

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Beaufort County

S.C. SUPREME COURT

Honorable Diane Schafer Goodstein, Circuit Court Judge

DARRELL HEYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001564

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

CHRISTIAN SAVILLE
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2012-GS-07-2390

State of South Carolina,
Plaintiff(s),
vs.
Darrell Heyward,
Defendant(s).

Transcript of Record

May 28-29, 2015
Beaufort, South Carolina

BEFORE:

The Honorable PERRY H. GRAVELY

APPEARANCE PAGE

1 APPEARANCES

2

3 REPRESENTING PLAINTIFF(S):

4

5 Patrick Hall, Assistant Solicitor

6 Julie Kate Keeney, Assistant Solicitor

7 14th Judicial Circuit Solicitor's Office

8 39 Sheridan Park Circle, Suite 2

9 Bluffton, SC 29910

10 843-255-5880

11

12

13

14 REPRESENTING DEFENDANT(S):

15

16 Jeffrey S. Stephens, Esquire

17 Quindlen & Merrifield, P.A.

18 PO Box 2450

19 Beaufort, SC 29901-2450

20 843-379-2660

21

22

23

24

25

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JURY SELECTION

1 THE COURT: Welcome back, everyone. I know that
2 some of you were here -- it seems like just a few
3 minutes ago. We appreciate you all coming back. For
4 a lot of us, y'all probably didn't have a whole lot of
5 choice about it, but thank y'all for coming back.

6 We're getting ready to strike a jury for this
7 morning. It's a case that will be going on until
8 possibly tomorrow, but the good news is that everybody
9 that does not get selected for this jury this morning
10 is released for the rest of the week.

11 For those of you fortunate enough to make it on
12 this jury, you will be here today and possibly some
13 tomorrow.

14 And I think we -- I think the clerk had contacted
15 anyone -- I know there were several people that needed
16 protection for Friday. Is there anybody out here that
17 I gave -- on Monday, I gave protection for Friday? If
18 so, please stand.

19 (No response.)

20 THE COURT: Okay. I thought that the clerks had
21 called everybody, but just wanted to make sure that we
22 didn't mess up anything there.

23 All right. Let's see here. Probably just have a
24 roll call. We have about 62?

25 THE BAILIFF: Yes.

JURY SELECTION

1 THE COURT: All right. Ladies and gentlemen, I'm
2 going to ask you some questions about this specific
3 case. I will remind you that y'all were put under
4 oath on Tuesday, so that still goes for today. So you
5 are still -- I'll just remind you of that, to answer
6 these questions truthfully and listen very carefully
7 because it's very important that we get the
8 information about you before we start a trial so that
9 we can, you know -- so that we can get a jury made up
10 of totally unbiased, fair, and impartial -- so that
11 you can be fair and impartial in this case against
12 Darrell Heyward, who is the Defendant. So, again, it
13 is important that you listen carefully on this.

14 Okay. This is the case of State versus
15 Darrell Heyward. Okay. This is a burglary second
16 degree based on this on October the 9th, 2012.
17 Indictment 2012-GS-07-02390.

18 Now, as I told you the other day that when a -- an
19 indictment is merely a charging document. It is not to
20 be considered as anything other than a charging
21 document that brings this matter before the court. So,
22 okay.

23 First of all, I would ask if any member of the
24 jury panel is related by blood or marriage to
25 Darrell Heyward.

JURY SELECTION

1 And Mr. Heyward, could you stand up please and
2 face the jury just so they can see you?

3 All right. Is anybody related by blood or
4 marriage or have a close personal, or social
5 relationship with Mr. Heyward? If so, please stand.

6 Okay. Let the record reflect that no one is
7 standing.

8 The attorneys involved in this matter are
9 Patrick Hall from the Solicitor's office and -- is Ms.
10 Keeney also?

11 MR. HALL: Ms. Keeney will be sitting with me,
12 yes, sir.

13 THE COURT: All right. Kate?

14 MS. KEENEY: Julie Kate.

15 THE COURT: Julie Kate Keeney, also with the
16 Solicitor's office. And Jeff Stevens.

17 All right. Those are the attorneys in this case.
18 Is any juror related by blood or marriage or have a
19 close personal relationship to either -- to any of
20 these attorneys or have been previously represented by
21 them?

22 Yes, ma'am, what's your jury number?

23 JUROR: Juror No. 80, Allison Coppage, same as
24 last time.

25 THE COURT: As you indicated yesterday?

JURY SELECTION

1 JUROR: My husband was a former employee of the
2 Solicitor's office, as in six months ago, and I have a
3 close relationship with all three attorneys.

4 THE COURT: All right. And the fact that you
5 know -- as a result of that relationship, could you
6 give a fair and impartial trial to both sides in this
7 matter?

8 JUROR: I guess my question would be, who the
9 arresting entity would be.

10 THE COURT: I believe it's Beaufort County
11 Sheriff's Office.

12 JUROR: I serve as county attorney and represent
13 the Beaufort County Sheriff's Office, so I don't think
14 I could serve.

15 THE COURT: I believe that would be a basis for
16 excusing you.

17 JUROR: Yes, sir.

18 THE BAILIFF: Excuse her, Your Honor?

19 THE COURT: Yes, she's excused.

20 All right. Man in blue.

21 JUROR: No. 325.

22 THE COURT: Okay. Mr. Rosser.

23 JUROR: Yes.

24 THE COURT: All right. What is your connection
25 to any of these attorneys?

JURY SELECTION

1 JUROR: Friends with the attorney Patrick Hall.

2 THE COURT: Okay. And that relationship, would
3 that keep you from being able to give a fair and
4 impartial trial to both parties?

5 JUROR: No, sir.

6 THE COURT: All right. Then I'm going to allow
7 you to stay. All right.

8 And the next lady?

9 JUROR: Juror 277, Sheri Nixon.

10 THE COURT: All right. Ms. Nixon, what is your
11 connection?

12 JUROR: I'm friends and family with Mr. Hall as
13 well.

14 THE COURT: Okay. And that connection, would
15 that keep you from giving a fair and impartial trial
16 to both parties in the matter?

17 JUROR: No, it would not.

18 THE COURT: Thank you. I'll allow you to stay.
19 Okay.

20 And your name and your number?

21 JUROR: Juror No. 176, Mindy Hopman.

22 THE COURT: All right. Ms. Hopman, what is your
23 connection?

24 JUROR: Friends with Patrick Hall.

25 THE COURT: Does that relationship in any way

JURY SELECTION

1 keep you from being able to give a fair and impartial
2 trial to both parties in this matter?

3 JUROR: No, sir.

4 THE COURT: All right. I'm going to find you
5 qualified.

6 Anybody else that knows either of the attorneys?
7 I'm sorry, any of them.

8 All right. Here's the witness list. Now, listen
9 carefully. If you know any of these witnesses, please
10 stand and then I'll ask some follow-up questions.

11 Investigator Doug Seifert, Beaufort County
12 Sheriff's Office. I guess that's him standing there.

13 Lieutenant Corporal John Duus. Is that pronounced
14 right?

15 MR. HALL: Yes, Your Honor.

16 THE COURT: Beaufort County Sheriff's Office.

17 Larry Laatsch -- or Laatsch, formerly of Beaufort
18 County Sheriff's Office. Officer Brady Lee, Bluffton
19 Police Department. Jimmy Gregory and Rebekah Disser.

20 Does anybody on the jury panel know any of these
21 possible witnesses or have any close personal
22 relationship or social relationship with any of these
23 witnesses? If so, please stand.

24 All right. Let the record reflect that no one
25 responded.

JURY SELECTION

1 And I realize that you have not been given a lot
2 of information about this case, but has anyone -- any
3 member of the jury panel formed or expressed an opinion
4 about any issue or matter involved in this case? If
5 so, please stand.

6 (No response.)

7 THE COURT: Is any member of the jury panel aware
8 of any bias or prejudice towards either the State or
9 the Defendant that would keep them from being able to
10 render a fair and impartial trial in this matter? If
11 so, please stand.

12 (No response.)

13 THE COURT: No response. Does any member of the
14 jury panel know of any reason whatsoever why he or she
15 could not serve as a juror in this case, and give both
16 the State and the Defendant a fair and impartial
17 trial? If so, please stand.

18 (No response.)

19 THE COURT: All right. Any other questions from
20 the State?

21 MR. HALL: Nothing from the State, Your Honor.

22 THE COURT: Anything from -- I'm sorry. We've
23 got a guy.

24 Yes, sir, the guy in the blue shirt.

25 JUROR: Yes, sir. Juror 60. Could you spell the

JURY SELECTION

1 officer John -- I didn't hear -- I couldn't
2 understand.

3 THE COURT: John Duus, D-U-U-S.

4 JUROR: Oh, okay. Thanks. I don't know him.
5 Thank you.

6 THE COURT: All right. Anybody else have any
7 questions, comments, editorial opinion?

8 All right. Any --

9 THE BAILIFF: One standing, Your Honor.

10 THE COURT: I'm sorry.

11 JUROR: Sir, will there be another opportunity to
12 be excused from today?

13 THE COURT: What's your issue?

14 JUROR: I have a very important meeting at school
15 and have been asked by my principal to beg that I
16 would be able to be there today.

17 THE COURT: All right. And what's your number?

18 JUROR: No. 360.

19 THE COURT: Leslie St. Laurent?

20 JUROR: St. Laurent, yes, sir.

21 THE COURT: Now, you're starting something. I
22 think in light of that, that seems pretty serious.
23 And in view of that, I'll allow you to be excused.

24 And, yes, your number.

25 JUROR: Sir, I'm 340, Cathy Shaw. I teach at

JURY SELECTION

1 Hilton Head Middle and we have the funeral services
2 for our assistant principal on Friday.

3 THE COURT: Oh, okay. Yeah. What was your
4 number again?

5 JUROR: No. 340.

6 THE COURT: Sorry about that. I definitely will
7 excuse you just so we won't have a chance to go into
8 that.

9 JUROR: Thank you.

10 THE BAILIFF: One more standing.

11 JUROR: Juror 326. I'm a paralegal at an
12 attorney's office in Bluffton and we have a closing
13 scheduled for tomorrow morning. Just protection for
14 tomorrow, if that's possible.

15 THE COURT: I'm sorry. I'm not going to be able
16 to excuse you for that. I realize that could create
17 some problems there, but we just have to see how this
18 goes.

19 JUROR: Okay.

20 THE COURT: All right. Anything else from the
21 Defendant -- from the State?

22 MR. HALL: Nothing from the State, Your Honor.

23 THE COURT: Anything else from the Defense?

24 MR. STEPHENS: Nothing from the Defense,
25 Your Honor. Thank you.

JURY SELECTION

1 THE COURT: All right. Stay seated and we will
2 give you additional instructions in just a minute.

3 It'll be about five and ten; is that correct?

4 MR. HALL: Yes, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, now
6 we're going to start the jury selection process, or
7 the actual jury selection, in the case of State versus
8 Darrell Heyward. And if your name is called, if you
9 will just stand right there in your place, and then
10 the attorneys will have a chance to determine whether
11 you're going to be selected. And if you are selected,
12 you will listen to the bailiff and be seated over
13 here. Follow his instructions.

14 So, at this time, if you will proceed.

15 THE CLERK: Juror 162, Nancy Haverland.

16 THE COURT: What says the State?

17 MR. HALL: Please seat the juror.

18 THE BAILIFF: Remain standing.

19 THE COURT: I'm sorry. Remain standing until we
20 tell you otherwise. I didn't follow through with that
21 instruction. I'm sorry.

22 All right. What says the Defense?

23 MR. STEPHENS: Please excuse the juror,
24 Your Honor.

25 THE COURT: All right. Now, you can sit down.

JURY SELECTION

1 THE CLERK: Juror 206, George Landon.

2 THE COURT: What says the State?

3 MR. HALL: Your Honor, may we approach?

4 THE COURT: Yes.

5 (Off-the-record discussion held.)

6 MR. HALL: Your Honor, with respect to that
7 juror, I'd ask that that juror be seated, please.

8 THE COURT: Okay.

9 MR. STEPHENS: Your Honor, please seat
10 Mr. Landon.

11 THE CLERK: Juror 139, Donald Goodwine.

12 THE COURT: What says the State?

13 MR. HALL: Please seat the juror.

14 THE COURT: What says the Defense?

15 MR. STEPHENS: Please seat Mr. Goodwine.

16 THE CLERK: Juror 121, Cody Forbes.

17 THE COURT: What says the State?

18 MR. HALL: Please seat the juror.

19 MR. STEPHENS: Please seat Mr. Forbes.

20 THE CLERK: Juror 115, Deborah Freidenfeld.

21 THE COURT: What says the State?

22 MR. HALL: Please seat the juror.

23 THE COURT: What says the Defense?

24 MR. STEPHENS: I'm sorry. Can I have that juror
25 number repeated?

JURY SELECTION

1 THE COURT: No. 115.

2 THE CLERK: No. 115, Deborah Freidenfeld.

3 MR. STEPHENS: I just had the wrong last name,

4 Your Honor. Please excuse Ms. Freidenfeld.

5 THE CLERK: Juror 260, Jennifer Montero.

6 THE COURT: What says the State?

7 MR. HALL: Please seat the juror.

8 THE COURT: And what says the Defense?

9 MR. STEPHENS: Please seat Ms. Montero.

10 THE CLERK: Juror 277, Sheri Nixon.

11 MR. HALL: Please seat the juror.

12 THE COURT: All right.

13 MR. STEPHENS: Please excuse Ms. Nixon.

14 THE CLERK: Juror 196, Kris Kampschror.

15 THE COURT: What says the State?

16 MR. HALL: Please seat the juror.

17 MR. STEPHENS: Please seat Mr. Kampschror.

18 THE CLERK: Juror 107, Laurie Eschell.

19 THE COURT: What says the State?

20 MR. HALL: Please seat the juror.

21 MR. STEPHENS: Please excuse Ms. Eschell.

22 THE CLERK: Juror 396, Phyllis Wilson.

23 THE COURT: What says the State?

24 MR. HALL: Please seat the juror.

25 THE COURT: What says the Defense?

JURY SELECTION

1 MR. STEPHENS: It's Ms. Wilson, Your Honor?

2 THE COURT: Yes.

3 MR. STEPHENS: Please seat Ms. Wilson.

4 THE CLERK: Juror 275, Brian Newton.

5 THE COURT: What says the State?

6 MR. HALL: Please seat the juror.

7 THE COURT: What says the Defense?

8 MR. STEPHENS: Please seat Mr. Newton.

9 THE CLERK: Juror 146, Lisa Gregg.

10 MR. HALL: Please excuse the juror.

11 THE CLERK: Juror 365, Brandy Thames.

12 THE COURT: What says the State?

13 MR. HALL: Please seat the juror.

14 THE COURT: What says the Defense?

15 MR. STEPHENS: Please seat Ms. Thames.

16 THE CLERK: Juror 31, Lizbeth Bell.

17 THE COURT: What says the State?

18 MR. HALL: Please seat the juror.

19 THE COURT: What says the Defense?

20 MR. STEPHENS: Please excuse Ms. Bell.

21 THE CLERK: Juror 129, Dorothy Gariti.

22 THE COURT: What says the State?

23 MR. HALL: Please seat the juror.

24 THE COURT: What says the Defense?

25 MR. STEPHENS: Please excuse Ms. Gariti.

JURY SELECTION

1 THE CLERK: Juror 131, Ricardas Gataveckas.
2 THE COURT: What says the State?
3 MR. HALL: Please seat the juror.
4 THE COURT: What says the Defense?
5 MR. STEPHENS: Please seat Mr. Gataveckas.
6 THE CLERK: Juror 204, Lawson Cheryl Kumpf.
7 THE COURT: What says the State?
8 MR. HALL: Please seat the juror.
9 THE COURT: What says the Defense?
10 MR. STEPHENS: Please excuse Ms. Kumpf.
11 THE CLERK: Juror 70, Suzanne Christy.
12 THE COURT: What says the State?
13 MR. HALL: Please seat the juror..
14 THE COURT: What says the Defense?
15 MR. STEPHENS: Please seat Ms. Christy.
16 THE CLERK: Juror 325, John Terrell Rosser.
17 THE COURT: What says the State?
18 MR. HALL: Please seat the juror.
19 THE COURT: What says the Defense?
20 MR. STEPHENS: Please excuse Mr. Rosser.
21 THE COURT: I've got nine for you.
22 THE CLERK: Juror 326, Katherine Rosso.
23 THE COURT: What says the State?
24 MR. HALL: Please excuse the juror.
25 THE CLERK: Juror 205, Paul Lacombe.

JURY SELECTION

1 THE COURT: What says the State?

2 MR. HALL: Please seat the juror.

3 THE COURT: What says the Defense?

4 MR. STEPHENS: May we approach briefly?

5 THE COURT: Yes.

6 (Off-the-record discussion held.)

7 THE COURT: All right. Paul Lacombe, what says
8 the State?

9 MR. HALL: Please seat the juror.

10 THE COURT: And Defense?

11 MR. STEPHENS: Please excuse Mr. Lacombe.

12 THE COURT: I have that as ten.

13 MR. STEPHENS: Ten.

14 THE CLERK: Juror 163, Michael Heckman.

15 THE COURT: What says the State?

16 MR. HALL: Please seat the juror.

17 MR. STEPHENS: Please seat Mr. Heckman,
18 Your Honor.

19 THE CLERK: Juror 214, Sandra Lieblein.

20 THE COURT: What says the State?

21 MR. HALL: Please seat the juror.

22 MR. STEPHENS: Please seat Ms. Lieblein.

23 THE CLERK: Juror 262, John Moore.

24 THE COURT: What says the State?

25 MR. HALL: Please seat the juror.

JURY SELECTION

1 MR. STEPHENS: Please seat Mr. Moore.

2 THE COURT: All right. I have that as 12.

3 THE CLERK: Yes, sir.

4 THE COURT: And how many alternates, do we need

5 two alternates or just one?

6 MR. STEPHENS: Your Honor, I think if we have

7 enough jurors, we should probably pick two alternates.

8 THE COURT: All right. So it will be one and two

9 more strikes.

10 THE CLERK: Juror 219, Erik Lopez.

11 THE COURT: What says the State?

12 MR. HALL: Please seat the juror.

13 THE COURT: What says the Defense?

14 MR. STEPHENS: Please seat Mr. Lopez.

15 THE COURT: Come forward.

16 THE CLERK: Juror 244, Kathleen McGill.

17 THE COURT: What says the State?

18 MR. HALL: Please seat the juror.

19 THE COURT: What says the Defense?

20 MR. STEPHENS: Please excuse Ms. McGill.

21 THE CLERK: Juror 54, Rita Brown.

22 THE COURT: What says the State?

23 MR. HALL: Please seat the juror.

24 MR. STEPHENS: Please seat Ms. Brown.

25 THE COURT: All right. Any objections or issues

JURY SELECTION

1 about the selection process for this case from the
2 State?

3 MR. HALL: Nothing from the State, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. STEPHENS: Nothing from the Defense.

6 THE COURT: All right.

7 Ladies and gentlemen, I know you're going to feel
8 like you just won the lottery, but we will be -- y'all
9 have been selected for the case of State versus
10 Darrell Heyward and we'll be getting ready to -- we've
11 got some preliminary matters to go through, and we'll
12 be starting this case in just a few minutes.

13 So at this time, I'm going to ask that you go back
14 to your jury room. But, again, do not -- you don't
15 know anything about the case, so you don't need to be
16 talking or trying to guess what it's going to be about.
17 Just talk about anything else. So there'll be -- I'll
18 give you further instructions on that, but just give
19 you a chance to take a break and we'll be back in here
20 in about 15 minutes. So thank you very much.

21 (Prospective jury panel exits the courtroom at
22 10:19 a.m.)

23 THE COURT: I wanted to wait until they got out
24 of here because I didn't want to rub it in.

25 Which precedes me telling you that we really

JURY SELECTION

1 appreciate your coming in these several days. I know
2 many of you actually served on a jury, we appreciate
3 that service. For those of you who didn't, you also
4 provided a service for being here as well. So thank
5 you for coming in. I'm sure that you'll be getting
6 that very large check that you need for your retirement
7 from the clerk's office.

8 And I guess if anybody needs an excuse for work,
9 you'll need to talk to the clerk's office. She's
10 raising her hand in the back. She's got something
11 there. and give your badges to her before you go out.

12 This also keeps you from having to serve on a
13 jury. You may get contacted, but you can exercise your
14 exemption for the next three years. So thank you very
15 much. I hope y'all have a great rest of the day and
16 weekend. Again, thank you for your service to Beaufort
17 County.

18 (Jury panel not selected was excused and exited
19 the courtroom.)

20 THE BAILIFF: The jurors are clear, Your Honor.

21 THE COURT: All right. I'm going to give y'all a
22 few minutes to kind of get ready, then we're going to
23 get the motions.

24 MR. STEPHENS: Are we at recess, Your Honor?

25 THE COURT: We are.

JURY SELECTION

1 (Whereupon, a brief recess was taken.)

2 THE COURT: All right. Before we bring the jury
3 in, I understand you have a couple of motions.

4 Any from the State?

5 MR. HALL: Nothing from the State, Your Honor. I
6 think as a general rule, I have most of my witnesses
7 sitting here in the back of the courtroom here. I know
8 I'm allowed to have my case officer here. I think it
9 would be standard to sequester the witnesses, and I'm
10 not opposed to that, so I'll instruct the other
11 witnesses they need to sit out in the hallway.

12 THE COURT: All right.

13 MR. STEPHENS: Yes, sir. We have no issue with
14 that.

15 MR. HALL: She's here and in the hallway.

16 THE COURT: All right. Mr. Stephens, I believe
17 you indicated you had a motion in limine.

18 MR. STEPHENS: Yes, Your Honor.

19 The first motion in limine we have, as we
20 discussed in chambers, Your Honor, I believe the State
21 is intending to use pretrial statements that a
22 co-Defendant, Mr. Jimmy Gregory, made to Beaufort
23 County Sheriff's Office law enforcement personnel. And
24 we would ask, after speaking with Mr. Gregory on prior
25 occasions and again this morning, he's indicated that

MOTIONS

1 he intends to refuse to testify.

2 And again, Your Honor, we can call him and order
3 him and advise him on that. But at this point, we
4 believe that he's going to refuse to testify
5 persistently, and we believe that under subtitle Rule
6 of Evidence 804 -- 8042, he's going to be unavailable
7 as a persistent refusal to testify.

8 Also, under both 804 and traditional views on
9 hearsay as well as the U.S. Supreme Court's opinions in
10 Crawford v. Washington and that line of cases,
11 including Davis v. Washington, we believe that his
12 statements would be testimonial hearsay if he is
13 unavailable based on his refusal to testify.

14 And I believe that's kind of the situation they
15 faced in Crawford. I'm handing the State a copy of the
16 Crawford decision. Your Honor may be very familiar
17 with it, but I --

18 THE COURT: Yeah, definitely.

19 MR. STEPHENS: And -- well, the second motion in
20 limine, which I'll wait to argue about, but it trails
21 on the first in part, Your Honor, dealing with
22 Mr. Gregory's indication that he's going to refuse to
23 testify.

24 Your Honor, the only thing I would advise are --
25 if I could point the Court's attention to, in the

MOTIONS

1 Crawford decision, most of this is Justice Scalia
2 talking about a history lesson on hearsay exceptions.

3 THE COURT: I remember trying to read it when it
4 first came out. And at some point, it was like okay,
5 where's the meaning?

6 MR. STEPHENS: Yes, sir. In the end -- towards
7 the end of the decision, the Court establishes that
8 there's a certain core of testimonial hearsay
9 situations. It doesn't really define them, but when
10 the primary purpose of someone giving a statement is
11 to law enforcement for use in potential future
12 investigation and prosecution, that clearly falls
13 within the core class of testimony and hearsay
14 statements under Crawford, as further defined in the
15 Davis v. Washington decision of 2006, Supreme Court
16 decision.

17 THE COURT: What's your position on this,
18 Mr. Hall?

19 MR. HALL: Well, Your Honor, Mr. Gregory is under
20 subpoena from the State of South Carolina. When I had
21 spoken to Mr. Gregory on a prior occasion, I believe
22 it was in August of last year, I asked him
23 specifically if he remembered ever talking to
24 Investigator Seifert with the Beaufort County
25 Sheriff's Office. He told me that he did not remember

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1 ever having a conversation with Investigator Seifert.

2 Because I have him under subpoena, I intend to
3 call him and put him on the stand, and I believe I'm
4 entitled to ask him questions regarding the prior
5 statements that he made pursuant to Rule 613(b). I'm
6 entitled to ask him the substance of the statement, the
7 time and place of the statement, the person to whom the
8 statement was made, and give him an opportunity to
9 explain or deny the statement. That would be the
10 State's position.

11 He's under subpoena, I will call him and I will
12 ask him those questions on the stand. And if he denies
13 ever making the statement, then as I said in chambers,
14 it would be the State's intent to move forward in
15 putting those statements in evidence through
16 Investigator Seifert, who took the statements from
17 Mr. Gregory. He would be subject to cross examination,
18 so ...

19 THE COURT: Right. I think what I want to do
20 now, because, I mean, obviously from your comments
21 and, you know, and your discussions, both of you agree
22 that he may refuse. So I'm going to limit my order on
23 the motion in limine at this point to -- I would ask
24 that you not address that in opening.

25 MR. HALL: Your Honor, I don't intend to, and I

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1 told Mr. Stephens that I'm making no reference to any
2 interrogation done with Mr. Gregory by Investigator
3 Seifert.

4 THE COURT: All right. And then I'm just going
5 to take that under advisement and address it as it
6 comes up.

7 But I think he's going to be able to ask him those
8 things, and then I guess the next question is, you
9 know, what we need to do. I just need to look a little
10 further into --

11 MR. STEPHENS: Yes. Your Honor, I only ask that
12 he be examined out of the presence of the jury
13 initially, just to ascertain whether or not he's going
14 to refuse to testify. I would hate to be put in a
15 situation that we move for mistrial just based on the
16 back and forth about whether he's going to testify.

17 And if he testifies, even to refute his
18 statements, the Defense concedes that if he refutes his
19 earlier statements, that could be used as prior
20 consistent statements against him substantively. So we
21 don't disagree on that.

22 But I would ask that when he's initially called,
23 that Your Honor question him about the refusal to
24 testify without the jury present.

25 THE COURT: When do you plan on call -- when are

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1 you calling him?

2 MR. HALL: He would be the fifth witness.

3 THE COURT: Okay. So we're talking -- take care
4 of that then around lunchtime or something.

5 MR. HALL: Yes.

6 THE COURT: All right. So none of that will come
7 up until the witness --

8 MR. HALL: Right. I don't plan to -- I mention
9 Jimmy Gregory in my opening statement, but I don't
10 mention any interview that had taken place between
11 Investigator Seifert and Jimmy Gregory in my opening.

12 THE COURT: Okay. That should cover it to that
13 point, then we'll just kind of kick the can down the
14 road.

15 MR. HALL: Well, with respect to Mr. Stephens'
16 other motion then, I believe it has to do with --
17 there were surveillance videos obtained from a
18 Kangaroo Pantry on Hilton Head Island, and that was
19 done in response to the first interview that
20 Investigator Seifert did with Jimmy Gregory.

21 Jimmy Gregory told Investigator Seifert during the
22 course of that interview that he was at this Kangaroo
23 Pantry, and his first statement was, I was there by
24 myself, Darrell Heyward came by, I asked him for a
25 ride, I got in the car, we headed towards Ridgeland.

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1 Based on what was said in that statement,
2 Investigator Seifert then went to the Kangaroo Pantry
3 on Hilton Head Island, sat down with personnel there
4 and personally viewed the video surveillance footage,
5 and could see Jimmy Gregory and Darrell Heyward
6 together. They arrived together, they walked into the
7 store together, they left together. It was -- he then
8 obtained a copy of that video and submitted it into
9 evidence. I'm not sure what Mr. Stephens' argument is
10 with respect to foundation or authentication.

11 Investigator Seifert personally observed the video
12 footage played out at the Kangaroo Pantry, obtained a
13 copy of that from the Kangaroo Pantry, and submitted it
14 into evidence. So it's properly submitted.

15 Investigator Seifert can authenticate that video
16 because he personally observed it. He didn't just call
17 up somebody in the Pantry and say, Hey, can you run a
18 video for me from this time to this time and I'll come
19 pick it up, he sat there and actually watched it. And
20 he'll be able to testify to that.

21 THE COURT: And what's your position on that?

22 MR. STEPHENS: Your Honor, about the video, I
23 believe that if Mr. Gregory testified and the State
24 wanted to use him to authenticate the video, then
25 under traditional means to authenticate a video, under

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1 South Carolina Rules of Evidence 901, that they would
2 be able to -- they might be able to authenticate it
3 that way, if he testified that the video is a fair and
4 accurate representation of the scene, as he recalled
5 it. I don't think that will be an issue.

6 However, Your Honor, since he's indicated that he
7 won't testify, I believe that using Investigator
8 Seifert is insufficient.

9 Traditionally, you had to use that first route,
10 and you would have to have someone who was present when
11 the thing was being filmed to authenticate.

12 The rules of evidence have been relaxed a bit in
13 the last few decades, Your Honor, and at this point you
14 could have someone testify that they're responsible for
15 the recording equipment, that it's in fair working
16 order, it's in good working order, and could testify
17 about how the video is recorded and stored to
18 authenticate it, and say that it hasn't been altered or
19 in any way distorted.

20 Investigator Seifert just doesn't have that
21 knowledge. Under Rule of Evidence 901, he has to have
22 knowledge of the thing. And they're trying to use this
23 evidence to show that these two people were together at
24 a particular place on a particular day and time.

25 The video is not date/time stamped, but even if it

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1 were, someone would have to testify that that is an
2 accurate recording, that it represents that date and
3 time.

4 I understand that the State hasn't offered it yet,
5 but for purposes of the motion in limine, I believe
6 that's going to be a foundational problem and that we
7 would move for them to be limited in reference to that
8 video because I don't think they're going to be able to
9 authenticate it.

10 THE COURT: All right. And I guess I'll address
11 it at the time. But, I mean, I'm inclined to let it
12 come in unless, you know, I see something differently.

13 MR. STEPHENS: I understand, Your Honor, and we
14 would just ask for an opportunity to cite case law to
15 Your Honor before this is offered, the actual video is
16 offered by the State.

17 THE COURT: When do you plan on offering the
18 video?

19 MR. HALL: That would be through Investigator
20 Seifert, my last witness.

21 THE COURT: Okay. But now, that's -- like right
22 now, I'm, you know -- I'm not going to rule on that.
23 It's just not -- you know, if they plan to offer it,
24 I'll, you know ...

25 MR. HALL: And, Your Honor, I guess the other

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1 thing that I failed to point out is that not only do I
2 believe that Investigator Seifert can authenticate the
3 video, because he personally observed it, he could
4 also testify as to a date and time, and he can also
5 identify Jimmy Gregory and Darrell Heyward on that
6 video. It's not as though he went in and, you know,
7 met Jimmy Gregory and then went -- he was familiar
8 with Jimmy Gregory, he was familiar with Darrell
9 Heyward. When he testifies, he's not going to testify
10 as to how he's familiar with them, but he can testify
11 that he knows who both of those individuals are that
12 are on that video.

13 MR. STEPHENS: Your Honor, I don't know how
14 Investigator Seifert is going to be able to testify to
15 those things without using hearsay statements from
16 someone else. Someone pulled and had to tell them,
17 These are the videos for that day and time.

18 Even if he testified that they were marked as that
19 day and time, someone would have to testify that
20 they're recorded and that some technician went and
21 accessed it for that day and time and marked it
22 accordingly, and those markings reflect that it is what
23 it purports to be.

24 Investigator Seifert can only testify that people
25 on the video appear to be people he recognizes.

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1 THE COURT: Yeah. And I need to get a little
2 more information. I'll look further into that when we
3 get to it.

4 MR. STEPHENS: Thank you, Your Honor.

5 THE COURT: When we get ready to produce that.

6 MR. HALL: Okay.

7 THE COURT: Are you all ready to proceed?

8 MR. HALL: Yes, Your Honor.

9 THE COURT: Anything else before we bring the
10 jury in, from the State?

11 MR. HALL: Nothing from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. STEPHENS: Nothing from the Defense, Your
14 Honor.

15 THE COURT: Like I say, we're basically kind of
16 delaying the ruling on the motion in limine until such
17 point that they're actual --

18 MR. STEPHENS: I understand, Your Honor.

19 THE COURT: All right. Go ahead and bring the
20 jury in. And you need to swear the jury.

21 THE BAILIFF: The jury is entering, Your Honor.

22 THE COURT: Thank you.

23 (Jury enters the courtroom at 10:55 a.m.)

24 THE COURT: All right. Ladies and gentlemen, we
25 are ready to begin this trial, and I appreciate your

OPENING TRIAL REMARKS

1 patience.

2 I think probably the bailiff has told you, the
3 alternates need to sit on the back row, and everyone
4 else will need to sit just kind of wherever on the
5 front two rows except the foreperson. And at your next
6 break, I'm going to ask that you elect a foreperson
7 from the --

8 THE BAILIFF: They've already chosen one, Judge.

9 THE COURT: Oh, they have.

10 THE BAILIFF: Jennifer Montero.

11 THE COURT: Wow. And what's your name?

12 JUROR: Jennifer Montero.

13 THE COURT: Okay. Well, I see you're ahead of
14 the game. You all are good.

15 All right. At this time, I'm going to ask the
16 clerk to administer the oath. And I'll tell you some
17 little things before we get started.

18 (Jury is sworn.)

19 THE BAILIFF: Juror 260, Judge, is the
20 foreperson.

21 THE COURT: Okay. Ladies and gentlemen, once
22 again, and I know I'm being repetitive with this, but
23 I do appreciate your services here today and this
24 week, and I know both parties also appreciate your
25 work. I mean, this is a very fundamental part of our

OPENING TRIAL REMARKS

1 system. I mean, I know you may have certain ideas
2 about trials, if you've not sat in one.

3 And a lot of times, your ideas about trials come
4 from TV. Well, you know, that's for entertainment
5 purposes, and so, therefore, it's stretched somewhat.
6 But as you will see, it's not quite the entertainment
7 value, but it is definitely more serious than what you
8 see on TV.

9 This is the case of State versus Darrell Heyward,
10 being charged with burglary second degree. You know,
11 it -- you've taken an oath in this matter, and I ask
12 that you take that oath very seriously. And part of
13 that oath is, one, is to listen very carefully to all
14 the evidence that is presented.

15 And evidence will be in two forms. It will be
16 from the witness stand, from a witness, and there may
17 also be exhibits, either in the form of photographs,
18 documents, videos, and things like that. And you are
19 not to consider anything that you do not hear from this
20 witness stand or properly admitted evidence.

21 You know, I would caution you that you do not need
22 to Google, you do not use your phone in any way. If we
23 go into tomorrow, and you go home, you don't need to do
24 any additional research in any way. Because it's
25 important that the only information that you get

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1 regarding this case comes from properly admissible
2 evidence in this courtroom.

3 And I know that a couple of you already served on
4 juries, but, you know -- so some of this may be
5 repetitive, but I need to tell you, you know, each of
6 us plays a different role.

7 I am the judge on the law, I am responsible for
8 the procedural and the evidence issues and what comes
9 into evidence, and you are the judge of the facts.
10 You're the sole decider of what the facts in this case
11 are. And that's why you should not even start any
12 deliberations until you've gotten everything.

13 You know, then at the point, you know, your
14 deliberations will be, and when you can start talking
15 about the case is after jury charge, after all the
16 evidence is in, after closing arguments, and after you
17 have received the law of this case.

18 In that oath, you've also indicated that you
19 promise to accept the law that I give you. It's not
20 what you think the law is, it's not what you think the
21 law should be, it's what the law is that I have given
22 you from the Bench up here at the end of the trial.
23 That's part of your oath.

24 And I will go through the elements of the charge
25 as we get further into it.

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1 As I said previously, the indictment is simply the
2 charge that brings this case to court, and it's not
3 evidence of guilt or in any way against the Defendant.

4 The Defendant has pled not guilty in this matter,
5 and in pleading not guilty, that puts the burden on the
6 State to prove all the elements of the crime beyond a
7 reasonable doubt.

8 It'll be your duty, ladies and gentlemen, to
9 decide whether the State has met that burden. You are
10 to determine the facts, and if I make any comments that
11 you may think are an opinion on the facts, please
12 disregard those because you are the sole determiner of
13 the facts, and you determine the facts from the
14 evidence properly presented.

15 So, you know, it's important that you pay close
16 attention, focus, you know, on the matters presented in
17 court, and if you have any -- you know, if at any point
18 you need to take a break, then all you need to do is
19 raise your hands, let the bailiff know, somehow give us
20 a signal. You know, we try to take breaks about every
21 hour, hour and a half. Sometimes it kind of depends
22 on, you know, where a witness is and that, so sometimes
23 it's dictated by that.

24 But, you know, if you need to take a break any
25 time before then, you know, it's important that you

OPENING TRIAL REMARKS

1 focus and pay attention. So if you need to take a
2 break, just indicate, you know, to the bailiff or to
3 me, and we'll take care of that.

4 Again, don't listen to anything -- and you
5 shouldn't be contacted by anybody, but if you are
6 contacted by anybody about this case, please take their
7 name or description of them and let the bailiff know as
8 soon as possible.

9 As you've already been instructed, you're not to
10 have cell phones or any kind of electronic devices in
11 the court, you know, for any purpose. It's important
12 that you do not do any additional research, that you
13 not take any videos or anything special when you're
14 deliberating. That's something that's supposed to be
15 within the sanctity of the jury room itself.

16 If you do need to make any calls, I realize that
17 sometimes people need to make calls, then you just need
18 to let the bailiff know during one of the breaks.

19 It's important that you keep an open mind from the
20 start to the finish of the case. You need to wait
21 until all the evidence is presented, so you don't need
22 to be making up your mind, you know, before that time.
23 It's your responsibility to determine the guilt or
24 innocence of the Defendant, and your verdict must be
25 based on the evidence presented.

OPENING TRIAL REMARKS

1 To kind of let you know how the trial will go, the
2 State will present, they have the burden of proof,
3 they'll start off with opening statements. Those are
4 not to be considered evidence, they're just opening
5 statements about what the State expects to happen in
6 the trial.

7 Then the Defense will have an opportunity to
8 present their opening statement. Okay. Then the State
9 has the right, you know, as the -- at first shot at
10 presenting their evidence, their case-in-chief. Then
11 if the Defense decides to put forth any case, it
12 follows that.

13 And, again, the Defendant is presumed innocent.
14 So, therefore, they are not required to put forth any
15 evidence or a case because the burden is on the State.

16 After the conclusion of all evidence, then we'll
17 have closing arguments by both sides, and then we'll
18 have jury charge, which is the law of the case, and
19 then you will at that time go back to your jury room to
20 deliberate.

21 You know, some of the things that you'll need to
22 consider is the credibility of witnesses, the
23 believability. That's something that you need to do on
24 your own, based on your own common sense, and based on
25 your own experiences. But, you know, you need to watch

OPENING TRIAL REMARKS

1 the witnesses, because, you know, a lot of times, you
2 know, credibility of witnesses is a very important part
3 of your consideration.

4 So, therefore, it's very important to pay close
5 attention to the witnesses, their body language, you
6 know, try not to let your thoughts wander. And if you
7 have any questions at any point, then, you know, you're
8 back in your jury room, you're just -- you know, again,
9 contact the bailiff or provide a note to them.

10 At the conclusion, you will get further
11 instructions. I know, it's like right now you're kind
12 of supposed to get a clean slate, and it's up to the
13 parties to put the necessary information on that slate.

14 But occasionally you may hear some objections by
15 either side. The purpose of that is to make sure that
16 all evidence is properly presented based on our rules
17 of court and the law in South Carolina, and that's
18 something that I'll need to rule on from time to time.
19 And sometimes it may require that I have to send you
20 out for a few minutes, so that may happen from time to
21 time during the trial.

22 So, you know, with all that being said, we will
23 now begin the trial of the case. And the State can
24 proceed with opening statements.

25 OPENING STATEMENT BY MR. HALL

OPENING STATEMENT BY THE STATE

1 MR. HALL: May it please the Court, Mr. Stephens.

2 Good morning, ladies and gentlemen of the jury.

3 My name's Patrick Hall, I'm with the State of South
4 Carolina on behalf of Beaufort County. It's my job
5 here to prosecute the case that you're going to hear
6 today.

7 I want to thank you all for being here. I know
8 this is not the most fun that you're probably going to
9 have this week, and, in fact, for a few of you, you've
10 already had a little bit of fun on a prior case and --
11 but we really appreciate you being here as well.

12 The Brickman Group was a landscaping company that
13 used to operate in Bluffton, at 1484 Fording Island
14 Road. During the early morning hours of October 9th,
15 2012, The Brickman Group was burglarized. The doors
16 had been pried open and items were taken from a locked
17 office within the warehouse building. It almost looked
18 as if someone knew exactly what they were looking for
19 and where to find it.

20 Amongst the items taken were several backpack
21 blowers and weed eaters. The estimated value of the
22 items taken exceeded \$4,000. These were brand-new
23 items that had just been purchased seven days before.

24 Deputies from the Beaufort County Sheriff's Office
25 responded to The Brickman Group and pictures of the

OPENING STATEMENT BY THE STATE

1 scene were taken. During the course of this initial
2 investigation, it was learned that a traffic stop had
3 taken place around 3:45 in the morning on U.S. 278
4 West, near Rose Hill Plantation. The driver of that
5 vehicle fled. Once the car stopped, the driver took
6 off. The other occupant in the car that evening was
7 someone by the name of Jimmy Gregory. Inside the
8 backseat of this car were several pieces of landscape
9 equipment.

10 Now, Larry Laatsch is a former deputy of the
11 sheriff's department. He was just coming on that
12 morning, and he was also part of a group that responded
13 to The Brickman Group in relation to this burglary.

14 Now, having just come on for work that morning, he
15 remembered hearing something over the radio about how
16 there had been a traffic stop in Bluffton that involved
17 some landscaping equipment being found in the back. He
18 received an itemized list of what had been taken from
19 The Brickman Group, and he responded to the tow yard
20 where this car had been taken.

21 With serial numbers in hand, he was able to match
22 the list of items in that car from the items taken from
23 The Brickman Group earlier that same day -- or earlier
24 that same morning. This, again, was the same car that
25 was stopped at 3:45 in the morning, this is the one

OPENING STATEMENT BY THE STATE

1 where the driver ran and left Mr. Gregory behind.

2 Further investigation by Doug Seifert with the
3 Beaufort County Sheriff's Office led to the arrest of
4 this man over here, Darrell Heyward, for his part in
5 the burglary.

6 One thing that I should mention that will come up
7 during the course of this trial, that during
8 October 2012 Darrell Heyward was an employee of The
9 Brickman Group. The driver of the car that fled from
10 the scene at 3:45 in the morning on U.S. 278 heading
11 west, the State contends that was Darrell Heyward, the
12 person sitting here today.

13 Listen carefully to the evidence that you're going
14 to hear today. I'm confident that at the end of this
15 trial, you will find Darrell Heyward guilty of burglary
16 second degree violent, as charged.

17 Thank you for your time. Please give your
18 attention to the opening statement of Mr. Stephens.
19 Thank you.

20 THE COURT: Thank you. Defense, Mr. Stephens.

21 MR. STEPHENS: Thank you, Your Honor.

22 OPENING STATEMENT BY MR. STEPHENS

23 MR. STEPHENS: Good morning, ladies and
24 gentlemen. I know it's Thursday, and we're all ready
25 for the weekend, but I do beg your indulgence. As the

OPENING STATEMENT BY THE DEFENDANT

1 Judge has instructed you, your duty here is very
2 important. It's very important to the law and the
3 conduct of the case in this court. Also very
4 important in the life of Mr. Darrell Heyward, sitting
5 over there.

6 I believe that although this trial is probably
7 going to be so short, there are going to be a lot of
8 very important testimony that you're going to hear.
9 What I think is that the evidence, the testimonial
10 evidence you're going to see, is going to tell a story
11 similar to some of the things that Mr. Hall mentioned.

12 You're going to hear testimony about an individual
13 who had been at The Brickman Group before, so he would
14 have known that location. You're going to hear
15 testimony about an individual who was pulled over in a
16 car that contained stolen items that were taken from
17 The Brickman Group. You may very well hear testimony
18 about DNA evidence linking an individual to the stolen
19 items.

20 Now, this is not going to be evidence that you
21 hear about Mr. Heyward sitting over there. All that
22 evidence links to Jimmy Gregory.

23 Jimmy Gregory had been present previously at
24 Brickman. Jimmy Gregory was arrested with the items in
25 the car in which he was riding. And most importantly,

OPENING STATEMENT BY THE DEFENDANT

1 Jimmy Gregory had his DNA tested, and that DNA matched
2 DNA that was found on the stolen items.

3 Unfortunately you're not here to try Jimmy
4 Gregory. That's already been done. You're here to
5 consider whether or not the State has met its burden of
6 proof beyond a reasonable doubt that Mr. Darrell
7 Heyward was guilty of the burglary. And in this case,
8 the evidence is just not going to show any direct
9 evidence, any circumstantial evidence, amounting to
10 proof beyond a reasonable doubt that Mr. Heyward was
11 involved in a burglary of Brickman on October 8th or
12 October 9th of 2012.

13 And again, please, gentlemen, after you've heard
14 all the testimony and the evidence that the State has,
15 hold them to their burden, proof beyond a reasonable
16 doubt. That's not a mere suspicion or guilt by
17 association, it's whether or not the State has met its
18 burden to prove that this man, not Jimmy Gregory, was
19 guilty of the charged offense of burglary of The
20 Brickman Group.

21 All right. Thank you very much.

22 THE COURT: All right. State may call its first
23 witness.

24 MR. HALL: Thank you, Your Honor. State calls
25 Lance Corporal John Duus.

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 Thereupon,

2 JOHN DUUS

3 was called as a witness, having been first duly sworn,
4 was examined and testified as follows:

5 THE CLERK: You may be seated. Please state and
6 spell your name for the court.

7 THE WITNESS: Hi. My name's John Duus. It's
8 J-O-H-N, D-U-U-S.

9 DIRECT EXAMINATION

10 BY MR. HALL:

11 Q Who do you work for, sir?

12 A I work for Beaufort County Sheriff's Office.

13 Q What's your current rank?

14 A I'm currently a lance corporal.

15 Q And how long have you worked for the sheriff's
16 department?

17 A Approximately four years.

18 Q What capacity -- what do you do for the sheriff's
19 department currently?

20 A I do road patrol, respond to 911 assistance calls,
21 assist medical calls, any types of burglary calls or theft
22 reports and traffic enforcement.

23 Q Were you working on the morning of October 9th,
24 2012?

25 A Yes, I was.

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 Q And did you receive a dispatch to go to The
2 Brickman Group landscaping company?

3 A Yes, I did.

4 Q Where is The Brickman Group located?

5 A Brickman group is located at 1484 Fording Island
6 Road in Bluffton, South Carolina. That's in Beaufort
7 County.

8 Q What did you do once you arrived on the scene
9 there?

10 A Upon arrival, I met with the complainant at
11 Brickman group. Her name was Rebekah Disser. She was one
12 of the managers of the company at the time.

13 Q And after speaking with Ms. Disser, can you
14 describe the scene at The Brickman Group?

15 A Okay. Ms. Disser had advised that there was a
16 break-in that had occurred overnight. She told me that
17 several landscaping items were taken from the business.

18 At that time, I conducted a 360 of the
19 business, looked at the exterior doors, observed damage to
20 one exterior door that appeared to be consistent with pry
21 marks. I went into the business. You walk across an open
22 area to a set of stairs that go up to an office that's above
23 the warehouse area. There was a second interior door that
24 also had pry marks on the door.

25 At the base of the door, there was a lawn

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 mower blade that appeared to be put there, that propped the
2 door open, and some burglary tools left at that base of the
3 door as well.

4 When you go into the office, there were --
5 Ms. Disser had told me that there were a bunch of
6 landscaping equipment items stored on the floor there.
7 There was still one or two items, I believe, that were still
8 at the scene, a weed trimmer, but all the other items were
9 gone, and that was what she was reporting stolen.

10 Q Did you take pictures of the scene?

11 A I did.

12 Q And did you submit those pictures into evidence?

13 A Yes.

14 Q Lance Corporal Duus, I'm showing you what's been
15 marked as State's Exhibit 1 for purposes of identification.
16 Can you identify that?

17 A Yes. This picture is the entrance to The Brickman
18 Group. This external fence is normally closed at nighttime.
19 In this picture it's open, because they're open for
20 business, and I took a picture of the entrance to the rear
21 area of the building.

22 Q Is that a fair and accurate depiction of what the
23 business looked like on October 9th, 2012?

24 A Yes, it is.

25 Q Thank you.

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 Now showing you what's been marked as State's
2 Exhibit No. 2, and I'll ask if you can identify that.

3 A This picture is the exterior door that was pried
4 open when entry was made by the suspects. It's the main
5 entry and exit point for the employees and people that work
6 inside.

7 Q Is that also a fair and accurate depiction of what
8 that door looked like on October 9th, 2012?

9 A Yes, it is.

10 Q I'll show you what's been marked as State's
11 Exhibit No. 3 for purposes of identification. Can you
12 identify that?

13 A This is a close-up image of the exterior door in
14 the previous picture. In the picture, you can see the pry
15 marks on the door jamb area, where it appeared a crowbar or
16 some type of device was wedged in there and used to pry the
17 door open.

18 Q Now, I'm going to show you what's been marked as
19 State's Exhibit No. 4 and ask if you can identify that.

20 A This picture is the picture in the upstairs office
21 area that I entered. The -- this is where all of the tools
22 were stored due to a previous theft. They were keeping them
23 up in a more secure location. There are still some tools
24 here that were left by the suspect.

25 Also, there was a crowbar on the floor in the

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 picture that was left by the suspects as well.

2 Q So it was your understanding these items did not
3 belong to The Brickman Group, the items left on the floor?

4 A The crowbar was not property of The Brickman
5 Group. The power tools were property of The Brickman Group.

6 Q Now, I'm going to show you what's been marked as
7 State Exhibit 5 for purposes of identification, ask if you
8 can identify this for me.

9 A This picture is a close-up picture of the interior
10 door that went into the office. It was at the top of the
11 stairs. In the picture you can see the -- this is a wood
12 door -- fresh pry marks on the wood where a crowbar or some
13 type of entry tool was used to force in between the door
14 jamb and pry the door open.

15 Q And is that a fair and accurate depiction of how
16 the door looked on October 9th, 2012?

17 A Yes, it is.

18 Q Finally, I'll show you what's been marked as
19 State's Exhibit No. 6 and ask you if you can identify that.

20 A This picture is a picture at the base of the door
21 of the previous picture. In this picture you can see the
22 lawn mower blade that is used to hold the door -- that was
23 used to hold the door open. It's right at the base of the
24 door. And a hammer -- I'm sorry. The hammer, pole cutters,
25 and a small drywall saw are left at the base of the door as

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 well, apparently in haste. And also a -- one of the power
2 tools that was not stolen was propped -- was leaned up
3 against the stairwell here.

4 But this is -- at the top of the stairs, you
5 turn right to go into the interior office. This is where
6 this image was taken.

7 Q Is that also a fair and accurate depiction of what
8 that looked like on October 9th, 2012?

9 A Yes, it is.

10 MR. HALL: Your Honor, at this time, I would move
11 State's 1 through 6 into evidence and ask to publish
12 these photos to the jury.

13 THE COURT: All right. Any objection from the
14 Defense?

15 MR. STEPHENS: No objection, Your Honor.

16 THE COURT: All right. They are in without
17 objection, one through six.

18 *(Whereupon, State's Exhibit No(s). 1-6 marked for*
19 *identification and received in evidence.)*

20 BY MR. HALL:

21 Q Lance Corporal Duus, did you get a list of the
22 items that had been stolen from The Brickman Group?

23 A Yes, I did.

24 Q And what did you do with that information?

25 A All that information was logged in to my report.

DIRECT EXAMINATION OF JOHN DUUS BY THE STATE

1 It was also broadcast over the radio to my dispatch
2 communications of the description of the items that were
3 taken as well.

4 Q Is that something akin to NCIC? Is that --

5 A Yes. The property that was stolen was entered
6 into NCIC.

7 Q Could you explain to the jury what that is?

8 A The NCIC is the National Crime Information Center.
9 It's a national database that you can input any object that
10 basically has a serial number for purposes of it being
11 stolen. So if you have a description of the object, say, in
12 this case I had -- we had steel blowers and trimmers that
13 were landscaping equipment that were stolen, if you have the
14 make, model, serial number, you can place it into this
15 database, and if that serial number is run by any law
16 enforcement agency in the country it'll come back as a hit,
17 as a fact of our jurisdiction.

18 Q And did you do that in this case?

19 A I did.

20 MR. HALL: Thank you. I have no other questions
21 of this witness.

22 THE COURT: All right. Mr. Stephens.

23 MR. STEPHENS: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. STEPHENS:

CROSS EXAMINATION OF JOHN DUUS BY THE DEFENDANT

1 Q Deputy Duus, let me first ask, was your
2 involvement in the case just limited to initial on-scene
3 investigation?

4 A At the time, yes. But I assisted another deputy
5 for when the items were located.

6 Q And who is the other deputy you assisted?

7 A It was Corporal Larry Laatsch.

8 Q Now, when you process a scene of a suspected
9 burglary, do you check for any kind of forensic evidence
10 that might be left at the scene?

11 A We can, correct.

12 Q In this case, while you were on scene, was any of
13 that done -- fingerprints tested?

14 A I collected the burglary tools as evidence to be
15 submitted for forensic testing, but I did not process
16 anything -- any object at the building.

17 Q Okay. When you take this stuff for testing, you
18 bag it up or do something with it?

19 A Yes. Tools, such as the ones that were collected,
20 will be placed into a paper bag. They would be submitted to
21 our evidence division, and we have a forensic lab that can
22 do any type of analysis we require, be that fingerprint or
23 DNA.

24 Q Okay. Did you take any contact DNA swabs on the
25 door or the physical environment there to see if there was

CROSS EXAMINATION OF JOHN DUUS BY THE DEFENDANT

1 any DNA present?

2 A I have to check my report.

3 Q To the best of your recollection, let me make it
4 easy?

5 A I don't -- I don't believe I did anything at the
6 structure on scene.

7 Q All right. You spoke with -- with a business
8 representative there, you said, I believe?

9 A Yes.

10 Q Who was that individual again?

11 A Rebekah Disser.

12 Q Okay. At the time you spoke with her, did you
13 have any names of potential suspects in the case?

14 A I did not.

15 Q Did she give you the names of any potential
16 suspects in the case?

17 A No.

18 Q And later on, when suspects were identified, did
19 you re-interview Ms. Disser about those suspects?

20 A No. After the initial response to the scene I had
21 no further contact with her. It was referred to
22 investigations at that point.

23 Q Yeah. Would it suffice to say that you wouldn't
24 know if Mr. Heyward had been an employee of Brickman?

25 A I had no idea who he was.

CROSS EXAMINATION OF JOHN DUUS BY THE DEFENDANT

1 Q Would it be fair to say you didn't know if
2 Mr. Gregory had ever sought employment at Brickman and had
3 been present there?

4 A I -- I had no knowledge of either of those
5 subjects.

6 Q All right. And after you assisted in then
7 deputy -- or Corporal Laatsch's collection of evidence to be
8 tested, that ended your involvement in the case?

9 A Yes, it did.

10 Q I have -- oh, I do actually have another question
11 for you.

12 You identified that it looked like a crowbar
13 or some type of pry bar had been used to open the door?

14 A Correct.

15 Q Do you know if any of the employees of Brickman
16 had keys to the location?

17 A I'm assuming an employee would have a key, but I
18 don't know -- I didn't know of any employees that -- well,
19 I -- I don't understand what you're getting at with your
20 question.

21 Q All right. Well, just, if you had knowledge if
22 any employees of Brickman had keys to the location.

23 A Other than like the managers, no, I didn't have
24 knowledge of that.

25 MR. STEPHENS: Okay. Well, I appreciate it.

CROSS EXAMINATION OF JOHN DUUS BY THE DEFENDANT

1 Thank you.

2 THE COURT: Any redirect?

3 MR. HALL: No redirect, Your Honor.

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

6 MR. HALL: Your Honor, may this witness be
7 released?

8 THE COURT: Yes. Any objection?

9 MR. STEPHENS: No objection from the Defense,
10 sir.

11 THE COURT: Thank you.

12 MR. HALL: The State calls Larry Laatsch.

13 Thereupon,

14 LARRY LAATSCH

15 was called as a witness, having been first duly sworn,

16 was examined and testified as follows:

17 THE CLERK: You may be seated. Please state and
18 spell your full name for the Court's record.

19 THE WITNESS: My name is Larry Laatsch,
20 L-A-A-T-S-C-H.

21 DIRECT EXAMINATION

22 BY MR. HALL:

23 Q Mr. Laatsch, where do you work currently?

24 A Currently I am an investigator for the 14th
25 Circuit Solicitor's office.

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 Q And where did you work in 2012?

2 A For the Beaufort County Sheriff Department, sir.

3 Q And how long you work for the Sheriff's

4 Department?

5 A Approximately five years, a little over five

6 years.

7 Q And what was the nature, what were your duties?

8 A I was a corporal in the patrol division.

9 Q And were you working on the morning of

10 October 9th, 2012?

11 A Yes, sir, I was.

12 Q And did you receive a dispatch to go to the

13 Brickman landscaping company?

14 A I did, sir.

15 Q And did you go there?

16 A Yes, sir, I did.

17 Q Where is The Brickman Group located?

18 A They are in Beaufort County, on Fording Island

19 Road. I believe the address is 1484.

20 Q What did you do when you got to The Brickman

21 Group?

22 A Once I arrived there, another officer was there

23 first. He had assumed the responsibility for the

24 investigation, so my purpose was to assist him in any way

25 that I could.

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 Q And as part of your assistance, what did you
2 discover about what had happened there?

3 A The landscaping company had been broken into, and
4 according to the lady that was present, a large amount of
5 equipment was stolen.

6 Q Now, during the course of your work that day, did
7 you become aware of any other incidents that had taken place
8 that day regarding landscaping equipment?

9 A Yes, sir. As I was -- as I was coming into work
10 in the morning a little after 5:00 a.m., I overheard radio
11 traffic from another agency and central dispatch.

12 Q What was that other agency, if you recall?

13 A It was the Bluffton Police Department.

14 Q And what was the nature of the information that
15 you received?

16 A A Bluffton officer had stopped a car on U.S. 278
17 outside of Rose Hill Plantation, and had dealings with the
18 occupant of the car, and described a bunch of equipment that
19 was in the vehicle.

20 Q And what did you do with that information?

21 A It kind of floated to the top of my head that --
22 that this was landscaping equipment of the same manufacturer
23 that was stolen from The Brickman Group.

24 Q So what did you do next after -- after getting
25 that information?

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 A I went to the location where the car that the
2 Bluffton Police Department had seized. I went to the tow
3 yard, where the vehicle was being stored.

4 Q And were you able to confirm that the car that you
5 were looking at in the tow yard was the same car that had
6 been in the traffic stop?

7 A Yes, sir, I did.

8 Q And how did you do that?

9 A By confirming the license plate number with
10 central dispatch.

11 Q And this was at a tow lot in Bluffton?

12 A Yes, sir. It was at Morris Towing on May River
13 Road.

14 Q And so once you were at Morris Towing, what did
15 you discover?

16 A The vehicle had a large amount of fairly new or
17 brand-new landscaping equipment in the backseat. It was a
18 car, not a truck or a van, a car. Not a whole lot of people
19 haul landscaping equipment of that volume in the backseat of
20 a car. So I did my very best to identify that equipment.

21 Q And did you have any information from The Brickman
22 Group with which to compare to the items that you had found?

23 A Yes, sir. We -- the equipment that was stolen
24 from The Brickman Group was so new to The Brickman Group,
25 they still had, I believe, invoices from the location that

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 they bought the equipment from, had serial numbers on it. I
2 had those with me.

3 Q And so you were able to compare the serial numbers
4 to the items that were in the car?

5 A Yes, sir.

6 Q And what did that comparison yield?

7 A Equality. They were the same thing. Same
8 numbers.

9 Q And what did you do with the property once you had
10 located it in the car that you'd confirmed that these were
11 the stolen items?

12 A It was eventually returned back to the Brickman
13 company.

14 Q And, again, this was the car, to your knowledge,
15 that had been involved in the traffic stop?

16 A Yes, sir, it is -- or it was.

17 MR. HALL: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, you may.

20 BY MR. HALL:

21 Q Showing you what's been marked as State's Exhibit
22 No. 7, ask you to take a look at that. Can you identify
23 that?

24 A Yes, sir. This is a photograph of a license plate
25 that was on the vehicle at Morris Towing.

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 Q And is that a fair and accurate depiction that you
2 were there that day on October 9th; is that correct?

3 A Yes, sir, I was.

4 Q Is that a fair and accurate depiction of what that
5 car looked like when you encountered it on October 9th,
6 2012?

7 A Yes, sir.

8 Q I'll show you what's been marked as State's
9 Exhibit No. 8 for purposes of identification, ask you to
10 take a look at that. Can you tell me what that is?

11 A That is the vehicle that has the license plate
12 from that photograph, the vehicle that was stopped by the
13 Bluffton Police Department and taken to Morris Towing.

14 Q Is that a fair and accurate depiction of how that
15 car looked on October 9th, 2012?

16 A Yes, sir.

17 Q Let me show you what's been marked as State's
18 Exhibit No. 9 for purposes of identification. Can you take
19 a look at that and tell me what that is?

20 A That is weed trimmers and blowers that were taken
21 out of that particular vehicle and sat on the ground.

22 Q Is that a fair and accurate depiction of what that
23 looked like on October 9th, 2012?

24 A It is, sir.

25 Q Finally, I'll show you State's Exhibit No. 10 for

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 purposes of identification. Can you identify that?

2 A Yes, sir. These are backpack blowers that came
3 out of the back of that vehicle on that day.

4 Q And finally, is that a fair and accurate depiction
5 of how that looked on October 9th, 2012?

6 A It is, sir.

7 MR. HALL: Your Honor, at this time I would move
8 State's Exhibits 7 through 10 into evidence and ask
9 for permission to publish to the jury.

10 THE COURT: Any objection from the Defense?

11 MR. STEPHENS: No objection, Your Honor.

12 THE COURT: All right. Seven through ten are in
13 without objection.

14 *(Whereupon, State's Exhibit No(s). 7-10 marked for*
15 *identification and received in evidence.)*

16 BY MR. HALL:

17 Q Mr. Laatsch, as part of your investigation, did
18 you do anything else with these items while you were at
19 Morris Towing?

20 A They were returned to the representative from The
21 Brickman Group.

22 Q Did you do any DNA processing?

23 A Ah, yes, sir, we did.

24 Q All right. And did you take samples from the
25 various items, is that -- can you explain that process for

DIRECT EXAMINATION OF LARRY LAATSCH BY THE STATE

1 the jury?

2 A You use sterile swabs that come in individual
3 packages and wipe different portions of the equipment,
4 looking for DNA from whoever might have handled it, any
5 stains, and especially the handles where people are going to
6 hold them. And then those are submitted to the laboratory.

7 Q And to your knowledge, was that done?

8 A Yes, sir.

9 Q And with respect to your involvement in this case,
10 is this as far as it went, or did you have any further
11 involvement?

12 A None, sir.

13 Q And so as you sit here, or at least with your
14 involvement in the case, do you have any idea of any type of
15 DNA results or anything?

16 A No, sir.

17 MR. HALL: I have no other questions, Your Honor.

18 THE COURT: All right. Mr. Stephens.

19 MR. STEPHENS: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. STEPHENS:

22 Q Mr. Laatsch, you said that you went to the towing
23 yard and did a number of things, including getting up the --
24 the equipment that was taken and comparing serial numbers
25 and all that stuff, correct?

CROSS EXAMINATION OF LARRY LAATSCH BY THE DEFENDANT

1 A Yes, sir.

2 Q All right. Now, you said you took potential
3 contact DNA swabs, if that's the right term, from those
4 items that were taken?

5 A Yes, sir.

6 Q And those were submitted for testing?

7 A Yes, sir.

8 Q Did you also process the vehicle that Mr. Gregory
9 had been riding in for any kind of fingerprints or contact
10 DNA?

11 A Yes, sir.

12 Q What areas of the vehicle did you test?

13 A If I remember correctly, the steering wheel, the
14 shift lever. That's mainly the parts that people touch in
15 cars. That's what I remember, sir.

16 Q So those are areas of the car that the driver
17 would have been touching?

18 A Yes.

19 Q Okay. And you don't know when you take those
20 swabs whether there's anything on there, correct? You just
21 take them and you have to wait and see what the testing
22 reveals?

23 A That is correct. We don't know what's on them.

24 Q All right. Now, was that all the forensic, I
25 guess not really testing, but forensic processing of that

CROSS EXAMINATION OF LARRY LAATSCH BY THE DEFENDANT

1 scene in the vehicle that you did?

2 A As far as testing for DNA swabs?

3 Q Or fingerprints.

4 A Yes, sir.

5 Q Did you have a fingerprint kit that you could have
6 used to try to lift fingerprints off the vehicle or the
7 items that were taken?

8 A No, sir. They were very rough textured and
9 wouldn't have been able to sustain prints.

10 Q In your opinion, they wouldn't have sustained
11 prints?

12 A Correct.

13 Q Okay. So you just looked for DNA and not
14 fingerprints?

15 A Correct.

16 Q All right. You indicated that the stolen items
17 were then returned to Brickman; is that correct?

18 A Yes, sir.

19 Q Did anybody authorize you to return them, did you
20 get approval from anyone to return those items?

21 A I'm sure.

22 Q Is that standard practice when you recover stolen
23 items, that they are returned?

24 A Yes, once evidence is taken from them, yes.

25 Q All right. Did you have any concerns that those

CROSS EXAMINATION OF LARRY LAATSCH BY THE DEFENDANT

1 items might be needed for later processing by anyone?

2 A No, sir.

3 Q And you don't know what happened to those items
4 after they were returned to Brickman?

5 A No, sir.

6 Q Did you ever speak with Ms. Disser or any other
7 employee of Brickman about, you know, the burglary or
8 anything else like that?

9 A Any more?

10 Q I'm sorry. I should be more specific.

11 Other than coordinating to return the stolen
12 equipment, did you have any discussions with any employee of
13 Brickman?

14 A Only as part of the original investigation.

15 Q Were there any statements about individuals who
16 may have broken in and stolen those items?

17 A Not specifically to me.

18 MR. STEPHENS: All right. I don't believe I have
19 any further questions for Mr. Laatsch.

20 Thank you, sir.

21 THE COURT: All right. Any redirect?

22 MR. HALL: No, thank you, Your Honor.

23 THE COURT: All right. You may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Thank you.

CROSS EXAMINATION OF LARRY LAATSCH BY THE DEFENDANT

1 MR. STEPHENS: Your Honor, may we approach for a
2 moment?

3 THE COURT: Yes.

4 (Off-the-record discussion held.)

5 THE COURT: All right. Ladies and gentlemen,
6 we're going to take a quick break. So -- and don't
7 start any deliberations. You will get tired of
8 hearing me say that, but that's what we have to do.
9 So don't start talking about the case, and we will
10 have you back in in just a few minutes.

11 (Jury exits the courtroom at 11:42 a.m.)

12 THE COURT: All right. We'll be at ease for
13 about ten minutes.

14 (Whereupon, a brief recess was taken.)

15 THE COURT: Anything before we bring the jury in,
16 from the State?

17 MR. HALL: Nothing from the State.

18 THE COURT: Anything from the Defense?

19 MR. STEPHENS: Nothing from the Defense.

20 Is your next witness a Bluffton P.D. officer?

21 MR. HALL: No. Just for purposes of scheduling,
22 my next witness is going to be Rebekah Disser, former
23 employee of The Brickman Group. After that, I would
24 intend to call Brady Lee, the Bluffton police officer.
25 That is the in-car video from the traffic stop that I

COLLOQUY

1 think Mr. Stephens and I need an opportunity to agree
2 on, and --

3 THE COURT: Okay.

4 MR. HALL: -- date for.

5 THE COURT: After the rest of it, it would
6 probably be a good break.

7 MR. HALL: Probably would be, yes, sir.

8 MR. STEPHENS: I agree, Your Honor.

9 THE COURT: All right. Bring the jury in.

10 THE BAILIFF: Jury entering, Your Honor.

11 (Jury enters the courtroom at 11:54 a.m.)

12 THE COURT: All right. Ladies and gentlemen, we
13 will now resume testimony from the State.

14 Mr. Hall, you may call your next witness.

15 MR. HALL: Thank you, Your Honor. State calls
16 Rebekah Disser.

17 Thereupon,

18 REBEKAH DISSER

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE CLERK: You may be seated. Please state and
22 spell your name for the court's record.

23 THE WITNESS: Rebekah Disser.

24 MR. HALL: Spell the name for the record, please.

25 THE WITNESS: R-E-B-E-K-A-H, D-I-S-S-E-R.

DIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 DIRECT EXAMINATION

2 BY MR. HALL:

3 Q Thank you. Ms. Disser, where did you work in
4 October of 2012?

5 A The Brickman Group.

6 Q And explain for the jury, what is it that The
7 Brickman Group did?

8 A Landscape contractor.

9 Q And what were your responsibilities at The
10 Brickman Group?

11 A I was the acting branch manager.

12 Q And in October of 2012, where was The Brickman
13 Group located?

14 A 1484B Fording Island Road, Bluffton. Otherwise,
15 278 Highway.

16 Q And is that Beaufort County?

17 A Yes.

18 Q And were you working on the morning of
19 October 9th, 2012?

20 A Yes, I was.

21 Q And what time did you arrive at work?

22 A Sometime around 6:30 in the morning.

23 Q And when you arrived at work at that time on that
24 date, what did you discover?

25 A That the door was ajar to the office and that all

DIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 of our equipment was missing.

2 Q And upon discovering that, what did you do?

3 A Called the Bluffton police.

4 Q All right. And were -- did officers respond to
5 the scene?

6 A Yes, very quickly.

7 Q And were you able to determine what had been
8 taken?

9 A Yes, by an inventory.

10 Q You had an inventory?

11 A Uh-huh. (Indicating affirmatively.)

12 Q Did you provide a list of the items that had been
13 taken?

14 A Yes, we did.

15 Q And did someone by the name of Darrell Heyward
16 work for The Brickman Group in October 2012?

17 A Yes, he did.

18 Q And what was his job?

19 A He was one of the crew members.

20 Q And as part of being one of the crew members,
21 would he have come into contact with equipment within The
22 Brickman Group?

23 A Yes.

24 Q Would he have had a key to the business?

25 A Nope.

DIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 Q Do you recognize Darrell Heyward in the courtroom
2 today?

3 A Yes.

4 Q And could you point him out and tell the Court
5 what it is he's -- where he's sitting and what he's wearing?

6 A He's sitting right there, and he has a green shirt
7 on with a tie.

8 MR. HALL: I'd ask the record to reflect that

9 Ms. Disser has identified Mr. Heyward.

10 THE COURT: So noted.

11 BY MR. HALL:

12 Q Did Darrell Heyward continue to work for The
13 Brickman Group after October of 2012?

14 A No, he did not.

15 Q Why not?

16 A Well, he wasn't at work that day, and he never
17 came back. From what I understand, he was arrested, in
18 jail, something.

19 Q Let me hand you what's already been entered into
20 evidence as State's Exhibit No. 6. I'm going to ask you to
21 take a look at that. Can you tell me what you see there in
22 the photo?

23 A That was what greeted me that morning at the top
24 of the stairs.

25 Q And were those items -- did those items belong to

DIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 The Brickman Group?

2 A The -- no. Not -- maybe the --

3 Q Maybe the trimmer that's shown in the picture?

4 A (Nods in the affirmative.)

5 Q Let me show you what's been marked as -- or
6 already entered into evidence as State's Exhibit 4 and ask
7 you to take a look at that. Can you identify this item here
8 in the picture, right there?

9 A Under the chair?

10 Q Yes.

11 A I can't really tell what it is. It looks like a
12 piece of equipment or something.

13 Q Does it appear to be a piece of equipment that
14 belongs to The Brickman Group? This, this item right here.

15 A Oh, that, no. No. I mean, that's like a metal.
16 Is that a crowbar or something that they -- yeah, no. We --

17 Q And that didn't belong to The Brickman Group?

18 A No.

19 Q And that's what you found when you got to work on
20 the morning of October 9th, 2012?

21 A Yeah.

22 MR. HALL: I have no other questions of this
23 witness, Your Honor.

24 THE COURT: All right. Any cross?

25 MR. STEPHENS: Thank you, Your Honor. Yes.

CROSS EXAMINATION OF REBEKAH DISSER BY THE DEFENDANT

1 CROSS EXAMINATION

2 BY MR. STEPHENS:

3 Q Ms. Disser, I'm Jeffrey Stephens. I represent
4 Mr. Heyward.

5 Who was responsible for hiring new employees
6 at Brickman -- or was responsible when you worked there?

7 A For hiring new employees?

8 Q Yes, ma'am.

9 A We had an office manager who hired new employees,
10 filled out their paperwork.

11 Q Do you know who a Jimmy Gregory is, ma'am?

12 A No.

13 Q So that name is not familiar to you?

14 A No, not that I recall.

15 Q Would you know if a Jimmy Gregory had come to
16 Brickman and applied for a position there?

17 A Might have, I don't know.

18 Q Okay. It was an office manager or someone else
19 who did hiring, as you said, ma'am?

20 A Of the crew members, yes.

21 Q Do you know who had access to that building where
22 the lawn equipment was stored?

23 A Myself, the office manager, when I gave her
24 permission, and the -- another branch manager who was in
25 Greenville, South Carolina.

CROSS EXAMINATION OF REBEKAH DISSER BY THE DEFENDANT

1 Q Ma'am, are you familiar with a company called
2 Valley Crest Landscape Maintenance?

3 A Yes.

4 Q And wasn't that a company that was purchased, so
5 it belonged to Brickman?

6 A Not at that time.

7 Q Well, is that a company that Brickman acquired as
8 part of Brickman? I mean, are they connected, those two
9 businesses?

10 A Not at the time.

11 Q Well, you did say you're aware of it. So
12 you don't -- are you saying, ma'am, that you don't know if
13 Valley Crest was purchased by Brickman?

14 A From what I understand, about a year ago those two
15 companies merged, yes, sir.

16 Q Ma'am, were you aware then that Mr. Heyward was
17 continuing to work with Brickman as he was employed by
18 Valley Crest after they merged; were you aware of that,
19 ma'am?

20 A Not to my knowledge.

21 Q When did you leave Brickman?

22 A That branch closed that December.

23 Q So you did -- you were not aware that Mr. Heyward,
24 contrary to your testimony, did in fact continue to work for
25 Valley Crest, you didn't know that, ma'am?

CROSS EXAMINATION OF REBEKAH DISSER BY THE DEFENDANT

1 A No.

2 MR. STEPHENS: I don't believe I have any further
3 questions for you. Thank you.

4 THE WITNESS: All right.

5 MR. HALL: Just a quick follow-up.

6 THE COURT: Yes.

7 REDIRECT EXAMINATION

8 BY MR. HALL:

9 Q Ms. Disser, it's your testimony that in October of
10 2012, that Darrell Heyward was employed with The Brickman
11 Group?

12 A Correct.

13 Q Not with Valley Crest?

14 A They were two separate companies at that time.

15 Q Two -- thank you.

16 MR. HALL: That's all I have. Thank you.

17 THE COURT: Anything else?

18 MR. STEPHENS: No follow-up, Your Honor. Thank
19 you.

20 THE COURT: You may step down.

21 All right. We're going to take a break at this
22 point, and I know it's just a short time here, but
23 we're going to take our lunch break. So -- and we're
24 going to try to come up with some other things.

25 At 2:00, does that give you --

REDIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 MR. HALL: Yes.

2 Your Honor, may I excuse Ms. Disser?

3 THE COURT: Oh, yes. Ms. Disser, there's no
4 issues there.

5 MR. STEPHENS: No objection, Your Honor.

6 THE COURT: Okay.

7 MR. HALL: Thank you.

8 THE COURT: So I'm going to ask that you be back
9 in your jury room at 2:00 and we'll resume testimony
10 at that point.

11 I remind you again, during this break you're not
12 to discuss this case in any manner. This includes not
13 only your fellow jurors, but when you go home to eat
14 lunch, if you go home to eat lunch, you don't need to
15 be talking with your family or friends or -- in any
16 way. Don't do any separate investigation.

17 If anyone should contact you about this case, get
18 their name or a description of them and notify the
19 bailiff. It's just, like I say, if any of you -- I
20 don't anticipate that there should be any news reports
21 or anything like that, do not -- you know, do not
22 review any of those, don't do any separate
23 investigation. You need to keep an open mind.

24 But other than that, just be back in your jury
25 room at 2:00.

JURY INSTRUCTIONS

1 All right. Thank you very much. See you this
2 afternoon. Have a good lunch.

3 (Jury exits the courtroom at 12:05 p.m.)

4 THE COURT: All right. We'll be at recess until
5 2:00 and then -- I mean, I don't want you to have
6 to come in, in the middle of a trial. But you -- you
7 know --

8 MR. HALL: We do -- I mean, we do have those
9 other matters that I, at least, sent the email out for
10 and notified everyone that we were going to try and do
11 some things during this break.

12 THE COURT: Okay.

13 MR. HALL: Certainly don't want to infringe on
14 the Court's lunch. But we have, we supposedly have an
15 interpreter that's available after 1:00, we do have a
16 few translator matters that we can deal with, and then
17 I think we have one bond setting from an attorney
18 that's coming in from Charleston, I believe. So if we
19 might be -- if we could accommodate at least a few of
20 those things.

21 THE COURT: Do you want to do it at one, is that
22 involving you or --

23 MR. HALL: If we could -- the bond setting
24 involves me. There is a Schmerber motion with a
25 translator that involves me. To be honest, that may

JURY INSTRUCTIONS

1 be the extent of my involvement. But, I mean --

2 THE COURT: I don't mean to interfere with you
3 when you're in the middle of trial.

4 MR. HALL: That's fine. You know, it's not as
5 though I have to, you know, sit and worry about
6 closing at this point.

7 THE COURT: Well, just let me know. I'm
8 available from 1:00 on.

9 MR. HALL: Okay. Great. Thank you.

10 And Mr. Stephens and I will get together and look
11 at this video and see exactly how much footage we agree
12 we need to show.

13 (Whereupon, a lunch recess was taken.)

14 MR. HALL: Yes, Your Honor. I need to put on the
15 record before the jury comes in, it was my intent -- I
16 realized after Ms. Disser left the stand. I realized
17 that there was a question that I forgot. And I
18 tracked her down in the parking lot and asked her to
19 come back. I simply wanted to ask her one question.

20 MR. STEPHENS: There's no problem from the
21 defense.

22 THE COURT: All right.

23 MR. HALL: With respect, we have an agreement
24 with the video that I'm going to show. We will show
25 the first 10, 15 minutes of it. The rest of it is

JURY INSTRUCTIONS

1 excess that no one needs to see.

2 THE COURT: All right. We are ready to roll
3 then.

4 MR. HALL: Yes, Your Honor, thank you.

5 THE BAILIFF: The jury is entering the courtroom,
6 Your Honor.

7 (Jury enters the Courtroom at 2:20 p.m.)

8 THE COURT: Good afternoon, ladies and gentlemen.
9 I hope that y'all had a good lunch, and I thank y'all
10 for waiting. We actually handled three other matters
11 on other cases while we had lunch here, so we
12 appreciate your patience there. We're trying to keep
13 as much going on as possible. So ...

14 But anyway, we'll begin -- the State is still in
15 their case, and they need to call their next witness.

16 MR. HALL: Thank you, Your Honor. The State
17 recalls Rebekah Disser.

18 THE COURT: And, Ms. Disser, I'm going to remind
19 you that you're under oath from previously.

20 THE WITNESS: Yes, sir.

21 Thereupon,

22 REBEKAH DISSER

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF REBEKAH DISSER BY THE STATE

1 BY MR. HALL:

2 Q Ms. Disser, you had testified earlier that you
3 were basically an office or project manager or branch
4 manager for Brickman Group; is that correct?

5 A Yes, that's correct.

6 Q Did you give anyone consent at any time to enter
7 The Brickman Group building and steal those items?

8 A No.

9 MR. HALL: That's the only question I had, Your
10 Honor. Thank you.

11 THE COURT: Any cross?

12 MR. STEPHENS: Just very quick cross examination,
13 Your Honor.

14 CROSS EXAMINATION

15 BY MR. STEPHENS:

16 Q Ma'am, I think you mentioned during your earlier
17 testimony that there were perhaps a couple of other people
18 that had keys to that location where the landscaping tools
19 were stored; is that correct, ma'am?

20 A That's correct.

21 Q And did you speak with all the individuals that
22 might have had keys to the location after you discovered
23 that the place had been broken into?

24 A Absolutely.

25 Q Okay. So you did ascertain that no one else had

CROSS EXAMINATION OF REBEKAH DISSER BY THE DEFENDANT

1 given permission for someone to come in and take any of
2 those tools?

3 A Absolutely.

4 MR. STEPHENS: Thank you, Your Honor, and thank
5 you, ma'am.

6 THE COURT: Any redirect?

7 MR. HALL: No, thank you, Your Honor.

8 THE COURT: Any objection to her being excused
9 again?

10 MR. HALL: No, not at all.

11 THE COURT: All right. You're excused.

12 MR. HALL: State calls Brady Lee.

13 Thereupon,

14 BRADY LEE

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE CLERK: Thank you and be seated. Please
18 state and spell your name for the Court's record.

19 THE WITNESS: Brady Lee.

20 MR. HALL: Spell it for the record.

21 THE WITNESS: B-R-A-D-Y, L-E-E.

22 DIRECT EXAMINATION

23 BY MR. HALL:

24 Q Officer Lee, who do you work for?

25 A Bluffton Police Department.

DIRECT EXAMINATION OF BRADY LEE BY THE STATE

1 Q And how long have you worked there?

2 A Three years.

3 Q What is your current rank?

4 A Police Officer II.

5 Q And were you working on the morning of
6 October 9th, 2012?

7 A I was.

8 Q Around 3:43 in the morning, did you conduct a
9 traffic stop on a brown Honda Accord?

10 A I did.

11 Q Where did this traffic stop take place?

12 A The traffic stop was initiated U.S. 278 eastbound,
13 in front of Plantation Business Park in the town of
14 Bluffton.

15 Q What was the basis of the stop?

16 A Speeding offense.

17 Q And did you activate your blue lights?

18 A I did.

19 Q Do you have a video camera system in your car?

20 A I do.

21 Q Could you please describe to the jury how that
22 camera system works?

23 A As soon as my front lights are initiated, the
24 system automatically turns on. It records audio and visual,
25 and it post dates about 30 seconds back prior to my light

DIRECT EXAMINATION OF BRADY LEE BY THE STATE

1 initiation.

2 Q And did the camera system in your car capture
3 video footage of this traffic stop?

4 A It did.

5 Q Did this brown Honda Accord pull over pursuant to
6 the traffic stop?

7 A Eventually, yes, sir.

8 Q When you say "eventually," what do you mean?

9 A I think it -- it initially started to pull over.
10 I believe, if my memory serves me correct, he put on his
11 right turn signal. Began to pull over to the right side of
12 the road and then changed its mind, increased speed. We
13 went probably -- probably within a half a mile to the next
14 intersection at Rose Hill. Had speeds of between 50 and, I
15 think at one point, we hit almost 70 miles an hour. And
16 eventually he stopped on the opposite side of the
17 intersection.

18 Q Now, what happened when the car stopped?

19 A As soon as the car came to a stop, the driver of
20 the vehicle exited and fled on foot, north across 278,
21 towards Rose Hill.

22 Q Was there anyone else in the car?

23 A There was.

24 Q And were you able to identify the other person
25 that was in the car?

DIRECT EXAMINATION OF BRADY LEE BY THE STATE

1 A I did subsequent.

2 Q And who was this person?

3 A Jimmy Gregory.

4 Q How were you able to identify him?

5 A After the driver fled, back-up arrived on the
6 scene. The passenger was subsequently detained, and we
7 identified him pursuant to his admission and the
8 state-issued identification he had.

9 Q Was Jimmy Gregory placed under arrest?

10 A He was.

11 Q And what for?

12 A I believe it was disorderly conduct. Disorderly
13 conduct under our town ordinance.

14 Q Now, other than the driver fleeing from the car,
15 was there anything else unusual about the traffic stop?

16 A There were several large pieces of landscaping
17 equipment strown throughout the car.

18 Q Now, let's go back to this video. Did you have
19 the video from the traffic stop pulled from the system?

20 A It was.

21 Q And was that item entered into evidence?

22 A It was.

23 MR. HALL: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes.

DIRECT EXAMINATION OF BRADY LEE BY THE STATE

1 BY MR. HALL:

2 Q Officer Lee, I'm showing you what's been marked as
3 State's Exhibit No. 11 for purposes of identification. Can
4 you identify that?

5 A This is the video.

6 Q And how do you know that that's the video?

7 A It's got the date and my initials on it.

8 Q And you've reviewed this disc in its entirety?

9 A I have.

10 Q Does the disc fairly and accurately depict what
11 you observed or what was occurring on October 9th, 2012?

12 A It does.

13 MR. HALL: Your Honor, at this time I would move
14 State's 11 into evidence and ask to publish it for the
15 jury.

16 THE COURT: What's the Defense position?

17 MR. STEPHENS: Your Honor, no objection. I
18 believe that we already worked out by agreement
19 between the parties what part is going to be published
20 to the members of the jury.

21 THE COURT: Right. I guess it's admitted into
22 evidence with limited to the parts that y'all agreed
23 that are relevant to the matter at hand.

24 MR. HALL: Exactly. Thank you.

25 THE COURT: Okay. And that's exhibit?

DIRECT EXAMINATION OF BRADY LEE BY THE STATE

1 MR. HALL: Eleven.

2 *(Whereupon, State's Exhibit No(s) 11 marked for*
3 *identification and received in evidence.)*

4 (Video played, stopped at 3:50 p.m.)

5 THE COURT: What's the number where you ended it?

6 MR. HALL: The exhibit?

7 THE COURT: The time number.

8 MR. HALL: Oh. The time that I stopped, 3:50:03
9 a.m.

10 BY MR. HALL:

11 Q Officer Lee, to your knowledge, were attempts made
12 to locate the individual who had run from the car?

13 A They were.

14 Q What were those efforts?

15 A The Beaufort County Sheriff's Office K-9 team
16 showed up, and they attempted to track him via K-9.

17 Q And to your knowledge, was the driver of that car
18 located that morning?

19 A No.

20 MR. HALL: Thank you. I have no other questions.

21 CROSS EXAMINATION

22 BY MR. STEPHENS:

23 Q Officer Lee, I'm Jeff Stephens. I represent
24 Mr. Heyward. I only have a few questions for you.

25 First, your involvement in this case is only

CROSS EXAMINATION OF BRADY LEE BY THE DEFENDANT

1 limited to the arrest of -- well, that stop we just saw and
2 the arrest of Mr. Gregory for the public disorderly conduct;
3 is that correct?

4 A That's correct.

5 Q And you're not involved in the investigation for
6 an alleged theft of property from Brickman landscaping?

7 A I am not.

8 Q Were you ever asked at any point to try to do an
9 identification for the driver of that vehicle that ran away?

10 A I was not.

11 Q Now, you said that after a search with a tracking
12 dog they were able to find that person?

13 A No, sir.

14 Q Do you know how many officers were involved in
15 that?

16 A I couldn't recollect. It was quite a bit. I know
17 the K-9 did track in that direction and then tracked up 278,
18 where we lost him.

19 Q Are you familiar at all with Mr. Darrell Heyward
20 sitting over there?

21 A I did see him one time at the Beaufort County
22 Detention Center.

23 Q And do you know he's 49 years old?

24 A I did not.

25 MR. STEPHENS: Well, thank you. No further

CROSS EXAMINATION OF BRADY LEE BY THE DEFENDANT

1 questions, Officer Lee. Thank you.

2 THE COURT: Anything else?

3 MR. HALL: No, Your Honor.

4 THE COURT: All right. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 MR. HALL: Your Honor, may we approach?

7 THE COURT: Yes.

8 Y'all want to have him released?

9 MR. HALL: Yes, that's fine.

10 THE COURT: All right. You're free to go.

11 THE WITNESS: Thank you, Your Honor.

12 (Off-the-record discussion held.)

13 THE COURT: All right. Ladies and gentlemen, we
14 just got settled there good, and we'll now have to
15 send you back. We got a couple of items we need to
16 take up outside your presence, so we will give you
17 another little stretch break here, and we will be back
18 in another 15 minutes or so. Thank you.

19 (Jury exits the courtroom at 2:40 p.m.)

20 THE COURT: All right. Now, you're going to
21 call -- your next witness is Mr. Gregory?

22 MR. HALL: That's correct, Your Honor.

23 THE COURT: Okay. And do we need -- I mean,
24 based on some of the -- obviously I'm going to have to
25 make a decision on some stuff. I guess we need to

COLLOQUY WITHOUT JURY

1 maybe kind of decide what he's going to say.

2 MR. HALL: Well -- and while Mr. Stephens has
3 some valid concerns, I -- you know, I likewise have
4 some concerns about if you're going to call him out
5 and we're going to have him come out and he's going to
6 testify in-camera.

7 My concern is, is that he's going to be given
8 multiple opportunities to kind of figure out what's
9 going on here and see what's what. I don't know, it's
10 kind of a double-edged sword for me.

11 As I said previously on the record, the last time
12 that I had spoken to Mr. Gregory, and I intentionally
13 did not go see him this morning, he told me that he did
14 not remember ever speaking to Investigator Seifert.
15 And then that's been the basis for any of the arguments
16 that I've made thus far today with respect to admitting
17 the prior statements that he had given to Investigator
18 Seifert.

19 I don't know as I stand here what he's going to
20 say on the stand, but I do have him under State's
21 subpoena. I would put him on the stand and would ask
22 him the questions.

23 MR. STEPHENS: May I be heard on that,
24 Your Honor?

25 THE COURT: Yeah.

COLLOQUY WITHOUT JURY

1 MR. STEPHENS: What I was going to say, Your
2 Honor, is under subtitled Rule of Evidence 804,
3 whether Mr. Gregory refuses to testify persistently
4 after an order by the court to, or whether he does
5 testify and state that he has no recollection, both
6 situations would make him unavailable per the rule.
7 It includes a lack of memory and --

8 THE COURT: Now, let me stop you right there.
9 Right now, I don't know that, the Court doesn't know
10 that. And why I wanted to discuss all this before we
11 brought him out.

12 And I kind of agree with Mr. Hall. I think, you
13 know, he's got him under subpoena, y'all all suspect
14 what he's going to say, but we don't know that until he
15 gets on the stand and says it. And I realize -- I
16 understand your concern with the prejudice, but I'm
17 going to just let him call him with the jury in here,
18 and we'll address it at that point.

19 MR. STEPHENS: I understand, Your Honor.

20 THE COURT: All right. Let's take a quick break.

21 (Whereupon, a brief recess was taken.)

22 THE COURT: All right. I was reviewing the
23 Stokes case that you handed up. Evidently you handed
24 it up to defense counsel. It's pretty relevant.

25 MR. STEPHENS: Your Honor, I believe that if

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1 Mr. Gregory still takes the stand and says he's not
2 going to testify, that's a very distinguishable
3 situation from what happens in Stokes, where a person
4 testifies but says they have limited recollection
5 about what happened.

6 Under Rule 804, if they persistently refuse to
7 testify -- if they're not available. And additionally,
8 under the ruling in Stokes, if they say that Stokes was
9 available for cross examination, he was asking -- or he
10 was answering questions. They said that the fact that
11 the trial defense counsel in that case didn't ask him
12 questions doesn't invalidate the fact that he was
13 available for cross examination.

14 If Mr. Gregory, and this is still hypothetically,
15 if he says he's not going to answer questions, then
16 there is no opportunity for cross examination,
17 Your Honor.

18 THE COURT: Or else he just might not be able to
19 respond like you want him to.

20 And anyway, I'm not thinking you're dealing
21 with -- I think you're trying to use a hearsay
22 exception for a confrontation clause exception, and I'm
23 not sure that that's going to work.

24 But, again, that's not directly in front of me at
25 this point. But Stokes, to me, looks pretty

COLLOQUY WITHOUT JURY

1 compelling, so I'm going to -- we will start with
2 Mr. Gregory, I guess, and then depending on that, we'll
3 make a ruling on what happens next.

4 MR. STEPHENS: Understand, Your Honor.

5 THE COURT: All right. I guess, bring the jury
6 in, please.

7 THE BAILIFF: The jury is entering the courtroom,
8 Your Honor.

9 (Jury enters the courtroom at 3:56 p.m.)

10 THE COURT: Welcome back, ladies and gentlemen.

11 We'll now proceed with the State's case.

12 You may call your next witness.

13 MR. HALL: Thank you, Your Honor. State calls
14 Jimmy Gregory.

15 THE COURT: Good afternoon.

16 THE WITNESS: How you doing?

17 Thereupon,

18 JIMMY GREGORY

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE CLERK: You may be seated. Please state and
22 spell your name for the court's record.

23 THE WITNESS: Jimmy Gregory.

24 DIRECT EXAMINATION

25 BY MR. HALL:

DIRECT EXAMINATION OF JIMMY GREGORY BY THE STATE

1 Q Good afternoon, Mr. Gregory.

2 A How you doing.

3 Q Do you recall on October 9th, 2012 giving a
4 statement to Investigator Doug Seifert of the Beaufort
5 County Sheriff's Office?

6 A I forgot.

7 Q You don't remember?

8 A (Nods in the negative.)

9 Q Do you recall that the conversation took place at
10 the Beaufort County Detention Center?

11 A I don't remember.

12 Q Do you recall telling Investigator Seifert on that
13 date that you were at the Kangaroo Pantry on Matthews Drive
14 during the early morning hours of October 9th?

15 A I don't remember, it's been so long.

16 Q Do you recall telling Investigator Seifert on
17 October 9th at the Beaufort County Detention Center that you
18 caught a ride with someone you knew as Darrell Heyward?

19 A No, I don't remember that.

20 Q Do you recall having a conversation with
21 Investigator Seifert on October 10th of 2012?

22 A I don't remember that either.

23 Q That also would have been at the Beaufort County
24 Detention Center?

25 A I don't remember that.

DIRECT EXAMINATION OF JIMMY GREGORY BY THE STATE

1 Q And during that conversation on October 10th, at
2 the Beaufort County Detention Center with Investigator
3 Seifert, do you recall detailing the facts surrounding the
4 burglary of the Brickman landscaping, including your
5 involvement and the involvement of Mr. Darrell Heyward?

6 A I don't remember none of that.

7 MR. HALL: Your Honor, if I may have a moment.

8 THE COURT: Yes.

9 BY MR. HALL:

10 Q Going back to the October 10th, 2012 statement, do
11 you recall telling Investigator Seifert that Darrell Heyward
12 possessed a gun during the incident?

13 A No, sir.

14 Q Do you recall telling Investigator Seifert that
15 Mr. Heyward threatened you with this gun in order to have
16 you participate in this burglary?

17 A I don't remember that either.

18 Q Do you recall in this October 10th conversation
19 with Investigator Seifert at the Beaufort County Detention
20 Center issuing a recorded apology to The Brickman Group for
21 your participation in this burglary?

22 A I don't remember that either.

23 Q One more question for you, Mr. Gregory. Do you
24 know Darrell Heyward?

25 A No.

DIRECT EXAMINATION OF JIMMY GREGORY BY THE STATE

1 Q You don't know him at all?

2 A No.

3 Q So if I asked you to point him out in the
4 courtroom for me today, you wouldn't be able to do that?

5 A Nah.

6 MR. HALL: Okay. Thank you, Your Honor. That's
7 all I have.

8 THE COURT: Cross examination.

9 MR. STEPHENS: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. STEPHENS:

12 Q Mr. Gregory, do you know where the Brickman
13 landscaping company is?

14 A No, I don't.

15 Q So you wouldn't -- do you recall if you've ever
16 been to a place called Brickman?

17 A No.

18 Q Do you remember anything about October 8th or 9th,
19 2012?

20 A No.

21 Q So you don't recall if you'd been drinking
22 anything that evening?

23 A No.

24 Q Mr. Gregory, you don't recall if -- if you'd been
25 drinking with a Darrell Heyward on October 8th or 9th?

CROSS EXAMINATION OF JIMMY GREGORY BY THE DEFENDANT

1 A No. I don't remember that day.

2 Q You didn't get in a fight with Mr. Heyward?

3 A No, sir.

4 Q All right. So you don't know of any bias you
5 would have against Mr. Heyward to incriminate him?

6 A No, sir.

7 MR. STEPHENS: All right. Thank you,
8 Mr. Gregory.

9 MR. HALL: Just a couple follow-up, Your Honor.

10 THE COURT: Yes.

11

12 REDIRECT EXAMINATION

13 BY MR. HALL:

14 Q Mr. Gregory, do you recognize Investigator Seifert
15 in the courtroom, from the Beaufort County Sheriff's Office?

16 A No. I don't even know him.

17 Q You don't know Investigator Seifert at all?

18 A No.

19 Q Never had any dealings with him whatsoever?

20 A No.

21 Q You pled guilty to this charge, correct?

22 A Yeah.

23 Q And that -- this charge for the burglary involving
24 the Brickman landscaping group; is that correct?

25 A Uh-huh, yeah.

REDIRECT EXAMINATION OF JIMMY GREGORY BY THE STATE

1 Q And that's currently what you're in prison for?

2 A Yeah.

3 MR. HALL: Thank you. I have no other questions.

4 THE COURT: I'll let you go ahead.

5 MR. STEPHENS: I got some follow-up based on --

6 THE COURT: Yeah, I'll let you go ahead.

7 MR. STEPHENS: Thank you, Your Honor.

8 THE COURT: Yes.

9 RE-CROSS EXAMINATION

10 BY MR. STEPHENS:

11 Q Mr. Gregory, you just indicated you pled guilty to
12 burglarizing Brickman. Did that refresh your recollection
13 as to whether you've ever been to the Brickman landscaping
14 company?

15 A No, man. My mind gone, man. I been locked up too
16 long, I don't know what's going on, man.

17 Q So you don't recall that you had broken in and --

18 A I don't know what's going on. I'm a lost man.
19 I'm on medication, man. I don't know what's going on. I'm
20 lost.

21 MR. STEPHENS: Thank you, Mr. Gregory.

22 MR. HALL: Your Honor, I have no further
23 questions.

24 THE COURT: All right. You may step down.

25 MR. HALL: Your Honor, may we approach?

RECROSS EXAMINATION OF JIMMY GREGORY BY THE
DEFENDANT

1 THE COURT: Yes.

2 MR. HALL: Thank you.

3 (Off-the-record discussion held.)

4 THE COURT: I'm sorry. Out of an abundance of
5 caution, we've just got a couple of matters before the
6 next witness. So today you're getting your exercise
7 today. You'll go back, and we'll have you back out
8 here as soon as possible.

9 (Jury exits the courtroom at 3:05 p.m.)

10 THE COURT: All right. Let me address the --
11 first the statement of Mr. Gregory. Since the motion
12 has already been made and stuff, I'm going to kind
13 of -- I'll hear from both sides on that, but it's my
14 understanding that now that Mr. Gregory has basically
15 denied -- I guess he didn't really deny making the
16 statement, he just didn't recall nothing, and that you
17 are now offering to introduce a video.

18 MR. HALL: It's actually two -- three separate
19 audio recordings. One for a conversation that took
20 place between Investigator Seifert and Mr. Gregory on
21 October 9th, and one that is in two parts, one of them
22 a very smaller part, because Investigator Seifert's
23 recorder died, but captured everything on October 10th
24 of 2012. The very same statements that I questioned
25 him on.

COLLOQUY WITHOUT JURY

1 THE COURT: Okay. And you put that -- all those
2 will be put in through Officer Seifert?

3 MR. HALL: That's correct, Your Honor.

4 THE COURT: Okay. And I'll be glad to hear from
5 you. Like I say, my reading of Stokes, I mean, I'll
6 be glad to hear you're saying so, but it appears to be
7 almost a transcript of the factual situation as
8 Stokes.

9 MR. STEPHENS: Well, Your Honor, I still would
10 like to renew my objection for the record. Of course,
11 Mr. Gregory, he did end up testifying, which is not
12 what he had indicated from prior conversations, but I
13 do think that that puts him much more in the Stokes
14 decision.

15 Just to preserve the record, I'm not going to make
16 further argument on that, Your Honor. But I do believe
17 that it's still not in effect confrontation, but I
18 understand the Supreme Court's decision in Stokes, and
19 I'm not going to make an argument on that.

20 THE COURT: All right. And by all means, when he
21 gets ready to put it in --

22 MR. STEPHENS: I'll renew my objection at that
23 point, Your Honor.

24 THE COURT: Okay. But based on what I've heard
25 at this point, I'm basically denying your motion in

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1 limine. Okay.

2 MR. STEPHENS: Understand, Your Honor.

3 THE COURT: All right. And then the other -- I
4 have a little concern on the video. Explain to me
5 exactly what the factual basis for the video on the --
6 the Kangaroo store.

7 MR. HALL: That's correct, Your Honor.

8 Essentially, what took place was Investigator
9 Seifert went and spoke, had that initial conversation
10 with Mr. Gregory at the detention center. And during
11 the course of that conversation, Mr. Gregory said, I
12 was at the Kangaroo Pantry on 278, the one near the
13 Pizza Hut, near the McDonald's, and I was waiting there
14 by myself, and that's when Darrell Heyward showed up.
15 And I asked Darrell Heyward for a ride, and I got into
16 the car with him and we drove off, and I noticed some
17 stuff in the backseat. But when I asked -- this is
18 Mr. Gregory speaking -- but when I asked Mr. Heyward
19 about it, he said, Oh, don't -- you know, Don't worry
20 about that. Don't worry about that.

21 It was based on that conversation that
22 Investigator Seifert then went to the Kangaroo Pantry,
23 went in, met with a manager there during the early
24 morning hours of October 10th, so the date following
25 having spoken with Jimmy Gregory the first time.

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1 THE COURT: Okay. Let me just -- he went -- this
2 is important for my evaluations. He went on October
3 the 10th, and it was from the actual video was on what
4 day?

5 MR. HALL: October 9th at approximately 1:20 in
6 the morning.

7 THE COURT: Okay.

8 MR. HALL: And so what Investigator Seifert did
9 was, he went to that Kangaroo Pantry, he sat down with
10 the manager, I believe at 6:30 in the morning, and
11 personally reviewed the video footage. He had already
12 spoken to Jimmy Gregory, he had already known of
13 Jimmy Gregory's potential involvement in this
14 burglary.

15 THE COURT: And how does he know the date and
16 time of that?

17 MR. HALL: How does he know the date and time of
18 the burglary?

19 THE COURT: No, of the video.

20 MR. HALL: Well, Jimmy Gregory said in that first
21 interview that --

22 THE COURT: No, but authenticating the video.

23 MR. HALL: He sat -- and Investigator Seifert can
24 testify to this, there is no time or date stamp on the
25 videos. There's three separate camera angles all

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1 showing the same time.

2 Investigator Seifert will be able to testify that
3 as he viewed that footage at the Kangaroo Pantry, it
4 had a date and time stamp on it, which is what allowed
5 him to be able to conclude that Jimmy Gregory and
6 Darrell Heyward were at the Kangaroo Pantry together at
7 1:20 in the morning.

8 THE COURT: And how does he know that -- well, I
9 mean -- .

10 MR. HALL: He recognized -- he knew these --

11 THE COURT: No, no, no, no. I'm talking about --
12 and here's the problem I have. You know, I've got a
13 VCR, the date is never set up right. Okay? If he
14 came and looked at my house, and it's like -- well, he
15 could say, Well, that's the date and time that that
16 was taken. But, I mean, how could -- that's what I'm
17 saying, how could he -- how does he know of his own
18 knowledge that that is -- that the time and date is
19 correct and what he was looking at was the correct
20 time and date?

21 MR. HALL: Because he went through and started
22 from 2:30, approximately, when Jimmy Gregory
23 originally told him he was at the Kangaroo Pantry, and
24 went forward and backward and got back to 1:20 a.m. on
25 the time stamp, on their system, and was able to see

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1 that that's when it was, 1:20 in the morning on
2 October 9th, 2012.

3 THE COURT: And that's still based on looking at
4 a machine that he doesn't know whether that's a proper
5 date and time. That's what I'm having problems with.
6 How can he authenticate that that machine would -- the
7 date and time on that machine, when he went back, was
8 proper?

9 MR. HALL: It would have been through information
10 that he would have gotten from the manager at the
11 Kangaroo Pantry.

12 THE COURT: Exactly. Which I think is the person
13 that needs to authenticate that video. Somebody to
14 say it was in good working condition, this is the date
15 and time, this is the proper date and time. I mean,
16 that's what I'm having problems with.

17 MR. HALL: How -- and I guess, I'm just -- how is
18 this a different situation than Brady Lee, who took
19 the stand, has a video pulled from his system and
20 presented it for the jury. That has a date and time
21 stamp on it, certainly, but he testified as to when
22 the traffic stop occurred and he was able to show
23 video.

24 Investigator Seifert will be able to testify that
25 he observed the time and date stamp on that video as he

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1 watched it in the store, and that's how he was able to
2 determine that Jimmy Gregory initially was lying about
3 being there by himself, and it also helped to establish
4 the timeline for the -- between the period of 1:20 in
5 the morning and 3:45, when they get pulled over.

6 THE COURT: Well, the difference that Brady Lee
7 had is, Brady Lee was basically saying that video is
8 confirming what I was there seeing live. I mean, he
9 was on the other end of that video saying, Yes, that's
10 a video of what happened, you know. But somebody
11 else, you'd have to have some technician come and say,
12 yeah, it was working properly, this is a proper video,
13 this is what was recorded, if Brady Lee hadn't have
14 been there.

15 MR. HALL: Otherwise, you are relying on me being
16 able to produce a third-shift convenience store
17 employee that is going to remember or not remember two
18 people randomly coming in at 1:20 in the morning.

19 THE COURT: Or somebody that's in charge of the
20 video system saying this is -- you know, I mean, I
21 looked at some of the cases during lunch and all of
22 them talk -- that the person testifying on these
23 surveillance videos is always the person that has
24 something to do with the surveillance videos. Yes, it
25 was in proper working condition, we didn't have any

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1 problems with the date stamp.

2 In fact, one of the cases actually talks about
3 there was a problem with the date. There was a problem
4 with the date and time on the video that they were
5 trying to show, and the owner says, Well, oh, that
6 was correct -- this is why that's a problem, because
7 I've had problems with that before.

8 And the problem I have with this officer being
9 able to authenticate that is I don't think he can
10 authenticate that that is the date and time of that
11 occurrence when they were in the Kangaroo, just because
12 he went and viewed it, and that's what was shown on the
13 video.

14 MR. HALL: Okay. Well --

15 THE COURT: I mean, that's my feeling. I'm sure
16 you probably don't want to add anything to that.

17 MR. STEPHENS: Well, I don't know, Your Honor,
18 I'm always willing to try and amend.

19 I do, just to add to what Your Honor's already
20 stated about distinguishing this from an officer
21 testifying to his own cruiser video. You know,
22 Mr. Hall recalls, I'm sure that he asked, to start
23 with, the officer to certify that the camera is in good
24 working condition and he checked it, and how the videos
25 are stored and then retrieved.

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1 Again, Investigator Seifert doesn't have firsthand
2 knowledge of those things. And if he could testify
3 about this sort of thing, it would obviate the need to
4 ever call a custodian of records or a technician to
5 operate these things, and that's it. It's really much
6 further than this court should go.

7 THE COURT: Yeah. And I'm just -- I'm going to
8 grant his motion in limine as to the Kangaroo video.

9 MR. STEPHENS: Thank you, Your Honor.

10 THE COURT: Are we ready to bring the jury in or
11 do y'all need to take a break?

12 MR. HALL: No, no, no, we're good. Thank you,
13 Your Honor.

14 THE COURT: All right. Nothing further from
15 either side, bring the jury.

16 MR. HALL: And, Your Honor, just briefly before
17 the jury comes in, there are some -- and Mr. Stephens
18 and I have not gone through this, but there is the
19 first video. It's roughly an hour long. It would be
20 my intent to play the first, roughly, 32 minutes.

21 THE COURT: All right. Tell him to stop the jury
22 just a minute.

23 MR. HALL: I'm sorry, Your Honor. Just --

24 THE COURT: Don't apologize. We're just making
25 sure we -- yeah.

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1 MR. HALL: There are references after about the
2 32-minute mark that Investigator Seifert makes to,
3 Darrell has not learned to stay out of breaking into
4 businesses. Obviously not the kind of thing that I'm
5 going to play before the jury.

6 There are several other references to things that
7 I know that I'm not going to be able to bring up in
8 front of the jury. So it would be my intent, with
9 respect to that first interview, when I play that, I'm
10 going to play it to roughly the 32-minute mark. I am
11 going to skip to the 4730 mark and play roughly about
12 another minute. So all told, about 33 minutes of that
13 audio.

14 The second interview, there is no cut at all in
15 the first part of the interview, and there is one cut
16 at about 445 into approximately a seven-minute audio
17 where Jimmy Gregory makes a statement to the effect of
18 something about Heyward just getting out of prison. I
19 don't intend to introduce that. So there's going to be
20 that brief little cut.

21 I just wanted to make the Court aware,
22 Mr. Stephens aware, that it's not going to be my intent
23 to try and put anything out before the jury that I'm
24 not allowed to, that I've gone through these and I
25 think that these are appropriate edits.

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1 MR. STEPHENS: Your Honor, I haven't seen those
2 edits, but I trust that Mr. Hall has done due
3 diligence to avoid putting any unduly prejudicial
4 information -- or inadmissible information in front of
5 the jury.

6 The only other thing that I could suggest is if
7 we, you know, went over these videos and played them
8 tomorrow, but I don't want to waste Court's time. If
9 we could plow through it, again, I trust that they're
10 probably going to be sufficient.

11 I've watched all of these videos, but I can't tell
12 you --

13 THE COURT: Video or audio?

14 MR. HALL: They're audios. The Kangaroo Pantries
15 are videos, these are audio files.

16 MR. STEPHENS: The audio. I've gone through them
17 previously, Your Honor, but I can't say exactly where
18 there's objectionable material.

19 Again, if it happens, I can make an objection at
20 that point, and hopefully it's the sort of thing that
21 can be taken care of with a curative instruction if
22 it's -- if it's inadmissible material for the jury's
23 hearing.

24 THE COURT: Well, maybe you need to stay close to
25 him or give him some signal if it looks like there's

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1 something he needs to pause on.

2 MR. STEPHENS: All right. I can do that, Your
3 Honor.

4 THE COURT: I'm just saying --

5 THE BAILIFF: Well, I try to do that anyway, just
6 because I'm on this side of the courtroom and I'll
7 have the best eyes. So I'll probably try to view it
8 from over there.

9 THE COURT: Audio.

10 MR. HALL: Listen.

11 MR. STEPHENS: Audio. Listen. The speakers are
12 over there. I keep thinking this is a video.

13 I'll park myself near Mr. Hall and we'll just
14 handle it as best as we can.

15 THE COURT: You're fine with that. It sounds
16 like he's done what he needs to do there, so y'all
17 just listen carefully.

18 MR. HALL: With that, I'm all set, Your Honor.
19 Thank you.

20 THE COURT: All right. Okay. We can let the
21 jury in. And then you'll put him on the stand --

22 MR. HALL: I'll rest. I'm done.

23 THE BAILIFF: You ready, Your Honor?

24 THE COURT: Yes. Bring them on in.

25 (Jury enters the courtroom at 3:22 p.m.)

DIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 THE COURT: All right. Thank you for your
2 patience, and we're now ready to resume the State's
3 case.

4 Mr. Hall, you may proceed.

5 MR. HALL: Thank you, Your Honor. State calls
6 Investigator Doug Seifert.

7 Thereupon,

8 DOUG SEIFERT

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 THE CLERK: Thank you, and be seated. Please
12 state and spell your name for the court's record.

13 WITNESS: Sergeant Doug Seifert, and it's
14 D-O-U-G, last name Seifert, S-E-I-F-E-R-T.

15 DIRECT EXAMINATION

16 BY MR. HALL:

17 Q Who do you work for?

18 A I work for Beaufort County Sheriff's Office.

19 Q And how long have you worked for them?

20 A July 10th will be nine years.

21 Q And what capacity are you currently working for
22 the sheriff's department?

23 A I'm investigations south.

24 Q And how long have you been with investigations?

25 A A little over four years now.

DIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 Q As part of your duties, were you asked to
2 investigate a burglary that occurred on October 9th, 2012 at
3 The Brickman Group?

4 A Yes, sir.

5 Q And what did you do initially as part of that
6 investigation?

7 A As far as once finding out the information of what
8 happened at the Brickman landscaping company, that's when I
9 end up taking over the investigation of different things of
10 interviewing the actual, you know, case officers, to
11 evidence, to everything, to the final of the investigation.

12 Q Through the course of your investigation, were you
13 able to identify any suspects in the case?

14 A Yes, sir.

15 Q And who did you identify?

16 A Jimmy Gregory and Darrell Heyward.

17 Q Now, concerning Jimmy Gregory, what specifically
18 did you do with respect to the investigation of him?

19 A I interviewed him actually twice, in two different
20 dates.

21 Q And was one of those on October 9th, 2012?

22 A Yes, sir.

23 Q Same morning as the burglary took place?

24 A That is correct.

25 Q Did you record his statements?

DIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 A I did.

2 Q Was he advised of his Miranda rights?

3 A Yes, sir.

4 Q Did he willingly speak with you?

5 A Yes, sir.

6 MR. HALL: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MR. HALL:

9 Q Investigator Seifert, I'm handing you what's been
10 marked as State's Exhibit 15 for purposes of identification.
11 Can you identify that?

12 A This would be the first interview of
13 Jimmy Gregory, which would be on October 9th.

14 Q Have you reviewed this disc in its entirety?

15 A Yes, sir.

16 Q What is it about that disc that signifies that
17 you've done that?

18 A It has my initials and the date on it.

19 Q Based on your hearing that recording, does it
20 fairly and accurately depict the conversation that you had
21 with Jimmy Gregory on October 9th, 2012?

22 A Yes, sir.

23 MR. HALL: Your Honor, at this time, I would move
24 State's 15 into evidence and ask to publish it to the
25 jury.

DIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 MR. STEPHENS: Your Honor, just renew my earlier
2 objection.

3 THE COURT: Okay. Subject to the objection, also
4 subject to it's entered limited to certain redactions.

5 MR. HALL: That's correct, Your Honor.

6 THE COURT: All right. Based on such objections
7 and due to the redactions, it is admitted on that
8 limited basis.

9 MR. HALL: Thank you.

10 *(Whereupon, State's Exhibit No(s). 15 marked for*
11 *identification and received in evidence.)*

12 BY MR. HALL:

13 Q Investigator Seifert, just for the record, this is
14 an audio recording?

15 A That is correct, sir.

16 (Audio recording played.)

17 MR. HALL: Your Honor, may we approach?

18 THE COURT: Yes.

19 MR. HALL: Thank you.

20 (Off-the-record discussion held.)

21 THE COURT: You know, every time I go over here,
22 it's not good for y'all.

23 So we just got -- the next audio, we just need to
24 listen to that before we actually present it to y'all,
25 so I'm going to ask you to go back just briefly into

DIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 your jury chambers, and we'll have you right back out
2 again.

3 You can stay seated, Officer.

4 (Jury exits the courtroom at 4:01 p.m.)

5 THE BAILIFF: The jury is clear.

6 MR. HALL: Your Honor, with respect to the second
7 audio that I would play, Mr. Stephens brought to my
8 attention that initially at the outset, when
9 Investigator Seifert talks to Mr. Gregory again, he
10 brings up the fact that he has gone to the Kangaroo
11 Pantry, he has reviewed the video, describes the
12 clothing that both he -- Mr. Gregory and Mr. Heyward
13 were wearing, but also throws in as a bit of, I think,
14 what Investigator Seifert would testify to, was a bit
15 of puffery, that he had also obtained video from The
16 Brickman Group. That video never existed, so that was
17 an investigation tactic, telling Mr. Gregory that he
18 had video from The Brickman Group when he didn't
19 really have video from The Brickman Group.

20 I know that Mr. Stephens is obviously concerned
21 that there would be reference made to the information
22 from the Kangaroo Pantry video that is brought up early
23 on. From the State's perspective, absent the exact
24 description of clothing that they were wearing, that
25 could be considered as much puffing as the Brickman

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1 video, that just to say that that's what he was telling
2 them -- that's what he was telling Mr. Gregory in order
3 to get Mr. Gregory to be more forthcoming, which he was
4 in the second interview.

5 I understand that Mr. Stephens probably wants to
6 limit any reference to the Kangaroo Pantry video
7 itself, and the description of it, but you know, we've
8 already heard through Mr. Gregory that he was at that
9 pantry, that Mr. Heyward was at that pantry also, and
10 that they, at least according to the first story, rode
11 off together after Mr. Heyward met Mr. Gregory at the
12 pantry.

13 So I would contend that the audio as is is fine.
14 I don't think Mr. Stephens agrees. And so I think
15 that's kind of where we're at.

16 THE COURT: Well, I think you need to somehow
17 redact it to the -- I've granted the motion as to the
18 video, but I don't think a reference to the Kangaroo
19 video would be appropriate.

20 MR. HALL: That's fine.

21 THE COURT: So, I mean, however you need to
22 redial it up.

23 MR. HALL: We just -- I think that Mr. Stephens
24 and I need an opportunity just to -- and it's not
25 lengthy, either one, the second -- the first part of

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1 the second recording is 24 minutes. I had intended to
2 play that in its entirety.

3 The second part of the statement is seven minutes
4 long, and there is one stop where I'd have to skip 21
5 seconds.

6 THE COURT: Okay. Well, y'all figure out how
7 y'all need to -- what do y'all need to do then?

8 MR. HALL: We just need --

9 MR. STEPHENS: Just probably --

10 MR. HALL: We need an opportunity, he and I, to
11 listen to it at least to figure out -- I don't recall
12 from listening to it whether there's any further
13 references to the pantry video and what they were
14 wearing past initially -- the initial part of the
15 conversation, which is when after that Mr. Gregory
16 begins to spill the beans about what, quote, unquote,
17 really happened.

18 THE COURT: Well, do y'all want to just take -- I
19 mean, y'all want to go through the whole thing and
20 figure it out?

21 MR. STEPHENS: Your Honor, my preference --
22 again, I don't want to waste the Court's time, but my
23 preference would be to listen to the whole video
24 rather than, you know, jump up and down midway through
25 when there's something that neither one of us had

COLLOQUY WITHOUT THE JURY PRESENT

1 noticed, and then move for a mistrial.

2 Again, I don't want a mistrial. I'd rather take
3 care of it on the front end.

4 THE COURT: Yeah. All right.

5 MR. HALL: As I said --

6 THE COURT: Yeah, I don't mind having you -- I'm
7 trying to figure out, do we need to do that this
8 afternoon?

9 MR. HALL: Well, that audio is 24 minutes long,
10 at least that part of it, to listen to it in its
11 entirety. And I would still, after that, assuming
12 that there were proper redactions and that, and that
13 cut out a couple of minutes of the audio, we're
14 talking 24 minutes from right now plus --

15 THE COURT: And I don't want to hold you to this,
16 but do you expect a lot more testimony today?

17 MR. HALL: With respect to Investigator Seifert,
18 I --

19 THE COURT: Well, we can go to 5:30. It's a
20 little bit late, but ...

21 MR. STEPHENS: Your Honor, if it -- and I might
22 have a lengthy cross examination of Investigator
23 Seifert. But if it helps the Court --

24 THE COURT: You're just saying that so you can go
25 in the morning. I'll hold you to it.

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1 MR. STEPHENS: Well, if it helps you, I have no
2 problem continuing to talk, Your Honor. But if it
3 helps the Court for planning purposes, we didn't
4 submit a witness list, we're not planning on calling
5 anyone in the Defense case. So I don't see any reason
6 we couldn't finish, if the Court were so inclined,
7 couldn't finish Investigator Seifert, then do our
8 charging discussions and charge the jury all
9 relatively quickly in the morning, if you are so
10 inclined, Your Honor.

11 THE COURT: I mean, that may be most efficient
12 use of everybody's time.

13 MR. STEPHENS: Because I know then Mr. Hall and
14 I, if someone else can run it forward, we can sit in
15 the back and listen to this audio either when they're
16 doing something else or after.

17 MR. HALL: You mean for right now? Yeah, there's
18 nothing else going on right now but this, yeah.

19 MR. STEPHENS: Whatever you need. Whatever you
20 need, Mr. Hall. I'm here for you.

21 THE COURT: Who said I'm not going to rule?

22 MR. HALL: Well, right. And that's the problem
23 with this.

24 THE COURT: I know, I realize that. Well,
25 let's -- you know, we're going to have to come back in

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1 the morning anyway.

2 Well, I'll tell you what, though, that's still --
3 I mean, we don't have to hear everything this
4 afternoon.

5 Let's just -- let's let y'all have a chance to
6 work on that tonight, and then let's just -- let's
7 recess now and then start back in the morning.

8 MR. HALL: Okay. And just so that -- I'm not
9 going to -- I know that Investigator Seifert is still
10 under oath, still subject to my direct examination.
11 Just so the record's clear, I'm not -- it's not going
12 to be my intent to have any interaction or contact
13 with Mr. Seifert regarding his testimony, any
14 testimony he's already given, or providing him with
15 any additional information.

16 THE COURT: Right. And I would instruct you,
17 Mr. Seifert, now that you have taken the stand, you
18 know, you're not allowed to talk to your attorney,
19 which is Mr. Hall, or anybody from his office, about
20 your testimony in any way.

21 I mean, it's kind of like you're in a bubble as
22 far as your testimony goes. So, you know, that's --
23 that's just not proper once you've taken the stand,
24 since we're breaking in the middle of it, so ...

25 All right. Let's bring the jury back in and let

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1 them -- they're probably getting ready -- they're
2 probably on their 15-minute bathroom break.

3 THE BAILIFF: The jury is entering the courtroom
4 now.

5 (Jury enters the courtroom at 4:10 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we
7 have come to a particular part of the case where I had
8 to make a decision of whether I was going to leave
9 y'all back there just to wait and twiddle your thumbs
10 so that we could properly get the next item of
11 evidence set up for y'all to hear. And we were coming
12 back in the morning anyway, because we're not going to
13 finish the case, so instead of waiting, letting y'all
14 wait 45 minutes back there, I just decided -- with a
15 lot of encouragement -- that I was just going to let
16 y'all go for the day. So you'll get an early day and
17 then we'll be back -- you know, I don't want to push
18 things too early, but tomorrow is Friday. Does
19 anybody have a problem coming back at nine? Yeah,
20 tomorrow is Friday, so I don't want to push it too
21 late.

22 And we're going to be ready to go at 9:00. Okay?
23 So you know -- so I'm going to ask y'all to -- we'll
24 have a recess now, y'all be back in your jury room at
25 9:00. Okay. And as you know, I'm going to tell you a

COURT RELEASING THE JURY FOR THE DAY

1 little spiel, and that is y'all are not to talk about
2 the case among yourselves, as you're walking to your
3 car, you're not to talk about this case in any way with
4 any family members or friends. You know, if somebody
5 is going to say, What have you been doing all day,
6 you'll just have to tell them, I can't tell you.

7 I mean, you can tell them what you've been doing,
8 but you just can't tell anything about the facts. No,
9 I can't tell you, I'm on a top secret mission, they may
10 think that, so ...

11 You know, but you can't talk about the case.
12 Don't do any additional investigation whatsoever about
13 this. Just right now, just when you walk out of here,
14 forget about it until you get back here in the morning.

15 You know, don't be making up your mind. Keep an
16 open mind until you've heard all of the evidence. If
17 anybody should contact you about the case, get their
18 name and description, let the bailiff know immediately.

19 Also, if you should hear anything on the news, the
20 newspaper, any media whatsoever, please do not watch
21 that or observe it, or disregard it totally.

22 So other than that, have a nice evening, and I
23 will see you in the morning.

24 (Jury exits the courtroom at 4:14 p.m.)

25 THE BAILIFF: The jury is clear.

COURT RELEASING THE JURY FOR THE DAY

1 ATTORNEY1: And I apologize, Your Honor, I had
2 not -- frankly, I had not had -- I had not anticipated
3 properly your ruling on the Kangaroo Pantry video.
4 Otherwise, I would have had everything ready to go as
5 I did with the first disc.

6 THE COURT: No, I know. I didn't know how I was
7 going to rule either, so -- but anyway, like I said,
8 9:00 shouldn't be a problem with everybody, just so we
9 can, you know, just get rolling here.

10 So -- all right. Anything else before you leave?

11 MR. HALL: Nothing other than this.

12 THE COURT: Anything from the Defense?

13 MR. STEPHENS: Nothing from the Defense, Your
14 Honor.

15 THE COURT: Is he in custody?

16 MR. STEPHENS: He is not, Your Honor.

17 MR. HALL: No.

18 THE COURT: Okay. I guess he'll still be on
19 bond.

20 Okay. Any objection to that?

21 MR. HALL: No.

22 THE COURT: Okay.

23 MR. STEPHENS: Thank Your Honor.

24 THE COURT: All right. We will see y'all in the
25 morning.

COURT RELEASING THE JURY FOR THE DAY

1 MR. HALL: Did you want to discuss the scheduling
2 for tomorrow?

3 THE COURT: Yes.

4 You can step down. Again, you're not supposed to
5 talk about the case.

6 (Whereupon, the trial was recessed for the day.)

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1 THE COURT: Good morning.

2 All right. Before we bring the jury in, it's my
3 understanding -- who actually talked to the husband?

4 THE BAILIFF: The Clerk.

5 THE COURT: It's my understanding that Brandy
6 Thames' husband called in and said that she was too
7 sick to be here today. I don't remember which exactly
8 Ms. Thames was. But under South Carolina Code,
9 Section 147-1340, the alternate -- we have two
10 alternates, and the alternate is to be selected by
11 ballot.

12 I've asked, any exceptions to that from the State?

13 MR. HALL: Nothing from the State, Your Honor.

14 THE COURT: Any from the Defense?

15 MR. STEPHENS: No, Your Honor. Thank you.

16 THE COURT: And what I've asked my clerk to do is
17 to put -- let's verify the two alternates' names. I
18 can't find my little jury --

19 THE CLERK: The numbers are 219 and 54 for the
20 alternates.

21 THE COURT: Okay. And do you have the little
22 official jury list?

23 The alternates are Erik Lopez, 219, and Rita
24 Brown, No. 54; is that correct?

25 All right. Anybody want to see the little numbers

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1 here? I feel like it's bingo or something, you know.

2 All right. And I'm going to put them right here
3 and I'm going to ask our clerk if she will select one
4 of them.

5 All right. 219, Rita -- no, I'm sorry, 219 is
6 Erik Lopez, the one she selected. All right. Erik
7 Lopez will be our 12th regular juror, and Rita Brown
8 will be the -- continue to be the alternate. So I'm
9 going, on this official list here, to mark through Ms.
10 Thames' name.

11 All right. And I'm going to ask you to staple
12 that to your little selection, or paper.

13 Any exception from the State on this method of
14 jury selection of the alternate?

15 MR. HALL: Not at all, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. STEPHENS: No, Your Honor.

18 THE COURT: I'm like y'all, it's the first time
19 I've ever done that, too.

20 MR. STEPHENS: Pardon, Your Honor?

21 THE COURT: I said, I'm like y'all, that's the
22 first time I've ever done that, too.

23 Okay. Are we ready to go?

24 MR. HALL: Yes, Your Honor.

25 MR. STEPHENS: Yes, Your Honor.

5-29-2015PROCEEDINGS

1 THE COURT: We're close to what we told them.

2 Okay. Anything else from the State before we
3 proceed?

4 MR. HALL: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. STEPHENS: No, Your Honor.

7 THE COURT: Let them in. Let them go. Let them
8 loose. Whatever.

9 THE BAILIFF: Ready, Your Honor? The jury is
10 entering the courtroom.

11 (Jury enters the courtroom at 9:13 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.

13 I was a little closer to the time this time, so --
14 just a few minutes, but we actually had something we
15 had to do. I don't know if they told you. As y'all
16 may be aware, one of your jurors got sick last night,
17 Ms. Thames, and was not able to make it here. So we
18 had two alternates selected, and based on state law,
19 it's a random pick. We put both names basically on a
20 piece of paper, and had to draw those. It was a
21 random selection, and Mr. Lopez is our regular juror.

22 Ms. Brown, you're still an alternate, we're not
23 releasing you yet. So hopefully we won't need an
24 alternate, but you are now the remaining alternate for
25 the balance of this trial.

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1 So I just wanted to let y'all know what we were
2 doing here. So, all right.

3 As we left yesterday, the State was still
4 presenting their case, and they will continue this
5 morning.

6 Mr. Hall.

7 MR. HALL: Thank you, Your Honor.

8 Thereupon,

9 DOUG SEIFERT

10 was recalled as a witness, having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HALL:

14 Q Investigator Seifert, I wanted to just briefly
15 touch on the audio from -- that we had listened to
16 yesterday. There was several references to a slang term, a
17 "lick." Can you describe to the jury what you understand
18 that to mean?

19 A A lick is a term -- terminology of street talk of
20 burglarizing either a business or a home, is what it usually
21 is.

22 Q So in reference to that audio then, any time you
23 were mentioning that, the lick was the slang term for the
24 burglary?

25 A Yes, sir.

DIRECT EXAMINATION CONTINUED OF DOUG SEIFERT BY THE
STATE

1 Q Now, you had spoken to Jimmy Gregory on
2 October 9th, 2012, we know that.

3 A Yes, sir.

4 Q Did you have occasion to speak with him again?

5 A Yes.

6 Q And when was that?

7 A It was on October 10th.

8 Q And where did that interview take place?

9 A That was, again, at the Beaufort County Detention
10 Center.

11 MR. HALL: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, you may.

14 BY MR. HALL:

15 Q Investigator Seifert, I'm handing you what's been
16 marked as State's Exhibit 16 for purposes of identification.
17 Can you identify that?

18 A Yes. This is Jimmy Gregory's second interview,
19 which displays that it was on October 10th, 2012.

20 Q And have you reviewed this disc in its entirety?

21 A Yes, sir.

22 Q What is it about this disc that signifies that
23 you've done that?

24 A My initials and the date.

25 Q Does it -- based on your review of that, does it

DIRECT EXAMINATION CONTINUED OF DOUG SEIFERT BY THE
STATE

1 accurately and fairly depict the content of the interview as
2 it took place on October 10th, 2012?

3 A Yes, sir.

4 MR. HALL: Your Honor, at this time, I'd move
5 State's 16 into evidence and ask to publish to the
6 jury.

7 THE COURT: Okay. And this will subject to the
8 Defense's prior objections.

9 MR. STEPHENS: Yes, Your Honor.

10 THE COURT: And it would be introduced on a
11 limited basis, redacted. I realize that you have not
12 agreed to the production of the statement, but that
13 you have agreed that it is going to be produced, and
14 the redacted version being what is being provided.

15 MR. STEPHENS: Yes, Your Honor. I couldn't say
16 it better myself.

17 THE COURT: I had more coffee.

18 All right. You may proceed.

19 MR. HALL: Thank you, Your Honor.

20 *(Whereupon, State's Exhibit No(s). 16 marked for*
21 *identification and received in evidence.)*

22 THE COURT: That was exhibit?

23 MR. HALL: Sixteen, Your Honor.

24 THE COURT: Sixteen.

25 (Audio played.)

DIRECT EXAMINATION CONTINUED OF DOUG SEIFERT BY THE
STATE

1 BY MR. HALL:

2 Q Investigator Seifert, I ended up playing a second
3 audio file that was from that disc. What was the reason
4 that there was a second audio file?

5 A There were several -- or two reasons, actually.
6 It was that he wanted to make another statement, and I
7 actually had to replace the batteries that were in my
8 recorder.

9 Q And in that second statement, you had mentioned,
10 and I just wanted to make sure we're clear on the date, I
11 believe that you had said to Mr. Gregory in the audio
12 recording that the incident date was October 2nd. What was
13 the incident date?

14 A It was actually October 9th. I was up during the
15 night with a call-out, I was the on-duty investigator.

16 Q So you knew that the date was October 9th?

17 A Yes, sir.

18 Q Do you have any idea when Mr. Heyward was arrested
19 for this charge?

20 A The incident occurred on October 9th, he was
21 arrested on November 9th.

22 Q And you were actually the person that happened to
23 be the one to arrest him; is that correct?

24 A That is correct.

25 MR. HALL: Your Honor, I have no more questions.

DIRECT EXAMINATION CONTINUED OF DOUG SEIFERT BY THE
STATE

1 THE COURT: All right. Cross examination.

2 MR. STEPHENS: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. STEPHENS:

5 Q Investigator Seifert, I just want to start with
6 chronologically when you got involved in the investigation.
7 You said you were the duty investigator the night of the
8 break-in at Brickman, correct?

9 A That is correct.

10 Q Okay. When you were assigned to the case, the
11 vehicle that Mr. Gregory was riding in was still in the tow
12 yard, correct?

13 A That is correct.

14 Q All right. Did you do anything to try to process
15 that vehicle for any kind of forensic evidence?

16 A No, sir.

17 Q Okay. Did you talk to then Deputy Laatsch about
18 anything he had done to process the vehicle for forensic
19 evidence?

20 A Yes. We already talked after I was heading up to
21 Beaufort for another incident, and that's when I ended up
22 talking to Mr. Gregory first.

23 Q Did he inform you that he did not try to get any
24 kind of fingerprints from the vehicle?

25 A He never mentioned any of that, sir.

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 Q But did you not go to the vehicle to lift
2 anything?

3 A No, sir.

4 Q Did you go to the site of the break-in at
5 Brickman, where it occurred?

6 A No, sir.

7 Q So you didn't do anything to process that scene
8 for forensic evidence?

9 A That is correct.

10 Q And to the best of your knowledge, no one sought
11 to get fingerprints from Brickman?

12 A Not through my understanding, no, sir.

13 Q All right. Have you examined the actual tools
14 that were used in the break-in?

15 A Have I examined them?

16 Q Sure.

17 A By pictures, yes.

18 Q Okay. Now, the tools that were seized, not the
19 tools that were stolen, but the actual burglary tools, are
20 those still in evidence?

21 A They are. They're here today, sir.

22 Q And were those tested for the presence of
23 fingerprints, to your knowledge?

24 A Not that I'm aware of, sir, no.

25 Q Do you know if they were tested for the presence

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 of what we call contact DNA, any kind of skin samples or
2 anything like that, that might have been present on those
3 items?

4 A No. I believe it was the -- only the tools
5 themselves -- or I'm sorry, the blowers and edgers and et
6 cetera that was in the vehicle, sir.

7 Q Have you looked through any employment records for
8 Brickman as to information about their employees?

9 A No, sir.

10 Q Are you aware of whether there were employees of
11 Brickman who might have had criminal records for burglary or
12 robbery?

13 A I don't know that, sir.

14 Q Investigator Seifert, you have been an officer
15 with Beaufort County Sheriff's Office for how long?

16 A Almost nine years, sir.

17 Q All right. In that time, have you prosecuted
18 people who were employed as landscapers before?

19 A Yes, sir.

20 Q And by "prosecute," I mean arrested, investigated.

21 A Yes.

22 Q Do you know if you've prosecuted other individuals
23 who were employed by Brickman for crimes?

24 A Not that I'm aware of, sir.

25 Q Did you ever speak to anyone at Brickman to ask

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 them whether they knew Jimmy Gregory?

2 A I don't recall that, sir.

3 Q So you're not aware of whether Mr. Gregory had
4 ever been to Brickman for other than a criminal activity, to
5 apply for a job, or if he had been employed by Brickman or
6 its subsidiaries or anything?

7 A No, sir.

8 Q Okay. And as far as the DNA that -- you mentioned
9 repeatedly in the interviews with Mr. Gregory that you had
10 tons of DNA. Are you aware of whether the samples that were
11 taken by Deputy Laatsch were tested for the presence of DNA,
12 either on the stolen items or the burglary tools that were
13 used?

14 A Just so -- if I could familiarize everybody with
15 our DNA lab, DNA is not tested right away. When I explained
16 that to Mr. Gregory, that's an investigative tactic that we
17 use as far as talking about different things that what --
18 what we have and all that stuff, videos, DNA, things like
19 that.

20 So as far as any DNA that came back that was
21 conclusive with this case, no, sir, there was none.

22 Q And just to revisit, what you're saying is you're
23 allowed to lie to people who are being interviewed as a
24 potential suspect, correct?

25 A Yes, sir.

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 Q Okay. And when you say "DNA," you didn't really
2 know at that time there was any DNA present?

3 A That is correct.

4 Q However, through the course of your investigation
5 since it started in 2012, are you aware of whether the
6 samples that were taken by Deputy Laatsch were ever tested
7 for the presence of DNA?

8 A They were.

9 Q Okay. And if a forensics lab is able to identify
10 a DNA sample, how do you go about, you know, in layman's
11 terms, to the best of your knowledge, how do you go about
12 testing whether someone else's DNA might be present on that
13 sample?

14 MR. HALL: Your Honor, I'm going to object
15 because I believe this would be out of the scope of
16 Investigator Seifert's expertise. He's asking
17 questions about what the DNA lab would be doing.

18 THE COURT: Okay. I'm not sure he laid a
19 foundation that he can answer that.

20 MR. STEPHENS: Your Honor, I'm not asking him to
21 testify as an expert, I'm just asking him on how he
22 proceeded with the investigation. It was why he took
23 or didn't take certain actions.

24 I'd be happy to proceed and come back to this if
25 it -- once its relevance has been established, Your

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 Honor.

2 THE COURT: Yeah.

3 MR. STEPHENS: And, again, I'm not asking for him
4 to testify as an expert.

5 THE COURT: Lay a better foundation.

6 BY MR. STEPHENS:

7 Q At some point during your investigation, did you
8 get a sample of what we call buccal swab sample of DNA from
9 Jimmy Gregory?

10 A Yes, sir.

11 Q And was that by his consent, or did you seek some
12 kind of --

13 A No, it was by his consent, sir.

14 Q All right. And did you submit that to be tested
15 and compared to the samples of potential DNA on the stolen
16 items and burglary tools?

17 A Yes, I did, sir.

18 Q And did you get a forensic lab report based on
19 your submission?

20 A Yes, I did, sir.

21 Q Did that indicate whether -- did that indicate
22 whether there was a match between Mr. Gregory's DNA and the
23 samples that were taken?

24 MR. HALL: Your Honor, I'm going to object.

25 Investigator Seifert's not qualified to answer that.

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 There's no one here from the lab, somebody would have
2 to be here from the lab to testify to that.

3 THE COURT: I'm going to sustain the objection.

4 BY MR. STEPHENS:

5 Q To take a DNA sample, you either seek consent or
6 you try to get a search warrant; is that correct, prior to
7 the person being arrested?

8 A Or due that they actually had other criminal
9 issues that were, I guess, as far as through CODIS, which
10 would be through --

11 Q Right. And what is CODIS, just very briefly?

12 A It goes into the -- once you're convicted of a
13 crime, it goes through the United States of your DNA, and it
14 can hit on different types of evidence that we have. In
15 particular, if that hits, then we actually do a DNA swab
16 through usually a Schmerber hearing, things like that, that
17 it goes through our database just to match, even though it's
18 already matched through CODIS when they're arrested.

19 Q And you, when you say "Schmerber," you mean
20 something in court like this, where you go in front of a
21 judge and ask for an order to take someone's DNA.

22 A That's correct, sir.

23 Q Okay. Oh, other than getting Mr. Gregory's
24 consent to take his DNA, did you seek to take a DNA sample
25 from any other individual?

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 A No, sir.

2 Q Do you know, to the best of your knowledge,
3 whether the samples that were taken from the stolen items
4 and anything -- any samples that were taken from the
5 burglary tools, was DNA submitted to look for a match with
6 CODIS?

7 MR. HALL: Your Honor, may we approach?

8 THE COURT: Yes.

9 MR. HALL: Thank you.

10 (Off-the-record discussion held.)

11 BY MR. STEPHENS:

12 Q Again, suffice it to say, you didn't seek to get a
13 DNA sample from Mr. Heyward, correct?

14 A I did not. From the time when he was arrested,
15 no. No, sir.

16 Q Although there are processes to do that and this
17 happened in 2012, we're three years later, correct?

18 A That is correct, sir.

19 Q Were you aware that the stolen items were returned
20 by Deputy Laatsch to Brickman?

21 A Yes, sir.

22 Q Did he consult you at all before those were
23 returned?

24 A No, sir.

25 Q Now, after your first interview with Mr. Gregory,

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 did you seek to have a search warrant issued, either for his
2 home or for Mr. Heyward's home?

3 A No, sir.

4 Q Are you aware of whether there had been other
5 break-ins at Brickman immediately preceding or in the couple
6 weeks preceding the charged offense here?

7 A I was under the understanding that there was a
8 couple of issues over there, yes, sir.

9 Q Okay. But you didn't seek to get a search warrant
10 to see whether Mr. Gregory might have some of the other
11 stolen items, or Mr. Heyward had them?

12 A No, sir.

13 Q At some point during your investigation, did you
14 review the patrol cruiser video that was taken by Bluffton
15 police department officer, Brady Lee?

16 A Yes, I did, sir.

17 Q And you heard his description of what he believed
18 the person who ran from that vehicle was wearing?

19 A Yes, sir.

20 Q Do you believe that if you had gotten a search
21 warrant, you might have been able to look for those items at
22 Mr. Heyward's home?

23 A You could or you couldn't.

24 Q All right. Have you investigated Mr. Gregory for
25 other suspected crimes in the past?

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 A As far as like burglaries, things like that, no,
2 sir.

3 Q Have you interviewed him in the past?

4 A I could have on the -- as far as like dealing with
5 public disorderly contact or something like that, something
6 that's a magistrate or a, you know, a municipal charge.

7 Q To the best of your knowledge, do you know any
8 other individuals that he regularly hangs around with or is
9 seen with?

10 A No, sir. I mean, it's like -- I mean, I know a
11 lot of people who -- where he hangs and stuff like that.
12 But I don't know who his -- who he's tight with, if that's
13 what you're asking.

14 Q All right. But you've never investigated him with
15 another individual in conjunction with any other crimes?

16 A I don't believe so, sir.

17 Q During the course of this investigation, did you
18 ever review any incident reports from Beaufort County
19 Sheriff's Office or other agencies that indicated
20 Mr. Gregory was involved with other individuals in the
21 commission of any crimes?

22 MR. HALL: Your Honor, I'm going to object to
23 that.

24 THE COURT: Yeah, that calls for hearsay there.

25 MR. STEPHENS: I understand, Your Honor.

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 BY MR. STEPHENS:

2 Q Let me ask you this, Investigator Seifert. You
3 mentioned repeatedly when talking to Mr. Gregory that you
4 think that there's a ring. Why did you think that there was
5 a ring involved in the break-in at Brickman?

6 A When -- most of our times that people steal
7 different types of tools or equipment, they don't take it to
8 the actual pawn shops, they actually have individuals that
9 they give it to that they get rid of them as fast as they
10 can, either for drugs or money. And that's what usually
11 occurs on different other incidents.

12 Q During the course of this investigation, did you
13 ever find any information that would lead you to believe
14 that there was a ring involved?

15 A I don't have anything conclusive, no, sir.

16 Q Now, after Mr. Gregory indicated in response to
17 your questions as to whether Mr. Heyward was involved in the
18 burglary, did you ever look for any other suspect who might
19 have been involved in the burglary?

20 A No, sir.

21 Q You said -- and this is kind of backtracking to
22 the question about a search warrant -- in Mr. Gregory's
23 second and third statement he indicated that there was an
24 effort -- you suggested that he might have been threatened
25 that there was a gun. He indicated that Mr. Heyward had a

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 gun.

2 Did you ever -- did you recover a gun from
3 Mr. Heyward when he was arrested?

4 A No, sir.

5 Q And you said that you didn't get a search warrant.
6 Do you know if anyone sought a search warrant looking for a
7 gun that might be on his premises?

8 A No, sir.

9 Q This might be my last question, Investigator
10 Seifert. Between the second and third interviews, second
11 and third audio recordings, those break in time, you said
12 that he wanted to do a new statement and you had to replace
13 the batteries in your recorder. I don't really recall the
14 time pack that you gave when the recording ended and the new
15 recording started.

16 Do you recall how long that was between the
17 end of the second recording and the beginning of the third?

18 A Five to ten minutes, if I had to guess, sir.

19 Q Did you speak to Mr. Gregory at all during that
20 time? Were you still in the room with him or had you left?

21 A We walked up to the booking area. I actually had
22 a few things that I had to deal with, with bond court.
23 That's when he wanted to give another statement, sir.

24 Q Okay. But did you speak with him during that
25 period of time, converse at all?

CROSS EXAMINATION OF DOUG SEIFERT BY THE DEFENDANT

1 A I could have. It could have been just small talk
2 about family, things like that.

3 Q And then he suggested that he do a new recording?

4 A I'm sorry?

5 Q Then he suggested that he -- that you record a new
6 statement?

7 A Yes, sir.

8 Q All right. After this new recording, did he ever
9 make any other statements to you?

10 A No, sir.

11 MR. STEPHENS: Now, I said that was my last
12 question, I'm going to stick to it. Thank you,
13 Investigator Seifert.

14 THE WITNESS: Yes, sir.

15 THE COURT: Any redirect?

16 MR. HALL: Thank you. Just a few brief
17 questions.

18 REDIRECT EXAMINATION

19 BY MR. HALL:

20 Q Investigator Seifert, Mr. Stephens was asking you
21 about search warrants. Did you go out and execute search
22 warrants at either Mr. Gregory's home or Mr. Heyward's home?
23 And did you go out and execute search warrants based on
24 these prior alleged burglaries?

25 Limiting just strictly to the prior alleged

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 burglaries, did you have any reason through the course of
2 this investigation to believe that either Jimmy Gregory or
3 Darrell Heyward were involved in any prior burglaries?

4 A No, sir.

5 Q Did Jimmy Gregory ever identify any of the
6 conversations -- I'm kind of asking a question I already
7 know the answer to, but that's what I'm supposed to do.

8 Did Jimmy Gregory ever identify any other
9 suspects other than Darrell Heyward as being involved in the
10 burglary at The Brickman Group?

11 A No, sir.

12 Q Now, you testified previously that Darrell Heyward
13 was arrested one month after this incident occurred?

14 A That is correct, sir.

15 Q Mr. Stephens is very interested in the gun. Based
16 on your experience, when you arrest someone a month later
17 and there's an allegation that there's a gun involved, do
18 people just continue to hang onto those guns?

19 A No, sir.

20 Q So when you arrested him on November 9th, it
21 shouldn't -- was it a surprise to you that he didn't have a
22 gun on him?

23 A It wasn't a surprise, no, sir.

24 MR. HALL: I have no other questions.

25 THE COURT: All right. Mr. Stephens.

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 MR. STEPHENS: Thank you, Your Honor.

2 THE COURT: You may step down.

3 MR. STEPHENS: Well, Your Honor -- I'm sorry. I
4 had a question on recross. I apologize, it should be
5 very short.

6 RE-CROSS EXAMINATION

7 BY MR. STEPHENS:

8 Q All right. You -- Mr. Hall just asked you
9 questions about the -- that Mr. Gregory didn't indicate
10 anyone else as a potential suspect, and so you didn't look
11 for anyone else.

12 When Mr. Gregory first made a statement in
13 his arrest, he said you reviewed that video and you heard
14 him say that he didn't know the individual who was in the
15 car with him. Is that when he was first pulled over?

16 A That is correct, sir.

17 Q And then when you first interviewed him, he said
18 that -- that at your suggestion, that it was Darrell Heyward
19 who was -- who was driving the car, and he said he had
20 nothing to do with it, correct, that he was just a
21 passenger?

22 A Yes, sir.

23 Q So you didn't believe him when he made his first
24 statement to Bluffton P.D. that he didn't know who the
25 driver was, correct?

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 A Did I believe that he knew who it was?

2 Q Well, he made an initial statement to Bluffton
3 P.D. that he didn't know who the driver was. So clearly you
4 didn't believe that, correct?

5 A That is correct, sir.

6 Q And when he made a statement that he was just a
7 passenger in the vehicle, you didn't believe that, correct?

8 A After my interviews, that's correct, sir.

9 Q But when he said that Darrell Heyward was the
10 individual, and the only individual who committed the
11 burglary with him, you believed that?

12 A Yes, sir.

13 Q And that's why Mr. Heyward was then arrested and
14 prosecuted, correct?

15 A With his statement, yes, sir.

16 MR. STEPHENS: Thank you.

17 THE COURT: All right. Mr. Seifert, you can step
18 down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Do you have another question?

21 MR. HALL: I -- well, actually I -- I did.

22 THE COURT: All right. Since I let him go one
23 extra time, you get one last shot.

24 MR. HALL: Thank you.

25 MR. STEPHENS: I will try to refrain from

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 follow-up, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HALL:

4 Q Investigator Seifert, through the course of your
5 investigation, you discovered that Darrell Heyward worked
6 for The Brickman Group?

7 A That is correct, sir.

8 Q Mr. Stephens took great pains to ask you about
9 numerous things concerning DNA. Was there a reason why
10 the -- that the sheriff's office didn't seek a sample from
11 Mr. Heyward based on your investigation?

12 A Yes, sir.

13 Q And what was that reason?

14 A It was already, you know, as far as validated that
15 he was a current employee at the Brickman landscaping, so
16 with the items that were recovered, his DNA would be on
17 there due to his manager stating that he uses those tools
18 all the time.

19 MR. HALL: Thank you. No other questions.

20 MR. STEPHENS: Your Honor, may I approach -- or
21 may we approach?

22 THE COURT: Yes.

23 (Off-the-record discussion held.)

24 THE COURT: All right, Mr. Seifert. You can step
25 down.

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Anything else for the State?

3 MR. HALL: Your Honor, at this time the State of
4 South Carolina rests its case.

5 THE COURT: All right. Ladies and gentlemen, we
6 are now at the stage where the State has presented
7 their case, and we have some matters of law to go
8 over. Hence, I'm going to send you back to your --
9 well, it's a good time for a break. We're going to
10 have about an hour, I'm going to send you back to your
11 jury room again.

12 Just because the State has presented their case,
13 it does not mean it's time for you to deliberate yet.
14 We -- you cannot start deliberating until you've gotten
15 all the evidence, and also I've given you the law.

16 So at this time, do not talk among yourselves
17 about the case. We'll take just a few minutes break
18 and we'll let you know when you can come back out.
19 Thank you very much.

20 (Jury exits the courtroom at 10:10 a.m.)

21 THE BAILIFF: The jury is clear, Your Honor.

22 THE COURT: The State has rested. Anything else
23 from the State?

24 MR. HALL: Nothing, Your Honor. Thank you.

25 THE COURT: All right. For the Defense?

REDIRECT EXAMINATION OF DOUG SEIFERT BY THE STATE

1 MR. STEPHENS: Your Honor, at this point I know
2 that you have to advise Mr. Heyward. Just want to say
3 we are -- I'll renew our objections. And at this time
4 I want to make a motion for directed verdict, but I
5 don't know if you need to counsel Mr. Heyward first.
6 But I'm not planning to put on any evidence.

7 THE COURT: Right. But I guess as far as your
8 motion for the end of the State's case, I guess you
9 can do that before.

10 MR. STEPHENS: Yes, sir. Since I'm not putting
11 on a case, I know you can normally renew your motions
12 --

13 THE COURT: I gotcha. Yeah, that's fine.

14 All right. Mr. Heyward, if you'll please stand
15 and raise your right hand.

16 THE DEFENDANT: Yes, sir.

17 Thereupon,

18 DARRELL HEYWARD

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE COURT: Okay. Your attorney has indicated to
22 me that you do not wish to -- your attorney's
23 indicated to me that you are -- he has advised that
24 you're not going to be testifying in this matter.
25 Okay.

CONSTITUTIONAL RIGHTS GIVEN TO DARRELL HEYWARD BY
THE COURT

1 First of all, I'm going to ask you some questions
2 to make sure that is your decision, that's what you
3 need to do, and you understand your rights.

4 First of all, have you had plenty of time to talk
5 to Mr. Stephens about your case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: About your rights, your
8 Constitutional rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And your strategy. You know, I'm
11 sure he's talked to you about there's strategies for
12 not testifying and there's strategies for testifying.
13 You've discussed all those matters with Mr. Stephens?.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you've had plenty of opportunity,
16 you don't need any additional time to talk to him
17 about that?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay.

20 Now, Mr. Heyward, at this time, I'm going to
21 explain your rights to you and make sure you understand
22 them. If you don't understand anything or I need to
23 explain any part of it, let me know.

24 Like I say, we've reached the part of -- the stage
25 in the case where it's time for you to present your

CONSTITUTIONAL RIGHTS GIVEN TO DARRELL HEYWARD BY
THE COURT

1 defense, if you would like to. You have a right to
2 claim the protection given to you by the Constitution,
3 particularly, the fifth amendment.

4 And that says basically in part that, No person
5 shall be compelled at any criminal case to be a witness
6 against himself.

7 This means that you cannot be required to testify
8 against yourself. You have the right to testify, of
9 course, but you don't have to testify. No one can make
10 you testify. This is a personal right, no one can
11 waive that right except you. Your attorney can't waive
12 it for you, you have to be the one to waive it.

13 If you decide to testify, you'll be subject to the
14 same rules that govern other witnesses, and you may be
15 examined and cross-examined on any relevant issues in
16 the case.

17 In addition, now, does Mr. Heyward have any
18 convictions?

19 MR. HALL: Yes, he does, Your Honor.

20 THE COURT: Just -- I mean, I don't need the
21 details, just briefly what would be used against him.

22 MR. HALL: He has prior convictions for grand
23 larceny, burglary, escape, use of vehicle without
24 owner's consent, possession of crack, failure to stop
25 for blue light, possession of stolen vehicle,

CONSTITUTIONAL RIGHTS GIVEN TO DARRELL HEYWARD BY
THE COURT

1 possession of crack, financial transaction card fraud.

2 Those are just some of the highlights.

3 THE COURT: Okay. And the reason I asked for
4 that information, let you know that, and I'm sure your
5 attorney has told you that if you did testify, those
6 matters, you know, could be brought against you. They
7 may or may not, but in a normal situation, that's
8 something to use in cross examination against you, and
9 I just want to make sure that is one of the potentials
10 there.

11 And it only -- you know, I'm not saying that all
12 of them could be against you, because any convictions
13 involving dishonesty or false statement are usually the
14 ones that relate. And then I have to determine whether
15 they should be admitted or not.

16 But those are generally what's been presented. So
17 the Solicitor, it could be possible the Solicitor could
18 present that record against you.

19 If you decide to testify, this decision on your
20 part must be freely and voluntarily made with knowledge
21 of your rights under the fifth amendment and the
22 consequences, if you decide to testify. If you decide
23 not to testify, I have to instruct the jury that that
24 cannot be used against you. And I very much stress
25 that. I mean, that's not something that could be used

CONSTITUTIONAL RIGHTS GIVEN TO DARRELL HEYWARD BY
THE COURT

1 against you, and it doesn't shift the burden to the
2 State, but it's left totally up to you whether you
3 testify. And if you would like to talk with your
4 attorney, your family, friends, or anyone else, that's
5 fine. But ultimately the final decision has to be
6 yours. Okay.

7 First of all, do you understand everything that
8 I've told you here this morning?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand your Constitutional
11 rights under the fifth amendment?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You discussed everything you need to
14 do with your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And do you wish to -- any
17 additional time to talk with him?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Do you wish to testify in
20 your case this morning?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. And that decision is
23 freely and voluntarily made?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: No one is coercing you or forcing you

CONSTITUTIONAL RIGHTS GIVEN TO DARRELL HEYWARD BY
THE COURT

1 not to testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: That's your decision.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Well, I will accept that
6 decision, and thank you.

7 So you may sit down. Thank you.

8 All right. I find that his decision not to
9 testify has been freely and voluntarily made, after
10 explaining his rights and advice of competent counsel,
11 with whom he's indicating he had time to discuss the
12 matter with.

13 All right. Now, we'll hear from the Defense.

14 MR. STEPHENS: Your Honor, I just wanted to
15 restate -- I said "objections," but I misstated,
16 objections and my motions, my motion in limine, the
17 one that was denied.

18 The only other thing I have, Your Honor, is my
19 motion for directed verdict. I guess, to be official,
20 the Defense rests prior to that. So at this time, the
21 Defense rests and I'd like to make my motion for
22 directed verdict.

23 THE COURT: Okay.

24 MR. STEPHENS: Your Honor, the Motion for
25 Directed Verdict, I understand that it's a very high

MOTIONS

1 standard, that we have to allege no competent evidence
2 to convict the Defendant. And this is based in part
3 on our objection to the admissibility of the
4 statements of Mr. Gregory that were used against him.

5 However, even with those statements, our argument
6 is simply that the only evidence against Mr. Gregory is
7 the statements -- excuse me, against Mr. Heyward, is
8 the statements of Mr. Gregory, and there are three, and
9 they are contradictory, all of them.

10 And we believe that the contradictory statements
11 combined with Mr. Gregory's interesting testimony
12 yesterday that he lacked all memory of having made a
13 statement, having met with the investigator, and of
14 even knowing Mr. Heyward, that the end result is
15 there's not sufficient competent evidence to convict
16 Mr. Heyward.

17 THE COURT: And I understand your motion, and I
18 think that there are various options I think the jury
19 can pick from on Mr. Gregory's statement, but they do
20 have a right to believe one of them, which does
21 identify Mr. Heyward. So -- I mean, Mr. Gregory -- I
22 mean, identify Mr. Heyward.

23 MR. STEPHENS: Yes, sir.

24 THE COURT: So I think that there is sufficient
25 evidence for this matter to go to the jury. So I deny

MOTIONS

1 your motion.

2 MR. STEPHENS: Thank you, Your Honor.

3 THE COURT: All right. Anything else from the
4 State?

5 MR. HALL: Nothing from the State, Your Honor.

6 THE COURT: Anything else from the Defense?

7 MR. STEPHENS: Nothing else from the Defense,
8 Your Honor.

9 THE COURT: I looked at the prior consistent
10 statement charge, I think that would be appropriate.
11 And mine doesn't actually say Defendant or trial
12 testimony, it's just witness' statement, so ...

13 MR. STEPHENS: Your Honor, we just ask for a
14 quick break before --

15 THE COURT: Oh, yeah. I just was letting you
16 know that. I think --

17 MR. STEPHENS: And Your Honor --

18 THE COURT: I'm going to charge prior consistent
19 statement. I am not going to charge mere presence, I
20 don't think that that really applies under the facts
21 of this case.

22 MR. STEPHENS: Yes, Your Honor. I just want to
23 preserve for the record that we requested it.

24 THE COURT: Right. Okay. So noted.

25 Anything else from the State?

MOTIONS

1 MR. HALL: No, Your Honor. Thank you.

2 THE COURT: Do y'all need more than ten minutes,
3 or is ten minutes good?

4 MR. STEPHENS: Ten minutes is sufficient for the
5 Defense. We just want to make it after the break.

6 THE COURT: Right.

7 MR. HALL: He's going to come back on the record
8 and rest, and then we're going right to argue charge?

9 THE COURT: Right. Yes.

10 MR. HALL: All right.

11 THE COURT: Yes.

12 MR. HALL: All right.

13 THE COURT: All right. We'll be at rest for ten
14 minutes.

15 (Whereupon, a brief recess was taken.)

16 THE COURT: I understand that everybody has
17 looked at that, the revised form with the word
18 "violent" in it, and it's acceptable.

19 MR. HALL: That's correct, Your Honor.

20 MR. STEPHENS: Yes, Your Honor.

21 THE COURT: And I usually do not send the
22 indictment back. I just send the verdict form back
23 and then have the foreperson sign the indictment
24 afterwards. So, Clerk, make sure I don't forget to do
25 that.

MOTIONS

1 Anything else before we bring the jury in?

2 MR. HALL: Nothing from the State, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. STEPHENS: Nothing from the Defense, Your
5 Honor. Thank you.

6 THE COURT: All right. Bring them in.

7 THE BAILLIFF: The jury is entering the courtroom,
8 Your Honor.

9 (Jury enters the courtroom at 10:45 a.m.)

10 THE COURT: All right. Ladies and gentlemen,
11 things have progressed while y'all were -- in your
12 absence. So welcome back, and I think the Defense --
13 when we all left, the State had rested. Okay. They
14 were not going to be putting forth any additional
15 evidence in their case-in-chief. At this point, the
16 Defense has the opportunity, if they so elect, to
17 present any testimony.

18 The Defense's position.

19 MR. STEPHENS: Your Honor, the Defense rests.
20 Thank you.

21 THE COURT: Okay. So the Defense has rested.
22 And what that means is it is now time to -- for
23 closing arguments and charge. And that's one of the
24 things that we did while you were out, make sure we
25 had all that ready to go so we wouldn't have to take

MOTIONS

1 another break.

2 And as many of you know from previous service,
3 even this week, what will happen now is that both sides
4 will have an opportunity to present their closing
5 arguments. And closing arguments are not to be
6 considered evidence. That is just the position of each
7 side. And as indicated previously, the State has the
8 burden of proof -- whether the Defendant has presented
9 any evidence or not, the State still has the burden of
10 proof beyond a reasonable doubt to each of the elements
11 of the charge.

12 After the closing arguments the -- I will present
13 to you the charge on the law and it's -- for you that
14 have been involved in previous matters, this was not
15 quite as lengthy, so it won't wear you out quite as
16 bad. But, anyway, that will be the charge on the law.
17 And then you'll go back to your jury room, and once you
18 get the signal, that's when you'll begin your
19 deliberations.

20 But at this time, the State will open and,
21 Mr. Hall, you have the floor.

22 MR. HALL: Thank you, Your Honor. May it please
23 the Court and Mr. Stephens.

24 THE COURT: Yes.

25 CLOSING ARGUMENT BY MR. HALL

CLOSING ARGUMENT BY THE STATE

1 MR. HALL: Good morning, ladies and gentlemen of
2 the jury. We have been at this a little while. I'd
3 like to think that I'd be able to get up in front of
4 you and not have to use this podium and be able to
5 walk back and forth and have everything memorized
6 exactly how I'd want to tell you. It doesn't work
7 like that for me anymore. I think I'm getting up
8 there a bit. I have everything written out right
9 before me.

10 The reason that I do that is that the closing
11 argument is so important to the State. This is the
12 last chance that I have to address you, and so I want
13 to make sure that I have collected all of my thoughts.
14 And I want to get all those thoughts out to you today.
15 So I'm trying very desperately to make eye contact with
16 you while I'm reading things, but just so you know,
17 that's exactly what I'm doing.

18 Yesterday morning I asked all of you to listen and
19 view the evidence carefully. I believe that you've all
20 done that. After numerous stops and starts, we are
21 finally nearing the end of these proceedings.

22 In my opening statement, I didn't spend a lot of
23 time talking about the actual crime Darrell Heyward is
24 charged with. He is charged with burglary second
25 degree violent.

CLOSING ARGUMENT BY THE STATE

1 The word "violent" can have several meanings. For
2 purposes of the burglary statute, violent is a type of
3 classification for a specific type of burglary. When
4 it's a burglary of a business and it's done during the
5 hours of darkness, it is classified under law as a
6 violent offense.

7 The Court will instruct you as to each of the
8 elements that I'm required to prove to you beyond a
9 reasonable doubt in order to return a guilty verdict
10 against Darrell Heyward in this case.

11 I will, however, briefly touch on them. I am
12 required to prove that Darrell Heyward entered The
13 Brickman Group on October 9th, 2012 without consent,
14 and with the intent to commit a crime therein.
15 Additionally, I'm required to prove that this entry
16 occurred during the hours of darkness.

17 Here is where I tell you exactly how I think I've
18 met my burden of proof. Remember in my opening how I
19 told you that this burglary appeared to be an inside
20 job, as if the people involved knew exactly where to go
21 to steal these backpack blowers and weed eaters. We
22 now know through Rebekah Disser that Darrell Heyward
23 worked at The Brickman Group. He was employed there on
24 October 9th, 2012. Darrell Heyward knew where to look
25 for these items that he stole with Jimmy Gregory.

CLOSING ARGUMENT BY THE STATE

1 We know that Darrell Heyward was supposed to be at
2 work the morning of October 9th, 2012, that he failed
3 to show up for work on that day or any day subsequent
4 to that, and he was terminated.

5 We also know from Rebekah Disser that she was one
6 of three people in a management position for The
7 Brickman Group. She testified that no one in a
8 position of authority consented to someone entering The
9 Brickman Group on October 9th, 2012. Any entry into
10 The Brickman Group during the early morning hours of
11 October 9th, 2012 was done without consent. The crime
12 committed inside The Brickman Group, the taking of the
13 backpack blowers and the weed eaters by Darrell Heyward
14 and Jimmy Gregory.

15 Finally, there's the hours of darkness element.
16 We know that it was during the early morning hours of
17 October 9th, 2012, thanks to two things, Jimmy
18 Gregory's statements to Investigator Seifert and the
19 traffic stop performed by Officer Lee of the Bluffton
20 police department.

21 Jimmy Gregory told you that Darrell Heyward went
22 into The Brickman Group around 2:30 in the morning on
23 October 9th, 2012, and Jimmy Gregory went with him.
24 Officer Lee performed that traffic stop on U.S. 278
25 heading west at approximately 3:43 in the morning.

CLOSING ARGUMENT BY THE STATE

1 There aren't too many places in the world where
2 it's light out at 2:30 in the morning. Keep all of
3 this in mind when the Court is instructing you on the
4 elements of burglary second degree violent.

5 Now, during the course of the trial, you've heard
6 from Lance Corporal Duus. Through him you were able to
7 see the damage done by Darrell Heyward and Jimmy
8 Gregory during their entry into The Brickman Group.
9 You were also able to see the burglary tools that were
10 left behind.

11 Through Larry Laatsch you were able to hear how
12 those items were found as the result of that traffic
13 stop, that they matched the list of items stolen by
14 Darrell Heyward and Jimmy Gregory.

15 You also got to see pictures of those stolen
16 items, and you'll be able to look at those pictures
17 back in the jury room during your deliberations.

18 Then there's the actual traffic stop itself.
19 Watching it in a vacuum, as you had to at that point,
20 prior to hearing from Jimmy Gregory, you saw that the
21 driver fled, leaving Jimmy Gregory there to face the
22 music. You now know that that car was being driven by
23 Darrell Heyward. Darrell Heyward is the person seen
24 fleeing from that traffic stop.

25 Turning back to my opening statement, I hope

CLOSING ARGUMENT BY THE STATE

1 you'll remember that I didn't mention much regarding
2 Jimmy Gregory and his involvement in this burglary.
3 Jimmy Gregory was kind of a wild card in this whole
4 trial. I don't know if any of you witnessed what took
5 place when Jimmy Gregory entered the courtroom
6 yesterday to testify. I most certainly did.

7 He looked over at Darrell Heyward and gave him a
8 nod, as if to say, Don't worry, I got you covered. At
9 least that's the impression of how Jimmy Gregory
10 thought his testimony would turn out yesterday.

11 Jimmy Gregory testified he didn't remember giving
12 any statements to Investigator Seifert. Jimmy Gregory
13 couldn't identify Darrell Heyward in court. Couldn't
14 identify Investigator Seifert in court.

15 Jimmy Gregory wasn't helping out Darrell Heyward
16 at all with his apparent lack of memory, Jimmy Gregory
17 was only helping out the State of South Carolina in its
18 case against Darrell Heyward.

19 We now know that Jimmy Gregory and Darrell Heyward
20 have been friends for a long time. We know that Jimmy
21 Gregory has known Investigator Seifert for a long time,
22 due mainly to Jimmy Gregory's prior run-ins with
23 Investigator Seifert.

24 You've heard two sets of statements from Jimmy
25 Gregory. In that first statement, Jimmy Gregory told

CLOSING ARGUMENT BY THE STATE

1 you that he was in the car that Darrell Heyward was
2 driving when Darrell Heyward fled from that traffic
3 stop. In an attempt to minimize his own involvement in
4 that first statement, Jimmy Gregory told Investigator
5 Seifert that he was only along for the ride, that he
6 had no part in taking anything.

7 Jimmy Gregory told Investigator Seifert that he
8 noticed the lawn equipment in the backseat and asked
9 Darrell Heyward about it. Darrell Heyward told Jimmy
10 Gregory to mind his own business.

11 This first statement was clearly an attempt by
12 Jimmy Gregory to minimize his own involvement in the
13 burglary at The Brickman Group. The statement was
14 obtained from Jimmy Gregory the very same morning of
15 the incident.

16 The following day we had the second interview.
17 You now know all the details of the burglary. Darrell
18 Heyward and Jimmy Gregory traveled together to The
19 Brickman Group. Jimmy Gregory knew that Darrell
20 Heyward had a gun. Darrell Heyward had made threats
21 toward Jimmy Gregory in order to secure his
22 participation in this burglary.

23 Jimmy Gregory told Investigator Seifert how entry
24 was made, the specific items that were taken, and how,
25 when Jimmy Gregory wanted to leave. Darrell Heyward

CLOSING ARGUMENT BY THE STATE

1 only wanted to go back and get more.

2 Now, this is Jimmy Gregory coming clean and
3 putting Darrell Heyward right smack dab in the middle
4 of everything. It was Darrell Heyward's plan. You
5 could hear the tone in Jimmy Gregory's voice when he's
6 questioning Darrell Heyward as to why they were
7 breaking into a business that Heyward was currently
8 working at.

9 There's one last issue that I want to address with
10 you. During the course of this trial, you've heard
11 numerous references to DNA swabs and fingerprints.
12 You're sitting there wondering where's the science, why
13 aren't you being dazzled with lab reports.

14 DNA evidence is great for the prosecution when it
15 can prove an absolute certainty. We know that Darrell
16 Heyward worked at The Brickman Group. Rebekah Disser
17 told you, as part of Darrell Heyward's former
18 employment, he would have been in contact with the very
19 pieces of lawn equipment that he's now accused of
20 burglarizing.

21 DNA evidence in this case presents a no-win
22 situation for the State. If I don't parade out
23 witnesses to testify about DNA and fingerprints, the
24 Defense attempts to make it look like the State has
25 something to hide, or perhaps law enforcement didn't do

CLOSING ARGUMENT BY THE STATE

1 their job properly.

2 If I do present DNA evidence, the fall back
3 position for the State is to say, Well, of course,
4 Darrell Heyward's DNA was going to be on those items,
5 he worked there. There is no absolute certainty here
6 for the State with regard to this DNA evidence.

7 In your deliberations, don't fall for this. This
8 is a red herring. You have all of the information that
9 you need in order to find Darrell Heyward guilty of
10 burglary second degree violent beyond a reasonable
11 doubt. I urge you to do so.

12 Thank you for your time and your careful
13 consideration of this matter. Thank you.

14 THE COURT: Mr. Stephens.

15 MR. STEPHENS: Thank you, Your Honor.

16 CLOSING ARGUMENT BY MR. STEPHENS

17 MR. STEPHENS: Good morning, ladies and
18 gentlemen. I had to see if it's still morning.

19 Mr. Hall and I are very much alike, and we have a
20 few interesting differences. I, as my wife would be
21 happy to tell you, I probably have Asperger's Syndrome
22 or mild Autism, as my wife likes to think of it,
23 because I can't sit still and I'm -- my chain of
24 thought kind of jumps around a lot. And I don't have
25 the best interpersonal skills.

CLOSING ARGUMENT BY THE Defendant

1 So since Mr. Hall was very honest with his faults
2 as a prosecutor, as defense counsel, there may be times
3 that I'm sarcastic, snide. I've been told I smirk too
4 much. Please hold those against me personally, not
5 against my client, Mr. Heyward.

6 However, if I've been sarcastic in this trial it's
7 only because I'm kind of offended by the position the
8 State's taking about science. Just my background, what
9 fits me as a geeky oddball is that I was a business
10 major in college. One physicist in my family, my
11 parents are kind of disappointed that I'm not a
12 scientist, which is odd. But even though I never
13 became a scientist, I kept that love of science.
14 Physics, to me, physics means the rules that make the
15 universe work. And boiled down, I think process. If
16 you want a result C, you have to start with A and then
17 B and you follow it in every case.

18 I kept that love of process and order as a lawyer.
19 And I was once in Mr. Hall's position, I was a
20 prosecutor back in the military and here in this
21 courtroom. And I know that there's a process to
22 investigate any crime.

23 But this is not the 19th century, where you pull
24 someone into an interview room and beat them or coerce
25 them into making a statement. You don't suggest the

CLOSING ARGUMENT BY THE Defendant

1 answer you want and then proceed to prosecution when
2 they give you those answers. You know, we have science
3 and we shouldn't just dismiss it.

4 There are things that law enforcement can do and
5 should do, should look for in any case. They should
6 never just rest and assume the person that they know
7 has lied to them repeatedly is now telling them the
8 truth on this one thing that they suggested.

9 Starting with the witnesses that you saw here.
10 Deputy Duus, you know, he didn't really do much in the
11 case, didn't really talk to the victim, any
12 representatives of Brickman. But then Deputy Laatsch
13 arrived and they processed the scene and processed the
14 car. Well, that's great, but only if you use it. We
15 know they had that ability.

16 You heard Deputy Laatsch say that he didn't look
17 for fingerprints because that wouldn't have been
18 helpful. Well, we don't know that because we didn't
19 look for them. You know, that's a science that's
20 available to show you that wasn't there in this case.
21 That no one looked for fingerprints either at the scene
22 or on the stolen items or on the burglary equipment.

23 Now, next we talked about DNA, but DNA has been a
24 dirty word here. You've seen that I've been limited in
25 what I could ask Investigator Seifert about, and the

CLOSING ARGUMENT BY THE Defendant

1 prosecution doesn't want you to consider DNA.

2 Well, they were interested, they did enough to
3 test Mr. Gregory's DNA. They caught him red-handed
4 with the stolen items. But they took the extra step
5 with Mr. Gregory to test his DNA, to make sure that
6 they had the right guy, that he had been involved with
7 this. You heard Investigator Seifert say nobody tested
8 Mr. Heyward's DNA. No one checked for his
9 fingerprints.

10 Now, the next witness you heard from was
11 Ms. Disser, I believe. And Ms. Disser, I think, was
12 being as honest and forthright as she could on the
13 stand, but she had no involvement with this -- of the
14 investigation in this case. She's a manager. And what
15 she did kind of indicate is that they have a number of
16 landscapers. Well, we don't know who broke into this
17 location other than Jimmy Gregory. Ms. Disser
18 indicated that they had a number of landscapers
19 including Mr. Heyward.

20 Now, to get back to Mr. Hall's point, because I
21 did bounce around, and I apologize for that, he said in
22 the conclusion of Investigator Seifert's testimony that
23 testing for DNA from Mr. Heyward on the stolen items
24 wouldn't have provided anything, wouldn't have been
25 useful.

CLOSING ARGUMENT BY THE Defendant

1 Well, how do we know? You already heard
2 Investigator Seifert's not a DNA expert. And we don't
3 know whether it would have been present or not.

4 But here's a logical argument. No one ever asked
5 Ms. Disser if Mr. Heyward had handled all of those
6 items that were taken. And I don't believe there was
7 an answer about whether there was a DNA sample on the
8 stolen items or not. Or whether there could have
9 been -- or fingerprints -- or excuse me, not the stolen
10 items, the alleged burglary tools. So we don't know
11 whether testing those for Mr. Heyward's DNA would have
12 been helpful or not.

13 There might have been logs that showed who used
14 what piece of equipment on what day. And because we
15 couldn't get into the DNA, you couldn't see who might
16 have -- how many DNA samples might have been on those
17 items.

18 So, again, is DNA required in every case? No.
19 Prosecutions could proceed, the State could reach their
20 burden of proof beyond a reasonable doubt without
21 having DNA in evidence in every case.

22 But a case like this, where the only real evidence
23 you've got is the inconsistent prior statements of
24 someone who claimed no memory in court, when you could
25 actually judge his demeanor, you have to have something

CLOSING ARGUMENT BY THE Defendant

1 more. And the State didn't even try to get it. Didn't
2 even try.

3 Instead, they want you to make up for their
4 failings. Just convict him. Just convict him, because
5 we clearly have the right guy. And here's what kind of
6 offends me the most, and I apologize if it offends you,
7 Mr. Hall said, We have the right guy because basically
8 he's tall, he's black, and he worked at Brickman.
9 That's offensive. Because he has the same racial
10 profile of the person who ran from the vehicle, who may
11 not have even been involved in the burglary, he was
12 suggested, because he works at Brickman, as the person
13 who was the accomplice for Jimmy Gregory.

14 All right. So what else did you see. Again,
15 after Ms. Disser, you heard the testimony of Brady Lee
16 from Bluffton police department. He showed you his
17 in-camera video. Mr. Lee, who was on the scene,
18 couldn't identify who that individual was. Has seen
19 Mr. Heyward, but still could not identify individual
20 who ran from that vehicle.

21 Again, all we know is that it was a tall
22 African-American man. We don't even know if the
23 individual who ran from that vehicle was in any way
24 involved in the burglary of Brickman. All we know is
25 that he was pulled over for speeding and that he ran

CLOSING ARGUMENT BY THE Defendant

1 from the vehicle. That's it. That's all you get from
2 Officer Brady Lee.

3 Jimmy Gregory testifies, and Mr. Hall is correct,
4 Mr. Gregory said nothing that helps the Defense. He
5 was a State witness. You heard me try to cross-examine
6 him. He didn't admit to knowing Mr. Heyward. He
7 didn't admit to anything like that.

8 And, again, ladies and gentlemen, there's nothing
9 that -- you're allowed to consider his prior
10 statements, and I'll talk about those a little bit more
11 in a minute as to what the content was. But you're
12 also allowed to give them as much or as little weight
13 as you want.

14 And when an individual sits here and answers
15 questions and denies everything, and you know that they
16 have repeatedly lied in their statements, that's like a
17 nullity. You can't consider anything they've said in
18 the past if every time they talk they're lying.

19 What we do know about Mr. Gregory, the only thing
20 that we know as confirmed fact about Mr. Gregory, the
21 only thing he admitted to, was that he pled guilty to
22 breaking into Brickman and stealing these items. He
23 pled guilty to it. His DNA was on the stolen items, he
24 was arrested with the stolen items, he pled guilty to
25 stealing those items.

CLOSING ARGUMENT BY THE Defendant

1 That's all we know for sure about Mr. Gregory, and
2 that's the only thing that the State's proven beyond a
3 reasonable doubt in this case, is that Mr. Gregory
4 stole these items.

5 That leads us to Mr. Seifert, Investigator
6 Seifert's testimony, and why we're here. And you got
7 to hear the interviews with -- between Investigator
8 Seifert and Mr. Gregory. And I normally tell jurors in
9 the beginning of the case, and I'll tell you now, the
10 arguments of counsel are just arguments. This is not
11 the evidence. If I say anything that contradicts how
12 you remember the evidence, go with your memory.
13 Discuss it amongst yourselves, and the same thing with
14 Mr. Hall's testimony. If you remember something
15 differently, trust your own memory.

16 The way I recall hearing the recordings with
17 Mr. Gregory, Investigator Seifert starts at the very
18 beginning, the first few seconds of the initial
19 interview, by saying, You don't have to tell me
20 anything, I already know it was Darrell Heyward.

21 And everything that follows is Mr. Gregory
22 agreeing to some degree, more or less, with what
23 Investigator Seifert already suggested. It was
24 Mr. Heyward. Yes, it was Mr. Heyward, I was just
25 riding, I was just riding. He repeats it the whole

CLOSING ARGUMENT BY THE Defendant

1 time, I was just, you know, catching a ride or
2 something like that.

3 But Investigator Seifert's the one that suggests
4 Darrell Heyward -- Darrell, his name is really Darrell
5 Heyward -- from the beginning, and that happens not
6 just in the first audio recording, but on and on.

7 In the second recording, or starting with the
8 first and continuing into the second, Investigator
9 Seifert suggested that maybe Mr. Gregory was
10 threatened, maybe Mr. Heyward had a gun.

11 Okay. Now, he has a gun. Now, we have a gun that
12 no one ever looks for. But, again, it's Mr. Heyward
13 agreeing with -- or excuse me, Mr. Gregory agreeing
14 with whatever Investigator Seifert has suggested.

15 The first thing you hear is Investigator Seifert
16 suggesting Darrell Heyward, Darrell Heyward, and
17 possibly a ring. If there was a ring, Mr. Gregory
18 would have had to come up with that on his own. And
19 clearly, he's not imaginative enough, he goes with
20 what's already been suggested to him, Mr. Heyward.

21 When Investigator Seifert comes back for the
22 second interview, at this point, Mr. Gregory agrees
23 with him with the new allegation. This is a day later,
24 he's had a chance to stew on it, and he'll admit, Hey,
25 I was involved, I was threatened. The person

CLOSING ARGUMENT BY THE Defendant

1 threatened my family.

2 Now, if Mr. Gregory actually had some kind of
3 accomplice -- and that hasn't been proven -- but if he
4 had any accomplice, possibly the person who ran from
5 the vehicle, what's more logical, that he's going to
6 name his accomplice, that he's going to point out
7 someone who might get in trouble? Who might know other
8 information about him? Or he's going to point out
9 somebody that he knows the officer has already
10 suggested is the one he wants. It's, This is the guy I
11 want. So that's the guy Jimmy Gregory goes with.

12 Does Mr. Gregory know that Darrell Heyward worked
13 at Brickman? Maybe. But there might have been -- lots
14 of people worked at Brickman. It could have been an
15 inside job. If it was an inside job, well, then why
16 did they need a crowbar? There weren't security
17 systems to avoid. They used a blunt instrument to
18 break in. There are tools in a landscaping business,
19 so why? Why an inside job? Makes the case easier.

20 They knew it was a tall black man who ran from the
21 car, and they knew Mr. Heyward's a tall black man who
22 works at Brickman. Case closed, they don't have to do
23 anything else.

24 And, again, ladies and gentlemen, that's
25 offensive. When Mr. Gregory finally gives some kind of

CLOSING ARGUMENT BY THE Defendant

1 substantive information in his last few minutes of the
2 interview, that's after the recording goes off. After
3 Investigator Seifert has a chance to talk to him.

4 And I'm not -- I wasn't there, I don't know what
5 went on between Investigator Seifert and Mr. Gregory
6 after the recording was turned back on. But there's a
7 lot more information that seems to come out in just a
8 few minutes after they had the chance to talk without
9 the recording running.

10 Again, we don't know what happened. What we do
11 know is Jimmy Gregory is a person who lied when he was
12 first pulled over and said he got a ride from somebody
13 he doesn't know. Then he lied the first time he met
14 with Investigator Seifert and said, I had nothing to do
15 with this, I didn't even -- you know, this stolen
16 stuff, I had nothing to do with it. We know he did.

17 And we know he was lying, at least in part with
18 the third time, because he talks about a gun and being
19 threatened. No gun was ever recovered, no proof of
20 anyone being threatened. So why, why, is the State so
21 much believing that Mr. Gregory was telling the truth
22 about who accompanied him or helped him?

23 It helps Mr. Gregory to have an accomplice,
24 because then he doesn't have to take the heat alone.
25 But why does the State want to believe him when they

CLOSING ARGUMENT BY THE Defendant

1 know he's a liar and he's lied to them repeatedly?

2 Because it ties the case up.

3 Investigator Seifert went in, trying to get
4 Darrell Heyward, and he got him. Without having to
5 lift a finger, without having to test for anything, he
6 got him.

7 Now, he just want you to wrap the case up.
8 Mr. Hall wants you to wrap it up for him so they don't
9 have to do anymore work in this case, they want you to
10 find Mr. Heyward guilty because he's tall, he's black,
11 he worked at Brickman, so let's just hang him out to
12 dry and be done with it.

13 Ladies and gentlemen, you do have a high burden in
14 this case. You have to hold the State to their burden
15 of proof beyond a reasonable doubt. And that's just
16 not an expression. I've heard it described in
17 different ways by different courts. I've heard it
18 described as proof beyond a reasonable doubt, a
19 reasonable doubt being anything that might make you
20 hesitate in something that's important to you.

21 I like to think of it as -- and, again, this is
22 not the legal definition, but what I like to think of
23 it as, any doubt that's not imaginative or fanciful.

24 If you look at Mr. Heyward and you really don't
25 know if he did it, that's doubt. It's reasonable

CLOSING ARGUMENT BY THE Defendant

1 because you got a good reason not to know, you haven't
2 seen any evidence that really convinces you. That's
3 reasonable doubt, ladies and gentlemen.

4 And while you might have a suspicion that
5 Mr. Heyward was involved, that is not proof beyond a
6 reasonable doubt, and you have an obligation, if you
7 don't believe that the evidence has proven him guilty
8 beyond a reasonable doubt, your obligation is to go to
9 the jury deliberation room and then return a verdict of
10 not guilty. And I'm confident that you will when you
11 retire and consider the evidence or lack of evidence
12 that you've seen in this case. That you will decide
13 that Mr. Heyward is not guilty of the charge burglary
14 second degree violent.

15 Thank you.

16 JURY CHARGE

17 THE COURT: All right. Thank you, Mr. Stephens.

18 I'm going to ask everybody to take a stretch
19 moment. Everybody stand up before we get started on
20 the law. All right. I'm not going to make you do
21 jumping jacks.

22 All right. You may sit down.

23 This is a very -- every stage of a trial is very
24 important and I've really -- I commend you on --
25 throughout this trial I've noticed that everybody has

JURY CHARGE

1 been very focused on the evidence, closing arguments,
2 and now we come to the jury charge, which is my job.

3 But I want to remind you, too, that during your
4 deliberations, you can only discuss this case in your
5 jury room with your fellow jurors. That -- and you
6 cannot discuss the case with anyone else until you've
7 returned a verdict at the end. That's something that's
8 real important to remember.

9 In this matter, Darrell Heyward has been indicted
10 for burglary violent second degree, and I'll go over
11 the elements of that. I remind you that this
12 indictment is just the charging paper, it is not
13 evidence in the case and it cannot be considered by you
14 as evidence of guilt nor does it create any presumption
15 or inference of guilt. The document is simply the
16 formal written instrument which contains the charges
17 made against the Defendant. It is the formal document
18 which brings this matter into court before you.

19 As I told you at the beginning, there's a
20 presumption of innocence, which is something that is
21 imposed by our Constitution. The Defendant has pled
22 not guilty to the indictment, and that plea puts the
23 burden on the State to prove the Defendant guilty.

24 A person charged with committing a criminal
25 offense in this State is never required to prove

JURY CHARGE

1 himself innocent. I charge you that it is an important
2 rule of law that the Defendant in a criminal trial, no
3 matter what the serious nature of the charge, will
4 always be presumed innocent of the crime for which the
5 indictment was issued, unless guilt has been proven by
6 evidence satisfying you, the jury, of guilt beyond a
7 reasonable doubt.

8 This presumption of innocence does not end when
9 you begin your deliberations, but it accompanies the
10 Defendant throughout the trial until you reach a final
11 verdict of guilt based on the evidence satisfying you
12 of that guilt beyond a reasonable doubt. Up to that
13 point, again, he's presumed innocent.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the
16 Defendant, which remains with a Defendant until it has
17 been stripped from the Defendant by evidence satisfying
18 you of the defendant's guilt, again, by your reasonable
19 doubt.

20 The presumption of innocence is not a legal
21 theory. It's not just a legal phrase. I know you've
22 heard me say it numerous times, and you've heard it
23 numerous times probably throughout your life, because
24 it is a substantial right, which every Defendant is
25 entitled to in a trial until the jury is satisfied from

JURY CHARGE

1 the evidence that the Defendant's guilt is beyond that
2 reasonable doubt.

3 Okay. Now, I have used the phrase numerous times,
4 but what does it mean? Reasonable doubt is the kind
5 of doubt that would cause a reasonable person to
6 hesitate to act. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the
8 Defendant's guilt. There are very few things in this
9 world that we know with absolute certainty, and in
10 criminal cases the law does not require proof that
11 overcomes every possible doubt. If, based on your
12 consideration of the evidence, you are firmly convinced
13 that the Defendant is guilty of the crime charged, you
14 must find the Defendant guilty.

15 If on the other hand you think there is a real
16 possibility that the Defendant is not guilty, you must
17 give the Defendant the benefit of that doubt and find
18 him not guilty.

19 As I mentioned, there is two duties here between
20 what the jury's role in this trial and the role of me
21 as Judge. As trial judge it is my responsibility to
22 preside over the trial of this case, and I also have
23 the duty to rule on the admissibility of the evidence
24 offered during this trial. You are only to consider
25 the competent evidence before you, the evidence that I

JURY CHARGE

1 ruled was admissible by way of either testimony here
2 from the witness stand or the exhibits which were
3 presented in the trial which you will have back in your
4 jury room. If there is any testimony that was
5 stricken, and I don't believe that there was in this
6 case, but if there was you are to disregard that. The
7 testimony or any exhibits which are part of the case,
8 you are to consider only the admissible evidence,
9 exhibits, and any stipulations that counsel made.

10 I have an additional to charge the law which is
11 applicable in this case. Now, in part of taking your
12 oath as a juror one of the things that you swore to was
13 that you would follow the law of the State. That is
14 not the law that you think it is. That is not the law
15 which you think it should be. It is the law as I give
16 it to you. That is the law of this case. It is the
17 law that I am giving you right now. Anything else you
18 are to disregard, regardless of how you think it should
19 be done. This is the law determined by the Legislature
20 and by our appellate courts.

21 In every case you become the sole judges of the
22 facts. I cannot intimate, I cannot state, I cannot
23 give my opinion on the facts of the case. And if there
24 is anything that I have done or said that led you to
25 believe otherwise, please disregard that because you

JURY CHARGE

1 are the sole determiner of the facts in this case. It
2 is what you determine the facts are.

3 The law does not allow me to have an opinion about
4 the facts in the case. Again, that is what a jury is
5 for. It is your duty to determine the effect, the
6 value, the weight, and the truth of the evidence
7 presented during this trial. That is something you
8 have to do using your common sense and experiences in
9 life.

10 There are two types of evidence that you consider.
11 There is direct evidence and there is circumstantial
12 evidence. Direct evidence is the testimony of a person
13 who claims to have actual knowledge of a fact, such as
14 an eyewitness. It is evidence which immediately
15 establishes the main fact to be proven.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating that fact. It is
18 evidence which immediately establishes collateral facts
19 from which the main fact may be inferred. So, in other
20 words, not direct. Circumstantial evidence is based on
21 inference and not on personal knowledge or observation.

22 Now, there is no distinction between the weight
23 that you are to give direct or circumstantial evidence.
24 Again, that is up to you to determine how to weigh
25 those two types of evidence if you are considering

JURY CHARGE

1 those in your deliberation. But after weighing all the
2 evidence, if you are not convinced of the guilt of the
3 Defendant beyond a reasonable doubt, then you must find
4 the Defendant not guilty.

5 All right. Credibility of witnesses. That is you
6 the jury have to make a determination from time to
7 time. And you may have to in this case. It depends on
8 you. I mean, that is up to you. But necessarily you
9 must determine the credibility of witnesses who have
10 testified in the case. Credibility simply means
11 believability. It becomes your duty as jurors to
12 analyze and evaluate the evidence and to determine
13 which evidence convinces you of its truth.

14 In determining the believability of witnesses who
15 have testified, you may believe one witness over
16 several witnesses or several witnesses over one
17 witness. You may believe a part of the testimony of a
18 witness and disregard the other parts, or you may
19 disregard the entire testimony or you may -- you may
20 accept the whole testimony. Again, that is up to you.

21 You may believe -- you may consider whether any
22 witnesses exhibited to you any interest, bias,
23 prejudice, or other motives. And, you know, how do you
24 do this? Well, that is where you use your own common
25 sense and the appearance of the witness, the body

JURY CHARGE

1 language. Just, you know, that is up to you to
2 determine what that believability or that credibility
3 is. And that is only something -- again, that is one
4 of those things that you do as a determiner of the
5 facts.

6 I also wanted to tell you what the law is on prior
7 inconsistent statements. There has been evidence
8 presented that one or more witnesses have made prior
9 statements which are not consistent with the previous
10 statements or testimony. You may use this evidence to
11 decide whether to believe that witness. You may also
12 use evidence of the earlier contradictory statements to
13 determine the truth of those statements. It is up to
14 you to decide whether to believe the earlier statements
15 or later statements or the testimony heard at trial.

16 If a witness is shown to have knowingly testified
17 untruthfully concerning any material matter, you may
18 consider this in determining whether to trust the
19 witness' testimony as to other matters. You may --
20 again, you may reject all testimony or a part of it.
21 It is up to you to determine what portion, if any, of a
22 witness' statement you ought to consider.

23 Now, as I -- as I mentioned to you also I think at
24 the beginning it is very important -- a very foundation
25 of our system is the right to a Defendant to testify or

JURY CHARGE

1 not to testify.

2 I instruct you and I emphasize that the Defendant
3 did not testify is not a factor to be considered by
4 you. That is not something that you are to be
5 considered in your deliberation in any way. And in
6 your -- you are trying to determine whether -- the
7 guilt or the innocence of the Defendant. And as a
8 constitutional right it must not be considered by you.
9 And Defendant has the constitutional right to remain
10 silent. And the assertion of that right is not to be
11 considered in the deliberations.

12 I repeat, under your oath you are to draw no
13 conclusion from that whatsoever. The fact that the
14 Defendant did not testify should not even be discussed
15 in the jury room. That does not change the burden of
16 that State.

17 The burden is on the State to prove beyond a
18 reasonable doubt. It is not on the Defendant to prove
19 his innocence. And that does not change and that is
20 why you really are not to consider whether the
21 Defendant testified or not.

22 And intent. In order to establish -- and we
23 discussed intent in a criminal matter. In order to
24 establish criminal liability, criminal intent is
25 required. For example, the mental state required to be

JURY CHARGE

1 proven by the State for a particular crime might be
2 purpose, intent, or knowledge. Criminal intent is
3 always a matter that must be determined by the jury
4 from the circumstances surrounding the situation.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based on the circumstances
8 shown to have existed. Criminal intent can arise from
9 action, it may arise from negligence, recklessness, or
10 indifference. And that is to be considered by the
11 equivalent of criminal intent to be determined by you.

12 And in this matter the Defendant is charged with
13 second degree under the violent category. And the
14 elements of that is if a person enters a building
15 without consent and with the intent to commit a crime
16 therein, and the entering or remaining occurs in the
17 nighttime. Those are the elements that the State must
18 prove to you beyond a reasonable doubt in this matter.

19 But, you know, to define building which -- to
20 prove second degree burglary, they must prove they
21 entered a building without consent. A building is any
22 structure, vehicle, watercraft, or aircraft where any
23 person lodges or lives; or where people assemble for
24 the purpose of business, government, education,
25 religion, entertainment, public transportation, or

JURY CHARGE

1 public use; or where goods are stored.

2 And then the -- again, they must prove that. And
3 there is also an element beyond a reasonable -- the
4 State must prove beyond a reasonable doubt that the
5 entering or remaining occurs in the nighttime. And
6 that is the actual charge being presented here.

7 All right. Madam Forelady, I am going to hand
8 up -- I'll let you look at a verdict while I go through
9 it. I just wanted to explain this to the jury.
10 Basically you have two possible verdict forms. There
11 are going to be two possible verdicts, and you're not
12 to take any significance in the order they are.

13 But the first part up here actually is the case
14 name and verdict form indictment. It says, Please
15 answer each question.

16 Well, there's really only one question here, and
17 that is: As to Indictment No. 2012-GS-07-2390, the
18 charge of burglary second degree violent, we the jury
19 find the Defendant, Darrell Heyward -- and you need to
20 check one. If you find that the State has met its
21 burden on each of the elements, as I've mentioned, then
22 you check the blank guilty of burglary second degree
23 violent. If you find the State has not met their
24 burden, then you check not guilty.

25 Then it says, I certify that this is a unanimous

JURY CHARGE

1 decision of the jury. You will sign your name there,
2 and then put a date indicating your verdict. As
3 indicated, ladies and gentlemen, the verdict must be
4 unanimous. That is, all 12 of you must agree on the
5 verdict. And at the time that y'all agree on your
6 verdict, then you -- Madam Forelady, you'll need to
7 just knock on the door and let the bailiff know, and we
8 will instruct you at that point and bring you back in
9 here. You don't need to do anything else at that
10 point.

11 If you have any questions, what you need to do is
12 write them on a piece of paper and give them to the
13 bailiff. The bailiff will present them to me, and I'll
14 make a determination of how we need to address those,
15 whether we need to bring you back in or provide you
16 with a note.

17 But, again, we're not quite ready to begin
18 deliberations. What I will do at this point is, I will
19 send you back to your jury room, all 13 of you, and we
20 will -- I need to make sure that if there's anything
21 else that we need to go over with you, go over with the
22 lawyers, and if there is additional matters, then I'll
23 bring you back out and discuss those with you. If
24 there are not any additional matters, then what I will
25 do is, I will ask the bailiff to present to take back

JURY CHARGE

1 with you -- take the verdict form back from him --
2 because that's going to be one of my signals. When the
3 signal for you to begin your deliberations is, when you
4 get the evidence and the jury form, okay, when you get
5 those two items. And at that point, my alternate will
6 get -- will need to step out. She cannot be involved.

7 Sorry. I know you've spent all of this time here,
8 but, you know -- so when you get the evidence, the jury
9 form, and the alternate steps out, then you can finally
10 begin your deliberations.

11 I would like to point out one other thing. It's
12 11:30 right now. I'm going to ask you to -- you can't
13 really discuss it, but when you begin your
14 deliberations, one of the first questions is, you need
15 to let the bailiff know what you want to kind of do
16 about lunch. If y'all want us to order lunch or --
17 again, just kind of discuss among yourselves what you
18 want to do about lunch, and then we'll make the
19 appropriate arrangements for that.

20 So at this time, again, I'm going to send you back
21 to your jury room again. Don't talk about the case
22 until I give you the signal.

23 (Jury exits the courtroom at 11:30 a.m.)

24 THE BAILIFF: The jury is clear.

25 THE COURT: All right. Anything further from the

COLLOQUY

1 State?

2 MR. HALL: Nothing, Your Honor. Thank you.

3 THE COURT: Anything else from the Defense?

4 MR. STEPHENS: Nothing from the Defense. Thank
5 you, Your Honor.

6 THE COURT: Wow. All right. If y'all will look
7 at the exhibits, both of you go through there and make
8 sure they're all in the proper form here and make the
9 -- and there's the verdict form.

10 Mr. Heyward, you're on limited custody right now.
11 Okay? I guess he told you I gave you a break last
12 night.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Thank you for coming back.

15 So, in other words, if you need to leave the
16 courtroom, you need -- you need to stay in here. If
17 you need to go to the bathroom, then we'll let somebody
18 know.

19 All right. I guess you can take those back,
20 because they have nothing to listen to them with
21 anyway, but if you want to send them back ... since
22 they were introduced, but they have nothing to listen
23 to them on.

24 MR. STEPHENS: Your Honor, I'm satisfied if they
25 just get the pictures. We have some missing exhibits

COLLOQUY

1 and I don't want to highlight that.

2 THE COURT: All right. We're going to be in
3 recess, and instruct the alternate she doesn't have to
4 come back out here unless -- well, she can. I just
5 want to talk to her.

6 All right. We'll be at east just a few minutes,
7 and then we can do whatever is needed.

8 (Whereupon, a brief recess was taken.)

9 (Alternate juror dismissed by the Court.)

10 (Jury begins deliberations.)

11 *(Whereupon, Court's Exhibit No(s). 1 marked for*
12 *identification and received in evidence.)*

13 THE COURT: All right. We have a question from
14 the jury in the matter of State versus Darrell
15 Heyward.

16 The question is: Is there a possibility to freeze
17 the video of the guy running from the car? We have
18 marked that as Court Exhibit 1.

19 My response is: You must consider only what has
20 been presented. And then we'll just send that back.

21 Any exception by the State?

22 MR. HALL: Oh, I'm sorry. Yeah, no objection
23 from the State.

24 THE COURT: Any exception by the Defense?

25 MR. STEPHENS: No, Your Honor. Thank you.

JURY QUESTION

1 *(Whereupon, Court's Exhibit No(s). 2 marked for*
2 *identification and received in evidence.)*

3 *(Jury continues deliberating.)*

4 THE COURT: Anything from the State before we
5 bring the jury in?

6 MR. HALL: Nothing, Your Honor. Thank you.

7 THE COURT: Anything from the Defense?

8 MR. STEPHENS: Nothing from the Defense,
9 Your Honor. Thank you.

10 THE COURT: All right. Bring them in..

11 Do not talk or make any responses when the jury
12 verdict is read. You all know that.

13 *(Jury enters the courtroom.)*

14 THE BAILIFF: The jury is entering the courtroom,
15 Your Honor.

16 THE COURT: Madam Forelady, I understand that
17 y'all have reached a verdict?

18 JURY FOREPERSON: Yes, sir.

19 THE COURT: All right. If you will hand it to
20 the bailiff.

21 *(Jury Foreperson complies.)*

22 THE COURT: All right. It looks proper. The
23 clerk will publish the verdict.

24 THE CLERK: Okay. In the State of South Carolina
25 versus Darrell Heyward, as to the Indictment

VERDICT

1 2012-GS-07-2390, the charge of burglary second degree
2 violent. We, the jury, find the Defendant, Darrell
3 Heyward, guilty of burglary second degree violent.

4 Ladies and gentlemen, if I have accurately
5 published your verdict, please raise your right hand.

6 (The jurors comply.)

7 THE CLERK: Thank you. You may place your hand
8 down.

9 THE COURT: Let the record reflect that all
10 members indicate a positive response.

11 Well, ladies and gentlemen, thank you very much.
12 I know y'all worked very hard this afternoon and
13 thought very long and hard about that. So I know that
14 -- I really appreciate your service, and I can release
15 you for the rest of the week now.

16 So thank you. I don't know if you need to get
17 anything from the clerk's office or --

18 Oh, okay.

19 All right. Madam Forelady, I will need you to
20 sign this. Just sign right there, it's the indictment.

21 But, again, thank you for your services and, like
22 I said, y'all won't have to come back -- or you can use
23 your exemption for up to three years now. So I hope
24 y'all have a very good weekend.

25 If you have any questions, if you want to -- I

VERDICT

1 think y'all -- they'll be taking him up that way. If
2 y'all have any questions of me, I'll be glad to answer
3 them in a few minutes. So if y'all want -- if anybody
4 has any questions, let the bailiff know, so ...

5 Thank you very much.

6 Anything from the State before we release the
7 jury?

8 MR. HALL: Nothing from the State, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. STEPHENS: No, Your Honor.

11 THE COURT: Okay. Let me go back.

12 THE BAILIFF: Did you want to go back and speak
13 to them?

14 THE COURT: Yeah, that'll be good.

15 MR. HALL: That's fine. I'm waiting on a
16 sentencing sheet to come upstairs.

17 (Judge exits the courtroom.)

18 (Pause.)

19 (Judge returns to the courtroom.)

20 THE COURT: All right. I guess, before I do
21 sentencing, anything else from the State?

22 MR. HALL: Nothing from the State, Your Honor.

23 THE COURT: Anything from the Defense?

24 MR. STEPHENS: No, Your Honor, but I'll reserve
25 my motions for after sentencing.

SENTENCING

1 THE COURT: Okay.

2 MR. HALL: Your Honor, at this point, I'd hand up
3 a sentencing sheet.

4 THE COURT: All right. I'll be glad to hear from
5 you.

6 MR. HALL: Thank you, Your Honor.

7 I should point out initially that both, with
8 respect to Mr. Heyward's case and Mr. Gregory's case,
9 I'm not going to obviously go back through the facts.
10 The Court's heard everything during the course of the
11 trial.

12 But I simply wanted to point out that when
13 Mr. Heyward's case and Mr. Gregory's cases came into
14 our office, they were originally assigned to our career
15 criminal team. That is a team that we have within our
16 office that handles what are considered to be the worst
17 of the worst. It was only because of a change in
18 protocol of what had been going on up to that point,
19 was that anything that was punishable by 15 years and
20 up in prison, and people with very bad records, they
21 were assigned to the career criminal team.

22 There was a shift at some point that changed that
23 threshold from 15 years to 20 years. And once that
24 happened, then Mr. Heyward's case and Mr. Gregory's
25 cases, I inherited those cases, not the career criminal

SENTENCING

1 team. But I just wanted to point that out for the
2 Court that when these cases first came in they were
3 assigned to our career criminal team and that was based
4 on the respective records of both Mr. Gregory and Mr.
5 Heyward.

6 Specifically, with respect to Mr. Heyward, he was
7 convicted in 1990 of grand larceny. He was also
8 convicted of burglary second degree, two counts. It
9 appears that there was a 15-year sentence that was
10 given as a result of that. In 1996 he was convicted of
11 driving under suspension. In 1999, his parole was
12 revoked. He did a year back in prison. In March of
13 2001 he was convicted of driving under suspension and
14 DUI first.

15 In June of '01 he was convicted of escapee
16 recapture. In July '01 he was convicted of use of
17 vehicle without permission, times two, and breach of
18 trust. He received a probation sentence somehow for
19 that. And in '02 he was convicted of larceny of
20 bicycles and resisting arrest.

21 In 2003, he was convicted of possession of crack,
22 failure to stop for blue light, use of vehicle without
23 owner's permission. For that he received five years
24 suspended upon the service of three years, to two years
25 probation. In '05 he was revoked six months on that

SENTENCING

1 prior probation.

2 In 2006 he was convicted of possession of a stolen
3 vehicle, for which he received one year in prison. In
4 2008 he was convicted of petit larceny. 2011,
5 shoplifting. Also in 2011, possession of crack and
6 financial transaction card fraud. In 2012, possession
7 of controlled substance and disorderly conduct.

8 The only thing that I can say with respect to
9 Mr. Heyward's record is that he does not appear to have
10 anything on it significant since 2012. But that's
11 about the only good thing I can say about his record.

12 The maximum possible sentence in this case is 15
13 years, and the State feels that it's appropriate that
14 Mr. Heyward, based on his -- not participation, but
15 directly leading, would be the State's contention --
16 this effort to burglarize a business that he worked at,
17 that 15 years would be appropriate.

18 Thank you.

19 THE COURT: Okay. Mr. Stephens, I will be glad
20 to hear from you.

21 MR. STEPHENS: Yeah. First, I just want to say
22 that what office of the Solicitor that this case was
23 assigned to is really not relevant to determine the
24 appropriate punishment.

25 So, Your Honor, as to regards to the co-Defendant,

SENTENCING

1 Mr. Gregory, I believe he had a more significant
2 sentence. He was sentenced to eight years. And,
3 again, tried to ask for Mr. Heyward to have the maximum
4 sentence allowable. While we understand he does have a
5 significant criminal record, we think that that's
6 inappropriately severe.

7 Your Honor, we'd point out Mr. Heyward is 48 years
8 old, almost 49. While he has gotten in a good deal of
9 trouble in the past, he had -- prior to this incident,
10 he'd started to clean up his life. He was gainfully
11 employed, not just at Brickman, but then after the
12 incident at Valley Crest Landscaping. He had plans,
13 depending on the outcome of this trial, to begin
14 employment at Amazing Event, which is -- they support
15 parties and other events here in the Beaufort area. Of
16 course, he's not going to be able to do that now.

17 I would also note, Your Honor, that his most
18 serious offenses are the older offenses. He's got some
19 minor drug offenses and petty larceny since about 2002.
20 So, again, while he's continued to get in trouble,
21 again, his most significant serious offenses are older.
22 And I believe that Mr. Heyward has started to clean up
23 his life, and I think that that would continue. You
24 would note that he hasn't been arrested since this
25 incident happened in 2012. He has stayed out of

SENTENCING

1 trouble for three years, which looks like something he
2 hasn't been able to do before.

3 I believe that he's already on the road to
4 rehabilitation, Your Honor. And hopefully you would
5 take that into account when arriving at an appropriate
6 sentence. We would ask for a sentence that is no more
7 severe than that given to his co-Defendant,
8 Mr. Gregory, in this case, Your Honor. We hope that
9 you would consider all these facts and be lenient in
10 your sentence.

11 THE COURT: All right. Would you like --
12 Mr. Heyward, would you like to say anything at this
13 point?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Anything else?

16 MR. HALL: Nothing from the State, Your Honor.
17 Thank you.

18 MR. STEPHENS: Your Honor, I would like to make
19 my motion for new trial. But, again, I'll reserve
20 that.

21 THE COURT: All right.

22 Did he spend any time in jail at the beginning?

23 MR. STEPHENS: I believe it was probably just an
24 overnight, Your Honor.

25 THE COURT: All right.

SENTENCING

1 In just looking at the career history here, the
2 severity of this case, the fact that all of this --
3 I've got all these to take into account. So since the
4 court is -- Mr. Heyward, please stand up.

5 MR. STEPHENS: Could we have him take his hands
6 out of his pockets.

7 THE COURT: Mr. Darrell Heyward, the sentence of
8 the Court is that you be confined to State Department
9 of Corrections for nine years.

10 MR. STEPHENS: Judge, do I need to approach or do
11 you just want me to go ahead?

12 THE COURT: No, that's fine. Go ahead.

13 MR. STEPHENS: Your Honor, I move for a new trial
14 in this case, both to preserve the record and for some
15 of the same reasons I mentioned in my motion for
16 directed verdict.

17 Respecting the jury's decision in the case,
18 Your Honor, I don't believe that any reasonable jury
19 could arrive at a conviction given the evidence that
20 was before them, and I'm not really -- can't really
21 guess at what happened in the jury deliberation room,
22 but the evidence before them and inconsistent
23 statements of Mr. Gregory, and a video of some person,
24 with no proof other than Mr. Gregory's statements that
25 that person was ever involved in the burglary. So,

MOTIONS

1 again, Your Honor, for those reasons, I don't believe
2 the evidence arose to beyond a reasonable doubt and we
3 would move for a new trial.

4 Additionally, Your Honor, I renew my previous
5 motion in limine concerning Mr. Gregory's pretrial
6 statements. And for those reasons, we move for a new
7 trial.

8 THE COURT: And respectfully denied. I think the
9 jury had ample opportunity to review the video and
10 obviously thought long and hard about it, and made a
11 decision which they felt was appropriate from the
12 evidence. I'm going to deny your motion.

13 MR. STEPHENS: Thank you, Your Honor.

14 THE COURT: All right. Anything else?

15 MR. HALL: That's it, Your Honor.

16 THE COURT: Thank you.

17 MR. HALL: Nothing else from the Defense,
18 Your Honor.

19 THE COURT: I thank y'all, both of y'all.

20 (Whereupon, the proceedings concluded.)

21

22

23

24

25

CERTIFICATE PAGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was authorized
7 to and did stenographically report the foregoing proceedings and that
the transcript is a true and complete record of my stenographic notes.

8 DATED this 10th day of January, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

16

mmanley@scccourts.org

17

18

19

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)

County of BEAUFORT)DARRELL HEYWARD 170239)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-07-1991APPLICATION FOR
POST-CONVICTION RELIEF2016 SEP -9 PM 2:56
JERRI ANN ROSEHEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention RIEDGE LAND CORRECTIONAL INST.
2. Name and location of Court which imposed sentence BEAUFORT COUNTY
3. Name(s) of co-defendant(s) (if any) JIMMY GREGORY
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS0702390
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 5/29/2015
- (b) 9 YRS SENTENCE
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty WENT TO TRIAL
- (b) ☒ after a plea of not guilty AFTER A PLEA OF NOT GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: before
- (a) my LAWYER did NOT APPEAL ~~the~~ 10 days
- (b) HE did IT AFTER 10 days

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) my lawyer filed THE APPEAL 30 days
 (b) AFTER my CASE WAS OVER, HE NEVER
 (c) called ANY of my WITNESSES
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) THE APPEAL WAS SUPPOSE TO BE FILED
 (b) BEFORE 10 DAYS AFTER THE CASE WAS
 (c) OVER, NOT 30 DAYS.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

i.

ii.

iii.

iv.

N/A

(d) the date of each such disposition:

i.

ii.

iii.

iv.

N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

N/A

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? ✓
 (c) your sentencing? ✓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. JEFFREY STEPHENS
QUINNLEN LAW FIRM P.A.
 ii. PO box 2450
BEAUFORT SC. 29901
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

A FAIR TRIAL, WITH A FAIR LAWYER,
AND TO SEEK TIME REDUCTION

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of

BEAUFORT

VERIFICATION

I, DARRELL HEYWARD 170239, 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.

Darrell Heyward
Darrell Heyward

SWORN to and subscribed before me this 6
 day of September, 2016.

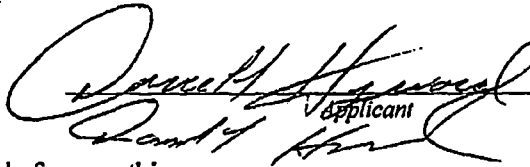
Dorothy Ferguson (L.S.)
 Notary Public

My Commission Expires: 10-1-20

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

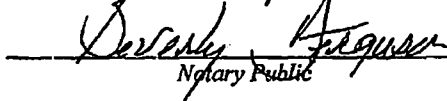
I, DARRELL HEYWARD 170239, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) ☒ I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

6 day of September, 2016.


Notary Public

My Commission Expires: 10-1-25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Darrell Heyward, #170239,

2016-CP-07-1991

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on September 9, 2016, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. Applicant was indicted by the December 2012 term of the Beaufort County Grand Jury for second degree burglary (violent) (2012-GS-07-2390). Jeffrey S. Stephens, Esquire, represented him. Assistant Solicitors Patrick Hall and Julie Kate Keeney prosecuted the case. On May 28-29, 2015, Applicant proceeded to trial before The Honorable Perry H. Gravely and a jury. Applicant was found guilty as indicted for second degree burglary (violent). Judge Gravely sentenced Applicant to incarceration for nine years.

Jeffrey Stephens, Esquire, was retained to represent Applicant on appeal. Applicant filed a notice of appeal. However, on October 19, 2015, the South Carolina Court of Appeals dismissed the appeal after Applicant failed to timely serve the notice of appeal. State v. Heyward, Appellate Case No. 2015-001680 (S.C. Ct. App., Filed October 19, 2015). The Remittitur was returned on December 7, 2015.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Me never called any of my witnesses"
2. Failure to file timely notice of appeal
 - a. "My lawyer did not appeal before 10 days"

Attached herewith and incorporated herein by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records from the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's PCR application claims Ineffective Assistance of Counsel. Nevertheless, Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised, which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. DIRECT APPEAL

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that, even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal

of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

This allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V. AMENDMENT

Respondent denies Applicant is entitled to relief on the basis of ineffective assistance of counsel and demands strict proof thereof. 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.

{Conclusion and signature block on following page}

VI. CONCLUSION

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

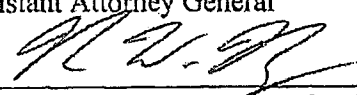
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGHAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 17th, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2016-CP-07-1991
DARRELL HEYWARD, #170239,	)	
	)	
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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan
 Mac | Vance Attorneys, LLC
 PO Box 5501
 West Columbia, SC 29169

DATED this 17th day of April, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 2017 MAY 25 PM 12:07) THE COURT OF COMMON PLEAS
 COUNTY OF BEAUFORT) FOR THE 14th JUDICIAL CIRCUIT
 Case No.: 2016-CP-07-01991
 DARRELL AND RUSSELL
 BEAUFORT COUNTY, S.C.
 Darrell Heyward, #170239, CLERK OF COURT

Applicant,

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

v.

State of South Carolina.

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 9, 2016, to add the following allegations:

1. Ineffective Assistance of Counsel

a. Failed to call two alibi witnesses at trial: Tingy Howard & Thomas Riley. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
 MAC | VANCE ATTORNEYS, LLC
 PO Box 5501
 West Columbia, SC 29171
 803-219-1110
 ashley@macvance.com
 SC Bar No. 71676
 ATTORNEY FOR APPLICANT

May 23, 2017

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Ruston W. Neely
Assistant Attorney General
rneely@scag.gov

This 23rd Day of May, 2017.


ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

2017 MAY 23 PM 12:07
jmk

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2016-CP-07-01991

DARRELL HEYWARD,	)	
Applicant,	)	TRANSCRIPT OF RECORD
-vs-	)	June 9, 2017
	)	Beaufort, South Carolina
THE STATE OF SOUTH	)	
CAROLINA,	)	
Respondent.	)	

B E F O R E:

The Honorable Diane Schafer Goodstein, Judge.

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

Ashley A. McMahan, Esquire
Attorney for the Petitioner

Ruston Wesley Neely, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (June 9, 2017.)

2 MR. NEELY: The next case the State would
3 call is the case of Darrell Heyward versus the State of
4 South Carolina, case number 2016-CP-07-01991. It is my
5 understanding that Mr. Heyward is withdrawing his
6 PCR allegations but is moving forward on a belated appeal
7 allegation, which the State -- I believe we have consent.
8 The notice of appeal is filed and not perfected.

9 THE COURT: Okay. Okay. Very well.

10 MS. McMAHAN: Your Honor, did you want to
11 hear some brief testimony from Mr. Stevens on that?

12 THE COURT: Not if there's a consent, and the
13 only reason that I would say that -- unless the State
14 does. And the only reason is, is if there is a consent,
15 and I know that Mr. Hayward wishes to have his appeal,
16 anything that might happen here, it would be my concern
17 that it could upset that apple cart, so if we've got a
18 good, stable cart, let's leave it there. Yes? Perfect.

19 Thank you so much for being here and happy
20 weekend.

21 THE APPLICANT: Thank you. Thank you very
22 much. You have a wonderful day.

23 THE COURT: You too, sir.

24 - - -

25 (Whereupon, the proceedings were concluded.)

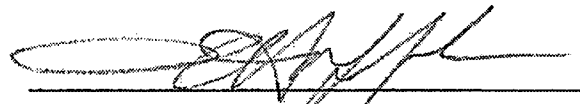
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 9th of June 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 16, 2017

A handwritten signature in dark ink, appearing to read 'A. Kelly Haffenden', is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Darrell Heyward, #170239,

Applicant,

v.

State of South Carolina,

Respondent.

THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No.: 2016-CP-07-01991

**ORDER OF DISMISSAL AND
GRANT OF BELATED APPEAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 9, 2016, and amended on May 25, 2017. The Respondent made its Return on or about April 20, 2017.

An evidentiary hearing was held on June 9, 2017, at the Beaufort County Courthouse. Ashley A. McMahan, Esquire represented the Applicant. Assistant Attorney General Ruston W. Neely represented the Respondent.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted at the December 2012, term of the Beaufort County Grand Jury for Burglary, 2nd Degree - violent (2012-GS-07-02390). Jeffrey S. Stephens, represented him. On May 28-29, 2015, Applicant underwent a jury trial, pursuant to which he was found guilty as indicted. The Honorable Perry H. Gravely sentenced him to confinement for a period of nine (9).

A Notice of Appeal was filed, but it was not timely. The South Carolina Court

of Appeals dismissed the Applicant's appeal on October 19, 2015. *See* Appellate Case Number 2015-001680. The Remittitur was sent on December 7, 2015.

II.

At the hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to timely file an appeal from his trial. The State consented to allow the Applicant to file his belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The Applicant withdraws all other claims raised in this PCR application.

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. *See White*. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his or her appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. *See* Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

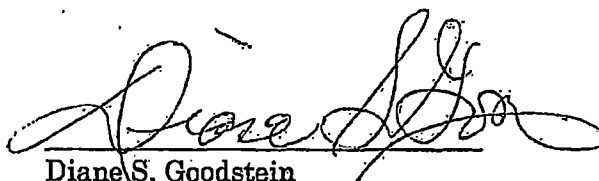
III.

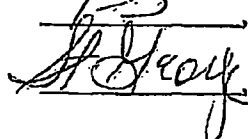
This Court finds that the grant of a belated direct appeal is proper. This Court further finds that based upon Applicant's testimony, the dismissal of this application for post-conviction relief (with the exception for the belated appeal request) is voluntary and that Applicant has knowingly and intelligently elected to have his application dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243(i) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!


Diane S. Goodstein
Presiding Circuit Court Judge

7-5, 2017
 South Carolina.

WITNESSES

D. Selfert - BCSO

ARREST WARRANT NUMBER

2012A0710200213

ACTION OF GRAND JURY

Melissa Brare
Foreperson of Grand Jury

Date: DEC 13 2012

VERDICT:

True Bill

Smith
Jennifer Montello
Foreperson of Petit Jury

Date: 5/29/15

INDICT

DOCKET NO. 2012GS0702390

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2012

THE STATE

vs.

Darrell Heyward

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) -
Second degree

SC Code: 16-11-0312(B)
CDR Code:0086

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0702390

At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Beaufort County present upon their oath:

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

That in Beaufort County, on or about October 9, 2012, the Defendant, Darrell Heyward, did enter the building belonging to Brickman Landscaping located at 1484 Fording Island Road, Suit B, without consent and with the intent to commit a crime therein and in addition, entry occurred at nighttime in violation of Section 16-11-312(B) of the South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor