

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Clarendon County

Honorable Jocelyn J. Newman, Circuit Court Judge

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MAY 23 2018

S.C. SUPREME COURT

VICTOR MCCOY WELDON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-0020000

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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PAGES 1-500

**INDEX**

INDEX..... i

TRIAL TRANSCRIPT DATED MAY 14-18, 2012.....1

APPLICATION FOR POST-CONVICTION RELIEF .....478

RETURN.....493

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 27, 2016 .....501

ORDER OF DISMISSAL.....569

INDICTMENT.....588

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

May 14, 2012  
Manning, South Carolina

**VOLUME 1 OF 5**

**B E F O R E:**

THE HONORABLE RALPH F. COTHRAN, JUDGE

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## INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
PRETRIAL MOTIONS (X 5)	
Remarks by Mr. Knobeloch	3
Remarks by Mr. Devoe	7
Remarks by Mr. Finney	11
CERTIFICATE OF THE COURT REPORTER	14

## INDEX TO EXHIBITS

No exhibits were introduced

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 PROCEEDINGS

2 THE COURT: Okay. Yes, sir?

3 MR. KNOBELOCH: Thank you, Your Honor. Your Honor,  
4 some brief motions; and some of these really are not  
5 necessarily motions but some clarifications. And I will  
6 say the Solicitor and I haven't had a chance to talk  
7 about this. He may -- they may resolve themselves.

8 The first motion would be a motion to sequester all  
9 of the witnesses.

10 THE COURT: What's the State's position?

11 MR. FINNEY: Your Honor, as long as we're allowed to  
12 have the victims and the lead investigators. I don't  
13 believe the other witnesses; they would all be chain of  
14 custody type witnesses and we wouldn't have an objection.

15 THE COURT: Okay. All right. Then the victim has  
16 a right to be here. And the lead -- who is the lead  
17 officer? Mr. Clark?

18 MR. FINNEY: Mr. Clark.

19 THE COURT: All right.

20 MR. FINNEY: And Your Honor, would that include Mr.  
21 and Mrs. Gibbons?

22 THE COURT: Oh, yes.

23 MR. FINNEY: Thank you.

24 MR. KNOBELOCH: Thank you, Judge. The second  
25 motion is just to renew a Rule 5 request for a victim's

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 statement. And our understanding is that there is not  
2 one but we'd like that on the record.

3 THE COURT: Okay.

4 MR. KNOBELOCH: And Your Honor, related to that is  
5 that I believe the officer has handwritten  
6 contemporaneous notes from interviewing the victim, which  
7 we do not have.

8 THE COURT: Okay. Do you want to -- what's the  
9 State's position on that?

10 MR. FINNEY: Your Honor, we will check with the  
11 investigating officer. We understand there may be some  
12 of his handwritten notes that were put into a summary,  
13 which has been provided. And if we have those notes we  
14 will provide them before the end of the day.

15 THE COURT: Okay.

16 MR. KNOBELOCH: And Judge just to confirm that  
17 there is not a victim statement. We're requesting a  
18 victim's statement but I'd like the response ---

19 MR. FINNEY: --- there is nothing that the victim  
20 has signed or recorded.

21 MR. KNOBELOCH: Thank you. We'd also request the  
22 Solicitor to provide a rap sheet for any witnesses it  
23 intends to call that I have a feeling you...

24 MR. FINNEY: I'll be glad to do that.

25 MR. KNOBELOCH: One more Rule 5 issue. The

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 officer's notes referred to a surveillance video that a  
2 neighbor runs 24/7 and we have not seen that video.

3 MR. FINNEY: My understanding is that the  
4 surveillance video was checked and there was nothing  
5 found on the video that would be of evidentiary help in  
6 this case to the State. So we don't intend to use any  
7 videos. They checked it -- was there anything on it?

8 MR. CLARK: It was checked and there wasn't anything  
9 on it.

10 MR. FINNEY: Nothing was on it the video.

11 MR. KNOBELOCH: If it's available we'd still like  
12 to see it if it does have something exculpatory but  
13 that's...

14 MR. FINNEY: There was no video that we were able  
15 to review and nothing we have to turn over.

16 MR. KNOBELOCH: Okay. Our next motion would be  
17 that if the Solicitor intends to bring in bad acts under  
18 Lyle that he inform us of that prior to commencing the  
19 trial.

20 THE COURT: Do you intend bring to bring --

21 MR. FINNEY: One of the defendants, Mr. Pearson,  
22 has an extensive prior record, which we do think we can  
23 use it as -- if we -- if he is allowed or wants to  
24 testify in rebuttal. Mr. Weldon so far as we know does  
25 not have convictions.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 THE COURT: Okay. Y'all want to address that?

2 MR. KNOBELOCH: Well, if he's saying my client  
3 doesn't have anything then I'll let Mr. Devoe address ---

4 THE COURT: --- so as far as Mr. Weldon is  
5 concerned you have no criminal record or allow --

6 MR. FINNEY: That's correct, Your Honor.

7 THE COURT: Okay. And on Pearson we have a prior  
8 record that you feel is admissible under the Rule.

9 MR. FINNEY: Yes, sir. It has been turned over to  
10 the defense.

11 THE COURT: All right. Do you have it? Do you  
12 want to address that or you want to address that at the  
13 beginning?

14 MR. DEVOE: Your Honor, all I have is the regular  
15 N-C-I-C sheet that they provided me with. No more  
16 details than that are on it.

17 THE COURT: Okay. Is there anything other than the  
18 N-C-I-C that you take a position does not come in under  
19 the rule?

20 MR. DEVOE: I'd have to recheck that -- I think  
21 there is one or two that should not come in -- there is a  
22 couple that should come in.

23 THE COURT: Well, you want to review that with the  
24 Solicitor and if y'all agree fine. If not I'll be glad  
25 to -- of course clearly this would only come in if your

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 client decided to testify. So, we could cross that  
2 bridge when we -- when at some point in this trial I will  
3 advise him of his rights to testify. And if decides to  
4 what can and cannot be used against him.

5 MR. DEVOE: Okay.

6 THE COURT: Any other issues?

7 MR. KNOBELOCH: One last issue for us. We had a  
8 previous order authorizing funds for a private  
9 investigator. I don't anticipate there being any more  
10 investigation.

11 But just with the fast pace and fluent nature of a  
12 trial we'd ask if we could have 500 dollars that if we  
13 need a subpoena served or something. But I don't  
14 anticipate needing any further investigation.

15 THE COURT: Well -- if it comes up if you'll let me  
16 know we'll address that issue then.

17 MR. KNOBELOCH: Okay. Thank you.

18 THE COURT: Yes, sir?

19 MR. DEVOE: I do have a motion on the -- I'd like  
20 to double check and make sure I have the complete  
21 transcript of Mr. Pearson when he talked to the police.  
22 I think they made two tapes but I think there was a third  
23 one that I don't have when he was interviewed by the  
24 police or by law enforcement.

25 THE COURT: Do you have it? Are you asking for a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 statement your client made?

2 MR. DEVOE: I'd like to make sure -- yes. I'd like  
3 to make sure that we have all the statements that my  
4 client gave.

5 THE COURT: Okay. Mr. Solicitor?

6 MR. FINNEY: As far as I know Your Honor everything  
7 we have was turned over under Rule 5. My recollection is  
8 that there are more than one disk and that more than one  
9 disk was turned over.

10 MR. DEVOE: I had two but I believe it might have  
11 been three.

12 MR. FINNEY: I believe there were three and I think  
13 that's all we had.

14 MR. DEVOE: I only got two.

15 MR. FINNEY: My understanding is that when copies  
16 are made sometimes the copies have more than just -- in  
17 other words the police officer may have made three  
18 originals, but when we copied them we just copied all the  
19 originals on to two disks instead of turning over the  
20 same number of disks. But as far as I know you have all  
21 the information.

22 THE COURT: Then just clear it up for the record.  
23 Did he allegedly make three statements at three different  
24 times or is this three disks of one statement made three  
25 times. That's why I'm asking you if you have a statement

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 you know March the 3<sup>rd</sup>, May the 7<sup>th</sup>; were there three  
2 actual disks or whether it's three disks recording one  
3 conversation?

4 MR. FINNEY: I can confirm that to you, Your Honor.  
5 What I will do I mean obviously if I've turned over -- I  
6 didn't hold back anything. So I will double check with  
7 the investigator. If there is a disk that was not turned  
8 over, then I'll give it to the attorney and he can make a  
9 motion at that time. But my understanding is everything  
10 has been turned over. Once he sees he has everything  
11 that motion will have been resolved.

12 THE COURT: But I'd like at least that issue  
13 resolved this afternoon. We've got some down time and  
14 give him copies ---

15 MR. FINNEY: --- I understand ---

16 THE COURT: --- and not stop the trial tomorrow ---

17 MR. FINNEY: --- do you have your disk here?

18 MR. DEVOE: Yes, sir.

19 MR. FINNEY: We can find out this afternoon.

20 THE COURT: Y'all check this afternoon and be sure  
21 all that is in place.

22 MR. FINNEY: Yes, sir.

23 THE COURT: Anything else Mr. Devoe?

24 MR. DEVOE: Nothing, Your Honor. Well I would have  
25 one other motion, Your Honor. If the trial doesn't go

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 forward this week I'd motion for a speedy trial.

2 THE COURT: You made that -- and it's going to go  
3 forward tomorrow at 2:30.

4 MR. DEVOE: In case it does not go forward. And I  
5 would ask that you -- release them on a PR bond.

6 THE COURT: Okay. We'll address that then if in  
7 fact it doesn't for whatever reason. I mean if we don't  
8 have enough jurors -- right now the only way this case is  
9 not going forward is through no fault of the State or  
10 y'all's. We just didn't have enough jurors show up.

11 MR. DEVOE: No fault of my client's either.

12 THE COURT: I understand and I'll note your motion.  
13 And tomorrow if it doesn't go forward -- if it doesn't go  
14 forward this week you can renew your motion. But you've  
15 got to be here on time.

16 The disk that you have received is there any issue  
17 about them on some format that you cannot play? So  
18 you've been able to listen to what you have. I mean I've  
19 had that issue come up because sometimes the law  
20 enforcement disks you can't play them on a normal...

21 MR. DEVOE: Well -- and see every disk that I have  
22 and I have thirteen disks.

23 THE COURT: Okay. I just wanted to be sure that  
24 wasn't an issue. I thought all that was worked out and  
25 showed up the next day and they said, Judge we can't hear

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 any of the disks because whatever format they were  
2 recorded on wouldn't play on anything we could find. And  
3 that hasn't usually been a problem here but there have  
4 been in some other counties where law enforcement has  
5 some unusual... Okay. Anything else?

6 MR. KNOBELOCH: Nothing from us.

7 THE COURT: All right then we're going to resume  
8 this situation back at 2:30 tomorrow. And I plan then at  
9 2:30 now if y'all got any other issues you need to deal  
10 with before then because at 2:30 if I've got enough  
11 jurors I'm going to draw this jury and we're going to  
12 proceed with that. But y'all got to be here on time or  
13 you got to call me with some emergency if you're not  
14 going to be here on time.

15 MR. FINNEY: Your Honor, reviewing our case file we  
16 noted a number of motions some of which have not been  
17 reflected today and we would just like to note for the  
18 record that there has been a waiver of some of those  
19 motions that we will not have to be heard on them. For  
20 example, there was a motion about D-N-A as it relates to  
21 Mr. Weldon.

22 MR. KNOBELOCH: There was a motion to compel  
23 discovery, which the order was issued and the Solicitor  
24 has complied with. There was an order compelling SLED to  
25 issue some information, which they have complied with.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 There was -- Judge, from memory I think the motion of --  
2 the motion to suppress all the D-N-A evidence and I could  
3 think of a way to make that motion fly I'll play it  
4 again. But at the moment that motion has been ruled on  
5 and we are not -- I'm not trying to keep that alive if  
6 that's the one...

7 MR. FINNEY: That's the one.

8 MR. KNOBELOCH: And from memory the motion to be  
9 relieved I am not pursuing. And I think the other motion  
10 that I filed at the last time we were here was for a  
11 change of venue, which was not moved -- I mean it was not  
12 right and it still is not.

13 MR. FINNEY: That's correct. Those are the ones.  
14 Thank you, Your Honor.

15 THE COURT: All right. And as far as this case is  
16 concerned we'll reconvene at 2:30 tomorrow. Now  
17 hopefully the Sheriff's office will be a position to give  
18 me some kind of report in the morning as to the status of  
19 these jurors and hopefully we will have enough.

20 He may -- hadn't been able to get in contact with  
21 overnight and hopefully be here by 2:30. If they don't  
22 catch them tonight after work or before they go to work  
23 in the morning we probably will not get a whole lot out  
24 of there, but we'll see. We'll just have to cross that  
25 bridge after 2:30. Anything else?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 1 - May 14, 2012

1 [No response]

2 THE COURT: All right then as far as this case is  
3 concerned we'll see y'all back then at 2:30.

4 [Whereupon, court is adjourned for the day]

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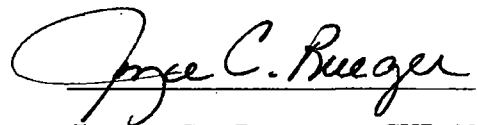
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 14<sup>th</sup> day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012



Joyce C. Rueger, CVR-M

Court Reporter



INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
JURY VOIR DIRE	3
STRIKING OF THE JURY	15
CERTIFICATE OF THE COURT REPORTER	42

INDEX TO EXHIBITS

No exhibits were introduced

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 PROCEEDINGS

2 MR. FINNEY: 2011-GS-14-0068. A true bill  
3 indictment against Michael Wilson Charlie Pearson and  
4 Victor McCoy Weldon, a six count indictment alleging  
5 count one, Burglary First Degree, count two, Attempted  
6 Murder, count three, Armed Robbery, count four, Grand  
7 Larceny, count five, Kidnapping, count six, Possession of  
8 a Weapon During a Violent Crime.

9 The State is ready to proceed, Your Honor.

10 THE COURT: Okay. Thank you, sir. All right.  
11 Ladies and gentlemen, if you'll give me your attention  
12 we're about to begin the trial of the State versus  
13 Michael Pearson and Victor Weldon. And those are the two  
14 we are proceeding against today, Mr. Solicitor?

15 MR. FINNEY: Yes, sir.

16 JURY VOIR DIRE

17 THE COURT: Is there any member of the jury panel  
18 connected by blood or marriage or close personal relation  
19 or personal friend with Michael Pearson or Victor Weldon?  
20 If so, please stand.

21 [No response]

22 THE COURT: I'm going to read a list of potential  
23 witnesses in this case. And I need you to pay close  
24 attention because I need to know if you are connected by  
25 blood or marriage, close personal friend, or social

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 relations with any of the potential witnesses in this  
2 case. And if you are then you should stand up when you  
3 hear the name; and sometimes it may be more than one name  
4 but at least -- and then I'll come back and ask you  
5 individual questions concerning it.

6 Edward Gibbons, Kay Gibbons, Geena Gibbons Wilson,  
7 Joe Wilson, Creighton Cheek, Micha Joseph, Barney Dozier,  
8 Kenneth Clark, Lin Ham, Curtis Hickman, Ricky Richards,  
9 Brandon Braxton, Terry Goff, Jacob Harrison, Marie Hodge,  
10 Barbara Procter, Catherine Leisy, Mack Eaddy, Walter  
11 Bush, Loretta Green, Latoya Benbow, John Hornsby, Richard  
12 Gamble, Solomon Sheroid, Gregory Brailsford, Lewis  
13 Mendes, Rick Elms, Ken Hodge, Nick Perry, Victor Weldon,  
14 Jessica Weldon, Barbara Weldon, Jimmie Cagle, Loretta  
15 Green, Michael Pearson, George Frierson, James Clark,  
16 Charles Taylors, and Reverend Wilson who -- Lisa Cousar,  
17 Tim Busby, Jodi Godwin, Donald Frierson, Gerald Frierson,  
18 Stacy Herring, Ann Jarrett, John Henry Brown, Kelsey  
19 Cousar, and Trent Moore.

20 Is any member of the jury panel connected by blood  
21 or marriage, close personal friends or social relations  
22 with any of those potential witnesses? If so, please  
23 stand.

24 [Whereupon, an individual stands]

25 THE COURT: Okay. Give your name and number

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 please, ma'am?

2 MS. EVINS: 46, Teresa Evins.

3 THE COURT: Okay. What -- tell me about Barney  
4 Dozier. Are you related or just friends or ---

5 MS. EVINS: We were married to first cousins. And  
6 he lived directly behind me.

7 THE COURT: Okay. And the fact that you were  
8 married to first cousins and were neighbors and if he is  
9 a witness in this case would that affect your ability to  
10 give both the State and these defendants a fair and  
11 impartial trial?

12 MS. EVINS: Yes.

13 THE COURT: It would? All right. And you are 46?

14 MS. EVINS: Yes.

15 THE COURT: Rhonda Johnson?

16 MS. EVINS: No.

17 THE COURT: I'm on the wrong list? All right.  
18 Ms. Evins?

19 MS. EVINS: Yes.

20 THE COURT: I'm going to excuse you from this  
21 trial.

22 [Whereupon, juror number 46 is excused for this  
23 trial]

24 THE COURT: All right. Yes, sir?

25 UNIDENTIFIED SPEAKER: [Inaudible]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 THE COURT: What's your name and number?

2 MR. WORRELL: Melvin Worrell, 160.

3 THE COURT: And in fact you're friends with one of  
4 the officers in this case. Would that affect your  
5 ability to give both the State and these defendants a  
6 fair and impartial trial?

7 MR. WORRELL: Yes, sir.

8 THE COURT: It would? You can listen to evidence  
9 and be fair?

10 MR. WORRELL: Yes, sir.

11 THE COURT: Okay. Thank you, sir.

12 MR. CORBETT: Judge, may we have his number again?

13 THE COURT: 160. Mr. Worrell.

14 [Whereupon, an individual stands]

15 THE COURT: Yes, ma'am?

16 MS. HILTON: Number 61 ---

17 THE COURT: Okay. And tell me who you know or are  
18 related to?

19 MS. HILTON: Actually I worked with Joe and Geena  
20 Wilson for two and half years.

21 THE COURT: Okay. And would that affect your  
22 ability to be fair and impartial?

23 MS. HILTON: I think it would affect it.

24 THE COURT: Okay. Thank you. I'll excuse you.

25 [Whereupon, juror number 61 is excused]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 THE COURT: Yes, ma'am?

2 MS. JOHNSON: Trent Moore. I'm on page 2, 44.

3 THE COURT: And tell me who you are related to?

4 MS. JOHNSON: Trent Moore is my sister-in-law's son.  
5 He's my nephew.

6 THE COURT: I missed that part. Say that one more  
7 time.

8 MS. JOHNSON: Trent Moore is my nephew by marriage.

9 THE COURT: And the fact that he is a potential  
10 witness in this case would that affect your ability to be  
11 fair and impartial?

12 MS. JOHNSON: I won't be.

13 THE COURT: You won't be fair?

14 MS. JOHNSON: No.

15 THE COURT: Okay. I appreciate that because what  
16 I'm trying to find is a fair jury that can listen to the  
17 evidence in this case and render a fair verdict.

18 And if you think -- if any of you think because of  
19 your relationship to any of the witnesses you can't be  
20 fair I need to know that. So I'm going to excuse you  
21 then.

22 [Whereupon, juror number 44 is excused]

23 THE COURT: You are Patricia Dow?

24 MS. DOW: I'm Patrice Dow on the first page.

25 THE COURT: Normally we don't have this problem

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 because we don't have two lists. Are you Ms. Johnson?

2 MS. JOHNSON: Yes, sir.

3 THE COURT: Okay. Ms. Johnson is excused. Now,  
4 I'll get back to you Ms. Dow. Yes, ma'am?

5 MS. REAVES: List 2, juror number 82 Allison  
6 Reaves.

7 THE COURT: Okay. Ms. Reaves?

8 MS. REAVES: I attend church with Joe and Geena  
9 Wilson.

10 THE COURT: Okay. And the fact that you go to  
11 their church would that affect your ability to be fair  
12 and impartial?

13 MS. REAVES: No sir, it will not.

14 THE COURT: Thank you. Okay. Yes ma'am, Ms. Dow?

15 MS. DOW: I attend church with the Loretta Green.

16 THE COURT: And the fact that she may be a  
17 potential witness in this case would that affect your  
18 ability to be fair and impartial?

19 MS. DOW: No, sir.

20 THE COURT: Okay. Thank you, ma'am.

21 MS. WITHERSPOON: Donald Frierson is my cousin.

22 THE COURT: And what?

23 MS. WITHERSPOON: 159.

24 THE COURT: I understand that. How close a cousin?

25 MS. WITHERSPOON: A third.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 THE COURT: Okay. And you're Ms. Witherspoon?  
2 MS. WITHERSPOON: I am.  
3 THE COURT: Would that affect your ability to be  
4 fair and impartial?  
5 MS. WITHERSPOON: [Inaudible]  
6 THE COURT: Thank you, ma'am. Yes, ma'am?  
7 MS. STOIA: I'm juror number 132. I am familiar  
8 with a couple of the names. I do know Jimmie Cagle but I  
9 don't feel like I would be unable to...  
10 THE COURT: Do you think you could be fair? You  
11 could listen to the evidence and be fair to both sides?  
12 MS. STOIA: I think I could.  
13 THE COURT: Okay. Thank you, ma'am. Yes, sir?  
14 MR. BURDEN: Juror number 30. I've known Mr.  
15 Gibbons for the past five years. And I'm close friends  
16 with Mr. Dozier -- second cousin --  
17 THE COURT: Okay. And your last name is Gardner?  
18 MR. BURDEN: Burden.  
19 THE COURT: I'm on the wrong list. Okay, Mr.  
20 Burden. So having said that do you think you could be  
21 fair and impartial?  
22 MR. BURDEN: No.  
23 THE COURT: All right. I'll excuse you. Thank  
24 you.  
25 [Whereupon juror number 30 is excused]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 THE COURT: Yes, ma'am?

2 MS. MCFADDEN: Chinesea McFadden, juror number 63 on  
3 list 2.

4 THE COURT: Okay. Ms. McFadden?

5 MS. MCFADDEN: Mr. Barney Dozier, his daughter and  
6 mine are friends.

7 THE COURT: And the fact that he may be a witness  
8 in this case would that affect your ability to be fair  
9 and impartial?

10 MS. MCFADDEN: No, it shouldn't.

11 THE COURT: So you can be fair?

12 MS. MCFADDEN: Yes.

13 THE COURT: Thank you, ma'am. Yes, ma'am?

14 MS. HAMPTON: Juror number 60 on the first list.

15 THE COURT: Okay.

16 MS. HAMPTON: I'm not related to anybody that is on  
17 the list but I do daily business with Mr. Gibbons; on a  
18 daily basis.

19 THE COURT: Okay. And the fact that you do that  
20 would that -- do you think you could be fair and  
21 impartial?

22 MS. HAMPTON: Yes, sir.

23 THE COURT: You can be?

24 MS. HAMPTON: Yes, sir.

25 THE COURT: Thank you, ma'am. And your name is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 Hampton? Your last name is Hampton?

2 MS. HAMPTON: Hampton.

3 THE COURT: Thank you, ma'am. Yes, sir?

4 MR. BLANDING: Juror number 12. I know Trent --

5 THE COURT: You can be fair?

6 MR. BLANDING: I couldn't be fair.

7 THE COURT: You cannot? I'll excuse you from this  
8 trial, Mr. Blanding.

9 [Whereupon juror number 12 is excused]

10 THE COURT: Yes, ma'am?

11 MS. RIDGEWAY: Juror 118, Joanne Ridgeway. Mr.  
12 Gibbons has known my family all my life.

13 THE COURT: Having said that do you think you could  
14 listen to the evidence in this case and be fair to both  
15 sides?

16 MS. RIDGEWAY: Yes sir, I think I can.

17 THE COURT: Thank you, ma'am. Okay, anyone else?

18 [No response]

19 THE COURT: The attorneys involved in this case  
20 representing the State is Solicitor Ernest Finney -- are  
21 you -- anybody else?

22 MR. FINNEY: Yes, sir. Mr. Corbett will be  
23 assisting.

24 THE COURT: Okay. Jason Corbett. The defense Mr.  
25 John Knobloch and Laura and Harry Devoe if y'all will

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 stand up.

2 [Whereupon, they comply]

3 THE COURT: Any member of the jury panel connected  
4 by blood or marriage or a close personal friend or have  
5 social relations with any of these attorneys or have been  
6 represented by them in the past? Is so, please stand.

7 [No response]

8 THE COURT: Thank you. Y'all can be seated.

9 [They attorneys comply]

10 THE COURT: Any member of the jury panel formed or  
11 expressed an opinion about any of the issues or matters  
12 involved in this case? If so, please stand.

13 [No response]

14 THE COURT: Any member of the jury panel aware of  
15 any bias or prejudice towards the State of South Carolina  
16 or these defendants? If so, please stand.

17 [No response]

18 THE COURT: Any member of the jury panel served in  
19 the Grand Jury that heard this case? If so, please  
20 stand?

21 [No response]

22 THE COURT: Any member of the jury panel or member  
23 of your immediate family ever been a victim of a crime?  
24 If so, please stand.

25 [Whereupon, an individual stands]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 MR. BOWMAN: Yes, sir. Victim of a crime.  
2 THE COURT: You ever been a victim of a crime?  
3 MR. BOWMAN: If I was?  
4 THE COURT: Yes? You or an immediate member of  
5 your family?  
6 MR. BOWMAN: A member of my family.  
7 THE COURT: Okay. Tell me your number again?  
8 MR. BOWMAN: Number 9.  
9 THE COURT: How close a member of the family was  
10 involved in a crime?  
11 MR. BOWMAN: My brother.  
12 THE COURT: Okay. And the fact that he was a  
13 victim of a crime would that affect your ability to be  
14 fair and impartial to both sides of this case?  
15 MR. BOWMAN: No, sir.  
16 THE COURT: Thank you, sir. Anyone else?  
17 [Whereupon, an individual stands]  
18 THE COURT: Yes, ma'am?  
19 MS. DODSON: On list 2, 21. I was robbed.  
20 THE COURT: Okay. And would that affect your  
21 ability to be fair and impartial?  
22 MS. DODSON: No.  
23 THE COURT: Okay. Thank you, ma'am. Anyone  
24 else?  
25 [No response]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 THE COURT: Any member of the jury panel due to --  
2 or moral or religious reasons unable to render or sit in  
3 judgment of your fellow man? If so, please stand.

4 [No response]

5 THE COURT: Any member of the jury panel know any  
6 reason whatsoever they can't give the State of South  
7 Carolina and these defendants a fair and impartial trial?  
8 If so, please stand?

9 [No response]

10 THE COURT: Any further questions from the State?

11 MR. FINNEY: None, Your Honor.

12 THE COURT: From the defense?

13 MR. KNOBELOCH: Nothing.

14 MR. DEVOE: No, Your Honor.

15 THE COURT: Okay. Madame Clerk, if you will give  
16 us a jury? We've got to go back to the old school. We  
17 used to have these new computers that normally would do  
18 this but because we had to bifurcate this jury list it is  
19 not able to do that.

20 But Mr. Davis is very capable of doing that so he's  
21 going to draw your names out of the cylinder in random  
22 order and we'll form a new list and draw a jury from it.

23 CLERK OF COURT: As I told you earlier if I call  
24 your name come through the aisle here [indicates] come up  
25 to the Mic and turn around and face the tables and stand

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 there until I tell you whether to have a seat back in the  
2 jury pool or have a seat in the jury box. If you have  
3 belongings, please bring them with you.

4 STRIKING OF THE JURY

5 CLERK OF COURT: Number 31 on the second list  
6 Clarence Georgia. Number 31 on the second list, Clarence  
7 Georgia.

8 [Whereupon, Mr. Georgia comes forward]

9 CLERK OF COURT: I need you to stand right there  
10 Mr. Georgia I have to ask them a question and then I'll  
11 tell you what to do.

12 What say the State?

13 MR. FINNEY: Please excuse the juror from this  
14 trial.

15 CLERK OF COURT: Mr. Georgia, you can have a seat  
16 back in the jury pool. Thank you, sir.

17 [Whereupon, Mr. Georgia returns to the jury pool]

18 CLERK OF COURT: Number 3 on the first list, Steven  
19 L. Barrineau.

20 [Whereupon, Mr. Barrineau comes forward]

21 CLERK OF COURT: What say the State?

22 MR. FINNEY: Please swear the juror.

23 CLERK OF COURT: Defendant Weldon?

24 MR. DEVOE: Please excuse this juror from the  
25 trial.

1 CLERK OF COURT: You may have a seat back in the  
2 jury pool, sir. Thank you.

3 [Whereupon, Mr. Barrineau returns to the jury pool]

4 CLERK OF COURT: Number 30 on the first list,  
5 Jocelyn C. Burden.

6 MR. FINNEY: She has been excused.

7 CLERK OF COURT: Excused? Oh, I'm sorry. Number  
8 52 on the first list, Jan Garten.

9 [Whereupon, Ms. Garten comes forward]

10 CLERK OF COURT: What say the State?

11 MR. FINNEY: Please swear the juror.

12 CLERK OF COURT: Defense, Weldon?

13 MR. DEVOE: Please excuse this juror.

14 CLERK OF COURT: You may have a seat back in the  
15 jury pool, ma'am. Thank you.

16 [Whereupon, Ms. Garten returns to the jury pool]

17 CLERK OF COURT: Number 9 on the second list, Keith  
18 D. Bowman.

19 [Whereupon, Mr. Bowman comes forward]

20 CLERK OF COURT: What say the State?

21 MR. FINNEY: Please excuse the juror from this  
22 trial.

23 CLERK OF COURT: You may have a seat back in the  
24 jury pool, sir.

25 [Whereupon, Mr. Bowman returns to the jury pool]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: Number 15 on the second list, Eva  
2 L. Brown.  
3 [Whereupon, Ms. Brown comes forward]  
4 CLERK OF COURT: What say the State?  
5 MR. FINNEY: Please swear the juror.  
6 CLERK OF COURT: Weldon?  
7 [No response]  
8 CLERK OF COURT: Pearson?  
9 MR. DEVOE: Please seat the juror.  
10 CLERK OF COURT: Have a seat in the jury box --  
11 hold on just a minute, Ms. Brown.  
12 MR. KNOBELOCH: Please seat the juror.  
13 MS. KNOBELOCH: Please seat the juror.  
14 CLERK OF COURT: Go over to the --  
15 [Whereupon, Ms. Brown is seated in the jury box as a  
16 juror]  
17 CLERK OF COURT: Number 145 on the first list,  
18 Robert L. Walters.  
19 [Whereupon, Mr. Walters comes forward]  
20 CLERK OF COURT: What say the State?  
21 MR. FINNEY: Please swear the juror.  
22 CLERK OF COURT: Weldon?  
23 MR. KNOBELOCH: Please seat the juror.  
24 CLERK OF COURT: Pearson?  
25 MR. DEVOE: Please seat the juror.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: Okay. Have a seat in the jury  
2 box.

3 [Whereupon, Mr. Walters is seated in the jury box as  
4 a juror]

5 CLERK OF COURT: Number 127 on the first list,  
6 Sandra F. Shapiro.

7 [Whereupon, Ms. Shapiro comes forward]

8 CLERK OF COURT: What say the State?

9 MR. FINNEY: Please excuse the juror from this  
10 trial.

11 CLERK OF COURT: Ma'am, have a seat back in the  
12 jury pool. Thank you.

13 [Whereupon, Ms. Shapiro returns to the jury pool]

14 CLERK OF COURT: Number 148 from the first list,  
15 Ronnie D. Welch.

16 [Whereupon, Mr. Welch comes forward]

17 CLERK OF COURT: What say the State?

18 MR. FINNEY: Please swear the juror.

19 CLERK OF COURT: Weldon?

20 MR. KNOBELOCH: Please excuse the juror.

21 CLERK OF COURT: Have a seat back in the jury pool.

22 [Whereupon, Mr. Welch returns to the jury pool]

23 CLERK OF COURT: Number 82 from the first list,

24 Allison R. Reeves -- excuse me, second list. I'm sorry,  
25 second list.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, Ms. Reeves comes forward]

2 CLERK OF COURT: What say the State?

3 MR. FINNEY: Please swear the juror.

4 CLERK OF COURT: Weldon?

5 MR. KNOBELOCH: Please excuse the juror.

6 CLERK OF COURT: Please have a seat back in the  
7 jury pool.

8 [Whereupon, Ms. Reeves returns to the jury pool]

9 CLERK OF COURT: Number 6 from the second list, Roy  
10 L. Beard.

11 [Whereupon, Mr. Beard comes forward]

12 CLERK OF COURT: What say the State?

13 MR. FINNEY: Please swear the juror.

14 CLERK OF COURT: Weldon?

15 MR. KNOBELOCH: Please seat the juror.

16 MR. DEVOE: Please excuse the juror.

17 CLERK OF COURT: You can have a seat back in the  
18 jury pool at this time.

19 [Whereupon, Mr. Beard returns to the jury pool]

20 CLERK OF COURT: Number 60 from the first list,  
21 Sharon L. Hampton.

22 [Whereupon, Ms. Hampton comes forward]

23 CLERK OF COURT: What say the State?

24 MR. FINNEY: Please swear the juror.

25 CLERK OF COURT: Weldon?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 MR. KNOBELOCH: Please excuse the juror.  
2 CLERK OF COURT: You may have a seat back in the  
3 jury pool, ma'am. Thank you.  
4 [Whereupon, Ms. Hampton returns to the jury pool]  
5 CLERK OF COURT: Number 8 from the second list,  
6 Russell Blackwell, Jr.  
7 [Whereupon, Mr. Blackwell comes forward]  
8 CLERK OF COURT: What say the State?  
9 MR. FINNEY: Please excuse the juror from this  
10 trial.  
11 CLERK OF COURT: You can have a seat in the jury  
12 pool, sir. Thank you.  
13 [Whereupon, Mr. Blackwell returns to the jury pool]  
14 CLERK OF COURT: Number 58 from the first list,  
15 Jamilla K. Griffith.  
16 [Whereupon, Ms. Griffith comes forward]  
17 CLERK OF COURT: What say the State?  
18 MR. FINNEY: Please swear the juror.  
19 CLERK OF COURT: Weldon?  
20 MR. KNOBELOCH: Please seat the juror.  
21 MR. DEVOE: Please seat the juror.  
22 CLERK OF COURT: Have a seat in the jury box,  
23 ma'am. Thank you.  
24 [Whereupon, Ms. Griffith is seated in the jury box  
25 as a juror]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: Number 152 from the first list,  
2 Calvin White.

3 [Whereupon, Mr. White comes forward]

4 CLERK OF COURT: What say the State?

5 MR. FINNEY: Please swear the juror.

6 CLERK OF COURT: Weldon?

7 MR. KNOBELOCH: Please excuse this juror.

8 CLERK OF COURT: Have a seat back in the jury pool.

9 Thank you.

10 [Whereupon, Mr. White returns to the jury pool]

11 CLERK OF COURT: Number 119 from the first list,

12 Sheila H. Ridgeway.

13 [Whereupon, Ms. Ridgeway comes forward]

14 CLERK OF COURT: What say the State?

15 MR. FINNEY: Please swear the juror.

16 CLERK OF COURT: Weldon?

17 MR. KNOBELOCH: Please seat the juror.

18 CLERK OF COURT: Have a seat in the jury box,

19 ma'am.

20 [Whereupon, Ms. Ridgeway is seated in the jury box  
21 as a juror]

22 CLERK OF COURT: Number 63 from the second list,

23 Chinese V. McFadden.

24 [Whereupon, Ms. McFadden comes forward]

25 CLERK OF COURT: What say the State?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 MR. FINNEY: Please swear the witness -- the juror,  
2 excuse me.

3 CLERK OF COURT: Weldon?

4 [No response]

5 MR. DEVOE: Please excuse this juror.

6 CLERK OF COURT: Have a seat back in the jury pool.

7 [Whereupon, Ms. McFadden returns to the jury pool]

8 CLERK OF COURT: Number 22 from the second list,

9 Candy W. Duke.

10 [Whereupon, Ms. Duke comes forward]

11 CLERK OF COURT: What say the State?

12 MR. FINNEY: Please swear the juror.

13 CLERK OF COURT: Weldon?

14 MR. KNOBELOCH: Please excuse this juror.

15 CLERK OF COURT: You can have a seat back in the  
16 jury pool.

17 [Whereupon, Ms. Duke returns to the jury pool]

18 CLERK OF COURT: Number 21 from list 2, Sue B.

19 Dodson.

20 [Whereupon, Ms. Dodson comes forward]

21 CLERK OF COURT: What say the State?

22 MR. FINNEY: Please swear the juror.

23 CLERK OF COURT: Defendant Weldon?

24 MR. KNOBELOCH: Please excuse this juror.

25 CLERK OF COURT: Have a seat back in the jury pool.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, Ms. Dodson returns to the jury pool]  
2 CLERK OF COURT: Number 129 from the first list  
3 Deborah R. Smith.  
4 [Whereupon, Ms. Smith comes forward]  
5 CLERK OF COURT: What say the State?  
6 MR. FINNEY: Please excuse the juror from this  
7 trial.  
8 CLERK OF COURT: You can have a seat back in the  
9 jury pool. Thank you.  
10 [Whereupon, Ms. Dodson returns to the jury pool]  
11 CLERK OF COURT: Number 32 from the first list,  
12 Will R. Cantey.  
13 [Whereupon, Mr. Cantey comes forward]  
14 CLERK OF COURT: What say the State?  
15 MR. FINNEY: Please excuse the juror from this  
16 trial.  
17 [Whereupon, Mr. Cantey returns to the jury pool]  
18 CLERK OF COURT: Number 118 from the first list,  
19 Joanne L. Ridgeway.  
20 [Whereupon, Ms. Ridgeway comes forward]  
21 CLERK OF COURT: What say the State?  
22 MR. FINNEY: Please swear the juror.  
23 CLERK OF COURT: Defendant ---  
24 MR. KNOBELOCH: --- please excuse the juror.  
25 [Whereupon, Ms. Ridgeway returns to the jury pool]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: Number 16 from the first list,  
2 Dontrell G. Bradley.  
3 [Whereupon, Mr. Bradley comes forward]  
4 CLERK OF COURT: What say the State?  
5 MR. FINNEY: Please swear the juror.  
6 CLERK OF COURT: Defendant Weldon?  
7 MR. KNOBELOCH: Please seat the juror.  
8 MR. DEVOE: Please seat the juror.  
9 CLERK OF COURT: Have a seat in the jury box.  
10 [Whereupon, Mr. Bradley is seated in the jury box as  
11 a juror]  
12 CLERK OF COURT: Number 2 from the second list --  
13 excuse me, number 46 from the second list, Rhonda S.  
14 Johnson.  
15 [Whereupon, Ms. Johnson comes forward]  
16 CLERK OF COURT: What say the State?  
17 MR. FINNEY: Please swear the juror.  
18 CLERK OF COURT: Weldon?  
19 MR. KNOBELOCH: Please excuse this juror.  
20 CLERK OF COURT: Have a seat back in the jury pool.  
21 Thank you.  
22 [Whereupon, Ms. Johnson returns to the jury pool]  
23 CLERK OF COURT: Number 100 from the second list,  
24 Melissa A. Woodard.  
25 [Whereupon, Ms. Woodard comes forward]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: What say the State?  
2 MR. FINNEY: Please swear the juror.  
3 CLERK OF COURT: Defendant Weldon?  
4 MR. KNOBELOCH: Please excuse this juror.  
5 [Whereupon, Ms. Woodard returns to the jury pool]  
6 THE COURT: Y'all approach.  
7 [Whereupon, an off the record bench conference is  
8 held]  
9 CLERK OF COURT: Number 78 from the first list,  
10 Willie E. Keitt.  
11 [Whereupon, Mr. Keitt comes forward]  
12 CLERK OF COURT: What say the State?  
13 MR. FINNEY: Please swear the juror.  
14 CLERK OF COURT: Defendants?  
15 MR. KNOBELOCH: Please excuse this juror.  
16 CLERK OF COURT: Have a seat back in the jury pool.  
17 [Whereupon, Mr. Keitt returns to the jury pool]  
18 CLERK OF COURT: Number 132 from the first list,  
19 Tina L. Stoia.  
20 [Whereupon, Ms. Stoia comes forward]  
21 CLERK OF COURT: What say the State?  
22 MR. FINNEY: Please swear the juror.  
23 CLERK OF COURT: Defendants?  
24 MR. DEVOE: Please excuse this juror.  
25 CLERK OF COURT: Have a seat back in the jury pool.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, Ms. Stoia returns to the jury pool]  
2 CLERK OF COURT: Number 149 from the first list,  
3 Charlotte Wells.  
4 [Whereupon, Ms. Wells comes forward]  
5 CLERK OF COURT: What say the State?  
6 MR. FINNEY: Please excuse the juror from this  
7 trial.  
8 [Whereupon, Ms. Wells returns to the jury pool]  
9 CLERK OF COURT: From list number 1 number 41,  
10 Melody T. Davis.  
11 [Whereupon, Ms. Davis comes forward]  
12 CLERK OF COURT: What say the State?  
13 MR. FINNEY: Please swear the juror.  
14 CLERK OF COURT: Defendant?  
15 MR. KNOBELOCH: Please excuse the juror.  
16 CLERK OF COURT: Have a seat back in the jury pool.  
17 [Whereupon, Ms. Davis returns to the jury pool]  
18 CLERK OF COURT: From list number 1 Martin D.  
19 Troutman, number 141.  
20 [Whereupon, Mr. Troutman comes forward]  
21 CLERK OF COURT: What say the State?  
22 MR. FINNEY: Please swear the juror.  
23 CLERK OF COURT: Defendants.  
24 MR. KNOBELOCH: Please seat the juror.  
25 CLERK OF COURT: Please have a seat in the jury

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 box. Thank you.  
2 [Whereupon, Mr. Troutman is seated in the jury box  
3 as a juror]  
4 CLERK OF COURT: Number 44 from list 1, Patrice I.  
5 Dow.  
6 [Whereupon, Ms. Dow comes forward]  
7 CLERK OF COURT: What say the State?  
8 MR. FINNEY: Please swear the juror.  
9 MR. KNOBELOCH: Please seat the juror.  
10 CLERK OF COURT: Have a seat in the jury box,  
11 ma'am.  
12 [Whereupon, Ms. Dow is seated in the jury box as a  
13 juror]  
14 CLERK OF COURT: Number 14 on list 2, Datamine M.  
15 Brown.  
16 [Whereupon, Mr. Brown comes forward]  
17 CLERK OF COURT: What say the State?  
18 MR. FINNEY: Please excuse the juror from this  
19 trial.  
20 CLERK OF COURT: Have a seat back in the jury pool.  
21 [Whereupon, Mr. Brown returns to the jury pool]  
22 CLERK OF COURT: Number 96 on list 2, Helen Vail.  
23 [Whereupon, Ms. Vail comes forward]  
24 CLERK OF COURT: What say the State?  
25 MR. FINNEY: Please swear the juror.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: Defendants?  
2 MR. DEVOE: Please excuse this juror.  
3 CLERK OF COURT: Have a seat back in the jury pool.  
4 [Whereupon, Ms. Vail returns to the jury pool]  
5 CLERK OF COURT: Number 131 from the first list,  
6 James M. Sprott, Jr.  
7 [Whereupon, Mr. Sprott comes forward]  
8 CLERK OF COURT: What say the State?  
9 MR. FINNEY: Please swear the juror.  
10 CLERK OF COURT: Defendants?  
11 MR. DEVOE: Please excuse this juror.  
12 CLERK OF COURT: Have a seat back in the jury pool.  
13 [Whereupon, Mr. Sprott returns to the jury pool]  
14 CLERK OF COURT: Number 46 from the first list,  
15 Teresa W. Evins -- excuse me, I'm sorry. Number 4 from  
16 the first list, Taylor N. Barrineau.  
17 [Whereupon, Ms. Barrineau comes forward]  
18 CLERK OF COURT: What say the State?  
19 MR. FINNEY: Please swear the juror.  
20 MR. KNOBELOCH: Please excuse the juror.  
21 CLERK OF COURT: Have a seat back in the jury pool.  
22 [Whereupon, Ms. Barrineau returns to the jury pool]  
23 CLERK OF COURT: Number 34 from the first list,  
24 Susan L. Carty.  
25 [Whereupon, Ms. Carty comes forward]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 CLERK OF COURT: What say the State?  
2 MR. FINNEY: Please swear the juror.  
3 CLERK OF COURT: Defendant.  
4 MR. DEVOE: Please seat the juror.  
5 CLERK OF COURT: Have a seat in the jury box ma'am.  
6 Thank you.  
7 [Whereupon, Ms. Carty is seated in the jury box as a  
8 juror]  
9 CLERK OF COURT: Number 66 from the second list,  
10 Amy B. McGee.  
11 [Whereupon, Ms. McGee comes forward]  
12 CLERK OF COURT: What say the State?  
13 MR. FINNEY: Please swear the juror.  
14 CLERK OF COURT: Defense?  
15 MR. KNOBELOCH: Please excuse this juror.  
16 CLERK OF COURT: Have a seat back in the jury pool.  
17 [Whereupon, Ms. McGee returns to the jury pool]  
18 CLERK OF COURT: Number 125 from the first list,  
19 Julie F. Scurry.  
20 [Whereupon, Ms. Scurry comes forward]  
21 CLERK OF COURT: What say the State?  
22 MR. FINNEY: Please swear the juror.  
23 CLERK OF COURT: Defense?  
24 MR. KNOBELOCH: Please swear this juror.  
25 CLERK OF COURT: Have a seat in the jury box,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 ma'am.

2 [Whereupon, Ms. Scurry is seated in the jury box as  
3 a juror]

4 CLERK OF COURT: Number 160 from the first list,  
5 Melvin M. Worrell, II.

6 [Whereupon, Mr. Worrell comes forward]

7 CLERK OF COURT: What say the State?

8 MR. FINNEY: Please swear the juror.

9 CLERK OF COURT: Defense?

10 MR. DEVOE: Please swear this juror.

11 CLERK OF COURT: Have a seat in the jury box, sir.

12 [Whereupon, Mr. Worrell is seated in the jury box as  
13 a juror]

14 CLERK OF COURT: Number 30 from the second list,  
15 Hydrick L. Gardner, Jr.

16 [Whereupon, Mr. Gardner comes forward]

17 CLERK OF COURT: What say the State?

18 MR. FINNEY: Please swear the juror.

19 CLERK OF COURT: Defense?

20 MR. KNOBELOCH: Please swear the juror.

21 CLERK OF COURT: Have a seat in the jury box.

22 [Whereupon, Mr. Gardner is seated in the jury box as  
23 a juror].

24 CLERK OF COURT: Number 51 from the first list,  
25 Wanda H. Garner.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, Ms. Garner comes forward]

2 CLERK OF COURT: What say the State?

3 MR. FINNEY: Please swear the juror.

4 MR. KNOBELOCH: Please swear the juror for this  
5 trial.

6 [Whereupon, Ms. Garner is seated in the jury box as  
7 a juror]

8 THE COURT: Two alternates, please.

9 CLERK OF COURT: From the first list number 48,  
10 Diana C. Foflygen.

11 [Whereupon, Ms. Foflygen comes forward]

12 CLERK OF COURT: What say the State?

13 MR. FINNEY: Please swear the juror.

14 CLERK OF COURT: Defendant?

15 MR. KNOBELOCH: Please swear this juror.

16 CLERK OF COURT: Have a seat in the -- the first  
17 seat and that will be your seat forever.

18 [Whereupon, Ms. Foflygen is seated in the jury box  
19 as an alternate juror]

20 CLERK OF COURT: Number 76 from jury list number 2,  
21 Tommy Parker, Jr.

22 [Whereupon, Mr. Parker comes forward]

23 CLERK OF COURT: What say the State?

24 MR. FINNEY: Please swear the juror.

25 MR. KNOBELOCH: Please excuse the juror.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, Mr. Parker returns to the jury pool]  
2 CLERK OF COURT: Number 159 from the first list,  
3 Diane M. Witherspoon.  
4 [Whereupon, Ms. Witherspoon comes forward]  
5 CLERK OF COURT: What say the State?  
6 MR. FINNEY: Please excuse the juror from this  
7 trial.  
8 CLERK OF COURT: Have a seat back in the jury pool.  
9 [Whereupon, Ms. Witherspoon returns to the jury  
10 pool]  
11 CLERK OF COURT: Number 33 from the first list,  
12 Frances Carter.  
13 [Whereupon, Ms. Carter comes forward]  
14 CLERK OF COURT: What say the State?  
15 MR. FINNEY: Please swear the juror.  
16 MR. KNOBELOCH: Please swear the juror.  
17 CLERK OF COURT: That will be your seat right in  
18 front of the Bailiff.  
19 [Whereupon, Ms. Carter is seated in the jury box as  
20 an alternate juror]  
21 THE COURT: Any matters of law pertaining to  
22 selection of the jury on behalf of the State?  
23 MR. FINNEY: None from the State.  
24 THE COURT: And the defense?  
25 MS. KNOBELOCH: May we approach briefly, Your

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 Honor?

2 THE COURT: Okay.

3 [Whereupon, an off the record bench conference is  
4 held]

5 THE COURT: After the bench conference it is my  
6 understanding there is no motion on behalf of the defense  
7 as far as selecting the jury. The State has already put  
8 that on the record. Is that correct?

9 MR. KNOBELOCH: That's correct, Your Honor.

10 THE COURT: All right. Mr. Solicitor, what do you  
11 want me to do with the panel?

12 MR. FINNEY: Your Honor, we expect this case to  
13 take two or three days and we would like the panel to  
14 call back after 6 o'clock tonight for further  
15 instructions if we should have a change.

16 THE COURT: That's an hour from now.

17 MR. FINNEY: After 12 tomorrow will be fine.

18 THE COURT: So if you were not selected to serve on  
19 this case if you would call the Clerk's office after 12  
20 tomorrow they will either tell you I need you back at  
21 2:30 or to call back after 6.

22 So if you want to go to work you can and make that  
23 call and keep calling until you get through. I don't  
24 know if you'll get a real person or an answering machine.  
25 But if you would do that -- we assume this case may last

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 the rest of the week but we'll have another one so just  
2 call back just in case. Thank you. Have a nice evening.

3 [Whereupon, the jury panel is excused at 4:44 p.m.]

4 THE COURT: Ladies and gentlemen, I'm going to send  
5 you to the jury room for a minute and let me -- I'll give  
6 you further instructions but at this point please don't  
7 talk about this case or speculate or all. If you'll go  
8 back into the jury room I'll get you back out in just a  
9 few minutes. Thank you.

10 [Whereupon, the jury exits the courtroom at 4:45  
11 p.m.]

12 THE COURT: We'll take a five minute break and then  
13 maybe counsel will come in chambers and we can talk about  
14 scheduling since it is 4:45 and what we will do, if  
15 anything, this afternoon.

16 [Whereupon, the court takes a brief recess at 4:45  
17 p.m.]

18 THE COURT: If the jury is ready, how about bring  
19 them in.

20 [Whereupon, the jury re-enters the courtroom at 4:59  
21 p.m.]

22 THE COURT: Ladies and gentlemen, it's 5 o'clock so  
23 we're probably not going to start this case tonight. The  
24 first stage of it will be opening statements by the  
25 attorneys and we just couldn't finish that in a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 reasonable amount of time. So I'm going to let you go  
2 home and ask you to be back in the jury room at 9:30 in  
3 the morning.

4 Now I instruct you while you -- overnight you can't  
5 talk about this case. You don't know anything about it  
6 yet, but you can't speculate you can't talk about it; you  
7 can't talk to your family about it. You can't read  
8 anything in the newspaper or anything or T.V. about this  
9 case.

10 You can't go get on your computer and Google  
11 anything or look on Facebook or try to read anything out  
12 about this case. And I'm going to give you a lot of  
13 further instructions in the morning about what your  
14 duties are.

15 What we're looking for is a fair open-minded jury  
16 that is going to decide this case based on the evidence  
17 you hear in this courtroom and from that evidence only.  
18 So it's important -- to our justice system, it's  
19 important to both parties in this case that we have a  
20 fair and impartial jury.

21 So I need you to come back with an open mind without  
22 any preconceived ideas or prejudice. Please don't talk  
23 about this case or allow anyone to talk to you about it.  
24 If for some reason you have an emergency overnight and  
25 you can't be here at 9:30 you need to call the Clerk's

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 office because we can't get started until all of you show  
2 up. Because if one of you doesn't show up I'm going to  
3 send the Sheriff's Department looking for you to bring  
4 you in.

5 So if you've got an emergency please call us because  
6 we will be sitting here waiting for you. When you come  
7 in in the morning, if you will just come straight into  
8 the jury room.

9 And I will -- I may have some legal matters that I  
10 need to deal with, but I will get you out here as soon as  
11 I can and give you further instructions as to your duties  
12 in this case and we will start. You have a nice evening  
13 and I will see you at 9:30 in the morning.

14 [Whereupon, the jury is excused for the evening at  
15 5:02 p.m.]

16 THE COURT: Okay. Anything further from either  
17 side we need to deal with tonight?

18 MR. FINNEY: Your Honor, just for the record I did  
19 want the defense to be aware that the State has moved to  
20 amend count four to talk about the Grand Larceny of the  
21 Chevy automobile belonging to Mr. Gibbons rather than an  
22 amount of money and that we were going forward on an  
23 amended indictment in that count.

24 THE COURT: All right. Does the defense want to  
25 be heard on this?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 MR. DEVOE: Your Honor, I don't think we've seen an  
2 amendment, number 1 and number 2 is it going to be added  
3 to it or is it an additional count for the monies also  
4 stated or not?

5 THE COURT: My understanding is they want to change  
6 in count four the word money change that to an  
7 automobile.

8 MR. FINNEY: That's correct, Your Honor.

9 THE COURT: A value of more than 2,000 dollars. So  
10 it's Grand Larceny from 2 to 10 but instead of currency  
11 the property they allege was taken was an automobile  
12 whose value is less than 10,000 dollars.

13 MR. DEVOE: So the fact that my client  
14 theoretically supposedly took money is not going to be an  
15 issue in this case?

16 MR. FINNEY: Yes sir, it is. That's the issue of  
17 the Armed Robbery.

18 THE COURT: It's my understanding on count two --  
19 count three is Armed Robbery. And I assume the State is  
20 going to prove that in fact some money or value was taken  
21 in the Armed Robbery. The Grand Larceny deals with  
22 another issue of an automobile and not money.

23 MR. DEVOE: Does that indictment show the year of  
24 the car and the make of the car?

25 THE COURT: No. It just says a value from 5 -- I

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 mean from 2 to 10,000 dollars. But they want automobile  
2 versus money.

3 MR. DEVOE: Is that he borrowed the car or he stole  
4 the car?

5 THE COURT: He stole the car. I don't think there  
6 was a lending situation.

7 MR. FINNEY: No, sir. It was not a lending  
8 situation.

9 THE COURT: I think they're going to allege that  
10 they stole the car. It's a notice situation. Obviously,  
11 they've got to prove each and every element of this and  
12 they are going to have to put whatever evidence they have  
13 in fact that Grand Larceny occurred and what was stolen.

14 What he's saying now from a notice standpoint your  
15 client has been noticed that he's charged with the crime  
16 of Grand Larceny. But their situation is it's not money,  
17 it was an automobile. The money deals with the Armed  
18 Robbery.

19 MR. DEVOE: I'd just say, Your Honor, it's pretty  
20 late in the day after two years coming on the eve of  
21 trial before a jury to amend the indictment.

22 MR. FINNEY: This was put on the record yesterday,  
23 Your Honor, before the jury was sworn. And it certainly  
24 would have been my belief that we could have...

25 THE COURT: Do you have any -- as far as your

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 client being prejudiced for lack of notice?

2 MR. KNOBELOCH: This is our first notice.

3 THE COURT: Well, you got notified yesterday I  
4 understand. But you've been knowing since this case that  
5 he was charged with Grand Larceny.

6 MR. KNOBELOCH: That's correct. But not to what was  
7 really stolen.

8 THE COURT: Okay. So do you have any other issues  
9 as far as you are prejudiced simply because he has  
10 changed it?

11 [Inaudible]

12 THE COURT: Okay. Then I'll allow the amendment.

13 MR. FINNEY: Thank you, Your Honor.

14 THE COURT: I thought you said you didn't have  
15 anything. I thought I had passed you over --

16 MS. KNOBELOCH: Your Honor, we would object. He  
17 needs to get the Grand Jury to look at it again. And  
18 Your Honor as far as the notice we don't have anything  
19 that we can calculate the value of that car. I don't.  
20 But we would object.

21 MR. FINNEY: Well, Your Honor, I wouldn't have had  
22 to show her evidence of the value of the car to put it in  
23 the indictment.

24 THE COURT: That's true. And if he doesn't prove  
25 the value -- you know he's got to prove beyond a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 reasonable doubt that it's more than 2,000 dollars. And  
2 if he doesn't do that it doesn't go to the jury on that.

3 MR. FINNEY: All of the parties have been on notice  
4 that the car was stolen.

5 THE COURT: Okay.

6 MR. FINNEY: Through the discovery that we  
7 submitted.

8 THE COURT: Well what about the arrest warrant?  
9 Was there an arrest warrant issued on Grand Larceny?

10 MR. DEVOE: No.

11 THE COURT: It was just an indictment but no arrest  
12 warrant?

13 MR. FINNEY: There was a warrant. It says they  
14 removed his wallet, money and keys and left the scene  
15 with the victim's vehicle. That's all language in the  
16 Grand Larceny warrant.

17 THE COURT: Okay. Well, I'll wait until in the  
18 morning and rule if y'all have any other thing you want  
19 to come up with overnight. But we'll proceed -- let me  
20 ask you this. Was there a warrant for Armed Robbery and  
21 a warrant for Grand Larceny?

22 MR. FINNEY: Yes, sir.

23 THE COURT: Okay. Well, how about -- do y'all  
24 disagree with that? Did y'all get served warrants on  
25 Grand Larceny and Armed Robbery?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 2 - May 15, 2012

1 [Whereupon, counsel confer]

2 THE COURT: I'll let y'all know in the morning  
3 then.

4 MR. FINNEY: Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. FINNEY: I don't know if the court has any  
7 preference as to marking but we would like to be able to  
8 put some stickers on some exhibits and have them pre-  
9 marked tonight so that we can be ready to go in the  
10 morning.

11 THE COURT: That would be great. Anything y'all  
12 can stipulate to that would be -- would save time in the  
13 morning. But if y'all want to pre-mark or whatever you  
14 can do -- as far as the court reporter -- I don't know if  
15 y'all want to go over and do them first thing in the  
16 morning. The court reporter may not want to stay here an  
17 hour dealing with it but may rather do it in the morning.  
18 But as much as you do before 9:30 would be great.

19 MR. FINNEY: Yes, sir. Thank you, Your Honor.

20 THE COURT: Okay. I'll be here at 8:30 or 9.  
21 We'll start the case back at 9:30.

22 [Whereupon, court is in recess until 9:30 tomorrow  
23 morning]

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 15<sup>th</sup> day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

  
Joyce C. Rueger, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

May 16, 2012  
Manning, South Carolina

**VOLUME 3 OF 5**

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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## INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	7
JUDGE REMARKS TO JURY	9
OPENING STATEMENT BY MR. FINNEY	13
OPENING STATEMENT BY MS. KNOBELOCH	18
OPENING STATEMENT BY MR. DEVOE	23
EDWARD GIBBONS	
Direct Examination by Mr. Finney	27, 66
Cross-Examination by Mr. Knobeloch	72
Cross-Examination by Mr. Devoe	76
Redirect Examination by Mr. Finney	88
KAY GIBBONS	
Direct Examination by Mr. Finney	91
MOTION	
Remarks by Mr. Knobeloch	99
CORPORAL CREIGHTON CHEEK	
Direct Examination by Mr. Finney	105
CECIL EADDY	
Direct Examination by Mr. Corbett	112
WALTER BUSH	
Direct Examination by Mr. Corbett	119

## INDEX TO PROCEEDINGS (con't)

	PAGE
RICKY RICHARDS	
Direct Examination by Mr. Finney	122
Cross-Examination by Mr. Devoe	134
LIN HAMM	
Direct Examination by Mr. Finney	137
Cross-Examination by Mr. Devoe	152
MARIE HODGE	
Direct Examination by Mr. Corbett	158
Cross-Examination by Mr. Devoe	174
BARBARA PROCTER	
Direct Examination by Mr. Corbett	180
CERTIFICATE OF THE COURT REPORTER	187

## INDEX TO EXHIBITS

[Exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

COURT

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Warrant on Df	7 / 7
2	Warrant on Df	7 / 7

STATE

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Photo	32
2	Photo	32
3-H	Photo	55
3-J	Photo	55
3-I	Photo	55
3-Q	Photo	55
3-P	Photo	55
3-E	Photo	55
17-H	Photo	53
3-K	Photo	55
9	Diagram of carport	60
3-F	Photo	62
3-R	Photo	62
3-C	Photo	62

## INDEX TO EXHIBITS (con't)

[Exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

STATE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
3-D	Photo	62
3-O	Photo	62
3-G	Photo	62
3-L	Photo	62
3-A	Photo	62
3-N	Photo	62
3-M	Photo	62
3-D	Photo	62
3-S	Photo	62
3-T	Photo	62
3-B	Photo	62
3-U	Photo	63
3-V	Photo	63
4	Bag of victim's items	65
5	Bag of victim's items	65
6	Bag of victim's items	65
7	Handkerchief	65
8	Pocketknife	65
11	Wallet	65
15	Check	65

## INDEX TO EXHIBITS (con't)

[Exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

STATE

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
17-A	Sketch	127
17-G	Photo	127
17-J	Photo	128
17-I	Photo	128
17-F	Custody form	130
10-A	Black tape	145 / 145
17-E	Fingerprint card	146
17-K	Fingerprint card	168 / 170
17-B	Report	I.D.
17-C	Report	171
22	Buccal swab - Pearson	183

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 PROCEEDINGS

2 THE COURT: Thank you. Be seated. Anything else  
3 on count four of the indictment that anybody would like  
4 to bring to my attention on the Grand Larceny?

5 MR. FINNEY: Nothing from the State, Your Honor.

6 THE COURT: Do you have a copy of the warrant ---

7 MR. FINNEY: --- I do, Your Honor ---

8 THE COURT: --- that was served on the defendant?  
9 And if you would place that in the record as a court's  
10 exhibit.

11 MR. FINNEY: There are two warrants; one against  
12 each defendant. Would you like both in?

13 THE COURT: Bring them in.

14 [Whereupon, court's exhibit number 1 is marked by  
15 the court reporter]

16 [Whereupon, court's exhibit number 1 is entered into  
17 evidence by the court]

18 [Whereupon, court's exhibit number 2 is marked by  
19 the court reporter]

20 [Whereupon, court's exhibit number 2 is entered into  
21 evidence by the court]

22 THE COURT: Anything from the defense?

23 MS. KNOBELOCH: No, sir.

24 THE COURT: Based on the criteria set out in the  
25 State v -- Supreme Court. I find that the indictment

1 does place the defendants on sufficient notice of the  
2 particular offense. And it does not change the nature of  
3 the crimes. I also notice from the arrest warrant that  
4 arrest warrants were issued for Grand Larceny.

5 In the arrest warrant it talks about the theft of  
6 the vehicle. It says it a 1987 Chevrolet El Camino  
7 valued in excess of 5,000 dollars is what the arrest  
8 warrant says.

9 In the indictment -- amending the indictment to  
10 replace money with the vehicle I don't think changes the  
11 nature of the offense when the defendants were put on  
12 notice of the charges they had to face in the trial. And  
13 I will allow the State to amend the indictment.

14 MR. FINNEY: Thank you, Your Honor.

15 THE COURT: Anything else before I bring the jury  
16 in?

17 [No response]

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

19 [Whereupon, the jury enters the courtroom at 9:54  
20 a.m.]

21 THE COURT: Ms. Beulah, will you swear the jury in?

22 CLERK OF COURT: Ladies and gentlemen of the jury  
23 please stand and raise your right hand?

24 [Whereupon, the jury complies]

25 [Whereupon, the jury is duly sworn by the Clerk of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Court as follows: you shall well and truly try and truly  
2 -- make between the State of South Carolina and Michael  
3 Wilson Pearson and Victor McCoy Weldon who you shall have  
4 and charged on a two verdict -- according to the evidence  
5 so help you God] Please say I will.

6 THE JURY: I will.

7 CLERK OF COURT: Thank you. You may be seated.

8 [Whereupon, the jury complies]

9 THE COURT: Ladies and gentlemen, we are about to  
10 get in a trial in this case. The title of the case is  
11 the State v Michael Pearson and Victor Weldon. I'm  
12 simply to comment and give you some introduction of what  
13 your job is and what you can expect...

14 These two defendants have been indicted with the  
15 crimes of Burglary in the First, Attempted Murder, Armed  
16 Robbery, Grand Larceny, Kidnapping, Possession of a  
17 Weapon during a Violent Crime.

18 In the elements of this indictment of the law I will  
19 explain to you later. But to this indictment they have  
20 entered a plea of not guilty therefore it places the  
21 burden upon the State to prove each and every element of  
22 this indictment beyond a reasonable doubt. This  
23 indictment is not evidence. It's simply a formal charge  
24 on paper to bring this case to court. Your job is to  
25 determine what the true facts are in this case. My job

1 is to instruct you on the law and determine what evidence  
2 I -- rule you can hear and to charge you with the law at  
3 the end of this case. You've got to determine what the  
4 true facts are based on the evidence in this case.

5 The evidence is going to come to you in basically  
6 three forms. The first is through sworn testimony from  
7 this witness stand. Witnesses will come up here under  
8 oath and testify. Then you may receive evidence through  
9 documents that have been introduced; photographs or  
10 whatever.

11 And the third way you may receive evidence is  
12 through stipulation of the attorneys. But that is the  
13 evidence that you decide what the true facts are in this  
14 case. The questions that the attorneys ask are not  
15 evidence. The opening statements that the attorneys make  
16 is not evidence. The closing arguments that the  
17 attorneys make are not evidence. You are to determine  
18 this case based on testimony and the evidence that is  
19 presented to you.

20 And I need you to pay close attention throughout  
21 this trial because it's very important that you get it  
22 right. If I make a mistake in the law at some other time  
23 or some other place but if you make a mistake it's very  
24 hard to change that mistake. That's why you need to pay  
25 attention and determine what the true facts are. Now I'm

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 not allowed to have an opinion about the facts in the  
2 case. So if I say anything or do anything during the  
3 trial that you may think I have an opinion you're to  
4 disregard that.

5 You are the judge the facts. On the same hand I'm  
6 the judge of the law so when I charge you on the law you  
7 must accept that law as I give it you whether you agree  
8 with it or not and apply the facts that you think are  
9 true and come back with a verdict that speaks the truth.

10 Now throughout this trial when we take a break or I  
11 send you back to the jury room I'm going to tell you you  
12 can't discuss this case. You can't even talk about it  
13 among yourselves. And you're going to wonder why I  
14 can't. Now we've heard from this witness or that  
15 witness; why can't we go back there and at least discuss  
16 what we've heard so far.

17 And the reason you can't is if you go back there and  
18 start talking about the case earlier then in the end of  
19 the case you're going to want to defend that opinion you  
20 had early on. Or you may try to guess where this case is  
21 headed or you may have an opinion about where this case  
22 is going. And you're going to express that opinion to  
23 your fellow juror. And at the end of the case you are  
24 going to defend that opinion you had early on. I don't  
25 want you to start forming an opinion until you've heard

1 all the evidence. You've heard all the evidence as well  
2 as the law and then and only then will it be proper for  
3 you to talk about it. So throughout this trial I need  
4 you to listen. I need you to have an open mind and  
5 follow my instructions and don't discuss this case until  
6 I give it to you for your deliberation.

7 Now, I am going to try to stop every hour or hour  
8 and 15 minutes for a break. And if -- I try not to stop  
9 in the middle of a witnesses testimony if at all  
10 possible. But at any time before then you need a break I  
11 need you to raise your hand because I need you to pay  
12 attention. And if you're uncomfortable you can't pay  
13 attention. So if you have an issue that you are  
14 uncomfortable just raise your hand and we'll stop right  
15 then and take a few minute break and come back to the  
16 testimony. And so -- because I need you to pay  
17 attention.

18 Now the attorneys are going to make opening  
19 statements to you. And as I told you that is not  
20 evidence. That is simply the attorneys getting up and to  
21 give you some type of roadmap where they think what this  
22 case is about and where they think the evidence is going  
23 to take you. The State has the burden of proving and  
24 they go first. The defense goes second. But they don't  
25 have to do anything; they don't have to make an opening

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 statement. The State has the burden of proving this  
2 case. But most of the time they do. At the end of the  
3 case they are going to make a closing argument to you.  
4 And they will argue to you as to what they think the  
5 evidence shows.

6 And I'll remind you that is not evidence either but  
7 listen to the opening statements of the attorneys and  
8 whether -- closing arguments and I will charge you with  
9 the law and give you this case to decide. If you are  
10 okay -- they are going to make their opening statements  
11 and then we will begin the testimony in this case. Thank  
12 you. Mr. Solicitor?

13 MR. FINNEY: May it please the court, Your Honor.

14 THE COURT: Yes, sir.

15 OPENING STATEMENT BY MR. FINNEY

16 MR. FINNEY: Good morning. Good morning ladies and  
17 gentlemen. My name is Ernest Adolphus [phonetic] Finney,  
18 III. With a name like that I'm very glad they gave me a  
19 nickname. They call me Chip. And I have been practicing  
20 law in this State for about 32 years.

21 As a matter of fact this month is my anniversary  
22 because we got sworn in in May. I am very pleased to be  
23 able to come before you this morning not only as a lawyer  
24 who has been practicing in the community for a long time  
25 but as your new Solicitor. I was elected and sworn in in

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 January of 2011 and I have been working very diligently  
2 to learn the job, surround myself with good people on  
3 staff and get ready to prosecute cases and present cases  
4 in the four courthouses that I've been elected to serve  
5 on; Clarendon, Sumter, Williamsburg, and Lee Counties are  
6 my four districts.

7 This morning I also have the pleasure of being with  
8 a good team. As I've told you nobody can do these things  
9 alone. We have to have team effort in the Solicitor's  
10 office to evaluate the cases, investigate the cases, and  
11 present the cases in court.

12 Part of the team this morning is Investigator  
13 Kenneth Clark. He, like myself has not been an  
14 investigator very long. As a matter of fact in 2010 when  
15 this case came about he had been an investigator about  
16 six months. He had been in law enforcement for a long  
17 time before that but had been promoted up to the  
18 investigation division.

19 Also assisting me is Jason Corbett. Jason is a  
20 resident of Summerton and has worked in Clarendon County  
21 for a long time. He also works over in Sumter helping us  
22 get our cases ready for court so that we can present them  
23 in court. Now the reason we're here today and  
24 indictment has been returned by the Grand Jury of  
25 Clarendon County. In that indictment six charges have

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 been leveled against two men [indicates], Mr. Victor  
2 Weldon in the white shirt and Mr. Michael Pearson in the  
3 blue shirt. Those gentlemen have been charged with  
4 serious offenses.

5       The indictment lists them Burglary First, which is a  
6 breaking in of a residence. And that residence belonged  
7 to Mr. and Mrs. Gibbons. Mr. Gibbons has the white hair  
8 and his wife is sitting right next to him in the black  
9 shirt. You'll meet them in a few minutes. Their  
10 residence was broken into in the early morning hours of  
11 May 15<sup>th</sup>, 2010. How ironic that on May 15<sup>th</sup>, 2012 you all  
12 were impaneled to listen to the evidence and decide this  
13 matter.

14       For two years they have been getting ready to come  
15 to court just as these gentlemen over here have had two  
16 years to get ready to come to court. And now we are  
17 ready. The evidence has been collected.

18       The investigation has been put together, the  
19 statements have been taken; and you will hear the  
20 evidence that we think points to the reasonable and  
21 inescapable conclusion that those two gentlemen maybe  
22 acting along with others broke into that house that  
23 morning, that Saturday morning in May, beat up and robbed  
24 Mr. Gibbons in his garage while he was getting ready to  
25 put his shoes on to go to work. They stole his El Camino

1 automobile after they beat him up and laid him out on the  
2 garage floor, took money from him, used a weapon to rob  
3 him and they committed this crime against what we call  
4 the peace and dignity of South Carolina.

5 The evidence in this case is going to be basically  
6 as the Judge told you, testimony. But you're going to  
7 see some direct evidence. You're going to see evidence  
8 of laboratory results that were taken when the  
9 investigators went and processed the crime scene.

10 Unfortunately ladies and gentlemen criminals in our  
11 society do not leave calling cards. Unfortunately we did  
12 not have video tape in that garage that morning.  
13 Unfortunately, you are going to see that there are some  
14 things that we would like to be able to show you that we  
15 don't have. But what we do show you, what we do have is  
16 fingerprint evidence and D-N-A evidence that link these  
17 two gentlemen to this crime.

18 Now you're going to hear from Mr. Gibbons in a  
19 minute that three black males jumped him in his garage  
20 that morning beat him up and robbed him. There are only  
21 two people here in court today. That is because the  
22 Solicitors and the Sheriff's Department and the other  
23 investigators have done their best, done their best to  
24 locate and charge and bring to court the men responsible  
25 for this act. The evidence that we have only points to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 two. We do not have the third person today. And in  
2 fact there may be another person. But what we're going  
3 to tell you and what we're going to show you over the  
4 next two days should lead you to believe that Mr. Gibbons  
5 is correct. Three men broke in on him, three men robbed  
6 him, three men got away. Two men left evidence and we're  
7 going to prosecute them to the fullest extent of the law  
8 in this jury trial.

9 Now the Judge has told you that you have a job to  
10 keep your mind open and listen to the evidence. That's  
11 absolutely what I want you to do. I also want you to  
12 remember that we don't expect you to be lawyers. We  
13 don't expect you to be police investigators, and we don't  
14 expect you to be judges. We expect you to use your  
15 common sense.

16 And we selected you yesterday because we know you  
17 have the common sense that it would take to bring home a  
18 verdict at the end of this matter that will speak the  
19 truth. Use your common sense. Don't let people try to  
20 take you to side issues or look at the ceiling when the  
21 case is right here on the floor.

22 We're going to focus on the evidence that we have.  
23 We're going to focus on the investigation and at the  
24 conclusion of this trial we believe you will see clearly  
25 that the evidence points to the guilt of these two

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 gentlemen. Thank you very much for being willing to  
2 serve. Thank you very much for giving us your time and  
3 your talent and we'll start very shortly. Thank you.

4 MS. KNOBELOCH: May it please the court?

5 THE COURT: Yes, ma'am.

6 OPENING STATEMENT BY MS. KNOBELOCH

7 MS. KNOBELOCH: Ladies and gentlemen, my name is  
8 Laura Knobeloch and I along with my husband John  
9 Knobeloch are here today from Mount Pleasant to represent  
10 our client Victor Weldon. Would you please stand up  
11 Victor?

12 [Whereupon, Mr. Weldon stands]

13 MS. KNOBELOCH: I'm actually from Florence, South  
14 Carolina. I've been practicing since 1993 in most  
15 counties in the State. And after being in Charleston  
16 County for a long, long time it's really a great pleasure  
17 to be back in front of a jury in front of a nice small  
18 town. Everyone in Manning has been so incredibly nice.  
19 I mean the courthouse staff, the restaurants I've eaten  
20 at, the gas stations; everyone is so nice and so helpful.

21 And I think you're going to see that in this case.  
22 You're going to see in this case, which is just  
23 remarkable to me multiple citizens came forward  
24 immediately after this crime with information to give to  
25 law enforcement. You know ignoring that perhaps there

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 might be threat to themselves or retaliation multiple  
2 citizens, multiple citizens from Manning came forward  
3 you'll hear in testimony to the police to give  
4 information that they had. Please look for that and  
5 listen for that.

6 Also I think that you're -- I think the evidence is  
7 going to show as the Solicitor suggested some reference  
8 to D-N-A evidence and fingerprints. And here it's really  
9 important to make sure -- I want to talk to you about  
10 keeping these cases separate.

11 We have my client Victor Weldon and there is a  
12 separate defendant, Mr. Pearson, with a separate lawyer.  
13 Please, please do not make the mistake of jumbling all  
14 the evidence against both of them. If there is D-N-A  
15 evidence that you hear it will concern Mr. Weldon, my  
16 client, not Mr. Pearson.

17 If you hear about fingerprint evidence today it does  
18 not concern my client, Mr. Weldon. It will be involving  
19 Mr. Pearson, the co-defendant. Whether or not these two  
20 gentlemen even know each other at all, have met in the  
21 past, it doesn't matter; these are separate gentlemen,  
22 separate cases.

23 So please I ask that you keep that in mind as you  
24 hear this evidence so at the end you won't be oh, they've  
25 D-N-A and fingerprints. No, it's separate and you must

1 consider them separate. Ladies and gentlemen speaking  
2 specifically of D-N-A you know D-N-A is really kind of  
3 tricky and there is a lot of misconception out there  
4 about it.

5 And until you've heard an expert on D-N-A actually  
6 explain it to you most people don't really understand  
7 what it can and cannot do. And if there is D-N-A  
8 evidence presented today it will be through an expert.

9 So it will be pretty interesting if you haven't  
10 heard an expert talk about D-N-A before I think you'll  
11 find it very interesting. Please pay attention to what  
12 it can and cannot do. T.V. and even the news people not  
13 intentionally but I think they've all kind of left the  
14 impression that D-N-A is a magic bullet; that's it, D-N-A  
15 case over.

16 Well, we wouldn't need you all here. We wouldn't  
17 all be here if that were the case. So I think you'll  
18 find it interesting but please pay attention about the D-  
19 N-A and what the experts say it can and cannot do.

20 Ladies and gentlemen, basically -- I'm not going to  
21 keep you much longer because I know I -- we're tired too  
22 coming from Mount Pleasant and we've really enjoyed our  
23 stay so far and I hope that you'll find this case  
24 interesting. We're here obviously because both of these  
25 men claim they were not involved in this. I'm not going

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 to stand here and tell you at all that this didn't  
2 happen. I'm not going to say that at all. It's a  
3 horrible thing that happened to this man. But we're here  
4 to say that Mr. Weldon had nothing to do with it and I  
5 think the evidence will bear that out.

6 Sunday was Mother's Day and I was telling the Judge  
7 earlier that my little girl who is six had made me this  
8 little homemade necklace, and she was so proud of her  
9 school and I've had it with me every day; and today I  
10 left it at the house. And I want that thing so bad to  
11 hold right now. She said Mommy, please take this with  
12 you when you're out of town and think about me and how  
13 much I'm going to miss you and how much I love you.

14 And you know when you hear about -- and this is a  
15 pretty violent crime that you're going to hear about.  
16 And you hear about things that after you have children it  
17 kind of changes how you think about things. Instead of  
18 thinking that sounds awful, you think I can't imagine  
19 anything worse if that happened to my child.

20 And I can't imagine anything worse than something  
21 like this happening to my child except perhaps being  
22 convicted when she didn't do it. The jury selection  
23 process -- I feel so horrible about jury selections  
24 because I know that people get real nervous and you maybe  
25 think there is something wrong with them if the lawyers

1 say strike that juror, it's nothing like that what we're  
2 doing. I tell you what I'm looking for when we do the  
3 jury selection is just someone who basically is not  
4 afraid to look at the defense table who has -- I'm  
5 looking for some people who are going to be fair to both  
6 sides; people I think might have an open mind.

7 And like the Judge said listen to all of the  
8 evidence and not form a conclusion, not make your  
9 decision until you've heard everything.

10 Right now Mr. Weldon is innocent. He is an innocent  
11 man. Yes, he has been charged with a crime, several  
12 crimes, but right now he is innocent. He doesn't have to  
13 do a single thing to prove that innocence. The State has  
14 to prove beyond a reasonable doubt and that's a pretty  
15 big burden for you to find him guilty.

16 And there is a reason that burden is so high.  
17 Unlike at other court's you might have been in or Family  
18 Court or at Civil Court fighting and arguing over money  
19 or whatever, in this courtroom what is at issue is a  
20 man's freedom.

21 And we hold that paramount. And that is why that  
22 burden is so high. We don't want to make mistakes here.  
23 But I know that you -- I am confident that you will all  
24 listen and pay attention and I'm confident that the State  
25 will not meet its burden; that you will not find Mr.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Weldon guilty. Thank you for your attention.

2 OPENING STATEMENT BY MR. DEVOE

3 MR. DEVOE: Good morning. My name is Harry Devoe  
4 and I live in Clarendon County although pretty quickly  
5 when you hear me talk and watch you'll understand why my  
6 voice, my accent is not from here, Clarendon County or  
7 South Carolina --

8 I was born in Providence, Rhode Island and raised  
9 there, went to college there. I went in the Navy and  
10 through the Navy met my wife and through that -- we -- to  
11 Clarendon County. So I went to law school at USC --  
12 practiced in Philadelphia for 23 years. And when it was  
13 time to retire from Philadelphia came back here.

14 And I found out that none of the lawyers in the  
15 state which you live in -- I took the Bar exam and I've  
16 been a lawyer here for 21 years. So that's -- my brief  
17 resume, my background, and my accent -- I am from  
18 Clarendon County and I'm happy to be in Clarendon County.

19 As my predecessor told you there were two different  
20 defendants. Each has different defenses. Each has  
21 different reason for defense. There was -- at the very  
22 beginning that my client has said he is not guilty. So  
23 you say why is he on trial today? To tell you he's not  
24 guilty. He doesn't have to tell you anymore than that.  
25 He doesn't have to testify to say that he is on trial

1 because he is charged with being -- not guilty. It's up  
2 to the State to prove to you beyond a reasonable doubt  
3 and I'm sure the Judge will explain to you what that  
4 means that my client is guilty or innocent as is the  
5 other co-defendant.

6 They are co-defendants because the crimes they are  
7 alleged to have committed was to the same person at the  
8 same time at the same place. But my client is in front  
9 of you because they found a stray fingerprint on a car  
10 that was stolen; the El Camino. One fingerprint. Not  
11 any D-N-A -- you'll say well -- it must be proof positive  
12 that he's guilty of what he did.

13 The question is when did the fingerprint get on that  
14 car? Fingerprints you'll find out last -- if the weather  
15 is good for quite a while. The question is going to have  
16 to be right down to it -- how did a fingerprint get on  
17 Mr. Gibbon's El Camino.

18 My client has said since the very beginning he is  
19 not involved in this. In terms of ironically that the --  
20 apparently the State concedes there are another three or  
21 maybe four people were involved in this. They think they  
22 found two. We think they found what they wanted to.  
23 You'll find out in their testimony that they were  
24 described as being 5'8 to 5'9 and our clients are much  
25 taller than that; mine happens to be 6'1. Finally they

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 were 20 years old. My client is 40. Nothing matches;  
2 nothing other than the fact that he is a black male. I  
3 don't think being a black male and a stray fingerprint,  
4 which they can't tell when was put on the car amounts to  
5 finding somebody guilty beyond a reasonable doubt.

6 This is a serious case. I know Mr. Gibbons was  
7 badly hurt. It's unfortunate what happened to him and I  
8 feel very sorry for them. I also at the same time feel  
9 sorry for my client who has been sitting in jail for two  
10 years awaiting trial; much longer than he should have  
11 waited.

12 But not all his fault. Part of it is my fault. I  
13 was sick last September and couldn't do much for the next  
14 three or four months; four or five months actually. But  
15 before that is one of the reasons the delay was not due  
16 to my client.

17 So sitting in jail for two years, particularly in  
18 the County jail versus the State Detention is not a happy  
19 place to be. He very seldom -- in the long run I believe  
20 since he's innocent I believe in his innocence that you  
21 will find him innocent on all charges.

22 I appreciate your attention. I'll say one thing  
23 about the jury selection. You saw how many jurors we had  
24 to get to a quorum. That's true what was said that  
25 sometimes you get people off the jury for really strange

1 reasons. Sometimes they don't -- some time they think  
2 they know people -- it's a lot of very strange facts --  
3 as to why you were picked or why you weren't. But you  
4 were the chosen 12. I look forward to practicing law in  
5 front of you. Thank you.

6 THE COURT: Mr. Solicitor, you may call your first  
7 witness.

8 MR. CORBETT: Your Honor, may I confer with counsel  
9 for a moment?

10 [Whereupon, Mr. Corbett confers with other counsel]

11 MR. FINNEY: We call Mr. Edward Gibbons to the  
12 stand.

13 [Whereupon, Mr. Gibbons comes forward]

14 THE COURT: If you'll come around please, sir and  
15 place your left hand on this Bible and raise your right?

16 CLERK OF COURT: Raise your right hand and place  
17 your left hand of the Bible and repeat your name, please?

18 MR. GIBBONS: Edward Guy Gibbons.

19 [Whereupon, the witness is duly sworn by the Clerk  
20 of Court as follows: do you solemnly swear the testimony  
21 you are about to give will be the truth and nothing but  
22 the truth so help you God]

23 MR. GIBBONS: It will be.

24 THE COURT: If you will come right up here and  
25 watch your step.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness takes the witness stand]

2

- - - - -

3

EDWARD GIBBONS,

4

Having been first duly sworn,

5

Was examined and testified as follows:

6

DIRECT EXAMINATION

7

BY MR. FINNEY:

8

Q. Good morning Mr. Gibbons.

9

A. Good morning.

10

Q. Your name is Edward Gibbons?

11

A. Yes, it is.

12

Q. Do you have a nickname?

13

A. Slick.

14

Q. All right, sir. And tell us what you do for a

15

living.

16

A. I own Clarendon Auto Parts in Manning --

17

Q. How long have you run that business?

18

A. About 45 years.

19

Q. All right. And are you married?

20

A. I am.

21

Q. How long you been married?

22

A. 50 years.

23

Q. All right. And you all have lived here in

24

Clarendon the whole 50 years you've been married?

25

A. We have.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Do you live -- where do you live in  
2 Clarendon County?

3 A. [REDACTED], right out of Manning, a  
4 couple of miles out of Manning.

5 Q. All right, sir. Could you give the jury a little  
6 physical description if we were leaving here today going  
7 to your house for lunch how would we get there?

8 A. You'd go down by the hospital and you'll cross the  
9 branch of Scott's -- take a left, go to the first paved  
10 road back to the left and that comes into the backside of  
11 the Country Club.

12 Then you go down to the first stop sign and take a  
13 right, second stop sign take a left, there is a -- take a  
14 left and then back to the right and that will be [REDACTED]  
15 [REDACTED] Circle.

16 Q. Now Mr. Gibbons in preparation for this case today  
17 have you been shown an aerial photograph of the area  
18 where you live?

19 A. I have, yes sir.

20 Q. And I believe it's been marked as State's Exhibit  
21 number 2.

22 [Whereupon, the witness is shown photo]

23 Q. Have you been able to look at this and see on this  
24 display where your house is located?

25 A. Yes, sir [indicates].

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. All right.
- 2 A. -- lake.
- 3 Q. You say your house is on a lake?
- 4 A. Yes. The backside of my house is on the ---
- 5 Q. --- point to the jury again where your house is
- 6 located on State's exhibit number 2.
- 7 A. This is it right here [indicates]. That's the
- 8 little small lake back there.
- 9 Q. All right. And the country club it has a golf
- 10 course?
- 11 A. Yes, it does.
- 12 Q. Can you see the golf course on that map?
- 13 A. Yes, sir. There's the golf course across the front.
- 14 Q. All right, sir. And how long have you lived in that
- 15 house?
- 16 A. I've been there 30 years.
- 17 Q. All right, sir. Did you build it or bought it?
- 18 A. Yes, sir.
- 19 Q. You built it?
- 20 A. Yes, sir.
- 21 Q. All right. Now Mr. Gibbons, this is State's
- 22 exhibit number 2.
- 23 [Whereupon, the witness is shown photo]
- 24 Q. You have neighbors in front of you and beside you?
- 25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. But you have a pond in back?
- 2 A. Yes, sir.
- 3 Q. So there is no neighbor in the back?
- 4 A. No, sir.
- 5 Q. All right. And the front of your house faces  
6 Country Club Drive?
- 7 A. It does.
- 8 Q. And the back of your house faces the pond?
- 9 A. That's right.
- 10 Q. All right. Now where is your garage on your house?
- 11 A. Looking at the front of the house it would be on the  
12 right hand side.
- 13 Q. All right, sir. And is it a single garage or double  
14 garage?
- 15 A. It's a double garage.
- 16 Q. All right. Let me show you another blow up  
17 picture. It's State's exhibit number 1.
- 18 [Whereupon, the witness is shown photo]
- 19 Q. Do you see your house on State's exhibit number 1?
- 20 A. Yes, sir. That's it right there [indicates].
- 21 Q. All right. And can you point to Country Club  
22 Drive?
- 23 A. Country Club Drive would be right in front of --  
24 right across there [indicates].
- 25 Q. All right. Country Club Drive is marked on here?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068) ...  
Volume 3 (of 5) - May 16, 2012

- 1 A. That's right.
- 2 Q. All right. And the house is facing Country Club  
3 Drive?
- 4 A. That's right.
- 5 Q. Now in the back do you see your garage doors on that  
6 picture?
- 7 A. Just barely, right there [indicates].
- 8 Q. Yes sir, right there, two garage doors?
- 9 A. Two garage doors. This is a garage that is not  
10 hooked to the house.
- 11 Q. All right. It's a separate dwelling?
- 12 A. No, it's just a separate garage.
- 13 Q. All right. And I also see -- I think there is a  
14 swimming pool on the property.
- 15 A. Swimming pool...
- 16 Q. Now you have a large backyard.
- 17 A. Yes, sir.
- 18 Q. That goes down to a dock and to the lake?
- 19 A. That's right.
- 20 Q. All right. And you say you've been there for 30  
21 years.
- 22 A. Yes, sir.
- 23 Q. Now you're still living there today?
- 24 A. Yes, sir.
- 25 Q. Two years ago when this case was made had you made

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 any changes to the house since that time or is the house  
2 still today the same way it was then?

3 A. Yes, sir.

4 Q. All right.

5 MR. FINNEY: Your Honor, we would move to admit  
6 State's 1 and 2 into evidence.

7 THE COURT: What sayeth the defense?

8 MR. KNOBELOCH: Without objection.

9 MR. DEVOE: No objection.

10 THE COURT: Okay. State's 1 and 2 are in without  
11 objection.

12 [Whereupon, State's exhibit numbers 1 and 2 are  
13 entered into evidence by the court]

14 Q. [Mr. Finney] Now Mr. Gibbons, tell us a little bit  
15 about your schedule as far as being a business man. Do  
16 you run your auto parts store six days a week?

17 A. Yes sir, I do.

18 Q. Are you closed on Sunday?

19 A. Yes, sir.

20 Q. All right. And taking you back to the events of  
21 May the 15<sup>th</sup>, 2010 do you remember what day of the week  
22 that was?

23 A. Saturday.

24 Q. What is your usual course or conduct on Saturday  
25 morning? Do you go and open the business?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Well, no I don't open it. Usually -- I got a guy,  
2 Ken Hodge is there a little before me. But I get -- I  
3 try to be there by 6:30 or 7:00.

4 Q. All right. And were you operating your normal  
5 schedule that morning as far as getting up and getting  
6 out of the house to be at work?

7 A. Yes, sir.

8 Q. All right. What time would you say you got to --  
9 got dressed and was leaving the house -- preparing to  
10 leave the house?

11 A. Probably between 6:00 and 6:30 maybe quarter after  
12 6:00 or 20 after 6:00.

13 Q. All right, sir. In your own words please sir would  
14 you tell us a little bit about what happened when you  
15 were on your way out of the house that particular morning  
16 two years ago in May.

17 A. Well, I came out of the garage. I've got steps that  
18 go around about three foot high. And when I come out I  
19 usually leave my shoes on the back and I was bend down to  
20 put my shoes on because I closed the door. I usually  
21 close the door and lock when I leave because my wife is  
22 there and usually she's not up when I leave in the  
23 morning.

24 And I locked the door and bent down to put my shoes  
25 on and as soon as I shut the door and bent down to put my

1 shoes on three guys came out of a little storage room  
2 that I got under the carport that is approximately 12  
3 feet away from the steps. My steps has got an iron rail  
4 on the back of it and the side of it you know to hold on  
5 to to walk down the steps.

6 Well, when I shut the door and bent down three guys  
7 came out of that little closet room in there and that's  
8 when they jumped me; and it's a miracle I'm still here  
9 after that.

10 Q. Mr. Gibbons, in order for the jury to see these  
11 exhibits I believe you're going to have to come off the  
12 witness stand.

13 But I'm going to need you to come down here and  
14 stand by me. And I'm going to need you to keep your  
15 voice up so that lady in the last seat back there can  
16 hear you.

17 A. Okay.

18 [Whereupon, the witness steps down from the witness  
19 stand]

20 Q. This is exhibit 3-H. This is a color photograph.  
21 Do you recognize what is shown in this color photograph?

22 [Whereupon, the witness views photo]

23 A. This is the room that -- the storage room that they  
24 came out of right there [indicates].

25 Q. All right. This is located in your garage?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir. That's -- the garage.

2 Q. Now on exhibit 3-H you actual have two photographs  
3 on one sheet of paper. Do you know what those represent  
4 there?

5 A. That's the car port door for the car port, under the  
6 car port.

7 Q. You have two garage doors on that garage?

8 A. Yes, sir.

9 Q. All right, sir. When you came out that morning were  
10 both of them down like they are in this picture?

11 A. They were, yes.

12 Q. All right. And this other picture on exhibit 3-H  
13 shows the storage room?

14 A. Yes, sir.

15 Q. And it also shows the metal rail of the steps coming  
16 down from the kitchen ---

17 A. --- that's right ---

18 Q. --- from the inside of the house?

19 A. Yes, sir.

20 Q. All right. And this is the area [indicates] that  
21 you were coming out of on that Saturday morning?

22 A. I was coming out of that door there [indicates] down  
23 those steps and you can see they are approximately three  
24 foot high from -- about three steps down to the bottom --  
25 to the concrete floor on that.

1 Q. When you came down those steps or came out into the  
2 garage that morning was there any indication that anybody  
3 was in that house in that garage; any strangers?

4 A. No, not at the time until they jumped ---

5 Q. --- All right, sir. And did you have an automobile?  
6 Was it -- this picture shows no automobile in the garage.  
7 Is that the way it was that morning or was there an  
8 automobile in the garage?

9 A. No, my wife's car was in the other part of the  
10 garage, which would be right up coming up to the steps  
11 where I came down.

12 Her car was pulled up on that side of the garage. I  
13 usually keep my other little pickup under this side, but  
14 it -- one of my grandsons had borrowed it and it wasn't  
15 there.

16 Q. All right, sir. Once you got out on the steps you  
17 were sitting in this area [indicates] on the steps. Let  
18 me see if there is a better picture of the steps area. I  
19 show you now what has been marked as State's exhibit 3-J.

20 [Whereupon, the witness is shown photo]

21 A. Yes, sir.

22 Q. Do you recognize that?

23 A. It is. That's where I came out of the back door and  
24 that's where I went to put my shoes on right there  
25 [indicates]. And of course they came from around here

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 [indicates].
- 2 Q. All right. And how many men did you say you  
3 reported in the garage?
- 4 A. Three.
- 5 Q. Did you have a description of the men in terms of  
6 what race they were?
- 7 A. Well at that particular time I didn't know. But  
8 then after they were on top of me beating me and kicking  
9 me and stuff I could tell that they were black.
- 10 Q. So there were three black men?
- 11 A. Yes.
- 12 Q. Could you tell anything about their features whether  
13 they had beards or light skin or dark skin?
- 14 A. No.
- 15 Q. Why not?
- 16 A. They had masks over ---
- 17 Q. --- all three?
- 18 A. Yes, sir.
- 19 Q. All right, sir. Now again looking at exhibit 3-J  
20 this picture shows the area. This would have been taken  
21 after the police arrived?
- 22 A. Yes, sir.
- 23 Q. Your wife's car was in this area right here  
24 [indicates]?
- 25 A. Right there [indicates]. And of course that chair

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 wasn't there. I think my wife must have bought that  
2 after she came down and she was trying to help me until  
3 the ambulance got there.

4 Q. All right, sir. Let me show you what's been marked  
5 as State's exhibit 3-I.

6 [Whereupon, the witness is shown photo]

7 Q. Can you tell us whether you see your wife's  
8 automobile in this picture?

9 A. That's just the very front of it right there  
10 [indicates]. That's the front bumper of it right there  
11 [indicates].

12 Q. And is that where the car was located when you came  
13 out that morning?

14 A. It was.

15 Q. All right. And is that normally where she parks  
16 her car?

17 A. All the time.

18 Q. What is this item on the floor here [indicates] in  
19 the middle of exhibit 3-I?

20 A. That's my wallet.

21 Q. Did you have your wallet in your pocket when you  
22 came out that morning?

23 A. I did.

24 Q. All right, sir. Were you carrying cash on you that  
25 morning?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir.
- 2 Q. How do you normally carry your cash?
- 3 A. In my pocketbook.
- 4 Q. In that wallet?
- 5 A. In that wallet.
- 6 Q. Did you have any cash in another place in your  
7 pants?
- 8 A. Well, I usually keep a little money clip like that  
9 just keep a little money clip.
- 10 Q. Did you have your money clip with you?
- 11 A. Yes, sir.
- 12 Q. About how much money would you say was in the money  
13 clip?
- 14 A. Probably 30 or 40 dollars.
- 15 Q. All right. And did you have a larger amount of  
16 money in your wallet?
- 17 A. I did.
- 18 Q. How much would you estimate that you had?
- 19 A. Probably somewhere around 800 dollars.
- 20 Q. All right, sir. Now you didn't put the wallet on  
21 the floor here [indicates]?
- 22 A. No, sir.
- 23 Q. This is where the wallet was left after you were  
24 robbed?
- 25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Now you've said to us this morning that  
2 the men came out of the storage closet.

3 A. Yes, sir.

4 Q. And once they came to where you were did they do  
5 anything to you?

6 A. Yes. When they come around they caught me by  
7 surprise I was up on the top step. Well, they grabbed  
8 me. When they throwed me down my hip hit the ground at  
9 that time and one jumped on top of me and sat across my  
10 chest and was beating me there.

11 And then one was sitting across my legs and then the  
12 bigger guy was kicking me in the side and stomping me in  
13 the chest and...

14 Q. As a result of the injuries that they -- that you  
15 sustained that day were you left on the garage floor by  
16 the gentlemen after they left?

17 A. Yes, down by the car.

18 Q. I'm showing you exhibit 3-Q at this point.

19 [Whereupon, the witness is shown photo]

20 Q. Does that look like how your garage looked after the  
21 gentlemen left?

22 A. This was the car here [indicates].

23 Q. That's your wife's car?

24 A. That's my wife's car. And that was the other wall  
25 and they had down between there. And that's where I was

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 left.

2 Q. All right, sir. You sustained injuries that caused  
3 you to bleed that amount?

4 A. Yes, sir.

5 Q. Mr. Gibbons, I'm going to ask you -- let me show you  
6 one more picture while we're here. This is exhibit 3-P.

7 [Whereupon, the witness is shown photo]

8 Q. Does this also show the side of your wife's car in  
9 that garage area?

10 A. It does.

11 Q. All right.

12 A. And that's the same location, yes sir.

13 Q. And where would the steps be in this position?

14 A. Be up there [indicates].

15 Q. At the top?

16 A. Yes, sir.

17 Q. All right. Very good. If you would take a seat  
18 back up on the witness stand.

19 [Whereupon, the witness returns to the witness  
20 stand]

21 Q. Mr. Gibbons, I put a cup of water up there if you  
22 need something to drink.

23 A. Thank you.

24 Q. Mr. Gibbons, tell the ladies and gentlemen of the  
25 jury what injuries you received?

1 A. Well, you know all my face was all beat up. They  
2 broke my nose, messed my hip up; in fact I'm still  
3 limping everyday from that hip. My left leg is shorter  
4 than my right leg...

5 Q. Now during this attack in your garage did you have a  
6 chance to fight back?

7 A. Not -- no, sir.

8 Q. All right. Did you have any information whether or  
9 not these people that were robbing you had any weapons?

10 A. Well, when they first came around a guy had -- I  
11 didn't see the gun but I -- you know he had something  
12 that could have been his finger; I'm not sure about that.  
13 But he had something in his hand but I couldn't see it;  
14 it was covered too.

15 But after they started beating me the guy that had  
16 the -- it looked like a pistol, he was on my chest. He  
17 was sitting across my chest and then he started beating  
18 me in the face and beating and beating me.

19 And the other one was sitting on my legs. And then  
20 the bigger guy he was just kicking me in the side and  
21 stomping me in the chest and the stomach.

22 Q. Mr. Gibbons, at some point did they try to restrain  
23 you on the floor? Was any type of object used to  
24 restrain you on the floor?

25 A. Yes. They tried to put tape around you know, wrap

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 it around my face.

2 Q. Yes, sir.

3 A. And put it on my feet.

4 Q. Did they get the tape around your legs?

5 A. No, sir. I kept kicking them -- I kept kick moving  
6 my legs and stuff. They never did get it wrapped around  
7 my feet so I could move. But they did get it around my  
8 face.

9 Q. I heard you tell the jury that you were on your back  
10 on the floor?

11 A. I was.

12 Q. And then so your hands were in front of you and you  
13 were able to try to resist with your hands?

14 A. Yes, somewhat. I was just trying to keep them from  
15 beating me in the face -- just had my hands over my face.

16 Q. All right. So the tape that was applied to your  
17 head was while you were down on the floor?

18 A. Yes, sir.

19 Q. All right. And as a result of this robbery did the  
20 men rob you of personal property? Did they take your  
21 personal property that day?

22 A. Yes, they did.

23 Q. How long would you say that this attack from the  
24 time you were first noticed these men in the garage until  
25 they left? How long if you have a time period?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. I don't know. I can't say exactly how long it was  
2 but it felt like forever they were beating on me and  
3 beating on me. I kept telling them not...

4 Q. Drink some water sir.

5 A. I told them to don't kill me and they didn't have to  
6 beat me in the floor.

7 Q. Were you able to hear any of these people talking to  
8 one another about what they should do to you or how they  
9 should treat you?

10 A. Well, during the beating me in the face and all one  
11 of them said are we going to shoot him. And then another  
12 one said Slick, you know that we know that you got money  
13 and where is the rest of it. I said this is all I got.

14 I said there's no use to beat me anymore for money  
15 so just shoot me because this is all I got. I said this  
16 is it that I got on me. I don't have any more. I said  
17 if I had it I'd give to you. I said I've given you all I  
18 got and please don't beat me anymore.

19 Q. Now Mr. Gibbons at this time of day on May the 15<sup>th</sup>  
20 were you home alone?

21 A. No, my wife was inside the house.

22 Q. Was she up?

23 A. No, sir.

24 Q. All right. And were you able to call out to her or  
25 call out to help?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. No, sir. She was on the other end of the house.  
2 She couldn't have heard me anyway. I didn't want them to  
3 know. I prayed to God that He not let them get in the  
4 house with my wife.

5 Q. All right, sir. After the attack was over did the  
6 men leave?

7 A. They did.

8 Q. Did they leave together?

9 A. Yes.

10 Q. All right. And where were you in position to that  
11 garage area -- the steps -- where were you when you were  
12 left by them?

13 A. On the floor.

14 Q. All right, sir. Were you bleeding?

15 A. Yes, sir.

16 Q. Were you in pain?

17 A. Yes sir, lots.

18 Q. All right, sir. You said something a minute ago  
19 about hitting your hip on the floor. Did the doctors  
20 tell you later what had happened to your hip?

21 A. Yes, sir.

22 Q. What happened?

23 A. It bruised it and cracked a bone where the hip hooks  
24 together. And he asked me if I wanted to replace the hip  
25 or try to let it heal. He said you're going to always

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 limp. But he said that's your option and I told him  
2 just try to let it heal because I knew I had to go back  
3 to work. I didn't want to be...

4 Q. All right. Now Mr. Gibbons, when the men left that  
5 day where did -- did you see them leave the garage area?

6 A. Well when they left they went out that -- not the  
7 garage door but there is an entrance door there on the  
8 side of the garage. And they went out of there.

9 And I was still conscious and I pulled up on the  
10 side of my wife's car and got up and caught that iron  
11 rail and stood up.

12 When they were leaving in my El Camino I thought  
13 that maybe they had driven a car there and I was going to  
14 try to look out that window that's in that go-cart room  
15 to see what kind of car they were driving.

16 And when I got up -- when they were leaving one of  
17 them said he's up, he's up, he's getting up and he jumped  
18 out of the back of my El Camino and run back in there and  
19 hit me with something. And then I don't know exactly how  
20 long I stayed on the ground before I got my wife to the  
21 door. I'm not sure ---

22 Q. --- I understand ---

23 A. --- what time that would have been. I don't know  
24 how much longer I was unconscious.

25 Q. Mr. Gibbons, if you don't mind I'd like for you to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 come down and show the jury a little bit more information  
2 about your house.

3 [Whereupon, the witness steps down from the witness  
4 stand]

5 Q. This is a picture that has been marked 3-E for the  
6 State's exhibit.

7 [Whereupon, the witness is show photograph]

8 A. Yes, sir.

9 Q. Is that an accurate representation of how your house  
10 looked that day?

11 A. It is.

12 Q. And is that the position of your wife's silver car  
13 in the garage where it was when the robbery occurred?

14 A. It is.

15 Q. All right. Now the garage doors when the attack  
16 occurred were they up or down?

17 A. The garage doors were down.

18 Q. Down. So not like in this picture. But this is the  
19 garage?

20 A. That's right.

21 Q. Now this door here [indicates] this side entrance  
22 door is that the door that you say you looked out?

23 A. That's the -- that's when I was standing up there  
24 [indicates] and the El Camino was parked crossways right  
25 here [indicates].

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1           And when they -- I seen them over there [indicates]  
2 getting in my car.   So you know that's when they came  
3 back in and hit me again.

4 Q.   All right.   Now the El Camino is the car that you  
5 drive, your personal car?

6 A.   Yes, sir.

7 Q.   You had it parked out here [indicates] on the  
8 driveway?

9 A.   Yes, sir.

10 Q.   And would -- can you point to where it would have  
11 been in exhibit 3-E?

12 A.   It would have been parked across this way  
13 [indicates] right behind that and kind of in front of  
14 that door and I usually just pull around that way  
15 [indicates] and get out and walk right in that door.

16 Q.   When you got out of the car Friday night to go into  
17 the house for the evening did you lock the car and take  
18 the keys?

19 A.   No, sir.

20 Q.   You usually leave the car in the driveway with the  
21 keys in it?

22 A.   Yes, sir.

23 Q.   All right.   This door right here [indicates] the  
24 entrance door, is it usually locked at night?

25 A.   No, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. So it would have been open?  
2 A. Maybe open but never closed, never locked anything.  
3 Q. All right. Now the go-cart room is the storage  
4 room inside the garage?  
5 A. Yes, sir.  
6 Q. Is it in this area [indicates] on this photograph  
7 3-E back in there?  
8 A. I see it right there [indicates].  
9 Q. Right there. So how -- is there any other way for  
10 these robbers to have gotten into your garage that night?  
11 A. No, sir.  
12 Q. Other than using this door [indicates]?  
13 A. That's right.  
14 Q. All right. And according to you can you testify  
15 how they left you after the robbery? How did they leave  
16 the garage area?  
17 A. Well...  
18 Q. Did they leave through that same door?  
19 A. You know -- yes -- yes sir, they went through this  
20 door [indicates], two of them got in the truck. The  
21 other one jumped across in the back of the El Camino.  
22 Q. Just in case some of the jurors don't know tell the  
23 ladies and gentlemen what an El Camino is.  
24 A. It's kind of a car pickup. It's low to the ground  
25 and it's like a regular car but it's got a place in the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 back you can haul some stuff; not a lot of stuff, but  
2 it's like a little car pickup really.

3 Q. And have you had that car for a long time?

4 A. Yes, sir.

5 Q. Now the El Camino what color was it?

6 A. Black.

7 Q. All right. And in the back where it's like a pickup  
8 truck were there any seats?

9 A. No, no seats.

10 Q. All right. How many seats are in the front area  
11 where the driver sits?

12 A. Just two.

13 Q. So it would be a bench seat?

14 A. Yes sir, with an armrest in the center you know for  
15 two -- two people.

16 Q. And you described two of the men getting in the El  
17 Camino?

18 A. Yes.

19 Q. And you described one man getting on the back of the  
20 El Camino?

21 A. Yes.

22 Q. All right. Now when you got up and you were  
23 pulling yourself up on the rail you say one of the men  
24 came back in the garage and hit you again?

25 A. Yes. The one that was on the back of the truck he

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 was hollering he's up, he's up. And he jumped out of the  
2 truck and come back in there and of course at that time I  
3 couldn't put up any kind of defense. I was just barely  
4 holding on and they hit me again and that's when they  
5 knocked me out.

6 Q. All right. Now this is exhibit 3-E ---

7 A. --- but just one came back in.

8 Q. Just one? The other two stayed in the car. Now let  
9 me just show you while you are standing here. This is  
10 exhibit 3-E.

11 [Whereupon, the witness is show photograph]

12 Q. This is exhibit 3-H now on the machine. Is that a  
13 view from inside the garage going out?

14 A. Yes. That's going out the door there.

15 Q. And do you see in this picture there is a Clarendon  
16 Sheriff's car in this picture?

17 A. Yes, sir.

18 Q. Is that about the area where the El Camino would  
19 have been -- your car?

20 A. My car was turned cross -- you know when I pulled  
21 around coming in the gate I just pull in this way  
22 [indicates]. The front of my car would have been over  
23 this way [indicates] and the driver's door would have  
24 been about right at that door.

25 Q. All right. Very good. Now after you got hit for

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 the second time by the one gentleman did you see him get  
2 back in the back of the El Camino?

3 A. No, sir.

4 Q. I understand.

5 A. I was on the floor.

6 Q. Did you hear the El Camino leave?

7 A. [Nods affirmatively]

8 Q. And you say you're not sure if you blacked out.  
9 You're not sure how long you were on the floor, but it  
10 took you a while to get back to your senses?

11 A. Yes, sir.

12 Q. At that point were you able to get to the door and  
13 contact your wife?

14 A. Well, I got to those iron steps and I pulled up and  
15 finally managed to get up there and I couldn't reach the  
16 door -- so I just beat on the door.

17 Q. All right, sir. And your wife came?

18 A. Yes.

19 Q. All right, sir. You can go back and sit down Mr.  
20 Gibbons.

21 [Whereupon, the witness returns to the witness  
22 stand]

23 Q. Mr. Gibbons, I want to show you what has been marked  
24 as State's exhibit 17-H. Would you take a look at that  
25 and tell us if you can identify that?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is show photograph]  
2 A. Yes. It's my El Camino.  
3 Q. What year Chevrolet is that?  
4 A. '87.  
5 Q. And have you had it for quite some time?  
6 A. Yes, sir.  
7 Q. And is that picture can you tell from where -- look  
8 at the surrounding areas. Where is that location of that  
9 El Camino?  
10 A. That's in front of my store. Cross in front of the  
11 hospital and Mill Street.  
12 Q. You said it was white. This is the condition it was  
13 in after it was recovered?  
14 A. Yes, sir.  
15 Q. All right, sir.  
16 MR. FINNEY: Any objection? We would like to  
17 publish exhibit 17-H a picture of the El Camino.  
18 THE COURT: Any objection from the defense?  
19 MR. DEVOE: No objections.  
20 THE COURT: It's admitted without objection.  
21 [Whereupon, State's exhibit number 17-H is entered  
22 into evidence by the court]  
23 Q. [Mr. Finney] So Mr. Gibbons that's a picture of  
24 your El Camino. It's a two-door Chevrolet automobile?  
25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. And it has the pickup truck back on it?
- 2 A. That's right.
- 3 Q. Now you say you've had this vehicle for a long time.  
4 Let me ask you this. When you bought the car how much  
5 did you pay for it?
- 6 A. More than 5,500 I think.
- 7 Q. And how long had you had it when this robbery took  
8 place in May of 2010?
- 9 A. Probably 12 years.
- 10 Q. All right, sir. And had you done anything to it to  
11 change it or modify it during the time you owned it?
- 12 A. Oh yes, I painted it and put the rims and tires on  
13 it, put a new motor in it and a new transmission in it.  
14 I probably spent 5,000 to 6,000 dollars.
- 15 Q. So you paid 5,500 I believe you said for it and you  
16 spent over 5,000 dollars customizing it?
- 17 A. Yes, sir.
- 18 Q. What would you say the value of it was on the day  
19 you got robbed?
- 20 A. Probably 6,500.
- 21 Q. All right. Are you in the car business?
- 22 A. Yes, sir.
- 23 Q. Do you from time to time sell cars, trade cars?
- 24 A. Oh, yes.
- 25 Q. Tell the ladies and gentlemen how many El Caminos do

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 you own?

2 A. Eight.

3 Q. You own eight of them? You bought all eight of  
4 them? Sometimes you sell them?

5 A. Yes, sir.

6 Q. All right. Is it a car that is readily available  
7 on the market? Do they still make them?

8 A. No, sir.

9 Q. What was the last year they did make them?

10 A. '87.

11 Q. And that's the model of this car?

12 A. Yes, sir.

13 MR. FINNEY: Your Honor, may it please I would like  
14 to move into evidence the exhibits that we have shown  
15 thus far during Mr. Gibbons testimony.

16 THE COURT: I'll call them out once they have been  
17 reviewed by defense counsel.

18 [Whereupon, counsel reviews the exhibits]

19 MR. FINNEY: Without objection, Your Honor. This  
20 is State's exhibits 3-H, 3-Q, 3-I, 3-K, 3-J, 3-P, and  
21 3-E.

22 THE COURT: That's without objection from counsel  
23 for the defendants. All right. They are in without  
24 objection.

25 [Whereupon, State's exhibit numbers 3-H, 3-Q, 3-I,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 3-K, 3-J, 3-P, and 3-E are entered into evidence by the  
2 court]

3 Q. [Mr. Finney] Mr. Gibbons, you said that one of the  
4 gentlemen that robbed you that morning made a statement  
5 to the other fellows that were there about a gun?

6 A. He didn't talk about the gun. He just asked are we  
7 going to shoot him.

8 Q. All right, sir. You heard that statement?

9 A. Yes, sir.

10 Q. And then later on you heard another statement by one  
11 of the gentlemen about Slick, we know you got money

12 A. Yes, sir.

13 Q. And they asked for more money?

14 A. Asked me if I had anymore or did I have any in the  
15 house and I said no.

16 Q. Mr. Gibbons, after your wife got to you and got you  
17 settled down did the police and the emergency vehicles  
18 ambulance arrive at your house?

19 A. Yes, sir.

20 Q. All right. And to your knowledge when you left  
21 your house going to the hospital were you still wearing  
22 the tape that had been placed around you?

23 A. Yes, sir.

24 Q. You didn't take it off and your wife didn't take it  
25 off?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. No, sir.
- 2 Q. Once you were taken to Clarendon Memorial Hospital  
3 were you treated there?
- 4 A. No. Then they took me by helicopter to Columbia.
- 5 Q. And once you got to Columbia by the helicopter you  
6 were put in the hospital over there?
- 7 A. Yes, sir.
- 8 Q. Were you in intensive care?
- 9 A. Yes, sir.
- 10 Q. And were you there for more than a week?
- 11 A. A week and more. When we left there and went to a  
12 Rehab in Sumter.
- 13 Q. The hospital released you in Columbia you went to  
14 the Rehab Center in Sumter?
- 15 A. Sumter, yes sir.
- 16 Q. You stayed there for how long?
- 17 A. A week.
- 18 Q. All right. And after that you had doctor's  
19 appointments and were taking medication?
- 20 A. Yes, sir.
- 21 Q. And you say you still have lingering injuries now  
22 from that attack?
- 23 A. Yes, sir.
- 24 MR. FINNEY: Beg the court's indulgence.
- 25 Q. [Mr. Finney] Just a few more questions, sir. We

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 have a sketch that's been marked as State's exhibit  
2 number 9. Can you tell us if you recognize what that  
3 diagram shows?

4 [Whereupon, the witness is shown diagram]

5 A. Yes, sir. That's the diagram of the inside of my  
6 carport.

7 Q. All right, sir. And do you recognize that it is  
8 showing the house door and the steps over in the corner  
9 on the right hand side of State's Exhibit number 9?

10 A. This is coming out of the foyer going down to the  
11 garage area.

12 Q. All right. And it's a two car garage?

13 A. Yes.

14 Q. And usually your wife's car is closest to the steps?

15 A. Yes, sir.

16 Q. All right. There is a closet door over here  
17 [indicates].

18 A. Yes, sir.

19 Q. Is it storage area?

20 A. Storage area.

21 Q. And would you tell the ladies and gentlemen of the  
22 jury where the attack on you took place on this sketch  
23 number 9?

24 A. It was between the bottom of steps [indicates] and  
25 the side of her car, which I handled when I was down kind

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 of in front of these doors [indicates] down in the floor.

2 Q. And the first time you saw or heard any noise of  
3 other people being in the garage where did you see them  
4 coming from?

5 A. The storage room right there [indicates].

6 Q. All right. At the time there was only one car in  
7 the garage? There wasn't another car in the garage at  
8 the time?

9 A. No.

10 Q. You have two garage doors?

11 A. Yes, sir.

12 Q. Both of them were down?

13 A. Yes, sir.

14 Q. And you had an exit door over here [indicates].

15 A. Yes, sir.

16 Q. Does this sketch represent very reasonably of what  
17 was going on in your garage that morning?

18 A. Exactly.

19 Q. Can you give us an estimation of how far it was from  
20 the closet door over to the steps?

21 A. Well, I'd say approximately 12 feet from the door to  
22 the steps.

23 Q. All right. And the gentlemen that came out of the  
24 closet door that morning caught you by surprise. They  
25 didn't make any noise, they didn't say anything, you

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 didn't hear them coming until they were on you?

2 A. That's right.

3 MR. FINNEY: We move State's exhibit number 9 into  
4 evidence.

5 MR. KNOBELOCH: No objection.

6 THE COURT: In without objection.

7 [Whereupon, State's exhibit number 9 is admitted  
8 into evidence by the court]

9 Q. [Mr. Finney] Mr. Gibbons, where did this attack  
10 occur?

11 A. In my home at [REDACTED].

12 Q. Is that in Clarendon County?

13 A. Yes, sir.

14 Q. All right. Based on the time that you got up that  
15 morning, that Saturday morning, was it dark when you got  
16 up that morning?

17 A. No, sir. Not completely dark. This time of year  
18 around 6:30 is pretty much daylight.

19 Q. All right. And do you know whether or not there  
20 were -- do you have any idea if these people entered your  
21 garage at night?

22 A. I'm not sure. I don't have any reason to know that.  
23 But I know they were there when I got there.

24 Q. They were already there when you came out the house?

25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. And you hadn't heard anything, any disturbance  
2 otherwise?

3 A. No, sir.

4 Q. All right. Did you have any occasion to believe  
5 that these people were armed at the time that they were  
6 committing this robbery?

7 A. Well, other than what I saw when they first come out  
8 -- when I first looked around -- when I heard them coming  
9 I looked around and something looked like a pistol in the  
10 fellow at first in his hand.

11 Q. And he was the first one to get to you?

12 A. Yes.

13 Q. Mr. Gibbons just so we'll have this for the jury to  
14 watch later on I would like to put these other pictures  
15 into evidence.

16 And I'll need you to come down and identify these  
17 pictures as we go through them so we can put them into  
18 evidence.

19 [Whereupon, the witness steps down from the witness  
20 stand]

21 THE COURT: Let him identify them before you  
22 publish them.

23 Q. [Mr. Finney] All right. Would you look at these  
24 photographs and tell me do they represent the garage area  
25 of your house as it was on May the 15<sup>th</sup> 2010.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is reviews photos]

2 A. All of them do.

3 Q. All right.

4 MR. FINNEY: We would move these color photographs  
5 in.

6 THE COURT: Give the exhibit number.

7 MR. FINNEY: Exhibits 3-F, 3-R, 3-C, 3-D, 3-O, 3-G,  
8 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B.

9 I have 3-B as in boy, and then 3-S, and then 3-T,  
10 and then 3-V as in Victor.

11 THE COURT: What sayeth the defense?

12 MR. DEVOE: I have no objections.

13 MR. KNOBELOCH: No objection.

14 THE COURT: All right. They are all in without  
15 objection.

16 [Whereupon, State's exhibit numbers 3-F, 3-R, 3-C,  
17 3-D, 3-O, 3-G, 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B  
18 are admitted into evidence by the court]

19 Q. [Mr. Finney] Mr. Gibbons, if you would get back on  
20 the stand I'm going to ask you to answer any questions.

21 [Whereupon, the witness returns to the witness  
22 stand]

23 Q. [Mr. Finney] Answer any questions defense may have.

24 MR. CORBETT: Your Honor, may we approach just  
25 briefly?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, an off the record bench conference is  
2 held]

3 THE COURT: Ladies and gentlemen, we are going to  
4 take our morning break. I'm going to send you to the  
5 jury room and I'll get you back out in about 10 or 15  
6 minutes. Please do not discuss this case.

7 [Whereupon, the jury exits the courtroom at 11:05  
8 a.m.]

9 THE COURT: All right. We're going to take a five  
10 minute break and when you come back we'll put whatever on  
11 the record you want to talk about. And I'll remind you,  
12 you can't discuss your testimony Mr. Gibbons since you're  
13 still on the stand.

14 [Whereupon, the court takes a brief recess]

15 THE COURT: Is the defense ready?

16 MR. KNOBELOCH: We're ready, Your Honor.

17 MR. FINNEY: Your Honor, just so we can do it while  
18 the jury is out we have several other items of evidence  
19 we intend to put in through Mr. Gibbons.

20 We also have a photograph of Mr. Gibbons at the  
21 emergency room. It is going to be 3-V as in victory.  
22 Prior to this I misidentified one of the photographs as  
23 3-V and it's actually 3-U.

24 And that has now -- so what you have on your -- we  
25 called it 3-V but it was actually 3-U. Now this one is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 going to be 3-V and we're going to ask Ms. Gibbons to  
2 move that in. We've shown it to defense counsel. They  
3 don't have any objection.

4 THE COURT: If they don't have any objection then.

5 MR. FINNEY: Mr. Gibbons is not going to recognize  
6 how he looked at the hospital because he is the subject  
7 in the picture so we're moving it in through the wife.

8 THE COURT: So...

9 MR. FINNEY: We have a ---

10 THE COURT: --- the exhibits you want to put into  
11 evidence are there any objection from the defense?

12 MR. KNOBELOCH: Is it clothing...

13 MR. FINNEY: Clothing, eyeglasses; things like  
14 that.

15 MR. KNOBELOCH: There won't be any objection.

16 MR. DEVOE: No objection, Your Honor.

17 MR. FINNEY: We're ready, Your Honor.

18 THE COURT: Understanding if they're not objecting  
19 you can just move it into evidence without objection.  
20 And if you want to ask him about it instead of going  
21 through each set and identifying them and putting them in  
22 you can skip that and just ask him what it is or you  
23 don't have to you know describe -- if there are no  
24 objections you don't have to actually go through the  
25 stuff of getting it in. Put it in without objection

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 then any piece of evidence you want to ask him about I'll  
2 show you State's exhibit whatever is into evidence ---

3 MR. FINNEY: --- well we have ---

4 THE COURT: --- this piece of evidence ---

5 MR. FINNEY: --- we have State's exhibit 4, State's  
6 exhibit 5, State's exhibit 6, State's exhibit 7, State's  
7 exhibit 8, State's exhibit 11, and State's exhibit 15  
8 that we are now moving into evidence, which are clothing  
9 items and personal items belonging to Mr. Gibbons that  
10 were found that day at the garage.

11 THE COURT: All right. And that's in without  
12 objection is that correct?

13 MR. DEVOE: That's correct.

14 MR. KNOBELOCH: That's correct.

15 THE COURT: All right. They are in evidence.

16 [Whereupon, State's exhibit numbers 4, 5, 6, 7, 8,  
17 11, 15 are admitted into evidence by the court]

18 MR. FINNEY: All right, sir. We're ready.

19 THE COURT: So we are ready for the jury?

20 MR. FINNEY: Yes, sir.

21 THE COURT: The defense ready for the jury?

22 MR. KNOBELOCH: Yes, Your Honor.

23 MR. DEVOE: Yes.

24 THE COURT: All right. The jury is ready. Bring  
25 them in.

1 [Whereupon the jury re-enters the courtroom at 11:51  
2 a.m.]

3 MR. FINNEY: If it pleases the court Your Honor, we  
4 recall Mr. Gibbons to ask him a few more questions  
5 regarding evidence.

6 EDWARD GIBBONS,  
7 Having been previously duly sworn,  
8 Testified as follows:

9 CONTINUED DIRECT EXAMINATION

10 BY MR. FINNEY:

11 Q. Mr. Gibbons, that afternoon -- that morning when you  
12 were put in the ambulance were you wearing the clothes  
13 you were going to wear to work?

14 A. Yes, sir.

15 Q. And do you remember what you had on that morning?

16 A. I'm not sure ---

17 Q. --- I'm going to show you what's been marked as  
18 State's exhibit number 4.

19 [Whereupon, the witness is shown exhibit]

20 Q. And do you recognize these men's pants?

21 A. Yes sir, they got my name on them.

22 Q. All right. On the laundry tag?

23 A. Yes, sir.

24 Q. S.G?

25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. And those are you khaki pants that you  
2 would have had on that morning?

3 A. Yes, sir.

4 Q. Now the pants seem to have been cut up. Were they  
5 cut up by the emergency technicians when you were taken  
6 into the ambulance?

7 A. Yes, sir.

8 Q. All right. You didn't take them off yourself?

9 A. No, sir.

10 Q. All right. And also in State's exhibit number 4  
11 was the shirt. You recognize this white print shirt?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, sir.

14 Q. And is that the shirt that you had on when you were  
15 attacked that morning?

16 A. It is.

17 Q. It's also been cut up because of the emergency  
18 medical technicians?

19 A. Yes, sir.

20 Q. All right. I want to ask you if you would look at  
21 what is entered as State's exhibit number 5?

22 [Whereupon, the witness is shown exhibit]

23 Q. Tell us if you know what those are?

24 A. Those are my shoes.

25 Q. These are the shoes that you were trying to put on

- 1 that morning on the steps?
- 2 A. Yes, sir.
- 3 Q. All right. And the shoes were taken into evidence.
- 4 Did you have the shoes on when you went to the hospital?
- 5 A. I'm not real sure.
- 6 Q. All right. Very good. Also in State's exhibit
- 7 number 5 is a men's one sock?
- 8 A. Yes, sir.
- 9 Q. That look like yours?
- 10 A. Yes, sir.
- 11 Q. And what about this exhibit here.
- 12 [Whereupon, the witness is shown exhibit]
- 13 Q. Can you identify that for the jury?
- 14 A. Yes, sir. Those are my -- were my glasses.
- 15 Q. These are the eyeglasses you had on at the time?
- 16 A. Yes, sir.
- 17 Q. And also in State's exhibit number 5 was a United
- 18 States quarter and two ink pens?
- 19 A. Yes, sir.
- 20 Q. Do they look like yours?
- 21 A. Yes, sir.
- 22 Q. Did you wear glasses back during that time regular?
- 23 A. Yes sir, all the time.
- 24 Q. All right. Now I want to let you look at State's
- 25 exhibit number 6.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is shown exhibit]

2 Q. Tell the jury if you can identify these two items  
3 that are in that bag?

4 A. Yes, sir. That's my old ---

5 Q. --- speak up a little bit, sir.

6 A. I said yes, this is the tape measure I usually tote  
7 in the pocket...

8 Q. You had a handkerchief in your pocket as well?

9 A. Yes, sir.

10 Q. All right. State's exhibit number 7 can you tell  
11 the jury whether or not you can identify this item?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes. That's a handkerchief of mine that I had in my  
14 pocket.

15 Q. All right. State's exhibit number 8?

16 [Whereupon, the witness is shown exhibit]

17 A. Yes, sir. That's a -- knife that I usually tote it  
18 in my pocket.

19 Q. Was it in your pocket that morning?

20 A. It was.

21 Q. All right. State's exhibit number 11 I'd ask you  
22 to look at this item and tell the ladies and gentlemen  
23 whether you can identify this?

24 [Whereupon, the witness is shown exhibit]

25 A. Yes, sir. That's my wallet that I had that morning.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Now this wallet as it appears today is  
2 empty. Did you receive the content of the wallet back  
3 from the police later on?

4 A. I did.

5 Q. And the wallet was taken into evidence?

6 A. Yes, sir.

7 Q. This is the wallet that you had that morning?

8 A. It is.

9 Q. Now inside that wallet did you have any -- you  
10 testified you had money.

11 A. Yes, sir.

12 Q. Did you have anything else of value in the wallet?

13 A. No, just credit cards and driving license and stuff  
14 like that.

15 Q. Do you remember there being any personal checks in  
16 the wallet?

17 A. They would have -- you talking about...

18 Q. Checks made out to you?

19 A. Yes, sir.

20 Q. All right. I want to show you what has been marked  
21 as State's exhibit number 15 and ask if you can identify  
22 this?

23 [Whereupon, witness is shown exhibit]

24 A. Yes, sir. That's one...

25 Q. Is that a check made out to you?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir.
- 2 Q. One of your customers gave you that check?
- 3 A. Exactly.
- 4 Q. It was in your wallet?
- 5 A. Yes, sir.
- 6 Q. All right. And is that the same check Mr. Gibbons  
7 that is identified in the color photograph of the items  
8 on your garage floor exhibit number 3-N as in Nancy? Do  
9 you see that check in that photograph?
- 10 [Whereupon, the witness is shown photo]
- 11 A. Yes, sir. That's it right there [indicates].
- 12 Q. And is it on the garage floor.
- 13 A. Yes, it is.
- 14 Q. All right. Referring back to exhibit number 6 I  
15 showed you a minute ago that exhibit number 6 had a  
16 handkerchief in it and you identified the handkerchief?
- 17 A. Yes, sir.
- 18 Q. You also identified...
- 19 A. The tape.
- 20 Q. The tape measure?
- 21 A. Yes, sir.
- 22 Q. In the bottom of the bag there was also one more  
23 item. Do you know what that is?
- 24 A. That's part of my glasses.
- 25 Q. All right. Is that part of the lens that came out

1 of the glasses?

2 A. Yes ---

3 Q. --- that were in exhibit number 5?

4 A. Yes, sir.

5 Q. This is the matching other lens that comes out of  
6 those set of glasses?

7 A. Yes, sir.

8 Q. And you didn't do any of the collection on these  
9 items is that correct? You were on your way to Columbia  
10 to the intensive care?

11 A. Yes, sir.

12 Q. All right. But those items all belong to you that  
13 we've just gone over.

14 A. They do.

15 Q. All right. Thank you, Mr. Gibbons. Answer any  
16 questions the other side may have.

17 MR. KNOBELOCH: May it please the court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. KNOBELOCH:

21 Q. Mr. Gibbons, you may have heard in opening statement  
22 certainly you were the victim of a violent crime and  
23 we're very sorry for what you and your family have gone  
24 through. We're not denying that today.

25 But I do need to cross-examine you and ask some

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 questions about the facts of what happened that night.  
2 You -- when you -- you had testified that you looked out  
3 the side door at the front of the garage and could see  
4 your El Camino?

5 A. Yes, sir.

6 Q. Could you see it clearly?

7 A. Not the whole El Camino. It was parked right cross-  
8 ways by the door; the entrance door which is only about  
9 three foot wide. I could see a little.

10 Q. But the part that you could see you could see  
11 clearly?

12 A. Yes, sir.

13 Q. There was enough light for you to see it?

14 A. Yes, sir.

15 Q. It was daylight outside?

16 A. Yes, sir.

17 Q. And you said you saw something that may have been a  
18 pistol but you never saw a pistol, is that correct?

19 A. That's correct.

20 Q. You also testified that there was a struggle. You  
21 were fending off the three assailants. During that time  
22 they never pointed a pistol at you to get you to quit  
23 struggling against them?

24 A. I don't remember them doing that. They were just  
25 beating me and kicking me.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. But they never pointed a gun at you and said be  
2 still, quit struggling?
- 3 A. No, sir.
- 4 Q. Did your wife have jewelry?
- 5 A. She does.
- 6 Q. Is it valuable?
- 7 A. To her I'm sure. To me I don't know.
- 8 Q. Does she keep it in the house?
- 9 A. Yes, sir.
- 10 Q. Does she have silverware?
- 11 A. Yes, sir.
- 12 Q. Does she keep that in the house?
- 13 A. Yes, sir.
- 14 Q. Do you have T.V.'s in the house?
- 15 A. Yes, sir.
- 16 Q. Do you have any shotguns, rifles; anything like that  
17 in the house?
- 18 A. Not shotguns or rifles, no sir.
- 19 Q. The assailants never attempted to enter your house?
- 20 A. No, sir.
- 21 Q. They stayed in the garage?
- 22 A. Yes, sir.
- 23 Q. Did you give a statement to investigators from the  
24 Sheriff's Department?
- 25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. On the -- this incident took place on May 15. On  
2 May 17 did you tell Officer Clark that as you were at the  
3 back door of your garage suspect number 1 approached you  
4 and said give me your money. You began to struggle and  
5 then later two more suspects came from the adjacent -- I  
6 think you called it the golf cart room.

7 A. No, sir. They all came at the same time.

8 Q. Is -- do you know why Investigator Clark would have  
9 put in his notes that you said that one man approached  
10 you and said give me your money. And then after you  
11 struggled with him two more came from the...

12 A. I don't think ---

13 MR. FINNEY: --- objection to the question, Your  
14 Honor.

15 THE COURT: Okay.

16 MR. KNOBELOCH: It's a statement against interest.

17 MR. FINNEY: It's not a statement against interest,  
18 Your Honor.

19 THE COURT: I'll sustain the objection -- to the  
20 form of the question. You'll have to ask it a different  
21 way.

22 Q. [Mr. Knobloch] Did you describe the three black  
23 males to Officer Clark as being between 19 and 20 years  
24 of age and being 5'8 to 5'9 in height?

25 A. I wouldn't have any way of knowing how old they

1 were. Again, I didn't see their faces and I wouldn't  
2 have had -- I don't recall saying that but I wouldn't  
3 have had any way of knowing that by just the size of  
4 them. I wouldn't have had any way of knowing how old  
5 they were. And don't recall having said anything like  
6 that.

7 Q. Okay. Well not age, what about height? Do you  
8 recall giving that description to Officer Clark?

9 A. Yes, sir. I told him two of them were about the same  
10 size and there was one that was bigger and taller.

11 MR. KNOBELOCH: No further questions, Your Honor.

12 MR. DEVOE: May it please the court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. DEVOE:

16 Q. Good morning. You mentioned your car the El Camino  
17 being an '87 -- '68?

18 A. '87.

19 Q. '87, I'm sorry. How many miles does that car has on  
20 it?

21 A. The speedometer never worked -- maxed.

22 Q. It's maxed over it?

23 A. Many times.

24 Q. Would you say 200,000 miles would be about right?

25 A. Probably more than that.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. 300,000? How many miles have you put on it since  
2 you put a new motor in it?  
3 A. Probably 50,000.  
4 Q. You didn't get it back to zero when you put the new  
5 motor in?  
6 A. No, sir...  
7 Q. And you got the car 12 years ago?  
8 A. I'm not real sure but I've had it a long time now...  
9 Q. You put 5,000 miles a year on it; that's it?  
10 A. 5,000 miles a year? No, sir.  
11 Q. You said 50,000 miles since the new motor?  
12 A. The new motor has just been -- probably 9 months  
13 ago.  
14 Q. Oh, that's a lot of miles.  
15 A. -- motor is in it.  
16 Q. Looking at the pictures and your testimony I think  
17 you said that the garage doors were down on the garage at  
18 the time you were attacked?  
19 A. Yes, sir.  
20 Q. And that one door was open?  
21 A. The entrance door in the garage.  
22 Q. Right. And you were in the garage pretty much as I  
23 understand between the wall of the garage as you come  
24 down your stairs from the house along the left of your  
25 wife's car.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. I didn't come down the stairs. They threw me down  
2 the stairs.

3 Q. But I'm talking about later on when you were down  
4 there looking out.

5 A. Yes, sir.

6 Q. It was between the wall and your wife's car?

7 A. Yes, sir.

8 Q. And that angle it was an oblique angle across the  
9 doorway?

10 A. Yes, sir.

11 Q. And so you also testified the El Camino was parked  
12 outside that same door but at an angle to it.

13 A. Straight across from the door.

14 Q. Straight across from blocking the doors almost.

15 A. Blocking the doors yes, sir.

16 Q. Were the drivers parked with the front of the car at  
17 the door?

18 A. What I do when I come down the driveway when I'm  
19 coming home is I turn the El Camino and I stop -- the  
20 door of my El Camino partial to the door that goes in. I  
21 want the door -- walk in the door of the garage.

22 Q. Which way is the tail of the car pointing?

23 A. Back.

24 Q. Back which way?

25 A. Towards the driveway.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. The driveway circles around the house and comes up  
2 from the back.

3 A. Yes, sir.

4 Q. And you're going -- you're coming to the garage at a  
5 90 degree angle to the garage. Do you keep on going to  
6 the left a little bit?

7 A. No, it's crossways by the entrance door. You're  
8 going to have to drive your car up and get out and walk  
9 right into the door and walk around the car and just walk  
10 right into ---

11 Q. --- I can only imagine a European car with right  
12 hand drive that does that unless you get out of your car  
13 and walk around the front of the El Camino to get to the  
14 door.

15 A. Can you ask that question again?

16 Q. If you are coming down and going around to the  
17 garage and swinging around by the garage and the front of  
18 the car is at the door...

19 A. Facing toward the house the door is right at the  
20 door of the entrance. When I open the door I just step  
21 out and walk in the door ---

22 Q. --- so you're perpendicular to the house?

23 A. That's right.

24 Q. So you're not blocking any of the garage doors?

25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. You are blocking it sort of?  
2 A. Yes --  
3 Q. So you get out and go right in; no problem. And  
4 when you're inside the garage and look out the door how  
5 much of the El Camino can you see?  
6 A. You can see the door and maybe a part right behind  
7 it.  
8 Q. Just the door. I think you testified that you saw  
9 one of the three defendants jump into the back of the  
10 truck. So how did you do that exactly? How could you  
11 see it?  
12 A. When you look out the door you can see a part of the  
13 back of the El Camino.  
14 Q. You just said ---  
15 A. --- I'm at the door you can see behind the door.  
16 You're looking at the open part of the body when you look  
17 behind the door. I couldn't see the door behind me  
18 though I couldn't see the complete back of it but I could  
19 see enough to see the back of the El Camino.  
20 Q. I'm going to use this as a prop. But if you see --  
21 if you're parked at the garage door this way...  
22 A. That's the door [indicates] to get into the garage.  
23 That's the entrance door [indicates] the El Camino was  
24 parked this way [indicates] and I was over here  
25 [indicates] and looking through there you can see the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 door and part of the back of the El Camino right through  
2 that door.

3 Q. So the driveway continues over here [indicates]?

4 A. Yes, sir.

5 Q. The door -- your -- from the ground and the angle  
6 would come this way into the garage.

7 A. It's comes -- the driveway -- there is grass between  
8 the house and the driveway. The driveway comes down here  
9 [indicates] comes around and all of this [indicates] is  
10 paved back here by the basketball court right there  
11 [indicates].

12 The El Camino was pulled up right by the door. I  
13 get out the El Camino and walk in the door. The whole  
14 backyard is paved concrete.

15 Q. In this picture there is your house [indicates].  
16 This is your house.

17 A. You can see my house right here [indicates].

18 Q. This is the driveway coming down [indicates].

19 A. The driveway coming down.

20 Q. So you could swing around.

21 A. Well all of this [indicates] is concrete all the way  
22 over there [indicates].

23 Q. Except at the -- I could make a mark here  
24 [indicates] at the very top right in here [indicates].

25 A. That's correct.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. Comes out like that?

2 A. No, it doesn't come out. It goes straight cross  
3 there like that [indicates]. And the grass is on that  
4 side and you come through that gate right there  
5 [indicates] and all of this is concrete right here  
6 [indicates]. And I come through that gate right there  
7 [indicates] and swing back to the left and park behind  
8 the garage.

9 Q. And you're saying you parked here [indicates] on  
10 this angle just like that [indicates]?

11 A. Just like that. That's exactly right. And I pulled  
12 up here [indicates].

13 Q. And the door of your car...

14 A. Is right at the door when I shut --

15 Q. So you get right out.

16 A. That's right.

17 Q. And you're saying you can see part of the back at  
18 that angle you're talking about?

19 A. Yes, sir.

20 Q. I can mark this up as an exhibit so this is what  
21 we're talking about right here [indicates].

22 A. Exactly.

23 Q. But you're saying that's no grass right there  
24 [indicates]?

25 A. That's correct. Look down the side and it don't go

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 past the house; the grass stops right there [indicates]  
2 and there is a brick fence there [indicates], there's an  
3 iron gate there [indicates], a brick fence all the way  
4 across here [indicates]. I drive in here and turn and  
5 park right there [indicates] and get out of the truck and  
6 open that door.

7 Q. Do you have to back and forth to make that turn or  
8 you can do it in one angle?

9 A. No, sir. Just the one --

10 Q. And you're saying that your angle from the beyond  
11 your wife's car in the garage you can see enough of that  
12 car to see the back of the car?

13 A. You can see half of it but not all of it. You can't  
14 see ---

15 Q. --- so if somebody got in the very back of the car  
16 you couldn't see them could you?

17 A. The very back ---

18 Q. --- a truck driver -- the bed?

19 A. If they were in the very back of it?

20 Q. Yes.

21 A. I don't understand exactly what you're saying.

22 Q. If somebody got ---

23 A. --- you can't see the whole car ---

24 Q. --- in the very very back of the El Camino ---

25 A. --- but you can see the door and about half of the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 back part of it. You couldn't see the whole car, the  
2 hood you couldn't see.

3 Q. So if somebody got in the truck in the tailgate you  
4 couldn't see it could you?

5 A. The tailgate? I couldn't see the tail gate, no.

6 Q. Okay. I think you also -- or talked to  
7 Investigator Clark and Lieutenant Ham at the hospital two  
8 days after this all happened, do you remember that?

9 A. I did, yes.

10 Q. And didn't you describe to them the height and the  
11 age of these -- of the suspects?

12 A. No, sir. I told the other gentleman I wouldn't have  
13 had no way of knowing how old they were.

14 Q. What?

15 A. I said I told him I said there were two of them  
16 about the same size and one that was taller and bigger.

17 Q. So if they said quote the suspects are described as  
18 three black males between 19 and 20 of age 5'8 to 5'9 in  
19 height ---

20 MR. FINNEY: --- objection, Your Honor ---

21 A. --- I never told them ---

22 Q. --- if you're saying ---

23 THE COURT: --- y'all got to quit talking.

24 MR. DEVOE: He was saying ---

25 THE COURT: --- he objected and I sustained the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 objection. You've got to ask a different question.

2 Q. [Mr. Devoe] And how is it you could tell the  
3 difference in height of the third one to the other two?

4 A. Well, when I was down there putting on my shoes and  
5 then I saw them right before they got to me. I mean the  
6 one that was in the rear was bigger and taller and the  
7 two front ones were approximately the same size.

8 Q. So they didn't all come at once? One came and then  
9 the others came?

10 A. No, sir. They all came at one time.

11 Q. At one time?

12 A. Yes, sir.

13 Q. And you were down trying to put your shoes on?

14 A. I looked up and I seen them when they came through  
15 the door and I seen them I looked up and they were coming  
16 around that cast iron hand rail is they had to come  
17 around in front there.

18 Q. You couldn't get up and get back in the house in  
19 time?

20 A. No, sir.

21 Q. Isn't it like 20 feet from that door to the...

22 A. 15 -- 12 -- 10 or 12 feet.

23 Q. How wide is your garage?

24 A. What?

25 Q. How wide is your garage?

- 1 A. I'm not sure. It's a double car garage.
- 2 Q. And you're saying they came out of this closet door  
3 right here [indicates] right?
- 4 A. That's right. That's exactly right.
- 5 Q. And this is a scale I presume.
- 6 A. A scale, that's exactly right.
- 7 Q. All the way over to here [indicates] and you're at  
8 the top of the steps. There is an iron railing there.
- 9 A. That's right.
- 10 Q. It's four steps. You saw them and couldn't get back  
11 in the house?
- 12 A. I mean they ran out of that garage. I didn't have  
13 time to do anything. You imagine how much time it would  
14 take them running to get from that 10 feet or 12 feet. A  
15 second and a half; I couldn't do anything.
- 16 Q. -- running for the first time. It looks like to me  
17 that this is a scale and a car length is this wall  
18 [indicates] about 20 feet ---
- 19 MR. FINNEY: --- objection ---
- 20 THE COURT: --- sustained ---
- 21 A. --- you're looking at it wrong there. The car is  
22 coming this way [indicates].
- 23 Q. From this way?
- 24 A. That's right.
- 25 Q. The car is wider than --

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. I'm not sure.
- 2 Q. And you're saying this is a scale?
- 3 A. It's a scale, yes sir. It don't have no  
4 measurements on it but it's approximately 10 to 12 feet  
5 from this door [indicates] to that step.
- 6 Q. That's a big variation from 10 to 12. Is it closer  
7 to 20 ---
- 8 A. --- it's 2 feet. That's 2 feet. It's 10 or 12 not  
9 10 or 20. It's 10 or 12; that's two feet ---
- 10 Q. --- so that closet door -- if you drive a second car  
11 in, not your wife's car but the other car in, wouldn't  
12 that face that closet door?
- 13 A. It would. It that part -- there's not a car in that  
14 part.
- 15 Q. I'm just trying to figure out the difference of  
16 length and widths. And are there -- a car stop is in  
17 your garage?
- 18 A. Yes, sir.
- 19 Q. So they don't crash...
- 20 A. Right.
- 21 Q. And there is a few feet beyond that too. When the  
22 car stopper is here maybe about 5 feet beyond that before  
23 the wall is there?
- 24 A. Yes, sir.
- 25 Q. Now you had money in a money clip also?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. So they got money from you in a money clip and then  
3 also from your wallet?

4 A. Yes, sir.

5 Q. And I think you were saying that it was daylight  
6 when this all happened?

7 A. Yes, sir.

8 Q. It was around 6:30 when you were out there?

9 A. I'm going to say somewhere around 6:15. Between 6  
10 and 6:30; I'd say 6:10 or 6:15.

11 Q. Okay. I have no further questions. Thank you.

12 THE COURT: Anything further, Mr. Solicitor?

13 REDIRECT EXAMINATION

14 BY MR. FINNEY:

15 Q. Mr. Gibbons, let me just ask you a couple of  
16 questions. I'll show you State's exhibit number 17-H.  
17 That's the picture of the El Camino that you owned and  
18 was in your driveway at the time?

19 [Whereupon, the witness is shown photo]

20 A. It is, yes sir.

21 Q. Now when you were telling Mr. Devoe that you could  
22 see the driver's door of the El Camino you could also see  
23 part of the back of the El Camino?

24 A. Yes, about -- probably half of the body.

25 Q. All right. And in -- and you were standing on the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 steps of your garage.
- 2 A. Yes, sir.
- 3 Q. And from the garage inside the garage looking at  
4 State's 3-H.
- 5 A. Yes, sir.
- 6 Q. Is that about the same amount of...
- 7 A. Yes, sir.
- 8 Q. Was the El Camino parked closer to the building --  
9 to the door than that police car is in that picture?
- 10 A. No, sir. But it was parked this way [indicates].
- 11 Q. All right. Parked more closer to the house?
- 12 A. Yes, sir.
- 13 Q. And you could see the driver's door of the El  
14 Camino?
- 15 A. Driver's door and about half of the back ---
- 16 Q. --- about half of the back?
- 17 A. Yes, sir.
- 18 Q. What we call the bed of the El Camino?
- 19 A. That's right.
- 20 Q. And you did see a man get in the back of the El  
21 Camino?
- 22 A. When they left the first time.
- 23 Q. Somebody got in the back?
- 24 A. In the back, yes.
- 25 Q. Did that man get out of the El Camino?

1 A. He got out.

2 Q. And he came back and hit you again?

3 A. Yes, sir.

4 Q. And -- although after that you don't know what  
5 happened.

6 A. No.

7 Q. Would there have been room for him to get in to the  
8 main part of the car?

9 A. Not really. It's a two seater car.

10 Q. All right. Thank you, Mr. Gibbons, nothing  
11 further.

12 THE COURT: You can step down.

13 [Whereupon, the witness is excused and exits the  
14 witness stand]

15 MR. FINNEY: I have a short witness, Your Honor.

16 THE COURT: Okay.

17 MR. FINNEY: I call Ms. Kay Gibbons.

18 [Whereupon, Ms. Gibbons comes forward]

19 CLERK OF COURT: Raise your right hand and place  
20 your left hand on the Bible for me and repeat your name  
21 please?

22 MS. GIBBONS: Kay Gibbons.

23 [Whereupon, the witness is duly sworn by the Clerk  
24 of Court as follows: do you solemnly swear the testimony  
25 you are about to give will be the truth and nothing but

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 the truth so help you God]

2 MS. GIBBONS: I do.

3 [Whereupon, Ms. Gibbons takes the witness stand]

4 - - - - -

5 KAY GIBBONS,

6 Having been first duly sworn,

7 Was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FINNEY:

10 Q. Good morning.

11 A. Good morning.

12 Q. Tell us your name please?

13 A. Kay Gibbons.

14 Q. And Ms. Gibbons, you're the wife of Mr. Gibbons that  
15 just testified?

16 A. I am.

17 Q. You live at Country Club Lane in Clarendon County?

18 A. I do.

19 Q. All right. Are you employed? Do you have a  
20 career?

21 A. Yes, I do. I'm self-employed. I work with my  
22 husband at Clarendon Auto Parts.

23 Q. And what do you do there?

24 A. I'm the office manager; do a little bit of  
25 everything.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Have you worked there a long time you  
2 and your husband together?

3 A. I have; we have.

4 Q. All right. On this particular day that we are  
5 talking about back in May of 2010 did you have the  
6 occasion to be home with your husband that Saturday  
7 morning?

8 A. I was.

9 Q. Is it your practice to get up early with him on  
10 Saturday morning when he leaves for work?

11 A. No sir, it's not.

12 Q. All right. Were you out of the bed at the time he  
13 left to go to work that morning?

14 A. No, sir.

15 Q. All right. What do you remember happening that  
16 called your attention to getting out of bed that Saturday  
17 morning?

18 A. I heard the doorbell and I jumped up and went to the  
19 door and when I opened the door and saw him it didn't  
20 take long to know -- you know realize what had happened.

21 Q. Yes, ma'am. Tell the ladies and gentlemen just in  
22 your own words what you saw and how did he appear to you  
23 at that time.

24 A. Well, he was bloody. He had tape on him. He was  
25 trying to stand up and really he couldn't stand up. He

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 was holding on the wrought iron rail.

2 And when I got to him -- I was trying to get him,  
3 trying to get him down, you know settled down on the  
4 garage so I could go in and call somebody.

5 Q. All right. I want to show you what's been marked  
6 into evidence as exhibit 3-R.

7 [Whereupon, the witness is shown photo]

8 Q. Is that a picture of your car in the garage?

9 A. Yes sir, it is.

10 Q. And I believe that's a silver Mercedes?

11 A. It is.

12 Q. In that picture also was a wooden chair. Was that  
13 chair kept in the garage?

14 A. It was -- it was somewhere not there. I got it...

15 Q. You went and got the chair?

16 A. I did.

17 Q. To put Mr. Edward in?

18 A. Yes, sir.

19 Q. But it wasn't at that location when you went to bed  
20 Friday night?

21 A. No, it wasn't.

22 Q. Now you say you described Mr. Gibbons as being  
23 bloodied and having something on this head. Tell the  
24 ladies and gentlemen about that.

25 A. Well, he had tape wrapped around his head. And he

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 was -- had a lot of blood on it.

2 Q. All right. I'm going to show you what has been  
3 marked as State's exhibit 3-V as in victory. Can you  
4 tell me -- have you looked at that. Can you tell me  
5 what's in that picture?

6 [Whereupon, the witness is shown photo]

7 A. This is the -- this is a picture of how he looked.

8 Q. All right. And is the tape on him in this picture?

9 A. Yes, sir.

10 MR. FINNEY: Permission to publish the document?

11 THE COURT: Okay. Permission granted.

12 Q. [Mr. Finney] After you got Mr. Edward in the chair  
13 and got him calmed down did you do anything to remove  
14 that tape from his head?

15 A. No, sir.

16 Q. All right. Who or what did you do after that? Who  
17 did you call or what did you do?

18 A. I was real upset and I ran back in the house. I  
19 wanted my daughter and I called her.

20 Q. All right. Tell me what your daughter does?

21 A. She's a family nurse practitioner.

22 Q. Where does she practice?

23 A. At Clarendon Memorial.

24 Q. Right here in Manning. And has she been doing that  
25 kind of work a long time?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir. A long time.
- 2 Q. What is her name?
- 3 A. Geena Wilson.
- 4 Q. All right. Did you call Ms. Wilson? Did you get  
5 her on the phone?
- 6 A. I did.
- 7 Q. What did you tell her?
- 8 A. I told her what had happened. And she came and she  
9 called 911.
- 10 Q. All right. Let me be clear. During the few  
11 minutes that you were with Mr. Gibbons in the garage did  
12 he do much talking to you or telling you what had  
13 happened? Was he able to speak clearly and tell you  
14 things that had happened?
- 15 A. He tried to tell me. He tried to talk to me.
- 16 Q. Were you understanding -- were you able to  
17 understand much?
- 18 A. I could understand some that he said.
- 19 Q. All right. Now, did you have a conversation with  
20 Geena about getting help sent to the house?
- 21 A. Yes sir, I did.
- 22 Q. And as far as you know did you receive help as a  
23 result of calling Geena?
- 24 A. I did.
- 25 Q. Can you tell the ladies and gentlemen of the jury

- 1 who arrived first at the house?
- 2 A. I think the first ones to arrive was somebody with  
3 law enforcement.
- 4 Q. You don't know if that was ambulance, or sheriff or  
5 city; you're not sure?
- 6 A. No, I think law enforcement got to my house before  
7 the ambulance did.
- 8 Q. All right. And do you remember making a call to  
9 Ken, a fellow named Ken that works at the store?
- 10 A. I did.
- 11 Q. And did you call Ken to let him know what had  
12 happened also?
- 13 A. I did.
- 14 Q. All right. He was informed then?
- 15 A. Yes sir, he was.
- 16 Q. Now based on the situation in the garage from the  
17 time you found Mr. Gibbons to the time the first law  
18 enforcement officer arrived other than bringing that  
19 chair out there for him to sit in, did you touch  
20 anything, move anything, add anything, take anything away  
21 from that scene?
- 22 A. No, sir.
- 23 Q. Did you move your car?
- 24 A. No.
- 25 Q. Did you put the garage doors up?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. No.

2 Q. All right. So if we see pictures that are in  
3 evidence where the garage doors were up or the Mercedes  
4 had been moved those things would have done as a result  
5 of the police investigating and moving things?

6 A. Somebody other than me. I did not.

7 Q. Very good. Going back to that description you gave  
8 the jury about the tape being on Mr. Gibbons head to your  
9 knowledge did anybody move that tape or alter that tape  
10 or try to do anything with that tape before the ambulance  
11 people and the medical people got there?

12 A. No, sir.

13 Q. All right. Did you go to the hospital with Mr.  
14 Gibbons?

15 A. I went to the hospital. I didn't ride -- I didn't  
16 go in the ambulance.

17 Q. All right. And when you got the hospital at  
18 Clarendon Memorial you stayed with your husband until the  
19 decision was made to put him in the helicopter?

20 A. I did.

21 Q. And then you drove with some family members over to  
22 Columbia?

23 A. I did.

24 Q. And he went in the helicopter?

25 A. That's right.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. Thank you, Ms. Gibbons. Answer any questions these  
2 lawyers have.

3 MR. KNOBELOCH: No questions from the defense.

4 MR. DEVOE: No questions, Your Honor.

5 THE COURT: Okay. Thank you, ma'am. You can step  
6 down.

7 [Whereupon, the witness is excused and exits the  
8 witness stand]

9 MR. FINNEY: Thank you, Your Honor. We can take a  
10 lunch break...

11 THE COURT: Okay. Ladies and gentlemen, we will  
12 break for lunch and I'll ask you to be back at 2 o'clock.  
13 And I will remind you please do not discuss this case or  
14 allow anyone to discuss it with you.

15 If you're out eating in a restaurant and someone is  
16 sitting by you discussing you this case you -- you are on  
17 the jury and they can't talk about it in your presence.  
18 Please don't read anything, do get on the Internet. Have  
19 a nice lunch and I'll see you at 2 o'clock. When you  
20 come back if you'll come straight to the jury room.  
21 Thank you.

22 [Whereupon, the jury exits the courtroom at 12:32  
23 p.m.]

24 THE COURT: Anything before we break for lunch?  
25 Anything from either side before we break for lunch?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 MR. FINNEY: Nothing from the State.

2 MR. KNOBELOCH: I do have one motion, Your Honor.

3 THE COURT: Okay.

4 MR. KNOBELOCH: Earlier during the break we were  
5 discussing -- defense. I thought that was resolved but  
6 now that I've looked at it more closely I realized that  
7 there were three pages that I did not receive at all.  
8 And there are two pages that I received but they each had  
9 several paragraphs redacted from what I received.

10 I know that now because co-defendant -- when  
11 something came up we started comparing notes. The -- in  
12 going to that one of the redacted paragraphs mentions an  
13 informant mentioning Victor Weldon.

14 I have two years ago sent a note to Assistant  
15 Solicitor Lann [phonetic] asking if she sent the correct  
16 discovery because my client wasn't mentioned in the  
17 discovery. But now I see there is one paragraph where  
18 he's mentioned.

19 The sentence is poorly worded so it's hard for me to  
20 tell exactly what the informant is referring to. And  
21 I'll show the Solicitor the paragraph I'm talking about.  
22 But I would ask the informant be named and that a  
23 subpoena be issued so that I can interview him.

24 MR. FINNEY: Which paragraph?

25 MR. KNOBELOCH: I'll get it -- I'll find it. It's

1 one that's marked page 6 at the bottom the handwriting.

2 MR. FINNEY: Mine is not marked at all.

3 [Whereupon, Mr. Finney reviews document]

4 MR. FINNEY: My understanding is, Your Honor that  
5 the informant that is being addressed in this report is a  
6 woman named Loretta Green. Her C.V. interview, taped  
7 interview was given to the defense and the defense has  
8 subpoenaed her as a witness.

9 MR. KNOBELOCH: Judge, it is true that ---

10 MR. FINNEY: --- she's also an eyewitness to this,  
11 Your Honor.

12 MR. KNOBELOCH: It is true that we did subpoena  
13 those lists. And it's true that they did provide her --  
14 I think -- her tape. I think it was audio, not video.

15 MR. FINNEY: Right.

16 MR. KNOBELOCH: In which case -- it would be a  
17 different thing if we didn't have this pattern where it  
18 says she refers to Victor Weldon. And I don't have  
19 anything prior to this where that particular witness  
20 refers to Victor Weldon. That's why that paragraph ---

21 MR. FINNEY: --- it appears, Your Honor what  
22 happened is that in the computer at the police station  
23 Mr. Clark was adding notes contemporaneously as the  
24 investigation unfolded.

25 When the discovery was sent by Ms. Lann sometime in

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 May of 2010 or '11 the notes that the law enforcement  
2 officer had typed in June were not -- they weren't made  
3 yet. So as a result of the supplemental rule five that  
4 was sent out by our office we sent the disk of the  
5 interview of -- and we identified because that's how they  
6 knew to subpoena her -- this Ms. Green.

7 THE COURT: Is there anything else? It's your  
8 motion, counselor did they identify the C-I who was  
9 interviewing her -- and identify the C-I as Ms. Green who  
10 was on your list and is... Is there anything else y'all  
11 want me to decide?

12 MR. KNOBELOCH: Your Honor, I will attempt to get  
13 the witness here. If not, I'll ask for a subpoena --  
14 she's under subpoena but ask for assistance in getting  
15 her here since I don't have an investigator.

16 And the other issue being that it is -- its two  
17 redacted pages and then three complete pages that I don't  
18 have. So after lunch I may have -- motions to other --  
19 whatever information that I don't...

20 MR. FINNEY: Let me say that there was nothing  
21 redacted. At the time that the rule 5 was sent out only  
22 those paragraphs existed. Subsequently law enforcement  
23 went back and added additional paragraphs to their report  
24 because that's what was in their case notes file.

25 And later that copy was sent apparently -- Mr. Devoe

1 had it. That's what this -- lawyer Knobeloch is saying  
2 that he saw that Harry had but that he didn't have it.  
3 And I don't know for a fact why that happened. But if  
4 that happened it's nothing redacted. It was just that  
5 Mr. Knobeloch got the original document before the  
6 additional paragraphs were added. Supplemental discovery  
7 was sent, but instead of sending out the full new report  
8 we apparently sent the statements, the interviews, the  
9 C.D. tapes that we had in our possession that have not  
10 been previously sent.

11 And so Mr. Knobeloch and Mr. Devoe have the  
12 information that is in the report, while they may not  
13 both have received the full report.

14 MR. DEVOE: Not the record. I got the supplemental  
15 so I called -- on Thursday when going through  
16 Investigator Clark's key notes -- copies didn't seem to  
17 be as thick as his and two of the reports they would  
18 flesh it out.

19 That was when I also received the second 3 C.D.'s --  
20 for my client about the same time. I think it was  
21 misfiled in the Solicitor's office. They had two  
22 Solicitor's copies and wound up with two -- Michael  
23 Pearson's discovery.

24 THE COURT: Okay.

25 MR. KNOBELOCH: Very -- does it say using the word

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 redacted I don't mean to imply anything that the  
2 Solicitor did maliciously. Obviously he's under  
3 continuing to do it under rule 5, provided I didn't  
4 receive it. And also just to point out -- that I  
5 mentioned that a confidential informant because that  
6 paragraph had mentioned my client. That is not the only  
7 new information it just gives an examples -- I received  
8 this today. I didn't have anything regarding the car  
9 other than the arrest warrant but there was no  
10 information about the car. I'll look at it over lunch  
11 and there may be --

12 THE COURT: All right. Then we will break for  
13 lunch. I'll be here early if y'all need to deal with  
14 anything before the jury comes in.

15 MR. FINNEY: All right. Thank you.

16 THE COURT: I'll be here at 2 o'clock. The jury  
17 won't be back until 2:30.

18 MR. KNOBELOCH: Did you say 2:30?

19 THE COURT: I'm sorry. 2'clock for the jury. I  
20 told them 2:00.

21 [Whereupon, court is in recess until 2:00 p.m.]

22 MR. KNOBELOCH: Judge, I don't plan on making a  
23 motion at this point; I may tomorrow. But at this point  
24 I just wanted to advise the court that in addition to the  
25 I think it was three pages or two pages that were

1 redacted we also just received a video interview of  
2 Latoya Benbow.

3 THE COURT: Is Ms. Benbow going to be a witness?

4 MR. FINNEY: Ms. Benbow is on the witness list. We  
5 do not intend to call her.

6 THE COURT: Okay. And you haven't looked at the  
7 video?

8 MR. KNOBELOCH: Judge, I would have to -- we found  
9 out sort of surreptitiously just a few minutes before 2  
10 o'clock and started to play it here in the courtroom but  
11 I realize it's an hour long and I just didn't have time  
12 so I didn't begin listening to it.

13 THE COURT: Okay. Anything else?

14 MR. FINNEY: No, Your Honor.

15 THE COURT: All right. We'll bring the jury in.

16 [Whereupon, the jury enters the courtroom at 2:10  
17 p.m.]

18 THE COURT: Okay. Mr. Solicitor, you may call  
19 your next witness.

20 MR. FINNEY: Thank you, Your Honor. I call  
21 Corporal K. Creighton Cheek.

22 [Whereupon, Mr. Cheek comes forward]

23 CLERK OF COURT: Raise your right hand. Repeat  
24 your name, please?

25 MR. CHEEK: Creighton Cheek.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is duly sworn by the Clerk  
2 of Court as follows: do you solemnly swear the testimony  
3 you're about to give will be the truth and nothing but  
4 the truth so help you God]

5 MR. CHEEK: I do.

6 [Whereupon, the witness takes the witness stand]

7

8 CREIGHTON CHEEK,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FINNEY:

13 Q. Corporal, please spell your last name.

14 A. C-H-E-E-K.

15 Q. All right. And you are a Corporal with the Manning  
16 Police Department?

17 A. Yes, sir.

18 Q. How long have you been employed in that position?

19 A. With Manning for six months now.

20 Q. All right. And prior to being with Manning where  
21 were you employed?

22 A. Clarendon County Sheriff's Office.

23 Q. All right. And how long were you a Sheriff's  
24 Deputy?

25 A. From January of '09 until December of this year.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. All right ---  
2 A. --- of last year.  
3 Q. All right. And were you assigned to any particular  
4 duties at the Clarendon County Deputy...  
5 A. Patrol.  
6 Q. Patrol officer?  
7 A. Yes, sir.  
8 Q. Did you cover a section or all of Clarendon County?  
9 A. Well, we cover sections and each day you come into  
10 work you might work a different section whenever you come  
11 in.  
12 Q. All right. Do you have a recollection of  
13 responding to a call to Country Club Drive back in May of  
14 2010?  
15 A. Yes, sir.  
16 Q. And as a result of your responding to that call were  
17 you the first officer on the scene that morning?  
18 A. There was two of us at the scene at the same time.  
19 Q. And which one of you wrote the report of the call?  
20 A. I did.  
21 Q. All right. And what does your report reflect in  
22 terms of what you got the 911 call or the dispatch call?  
23 A. Around 6:40 a.m.  
24 Q. 6:40 a.m.?  
25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. On what day?
- 2 A. It was the 15<sup>th</sup> of -- I'm not sure what the day is.
- 3 Q. The 15<sup>th</sup> of May?
- 4 A. Yes, sir.
- 5 Q. 2010?
- 6 A. - Yes, sir.
- 7 Q. All right. When you arrived at Country Club what  
8 can you tell the ladies and gentlemen of the jury you  
9 saw?
- 10 A. I just from what I can remember I saw Mr. Gibbons in  
11 the garage and he had duct tape wrapped around his head  
12 and face area.
- 13 Q. All right. Did you know Mr. Gibbons before you  
14 arrived there that day?
- 15 A. I knew of him.
- 16 Q. All right. And when you got to the garage area  
17 could you tell that it appeared to be a crime scene?
- 18 A. I mean with the tape around his head, yes sir.
- 19 Q. All right. Can you give me any other description?  
20 Did he have blood on his clothing?
- 21 A. I can't remember.
- 22 Q. All right, sir. I want to show you what's been put  
23 in as State's exhibit 3-V.
- 24 [Whereupon, the witness is shown photo]
- 25 Q. Can you look at that and tell me if that fairly

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 represents how Mr. Gibbons looked that morning when you  
2 got there?  
3 A. Yes, sir.  
4 Q. All right. And what kind of tape is that? Can you  
5 tell from what you observed what kind of tape ---  
6 A. --- it looked like duct tape.  
7 Q. A dark colored duct tape?  
8 A. Yes, sir.  
9 Q. Wrapped around his head?  
10 A. Yes, sir.  
11 Q. All right. Did you in your arriving at the scene  
12 you say you had another officer with you? Do you know  
13 who that was?  
14 A. Yes sir, Sergeant Micha Joseph.  
15 Q. All right. As far as you know is he still with the  
16 Clarendon County ---  
17 A. --- no, sir.  
18 Q. He's not with the Clarendon County Sheriff's  
19 Department. Did you all do anything in particular to  
20 give aid to Mr. Gibbons or move anything or touch  
21 anything or photograph anything?  
22 A. No, sir. E-M-S was there right behind us within  
23 just a couple of minutes.  
24 Q. All right. They were giving medical treatment?  
25 A. They did and they took him from the scene. He

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 wasn't there long while we were there.

2 A. All right. Were you able to tell, maybe using your  
3 report to refresh your memory, were there items located  
4 around the inside of the garage; wallet, glasses, tape,  
5 anything like that you recollect or remember?

6 A. No, sir.

7 Q. You've been working patrol for a while at this  
8 point?

9 A. Yes, sir.

10 Q. Was your primary responsibility to secure the scene?

11 A. Yes, sir. On a scene like that I would secure it and  
12 call investigations in.

13 Q. Now, do you request an investigator to report to the  
14 scene or does dispatch do that?

15 A. Well, we would call -- depending on the scene either  
16 we'll make the call or ask dispatch to call for us. But  
17 one way or the other they are contacted and they respond  
18 to the scene.

19 Q. All right. Let me ask you this. Does the  
20 investigator call out the crime scene photographs and  
21 fingerprint persons or do you do that?

22 A. The investigator does. The investigator is going to  
23 take some photographs...

24 Q. Now were you on the scene when the investigator  
25 arrived?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir.
- 2 Q. Who do you remember that being?
- 3 A. I don't recall who was there. There were several of  
4 them out there I believe but I don't recall which one  
5 took the case.
- 6 Q. And I know you may not remember this or not but I  
7 have a picture of a Manning Sheriff's car in one of our  
8 exhibits. I just wondered if this might be your car,  
9 State's exhibit 3-B.
- 10 [Whereupon, the witness is shown photograph]
- 11 Q. Can you look at that to refresh your memory as to  
12 whether or not that is you in that picture or are  
13 those...
- 14 A. That's me and Sergeant Dozier. It looks like there  
15 are two patrol cars. I couldn't tell you who was in  
16 which one from this view here.
- 17 Q. That is you and your ---
- 18 A. --- it looks like Sergeant Joseph and Investigator  
19 Ham. I believe that's who that is.
- 20 Q. One of the investigators is in that picture?
- 21 A. Yes, sir.
- 22 Q. All right. That was taken in the morning shortly  
23 after you arrived?
- 24 A. Yes, sir.
- 25 Q. Does your report reflect how long you were there

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 that morning?

2 A. I was there until 11:49 a.m.

3 Q. All right. And then you were released by the  
4 investigator to go back to duty?

5 A. Yes, sir.

6 Q. All right. Was anything -- as far as you know  
7 anybody or anything added or removed from that area while  
8 you were there?

9 A. No, sir.

10 Q. Thank you, Officer. I appreciate you coming.

11 THE COURT: Any questions?

12 MR. KNOBELOCH: No questions.

13 THE COURT: Mr. Devoe?

14 MR. DEVOE: No questions, Your Honor.

15 THE COURT: Thank you, sir. You can step down.

16 [Whereupon, the witness is excused and exits the  
17 witness stand]

18 THE COURT: Mr. Finney?

19 MR. FINNEY: I call Mr. Mack Eaddy.

20 MR. CORBETT: Your Honor, Officer Cheek is on duty.  
21 May he be excused?

22 THE COURT: Any objection?

23 MR. KNOBELOCH: No objection.

24 MR. DEVOE: No objection.

25 THE COURT: Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, Mr. Eaddy comes forward]

2 CLERK OF COURT: If you'll raise your right hand  
3 and place your left hand on the Bible and repeat your  
4 name, please?

5 MR. EADDY: Cecil Eaddy, Jr.

6 [Whereupon, the witness is duly sworn by the Clerk  
7 of Court as follows: do you solemnly swear the testimony  
8 you are able to give will be the truth and nothing but  
9 the truth so help you God]

10 MR. EADDY: Yes, ma'am.

11 [Whereupon, the witness takes the witness stand]

12

- - - - -

13

CECIL EADDY,

14

Having been first duly sworn,

15

Was examined and testified as follows:

16

DIRECT EXAMINATION

17

BY MR. CORBETT:

18

Q. Mr. Eaddy, good afternoon.

19

A. Good afternoon.

20

Q. Tell us your full name please?

21

A. Cecil Eaddy, Jr.

22

Q. And Mr. Eaddy do you live here in the Manning area?

23

A. Yes.

24

Q. And how long have you lived in the Manning area?

25

A. My whole life.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. So back in 2010 you were in this area?
- 2 A. Yes, sir.
- 3 Q. And what do you do here in the Manning area?
- 4 A. I farm.
- 5 Q. Okay. Is there a particular part of the county or  
6 area that you farm in?
- 7 A. The south side of Manning.
- 8 Q. The south side of Manning, okay. Are you familiar  
9 with what I would call Oak Grove Church Road?
- 10 A. Yes, sir.
- 11 Q. Okay. Do you farm in that vicinity?
- 12 A. Yes, sir.
- 13 Q. Okay. Now do you have recollection of being  
14 involved in this case, which took place on May 15<sup>th</sup> of  
15 2010?
- 16 A. Yes, sir.
- 17 Q. Okay. How did you become to be involved?
- 18 A. I found Slick's car in the road that morning when I  
19 left the house.
- 20 Q. Now, when you say Slick's car are we talking about  
21 Edward Gibbons?
- 22 A. Yes, sir.
- 23 Q. Okay. You know him as Slick?
- 24 A. That's right.
- 25 Q. Okay. You say you found his car that morning?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. Okay. Do you know about where you found his car?

3 A. Yes, sir.

4 Q. Okay. Where was that?

5 A. Right past Gary Lee's house on the right hand side  
6 of the road.

7 Q. Okay. Now, I'm going to do this with you if you  
8 may --

9 MR. CORBETT: Your Honor, may I have the witness  
10 step down?

11 THE COURT: Yes, sir.

12 [Whereupon, the witness steps down from the witness  
13 stand]

14 Q. [Mr. Corbett] Mr. Eaddy, I'm going to get you to  
15 stand kind of beside here and we're going to hold this  
16 map up. Now aerial maps can be a little tricky but if  
17 you will take a moment to kind of get yourself acclimated  
18 to this map.

19 [Whereupon, the witness views the map]

20 A. Yes, sir.

21 Q. Now just as an aside do you know where Mr. Gibbons  
22 lives?

23 A. Yes, sir.

24 Q. Which area of the County does he live in?

25 A. He lives in the Country Club.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. In the Country Club.

2 A. Somewhere right down here [indicates].

3 Q. Now on this map are you able to tell where you found  
4 his car?

5 A. Yes sir, pretty close. About right there  
6 [indicates].

7 Q. Okay. I'm going to get you to just take my pen and  
8 just make a little circle in the general area where you  
9 found the car.

10 [Whereupon, the witness complies]

11 Q. Right about there [indicates]?

12 A. Yes, sir.

13 Q. All right. If you can return to the witness stand  
14 for me please?

15 [Whereupon, the witness returns to the witness  
16 stand]

17 MR. CORBETT: Your Honor, for the record the  
18 witness was referring to State's exhibit number 2 and  
19 marked it.

20 Q. [Mr. Corbett] Now Mr. Eaddy, if you would please  
21 tell us about the condition of the car when you found it  
22 and what struck you about it.

23 A. About the back right tire was touching the white  
24 line and the nose of the car was headed next to the ditch,  
25 sort of. But it was pretty much in the road.

1           And the passenger door was open on the car. And I  
2 slowed up by it and I knew it was Mr. Gibbons' car. So I  
3 got out because I thought something might have been wrong  
4 with him since the passenger door was open and the car  
5 was running. I looked around and ---

6 Q. --- sir, hold up. The car was running?

7 A. Yes, sir.

8 Q. All right. So the engine was cranked?

9 A. Yes, sir.

10 Q. Okay. Continue please.

11 A. And I looked around and I hollered for him to see if  
12 he was in the edge of the woods or something. Then I  
13 called the store and Ken answered the phone. And I asked  
14 if he was there and he said no, he wasn't there.

15           And then I told him I found the car. And he told me  
16 he had just been beaten up at his house. I told him I  
17 found the car. So I pulled it out of the road and  
18 switched it off and took the keys out. That's when I  
19 took on up there to the store.

20 Q. So you took the keys with you to the store?

21 A. Yes, sir.

22 Q. Okay. If you know do you know about how far it is  
23 from where you found the car to the store?

24 A. Maybe a mile and a half.

25 Q. So do you know about what time of morning this was?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Roughly about twenty minutes to 7.
- 2 Q. Twenty minutes to 7. 6:40 a.m.?
- 3 A. Yes, sir.
- 4 Q. All right. What happened when you took the keys to  
5 the store?
- 6 A. Ken had told me that Ms. Kay had called him and said  
7 that he had been beaten up. And then a fellow that  
8 worked for Mr. Gibbons, we call him Roadpack [phonetic]  
9 walked in.
- 10 And I was going back that direction so he just said  
11 he would come get the car and drive it back to the store  
12 because neither one -- none of us knew what had taken  
13 place. So I took Roadpack back up with me and he drove  
14 the car from there back to the store.
- 15 Q. Now you're saying Roadpack. That's the nickname of  
16 one of Mr. Gibbons' employees?
- 17 A. Yes, sir. That's what I've always known him as. I  
18 couldn't tell you his real name.
- 19 Q. All right. So then he rode from the store with you  
20 back to where the car was?
- 21 A. Yes, sir.
- 22 Q. Okay. What happened then?
- 23 A. He got in the car and turned around and rode back to  
24 the store and I went on out to the farm.
- 25 Q. Thank you, Mr. Eaddy. That's all the questions that

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 we have for you. If you'll remain right there in case  
2 these gentlemen have some questions for you.

3 MR. KNOBELOCH: No questions.

4 THE COURT: Mr. Devoe?

5 MR. DEVOE: No questions of this witness.

6 THE COURT: You may step down. Any reason he can't  
7 be excused?

8 MR. CORBETT: None from the State, Your Honor.

9 THE COURT: Defense?

10 MR. KNOBELOCH: No, sir.

11 THE COURT: Thank you, Mr. Eaddy. You can be  
12 excused.

13 [Whereupon, the witness is excused and exits the  
14 witness stand]

15 THE COURT: Next?

16 [Whereupon, an individual come forward]

17 CLERK OF COURT: If you could raise your right hand  
18 and place your left hand on the Bible and repeat your  
19 name, please?

20 MR. BUSH: Walter Bush.

21 [Whereupon, the witness is duly sworn by the Clerk  
22 of Court as follows: do you solemnly swear the testimony  
23 you are about to give will the truth and nothing but the  
24 truth so help you God]

25 MR. BUSH: Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness takes the witness stand]

2

- - - - -

3

WALTER BUSH,

4

Having been first duly sworn,

5

Was examined and testified as follows:

6

DIRECT EXAMINATION

7

BY MR. CORBETT:

8

Q. Mr. Bush, good afternoon.

9

A. How you doing?

10

Q. I'm doing fine, thank you. Mr. Bush, do you go by a

11

nickname?

12

A. Yes, sir. Packem [phonetic]

13

Q. Packem?

14

A. Packem.

15

Q. Okay. I'm going to call you Mr. Bush today, okay?

16

A. Yes.

17

Q. All right. Mr. Bush, ease back from that

18

microphone just a little bit.

19

[Whereupon, the witness complies]

20

Q. There you go. Mr. Bush, I wanted to turn your

21

attention back to May 15<sup>th</sup>, 2010. Did you have occasion

22

to pick up Mr. Gibbons car that day?

23

A. Yes, sir.

24

Q. Now were you an employee of Mr. Gibbons?

25

A. Yes, sir.

1 Q. And how long have you been an employee?

2 A. About 25 or 30 years.

3 Q. Okay. A long time?

4 A. A long time.

5 Q. Okay. Now you came into work that morning. Tell  
6 us how it was that you ended up going out there to get  
7 the car.

8 A. Well, Mack Eaddy came by the -- well, called Ken at  
9 the store and told him he seen Mr. Gibbons El Camino  
10 sitting in the road on Oak Grove Church Road; about  
11 middle ways the road.

12 Ken told him to move it out the road and bring him  
13 the keys. And he did. He moved it and brought the keys  
14 to the store. Ken asked me to get back in there with  
15 Mack and run back down there and pick it up.

16 Q. So you actually got in the vehicle with Mr. Eaddy?

17 A. Yes, sir.

18 Q. And where did y'all go?

19 A. Back down there on Oak Grove Church Road.

20 Q. Okay. And then what did you do next?

21 A. Brought it back to the store.

22 Q. All right.

23 A. Straight back to the store.

24 Q. You didn't go anywhere else in the meantime?

25 A. Uh-uh. He followed me back to the store.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. All right. And then did you park it there at the  
2 store?

3 A. Right there in front right where Mr. Gibbons parks  
4 it.

5 Q. Now when you say -- is that right there near the  
6 front door of the store?

7 A. Yes, sir.

8 Q. Okay. Mr. Bush, please answer any questions that  
9 these gentlemen may have.

10 A. Okay.

11 MR. KNOBELOCH: No questions.

12 MR. DEVOE: No questions of this witness.

13 THE COURT: Thank you, sir. You can step down.  
14 Any reason he can't be excused?

15 MR. CORBETT: None from the State, Your Honor.

16 MR. KNOBELOCH: No, sir.

17 THE COURT: You can go.

18 [Whereupon, the witness is excused and exits the  
19 witness stand]

20 [Whereupon, an individual comes forward]

21 CLERK OF COURT: Raise your right hand and place  
22 your left hand on the Bible and repeat your name, please?

23 MR. RICHARDS: Ricky Richards.

24 [Whereupon, the witness is duly sworn by the Clerk  
25 of Court as follows: do you solemnly swear the testimony

1 you are about to give will be the truth and nothing but  
2 the truth so help you God]

3 MR. RICHARDS: I do.

4 [Whereupon, the witness takes the witness stand]

5 - - - - -

6 RICKY RICHARDS,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FINNEY:

11 Q. Good afternoon.

12 A. Afternoon.

13 Q. Tell us your full name, sir?

14 A. It's Ricky Richards.

15 Q. And by whom are you employed?

16 A. Clarendon County Sheriff's Office.

17 Q. How long have you been there, sir?

18 A. I've been there about six years.

19 Q. All right. Did you have prior law enforcement  
20 experience before that?

21 A. Yes sir, at Sumter County for a little under five  
22 years.

23 Q. And are you assigned to a particular division now?

24 A. Yes, sir. Right now I am an investigator.

25 Q. And were you so assigned back in 2010?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. All right. Do you remember whether or not you were  
3 the primary investigator on this case involving Mr.  
4 Gibbons?

5 A. No, sir. I was just called to assist.

6 Q. All right. And did you get a call early Saturday  
7 morning?

8 A. Yes, sir.

9 Q. All right. In Clarendon County do the  
10 investigators -- they have an on call system?

11 A. Yes, sir. We're usually on call every fifth week.

12 Q. Okay. So it rotates around?

13 A. Yes, sir.

14 Q. All right. Let me ask you this. Did you know Mr.  
15 Gibbons before this incident?

16 A. I knew who he was but we've never really had a  
17 personal relationship.

18 Q. All right. Have you ever been to his house before?

19 A. This time ---

20 Q. --- this time? So you were called out to the house  
21 and you arrived to respond to a basically a 911 call?

22 A. I got ---

23 Q. --- I'm sorry. You did not respond to the house did  
24 you?

25 A. I actually went to the house but I was only there a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 few minutes at most.

2 Q. All right. Did you get a call to go to some other  
3 location?

4 A. Yes, sir. Investigator Ham was there at the house  
5 and he advised me that the vehicle had been found and  
6 that it was at Mr. Gibbons' business. And I went right  
7 there to try to process that vehicle for any evidence.

8 Q. When you say process the vehicle what were you  
9 looking for?

10 A. My primary thing first was I dusted the vehicle for  
11 fingerprints.

12 Q. All right. And do you have expertise in doing  
13 that? Have you been trained for that?

14 A. Yes, sir.

15 Q. All right. And when you dusted were you able to  
16 find any prints there were readable?

17 A. Yes, sir. I found enough prints to put on two cards  
18 to have sent to Sumter to Marie Hodge for her to analyze  
19 the prints.

20 Q. All right. And is that -- Marie Hodge is a  
21 fingerprint technician?

22 A. Yes, sir. She runs the AFIS machine for Sumter  
23 Police Department.

24 Q. Can you tell the ladies and gentlemen what AFIS  
25 means?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Automatic -- automated fingerprint identification  
2 system.
- 3 Q. All right. And that's a national computer system?
- 4 A. Yes, sir. That's a national database for  
5 fingerprints of anyone that has been booked in, had a  
6 concealed weapons permit, law enforcement. Any time your  
7 fingerprints are taken they are normally put into that  
8 system.
- 9 Q. All right. And if you found fingerprints on Mr.  
10 Gibbons' car and you sent them over there what were you  
11 trying to accomplish by doing that?
- 12 A. To find the owner of those fingerprints --
- 13 Q. Now I want to show you a color photograph that is  
14 marked as 17-G, State's exhibit 17-G is a color  
15 photograph of the -- do you know what that is?
- 16 [Whereupon, the witness is shown photograph]
- 17 A. Yes, sir. It looks like it's the rear of Mr.  
18 Gibbons' El Camino.
- 19 Q. All right. And where did you first come in contact  
20 with the El Camino?
- 21 A. It was at his business.
- 22 Q. On what street?
- 23 A. I think that's Mill Street still out that way or  
24 260; some people call it Highway 260.
- 25 Q. All right. And was the car in the condition that

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 you see it presented in this photograph?

2 A. Actually in this photo there was already some  
3 fingerprint powder done. But other than that -- the  
4 doors were closed when I got there but other than that it  
5 was in the same condition.

6 Q. All right. Now were you able to recover  
7 fingerprints from this vehicle that you thought you could  
8 transfer over to Marie Hodge in Sumter?

9 A. Yes, sir.

10 MR. FINNEY: And 17-G is the document that I showed  
11 the witness. I'd like to move that into evidence.

12 Q. [Mr. Finney] Officer, this is already in evidence.  
13 This is 17-H.

14 [Whereupon, the witness is shown photograph]

15 A. Yes, sir.

16 Q. What does that show in that picture?

17 A. This is going to be like a rear view of the driver's  
18 side of the vehicle.

19 Q. All right. And based on the sketch that is  
20 presented in 17-A do you have an opinion as to where you  
21 found fingerprints on that vehicle?

22 A. Yes, sir. I'd say the rear quarter on the driver's  
23 side.

24 Q. Would you show the jury?

25 A. Right here I know it's hard to see the little dots

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 [indicates] but that is actually where the fingerprints  
2 were right near the rear corner of the car.

3 Q. And based on your sketch that's in 17-A did you lift  
4 prints from another part of the car also?

5 A. Yes, sir. From the driver's side it would have been  
6 right at the door jamb area of the vehicle.

7 Q. Point that out, please sir?

8 A. It would have been right here [indicates].

9 Q. All right.

10 MR. FINNEY: I move, Your Honor, for the admission  
11 of 17-A, which is the sketch of the witness.

12 THE COURT: Any objection?

13 MR. KNOBELOCH: No objection.

14 MR. DEVOE: No objection.

15 THE COURT: Okay. 17-A is in without objection.

16 [Whereupon, State's exhibit number 17-A is entered  
17 into evidence by the court]

18 MR. FINNEY: 17-G is a picture of the rear of the  
19 car. In without objection?

20 MR. KNOBELOCH: No objection.

21 THE COURT: All right. Both of them are in  
22 without objection.

23 [Whereupon, State's exhibit number 17-G is entered  
24 into evidence by the court]

25 Q. [Mr. Finney] Now Officer I've got 17-J and 17-I.

1 Could you look at those photographs and tell me what they  
2 depict?

3 [Whereupon, the witness is shown photographs]

4 A. Yes, sir. These are going to be pictures of the  
5 actual fingerprints, which is kind of a normal practice  
6 that we try to take a picture of the print before you  
7 lift it. And that's just a practice.

8 These right here [indicates] are going to be the  
9 ones from the rear of the vehicle. And that's going to  
10 be from the cross member of the vehicle.

11 Q. Cross member is up near the ---

12 A. --- that's right up there by the door.

13 Q. All right. So which one is that?

14 A. That is going to be the one that is out of focus.  
15 That's going to be 17-J.

16 Q. 17-J is the prints from near the driver's door?

17 A. The other driver's door 17-I are going to be the  
18 prints from the rear driver's side of the vehicle.

19 MR. FINNEY: Move to admit them into evidence.

20 THE COURT: Any objection?

21 MR. KNOBELOCH: No objection.

22 MR. DEVOE: No objection.

23 THE COURT: In without objection.

24 [Whereupon, State's exhibit numbers 17-J and 17-I  
25 are admitted into evidence by the court]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. [Mr. Finney] Now Officer, did you fill out an  
2 evidence chain of custody form?

3 A. Yes, sir.

4 Q. And what sticker number is on that one?

5 A. 17-F.

6 Q. Did you sign that form?

7 A. Yes, sir.

8 Q. Is that standard procedure in Clarendon County to  
9 fill out that after you've taken prints from a crime  
10 scene?

11 A. Yes, sir. For prints and any other evidence any  
12 time it changes hands we...

13 Q. Where did you take the evidence cards and -- do with  
14 -- where did you take them?

15 A. I gave them directly to Investigator Clark as it  
16 states on there.

17 Q. And he is the -- and it states that on the form?

18 A. Yes, sir.

19 Q. All right. Investigator Clark was the investigator  
20 in charge of this case?

21 A. Yes, sir.

22 MR. FINNEY: 17-F move to admit the custody form.

23 MR. KNOBELOCH: No objection.

24 MR. DEVOE: No objection.

25 THE COURT: In without objection.

1 [Whereupon, State's exhibit number 17-F is entered  
2 into evidence by the court]

3 Q. [Mr. Finney] Would you please sir tell the ladies  
4 and gentlemen of the jury before you get off the stand  
5 the process of how you go about identifying what's a  
6 fingerprint and what's not and how you lift the  
7 fingerprint so that you can preserve it?

8 A. Yes, sir. Normally we use a fingerprint powder.  
9 There are numerous kinds. In this case I just used what  
10 is a regular black fingerprint powder.

11 You put it on a brush, which is not unlike what you  
12 see T.V. they do all the time, you put it on a brush  
13 lightly and you go over the vehicle or whatever you are  
14 fingerprinting very lightly and it sticks to the oils  
15 that are left on the fingerprint. And that gives you the  
16 detail.

17 Usually with visual inspection of it you can see if  
18 the ridges or if there is a smear or something of that  
19 nature that would constitute -- you actually pull it off.

20 Now to pull it off you are going to have a card,  
21 which is just a plain white card on one side and use a  
22 clear tape. You can use a 2 inch, or a 3 or a 4. You  
23 put it on smooth.

24 And you always try to get it immobile so it doesn't  
25 distort the print, pull that tape off and that transfers

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 that print or that powder that shows the detail of the  
2 print onto the tape and you put it on that white back  
3 card, which in this case was white. They also make them  
4 in black. But you put it on that card and that helps you  
5 to see just that print what you've lifted off.

6 Q. Did you dust the entire car looking for prints?

7 A. Yes, sir.

8 Q. Inside and out?

9 A. Yes, sir.

10 Q. And the prints that you were able to actually lift  
11 and put on a card were both on the driver's side?

12 A. Yes, sir.

13 Q. One near the door and one in the back?

14 A. Yes, sir.

15 Q. And those prints were sent off to the lady in Sumter  
16 at the AFIS center?

17 A. Yes, sir.

18 Q. All right. Officer, would you tell the ladies and  
19 gentlemen of the jury a little bit how fingerprints are  
20 affected by environmental things?

21 For example, if I drove the car at 12 o'clock and  
22 got out and you came in or somebody else came in and  
23 drove the car after me would it be likely that you are  
24 going to be able to find my prints?

25 A. Depending on the surface, yes sir. Prints will stay

1 on even if the car had been driven. Normally what really  
2 affects them is a heavy rain. Being out in the sun for  
3 an extended period of time the heat will evaporate the  
4 oil off the car, or bake it off is what we like to say  
5 sometimes. But yes, it can be affected especially with  
6 a prolonged exposure to them.

7 Q. Now you said the basis of the fingerprint is the oil  
8 that is left after a person touches something?

9 A. Yes, sir.

10 Q. So if the oil is moved that's going to disturb the  
11 fingerprint?

12 A. Yes. As far as protecting a print like if I was to  
13 take a print and try to move a print that is -- I've only  
14 seen that on T.V.; I've only heard of that on a  
15 television show.

16 Q. All right. I want to show you 17-A again, the  
17 color photograph showing the Gibbons' car.

18 [Whereupon, the witness is shown photograph]

19 Q. Do you have on that particular card -- is that a  
20 picture of the prints that you lifted off the back rear?

21 A. Yes, sir.

22 Q. And those were the ones that were sent to Columbia,  
23 these -- sent to Sumter?

24 A. Yes, sir. That was more -- that was just a stand --  
25 off for you to get more area and then the next photo

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 which we looked at was a closer up.  
2 Q. I'm sorry. I identified it as A, but that is  
3 actually 17-H.  
4 A. Yes, sir.  
5 MR. FINNEY: Beg the court's indulgence.  
6 Q. [Mr. Finney] This is 17-A.  
7 [Whereupon, the witness is shown photograph]  
8 Q. This is the sketch. And on the back what is that  
9 that appears on the back of that card?  
10 A. That's going to be the fingerprints that I pulled  
11 off the right rear of the vehicle.  
12 Q. And they were sent to Sumter?  
13 A. Yes, sir.  
14 Q. After Sumter analyzed them did they send them back  
15 here?  
16 A. Yes, sir. They always do -- Ms. Hodge always does a  
17 report for us whether she finds something or not. There  
18 is usually a report with it and she sends the report back  
19 to us.  
20 Q. So these are the actual tapes -- that's the tape you  
21 talked about showing the fingerprints that were lifted  
22 off the car?  
23 A. Yes, sir.  
24 Q. Thank you, Officer. Answer any questions the  
25 defense may have.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 MR. DEVOE: May it please the court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. DEVOE:

6 Q. On the fingerprint analysis you did or at least  
7 taking off of the car is there any way for you to tell  
8 when those fingerprints got on the car?

9 A. No, sir.

10 Q. Not at all, okay. So they could have been on two  
11 days before, three days before, you just don't know --

12 A. There is no -- I don't know of any way you can tell.

13 Q. But you did testify that after a period of time the  
14 oil dissipates and the fingerprints disappear.

15 A. Yes, sir. And that's just from experiencing stuff  
16 of prints that have --

17 Q. Of course. Could it be due to heavy rain for  
18 example?

19 A. Heavy rain, the sun baking them off; yes sir.

20 Q. Driving in the desert with sand coming up against the  
21 car and stuff like that?

22 A. I would imagine, sir.

23 Q. Is there any reason you didn't take fingerprints on  
24 the inside of the car?

25 A. I did attempt to get fingerprints. I just didn't

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 find any that were able to be pulled off; any prints that  
2 I saw that were good enough at all to be pulled off. And  
3 that's normally due to the texture of the dash, which  
4 makes it really hard or the texture of the inside of the  
5 door.

6       There were no prints on the inside of the glass or  
7 the mirror, steering wheel. Again, with the texture of  
8 the steering wheel even putting fingerprint powder on it  
9 -- I don't believe I've ever pulled a print off of a  
10 steering wheel or a dash.

11 Q.   So you were told that the passenger door of the car  
12 was open at one point?

13 A.   Yes, sir.

14 Q.   It was left open. So it stands to reason that  
15 somebody was driving and a passenger sitting in the  
16 passenger?

17 A.   Yes, you would think so, on the passenger side, yes  
18 sir.

19 Q.   They had opened the door?

20 A.   Yes, sir.

21 Q.   Is there a chrome door handle or is it fabric?

22 A.   I believe it is chrome on it -- on the inside or the  
23 outside?

24 Q.   The inside?

25 A.   On the inside the actual handle was some type of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 metal. I don't know if it's chrome. It was some type of  
2 metal.

3 Q. And you dusted that also?

4 A. Yes, sir.

5 Q. I have no further questions. Thank you.

6 THE COURT: Anything further from the State?

7 MR. FINNEY: No, Your Honor, not for this witness.

8 We ask that he be excused.

9 THE COURT: Any objection to him being excused?

10 MR. DEVOE: No objection.

11 MR. KNOBELOCH: No objection, Your Honor.

12 THE COURT: Thank you, sir.

13 [Whereupon, the witness is excused and exits the  
14 witness stand]

15 MR. FINNEY: We'd call Mr. Lin Ham.

16 [Whereupon, Mr. Ham comes forward]

17 CLERK OF COURT: Raise your right hand and place  
18 your left hand on the Bible and repeat your name, please?

19 MR. HAM: Thomas Ham.

20 [Whereupon, the witness is duly sworn by the Clerk  
21 of Court as follows: do you solemnly swear the testimony  
22 you are about to give will be the truth and nothing but  
23 the truth so help you God]

24 MR. HAM: Yes, ma'am.

25 [Whereupon, the witness takes the witness stand]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 THOMAS HAM,  
2 Having been first duly sworn,  
3 Was examined and testified as follows:  
4 DIRECT EXAMINATION  
5 BY MR. FINNEY:  
6 Q. Mr. Ham?  
7 A. Yes, sir?  
8 Q. Tell the ladies and gentlemen of the jury what you  
9 do for a living?  
10 A. I'm a criminal investigator with the Clarendon  
11 County Sheriff's Office.  
12 Q. How long have you been employed in that capacity?  
13 A. With the Sheriff's Office I've been there since  
14 2002. Prior to that I was with the City of Manning and  
15 began in 1994.  
16 Q. And how long have you been an investigator?  
17 A. I've been an investigator since 2002.  
18 Q. Prior to that were you a deputy on patrol?  
19 A. I was a patrolman with the City of Manning, yes.  
20 Q. Do you have recollection of being called out to Mr.  
21 Gibbons' house on May the 15<sup>th</sup>, 2010?  
22 A. Yes, I do.  
23 Q. Did you know Mr. Gibbons at that time?  
24 A. I've know Mr. Slick and Ms. Kay and all of them all  
25 my life.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. All right. Have you been to the house before?
- 2 A. Yes, I have.
- 3 Q. All right. You responded to a call to the house,  
4 is that correct?
- 5 A. Yes, sir.
- 6 Q. All right. Were you at any time the lead  
7 investigator on the case?
- 8 A. No, I was not.
- 9 Q. All right. What was your participation as far as  
10 collection of evidence once you got to the crime scene?
- 11 A. Basically I was called to assist Investigator Clark  
12 with the whole case, that being a major case per se.  
13 Kenneth had been an investigator with us a short period  
14 of time. He had been a law enforcement officer for a  
15 while.
- 16 I was there to kind of oversee things; kind of like  
17 in a supervisory capacity. And just kind of see how  
18 things were going and make sure we didn't overlook  
19 anything. And sent people where they needed to go.
- 20 Q. Do you know who was in charge of taking photographs  
21 that day?
- 22 A. I think Investigator Clark was.
- 23 Q. All right. Have you been able to look at the  
24 photographs that were taken?
- 25 A. I have seen them, yes sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. Has it been a while since you've seen them?

2 A. Yes, sir.

3 Q. Let me ask you to look through them and answer a few  
4 questions after you've had a chance to look through them.  
5 First of all when you got there was Mr. Gibbons there?

6 A. He was not. He had already been transported to the  
7 hospital.

8 Q. All right. So I'll come back to that question.  
9 Did you later leave the house and go to the hospital?

10 A. Yes, I did.

11 Q. And did you have a chance to see Mr. Gibbons and  
12 talk to him at that time?

13 A. Yes, I did.

14 Q. All right. Are you familiar with the fact that Mr.  
15 Gibbons drove an El Camino, a white [phonetic] El Camino?

16 A. Yes, sir. I was -- I've been familiar with Mr.  
17 Gibbons El Camino for a while.

18 Q. All right. Let me ask you showing you the back of  
19 the garage in State's Exhibit 3-E does that appear to be  
20 a fair representation of Mr. Gibbons' house?

21 [Whereupon, the witness is shown photograph]

22 A. Yes, sir. When I arrived though the garage doors  
23 were closed.

24 Q. Right.

25 A. And this door [indicates] was actually open when I

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 arrived; I remember that.

2 Q. That's the side door?

3 A. Yes, sir -- the regular.

4 Q. When you got there was the silver Mercedes inside  
5 the garage?

6 A. Yes, sir.

7 Q. All right. Look at exhibit 3-I please sir and tell  
8 me do you remember there being articles and items that  
9 belonged to Mr. Gibbons on the floor of the garage?

10 [Whereupon, the witness is shown photograph]

11 A. Yes, sir. Kenneth and I walked through there and he  
12 pointed out some things that he had found in there. We  
13 looked around to see if anything appeared to be out of  
14 place, disturbed, what wasn't where it was supposed to  
15 be.

16 Q. Also, in 3-Q that's the side of the garage where Mr.  
17 Gibbons says he was attacked.

18 [Whereupon, the witness is shown photograph]

19 Q. Did you notice that area and see that area?

20 A. Yes, sir I did. I noticed there was a lot of blood  
21 there and the shoes. And as a matter of fact the -- you  
22 can see the blue and white tarp where it's not -- I  
23 remember the one that Mr. Slick had given us when we were  
24 in Cub Scouts many years ago.

25 Q. The same similar ---

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. --- yes, sir.

2 Q. Look at exhibit 3-T and tell me what you see in that  
3 color photograph.

4 [Whereupon, the witness is shown photograph]

5 A. This is beside the steps. It's the black duct tape,  
6 some blood spots.

7 Q. Is that the way the black duct tape was located when  
8 you got there?

9 A. Yes, sir.

10 Q. All right. Did you happen to see other pieces of  
11 black duct tape that afternoon, that morning as you were  
12 doing your investigation?

13 A. That morning, yes sir when I went to the hospital  
14 and walked into the trauma room they had Mr. Slick on the  
15 table in the trauma room.

16 Mr. Slick still had tape around his head that looks  
17 similar to the one that was in the -- that was left in  
18 the carport.

19 Q. I want to show you what has been marked as State's  
20 exhibit 3-B.

21 [Whereupon, the witness is shown photograph]

22 Q. It's a color photograph. Can you tell us what that  
23 is?

24 A. That's a picture of Mr. Slick. He was still on the  
25 -- he was still on the bed. It shows the duct tape on

1 his hair or on his head and it had peeled up just a  
2 little bit so he could see. He was -- apparently still  
3 got the neck collar in place. You can see the rail of  
4 the hospital bed. There is some their equipment in the  
5 trauma room --

6 Q. All right. Tell me if you know what happened to  
7 the duct tape that was around his head in this  
8 photograph.

9 [Whereupon, the witness is shown photograph]

10 A. Yes, sir. The nurse began to try to take it off and  
11 Mr. Slick started hollering so I stepped up and got on a  
12 pair of gloves and started helping get the duct tape off  
13 of there.

14 I was talking to Mr. Slick telling him to calm down.  
15 We were trying to calm him down just a little bit. I  
16 figured he knew me. He would respond a little bit better  
17 to me so I proceeded to take the duct tape off his head.

18 Q. What did you do with it once you removed it from his  
19 head?

20 A. I took the duct tape into custody and I kept it. I  
21 put it in a bag and took it back to the office and turned  
22 it over to Investigator Clark. He was in charge of this  
23 whole case. The reason I did that is so he could -- we  
24 were planning on taking all of the evidence up to SLED  
25 that Monday morning to go ahead and get it processed. We

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 don't do any D-N-A or anything like that in house. So we  
2 sent it to SLED for analysis.

3 Q. All right. I'm going to show you what has been  
4 marked as exhibit number 10 for the State.

5 [Whereupon, the witness is shown exhibit]

6 Q. Can you identify what is in the plastic bag there?

7 A. It appears to be a piece of duct tape.

8 Q. All right. Is that the same duct tape that you  
9 removed from his head?

10 A. It is -- I can say it looks just like it. I can say  
11 it's got hair on it. I'm pretty sure that's the one.

12 Q. All right. Did you fill out any kind of paperwork  
13 to put this into the evidence?

14 A. Yes, sir. We would fill out a chain of custody.

15 Q. All right. And you would have signed it into  
16 evidence on the same day that you went to the hospital  
17 and took this off his head?

18 A. I would have to look at the evidence sheet. This  
19 has been two years ago.

20 Q. All right. Officer, as it regards State's exhibit  
21 10 and the black tape, did you fill out an evidence  
22 sheet? Do you see your name on there?

23 [Whereupon, the witness is shown document]

24 A. Yes sir, right here [indicates].

25 Q. All right. Tell us what that reflects.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. It's got right here [indicates] description of  
2 evidence is black tape from the victim's head.

3 Q. All right.

4 A. Mr. Slick's head. It's got the victim Edward and  
5 I've got in quotes Slick Gibbons where recovered would be  
6 the C-M-H-E-R, which is Clarendon Memorial Hospital  
7 Emergency Room.

8 Right here [indicates] this little chicken scratch  
9 here is my signature. It's got right here [indicates]  
10 where it's from me to Kenneth Clark and he's got his  
11 initials right there [indicates]. It was on 5-17-2010 at  
12 approximately 10 a.m.

13 Q. All right. The 17<sup>th</sup> was two days after the  
14 incident. But that note is for when Mr. Clark took  
15 custody of it?

16 A. Yes, sir.

17 Q. And as far as you know -- did you yourself send it  
18 to SLED or carry it to SLED?

19 A. I actually rode with Kenneth up to Columbia to SLED  
20 to turn all this in.

21 Q. All right.

22 A. And we planned on stopping by and seeing Mr. Slick  
23 at Richland Memorial up there and talking with him to see  
24 if he remembered anything else.

25 MR. FINNEY: I want to put this evidence sheet in as

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 an exhibit. 10-A, Your Honor.

2 [Whereupon, State's exhibit number 10-A is marked by  
3 the court reporter]

4 MR. FINNEY: Any objection?

5 MR. KNOBELOCH: No objection.

6 THE COURT: All right. 10-A is in without  
7 objection.

8 [Whereupon, State's exhibit number 10-A is entered  
9 into evidence by the court]

10 Q. [Mr. Finney] Mr. Ham?

11 A. Yes, sir?

12 Q. Let me fast forward about five days. I want to show  
13 you what has been marked as State's exhibit 17-E.

14 [Whereupon, the witness is shown exhibit]

15 Q. Could you look over that and tell the ladies and  
16 gentlemen of the jury can you recognize that?

17 A. Yes, sir. It's what we call a 10 print fingerprint  
18 card. This is one from Michael Wilson Pearson. It's got  
19 his social down here [REDACTED]

20 It's got a date of birth of [REDACTED] 73. It's got his  
21 sex, race, his height 6'1, weight 198, eyes brown, hair  
22 black. It's got 8 rolled fingerprints.

23 Q. Is that the standard procedure for taking  
24 fingerprints from somebody who is being investigated?

25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. All right. And did you do the ink rolling and  
2 prepare that fingerprint card?
- 3 A. Yes, sir. Again, it's my handwriting.
- 4 Q. And is your name on the back of it?
- 5 A. On the back, yes sir.
- 6 Q. What date was that card filled out?
- 7 A. On May the 20<sup>th</sup>, 2010.
- 8 Q. May the 20<sup>th</sup>, 2010. And would that process have  
9 taken place at the law enforcement center or at the jail?
- 10 A. No, this would have taken place at our office.
- 11 Q. All right. So Mr. Pearson was in your office at  
12 the law enforcement center on May the 20<sup>th</sup>?
- 13 A. At the Sheriff's Office.
- 14 Q. And he was -- and he had his fingers inked and  
15 rolled so that they could be placed on that card?
- 16 A. Yes, sir. His fingers were rolled.
- 17 Q. And you attested to it because you did it?
- 18 A. Yes, sir.
- 19 MR. FINNEY: I'd like to move that into evidence,  
20 please?
- 21 MR. KNOBELOCH: No objection, Your Honor.
- 22 MR. DEVOE: No objection.
- 23 MR. FINNEY: 17-E.
- 24 THE COURT: It's in without objection.
- 25 [Whereupon, State's exhibit number 17-E is entered

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 into evidence by the court]

2 Q. [Mr. Finney] Now once this card was prepared do you  
3 know if it was sent off anywhere or anything was done to  
4 it?

5 A. That would have been given to Investigator Clark who  
6 had some fingerprints that were identified by Ms. Marie  
7 Hodge.

8 Q. All right. Very good. Mr. Ham, as a result of  
9 this investigation I guess everybody in Manning was  
10 looking for the people that committed this crime against  
11 Mr. Gibbons?

12 A. Yes, sir.

13 Q. And as a law enforcement officer do you have  
14 occasion from time to time to ask people questions, to  
15 check out leads, to try to investigate the case?

16 A. Yes, sir.

17 Q. All right. And did you have occasion to talk to a  
18 Mr. Lewis Mendes regarding this case?

19 A. Yes, sir. I have.

20 Q. And did you call up or go see Mr. Mendes or did he  
21 come to you?

22 A. Mr. Mendes actually came to my house.

23 Q. All right. To your personal house?

24 A. That's correct.

25 Q. And did he get to speak with you?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir.
- 2 Q. And as a result of speaking with you did you give  
3 him some instructions on what to do?
- 4 A. I put him in touch with Investigator Clark since he  
5 was the lead investigator on the case.
- 6 Q. And he was the lead investigator on the case and  
7 that's why you referred Mr. Mendes over to Investigator  
8 Clark?
- 9 A. Yes.
- 10 Q. And the information concerned this case?
- 11 A. Yes, sir.
- 12 Q. And to your knowledge did Mr. Mendes and Mr. Clark  
13 talk about...
- 14 A. Yes, sir. They did.
- 15 Q. How do you know Mr. Mendes?
- 16 A. Mr. Mendes I've known him through law enforcement,  
17 through seeing him in the area where I live. He was --  
18 he lived a short distance down the road from me.
- 19 Q. So somebody in the community?
- 20 A. Yes.
- 21 Q. That you knew? All right. When you had the  
22 occasion to do the fingerprints for Mr. Pearson ---
- 23 A. --- yes, sir ---
- 24 Q. --- did you get a chance to know him? Did you know  
25 who that was when you were doing the fingerprints?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 A. Mr. Pearson?
- 2 Q. Yes?
- 3 A. Yes, sir.
- 4 Q. Do you see him in court today?
- 5 A. Yes, sir.
- 6 Q. Would you tell the ladies and gentlemen of the jury  
7 which one of the gentlemen he is?
- 8 A. He's the gentlemen at the end of the table over  
9 there [indicates] in the blue long sleeve shirt.
- 10 Q. All right. And you knew him before you had seen  
11 him that day with the fingerprint card?
- 12 A. Yes sir, I knew him by the nickname Foots.
- 13 Q. Foots?
- 14 A. Yes, sir.
- 15 Q. That's the name he goes by in the community?
- 16 A. Yes, sir.
- 17 Q. How long would you say you've known him? Months?
- 18 A. Several years.
- 19 Q. Years, all right. Did you have the occasion to be a  
20 witness or a participant in an interview that was done by  
21 Investigator Clark? Were you present for an interview  
22 done by Investigator Clark with Mr. Michael Pearson?
- 23 A. Yes, I was.
- 24 Q. And was that -- was that done at the law enforcement  
25 center?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. It was done at the Sheriff's office.

2 Q. Was it done the same day that the fingerprint card  
3 was done?

4 A. I would have to look and see. I don't have...

5 Q. All right. But you do recollect having the  
6 opportunity to talk with him and interview him regarding  
7 this case with Mr. Gibbons?

8 A. Yes, sir.

9 Q. And was it your understanding from that interview  
10 that he knew Mr. Gibbons or did not know Mr. Gibbons?

11 A. He adamantly denied knowing Mr. Gibbons.

12 Q. All right. Did he adamantly deny being at that  
13 house on the day of the robbery?

14 A. He told me he didn't know where Mr. Slick lived. He  
15 had never been there. He had never been to Mr. Slick's  
16 place of business. He had never come into contact with  
17 Mr. Slick's vehicle.

18 Q. All right.

19 A. I guess -- he said that he didn't know him.

20 Q. All right. And do you remember having more than  
21 one interview with Mr. Michael Pearson or just that one?

22 A. I talked with him on more than one occasion.

23 Q. All right. Very good. How about the other  
24 gentleman, Mr. Weldon? Did you have a chance to be  
25 inside an interview room where there was an interview

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 being conducted with Mr. Weldon?

2 A. I actually don't recall whether I was in the  
3 interview or whether I was just in the office. But I was  
4 there when he was brought into the interview.

5 Q. Do you have any recollection of any of the questions  
6 or the answers that were given in that?

7 A. I just remember that he didn't want to talk.

8 Q. Very good.

9 A. He didn't know anything about the whole incident.

10 Q. All right. Very good. Were you in any way  
11 connected with the paperwork that was issued when a  
12 warrant was issued for the arrest of these two gentlemen  
13 or was that for another investigator to do?

14 A. There are several things that go on along during the  
15 investigative process. Anytime that Investigator Clark  
16 needed my help I would help him out. If he had asked me  
17 to work or something anything like that I would have to  
18 look at the warrants that are --

19 Q. All right. Very good.

20 MR. FINNEY: Beg the court's indulgence.

21 Q. [Mr. Finney] Thank you, Officer. Please answer any  
22 questions the defense may have.

23 MR. DEVOE: May it please the court?

24 THE COURT: Yes, sir.

25 - - -

1 CROSS-EXAMINATION

2 BY MR. DEVOE:

3 Q. When you went to the hospital, Manning Memorial

4 Hospital to see Mr. Gibbons?

5 A. Yes, sir.

6 Q. And you took -- you took a picture at the hospital?

7 A. I believe I did, yes sir.

8 Q. All right. So this picture accurately represents

9 what he looked like when you were there, is that correct?

10 [Whereupon, the witness is shown photograph]

11 A. Yes, sir.

12 Q. His eyes were -- they looked closed?

13 A. Yes, sir. He's squinting in pain.

14 Q. He's squinting in pain?

15 A. Yes, sir.

16 Q. He sort of recognized you?

17 A. Yes, sir. He knew who I was.

18 Q. By voice or by sight?

19 A. I guess by both.

20 Q. And how soon after the situation happened did you

21 see him? How many hours?

22 A. It wasn't that long later. I did not look at my

23 watch when I was in there. I don't have a time that I

24 was in there.

25 Q. Well, apparently this thing happened around 6:30.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. And when he -- what time did you get involved in it?

3 A. It was shortly thereafter when the call came out. I  
4 was called at my residence. It was a Saturday, I wasn't  
5 on call.

6 I answered the phone and I was told about the  
7 situation and I came straight in. I don't know what time  
8 I got there. It wasn't much later after the call. But I  
9 don't know what time the call came in.

10 I met Investigator Clark there. Also I got him  
11 started on the crime scene. Slick had already gone to  
12 the hospital.

13 Q. Well, assume for a moment that you got there around  
14 7 o'clock. Would that be about right?

15 A. That could be, yes sir.

16 Q. And you got to the hospital at maybe 7:30?

17 A. Maybe. Like I said I was more in tuned to kind of  
18 make sure everything was taken care of. That was  
19 basically my role that day.

20 Q. Was that taking care of there at the scene or at the  
21 hospital?

22 A. At both. I made sure I got Kenneth started on the  
23 crime scene there. We walked through the crime scene and  
24 looked at different things and I called another  
25 investigator Ricky Richards I think was up here just a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 minute ago. And he was supposedly responding to the  
2 hospital to begin with. While we were there on the scene  
3 we got the call that said Mr. Slick's vehicle had been  
4 found on Oak Grove Church Road and it had been taken back  
5 to Mr. Slick's place of business.

6 I talked with Ricky Richards after that. And I  
7 turned him away from going to the hospital and go ahead  
8 and process the vehicle there at Mr. Slicks to go ahead  
9 and get that out of the way.

10 And I went myself onto the hospital to see Mr. Slick  
11 to see if there was any evidence that we needed to get  
12 there, which the duct tape on his head was evidence. So,  
13 yes sir, I went to the hospital and took that off his  
14 head.

15 Q. That's when you took off the duct tape?

16 A. Yes, sir.

17 Q. And the hospital let you do that?

18 A. Yes, sir. Mr. Slick was -- I really can't imagine  
19 because I've probably not ever been in that much pain;  
20 I've never been beat up like this before. And Mr. Slick  
21 was basically laying down there on the bed hollering and  
22 screaming.

23 And they started pulling and I imagine it was  
24 pulling on his skin and pulling on his hair. I imagine  
25 it hurt a lot worse so.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

- 1 Q. So this picture was taken before the pulling?
- 2 A. Oh, yes sir.
- 3 Q. And not date time stamped is it?
- 4 A. I don't think that picture is, no sir.
- 5 Q. Do you have the ability to do that?
- 6 A. Date and time stamp those pictures?
- 7 Q. Yes, sir?
- 8 A. No, sir. We did print and -- print some pictures  
9 just like that.
- 10 Q. All right. At the crime scene itself did you do  
11 anything about measuring various dimensions or the garage  
12 itself, or the distance from certain places? Did any of  
13 that get done for the crime scene situation?
- 14 A. No, sir. Everything was photographed like it was.  
15 Everything was marked as evidence and photographed in.  
16 By that I mean we put these little markers up beside them  
17 and go around and take a picture. And you've got your  
18 note pad and you log in where everything was in the crime  
19 scene per se. And...
- 20 Q. For example, exhibit 9 in the State's case is a  
21 picture -- is a diagram of the garage.
- 22 A. Yes, sir.
- 23 Q. There are no dimensions at all?
- 24 A. None.
- 25 Q. Did somebody need to do that?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. We did not measure the garage, no sir.

2 Q. It's still there isn't it?

3 A. Yes, sir.

4 Q. And did you go back before you went to the hospital  
5 -- when you went to the hospital to talk to Slick did you  
6 ask any questions about the crime itself?

7 A. I actually don't recall whether I asked specific  
8 questions. I know that what I was doing there was to  
9 look to see what we had, see how bad Mr. Slick was hurt,  
10 collect any evidence there that was at the hospital.  
11 Just by knowing Mr. Slick I tried to comfort him some.

12 Q. All right.

13 A. I figured a familiar voice would kind of --

14 Q. You're saying he recognized your familiar voice?

15 A. Yes, sir.

16 Q. And you went to Richland Memorial a couple of days  
17 later?

18 A. Yes, sir.

19 Q. Did you ask any questions there?

20 A. Investigator Clark and I did, yes.

21 Q. All right. I have no further questions. Thank  
22 you.

23 MR. KNOBELOCH: No questions.

24 THE COURT: Anything from the State?

25 MR. FINNEY: Nothing further. We'd ask that the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 witness be allowed to be excused.

2 THE COURT: Any objection?

3 [No response]

4 THE COURT: Thank you, sir.

5 [Whereupon, the witness is excused and exits the  
6 witness stand]

7 MR. CORBETT: Your Honor, just one moment until we  
8 get our next witness.

9 THE COURT: How long is the next witness?

10 MR. FINNEY: Ms. Hodge from Sumter may be 15 to 20  
11 minutes.

12 THE COURT: All right. We'll take our break right  
13 now. Ladies and gentlemen we are going to take our  
14 afternoon break right now. Please do not discuss the  
15 case --

16 [Whereupon, the jury exits the courtroom at 3:14  
17 [p.m.]

18 [Whereupon, court is in recess from 3:15 p.m. until  
19 3:35 p.m.]

20 THE COURT: Thank you. Be seated. Is the State  
21 ready?

22 MR. FINNEY: The State is ready.

23 THE COURT: The defense ready?

24 MR. KNOBELOCH: Yes.

25 MR. DEVOE: Ready, Your Honor.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 THE COURT: Bring the jury in.

2 [Whereupon, the jury re-enters the courtroom at 3:37  
3 p.m.]

4 THE COURT: Ready --

5 MR. CORBETT: Thank you, Your Honor. The State  
6 will call Marie Hodge.

7 [Whereupon, Ms. Hodge comes forward]

8 THE COURT: You come up please ma'am and put your  
9 left hand on that Bible and raise your right.

10 CLERK OF COURT: Repeat your name, please?

11 MS. HODGE: Marie A. Hodge.

12 [Whereupon, the witness is duly sworn by the Clerk  
13 of Court as follows: do you solemnly swear the testimony  
14 you are about to give will be the truth and nothing but  
15 the truth so help you God]

16 MS. HODGE: I do.

17 [Whereupon, the witness takes the witness stand]

18 - - - - -

19 MARIE HODGE,

20 Having been first duly sworn,

21 Was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CORBETT:

24 Q. Ms. Hodge, good afternoon.

25 A. Good afternoon.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. Ms. Hodge, if you would please tell us by whom are  
2 you employed?

3 A. I work for the Sumter Police Department in Sumter.

4 Q. And how long have you been with the Sumter Police  
5 Department?

6 A. Thirty eight years.

7 Q. And what is your current assignment within the  
8 Sumter Police Department?

9 A. I am the AFIS examiner, and AFIS stands for  
10 Automated Fingerprint Identification System.

11 Q. Now when you say you are the AFIS administrator tell  
12 us what that means?

13 A. That means that basically I take in latent  
14 fingerprints from different agencies; not just the Sumter  
15 Police Department but also the Sheriff's Department,  
16 surrounding agencies will often bring things to us also.

17 I get those latent fingerprints in from crime scenes  
18 and enter that information into the AFIS system to see if  
19 we can determine if we have a match.

20 Q. And if you would please tell me a little bit about  
21 both your training and your experience in this field?

22 A. Originally my fingerprint training came in on a --  
23 this is going to date me -- in 1968 I worked for the FBI  
24 in Washington, D.C. for the identification division.  
25 That required for schooling for three months; that's

1 eight hours a day, five days a week, before we could go  
2 out and actually work on fingerprints with the FBI. So I  
3 did that for about almost two years, then started to work  
4 in 1973 with Sumter Police Department.

5 My job title at that time was the identification  
6 records person. In other words I had to get the  
7 fingerprint records in and match them to identification  
8 folders for people who had been arrested to see if they  
9 had a prior record and make sure they were the same  
10 person as was entered into that record.

11 So I did that for quite some time and then went into  
12 the investigative services division or detective division  
13 of the Sumter Police Department and was basically  
14 responsible for doing all the case folders and case files  
15 for General Sessions Court.

16 Also, I guess you'd say the tentative identification  
17 of latent fingerprints at that time everything that was  
18 done had to be sent to SLED for verification -- the State  
19 Law Enforcement Division. And they did the majority of  
20 all the fingerprint work as far as the court was  
21 concerned.

22 After that in 1989 I worked for over 16 years as the  
23 victim advocate for the Sumter Sheriff's Department and  
24 Sumter Police Department. Also during that time I still  
25 worked with the investigative services division in

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 matching fingerprints for that division; just for the  
2 Police Department not for other departments. In 19 --  
3 excuse me, in 2005 is when we received a grant for the  
4 AFIS system; I like to call that my CSI machine so we got  
5 the grant.

6 And part of the grant requirements were that you do  
7 fingerprint examinations for other agencies, not just our  
8 own. And that's why we do the surrounding area also. It  
9 saves a lot of time.

10 Q. Now, from 1968 to 2005 before actually starting with  
11 the AFIS system you had occasion to examine fingerprints?

12 A. Correct.

13 Q. Which would number in the?

14 A. Hundreds.

15 Q. So you have looked at hundreds of fingerprints  
16 through the years?

17 A. Yes. If you want to count the time with FBI now  
18 that was different; that would be thousands.

19 Q. So you have literally looked at thousands of  
20 fingerprints through the years?

21 A. Yes.

22 Q. Now you are currently the AFIS administrator for  
23 Sumter Police Department, is that correct?

24 A. Correct.

25 Q. And have you testified in court before as an expert

1 witness?

2 A. Yes, I have.

3 Q. What is your field of expertise?

4 A. Fingerprint identification.

5 Q. And you have been qualified as an expert on no less  
6 than a half dozen occasions, is that correct?

7 A. At least -- I believe it's six now.

8 Q. Now you were telling me about some experience but  
9 you've also had formal training in this field?

10 A. Yes. The first formal training course came with the  
11 FBI on fingerprint identification. I've had various  
12 schools since then as listed in my resume; it's hard for  
13 me to quote all of them, but the Forensic Ridgeology,  
14 Advanced Ridgeology, which was a weeklong school.

15 There has also been two and three day schools in  
16 palm print comparison, courtroom testimony, various  
17 fields of identification.

18 Q. So you've had continuing education through the  
19 years?

20 A. Yes.

21 MR. CORBETT: Your Honor, at this time we would  
22 offer Marie Hodge as an expert in the field of  
23 fingerprint identification.

24 THE COURT: What sayeth the defense?

25 MR. KNOBELOCH: No objection, Your Honor.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 THE COURT: The court finds she is an expert in  
2 fingerprint identification.

3 Q. [Mr. Corbett] Now Ms. Hodge, you have already told  
4 us that on occasion you work with agencies in the  
5 surrounding area, is that correct?

6 A. Yes.

7 Q. Okay. Now you are familiar with why we have you  
8 here today, is that correct?

9 A. Yes.

10 Q. Is Clarendon County one of the agencies that you  
11 assist from time to time?

12 A. I do.

13 Q. Okay. And did you receive a latent fingerprint  
14 from Clarendon County with regard to this case?

15 A. Yes, I did.

16 Q. Okay. I'm going to show you what has been marked  
17 as State's exhibit 17-A as in alpha and ask if you -- if  
18 that looks familiar if you can tell us what that is?

19 [Whereupon, the witness is shown item]

20 A. Yes, this is a latent fingerprint card and you will  
21 see I've got my initials here and the date that I did the  
22 examination.

23 In this particular latent fingerprint is labeled  
24 latent image 5.1, which was the fifth card that I looked  
25 at and the first fingerprint on that card that I looked

1 at.

2 Q. Now you actually personally examined that card, is  
3 that correct?

4 A. Yes, I did.

5 Q. Now if you would please tell us a little bit about  
6 how you go about making comparisons with -- that is known  
7 as a latent print, correct?

8 A. Correct. The first thing we do is of course I'm  
9 going to put this under my camera and it kind of  
10 magnifies it so I can see it.

11 And I examine that latent fingerprint for quality,  
12 clarity, to see if it's good enough to even enter into  
13 the AFIS system.

14 We have to be able to see the sufficient ridge  
15 detail before we can enter it. So that's the first thing  
16 I do is examine it.

17 Once I put it into the AFIS system we have to mark  
18 the different identification points to tell the computer  
19 what to look for and then it's sent through the system to  
20 search.

21 Q. Now I'm going to stop you right there for just a  
22 moment because you talked about identification points.

23 A. Correct.

24 Q. Tell us a little bit about what that means.

25 A. Okay. On your fingers, and you might be able to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 see them on your own hands you have what we call ridges.  
2 These are friction ridges and they occur on your fingers  
3 of course and the palms of your hands and the soles of  
4 your feet. They are called friction ridges.

5 And it's basically a little raised section that  
6 looks like a ridge. If you were a farmer and you put a  
7 plow through the fields you'd have a furrow and on each  
8 side of that furrow you would have two ridges. That's  
9 basically what a fingerprint looks like and what a ridge  
10 looks like.

11 And it goes sometimes it will go in a loop and  
12 sometimes they will go in a circle and sometimes they  
13 will just go sort of in a little wiggly line. And that's  
14 called ridge. On some of those ridges may be some  
15 identification points.

16 In other words you might have one ridge that is  
17 going along and all of a sudden they split and it becomes  
18 two. And right there where it splits would be an  
19 identification point.

20 You might have a ridge that's going along and all of  
21 a sudden it stops abruptly. Right there where it stops  
22 is considered an identification point. So that's what we  
23 mean by points on the ridges that would be identification  
24 points.

25 Q. So for example with this latent image you put it

1 under your camera and then identify these identification  
2 points.

3 A. Correct.

4 Q. Or you mark or note it?

5 A. Yes.

6 Q. Okay. And you then compare it to what?

7 A. Compare it to the existing prints that are on file  
8 in the system.

9 Q. All right. Did you have occasion to do that in  
10 this case?

11 A. Yes, I did.

12 Q. Okay. And what did your results indicate at that  
13 time?

14 A. My results indicated at first that I did not get an  
15 identification on any of the prints that I actually  
16 entered into the system. There were 1, 2, 3, 4, 5, 6  
17 that were entered and I did not get identification at  
18 first.

19 Q. Okay. What was your next step?

20 A. The next step was to actually print out the  
21 fingerprints of persons of interest from the AFIS system.  
22 So I did that and compared each set one on one to the  
23 individual fingerprint and managed to get an  
24 identification on that at that time.

25 Q. Now once you used that card and were able to get an

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 identification are you able to tell the jury how you go  
2 about making that positive match?

3 A. Yes. You actually put the latent fingerprint side  
4 by side with each fingerprint on a card. Of course there  
5 are ten fingerprints on the card. You start with the  
6 left one all the way through -- I mean excuse me, the  
7 right thumb all the way to the left little finger.

8 So you've actually had to compare that one print  
9 side by side with each of those ten prints on each card.  
10 And you actually go to those identification points and  
11 they have to match up exactly.

12 Not only do the identification points have to match  
13 up, but if there is a ridge that doesn't have any breaks  
14 in between those that has to be the same too.

15 Q. Now is this something you're looking at side by side  
16 comparisons, is that correct?

17 A. Correct.

18 Q. Okay. Is this something you're seeing with your  
19 own eyes? Is there some visual representation of how you  
20 do this? I mean is there a chart or an example or  
21 anything like that that you use?

22 A. Yes, there is.

23 Q. Now tell us how that works.

24 A. Once an identification has been made, which I made  
25 in this particular case, then we actually chart those

1 points so that we can present that to you side by side.  
2 And we actually do a chart that compares the two prints  
3 side by side with one through however many points of  
4 identification there are to be compared.

5 Q. Did you have an occasion to do a chart in this  
6 particular case?

7 A. Yes, I did.

8 Q. Do you have that with you?

9 A. Yes, I do.

10 Q. May I hold that for a moment?

11 [Whereupon, the witness complies]

12 MR. CORBETT: Your Honor, at this time if I could  
13 mark this for identification. And if I may mark this as  
14 17-K as in kilo.

15 THE COURT: Okay.

16 [Whereupon, State's exhibit number 17-K is marked by  
17 the court reporter]

18 Q. [Mr. Corbett] Now Ms. Hodge, if you would please as  
19 best you can show the jury how you go about making that  
20 match.

21 A. May I step down?

22 Q. Yes, ma'am.

23 [Whereupon, the witness steps down from the witness  
24 stand]

25 A. It's kind of hard to see so far away --

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 THE COURT: Ma'am, can you speak up just a little  
2 bit for the court reporter?

3 A. I'm sorry. As you can see they are side by side.  
4 This side [indicates] is what is called the latent print.  
5 It was taken from the crime scene. And this side over  
6 here [indicates] is the known print that came from an ink  
7 rolled -- card, okay.

8 So each one of these numbers [indicates] correspond  
9 and they represent a point of identification either a  
10 bifurcation like I talked about before when the ridge  
11 splits and goes into two or it could be an ending ridge.  
12 Or it could even what's called an enclosure.

13 Enclosure is where you've got a ridge that comes and  
14 splits into two and goes back into one. So that would  
15 be two points of identification on both hands, okay.

16 It's a little hard to see but that's what we do is  
17 we do them side by side and we actually do a chart and  
18 chart each one of the points so that it can be clearly  
19 seen.

20 [Whereupon, the witness returns to the witness  
21 stand]

22 MR. CORBETT: Your Honor, at this time we would  
23 offer 17-K into evidence.

24 THE COURT: What sayeth the defense?

25 MR. KNOBELOCH: No objection.

1 THE COURT: Okay. It's in without objection.

2 [Whereupon, State's exhibit number 17-K is entered  
3 into evidence by the court]

4 Q. [Mr. Corbett] Now Ms. Hodge I'm going to show you  
5 what has been marked as State's exhibit 17-B as in Bravo  
6 and ask if you can identify that for us?

7 [Whereupon, the witness is shown document]

8 A. Yes. This is the original report that I generated  
9 on May the 20<sup>th</sup>, 2010.

10 Q. And as a result of your examination what were you  
11 able to determine about the latent print supplied to you?

12 A. I was able to determine that Michael Wilson Pearson  
13 was identified as having contributed the latent image  
14 labeled 5.1. This was identified as finger number 1,  
15 which is the right thumb.

16 Q. Now, I'm also going to show you what was previously  
17 marked as State's exhibit number 17-E as in Echo and ask  
18 if you can tell us what that is?

19 [Whereupon, the witness is shown exhibit]

20 A. Yes. This is an ink rolled fingerprint card therein  
21 the name of Michael Wilson Pearson and it also has my  
22 initials and the date 12/9/11.

23 Q. Now with the first report you printed -- you took  
24 prints from the AFIS system, is that correct?

25 A. Correct.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. And matched them to Mr. Pearson?

2 A. Correct.

3 Q. Okay. Then at a subsequent point in time you  
4 received an actual printed card, which purports to be Mr.  
5 Pearson's prints?

6 A. Correct.

7 Q. Now, I'm going to show you what has been marked as  
8 State's exhibit 17-C as in Charlie and ask if you can  
9 tell us what that is?

10 [Whereupon, the witness is shown document]

11 A. This is the report that I generated based on my  
12 having examined the actual ink rolled fingerprint card of  
13 Michael Pearson dated December 9<sup>th</sup>, 2011.

14 Basically on today's date I prepared the ink rolled  
15 prints bearing the name of Michael Wilson Pearson as  
16 provided by Investigator Clark to the latent image  
17 labeled 5.1. I have reaffirmed that this latent image  
18 was made by the right thumb of Michael Wilson Pearson.

19 MR. CORBETT: Your Honor, at this time we would  
20 move to admit State's exhibit 17-C as in Charlie.

21 THE COURT: What sayeth the defense?

22 MR. DEVOE: No objection.

23 THE COURT: 17-C is in without objection.

24 [Whereupon, State's exhibit number 17-C is entered  
25 into evidence by the court]

1 MR. CORBETT: Your Honor, if I may confer with the  
2 Solicitor for just one moment.

3 [Whereupon, Mr. Corbett and Mr. Finney confer]

4 Q. [Mr. Corbett] Now Ms. Hodge, earlier you were  
5 showing us the chart. If you could get that in front of  
6 you?

7 [Whereupon, the witness complies]

8 Q. When you were talking about the identification  
9 points. Is there a standard that you use in terms of  
10 looking for identification points, quality, number;  
11 anything of that nature?

12 A. There's no standard of number of points that you  
13 have to have to make a positive identification. And the  
14 reason there is really no standard is because everything  
15 has to match.

16 Not just the points but as I said before each ridge  
17 that is on there that you can see has to be the same as  
18 what you see on the rolled print. So everything becomes  
19 part of the identification.

20 You even use things as the thickness of a ridge,  
21 which can vary and the amount of space between the  
22 ridges. But there is no standard number of points.  
23 There are 14 points on this one.

24 Q. But you look beyond the points is what you're  
25 telling me?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 A. Yes. Everything has to be the same. It's not just  
2 the points.

3 Q. Now if you would please tell us a little bit about  
4 the individuality of the fingerprints.

5 A. Fingerprints are unique. They are unique to the  
6 individual. And what makes them unique is number one  
7 they don't change from birth until after death.

8 The only way you're going to obliterate a  
9 fingerprint would be to -- you can scar a fingerprint and  
10 change its perception a little, but it's still going to  
11 remain -- the ridges are still going to remain the same,  
12 but outside that scaring isn't.

13 Q. So individuals do not share fingerprints?

14 A. They do not share fingerprints. There have been  
15 studies done even with identical twins over the years.  
16 They have never found two to be identical to be just  
17 alike.

18 Q. Now Ms. Hodge I know that we've sort of touched on  
19 this but let me ask it in this fashion please.

20 If we take item number 17-A, the latent print, and  
21 we take item 17-E, the prints of Michael Pearson in your  
22 expert opinion does that latent print match to Michael  
23 Pearson?

24 A. The latent print labeled 5.1 on 17-A is identified  
25 with the right thumb on this fingerprint card of Michael

1 Pearson.

2 Q. Ms. Hodge, thank you. Please answer any questions  
3 these gentlemen may have.

4 CROSS-EXAMINATION

5 BY MR. DEVOE:

6 Q. Ms. Hodge, I guess I'm this gentleman. My name is  
7 Harry Devoe. I'm the attorney representing Michael  
8 Pearson in this case.

9 If my accent throws you off and you can't understand  
10 me, let me know. The judge tells me that from time to  
11 time. You also examined I think palm prints in this  
12 case?

13 A. Yes, I did.

14 Q. And supposedly they are the palm prints of among  
15 others Michael Pearson?

16 A. Yes.

17 Q. And the report I see that you have here says you  
18 were unable to identify those palm prints as belonging to  
19 Michael Pearson.

20 A. That's correct. The palm prints that I had was not  
21 identified as Michael Pearson.

22 Q. And that was found on the same car I suppose and was  
23 submitted to you by the --

24 A. I'm not familiar with where they were located on the  
25 -- from the crime scene I'm not familiar with the...

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 Q. Okay. And the thumb print in question from Michael  
2 was that a flat print on the surface you got it from or  
3 an edge print or what?

4 A. You know I don't know. The only thing that I  
5 received is going to be the actual latent lift card. The  
6 officer that lifted the print could tell you what the  
7 surface looked like. But the only thing that I get is  
8 just this card, and of course it's flat.

9 Q. You can't tell from the print itself would be a  
10 little bit different on the ridge versus the flat versus  
11 the other ridge?

12 A. No, I couldn't tell you what the surface looked like  
13 that the print was sitting on.

14 Q. One interesting thing about your testimony is you  
15 never testified to us what the age of that print is did  
16 you?

17 A. No, sir. You can't age a fingerprint. It could be  
18 there from two years on up to two days. You can't date a  
19 print or age a print.

20 Q. All right.

21 A. Unless it's wiped off. In other words you would  
22 actually have to clean something off for it to go away --  
23 a fingerprint to get it to go away. If it's left at  
24 someplace and left undisturbed, then it can be there for  
25 quite some time.

1 Q. Some people said that some weather might get rid of  
2 the print.

3 A. You would have to wipe it. Say that if it rained or  
4 something like that you would have to actually wipe that  
5 fingerprint off with something. The rain would not  
6 affect it.

7 Q. So if it came from a car, for example, would a car  
8 wash take care of it?

9 A. If it was rubbed off, yes it would.

10 Q. Rubbed off?

11 A. Yes, it would be. If you went through a car wash  
12 and I guess those little things that turn around and it  
13 brushed it then yes, it would wash it off.

14 Q. All right. There's one other question to clarify  
15 one thing for me. On your report you stated that I think  
16 you had seven suitable latent images were searched  
17 through South Carolina AFIS?

18 A. Yes.

19 Q. With negative results?

20 A. Yes.

21 Q. Now why would that be?

22 A. There are many reasons that you wouldn't get  
23 results. The -- sometimes the latent image doesn't  
24 contain the same part of the fingerprint that may be on  
25 the fingerprint card. Sometimes the quality of the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 fingerprints that are in the system are not as good as  
2 the quality of the latent prints so they are or more  
3 simply there is not anyone in the system to match that  
4 particular latent print. So there are many reasons for  
5 not getting them.

6 Q. But one of -- or that the print you used was a bad  
7 print compared to one in the AFIS system. Could that  
8 work out that way, the reverse way?

9 A. If the one that we used was the bad one?

10 Q. If your print was not as good as the one in the AFIS  
11 system would it show up in the AFIS system or not?

12 A. If you had -- if you had something that was of such  
13 poor quality that you couldn't use it you wouldn't even  
14 enter it in the AFIS system.

15 It has to be a certain -- you have to have a certain  
16 number of -- you have to have a certain quality and  
17 clarity to be able to enter it into the AFIS system. So  
18 if it's that poor you wouldn't even enter it.

19 Q. But why would it be in the AFIS system as a bad  
20 quality print?

21 A. Some prints that they are -- some of the ten prints  
22 that were put in the AFIS system originally when they  
23 first started with the AFIS system were rolled maybe a  
24 while ago and their quality of the actual rolled prints  
25 aren't as good. I could point out that even some of the

1 these that are not rolled -- in my opinion if they are  
2 not rolled properly there are portions of the fingerprint  
3 missing. So sometimes that particular portion is  
4 missing. It might be the piece that you got on your  
5 latent print so therefore you're not going to get a match  
6 because it's not in there.

7 Q. But the more recent prints that go in are better I  
8 take it?

9 A. The more recent prints that are going in now are  
10 done usually by live scanning and they are much better.

11 Q. I notice in this report you had seven prints and  
12 none of them came out.

13 A. Correct.

14 Q. Is that unusual?

15 A. No, that's not unusual.

16 Q. All right. So I guess my last question would be  
17 that you're saying on the age situation the only way to  
18 get rid of the print on a surface is to wipe it off?

19 A. Yes, sir. You would have to disturb it in some  
20 manner. In other words to wipe it, to smear it, to wash  
21 it, you would have to disturb it. As long as it's not  
22 disturbed then that fingerprint can stay there.

23 Q. Let's go further then. Would heavy rain take it  
24 off?

25 A. It should not. The heavy rain should not take it

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 off because you're not disturbing the print. You're not  
2 wiping it or smearing it.

3 Q. And a light drizzle certainly wouldn't take it off?

4 A. It should not.

5 Q. I have no further questions. Thank you.

6 THE COURT: Anything further from the State?

7 MR. CORBETT: Nothing from the State, Your Honor.

8 THE COURT: Thank you. Any reason she can't be  
9 excused?

10 MR. FINNEY: No, Your Honor.

11 [Whereupon, the witness is excused and exits the  
12 witness stand]

13 MR. CORBETT: Your Honor, are you ready for us to  
14 call the next witness?

15 THE COURT: Yes.

16 MR. CORBETT: Your Honor, the State would call  
17 Barbara Procter.

18 [Whereupon, Ms. Procter comes forward]

19 CLERK OF COURT: Raise your right hand and place  
20 your left hand on the Bible and repeat your name, please?

21 MS. PROCTER: Barbara Procter.

22 [Whereupon, the witness is duly sworn by the Clerk  
23 of Court as follows: do you solemnly swear the testimony  
24 you are about to give will be the truth and nothing but  
25 the truth so help you God]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 MS. PROCTER: I do.

2 [Whereupon, the witness takes the witness stand]

3

- - - - -

4

BARBARA PROCTER,

5

Having been first duly sworn,

6

Was examined and testified as follows:

7

DIRECT EXAMINATION

8

BY MR. CORBETT:

9

Q. Ms. Procter, good afternoon. Tell us by whom are

10

you employed?

11

A. Clarendon County Sheriff's office.

12

Q. And how long have you been with the Clarendon County

13

Sheriff's office?

14

A. Fifteen years.

15

Q. And what is your current duty with the Clarendon

16

County Sheriff's office?

17

A. I'm the evidence custodian.

18

Q. And how long have you been the evidence custodian?

19

A. Fifteen years.

20

Q. So obvious question but May the 15<sup>th</sup> of 2010 you were

21

the evidence custodian?

22

A. That's correct.

23

Q. Okay. Now as evidence custodian tell us a little

24

bit about what it is that you do?

25

A. It's my responsibility to keep up with every piece

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 of evidence that is turned in to the Sheriff's office.  
2 As our officers are out on -- the road guys and traffic  
3 stops or anything else they may acquire evidence we have  
4 lockers that they can put them in.

5 And they have a key; they open it up, put the  
6 evidence in, lock it and drop the key. And I have to go  
7 around to the back side, no one else has a key, I go  
8 around to the back side and retrieve it, log it in.

9 I have set places that I put certain things and it's  
10 my job to keep up with it; either carry it to SLED, bring  
11 it to court, or let it sit.

12 Q. Now in this particular case there are items of  
13 evidence here that you've handled and then some that the  
14 investigation division handled, is that correct?

15 A. That's correct.

16 Q. Now are you ever responsible for collecting  
17 evidence?

18 A. I am.

19 Q. Now with regard to this case I'm going to show you  
20 what has been marked I believe that's number 22, is that  
21 correct?

22 [Whereupon, the witness is shown item]

23 A. It is.

24 Q. And if you would please tell us what is item 22?

25 A. It is a buccal swab from Michael Pearson.

1 Q. Okay. Now tell us if you would please what a  
2 buccal swab is.

3 A. It comes in a kit and it goes back in a kit. It  
4 comes with instructions. You just read and follow the  
5 instructions.

6 It's basically like swab -- Q-tip swabs almost. You  
7 go inside the sides of a person's mouth and swab it  
8 really good. It comes with a little box with holes.

9 You stand those swabs up and let them dry for just a  
10 matter of minutes, place them back inside, seal it up,  
11 and then it's carried to SLED for analysis.

12 Q. Now with regard to item 22 you indicated that was a  
13 buccal swab from Mr. Pearson, is that correct?

14 A. That's correct.

15 Q. And did you personally take that swab from Mr.  
16 Pearson?

17 A. I did.

18 Q. And did you then submit that item to SLED?

19 A. I did.

20 Q. Now you personally don't do any type of analysis of  
21 it, is that correct?

22 A. That's correct.

23 MR. CORBETT: Your Honor, at this time we would  
24 move item number 22 into evidence.

25 THE COURT: What sayeth the defense?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 MR. DEVOE: No objection, Your Honor.

2 THE COURT: It's in without objection.

3 [Whereupon, State's exhibit number 22 is entered  
4 into evidence by the court]

5 Q. [Mr. Corbett] Now Ms. Procter, in this particular  
6 case you indicated that there are times where you do  
7 evidence collection, is that right?

8 A. That's right.

9 Q. Other than the buccal swab did you do evidence  
10 collection in this case?

11 A. No, I did not.

12 Q. But you did maintain custody and control of evidence

13 ---

14 A. --- care, custody, and control of it.

15 Q. Okay. So when we see these paper bags here those  
16 are things that would be stored in your area?

17 A. That's correct.

18 Q. Okay. Now are these items that you brought here to  
19 court things that were logged into evidence?

20 A. Right. They were logged into evidence. Some had  
21 been carried to SLED, some I carried to SLED, and then I  
22 picked up everything as they finished, brought it back,  
23 logged it back in, and had a set place for it all.

24 Q. And from the time that it was brought to you it then  
25 goes and is left with SLED, so in between that time does

1 anybody else come into your area and do anything with  
2 these items?

3 A. No.

4 Q. Once it comes back from SLED does it stay secured in  
5 your area?

6 A. That's correct.

7 Q. Does anyone else access those items of evidence at  
8 this time?

9 A. No one else has a key to that room.

10 Q. So when evidence is turned in to you it goes to SLED  
11 in the same condition as when it was turned in?

12 A. That's right.

13 Q. And when it comes back from SLED it stays in the  
14 same condition until we get up here and start pulling it  
15 apart?

16 A. That's correct.

17 Q. Ms. Procter, thank you. Please answer any questions  
18 these gentlemen have.

19 MR. DEVOE: I have no questions, Your Honor.

20 MR. KNOBELOCH: No questions.

21 MR. FINNEY: Your Honor, please can we approach?

22 [Whereupon, an off the record bench conference is  
23 held]

24 THE COURT: Ladies and gentlemen, after conferring  
25 with counsel we are probably going to have to quit for

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 3 (of 5) - May 16, 2012

1 today. The main witness won't be able to be here until  
2 this morning. So I'm going to let you go home tonight  
3 and ask you to be back in the jury room at 9:30 in the  
4 morning.

5 And I'll remind you you can't discuss this case.  
6 And when you get home tonight your family is going to  
7 want to know what you've been doing all day. But you  
8 can't tell them. And if they're like my family they're  
9 going to have an opinion as to what you should do. They  
10 haven't been here and they haven't listened to this.

11 When this case is over with you can talk to them as  
12 much as you want to. But at this point I've got to keep  
13 your minds clear and you've got to -- the only evidence  
14 is what you've heard in this courtroom. So if you'll  
15 follow that I would appreciate it. I'll see you back at  
16 9:30 in the morning. You have a nice evening.

17 [Whereupon, the jury exits the courtroom]

18 THE COURT: All right. Anything y'all want to put  
19 on the record or you've got some -- I know Mr. Devoe you  
20 had some concerns about how we're scheduling the time of  
21 the witnesses.

22 MR. DEVOE: Your Honor, we have a witness list for  
23 the State and I'm just curious how many more witnesses  
24 we're going to be having for the timing schedule.

25 THE COURT: All right. Can you give us an idea?

1 Do you know that Mr. Solicitor?

2 MR. FINNEY: Your Honor, estimating five more  
3 witnesses for the State, three of whom would be  
4 relatively short. We expect the D-N-A lady from SLED and  
5 perhaps Investigator Clark to be our longest witnesses  
6 tomorrow. Her name is -- Catherine Leisy.

7 THE COURT: All right. Anything else, Mr. Devoe?

8 MR. DEVOE: Will the State be through by tomorrow?

9 MR. FINNEY: We anticipate by tomorrow, Your Honor.

10 THE COURT: Well, y'all need to be in position  
11 because you could be -- if you're going to put up a  
12 defense you could be doing it by mid day tomorrow.

13 MR. FINNEY: Or after -- right after lunch.

14 THE COURT: All right. Then if there is nothing  
15 else we will be in recess until 9:30 in the morning.

16 MR. FINNEY: Thank you, Your Honor.

17 [Whereupon, court is in recess until 9:30 in the  
18 morning]

19

20

21

22

23

24

25

C E R T I F I C A T E

1  
2 I, the undersigned, Joyce C. Rueger, Official Court  
3 Reporter for the Ninth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete Transcript of Record of the  
6 proceedings had and evidence introduced in the trial of  
7 the captioned case, relative to appeal, transcribed by  
8 Joyce C. Rueger, reported by Melissa Singletary, in the  
9 Court of General Sessions, Clarendon County, South  
10 Carolina on 16<sup>th</sup> day of May, 2012.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest to any party hereto.

13  
14 October 14, 2012

15  
16  
17 

18 Joyce C. Rueger, CVR-M  
19 Court Reporter  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

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May 17, 2012  
Manning, South Carolina

**VOLUME 4 OF 5**

**B E F O R E:**

THE HONORABLE RALPH F. COTHRAN, JUDGE

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## INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
KENNETH CLARK	
Direct Examination by Mr. Finney	6
Cross-Examination by Mr. Knobloch	38
Cross-Examination by Mr. Devoe	57
Redirect Examination by Mr. Finney	75
RICHARD GAMBLE	
Direct Examination by Mr. Corbett	79
Cross-Examination by Mr. Devoe	86
JOHN HORNSBY	
Direct Examination by Mr. Corbett	92
Cross-Examination by Mr. Knobloch	95
Cross-Examination by Mr. Devoe	96
CATHERINE LEISY	
Direct Examination by Mr. Corbett	99
Cross-Examination by Mr. Knobloch	111
Cross-Examination by Mr. Devoe	120
Redirect Examination by Mr. Corbett	122
ANDRENNNA BELTON	
Direct Examination by Mr. Corbett	126

## INDEX TO PROCEEDINGS (con't)

	PAGE
FIFTH AMENDMENT RIGHTS	132
BARBARA PROCTER (Recalled)	
Direct Examination by Mr. Corbett	136
MOTION FOR DIRECTED VERDICT	
Remarks by Mr. Knobeloch	138
Remarks by Mr. Devoe	140
Remarks by Mr. Finney	142
Remarks by Mr. Devoe	143
CERTIFICATE OF THE COURT REPORTER	156

## INDEX TO EXHIBITS

[Exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

STATE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
18-C	Photo	12
18-B	Photo	12
18-A	Photo	12
12	Black tape	15
13	Black tape	15
14	Black tape	15
19	Swabs from tape	108
20	Gibbons buccal swab	107
21	Weldon buccal swab	107
28	SLED report	131
10	Black tape - victim's head	137

1 PROCEEDINGS

2 THE COURT: Okay. Is the State ready?

3 MR. FINNEY: The State is ready.

4 THE COURT: Defense ready?

5 MR. KNOBELOCH: We're ready.

6 MR. DEVOE: Defense is ready, Your Honor.

7 THE COURT: Bring the jury in please, ma'am.

8 [Whereupon, the jury enters the courtroom at 9:44

9 a.m.]

10 THE COURT: Mr. Solicitor?

11 MR. FINNEY: Good morning, Your Honor. May it

12 please the court?

13 THE COURT: Yes, sir.

14 MR. FINNEY: Mr. Kenneth Clark to the stand.

15 [Whereupon, Mr. Clark comes forward]

16 CLERK OF COURT: Raise your right hand and place

17 your left hand on the Bible and repeat your name, please?

18 MR. CLARK: Kenneth Clark.

19 [Whereupon, the witness is duly sworn by the Clerk

20 of Court as follows: do you solemnly swear the testimony

21 you are about to give will be the truth and nothing but

22 the truth so help you God]

23 MR. CLARK: Yes, I do.

24 [Whereupon, the witness takes the witness stand]

25 - - -

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 KENNETH CLARK,  
2 Having been first duly sworn,  
3 Was examined and testified as follows:  
4 DIRECT EXAMINATION  
5 BY MR. FINNEY:  
6 Q. Good morning, sir.  
7 A. Good morning.  
8 Q. Tell us your full name, please?  
9 A. Investigator Kenneth Clark.  
10 Q. And where are you employed?  
11 A. Clarendon County Sheriff's Office.  
12 Q. How long have you been connected with the Sheriff's  
13 Office?  
14 A. I began with the Sheriff's Office in 1990.  
15 Q. And do you have law enforcement experience before  
16 you joined the Sheriff's Office?  
17 A. No, sir. Not prior to 1990.  
18 Q. All right. And you live here in Clarendon County?  
19 A. Yes, all my life.  
20 Q. All right. How long have you been an investigator?  
21 A. I've been an investigator for approximately two and  
22 half years.  
23 Q. All right. And the case that we are talking about  
24 today, the Gibbons case, it occurred in May of 2010. How  
25 long had you been an investigator when this case arose?

1 A. Approximately six months.

2 Q. All right. Would you say that this is probably the  
3 first big case you worked on as an investigator?

4 A. It was.

5 Q. All right. Tell us a little bit about what an  
6 investigator does. What was your training? I think we  
7 had testimony yesterday from Mr. Ham that he helped give  
8 you some of the ropes, learned the ropes as how to do an  
9 investigation. What do you do -- some of the things you  
10 do as an investigator?

11 A. Basically your role is to evaluate and process the  
12 crime scene and thereafter to gather evidence and from  
13 thereafter to have that evidence with the help of outside  
14 agents to have that evidence analyzed into -- involvement  
15 in the particular case in order to -- in order to bring  
16 about an arrest.

17 We gather the evidence. We seek -- solicit help  
18 from SLED to get the evidence analyzed where it's not  
19 done here in Clarendon County in hope to bring about an  
20 arrest.

21 Q. Do you find that most cases track along the same  
22 lines or is every case different?

23 A. Some cases are different. Some cases it's harder to  
24 get evidence on the scene. In some cases evidence is  
25 just there.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Let me ask you this. Did you know Mr. Ed Gibbons  
2 prior to this assault and robbery on May the 15<sup>th</sup>?

3 A. Yes, I did.

4 Q. And did you know him well?

5 A. I know him very well. As a matter of fact I learned  
6 to know Mr. Gibbons when I bought my first car and  
7 started doing business at this parts place.

8 Q. Did you have occasion to go to the house before or  
9 did you know the area at Country Club Road?

10 A. I was familiar with the area; not per se familiar  
11 with his residence but I was familiar with the area.

12 Q. All right. Now on the morning of May the 15<sup>th</sup> when  
13 you got the call you were the investigator on call?

14 A. Yes, I was. I was the investigator on call.

15 Q. It was a Saturday morning.

16 A. Yes.

17 Q. What time would you say you arrived at the house?

18 A. I arrived approximately 6:50.

19 Q. All right. And at that time was Mr. Gibbons there?

20 A. Mr. Gibbons was in the ambulance when I arrived on  
21 the scene. I did not get to see him.

22 Q. All right. How about Ms. Gibbons, did you have any  
23 chance to meet her or talk to her?

24 A. For a second. And I really didn't talk with her.  
25 She was with family and she was getting in a vehicle to

1 follow the ambulance.

2 Q. All right. Now what was your first official thing  
3 you did at the crime scene that morning?

4 A. To try to gather as much information as possible on  
5 what happened. And that was kind of hard because we  
6 didn't have the victim there at the time.

7 Family members were concerned about the victim; they  
8 were going to the hospital. We knew that at that time  
9 that there was a burglary, a home invasion type incident.

10 But from there on we started -- I started to  
11 evaluate the crime scene. And we start doing that by  
12 taking photos.

13 We try to take photos as quick as possible so  
14 nothing is disturbed -- what, if anything had been  
15 disturbed try to keep everything in place.

16 And you try to do an out view of a crime scene as  
17 you start taking your pictures going inward. So the  
18 first shot would be like the mailbox to establish the  
19 incident location.

20 Q. All right. I'm going to show you a stack of color  
21 photographs that have been introduced into evidence as  
22 State's exhibits 3-A through 3-V.

23 [Whereupon, the witness is shown photos]

24 Q. Would you just look at them and maybe if you see  
25 things that you want to point out to the jury -- what is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 in 3-A?

2 A. 3-A is an overview of the home. And that  
3 [indicates] would be the front of the home.

4 Q. And did you take all these photographs we're about  
5 to talk about?

6 A. Yes, I did.

7 Q. All right. What happens after 3-A?

8 A. Exhibit 3-B shows facing the residence this would be  
9 the right side [indicates] actually the driveway going  
10 into the rear of the residence.

11 Q. That photograph shows that by the time that picture  
12 was taken law enforcement had already responded?

13 A. Yes.

14 Q. All right. I believe we've gone through most of  
15 these photographs. But you took all of these?

16 A. Yes sir, I did.

17 Q. All right. Did you have the occasion to take some  
18 photographs as the house was found and then later on you  
19 had to move vehicles, open doors, things like that to  
20 take other photographs?

21 A. Yes. That's our first thing is to take a photo as  
22 the scene is before doing any marking we take a  
23 photograph as the scene is.

24 Q. All right. Did you take this photograph State's  
25 exhibit 3-V of Mr. Gibbons?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Not that particular photograph. That wasn't taken  
2 by me.

3 Q. Did you happen to go to the hospital to see Mr.  
4 Gibbons at the hospital after you left the crime scene?

5 A. Not on that particular day.

6 Q. All right. Did you learn that he had been  
7 Medevaced over to the hospital in Richland County?

8 A. Yes. I stayed in contact there from May the 15<sup>th</sup> on  
9 the day of the incident with the family because we had  
10 concern on his well being and how he was getting along.

11 Q. All right. Now, want to show you 3 color  
12 photographs. One is State's exhibit 18-C, one is 18-B,  
13 and one is 18-A; A, B, and C.

14 [Whereupon, the witness is shown photographs]

15 Q. Would you look at those photographs and tell us what  
16 you see in them?

17 A. Exhibit 18-C is mark number 5 -- marker number 5,  
18 which placed -- the photo of a piece of black duct tape.

19 Q. And tell us about the yellow markers with the  
20 numbers on them.

21 A. The yellow markers is used to display evidence where  
22 you can actually be able to go back from the photos and  
23 also from drawings to show where a particular object was.

24 Q. All right. And what about 18-B?

25 A. 18-B is marker number 6, which shows a pair of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 broken eyeglasses and also a blood spot. And around  
2 marker number 6 is a pair of shoes and also an ink pen  
3 and also a quarter, and also a chair.

4 Q. All right. Thank you, sir. In the next exhibit  
5 18-A?

6 A. 18-A is an overall picture of majority of all the  
7 markings that was placed inside the garage area.

8 Q. Would it have been one of your duties to place the  
9 markers down where you saw things that you thought were  
10 evidentiary and then take pictures of them?

11 A. Yes, that's part of my duty.

12 Q. And those items were not moved by anybody when you  
13 took those pictures; that's how you found the scene?

14 A. They were marked as they were found.

15 Q. All right.

16 MR. FINNEY: Move to introduce 18-A, B, and C.

17 MR. KNOBELOCH: Without objection.

18 THE COURT: Without objection.

19 MR. DEVOE: No objection, Your Honor.

20 THE COURT: 18-A, B, and C are in without  
21 objection.

22 [Whereupon, State's exhibit numbers 18-A, 18-B, and  
23 18-C are admitted into evidence by the court]

24 MR. FINNEY: Permission to publish?

25 THE COURT: Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. [Mr. Finney] Now Investigator after you photographed  
2 and did your markers did you take measurements also?

3 A. Not at the time.

4 Q. All right. Were you in charge of actually  
5 collecting evidence?

6 A. Yes.

7 Q. All right. Can you tell us for example what you  
8 collected? Do you have any notes that will help us show  
9 what you collected that day?

10 All of the things, glasses, shoes, penknife, tape  
11 measure; all those things that were found in the garage  
12 that have been testified to, did you collect them all and  
13 put them in evidence?

14 A. Yes. All those were marked and they were placed on  
15 a chain of evidence form.

16 Q. All right. Did you testify earlier that you  
17 collected certain black tape that was found on the garage  
18 floor?

19 A. Yes, sir.

20 Q. All right. I want to show you what has been marked  
21 as State's exhibit number 12 and ask if you can identify  
22 that item?

23 [Whereupon, the witness is shown exhibit]

24 A. Yes. This appears to be some of the black tape that  
25 was found on the scene that was marked in the exhibits.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. All right. And the black tape was collected by  
2 you, is that correct?

3 A. Yes.

4 Q. Was it transferred to the evidence room at Clarendon  
5 County?

6 A. Yes -- well, at first this was on a Sunday. It was  
7 locked away in a secure area and on the Monday morning  
8 took all the evidence myself and Investigator Ham on the  
9 17<sup>th</sup> and that's when it went to SLED.

10 Q. All right. This is State's exhibit number 13,  
11 another plastic bag. Can you tell us what's in there?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes. It appears to be part of a black duct tape  
14 that was also found on the scene.

15 Q. All right. And State's exhibit 14?

16 [Whereupon, the witness is shown exhibit]

17 Q. Can you tell us what that is?

18 A. This is also black duct tape that was found on the  
19 scene.

20 Q. All right. Collected by you?

21 A. Yes.

22 Q. And you transferred all of these items over to SLED?

23 A. Yes, I did.

24 [Whereupon, Mr. Finney shows exhibit to Mr.

25 Knobeloch and Mr. Devoe]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 MR. FINNEY: Without objection, Your Honor.  
2 State's 13, 14 -- excuse me State's 12, 13, and 14 into  
3 evidence.

4 THE COURT: In without objection.

5 [Whereupon, State's exhibit numbers 12, 13, and 14  
6 are admitted into evidence by the court]

7 Q. [Mr. Finney] Once you had recovered the evidence you  
8 say you had to wait until Monday to transfer some of the  
9 evidence over to SLED?

10 A. Yes.

11 Q. And they were going to do the processing for  
12 fingerprints, D-N-A; they were going to look at the  
13 evidence you collected?

14 A. That's correct.

15 Q. All right. While you were in Columbia dropping off  
16 the evidence did you also have a chance to go by and see  
17 Mr. Gibbons at the hospital?

18 A. Yes, that was part of the plan of the trip on the  
19 17<sup>th</sup>.

20 Q. And as a result of going in and having an interview  
21 with him what were you able to learn about the people who  
22 had perpetrated this crime?

23 A. After talking with Mr. Gibbons there at the hospital  
24 we learned that the suspects were of mid age, medium  
25 build, they were black -- three black males. And we

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 learned that it was an attack there at the residence. He  
2 did -- got beaten. We also learned from him that they  
3 took his vehicle.

4 And most of what we learned from him just  
5 reiterating what -- parts of what we already knew; that  
6 they took his vehicle, they took cash away from him, his  
7 life was threatened.

8 Q. All right. Now that was the first meeting May  
9 17<sup>th</sup>?

10 A. Yes, it was.

11 Q. Did you have other meetings with Mr. Gibbons in the  
12 days and weeks that followed?

13 A. Yes. Occasionally, yes I would meet up with him.

14 Q. All right. Now did you take notes that first  
15 meeting as to what he said happened?

16 A. Yes. That was actually -- the first meeting was  
17 audio; it was taking into a cassette recording.

18 Q. All right. What happened to that cassette  
19 recording?

20 A. That cassette recording was passed on to the  
21 investigator coordinator and evidence custodian, Ms.  
22 Barbara Procter.

23 Q. And as a result did Ms. Procter type up what was on  
24 the tape?

25 A. Yes.

1 Q. Did you save the tape after you had the typed  
2 document?

3 A. No. She did not save the tape after -- those tapes  
4 are...

5 Q. And what is that typed document called as far as  
6 your case file?

7 A. They're called case notes.

8 Q. So after talking with Mr. Gibbons on the 17<sup>th</sup> of May  
9 you had some case notes?

10 A. Yes.

11 Q. And in those case notes he told you there were three  
12 black males. He told you they were of medium build.

13 A. Correct.

14 Q. Did he tell you anything about what they had on or  
15 how they -- identity, could he see hair, beards, teeth,  
16 skin tone?

17 A. He stated that they were wearing masks and they were  
18 wearing dark clothing.

19 Q. All right. Now were you able to determine what  
20 time Mr. Gibbons came out of his house that morning?

21 A. It was approximately 6:15 -- 6:15 to 6:20.

22 Q. All right. And that would have been when he exited  
23 his house to come into the garage area?

24 A. Yes.

25 Q. All right. At that point do you believe or does

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 your investigation show you whether or not a sunrise had  
2 occurred?

3 A. Yes. I did some checking on that at that particular  
4 year -- we're talking about two years, 2010 -- if I can  
5 refer back to some notes.

6 [Whereupon, the witness reviews his notes]

7 A. On May 15, 2010 sunrise at 6:21 a.m.

8 Q. All right. And based on your investigation at 6:21  
9 would Mr. Gibbons have been coming out of the house on  
10 the steps getting ready to go to work?

11 A. Yes.

12 Q. And did he testify or tell you in an interview with  
13 you that the gentlemen were already in his storage room  
14 at the time he came out?

15 A. Yes, he did.

16 Q. Did he have any way of knowing or did he tell you  
17 how long they had been in there?

18 A. No, sir.

19 Q. All right. Now based on the interviews that you  
20 had with Mr. Gibbons you found out three men, dark  
21 clothing with masks on. You had already submitted the  
22 evidence to SLED.

23 A. Yes.

24 Q. All right. The 17<sup>th</sup>, the 18<sup>th</sup>, the 19<sup>th</sup>, the 20<sup>th</sup> of  
25 May, those days, did you have a suspect?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. No, sir.

2 Q. What were you doing in the community as far as this  
3 case was concerned?

4 A. Well, I was following up all the leads and I was  
5 receiving a lot of phone calls. I was on the street  
6 interviewing persons that may any information -- Mr.  
7 Gibbons is a business man. There are people in and out  
8 of his business all day.

9 I was interviewing anyone that would have any  
10 information leading to this crime; and also again,  
11 following up all the leads that were coming in. We had  
12 several phone calls that was coming in naming possibly  
13 persons of interest that they want us to check out.

14 Q. All right. And when did you get your first big  
15 break in this case?

16 A. The first -- leading up to the first big break I  
17 received a phone call dealing with three individuals that  
18 was spending a lot of money.

19 The first person that was interviewed to look at I  
20 talked with Michael Pearson. We met on the back of  
21 Family Court.

22 Q. This is the Michael Pearson who is sitting in the  
23 blue shirt?

24 A. We met on the back of Family Court. I received the  
25 information, and I didn't know Michael prior to this, I

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 received information and they told me what he was wearing  
2 and they said he just went around near Family Court. I  
3 met him in the parking lot and asked him if he would mind  
4 talking to me; I'm doing investigation on a case. And he  
5 just sat and talked with me.

6 Q. All right. Based on that interview or that  
7 conversation did you take any action against Mr. Pearson  
8 at that time?

9 A. Not at that time.

10 Q. All right. On the 20<sup>th</sup> of May did you receive some  
11 information concerning evidence that had been collected  
12 at the scene?

13 A. Yes. Subsequently -- coincidentally we received on  
14 the 20<sup>th</sup> we received information back from Marie Hodge  
15 that works at Sumter County -- Sumter City. She is a  
16 fingerprint analyst.

17 We received information back from a latent print  
18 card that we sent up there to be analyzed that the  
19 fingerprint came back as a positive hit on Michael  
20 Pearson.

21 Q. And that was the same Michael Pearson you had  
22 interviewed over at Family Court a day or two earlier?

23 A. Yes.

24 Q. All right. And you didn't have any way of knowing  
25 where -- who that fingerprint card that was sent off to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Marie Hodge you didn't know whose fingerprint was on it,  
2 did you?

3 A. No, sir.

4 Q. Do you remember -- can you tell the ladies and  
5 gentlemen of the jury where that fingerprint card came  
6 from in terms of the crime scene?

7 A. Yes, from Investigator Richardson. And I didn't  
8 lift that particular print. It was on the driver's side  
9 rear quarter panel of the bed of Mr. Gibbons El Camino.

10 Q. And that's the El Camino that was taken by the  
11 robbers from the house and later found over on the  
12 abandoned road.

13 A. Yes, on Oak Grove Church Rd.

14 Q. Let me ask you this. I'm not sure the jury has been  
15 told this. Can you tell the jury how far it is in  
16 distance from Mr. Gibbons' house to where the car was  
17 abandoned on Oak Grove Rd.?

18 A. Yes, it's approximately two and half miles.

19 Q. And driving at a normal rate of speed how long would  
20 it take a person to drive from Mr. Gibbons house over to  
21 where that car was found?

22 A. At a normal rate I would say 8 to 10 minutes.

23 Q. And if they were in a hurry they could do it faster?

24 A. Yes.

25 Q. Now once you got the notice that you had a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 fingerprint that matched Michael Pearson what did you do  
2 then?

3 A. Yes. After we got the notice that it was a positive  
4 hit we did at that time had a warrant drawn up for the  
5 arrest to bring Michael Pearson in.

6 Q. All right. Now at that time did you go out and  
7 search for him and arrest him?

8 A. Yes, we did.

9 Q. And did you interview him?

10 A. Yes.

11 Q. As a result of that interview did any statements get  
12 made?

13 A. Yes. During the audio interview with Mr. Pearson he  
14 stated that he did not even -- he was not well familiar  
15 with Mr. Gibbons. He had heard of him but he had never  
16 been around any of his property or vehicle, didn't know  
17 where he stayed and never been to his house.

18 Q. All right. So Mr. -- let me ask this. When those  
19 statements were taken by you did you inform Mr. Pearson  
20 of his rights to an attorney?

21 A. Yes, I did.

22 Q. His rights to remain silent and all that?

23 A. Yes, before the interview.

24 Q. And so he denied knowing anything about this case?

25 A. Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. At that time did you tell him that his fingerprint  
2 had been found on the vehicle?

3 A. Yes, I did. And I gave him the opportunity to  
4 reveal any information that he had on this case, his  
5 involvement to be open and be truthful.

6 Q. And he declined to say anything?

7 A. Yes, he declined.

8 Q. Now let me ask you this. As a result of your  
9 investigation and the evidence you had put together at  
10 that point when you sent out the warrant on Michael  
11 Pearson did you send out warrants charging him with all  
12 of the counts that are now contained in the indictment?

13 A. Yes, sir.

14 Q. Let's go through this a little bit. You charged him  
15 with Burglary First?

16 A. Yes.

17 Q. Why -- tell the jury why did you charge Michael  
18 Pearson with Burglary in the First Degree?

19 A. Because it was revealed that he entered the  
20 residence to commit a crime.

21 Q. And what was the crime?

22 A. The crime was robbery.

23 Q. All right. And did he enter -- was it a residence  
24 or a business that he entered?

25 A. He entered a residence.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. And was it in the nighttime so far as your  
2 investigation was concerned?

3 A. My investigation revealed that it was nighttime.

4 Q. And that's because of what?

5 A. Because of the hour of the sunset, the time of the  
6 attack.

7 Q. Did you also charge Mr. Pearson with Attempted  
8 Murder?

9 A. Yes.

10 Q. And based on what evidence had you collected about  
11 that?

12 A. The evidence revealed and the investigation the way  
13 -- how the attack came about that they did have a weapon.  
14 It was mentioned of a weapon during -- gathering a  
15 statement from Mr. Gibbons.

16 They stated that should we kill him. So that led me  
17 to believe that they had the means to carry out that  
18 threat. And also was mentioned that one of the gentlemen  
19 had the object in his hand that possibly could have been  
20 a handgun.

21 Q. Did Mr. Gibbons detail to you that after the first  
22 beating when the gentlemen jumped in the El Camino to  
23 leave that somebody saw him getting up and they said he's  
24 up, he's up?

25 A. Yes. And thereafter one of the gentlemen came back

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 inside and they struck him several more times completely  
2 knocking him out.

3 Q. All right. The other warrant that you issued  
4 against Michael Pearson would have been for Armed  
5 Robbery?

6 A. Yes.

7 Q. What was that based on?

8 A. They did take cash from his person to -- location.  
9 It was found out that he had cash in his wallet. And  
10 also it was a money clip with his initials on it that  
11 cash was taken from.

12 Q. All right. And that robbery was affected --  
13 according to your investigation did you believe that  
14 robbery was affected with a weapon?

15 A. Yes.

16 Q. What was the weapon that you thought was used?

17 A. A handgun.

18 Q. All right. Now as to the next count that would  
19 have been Grand Larceny. You charged Michael Pearson  
20 with Grand Larceny in this case?

21 A. Yes.

22 Q. Based on what? He did took the vehicle from the  
23 residence, which was valued over 2,000 dollars.

24 Q. And that would have been the El Camino automobile?

25 A. That would have been the El Camino.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. All right. Now the next warrant that was served  
2 wad Kidnapping.

3 A. Yes.

4 Q. What were the facts that led you to believe that he  
5 was guilty of kidnapping?

6 A. Yes. They by wrapping duct tape around his body  
7 they did restrict his movement. Mr. Gibbons could not  
8 leave the residence -- he couldn't -- so they actually  
9 restrained him and restricted his movement, up to  
10 Kidnapping.

11 Q. All right. And the last count was Possession of a  
12 Weapon During a Violent Crime.

13 A. Yes.

14 Q. Why did you charge him with that?

15 A. Yes, because we do believe and evidence revealed in  
16 testimony that they did -- believed to have a weapon, did  
17 mention of a weapon, and then had means to use a weapon.

18 Q. All right. After Mr. Pearson was served with all  
19 those warrants did your investigation continue?

20 A. Yes, it did.

21 Q. How many men were you looking for at that point?

22 A. We were looking for approximately three.

23 Q. All right. Did you ever have occasion to think  
24 that maybe more than three were involved?

25 A. Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Tell us why.

2 A. Because three was actually -- three was on the scene  
3 and this came from the testimony of the victim and we do  
4 believe they had to have been dropped off and they had to  
5 have been picked up. So there had to a fourth person  
6 involved and maybe a fifth person.

7 Q. All right. So you were open to the possibility  
8 that there were more than three people involved in this  
9 crime?

10 A. Yes.

11 Q. Now as a result of your investigation after May the  
12 20<sup>th</sup> when was the next big break that came along that  
13 identified a suspect in this case?

14 A. If I can refer to my notes.

15 [Whereupon, the witness reviews notes]

16 A. On May the 25<sup>th</sup>, which was exactly 10 days later we  
17 received information -- I received information of a young  
18 lady by the name of Loretta Green that had information.

19 I met with her and she stated to me that she  
20 overheard a conversation that Slick Gibbons was beat up.  
21 And this information came from what she said James --  
22 Clark. And in the conversation he said they -- they  
23 beat up Slick.

24 Q. All right. And after you got that information did  
25 you start checking on leads for those people?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Yes. I started checking leads on James Clark and  
2 his involvement, anyone who would have been in the circle  
3 meaning anyone who hangs around him I did all the  
4 background checks on James, and we continued. And then I  
5 had another meeting with Loretta.

6 Q. All right. So you were pursuing information to try  
7 to get information about what was being said in the  
8 community?

9 A. Yes.

10 Q. Did you have occasion about a month later, the 23<sup>rd</sup>  
11 of June to receive D-N-A information from the crime  
12 scene?

13 A. Yes. Around the 23<sup>rd</sup> of June we received  
14 information from SLED with another positive hit that came  
15 off the black duct tape that was wrapped around the  
16 victim, Mr. Gibbons, head.

17 Q. Before June 23<sup>rd</sup> the only person that you had  
18 arrested and charged with anything was Mr. Pearson?

19 A. Yes.

20 Q. You were still looking for other suspects?

21 A. Yes.

22 Q. Once the June hit came in from SLED saying there was  
23 D-N-A who did that D-N-A point you to?

24 A. Victor Weldon.

25 Q. All right. And Mr. Weldon is in court today in the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 white shirt?
- 2 A. With the white shirt on.
- 3 Q. Did you know him?
- 4 A. No, sir.
- 5 Q. Had you received any information before June 23<sup>rd</sup>
- 6 that led you to believe that Victor Weldon was a suspect
- 7 or a person of interest in the Gibbons case?
- 8 A. Not in the Gibbons case.
- 9 Q. All right. Now once you got that hit did you go
- 10 out and look for Mr. Weldon?
- 11 A. Yes, we did.
- 12 Q. Did you find him and charge him?
- 13 A. Yes.
- 14 Q. And did you charge him with the same charges that
- 15 you had placed against Mr. Pearson?
- 16 A. Likewise.
- 17 Q. Those are Burglary First, Attempted Murder, Armed
- 18 Robbery, Grand Larceny, Kidnapping, and Possession of a
- 19 Weapon During a Violent Crime?
- 20 A. Yes, sir.
- 21 Q. All right. Did you interview Mr. Weldon?
- 22 A. Yes.
- 23 Q. And as a result of that interview did you learn any
- 24 information?
- 25 A. He was adamant about he really -- he didn't know Mr.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Gibbons, wasn't on the scene, didn't know what we were  
2 talking about in reference to a robbery.

3 Q. And did he tell you during that interview that he  
4 knew or did not know Mr. Pearson?

5 A. He stated that he did not know Mr. Pearson; never  
6 heard of him.

7 Q. So now you've got two matches; one is a fingerprint,  
8 one is D-N-A?

9 A. Yes.

10 Q. And are you continuing to look now for the third  
11 person?

12 A. Yes.

13 Q. As of today, two years later, have you identified  
14 enough evidence to charge another person with the  
15 commission of the robbery against Mr. Gibbons?

16 A. Not as of today but I'm not giving up. We're still  
17 looking.

18 Q. Now once the fingerprint came back with a positive  
19 match for Mr. Pearson did you double check that result by  
20 submitting more fingerprints?

21 A. Yes, we did. Mr. Pearson while he was incarcerated  
22 we did get a roll print of Mr. Pearson and that was  
23 submitted to Ms. Marie Hodge also.

24 Q. And so she checked the results that she came up with  
25 the first time with another set of prints that came from

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Mr. Pearson?

2 A. Yes.

3 Q. And the results of those was a confirmation?

4 A. Yes. It was affirmation that those prints did  
5 belong to Mr. Michael Pearson.

6 Q. All right. Did you arrest Mr. Weldon on this  
7 charge?

8 A. Yes.

9 Q. Did you take a buccal swab from Mr. Weldon as a  
10 result of his arrest?

11 A. Yes, we did receive a consent form a judge ordered,  
12 and we did a D-N-A buccal swab of Mr. Weldon.

13 Q. So once he was arrested you asked the Solicitor's  
14 office to get you a court order to take a buccal swab  
15 from Mr. Weldon?

16 A. Yes.

17 Q. What were you trying to get with the buccal swab?

18 A. Well I wanted to make sure. I wanted to be certain  
19 that this was Mr. Weldon's D-N-A that was in CODIS.

20 Q. All right.

21 A. I wanted to confirm to make sure.

22 Q. Did you get the court order?

23 A. Yes.

24 Q. And you took the buccal swab?

25 A. Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 Q. Are you familiar with the buccal swab kit?
- 2 A. Yes.
- 3 Q. I'm going to show you State's exhibit number 21.
- 4 [Whereupon, the witness is shown exhibit]
- 5 Q. Can you tell us whether that's the kit that you took
- 6 on Mr. Weldon?
- 7 A. Yes, sir. It appears to be.
- 8 Q. And after you took that kit on Mr. Weldon did you
- 9 put the sample of his swab in an evidence envelope and
- 10 turn it over to Ms. Barbara Procter?
- 11 A. Yes.
- 12 Q. And as far as you know Mr. Procter took it to SLED
- 13 for analysis?
- 14 A. Yes..
- 15 Q. This is State's exhibit number 21. As a result of
- 16 your sending the buccal swab over to SLED did you get any
- 17 report from SLED back concerning Mr. Weldon's D-N-A?
- 18 A. Yes. It was reaffirmed from SLED through a report
- 19 that it was -- that a D-N-A tested again with a positive
- 20 match.
- 21 Q. And it was a match to the D-N-A that was found on
- 22 the duct tape?
- 23 A. Yes.
- 24 Q. And that duct tape was around Mr. Gibbons head?
- 25 A. Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Have you come up with any other leads since you've  
2 arrested Mr. Weldon to help you put together what  
3 happened to Mr. Gibbons that day as far as the third man  
4 in the garage or the possibility of a getaway driver who  
5 picked them up after dropping them off near the house?

6 A. Not at this present time.

7 Q. Let me ask you this. I don't know that this has  
8 been put in evidence. Was there any sign of forced entry  
9 at Mr. Gibbons house in terms of how they got in the  
10 garage that day?

11 A. No. The entrance door to Mr. Gibbons house -- and  
12 this is information we received from him, it wasn't  
13 locked; the entrance door wasn't locked.

14 Q. Now as a result of your investigation and your  
15 arrest of these two gentlemen have you been able to go  
16 out and talk to other people in the community about  
17 whether or not their story to you was truthful?

18 A. Yes. I did follow each of the defendant's stories.  
19 Michael Pearson stated that he'd never been to Mr.  
20 Slick's residence. He's not familiar -- he did not know  
21 Slick Gibbons. He'd never been around his vehicle.

22 When I went out to investigate his statement it led  
23 me to a person who can testify that he had been to Slick  
24 Gibbons house and that he is familiar with it.

25 Q. How did you -- what information have you learned

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 about him being at Mr. Gibbons house previous to or prior  
2 to May 15?

3 A. There is a gentleman that occasionally do  
4 landscaping. And at the time of the incident in question  
5 this gentleman took Mr. Michael Pearson on several  
6 occasions to put down straw at the victim's residence.  
7 So he has been at the residence before.

8 Q. And can you give, based on your investigation can  
9 you give us a time period as to how long before May the  
10 15<sup>th</sup>, 2010 Mr. Pearson was over there doing landscaping  
11 work?

12 A. Yes. It was early spring.

13 Q. Of the same year?

14 A. Of the same year; 2010.

15 Q. And that person was basically the owner of the  
16 landscape company that took Mr. Pearson over there?

17 A. Yes.

18 Q. How many times would you say he had been over there  
19 with Mr. Pearson to do landscaping work ---

20 MR. DEVOE: --- Your Honor, I object to this line  
21 of questioning. Unless they are going to bring the  
22 witness in; the one they are referring to that will  
23 testify to it?

24 THE COURT: Okay. You -- what grounds are you  
25 objecting on?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 MR. DEVOE: Hearsay.

2 THE COURT: Okay. I sustain it.

3 Q. [Mr. Finney] All right. Besides information  
4 showing that Mr. Pearson was familiar with Mr. Gibbons  
5 property did you learn of any information that Mr.  
6 Gibbons -- excuse me, Mr. Pearson was familiar with Mr.  
7 Weldon?

8 A. Yes. I further investigated the story of not  
9 knowing each other that they gave and it led me to -- the  
10 investigation led me to Voc Rehab.

11 Q. Tell us what Voc Rehab is?

12 A. Voc Rehab is a rehabilitation to the point where  
13 someone to develop their skills where they can get back  
14 into the work field.

15 Q. This is a State agency run by South Carolina?

16 A. Yes. It's in Sumter County.

17 Q. South Carolina Vocational Rehabilitation Center?

18 A. Yes, that's the proper name.

19 Q. Located in Sumter County?

20 A. Yes.

21 Q. What did you find out as a result of your  
22 investigation concerning Voc Rehab and these two  
23 gentlemen?

24 A. Records revealed that they were there at the same  
25 time. I was able to get their time card and their work

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 schedule.

2 Q. Very good. Do you have any other information or  
3 evidence that you would -- that you've been able to put  
4 together to put these gentlemen as being the suspects and  
5 responsible for the robbery of Mr. Gibbons?

6 A. No, I don't at this time.

7 MR. FINNEY: Beg the Court's indulgence.

8 Q. [Mr. Finney] Mr. Clark, as part of your  
9 investigation did you also take a buccal swab from Mr.  
10 Gibbons, the victim in this case?

11 A. Yes. The point of my investigation with SLED all  
12 the evidence is sent up to SLED so when they start their  
13 analyzing of the evidence that was submitted that they  
14 would have the victim buccal swab so they can  
15 differentiate any other D-N-A that they found on any part  
16 or partial of any evidence that was sent up.

17 Q. Let me show State's exhibit number 20 and ask if you  
18 can indentify that as being Mr. Gibbons buccal swab kit?

19 [Whereupon, the witness is shown exhibit]

20 A. Yes, it appears to be.

21 Q. And was it also sent by Ms. Procter over to SLED for  
22 analysis?

23 A. Yes.

24 Q. All right. Now just to clarify when you did your  
25 investigation preliminarily you were trying to determine

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 what time the robbery took place. I think you might have  
2 said that the sun set at 6:21. I just want to clarify  
3 what was your information as to when sunrise was on May  
4 15<sup>th</sup>, 2010?

5 A. Sunrise at 6:21, sunset at 8:12.

6 Q. In the evening?

7 A. In the evening.

8 Q. And based on that information and based on the  
9 testimony that Mr. Gibbons gave you about coming out to  
10 sit on the steps did you believe that the robbers were  
11 already in his house before 6:20?

12 A. Yes.

13 Q. Before sunrise?

14 A. Before sunrise.

15 Q. All right. Answer any questions defense may have.

16 MR. KNOBELOCH: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 [Whereupon, an off the record bench conference is  
19 held]

20 MR. KNOBELOCH: Officer Clark can I review the  
21 notes you were using to refresh your memory?

22 [Whereupon, the witness complies]

23 MR. KNOBELOCH: Thank you. May it please the  
24 court?

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. KNOBELOCH:

3 Q. Officer Clark you testified that what led you to the  
4 arrest of Victor Weldon was a D-N-A match. You also  
5 testified that you collected evidence at the crime scene.  
6 Did you swab for D-N-A at the crime scene?

7 A. No, sir. All the evidence was submitted to SLED.

8 Q. But did you collect the evidence at the crime scene?

9 A. I collected evidence and submitted it to SLED.

10 Q. And you collected evidence for D-N-A analysis from  
11 the wall of the garage, the floor of the garage, the  
12 trunk of the car, side panels on the car, the duct tape;  
13 three separate pieces of duct tape found on the floor,  
14 the duct tape on the victim's head, the wallet, shoes  
15 belonging to defendant -- and a check, is that correct?

16 A. Let me back up. I apologize sir, you mentioned one  
17 swab. The dusting of the fingerprint on the Mercedes  
18 after that was fingerprinted I did swab for D-N-A after  
19 the fingerprint.

20 Q. Okay.

21 A. And that was submitted to SLED.

22 Q. But -- so all of those areas I just mentioned were  
23 swabbed for D-N-A analysis?

24 A. Not all of -- not all of them by me.

25 Q. But they were swabbed and D-N-A evidence was

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 collected from all those areas?

2 A. Yes.

3 Q. Okay. And you said there were four total pieces of  
4 duct tape, correct, that were collected?

5 A. I think it was approximately four, yes.

6 Q. And only one of those had a potential D-N-A match,  
7 is that correct?

8 A. Yes, it's the one from the head of the victim.

9 Q. Who collected that particular D-N-A sample?

10 A. Who collected?

11 Q. Collected? Not analyzed but actually collected that  
12 D-N-A?

13 A. Okay. The tape from the head was collected by  
14 Investigator Lin Ham.

15 Q. Now we heard yesterday about areas that were dusted  
16 for fingerprints but you also dusted some of the areas at  
17 the crime scene for fingerprints, correct?

18 A. Yes.

19 Q. And the areas that were dusted at the crime scene  
20 for fingerprints include the right side front upper part  
21 of the car door, front right side front and lower part of  
22 the car door, right front fender, lower rear, front, and  
23 back of the car, and the right side door at the hood of  
24 the car above the grill, the right side of the hood above  
25 the headlight, the driver's side window of the car, the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 driver's side bed of the car, driver's door, center trunk  
2 lid, left rear door on the top of the car, a check found  
3 at the scene, a wallet found at the scene, and three  
4 pieces of duct tape found at the scene is that correct?

5 A. When you say that is correct you related back to  
6 what was dusted?

7 Q. I'm asking you if those areas were dusted for  
8 fingerprints?

9 A. No sir, that's not correct in the order that you  
10 gave. You included the check; I did not dust the check  
11 for fingerprints.

12 Q. With the exception of the check were those other  
13 areas dusted for fingerprints?

14 A. Yes, sir. I dusted -- mainly what I dusted was the  
15 Mercedes that belonged to Ms. Kay Gibbons.

16 Q. And none of those items mentioned was there a D-N-A  
17 -- excuse me, I mean a fingerprint match for Victor  
18 Weldon?

19 A. No, sir.

20 Q. And you executed a search warrant for Mr. Weldon's  
21 house after you arrested him is that correct?

22 A. Yes.

23 Q. Did you find a roll of duct tape which matched the  
24 duct tape from the scene?

25 A. No, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 Q. Did you find a mask?
- 2 A. No, sir.
- 3 Q. Did you find a gun?
- 4 A. No, sir.
- 5 Q. Did you find the money clip with the victim's
- 6 initials?
- 7 A. No, sir.
- 8 Q. Did you find anything which belonged to the victim
- 9 at the defendant's house -- Victor Weldon?
- 10 A. No, sir.
- 11 Q. You also -- when you executed the search warrant one
- 12 of the items you took from his house was a pair of boots
- 13 is that correct?
- 14 A. Yes.
- 15 Q. And those were analyzed for D-N-A?
- 16 A. Yes, those were sent off to SLED.
- 17 Q. And they showed a match for the owner of boots,
- 18 Victor Weldon, but no match for the victim, Mr. Gibbons?
- 19 A. That is correct.
- 20 Q. Was there a lot of blood at the crime scene?
- 21 A. Yes, it was.
- 22 Q. And were there bloody footprints at the crime scene?
- 23 A. Yes.
- 24 Q. Did any of the Victor Weldon's shoes match the
- 25 footprints found at the crime scene?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. No, sir. There was one set of bloody print that  
2 shows in the photograph but it did not match to the boots  
3 that we recovered from him.

4 MR. KNOBELOCH: May I approach the witness?

5 THE COURT: Yes, sir.

6 [Whereupon, the witness is show document]

7 Q. [Mr. Knobloch] Officer Clark, can you identify the  
8 document I've handed you?

9 A. Yes. This is a document that was typed up by  
10 Coordinator Barbara Procter that talked into the  
11 recording.

12 Q. And the caption says that these are case notes and  
13 they are from Investigator Clark.

14 A. It says case file up top and the date and it gives  
15 the crime, the victim, and then my name. It does not say  
16 case notes.

17 Q. And can you tell me the date on these notes here  
18 that are halfway down?

19 A. Yes. That's May 17<sup>th</sup>, 2010. That's the day we  
20 visited Mr. Gibbons at ---

21 Q. --- that was two days after the incident and as you  
22 testified earlier just now this is the day you visited  
23 Mr. Gibbons at the hospital.

24 A. Right.

25 Q. Can you read the part that I've underlined here

1 [indicates] which states the time of the incident?

2 A. Yes. [Reading] Approximately 6:28.

3 Q. Okay. So two years later your testimony is that it  
4 was at 6:15 but on May 17 your notes say at approximately  
5 6:28?

6 A. Yes, approximately when -- at the time that's an  
7 approximate time that the incident may have occurred.

8 Q. Not approximately 6:30 but approximately 6:28?

9 A. Approximately; give or take.

10 Q. I'd also like you if you would to read these next  
11 two sentences that I've marked here [indicates].

12 A. [Reading] Suspect number one, a black male approach  
13 him. The suspect stated give me your money.

14 The next one that you have underlined: [Reading] He  
15 grabbed the suspect about the chest area. He then  
16 discovered that there were two more suspects in the tool  
17 room adjacent to underneath the garage. They came out  
18 and assisted he tried to push him down.

19 Q. So according to your notes all three suspects did  
20 not approach the victim at the same time?

21 A. What I have there is what was talking to a  
22 recording. And before you go any further there is some  
23 variation there. There is some variation because that  
24 was talked in a recorder. Later I typed in, which would  
25 have a heading case notes. This was my first big case.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Going about how to document things was kind of new to me.  
2 With the guidance of a senior Investigator, Lin Ham, I  
3 later started to type my notes in. But there are some  
4 variations in the statements in my case notes versus what  
5 I talked into a recording.

6 Q. Okay. Let's look at another variation. Will you  
7 read the final sentence that I've underlined here  
8 [indicates]?

9 A. Yes. [Reading] The main variation -- the suspects  
10 were described as three black males between 19 and 20  
11 years of age, 5'8 to 5'9 in height. The victim said that  
12 one of the boys sounded familiar.

13 Q. Okay. So is that also approximate 5'8 or 5'9 like  
14 the time 6:28?

15 A. It didn't say on there what I just read  
16 approximately. I read it as its typed there, sir.

17 Q. How tall is Victor Weldon?

18 A. I would give a guess, and I'm not good at that, I  
19 would give him approximately 5'8 or 5'9; approximately.

20 MR. KNOBELOCH: May I have Mr. Weldon stand, Your  
21 Honor?

22 THE COURT: Yes, sir.

23 [Whereupon, defendant Weldon stands]

24 MR. KNOBELOCH: Okay. You can sit.

25 [Whereupon, defendant Weldon sits down]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. And I'm not the victim. I'm not the one that's  
2 judging the defendants that attacked him.

3 Q. [Mr. Knobloch] You testified earlier about getting  
4 information from Voc Rehab where the two defendants  
5 worked at Voc Rehab at the same time?

6 A. Yes.

7 Q. Did you review documents from Voc Rehab?

8 A. Yes, I did.

9 Q. And those documents showed that there was a five day  
10 period in December of 2008 where they both were working  
11 at Voc Rehab?

12 A. I can't say that it was a five day period. It would  
13 give the time and the punch card. They were there at the  
14 same time. That put both of them there at the same time  
15 that should have been familiar with each other and they  
16 were in the same work area.

17 Q. Can you review these documents please Officer Clark?

18 [Whereupon, Mr. Clark is shown documents]

19 A. Okay. This is a letter from South Carolina  
20 Vocational Rehabilitation department addressed to me from  
21 Mr. John Hornsby who acknowledging the search warrant  
22 that was sent to him.

23 And it says: [Reading] Regarding Victor Weldon and  
24 Michael Pearson the following information is a copy of  
25 time cards of Mr. Weldon and Mr. Pearson along with the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 daily production sheet for the time and attendance  
2 And I did receive their production sheet and I did  
3 receive their timecard, which two of them right here are  
4 dated around the same time December the 12<sup>th</sup>, 2008.

5 And also is their production sheet that shows that  
6 both of them on December the 9<sup>th</sup> both of them have the  
7 same date at the basic wood shop: December the 11<sup>th</sup> the  
8 same day at the wood shop. And also December the 12<sup>th</sup> at  
9 the wood shop, and December the 9<sup>th</sup>.

10 Q. Okay. So December 9, 10, 11, and 12 of 2008 they  
11 worked at the same time. Did you receive any other  
12 timecards where they worked together at the same time at  
13 Voc Rehab?

14 A. I haven't.

15 Q. Did you review records showing the total time when  
16 Victor Weldon worked at Voc Rehab?

17 A. No. Only what you have there is what was sent to  
18 me. That particular -- Mr. Hornsby will be subpoenaed to  
19 come in and he will testify on their behalf.

20 Q. Did you ask how many employees work at the same time  
21 in the wood shop?

22 A. No. Back when we asked -- when -- we subpoenaed  
23 them here to testify on their behalf.

24 Q. Now, you testified earlier that you spoke with  
25 members of the community while you were developing your

- 1 case. Did you speak with Jimmie Cagle?
- 2 A. Yes, on several occasions.
- 3 Q. Jimmy Timms [phonetic]
- 4 A. Jimmy Timms? Yes, yes, yes.
- 5 Q. Solomon Sheroid?
- 6 A. Yes.
- 7 Q. Gregory Bradfords ---
- 8 A. --- Brailsford, yes.
- 9 Q. Loretta Green?
- 10 A. Yes.
- 11 Q. Lewis Mendes?
- 12 A. Yes.
- 13 Q. Richard Lee Gamble?
- 14 A. Yes.
- 15 Q. Did any of them indicate that Victor Weldon was
- 16 involved in this incident?
- 17 A. The only one that I interviewed that came close to
- 18 association would be ---
- 19 Q. --- not association. Was he involved in this
- 20 incident?
- 21 A. If I may explain? You want a yes or no first?
- 22 Q. I want a yes or no answer. Was he involved in this
- 23 incident -- did any of them indicate he was involved in
- 24 this incident?
- 25 A. No...not your client.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. You mentioned earlier there -- well, was George  
2 Frierson one of the people that -- I want to make sure I  
3 remember your testimony.

4 In the course of your investigation did you learn  
5 that George Frierson was spending a large amount of money  
6 soon after the incident?

7 A. Yes --

8 Q. Within 24 or 48 hours of the incident?

9 A. Yes.

10 Q. And you learned that within 24 or 48 hours of the  
11 incident he was spending a large amount of money. And  
12 you also learned this information within 24 or 48 hours  
13 of the incident?

14 A. Yes.

15 Q. Did -- 24 hours after the incident did you learn  
16 that George Frierson tried to avoid a traffic stop -- a  
17 license check?

18 A. I don't have a document to that that he tried to  
19 avoid. I have documents that he came to a traffic stop  
20 with the Manning Police Department.

21 I was given that information and his time was  
22 stamped. I caught that information verbally from the  
23 officer stating what time he was out and the hour of  
24 night and who his passenger was.

25 MR. KNOBELOCH: May I approach?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Yes, sir.

2 Q. [Mr. Knobloch] Do you recognize these notes?

3 [Whereupon, the witness is shown documents]

4 A. Yes.

5 Q. Are those case notes or part of your case notes?

6 A. Let me compare it to mine.

7 [Whereupon, the witness reviews his documents]

8 A. Yes.

9 Q. And will you read this paragraph [indicates]

10 beginning on May 18<sup>th</sup>?

11 A. [Reading] On May 18 it was verified by Sergeant

12 Micha Joseph that subject George Frierson was ---

13 MR. CORBETT: Objection, Your Honor.

14 THE COURT: Okay.

15 MR. CORBETT: I believe he's got him reading

16 somebody else's statement. He didn't qualify it but it

17 sounds as if it is an out of court statement being

18 offered in court.

19 THE COURT: Your objection is hearsay?

20 MR. CORBETT: That's correct.

21 THE COURT: I sustain it.

22 MR. KNOBELOCH: Judge, it is not a -- these -- the

23 paragraph is from Officer Clark's notes. There is no

24 quotation contained in here; just an incident that

25 happened.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 THE COURT: But my understanding is this is  
2 information -- if it's something he did or he said its  
3 fine ---
- 4 MR. KNOBELOCH: --- I'll withdraw it ---
- 5 THE COURT: --- but the information ---
- 6 MR. KNOBELOCH: --- I'll withdraw it.
- 7 Q. [Mr. Knobeloch] You mentioned earlier that you  
8 issued a search warrant for Victor Weldon's house. When  
9 you issue a search warrant or when you request a search  
10 warrant from a Magistrate you have to issue an affidavit  
11 to support why you want the search warrant is that  
12 correct?
- 13 A. Yes.
- 14 Q. Can you identify this document please?
- 15 [Whereupon, the witness is shown documents]
- 16 A. Yes, that's a part of the search warrant on the day  
17 that was issued by a judge from Sumter County.
- 18 Q. Is that your signature at the bottom?
- 19 A. Yes, it is.
- 20 Q. And that statement -- that's your statement,  
21 correct?
- 22 A. Yes, that was typed in the affidavit.
- 23 Q. And it sworn under oath?
- 24 A. Yes.
- 25 Q. When you give that statement you swear that

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 everything in there is truthful?

2 A. Yes.

3 Q. Can you read the handwritten part? It's mostly  
4 typed but there is a handwritten part here [indicates].

5 MR. FINNEY: Your Honor, please? May I ask that we  
6 approach the bench for a moment?

7 THE COURT: Okay.

8 [Whereupon, an off the record bench conference is  
9 held]

10 THE COURT: Ladies and gentlemen, I need to take up  
11 a matter of law outside your presence. I will remind you  
12 please don't discuss this case and I'll get you back out  
13 in just a few moments.

14 [Whereupon, the jury exits the courtroom at 10:54  
15 a.m.]

16 THE COURT: We will take a five minute break and  
17 then come back.

18 [Whereupon, the court takes a brief recess]

19 MR. KNOBELOCH: Judge, the Solicitor is absolutely  
20 correct. I don't want to open the door into other  
21 pending charges. And I think I'd just like to read one  
22 sentence. I'd like to see if this opens the door. It  
23 says: [Reading] Suspect -- and they refer to him as  
24 McCoy, which is his middle name but he's referred to as  
25 Victor Weldon -- suspect McCoy has made statements

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 acknowledging his participation on the May 15<sup>th</sup> burglary.

2 The other incident was --

3 MR. FINNEY: It was May 18<sup>th</sup>.

4 MR. KNOBELOCH: --- it wasn't May 15.

5 THE COURT: So you want to put that in? You want  
6 him to read that?

7 MR. KNOBELOCH: I do want him to read that because  
8 it's false. I'm going to ask him if that's his  
9 statement. But I don't think it opens the door ---

10 MR. FINNEY: --- well my point is it opens the door  
11 because what the Officer's affidavit is reflecting is  
12 that statements that he was made aware of implicating  
13 Weldon in another case. And in that case there was  
14 information that linked...

15 MR. KNOBELOCH: Judge, he's using this to get a  
16 search warrant. We're not attacking the warrant but if  
17 they had received something I would have argued very  
18 strongly and be careful when you're coming out to use ---

19 MR. FINNEY: --- but that's another issue for that  
20 case. That search warrant...

21 MR. KNOBELOCH: Really I was just making a point  
22 that if I were attacking the search warrant, which I'm  
23 not, that I don't think you can just say I made a mistake  
24 in my affidavit let's...

25 MR. FINNEY: Well, I want him to explain why he put

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 that information on that warrant and I think that opens  
2 the door to the other case.

3 THE COURT: Let me ask you. Is this search warrant  
4 that y'all were talking about a search warrant for this  
5 case or another case?

6 MR. KNOBELOCH: This case.

7 MR. FINNEY: And he's already testified that he  
8 didn't find any mask, gun; anything from -- as a result  
9 of the search warrant.

10 THE COURT: And so in that sworn affidavit you want  
11 him to read one line that says ---

12 MR. KNOBELOCH: --- he could read the whole thing  
13 but the line that I care about says that he acknowledges  
14 participation in other -- that's my case. If it opens  
15 the door I most certainly will withdraw it.

16 THE COURT: Assuming he has a right to explain his  
17 answer. The problem is when he explains that answer and  
18 it gets to another case you've opened that door.

19 I mean you can't just pick out one without -- I mean  
20 if it doesn't involve the other case and he was just  
21 wrong on this case that's fine. But if the information  
22 says that it comes from another case...

23 MR. KNOBELOCH: Judge, if I could just check one  
24 thing. I've got a little bit -- of the other case but  
25 I...

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 THE COURT: My understanding from what y'all said  
2 to me yesterday about some Green witness -- last name is  
3 Green and she said she overheard him say he was involved  
4 with the Gibbons robbery.

5 MR. KNOBELOCH: My discovery says she said she  
6 heard his brother was involved in -- and see if I ---

7 THE COURT: --- and I haven't seen any of them.  
8 I'm just saying whatever y'all told me right or wrong --  
9 and so...

10 MR. FINNEY: I think that the key of it is counsel  
11 is disturbed that the affidavit says that Victor made a  
12 statement and the officer will explain that it wasn't  
13 Victor that made the statement it was Victor's brother  
14 but that he knew that he and Victor had done another  
15 crime together and that's why he wanted the affidavit to  
16 connect him to the Gibbons case; the search warrant.

17 And that's why I think the officer needs to be able  
18 to explain why he put that in the affidavit.

19 MR. KNOBELOCH: Judge, just to let you know what  
20 I'm looking for are the dates in the other case and I  
21 only brought a small amount of that file here.

22 THE COURT: Well what is -- did the other case  
23 allegedly occur before or after ---

24 MR. KNOBELOCH: --- after. And so this affidavit  
25 was signed July 20<sup>th</sup>, 2010 so that is what I'm looking for

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 is ---

2 MR. FINNEY: --- but the burglary happened on the  
3 20<sup>th</sup> of May; five days after the Gibbons case.

4 MR. KNOBELOCH: I'm looking for when the  
5 information...

6 MR. FINNEY: It would be on Loretta Green's tape I  
7 guess. You talking Loretta?

8 MR. KNOBELOCH: Loretta Green's tape.

9 MR. FINNEY: The tape?

10 MR. KNOBELOCH: The Loretta Green tape doesn't  
11 indicate. I know it's not evidence but it doesn't say...

12 MR. FINNEY: On Loretta Green both cases the  
13 burglary and the Gibbons case was talked about with  
14 Loretta with that officer.

15 MR. KNOBELOCH: She never said Victor's name?

16 MR. FINNEY: But she said Marcus's name; that's my  
17 recollection.

18 MR. KNOBELOCH: Judge, again I certainly don't want  
19 to open the door but I don't see how an informant on  
20 another case mentioning this man's brother I don't see  
21 the nexus to have an informant in another case say that  
22 Marcus did something I don't see why he doesn't say that  
23 Victor...

24 THE COURT: Well, he doesn't say that. You're the  
25 one who is bringing it out. I mean I guess the obvious

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 issue if he had found something as a result of a search  
2 warrant. Let's say he found incriminating evidence in  
3 the house then your argument would be all that gets  
4 thrown out because it's a bad search warrant. But the  
5 search warrant is based on something that ain't right.

6 MR. KNOBELOCH: I know ---

7 THE COURT: --- you may win that argument. And you  
8 could have gotten maybe all that thrown out based on the  
9 information being erroneous.

10 But in this to pick one line out of that search  
11 warrant that involves another case he has a right to  
12 explain how he got it, right or wrong. You may open that  
13 door -- I don't know how much you are going to gain;  
14 clearly.

15 MR. KNOBELOCH: I'll say I disagree. I don't think  
16 they could connect the dots but I'm going to withdraw the  
17 question. I don't want to risk it.

18 THE COURT: Okay.

19 MR. KNOBELOCH: But Judge if I could just have two  
20 minutes so I don't stumble when the jury comes back in to  
21 find ---

22 THE COURT: --- certainly. Now, since we do have a  
23 break, at least from a scheduling standpoint, do you --  
24 do you think -- how much longer you think you're ---

25 MR. KNOBELOCH: --- I'm not asking any more

1 questions of this witness.

2 THE COURT: Okay. Ms. Johnson, bring in the jury  
3 if they are ready. Mr. Devoe, are you going you have any  
4 questions of the witness?

5 MR. DEVOE: Yes, Your Honor, I have several.

6 THE COURT: All right.

7 [Whereupon, the jury re-enters the courtroom at  
8 11:12 a.m.]

9 THE COURT: Yes, sir?

10 MR. KNOBELOCH: Thank you, Your Honor. I have no  
11 further questions of this witness.

12 THE COURT: All right. Mr. Devoe?

13 MR. DEVOE: Thank you, Your Honor. May it please  
14 the court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. DEVOE:

18 Q. I'm going to say good morning but it's almost  
19 noontime. Mr. Clark, we've talked several times about  
20 this case in the past haven't we?

21 A. Yes sir, we have.

22 Q. And you were kind enough to give me your notes to  
23 make sure I have full sets of all those notes. I guess  
24 during the last couple of days there were some additions  
25 to make to them.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Yes, sir.

2 Q. And I appreciate it.

3 A. You're welcome, sir.

4 Q. On your notes you talked about the garage here in  
5 the exhibit -- exhibit number 9 I think it is. You  
6 mentioned on the garage that you really made sure that  
7 you flagged all the various pieces of information from  
8 the garage and the floor?

9 A. Yes, sir.

10 Q. The garage floor in this exhibit there is nothing on  
11 it showing where the flags were.

12 A. Not on that there, no sir.

13 Q. Not a -- in the picture.

14 A. Right. But I do have an exhibit where the markings  
15 are on ---

16 Q. --- the pictures?

17 A. No, not the pictures, a drawing you should have.

18 Q. Is that an exhibit next to this case?

19 A. No sir, it's in my file.

20 Q. Not in the case? You've not identified that and  
21 made it an exhibit in this case for the jury to see?

22 A. Well, you were asking -- no I didn't make none of  
23 the exhibits that you see. That's the attorney's job.  
24 But in my case file there is a drawing and it does show  
25 the markings.

1 Q. And you didn't in the garage measure the width and  
2 depth and that sort of situation?

3 A. Well, Mr. Devoe I heard you mention this on  
4 yesterday I did went back and measured from the go-kart  
5 room where the defendants came out of to the step because  
6 that seemed to be an issue with you. And it is 12 feet  
7 from the step back to the go-kart room.

8 Q. Which is the go-kart room in the garage?

9 [Whereupon, the witness views drawing]

10 A. What is shown here [indicates] is a closet door.  
11 Mr. Gibbons called this the go-kart room. Mr. Gibbons  
12 was right here [indicates] on this step.

13 The distance between the step and the go-kart room  
14 is 12 feet. Mr. Gibbons was dead on it when he said it  
15 was 12 feet. I went back out and measured it.

16 Q. Was the go-kart room with the closet door properly  
17 represented where it is in this picture -- in this  
18 drawing?

19 A. Yes. This is a good position.

20 Q. Are you basically saying that's 12 feet and the  
21 whole garage width is 15 feet?

22 A. I did not measure the whole garage. I measured from  
23 the step to the go-kart room that was an issue with you.

24 Q. And high wide are the steps?

25 A. I did not measure the width of the steps.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Well, let's assume that's 3 feet or 4 feet; I'll be  
2 generous about it, 4 and 12 is 16 and maybe another 5 is  
3 21 feet the whole double garage plus the door coming in,  
4 is that correct?

5 A. No, sir. I can only testify to what I did. I  
6 measured from the go-kart room to the step and its 12  
7 feet. Any other measurement I cannot testify to.

8 Q. Okay. But in this garage on the floor several  
9 things were identified as being either fibers from the  
10 victim or blood?

11 A. Yes.

12 Q. Things of that type?

13 A. Yes.

14 Q. Including that was a wallet?

15 A. Yes, it was a wallet.

16 Q. I assume that wallet was Mr. Gibbons wallet?

17 A. Yes, it was identified as his wallet.

18 Q. And I assume that in that wallet at one time would  
19 be money?

20 A. Yes.

21 Q. And I therefore assume that you fingerprinted that  
22 wallet is that correct?

23 A. That wallet was sent to SLED, yes.

24 Q. Was it fingerprinted?

25 A. No, sir. All the analysis on that wallet was done

1 by SLED lab.

2 Q. Well, wouldn't you think that the wallet, which was  
3 taken from Mr. Gibbons pocket and transferred by someone  
4 else, i.e. one of these three persons who did the crime,  
5 would have a fingerprint of that person on the wallet?

6 A. We solicited help from SLED. That wallet was sent  
7 to be analyzed to be swabbed for D-N-A, which I'm pretty  
8 sure it was. Our analyst on D-N-A will testify to that.

9 Q. Well, did the analyst ever testify for fingerprints?

10 A. She will be on the stand and you can ask her that  
11 question. I can't say what she did.

12 Q. Well, I'm asking you because you're the chief  
13 investigator on the case. Was it analyzed for  
14 fingerprints?

15 A. I do not have any reports on that...

16 Q. So the absence ---

17 A. --- but it was analyzed.

18 Q. In the absence of you saying yes I'd assume the  
19 answer is no.

20 A. I can't tell you what she did; what her job was. It  
21 was sent to her to be analyzed.

22 Q. And who is her?

23 A. Ms. Catherine Leisy.

24 Q. Okay. And since she is not testified apparently we  
25 have no answer other than the fact you don't know.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 A. I don't know. You will get an answer from her.
- 2 Q. But you didn't follow up on that?
- 3 A. I got a report from the analyst.
- 4 Q. Were there any reports about the wallet?
- 5 A. Yes. It was mentioned in the report of the wallet.
- 6 Q. What did it say?
- 7 A. The wallet was tested for D-N-A.
- 8 Q. I'm asking ---
- 9 A. --- there is no mention in there for fingerprints on  
10 the wallet.
- 11 Q. Or D-N-A?
- 12 A. And to answer that question any items that we are  
13 going to send to SLED they don't want us examining it and  
14 sending it to them.
- 15 If we are going to let SLED do it out of respect, of  
16 an expert you send it to them. You don't mess with it  
17 and then turn around and send it to someone else to  
18 analyze it. You're tainting the evidence.
- 19 Q. And yet fingerprints are an important element of  
20 this case certainly as far as my client is concerned.  
21 And you're telling me there is no evidence one way or the  
22 other who took the wallet?
- 23 A. No, sir. No sir, I can't testify to -- it's in  
24 evidence.
- 25 Q. Now you also read in the testimony of the booking

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 report of my client and his co-defendant?
- 2 A. The booking report?
- 3 Q. The arrest warrant, I'm sorry.
- 4 A. Yes, the arrest warrant.
- 5 Q. And on the arrest warrant -- do you have a copy of
- 6 the arrest warrant with you?
- 7 A. No sir, I do not.
- 8 Q. On the arrest warrant it doesn't show the height and
- 9 the weight of the individuals who are involved in the
- 10 crime.
- 11 A. You're saying it doesn't?
- 12 Q. I'm asking you.
- 13 A. I don't have it in front of me, sir.
- 14 Q. You've seen arrest warrants before?
- 15 A. Yes, yes. That's the personal data information that
- 16 on the front of ---
- 17 Q. --- it has a place for the name, the address, the
- 18 sex, the race, height, weight. It would be there
- 19 wouldn't it?
- 20 A. Yes, sir.
- 21 Q. And will be there?
- 22 A. Yes.
- 23 Q. Can you remember on that arrest warrant what was the
- 24 height and weight of my client?
- 25 A. No, sir. I can't remember back two years what was

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 on the face of that warrant.

2 Q. You don't -- that warrant, you just read it.

3 A. No, I don't have the warrant. I didn't read it from  
4 the stand here today.

5 Q. You didn't?

6 A. No, sir.

7 Q. The arrest warrant -- is that arrest warrant in  
8 evidence? It was read to the jury by the Solicitor. All  
9 the arrest warrants were read by the Solicitor to the  
10 jury; every one.

11 It went from Burglary First all the way down to  
12 Kidnapping, had the name, address, sex, date of birth,  
13 social security number; all that and height and weight.  
14 And you signed these. You signed these arrest warrants.

15 A. Yes, sir.

16 Q. Is this one you signed right here?

17 [Whereupon, the witness is shown documents]

18 A. Yes, sir.

19 Q. Well on the arrest warrant can you see where it says  
20 height and weight ---

21 MR. CORBETT: --- Your Honor, at this point I would  
22 interpose an objection. I don't know what information he  
23 intends to elicit from the warrant. But at this point I  
24 would allege lack of foundation as to what he's asking  
25 this witness and how they know it.

1 THE COURT: Both of you got to keep your voice up  
2 so the court reporter can get it down. And just ask the  
3 question. What do you want to do -- what question do you  
4 want to ask?

5 MR. DEVOE: I want to read from the arrest warrant  
6 what was put down for my client's height and weight.

7 MR. FINNEY: We would object, Your Honor, unless  
8 the witness put that information on the warrant.

9 THE COURT: Did you put that information on the  
10 warrant?

11 THE WITNESS: No, sir. These warrants are  
12 generated through the Magistrate's office. We give them  
13 an affidavit and this is generated from their computer  
14 system.

15 THE COURT: Okay.

16 Q. [Mr. Devoe] Did you review the arrest warrant before  
17 you signed it?

18 A. Yes, sir.

19 Q. Every bit of it?

20 A. I would say I reviewed the arrest warrant as  
21 thoroughly as possible.

22 Q. You say as thoroughly as possible. So in your  
23 opinion you thought the information in the arrest warrant  
24 was accurate?

25 A. To the best of my knowledge?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Yes?

2 A. And mostly I'm concentrating on the narrative ---

3 Q. --- I understand that ---

4 A. --- of the affidavit that is of the ---

5 Q. --- but even the essential facts of who the person  
6 is on there?

7 A. That's the facts of the arrest warrant is the  
8 affidavit. If you're referring to the person with data  
9 information, that may have some importance. But most so  
10 the weight of a arrest warrant is the affidavit.

11 Q. Any information on the arrest warrant before you  
12 sign it and before you issue it is verified by somebody,  
13 obtained from someplace correct?

14 A. Yes, from my report.

15 Q. I mean including the data on the person's name, his  
16 social security number and so on.

17 A. That would be in the system. We only can put what's  
18 in the system.

19 Q. Right. In the system and on this arrest warrant has  
20 listed his height and his weight.

21 A. Yes, it does.

22 Q. And you're saying if it says in the arrest warrant  
23 the height was 6' ---

24 MR. CORBETT: --- Your Honor, this is an attempt to  
25 read off an arrest warrant for which we interpose an

1 objection. Now if the witness can answer that question,  
2 fine. But it's not proper for the person asking the  
3 question to read off it then see if it can be  
4 authenticated.

5 MR. DEVOE: Well, Your Honor, I would say that the  
6 event -- I was overcome when the Solicitor actually read  
7 the arrest warrant to the jury.

8 THE COURT: But you didn't object.

9 MR. DEVOE: Well ---

10 MR. FINNEY: --- and I didn't read it. I read the  
11 indictment to the jury, Your Honor.

12 THE COURT: You can ask him what information that  
13 he knows and it -- if he knows the answer to that he can  
14 answer it.

15 MR. DEVOE: All right.

16 Q. [Mr. Devoe] Do you know of it personally that among  
17 the information -- and I'll go right back to the same  
18 question I guess, what Mr. Pearson's height is?

19 A. No, sir. I can only verify that the affidavit in  
20 the warrant is a true affidavit.

21 Q. Mr. Clark, how tall are you?

22 A. I'm five foot seven and a half.

23 Q. When you're standing next to Mr. Pearson is he your  
24 height?

25 A. No, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Is he shorter than you?

2 A. He's taller, sir.

3 Q. How much taller do you think he is?

4 A. Approximately about four or five feet taller.

5 Q. Four or five --

6 A. --- I'm sorry. He's approximately 1 -- about a feet  
7 and about three inches taller.

8 Q. How tall?

9 A. About a feet and three inches taller.

10 Q. Is he ---

11 A. --- he's approximately -- I would give him around 6.  
12 As you saw earlier I'm not good at measurement; that's  
13 one of my weaknesses is a person's height.

14 I never was good at that so if you're looking for me  
15 to give you an accurate answer on that I'm just -- that's  
16 one of my weaknesses. I can look at you Mr. Devoe and  
17 tell you -- I'm not good at guessing ages neither height.

18 Q. I know what I used to be -- I don't know ---

19 A. --- what was placed in this arrest warrant is what's  
20 in the system.

21 Q. I refuse to give my height anymore because I've  
22 shrunk so much recently. As long -- getting around to it  
23 in one of your reports I believe you mentioned that this  
24 crime was committed by three black males, averaging  
25 height 5'8 to 5'9.

1 A. Yes, I testified to that earlier the variation.

2 Q. And the age between 19 and 20?

3 A. Yes, I testified to that earlier, sir.

4 Q. And that was your initial impression or additional  
5 information about this whole situation?

6 A. Yes sir, I testified to that earlier that's what was  
7 talked into a recorder.

8 Q. And recorders never lie do they? They're always  
9 correct and they reflect what you said?

10 A. Yes.

11 Q. It's not like some handwriting you can never know if  
12 you wrote down until later and you can't read it  
13 yourself. You ever been in a situation where you take  
14 notes down and later on you can't read it?

15 A. No, sir. That's not one of my weakness areas.

16 Q. Good ---

17 A. --- that's probably one of your weakness areas.

18 Q. It is. You learn in law school to take notes and  
19 you learn if you don't look at it an hour later you don't  
20 know what you put down because it gibberish.

21 You also in your notes mention some place about your  
22 first meeting with Mr. Pearson about -- my understanding  
23 -- did he call you or did you call him?

24 A. I approached him.

25 Q. And? Why did you approach him?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. I had information that led me to Michael Pearson and  
2 I wanted to talk to him and we had the conversation  
3 behind the Family Court building.

4 Q. At the Family Court building? Are you talking about  
5 right over in the -- Chevrolet ---

6 A. --- yes sir. That's where he was doing business  
7 that day and that's where we met.

8 Q. And you interviewed him three different times here  
9 at the Sheriff's Department?

10 A. After his arrest.

11 Q. After his arrest you brought him up here three  
12 different times?

13 A. Yes sir, it was approximately three times.

14 Q. And he was always adamant about the fact he wasn't  
15 involved in that case ---

16 MR. CORBETT: --- objection, Your Honor.

17 MR. DEVOE: I'm asking a question.

18 THE COURT: What's your objection?

19 MR. CORBETT: He's asking this witness what someone  
20 else said.

21 Q. [Mr. Devoe] You interviewed him. Did he ever  
22 confess to you that he did this crime?

23 MR. CORBETT: Your Honor, if I may? My objection  
24 is still there.

25 THE COURT: Y'all approach.

1 [Whereupon, an off the record bench conference is  
2 held]

3 Q. [Mr. Devoe] I'm going to stand further away so the  
4 jury can hear me because I've lost my voice since I was  
5 sick. I used to have a strong voice and somehow or  
6 another I maybe mumbled in the old days so now I'm  
7 mumbling...

8 You issued a search warrant on Mr. Pearson's  
9 residence also?

10 A. Yes, sir.

11 Q. Were there results from that search warrant?

12 A. No, sir. We recovered a pair of sneakers from the  
13 result of the search warrant.

14 Q. And those sneakers did they have some blood on them?

15 A. They were sent to SLED to be analyzed.

16 Q. Wouldn't you notice if a cutting made -- for some  
17 shoes because there is some blood?

18 A. I have to refer back to the analyst report.

19 Q. So you don't know the results of that?

20 A. It's in the report. I'll have to refer back to the  
21 report.

22 Q. Well, if the results have been positive wouldn't you  
23 know about it?

24 A. Yes, sir.

25 Q. So we can assume that the -- if there was blood it

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 was not the blood of the victim?

2 A. Yes, sir.

3 Q. All right. Now the Voc Rehab situation do you know  
4 how many people were at the Voc Rehab place every day or  
5 the days you were talking about?

6 A. No, sir. The result of the search warrant that was  
7 served on them did not give me that information.

8 Q. Did you ask for the information?

9 A. We did not ask for that specifically a count of how  
10 many clients they had if that's your question.

11 Q. But it's certainly more than two people?

12 A. We had an interest in Victor Weldon and Michael  
13 Pearson. That was the interest in the search warrant;  
14 not how many clients were there and so forth.

15 Q. Did you find out in that search warrant or the  
16 request to Voc Rehab as to what the dates that Mr. Weldon  
17 worked there and what dates Mr. Pearson worked there  
18 other than the one week that you're talking about?

19 A. Yes, the dates that were recovered resulted in the  
20 search warrant that was put out earlier.

21 Q. And one week, the four days?

22 A. I think it was -- it was four days.

23 Q. Four days in December?

24 A. I think it was, Mr. Devoe.

25 Q. Would it make a difference of knowledge of people if

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 there were say 30 people there rather than three?  
2 A. I couldn't tell you that it would make a difference  
3 on the number of clients there versus a large member,  
4 smaller member. I can tell you that they were there  
5 during the same time and it's a good possibility that  
6 they would have been familiar with each other.  
7 Q. There's also a possibility depending on the size of  
8 the building and how many work rooms there were and the  
9 age difference that they wouldn't know each other at all?  
10 A. It's a greater possibility that they would have.  
11 Q. Do you know how many people -- how big the building  
12 was they worked at?  
13 A. No, sir. I did not measure that building.  
14 Q. But you've seen it.  
15 A. Yes, sir.  
16 Q. Who supervised the taking of the fingerprints off  
17 the truck?  
18 A. The fingerprint was recovered from the truck through  
19 -- in reference to the victim Mr. Gibbons truck?  
20 Q. Yes?  
21 A. That was done by Investigator Rick Richards.  
22 Q. So you weren't there at all when that was ---  
23 A. --- no I was not. I'm messy...  
24 Q. Do you have any idea whether or not that truck is  
25 parked in front of Mr. Gibbons store most of the time?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 A. I can only -- most of the time not. The morning  
2 when the truck was fingerprinted is that your question?  
3 Q. Yes?  
4 A. Occasionally when I pass there it's always parked in  
5 front of the coke machine.  
6 Q. As you face the store is it the...  
7 A. On the right corner.  
8 Q. The right corner?  
9 A. The right corner.  
10 Q. So if you're going down 260 and the store is on the  
11 right hand side right across from the hospital.  
12 A. Yes, sir.  
13 Q. Then you turn right and the store is -- the truck is  
14 on the far right of the lot?  
15 A. Yes. That's where I normally notice it's parked at.  
16 Q. It's not behind closed gates?  
17 A. No, sir.  
18 Q. So it's available for anybody to look at as you walk  
19 by to go in the store?  
20 A. Right. And your client stated he had never been to  
21 Mr. Slick's business. He heard of him; he's not familiar  
22 with him. So it's not a business that Michael Pearson go  
23 in and out of daily or do business with Mr. Gibbons.  
24 Q. But it's in an area that people walk by all the  
25 time? So I'm just -- it's in an area where the China

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Buffet is near it to the right hand side?

2 A. Yes. And again your client stated that he never  
3 touched the vehicle. He had never been around Mr.  
4 Slick's vehicle.

5 Q. I'll go back to one last thing. On your notes, the  
6 first notes you wrote -- it's a 2-page note you're  
7 talking about the one you can transcribe later.

8 A. Yes, sir.

9 Q. I believe didn't you underline the height of 5'8 to  
10 5'9 in those notes?

11 A. Yes. I have underlined the three black males  
12 between 19 and 20 of age and 5'8 to 5'9 in height. That  
13 was underlined today by me because I know that was an  
14 issue.

15 Q. I have no further questions. Thank you.

16 MR. FINNEY: May it please the court?

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. FINNEY:

20 Q. Investigator, did you give me a copy of that  
21 statement that Mr. Devoe was asking you about?

22 A. Yes.

23 Q. Is it underlined in my statement?

24 A. No, sir.

25 Q. According to Mr. Weldon's lawyer you didn't find any

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 evidence at Mr. Weldon's house when you executed the  
2 search warrant. You didn't?

3 A. No, sir.

4 Q. When was the crime at Mr. Gibbons house?

5 A. Yes.

6 Q. When was it?

7 A. Oh, May 15<sup>th</sup> 2010.

8 Q. When was the search warrant?

9 A. May -- I'm sorry let me go back to my notes here.  
10 On July 15<sup>th</sup>.

11 Q. July the 15<sup>th</sup>?

12 A. Yes.

13 Q. Two months after Mr. Gibbons got robbed?

14 A. Yes.

15 Q. Did you go there looking to see if there was a --  
16 some boots or a mask there at the house? You were hoping  
17 to find it right?

18 A. Yes.

19 Q. But how many -- 8 weeks had gone by?

20 A. Yes. Easily evidence could have been destroyed by  
21 then.

22 Q. All right. You went to Mr. Pearson's house looking  
23 for the same thing?

24 A. Yes, sir.

25 Q. And was that sooner in time after the robbery?

1 A. Yes, 5 days.

2 Q. You didn't see any dark clothes; you didn't see any  
3 mask there either?

4 A. No, sir.

5 Q. You said that there were some differences between  
6 these statements that you -- I think you called them case  
7 notes?

8 A. Yes, sir.

9 Q. When Mr. Gibbons talked to you at the hospital did  
10 he tell you 5'9 to 5'9?

11 A. No, sir.

12 Q. Did he tell you medium height?

13 A. Yes, sir.

14 Q. So when you transcribed your notes you heard at the  
15 hospital medium height but you wrote down 5'8 or 5'9?

16 A. Yes, sir.

17 Q. Is 5'8 or 5'9 medium height in your opinion?

18 A. In my opinion -- and I testified to the point that  
19 is one of my weaknesses in measuring height and weight by  
20 looking at it.

21 Q. All right. Mr. Weldon's lawyer asked you about  
22 George Frierson and checking him out?

23 A. Yes.

24 Q. Did you take George Frierson to the lab and swab his  
25 mouth with a buccal swab?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Oh, yes.

2 Q. Did you send it in?

3 A. Oh, yes.

4 Q. Did you roll his fingerprints and send those in?

5 A. Yes, it was.

6 Q. Did you come back with anything on those?

7 A. No, sir.

8 Q. And as far as Mr. Pearson's fingerprints on this  
9 wallet, which is State's exhibit number 11, you sent that  
10 to the experts at SLED?

11 A. Right.

12 Q. And they processed this?

13 A. Yes, they did.

14 Q. Is it possible for somebody to pick up something  
15 like this book and before I put it down I could do  
16 something to the book to take the fingerprints off?

17 A. Of course.

18 Q. What would I have to do?

19 A. Just wipe them off.

20 Q. Just wipe it off and put it down?

21 A. Yes.

22 Q. Nothing further.

23 THE COURT: You can step down.

24 [Whereupon, the witness is excused and exits the  
25 witness stand]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Mr. Solicitor, you may call your next  
2 witness.

3 MR. FINNEY: Your Honor, our next witness will be  
4 Mr. Richard Gamble.

5 THE COURT: All right.

6 [Whereupon, Mr. Gamble comes forward]

7 CLERK OF COURT: Step right here, Mr. Gamble.  
8 Raise your right hand and place your left hand on the  
9 Bible and repeat your name please?

10 MR. GAMBLE: Richard Gamble.

11 [Whereupon, the witness is duly sworn by the Clerk  
12 of Court as follows: do you solemnly swear the testimony  
13 you are about to give will be the truth and nothing but  
14 the truth so help you God]

15 MR. GAMBLE: Yes, ma'am.

16 [Whereupon, the witness takes the witness stand]

17

- - - - -

18

MR. RICHARD GAMBLE,

19

Having been first duly sworn,

20

Was examined and testified as follows:

21

DIRECT EXAMINATION

22

BY MR. CORBETT:

23

Q. Mr. Gamble, good morning.

24

A. Good morning.

25

Q. Mr. Gamble if you would please tell us where you

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 live -- I mean in just general?  
2 A. New Zion.  
3 Q. In the New Zion area?  
4 A. Yes, sir.  
5 Q. And do you know an individual named Edward Gibbons  
6 who goes by the nickname Slick?  
7 A. Yes, sir.  
8 Q. Now do you have recollection of an incident where  
9 Mr. Gibbons was beaten and robbed?  
10 A. Yes, sir.  
11 Q. Have you known or known of Mr. Gibbons for some  
12 time?  
13 A. All -- practically all my life.  
14 Q. Okay. Is that from living in the community and  
15 doing business at the parts store?  
16 A. I did a lot of landscaping for him all through the  
17 years.  
18 Q. Now do you know an individual named Michael Pearson?  
19 A. Yes, sir.  
20 Q. Do you see him here today?  
21 A. Yes, sir.  
22 Q. And tell me what color shirt he's wearing please?  
23 A. That blue shirt right on your right.  
24 Q. Now do you know him by any nickname?  
25 A. Yes, sir. Footie [phonetic]

1 Q. Now has Mr. Pearson ever had any occasion to help  
2 you out in terms of doing work?

3 A. Yes, sir he did. We were working at a car cash a  
4 few summers ago, and Ed come up there to get us to do  
5 some landscaping.

6 Q. Now you say Ed came up there and when you reference  
7 Ed who do you mean?

8 A. Ed, Mr. Gibbons son.

9 Q. Mr. Gibbons son?

10 A. Yes, sir.

11 Q. Mr. Gibbons son that has since passed away?

12 A. Yes, sir.

13 Q. Now where did you do this landscaping?

14 A. We done some at Ed's house and some at Mr. Gibbons  
15 house.

16 Q. Are those in close proximity?

17 A. Yes, sir. They are one house apart.

18 Q. Now when doing that landscaping there at both Ed  
19 Gibbons house and the residence of Slick Gibbons did  
20 Michael Pearson do any work in those yards with you?

21 A. Yes, sir. He helped me at Ed's house and Slick's.

22 Q. If you would just tell us a little bit about the two  
23 of you being out in that area and about Mr. Pearson and  
24 what type of work he was doing in that area?

25 A. He was doing trim and helped push -- he was doing

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 the clean up and stuff.

2 Q. And do you know how many occasions did you and -- or  
3 when Mr. Pearson was with you that you would have been  
4 out to those two residences?

5 A. I don't know -- those two houses probably we was  
6 there for at least 5 days; I think we were there all  
7 week.

8 Q. Would y'all have seen both the front and the rear of  
9 the residences?

10 A. Yes sir, we did both of them.

11 Q. I'll ask you first and then expand the question a  
12 little bit? Have you ever had any occasion to be in Mr.  
13 Gibbons garage?

14 A. Yes, sir. When we were landscaping all the tools  
15 were in the garage. We were in both of them; we were in  
16 the garage.

17 Q. Now when you say we what do you mean we?

18 A. Me and Michael.

19 Q. So to your knowledge Mr. Pearson has actually been  
20 in Mr. Gibbons garage?

21 A. Yes, sir.

22 Q. And this was prior to this robbery and beating?

23 A. Yes, sir.

24 Q. Now if I tell you that this incident took place on  
25 May 15<sup>th</sup> of 2010 would it have been that spring?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 A. I think so. I think that's right.
- 2 Q. One moment please, sir. Now in terms of who you had  
3 contact with specifically you and Mr. Pearson would y'all  
4 have contact with Ed Gibbons or who I'm going to call  
5 Slick Gibbons?
- 6 A. We'd talk to Ed personally. But we all went up to  
7 the store in the afternoon when we finished up. Mr.  
8 Gibbons always -- every time we would pull in there -- so  
9 I'm sure we made contact with him --
- 10 Q. But in terms of payment that was handled by Ed?
- 11 A. That's right.
- 12 Q. While working there in the yard did Slick Gibbons --  
13 did he ever come and personally direct any of y'all's work  
14 or who handled that?
- 15 A. No. It was his house and he told us what he wanted  
16 done in the yard.
- 17 Q. And who is this now?
- 18 A. Slick.
- 19 Q. And when would he have told you that? I mean at the  
20 store, at the yard?
- 21 A. In the yard.
- 22 Q. And that would have been -- Mr. Pearson would have  
23 been with you there as well?
- 24 A. Yes, sir.
- 25 Q. And you said this stretched over a period of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 probably somewhere in the neighborhood of five days?

2 A. That's right.

3 Q. Sir, I'm going to ask you first of all if you can  
4 recognize this or if you have enough familiarity with Mr.  
5 Gibbons garage to recognize this drawing?

6 [Whereupon, the witness is shown drawing]

7 A. Yes, sir.

8 Q. Okay. Do you have any recollection from this where  
9 the tools would have been?

10 A. That his house?

11 Q. Yes, sir?

12 A. Those are his tools. This is the garage [indicates]  
13 coming up to the house right here [indicates].

14 Q. Two garage doors and a small door ---

15 A. --- this door right here [indicates] takes you all  
16 the way to the -- he's got a storage room at the front  
17 end of the garage and he kept all the tools in the front  
18 so we all had to go in this door [indicates] to go to the  
19 storage area to get the tools out.

20 Q. The storage area here [indicates]?

21 A. That's right.

22 Q. If you would step down for me just a moment.

23 [Whereupon, the witness steps down from the witness  
24 stand]

25 Q. It's going to be a little difficult standing there

1 at the side but if you would try to tell me about which  
2 door and which closet?

3 A. Right here [indicates]. This door right here takes  
4 you inside the garage and takes you back to the storage  
5 room here [indicates] and all the tools -- in the garage  
6 on this side over here [indicates] tools would be here  
7 [indicates].

8 Q. And to your knowledge both you and Mr. Pearson  
9 retrieved tools from this area?

10 A. I'm sure I sent him in there a couple of times while  
11 I was cutting -- get tools for me.

12 Q. Thank you very much.

13 [Whereupon, the witness returns to the witness  
14 stand]

15 Q. Now I'm going to show you what has been marked or  
16 has been admitted as State's exhibit 3-D and ask if you  
17 recognize that?

18 [Whereupon, the witness is shown exhibit]

19 A. Yes sir, I sure do. That's the back of Slick's  
20 house.

21 Q. So when we are talking about this garage here on  
22 this chart [indicates] ---

23 A. --- right there ---

24 Q. --- that's this page [indicates]?

25 A. That picture --

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Thank you, sir. Please answer any questions these  
2 gentlemen have.

3 CROSS-EXAMINATION

4 BY MR. DEVOE:

5 Q. Mr. Gamble, I believe you said you were from New  
6 Zion?

7 A. Yes, sir.

8 Q. What part?

9 A. I live on [REDACTED].

10 Q. You do?

11 A. Right down to the subdivision.

12 Q. [REDACTED]?

13 A. Yes, sir.

14 Q. Do you know where I live?

15 A. Yes, sir.

16 Q. About four miles the other direction.

17 A. That's right.

18 Q. This is the dates you say you worked with -- or  
19 Michael Pearson worked with you?

20 A. That's right.

21 Q. What year was this?

22 A. What year was it?

23 Q. What year -- you don't remember what year it was?

24 A. I know it was summer. I don't know exactly what  
25 year it was.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Were there other people involved working with you  
2 besides Mr. Pearson?

3 A. No, sir.

4 Q. Do you know a man named Boo [phonetic] Parker?

5 A. Boo Parker?

6 Q. Yes?

7 A. No, sir.

8 Q. You don't?

9 A. No. -- If I saw him again -- I might know him if I  
10 see him.

11 Q. He never worked with you?

12 A. Boo?

13 Q. Yes?

14 A. I just know a short guy named Boo -- he has a house  
15 of West --

16 Q. I'm sorry. I can't hear you?

17 A. I said Boo worked with me some but he didn't work  
18 with me at Slick's house. He worked with me at Wes  
19 Jackson's house -- back there by the jail.

20 Q. Over there by Lincoln Park?

21 A. That's right.

22 Q. Did you ever work with a guy named Scooter  
23 [phonetic]?

24 A. No, sir.

25 Q. At the car wash?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 A. At the car wash? Maybe, you might be right.
- 2 Q. And did you ever work with a Gerald Frierson or  
3 Charlie Frierson?
- 4 A. The name don't sound familiar but maybe I did at the  
5 carwash.
- 6 Q. What did you do? Did you work mostly in Manning or  
7 New Zion or what?
- 8 A. I work in Columbia, Florence, Manning, New Zion.
- 9 Q. All over the place?
- 10 A. Exactly. Santee.
- 11 Q. And you pick up people to help as casual labor or  
12 what?
- 13 A. No, sir. We worked at Ed's house. I was working at  
14 the carwash when he hired me --
- 15 Q. The carwash out by Jerry's truck stop?
- 16 A. No, sir. Right there off -- road --
- 17 Q. Okay.
- 18 A. And it's a sign -- he put a sign -- we was washing  
19 cars there -- but we washed all of Ed's cars. Everything  
20 he bought we washed. And he come up there one day and  
21 needed landscaping and he wanted me to cut some bushes  
22 for him, edge around house and his daddy's house and all  
23 that. He was there working with --
- 24 Q. He what? I couldn't hear you.
- 25 A. -- worked with me because he wanted to make some

- 1 money.
- 2 Q. Nothing wrong with making some money.
- 3 A. Absolutely not.
- 4 Q. But you say he worked with you for how long?
- 5 A. With Slick's house or Ed's house?
- 6 Q. At any house, anyplace?
- 7 A. I'm not sure exactly how long he worked. But I know
- 8 he was working -- I want to think he was working with us
- 9 at the car wash for a couple of weeks -- and we done the
- 10 work for Ed. I think he might have worked about a week
- 11 or so after that.
- 12 Q. Worked with you after that you say?
- 13 A. Yes, sir.
- 14 Q. Where would he work after that?
- 15 A. At the car wash.
- 16 Q. At the carwash?
- 17 A. Yes, sir.
- 18 Q. Did he ever work with you in Alcolu?
- 19 A. I don't know. I don't really know. I don't think
- 20 so.
- 21 Q. No houses in Alcolu?
- 22 A. No, sir.
- 23 Q. So your business wasn't just maintaining yards was
- 24 it?
- 25 A. My business?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. Yes?

2 A. No, my business was washing cars.

3 Q. Washing cars, right. So how did you happen to get  
4 into the yard maintenance business?

5 A. I been doing it all my life. I was probably doing  
6 washing and cutting bushes all my life; landscaping.

7 Q. I understand doing your own yard and other  
8 neighbors, but how did you get the business in Manning?

9 A. Manning? Because I was -- when I bought my first  
10 vehicle to start landscaping I bought it from Ed.

11 Q. Do what?

12 A. And I started landscaping. I was young then. I was  
13 like 15 or 16 when I started landscaping and I started  
14 cutting bushes for him and -- that knew me and wanted  
15 their bushes cut.

16 Q. So how old are you now?

17 A. I'm 44.

18 Q. So for 30 years you've been landscaping?

19 A. Yes, sir.

20 Q. And you do it still everyday ---

21 A. --- still every day ---

22 Q. --- or you're washing cars, which is it?

23 A. No, I cut bushes now. I ain't washing cars no more.  
24 That only lasted for maybe a year or so then I went back  
25 in the landscaping.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. What?  
2 A. I was back in the landscaping.  
3 Q. When did you do the washing cars?  
4 A. I guess that was about 3 years ago, 2 years ago?  
5 Q. Well, which is it?  
6 A. About 3 years ago?  
7 Q. 3 years ago and that's when you say Michael Pearson  
8 helped you out?  
9 A. Yes, sir. Whenever I was washing cars he helped me  
10 then.  
11 Q. I'm not talking about washing cars I mean side ---  
12 A. --- cutting bushes.  
13 Q. You testified about going to Mr. Gibbons place and  
14 cleaning up his yard?  
15 A. Yes, sir.  
16 Q. I'm asking that was when you were washing cars also?  
17 A. Yes, sir.  
18 Q. So about 3 years ago?  
19 A. Yes, sir.  
20 Q. I have no further questions, thank you.  
21 THE COURT: Anything further from the State?  
22 MR. CORBETT: Nothing further.  
23 THE COURT: Thank you, sir. You may step down.  
24 [Whereupon, the witness is excused and exits the  
25 witness stand]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 MR. CORBETT: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 [Whereupon, an off the record bench conference is  
4 held]

5 MR. CORBETT: The State calls John Hornsby, Your  
6 Honor.

7 [Whereupon, Mr. Hornsby comes forward]

8 CLERK OF COURT: Raise your right hand and place  
9 your left hand on the Bible and repeat your name, please?

10 MR. HORNSBY: John Hornsby.

11 [Whereupon, the witness is duly sworn by the Clerk  
12 of Court as follows: do you solemnly swear the testimony  
13 you are about to give will be the truth and nothing but  
14 the truth so help you God]

15 MR. HORNSBY: Yes, ma'am.

16 [Whereupon, the witness takes the witness stand]

17 - - - - -

18 JOHN HORNSBY,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORBETT:

23 Q. Mr. Hornsby, good morning.

24 A. Good morning, sir.

25 Q. I'm sorry, good afternoon I guess. Mr. Hornsby,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 tell us by whom are you employed?

2 A. With South Carolina Vocational Rehabilitation in  
3 Sumter.

4 Q. In Sumter?

5 A. Yes, sir.

6 Q. And what is your title or what is job duties there?

7 A. I'm the area supervisor.

8 Q. And in connection with that do you have access to  
9 the Voc Rehab records?

10 A. Yes, sir.

11 Q. At our request did you pull attendance records for  
12 Victor Weldon and Michael Pearson?

13 A. Yes, but due to Federal confidentiality I cannot  
14 disclose any information unless I'm court ordered to do  
15 so.

16 THE COURT: And I so order you to do so.

17 THE WITNESS: Yes, sir.

18 Q. [Mr. Corbett] Now do you personally know those  
19 individuals?

20 A. No sir, I do not.

21 Q. Okay. Now do your time records indicate a period  
22 of overlap where the two of them had timecards at Voc  
23 Rehab over the same period?

24 A. Yes, sir.

25 Q. Do you have those records available today?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. I do. Those records would be December 9<sup>th</sup> through  
2 December 12<sup>th</sup> of 2008 is when those times did overlap.

3 Q. And what do those time records indicate in terms of  
4 area and hours?

5 A. Well those individuals they were assigned to our  
6 wood shop. We have a job readiness training program  
7 where these individuals attend and they work in a  
8 facility where we build specialized pallets and shipping  
9 crates. And they were assigned to that workshop there.

10 Q. And your records indicate that they both attended  
11 and worked at that wood shop from December 9 through  
12 December 12?

13 A. Yes, sir.

14 Q. At the same time?

15 A. Yes, sir.

16 Q. Just one moment please. Now Mr. Hornsby, do you  
17 have any knowledge of the workings of the what I will  
18 call the wood shop as you described in terms of its size,  
19 number of people who work there at any given point in  
20 time?

21 A. The facility is about 150 square foot by about 250  
22 square foot. It is -- under is a I guess you could say a  
23 metal warehouse type facility where we do build the  
24 pallets and crates. It's an open floor plan split into 2  
25 different sides. I have about 25 individuals there on a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 daily basis. And our hours usually depending upon the  
2 time of year usually runs from 8:30 to about 2:30 or  
3 3:00.

4 Q. Now do your records -- you had given me the  
5 timeframe of December 9 through December 12<sup>th</sup>. Do your  
6 records indicate their start and end times? For example,  
7 do you know when Mr. Weldon started with Voc Rehab and  
8 when he ended?

9 A. As far as when he applied for services?

10 Q. Yes, sir?

11 A. I do not have any of that information with me, sir.

12 Q. How about for Mr. Pearson?

13 A. I do not have any information...

14 Q. But you do know that during that December 9<sup>th</sup> through  
15 12<sup>th</sup> they were there at the same time?

16 A. Yes, sir.

17 Q. Mr. Hornsby, thank you very much.

18 MR. KNOBELOCH: May it please the court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. KNOBELOCH:

22 Q. Mr. Hornsby?

23 A. Yes, sir.

24 Q. Before attending today did you review the records  
25 from Mr. Weldon and Mr. Pearson to see when they did work

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 at Voc Rehab?

2 A. Yes, sir.

3 MR. KNOBELOCH: May I approach?

4 THE COURT: Yes, sir.

5 Q. [Mr. Knobeloch] Would it refresh your memory --

6 [Whereupon, the witness is shown documents]

7 Q. The Solicitor asked you earlier if you knew the  
8 start date and end date for Mr. Pearson and the start  
9 date and end date for Mr. Weldon.

10 And now that you've reviewed that document to  
11 refresh your memory could you answer that question?

12 A. Yes. I mean the start date of our job readiness  
13 training program for Mr. Pearson began on December 9<sup>th</sup>  
14 2008 and he was discharged from that training program on  
15 December -- I mean April 8<sup>th</sup>, 2009. And Mr. Weldon began  
16 on May 13<sup>th</sup>, 2008 and discharged on December 12<sup>th</sup>, 2008.

17 Q. No further question.

18 THE COURT: Mr. Devoe?

19 CROSS-EXAMINATION

20 BY MR. DEVOE:

21 Q. Just to summarize I take it that Mr. Weldon's last  
22 week on the job was Mr. Pearson's first week on the job?

23 A. Yes, sir.

24 Q. And I think you said the dimensions of the building  
25 is approximately 250 square feet?

1 A. Somewhere around that, sir.

2 Q. And how many different work areas do you have in  
3 that building?

4 A. It is basically like I said an open floor plan with  
5 a partial wall between 2 different work areas.

6 Q. And a new hire or a new person coming in would work  
7 in a more basic area that someone who has been there for  
8 a while?

9 A. No, sir. It just depends upon the contract the  
10 individual is assigned to.

11 Q. Sorry?

12 A. It depends upon the contract that the individual is  
13 assigned to.

14 Q. And do you have any work records for the week in  
15 question as to which contract which was one was assigned  
16 to?

17 A. At that time in 2008 sir we did not have them -- how  
18 would you say -- we did not have records of who was  
19 assigned to each one of those contracts.

20 Q. And do you have any records as to how many people  
21 were there any one time to work?

22 A. About 25. We usually have an individual maintained  
23 there is about 25 individuals.

24 Q. And they all work a 6 hour work day or 8 hour work  
25 day?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. 6 hours.

2 Q. And they eat in the same area?

3 A. Yes, sir.

4 Q. And they came to work at the same time? One  
5 restroom?

6 A. Yes, sir.

7 Q. And left the same time?

8 A. [No response]

9 Q. I have no further questions. Thank you.

10 THE COURT: Anything further from the State.

11 MR. CORBETT: Nothing further, Your Honor.

12 THE COURT: Any reason why he can't be excused?

13 MR. CORBETT: Nothing from the State.

14 MR. KNOBELOCH: Nothing.

15 THE COURT: Thank you, sir.

16 [Whereupon, the witness is excused and exits the  
17 witness stand]

18 MR. CORBETT: Your Honor, the State would call  
19 Catherine Leisy.

20 [Whereupon, Ms. Leisy comes forward]

21 CLERK OF COURT: Raise your right hand and place  
22 your left hand on the Bible and repeat your name, please?

23 MS. LEISY: Catherine Leisy.

24 [Whereupon, the witness is duly sworn by the Clerk  
25 of Court as follows: do you solemnly swear the testimony

1 you are about to give will be the truth and nothing but  
2 the truth so help you God]

3 MS. LEISY: Yes, I do.

4 [Whereupon, the witness takes the witness stand]

5 - - - - -

6 CATHERINE LEISY,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CORBETT:

11 Q. Ms. Leisy, good afternoon.

12 A. Good afternoon.

13 Q. If you would please tell us your full name?

14 A. Catherine Leisy L-E-I-S-Y.

15 Q. And by whom are you employed?

16 A. I work for the South Carolina Law Enforcement  
17 Division; also known as SLED.

18 Q. In what capacity?

19 A. I am a forensic scientist assigned to the D-N-A and  
20 Serology unit.

21 Q. If you would please tell us a little bit about both  
22 your education and your training to prepare you for that  
23 assignment?

24 A. I have a Bachelor of Science degree in Genetic  
25 Engineering from Cedar Crest College in Allentown,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Pennsylvania. I have received in house training at SLED  
2 pertaining to all the different types of tests and  
3 analysis I'm required to perform.

4 Prior to my employment with SLED I spent  
5 approximately 4 years working as a forensic D-N-A analyst  
6 at a private testing facility known as --

7 I also have approximately 2 years of experience as a  
8 research associate in -- laboratory.

9 Q. Now specifically at SLED what do your duties  
10 include?

11 A. My responsibilities include processing forensic  
12 cases, generating reports based on the results and  
13 conclusions drawn, and testifying to those reports as  
14 necessary. I'm also responsible in assisting in the  
15 training of new hires, our new analysts to be hired.

16 Q. Have you ever testified in court as an expert  
17 witness?

18 A. Yes, I have.

19 Q. In what field of expertise?

20 A. In the field of forensic D-N-A identification  
21 testing.

22 MR. CORBETT: Your Honor, at this time we would  
23 offer Ms. Leisy as an expert in the field of D-N-A  
24 analysis and testing.

25 THE COURT: What sayeth the defense?

1 MR. KNOBELOCH: No objection.

2 MR. DEVOE: No objection, Your Honor.

3 THE COURT: I so find she is an expert in D-N-A  
4 analysis without objection.

5 Q. [Mr. Corbett] Ms. Leisy, correct me if I'm wrong but  
6 SLED is sometimes referred to as an assisting agency, is  
7 that correct?

8 A. Yes, it is.

9 Q. Okay. So it's not uncommon for you to receive  
10 items of evidence from other law enforcement agencies?

11 A. That's correct.

12 Q. Then as part of that process you test and perform  
13 analysis on those items submitted?

14 A. Yes.

15 Q. Bear with me for just a moment. Now, I'm going to  
16 show you what has been marked for identification as  
17 State's exhibit number 10.

18 [Whereupon, the witness is shown exhibit]

19 Q. And if you can tell us what that item is?

20 A. This particular item did not come into my custody at  
21 any point. It does contain the SLED identification number  
22 for this particular case. I only received swabs taken  
23 from several of the items. I don't believe this  
24 particular item was in my custody.

25 Q. All right. If you'll hold on to that for just one

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 moment. If I may let me hand you what has been marked  
2 for identification as State's exhibit number 19.

3 [Whereupon, the witness is shown exhibit]

4 Q. Can you tell us what that is?

5 A. This is a heat sealed pouch that contains the SLED  
6 case number for this particular case. It also contains  
7 my initials indicating that it was in my custody as well  
8 as my initials and the date when the seal on each side  
9 was cut and was sealed up after I completed my testing.

10 Q. Now if you would please tell us what is contained  
11 within that envelope -- I'm sorry, before I go there let  
12 me ask it this way if I may. Now what we're looking at  
13 here is a sealed envelope from SLED is that correct?

14 A. Yes, it is.

15 Q. Now who puts it back in this envelope?

16 A. If an analyst receives a larger item such as an  
17 article of clothing or a larger item than we can  
18 physically process in the laboratory the technician or  
19 analyst that takes a swabbing or cutting of that  
20 particular item for D-N-A testing will place it first  
21 into what we call a coin envelope or a small manila  
22 envelope that contains the case the item numbers.

23 Those envelopes are then placed into this heat  
24 sealed pouch, sealed, dated, and initialed and then  
25 transferred to my custody.

1 Q. So it's packaged each time it comes through the lab?

2 A. Correct. Items are only transferred in heat sealed  
3 pouches so that we can show there has been no tampering.  
4 We can tell if somebody has been in the pouch.

5 Q. And then do you send it back to the local agency in  
6 a pouch such as it is now?

7 A. That's correct. I would seal it up inside the same  
8 heat sealed pouch that I received it in and it will be  
9 transferred back to the custody of the submitting agency.

10 Q. Now, with regard to that particular pouch and you  
11 indicated -- what were the items contained in that pouch?

12 A. Would you like me open it or should I just refer to  
13 the numbers that are on it.

14 Q. Whichever way is more convenient for you or easier  
15 for you.

16 A. This pouch indicates that it contains several swabs  
17 that were taken from pieces of duct tape that were  
18 submitted for testing.

19 There is also a wallet -- there is a swab from a  
20 wallet, a swab from duct tape found near a garage door, a  
21 swab from duct tape taken near step.

22 There is also a swab taken from a check as well as a  
23 swab of duct tape taken from the victim's head.

24 Q. Now did you conduct the D-N-A analysis of those  
25 swabs?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Yes, I did.

2 Q. Now did you generate a report with regard to that  
3 analysis?

4 A. I did.

5 Q. Do you have a copy of that available to you?

6 A. Yes, sir.

7 Q. Okay. If you would, please locate that report.

8 [Whereupon, the witness complies]

9 Q. Do you have that available?

10 A. Yes.

11 Q. All right. Now during the -- your report were  
12 there any of the swabs matched to any other known  
13 standards?

14 A. The D-N-A profiles that I developed from the swabs  
15 from the duct tape and the swab from the wallet were  
16 compared to several known standards, yes.

17 Q. And what were your findings?

18 A. For what was identified as SLED item 5.1, which was  
19 a swab from duct tape taken from the victim's head I  
20 determined that the D-N-A obtained from this item is a  
21 mixture of at least two individuals.

22 That the partial D-N-A profile developed from the  
23 major contributor to this mixture matches -- excuse me,  
24 matches the D-N-A profile of Victor Weldon. The  
25 probability of randomly selecting an unrelated individual

1 having a profile matching the major contributor to this  
2 mixture is approximately 1 in 670 billion. Edward  
3 Gibbons cannot be excluded as a possible minor  
4 contributor to this mixture. Michael Pearson, George  
5 Frierson, and Matthew Weldon are excluded as possible  
6 contributors to this mixture.

7 I also developed a D-N-A profile from the swab of  
8 the duct tape found beside the garage door. The D-N-A  
9 profile developed from that item matches the D-N-A  
10 profile of Edward Gibbons. The probability of randomly  
11 selecting an unrelated individual having a D-N-A profile  
12 matching this item is approximately 1 in 780 quintillion.  
13 Excuse me, that's 1 in 780 quadrillion.

14 I also developed a D-N-A profile from the swab taken  
15 from the duct tape that was found beside the step. The  
16 D-N-A profile developed from this swab is a mixture of at  
17 least two individuals.

18 The D-N-A profile developed from the major  
19 contributor to this mixture also matches the D-N-A  
20 profile of Edward Gibbons and the partial D-N-A profile  
21 developed from the minor contributor to this mixture is  
22 insufficient for reliable interpretation.

23 I was also able to develop D-N-A profile taken from  
24 the swabs from a wallet that was submitted. The D-N-A  
25 obtained from the wallet is a mixture of at least 2

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 individuals. The D-N-A profile developed from the major  
2 contributor to this mixture also matches the D-N-A  
3 profile of Edward Gibbons. And Michael Pearson, George  
4 Frierson, Matthew Weldon, and Victor Weldon are excluded  
5 as possible contributors to this mixture. No analysis  
6 was performed on the swabs submitted to me taken from the  
7 check.

8 Q. Now with regard to item 5.1 if I could go back to  
9 that for just a moment. And if you would tell us a  
10 little bit about how you do that analysis there in  
11 particular with regard to 5.1 because you indicated it  
12 was a mixture?

13 A. Correct. When I develop a D-N-A profile from an  
14 item if there is D-N-A present from more than one  
15 individual we refer to it as a mixture.

16 If one of those individuals who contributed D-N-A  
17 contributed significantly more than the other individual  
18 we have what we call a major profile.

19 Basically it just means that the signals given off  
20 by that particular set of D-N-A is much stronger and  
21 allows me to essentially pull it out of the mixture and  
22 identify a single profile from that mixture.

23 I can then compare that major profile to a known  
24 individual to determine whether or not they may be the  
25 contributor. I can also compare a known individual to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 the minor contributor to determine if it's possible that  
2 they were also a contributor.

3 Q. Now Ms. Leisy I'm going to show you what's been  
4 marked as State's exhibit number 20 and State's exhibit  
5 number 21 and I'm going to ask if you can identify those.  
6 And if you need to open them let us know.

7 [Whereupon, the witness is shown exhibits]

8 A. State's exhibit 20 is a heat sealed pouch containing  
9 the known standard of Edward Gibbons. And State's exhibit  
10 21 is a heat sealed pouch containing the known standard  
11 of Victor Weldon.

12 MR. CORBETT: Your Honor, at this time the State  
13 would move into evidence State's exhibit 20 and State's  
14 exhibit 21.

15 THE COURT: Is that the --

16 MR. CORBETT: I'm sorry, Judge. Number 20 is the  
17 standard from Edward Gibbons. Number 21 is the standard  
18 from Victor Weldon.

19 THE COURT: What sayeth the defense?

20 [No response]

21 THE COURT: Any objection?

22 MR. KNOBELOCH: No objection.

23 THE COURT: They are in without objection.

24 [Whereupon, State's exhibit numbers 20 and 21 are  
25 admitted into evidence by the court]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Q. [Mr. Corbett] Now Ms. Leisy, with regard to item 5.1  
2 you indicated that that was described as duct tape from  
3 victim's head is that correct?

4 A. Correct. That's the description I received...

5 Q. And then that swab is contained here in an envelope  
6 marked as State's exhibit 19?

7 A. Correct.

8 MR. CORBETT: Your Honor, we would offer State's  
9 exhibit number 19 into evidence.

10 THE COURT: What sayeth the defense?

11 MR. KNOBELOCH: No objection.

12 MR. DEVOE: No objection.

13 THE COURT: All right. It is in without  
14 objection.

15 [Whereupon, State's exhibit number 19 is admitted  
16 into evidence by the court]

17 Q. [Mr. Corbett] Ms. Leisy I apologize. I feel like  
18 I've kind of bounced you around here a little bit.

19 Going back to 5.0, and again the reason I'm  
20 specifying that is because you talked through a number of  
21 different profiles that were developed.

22 A. Yes, sir.

23 Q. Many of which had evidence linking it back to Mr.  
24 Edward Gibbons?

25 A. That's correct.

1 Q. With particular to 5.1 you told us a little bit  
2 about the mixture of it and then it produces the  
3 likelihood of another individual having that. Based on  
4 what you were able to determine in 5.1 how does it match  
5 to Victor Weldon?

6 A. The partial D-N-A profile I developed from the major  
7 contributor to this item matches that of Victor Weldon.  
8 Again, the probability of randomly selecting an unrelated  
9 individual having a D-N-A profile matching a major  
10 contributor to this mixture is approximately 1 in 670  
11 billion.

12 That number basically means that if you randomly  
13 selected a person out on the street and developed their  
14 D-N-A profile the chance that it would match this  
15 particular profile is approximately 1 in 670 billion.

16 Q. Now 670 billion that's more people than have ever  
17 lived on the earth, right?

18 A. It's quite a bit more than currently live on the  
19 earth. I can't tell you exactly how many have ever lived  
20 on earth.

21 Q. But with regard to D-N-A talk to us a little bit  
22 about the individual nature of D-N-A.

23 A. D-N-A stands for deoxyribonucleic acid. It's the  
24 genetic material found in all of our body cells with the  
25 exception of our red blood cells. We receive half of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 our D-N-A from our mother and half from our father and  
2 therefore have two copies of every gene. We have  
3 approximately 99.9 percent in common with everyone else.  
4 And it's a variation in that remaining point 1 percent of  
5 our D-N-A that allows us to tell different people apart.

6 Q. Now when you're looking at D-N-A analysis it's  
7 particular to an individual correct?

8 A. With the exception of identical twins an  
9 individual's profile, D-N-A profile, will be unique to  
10 that individual.

11 Q. Now Ms. Leisy you examined these items in the  
12 laboratory is that correct?

13 A. Yes.

14 Q. You didn't actually come out and work the crime  
15 scene?

16 A. No, we don't go to crime scene --

17 Q. One moment please. Just a little bit of background  
18 about the sampling. And I'm not a scientist so if I use  
19 the right term you correct me, okay. D-N-A obviously  
20 is coming from skin, from bodily fluid, from things of  
21 that nature is that correct?

22 A. Correct.

23 Q. Within your testing do you attempt to identify that  
24 type of source or is it the D-N-A, that acid word you  
25 were telling us about that you're looking for?

1 A. It depends largely on the sample and on exactly what  
2 the agency is requesting. If an agency requests just  
3 what they call touch D-N-A meaning D-N-A that has been  
4 left just by physical contact with an item we'll just go  
5 ahead and do straight D-N-A testing on that unless it  
6 appears when I process it that there may be positive  
7 there.

8 If they request a test for blood we will perform  
9 what we call serology tests that try to identify  
10 different bodily fluids that may be present in others.

11 Q. And this swab was characterized as touch D-N-A or  
12 how was it characterized?

13 A. Correct. The request made on the duct tape from the  
14 victim's head was just for touch D-N-A. When I processed  
15 the swab I didn't see anything indicating that I should  
16 test for bodily fluids so it was only tested for touch.

17 Q. Ms. Leisy, please answer any questions these  
18 gentlemen have.

19 MR. KNOBELOCH: May it please the court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. KNOBELOCH:

23 Q. Ms. Leisy, I'm in the same boat as the Solicitor I'm  
24 not a scientist so forgive me if I don't ask the  
25 questions correctly. I'll try to ask them so that they

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 make sense. When you analyze a D-N-A sample and then  
2 you give a probability of it being a match; a 1 out of a  
3 billion numbers that you gave earlier, it is correct  
4 there are two parts to that analysis.

5 The first part is where you physically isolate the  
6 D-N-A. You look at a particular part of the D-N-A and  
7 address if you will on the D-N-A that particular address  
8 as identifying information.

9 You can compare that identifying information on one  
10 piece of D-N-A with identifying information on the same  
11 address on a separate sample of D-N-A. And you get a  
12 quantitative number is that correct?

13 A. Yes, sir.

14 Q. And then the second part of your analysis is math,  
15 is the probability. And probability math is that the  
16 math where if I flip a coin a certain number of times  
17 you'll tell me the probability of on the fifth time if  
18 it's heads or tails?

19 A. Essentially, yes.

20 Q. So when you come up with the probability there is a  
21 part -- do y'all use a microscope? I don't know how you  
22 actually see the low side of the D-N-A. But somehow you  
23 are physically examining the D-N-A; a sample?

24 A. Correct. We're making copies of the locations in  
25 the D-N-A that we're interesting in testing and then

1 examining the data on those.

2 Q. But then to complete your testimony you've got to do  
3 the math. Is the next card going to be a face card or is  
4 it going to be heads or tails?

5 A. The math again basically an estimate of how common  
6 or rare this profile will be in the general population.

7 Q. You also testified that some items excluded an  
8 individual as being a contributor to that D-N-A sample.

9 A. Correct.

10 Q. When you exclude someone you can say that with 100  
11 percent certainty can't you?

12 A. Correct. An exclusion is definitive in a way that I  
13 can say conclusively that I feel he's excluded as a  
14 possible contributor to the mixture --

15 Q. So if it doesn't match you could testify with 100  
16 percent certainty this person did not contribute to this  
17 sample?

18 A. I can say that if I can exclude them as a  
19 contributor to what I'm seeing.

20 Q. You can exclude them to the contributor to the  
21 sample that collected ---

22 A. --- correct. I can exclude them from the profile  
23 that I developed.

24 Q. But you can never say it the other way. You can  
25 never say with 100 percent certainty this person

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 contributed this sample, which is why we use the  
2 probabilities is that correct?

3 A. Correct. The strongest statement I would ever be  
4 able to make with a match that is within a reasonable  
5 degree of scientific certainty it is my opinion that an  
6 individual is a contributor.

7 Q. You also testified that humans -- that our D-N-A is  
8 99 percent identical. The one percent that is not  
9 identical how many building blocks of D-N-A would make up  
10 one percent of our D-N-A?

11 A. It's still quite a large amount if you want to count  
12 specific D-N-A bases there is a fair amount of  
13 information.

14 Q. And I know there's not an exact number but is it  
15 hundreds or thousands?

16 A. Well, the locations that we are testing are called  
17 short standard repeats or S-T-R's. They are locations in  
18 our D-N-A where a short -- of D-N-A repeats a certain  
19 number of times.

20 And there are potentially thousands of S-T-R  
21 locations. We test selected 15 that are partially  
22 available as far as what kits we can use and are readily  
23 acceptable within the forensic community.

24 Q. Those locations -- and I forgot what was the word  
25 you used again?

1 A. They are short standard repeats or S-T-R's.

2 Q. The S-T-R's in a human's D-N-A are there tens of  
3 thousands of S-T-R's?

4 A. Potentially yes, there are going to be.

5 Q. And you test 15?

6 A. That's the system that we use, correct. We test 15  
7 locations.

8 Q. So when you use your probability you're testing 15  
9 out of tens of thousands of locations on a D-N-A sample.

10 A. That's correct.

11 Q. Do you wear gloves in your laboratory?

12 A. Yes, sir.

13 Q. Why do you wear gloves in your laboratory? Is that  
14 because you don't want to contribute your D-N-A to a  
15 sample?

16 A. It's actually for quite a few reasons. One is that  
17 I certainly don't want to transfer my D-N-A to a sample  
18 as I'm processing it. I also want to protect myself from  
19 that sample.

20 We deal with what are commonly considered  
21 potentially infectious biohazards; any type of bodily  
22 fluid could potentially be dangerous to us.

23 We also wear the gloves because it's easy for us to  
24 change gloves in between handling different samples; so  
25 we're not cross-contaminating or carrying D-N-A over from

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 one sample to the next as we process.

2 Q. So every time you move from one sample to another  
3 you would change gloves is that correct?

4 A. Not necessarily in between every single but quite  
5 frequently; anytime I feel I need to to try to prevent  
6 contamination.

7 Q. What about your laboratory itself? Do you clean it  
8 or sterilize it occasionally.

9 A. The bench space and what we call good space that I  
10 use for my examinations are cleaned daily. I also run a  
11 U.V. light in the hood space overnight to degrade any  
12 D-N-A that may still be present to cause contamination.  
13 And we are required to perform regular decontamination  
14 processes in all the lab spaces that we use.

15 Q. And is that for the same reason that you wear the  
16 gloves then that you don't want to get some D-N-A that is  
17 laying on your work bench on the item that you are  
18 examining?

19 A. That's correct. We want to do everything we can to  
20 make sure we are not introducing D-N-A to the evidence  
21 once they...

22 Q. Earlier there was mention of a buccal swab, which is  
23 where you get a D-N-A sample from a person. I'm more  
24 familiar with it in Family Court doing paternity tests  
25 but I assume it's the same in this type of case?

1 A. Yes, sir.

2 Q. When you're gathering a D-N-A sample from a person  
3 do you use a scalpel?

4 A. No, what we commonly receive are either buccal  
5 swabs, which are basically are just sterile Q-tips that  
6 have been rubbed against the inside of someone's cheek to  
7 collect skin cell.

8 And we may also receive tubes of blood that we pour  
9 in -- cutting out to process. I'm not familiar with any  
10 technique that would require someone to be cut or excised  
11 with a scalpel,

12 Q. So you can get a D-N-A sample from me by rubbing a  
13 Q-tip type swab inside of my mouth?

14 A. Correct.

15 Q. Is it possible that I am leaving D-N-A on this  
16 podium by placing my hands on it?

17 A. Yes sir, you will be.

18 Q. And then the same would be true of the duct tape.  
19 If someone touched the duct page they would be  
20 potentially leaving a D-N-A sample on the duct tape?

21 A. It would be possible to transfer just by touching,  
22 yes.

23 Q. D-N-A analysis doesn't indicate the race of the  
24 donor, is that correct?

25 A. This particular type does not identify race of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 donor.

2 Q. Does it indicate the age of the donor?

3 A. No, it does not.

4 Q. Does it indicate how long it has been on the surface  
5 of the item you're examining?

6 A. It does not. As D-N-A is left on an item over time  
7 it can degrade or break down, but I can't pinpoint  
8 exactly when an item is left -- excuse me, when D-N-A was  
9 left on an item.

10 Q. It can degrade or break down with exposure to  
11 sunlight for example; I believe we did that is that  
12 correct?

13 A. Yes, it would.

14 Q. But it doesn't necessarily degrade or break down if  
15 they had gotten D-N-A samples from the iceman or from  
16 mummies?

17 A. D-N-A can be very stable under the right conditions  
18 for quite a long time.

19 Q. So it could last -- it could be there for a year,  
20 two years?

21 A. I can be there up to several decades depending again  
22 on how a sample is collected and kept.

23 Q. And I hope I'm not being redundant but we -- your  
24 analysis doesn't tell us if it's skin, blood, semen,  
25 saliva?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. On the in particular item 5.1 or?

2 Q. Yes, we'll just talk about 5.1.

3 A. Again, for 5.1 there was no request made to  
4 determine bodily fluid and I didn't see any reason when I  
5 examined the item too.

6 So I can't necessarily say whether or not this D-N-A  
7 is from just the skin cells or the transfer through  
8 saliva or even sweat.

9 Q. Do you have any information as to whether the sample  
10 came from the inside or the outside of the duct tape?

11 A. The description I received was a swab from outside  
12 and inside area of the black duct tape from the victim's  
13 head.

14 Q. So the swab was taken on both sides of the duct  
15 tape?

16 A. Based on the information I received, yes sir.

17 Q. Did you receive a swab from the duct tape or did you  
18 receive the duct tape itself?

19 A. I received swabs that were taken from the duct tape.

20 Q. Did you also receive the duct tape itself?

21 A. No, I did not.

22 Q. Okay. So only one sample of that particular 5.1  
23 was examined?

24 A. As far as what I examined there was just the swabs  
25 taken from the duct tape, correct.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 MR. KNOBELOCH: No further questions, Your Honor.

2 THE COURT: Okay. Mr. Devoe, do you have any  
3 questions?

4 MR. DEVOE: Thank you. I have several questions,  
5 Your Honor.

6 CROSS-EXAMINATION

7 BY MR. DEVOE:

8 Q. Good afternoon. I'm Harry Devoe. I represent  
9 Michael Pearson in this matter. I just want to summarize  
10 two or three questions on your analysis. I believe you  
11 looked at a black wallet.

12 A. I received swabs that were taken from a black  
13 wallet, yes sir.

14 Q. And I take it my client was not involved in that --  
15 he was excluded as a contributor of D-N-A on that black  
16 wallet?

17 A. That's correct. He was excluded as a possible  
18 donor.

19 Q. But you don't do any fingerprint analysis do you?

20 A. That is not my area of expertise, sir.

21 Q. So if any fingerprints were on that black wallet you  
22 wouldn't know anything about it?

23 A. Correct. That's not something I can answer.

24 Q. The other place he is mentioned, my client is  
25 mentioned in your report I believe is 11.1?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 A. Yes, sir ---

2 Q. --- that was a cutting from a sneaker or a shoe?

3 A. I received what was marked as SLED 11.1, which was  
4 cutting from a left shoe of Mr. Pearson.

5 Q. And you found blood on that left shoe?

6 A. The serology test I performed did indicate the  
7 possible presence of blood, yes sir.

8 Q. And those -- that D-N-A blood matches that of  
9 Michael Pearson?

10 A. Again, I had a mixture and the major D-N-A profile  
11 developed from that item did match the D-N-A profile of  
12 Mr. Pearson, yes.

13 Q. And no one else?

14 A. No, the major is just a match to Mr. Pearson.

15 Q. And I believe that my client was excluded from the  
16 D-N-A on item 2.1?

17 A. Yes, he was.

18 Q. And actually wasn't included in any of your lab --

19 A. The only item I could make a comparison or cause a  
20 comparison to Mr. Pearson was item 11.1, which again was  
21 a cutting from a shoe.

22 Q. Thank you. No more questions.

23 THE COURT: Mr. Solicitor?

24 MR. CORBETT: Brief follow up, Your Honor.

25 ---

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 REDIRECT EXAMINATION

2 BY MR. CORBETT:

3 Q. Now Ms. Leisy, with regard to your report there is a  
4 number of items that you tested, correct?

5 A. That's correct.

6 Q. Not everything is going to give you a usable sample.

7 A. Correct.

8 Q. Does your report indicate some items that were -- no  
9 analysis was performed?

10 A. Yes, there were several items that I did not perform  
11 analysis on.

12 Q. Okay. Is that just a sample is not good enough to  
13 work on or how -- tell us a little bit about the process  
14 if you would.

15 A. In this particular case we did receive quite a few  
16 items. We tried to limit or restrict to just the most  
17 important or most potentially probative items when we  
18 begin our testing.

19 We ask the submitting agency to tell us what items  
20 they wanted us to start with what they believed would be  
21 the most useful. Those are the items that I started  
22 with.

23 And there was no further request on the other items  
24 to perform D-N-A testing. So at that point I stopped  
25 testing on the case and returned the items that I hadn't

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 done any processing on.

2 Q. Just one moment please. Now let me go back to 5.1  
3 for just a moment if I may. When were you able to  
4 develop 5.1 as a match to Victor Weldon?

5 A. I actually issued several reports in this case. My  
6 first case identified that major as coming from an  
7 unidentified male individual.

8 I later received a standard taken from Mr. Weldon at  
9 which point I did my comparison, made the match, and  
10 generated a supplemental report to reflect that match.

11 Q. Do you have that supplemental report available?

12 A. I do.

13 Q. Indicating that match?

14 A. Yes, sir.

15 Q. May I take a look at that please, ma'am?

16 MR. KNOBELOCH: Judge, may we approach briefly?

17 [Whereupon, an off the record bench conference is  
18 held]

19 Q. [Mr. Corbett] Now Ms. Leisy, may I see a copy of  
20 that report?

21 [Whereupon, the witness provides document to Mr.  
22 Corbett]

23 Q. And this is the supplemental report indicating your  
24 analysis with particular to 5.1?

25 A. Correct. That particular report includes the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 results the results from -- all the testing that I did in  
2 this case.

3 Q. Do you have any objections to us using this as an  
4 exhibit?

5 A. No, sir.

6 Q. Okay.

7 MR. CORBETT: Your Honor, at this time we would  
8 offer this as State's exhibit 28.

9 THE COURT: What sayeth the defense?

10 MR. KNOBELOCH: Judge, I'd just like to put my  
11 objection on the record. Judge, I'd like to put it on  
12 the record but I'd like to put outside the presence of  
13 the jury.

14 THE COURT: Okay. Is your objection the same  
15 objection you had at the bench?

16 MR. KNOBELOCH: It is. And I just want to preserve  
17 it at the proper time. I don't mind it coming ---

18 THE COURT: --- let me see the report.

19 [Whereupon, the report is handed up to the court]

20 THE COURT: You say -- you call this a  
21 supplemental. Is there another report in evidence?

22 MR. CORBETT: Judge, there is currently not any  
23 other report in evidence.

24 THE COURT: Okay. Y'all approach one more time.

25 [Whereupon, an off the record bench conference is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 held]

2 MR. CORBETT: Thank you, Ms. Leisy.

3 THE COURT: You can step down.

4 MR. FINNEY: I'd ask the court to allow the witness  
5 to be excused?

6 THE COURT: Any objection?

7 MR. KNOBELOCH: No objection.

8 THE COURT: Okay. Thank you.

9 [Whereupon, the witness is excused and exits the  
10 witness stand]

11 THE COURT: Its 5 minutes to 1. Is it a good time  
12 to take a break or y'all got something...

13 MR. FINNEY: One short witness who is riding with  
14 Ms. Leisy back to Columbia.

15 THE COURT: How short?

16 MR. FINNEY: Five minutes.

17 THE COURT: All right. Five minutes is good but  
18 if this is going to be an hour we're going to lunch.

19 MR. FINNEY: I promise you its five minutes.

20 THE COURT: All right. Bring her.

21 MR. CORBETT: Your Honor, the State would call  
22 Andrena Belton.

23 [Whereupon, Ms. Belton comes forward]

24 CLERK OF COURT: Raise your right hand and place  
25 your left hand on the Bible and repeat your name and

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 spell it please?

2 MS. BELTON: Andrena Belton. A-N-D-R-E-N-A  
3 B-E-L-T-O-N.

4 [Whereupon, the witness is duly sworn by the Clerk  
5 of Court as follows: do you solemnly swear the testimony  
6 you are about to give will be the truth and nothing but  
7 the truth so help you God]

8 MS. BELTON: Yes.

9 [Whereupon, the witness takes the witness stand]

10

- - - - -

11

ANDRENA BELTON,

12

Having been first duly sworn,

13

Was examined and testified as follows:

14

DIRECT EXAMINATION

15 BY MR. CORBETT:

16 Q. Ms. Belton, good afternoon.

17 A. Hello.

18 Q. Tell us by whom are you employed please, ma'am?

19 A. South Carolina Law Enforcement Division also known  
20 as SLED.

21 Q. And in what capacity?

22 A. I'm a latent print fingerprint -- latent print  
23 examiner. I'm a special agent in the crime scene latent  
24 print department.

25 Q. And do you have occasion to review items of evidence

1 submitted?

2 A. Yes.

3 Q. Now with regard to this case did you bring any notes  
4 or reports generated as a result of that?

5 A. Yes. I have my worksheet and my report.

6 Q. I'm going to show you what has previously been  
7 marked as State's exhibit number 19.

8 [Whereupon, the witness is shown exhibit]

9 Q. And I believe those are swabs that you forwarded the  
10 D-N-A?

11 A. Yes.

12 Q. And in particular I believe item 5.1? I'm sorry,  
13 5.1 that was taken from black duct tape from the victim's  
14 head is that correct?

15 A. That's correct.

16 Q. And can you tell us what that appears to be there?

17 [Whereupon, the witness is shown exhibit]

18 A. This is marked item 14 on the outside bag and its  
19 black duct tape, yes.

20 Q. Okay. Now when you swab an item -- when you swab  
21 an item for D-N-A, in particular this duct tape here,  
22 tell us what it is you're doing?

23 A. I'm just swabbing it for touch D-N-A.

24 Q. Now were there other items, other tests that you did  
25 as well?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

- 1 A. Other items or other tests?
- 2 Q. Both?
- 3 A. Yes, there were other items and tests that I did on  
4 these items.
- 5 Q. And part of that was you were looking for  
6 fingerprints is that correct?
- 7 A. That's correct.
- 8 Q. And I'll show you what's previously been marked as  
9 State's exhibit number 11.
- 10 [Whereupon, the witness is shown exhibit]
- 11 A. Okay.
- 12 Q. And did you have occasion to test this?
- 13 A. Yes, I did.
- 14 Q. Okay. And were you able to develop any type of  
15 fingerprints?
- 16 A. No, I didn't.
- 17 Q. And I believe you also attempted to recover  
18 fingerprints from a check that was submitted?
- 19 A. Yes.
- 20 Q. And did you have any luck developing any useful  
21 prints from that?
- 22 A. There were two latent prints on the check. And it  
23 looks -- if you'll give me one second -- it looks like  
24 they were developed on the front and the back of the  
25 check. But both those latents that were developed were

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 of no value.

2 Q. And occasionally you look for prints but they just  
3 aren't of good enough quality is that correct?

4 A. That's correct.

5 Q. So you do that work, sometimes it just doesn't turn  
6 out?

7 A. That's correct.

8 MR. CORBETT: Your Honor, if I may have just one  
9 moment please?

10 [Whereupon, Mr. Corbett reviews documents]

11 MR. CORBETT: I'm sorry Your Honor, if you'll give  
12 us just one moment.

13 [Whereupon, counsel confer]

14 MR. CORBETT: No further questions.

15 THE COURT: Any questions from the defense?

16 MR. KNOBELOCH: No, Your Honor.

17 THE COURT: Mr. Devoe?

18 MR. DEVOE: No questions, Your Honor.

19 THE COURT: Thank you, ma'am. You can step down.

20 MR. FINNEY: We'd ask that the witness be excused?

21 THE COURT: Any objection?

22 MR. KNOBELOCH: No objection.

23 [Whereupon, the witness is excused and exits the  
24 witness stand]

25 THE COURT: Ladies and gentlemen we're going to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 stop for lunch. And I'll ask you to be back at 2:30.  
2 I've got some legal matters I need to deal with over  
3 lunch and I'll try -- we'll come back at 2:00 and try to  
4 resolve those before you get back.

5 So you have a nice lunch. I'll remind you just  
6 like I did yesterday you can't talk about this case or  
7 allow anyone to talk about it with you, or read anything  
8 or go on the computer. Have a good lunch and come  
9 straight back to the jury room at 2:30. Thank you.

10 Whereupon, the jury exits the courtroom at 1:02  
11 p.m.]

12 THE COURT: I think you objected to that report  
13 because you felt it went outside of the scope of direct.

14 MR. KNOBELOCH: Very clearly I'd just like to say I  
15 actually had two objections that remain contemporaneously  
16 through the moment the Solicitor raised them.

17 First one was the entire line of questioning was  
18 beyond the scope of redirect. And the second was  
19 specifically to the report, which went beyond the scope  
20 of direct. Those objections were made at the bench  
21 outside of -- not on the record, and I just want to put  
22 that on the record --

23 THE COURT: And my understanding that you and Mr.  
24 Devoe both questioned her about that report. So it  
25 seemed based on y'all's cross-examination I didn't think

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 the redirect went outside of that and you didn't go into  
2 any new ground that y'all hadn't covered. You just  
3 simply went over it after the fact. So I'll allow that  
4 in.

5 [Whereupon, State's exhibit number 28 is admitted  
6 into evidence by the court]

7 MR. KNOBELOCH: Thank you.

8 THE COURT: Anything else?

9 MR. KNOBELOCH: Nothing.

10 THE COURT: All right. We'll probably be back at  
11 2-ish and see if we need to talk about how much more the  
12 State has. There are some scheduling issues I need to  
13 cover. You can talk to your clients about them wanting  
14 to testify and their rights as far as that concerned and  
15 see what they say and any potential -- y'all want to  
16 make. I'll see y'all at 2.

17 MR. KNOBELOCH: Judge, I have a real quick question  
18 that does need to go on the record.

19 [Whereupon, court is in recess until 2:00 p.m.]

20 THE COURT: Do you want -- from a scheduling  
21 standpoint have y'all decided what we are going to do?

22 MR. FINNEY: I think you need to ask them, Judge.

23 MR. KNOBELOCH: Judge, I didn't have an -- for the  
24 defendants but as far as scheduling goes we're not  
25 anticipating putting up any evidence.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Then now is a good time at least to go  
2 over their rights with them.

3 MR. KNOBELOCH: That's fine.

4 FIFTH AMENDMENT RIGHTS

5 THE COURT: Mr. Pearson, Mr. Weldon if y'all stand  
6 up and let me talk to y'all a minute?

7 [Whereupon, Mr. Pearson and Mr. Weldon comply]

8 THE COURT: Raise your right hands. I'm going to  
9 swear you in.

10 [Whereupon, the witnesses are duly sworn by the  
11 Court as follows: do you solemnly swear that the  
12 testimony you give will be the truth, the whole truth,  
13 and nothing but the truth so help you God]

14 MR. PEARSON: Yes, sir.

15 MR. WELDON: Yes, I do.

16 THE COURT: And we're close to reaching the point  
17 in the trial where y'all have a right to put up a case if  
18 you want to. You have a right to testify, but you don't  
19 have to testify. Do you understand that?

20 MR. PEARSON: Yes, sir.

21 MR. WELDON: Yes, sir.

22 THE COURT: If you decide that you are going to  
23 testify then you are subject to cross-examination just  
24 like any other witness. And if you have a criminal  
25 record that qualifies it could be brought out on cross-

1 examination. And I don't know whether you do or not but  
2 I'm sure you've discussed that with your lawyers. Have  
3 you had enough time to talk to your lawyers about whether  
4 you're going to testify or not?

5 MR. PEARSON: [Nods affirmatively]

6 MR. WELDON: Yes, sir.

7 THE COURT: And only you can talk to your lawyers,  
8 you can get advice from your lawyers as to what they  
9 think you should or should not do or whatever trial  
10 strategy they plan to implement. But ultimately it is  
11 your decision and not theirs as to whether you testify or  
12 not. Do you understand?

13 MR. PEARSON: [Nods affirmatively]

14 MR. WELDON: Yes, sir.

15 THE COURT: And do you understand if you choose not  
16 to testify I will instruct the jury that they cannot hold  
17 that against you and they cannot pursue that in any way  
18 whatsoever that you would not have to prove your  
19 innocence; the State has to prove you are guilty beyond a  
20 reasonable doubt and they will not even be able to  
21 discuss that you didn't testify and the jury with regards  
22 to that?

23 MR. PEARSON: [Nods affirmatively]

24 MR. WELDON: Yes, sir.

25 THE COURT: Do you have any questions you want to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 ask me regarding your rights?  
2 MR. PEARSON: [Nods negatively]  
3 MR. WELDON: No, sir.  
4 THE COURT: Any further questions the attorneys  
5 want me to go over?  
6 MR. KNOBELOCH: No, Your Honor.  
7 MR. DEVOE: [Nods negatively]  
8 THE COURT: Okay. Now Mr. Solicitor is it my  
9 understanding you have some other witnesses so if you  
10 want to...  
11 MR. FINNEY: We have one witness to put a bag of  
12 evidence in and then the State will rest.  
13 THE COURT: Okay. Now, it's quarter to 3. And  
14 y'all still may decide or not decide to put up evidence.  
15 But if you don't then it will be 3 o'clock and we've got  
16 three attorneys at least that will argue -- maybe four.  
17 I normally don't like to give -- it will be 4  
18 o'clock, 4:30 or 5 when we get -- and my charge may be  
19 somewhat lengthy because of all the charges. I normally  
20 don't like to give a jury a case after 4:00 or 4:30  
21 because usually when that happens we are here late into  
22 the night and they get tired.  
23 So I normally -- an option is to wait and do closing  
24 arguments and charge in the morning and give it to them  
25 unless the other side has some strong indication there is

1 some problem with that. If this was a shorter case and  
2 smaller issues then I may consider that you know, but --  
3 is one thing. Unless I hear something strongly the other  
4 way we probably won't charge the jury tonight and we'll  
5 do it first thing in the morning. Do y'all need to talk  
6 about that or y'all...

7 MR. FINNEY: Your Honor, the State would request  
8 that since we are going to not be able to argue last that  
9 Mr. Corbett be able to open on the law and I will close  
10 on the facts and then hand off closing to the defense.  
11 We would prefer to do it today but we will abide by the  
12 court's ruling.

13 THE COURT: Well, how long do y'all anticipate your  
14 argument is going to be?

15 MR. FINNEY: I think if you gave us 30 minutes we  
16 would both be up and down in 30 minutes.

17 THE COURT: All right. What is y'all's going to  
18 be?

19 MR. KNOBELOCH: Judge, my only thing, and I'm not  
20 familiar with how you do it, I would like a brief  
21 opportunity after you discuss not with the jury but with  
22 us what the charges will be before we go into closing.

23 THE COURT: Okay. Well, the other option -- the  
24 other thing we've got is you put up this last witness and  
25 then we've got to send the jury out and deal with any

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 motions. And dealing with those motions and/or potential  
2 charges -- and I guess what we can do is just get this  
3 last witness in and send the jury out for a few minutes  
4 to see where we stand as far as motions and legal  
5 arguments are concerned and then make the call whether  
6 we're going tonight.

7 MR. FINNEY: That will be fine, Your Honor.

8 THE COURT: We'll do that. Anything before I bring  
9 the jury in?

10 [No response]

11 [Whereupon, the jury re-enters the courtroom at 2:30  
12 p.m.]

13 THE COURT: Mr. Solicitor?

14 MR. CORBETT: Thank you, Your Honor. The State  
15 would recall Barbara Procter.

16 THE COURT: Okay.

17 [Whereupon, the witness comes forward and retakes  
18 the witness stand]

19 - - - - -

20 BARBARA PROCTER,

21 Having been previously duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CORBETT:

25 Q. Now Ms. Procter, I'm going to show you what has been

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 marked as State's exhibit number 10.

2 [Whereupon, the witness is shown exhibit]

3 Q. Now, is that an item that was in your care, custody,  
4 and control upon being returned from SLED?

5 A. Yes, it is.

6 Q. And maintained securely there at your facility?

7 A. That's correct.

8 Q. And this being described as tape from victim's head?

9 A. That's correct.

10 MR. CORBETT: Your Honor, at this time we would  
11 move into evidence State's number 10.

12 THE COURT: All right. What sayeth the defense?

13 MR. KNOBELOCH: No objection.

14 MR. DEVOE: No objection.

15 THE COURT: All right. Exhibit 10 is in without  
16 objection.

17 [Whereupon, State's exhibit number 10 is entered  
18 into evidence by the court]

19 MR. CORBETT: That's all that I have, Your Honor.

20 THE COURT: All right. Any questions?

21 MR. KNOBELOCH: No, Your Honor.

22 THE COURT: All right. You can step down.

23 [Whereupon, the witness is excused and exits the  
24 witness stand]

25 MR. FINNEY: Your Honor, the State rests at this

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 time.

2 THE COURT: Okay. Ladies and gentlemen, you've  
3 heard all the evidence you can hear on behalf of the  
4 State. I've got to deal with some legal matters now so  
5 I've got to send you back to the jury room and I'll get  
6 you back out just as quick as I can.

7 I won't leave you back there too long; we won't take  
8 too long. I'll -- let me talk to these lawyers and deal  
9 with the legal matters and I'll meet you back out. I'll  
10 remind you, don't start discussing this case. Thank you.

11 [Whereupon, the jury exits the courtroom at 2:49  
12 p.m.]

13 THE COURT: Okay. Anything from either side? Any  
14 motions that you have or -- I assume the State doesn't  
15 have anything?

16 MR. FINNEY: I do not, Your Honor.

17 THE COURT: Okay. Yes, sir.

18 MOTION FOR DIRECTED VERDICT

19 MR. KNOBELOCH: Your Honor, we would move for a  
20 directed verdict. We are -- in our motion we are  
21 primarily relying on three cases. State v Mitchell,  
22 which is 341 S.C. 406, 535 S.E.2d 126 that's a 2000  
23 Supreme Court case, then State v Bostic, which is 392  
24 S.C. 134, 788 S.E.2d 774. It's also a Supreme Court case  
25 2011, and State v Arnold 361 S.C. 386, 605 S.E.2d 529;

1 also a Supreme Court case from 2004. All of those cases  
2 have to do with whether or not -- evidence arises to a  
3 level where it's proper to send a case to the jury. In  
4 the Mitchell case very briefly the facts were -- the  
5 defendant was tried for burglary. State presented  
6 fingerprint evidence that was on a screen, which was  
7 removed from a window that appeared based on broken glass  
8 to be the point of entry into the home.

9       However, the State -- the court responded to the  
10 fact that respondent's fingerprint was on a screen that  
11 was propped up against the house does not prove entry.  
12 And a directed verdict was granted in that case.

13       In State v Bostic the victim was robbed and was  
14 burned alive in her home. In that case several of the  
15 victim's personal items were found in the defendant's  
16 family burn pile. The defendant had traces of gasoline  
17 on his shoes, which was also shown to be the accelerant  
18 which was used in the burning of the home. And there was  
19 blood on the defendant's pants. Analysis of the blood  
20 was inconclusive. But with all three of those items the  
21 court again determined that a directed verdict should be  
22 granted.

23       And then finally we get to State v Arnold. In that  
24 case the defendant -- it was shown the defendant and  
25 victim were introduced to each other in South Carolina

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 and had consensual sex. The defendant -- there was  
2 testimony the defendant at that time had a pistol in his  
3 possession. Several days after being introduced the  
4 victim's body was found shot to death. Several days  
5 after that the victim's car, in fact the car he was  
6 borrowing but the car the victim was driving was found in  
7 Tennessee as was the defendant who lived in Tennessee and  
8 who had told his friend in South Carolina if you need me  
9 I'll be in Tennessee.

10 In that case there was a coffee cup in the victim's  
11 car with the defendant's fingerprint on it. And once  
12 again under those facts the Supreme Court stated that a  
13 directed verdict should be granted.

14 In this case as it pertains to Mr. Weldon the  
15 evidence that was presented does show that his D-N-A was  
16 found on duct tape. It wasn't found on any other items  
17 and there is nothing that -- there is nothing that puts  
18 him at the crime; there's certainly nothing that shows  
19 that he committed the crime.

20 I don't believe there is any other evidence other  
21 than the D-N-A probability of a match on the duct tape.  
22 For all of those reasons and based on those cases we move  
23 for a directed verdict.

24 THE COURT: All right. Mr. Devoe?

25 MR. DEVOE: Thank you, Your Honor. I would refer

1 you to the same three cases for my client. The facts as  
2 given to you by Mr. Knobeloch are essentially correct and  
3 I think you have the sites in front of you and you can  
4 look these cases up. The only difference in the cases in  
5 my client's situation is that the only evidence that they  
6 have against him is the fingerprint found on the -- head  
7 in the El Camino that was located at Mr. Gibbons place of  
8 business.

9 There is no evidence of my client being at the scene  
10 of the crime, no direct evidence, -- no eyewitness and no  
11 forensic evidence. My client lived a block and half from  
12 the store. My client walks the neighborhood and recently  
13 put the fingerprint on the -- at that store and no other  
14 place.

15 The expert witness from the State testified that if  
16 a fingerprint was placed somewhere it could stay there  
17 almost -- she said from two days to two years; a lot of  
18 time. But rain would not take it off. The only thing  
19 that would take it off would be a hand washing and a hand  
20 rubbing in that area of the truck to remove it.

21 So we don't know when the fingerprint got there. It  
22 could have been well before this whole thing happened.  
23 But certainly not afterward because the truck was found  
24 right away and it was -- right away. But before that  
25 there is no evidence the State as to that truck being

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 taken to a car wash or being hand washed by anybody. So  
2 you don't know the last time the car was washed. And  
3 therefore, you don't when the fingerprints came on the  
4 truck. But certainly there is nothing -- that my client  
5 -- so I would ask for the same situation of the unique --  
6 of my client's case for a directed verdict. Thank you.

7 THE COURT: Mr. Solicitor, do you want to respond?

8 MR. FINNEY: May it please the court? None of the  
9 cases that have been cited by the defense, Your Honor, go  
10 to the totality of the circumstances that we have in this  
11 case.

12 We have Mr. Gibbons who is a resident in his own  
13 home who was attacked in the early morning hours who was  
14 tied up with duct tape. And it is that duct tape, not  
15 from somewhere else in the house or somewhere in the bed  
16 of the car, but that duct tape on his head that led to  
17 the hit and the identification of one of the defendants.

18 Also, the fingerprint was in the area of the car  
19 where Mr. Gibbons testified that one of the men, and I  
20 believe he testified the larger of the men got into the  
21 bed of the El Camino not one time, not two times, but by  
22 the testimony we had here four times.

23 He got in the first time at the house. He yelled  
24 out he's getting up, he's getting up. He got out of the  
25 El Camino and came back into the garage, got back in the

1 El Camino again to leave the residence and got out of the  
2 El Camino again when he abandoned the car about two miles  
3 away. Plenty of evidence for the jury to infer that his  
4 presence at the scene of the crime led to that  
5 fingerprint being placed on the car.

6 We also have a situation, Your Honor, where through  
7 good police investigation we were able to tie people in  
8 the community to these gentlemen knowing that they went  
9 to class together at Voc Rehab in Sumter, which they  
10 either forgot about or lied about to the police officers,  
11 and to the gentleman, Mr. Pearson, who says he didn't  
12 know Mr. Gibbons, had never been around Mr. Gibbons, his  
13 co-worker in the landscaping business took him over to  
14 the house several times and took him into the shed where  
15 the tools were stored where Mr. Gibbons saw the robbers  
16 emerge from that morning.

17 I believe there is sufficient evidence is in the  
18 record to let the jury have the case and we ask to deny  
19 the motion by the defense.

20 THE COURT: Okay.

21 MR. DEVOE: If I could respond to...

22 THE COURT: Okay.

23 MR. DEVOE: We had Mr. Gamble who testified today  
24 testified that you could not see the victim -- could not  
25 see that part the top -- could not see the -- properly

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 back on that. So I heard the witness say he identified  
2 the man getting out of the truck, on or off the truck.  
3 Normally you get out of a truck not the side of the truck  
4 where you see from the back of the truck. So I think  
5 that's a -- the jury will have to decide that. And I  
6 would -- in that situation -- in the car.

7 There are no fingerprints there. There is no other  
8 indication of them being there. Mr. Gamble really  
9 appeared to my client as being a casual worker for a  
10 brief period of time. He is not a co-worker.

11 I'm not sure that my client said that he knew where  
12 he was -- in addition to where he was -- once again I  
13 think the fingerprint was the only hard evidence the  
14 State has against my client found on that truck.

15 MR. KNOBELOCH: Your Honor, very briefly. As far  
16 as the nexus between the co-defendants that was at least  
17 18 months prior to this and very tenuous at best. What I  
18 would like to focus on is the duct tape and just point  
19 out that it's the duct tape itself is one of those items  
20 that it doesn't -- the D-N-A on the duct tape doesn't put  
21 the defendant at the crime scene.

22 He knows that at some point he was with the duct  
23 tape. But comparing it the Arnold case in that case you  
24 have evidence that puts the defendant in the victim's car  
25 in another State within I think days of the crime.

1 Certainly a much more -- that one bit of physical  
2 evidence ties that defendant much more closely to that  
3 crime that this does.

4 THE COURT: Okay. Do you have a copy of the  
5 cases?

6 MR. KNOBELOCH: I do, Your Honor.

7 THE COURT: If you do that I'll read them real  
8 quick. Any other issues we need to deal with?

9 [Whereupon, Mr. Knobloch provides documents to the  
10 court]

11 THE COURT: Any other legal issues?

12 MR. DEVOE: We have some legal issues I guess on  
13 the indictment.

14 THE COURT: Well, I guess now is the time to deal  
15 with them.

16 MR. FINNEY: Your Honor, on behalf of the State it  
17 has been brought to our attention that the indictment  
18 reflects that the defendants were charged with Attempted  
19 Murder and that that statute was implemented after the  
20 date of the crime.

21 We would after having reviewed our notes feel that  
22 the proper way to handle that at this point would be for  
23 all parties state a defense to stipulate that the proper  
24 charge based on the evidence that has been presented in  
25 the record would be Assault and Battery of a High and

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 Aggravated Nature under the common law statute and that  
2 that charge be supplemented or replaced -- replace the  
3 count two Attempted Murder and that we go forward to the  
4 jury on that charge.

5 THE COURT: What's the defense position?

6 MR. DEVOE: Your Honor, I would argue that the  
7 Attempted Murder charge ought to be dropped -- a  
8 jurisdictional issue.

9 MR. KNOBELOCH: And we would join in that request.

10 THE COURT: All right. Anything else?

11 MR. FINNEY: I would mention for the record that  
12 the charge of Assault and Battery of a High and  
13 Aggravated Nature is a statutory lesser included offense  
14 under the statutory language and the indictment also  
15 carries the language at the bottom that it is against the  
16 peace and dignity of the State therefore would be allowed  
17 to be supplemented by the fact that it is a common law  
18 offense.

19 THE COURT: I'm going to take a quick recess and go  
20 read these cases.

21 [Whereupon, the court takes a brief recess]

22 THE COURT: I'm kind of inclined as late as it is  
23 we aren't going to get this to the jury tonight because  
24 it will be after 5 o'clock I think realistically before  
25 they get it. And I've had some bad experiences giving

1 jury the cases -- so I'll bring them out and send them  
2 home and bring them back at 9:30 in the morning and do  
3 closing arguments and charge and then I'll rule on these  
4 motions afterwards. Bring the jury back in.

5 [Whereupon, the jury re-enters the courtroom at 3:18  
6 p.m.]

7 THE COURT: Ladies and gentlemen, what we have to  
8 do to finish this case is do the closing arguments of the  
9 attorneys and I charge you on the law. And once I do  
10 that y'all can't go home; you've got to decide this case.

11 And as late as it is you're probably not going to  
12 get this case until 5 o'clock so -- and I have no idea  
13 how long you are going to take and you don't have any  
14 idea how long you're going to take.

15 So, the safest thing to do is just come back in the  
16 morning at 9:30 and do the closing arguments and Charge.  
17 I've still got some legal matters that I need to deal  
18 with and I didn't want to keep you locked up back there  
19 while I dealt with them.

20 So I'm going to send you home and we'll deal with  
21 all those legal matters I have to and when you get back  
22 in the morning we'll hear the closing arguments of the  
23 attorneys and I'll charge you on the law and give you  
24 this case to decide. I remind you please don't discuss  
25 this case yet. Don't allow anyone to discuss it with

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 you. I will see you at 9:30 in the morning. Thank you.

2 [Whereupon, the jury is excused for the evening at  
3 3:22 p.m.]

4 THE COURT: I was making all the assumptions based  
5 on my understanding is y'all are not going to put up a  
6 case is that correct?

7 MR. KNOBELOCH: That's correct.

8 THE COURT: You're not going to put up any evidence  
9 correct?

10 MR. DEVOE: That's correct, Your Honor.

11 THE COURT: Okay. Now as far as the directed  
12 verdict I have read the cases you've submitted to me.  
13 And after reading these cases I respectfully deny your  
14 motion for directed verdict.

15 I think in this particular case the burden is  
16 whether the existence of any evidence and whatever weight  
17 this jury gives it. The evidence in this case as far as  
18 Mr. Weldon is concerned his D-N-A was found on the duct  
19 tape that was placed around the victim's head.

20 I certainly think -- and there has been no other  
21 explanation as how his fingerprint got on that duct tape  
22 other than him being at the scene that morning -- and the  
23 jury certainly may find based on the evidence before them  
24 that there is sufficient evidence or least existence of  
25 credible evidence. And I find that it is unlikely that

1 his D-N-A was found on some odd -- or some place that he  
2 had a right to be. The fact that it's on the duct tape  
3 on the victim's head in his garage that morning gets to  
4 the jury.

5 As far as Mr. Pearson's fingerprint the evidence in  
6 this case that has come before this jury that I recall he  
7 told the police officer he did not know Mr. Gibbons. He  
8 had not been at his house or his place of business.

9 His vehicle was taken that morning. Within 30  
10 minutes the vehicle was found abandoned a mile and a half  
11 or two miles away. The vehicle was processed and was  
12 carried to the auto parts place and processed. That day  
13 his fingerprint was found on the vehicle.

14 And I certainly think at least that's sufficient  
15 evidence for the jury to make a determination of guilt or  
16 innocence in this case. And I respectfully deny your  
17 motion. Yes, sir?

18 MR. DEVOE: As to recognize, I'd like to point out  
19 that there's no indication as to why Mr. Gibbons car was  
20 not broke down or -- and therefore he had no idea -- the  
21 fingerprints that are on the car.

22 THE COURT: I understand that and the jury has got  
23 to deal with that issue. But part of the testimony  
24 before this jury is has you client ever had contact with  
25 that car. And he -- believed that he never had contact

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 with the car so that fingerprint could have gotten there  
2 some -- lawfully. I understand later there is also  
3 evidence that he worked in Mr. Gibbons yard and was  
4 familiar with his house. And there was no testimony that  
5 the car was there at that time or that in fact he touched  
6 the car or had anything to do with the car. But that's a  
7 question of fact this jury is going to have to decide.

8 MR. DEVOE: Your Honor, the evidence -- on the  
9 house was a year before this all happened --

10 THE COURT: My recollection is the Solicitor asked  
11 him that question. He said it was the spring of the year  
12 the incident happened. When you asked him that question  
13 you asked him was it two years or three years and he said  
14 it could have been either one.

15 And you came back and said was it three years; it  
16 could have been. So it's conflicting testimony as to the  
17 time whether it happened three years earlier or two years  
18 earlier. And he told the Solicitor it happened in the  
19 spring of the incident in which Mr. Gibbons was  
20 assaulted. There was some testimony it happened April of  
21 2010 versus this happened in May of 2010.

22 MR. DEVOE: --- but there's no testimony that the  
23 car was there when he broke into that house either.

24 THE COURT: I understand that. There was no  
25 testimony from -- he was working at his house so

1 therefore there's no testimony his print could have  
2 accidentally gotten on that car. Now those are all  
3 questions of fact this jury is going to have to struggle  
4 with. But at this point in the game whether the  
5 evidence exists that they could make this determination  
6 and in fact circumstances that this prints are on the car  
7 within 30 minutes of the crime being occurred is at least  
8 sufficient to have placed him at the scene.

9 It depends on -- I understand that the jury is going  
10 to have to make this determination as to whether they  
11 think the State has met its burden of proof. But at this  
12 point it's the existence of evidence and I think there is  
13 at least credible evidence in this record that the jury  
14 could make a finding of guilt.

15 It's a number of facts they've got to struggle with.  
16 But I'm going to let them make that call. I'm sure both  
17 sides will argue what the evidence does or does not show.  
18 But at least at this point I think it goes further than  
19 the Mitchell, Arnold, or Bostic case. And in fact the  
20 D-N-A is on the tape on the victim's head or like found  
21 somewhere else certainly has the potential of placing Mr.  
22 Weldon at the crime scene.

23 And your client's fingerprint was found on the  
24 stolen vehicle within 30 minutes of the crime. They can  
25 at least -- they can decide if the State has not proved

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 that he was there at the time of the crime or not; I  
2 don't know. There is at least evidence of that. All  
3 right. Anything else?

4 [No response]

5 THE COURT: As far as the second count of the  
6 indictment of Attempted Murder. Since this is not going  
7 to the jury -- I'm going to think about it another night.  
8 It has created a unique legal issue and the question is  
9 whether I can Charge Assault and Battery of a High and  
10 Aggravated Nature based on this or not.

11 I want -- now that I have the luxury of thinking  
12 about it overnight I'd like to think about it again  
13 because I don't think -- there's no case law on this at  
14 all. This has never come up in the courts of South  
15 Carolina that I'm aware of.

16 And I don't think I can do my best guess to see what  
17 the Supreme Court has said about everything, but I'd like  
18 to try and get it right. So I'll let y'all know in the  
19 morning. Anything else?

20 MR. DEVOE: Your Honor, the only -- he mentions the  
21 count 1 Burglary First in the indictment also.

22 THE COURT: Well -- and I understand that. Y'all  
23 made no objection prior to the jury being sworn. At  
24 least there is evidence. The question is whether it  
25 occurred in the nighttime. The evidence in the record

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 that Mr. Gibbons was assaulted somewhere -- he said he  
2 gets up around 6 or 6:30 and he leaves Sumter between  
3 6:15 and 20 minutes to 7. The testimony from the  
4 officer was that sunrise was 6:21 that morning. And  
5 clearly from the evidence that Mr. Gibbons was assaulted  
6 he said it was light outside.

7 But the real issue is when the entry occurred and  
8 whether they entered the garage during darkness. And  
9 that's a question I think that the jury is going to get  
10 to decide as to how long they had been there and whether  
11 they had been there before sunrise.

12 I will give them the definition of Burglary and the  
13 only aggravated circumstances I can give them I feel  
14 because of the way the indictment was written is it  
15 happened at nighttime and give them the definition of  
16 nighttime and they will have to make the call to whether  
17 they think the State has proved that beyond a reasonable  
18 doubt.

19 MR. DEVOE: Correction, Your Honor. The sunrise  
20 was at 5:53 that day.

21 THE COURT: No, that ---

22 MR. DEVOE: --- yes.

23 THE COURT: That ain't in the record, Mr. Devoe.

24 MR. DEVOE: It is --

25 THE COURT: That ain't in the record. The only

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

1 record I got and the only evidence I got is 6:21.

2 MR. DEVOE: [Inaudible]

3 THE COURT: I understand. You could have put in  
4 any evidence you wanted to but what's in the record right  
5 now is 6:21. So that's the record the jury is going to  
6 have to go by. There is no other evidence in this record  
7 that the jury could consider except 6:21.

8 Now, if you had evidence that the sun came up at  
9 some other time you should have put it in. But right now  
10 you can't tell them it came up at some other time because  
11 all that is in the record is 6:21.

12 Now if you did your independent research you are not  
13 a witness in this case. You could have called somebody  
14 from the National Weather Service I guess and got him to  
15 testify.

16 But I doubt seriously it happened at 5:53 though  
17 because I know exactly at this time of year I get up  
18 about that time every morning and the sun doesn't come up  
19 at 5:53. It might be starting the crack of day and  
20 starting to get daylight but it doesn't come up -- anyway  
21 that's not in this record here.

22 Anything else?

23 MR. CORBETT: Your Honor, if I may make an inquiry  
24 of defense with regard to count one just for planning  
25 purposes if they intend to request a lesser included

1 offense of Burglary in the 2<sup>nd</sup> degree? And also whether  
2 or not they intend to request a lesser included offense  
3 of Strong Armed Robbery under count three?

4 THE COURT: Okay. What about it gentlemen?

5 [Whereupon, an off the record bench conference is  
6 held]

7 THE COURT: Brief recess just so we can research  
8 and I'll go back to chambers and see what we can figure  
9 out.

10 [Whereupon, court is in recess]

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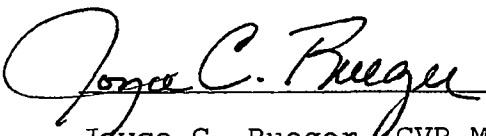
State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 4 (of 5) - May 17, 2012

C E R T I F I C A T E

1  
2 I, the undersigned, Joyce C. Rueger, Official Court  
3 Reporter for the Ninth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete Transcript of Record of the  
6 proceedings had and evidence introduced in the trial of  
7 the captioned case, relative to appeal, transcribed by  
8 Joyce C. Rueger, reported by Melissa Singletary, in the  
9 Court of General Sessions, Clarendon County, South  
10 Carolina on 17<sup>th</sup> day of May, 2012.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest to any party hereto.

13  
14 October 14, 2012

15  
16  
17   
18 Joyce C. Rueger, CVR-M  
19 Court Reporter  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

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May 18, 2012  
Manning, South Carolina

**VOLUME 5 OF 5**

**B E F O R E:**

THE HONORABLE RALPH F. COTHRAN, JUDGE

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## INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CLOSING ARGUMENT BY MR. CORBETT	4
CLOSING ARGUMENT BY MR. FINNEY	11
CLOSING ARGUMENT BY MR. KNOBELOCH	19
CLOSING ARGUMENT BY MR. DEVOE	28
CHARGE OF THE COURT	40
VERDICT	67
POLLING OF THE JURY	68
DEFENDANT WELDON ADDRESSES COURT	74
REMARKS BY MR. DEVOE	74
DEFENDANT PEARSON ADDRESSES COURT	75
REMARKS BY MR. KNOBELOCH	75
SENTENCING	76
CERTIFICATE OF THE COURT REPORTER	78

## INDEX TO EXHIBITS

[No exhibits were introduced in this volume]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
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PROCEEDINGS

[Whereupon, the jury enters the courtroom at 9:40  
a.m.]

THE COURT: The Clerk has informed me that we have  
lost one of our jurors overnight. She is ill and could  
not attend. So I had her put the two alternate names in  
the box and draw out one of them and Ms. Carter you were  
the one that was drawn to seat so I need you to move from  
your alternate chair to the jury panel please.

[Whereupon, the juror complies]

THE COURT: Counsel?

MR. KNOBELOCH: Defense rests.

MR. DEVOE: Defense rests, Your Honor.

THE COURT: All right. Ladies and gentlemen that  
means you've heard all the evidence you're going to hear  
in this case. What I need you to do at this point is to  
go back into the jury room for a minute and select a  
foreperson. I found out that jurors do a lot better job  
of selecting their foreperson than I do.

You've been together a day or two. You know each  
other to some degree. The foreperson has no greater  
authority than anyone else or no greater vote. Your  
verdict will have to be unanimous. That person will  
simply preside over the deliberations and fill out the  
verdict forms that have been handed in to the Clerk. So

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 if you'd go back to the jury room. We need you to select  
2 a foreperson. If you'll knock on the door and let the  
3 bailiff know I'll bring you back out. Then you will hear  
4 the closing arguments of the attorneys and I will charge  
5 you on the law and give you this case to decide. As soon  
6 as you select a foreperson if you'll come let us know.  
7 Thank you.

8 [Whereupon, the jury exits the courtroom at 9:47  
9 a.m.]

10 THE COURT: Anything before I bring the jury out?  
11 Are y'all ready to proceed? Bring the jury out.

12 [Whereupon, the jury re-enters the courtroom at 9:50  
13 a.m.]

14 THE COURT: Mr. Troutman, you've been selected?

15 MR. TROUTMAN: Yes, sir.

16 THE COURT: All right, gentlemen?

17 MR. CORBETT: Your Honor, may it please the court?

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENT BY MR. CORBETT

20 MR. CORBETT: Ladies and gentlemen of the jury good  
21 morning. Let me begin by thanking you for your time and  
22 attention during this at times long week. In a few  
23 moments Solicitor Finney will have an opportunity to come  
24 up here and talk to you about the facts of these brutal  
25 and evil acts on the morning of May 15<sup>th</sup>, 2010. But if I

1 may I want to begin in talking to you a little bit about  
2 the law that applies in this case. At the conclusion of  
3 arguments the Judge will charge you on the law of the  
4 case.

5 And it is from the Judge that you must take that  
6 law. And I do not want to say anything different than  
7 the Judge. If I do it is his law that you must follow.  
8 But I do want to take a few moments and talk with you  
9 about the law in this case and the charges in this case.

10 In just a little bit you're going to hear about the  
11 charges in this case one of which is Burglary in the  
12 First Degree. Burglary in the First Degree is when a  
13 person enters a dwelling without consent. A dwelling is  
14 your house. It's your home.

15 If there is a garage attached to your home that is  
16 your dwelling. Even though it does not apply in this  
17 particular case the law even recognizes detached building  
18 within a short distance of your house as being a part of  
19 your dwelling.

20 So there is absolutely no doubt and no question that  
21 that garage attached to the Gibbons home part of that  
22 house was the dwelling of Mr. Gibbons. That it was  
23 without consent from the facts and circumstances of this  
24 case that's obvious it is without consent, and with the  
25 intent to commit a crime. Yes, they did commit a crime.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 Throwing someone to the concrete and beating them and  
2 robbing them that's a crime. And that this occurred or  
3 the entering took place in the nighttime. Now here this  
4 morning, and you will hear a little more facts about  
5 this, but quite an issue was made about the nighttime  
6 portion of it.

7 But you heard testimony from the victim that he left  
8 his house that morning between 6 and 6:30. You heard  
9 testimony from the officers about their arrival. And you  
10 also heard testimony that sunrise that day was 6:20 a.m.  
11 6:20. You've seen the maps and you know where the house  
12 is.

13 Ladies and gentlemen these individuals they came in  
14 the nighttime and they laid in wait. They were lying in  
15 wait in that room for Mr. Gibbons to come out. He had  
16 been out since before day. And they were in that go-cart  
17 room waiting on him to come out and they entered that  
18 residence in the nighttime.

19 Now it's somewhat commonplace the judge often times  
20 charges jurors on other portions of law what are known as  
21 lesser included offenses. So the Judge may also charge  
22 you and you may hear language about Burglary in the  
23 Second Degree. The reason being is the facts of your  
24 problems. You members of the jury you determine what the  
25 facts are and how they apply to the laws that the Judge

1 charges you. So you may hear the lesser included offense  
2 but I believe that what the evidence will show you is  
3 that this was Burglary in the First Degree. You will  
4 have the option of Burglary in the Second Degree, which  
5 is basically the same thing. It determines your -- it's  
6 based on your determination of nighttime.

7 You're also going to hear the charge of Armed  
8 Robbery. Armed Robbery is just what is says; that I take  
9 a weapon and I come up to you and I rob you of your  
10 belongings. Armed Robbery. Now will issue be made of  
11 the gun? Of course it will. But I want you to hear  
12 something in the law.

13 A person who commits robbery while armed with a  
14 pistol is -- it references to other weapons but let's  
15 leave it at pistol for a moment. And here's an important  
16 part or while alleging either by action or words he was  
17 armed while using a representation of a deadly weapon.

18 The victim told you the truth. He didn't get a good  
19 look at the gun; that it was obscured. Do you remember  
20 his testimony how he even gestured how it was pointed at  
21 him as they came to him and the struggle began and that  
22 during the course the beating that he took one of him  
23 said are we going to shoot him. That's an Armed Robbery.  
24 Now again, the Judge under the law charges lesser  
25 included offenses. And there is another crime known as a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 Strong Arm Robbery. We also call it Common Law Robbery  
2 and it's basically just like an Armed Robbery except the  
3 person doesn't have a weapon. Again, the facts of the  
4 case are within your providence and for your  
5 determination.

6 But ladies and gentlemen I submit to you that you've  
7 heard testimony that there was a gun there or at the very  
8 least there was a representation of that gun and words  
9 and deeds used to convey to that victim that they were  
10 armed. Armed Robbery.

11 You will hear about the crime of Grand Larceny in  
12 this case. Larceny, once again, it's no need to make it  
13 more complicated than it is, after robbing Mr. Gibbons  
14 there in his garage they went out and jumped in his car  
15 and took it.

16 One of the elements is what is the value of that car  
17 and Mr. Gibbons told you 6,500 dollars. There is no  
18 question his El Camino was stolen; absolutely not. We  
19 call it Larceny; the easiest way of saying it is it was  
20 stolen. Mack Eaddy found it two and a half miles away.  
21 That's a Grand Larceny.

22 Now we also come to the charge of Kidnapping. Now I  
23 want to take a moment here and talk to you about  
24 kidnapping because there is a common perception of what  
25 Kidnapping is but then there's the legal definition which

1 by your oath you're bound to follow. Many people when  
2 they hear the word Kidnapping they think of a television  
3 show where somebody is put in the truck of a car and they  
4 drive them to an abandoned house or barn out in the  
5 middle of nowhere and they send the family a ransom note.  
6 That's what people's belief Kidnapping is.

7 But this is what the law of Kidnapping is and I'm  
8 only going to read a portion of it but I'm going to read  
9 the portion that is pertinent: [Reading] Whoever shall  
10 unlawfully seize, confine -- and it goes on to talk about  
11 -- decoy, abduct, carry away -- but whoever seizes or  
12 confines a person.

13 Ladies and gentlemen, when three people jump on you  
14 in your garage and hold you down and beat you you've been  
15 seized. When three people throw you down in your garage  
16 and start trying to tape you up you have been confined.  
17 And under the law that is Kidnapping.

18 The law does not require that you get stuffed into  
19 the trunk of the car and driven somewhere. It is the law  
20 is what you must follow and that is how a Kidnapping is  
21 defined in the law.

22 You're also going to hear the charge in the law of  
23 Possession of a Weapon During the Commission of a Violent  
24 Crime. And once again a person is in possession of a  
25 firearm or visibly displays what appears to be a firearm.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 We covered this just a few minutes ago in Armed Robbery.  
2 Not only did they come there to commit a violent crime  
3 but it is a separate offense to bring that weapon with  
4 you. Possession of a Weapon During the Commission of a  
5 Violent Crime.

6 Ladies and gentlemen, those are the statutes that  
7 the Judge will be charging you on in just a few moments.  
8 You will also hear from the law the concept of the hand  
9 of one is the hand of all. In technical parlance we call  
10 it accomplice liability. Why is that important? Because  
11 when three people come into your garage all three of them  
12 don't have to have a gun in their hand.

13 If you go with the man that has the gun and he's  
14 holding the gun and you're doing the kicking or the man  
15 that you've already thrown to the concrete or you're  
16 holding as they are putting the tape on him you're just a  
17 guilty of Armed Robbery as the man who had the gun.  
18 You're just as guilty. We all know; the getaway driver  
19 is just as guilty. The hand of one is the hand of all.

20 Ladies and gentlemen, thank you. Mr. Finney is  
21 going to talk to you about the facts and the evidence  
22 that you've heard today. But I greatly appreciate your  
23 attention.

24 MR. FINNEY: May it please the court, Your Honor.

25 THE COURT: Yes, sir.

1 CLOSING ARGUMENT BY MR. FINNEY

2 MR. FINNEY: Good morning ladies and gentlemen. I  
3 want to take an opportunity also not only to thank you on  
4 behalf of the Solicitor's office for giving us your time  
5 and attention this week.

6 You all have had an opportunity to serve this week  
7 in a very important case and in a very important system.  
8 Our judicial system works on a multitude of levels. And  
9 I wanted to, and I told you on Monday, I wanted to let  
10 you know that it's not just my job to come over here and  
11 make the cases, but I want you to understand how  
12 important the other people are. Not only the judges and  
13 the clerks and the court reporters but these law  
14 enforcement officers.

15 We have in this case seen what happens when an  
16 officer takes his responsibility seriously. And I want  
17 to thank Mr. Clark on behalf of my office and I know on  
18 behalf of the Gibbons family for the work that he put in  
19 along with the other officers.

20 Officers get paid a salary. They don't get paid by  
21 the hour. This unit, this investigative unit has spent  
22 untold hours after 5 o'clock working leads and trying to  
23 help the Gibbons family come to some conclusion about  
24 what had happened that day. You understand that when Mr.  
25 Gibbons got on that helicopter and went to Richland

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 Memorial nobody knew who had done this. But the officers  
2 dedicated themselves to coming back there and picking up  
3 every piece of evidence, sending things off to the labs;  
4 looking for a break.

5 You got to remember that the three or four guys or  
6 how many guys committed this robbery they planned it;  
7 they thought about it. They made preparation.

8 Mr. Gibbons told you they had on dark clothes;  
9 that's because they didn't want to be seen in the middle  
10 of the morning at 4 or 5 or 6 o'clock in the morning  
11 going over to that house. They didn't have a car waiting  
12 for them outside. They walked over there more than  
13 likely or got dropped off close by the scene.

14 When they got there they had masks on Mr. Gibbons  
15 said so they could conceal their identity because  
16 according to Mr. Gibbons one of them said Slick, we know  
17 you've got money. Give us your money. They knew him.  
18 They planned this. They took steps.

19 Ladies and gentlemen ask yourself this. Why is it  
20 that the only fingerprint taken off Mr. Gibbons car was  
21 Mr. Pearson's? Why is it that nobody else when they came  
22 out there and put that black fingerprint powder all over  
23 that car on both sides, inside and out, they came up with  
24 one fingerprint? Sure some other people had driven the  
25 car that day. When they found it abandoned and they

1 brought it back to Mr. Gibbons one or two people had  
2 driven it. The guy from Mr. Gibbons shop had driven it.  
3 They didn't even find his fingerprints in the car. It's  
4 hard to find fingerprints. It's hard to find evidence  
5 sometimes because everything has to work together.

6 A person has to touch it in the right way and leave  
7 the oils from their fingers and then it doesn't have --  
8 it has to be left undisturbed. You can't disturb it  
9 because if you disturb it by somebody else getting in  
10 there or the surface of the car wasn't right it won't  
11 leave a fingerprint; they can't find it.

12 You have to leave enough for them to trace. You can  
13 leave a partial print but a partial print is not enough.  
14 These officers who testified and Ms. Hodge from Sumter  
15 says that she has to have identifiable point enough to  
16 confirm before she is going to come up here and put her  
17 reputation on the line.

18 I also wanted to come and thank you on behalf of the  
19 Gibbons family because you are their voice at this point  
20 in this case. We have been that voice for them for the  
21 last two years; now we give the case to you.

22 You saw Mr. Gibbons tell you that he came outside  
23 about 6:15, 6:20 in the morning to put on his work  
24 clothes and go to work. And he was met by people that he  
25 did not know that he could not identify and they brutally

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 beat him. Took his property and then took his car.  
2 At some point during this attack not only did they put  
3 him down on the ground but after awhile when they were  
4 trying to leave he got up to see what kind of car they  
5 were in so he could help identify to the police what kind  
6 of car they were in, they were taking his car.

7 They saw him looking and somebody said he's up, he's  
8 up. And the guy in the back of the car got out, came  
9 back and knocked Mr. Gibbons down again. The good thing  
10 about it is by this time in the morning it was light  
11 enough for him to see where that man came from.

12 Now consider this. The fingerprints that we talked  
13 about in this case that show that Michael Pearson was in  
14 this robbery that fingerprint was on the back of the El  
15 Camino. You've got a picture of it in evidence. It's on  
16 the right driver's side -- that would be the left -- the  
17 left rear quarter panel.

18 Mr. Gibbons told you that one of the men got in the  
19 back of the El Camino when they were getting away. He  
20 had to get in the car; that's number one. Then Mr.  
21 Gibbons saw the man just out of the car, number two, to  
22 come and beat him down on the ground again. Then the man  
23 escaped with the other guys when they left; that's number  
24 three. Then they went over to Oak Grove and abandoned  
25 the car. He had to get out of the car, that's four times

1 that robber had a chance to come into contact with that  
2 back panel of that car; four times. What are the chances  
3 that he wouldn't have left a fingerprint on the car if he  
4 had contact with it four times?

5 What are the chances that that fingerprint was  
6 sitting there on that car one or two or three or four  
7 days before that because he had some casual contact with  
8 it. What's more reasonable?

9 What did I ask you to do when I asked you to come  
10 into this jury room and listen to the evidence? Use your  
11 common sense. This is not about trying to manufacture  
12 evidence. The evidence was there. The officers worked  
13 hard and they dug it up for us. That fingerprint belongs  
14 to that man. It was put on the car that morning.

15 Even if you take the forensic evidence, the D-N-A,  
16 the fingerprint and sit it on the table and say we're not  
17 going to consider that. What else do you have? Consider  
18 this. Both of those gentlemen once they were made  
19 suspects in the case came to law enforcement and they  
20 were interviewed.

21 Michael Pearson said I don't know Slick Gibbons.  
22 I've never been to his house. I don't know anything  
23 about this case. What about that? What about Mr. Gamble  
24 who got on this witness stand and told you yes, he knows  
25 Mr. Gibbons. Mr. Gibbons has been an employer of his,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 helped him make money, and gave him work to do at the  
2 house. And guess who was with Mr. Gamble when he went to  
3 the house to cut the bushes? Guess who was going into  
4 the garage at Country Club Road to get tools out of the  
5 garage? Michael Pearson. The same room that the robbers  
6 came out and knocked Mr. Gibbons down to the garage on  
7 May 15<sup>th</sup>.

8       You don't think the fingerprint is enough? You  
9 don't think the D-N-A is enough? What about that story?  
10 Mr. Weldon? I don't know anything about this case. His  
11 D-N-A is on the tape. Not the tape on the floor. Not  
12 the tape that somebody found in the storage room. His  
13 D-N-A is on the tape that is wrapped around Mr. Gibbons  
14 head while he's in the hospital trying to be looked  
15 after.

16       What about the other evidence that they didn't want  
17 us to know about that this officer dug up over at the Voc  
18 Rehab Center in Sumter where they told the officers no, I  
19 don't know Michael Pearson. That's what Mr. Weldon said.  
20 Mr. Weldon said no, I don't know Michael Pearson. Mr.  
21 Pearson says no, I don't know Mr. Weldon.

22       Both of them at the Voc Rehab Center December the  
23 9<sup>th</sup>, December the 10<sup>th</sup>, December the 11<sup>th</sup>, December the  
24 12<sup>th</sup>, 2008 working in the same workshop with 25 other  
25 people. What are the chances ladies and gentlemen that

1 two men from the Manning area go over to Voc Rehab work  
2 together for a week and they don't know each other? And  
3 later on within a year or two when they get interviewed  
4 by the officer they deny knowing each other.

5 We ask you to convict these gentlemen based on the  
6 evidence that has been brought into this court. We don't  
7 ask you to convict because you like one side or the other  
8 or you feel sorry for Mr. Gibbons. Put all that aside.  
9 Look at the evidence.

10 How many times do you think people would have been  
11 able to get to that house if it hadn't been dark?  
12 Burglary First is the proper crime in this case because  
13 they were laying in wait. They were in that storage room  
14 waiting for him to come out that day. It was dark when  
15 they got in that house. And that's the key time; not  
16 when Mr. Gibbons saw them leave when did they get in that  
17 room?

18 It was an Armed Robbery. Not only from the  
19 standpoint of what Mr. Gibbons felt and what they  
20 demonstrated by their actions but also by what they said.  
21 Are we going to shoot him? It was a Grand Larceny  
22 because that was his vehicle and they did take it away  
23 and we know that because it was found two miles away. It  
24 was Kidnapping because he couldn't move, he couldn't get  
25 up, he couldn't defend himself with a man sitting on his

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 chest and two other people beating on him. It was  
2 Possession of a Weapon during a Violent Crime because  
3 they did threaten him and they already had committed the  
4 Armed Robbery. They used a weapon; they brought a weapon  
5 with them. You should find them guilty of that.

6 When I took this case and got it ready for court  
7 Jason Corbett and I had worked on this case a lot. We  
8 went through the evidence and it struck me that when you  
9 look at exhibit number 5 you're going to see the glasses  
10 that Mr. Gibbons had on that day.

11 That right there should be enough to tell you what  
12 he went through. That right there should be enough to  
13 tell you the pain and the misery that this has caused  
14 this family for two years. Nobody in their own house  
15 ought to have to go through that.

16 But ladies and gentlemen, the guys that came in and  
17 broke in on Mr. Gibbons that morning, they had planned  
18 it. They had worked out what they thought was every  
19 detail and they thought they had it right. But they  
20 forgot about one thing. And that is that Mr. Gibbons was  
21 not going to let them get away with this without a fight.

22 He fought for his life. He fought for his wife.  
23 And he fought for his honor in his own home. He stood  
24 his ground. And now I'm asking you to do the same thing.  
25 Find these gentlemen guilty based on the evidence. Find

1 these gentlemen guilty because they are responsible for  
2 the crimes with which they have been charged. Thank you,  
3 very much.

4 MR. KNOBELOCH: May it please the court?

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT BY MR. KNOBELOCH

7 Ladies and gentlemen, like everybody else today I  
8 want to the thank you for your service. And in any case  
9 you'll hear the attorneys and judge thank you and  
10 especially in a long case. This was a relatively long  
11 case and we sincerely appreciate you giving it your  
12 attention. You were chosen for a reason. We think  
13 you're going to evaluate the testimony and the evidence  
14 and you're going to do the right thing in this case.

15 You heard Solicitor Corbett talk to you about the  
16 law. And he raised issues about was it daytime or  
17 nightttime or was there a gun, yes or no, was the victim  
18 confined. In all of those are things I have concerns  
19 about also.

20 The judge is going to charge you about that and I  
21 trust that you are going to follow those charges and  
22 you're going to evaluate the evidence as it needs to be  
23 so I'm not going to spend time on that. He also raised  
24 the issue of the hand of one is the hand of all. The  
25 judge is going to charge you on that as well. The hand

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 of one is the hand of all says if you are all involved in  
2 the crime together but only one of you pulls the trigger  
3 the hand of one is the hand of all you're all guilty of  
4 that crime.

5 Sitting at the table together doesn't mean hand of  
6 one, hand of all. Being involved in the crime together  
7 means hand of one, hand of all. And it's important that  
8 when you do evaluate the testimony and the evidence that  
9 you keep separate it's not an amalgamation of  
10 fingerprints and D-N-A. You've got to keep the evidence  
11 as it applies to one in one pile and the evidence that  
12 applies to another in another pile.

13 In his opening Solicitor Finney implied that defense  
14 attorneys use smoke and mirrors; that's our trick. I  
15 believe what he said was if he points at the ceiling  
16 don't let me point at the floor. Well, this is the  
17 evidence. I'm not going to point at the ceiling or the  
18 floor. I want you to look at this. I want you to  
19 remember the testimony and I want you to look at the  
20 evidence.

21 We've said this was a long trial. We've heard two  
22 or three days of testimony and we had two or three days  
23 of presenting this evidence. Solicitor Finney spoke for  
24 ten or fifteen minutes. And he did a good job of  
25 recounting what happened. There is no question it was a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 violent crime. There is no question I wouldn't want that  
2 to happen to me. But look at this table. All these  
3 bags, all these photographs, all these documents how do  
4 they link Victor Weldon to this crime. That's the  
5 question. We know a crime happened. Did Victor Weldon  
6 have anything to do with it? That's what we want you to  
7 focus on.

8 Now obviously, there is a lot of stuff here that  
9 says there was a crime. There is a lot of stuff here  
10 that was taken from the garage. What y'all are going to  
11 have a question from me about is the D-N-A. That's the  
12 piece of evidence I need to address as far as Victor  
13 Weldon.

14 And as far as that D-N-A goes I want you to think  
15 about what the State's witness said. There were some  
16 items where she tested the D-N-A and she was able to say  
17 that was not Victor Weldon's D-N-A. That was not Slick  
18 Gibbons D-N-A. That was not Michael Pearson's D-N-A.  
19 Anytime she said that was not someone's D-N-A she was  
20 able to say that 100 percent absolutely certain that is  
21 not their D-N-A.

22 But on the flip side when she said is this someone's  
23 D-N-A. Well, she can't say 100 percent certain. She has  
24 to say and I don't remember the exact numbers but they  
25 were big numbers this is a one out of a billion or one

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 out of a trillion chances it's their D-N-A. But she  
2 cannot say with 100 percent certainty that it is. She  
3 also testified that there were two parts. There is the  
4 actual scientific analysis and then there is coming up  
5 with probability.

6 As far as the scientific analysis she said that they  
7 physically look at a piece of the D-N-A and compare that  
8 location to another sample D-N-A. And she said that  
9 those locations, I believe she called them S-R-P or S-R-  
10 T's that there are tens of thousands of those locations  
11 on a piece of D-N-A. And in this analysis she looked at  
12 fifteen.

13 Then we get to the second part of her analysis,  
14 which is the math; the math of probability. The math of  
15 probability says if I flip this coin what's the chance of  
16 it being heads? If I turn over this deck of cards what's  
17 the chance of it being a face card?

18 And you'll notice that even though on every single  
19 thing they tested they always looked at fifteen spots.  
20 You'll see it on the report. The victim's D-N-A, Victor  
21 Weldon's D-N-A, the D-N-A from any item they find they  
22 look at fifteen spots. And yet sometimes that  
23 probability is one in 200 billion and sometimes one is  
24 500 billion. I think the math of probability raises a  
25 question of whether you can find beyond a reasonable

1 doubt that Victor Weldon had anything to do with it. But  
2 for the moment we'll assume that that was Victor Weldon's  
3 D-N-A found on item 5.1. It was the duct tape on the  
4 victim's head. It's the only they found a possible match  
5 on.

6 My first point is you will notice on that report  
7 that they took a swab from the outside of the duct tape  
8 and from the inside of the duct tape, but they didn't  
9 test them separately. They jumbled them up and tested  
10 them together.

11 Certainly if they were able to show that Victor  
12 Weldon's D-N-A was on the dead center middle sticky side  
13 of the duct tape five feet into the roll, we'd have a  
14 much more difficult case today. That evidence is not  
15 there. There is evidence that there may be his D-N-A on  
16 the duct tape; possibly from the outside and possibly  
17 from the inside.

18 You'll also remember that she testified that when  
19 they get a sample of D-N-A in a criminal case and a  
20 paternity case they don't take a scalpel and cut it out.  
21 They rub the inside of your mouth with a Q-tip. That's  
22 how easy it is to get D-N-A. My D-N-A is all over this  
23 podium. You heard her say that.

24 Another issue I have with this one piece of evidence  
25 trying to connect Victor Weldon to this crime is they

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 didn't find the D-N-A on some Samurai sword or a hunting  
2 knife or something that really ties to the crime. They  
3 didn't find the D-N-A on a rare coin collection that it  
4 would be unusual for anyone to touch. They found it on a  
5 piece of duct tape.

6 I've got duct tape in my truck, in my boat, in my  
7 kitchen drawer, in my tool box; and I don't know if that  
8 duct tape in my boat is my duct tape or if it's my  
9 buddy's duct tape from the last time we went fishing. It  
10 wasn't a rare form and it wasn't Samurai sword; it's a  
11 piece of duct tape.

12 So we've talked about the probability. We've talked  
13 about how easy it is if you touch an item. She also said  
14 that the duct tape could survive for years. She talked  
15 about mummies. At any point on any fishing trip, hunting  
16 trip, home project; if someone has touched that duct tape  
17 they can contribute their D-N-A to it.

18 You will also recall that she talked about gloves.  
19 Now she testified that one reason she wears gloves is she  
20 doesn't want to get her D-N-A on a sample that she is  
21 analyzing. But then she also said she doesn't want to  
22 cross contaminate. She doesn't want to touch this sample  
23 [indicates] and then touch this sample [indicates]  
24 because she's got this D-N-A on this D-N-A. So we don't  
25 even know with 100 percent certainty that Victor ever

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 touched the D-N-A. Someone could have brushed up against  
2 blood, saliva, hair, skin cell and then touch sticky  
3 D-N-A. So we've got the issue of the probability, the  
4 math that's used, we've got the issue of even if he did  
5 touch it what does that mean? That someone touched a  
6 piece of D-N-A at some unknown time.

7 And then we've really got the issue of do we even  
8 know if he ever touched them? Now, the Solicitor again  
9 said the defense attorneys are going to say look at the  
10 ceiling; I don't want you to look at the floor. That's  
11 not the case.

12 The Solicitor said in his closing even if we set  
13 aside the D-N-A we still have evidence. The evidence  
14 that he presented, the other evidence they have in  
15 addition to the D-N-A is that a year and a half prior to  
16 this incident Michael Pearson and Victor Weldon had a job  
17 that overlapped for four days.

18 Now one thing about that is you heard that Victor  
19 Weldon had worked there for several months. Those four  
20 days were his last four days. He's done. That's what  
21 he's got on his mind.

22 You also heard it was Michael Pearson's first four  
23 days. He started, he's excited, and it's a new job.  
24 Four days eighteen months ago I don't know if I would  
25 remember somebody that I spent four days with eighteen

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 months ago. But there is another point that I want to  
2 make with that evidence. It's not the defense attorney  
3 saying look at the ceiling, don't look at the floor.  
4 It's the Solicitor's looking for any evidence.

5 That's there -- ladies and gentlemen, even if we set  
6 aside the D-N-A. Let's look at else what we have. That  
7 one other thing they have is that two people worked  
8 together for four days eighteen months prior to this  
9 happening.

10 I want to talk a little bit about the testimony now.  
11 And the Judge will instruct you on the fact that you  
12 can't make an inference from the fact that Victor Weldon  
13 didn't testify. Well, this is one of those cases where  
14 what is there to say? The State has not met their burden  
15 of proof.

16 You remember Officer Clark's testimony. The only  
17 evidence they have linking Victor Weldon and Michael  
18 Pearson is the incident I was just talking about. Four  
19 days of employment eighteen months before it happened.

20 Nobody put up any evidence that there was any  
21 connection between Victor Weldon and Slick Gibbons or  
22 with Slick's house or with Slick's car. We did hear  
23 testimony that Officer Clark had in his notes that the  
24 assailants were between 5'8 and 5'9 -- lying in his notes  
25 -- he doesn't want them in there now. Two years later

1 the State doesn't want to say they are 5'8 and 5'9. But  
2 the notes that were taken on May 17, 2010 48 hours after  
3 the incident they say 5'8 and 5'9. And they are  
4 underlined.

5 The issue of daylight, whether it's daylight or not  
6 is an issue. We clearly heard the victim say it was  
7 daylight when he was up. But going back to Officer  
8 Clark's testimony his testimony was 6:15. His notes were  
9 approximately 6:28. He doesn't like the contemporaneous  
10 -- he doesn't like the notes he took at the time this  
11 happened.

12 His notes say 19 to 20 years old. The victim said I  
13 never said that. They don't like the notes they took  
14 when it happened. The testimony two years later and the  
15 notes taken two years ago are not the same. The notes  
16 say one person came out and then a moment later two more  
17 people came in. Now the testimony is all three came out.

18 We're not saying this didn't happen. But the  
19 investigation gets the D-N-A and says that's it, I've  
20 stopped. You also heard testimony from Officer Clark  
21 that talked to several people; you know what's the word  
22 on the street? He spoke with Jimmie Cagle, Jimmie Timm,  
23 James Bradford, Soloman Sherard, Latoya Green, Mr.  
24 Mendes, Mr. Gamble; it may have been others. But there  
25 were several people that he spoke to. When asked did any

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 of those people implicate Victor Weldon and the answer is  
2 no. This was without question a horrible crime. And  
3 it's without question that it happened. And it's without  
4 question that we've got lots of bags, and lots of  
5 photographs, and lots of things that prove that it  
6 happened.

7 And it's without question the Solicitor spent a long  
8 time in his closing recounting those events. But there  
9 is nothing that links Victor Weldon to this crime. Thank  
10 you.

11 THE COURT: Mr. Devoe?

12 MR. DEVOE: Thank you, Your Honor. May it please  
13 the court?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT BY MR. DEVOE

16 MR. DEVOE: I apologize to the jury for coming up  
17 late because I was looking for fingerprints and pictures  
18 that are in evidence. Four days ago I introduced myself  
19 as Harry Devoe. Until last -- until different --

20 I think you've been a very good jury. You've been  
21 listening I can see by speaking. It is always hard for  
22 the jury but I'm glad this jury but I'm glad this jury  
23 has been listening. What happened two years ago this  
24 week was a tragic event. I feel sorry that Mr. Gibbons  
25 got hurt. I feel sorry his house was broken into; it was

1 a traumatic situation I know -- once in Philadelphia --  
2 the back door or the front door. The same you do after  
3 the fox gets in the chicken coop, you're going to lock  
4 the chicken coop and we're going to get a security alarm  
5 after a break-in. And so I understand full well what  
6 Mr. Gibbons is going through.

7       However, however my client and actually not the --  
8 is standing before you telling you he didn't do this  
9 crime. And he's been sitting in jail for two years  
10 because of them confusing him.

11       He's being accused of someone who is 5'8 or 5'9.  
12 My client is standing -- you see him stand, he's the one  
13 who is standing right there [indicates]. I don't think  
14 he's 5'8 or 5'9. He's taller than I am; I used to be,  
15 don't tell my wife. As time goes on with age gravity  
16 comes. I guess I'm 5'-- almost 5'10.

17       We put a lot of weight on what -- the point is  
18 everybody changes as time goes on. But he is not 5'8 or  
19 5'9. He hasn't been that I suppose since he was in  
20 junior high school. And he's not 20 years old. By  
21 looking at him he is more middle aged than he is young.

22       So how does he get arrested? He gets arrested  
23 through one thing. Fingerprint and that's all. His  
24 fingerprint was found in the back of Mr. Gibbons El  
25 Camino, which was stolen. It was abandoned; abandoned

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 apparently within a mile of driving in the little Country  
2 Club area of Manning. You know coming in that used to be  
3 come right off of 260 straight in. But since they have  
4 the dam there the folks -- wanted to reopen it and they  
5 made a secure entrance there. So to get to it by driving  
6 You have to go all the way around.

7 And when I do it my wife had a cousin right near Mr.  
8 Gibbons. And I sometimes would take a long drive and get  
9 lost. But they -- after this happened and the stole the  
10 car they drove more than -- mile -- whoever they is.

11 They're saying there were three people. Where is  
12 the third person? Where is the second person and where  
13 is the first person who really did it? I think the three  
14 of them are the ones who ought to be in front of you  
15 today; not my client -- my client is accused of knowing  
16 the co-defendant. He certainly didn't meet him in jail.

17 That jail makes very sure that if two co-defendants  
18 are kept away from each other in different cells. Did  
19 they meet in Manning? I don't believe the co-defendant  
20 -- did they meet at the rehab center -- the Voc Rehab  
21 Center? I think Mr. Knobeloch told you that there were  
22 20 -- it was testified yesterday there were 20 or so  
23 people working there. The building is about 3,500 square  
24 feet. They are doing wood-working there and so -- if you  
25 don't pay attention to what you're doing. And one of

1 them is the last four days of work. I'm sure if I was  
2 there for four months I would be anxious to get out. I  
3 don't mean jail doing this; it's a voluntary situation.  
4 Still you're looking to the future and doing things and  
5 my mind would be elsewhere.

6 The bus come in for the first time I would be  
7 looking at what goes on and what am I supposed to do?  
8 How can I work safely? The wood-working machine if you  
9 don't know much about wood-working the machine could be  
10 very, very dangerous.

11 So to say that they met each other is a real stretch  
12 by the State. And they say after meeting each in  
13 December of 2008 that they got together in May of 2010  
14 seventeen months later to do this crime. And there is no  
15 indication anywhere they had met each other or knew each  
16 other anytime between those two times.

17 And I know that Mr. Clark and others have --  
18 hundreds of people in Clarendon County about this case  
19 and various people fit the age level and the height level  
20 and so on. There is nothing in anyone's notes indicating  
21 that either Mr. -- my client and the co-defendant ever  
22 contacted each other, never ran in the same crowd, never  
23 worked again with each other. Nothing, absolutely  
24 nothing. So go back in your lives. If you worked with  
25 somebody eighteen months ago or seventeen months ago

1 temporarily with twenty five other people at a different  
2 age and lived in the same area and the same neighborhoods  
3 would you get to know those people necessarily? I didn't  
4 hear they had coffee together or anything like that. I  
5 just heard they were working together in the same  
6 facility in Sumter County for a period of time.

7 My client is here only for one reason; a  
8 fingerprint. That's it. Nothing else. The State would  
9 have you think they've got one fingerprint and they've  
10 got one match. But there are other fingerprints in that  
11 car. I know they tested at least three other  
12 fingerprints and they didn't match anybody. Not the  
13 fingerprints, excuse me; the people. They didn't match  
14 any fingerprints.

15 You have to have a person to match a fingerprint to  
16 in order to match a fingerprint. You just can't take a  
17 latent -- fingerprint and -- identify everybody out of  
18 those fingerprints. You could if you have the people  
19 with the fingerprints on it or had them in the system.

20 But you notice the system has millions of  
21 fingerprints -- or at least thousands. And they are not  
22 going through every fingerprint trying to match it to  
23 some identifiable person. It's the other way around.  
24 You take the person and match it to the fingerprint.  
25 They didn't find any person, other person to match to any

1 fingerprint on that car. I'm going to go back to that in  
2 a second. But think of the house itself in that garage  
3 and that room they supposedly hid. Did they take off  
4 everyone for fingerprints? Did they dust that door for  
5 fingerprints? Not to my knowledge. Why not?

6       You have to open the door by using a door knob;  
7 fingerprints go on it. Or you push a door open and  
8 fingerprints are on it. There is no indication that  
9 these people were wearing gloves. So why did any  
10 fingerprints or any attempt to make fingerprints come to  
11 the garage?

12       They did the car certainly but nothing else. And  
13 they didn't do the car -- apparently. I asked first  
14 about the door knobs and the door locks. They didn't  
15 touch those. Of course inside the car the fabric is not  
16 suitable I guess for taking fingerprints. I guess that's  
17 so; I don't know.

18       They also asked Mr. Clark why the wallet where the  
19 money was wasn't tested for fingerprints. They tested --  
20 but not for fingerprints. What's the -- this is not a  
21 case that is being done the day after it happened. This  
22 was done two years later. The investigation stopped  
23 contrary to what Mr. Clark says they had other jobs to do  
24 also when they arrested my client and the co-defendant.  
25 I guess two out of three is good enough. You know the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 fingerprint person said a fingerprint stays on a car for  
2 a long time. They don't just go away by age. They don't  
3 go away by rain. The only way they go away is when a car  
4 is washed by hand or any other place. There is no  
5 testimony in this case of when that truck was ever  
6 washed.

7 I'm sure it was washed from time to time; it's not a  
8 dirty looking truck. But I don't know when it was washed  
9 and you don't either. So you can assume for the moment  
10 of anything that all the fingerprints in that car that  
11 were there after the last car wash stay on it until the  
12 next car wash.

13 Now they found one fingerprint made by my client.  
14 Its evidence on exhibit 17-H the record I'll point out to  
15 you the fingerprint that they say is my client's  
16 fingerprint. It's this fingerprint right here  
17 [indicates]. It's in the left -- the rear left side of  
18 the car, the passenger side.

19 The second -- the last fingerprint of the right  
20 thumb. The top of the thumb was towards the car --  
21 towards the top of the car. I'm --trying to imagine how  
22 as was testified that somebody jumped in the rear of the  
23 car because right in that pickup truck if I get in the  
24 rear of the car I'd go by the tailgate and the bumper and  
25 step on it; not from the side of the car. My -- is still

1 very, very good. I don't -- but the right thumb is at  
2 the top. I don't know how you put a right thumb on the  
3 side of the car without putting other fingers ---

4 MR. CORBETT: --- Your Honor?

5 THE COURT: Yes?

6 MR. CORBETT: I'm going to impose an objection to  
7 arguing facts that are not in evidence. The order ---

8 MR. DEVOE: --- Your Honor, I think this fact is in  
9 evidence. There are pictures in evidence.

10 THE COURT: I understand. And you can argue what  
11 is in evidence.

12 MR. DEVOE: That's correct.

13 THE COURT: I think he's concerned about the  
14 orientation.

15 MR. DEVOE: The orientation is number 17-I is  
16 another fingerprint of the same area -- and this is --  
17 and this is the fingerprint. It's the thumb -- that  
18 fingerprint is not identified through Mr. Pearson in any  
19 way --

20 Mr. Gibbons store is right across from the hospital  
21 -- most of you know where it is. It's on 260. I don't  
22 know where y'all live but if you go down by the hospital,  
23 the I-G-A or the other place the China Buffet it's on the  
24 right hand side. It was testified to Mr. Gibbons truck  
25 was always parked it faced the store on the very right

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 side of the store. I'll bet if you go by there on  
2 Saturday his car is probably right there. My client  
3 lives in Manning. He walks around Manning like -- he  
4 walks here, he walks there -- he may go into a thrift  
5 store around the same area. He may go in the I-G-A. He  
6 could go in the other direction.

7 And who is to say that he walked he didn't come by  
8 and look at the strange looking car because his car was  
9 an enigma. That is why it's valued not as a throw away  
10 car but as a decent car. You heard Mr. Gibbons testify  
11 he has eight of them about the only existence in  
12 Clarendon County. If it goes up for sale --

13 The point is that the car was there exposed to the  
14 public in which my client is one. And his fingerprint is  
15 on it. From where? Where did the other fingerprints  
16 come from and when? We are saying the State cannot prove  
17 when those fingerprints got on the car.

18 They're trying to say they got on the car when he  
19 jumped on the truck back at the house -- when he jumped  
20 on it the second time or the third time; whatever it is.  
21 They can say all they want to say. It's not been proven  
22 by anybody at anytime. There is no age -- you can't age  
23 when a fingerprint is there. You can't insert other  
24 things in a time capsule and figure out the carbon --  
25 testing of various things of age. It doesn't work with

1 fingerprints. Fingerprints -- there is no -- you can't  
2 tell the age -- and this whole case and my client  
3 revolves around that situation. We have a -- I don't  
4 represent the co-defendant; he's not my case. We sit  
5 together at the same table and we have certain things in  
6 common and we're both are trying to help our clients out.

7 My client's only piece of evidence is something they  
8 can't prove as to when it got there. If they can't prove  
9 that, they can't prove anything because they can't prove  
10 that they knew each other. My client seemingly knew each  
11 other somehow and someplace.

12 They're trying to say my client worked through Mr.  
13 Gamble and they're tried to prove that he worked at that  
14 house in the yard. That is not -- Mr. Gamble did not say  
15 that you or my client was working -- just working in  
16 somebody's yard. He also said it happened three years  
17 ago. Three years ago. You heard me say -- about two  
18 years ago.

19 So those are the only linkage no matter how remote  
20 they are my client has with this whole situation.  
21 Everybody in Manning -- I guess everybody knows Mr.  
22 Gibbons one way or the other. I know him. He was -- I  
23 was just doing my job. I'm just representing my client  
24 and my client -- no one has proven my client -- if you  
25 worked here some -- and he is standing trial in front of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 you today and he's been sitting in jail for two years  
2 because he's telling you that he is not guilty. Now when  
3 the judge reads the law to you as one of the things to  
4 you there are several things for you to think about.

5 And on a daytime and nighttime situation of when  
6 they broke in there is no proof as to when they actually  
7 went into that garage. They might have gone in at  
8 midnight like the State would like you to believe and  
9 take a snooze or something. They might have gone in at 3  
10 o'clock in the morning. They might have gone at 6:15; we  
11 don't know. We don't know.

12 There is no way to prove when they went in. We know  
13 when the situation happened. The clock said 6:28, 6:30,  
14 6:28 -- is that too exact -- he wasn't there when it  
15 actually happened. We also know that daylight -- sunrise  
16 was at 6:21.

17 To make it a nighttime event they had to start the  
18 event as far as breaking in, the judge will tell you when  
19 that is but it's -- had to be visible light. And visible  
20 light -- you know this week two years ago this happened.  
21 You know what time its light in the morning. You get --  
22 and time to get up -- but to get here in time and get all  
23 prettied up and everything you have to get up a little  
24 bit ahead of time. And some people can read at 6:10. Is  
25 that not visible light? I know that this is a very

1 serious case. It's serious to Mr. Gibbons. It's serious  
2 to my client. It's serious to his co-defendant. I'd  
3 just repeat that my client is telling you he did not know  
4 his co-defendant.

5 He did not go into the victim's house. He did not  
6 try to beat him up. He did not -- in the car. And I  
7 would ask you when you go back to deliberations that you  
8 find my client not guilty. Thank you.

9 THE COURT: Ladies and gentlemen, we're going let  
10 y'all take about -- you've been in here an hour and a  
11 half. We're going to take a short break. I'll send you  
12 to the jury room and when you come back out I'll charge  
13 you with the law that you -- at this point you still  
14 can't talk about it. I'll get you back out in just a  
15 minute.

16 [Whereupon, the jury exits the courtroom at 10:52  
17 a.m.]

18 THE COURT: All right. Gentlemen, while we're on  
19 this break if y'all will make sure all the evidence is  
20 together and you can coordinate that with the court  
21 reporter and look at the verdict -- the possible verdict  
22 form and be sure you don't have a problem with it. And  
23 I'll be back in a minute.

24 [Whereupon, the court takes a brief recess]

25 THE COURT: All right. Is there anything before I

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 bring the jury in for me to decide? Have y'all had an  
2 opportunity to review the verdict form?

3 [No response]

4 THE COURT: Any objection to the form of the  
5 verdict?

6 MR. FINNEY: Everything is fine, Your Honor.

7 MR. KNOBELOCH: No objections.

8 THE COURT: Mr. Devoe?

9 MR. DEVOE: No objection, Your Honor.

10 THE COURT: Okay. And my understanding from the  
11 court reporter that y'all have gone over the evidence and  
12 -- is present to the presented to the jury is that  
13 correct? Bring in the jury.

14 [Whereupon, the jury re-enters the courtroom at  
15 11:22 a.m.]

16 CHARGE OF THE COURT

17 THE COURT: Thank you ladies and gentlemen. Now  
18 that you've heard all the evidence in this case as well  
19 as the arguments of both the State and Defense attorneys  
20 I am going to instruct you on the law that you are to  
21 apply in this case.

22 Under our Constitution and Code of Law only the jury  
23 can make a finding of fact. I am not permitted as I  
24 indicated to you earlier to have an opinion about the  
25 facts. So if I said anything or have done anything in

1 this trial that you think I had an opinion about the  
2 facts you are to disregard that because you and only you  
3 are to determine what the true facts are in this case.

4 The same Constitution and Code of Law that  
5 designates you the exclusive judges of the facts  
6 designates me as the exclusive judge of the law.  
7 Therefore, you should take the law exactly as I give it  
8 to you.

9 You may have an opinion that the law should be  
10 different or it's not what you interpret the law to be  
11 but you are to set aside that under your oath and accept  
12 the law as I give it to you and apply it to the facts  
13 that you deem to be true to come out with a true verdict  
14 in this case.

15 The fact that the defendants in this case were  
16 arrested charged and indicted is not evidence in this  
17 case and cannot be considered by you as evidence of guilt  
18 in any way. Nor does it create any presumption or  
19 inference of guilt.

20 The indictment is simply a formal legal document  
21 that brings these charges to court. It serves as the  
22 formal document to process the paperwork through the  
23 court. The defendants in this case have entered a plea  
24 to this indictment of not guilty. Therefore, it places  
25 the burden on the State of South Carolina to prove each

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 and every element of the indictment beyond a reasonable  
2 doubt. A person charged with committing a criminal  
3 offense in South Carolina is never required to prove  
4 himself or herself innocent. And I instruct you and  
5 emphasize to you the fact that the defendants in this  
6 case did not testify is not a fact to be considered by  
7 you in any way in your deliberations.

8 The State has the burden of proving them guilty  
9 beyond a reasonable doubt and they do not have to prove  
10 anything. So you must not consider in any manner  
11 whatsoever the fact that they exercised their  
12 constitutional right to remain silent and their assertion  
13 of this right cannot be considered by you in your  
14 deliberations.

15 I'll repeat under your oath you are to draw no  
16 conclusions whatsoever from the fact that the defendants  
17 in this case did not testify. The fact that the  
18 defendants did not testify should not even be discussed  
19 in the jury room.

20 The burden of proof that I've stated to you is from  
21 the State of South Carolina for each and every element of  
22 the indictment beyond a reasonable doubt. Now it's an  
23 important rule of law the defendant in a criminal trial  
24 will always be presumed innocent of the crime in which he  
25 or she is charged unless or until that guilt has been

1 proven to you be evidence that satisfies you beyond a  
2 reasonable doubt. The presumption of innocence is not  
3 mere legal theory. It is not just a legal phrase. It is  
4 a substantial constitutional right which every defendant  
5 is entitled to.

6 This presumption of innocence accompanies the  
7 defendant from the time he or she is charged throughout  
8 the trial until you reach a verdict of guilt based upon  
9 evidence that satisfies you of that guilt beyond a  
10 reasonable doubt.

11 A reasonable doubt is a doubt which makes honest,  
12 sincere conscientious juror in search of truth to  
13 hesitate to act. Proof beyond a reasonable doubt must  
14 therefore be proof of such a convincing character that a  
15 reasonable person would not hesitate to rely upon and act  
16 upon it in a most important his or her own affairs.

17 Proof beyond a reasonable doubt can be described as  
18 proof that leaves you firmly convinced of the defendant's  
19 guilt. And there are very few things in this world that  
20 we know with absolute certainty.

21 And in a criminal case the law does not require  
22 proof that overcomes every possible doubt. If based on  
23 your consideration of the evidence you are firmly  
24 convinced that the defendants or defendant is guilty of  
25 the crime charged you must find him guilty. On the other

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 hand if you think there is a real possibility that he or  
2 she is not guilty you must give them the benefit of that  
3 doubt and find him not guilty.

4 In determining what the facts are in a case you must  
5 necessarily pass upon creditability, which simply means  
6 the believability of the witnesses and give whatever  
7 weight and value you think is appropriate to their  
8 testimony. You alone must decide the force and effect of  
9 the truth of that testimony.

10 In making the decision there are many things that  
11 you may and should take into consideration such as the  
12 appearance and the manner of the witness on the stand;  
13 sometimes referred to as the demeanor of the witness.  
14 Was the witness forthright or hesitant? Was the  
15 witnesses testimony consistent or did it contain  
16 discrepancies?

17 What was the ability of the witness to know the  
18 facts about which he or she testified? Did a witness  
19 have cause or reason to be biased or prejudiced in favor  
20 of the testimony he or she gave? Was the testimony of a  
21 witness corroborated or made strong by other evidence and  
22 testimony? Or was it made weaker or -- by other evidence  
23 or testimony? Now the rules of evidence don't ordinarily  
24 permit a witness to testify to an opinion or conclusion.  
25 An exception to this rule exist for witnesses we call

1 expert witnesses. A witness who by education and  
2 experience has become an expert in some art, science,  
3 profession, or calling may state an opinion as to the  
4 relevant material matter in which the witness claims to  
5 be an expert. They may also give the reasons for that  
6 opinion.

7       You should consider any expert opinion received into  
8 evidence in this case like any other evidence; give it  
9 the weight you think it deserves. If you decide that the  
10 opinion of an expert is not based on sufficient education  
11 and experience or if you conclude the reasons given in  
12 support of the opinion are not sound or that the opinion  
13 is outweighed by other evidence you may disregard the  
14 opinion in its entirety.

15       An expert witness's testimony is to be given no  
16 greater weight than that of any other witness simply  
17 because the witness is an expert. And further you are  
18 not required to accept an expert's opinion even though it  
19 is not contradicted.

20       As jurors you have a right to believe a small  
21 portion of a witness's testimony and disregard the larger  
22 or vice versa. You may believe the testimony of a single  
23 witness against that of many or the other way around.  
24 Now criminal intent is a necessary element of each crime  
25 and must be proven by the State beyond a reasonable

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 doubt. Criminal intent is always a matter than must be  
2 determined by the jury with circumstances surrounding  
3 situations. There is no way to prove intent to a  
4 mathematical certainty. There is no way medical science  
5 can dissect a person's brain and determine what he or she  
6 had in mind.

7 So the law states criminal intent may be inferred  
8 through circumstances shown to have existed both before  
9 and after the fact. This is how you, the jury, make a  
10 determination of whether or not the elements requiring  
11 intent were present.

12 Criminal intent is a state of mind that operates  
13 jointly with an act or omission in the commission of a  
14 crime. Criminal intent is a mental state of conscious  
15 wrongdoing. So it is up to you, the jury, to determine  
16 what the defendants intended to do based on the  
17 circumstances shown to exist. And I tell you the State  
18 must prove criminal intent just as the State must prove  
19 everything beyond a reasonable doubt.

20 Now there are two types of evidence which are  
21 generally presented at the trial; direct evidence and  
22 circumstantial evidence. Direct evidence is the  
23 testimony of a person who asserts or claims to have  
24 actual knowledge of a fact such as an eye witness.  
25 Circumstantial evidence is proof of a chain of

1 circumstances or facts indicating the existence of a  
2 fact. Yesterday we were in this courtroom most of the  
3 day. I came out after the trial and it had rained  
4 substantial. There was water all over the ground. And  
5 we were in here and didn't look out the window and didn't  
6 see it raining but when we go outside and the ground is  
7 covered in water that is circumstantial evidence.

8 I didn't see it. But if I had seen it rain that  
9 would be direct evidence. But if I go outside at the end  
10 of the day and the ground is covered in water then I can  
11 assume sometime during the day we were in this courtroom  
12 it rained. That's circumstantial evidence.

13 The law makes absolutely no distinction between the  
14 weight or value to be given either to direct or  
15 circumstantial evidence, nor is there a greater degree of  
16 certain requirements of circumstantial evidence and not  
17 direct evidence. You should weigh all the evidence in  
18 the case and after weighing all the evidence if you're  
19 convinced of the guilt of the defendants beyond a  
20 reasonable doubt you must find the defendants guilty.

21 If on the other hand you think there is a reasonable  
22 doubt you must find them not guilty. If a crime is  
23 committed by two or more people who are acting together  
24 in committing a crime the act of one is the act of all.  
25 A person who joins with another to commit an unlawful act

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 is criminally responsible for everything done by the  
2 other person, which happens as a probable and natural  
3 consequence of the acts done in carrying out the common  
4 plan and purpose.

5 For example, two people can be guilty of killing  
6 another person when only one of the two had a gun, there  
7 was only one bullet and only one of the two fired a shot  
8 that caused the death. If two or more people are acting  
9 together assisting each other in the commission of a  
10 crime, the act of one is the act of all. Sometimes  
11 referred to as the hand of one is the hand of all.

12 Prior knowledge that a crime is going to be  
13 committed without more is not sufficient to make a person  
14 guilty of that crime. The mere knowledge that another is  
15 going to commit a crime, even if the defendant is present  
16 when the crime is committed is not sufficient to convict  
17 a defendant --

18 Guilt is a principle shown by actual or constructive  
19 presence at the scene as a prior result of an  
20 arrangement. Therefore, finding a prior arrangement or  
21 plan or common scheme is necessary for finding the guilt  
22 as a principle. The State must prove beyond a reasonable  
23 doubt with competent evidence theory of a hand of one is  
24 the hand of all. A principle in a crime is one who  
25 either acts and commits the crime or who is present,

1 aiding, or abetting, or assisting in the commission of  
2 the crime. When a person doesn't act in the presence of  
3 and with the assistance of another the act is done by  
4 both. But if two or more acted with a common plan or  
5 intent or present at the commission of the crime it does  
6 not matter who actually committed the crime. All are  
7 guilty; the hand of one is the hand of all.

8        Presence at the commission of a crime means to be  
9 sufficiently near to aid, abet, or assist in the  
10 commission of a crime. However, mere presence at the  
11 scene of a crime is not sufficient to convict one as a  
12 principle in theory from aiding and abetting.

13        Intent is also a necessary element that must have  
14 been a common design or intent to commit a crime and the  
15 crime must have been committed pursuant thereto with a  
16 person aiding and abetting by some overt act.

17        Intent means intending the results that actually  
18 occurred; not accidentally or involuntarily. Intent may  
19 be shown by acts and conduct of the defendant and other  
20 circumstances which may naturally and reasonably infer  
21 intent. The State must prove these elements beyond a  
22 reasonable doubt.

23        The defendants in this case are charged with the  
24 crime of Burglary in the First Degree. The State must  
25 prove beyond a reasonable doubt that the defendants

1 entered a dwelling without consent. A dwelling is any  
2 building or portion of a building which a person  
3 ordinarily sleeps.

4 A building constructed this way that has never been  
5 occupied cannot be considered be a dwelling for the  
6 purposes of a Burglary. But a building is a dwelling  
7 even if the residents are temporarily absent from the  
8 building.

9 In order to prove that the defendant entered the  
10 dwelling the State does not have to show the defendant's  
11 entire body entered the dwelling; the smallest entry is  
12 sufficient in making any part of the body such as the  
13 hand or foot or even an instrument such as a hook or  
14 other instrument.

15 In addition the State does not have to prove that  
16 force was used to gain entry. Next the State must prove  
17 beyond a reasonable doubt the defendant intended to  
18 commit a crime either a felony or a misdemeanor at the  
19 time of entry.

20 The mere entry into a dwelling without consent is  
21 not Burglary. If intent to commit a crime is borne after  
22 the entry it is not Burglary. On the other hand if the  
23 defendant intended to commit a crime at the time of the  
24 entry it is burglary; even if intent was abandoned after  
25 the entry. It does not matter that the intended crime

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 was not completed. Intent may be shown by acts of  
2 conduct of the defendant or other circumstances which you  
3 may naturally and reasonably infer.

4 The State must also prove Burglary First that the  
5 defendant intended and remained in the dwelling in the  
6 nighttime. Nighttime is the period between sunset and  
7 sunrise during which there is not enough daylight to  
8 recognize a person's face except by artificial light or  
9 moonlight.

10 If you find that the State has failed to prove  
11 beyond a reasonable doubt the defendant committed  
12 Burglary in the First Degree you may consider whether the  
13 State has proven beyond a reasonable doubt that the  
14 defendant committed Burglary in the Second Degree.

15 Burglary in the Second Degree includes all the  
16 evidence of Burglary in the First Degree except the  
17 nighttime. If you find the State has not proved beyond a  
18 reasonable doubt that the burglary occurred in the  
19 nighttime then you may find the defendant guilty of  
20 Burglary in the Second Degree.

21 If you do not find the State has proved beyond a  
22 reasonable doubt the defendants entered the dwelling with  
23 intent to commit a crime therein anytime then you would  
24 find the defendants not guilty on the crime of Burglary  
25 in the First or Second Degree. Now the defendants are

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 also charged with the crime of Armed Robbery. In order  
2 to prove this offense the State must prove beyond a  
3 reasonable doubt that the defendant took personal  
4 property from the person or presence of another person.  
5 The property is in the presence of a person.

6 It is within that person's reach, inspection,  
7 observation, or control so that a person could if not  
8 overcome with violence or prevented by fear kept the  
9 possession of the property.

10 The State must prove beyond a reasonable doubt the  
11 defendant carried the property away intending to  
12 permanently deprive the owner of the property and to keep  
13 the property from the defendant's own use. The slightest  
14 removal of the property or the completion or possession  
15 of the property even for an instant by the defendant is  
16 sufficient to show intent in carrying away the property.

17 The taking and carrying away of the property must  
18 have been done with violence or by putting the owner of  
19 the property in fear of violence. And finally the State  
20 must prove beyond a reasonable doubt that the defendant  
21 or defendants were armed with a deadly weapon during the  
22 commission of the robbery.

23 A deadly weapon is any article or substance, which  
24 is likely to cause death or great bodily harm. Whether  
25 an instrument has been used as a deadly weapon depends on

1 the facts and circumstances of each case. The following  
2 are examples of instruments which may be deadly weapons:  
3 a pistol, a shotgun, a rifle -- a dagger, a knife, a  
4 sling shot, metal knuckles, a razor, gasoline, a fire  
5 bomb or Molotov cocktail, lighter fluid. A gun may be a  
6 deadly weapon even if it's not operating.

7 A hand or a fist is not normally considered a deadly  
8 weapon; however under the circumstances depending on the  
9 manner and means of issuance the wounds inflicted and  
10 other relevant factors a hand or fist may be considered a  
11 deadly weapon. And it is for you to decide based on the  
12 facts that you determine to be the truth in this case as  
13 whether or not a hand or a fist is a deadly weapon.

14 Ordinarily objects may become deadly weapons when  
15 facts show that they had been used to inflict serious  
16 bodily harm or death. Whether a toy gun, which has the  
17 appearance of or believed to be a real gun, is a deadly  
18 weapon, is a factual question for you to determine.

19 Now if you find the State has failed to prove the  
20 defendant or defendants were armed with a deadly weapon  
21 you may then consider whether the defendants has proven  
22 beyond -- the State has proven beyond a reasonable doubt  
23 the defendants had committed the robbery. A robbery  
24 includes all the offenses I just explained to you under  
25 armed robbery except that you can find that the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 defendants were not armed with a deadly at the time of  
2 the commission of the robbery, and just as I explained to  
3 you in armed robbery of another person.

4 Now the defendants have also been charged with the  
5 crime of Grand Larceny. The State must prove beyond a  
6 reasonable doubt the defendants took and carried away the  
7 property of another person against the will or without  
8 the consent of the other person. The slightest removal  
9 of the property or the complete possession of the  
10 property, even for an instant by the defendant, is enough  
11 to show a taking and carrying away of property.

12 The State must prove beyond a reasonable doubt that  
13 the defendant intended to permanently deprive the owner  
14 of the property. And finally the State must prove the  
15 value of the thing taken was 1,000 dollars or more.

16 Now the defendants were also charged with the crime  
17 of Kidnapping. The State must prove beyond a reasonable  
18 doubt that the defendant or defendants knowingly and  
19 unlawfully seized, confined, inveigled, decoyed,  
20 kidnapped or abducted or carried away another person  
21 without the authority of law. To do a thing unlawfully  
22 is to do it willfully against the law.

23 Knowingly means with knowledge consciously and not  
24 accidentally. Seize means to take hold suddenly of a  
25 person. Confined means to limit or restrict or enclose

1 within bounds imprison, or shut in, or keep. Inveigle  
2 means to lure, entice, or lead astray by false  
3 representations or promises or other equal means. Decoy  
4 means to lure by or -- if by decoy is something to entice  
5 a person into a trap.

6 Kidnapping is to remove a person against his will by  
7 unlawful force or by fraud. Abduct means to carry off  
8 secretly or by force for an illegal purpose. Carry away  
9 means to remove.

10 The State does not have to prove the defendant did  
11 all of these things. Instead if you find beyond a  
12 reasonable doubt that the defendant or defendants did any  
13 of these things you may find the defendant or defendants  
14 guilty of Kidnapping.

15 The Kidnapping does not have to be for any personal  
16 or monetary gain -- it only has to be for some illegal  
17 purpose. The defendants are also charged with the crime  
18 of Possession of a Deadly Weapon during the Commission of  
19 a violent crime.

20 The State must prove beyond a reasonable doubt that  
21 the defendant or defendants possessed a firearm or  
22 visibly displayed what appeared to be a firearm or  
23 visibly displayed a knife during the commission of a  
24 violent crime. A firearm means any machine gun or a  
25 rifle, revolver, pistol or any weapon which will or is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 designed to or may be readily converted to expel a  
2 projectile. A knife means any instrument or tool with a  
3 sharp cutting blade whether or not -- which can be used  
4 to inflict cut, slash, or wound.

5 In order to find the defendants guilty of Possession  
6 of a Weapon during the Commission of a Violent Crime you  
7 must first find the defendants guilty of either  
8 committing a violent crime or attempting to commit a  
9 violent crime.

10 And I instruct you that Burglary in the First  
11 Degree, Armed Robbery, and Kidnapping are considered  
12 violent crimes under State law. Now the indictments in  
13 this case allege several different offenses against the  
14 defendants.

15 And I have gone over those charges and they will be  
16 on the verdict form for you. Each count charges a  
17 separate and distinct offense. You may decide -- you  
18 must decide each count on the indictment separately from  
19 the evidence of the law -- to it uninfluenced by decision  
20 you have had to any other count of the indictment.

21 The defendants may be convicted or acquitted on any  
22 and all of the offenses charged. You will be asked to  
23 write a separate verdict of guilty or not guilty on each  
24 count of the indictment. I charge you that there are two  
25 defendants in this case; each of whom are charged with

1 the crimes that I have gone over with you listed on the  
2 indictment. The case of each defendant and the evidence  
3 and law concerning that defendant should be considered  
4 separately and individually.

5 Your verdict does not have to be the same for both  
6 or all of the defendants. The fact that you may find one  
7 defendant guilty or not guilty should not control your  
8 verdict as to the other defendant.

9 Moreover when one person is charged with the crime  
10 if the evidence warrants it you may convict him and  
11 acquit the other. You may acquit both or you may  
12 convict both. It will depend upon your view of the  
13 testimony and evidence. You must take each defendant and  
14 consider the evidence as to that defendant and my  
15 instructions on the law as to that defendant.

16 You will then write a separate verdict of guilty or  
17 not guilty on each count on each defendant. Now ladies  
18 and gentlemen you are not advocates or partisans of the  
19 State of South Carolina of these defendants. You don't  
20 serve as jurors to reward your friends or punish your  
21 enemies. The -- of justice simply will not be tolerated.  
22 You have been selected by both the State and this  
23 defendant as a fair and impartial juror. It is your duty  
24 then by your joint deliberations to determine the truth  
25 in this case giving to these defendants the benefit of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 every reasonable doubt on each and every issue. And then  
2 to the facts that you determine to be true you are to  
3 apply the law that I have given you and arrive at a  
4 verdict that speaks the truth in this case. When you  
5 have accomplished this you would have satisfied your oath  
6 as jurors and discharged your duty to this court.

7 Now I have had my law clerk draw up possible verdict  
8 forms in this case. And I have -- at the top of the form  
9 is just the caption of the case. And I -- you will have  
10 the verdict for each defendant. And the verdict form  
11 says the State of South Carolina County of Clarendon  
12 State Michael Pearson and Victor Weldon; that is simply  
13 the title of the case.

14 The verdict is one, we the jury now do find the  
15 defendant Victor Weldon guilty of Burglary First or not  
16 guilty of Burglary First or we the jury now do find  
17 Victor Weldon guilty of Burglary in the Second Degree or  
18 not guilty of Burglary in the Second Degree.

19 If you find him on the charge of Burglary if the  
20 State has proven to you the guilt beyond a reasonable  
21 doubt on Burglary First you would find him guilty of  
22 Burglary First. If you find that they have not proven  
23 beyond a reasonable doubt that he is guilty of Burglary  
24 First you could consider the lesser included offense of  
25 Burglary Second and then you will apply the same facts if

1 they have proven to you beyond a reasonable doubt he is  
2 guilty of Burglary Second you may find him guilty. If  
3 they have not you must find him not guilty. But you  
4 can't find him guilty of both; it's just one or the other

5       It's the same thing on the offense of Armed Robbery.  
6 The verdict form says we the jury now do find the  
7 defendant guilty of Armed Robbery or not guilty of Armed  
8 Robbery. If you find him guilty of Armed Robbery and  
9 each defendant stands on his own you would not consider  
10 the second of Robbery.

11       If you find him not guilty, if you find the State  
12 has not proven the facts beyond a reasonable doubt you  
13 may go to the lesser included offense of Robbery to  
14 determine whether they have proven that. If you feel  
15 they have not you would find him not guilty.

16       So you can't find him guilty of either one of Armed  
17 Robbery and of Robbery; you've got to pick one of the  
18 two. And I've put that in a sheet accordingly. And the  
19 third count is Grand Larceny.

20       The options are we the defendant -- we the jury find  
21 the defendant of Grand Larceny or not guilty of Grand  
22 Larceny. And the same situation with Kidnapping guilty  
23 or not guilty of Kidnapping. He is guilty or not guilty  
24 of Possession of a Weapon During a Violent Crime. Now  
25 I've given you a sheet on each one of these defendants

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 and you're to treat each one separately on each count.  
2 And the order I've placed them in you are to draw no  
3 inference whatsoever. We just simply had to put them in  
4 some order. But your job is to determine each one of  
5 these counts on each defendant individually.

6 And Mr. Foreman, your job is once you have reached a  
7 verdict on each count and it must be unanimous verdict;  
8 all twelve of you must agree, then you are to check to  
9 the appropriate box and at the end sign your name to  
10 these forms knock on the door and we will bring you out  
11 and receive your verdict.

12 Now if at any time during your deliberations one of  
13 you needs to be excused and one of you leave the table  
14 and go to the restroom or whatever, you've got to stop  
15 your deliberations. You can only talk about this case  
16 when all twelve of you are sitting there in the room and  
17 can hear each other. So if somebody needs to be excused,  
18 stop talking about the case until they come back resume  
19 your deliberations until you reach a verdict.

20 Then if you will knock on the door we will bring you  
21 out procedurally. If you have some question of me and  
22 you -- you need to write that question on a piece of  
23 paper and knock on the door and give it to the Bailiff.  
24 I can tell you right now I can only answer questions of  
25 law. If you have a question about the law in this case

1 or the instructions I have given you I can answer that.  
2 I can't answer a question about the facts. So if you are  
3 asking me a question about the evidence or facts you have  
4 all the evidence you will hear and you've got to decide  
5 that. I can't answer a question about any particular  
6 fact. I can only clarify the law to you.

7 So having said that I am going to send you to the  
8 jury room. I've got to review my charge with these  
9 attorneys to be sure I've not missed anything or left  
10 something out. If I have I will bring you back out and  
11 charge you further on the law. If I've not then I will  
12 have the Bailiff bring in the evidence along with these  
13 verdict form.

14 When you receive this verdict form that will be your  
15 indication then to begin your deliberations and knock on  
16 the door when you receive the verdict. So if you will go  
17 to your jury room right now.

18 Madame alternate, if you'll stay with me. I want  
19 you to sit there and if it looks like everybody is going  
20 to make it I only will need you if I'm losing one of  
21 them. We lost one this morning but it looks like  
22 everybody is going to get me through the day so if you  
23 will stay right where you are seated but everybody else  
24 can go to the jury room.

25 [Whereupon, the jury exits the courtroom at 11:55

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 a.m.]

2 THE COURT: Any exceptions or additions on behalf  
3 of the State?

4 MR. FINNEY: May I have a moment, Your Honor?

5 THE COURT: Yes, sir.

6 MR. FINNEY: Your Honor, we did have a question  
7 about your charge on the Armed Robbery as to whether or  
8 not you informed the jury that the person who allegedly  
9 commits the robbery could be guilty if they were alleging  
10 either by action or words that he was armed by using a  
11 representation of a deadly weapon or any object which --  
12 present during the commission of the robbery reasonably  
13 believed to be a deadly weapon. And that language comes  
14 from section 16-11-330.

15 THE COURT: I did not charge that particular  
16 language. I charged a fist can be a deadly weapon or any  
17 objects can be a deadly weapon. And tell me -- and that  
18 is not in my charge but tell me what...

19 MR. FINNEY: We believe that you charged correctly  
20 Your Honor that a person can be guilty of robbery when he  
21 is armed with and then you named five or six things.

22 THE COURT: Right.

23 MR. FINNEY: And then we believe that you went on  
24 to talk about I remember you talked about the toy pistol  
25 and it would be up to them.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 THE COURT: I talked about any deadly weapons or  
2 any -- a deadly weapon is any article, instrument or such  
3 which is likely to cause death or great bodily injury  
4 whether an instrument has been used as a deadly weapon  
5 depends on the facts and circumstances of each case and  
6 the following are examples -- and I let out gun, knife --

7 Then I said a hand or fist is not normally  
8 considered a deadly weapon however under some  
9 circumstances depending on the manner and means it is  
10 used will lose -- the other relevant factors a hand or a  
11 fist may be considered a deadly weapon. It is for you to  
12 decide. Then I went on as to ordinary objects and of toy  
13 guns. Now what do you think I've left out?

14 MR. FINNEY: We believe there is a section in 16-  
15 11-330, which informs the jury that a person who was  
16 armed while using a representation of a deadly weapon or  
17 any object which a person present during the commission  
18 of a robbery reasonably believed to be a deadly weapon  
19 would be guilty of the felony of Armed Robbery. And  
20 obviously while we didn't want you to make a comment on  
21 the facts ---

22 THE COURT: --- and you think that's in the statute  
23 of what section?

24 MR. FINNEY: 16-11-330.

25 THE COURT: All right, let me look. So you want me

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 just read section 8 of the statute: a person who commits  
2 robbery while armed with a -- sling shot, metal knuckles,  
3 razor or other deadly weapons while alleging either by  
4 action or word he has armed -- he was armed while using a  
5 representation of a deadly weapon or any object with a  
6 person present during the commission of a robbery  
7 reasonably believed to be a deadly weapon is guilty of a  
8 felony.

9 MR. FINNEY: Yes, sir.

10 THE COURT: All right. Anything else from the  
11 defense?

12 [No response]

13 THE COURT: Anything from the defense?

14 MR. DEVOE: Your Honor, you made a statement they  
15 could not come out and ask about any testimony in the  
16 case. I believe the court asked them -- the court  
17 reporter can look it up and we could --

18 THE COURT: Well, if I conveyed that I didn't mean  
19 it. I said he could ask me for factual questions. They  
20 certainly can hear testimony played back. I will clear  
21 that up when I bring them back out.

22 MR. DEVOE: Thank you.

23 THE COURT: Anything else?

24 [No response]

25 THE COURT: All right. Bring them back out.

1 [Whereupon, the jury re-enters the courtroom at  
2 12:02 p.m.]

3 THE COURT: Thank you ladies and gentlemen. I'm  
4 sorry, the attorneys have pointed out that I left out a  
5 portion of the definition of Armed Robbery so I am going  
6 to supplement my charge on Armed Robbery and give you  
7 that additional definition.

8 A person who commits robbery while armed with a  
9 pistol, -- sling shot, metal knuckles, razor, or any  
10 other deadly weapon while alleging either by action or  
11 words that he was armed while using a representation of a  
12 deadly weapon or any object which a person present during  
13 the commission of a robbery would reasonably believe it  
14 to be a deadly weapon. I added that to the definition  
15 I've already given you to Armed Robbery.

16 And one of -- I told you when you went back I could  
17 answer questions of law but I could not answer questions  
18 of fact. However, that doesn't mean that if you want to  
19 hear testimony again of any question asked. I can't  
20 answer any questions after -- or you ask -- you want to  
21 hear some witness's testimony have a right to come back  
22 out and the court reporter would have to replay portions  
23 or all of any witness's testimony. And if that becomes  
24 an issue I just can't answer questions if you want to  
25 ask. But I can certainly allow you to review whatever

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 evidence is in the record as well as additional  
2 testimony. Then, I assume I've covered everything. I'm  
3 going to send you back to the jury room and I'll talk to  
4 these lawyers again. If I have covered everything I will  
5 send the verdict form and the evidence to the room and  
6 you can begin your deliberations. If I haven't I'll  
7 bring you back in again. Thank you. Madame Alternate,  
8 if you'll stay with us still.

9 [Whereupon, the jury exits the courtroom at 12:05  
10 p.m.]

11 THE COURT: Anything further?

12 MR. FINNEY: Nothing from the State.

13 MR. KNOBELOCH: Nothing from us.

14 THE COURT: All right. If you will carry these  
15 verdict forms and get the evidence in there. Its 12  
16 o'clock you might can start talking by lunch. At 12:30  
17 we'll knock on the door and ask them if they want to  
18 start ordering lunch. And if they say yes it will take  
19 it about 30 to 35 minutes to get here so I'll send Ms.  
20 Beulah or one of her staff in there to take lunch orders  
21 at 12:30 if we haven't reached a verdict. Any objection  
22 to that?

23 MR. FINNEY: No objection from the State.

24 MR. KNOBELOCH: No, Your Honor.

25 MR. DEVOE: No.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 THE COURT: Okay. Then we'll stand at ease for a  
2 few minutes and see if the Solicitor has got anything  
3 else he wants me to do while we're waiting on them.

4 [Whereupon, the court is in recess]

5 MS. ROBERTS: I understand the jury has a verdict.

6 [Whereupon, the jury re-enters the courtroom at 2:00  
7 p.m.]

8 VERDICT

9 THE COURT: You may publish the verdict.

10 MS. ROBERTS: On indictment number 2011-GS-14-68 we  
11 the jury unanimously find the defendant Victor Weldon  
12 guilty of Burglary in the First Degree.

13 We the jury unanimously find the defendant Victor  
14 Weldon guilty of Armed Robbery.

15 We the jury unanimously find the defendant Victor  
16 Weldon guilty of Grand Larceny more than 1,000 dollars.

17 We the jury unanimously find the defendant Victor  
18 Weldon guilty of Kidnapping.

19 We the jury unanimously find the defendant Victor  
20 Weldon guilty of Possession of a Weapon during a Violent  
21 Crime. Signed Martin D. Troutman as Foreperson.

22 As to the indictment number 2011-GS-14-68 we the  
23 jury unanimously find the defendant Michael Pearson  
24 guilty of Burglary First Degree.

25 We the jury unanimously find the defendant Michael

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 Pearson guilty of Armed Robbery.

2 We the jury unanimously find the defendant Michael  
3 Pearson guilty of Grand Larceny of more than 1,000  
4 dollars.

5 We the jury unanimously find the defendant Michael  
6 Pearson guilty of Kidnapping.

7 We the jury unanimously find the defendant Michael  
8 Pearson guilty of Possession of a Weapon During a Violent  
9 Crime. Signed Martin D. Troutman, Foreperson.

10 THE COURT: Anything from the State as far as it  
11 relates to the jury?

12 MR. FINNEY: Nothing from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. KNOBELOCH: No, Your Honor.

15 MR. DEVOE: I'd like the jury polled.

16 THE COURT: All right, Ms. Beulah?

17 POLLING OF THE JURY

18 MS. ROBERTS: Ladies and gentlemen of the jury  
19 beginning with the foreperson I'm going to ask you -- I'm  
20 going to call your name and ask you to stand and I'm  
21 going to ask you two questions I need you to answer for  
22 me, okay. Beginning with our foreperson Mr. Martin D.  
23 Troutman.

24 [Whereupon, Mr. Troutman stands]

25 MS. ROBERTS: Is this your verdict?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 MR. TROUTMAN: Yes, ma'am.

2 MS. ROBERTS: It's still your verdict?

3 MR. TROUTMAN: Yes.

4 MS. ROBERTS: Thank you, sir. Eva L. Brown?

5 [Whereupon, Ms. Brown stands]

6 MS. ROBERTS: Is this your verdict?

7 MS. BROWN: Yes.

8 MS. ROBERTS: It's still your verdict?

9 MS. BROWN: Yes.

10 MS. ROBERTS: Thank you, ma'am. Susan Carty?

11 [Whereupon, Ms. Carty stands]

12 MS. ROBERTS: Is this your verdict?

13 MS. CARTY: Yes.

14 MS. ROBERTS: Thank you. Julia F. Scurry?

15 [Whereupon, Ms. Scurry stands]

16 MS. ROBERTS: Is this your verdict?

17 MS. SCURRY: Yes, ma'am.

18 MS. ROBERTS: And it's still your verdict?

19 MS. SCURRY: Yes, ma'am.

20 MS. ROBERTS: Thank you. Melvin M. Worrell, II?

21 [Whereupon, Mr. Worrell stands]

22 MS. ROBERTS: Is this your verdict?

23 MR. WORRELL: Yes, ma'am.

24 MS. ROBERTS: And it's still your verdict?

25 MR. WORRELL: Yes, ma'am.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 MS. ROBERTS: Thank you, sir. Hydrick L. Gardner,  
2 Jr.?  
3 [Whereupon, Mr. Gardner stands]  
4 MS. ROBERTS: Is this your verdict?  
5 MR. GARDNER: Yes, ma'am.  
6 MS. ROBERTS: And it's still your verdict?  
7 MR. GARDNER: Yes, ma'am.  
8 MS. ROBERTS: Thank you. Wanda H. Garner?  
9 [Whereupon, Ms. Garner stands]  
10 MS. ROBERTS: Is this your verdict?  
11 MS. GARNER: Yes, ma'am.  
12 MS. ROBERTS: And it's still your verdict?  
13 MS. GARNER: Yes, ma'am.  
14 MS. ROBERTS: Patrice I. Dow?  
15 [Whereupon, Ms. Dow stands]  
16 MS. ROBERTS: Is this your verdict?  
17 MS. DOW: Yes.  
18 MS. ROBERTS: And it's still your verdict?  
19 MS. DOW: Yes.  
20 MS. ROBERTS: Robert L. Walters?  
21 [Whereupon, Mr. Walters stands]  
22 MS. ROBERTS: Is this your verdict?  
23 MR. WALTERS: Yes.  
24 MS. ROBERTS: And it's still your verdict?  
25 MR. WALTERS: Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 MS. ROBERTS: Sheila H. Ridgeway?  
2 [Whereupon, Ms. Ridgeway stands]  
3 MS. ROBERTS: Is this your verdict?  
4 MS. RIDGEWAY: Yes.  
5 MS. ROBERTS: And it's still your verdict?  
6 MS. RIDGEWAY: Yes, ma'am.  
7 MS. ROBERTS: Dontrell G. Bradley?  
8 [Whereupon, Mr. Bradley stands]  
9 MS. ROBERTS: Is this your verdict?  
10 MR. BRADLEY: Yes, ma'am.  
11 MS. ROBERTS: And it's still your verdict?  
12 MR. BRADLEY: Yes, ma'am.  
13 MS. ROBERTS: And Ms. Frances Carter?  
14 [Whereupon, Ms. Carter stands]  
15 MS. ROBERTS: Is this your verdict and still your  
16 verdict?  
17 MS. CARTER: Yes.  
18 MS. ROBERTS: Thank you, ma'am. Your Honor, the  
19 jury has been polled.  
20 THE COURT: Okay. Anything further from either  
21 side?  
22 [No response]  
23 THE COURT: Ladies and gentlemen, I want to thank  
24 you for your services this week. You've been a good  
25 jury. You paid close attention throughout the trial and

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 I really appreciate it. I'm going to excuse you. You  
2 are welcome to stay if you want to or you can take a seat  
3 in the courtroom while I pass sentence on these  
4 defendants. I've been telling you all week you couldn't  
5 talk about this case but now you can talk about anything  
6 you want to. You can tell your family what you've been  
7 doing. You don't have to talk about it. If somebody  
8 wants to talk to you and you don't want to talk about it,  
9 you just simply tell them I don't want to talk about it;  
10 but it's totally up to you now.

11 Thank you for your service. Ms. Beulah is going to  
12 mail you a check. And you're going realize what a huge  
13 service it was when you get that check; you're not going  
14 to be able to do much with it. But I appreciate you  
15 being here and you willing to serve.

16 Our system of justice simply wouldn't work without  
17 citizens such as you being willing to give up your time  
18 and make the tough decisions. I thank you and you have a  
19 nice week, what's left of the nice summer. Thank you,  
20 very much.

21 MS. JOHNSON: Your Honor may I...

22 THE COURT: Ms. Beulah is going to tell you one  
23 more thing.

24 MS. JOHNSON: One more thing. If any of you need a  
25 statement for your employer saying that you were here

1 with me this week, go downstairs to my office. My office  
2 is right down the middle of the stairs -- in the middle  
3 of the hallway. It says Clerk of Court and the young  
4 ladies down there will give you a statement, okay. All  
5 right, thank you.

6 [Whereupon, the jury is excused and exits the jury  
7 box]

8 THE COURT: Is the State ready? Do you need time  
9 to...

10 MR. FINNEY: Just a few minutes, Your Honor. I'm  
11 going to pass up the prior records.

12 MR. CORBETT: Your Honor, may I approach to hand up  
13 our sentence sheets?

14 [Whereupon, documents are handed up to the court]

15 THE COURT: Gentlemen, either one of y'all want to  
16 tell me anything?

17 MR. DEVOE: On their sentence?

18 THE COURT: Huh?

19 MR. DEVOE: Sentence?

20 THE COURT: Do you want to tell me anything before  
21 I pass sentence?

22 MR. KNOBELOCH: Judge, the defendants would also  
23 like to address the court at this time.

24 THE COURT: Okay.

25 MR. KNOBELOCH: Mr. Weldon would like to address

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 the court.

2 THE COURT: Yes. Come forward and stand at the  
3 microphone right here [indicates]. How about both of you  
4 come forward.

5 [Whereupon, Mr. Weldon and Mr. Pearson come forward]

6 THE COURT: Yes, what do you want to tell me?

7 MR. WELDON: It really is a misunderstanding of what  
8 happened. I'm sorry that this had to happen to Mr.  
9 Gibbons. But I hope that it will out when he gets home  
10 tonight -- I'm sorry it happened to the man. I  
11 understand it did happen; I'm not trying to deny that.  
12 It's not that I like, it's just how it is.

13 THE COURT: I understand. Is there anything you  
14 want to tell me Mr. Devoe?

15 MR. DEVOE: Yes. Mr. Pearson has a minor record.  
16 He's 39 years old and he's been in jail for exactly two  
17 years tomorrow on this charge. I'd ask that you give  
18 concurrent sentences and I would ask you to be -- it was  
19 a trial, it was a meaningful trial and I'm surprised the  
20 jurors were out as short of a time they were.

21 However, my client has had a breathing problem for  
22 quite some time. It just happened because of the -- and  
23 his record his only major conviction was 2007 and he was  
24 convicted of taking -- and he -- it looks like its two  
25 convictions but it's just one -- but it still counts and

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 he got three years on each -- he wants to say a few words  
2 too, Your Honor.

3 THE COURT: Okay. Yes, sir.

4 MR. PEARSON: Also like Mr. Weldon I know a crime  
5 was committed. And I know it was a bad crime committed  
6 to Mr. Gibbons. Also, I am an innocent man and as he  
7 said hopefully we can get this resolved with the appeal  
8 that we'll put in.

9 I'm asking for leniency also because of a situation  
10 that they found us guilty. But I'd still like to as Mr.  
11 Devoe said, don't quite understand with the evidence that  
12 we presented was that -- they presented against us that  
13 we were found guilty. But I'm just asking you for  
14 leniency. That's all. Thank you.

15 THE COURT: All right.

16 MR. KNOBELOCH: Your Honor, may I briefly? Mr.  
17 Weldon has his father and his sister here. I'm sorry,  
18 his girlfriend is here. His mother was unable to be here  
19 because she could not get off work.

20 Mr. Weldon has I believe it was a burglary but it is  
21 a juvenile offense; something that happened when he was  
22 15 or 16 and that's his only prior conviction on his  
23 record.

24 He's the only member of his family who graduated  
25 high school. When he was in high school he participated

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 in ROTC and he was in the Saber Guard and Color Guard.  
2 He regularly attends church in his neighborhood. We'd  
3 also ask that you run any sentences concurrent and I'd  
4 ask for leniency from the court. Thank you.

5 SENTENCING

6 THE COURT: Okay. All right Mr. Weldon and Mr.  
7 Pearson. You know the legislature set Burglary at 15  
8 years to life and this is as serious a crime as you can  
9 get. You go to a man's house, you lay in wait for him,  
10 he comes out in the morning and you beat him and you rob  
11 him. And I'll give you as much leniency as I can under  
12 the circumstances.

13 The Burglary First the sentence of the court is you  
14 are committed to the State Department of Corrections for  
15 a term of 30 years. On the Armed Robbery the sentence of  
16 the court is you are committed to the State Department of  
17 Corrections for a term of 30 years to run consecutive to  
18 the Burglary First.

19 On the Grand Larceny the sentence is five years to  
20 run concurrent and I'm giving you credit for the time  
21 served on all of these. On the Kidnapping the sentence  
22 is 20 years to run concurrent with credit for time  
23 served. And on the Possession of a Weapon during a  
24 Violent Crime is five years to run concurrent with the  
25 time served. Mr. Pearson, your sentence is Burglary

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

1 First is 30 years; Armed Robbery is 30 years to run  
2 consecutive to Burglary First. Grand Larceny is five  
3 years, Kidnapping is 20 years. Possession of a Weapon  
4 during a Violent Crime is 5 years. The Armed Robbery and  
5 the Burglary is consecutive and everything else is  
6 concurrent. And I am giving you credit for time served  
7 for each one of them.

8 MR. DEVOE: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. DEVOE: They got credit for time served?

11 THE COURT: Huh?

12 MR. DEVOE: Credit for time served?

13 THE COURT: Yes. I gave them both credit for time  
14 served. Then they got to do 60 years.

15 MR. FINNEY: Thank you, Your Honor.

16 THE COURT: Thank you.

17 [Whereupon, the jury trial concludes]

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25


State v Michael Pearson, Victor Weldon (2011-GS-14-0068)  
Volume 5 (of 5) - May 18, 2012

C E R T I F I C A T E

1  
2 I, the undersigned, Joyce C. Rueger, Official Court  
3 Reporter for the Ninth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete Transcript of Record of the  
6 proceedings had and evidence introduced in the trial of  
7 the captioned case, relative to appeal, transcribed by  
8 Joyce C. Rueger, reported by Melissa Singletary, in the  
9 Court of General Sessions, Clarendon County, South  
10 Carolina on 18<sup>th</sup> day of May, 2012.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest to any party hereto.

13  
14 October 14, 2012

15  
16  
17   
18 Joyce C. Rueger, CVR-M  
19 Court Reporter  
20  
21  
22  
23  
24  
25

FORM 5

STATE OF SOUTH CAROLINA )

County of Clarendon )

Victor McCoy Welton # 950911 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

2016-CR-14-00002  
IN THE COURT OF COMMON PLEAS

The 3rd Judicial Circuit

APPLICATION FOR  
POST-CONVICTION RELIEF

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE

DATE 1/5/2016

Beulah H. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

BEULAH H. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2016 JAN - P 16:17

INSTRUCTIONS-READ CCAREFULLY

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 of 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 established 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.

- Place of detention Perry Correctional Institution, 430 Oaklawn Rd. Pelzer S.C. 29169.
- Name and location of Court which imposed sentence Clarendon County Courthouse, P.O. Box 136, 3 West Keitt St, Manning, S.C. 29102
- Name(s) of co-defendant(s) (if any) Michael Wilson Pearson
- The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

- (a) Burglary 1<sup>st</sup> 2011-GS-14-0068 / Armed Robbery - 2011-GS-14-0068
- (b) Attempted Murder - 2011-GS-14-0068 / Kidnapping - 2011-GS-14-0068
- (c) Grand Larceny - 2011-GS-14-0068 / POW during violent crime - 2011-GS-14-0068

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 18, 2012 - Burglary 1<sup>st</sup> 30 yrs / Armed Robbery 30 yrs
- (b) Grand Larceny 5 yrs Kidnapping 20 yrs /
- (c) POW during violent crime 5 yrs

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered yes to (7), list:

(a) the names of each Court to which you appealed:

- i. South Carolina of appeals
- ii. N/A
- iii. N/A

(b) the result in each such Court to which you appealed:

- i. ~~Grant~~ Denied
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. April 8, 2015
- ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered no to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See attachment

(b) See attachment

(c) See attachment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See attachment

(b) See attachment

(c) See attachment

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(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? N/D

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. Petition to rehearing

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. State of S.C. in the Supreme Court -

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. January 23, 2015

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. February 26, 2015

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

- ii. N/A
- iii. N/A
- iv. N/A

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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Due Process
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. General Session - change of venue
- ii. N/A
- 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) N/A
- (b) N/A
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any?

- (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. John Knoblauch - 808 Johnnie Dadd BLVD  
Mount Pleasant, S.C. 29464
  - ii. Robert Dudek - P.O. Box 11529  
Columbia, S.C. 29211
  - iii. N/A  
N/A
- (b) the proceedings at which each such attorney represented you:
  - i. John Knoblauch - Trial Lawyer and sentencing
  - ii. Robert Dudek - Appeal lawyer
  - iii. N/A

19. State clearly the relief you seek in filing this application:

Reverse/Vacate Conviction

20. Are you now under sentence from any other court that you have not challenged?

No

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Victor M. Weldon hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. 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.

Victor Weldon

Applicant

SWORN or affirmed to and subscribed before me this  
21 day of December, 2015.

Tamara Connell  
Notary Public

My Commission Expires: September 25, 2023

STATE OF SOUTH CAROLINA )

County of Clarendon )

VERIFICATION

I, Vitor M. Weldon, 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.

Vitor Weldon

SWORN to and subscribed before me this 21 day of December, 2015.

Tammie Conwell (L.S.)  
Notary Public

My Commission Expires: September 25, 2023

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC

### Summary

On May 15, 2010, Edward Guy Gibbons was robbed in his garage by 3 mask assailants, then fled in his automobile with a small amount of cash.

On July 20, 2010, a warrant was issued for Victor McCoy Weldon. May 18, 2012, Victor Weldon and Micheal Pearson was found guilty of all charges and sentence to 60 yrs in S.C.D.C.

During trial victim stated, he never saw a gun, also stated it was bright enough to see. It was never stated assailants moved victim from point A to B, or told him not to move. No type of weapons were found.

Before the trial, Mr. Knobloch filed a motion to be relieved off of my case, due to me writing him up for lack of communication. Never following up any of my request throughout my trial. At the end, Micheal Pearson and I was convicted and sentence to (2) 30yrs consecutive. All appeals have been denied and PCR is now in motion.

I have continually told the state I was innocent and had alibi's to back it up my claim.

## Argument I

10a Ineffective Assistance Counsel (Trial Counsel)

- 11a Attorney file a motion to be relieved of case /  
 None of my alibi's were called to testify on my behalf /  
 I was never called to the stand to testify.  
 Lack of communication  
 Force me into a joint trial  
 Offer a joint plea instead of a independent plea -

## Argument II

10b Due Process

- 11b Denied my motion for a Change of Venue /  
 Gave me a joint trial -

## Argument III

10c Prosecutorial Misconduct

- 11c Offer Me a joint plea instead of a independent plea

## Argument IV

10d Judicial Bias

- 11d Judge and victim were acquaintance

## Argument V

10e Jury Violation

11e Charge the jury when proven clearly of a lesser included offense, the charge of the jury made me look guilty

Victor Weldon # 350911  
Perry Correctional Institution  
Q1-A-218  
430 Oaklawn Rd.  
Pelzer S.C. 29669

December , 2015

Clarendon County Clerk of Court

Manning, S.C.

RE: Victor Weldon vs. The State  
C/A. No.: 2011-05-14-0068

Dear Clerk,  
Please find enclosed applicants notice of motion  
to amend his PCR Application, 11a-11e, any attachment  
and proof of service.

Also enclosed is a pre-paid self-addressed envelope  
for the return of the extra copy here with. Please  
clock stamp file the same and return it

)

Thank you in advance.

S/Vitor Weldon

( )

)

State of South Carolina  
 County of Clarendon  
 Victor Weldon  
 Applicant;

✓

State of South Carolina  
 Respondent

In the Court of Common Pleas  
 for the 3<sup>rd</sup> Judicial Circuit

C/A. No. 2011-05-14-0068

Motion to Amend  
 3-PCR Application

Applicant hereby moves to amend his PCR application.  
 Pursuant to SCRCVP Rules 41.1(d) with following.

All attachment  
 PCR Application - 11a - 11e

For the foreign reason applicants PCR should  
 be amended. Said additional arguments are  
 merits, and support the original

December 2015

*Victor Weldon*

In the State of South Carolina  
County of CHARENDON  
VICTOR WELDON  
Plaintiff

In the Court of Common Pleas  
3<sup>rd</sup> Judicial Circuit

CA No.

v  
The State of South Carolina  
Defendant

(Proof  
Certificate of Service

I, Victor Weldon, hereby certify that on this 21<sup>st</sup> day  
of Dec , 2015, that I have served a copy of  
Motion to Amend upon the following party(ies) D Clerk  
of Court by way and through the Perry Correctional  
Institution's legal ~~system~~ mail system

Sworn to and subscribed before me on  
This 21 day of December, 2015

Tamara Conwell  
Notary Republic Signature

My Commission Expires  
September 25, 2023

My Commission Expires

Victor Weldon  
Your Name  
Address

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Victor McCoy Weldon, #35091,	)	2016-CP-14-00002
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 5, 2016, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Clarendon County Grand Jury for burglary – first degree, attempted murder, armed robbery, grand larceny (\$2000-\$10000), kidnapping, possession of a weapon during a violent crime (2011-GS-14-0068). John Knobloch, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant to thirty years for armed robbery running consecutively to a sentence of thirty years for burglary – first degree. Judge Cothran further sentenced Applicant to five years for grand larceny, twenty years for kidnapping, and five years for possession of a weapon during a violent crime, all running concurrently.

A timely Notice of Appeal was filed on Applicant’s behalf. The South Carolina Court of Appeals affirmed Applicant’s conviction and sentence. State v. Weldon, 2014-UP-463 (Ct. App. filed December 17, 2014). Applicant filed a Petition for Writ of Certiorari to the South Carolina

Supreme Court. The Petition was denied via order filed January 23, 2015. The Remittitur was issued on May 8, 2015.

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Attorney file a motion to be relieved of case."
  - b. "None of my alibi's were called to testify on my behalf."
  - c. "I was never called to the stand to testify."
  - d. "Lack of communication."
  - e. "Force me into a joint trial."
  - f. "offer a joint plea instead of independent plea."
2. Due process violation
  - a. "denied my motion for a change of venue."
  - b. "gave me a joint trial."
3. Prosecutorial misconduct
  - a. "offer me a joint plea instead of independent plea."
4. Judicial Bias
  - a. "Judge and victim were acquaintance."
5. Jury violation
  - a. "charge the jury when proven clearly of a lesser included offense."
  - b. "the charge of the jury made me look guilty."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCPP.

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of

trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

## V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

## VI.

Respondent submits that the second, fourth, and fifth allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss these allegations as they are not proper in a post-conviction relief action.

#### VII.

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; SCRCF 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. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

#### VIII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IX.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
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By:   
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April 11, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON )  
 )  
 )  
 )  
 VICTOR MCCOY WELDON, #350911, )  
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 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS

2016-CP-14-00002

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Lance S. Boozer, Esquire**  
**The Boozer Law Firm, LLC**  
**807 Gervais Street, Suite 203**  
**Columbia, South Carolina 29201**

DATED this 11<sup>th</sup> day of April, 2016.



Caroline Collins, Legal Assistant  
 For Respondent