

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Jocelyn J. Newman, Circuit Court Judge S.C. SUPREME COURT

RECEIVED

JAN 18 2018

DAVID ABRAHAM DUREN, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000605

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2012-GS-43-01149

State of South Carolina,	)
	)
Plaintiff,	)

-vs-

Transcript of Record

David A. Duren Jr.,	)
	)
Defendant.	)

May 18-20, 2015
Sumter, South Carolina

B E F O R E:

The Honorable George C. James Jr., Judge

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

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David A. Duren Jr., Pro Se

Krystal J. Smith
Court Reporter

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1 MAY 18, 2015

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared on a pro se basis.)

4 THE COURT: Mr. Duren, I was going to explain a couple of
5 things to you before the jury panel came in. I realize you
6 said you had some pre-trial matters you wanted to cover. Is
7 that correct, sir?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: What we'll do, first of all, is we'll go
10 ahead and pick the jury, then I will send them home, and then
11 we'll start back this afternoon. That will give us time
12 between now and lunch for me to hear your motions. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And under the -- under the rules,
15 you do have -- you will have -- will seat a jury of twelve
16 people. You will have ten strikes. The State --

17 THE DEFENDANT: How many?

18 THE COURT: Ten. Ms. McElveen, you agree the State has
19 -- the defendant has ten?

20 MS. MCELVEEN: Yes, sir.

21 THE COURT: The State, Mr. Duren, has five strikes. So
22 you certainly don't have to use all ten, but you do have the
23 right to exercise ten peremptory strikes. We'll seat one
24 alternate. You, Mr. Duren, will have two strikes on the
25 alternate, and we'll let you know when the alternate is being

1 selected, and the State will have one.

2 Neither side is permitted to strike any juror for any
3 reasons based on race, sex, or national origin. So I think
4 both sides understand that. You understand that, Ms.
5 McElveen?

6 MS. MCELVEEN: Yes, sir, Your Honor.

7 THE COURT: Mr. Duren, do you understand that?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Okay. Do you have any questions that you
10 would like for me to ask the jury, any specific questions for
11 qualification purposes?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Any from the State?

14 MS. MCELVEEN: None, Your Honor. I understand your
15 wonderful standard questions.

16 THE COURT: I will be asking the jury a series of
17 questions. Whether or not they know you, know anything about
18 the case, know anything about the witnesses, and other rather
19 standard questions. Okay?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: All right. You can bring in the jury. Mr.
22 Prince, do you have the list from downstairs, the one that --

23 THE CLERK: Yes, sir, I do.

24 THE COURT: -- that their names were on it?

25 THE CLERK: Yes, sir.

1 THE COURT: Okay.

2 (WHEREUPON, the jury panel entered the courtroom.)

3 THE COURT: All right.. I believe that's everybody.

4 THE CLERK: That's all the jurors. Judge, how about the
5 spectators? Do you want them on the back row?

6 THE COURT: They can sit on the back row for now. Yeah.
7 And then once we have the jury seated, they can sit anywhere.
8 All right. Margaret, are you ready?

9 THE COURT REPORTER: I'm ready.

10 THE COURT: All right. Ladies and gentlemen, we are now
11 going to select a jury. What I will do now is ask Ms.
12 McElveen to call the first case for the State.

13 MS. MCELVEEN: Yes, sir, Your Honor.. We would like to
14 call the State of South Carolina versus David Abraham Duren
15 Jr., Indictment 2012-GS-43-1149. And if I may pass up a
16 witness list and the indictment?

17 THE COURT: All right. Give Mr. Duren a copy. All
18 right, ladies and gentlemen. You are under oath. You are
19 still under the oath that you took earlier downstairs to
20 answer all questions truthfully.

21 We are now going to select a jury for the trial of the
22 case of the State of South Carolina versus David Abraham Duren
23 Jr. I will tell you this. That the fact that a person -- the
24 fact that a person is arrested or charged or indicted for any
25 criminal offense is not evidence of the defendant's guilt.

1 The defendant, Mr. Duren, is presumed innocent. He has
2 entered a plea of not guilty to the charge and he has no
3 burden to prove or disprove anything. The burden is solely on
4 the State to prove the elements of the crime charged beyond a
5 reasonable doubt. The State has to prove the elements of the
6 crime charged beyond a reasonable doubt and, again, the
7 Defendant is presumed innocent.

8 I am now going to tell you what the State is charging Mr.
9 Duren with so I can ask you the first question. The first
10 question is going to be is there anyone on this jury panel who
11 knows anything about the allegations in this case. The fact
12 that I refer to the indictment is not intended to be a comment
13 by me on the facts. As you will be told if you are on this
14 jury, the jury is the sole body that makes the findings of
15 fact. The jury is the sole body that will be able to return a
16 verdict of not guilty or guilty. So I have no role in that
17 regard, but I do have to tell you what the allegations are to
18 find out if any of you know anything about this case.

19 The State alleges in the indictment that on or about June
20 8th, 2011, in this county, the defendant did enter the building
21 of Thomas & Howard Company on South Harvin Street without
22 consent and with the intent to commit a crime therein. Those
23 are the allegations and there may be other certain particulars
24 that I will explain to you in detail what the State has to
25 prove, but that is a general recitation of the State's claim.

1 Is there anyone on this panel who knows anything about
2 these particular charges, knows anything about this case? If
3 so, please stand.

4 (WHEREUPON, no one stood.)

5 THE COURT: All right. The defendant is David Abraham
6 Duren Jr. I will tell you, ladies and gentlemen, that a
7 person who is charged with a criminal offense has the right to
8 represent himself or herself. If you are on a jury and that
9 is the case, you are not to penalize the defendant for
10 representing himself and you are not to give him any benefit
11 because he's representing himself. But he does have the right
12 to represent himself. Mr. Duren, if you would, please stand
13 and face the panel.

14 (WHEREUPON, the defendant complied.)

15 THE COURT: All right. Thank you, sir. You can have a
16 seat. Is there anyone on this panel or to your knowledge is
17 there anyone in your family who, first of all, might be
18 related to Mr. Duren by blood or marriage? That means kin to
19 him.

20 (WHEREUPON, no one stood.)

21 THE COURT: Is there anyone on this panel or to your
22 knowledge anyone in your -- in your family who has any
23 connection, that would be past or present, any connection with
24 Mr. Duren of any kind? Do you know him really well, barely
25 know him, may have gone to school with him, church with him,

1 been in a club with him, any -- by any stretch, any connection
2 at all with Mr. Duren? Is so, please stand?

3 (WHEREUPON, one person stood.)

4 THE COURT: Yes, sir, your name?

5 JUROR NUMBER 140: Jason Pugh.

6 THE COURT: All right. Come on up, please, Mr. Pugh.

7 Mr. Duren, Ms. McElveen, y'all can come up too, please.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury panel but out of the hearing of the jury
10 panel as follows.)

11 THE COURT: Yes, sir.

12 JUROR NUMBER 140: I do kind of know him, but I don't
13 know him. I see him around --

14 THE COURT: Okay.

15 JUROR NUMBER 140: -- town, but I know some of my family
16 members know him.

17 THE COURT: Just in passing?

18 JUROR NUMBER 140: Just being around town.

19 THE COURT: If you are on this jury, would you be able to
20 set that aside and be completely fair and impartial to both
21 Mr. Duren and to the State?

22 JUROR NUMBER 140: Yes, sir.

23 THE COURT: And would you be able to listen to the
24 evidence in this case?

25 JUROR NUMBER 140: Yes.

1 THE COURT: Okay. Thank you, sir.

2 (WHEREUPON, the bench conference ended.)

3 THE COURT: That was Mr. Pugh, Number 140. Okay. I'm
4 going to read off a list of possible witnesses. And what I
5 mean by possible or prospective is that some of -- some of
6 these witnesses may testify, all of them may testify, but they
7 are possible witnesses and, if any of the witnesses are here,
8 if you would please stand, and I will alert you -- alert the
9 jury to where they are so you can look at them.

10 And the questions will be the same. Is there anyone on
11 the panel or anyone in your family who might be related to
12 them by blood or marriage, or acquainted with them now or in
13 the past in any way whatsoever?

14 John Melton, Sumter Police Department; Scott Bonner of
15 the Sumter County Sherriff's Office; Johanna Aleck of the
16 Sumter Police Department; Jim Allsbrook of the Sumter Police
17 Department; Cory Osteen, Sumter Police Department; Trey
18 Tallon, South Carolina Law Enforcement Division, typically
19 known by the acronym of SLED; Matthew Spiegel, with Thomas &
20 Howard Company; Thomas Page, with Thomas & Howard Company;
21 David McClure, Rhonda Fields, Kenneth Bogan, all with SLED;
22 Cynthia Cale, with Strand Analytics; and Karen Brinegar of
23 Strand Analytics.

24 Again, anyone on the panel or anyone in your family
25 related by blood or marriage or have any connection, however

1 strong or slight, with any of these possible witnesses?

2 (WHEREUPON, one person stood.)

3 THE COURT: Please stand. Mr. Hill?

4 JUROR NUMBER 86: Yes.

5 THE COURT: Come on up, please.

6 THE COURT: Mr. Hill is Number 86.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury panel but out of the hearing of the jury
9 panel off the record.)

10 THE COURT: And that was Number 86. All right. I've
11 already introduced Mr. Duren to you. Ms. McElveen, Bronwyn
12 McElveen of the Third Circuit Solicitor's Office. Ms.
13 McElveen, you can introduce yourself and anyone else who will
14 be assisting you from the Solicitor's Office.

15 MS. MCELVEEN: My name is Bronwyn McElveen. I work under
16 the Honorable Ernest A. Finney III, our elected solicitor for
17 the Third Judicial Circuit.

18 THE COURT: All right.

19 MS. MCELVEEN: And I do not anticipate anybody else
20 helping. Thank you.

21 THE COURT: All right. Is there anyone on this panel or
22 anyone in your immediate family who, first of all, might be
23 related to Ms. McElveen by blood or marriage? Is there anyone
24 on the panel or anyone in your family, to your knowledge, that
25 might have any type of connection, acquaintance or association

1 with Ms. McElveen?

2 (WHEREUPON, one person stood.)

3 THE COURT: Yes, ma'am, your name?

4 JUROR NUMBER 168: Elizabeth Tate.

5 THE COURT: All right, Ms. Tate. Anyone -- wait just a
6 second. Anyone else?

7 (WHEREUPON, one person stood.)

8 THE COURT: Okay. Y'all come on up, please, one at a
9 time.

10 THE COURT: Ms. Tate is 168.

11 (WHEREUPON, a bench conference is held in the presence of
12 the jury panel but out of the hearing of the jury panel
13 as follows.)

14 THE COURT: Yes, ma'am?

15 JUROR NUMBER 168: My daughter, Amy Watson --

16 THE COURT: Okay.

17 JUROR NUMBER 168: -- is related by marriage --

18 THE COURT: Okay.

19 JUROR NUMBER 168: -- but it's distant.

20 THE COURT: Okay. And do you know Ms. McElveen?

21 MS. MCELVEEN: Yes. Amy is married to my husband's uncle
22 -- third uncle, Kell.

23 THE COURT: Okay.

24 MS. MCELVEEN: And I've never met Ms. Tate. I had no
25 idea.

1 THE COURT: Okay. All right. That is what relation to
2 you?

3 JUROR NUMBER 168: My daughter.

4 THE COURT: Your daughter is married to Kell Watson?

5 JUROR NUMBER 168: Right.

6 THE COURT: Who is her --

7 MS. MCELVEEN: Uncle-in-law.

8 THE COURT: Okay.

9 JUROR NUMBER 168: Right.

10 THE COURT: All right. If you were on this jury, could
11 you set that aside and be completely fair and impartial to Mr.
12 Duren and to the State?

13 JUROR NUMBER 168: Of course.

14 THE COURT: And would you base your verdict on the
15 evidence and the law and not on who Ms. McElveen is?

16 JUROR NUMBER 168: Yes.

17 THE COURT: All right. Thank you.

18 (WHEREUPON, the bench conference ended.)

19 THE COURT: All right.

20 THE BAILIFF: Juror Number 159.

21 THE COURT: Come on up, sir. Mr. Thames?

22 JUROR NUMBER 159: Yes, sir.

23 THE COURT: All right.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury panel but out of the hearing of the jury

1 panel as follows.)

2 THE COURT: Yes, sir?

3 JUROR NUMBER 159: I go to church with her. .

4 THE COURT: What church is that?

5 JUROR NUMBER 159: First Pres.

6 THE COURT: Okay. How long have you been going to church
7 with Ms. McElveen?

8 JUROR NUMBER 159: I've been going there for years. My
9 wife's been going there -- I have no clue.

10 THE COURT: Who is your wife?

11 JUROR NUMBER 159: Robin Thames.

12 THE COURT: Okay. If you are on this jury -- let me ask
13 you this first. Are you on any committees with her?

14 JUROR NUMBER 159: No, sir.

15 THE COURT: Any specific activities y'all have undertaken
16 together church-related?

17 JUROR NUMBER 159: No, sir.

18 THE COURT: You just know her from church?

19 JUROR NUMBER 159: Yes.

20 THE COURT: Okay. If you were on this jury, could you
21 set that aside and be fair and impartial to Mr. Duren and to
22 the State?

23 JUROR NUMBER 159: Yes, sir.

24 THE COURT: And base your verdict on what the evidence is
25 and not on the fact that you go to church with her?

1 JUROR NUMBER 159: Yes, sir.

2 THE COURT: All right.

3 THE DEFENDANT: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 (WHEREUPON, the bench conference ended.)

6 THE COURT: Is there anyone on the panel who is aware of
7 any bias or prejudice that you might have for or against the
8 State of South Carolina in this case, for or against Mr.
9 Duren, or for or against any of the witnesses in this
10 particular case?

11 (WHEREUPON, no one stood.)

12 THE COURT: Is there anyone on the panel who knows of any
13 reason whatsoever why you could not be fair and impartial as a
14 juror?

15 (WHEREUPON, no one stood.)

16 THE COURT: Is there anyone on this panel who knows of
17 any reason at all why you shouldn't serve in this case?

18 (WHEREUPON, no one stood.)

19 THE COURT: Any additional questions from the State?

20 MS. MCELVEEN: None, Your Honor.

21 THE COURT: Mr. Duren, any questions? Any additional
22 questions?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, the -- your
25 list or your number has already been scrambled so we don't

1 have to -- you've got that list; right?

2 THE CLERK: Yes.

3 THE COURT: Okay. If -- if -- when the clerk calls your
4 name, if you would, bring any of your personal belongings with
5 you and come up to this podium that's up here in front of me.
6 Stop at the podium and turn around and face the back of the
7 courtroom. It will work like this. Under the striking
8 process, the State, through Ms. McElveen, will either say
9 excuse the juror or please present the juror. If she says
10 please present the juror, then Mr. Duren will have the right
11 to either ask you to be seated in the jury box or excused for
12 this case. All right. Are we clear on that, Ms. McElveen?

13 MS. MCELVEEN: Yes, sir.

14 THE COURT: Mr. Duren, you understand that?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay. All right. Ms. Britt? Oh, I'm sorry,
17 Mr. Prince.

18 THE CLERK: May it please the Court?

19 THE COURT: Yes, sir.

20 THE COURT: And we'll have one alternate. Okay?

21 THE CLERK: All right, sir.

22 THE CLERK: Okay. Just follow the judge's instructions.
23 Number 169, Furman Thames.

24 (WHEREUPON, a white male came forward.)

25 THE CLERK: What say the State?

1 MS. MCELVEEN: Please present the juror.

2 THE CLERK: What say the defense?

3 THE DEFENDANT: Excuse the juror.

4 THE CLERK: Please have a seat, sir. You've been excused
5 from this trial at this time. Number 75, Linda Gross.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: What say the State?

8 MS. MCELVEEN: Please present Ms. Gross.

9 THE CLERK: What say the defense?

10 THE DEFENDANT: Excuse the juror.

11 THE CLERK: Have a seat, ma'am. You've been excused from
12 this trial at this time. Number 140, Jason Pugh.

13 (WHEREUPON, a black male came forward.)

14 THE CLERK: What say the State?

15 MS. MCELVEEN: Please excuse Mr. Pugh from the trial of
16 this case.

17 MS. MCELVEEN: Have a seat, sir, back in the panel.

18 You've been excused from this trial at this time. Number 97,
19 Kimberly Krages.

20 (WHEREUPON, a white female came forward.)

21 THE CLERK: What say the State?

22 MS. MCELVEEN: Please present the juror.

23 THE CLERK: What say the defense?

24 THE DEFENDANT: Seat the juror.

25 THE CLERK: Excuse the juror?

1 THE DEFENDANT: Seat the juror.

2 THE CLERK: Seat the juror. Have a seat in jury box,
3 ma'am, right over there. Number 117, Felicia Miller.

4 (WHEREUPON, a black female came forward.)

5 THE CLERK: What say the State?

6 MS. MCELVEEN: Please present the juror.

7 THE CLERK: What say the defense?

8 THE DEFENDANT: Seat the juror.

9 THE CLERK: Have a seat in the jury box, ma'am. Number
10 98, George Lambert.

11 (WHEREUPON, a white male came forward.)

12 THE CLERK: What say the State?

13 MS. MCELVEEN: Please present the juror.

14 THE CLERK: What say the defense?

15 THE DEFENDANT: Excuse the juror.

16 THE CLERK: Have a seat back in the panel, sir. You've
17 been excused from this trial at this time. Number 44, Allison
18 Davis.

19 (WHEREUPON, a white female came forward.)

20 THE CLERK: What say the State?

21 MS. MCELVEEN: Please present the juror.

22 THE CLERK: What say the defense?

23 THE DEFENDANT: Excuse the juror.

24 THE CLERK: Have a seat back in the panel, ma'am. You've
25 been excused from this trial at this time. Number 119, Quincy

1 Montgomery.

2 (WHEREUPON, a black male came forward.)

3 THE CLERK: What say the State?

4 MS. MCELVEEN: Please excuse the juror from the trial of
5 this case.

6 THE CLERK: Have a seat, sir, back in the panel. You've
7 been excused from this trial at this time. Number 2, Erlinda
8 Adger.

9 (WHEREUPON, an Asian female came forward.)

10 JUROR NUMBER 2: You said Number 2?

11 THE COURT: Yes, ma'am.

12 JUROR NUMBER 2: I'm sorry.

13 THE CLERK: What say the State?

14 MS. MCELVEEN: Please present Ms. Adger.

15 THE DEFENDANT: Excuse the juror.

16 THE CLERK: Have a seat back in the panel, ma'am. You've
17 been excused from this trial at this time. Number 71,
18 Veronica Gibbs.

19 (WHEREUPON, a black female came forward.)

20 THE CLERK: What say the State?

21 MS. MCELVEEN: Please excuse the juror from the trial of
22 this case.

23 THE CLERK: Have a seat back in the panel, ma'am. You've
24 been excused from this trial at this time. Number 129,
25 Rebecca Nesbitt.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say the State?

3 MS. MCELVEEN: Please present the juror.

4 THE CLERK: What --

5 THE DEFENDANT: Excuse the juror.

6 THE CLERK: Have a seat back in the panel, ma'am. You've
7 been excused from this trial at this time. Number 53, Linda
8 Dwyer.

9 (WHEREUPON, a white female came forward.)

10 THE CLERK: What say the State?

11 MS. MCELVEEN: Please present the juror.

12 THE CLERK: What say the defense?

13 THE DEFENDANT: Seat the juror.

14 THE CLERK: Have a seat in the panel, ma'am. Number 48,
15 Ryan Dixon.

16 (WHEREUPON, a white male came forward.)

17 THE CLERK: What say the State?

18 MS. MCELVEEN: Please present the juror.

19 THE CLERK: What say the defense?

20 THE DEFENDANT: Excuse the juror.

21 THE CLERK: Have a seat back in the panel, sir. You've
22 been excused from this trial at this time. Number 46, Erica
23 Delay.

24 (WHEREUPON, a black female came forward.)

25 THE CLERK: What say the State?

1 MS. MCELVEEN: Please present the juror.

2 THE CLERK: What say the defense?

3 THE DEFENDANT: Seat the juror.

4 THE CLERK: Have a seat in the panel, ma'am. Number 170,
5 Elsie Thompson.

6 (WHEREUPON, a black female came forward.)

7 THE CLERK: What say the State?

8 MS. MCELVEEN: Please present the juror.

9 THE CLERK: What say the defense?

10 THE DEFENDANT: Seat the juror.

11 THE CLERK: Number 86, Francis Hill III.

12 (WHEREUPON, a white male came forward.)

13 THE CLERK: What say the State?

14 MS. MCELVEEN: Please present the juror.

15 THE CLERK: What say the defense?

16 THE DEFENDANT: Excuse the juror.

17 THE CLERK: Number 6, David Bagwell.

18 (WHEREUPON, a white male came forward.)

19 THE CLERK: What say the State?

20 MS. MCELVEEN: Please present the juror.

21 THE CLERK: What say the defense?

22 THE DEFENDANT: Seat the juror.

23 THE CLERK: Have a seat in the panel. Number 130, Sara
24 Nichols.

25 (WHEREUPON, a white female came forward.)

1 THE CLERK: What say the State?

2 MS. MCELVEEN: Please present the juror.

3 THE CLERK: What say the defense?

4 THE DEFENDANT: Excuse the juror.

5 THE CLERK: Have a seat in the panel, ma'am. You've been

6 excused from this trial at this time. Number 40, Jeffrey

7 Crow.

8 (WHEREUPON, a black male came forward.)

9 THE CLERK: What say the State?

10 MS. MCELVEEN: Please present Mr. Crow.

11 THE CLERK: What say the defense?

12 THE DEFENDANT: Seat the juror.

13 THE CLERK: Have a seat in the jury, sir. Number 12,

14 Ernest Birth III.

15 (WHEREUPON, a black male came forward.)

16 THE CLERK: What say the State?

17 MS. MCELVEEN: Please present the juror.

18 THE CLERK: What say the defense?

19 THE DEFENDANT: Seat the juror.

20 THE CLERK: Excuse the juror?

21 THE DEFENDANT: No, seat the juror.

22 THE CLERK: Seat the juror. Have a seat there. Number

23 168, Elizabeth Tate.

24 (WHEREUPON, a white female came forward.)

25 THE CLERK: What say the State?

1 MS. MCELVEEN: Please present the juror.

2 THE CLERK: What say the defense?

3 THE DEFENDANT: Seat the juror.

4 THE CLERK: Have a seat in the panel, ma'am. Number 72,
5 Wanda Goodwin.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: What say the State?

8 MS. MCELVEEN: Please present the juror.

9 THE CLERK: What say the defense?

10 THE DEFENDANT: Present the juror.

11 THE CLERK: Have a seat on the panel, ma'am. Number 174,
12 Darrell Tyrone.

13 (WHEREUPON, a black male came forward.)

14 THE CLERK: What say the State?

15 MS. MCELVEEN: Please excuse the juror from the trial of
16 this case.

17 THE CLERK: Have a seat back in the panel, sir. You've
18 been excused from this trial at this time. Number 88, Andrew
19 House.

20 (WHEREUPON, a white male came forward.)

21 THE CLERK: What say the State?

22 MS. MCELVEEN: Please present the juror.

23 THE CLERK: What say the defense?

24 THE DEFENDANT: Seat the juror.

25 THE CLERK: Number 85, Ashante Hightower.

1 (WHEREUPON, a black female came forward.)

2 THE CLERK: What say the State?

3 MS. MCELVEEN: Please present the juror.

4 THE CLERK: What say the defense?

5 THE DEFENDANT: Seat the juror.

6 THE CLERK: Have a seat in the panel, ma'am. Alternate

7 juror. Number --

8 THE COURT: Wait just a second.

9 THE CLERK: Sir?

10 THE COURT: That's -- okay. Go ahead. I'm sorry.

11 THE CLERK: Number 158, William Shumate.

12 (WHEREUPON, a white male came forward.)

13 THE CLERK: What say the State?

14 MS. MCELVEEN: Please present the juror.

15 THE CLERK: What say the defense?

16 THE DEFENDANT: Excuse the juror.

17 THE CLERK: Have a seat back in the panel, sir. You've

18 been excused from this trial at this time. Number 83, Wayne

19 Hemingway.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: What say the State?

22 MS. MCELVEEN: Please present Mr. Hemingway.

23 THE CLERK: What say the defense?

24 THE DEFENDANT: Seat the juror.

25 THE CLERK: Have a seat in the panel box, please.

1 JUROR NUMBER 83: All right.

2 THE COURT: All right. Could I see Mr. Duren and Ms.
3 McElveen for just a moment?

4 (Whereupon, a bench conference was held in the presence
5 of the jury but out of the hearing of the jury off the
6 record, after which the proceedings resumed as follows.)

7 THE COURT: All right. Ms. McElveen, any objections or
8 motions pertaining to jury selection?

9 MS. MCELVEEN: None, Your Honor.

10 THE COURT: Mr. Duren?

11 THE DEFENDANT: None, Your Honor.

12 THE COURT: All right. All right. Ladies and gentlemen
13 who have been selected as jurors for the trial of this case,
14 I'm going to give you some instructions before you leave, but
15 we're going to actually begin the trial of the case at 2:15.
16 I'll be typically operating off that clock. Of course, it's
17 five minutes to twelve. I want you to be back in your jury
18 room that Mr. Jones is going to explain to you how to get
19 there. He's seated to the left of the jury box. When you do
20 get back, I will appoint a foreperson who will be the
21 spokesperson for the jury, and we'll begin at 2:15.

22 In the meantime, and as I will tell you many times during
23 the trial of this case, you are not permitted to discuss this
24 case with anyone in the world until I tell you that you can,
25 and that includes amongst yourselves. More than likely, this

1 case is the only thing that you have in common, but you may
2 not discuss it in any way. You can't talk about what the
3 charge is, you can't discuss who any of the witnesses are, who
4 the prosecutor is, who the defendant is. You can't even talk
5 about remotely what even the charge is.

6 That is because you are going to take an oath to try this
7 case according to the evidence and the law. You will get all
8 of that right here. It would be terribly inappropriate and
9 would be against the law for you to get any information or
10 receive any information about this case or anything remotely
11 connected to it from the outside world.

12 If you are on Facebook, if you are on Twitter, or if you
13 are on anything else where you can type things or receive
14 information from anybody, you cannot put on Facebook anything
15 about being on jury duty, about this case, or anything else.
16 You can't get on your -- I don't know how to Twitter, but you
17 cannot get on whatever machine you use and put out
18 communications that you're -- you've been seated as a juror on
19 this case. You can't do it. If you do it, I can guarantee
20 you that it will come back and I'll find out about it.

21 So just put this case out of your mind when you leave.
22 You might go to work, you might go home, you might go
23 somewhere else during this lunch hour or lunch hour and forty-
24 five minutes, or however long it is, two hours. Somebody you
25 see is going to be dying to know what you've been doing. You

1 can't tell them. And you can tell them that if you do tell
2 them that you will get in big trouble. I'll be asking you
3 this question periodically when you do come back, if there's
4 anyone on the panel who was not able to follow my instruction
5 or has received, even by accident, any information about this
6 case.

7 So you see who all the people are in the courtroom now.
8 Please don't have any communications with them at all or
9 anyone else who might even be remotely connected to the case.
10 All right. We will see you back at 2:15, and Mr. Jones will
11 show you where you're to report.

12 THE BAILIFF: Follow me.

13 (WHEREUPON, the jury exited the courtroom.)

14 THE COURT: All right. Ladies and gentlemen who were not
15 selected as jurors for the trial of this case, you are excused
16 for the balance of today. You should have a piece of paper or
17 a card that the Clerk of Court gave you that has a phone
18 number on it. He probably explained the call-in system to
19 you. Please call that number after six p.m. today.

20 You will hear a voice recording, and the recording will
21 give you instructions about what your responsibilities will
22 be. The instruction may be that you're to call back at a
23 certain time tomorrow. It may be that you're supposed to come
24 back at a certain time tomorrow.

25 Please follow those instructions. Usually half the time

1 there is a juror who does not ever show back up, and they
2 typically say that they didn't understand the voice mail or
3 that they didn't know the voice mail was meant for them. The
4 voice mail that you hear or the message that you hear after
5 six p.m. is meant for you. So please follow those
6 instructions and continue to follow those throughout the week.
7 Does anyone have any questions?

8 (WHEREUPON, there was no response.)

9 THE COURT: All right. Thank you for your patience and
10 you're free to go. Call that number after six.

11 (WHEREUPON, the jury panel was excused and exited the
12 courtroom.)

13 THE COURT: All right. Mr. Duren, you said you had some
14 motions?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay. I'll be -- I'll be happy to take those
17 in the order that you want to bring those. So just tell me
18 about your first one.

19 THE DEFENDANT: Yes, sir, Your Honor. If it pleases the
20 Court, Your Honor, the defendant makes a motion for dismissal
21 of the case pursuant to -- pursuant to the Supreme Court of
22 South Carolina 365-day Bench Mark Administrative Order,
23 pursuant to the provisions of South Carolina Constitution
24 Article 5, Number 4.

25 Per Chief Justice Jean Hoefer Toal, it is ordered that

1 eighty percent of all criminal cases in each circuit in the
2 State of South Carolina shall be disposed of within 365 days
3 from the date of the defendant's arrest. Provided, however,
4 that the Circuit Court may continue a criminal case beyond 365
5 days by written order if the Court determines that exceptional
6 circumstances exist in this case. This order does not create
7 or define a right of a defendant to a speedy trial.

8 It is further ordered that the Chief Justice's order date
9 5 March, 1999, which states that all criminal cases shall be
10 disposed of within 180 days from the date of defendant's
11 arrest is hereby rescinded. It is so ordered.

12 THE COURT: Okay.

13 THE DEFENDANT: Your Honor, I was arrested in 2000 and --
14 let me get my arrest warrant. This one doesn't have the date
15 on it. Could you bear with me one second, Your Honor?

16 THE COURT: Yes, sir. Do you have his arrest date, Ms.
17 McElveen?

18 MS. McElveen: Yes, sir. He was arrested May 27th, 2012,
19 bonded out the next day, Your Honor.

20 THE COURT: Okay.

21 THE DEFENDANT: Yes, sir. Your Honor, I was arrested May
22 27th and if they have any order that extended this from the
23 court date that extends past this due date, I would be glad to
24 see it, sir, but I ask that this -- this indictment be
25 dismissed on these grounds, sir, the 365-day benchmark from

1 the South Carolina Supreme Court, sir.

2 THE COURT: All right. Ms. McElveen, any response?

3 MS. MCELVEEN: Well, Your Honor, basically, Chief Justice
4 Toal put together a scheduling order in order to have
5 solicitor's offices to move the cases quickly. Obviously,
6 those dismissal of cases are done on a discretionary basis.
7 This is certainly not the type of case that we would wish to
8 dismiss.

9 THE DEFENDANT: Your Honor, it says all criminal cases,
10 sir. Not -- not any one, sir.

11 THE COURT: Okay. All right. Your next motion?

12 THE DEFENDANT: The next motion, Your Honor, is the
13 suppressing of Indictment 2012-GS-43-1149, amended burglary,
14 filed after 6/28, violent, second degree, Your Honor.

15 THE COURT: Okay. You want the indictment suppressed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And the basis for that?

18 THE DEFENDANT: The basis for that?

19 THE COURT: All right. And if you've got something that
20 you're going to be reading, Mr. Duren, that's fine, but the
21 court reporter is going to count on you to read it slowly.
22 Okay?

23 THE DEFENDANT: All right.

24 THE COURT: Okay. You can hand -- you have some stuff
25 you want to hand up?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 THE DEFENDANT: Just --

4 THE COURT: Wait. Let me -- let me take a look at what
5 you handed up first. I'll glance through it real quickly and
6 then I'll be glad to hear you.

7 (WHEREUPON, there was a pause in the proceedings.)

8 THE COURT: All right. Are you going to be reading this
9 entire thing?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: Okay. All right. I'll be glad to hear from
12 you.

13 THE DEFENDANT: Your Honor, with all due respect, if it
14 pleases the Court, sir. This case was presented to the grand
15 jury on direct presentation without my knowledge in 2012, sir.
16 At the time, the grand jury enhanced my crime from second-
17 degree burglary non-violent to first-degree burglary. On July
18 31st, 2014, Solicitor McElveen filed a notice of intent to seek
19 life in prison without my knowing. At -- at -- at that time,
20 I was presented at the hearing -- at that time, I was not
21 present at either one of my hearings, nor did I have a lawyer
22 present for me, Your Honor, because the Public Defender Office
23 has refused two of my applications for a public defender.

24 THE COURT: Who is -- they've done what with your
25 application?

1 THE DEFENDANT: They refused it. On this -- on this
2 case, they refused two of my applications for a public
3 defender. I was not represented by an attorney at that -- at
4 either one of those hearings, Your Honor.

5 THE COURT: Okay.

6 THE DEFENDANT: It appears that Ms. McElveen has used the
7 color of law to violate my Fifth Amendment, my Sixth Amendment
8 -- the Fourteen -- Fourteenth Amendment and the Rules of
9 Criminal Procedure. South Carolina Rules of Criminal
10 Procedure, sir, Rule 5(e) and 2, disclosure by prosecution
11 within ten days after defendant serves notice, but in no event
12 less than ten days before trial, or as the Court may direct
13 otherwise. I was not presented.

14 THE COURT: You weren't presented with what, sir?

15 THE DEFENDANT: I was not presented with any disclosure
16 of this case, sir.

17 THE COURT: Okay. Are you talking about discovery or are
18 you talking about --

19 THE DEFENDANT: Discovery.

20 THE COURT: Okay. Have you given him or his past
21 attorneys the proper discovery responses, Ms. McElveen?

22 MS. MCELVEEN: Your Honor, if I may just go through a
23 little bit of the timeline? Anticipating this, I can answer
24 your questions.

25 First of all, Mr. Duren bonded out of jail and he did --

1 he was rejected from the Public Defender's Office and then
2 reapplied July 25th, 2012. He's rejected again August 13th,
3 2012. And then when he accrued more burglary charges and he
4 got put back in jail, his bond was denied.

5 And at that point, I made sure to follow up with the
6 Public Defender's Office. On January 7th, 2013, he went back
7 down to the Public Defender's Office to reapply. I think his
8 parents did. And Mr. Murphy said that he would definitely
9 approve him. At one point, Mr. Murphy --

10 THE COURT: And just to make sure that the record
11 reflects, Mr. Murphy is a lawyer in the Public Defender's
12 Office.

13 MS. MCELVEEN: Yes, sir. At one point, Mr. Murphy did
14 represent him, and then Jacob Smith, who was formerly with the
15 Public Defender's Office, as well. On August 13th, 2014, we
16 served discovery on Attorney Jacob Smith.

17 After that, Your Honor, Mr. Duren requested -- was not
18 able to work with his lawyers and requested that he be able to
19 represent himself. On March 25th, 2015, Judge Cothran
20 certified him as pro se. On January 22nd, 2015, two months
21 before that, I myself gave a copy of his whole file to Mr.
22 Duren in the courtroom to make sure that he had discovery.
23 And then --

24 THE COURT: And what date was that?

25 MS. MCELVEEN: January 22nd, 2015. So that's the second

1 time we provided him with discovery. On March 25th, 2015, the
2 date he got certified --

3 THE COURT: Wait -- you've got to slow down just a little
4 bit.

5 MS. MELVEEN: Okay.

6 THE COURT: I know you're familiar with the dates, but
7 I'm not. January 22, 2015, you say you gave discovery
8 directly to Mr. Duren in the courtroom?

9 MS. MELVEEN: Yes, sir, on the record.

10 THE COURT: All right. And go ahead.

11 MS. MELVEEN: And then March 25th -- two months after
12 that, March 25th, 2015, is when Judge Cothran again officially
13 certified him as pro se after -- in January, he let his
14 attorney know that he did not wish to have him represent him.
15 So March 25th, 2015, I brought him over and served him with a
16 life without parole notice.

17 THE COURT: And that was what date?

18 MS. MELVEEN: March 25th, 2015.

19 THE COURT: You served Mr. Duren in the courtroom?

20 MS. MELVEEN: Yes, sir.

21 THE COURT: On the record?

22 MS. MELVEEN: Yes, sir, in front of Judge Cothran with a
23 life without parole notice based upon his two -- his two prior
24 violent -- I'm sorry -- his two prior serious offenses. There
25 are three: arson second degree from 2002, and two prior

1 burglary second degree violent from 2002, along with a --
2 certified copies of those sentencing sheets. And I also
3 served a direct presentment as to the defendant for burglary
4 first degree.

5 At that point, Your Honor, after that fact, I realized
6 that his prior convictions are not enough to get up to a
7 burglary first degree since he did not break into a dwelling.
8 I realized that the original charge was the proper charge,
9 burglary second degree violent. That does not change his life
10 without parole status. He still has two prior serious
11 convictions.

12 And so on April 7th, 2015, in front of Judge McMahon, I
13 served Supplemental Rule 5, which included a SLED DNA analysis
14 report, so that he made sure I served it on him in person to
15 make sure he had a copy of that report. Judge McMahon also
16 denied defendant's motion to dismiss, and the defendant told
17 the judge that he had no discovery issues because I made sure
18 to go over discovery at that date as well. May 13th, 2015 --

19 THE COURT: Wait a second. That's last week?

20 MS. MCELVEEN: Yes, sir. Just to make sure we were ready
21 for trial, I brought the defendant before the Honorable
22 Ferrell Cothran. I went over discovery and attorney issues
23 again. Served him with a corrected burglary second violent
24 indictment and with -- even though it was a lesser offense, I
25 actually gave him a direct present notice, and made sure to

1 include a certified true-billed copy of the new -- the
2 original indictment, the new -- the original charged
3 indictment and it was re-presented to the grand jury.

4 We went over discovery and attorney issues again with
5 Judge Cothran, and the defendant stated that he is okay with
6 the attorney issues and he was concerned only about the copies
7 of the photos that were used in this case, and I handed him
8 color copies of all the photos that we knew we were going to
9 use in this case.

10 THE COURT: All right. Mr. Duren?

11 THE DEFENDANT: Yes, sir, Your Honor. If it please the
12 Court, Your Honor.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: On the re-indictment of burglary second
15 that was served on me on May the 13th, given to me by Ms.
16 McElveen at the court, another indictment, I looked up the
17 statute on that burglary second, Your Honor, and the statute
18 states that burglary second is punished by imprisonment for
19 not more than fifty years.

20 THE COURT: Fifteen.

21 THE DEFENDANT: Fifteen years. But section two on that
22 stated that the burglary is committed by a person with a prior
23 record of two or more convictions for burglary or
24 housebreaking or a combination of both. This -- and it says
25 up to -- it only carries up to fifteen years, not a life

1 sentence, sir, with two burglary second, with two or more
2 prior burglaries. And that's the 2014 statute off the South
3 Carolina Rules of Criminal Procedure.

4 THE COURT: All right. Ms. McElveen, is burglary in the
5 second degree violent a -- classified as a serious offense
6 under state law?

7 MS. MCELVEEN: Yes, sir.

8 THE COURT: And if he is convicted of this, how many
9 serious offense convictions will he have?

10 MS. MCELVEEN: This would be his fourth.

11 THE COURT: It would be his fourth? All right.

12 MS. MCELVEEN: And so under the three -- or under the
13 two-strike law, which is pursuant to Section 17-25-45,
14 subsection (a) --

15 THE COURT: Isn't it 145 or is it 45?

16 MS. MCELVEEN: It might be 145, Your Honor.

17 THE COURT: Okay. Whatever the case is, this is a
18 serious or most serious? This is --

19 MS. MCELVEEN: I believe --

20 THE COURT: You said two strikes.

21 MS. MCELVEEN: I'm sorry. This is --

22 THE COURT: It's the three-strikes law.

23 MS. MCELVEEN: Three strikes, I'm sorry.

24 THE COURT: Okay.

25 MS. MCELVEEN: And he's got the arson second degree, and

1 two --

2 THE DEFENDANT: Excuse me, Your Honor?

3 MS. MCELVEEN: -- burglaries second degree violent.

4 THE DEFENDANT: Excuse me, Your Honor. The arson does
5 not play in this burglary part, Your Honor.

6 THE COURT: Okay. All right. I'll come back to you in
7 just a second.

8 THE DEFENDANT: Yes, sir.

9 MS. ELVEEN: So under those prior serious convictions,
10 the State is entitled to seek life without parole.

11 THE OCURT: Okay. Yes, sir?

12 THE DEFENDANT: But the South Carolina State Code -- and
13 you can read the history of it, sir. 1985 Act -- section 2 --
14 210 Act --

15 THE COURT: Okay. What is the code section? 16-3 --
16 excuse me -- 16-11-312?

17 THE DEFENDANT: I believe it is, sir.

18 THE COURT: All right.

19 THE DEFENDANT: It doesn't carry a life -- a life without
20 parole, sir. I've looked myself at the -- from the legal
21 kiosk at the Sumter County Corrections Center.

22 MS. MELVEEN: Your Honor, if he'd look at 17-25-45,
23 subsection (b), that is the Three-Strikes Law.

24 THE COURT: Okay. All right. What's your next motion,
25 Mr. Duren?

1 THE DEFENDANT: Oh, sir, I have one more thing on this.

2 THE COURT: Okay. Sure.

3 THE DEENDANT: Your Honor, I've been -- I've been
4 prepared for this case of first-degree burglary for almost
5 three years now, sir. I have all -- I had all my defense and
6 everything built around this case. And then on May the 13th, I
7 was given this re-indictment by Ms. McElveen two business days
8 before trial. And the Code specifically says that all things
9 is supposed to be done within ten days before trial according
10 to -- I'm new at this, Your Honor.

11 THE COURT: I understand.

12 THE DEFENDANT: On Rule 5 disclosed by the prosecution
13 within ten days after defendant is served notice, but in no
14 event less than ten days before trial as directed otherwise.
15 Two business days is not enough time to get ready for trial,
16 Your Honor.

17 THE COURT: Okay. And the -- and you said you've been
18 preparing for first-degree burglary and that the second-degree
19 burglary indictment was served less than ten days ago?

20 THE DEFENDANT: Yes, sir. It was just served last week,
21 Your Honor.

22 THE COURT: All right. Ms. McElveen?

23 MS. MCELVEEN: Yes, sir. Your Honor, the only difference
24 between first-degree and second-degree burglary is there's --
25 actually, first degree just requires that you broke into a

1 home, second degree requires that you break into another
2 business or building. And, Your Honor, that's the charge he
3 was originally served with. It's actually a less or reduced
4 charge from what we direct presented him on, and there really
5 is not much of a difference besides the type of building.
6 Just in an abundance of caution, I did serve him with the
7 direct present notice just as an abundance of caution, but
8 technically it's a lesser offense, Your Honor.

9 THE COURT: All right. Mr. Duren?

10 THE DEFENDANT: Your Honor, with all due respect, Your
11 Honor, if it please the Court, Ms. McElveen -- she is a
12 graduate law student. She is a lawyer. She's been working
13 with the Solicitor's Office all these years. It takes three
14 years to find out that you have charged the person with the
15 wrong charge?

16 Your Honor, this all came about after -- after my
17 attorney, Mr. Jacob Smith, brought me three -- three pleas
18 from the Solicitor's Office and I turned down all three. This
19 only came after that when I refused to take the plea. This is
20 not a game. This is my life that the Solicitor's Office is
21 playing with. And the only thing that I request that the
22 original charge be reinstated of first-degree burglary.
23 That's all I ask of the Court.

24 THE COURT: Well, let me ask you this? What part of Rule
25 5 does this come under?

1 THE DEFENDANT: Rule 5, Rules of Criminal Procedure, Rule
2 5(e), as to disclosure by prosecution within ten days after
3 defendant served his notice, but in no event less than ten
4 days before trial, or as the Court may direct otherwise. The
5 prosecution shall serve upon the defendant or his attorney the
6 names and addresses of witnesses upon whom the State intends
7 to rely to establish defendant's presence at the scene of the
8 alleged crime.

9 THE COURT: So you're saying that the service of the
10 indictment less than ten days ago is a violation of Rule 5(e)?

11 THE DEFENDANT: Yes. Also Rule 5(c), Continuing Duty to
12 Disclose. If prior to or during trial a party discovers
13 additional evidence or material previously requested or
14 ordered which is subject to discovery or inspection under this
15 rule, he shall promptly notify the other party or his attorney
16 or the Court of the existence of the additional evidence or
17 material.

18 THE COURT: Okay. All right. I have -- all right. You
19 finished with that particular motion? I'm going -- and again,
20 I'm going to make my rulings on all of them at the same time.
21 What's your third motion?

22 THE DEFENDANT: Third motion is motion to suppress DNA
23 swab taken by Detective Melton.

24 THE COURT: To suppress the swab taken from you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. The basis for that? Was there a
2 *Schmerber* order, Ms. McElveen?

3 MS. MCELVEEN: Your Honor, not in this case. In the
4 other two, defendant consented to a buccal swab. We have the
5 form that he signed. There's a witness. Detective Melton and
6 Detective Osteen were present when he consented.

7 THE COURT: All right.

8 MS. MCELVEEN: They took the swab. There were *Schmerber*
9 orders in the next two cases, but not this one because he
10 consented.

11 THE COURT: All right. Now, just hand those up. She's
12 handing up materials from Mr. Duren, which appears to be a
13 copy of the DNA collection statute, a consent signed by Mr.
14 Duren on May 31, 2012, in an arrest or in conjunction with an
15 arrest warrant. Looks like it appears to be in this case.
16 And a handwritten motion from Mr. Duren.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Duren, what's your objection
19 based on?

20 THE DEFENDANT: My objection is based on that he
21 collected this swab under the color of law, sir. DNA was
22 collected by Detective Melton when he had no right to -- after
23 consent was given. I did give consent, Your Honor. I did
24 give consent, but I also told Detective Miller at that time
25 even though I gave consent, and the paper that you have

1 specifically said that swab was only to be taken by a
2 certified doctor/nurse. And I'm quite sure that Mr. Melton is
3 not a certified doctor/nurse. This was put in place by their
4 department -- their department to stop the tampering with of
5 evidence. That's not my statement. That is in black and
6 white, Your Honor, right there. It says a certified doctor or
7 nurse.

8 THE COURT: It says: I hereby -- and we'll mark this as a
9 Court's Exhibit Number 1. I hereby give consent for the
10 Sumter Police Department to obtain such samples through a
11 medical doctor/nurse.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Ms. McElveen?

14 MS. MCELVEEN: Your Honor, the medical doctor or nurse
15 policy goes as far as blood.

16 THE DEFENDANT: No.

17 MS. MCELVEEN: Which is intrusive.

18 THE COURT: Wait just a second. Don't interrupt her.

19 THE DEFENDANT: Okay.

20 MS. MCELVEEN: It's more intrusive and obviously the
21 police department would never engage in such an intrusive
22 action as far as drawing blood. However, saliva is something
23 that is easily done through a safe and reliable practice and
24 can be done by anyone, Your Honor..

25 THE COURT: All right. Yes, sir?

1 THE DEFENDANT: The order specifically says saliva or
2 blood by a certified doctor/nurse.

3 THE COURT: Well, it doesn't say certified. It says
4 medical doctor/nurse --

5 THE DEFENDANT: Medical doctor/nurse. And at that time
6 the sample was taken, it was taken at the Sumter Lee Regional
7 Correctional Facility and they do have medical trained --
8 trained medical personnel there.

9 THE COURT: All right. But it --

10 THE DEFENDANT: And also --

11 THE COURT: Wait just a second. Ms. McElveen, does the
12 State stipulate that Detective Melton procured -- excuse me --
13 was responsible for taking the sample?

14 MS. MCELVEEN: Yes, sir.

15 THE COURT: Does the State stipulate that the sample was
16 not taken by a medical doctor or a nurse?

17 MS. MCELVEEN: Yes, sir.

18 THE COURT: Okay. Go ahead. Mr. Duren, you can
19 continue.

20 THE DEFENDANT: Also, Your Honor, that sample was given
21 under duress because, at that time, I had a PR bond for
22 burglary second. I was told by Detective Melton -- and I do
23 not have that, but I was told by Detective Melton that, if I
24 did not give that swab, he was going to the judge to have my
25 bond revoked. And the only reason that I signed that to give

1 it to them, to have a PR bond because I was doing thirty days
2 trial -- thirty days on a misdemeanor and I didn't want my
3 bond revoked, to get no bond or a high bond.

4 THE COURT: Did you have an attorney at the time?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. All right. So Detective Melton
7 told you that if you did not consent, he would try to have
8 your bond revoked?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Okay. All right. You can continue.

11 THE DEFENDANT: I just ask the Court to take into
12 consideration and have this suppressed.

13 THE COURT: All right. That's -- that's your DNA motion.
14 Ms. McElveen, will you please call Detective Melton to the
15 stand so you can question him --

16 MS. MCELVEEN: Yes, sir.

17 THE COURT: -- about the taking of the sample and any --
18 address the allegations of duress. And, Mr. Duren, you'll
19 have the right to question Detective Melton after Ms. McElveen
20 finishes.

21 MS. MCELVEEN: And, Your Honor, I believe Detective
22 Osteen is supposed to be on the way as he witnessed --

23 THE COURT: Okay.

24 MS. MCELVEEN: -- the sample. I believe he's on the way.

25 THE CLERK: State your name, please.

1 JOHN MELTON: John Melton.

2 THE CLERK: Do you solemnly swear or affirm the testimony
3 you give this Court will be the truth, the whole truth, and
4 nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: And while -- while he's taking the stand, I'm
7 going to mark this. Mr. Duren, I'm going to mark this consent
8 form as an exhibit. Okay?

9 (WHEREUPON, the consent form was marked as Court's
10 Exhibit Number 1.)

11 THE CLERK: State your name and spell your last for the
12 record.

13 THE WITNESS: My name is Detective John Melton, M-e-l-t-
14 o-n.

15 THE COURT: Wait just a second.

16 THE WITNESS: Yes, sir. I apologize.

17 THE COURT: That's okay. She's going to mark that.

18 MS. MCELVEEN: Your Honor, if you would like, that's got
19 a warrant on the back it looks like photocopied.

20 THE COURT: It's not going to the jury.

21 MS. MCELVEEN: Okay. I just wanted to make sure.

22 THE COURT: Yet anyway. If it ends up going to the jury,
23 we'll deal with it then. Okay?

24 MS. MCELVEEN: Yes.

25 THE COURT: And I'll hand you -- if you need to use this

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 Ms. McElveen, it's right here.

2 JOHN MELTON, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MCELVEEN:

6 Q: Did you have the opportunity to interview Mr. David Duren
7 regarding a burglary second degree violent on May 31st of 2012?

8 A: I did.

9 Q: Where did you interview him?

10 A: The Sumter Lee Regional Detention Center.

11 Q: What -- did you fill out any forms? Are there normal
12 forms that you would sign and have someone sign if you
13 interviewed them?

14 A: Yes. After a suspect is arrested, before any interview
15 takes place we do what's called a Miranda waiver form or
16 Miranda rights form, where it is read to, as well as a copy
17 and verbal writing is placed before the defendant in the case.

18 Q: And did Mr. Duren -- was he presented with one of these
19 and signed it?

20 A: Yes, he did.

21 Q: I'm going to hand you --

22 MS. MCELVEEN: Would this be Court's exhibit or State's
23 exhibit?

24 THE COURT: Court's exhibit. What are you handing him?

25 MS. MCELVEEN: This is a different form. This is a

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 different form, I believe.

2 THE COURT: Well, it will be State's Number 1 for ID, but
3 what are -- are you going into a statement he gave or you
4 going into the consent?

5 MS. MCELVEEN: The consent.

6 THE COURT: Okay. You can call that State's 1 for ID.
7 Let Margaret mark it, please.

8 (WHEREUPON, the Miranda consent form was marked as
9 State's Exhibit Number 1 for identification.)

10 BY MS. MCELVEEN:

11 Q: I'm handing you --

12 THE COURT: Show it -- show it to Mr. Duren.

13 BY MS. MCELVEEN:

14 Q: I'm handing you what's been marked as State's Exhibit 1
15 for identification purposes only. Can you identify that?

16 A: Yes, I can.

17 Q: What is that?

18 A: This is the Sumter Police Department interview form, also
19 known as a Miranda form.

20 Q: Does that indicate that Mr. Duren -- were you there when
21 Mr. Duren signed that paper?

22 A: Yes, I was. My signature and badge number is on it.

23 Q: Was there another witness present in the room?

24 A: Yes. Cory Osteen.

25 Q: Did he indicate he wished to waive his rights and speak

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 with you?

2 A: Yes, he did. He actually signed it down here, dated 31
3 May, time 3:53 p.m.

4 Q: Did he -- did you guys speak about him giving a buccal
5 swab?

6 A: I tried to speak with him about the crime, as my notes or
7 my report indicates that I turned in. He didn't have anything
8 to say other than he didn't do it. That he had recently come
9 back to South Carolina and that he wanted to give a buccal
10 swab to prove that it wasn't him.

11 Q: So he actually desired to give it? He brought it up
12 first?

13 A: I -- I don't remember that now. I don't remember whether
14 he did or whether I did.

15 Q: And I'm going to hand you what's been marked as Court's
16 Exhibit 1. What is this item?

17 A: This is a Sumter Police Department Consent to Give
18 Samples for Analysis form.

19 Q: Were you present -- did you present that to Mr. Duren?

20 A: I did.

21 Q: Did he sign it?

22 A: He did.

23 Q: What time did he sign that?

24 A: At 4:15 p.m.

25 Q: So this is twenty-two minutes later or twenty -- twenty

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 minutes or so later?

2 A: Yes, ma'am.

3 Q: Did you threaten him in any way?

4 A: I would never do that.

5 Q: Did you tell him that if he did not give the sample you
6 would ask to have his bond revoked?

7 A: I don't recall saying any of that.

8 Q: And was his bond already in place? There was already a
9 bond set?

10 A: I believe so. I'm not sure. I can't answer that.

11 Q: Was there a witness in the room with you?

12 A: Officer Osteen.

13 Q: Did he sign this form as well?

14 A: He did.

15 Q: Did Mr. Duren appear to be under the intoxication of any
16 medicine, alcohol, drugs, or otherwise inhibited from giving
17 consent?

18 A: Uh-uh.

19 Q: Can you answer with a yes or no?

20 A: I apologize. No, ma'am. Sorry.

21 Q: And after he gave consent, what is the general policy for
22 collecting saliva?

23 A: We keep DNA kits. It is basically the way I would phrase
24 them. It is an envelope. It's got a piece of evidence tape
25 in it. It's got a little box that you would make. It's got a

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 sterile swab that's inside of a sealed and closed container
2 just like they would use at the hospital, and then we always
3 take rubber gloves as well.

4 Q: Do you collect the saliva?

5 A: I've collected it probably over a hundred times.

6 Q: Do you collect blood?

7 A: Never. Only if it would be at a crime scene that we were
8 processing, not directly from an individual.

9 Q: So you've never collected blood from an individual?

10 A: Not -- it would be drawing blood. I think on one
11 occasion I may have swabbed some dried blood off of somebody's
12 person.

13 Q: Okay. But not taken a needle and drawn blood?

14 A: Never. I would have no idea how to even do that.

15 MS. MCELVEEN: Thank you. I have no further questions
16 for you at this time.

17 THE COURT: All right. Mr. Duren, you can question the
18 witness.

19 CROSS-EXAMINATION

20 BY THE DEFENDANT:

21 Q: Detective Melton, you have worked burglary cases before,
22 haven't you?

23 A: I heard the first part --

24 Q: You've had a bunch of burglary cases before, haven't you?

25 A: Yes, sir. I have had burglary cases.

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: And how many of those have Judge Gibson denied bond on?

2 A: I would have no idea on that.

3 Q: I would say zero to none. Do you remember where you gave
4 this swab test at?

5 A: I do not.

6 Q: Do you not remember when --

7 A: I just know it's at the jail because of my chain of
8 custody.

9 Q: You don't know where at the jail?

10 A: Uh-uh.

11 THE COURT: You need to answer.

12 THE WITNESS: I'm sorry.

13 BY THE DEFENDANT:

14 A: No, sir. I couldn't tell you the exact place at the
15 jail. I just know it was at the jail because of my chain of
16 custody.

17 Q: Have you ever -- have you requested any more swabs from
18 Mr. Duren?

19 A: Yes, sir, I did. I did request swabs. I had to get
20 Attorney McElveen because you did not provide a swab and we
21 had to do -- I believe it's called a *Schmerber* Order before
22 another Circuit Court judge and we were -- we had to obtain
23 your DNA that way. And at that time, you said that you had
24 already provided us with a sample, sir, and that you weren't
25 giving any further samples.

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: So if he refused to give you a swab a second and third
2 time, don't you think he refused to give you a swab the first
3 time?

4 A: I don't -- if that's a question, I don't understand.

5 Q: Did I refuse to give you a swab the first time that you
6 came down to the jail?

7 A: No, sir, you didn't. This is the form that you signed.

8 Q: I know --

9 THE COURT: Wait, wait, wait, wait. Mr. Duren, don't
10 interrupt him. Okay? He's not going to interrupt you; you're
11 not going to interrupt him. Go ahead.

12 THE DEFENDANT: I apologize, sir.

13 THE COURT: That's okay. I understand. Ask him the
14 question again, please.

15 BY THE DEFENDANT:

16 Q: Didn't I refuse to give you a swab the first time?

17 A: No, sir. Here's the form you actually signed to give a
18 voluntarily consent after you completed a Miranda rights form
19 knowing your rights.

20 Q: I understand I signed -- I'll admit I signed the form.

21 I'll admit that. I'll admit that. You don't remember
22 threatening me about getting my bond revoked?

23 A: No, sir. Not at all.

24 Q: You don't remember threatening Richard Porchet about
25 getting his bond -- about getting him -- his swab -- swab

JOHN MELTON - CROSS BY THE DEFENDANT

1 test?

2 A: I don't even know who Richard Porchet is, sir.

3 Q: You know there is numerous of inmates at the jail that
4 you have threatened, and I --

5 MS. MCELVEEN: Objection.

6 THE DEFENDANT: And I --

7 THE COURT: Wait just a second. Wait just a second.

8 THE DEFENDANT: And I --

9 THE COURT: Wait, wait. You ask questions, first of all,
10 subject to any irrelevance objection, you can't make a
11 statement --

12 THE DEFENDANT: Okay.

13 THE COURT: -- to the witness. You must ask him a
14 question.

15 THE DEFENDANT: Okay.

16 THE COURT: Okay?

17 BY THE DEFENDANT:

18 Q: Excuse me. Excuse me, Detective Melton. Aren't there
19 numerous of inmates at Sumter Lee Correctional Center that you
20 have threatened if you didn't get a DNA swab you was going to
21 do something to?

22 A: Going to do something to them? Do something like what?

23 Q: Like boost up their charge.

24 A: I don't -- I'm a fact finder, Mr. Duren. The charge is
25 what it is. You know, I'm trying to figure out exactly where

JOHN MELTON - CROSS BY THE DEFENDANT

1 you're going with this.

2 THE COURT: No, you don't figure out where he's going.
3 He's asking you --

4 THE WITNESS: Okay.

5 THE COURT: -- if you've ever threatened an inmate or
6 somebody at the jail if they didn't give you a swab. That's
7 the question. Okay. You can answer that.

8 THE WITNESS: Okay.

9 BY THE DEFENDANT:

10 A: As far as that goes, I have never said I would boost up
11 your charge or make a higher charge if you do not give DNA.

12 Q: Excuse me. Let me rephrase the question. Have you
13 threatened any other inmates at Sumter Lee Correctional
14 Center?

15 A: Threatened? Like I've --

16 Q: Have you threatened?

17 THE COURT: You can -- you need clarification?

18 THE WITNESS: I was trying --

19 THE COURT: Okay. Clarify your question, please, sir,
20 what you mean by threatened?

21 BY THE DEFENDANT:

22 Q: Have you made any negative accusations toward their
23 charges of other inmates at Sumter Lee Correctional Facility?

24 A: I think the question you're asking if I've ever
25 threatened another inmate at the facility?

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: That's what I asked you the first time.

2 A: I have never threatened to do physical harm to any
3 inmate. I think with regard to the buccal swab, what you're
4 referring to is either give a buccal swab or you don't. If
5 you don't, I'll get a *Schmerber* from the Court just like I did
6 in your case, Mr. Duren. That -- that's our procedure.
7 That's our policy.

8 Q: Okay. Honestly, your procedures -- am I correct -- are
9 procedures at the Sumter County Police Department is no
10 detective can take a swab? I've spoken with other detectives
11 and they told me that they are not --

12 MS. MCELVEEN: Objection.

13 BY THE DEFENDANT:

14 Q: -- allowed to take a swab.

15 MS. MCELVEEN: Statement making, hearsay, not asking a
16 question.

17 THE COURT: Okay. All right. You can ask him the
18 question. Is it true or not true that detectives can or
19 cannot take swabs?

20 BY THE DEFENDANT:

21 Q: Is it true or not true that detectives at the Sumter
22 County -- at the Sumter City Police Department can take swabs?

23 A: That we can take swabs?

24 Q: That you cannot take swabs?

25 A: That we cannot? We can take DNA buccal swabs as far as

JOHN MELTON - CROSS BY THE DEFENDANT

1 saliva goes. I was trained to do that when I was learning how
2 to be a detective. Detectives are still trained how to do
3 that. We still currently do that all the time.

4 THE DEFENDANT: No further questions.

5 THE COURT: Anything else, Ms. McElveen, of Detective
6 Melton?

7 MS. MCELVEEN: Nothing, Your Honor.

8 THE COURT: All right. Just to make sure the record is
9 complete, do you draw -- do you take hair samples?

10 THE WITNESS: I've never taken a hair sample off an
11 inmate, Your Honor. Only thing I know how to do is saliva
12 concerning a buccal.

13 THE COURT: All right. You can step down. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Any additional witnesses on the issue of
16 consent, Ms. McElveen?

17 MS. MCELVEEN: Yes, sir. The State would call Cory
18 Osteen.

19 THE COURT: All right. Mr. Osteen, come up and be sworn
20 please.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right hand and state your name, please.

23 THE WITNESS: Cory Osteen.

24 THE CLERK: Do you solemnly swear or affirm the testimony
25 you give this Court will be the truth, the whole truth, and

CORY OSTEEN - DIRECT BY MS. MCELVEEN

1 nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Thank you. Come around, sir.

4 THE CLERK: State your name and spell your last for the
5 record.

6 THE WITNESS: Cory Osteen. O-s-t-e-e-n.

7 CORY OSTEEN, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MCELVEEN:

11 Q: Now, what is your rank?

12 A: At this point in time, I'm a lead corporal.

13 Q: Lead Corporal? Lead Corporal Osteen, I'm handing you
14 State's Exhibit 1 for identification purposes only. Were you
15 present for the interview of Mr. David Duren on May 31st, 2012?

16 A: I was.

17 Q: Were you -- who else was present in the room?

18 A: That would be Detective John Melton.

19 Q: Did you witness that sheet in front of you being signed?

20 A: I did.

21 Q: Who signed it?

22 A: Mr. David Duren.

23 Q: Did you sign that sheet as well?

24 A: I did. I signed as a witness.

25 Q: Did he seem to be under any sort of threat or was anybody

CORY OSTEEN - DIRECT BY MS. MCELVEEN

1 being aggressive towards him or making threats towards him
2 when he signed that sheet?

3 A: Absolutely not.

4 MS. MCELVEEN: And, Your Honor --

5 BY MS. MCELVEEN:

6 Q: Lead Corporal Osteen, I'm going to hand you Court's
7 Exhibit 1. Were you present for the signing of that sheet as
8 well?

9 A: Yes, ma'am, I was.

10 Q: Was that done at the same time, that same interview?

11 A: This was.

12 Q: Did Mr. Duren indicate that -- did you ever hear any
13 threats being made toward Mr. Duren or any sort of
14 intimidation being used against Mr. Duren?

15 A: Absolutely not.

16 Q: Did Mr. Duren consent to give a buccal swab?

17 A: He did.

18 Q: And did you sign the sheet indicating that?

19 A: I witnessed the entire incident, yes, ma'am.

20 Q: Did you witness the buccal swab being collected?

21 A: I did.

22 Q: Was Mr. Duren ever threatened that his bond would be
23 revoked if he refused to give a buccal swab?

24 A: Mr. Duren was not threatened at all.

25 MS. MCELVEEN: Thank you. I have no further questions.

CORY OSTEEN - CROSS BY THE DEFENDANT

1 Please answer any questions the Defendant may have for you.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY THE DEFENDANT:

5 Q: Corporal Osteen?

6 A: Yes, sir.

7 Q: Do you have any recollection where that swab was given
8 at?

9 A: The Sumter Lee Regional Detention Center.

10 Q: Do you have -- do you have any recollection where?

11 A: The only time we will ever collect swabs from an inmate
12 at the -- at the detention center would be in the holding cell
13 for the pod they were placed.

14 Q: Do you remember where it was in the holding cell or the
15 pod?

16 A: I do not recall what pod you were in at that point in
17 time, no, sir.

18 Q: Okay. Do you remember the conversation that took place
19 between me and Detective Melton?

20 A: Word for word, no, sir.

21 Q: Word for word? Okay. Do you remember -- where did you
22 get the testing kit from for the swab?

23 A: I didn't --

24 Q: Did you have it with you?

25 A: I didn't get it at all, sir.

CORY OSTEEN - CROSS BY THE DEFENDANT

1 Q: Okay. Do you remember where Detective Melton got it
2 from?

3 A: He brought it in from our -- from our investigations
4 department.

5 Q: He brought it in with him to the jail?

6 A: Yes, sir.

7 Q: In the jail?

8 A: He brought it into the jail, yes, sir.

9 Q: So if I go back -- if I go back to that date that he took
10 that buccal swab and get the -- I'm going to request the film
11 from that date. If I go back and get the film, you said he
12 brought it in with him to get the swab?

13 A: Yes, sir.

14 THE DEFENDANT: No further questions, Your Honor. But,
15 Your Honor, I would like to have that tape subpoenaed from
16 that date, Your Honor -- from the jail, Your Honor.

17 THE COURT: All right. I'll cover that in just a minute.

18 THE DEFENDANT: All right.

19 THE COURT: But, Ms. McElveen, do you have any follow-up
20 questions?

21 MS. MCELVEEN: Nothing, Your Honor.

22 THE COURT: All right. You can step down, sir. Leave
23 the exhibits up there. All right. Any additional witnesses
24 on this point?

25 MS. MCELVEEN: No, sir.

1 THE COURT: Mr. Duren, would you like to offer any
2 testimony or present any witnesses on this issue?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: All right. Your fourth motion?

5 THE DEFENDANT: One second, Your Honor. I've got them
6 all mixed up in here.

7 THE COURT: Okay.

8 THE DEFENDANT: Your Honor, I have a question to ask you,
9 Your Honor, before I present this motion. A warrant is for
10 the information after it's signed; correct, Your Honor?

11 THE COURT: I know what a warrant is, Mr. Duren. I don't
12 know what the technical definition of information would be.

13 THE DEFENDANT: I think it's for -- a warrant is for the
14 information. I would like a motion to suppress the warrant,
15 Your Honor.

16 THE COURT: The warrant in this particular case?

17 THE DEFENDANT: The warrant in this case, second-degree
18 burglary, Your Honor.

19 THE COURT: All right. And what do you mean by
20 suppressing the warrant?

21 THE DEFENDANT: To dismiss the warrant.

22 THE COURT: Okay. And the basis for that?

23 THE DEFENDANT: The basis for that is South Carolina Rule
24 21.22, information based on complaint, Your Honor.

25 THE COURT: All right. Rule what?

1 THE DEFENDANT: It's Article 21.22, 415, 479, 467,
2 information based on a complaint.

3 THE COURT: Do you have a copy of that rule that I could
4 maybe --

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: -- look at? The rule itself?

7 THE DEFENDANT: No, it's a -- it's a law, Your Honor.

8 THE COURT: All right. Is it a federal law or a state
9 law?

10 THE DEFENDANT: It's a state law.

11 THE COURT: All right. Let me -- I'll -- let me look at
12 the paper you've handed the bailiff. Article 21.22. You also
13 handed up an April 6th, 2015 --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- letter from the South Carolina Bar.

16 THE DEFENDANT: Yes. That goes along with that, Your
17 Honor. That letter goes along with it.

18 THE COURT: Oh. Talking about whether the magistrates
19 are members of the bar.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Let me -- let me read this. Okay?

22 THE DEFENDANT: Yes, sir.

23 (WHEREUPON, there was a pause in the proceedings.)

24 THE COURT: Okay. I'm not sure what Article 21.22 is.
25 Where is that? Is that in the Constitution or where?

1 THE DEFENDANT: I picked it up on the -- I'm not sure
2 where.

3 THE COURT: And I'm reading from your submission.
4 Information -- and this is what you say Article 21.22 says.

5 Information based upon complaint. No information shall
6 be presented until affidavit has been made by some credible
7 person charging the defendant with an offense. The affidavit
8 shall be filed with the information. It may be sworn to
9 before the district or county attorney, who for that purpose
10 shall have power to administer the oath, or it may be made
11 before any officer authorized to practice law.

12 Okay. It strikes me that the record says a district
13 attorney, which we don't have in this state. We have
14 solicitors. So is this a South Carolina Law?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Ms. McElveen, are you familiar
17 with that law?

18 MS. MCELVEEN: No, sir.

19 THE DEFENDANT: I'd have to go and research it again and
20 read the kiosk tonight. I can bring it back tomorrow.

21 THE COURT: Okay. All right. Do you have anything
22 further on that point?

23 THE DEFENDANT: No, sir. But it -- it states that a
24 magistrate that does -- a magistrate that doesn't have a bar
25 card is not authorized to sign an information. A warrant is

1 called an information after it is signed. You have a
2 complaint first. You have elements of a warrant.

3 THE COURT: Okay. All right. I'm clear on what your
4 what your argument is there. Any response from the State?

5 MS. MCELVEEN: Your Honor, any issues with the original
6 arrest warrant would have been solved by the direct
7 presentment. This was on two different occasions.

8 THE COURT: Okay. All right. Your next motion, Mr.
9 Duren?

10 THE DEFENDANT: That's all the motions I have at the
11 moment.

12 THE COURT: Okay. And just so I'm -- so I'm clear, your
13 first motion is a motion to dismiss based on your claim that
14 the Chief Justice's order dated May 13, 2013, concerning the
15 365-day disposition of cases, you claim that deadline has not
16 been met. That's your first one; right?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: Number two is suppression of the indictment.
19 You said that was presented to the grand jury without your
20 knowledge and that your Fifth, Sixth, and Fourteenth Amendment
21 rights have been violated. And we went over the time line
22 about discovery when you were, as Ms. McElveen said, certified
23 as pro se, and service of the life without parole notice, and
24 you claimed that the new indictment was served less than ten
25 days ago in violation of Rule 5(e) and Rule 5(c).

1 And your third motion is that the DNA swab taken from you
2 should be suppressed or not admitted because it was not taken
3 through a medical doctor or a nurse.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You also claim that consent was given under
6 duress by virtue of Detective Melton telling you that if you
7 did not consent, he would take you before a judge to have your
8 bond revoked.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Detective Melton said that you told him you
11 wanted to give a DNA sample to prove you were not guilty of
12 the offense. And then your last motion is to suppress or
13 dismiss the warrant because it was not obtained -- or the
14 information wasn't presented to a licensed attorney.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Any -- any -- any statements the
17 defendant gave that the State will be seeking to introduce in
18 the trial? Any incriminating statements that you intend to
19 seek introduction of?

20 MS. MCELVEEN: Your Honor, just the buccal -- buccal
21 swab, but also we have to dance around a CODIS hit, Your
22 Honor. So we --

23 THE COURT: Well, CODIS -- a CODIS hit establishes
24 probable cause, which the jury is not going to see or hear.

25 MS. MCELVEEN: Right.

1 THE COURT: So what is it about the CODIS hit?

2 MS. MCELVEEN: What -- what we plan for our detective to
3 -- basically, I'll ask him questions in a way so that it's
4 just saying we got a lead in the case which led us to Mr.
5 Duren and we arrested him and collected a buccal swab. We
6 aren't going to be able to say how we were able to get the
7 lead on Mr. Duren.

8 THE COURT: All right. Mr. Duren, you understand what
9 she's saying?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Any response to that?

12 THE DEFENDANT: No, sir. But if the pleases the Court,
13 Your Honor, I have one last little motion, a short motion.

14 THE COURT: Well, let's talk that first so I can keep it
15 straight in my mind.

16 THE DEFENDANT: Okay.

17 THE COURT: But you don't have anything you want to say
18 about that?

19 THE DEFENDANT: About the buccal swab?

20 THE COURT: No. About the CODIS hit. In other words,
21 there's a DNA database.

22 THE DEFENDANT: All right.

23 THE COURT: Evidently, it had your DNA in it.

24 THE DEFENDANT: I understand.

25 THE COURT: Once a sample from the scene, I assume, comes

1 back and it's a CODIS hit on you, they -- that is used to
2 establish probable cause to get an actual DNA sample from you.

3 THE DEFENDANT: I understand.

4 THE COURT: And then, if things go according to plan,
5 there's a chain of custody for that and it comes in front of
6 the jury. I think that the proper thing to do, Ms. McElveen,
7 will be do what you said, and that is that certain information
8 or just information led them to Mr. Duren and they obtained
9 the DNA -- a buccal swab from him.

10 MS. MCELVEEN: Yes, Your Honor. I just want to make the
11 Court aware, also, the element of the crime is that he has two
12 prior burglary convictions. And looking at case law, we have
13 to put that in. We --

14 THE COURT: All right. You have those -- you have that
15 evidence prepared?

16 MS. MCELVEEN: Yes, sir. We have certified copies of the
17 sentencing sheets from the prior burglary convictions. We
18 will only introduce two of his prior burglary convictions
19 through Detective Melton.

20 THE COURT: All right. Where were those convictions?
21 Here?

22 MS. MCELVEEN: Yes, sir.

23 THE COURT: All right. Any -- any comment about or
24 response to that, Mr. Duren?

25 THE DEFENDANT: Yes, sir. I have another motion to

1 suppress the criminal -- defendant's criminal record, Your
2 Honor.

3 THE COURT: Okay.

4 THE DEFENDANT: Your Honor, if it pleases the Court, Your
5 Honor, the defendant would move that the Court suppress the
6 defendant's record -- the defendant's record from being
7 reviewed because if it is reviewed, it will cause the jury to
8 view the defendant in a way that would cause substantial
9 likelihood of the defendant being found guilty, Your Honor.

10 THE COURT: All right. And you're -- you're talking
11 about just the introduction of the two burglary convictions to
12 establish an element of the crime charged; right, Ms.
13 McElveen?

14 MS. MCELVEEN: Yes, sir. We do not plan on introducing
15 his whole record.

16 THE COURT: Well, you wouldn't be able to in your case in
17 chief. All right. Anything else, Mr. Duren, on that -- on
18 that particular point?

19 THE DEFENDANT: On that particular --

20 THE COURT: On the -- on the -- what Ms. McElveen is
21 claiming, evidently, is that one of the elements of burglary
22 in the second degree violent is that you have been convicted
23 of two or more prior burglaries. Is that right, what your
24 claiming, Ms. McElveen?

25 MS. MCELVEEN: Yes, sir. And under *State v. Hamilton*,

1 327 S.C. 440, the evidence of prior burglary convictions is
2 admissible to prove the prior offense element of first degree
3 and thus second degree burglary as well. Also under *State v.*
4 *Benton*, 338 S.C. 151, the State does not have to stipulate to
5 those. We are allowed to put them into evidence and -- but we
6 are limited to just those required by law. We cannot put them
7 all in under *State v. James*, 355 S.C. 25.

8 THE COURT: All right. Mr. Duren, anything else on your
9 motion to suppress the two prior burglary convictions?

10 THE DEFENDANT: No, sir. That's it, Your Honor.

11 THE COURT: All right. All right. Any other motions
12 that you have?

13 THE DEFENDANT: I just have one motion to subpoena the
14 film from the jail of May 27th, the year that they took the
15 buccal swab, Your Honor. That's the only thing I have.

16 THE COURT: What year was that?

17 MS. MCELVEEN: May 31st, 2012, Your Honor.

18 THE COURT: Okay. I don't have any idea whether or not
19 those things are retained that long. And what would be your
20 reason for doing that?

21 THE DEFENDANT: The reason --

22 THE COURT: To see if Detective Melton brought the buccal
23 swab kit with him?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. I'm going to ask the question of

1 Detective Melton. You're still under oath. Do you bring
2 those samples with you?

3 DETECTIVE MELTON: Yes, sir.

4 THE COURT: Excuse me. Those kits with you?

5 DETECTIVE MELTON: Yes, sir, we do. We bring them right
6 in through the front door. They come from our evidence area,
7 our supply --

8 THE COURT: What do they look like? How big is the box?

9 DETECTIVE MELTON: It is a manila folder. It's about
10 this big, Your Honor. A little envelope, it's sealable. The
11 box is inside of the folder. It has to be folded in some
12 cases and in other cases, it doesn't. I guess it depends on
13 what's most cost effective, but everything is in a manila
14 folder about this big. I cannot tell you whether I came in
15 the back door or front door. Frankly, I don't remember.

16 THE COURT: All right. And if you were walking by a
17 surveillance camera, would it be readily apparent what it was
18 you were carrying?

19 DETECTIVE MELTON: Usually, Your Honor, it would be stuck
20 inside of a stack of paper, like, you know, for example, this
21 manila envelope, I'll just set it up on whatever I'm carrying.
22 Other times, I will actually carry just the envelope. So it
23 could be; it may or may not be.

24 THE COURT: All right. Does the State have any response
25 to the defendant's request that I order the detention center

1 to produce the May 31, 2012, surveillance of Detective Melton
2 going out there?

3 MS. MCELVEEN: Your Honor, we just don't understand the
4 relevancy of that information, if he brought the kit with him
5 or not. It certainly doesn't indicate if he gave consent or
6 not. It really plays no role at all in that.

7 THE COURT: All right.

8 MS. MCELVEEN: So no.

9 THE COURT: Mr. Duren, any response?

10 THE DEFENDANT: Yes, sir. It does play a relevant in the
11 case, Your Honor, because at the time when he first came in
12 there and questioned me and asked me for a swab, I told him
13 no. He threatened to take -- like I said, he threatened to
14 take my PR bond. I said, well, I'll sign it, you can go ahead
15 and get your swab.

16 He said, well, we don't have the kit right here. These
17 were his exact words. He said I don't have a kit now, but
18 I'll be back to get your swab -- to get your swab. He left
19 and went out the back door of the jail. I was in Pod E. He
20 went out the jail. He came back in a few minutes after that,
21 said, oh, I found the swab in the trunk of my -- or kit in the
22 trunk of my car. He did not bring no swab in with him. He
23 only went and got a swab after he had threatened me. He left
24 and said he was going to get a swab and come back. It is very
25 relevant to my case.

1 THE COURT: All right. That --

2 THE DEFENDANT: I --

3 THE COURT: Yes, sir?

4 THE DEFENDANT: I remember it like it was yesterday, Your
5 Honor.

6 THE COURT: Okay.

7 MS. MCELVEEN: Your Honor, Detective Melton says that is
8 quite --

9 THE COURT: Well, I understand. You can't say what he
10 said. Detective Melton, do you keep these kits in your car on
11 occasion?

12 DETECTIVE MELTON: Yes, sir, I do. I've probably got
13 about five or six in my car right now, Your Honor.

14 THE COURT: All right. Mr. Duren, your motion has been
15 made. There are two issues to be determined in this
16 particular context. One is chain of custody, which will be a
17 trial issue. The other would be your claim that it was given
18 under duress.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: It has no relevance to a chain of custody.
21 When he got the kit or whether or not he had one in his car, I
22 don't think -- I don't think it adds anything to that
23 particular equation. It doesn't add anything to the issue of
24 duress. So your motion on that point is denied. Any other
25 motions that you have?

1 THE DEFENDANT: None, Your Honor.

2 THE COURT: All right. The motion to dismiss the
3 indictment under what Mr. Duren has referred to as the 365-day
4 Rule, specifically Chief Justice Toal's order of May 13, 2013,
5 is denied. That order does not mandate a dismissal of
6 charges. It sets a benchmark that the solicitors are to
7 follow, but it doesn't necessarily mandate dismissal. There's
8 obviously no question that it's been almost three years since
9 he was arrested, but dismissal is not mandated under these
10 circumstances.

11 The second motion, the dismissal of the indictment, first
12 of all, based on the ground that it was presented to him ten
13 days -- less than ten days ago certainly doesn't violate Rule
14 5(e), which is the alibi rule. It doesn't violate Rule 5(c),
15 the State's continuing duty to disclose.

16 Mr. Duren was certainly aware for a long time that he was
17 accused of entering the Thomas & Howard building on South
18 Harvin without consent and with the intent to commit a crime
19 therein. Whatever label was put on it, burglary first degree
20 or second degree, certainly does not deprive him of notice of
21 what the basic factual allegations are.

22 To the extent there's any issue about service of the life
23 without parole notice, I have not seen the notice. Perhaps
24 that needs to be made a Court's exhibit, Court's Exhibit 2.
25 Let me see that.

1 MS. MCELVEEN: Yes, sir, Your Honor. I've also got the
2 certified copies of the sentencing sheets that we would be
3 seeking to introduce into evidence.

4 THE COURT: Well, I'm not talking about that now.

5 MS. MCELVEEN: Okay.

6 THE COURT: I don't want to get bogged down on that. I
7 want to see the life without parole notice. Is there a
8 certified copy of it?

9 MS. MCELVEEN: Yes, sir. Right here.

10 THE COURT: Okay. It's clocked in July 31, 2014, a
11 certified copy. And this would be for sentencing purposes
12 only if the defendant ended up being found guilty. This --
13 this was served on him you said on the record on March 25,
14 2015, and also at a prior time?

15 MS. MCELVEEN: Yes, sir. It was served on him March 25th,
16 2015, and I already gave him a copy when he had an attorney as
17 well. I served it on him with his attorney in January -- I'm
18 sorry.

19 THE COURT: January 22?

20 MS. MCELVEEN: January 22nd, 2015. I served him with
21 another copy. That's when he let his attorney -- he noted he
22 did not wish to have his attorney.

23 THE COURT: All right.

24 MS. MCELVEEN: So we served him another time.

25 THE COURT: There appears to be some confusion on the

1 defendant's part about the use of the arson conviction in the
2 State's effort to seek life without parole. The defendant is
3 correct that arson has no relevance in this trial as far as
4 proof of burglary or any enhanced burglary because of a prior
5 record.

6 The arson second-degree conviction would only become
7 relevant if he ends up being found guilty of this burglary and
8 the arson is used as a predicate strike in the State's effort
9 to have him sentenced to life without parole. So that
10 particular motion to suppress the indictment on that basis is
11 denied.

12 The motion to suppress the DNA swab taken from him -- Mr.
13 Duren says that it was not taken, quote, through a medical
14 doctor/nurse. He also claims that consent was given by him
15 under duress because Detective Melton told him if he did not
16 consent, he would take him before a judge to have his PR bond
17 revoked. Detective Melton's testimony was that he may have
18 told him that if he did not consent, he would request that he
19 be taken before a judge to have the sample taken.

20 I find by -- by the weight of the evidence that Detective
21 Melton's testimony is believable that he told him that if he
22 did not give one voluntarily, he would request that a judge
23 hear a motion for a sample to be taken.

24 It's interesting that the consent form says that the
25 buccal swab consent is given if taken through a -- excuse me --

1 - a medical doctor or nurse. I do find that under the
2 circumstances that it was properly taken by Detective Melton.
3 He said he's been trained to do that. I also find that there
4 is no credible evidence of duress.

5 The Article 21.22 point, Mr. Duren, if you find anything
6 else on that particular issue to dismiss the warrant under
7 that particular article, I'll be glad to hear you after lunch,
8 but I don't really know what you're talking about. But if you
9 could find that specific statute -- if you can, and I'm going
10 to look for it to, but at least I'll hold that in abeyance.

11 The motion to suppress your two prior burglary
12 convictions -- Ms. McElveen, you need to listen carefully to
13 this. Under the law, Mr. Duren, the State is permitted in
14 this type of case to introduce to the jury, as elements of the
15 crime only, that you were convicted in the past of a burglary
16 and another burglary. They're permitted to introduce that.

17 The State may not, nor may any witness, imply or argue
18 directly that those prior convictions make it more likely than
19 not that he committed this burglary. Now, that's a fine line
20 that must be walked. The State is permitted -- it sounds kind
21 of counterintuitive, but the State is permitted to introduce
22 the two prior burglaries only to prove the elements of
23 burglary in the second degree violent.

24 But if the State or a witness implies, suggests, or
25 states to the jury that those two prior burglary convictions

1 mean he must be guilty or he's likely to be guilty of these, I
2 will immediately grant a mistrial and other relief may be
3 given to the defendant as well. So make sure that if there's
4 any question, that you ask to have a conference with me
5 outside the presence of the jury before you -- anybody wants
6 to get -- and these are my words -- get fancy with that.
7 Okay? The State is not required to stipulate that those two
8 burglaries come in as elements of the crime charged.

9 All right. I believe, Mr. Duren, all of your positions
10 have been put on the record. I will tell you that if -- when
11 the jury is in the courtroom, if you want to continue to
12 object to those, you are not going to offend me, you're not
13 going to hurt my feelings. You have every right to object.
14 All right?

15 THE DEFENDANT: I have one last question.

16 THE COURT: Yes, sir?

17 THE DEFENDANT: For the record, Your Honor, am I a human,
18 Your Honor?

19 THE COURT: I can't answer that, but you look like one.

20 THE DEFENDANT: Am I a human, Your Honor, for the record?

21 THE COURT: I'm not -- I'm not going to get into a
22 philosophical discussion about your being.

23 THE DEFENDANT: No further questions, Your Honor.

24 THE COURT: All right. Yes, sir?

25 THE DEFENDANT: I do have one last thing here, Your

1 Honor.

2 THE COURT: Yes, sir?

3 THE DEFENDANT: On April the 13th, 2015, I would like to
4 make a motion for dismissal of my charge and these charges to
5 be honest because I filed a notice -- a notice of declaration
6 in the form of commercial advocate of truth with the Clerk's
7 Office, with the Solicitor's Office, and --

8 THE COURT: Do you have a copy for me?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: A notice of declaration of what?

11 THE DEFENDANT: Advocate of truth, sir.

12 THE COURT: All right.

13 THE DEFENDANT: And -- and it says she has until April
14 the 30th, 2015, to answer this or I presume that the matter
15 would be closed, sir.

16 THE COURT: Okay. Let's first of all mark the life
17 without parole notice as Court's Exhibit 2. Of course, Ms.
18 McElveen, you -- the jury will hear nothing about life without
19 parole.

20 MS. MCELVEEN: Yes, sir. That's right.

21 (WHEREUPON, the life without parole notice was marked as
22 Court's Exhibit Number 2.)

23 THE COURT: All right. Did you serve this on Ms.
24 McElveen?

25 THE DEFENDANT: Yes, ma'am, Your Honor. Excuse me, Your

1 Honor. Yes. Yes, sir, Your Honor. It was hand delivered by
2 my mother, Ms. Mary Jo, to her office.

3 THE COURT: All right. I will review this over the lunch
4 break. Ms. McElveen, do you have a copy?

5 MS. MCELVEEN: As far as the solicitor, there is a
6 report filed on the record. This is an international notice
7 for return to a spiritual being, a living soul --

8 THE DEFENDANT: No, not that one.

9 MS. MCELVEEN: Notice of Declaration of World --

10 THE COURT: No, no, no. This is filed April 13, 2015.
11 This is an international notice. Then the second page says
12 notice and refusal for cause of warrants.

13 MS. MCELVEEN: I --

14 THE COURT: All right.

15 MS. MCELVEEN: -- do not have that, Your Honor. I have
16 many letters from him, but not that one. But I can -- I'm
17 okay with the Court reviewing it.

18 THE COURT: Okay. I'll address this when we come back,
19 2:15.

20 MS. MCELVEEN: Thank you, Your Honor.

21 (WHEREUPON, there was a break in the proceedings.)

22 THE COURT: All right. Is the State ready to proceed?

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

24 THE COURT: Short of my rulings, Mr. Duren, are you ready
25 to proceed?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. All right. Lastly, on the issue of
3 Mr. Duren's filing of April 13, 2015, one of the -- one of the
4 notes or notations in that motion, if you want to -- if I
5 would call it that, was that the warrant was implemented by
6 use of threat, duress, and coercion. The other is an
7 allegation of constructive fraud under the UCC, which does not
8 apply to this case.

9 There's a repeat of there being no bona fide affidavit in
10 support of the alleged complaint, which is Article 21.22 that
11 we talked about earlier.

12 And number four, that Mr. Duren was not engaged in any
13 commercial activity.

14 Number five, no bona fide instruments to support a claim.

15 Number six, the aggrieved party is neither a U.S. citizen
16 or resident, nor a citizen or resident of any state. That
17 categorically is dismissed because it's not relevant.

18 Number seven, the aggrieved party, Mr. Duren, is not the
19 beneficiary or a recipient of privilege. That makes no sense.
20 That's dismissed.

21 The aggrieved party is not a fiduciary of any state
22 trust. That is equally nonsensical, if you will. That is
23 dismissed.

24 The aggrieved party cannot be forced to represent
25 another. It says the aggrieved party does not wish to

1 represent the entity named on the warrants. The aggrieved
2 cannot be compelled to function as a fiduciary or trustee of
3 the party named on the warrants. That has absolutely no basis
4 in the law. That is dismissed.

5 All of those grounds in that filing are dismissed. I'll
6 make this part of the record. All right.

7 MS. MCELVEEN: Thank you, Your Honor.

8 (WHEREUPON, Court's Exhibit Number 3, the warrants
9 document, was marked and admitted.)

10 THE COURT: Yes, sir, Mr. Duren. Anything else?

11 THE DEFENDANT: Yes, sir. I seem to have misplaced the
12 latest indictment.

13 THE COURT: I'm sorry, sir?

14 THE DEFENDANT: The latest indictment, the indictment
15 amended. I was just wondering did I give it to you, sir? The
16 new indictment.

17 THE COURT: I have what the solicitor handed to me as
18 being the indictment, burglary in the second degree violent.
19 This is -- this appears to be the original indictment.

20 THE DEFENDANT: I was talking about the indictment with
21 the direct presentation on it to the grand jury.

22 THE COURT: You're certainly welcome to come up here and
23 look at what she gave me, but I have the actual indictment. I
24 have your communication from the Bar, your motion to suppress
25 the warrant, the motion to suppress the DNA swab, your letter

1 from the Department -- the Federal Department of Justice, and
2 your motion to suppress the warrant.

3 Now, there's a separate motion to suppress the warrant,
4 but I do not have a copy of anything that is an indication
5 that it was something presented to the grand jury. And I also
6 have Chief Justice Toal's letter -- excuse me -- order dated
7 May 13, 2013.

8 THE DEFENDANT: Hopefully, I'll bring this over there in
9 just a minute.

10 THE COURT: All right. One final thing before we bring
11 in the jury. Mr. Duren, for your information, what I will do
12 is I will make some opening statements to the jury about how
13 the process works. I will tell them as part of that talk that
14 Ms. McElveen will give an opening statement to the jury. I
15 will also tell them that even though you don't have to, you
16 may also give an opening statement if you want to, just to
17 make sure you understand that you do not have to give an
18 opening statement unless you want to.

19 If you do give an opening statement, you're not permitted
20 to actually testify. You can explain to the jury what you
21 believe the evidence or lack of evidence will establish or not
22 establish.

23 All right. Anything else, Ms. McElveen?

24 MS. MCELVEEN: Your Honor, just for the sake of ease and
25 convenience, we did hand Mr. Duren color photos last week that

1 we plan on using in the case, and I want to know if there are
2 any objections so that we could go ahead and present those.
3 We've pre-marked them as exhibits so that we could --

4 THE COURT: Well, I don't know. I -- Mr. Duren, do you
5 have any objection to the photos or do you want her to go
6 through the process of having those authenticated and marked
7 as she questions the witness or you want to agree in advance
8 that they can come into evidence?

9 THE DEFENDANT: They can come into evidence, Your Honor.

10 THE COURT: All right. Let's mark those. It'll be 2
11 through whatever.

12 MS. MCELVEEN: Yes, sir.

13 THE COURT: How many are marked?

14 MS. MCELVEEN: I'm sorry?

15 THE COURT: How many?

16 MS. MCELVEEN: These are just used with the first two
17 witnesses.

18 THE DEFENDANT: Your Honor, I have a --

19 THE COURT: While the court reporter's doing that, she
20 can't take anything down; so we have to wait until she's
21 ready. Okay?

22 (WHEREUPON, there was a pause in the proceedings.)

23 MS. MCELVEEN: So, Your Honor, these have been admitted
24 into evidence?

25 THE COURT: Well, wait. Wait till --

1 MS. MCELVEEN: Okay.

2 (WHEREUPON, there was a pause in the proceedings.)

3 THE COURT REPORTER: There's thirty, Judge, 2 to 30..

4 (WHEREUPON, State's Exhibit 2 through 30, all color
5 photographs, were admitted into evidence.)

6 MS. MCELVEEN: If that's rejected on --

7 THE COURT: Well, we're putting -- yes, sir, Mr. Duren?
8 One more thing before we go. What else would you like to put
9 on the record?

10 THE DEFENDANT: I can't find that indictment on that
11 presentation. Is it possible the Court can make me a copy?

12 THE COURT: Come on up and let me find out what you're
13 talking about. Are you talking about the --

14 THE DEFENDANT: The --

15 THE COURT: This?

16 THE DEFENDANT: No, sir. Mine had something written on
17 the bottom of it where she gave it to me on the 13th of --

18 THE COURT: May?

19 THE DEFENDANT: -- May.

20 THE COURT: I remember her talking about it.

21 UNKNOWN MALE: I think it's a Court's -- I think it's
22 over there.

23 THE COURT REPORTER: What is it he needs?

24 THE COURT: He looking through -- show him the Court's
25 exhibits, please.

1 THE COURT REPORTER: Oh. Here.

2 UNKNOWN MALE: I think it might be that one.

3 THE COURT REPORTER: There's three of them..

4 THE DEFENDANT: It's this one. This one had writing on
5 the bottom that says the 13th of May.

6 THE COURT REPORTER: This is the State exhibit.

7 THE DEFENDANT: No.

8 THE COURT REPORTER: Okay. I don't know what you're
9 talking about.

10 THE DEFENDANT: It was an indictment and---

11 THE COURT: Is it the latest indictment, Mr. Duren?

12 THE DEFENDANT: It was the latest indictment.

13 THE COURT: I don't think you handed me the indictment
14 with anything. Does it look like this?

15 THE DEFENDANT: No, sir. It was the latest indictment.

16 MS. MCELVEEN: I don't have a true-billed copy.

17 THE DEFENDANT: Direct presentation.

18 THE COURT: All right. Direct presentment?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 THE DEFENDANT: The direct presentment was on top of the
22 indictment, stapled to it, Your Honor.

23 THE COURT: Okay. I don't have it up here, Mr. Duren.

24 If I -- if I had an idea of what you were talking about. Do
25 you have a copy of the latest indictment with direct

1 presentment language written on it?

2 MS. MCELVEEN: No, Your Honor. We just have a true-
3 billed indictment. I don't know what he had a copy of, but
4 it's the copy that I served on him in the court last week and
5 it would be the same thing you have up at your desk -- your
6 bench, Your Honor.

7 THE COURT: Is this machine working now? Do I have to do
8 anything?

9 (WHEREUPON, there was a pause in the proceedings.)

10 THE COURT: All right. Is everybody ready?

11 MS. MELVEEN: Yes, sir.

12 THE COURT: All right. Mr. Duren, you ready?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. You can bring in the jury.

15 THE DEFENDANT: Your Honor, am I going to be able to get
16 a copy of that?

17 THE COURT: I don't know what it is you need, but I'll
18 tell you if I have a copy of it, I'll be glad to give it to
19 you, and Ms. McElveen, if she has a copy, she'll be glad to
20 give it to you.

21 THE DEFENDANT: Yes, sir. I just remembered the tape.

22 THE COURT: Well, come on up, please, sir. Ms. McElveen,
23 could you come up, please?

24 (WHEREUPON, a bench conference was held as follows.)

25 THE COURT: I don't know how I can tell you that I'll

1 give it to you if I don't know what it is you're talking
2 about.

3 MS. MCELVEEN: He needs a copy of the true-billed
4 indictment; right?

5 THE COURT: He said that's not what he needs a copy of.

6 THE DEFENDANT: That's the last direct presentation that
7 came along.

8 THE COURT: To you? And it was given to you?

9 THE DEFENDANT: Yes, sir.

10 MS. MCELVEEN: And it was attached to those letters?

11 THE DEFENDANT: Yeah. That's what I'm -- and the true-
12 billed indictment. That's all I would ask for.

13 THE COURT: Okay. I'll be glad to make you a copy. You
14 make a copy -- where'd Mr. Prince go?

15 THE COURT REPORTER: He went to get the jury.

16 THE COURT: He'll go make a copy of this for you and the
17 direct presentment notice. She'll get it for you.

18 MS. MCELVEEN: Here is a -- I can make a copy of this.

19 (WHEREUPON, the bench conference ended.)

20 (WHEREUPON, the jury enters the courtroom.)

21 THE BAILIFF: All the jurors are back in the courtroom,
22 Your Honor.

23 THE COURT: All right. Thank you, ladies and gentlemen,
24 for your patience. We are now ready to begin. The solicitor
25 -- another solicitor is in that hallway that connects two

1 courtroom making a copy. He's going to come out in just a
2 minute, so don't be -- don't be alarmed at that. There he is
3 right now.

4 We are going to have you take another oath right now.
5 So, Mr. Prince, you can swear the jury in.

6 THE CLERK: Okay. Ladies and gentlemen, please stand and
7 raise your right hand, please. The State of South Carolina,
8 County of Sumter, Court of General Sessions, Indictment Number
9 2012-GS-43-1149, State of South Carolina versus David Abraham
10 Duren Jr. You shall well and truly try and a true
11 deliverance make between the State of South Carolina and David
12 Abraham Duren Jr., whom you have in charge, and a fair and
13 just verdict given accordingly to the evidence, so help you
14 God. Please respond by saying I will.

15 THE JURY: I will.

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

17 THE COURT: Is that what y'all were looking for? All
18 right.

19 Ladies and gentlemen, you now have been sworn in as
20 jurors in this case. What -- right now I'm going to talk to
21 you for just a few minutes about what your responsibilities
22 will be as jurors in this case. How many of you have ever
23 actually sat on a jury, criminal case, civil case, or
24 whatever? How many of you have ever actually done this?

25 (WHEREUPON, three jurors indicated.)

1 THE COURT: Three of you. Okay. Simply put, ladies and
2 gentlemen, the responsibility of a jury during the trial of
3 any case is to be the finders of facts. That means that you
4 will be called upon at the end of this case to, through your
5 foreperson, reach a verdict. In other words, through your
6 foreperson, that means your foreperson will make sure that
7 your verdict is unanimous, whether it be not guilty or guilty,
8 and that the foreperson will write the verdict on the verdict
9 form, hand it to the bailiff, and the bailiff will read it.

10 Now, to get to that point, you have to do primarily one
11 thing, and this is one thing that we all hope we do every day,
12 and that is use your good common sense. To be -- to do your
13 job as finders of fact in this case, you will, first of all,
14 have to pay very close attention to the evidence as it is
15 introduced because you've just taken an oath to try this case
16 according to the evidence and the law, so help you God.

17 The evidence itself is going to come to you in basically
18 three different ways. It is going to come to you by way of
19 witness testimony. That is when a witness is sworn, sits in
20 that chair, and testifies. The witness -- witnesses will be
21 testifying to you; so it's up to you to pay very close
22 attention.

23 Another way evidence comes in during any given trial is
24 by way of exhibits. Those are typically things that you can
25 see or touch. It might be a photograph. It might be a

1 document. It might be, in any given case, an automobile tire,
2 it might a shoe, it might be a pencil. It could be anything.
3 An exhibit again is something you can typically see or touch,
4 and those are things that usually will have a sticker or a tag
5 on it that will have an identifying number.

6 So if you hear me several times throughout the trial,
7 say, what number is it, what exhibit number is it, that is
8 what I am talking about. So when you go back to your jury
9 room, you can look at the same exhibit, like Exhibit 12. If
10 it's important to you, you can look at it and say I want to
11 see that exhibit. That will all be back there with you in
12 your jury room while you deliberate.

13 Another way evidence can come in during a trial is by way
14 of a stipulation. That is when the parties, the State and the
15 defendant, agree that a fact or a certain set of facts is
16 true. If there is a stipulation, that will be made known to
17 you typically by me telling you what the stipulation is. I
18 would say something like, the parties stipulate that such and
19 such and such and such is true. And if there is a
20 stipulation, I will let you know what that is.

21 So evidence comes to you by those -- in those three ways:
22 exhibits, testimony, and stipulations. If evidence comes in,
23 you can consider it. If during the course of the trial I
24 instruct you to disregard a certain piece of evidence that has
25 not come in or a question or an answer or some other --

1 perhaps some statement that is made, under your oath that
2 you're following the law, you must disregard what I tell you
3 to disregard. But if it does come in, you can consider it.

4 Now, on the issue of witness testimony, it will be your
5 responsibility to decide whether or not you believe the
6 witness who is testifying. Another word for believability is
7 credibility. You use your good common sense in determining
8 whether or not you believe someone. You can believe every
9 word of what a witness has to say, you can disbelieve every
10 word, or you can believe parts and disbelieve the rest.
11 Again, you use your common sense.

12 You can take into account things such as the witness's
13 demeanor. In other words, how did they act on the stand? Was
14 the witness hesitant or straightforward? You can also take
15 into account in your mind what was that witness's ability to
16 know what he or she claims to know. Was the witness's
17 testimony strengthened or weakened by other evidence that's in
18 the record? And anything else you think is appropriate, you
19 can take into account in determining whether or not you
20 believe testimony.

21 What you don't do is count up the number of witnesses who
22 say one thing and compare that against the number of witnesses
23 who say something else. You can believe one witness over many
24 witnesses. You can believe many over one. That will be
25 entirely up to you. You look at all of the evidence and you

1 determine, in your mind, whether or not you believe certain
2 testimony that has been given.

3 Now, ladies and gentlemen, I will tell you that the fact
4 that a person is arrested or charged or indicted for any
5 criminal offense is not evidence of anything. The defendant
6 is charged in this case, as I mentioned to you, with the
7 offense of burglary. The State will have to prove the
8 elements of that crime. The State will have to prove all of
9 those elements beyond a reasonable doubt.

10 The defendant does not have to prove or disprove
11 anything. He has no burden whatsoever. He is presumed
12 innocent of the charge for which the indictment has been
13 issued unless the State has convinced all of you that he is
14 guilty beyond a reasonable doubt.

15 And that will be your mission. To get to the verdict
16 form you will have to pay very close attention so that the
17 verdict you reach will be the truth.

18 Now, ladies and gentlemen, the trial itself will go in
19 stages. In a moment, the State, through Ms. McElveen, will
20 give an opening statement. She will tell you what she
21 believes the evidence will prove. After that, Mr. Duren -- if
22 he wants to even though he does not have to, because remember,
23 he has no burden. He can give an opening statement if he
24 wants to. He can, if he chooses, give an opening statement
25 after the State rests or he doesn't have to give one at all.

1 I will also remind you that the fact that Mr. Duren is
2 representing himself is not anything that you are to consider
3 in any way whatsoever. A person who is charged with a crime
4 does have the right to represent himself or herself. Ms.
5 McElveen and Mr. Duren will both be expected to follow the
6 rules, but you may not hold it for or against Mr. Duren that
7 he's representing himself.

8 Now, ladies and gentlemen, after the opening statements
9 are given, the State, through Ms. McElveen, will present what
10 is called its case in chief, and the State will do that by
11 presenting witnesses and exhibits and other evidence. After
12 the State rests, which will probably be sometime tomorrow, the
13 defendant, if he chooses, can present evidence as well. But
14 remember, he does not have to because he has no burden to
15 prove or disprove anything.

16 Once all of the evidence is in, Ms. McElveen and Mr.
17 Duren, if he chooses, will give a closing argument and, after
18 that, I will give you a charge on the law. Remembering that I
19 am the judge of the law, I'm going to tell you a couple of
20 things about that.

21 Do not base any decisions in this case on what you think
22 the law is or what you think it ought to be. I will tell you
23 exactly what the law is at the end of this case.

24 During the course of the trial, I will necessarily have
25 to make certain rulings. It might be an evidentiary ruling.

1 The rules of evidence are in this brown book that I have.
2 Probably about time for a new one because it's a little worn
3 out. There will also be procedural rulings. My rules are in
4 this purple book. Don't take from anything that I say or do
5 or how I rule that I favor one result over another. I don't.
6 My rulings will be based on what the law is.

7 If I rule in favor of one time -- twelve times -- of one
8 side twelve times and the other four, that doesn't mean that I
9 think the other -- that the one I ruled in favor of twelve
10 times should prevail. That's not what that means. My rulings
11 are based solely on what the law is.

12 I will likely have to send you out of the courtroom at
13 any given time so that I can hear the arguments that the sides
14 might want to make in full. They have the right to be heard.

15 And right now -- I'll be frank with you -- you and I know
16 as much about this case as each other. I have no idea what
17 the case is about except that the defendant is charged with
18 burglary. It doesn't matter what I think about the facts; so
19 if I say or do something that makes you think, well, he -- the
20 judge thinks that this one side ought to win, you can put that
21 out of your mind because we're learning about the case
22 together as we go.

23 And that's another reason that I may have to send you
24 out. Our system is devised in this fashion. I don't
25 necessarily have advanced knowledge of what the factual

1 allegations are.

2 Now, ladies and gentlemen, if a -- if Ms. McElveen or Mr.
3 Duren, at any given time, stand up and make an objection to
4 something, that is not an effort on their part to deprive you
5 of some evidence that you really ought to see or hear. The
6 rules will dictate how that ruling will go, but there are many
7 times good faith differences of opinion on whether or not
8 evidence is admissible.

9 Likewise, if a lawyer or Mr. Duren asks a question or
10 elicits some information that's objected to, that doesn't mean
11 that person's trying to slip something in that you really
12 ought not see or hear. Again, the rules are the rules, and
13 I'll follow the rules and the two sides will have different
14 opinions on the applicability of those rules.

15 Please give all the witnesses and Ms. McElveen and Mr.
16 Duren your undivided attention because we know what time it
17 is. It's quarter to three. We all just ate, and this is the
18 time of day where you might let your attention wander, your
19 eye lids get heavy, but we can't do that because you have
20 taken a very serious oath to try this case according to the
21 evidence and the law. You cannot do what you've sworn to do
22 if you start losing your attention.

23 I'm going to appoint Mr. Bagwell as the foreperson of the
24 jury. If it were up to me, you could sit anywhere, but when
25 you come back in after we might take a break, the bailiff

1 might want you to sit in a certain spot.

2 Mr. -- Mr. Hemingway? Where's Mr. Hemingway? You're the
3 alternate juror. It suits me fine if you sit anywhere too,
4 but the bailiffs -- if you go to forty-six counties, they got
5 forty-six different ways of doing it. So you can sit wherever
6 you want to sit unless Mr. Prince has you sit somewhere in
7 particular.

8 All right. Again, please give these folks your undivided
9 attention and remember your oath and take that very seriously.
10 All right. Ms. McElveen?

11 OPENING STATEMENT ON BEHALF OF THE STATE

12 MS. MCELVEEN: Good afternoon, ladies and gentlemen. My
13 name is Bronwyn McElveen. I represent the State in this
14 matter. Mr. Duren is charged with burglary second degree
15 violent.

16 We plan to present evidence that on June 8th, 2011 -- this
17 is a while ago, but June 8th, 2011, employees of Thomas &
18 Howard Company, located here in Sumter right next to H&S
19 Wholesalers at South Harvin Street, left the business. It
20 was locked up, secure. Everything was in place.

21 After midnight, the manager, Mr. Spiegel, got an alarm
22 call. He showed up, responded in the middle of the night with
23 the police. They could find nothing out of place, went home,
24 went back to bed. That morning, Mr. Spiegel and Mr. Page
25 showed up at the business and realized that there was

1 something they had missed last night not going outside.

2 There was a large hole in the back of the building behind
3 a large walk-in refrigerator and there was something missing.
4 There were cigarettes missing. And there were cigarette boxes
5 in the yard and there were cigarette boxes between the
6 refrigerator and the wall. And it was clear someone had come
7 in between the wall and that refrigerator unit, shimmied up
8 over that refrigerator unit, stolen cigarettes, and tried to
9 leave and did leave.

10 But they left something behind. They left their blood,
11 and they left a fair amount of blood from shimmying up that
12 wall and breaking in, and you will see the hole in the
13 building and you will understand why there was blood left at
14 that scene.

15 Officers responded, processed the scene, took swabs of
16 the blood, submitted them into evidence. There's a little bit
17 of a lull. Nothing really happens in the case. They don't
18 know what happened.

19 They get a lead and it leads them to Mr. David Duren. He
20 gives up a buccal swab, which is when someone takes the inside
21 of a cheek and swabs it for DNA. He gives a buccal swab.
22 You'll hear from a forensic analyst. That's a special doctor
23 who specializes in analyzing DNA and all that neat NCIS and
24 CSI and Law and Order stuff. And she links the blood to, as
25 suspected, Mr. David Duren. And you'll hear her testify as

1 well. He left his blood at the scene.

2 Ladies and gentlemen, this is a business that was broken
3 into. It's not someone's home, but it's a business and
4 businesses are the life blood of our community.

5 And we are here today because Mr. Duren has committed a
6 crime. A crime not just to the people of Thomas & Howard
7 Company, but a crime to the citizens of South Carolina. And
8 what you're doing today is a huge service, sitting on a jury
9 and, like many people have told you, this might not be the
10 first thing you wanted to do today, but it is a service and we
11 certainly appreciate it.

12 I ask for your attention and just to use your common
13 sense and your reason and listen to the evidence presented and
14 in the end I'll speak with you again. Thank you so much.

15 THE COURT: Thank you, Ms. McElveen. Mr. Duren, any
16 opening statement you'd like to give?

17 THE DEFENDANT: I prefer to reserve that right to after
18 the State closes, your Honor.

19 THE COURT: All right. Thank you, sir. Ms. McElveen,
20 your first witness.

21 MS. MCELVEEN: Yes, sir. The State would call Mr.
22 Matthew Spiegel.

23 THE CLERK: Place your left hand on the Bible and raise
24 your right hand and state your name, please.

25 THE WITNESS: Matthew Spiegel.

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 THE CLERK: Do you solemnly swear or affirm that the
2 testimony you give to this Court to be the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 THE WITNESS: Yes, sir.

5 THE CLERK: Thank you. Come around, sir, and have a
6 seat. State your name and spell your last for the record.

7 THE WITNESS: Matthew Spiegel, S-p-i-e-g-e-l.

8 MATTHEW SPIEGEL, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MCELVEEN:

12 Q: Mr. Spiegel, why are you here today?

13 A: The place of Thomas & Howard, I was the first employee to
14 discover it had been broken into.

15 Q: Where do you -- are you from Sumter?

16 A: Yes, ma'am.

17 Q: Where do you work now?

18 A: H&S Wholesale, right next door.

19 Q: Where did you work on June 8th, 2011?

20 A: Thomas & Howard Cash and Carry.

21 Q: Where is that located? What's the address?

22 A: South Harvin Street.

23 Q: What kind of role did you -- what did your job entail?
24 What did you do?

25 A: I was the manager.

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 Q: You were the manager?

2 A: Yes, ma'am.

3 Q: Do you have any recollection of a sequence of events that
4 happened June 8th, 2011, to June 9th, 2011? Could you tell us
5 a little bit about what you saw, what you experienced, what
6 you did?

7 A: I left June 8th, 2011. I secured the place.

8 Q: What time was that?

9 A: About five -- 5:15. I got a call that the alarm was
10 going off. I can't remember what time. It was, you know,
11 middle of the night. I went there and didn't see anything out
12 of place. I reset the alarm. Came back June the 9th, 2011,
13 walked in the back, and saw a big hole. I looked on top of
14 the refrigerator or the freezer, discovered there was blood up
15 there. Looked in the back and saw the cigarettes. You know,
16 there were cigarettes in the yard, and realized somebody had
17 broken into it.

18 Q: What did you do then?

19 A: I called the police.

20 Q: Was there anyone else working with you that day?

21 A: Thomas Page.

22 Q: I'm going to show you State's Exhibits -- State's
23 Exhibits 2 through 5. Can you identify what that is?

24 A: That's the place of business, Thomas & Howard.

25 Q: Thank you.

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 MS. MCELVEEN: Your Honor, may we put the setting on the
2 laptop? Permission to publish Exhibits 2 through 5?

3 THE COURT: 2 through 5, yeah, they're in. You can. Mr.
4 Duren had no objection. Those are in.

5 MS. MCELVEEN: Okay.

6 BY MS. MCELVEEN:

7 Q: And this would be the business where you worked?

8 A: Yes, ma'am.

9 THE COURT: Wait. Are your monitors working, ladies and
10 gentlemen, in the jury box? Okay.

11 THE BAILIFF: Do they work?

12 THE COURT: Any of them on?

13 THE BAILIFF: Reach up there and cut them on.

14 THE COURT: Are any of them on now? I think there are
15 eight monitors. How many of them there -- are there on?

16 A JUROR: All four of these are on.

17 A JUROR: We're good.

18 THE COURT: Okay.

19 BY MS. MCELVEEN:

20 Q: So this is the business where you worked, sir?

21 A: Yes, ma'am.

22 Q: And is this the inside of that business?

23 A: Yes, ma'am.

24 Q: This as well?

25 A: Yes, ma'am.

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 Q: And what is this?

2 A: That's the freezer. That's where I discovered the blood,
3 the cigarettes behind it, the hole in the hall behind it.

4 Q: You realized that the next morning you said?

5 A: Yes, ma'am.

6 Q: I'm going to show you State's Exhibits 6 and 9 through
7 12. I'm also going to publish them to the jury. Is this --
8 where was the hole located?

9 A: The back of the building behind the freezer.

10 Q: So it'd be behind this freezer unit right here; correct?

11 A: Yes, ma'am.

12 Q: On the screen?

13 A: Yes, ma'am.

14 Q: And is this a view of the hole?

15 A: Yes, ma'am.

16 Q: So this -- when you responded in the middle of the night,
17 did you go outside the building?

18 A: I did, and it's got a fence around the building. There
19 was a lock on it and it was just poor judgment I didn't walk
20 behind there and check.

21 Q: But this is what you discovered and this is how it looked
22 that morning?

23 A: Yes, ma'am.

24 Q: And is that a close-up of the hole?

25 A: Yes, ma'am.

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 Q: You mentioned something about cigarettes. Well, let me
2 ask first did you get a chance -- you said there was a fence
3 around the business; correct?

4 A: Yes, ma'am.

5 Q: Were you able to find a place where someone could have
6 got under the fence?

7 A: After seeing the hole in the wall, I discovered where it
8 had been pulled up. The fence had been pulled up.

9 Q: Is this a photo of where it had been pulled up?

10 A: Yes, ma'am.

11 Q: And then you mentioned something about cigarettes. Where
12 were the cigarettes located?

13 A: Throughout the yard, from the back of the building to the
14 fence, under the fence, you know.

15 Q: Is this an example? Were they all -- is this --

16 A: Yes, ma'am.

17 Q: And they were all Newports?

18 A: Yes, ma'am.

19 Q: Is this also some cigarettes that you saw inside between
20 the refrigerator unit?

21 A: Yes, ma'am.

22 Q: And -- okay. When you discovered this, you said you did
23 what?

24 A: Well, I discovered it; so I come back inside and looked
25 on top of the freezer. I saw where -- well, on the side of

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 it, you could see were somebody had -- it was scuff marks
2 where somebody had tried to get back up.

3 Q: Are these -- and again, referencing Exhibits 2 through
4 30, is this the scuff mark that you saw on the side?

5 A: Yes, ma'am.

6 Q: And you said -- what did you do? I'm sorry.

7 A: I looked on top of the freezer by pulling myself up,
8 discovered that there was blood up there. It appeared that
9 somebody had cut theirsself.

10 Q: Is this an image of what you saw?

11 A: Yes, ma'am.

12 Q: What did you do when you discovered the blood on top of
13 the refrigerator unit?

14 A: Called the police.

15 Q: Did you have any reason for anyone to be on top of that
16 refrigerator unit or freezer unit?

17 A: No, ma'am, not at all.

18 Q: Do you -- do you know Mr. Duren, the defendant?

19 A: No, ma'am.

20 Q: Did he ever work for you?

21 A: No, ma'am.

22 Q: Ever a customer?

23 A: Not that I can recall. No, ma'am.

24 Q: Would he have been working on your refrigerator or
25 freezer unit?

MATTHEW SPIEGEL - DIRECT BY MS. MCELVEEN

1 A: Not at all.

2 Q: Would you have been aware if someone was working on your
3 freezer or refrigerator unit?

4 A: Yes, ma'am. I always was..

5 Q: So there's no reason this blood would be on top of your
6 freezer?

7 A: No.

8 Q: You said you called police?

9 A: Yes, ma'am.

10 MS. MCELVEEN: I have no further questions at this time.
11 Please answer any questions Mr. Duren may ask.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Mr. Duren, any questions?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: All right.

16 THE DEFENDANT: Your Honor, the defendant moves for a
17 motion of dismissal at this point. Your Honor, the defendant
18 was never notified of presentation to the grand jury.

19 THE COURT: Wait a minute. The question -- excuse me.
20 The issue at this point, Mr. Duren, is whether or not you want
21 to question this witness. No other issue.

22 THE DEFENDANT: I reserve the right to recall this
23 witness.

24 THE COURT: All right. You have no questions at this
25 time?

1 THE DEFENDANT: At this time.

2 THE COURT: All right.

3 THE DEENDANT: But I have a motion to make before you.

4 THE COURT: You're not going to make it right now. Okay?

5 We -- come on up, please, sir. Ms. McElveen, come up please.

6 MS. MCELVEEN: Yes, sir.

7 THE COURT: You can stay right there just for now. Okay?

8 THE WITNESS: Yes, sir.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury as
11 follows.)

12 THE COURT: Yes, sir?

13 THE DEFENDANT: I have a motion to make before the Court
14 for dismissal of the charge. I was never notified of this
15 warrant being sent up to the grand jury for direct
16 presentation.

17 THE COURT: Okay. That is not now. We can deal with
18 that during the break, but you're not going to deal with it
19 right now. Okay?

20 THE DEFENDANT: I would like to question him at this
21 point.

22 THE COURT: Go ahead. You can question him.

23 (WHEREUPON, the bench conference ended.)

24 THE COURT: All right. You say you would like to
25 question the witness, Mr. Duren? Mr. Duren? Mr. Duren?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Would you like to question the witness?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: All right.

5 THE DEFENDANT: First, I'd like to make this. For the
6 record, Your Honor, and the Court should take judicial notice,
7 I, a human, reserve all my rights and waiver none. Do you
8 understand that, Your Honor?

9 THE COURT: You're not going to question me, Mr. Duren.
10 You can question the witness. Okay?

11 THE DEFENDANT: For the record, Your Honor, and the Court
12 should take judicial notice, I, a human, reserve all my rights
13 and waiver none.

14 THE COURT: All right. Ladies and gentlemen, please step
15 to your jury room. You may not discuss the case in any way
16 whatsoever. Thank you.

17 (WHEREUPON, the jury exited the courtroom.)

18 THE COURT: All right, Mr. Duren. From a procedural
19 standpoint, the way the trial will be run -- this is the way
20 it will be run. If I ask you if you have any questions of the
21 witness, you may either question the witness or have no
22 questions. That will be entirely up to you.

23 If you say you want to question the witness, you do not
24 begin directing any comments to me. That is not how the rules
25 work. Is that clear?

1 THE DEFENDANT: I -- for the record, Your Honor, I am a
2 sovereign citizen, Your Honor.

3 THE COURT: Well, that's -- that's perfectly fine by me,
4 but you will have to follow the rules.

5 THE DEFENDANT: Your Honor, I cannot get a fair trial in
6 this courtroom. This is not a court of common law, Your
7 Honor.

8 THE COURT: Then why are you bringing this up now after
9 the trial has started?

10 THE DEFENDANT: Your Honor, this is not a court of common
11 law. I will not get a fair trial in this courtroom.

12 THE COURT: Okay. Well, I will tell you, Mr. Duren, it'd
13 be up to you whether to participate or even be present.
14 That's entirely up to you. Whether or not you think you can
15 get a fair trial or not, what you think is not my concern. My
16 concern is that this trial is -- that this trial will proceed
17 according to what the rules are. What you think is
18 irrelevant.

19 THE DEFENDANT: Your Honor, with all due respect, Your
20 Honor, the State of South Carolina is a corporation. The
21 State is a con -- contingency of South Carolina.

22 THE COURT: It's a what?

23 THE DEFENDANT: The State is a --

24 THE COURT: A contingency?

25 THE DEFENDANT: No, sir. Let me get the word right.

1 Consists of South Carolina.

2 THE COURT: Okay.

3 THE DEFENDANT: The State represents your corporate South
4 Carolina. The State has no interest -- no interest in this
5 case, Your Honor. The State of South Carolina is -- South
6 Carolina is a corporation. It's a fictitious entity, Your
7 Honor. It has no right to bring charges against a human
8 created in the image of God. No right. I will not get a fair
9 trial in this courtroom.

10 THE COURT: So you suggest you should be tried where?

11 THE DEFENDANT: At the Court of Common Pleas, which is
12 the only common law court in the -- in the corporation of the
13 United States of Washington, D.C.

14 THE COURT: That motion is denied. Motion to dismiss on
15 that basis is denied. Will you have any questions of the
16 witness when the jury comes back in?

17 THE DEFENDANT: Sir, this courtroom is based on
18 commercialism. The UCC covers all commercialism, rules and
19 regulations. It governs all. This court, Your Honor, is
20 under admiralty [sic.] jurisdiction.

21 THE COURT: It's called admiralty.

22 THE DEFENDANT: Admiralty jurisdiction.

23 THE COURT: But it's not. Okay.

24 THE DEFENDANT: It has been since 1933, Your Honor, since
25 the United States went bankrupt.

1 THE COURT: No. Went off the gold standard.

2 THE DEFENDANT: Went off the gold standard, bankrupt.
3 They went bankrupt. They owed -- they owed money to foreign
4 exchange through the international bankers. All courts,
5 government officials, buildings, schools, banks, were put
6 under military jurisdiction to keep foreign power from coming
7 in to take over.

8 THE COURT: All right. Let me stop you right there. We
9 spent from about noon until almost one today going through
10 what your motions were. Not one time did you mention all this
11 and I'm not going to permit you to mention that during the
12 presentation of witnesses. Whether you like it or not, I am
13 not going to permit it.

14 THE DEFENDANT: Your Honor, with all due respect, Your
15 Honor, and I respect you, Your Honor. I require a common law
16 venue. That's all I ask.

17 THE COURT: Well, you might require it, sir, but you are
18 not going to get the relief you requested. This is the proper
19 court for this charge to go forward for trial.

20 THE DEFENDANT: A common law -- the United States
21 Constitution right here speaks of three types of venue in
22 America.

23 THE COURT: Your motion is denied.

24 THE DEFENDANT: Common law --

25 THE COURT: Your motion is denied.

1 THE DEFENDANT: -- admiralty, and equity.

2 THE COURT: Mr. Duren, your motion is denied.

3 THE DEFENDANT: And this is not a common law courtroom.

4 THE COURT: Your motion is denied. I don't know how I
5 can put it any clearer. When you -- when the jury comes back
6 in, will you have any questions of the witness?

7 THE DEFENDANT: No. I'll wait until the State take the
8 stand to ask the questions.

9 THE COURT: When the State takes the stand? All right.
10 If that occurs --

11 THE DEFENDANT: When the State witnesses.

12 THE COURT: Okay. Well, the gentlemen testifying now,
13 Mr. Spiegel, will you have any questions of him?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. You can bring in the jury.

18 (WHEREUPON, the jury entered the courtroom.)

19 THE BAILIFF: All of the jurors are back in the
20 courtroom, Your Honor.

21 THE COURT: All right. Mr. Duren, you may question the
22 witness.

23 CROSS-EXAMINATION

24 BY THE DEFENDANT:

25 Q: Mr. Spiegel, sir?

MATTHEW SPIEGEL - CROSS BY THE DEFENDANT

- 1 A: Yes, sir.
- 2 Q: These walk-in freezer that are in the building here?
- 3 A: That's right.
- 4 Q: How heavy are they?
- 5 A: How heavy are they?
- 6 Q: Yes, sir.
- 7 A: I have no idea. I've never weighed one.
- 8 Q: Can one person move it?
- 9 A: No. I wouldn't think so.
- 10 Q: Are these freezers up against the wall?
- 11 A: There's a gap between it -- between the wall and the
- 12 freezer.
- 13 Q: There's a gap between the -- between the -- I see you got
- 14 boards here. You got -- what are those? Two by sixes?
- 15 A: I have no idea. It looks like two by fours.
- 16 THE DEFENDANT: Your Honor, may I approach the witness?
- 17 THE COURT: Yes, sir. You can come up and talk to him.
- 18 Ms. McElveen, is that one of your marked exhibits?
- 19 MS. MCELVEEN: Yes, sir.
- 20 THE COURT: Okay. You can show it to the witness.
- 21 BY THE DEFENDANT:
- 22 Q: Would you agree that that freezer is completely up
- 23 against the wall?
- 24 A: No. There's the gap right here. There's a gap in-
- 25 between the wall and the freezer? See that?

MATTHEW SPIEGEL - CROSS BY THE DEFENDANT

- 1 Q: This picture shows the freezer up against the wall.
- 2 A: It's showing the top of the freezer at that angle.
- 3 Q: It's up against the wall. It's right against the two by
- 4 four.
- 5 A: I mean that's clearly a gap right there.
- 6 Q: It's probably a gap for when they moved it to get behind
- 7 there to get the cigarettes, but right here? If you look
- 8 right here, it's right up against the wall and everybody can
- 9 see it's up against the wall. It's right up against the wall.
- 10 A: It's not up against the wall.
- 11 Q: Well, I know they say a picture is worth a thousand words
- 12 and this one doesn't lie.
- 13 A: This one doesn't either. There's a gap.
- 14 THE COURT: All right. Mr. Duren, you can ask questions.
- 15 Please don't make any statements while you're questioning A
- 16 witness.
- 17 THE DEFENDANT: Yes, sir. May I ask another question?
- 18 THE COURT: Go right ahead.
- 19 BY THE DEFENDANT:
- 20 Q: Why is there two layers of plywood there?
- 21 A: I did not build the building. I have no idea.
- 22 Q: Have your place been broken in before?
- 23 A: Several times.
- 24 Q: Where at?
- 25 A: Through the roof, through the front, through the side,

MATTHEW SPIEGEL - CROSS BY THE DEFENDANT

1 through the doors.

2 Q: Has it ever been broken in through the rear wall before?

3 A: Through the where?

4 Q: To the place where it was broken into right here?

5 A: I think that's the first time.

6 Q: First time?

7 A: Yeah.

8 Q: You one hundred percent positive?

9 A: I worked there for ten years. In my ten years --

10 Q: Your ten years?

11 A: -- that's the first time.

12 Q: That's the first time?

13 A: Yeah.

14 Q: So if I go back through the records and go back through
15 Sumter County, Sumter Daily Item, I wouldn't find no other
16 entry?

17 A: Not within the last ten years.

18 Q: Not within the past ten years?

19 A: That's right.

20 THE DEFENDANT: No further questions.

21 THE COURT: Redirect?

22 THE DEFENDANT: No further questions.

23 MS. MCELVEEN: Yes, sir. Very briefly.

24 REDIRECT EXAMINATION

25 BY MS. MCELVEEN:

MATTHEW SPIEGEL - REDIRECT BY MS. MCELVEEN

1 Q: You testified that you've never moved this unit before;
2 is that correct? The freezer unit?

3 A: No.

4 Q: But you did say that there is a space between the wall
5 and the entry, the hole; is that correct?

6 A: Yes, ma'am. That's the picture.

7 Q: Is that --

8 A: There's a gap.

9 Q: A picture of the gap?

10 A: Yes. That's the gap in-between the wall and the freezer.

11 Q: And so you're testifying that there is space between the
12 back of this refrigerator unit, right here; is that correct?

13 A: Yes, ma'am. The other picture shows a better angle.

14 Q: Yes, sir. Thank you.

15 A: Yes, ma'am.

16 MS. MCELVEEN: No further questions.

17 THE COURT: All right. You -- yes, sir, Mr. Duren?

18 THE DEFENDANT: Redirect.

19 THE COURT: All right. Recross?

20 THE DEFENDANT: Redirect.

21 RECROSS-EXAMINATION

22 BY THE DEFENDANT:

23 Q: Mr. Spiegel, here's two more pictures that I have. It's
24 the same freezer?

25 A: That's correct.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

1 Q: Different angle?

2 A: That's correct.

3 Q: It appears to me this one is up against the wall too.

4 A: Look at that picture right there. From that angle, it
5 looks like it's up against the wall. From this, taken at a
6 side point, it's clearly a gap.

7 Q: Okay. Here's one taken directly with the freezer.

8 A: And you can tell there's a gap.

9 Q: Yeah. There's a gap between the two by four because -- I
10 mean two by sixes because two by sixes is -- what? -- five and
11 a half inches wide?

12 A: No. There's a gap in-between the wall and the freezer.

13 Q: Clearly, Mr. Spiegel, I got on glasses, but if I take
14 them off, I still ain't blind. There still ain't no gap
15 there.

16 MS. MCELVEEN: Objection, Your Honor. Asked and
17 answered.

18 THE COURT: All right. Sustained. The witness has
19 answered your question. The fact that y'all disagree is not a
20 point for further discussion.

21 THE DEFENDANT: Okay.

22 THE COURT: With the witness anyway.

23 THE DEFENDANT: Okay. May I ask a question about the
24 blood?

25 THE COURT: Yes, sir.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

1 BY THE DEFENDANT:

2 Q: Was the blood smeared or dry?

3 A: It appeared to be smeared.

4 Q: Smeared? If somebody cut theirsself, wouldn't there be a
5 drop somewhere?

6 A: I didn't see any. When I looked up there, it was smeared
7 like somebody was trying to get off back down there.

8 Q: Smeared?

9 A: Yes.

10 Q: Okay. Is that the only place?

11 A: On top of the freezer? That I saw.

12 Q: That's the only place on top of the freezer that you saw?

13 A: I mean the police did their investigation.

14 Q: Was there blood anywhere else in the place?

15 A: Not that I saw.

16 Q: On the floor or nothing?

17 A: Not that I saw.

18 THE DEFENDANT: Your Honor, may I -- well, these are
19 already into evidence.

20 THE COURT: Yes, sir, they are.

21 THE DEFENDANT: Okay.

22 BY THE DEFENDANT:

23 Q: And your burglar alarm went off that night; right, sir?

24 A: That's correct.

25 Q: And when did you notify the police?

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

- 1 A: The police met me there.
- 2 Q: That same night?
- 3 A: Yes.
- 4 Q: Same night?
- 5 A: Yeah. They call me when the alarm goes off.
- 6 Q: And the alarm went off, but you didn't discover the hole
- 7 until the next morning?
- 8 A: Right. We don't -- there's a fence behind -- around the
- 9 building; so we didn't walk behind the building. It appeared
- 10 everything was intact.
- 11 Q: Is there a light back there?
- 12 A: Not shining on the back of the building, no.
- 13 Q: Do you have cameras in the place?
- 14 A: No.
- 15 Q: Okay. All those years of your place being broken in,
- 16 y'all don't have no cameras in the place?
- 17 A: I'm not the owner of it. I mean the owners I guess were
- 18 cheap.
- 19 Q: Huh?
- 20 A: I guess the owners were cheap. They don't want to get
- 21 cameras.
- 22 Q: But you said the blood was smeared?
- 23 A: That's correct.
- 24 Q: And no blood nowhere else?
- 25 A: Not that I saw. I mean the police did an investigation.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

- 1 You can ask them.
- 2 Q: Do you think somebody could have smeared it there?
- 3 A: Yeah, trying to get out of there.
- 4 Q: Did I?
- 5 A: Yeah.
- 6 Q: I got a question. If somebody -- that's on the end;
- 7 right.
- 8 A: That's right.
- 9 Q: Now, where did they -- where did -- where is the entry
- 10 part at?
- 11 A: The front of the building.
- 12 Q: I mean entry point where they came into the building?
- 13 A: Where they broke in?
- 14 Q: Yes.
- 15 A: In the back -- the back of the building.
- 16 Q: I mean at what position of it? Is it in proximity to the
- 17 freezer? Middle, end, or whatever?
- 18 A: The freezer is in the back of the store.
- 19 Q: I understand that. The entry point where they came into
- 20 the building, where is that at?
- 21 A: I assume what they did was they busted a hole, shimmied
- 22 up the side of the freezer, cut theirselves in the process,
- 23 stole what they could --
- 24 Q: Okay.
- 25 A: -- at the time.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

1 Q: I asked you is the entry hole in the middle of the
2 freezer or at the end of the freezer?

3 A: If I recall, about middle ways.

4 Q: About middle way? Sort of strange, isn't it? If you
5 come in the building and go over the freezer, you go back out
6 the same way you came in; right?

7 A: You would try to jump back on the freezer and get blood
8 everywhere.

9 Q: Well --

10 A: That's -- I mean you would smear -- trying to jump up,
11 you would cut yourself, smear blood. It's got jagged edges.

12 Q: It's got jagged edges?

13 A: Yeah. Somebody clearly cut theirself. So I guess
14 whoever's blood it is.

15 Q: So you would have blood where he tried to come in or go
16 out; right?

17 A: If it wasn't a deep cut -- I mean if they cut theirself
18 and it's on their hand or on their arm, then it smears.

19 Q: I'm just curious. If you come in one way, why would you
20 have to go out another way? If the hole -- hole is right
21 there, go back over the way you came in. Why go all the way
22 down to the end? Why go all way to the end and try to get
23 back on the freezer if you can go back from the way you came
24 in?

25 A: I don't know which way they come off the freezer.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

1 Q: You just said -- you just said they came in and came over
2 the top of the freezer.

3 A: I was assuming they did. That's the way it appeared to
4 be.

5 Q: That's what you said earlier. They came in the middle
6 and came over the freezer?

7 A: I wasn't there. You know, I don't hang out with crooks.
8 So I wasn't there.

9 Q: Oh. So you're implying that I'm a crook, huh?

10 A: No, I didn't say that. I'm just saying I don't hang out
11 with crooks. So --

12 Q: Well, that's --

13 MS. MCELVEEN: Objection. Your Honor, this is
14 argumentative.

15 THE COURT: This is argumentative. It's not a debate by
16 either the witness or by the person asking questions.
17 Objection sustained.

18 BY THE DEFENDANT:

19 Q: I'm just curious why a person would go in one way and go
20 out the other way.

21 A: I wasn't there, so I don't --

22 Q: Especially in spaces that he can't get in --

23 A: I wasn't there.

24 Q: -- unless he is a member of the Fantastic Four and a
25 rubber man.

MATTHEW SPIEGEL - RECROSS BY THE DEFENDANT

1 MS. MCELVEEN: Objection. No question.

2 THE COURT: Ma'am?

3 MS. MCELVEEN: No question, Your Honor.

4 THE COURT: Okay. Sustained. All right. Any other
5 questions, Mr. Duren?

6 THE DEFENDANT: Not from this witness, Your Honor.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness. Can the witness be excused by
10 the State?

11 MS. MCELVEEN: Yes, please.

12 THE COURT: Any additional need for the witness, Mr.
13 Duren?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: All right. Thank you, Mr. Spiegel. You can
16 leave or stay, whichever you like.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Yes, ma'am, Ms. McElveen.

19 MS. MCELVEEN: Mr. Thomas Page.

20 THE CLERK: Place your left hand on the Bible and raise
21 your right hand and state your name, please.

22 THE WITNESS: Thomas R. Page.

23 THE CLERK: Do you solemnly swear or affirm that the
24 testimony you give to this Court will be the truth, the whole
25 truth, and nothing but the truth, so help you God?

THOMAS PAGE - DIRECT BY MS. MCELVEEN

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Come around, sir, and sit down.

3 State your name and spell your last for the record.

4 THE WITNESS: Thomas R. Page. P-a-g-e.

5 THOMAS PAGE, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCELVEEN:

9 Q: Why are you here today, Mr. Page?

10 A: I worked at the Thomas & Howard when the time it was
11 broken in.

12 Q: So you were working there June 8th, 2011?

13 A: Yes, ma'am.

14 Q: Can you tell us about what you do? What did you do
15 there? What was your job description?

16 A: I was the assistant manager.

17 Q: What did you do -- do you remember what happened June 8th
18 to the 9th, 2011?

19 A: We locked up the evening of the 8th, me and Matt together,
20 set the alarm, locked the doors, went home. I did not receive
21 a phone call overnight, but Matt did from the alarm company.
22 When I got to work the next morning, we got there roughly
23 about the same time. He told me what had happened and said,
24 you know, go take a look at what was in the back and noticed
25 at that time a large hole in the back of the building.

THOMAS PAGE - DIRECT BY MS. MCELVEEN

1 Q: So you were present to witness -- you guys discovered
2 this together, this large hole in the back?

3 A: Yes, ma'am.

4 Q: What did you guys do at that point?

5 A: Matt called the police after that. At that point, he had
6 already been inside the building ahead of me and, you know,
7 found cigarettes, you know, behind the freezer and all that
8 good stuff.

9 Q: So you witnessed -- you saw with your own eyes the
10 cigarettes in the yard?

11 A: Yes, ma'am. I did see a couple empty cartons strewn out
12 throughout the back there and the fence was pulled up and,
13 yes, ma'am, I do remember that carton right there.

14 Q: Is your business -- is it -- what's the address again?

15 A: South Harvin Street.

16 Q: Is that here in Sumter County?

17 A: Yes, ma'am.

18 Q: All the cigarettes that were taken were what brand?

19 A: Newports.

20 Q: How do you know that those cigarettes that you saw came
21 from your business?

22 A: We did a count later and found that we were about thirty
23 cartons short, if I recall.

24 Q: Thirty cartons?

25 A: I want to say thirty. Don't quote it. I mean it's been

THOMAS PAGE - DIRECT BY MS. MCELVEEN

1 a long time.

2 Q: But about thirty cartons?

3 A: Yes, ma'am.

4 Q: Did you know -- do you know Mr. Duren -- David Duren?

5 A: No, ma'am.

6 Q: Did he work for you?

7 A: No, ma'am.

8 Q: Was he -- do you remember him being at the store? Do you
9 remember him working on your refrigerator unit?

10 A: No, ma'am.

11 Q: Would there -- was your refrigerator unit recently worked
12 on?

13 A: No, ma'am. As a matter of fact, that was a brand new
14 unit that was, you know, not very old at all.

15 Q: Is there any reason that Mr. Duren would be there or that
16 his blood would be at the top of that refrigerator unit?

17 A: No, ma'am.

18 Q: Were you present when the police showed up?

19 A: I was.

20 MS. MCELVEEN: I have no further questions. Please
21 answer any questions Mr. Duren might have. Thank you.

22 THE COURT: Mr. Duren?

23 THE DEFENDANT: Yes.

24 CROSS-EXAMINATION

25 BY THE DEFENDANT:

THOMAS PAGE - CROSS BY THE DEFENDANT

1 Q: Good afternoon, Mr. Page. How are you doing?

2 A: Pretty good.

3 Q: All right. I'm curious to know something, sir.

4 A: Yes.

5 Q: You stated -- this is the Sumter incident report from the
6 police department; right?

7 A: Yes, sir.

8 Q: Thank you.

9 A: Can I see it, please? That's one of them. I got a
10 couple more. Okay.

11 Q: You said consumable cigarettes were stolen?

12 A: Yes, sir.

13 Q: I got the written report. It says undetermined --
14 undetermined amount. You're saying it was approximately
15 thirty?

16 A: It was a long time ago; so I can't remember the exact
17 amount, but I want to say it was around thirty.

18 Q: I got the report right here. Let me ask you a question.
19 You think a burglar or crook or whatever would break in your
20 place and steal one dollar worth of cigarette?

21 A: Well, first of all, I can't think of any cigarette that
22 costs one dollar.

23 Q: That's what the report said. It says description,
24 consumable cigarette, quantity one, value one dollar. That's
25 a person hard up for a cigarette. He could go pick one up out

THOMAS PAGE - CROSS BY THE DEFENDANT

1 of the ground somewhere maybe?

2 MS. MCELVEEN: Your Honor, I --

3 A: No, sir.

4 THE COURT: Wait a second.

5 A: No, sir.

6 MS. MCELVEEN: I don't know --

7 THE COURT: Wait just a second.

8 A: No, sir.

9 MS. MCELVEEN: I don't know what document --

10 THE COURT: Y'all just stop.

11 MS. MCELVEEN: I'm sorry. I don't know what document he
12 is --

13 THE COURT: Show her the document.

14 MS. MCELVEEN: -- testifying from.

15 THE COURT: Wait a minute. Show her the document,
16 please, Mr. Duren.

17 THE DEFENDANT: Right here.

18 MS. MCELVEEN: And, Your Honor, this is hearsay.

19 THE COURT: All right. Let me see it, please, sir.

20 THE DEFENDANT: This is not hearsay because it does --

21 THE COURT: We're not -- we're not arguing right now.
22 I'm looking.

23 All right. You can question the law enforcement officers
24 or the lead detective on the case, but the objection to
25 hearsay with this particular witness is sustained. All right.

THOMAS PAGE - CROSS BY THE DEFENDANT

1 MS. MCELVEEN: Thank you, Your Honor.

2 BY THE DEFENDANT:

3 Q: Mr. Page?

4 A: Yes, sir.

5 Q: I've got to ask you this. Can this refrigerator be moved
6 by one person?

7 A: No, sir.

8 Q: And how tall are these refrigerators?

9 A: Probably about -- let's see, I'm six foot three; so I'd
10 estimate they are about seven feet tall, maybe a little more
11 than seven.

12 Q: Where was the point of entrance that you noticed?

13 A: In the rear of the building.

14 Q: All right. Middle ways the refrigerator?

15 A: No. In relationship to the freezer unit, I'd say
16 probably about middle to three quarters of the way.

17 Q: And where was the blood found at?

18 A: On top of the freezer.

19 Q: At what place?

20 A: Near the edge.

21 Q: Near the edge?

22 A: Uh-huh.

23 Q: The corner or middle ways?

24 A: No. Near the edge. If you're looking straight at the
25 freezer, it'd be on the left hand side toward the top.

THOMAS PAGE - CROSS BY THE DEFENDANT

- 1 Q: On the corner?
- 2 A: No. On top.
- 3 Q: At the end of the freezer?
- 4 A: Yeah. Uh-huh.
- 5 Q: And how much space would you say was behind that freezer?
- 6 A: How much space?
- 7 Q: Yeah.
- 8 A: Oh, probably a gap about a foot, maybe two feet.
- 9 Q: About a foot?
- 10 A: Yeah.
- 11 Q: Two feet? Okay. Excuse me. From looking at this
- 12 picture, would you see a gap of one to two feet back?
- 13 A: Well, from the perspective of this camera angle here, it
- 14 appears that the freezer is all the way up against the wall,
- 15 but trust me, it's not.
- 16 Q: Okay. What are these hooks here for?
- 17 A: Can I see it?
- 18 Q: Are those for holding the freezer up against the wall?
- 19 That's what they appear to be.
- 20 A: I'm not sure what those hooks are, sir, but you can
- 21 clearly see in this picture that they're not attached to
- 22 anything.
- 23 Q: They're not attached to here?
- 24 A: No, sir.
- 25 Q: They're not attached? But it looks like they're up

THOMAS PAGE - CROSS BY THE DEFENDANT

1 against the wall. It looks like there's no gap.

2 MS. MCELVEEN: Objection, Your Honor, testifying, no
3 question.

4 THE COURT: All right. Sustained. You can ask
5 questions.

6 BY THE DEFENDANT:

7 Q: Mr. Page, how many times has your place been burglarized?

8 A: Oh, quite a few.

9 Q: Okay. How many times in the rear wall?

10 A: None, that I recall.

11 Q: None?

12 A: Except for this one, it's a no.

13 Q: Except for this one?

14 A: Yes, sir.

15 Q: This one time?

16 A: Yes, sir.

17 Q: You one hundred percent sure?

18 A: In my five years of working there, that is the only time
19 it was broken in through the rear.

20 Q: Your five years, his ten years. So it's never been
21 broken into the rear before?

22 A: No, sir.

23 Q: Okay. I have a question. I'll be right back.

24 A: Yes, sir.

25 Q: See this picture?

THOMAS PAGE - CROSS BY THE DEFENDANT

1 A: Uh-huh.

2 Q: See the difference in the cement?

3 A: Yes, sir.

4 Q: See the difference in these smears?

5 A: Yes, sir.

6 Q: It appears that it's been broken into before. It's been
7 replaced.

8 A: If it was, it didn't happen when I worked there.

9 Q: And you never noticed this before?

10 A: I never studied that wall that closely, sir. My work was
11 mainly on the inside of the building, not the outside.

12 Q: If I go back through the record of this building, two
13 people testified that this building never been broken into
14 before.

15 THE DEFENDANT: No further questions.

16 THE COURT: All right. Anything else?

17 MS. MCELVEEN: Just quickly, Your Honor, if I may ask.

18 REDIRECT EXAMINATION

19 BY MS. MCELVEEN:

20 Q: Thirty cartons of cigarettes when you were working there,
21 valued approximately how much?

22 A: Let's see, at that time -- the prices have changed now
23 I'm sure, but at that time, thirty cartons would have probably
24 been at least a thousand dollars' worth, maybe. Let's call it
25 900 to 1,100, somewhere in there.

CHARLES SCOTT BONNER - DIRECT BY MS. MCELVEEN

1 MS. MCELVEEN: Thank you. No further questions.

2 THE COURT: Anything else, Mr. Duren?

3 THE DEFENDANT: Right to recall this witness.

4 THE COURT: All right. You can step down. Thank you,
5 sir. Where are you working now, sir?

6 THE WITNESS: Jones Chevrolet.

7 THE COURT: Okay.

8 MS. MCELVEEN: Thank you, Your Honor. The State would
9 call Scott Bonner to the stand, please. Your Honor, may the
10 first two witnesses please be able to leave the courthouse?

11 THE COURT: Yes.

12 THE CLERK: State your name.

13 THE WITNESS: Scott Bonner.

14 THE COURT: Mr. Page, you can leave or stay, whichever
15 you'd like.

16 THE CLERK: Do you solemnly swear or affirm that the
17 testimony you give to this Court to be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: Yes, sir.

20 THE CLERK: Thank you. Come around and sit down. State
21 your name and spell your last for the record.

22 THE WITNESS: Charles Bonner. B-o-n-n-e-r.

23 CHARLES "SCOTT" BONNER, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

SCOTT BONNER - DIRECT BY MS. MCELVEEN

1 BY MS. MCELVEEN:

2 Q: Why are you here today, Mr. Bonner?

3 A: In regards to the -- to the incident, I was the reporting
4 officer at the time in the morning.

5 Q: Where did you -- well, where do you work now?

6 A: I work for the Sumter County Sheriff's Office.

7 Q: But in 2011, where did you work?

8 A: For the City of Sumter Police Department.

9 Q: Were you working June 8th and 9th, 2011?

10 A: Yes, ma'am, I was.

11 Q: Did you have the opportunity to respond to Thomas and
12 Howard Company here in Sumter County on June 9th, 2011?

13 A: Yes, ma'am, I did.

14 Q: What did you discover?

15 A: I discovered -- when I arrived, the workers there at
16 Thomas & Howard showed that there was a -- as you've seen
17 before, a hole in the back wall. Also, cigarette cartons
18 scattered all about the back yard of the business.

19 Q: Was there a fence encircling the business?

20 A: Yes, ma'am, there was.

21 Q: Was there a way for someone to enter that underneath the
22 fence?

23 A: Yes, ma'am, there was.

24 Q: I'm going to show you State's Exhibit. Is this the point
25 of entry into the fence?

SCOTT BONNER - DIRECT BY MS. MCELVEEN

1 A: I believe so, yes, ma'am.

2 Q: And you saw the hole in the wall yourself?

3 A: Yes, ma'am, I did.

4 Q: What did you do after you responded and spoke with the
5 victims or the business workers?

6 A: After we saw that, we called -- as a patrol officer, we
7 called for the investigator on call.

8 Q: Was there anyone -- who would respond? Who did respond?

9 A: I believe Detective Tallon.

10 Q: Looking at the crime scene and what was left behind, what
11 was the -- why did the person break into the building?

12 A: Why did they break into the building?

13 Q: Yes, sir.

14 A: I guess to commit a crime.

15 Q: What kind of crime?

16 A: I guess burglary.

17 Q: And were they trying to steal anything?

18 A: It appears so, yes, ma'am.

19 Q: What were they trying to steal?

20 A: Cigarettes.

21 Q: And if you'd please answer any questions that Mr. Duren
22 might ask.

23 A: Sure.

24 THE COURT: Mr. Duren?

25 THE DEFENDANT: Yes, sir.

SCOTT BONNER - CROSS BY THE DEFENDANTCROSS-EXAMINATION

1
2 BY THE DEFENDANT:

3 Q: Officer, you were one of the first ones to respond to the
4 scene; correct?

5 A: That morning, yes, sir.

6 Q: Okay. Did -- did you process the scene?

7 A: No, sir.

8 Q: Okay. So what was your job at the scene?

9 A: When I got the 9-1-1 call, the call to the alarm and to
10 the business owners, I arrived there to see what was -- what
11 was the matter.

12 Q: And what did you observe?

13 A: I saw the hole in the back of the wall, as well as the
14 cigarettes all over the yard.

15 Q: You didn't touch anything or move anything?

16 A: Evidence-wise, no, sir.

17 Q: Evidence-wise? Is this the hole you observed in the
18 wall?

19 A: Yes, sir.

20 Q: Do you have any idea how a hole like this would be made?

21 A: Is it -- brute force. There's a million ways that that
22 could be made, sir.

23 Q: A person can break it out?

24 A: You can do anything.

25 Q: With a hand? With a hand?

SCOTT BONNER - CROSS BY THE DEFENDANT

1 A: Yes, sir. If that's what you want to do.

2 Q: I don't think you could rip no two by fours. I mean two
3 by -- plywood out with your hand. What strikes you odd about
4 this photograph here?

5 A: That there's a hole in the wall.

6 Q: What else?

7 A: I don't understand the question, sir.

8 Q: To me, it looks like somebody took their time and took
9 these blocks out and knocked this out from the inside. That's
10 what it looked like.

11 A: Okay.

12 Q: To me, it does.

13 MS. MCELVEEN: Objection. Testifying, Your Honor.

14 THE COURT: Okay. You can ask questions, Mr. Duren.
15 While you are questioning a witness, you may not make any
16 affirmative --

17 THE DEFENDANT: Okay.

18 THE COURT: -- statements.

19 THE DEFENDANT: Okay.

20 BY THE DEFENDANT:

21 Q: So you didn't collect none of the DNA evidence?

22 A: No, sir, I did not.

23 Q: You didn't collect none of the evidence there?

24 A: No, sir.

25 Q: Your forensic team did that?

SCOTT BONNER - CROSS BY THE DEFENDANT

1 A: Yes, sir.

2 Q: Okay.

3 THE DEFENDANT: No further questions.

4 THE COURT: All right. Anything else?

5 MS. MCELVEEN: Nothing, Your Honor.

6 THE COURT: Thank you. You can step down.

7 MS. MCELVEEN: The State would call Trey Tallon.

8 THE COURT: Everybody on the jury okay? Anybody need to
9 take a break? We can if you want to.

10 (WHEREUPON, there was no verbal response.)

11 THE COURT: All right. We'll have one more witness and
12 then take a break. Okay?

13 MS. MCELVEEN: Thank you, Your Honor. May Investigator
14 Bonner be excused at this time?

15 THE COURT: Any objection, Mr. Duren, to Mr. Bonner?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Thank you, sir.

18 THE CLERK: Place your left hand on the Bible and raise
19 your right hand. State your name.

20 THE WITNESS: James Tallon.

21 THE CLERK: Do you solemnly swear or affirm that the
22 testimony you give to this Court will be the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Come around here. State your

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 name and spell your last for the record.

2 THE WITNESS: James Tallon. T-a-l-l-o-n.

3 JAMES TALLON, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MCELVEEN:

7 Q: Why are you here today, Mr. Tallon?

8 A: On the date in question, I was working as a forensic
9 technician at the Sumter Police Department and I responded to
10 process the scene.

11 Q: What do you do now?

12 A: I am a special agent with the South Carolina Law
13 Enforcement Division, also known as SLED.

14 Q: But on -- in June 2011, you responded to Thomas & Howard
15 Company?

16 A: Yes, ma'am, I did.

17 Q: Can you tell us about what you found there and what you
18 did?

19 A: Once we arrived on scene, it was myself and Detective
20 Aleck. We arrived on scene, photographed the scene. These
21 photos that you're seeing today, we took. We walked around
22 the back of the building, saw the hole in the back of the
23 building, and then went on the inside. While we were in the
24 back though, we did notice the cigarette cartons along the
25 back and that place where it looked like someone could

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 possibly scoot under the fence to get inside. Once we got
2 inside, we went to the back of the building and I got a ladder
3 so that I could climb up on top of the big wall freezer, I
4 guess you'd call it.

5 Q: Is this a corner of the freezer that you saw, that you
6 climbed on top of?

7 A: Actually, I climbed on -- in the front part of it so that
8 I wouldn't mess up anything on that side because if you look
9 right there, it looks like where somebody would be jumping up
10 and shoe marks skidding across the aluminum.

11 Q: So this skid mark was on the refrigerator? You did not
12 make that mark, did you?

13 A: No, ma'am.

14 THE COURT: What number is that?

15 MS. MCELVEEN: That is number -- Your Honor, that is
16 number -- I'm showing you State's Exhibit 18.

17 THE COURT: Okay.

18 BY MS. MCELVEEN:

19 Q: What did you do once you got on top of the refrigerator
20 unit?

21 A: We photographed it. I also noticed some blood or what
22 appeared to be blood at the time, right here on that end of
23 the refrigerator, and also where the dust had been disturbed
24 on the top.

25 Q: And is this -- you took these pictures yourself?

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 A: Yes, ma'am, I did.

2 MS. MCELVEEN: I'm showing him State's Exhibits 15
3 through 29, Your Honor.

4 BY MS. MCELVEEN:

5 Q: Did you perform some sort of test to determine that that
6 was blood? How did you know it was blood?

7 A: We have a test in forensics; it's called Hemadent.

8 Basically, it looks for the hemoglobin in blood. So those two
9 swabs that you saw me taking in a photo just a moment ago, it
10 was swabbed on that with sterile water and then placed inside
11 the Hemadent, at which time the glass is broken and you shake
12 it up and if it turns blue, it's positive for mammal blood.

13 It could be any kind of mammal, but it comes up as mammal
14 blood. So that lets me know it's not dried ketchup or
15 something to that effect, and I can go ahead and collect it
16 and send it off for DNA testing.

17 Q: Looking at State's Exhibit 19, is that your Hemadent
18 test?

19 A: Yes, ma'am, it is.

20 Q: And that indicates that that is mammal blood that was on
21 top of that refrigerator unit?

22 A: Correct.

23 Q: What did you do next?

24 A: I then took two swabs from another area right there and
25 sealed them up with evidence tape showing where I got them

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 from so that we could later send it to SLED.

2 MS. MCELVEEN: All right. Your Honor, please let the
3 record reflect that he is referencing picture number 2.

4 THE COURT: That one right there is State's number 2?

5 MS. MCELVEEN: I'm sorry, 22.

6 THE COURT: State's 22.

7 MS. MCELVEEN: State's 22. I'm sorry.

8 BY MS. MCELVEEN:

9 Q: And you photographed the top of the refrigerator unit you
10 said; correct?

11 A: Yes, ma'am.

12 Q: Was there other blood -- is this -- well, is this a good
13 picture from the top of the refrigerator unit down to the
14 bottom?

15 A: Yes, ma'am. I didn't go quite as far as I could have in
16 that photo, just because I did not want to fall down.

17 Q: But there is -- is there space between the refrigerator
18 unit and the point of entry?

19 A: That is correct. The worker that was up here earlier
20 stated it's about a foot and half to two foot. He was
21 correct.

22 Q: So that light you see coming through the hole, that is
23 the hole? That's the hole where the burglar came in?

24 A: Correct. Yes, ma'am.

25 Q: What is this pictured here in State's Exhibit 27?

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 A: That is also -- we called it a possible blood stain at
2 the time, but with the Hemadent showing it was blood. It was
3 a -- it was a blood stain.

4 Q: That's another separate blood stain?

5 A: Correct.

6 Q: What did you do with these swabs? What -- what -- what
7 happens next?

8 A: Basically, they go into a small cardboard box and then
9 that box goes inside of a manila envelope. You fill out the
10 information involving case number, where you collected it
11 from, what type of sample it is, in this case blood, and then
12 we seal it with evidence tape. I sign it, date it, and then
13 it goes off to our evidence custodian who later takes it to
14 SLED to be processed.

15 Q: I'm going to hand you State's Exhibit 31.

16 THE COURT: What's 30?

17 MS. MCELVEEN: Photos.

18 THE COURT: So we're talking about 31?

19 MS. MCELVEEN: 31, yes, sir.

20 BY MS. MCELVEEN:

21 Q: Is this -- looking deep inside this package that's sealed
22 up, without opening it, are those the swabs that you took from
23 the top of the refrigerator that day?

24 A: Yes, ma'am.

25 Q: How do you know that?

JAMES TALLON - DIRECT BY MS. MCELVEEN

1 A: It's got the initials and the handwriting on there that I
2 can recognize.

3 Q: What happens -- what did you do with the swabs after you
4 collected them?

5 A: After they were collected and sealed, they were passed
6 off to Mr. James Allsbrook, who is our evidence custodian, who
7 then takes it to SLED.

8 Q: Thank you very much. Oh, one question. I'm sorry. The
9 blood on top of the frig -- you've dealt with blood many
10 times. I'm sure you processed a lot of scenes. Was it dried
11 or was it a little more fresh?

12 A: It was a dried but in a fresh state blood. Once it
13 dries, it stays red for a period of time and then once -- over
14 time, it becomes a dark brown color. Also with the dust
15 that's disturbed on the top of refrigerator, if that had been
16 old blood, say a few months old, the dust in that building
17 would have started to cover over the top of it. In this case,
18 it didn't.

19 MS. MCELVEEN: Thank you. I have no further questions.
20 Please answer -- answer any questions Mr. Duren might have.

21 THE WITNESS: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY THE DEFENDANT:

24 Q: Good afternoon.

25 A: Good afternoon, sir.

JAMES TALLON - CROSS BY THE DEFENDANT

1 Q: What did you say your name was again?

2 A: James Tallon.

3 Q: You was the one that did the blood there?

4 A: Yes, sir.

5 Q: So you are the forensic expert in collection?

6 A: I was the forensic technician at the time, yes, sir.

7 Q: You were the forensic technician at the time and you
8 would agree that this the blood that you tested was mammal
9 blood?

10 A: I'm sorry. Ask the question again?

11 Q: This -- you would agree that this was the blood that you
12 tested near the corner of the refrigerator?

13 A: Correct.

14 Q: For human blood, mammal blood?

15 A: Correct.

16 Q: Correct. And directly over the point of entry, was there
17 blood too?

18 A: Directly over the point of entry as in the top of the
19 freezer?

20 Q: Refrigerator.

21 A: Correct. Yes, sir. You're looking at that and that's
22 the same photo that's up on the monitor there.

23 Q: You tested that too?

24 A: I don't remember if that one specifically was tested, but
25 we usually don't test every single blood spot because when you

JAMES TALLON - CROSS BY THE DEFENDANT

1 find blood, more than likely it's all going to be blood, but
2 it's going to be tested --

3 Q: Was --

4 A: -- later.

5 Q: So you didn't -- I got the report here to SLED. You only
6 sent one blood test to SLED to be tested?

7 A: One set of swabs. Correct.

8 Q: One set of swabs. And you didn't send the other?

9 A: I can't -- I don't know that there was -- there was no
10 other set of swabs.

11 Q: Okay. It's SLED's evidence report. Item 2, swab from
12 the top of the refrigerator above entry point was not tested
13 at the time, according to instruction from the South Carolina
14 Law Enforcement Division. So there was two sets?

15 MS. MCELVEEN: Objection.

16 A: No, sir. That's --

17 THE COURT: Wait just a second. Ma'am?

18 MS. MCELVEEN: I don't know what document he is --

19 THE COURT: Show her --

20 MS. MCELVEEN: -- trying to publish to the jury right
21 now, but I know that we have a forensic analyst coming to
22 testify.

23 THE COURT: Are you going to -- are you going to be
24 seeking to have information from that report presented later?

25 MS. MCELVEEN: Yes, sir.

JAMES TALLON - CROSS BY THE DEFENDANT

1 THE COURT: Okay. So do you object to him referencing
2 this report now?

3 MS. MCELVEEN: No, sir..

4 THE COURT: All right.

5 MS. MCELVEEN: That report will be testified to later.

6 THE COURT: Okay. You can go ahead, Mr. Duren.

7 THE DEFENDANT: Okay.

8 BY THE DEFENDAT:

9 Q: It says Item 1 was analyzed for DNA. Item 2 wasn't. I'm
10 sort of curious why both of them wasn't analyzed. It could
11 have been more than one suspect.

12 A: That was done by SLED or the affiliate that they sent the
13 testing to. I would have to see the document that you're
14 speaking of to be able to tell you what that's about.

15 Q: Looks like if you test one, you'd test them all. Okay.
16 At the point of entry -- you're a forensic -- did you find any
17 fiber or anything?

18 A: Fiber as in?

19 Q: From off the clothes?

20 A: No, sir.

21 Q: If somebody go through a hole like that against this
22 wall, there would be some sort of fiber or something, wouldn't
23 it?

24 A: Not necessarily.

25 Q: Not necessarily? Come on.

JAMES TALLON - CROSS BY THE DEFENDANT

1 A: You don't always --

2 Q: A rocket scientist would know you're going to leave
3 something.

4 MS. MCELVEEN: Objection, Your Honor.

5 THE COURT: All right. Sustained. You -- you may ask
6 questions. You can make those statements in the form of
7 questions, Mr. Duren.

8 THE DEFENDANT: Okay.

9 THE COURT: But you may not make a statement while you
10 are questioning a witness.

11 THE DEFENDANT: Okay.

12 BY THE DEFENDANT:

13 Q: Did -- did you check for fiber?

14 A: We looked around the area, but I did not notice anything.
15 But we did not get out our alternate light source to check
16 either.

17 Q: Okay. Mr. -- one of witnesses earlier -- I can't
18 remember his name -- he stated that -- this blood, is it
19 smeared or dripped?

20 A: That is definitely a smear.

21 Q: A smear. So in your opinion or whatever, somebody could
22 have smeared it?

23 A: Correct.

24 THE DEFENDANT: No further questions, Your Honor.

25 THE COURT: All right. Any redirect?

1 MS. MCELVEEN: None, Your Honor.

2 THE COURT: All right. Thank you, sir. You can step
3 down.

4 All right. Ladies and gentlemen, we are going to take a
5 recess for about ten minutes. During the break, I'll be
6 finding out exactly -- well, pretty much exactly how much
7 longer we'll be here today.

8 Obviously, during the break you may not discuss the case
9 in any way at all. Nothing remotely involving it. Thank you.

10 (WHEREUPON, the jury exited the courtroom.)

11 MS. MCELVEEN: Your Honor, may Special Agent Tallon be
12 released?

13 THE COURT: All right. Any objection to Agent Tallon
14 being dismissed?

15 THE DEFENDANT: I would like to reserve the right to
16 recall this witness.

17 THE COURT: All right. You -- you work in Columbia, sir?

18 THE WITNESS: Yes, sir.

19 THE COURT: Where do you live? In Columbia?

20 THE WITNESS: In Columbia, yes, sir.

21 THE COURT: All right. Your -- Ms. McElveen has you your
22 contact information?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Okay. You can leave or stay if
25 you'd like. But for now, you're excused.

1 THE WITNESS: All right. Thank you.

2 THE COURT: All right. We'll take ten minutes. Yes,
3 sir, Mr. Duren?

4 THE DEFENDANT: I have a motion for the Court.

5 THE COURT: All right.

6 THE DEFENDANT: Your Honor, I'd like to make a motion for
7 dismissal of the charges.

8 THE COURT: Okay.

9 THE DEFENDANT: Because I was never notified directly
10 that they was presenting this case before the grand jury for
11 indictment.

12 THE COURT: All right. Ms. McElveen?

13 THE DEFENDANT: I had no notice of direct presentation,
14 Your Honor.

15 THE COURT: I'm sorry. I didn't hear that last part.

16 THE DEFENDANT: I did not have a notice of direct
17 presentation of the charge to the grand jury.

18 THE COURT: Okay. I don't either. So I don't know what
19 you're talking about. Do you have a copy I can look at?

20 THE DEFENDANT: They -- they presented a charge to the
21 grand jury, Your Honor.

22 THE COURT: Yes, sir.

23 THE DEFENDANT: But, Your Honor, I would like to see that
24 warrant that they presented.

25 THE COURT: Is this the document you were looking for

1 earlier?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And Ms. McElveen had a copy?

4 THE DEFENDANT: Yes, sir, Your Honor. I would like to
5 see the warrant that they presented.

6 THE COURT: All right. Warrant Number 93626, you have
7 that?

8 MS. MCELVEEN: Yes, sir, Your Honor. That is the
9 original arrest warrant that was served on him at the time of
10 his arrest, charging him with burglary second degree violent.

11 THE COURT: Okay.

12 MS. MCELVEEN: Let me get you a copy right here. It's
13 just not a certified copy. It's just a copy that I have.

14 THE COURT: All right. Let me see the warrant, please.
15 All right. This is an arrest warrant referencing -- or it's
16 Warrant Number M936 --

17 THE DEFENDANT: 936.

18 THE COURT: 326.

19 THE DEFENDANT: 326. The warrant numbers are different,
20 Your Honor.

21 THE COURT: 936 -- all right. One says 93626; the other
22 one says 936326. Has there been more than one arrest warrant
23 served on Mr. Duren?

24 MS. MCELVEEN: No, sir.

25 THE COURT: All right. Anything else, Mr. Duren?

1 THE DEFENDANT: I would show that she had that warrant
2 number on the other two presentations, Your Honor.

3 THE COURT: I'm sorry?

4 THE DEFENDANT: That same warrant number on the other two
5 that was for first-degree burglary. She presented those same
6 -- that one on the same two there.

7 THE COURT: The incorrect one?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Well, it's apparently a scrivener's
10 error, which means a clerical error. Your motion on that
11 point is denied because we're undoubtedly talking about the
12 same warrant. Evidently one number was left off the notice of
13 direct presentment.

14 THE DEFENDANT: Your Honor, with all due respect, Your
15 Honor?

16 THE COURT: Yes, sir.

17 THE DEFENDANT: She -- she caught an error after two-and-
18 a-half years --

19 THE COURT: Uh-huh.

20 THE DEFENDANT: -- and re-indicted me. I just found this
21 one over break. Clearly, she could have caught that one.
22 That is the wrong warrant number. I will win this on appeal,
23 Your Honor.

24 THE COURT: Well, that's fine. If you win it on appeal,
25 that's fine and dandy, but you're not -- you're not going to

1 prevail on it now. If I get reversed, I will take no personal
2 offense, but your motion is denied. It's clearly a clerical
3 error. If it was -- you said that the same incorrect warrant
4 number has been on the other presented indictments; is that
5 correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Well, so we're undoubtedly talking
8 about the same piece of paper --

9 THE DEFENDANT: Okay.

10 THE COURT: -- but the numbers are just different.

11 THE DEFENDANT: This is a whole different warrant, Your
12 Honor:

13 THE COURT: All right. I gotcha. I understand your
14 argument.

15 THE DEFENDANT: It's a whole different warrant.

16 THE COURT: All right. Ms. McElveen, you can have this
17 warrant back.

18 MS. MCELVEEN: Okay. Your Honor, also --

19 THE COURT: Would you like to make this a part of the
20 record too, sir?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: All right. We'll -- Ms. McElveen, if you
23 would please, give Mr. Campbell a copy of your notice of
24 direct presentment. Mr. Duren wrote on his.

25 MS. MCELVEEN: Okay.

1 THE COURT: Can you make another copy of it?

2 MS. MCELVEEN: Okay.

3 THE COURT: And make a copy of the warrant.

4 MS. MCELVEEN: Yes, sir.

5 THE COURT: And here's the warrant right here.

6 MS. MCELVEEN: Thank you. The warrant, Your Honor, was
7 attached to his notice of direct presentment; so he should
8 have no confusion as to the number because the -- I'm sorry.
9 The indictment has the correct arrest warrant number on it,
10 and it was attached as a part of the certified copy.

11 THE COURT: Wait just a second. All right. Explain that
12 to me again? Because we're -- explain it for the record
13 slowly so everybody will understand.

14 MS. MCELVEEN: Although there was a scrivener's error on
15 the direct present notice, when I served the notice on him, a
16 certified copy of the indictment with the proper arrest
17 warrant number was attached, and it included all six numbers
18 at that time. So there should be no confusion. It was served
19 to him with a copy of the true-billed indictment which
20 contained the correct arrest warrant number at the time.

21 THE COURT: Okay. The arrest warrant number on the face
22 of the indictment is M936326. The arrest warrant number on
23 the notice prepared and signed by Ms. McElveen clocked in May
24 12, 2015, leaves the second three out. So it's apparent that
25 it was referring to the exact same warrant. And your -- your

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 -- your motion to dismiss it based on that particular
2 scrivener's error is denied.

3 MS. MCELVEEN: Your Honor, for the record, also the same
4 indictment number was attached to both the notice and the
5 indictment.

6 THE COURT: Right. All right. We'll take ten minutes.

7 MS. MCELVEEN: Thank you, Your Honor.

8 (WHEREUPON, there was a break in the proceedings.)

9 (WHEREUPON, the jury entered the courtroom.)

10 THE COURT: Ladies and gentlemen. Ms. McElveen, next
11 witness.

12 MS. MCELVEEN: Yes, sir. The State would call John
13 Melton.

14 THE CLERK: State your name, please.

15 THE WITNESS: John David Melton.

16 THE CLERK: Do you solemnly swear or affirm that the
17 testimony you give to this Court will be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: State your name and spell your last for the
21 record.

22 THE WITNESS: Excuse me. John David Melton, M-e-l-t-o-n.

23 JOHN MELTON, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 BY MS. MCELVEEN:

2 Q: Why are you here today, Mr. Melton?

3 A: I am the lead investigator in the case that is being
4 tried.

5 Q: What is your job? What do you do?

6 A: I work for the Sumter Police Department. I am the lead
7 detective of the Sumter Police Department's Property Crimes
8 Unit under the Investigative Services Division.

9 Q: Did you respond to -- did you go to the scene?

10 A: I did not.

11 Q: Then what -- tell us a little bit about what detectives
12 do? If you don't -- you don't have to go to the scene, what
13 do you -- do you make the charges? Do you arrest the
14 individual? What do you do?

15 A: There are many times where we don't go to the scene. A
16 patrol officer will respond to a scene. They may get to
17 process a scene themselves if it's a limited amount of
18 processing or they may call out a forensic unit. That depends
19 on a number of things. It could be manpower issues. It could
20 be severity of the scene. It could be maybe they don't have
21 the proper training to do certain things at the scene.

22 From that, the evidence that is collected is placed into
23 evidence. It goes into our evidence with a chain custody that
24 will follow it. It goes to our evidence custodian and it kind
25 of gets dispersed from there. It might have to do with

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 processing for fingerprints. It might have to do with
2 processing for DNA. It might -- might be something that
3 doesn't need any further processing; it's just there just for
4 court purposes. Sometimes we even get stuff that's marked for
5 return.

6 It just depends on a case-by-case basis. All that goes
7 in. The scene is photographed. The case will get assigned to
8 me by a supervisor, who every weekday morning will come in and
9 assign cases, and from there we'll follow it up.

10 We will read the report. We'll make contacts with
11 victims, witnesses, what have you. Look at pictures in some
12 cases. Try to deal with what needs to be done with evidence,
13 if we can, and then we'll -- if we get a lead, we'll follow
14 the lead, try to develop probable cause to make an arrest, get
15 an arrest warrant, and then we will prepare all of the case
16 for court as far as getting everything to the Solicitor's
17 Office for a hearing.

18 Q: Did you guys solve the Thomas & Howard Burglary in 2011?
19 Did you guys know who did the crime in 2011?

20 A: No, we did not.

21 Q: Did you receive a lead that would indicate Mr. Duren?

22 A: Yes, we did.

23 Q: What happened after you got that lead?

24 A: I received the lead. In turn, ended up collecting Mr.
25 Duren's DNA, which is a buccal swab, which is swabbing inside

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1 of the cheek. What we're actually collecting there is --

2 Q: Let's go back. You are jumping way ahead here.

3 A: I apologize.

4 Q: Did you meet with Mr. Duren?

5 A: I did.

6 Q: Did you get -- what day did you meet with Mr. Duren?

7 A: I don't have that in front of me. I couldn't tell you
8 the exact date without looking at the documents.

9 Q: I'm going to hand you State's Exhibit 1, for right now
10 for I.D. purposes. Can you identify what this is?

11 A: This is a Sumter Police Department Interview Form, also a
12 Waiver of Rights Form or more commonly known as a Miranda
13 Rights Form.

14 Q: Does that indicate what date you met with Mr. Duren?

15 A: It does.

16 Q: What date did you meet with Mr. Duren?

17 A: 31 May 2012 at 3:53 p.m.

18 Q: And that sheet -- you gave him that sheet; correct?

19 A: This sheet -- when we do it, actually we'll read it out
20 loud. The person will have the opportunity to read it with
21 us. Each time we say a bullet, we will ask them if they
22 understand, yes or no. When we get to the bottom, we fill out
23 this part down here that indicates the date and the time, that
24 everything's been read, that they understand everything, and
25 then we come down here to the part where the defendant has the

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 opportunity to sign it.

2 Q: So were you present? Did Mr. Duren sign that form?

3 A: He did.

4 Q: And that form indicates what? What does it say? What
5 does that form state exactly? Did he talk to you about what
6 happened?

7 A: He just was adamant that he didn't do it.

8 Q: Did he consent to give you a DNA swab?

9 A: He did.

10 Q: What does a DNA swab -- how do you collect the DNA swab
11 once someone consents?

12 A: A DNA swab is a -- it starts off with a kit inside a
13 manila envelope. Inside that envelope is a little small box.
14 It's got a couple of swabs, just like you would see at the
15 hospital. And also in there is a piece of evidence tape.

16 So the kit -- I would take the kit, I would go and speak
17 with somebody. As part of it, we would read them their
18 rights. We would go through a consent form for DNA, which
19 will be filled out, signed, so on and so forth.

20 Then as far as the collection goes, we would build the
21 little box that's in there, open the envelope, get the swabs
22 out, glove on. It would actually be swabbing the inside of
23 the mouth with -- I'm not sure if it's cotton, but it looks
24 like cotton on the end of the swab itself. You are actually
25 collecting dead skin cells from inside of the mouth.

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1 Once you swab the inside of the mouth, you insert them
2 back into the box, you seal the box, stick that into the
3 envelope, close the envelope, put your evidence tape on it,
4 fill out the outside of the envelope, which would indicate
5 date, time, individual, things of this nature.

6 MS. MCELVEEN: And, Your Honor, we'd like to have State's
7 Exhibit 1 entered into evidence at this time.

8 THE COURT: Any objection from the defendant?

9 THE DEFENDANT: No.

10 THE COURT: All right. Is that the Miranda Form?

11 MS. MCELVEEN: Yes, sir.

12 THE COURT: All right, 1 is in.

13 (WHEREUPON, State's Exhibit Number 1, the Miranda form,
14 was admitted into evidence.)

15 MS. MCELVEEN: And, Your Honor, I think this is also a
16 Court's exhibit. We'd like to make it State's Exhibit 32.

17 BY MS. MCELVEEN:

18 Q: Can you identify --

19 THE COURT: Do you have a separate copy?

20 MS. MCELVEEN: Yes, sir.

21 THE COURT: Okay. That will -- mark it for ID, please.

22 THE COURT REPORTER: Yes, sir.

23 (WHEREUPON, the consent form was marked as State's
24 Exhibit Number 32 for identification.)

25 THE COURT: 32?

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 MS. MCELVEEN: 32, yes, sir.

2 BY MS. MCELVEEN:

3 Q: Can you identify Exhibit 32?

4 A: Yes. This is a City of Sumter Police Department Consent
5 to Give Samples for Analysis form.

6 Q: Does that have your signature on it?

7 A: It does and my badge number.

8 Q: Did you -- so you signed that form?

9 A: Yes, I did.

10 Q: Did you sign that form in the presence of anyone?

11 A: Mr. Duren and, at the time, Detective Osteen.

12 Q: Does -- what does that form -- what did Mr. Duren sign
13 that form for? Why did he sign that form?

14 A: This form is basically presented when we want to collect
15 DNA from somebody. This is a form that says that they
16 voluntarily give us their DNA for whatever purposes we might
17 need it for, and it is completed to show that he, in fact, did
18 voluntarily give his DNA.

19 MS. MCELVEEN: Your Honor, we would like to have State's
20 Exhibit 32 entered into evidence at this time.

21 THE COURT: Any objection, Mr. Duren?

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: Okay. 32 is in.

24 (WHEREUPON, State's Exhibit Number 32, the consent form,
25 was admitted into evidence.)

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 BY MS. MCELVEEN:

2 Q: So after he consented, you did collect buccal swabs;
3 right?

4 A: That's correct.

5 Q: I'm showing you State's Exhibit 33 for identification
6 purposes only at this time. What are -- what is 33? What
7 does that do?

8 A: This is the envelope I described a minute ago. This is a
9 DNA collection kit. It is -- if you see here, the outside has
10 the case number. It's got my name. I'm the one who collected
11 it. It's got the date, the time. It says oral buccal, which
12 means we collected it from the inside of the mouth, and it's
13 got Mr. Duren's name, along with his date of birth. Then on
14 the back -- I don't know if you can see real well, but I
15 described the evidence tape. It's right there across the back
16 where it was sealed.

17 Q: So you're the one that collected that and sealed that
18 evidence?

19 A: Yes, that's correct.

20 Q: After you collect that swab -- I guess you did that for
21 Mr. Duren; correct?

22 A: That's correct.

23 Q: So you personally took the swabs from his mouth?

24 A: Yes.

25 Q: What happens to that evidence after that?

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 A: Once again, I take this, I seal it. I know you can't see
2 it from there, but on the bottom is some initials. I enter it
3 into evidence and turn it over to our evidence custodian, via
4 a chain of custody. What that does is that keeps track of it
5 from the point I take it all the way through here today.

6 Q: After you submitted that evidence, did you have the
7 occasion to arrest Mr. Duren for this crime?

8 A: I did.

9 Q: What did you charge him with?

10 A: Burglary second degree violent.

11 Q: What exactly does that -- why burglary second degree
12 violent?

13 A: In this case, an enhancement charge was made as far as
14 the burglary second degree violent due to Mr. Duren's --

15 Q: I'm going to hand you State's Exhibit 34 so you can
16 testify to it.

17 THE COURT: Let me see it, please. Show it to Mr. Duren.

18 MS. MCELVEEN: I've already given him a copy of it.

19 THE COURT: Show it to him. This would be 33 and --
20 excuse me, 34. It's one or 34 and 35?

21 MS. MCELVEEN: 34 and 35.

22 THE COURT: Mark those for ID first and then show them to
23 him. Okay?

24 MS. MCELVEEN: Yes, sir.

25 THE DEFENDANT: Objection, Your Honor.

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 THE COURT: All right. Ladies and gentlemen, if you
2 would, please step out to your jury room. Please do not
3 discuss the case. It will be about a five-minute recess.

4 (WHEREUPON, the jury exited the courtroom.)

5 THE COURT: All right. Mr. Duren?

6 THE DEFENDANT: Your Honor, if these are presented to the
7 jury in evidence, this would solely convict me, Your Honor.

8 THE COURT: All right. Are you talking about the two
9 sentencing sheets --

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: -- for your prior burglary convictions?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Please --

14 THE DEFENDANT: This would --

15 THE COURT: Wait. I understand. Just let me -- I'd like
16 to read them closely.

17 MS. MCELVEEN: May I --

18 THE COURT: So you -- I need to take a look at them
19 closely. Okay?

20 (WHEREUPON, there was a pause in the proceedings.)

21 THE COURT: All right. Just to make sure the record is
22 clear, Number 34 is a sentencing sheet signed evidently by
23 Judge Newman, April 4, 2002, burglary in the second degree
24 under the violent section. The sentence is irrelevant, but it
25 was a five-year prison sentence.

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 On the same date, Exhibit 35 is a sentencing sheet for
2 another guilty plea of burglary in the second degree violent,
3 and Mr. Duren was sentenced to a concurrent five-year prison
4 term.

5 The defendant -- Mr. Duren, you are arguing that this is
6 extremely prejudicial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Ms. McElveen?

9 MS. MCELVEEN: Yes, sir. Under South Carolina Code of
10 Laws for burglary second degree violent, that is two prior
11 burglary or house-breaking convictions is an element of the
12 offense that can be used and proved in evidence, pursuant to
13 *State of South Carolina v. Thomas Curtis Hamilton*, 327 S.C.
14 440, which held that evidence of prior burglary convictions
15 was admissible to prove prior offense element of first-degree
16 burglary, which would equally apply here to second-degree
17 violent burglary.

18 And also, under *State v. James Benton*, 338 S.C. 151, the
19 State does not have to accept defendant's stipulation to his
20 two prior burglary offenses in lieu of introducing the
21 evidence of convictions before the jury. We are allowed to
22 enter the evidence of convictions to the jury. We do not have
23 to agree to stipulate.

24 THE COURT: All right. Mr. Duren, anything -- any
25 response to that?

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 THE DEFENDANT: Of the two -- of the two burglaries, Your
2 Honor, if I'm allowed to explain to the jury those two
3 burglaries, I will -- am I allowed to explain to the jury
4 about those two burglaries?

5 THE COURT: No, sir. The --

6 THE DEFENDANT: Well --

7 THE COURT: First things first. Well, I guess what
8 you're saying is you may not object to it or you might not
9 object to it if you are allowed to explain?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. That is not part of the legal
12 equation. The law is this, and according to these two cases
13 and the burglary statute, that the State, unfortunately for
14 you, is entitled to do what it is attempting to do. I would
15 be required to tell the jury that they may not use these two
16 prior burglary convictions in a fashion that would -- well,
17 let me put it this way.

18 They cannot use these two prior burglary convictions as
19 evidence that you must have committed this one too, since
20 you've already done two more, and the jury is not entitled to
21 use these two prior burglary convictions on the issue that you
22 are a person of bad character or you are the type of character
23 who would commit this offense.

24 THE DEFENDANT: Your Honor, with all due respect to you,
25 Your Honor, those two burglaries -- I was running for my life

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 that day. Some young man was behind me with a .357 Magnum and
2 a 9mm, the same day the arson took place. I almost ended up
3 losing my life that day. I got Medivac-ed to Charleston
4 Medical Burn Center, stayed on life support system for twenty-
5 two days.

6 Those two burglaries -- I had no intention of running up
7 in nobody's door, but my life was in danger and somebody was
8 trying to kill me. When the first person's house I ran into,
9 he asked me to leave his house, I left his house. Asked him
10 to call 9-1-1. The second burglary, I ran into that man's
11 house, an older white guy. I caused \$14,000 worth of damage
12 to that man's house. That man forgave me in court when he
13 realized the situation that I was in. Those burglaries was
14 not intentionally that.

15 And if I had known back then that they was going to try
16 me as violent on that, I would have never had pled guilty to
17 it because none of the defendants -- I mean none of -- none of
18 the plaintiffs back then had no remorse for me doing what I
19 did. They told me they would have did the same thing. They
20 came and stood up and told the judge in court that they didn't
21 want me prosecuted, but the Judge said by law he had to give
22 me some time. Those -- those was back when I was a stupid
23 individual. Yes, I did those two, for my life, Your Honor.

24 THE COURT: All right.

25 MS. MCELVEEN: Your Honor --

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 THE DEFENDANT: For my life.

2 MS. MCELVEEN: He is confusing them. There is another
3 set of burglary with an arson. That is a different set of
4 burglaries. Those are the violent burglaries. These are the
5 non-violent burglaries, but that's not --

6 THE COURT: When you say those are the violent
7 burglaries, these are the non-violent, the record doesn't show
8 what you're talking about.

9 MS. MCELVEEN: I'm sorry.

10 THE COURT: What are you talking about?

11 MS. MCELVEEN: I'm sorry. The sentencing sheets, 34 and
12 35, put into evidence, are not with an accompanying arson
13 charge. Those are from a different incident and those are his
14 two prior violent burglary convictions.

15 THE DEFENDANT: Those --

16 MS. MCELVEEN: We only plan on introducing those two. We
17 do not plan on introducing all four prior burglary charges
18 because we are prohibited from doing that. We are not
19 introducing the ones involving the arson.

20 THE DEFENDANT: With all due respect, Your Honor, those
21 two violent burglaries right there on that same date took
22 place the same date that that arson took place off of Pinewood
23 Road over there.

24 THE COURT: All right. Just for the record, Ms.
25 McElveen, what are the offense dates on the sentencing sheets

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 that you're not seeking to introduce?

2 MS. MCELVEEN: There are -- there's a July 18th, 2001,
3 September 29th, 2001, and a September 29th, 2001. The arson is
4 associated with the September 29th, 2001, non-violent burglary.

5 THE COURT: Okay. This one is September 5, 2001, Number
6 35. Number 36 looks like January 27, dash, January 28, 2000?

7 MS. MCELVEEN: Yes, sir.

8 THE COURT: All right. Anything further, Mr. Duren?

9 THE DEFENDANT: I don't know what set she has. I have my
10 criminal record right here.

11 THE COURT: Okay.

12 THE DEFENDANT: I don't know what she --

13 THE COURT: While you're looking that up, I'm going to
14 read the statute out loud. S.C. Code Section 16-11-312(B)
15 says that:

16 A person is guilty of burglary in the second degree if
17 the person enters a building without consent and with intent
18 to commit a crime therein, and either: when effecting entry
19 or while in the building or in immediate flight therefrom, he
20 or another participant in the crime is armed with a deadly
21 weapon; or causes physical injury to a person who is not a
22 participant; or uses or threatens the use of a dangerous
23 instrument; or displays what is or what appears to be a knife,
24 pistol, revolver, rifle, shotgun, machine gun, or other
25 firearm; or -- and this is the operative section -- the

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 burglary is committed by a person with a prior record of two
2 or more convictions for burglary or housebreaking or a
3 combination of both; and then it says or 3, which doesn't
4 apply, it happened at night.

5 THE DEFENDANT: Your Honor? Your Honor, with all due
6 respect, Your Honor, the witness, Mr. Melton, why is he
7 winking to somebody in the crowd?

8 THE COURT: Winking?

9 THE DEFENDANT: Yes, sir. He just winked a few minutes
10 ago. If you go back and look on the camera that they got
11 here, why is he winking at somebody out here?

12 THE COURT: I don't know. That's not for me to decide,
13 but I can tell this. He won't be doing it while this jury is
14 in the courtroom. I don't care what he's doing right now, but
15 he's not going to do it when the jury is in here. He
16 shouldn't be doing it, but it's not relevant to the issue of
17 whether or not these sentencing sheets or -- excuse me -- your
18 prior convictions are admissible.

19 THE DEFENDANT: That's -- that's telling me something.

20 THE COURT: Well, I -- I mean I can't read his mind and
21 I'm not going to cross-examine him.

22 THE DEFENDANT: Well, it's got to mean something. Okay.
23 We can proceed, Your Honor?

24 THE COURT: All right. Over Mr. Duren -- and, by the
25 way, Mr. Duren, your objection is certainly noted by me and I

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 certainly see the point you're making, but the state of the
2 law in South Carolina is that it comes in.

3 THE DEFENDANT: It's your courtroom. I understand.

4 THE COURT: All right.

5 MS. MCELVEEN: Thank you, Your Honor.

6 THE COURT: Okay. When the -- when the convictions are
7 introduced, I will give an instruction to the jury along the
8 lines of what I mentioned just a few minutes ago, and I'll
9 also do it at the end of the case, and I'll do it at any time
10 that any other witness mentions the two prior convictions.

11 Okay. You can bring in the jury. I'll hand these --
12 this back to you, Ms. McElveen.

13 MS. MCELVEEN: Thank you, Your Honor.

14 THE COURT: And I believe the exhibits are self-
15 authenticating as well.

16 MS. MCELVEEN: Thank you, Your Honor. We'll move to have
17 them admitted.

18 THE COURT: Well, just do it when the -- when the -- when
19 the jury comes back in and you have the witnesses and you can
20 lay the proper foundation.

21 MS. MCELVEEN: Thank you, Your Honor.

22 (WHEREUPON, the jury entered the courtroom.)

23 THE CLERK: All the jurors are back in the courtroom,
24 Your Honor.

25 THE COURT: All right. Thank you, Mr. Prince. Ms.

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 McElveen?

2 MS. MCELVEEN: Yes, Your Honor.

3 BY MS. MCELVEEN:

4 Q: Detective Melton, I'm handing you State's Exhibit 34 and
5 35. Can you identify what these are?

6 A: Yes, ma'am, I can.

7 Q: What are they?

8 A: These are General Sessions indictment case number and the
9 rulings.

10 Q: Does that show prior convictions for the defendant?

11 A: Yes, it does.

12 Q: Are they certified copies from the Clerk's Office of
13 these convictions?

14 A: Yes, they are.

15 MS. MCELVEEN: Your Honor, we'd like to have State's
16 Exhibit 34 entered into -- 34 and 35 entered into evidence at
17 this time.

18 THE COURT: All right. Over Mr. Duren's objection, those
19 will be admitted. Ladies and gentlemen, let me have your
20 attention. Let me have the exhibit too, please. I want you
21 to listen very carefully to this.

22 Exhibits 34 and 35 are entered into evidence. Exhibit
23 Number 34 is evidence of a plea of guilty -- excuse me --
24 April 4, 2002, by the defendant, to the charge of burglary in
25 the second degree. Exhibit 35 is a sentencing sheet

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 confirming the defendant's guilty plea to another count of
2 burglary in the second degree, that plea date being on the
3 same -- same day.

4 I will tell you, ladies and gentlemen, as I mentioned to
5 you at the beginning of the trial, the State is required to
6 prove the elements of the crime charged. Those two
7 convictions are not to be considered by you as evidence that
8 the defendant is a person of bad character or is a person who
9 would have the propensity or likelihood of committing these
10 burglaries. That is -- you cannot use it for that.

11 One of the elements of the crime of burglary in the
12 second degree is that the person charged has been convicted of
13 two prior burglaries. That is the only way you may use
14 evidence in the form of Exhibits 34 and 35, solely on the
15 issue of whether or not the State has proven that particular
16 element of burglary in the second degree.

17 Again, you may not use it as evidence of the defendant's
18 propensity to commit the crime or the likelihood that he would
19 be the type of person to commit the crime or in any way as
20 evidence of his character. And I'll instruct you again on
21 that point at the end of the case.

22 All right. Ms. McElveen, you can continue questioning
23 the witness.

24 MS. MCELVEEN: Thank you, Your Honor.

25 (WHEREUPON, State's Exhibit Number 34 and State's Exhibit

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 Number 35, both sentencing sheets, were admitted into
2 evidence.)

3 BY MS. MCELVEEN:

4 Q: Looking at Exhibits 34 and 35, Detective Melton, what
5 were the charges and the offense dates for those two prior
6 burglaries? Well, what are the two charges that are on those
7 sentencing sheets and the offense dates?

8 A: Burglary second degree violent.

9 Q: And the offense date at the top?

10 A: The offense date is January 27th or 28th of 2000. On the
11 other one, it is burglary second degree violent, offense date
12 is 9/5/2001.

13 Q: Thank you. And did you consider that in making your
14 charges against Mr. Duren?

15 A: I did.

16 Q: And what did you have -- what was the arrest warrant
17 drawn for?

18 A: Burglary second degree violent.

19 Q: That was against the defendant, Mr. David Duren?

20 A: Yes.

21 Q: And again, you took those buccal swabs and turned them
22 into evidence; is that correct?

23 A: Yes, I did.

24 MS. MCELVEEN: Thank you. I have no further questions
25 for you at this time. Please answer any questions Mr. Duren

JOHN MELTON - CROSS BY THE DEFENDANT

1 may have.

2 CROSS-EXAMINATION

3 BY THE DEFENDANT:

4 Q: Mr. Melton?

5 A: Yes, sir.

6 Q: You just testified just now that you drew up the warrant
7 for burglary second degree violent; right?

8 A: Yes, sir.

9 Q: What does -- this is warrant number M93626. What does
10 that say on that?

11 A: It says burglary second degree non-violent.

12 Q: Thank you. So you lied under oath?

13 A: I don't know why I drew it up for non-violent.

14 Q: You just said you drew it up for violent. So you lied
15 under oath?

16 A: I was under the impression it was violent.

17 Q: You drew up this warrant. You should know.

18 A: I didn't.

19 Q: Huh? So you lied under oath?

20 MS. MCELVEEN: Objection, Your Honor, asked and answered.

21 THE COURT: Sustained.

22 BY THE DEFENDANT

23 Q: What day did you arrest Mr. Duren, Mr. Melton?

24 A: I don't have that in front of me.

25 Q: You just said the 27th of May, 2012.

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: The only date I have in front of me is 31 May of 2012.

2 Q: Well, I'll refresh your memory. What does this say the
3 arrest date on there?

4 A: This says on 5/27/2012, David Duren was arrested and
5 transported to the Sumter Lee Regional Detention Center.

6 Q: Is --

7 A: On 5/31 -- sorry.

8 Q: Go ahead.

9 A: On 5/31/2012, I went to the Sumter Lee Regional Detention
10 Center to interview Mr. Duren. I'm going to stop there unless
11 you want me to go on.

12 Q: You can stop there. Is this -- this is a copy of the
13 arrest report; am I correct?

14 A: That is a -- it looks like the back page from my
15 investigative summary.

16 Q: Okay. And who arrested Mr. Duren?

17 A: I could not tell you who actually took you to the jail,
18 Mr. Duren.

19 Q: All right. But he was arrested on that day?

20 A: My investigative report reflects 5/27 of 2012.

21 Q: Well, I'm curious about this one. Supplemental incident
22 report. On 5/15/2012 --

23 MS. MCELVEEN: Objection, Your Honor. He's reading the
24 incident report into evidence himself.

25 THE COURT: Well, he can ask him about it.

JOHN MELTON - CROSS BY THE DEFENDANT

1 MS. MCELVEEN: It's hearsay.

2 THE COURT: Well, who -- who -- wait a minute. Who
3 prepared it?

4 MS. MCELVEEN: Not Detective Melton, Your Honor.

5 THE COURT: Okay. Let me see what's she's talking about,
6 please, sir. Let me take a look at it real quick. Well, on
7 the front, it's got reporting officer, John D. Melton; on the
8 back, it has Johanna Aleck. And I don't -- which part are you
9 going to ask him about, sir?

10 THE DEFENDANT: I'm going to ask him about this part,
11 sir, the one where his name is on it.

12 THE COURT: All right. First confirm if that's something
13 he authored, please.

14 BY THE DEFENDANT:

15 Q: Is that something you authored, sir?

16 A: Let me see. It says my name at the bottom of the report.

17 Q: Okay. Could you read it?

18 A: It says during the initial investigation of this burglary
19 and crime scene, the crime scene was processed by Sumter
20 Police Department's Forensic Division. Blood type evidence
21 was collected during the crime scene processing, which was
22 submitted to SLED. On 4/19 of 2012, the Sumter Police
23 Department received notification from SLED.

24 THE COURT: All right. Let me see it again, please.

25 THE WITNESS: I apologize, Your Honor.

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: All right. Come on up, please, Ms. McElveen.

2 THE DEFENDANT: I would like for him to finish reading
3 it.

4 THE COURT: Okay. Just a second.

5 (WHEREUPON, a bench conference was held in the presence
6 of the jury but out of the hearing of the jury off the
7 record.)

8 MS. MCELVEEN: No objection, Your Honor.

9 THE COURT: Okay. All right. Mr. Duren wants him to
10 read it, so he'll read it.

11 THE WITNESS: I'm going to start over if that's okay,
12 Your Honor.

13 THE COURT: All right.

14 BY THE DEFENDANT:

15 A: During the initial investigation of this burglary, the
16 crime scene was processed by Sumter Police Department's
17 Forensic Division. Blood type evidence was collected during
18 the crime scene processing, which was submitted to SLED. On
19 4/19/2012, the Sumter Police Department received notification
20 from SLED that the blood type evidence was positively
21 identified as belonging to David A. Duren, date of birth
22 of , who has the corresponding South Carolina SID number
23 . Warrants were obtained for David Duren on 5/15 of
24 2012 for burglary second degree. On 5/15 of 2012, Duren was
25 arrested and was transported to Sumter Lee Regional Detention

JOHN MELTON - CROSS BY THE DEFENDANT

1 Center.

2 Q: On 5/15? I was -- I was arrested on two dates?

3 A: Looks like I just made a mistake on my report, sir.

4 Q: On which one?

5 A: I'd have to look back through, but it appears the one I
6 just read said 5/15 and I believe the one you had me read a
7 minute ago said 5/27, which I believe was the correct date of
8 arrest.

9 Q: What if I tell you you didn't arrest me?

10 A: I said that I don't know who actually arrested you or
11 anything else.

12 Q: What if I tell you nobody arrested me for that charge?

13 A: I wouldn't understand.

14 Q: What if I tell you that charge was delivered to me at the
15 Sumter Regional Correctional Center?

16 A: By another officer?

17 Q: Yes.

18 A: And that could be the case.

19 Q: Okay. So why would you say I was arrested on that date?

20 A: Because that is the date the warrant is served, and the
21 date the warrant is served is actually the date of the
22 affected arrest.

23 Q: But you said I was arrested and transported. There's a
24 difference between being there and transported; am I correct?

25 A: You are correct.

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: Okay. So I was transported two days?

2 A: I can't tell you how you got there, sir. The only thing
3 I can do is tell you the date that I came and I spoke with you
4 and I collected your swab.

5 Q: I'll tell you how I got there.

6 THE COURT: No, you can't testify, Mr. Duren.

7 THE DEFENDANT: I'm not going to testify, but I can tell
8 you how I got there, but I'm quite sure none of your officers
9 arrested me.

10 BY THE DEFENDANT:

11 A: And that very well may be the case.

12 Q: Right.

13 A: But I just can tell you the date the warrant was served
14 and the date that I came and spoke with you and collected your
15 DNA samples.

16 Q: So you just write a report that says you arrested and
17 transported me. There's a big difference. There's a big, big
18 difference.

19 A: I'm not disagreeing with you about that. It looks like I
20 just made a mistake on my report.

21 Q: I'll say.

22 THE COURT: All right.

23 THE DEFENDANT: I'm not done.

24 THE COURT: Oh no, I said that's fine. Take your time.

25 BY THE DEFENDANT:

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: Detective Melton, could I have your opinion of what does
2 this look like?

3 A: I wasn't there to actually see it. I can't give you -- I
4 don't feel that I can render a fair opinion on it.

5 Q: Okay. But it looks like smeared blood. It was testified
6 earlier that it was smeared blood.

7 A: That's what the officer who went to the scene testified
8 to as it being, Mr. Duren.

9 Q: Detective Melton?

10 A: Yes, sir.

11 Q: Could someone else have placed that blood at the scene?

12 A: You're asking --

13 MS. MCELVEEN: Objection. Calls for speculation.

14 THE COURT: All right. Can you clarify your question,
15 please?

16 THE DEFENDANT: Let me think.

17 BY THE DEFENDANT:

18 Q: Could another person have placed that blood at the scene
19 of the crime?

20 MS. MCELVEEN: Objection. Calls for speculation.

21 THE COURT: The question is could somebody have. I'll
22 let -- I'll let him answer the question. I won't let him
23 answer the question did somebody else put it at the stand -- I
24 mean at the scene.

25 BY THE DEFENDANT:

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: I would say that's highly unlikely.

2 Q: Highly unlikely? Forensic DNA is a good thing; right?

3 A: I think -- I think it's a wonderful thing.

4 Q: Oh. Wonderful thing. It can frame people for a crime
5 that they didn't commit; right?

6 A: There's always a potential of that, but in this case I
7 think that it's highly unlikely that somebody planted your
8 blood at a crime scene.

9 Q: Detective Melton?

10 A: Yes, sir.

11 Q: Are you familiar with a Detective Robert Richburg?

12 A: I know -- I know who -- I know who he is, yes, sir.

13 Q: He's still working with the Sumter County Police
14 Department?

15 MS. MCELVEEN: Relevancy, Your Honor.

16 THE COURT: All right. Come on up please, sir. And you
17 said his name was what, Mr. Duren?

18 THE DEFENDANT: Robert Richburg.

19 THE COURT: All right. Come on up, please.

20 (Whereupon, a bench conference was held in the presence
21 of the jury but out of the hearing of the jury off the
22 record.)

23 THE COURT: All right. Ladies and gentlemen, step to
24 your jury room. You may not discuss the case.

25 (WHEREUPON, the jury exited the courtroom.)

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: All right. Question the witness, please.
2 You can question him. I want to hear the questions and the
3 answers, and then I'll hear your argument as to why it's
4 relevant.

PROFFERED CROSS-EXAMINATION

5
6 BY THE DEFENDANT:

7 Q: Detective Melton, do you know Detective Richburg?

8 A: I -- I caught that question. Can you speak up just a
9 little, please? Sorry.

10 THE COURT: Do you know Detective --

11 Q: Detective Robert --

12 THE COURT: -- Robert Richburg?

13 A: Yes. I do know who he is.

14 Q: Does he still work for the Sumter County?

15 A: He does not.

16 Q: May I ask why?

17 A: I really don't know anything about why he no longer works
18 there.

19 Q: Was he your partner?

20 A: I'm not sure that we were actually listed as exact
21 partners.

22 Q: If he wasn't your partner --

23 A: If he was my partner, it would have been for an extremely
24 short period of time, maybe a matter --

25 Q: He worked for --

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: -- of weeks.

2 THE COURT: Don't interrupt. The court reporter can only
3 take one person at a time. Okay. Finish your answer.

4 BY THE DEFENDANT:

5 A: I'm not sure that we were listed as exact partners. He
6 was the -- I don't know what his rank was back then, but he
7 was the senior person in property crimes at that time.

8 THE COURT: All right.

9 BY THE DEFENDANT:

10 A: I'm not sure exactly what time, to be honest with you.

11 Q: He was not your partner in 2011 and 2010? So if I go
12 back and get that record, he wasn't your partner?

13 A: See, this is the deal when you ask partner. We work with
14 everybody in the same unit. So I don't know that it would be
15 specifically listed as an exact partner.

16 Q: Well, that's --

17 A: But, yes, I did work with him on different things, and I
18 worked on other things where I didn't work with him. So I
19 don't know that you would classify it as exact partners.

20 Q: He was your partner. I can prove that.

21 THE COURT: All right. Again, Mr. Duren, I'm going to
22 say this maybe one or two more times. You do not make a
23 statement while you are questioning a witness.

24 THE DEFENDANT: Okay.

25 THE COURT: There will be a time, if you choose, after I

JOHN MELTON - CROSS BY THE DEFENDANT

1 read you your rights, whether or not you testify under oath
2 and be subject to cross-examination, but while you are
3 questioning witnesses, you may not, again, make a statement.

4 All right. Any other questions on the issue concerning
5 Mr. Richburg?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Go ahead.

8 THE WITNESS: Can I clarify something, please, real
9 quick?

10 THE COURT: Yes, sir.

11 BY THE DEFENDANT:

12 A: He -- he very well may -- there was a -- there was a time
13 frame in there where you could have probably classified us as
14 partners, but we all kind of worked together in property
15 crime. So I mean I guess you could say everybody is partners.
16 I don't know if he was ever specifically listed as my partner,
17 but you -- you could say we worked together on different
18 things from time to time.

19 Q: You know why he was released from Sumter County Police
20 Department?

21 A: I can't even tell you why exactly. I had no
22 participation in any of that.

23 THE DEFENDANT: May I?

24 THE COURT: You can ask him -- you can ask him questions,
25 but don't make any statements. For example --

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE DEFENDANT: Was --

2 THE COURT: Was.

3 BY THE DEFENDANT:

4 Q: Was Mr. Richburg and other officers at the Sumter County
5 Police Department relieved because of evidence tampering?

6 A: I'm sitting here -- look, I don't know how many more ways
7 to say this. I have no idea, none whatsoever.

8 Q: So, Mr. Melton, so you mean to tell me --

9 A: I know that he is no longer employed with us. I had
10 nothing to do with any of that. I have no idea anything about
11 it, not one thing.

12 Q: You haven't heard nothing as long -- since he been
13 relieved?

14 A: I just told you, I have no idea about any of it.
15 Literally.

16 THE DEFENDANT: No further questions.

17 A: I just know that he no longer works with us.

18 THE DEFENDANT: No further questions.

19 THE COURT: All right. Your objection, Ms. McElveen?

20 MS. MCELVEEN: Your Honor, the questions regarding
21 Detective Richburg, formerly of the police department, are not
22 relevant to this case. They bring nothing to the table and,
23 therefore, we'd request that they just be avoided.

24 THE COURT: All right. Mr. Duren, your argument?

25 THE DEFENDANT: Your Honor, they just bring wealth to

JOHN MELTON - CROSS BY THE DEFENDANT

1 this case, Your Honor.

2 THE COURT: How so?

3 THE DEFENDANT: Your Honor, just the other day on CNN --
4 on CNN out of San Francisco, over 3,000 cases are being
5 brought back to court for police officers and detectives
6 evidence tampering with DNA. The state of -- the state of
7 Texas, the Texas state senator -- DNA testing is all being
8 brought back because of DNA tampering. Detectives planted
9 evidence and everything, Your Honor. It does have relevance
10 to this case.

11 THE COURT: All right.

12 THE DEFENDANT: In Sumter County Police Department, they
13 were fired.

14 THE COURT: Sumter City Police Department.

15 THE DEFENDANT: In Sumter City Police Department, they
16 were fired -- it was in the newspaper -- for evidence
17 tampering. And Mr. Melton -- Detective Melton was partnered
18 with Mr. Richburg --

19 THE COURT: All right.

20 THE DEFENDANT: -- at that time.

21 THE COURT: All right. Anything else?

22 THE DEFENDANT: That's it.

23 THE COURT: Ms. McElveen, anything else? And don't
24 repeat what you said. Anything else?

25 MS. MCELVEEN: No, sir. Just that Sumter County is far

JOHN MELTON - CROSS BY THE DEFENDANT

1 different than San Francisco, Your Honor.

2 THE COURT: All right. Rule 401, relevant evidence is
3 evidence having any tendency to make the existence of any fact
4 that is of consequence to the determination of the action more
5 probable or less probable than it would be without the
6 evidence.

7 By no stretch, based on what you have presented by
8 innuendo and a little bit of smoke, it doesn't establish
9 anything in the first place. On top of that, there's no
10 evidence that Detective Richburg had any involvement in this
11 case. Even if he was terminated for what you refer to as
12 evidence tampering, that has nothing -- has no logical
13 connection to this case.

14 So the objection on the relevance ground is sustained,
15 and you will not ask the witness that question. When the jury
16 comes back in, I will tell the jury to disregard any reference
17 to Detective Richburg.

18 If you can do better than that and present some relevant
19 evidence that someone did plant this blood, which is evidently
20 the road you're going down, then I will revisit it, but with
21 this witness as it stands now, you will not ask that question.
22 All right?

23 THE DEFENDANT: All right. I see, Your Honor.

24 THE COURT: Is that humorous --

25 THE DEFENDANT: No.

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: -- or you have something else to say?

2 THE DEENDANT: No.

3 THE COURT: Sir?

4 THE DEFENDANT: It's not humorous.

5 THE COURT: All right. Just -- if I make a ruling, I
6 don't expect you to --

7 THE DEFENDANT: Yes.

8 THE COURT: -- chop it.

9 THE DEFENDANT: With all due respect, I mean no
10 disrespect in your courtroom.

11 THE COURT: All right. Okay. Thank you. All right.
12 You can bring in the jury.

13 (WHEREUPON, the jury entered the courtroom.)

14 THE BAILIFF: All the jurors are back in the courtroom,
15 Your Honor.

16 THE COURT: All right. Thank you for your patience,
17 ladies and gentlemen.

18 A moment ago, ladies and gentlemen, you heard a reference
19 to a -- someone by the last name of Richburg. Please
20 disregard any reference to that person's name. It has no
21 relevance to this particular case and under the oath that
22 you've taken, remember, I told you you must disregard
23 something if I tell you to disregard it. Just disregard any
24 reference to that person in its entirety.

25 All right. Mr. Duren, you can continue questioning the

JOHN MELTON - CROSS BY THE DEFENDANT

1 witness.

2 CROSS-EXAMINATION

3 BY THE DEFENDANT:

4 Q: Detective Melton, have you read the report by a Johanna
5 -- Ms. Johanna R. Aleck, Detective?

6 A: I may have briefed over it, but I look at so many of
7 those, I couldn't tell you what it said one way or another.

8 THE DEFENDANT: May I read it, Your Honor?

9 THE COURT: If she testifies, you may, sir. Well, does
10 the State have any objection to it?

11 MS. MCELVEEN: No, sir.

12 THE COURT: Okay. All right. Go ahead, Mr. Duren. So
13 any hearsay objection is waived?

14 MS. MCELVEEN: Which report is he referencing then?

15 THE COURT: Show it to Ms. McElveen, please, sir.

16 MS. MCELVEEN: Your Honor, no objection.

17 THE COURT: Okay.

18 BY THE DEFENDANT:

19 Q: I just have -- I just have one question about this report
20 and that's this.

21 A: Okay.

22 Q: Detective Melton, this says -- on here it says the scene
23 was not dusted for prints due to contamination by owners and
24 parties prior to our arrival. A refrigerator tested positive
25 for mammal blood. I'm just curious about the word

JOHN MELTON - CROSS BY THE DEFENDANT

1 contaminated -- contamination. If one part of the scene is
2 contaminated, in your professional opinion, that means the
3 whole scene is contaminated?

4 A: Not necessarily.

5 Q: The manager stated earlier that he was up on top of the
6 refrigerator. So isn't that contamination of the area?

7 A: You know, it could be, but in this case, you know, it's
8 not the manager's DNA that we're looking at. It's your DNA
9 that was collected from the blood sample on top of the
10 freezer. And in a DNA case, if --

11 Q: I --

12 A: -- the manager had contaminated --

13 Q: I don't want --

14 A: -- the DNA, we could eliminate his DNA by just really
15 taking a buccal swab from him.

16 Q: I'm just curious. I'm just curious why they got -- why a
17 milk carton behind the building in the grass, cigarette carton
18 behind the refrigerator, Dr. Pepper bottle, all this wasn't
19 tested for DNA. I'm just curious.

20 A: I can't answer that question. You'd have to ask
21 Detective Aleck.

22 Q: And I'm -- and I'm just curious why just test one spot
23 for blood and not both spots --

24 MS. MCELVEEN: Asked and answered, Your Honor.

25 Q: -- for DNA?

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: Overruled. Go ahead. Overruled. You can
2 ask it, Mr. Duren.

3 BY THE DEFENDANT:

4 Q: I'm just curious why they test one spot of blood maybe
5 twenty feet away from the point of entry, a blood smear, for
6 human blood, and blood over the point of entry you don't test.
7 It doesn't make sense.

8 A: Again, you know, I can't answer that because I didn't
9 actually go to the scene, as I said in the beginning. You
10 know, but the fact still remains the blood that was collected
11 came back to your DNA, and that's why we're here today.

12 Q: That's what the report says. I think one -- I forgot who
13 it was from Columbia. He said it could have been smeared by
14 somebody else. That was said earlier.

15 A: I don't recall that being said, but --

16 Q: Because I'm quite sure, Detective, if I get cut, I'm
17 going to drip somewhere. It's not going to smear. It's going
18 to be a drip somewhere. This is just one big smear.
19 Something ain't adding up here. Somewhere something ain't
20 adding up.

21 A: I mean --

22 Q: I can't figure it out. And it wouldn't make sense for a
23 burglar to go in a place --

24 THE COURT: Mr. Duren, you can say does it make sense --

25 THE DEFENDANT: Okay.

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: -- but you can't say it doesn't. You can ask
2 him --

3 THE DEFENDANT: Okay.

4 THE COURT: -- if it makes sense to him, but you can't
5 say what your statement is.

6 THE DEFENDANT: Okay.

7 THE COURT: Okay. While you're questioning -- I know
8 it's a little bit difficult, but when you're questioning a
9 witness, you've got to ask a question.

10 THE DEFENDANT: Okay.

11 THE COURT: Okay. I know it's a little bit difficult.

12 BY THE DEFENDANT:

13 Q: Detective Melton, does it make sense for a burglar to
14 come in the point of entry, go over the top of the
15 refrigerator, like they say burglarize the place, then try to
16 exit thirty feet from where he goes?

17 A: I will tell you this, Mr. Duren. In my years of doing
18 this, I have seen all sorts of things and I don't -- there's
19 many times I don't even try to make sense out of it. I just
20 look at the facts. And you know, once again, we're here for
21 the facts. Your DNA was collected from the scene.

22 Q: Hold on a second. How many times, Detective Melton,
23 would you say this place had been burglarized? How many times
24 do you think -- how many times has this place been broken
25 into?

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: I have no way of estimating that whatsoever.

2 Q: This is your first case on this place?

3 A: I'm trying to think. I don't recall one before, but I'm
4 not going to say I've never had one before that. But this is
5 a case that I actually made a charge on.

6 Q: Okay. On this picture right here -- do you know anything
7 about masonry?

8 A: I know absolutely nothing about masonry.

9 Q: Okay. Well, I'm a little masonry man. It looks like
10 this place has been patched up before.

11 A: Can I see it closer?

12 Q: I mean if you look at the difference in the masonry work,
13 you see the difference in the masonry work where they were
14 laid first? See how they smeared here? How the blocks are
15 laid back in there? It's been patched up before and it wasn't
16 that long.

17 THE COURT: You've got -- you can ask a question.

18 THE DEFENDANT: Okay.

19 BY THE DEFENDANT:

20 Q: What was the weather like on that night, Detective
21 Melton?

22 A: Of the case?

23 Q: Yes.

24 A: I have no idea.

25 Q: You have no idea? You don't whether it was raining? You

JOHN MELTON - CROSS BY THE DEFENDANT

1 don't know whether it was cloudy or nothing?

2 A: I have absolutely no idea.

3 THE DEFENDANT: No further questions.

4 THE COURT: All right.

5 THE DEFENDANT: Defense reserves the right to recall this
6 witness.

7 THE COURT: Yes, sir. Ms. McElveen, any redirect?

8 MS. MCELVEEN: Nothing, Your Honor.

9 THE COURT: All right. Thank you, sir. You can step
10 down. Make sure you leave the exhibits. Can we recess for
11 the day?

12 MS. MCELVEEN: Yes, sir.

13 THE COURT: All right. Ladies and gentlemen, we are
14 going to break for the day. It's coincidentally near five.
15 We typically try not to intrude on your time after five. I'm
16 going to allow you to go ahead and leave.

17 Between now and the time that you come back tomorrow, you
18 are not permitted to discuss this case with anybody in the
19 universe. That means face to face, over the phone, by text,
20 Twitter, Facebook, any communication method that exists known
21 to man. You cannot communicate with anyone, and that
22 includes, obviously, you can't discuss it amongst yourselves.
23 Don't talk about it at all. You will be violating your oath
24 if you do that and I fully expect and encourage you and order
25 you to follow that instruction.

1 We'll see you back tomorrow morning at 9:45. We'll be
2 here earlier. I'll be discussing with Ms. McElveen and Mr.
3 Duren how the morning segment will go. We'll be here earlier
4 than you, but you please be back in your jury room at 9:45.
5 Okay?

6 And one final thing, I'm required by order of the Chief
7 Justice to tell you that you cannot read anything this. Don't
8 get on any Google machine and look up anybody's name, anything
9 involving this case, any term that you may have heard used.
10 Don't undertake to do any research. If you even heard
11 reference to a particular location, don't ride by there and
12 don't go by there. Just don't do it. Okay? See you tomorrow
13 morning, 9:45.

14 THE DEFENDANT: Your Honor?

15 THE COURT: Wait just a second. Wait for them to leave.

16 (WHEREUPON, the jury exited the courtroom.)

17 THE COURT: Yes, sir, Mr. Duren?

18 THE DEFENDANT: I just want to ask, sir, is it possible I
19 could speak with my parents real briefly?

20 THE COURT: If that suits the deputies. I don't have a
21 problem with it, but I'm not in charge of security. But --

22 THE DEFENDANT: I don't want to go near them. I just
23 want to say hello to them.

24 THE DEPUTY: He can say hello.

25 THE COURT: I don't have a problem with you saying hello

1 to them. Mr. Youmans, can he say hello to them?

2 THE DEPUTY: Hello will be okay.

3 THE COURT: Okay. If it was my parents, I would want to
4 do the same thing. I understand, but we have -- they have
5 rules here. Okay?

6 Be back in the building no later than nine tomorrow and
7 seated in the courtroom by 9:30. Okay?

8 MS. MCELVEEN: Your Honor, jus?

9 THE COURT: Yes, ma'am?

10 MS. MCELVEEN: Just to give the Court a head's up, we
11 have an out-of-state witness flying in at nine. The flight
12 lands supposedly at 9:35 a.m. in Columbia. It is our forensic
13 analyst from Indianapolis. And so I just want to give the
14 Court a head's up on that scheduling. We have two witnesses
15 before that.

16 THE COURT: We may have to take a little extended break?

17 MS. MCELVEEN: Yes, sir. And I just didn't think we'd
18 get through these witnesses today.

19 THE COURT: Who is going to be your first two in the
20 morning?

21 MS. MCELVEEN: Investigator -- or Mr. Allsbrook and then
22 Kenneth Bogan from SLED.

23 THE COURT: Okay. And then the DNA analyst?

24 MS. MCELVEEN: Yes, sir.

25 THE COURT: From Indianapolis?

1 MS. MCELVEEN: Strand Analytics.

2 THE COURT: Okay. And then who -- that person will be
3 your last witness?

4 MS. MCELVEEN: Yes, sir.

5 THE COURT: Okay. All right. Mr. Duren, it sounds like
6 the State will finish its case sometime shortly before lunch
7 and if you will have any witnesses, including yourself, we may
8 be able to start either right before lunch or right after.
9 Okay?

10 THE DEFENDANT: Okay.

11 THE COURT: Thank you, sir.

12 MS. MCELVEEN: Thank you, Your Honor.

13 THE COURT: Okay.

14 (WHEREUPON, the proceedings were adjourned for the day.)

15 MAY 19, 2015

16 (WHEREUPON, the proceedings resumed.)

17 MS. MCELVEEN: I've been thinking overnight and I would
18 like to redirect Mr. Melton.

19 THE COURT: Recall him?

20 MS. MCELVEEN: Well, redirect. I have questions in
21 response to his questions. That's a recall -- I can recall
22 him I think. Whatever you prefer.

23 THE COURT: Well, I can't -- was he the last witness to
24 testify?

25 MS. MCELVEEN: Yes, sir.

1 THE COURT: Okay. Well, I think the correct thing would
2 be to recall him.

3 MS. MCELVEEN: Okay.

4 THE COURT: And you can -- I have the discretion to allow
5 you to do that. Mr. Duren, do you have any objection to her
6 recalling him?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Okay. And, of course, you'll be able to
9 cross-examine him.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. So we've covered that and I'm not
12 going to hold you to it, but you said you had two other
13 witnesses and then your DNA witness?

14 MS. MCELVEEN: Well, I've got Detective Melton, Detective
15 Aleck, Jim Allsbrook quickly for the chain.

16 THE COURT: Right.

17 MS. MCELVEEN: And then Ken Bogan from SLED, and then the
18 out-of-town analyst.

19 THE COURT: All right. Do you know when Mr. Bogan will
20 be here?

21 MS. MCELVEEN: I think I told Mr. Bogan to be here at --
22 I think I told him ten a.m.

23 THE COURT: Okay.

24 MS. MCELVEEN: Since the jury was coming in at 9:45.

25 THE COURT: So based on what you've said, I'm guessing

1 that we will likely be -- you will likely be finished with
2 your case by lunchtime?

3 MS. MCELVEEN: I would expect so, Your Honor.

4 THE COURT: All right. So, Mr. Duren, that kind of gives
5 you a heads up on when you might start presenting your case,
6 if you want to.

7 One of the things that I will be doing when she rests, I
8 will ask you if you have any motions you want to make and you
9 certainly can make the motions you want to make.

10 After that, I will explain to you your Fifth Amendment
11 rights and, if you want me to, over the next couple of minutes
12 I can explain to you what I will be telling you. Would you
13 like for me to do that now?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: All right. What I -- what I will generally
16 do -- and you will be sworn in. The jury will out of the
17 room. I will -- you will be sworn in and I will tell you that
18 under the Fifth Amendment, which states in pertinent part, no
19 person in any criminal case shall be compelled to be a witness
20 against himself. That is what the Fifth Amendment says in
21 pertinent part for this purpose.

22 I will tell you that you have the right to testify, which
23 means that if you do testify, you'll be sworn in, and you will
24 sit in that chair. Of course, since you are representing
25 yourself, when you're -- when you are giving your direct

1 testimony, there won't be anybody actually asking you any
2 questions, but you will be permitted to testify in that
3 fashion from the witness stand.

4 I will tell you that if you do decide to testify, you
5 will be subject to the same general rules that you have seen
6 that govern the direct examination and the cross-examination
7 of witnesses.

8 I will also tell you that if you have been convicted of
9 any criminal offenses and you were convicted or released from
10 confinement less than ten years ago and the crime was a crime
11 of dishonesty in a certain category of crimes of dishonesty,
12 then those convictions can be introduced on cross-examination
13 solely for the purpose of the jury determining whether or not
14 they should believe you.

15 Now, I will tell you that -- and this is confusing. I
16 will agree with that, Ms. McElveen. Burglary is not a crime
17 of dishonesty. Of course, the -- two prior burglaries have
18 been admitted as a predicate element of the crime in this case
19 of burglary in the second degree non-violent, but any other
20 burglaries where you were released from prison or the
21 conviction was less than ten years ago, those burglaries will
22 not come in.

23 There's also another rule that's part of that same rule
24 governing the admission of those convictions. That if you
25 have been convicted of any other criminal offenses and less

1 than ten years has gone by from your release from confinement
2 or your conviction, if I determine that the probative value
3 outweighs any prejudicial effect to you, I will allow those
4 convictions in.

5 For example -- does he have any other ones, Ms. McElveen?

6 MS. MCELVEEN: I'm trying to remember, Your Honor. Let
7 me take a look.

8 THE COURT: I know he had an arson, but that was more
9 than ten years ago; correct?

10 MS. MCELVEEN: Yes, sir.

11 THE COURT: Unless he was released from confinement --

12 MS. MCELVEEN: Let me make sure.

13 THE COURT: -- less than ten years ago. But in any event,
14 I will tell you that, in the end, this decision must be made
15 by you. I can't make you testify. Ms. McElveen cannot. No
16 one else can make the decision about whether or not you will
17 or won't testify except for you.

18 So those are the general things that I'll be covering
19 with you when she rests her case. I just wanted to give --
20 kind of give you a heads up on that. All right?

21 THE DEFENDANT: All right.

22 THE COURT: All right. Do you have any questions about
23 that so far?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. And if you have any witnesses you

1 want to call, they need to be here sometime around mid-day.

2 THE DEFENDANT: Your Honor, with all due respect, sir, I
3 haven't -- I haven't had ample time to subpoena any witnesses,
4 Your Honor.

5 THE COURT: All right. Are there any witnesses who are
6 under the control of the police department that you can
7 perhaps alert me so that Ms. McElveen will know and she can,
8 if possible, make them available?

9 THE DEFENDANT: Yes, sir. I have one, but I don't have
10 the name, sir.

11 THE COURT: All right. Do you know what his job was?

12 THE DEFENDANT: No, sir.

13 THE COURT: Was he an employee of the police department?

14 THE DEFENDANT: Yes, sir. I have his badge number, sir.

15 THE COURT: All right. What's his badge number? Is Mr.
16 Simmons next door or is he back at the office?

17 MS. MCELVEEN: I do not know, sir.

18 THE COURT: All right. Well, I --

19 MS. MCELVEEN: Maybe that's highway patrol's case.

20 THE COURT: Yes, sir.

21 THE DEFENDANT: It's 1805.

22 THE COURT: 1805. Male or female?

23 THE DEFENDANT: I can't -- I think it's male.

24 THE COURT: Okay. So you're not sure? You just have the
25 badge number?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right.

3 MS. MCELVEEN: Your Honor, is it the person who served
4 the warrant on him?

5 THE COURT: I don't know.

6 MS. MCELVEEN: Yeah. That's --

7 THE COURT: How many -- Mr. Prince, do we have all the
8 jury here?

9 THE BAILIFF: Give me just a minute and let me double
10 check, Judge.

11 THE COURT: Any idea whose badge number 1805 is?

12 MS. MCELVEEN: It looks like an Ann or an Anna. It's the
13 person who served the warrant on him, Judge.

14 THE COURT: Okay. And you want that person to be brought
15 over -- brought if possible, Mr. Duren?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: All right. Maybe either Ms. Aleck or Mr.
18 Allsbrook could go call the department and find out if that
19 person's badge number -- if that person is still employed
20 there.

21 MS. MCELVEEN: I believe Mr. Allsbrook is working on it
22 --

23 THE COURT: Okay.

24 MS. MCELVEEN: -- with his fingers right now.

25 THE COURT: Oh, okay. Well, that's fine. You can -- you

1 can do it on my telephone if you want.

2 THE BAILIFF: Your Honor, we still lack two, but they're
3 coming.

4 THE COURT: They're coming up the stairs or the elevator?
5 All right. Anything that the State feels we need to cover
6 before we start back?

7 MS. MCELVEEN: Yes, sir. There are some prior crimes of
8 dishonesty that we would be wanting to bring out.

9 THE COURT: All right. What are those? And give me
10 conviction dates, names of offenses.

11 MS. MCELVEEN: He's got a February 18th, 1985, worthless
12 check.

13 THE COURT: That's more than ten years old. That's not
14 going to -- it's --

15 MS. MCELVEEN: Oh. I thought crimes of dishonesty could
16 go back as far as --

17 THE COURT: No. If they are remote, under the ten-year
18 rule, they might still come in, but I have to employ the
19 balancing test, and you have a much higher hurdle. But that's
20 -- that's in Rule 609. So what else?

21 MS. MCELVEEN: We've got another worthless check in 1987
22 and again escaping from prison, which we would think would be
23 a crime of dishonesty. 1991 --

24 THE COURT: What year was that?

25 MS. MCELVEEN: 1987.

1 THE COURT: Escape?

2 MS. MCELVEEN: I'm sorry?

3 THE COURT: It's escape?

4 MS. MCELVEEN: Yes, sir.

5 THE COURT: Okay.

6 MS. MCELVEEN: 1991, two counts of receiving stolen
7 goods. I do not believe malicious injury is a crime of
8 dishonesty.

9 THE COURT: No.

10 MS. MCELVEEN: I don't believe.

11 THE COURT: Escape probably wouldn't be either.

12 MS. MCELVEEN: Oh, really?

13 THE COURT: If burglary is not, then escape is not going
14 to be. It doesn't have to be dishonest to escape. You just
15 have to escape.

16 MS. MCELVEEN: Then --

17 THE COURT: Burglary can be a crime of dishonesty, but
18 you'd have to establish the basic facts of what the burglary
19 was. So that's just an academic expiration. Yes, sir, Mr.
20 Duren?

21 THE DEFENDANT: Your Honor, if it please the Court, sir.
22 Is it possible the defendant could have an up-to-date criminal
23 history because he has had a numerous of discharges expunged.

24 THE COURT: Do you have his rap sheet, Ms. McElveen?

25 THE DEFENDANT: An up-to-date one.

1 MS. MCELVEEN: I have the one printed out from 2012. But
2 I can tell you that the six burglaries aren't going to be
3 expunged. What we have is not going to be expunged.

4 THE COURT: Okay. Have you given him a copy of his
5 criminal history?

6 MS. MCELVEEN: Yes, sir. It was in his Rule 5.

7 THE DEFENDANT: I --

8 THE COURT: All right. You want an up-to-date one as of
9 today?

10 THE DEFENDANT: I want an up-to-date one, sir.

11 THE COURT: How hard is that to get?

12 UNKNOWN MALE: I can get it, Judge.

13 THE COURT: All right. You'll get one of those, Mr.
14 Duren.

15 THE BAILIFF: Judge, I was just informed that was two
16 different ones. We're still lacking two, 40 and 44.

17 THE COURT: Number 40 and Number 44?

18 THE BAILIFF: Yes, sir.

19 THE COURT: There's no 44 on here. There's a 40 and a
20 46.

21 THE BAILIFF: 46 is right, Judge.

22 THE COURT: 40 and 46?

23 THE BAILIFF: Yes, sir.

24 THE COURT: All right.

25 THE BAILIFF: They should be here.

1 THE COURT: They have telephone numbers for them?

2 THE BAILIFF: Yes, sir.

3 THE COURT: Okay. Do the people -- do the jurors know
4 that we're waiting on two of them? I guess they --

5 THE BAILIFF: They don't know.

6 THE COURT: Well, ask Mr. Jones to just go in there and
7 just call the roll, even though he knows.

8 THE BAILIFF: Okay.

9 THE COURT: Just so they'll know --

10 THE BAILIFF: Yes, sir.

11 THE COURT: -- we're missing two people.

12 MS. MCELVEEN: Your Honor, we've figured out Badge 1805
13 is Andrew Basendon [phonetic], and he has left the force. He
14 is in New York.

15 THE DEFENDANT: I can still -- I can still do it. I can
16 still do it without him, sir.

17 THE COURT: Okay.

18 THE DEFENDANT: I assume we have to fly him down here.

19 THE COURT: Oh. Well, he's not flying down here. No,
20 sir. If you want him to fly down here, you've got to make
21 arrangements.

22 THE DEFENDANT: Judge, it doesn't look like he'll make
23 it.

24 THE COURT: No. The police department is not going to
25 bear the expense of flying him down.

1 THE DEFENDANT: Okay.

2 THE COURT: And I'm not going to either.

3 THE DEFENDANT: Okay. I have one more motion, sir.

4 THE COURT: Okay.

5 THE DEFENDANT: I just found out something last night
6 when I went back to the jail, sir.

7 THE COURT: All right.

8 THE DEFENDANT: It's vital to my defense, sir. The date
9 that the warrant was served on the 27th of -- I think it was
10 April.

11 THE COURT: May.

12 THE DEFENDANT: May?

13 THE COURT: Well, at least that's what the testimony was.

14 THE DEFENDANT: Yeah. May.

15 THE COURT: If that's correct, yes, sir.

16 THE DEFENDANT: I just found out last night that they
17 keep videos and audios.

18 THE COURT: And it's 2000 --

19 DETECTIVE MELTON: Yes, sir.

20 THE COURT: 2000 what?

21 THE DEFENDANT: 2012.

22 THE COURT: Okay.

23 THE DEFENDANT: They keep videos and audios for the
24 purpose of, in case something ever happens, they can go back
25 and review it. And where this conversation took place in the

1 sally port of E Pod at the correctional center, there is a
2 camera and audio right there in the corner where Mr. Melton
3 took the swab that I didn't give consent to. That I told that
4 he forced me, you know, threatened me that he was going to
5 take my bond.

6 THE COURT: But he can't take your bond, but go ahead. I
7 understand.

8 THE DEFENDANT: He was going to the judge to have my bond
9 revoked.

10 THE COURT: All right.

11 THE DEFENDANT: My PR bond. A PR bond is hard to come
12 by. And they do have videos and audios.

13 THE COURT: And who gave you this information?

14 THE DEFENDANT: One of the jailers.

15 THE COURT: Well, did you ask the people while you were
16 out there?

17 THE DEFENDANT: Yes. It's hard to get to Mr. Sergeant
18 Major unless you got a subpoena.

19 THE COURT: Well --

20 THE DEFENDANT: You can write a request and it will take
21 two months to get to him.

22 THE COURT: All right. Is anybody from the jail here?
23 Nobody from the jail in the courtroom?

24 THE BAILIFF: Not in the courtroom, sir.

25 MS. MCELVEEN: Your Honor, also, Detective Melton said he

1 spoke with officers at the jail, and they only hold videos for
2 forty-five days.

3 THE COURT: Okay. Well, he says he was told something
4 different. Detective Melton has other information. The jail
5 is not under the supervision of the police department. I'll
6 be happy to try to get somebody to find out the answer to that
7 question. If we have to, it can be Captain Teresa Ray Lee,
8 who can give us the information. It can be Mr. Major. It can
9 be somebody out there who knows, but --

10 UNKNOWN MALE: I've got Sergeant Jordan --

11 THE COURT: Okay, would you -- is he in the immediate
12 area here?

13 UNKNOWN MALE: Yes, sir.

14 THE COURT: Ask him to step out. All right. Anything
15 else, Mr. Duren?

16 THE DEFENDANT: That's it, Your Honor.

17 THE COURT: Still waiting on two?

18 THE BAILIFF: Yes, sir.

19 THE COURT: Ms. McElveen, anything else?

20 MS. MCELVEEN: Nothing, Your Honor.

21 UNKNOWN MALE: He must have had to go downstairs.

22 THE COURT: All right. Would you ask him, at some point,
23 to come up here so I can ask him a question? Or he can call
24 the jail and find out the answer to the question.

25 Have they called those two jurors?

1 THE BAILIFF: She's supposed to be calling. Let me
2 double check.

3 THE COURT: All right. You have your witnesses present;
4 right, Ms. McElveen?

5 MS. MCELVEEN: Yes, sir.

6 THE COURT: Okay. We'll just wait a few more minutes.

7 (WHEREUPON, there was a pause in the proceedings.)

8 THE COURT: The juror who is not here is Mr. Crow. He is
9 Juror Number 40. He's twenty-five minutes late. The clerk's
10 office has called him, got a voice mail. He is the gentleman
11 who works at Lugoff Toyota, but obviously he lives here in
12 Sumter. From the address, he lives over there off Morganville
13 Road. Certainly not a long trek to get here.

14 All right. I would be inclined to seat the alternate,
15 who is Mr. Hemingway. That will give us still a jury of
16 twelve. Mr. Hemingway is Juror Number 83. What is the
17 State's position?

18 MS. MCELVEEN: We consent, Your Honor.

19 THE COURT: Mr. Duren?

20 THE DEFENDANT: We consent, Your Honor.

21 THE COURT: All right. Yes, sir?

22 THE DEFENDANT: I have a question to ask you, Your Honor.

23 THE COURT: Okay.

24 THE DEFENDANT: Just very -- do you allow texting in your
25 courtroom, sir?

1 THE COURT: Do I allow texting?

2 THE DEFENDANT: Texting in the courtroom. Yes, sir.

3 THE COURT: Well, that's kind of -- I guess the answer to
4 that question is it depends. I -- now, there is an order in
5 place that people are not to be using their electronic devices
6 for non-work purposes. For example, if you -- if you have a
7 cell phone or anyone on this side working on the case, I allow
8 them to use their cell phones to communicate or do things
9 related to this case.

10 Now, the natural question is how can I enforce that.
11 It's an honor system. Now, people out in the audience, that
12 is the bailiff's territory. But if somebody over there to
13 your left on this side of the rail is using a cell phone, they
14 can't talk on it. I'm talking about hold it up to their ear
15 and talk. I don't allow that, but since smart phones are
16 pretty much capable of doing what a laptop or a tablet can do,
17 I don't have a problem with it. Do you have a problem with
18 somebody doing that?

19 THE DEFENDANT: Yes, sir. Especially after I done asked
20 the questions and then they got right on their phone and
21 started texting. And not while you were here, but as soon as
22 you left out the door they started texting. Then I asked the
23 question and he looked at me, you know, crazy. That's why I
24 just asked you.

25 THE COURT: Well, they're for communication, and

1 communication is certainly something that's encouraged. But
2 -- for example, if a detective or a lawyer was over there
3 texting their friend or family member about where they are
4 going for lunch, I would -- if I knew that, I would take the
5 phone away from them.

6 THE DEFENDANT: It's hard to find out what's going on.

7 THE COURT: It sure is. That's why it's called an honor
8 system. You have to expect that people will -- all people
9 will follow the rules. But anyway, that's the answer to the
10 question. Okay. Is the juror still missing?

11 THE BAILIFF: Yes, sir.

12 THE COURT: All right. Does the rest of the jury know
13 who we are waiting on or -- excuse me -- know we are waiting
14 on somebody?

15 THE BAILIFF: I went in and called the roll.

16 THE COURT: All right. Let's go ahead and bring in the
17 jury.

18 THE COURT: He's still missing?

19 THE BAILIFF: He's here, Your Honor.

20 THE COURT: Oh, wait a minute. Wait just a second. He's
21 here now?

22 THE BAILIFF: He just came in, Judge. You want to just
23 let him wait in the jury room?

24 THE COURT: No. Let him -- he can participate.

25 THE BAILIFF: He can?

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 THE COURT: Bring him on in.

2 THE BAILIFF: All right. Have him come on in.

3 THE DEFENDANT: May I have the name of that detective
4 that I asked for the badge number?

5 THE COURT: Can you write it down? I don't know how to
6 pronounce it, but she'll write it down for you.

7 (WHEREUPON, the jury entered the courtroom.)

8 THE COURT: All right. Everybody's here?

9 THE BAILIFF: All the jurors are in the courtroom, Your
10 Honor.

11 THE COURT: All right. Ladies and gentlemen, we are
12 ready to continue. Ms. McElveen?

13 MS. MCELVEEN: Yes, sir. The State would recall
14 Detective Melton to the stand.

15 THE COURT: All right. Mr. Melton, you are still under
16 oath. You can have a seat in the witness chair.

17 JOHN MELTON, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MCELVEEN:

21 Q: Good morning again.

22 A: Good morning.

23 Q: Detective Melton, yesterday you answered some questions
24 from Mr. Duren. I think we probably all left thoroughly
25 confused. I wanted to recall you and go over a time line

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 again, addressing as well the April 19th incident report that
2 you filled out about the DNA hit. We know the incident
3 happened June 9th -- June 8th to June 9th, 2011. What sort of
4 information did you receive all through 2011? Did you know
5 anything about who did the crime?

6 A: I did not.

7 Q: What happened -- from that report that Mr. Duren made you
8 read out yesterday, what happened April 19th, 2012?

9 A: I got a confirmation from SLED that the blood collected
10 at the scene matched David Duren.

11 Q: And at that point, you had no idea who did this crime; is
12 that correct?

13 A: That's correct.

14 Q: What did you do? When you received that information from
15 SLED, not knowing anything at all, what did you do?

16 A: I obtained an arrest warrant for Mr. -- well, first I
17 contacted the business to verify that David Duren was not an
18 employee or anything of this nature.

19 Q: Uh-huh.

20 A: He was not. So then that gave me probable cause to
21 obtain an arrest warrant.

22 Q: And what day did you get the arrest warrant?

23 A: I believe it was May the 15th of 2012.

24 (WHEREUPON, someone sneezed.)

25 Q: And what was the -- God bless you. What was the arrest

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 warrant for?

2 A: Burglary second degree non-violent, which is what Mr.
3 Duren had me read yesterday.

4 Q: Okay. So you did get the arrest warrant for burglary
5 second degree non-violent on May 15th; correct?

6 A: That's correct.

7 Q: Did you know about his prior burglaries at that point?

8 A: At that point I must not have because the warrant is for
9 burglary second degree non-violent.

10 Q: And did you -- when did you serve that warrant on Mr.
11 Duren?

12 A: I didn't actually serve the warrant; somebody else did.

13 Q: What date?

14 A: May 27th of 2012.

15 Q: And you didn't serve it you said?

16 A: I did not.

17 Q: But you got the warrant May 15th. It was served May 27th.

18 What date did you speak with Mr. Duren?

19 A: May the 31st of 2012.

20 Q: And that's the first time you had any contact with Mr.
21 Duren; is that correct?

22 A: That's correct.

23 Q: So you got this information from SLED and it leads you
24 all the way down the road, and you finally talk to him May
25 31st. What did you do May 31st, 2012?

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 A: I went out there, read him his Miranda rights, then read
2 him or gave him the form for the buccal swab, and I collected
3 a buccal swab from him.

4 Q: And again that's the swab of the mouth; correct?

5 A: That's correct.

6 Q: If you already have information from SLED that the blood
7 belonged to Mr. Duren, why did you get a buccal swab?

8 A: What we do is, when SLED gives us confirmation of a DNA
9 -- or confirmation that blood matches somebody or any DNA
10 matches somebody, in order to be thorough and to make sure
11 that we have the right person, when they are arrested, we
12 collect another swab. We then send that swab back to SLED and
13 then it gets analyzed against the sample to confirm that we,
14 in fact, do have the correct person.

15 Q: So it's double checking; is that correct?

16 A: That's correct.

17 Q: And when you -- on the warrant, you list his weight.
18 What was the weight listed on the warrant?

19 A: I'd have to look at it again.

20 Q: I'm going to hand you this for identification purposes
21 only, not putting it into evidence. State's Exhibit 36, I
22 believe, for identification purposes only. Is that correct?

23 THE COURT REPORTER: The next one's 36.

24 MS. MCELVEEN: Okay. 36 for identification purposes
25 only.

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 BY MS. MCELVEEN:

2 Q: What weight is he listed at on that warrant?

3 A: One hundred and fifty pounds.

4 Q: 1-5-0?

5 A: Yes, ma'am. 1-5-0, one fifty.

6 Q: All right. And he's charged with burglary second degree
7 violent. Did you charge him with burglary second degree
8 violent?

9 A: No, I did not. On the warrant, I charged him with
10 burglary second degree non-violent.

11 Q: And that's because no -- you weren't aware of the priors
12 again; correct? Is that correct?

13 A: I was not aware of the priors. It's not listed in the
14 body of the warrant.

15 Q: So who made the charge or the determination to charge him
16 with burglary -- why is it for burglary second degree violent?
17 Who makes that determination?

18 A: Any time we make a charge, our charge goes to the
19 Solicitor's Office. They look over everything that we've
20 done. It's kind of like a series of checks and balances, and
21 then they determine the appropriate charge to bring to court.
22 In this case, the charge was -- I don't know whether the
23 correct term would be amended or what have you, but the
24 Solicitor's Office brought the charge of burglary second
25 degree violent to court.

JOHN MELTON - DIRECT BY MS. MCELVEEN

1 Q: So that's what we were charging him is burglary second
2 degree violent because that is what we have brought based upon
3 the facts; is that correct?

4 A: Yes.

5 MS. MCELVEEN: Thank you. I just wanted to clear some
6 things up.

7 THE WITNESS: All right.

8 MS. MCELVEEN: Please answer any questions Mr. Duren may
9 have.

10 THE COURT: All right. No comments, just questions. All
11 right. Mr. Duren?

12 THE DEFENDANT: Yes. Bear with me one second, Your
13 Honor.

14 THE COURT: Yes, sir. Take your time.

15 CROSS-EXAMINATION

16 BY THE DEFENDANT:

17 Q: Good morning, Detective Melton.

18 A: Good morning, sir.

19 Q: Detective Melton, earlier yesterday while the jury was
20 not here, you -- under oath you stated that you were certified
21 to take DNA?

22 A: While the jury was not here, I said I was trained to take
23 DNA.

24 Q: Oh, you was trained to take DNA. So trained and
25 certified is two different things?

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: I'm trained. I don't know whether --

2 Q: I'll rephrase. I'll rephrase the question. Detective
3 Melton, are you certified to take DNA?

4 A: Certified, no. Trained, yes.

5 Q: You're trained, yes? Did the -- did the defendant sign a
6 consent form for you to take a DNA swab?

7 A: You signed a consent form for me to take a DNA swab.

8 Q: Me, the defendant?

9 A: Yes, sir.

10 Q: Is this the consent form that I signed?

11 A: Could you hold it closer, sir? That's a copy of the
12 consent form, yes, sir.

13 Q: It's a copy of the consent form?

14 A: Yes, sir, it is.

15 Q: Do you mind if I read it to the jury?

16 A: I -- I can't answer that.

17 THE DEFENDANT: Do you mind if I read this to jury?

18 MS. MCELVEEN: Your Honor, it's already State's Exhibit
19 Number 32 for the record.

20 THE COURT: Okay. You can -- you can read it though, Mr.
21 Duren. It's in evidence.

22 BY THE DEFENDANT:

23 Q: Consent to take sample for analysis. It says I, David A.
24 Duren, voluntarily consent to provide the City of Sumter
25 Police Department with a sample needed for their criminal

JOHN MELTON - CROSS BY THE DEFENDANT

1 investigation. The following sample, hair, saliva, and/or
2 blood are needed for forensic lab analysis. I hereby give
3 consent for the Sumter Police Department to obtain such sample
4 through medical doctor/nurse. I give this consent freely and
5 voluntarily without threat, coercion, promise or special
6 treatment. I am signing my name to this form to show consent
7 is given for the sample freely and voluntarily.

8 I signed it. Detective Melton?

9 A: Yes, sir.

10 Q: Did you tell the defendant that if he didn't give you a
11 swab, that you was going to have --

12 MS. MCELVEEN: Objection, Your Honor,

13 Q: -- his PR bond revoked?

14 THE COURT: Wait just a second. Yes, ma'am?

15 MS. MCELVEEN: Objection, Your Honor. We've already
16 addressed this.

17 THE COURT: Overruled.

18 BY THE DEFENDANT:

19 Q: Detective Melton, did you threaten the defendant that if
20 he didn't give you a swab that you was going to have his PR
21 bond revoked?

22 A: We discussed this yesterday. I can't tell you the exact
23 conversation. That's been years ago.

24 Q: Detective Melton, did you know the defendant had a PR
25 bond for this crime?

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: I have a note written on my warrant, on the bottom of my
2 warrant. I don't know where that note came from. That is in
3 my case file.

4 Q: Detective Melton, what is a PR bond?

5 A: I know it's referred to as a personal recognizance, I
6 believe, bond. And that's where somebody basically signed --
7 I don't know the exact procedure, but they get out of jail
8 without having to post anything.

9 Q: So they don't have to pay no money to get out of jail?
10 Detective Melton, if you were the defendant and a police
11 officer was to say to you, if you don't give me a swab, I'm
12 going to have your PR bond revoked, what would you do?

13 A: I can't answer that because I've never been on the other
14 side of the fence.

15 Q: Hypothetically, what would you do?

16 A: I believe that if it was me, I would give a swab no
17 matter what.

18 Q: Thank you. And you would sign anything, wouldn't you?

19 A: Myself? I'm funny about what I sign.

20 Q: Hypothetically.

21 A: Hypothetically, I'm funny about what I sign. I really
22 am, but if that is required to give the swab and if I knew it
23 wasn't me, I would happily give the swab.

24 Q: Excuse me. I didn't ask you. Hypothetically, would you
25 sign? That's all I asked you.

JOHN MELTON - CROSS BY THE DEFENDANT

- 1 A: If that was required to give the swab then, yes, sir, I
2 would sign.
- 3 Q: That's not what I asked you. Hypothetically --
- 4 A: Yes.
- 5 Q: -- would you sign?
- 6 A: Yes, I would sign.
- 7 Q: That's all I asked.
- 8 A: Yes, sir.
- 9 Q: I'm curious. Detective Melton, are you a doctor?
- 10 A: No, sir.
- 11 Q: Are you a nurse?
- 12 A: No, sir.
- 13 Q: So this is your form from the City of Sumter Police
14 Department? Consent form?
- 15 A: Yes, sir.
- 16 Q: This is a protocol that they go by?
- 17 A: Yes, sir.
- 18 Q: But yet still you took this swab and this is your
19 protocol?
- 20 A: Yes, sir, I did.
- 21 Q: You did. And you're not a doctor or a nurse?
- 22 A: No, sir, I'm not a doctor or a nurse.
- 23 Q: You're not a doctor or a nurse. So therefore -- next
24 question. Was there a trained personnel available where you
25 took the swab?

JOHN MELTON - CROSS BY THE DEFENDANT

1 A: I know that the detention center has staff. I don't know
2 whether they're med-techs, nurses. I don't really know
3 exactly what's available. I'm not a detention center
4 employee.

5 Q: I will tell you they have certified nurses --

6 MS. MCELVEEN: Objection. Testifying.

7 THE COURT: You can't testify. You can ask him if he
8 knows. You can't say what you think.

9 BY THE DEFENDANT:

10 Q: Do you know -- Detective Melton, do you know if they have
11 a certified doctor or nurse there?

12 A: I'm under the impression that there are nurses there, but
13 I am not sure that they are actually nurses. I don't know.

14 Q: How about a doctor?

15 A: I do not know about a doctor.

16 Q: So the correction center doesn't have a nurse or a doctor
17 there.

18 THE COURT: You can't make statements, Mr. Duren.

19 THE DEFENDANT: Okay.

20 THE COURT: Nor can Ms. McElveen. I have told her not to
21 make statements. You can't make statements while you are
22 questioning a witness.

23 THE DEFENDANT: I'm new to this, Your Honor.

24 THE COURT: I understand you're new, but you -- y'all
25 both have to follow the rules.

JOHN MELTON - CROSS BY THE DEFENDANT

1 BY THE DEFENDANT:

2 Q: Did the defendant -- did not the defendant gave -- give
3 consent -- consent to be obtained through a medical doctor or
4 nurse?

5 A: You signed the consent form and the consent form was
6 worded that way, correct, sir.

7 Q: That's correct; right?

8 A: Yes, sir.

9 Q: So where was the -- Detective, Melton, where was the
10 sample taken?

11 A: I told you I know they were taken at the detention
12 center, but I do not know where.

13 Q: You do not know where?

14 A: I can't remember hardly anything about our encounter.
15 Nothing at all. I've got a little two-line note in my file.

16 Q: You have a two-line note in your file?

17 A: And I've got the Miranda form that you signed and the
18 consent form for the buccal.

19 Q: Detective Melton, why wasn't a medical doctor or nurse
20 used?

21 A: Any time --

22 Q: When --

23 A: You know, any time we collect a buccal swab, which is a
24 saliva, we do it ourselves. We have done it -- I have
25 probably done hundreds. I was trained to do that when I first

JOHN MELTON - CROSS BY THE DEFENDANT

1 became a detective, and I understand the wording on the form,
2 Mr. Duren. I don't make those. That is what the police
3 department uses.

4 Q: But it's your protocol, is it not?

5 A: I --

6 Q: This is the procedure that they go by, is it not?

7 A: I'm sitting here telling you the everyday procedure if
8 you will give me a chance, sir. I was trained as a detective
9 to take buccal swabs. Anytime we need to take something more
10 intrusive, like blood or something of that nature, then we
11 would take somebody to the hospital to collect those.

12 But anytime we do a buccal swab for saliva, which again
13 is collecting the dead skin cells from the inside of the
14 mouth, it is a cotton swab, it is sterile. I have been
15 trained to do that myself. I've collected hundreds of them
16 from people. Hundreds.

17 Q: Where do y'all take people to take a hair sample?

18 A: I have never actually collected a hair sample. If I
19 needed one, that is something that I would ask my supervisors
20 what to do.

21 Q: I'm still looking at this here, Detective Melton, and
22 this is clearly stated that -- in black and white, it says the
23 following sample, hair, saliva, or blood are needed for
24 forensic lab analysis. I hereby give consent for --

25 MS. MCELVEEN: Asked and answered.

JOHN MELTON - CROSS BY THE DEFENDANT

1 THE COURT: Sustained. It's asked and answered. You've
2 covered that and you may cover it later with the jury during
3 your closing argument.

4 THE DEFENDANT: We'll move on.

5 BY THE DEFENDANT:

6 Q: Detective Melton, you also stated earlier while the jury
7 wasn't in here that you were accompanied by Officer Cory
8 Osteen; is that correct?

9 A: That is correct.

10 Q: Detective Melton, do you still currently work with the
11 violent crime division of Sumter Police Department?

12 A: No.

13 Q: No? So, Detective Melton, you're no longer with the
14 violent crime division?

15 A: No, sir, I'm not.

16 Q: What year did you make that move, Detective Melton?

17 A: I couldn't tell you the exact years, but I've never been
18 assigned to the violent crimes unit.

19 Q: You've never been -- you just said no, you don't work
20 there no more. So you had to be assigned there?

21 A: The fact is this -- is my agency, my division, property
22 crimes, we are kind of a catch all for everything. When
23 violent crimes get overwhelmed, we help them. When we get
24 overwhelmed, sometimes they help us. I've been trained in
25 every aspect of investigations for the most part.

JOHN MELTON - CROSS BY THE DEFENDANT

1 Q: So where do you work now, Detective Melton? In what
2 division?

3 A: Property crimes.

4 Q: Property crimes?

5 A: Yes, sir.

6 Q: Property crimes. Detective Melton, while you were
7 working in property crimes division, did your partner get
8 fired for evidence tampering?

9 MS. MCELVEEN: Objection.

10 Q: Mr. Robert Richburg?

11 THE COURT: All right.

12 MS. MCELVEEN: Objection.

13 THE DEFENDANT: I withdraw the question.

14 THE COURT: All right. All right. Wait -- no, sir. No,
15 sir. Ladies and gentlemen, please go to the jury room. Do
16 not discuss the case. Stay standing, please, Mr. Duren.

17 (WHEREUPON, the jury exited the courtroom.)

18 THE COURT: I told you yesterday while -- unfold your
19 arms. I told you yesterday while the jury was out you would
20 not ask that question. Do you recall that? Do you recall
21 that?

22 THE DEFENDANT: I'm sorry, Your Honor.

23 THE COURT: You are in contempt of court. I will deal
24 with that charge after this case is over. I specifically
25 instructed you at the end of an in-camera hearing -- in-camera

1 means the jury is out of the courtroom. I instructed you
2 specifically not to ask that question and not to bring it up
3 for two reasons. One, relevance. Two, there was no proof
4 that what you said was true.

5 Now, you said -- you blurted that out, obviously
6 strategically, and then you somewhat inartfully and in your
7 mind perhaps dramatically, walked away, turned your back to
8 the witness and the jury, and said I withdraw the question.
9 You probably saw that on television. We don't do that here.

10 You are in contempt of court. All right. Does the State
11 have any motions? All right. We'll take five minutes for the
12 State to decide what it wants me to do --

13 MS. MCELVEEN: Your Honor --

14 THE COURT: -- or what it wants to ask me to do.

15 MS. MCELVEEN: Okay. We would like to request that his
16 paperwork or his notes be reviewed to see if he had written
17 that question down to know whether he planned to say that or
18 if he had notes that he knew not to say that.

19 THE COURT: Well, I don't think there is any doubt that
20 -- I don't think that there is any doubt that he planned to
21 say it, whether he wrote it down or not. I don't care if he
22 wrote it down. I -- I conclude that he willfully and
23 deliberately and strategically disregarded my order to not ask
24 that question.

25 MS. MCELVEEN: Yes, sir.

1 THE COURT: I don't need to see his notes, nor do you.

2 MS. MCELVEEN: Yes, sir.

3 THE COURT: Mr. Duren, do you have anything else you want
4 to say on this issue?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: All right. Why did you ask that question
7 when I told you yesterday not to do it?

8 THE DEFENDANT: Well --

9 THE COURT: No. Let me take that back. You have the
10 right to remain silent on that point. Anything you say can
11 and will be used against you in court on a charge of contempt
12 of court. Now, do you want to answer that question?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: All right. Please do.

15 THE DEFENDANT: Your Honor, when I went back last night,
16 I sat down and made a group of questions for the witness today
17 and the witness --

18 THE COURT: But the witness had already testified.

19 THE DEFENDANT: Yes. On my redirect.

20 THE COURT: But he had already testified and had stepped
21 down.

22 THE DEFENDANT: And I just plain forgot about it, Your
23 Honor. I was writing -- I was writing last night.

24 THE COURT: Well, I want the State to decide in this
25 five-minute break what position it takes on what I am to do,

1 whether or not it has a motion for a mistrial, whether or not
2 it wants me to instruct the jury in some particular way, and
3 then Mr. Duren will have his say. But, Mr. Duren, I'm very
4 disappointed.

5 THE DEFENDANT: Your Honor, I didn't do it to respect --
6 disrespect the Court, Your Honor. I just wrote down questions
7 last night. This -- this is my life that I am fighting for.

8 THE COURT: I understand that and I sympathize with you
9 on that, but I specifically told you not to do it --

10 THE DEFENDANT: I --

11 THE COURT: Don't interrupt me. I specifically told you
12 not to do it and it was clear when you turned your back on the
13 witness, you knew. You knew that that question was improper
14 because you -- once you asked it, you began walking away. You
15 knew because you weren't standing there waiting on an answer.
16 You asked the question and turned around and walked off. You
17 knew what was going to happen.

18 All right. Five minutes.

19 MS. MCELVEEN: Thank you, Your Honor.

20 THE COURT: You can step down, Detective. You may not
21 discuss your testimony with anyone.

22 THE WITNESS: Yes, sir. Thank you, Your Honor.

23 (WHEREUPON, there was a break in the proceedings.)

24 Ms. MCELVEEN: We request an instruction to a point where
25 it is actually stated that nobody from the police department

1 was let go for evidence tampering. There was no basis for
2 that -- for the facts stated.

3 THE COURT: I'm not going to say that first part.

4 MS. MCELVEEN: Okay.

5 THE COURT: But here's what I would contemplate in the
6 way of hearing instruction. You can stand up, please, sir.

7 Is that -- yesterday, the defendant was instructed not to
8 ask that question. He asked the question today. Because Mr.
9 Duren will surely remember this. That when the jury came back
10 in, I told them to disregard any mention of anything involving
11 a Mr. Richburg.

12 You have shown -- actually, Mr. Duren, you've done an
13 excellent job in questioning witnesses. So I do not doubt
14 your ability to recall that specific instruction I gave to the
15 jury.

16 But what I will tell the jury is that yesterday, I
17 instructed them and instructed Mr. Duren -- excuse me. I
18 instructed Mr. Duren not to ask any questions about a Mr.
19 Richburg, and I instructed the jury to disregard any reference
20 to a Mr. Richburg because it wasn't relevant. It had nothing
21 to do with this case.

22 Today I'm going to tell the jury again that I instructed
23 you not to reference that at all, and to the extent any
24 reference has been made again to a Detective Richburg, they
25 are to disregard it. It has nothing to do with this case and

1 there has been no evidence presented that he or anyone else
2 was discharged from the police department for tampering with
3 evidence.

4 All right. What's the State have to say about that?

5 MS. MCELVEEN: I think that would be appropriate.

6 THE COURT: Mr. Duren?

7 THE DEFENDANT: Thank you, Your Honor.

8 THE COURT: Does that suit you?

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: All right. It won't happen again, will it?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: All right. Because we have rules.

13 THE DEFENDANT: Thank you.

14 THE COURT: And my irritation, if you will, is not
15 directed at you personally. It's directed at you not
16 following my specific order.

17 THE DEFENDANT: Thank you, Your Honor.

18 THE COURT: The system can't survive like that.

19 THE DEFENDANT: Thank you.

20 THE COURT: All right. Bring in the jury. Will there be
21 any additional questions of the witness?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Then when the jury comes in and I
24 finish, you can say you have no further questions. If you
25 change your mind, you can go ahead and question him.

1 (WHEREUPON, the jury entered the courtroom.)

2 THE BAILIFF: All the jurors are back in the courtroom,
3 Your Honor.

4 THE COURT: Ladies and gentlemen, let me have your
5 attention for a few minutes. Yesterday afternoon, I
6 instructed you to disregard a mention of someone by the name
7 of Richburg, and under the oath that you've taken you are
8 required to do that. I specifically instructed you to
9 disregard that.

10 I again instruct you to disregard anything that was
11 mentioned about someone by the name of Richburg. It has no
12 relevance to this case. It has nothing to do with this case.

13 In addition to that, there is no evidence that anyone by
14 the name of Richburg or anyone else was discharged from the
15 Sumter Police Department for evidence tampering. So please
16 disregard it and, under your oath, you must do that.

17 All right. Any additional questions, Mr. Duren?

18 THE DEFENDANT: No, sir, Your Honor. The defense would
19 like to reserve the right to recall this witness.

20 THE COURT: Yes, sir. All right. You can step down,
21 please, sir. Next witness for the State?

22 MS. MCELVEEN: Yes, sir. The State would call Johanna
23 Aleck.

24 THE CLERK: Place your left hand on the Bible and raise
25 your right hand and state your name, please.

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 THE WITNESS: Detective Johanna R. Aleck.

2 THE CLERK: Do you solemnly swear or affirm that the
3 testimony you give to this Court to be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do, sir.

6 THE CLERK: Thank you. Come around, ma'am. State your
7 name and spell your last for the record.

8 THE WITNESS: Johanna R. Aleck. A-l-e-c-k.

9 JOHANNA ALECK, being first duly
10 sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MS. MCELVEEN:

13 Q: Can you tell us what you do, what your rank is, and where
14 you work?

15 A: I'm Detective Johanna R. Aleck. I work for the Sumter
16 Police Department. I am a detective currently assigned to
17 investigate criminal domestic violence cases, but I'm also a
18 part-time crime scene forensic worker. I was working forensic
19 at the time of this crime.

20 Q: So you helped process the scene of a burglary; is that
21 correct?

22 A: Yes, ma'am.

23 Q: Were you present when Trey Tallon took the swabs of the
24 blood from the top of refrigerator?

25 A: Yes, ma'am.

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 Q: And what did you do at the scene?

2 A: It's been a while. It's tough to remember, but I think I
3 took some pictures.

4 Q: You took all the pictures that we've seen up here?

5 A: I didn't take the pictures on top of the refrigerator
6 because Detective Tallon went on top of the refrigerator. But
7 I did take -- I believe I took some of the pictures outside
8 and some pictures inside the business. I also collected some
9 evidence.

10 Q: Wonderful. When you say -- well, people have mentioned
11 these cigarette cartons laying around. Did you do anything
12 with those cigarette cartons?

13 A: I collected them. I also photographed them.

14 MS. MCELVEEN: (To court reporter) May I mark this as
15 State's Exhibit 37 for identification purposes only at this
16 point?

17 BY MS. MCELVEEN:

18 Q: You said you collected the cigarette cartons. What did
19 you do with them?

20 A: Probably took them to the lab and processed them.

21 Q: Do you take the whole carton or what does that entail as
22 far as you say you processed them?

23 A: Usually I take the whole carton, what I collect, and I
24 put it in a fuming chamber, which processes the fingerprint,
25 causes it to be hardened, and then we dust it with black

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 powder and see if there is any fingerprints on it.

2 Q: Is it easy to get fingerprints off of something? You see
3 these shows like *NCIS, Law and Order*. They can tell if a clay
4 is from Peru or tire tracks are from one type of car. Do you
5 get fingerprints from everything?

6 A: No. No, ma'am.

7 Q: Did you get fingerprints from the cartons in this case?
8 Did you try to look for fingerprints on these cartons?

9 A: I got ridge detail.

10 Q: Can you tell us about that?

11 A: A lot of times, people will leave ridge detail, but it's
12 not a complete fingerprint. There is not enough of a pattern
13 to make an identification.

14 Q: So you need more? Sometimes you need more to make a --
15 is that what you are saying? I don't -- I don't understand.
16 Can you go into some detail about that? Do you have a ridge
17 pattern, but you don't have enough? Tell us, please.

18 A: Exactly. You have to have enough ridge detail to get
19 enough of the pattern to plot in order to make an
20 identification.

21 Q: Okay. Was there enough on these cigarette cartons for
22 you to be able to figure out a fingerprint?

23 A: There was insignificant ridge detail.

24 Q: Which means?

25 A: There is not enough detail to make an identification.

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 Q: Wonderful. You were present at the scene. You said you
2 helped collect evidence. Did you -- did you collect the
3 evidence from Mr. Tallon as well?

4 A: Yes, I did.

5 Q: What do you do with the evidence when you take it from a
6 scene? You would have taken your cigarette cartons and
7 everything. What do you do with the evidence when you take it
8 to a scene -- take it from a scene? I'm sorry.

9 A: We either take it to the lab or we turn it in to
10 evidence. If it needs to be processed, we take it to the lab,
11 and if it doesn't need to be processed, we just turn it in to
12 the evidence room.

13 MS. MCELVEEN: May I mark this as State's Exhibit 38?

14 Thank you.

15 BY MS. MCELVEEN:

16 Q: Is there some sort of form that goes with the evidence to
17 show where it goes and what happens to it?

18 A: Yes, ma'am, there is. It's called a chain of custody.

19 Q: Do you -- can you identify Item Number 38? State's
20 Exhibit 38?

21 A: Yes. It's --

22 THE DEFENDANT: Objection, Your Honor.

23 A: -- a chain of custody.

24 THE COURT: Yes, sir?

25 THE DEFENDANT: Your Honor, the State hasn't presented me

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 with the chain of custody form.

2 THE COURT: All right. Could you show him the exhibit,
3 please?

4 MS. MCELVEEN: Yes, sir. It was in his discovery.

5 THE COURT: Was that presented to Mr. Duren in discovery?

6 MS. MCELVEEN: Yes, sir.

7 THE COURT: All right.

8 MS. MCELVEEN: It was in his discovery packet.

9 THE COURT: Take a look at it and then you can compare it
10 to what you may have.

11 THE DEFENDANT: Your Honor, with all due respect, this is
12 the first time I've seen this.

13 THE COURT: Okay. May I see it, please?

14 MS. MCELVEEN: Yes, sir.

15 THE DEFENDANT: This is the first time I've seen it.

16 THE COURT: Ms. McElveen, you produced this to the
17 defendant or not?

18 MS. MCELVEEN: Yes, sir. We produced the chain of
19 custody form and all in the reply packet.

20 THE COURT: And that was with the discovery production
21 that you referenced earlier?

22 MS. MCELVEEN: Yes, sir. Both of them.

23 THE COURT: Are you going to offer the original into
24 evidence?

25 MS. MCELVEEN: We were, Your Honor. Yes, sir.

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 THE COURT: All right.

2 THE DEFENDANT: Your Honor, with all due respect, I was
3 going to ask that question this morning because a person at
4 the jail --

5 THE COURT: No. You can't say what somebody at the jail
6 told you.

7 THE DEFENDANT: Okay. But --

8 THE COURT: Come on up, please, sir.

9 MS. MCELVEEN: Your Honor, he's got a copy of it right
10 there in his pile I believe.

11 THE DEFENDANT: It's not a copy of yours.

12 THE COURT: All right. Let me -- let me see what you
13 have.

14 THE DEFENDANT: I was going to ask --

15 THE COURT: Wait just a second, please. I've got to look
16 first.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury but out of the hearing of the jury off the
19 record.)

20 THE COURT: All right. Ladies and gentlemen, please go
21 to your jury room. You may not discuss the case.

22 (WHEREUPON, the jury exited the courtroom.)

23 THE COURT: We'll go back on the record now. The jury is
24 out of the room. Mr. Duren, you're claiming that you did not
25 receive a copy of Number 38 for ID?

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1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: You're not saying that?

3 THE DEFENDANT: I'm saying it. Yes, sir, Your Honor, I
4 did not.

5 THE COURT: All right. What you handed up during the
6 bench conference was a chain of custody form that you said up
7 here at the bench conference that you got from another
8 detainee at the jail?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: And you obtained that from him why?

11 THE DEFENDANT: Last -- last night I was going over my
12 case.

13 THE COURT: Uh-huh.

14 THE DEFENDANT: And he's got a case coming up and he said
15 did you get this, and I said, no, I never received none of
16 this.

17 THE COURT: And can you explain to me why that particular
18 chain of custody form in your mind was of paramount concern
19 last night?

20 THE DEFENDANT: No. I was going over my case on the
21 table and, you know, I have a bunch of inmates there helping
22 me.

23 THE COURT: Okay. And you're saying that -- you're
24 saying that the chain of custody form was not presented to you
25 by the State during discovery?

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: Okay. All right. So you are saying that or
3 you're not saying that?

4 THE DEFENDANT: I'm saying it was not presented to me
5 during the discovery, sir.

6 THE COURT: All right. He's going to give you a copy of
7 that and, Ms. McElveen, what -- did you give him a copy of it?

8 MS. MCELVEEN: Yes, sir, I did. And also there is a
9 second chain of custody form that's just his buccal swab that
10 was also given to him in the chain of custody that I want to
11 make sure he has before we continue.

12 THE COURT: All right. Well, I'm inclined to agree -- to
13 conclude that you did give it to him.

14 MS. MCELVEEN: Yes, sir.

15 THE COURT: You -- all right. What is the prejudice
16 result -- let's assume for the moment that you didn't get it.
17 What is the prejudice that you are experiencing that should
18 require me to exclude it?

19 THE DEFENDANT: Because I could see if the chain of
20 custody was broken, sir.

21 THE COURT: But can you not see that now whether it is or
22 isn't?

23 THE DEFENDANT: I haven't had a chance to study it, Your
24 Honor.

25 THE COURT: All right. You can study it while the

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 witness is being questioned.

2 THE DEFENDANT: All right.

3 THE COURT: But my conclusion is, based on what the State
4 says, that you did, in fact, receive it.

5 THE DEFENDANT: Okay.

6 THE COURT: Give that back to the court reporter, please.

7 THE DEFENDANT: May I -- may I make a statement, Your
8 Honor?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: Your Honor, I have had a problem getting
11 things from the solicitor ever since I became pro bono, even
12 before I became pro bono. I have filed motions before the
13 Clerk of Court, Your Honor. I called to check on my motions.
14 They never received it. The only way I got motions filed at
15 the Clerk of Court and to Ms. McElveen was that my mother -- I
16 mailed them to my mother, had her go to the Clerk's Office,
17 get them time stamped, make copies, and hand deliver them to
18 her office.

19 THE COURT: So that was done?

20 THE DEFENDANT: No.

21 THE COURT: I mean she got them; right?

22 THE DEFENDANT: Yes, she got them.

23 THE COURT: Okay.

24 THE DEFENDANT: But the only way she got them. I tried
25 calling Ms. McElveen.

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1 THE COURT: All right. We're not talking about motions,
2 Mr. Duren. We're talking about discovery because the jury is
3 out. We're not going to talk about motions because I've heard
4 -- I heard your five motions yesterday.

5 THE DEFENDANT: This is a discovery issue. I asked for
6 copies of my photos. Okay. They came to the jail. They gave
7 me four DVDs, knowing I had no access to them.

8 THE COURT: Well, they shouldn't do that. They should
9 give you the pictures.

10 THE DEFENDANT: I got the paper.

11 THE COURT: And you got the pictures?

12 THE DEFENDANT: I got the pictures right there right
13 before the trial.

14 THE COURT: You sure did.

15 THE DEFENDANT: I didn't get a chance to study it. Ten
16 minutes.

17 THE COURT: But you've done a good job questioning these
18 witnesses about those photographs.

19 THE DEFENDANT: Well, the thing is --

20 THE COURT: You're saying there is a pattern?

21 THE DEFENDANT: There is a pattern, Your Honor.

22 THE COURT: Okay. Now, Ms. McElveen, as an officer of
23 the court, did you provide Mr. Duren with a copy of the chain
24 of custody form during the course of discovery, the buccal
25 swab and the evidence seized from the crime scene?

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1 MS. MCELVEEN: Yes, sir. We gave Mr. Duren's attorney --
2 a long time ago back in August, I believe 2013, we served Rule
3 5 on them and then also we gave Mr. Duren a copy of his file.
4 We served him again January 22nd, 2015. We also served
5 Supplemental Rule 5 on him April 7th, 2015, which included the
6 buccal swab collection chain of custody form, along with the
7 submission to SLED and the SLED report.

8 THE COURT: All right.

9 MS. MCELVEEN: He said he had no discovery issues on
10 April 7th, 2015. May 13th, 2015, he mentioned -- we brought
11 him over because he keeps filing interesting papers, and I
12 wanted to make sure that we are addressing them; so we keep
13 bringing him over and make sure they are addressed, and he
14 also made the mention of the DVDs. I was right there. I
15 handed him the color photos May 13th. Last week -- and I
16 handed them on the record in front of Judge Cothran. I said
17 please, you can have my copies, here you go. I gave him them
18 on the record.

19 THE COURT: All right. Anything else?

20 THE DEFENDANT: Yes, sir, Your Honor. If it please the
21 Court, if we can subpoena or your people can get the record
22 from the Public Defender's Office from Mr. Jacob Smith's file
23 on this case, you could see in that file that I was never
24 given that custody form. He would have a copy of it, if it's
25 still there. That would let you know that I never received a

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 copy of it because my attorney --

2 THE COURT: All right. We're not going to do that now,
3 but I will -- I will look into that at the next extended
4 break. The question is this. Are you prepared to go forward
5 with cross-examination on that custody form?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: All right.

8 MS. MCELVEEN: And can we go ahead and mark Number 39,
9 being the buccal swab?

10 THE COURT: Well --

11 MS. MCELVEEN: -- chain of custody form?

12 THE COURT: No. Because there is no witness to talk
13 about that.

14 MS. MCELVEEN: I believe she's talked about it.

15 THE COURT: I thought Detective Melton was the one who
16 took the swab.

17 MS. MCELVEEN: He did, and he said he turned it into
18 evidence.

19 THE COURT: All right. Mark it for ID.

20 MS. MCELVEEN: She took it to SLED.

21 THE COURT: Mark it for ID and then we're going to get
22 moving.

23 MS. MCELVEEN: Okay. She took it to SLED.

24 THE COURT: Go ahead. Just mark it for ID and we are
25 going to get moving. All right.

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 Mr. Duren, I've heard your objection. I don't find --
2 first of all, I find that you probably did get it, and second
3 of all, you are not prejudiced. You can question the witness
4 after you listen to the direct examination about her part in
5 the chain of custody.

6 All right. Bring in the jury.

7 (WHEREUPON, the jury entered the courtroom.)

8 THE COURT: All right. Ms. McElveen, you can continue.

9 MS. MCELVEEN: Yes, sir.

10 BY MS. MCELVEEN:

11 Q: Detective Aleck, looking again at State's Exhibit 38, can
12 you identify what that is?

13 A: Yes, ma'am.

14 Q: What is it?

15 A: I turned in three cigarette carton boxes with cigarettes
16 --

17 Q: What is that document?

18 A: Oh, the document? Oh, it's a chain of custody.

19 Q: And that keeps track of evidence?

20 A: Yes, ma'am.

21 Q: And that -- did you sign that form?

22 A: Yes, ma'am.

23 Q: Where is your signature?

24 A: Down here in the bottom left.

25 Q: Wonderful. So that means you take that evidence to

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 where? Where do you take evidence from the scene?

2 A: I take it to the lab for processing. All of these items,
3 except for the swabs, I took to the lab for processing.

4 Q: And so you say you took them to the lab for processing,
5 and these -- you're talking about the cigarette cartons and
6 everything. This is what you -- and the State's Exhibit 37,
7 can you identify those?

8 A: This would be a cutting that I took from one of the
9 cigarette cartons.

10 Q: And that means that you looked for fingerprints on that?

11 A: Yes, there was some ridge detail down here. I preserved
12 it with a piece of tape, but it didn't have enough. It was
13 insignificant. It didn't have enough ridge detail to make an
14 identification.

15 Q: Okay. Thank you. So you did look for fingerprints?

16 A: Yes, ma'am.

17 Q: But you guys were not successful; is that correct?

18 A: Yes, ma'am. I found fingerprints. I just didn't --
19 fingerprints with insignificant ridge detail.

20 Q: So you couldn't tell whose they were?

21 A: That's correct.

22 Q: Could have been anybody's. If someone --

23 THE COURT: Nope. No -- no comments.

24 MS. MCELVEEN: Okay.

25 BY MR. MCELVEEN:

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 Q: If someone were to --

2 THE COURT: You've got to ask questions.

3 MS. MCELVEEN: Yes, sir.

4 BY MS. MCELVEEN:

5 Q: If someone were to wear gloves, what would that do to
6 your ability to find fingerprints?

7 A: It makes it more difficult.

8 Q: More difficult?

9 A: Yes, ma'am.

10 Q: What do you mean more difficult?

11 A: Depending upon the gloves, it makes it very difficult
12 because they don't leave fingerprints.

13 Q: Okay. So they don't leave fingerprints if they wear
14 gloves?

15 MS. MCELVEEN: Your Honor, we would like to have State's
16 Exhibits -- I'm sorry.

17 BY MS. MCELVEEN:

18 Q: After you analyzed these items at the lab, what do you do
19 with the items then? Where do you take those items?

20 A: They go to the evidence room.

21 Q: Okay.

22 MS. MCELVEEN: Your Honor, we would like to have State's
23 Exhibit 37 and 30 -- actually -- I'm sorry -- just 38
24 introduced into evidence at this time.

25 THE COURT: Mr. Duren, any objection?

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 THE DEFENDANT: No objection, Your Honor.

2 THE COURT: All right. 38 is in.

3 (WHEREUPON, State's Exhibit Number 38, a chain of custody
4 form, was admitted into evidence.)

5 MS. MCELVEEN: Thank you.

6 BY MS. MCELVEEN:

7 Q: You have heard testimony that a buccal swab was taken
8 from the defendant. After a buccal swab is collected, where
9 does it go? Well, Detective, we know it went into evidence.
10 Where does it go after evidence?

11 A: It goes to SLED for processing.

12 Q: Do you -- I'm going to -- if you'll look at State's
13 Exhibit 39 for identification purposes only, who took that
14 buccal swab over to SLED?

15 A: I can't tell from this because when we take it to SLED,
16 we use a SLED chain of custody.

17 Q: And do you sign it out from Detective -- from Detective
18 Allsbrook if you take it to SLED?

19 A: Yes.

20 Q: Do you -- did you sign that form? Did you take that
21 buccal swab to SLED?

22 A: I don't -- I'd have to have the form to tell.

23 Q: Okay.

24 A: I don't specifically recall this case.

25 Q: I'm going to hand you -- maybe it will refresh your

JOHANNA ALECK - DIRECT BY MS. MCELVEEN

1 recollection -- State's Exhibit 40 for identification purposes
2 only. What is that item that I just handed you?

3 A: This is the chain of custody for SLED.

4 Q: For SLED?

5 A: Yes.

6 Q: Did you take the buccal swab from Mr. Duren over to SLED?

7 A: Yes, I did. There's my signature right here on the
8 second page.

9 Q: Okay. And that's kept -- that means that you took it
10 over to SLED?

11 A: Yes, ma'am.

12 MS. MCELVEEN: Thank you. I have no further questions at
13 this time. Please answer any questions that Mr. Duren might
14 ask.

15 THE COURT: Mr. Duren?

16 THE DEFENDANT: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY THE DEFENDANT:

19 Q: All right. Good morning.

20 A: Good morning, sir.

21 Q: Detective Alford --

22 A: Detective Aleck.

23 Q: Alecks.

24 A: Aleck.

25 Q: Alecks?

JOHANNA ALECK - CROSS BY THE DEFENDANT

1 A: A-l-e-c-k, sir.

2 Q: Okay. Excuse me. A what?

3 A: A-l-e-c-k.

4 Q: A-l-e-c-k. Detective Aleck, you stated that you took the
5 pictures of the crime scene?

6 A: I took some of them.

7 Q: Some of them? Detective Aleck, did you take the pictures
8 of the cigarette cartons and stuff that was behind the
9 refrigerator?

10 A: I think I took those. I'm not positive. Tallon --
11 Detective Tallon took some of the pictures and I took some of
12 the pictures. It's been a while. I can't recall exactly what
13 pictures I took.

14 Q: Okay. Detective Aleck, you stated in testimony that you
15 dusted the cigarette cartons for fingerprints?

16 A: Yes, sir.

17 Q: And you stated also, Detective Aleck, that you couldn't
18 get any credible fingerprints?

19 A: There was not enough ridge detail to make an
20 identification.

21 Q: Not enough ridge detail?

22 A: Yes, sir.

23 Q: Can I ask -- Detective Alecks --

24 A: Aleck.

25 Q: Detective Aleck?

JOHANNA ALECK - CROSS BY THE DEFENDANT

1 A: Yes, sir.

2 Q: Do fingerprints carry DNA?

3 A: They can.

4 Q: They can?

5 A: Yes, sir.

6 Q: Why weren't these cartons checked for DNA?

7 A: With a burglary, we are only allowed, because of costs,
8 to send so many DNA samples to SLED. Because we had the
9 blood, we decided to send those samples and to test for
10 fingerprints -- for the fingerprints.

11 Q: So you did send both blood samples to SLED?

12 A: Yes, sir.

13 Q: And I'm curious. If you sent both blood samples to SLED,
14 why didn't SLED test both of them?

15 A: You will have to ask SLED that.

16 Q: Detective Aleck, the solicitor also stated that if a
17 person wear gloves, they wouldn't leave no prints; right?

18 A: It's highly unlikely.

19 Q: Okay. Hypothetically, this burglar wore gloves. Would
20 he have left any prints on the cigarette cartons?

21 A: It's unlikely if he wore gloves --

22 Q: But you found --

23 A: -- that there'd be fingerprints.

24 THE COURT: Let her finish, sir.

25 THE DEFENDANT: Okay.

JOHANNA ALECK - CROSS BY THE DEFENDANT

1 BY THE DEFENDANT:

2 Q: But you say you found a ridge on the cigarette carton
3 that you couldn't make a determination of?

4 A: That's correct.

5 Q: So if the burglar had wear gloves, how did he cut
6 himself?

7 A: I don't know. It's possible he cut himself in areas
8 other than his fingers or his hands.

9 Q: Detective Aleck, yesterday the -- well, one of the owners
10 stated that the end of the thing was sharp. Quite likely that
11 would be how he cut himself?

12 A: It's possible.

13 Q: Detective Aleck, was blood found anywhere else in the
14 crime scene other than the top of the refrigerator?

15 A: No, sir.

16 Q: If a person was bleeding, Detective Aleck, wouldn't they
17 have left blood somewhere else?

18 A: I cannot answer that.

19 MR. DUREN: No further questions, Your Honor.

20 THE COURT: All right. Redirect?

21 MS. MCELVEEN: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MCELVEEN:

24 Q: If someone were wearing blood -- I mean wearing gloves
25 but tore open a wall, could they cut their forearms?

JOHANNA ALECK - REDIRECT BY MS. MCELVEEN

1 A: It's possible.

2 MS. MCELVEEN: Thank you. No further questions.

3 THE COURT: Anything else, Mr. Duren?

4 THE DEFENDANT: Yes, Your Honor.

5 RECROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q: Detective Aleck, if the burglar was really wearing
8 gloves, he would have on a long sleeve shirt so he wouldn't
9 cut his forearm or jacket and stuff, would he?

10 A: I don't -- I can't answer that.

11 THE COURT: All right. You can step down. Thank you,
12 ma'am.

13 THE WITNESS: Yes, sir.

14 THE COURT: Next witness?

15 MS. MCELVEEN: Yes, sir. The State would call Lead
16 Corporal Osteen.

17 THE COURT: Is everybody okay?

18 THE CLERK: State your name?

19 THE WITNESS: Cory Osteen.

20 THE CLERK: Do you solemnly swear or affirm that the
21 testimony you give to this Court will be the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: Yes, sir, I do.

24 THE CLERK: Come around, sir. State your name and spell
25 your last for the record.

CORY OSTEEN - DIRECT BY MS. MCELVEEN

1 THE WITNESS: Cory Osteen. O-s-t-e-e-n.

2 CORY OSTEEN, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MCELVEEN:

6 Q: I think I just gave it away. You are a lead corporal.

7 Where do you work?

8 A: At this point in time, I'm a lead corporal at the Sumter
9 Police Department. I'm the first-line supervisor for C Shift.

10 Q: Wonderful. Thank you. Were you working with the police
11 department on June 9th, 2011?

12 A: I was, and I was a detective at the time.

13 Q: Were you also working in May of 2012?

14 A: I was.

15 Q: Did you have the opportunity to speak with or be present
16 for an interview with Mr. David Duren?

17 A: I was at the Sumter Lee Regional Detention Center.

18 Q: Can you please tell us a little bit about that interview?
19 Who was -- who were you with and what did you witness?

20 A: Detective Melton asked me to ride with him to the jail to
21 speak with Mr. Duren and possibly collect a buccal swab for
22 DNA.

23 Q: And were you present when Mr. Melton spoke with him?

24 A: Yes, ma'am, I was.

25 Q: Did you witness Mr. Duren consenting to give a sample?

CORY OSTEEN - DIRECT BY MS. MCELVEEN

1 A: Yes, ma'am.

2 Q: And did you sign this sheet indicating that as well?
3 Which is -- let's see -- State's Exhibit 32. Did you sign
4 that sheet, sir?

5 A: This is my signature and my badge number.

6 Q: And you witnessed him consenting to that form?

7 A: Yes, I did.

8 Q: Is it standard protocol to -- who collects --

9 THE DEFENDANT: Objection.

10 Q: -- buccal swabs?

11 THE COURT: If you'll wait just a second. Yes, sir?

12 THE DEFENDANT: Your Honor, may I review that form? I
13 haven't seen it, Your Honor.

14 THE COURT: It was introduced yesterday. But is it in
15 evidence?

16 MS. MCELVEEN: Yes, sir.

17 THE COURT: Okay. I believe -- you can take a look at
18 it, yes, sir. Hand it to him, please, Ms. McElveen.

19 MS. MCELVEEN: Yes, sir.

20 THE COURT: Mr. Duren, it was -- while you're looking at
21 it, I'll find my notes to maybe assist you -- at 4:12 p.m.
22 yesterday.

23 THE DEFENDANT: All right.

24 THE COURT: It was introduced without any objections.

25 THE DEFENDANT: Okay.

CORY OSTEEEN - DIRECT BY MS. MCELVEEN

1 THE COURT: Okay. Does that clear it up?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Go ahead, Ms. McElveen.

4 BY MS. MCELVEEN:

5 Q: Who collects -- when you -- when someone consents or
6 someone is -- when you receive a buccal swab, a mouth swab
7 from somebody, who collects those pieces of evidence?

8 A: There are two different ways that we usually do it. One
9 way is a detective will do it. He will wear rubber gloves to
10 not contaminate the stick or the cotton swab at the end, or if
11 the defendant feels he would rather get it himself, him or
12 her, we will let him or her hold the swab, swab the inside of
13 their own mouth for the dead skin cells, and drop it in the
14 box.

15 Q: How is blood collected?

16 A: At the hospital by a doctor or a nurse.

17 Q: Okay. You guys do not collect blood?

18 A: No, sir. No, ma'am.

19 Q: Were you --

20 A: Absolutely not.

21 Q: Were you present when Mr. Duren's buccal swab was
22 collected?

23 A: I was.

24 Q: And he seemed to give consent and had no problems;
25 correct?

CORY OSTEEN - CROSS BY THE DEFENDANT

1 A: Absolutely.

2 MS. MCELVEEN: Thank you. No further questions. Please
3 answer any questions Mr. Duren might have.

4 THE COURT: Mr. Duren?

5 CROSS EXAMINATION

6 BY THE DEFENDANT:

7 Q: Detective Osteen?

8 A: Yes, sir.

9 Q: You're familiar with what this is; right?

10 A: Absolutely.

11 THE COURT: Is that a copy, Mr. Duren, of Number 32?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Just want to make sure the record
14 is clear. Go ahead.

15 THE DEFENDANT: It's just a copy.

16 THE COURT: All right.

17 THE DEFENDANT: If it pleases the Court, it's the same
18 thing I read for Mr. -- Detective Melton.

19 BY THE DEFENDANT:

20 Q: It says I, David Duren, voluntarily consent to allow the
21 City of Sumter Police Department for this sample needed for
22 their criminal investigation. The following sample, hair,
23 saliva or blood, are needed for a forensic lab analysis. I
24 hereby give consent for Sumter Police Department to obtain
25 such sample through a medical doctor/nurse.

CORY OSTEEN - CROSS BY THE DEFENDANT

1 A: Go on.

2 Q: I give this consent freely and voluntarily without
3 threat, coercion, promise or special treatment. I am signing
4 my name to this form to show consent to give sample freely and
5 voluntarily. Yes, I signed the form.

6 A: Yes, sir.

7 Q: I'll admit I signed it.

8 A: Yes, sir.

9 Q: Detective Osteen, were you aware that Mr. Duren had a PR
10 bond?

11 A: Say again?

12 Q: Were you aware that Mr. Duren had a PR bond for burglary
13 degree second?

14 A: No, sir.

15 Q: Detective Osteen, do you know what a PR bond is?

16 A: Absolutely. Personal recognizance.

17 Q: Okay. That means a person doesn't have to pay the money
18 to get out?

19 A: No, sir. That means that a person signs his own self out
20 of jail saying he would show up for court when he -- whenever
21 it is his or her time to come.

22 Q: Okay. It's their time to come? So you don't recall
23 Detective Melton stating to the defendant that he would go to
24 the judge and get his PR bond revoked if he didn't give a
25 saliva sample?

CORY OSTEEN - CROSS BY THE DEFENDANT

- 1 A: Detective Melton did not say that.
- 2 Q: He did not say that?
- 3 A: He did not say that.
- 4 Q: So if I was to request the voice recorder and the video
- 5 from the jail on that date, it wouldn't say that?
- 6 A: Please do.
- 7 Q: I will. I will.
- 8 A: But the answer is no, it would not say that.
- 9 Q: Okay. Officer Osteen?
- 10 A: Yes, sir.
- 11 Q: If you had a PR bond for burglary degree second and
- 12 somebody threatened you, hypothetically, to go and get your
- 13 bond revoked, would you sign?
- 14 A: Hypothetically, I would never have a PR bond for burglary
- 15 second.
- 16 Q: Hypothetically.
- 17 A: No, sir. That would never be the case.
- 18 Q: That would never be the case?
- 19 A: I can't answer that question.
- 20 Q: You can't answer that question?
- 21 A: No, sir.
- 22 Q: You would never have a burglary second?
- 23 A: No, sir.
- 24 Q: Okay. You refuse to answer that question?
- 25 THE DEFENDANT: No further questions, Your Honor.

JIM ALLSBROOK - DIRECT BY MS. MCELVEEN

1 THE COURT: All right. Any redirect?

2 MS. MCELVEEN: No, sir.

3 THE COURT: Thank you, Mr. Osteen. You can step down.

4 Next witness?

5 MS. MCELVEEN: Thank you, Your Honor. Jim Allsbrook.

6 THE CLERK: State your name, please.

7 THE WITNESS: James Allsbrook.

8 THE CLERK: Do you solemnly swear or affirm the testimony
9 you give to this Court will be the truth, the whole truth and
10 nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Come around, sir.. State your
13 name and spell your last for the record.

14 THE WITNESS: James Allsbrook, A-l-l-s-b-r-o-o-k.

15 JAMES ALLSBROOK, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MCELVEEN:

19 Q: Mr. Allsbrook, what is your job? What do you do?

20 A: My title is evidence technician.

21 Q: What does that entail?

22 A: I'm responsible -- I work for the city police department
23 and my responsibilities are to take possession of any and all
24 evidence, to maintain the care, custody, and control of
25 anything that is brought to the department for court

JAMES ALLSBROOK - DIRECT BY MS. MCELVEEN

1 appearances.

2 Q: Do you respond to case -- do you respond to crime scenes
3 or make charges or write incident reports?

4 A: I have gone to crime scenes. I do not make reports. I
5 do not process crime scenes.

6 Q: You're just the keeper of all evidence; is that correct?

7 A: Yes, ma'am.

8 Q: You've heard officers testify that -- well, Detective
9 Aleck testified that the evidence she submitted to you from
10 the crime scene. She also testified that she -- Detective
11 Melton testified that he brought the buccal swab to you as
12 well, and then she testified she took it to SLED. And she
13 testified that she signed -- Detective Aleck testified that
14 she signed all the evidence over to you from the scene in
15 State's Exhibit 38.

16 And then looking at State's Exhibit 39, what is that?

17 A: That is a chain of custody.

18 Q: And regarding what item?

19 A: That is a buccal swab collected from David Duren, signed
20 by Detective Melton on 5/31/2012.

21 Q: So that's the day he collected the buccal swab and he
22 brought it to you; is that correct?

23 A: That is correct.

24 Q: How do you know that?

25 A: The officer is required to fill out all the appropriate

JAMES ALLSBROOK - DIRECT BY MS. MCELVEEN

1 blocks describing the item that he has collected. He has to
2 date it, print his name, sign it, put his employee number or
3 badge number on the bottom of the form. On the back side of
4 the form, it lists every item that he is transferring from
5 himself or herself to me. He will again date it, sign it, and
6 then I'll just sign it showing that I've taken possession of
7 it.

8 Q: Wonderful.

9 MS. MCELVEEN: Your Honor, we'd like to have State's
10 Exhibit 39 entered into evidence at this time.

11 THE COURT: Mr. Duren, any objection?

12 THE DEFENDANT: Which one is that?

13 THE COURT: Show it to him, please.

14 MS. MCELVEEN: Yes, sir.

15 THE DEFENDANT: That's the one from Detective Melton?
16 No?

17 MS. MCELVEEN: No. It's the buccal swab from you.

18 THE DEFENDANT: No objection, Your Honor.

19 THE COURT: All right. 39 is in.

20 (WHEREUPON, State's Exhibit Number 39, chain of custody,
21 was admitted into evidence.)

22 THE COURT: Just to make clear, 37 for ID is still for
23 ID, 40 for ID is still for ID; correct?

24 MS. MCELVEEN: Yes, sir.

25 THE COURT: All right.

JAMES ALLSBROOK - DIRECT BY MS. MCELVEEN

1 MS. MCELVEEN: That is correct.

2 BY MS. MCELVEEN:

3 Q: Okay. Looking at that -- looking at that chain of
4 custody form regarding the buccal swab, Detective Aleck
5 testified that she took that buccal swab to SLED. Had you
6 already taken -- can you tell us what you took with the
7 evidence, the swabs collected from the fridge at the scene?
8 Did you do anything with that evidence after it came to you
9 and Detective Tallon swiped the blood and collected it and
10 they brought it to you? What did you do with that? And I'm
11 sorry. I guess you need to look at a different form, Number
12 38. What did you do with those swabs from the refrigerator?

13 A: The swabs from the refrigerator? It was requested that
14 they be sent to SLED and, in order for that to occur, I'm
15 required by SLED to do what is called a pre-log-in, which is
16 where I just simply go by Internet, fill out a form, have it
17 printed out, which tells SLED to expect specific items of
18 evidence to be brought to them. And I did that and then
19 transported the swabs to SLED.

20 Q: So you yourself physically take these items over to SLED?

21 A: Predominantly, yes, ma'am.

22 Q: And you did that in this case? How do you know that you
23 did that? Is there some sort of documentation you have?

24 A: Yes, ma'am.

25 Q: What date did you take it to SLED? The swabs from the

JAMES ALLSBROOK - DIRECT BY MS. MCELVEEN

1 refrigerator.

2 A: 6/22 of '11.

3 Q: Thank you. And then at that point, when did you collect
4 everything from SLED? Because we know Detective Aleck then
5 takes the mouth swabs to SLED herself. So when did you get
6 everything back from SLED?

7 A: It appears -- if I'm understanding the SLED intake form,
8 chain of custody, on 8/16 of '12 it was signed over from SLED
9 to myself.

10 Q: And the evidence was resubmitted; is that correct? With
11 the buccal swab?

12 A: I'm sorry?

13 Q: I'm sorry. I'm sorry. Did you collect other items? You
14 collected all the evidence back from SLED; is that correct?
15 All the swabs, everything comes back to you, the reports?
16 You're notified when something is -- when they finish their
17 reports; is that correct?

18 A: Yes, ma'am. And once I go up to SLED, I do this
19 periodically throughout the month and they will in turn
20 transfer everything that is -- pertains to a specific case
21 back to me and I place it back within the department's secured
22 storage area waiting for court purposes.

23 Q: Thank you.

24 MS. MCELVEEN: I have -- I believe I have no further
25 questions. Please answer any questions Mr. Duren would have.

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 THE WITNESS: Yes, ma'am.

2 THE DEFENDANT: No questions, Your Honor.

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

5 THE WITNESS: Thank you.

6 THE COURT: Okay. Ms. McElveen?

7 MS. MCELVEEN: The State would call Ken Bogan.

8 THE CLERK: Place your left hand on the Bible and raise
9 your right hand. State your name, please.

10 THE WITNESS: My name is Kenneth Bogan.

11 THE CLERK: Do you solemnly swear or affirm the testimony
12 you give to this Court will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Come around, sir. State your
16 name and spell your last for the record.

17 THE WITNESS: My name is Kenneth Bogan. My last name is
18 spelled B-o-g-a-n.

19 KENNETH BOGAN, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. MCELVEEN:

23 Q: And where do you work, Mr. Bogan?

24 A: I'm employed with the South Carolina Law Enforcement
25 Division, commonly known as SLED.

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 Q: What do you do at SLED?

2 A: I am a forensic DNA analyst and my job responsibilities
3 right now are outsourcing property crimes.

4 Q: What does that mean outsourcing property crimes? Please
5 elaborate.

6 A: SLED has contracted with vendor laboratories. In this
7 particular case, it's Strand Analytical Laboratories in
8 Indianapolis, Indiana. We contracted with them to actually do
9 DNA -- DNA analysis on evidence samples submitted to SLED, and
10 then we outsource them to that laboratory so that they can
11 perform the analysis. The reason that we do that -- we have
12 federal grant money that helps us with our backlog of cases,
13 and we have not enough manpower at SLED to keep up with the
14 influx of cases coming in.

15 Q: And you referenced this case. Did you have the
16 opportunity to outsource the evidence in this case?

17 A: I did outsource some of it, yes.

18 Q: Can you please tell us a little bit about the time line
19 of the evidence? We've heard testimony from Mr. Allsbrook
20 that he submitted swabs from a refrigerator first. Can you
21 tell us what date those arrived at your facility and what you
22 did with those swabs from the burglary?

23 A: On June 22nd of 2011, James Allsbrook from the Sumter
24 Police Department delivered two swabs to SLED. Those swabs
25 were logged into the SLED laboratory information management

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 system. They were sealed in heat-sealed pouches.

2 Subsequently, those swabs were sent by FedEx to Strand

3 Analytical Laboratories for DNA analysis.

4 Q: And how do you keep up with them when they're being sent
5 to Strand? Do you have a tracking number and --

6 A: Yes. There is a FedEx tracking number. We send them on
7 a special overnight delivery. So they're sent one day,
8 they're picked up by FedEx generally about three o'clock in
9 the afternoon, and they arrive at the vendor lab generally the
10 next morning or if it's -- if it's slightly delayed, it may be
11 the following day. So sometimes it's one day, sometimes it's
12 two days.

13 Q: Is there a way to protect the swabs from the weather, the
14 heat, the cold, the elements?

15 A: Well, the heat-sealed pouches themselves are -- are
16 protection from any of the moisture elements. And of course,
17 they're sealed in a -- in a cardboard box and shipped off.

18 Q: What happens next? After those swabs go to Strand, when
19 did you next see those swabs?

20 A: The swabs were returned from Strand Analytical on July
21 25th of 2012.

22 Q: Did you receive more evidence -- well, we heard testimony
23 that Detective Aleck herself brought over the defendant's --
24 well -- I'm sorry. I'm jumping around here. What does --
25 what did Strand do with those swabs when they were over from

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 the refrigerator? What did those -- what did Strand do with
2 those swabs from the refrigerator?

3 A: There was a request made for them to perform DNA analysis
4 and attempt to develop a DNA profile from one of the swabs.
5 The other swab -- there was no request for analysis on it.
6 Strand did perform the analysis and did develop a DNA profile
7 from a swab that was collected from a refrigerator.

8 Q: When you say they developed a DNA profile, what do you
9 mean by that?

10 A: A DNA profile is a combination of genetic markers. A DNA
11 profile that's developed is developed by using a kit which
12 develops genetic markers at about fifteen loci plus
13 amelogenin, which is a locus that determines whether -- you
14 know, the sex of the individual, whether it's a male or
15 female.

16 So they developed a profile. A profile is a series of
17 basically numbers that are unique to an individual, except
18 identical twins could have the same profile.

19 Q: What did -- when they created that profile, what happens?
20 Does it come back to you? Does that DNA profile come back to
21 you? What do you do with the information?

22 A: Well, Strand Analytical sends back a report to me. What
23 I do at that time is I go through the report. I ensure that
24 they followed their protocol for developing DNA profiles. I
25 ensure that their -- the controls that they ran. I review all

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 the results, and I ensure that they came to the correct
2 conclusions on that sample. At that time, I determine if the
3 DNA profile developed is suitable to enter into a database. I
4 enter that into a database and then I subsequently issue that
5 report to the submitting agency, which in this case was the
6 Sumter Police Department.

7 Q: I'm going to hand you what's been marked as State's
8 Exhibit 41 right now just for identification purposes only.
9 In looking at State's Exhibit 41, can you tell us if that is
10 the report you reviewed after receiving a DNA profile from
11 Strand? Is that the report you reviewed from Strand in this
12 case?

13 A: Yes. State's Exhibit 41?

14 Q: Yes, sir.

15 A: Okay. State's Exhibit 41 is a photocopy of a DNA report
16 that I received from Strand Analytical.

17 Q: And you said the defendant brought up an April 29th -- or
18 an April 19th, 2012, you -- that SLED informed the police
19 department of a match; is that correct? Were you the person
20 that informed the police department of a match to Mr. David
21 Duren?

22 A: I am not that person.

23 Q: Okay. But your agency does send those sorts of reports
24 -- those sorts of reports that something matches?

25 A: Yes.

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 Q: Thank you. After that notice went to the police
2 department, did you receive more evidence in this case?

3 A: Yes, I did.

4 Q: What did you receive and when?

5 A: On June 14th of 2012, a buccal swab described as being
6 from David A. Duren was submitted by Detective Johanna Aleck
7 from the Sumter Police Department.

8 Q: What did you do with that buccal swab?

9 A: That swab was also logged in to our evidence unit. It
10 was sealed in a heat-sealed pouch and subsequently it was sent
11 to Strand Analytical for DNA analysis and comparison of a DNA
12 profile developed from the buccal swab to the evidence that
13 was submitted previously.

14 Q: So you guys want to compare the swab from Mr. Duren to
15 the swabs from the refrigerator; is that correct?

16 A: That's correct.

17 Q: And you used the same procedure to send it and keep track
18 of that item and make sure it arrived at Strand Analytics
19 safely?

20 A: Yes.

21 Q: What happened after Strand? Did you ever get it back
22 from Strand Analytics?

23 A: Yes. It was returned on January the 25th of 2013.

24 Q: And what happened to the evidence after that?

25 A: What I do is I -- excuse me -- inventory it. Then I log

KENNETH BOGAN - DIRECT BY MS. MCELVEEN

1 it into my custody and I transfer it basically to an evidence
2 return, which goes back to our evidence custodian and
3 eventually goes back to the submitting agency, which is the
4 Sumter Police Department. It was returned to the Sumter
5 Police Department on February 28th of 2013.

6 Q: And do you get a copy of the report from Strand Analytics
7 to make sure that protocol was -- the right procedures were
8 used and that everything was done properly?

9 A: Yes.

10 Q: I'm going to hand you State's Exhibit 42 for
11 identification purposes only at this time. Can you tell me
12 what State's Exhibit 42 is?

13 A: State's Exhibit 42 is a supplemental report from Strand
14 Analytical Laboratories with the results of development of the
15 DNA profile from David Duren, and it also contains the results
16 of a comparison between the profile from David Duren to
17 evidence that was collected and previously testified to.

18 Q: Thank you. And you reviewed that report and you make
19 sure -- do you double check on their work?

20 A: Yes, I did.

21 MS. MCELVEEN: Thank you. I have no further questions at
22 this time. Please answer any questions that Mr. Duren has.

CROSS-EXAMINATION

23
24 BY THE DEFENDANT:

25 Q: Mr. Kenneth Bogan? Mr. Kenneth Bogan?

KENNETH BOGAN - CROSS BY THE DEFENDANT

1 A: Yes, sir.

2 Q: Good afternoon, sir. How are you doing?

3 A: I'm fine, sir. How are you?

4 Q: I'm all right, sir. Mr. Kenneth Bogan -- Mr. Bogan, sir,
5 when y'all initially get a hit at -- at SLED and it comes back
6 a CODIS hit, do you have to get an additional swab?

7 A: Yes.

8 Q: May I ask why, sir?

9 A: The sample that's in the database, the DNA profile from
10 the sample that's in the database, there is no chain of
11 custody -- confirmed chain of custody that can be validated on
12 that sample. Therefore, we have to -- we request an
13 additional sample for confirmation and that we can have chain
14 of custody of that sample from the time of collection all the
15 way through analysis.

16 Q: So the first CODIS hit, they can't use that for court
17 purposes then?

18 A: No.

19 Q: They can't?

20 A: No.

21 Q: So they would have to get another swab from whoever they
22 got the hit on?

23 A: Yes.

24 Q: May I ask you a question, sir? You're a DNA analyst. Do
25 you have to be certified to take DNA swabs?

KENNETH BOGAN - CROSS BY THE DEFENDANT

- 1 A: I don't know of any certification necessary to collect
2 the buccal swab.
- 3 Q: But if your department have a protocol, you would go by
4 it; right, sir?
- 5 A: You're asking about SLED protocol?
- 6 Q: If your -- if -- it's fair to say every department have a
7 protocol that if you were a member of the law enforcement you
8 would go by?
- 9 A: Yes.
- 10 Q: You would follow procedure; right?
- 11 A: Certainly I'd follow procedures. Right.
- 12 Q: Mr. Bogan, where do you send these? How do you get these
13 -- let's see. Where do you send them for examination?
- 14 A: Where do I send them?
- 15 Q: Yeah. Where do you outsource them to?
- 16 A: It's -- the name of the laboratory is Strand Analytical
17 Laboratories.
- 18 Q: Strand Analytical Laboratories? That's the only place
19 y'all send them?
- 20 A: That's the only place I sent these samples.
- 21 Q: These samples?
- 22 A: Yes, sir.
- 23 Q: The only place you sent these samples?
- 24 A: Yes.
- 25 Q: You're one hundred percent sure?

KENNETH BOGAN - CROSS BY THE DEFENDANT

1 A: Yes.

2 Q: One hundred percent sure?

3 A: Yes.

4 Q: And what date did you send them outsource, sir?

5 A: The samples that were collected at the scene from the
6 refrigerator were sent on February 14th of 2012. The buccal
7 swab from David Duren was sent on January 25th of 2013. I'm
8 sorry. Excuse me. I need to back that up. It was sent on
9 July 23rd of 2012.

10 Q: Okay. July 23rd of 2012. May I look at that, sir? I was
11 looking at the date at the top, the SLED date at the top.
12 April 15th, 2012?

13 A: You're referring to State's Exhibit 41?

14 Q: Yes, sir.

15 A: And up in the corner, April 15th, 2012?

16 Q: Yes, sir.

17 A: It's probably the date that the report went out. We have
18 a system that we report to. Our contributing agency --

19 Q: Okay.

20 A: -- such as Sumter Police Department, that the reports are
21 made available to them. It's called iLab. It's an internet
22 service that law enforcement agencies -- officers from Sumter
23 Police Department can go on iLab, enter that service to find
24 this report.

25 Q: On your report, it states that you sent Item 2, swab from

KENNETH BOGAN - CROSS BY THE DEFENDANT

- 1 the top of refrigerator above entry point?
- 2 A: Yes.
- 3 Q: It was --
- 4 A: Well, it -- excuse me.
- 5 Q: I'll rephrase that. I'll go back. The item that you
- 6 tested for analysis of DNA result was from Item 1?
- 7 A: That's correct.
- 8 Q: From Item 1, swab from top of refrigerator near the
- 9 corner?
- 10 A: That's correct.
- 11 Q: Item 2 was never tested?
- 12 A: No, it was not.
- 13 Q: May I ask why?
- 14 A: That -- I was not responsible for that decision; so I
- 15 really can't answer that.
- 16 Q: You can't answer that?
- 17 A: I can answer in general terms. I can give you an
- 18 opinion.
- 19 Q: I appreciate that, sir. So you say that you don't send
- 20 the outsource to no other place but Strand? What's that -- I
- 21 can't pronounce that.
- 22 A: Strand Analytical Laboratories.
- 23 Q: Strand Analytical Laboratories. And where is that
- 24 located at?
- 25 A: Indianapolis, Indiana.

KENNETH BOGAN - CROSS BY THE DEFENDANT

1 Q: Indiana? So Indiana. That's Exhibit 41?

2 A: Yes.

3 Q: Well, Mr. Bogan, I'm curious to know where this report
4 here came from. This one says --

5 THE COURT: Show it to him, please, sir.

6 MS. MCELVEEN: Your Honor, may I also see that?

7 THE DEFENDANT: Well --

8 THE COURT: Let's do this. Mark it with a sticker as
9 Defendant's ID Number 1 and then show it to Ms. McElveen and
10 then, if all goes according to plan, you can show it to the
11 witness. Just for ID.

12 (WHEREUPON, the document was marked as Defendant's
13 Exhibit Number 1 for identification purposes.)

14 THE COURT: All right. Any objection to him presenting
15 it to the witness?

16 MS. MCELVEEN: No objection presenting it to the witness.

17 THE COURT: All right.

18 MS. MCELVEEN: If he can identify it.

19 THE COURT: All right. Number 1 for ID for the
20 defendant.

21 BY THE DEFENDANT:

22 Q: Do you see the date in the upper left-hand corner there,
23 sir?

24 A: Yes.

25 Q: What's that date, sir?

KENNETH BOGAN - CROSS BY THE DEFENDANT

1 A: June 13th, 2014.

2 Q: June 13th, 2014? And right above the top of that, what
3 does it say?

4 A: SLED Laboratory -- SLED Lab Number L13-14237.

5 Q: So that's from your office from your department?

6 A: Yes.

7 Q: But you don't outsource no place else?

8 A: What I testified to is I did not outsource any of these
9 samples to any other laboratory. I have -- I deal with
10 basically three vendor laboratories. The only evidence I sent
11 in this case went to Strand Analytical Laboratories. It
12 didn't go to any other laboratory. I do contract with another
13 laboratory in Dallas, Texas. It's called Cellmark Forensics.
14 I also contract with Bode Technology, which is in Wharton,
15 Virginia.

16 Q: Okay.

17 A: But none of the samples in this case went to any other
18 laboratory except Strand Analytical.

19 Q: Okay.

20 A: I don't even know what that case is about.

21 THE COURT: You're talking about Number 1, sir?

22 THE WITNESS: What he showed me from Cellmark.

23 THE COURT: Okay.

24 BY THE DEFENDANT:

25 Q: June 13th of 2014. DNA hit was the same. Markers was the

KENNETH BOGAN - CROSS BY THE DEFENDANT

1 same.

2 A: Is that a question?

3 THE DEFENDANT: No further questions.

4 THE COURT: All right. Redirect? Make sure 1 for ID
5 stays up there.

6 MS. MCELVEEN: Can I see that?

7 THE COURT: Mr. Duren? Mr. Duren, if it's been marked
8 with a sticker, it has to stay with the court reporter.

9 THE DEFENDANT: Oh.

10 THE COURT: All right. Just hand it back to the witness
11 and then you can redirect.

12 MS. MCELVEEN: Okay. Well, I don't think I have any
13 questions. I'm just trying to make sure. Okay.

14 REDIRECT EXAMINATION

15 BY MS. MCELVEEN:

16 Q: Mr. Bogan, Mr. Duren asked you about a CODIS hit. What
17 is CODIS?

18 A: CODIS is a acronym which stands for the Combined DNA
19 Index System.

20 Q: And what is the Combined DNA Index System?

21 A: It's a database where DNA profiles from evidence samples
22 where there is a -- if a DNA profile meets certain criteria,
23 it can be entered into that database. Also in that database
24 are DNA profiles from individuals for comparison purposes.

25 Q: And so the DNA profile created by Strand was entered into

KENNETH BOGAN - REDIRECT BY MS. MCELVEEN

1 CODIS?

2 A: Yes. I --

3 Q: Okay.

4 A: Yes.

5 Q: Okay. And you entered it into CODIS; is that right?

6 A: I did, yes.

7 Q: And it came back and hit on Mr. Duren April 19th, 2012;
8 correct? Or your lab would have identified -- notified the
9 police department that would have hit on Mr. Duren; is that
10 correct?

11 A: Yes. We -- we actually have a database laboratory. It's
12 -- there's about five employees that run that database. It's
13 part of all -- all part of the DNA unit, but they send out
14 their own reports. In other words, when they get a match, the
15 -- there's a database search that happens every week. So
16 unknown samples from evidence samples are compared to known
17 samples or reference samples, like the buccal swabs, every
18 week. And it happens actually twice a week now.

19 So it's compared against the database not only in South
20 Carolina, but the databases nationwide so that if there is a
21 match, that report comes back and the people that work in the
22 database laboratory, the CODIS laboratory, get that -- what's
23 called a hit result, and they issue a notification letter to
24 the investigating agency, which is in this particular case
25 Sumter Police Department. They send a notification letter to

KENNETH BOGAN - REDIRECT BY MS. MCELVEEN

1 the Sumter Police Department that there's been a hit on a
2 certain individual. In this case, it was a hit against or
3 with David Duren.

4 Q: I'm going to hand you State's Exhibit 43 for
5 identification purposes only. Can you identify State's
6 Exhibit 43?

7 THE COURT: Show it to Mr. Duren, please.

8 MS. MCELVEEN: I'm sorry.

9 BY MS. MCELVEEN:

10 Q: Can you identify Item 43?

11 A: State's Exhibit 43 is a notification from Lieutenant
12 David McClure of the DNA database unit at SLED notifying
13 Detective James Allsbrook of a match between a DNA profile
14 developed from Item 1, which was a swab from a refrigerator,
15 to DNA database individual David A. Duren.

16 Q: And the date on that is?

17 A: This letter went out April 19th, 2012.

18 MS. MCELVEEN: Your Honor, we'd like to have -- I'm
19 sorry.

20 BY MS. MCELVEEN:

21 Q: Is that a regularly kept business record? Is that
22 something that SLED regularly prints out and creates?

23 A: It's stored on the -- on our laboratory information
24 management system. So it's readily available, yes.

25 Q: Thank you.

KENNETH BOGAN - REDIRECT BY MS. MCELVEEN

1 MS. MCELVEEN: Your Honor, we'd like to have State's
2 Exhibit 43 entered into evidence at this time.

3 THE COURT: Mr. Duren?

4 THE DEFENDANT: No objection.

5 THE COURT: Okay. It's in.

6 (WHEREUPON, State's Exhibit Number 43, letter from SLED
7 to James Allsbrook, was admitted into evidence.)

8 BY MS. MCELVEEN:

9 Q: You said that after SLED gets a CODIS hit, can you repeat
10 why do you go back? After the CODIS hit from that system, why
11 do you go back and after you arrest someone, why do you get a
12 buccal swab or why do they draw blood or why go through the
13 process again? Please elaborate on that.

14 A: Generally, when the first sample, the sample that's put
15 into the database for comparison purposes, is acquired by SLED
16 -- or it could be acquired from any other state agency. Like
17 I said, the search goes nationwide. There is no chain of
18 custody on that sample. It's generally collected by medical
19 personnel in the form of a blood sample, usually at a
20 detention center. It's collected and it's submitted to SLED
21 by nurses. They bring in batches of them and they don't
22 maintain a chain of custody on that. It's for entry into the
23 database only and for comparison purposes.

24 In order to confirm that the hit is -- or the match is
25 correct, we request another sample. Now, the database

KENNETH BOGAN - REDIRECT BY MS. MCELVEEN

1 department goes through and checks the sample that was
2 originally submitted with fingerprint identification and makes
3 sure that the individual is correct before they send out this
4 notification letter that there was a hit. Once that
5 notification letter is sent out, it is stated on this that
6 this information is provided for investigative purposes only.
7 If a suspect is charged, an additional biological specimen
8 must be submitted for court purposes. And for court purposes,
9 of course, we have to maintain that chain of custody. And so
10 that's why a second sample is submitted.

11 Q: And a second sample was submitted in this case? That was
12 the buccal swab of Mr. Duren?

13 A: Yes. Item 3.

14 Q: And that's what was sent off to Strand Analytics; is that
15 correct?

16 A: Yes.

17 MS. MCELVEEN: Thank you. I have no further questions.

18 THE COURT: Any recross, Mr. Duren?

19 THE DEFENDANT: Yes, Your Honor.

20 RE CROSS-EXAMINATION

21 BY THE DEFENDANT:

22 Q: Mr. Bogan, do you consider yourself a DNA expert?

23 A: Yes.

24 Q: No question DNA is a new scientific tool in the year 2015
25 or whatever?

KENNETH BOGAN - RECROSS BY THE DEFENDANT

1 A: Well, DNA has been in use in forensic cases since the
2 mid-80s, and we started using DNA analysis at SLED in 1990.
3 That's not exactly new.

4 Q: And how long have you been a DNA analyst?

5 A: I began my career at SLED in 1984. I've been an employee
6 at SLED for thirty-one years. I've worked in the laboratory
7 the entire time. I did my training in DNA analysis methods in
8 1990. I attended the Federal Bureau of Investigations
9 Forensic DNA Analysis Methods, and subsequently I've had
10 training on a continual basis every year.

11 Q: I don't question your training, sir. I have a question
12 to ask. Y'all have -- you stated earlier y'all have protocols
13 y'all go by?

14 A: Yes.

15 Q: I want to ask you a hypothetical question, sir.

16 MS. MCELVEEN: Your Honor, this is outside the scope of
17 cross-exam.

18 THE COURT: All right. Go ahead and ask the question.
19 I'll overrule the objection.

20 BY THE DEFENDANT:

21 Q: If I give consent to take a sample, I sign the consent
22 form to take a sample of hair, saliva or blood needed for
23 forensic lab analysis, and further on in that consent form it
24 says such samples should be taken through a medical doctor or
25 a nurse, would you take it upon yourself to take that sample?

KENNETH BOGAN - RECROSS BY THE DEFENDANT

1 A: I would not take it upon myself to collect a blood
2 sample. I have --

3 Q: Excuse me.

4 A: Yes.

5 THE COURT: Let him answer. Then you can question him.

6 BY THE DEFENDANT:.

7 A: I would not take it upon myself to collect a blood
8 sample, although in my employment before I worked at SLED, I
9 was a laboratory -- worked in the clinical laboratory as a
10 medical technologist. I used to draw blood quite often.
11 There was always that umbrella of protection that there were
12 doctors, pathologists, over the laboratory so in case anything
13 went wrong, I was basically protected by that.

14 In my present position, I would not take a blood sample
15 from anybody. I would take a buccal swab. A buccal swab is
16 not an intrusive thing and I have collected them. And most
17 often, what I will do is offer the individual the opportunity
18 to actually take the swab and rub the inside of their cheeks
19 themselves.

20 Q: Wouldn't that be going against protocol if that person
21 said he wanted a medical doctor or a nurse to take it and he
22 didn't -- he didn't want you to take it for the simple fact he
23 didn't trust you?

24 MS. MCELVEEN: Your Honor, this is asked and answered.

25 THE COURT: It's been asked and answered of this witness.

KENNETH BOGAN - RECROSS BY THE DEFENDANT

1 All right. Earlier in the exchanges. Sustained.

2 THE DEFENDANT: No further questions, Your Honor.

3 THE COURT: All right. Anything else?

4 MS. MCELVEEN: Nothing, Your Honor.

5 THE COURT: You can step down, please, sir. Thank you.

6 Can the witness be excused, Ms. McElveen?

7 MS. MCELVEEN: Yes, please.

8 THE COURT: Mr. Duren?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Thank you, sir. You can leave or
11 stay, whichever you'd like.

12 THE WITNESS: All right.

13 THE COURT: All right. Is everybody on the jury okay?

14 Does anybody want to take a break? Don't be shy. All right.

15 Next witness?

16 MS. MCELVEEN: Your Honor, the State would call Cynthia
17 Cale.

18 THE CLERK: Place your left hand on the Bible. Raise
19 your right hand. State your name, please.

20 THE WITNESS: Cynthia Cale.

21 THE CLERK: Do you solemnly swear or affirm the testimony
22 you give to this Court will be the truth, the whole truth, and
23 nothing but the truth, so help you God?

24 THE WITNESS: Yes, sir.

25 THE CLERK: Have a seat. State your name and spell your

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 last for the record.

2 THE WITNESS: Cynthia Cale, C-a-l-e.

3 CYNTHIA CALE, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MCELVEEN:

7 Q: Good morning, Ms. Cale.

8 A: Good morning.

9 Q: Thank you for being here.

10 A: Yes, ma'am.

11 Q: Where do you work?

12 A: I work at Strand Analytical Laboratories in Indianapolis,
13 Indiana.

14 Q: Did you come here from Indiana to testify?

15 A: Yes, I did.

16 Q: What is your job there? What do you do?

17 A: I am the lead forensic DNA analyst and serologist at
18 Strand.

19 Q: That is the -- I'm sorry. The lead forensic?

20 A: DNA analyst and serologist.

21 Q: Okay. And what does that entail?

22 A: Serology is basically the identification of body fluids,
23 like blood, semen, saliva, and any other sources of DNA, and
24 then the subsequent DNA analysis, you know, extracting the
25 DNA, analyzing it for quantity and quality, and then

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 developing a DNA profile.

2 Q: And what sort of education and training have you had to
3 go through in order to be qualified to do this?

4 A: I received a Bachelor of Science degree in biology from
5 Illinois Wesleyan University in 2000. Shortly thereafter, I
6 started working for the Illinois State Police and I worked for
7 them for a little over seven years, and I went through their
8 formal training program in both DNA analysis and serology.
9 And then when I came to Strand, I started working on my
10 master's degree in human biology at the University of
11 Indianapolis.

12 Q: Do you have -- do you have trainings and certifications
13 that you have continued to grow your wealth of knowledge?

14 A: Yes. I'm required to have at least twelve hours of
15 continuing education every year to -- to be able to continue
16 working on case work.

17 Q: How long have you been analyzing -- how many cases -- how
18 many samples have you analyzed?

19 A: Thousands.

20 Q: How many times have you testified in court?

21 A: Over a hundred.

22 Q: Are you subject to peer review?

23 A: If we submit any kind of -- we have technical reviews.

24 Is that what you're --

25 Q: Yes.

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 A: Yes. We have a hundred percent technical review of all
2 our case files. So when I put a case file together, it goes
3 to another analyst who reviews it to make sure that I followed
4 our procedures in the laboratory and that I came to accurate
5 conclusions before it's submitted to the client.

6 Q: So they kind of double check behind you?

7 A: Yes.

8 MS. MCELVEEN: Your Honor, we'd like to have Ms. Cale --
9 BY MS. MCELVEEN:

10 Q: Or is it Dr. Cale?

11 A: It's just Mrs. Cale.

12 Q: Okay.

13 MS. MCELVEEN: We'd like to have Mrs. Cale certified as
14 an expert in forensic DNA analysis and serology at this time.

15 THE COURT: All right. Mr. Duren, do you have any
16 questions about her qualifications?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, the witness
19 is qualified as an expert in the field of forensic DNA
20 analysis and serology. I'll explain one thing to you.

21 Under the rules of evidence that I mentioned to you at
22 the beginning of the trial, typically a witness who testifies
23 is not entitled to give opinions. There is an exception for
24 witnesses who are expert witness, and an expert witness is
25 someone who is qualified by education, training or experience

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 in a particular field. That type of witness, an expert
2 witness, can give opinions and they can give the reasons for
3 those opinions.

4 That does not mean, however, that you are required to
5 accept the testimony of an expert just because it comes from
6 an expert. I'll talk to you in detail at the end of the case
7 a little bit more about that. You give the testimony of an
8 expert the weight you believe in your good common sense that
9 it deserves.

10 All right. Ms. McElveen, she is qualified as an expert
11 in forensic DNA analysis and serology.

12 MS. MCELVEEN: Thank you, Your Honor.

13 BY MS. MCELVEEN:

14 Q: Were you working back in 2012 at Strand Analytical
15 Laboratories?

16 A: Yes, I was.

17 Q: Did you have the opportunity to examine swabs from the
18 top of a refrigerator submitted by the Sumter Police
19 Department?

20 A: Yes, I did.

21 Q: Can you tell us about what you did, what sort of
22 procedures you used, and what the outcome of analyzing those
23 swabs brought?

24 A: Initially when evidence comes in to our laboratory, it's
25 assigned a unique case number. And then once that's -- that

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 assessing process is done, I take custody of the evidence,
2 open the evidence, document what's inside the evidence, take a
3 portion for DNA analysis, and then go through and extract the
4 DNA, which is basically just removing the stain from whatever
5 substrate it is deposited on, breaking open the cells and
6 releasing the DNA into a solution and trying to clean it up as
7 best as I can to develop a profile.

8 And then I determine how much DNA is in the -- in the
9 sample and if it's of good quality. And then do what's called
10 STR typing, which is we will get sixteen different locations,
11 one including the amelogenin, which is the sex-typing
12 location, and see if I can develop a DNA profile from that
13 sample, and that's what I -- what I did in this case.

14 Q: What was your conclusion? Did you document your
15 conclusion?

16 A: Yes.

17 Q: Can you tell us -- looking at Exhibit Number 41, State's
18 Exhibit 41, can you tell us -- can you identify that item?

19 A: Yes. It's my report from March 20th, 2012.

20 Q: And that report is from what? What are you -- what is
21 your -- what are you analyzing and what's your conclusion and
22 --

23 A: This is the initial analysis of the swabs from the top of
24 the refrigerator, which would have been my Item Number 1, and
25 I was able to obtain a single source unknown male DNA profile

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 from that item.

2 Q: But you did create a DNA profile?

3 A: Yes.

4 MS. MCELVEEN: Your Honor, we'd like to have State's --
5 and I'm sorry.

6 BY MS. MCELVEEN:

7 Q: That's your report?

8 A: Yes. That's my report.

9 Q: Is your name on the bottom, that signature?

10 A: My initials and my signature is, yeah.

11 MS. MCELVEEN: Thank you. We'd like to have State's
12 Exhibit 41 entered into evidence at this time.

13 THE COURT: Mr. Duren, any objection?

14 THE DEFENDANT: No objection, Your Honor.

15 THE COURT: It's in.

16 (WHEREUPON, State's Exhibit Number 41, the DNA report,
17 was admitted into evidence.)

18 MS. MCELVEEN: Thank you.

19 THE COURT: What's it titled, please, ma'am? What is --
20 what that, please?

21 THE WITNESS: People --

22 THE COURT: No, no. The -- what is it called?

23 THE WITNESS: Laboratory Examination Report.

24 THE COURT: All right.

25 THE DEFENDANT: May I see it, Your Honor?

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 THE COURT: Yes, sir. I believe it was shown to you
2 earlier, but show it to him, please.

3 MS. MCELVEEN: Yes, sir.

4 THE DEFENDANT: I just want to make sure it's the same
5 thing.

6 THE COURT: Yes, sir. I understand.

7 MS. MCELVEEN: So --

8 THE COURT: Let him look at it before you ask the next
9 question. All right.

10 BY MS. MCELVEEN:

11 Q: You said you create a DNA profile and you have sixteen
12 different points --

13 A: Yes.

14 Q: -- from which you create it?

15 A: Yes.

16 Q: And you determined it was a male?

17 A: Yes.

18 Q: Human?

19 A: Yes.

20 Q: What do you do with that information then?

21 A: I issued a report and then it's sent back to SLED for
22 their -- their peer review. Basically, they have to go
23 through it and make sure that it's okay and, if there's any
24 discrepancies, we discuss it or anything like that.

25 Q: So there's a review on your end and on SLED's end?

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 A: Yes.

2 Q: Thank you. Did you have the opportunity to re-examine or
3 use that DNA profile you created from the swabs from the
4 refrigerator to compare it to a buccal swab that was
5 submitted?

6 A: Yes.

7 Q: Looking at State's Exhibit 42, can you tell us a little
8 bit about when you receive buccal swabs what you do with them,
9 again the process you use, and what happened afterwards?

10 A: The buccal swabs from David Duren, which was my Item 3,
11 were submitted to our laboratory on July 24th, 2012, from the
12 -- from SLED via FedEx.

13 Again, I took custody of the items after they were
14 assessed by our vault custodian. I examined them, documented
15 what was in the -- what was in the evidence, and then took a
16 portion for DNA analysis. I extracted that sample, determined
17 the amount of DNA that was in the sample, and then analyzed it
18 with those -- the sixteen different locations, and developed a
19 profile.

20 Q: And what -- did you document your findings?

21 A: Yes.

22 Q: Looking at State's Exhibit 42, what is that?

23 A: This is my supplemental laboratory examination report
24 from August 6th, 2012.

25 Q: And it indicates that's your findings from this test?

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 A: Yes.

2 MS. MCELVEEN: All right. We'd like to have State's
3 Exhibit 42 entered into evidence at this time.

4 THE COURT: Would you like to see that, Mr. Duren?

5 THE DEFENDANT: Yes, sir, I would.

6 THE COURT: Show it to him again, please. And that date
7 is what, ma'am?

8 THE WITNESS: August 6th, 2012.

9 THE COURT: All right. All right. Any objection, Mr.
10 Duren?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. 42 is in. And that is a
13 supplemental DNA report, ma'am?

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit Number 42, supplemental DNA
17 report, was admitted into evidence.)

18 BY MS. MCELVEEN:

19 Q: Can you please tell us what your conclusion was after
20 comparing the swabs from the refrigerator and the buccal swab
21 from Mr. Duren?

22 A: The single source male DNA profile obtained from the
23 swabs from the top of the refrigerator matched the DNA profile
24 of David Duren.

25 Q: And what is the probability of -- how reliable is this?

CYNTHIA CALE - DIRECT BY MS. MCELVEEN

1 What's the probability that it could belong to anybody else?

2 A: The probability of an unrelated individual selected
3 randomly from the population being the source of that DNA
4 profile from the swab from the refrigerator is approximately
5 one in 330 quintillion.

6 Q: One in 330 quintillion?

7 A: Quintillion.

8 Q: Okay. I don't even know how many zeros that is I don't
9 think.

10 A: I figured it out. It was eighteen.

11 Q: Eighteen?

12 A: One followed by eighteen zeros.

13 Q: Okay. Eighteen zeros. Would you say that's a pretty
14 good chance that it's the person's?

15 A: That's -- that probability is just -- if a random person
16 came through that door, what is the chance that that person
17 would have that profile, and that's -- that's the probability.

18 Q: So the blood on the top of the refrigerator matched David
19 Duren?

20 A: Yes.

21 MS. MCELVEEN: Thank you. I have no further questions
22 for you at this time. If you could, answer any questions Mr.
23 Duren might have.

24 THE COURT: Mr. Duren?

25 THE DEFENDANT: Yes.

CYNTHIA CALE - CROSS BY THE DEFENDANT

CROSS-EXAMINATION

1
2 BY THE DEFENDANT:

3 Q: Ms. Cynthia Cale --

4 A: Yes, sir.

5 Q: You're a DNA expert?

6 A: Yes, ma'am. Yes, sir.

7 Q: Like I did the other day.

8 A: I did.

9 Q: I just have a few questions for you.

10 A: All right.

11 Q: What is your current position today, ma'am?

12 A: I'm the lead DNA analyst and forensic -- and serologist
13 at the Strand Analytical Laboratories.

14 Q: And how -- again, how many trials have you testified in?

15 A: Over a hundred.

16 Q: So you know what you're doing? Okay.

17 A: Yes.

18 Q: Ms. Cale, how many mistakes have been made in your lab?

19 A: What do you mean by mistakes?

20 Q: Mistakes in DNA testing for suspects or whatever.

21 A: Do you mean, like, errors in --

22 Q: Errors.

23 A: Errors in testing?

24 Q: Yes.

25 A: I don't know off the top of my head. We track errors

CYNTHIA CALE - CROSS BY THE DEFENDANT

1 with incident reports.

2 Q: But you do have errors in your lab?

3 A: Yes. It happens.

4 Q: Let me ask you a question. You're a DNA expert. Can
5 another person's DNA be placed at a crime scene?

6 A: It's possible, yes.

7 Q: It's possible?

8 A: Yes.

9 Q: Have you ever heard of this happening?

10 A: Just on news outlets. I've never actually seen it
11 happen.

12 Q: So it has happened?

13 A: Apparently, yes.

14 Q: Yeah. There was just recently one in San Francisco.

15 MS. MCELVEEN: Objection. Testifying.

16 THE COURT: You can't testify.

17 THE DEFENDANT: Okay.

18 THE COURT: You can ask her.

19 THE DEFENDANT: Okay.

20 BY THE DEFENDANT:

21 Q: Ms. Cale, have you recently heard about the DNA evidence
22 tampering that has taken place in San Francisco on CNN news?

23 A: No. I don't know anything about it.

24 Q: That was just two weeks ago. Could you take another
25 person's blood and put it at a crime scene to show that that

CYNTHIA CALE - CROSS BY THE DEFENDANT

1 person was at that crime scene?

2 A: I guess it's possible.

3 Q: It's possible?

4 A: Yes.

5 Q: Okay. And the blood that you took -- that you tested was
6 human blood?

7 A: Yes. All our testing is human specific. So that would
8 be the only way I could test --

9 Q: All your testing are human blood?

10 A: Yes. Human specific, yes.

11 Q: That's what Ms. McElveen asked you?

12 A: Yes.

13 MR. DUREN: No further questions.

14 THE COURT: Anything else?

15 MS. MCELVEEN: Nothing, Your Honor. May this witness be
16 excused?

17 THE COURT: Yes, ma'am. Ms. Cale, thank you. You can be
18 excused. You can stay if you'd like, of course.

19 THE DEFENDANT: Your Honor, may we approach the bench?

20 THE COURT: Yes, sir.

21 (WHEREUPON, a bench conference was held in the presence
22 of the jury but out of the hearing of the jury off the
23 record.)

24 THE COURT: Okay. Next witness?

25 MS. MCELVEEN: Your Honor, I beg the Court's indulgence.

1 THE COURT: Yes. Yes, ma'am.

2 MS. MCELVEEN: The State would rest.

3 THE COURT: All right. Ladies and gentlemen, the State
4 has rested, which means the State has presented all the
5 evidence it is going to present in its case in chief.

6 As luck would have it, it's about lunchtime anyway, and I
7 would be required to take a recess in any event. So what
8 we're going to do now is break for lunch.

9 Mr. Tomlin, could you please find Mr. Brown and see if
10 that other matter he wants me to deal with at 1:30 in a
11 completely different case -- see if he's still out there. All
12 right. It doesn't have anything to do with your case, Mr.
13 Duren.

14 THE DEFENDANT: I have a matter to discuss, Your Honor.

15 THE COURT: We'll deal with that in just a minute. Okay.
16 The -- the lunch hour -- I'm trying to get a little time.

17 THE BAILIFF: Your Honor, can I go downstairs? He's out
18 on the outside.

19 THE COURT: Okay.

20 MS. MCELVEEN: I can --

21 THE COURT: Well, let's go ahead. Ladies and gentlemen,
22 I was told yesterday that someone wanted me to take care of an
23 issue in another case that doesn't have anything to do with
24 this, and they mentioned 1:30.

25 So let's go ahead and get back together at two. Please

1 be back in your jury room at two o'clock. That gives you an
2 hour and forty-five minutes. Please be on time and we'll --
3 we'll start as close to two as we possibly can.

4 In the meantime, do not discuss the case with anybody on
5 this earth or in the universe. Please don't do it. Don't
6 Twitter, Facebook, communicate. Don't research. Just put
7 this case to rest insofar as any activity on your part until I
8 tell you that you can discuss it.

9 See you back at two o'clock. Thank you.

10 (WHEREUPON, there was a pause in the proceedings as the
11 Court conferred regarding an unrelated matter.)

12 THE DEFENDANT: Your Honor?

13 THE COURT: Wait just a second. Got to let the jury out.
14 Okay?

15 THE DEFENDANT: Okay.

16 (WHEREUPON, the jury exited the courtroom.)

17 THE COURT: Yes, sir, Mr. Duren?

18 THE DEFENDANT: May me and the solicitor approach the
19 bench again?

20 THE COURT: Well, the jury is out. So we're going to put
21 -- whatever you would say up here, we're going to put on the
22 record anyway. And what I'd like to do before I hear your
23 comments is that you mentioned up here at the bench -- and I'm
24 required to put this on the record -- that --

25 THE DEFENDANT: That's what I was going to ask you.

1 THE COURT: Okay. You can go ahead and put that on the
2 record now.

3 THE DEFENDANT: Your Honor, I'll withdraw that statement.

4 THE COURT: You withdraw that statement?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. But to protect the record, I still
7 have to put on the record what it was so the record can
8 accurately reflect what you withdrew.

9 THE DEFENDANT: Okay.

10 THE COURT: You indicated that you are well-versed in
11 Black's Law Dictionary. I think you said your wife was a law
12 school graduate?

13 THE DEFENDANT: Yes.

14 THE COURT: And that the word human is not in Black's Law
15 Dictionary?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: And you mentioned something about you being a
18 fictitious being?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But you withdraw that statement?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. All right. That's clear. Okay.
23 Mr. Duren, the next order in the proceedings would be for me
24 to ask you if you have any motions for what is called a
25 directed verdict. Are you prepared to make those now or would

1 you like to make those later?

2 THE DEFENDANT: Later.

3 THE COURT: And it would be before we started back at two
4 o'clock. Okay?

5 THE DEFENDANT: I have no motion for a directed verdict.

6 THE COURT: You do not? Okay. Would you please stand,
7 sir, and raise your right hand? Your name, sir?

8 THE DEFENDANT: David A. Duren Jr.

9 THE COURT: All right. Do you swear that the testimony
10 you give and the answers to the questions that I ask you will
11 be the truth, the whole truth, and nothing but the truth?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. As I --as I mentioned to you
14 earlier, Mr. Duren, I was going to cover this with you when
15 the State did rest. We're now at what -- or we -- excuse me.

16 We will be at two o'clock at the point of the trial
17 during which you may testify and offer your own evidence. Do
18 you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I am going to tell you now under the Fifth
21 Amendment to the United States Constitution, it states in
22 pertinent part that no person in any criminal case can be
23 compelled to be a witness against himself. What that means is
24 that no one can make you testify. I cannot. Ms. McElveen
25 cannot. No one can make you testify.

1 The reason for that is that the rights that you have
2 under the Fifth Amendment are personal rights. Since they are
3 personal rights, no one can give them up except for you.

4 If you decide to testify, you will be subject to the same
5 basic rules that govern the direct and cross-examination of
6 any other witnesses. Obviously, since you're representing
7 yourself, direct examination would be you testifying to what
8 you thought were relevant and material matters, but no one
9 would be actually asking you questions.

10 However, after you testified on direct, the solicitor,
11 Ms. McElveen, would be permitted to cross-examine you. Do you
12 understand that?

13 THE DEFENDANT: I understand that, Your Honor.

14 THE COURT: All right. In addition to that, if you have
15 been convicted of any criminal offenses that involve
16 dishonesty or -- and the crime involved dishonesty or false
17 statement, depending upon the timing of those convictions and
18 your release from confinement, those convictions could be
19 introduced solely for the purpose of the State trying to
20 impact your believability.

21 In addition to that, if you have been convicted of a
22 crime where the possible punishment was more than one year in
23 prison, and if I determined that the probative value of
24 admitting that evidence outweighs any prejudicial effect to
25 you, depending upon the timing of the conviction or your

1 release from confinement, that conviction could also be
2 introduced to the jury for the purposes solely of determining
3 or attacking your credibility.

4 Now, if you decide to testify, that decision on your part
5 must be made freely, voluntarily, and intelligently with full
6 knowledge of your rights under the Fifth Amendment and your --
7 and the consequences of your decision to testify.

8 If you decide not to testify, I will tell the jury that
9 the fact that you did not testify cannot be considered by you
10 in any way -- excuse me -- considered by the jury in any way
11 in determining whether you're guilty or not guilty. What I
12 say to them is that they cannot think about it, they can't
13 talk about it, and the fact that you did not testify cannot
14 enter into their decisions in any way whatsoever.

15 Likewise, if you testify, I tell the jury that the fact
16 that you decided to testify does not mean that you have taken
17 on any burden to prove or disprove anything, and that at all
18 times the burden of proof remains on the State.

19 In the end, you can think about this issue, but the final
20 decision will be yours as to whether or not you will or won't
21 testify. Is that clear?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Have you -- do you have any questions about
24 the -- what I've explained to you?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And have you made your decision yet?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And what is that decision?

4 THE DEFENDANT: I will not be testifying, Your Honor.

5 THE COURT: Okay. Now, if you change your mind between
6 now and two o'clock, you need to let me know. And certainly
7 again, if you have any questions about what we just went over,
8 you can ask me those when we get back together. Okay?

9 THE DEFENDANT: Okay.

10 THE COURT: Yes, ma'am?

11 MS. MCELVEEN: Your Honor, can all of the witnesses now
12 be released since -- I don't know if he was going to --

13 THE COURT: Are you going to be calling any witnesses,
14 Mr. Duren?

15 THE DEFENDANT: I'm going to be calling Mr. -- is that
16 Melton?

17 THE COURT: Detective Melton? Well, he'll be here.
18 Correct, Ms. McElveen?

19 MS. MCELVEEN: Yes, sir.

20 THE COURT: All right.

21 THE DEFENDANT: Also Mr. Allsbrook.

22 THE COURT: All right. I'll require him to be here.

23 THE DEFENDANT: Mr. Tallon.

24 THE COURT: Mr. who?

25 MS. MCELVEEN: Tallon?

1 THE DEFENDANT: Tallon, right. Mr. Matthew Spiegel. Mr.
2 Thomas Page.

3 THE COURT: All right. You -- I believe when they left
4 yesterday, Ms. McElveen, you may have gotten their contact
5 information. Mr. Spiegel works at H&S Wholesalers, which is
6 across the street from Thomas & Howard. And Mr. Page works at
7 Jones Chevrolet.

8 MS. MCELVEEN: Yes, sir.

9 THE DEFENDANT: And possibly Mr. Timothy Murphy.

10 THE COURT: Okay. He was the public defender?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Was he your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. If he's in the building or in his
15 office, I will request him to be here. Do you know what you
16 -- what's the general subject matter of your testimony --
17 excuse me -- your questioning of him?

18 THE DEFENDANT: I just want to ask him about his
19 representation of me.

20 THE COURT: All right. Well, we'll deal with whether or
21 not that's relevant. I -- I've -- I'll go out on a limb and
22 I'll have my secretary call him and see if he's available.
23 Does anybody know if he's in the building?

24 THE BAILIFF: I didn't see him, Your Honor.

25 THE DEFENDANT: And Mr. Jacob Smith.

1 THE COURT: Who?

2 THE DEFENDANT: Jacob Smith, my ex-attorney.

3 THE COURT: He's no longer in Sumter. I don't know where
4 he is. Does anybody know where he works now?

5 UNKNOWN MALE: I don't know where, but it's in Lexington
6 County.

7 THE COURT: All right.

8 THE DEFENDANT: He's no longer in Sumter? And another
9 matter is the record for Mr. Jacob Smith, his prior folder.
10 We was discussing that earlier.

11 MS. MCELVEEN: Your Honor, Mr. Smith has testified before
12 that he gave the contents of the folder to Mr. Duren when he
13 stopped representing him.

14 THE COURT: Is this for the discovery issue, Mr. Duren?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Is there anything for the -- for the jury to
17 hear?

18 THE DEFENDANT: There's nothing for the jury. I would
19 just like to review the record -- everything that's in that
20 record that she says that she gave him.

21 THE COURT: All right. Now, we went over this yesterday
22 morning. She served discovery on your attorney back sometime
23 in 2013. Then on January 22, 2013, she gave you another copy
24 of it evidently during a hearing before another judge on the
25 issue of attorney representation.

1 Then I believe sometime in May, Judge Cothran determined
2 that you were able to represent yourself, and that discovery
3 was discussed again or perhaps in April you advised there were
4 no discovery issues.

5 THE DEFENDANT: I understand that, Your Honor, but after
6 today it should all be stuff that's coming out of the
7 woodwork, sir. It's --

8 THE COURT: What stuff, Mr. Duren?

9 THE DEFENDANT: All of it.

10 THE COURT: There is no stuff coming out of the woodwork.

11 THE DEFENDANT: Oh, excuse me. The chain of custody that
12 she said she -- that was in my motion. It wasn't there.

13 THE COURT: Well, that's a discovery matter. It has
14 nothing to do with this jury. So you're not going to be
15 questioning, I don't think, any witnesses about what you did
16 or did not get in discovery.

17 THE DEFENDANT: Okay.

18 THE COURT: That's a -- that's a procedural matter. It's
19 not a trial issue.

20 THE DEFENDANT: Okay. The next -- next issue?

21 THE COURT: Yes, sir.

22 THE DEFENDANT: The surveillance camera of Sumter County.

23 THE COURT: All right. An officer from the -- I don't
24 know if he's still here. Is it Mr. Jordan?

25 UNKNOWN MALE: Yes, sir.

1 THE COURT: Is he still here?

2 UNKNOWN MALE: Yes, sir.

3 THE COURT: Ask him to come upstairs, please.

4 (WHEREUPON, there was a pause in the proceedings.)

5 THE COURT: All right. Anyone else who is here for this
6 case, you can go ahead and go to lunch except for Ms. McElveen
7 and Mr. Duren. I'm going to go ahead and while we're waiting
8 on the correctional officer to come up here, I'm going to
9 speak with these lawyers about the plea they wanted to do. We
10 will get back together at about ten minutes until two.

11 Before we go off the record in this case, let me ask, Ms.
12 McElveen, do you have any written jury charges you would like
13 for me to present?

14 MS. MCELVEEN: No, sir.

15 THE COURT: Or -- excuse me -- give to the jury?

16 MS. MCELVEEN: No, sir.

17 THE COURT: You might as well go ahead and start on that
18 now. Mr. Duren, you're permitted to submit written requests
19 to charge to the jury. Do you have any that you would like to
20 submit?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Okay. All right. Just wait for a few
23 minutes and wait for the gentleman from the jail to come.

24 (WHEREUPON, there was a pause in the proceedings.)

25 THE COURT: Now, let's go back. What is your name, sir?

1 MR. JORDAN: Staff Sergeant Jordan.

2 THE COURT: All right. Mr. Jordan, you -- you have
3 checked with the Sumter Lee Regional Detention Center about
4 retention of videos and surveillance?

5 MR. JORDAN: Yes, sir.

6 THE COURT: Can you tell me what you've discovered?

7 MR. JORDAN: Thirty days.

8 THE COURT: Those things are kept for thirty days?

9 MR. JORDAN: Thirty days. Yes, sir.

10 THE COURT: Is there anything to your knowledge that's
11 kept for forty-five days or longer?

12 MR. JORDAN: No, sir.

13 THE COURT: All right. And you -- who did you get that
14 information from?

15 MR. JORDAN: My supervisor, Lieutenant Kelly. She
16 contacted the people that save these tapes, Major McGainey and
17 Captain Ray Lee.

18 THE COURT: Major McGainey and Captain Ray Lee?

19 MR. JORDAN: That's the assistant director and the
20 population manager.

21 THE COURT: Okay. And are they -- they're out at the
22 detention center?

23 MR. JORDAN: Yes, sir.

24 THE COURT: All right. Thank you, sir.

25 MR. JORDAN: Yes, sir.

1 THE COURT: All right. Anything else on that point, Mr.
2 Duren?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: All right. Ms. McElveen?

5 MS. MCELVEEN: None, Your Honor.

6 THE COURT: Thank you, Mr. Jordan. All right. If Mr.
7 Duren could be seated back in the courtroom at ten minutes to
8 two?

9 (WHEREUPON, there was a break in the proceedings.)

10 THE COURT: Figure out what you might want to elicit from
11 him.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Come on up, please, Mr. Murphy.

14 THE CLERK: State your name, please.

15 THE WITNESS: Timothy W. Murphy.

16 THE CLERK: Do you solemnly swear or affirm the testimony
17 you give this Court will be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Come around, sir.

21 THE COURT: All right. Mr. Duren, before you begin, I
22 realize from what evidently has been alluded to during the
23 trial that you had some type of attorney/client relationship
24 with a Jacob Smith from the Public Defender's Office. Mr.
25 Murphy, did you have an attorney/client relationship with the

1 defendant?

2 THE WITNESS: Originally, yes, sir. I was originally --
3 for about a thirty-day period, I was his attorney.

4 THE COURT: Okay.

5 THE WITNESS: I honestly don't recall whether or not I
6 met with Mr. Duren or not.

7 THE COURT: What I want to explain to you, Mr. Duren, is
8 that your communications with any attorney that you had are
9 privileged. You can waive that privilege if you want, but
10 that might open up a can of worms that you certainly don't
11 want to explore because if you open it up for a limited
12 purpose, it's open. It's opened up.

13 I understand from what you indicated earlier that you
14 want to question Mr. Murphy about the discovery material that
15 was in your file?

16 THE DEFENDANT: Just I want to question him about
17 representation at one of my hearings.

18 THE COURT: By this -- by Mr. Murphy?

19 THE DEFENDANT: By Mr. Murphy. Because at my bond
20 hearing, it was in reference that I was represented by Mr.
21 Murray --

22 THE COURT: Murphy.

23 THE DEFENDANT: Mr. Murphy at the direct presentation
24 hearing.

25 THE COURT: All right. You can go ahead and ask him

TIMOTHY MURPHY - PROFFERED DIRECT BY THE DEFENDANT

1 those questions then.

2 TIMOTHY W. MURPHY, being first
3 duly sworn, testified as follows:

4 PROFFERED DIRECT EXAMINATION

5 BY THE DEFENDANT:

6 Q: Mr. Murphy?

7 A: Yes, sir.

8 Q: Have you ever represented me at a direct presentation
9 hearing?

10 A: I don't recall. What -- I represented you -- I looked at
11 the file when I was called up to be a witness and, according
12 to the file, I represented you I believe from the end of June
13 of 2014, and then the case file was transferred to -- the
14 decision was made to transfer it to Mr. Smith I believe in
15 mid-July 2014. And then he contacted you I believe August 3rd
16 or 4th of 2014 with the formal record. I don't recall -- I
17 don't recall ever representing you a particular hearing. I
18 mean that doesn't mean I didn't. I just don't recall.

19 Q: Have you ever met with the defendant, Mr. Murphy?

20 A: I don't recall. I don't believe I did.

21 Q: Then you wouldn't have been his attorney in 2011 -- I
22 mean 2012-2013?

23 A: According to the file that I reviewed in our defender
24 data system, you applied for a public defender for a 2012
25 warrant in 2012, and that was denied by Mr. Howle.

TIMOTHY MURPHY - PROFFERED DIRECT BY THE DEFENDANT

1 Thereafter, you applied a second time and that was denied by
2 me, and I believe it was, like, a year later. And then a
3 third time you applied. It was either because you were in
4 jail or there was something different with the application.
5 It was approved and I believe that was in June of 2014.

6 Q: But I didn't apply for that charge in 2012?

7 A: No. You had applied twice and it was denied, and I guess
8 at some point we made a decision to pick up all of your
9 charges. There was a more current one you had applied for and
10 I think -- I guess at some point we made the decision or I
11 made a commitment. I do recall at some point making a
12 commitment that we would represent you in all of your pending
13 charges because you had applied for one that we had agreed to
14 represent you on.

15 Q: Mr. Murphy, on direct presentation to the grand jury, do
16 attorney and his client have to be present at that hearing?

17 A: They normally are. I mean to the grand jury?

18 Q: Yes.

19 A: On a grand jury, no, no, no, no, no.

20 Q: Before they get presented to the grand jury --

21 A: No, no, no, no, no. At a grand jury -- a grand jury
22 hearing, the attorney --

23 Q: I thought a grand jury hearing is secret.

24 A: Right.

25 Q: I mean at the direct presentation hearing. It has to

TIMOTHY MURPHY - PROFFERED DIRECT BY THE DEFENDANT

1 have a direct presentation in order to enhance your charge.

2 A: I'm not exactly sure what you're talking about when you
3 say direct presentation. I'm not exactly sure what you mean
4 by that. Could you --

5 Q: Okay.

6 THE COURT: Is all the jury here, Mr. Prince?

7 THE CLERK: Everybody is here.

8 THE COURT: All right. Okay. He said they're here. Is
9 this in conjunction with your motion of yesterday that you
10 wanted the indictment suppressed because it was presented to
11 the grand jury without your knowledge, Mr. Duren?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Okay. I just want to make sure that that was
14 the issue that I was looking at. Any additional questions?

15 THE DEFENDANT: Let's see, Your Honor. May I, Your
16 Honor?

17 THE COURT: Yes, sir. All right. What are you looking
18 for, Mr. Duren?

19 THE DEFENDANT: I'm looking for notes of the direct
20 presentation charge.

21 THE COURT: Notice of Direct Presentment? That's been
22 put into evidence. You said you lost your copy. One is in
23 evidence as a Court's exhibit. Can you find it, please, Ms.
24 McElveen? Or Margaret? Court's identification Number 1 or 2.
25 Excuse me. Court's Exhibit Number 1 or 2.

TIMOTHY MURPHY - PROFFERED DIRECT BY THE DEFENDANT

1 MS. MCELVEEN: It's direct presentment. Right here.

2 Court's Exhibit Number 4, Your Honor.

3 THE COURT: All right.. Please hand that to Mr. Murphy.

4 Mr. Duren, you can come up and look at it, and go ahead and
5 ask him the questions.

6 THE DEFENDANT: This -- this is not the one I'm looking
7 for. I'm looking for the one that from 2012, that
8 presentation to first degree burglary.

9 THE COURT: Okay. Mr. Murphy did not represent you in
10 2012 or so he said.

11 THE DEFENDANT: Okay.

12 THE COURT: Is that what you're -- is that the time frame
13 you're talking about?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Okay. Did you represent him or anyone in the
16 office represent him in 2012?

17 THE WITNESS: No, sir. I will say this. I believe we
18 picked up a warrant that was from the incident that occurred
19 in 2012, but that representation didn't begin until 2014.

20 THE COURT: All right.

21 THE DEFENDANT: Okay.

22 BY THE DEFENDANT:

23 Q: Mr. Murphy?

24 A: Yes, sir.

25 Q: On a Notice of Direct Presentation, before it goes to the

TIMOTHY MURPHY - PROFFERED DIRECT BY THE DEFENDANT

1 grand jury, do or do not -- do it or not has to be a hearing
2 to be held on it?

3 THE COURT: These are legal issues, but I will allow the
4 witness to answer this question. That is a legal issue. It
5 is not a factual issue. First of all, it's not pertinent to
6 this -- the issues before the jury.

7 THE DEFENDANT: Okay.

8 THE COURT: You can make arguments on whether or not
9 there has to have to a -- has to be a hearing. Mr. Murphy,
10 would you please answer the question?

11 THE WITNESS: If I can take a look at the document?

12 THE COURT: Yes, sir.

13 THE WITNESS: I'm not exactly sure what he's talking
14 about.

15 BY MR. DUREN:

16 A: This is a notice document. I don't believe a hearing is
17 required.

18 MR. DUREN: No further questions, Your Honor.

19 THE COURT: All right. Any questions?

20 MS. MCELVEEN: No, sir.

21 THE COURT: All right. Thank you, Mr. Murphy. You can
22 step down. Mr. Duren, would that be the evidence that you
23 would seek to present to the jury for Mr. Murphy?

24 THE DEFENDANT: Yes. He can be excused, Your Honor.

25 THE COURT: All right. Mr. Murphy, you can depart or

1 stay, which ever you'd like to do.

2 THE WITNESS: I'll depart, Your Honor. Thank you.

3 THE COURT: Okay. All right. Did you contact those
4 witnesses, Ms. McElveen?

5 MS. MCELVEEN: I did, Your Honor. One of them -- I think
6 -- I believe this is Matthew Page -- or Thomas Page is able to
7 come. He said he's finishing lunch and coming on up.

8 THE COURT: Okay. All right.

9 MS. MCELVEEN: I have not heard back from Mr. Spiegel.

10 THE COURT: And not to be facetious, but did he say where
11 he was having lunch and when he was coming up?

12 MS. MCELVEEN: He did not, Your Honor. He said let me
13 finish lunch and I'll head up there. Let me -- I'll ask him.

14 THE COURT: Well, I'm just trying to make the best use of
15 our -- the best use of our time. Mr. Duren, who are the other
16 witnesses you'll be calling? You said you wanted to recall
17 Detective Melton?

18 THE DEFENDANT: Detective Melton.

19 THE COURT: Mr. Osteen and Mr. Allsbrook?

20 THE DEFENDANT: No. Mr. Allsbrook, Mr. Matthew Spiegel,
21 Mr. Thomas Page.

22 THE COURT: Okay. Well, we'll be --

23 THE DEFENDANT: And Mr. -- well, Mr. John Melton.

24 THE COURT: All right. And then we'll begin with either
25 Detective Melton or Mr. Allsbrook with the jury now. Does

1 that suit you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. You can bring in the jury. Did you
4 hear from Mr. Page -- Mr. Spiegel, Ms. McElveen?

5 MS. MCELVEEN: I have not heard back from my text about
6 where they are having lunch.

7 THE COURT: What about Mr. Spiegel?

8 MS. MCELVEEN: Oh, no, sir. I have not heard back from
9 Mr. Spiegel. I only have the one number for Mr. Spiegel. I
10 think I only have a work number for him. I don't have but the
11 one.

12 THE COURT: All right. Well, after we --

13 (WHEREUPON, the jury entered the courtroom.)

14 THE BAILIFF: All the jurors are back in the courtroom,
15 Your Honor.

16 THE COURT: Thank you, Mr. Prince. All right. Ladies
17 and gentlemen, as I mentioned to you earlier, the State has
18 rested. I'll now turn to Mr. Duren. Mr. Duren, you can call
19 any witnesses, if any, that you choose to present.

20 THE DEFENDANT: The defendant calls Detective Melton.

21 THE COURT: All right. Mr. Melton, you're still under
22 oath. You can have a seat in the witness chair.

23 JOHN MELTON, being previously
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

JOHN MELTON - DIRECT BY THE DEFENDANT

1 BY THE DEFENDANT:

2 Q: Good afternoon again, Detective Melton.

3 A: Good afternoon, Mr. Duren.

4 Q: Detective Melton, did you interview Mr. Duren?

5 A: I don't know that I would exactly call it an interview,
6 but yes.

7 Q: Okay.

8 A: It was very limited in time, which is indicated by the
9 time frame of the Miranda and the buccal swab.

10 Q: Did he give any type of statement?

11 A: I can't even remember the conversation. I know that --
12 that there was a very limited one, like I said.

13 THE DEFENDANT: Your Honor, may I present this? It's
14 already in evidence.

15 THE COURT: Is it -- if it's in evidence, you can. If
16 you would, refer to it by number so the record will show.
17 What is it, please, sir?

18 THE DEFENDANT: It's the evidence inventory chain of
19 custody of Sumter County Police Department.

20 THE COURT: For this case?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Hand it to him. That's fine.

23 THE WITNESS: On the back of it, Your Honor, it looks
24 like a little note I made about something he said.

25 THE COURT: Okay. Go ahead. You can -- you can hand

JOHN MELTON - DIRECT BY THE DEFENDANT

1 that to him.

2 BY THE DEFENDANT:

3 Q: Can you read that?

4 A: I can. It says moved home to South Carolina April 2011.
5 Came back to Georgia first part of June for a court date.

6 Q: Okay. Thank you. Detective Melton, did you follow up on
7 that brief statement they gave?

8 A: I have no way of following anything up on it. That's --
9 that's what you're saying.

10 Q: That's what I'm saying? I didn't specifically give you
11 no names or nothing that you could contact?

12 A: Right there is all I have written down, Mr. Duren.

13 Q: I see that. Detective Melton, do you know where Mr.
14 Duren live?

15 A: I have no idea where you live.

16 Q: No idea? From the warrant, you couldn't tell where Mr.
17 Duren live?

18 A: I'd be happy to look at the warrant.

19 THE COURT: He can look at an exhibit.

20 THE DEFENDANT: He can look at the warrant?

21 THE COURT: Do you -- who has the exhibits? Margaret, do
22 you have them? Hand them --

23 MS. MCELVEEN: The pack?

24 THE COURT: Just hand them to him and see if he can find
25 something that might answer the question. Let's let the

JOHN MELTON - DIRECT BY THE DEFENDANT

1 witness look.

2 MS. MCELVEEN: Which one?

3 THE COURT REPORTER: I'm sorry. 37.

4 BY THE DEFENDANT:

5 A: Are you ready for me to read it, Mr. Duren?

6 Q: Yes.

7 A: It says according to the warrant [REDACTED] [REDACTED] -- I'm not
8 sure what that means -- [REDACTED] [REDACTED] Pinewood, South Carolina
9 29125.

10 THE DEFENDANT: If it please the Court, Your Honor, can I
11 correct the address on there?

12 THE COURT: You can ask him a question. When you're
13 questioning a witness, you may not testify. You may not say
14 anything as you're asking the witness. You can say is it not
15 true that my address was, but you can't affirmatively say what
16 it was while you're questioning a witness, nor can Ms.
17 McElveen.

18 THE DEFENDANT: Okay.

19 BY THE DEFENDANT:

20 Q: Where's [REDACTED] located at, Mr. Melton?

21 A: I have no idea.

22 Q: It doesn't say on the warrant?

23 A: It just says -- oh, Pinewood, South Carolina. I thought
24 you were asking me the exact place. I apologize.

25 Q: Pinewood, South Carolina. That's good enough. That's

JOHN MELTON - DIRECT BY THE DEFENDANT

1 the general area. Approximately how many miles is that from
2 Sumter?

3 A: I have no idea.

4 Q: Would you say approximately fourteen or fifteen miles?

5 A: I'd be afraid to give a number because I don't generally
6 drive from Sumter directly to Pinewood and back, but it's --

7 Q: Under twenty miles?

8 A: I'd be afraid to guess, but I mean it's a drive.

9 Q: It's a drive? One of those country drives? Okay.

10 Detective Melton, in your investigation, did you ever find out
11 did Mr. Duren own a car or anything? Any type of
12 transportation?

13 A: I don't have any record of anything like that.

14 Q: Okay. And what time of night did this crime supposedly
15 occurred?

16 A: I don't have an exact time. We had a time frame. I'd
17 have to refer back to the incident report to look at the time
18 frame that we have.

19 Q: You have a time frame? Okay. Detective Melton, wouldn't
20 somebody need a vehicle or something to carry away the amount
21 of cigarettes that Mr. Spiegel said that was taken from this
22 place?

23 A: There's no way I would say what somebody would or would
24 not need because I'm telling you in my years of doing this I
25 have seen just stuff that would amaze you.

JOHN MELTON - DIRECT BY THE DEFENDANT

1 Q: Twenty miles away? Detective Melton, what kind of crime
2 area is this business located in? High crime? Low crime?

3 A: I'd be afraid to answer that without statistics, but I
4 would classify that as being more of the downtown area.

5 Q: Downtown area? And where precisely is this location at?

6 A: It's on Harvin Street. I'd have to look at the exact
7 numerical address.

8 Q: Okay. Would you say that it's approximately right about
9 the railroad track on Harvin Street?

10 A: It is by the railroad tracks on Harvin Street.

11 Q: Okay. And you would classify that as the downtown area?

12 A: I would, yes, sir.

13 Q: Detective Melton, was a reward ever offered for the
14 burglary of this place?

15 A: We generally do not just go offering rewards when we have
16 no information.

17 Q: Do you have any knowledge of the company offering a
18 reward?

19 A: I have no knowledge of that. That would be something
20 you'd have to ask them.

21 Q: Did you ever have knowledge of Crime Stoppers offering
22 any reward?

23 A: I can tell you that when I obtained the warrant for you,
24 I did a BOLO that says that you're wanted. So somebody would
25 have given up your location. They could have called through

JOHN MELTON - DIRECT BY THE DEFENDANT

1 Crime Stoppers or they could have called through dispatch, but
2 I do not know what Crime Stoppers will or will not do because
3 we -- I don't have a role in that.

4 Q: Detective Melton, have you ever known why Mr. Duren would
5 have broken into a business in Sumter?

6 A: That's a question that, Mr. Duren, unfortunately only you
7 can answer.

8 Q: Detective Melton, did you ever notice that Mr. Duren was
9 on any drugs or alcohol or anything in interviewing him, at
10 the jail, wherever you talked to him?

11 A: Mr. Duren, I told you a while ago. I said it. I don't
12 really remember the context of the interview. You produced
13 the only note that I wrote about anything that was said and,
14 you know, I've wondered lots of things.

15 Q: Other than blood, Detective, is there anything else that
16 connects Mr. Duren to this crime other than blood?

17 A: Other than the blood? No, sir.

18 Q: No, sir? No witness? No statement? Nobody coming
19 forward for a reward? Not even nobody trying to get out of
20 jail by turning -- turning him up? Really strange, isn't it?

21 A: Is that a question, sir?

22 Q: No. That's not a question. Detective Melton, the swab
23 that you took from Mr. Duren that was submitted to SLED for
24 testing, you remember that; right? The saliva swab?

25 A: I told you this, Mr. Duren. I said it.

JOHN MELTON - DIRECT BY THE DEFENDANT

1 Q: No.

2 A: I'll say it again. I don't remember anything about our
3 encounter. I know that I took a swab off of you based off
4 paperwork that we had.

5 Q: Okay. But that swab was submitted to SLED; right?

6 A: That's correct. I turned it in to evidence. Where it
7 goes from there is up for them to say.

8 Q: And that swab came back as a CODIS hit matching Mr.
9 Duren?

10 A: It came back as a CODIS hit for David Duren.

11 Q: Okay.

12 A: For you.

13 Q: Do you have a copy of that result for your result from
14 SLED?

15 A: I don't know if there's one that's been produced in the
16 court purposes, but right in front of me I do not have one,
17 sir.

18 THE DEFENDANT: Has one been produced?

19 MS. MCELVEEN: Yes, sir. It's Number 43.

20 THE DEFENDANT: 43?

21 MS. MCELVEEN: Uh-huh.

22 BY THE DEFENDANT:

23 Q: Number 43. Could you read it for me, Mr. -- Detective
24 Melton?

25 A: Yes, sir, I can. It says from the South Carolina Law

JOHN MELTON - DIRECT BY THE DEFENDANT

1 Enforcement Division Forensic Services Laboratory Report.
2 It's got the SLED symbol, along with Governor Nikki Haley and
3 Chief Mark Keel's name on it. It's dated April 19th of 2012.
4 It's got our Sumter Police Department evidence custodian James
5 Allsbrook's name. It says James Allsbrook, Sumter Police
6 Department, 107 East Hampton Avenue, Sumter, South Carolina,
7 ZIP code 29150. Agency Case Number 11070427. SLED Case
8 Number L11-07133. It says:

9 Dear James Allsbrook, the short-tandem repeat PCR DNA
10 profile developed from Item 1 was compared to the combined DNA
11 index system, CODIS. This profile matches the STRPCR DNA
12 profile developed from DNA database offender David A. Duren
13 Jr., AKA David Duren, South Carolina SID Number SC-00405680.
14 This information is provided for investigative purposes only.
15 If the suspect is charged, an additional biological specimen
16 must be submitted for court purposes.

17 This search was conducted by Lieutenant David L. McClure,
18 South Carolina Law Enforcement Division. Sincerely, David
19 McClure, his signature, and then it says Lieutenant David
20 McClure, DNA Database Unit.

21 Q: I'm curious to know something, Detective. It's been
22 bothering me.

23 THE COURT: No, sir. You may not make --

24 THE DEFENDANT: Oh, okay.

25 THE COURT: -- statements. You can ask.

JOHN MELTON - DIRECT BY THE DEFENDANT

1 THE DEFENDANT: Okay.

2 THE COURT: You can argue to the jury later on what --

3 THE DEFENDANT: Okay.

4 THE COURT: -- what was bothering you.

5 BY THE DEFENDANT:

6 Q: I'm just curious. Right here it says short-term from
7 Item 1. Item 1. That was the blood sample from the freezer
8 -- the top of the freezer above the entry point. I'm asking
9 you for your report, the one that you sent to SLED for the
10 swab of my cheek. That's the one I want. I don't want this
11 one. I want the other one. These swabs were ineffective. I
12 want the other one.

13 THE COURT: No. He answers the question, Ms. McElveen.

14 BY THE DEFENDANT:

15 A: I turned the buccal swab into SLED after I -- or after --
16 excuse me -- into our evidence area. Okay? Via a chain of
17 custody. I would have to look at the chain of custody to see
18 what day -- you know, the date and the time and everything I
19 turned it in, which I would be happy to do, but the report
20 then comes back from -- SLED does what they do with it. I
21 think earlier we had testimony from -- I can't remember the
22 name of the company. They do what they do with it and then a
23 report comes back to go with the case file.

24 Q: That's the report that the analyst gave right there.

25 A: I don't know what reports are in or what reports are not.

JOHN MELTON - DIRECT BY THE DEFENDANT

1 Q: Her name is signed to it.

2 A: Okay.

3 Q: I want the DNA test result that you took from my cheek.

4 That's the one I'm looking for.

5 A: Once again, I don't do --

6 Q: That's the one --

7 A: -- DNA testing.

8 Q: -- that hasn't been entered into evidence yet. That's

9 the one I'm looking for.

10 A: I do not do DNA testing, Mr. Duren. I only do the

11 collection.

12 Q: So it just mysteriously gets lost?

13 A: I don't think it's lost at all, Mr. Duren. I think we've

14 had testimony --

15 Q: But it's not into evidence and we've been here two days.

16 It's not into evidence yet. Where is it?

17 A: I thought we already had testimony on that.

18 Q: I thought so too, but when I went down there and looked,

19 it's not there.

20 THE COURT: Mr. Duren, I'll tell you -- I will mention it

21 to you again. You may not --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- when you're questioning a witness do

24 anything other than ask questions.

25 THE DEFENDANT: Yes, sir.

JOHN MELTON - DIRECT BY THE DEFENDANT

1 THE COURT: There's a time and place for testimony, but
2 it is not --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- when you are questioning a witness. So,
5 ladies and gentlemen, you will disregard Mr. Duren's last
6 statement.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You may ask a question --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: -- only.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are we clear?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. You can continue with
15 questioning.

16 THE DEFENDANT: Your Honor, the defendant put in a motion
17 for a dismissal of these charges.

18 THE COURT: Denied. You can move on.

19 BY THE DEFENDANT:

20 Q: Mr. Melton --

21 A: Yes, sir.

22 Q: Again I ask you, where is the test that you supposedly
23 had sent to SLED that you took from me at the Sumter County
24 jail? Where's the test?

25 THE DEFENDANT: No further questions, Your Honor.

JOHN MELTON - CROSS BY MS. MCELVEEN

1 THE COURT: All right. The question was withdrawn,
2 ladies and gentlemen. You may disregard that question. All
3 right. Ms. McElveen, you can cross-examine the witness.

4 MS. MCELVEEN: Yes, sir.

5 CROSS-EXAMINATION

6 BY MS. MCELVEEN:

7 Q: Detective Melton, do you perform any sort of DNA testing?

8 A: Absolutely not.

9 Q: Are you a scientist?

10 A: Absolutely not.

11 Q: Do you -- are you trained to test any DNA and analyze a
12 buccal swab for a certain DNA profile?

13 A: No way, shape or form.

14 MS. MCELVEEN: Thank you. No further questions.

15 THE COURT: Anything else?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: All right. On the -- on the matters raised
18 by Ms. McElveen, you can question the witness. Nothing new.

19 REDIRECT EXAMINATION

20 BY THE DEFENDANT:

21 Q: Detective Melton, per South Carolina Law Enforcement
22 Division, what we just read, per South Carolina Law
23 Enforcement Division, the evidence -- the swab that tested and
24 entered into evidence, this information is provided for
25 investigational purposes only. If a suspect is charged, an

JOHN MELTON - REDIRECT BY THE DEFENDANT

1 additional biological specimen must be submitted for court
2 purposes.

3 THE COURT: Wait just a second. Yes, ma'am?

4 MS. MCELVEEN: This is asked and answered. It's been
5 made -- it's there.

6 THE COURT: Okay. Ladies and gentlemen, please go to
7 your jury room. You may not discuss the case.

8 (WHEREUPON, the jury exited the courtroom.)

9 THE COURT: All right. It's not up to me when the jury
10 is in the courtroom to remedy any perceived or real confusion.
11 Your objection is that the question was asked and answered?

12 MS. MCELVEEN: Yes, sir.

13 THE COURT: All right.

14 MS. MCELVEEN: Also outside the scope of cross.

15 THE COURT: Okay. Technically, those are correct, but I
16 think y'all are missing something. But I'm not going to
17 mention it in front of the jury. Mr. Duren is confused about
18 the order of what comes first.

19 At the beginning of the trial -- I just want to make sure
20 the record is clear and reflects this. I excluded any
21 reference to CODIS because it would prejudice you, Mr. Duren,
22 because it indicates to the world that your DNA is in a
23 nationwide criminal database. You brought it up; so the
24 witnesses went into it.

25 CODIS hits are used for probable cause. The CODIS hit is

JOHN MELTON - REDIRECT BY THE DEFENDANT

1 what is referenced in what you just read, Mr. Duren. Wait a
2 minute. Let me finish.

3 CODIS hit is for investigative purposes only, and another
4 sample must be obtained and analyzed for court purposes. That
5 is the swab taken from your cheek. I'm not going to explain
6 that to the jury. The witnesses will have to do that.

7 Mr. Duren, you are not going to testify again unless you
8 are sworn and you take the witness stand. So you may not --
9 don't interrupt me. You may not make statements, especially
10 that one which is fundamentally false. Maybe not on purpose,
11 but it's false because -- and I want to explain to you my
12 ruling is that the CODIS hit is what is mentioned in the 2012
13 report. That is what is for investigative purposes only.
14 That establishes probable cause. You are arrested. You came
15 in and a DNA -- excuse me -- a buccal swab was taken from your
16 mouth.

17 THE DEFENDANT: Right.

18 THE COURT: That is what is used for court purposes.
19 There has been testimony that again links you to the blood
20 that they claim that they found at the scene.

21 So I just want to make sure that you understand that that
22 is the lay of the land here, and I'm not going to allow you to
23 make statements to the jury while you're questioning a witness
24 that no other follow-up analysis was done. I will allow you
25 to ask questions about it, but I will not allow you to tell

JOHN MELTON - REDIRECT BY THE DEFENDANT

1 this jury as an aside to exploring a question with a witness
2 that no follow-up DNA analysis was done because that's not
3 true. Now you can talk.

4 THE DEFENDANT: Your Honor, with all due respect here,
5 all I ask for is the follow-up result.

6 THE COURT: And that's been testified to by the expert
7 from Indianapolis, Indiana.

8 THE DEFENDANT: She testified to the CODIS hit.

9 THE COURT: She testified to both.

10 THE DEFENDANT: She testified to the CODIS. All --

11 THE COURT: All right. I've got -- I've got my notes.
12 All right. Cynthia Cale took the stand at twelve noon on the
13 dot. Laboratory examination report. A DNA profile was
14 created, sent back to SLED for its peer review. She later
15 received buccal swabs, August 6th, 2012, because I asked her
16 for that date. She rendered a supplemental DNA report. Is
17 that -- that's Exhibit 42..

18 Am I missing something, Ms. McElveen?

19 MS. MCELVEEN: No, sir.

20 THE COURT: All right. Let me see Exhibit 42. I'm not
21 trying to help you, Mr. Duren. I'm not trying to hurt you,
22 but what I want to make sure of, again, the reason for
23 excusing the jury -- 42 --

24 MS. MCELVEEN: 42.

25 THE COURT: -- is that you may not make statements to

JOHN MELTON - REDIRECT BY THE DEFENDANT

1 this jury. First of all, you can't make them at all. Second
2 of all, you can't make them when they're false. I just need
3 Exhibit 42.

4 Okay. Supplemental DNA Report is in evidence. Yes, sir.
5 You already -- and you already have it because I've required
6 Ms. McElveen to hand each one of these to you.

7 THE DEFENDANT: I have this. I just want to check to see
8 if it's the same.

9 THE COURT: All right. You can come check it. And just
10 to make sure that my statements for the record are correct,
11 the witness testified that the DNA connected to you, one in
12 300 quintillion chance that it would belong to somebody else
13 who might walk through that door.

14 Ms. McElveen, H&S Wholesalers direct office line is 773-
15 6923.

16 MS. MCELVEEN: I have heard back from Mr. Spiegel. He's
17 on the way.

18 THE COURT: All right. Thank you. All right. Now, Mr.
19 Duren, do you have any -- any questions or qualms about any of
20 the matters that I've just put on the record?

21 THE DEFENDANT: No further questions, Your Honor.

22 THE COURT: All right. Will you have any more questions
23 of Detective Melton?

24 THE DEFENDANT: No further questions, Your Honor.

25 THE COURT: All right. You can bring in the jury and

JOHN MELTON - REDIRECT BY THE DEFENDANT

1 he'll -- he may change his mind; so I'll let Mr. Duren excuse
2 you.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: I'm not prohibiting you from asking
5 questions, but I'm not going to allow you to make statements.

6 THE DEFENDANT: Okay.

7 THE COURT: That's why I sent the jury out. And Mr. Page
8 is here, by the way, Mr. Duren. He's back in the front row I
9 believe.

10 THE DEFENDANT: Yes, sir.

11 (WHEREUPON, the jury entered the courtroom.)

12 THE BAILIFF: All the jurors are back, Your Honor.

13 THE COURT: All right. Mr. Duren, you can continue with
14 the witness.

15 THE DEFENDANT: No further questions, Your Honor.

16 THE COURT: All right. Anything else?

17 MS. MCELVEEN: Nothing, Your Honor.

18 THE COURT: Thank you. Mr. Melton, you can step down.

19 THE WITNESS: Yes, sir.

20 THE COURT: Your next witness, Mr. Duren?

21 THE DEFENDANT: Mr. Thomas Page.

22 THE COURT: All right. Mr. Page, you can come on up.
23 You're still under oath. P-a-g-e; correct?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Thank you, sir. Have a seat.

THOMAS PAGE - DIRECT BY THE DEFENDANT

1 THOMAS PAGE, being previously duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY THE DEFENDANT:

5 Q: Mr. Page --

6 A: Yes, sir.

7 Q: Mr. Page, the other day you testified that there was
8 approximately thirty cartons of Newports taken from your
9 business?

10 A: Approximately.

11 Q: Approximately? And in the initial -- the initial report
12 said an undetermined amount. I just -- Mr. Page, I just want
13 to know where did the thirty cartons come from?

14 A: They came from the cigarette storage.

15 Q: Cigarette storage?

16 A: Yeah.

17 Q: And in one of the -- Mr. Page, in one of the incident
18 reports, they said that the quantity that was taken was one
19 and the value was a dollar?

20 A: Sir, I'd never seen that document until you presented it
21 to me the other day. I don't know where it came from or what
22 it is.

23 Q: I have one question to ask you about the point of break-
24 in.

25 A: Uh-huh.

THOMAS PAGE - DIRECT BY THE DEFENDANT

1 Q: You stated that you don't know that this place was ever
2 burglarized before in that same place?

3 A: Say again?

4 Q: You stated before that you've been there for five years
5 and you never noticed that the place had been broken in at
6 that same place before?

7 A: No, sir.

8 Q: It hasn't?

9 A: That was the only time I know of where it was broken in
10 in that part of the building.

11 Q: And this picture here clearly shows --

12 MS. MCELVEEN: Objection, Your Honor. No question.

13 THE COURT: You can ask a --

14 BY THE DEFENDANT:

15 Q: Mr. Page --

16 THE COURT: I'll -- just say do you see in the picture?

17 BY THE DEFENDANT:

18 Q: Mr. Page, do you see in the picture where it possibly
19 could have been broken into before?

20 A: No.

21 Q: There's no plywood over no other plywood, Mr. Page?

22 A: I see plywood, but I couldn't tell you why it's there.

23 Q: It would stand to reason, Mr. Page --

24 A: For all I know, it could have been a door there at one
25 time.

THOMAS PAGE - DIRECT BY THE DEFENDANT

1 Q: A door? It may have been a garage door there at one
2 time?

3 A: It's possible.

4 Q: I don't --

5 A: I didn't build the building; so I couldn't --

6 Q: I don't --

7 A: -- testify to that.

8 Q: Mr. Page, did your company offer a reward for this break-
9 in?

10 A: None that I was aware of.

11 Q: Have y'all -- have you ever -- this company ever offered
12 a reward?

13 A: No, sir. They barely offered a paycheck.

14 Q: I know what you mean, Mr. Page. Mr. Page, you also
15 stated that you've never seen the defendant?

16 A: Never.

17 Q: He's never been in your place of business?

18 A: Never that I can recall.

19 Q: May I ask you a question, Mr. Page?

20 A: Absolutely.

21 Q: Mr. Page, where is the cigarettes located at in this
22 place?

23 A: At the time, I think they were kept in a room toward the
24 front of the building, but not all the way in the front.

25 Q: Toward the front of the building?

THOMAS PAGE - DIRECT BY THE DEFENDANT

1 A: Uh-huh.

2 Q: And a person -- Mr. Page, a person burglarizing this
3 place would have to have known where they was at; probably
4 right?

5 A: Probably so.

6 THE DEFENDANT: No further questions, Your Honor.

7 THE COURT: Anything else?

8 MS. MCELVEEN: Nothing, Your Honor.

9 THE COURT: Thank you, sir. Mr. Page, you can step down
10 and you're excused.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Of course, you can stay too, if you'd like.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Next witness, Mr. Duren?

15 THE DEFENDANT: Mr. --

16 THE COURT: I think Mr. Spiegel is here.

17 THE DEFENDANT: I'm looking for the forensic that was on
18 the scene.

19 THE COURT: The name?

20 THE DEFENDANT: Yes.

21 THE COURT: Ms. Aleck?

22 THE DEFENDANT: That took the DNA swabs. Mr. Tallon?

23 THE COURT: Mr. Tallon works in Columbia. I don't know
24 if you reserved the right to -- I don't know if you asked that
25 he be --

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 THE DEFENDANT: I thought I did.

2 THE COURT: Well, we'll check on that, but go to your
3 next witness.

4 THE DEFENDANT: Mr. Spiegel.

5 THE COURT: All right. Come on up, Mr. Spiegel. You are
6 still under oath.

7 MATTHEW SPIEGEL, being
8 previously duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY THE DEFENDANT:

11 Q: Mr. Spiegel?

12 A: Yeah.

13 Q: How are you doing this afternoon, sir?

14 A: All right.

15 Q: Mr. Spiegel, on the night of the alleged burglary, you
16 responded to an alarm there?

17 A: That's correct.

18 Q: Do you know approximately about what time?

19 A: I can't remember. It was the middle of the night. I
20 can't remember.

21 Q: All right. And when you got there, was you accompanied
22 by a police officer?

23 A: Yes.

24 Q: And who was that officer?

25 A: I cannot recall.

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 Q: You cannot recall? And what did you do after you got
2 there, Mr. Spiegel?

3 A: We opened up the place and looked around. Everything
4 seemed to be intact. We -- I secured the place and left.

5 Q: Okay. Did you walk around the place?

6 A: I walked around inside, yes.

7 Q: You didn't go and walk around the outside?

8 A: I didn't walk in the back of the building where the gate
9 was. No, I didn't.

10 Q: You didn't? If a burglar alarm goes off at a business,
11 wouldn't you check out the whole building, you and the police?

12 A: It went off so many times. It had a -- the burglar alarm
13 would go off if a -- if a mouse run across the floor. I mean
14 that's what --

15 Q: If a mouse ran across the floor?

16 A: Yeah. It went off several times.

17 Q: So in other words, it would go off all the time, anytime?

18 A: Yes. Oh, yeah. Yeah.

19 Q: And you never thought to go look at the back of the
20 building?

21 A: No, I didn't.

22 Q: And at the time you looked, you didn't see nothing that
23 was missing or out of place?

24 A: Not out of place, no.

25 Q: Or missing?

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

- 1 A: No. Or missing.
- 2 Q: Not until the next morning?
- 3 A: That's correct.
- 4 Q: And, Mr. Spiegel, approximately where are the cigarettes
- 5 located?
- 6 A: The front of the building.
- 7 Q: The front of the building? And how far is that from the
- 8 back?
- 9 A: I don't know how many feet. Probably here to out in the
- 10 hallway, a little bit beyond. I mean I don't -- it wasn't a
- 11 very big building.
- 12 Q: So a person would have to be familiar with that place?
- 13 A: Not necessarily.
- 14 Q: Not necessarily?
- 15 A: I don't know how -- like I said before, I don't know how
- 16 a crook thinks.
- 17 Q: I understand that.
- 18 A: Yeah.
- 19 Q: But the burglar alarm was going off?
- 20 A: Yes. It went off that night.
- 21 Q: If the alarm going off -- excuse me. Let me get this
- 22 correct. If an alarm is going off in a place and the distance
- 23 you say is that far, wouldn't you think the burglar would get
- 24 out of there?
- 25 A: I don't know. I mean I don't have experience with

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 breaking in or -- so I mean -- you know, I don't know. I
2 can't answer that.

3 Q: The cigarettes that was -- the kind of cigarettes that
4 was found behind the freezer -- let me find the picture of it.
5 Must be this one.

6 A: That's where the gap is.

7 Q: That's where the gap is?

8 A: That's right.

9 Q: Okay. That's where the gap is. And this -- there's
10 something behind that freezer on that corner; right?

11 A: There's a what?

12 Q: There's something behind that freezer on that corner;
13 right?

14 A: Let me see the picture. It looks like a drink bottle.
15 Is that what you're talking about?

16 Q: I'm talking about the metal part. Is that part of the
17 freezer?

18 A: I don't recall. I don't know if that's the --

19 Q: Here's a better picture of it. This --

20 A: Yeah. I know what you're talking about. Right here is
21 an old door that was in the front of the -- the front of the
22 freezer. They took that out and I slid it behind the freezer.

23 Q: So this leans straight up right here and on this picture
24 here it's leaning forward over the freezer as somebody pulled
25 the freezer out to get behind there to get the cigarettes out?

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 A: I don't see where anybody could pull that freezer out. I
2 mean it's -- that's the gap.

3 Q: If you put them in there, you can slide them out. I
4 guarantee you can slide them out if they have to be moved.

5 A: Right. But if they were on top of that freezer, like I'm
6 thinking, they probably dropped it.

7 Q: Dropped it? They look like they were placed there to me.

8 A: No. Nobody placed any cigarettes behind there.

9 Q: You've been working there for ten years; right, Mr.
10 Spiegel?

11 A: About ten years.

12 Q: About ten years. And the back of that place has never
13 been broken into before?

14 A: Not that I recall.

15 Q: Not that you recall? Do you know anything about
16 carpentry, Mr. Spiegel?

17 A: No, I don't.

18 Q: Do you know -- do you know when something has been
19 patched over, Mr. Spiegel?

20 A: No. I mean I -- no.

21 Q: Looking at this photo here --

22 A: Yeah.

23 Q: Looking directly down the hall?

24 A: Uh-huh.

25 Q: You look up at the top, you see the top edge of two

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 plywood?

2 A: Right.

3 Q: This one goes all the way to the bottom. This one goes
4 right here where it looks like it broke out?

5 A: Right.

6 Q: Wouldn't that sort of indicate that that place had been
7 patched over before?

8 A: It almost looks like a door was there.

9 Q: A door?

10 A: A roll-up door. That's a big patch. If you're
11 indicating that that hole -- all that wood is a patch?

12 Q: No.

13 A: It looks like a --

14 Q: I'm talking about the top edge of the plywood right here
15 between the two -- two joists.

16 A: Okay.

17 Q: Right there, it goes down.

18 A: All right.

19 Q: And the brickwork --

20 A: All right.

21 Q: See the difference in the mortar joints --

22 MS. MCELVEEN: Objection, Your Honor. This is him
23 walking him through pictures --

24 THE COURT: Overruled.

25 MS. MCELVEEN: -- not asking any questions.

MATTHEW SPIEGEL - DIRECT BY THE DEFENDANT

1 THE COURT: Overruled.

2 BY THE DEFENDANT:

3 Q: The difference in the mortar joints?

4 A: I do see it, yeah.

5 Q: See how that one is smeared?

6 A: Right.

7 Q: Like it's been patched before?

8 A: I can't answer that. I don't know anything about
9 patching. I see -- I see that there's a difference, but, you
10 know, I don't --

11 Q: There's a big difference.

12 A: There's a difference. I wouldn't say big.

13 Q: It would indicate that it has been torn out before?

14 A: I'm not in that kind of business.

15 Q: And patched back up?

16 A: I don't know. I can't answer that. I mean regardless,
17 somebody broke in to the --

18 Q: Yeah. I agree with you. Somebody -- I agree with you.
19 Somebody broke in there.

20 A: So a patch or not a patch, I mean --

21 Q: I'll agree with you on that, but I don't agree -- I can't
22 say that. There's been more than one time?

23 A: That has nothing to --

24 Q: It looks like --

25 THE COURT: All right. No statements, Mr. Duren. You

1 can question.

2 THE DEFENDANT: No further questions.

3 THE COURT: All right. Any questions, Ms. McElveen?

4 MS. MCELVEEN: No, sir, Your Honor.

5 THE COURT: Thank you, Mr. Stiegel -- Spiegel. You can
6 step down and you can be excused if you like. Certainly, you
7 can stay too.

8 THE WITNESS: Yes, sir. Thank you.

9 THE COURT: All right. Next witness, Mr. Duren?

10 THE DEFENDANT: Yes. The defense rests, Your Honor.

11 THE COURT: All right. Will there be any reply?

12 MS. MCELVEEN: I don't believe so, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the jury,
14 if you would, please go to your jury room. What we're going
15 to do in the next few minutes is go into the closing arguments
16 and then the jury charge. I've got to spend just a few
17 minutes with Mr. Duren and Ms. McElveen and go over the charge
18 that I'm going to be giving to you on the law. I'm required
19 under the rules to recess at this point and do that.

20 And so if you would, please go to your jury room. Please
21 do not discuss the case.

22 (WHEREUPON, the jury exited the courtroom.)

23 THE COURT: All right. Any motions at this time, Mr.
24 Duren?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: All right. I will -- I will review the
2 basics of the jury charge and the order of argument under the
3 rules will be this. Ms. McElveen, you will open briefly on
4 the law.

5 MS. MCELVEEN: Yes, sir.

6 THE COURT: Mr. Duren, you will be able to present your
7 closing argument, and then Ms. McElveen will have the last
8 argument. That's what the rules provide.

9 During the course of your closing argument, Mr. Duren,
10 you are permitted to argue about the evidence and the law.
11 You may not make any affirmative testimonial statements to the
12 jury because you have opted not to testify, which is certainly
13 your right. The reason for that is is because if you begin
14 making affirmative testimonial statements to the jury, Ms.
15 McElveen will not have had an opportunity to cross-examine
16 you.

17 But in any event, if the State chooses to object at any
18 given time, I will rule. I will either sustain the objection
19 or overrule it. But the rules -- yes, sir?

20 THE DEFENDANT: Your Honor, I want to ask a question.
21 I'm not prepared to give a closing statement at the moment.

22 THE COURT: You're not prepared to give a closing
23 argument?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: How much time do you need?

1 THE DEFENDANT: I would say overnight, Your Honor.

2 THE COURT: Well --

3 THE DEFENDANT: First thing in the morning, Your Honor.

4 THE COURT: It's ten minutes to three now.

5 THE DEFENDANT: It's still not time for me to prepare,
6 Your Honor.

7 THE COURT: Ms. McElveen?

8 MS. MCELVEEN: Your Honor, the State is ready for
9 whatever Your Honor would like to do.

10 THE COURT: All right. Can you explain to me why you're
11 not prepared to give a closing argument?

12 THE DEFENDANT: Number one, Your Honor, I don't know
13 where to start and it's going to take me some time to draw it
14 up, Your Honor. I've got to go over everything that's been
15 going on. I understand. This is my first time defending
16 myself.

17 THE COURT: What time is the jury coming back tomorrow?
18 Does anybody know?

19 THE CLERK: Your Honor, I'm not aware of anybody making
20 that decision yet.

21 THE COURT: I talked to Mr. Griffin earlier. He said
22 that Mr. Donald -- let's go off the record.

23 (WHEREUPON, there was a pause in the proceedings.)

24 THE COURT: The jury is scheduled for tomorrow morning at
25 nine thirty. Mr. Duren, I will ask the officers to have you

1 in the courtroom at 9:15. That will give you a chance to
2 prepare your -- your closing argument to the jury. I know
3 you've got a lot of material and you've got a lot of thinking
4 to do, and I certainly appreciate that. That will cure any
5 ills that we have as far as any prejudice to you for jumping
6 right into it.

7 And then -- let me ask this question of the State first
8 and then I'll ask Mr. Duren. On the verdict form, the verdict
9 form has two choices: not guilty, guilty. Is there either
10 side that sees any argument for a lesser offense to be
11 submitted to the jury?

12 MS. MCELVEEN: No, sir.

13 THE COURT: Because a person can be convicted of burglary
14 in the second degree if he enters a building without consent
15 and with the intent to commit a crime therein. What makes it
16 violent and what makes it a strike in this case collaterally,
17 if you will, is that the -- they conclude Mr. Duren entered
18 the building without consent with the intent to commit a crime
19 therein and you've proven to the jury's satisfaction that he
20 has two prior convictions of burglary. That will go to the
21 jury on the violent as opposed to non-violent.

22 Any thoughts on that, Ms. McElveen? You wanted up or
23 down on just the one?

24 MS. MCELVEEN: Yes, sir. I would just like the one.

25 THE COURT: All right. Mr. Duren?

1 THE DEFENDANT: I don't understand that.

2 THE COURT: Okay. In the -- in the -- in the law, there
3 are certain offenses that may also have what you call lesser
4 included offenses. In other words, if you're not guilty of
5 the big one, you might be guilty of the smaller. I can't give
6 you any legal advice, but all I can do is explain to you that
7 in some cases -- and I'm not saying this is or is not one of
8 those -- the jury is entitled to consider both, and they could
9 only -- they could find you guilty of only one or neither.
10 They couldn't find you guilty of both. I know it's a little
11 confusing, but I'm not permitted under the law to advise you.

12 THE DEFENDANT: I understand.

13 THE COURT: So the question would be whether or not there
14 would be a lesser included charge for the jury to consider or
15 whether or not you want the jury to only have one to consider.

16 THE DEFENDANT: One, Your Honor.

17 THE COURT: All right. Then I'll just -- I'll just
18 charge them and the verdict form will include only the
19 burglary that includes the State having to prove that he has
20 been convicted of two -- two prior burglaries.

21 Okay. Mr. Duren, thank you for your patience this
22 afternoon on my waiting to see what we would do, and you'll be
23 back in this room at 9:15.

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: All right. Okay. This case is discharged

1 for the rest of the day. Mr. Donald, I hate to drag you up
2 here. We're off the record now.

3 (WHEREUPON, the proceedings were adjourned for the day.)

4 MAY 20, 2015

5 (WHEREUPON, the proceedings resumed.)

6 THE COURT: All right. That's the verdict form.

7 Obviously, it says:

8 As to the charge of second degree burglary, we
9 unanimously find that the defendant -- two choices are not
10 guilty or guilty.

11 I think that is in line with what both sides agreed
12 yesterday would be appropriate. Does the State have any
13 objection to the verdict form?

14 MS. MCELVEEN: Nothing, Your Honor.

15 THE COURT: Mr. Duren, do you have any objection?

16 THE DEFENDANT: Nothing, Your Honor.

17 THE COURT: Okay. Does -- does either side have any
18 questions or requests before we go into the closing arguments?

19 MS. MCELVEEN: No, sir.

20 THE COURT: Mr. Duren?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. I will -- Mr. Duren, I know this
23 is new to you. I want to explain to you what I'll be telling
24 the jury before the arguments begin.

25 I will tell the jury that the State will present the

1 first argument and it's called opening on the law. The State
2 would not essentially go into the evidence, but is permitted
3 in this part to explain to them the law that she believes I'm
4 going to charge the jury.

5 After that, you're permitted -- your argument will be
6 next. Again, you don't have to present argument, but you can.
7 And I assume from what you said yesterday you intend to do
8 that.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Since you wanted to prepare. I will also
11 tell the jury that after you argue, the State under the rules
12 has the last argument. But let me -- let me think. Let me
13 back up. Yeah. The State in this case will have the last
14 argument.

15 I will tell the jury that what you and Ms. McElveen say
16 to the jury is not evidence because during the closing
17 argument stage, you have the right to refer to evidence that
18 has been introduced and refer to the law as I will charge it
19 to them, but what you say and what Ms. McElveen says to the
20 jury is not evidence.

21 So you're not permitted during your argument to actually
22 testify to the jury. Certainly, you have already waived your
23 -- you have invoked your Fifth Amendment right and you have
24 chosen not to testify. So I just wanted to make sure you
25 understand that. Do you have any questions about that?

1 THE DEFENDANT: After you argue, is there a closing
2 statement do you have too?

3 THE COURT: That I have?

4 THE DEFENDANT: No. That the defendant has. Or is there
5 a closing statement here?

6 THE COURT: Closing statement is the closing argument.

7 THE DEFENDANT: Okay.

8 THE COURT: It's the same thing.

9 THE DEFENDANT: So I don't want to -- you can write your
10 closing statement any way you want to?

11 THE COURT: Well, you could write it, yes, sir. But it's
12 a matter of holding the jury's interest as to whether or not
13 you actually read it.

14 THE DEFENDANT: Okay.

15 THE COURT: But you will not be able to say anything you
16 want. The rules say that you're permitted to argue to the
17 jury the conclusions you believe the evidence or lack of
18 evidence would compel them to reach. And you can refer to the
19 law that is applicable to this case, and that's what I'm going
20 to discuss very briefly in just a minute.

21 But you are not permitted to in a blanket way say
22 anything you want. Certainly, you may argue, but there are
23 parameters and there's nothing -- there's no bright line about
24 what is wrong and what is right, but you may not argue facts
25 that aren't in the record and you may not testify to the jury.

1 What I'm going to do is I'm going to tell the jury that
2 it is their job to determine the believability of witnesses.
3 I'm going to explain to them that you are presumed innocent.
4 You don't have any burden. I'm going to explain to them that
5 the fact that you did not testify from the witness stand is
6 not to be held against you in any way. I will tell them again
7 the fact that you represent yourself is not to be a factor in
8 their decision-making.

9 I'll explain to them what reasonable doubt is. I will
10 explain to them what the elements of second degree burglary in
11 this case are. I'll talk to them about criminal intent and
12 tell them that their verdict must be unanimous.

13 THE DEFENDANT: And beyond a reasonable doubt?

14 THE COURT: Yes, sir. Proof beyond a reasonable doubt is
15 pretty much the middle thing that I talk about. All right?

16 THE DEFENDANT: I just -- I'm just trying to be clear
17 about this. So I wrote my statement -- my argument approaches
18 a statement. Briefly, I've got a paragraph that includes my
19 parents.

20 THE COURT: You can talk about your parents.

21 THE DEFENDANT: Okay.

22 THE COURT: But you can't -- you can't -- you can't tell
23 the jury what they would have said if they had testified.

24 THE DEFENDANT: Oh, no, no.

25 THE COURT: Sure. I mean you --

1 THE DEFENDANT: Okay.

2 THE COURT: Yes, ma'am?

3 MS. MCELVEEN: Also, the penalty is not supposed to be
4 out there.

5 THE COURT: Yes. That's correct. The -- neither side is
6 --

7 THE DEFENDANT: Oh, I understand that.

8 THE COURT: Neither side is permitted to tell the jury
9 what the potential sentence is.

10 THE DEFENDANT: Okay. Now, one last thing.

11 THE COURT: Yes, sir.

12 THE DEFENDANT: Since my charge was back-graded to the
13 original charge from first-degree burglary, I can mention
14 that; right?

15 THE COURT: Well, that --

16 THE DEFENDANT: It's --

17 THE COURT: That has -- that has come out in evidence.

18 THE DEFENDANT: Okay.

19 THE COURT: It wasn't objected to.

20 THE DEFENDANT: Okay.

21 THE COURT: But it's really -- to me, I don't have any --

22 THE DEFENDANT: Okay.

23 THE COURT: -- cause to debate that with you, but the
24 fact that it was lowered from burglary in the first degree to
25 burglary in the second degree is really not relevant to the

1 proof in the case. It's not really relevant --

2 THE DEFENDANT: I understand that.

3 THE COURT: -- to any of the issues of the case.

4 THE DEFENDANT: I understand that.

5 THE COURT: All right. But if -- if Ms. McElveen objects
6 or you object to anything she says or she objects to anything
7 you say, I'll rule on it according to what the rules are.

8 THE DEFENDANT: All right, sir.

9 THE COURT: Do we have everybody?

10 THE CLERK: Yes, sir.

11 THE COURT: All right. Is the State ready?

12 MS. MCELVEEN: Yes, sir, Your Honor.

13 THE COURT: Mr. Duren, are you ready?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Okay. You can bring in the jury. Would you
16 -- would you turn the screen off, please?

17 MS. MCELVEEN: Yes. Well, I don't --

18 THE COURT: Or just put something over it for now while I
19 talk to the jury.

20 MS. MCELVEEN: Okay.

21 THE COURT: Just put a piece of paper over it.

22 MS. MCELVEEN: I don't know if I can --

23 THE COURT: Oh, okay. Just leave it there then.

24 MS. MCELVEEN: Okay.

25 THE COURT: Just leave it there.

1 MS. MCELVEEN: I think you can --

2 THE CLERK: You can hit reject.

3 THE COURT: If I hit reject, I won't ever be able to get
4 it to come back on.

5 MS. MCELVEEN: I'm sorry.

6 THE COURT: It's fine that it's up there, but it would be
7 better for --

8 MS. MCELVEEN: If I do this --

9 THE COURT: Okay.

10 (WHEREUPON, the jury entered the courtroom.)

11 THE BAILIFF: All the jurors are back in the courtroom,
12 Your Honor.

13 THE COURT: Thank you, sir. All right. Ladies and
14 gentlemen, we are ready to move forward with the trial of the
15 case. As I mentioned to you yesterday, all of the evidence
16 that is going to be presented has been presented.

17 The next stage of this trial is the closing argument
18 stage. Under the rules that we follow in this particular
19 case, the State will present the first argument and the State
20 will, through Ms. McElveen, do what is called open on the law.
21 In other words, she is permitted during this part of the
22 argument to refer to the law as I will charge it to you.

23 Mr. Duren will be permitted and have the right to make
24 the argument next. And after that, Ms. McElveen for the State
25 will be presenting the State's closing argument.

1 I will tell you this. Under the rules, the State and the
2 defendant are both entitled to refer to the evidence that has
3 been introduced, but I will remind you what they say to you
4 during the course of their arguments is not evidence itself
5 because this is not the time for testimony.

6 If they refer to evidence that does not correspond with
7 your collective memory of what the evidence actually was, you
8 go with your memory and your interpretation of the evidence.
9 Don't necessarily follow what they say just because they say
10 it.

11 Likewise, they are permitted to refer to the law as I am
12 going to charge it to you. But again, I will give -- I will
13 give you the law. If they refer to the law in a way that does
14 not correspond with the law as I give it to you, you must go
15 with it exactly as I give it to you.

16 As I will tell you when I begin the jury charge, if you
17 come into this case with a preconceived notion of what you
18 think the law is or what you think it ought to be, you must
19 put that out of your mind. Again, you must go with the law
20 exactly as I give it to you.

21 We are at the point now where you must still continue to
22 pay very close attention because the time is coming for you to
23 be using your common sense and your view of the evidence and
24 the law as I give it to you to reach a verdict that speaks the
25 truth. And as I will tell you again, your verdict will be

1 that either the State has or has not proven the elements of
2 the crime charged beyond a reasonable doubt.

3 So please give Ms. McElveen and Mr. Duren your undivided
4 attention. Depending upon the length of the arguments, we may
5 take a brief recess after those and then have you come back
6 out for the jury charge.

7 All right. Ms. McElveen?

8 CLOSING ARGUMENT (LAW) ON BEHALF OF THE STATE

9 MS. MCELVEEN: Good morning, ladies and gentlemen. We
10 are at the finish line. I know we're all glad to be there,
11 and thank you for your attention these last two days and now
12 going into a third day. I will be brief opening on the law.

13 Mr. -- the defendant is charged with burglary second
14 degree, and you can see on this screen the statute typed out
15 so that we can go through element by element, and this is just
16 what's written in the rule book.

17 It's a person enters a building without consent with
18 intent to commit a crime therein. And in this case, the
19 person has a prior record of two or more convictions of
20 burglary and/or housebreaking. We have to prove all of these
21 elements beyond a reasonable doubt.

22 Now, entering a building. Thomas & Howard Company,
23 definitely a building.

24 Without consent. People have testified that he didn't
25 work there. It was the middle of the night. No clients are

1 going to be in the building in the middle of the night. He
2 had no business being there in the middle of the night outside
3 of business hours..

4 And with intent to commit a crime therein. Cigarettes
5 were obviously taken. There are cigarettes laying across the
6 field. There are cigarettes behind the refrigerator unit.
7 Cigarettes, that was the crime.

8 And we have entered evidence of his sentencing sheets
9 from his two prior burglary charges. Two prior convictions
10 for burglary.

11 We have to prove all of this though beyond a reasonable
12 doubt. Now, beyond a reasonable doubt is a very high burden
13 of proof, and the State bears that burden. We know that's a
14 very high burden. However, it's not beyond any doubt. It's
15 not beyond the "as seen on TV", NCIS, unreasonable, crazy,
16 off-the-wall doubt.

17 It's beyond a reasonable doubt. You guys use your
18 reason. You're smart people. You have common sense. You're
19 here today to use that common sense.

20 Reasonable doubt. For instance, Little Johnny is
21 outside. He's playing baseball. He's got his mitt, he's got
22 his glove, he's got a ball. You're inside the house working
23 or watching television, whichever you would rather be doing.
24 And he's got that eye black on underneath his eyes. Okay?

25 And all of a sudden, you're sitting there or you're

1 standing at the sink working and you hear a crack and in comes
2 a baseball through the window. Ladies and gentlemen, you pick
3 up the baseball and you look at it and, sure enough, there's a
4 little bit of that eye black on that baseball from him
5 sweating. And you run outside and you say, Johnny, you come
6 here. You just put that ball through my window.

7 He says, oh, no. Meanwhile, he's got the bat. He's got
8 the glove. He's right out there. He says, oh, no, someone
9 put that eye black on that ball. I didn't do it.

10 Now, we're all reasonable people. You're still going to
11 send Johnny in the house and you're going to send him to bed
12 without supper or whatever sort of punishment you decide to
13 put on Little Johnny.

14 That is -- of course, he could claim someone else put
15 that eye black on that ball. He could claim someone else
16 lobbed that baseball through your window. He could say I
17 didn't break the whole window; I broke part of it.

18 He could try to distract you from whatever he wanted to
19 say, but you know that Johnny put that baseball through the
20 window. That is the level of proof we have to reach. Beyond
21 a reasonable doubt.

22 We just ask you to use your reason, your common sense,
23 and I'll come back and speak to you more on the specific facts
24 of this case. Thank you.

25 THE COURT: Mr. Duren?

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

THE DEFENDANT: Good morning, ladies and gentlemen of the jury. How are y'all doing this morning?

Ladies and gentlemen of the jury, I just want to thank you for the service of your last two days. You did not have to be here, but your service was required, your precious time, for this matter.

First of all, playing baseball, you don't put nothing black under your eyes like football you do. Not baseball. So therefore, if you're playing with a baseball outside, you wouldn't have no eyeshadow under your eye. It's just as simple as that. I know in football they put it under there, but I've never seen it in baseball. I know they put on shades.

Well, I know you'd probably love to be somewhere else, but your service is required for just a few more hours. I'd rather be somewhere else other than this place this morning, like with my mother in the garden, my best friend, or my father, who is also my best friend.

They were here the other day, but -- they're here supposed to be today. You know, they were a couple that didn't have much in life, but they had each other. Fifty-nine years they had each other, two more years older than I am. Lovely couple.

But anyway, to go from there, in 2011 I was staying in

1 Columbus, Georgia, and I thought about my mother and father.
2 And I said you know what? They're getting old. You know,
3 they -- I need to go back to South Carolina. And I had a
4 friend down there and she said you really don't want to go
5 back to South Carolina. I said it's the duty. It's a son's
6 duty to go back and take care of his parents and stuff when
7 they get old.

8 And little did I know that the trouble that was in front
9 of me when I got here, you know. How would you be -- how
10 would you feel being accused of something that you know you
11 didn't do even though the evidence that they have says that
12 you did it, but in your heart you know you didn't do it? It's
13 just as simple as that.

14 In May of 2012, I was charged with burglary second
15 degree, something the police department had every right to
16 arrest me. They said they found blood on the scene and they
17 said it was my blood. And from that day that I was arrested,
18 I have stuck by and I will stick by until I go to my grave I
19 didn't do it. I don't know how the blood get there.

20 And in the three years that I have been charged, I've
21 learned a lot of things. For one, you have to look out for
22 yourself. You can't put your life in the hands of the Public
23 Defender's Office. You can't.

24 And I realized something else. The Solicitor's Office
25 will go to any extent --

1 MS. MCELVEEN: Objection, Your Honor.

2 THE COURT: Well, Mr. Duren, you can comment on the
3 evidence or lack of evidence.

4 THE DEFENDANT: Okay.

5 THE COURT: Don't comment on the tactics of the
6 Solicitor's Office.

7 THE DEFENDANT: Okay.

8 THE COURT: You can comment on the tactics of the police,
9 but not the Solicitor's Office.

10 THE DEFENDANT: Well, let me rephrase that. The police
11 will go to any extent to get a conviction.

12 On 9/27/2012, Mr. Brad Jewett [phonetic] upgraded my
13 burglary second to a burglary first degree, but three years I
14 was facing the charge of burglary first degree, almost three
15 years. During those three years, me and my public defender
16 were planning to go to trial for burglary second -- burglary
17 first degree.

18 In prison, I didn't -- for a minute, I didn't know I was
19 indicted on burglary first degree. I still thought I was
20 under the warrant of burglary second degree until recently
21 last year. June of last year, I found out I was indicted for
22 burglary first degree.

23 And I kept asking my attorney how could they do that. He
24 said, well, Mr. Duren, like she say, you have two priors like
25 I do. So I went along with it.

1 And I asked him about bond. He said, well, I don't think
2 you're going to get no bond. I went to bond court. I didn't
3 get a bond. Then I asked my -- asked my attorney -- I said do
4 you think we have a chance a trial. He said, well, Mr. Duren,
5 they have your blood. I said -- but I didn't do it. And he
6 said, well, what do you want to do? So I thought about it. I
7 said you know what? I can defend myself.

8 So in January of this year, I got rid of my attorney. I
9 said I'd do my own research. And I found out something. I
10 found out that the Solicitor's Office -- oops, forgive me. I
11 found out that my charge couldn't be upgraded to burglary
12 first degree.

13 And I asked myself -- I said why -- why are they doing
14 this? So why are they doing this? So I started doing my
15 research and stuff. But I'm going to tell you something. To
16 come in pro se -- and pro se being representing yourself -- if
17 you think the doors are closed when you have a public defender
18 representing you, try representing yourself. All the doors
19 are closed then, every last one of them. You can't get
20 nothing done. Everything I filed with the clerk's office --

21 MS. MCELVEEN: Objection, Your Honor.

22 THE COURT: Sustained. Mr. Duren, you may argue to the
23 jury on the evidence or lack of evidence and the law. There
24 is some latitude.

25 THE DEFENDANT: Okay.

1 THE COURT: But you may not discuss any of your
2 interactions with the Clerk of Court.

3 THE DEFENDANT: Okay. Well, in order for me to get stuff
4 filed and stuff, I had to get my --

5 MS. MCELVEEN: Objection, Your Honor.

6 THE COURT: Sustained.

7 MS. MCELVEEN: He's still talking about --

8 THE COURT: Sustained.

9 THE DEFENDANT: You know, I spent eight years in the
10 Marine Corps. One thing the Marine Corps taught me, how to
11 make something out of nothing.

12 You know, our fathers -- our founding fathers intended
13 when they wrote the Constitution of this great nation that no
14 man or woman should suffer for a wrongful conviction or should
15 be unjustly imprisoned or, worse, executed because of a
16 mistake on the part of the State. And there's some mistakes
17 that have been made.

18 Let's talk about the trial and forget everything else.
19 Let's talk about the trial.

20 As you see, the State has unlimited funds available to
21 them. They brought a DNA expert in here all the way from
22 Indianapolis just for this trial. A DNA expert from Columbia.
23 They got all kind of investigators, police department. They
24 got unlimited funds.

25 This indictment was handed to me on May the 13th for

1 second degree burglary, two business days before the trial.

2 MS. MCELVEEN: Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. MCELVEEN: Objection. Not -- arguing facts that are
5 outside of --

6 THE COURT: Sustained.

7 MS. MCELVEEN: -- evidence.

8 THE DEFENDANT: You know what? It all taught me don't
9 cry over my situation. Overcome it and go on.

10 Let's talk about reasonable doubt. Reasonable doubt,
11 Black's Law Dictionary, the lawyer Bible.

12 Reasonable doubt. A lingering doubt following serious
13 consideration of a matter, not just any possible doubt.
14 Reasonable doubt is the same thing as not being convinced of a
15 defendant's guilt beyond a reasonable doubt. No matter how
16 small or tiny a doubt, you must find the defendant not guilty.
17 Beyond a reasonable doubt, the burden of proof that the
18 solicitor must carry in a criminal trial to obtain a guilty
19 verdict.

20 Ladies and gentlemen, there's a saying that said my
21 people perished because of lack of knowledge. One must study
22 to show thyself approved. If you don't know, you're going to
23 get taken advantage of. It's just as simple as that.

24 Let's talk about trial. Let's talk about first about Mr.
25 Thomas Page, employer, Thomas & Howard Company. Ten years on

1 the job. Ten years. I'm curious. You've been employed to a
2 place for ten years, you would know that place inside out.
3 You would know all the ins and outs. You would know whatever
4 happened to that place.

5 You're home one night, Mr. Page, and burglar alarm goes
6 off. You get out of your bed. You go to the place. Police
7 is with you. You open the door. You go in and turn off the
8 alarm. You look the place over. Nothing missing.

9 If it was my business, I'd go around the whole business.
10 I'd check the whole place out. The alarm go off. I don't
11 care if the alarm went off behind the counter. I'm still
12 going to check out my whole place. But you find nothing
13 wrong. You find nothing missing. You lock up. You go home.

14 Next morning, you come to work. You find a big hole in
15 the back of the building. How it got there, you don't know.
16 But the night before, you didn't check it. Nothing missing,
17 but now -- now, police report. And then determine amount of
18 cigarettes is missing. That's a big hole in the back of the
19 wall. Somebody done came in, went over the top of the
20 refrigerator, and gone back out. That's what he testified to.

21 The police does a incident report. You've got more than
22 one of them. This one -- they're totally different.
23 Description of what's missing. Nothing missing the night
24 before. Now, this morning, consumable cigarettes. Quantity
25 missing, one. Value, one dollar. Somebody broke in your

1 place to steal one dollar worth of cigarettes? That doesn't
2 make sense.

3 Other report. Description: nothing missing the night
4 before. What's missing now? Consumable cigarettes. Value,
5 one dollar. Quantity, one. Two different reports, two
6 different things. I'm sure you can't make that mistake twice,
7 two people. Quite sure there was nothing missing the night
8 before. Nothing missing this morning.

9 One thing the Marine Corps taught me -- when I was an
10 embarkation clerk, I kept inventory, every piece of gear the
11 Marine Corps had in my battalion. I could check where it was,
12 how much they had, how much I had to get.

13 If your place is broken into, the first thing you're
14 going to do is inventory. That's what you're going to go.
15 You're going to do inventory. You're going to find out what's
16 missing. You're going to find out how much, and you're going
17 to find out the value. It's just as simple as that.

18 But according to Mr. Page, nothing was missing the night
19 before, but now we have all this turning up. Mr. Page didn't
20 -- he was on the stage, yes. I believe on the witness stand I
21 asked what was taken. Thirty cartons. How are you not going
22 to miss thirty cartons the night before? Thirty cartons of
23 cigarettes? That's a lot of cigarettes.

24 And then I asked Mr. Page has your place ever been broken
25 into before. Oh, excuse me. I got mixed up. Mr. Spiegel, I

1 mean. Forgive me. He said not as long as he's been there,
2 ten years. Ten years.

3 Excuse me?

4 THE COURT: Yes, sir?

5 THE DEFENDANT: Am I allowed to deal with pictures?

6 THE COURT: Yes, sir. Now, these have been marked -- put
7 into evidence?

8 THE DEFENDANT: No, sir.

9 THE COURT: Those have not been introduced?

10 THE DEFENDANT: No, sir. These are still the exact same
11 pictures.

12 THE COURT: Well, they -- look at them. Yes -- the
13 answer to your question -- you are permitted to show the jury
14 pictures as long as they are in evidence. Are those your 2
15 through 29 or part of your 2 through 29?

16 MS. MCELVEEN: I don't believe -- this one is, but the
17 other two are. Sir, it doesn't -- I'm -- it's -- the State is
18 fine.

19 THE COURT: Okay.

20 MS. MCELVEEN: I'm sorry. The State has no objection.

21 THE COURT: Yes, sir. You can -- you can show them
22 pictures.

23 THE DEFENDANT: The first picture I want to show to the
24 jury and pass around is the brickwork on the building. Look
25 at the difference in the mortar joints.

1 (WHEREUPON, there was a pause in the proceedings for the
2 jury to review the photograph.)

3 THE DEFENDANT: Thank you, sir. Looking at the mortar
4 joints, these are evenly spaced. This one is all smeared.
5 The blocks are different. You have a block laying down here.
6 Anybody breaking into a place, I would say they're not going
7 to take their time and pull these blocks out and set them out.
8 They're going to take a hammer or sledgehammer and bust them
9 up. It's just as simple as that. They're not going to take
10 their time and take these blocks and just place them down
11 there. That ain't going to happen.

12 Now, you can see this place has been repaired before.
13 And from looking at it, it wasn't that long.

14 These two pictures, different angle right over the entry
15 point. Two sheets of plywood that goes down between the 2x6s
16 placed over there. You can see the two sheets of plywood back
17 there. It's been patched before. If you work in a place, you
18 can't miss that. A picture is worth a thousand words they
19 say.

20 (WHEREUPON, there was a pause in the proceedings for the
21 jury to review the photographs.)

22 THE DEFENDANT: Thank you, sir. Yesterday, Mr. Spiegel
23 testified on the stand. I asked him -- I said, well, how long
24 is this building, and I believe he said, oh, about from here
25 to the other side of the door. You've been working there ten

1 years? We've got a picture showing the building is longer
2 than that, at least two and a half -- three times longer than
3 that, the outside and the inside of the building. You can see
4 the building.

5 (WHEREUPON, there was a pause in the proceedings for the
6 jury to review the photographs.)

7 THE DEFENDANT: Thank you, sir. Yesterday, Mr. Spiegel
8 also testified under oath and said something that got me
9 curious and got me to thinking. I asked him the location of
10 the building. From this trial, I found out the building is
11 located next to the railroad track on South Harvin Street.
12 That's approximately -- I asked the fellow. Approximately
13 three-and-a-half -- four blocks away from Sumter Police
14 Department.

15 Mr. Spiegel testified yesterday. I asked him did they
16 have a burglar alarm in the place. Well, I guess they do
17 because he said the alarm was going off. But he said that
18 alarm was highly sensitive. Highly sensitive. Those was his
19 exact words. Highly sensitive. He said it was so sensitive
20 if a mouse ran across the floor, it would go off. Those were
21 his words.

22 And he also stated he came up there numerous of times --
23 other times to turn off the alarm. An alarm that sensitive --
24 that sensitive, a person breaking into that place has got to
25 hear the alarm going off. He's not going to go in there. The

1 alarm is going off. The police department is right there.

2 I don't know. It doesn't make any sense. If the alarm
3 is going off, who is going to continue to break in and go in
4 the place? I'm just curious if their alarm was that sensitive
5 and going off, three-and-a-half -- four blocks away from the
6 police station, is a burglar going to break in a place while
7 an alarm is going off? Response time should be little or
8 nothing from there because if the alarm is going off at his
9 house and I know it's going off at the alarm company, I know
10 they would contact the police department. It's not going to
11 take no twenty minutes or an hour because they're right there.
12 What's wrong with that picture?

13 But let's move on from Mr. Page and Mr. Spiegel. Let's
14 go to Ms. Johanna Aleck. She was on the crime scene. She
15 testified here. She testified yesterday I think. She
16 testified that she helped with the crime scene. As a matter
17 of fact, I have her incident report right here, a copy of it.

18 It says evidence collected, Newport cigarette carton from
19 grass behind business. Cigarette carton, two swabs each. Two
20 bloody spots located on the top of the refrigerator. I
21 believe she said that somebody else took those because she
22 couldn't get up there. Cigarette carton with cigarette,
23 partially empty Dr. Pepper bottle from behind refrigerator.

24 She said arrived, photographed scene. Suspect entered
25 building by tearing a hole in the wall behind the

1 refrigerator, climbing on top and over the refrigerator.

2 Scene was not dusted for prints due to contamination by
3 owner/employee prior to our arrival.

4 Two red stains were observed on top of the refrigerator
5 and one nearest the corner of the refrigerator tested positive
6 for mammal blood when tested on the scene for -- which I can't
7 pronounce that word. Swabbed each stain with two swabs each
8 for DNA testing, one near corner and one near entry point.
9 Collect remaining evidence and depart scene. Signed, Johanna
10 R. Aleck.

11 Scene was not dusted for fingerprints due to
12 contamination. Definition of contaminated: soiled or infected
13 by contact or association. The scene was not dusted for
14 prints due to contamination by owner/employee prior to
15 arrival.

16 Yesterday on the stand, Ms. Aleck testified that she
17 lifted a print off a Newport carton, a partial print. So I
18 want to know if the scene wasn't dusted for prints due to
19 contamination by owner and employee, where did the partial
20 fingerprint come from? You just said in your report you
21 didn't take any. The area was contaminated.

22 Inconsistency. Inconsistency. Excuse me. You know, the
23 English language isn't one of my best languages.

24 Then I believe the State referred to -- well, they asked
25 Ms. Aleck if the burglar was wearing gloves, would he have

1 done any prints. She's right. It wouldn't have left any
2 prints. So how do you get a print from a Newport carton if
3 he's wearing gloves? Where did you get that from? Good
4 question. We surely would like to know. I'd like to know
5 where the print came from after you done specifically said the
6 scene was not dusted for prints due to contamination.

7 But I also got another. If I'm a crime scene
8 investigator, which I'm not and that's a whole 'nother thing,
9 but I'm just saying if I was and if I collected --
10 contaminated or not, contaminated or not, I still would dust
11 for fingerprints. I would look for DNA. I would.

12 They may not be admissible as evidence because it was
13 contaminated, but I would be curious. That's just me now.
14 That's just me. I can't speak for anybody else, but I'm just
15 still just curious why everything else wasn't tested.

16 If the area -- if one area is contaminated, the whole
17 place is contaminated. If a man go up on top of the freezer
18 to collect blood that's up there, that's contaminated too. He
19 was up there before they got there. He said that. He had to
20 get a ladder and get up there after they found where he was
21 coming in. Mr. Spiegel said that.

22 So if that area -- if that's contaminated, everything
23 else is contaminated. It's just as simple as that. You can't
24 have one or the other. It's just as simple.

25 Let's move on to Mr. Kenneth Bogan. Bogan. Bogan, South

1 Carolina Law Enforcement Division, a man twenty years in his
2 profession. That was his -- one of his credentials yesterday.
3 Twenty years is a long time to be in one job, to know your job
4 inside out.

5 On the stand, Mr. Kenneth Bogan -- he testified that his
6 lab only sent -- outsource I say. Outsource to Strand
7 Laboratory -- Strand -- I can't pronounce that word. It's a-
8 n-a-l-y-t-i-c-a-l. Strand something Laboratory in
9 Indianapolis. That was his testimony at first. That's the
10 only place they outsource to.

11 You can identify it, the SLED thing, by right up here in
12 the corner, SLED Lab Number LL70133, April 15th, 2012. He
13 testified to that, just the one lab. Then I present Mr. Bogan
14 with another outsource report, different lab, different date,
15 but you can also identify that by SLED Lab Number L-13-14-
16 2370, June 13, 2014.

17 So I asked him where did that come from. Then he stated,
18 oh, well, we outsource to two or three other vendors. But
19 that wasn't your statement at first. Your statement at first
20 you only outsource to one vendor, one in Indianapolis. This
21 one says in Dallas, Texas, a whole 'nother state. A whole
22 'nother state.

23 Oh, excuse me.

24 (WHEREUPON, the defendant and counsel for the State
25 confer.)

1 MS. MCELVEEN: No, Your Honor.

2 THE COURT: Are those in evidence, Mr. Duren?

3 THE DEFENDANT: Huh?

4 THE COURT: Are those in evidence?

5 THE DEFENDANT: I think one of them might be.

6 THE COURT: Well --

7 THE DEFENDANT: Okay.

8 MS. MCELVEEN: Your Honor, the test relating to our case
9 is in evidence. That test from another separate case is not
10 in evidence. That does not pertain to this case at all.

11 THE COURT: All right. All right. You can -- you can
12 publish to the jury anything that's got a sticker --

13 THE DEFENDANT: Okay.

14 THE COURT: -- and admitted into evidence in this case.

15 THE DEFENDANT: Okay. I also asked Mr. Kenneth Bogan --
16 I said, Mr. Bogan, if you have a protocol in your division,
17 would you go by a protocol? And he simply said, yes, I go by
18 a protocol.

19 Then I asked Mr. Bodan -- Bogan -- I said, Mr. Bogan, if
20 someone signed a consent form to give the following:
21 saliva/blood -- no, back up. To give the following sample:
22 hair, saliva or blood as needed for forensic lab analysis. I
23 hereby give this consent for whoever to obtain such samples
24 through a medical doctor/nurse.

25 I said would you follow that protocol, and Mr. -- Mr.

1 Bogan said -- I can't say the exact words, but he said I would
2 -- he thought about it at first and he said I would get a
3 medical doctor to take the blood because -- I don't know.
4 Maybe he said he wasn't qualified, but he said -- but the swab
5 I would do it because I'm trained. I said that's not what I
6 asked you. I said would you follow protocol. He said I would
7 get a medical doctor to do the blood, but I've been trained to
8 take swabs. I said that's not what I asked you.

9 Even though consent was given, consent was given for a
10 medical doctor or nurse, not you. It's just as simple as
11 that. It's in black and white.

12 May I?

13 THE COURT: If it's in evidence, yes, sir, you can
14 publish it to the jury.

15 THE COURT: If you look, consent is given, but protocol
16 says a medical doctor/nurse, not nobody else. Not nobody else
17 to take it upon theirself. Now, if I read it wrong, I could
18 read -- I could have read it wrong, and I'll be the first to
19 admit I did give consent.

20 (WHEREUPON, there was a pause in the proceedings as the
21 jury reviewed the document.)

22 THE DEFENDANT: Thank you, sir. Now, let's move on to
23 Mr. Trey Tallon, South Carolina Law Enforcement Division.

24 THE COURT: Is everybody on the jury okay? Anybody need
25 to take a break? All right. Go ahead, Mr. Duren.

1 THE DEFENDANT: I forget my --

2 MS. MCELVEEN: Your Honor, can we assist him? We can
3 turn on the document viewer.

4 THE COURT: No. That's okay.

5 MS. MCELVEEN: Okay.

6 THE COURT: Keep -- Mr. Duren, if you do need that --

7 THE DEFENDANT: No.

8 THE COURT: -- you can ask permission to cut it on
9 because you can show them quicker.

10 THE DEFENDANT: I won't --

11 THE COURT: But it's your -- you have the floor.

12 THE DEFENDANT: Mr. -- Mr. Trey Tallon collected the
13 blood from the scene. As you recall -- can recall, he said he
14 collected blood from two places on the scene of this crime.
15 The top of the refrigerator, one, above the entry point right
16 where the burglar was supposed to have come in. Two, on the
17 corner of the freezer, distance about -- I'm guesstimating
18 twenty feet.

19 Something that's bothered me -- you collected two-
20 specimens of blood. When you send them to SLED -- when you
21 send them to SLED, you only ask that one be tested. One.
22 Something strange to me. Why not both? Why not both?
23 Especially one over the entry point. Why not both?

24 In one of the reports, you say you tested for mammal
25 blood, but you don't tell what the one over there's report

1 tested for. There's something strange, isn't there? No kind
2 of conclusion of what kind of blood that was, whether it was
3 animal or whether it was human. No -- no analysis. Yet you
4 get one for the corner. Why is that?

5 And if you looked at the one on the corner, it looked as
6 though somebody smeared it there. If a person is bleeding,
7 it's going to -- it's going to drop. It's going to splatter.
8 It's not going to be smeared. I could be wrong, but if a
9 person is bleeding and only two spots in the whole place if a
10 person is bleeding? I could be wrong now. I don't know. I'm
11 not the expert in this, but I could be wrong.

12 Then I asked Mr. Tallon a question and he answered it. I
13 said, Mr. Tallon, could that blood have been placed there by
14 someone, and he said yes. It's as simple as that. It's as
15 simple as that. It's as simple as that.

16 But the question is -- I still want to know. If you've
17 got two spots of blood, one over here in the corner and one at
18 the entry point, and you test the one way over here, but you
19 don't test the one at the entry point and you don't give no
20 kind of analysis of what kind of blood it was? It doesn't
21 make sense. He being an investigator, especially from SLED in
22 Columbia, he's supposed to be one of the decorated law
23 enforcement division in South Carolina, I want a thorough job.
24 That's what they taught me in the Marine Corps.

25 I'm a mechanic. That's how I did my business. I do an

1 excellent job. My customers speak for me. I don't have to
2 worry about work. I can't answer that. Maybe y'all can, but
3 I can't.

4 Let's move on to Mr. John Melton, Sumter County Police
5 Department. Mr. Melton. I don't have the second one. I left
6 it. Rushing and rushing and rushing. But I trust the jury.
7 I trust that they have good memories.

8 Mr. Melton stated that I was arrested on the 5/27/2012.
9 Right here it says on 5/27/2012, David Duren was arrested and
10 transported to the Sumter Lee Regional Detention Center. I've
11 also produced another piece of paper that said -- I don't have
12 it with me today, but it's on record. We got testimony that
13 said Mr. David Duren arrested 5/15/2012, transported to the
14 Sumter Regional Detention Center. I've got to figure out how
15 I got arrested on the 15th and transported and got arrested on
16 the 27th and transported, and was never out of jail. It
17 doesn't make sense. It doesn't make sense at all.

18 Then I think I asked Mr. Melton about the quantity of
19 cigarettes stolen and he said he didn't know and I showed him
20 a report, an investigator's report.

21 THE COURT: Is that in evidence, Mr. Duren?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is it entered into evidence? I don't know if
24 it is or not because I haven't seen the exhibits. I've just
25 ruled on them when necessary.

1 MS. MCELVEEN: No, sir. Your Honor, incident reports are
2 not in evidence.

3 THE COURT: You can -- you can refer to testimony or
4 other evidence, but you may not --

5 THE DEFENDANT: Okay.

6 THE COURT: -- hand anything to the jury unless it is --
7 that exact physical thing is in evidence.

8 THE DEFENDANT: Okay.

9 THE COURT: All right.

10 THE DEFENDANT: Thank you.

11 THE COURT: Is everybody on the jury okay?

12 THE DEFENDANT: Is everybody comfy?

13 THE COURT: You don't ask them, Mr. Duren. I ask them.

14 THE DEFENDANT: Okay.

15 THE COURT: Okay?

16 THE DEFENDANT: All right. I don't know whether you can
17 see, but right here --

18 THE COURT: You can't -- you can't show it to them.

19 THE DEFENDANT: Okay.

20 THE COURT: You can refer to the testimony about
21 something, but you may not hand them a physical object that
22 has not been introduced into evidence.

23 THE DEFENDANT: Anyway, I have two separate incident
24 reports. I've read them. I read them earlier. Consumable
25 cigarette. Quantity, one. Value, one dollar. Property

1 stolen: consumable goods, consumable cigarette. Value, one
2 dollar. Quantity, one. He told me that was the first he knew
3 about it.

4 Well, let's move on to the DNA swab that Mr. Melton took.
5 I believe you've already looked at this. Top of the page,
6 City of Sumter Police Department, Consent to Give Sample for
7 Analysis. As I stated before, yes, I did sign a consent form.
8 Yes, I gave Mr. Melton a swab. Only after -- only after I was
9 told if I didn't give him a swab --

10 MS. MCELVEEN: Objection, Your Honor. He's testifying.

11 THE COURT: You may not testify.

12 THE DEFENDANT: Okay.

13 THE COURT: You may not testify. It is the rule. Ms.
14 McElveen can't do it either. Ms. McElveen, for example, can't
15 hand the jury a document that is not in evidence. You can't.
16 You cannot testify from where you -- during this portion of
17 the proceeding, Mr. Duren. You can refer to evidence, but you
18 may not testify at this stage.

19 THE DEFENDANT: I can't refer to anything that was said
20 by --

21 THE COURT: You can refer to what a witness said. You
22 cannot refer to what you said because you -- you are not
23 giving testimony.

24 THE DEFENDANT: The bottom line is consent was given for
25 a doctor -- medical doctor/nurse to take this test. It's just

1 as plain and simple as that. It's plain and simple as that.
2 It's in black and white. Plain and simple. Plain and simple.
3 Black and white.

4 Let's move on to Ms. Cynthia Cale, Strand Analysis, DNA
5 expert, flew all the way here from Indianapolis, highly
6 trained young lady. She's testified at over -- she said at
7 over hundreds of trials -- hundreds of trials. I believe I
8 asked her the question have mistakes ever been made in her
9 lab. She said yes. Very honest answer.

10 I believe I asked her have DNA evidence have been placed
11 at a crime scene to incriminate people. I believe she
12 answered that truthfully. She said yes.

13 I believe I asked her could a person take another
14 person's blood and place it at a crime scene that that person
15 has committed a crime, and she answered truthfully. She said
16 yes, it's possible. It is possible. It is very much
17 possible. It's been done. Can't go there. Can't go there.
18 It's very much possible.

19 And I'm just curious. There's only thing that links Mr.
20 Duren to this crime. One smear spot of blood. One smear
21 spot. That's the only thing. And I'm also curious why both
22 spots of blood wasn't tested. I'm very curious. I'm very
23 curious. I'm curious how it got there. Very curious.

24 Two experts. Two experts stated, one from South
25 Carolina, one from Indianapolis, it's possible. It could have

1 been. It could be done. It has happened. It came from the
2 experts. It didn't come out of my mouth. It came out of
3 their mouths. It has happened.

4 MS. MCELVEEN: Your Honor, that's a misstatement of the
5 testimony. Nobody testified that it has ever happened.

6 THE COURT: You can address that. The jury can sift
7 through the evidence in its mind. Go ahead, Mr. Duren.

8 THE DEFENDANT: Ladies and gentlemen of the jury, I ask
9 each and every one of you to search your heart and weigh the
10 evidence. Do what's right. Do what your heart tells you to
11 do. You get to go home today after this trial to your family
12 and your loved ones.

13 You know, a crime has been committed. I'm sorry about
14 that. And it looks like I did it, but I'll tell you in my
15 spirit I know I didn't. One piece of evidence out of all the
16 evidence at the crime scene, two spots of blood, one tested.
17 The night before, nothing missing. The next morning, thirty
18 cartons. One piece of evidence, two spots of blood, one
19 tested, one not. Why?

20 DNA is a wonderful thing. It can set a person free, but
21 I'll show you it also can be used to lock a person up. Are
22 you going to deprive Mr. Duren of his freedom today --

23 THE COURT: Over -- overruled.

24 THE DEFENDANT: -- because someone wanted to get him off
25 the street for their personal gain?

1 Are you going to deprive Mr. Duren's mother of the
2 comfort that she'll -- that she knows she will not be getting,
3 nor her beloved son will not be there for her when she leaves
4 this world? Are you going to deprive this woman of her joy
5 she experiences with her son planting her garden each year?

6 You know what? Last year, I remember -- I remember a day
7 that's going to stick with me forever. I asked my mom -- I
8 said, mom, are you going to plant a garden this year, and she
9 said, no, son, I don't feel like planting a garden. I knew
10 different.

11 So I got out there a week and I got the tiller and I got
12 the ground ready for planting and made the rows. I made about
13 twenty rows. The whole time I saw my mother looking out the
14 kitchen window just waiting. And I asked her -- I said I want
15 to see if they got that done. So I told her -- I said, mom,
16 I'm going fishing. Of course, I wasn't going fishing. I only
17 left to give her a chance to plant her rows.

18 I came back. Of course, I ain't had no fish. I told her
19 -- I said, well, mom -- I said I'm going to get my seed and
20 I'm going out there and plant my rows. Man, she just started
21 laughing. I mean she just started laughing. And I said, mom,
22 I know you just couldn't stand the thought of being in that
23 garden all by myself knowing you like to be right out there
24 with your hoe right beside me.

25 I said, well, I'll go out there and plant what rows you

1 got left for me. She started laughing again. I said what's
2 this. She said you ain't got no rows left out there. Shoot,
3 I done planted all twenty of them. And you know what? I saw
4 so much joy and love in that precious moment. I'll never
5 forget that moment.

6 Ladies and gentlemen, it's not all about us in life.
7 It's about joy and love that you can bring into the lives of
8 another human being.

9 So I ask you today to look real hard at what has been
10 brought before you. Look real hard. If you see the tiniest
11 bit of reasonable doubt, you must find the defendant not
12 guilty. The tiniest bit. Reasonable doubt. Lingering doubt
13 following serious consideration of a matter. Not just any
14 possible doubt. Reasonable doubt is the same thing as not
15 being convinced of a defendant's guilt beyond a reasonable
16 doubt. No matter how small or tiny a doubt, you must find the
17 defendant not guilty.

18 Two DNA experts. It could have been placed there by
19 another person. It's possible.

20 Ladies and gentlemen, I just want to thank you for your
21 time, your precious time, in this matter. And I pray that you
22 will look in your heart and find the defendant not guilty,
23 like I say, beyond a reasonable doubt. Thank you.

24 THE COURT: All right.

25 THE DEFENDANT: Have a blessed day.

1 THE COURT: Ladies and gentlemen, we'll take ten minutes.
2 You may not discuss the case.

3 (WHEREUPON, the jury exited the courtroom.)

4 (WHEREUPON, there was a break in the proceedings.)

5 THE COURT: If they're ready.

6 (WHEREUPON, the jury entered the courtroom.)

7 THE BAILIFF: All the jurors are back, Your Honor.

8 THE COURT: Thank you. Ms. McElveen?

9 CLOSING ARGUMENT ON BEHALF OF THE STATE

10 MS. MCELVEEN: Yes, sir. Ladies and gentlemen, it's my
11 job to present the facts through testimony and through the
12 pieces of evidence that are admitted.

13 Mr. Duren, the defendant, has done a great job. I don't
14 think anyone can disagree he's done a wonderful job
15 representing himself. This is a hard job. It's a hard thing
16 to do. And at times, he's a very likeable guy.

17 But here today, you're dealing with the facts, the facts
18 of this case. I have set out a timeline from the testimony of
19 what happened in this case.

20 On June 8th to June 9th, the burglary occurred. And yes,
21 Mr. Spiegel testified he came in the middle of the night in
22 reference to a burglary alarm. And he didn't go around the
23 back of the building and at that time he didn't inventory the
24 cigarettes. He left and he reset the alarm at the police
25 department.

1 And the next morning, he and Mr. Page realized, yes,
2 there was a big hole in the back of the building. They should
3 have caught it. There were cigarettes missing, over about
4 thirty cartons of cigarettes.

5 The police responded. The scene was processed, and swabs
6 were collected from both places on the fridge. Mr. Tallon did
7 testify that he collected swabs from both spots on top of that
8 refrigerator. It was smeared, and officers did testify that
9 that could have happened -- or -- I'm sorry. I think Mr.
10 Spiegel testified that it could have happened when someone
11 jumped up or down on the unit. Yes, the blood was smeared on
12 top of the refrigerator.

13 On June 22nd, the swabs were sent to SLED. And March
14 20th, 2012, Strand Analytical Labs created a DNA profile. They
15 created a male DNA profile from sixteen points. On April 19th,
16 2012, SLED, the South Carolina Law Enforcement Division, ran
17 it through CODIS, which is a combined -- as stated in the
18 letter, it's a Combined DNA Index System in which offenders'
19 DNA is entered. Officers got a CODIS hit linking that DNA
20 profile to Mr. David Duren. The DNA profile that was created
21 -- it was checked twice at Strand and once by SLED and then
22 entered into that CODIS system.

23 So at that point, officers got an arrest warrant on May
24 15th, 2012. No confusion there. May 15th, 2012, is when the
25 warrant was issued. May 27th, 2012, is when the warrant was

1 served on the defendant and, at that time, he was 150 pounds.

2 Ladies and gentlemen, at that point, officers checked
3 again. They got a buccal swab from the defendant, making sure
4 again that this DNA is linked to the defendant.

5 Can we fix -- yeah. Can we fix the monitors? I'm sorry.
6 Linking it to the defendant.

7 THE COURT: Is that something I have to do?

8 MS. MCELVEEN: I don't know.

9 THE COURT: I didn't touch anything. All right.

10 MS. MCELVEEN: May 31st, 2012, the officers collected that
11 buccal swab from Mr. Duren and they testified that Mr. Melton
12 collected the swab, but also the defendant could have swabbed
13 his own mouth. Standard protocol. Everybody agrees that
14 buccal swabs are collected by detectives.

15 Then August 6th, 2012, after those mouth swabs are sent
16 back to Strand Analytical Laboratories, they compare it to the
17 DNA profile and they again link this DNA profile from the
18 refrigerator to Mr. David Duren. This is the second time
19 they've linked it. This test is checked again at Strand and
20 checked again at SLED.

21 So at this point, six times they have compared this DNA
22 to Mr. David Duren and linked it to him. When he was
23 arrested, he weighed 150 pounds, three years ago.

24 Now, those are the facts, the timeline.

25 THE DEFENDANT: Objection, Your Honor.

1 THE COURT: Sir?

2 THE DEFENDANT: Objection.

3 THE COURT: Your objection?

4 THE DEFENDANT: Yes. It took three years, Your Honor.

5 THE COURT: I'm sorry?

6 THE DEFENDANT: It took three years.

7 THE COURT: Please stand. I can't hear you.

8 THE DEFENDANT: It took three years, Your Honor.

9 THE COURT: Three years to do what?

10 THE DEFENDANT: It took three years. I wasn't arrested
11 three years ago. I wasn't. I've been arrested -- I've been
12 incarcerated for a year. As far as she's talking about the
13 moment I got arrested three years ago.

14 THE COURT: Yes, sir.

15 THE DEFENDANT: At that moment.

16 THE COURT: All right. Objection is overruled.

17 MS. MCELVEEN: Now, as I've said, Mr. Duren has done a
18 great job. He's presented some issues that he thinks are --
19 he is -- to use his own words, he has made something out of
20 nothing, just like the Marine Corps taught him to do, just
21 like he said in his closing statement. He has tried to make
22 something where there is nothing.

23 And, ladies and gentlemen, the non-issues in this case --
24 there are so many. How much cigarettes cost in 2011, not an
25 issue. We -- thirty cartons of cigarettes did not cost a

1 dollar. Not the date on the incident report, not the race of
2 the defendant, not the race of the police, not whether he had
3 a bond or not. He actually said in his closing statement his
4 bond was denied, but the testimony shows that he had a PR
5 bond. Remember? He kept saying that means you get out
6 without paying anything.

7 So he misspoke in his closing argument. Not one sentence
8 on the police department form -- that is not an issue, ladies
9 and gentlemen. Not how the crime was reduced from a burglary
10 first degree to a burglary second degree. Not an issue. He's
11 charged with burglary second degree, a reduced charge.

12 And not whether that wall has been patched before. You
13 heard the worker state I don't know how the wall -- no one
14 broke in. It could have been a door. I don't know, but the
15 defendant was sure quick to point out the mortar joints and
16 how the mortar was changed and different.

17 And I would submit, ladies and gentlemen, if you took
18 apart the wall, you certainly would know how the mortar was
19 put together and how it was pieced together, but the employees
20 of that business did not know. They said it could have been a
21 burglary, could have happened. I don't know. Worked there
22 ten years, not on my watch.

23 Not -- also not an issue, the number of places SLED
24 outsources. The DNA expert -- or Ken Bogan, SLED expert,
25 stated that they outsourced this case to Strand Analytics.

1 Yes, they use analytical laboratories. Yes, they use other
2 labs, but they said in this case we only sent it to Strand
3 Analytical Laboratories, and you'll see both the reports.
4 They are in evidence. They'll go back in the jury room with
5 you and you will see they're all from Strand Analytical
6 Laboratories.

7 Also, as I've stated, the issue is not whether you like
8 or dislike the defendant. The issue is not whether you like
9 or dislike a policeman. The issue is not whether you like or
10 dislike me. The issue is the facts and whether we have met
11 our burden of proof beyond a reasonable doubt.

12 Now, the real issues in this case. The blood. The blood
13 was linked to the defendant twice, through the CODIS hit and
14 through the Strand Analytical Labs report.

15 Another issue, credibility. Who to believe? Do you
16 believe the officers and the experts and the people who worked
17 there or do you believe Mr. Duren, who is on trial today? You
18 have to put your weight on the person who -- people you choose
19 to believe, the people who have nothing to lose versus being
20 charged with a crime.

21 Ladies and gentlemen, the officers, the experts, the
22 employees, they -- they have nothing to lose. You heard the
23 employees don't even work there anymore. The officers do
24 their job, ladies and gentlemen.

25 This is not Law and Order. We watch a lot of television.

1 We have some wonderful shows: NCIS, CSI, all these great
2 shows, but this is not --

3 THE DEFENDANT: Objection.

4 MS. MCELVEEN: -- *Law and Order*.

5 THE COURT: Sir?

6 THE DEFENDANT: Objection.

7 THE COURT: You must state your grounds.

8 THE DEFENDANT: This is not -- that's related -- related
9 to speculation.

10 THE COURT: Overruled.

11 MS. MCELVEEN: This is not *Law and Order*, ladies and
12 gentlemen. Fingerprints can't be found everywhere. Detective
13 Aleck testified they found a partial print. They couldn't
14 even say it was the defendant's or not the defendant's.
15 People have handled cartons of cigarettes. They were not able
16 to say anything regarding those fingerprints.

17 Also, this is not *Law and Order* and people are not
18 framed. Evidence is not planted. Ladies and gentlemen, what
19 motive would anyone have to frame Mr. Duren? Mr. Duren is not
20 an elected official. He's not -- I don't know who else one
21 would frame, but he's not a pastor at a church. There is
22 nothing showing that anyone would have any reason at all to
23 frame Mr. Duren for a crime.

24 And if they tried to frame him, they did a very bad job
25 of it. It took almost a year to solve the case. If someone

1 were going to frame somebody, I sure would think that they
2 would leave a lot better evidence than something that would
3 take a year to figure out the crime.

4 Ladies and gentlemen, this is not television. It makes
5 zero sense that he was framed. Evidence is not planted. The
6 blood is smeared from someone moving around on top of that
7 refrigerator after breaking through a wall. This is not Law
8 and Order.

9 What we do have -- and it is the strongest evidence that
10 can speak. We do have the CSI factor. We do have that DNA,
11 and that is a great thing to have. Just like Mr. Duren
12 stated, that is a wonderful thing to have.

13 And evidence -- or the forensic scientist stated that the
14 chance of this being anybody else's DNA is one in 330
15 quintillion. Ladies and gentlemen, you'd have to recreate the
16 world 48 million times for someone else to have a similar DNA
17 pattern to the one presented in this case. This is Mr.
18 Duren's blood at the scene.

19 You saw pictures. You see the entry point right here.
20 You can see that there is space for someone to squeeze in over
21 a refrigerator and over into the store. You can see the point
22 of entry. And we have the strongest evidence that can speak.

23 Ladies and gentlemen, Mr. Duren, like I've stated,
24 likeable guy. If he served our country, we certainly
25 appreciate the service. We're all mothers, brothers, sisters,

1 fathers, what have you, but Mr. Duren has put you in this
2 position today. Mr. Duren committed this crime, and now he's
3 pulling on your heart strings, quite frankly, but we have to
4 look at the facts and we have to look at what we have in front
5 of us, and we have the loudest piece of evidence possible. We
6 have his DNA at the scene.

7 Ladies and gentlemen, there is something called the low
8 card principle, and this is the father of forensic scientists.
9 I'm just going to do a quote from him. It's a longer quote
10 than what's pictured, but it says:

11 Wherever he steps, wherever he touches, whatever he
12 leaves, even unconsciously, will serve as a silent witness
13 against him. Not only his fingerprints or his footprints, but
14 his hair, the fibers from his clothes, the glass he breaks,
15 the tool mark he leaves, the paint he scratches, the blood or
16 semen he deposits or collects, all of these things and more
17 bear mute witness against him. This is evidence that does not
18 forget. It is not confused by the excitement of the moment.
19 It is not absent because human witnesses are. It is factual
20 evidence. Physical evidence cannot be wrong. It cannot
21 perjure itself. It cannot be wholly absent.

22 The blood in this case is the loudest and strongest
23 witness. David Duren was in the building. His blood was
24 there. He stole the cigarettes. He wasn't framed. He's
25 trying to be Little Johnny. He's trying to say that I didn't

1 break that window when you know beyond a reasonable doubt that
2 he did, ladies and gentlemen. He's trying to frame you, and I
3 know you're not going to be fooled. Thank you.

4 THE COURT: All right. Could you turn the computer off,
5 please?

6 MS. MCELVEEN: Yes, sir.

7 THE COURT: All right. Ladies and gentlemen, let me have
8 your attention. You can turn the lights up, please.

9 THE BAILIFF: Yes, sir.

10 CHARGE ON THE LAW

11 THE COURT: I'm going to give you now what is called a
12 charge on the law. I will remind you, as I have a couple of
13 times, that you must accept the law exactly as I give it to
14 you. You may not under any circumstances base your verdict on
15 what you think the law is or what you think it should be. You
16 must base your verdict on your common-sense view of the
17 evidence and the law, and the law exactly as I give it to you.
18 Even if you disagree with it, you must accept the law.

19 Obviously, during the course of this trial, you and I
20 have had certain and different duties to perform. Under our
21 system of laws, it is my responsibility to preside over the
22 trial of the case. It's my responsibility to rule on the
23 admissibility of evidence. It's my responsibility to make
24 various legal decisions or determinations.

25 It's your responsibility to evaluate the evidence. And

1 as I mentioned to you at the beginning of the trial, you take
2 your view of the evidence and the law as I give it to you, you
3 put those things together in your mind, and that will allow
4 you after deliberation to reach a verdict that speaks the
5 truth.

6 The verdict form is very simple. It says:

7 As to the charge of second degree burglary, also known as
8 burglary in the second degree, we unanimously find the
9 defendant -- and there are two choices -- not guilty or
10 guilty.

11 Whatever your verdict is, all of you must agree. It must
12 be absolutely unanimous. There is no middle ground. It must
13 be absolutely unanimous. And then, Mr. Foreperson, it is your
14 certification on the bottom of the verdict form that this is
15 the unanimous decision of the jury.

16 If there was any testimony or evidence that I instructed
17 you to disregard or if I ordered it to be stricken from the
18 record, under the oath that you've taken you must disregard
19 what I've told you to disregard. There is no middle ground on
20 that either. If evidence has come in, if it has been
21 admitted, you can consider it. Again, if it has been stricken
22 or if you've been instructed to disregard any statement or any
23 evidence, you must disregard it.

24 Now, ladies and gentlemen, in every case that is tried
25 before a jury, the jury is the sole and exclusive judge of the

1 facts. I cannot intimate or state or imply in any way or
2 comment in any way on the facts of the case or on the evidence
3 that has been introduced. In the course of certain rulings, I
4 may have collaterally had to comment on what was presented to
5 me in the way of an argument, but that is not intended to be
6 -- to be a comment by me on what I think you should decide
7 about the factual issues in the case.

8 So don't take from anything that I've said or done that I
9 favor one particular result over another. I certainly respect
10 your role and I -- and I do believe very wholeheartedly that
11 you have paid very close attention. I have every confidence
12 that you will weigh the evidence in the case and you will
13 accept the law as I give it to you and you will reach a
14 verdict that speaks the truth, whatever that verdict might be.

15 Now, ladies and gentlemen, the fact that Mr. Duren has
16 been charged or arrested or indicted for any criminal offense
17 is not evidence of anything. The case itself has to get its
18 way into this courtroom somehow and, in this state and in most
19 jurisdictions in the country, the indictment process is used.
20 It's simply a charging document. The indictment is a charging
21 document. It contains allegations that the State has to prove
22 beyond a reasonable doubt. So again, the fact that he has
23 been arrested or charged or indicted in and of itself is not
24 evidence of anything.

25 Now, ladies and gentlemen, the defendant has entered a

1 plea of not guilty to the charge, as I will instruct you in
2 just a minute. He has -- he does not have to prove or
3 disprove anything. The burden at all times remains on the
4 State to prove him guilty beyond a reasonable doubt.

5 Now, necessarily as jurors, as the -- as the people who
6 weigh the evidence, it is your responsibility to determine the
7 credibility of the witnesses who have taken that witness
8 stand, been sworn, and who have given you testimony. It's
9 your responsibility to decide who to believe and what to
10 believe.

11 You can believe every word that comes out of a witness'
12 mouth, you can disbelieve every word or you can believe some
13 things and disbelieve the rest. That's entirely up to you.
14 There is no magic formula. You use your common sense.

15 Some examples of things you can take into account were
16 the witness' demeanor. In other words, when they're in the
17 chair and they're testifying, how did they act? Were they
18 hesitant or straightforward? Was their testimony consistent
19 or inconsistent? Was their testimony strengthened or weakened
20 by other evidence that's come in? Did the witness have a bias
21 or a prejudice for or against one result over another?

22 You can take those things into account if you want to,
23 and anything else you think collectively is appropriate. You
24 can believe one witness over many, many over one, or some
25 combination. That's entirely up to you.

1 Now, ladies and gentlemen, as I mentioned to you -- I
2 guess it was yesterday sometime. The rules of evidence that
3 we have ordinarily do not permit a witness to give an opinion.
4 Typically, those are people we call lay witnesses. They can
5 say I saw this, I heard this, this is what I saw happened.
6 Those are lay witnesses.

7 There is an exception in the rules for witnesses who are
8 qualified by education, training or experience in a particular
9 field. We call them expert witnesses. They can give opinions
10 and they can give the reasons for those opinions.

11 You are not bound by the opinion of an expert just
12 because it comes from an expert. If you conclude that the
13 witness is not sufficiently qualified or if you conclude that
14 the reasons given in support of the expert's opinion are not
15 sufficient or if you think the opinion is outweighed by other
16 evidence, you can disregard the expert's opinion. In other
17 words, an expert's testimony is to be given no greater weight
18 simply because it comes from an expert, and you are not
19 required to accept an expert's opinion, even though it might
20 be uncontradicted.

21 I mentioned earlier, ladies and gentlemen, that there are
22 different ways evidence generally comes in: testimony,
23 exhibits, and the third way sometimes by way of a stipulation.
24 Just to shift for a moment, there are ordinarily two types of
25 evidence that come in during a trial. These are called direct

1 evidence and circumstantial evidence.

2 Direct evidence is evidence that directly proves the
3 existence of a fact. It does not require any deduction. For
4 example, if in a given case there was an issue that you had to
5 decide on whether or not a dog crossed the street, if you had
6 a witness and if you believed that witness who said I saw that
7 dog cross that street, if you believe that witness, that is an
8 example of direct evidence.

9 Now, circumstantial evidence is evidence that is based on
10 proof of a chain of facts and circumstances that indicate the
11 existence of a fact. Using the same example, if you had a
12 witness you believed who said I saw the dog on the left side
13 of the street, I looked down for just twenty seconds, and then
14 when I looked up, the dog was on the other side of the street,
15 if you believe that witness, you could conclude if you wanted
16 to that circumstantially it was established that the dog, in
17 fact, crossed the street. That's a very fundamental example
18 of what circumstantial evidence is.

19 Crimes may be proven by circumstantial evidence or direct
20 evidence or some combination of the two. And I will tell you
21 this. The law makes absolutely no distinction between the
22 weight or the value that you are to give to either direct or
23 circumstantial evidence.

24 However, to the extent the State relies on circumstantial
25 evidence, all of the circumstances must be consistent with

1 each other and when taken together point conclusively to the
2 guilt of the accused beyond a reasonable doubt. If the
3 circumstances merely portray a defendant's behavior as
4 suspicious, then that proof has failed. The State has the
5 burden of proving the defendant guilty beyond a reasonable
6 doubt, and that burden rests with the State regardless of
7 whether the State relies on direct evidence or circumstantial
8 evidence or some combination of the two.

9 As I mentioned earlier, the defendant has entered a not
10 guilty plea to the charge in the indictment. That plea puts
11 the burden on the State to prove him guilty beyond a
12 reasonable doubt. Under our system of law, a person who is
13 charged with committing a criminal offense, no matter what the
14 charge, is never required to prove himself not guilty. He is
15 never required to prove himself innocent.

16 It's a very important rule of law. It is a fundamental
17 rule of law that the defendant in a criminal trial is always
18 presumed to be innocent of the crime for which the indictment
19 is issued unless and until it is established by evidence
20 satisfying you of guilt beyond a reasonable doubt.

21 The presumption of innocence does not end in a few
22 minutes when you stand up and leave that box and go to your
23 jury room. The presumption of innocence remains with the
24 defendant throughout the trial, throughout your deliberations,
25 unless and until you reach a verdict of guilt based on

1 evidence satisfying you of guilt beyond a reasonable doubt.

2 Now, ladies and gentlemen, the presumption of innocence
3 is not a mere legal theory. It is not a casual phrase we toss
4 around. It is a substantial right to which every defendant is
5 entitled, again unless a jury finds the defendant guilty
6 beyond a reasonable doubt.

7 So what is a reasonable doubt in the law? A reasonable
8 doubt is the kind of doubt that would cause an honest,
9 sincere, and conscientious person who is in search of the
10 truth to hesitate to act. The State, as I mentioned many
11 times, has the burden of proving the elements of the crime
12 charged beyond a reasonable doubt.

13 Some of you might have been a juror in a civil case or
14 you might otherwise be familiar with how the burden of proof
15 works in a civil case. In those cases, civil cases, the judge
16 typically tells the jury that the burden of proof is by what
17 we call the greater weight. And so the person who has that
18 burden, if you imagine even scales, that person has to tip
19 those scales ever so slightly in his or her favor. That's by
20 the greater weight of the evidence.

21 In criminal cases, the State's proof must be more
22 powerful than that. It must be proof beyond a reasonable
23 doubt. Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the defendant's guilt.

25 Now, there are very few things we know on this earth with

1 absolute certainty, and the law does not require the State to
2 present proof that overcomes every possible doubt. If based
3 on your consideration of the evidence, if you are firmly
4 convinced that the defendant is guilty, you must find him
5 guilty. If, on the other hand, you think there is a real
6 possibility that he is not guilty, then you must give him the
7 benefit of the doubt and find him not guilty.

8 Now, ladies and gentlemen, I instruct you and emphasize
9 to you the fact that the defendant has represented himself in
10 this case is not an issue for your consideration at all. It's
11 not to be used by you for him or against him. He has the
12 right to represent himself and he has done that, and that is
13 not an issue for you to take into account in reaching your
14 verdict.

15 I also instruct you and I emphasize to you that the fact
16 that the defendant did not take the witness stand and testify
17 is not a factor to be considered by you in any way in your
18 deliberations on the issues of whether the defendant is guilty
19 or not guilty. You cannot think about that, you can't talk
20 about that, and it cannot enter into your decision-making
21 whatsoever.

22 A defendant has the constitutional right to remain
23 silent, and the assertion of that right by him must not be
24 considered by you in any way whatsoever. So I repeat, under
25 your oath to follow the law, the fact that he did not testify

1 may not be considered by you in any way whatsoever.

2 Now, ladies and gentlemen, I'll also tell you that the
3 fact that the defendant called witnesses does not mean that he
4 has taken on or assumed any burden of proving or disproving
5 anything. At all times, keep in mind that the burden of proof
6 remains on the State and the State only to prove guilt beyond
7 a reasonable doubt.

8 Now, ladies and gentlemen, I'm now going to talk to you
9 about the specific elements of the crime charged of burglary
10 in the second degree, again also known as second degree
11 burglary. If I mention that the State has to prove something,
12 the State has to prove it beyond a reasonable doubt.

13 To prove second degree burglary, the State must prove
14 beyond a reasonable doubt that the defendant entered a
15 building without consent and with the intent to commit a crime
16 therein.

17 Now, ladies and gentlemen, the mere entry into a building
18 without consent is not burglary. At the time of entry, the
19 person must have had the intent to commit a crime inside.

20 If the intent to commit a crime is formed after the
21 entry, it is not burglary. On the other hand, if the
22 defendant intended to commit a crime at the time of entry, it
23 is still a burglary even if the intent was abandoned or given
24 up after the entry. It does not matter that the intended
25 crime was not completed.

1 Now, as I will tell you more specifically at the end of
2 this charge in just a minute or two, intent may be shown by
3 direct evidence or circumstantial evidence or some combination
4 of the two.

5 Now, ladies and gentlemen, in the context of a building,
6 I'm required to tell you how our legislature has defined the
7 term building. A building is any structure where a person
8 lives or where people assemble for the purpose of business or
9 government or education, religious involvement, entertainment,
10 public transportation or public use, or a building is a place
11 where goods are stored.

12 Now, I mentioned to you that the -- that the State must
13 prove beyond a reasonable doubt that the defendant entered the
14 building without consent and with the intent to commit a crime
15 therein. I further charge you that in this case the State
16 must also prove beyond a reasonable doubt that the defendant
17 has a prior record of two or more convictions for burglary
18 and/or housebreaking.

19 Now, evidence of those prior conviction, as I
20 specifically told you yesterday or perhaps it was Monday,
21 evidence of those prior convictions is not offered and may not
22 be considered by you as evidence that the defendant has a bad
23 character or to prove that the defendant committed the
24 burglary on this occasion. Those prior convictions may be
25 considered by you only for the purpose of determining in your

1 mind whether or not the State has satisfied that element of
2 the offense of burglary in the second degree. That is that
3 the defendant had two or more prior convictions for burglary.

4 Now, on that point listen carefully. Before you can even
5 consider evidence of the prior burglary convictions, you must
6 first find beyond a reasonable doubt that the State has proven
7 that he -- that the defendant was the person who entered this
8 building in this case without consent and he did that with the
9 intent to commit a crime. If you find beyond a reasonable
10 doubt that the defendant entered the building without consent
11 and with the intent to commit a crime, then and only then may
12 you consider evidence of the prior convictions for burglary.

13 Now, ladies and gentlemen, if you do not find beyond a
14 reasonable doubt that the defendant was convicted of these
15 prior burglaries, then you must find him not guilty of this
16 offense.

17 Now, ladies and gentlemen, in every criminal case, no
18 matter what the charge, the State also has the burden of
19 proving the element of intent. It's also called criminal
20 intent and sometimes in the context of any given case, in this
21 case the intent to commit a crime therein.

22 Criminal intent has to be established beyond a reasonable
23 doubt. It's always a matter that the jury has to determine.
24 Criminal intent can be proven by direct evidence or
25 circumstantial evidence or some combination of the two.

1 There is no way medical science can yet -- at least yet
2 dissect a person's brain and look into it and determine what,
3 if anything, that person intended to do. So again, the law
4 says that criminal intent may be established by circumstantial
5 evidence. It is not necessary to establish criminal intent
6 solely by direct evidence.

7 Now, ladies and gentlemen, criminal intent is a mental
8 state. It's a conscious wrongdoing. And it's up to you to
9 determine what, if anything, the defendant intended to do
10 based on the circumstances shown to have existed.

11 All right. Now, ladies and gentlemen, you will have with
12 you in your jury room several things. First of all, you'll
13 have your good common sense. Second of all, you'll have all
14 of the exhibits that have been introduced.

15 As you noticed, many times I was saying what number is
16 that exhibit. Is it still for ID? Some exhibits are marked
17 for identification and never offered into evidence. You will
18 have with you all of the exhibits that have been entered.

19 You will also have your collective memory of the
20 testimony. If you want to hear testimony played back, we'll
21 arrange that for you, but you will not have the actual
22 testimony printed for you back in the jury room.

23 You will not get any new evidence. You will not get any
24 new information. The evidence that is going to be introduced
25 and given to you has been introduced and given to you.

1 If you have any questions, Mr. Foreman, you will write
2 the question down on a notepad. You sign it, date it, tap on
3 the door, and let the bailiff know you have a question. The
4 question will be relayed to me. It will be put on the record,
5 and the law dictates if and how I can respond to your
6 question. But feel free to ask any question you want to ask,
7 but again the law dictates if and how I respond.

8 I have every confidence that you will be giving the
9 issues in this case the very serious consideration they
10 deserve. Mr. Duren expects and is entitled to a fair trial at
11 your hand. The State expects and is entitled to a fair trial
12 at your hand. You can only do that if you give these issues
13 the serious consideration they deserve.

14 And as I mentioned, your deliberations will end with your
15 foreperson's completion of this verdict form. It's got to be
16 unanimous and, above all, it has to speak the truth.

17 Now, if anyone needs to leave the jury room to use the
18 restroom -- excuse me -- yeah -- to even use the restroom in
19 that little anteroom right outside where you sit, stop your
20 deliberations until that person comes back. If someone has to
21 leave the jury room to use the phone, you've got to get my
22 permission to do that, but if someone does leave the jury room
23 to make a phone call -- if you want to smoke a cigarette,
24 you've got to get permission to do that too, but if that -- if
25 anyone leaves, wait until they come back.

1 I will likely be ordering lunch for you within the next
2 twenty or thirty minutes; so don't be concerned about that.
3 You'll have all the time that you need, and the State and the
4 defendant are counting on you to give these issues full and
5 complete discussion.

6 Now, what I'm going to do now is allow you to go to your
7 jury room, except for Mr. Hemingway. You can wait out in the
8 hall. Do not begin discussing the case yet because the rules
9 that we have require me to ask Ms. McElveen and Mr. Duren if
10 they contend that I left something out of my charge or if I
11 said something different. And it's also going to give them a
12 minute or two to get with the court reporter to make sure that
13 all the exhibits are properly in order and ready to go back to
14 you.

15 When the bailiff comes to the door with the verdict form
16 and with the exhibits and tells you that you can begin, I'll
17 mark that time on my notepad and we'll be ready to receive
18 your verdict or any questions at any time you think is
19 appropriate.

20 Please remember, Mr. Foreman --, it happens on occasion --
21 when you have reached a verdict, complete the verdict form,
22 sign it, date it, tap on the door, because we won't know
23 unless you tell us that y'all are finished. Okay? Thank you.

24 (WHEREUPON, the jury exited the courtroom.)

25 THE COURT: All right. Mr. Hemingway, do you have

1 anything in the jury room?

2 JUROR NUMBER 83: Just a hat. I'll take it out.

3 THE COURT: Okay. You can just have a -- you can stand
4 in the hall and I'll have you come in in just a second.

5 JUROR NUMBER 83: Okay.

6 (WHEREUPON, the alternate juror exited the courtroom.)

7 THE COURT: All right. Any objections or additions from
8 the State?

9 MS. MCELVEEN: None, Your Honor.

10 THE COURT: Mr. Duren, do you have any objections?

11 THE DEFENDANT: None, Your Honor.

12 THE COURT: All right. What we'll do -- if you and --
13 Mr. Duren, if you and Ms. McElveen will come up off the record
14 and get with Ms. Sullivan about the exhibits and make sure
15 that everything is appropriately entered, and then I'll hand
16 the verdict form down. That will go along with it.

17 (WHEREUPON, there was a pause in the proceedings while
18 the exhibits were checked.)

19 THE COURT: All right. We'll just note for whatever
20 time-keeping purposes that the jury began deliberating at six
21 minutes to twelve.

22 THE BAILIFF: Do you want me to send the alternate in?

23 THE COURT: Yes, sir. Ms. McElveen, I'm going to release
24 the alternate.

25 MS. MCELVEEN: Yes, sir.

1 THE COURT: Mr. Duren, I'm going to release the
2 alternate.

3 THE DEFENDANT: Yes, sir..

4 THE COURT: All right. You can send him in. When are
5 they coming back?

6 MS. MCELVEEN: Who?

7 THE COURT: The jury.

8 THE CLERK: Judge --

9 MS. MCELVEEN: I'm sorry. I do not know, Your Honor. I
10 haven't heard.

11 THE COURT: All right. Mr. Hemingway?

12 JUROR NUMBER 83: Yes, sir.

13 THE COURT: Only twelve people can deliberate.

14 JUROR NUMBER 83: Uh-huh.

15 THE COURT: If somebody had happened to fall by the
16 wayside, then -- then you would have been seated as an active
17 juror, but only twelve can deliberate. So I'm going to let
18 you go. I believe that the rest of the panel is coming back
19 at two.

20 JUROR NUMBER 83: Okay.

21 THE COURT: If they do come back, Mr. Prince, do they go
22 to the jury assembly room?

23 THE CLERK: I'll have to see.

24 THE COURT: Okay. Could you ask all of them to come in,
25 Mr. Tomlin? Does anybody know when the jury is coming back?

1 (WHEREUPON, there was a break in the proceedings from
2 11:56 a.m. until 1:36 p.m.)

3 THE COURT: Are you ready?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay.

6 (WHEREUPON, the jury entered the courtroom.)

7 THE BAILIFF: All the jurors are back in the courtroom,
8 Your Honor.

9 THE COURT: Thank you, sir. All right. Mr. Foreman, I
10 understand you've reached a verdict?

11 THE FOREMAN: Yes, sir.

12 THE COURT: Is it unanimous?

13 THE FOREMAN: It is.

14 THE COURT: All right. You can hand the form to Mr.
15 Prince..

16 (WHEREUPON, the foreman complied.)

17 THE COURT: All right. Mr. Duren, please stand and face
18 the jury.

19 (WHEREUPON, the defendant complied.)

20 VERDICT

21 THE CLERK: The State of South Carolina, the County of
22 Sumter, in the Court of General Sessions, Indictment Number
23 2012-GS-43-1149, State of South Carolina versus David Abraham
24 Duren Jr.

25 As to the charge of second degree burglary, we

1 unanimously find the defendant guilty.

2 I certify this is the unanimous verdict of the jury,
3 David E. Bagwell, Foreperson, May the 20th, 2015.

4 Ladies and gentlemen of the jury, is this your verdict,
5 so say you all, by signifying raising your right hand?

6 (WHEREUPON, the jurors comply.)

7 THE COURT: All right. Thank you, Mr. Duren. You can
8 have a seat.

9 THE DEFENDANT: Will you poll the jury?

10 THE COURT: All right. You can poll the jury, please,
11 Mr. Prince.

12 THE CLERK: Yes, sir.

13 THE COURT: You can have a seat, Mr. -- Mr. Duren.

14 THE CLERK: Ladies and gentlemen, when I call your name
15 and number, just stand, raise your right hand, please, and
16 answer a couple of questions.

17 Number 97, Kimberly Krages. Is this your verdict and
18 still your verdict?

19 JUROR NUMBER 97: Yes.

20 THE CLERK: Number 117, Felicia Miller. Is this your
21 verdict and still your verdict?

22 JUROR NUMBER 117: Yes.

23 THE CLERK: Number 53, Lynda Dwyer. Is this your verdict
24 and still your verdict?

25 JUROR NUMBER 53: Yes.

1 THE CLERK: Number 46, Erica Delay. Is this your verdict
2 and still your verdict?

3 JUROR NUMBER 46: Yes, sir.

4 THE CLERK: Number 170, Else Thompson.

5 JUROR NUMBER 170: Yes, sir.

6 THE CLERK: Is this your verdict and still your verdict?

7 JUROR NUMBER 170: Yes, sir.

8 THE CLERK: Number 6, David Bagwell. Is this your
9 verdict and still your verdict?

10 JUROR NUMBER 6: It is, yes.

11 THE CLERK: Number 40, Jeffery Crow. Is this your
12 verdict and still your verdict?

13 JUROR NUMBER 40: Yes.

14 THE CLERK: Number 12, Ernest Birth. Is this your
15 verdict and still your verdict?

16 JUROR NUMBER 12: Yes.

17 THE CLERK: Thank you. Number 168, Elizabeth Tate. Is
18 this your verdict and still your verdict?

19 JUROR NUMBER 168: Yes, it is.

20 THE CLERK: Number 72, Wanda Goodwin. Is this your
21 verdict and still your verdict?

22 JUROR NUMBER 72: Yes.

23 THE CLERK: Number 88, Andrew House. Is this your
24 verdict and still your verdict?

25 JUROR NUMBER 88: Yes.

1 THE COURT: 85? The last one would be Ashante Hightower.

2 THE CLERK: Yes, sir. Number 85, Ashante Hightower. Is
3 this your verdict and still your verdict?

4 JUROR NUMBER 85: Yes.

5 THE CLERK: Thank you.

6 THE COURT: Thank you.

7 THE CLERK: All the jurors have been polled and the
8 verdict stands, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, that
10 concludes your service in this particular case. I'm trying to
11 find out now what the future might hold for your service this
12 week. I do know that the rest of the panel is reporting
13 downstairs to the jury room at two o'clock today for selection
14 in another case that we're going to begin in here this
15 afternoon.

16 I'm not going to put you in that pool. What I'm trying
17 to do is to find out if there will be -- what the next --
18 here's what I'd like for you to do. Call the number that you
19 have after six p.m. The other jurors have been doing that
20 this week, the ones who weren't on the jury next door, because
21 there's a case going on next door. And those who weren't on
22 this jury have been calling that number and they're reporting
23 back again at two.

24 You call the number that you have after six p.m. If you
25 don't have that blue card, let one of the bailiffs know and

1 they'll get it for you.

2 What we're going to do in just a minute in this case --
3 and you're certainly welcome to stay -- is Mr. Duren will be
4 permitted to make any motions that he would like to make.
5 Also, we'll go -- we'll go through the sentencing phase of
6 this trial, and you're certainly welcome to stay in the jury
7 box and watch that if you want. If you want to go ahead and
8 go, you can do that too.

9 Now, you can talk about this case now all that you want,
10 but you don't have to. I would give you one final
11 instruction. Don't talk about the case until Friday at five
12 o'clock because that way we know that everyone's jury service
13 will be over. But after that, you can talk about it all that
14 you want.

15 If someone does approach you, call you or whatever to
16 talk about this case, it's something I disfavor, but they're
17 not prohibited from doing it. You can tell them what you
18 thought about the issues in the trial. If you don't want to
19 talk about it, just politely tell them I don't want to talk
20 about it, and they should follow that instruction. If they
21 persist and keep trying to get you to tell them something,
22 call Mr. Campbell at the Clerk's Office. He'll tell me and
23 I'll take care of it. All right?

24 You shouldn't be showered with praise and you shouldn't
25 be showered with negativity about your verdict because it was

1 your verdict and it was -- it was based on your view of the
2 evidence and everyone should respect that.

3 Having said all that, if you do want to stay and watch
4 the sentencing, you can. If you would like to go ahead and go
5 with the instruction that you call back after six, you can go
6 ahead and do that.

7 All right. Thank you. And you can -- you can leave as
8 we're going through this now.

9 (WHEREUPON, the jury was released.)

10 POST-TRIAL MOTIONS

11 THE COURT: Mr. Duren, the rules that we have permit a
12 couple of things. I'm allowed to give you ten days from
13 today. I'm not permitted to calculate the time for you, but
14 ten calendar days from today where you can make your post-
15 trial motions. I'll certainly allow you that ten days if you
16 want it or you can make the motions now.

17 THE DEFENDANT: Your Honor, I would like to make a motion
18 for a direct appeal.

19 THE COURT: Okay. Well, there need not be a motion for
20 that. You can certainly file a direct appeal.

21 THE DEFENDANT: Okay.

22 THE COURT: But there is -- there is a motion for a new
23 trial or a motion for what they call a verdict in arrest of
24 judgment. I'll be glad to give you ten days to do that. If
25 you don't file any motions, you do have only ten days from

1 today to file an appeal with an appellate court.

2 THE DEFENDANT: Okay.

3 THE COURT: And that will be fine too. It's not going to
4 hurt my feelings.

5 THE DEFENDANT: Okay.

6 THE COURT: Okay?

7 THE DEFENDANT: A motion for a retrial.

8 THE COURT: You'd like a new trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the basis for that?

11 THE DEFENDANT: Huh?

12 THE COURT: The basis for your motion?

13 THE DEFENDANT: Oh, yeah. Based today.

14 THE COURT: Well, I said I would give you ten days to do
15 that.

16 THE DEFENDANT: Well, I'll file that with the Clerk of
17 Court?

18 THE COURT: Yes, sir. And the -- the rule requires you
19 to send me a copy, but in this instance if you give it to the
20 Clerk of Court's office, I'll ask them to send me a copy so
21 you won't have to send two.

22 THE DEFENDANT: Okay. And a motion for a new trial, how
23 long should that take?

24 THE COURT: You -- you have ten days from today to make
25 your motion for a new trial.

1 THE DEFENDANT: And how long will it take before we know
2 if it's granted?

3 THE COURT: I would -- I would rule on that in the
4 ordinary course of my business. I wouldn't be able to tell
5 you exactly when, but I would rule on it pretty quickly,
6 either giving you a new trial or refusing your motion.

7 THE DEFENDANT: Okay.

8 THE COURT: Okay.

9 THE DEFENDANT: What was the other one, Your Honor?

10 THE COURT: You have ten days from today to file an
11 appeal with the Court of Appeals or Supreme Court, and that is
12 still your deadline if you do not file any motion for a new
13 trial.

14 THE DEFENDANT: And where do you send the appeal to?

15 THE COURT: Well, like I told you at the beginning of the
16 trial, I'm not permitted to --

17 THE DEFENDANT: Okay.

18 THE COURT: -- give you legal advice. I can give you a
19 short answer. Columbia. I'm not -- we -- it's in the rule
20 book here.

21 THE DEFENDANT: All right.

22 THE COURT: But I'm not permitted under the law to advice
23 you on the mechanics of that.

24 THE DEFENDANT: Okay. I understand.

25 THE COURT: Okay?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Would you like the ten days --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- to file the motion for a new trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. I'll be happy to give that to
7 you.

8 THE DEFENDANT: All right, sir.

9 SENTENCING

10 THE COURT: All right. Ms. McElveen, could you explain
11 or give me the benefit of his record and any matters that you
12 would like to be presented during sentencing? Then, Mr.
13 Duren, after that, I'll be certainly happy to hear from you
14 and anyone else concerning sentencing. All right?

15 MS. MCELVEEN: Your Honor, Mr. Duren's prior record. He
16 has a June 1983 violation of a rental agreement.

17 THE COURT: Okay. And go slowly for me since you're
18 reading.

19 MS. MCELVEEN: June 1983, violation of a rental
20 agreement. January 1985, another violation of a rental
21 agreement. February 1985, worthless check.

22 THE COURT: Okay. You've got to slow down. I'm writing
23 it down. All right. Violation of a rental agreement, '80
24 what?

25 MS. MCELVEEN: February 1985.

1 THE COURT: Okay. And then the --

2 MS. MCELVEEN: I'm sorry. Violation of a rental
3 agreement was January 1985.

4 THE COURT: Okay.

5 MS. MCELVEEN: Worthless check is February 1985.

6 THE COURT: All right.

7 MS. MCELVEEN: July 1987, three counts of worthless
8 checks.

9 THE COURT: All right.

10 MS. MCELVEEN: October 1987, escape or attempt to escape
11 from prison. December 1991, two counts of receiving stolen
12 goods.

13 THE COURT: Okay.

14 MS. MCELVEEN: May 1993, malicious injury to personal
15 property.

16 THE COURT: All right.

17 MS. MCELVEEN: December 1993, escape from prison again.
18 August 1996, driving under suspension. September 1998,
19 criminal domestic violence. June 2011 from Georgia,
20 possession of burglary tools and criminal trespass.

21 THE COURT: June of '11?

22 MS. MCELVEEN: June 2011, yes, sir.

23 THE COURT: Okay.

24 MS. MCELVEEN: April 2000, burglary second degree
25 violent.

1 THE COURT: All right.

2 MS. MCELVEEN: November 2001, burglary second degree
3 violent, two counts of burglary second degree non-violent.
4 I'm sorry. Three counts of burglary second degree -- I'm
5 sorry. Four counts of burglary -- no. Three counts of
6 burglary second degree non-violent, two counts of burglary
7 second degree violent from November 2001, and an arson in the
8 second degree.

9 THE COURT: So November of '01 totalled five burglary
10 convictions and one arson?

11 MS. MCELVEEN: Five --

12 THE COURT: Two violent and three non-violent and an
13 arson?

14 MS. MCELVEEN: Yes, sir.

15 THE COURT: Okay.

16 MS. MCELVEEN: May 2012, public disorderly conduct.

17 THE COURT: And that's it?

18 MS. MCELVEEN: And June 2013, entering premises after
19 warning.

20 THE COURT: Okay. All right. Could you -- I think the
21 notice has already been put on the -- in the record. Of
22 course, that was a preliminary matter. Could you explain that
23 for the record, please?

24 MS. MCELVEEN: Yes, sir. Your Honor, I believe it's a
25 Court's exhibit.

1 THE COURT REPORTER: It is, 4.

2 THE COURT: All right.

3 MS. MCELVEEN: Oh, wait, that's direct presentment.

4 Which one -- Your Honor, State's Exhibit -- or -- I'm sorry.
5 Court's Exhibit Number 2. On July 31st of 2014, based upon
6 three or more prior serious offenses -- or actually we only
7 needed two or more prior serious offenses. We served notice
8 of Intention to Seek Life Imprisonment Without Parole on Mr.
9 Duren based upon his prior record and the charges that are now
10 before the Court.

11 THE COURT: All right. It's your position that the two
12 prior burglary second violent convictions -- or actually,
13 there were three in April of 2000 and the two in November of
14 2001. Those were strikes under the Three Strikes Law?

15 MS. MCELVEEN: Right. Yes, sir. And also, arson second
16 degree. Yes, sir. But the two burglary second degree
17 violent at least. That's what we've listed, but I know there
18 are others. But we wanted to just put the violent level and
19 see if we can get that.

20 THE COURT: Okay. And arson in the second degree is
21 classified as a serious offense?

22 MS. MCELVEEN: Yes, sir. Under --

23 THE COURT: 17-25-45?

24 MS. MCELVEEN: Yes, sir.

25 THE COURT: All right. Burglary in the second degree or

1 subsection B of 312 is also a strike. All right. This
2 statute was amended at some point, I guess in June of 2010
3 when most of them were, and the law says this:

4 Upon a conviction --

5 This is 17-25-45, subparagraph capital A.

6 Notwithstanding any other provision of law except in
7 cases in which the death penalty is imposed, upon a conviction
8 for a most serious offense as defined in this section, a
9 person must be sentenced to life imprisonment if there has
10 been a prior conviction for a most serious offense.

11 Subparagraph B. It says:

12 Notwithstanding any other provision of law except in
13 cases in which the death penalty is imposed, upon a conviction
14 for a serious offense as defined by this section, a person
15 must -- and that's the operative word -- must be sentenced to
16 a term of life imprisonment without the possibility of parole
17 if that person has two or more prior convictions for --
18 Subparagraph 1 -- a serious offense.

19 According to the State's recitation, Mr. Duren has been
20 convicted in April of 2000 for burglary in the second degree
21 violent, which is a serious offense. It's a strike. November
22 1, two counts of burglary in the second degree, violent.
23 Again, a strike. And also arson, second degree, which is a
24 strike.

25 At a minimum, according to your recitation, Ms. McElveen,

1 there are three prior serious offense convictions, maximum of
2 four. It depends upon how the law would look at pleading
3 guilty to two burglaries on the same date.

4 Anything else the State wants to present? Anything from
5 you or from law enforcement?

6 MS. MCELVEEN: Your Honor, just for the abundance of
7 caution for the record, State's Exhibit 34 and 35 are
8 certified copies of those two burglaries. Serious, violent
9 charges is checked, the judge signed, and they're from two
10 different offense dates. I also have the certified copy of
11 his arson, second degree, sentencing sheet, if Your Honor
12 would like to receive that just in an abundance of caution,
13 but the other ones are State's exhibits already entered into
14 evidence.

15 THE COURT: And the April 2000 burglary second violent,
16 that was also Sumter County?

17 MS. MCELVEEN: Yes. I'm -- yes, sir. There's only one
18 outside of Sumter and I believe it was the Georgia charge,
19 possession of burglary tools, and the other burglary charge.
20 I'm sorry. The other Georgia charge. I can't remember what
21 it was.

22 THE COURT: All right. This will be made an exhibit too
23 -- excuse me -- as well. All right.

24 (WHEREUPON, the arson sentencing sheet was marked as
25 Court's Exhibit Number 9.)

1 THE COURT: Mr. Duren, is there anything you would like
2 to tell me?

3 THE DEFENDANT: Yes, sir. I would like to speak on -- on
4 the two burglary -- violent burglary charges and the arson
5 charge.

6 THE COURT: All right, sir.

7 THE DEFENDANT: I would like to tell you about them.

8 THE COURT: Okay.

9 THE DEFENDANT: From 2000. Your Honor, in 2000 to the
10 violent charge, burglary, and the arson charge, which took
11 place on the same day, that happened, Your Honor. With all
12 due respect, that happened.

13 And, Your Honor, that day, if I had to do that day over
14 again, I would. That's the truth, Your Honor, because that
15 day I went into a neighborhood out there on Pinewood Road and
16 you can read the -- you can read the incident report and read
17 the newspaper right there about that incident.

18 Two young men got behind me with a .357 Magnum and a 9mm.
19 I ran across Pinewood Road into the housing area over there,
20 running for my life. I ran up in there. I snatched the first
21 young man's door open, ran in his house, closed the door. He
22 was sitting on the couch. I'll never forget it. And he said,
23 what you doing in my house? I said, sir, please call 9-1-1.
24 I got somebody trying to kill me. He said, could you leave my
25 house? I said, please call 9-1-1. He said, leave. I said,

1 I'm leaving your house.

2 I left out his back door when he was getting on the phone
3 to call 9-1-1. When I came out the back door, these young men
4 -- they were still behind me. I ran through the other
5 neighbor's. I jumped fences, fences, fences in the
6 neighborhood, and they was closing on me. Just an older white
7 guy. I ran and knocked his door. His was the back door. I
8 got in there and put his kitchen table up behind the door, and
9 they was still trying to come in the house. I ran in the back
10 bedroom, put the bunkbed up against the door. They were
11 coming in the house. I set the bunkbed on fire because I
12 figured ain't nobody coming in the room on fire.

13 That's what I did, not knowing I trapped myself in that
14 room. I did. That room got so hot, I walked in the walk-in
15 closet and the guy who --

16 THE COURT: How did you set it on fire?

17 THE DEFENDANT: With a -- with a --

18 THE COURT: Lighter?

19 THE DEFENDANT: Lighter because I used to smoke
20 cigarettes back then.

21 THE COURT: Okay.

22 THE DEFENDANT: I set it on fire. I went in the walk-in
23 closet, and I said, God, I don't want to die today. And I
24 went back out in that bedroom and that fire was hotter than
25 all hell, Your Honor. I -- the clothes and stuff started

1 burning. I walked back in that closet. I said, I don't want
2 to die, God. I heard a voice say hit the back of the closet.
3 I hit it. Nothing happened. I heard something say hit it
4 again. I hit it. Nothing happened.

5 I walked back out of that bedroom and that fire was
6 superhot. I went back in the closet and I said, God, I don't
7 want to die. I heard something say hit it again, and I hit it
8 gain and I bust through the wall into another room. I'll
9 never forget this. And smoke was starting to come in this
10 room. I got on the floor and I went to try to get the window
11 up, and I got the window up. I decided to get out because
12 they had the double-paned window. I had to knock that out,
13 but I knocked that out.

14 I started yelling, somebody help me. There was a white
15 couple in -- this white guy and his family getting in a car
16 across the street. They heard me start hollering and he saw
17 what was going on. He saw the smoke start coming out of the
18 house. He ran over there and starting helping me out the
19 window and told his wife to call 9-1-1.

20 The last thing I remember was getting put in the
21 ambulance. When I woke up, it was twenty-two days later at
22 Charleston Medical Burn Center. While I was there, they told
23 my parents I had two collapsed lungs, double pneumonia, and
24 third-degree burns over seventy percent of my body.

25 The guy told -- the doctor told my parents to go ahead

1 and plan my funeral. I wasn't going to -- I was never going
2 to make it. God saw that I made it.

3 When I came to, there was a young woman standing beside
4 my bed I hadn't seen in twelve years, and that was my
5 daughter. I have a beautiful daughter. She have a job for a
6 Hyatt Regency hotel out there in Portland, Oregon, Your Honor.
7 I have three beautiful grandkids. When I woke up, she said,
8 pop, why are you still hurting people that you love? I
9 promised my daughter on that bed that I was never going to
10 hurt nobody else again.

11 God blessed me. I didn't need no skin grafts. My skin
12 healed itself. The doctor said I was a miracle. They had
13 never seen nothing like that before. I promised my daughter
14 that I was never going to do nothing like that again, and I
15 haven't, Your Honor.

16 I woke up. I got out. I went straight home. I got out
17 and went there and went straight back here. I went to Sumter
18 County prison. Everybody told me I was getting life in
19 prison. I put it in God's hands, and I did. I got blessed
20 before the judge. I was facing 115 years and a life sentence.

21 THE COURT: Back in 2000?

22 THE DEFENDANT: Yes, sir. That's what they told me. The
23 man -- both men came to my trial. They had no qualms against
24 me for what I did. They said they would have did the same
25 thing, and I want to tell you, Your Honor, I would do the same

1 thing over. I wasn't about to get shot that day for something
2 I didn't do.

3 The man's house that I caught arson, I caused \$14,000
4 worth of damage to his house. He never -- he said, old man, I
5 forgive you. He said, because I have a son out there in the
6 street. I know what goes on out there.

7 And the room that I set on fire, the guy was prepared
8 before because that was his grandson's room and I remember the
9 day there was nothing -- you know, young kids have all kinds
10 of stuff in their closet, clothes, toys, and all that. There
11 was nothing in that closet that day when I went in there.

12 And I promised this lady here that I wouldn't do nothing
13 else, and I kept that promise. I kept that promise. When I
14 got out of prison -- I stayed in prison from 2001 until 2007,
15 and I moved out of South Carolina to get away from this. I
16 moved to Georgia, had a good life down there. Working down
17 there for a tax service, during security work and everything.
18 Painter, painting all up in a ladder, painting multi --
19 \$100,000 houses, doctor office, dentist office, all in
20 Atlanta.

21 I kept that promise to my mother, but my past caught up
22 with me. I was doing a -- a job renovating a restaurant, a
23 barber shop, and -- and -- what else? -- a beauty salon. It
24 was all in one building.

25 Burglary tools. I was going to work one night because

1 I'd work during the day and go home and eat and then go back
2 to do a job. I had keys to the place and everything, but I
3 got a backpack on. I got paintbrushes, I got hammers and all
4 in there.

5 They stopped me, asked me where I was going. I told them
6 I was going to work. Can I check your backpack? It got tools
7 and all in there? Yes, it does. I'm going to work. I told
8 them where I was going to work. They ran a record. They ran
9 a check to see did I have a record, and they locked me up for
10 burglary tools. Once they started, they kept at me. They
11 kept so that I had to move into the place that I was
12 renovating to keep from being hassled.

13 And I came back to South Carolina to help my mother and
14 my father. I got a sick brother at the house that they're
15 taking care of right now.

16 That man's place got broken into. It did. I didn't do
17 it. How my blood got there, I do not know.

18 THE COURT: When did you move back from Georgia?

19 THE DEFENDANT: I moved back from Georgia in 2011. And
20 I'm going to tell you this. See, the Court don't know this.
21 I wasn't back in South Carolina forty-eight hours, Clarendon
22 County locked me up for a burglary. I went down to 301 to
23 help put an engine in my father's truck.

24 THE COURT: Do you have a burglary charge pending in
25 Clarendon County?

1 THE DEFENDANT: No. I went to trial. I went to trial.
2 I went to trial and they kept me going back and forth the
3 whole year, going to trial about that.

4 I'm walking -- that night, I'm walking with my brother.
5 I told him before he left the place to put gas in the truck.
6 He wouldn't put no gas in the truck. He wouldn't put no gas
7 in the truck. He ran out of gas. I walked. I met the
8 police. The deputy sheriff was coming up the road. I waved
9 to him. He passed by me and went down to talk to my brother
10 in the truck and came back. He pulled over by me. I walked
11 to the man with the gas can.

12 He asked me for ID; I gave him my ID. He ran a check on
13 me. I had an old warrant on me from 2001, a warrant ten years
14 old -- eleven years old really. I had no problem with that.
15 He took me to jail. He said, you want to go talk to your
16 brother in the truck? I went to talk to my brother in the
17 truck and gave him a bottle of gas and his money back. He
18 took me to jail.

19 The next morning, I was expecting to go to bond. They
20 told me I have a burglary in the area that I was in. They
21 charged me for the burglary.

22 THE COURT: All right. How long --

23 THE DEFENDANT: The only --

24 THE COURT: How long had you been back in South Carolina
25 before the date of this offense at the Thomas & Howard place?

1 THE DEFENDANT: Since 2011.

2 THE COURT: Okay.

3 THE DEFENDANT: May of 2011.

4 THE COURT: May of 2011?

5 THE DEFENDANT: No. April.

6 THE COURT: And your contention obviously has been that
7 the blood -- your blood was planted?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you know how they got your blood?

10 THE DEFENDANT: I do not know, sir.

11 THE COURT: And do you know how they knew you were back?

12 THE DEFENDANT: Your Honor?

13 THE COURT: Do you know?

14 THE DEFENDANT: No, sir, Your Honor. That's just it. I
15 never came to Sumter. My mother will tell you. When dark
16 came, I stayed out of the city limit of Sumter. I didn't come
17 to Sumter. I barely came to Sumter in the day. The only time
18 I came to Sumter was to go to the recycling place or go to the
19 parts place.

20 But anyway, in Clarendon County, something told me to get
21 a copy of my booking report. I got a copy of my booking
22 report. The next thing I know, when I go to court they got
23 that I'm booked in with fifty silver coins, a watch --

24 THE COURT: Well, I don't need to hear about that.

25 THE DEFENDANT: Okay.

1 THE COURT: That has nothing to do with sentencing.

2 THE DEFENDANT: Okay. I understand.

3 THE COURT: Okay.

4 THE DEFENDANT: Okay. The policeman down there told me
5 he got all this stuff off me and put it on the hood of his
6 car. Now, they got --

7 THE COURT: All right. Do you have any charges pending
8 from that?

9 THE DEFENDANT: No, sir.

10 THE COURT: Then I don't need to hear about that.

11 THE DEFENDANT: But I'm not guilty. But they tried to
12 plant evidence on me there, the Sheriff's Department did.

13 THE COURT: In Clarendon?

14 THE DEFENDANT: In Clarendon. And if you read that case,
15 you can see what they booked me in with, what they said --

16 THE COURT: All right. So are any of your prior
17 convictions -- are any of those legitimate?

18 THE DEFENDANT: Legitimate?

19 THE COURT: Did you commit any of those crimes?

20 THE DEFENDANT: Yes, sir. I committed -- I committed --
21 I was stupid back then before 2000. Before -- the day after
22 9/11 was when I committed the arson and the two violent
23 burglaries, the day after 9/11. I'll never forget it. The
24 two before that, yes, sir. I did those.

25 THE COURT: Well, actually, it was about three weeks

1 after.

2 THE DEFENDANT: Well --

3 THE COURT: But anyway --

4 THE DEFENDANT: Those -- those were --

5 THE COURT: No. I take that back. Two burglaries -- one
6 burglary September 5, 2001, another burglary January 27, 2000,
7 another -- and the arson was September 29, 2001.

8 What I can't -- what I cannot do is entertain an
9 explanation from you on these charges as to why you were
10 really not guilty of what you already pled to. I can't do
11 that.. I mean that would be impossible for me to do.

12 THE DEFENDANT: I understand. I'm just letting you know,
13 Your Honor.

14 THE COURT: All right.

15 THE DEFENDANT: My life history.

16 THE COURT: And you're right. This is -- this is a
17 result that is not good for you.

18 THE DEFENDANT: Yeah. But if I know for me pleading
19 guilty to do those two violent, I wouldn't have pled guilty.
20 I was in -- you know, they transported me to prison and I came
21 back and pleaded to that one without a lawyer.

22 THE COURT: Well, no, you had a lawyer. You had Mr. Jack
23 Howell.

24 THE DEFENDANT: Jack Howell?

25 THE COURT: That's whose signature -- that's whose

1 signature is on here.

2 THE DEFENDANT: Yeah. They appointed me him the day I
3 came back there. Yes, sir. You're right, Your Honor. But if
4 I had known that this would affect me down the road, I would
5 have never pleaded to them, Your Honor.

6 THE COURT: All right. I'm just --

7 THE DEFENDANT: Yes. Those -- I did those, Your Honor,
8 but I did those in duress to save my life. And like I tell
9 you, I would do that again. If the same situation arise, I
10 would do the exact same thing, Your Honor.

11 THE COURT: All right. Would you -- do your parents want
12 to say anything? All right. Your name, sir.

13 MR. DAVID DUREN SR.: David Eric Duren Sr.

14 THE COURT: Yes, sir?

15 MR. DAVID DUREN SR.: The only thing -- it's not a
16 statement, but it's a question.

17 THE COURT: Yes, sir.

18 MR. DAVID DUREN SR.: I'd just like to ask you to be
19 lenient on him, please, because me and my wife -- me and my
20 wife both -- we're disabled, plus I have a disabled son, the
21 one next to him, at home that we're trying to take care of.
22 And he has been a lot of help too.

23 THE COURT: Yes, sir.

24 MR. DAVID DUREN SR.: But I don't know the things that
25 he's spoke about, and I can't say whether he's innocent or

1 guilty. But all I'm asking is be lenient on him, Your Honor.

2 THE COURT: Thank you, Mr. Duren.

3 MR. DAVID DUREN SR.: Thank you, Your Honor.

4 THE COURT: All right. Mr. Duren, anything else you want
5 to say?

6 THE DEFENDANT: Also, Judge, at the time I was in -- I
7 was in school.

8 THE COURT: When?

9 THE DEFENDANT: The year --

10 THE COURT: When these -- when the burglary at the Thomas
11 & Howard happened?

12 THE DEFENDANT: No. After that. I was going -- I was
13 doing junk before then, but my life -- my life has been clean,
14 Your Honor. I was going to Sumter Carolina trying to get my
15 license. I've gotten married and everything. I have a
16 beautiful wife, you know. She don't want to be here, you
17 know. She have cancer, but a beautiful wife. She's a
18 graduate of the top of her class at law school. I have a
19 beautiful wife. I have three beautiful grandchildren.

20 I didn't commit these burglaries, Your Honor. That's the
21 God-heaven truth. How am I going to do that? I do not know.
22 I don't. I don't.

23 THE COURT: All right. Thank you, sir. Anything else
24 from the State?

25 MS. MCELVEEN: Your Honor, just for the consideration in

1 sentencing, when his CODIS hit came back on this case, it came
2 back on four other burglaries and there are two other 2013
3 burglaries pending in our office with his blood left at the
4 scene or other sort of specimens left at the scene from --

5 THE COURT: So he has other pending burglary charges in
6 Sumter?

7 MS. MCELVEEN: Yes, sir.

8 THE DEFENDANT: How many?

9 MS. MCELVEEN: Two other ones.

10 THE COURT: Two other ones?

11 MS. MCELVEEN: I'm sorry. Two other. Yes, sir.

12 THE DEFENDANT: Two?

13 THE COURT: So blood or some substance was left at the
14 scene on those also?

15 MS. MCELVEEN: Yes, sir. I can't remember if it was
16 blood or saliva or what, but I know that.

17 THE COURT: Were those when he was out on bond for this
18 or off the --

19 MS. MCELVEEN: Yes, sir. Which is why he got the bond
20 revoked after on this charge is because he went out and there
21 are two more burglary cases that came in after this.

22 THE COURT: While he was out on bond?

23 MS. MCELVEEN: For this.

24 THE COURT: On his PR bond?

25 MS. MCELVEEN: Yes, sir.

1 THE COURT: Okay. All right. All right. The State, Mr.
2 Duren -- well, not directly to you, but just for the record.
3 The State has given notice under 17-25-45 of its intention to
4 seek life without parole or a sentence of life without parole
5 because of the fact that you have already been convicted of
6 two or more serious offenses.

7 This is one of the few circumstances where I have no
8 discretion. I do not know, nor do I want to know, about any
9 plea negotiations between you and the State or you and your
10 former attorney and the State. I don't want to know about
11 that.

12 But at this stage, there is nothing I can do. I have
13 utterly no authority to render a sentence of anything less
14 than life in prison without the possibility of parole. Our
15 legislature has seen fit to adopt this statute with the Three
16 Strikes Law and the Two Strikes Law. This is a three strike.

17 I do not know what the State intends to do with the other
18 burglaries. I would assume that the State is going to
19 continue prosecution for those.

20 SENTENCE

21 THE COURT: Under the law, as I am required to do, I am
22 confining you to the South Carolina Department of Corrections
23 for the balance of your life without any possibility of
24 parole.

25 My heart goes out to your parents, but they didn't break

1 into this store. They didn't commit the other burglaries.
2 They didn't commit the arson in the second degree. I have no
3 choice. All right. That is the sentence.

4 MS. MCELVEEN: Thank you, Your Honor. I have his
5 sentencing sheet.

6 THE COURT: All right. You can hand that up.

7 All right. Ladies and gentlemen of the jury, you are
8 free to go. Again, call the number that you have after six
9 o'clock.

10 (WHEREUPON, the jury exited the courtroom.)

11 THE COURT: Before Mr. Duren leaves -- Mr. Duren, if you
12 decide not to file any motions for a new trial, make sure that
13 you understand you have the right to appeal within ten days.

14 THE DEFENDANT: Okay. I don't know how long it will
15 take.

16 THE COURT: Sir?

17 THE DEFENDANT: I don't know how long it's supposed to
18 take.

19 THE COURT: For me to decide?

20 THE DEFENDANT: Yes.

21 THE COURT: I will deal with it very promptly.

22 THE DEFENDANT: Okay.

23 THE COURT: Okay? All right.

24 (WHEREUPON, the proceedings ended.)

25 --- END REQUESTED TRANSCRIPT ---



Kristal J. Smith

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RECORDED

2015 SEP 14 AM 11:51

2015-CP-43-2134

STATE OF SOUTH CAROLINA

County of

SumterJAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

In the Court of Common Pleas

CERTIFIED TRUE COPY
OF ORIGINAL FILEBarbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINADavid A. Duran #181263
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieben C. I P.O. Box 205
Ridgelyville, S.C. 29472
2. Name and location of Court which imposed sentence Sumter County Court of
General Session
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012-65-43-1149, 2002-65-43-107, 2002-65-43-109
 - (b) The Charges are Burglary and ARSON
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentences:
 - (a) 1st May 20, 2015 And 4-4-2002, And 4-11-2000
 - (b) _____
 - (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

5. Check whether a finding of guilty was made

- (a) after a plea of guilty on the 4-4-2002 and 4-11-2000
- (b) after a plea of not guilty on the 5-20-2015 Charge.
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. N/A
- ii. N/A
- iii. N/A

(b) the result in each such Court to which you appealed:

- i. N/A
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. N/A
- ii. N/A
- iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
- ii. N/A
- iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Family Matters and did not discover issue
- (b) until now.
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 4th, 5th, 6th, 8th, 13th, 14th, agreed Violation; due
- (b) Process Violation; Lawd upon the Court; subject matter
- (c) jurisdiction; Ineffective Counsel.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Amended PCR will follow; Brief will follow
- (b) _____
- (c) _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

I. N/A

II. N/A

III. N/A

(b) the proceedings in which each ground was raised:

I. N/A

II. N/A

III. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Did NOT discover ISSUE UNTIL NOW

(b) COUNSEL WAS INEFFECTIVE

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? N/A

(c) your sentencing? N/A

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

I. N/A

II. N/A

III. N/A

IV. N/A

V. N/A

(b) the proceedings at which each such attorney represented you:

I. N/A

II. N/A

III. N/A

18. State clearly the relief you seek in filing this application.

SENTENCE AND CONVICTION VACATED; ORDER ISSUE EXAMINING RECORD; NONE AND
DNA REMOVE FROM ALL DEGRATORY FILES; ALL MONEY PAID RETURN

19. Are you now under sentence from any other court that you have not challenged?

NO; EXCEPT 1 year Family Court

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, David A. Duren 181965, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David A. Duren

SWORN to and subscribed before me this 9th
day of September, 19 2015

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, David A. Duren 181965, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

David A. Duren
Applicant

SWORN or affirmed to and subscribed before me this

9th day of September, 19 2015

Ludrean Bryant
Notary Public

My Commission Expires May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
David A. Duren, #181965,	)	
	)	2015-CP-43-2134
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

RECORDED
2015 DEC -7 PM 1:10
JAMES C. WISSELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 14, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the May 2015 term of the Sumter County Grand Jury for Burglary- Second Degree (2012-GS-43-1149). Applicant proceeded pro-se at trial before the Honorable George C. James, Jr. Applicant was found guilty as indicted on May 20, 2015. Judge James sentenced Applicant to life without parole. Applicant did not appeal his conviction or sentence.

Additionally, Applicant was true bill indicted at the February 2002 term of the Sumter County Grand Jury for three counts Burglary – Second Degree and Arson Second Degree (2002-GS43-109).¹ Jack Howle, esquire represented Applicant. On April 4, 2002, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to seven year term of imprisonment for burglary – second degree for two counts of burglary-second

¹ Applicant listed this indictment on his current PCR application. As stated below, Respondent submits that any allegations raised regarding indictment 2002-GS-43-109 are barred by the statute of limitations and doctrine of laches.

degree and six year term of imprisonment for arson – second degree with those charges running concurrent to each other. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "4th, 5th, 6th, 8th, 13th, 14th, amend. Violation."
2. Due process violation.
3. Fraud upon the court.
4. Subject matter jurisdiction
5. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record, Rule 11, SCRCP.

III.

As it relates to indictment 2012-GS-43-1149, Respondent notes Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws

of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

IV.

As it relates to indictment 2012-GS-43-1149, the Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

As it relates to indictment 2012-GS-43-1149, the Respondent asserts that Applicant's allegations # 3 "Fraud upon the court" should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003).

An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Furthermore the relief sought by the Applicant in the application is not a cognizable relief claim for post-conviction relief under any of the statutory grounds.

VI.

As it relates to indictment 2002-GS-43-109, Respondent submits that those allegations for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was pled guilty to the offenses he challenges in this Application on April 4, 2002. This Application was filed on September 14, 2015 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the Application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VII.

As it relates to indictment 2002-GS-43-109, Respondent submits that those allegations are barred under the doctrine of *laches*. Applicant has filed this Application over thirteen years after he was convicted. The doctrine of *laches* bars Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the Applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2d Cir. 1979); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

Applicant's delay has greatly prejudiced Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. If Applicant had sought post-conviction relief within a reasonable time after his conviction, neither of these problems would exist. Therefore, Respondent submits that this Application should be summarily dismissed based on Applicant's lack of diligence in processing his claim for relief.

VIII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

IX.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

X.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on allegations arising out of indictment 2012-GS-43-1149. Respondent submits that any

allegations arising from indictment 2002-GS-43-109 are barred by the statute of limitations and doctrine of laches.

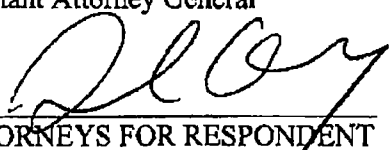
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 3, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2015-CP-43-2134
	)	
DAVID A. DUREN, JR., #181965,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Timothy Lee Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W. Wesmark Blvd, Second Floor
Sumter, South Carolina 29150**

DATED this 3rd day of December, 2015.


Caroline Collins, Legal Assistant
For Respondent

State of South Carolina)
)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-2134

David A. Duren, Jr.,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

July 26, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge

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

David A. Duren, Jr.
Self-represented Litigant

Julie A. Coleman, Esquire, Assistant Attorney General
Attorney for the Respondent

ALSO PRESENT:

Timothy L. Griffith, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Jacob M. Smith	
Direct Examination by Ms. Coleman.	28
Cross-examination by Mr. Duren	32
Certificate Page.	70

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

1 MS. COLEMAN: This is *David Duren vs. The State of*
2 *South Carolina*, 2015-CP-43-2134, and he's present today and
3 represented by Mr. Griffith, and I believe they have a
4 motion before the court.

5 THE COURT: Yes, sir.

6 MR. GRIFFITH: Your Honor, Mr. Duren has submitted a
7 motion, along with certificate of service handwritten. I'm
8 not sure if Your Honor has see it -- seen it. It was sent
9 out July 8th asking for the court to relieve counsel so
10 that he may either seek other counsel or represent himself.

11 This would be the third time that he's sent in a
12 request to relieve counsel. I certainly consent to being
13 relieved, but I would leave that up to the court, and Mr.
14 Duren, of course, presented the motion. You may want to
15 hear from him as well.

16 THE COURT: Yes, sir, I do, but I have not seen the
17 motion. Do you have a copy that I can look at?

18 MR. GRIFFITH: This is the latest one.

19 THE COURT: Okay.

20 (A PAUSE.)

21 THE COURT: Mr. Duren, if you would raise your right
22 hand and be placed under oath?

23 BAILIFF: Raise your right hand, please.

24 MR. DUREN: Excuse me, Your Honor, with all due
25 respect, Your Honor, before we get started I would like to

1 put the -- is this being recorded?

2 THE COURT: Yes, sir.

3 MR. DUREN: Okay. For the record, and the court shall
4 take judicial notice I, a human being, a living soul of
5 flesh and blood, reserve all my rights and waiver not. Do
6 you understand?

7 THE COURT: Yes, sir.

8 MR. DUREN: For the record, and the court shall take
9 judicial notice I, a human being, a living soul of flesh
10 and blood, do not wish to represent a corporate entity
11 named David A. Duren, Jr., and I have never consent to
12 represent that corporate entity, and I have no intention of
13 representing that corporate entity.

14 THE COURT: Okay. What is your opposition to being
15 placed under oath, whether ---

16 MR. DUREN: Because ---

17 THE COURT: --- you swear or affirm to tell the truth?

18 MR. DUREN: Please place under oath, Your Honor, the
19 holy Bible simply said thou shalt not swear by nothing on
20 heaven or the earth.

21 THE COURT: And let me interrupt you, sir, and let you
22 know that affirming that you will tell the truth ---

23 MR. DUREN: To ---

24 THE COURT: --- is an option.

25 MR. DUREN: To, to affirm, Your Honor, would be a

1 legal, binding contract with the court, and I do not wish
2 to contract with this court, Your Honor.

3 THE COURT: Well, unless I know that you're giving
4 me ---

5 MR. DUREN: I ---

6 THE COURT: --- truthful testimony, then how can I ---

7 MR. DUREN: I will let my ---

8 THE COURT: --- trust anything ---

9 MR. DUREN: I will let my ---

10 THE COURT: --- you say?

11 MR. DUREN: --- yes be yes and ney be ney.

12 THE COURT: Well, that's what everybody says, but we
13 have a procedure in which people have to tell me that they
14 are going to tell me the truth.

15 MR. DUREN: Well, Your Honor, at this -- yes, sir --
16 yes, ma'am, excuse me. No disrespect to the court, Your
17 Honor, but at this time, Your Honor, I would like to invoke
18 UCC1-302/3-305(a)(1)(iii).

19 THE COURT: Which says what?

20 MR. DUREN: Under prejudice and I am under no
21 obligation if I affirm, Your Honor.

22 THE COURT: What does the Uniform Commercial Code have
23 to do with this matter?

24 MR. DUREN: Because ---

25 MR. GRIFFITH: Pardon me, Your Honor. I believe what

1 he's stating is that he may affirm to tell the truth. He
2 just will not swear to it but, Your Honor, I believe that
3 he may affirm to tell the truth.

4 Would you -- is that what you're talking about?

5 MR. DUREN: Yes.

6 THE COURT: That's all I'm asking.

7 MR. GRIFFITH: And so if you were to raise your hand
8 and so affirm to tell the truth, then that would, I think,
9 be acceptable by the court.

10 THE COURT: That's all I'm asking, sir.

11 MR. DUREN: Okay.

12 THE COURT: And he's going to ask you if you swear or
13 affirm.

14 MR. DUREN: I'll affirm.

15 DAVID A. DUREN, JR., DULY AFFIRMS

16 AND TESTIFIES AS FOLLOWS:

17 THE COURT: Perfect. Now, Mr. Duren, I want you to
18 tell me why you don't want Mr. Griffith to represent you.

19 MR. DUREN: Because, Your Honor, it would be a
20 conflict of interest because the state is paying, the state
21 is paying Mr. Griffith to represent me, and he took a
22 solemn oath, and he is a member of the South Carolina Bar
23 Association, along with the state, and that is a conflict
24 of interest, Your Honor.

25 THE COURT: So, who do you want to represent you?

1 MR. DUREN: I'm representing myself, Your Honor.

2 THE COURT: All right. Well, then if he consents to
3 be relieved and you're going to represent yourself, are you
4 ready to go forward today?

5 MR. DUREN: Yes, ma'am.

6 THE COURT: All righty. Well, we'll just relieve Mr.
7 Griffith, and you can represent yourself, sir.

8 MR. DUREN: Yes, ma'am. Thank you.

9 MR. GRIFFITH: Thank you, Your Honor, and, Your Honor,
10 just to inform the court, this is Mr. Duren's file, and I'm
11 going to give it to him so that he does have all the
12 information that I have. And I know he has this plus
13 others, but I just wanted to be sure that everything is in
14 here today.

15 THE COURT: All righty.

16 MR. GRIFFITH: Thank you, Your Honor.

17 THE COURT: Well, let me ask before we begin. Is the
18 state ready to proceed on this case today?

19 MS. COLEMAN: Yes, Your Honor, we are ready to
20 proceed.

21 THE COURT: Okay. All right.

22 MR. GRIFFITH: Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 MS. COLEMAN: Your Honor, would you like me to read
25 the procedural history?

1 THE COURT: Yes, please.

2 MS. COLEMAN: Okay. We'll start with -- do you have
3 that list of factors that we were looking at yesterday? I
4 can pull them up to qualify him as pro se.

5 THE COURT: I did not.

6 MS. COLEMAN: Okay.

7 MR. GRIFFITH: Excuse me, Your Honor.

8 THE COURT: Yes, sir.

9 MR. GRIFFITH: Will you be giving him the *Faretta*
10 warning?

11 MS. COLEMAN: The state would request that you will.

12 THE COURT: If somebody has that list? I haven't
13 brought it ---

14 MS. COLEMAN: Yeah, we can pull that.

15 MR. GRIFFITH: Okay. Thank you, Your Honor.

16 THE COURT: Yes, I will.

17 MS. COLEMAN: Your Honor, would you mind if we did the
18 other case before we begin with this one in order to get
19 our witnesses out?

20 THE COURT: I hate to shuffle the inmates around too
21 much.

22 MS. COLEMAN: Yes, Your Honor.

23 THE COURT: But I do recognize that ---

24 MS. COLEMAN: Just while we pull up those factors
25 maybe to give us a chance to find those.

1 THE COURT: Well, I mean, Mr. Duren has been through
2 this before. I understand you filed motions to relieve
3 other attorneys before, right?

4 MR. DUREN: Yes, ma'am.

5 THE COURT: And you've come to court on those. I
6 mean, you understand that representing yourself, you don't
7 have any legal training. You know that, right, any formal
8 legal training? I'm not assuming that you don't know
9 anything about the law, but you've not been to law school,
10 correct?

11 MR. DUREN: No, ma'am.

12 THE COURT: Okay. You feel qualified to represent
13 yourself?

14 MR. DUREN: Ma'am?

15 THE COURT: You feel qualified to represent yourself?

16 MR. DUREN: Yes, ma'am, because the reason I'm
17 representing me, I called Mr. Griffith the other day,
18 right, and this has been going on, and I asked him. I said
19 what are we arguing at my PCR hearing? He asked me who is
20 this. I said this is Duren. He didn't even know we were
21 having a ---

22 THE COURT: Well, I understand. Mr. Griffith is gone.

23 MR. DUREN: Yeah.

24 THE COURT: He's not your lawyer anymore; I've taken
25 care of that. I'm just worried about you representing

1 yourself.

2 MR. DUREN: Well.

3 THE COURT: But, of course, the problem is if you
4 believe that any member of the South Carolina Bar has some
5 allegiance to the State of South Carolina, then I can't
6 appoint anybody to represent you because they'd all be paid
7 by the taxpayer dollars, by the bar, or Indigent Defense.

8 MR. DUREN: Your Honor, the State of South Carolina is
9 a corporation.

10 THE COURT: Okay.

11 MR. DUREN: Sumter County is a corporation.

12 THE COURT: Okay.

13 MR. DUREN: This courtroom is a corporate court.

14 THE COURT: All right. I just want to make sure you
15 know what you're doing representing yourself.

16 MR. DUREN: Yes, ma'am.

17 THE COURT: All right.

18 MR. DUREN: Yes, ma'am.

19 THE COURT: All right. I think we should, while you
20 pull those things up -- unless you have them before you
21 right now.

22 MS. COLEMAN: Not yet, Your Honor.

23 THE COURT: We're going to hear one more case before
24 we hear yours, Mr. Duren, because I think yours could be a
25 little bit long, and I've got a bunch of other people out

1 here waiting. So, we're going to put you back in the
2 holding cell. I know you just unpacked all your stuff, but
3 we're going to do the next case before yours, and then
4 we'll bring you back out here. That will give you some
5 time to prepare to represent yourself and go forward today,
6 okay? All right.

7 MS. COLEMAN: Thank you, Your Honor. I appreciate it.

8 (OFF THE RECORD.)

9 THE COURT: All right, Mr. Duren, we're going to start
10 with the state's case and whatever witnesses they have.
11 You can have a seat unless you need to stand to sort your
12 papers. I know it's kind of hard reaching, but you can
13 have a seat while the state goes first, okay? All right.

14 Yes, ma'am, Ms. Coleman.

15 MS. COLEMAN: Yes. This is *David A. Duren vs. The*
16 *State of South Carolina*, 2015-CP-43-2134. Applicant is
17 presently confined to South Carolina Department of
18 Corrections pursuant to orders of commitment of the Sumter
19 County Clerk of Court.

20 Applicant was true-bill indicted at the May 2015 term
21 of the Sumter County grand jury for burglary second degree,
22 2012-GS-43-1149. Applicant proceeded pro se at trial
23 before the Honorable George C. James, Jr. Applicant was
24 found guilty as indicted on May 20, 2015. Judge James
25 sentenced applicant to life without parole. Applicant did

1 not appeal his conviction or his sentence.

2 Additionally, applicant was true-bill indicted at the
3 February 2002 term of the Sumter County grand jury for
4 three counts of burglary second degree and arson second
5 degree, 2002-GS-43-109. Jack Howell, Esquire, represented
6 the applicant. On April 4, 2002, applicant pled guilty as
7 indicted before the Honorable Clifton Newman. Judge Newman
8 sentenced applicant to a seven-year term of imprisonment
9 for burglary second degree, with two counts of burglary
10 second and a six-year term of imprisonment for arson second
11 degree with those charges running concurrent to each other.
12 Applicant did not appeal his guilty plea or sentence.

13 Applicant filed an application for post-conviction
14 relief on September 14, 2015, alleging that he was being
15 held in custody unlawfully for the following reasons:
16 Fourth, Fifth, Sixth, Eighth, Thirteenth, Fourteenth
17 Amendment violations; due process violation; fraud upon the
18 court; subject-matter jurisdiction; and ineffective
19 assistance of counsel. The state filed its return on
20 December 3, 2015, and he is present today in the courtroom
21 and wishes to represent himself.

22 THE COURT: Oh, that's right. Let me start there
23 before you ---

24 MS. COLEMAN: Sure.

25 THE COURT: --- get any farther.

1 Mr. Duren, if you'd stand up again? I apologize. I
2 know we went through some of this earlier. I just want to
3 chat with you a little bit more about representing
4 yourself. Tell me how far you've gone in school.

5 MR. DUREN: I graduated high school.

6 THE COURT: All righty, and ---

7 MS. COLEMAN: Excuse me, Your Honor. Is he still
8 under oath? I just wanted to...

9 THE COURT: He is. I figure let's just save the
10 trouble of ---

11 MS. COLEMAN: Thank you.

12 THE COURT: --- going through that again, but ---

13 MR. DUREN: Your Honor, Your Honor, if it please the
14 court?

15 THE COURT: Yes, sir.

16 MR. DUREN: I put the court on judicial notice that I
17 didn't want to represent the court entity named Mr. Duren.
18 If it pleases the court, the court could call me David,
19 please.

20 THE COURT: Okay, David. Tell me what kind of work
21 you've done in your life.

22 MR. DUREN: Well, United States Marine Corps, painter,
23 self, self-employed. I had my own business at one time.
24 I'm also a mechanic, and I also do carpentry work, and I do
25 -- I turn bowls.

1 THE COURT: You do what now?

2 MR. DUREN: Turn bowls, make -- I build furniture.

3 THE COURT: Oh, bowls. Okay.

4 MR. DUREN: I build furniture.

5 THE COURT: Okay. All righty. Now, aside from the
6 charges that you're in the Department of Corrections on
7 now, have you ever had any other criminal charges in the
8 past?

9 MR. DUREN: Yes.

10 THE COURT: Okay. Did you have lawyers represent you
11 on those charges?

12 MR. DUREN: Yes.

13 THE COURT: Okay. You understand that -- you know, I
14 don't know if you were satisfied with that representation
15 or not, but you understand that attorneys have certain
16 legal training that may be beneficial in court proceedings.
17 You understand that?

18 MR. DUREN: I understand that.

19 THE COURT: Okay. Do you believe that you are capable
20 and have sufficient education and training to represent
21 yourself?

22 MR. DUREN: Yes, ma'am.

23 THE COURT: All right. Do you know why you're here
24 today, what kind of case this is?

25 MR. DUREN: This is a P -- post, post, post-conviction

1 relief proceeding.

2 THE COURT: Okay, and what are you asking the court to
3 do in the PCR relief case?

4 MR. DUREN: I'm asking them to vacate my sentences.

5 THE COURT: Okay.

6 MR. DUREN: Because of ineffective assistance of
7 counsel in my prior conviction, on the prior conviction.

8 THE COURT: Now, you understand that if after I hear
9 everything I decide that your conviction should be vacated,
10 you will go back and get a new trial. You understand that?

11 MR. DUREN: Yes, ma'am.

12 THE COURT: That doesn't mean that the charge
13 permanently goes away; it just means you start back from
14 the beginning.

15 MR. DUREN: Okay.

16 THE COURT: You understand that?

17 MR. DUREN: If I go back, if the court decides that I
18 go back and get a new trial, will the state appeal it?

19 THE COURT: I don't know the answer to that.

20 MR. DUREN: Okay.

21 THE COURT: I don't know the answer to that. That's
22 not up to me to decide. They may. They may not. I don't
23 know, but let's assume that they don't appeal and my
24 decision stands and I say yes, you get a new trial. That
25 just means you go back to the beginning, and you will still

1 have this charge of burglary and arson, and I forget what
2 your other charges were, but you still have to go to trial
3 on those charges. You understand that?

4 MR. DUREN: I already did time for those charges.

5 THE COURT: You could get more time than you are
6 currently serving.

7 MR. DUREN: Those, those charges was 2002.

8 THE COURT: Okay, I'm sorry. What are you in for
9 right now?

10 MR. DUREN: I'm in for burglary second, just one
11 charge.

12 THE COURT: Okay. Well, then if I grant the PCR as to
13 the burglary second charge.

14 MR. DUREN: Yes.

15 THE COURT: Is that what you're asking for? I'm
16 sorry, I don't have everything in front of me. I think
17 I've lost some of the paperwork.

18 MR. DUREN: I was, I was, I was charged with burglary
19 second. I was indicted for burglary second.

20 THE COURT: Okay.

21 MR. DUREN: May 13, 2015.

22 THE COURT: Okay.

23 MR. DUREN: Okay.

24 THE COURT: And that's the seventeen-year sentence?

25 MR. DUREN: Huh?

1 THE COURT: Is that the seventeen-year sentence?

2 MR. DUREN: No. They gave me a life sentence. They
3 three striked me.

4 THE COURT: Okay.

5 MR. DUREN: They enhanced my sentence.

6 THE COURT: Oh. Okay.

7 MR. DUREN: They three striked me because of my
8 priors.

9 THE COURT: Gotcha.

10 MR. DUREN: But today I'm challenging my prior, too,
11 for ineffective assistance of counsel because if those
12 priors were -- if counsel was not given at those -- were
13 inadequate that those -- the defendant can challenge those
14 charges.

15 THE COURT: Okay. So, then I'm back to my original
16 question.

17 MR. DUREN: Yes.

18 THE COURT: Do you understand that if I were to agree
19 with you as to those 2002 charges and vacate all of your
20 sentences, I guess, I grant your PCR application and let
21 you get a new trial.

22 MR. DUREN: Yes, Your Honor.

23 THE COURT: You know, you might still end up doing
24 life or ---

25 MR. DUREN: No. Fifteen.

1 MS. COLEMAN: Your Honor, the state is actually going
2 to move to dismiss the 2002 charges.

3 THE COURT: I figured that.

4 But in the best case scenario for David here, you know
5 it just means that you start back at the beginning. You
6 understand?

7 MR. DUREN: All right. Okay. So, the charges are
8 dismissed, so I get a new trial because I don't face a life
9 sentence no more.

10 THE COURT: You might still. I don't know. It
11 depends on the way they try you.

12 MR. DUREN: Okay. So, the state is considering that
13 they are dismissing the 2002 charge, the enhancement
14 charge?

15 THE COURT: Oh, no, no, no. No, no, no. That's not
16 what he ask -- not what Ms. Coleman said. We'll get to
17 that part in a minute. I just want to make sure you know
18 that you would be starting back at the beginning with your
19 charges.

20 MR. DUREN: Yes, ma'am.

21 THE COURT: Okay. I mean, I don't know what else to
22 ask you. I guess you're comfortable representing yourself?

23 MR. DUREN: Yes, ma'am.

24 THE COURT: All righty. Then we're going to go
25 forward, and I'm going to let Ms. Coleman go first.

1 MS. COLEMAN: Thank you.

2 THE COURT: And we'll talk about that thing she said
3 about 2002 in a second.

4 MS. COLEMAN: Yes. I'll do that.

5 THE COURT: Okay.

6 MS. COLEMAN: The state at this time moves to dismiss
7 the PCR allegations on the 2002 three counts of burglary
8 second and arson second degree. We move to dismiss those
9 as untimely filed past the statute of limitations.

10 THE COURT: Okay, David, basically what the state
11 wants me to do is -- I know you filed this PCR application
12 as to the 2002 charges and the 2015 charges, right?

13 DEFENSE: Yes, ma'am.

14 THE COURT: What they're saying is you filed the
15 application for PCR too late on those 2002 charges. You
16 understand you're supposed to file a PCR application within
17 one year of the conviction and/or final determination of
18 appeal, whichever ---

19 MR. DUREN: But ---

20 THE COURT: --- that is?

21 MR. DUREN: But I'm not challenging those three
22 charges that they -- I'm challenging the two charges that
23 they used to enhance my, my sentence.

24 THE COURT: Well, yes, those would ---

25 MR. DUREN: And the ---

1 THE COURT: --- be the 2002 charges.

2 MR. DUREN: But there was two burglary charges. They
3 weren't arson. There were two burglary violent. Those are
4 the two charges I'm challenging.

5 THE COURT: Yes, from 2002, right?

6 MR. DUREN: Yes, ma'am.

7 THE COURT: Okay, and that's what she's saying. That
8 happened in 2002. So, you probably should have filed the
9 post-conviction relief application some time in 2003 within
10 a year of that conviction.

11 MR. DUREN: Under, under rule of discovery, I can
12 bring those up at any time.

13 THE COURT: Well, tell me what rule you're talking
14 about.

15 MR. DUREN: Rule 46, I think it's Rule 46. It's
16 discovery. It's not newly discovered evidence. It's
17 discovery.

18 THE COURT: Okay. What made you just discover that
19 you needed to file a PCR?

20 MR. DUREN: During, during my research. In *US vs.*
21 *McQueen*, 445 F3d 757:

22 Defendant may collaterally challenge the use of
23 prior sentencing if the conviction was obtained
24 in a violation of his right to counsel.

25 That's *US vs. McQueen*. *Baylor vs. State*, 392 SC 422,

1 the Sixth Amendment of the US Constitution guarantees
2 defendant the right to effective assistance of counsel in
3 *Strickland vs. Washington*. I -- those, those -- this
4 sentence was in violation of, of my right to counsel at
5 that proceeding because if the defendant can prove that the
6 counsel was just inserted the day I plead guilty back in
7 2002 just as standby to take the guilty plea, that's not,
8 that's not counsel.

9 If we had the court record -- I asked for the
10 transcript, but that, that counsel was inserted when I
11 plead guilty because Judge Clifton Newman appointed that
12 counsel the day I plead guilty. That counsel had no, he
13 had no time to investigate this charge because if he had
14 investigated those charges, he would have seen that the
15 indictment that they supposedly had to enhance this charge,
16 the indictment was totally defective because you have two
17 charges on one indictment that are not closely connected
18 offenses.

19 THE COURT: Well, and my question to you, though, is
20 all that happened back in 2002, and you knew in 2002 that
21 Judge Newman appointed that attorney that same day. Why
22 didn't you file a PCR application about that some time in
23 2002 or even 2003? Why is it just coming up now?

24 MR. DUREN: It just -- because, because, ma'am, in
25 2002 and 2003 those sentence, those sentence was a six-year

1 sentence. I had no knowledge of the law back then, none,
2 none. No knowledge of those laws.

3 THE COURT: Why didn't you?

4 MR. DUREN: Huh?

5 THE COURT: Why didn't you?

6 MR. DUREN: Ma'am, my mind was somewhere else, to be
7 honest. I was content to do my time and go home. These
8 came, these came up, these charges came up. They used
9 these two charges. I can challenge my prior conviction
10 according to *US vs. McQueen*.

11 THE COURT: Okay.

12 MR. DUREN: Because they were used to enhance the
13 sentence.

14 THE COURT: Okay.

15 MS. COLEMAN: Your Honor, if I may ---

16 THE COURT: Sure.

17 MS. COLEMAN: --- respond to the newly discovered
18 evidence claim? I would argue that *Hayden vs. State*, which
19 is a 1983 South Carolina case, lays out the factors for
20 newly discovered evidence in a post-conviction relief
21 action.

22 MR. DUREN: This is not newly discovered evidence.
23 This is discovery, not newly discovered.

24 MS. COLEMAN: Okay.

25 MR. DUREN: There's a difference.

1 THE COURT: Well, let me finish hearing what she has
2 to say.

3 MS. COLEMAN: I was just going to say that one of the
4 factors in that is that could not -- that the, the
5 information could not, by the exercise of due diligence,
6 have been discovered before the trial.

7 THE COURT: Right.

8 MS. COLEMAN: And we would argue that Mr. Duren did
9 not exercise due diligence.

10 THE COURT: Right. Well, right.

11 David, I'm going to respectfully disagree with you,
12 and I'm going to have to grant the state's motion to
13 dismiss that part of your PCR. I mean, you just told me
14 yourself that you were at that time content to just do your
15 time, and you didn't have the knowledge that you have, but
16 maybe you should have done some research at that point
17 instead of now. The law only gives you one year to do your
18 research and figure out whether you should file the PCR
19 application, and you didn't do that because you were
20 content to just do your time. And, you know, that's fine
21 and that's the decision that you made, but I can't go back
22 and rewrite history and allow you to bring that up now.
23 That's too old. You didn't file the application in time.

24 MR. DUREN: Excuse me. Bear with me for a second,
25 please.

1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 MR. DUREN: In *Childress vs. Johnson*, 103 F3d 1221
4 Fifth Circuit, sentencing and punishment. Inadequate
5 representation of counsel appointed merely to stand by to
6 listen to judge and response to contention that may arise
7 while defendant waived his right to a jury trial on
8 burglary charge was not assisting at all and required by
9 the Sixth Amendment. Thus, defendant burglary conviction
10 used to enhance sentence for later leaving the scene of a
11 crime was vacated. That's in *Childress vs. Johnson*.

12 Defendant is entitled to effective assistance of
13 counsel in determine how to plea and in making a plea and
14 can attack his conviction collaterally if he's not given
15 that right. That's even in prior convictions. It's a
16 constitutional violation, and a constitutional violation
17 can be raised at any point at any time. The Fifth, Sixth
18 Amendment, Thirteenth and Fourteenth are constitutional
19 violations, state and federal. Can be raised in any
20 proceeding at any time regardless -- even if that defendant
21 does not challenge his conviction at that time. It can be
22 raised at any time, a constitutional violation.

23 THE COURT: I understand your argument, and I've heard
24 what you've had to say, but I respectfully disagree with
25 you, sir.

1 MR. DUREN: So, so, my constitutional rights, a
2 defendant constitutional right can be violated at any time,
3 and nothing can be done about it?

4 THE COURT: What I'm telling you is that the law
5 requires that if you feel you were denied your right to
6 counsel, there is a time frame in which you must appeal to
7 the court or file an application to have that matter heard
8 for the court to make that determination. You failed to do
9 that in this case. Therefore, I will not hear that portion
10 of your case, sir.

11 MR. DUREN: Excuse me one second.

12 (A PAUSE.)

13 MR. DUREN: The law, we're talking about, we're
14 talking about the law. This is Supreme Court Justice
15 Warren E. Burger, justice Supreme Court, Washington Post,
16 26 May 1969, he say:

17 Guilt or innocence become irrelevant in a
18 criminal charge as we flounder in a morass of
19 artificial rules. All court rules and
20 regulations are artificial.

21 And he goes on to say they are poorly conceived and
22 impossible of application. Like they're impossible. All
23 court rules and regulations are artificial. They, they are
24 bylaws of the corporation. A corporation is an artificial,
25 intangible, invisible, being created by the statute of law.

1 South -- these laws that -- in South Carolina are
2 artificial laws.

3 I have cases right here that can prove that South
4 Carolina -- the state is a corporation. I was never
5 informed that the state was a corporation. I was never
6 informed that I was a representing a corporate entity. I
7 was told if I didn't adhere to the warrant, that they was
8 going to take me to jail by force. All, all, all court
9 rules and regulations are artificial. As they say in the
10 language, I mean, it's quasi. It may look like it's real,
11 it may act like it's real, but it's not real.

12 THE COURT: Okay.

13 MR. DUREN: And today we're standing in a military
14 courtroom. Army regulation 840-10, it states that the
15 United States flag with the two and a half inch frame
16 fringe around it is only supposed to be flown in a military
17 courtroom, and that's under US -- under the United States
18 Code, Title 4, flag. You can read it. I have the Army --
19 the regulation right here.

20 THE COURT: That's not necessary. We're not here
21 about that, sir. What we're here about is you trying to
22 get a new trial on all your charges ---

23 MR. DUREN: But ---

24 THE COURT: --- and ---

25 MR. DUREN: --- it's all tied together with this case.

1 These all tie together.

2 THE COURT: Sir, David, I understand that you have a
3 certain position, that you are convinced that you are
4 absolutely correct in that position, so much -- you are
5 just as convinced as Ms. Coleman is that she is correct in
6 everything that she says to me. And my job here is to make
7 a decision as to who I think is right and what I believe
8 the law says. And I've heard you, and I know that you are
9 adamant about your position, but disagree with you, sir,
10 and so I'm done with that issue. We're not going to hear
11 your post-conviction relief application as to the 2002
12 charges. I'm happy to hear from you about your 2015
13 conviction if you want to discuss that, but we're done with
14 the 2002 charges. I'm not going to hear that.

15 MR. DUREN: Okay. If we can't hear the 2002 charges,
16 they are inserted in my 2015 conviction.

17 THE COURT: And you will have to figure out how to
18 extract that. Do you have any other complaints about the
19 2015 conviction?

20 MR. DUREN: Yes, ma'am.

21 THE COURT: Well, that's what I want to hear.

22 MR. DUREN: Okay.

23 THE COURT: Okay.

24 MR. DUREN: We'll start with the warrant.

25 THE COURT: Well, like I said, I'm going to hear from

J. SMITH -- DIRECT EXAMINATION BY MS. COLEMAN

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1 Ms. Coleman first. I just wanted to hear that motion. And
2 just so you understand my ruling, when it gets to be your
3 turn, all we're going to be talking about is your 2015
4 conviction, not the 2002 charges.

5 MR. DUREN: Okay.

6 THE COURT: Okay?

7 MR. DUREN: All right.

8 THE COURT: All right, Ms. Coleman.

9 MS. COLEMAN: Thank you, Your Honor. The state calls
10 Jacob Smith to the stand.

11 JACOB M. SMITH, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 BAILIFF: State your full name. Spell your last name
14 for the record.

15 WITNESS: Jacob Smith, S-m-i-t-h.

16 DIRECT EXAMINATION BY MS. COLEMAN:

17 Q. Hi, Mr. Smith. How are you?

18 A. Good. How about yourself?

19 Q. Fine, thank you. How long have you been practicing
20 law?

21 A. Four years.

22 Q. And can you tell us some -- a little bit about your
23 involvement in this case? Were you appointed or retained?

24 A. I was appointed to this case. Actually we were
25 appointed from the bench, I believe. It was actually Tim

J. SMITH -- DIRECT EXAMINATION BY MS. COLEMAN

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1 Murphy that was initially appointed. I worked in the
2 public defender office. He came in one day, basically told
3 me I was going to take over the case. So, I took over the
4 case, picked up appointment on it, and proceeded forward
5 with the preliminary hearing the next day.

6 Q. Okay, and how long did you represent Mr. Duren?

7 A. About four months.

8 Q. How many times did you met with him prior to his
9 trial?

10 A. Ten to fifteen.

11 Q. Did the applicant cooperate with you during the course
12 of your representation?

13 A. For the most part, yes, until the end. He decided he
14 wanted to represent himself, so I filed the motion to be
15 relieved and then also filed a motion to reduce bond, I
16 believe it was, or reconsider bond.

17 Q. And he ultimately had a hearing about whether or not
18 he could go pro se at trial. Is that correct?

19 A. Correct.

20 Q. Okay. Did you file any *Brady* or Rule 5 motions in
21 this case?

22 A. I did.

23 Q. Okay. Did you review the discovery material with the
24 applicant?

25 A. I did.

J. SMITH -- DIRECT EXAMINATION BY MS. COLEMAN

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1 Q. Did you discuss the elements of the charges and what
2 the state was required to prove?

3 A. I did.

4 Q. Did you discuss the applicant's version of the facts?

5 A. Yes, I did.

6 Q. And can you tell us a little about those?

7 A. He basically had an alibi. He said that his two
8 sisters -- he was down in Georgia. I hired a PI to
9 investigate that. PI came back with nothing. I informed
10 Mr. Duren that he has not -- had not been able to find
11 anything out on that end and that, you know, we were going
12 to proceed forward.

13 There was an issue in the discovery. DNA was not
14 processed as far as they have not collected it from Mr.
15 Duren to test what they had on the scene. So, a *Schmerber*
16 motion was filed or a *Schmerber* hearing was done, but I was
17 not representing him at that time. We -- I never had the
18 DNA to evaluate with Mr. Duren.

19 Q. Can you briefly describe the state's evidence against
20 the applicant?

21 A. Sure. There was a burglary. I believe there may have
22 been a video at one of the burglary sites, but it was
23 mainly a CODIS hit on DNA collected at the scene. I
24 believe it was blood DNA.

25 Q. Would you describe their evidence as overwhelming?

J. SMITH -- DIRECT EXAMINATION BY MS. COLEMAN

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1 A. Well, at the time we didn't know. The DNA hadn't been
2 tested, so it wasn't overwhelming at the time, but if the
3 DNA was going to come back his, it, it would have been very
4 strong.

5 Q. Okay. You mentioned a couple of alibi witnesses that
6 you investigated. Were there any other potential witnesses
7 or leads the applicant provided you with?

8 A. Not any he brought up to me.

9 Q. What other investigation did you do in this case?

10 A. Tried to make contact with alibi witnesses. We
11 reviewed the discovery. The big thing for us was there was
12 no DNA at the time that I represented him. Again, it was a
13 short period of time; it was about four months. I think it
14 might have been a little bit less that I actually
15 represented him, but because we didn't have the, the DNA,
16 the state did make an offer on the case. I relayed that
17 offer to Mr. Duren and realistically it was wait and see
18 for the DNA to come back.

19 Q. Did you spend any time preparing for trial in this
20 case?

21 A. I didn't because we hadn't reached that point yet.

22 Q. Okay. How did -- well, you already explained this.
23 How did your representation of the applicant end?

24 A. He told me one day that he wanted to proceed pro se.
25 It was after I relayed the offer from the state. He asked

J. SMITH -- DIRECT EXAMINATION / CROSS-EXAMINATION

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1 if he could get five years; he said that he would do five.
2 I said I would ask. I asked. They wouldn't budge. The
3 offer was plead straight up to two counts burg second
4 violent and one count burg second nonviolent, I believe.

5 Q. Is there anything else you'd like us to know about
6 your representation of Mr. Duren?

7 A. That's it.

8 Q. Okay.

9 MS. COLEMAN: No further questions. Thank you.

10 WITNESS: Thank you.

11 THE COURT: David, do you have any questions for this
12 gentleman?

13 MR. DUREN: Yes. Yes, ma'am, I do, ma'am.

14 THE COURT: Okay.

15 CROSS-EXAMINATION BY MR. DUREN:

16 Q. Mr. Smith.

17 A. Yes, sir.

18 Q. Did you represent Mr. Duren at his notice to seek life
19 without parole hearing?

20 A. I believe I did. Again, I came on -- Tim Murphy was
21 on the case, I guess, initially, but I came in. I think I
22 actually handled that. I think it was the day after I
23 actually took over the trial.

24 Q. Okay. Did you do any investigation into his priors
25 since they was going to use his priors to enhance his

1 charge?

2 A. Yeah. I reviewed the SLED records to indicate that
3 you did have priors.

4 Q. So in your investigation of this select record, you
5 did not notice any discrepancy in the indictments?

6 A. Not that I can recall. There may be -- I think there
7 may have been an issue. I, I can't recall. I didn't -- I
8 don't remember anything off the top of my head.

9 MR. DUREN: Just a second. Bear with me. I've just
10 got a bunch of stuff up here.

11 THE COURT: Yes, sir.

12 BY MR. DUREN:

13 Q. Okay, Mr. Smith, you represented Mr. Duren in his
14 notice to seek life imprisonment hearing. It was dated,
15 let's see, dated, dated July the 31, 2014. Mr. Smith, in
16 your investigation, did you investigate Mr. Duren prior
17 record?

18 A. Like I said, I reviewed the prior record that you had
19 with SLED, and there was an indication of a prior record.
20 I believe ---

21 Q. I was talking prior indictments.

22 A. Prior indictments?

23 Q. Yeah.

24 A. No. I didn't -- I don't believe I actually reviewed
25 the prior indictments. I reviewed your prior convictions.