and
7 his expertise that the latent print of value that he was
8 able to determine was the middle finger on either hand, he
9 just couldn't tell you without actually being at the scene
10 or knowing more about the case, which he didn't know
11 anything about the case when he was examining this, what
12 hand it was. And what did AFIS say, that the person with
13 the highest probability, significantly higher than the rest
14 with 10 points of comparison, 10 points of minutia,
15 belonged to Mr. Lawson.

16 Now we know Mr. Lawson lives in Cayce. In fact,
17 his residence sits on the same map as the incident
18 location. I know if anyone has attempted to do this, but
19 within a mile radius, it fit on one map. The print didn't
20 come back to someone in Greenville, it didn't come back for
21 someone in Charleston; it came back to a man down the
22 street. It came back to a black man down the street.
23 Hickman didn't know to select black male. He didn't know
24 to select Mr. Lawson. It came back to a man, which you'll
25 see on the ten-print card classified as 5'10", 169 pounds.

1 You heard Jessica's testimony of the man she saw
2 from the back, said he had broad shoulders. You -- you've
3 seen Mr. Lawson for three days now. Get a good look at him
4 before you go into the jury room again. She described the
5 man as slender build, broad shoulders, taller than her and
6 she's 5'5". She said when she stands at the convertible,
7 her chin is right above the top, but him, the man, his
8 shoulders were above the convertible consistent with the
9 height of Mr. Lawson.

10 Now there have been some mention about a tool being
11 used and a crow bar that was found in the direction that
12 Mr. Lawson took off running that night and we don't have
13 that crow bar today, but if we did, does it change the
14 prints in the car; does it impact the value, does it change
15 the ridge detail; does it change that Mr. Lawson left his
16 print inside the vehicle as he was breaking into the car.

17 I submit to you, ladies and gentlemen, that does
18 not. You heard Mr. Hickman testify that with fingerprints,
19 he can say it's you. He can test a fingerprints, compare
20 it and say it's you and he compared it with DNA where two
21 identical twins could have the same DNA, but they'll have
22 different fingerprints.

23 Ladies and gentlemen, the key question in this case
24 is why were Mr. Lawson's prints in that car? Now, the
25 State has the burden of proof in this case and we've talked

1 about it; it's beyond a reasonable doubt. It's not proof
2 beyond any doubt and the judge is going to charge you on
3 the law, but it's proof that just means you're firmly
4 convinced of the defendant's guilt. All of you would be --
5 are the judges in this case, the judges of the credibility
6 and the believability of every witness that took that
7 stand, of each and every one. No one else in this
8 courtroom but you.

9 Now the law in the case, the law will that the
10 judge will charge you on, defendant is charged with
11 breaking into a motor vehicle and this is the statute
12 straight from the Code of Laws, Section 16-13-160, breaking
13 into a motor vehicle. It is unlawful for a person to break
14 or attempt to break into a motor vehicle or its compartment
15 with the intent to steal it or anything of value from it.

16 Ladies and gentlemen, I submit to you that it's
17 that simple. Those are the elements. It's a break or
18 attempt to break and, in this case, his hands were in the
19 car. He used that tool, you'll see the damage.

20 On March 14th, 2014, Johnny Lawson left his calling
21 card and we talked about that. And six months later, the
22 print came back and it matched to him. There is no reason
23 for his fingerprint to be found inside that car on that
24 window if he wasn't the man responsible for breaking into
25 it.

1 Ladies, I thank you for your service -- Ladies and
2 gentlemen, I thank you for your service, your attention and
3 my co-counsel asked you two things at the beginning of this
4 trial, I'm going to ask you for three things. Don't leave
5 your common sense outside that courtroom -- outside of the
6 jury room. Take it with you in there. Take it with you in
7 there. Once you receive all of the evidence in this case
8 and you're able to examine it, begin to judge the evidence.
9 Go through all the testimony. Remember that evidence is
10 testimony. Evidence are the photos, are the prints.
11 Evidence aren't our questions. Evidence is what you have
12 to take into that courtroom. It's whatever came from the
13 witness stand, whatever exhibits you get with you in the
14 jury room.

15 And the last thing I ask you, the most important
16 thing in this case is to find Mr. Lawson guilty of breaking
17 into Jessica's motor vehicle. Thank you.

18 THE COURT: Thank you. Thank you, Solicitor.

19 THE COURT: All right. Ms. Zmroczek?

20 MS. ZMROCZEK: Thank you, Your Honor, may I just
21 pull out the things I wanted to --

22 THE COURT: Of course.

23 MS. ZMROCZEK: Thank you. Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. ZMROCZEK: Good morning.

1 THE JURY: Good morning.

2 MS. ZMROCZEK: I would like to thank you on behalf
3 of Mr. Lawson for your time and for your attention. The
4 thirteen of you have paid very close attention to the
5 evidence that's been provided. This case is an auto
6 break-in case and when you hear auto break-in, you think
7 oh, it's just a little case. But in our criminal justice
8 system, when someone's liberty and freedom is on the
9 line --

10 THE COURT: No, ma'am, that's not a proper
11 argument. That's -- that's for the Court; they are judges
12 of the facts.

13 MS. ZMROCZEK: In our justice system, you get to
14 decide, you, and you alone, get to decide what the facts
15 are and if the facts have not been provided to you, then
16 Judge McMahon will tell you, you are required to follow the
17 law and he's going to tell you what the law is. He's going
18 to tell you the law includes the burden of proof. It also
19 includes whose burden that is because although I
20 cross-examined witnesses and asked them questions, we have
21 no burden.

22 He will tell you that Mr. Lawson is presumed
23 innocent until you are convinced beyond a reasonable doubt.
24 He will define reasonable doubt for you. Ladies and
25 gentlemen, that's the highest burden in our jurisprudence

1 system and it's done that way for a reason; because you're
2 here to answer very important questions of fact. We have
3 an adversarial system.

4 The Solicitor's and State's job is to present the
5 best evidence to you that they collected. It's my job in
6 representing Mr. Lawson to be able to ask questions and
7 challenge that evidence. There's no doubt that there was a
8 crime that was committed and Judge McMahon will instruct
9 you that emotion is to not to play out a consideration.
10 Ms. Wilbanks and Mr. Wilbanks both testified from the stand
11 right here as to what they saw, as to what they heard, as
12 to what they remembered. I think it was a startling event
13 for them. When there are inconsistencies in the testimony,
14 for example, when asked how long did it take for the police
15 to arrive after you called 9-1-1, approximately 15 minutes.
16 That doesn't mean that she's telling a lie, she wasn't
17 timing it. The CAD report tells us it was approximately 5
18 minutes.

19 Ladies and gentlemen, it's because when we're in a
20 state of excitement, we remember what we remember and
21 that's why the officers were questioned about the reports
22 that they wrote because they wrote them that night, not
23 seven months later and certainly not at the time of this
24 trial, because at that time, the evidence and the
25 information that they were provided were most accurate. Do

1 you recall I asked the lead investigator, who wrote several
2 reports and a case summary, what description were you given
3 of the person -- and if at any time my recollection differs
4 from yours,--you rely on yours? My recollection was he said
5 coming outside of her residence and she saw a person
6 breaking into her vehicle, unable to provide much of a
7 description because it was dark and he ran away and that's
8 okay because that's normal.

9 There is testimony that this Volvo was locked and
10 the alarm was on and there was a purse and two bags and,
11 ladies and gentlemen, one of your most important jobs in
12 deciding the facts is looking at the evidence and asking
13 yourself, does that add up. In fact, Judge McMahon is
14 going to give you a charge that discussed direct and
15 circumstantial evidence and the differences and he'll tell
16 you how to consider that evidence. Several photographs
17 were taken. It was clearly established that these
18 photographs were taken prior to anyone manipulating the
19 vehicle.

20 Do you recall, Mr. Wilbanks said he thinks Officer
21 Kelly may have opened the door; he can't remember, but we
22 know that the pictures were done before then. And, Ladies
23 and gentlemen, that's the evidence that's preserved and
24 when you take these back here and you look at State's 1 and
25 you see that the button is up and you recall Mr. and Ms.

1 Wilbanks saying when the car is unlocked, the buttons up
2 and when it's locked, it's down. That doesn't mean that
3 they weren't being truthful; he just doesn't remember and
4 that's okay. But this evidence doesn't just remember; this
5 is the evidence.

6 Mr. Wilbanks and I had a long discussion about the
7 location of the items in the vehicle. I asked Detective
8 Merrill what items were listed on the property report;
9 there were none. And in State's 6, if you recall, we got
10 to see the purse and Mr. Wilbanks described that purse as
11 being right at the end of the console. You get to look and
12 you get to see that maybe he doesn't remember and that's
13 okay. And then you recall on the back seat was her bag.
14 It doesn't make them liars; it's startling, this event, no
15 doubt.

16 THE COURT: Ms. Zmroczek, can I interrupt you a
17 minute?

18 MS. ZMROCZEK: Yes, sir.

19 THE COURT: It has nothing whatsoever to do with
20 your closing. Juror Number 191, will you step out for me
21 please.

22 Thank you. Thank you very much.

23 (The juror left the courtroom.)

24 Is she taken care of, Sheriff?

25 THE OFFICER: Yes, sir.

1 THE COURT: Our alternate, you have been promoted.
2 You may take that same seat that you've been promoted. I
3 apologize to you, Ms. Zmroczek.

4 MS. ZMROCZEK: That's okay.

5 THE COURT: Thank you. You may continue.

6 MS. ZMROCZEK: One of my jobs in presenting and
7 challenging the evidence to help you decide what the facts
8 are, is to ask the hard questions. Those solicitors asked
9 you to please use your common sense. I couldn't agree more
10 because common sense is what you bring with you to help you
11 make this decision and when you twelve, now twelve, go back
12 there, you each get to make your own mind and then you
13 deliberate and you talk and you get to decide what the
14 facts are.

15 Ms. Radlein asked you before you left to take a
16 good look at Mr. Lawson and, in fact, during their case,
17 they asked him to come up and they asked him to hold up his
18 right hand because, ladies and gentlemen, one fingerprint
19 is what they're asking you to convict on. I had a whole
20 outline I was going to point out with Investigator Hickman,
21 but during his testimony yesterday, I think that, that you
22 understand where I was going. Investigator Hickman has
23 been an officer of law enforcement --

24 (Juror 191 re-entered the courtroom.)

25 THE COURT: No, she can't come in here --

1 If y'all would just stay in place for a moment.

2 (There was a pause in the proceedings.)

3 THE COURT: I apologize, Ms. Zmroczek. Just for
4 the Court's edification, the notification to me was that
5 young lady's daughter was hurt in an accident, but it
6 turned out she was in an accident, but not hurt. So that's
7 why she was excused. She's been excused from the jury
8 panel so will have a happier Thanksgiving.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: And I've already promoted our
11 alternate. I'm sure he's up for the challenge. All right.
12 You may continue, Ms. Zmroczek.

13 MS. ZMROCZEK: Thank you, Your Honor.

14 Investigator Hickman has been an investigator
15 longer than some of you have been alive. He received his
16 last training in the, maybe mid-80's, mid-90's. I wasn't
17 doubting his ability, but ladies and gentlemen, as your
18 common sense tells you, as time progresses, advancements
19 are made. What concerns me -- what concerns me, and the
20 reason I kept bringing it out, the way that we get to test
21 and question the evidence that's presented for you to
22 decide the facts, is we get to make sure policies and
23 procedures are followed, that there are quality control
24 issues, that -- that they're doing what they're supposed
25 to.

1 One fingerprint, 8 matches on their big board and
2 then 10 maybe yesterday and maybe 15 and it wasn't just
3 randomly selected. He is subjective. He gets to put some
4 parameters. The prints, Lift 2 and Lift 3, there's one
5 print, not prints inside of the car, Lift 2 and Lift 3, the
6 same print was used for the comparison. He -- he relied
7 on, on Lift 2, the number 3 finger and he told you that 20
8 hits were generated and Ms. Radlein made sure to point out
9 that that first one is the one that were the prints that
10 belonged to Mr. Lawson, but we don't know, we don't know
11 what that score was based on.

12 Why -- what -- what that 4 to 5,000 number means
13 and would it change if he didn't, couldn't sound
14 subjective. We're all human, ladies and gentlemen. The
15 testimony yesterday was that -- and again, if you recall it
16 differently, you remember the way you recall it. What I
17 heard when I asked how many times has your work been peer
18 reviewed and you've been told that match was incorrect;
19 never; never. The CSI effect, we watch T.V., we see what
20 goes on in this world and it's my concern that we don't
21 function like T.V. There aren't crimes committed, arrests
22 made, and a complete judicial system in 42 minutes. It's
23 not exciting and there's no Matlock moments; I'm aging
24 myself, I understand. There aren't Law and Order moments
25 where people stand up and say it was me or they did it.

1 It's real life and real life requires that we play
2 by the rules. Judge McMahon has the rules for this
3 courtroom. Cayce Police Department has the rules for its
4 investigators. Mr. Hickman, said one of the most important
5 questions were why were Mr. Lawson's prints in the car. I
6 respectfully disagree that that's the most important
7 question. I hope that when you deliberate, you ask lots of
8 questions. You ask yourself is 8 to 10 enough, is, does it
9 matter if Mr. Lawson is right-handed or left-handed. Mr.
10 Hickman testified that if there are scars or features on
11 your fingers that those would show up on the prints.
12 You've got to look very closely at his hands. I'm not
13 saying that fingerprint evidence is not proper evidence.
14 It absolutely should be considered by someone whose been
15 trained and stays up to date and knows that their work will
16 be tested and not just tested and peer reviewed with
17 someone with whom they can debate and either agree or
18 disagree or convince them that they see it or they don't
19 and -- and one of the things or all of the things that's
20 said back there are these pictures and prints and you can
21 do it because no certification is needed for this.

22 Investigator Hickman said that we have a list or a
23 checks and balances system. You, you are the checks and
24 balances of this system. Ms. Radlein said this print
25 didn't come from Greenville, it didn't come from

1 Charleston, but in truth, and in fact, we don't know
2 because there were 19 other prints that the computer said
3 were reasonable matches. Investigator Hickman himself
4 admitted it would have been reasonable to search those
5 prints.

6 MR. RADLEIN: Objection, Your Honor.

7 THE COURT: All right. What's your objection,
8 Solicitor?

9 MR. RADLEIN: She's mis-stating the testimony.

10 THE COURT: All right. Ladies and gentlemen, you
11 are the judges of the facts of the case. The facts of the
12 case are based on your independent and your collective
13 recognition and remembrance of those facts. What the
14 attorneys say is not evidence in the case. But if they
15 comment on the facts, the inferences and the law, but
16 they're not the sworn witnesses testifying under oath; you
17 rely on your recollection of the testimony.

18 Thank you, Solicitor.

19 Thank you, Ms. Zmroczek. You may continue.

20 MS. ZMROCZEK: And I believe that I've said that
21 numerous times. You rely on what you remember and what you
22 saw individually and collectively. It's not complicated;
23 it's called simple justice.

24 Lastly, I want to discuss Investigator Merrill's
25 testimony because the Judge is going to give you a charge

1 on what's called spoliation. Spoliation and that's when
2 there's evidence that's not here. We had extensive
3 testimony about the scraping sound and the directions that
4 the suspect ran. You'll have the map back there where it
5 identifies the Wilbanks' house and it identifies or when
6 asked, the church was on this side and yes, Mr. Lawson has
7 lived down here since 2006. Investigator Merrill said
8 Cayce is approximately 15 square miles; if that's a
9 rectangle, that's 6 miles by 2 and a half miles. If a
10 black man living a mile from a crime scene is enough to
11 convict, then our justice system isn't working.

12 Ladies and gentlemen, I want to close with a story,
13 if you'll indulge me, to help you arrive at these facts and
14 to help you understand. We don't tell you what the facts
15 are, just like the Judge has said numerous times. In our
16 opening statements, we told you what we thought the
17 evidence would show. I -- our closing arguments, it's my
18 job to tell you my interpretation and I believe someone
19 said that I could change their view. It's just what we
20 think the evidence shows.

21 When I was a kid growing up, I'm the oldest of
22 seven girls; my dad just wanted a boy, but I'm the oldest
23 of seven girls and I would get in trouble a lot because I
24 was the oldest of seven girls. Crayons on the floor; I did
25 it, writing on the wall; it was me because I knew better,

1 but I couldn't get away with it and I would get so angry
2 every time I got blamed, so mad. And being a moody girl,
3 I'd get yelled at, I'd get popped and I'd run up the stairs
4 and slam the door, which would then get me in more trouble.
5 But I was so angry that I was always getting the blame for
6 things I didn't do just because I was in the room or just
7 because I happened to walk in the room.

8 And one day I was at swim practice and I came home
9 and three of my sisters were playing and there was Kool-aid
10 on the ground and I was literally walking in the front door
11 and I knew this wasn't going to be me and I heard my dad
12 yell and I recognized the tone, Allison Ann, the sister
13 right next to me, the one closest in age, she said it
14 wasn't me, it wasn't me and I'm laughing. The wind is
15 blowing and she's screaming, my dad's yelling; I know
16 what's going to happen and finally even if it wasn't right,
17 I didn't care. I had taken it for so long. And she runs
18 up those stairs and the door slams and I immediately got
19 excited, unfortunately. But it was about time somebody
20 experienced what I was experiencing and my dad is banging
21 up those stairs and I knew what was coming so I'm following
22 behind going yeah, yeah, and he goes into that -- and we
23 shared a room -- and he goes into that room and he swings
24 that door open and she's sitting on the bed; no, daddy, no,
25 daddy, no. And just as about as he's lifting that wooden

1 spoon, a breeze comes through the window; BAM, the door
2 slams. My dad for three seconds, three excruciating
3 seconds, hesitates. Ladies and gentlemen, that's the best
4 way I can describe reasonable doubt.

5 This case is a circumstantial evidence case and the
6 Judge will explain that to you. It's not to be tested by
7 the strongest circumstances. I submit our justice
8 requires, our justice system requires that you test it by
9 the weakest of circumstances. The weakest link in the
10 chain and you evaluate that that weakest link be reasonable
11 doubt for you and then you deliberate. You were chosen
12 because you can be fair and you can follow the law. Ladies
13 and gentlemen, I'm certain when you do that, that you will
14 come to a verdict that the State has not proven its case
15 beyond a reasonable doubt and the law will tell you that
16 will find Mr. Lawson not guilty. Thank you.

17 THE COURT: Thank you, Ms. Zmroczek. Again, I
18 apologize for interrupting you during the course of your
19 closing argument.

20 **JURY CHARGE**

21 THE COURT: If I could have your complete and
22 undivided attention. This, you may find is very difficult
23 to listen. This is very well scripted, but I'd ask that
24 you focus your attention as you have shown all the parties
25 throughout the trial of the case.

1 The way I instruct a criminal jury is, I instruct
2 the general criminal law that applies in all cases in South
3 Carolina. Typically, I will give you the subject matter of
4 what I'm fixing to cover. When I change from one subject
5 matter to the next, I'll give you the highlight of the area
6 I'm fixing to cover. After I cover the general criminal
7 law, I will then cover the statute of breaking and entering
8 a motor vehicle or attempting to break and enter a motor
9 vehicle. And finally, I will instruct you on the form of
10 the verdict.

11 Charge, arrest, indictment, not evidence: The
12 indictment charges Mr. Lawson with breaking into a motor
13 vehicle under Code 16-13-160. I remind you that the fact
14 that the defendant was arrested, charged and indicted in
15 this case is not evidence in the case and cannot be
16 considered by you as evidence of guilt in the case, nor
17 does it create any presumption or inference of guilt. This
18 document, this indictment, is simply the formal written
19 instrument by which the case is brought before the Court.
20 It contains the formal charge made against the defendant.

21 Presumption of innocence: The defendant has pled
22 not guilty to the indictment and that plea puts the burden
23 on the State to prove the defendant guilty. A person
24 charged with committing a criminal offense in South
25 Carolina is never required to prove himself innocent. I

1 instruct you that it is an important rule of the law that
2 the defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed
4 to be innocent of the crime for which the indictment was
5 issued unless guilt has been proven by evidence satisfying
6 you of that guilt beyond a reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the defendant
14 which remains with the defendant until it has been stripped
15 from the defendant by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere legal
18 theory, it is not just a legal phrase, it is a substantial
19 right to which every defendant is entitled unless you the
20 jury are satisfied from the evidence of the defendant's
21 guilt beyond a reasonable doubt.

22 Reasonable doubt: What is a reasonable doubt in
23 the law? A reasonable doubt is the kind of doubt that
24 would cause a reasonable person to hesitate to act. The
25 State has the burden of proving the defendant guilty beyond

1 a reasonable doubt. Some of you may have served as jurors
2 in the past in civil cases where you were told that it is
3 only necessary to prove that a fact is more likely true
4 than not true, which is known as by the greater weight or
5 the preponderance of the evidence. In criminal cases, the
6 State's proof must be more powerful than that; it must be
7 beyond a reasonable doubt.

8 Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.
10 There are very few things in this world that we know with
11 absolute certainty and in criminal cases the law does not
12 require proof that overcomes every -- every possible doubt.
13 If based on your consideration of the evidence, you are
14 firmly convinced that the defendant is guilty of the crime
15 charged you must find the defendant guilty. If on the
16 other hand, you think there is a real possibility that the
17 defendant is not guilty, you must give the defendant the
18 benefit of that doubt and find him not guilty.

19 Duties of trial jury and trial judge: I remind you
20 that during this trial, you and I have certain distinct
21 duties to perform. As the trial judge, it is my
22 responsibility to preside over the trial of this case and I
23 also have the duty to rule on the admissibility of the
24 evidence offered during the trial. You are to consider
25 only the competent evidence before you. If there was any

1 testimony ordered stricken from the record in this case
2 during this trial, you must disregard that testimony. You
3 are to consider only the testimony which has been presented
4 to you from the witness stand, any exhibits which have been
5 made a part of the record and any stipulations of the
6 parties.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge, I am the
9 sole judge of the law of this case and it is your duty as
10 jurors to accept and apply the law as I now state it to
11 you. If you already have any idea as to what the law is or
12 what the law ought to be and it does not agree with what I
13 now tell you the law is, you must abandon your idea because
14 you are sworn to accept the law and apply the law exactly
15 as I state it to you. In every case tried in this court
16 before a jury, the jury becomes the sole and exclusive
17 judge of the facts in a case.

18 A Trial Judge cannot intimate, state, comment on,
19 or make any statement to a trial jury about a fact in a
20 case. Since you, the jury, are the sole judge of the
21 facts, you are not to infer from what I have said during
22 the progress of this trial in ruling upon the admissibility
23 of evidence or otherwise or anything that I say now during
24 the course of this instruction to you that I have any
25 opinion about the facts in this case. The law does not

1 allow me to have an opinion about the facts in this case.
2 That is a matter solely for you, the jury, to determine.
3 As jurors, it is your duty to determine the effect, the
4 value, the weight, and the truth of the evidence which has
5 been presented during the trial.

6 Direct and circumstantial evidence: There are two
7 types of evidence which are generally presented during a
8 trial; direct evidence and circumstantial evidence.

9 Direct evidence is evidence which directly proves
10 the existence of a fact and does not require deduction.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact. Crimes
13 may be proven by circumstantial evidence. The law makes no
14 distinction between the weight or the value to be given to
15 direct evidence or circumstantial evidence. However, to
16 the extent the State relies on circumstantial evidence, all
17 the circumstances must be consistent with each other and
18 when taken together, point conclusively to the guilt of the
19 accused beyond a reasonable doubt.

20 If the circumstances merely portray the defendant's
21 behavior as suspicious, the proof has failed. The State
22 has the burden of proving the defendant guilty beyond a
23 reasonable doubt. This burden rests with the State
24 regardless of whether the State relies on direct evidence,
25 circumstantial evidence or a combination of both direct and

1 circumstantial evidence.

2 Credibility of witnesses: Necessarily you must
3 determine the credibility of the witnesses who have
4 testified in this case. Credibility simply means
5 believability as you all know. It becomes your duty as
6 jurors to analyze and to evaluate the evidence and
7 determine which evidence convinces you of its truth. In
8 determining the believability of witnesses who have
9 testified in this case in using your individual and
10 collective good judgments and common sense, you may believe
11 one witness over several or several over one. You may
12 believe a part of the testimony of a witness and reject the
13 remaining part of the testimony of that same witness. You
14 may believe the testimony of a witness in its entirety or
15 reject the testimony of a witness in its entirety provided
16 you have a good reason in the record. You may consider
17 whether any witness has exhibited to you any interest,
18 bias, prejudice or other motive in this case. You may also
19 consider the appearance, the manner, the demeanor of a
20 witness while on the witness stand.

21 During the course of the trial, you've heard this
22 charge partially on expert witnesses. The Rules of
23 Evidence ordinarily do not permit witnesses to testify to
24 opinions or conclusions. An exception to this rule exists
25 for witnesses we call expert witnesses. A witness, who by

1 education and experience, has become an expert in some art,
2 science, profession, craft, or calling may state an opinion
3 as to the relevant and material matter in which the witness
4 claims to be an expert and may also state the reasons for
5 holding such opinions. You should consider any expert
6 opinion received in evidence and like any other evidence,
7 give it the weight you think it deserves. If you decide
8 the opinion of an expert witness is not based on sufficient
9 education or sufficient experience or if you conclude the
10 reasons given in support of the opinion are not sound or
11 that the opinion is outweighed by other evidence, you may
12 disregard the opinion in its entirety. An expert
13 witnesses' testimony is to be given no greater weight than
14 that of another witness just simply because the witness is
15 an expert. Further, you are not required to accept an
16 expert's opinion even though it is not contradicted.

17 I instruct you and emphasize that the fact that the
18 defendant did not testify is not a factor to be considered
19 by you in any way in your deliberations and in your
20 consideration on the question of the guilt or the innocence
21 of the defendant. It must not be considered by you in any
22 manner whatsoever. A defendant has the constitutional
23 right to remain silent and the assertion of that right must
24 not be considered by you in your deliberations. I repeat,
25 under your oath, you are to draw no conclusion whatsoever

1 from the fact that the defendant in this case did not
2 testify. The fact that this defendant did not testify,
3 Madam Forelady, should not even be discussed in the jury
4 room. The burden of proof as I have stated to you is on
5 the State. The defendant is not required to prove his
6 innocence. The burden of proof remains on the State to
7 prove guilt beyond a reasonable doubt.

8 Spoliation: In this case there are allegations of
9 spoliation or destruction of evidence. The State not only
10 has the burden of proof of guilt, but also it has the
11 burden of producing evidence which could establish the
12 guilt or the innocence of the defendant. When evidence is
13 lost or destroyed by a party, you may infer the evidence --
14 you may infer, that's a permissive inference, that the
15 evidence which was lost or destroyed by that party would
16 have been adverse to that party.

17 If you find first that the evidence was spoiled or
18 destroyed and if you further find the evidence could help
19 establish the innocence of the defendant, you may then
20 consider those facts in deciding whether or not the State
21 has met its burden of proof.

22 Intent: In order to establish criminal liability,
23 criminal intent is required. For example, the mental state
24 required to be proven by the State for a particular crime
25 might be purpose, intent, knowledge, recklessness,

1 unlawfulness, or criminal neglect. Criminal intent must
2 always be proven by the State beyond a reasonable doubt.
3 Criminal intent is always a matter that must be determined
4 by the jury from the circumstances surrounding the
5 situation.

6 There is no way to prove intent to a mathematical
7 certainty. There is no way medical science can dissect a
8 person's brain and determine what that person had in mind.
9 So the law says that criminal intent may be inferred from
10 the circumstances shown to have existed. This is how you
11 make your determination of whether or not the element
12 requiring intent was present. It is not necessary to
13 establish intent by direct and positive evidence, but
14 intent may be established by inference in the same way as
15 any other fact, by taking into consideration the acts of
16 the parties and all the facts and circumstances of a case.

17 Ladies and gentlemen, that is the general charges
18 on the criminal law in South Carolina. Again, the charge,
19 arrest, indictment not evidence; presumption of innocence;
20 reasonable doubt; duties of the jury and the trial judge;
21 direct and circumstantial evidence; credibility of
22 witnesses; expert witnesses; right to remain silent not be
23 considered in the jury room; and criminal intent I assure
24 you -- and spoliation of evidence.

25 I assure you, ladies and gentlemen, the end of my

1 charge is in sight. If you would please continue to give
2 me your complete and undivided attention, I'm going to
3 charge the statute and then finally the verdict form.
4 The defendant is charged with breaking into a motor vehicle
5 or commonly called auto break-in. It is a statute in South
6 Carolina 16-13-160. In order to prove this crime, the
7 State must prove beyond a reasonable doubt that the
8 defendant broke or attempted to break-in a motor vehicle or
9 its compartment with the intent to steal the vehicle or
10 anything of value from the vehicle, anything attached to
11 the vehicle or anything used in connection with the vehicle
12 or in the commission of any criminal offense. Break-in is
13 any act of physical force, however slight, by which any
14 obstruction to entering is forcibly removed.

15 The break-in does not need to be by means of great
16 force, because any force which is necessary to make an
17 opening in the vehicle is sufficient. For example, the car
18 door is closed; even though it not locked, an opening of
19 that door would constitute a break-in.

20 Intent means intending the result which actually
21 occurs, not accidentally or involuntary. Intent may be
22 shown by acts and conduct of a defendant and other
23 circumstances from which you may naturally and reasonable
24 infer intent.

25 As you heard, ladies and gentlemen, in that statute

1 it is the break-in or the attempt to break-in to a motor
2 vehicle or any of its compartments. So I'm going to define
3 for you what an attempt is. An attempt is an effort to
4 accomplish a crime which does not succeed. An attempt
5 includes a specific intent to do a particular criminal act
6 along with an act falling short of the act intended.

7 The State must show more than mere preparation and
8 intent; there must be some overt act committed in an effort
9 to commit the crime. Intent again means intending the
10 result which actually occurred, not accidentally, not
11 involuntary. Intent may be shown by all the surrounding
12 circumstances and the act and conduct of the defendant.

13 And finally, ladies and gentlemen, the jury
14 verdict. There are two possible verdicts which you may
15 find in this case; guilty or not guilty. The order which I
16 stated them and the order they're on your form of verdict
17 has no significance whatsoever; it's only that one must
18 be -- one must be stated first.

19 Ladies and gentlemen, your verdict must be a
20 unanimous verdict. All twelve of you must agree. Your
21 verdict may not be based on passion, prejudice, emotion or
22 any other bias not in evidence in this case. Your verdict
23 must be based on the facts and the reasonable inferences to
24 be drawn from the facts as you find them to be and applying
25 them to the law as I tell you the law is.

1 Ladies and gentlemen, you determine the facts. You
2 then apply the facts as you find them to the law as I've
3 told you and that is how you reach your verdict
4 uninfluenced by any bias, prejudice. You are a fair and
5 impartial jury. You're very attentive, have great work
6 ethic, very focused and I am sure you will be loyal to your
7 oath.

8 Madam Forelady, you will have this document in --
9 in there with you. It is simply entitled Verdict Form and
10 it has: We, the jury, as to the charge of breaking into a
11 motor vehicle find the defendant; you have two choices
12 again, guilty or not guilty. If it is the unanimous
13 verdict of the jury, in other words, after your
14 determination of the facts, applied them to the law, you
15 find the State has met its burden of proving its case
16 beyond a reasonable doubt and your verdict is guilty, I
17 would ask you to please check on the line to the left of
18 the word guilty, circle both your check mark and the word
19 guilty, sign as presiding juror and date it.

20 If after your determination of the facts and
21 applying those facts to the law as I told you, your
22 unanimous verdict is not guilty, I would ask you to check
23 to the left of the two words not guilty, circle your check
24 mark, the two words not guilty, sign and date it.

25 Once you've reached a verdict, filled out the form,

1 Madam Forelady, I would ask you to please knock on the jury
2 room door, inform the bailiff that you have reached a
3 verdict. At that time, we will receive you back into the
4 courtroom.

5 The law requires I meet -- before I tell you that,
6 if you have any questions during the course of your
7 deliberations, if you'd please write -- write those
8 questions out for me, knock on the jury room door, give it
9 to the bailiff. We're not going to leave y'all; we're
10 going to be right here. So -- and I will certainly attempt
11 to respond and to respond timely.

12 He law requires I meet with you one final time
13 outside -- excuse me, meet with the lawyers one final time
14 outside of your presence in case I have forgotten
15 something. If I have, I will bring you back in. If I have
16 not, all the evidence will be presented to you and you'll
17 be notified by the clerk to begin your deliberations.

18 Do not discuss the case until you are so notified.
19 Thank you again very much for your patience and your
20 attention during the course of the trial and during the
21 course of my instructions to you. You may now go with your
22 bailiff.

23 (The jury left the courtroom at 12:08 p.m.)

24 THE COURT: Any -- any exceptions, additions,
25 Solicitor?

1 MR. RADLEIN: Nothing from the State, Your Honor.

2 THE COURT: Ms. Zmroczek?

3 MS. ZMROCZEK: Nothing from the defense, Your
4 Honor.

5 THE COURT: All right. If y'all would check the
6 evidence please.

7 (The attorneys were clarifying the exhibits were
8 all present.)

9 MS. ZMROCZEK: Does the stipulation go back?

10 THE COURT: Y'all want it to go back?

11 MR. RADLEIN: Yes, Your Honor.

12 THE COURT: I usually send them back.

13 MS. ZMROCZEK: Okay. Yes, I just didn't know.

14 THE COURT: Any objection?

15 MS. ZMROCZEK: Oh, no, no objections, Your Honor.
16 I was unclear.

17 THE COURT: Ms. Zmroczek, I'm going to have the
18 Sheriff take Mr. Lawson.

19 MS. ZMROCZEK: Oh, okay. That's fine.

20 THE COURT: And they can't provide him any lunch;
21 I've got to get him lunch too.

22 THE COURT: No, ma'am.

23 MS. ZMROCZEK: No, I'd kidding. I'll get it.

24 THE COURT: I'm just saying they've probably
25 already had it. I don't know if they had any inmates over

1 here today or not.

2 MS. ZMROCZEK: I'll meet with him and find out what
3 he wants.

4 THE COURT: I think I'll need to have him in
5 custody now that we're deliberating.

6 MS. ZMROCZEK: That's fine. Absolutely.

7 THE COURT: All right. Thank y'all. Thank y'all
8 very much.

9 Thank you, Solicitors.

10 And thank you, Ms. Zmroczek.

11 MS. ZMROCZEK: Thank you.

12 MR. RADLEIN: Thank you, Your Honor.

13 (The jury began deliberations at 12:11 p.m.)

14 (It was reported to the court that the jury had
15 reached a verdict at 12:52 p.m.)

16 **VERDICT**

17 THE COURT: All right. Anything from the State
18 before we bring in our jury, Solicitor?

19 MR. RADLEIN: Nothing from the State, Your Honor.

20 THE COURT: Defense, Ms. Zmroczek?

21 MS. ZMROCZEK: Nothing from the defense.

22 THE COURT REPORTER: We don't have a Clerk.

23 THE COURT: We'll get the bailiff to handle it.

24 (The jury entered the courtroom at 1:03 p.m.)

25 THE COURT: All right. Madam Forelady, has the

1 jury reached a unanimous verdict?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Have you filled out the verdict form?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Will you hand it to the bailiff please?

6 (The bailiff handed the verdict to the Court.)

7 THE COURT: All right. As to Indictment

8 2015-GS-32-00107, the State versus Johnny Lee Lawson, as to
9 breaking into the motor vehicle, We, the jury, unanimously
10 find the defendant guilty.

11 The form is executed in the form in which I
12 instructed our Forelady. It is signed by the presiding
13 juror dated 19 November, 2015.

14 Anything additional for the jury from the State?

15 MR. RADLEIN: Nothing from the State, Your Honor.

16 THE COURT: The defense?

17 MS. ZMROCZEK: We just ask that we poll the jury.

18 THE COURT: All right. I will try.

19 MS. ZMROCZEK: Thank you.

20 **POLLING OF THE JURY**

21 THE COURT: Ladies and gentlemen, polling of the
22 jury is a procedure we go through whereby I would, I would
23 call your number and your name, ask you to please raise
24 your right hand, so I can identify you there and will ask
25 you two questions: Was this your verdict, you answer yes

1 or no; And is it still your verdict; you answer yes or no.

2 All right. Any questions?

3 And I say I will try. Typically the clerk does it
4 and I will try to, following the list even without my
5 magnifying glass.

6 Juror Number 41, Mr. Carter, was this your verdict?

7 THE JUROR: Yes.

8 THE COURT: Is it still your verdict?

9 THE JUROR: Yes.

10 THE COURT: Juror Number 90, Mr. Hendricks, was
11 this your verdict?

12 THE JUROR: Yes, it is.

13 THE COURT: Is it still your verdict?

14 THE JUROR: Yes, sir.

15 THE COURT: Juror Number 172, Ms. Goff, was this
16 your verdict?

17 THE JUROR: Yes, sir.

18 THE COURT: Is it still your verdict?

19 THE JUROR: Yes, sir.

20 THE COURT: Juror Number 21, Ms. Boyd, was this
21 your verdict?

22 THE JUROR: Yes, sir.

23 THE COURT: Well is it still your verdict?

24 THE JUROR: Yes, sir.

25 THE COURT: Juror Number 37, Ms. Campbell, was this

1 your verdict.

2 THE JUROR: Yes, sir.

3 THE COURT: Is it still your verdict?

4 THE JUROR: Yes, sir.

5 THE COURT: Juror 191 was excused.

6 Juror Number 180, Mr. Roberts, was this your
7 verdict?

8 THE JUROR: Yes, sir.

9 THE COURT: Is it still your verdict?

10 THE JUROR: Yes, sir.

11 THE COURT: Juror Number 104, Mr. Hyman, was this
12 your verdict?

13 THE JUROR: Yes, sir.

14 THE COURT: Is it still your verdict?

15 THE JUROR: Yes, sir.

16 THE COURT: Juror Number 45, Ms. Chinault, was this
17 your verdict?

18 THE JUROR: Yes, sir.

19 THE COURT: Is it still your verdict?

20 THE JUROR: Yes, sir.

21 THE COURT: Juror Number 6, Mr. Amick, was this
22 your verdict?

23 THE JUROR: Yes, sir.

24 THE COURT: Is it still your verdict?

25 THE JUROR: Yes, sir.

1 THE COURT: Juror Number 76, Ms., Mr. Fragano, was
2 this your verdict?

3 THE JUROR: Yes, sir.

4 THE COURT: Is it still your verdict?

5 THE JUROR: Yes, sir.

6 THE COURT: Juror Number 10, Ms. Barker, was this
7 your verdict?

8 THE JUROR: Yes, sir.

9 THE COURT: Is it still your verdict?

10 THE JUROR: Yes, sir.

11 THE COURT: And Juror Number 146, Mr. -- give me a
12 minute, Mikulecky, was this your verdict?

13 THE JUROR: Yes, Your Honor.

14 THE COURT: Is it still your verdict?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: Thank you. Thank you very much.

17 All jurors have been polled. All have answered in
18 the affirmative the two questions I put to them.

19 Anything further from the jury from the defense?

20 MS. ZMROCZEK: No, thank you, Your Honor.

21 THE COURT: All right. Thank you. Thank you very
22 much.

23 Ladies and gentlemen, ladies and gentlemen,
24 momentarily I'm going to release you from your jury service
25 for the remainder of the day and remainder of the week.

1 You do not have to call back. You do not have to come
2 back. Y'all have been just an outstanding jury. I don't
3 criticize or commend the jury for it's verdict. I may for
4 it's work ethic, patience, attention. And it's been not
5 only a privilege, but a delight to work, work with y'all
6 this week.

7 I know it's been a long week. It's hard to sit and
8 listen. It's hard to sit and listen and focus on such an
9 important matter. It is an important matter for both the
10 State and the defense. Probably, not probably, it's the
11 longest breaking and entering motor vehicle case I've ever
12 tried and may the only breaking and entering motor vehicle
13 that I have tried as a Judge.

14 I would share with you when y'all first came for
15 jury duty Monday, our flag was at half-mast. It is still
16 half-mast and I always share with jurors the reasons and
17 I'm sure y'all all know the reason is because of the
18 tragedy in Paris and, of course, I'm a firm believer that
19 the flag of our country is at half-mast too often, quite
20 frankly.

21 I -- I will share with you one thing going into the
22 Thanksgiving and the other holiday season. If you get an
23 opportunity -- and I wouldn't recommend this, recommend
24 things much to you, but there's a gentleman named Jerry
25 Yellin, Y-E-L-L-I-N. Mr. Yellin is a 91 year old

1 individual, World War II Veteran, the last living combat
2 pilot that I -- that I know of from World War II. He was a
3 Marine pilot and he flew many combat missions, some of
4 which, one of which was over Iwo Jima. There's a
5 remarkable interview with him where he went back to one of
6 the anniversaries there and it's a short YouTube of Mr.
7 Yellin. And he uses a term on there called purity of
8 purpose and that's what I think jurors should do when they
9 take their oath, have the purity of purpose to return a
10 verdict, a fair and impartial verdict from a fair and
11 impartial juror.

12 And I commend you for your work ethic and for your
13 time in our system of justice. We could not do this
14 work -- these folks couldn't do their work without your,
15 your participation and citizens just like yourself, each
16 and every one, in all out courtrooms throughout South
17 Carolina and throughout America.

18 With that being said, I won't delay your departure
19 any further. It has been my pleasure and privilege. Thank
20 you. Thank you very much. I hope y'all have a pleasant
21 rest of the day, rest of the week and a Happy Thanksgiving.
22 Thank you again. Oh, and I think your juror that got
23 excused, 191, as I said, her daughter was in a motor
24 vehicle accident?

25 THE JURY: Yes, sir.

1 THE COURT: But was fine? The first message I got,
2 she was in an accident and had to leave. So the bad news,
3 she was in an accident; the good news is, I understand she
4 is not injured.

5 All right. Thank you. Thank you very much.

6 (The jury left the courtroom at 1:11 p.m.)

7 THE COURT: Motions, Ms. Zmroczek?

8 **POST-TRIAL MOTIONS**

9 MS. ZMROCZEK: Yes, Your Honor. At this time we
10 would again, well not again, but at this point, we would
11 ask that the verdict be set aside, especially based on our
12 circumstantial evidence directed verdict motion based on,
13 previously submitted to the Court.

14 THE COURT: All right. Thank you. Thank you very
15 much. I would respectfully deny that motion. I think
16 there was sufficient circumstantial evidence for the
17 verdict, for the jury's verdict. Any other motions?

18 MS. ZMROCZEK: That's all I have, Your Honor.

19 THE COURT: Any reason sentencing cannot be imposed
20 at this time?

21 MS. ZMROCZEK: No, Your Honor.

22 THE COURT: If you'd come around for me, Mr.
23 Lawson, please and Ms. Zmroczek?

24 **SENTENCE**

25 THE COURT: Anything additional from the State,

1 Solicitor.

2 MR. RADLEIN: Yes, Your Honor.

3 MR. ELAM: Your Honor, do we need a Courtroom Clerk
4 for this?

5 THE COURT: I don't, I don't know.

6 MR. ELAM: At this point now --

7 THE COURT: Nobody's ever trained me in that
8 regard, but I figured it's my courtroom so --

9 MR. ELAM: Yes, sir.

10 THE COURT: I'm not upset that she's not here. I
11 mean -- we're all right.

12 MR. RADLEIN: Your Honor, may I approach with the
13 sentence sheet?

14 THE COURT: Yes.

15 MR. RADLEIN: Thank you, Your Honor. The
16 defendant's prior record, Your Honor, dates back to 1981.
17 He has a soliciting for prostitution, DUS and a fraudulent
18 check in 1984; simple possession of marijuana, failure to
19 return rented object in '85; failure to return rented
20 object as well as use of vehicle without permission; in
21 1987 he has a fraudulent check; in '91/2000 he has a
22 fraudulent check; in 1992 he has a CSC third and five
23 counts of fraudulent checks, a DUS and speeding; in '95,
24 fraudulent check; '97 a CDV; 2001, DUS; 2000, ABHAN; 2003,
25 DUS II and operating an uninsured motor vehicle, three

1 counts of that, failure to appear; a 2004 ABHAN; a 2008
2 ABHAN where he received six years, five years suspended on
3 five years and one year probation, Your Honor. He got
4 charged with a CSC first that was pled down.

5 Your Honor, also for the record he's on the sex
6 offender registry.

7 In 2010 he was violated on probation or parole and
8 he also has a receiving stolen goods. In 2011 another
9 violation and three counts of receiving stolen goods; in
10 2013 another count of receiving stolen goods that was pled
11 down through Magistrate Court as well as a shoplifting;
12 2014, he has another count of receiving stolen goods that
13 occurred on May 28th, 2014 and as the Court's aware, this
14 incident occurred on March 14th, 2014.

15 Since this case has been pending, Your Honor, the
16 defendant also has another pending charge in Lexington
17 County for possession of burglary tools in an unrelated
18 incident. Also, Your Honor, I believe a couple of months
19 ago, he was convicted in Magistrate Court for failure to
20 stop for police command and trespassing. On that scene,
21 Your Honor, there was a property crime that had occurred
22 there. There wasn't enough to charge him on a General
23 Sessions charge.

24 And, Your Honor, for the record, Mr. Lawson is well
25 known in Cayce. Every officer that I've met with Cayce

1 asked me about this case. It seems to appear that the
2 periods of times that Mr. Lawson is incarcerated, the
3 breaking in motor vehicles actually decreased. There was
4 actually an article in the paper, a little blurb where the
5 residents can submit requests and one of them submits in
6 writing and one of them said when are the break-ins in the
7 Avenues going to stop, the breaking in of motor vehicles.
8 I believe it's law enforcement's -- although he's only,
9 only found guilty of this one incident, I do want the Court
10 to be aware that he has been a problem for the Cayce area.

11 I'm not sure if Detective Merrill can add anything
12 or if the victim wants to address the Court on this.

13 DETECTIVE MERRILL: Yes, Your Honor, I'd like to
14 add something if you don't mind.

15 THE COURT: I do not mind. I'd be delighted to
16 hear from anyone.

17 DETECTIVE MERRILL: I'd just like to make Your
18 Honor aware, speaking from an Investigator here in Cayce
19 Department of Public Safety, like Solicitor Radlein said,
20 we are all aware of him. He's been a suspect in numerous
21 cases. My personal knowledge of him extends to doing two
22 search warrants at his residence over the past several
23 years where I've located stolen property at his house,
24 inside his house that were, was recovered and was related
25 back to previous car break-in incidents. He's constantly

1 found walking around our city in the late hours of the
2 night and the early morning hours, almost a regular
3 occurrence several times a week. He uses drains, ditches
4 and sewers now to make his way around the city in his
5 travels because he knows that we patrol the streets pretty
6 heavily and he's just, he's a problem. I'd just like to
7 make Your Honor aware of that.

8 THE COURT: Thank you. Thank you, Detective.

9 Any additional victim impact, Solicitor?

10 MS. RADLEIN: I believe so, Your Honor.

11 THE COURT: Yes, ma'am, Ms. Wilbanks, I'd be
12 delighted to hear from you.

13 MS. WILBANKS: I just wanted to thank the Court for
14 your time and just to say that, yes, I was startled. The
15 car breaking in was not the biggest problem for me. The
16 boldness of the person breaking in the car while we were,
17 you know, in and out of our -- in and out of our house, it
18 was almost like they didn't care if they got caught or if
19 they were, you know, bothering us, and so, so that was the
20 part that, that made the most impression on me was that,
21 that kind of blatant disregard for respecting another
22 person's comfort and property.

23 THE COURT: Thank you. Thank you very much, Ms.
24 Wilbanks.

25 Anything additional, Solicitor.

1 MR. RADLEIN: That will be it for the State, Your
2 Honor.

3 THE COURT: Thank you.

4 Ms. Zmroczek.

5 MS. ZMROCZEK: Thank you, Your Honor. I understand
6 that he has a long record. It's -- he has a lot of petty
7 charges. She -- to call him the cause of all the break-in
8 in motor vehicles, but this is his first arrest and charge
9 and conviction for that, Your Honor -- obviously I know a
10 different person. Mr. Lawson lives and has lived in Cayce
11 since 2006. He's mom passed away and she sent the house,
12 she left the house to him and his brother. I believe
13 Detective Merrill would agree with me that his brother is
14 in significant more trouble than Mr. Lawson is and Mr.
15 Lawson has constantly felt like he's been associated with
16 his brother in a lot of these receiving stolen goods, but
17 that being as it may, Your Honor, he's 54. He has -- the
18 reason he walks everywhere is because he is losing his
19 eyesight; he can't see in one eye and is losing the
20 eyesight in his other eye. He served 8 months. I
21 understand that this charge carries, it's a maximum of 5
22 years non-violent. We would just ask the Court to -- to
23 sentence him as the Court sees appropriate.

24 THE COURT: Thank you.

25 MS. ZMROCZEK: And give him credit for any time

1 he's been --

2 THE COURT: Thank you, Ms. Zmroczek.

3 Mr. Lawson, anything you'd like to say?

4 MR. LAWSON: No, Your Honor.

5 MR. RADLEIN: Your Honor, if I may, in terms of the
6 times he served, he has not served, by my records, 8 months
7 on this charge.

8 THE COURT: All I do is check the box.

9 MR. RADLEIN: Okay. Thank you, Your Honor.

10 THE COURT: The defendant is to be given credit for
11 time served pursuant to the statute by the department of
12 corrections unless somebody tells me precisely what the
13 time is.

14 All right. I take into account his prior criminal
15 history and it goes back three decades. That, in addition
16 to crimes involving dishonesty, he also has crimes,
17 numerous crimes as far as violent offenses although this is
18 not a violent offense. I also take in all the totality of
19 the facts and the circumstances of the crimes that was
20 committed in this case and the time of day it occurred and
21 as Ms. Wilbanks said, the boldness and voracity of that
22 crime with people coming in and out, knowing you could
23 potentially be confronted by a homeowner, mover or worker,
24 what have you.

25 I do not take into account the problems -- problems

1 aren't convictions of a crime, being suspects in other, in
2 other cases is not convictions of crimes. I do not, I do
3 not take that in account in any way, shape or form in my,
4 in my sentencing.

5 2015-GS-32-00107, Johnny Lee Gar -- Lawson,
6 breaking into a motor vehicle. The defendant is committed
7 to the State Department of Corrections for a determinate
8 term of 5 years. He is to be given credit for time served.
9 Good luck to you, Mr. Lawson.

10 MS. ZMROCZEK: Thank you, Your Honor.

11 MR. RADLEIN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MS. ZMROCZEK: May I get a copy of that --

14 THE COURT: I'm sorry?

15 MS. ZMROCZEK: He wants me to file the appeal, so
16 can I go ahead and get a copy of that?

17 If you don't mind I can copy it right here.

18 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 17th through 19th days of November 2015.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 22nd day of February, 2016.

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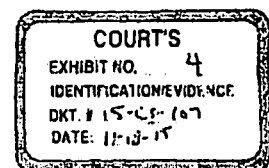
Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
THE STATE	)	INDICTMENT NO. 2015-GS-32-107
	)	
	)	Defendant's request for Jury Charges
	)	
Johnnie Lawson,	)	
Defendant.	)	

NOW COMES the Defendant, by and through his undersigned attorney and requests the following jury charges. The requested charges are in bold and the supporting case law is in regular font.

PRESUMPTION OF INNOCENCE

The defendant is presumed to be innocent unless and until the State has established guilt beyond a reasonable doubt. It is a vital, important rule of the law that the defendant in a criminal trial, no matter how grave or serious may be the offense with which he is charged, must always be presumed innocent, unless and until his guilt has been proven beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. This presumption of innocence is legal proof of innocence. This presumption of innocence remains with the defendant at all times from the moment of his arrest, throughout the trial proceeding, and goes into your jury room and remains with the defendant even then unless and until you, the jury, reach a verdict of guilty based on evidence which the State has presented satisfying you of the defendant's guilt beyond a reasonable doubt. • *State v. Primus*, 349 S.C. 576, 584, 564 S.E.2d 103, 107 (2002), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) ("It is elementary that an accused is presumed innocent until proven guilty and that the burden is upon



the State to prove the accused committed the crime charged. An accused has the right to rely entirely upon this presumption of innocence and the weakness in the State's case against him.") (internal quotation marks omitted); *State v. Hyder*, 242 S.C. 372, 379, 131 S.E.2d 96, 100 (1963) ("[E]very person is presumed to be innocent until he is proved to be guilty."); *State v. Bright*, 323 S.C. 221, 223, 473 S.E.2d 851, 851 (Cl. App. 1996) ("It is a fundamental principle of law that a defendant is presumed innocent until the State proves him guilty beyond a reasonable doubt."). § 1-6 Presumption of Innocence, Anderson, S.C. Requests to Charge - Criminal, § 1-6

REASONABLE DOUBT

Now, Johnnie Lawson has pled not guilty to this indictment. And that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent. And I charge you that it is a cardinal and important rule of the law that a defendant in a criminal trial will always be presumed to be innocent of the crime for which an indictment has been issued unless and until guilt has been proven by evidence satisfying you of guilt beyond a reasonable doubt. Now, reasonable doubt is the kind of doubt which would cause a reasonable person to hesitate to act. And reasonable doubt may arise from the evidence which is in the case or from the lack or absence of evidence in the case. And you, the jury, must determine whether or not reasonable doubt exists as to the guilt of this Defendant. The State has the burden of proving each and every element of a crime beyond a reasonable doubt. And any reasonable doubt that you may have in your deliberations should be resolved in favor of the Defendant. We find this reasonable doubt instruction to be a correct statement of the law. See *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (holding a jury instruction explaining, "A reasonable doubt is the kind of doubt that would cause

a reasonable person to hesitate to act” was “a correct statement of South Carolina law.”). Further, the trial court's instruction on circumstantial evidence (*see supra*) immediately followed the reasonable doubt instruction. *State v. Logan*, 405 S.C. 83, 747 S.E. 2d 444 (2013); *State v. Jenkins*, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Cl. App. 2014), reh'g denied (July 9, 2014), reh'g denied (Aug. 25, 2014), cert. denied (Feb. 4, 2015)

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Specifically, the Logan court set forth the following instruction to be given to the jury, in addition to a proper reasonable doubt instruction, when so requested by a defendant: **There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.**

State v. Logan, 405 S.C. 83, 747 S.E. 2d 444 (2013); *State v. Jenkins*, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Cl. App. 2014), reh'g denied (July 9, 2014), reh'g denied (Aug. 25, 2014), cert. denied (Feb. 4, 2015)

EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become an expert in some art, science, profession or calling may state an opinion as to the relevant and material matter in which the witness claims to be an expert, and may also state the reasons for the opinion. You should consider any expert opinion received in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

State v. Anderson, 407 S.C. 278, 284-85, 754 S.E.2d 905, 908 (Ct. App. 2014), reh'g denied (Mar. 21, 2014), cert. denied (Nov. 10, 2014); *State v. Douglas*, 380 S.C. 449, 503, 671 S.E.2d 606, 609 (2009) ("The same tests which are commonly applied in the evaluation of ordinary evidence are to be used in judging the weight and sufficiency of expert testimony. As with any witness, the jury is free to accept or reject the testimony of an expert witness. The fact that Herod was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness." (citing *State v. Milian-Hernandez*, 287 S.C. 183, 186, 336 S.E.2d 476, 478 (1985)).

DEFENDANT NOT TESTIFYING

The defendant in this case has not testified. This is his constitutional right. It is not a circumstance you can take into consideration, or even allow to enter into your discussion in the jury room. Under the Constitution of South Carolina and the United States Constitution, it is the defendant's constitutional right not to testify. The burden of proof is upon the State of South Carolina to establish his guilt by competent evidence beyond a reasonable doubt. The fact the defendant did not take the witness stand and testify in his own behalf does not create any inference against him. The jury must not permit that fact to weigh in the slightest degree against this defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner. • U.S. Const. Amend. V; S.C. Const. Art. I, § 12 ("No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself."); *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (holding an accused has the right to remain silent and the exercise of that right cannot be used against him); *State v. Robinson*, 238 S.C. 140, 119 S.E.2d 671 (1961), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (holding Article I, § 12 of the State constitution looks to an absolute freedom of defendants in all criminal cases as to testifying--nothing shall result to a defendant's prejudice from a failure to testify); *State v. White*, 243 S.C. 238, 133 S.E.2d 320 (1963); *State v. Barwick*, 89 S.C. 153, 71 S.E. 838 (1911); *State v. Williamson*, 65 S.C. 242, 43 S.E. 671 (1903); *State v. Howard*, 35 S.C. 197, 14 S.E. 481 (1892); see also *Gill v. State*, 346 S.C. 209, 552 S.E.2d 26 (2001) (finding a solicitor cannot comment directly or indirectly upon a defendant's failure to testify at trial); *Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997) ("It is impermissible for the prosecution to comment, directly or indirectly, upon the

defendant's failure to testify.") (citing, inter alia, *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965)); *State v. Johnson*, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987) ("When an accused asserts a constitutional right, it is impermissible for the state to comment upon or argue in favor of guilt or punishment based upon his assertion of that right."); *State v. Arther*, 290 S.C. 291, 297-98, 350 S.E.2d 187, 190 (1986) ("This Court has repeatedly admonished that the prosecution must not comment directly or indirectly on a defendant's failure to take the stand. Because the Fifth Amendment privilege against compelled self-incrimination applies in both the guilt and penalty phases of a capital trial, this prosecutorial restraint applies in both phases as well.") (citing, inter alia, *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981)); *State v. Goolsby*, 275 S.C. 110, 268 S.E.2d 31 (1980), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Rouse*, 262 S.C. 581, 206 S.E.2d 873 (1974); *State v. King*, 349 S.C. 142, 159, 561 S.E.2d 640, 649 (Ct. App. 2002) ("[T]he State cannot, through evidence or argument, comment upon a defendant's exercise of a constitutional right."). Compare *State v. Carlson*, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005) (stating improper comments on defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant); *Id.* (finding negative inferences created by prosecutors can be cured if the trial judge gives an immediate curative instruction to the jury; if the trial judge charges the jury during jury instructions that the burden of proof is fully on the State, and that the jury may not consider a defendant's failure to testify in its deliberations, any prejudicial effect can be cured).

§ 1-7 Defendant Not Testifying, Anderson, S.C. Requests to Charge - Criminal. § 1-7

PRIOR BAD ACTS

In regard to evidence of an alleged bad act on another occasion, specifically that the fingerprints were captured at Kirkland Correctional Institution, this evidence is limited to consideration by you as it relates to: the identity of the person charged with the commission of the crime on trial. The evidence is limited to those purposes and uses. This evidence can NOT be used for any other purpose. This type of evidence must NOT be considered in any other fashion. • *State v. Fletcher*, 379 S.C. 17, 23-24, 664 S.E.2d 480, 483 (2008) (“Under Rule 404(b), SCRE, evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.” (citations omitted)) see also *State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) (“The dissent would hold the evidence is admissible to establish a pattern of child abuse and neglect, such that it is relevant to the charge of homicide by child abuse. The majority of this Court, however, has specifically rejected an identical contention under similar facts.” (citing *State v. Pierce*, 326 S.C. 176, 485 S.E.2d 913 (1997)) see also *State v. Gaines*, 380 S.C. 23, 29-30, 667 S.E.2d 728, 731 (2008). • *State v. Stokes*, 381 S.C. 390, 405, 673 S.E.2d 434, 441 (2009) (holding that the positive identification of defendant by two witnesses, along with forensic

evidence linking the bullet from his previous victim's leg to the gun found with defendant after the shooting in the instant case, connected defendant to the crimes of the instant case because the same weapon was used in both crimes

§ 1-17 Prior Bad Acts, Anderson, S.C. Requests to Charge - Criminal, § 1-17

SPOLIATION

Spoliation is the destruction of evidence that one might otherwise have expected to have been relevant to a case (In this case Defendant is referring to the crowbar). Although not technically the same, the doctrine is similar to one that presumes that an expected, available witness who is not called to testify would have said something unfavorable. See *Ex parte Hernlen*, 153 S.E. 133, 134 (S.C. 1930). However, unlike that theory, which requires that the witness be available, spoliation involves evidence that is specifically not available to either party. The presumption does not arise from the failure to present the evidence, but from the role that the party had in preventing it from being reviewed by the jury or court. *Kevin Eberle, Spoliation in South Carolina, S.C. Law., September 2007, at 26* The courts of South Carolina have long recognized that a party is entitled to favorable presumptions about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might otherwise be expected to have been relevant. In a pair of very early cases, the S.C. Court of Appeals hit upon the policy for the rule: presumptive prejudice to the other party. While spoliation cases in South Carolina have been few and far between, the reasoning of the early cases remains true today. *Kevin Eberle, Spoliation in South Carolina, S.C. Law., September 2007, at 26, 28*

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees a defendant's fundamental right to a fair trial. U.S. Const.amend. XIV. Where a

defendant's right to a fair trial due to missing or destroyed evidence is at issue, the applicable standard is derived from the United States Supreme Court's opinion in *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988). In *Youngblood*, a ten-year-old boy was abducted and brutally sodomized by a middle-aged man. Id. at 52, 109 S.Ct. 333. The police obtained a sexual assault kit from the hospital as well as the boy's underwear and shirt. Id. at 52–53, 109 S.Ct. 333. However, police did not timely examine the assault kit or refrigerate the boy's clothing; as a result, later tests on the kit and clothing were inconclusive as to the identity of the assailant. Id. at 53–54, 109 S.Ct. 333. Nevertheless, the State proceeded to trial based primarily on the boy's photo lineup identification of Larry Youngblood as his attacker. Id. at 53, 109 S.Ct. 333. Youngblood's primary defense was that the boy misidentified him as the perpetrator, but he was nevertheless convicted of child molestation, sexual assault, and kidnapping. Id. at 53–54, 109 S.Ct. 333. The Arizona Court of Appeals reversed Youngblood's conviction reasoning that the timely performance of tests with properly preserved semen samples may have produced results which could have exonerated him. Id. at 54–55, 109 S.Ct. 333. Examining the question of whether Youngblood's right to a fair trial had been violated, the United States Supreme Court acknowledged that “ ‘[w]henver potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.’ ” Id. at 57–58, 109 S.Ct. 333 (quoting *California v. Trombetta*, 467 U.S. 479, 486, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)). Rejecting an approach which would impose on the State an absolute duty to retain and preserve all potentially exculpatory evidence, the Court instead crafted a standard which focused on police conduct where evidence was lost or destroyed: We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and

confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law. *Id.* at 58, 109 S.Ct. 333. Finding no bad faith present in the police's failure to refrigerate the clothing and perform tests on the semen samples, the Court reversed the Arizona Court of Appeal's dismissal of the case. *Id.* at 58-59, 109 S.Ct. 333. 4A number of state courts have declined to follow the bad faith standard established in *Youngblood* based on state law grounds. See, e.g., *State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn.1999)

("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the *Youngblood* analysis in its pure form."); *State v. Osakalumi*, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) ("As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record."); *Commonwealth v. Henderson*, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) ("The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the *Youngblood* opinion."). However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution. Specifically, Reaves argues the police's actions in failing to preserve evidence were so egregious as to constitute misconduct and bad faith. While he does not argue the police acted intentionally, he asserts the police's negligent and reckless conduct amounted to bad faith. However, Reaves cites no authority to support this proposition, and we found only a single federal district court case which has adopted this approach. See *United States v. Elliott*, 83

F.Supp.2d 637, 647–48 (E.D.Va.1999) (“[W]here the law enforcement officer acted in a manner which was either contrary to applicable policies and the common sense assessments of evidence reasonably to be expected of law enforcement officers or was so unmindful of both as to constitute the reckless disregard of both, there is a showing of objective bad faith sufficient to establish the bad faith requirement of the Trombetta/Youngblood test.”). The weight of federal authority seems to reject this premise and has adopted the view that the extraordinary remedy of dismissal should only be granted when the authorities act intentionally and in bad faith. See, e.g., *United States v. Tyerman*, 701 F.3d 552, 560 (8th Cir.2012) (“[The defendant] argues that a reckless destruction equates to bad faith. This court rejects that argument.”); *United States v. Vera*, 61 Fed.Appx. 330, 331 (9th Cir.2003) (“An officer does not act in bad faith unless he or she acts with the purpose of depriving the defendant of the potentially exculpatory evidence. Although the property officer may have acted negligently or even recklessly in destroying the chemical samples, there is no evidence that the officer acted in bad faith by deliberately destroying the evidence to deprive [the defendant] of access to relevant evidence.” (internal citations omitted)). Even if we were to accept the theoretical premise of Reaves' argument—that recklessness can equate to bad faith—we disagree the police were reckless in not preserving evidence in this case. Although the record is replete with indications the police investigation was deeply flawed, the record also contains no indication these flaws were the product of more than mere negligence. See *State v. Cheeseboro*, 346 S.C. 526, 539, 552 S.E.2d 300, 307 (2001) (declining to dismiss the indictment where police department negligently destroyed gun used to commit murder before the defendant was given the opportunity to run tests on it). Further, to the extent Reaves was disadvantaged by the State's loss of evidence, Reaves' attorney was allowed to forcefully cross-examine the police officers on the deficiencies in their investigation.

Additionally, the trial court instructed the jury "[w]hen evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party." Accordingly, although we acknowledge there are deeply troubling aspects of the investigation in this case, the errors made by the police do not indicate bad faith as is required to dismiss an indictment under the federal constitutional test. Therefore, we affirm the court of appeals' decision to affirm the trial judge's denial of Reaves' motion to dismiss.

State v. Reaves, 777 S.E.2d 213, 216-18 (S.C. 2015) Hence, the jury should have been instructed per a spoliation charge to view the destroyed unfavorably against the state in connection with its burden of proof and favorably on behalf of the defense in connection with its position that the state failed to prove petitioner's guilt beyond a reasonable doubt on the drug charge lodged against him by the state. Moreover, allowing petitioner to question the witness about the missing videotape and the story change regarding where the drugs were found did not cure the error because the jury heard only one side of the story (state's version), which was advantageous to the state and disadvantageous to the defense because the state's story was un rebuttable. This is precisely why a spoliation charge was needed in the case. In the opinion issued by the South Carolina Court of Appeals in the case, the finding of no error in connection with the failure to give a spoliation charge follows: We find the circuit court properly refused Gilliard's request for a jury instruction because there was no evidence that the State acted in bad faith, and Gilliard failed to show the exculpatory value of the destroyed videotape. Moreover, Gilliard's counsel specifically stated he did not think the videotape was destroyed in bad faith. See *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988) (holding that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process); see also *State v. Cheeseboro*, 346 S.C. 526, 538-539, 552 S.E.2d 300,

307 (2001) (“The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant. To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.”). However, the Court of Appeals incorrectly decided the spoliation charge issue on federal constitutional law instead of state law. The sole issue presented before this Court was whether the trial court erred in refusing to instruct per a spoliation charge that the jury could infer that any evidence destroyed by the state would have been favorable to [the defense]. The issue of whether criminal juries should be advised of state law via a spoliation charge was encompassed within the question presented on direct appeal in the case because this is our state law. When a party fails to preserve material evidence for trial, an inference may be drawn that the evidence would have been unfavorable to that party. *Stokes v. Spartanburg Regional Medical Center*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Cl. App. 2006). “The Courts of South Carolina have long recognized that a party is entitled to favorable presumptions about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might otherwise be expected to have been relevant.” Kevin Eberle, *Spoliation in South Carolina*, 19 S.C.Law. 26 (2007). South Carolina Courts have primarily given spoliation charges in civil cases. See, e.g., *Stokes*, *Supra*, 368 S.C. 515, 629 S.E.2d 675; *Kershaw County Board of Education v. U.S. Gvosum*, 302 S.C. 390, 396 S.E.2d 369 (1990). However, spoliation charges are routinely appropriate in criminal cases as well. In this case, a spoliation charge was appropriate; therefore, this Court should have found that the trial court erred in refusing the requested charge. Spoliation charges are given because when evidence is destroyed by one party, the other party is often incapable of proving

what that evidence would show. Without an inference against the destroying party, the jury is often left with only one side of the story. That is what happened in appellant's case. Therefore, it was crucial for the jurors to know that they could draw a negative inference from the State's destruction of the videotape in question. See *id.*, 368 S.C. at 522, 629 S.E.2d at 679. In petitioner's case, the failure to instruct the jury on the spoliation of evidence was reversible error. If the state chose not to preserve material evidence in a criminal case, it should have been held to the same degree of accountability as a party in a civil case. In this case, the Court of Appeals relied on *Arizona v. Youngblood*, 488 U.S. 51 (1988), and *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) per the opinion. However, those cases interpret federal constitutional law rather than state law. Although this Court's opinion reconstructed the question presented as a due process issue, it was not.

The state does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the state destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. *State v. Moses*, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010)." (emphasis added). Thus, essentially, the Court improperly followed the state's suggestion to view the spoliation issue as a due process issue without recognizing the distinctions between the doctrine of spoliation and the issue raised in *Moses*. BOR 6-8. In *Moses*, the defendant, "argue[d] the trial court erred in refusing to dismiss the charges due to the failure of the state to preserve or disclose videotaped evidence." *Moses*, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (emphasis added). *Moses* argued that destruction of evidence was a due process violation that warranted dismissal. However, the argument was that he was entitled to a jury instruction based on a long standing doctrine in common law.

IT IS SO MOVED.

Respectfully Submitted,

/s

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aimee@ajzlawfirm.com
Attorney for Defendant

November 19, 2015
Lexington, South Carolina

WITNESSES

Cayce Department of Public Safety

J. R. Merrill

Law Enforcement Case #: 1401700

SR

ARREST WARRANT NUMBER

2014A3220300360

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 4/13/15

VERDICT

Guilty
Petit Jury

Foreperson of Petit Jury
Date: 11/19/2015

DOCKET NO. 2015GS3200107

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2015

**THE STATE
vs.**

JOHNNIE LEE LAWSON

CDR #: 0258

Indictment for

Breaking into Motor Vehicle

§ 16-13-0160(A)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
Breaking into Motor VehicleCOUNTY OF LEXINGTON)
)
)
)

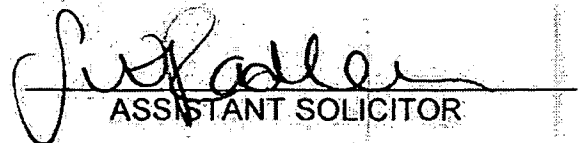
§ 16-13-0160(A)(1)

At a Court of General Sessions, convened on April 2015, the Grand Jurors of Lexington County present upon their oath:

That **Johnnie Lee Lawson**, in Lexington County, South Carolina, on or about March 14, 2014, did break or attempt to break into a motor vehicle belonging to Jessica Wilbanks, at Holland Avenue, Cayce, South Carolina, with intent to steal the same or anything of value there from; in violation of Section 16-13-160(A)(1) of the Code of Laws of South Carolina, (1976, as amended).

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NOV 30 2015
SC Court of Appeals

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

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 20th day of March, 2017.

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SC Court of Appeals

460

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 20th day of March, 2017.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 20 2017

SC Court of Appeals

Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNIE LEE LAWSON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of March, 2017.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of March, 2017.

 (L.S.)
Notary Public for South Carolina

My Commission Expires July 3, 2023.