

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable R. Lawton McIntosh, Circuit Court Judge

DAVID W. DOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001969

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 15 2018

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 10, 12, 13, 2014	1
INDICTMENT AND SENTENCING SHEET	414
APPLICATION FOR POST-CONVICTION RELIEF FILED MARCH 6, 2017	417
MEMORANDUM SUPPORTING POST-CONVICTION RELIEF APPLICATION	424
RETURN.....	427
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 2, 2017	433
ORDER OF DISMISSAL FILED SEPTEMBER 15, 2017	477

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
) CASE NOS.: 2014-GS-46-1522, 1523

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
vs.)
) DAY 1 - VOLUME 1
)
)
DAVID W. DOVER) (PAGES 1 - 53)

NOVEMBER 10, 2014
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LEE S. ALFORD

APPEARANCES:

JENNIFER DESCH, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

CHRIS JONES, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MINDY LIPINSKI, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I N D E X

Witnesses:	Direct	Cross	Re-Direct	Re-Cross
Lucas Taylor				
By Mr. Jones	106			
By Ms. Lipinski	135			
Neil v. Biggers:				
Kelly Lovelace				
By Ms. Desch	153			
By Ms. Lipinski		161		
Robert Ellis				
By Ms. Desch	168			
By Ms. Lipinski		182		
By Ms. Desch			194	
By Ms. Lipinski				196
Cheryl Gregory				
By Ms. Desch	198			
By Ms. Lipinski		204		
By Ms. Desch -contd.	207			
By Ms. Desch -contd.	234			
By Ms. Lipinski		235		
By Ms. Desch			255	
Brian Bagwell				
By Ms. Desch	264			
By Ms. Lipinski		276		
By Ms. Desch			287	
Kelly Lovelace				
By Ms. Desch	288			
By Ms. Lipinski		303		
Proffered:				
By Ms. Lipinski	326			
By Ms. Lipinski-contd.	328			
By Ms. Desch			330	
By Mr. Lipinski				335

E X H I B I T S

		ID	ID
S-1	Printed photos (taken 10/7/14)	4	
S-2	Printed photos	4	128
S-3	Printed photos	4	128
S-4	Printed photos (house)	4	116
S-5	Printed photos	4	116
S-6	Printed photos	4	116
S-7	Printed photos	4	116
S-8	Printed photos	4	116
S-9	Printed photos	4	116
S-10	911 call	4	132
S-11	Calls to Kelly	4	
S-12	Photo lineup	4	300
	(Neil v. Biggers)	4	161
S-13	Printed photos (truck)	4	133
S-14	Printed photos	4	179
S-15	Printed photos	4	179
S-16	Printed photos	4	179
S-17	Printed photos	4	179
S-18	Printed photo (house)	4	116
S-19	Photo disc (truck and	4	
	Victim's house)		259
S-20	Latent print card	212	276
S-21	Latent print card	212	276
S-22	10 Print card (front only)	272	273
C-1	Dispositions for prior		
	Certified convictions	4	
C-2	Note from jury	384	
C-3	Note from jury	388	
C-4	Note from jury	388	
C-5	Note from jury	392	
C-6	Note from jury	396	

1 (WHEREUPON, DOCUMENTS MARKED COURT'S EXHIBIT
2 NUMBER 1 AND STATE'S EXHIBITS 1 THROUGH 19 FOR
3 IDENTIFICATION)

4 THE COURT - Please be seated. Thank you. All
5 right, counsel ready to proceed?

6 MS. DESCH - Yes, Your Honor, may it please the
7 Court. Your Honor, this is the case of State of South
8 Carolina, County of York, versus David Wayne Dover on
9 Indictments - true bill Indictments 2014-01522, which is
10 charged and true billed as a burglary second degree non-
11 violent, and 2014-GS-46-01523, true billed as a petit
12 larceny property enhancement. Your Honor, we had -- I had
13 directly indicted -- this originally just came in as a
14 petit larceny. There was two priors. I directly indicated
15 it. I think it was actually before you several months ago
16 we did the arraignment and set the bond and switched the
17 bond over to this, so he should be arraigned. I verified
18 that today that he was, in fact arraigned and that we
19 didn't need to do that again today. We're going forward on
20 the two true billed indictments. Your Honor, there are
21 disposition sheets that we would like to move in as a
22 Court's Exhibit. Right now there are six prior property
23 enhancements that give us jurisdiction on the petit
24 larceny. I've gone over it with the defense. She has

1 stipulated. We've marked it as one sticker on the Court's
2 Exhibit. If you would like them as difference stickers ---

3 THE COURT - No, that's fine.

4 MS. DESCH - Okay.

5 THE COURT - Court Exhibit.

6 MS. DESCH - Court's Exhibit. Okay. The
7 Defendant is represented by Mindy Lipinski who's here
8 before you today. He's pled not guilty to the charges.
9 Your Honor, I just wanted to put for the record that we've
10 had lots of negotiations in this case and a few months ago
11 he did reject the final offer from the State which was a
12 cap of four. He has other pending charges that would've
13 been wrapped up in that cap of four that we'll be trying in
14 a different time, but I just wanted to put on the record
15 that he had rejected that. There was counter offers that
16 the State has rejected and that brings us here today before
17 you for trial.

18 THE COURT - Do you have a witness list, voir
19 dire, motions?

20 MS. DESCH - I've presented my witness list to the
21 defense, to you and to the court; Madam Clerk of Court, I
22 think you have them for the Judge.

23 (DOCUMENTS HANDED UP TO THE COURT.)

24 THE COURT - Any voir dire request from the State?

1 MS. DESCH - Nothing more than your usual, Your
2 Honor.

3 THE COURT - How about from the defense, voir
4 dire, witnesses?

5 MS. LIPINSKI - Your Honor, I did not prepare a
6 witness list. The only possible witness we might have -- I
7 originally thought while preparing the case was David
8 Dover, and he doesn't intend on testifying. I did get a
9 witness list from the State and saw that she's listed every
10 officer but an Otis Whistine, W-h-i-s-t-i-n-e, and he may -
11 - that name may come up, and that may be somebody the
12 defense does ultimately call, although I don't know, and so
13 just because he was involved in the investigation, I'd just
14 like to add it out of an abundance of caution in terms of
15 that. In terms of voir dire, I'm fine with your standard
16 voir dire, Your Honor.

17 THE COURT - Okay. How you spell his last name,
18 the officer?

19 MS. LIPINSKI - W-h- -- I have W-h-i-s-t-i-n-e.

20 THE COURT - That's what I thought it was. Okay.
21 We'll ask. If he doesn't testify, then it won't matter.
22 If he does -- name comes up or something, we'll know -- all
23 right motions -- any pre-trial motions that need to be
24 heard at this time?

1 MS. LIPINSKI - I didn't know -- the Court -- kind
2 of have the standard, some of the defense motions, Your
3 Honor. Well, -- any of them are lengthy except the issue
4 involving the Defendant's statement.

5 THE COURT - All right, let's run through them
6 right quick. I'll let you present them, counsel.

7 MS. LIPINSKI- Thank you, Your Honor. We'd just
8 make a motion to determine if the State's complied with
9 Rule 5 and Brady. I got an FSC report this morning, so I
10 just wanted to make sure I have everything I'm supposed to
11 have. I have no indication that, you know, don't, but I
12 just think to protect the record, the defense has to make
13 that motion.

14 MS. DESCH - The State has complied with Rule 5
15 and Brady.

16 MS. LIPINSKI - We'd just like the State to
17 identify at this time any prior convictions they would use
18 to impeach the Defendant's testimony should he decide to do
19 that, just establish those, and that would give us the time
20 to flesh out any indiscrepancy.

21 MS. DESCH - Your Honor, Mr. Dover has a record of
22 property crimes. There are six marked that are essentially
23 six convictions of property value, but they're all City
24 Court level, so each one of them's a 30-day fine, but they
25 do involve various property crimes subject to value. There

1 are -- to par down the lengthy record, there are burglaries
2 in there, a burglary to the point where we -- the burglary
3 and the property crimes will go to truthfulness. Anything
4 else that would go to that. There are some marijuana
5 charges that are one year and we wouldn't use any of that
6 stuff, so essentially it would be the felonies and the
7 property crimes that we would ask him about that pertain to
8 truthfulness or lack of truthfulness.

9 MR. LIPINSKI - And, Your Honor, I don't know that
10 necessarily we need to hash this out, but obviously if that
11 came to it, the defense would make a motion that they would
12 only be able to use that he has felony convictions, because
13 naming the actual crime at that level we would argue would
14 be too prejudicial to our client, but in the event that he
15 does need to testify, I don't need to -- think we need we
16 need to go there until that point in the trial. I just
17 wanted to identify the convictions ahead of time for the
18 record.

19 MS. DESCH - Your Honor, out of the State of
20 Georgia, theft by receiving property crime; that's
21 September of 1998.

22 THE COURT - That'd be two old, wouldn't it?

23 MS. DESCH - It would be outside the ten years,
24 yes, it would -- for enhancement purposes, no, but for
25 impeachment purposes I believe so.

1 THE COURT - And we're just talking about
2 impeachment at this point.

3 MS. DESCH - There is a 9 -- September, 2004
4 burglary conviction out of Georgia. (Pause) There are
5 convictions out of North Carolina that are prior to ten
6 years. They are 2001 and 2002 -- those for impeachment
7 purposes. There are Florida conviction that date back to
8 '98 -- those. There's a shoplifting charge January of 2014
9 from York PD, I believe it's part of the Court's Exhibit
10 packet. And I'll skip the '94, '96, '97. There are --
11 just outside of the ten years, there is receiving stolen
12 goods and breach of trust with fraud January, 2002. And
13 2012 there was a -- out of Spartanburg County there was a -
14 - I believe it was a burglary and a grand larceny that was
15 pled to a petit larceny, and then, of course, the Court's
16 Exhibit would be the six prior charges stemming from York
17 City Court, and each of them are 30-day misdemeanors but
18 they are property crimes.

19 THE COURT - All right, thank you, Solicitor.

20 MS. LIPINSKI - We would just make a motion for --
21 she's already provided a list of witnesses with criminal
22 histories. We need non-law enforcement witnesses the State
23 intends to call, so I think it's just the victim at this
24 point, Your Honor.

25 MS. DESCH - Correct, Your Honor.

1 THE COURT - Next.

2 MS. DESCH - Let me -- actually, one second.

3 There is something we need to address with him. I have run
4 Mr. Lucas Taylor's record for trial purposes -- handing
5 that to the defense -- there is charges but all have been
6 dismissed. There are no convictions, so we would ask that
7 -- we would ask that it doesn't qualify for impeachment
8 purposes.

9 MS. LIPINSKI - Number 4 is Motion to Sequester
10 the Witnesses of the State. I know the victim and case
11 agent would be allowed to stayed, but the other officers we
12 would ask be sequestered, Your Honor.

13 MS. DESCH - We'd just ask that it be reciprocal,
14 Your Honor, if any -- if there is any defense witnesses.

15 THE COURT - Of course, --- defense always make
16 the motion if they don't have any witnesses. That's -
17 that's aside. I'll grant that motion. Just remember that,
18 of course, the case agent can be in here obviously; the
19 victim can be here if they're going to testify. Anybody
20 else, any other witnesses will not be able to come until
21 after they testify and then they can't -- when a witness
22 who testifies can't go back and tell another witness what
23 the question were or what happened with their testimony, so
24 sequestration means total sequestration, not be in the

1 courtroom and not discussing their testimony with somebody
2 that hadn't yet testified at this point sequestration.

3 MS. DESCH - Absolutely. Your Honor, I will note
4 for the record if you need to know this, one of the
5 witnesses, the main witness, Detective Kelly Lovelace, she
6 will be here today. She's been dealing with a husband
7 that's in chemo and then on top of that, she had an aunt
8 that died today and the funeral's tomorrow, so she's
9 struggling to get through the personal stuff, but she will
10 be here Wednesday, but in case we need to point that out to
11 the jury as to why -- but she would likely be the case
12 agent that would be in here.

13 THE COURT - Okay.

14 MS. LIPINSKI - The next motion, Your Honor, would
15 just be in that he does have a burglary record, just to
16 determine the existence and admissibility, if the State
17 intends to rely on any of those property crimes or other
18 crimes as a prior bad act or Lyle evidence to establish
19 that at this point.

20 MS. DESCH - Your Honor, I've provided everything
21 I have as far prior bad acts just in case. I didn't intend
22 to move it in just in the case in chief, but obviously if
23 something comes up during cross examination in defenses'
24 case, then I've provided everything to them, but I don't

1 intend to move anything in without the door be opened at
2 this point.

3 THE COURT - Unless the door's opened.

4 MS. LIPINSKI - And, Your Honor, I have his
5 criminal record, but I don't have a case report on the
6 burglary. I -- you know, I -- some shopliftings that
7 happened this year. I don't have anything beyond those
8 other shopliftings, so, you know, is she only referring to
9 the shopliftings of this year that she intends to use as
10 Lyle or prior bad acts or are we opening his entire record.
11 If so then I think we need to identify that in those facts
12 and circumstances. That's the purpose of this motion,
13 because all I've got is his criminal record in terms of
14 those older type offenses.

15 MS. DESCH - The shoplifting, in all candor, was
16 more to do with our shoplifting trial that we still have to
17 do. I've provided that information. There was -- I did
18 provide a burglary incident report from -- I believe it was
19 the Spartanburg incident, but essentially it would have to
20 be opened by him, and I don't anticipate it did; I just
21 provided it out of an abundance of caution, but there are
22 no -- there are no specific pattern of events that I know
23 of that would come in under 404 in my case in chief without
24 him taking the stand and saying I've never been in trouble
25 before or something along those lines.

1 THE COURT - Just opening the door, that's all I'm
2 saying, opening the door. If he gets on the stand and say
3 I never committed a burglary, or obviously -- they can get
4 whatever burglary they can find.

5 MS. LIPINSKI - I understand that, Your Honor. I
6 just want to be clear, and I appreciate it. Thank you.
7 And then the final one, Your Honor, in this case is
8 somewhat unique in terms of the Defendant's statement. The
9 allegations are that my client committed a burglary during
10 the daytime of a resident of Lucas Taylor. The victim
11 gives law enforcement a tag number, because he actually
12 comes home and catches him there at the house is his
13 version of events, and then they go out searching for my
14 client; Detective Lovelace makes contact with my client
15 over the phone, and he gives her an alternative explanation
16 of events, and not to belabor the issue, but he states,
17 basically, it's a drug deal gone bad; they got in a fight;
18 he fled from the area and that that's what really happened.
19 The -- it's not a typical Jackson v. Denno, because it's --
20 it's over the phone, so it's clearly not in custody and
21 those kind of things, and I don't know what the State
22 intends in terms of their eliciting of this, but I do think
23 -- and I think invariably that statement's coming out one
24 way or the other, and so I just want to make the Court
25 aware of it and make sure that we kind of fleshed out some

1 of those issues ahead of time in trying to avoid a lengthy
2 recess when we would get to that, but the defense would
3 obviously believe that that evidence is coming in through
4 Detective Lovelace or someone else. I don't know if the
5 State intends to elicit it or not, but I just -- like I
6 said, it's not a typical Jackson v. Denno, because it's not
7 in custody and all those kind of things don't present
8 themselves; there is a recording of a phone call, so, you
9 know, in terms of details of it, they're pretty concrete.

10 MS. DESCH - In response to that, Your Honor, I
11 was going to bring up whether or not the defense wanted a
12 Jackson v. Denno hearing, because she's right, it's not a
13 typical in custody -- the way I understand the facts is
14 when -- when Detective Lovelace is called on the scene to
15 help the patrol officer that was first on the scene, they
16 had the tag number; they identified David Dover by the tag
17 and get his address; Detective Lovelace goes out to the
18 scene; he is not there; she leaves a message with his
19 father, and it's Mr. Dover that calls her on two occasions,
20 so it's him reaching out to her, but when he did call into
21 the York County Sheriff's Office, her line, it's a recorded
22 line, so the -- the State at this point intends to elicit
23 that testimony through Detective Lovelace and present that
24 -- those recorded conversations, so it's not a typical
25 Jackson v. Denno; he's not in custody. It's him reaching

1 out to law enforcement to give his side of the story, but
2 if there's anything we need to do to protect the record, I
3 can have Detective Lovelace come early on Wednesday and
4 deal with it prior to the jury coming in.

5 THE COURT - I don't think they're going to object
6 to it coming in. They'll probably ask about it on cross
7 anyway. Don't you think?

8 MS. DESCH - That's what I assumed, Your Honor.

9 MS. LIPINSKI - That is my intent, but like I
10 said, I know that invariably on appeal these issues are
11 kind of raised, and I didn't want the Court to be caught
12 off guard and all of a sudden, we -- you know, started
13 talking about the statement, which normally the Court is
14 well aware of by the time we get there. It is an unusual
15 fact pattern; it is a non-custodial statement, so I don't
16 think the typical Jackson v. Denno, but I've had Judges who
17 want to just, let me hear it before the jury hears it and
18 the cat's out of the bag, and so I just wanted to raise
19 that issue with the Court. I understand Detective
20 Lovelace's predicament, and if that issue has to be
21 postponed til Wednesday, that's fine. It was just part of
22 as I was going through my pre-trial checklist something
23 that I included and wanted to raise ahead of time. I think
24 that just ---

1 THE COURT - Well, I'll do whatever you want to
2 do. If you think we need a Jackson v. Deno -- it sounds
3 like to me it's a non-custodial interrogation as part of an
4 investigation, calling him and giving his side of it, which
5 is essentially -- essentially is a self-serving statement
6 in which he denies that he's committed a burglary or a
7 larceny, and -- of course, it does say he was there for a
8 drug deal, so to that extent, but he's not charged with
9 that. So it looks like to me, you know, it's probably a
10 self-serving statement in any event, but I assume the State
11 is going to get into it. If they didn't, then defense
12 would have to get into it, because it's a self-serving on
13 behalf of the Defendant; that's his explanation of what
14 happened which negates the charge of burglary, petit
15 larceny here, so I don't see any need, but I'll do whatever
16 you want to do. I don't think -- he wasn't in custody,
17 wasn't forced to come in and he talked to them on the
18 phone; he didn't have to talk to them obviously, didn't
19 have to do that. Of course, I assume she didn't advise him
20 of his rights, but he wasn't in custody and it wasn't a
21 custodial interrogation, so I don't see a problem with it,
22 but I'll -- if you want -- out of an abundance of caution
23 if you want to have the officer testify in a pre-trial
24 before she testifies, that's okay with me.

1 MS. LIPINSKI - And I don't know exactly what the
2 Court's schedule is either, but when -- and I've noted
3 Detective Lovelace's situation, but in that they're
4 recorded we could also play them for you just so you could
5 hear that. We -- assuming that Detective Lovelace will
6 authenticate and lay that foundation at that predicament
7 and achieve that goal today if the Court wanted to do that,
8 just offering alternatives out there, so it's kind of --
9 and I -- we kind of didn't know how much other business the
10 solicitor's office had for you, and I know tomorrow is
11 Veteran's Day, which is a little unusual. I know we wanted
12 to draw a jury today and only have to bring those 12 back
13 on Wednesday, but trying to make it so that on Wednesday
14 we'd get as much trial work done and get as much out of the
15 way, I just wanted to raise that, but I don't -- I'll leave
16 in the Court's fine discretion, Your Honor.

17 THE COURT - Like I say, I'll do whatever you want
18 to do. If you want to -- how long is this audio recording
19 of the conversation?

20 MS. DESCH - All totaled it might be 45 minutes.
21 The first call is longer; the second call is maybe 10
22 minutes.

23 THE COURT - Whatever you want me to do. I'll
24 listen to it. We can listen to it today if we get through
25 whatever else we've got.

1 MS. DESCH - Yes, Your Honor.

2 THE COURT - Just do it today. We could do that.

3 Like I say, you -- nobody's really questioning whether it
4 was even a custodial statement and whether he was advised
5 of his right or not. Nobody's questioning that.
6 Apparently, wouldn't make any difference, but if there's a
7 possibility of that, then I think we ought to go ahead and
8 listen to them, and at least we'll be in a position then
9 when Officer Lovelace comes in and lay the foundation for
10 it and make a determination whether it comes in or not.

11 MS. LIPINSKI - Why don't we -- I know there's a
12 jury downstairs. Do we want to go ahead and -- was it
13 otherwise your intention to try and do opening today and
14 then bring them back Wednesday, or were you just going
15 Wednesday hitting the ground running? And I know we
16 haven't had that normal pre-trial conversation ---

17 THE COURT - What do y'all want to do?

18 MS. DESCH - We had planned to go as far as we
19 could go today. It's only 3:00 o'clock. I mean our
20 intention -- the victim's here. We had intended openings
21 and if we need to get into testimony, we could.

22 THE COURT - Well, we'll do what we can. We'll do
23 what we can today, get that much done. We should be able
24 to -- I -- we'll get the jury selected. I like to give
25 them -- give them an instruction about the formality of the

1 trial and what to expect and that sort of thing, which
2 won't take long, maybe ten minutes or so, and go through a
3 little housekeeping matters, and then we'll get into
4 opening statements and see where we are. It may be at that
5 point ---

6 MS. LIPINSKI - I think the victim's testimony
7 would be a little lengthy, Your Honor. I don't really like
8 the -- doing direct and then starting cross examination on
9 -- even though that somewhat allows me a little while to
10 prepare that.

11 THE COURT - Yes, I'm not crazy about -- I think
12 we ought to think about the jury, too, because whatever --
13 they going to hear this and then they're not going to be
14 here tomorrow at all and then they going to come back
15 Wednesday, and so as much continuity as we can will be
16 good.

17 MS. LIPINSKI - And there's only five witnesses,
18 Your Honor. I think Bobbie Brooks was put on there just
19 solely for the clerk of court, those -- I don't that she
20 actually gets called or anything, so I think it could be a
21 trial we could easily do within a day. We'll get all the
22 housekeeping ---

23 THE COURT - Well, let's do what we can today, but
24 what we may do is just don't get into any testimony today,
25 particularly, if you're planning to put the victim up first

1 and the victim's testimony on direct and cross is going to
2 be an hour, hour and a half, I mean, you know, then the
3 jury sits on that til Wednesday that's probably not good
4 without having time to -- but we'll see where we go. Why
5 don't we do that? We'll get the jury drawn; I'm giving
6 them hoping instruction, instruction about the trial and
7 then we can get in -- look at getting into opening
8 statements then see where we are.

9 MS. DESCH - Yes, sir.

10 THE COURT - If we've got enough time to take a
11 witness in full, we'll do it, but if not, then we'll go
12 ahead and adjourn for the day and start back Wednesday
13 morning and get started and try to finish it Wednesday.
14 Strikes are ten for the defense, five for the State.

15 MS. DESCH - Yes, sir.

16 THE COURT - We'll go ahead and select one
17 alternate. Strikes on that will be two for the defense and
18 one for the State.

19 MS. LIPINSKI - Thank you, Your Honor.

20 MS. DESCH - Is there anymore motions from
21 defense?

22 MS. LIPINSKI - I think that's all, Your Honor.

23 THE COURT - Anything from the State?

24 MS. DESCH - Yes, Your Honor, two things. There
25 is a photo line-up that is shown to the victim. Again, if

1 the defense would like to go -- you know, the eviction
2 (sic) we could do that early on Wednesday when Detective
3 Lovelace is available, if the Court was so inclined, so I
4 just wanted to be available for that. And the other thing
5 is, Your Honor, we're somewhat aware of the defense from
6 listening to the recorded calls, assuming that -- I mean
7 obviously he doesn't have to stick with that, but assuming
8 that it does get into a drug deal gone bad or something
9 like that, we would like to limit any fishing expedition on
10 the victim. I think it's absolutely fair game to get into,
11 was it a drug deal gone bad, were you seeking him out for
12 marijuana that day, anything that had to do with a drug
13 transaction that day is fair game. What I wanted to avoid
14 is getting into just conjecture, guessing or speculation
15 about if the victim has ever done drugs or getting into
16 just things that are clearly a character strait that is not
17 relevant and against 404, so I just wanted to -- obviously
18 what happened that day is fair game, but a fishing
19 expedition we'd like to limit that.

20 MS. LIPINSKI - You know, Your Honor, similar to
21 the Defendant, it's hard to supplement not knowing what
22 doors he's going to open or not knowing what his response
23 is going to be; I understand the concern of the State, but
24 I don't know that the Court can make that Motion in Limine

1 ahead of time not really knowing what his response to that
2 is going to be.

3 THE COURT - I don't think I can either, but at
4 the same time what she's trying to throw out there is, that
5 you'll not be able to just get in and start asking
6 questions about drug use and all kind of stuff, doesn't
7 have anything to do with that day, essentially, trashing
8 somebody's reputation asking questions about that unless
9 it's somehow tied to this case, so I think that's where
10 she's going with it, and I can make my decision at the
11 time. Sometimes it's hard to unring a bell once it's been
12 rung with regard to asking just questions to attack
13 somebody's character. If you're going to do that, I'll
14 probably need to hear that and weigh to see if it's
15 relevant to the case and also weigh under 403 probative
16 versus prejudicial value of it, so ---

17 MS. LIPINSKI - And, Your Honor, and the reason I
18 -- it's hard for me to respond to that is, you know, she
19 may try and prompt that issue and he say I've never done
20 drugs before in my life and then you ---

21 THE COURT - Well, again, if they open the door,
22 obviously you can walk through that door, and put him on
23 the stand and if she ask him, have you ever done any drugs
24 before or involved in drugs, and he says no, and you've got
25 proof that he has, obviously you can -- you walk through

1 that door and get into it, but he would -- because it's
2 then a credibility issue, but not just attack his character
3 unless that door is opened somehow, but we'll have to play
4 that my ear. I think she's just throwing that out there to
5 make sure that there -- just isn't a fishing expedition or
6 some kind of questions asked just to attack somebody's
7 credibility without anything to back it up or not relevant
8 in some way to the case. All right, anything else?

9 MS. DESCH - No.

10 MS. LIPINSKI - If you're going to summon the
11 jury, if I could just take a quick break while they come
12 up.

13 THE COURT - Yes, it'll take them a few minutes to
14 come up. So why don't we just take five and then we'll get
15 the jury.

16 MS. LIPINSKI - Thank you, Your Honor.

17 (BRIEF RECESS)

18 THE COURT - Please be seated. Thank you.
19 Counsel approach just a minute.

20 DEPUTY CLERK - You have me go on and call them
21 while you're ---

22 THE COURT - Call them, yes, go ahead and call
23 them if you will, please.

24 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
25 NOT REPORTED)

1 DEPUTY CLERK - Did you say five and five and one
2 and two?

3 THE COURT - Ten and five, two and one.

4 DEPUTY CLERK - Defense got ten?

5 THE COURT - Defense got ten.

6 DEPUTY CLERK - One alternate?

7 THE COURT - One alternate. Is the FSC initials
8 Forensic Science Unit?

9 MS. DESCH - Forensic Services Unit.

10 (JURY PANEL ENTERS THE COURTROOM)

11 THE COURT - Good afternoon, ladies and gentlemen
12 of the jury panel. I hope you've had a pleasant day so far
13 and a nice lunch. We're ready now to start a trial. The
14 trial will be in the matter of the State of South Carolina
15 vs. David Wayne Dover. The State charges Mr. Dover with
16 two offenses. They charge him with burglary second degree
17 and also with petit larceny. To these charges, the
18 Defendant has pled not guilty, which then places upon the
19 State the burden of proving the Defendant guilty beyond a
20 reasonable doubt. The State is represented in this case by
21 Assistant Solicitors Jenny Desch and Chris Jones. Counsel,
22 please stand so the jury can see you.

23 (COUNSEL COMPLY)

24 THE COURT - Thank you. You may be seated. Is
25 anyone on the jury panel related by blood or marriage,

1 friends with or have any other type social, business or
2 professional relationship with either Jenny Desch or Chris
3 Jones, Assistant Solicitors? If so, please stand.

4 (No response)

5 THE COURT - Is anyone on the jury panel related
6 by blood or marriage, friends with or have any other type
7 social, business or professional relationship with anyone
8 who works in the Sixteenth Circuit Solicitor's Office? If
9 so, please stand.

10 (No response)

11 THE COURT - The Defendant, David Wayne Dover is
12 represented in this case by Attorney Mindy Lipinski.
13 Counsel, would you please stand and also ask Mr. Dover to
14 stand so the jury can see who he is in person.

15 (COUNSEL AND DEFENDANT COMPLY)

16 THE COURT - Thank you. You may be seated. Is
17 anyone on the jury panel related by blood or marriage,
18 friends with or have any other type social, business or
19 professional relationship with David Wayne Dover? If so,
20 please stand.

21 (No response)

22 THE COURT - Is anyone on the jury panel related
23 by blood or marriage, friends with or have any other type
24 social, business or professional relationship with Attorney

1 Mindy Lipinski or anyone else in the Public Defender's
2 Office? If so, please stand.

3 (No response)

4 THE COURT - Ladies and gentlemen of the jury
5 panel, I'm going to go through a list of potential
6 witnesses in this case. All these witnesses may not be
7 called, but they may be called. What I'm going to ask you
8 to do is, when the potential witnesses' name is called, if
9 you're related by blood or marriage, friends with or have
10 any other type social, business or professional
11 relationship with any of these named potential witnesses,
12 when I call their names, I would ask that you please stand.
13 Sergeant Robert Ellis of the York County Sheriff's Office,
14 Detective Kelly Lovelace with the York County Sheriff's
15 Office, Investigator Cheryl Gregory who's with the Forensic
16 Service Unit for York County, Investigator Brian Bagwell,
17 also with the Forensic Service Unit, Lucas Taylor; this is
18 Mr. Taylor in the back. Bobbie Brooks, who's a Clerk of
19 Court for York Municipal Court, Otis Whistine, spelled W-h-
20 i-s-t-i-n-e I believe with the Sheriff's Department.

21 (No response)

22 THE COURT - Is any member of the jury panel
23 employed by any city, county, state or federal law
24 enforcement agency, either at the present time or in the
25 past? If so, please stand.

1 (No response)

2 THE COURT - Is any member of the jury panel
3 related by blood or marriage or close friend to any person
4 employed by any city, county, state or federal law
5 enforcement agency, either at the present time or in the
6 past? If so, please stand.

7 (No response)

8 THE COURT - Is any member of the jury panel
9 employed by any city, county, state or federal prosecutor's
10 office either at the present time or in the past? If so,
11 please stand.

12 (No response)

13 THE COURT - Is any member of the jury panel
14 related by blood or marriage or close friend to any person
15 employed by any city, county, state or federal prosecutor's
16 office either at the present time or in the past? If so,
17 please stand.

18 (No response)

19 THE COURT - Has any member of the jury panel
20 volunteered with any law enforcement agency or prosecutor's
21 office either at the present time or in the past? If so,
22 please stand.

23 (No response)

24 THE COURT - Is any member of the jury panel a
25 member of or does any member of the jury panel contribute

1 money to any organization such as Mother's Against Drunk
2 Driving, Students Against Drunk Driving, Citizens Against
3 Violence Everywhere or any other organization that lobbies
4 on behalf of victim's rights or for tougher penalties for
5 criminal offenders? If so, please stand.

6 (JUROR STANDS)

7 THE COURT - Yes, sir. Please give us your name
8 and number, sir.

9 JUROR - David Yarnes, and I believe Mother's
10 Against Drunk Driving.

11 THE COURT - Okay, and your number, sir?

12 JUROR - It's 245.

13 THE COURT - Sir, is there anything about your
14 support of that organization that would interfere in any
15 way with your ability to give both sides a fair and
16 impartial trial in this case?

17 JUROR - I feel I may be unusually strict in
18 judgment honestly.

19 THE COURT - Come down front for just a moment.

20 (WHEREUPON, THE JUROR APPROACHES THE COURT)

21 THE COURT - What do you mean by that statement?

22 JUROR - Well, you know, I work for a ministry and
23 we -- you know, we're politically active. We're
24 internationally supportive of tougher crime prevention, so
25 just trying to be honest.

1 THE COURT - Let me ask you -- well, your answer
2 wasn't exactly that way.

3 JUROR - Oh, I'm sorry, sir.

4 THE COURT - And so my question to you is, could
5 you listen to the testimony and evidence that comes in
6 during the course of the trial and the law as instructed by
7 the Court and render a decision which would be fair and
8 impartial as to both the State and the Defendant? Could
9 you do that or not do that, just as honest as you can be?

10 JUROR - Yes, I'd try to be as honest as I could
11 be, sure.

12 THE COURT - Well, that's not my question to you.

13 JUROR - I'm sorry.

14 THE COURT - The question is, could you listen to
15 the testimony and evidence ---

16 JUROR - Yes.

17 THE COURT - --- and the law as instructed by the
18 Court and apply the facts to the law and render a decision
19 which is fair and impartial without regard to any bias or
20 prejudice in the case? Could you do that or not do that?
21 Just be as honest as you can.

22 JUROR - I feel like I might have a predisposition
23 against crime. Just trying to be as honest and forthright
24 as I can be.

1 THE COURT - Well, you know, if everybody felt
2 that way, nobody would get a fair trial, could they? I'm
3 not going to require you to sit on this trial, because I
4 don't think you could be fair and impartial, so I'm not
5 going to require you to sit on this one.

6 JUROR - I apologize.

7 THE COURT - Just go back. No, that's all right.
8 I want you to be honest. Just go back and have a seat.
9 Anyone else?

10 (JUROR STANDS)

11 THE COURT - Yes, sir.

12 JUROR - Your Honor, I would like to back up with
13 some of the statements you made. I do want to report to
14 you that I do play golf with Sheriff Bryant several times a
15 year. I passed on that issue and I should've stood up. I
16 apologize.

17 THE COURT - Oh, that's okay. Let me ask you then
18 in that regard, is there anything about your relationship
19 playing golf with the sheriff or any other relationship
20 that would interfere in any way with your ability to give
21 both the State and the Defendant a fair and impartial trial
22 in this case?

23 JUROR - Absolutely not.

1 THE COURT - All right, I want to be sure I got
2 your name and number for the record. This all has to be on
3 the record.

4 JUROR - Mike Lowery, 132.

5 THE COURT - Thank you, Reverend Lowery.

6 (JUROR STANDS)

7 THE COURT - Does any member of the ---

8 COURT REPORTER - Judge, ---

9 THE COURT - I'm sorry. Yes, ma'am, give us your
10 name and number. I'm sorry.

11 JUROR - Rhonda Jackson, 113.

12 THE COURT - Yes, ma'am.

13 JUROR - I was a private investigator for a little
14 over a year in South Carolina.

15 THE COURT - Okay, with which agency?

16 JUROR - Skidmore and Eddie Therrell.

17 THE COURT - Okay, that's kind of a private
18 investigative ---

19 JUROR - Yes, sir.

20 THE COURT - All right, let me ask you whether
21 there's anything about your experiences in that regard that
22 would interfere in any way with your ability to give both
23 the State and the Defendant a fair and impartial trial in
24 this case?

25 JUROR - No, sir.

1 THE COURT - Thank you, ma'am. Anyone else?

2 (No response)

3 THE COURT - Does any -- is any member of the jury
4 panel a member of or does any member of the panel
5 contribute money to any law enforcement organization, such
6 as the Fraternal Order of Police, the South Carolina Law
7 Enforcement Officers Association or the South Carolina
8 Trooper's Association? If so, please stand.

9 (No response)

10 THE COURT - Has any member of the jury panel had
11 any prior knowledge about this case from any source before
12 coming here to Court today? If so, please stand.

13 (No response)

14 THE COURT - Has any member of the jury panel
15 formed or expressed an opinion as to the guilt or innocence
16 of the Defendant, David Way Dover? If so, please stand.

17 (No response)

18 THE COURT - Is any member of the jury panel
19 conscious of any interest, bias or prejudice for or against
20 the Defendant, David Wayne Dover? If so, please stand.

21 (No response)

22 THE COURT - Can each member of the jury panel
23 give both the State and the Defendant, David Wayne Dover, a
24 fair and impartial trial in this case? If not, please
25 stand.

1 (No response)

2 THE COURT - Does any member of the jury panel
3 know of any reason whatsoever why he or she should not
4 serve as a juror in this particular case? If so, please
5 stand.

6 (No response)

7 THE COURT - Any additional questions requested of
8 the jury panel from the State?

9 MS. DESCH - Nothing from the State, Your Honor.

10 THE COURT - From the defense?

11 MS. LIPINSKI - Nothing from the defense, Your
12 Honor.

13 THE COURT - Madam Clerk, give us a jury, please.

14 DEPUTY CLERK - If your name is called, please
15 bring any personal belonging you have and come stand by the
16 bailiff. Number 135, John Ludwig. What say you for the
17 State?

18 MS. DESCH - Please present this juror.

19 DEPUTY CLERK - Defense?

20 MS. LIPINSKI - Please present Mr. Ludwig.

21 DEPUTY CLERK - Have a seat in the jury box.

22 (JUROR SEATED)

23 DEPUTY CLERK - Number 2, Jason Adams. What say
24 you for the State?

25 MS. DESCH - Please present this juror.

1 DEPUTY CLERK - Defense?

2 MS. LIPINSKI - Please seat this juror.

3 DEPUTY CLERK - Have a seat in the jury box.

4 (JUROR SEATED)

5 DEPUTY CLERK - Number 42, Lisa Caudle.

6 MS. DESCH - Madam Clerk, 42?

7 DEPUTY CLERK - 42.

8 MS. DESCH - Thank you.

9 DEPUTY CLERK - What say you for the State?

10 MS. DESCH - Please present this juror.

11 DEPUTY CLERK - Defense?

12 MS. LIPINKSKI - Please excuse this juror.

13 DEPUTY CLERK - You're excused in this case.

14 Number 64, Shaquavious Dunham. What say you for the State?

15 MS. DESCH - Please present the juror.

16 DEPUTY CLERK - Defense?

17 MS. LIPINSKI - Please seat the juror.

18 DEPUTY CLERK - Have a seat in the jury box.

19 (JUROR SEATED)

20 DEPUTY CLERK - Number 158, Raymond Miller. What
21 say you for the State?

22 MS. DESCH - Please excuse this juror.

23 DEPUTY CLERK - You're excused in this case.

24 Number 194, Roxanne Risky. What say you for the State?

25 MS. DESCH - Please present this juror.

1 DEPUTY CLERK - Defense?

2 MS. LIPINSKI - Please excuse this juror.

3 DEPUTY CLERK - You're excused in this case.

4 Number 78, Tabitha Fields. What say you for the State?

5 MS. DESCH - Please excuse this juror.

6 DEPUTY CLERK - You're excused in this case.

7 Number 113, Rhonda Jackson. What say you for the State?

8 MS. DESCH - Please excuse this juror.

9 DEPUTY CLERK - Number 203, Timothy Shappley.

10 What say you for the State?

11 MS. DESCH - Please present this juror.

12 DEPUTY CLERK - Defense?

13 MS. LIPINSKI - Please excuse this juror in this
14 case.

15 DEPUTY CLERK - You're excused in this case.

16 Number 137, Jesse Mabry. What say you for the State?

17 MS. DESCH - Please present this juror.

18 DEPUTY CLERK - Defense?

19 MS. LIPINSKI - Please seat the juror.

20 DEPUTY CLERK - Have a seat in the jury box.

21 (JUROR SEATED)

22 DEPUTY CLERK - Number 129, Isreal Lightner. What
23 say you for the State?

24 MS. DESCH - Please present this juror.

25 DEPUTY CLERK - Defense?

1 MS. LIPINSKI - Please excuse this juror.

2 DEPUTY CLERK - Number 89, Danny Gibson. What say
3 you for the State?

4 MS. DESCH - Please present the juror.

5 DEPUTY CLERK - Defense?

6 MS. LIPINSKI - Please seat the juror, Your Honor.

7 (JUROR SEATED)

8 DEPUTY CLERK - Number 43, Christie Childers.

9 MS. DESCH - I'm sorry, Madam Clerk, what number?

10 DEPUTY CLERK - 43. What say you for the State?

11 MS. DESCH - Please present the juror.

12 DEPUTY CLERK - Defense?

13 MS. LIPINSKI - Please seat the juror, Your Honor.

14 (JUROR SEATED)

15 DEPUTY CLERK - Number 98, Garland Grooms. What
16 say you for the State?

17 MS. DESCH - Please present the juror.

18 DEPUTY CLERK - Defense?

19 MS. LIPINSKI - Please seat the juror, Your Honor.

20 (JUROR SEATED)

21 DEPUTY CLERK - Number 231, Kayla Vroman. What
22 say you for the State?

23 MS. DESCH - Please present the juror.

24 DEPUTY CLERK - Defense?

1 MS. LIPINSKI - Please present the juror, Your
2 Honor.

3 (JUROR SEATED)

4 DEPUTY CLERK - Number 132, James Lowery. What
5 say you for the State?

6 MS. DESCH - Please present the juror.

7 DEPUTY CLERK - Defense?

8 MS. LIPINSKI - Please excuse Mr. Lowery.

9 DEPUTY CLERK - You're excused in this case.
10 Number 103, Ann Hartmann-Smith. What say you for the
11 State?

12 MS. DESCH - Please present the juror.

13 DEPUTY CLERK - Defense?

14 MS. LIPINSKI - Please excuse the juror, Your
15 Honor.

16 DEPUTY CLERK - You're excused in this case.
17 Number 154, Michelle Meyer.

18 THE COURT - MEYER.

19 DEPUTY CLERK - Meyer. What say you for the
20 State?

21 MS. DESCH - Please present the juror.

22 DEPUTY CLERK - Defense?

23 MS. LIPINSKI - Please excuse this juror.

24 DEPUTY CLERK - You're excused in this case.

25 Number 86, Graham Garner. What say you for the State?

1 MS. DESCH - Please excuse this juror.

2 DEPUTY CLERK - You're excused in this case.

3 Number 47, Lajuana Colvin. What say you for the State?

4 MS. DESCH - Please present this juror.

5 DEPUTY CLERK - Defense?

6 MS. LIPINSKI - Please seat the juror.

7 (JUROR SEATED)

8 DEPUTY CLERK - Number 123, Ricky Koverman. What
9 say you for the State?

10 MS. DESCH - Please present this juror.

11 DEPUTY CLERK - Defense?

12 MS. LIPINSKI - Please excuse this juror, Your
13 Honor.

14 DEPUTY CLERK - Number 162, Howard Morgan. What
15 say you for the State?

16 MS. DESCH - Please present this juror.

17 DEPUTY CLERK - Defense?

18 MS. LIPINSKI - Please excuse this juror.

19 DEPUTY CLERK - You're excused in this case.

20 Number 232, Branka Vujicic. I'm not sure how you say that.
21 What say you for the State?

22 MS. DESCH - Please present the juror.

23 DEPUTY CLERK - Defense?

24 MS. LIPINSKI - Please seat the juror.

25 DEPUTY CLERK - Have a seat in the jury box.

1 (JUROR SEATED)

2 DEPUTY CLERK - Number 136, Ryan Ludwig. What say
3 you for the State?

4 MS. DESCH - Please present this juror.

5 DEPUTY CLERK - Defense?

6 MS. LIPINSKI - Please seat the juror.

7 DEPUTY CLERK - Have a seat in the jury box.

8 (JUROR SEATED)

9 DEPUTY CLERK - Number 163, Mark Morgen. What say
10 you for the State?

11 MS. DESCH - Please excuse this juror.

12 DEPUTY CLERK - You're excused in this case.

13 Number 246, Crystal Yonce. What say you for the State?

14 MS. DESCH - Please present this juror.

15 DEPUTY CLERK - Defense?

16 MS. LIPINSKI - Please seat the juror, Your Honor.

17 (JUROR SEATED)

18 DEPUTY CLERK - This is for the alternate. Number
19 180, Joyce Peay.

20 MS. LIPINSKI - What was that number?

21 DEPUTY CLERK - 180.

22 MS. LIPINSKI - 180.

23 DEPUTY CLERK - What say you for the State?

24 MS. DESCH - Please present this juror.

25 DEPUTY CLERK - Defense?

1 MS. LIPINSKI - Please present the juror.

2 DEPUTY CLERK - Have a seat in the jury box.

3 (JUROR SEATED)

4 THE COURT - Any questions concerning the
5 selection process from the State?

6 MS. DESCH - Nothing from the State, Your Honor.

7 THE COURT - From the defense?

8 MS. LIPINSKI - Nothing from defense.

9 (DISCUSSION IS HELD BETWEEN THE COURT AND THE
10 DEPUTY CLERK WHICH WAS NOT REPORTED.)

11 THE COURT - Ladies and gentlemen of the jury
12 panel who were --

13 (DISCUSSION IS HELD BETWEEN THE COURT AND THE
14 DEPUTY CLERK WHICH WAS NOT REPORTED.)

15 THE COURT - All right, ladies and gentlemen of
16 the jury panel who were not selected for this particular
17 case, kind of your lucky day, I guess, if you didn't want
18 to serve. If you -- some people like to serve on the jury
19 and don't mind that, but in any event, this will -- we're
20 going to excuse you at this time. What I'm going to ask
21 you to do -- tomorrow's a holiday. None of us will be here
22 tomorrow. What I'm going to ask you to do is ---

23 (DISCUSSION IS HELD BETWEEN THE DEPUTY CLERK AND
24 THE COURT WHICH WAS NOT REPORTED.)

1 THE COURT - All right, we will not be here
2 tomorrow, but I'm going to ask you to call in tomorrow
3 night after 7:00 o'clock, tomorrow night after 7:00
4 o'clock, that is Tuesday night after 7:00 o'clock, call
5 your voice mail number and you'll get instructions as to
6 when you either need to report back or call back again as
7 the case may be. Please enjoy your day off tomorrow as the
8 holiday -- Veteran's Day holiday, and congratulations to
9 all veterans who might be present today. We're going to
10 excuse you at this time. Call in tomorrow night after
11 7:00. Thank you.

12 (REMAINING JURY PANEL EXITS THE COURTROOM)

13 THE COURT - All right, ladies and gentlemen of
14 the jury panel, I'm going to give you what I call a
15 preliminary instruction with regard to the format of the
16 trial and what to expect as we go through the trial. I
17 suspect that most of you have not served on a jury in
18 Circuit Court before or General Sessions case in Circuit
19 Court before. Hopefully this information will make you
20 feel a little more comfortable knowing what's going to
21 happen and the format of the trial as we proceed through
22 it. We're not going to go too late today. It's already a
23 little after 4:00, but we want to get as much done as we
24 can before we adjourn for the day. The first thing that
25 will happen after I've completed my instruction to you, is

1 that an attorney for the State who is an assistant
2 solicitor will make an opening statement to you, and then
3 the attorney for the Defendant will have the same
4 opportunity to address you in an opening statement. Now,
5 these opening statements by the attorneys are not evidence,
6 but you should pay close attention, because they're essence
7 going to identify to you what they say or perceive the
8 issues in the case are. After they've made their opening
9 statements to you, then the State will proceed by
10 presenting the testimony and evidence they want you to
11 consider. The reason the State goes first is that the
12 State has the burden of proof in this case. There is no
13 burden of proof upon the Defendant to prove his innocence.
14 The burden of proof is upon the State of South Carolina to
15 prove the charges against this Defendant by evidence that
16 satisfies you the jury beyond a reasonable doubt before you
17 can return a verdict of guilty. If the State fails to meet
18 that burden of proof, then your verdict must be not guilty.
19 After the assistant solicitors have presented to you the
20 evidence they want you to consider on behalf of the State,
21 then the same opportunity will be afforded to the defense.
22 The Defendant may, but is not required, to present any
23 testimony or evidence, because the State has the burden of
24 proving the Defendant guilty beyond a reasonable doubt.
25 The Defendant does not have to prove he is innocent. He is

1 presumed innocent and that presumption stays with him
2 throughout the trial and may only be removed if the State
3 meets its burden by proving the guilt of the Defendant
4 beyond a reasonable doubt. What is evidence in a case?
5 Evidence is the sworn testimony you'll hear from the
6 witness stand to my right, exhibits admitted into the
7 record for your consideration by me the presiding Judge and
8 any stipulation of counsel. Now, exhibits may take many
9 forms, such as documents, pictures, video-tapes, maps,
10 diagrams and so forth. Stipulations are agreements of
11 facts by the attorneys. If the attorneys enter into a
12 stipulation or agreement of fact, that will be made known
13 to you, and you may consider it, give it such weight to as
14 you deem appropriate once you begin your deliberations.
15 Sworn testimony, exhibits and stipulations are the only
16 evidence that you may consider in your deliberation of the
17 innocence or guilt of the Defendant. You may not consider
18 anything you've heard from any other source about this case
19 in making your decision, because that is not evidence.
20 After you've heard all the evidence then the attorneys for
21 the State and the Defendant will once again appear before
22 you and make what we call closing arguments. We call them
23 arguments because the attorneys are allowed at that time to
24 argue their positions and will attempt to persuade you as
25 to their view or position as to the facts. When you've

1 heard final arguments from counsel, I will then charge you,
2 which simply means to instruct you as to the law that
3 applies to the issues in this case. You will then retire
4 to the jury room to deliberate and reach your verdict.
5 That's how a case is tried in general sessions Court,
6 whether it be this case or any other case. Some cases take
7 a half a day or a day. Some cases take weeks, but the same
8 format applies in every case. As the Trial Judge I have
9 three functions to perform during the trial. I am the
10 presiding officer and therefore, must see that the trial is
11 run in an orderly manner. I decide based on rules of civil
12 and criminal procedure whether testimony and exhibits are
13 admissible into evidence for your consideration and at the
14 conclusion of the trial I instruct you as to the law you
15 must apply to the facts in this case in reaching your
16 verdict. You, ladies and gentlemen, are also judges in
17 this case. You are the judges of the facts. In other
18 words, you determine the truth of the facts in this case.
19 Under our constitution I am not permitted as the Judge of
20 the law to have an opinion about the facts. So I do not
21 get into whether I believe a witness or not. That is not
22 my function. I'm not even permitted to express an opinion
23 if I had one as to the facts in this case, so you the
24 jurors determine what is the truth of the facts. Now, I do
25 not permit jurors to take notes during the trial, because

1 it's my experience that while writing notes you may miss
2 something very important for you to hear and you may fail
3 to observe a witness when testifying. It is important that
4 you pay careful attention to all testimony and introduction
5 of evidence since you must judge the credibility or
6 believability of the witnesses and the weight to give all
7 evidence introduced in this case in determining the truth
8 of the facts. During the trial the attorneys may object to
9 the admissibility of certain testimony or other evidence.
10 I will either sustain the objection, which means I agree,
11 and the testimony or evidence may not be made part of the
12 record for your consideration, or I will overrule the
13 objection which means as the Judge of the law I determine
14 that it is admissible as part of the record for your
15 consideration. The mere fact that I have admitted it does
16 not mean that you must believe it or disbelieve it. I
17 simply determine that it is admissible under our rules and
18 it is up to you then to believe it or disbelieve it and to
19 assign such weight to it as you determine to be
20 appropriate. At the conclusion of the trial when we send
21 you to the jury room, every exhibit that is admitted into
22 evidence will be sent to the jury room for you to examine
23 further and to consider. I remind you that one of the most
24 important aspects of your duty as a jury lies essentially
25 in the oath that you will -- I'm not going to have you take

1 oath today unless we actually get started with the trial,
2 but there is an oath that you will take and that oath says
3 that you will well and truly try this case and determine
4 the truth of the facts in this case. That oath in a very
5 essential way says that you're the sole judges of the facts
6 in this case. As jurors in this case it will be your
7 exclusive duty to determine the facts in this matter
8 through your evaluation of the evidence that was received
9 during the course of the trial and to give such evidence
10 whatever value, weight or effect as you deem appropriate
11 with the goal of reaching the truth in this matter. In
12 doing so you will have fulfilled your obligations as jurors
13 and that is to give both the State and the Defendant a fair
14 and impartial trial in this matter. Ladies and gentlemen,
15 whatever your verdict in this case, it must be your
16 unanimous verdict. All 12 of you must agree on the verdict
17 which the foreperson will be authorized to write on behalf
18 of the jury. Ladies and gentlemen, you are not to discuss
19 this case at any time during the trial until I tell you,
20 and that will not occur until you have received all of the
21 evidence and I have instructed you upon the law that
22 applies. You should not discuss the case among yourselves,
23 and you should not discuss it with your family, friends or
24 anyone else you might see on a recess from Court. You
25 might say, well, what's wrong with our discussing the case

1 as we go along or if someone finds out I'm on the jury and
2 they want to know something about the case I'm on, what's
3 wrong with discussing it. The problem with discussing the
4 case is that you -- once you start discussing the case, you
5 start forming opinions, and you wouldn't be fair to both
6 sides of this case if you didn't wait until you've heard
7 all of the testimony and evidence and I've instructed you
8 on the law that applies before you start forming opinions.
9 Until then you should keep an open mind, wait until you
10 have all of the information you need before you start
11 forming opinions in this case. Now, if you should overhear
12 the parties, their attorneys or witnesses talking about the
13 case outside of the courtroom, you should not listen and
14 move away. If anyone should deliberately try to discuss
15 the case with you, you should not discuss it with them, but
16 leave and report that attempt to me through the bailiff or
17 the Clerk of Court. They'll let me know and I'll deal
18 appropriately with that person. No one should try to
19 discuss the case with you. If they do, I certainly wish to
20 be made aware of it. If there should be any media coverage
21 of this trial, please do not read, listen to or watch any
22 media account of this trial until after the trial is over.
23 Now, if there should be any media coverage -- I don't know
24 any, and there may very well not be, but if there should be
25 any media -- we never know about -- but if there should be

1 any media coverage of the trial, again, please don't read,
2 listen to or watch it. If someone wanted to save it -- if
3 there should be any, if someone wanted to save it for you
4 until after the trial, you're welcome to read, listen to
5 and watch it after the trial; once the verdict is in,
6 you're welcome to do that, but in the meantime, please do
7 not do that. Please do not go on any -- onto any
8 electronic device to try to find out anything about this
9 case. We're well aware that you can get all kind of
10 information from your smart phones and your IPADs and your
11 computers. One of these days they'll be doing it on a
12 wrist watch. Please do not try to get any information
13 about this case. Once the trial's over, you're welcome to
14 look at anything you want to look at, but in the meantime,
15 please do not do that. It's very important -- we can't
16 guarantee the accuracy of any other information you might
17 receive or any account of this trial. You need to make
18 your decision solely on the sworn testimony and evidence
19 that comes in during the course of the trial and not any
20 other source. Now, I'm concerned about your comfort and
21 your ability to see and hear the testimony and evidence so
22 you can properly do your job. I'll try to take a break
23 about every hour and a half. If you need a break before
24 the time a break is taken, just raise your right hand and
25 let me know and I'll take a break as quickly after that as

1 I can. If you cannot see or hear something you need to
2 hear or see during the course of the trial, I'll anticipate
3 -- I try to anticipate that, but some of you are much
4 further away from the witness stand or where the attorneys
5 may be standing that I, so if you cannot see or hear
6 something you need to hear or see during the trial, please
7 do not hesitate to raise your right hand and let me know,
8 and I'll make sure that you're able to hear or see so you
9 can properly do your job. Now, if you wish to communicate
10 with the Court other than needing a break or the inability
11 to see or hear, please write the message down back in the
12 jury room, give that to the bailiff, write it on a tablet
13 provided for you back there, give it to the bailiff, the
14 bailiff will bring it to me; I'll either correspond in like
15 manner, or I'll bring you back out in the courtroom and
16 respond as case need be. That's how we should communicate
17 now the trial having started in this case. Now, thank you
18 for your kind attention, ladies and gentlemen. Counsel
19 approach just a minute.

20 (WHEREUPON, BENCH CONFERENCE IS HELD IN THE
21 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
22 WHICH WAS NOT REPORTED.)

23 THE COURT - Ladies and gentlemen, we're just
24 trying to look at scheduling; because of tomorrow being a
25 holiday, we're trying to figure what we want to get started

1 with so that some of you being lost over the holiday, and I
2 think what we've decided to do is -- we have some -- a
3 little other work that we need to get done before we leave
4 today anyway and so -- that we promised we'd try to do, so
5 I think what we're going to do is just go ahead and adjourn
6 for the day and bring you back Wednesday morning. What I'm
7 going to ask you to do though is, I'm going to ask you to
8 go back into the jury room, the bailiff will show you your
9 way in there, and they can more instruct you about where to
10 come when you report back, and I'm going to ask you to
11 elect from the first 12 jurors a foreperson. Now, the
12 alternate -- let me explain the role of the alternate. The
13 alternate, ma'am, is the same as the first 12 jurors
14 chosen, and that is to listen carefully to the testimony
15 and evidence so you'll be in a position to deliberate to
16 help reach a verdict in this case, because if for reason an
17 emergency should be develop with regard to one of the first
18 12 jurors chosen, you'd automatically fill-in for the
19 missing juror. You couldn't do that if you haven't
20 listened carefully to the testimony and evidence. I'm
21 going to ask you to keep that same seat through the trial.
22 Let me explain the role of the foreperson. I want you to
23 elect from the first 12, not the alternate, but the first
24 12 a foreperson. The foreperson is asked to serve as
25 spokesperson for the jury back to the Court. So if there's

1 a matter that needs to come to the attention of the Court
2 from the jury, we ask that the foreperson write the message
3 down on a tablet provided for you back in the jury room and
4 we'll correspond like I said; the bailiff will bring it to
5 me and we'll correspond appropriately. We also ask that
6 the foreperson serve as the moderator once we've reached
7 the deliberative stage of the trial to make sure everyone's
8 allowed to participate and to be heard in deliberations,
9 and then finally once a unanimous verdict is reached by the
10 jury to record the verdict on the verdict forms which will
11 be provided to you and explained to you at the appropriate
12 time at the conclusion of the trial. The primary role of
13 the foreperson is the same as every other juror; that's to
14 listen carefully to the testimony and evidence so you'll be
15 in a position to deliberate and help reach a verdict in
16 this case. So with that in mind, from the first 12 you
17 will elect a foreperson, and if that person will write
18 their name and juror number down, give that to the bailiff
19 before you leave and the bailiff will give it to me; then
20 I'm going to ask you to be back in ready to go Wednesday
21 morning at 9:30, Wednesday morning at 9:30. We can
22 possibly finish this case Wednesday, if not, we almost
23 surely will finish it up Thursday morning. It's not going
24 to be a long case, but I want you to be here ready to go at
25 9:30 and we'll try to get started promptly at 9:30 and move

1 as quickly as we can through the case. Now, I hope you
2 have a pleasant Veteran's Day; any veterans on the jury,
3 thank you for your service and congratulations to you.
4 Now, if you will retire back to the jury room and elect a
5 foreperson, you're free to go and return Wednesday morning
6 at 9:30.

7 (WHEREUPON, JURY EXITS THE COURTROOM)

8 THE COURT - Anything we need to take up out of
9 the presence of the jury at this time from either side?

10 MS. LIPINSKI - Nothing from defense.

11 MS. DESCH - Nothing in this case, no, sir.

12 THE COURT - All right, counsel, we'll get started
13 at 9:30 Wednesday morning and we will go through as quickly
14 as you can through the case.

15 (WHEREUPON, DISCUSSION IS HELD REGARDING OTHER
16 MATTERS WHICH WAS NOT REPORTED.)

17 MS. DESCH - Bond issue, Your Honor. Is he --
18 bond is done. Is he held overnight or ---

19 MS. LIPINSKI - I believe until a jury is sworn --
20 I'd actually ---

21 THE COURT - Yes, jeopardy really hasn't attached
22 -- let me just say this to you, so I'll leave him out for
23 now. Let me admonish Mr. Dover though, if for any reason
24 you didn't show back up Wednesday morning, your attorney
25 will be here and ready to represent you. If you didn't

1 show back up, the trial will go forward in your absence.
2 If the jury were to convict you, then the Court will impose
3 sentence, seal it, a bench warrant will be issued for your
4 arrest and you'll be picked up and brought back in and
5 sentencing will be imposed on you at that time, so the
6 trial is to go forward whether you're here or not. You
7 understand that?

8 MR. DOVER - Sir, yes, sir.

9 THE COURT - All right, and let me admonish both
10 sides of this case, the victim and the Defendant. There's
11 to be no contact between you all in way, form or fashion.
12 Now, if anybody violates that, you're subject to being --
13 getting in trouble with the law and charged, so, please
14 avoid having any kind of contact in any way, form or
15 fashion to each other, speaking to each other between now
16 and the time we start the trial on Wednesday. Thank you.

17 MS. LIPINSKI - Thank you, Your Honor.

18 (COURT IN RECESS FOR THE DAY AT 4:26 PM)

19 * * * * *

20

21

22

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-GS-46-1522, 1523

STATE OF SOUTH CAROLINA)
Vs.)
DAVID W. DOVER)
TRANSCRIPT OF RECORD
DAY 2 - VOLUME 2
(PAGES 54 - 261)

November 12, 2014
York, South Carolina

BEFORE THE HONORABLE LEE S. ALFORD

APPEARANCES:

JENNIFER DESCH, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

CHRIS JONES, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MINDI LIPINSKI, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I N D E X

Witnesses:	Direct	Cross	Re-Direct	Re-Cross
Lucas Taylor				
By Mr. Jones	106			
By Ms. Lipinski	135			
Neil v. Biggers:				
Kelly Lovelace				
By Ms. Desch	153			
By Ms. Lipinski		161		
Robert Ellis				
By Ms. Desch	168			
By Ms. Lipinski		182		
By Ms. Desch			194	
By Ms. Lipinski				196
Cheryl Gregory				
By Ms. Desch	198			
By Ms. Lipinski		204		
By Ms. Desch -contd.	207			
By Ms. Desch -contd.	234			
By Ms. Lipinski		235		
By Ms. Desch			255	
Brian Bagwell				
By Ms. Desch	264			
By Ms. Lipinski		276		
By Ms. Desch			287	
Kelly Lovelace				
By Ms. Desch	288			
By Ms. Lipinski		303		
Proffered:				
By Ms. Lipinski	326			
By Ms. Lipinski-contd.	328			
By Ms. Desch			330	
By Mr. Lipinski				335

EXHIBITS

		ID	ID
S-1	Printed photos (taken 10/7/14)	4	
S-2	Printed photos	4	128
S-3	Printed photos	4	128
S-4	Printed photos (house)	4	116
S-5	Printed photos	4	116
S-6	Printed photos	4	116
S-7	Printed photos	4	116
S-8	Printed photos	4	116
S-9	Printed photos	4	116
S-10	911 call	4	132
S-11	Calls to Kelly	4	
S-12	Photo lineup	4	300
	(Neil v. Biggers)	4	161
S-13	Printed photos (truck)	4	133
S-14	Printed photos	4	179
S-15	Printed photos	4	179
S-16	Printed photos	4	179
S-17	Printed photos	4	179
S-18	Printed photo (house)	4	116
S-19	Photo disc (truck and Victim's house)	4	259
S-20	Latent print card	212	276
S-21	Latent print card	212	276
S-22	10 Print card (front only)	272	273
C-1	Dispositions for prior Certified convictions	4	
C-2	Note from jury	384	
C-3	Note from jury	388	
C-4	Note from jury	388	
C-5	Note from jury	392	
C-6	Note from jury	396	

1 THE COURT - Please be seated. Thank you.

2 MS. DESCH - Your Honor, could I just mention
3 something before the jury comes in?

4 THE COURT - Yes, ma'am.

5 MS. DESCH - I just want to make sure I mentioned
6 it before we get into opening statements?

7 THE COURT - Yes, ma'am.

8 MS. DESCH - May it please the Court. Your Honor,
9 when we first started this on Monday, we had -- we kind of
10 had an idea that there was a piece of evidence that we were
11 going to put into evidence and there was some discussions
12 with Ms. Lipinski, and I've giving it more thought. There
13 were some calls that were recorded by Detective Lovelace,
14 that the Defendant did call in and I think we talked about
15 it earlier on Monday about he called in with his side of
16 the story and they were recorded, which I've provided to
17 the defense. I think at this point the State does not
18 intend to move that into evidence. I agree that it's self-
19 serving hearsay, and there's some statements that he wanted
20 to make and should be subject to cross examination. I just
21 wanted to bring that out prior to us getting into opening
22 if it changes opening, so I just wanted to make sure that
23 they weren't relying on us putting them into evidence.

24 THE COURT - Any comment?

1 MS. LIPINSKI - Irrelevant whether they put it in,
2 Your Honor, I do think that nonetheless is still a matter
3 that the defense can go into and ask Detective Lovelace
4 about terms of her investigation, and I don't think the
5 argument about they're just self-serving necessarily
6 resolves the entirety of the issue and the analysis by the
7 Court and then, you know, that's just the end of the
8 question. I think the Court would have to then do the
9 hearsay analysis, determine whether they were self-serving.
10 I think the standard if they're self-serving is that they
11 need to be corroborated. I can't imagine any better
12 corroboration by the fact that they're recorded by a member
13 of law enforcement. Normally we're dealing with self-
14 serving statements made to people out in the community, and
15 it's a question of whether or not he ever told his boy
16 Mikey that he did the robbery or something like that or
17 whether or not that -- the making of that statement can be
18 corroborated, but in this where the corroboration is pretty
19 clear, it's recorded, we know the statement was made, then
20 I think the Court needs to go into the analysis.

21 THE COURT - Well, I think you can -- I certainly
22 think you can ask the officer if he denied being involved
23 and denied going there and do anything, if he -- if he
24 denied it, and if he does, he does. Other than that, any
25 self-serving hearsay statement doesn't necessarily come in.

1 You know that. And -- because he can say anything,
2 particularly when he's had a chance to think about it.
3 It's not a present sense of impression or excited utterance
4 or anything like that. So I don't -- just because he said
5 something favorable to himself or gave detail to something
6 favorable to himself, I don't think they're entitled to get
7 it in. He can get on the stand and testify to those
8 things, but he can't get it in through her -- I mean -- I
9 think you can ask her and put her on the stand, they can
10 ask her if she talked to him and he denied being involved
11 in it. I think that's as far as you go. And if he wants
12 to get on the stand and testify, he can get on the stand
13 and testify, but I don't think he's entitled to get in
14 self-serving statements, you know, factually through the
15 investigating officer that he made and had an opportunity
16 to think about it when he -- when he was called.

17 MS. LIPINSKI - Well, I think the testimony of
18 Detective Lovelace would be that these were made fairly
19 contemporaneous to the crime, certainly thereafter; it
20 wasn't weeks and months after ---

21 THE COURT - Well, I understand, but it wasn't at
22 the scene either.

23 MS. LIPINSKI - I understand that, Your Honor, but
24 I think it was fairly close in time. I would also just ask
25 the Court to consider some case law, because I do think --

1 this is a unique situation of self-serving hearsay, because
2 in some respects it's self-serving; he denies being
3 involved in the burglary, but in the other end it is a
4 statement against interest, because he is admitting to
5 setting up a drug deal. What he says, is that he goes over
6 there to sell the individual some marijuana, that they get
7 in an argument over the payment, whether or not the
8 dealer's going to take a t.v. for the marijuana, that that
9 resulted in a physical fight and that he flees, but he's
10 inculcating himself in a drug deal in order to exculpate
11 himself out of a burglary, so it's not just a blanket
12 denial to law enforcement that you have here. You do have
13 something that otherwise does fall within a hearsay
14 exception and that it is a statement against penal
15 interest, at the same time somewhat self-serving because
16 it's denying the burglary, but that's not the case, and I'd
17 just ask the Court to consider State v. Kinloch and State
18 v. McDonald.

19 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT)

20 MS. LIPINSKI - And for the Court Reporter's
21 benefit, Kinloch is K-i-n-l-o-c-h, somewhat unusual name,
22 but if you're looking at it purely as self-serving interest
23 and that that does it, the Court has to -- basically the
24 analysis is whether or not the making of the statement can
25 be corroborated, and here the corroboration is the fact

1 that they didn't have it recorded. It's not a situation
2 of, you know, do we believe that the guy said it. In
3 determining whether self-serving hearsay should come in,
4 the discretion is in the Trial Judge, does not require
5 corroboration of the information contained in the statement
6 but focuses solely in terms of 804(B)(3) analysis, was the
7 statement actually made. The analysis does not go to the
8 truth of the statement contents but rather to the making of
9 the statement where there were three witnesses able to
10 corroborate the statement that was made. The Court
11 should've allowed the testimony in, and that's quoting from
12 State v. McDonald, Your Honor. In Kinloch again, talking
13 about 804(3)(3), again, it talks as statement tending to
14 expose the declarant to criminal liability or offer to
15 exculpate the accused is not admissible as corroborating
16 circumstance clearly indicate the trustworthiness of the
17 statement, but they don't mean the trustworthiness of what
18 he's saying ---

19 THE COURT - Well, this -- are we talking about a
20 statement by a third party, or are we talking about a
21 Defendant giving a statement to the police in these cases?

22 MS. LIPINSKI - These cases do talk about the
23 Defendant making a comment to a third party versus a
24 comment made to law enforcement, but I don't think that
25 that changes that. And they talk -- often times it is

1 statement of the Defendant to a third-party, and again, the
2 Court's analysis is, it means only that there be
3 corroborating circumstance which clearly indicate the
4 trustworthiness of the statement, i.e. that the statement
5 was made. The corroboration requirement is a preliminary
6 determination to the statement's admissibility and not a
7 ultimate determination about the statement's truth. So the
8 Court doesn't look for whether or not the statement's true
9 or not, that the Court looks to whether or not we can
10 corroborate that he made the statement. And the State has
11 phone calls of the statement. The corroboration is ---

12 THE COURT - Well, let me ask you this -- let me
13 put it to you in a little different way. What I asked you
14 was, are we talking about a witness other than a Defendant
15 who comes into Court to testi -- or has made the statement
16 or says that the Defendant make a statement and the
17 question is the reliability or trustworthiness of the
18 person who's making the statement or the circumstances
19 surrounding it? Is that what this is, or are we talking
20 about statements given by a suspect or somebody they
21 interviewed as a possible suspect of a crime, what that
22 person said gave a self-serving -- a statement to the
23 police, then whether defense is able to get that statement
24 in through the police or not, if you get a self-serving
25 statement, and, you know, that it not be an admission of

1 guilt in that particular case. In this case you're saying
2 because it's admission of a different crime, nevertheless,
3 comes in because it's initially against interest. I don't
4 know that's necessarily true.

5 MS. LIPINSKI - Well, I think it comes in on
6 either ground. If the Court finds that it's a self-serving
7 statement, then the question is, is it corroborated. I
8 don't think from recording of a phone call we get better --
9 -

10 THE COURT - No, no, no, no. A self-serving
11 statement does not automatically come in because it's
12 trustworthy or the person made it to a police officer who
13 didn't record it. If a person gives the police a
14 statement, a one-page statement, exonerating himself, the
15 defense is not able to get everything he said in through
16 the police officer of self-serving statements that he made.
17 Now, it may be in this case because it explains his version
18 of what happened maybe, but that doesn't come in just
19 because it's trustworthy, that is, a police officer heard
20 it and wrote it down, and that doesn't make it
21 automatically come in, if it's self-serving statement.
22 Does it?

23 MS. LIPINSKI - I think it is a statement ---

24 THE COURT - Now, what you're talking about though
25 is a different exception, and that would be that it's an

1 admission against interest in that statement. Not only is
2 it trustworthy, the i.e. having been given to a police
3 officer who recorded it, but it's also -- admits to
4 criminal activity against penal interest even though it's
5 not this particular crime. That's your position as I
6 understand it.

7 MS. LIPSINKI - Well, even though he doesn't admit
8 to the crime charged, but he inculcates himself in a
9 different contemporaneous crime, ---

10 THE COURT - I understand you're saying ---

11 MS. LIPINSKI - --- so he's not saying I was
12 somewhere else committing a bank robbery; he is giving a
13 different version of events that inculcates himself in a
14 crime, that being that is facilitating a drug deal ---

15 THE COURT - I mean that's exactly what I asked
16 you, is that your position as reason you're saying it comes
17 in.

18 MS. LIPINSKI - I -- yes, under that as well. I
19 believe that's another grounds for the admissibility ---

20 THE COURT - I thought that was your only ground.
21 What other ground do you have?

22 MS. LIPINSKI - I think under 804(B) (3) analysis
23 it does come in.

24 (WHEREUPON, THERE IS A BRIEF PAUSE IN THE
25 RECORD.)

1 MS. DESCH - Your Honor, while you're looking at
2 that, if I could point out one thing. On State v. Terry
3 which is 339 SC 352 -- it's a case that came out in 2000 -
4 it says a Defendant who elects not to testify, is not
5 unavailable within the meaning of 804(B)(3), so the -- that
6 argument should not -- it -- the case law just clearly
7 states that they're not unavailable, therefore, we don't
8 get into 804, so we would just be back to the self-serving
9 hearsay, and of course, the State believes that it's
10 completely different than the cases set up by the defense,
11 because these are third parties that being called by the
12 defense to give the Defendant's version. This is his
13 version, and a Defendant seeking to testify and make
14 exculpatory statements must face cross examination and I
15 think that State v. Terry are very clear on that.

16 THE COURT - Well, I don't -- I don't even think
17 it's a question of hearsay, and I don't think 804(3) comes
18 into it. It's not a question of hearsay, because he's
19 available; he's here, so it's not the question really of
20 hearsay. So the question is, -- (pause) ---

21 MS. LIPINSKI - It's nonetheless, Your Honor, a
22 statement against interest, which doesn't necessarily
23 impact on unavailability. If he -- just the way they get
24 the Defendant's statement in without having call him to the
25 stand, again, because it's a statement against penal

1 interest, it's because we can believe the trustworthiness
2 of that statement, because somebody wouldn't have made if
3 it didn't tend to expose them to criminal liability. He
4 was admitting the facilitated drug deal. I mean in the
5 grand scheme of things he may have been exposing himself to
6 greater criminal liability than the burglary he was trying
7 to explain away. So if the State gets to introduce the
8 statement and not call the Defendant on the stand, the
9 Defendant ought to get to introduce the same incriminating
10 statement in order to exculpate himself from one crime if
11 it's deemed trustworthy, because if he wouldn't have been a
12 statement against pending interest, he wouldn't have made
13 it. If the State gets to admit those statements of the
14 Defendant that do expose themselves to criminal liability,
15 the Defendant gets the same benefit of that hearsay rule.
16 It doesn't just work for the State.

17 MR. DESCH - But we are not, and I would disagree
18 with the analysis. I think 804 clearly -- those hearsay
19 exceptions are because the declarant's unavailable. He's
20 clearly available, so we shouldn't even get into 804, but
21 if the Court's considering it, what he could possibly be
22 admitting to at best is an accommodation sale. He doesn't
23 say I have the drugs, I'm providing them to the victim; he
24 says, I know a guy, I could possibly take money up, get you
25 what you need, so an accommodation sale, that carries 30

1 days, Your Honor. So by admitting to a 30 day charge to
2 get out of a 10-year felony, that certainly doesn't fall
3 into the statement against interest, because the reason we
4 have that rule, says a statement which was at the time of
5 its making so far contrary to the declarant's pecuniary and
6 proprietary interest, and so far tended to subject the
7 declarant to criminal liability or to render invalid -- a
8 reasonable person in the declarant's position would be in a
9 position where it must be trustworthy, because why would
10 you expose yourself. So in her -- in the defense example
11 of if he admitted to a bank robbery to get out of a
12 burglary, now that would be something different, but an
13 accommodation sale at best where he's facing 30 days to get
14 out of the burglary, that's not against pecun -- I mean
15 that's not what the rule's intended for, but again, I go
16 back to the fact that we shouldn't even be in 804 because
17 he's available.

18 MS. LIPINSKI - And, Your Honor, to say that this
19 is just an accommodation sale, I've never seen the 16th
20 Circuit prosecute a middle man as just an accommodation
21 sale; they take everyone as the hand of all -- the hand of
22 one is the hand of all, and if you deliver the drugs from
23 the drug dealer outside and take the money back, they
24 charge you as a principal, so to sit there and try to
25 minimize his role now to avoid that hearsay rule is

1 disingenuous and I think somewhat in bad faith. He's
2 implicating himself in a drug deal. Just because, oh, he's
3 a middle man and not the dealer himself, means that some --
4 somehow that this Defendant, because you're looking at,
5 would he have made this statement had he known it to be
6 true, so you have to impart a fairly sophisticated legal
7 knowledge to Mr. Dover that he's somehow diminishing his
8 legal right by saying I -- was a drug deal gone bad and not
9 a burglary, because I know I'm just admitting to an
10 accommodation sale and not a burglary itself. I think
11 that's a highly sophisticated level and goes against the
12 hearsay grounds.

13 THE COURT - What I'm wrestling with, counsel, and
14 I'll listen to you -- you talk on -- I didn't know we were
15 going to do all this -- wouldn't have had the jury sitting
16 back there all this time if I'd known this issue was coming
17 up. We had plenty opportunity to discuss that yesterday.
18 But let me -- having said that, I hear what you're saying.
19 The question in my mind -- I don't think it's a hearsay
20 issue at all, because these cases you're handing up and
21 we're talking about third parties, and whether their
22 statements are reliable or trustworthy and that, and you're
23 talking about, but that's a third party with a hearsay
24 statement. This is not a hearsay statement. This is a
25 statement from the Defendant to a police officer who's

1 conducting the investigation, so it's not a hearsay issue.
2 So the question is, does he get to put his defense in
3 without taking the stand by putting in what he said to a
4 police officer, therefore, not subjecting himself to cross
5 examination on that statement but getting it in through the
6 police office, his statement. That's the question. And as
7 you say, of course, the police officers can put in
8 statement if he's been advised of rights and makes a
9 statement against his interest, so they can get that in if
10 the Court finds it's freely and voluntarily and
11 intelligently made, but in this case you're asking to get
12 in -- not hearsay; it's not hearsay at all, because the
13 State says he made it; I presume he says he made it if he's
14 going to try to get it in, otherwise he'd leave it alone,
15 if they're not going to put in. So it's not a question of
16 hearsay. The question is, is he able to present a defense
17 without ever getting on the stand. That's the question.

18 MS. LIPINSKI - Well, and, Your Honor, the
19 defense's issue with that is, Defendants often time give
20 these kind of middle-of-the-road statements, or they'll say
21 I was in an armed robbery but I wasn't the shooter, or I
22 was there but I didn't know he had a gun. All of those
23 kind of things often times come up in statements that the
24 State routinely puts before the jury without calling the
25 Defendant to the stand, and it's all done under a -- that

1 it's a statement against interest, that even if they don't
2 admit to be the shooter, the mastermind to the armed
3 robbery or they were the only one that supplied the gun,
4 but they weren't there when the robbery came down, or any
5 of those kind of things, the State always gets to use those
6 because they're still a statement against penal interest
7 without having to put the Defendant on the stand, without
8 having to call him as a witness. And what the defense is
9 saying is that the hearsay rules have to flow both ways,
10 and if those statements, even though they might minimize
11 their role or mitigate what happened or take a different
12 view but still tend to expose the declarant to criminal
13 liability by putting themselves at the scene or by
14 acknowledging some involvement or by acknowledging some
15 knowledge of what was transpiring and the State gets to use
16 those through the testimony of the detective, because
17 that's how they get it in, then the defense deserves the
18 same benefit, because if the hearsay rules allow the State
19 to produce those statements of the Defendant, then the
20 hearsay rules permit the Defendant to use those, because it
21 can't be that -- if that were true, then unless every
22 confession was, I was the worst guy there, or those kind of
23 things, but they might've been somewhat self-serving, they
24 don't come in, it doesn't -- it doesn't get to cut both
25 ways, and I understand -- and I apologize for bringing up

1 this issue now, but when we had this discussion, she was
2 putting the tapes in, and had I known we were taking the --
3 I wouldn't encouraged the Court -- I had to hear the stuff
4 and thought we were going there, so I don't want ---

5 THE COURT - Well, I understand. I'm not -- I'm
6 just -- I'm not going to criticize anybody; I'm just saying
7 I would like to have known this when I had an opportunity
8 to discuss when the jury was not here, keeping them sitting
9 back there, which I don't like to do, but -- either of you
10 have an authority where a Defendant's allowed to make a
11 self-serving statement to a police officer and then have
12 the police officer ask about it, and it comes in without
13 the Defendant ever putting his credibility in issue?

14 MS. DESCH - The State has opposing case law that
15 we've presented that says that it doesn't come in, and just
16 to point out this argument, the State always gets to do it,
17 I think that's an unfair characterization. If each case
18 that we put before a Court, the Judge addresses those
19 issues, so we can't necessarily know what every other Judge
20 decides in every other case. And we do have 801(D)(2)
21 statement against interest -- an admission by a party
22 opponent that allows the State to get into it because
23 they're our party opponent. That's why we're allowed to
24 get into admissions, and in this case it is an admission,
25 but he's not a party opponent. He is the party. So for

1 him to be able to do it -- so we should be dealing with
2 apples and apples, and defense is asking you to deal with
3 apples and oranges, because we're always allowed to do, but
4 we're faced with the same rules in every trial. In this
5 case I think it's clear that it is a case where he would
6 get to put his defense on without being subject to cross
7 examination, without having to go over his lengthy record,
8 without having to have someone question him on the
9 inconsistencies in his statement and that is exactly what
10 State v. Terry says that is not to do -- that's exactly ---

11 THE COURT - Did you hand that case up?

12 MS. DESCH - I can get it for you, Your Honor. We
13 can hand that up to you. So we're not aware of any
14 authority that allows it to happen. We'll hand that up to
15 you.

16 MS. LIPINSKI - Your Honor, I'd just like an
17 opportunity -- because it's our position that it's still a
18 statement against his interest, and as much as she
19 characterizes that, but it goes even deeper into the
20 defense. You have two people here who present law
21 enforcement with what happened out there on that day, and
22 part of the defense is not only this statement, but also
23 that law ---

24 THE COURT - That's not the question. The
25 question is, does he have to get on the stand or present

1 some testimony to prove that, or does he get to put it in
2 through somebody else on the other side of their case? He
3 obviously can do it, whatever defense he has. That's not
4 the issue. The issue is, getting -- does he get to put his
5 case in through a police officer, because he made a
6 statement to them, which is favorable to him insofar as
7 these charges are concerned? Does he get the exact same
8 statement that he made to them, get that brought in without
9 ever subjecting his credibility at issue or questioning
10 what -- concerning some of the things he said in that
11 statement? That's the question. Does he get to present a
12 defense without ever taking the stand or presenting any
13 testimony or evidence by presenting a self-serving
14 statement to a police officer? That is the issue. Without
15 ever being able to be cross examined about that statement
16 or any details about that statement or being his -- put his
17 credibility in issue which would include crimes that he may
18 have committed that the jury could consider. That's the
19 issue.

20 MS. LIPINSKI - I understand, Your Honor, and it's
21 our position that he is inculpatating himself in another
22 crime. To say it's self-serving, you know, it just -- that
23 doesn't resolve the whole thing.

24 MR. HOGGE - I'll print out the case, Your Honor.

25 (WHEREUPON, THERE IS A PAUSE IN THE RECORD)

1 MS. LIPINSKI - Your Honor, I don't know if you
2 have State v. Terry, but they are talking about a statement
3 to police in that case. It's somewhat similar in that he -
4 - it's a sex case, and he's saying he was there and had sex
5 with the victim, but that it was consensual, that it was
6 not a -- a rape, but then he also says that there was also
7 a manslaughter charge trying to reduce the murder from the
8 manslaughter charge, but it stated that the statement he
9 offered, that it was self-serving was not admissibility
10 because they couldn't corroborate it, there was no
11 trustworthiness to it, although that's not at issue here,
12 and they said that he then wanted to introduce that he had
13 corroborated and gave a statement without introducing the
14 statement itself, and they said you can't have it both
15 ways; if you want it out that you gave a statement, then
16 the statement itself comes in, but you don't get to say you
17 made a statement but not what it was.

18 (WHEREUPON, THERE IS PAUSE IN THE RECORD)

19 THE COURT - Counsel, again, I don't -- I don't
20 think this is a hearsay issue at all. I think the Court
21 has ruled on that before. Just because a Defendant is in
22 Court and available, if he chooses his right not to testify
23 or to take the stand or testify under the fifth amendment
24 right not to be called or testify, he's not unavailable for
25 his testimony; therefore, it is not a -- and I think the

1 cases are clear on that. I think probably Terry said that
2 in that case said he was not unavailable. Therefore, it's
3 not a question -- the question is then, how does it come
4 in? Is he entitled to elicit through a police officer that
5 did the investigation any self-serving statements that he
6 made? In -- what's the name of that case? Cabrera Pena,
7 Cabrera case, and they cited other -- other cases for the
8 proposition that he was not -- he's not entitled to get in
9 self-serving statements. In this case -- and it's cited in
10 the case, I believe it's Terry, where the Defendant sought
11 to bring in he was probably guilty of voluntary
12 manslaughter but not murder, trying to reduce murder down
13 to voluntary manslaughter by his statement of the facts as
14 to what happened. They didn't let that in. The Trial
15 Court didn't let it in and they upheld it, so that was a
16 statement against penal interest, because he was admitting
17 to the facts of beating up this woman and that sort of
18 thing and eventually her dieing, but it was more -- he was
19 alleging facts or such that she tried to stop him from
20 leaving and he did that in order to leave and -- because he
21 was angry at her for trying to stop him from leaving, and
22 the Court said they were not allowed to get his statement
23 in because it was still self-serving and was trying to
24 reduce the charge. The facts are -- the facts before the
25 Court which would reduce the charge from murder to

1 voluntary manslaughter or less, I guess, so it was not like
2 -- so Defendant's not entitled to get his self-serving
3 statement in to the police officer. An exception would be,
4 of course, if the State through its witness, i.e. a police
5 officer, testifies concerning part of what he might've
6 said, then he would be entitled to get in the rest of it.
7 You know, you can't -- you can't put in part of what he
8 said to a police officer and then not allow the defense to
9 cross examine the officer and ask about the rest of it, so
10 is entitled to have it all included not part of it.
11 Wouldn't be fair to the defense. But the cases don't say
12 that the defense is able to put in their case through a
13 State's witness because of a self-serving statement made by
14 the Defendant. I think that -- and what the Court's
15 wrestling with is, I think the Defendant is entitled to get
16 into his version of what happened, the reasons for it
17 happening, but does he get to do it without ever taking the
18 stand? That's the question. I think he certainly is
19 entitled to either get on the stand himself and testify
20 subject to cross examination about what his testimony is or
21 he has other evidence which would tend to establish his
22 defense, he's entitled to put them up as well. Is he
23 entitled to put up his case without ever putting up a case?
24 That's the question.

25 MS. LIPSINKI - Your Honor, ---

1 THE COURT - I think the cases say no.

2 MS. LIPINSKI - And I think if it was just a pure
3 blanket denial, I didn't do it, I wasn't there, then I
4 understand -- I understand the Court's ruling, and I think
5 the case law is fairly clear. I think what you have here
6 is a very novel issue, because you don't have a Defendant
7 just trying to get in a blanket denial that he wasn't
8 there, a blanket denial that he did something. What you
9 have here is a Defendant who's saying it wasn't a burglary,
10 it was a drug deal gone bad, and I think that's different.
11 I think the reason they don't let blanket denials in is
12 because they are self-serving and ---

13 THE COURT - What about Cabrera, Pena Cabrera,
14 where they said -- no it wasn't -- it was Terry in which he
15 admitted beating this woman but said she was trying to stop
16 him from leaving and they got in an altercation and that he
17 did then beat them, but they didn't let that in unless he
18 took the stand and testified, because even though he -- it
19 was a -- an admission against his interest, because he was
20 admitting to essentially a crime, that is beating her in
21 some type of either manslaughter, voluntary or involuntary
22 manslaughter or that, as opposed to murder to which he was
23 charged; they didn't let that in, but that was a statement
24 against penal interest. So how do you get around that?

1 MS. LIPSINSKI - Well, I think in that case what
2 they talked about was the corroborating circumstances
3 surrounding that statement and the fact that -- and what
4 I'm grappling with is that in all the other corroborating
5 analysis -- because that's under 804(B)(3) -- is, is the
6 believability that the statement was made, and Kinloch and
7 McDonald all say that ---

8 THE COURT - See you -- you want to preface it
9 and all; I've ruled; that's out. This is not a hearsay
10 statement. This Defendant is sitting in Court today; he's
11 perfectly available to take that stand, put his credibility
12 in issue and tell what he says happened, what the facts are
13 in this case, what the real -- his story about it. He has
14 that right and to put up any other witness who might verify
15 that or corroborate it. He has the right to do that. This
16 is not hearsay. He's not unavailable. He's sitting right
17 there. He's not unavailable; he says I don't want to
18 testify. The Courts have said that. That doesn't make him
19 unavailable for purposes of the hearsay rule, so this is
20 not hearsay. You want to preface it all on hearsay and
21 whether it's trustworthy because he gave it to a police
22 officer. That's not the issue. I've ruled that. I've
23 ruled that out. So it has to be based on the fact that --
24 fundamental fairness to the Defendant is able to get this
25 statement in that he made to the police officer which is

1 contradictory to I guess what the -- I hadn't heard what
2 the alleged victim is going to say in this case, but I
3 guess it's contradictory to that or any other evidence that
4 they might have, and so that's where we are. We're -- so
5 the only issue is whether it's as much against his self
6 interest -- and I don't think it is. And I think what I
7 might -- what I think what I'm going to do is if the
8 defense wishes to go into it with the police officer, I
9 think I will allow the police officer to say he denied
10 doing anything wrong. I think he -- what I'm wrestling
11 with, he's able to say, well, this is just a drug deal gone
12 bad is what the police officer says or not and leave it at
13 that. That's kind of a middle road I guess I'm -- in a
14 sense, but he denied burglarizing the house and just simply
15 said it was a drug deal gone bad and he left. You know,
16 that might be a middle of the road thing. Or you can put
17 the whole -- his whole statement in. What are your
18 thoughts?

19 MS. DESCH - Your Honor, we didn't intend to get
20 into where near (sic) what he said to the officer, because
21 for her to be in a position where she's answering he denied
22 it, that's actually disingenuous to what happened, so she -
23 - that would be putting her in a position where she'd be
24 saying something that wasn't true, so we weren't going to
25 address it all, and my stance would be that it -- that

1 State v. Terry is dead on point, that it's not allowed at
2 all to come in, and I think they put it very well when they
3 say, you know, that several Courts have faced this issue
4 whether a Defendant has procured his own unavailability by
5 invoking it. I know you've already ruled on that, but the
6 -- a Defendant seeking to testify and make exculpatory
7 statements -- and I'm on the second page of the case that
8 we've presented to the Court -- that a Defendant seeking to
9 testify and make exculpatory statements must face cross
10 examination as a basic rule of our adversary system. This
11 is not a novel issue. There's plenty of times that people
12 -- Defendants have wanted to get out their own self-serving
13 statement saying, you know, I -- I was there for whatever
14 reason, and it's just -- the case law is just clear that -
15 not allow, and so we weren't even going to ask the
16 detective at all about her contact with the Defendant. It
17 was a phone call; he called her because he knew that they
18 were looking for him; he didn't want to come in; he never
19 actually came in and gave a statement. There was never a
20 chance to sit down with Detective Lovelace and go over
21 Miranda Rights or anything like that. It was just a call,
22 so ---

23 THE COURT - Well, I understand that's your
24 position today, that's your plan today and it's not your
25 plan on Monday, but that's your plan today, but the

1 question is does defense get to ask him if he talked with
2 the Defendant about it, and I think she has a right to ask
3 her that.

4 MS. DESCH - But then what's the answer going to
5 be?

6 THE COURT - I don't know. That's what I'm
7 telling you, but I think she has a right to ask, did you
8 talk to the Defendant, and -- and at worst, or at least,
9 let me put it that way, at the least that he denied that he
10 committed a burglary or petit larceny.

11 MS. DESCH - The fear that I had and the reason
12 that we were grappling with this issue is that there have
13 been many times where we have kept something out for legal
14 reasons, Crawford a perfect example, we don't move in any
15 car video because we know that Crawford does not allow us
16 to, and then of course when we're faced with the defense
17 arguments and the jury gets to hear about how we're hiding
18 evidence or we're not producing everything, and so that was
19 what I was grappling with on Monday, you know, do we expose
20 ourselves to that argument to the jury, and I think by
21 having Detective Lovelace put on the stand and cross
22 examined on, well, didn't you talk to the Defendant, and
23 didn't he have something to say, and then we don't present
24 what he had to say, then we're faced with the jury looking
25 at us, like, well, why didn't -- why didn't you mention

1 that, because they don't understand the rules of law and
2 how certain things that are kept out, and in this case it
3 should be kept out because of the legal issues of it and to
4 kind of allow this implication that he did give a statement
5 but not providing it, I think, does open us up to that
6 argument, and so that's what we're trying to avoid. I
7 think the jury has every right to hear what is legally
8 presentable to them, but we do have legal issues obviously
9 in this case, as we do in any other case, and so we're just
10 trying to keep it as clean as possible and not ring a bell
11 that we can't unring.

12 THE COURT - All right, this is, you know, kind of
13 a tough call for the Court at this point, but I -- it's a
14 fundamental fairness in the cases, particularly Terry case,
15 and tells me that the Defendant should not be able to get a
16 statement in -- self-serving statement in his version of
17 the facts in this case, defense not be able to get that in
18 through a police officer who was -- he called -- her -- was
19 trying to get in touch with him and he called the police
20 officer and gave his statement to them. I don't believe
21 he's entitled to put that up without ever having to take
22 the stand or ever putting up a witness, not ever putting
23 his credibility in issue or being subject to cross
24 examination about that statement. I don't think he should
25 be able to do that, and therein lies the problem. If he's

1 going to exercise his fifth amendment right not to testify,
2 then I don't think you should be able to put up a defense
3 through the State's witness, through self-serving
4 statements he made, even if it is technically -- or not
5 technically -- is a statement which can involve him in
6 having attempted to commit a crime i.e. some kind of drug -
7 - nevertheless, that's not burglary and petit larceny with
8 which he's charged in this case. You know, and I'm saying
9 that and on the other -- on the other hand I want to be
10 fair to the defense and say the defense should be able to
11 put up denial, but they're not really prevented from doing
12 that. All you have to do is put up the person who said he
13 made the statement and let them say it on the stand, that
14 he made this statement, this is what happened, give his
15 version of it subject to being cross examined about it. I
16 think the State has that right. So I'm not given much time
17 to think about this, but I -- because the jury's out being
18 held -- been held back there for an hour while we do this,
19 so -- and I've looked at -- but I've looked at cases in
20 that, and my ruling is going to be that the defense is not
21 allowed to get this statement in or asked about this
22 written statement that the officer took, recorded from him,
23 because it is self-serving insofar as the charges against
24 him, that he's on trial for today, so I'm not going to
25 allow him to do that. Nothing to prevent the Defendant

1 from testifying or putting up any witnesses he may have to
2 support his defense, his theory of his opinions, so that's
3 going to be -- make it clear that this is not an 804(3)
4 issue of self -- of hearsay. It's not a question of
5 hearsay. The Defendant's present in Court; he certainly is
6 available to testify. By invoking his Fifth Amendment
7 right if he chooses not to testify does not make him
8 unavailable, therefore, it's not a hearsay statement at
9 all. That's not the issue in this case. The issue is
10 whether he can present his defense without being called to
11 the stand to testify or being subject to cross examination
12 by having given a self-serving statement to the police
13 officer. Even if it is somewhat indicative of
14 participation of a crime, it's not the crime for which he's
15 on trial here today, so -- the two charges he's on trial
16 for today. So that's going to be the ruling of the Court.
17 Now, having said that, if -- got to be careful what the
18 police officer says, because if she opens the door just a
19 little bit, then I might change that ruling, depending on
20 what's said, because not going to be able to get into part
21 of it -- of anything that he might have said or anything in
22 the case -- you get into any of that without getting into
23 the rest of it. And the rules are clear on that, that if
24 you get in the part of it, the defense is entitled to get
25 into the rest of it in cross examination and so if that

1 door is cracked open, she'll be able to get through that
2 door. Counsel?

3 MS. LIPINSKI - And I just want to be clear, I
4 know we kind of caught you off guard, but earlier you had
5 said that you would allow Detective Lovelace to say he
6 denied it or if he said he was a drug deal gone bad, that
7 he -- is that still your ruling or ---

8 THE COURT - No, that's not my ruling. Back up on
9 that, because if you get into a drug deal gone bad, --
10 (pause) Here's the problem; here's what I'm wrestling with.
11 I think it would be fair to say that he denied he committed
12 these crimes. Okay? On the other hand, he did admit
13 having contact with the victim in this case and being at
14 the scene where they claim or allege that a burglary and
15 that took place. And so the problem is, if you get into
16 that, then we're going to wrestle with that whole -- that
17 whole issue once you open the door to it. That's the
18 problem.

19 MS. LIPINSKI - I understand, but, you know, I
20 also think I have a good faith basis to confront the victim
21 about that alternative about.

22 THE COURT - Yes, I think you do, but you don't
23 get to use his statement to do it.

24 MS. LIPINSKI - I understand that, but I don't
25 want to draw the eye of the Court ---

1 THE COURT - The victim gets on ---

2 MS. LIPINSKI - --- it's not necessarily just
3 through the detective. I ---

4 THE COURT - If you get -- if the victim gets on
5 the stand, his credible is at issue, and you can ask him,
6 is this what happened, but you can't use this statement by
7 the Defendant. You understand what I'm saying? That the
8 Defendant's statement said ---

9 MS. LIPINSKI - Right, I can't mention that the
10 Defendant gave that statement, but I can say is this what
11 happened and is this ---

12 THE COURT - You can ask him if this is what
13 happened. If it's -- if that's your defense, if that's
14 what your Defendant says happened, surely you can ask the
15 alleged victim about it, did this (sic) what really happen.
16 Okay?

17 MS. LIPINSKI - I understand. I just want to make
18 sure I - I don't want to do in Court and then draw the eyer
19 of the Court because you think that I've gone against the
20 spirit of your ruling and ---

21 THE COURT - No, no, no. Just -- here's what I'm
22 ruling -- is his statement to the police officer does not
23 come in, and the police officer can't be asked about the
24 statement because it's a self-serving statement by him.
25 He's available, he can get on the stand and testify to

1 whatever he wants to. If the victim gets on the stand, the
2 alleged victim in this case gets on the stand, certainly he
3 can be cross examined, not about this statement, but you
4 can ask him, is this what happened or about this, that and
5 the other. Yes, sure, you can ask him that.

6 MS. LIPINSKI - All right. So there'll be no
7 questions of Detective Lovelace or any of the other
8 officers that they ever had any conversations with David
9 Dover, no questions about his Miranda form, no questions
10 that he ever gave a statement of any kind. And I just I
11 want to make sure we stay -- you kind of -- and I just ---

12 THE COURT - Well, I know, and there's the
13 problem. You know, there's the problem.

14 MS. DESCH - Your Honor, to be clear, the State
15 understands completely that we're not to bring it up in
16 part and we will abide by that. We're not intending to.

17 THE COURT - The other thing I'm wrestling with
18 though is, whether they can ask the officer if she talked
19 to the Defendant or not or if he -- to what extent -- my
20 thoughts were that -- to let the police officer -- ask the
21 police officer if she talked to Mr. Dover about it and then
22 he denied it; he denied being -- committing these offenses.
23 If we stop there, I think that part is true without anybody
24 -- any differently. And, of course, he gets a different
25 account of what happened, but then where -- where do you go

1 from there? You have to be very careful where you go from
2 there. What are your thoughts?

3 MS. LIPINSKI - You know, at some point it's
4 beneficial, because he's at least getting out that he
5 didn't deny it, but it's not a denial in the sense of I
6 didn't do that; it's a different version of events
7 altogether and ---

8 THE COURT - Well, I mean he's available to come -
9 - to put on the stand and tell his version.

10 MS. LIPINSKI - I understand that, and I'm not
11 trying to take exception of the Court's ruling, just kind
12 of more in terms of you were thinking aloud and it just
13 raised some thoughts in my head, but, ---

14 THE COURT - Right.

15 MS. LIPINSKI - --- you know, I mean your argument
16 is he's still available. He -- I don't think he's anymore
17 unavailable if the State produces that evidence than if the
18 defense. He still has the Fifth Amendment right, and I
19 understand what you're grappling with, and this may still
20 be a strategic decision that the defense has to encounter,
21 but this is the rule you pointed out to me when I was
22 trying cases against you when I was still younger is, she
23 still has 806 available. She can still attack his
24 credibility if that statement comes in, just the same as if
25 the declarant had testified, so she's not -- if that's the

1 grounds of it, I don't know that that is reason alone to
2 keep it out.

3 THE COURT - What do you mean she can attack his
4 credibility?

5 MS. LIPINSKI - 806 says that if any statement is
6 put in by a declarant, that the credibility of declarant
7 can be challenged the same as whether or not the declarant
8 testified or not, which means the Defendant could make a
9 decision that the statement comes in because it's a
10 statement against penal interest, knowing that she would be
11 allowed to attack his credibility the same as if he
12 testified. She doesn't get to cross examine him, but it
13 may open the door, and my client would have to make that
14 strategic decision of the same way they could use his
15 record to impeach his version of events as if he testified,
16 which means it would be the same being allowed and her to
17 bring out that he has felony convictions within the past 10
18 years and those type things. And I haven't fleshed all
19 this out, because I was under the impression that this was
20 kind of -- this trial strategy of the State -- and I
21 understand, she's free to make her decisions and things --
22 I had those same moments as a prosecutor, so I'm not
23 challenging her; I just don't want the Court to think that,
24 you know, I'm trying to belabor the issue or duly delay the
25 trial. Our conversations yesterday were redacting the

1 tapes, not not admitting them. So I'm thinking off my head
2 the same as the Court, and I apologize.

3 MS. DESCH - Your Honor, I -- she asked me
4 blatantly if I was putting them in and I was answering
5 quite vaguely and said if I do put it in, what is it that
6 you want to address? I never said I'm absolutely putting
7 them in, so I think that's an unfair characterization, but
8 as far as -- I think you've already ruled on the issue.

9 THE COURT - Well, I - I've ruled. What I'd like
10 to do and I want to be fair, of course, in Cabrera, Pena
11 Cabrera or it might be backward I'm saying it, but in that
12 case the Court said that -- that it was not unfair to the
13 Defendant that -- that it was unfair to the Defendant
14 because it didn't talk about him cooperating with the
15 police or something like that and giving them a statement
16 or talk to them or something like that, and the Court said,
17 no, it wasn't -- was not unfair to the Defendant and so my
18 question is -- it seems appropriate to me for the -- if the
19 police officer is asked if you talked to the Defendant, her
20 answer yes, and then did he deny committing these crimes or
21 -- or -- how much further than that would you need to go?
22 I don't -- you know, does that open the door to anything
23 else? I think they -- the Defendant is not permitted from
24 getting on the stand and testifying, yes, I talked with
25 her, and this is what I told her, this is what happened,

1 and so -- what's your thought? Do you want to be able to
2 asked and leave it at that unless she goes further with it,
3 that he denied of committing these crimes?

4 MS. LIPINSKI - I think it would be a more truth
5 of characterization is that he -- he denied it, he gave an
6 alternative version of events without getting in what that
7 alternative version of events was.

8 MS. DESCH - I think that opens it up to the jury
9 wondering what that is and why we didn't present it, and I
10 think that's unfair to the State.

11 THE COURT - Well, I agree with you. I think --
12 I'm going to leave it at that. I will allow you to ask --
13 I'll allow the officer to be asked -- if you don't ask on
14 direct, then the defense -- I'll allow the defense to on
15 cross examine ask her did he -- did he -- did you talk with
16 the Defendant and what did he say, or -- and she can -- for
17 her to answer that he denied that he admitted these crimes,
18 or you can do that on direct.

19 MS. DESCH - I think, Your Honor, if -- obviously,
20 the defense can cross with close-ended questions, and if
21 she says it, that's one thing. I think it's unfair to put
22 the officer in a position to ask an open-ended question
23 saying what did he say, and then have her say, he denied
24 it, so ---

25 THE COURT - Oh, well, I agree with you.

1 MS. DESCH - --- and I understand the meaning of
2 the Court, but I'm just saying for an open-ended question
3 to be presented during cross examination that will put the
4 officer in a position to kind of misrepresent the facts I
5 think is an unfair question for her, because ---

6 THE COURT - Well, I think the best way to handle
7 it, if I'm going to allow that question to be asked is
8 just, let it be done on direct. Ask the officer, did you
9 talk with him, yes, he called me, you know, we're going to
10 talk -- we were -- we wanted to talk to him and he called
11 and I talked to him and he denied any of -- that he
12 committed these offenses, and there we go. And then where
13 would you go with cross examine? But I don't want to --
14 him to get in his statements about exactly what happened,
15 his version of events, unless he testifies. Obviously, he
16 can do it and present his case.

17 MS. LIPINSKI - And, Your honor, I don't mean to
18 belabor the point. I'm just trying to, you know, play out
19 a infinite number of scenarios in my head that are quite
20 different, because trying to decide whether or not -- I
21 just want -- he never talked to him versus he denied it,
22 denied being there, because I -- you know, I don't want him
23 to say he denied being there, because ---

24 THE COURT - I'm not saying denied being there; --

25 -

1 MS. LIPINSKI - Right.

2 THE COURT - --- denied he committed these crimes.

3 He'll -- either be that or nothing.

4 MS. LIPINSKI - What about he denies that that's
5 what happened?

6 MS. DESCH - Still an implication to the jury that

7 ---

8 MS. LIPINSKI - Anything we do is an implication
9 to the jury, because if we say that he just denied doing
10 it, that doesn't give the jury also the correct impression
11 that ---

12 THE COURT - All right, why don't we do that?
13 That might be a good alternative, that -- that officer
14 testify -- he's on direct or on cross -- that -- either way
15 that he denied that's what happened. That's it. And then
16 that's all that we'll have, that he denied that's what
17 happened unless the defense wants to put something up. She
18 can also cross examine the alleged victim in this case
19 though. She's allowed to do that certainly.

20 MS. DESCH - Yes. Yes, of course, and to that
21 end, you know, as ---

22 THE COURT - So it's all going to come out anyway
23 if she starts asking about that. And so then if the
24 officer says, well, he -- he denied that's what happened,
25 we can leave it at that. That doesn't tell the jury he

1 made a statement or there's a statement out there that you
2 haven't put into evidence.

3 MS. DESCH - Yes, Your Honor, just to go back
4 briefly to the cross examination of the victim, as we
5 talked about on Monday, of course, she has great leeway
6 with cross examination of the victim. We would just ask
7 that it be within the bounds of character evidence 404, not
8 to get into -- obviously allowed that day and that -- that
9 whatever she wants to get into but not into the fishing
10 expedition of, you know, are you a drug user, etcetera,
11 etcetera. I just wanted to renew that.

12 THE COURT - We've already been through that.

13 MS. DESCH - Yes, sir.

14 THE COURT - I think I've ruled on that. She's
15 got -- depends on what comes up -- whether the door gets
16 open whether or not she's prohibited from just going on a
17 fishing -- character or assassination -- something like
18 that.

19 MS. LIPINSKI - Could we approach just briefly?

20 THE COURT - Yes.

21 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
22 NOT REPORTED.)

23 THE COURT - All right, let's take about five
24 minutes.

25 (WHEREUON, RECESS TAKEN)

1 THE COURT - Thank you. Keep your seat. Thank
2 you.

3 MS. LIPINSKI - And, Your Honor, I don't mean this
4 to cause the Court to revisit the issue; it's really to
5 kind of supplement the record on appeal, but in talking to
6 my client I am reminded of the case of State v. Blurton,
7 which is kind of an unusual case. In that case the
8 Defendant robbed a Walmart, and his defense was that he
9 wasn't robbing it, he was part of a CIA operative training,
10 and the Court ruled that that shouldn't have been
11 admissible because the corroborating circumstances didn't
12 justify to -- basically they thought -- I think they kind
13 of dismayed it as a defense, but he tried to offer tapes
14 between him and a Co-Defendant wherein they discussed the
15 armed robbery, so there were statements of the Defendant
16 that the Defendant was trying to introduce. It does not
17 say whether or not the Defendant testifies, so in all
18 candor I'll front that to the Court, but what it does say
19 is that those out-of-Courts statements should've been
20 admissible in that they were relevant and they do go to the
21 Defendant's defense, and so I know it's not completely a
22 similar situation, but it's again the Defendant trying to
23 offer testimony of an alternative theory through hearsay
24 statements where -- and it was taped conversations between
25 him and a Co-Defendant, not between him and law

1 enforcement, but the Court ruled that those tapes should've
2 been admitted to demonstrate that the Defendant lacked the
3 requisite criminal intent or mens rea to commit the crime.
4 Again, I'm not trying to cause the Court to revisit its
5 opinion; I just basically want to supplement the record,
6 because I do see this as something -- and it wasn't
7 something that came to me previously. So I do think State
8 v. Blurton just kind of does perhaps ---

9 THE COURT - What's the name of it?

10 MS. LIPINSKI - Blurton, B-l-u-r-t-o-n. It's 342,
11 SC 500, and has been challenged -- it has been reversed on
12 other issues on appeal, but they -- and it was kind of
13 bazaar case. I remember reading it, because thinking, oh,
14 I'm a CII (sic) operative and -- he had offered it, but
15 that that was his version of events, and I remember what
16 (sic) defense attorney would even offer that theory as a
17 defense, and I just really -- defense attorney (sic) and
18 said that was part of their strategy, but nonetheless on
19 appeal, they said he should've been offered to allow the
20 tapes between the Defendant and the Co-Defendant that
21 demonstrated his version of events.

22 THE COURT - Well, I'm -- if he's putting a
23 defense, but here we're talking about not putting up a
24 defense. Because if he gets up there on the stand, he can
25 testify to whatever he wants to testify to in this -- you

1 know, if there's a question about whether he told the
2 police officer or not, you know, that's one thing. Using a
3 statement to verify what he -- what he said to them, but I
4 mean I don't know happened. Did the person -- were they
5 putting up a defense and they didn't allow it in as part of
6 their defense?

7 MS. LIPINSKI - Yes, Your Honor.

8 THE COURT - That's different. Here you're
9 talking about putting up a defense without putting up a
10 defense, without putting up a Defendant or putting
11 anybody's credibility in issue.

12 MS. LIPINSKI - Because I acknowledge to the Court
13 ---

14 THE COURT - That's what's causing me to believe
15 that that would be totally unfair to the State.

16 MS. LIPINSKI - And it is a differ decision. They
17 argued that it wasn't offered for the truth of the matter,
18 that the CIA plan happened, but that that's what the
19 Defendant believed, so it's not completely on point. And I
20 understand that.

21 THE COURT - I think the Defendant's entitled to
22 put up a case in the defense; he has every right to do
23 that, and certainly ought to be protected with his right to
24 do that, but he's got to do it -- if he's putting up a
25 defense, it's still got to be subject to cross examination

1 by the State and his credibility has to be an issue if it's
2 his version of what happened. That's where I have the
3 problem. Not -- he has a right to put up his defense; you
4 have a right to cross examine the State's witnesses, that
5 is, to say the alleged the victim who gives a version of
6 facts; you're allowed to cross examine him with regard to
7 the Defendant's version of the facts and challenge that.
8 You have a right to do that. The question here is self-
9 serving hearsay -- not a hearsay statement -- a self-
10 serving statement by the Defendant without the State
11 putting -- the defense putting up anything to corroborate
12 or to -- not to corroborate but subject to cross
13 examination or putting the credibility in issue based on
14 what he might've said to the police officers. In other
15 words, putting up a defense through the State's witnesses
16 rather than putting up his own defense. That's what it
17 would amount to. And I don't think that's permitted under
18 the Rule.

19 MS. LIPINSKI - That's fine, Your Honor, and we
20 accept -- I -- as I said, it was merely a -- one more case
21 for the record and not to ask you to revisit your opinion.
22 We'll stick with Lovelace saying that he ---

23 THE COURT - I mean without knowing the facts of
24 that case, I don't have much to go on.

1 MS. LIPINSKI - And in Blurton he did testify,
2 Your Honor, so it is a different set of facts. Your Honor,
3 in Blurton the Defendant does testify. What they're saying
4 is he should've been allowed to use those tapes to
5 corroborate his testimony, so it is different in that the
6 Defendant testifies in Blurton, but they did say that the
7 tapes should've come in and so ---

8 THE COURT - Well, I mean did he testify or not
9 testify?

10 MS. DESCH - Yes, sir.

11 MS. LIPINSKI - He did testify, Your Honor.

12 THE COURT - He did testify?

13 MS. LIPINSKI - Yes, Your Honor.

14 THE COURT - Then I mean, obviously, I think they
15 probably should've come in, because that's part of their
16 defense, and if he's available to be cross examined
17 concerning these statements or tapes, I agree; then the
18 question would be relevancy I guess. But I think could be
19 relevant -- a Defendant is entitled -- sometimes the State
20 has a hard time understanding this, but a Defendant has a
21 right to put up his defense, even if it's not a very
22 credible defense, but if that's what the defense believes
23 his case is, he's entitled to put it up, and I will allow a
24 Defendant to put up his case, and so -- and it's not a
25 question of whether our -- the State thinks it's

1 necessarily a very credible one or not. It may be very
2 credible; I don't know; I haven't heard it in this case,
3 but I'm just saying, a Defendant's entitled to put up his
4 case, and if that case said, he testified in it, he's given
5 these -- he had tapes to verify what his belief was or
6 wasn't, his version of the case, that issue -- come in; I
7 don't disagree with that. And if he testifies, that's
8 different. Okay? All right, let's move on. Before we
9 bring the jury in, we'll swear them first thing, and then
10 I'll tell them we're going to begin with opening
11 statements. Please bring the jury in. Think anyone can
12 understand -- I take a lot more time with these things than
13 most Judges would. I want to try to get it right and be
14 fair to both sides.

15 MS. DESCH - Thank you, Your Honor.

16 (WHEREUPON JURY ENTERS THE COURTROOM)

17 THE COURT - Good morning, ladies and gentlemen of
18 the jury panel. I hope you had a pleasant day yesterday,
19 because we were not in Court. I have your -- a note out
20 indicating that you have elected Juror Number 98, Garland
21 Grooms as your foreperson. That's you, sir, front row. If
22 you'll keep that same seat throughout the trial, please.
23 Before we start with the trial, let me apologize for the
24 long delay in keeping you in the jury room this morning. I
25 apologize for that. I try to avoid that. There's some

1 legal issues came up that took some time to go over this
2 morning. We had to complete that before we got started
3 with the trial and I apologize. If I'd known those issues
4 were coming up, we would've got with them before this
5 morning, but as I say, sometimes those things come up and
6 are unavoidable. I'm going to ask the Clerk if she will at
7 this time to please swear the jury panel.

8 (WHEREUPON JURY PANEL IS DULY SWORN BY THE DEPUTY
9 CLERK)

10 DEPUTY CLERK - Let the record show all affirm.

11 THE COURT - Thank you. Please be seated. Now,
12 Mr. Foreman, ladies and gentlemen of the jury panel, we're
13 to that part of the trial where counsel will make their
14 opening statements to you. I ask that you listen
15 attentively now as counsel address you in opening
16 statements. Solicitor?

17 MR. JONES - Thank you, Your Honor. May it please
18 the Court.

19 THE COURT - Yes, sir.

20 MR. JONES - [REDACTED]. [REDACTED]. That's what the
21 victim, Lucas Taylor, told the 911 operator on February
22 10th, 2014. Mr. Taylor had just picked his two kids up from
23 the Episcopal Day School in York. He picks them up around
24 12:00 o'clock, had a five year old and a one year old. And
25 he picked those kids up and he drove back to his house on

1 McFarland Road. And when he pulled up to the driveway, he
2 saw an old rusty blue-ish truck. He had to park behind it.
3 He couldn't -- he couldn't go all the way into the
4 driveway. He stopped, got out of his car, walked up
5 towards his house, kind of a confused look on his face,
6 what's going on, who's at my house. And as he approached
7 his house, he saw the Defendant walking down the back steps
8 of his deck. The Defendant was carrying is t.v. The
9 Defendant had gotten down the stairs, he took a left to go
10 back towards his truck, and right there the two made eye
11 contact just for a second. We all know what fight or
12 flight is. We know the feeling of adrenaline pumping,
13 you're heart's racing, and everybody reacts differently to
14 that. Some people freeze, can't move at all. Some people
15 run and try and hide, and some people become aggressive.
16 Mr. Taylor is a passionate, emotional person. You'll know
17 what I'm talking about when he testifies. In this
18 situation he became aggressive. He ran to the Defendant,
19 confronted him. The Defendant ran to the other side of the
20 house, put the t.v down, started begging him not to call
21 the police. Mr. Taylor said, pick my t.v. up and put it
22 back in the house. And he walked him back in the house and
23 the Defendant put the t.v. back where he found it, back
24 into the room where he found it, and the victim hit the
25 Defendant. And in that confrontation the Defendant managed

1 to escape to get out of the house. The Defendant got back
2 into this truck and tried to leave, but remember when Mr.
3 Taylor drove up the driveway, he was blocking the Defendant
4 in; Defendant had nowhere to go, so the Defendant had to
5 drive all the way around the victim's house, and instead of
6 leaving on the driveway, exited through the woods right
7 towards McFarland Road. And you'll be able to see in the
8 pictures the tire tracks of where the Defendant drove the
9 truck, and you'll be able to clearly see that he drove
10 through the woods to get to the road. The Defendant's
11 charged with burglary second degree. He entered a dwelling
12 without permission with intent to commit a crime inside.
13 And the State's going to prove each one of those elements,
14 the testimony of our victim, the testimony of our officers,
15 the photographs of the scene and the 911 call from the
16 victim. You'll listen to what he says, and listen to how
17 he says it. Luckily in this country the victim doesn't
18 have to search for some sort of vigilante justice; he tells
19 law enforcement; they conduct an investigation; present the
20 case to you and the jury decides. The jury decides what is
21 justice, and in this particular case, justice is a guilty
22 verdict. Thank you.

23 MS. LIPINSKI - May it please the Court, Your
24 Honor.

25 THE COURT - Counsel.

1 MS. LIPINSKI - Good morning, ladies and gentlemen
2 of the jury. My name is Mindy Lipinski, and I work here in
3 York County. I have the pleasure of working for Sixteenth
4 Circuit Defender Harry Dest, and it is my privilege to
5 represent the Defendant, David Dover. My role here is to
6 represent him and to test the evidence, because you have
7 now been selected on a jury in the case of the State versus
8 David Dover. And we all hear about jury service when we're
9 out there, and oh, I don't want to go to jury service, and
10 they don't pay you anything, and I've got better things to
11 do and my job and this and that, but until really you sit
12 in that chair, you really fail to appreciate what it is
13 your role is here, why a right to a jury trial is something
14 that they put in the Constitution, that it's not people
15 deciding what happened but why we bring in 12 people who
16 don't know the victim, who don't know the Defendant and ask
17 them to decide what happened, because it isn't your role to
18 seek justice which the prosecutor just explained. You're
19 not justice seekers. You will be asked at the end of this
20 trial to render a verdict, is the Defendant guilty of these
21 charges, and imbedded in that question is, has the State of
22 South Carolina proved to you his guilt beyond any
23 reasonable doubt that he's guilty of both of these
24 offenses, and that's the question you ask, not do you like
25 the victim more than the Defendant, not who do you rather

1 have over for dinner, not that you're the sword of the
2 victim seeking justice in this particular case. That's not
3 your role. Verdicto is Latin. It means to speak the
4 truth, to try and decide what happened, if you decide what
5 happened. It's somewhat easier -- and you have a very
6 difficult role, because you can get called for duty in an
7 automobile wreck, and then it's a red light case, and in
8 that situation two people go in an intersection and they
9 collide and they both say they had a green light, and they
10 bring in the traffic guy and he talks about the timing of
11 the lights and witnesses and those kind of things, and it's
12 much more cut and dry. Also in a civil case, the evidence
13 is just by a preponderance of the evidence. The only thing
14 that the Plaintiff has to do in a civil case is just
15 slightly tip the scales in their favor. But in criminal
16 cases, wherever you're asking a jury to convict someone of
17 a crime, the evidence has to be much more substantial than
18 that. The Defendant is presumed innocent. As you look at
19 him here today, he is innocent of these crimes. The fact
20 that he has been arrested, that he's been called in here to
21 Court for trial is not evidence of his guilt. The fact
22 that Mr. Jones is able to start this trial with a
23 compelling and emotional story is not evidence, because you
24 see, I was not there; Mr. Jones was not there; Ms. Desch
25 was not there, and we are not witnesses, and what we

1 believe happened matters not. What will ultimately be at
2 issue is what do you believe happened, and has the State
3 met their burden of investigating this case, of doing a
4 thorough investigation, of looking at hard and objective
5 facts, of doing everything they could so that they can then
6 ask you to answer that question in the affirmative that he
7 is guilty, or did law enforcement see this as a run-of-the-
8 mill burglary, they saw what the victim told them what they
9 wanted to see and that was it, and that they maybe didn't
10 do a thorough investigation. And what you often hear in
11 criminal charges is -- in criminal cases is, it's not
12 always as clear cut and obvious as the State makes it seem
13 to be. You have been selected as jurors and you may say,
14 well, what do I know about this, why am I picked, but in
15 essence you're picked because you don't know anything,
16 because you bring fresh eyes to the table, because you are
17 honor-bound to look at this evidence in a critical
18 viewpoint and evaluate that evidence; is it enough; does it
19 leave me firmly convinced; do I hesitate for any reason at
20 the end of this trial; do I have any lingering doubts in my
21 mind about what transpired out there today, because that is
22 your role. And you bring all your life experience in here
23 with you. We don't ask you to check your life at the door.
24 We all make these evaluations on a daily basis. We act as
25 jurors on multiple times a day. Two of our children come

1 up to us and they're, you know, he hit me first; no, he hit
2 me first; well, he stole my doll; well, he did this, and we
3 sit there and we say, well, you know, Timmy's always
4 harassing Susie, so, you know, I tend to believe Susie this
5 time; or we might deal with it at work. We have people who
6 complain that things happened at work and managers mistreat
7 them, and we make those same evaluations about credibility,
8 and we make the same of, maybe I don't know everything;
9 I've got a couple people telling me what happened, but
10 maybe I'm not getting the whole story, so I'm not going to
11 take sides, because I don't know what happened. And that
12 is what you'll do. You'll sit here for the next two days;
13 you'll hear the evidence that the State presents, but
14 during that entire time, you, the jury, will presume that
15 the Defendant is innocent of these charges, because you
16 will hear the evidence as it comes. One witness may
17 convince you of one thing, but a later witness may cause
18 you to challenge those same view points or those same
19 opinions, and that is why his presumption of innocence
20 follows him into the jury deliberation room until you all
21 unanimously, each one of you independently as a group of 12
22 decide if he is guilty of these offenses, and I ask that
23 you do that, that you pay particular attention to the
24 evidence that is presented, that you look at what the
25 victim says, you look at any inconsistencies in what he

1 says and you evaluate it as you would if you found yourself
2 in similar circumstances or similar predicament, and that
3 is your role as a juror, because at the end, because that
4 is the question. It's not that you're out here seeking
5 justice for a victim of a crime. You don't. You don't
6 decide punishment; you don't decide any of those things.
7 The Judge will ask you at the end of this trial to answer
8 simply two questions: Do you find the Defendant guilty or
9 not guilty of burglary and petit larceny, and in order to
10 find him guilty, the proof must be that which leaves you
11 firmly convinced of the Defendant's guilt beyond any
12 reasonable doubt. So I ask that you not jump on the
13 emotional bandwagon the prosecution has just presented to
14 you, but instead you adhere to the oath that you took here
15 at the beginning to follow the law, to listen to the
16 witness, to be an objective, neutral observer and to do
17 that so that you can answer that question at the end of the
18 trial; in accordance with that oath is has the State met
19 their burden, and it's the defenses' position that once you
20 do, you will have those doubts, and as a result you return
21 those same verdicts. I thank you for your time and
22 attention. I do know that we are taking you away from your
23 lives and your jobs and your families, but I think you'll
24 understand now, having been selected on the notorious jury
25 duty that we hear about so commonly, that your role is so

1 important to how this system works, because often times in
2 reality two people have two completely different version of
3 events, and it takes an independent audience to assess what
4 really transpired, so please know that the defense, the
5 State, the Court system as a whole appreciates your
6 service, because without you it would be a quick rush to
7 judgment, and the Constitution guarantees something totally
8 different. Thank you, ladies and gentlemen.

9 THE COURT - The State would call its first
10 witness, please.

11 MR. JONES - The State calls Lucas Taylor.

12 LUCAS TAYLOR, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 DEPUTY CLERK - Thank you. You may have a seat.

15 DIRECT EXAMINATION

16 BY MR. JONES -

17 Q Please state your name, sir.

18 A Lucas Taylor.

19 Q Mr. Taylor, where do you live?

20 A [REDACTED] McFarland Road in York.

21 Q And how long have you lived there?

22 A A little over five years.

23 Q Okay. And who lives there with you?

24 A My wife and my two children.

25 Q How old are your two children?

1 A Actually it's five and three.

2 Q Five and three. Okay. And who's the primary
3 caretaker?

4 A Me.

5 Q You are?

6 A Yes.

7 Q And what does your wife do?

8 A She is a horse veterinarian. She owns her own
9 business.

10 Q On February 10th of 2014, -- take us through that day.
11 What were you doing that particular day?

12 A Well, I had took my kids to school and I came back to
13 the house and ---

14 Q Well, you took them to school. What school did you
15 take them to?

16 A Episcopal Day School in downtown Rock Hill.

17 Q Downtown Rock Hill.

18 A Yes.

19 Q And about how far is that from ---

20 A It's 9.8 miles.

21 Q 9.8 miles from your house.

22 A Yes.

23 Q So you took your kids to school, and did you do
24 anything else of importance before you picked them up?

1 A I mean I went home and I cleaned the house and then I
2 went to pick them up.

3 Q What time did you have to pick them up?

4 A 12:00 o'clock.

5 Q 12:00 o'clock. Is that an every day thing or is it
6 just that Monday?

7 A Yes, every day.

8 THE COURT - Sir, excuse me. I'm going to get you
9 to put your hand down, so we can hear you clearly.

10 MR. TAYLOR - Okay.

11 Q That's all right. So you pick them up at 12:00
12 o'clock and you say that's an every day thing. Right?

13 A Right.

14 Q Okay. So you went to go pick them up at 12:00
15 o'clock, and then did you take them by lunch or anything
16 like that?

17 A No, I take them home and make them a good lunch.

18 Q Okay. So you took them home after -- after school.
19 Right?

20 A Right.

21 Q Tell the jury what you saw immediately when you came
22 back to your house?

23 A I pulled into my driveway, and as soon as I did there
24 was a truck parked to where I couldn't get around it or
25 anything. It was just kind of stopped and I was confused.

1 Q Had you ever seen that truck before?

2 A No.

3 Q Were you expecting anybody at your house?

4 A No.

5 Q So after you saw the truck there, what did you do?

6 A Well, it didn't -- it wasn't but a couple seconds
7 later I saw -- can I -- him coming down my steps with my
8 t.v.

9 Q Okay. Well, hold on a second. Did you see him when
10 you were in your vehicle or had you gotten out of your
11 vehicle?

12 A Well, I had opened the door to see what was going on,
13 and then I saw him coming down the steps.

14 Q Okay. Okay, so you opened your door. What did you do
15 after you saw him?

16 A Uh, -- well, he saw me and took off running the other
17 way, so I cut -- I went through the front yard and cut him
18 off and he ---

19 Q Okay, so let's -- slow down right there. So he was
20 coming down off your back porch. Is that what you said?

21 A Yes.

22 Q As you were getting out of your vehicle.

23 A Right.

24 Q And that's when y'all saw each other?

1 A Right. Well, I saw him before he saw me. He turned
2 and saw me.

3 Q Right. Okay. And then you say the Defendant began to
4 run?

5 A Yes.

6 Q What did he do with the t.v.?

7 A He set it down on the other side of the house near our
8 side door.

9 Q And describe your interaction with him when you
10 confronted him.

11 A He was scared, half crying, begging me not to beat him
12 up or call the cops, and I told him that I was going to do
13 both.

14 Q Okay. And what did -- describe the interaction a
15 little bit more. What did you do?

16 A Well, I kicked off my shoes and he was shaky, and his
17 eyes were big as saucers and I, you know, he was emptying
18 his pockets and that kind of stuff, and when I kicked off
19 my flip-flops, he said please don't and started backing up.

20 Q Okay. And then what did -- what did you tell the
21 Defendant?

22 A That I was going to beat him up and call the cops,
23 both.

24 Q Okay. So what happened after that?

1 A I said I will not -- he started backing up, no,
2 please, no, please, I'll pay you, and I saw my t.v., and I
3 said -- I said, pick my t.v. up and take it back to where
4 you got it, and he picked it up and started walking
5 backwards through my house all shaken, scared.

6 Q Okay. So he picked the t.v. up and started walking
7 backwards to your house. Did he go -- or what door did he
8 go into? Did you have to open the door?

9 A Yes.

10 Q Okay. And did you have to tell him where to put the
11 t.v.?

12 A He knew where to put the t.v. He stole it.

13 Q Okay. So your instructions were just to put the t.v.
14 back where you found it?

15 A Exactly.

16 Q Okay. And then describe the altercation and describe
17 what happened in your home with the Defendant?

18 A When we got back in my bedroom, I told him to put the
19 t.v. on the bed versus the stand and as soon as he put the
20 t.v. on the stand I just -- you know, I tried to -- I --
21 you know, I guess I -- I guess you could say I beat him up,
22 and he screamed and said something about his ear drum and
23 please, please, and then he ran out of my door before I
24 could hit him again ---

25 Q Okay.

1 A --- and I just walked slowly behind him thinking ---

2 Q Now, why were you walking slowly behind him?

3 A Because I had him trapped in, ---

4 Q Okay.

5 A --- because there's woods on both sides.

6 Q Okay. So describe what happened. He ran away and you
7 were walking slowly behind him.

8 A And he's just (indicating) like that, crying and crazy
9 stuff.

10 Q So describe what happened when you went outside.

11 A I just walked slowly back to him, and he jumped in his
12 truck, still shaking, and he looked at me, and I wasn't
13 worried about it and he cranked his truck and he drove
14 around my driveway which ends, but then he came around my
15 front yard where it was soggy from rain and all, and he dug
16 in and kept spinning and spinning and spinning, and then he
17 couldn't get past my car, so he turned and went down
18 through the -- and I was like, all right, well, he's going
19 to hit a tree and then I'm going to drag him out of there,
20 but he sped down through the woods and finally got that old
21 beat-up truck onto the road and took off.

22 Q Okay. And when he made it through the woods and took
23 off, what -- what did you do?

24 A I was calling 911 then. By that -- when I knew I
25 wasn't, you know, ---

1 Q Right.

2 A --- be able to handle it, I called them.

3 Q Where were you when you read his license plate?

4 A Right -- right behind -- down near the end of the
5 driveway watching him try to scoot out of there.

6 Q So did you chase -- chase him down a little ways and
7 go down to the road?

8 MS. LIPINSKI - Objection as to the leading, Your
9 Honor.

10 A No, I did not -- not -- my vehicle.

11 THE COURT - Hold it; hold it; hold it.

12 A Not in my vehicle ---

13 THE COURT - Hold it. When there's an objection
14 made, let the Court rule before you say anything.

15 MR. TAYLOR - Okay, I didn't know. I'm sorry.

16 THE COURT - I sustain the objection.

17 MR. JONES - Yes, Your Honor.

18 Q When the Defendant -- when the Defendant drove through
19 the woods and made it to McFarland Road, tell the jury what
20 you did. What actions did you take?

21 A I was on the phone with 911.

22 Q Okay.

23 (WHEREUPON COUNSEL PREPARING TO SHOW VIDEO)

24 MS. LIPINSKI - Your Honor, this is mostly
25 material showing e-mails and other kind of things that were

1 shown before this. They had their Outlook up; that had
2 their questions about the Defendant and all kind of things
3 were put before the jury.

4 THE COURT - Counsel approach just a minute.

5 (WHEREUPON BENCH CONFERENCE WAS HELD IN THE
6 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
7 WHICH WAS NOT REPORTED.)

8 MR. JONES - Beg the Court's indulgence.

9 THE COURT - Yes, sir.

10 MS. LIPINSKI - Objection, (sic) Your Honor, as to
11 those photographs.

12 MR. JONES - Your Honor, may I approach the
13 witness.

14 THE COURT - You May.

15 Q Mr. Lucas, I'm handing you State's Exhibits 4 through
16 9 and State's Exhibit 18. Would you take a look at those
17 for me, please, sir?

18 A (WITNESS COMPLIES)

19 Q Can you go through and read each particular number and
20 tell the Court what -- what that picture depicts?

21 A This one is number 18 and it is my bedroom after the
22 t.v. was taken; the cords and the Blue Ray disc player is
23 strewn on the floor as well as the all the other
24 connections, and I don't know how he got like my band-aids

25 ---

1 MS. LIPINSKI - I'm going to object as to
2 speculation.

3 THE COURT - Let's just --

4 Q Let's just ---

5 THE COURT - Let's do this the right way.

6 A So that's what that one is.

7 Q Let's move along and describe each particular picture,
8 please, sir.

9 A Number 9 is where my t.v. was setting before he stole
10 it. Number 8 is after he laid the t.v. on the bed. And
11 Number 7, these show where he went through my front yard
12 and veered left into the woods down behind the gate and
13 everything and sped off. Number 6, that's just showing the
14 -- my driveway looking down the road and right past this
15 post I have here was where his truck was parked, so
16 obviously there's woods on both sides. And Number 5 is
17 just a picture of my monkey grass, which you can still see
18 the divots in the mud where he slid all around and went
19 left into the woods in this picture also. And Number 4 is
20 where he spun off about -- in my front yard trying to get
21 away.

22 Q And are all those true and accurate depictions of the
23 scene that particular day?

24 A Yes.

1 MR. JONES - Your Honor, at this point I'd like to
2 move State's Exhibits 4 through 9 and 18 into evidence.

3 THE COURT - Admitted without objection.

4 MS. LIPINSKI - Without objection.

5 (DOCUMENTS MARKED INTO EVIDENCE AS STATE'S
6 EXHIBITS NUMBER 4 THROUGH 9 AND 18.)

7 Q Mr. Lucas (sic), could you please take State's Exhibit
8 4 and tell the jury again what that is.

9 A That's his -- the truck -- the tracks of his truck as
10 it came around the front of my house, and they're kind of
11 swervy.

12 Q And can you just briefly show that to the jury and
13 point to the tracks?

14 A This is the tracks right here. He came around the
15 front of the house ---

16 MS. LIPINSKI - Your Honor, could I move? I
17 apologize.

18 THE COURT - Yes, sure.

19 A --- and then went through the woods right there.

20 THE COURT - You might want to do that down in
21 front of the jury. I don't think they can see them from
22 there.

23 MR. JONES - Yes, Your Honor.

24 Q Can you show us 4, please, sir?

25 A (WITNESS COMPLIES)

1 MS. DESCH - Your Honor, may we publish to the
2 jury?

3 THE COURT - Yes.

4 Q Okay, please describe to the jury what you see here.

5 A The upper left-hand side is -- past that is where the
6 cars park -- my cars -- you know, we drive around to there.
7 Well, he kept going around my front yard, which is right
8 there, and, you know, it had been raining for a couple of
9 days, so I thought he was going to get stuck. He was
10 swerving, swerving, swerving, swerving, and then he veered
11 into the woods and got away, but that's where he came
12 through the front yard and about got stuck.

13 Q So is that -- that -- you say that's in the front
14 yard. Right?

15 A Yes. I mean we don't even use the front door. We use
16 our deck as our door, so -- but that is the front yard,
17 yes.

18 Q And is where the Defendant exited your house on this
19 particular picture?

20 A No. He came out of my bedroom door.

21 Q I'm sorry. I'm sorry, where he exited towards the
22 road. Can you see that in this picture or not?

23 A No, they're not turning left right now.

24 Q Okay. Please hold up State's Exhibit 5.

25 A (WITNESS COMPLIES)

1 Q And tell the jury what this picture shows.

2 A Basically the same thing, a different angle. It shows
3 -- well, at the end there it shows where he's turn -- his
4 truck turns left into the woods, but you can still his
5 tracks all through my front yard, then right before he got
6 to my vehicle, he turned hard into the woods.

7 Q You said he turned hard. Which direction did he turn?

8 A He turned -- he either turned left or his truck
9 swerved in the left. Either way he drove down through the
10 woods.

11 Q And although it's not on this picture, but can you
12 describe to the jury where the truck started out, where the
13 Defendant's truck started out?

14 A I'd say about five feet behind the monkey grass
15 walkway right there.

16 Q To the right or to the left?

17 A Like backed up. Backed up from the monkey grass
18 toward the road.

19 Q Okay. So that's where his car started out.

20 A Right. He was parked toward the road where, I guess,
21 where he could get away.

22 Q And then you described it before, but maybe in this
23 picture it'd be a little -- little more clear. What route
24 did the Defendant take to leave to go toward the road from
25 where you say he was parked?

1 A He went around my regular driveway and just kept
2 going.

3 Q So he came around and then came around the other side
4 of the house is what you're saying.

5 A Right, yes.

6 Q And then took a hard left toward the big part of the
7 road.

8 A Right.

9 Q And hold up State's Exhibit 6, please, sir.

10 A (WITNESS COMPLIES)

11 Q And tell the jury what State's Exhibit 6 shows?

12 A That's my driveway going down to the McFarland Road,
13 the main road, and he was parked about -- I don't know --
14 four or five feet past that post there.

15 Q Past toward McFarland Road or past ---

16 A No, he was pointed up toward the house, yes.

17 Q Okay. And when was this picture taken?

18 A I guess the detective took it or somebody -- I don't
19 know. I didn't take it.

20 Q Was it taken ---

21 A It was taken that day.

22 Q Okay. What I'm getting at, was it taken at the time
23 of this event or was it taken closer to today?

24 A Well, ---

1 MS. LIPINSKI - Your Honor, he just stated he
2 doesn't know who took the picture, doesn't ---

3 A Yes, I mean ---

4 MS. LIPINSKI --- know when it was taken.

5 A I don't know who took that picture. They -- I think
6 the investigator ---

7 Q Not who took it, but when it was taken.

8 A I guess February; I don't know.

9 Q Okay, but is this what the fence looked like the day
10 of the incident?

11 A Yes, just like that.

12 Q Okay. And just tell the jury about that fence. When
13 was it installed; how did you use it.

14 A Well, the guy that put it in, he only brought the post
15 and the gate, and as you can see the gate ties, so the wind
16 wouldn't blow it, you know, across and hit anything, and it
17 just stayed like that until we had an electric pump opener,
18 you know, open and close the gate so we wouldn't have to
19 get out of the car.

20 Q So at this particular time, did you close it on a
21 regular basis when you left?

22 A We didn't close it ---

23 Q So ---

24 A -- at all.

25 Q Okay. So you didn't close it.

- 1 A No.
- 2 Q And hold up State's Exhibit 7, please.
- 3 A (WITNESS COMPLIES)
- 4 Q State's Exhibit 7. Tell the jury what you see here.
- 5 A That is an actual picture, you know, from I guess
- 6 looking -- I was behind his tracks looking and you can see
- 7 where he dives into the woods there. And it's just --
- 8 those are still the tracks through my front yard.
- 9 Q Did the Defendant continue through the woods or did he
- 10 ever make it to your driveway?
- 11 A It seemed -- well, by that time I had the phone, but I
- 12 know his truck was bouncing real, you know, not good for
- 13 your vehicle kind of bouncing. It was like, bam, bam, bam
- 14 and then got on the road and left, so I don't know if he
- 15 touched my driveway with one wheel or not. I wasn't paying
- 16 attention to that so.
- 17 Q Okay. And please hold up State's Exhibit 8.
- 18 A (WITNESS COMPLIES)
- 19 Q And what is this, Mr. Taylor?
- 20 A That's my bedroom with my television on it.
- 21 Q And how did the television get to be on your bed?
- 22 A I -- that's where I told him to put it.
- 23 Q Okay. So that's where the Defendant laid the
- 24 television. Is that what you're saying?
- 25 A Yes.

1 Q Can you describe in your room where the -- I know it
2 was several months ago and it was a lot to remember, but
3 can you describe where in your bedroom the altercation took
4 place?

5 A Yes. I mean he walked backwards from me, I guess
6 thinking I was going to attack him, and then he went to the
7 -- to the door and he had the t.v. and I said lay the bed
8 (sic) -- on the t.v. (sic), and he laid it down, and then
9 right then is when I hit him, is when he (sic) stood back
10 up, and then he -- he backed up against that lamp on the
11 right side and I -- you know, I just got in his face to
12 scream to get away from my wife's side of the bed; he was
13 scummy and all that kind of stuff, so ---

14 MS. LIPINSKI - Your Honor, I object as to the ---

15 A -- and so I ---

16 THE COURT - Hold it. I sustain the objection.

17 Q And so the altercation occurred on the right side of
18 the bed. Tell the jury where the -- where's the door to
19 enter and exit the bedroom on this picture? Is it to the
20 left ---

21 A It is to the right of that table right there at the
22 end of my bed.

23 Q So the door to enter and exit is basically below the
24 picture?

25 A Yes.

- 1 Q Okay. Below and to the right?
- 2 A (Indicating yes)
- 3 Q And hold up State's Exhibit 9, please.
- 4 A (WITNESS COMPLIES)
- 5 Q And tell the jury what State's Exhibit 9 shows.
- 6 A It shows my DVR without my television on it.
- 7 Q So what used to be in this picture?
- 8 A My Blue Ray player and my television.
- 9 Q So this is where the television normally sits?
- 10 A Yes.
- 11 Q And how was the television -- was it mounted or was
- 12 just sitting on the ---
- 13 A It was sitting on top of the box, yes.
- 14 Q So was -- describe how it was connected to anything,
- 15 if anything at all.
- 16 A Well, that's the DVR player and it's connected to that
- 17 and then you just connect the t.v. to the DVR player, and -
- 18 - but that's gone at the moment. That's the ---
- 19 Q And State's Exhibit 18.
- 20 A (WITNESS COMPLIES)
- 21 Q And tell the jury what State's Exhibit 18 shows.
- 22 A That is my Blue Ray player he slung off the -- my
- 23 dresser, and then like I said, the band-aids and the shirt
- 24 wasn't even there when I left, but I don't know what --
- 25 what happened or where that -- what he did, so ---

1 Q Okay.

2 A --- my t.v. used to be -- that was up there with the
3 television.

4 Q Okay, so that was in the -- that used to be where the
5 television and the ---

6 A Yes.

7 Q Okay.

8 MS. LIPINSKI - Without objection, Your Honor.

9 MR. JONES - Can I approach the witness, Your
10 Honor.

11 THE COURT - Yes, sir.

12 Q Mr. Lucas, I'm handing you State's Exhibits 1, 2 and
13 3. Will you take a look at those for me?

14 A (WITNESS COMPLIES)

15 Q Can you tell the jury what you see in State's Exhibits
16 1, 2 and 3?

17 A In the first one I see it's also looking down my
18 driveway toward the road; this looks like a fairly new
19 picture. Yes, because I have my pump on my gate, so this
20 is my house now, my driveway now.

21 Q And let's -- let's say the number and then say what
22 you see.

23 A Number 1.

24 Q Okay. And State's Exhibit 2.

1 A Number 2 is the -- the -- it just shows my deck which
2 he was coming down, as well as the door that everything
3 took place, yes, sir.

4 Q Okay. State's Exhibit 3.

5 A Number 3 is just the other side of my house where he
6 laid the t.v. down.

7 Q And are those true and accurate depictions of the
8 scenes they depict?

9 A Yes.

10 MS. LIPINSKI - Your Honor, at this time -- and I
11 know I initially said objection, but he stated that these
12 were taken fairly new. I don't know if there's anything
13 different in those pictures that wasn't the case at the
14 time the crime occurred. I was under the impressions all
15 the pictures I was presented were taken fairly
16 contemporaneously with the crime.

17 THE COURT - All right, lay your proper foundation
18 of when the pictures were taken, sir, if this witness can
19 establish that.

20 Q Mr. Lucas (sic), can you tell the jury, please, or
21 tell the Court when -- when you think these pictures were
22 taken?

23 A These pictures were taken last week sometime by you
24 guys, because I noticed the driveway's covered with leaves.
25 I see my little girl right there in -- that I remember a

1 couple days ago watching y'all, and I remember -- I got --
2 the pool's still there and my children's stuff. We didn't
3 even have that stuff at the time.

4 Q And are those -- are those pictures true and accurate
5 depictions ---

6 A Yes.

7 Q --- of those scenes?

8 A Yes.

9 MS. LIPINSKI - And, Your Honor, that doesn't
10 depict how those things were that day. Obviously, he's
11 identified there are several things that have changed.
12 Just don't understand they're relevant. I mean they're
13 asserting a child into the picture for no reason. I ---

14 MS. DESCH - Approach, Your Honor. May we
15 approach?

16 (WHEREUPON, BENCH CONFERENCE IS HELD IN THE
17 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
18 WHICH WAS NOT REPORTED.)

19 Q Mr. Taylor, speaking about State's Exhibits 2 and 3, -
20 --

21 A Yes.

22 Q --- tell the jury, again, what those pictures show.

23 A This just shows the side of the house where he was
24 leaving with my television and also the driveway; he drives
25 around the front of the house.

1 Q Okay. And what's the other one show?

2 A The other one shows the other side of my house after
3 you pass.

4 Q And has your house changed at all from the date of the
5 incident to when these pictures were taken?

6 A No.

7 MR. JONES - Your Honor, at this time I'd like to
8 move State's Exhibits 2 and 3 into evidence for
9 demonstrative purchases.

10 MS. LIPINSKI - But they're moving into evidence;
11 I believe they're beyond demonstrative purposes. So are
12 they evidence or ---

13 MR. JONES - We'd move them into evidence, Your
14 Honor.

15 MS. LIPINSKI - And if I could just -- if he could
16 ask him -- he stated their house hasn't changed -- is there
17 anything in the pictures that is different than the day in
18 question, because I think that just in all candor needs to
19 be pointed out to the jury, not the things that have been,
20 but if there are things that have or weren't that way.

21 THE COURT - Okay, counsel. We're going to be
22 here all week with the trial. All right. Lay your proper
23 foundation about that.

1 Q Is there anything in either of those two pictures that
2 wasn't at the -- wasn't at your house the day this
3 occurred?

4 A Nope, it's all the same.

5 THE COURT - Does that satisfy you, counsel?

6 MS. LIPINSKI - Thank you, Your Honor.

7 THE COURT - Admitted without objection.

8 MR. JONES - Thank you, Your Honor.

9 (WHEREUPON, DOCUMENTED MARKED INTO EVIDENCE AS
10 STATE'S EXHIBITS NUMBERS 2 AND 3.)

11 Q And, please, take a look at State's Exhibit 2.

12 MR. JONES - Your Honor, at this time I'd like to
13 publish these two to the jury.

14 THE COURT - Yes, sir.

15 Q And can you show us State's Exhibit 2, please.

16 A Yes. (WITNESS COMPLIES)

17 Q And tell the jury what this is.

18 A That's the -- where -- the back deck where he was
19 coming off of with my television on the right, and the door
20 on the right is my bedroom.

21 Q So where was the Defendant when you saw him, when you
22 pulled up?

23 A He was coming down those steps right there. Well, you
24 know, not facing me. Just I saw him back when you turn
25 like that.

1 Q And which way did he turn when you say you made eye
2 contact with him?

3 A He went that way then.

4 Q No, no. Which way did he initially turn ---

5 A He turned this way to go to his truck; when he saw me,
6 he turned this way and ran around the other side of the
7 house.

8 Q And on this particular picture, tell the jury which
9 way was he going. Does that make sense?

10 A Well, if you coming down my steps, he went to the
11 left.

12 Q Right.

13 A Saw me, then he went to the right.

14 Q And just -- just to be clear, there's a picture of a
15 girl ---

16 A Yes, that was -- yes, she totally just is nosey. It's
17 -- there's no -- you're not trying to show I got a little
18 girl. It's cool.

19 Q So she wasn't there inside the house ---

20 A No.

21 Q --- the day this happened.

22 A No.

23 Q Okay. And please show us State's Exhibit 3.

24 A (WITNESS COMPLIES)

1 Q And tell the jury what is shown in this picture,
2 Exhibit 3.

3 A That is the side of the deck; it's my chihuahua, and
4 then right in front of the -- right I'd say past the steps
5 a little bit is where my t.v. was sat down.

6 Q So the t.v. was set down near the steps.

7 A Yes, a little bit past the steps, yes.

8 Q Okay. And can you -- where did the altercation, the
9 confrontation, ---

10 A He ran -- he thought he could around he front yard
11 right there, but I had already cut him off, you know; we
12 met right there.

13 Q So can you describe in relation to this photograph
14 where you and the Defendant were?

15 A No. I mean on the other side of the house in the
16 front yard.

17 Q Okay, so you're on the front, front side?

18 A Yes, he ran around there and saw me and stopped in his
19 tracks, and that was when we had the confrontation.

20 MR. JONES - Can we have the lights back on,
21 please.

22 Q Mr. Lucas (sic), when you first pulled up -- well, why
23 didn't you call 911 immediately?

24 A Because I wanted to get -- I wanted to take care of it
25 first.

1 Q Because you wanted to take care of it.

2 A Yes.

3 Q How would you describe yourself on that particular
4 moment, that particular time when you saw the Defendant
5 coming out of your house?

6 A I mean blind rage.

7 Q Can you -- can you move your hand and say that again?

8 A I was in a blind rage. I just wanted to attack.

9 Q And did you call 911 eventually?

10 A Yes.

11 MR. JONES - Your Honor, may I approach the
12 witness?

13 THE COURT - Yes, sir.

14 Q I'm handing you State's Exhibit 10. Would you take a
15 look at that for me, please, sir.

16 A (Indicating yes)

17 Q Can you tell the jury what is State's Exhibit 10?

18 A It's initialed disc. That was the 911 call I made.

19 Q So what's on that particular disc?

20 A The 911 call.

21 Q And how do you know it's the 911 call?

22 A Because I heard it, and I initialed it.

23 Q Okay. And is it a true and accurate depiction of the
24 conversation?

25 A Yes.

1 MR. JONES - Okay. Your Honor, at this time I'd
2 like to move State's Exhibit 10 into evidence.

3 MS. LIPINKSI - Your Honor, at this time the
4 defense would object. He's testified as to anything that's
5 the substance of that tape. I'm not sure it's relevant at
6 this point beyond to trying to really bolster the testimony
7 of their own witness. He's here to testify as to what he
8 told them. I'm not sure of the relevance of the tape
9 beyond that.

10 THE COURT - Is that your only objection?

11 MS. LIPINSKI - It is my only objection.

12 THE COURT - Admitted over objection.

13 (ITEM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 10.)

15 MR. JONES - Your Honor, at this time I'd like to
16 play this for the jury.

17 THE COURT - You may.

18 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY.)

19 Q Mr. Lucas, why were you repeating the tag number over
20 and over again?

21 A So they would get it.

22 Q Well, why didn't you just tell the operator the
23 Defendant's name?

24 A I have never seen him nor that truck in my life.

1 MR. JONES - Beg the Court's indulgence, Your
2 Honor.

3 THE COURT - Yes, sir.

4 MR. JONES - May I approach the witness, Your
5 Honor?

6 THE COURT - Yes, sir.

7 Q I'm handing you State's Exhibit 13. Take a look at
8 that for me.

9 A (WITNESS COMPLIES)

10 Q Do you recognize that?

11 A Yes.

12 Q And what does it depict?

13 A The Defendant's rotten truck.

14 Q And is that the truck that you saw in your driveway?

15 A Yes.

16 Q Is that a true and accurate depiction of the truck?

17 A Yes.

18 MR. JONES - Your Honor, at this time I move
19 State's Exhibit 13 into evidence.

20 MS. LIPINSKI - Without objection.

21 THE COURT - Admitted without objection.

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 STATE'S EXHIBIT NUMBER 13.)

24 MR. JONES - Beg the Court's indulgence, Your
25 Honor.

1 THE COURT - Yes, sir.

2 Q Mr. Lucas, did you give the Defendant permission to
3 come into house?

4 A Absolutely not.

5 Q Did you give the Defendant permission to take your
6 television?

7 A No.

8 Q Did you know the Defendant before this incident?

9 A No. I sure didn't. No. Sorry, sir.

10 Q And do you recognize -- do you see the person who was
11 coming out of your house with your television in the
12 courtroom here today?

13 A Yes.

14 Q Can you point him out for us?

15 A He's right there.

16 MR. JONES - Let the record reflect he pointed to
17 the Defendant.

18 Q And did all this occur in York County?

19 A Yes.

20 Q And just briefly, can you tell the jury about how much
21 your t.v. cost?

22 A My t.v. cost five hundred and eighteen dollars, and it
23 says three hundred and twenty for some reason on the
24 documents or something, but yes.

25 Q But between three twenty and five hundred?

1 A No, it was five hundred and eighteen.

2 Q Five hundred eighteen?

3 A Yes.

4 Q Okay.

5 MR. JONES - Thank you, Your Honor, no further
6 questions.

7 CROSS EXAMINATION

8 BY MS. LIPINSKI -

9 MS. LIPINSKI - May I approach the witness, Your
10 Honor?

11 THE COURT - Yes, ma'am.

12 MS. LIPINSKI - Thank you, Your Honor.

13 Q If I could just ask you to look at State's Exhibit
14 Number 2 and 3 and you stated that these are more recent
15 pictures. Correct?

16 A Yes.

17 Q And you think that the prosecution or somebody on
18 their behalf came out and ---

19 A No, they did.

20 Q They did themselves ---

21 A Yes.

22 Q --- and took them in the previous week.

23 A (Indicating yes)

24 Q All right, so these are not photographs taken by law
25 enforcement on that particular day?

1 A Not that day, no.

2 Q All right. And you said that the leaves might be
3 different or might be a few things around the deck or a
4 pool thing that wasn't there ---

5 A (Indicating yes)

6 Q --- but the house for the most part is the same.

7 A Yes.

8 Q All right. And you stated that in State's Exhibit
9 Number 2, there's a glass sliding door here at the rear of
10 the residence. Correct?

11 A (Indicating yes)

12 Q And then there's another window here ---

13 A Yes, the bathroom, yes, ma'am.

14 Q That's the bathroom? And then there's a door here.
15 Correct?

16 A (Indicating yes)

17 Q All right. And the steps that you say that you saw
18 him coming off of were these back ones that -- that are
19 really in front of the glass sliding door. Is that true?

20 A Right.

21 Q All right. Because you were doing left and right.
22 Sometimes I get confused with that, so I just wanted to
23 make sure.

24 A No, I mean he turned right and ran.

1 Q As he came down the steps. Right, but he -- the steps
2 in front of the glass sliding door, ---

3 A Yes, those steps, ---

4 Q --- that's what I'm talking about.

5 A --- yes.

6 Q Right. Because you have another picture, State's
7 Exhibit Number 3, also has some steps ---

8 A (Indicating yes)

9 Q --- around the other side of the house.

10 COURT REPORTER - He needs to answer. ---

11 A Right.

12 COURT REPORTER - --- verbally.

13 MS. LIPINSKI - All right.

14 Q And we're not talking about State's Exhibit 3. When
15 you saw him, you say State's Exhibit Number 2.

16 A Right.

17 Q All right.

18 A Yes.

19 Q Near the glass sliding door. This is kind of like a
20 more typical house door kind of thing.

21 A Right.

22 Q All right. And State's Exhibit Number 13, they ask
23 you about the Defendant's truck. Correct?

24 A (Indicating yes)

25 COURT REPORTER - He needs to answer verbally.

1 THE COURT - Well, let me -- sir, please answer
2 yes or no, instead of uh hum, because it's hard to record
3 that.

4 A Yes.

5 Q And you stated that you came to your house, and the
6 Defendant's truck had pulled up in your driveway. Correct?

7 A Yes.

8 Q And so you pulled in behind it. Right?

9 A Yes, I couldn't get around it. Yes.

10 Q Right, but you're in line like two cars going down a -
11 --

12 A Yes.

13 Q --- road. Correct?

14 A Right.

15 Q And that at some point he got into his truck, pulled
16 around the back of your house and then came across the
17 front of your yard and then onto the road. Correct?

18 A No. Then into the woods, then onto the road.

19 Q All right, but as you see the truck, either from the
20 front or the back of the house, you're going to see him
21 driving around the back of the house. Right?

22 A Yes, he sped off around the driveway, yes.

23 Q Right. And so as he goes around the back, at that
24 point you would've been looking at the driver or passenger
25 side of his truck.

1 A I had walked up to his window as he was shivering and
2 begging me, and he cranked his truck and took off around
3 that circle, came through my front yard, went off through
4 the woods.

5 Q Okay. So -- and I may have missed that before,
6 because I kind of took it that he ran out of the house
7 before you -- and you slowly walked behind him; ---

8 A Right.

9 Q --- he got in the truck and sped off before you could
10 stop him, but you're saying you actually made it out of the
11 house and up to the driver's side of his car, ---

12 A Yes.

13 Q --- and that's when he sped off.

14 A Right.

15 Q Okay. All right. Now, they just played the 911 tape
16 for you, and I know some of it isn't necessarily clear, but
17 you stated that you reviewed it prior to your testimony
18 here today?

19 A (Indicating yes)

20 Q And do you remember telling the 911 operator that you
21 described him as 5 foot 10 or so?

22 A Something like that, yes.

23 Q All right. And that you described him as having short
24 brown hair.

25 A Yes.

1 Q All right. And also made the statement that you
2 knocked his teeth out.

3 A No.

4 Q You didn't make the statement to the 911 operator that
5 you knocked his teeth out?

6 A No. We just heard it. I told the -- I don't know her
7 title -- the detective, I told her that that was my
8 intention to knock his teeth out, but he turned like a
9 little girl, and I hit in the ear.

10 Q All right. We'll get to the statement you gave
11 Detective Lovelace, but you don't recall making that same
12 statement to the 911 operator.

13 A No.

14 Q And at the end of the tape you were asking the 911
15 operator to give you his name and address ---

16 A Yes.

17 Q --- because you state you didn't know it.

18 A Right.

19 Q But you have no friends in common?

20 A I don't have friends period. We're all married with
21 children. They all live about 80 miles away, so I don't
22 have any friends here.

23 Q You have no friends in York County whatsoever.

24 A No, I hang out with my nephew; he's back there.

25 That's it.

1 Q All right. And so you two don't know a girl by the
2 name of Jennifer together.

3 A Well, I was told Angela by him, but no, I don't know a
4 Jennifer either.

5 Q All right. And he would have no reason to know
6 whether or not you two have tattoos done by the same guy.

7 A My tattooist wouldn't know a guy like that.

8 Q And you stated that you knocked his teeth out. It's
9 true that you do have some experience I think in MMA
10 fighting or cage fighting that type of thing?

11 A Yes. (Indicating yes)

12 Q All right. And is that something you told him that
13 day?

14 A No.

15 Q All right, so you have no reason to know why he would
16 know a detail like that?

17 A No. I don't know why -- but -- I mean the fact that I
18 kicked off my shoes and was going to beat his ass, that's
19 it.

20 Q All right, so you think that would've been an
21 indication that ---

22 A Right.

23 Q All right. And you did give a statement to Detective
24 Lovelace I believe? I don't know if you remember her name.
25 Do you remember giving a written statement ---

1 A Yes, -- I ---

2 Q --- to a detective?

3 A Yes.

4 Q All right. And do you remember -- your statement is
5 that you saw him from within the vehicle. Right?

6 A Saw him what?

7 Q When you see him you're still in your car. Correct?
8 Is that your testimony?

9 A Well, I have -- I had opened the door and started to
10 step out to see what was going on and that's when I saw
11 him, yes.

12 Q So you stated that you didn't see him until you got
13 out of your car now?

14 A Nope, I said I opened the door to see what was going
15 on, and by the time I opened my door, I saw him coming off
16 my steps, so I got out fast.

17 Q And -- show you State's Exhibit Number 5 again. All
18 right?

19 A (Indicating yes) (Indicating yes)

20 Q This is -- because again, this is mainly the monkey
21 grass that leads up to the front of your house? Correct?

22 A This -- I got out of my car; I walked down this path,
23 and he ran around and we met right here.

24 Q I understand that, but back up and listen to my
25 question. All right?

1 A Yes, that's monkey grass.

2 Q This is kind of a path that leads up to the front
3 door, and I think you said you never really use that.

4 Right?

5 A Right.

6 Q All right. And this is the -- the monkey grass shows
7 the front of the house. Right?

8 A Yes.

9 Q All right. And you stated that the road -- right --
10 Would be back this way about five yards or some -- or you
11 were parked about five yards past this path?

12 A No.

13 Q Okay.

14 A He was -- the front of his truck was about five yards
15 behind that.

16 Q Okay. And let me just be clear, because you're saying
17 behind. Right?

18 A Right.

19 Q This is a photograph. So between the monkey grass and
20 the road is what you mean by behind, or between the monkey
21 grass and the back of your house, because that's where I'm
22 getting lost.

23 A No, you -- let's say my driveway's 30 feet; he pulled
24 up into my driveway about 12 feet and stopped where the
25 concrete ended and the gravel began -- go all around -- he

1 stopped at the very -- I bet he didn't go 25 feet up my
2 driveway before he stopped and snuck up on the house.

3 Q All right. And you weren't there when he entered the
4 house. Correct?

5 A No.

6 Q So you don't know that he snuck up on ---

7 A Yes. Oh, yes, I know he did, because I mean you'd
8 have to snick to get in somebody house or look and see if
9 somebody's there. Either way it was sneaky.

10 Q But you weren't there.

11 A Well, I got -- I busted him, so yes, I was there.

12 Q Right. But when he entered the house, you were not
13 there. You stated as you pull up into the driveway, he is
14 walking down the back steps.

15 A Correct.

16 Q Okay. So when -- you did not see him enter the house
17 initially.

18 A No.

19 Q All right. And you stated -- and they showed you
20 multiple pictures, but in State's Exhibit Number 5 you
21 can't see the driveway. That's fair to say. Right?

22 A Right.

23 Q Because it's mainly a picture of the front yard.

24 A (Indicating yes)

1 Q But you say wherever the monkey grass hits the
2 driveway, he is between that and the road. Correct?

3 A The front of his truck is about five feet back from
4 that side of the monkey grass.

5 Q Right. And so back here in State's Exhibit Number 6 -
6 --

7 A (Indicating yes)

8 Q --- that shows the actual where the driveway meets
9 McFarland.

10 A Right.

11 Q Right. And there's some concrete out there. Right?

12 A Yes. It ends about right there where the white is.

13 Q All right. So between the monkey grass and where this
14 concrete is is where you say the Defendant's truck was
15 initially.

16 A Yes, he was so far backed up I couldn't get around
17 either side of it.

18 Q And you stated that you then meet him at the front of
19 the house. Right?

20 A (Indicating yes)

21 Q You two get into it.

22 A No.

23 Q Well, you exchange words.

24 A Well, yes, begging I guess is ---

1 Q And then it's after that you direct him to go back
2 around to where the t.v. is on the other side of the house
3 and carry it back inside.

4 A Well, I kicked off my flip-flops and went after him,
5 and he backed up and I saw my t.v. and I demanded that he
6 pick up my t.v. and take it in the house.

7 Q And you stated that at that time your t.v. is on the
8 far side of the house. Right?

9 A No, it was right around the corner from where he had
10 just ran. He set it by those steps, the small set of steps
11 you pointed in that picture.

12 Q All right, but not the driveway side of the house.
13 Right?

14 A Right.

15 Q Not the back of the house where the deck is, the glass
16 sliding door deck, that ---

17 A Right, the ---

18 Q --- but on this side of the house ---

19 A Yes. (Indicating yes)

20 Q --- farthest away from the driveway, that's where you
21 say your t.v. was setting.

22 A No, that's where my t.v. was setting, yes.

23 Q And then at that point you directed him to pick it up
24 and carry it back inside the house.

25 A Correct, yes.

1 Q Okay. And you go back inside the house and you go all
2 the way back, not just inside the house but back to your
3 back bedroom.

4 A Yes.

5 Q All right. And show you State's Exhibit 8 Number, you
6 stated that's a representation of your bedroom that day.

7 A Yes.

8 Q Right? And you stated that you directed him to leave
9 the t.v. on the bed?

10 A (Indicating yes)

11 Q And that you two got -- and you said he actually got
12 backed up against this lamp?

13 A Well, he was screaming and crying and backed up
14 against the lamp.

15 Q Right. Between the bed and the wall and the lamp.

16 A Right. And he backed all the way up against the wall.

17 Q And that he then somehow managed to escape, get
18 outside, and then you followed him back through the house.
19 You stated that you were walking slowly?

20 A Didn't follow him through the house. Went out the
21 door he stole my t.v. from and slowly walked after him
22 because I knew he couldn't get away and ---

23 Q Right. But you also knew that -- you stated that your
24 kids were out there in the car?

1 A They were in the car, yes. They didn't -- you know,
2 they were crying; they saw -- they saw this ---

3 Q Okay. And you stated that you were able to walk
4 slowly because you didn't believe he could get out of the
5 driveway.

6 A Right.

7 Q But he could've gotten out into the woods.

8 A Well, gosh, I don't know. I didn't know you could ---

9 Q You have woods around your house. Correct?

10 A Yes. Right.

11 Q He could've gotten through those woods. Correct?

12 A He did. I don't know how, but yes, he did.

13 Q On foot. He could've exited your house and fled into
14 the woods. Correct?

15 A Absolutely, yes.

16 Q He could've got in your car with your kids.

17 A No.

18 Q He was able to get into his truck, but he couldn't
19 have gotten into your truck.

20 A I mean he wouldn't have been that stupid, so, no, I
21 don't think so.

22 Q I didn't ask you if he would've been that stupid. I
23 asked you whether or not ---

24 A No, he would not; I had the key, and I locked the
25 door.

1 Q Oh, okay. You locked the doors.

2 A Right.

3 Q All right. And you then stated that as he drove off,
4 you called 911. Correct?

5 A Yes.

6 Q And when you initially called 911, you're repeating
7 the tag over and over again. Correct?

8 A Right.

9 Q But the 911 operator asked you, this just happened.
10 Right? Like five minutes ago, and then you replied, well,
11 10 to 15 minutes ago. Correct?

12 A That was when I first arrived, yes.

13 Q And Mr. Jones asked you, that's when you called 911
14 and you made the statement then, eventually.

15 A I -- that's a lie. I didn't say eventually nothing.
16 I said the second he was driving through my woods I knew I
17 wouldn't be able to get my hands on him, I called 911 to
18 make sure they got his tag number. Because I don't know
19 him, never seen him before or anybody he would hang out
20 with so.

21 Q Because you have no friends at all in York County.

22 A Correct. And my friends are clean, but I don't have
23 any here.

24 Q Your friends are clean, but you don't have any here.

25 A Yes.

1 Q All right. So you didn't meet with the Defendant
2 earlier in the day a few yards up this driveway, up the
3 road?

4 A No.

5 Q And you didn't flag him down and ask him to come back
6 to your house?

7 A No.

8 Q And you didn't offer to trade your t.v. for marijuana?

9 A Oh, please, no. I'm not that stupid.

10 Q And there was nothing else taken from your house.

11 Correct?

12 A Nope, nothing else.

13 Q Just that t.v.

14 A Right. He snatched it and ran; I just happened to
15 catch him.

16 MS. LIPINSKI - Court's indulgence one moment,
17 Your Honor. (Pause) Just briefly, a couple more
18 questions.

19 Q When you called 911, you made the statement that he
20 had stolen your huge wide screen t.v. Correct?

21 A (Indicating yes) Right.

22 Q This t.v. is what, 27 inches in diameter?

23 A 32.

24 Q Okay. That's not the only t.v. in the house. Right?

25 A No.

1 Q The one in the bedroom?

2 A No.

3 Q There's a much bigger wide screen in the living room.

4 Correct?

5 A A 47, yes.

6 Q All right. And you said -- there's a picture there of
7 your Chihuahua. You've got other dogs in the area as well.

8 Correct?

9 A Yes, they're in a pin at my house. I have an acre and
10 a half fenced in. I rescue dogs.

11 Q So you have a number of other dogs. The Chihuahua is
12 not your only guard dog.

13 A That's just my -- that's not a guard dog. It's my
14 house dog.

15 Q That's a house dog.

16 A Right.

17 Q You have other guard dogs in the yard as well.

18 A Well, we don't have guard dogs at all. I rescue
19 abused animals.

20 Q And some of them are pit bulls and other dogs?

21 A One is half a pit, yes, and like I said, they all live
22 fenced in area so.

23 MS. LIPINSKI - Nothing further, Your Honor.

24 MR. JONES - Nothing from the State, Your Honor.

25 THE COURT - Thank you, sir. You may stand down.

1 MR. TAYLOR - Yes, sir.

2 THE COURT - All right, counsel, it's 1:00
3 o'clock. I think we'll go ahead and get some lunch at this
4 time. Mr. Foreman, ladies and gentlemen of the jury panel,
5 it's 1:00 o'clock, thereabouts, so we're going to go ahead
6 and get some lunch at this time. I'm going to ask you to
7 get lunch and be back in the jury room ready to go at 2:00
8 o'clock, at 2:00 o'clock. We'll resume at that time. I
9 would remind you of one thing. If you have something to
10 drink back in the jury room and you want to bring it back
11 into the jury box with you, you're welcome to do that. The
12 Clerk allows you to do that and so will I, so if you have
13 coffee, water, or cold drink, if you want to bring it back,
14 you're allowed to do it.

15 (WHEREUPON, JURY EXITS THE COURTROOM)

16 THE COURT - Now, I do ask that everybody remain
17 seated when the jury's going out and coming in. Any other
18 time you're welcome to get up and go out. Anything we need
19 to take up out of the presence of the jury at this time,
20 either side?

21 MS. LIPINSKI - I don't know if you want to do a
22 short Neil v. Biggers hearing. You want to do that when we
23 get back or -- they do have a photo line-up. I think the
24 Court, just like a Jackson v. Denno hearing has to at least
25 render an opinion on that before the event.

1 THE COURT - Yes, I'll do whatever you want to do.

2 We can take up anything you want to do right quick.

3 MS. LIPINSKI - I don't anticipate it'll be
4 lengthy, but I think it's something ---

5 THE COURT - Yes, it'd be a good time to do it out
6 of the presence of the jury. Yes, ma'am.

7 (WHEREUPON, NEIL V. BIGGERS HEARING IS HELD.)

8 MS. DESCH - The State would call Detective Kelly
9 Lovelace.

10 KELLY LOVELACE, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS -

12 MS. DESCH - May it please the Court.

13 THE COURT - Yes, ma'am.

14 DIRECT EXAMINATION

15 BY MS. DESCH -

16 Q Detective, could you please state your name and spell
17 your last name for the record?

18 A Yes, ma'am. It's Kelly Carol Lovelace, L-o-v-e-l-a-c-
19 e.

20 Q And where is it that you work?

21 A The York County Sheriff's Office.

22 Q How long have you worked for the county?

23 A Twenty-three years.

24 Q And what is it that you do for the county right now?

1 A I am assigned as a detective in the property crimes
2 division.

3 Q How long have you been with property crimes?

4 A Six years. A little over six years.

5 Q What did you do before you got assigned to property
6 crimes division?

7 A I worked with the York County Mutli-Jurisdictional
8 Drug Enforcement Unit as an investigator and also as a
9 lieutenant.

10 Q You were the lieutenant over the DEU?

11 A Yes, ma'am, I was.

12 Q How long were you there?

13 A I was in the DEU 13 years; well, narcotics total 13
14 years. I was a lieutenant for eight of those.

15 Q In this particular case, the State against David
16 Dover, did you have the occasion to do a photo line-up?

17 A I did.

18 Q And do you remember the date that you did the line-up?

19 A It was the date of the incident. I'm not sure
20 exactly. I don't have my file in front of me so.

21 Q Would looking at the photo line-up help refresh your
22 recollection?

23 A Yes, ma'am.

24 Q I'm showing you what's been marked as State's Exhibit
25 12.

1 A Yes, ma'am. Thank you.

2 Q Do you recognize that? I'm sorry. Let me just back
3 up. Does that refresh your recollection as to the date?

4 A Yes, ma'am, it does.

5 Q And what date did you -- without -- you don't need to
6 look at it, but without that, what's the date that you ---

7 A February 10th, 2014.

8 Q Do you remember the location in which you showed this
9 photo line-up?

10 A Yes, ma'am, at Lucas's residence.

11 Q And to whom did you show the line-up?

12 A To Mr. Lucas. Lucas Taylor. I apologize.

13 Q When you're doing a photo line-up, how many photos are
14 used?

15 A Six normally.

16 Q And when you initially put together the six photo
17 line-up, how do those -- where do those pictures come from?

18 A I applied through the SLED Data Base, State Law
19 Enforcement Data Base for this line-up, and I asked for it
20 to be expedited, because I knew this incident had just
21 occurred, and we had the tag number, and we felt like we
22 had the person identified, so I sent an e-mail to a SLED
23 Data Base asking for a line-up to be conducted.

24 Q And did that include the person that you thought was
25 involved?

1 A Yes, ma'am, it did.

2 Q Did you, in fact, get six photos from SLED in response
3 to your request?

4 A Yes, ma'am, I did.

5 Q And when you put that into a photo line-up, is that
6 what appears to be in front of you?

7 A Yes, ma'am, it is.

8 Q Now, the initial line-up, prior to showing it to Mr.
9 Taylor, was it marked in any way?

10 A No, ma'am, it was not.

11 Q Was there any wording on the six pictures?

12 A No, ma'am, other than the numbers that were already
13 denoted on there and the e-mail that I received from SLED.

14 Q So there's six pictures, and each one of them has a
15 number above it.

16 A Yes. Below it actually.

17 Q I'm sorry. Below it.

18 A Yes, ma'am.

19 Q So below it. And so there's no other identifying
20 information, no names, nothing marked on there in any way
21 besides the photos and the numbers that are correlating?

22 A That's right.

23 Q You indicated that you showed this line-up to Lucas
24 Taylor. Correct?

25 A I did, yes, ma'am.

1 Q How many line-ups was he shown?

2 A One.

3 Q And how did you present the line-up to Mr. Taylor?

4 A I used a York County Sheriff's Office form that is
5 developed to be used when we show a line-up that has the
6 information on it, and I'll read it if you'd like for me to
7 or if you need me to.

8 Q Sure.

9 A Okay. It starts off -- of course, it's got the seal
10 of the York County Sheriff's Office, photographic line-up,
11 and it has a place for the date, which was February the
12 10th, 2014, the time, which was 2:48 p.m., the location,
13 [REDACTED] McFarland Road, and it has the incident report number
14 assigned to that investigation, which was 20140004519, and
15 this is the part that I read to the witness: In a moment I
16 am going to show you a group of photographs. This group of
17 photographs may or may not contain a picture of the person
18 who committed the crime now being investigated. Keep in
19 mind that hairstyles, beards and mustaches may be easily
20 changed. Also, photographs may not always depict the true
21 complexion of a person. It may be lighter or darker than
22 shown in the photographs. Pay no attention to any markings
23 or numbers that may appear on the photographs or any other
24 differences in the style or type, -- excuse me -- type or
25 style of the photographs. When you have looked at all the

1 photographs, tell me whether you see the person who
2 committed the crime. Do not tell others that you have or
3 have not identified anyone. And then there's an affidavit
4 section as well down at the bottom.

5 Q And is that what you read to Mr. Taylor on the 10th of
6 February?

7 A Yes, ma'am, it is.

8 Q And what, if anything else, was the witness to the
9 line-up told before being permitted to see it? Other than
10 what you've read, was there anything else told to him?

11 A There's another section down here. Well, actually
12 it's the -- it's after I showed him. Nothing else was told
13 him, other than I was going to show him this line-up that I
14 had.

15 Q And was there anybody else present besides you and
16 him?

17 A No, ma'am.

18 Q And did -- did you or any person in your presence
19 influence or suggest to Mr. Taylor which photo to select?

20 A No, ma'am.

21 Q And did anyone point to, suggest or comment upon any
22 of the photos in the line-up prior to him seeing them?

23 A No, ma'am.

24 Q Was he able to select a photo from that line-up?

25 A Yes, ma'am, he did.

1 Q And which photo did he select?

2 A He selected photo number two; he also initialed it and
3 circled it at my request, and then I administered the
4 photographic identification affidavit.

5 Q And what -- what does that entail?

6 A It says, I Lucas Chadwick Taylor, having viewed a
7 group of six photographs on this 10th day of February, 2014,
8 I have positively identified photograph number two as being
9 the person, slash, one of the persons who committed the
10 crime to which I was a witness or a victim. I am making
11 this identification freely and voluntarily and without any
12 influence or threats, coercion or promises or reward, and
13 he signed it.

14 Q There is some handwriting in there. Is that your
15 handwriting in the beginning?

16 A Yes, ma'am, it is. All the -- all the blanks that
17 were filled in is my handwriting.

18 Q And then did you witness his signature ---

19 A Yes, ma'am, I did.

20 Q --- as the affiant of what you just read?

21 A Yes, ma'am, I did.

22 Q And did you witness him circle number 2 and initial
23 it?

1 A I verbally witnessed it. I didn't -- I didn't denote
2 it other than this form. I saw him doing it. I didn't
3 write anything down.

4 Q Was anything said to him during or after selecting the
5 photo?

6 A No, ma'am.

7 Q Was anything said by him during or after selecting the
8 photo?

9 A I think he made a expletive saying that that was the
10 person that had committed the crime against him.

11 Q An expletive that we don't need to get into in Court?

12 A Correct, he was ---

13 Q And so State's Exhibit 12 that you have in your hand,
14 do you recognize that to be the photo line-up that you
15 discussed with Mr. Taylor?

16 A Yes, ma'am, it is.

17 Q And is that fairly and accurately represent the photo
18 line-up that you showed to him and that he was able to
19 identify somebody in it?

20 A Yes, ma'am.

21 Q And was it -- is it changed and altered in any way?

22 A No, ma'am.

23 MS. DESCH - For the purpose of this hearing, the
24 State would like to move that into evidence, Your Honor.

NEIL V. BIGGERS: KELLY LOVELACE - CROSS BY MS. LIPINSKI 161

1 MS. LIPINSKI - For purposes of the hearing, no
2 objection.

3 THE COURT - Okay. All right, so for this hearing
4 it's admitted without objection.

5 (WHEREUON, DOCUMENT MARKED INTO EVIDENCE FOR
6 PURPOSES OF HEARING AS STATE'S EXHIBIT NUMBER 12.)

7 MS. DESCH - Thank you, Your Honor.

8 Q And who did Mr. Taylor identify as the person he saw
9 taking his t.v. on February 10th, 2014?

10 A Mr. Dover.

11 Q Is that Mr. David Dover that's here before you today?

12 A Yes, ma'am, it is.

13 MS. DESCH - Thank you. Please answer any
14 questions the defense might have.

15 MS. LIPINSKI - Just briefly, Detective Lovelace.

16 CROSS EXAMINATION

17 BY MS. LIPINSKI -

18 Q You weren't the responding officer out there that
19 night. Correct?

20 A Not initially, no, ma'am.

21 Q So another officer would've responded to the scene.
22 Correct?

23 A Yes, ma'am.

1 Q All right. And you were able to generate him as a
2 suspect based on DMV records. Is that correct? The tag
3 came back to David Dover?

4 A Yes, ma'am, that's correct.

5 Q And so these photographs are presumably from DMV
6 records from SLED?

7 A I think that's where SLED gathers their -- their
8 photographs.

9 Q But this wasn't something you would compiled off of
10 mug shots from the York County Sheriff's Office or
11 something?

12 A No, ma'am, I did not.

13 Q You requested it done from SLED itself.

14 A I did, yes, ma'am.

15 Q And does SLED indicate the order of the photo line-up
16 like why he's front and center at number 2, or is that done
17 randomly?

18 A It's done randomly.

19 Q So you didn't do that personally?

20 A No, ma'am, I did not.

21 Q And you -- the photo line-up is done at 2:48 p.m.

22 Correct?

23 A Is when I showed it to him, yes, ma'am.

24 Q Right. I apologize. You showed him the photo line-up
25 at 2:48 p.m. Correct?

NEIL V. BIGGERS: KELLY LOVELACE - CROSS BY MS. LIPINSKI 163

1 A Yes, ma'am, that's correct.

2 Q But obviously in between that time there had been
3 responding officers out to his house already?

4 A Yes, ma'am, that is correct.

5 Q All right. And there's obviously -- those responding
6 officers aren't like you detectives; those would've been
7 road deputies.

8 A Yes, ma'am.

9 Q And so you're not aware of any conversation that those
10 road officers may have had with him in terms of they've
11 identified the suspect, they know his name, they know where
12 he lives or anything like that.

13 A No, ma'am.

14 Q So you have no independent knowledge of not
15 necessarily whether you suggested anything but whether any
16 information was given about his identity to him by any of
17 these other officers.

18 A You mean to the victim?

19 Q Yes.

20 A I just want to make sure I understand the question you
21 asked me.

22 Q Yes, the victim.

23 A Yes, ma'am, I have no knowledge what -- what was said
24 to him.

1 Q All right. And when you get out there and -- do you
2 go straight into the photo line-up, or do you just go
3 through it with him verbally, then do the photo line-up and
4 the statement? What's the order?

5 A Did I go through what verbally with him?

6 Q Do you sit down and go, tell me what happened, okay,
7 thank you, let me show you a photo line-up and then let's
8 put that in writing and get a statement, or do you walk in
9 and go, first thing I want to do is show you a photo line-
10 up?

11 A No, ma'am, I don't -- I didn't show him the photo
12 line-up initially.

13 Q So you went in and had some conversation with him, got
14 his version of events. Right?

15 A Yes, ma'am.

16 Q And then would've shown him the photo line-up and then
17 gotten the written statement from him. Is that correct?

18 A I'm not sure exactly what the order was.

19 Q Okay. The photo line-up has a time on it of 2:48?

20 A It does, yes, ma'am.

21 Q All right. And the statement has a time stamp on it,
22 but that's in front of you but ---

23 A No, ma'am, it's not.

NEIL V. BIGGERS: KELLY LOVELACE - CROSS BY MS. LIPINSKI 165

1 Q --- if you believe me on this one that it's 2:56, we
2 can believe that the line-up came first and then the
3 statement. Right?

4 A Well, the -- I could've talked to him verbally ---

5 Q Okay.

6 A --- and then showed the line-up and then got the
7 written statement. I'm not -- I'm not remembering the
8 exact order that that occurred in.

9 Q And did you have any conversation with him about how
10 long he had to view the Defendant, his prior knowledge of
11 the Defendant or any of those conversations with him?

12 A No, ma'am.

13 Q All right.

14 MS. LIPINSKI - That's all we have, Your Honor, at
15 this time.

16 THE COURT - All right, wish to be heard, either
17 one of you?

18 MS. LIPINSKI - Your Honor, I just feel -- my
19 interpretation of Neil v. Biggers is the Court just has to
20 determine that it was done pursuant to procedure. We don't
21 have any challenge to that. We would just ask that in
22 direct in front of the jury it come out that they're from
23 DMV records to erase any prejudice that it was done from
24 prior booking photos or those kind of things, but other
25 than that, we would have nothing else about her testimony.

1 THE COURT - All right, I think they'll be
2 appropriate that the photos come from DMV. She can testify
3 that if she gets it from SLED, say gets theirs from DMV,
4 and so I think that's the best way to handle that. And, of
5 course, looking at what the Court has to consider in
6 determining the admissibility under Neil v. Biggers, I
7 think all the elements that the State's required to prove
8 they've proven and clearly the testimony was that this
9 occurred in the afternoon, his house, inside and outside,
10 that sort of -- had plenty of opportunity to view the
11 person who committed the crime, and to -- don't see any
12 suggestions or evidence of any suggesting or telling him
13 who the person was or any of that sort of thing, so for all
14 those reasons I think the requirements of Neil v. Biggers
15 have been met, and the Court finds that his identification
16 in the line-up, photo line-up, would be admissible into
17 evidence. Anything else?

18 MS. LIPINSKI - Nothing from the Defendant, Your
19 Honor.

20 MS. DESCH - Nothing from the State, Your Honor.

21 THE COURT - Why don't we -- let's go ahead and
22 get some lunch, because we don't have too long to do it.
23 Let's try to be back I'd say maybe -- it's now 1:15.. Let's
24 be back about ten minutes after 2:00, about 10 minutes

1 after 2:00 so everybody can get some lunch. We're going to
2 require the Defendant to be held at this time. Thank you.

3 MS. LIPINSKI - Your Honor, if I could just for
4 his interest put on the record, I did speak with his
5 bondsman this morning, and he did indicate to me that he
6 was willing to stay on the Defendant's bond and for him to
7 remain out until the jury reached a verdict. I just wanted
8 to do that. The defense would ask -- he showed up every
9 time. He sat here all day a number of times. I don't see
10 any reason that he would flee at this particular time, and
11 I think he can be trusted to return to the Court at the
12 proper time.

13 THE COURT - I understand your position. This is
14 a felony, a burglary and I'm going to require him to be
15 held. This will be a short trial; it will not be long.

16 MS. LIPINSKI - Thank you, Your Honor.

17 MS. DESCH - Thank you, Your Honor.

18 (WHEREUPON LUNCH RECESS IS TAKEN)

19 THE COURT - Thank you. Please be seated.
20 Counsel ready to proceed?

21 MS. DESCH - Yes, Your Honor.

22 MS. LIPINSKI - Yes, Your Honor.

23 THE COURT - Please bring the jury in.

24 (WHEREUPON JURY ENTERS THE COURTROOM)

1 THE COURT - Good afternoon, Mr. Foreman, ladies
2 and gentlemen of the jury panel; I hope you enjoyed your
3 lunch. We're now ready to resume with the trial. The
4 State would please call its next witness.

5 MS. DESCH - Thank you, Your Honor. May it please
6 the Court.

7 THE COURT - Yes, ma'am.

8 MS. DESCH - The State calls Sergeant Robert
9 Ellis.

10 ROBERT ELLIS, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MS. DESCH -

14 Q Good afternoon.

15 A Hi.

16 Q Can you please state your name and spell your last
17 name for the record?

18 A My name is Robert Ellis. Spelling of the last name is
19 E-l-l-i-s.

20 Q And where is it that you work?

21 A I'm employed with the York County Sheriff's Office.

22 Q How long have you been with the county?

23 A Since May of 2001.

24 Q Do you have any other law enforcement experience?

1 A I do. I have a little over two years with the Clover
2 Police Department in Clover, South Carolina.

3 Q Do you hold a rank?

4 A I do. I am a sergeant at the county.

5 Q Were you working on February 10th, 2014?

6 A I was.

7 Q At some point did you get called out to assist
8 somebody on [REDACTED] McFarland Road in York?

9 A Yes.

10 Q Is that in York County?

11 A It is.

12 Q What was the call?

13 A It was in reference to a burglary that just occurred,
14 to a residence.

15 Q Do you remember about what time?

16 A Around between 12:20 and 12:30-ish, right in that
17 area, right around 12:20 in the afternoon.

18 Q Okay. So about 12:30 in the afternoon you get called
19 out to McFarland Road. How quickly were you able to get
20 there?

21 A Took me about 15 minutes to get to from where I was to
22 the scene.

23 Q And when you got to the house -- or sorry -- was it a
24 house? Was it a residence?

25 A Yes. Yes.

1 Q When you got there what did you see?

2 A The first thing I saw when I got there was the
3 homeowner.

4 Q Was that Mr. Taylor here?

5 A Yes.

6 Q And what happened when you saw him?

7 A He began to tell me the circumstances behind the
8 reason I was there.

9 Q Can you tell the jury what his demeanor was like? How
10 did you find him?

11 A He -- I -- I would describe that he was more mad than
12 anything, upset that this just happened, but he put me in
13 the mind of being mad that it had happened.

14 Q And did it appear that he was still under the
15 influence of whatever reason he had called you?

16 A Oh sure.

17 MS. LIPINSKI - Objection as to the leading, Your
18 Honor.

19 THE COURT - Pardon.

20 MS. LIPINSKI - I objected as to leading, Your
21 Honor.

22 THE COURT - Please avoid the leading, counsel.

23 Q What did it appear to you what was bringing on this
24 mad or this upset? What did it appear to you was the
25 reason?

1 A The incident that had just occurred there at his home.

2 Q And how so? How could you tell he was mad or upset?

3 A By his voice, him describing to me what had happened
4 and being excited as he -- as he's explaining it to me.

5 Q And what was he able to tell you about what happened?

6 MS. LIPINSKI - Your Honor, I'd object as to
7 hearsay. The witness has already testified why this -- why
8 this officer is coming and repeat what the victim told him.
9 I'm not sure of the probative value at this point. It's
10 hearsay. It's an out-of-Court statement being offered for
11 the truth. He's already testified there was no reason that
12 ---

13 THE COURT - Exactly. He has already testified.
14 Counsel approach just a minute.

15 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
16 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
17 WHICH WAS NOT REPORTED.)

18 THE COURT - Objection's overruled.

19 Q What was he able to tell you about the incident?

20 A He informed me that he was on the way home from
21 picking his children up at school. When he pulled into the
22 driveway he noticed there was another vehicle pick-up truck
23 blocking his driveway. He told me that he had parked
24 behind the vehicle and instructed his children to stay in
25 the car. When he approached the rear of his residence, he

1 saw a gentleman bringing a -- carrying a t.v. out of his
2 residence. He said he chased the guy around; he kind of
3 caught him in the front yard; he made him take the
4 television back into his house, and then once the guy set
5 the t.v. down, he told me that he assaulted him by hitting
6 him with his fist, told me then that the guy ran out of the
7 residence, jumped in the pick-up truck and spun-out in the
8 yard and left, but he was able to get a tag number.

9 Q So he was able to provide a tag number to you.

10 A Yes.

11 Q What did you do with that information?

12 A I then radioed that to my dispatch to try to get an
13 address and a possible name, possible name and address to
14 that tag.

15 Q Were you able to get that information as to who
16 belonged to the tag?

17 A I was.

18 Q What did you do at that point?

19 A At that point I have two other deputies that work on
20 my shift, I instructed them to go to that residence to see
21 if maybe we couldn't intercept the suspect.

22 Q So you stayed on scene for a moment with Mr. Taylor,
23 and you sent two deputies over to the scene of the tag
24 number.

25 A Yes.

1 Q What else did you observe about the address on
2 McFarland?

3 A I observed the ruts in the yard, ---

4 Q So you did see the ruts.

5 A --- consistent with the victim, Mr. Lucas's statement
6 as to what had happened.

7 Q So the ruts you saw that day were consistent with what
8 he had said happened?

9 A Yes.

10 Q What did you observe about the driveway and the gate
11 as you were coming in? Anything?

12 A Other than that it had -- it had a gate. That's all I
13 observed.

14 Q So it had a gate, but was there any fence attached to
15 it or was it just basically post and a gate all on its on?

16 A It was like a cattle gate, what I call a cattle gate
17 attached to a post.

18 Q And then what was surrounding the property? Anything?

19 A Woods.

20 Q Did you see the kids?

21 A I did.

22 Q And what did you see about the kids?

23 A I saw them peeking out the living room window.

24 Actually not the window; the window to the door had a

1 curtain and they were actually peeking; I could see the
2 kids peeking out the -- out the door.

3 Q Did you talk to them at all?

4 A I did not.

5 Q How come?

6 A Due to the fact that they was age of range from two to
7 five, very shy, I didn't.

8 Q What did you do after you were with Mr. Taylor at his
9 house? Did you do anything else?

10 A I did. I -- once I got everybody situated, somebody
11 going to the residence where the tag came back to, I called
12 and found out who the detective on call was for that day,
13 and I realized it's day shift, so I knew that Detective
14 Lovelace was the detective assigned to the area that I
15 patrol, so I called Detective Lovelace on the telephone.

16 Q All right. So you brought in the detective; did you
17 talk to anybody else to help investigate?

18 A Just um -- after that we -- I notified forensics and -
19 - Cheryl from forensics responded to the scene.

20 Q And why were you notifying forensics to come out to
21 the scene?

22 A To try to collect any kind of physical evidence or
23 evidence -- otherwise evidence that would've been left
24 behind by the suspect.

1 Q And did forensics send a person out to, in fact, do
2 that?

3 A They did.

4 Q Were you there when she was there?

5 A I was.

6 Q What did you observe her do?

7 A We went into the bedroom; the t.v. that was in
8 question was laying face-down on the bed in the same room
9 it was stolen from. She took the t.v. from there to the
10 porch to process it for latent prints. She took photos and
11 also she printed the cable box and the door -- the glass
12 doors that lead into the bedroom.

13 MS. DESCH - May I approach, Your Honor?

14 THE COURT - Yes, ma'am.

15 Q I'm going to refer to State's 2. On State's 2 when
16 you say the door that was leading into the bedroom, do you
17 see that in that picture?

18 A I do.

19 Q And could you point -- can you -- if you could just
20 hold it up to the jury ---

21 A It's this door here. It's kind of a glass door; it's
22 got a blind or something over it; it leads into the
23 bedroom.

24 Q So that door leading into the bedroom.

25 A Yes.

1 Q What did you observe her do at that door?

2 A Dust it for -- for prints, fingerprint dust it for
3 fingerprints.

4 Q And to your knowledge, was she able to find anything
5 on that door?

6 A She did locate some things on the door, but they were
7 smudges, and she had stated that there wasn't -- no -- any
8 ridge detail to lift, but it was all smudges.

9 MS. LIPINSKI - Objection as to hearsay, Your
10 Honor.

11 THE COURT - Sustained.

12 Q When you went into the room, did you -- you said you
13 saw the t.v. on the bed.

14 A Yes.

15 Q Was that consistent with how Mr. Taylor told you it
16 was brought back in the house?

17 A Yes.

18 Q After you concluded your investigation at the
19 McFarland house, where did you go?

20 A I waited til forensics completed their part of the
21 investigation and then forensics didn't quite know where
22 the address was, so they followed me to the address of the
23 -- of the alleged suspect.

24 Q And did you, in fact, go there from the McFarland Road
25 address?

1 A I did.

2 Q How close -- do you know off hand what that address
3 is?

4 A I do not.

5 Q Would looking at a report refresh your recollection?

6 A Yes.

7 Q If you could, just look through that without saying
8 anything out loud, and let me know when that refreshes your
9 recollection as to the address.

10 A I've -- I've got it.

11 Q All right. And where is it that you went?

12 A [REDACTED] Moss Creek.

13 Q So [REDACTED] Moss Creek Road is the address that was given
14 to you as belonging to the tag number you were provided by
15 Mr. Taylor. Correct?

16 A That is correct.

17 Q And about how close is that to the McFarland Road
18 address?

19 A Driving distance it took us 45 seconds, a minute to
20 get there.

21 Q So you go up the road less than a minute. What did
22 you see when you got to that address?

23 A I witnessed Detective Lovelace was there on the scene
24 along with the two deputies that I had asked to respond to
25 that residence.

1 Q Was anybody else on the scene?

2 A Not at that point, no.

3 Q Did you observe anything -- did you -- what did you
4 observe about the address itself?

5 A That the -- the truck was in the driveway that matched
6 the tag number that was given to me by the victim and also
7 that there was fresh mud dripping from underneath the truck
8 consistent with the ruts that I had observed in the yard.

9 Q Was David Dover present?

10 A He was not.

11 Q I'm going to show you what's been marked for
12 identification as State's 14, 15, 16 and 17. If you could
13 look through those and tell me if you recognize them.

14 A Yes.

15 Q What do you recognize them to be?

16 A The truck that was parked at that address on Moss
17 Creek with the mud dripping from it.

18 Q So that's the truck that you saw at the Moss Creek
19 address the day that you went over the on the 10th of
20 February.

21 A Yes.

22 Q Is that a fair and accurate representation of how it
23 looked on that day?

24 A Yes.

1 MS. DESCH - The State at this point would like to
2 move in evidence 14, 15, 16 and 17.

3 MS. LIPINSKI - Without objection.

4 THE COURT - Admitted without objection.

5 (WHEREUPON DOCUMENTS MARKED INTO EVIDENCE AS
6 STATE'S EXHIBITS 14, 15, 16 AND 17.

7 MS. DESCH - May we publish them to the jury, Your
8 Honor?

9 THE COURT - You may publish.

10 (WHEREUPON DOCUMENTS PUBLISHED TO THE JURY)

11 Q And if you could -- I'm going to start with 14. If
12 you could pull that up and Mr. Jones can show the jury
13 which one you're referring to?

14 A I'm sorry. Could you repeat?

15 Q Sorry. If you'd just hold up 14 and then Mr. Jones
16 can show the jury what it is that you're looking at.

17 A (Witness complies)

18 Q Now, could you describe what it is that you're seeing
19 in that picture down towards the bumper?

20 A Yes, if you'll look just above the exhaust that comes
21 out of the side of the truck, you can observe -- you can
22 see the mud that's wet dripping off, and also how the tires
23 are muddy consistent with a tire spinning in the mud.

24 Q If you could look at 15, please; hold that up.

25 A (Witness complies)

1 Q And again, what are we seeing here in 15?

2 A It's the same -- same picture except it is a closer
3 photograph of the mud itself.

4 Q And 16, please.

5 A (Witness complies)

6 Q And what does this depict?

7 A That's a picture of South Carolina license plate
8 matching the numerics and letters that was supplied to me
9 by the victim.

10 Q And so this license plate is what's on the truck that
11 you found at the Moss Creek address which is David Dover's
12 address?

13 A Yes.

14 Q And that, in fact, is the numbers that were given by
15 Lucas Taylor as the person he identified being at his house
16 stealing his t.v.

17 A That is the tag number that I ran that he supplied to
18 me of the tag that he got when it was leaving his
19 residence, yes.

20 Q Thank you very much. And just for clarification
21 Number 17, please.

22 A (Witness complies)

23 Q And what is that a picture of?

24 A It's a picture of the bed of the pick-up truck with a
25 gas can in the back of it.

1 Q And that's how it appeared on the 10th of February?

2 A Yes.

3 Q Thank you. When you arrived on scene, you said that
4 the two deputies you sent over there were still present.

5 Correct?

6 A Correct.

7 Q To your knowledge, had they been able to make any
8 contact with David Dover?

9 MS. LIPINSKI - Your Honor, objection as to how he
10 would know that. It calls for hearsay. The only way he
11 knows it is if they told him.

12 THE COURT - Well, unless he has some other
13 personal knowledge of it. He can't testify as to what
14 somebody might've told him or ---

15 Q When you arrived, was David Dover present?

16 A No.

17 Q To your knowledge, had he been present at all prior to
18 your arrival actually -- let me strike that. At some point
19 did you also bring forensics -- oh, I'm sorry. You said
20 forensics followed you over to the house?

21 A Correct.

22 Q Were you there when she was processing that residence?

23 A I was.

24 Q And what did she do over there?

25 A Took photos of that (sic) we just looked at.

1 MS. DESCH - Court's indulgence.

2 Q What, if anything, happened before you concluded at
3 Moss Creek address that day?

4 A The last thing that happened at Moss Creek was Mr.
5 Dover's father came next -- came to the residence from next
6 door where he resided over to where we were taking
7 photographs.

8 Q And at no point while you were over there did you see
9 David Dover?

10 A I did not, no.

11 MS. DESCH - Please answer any questions that the
12 defense might have.

13 CROSS EXAMINATION

14 BY MS. LIPINSKI

15 Q Sergeant Ellis, ---

16 A Yes.

17 Q --- how you doing today?

18 A Doing well.

19 Q You're not a mud expert, are you?

20 A I wouldn't -- by Court purposes, no, ma'am.

21 Q All right. So while you said that there were some
22 ruts in the front yard and there was mud on the truck,
23 you're not out there doing dirt analysis or tire track
24 impressions or anything of that nature, are you?

25 A No, ma'am.

1 Q You saw ruts; you saw a truck; it had mud on it.

2 A Correct.

3 Q All right. Now, let's go back out to when you first
4 arrive on the scene; you stated that you got there, you
5 mentioned that the children when you got there were present
6 inside the residence already?

7 A Yes, ma'am.

8 Q All right. And you -- were you -- obviously, and the
9 jury might not be aware, but as you ride around on a daily
10 basis as a -- you're a road deputy? Is that fair to say?

11 A Yes.

12 Q Somebody calls 911, you driving out in the road, you
13 respond to whatever you're closest to.

14 A Correct.

15 Q All right. But -- and there is some radio traffic to
16 you between dispatch and you. Right?

17 A Correct.

18 Q But you don't sit around listening to 911 calls all
19 day. Right?

20 A I do not.

21 Q You're not privy to that information, are you not?

22 A I am not.

23 Q But you are certainly -- you've been doing this long
24 enough. You know what dispatch does and doesn't do.

25 Correct?

1 A Correct.

2 Q And is it common or not common for them to advise
3 people, don't go back in the house; we don't want you to
4 disturb anything before forensics has a chance to get
5 there.

6 A I'm not familiar with dispatch's protocols to what
7 they tell people on the telephone.

8 Q Okay.

9 A I do not know that.

10 Q But you arrive on the crime scene and everybody's
11 outside, the crime occurred on the inside, you're not going
12 to let people go back inside until forensics gets there.

13 A Depends.

14 Q All right. But the goal -- the reason to not allow
15 them to is so that when forensics get there, what they see
16 is what happened when the crime allegedly occurred.

17 A That is correct.

18 Q Correct?

19 A That is correct.

20 Q You don't want them going in there and adjusting
21 things or doctoring things or putting things away or those
22 kind of things before forensics has a chance to get there
23 and observe the scene, photograph it, fingerprint it,
24 those. Correct?

25 A Correct.

1 Q And I know you weren't privy to the 911 call, but if
2 dispatch had advised Mr. Taylor not to go back inside, not
3 to let the children go back inside, and when you get there
4 the children are inside, that's not what should've
5 occurred. Correct?

6 MS. DESCH - Your Honor, I'm going to object.
7 She's mischaracterizing what was told to him.

8 THE COURT - Sustained.

9 Q Obviously, the presence of children in the home in
10 some way could've contaminated that crime scene. Correct?

11 A No, ma'am.

12 Q The kids couldn't have run around and moved stuff
13 around?

14 A No, ma'am.

15 Q Why not?

16 A Because the area of the house the children were in was
17 in the living room area. This is on the other side of the
18 house in the bedroom area, which was closed off from the
19 rest of the house by a closed door.

20 Q But you weren't there before -- you weren't there when
21 the crime occurred.

22 A That's correct.

23 Q And you don't know what happened between when you
24 arrived and when Lucas Taylor called 911.

25 A That's correct.

1 Q So you don't know what access the children had to that
2 part of the house before you arrived and got in the house.

3 A That's correct.

4 Q So it is possible if they were allowed inside the
5 house, that they also could've been allowed inside the
6 bedroom. Correct?

7 A Sure.

8 Q It's also possible that Mr. Taylor himself went back
9 inside the house before you got there and was able to move
10 things about within that crime scene. Correct?

11 A I'm sure that's possible.

12 Q So if there was any evidence of anything else that
13 transpired, Mr. Taylor, because of your response time,
14 obviously, had the opportunity to go in there and adjust
15 certain things. Correct?

16 A Possible.

17 Q Let's start with -- let me start with this document
18 and ask you if you're familiar with that type document. Is
19 that something you regularly use with the sheriff's office,
20 a report that's generated?

21 A I do not use that, no, ma'am.

22 Q I know, but it's something that they use to document
23 what you all do. Fair to say?

24 A (No response)

1 Q You've never seen a Detail Call for Service Report in
2 your entire history in law enforcement.

3 MS. DESCH - Your Honor, I'm going to object for
4 the simple part that she said, do you use this and he said,
5 so I don't think asking him any questions about it is
6 relevant, because ---

7 MS. LIPINSKI - He said he didn't generate it. I
8 apologize.

9 THE COURT - She can ask him if he has knowledge
10 of it, what it's used for; if he knows, he can answer.

11 Q All right. This you said was your case report.
12 Correct?

13 A That is correct.

14 Q All right. Does it show the dispatch time on there?

15 A I don't think it shows the dispatch time, no, ma'am.

16 Q Okay. Does it show your arrival time?

17 A It does not.

18 Q Okay. I'm going to show you a Detail Call for Service
19 Report.

20 A Okay.

21 Q Ask you generally if you're familiar with that
22 document?

23 A I have seen this document before, yes, ---

24 Q Okay, and does it ---

25 A --- but I have never read one, so ---

1 Q Does it indicate the dispatch and arrival time of you
2 for this particular call?

3 A Yes. Yes, dispatch time and arrival time, yes.

4 Q And that's documented so that law enforcement knows
5 what time you got out there and how much time elapsed.
6 They track your response times, those kind of things.

7 Correct?

8 A Sure. Yes.

9 Q All right. And it says that you were dispatched out
10 at 12:33:23. Correct?

11 A Yes.

12 Q And it says your arrival time was 12:52:23. Correct?

13 A Yes.

14 Q All right, so approximately 20 minutes between the
15 time that dispatch sends you out there that you arrive at
16 this address.

17 A Correct.

18 Q All right. And then you also generate kind of a
19 paragraph narrative. Correct?

20 A Yes.

21 Q All right. But there was also obviously some delay
22 because they did have -- the homeowner and the Defendant
23 had some encounter out there. Right? There may have been
24 some delay as to when 911 called, if it was called right

1 when he got home versus after the incident occurred, those
2 type things as well. Correct?

3 A Sure. Sure.

4 Q All right. And that's why when you ask people what
5 time did this occur, you really give approximations because
6 you're kind of counting backwards from all of these events.
7 Is that fair to say?

8 A Yes.

9 Q You don't know what time David Dover may have arrived
10 at that house. He could've been there for a hour for all
11 you know. Correct?

12 A Correct.

13 Q All right. So those are the kind of things -- we know
14 what time the person called 911; we know what time you were
15 sent out there; we know what time you arrived; generally
16 speaking sometimes we know what time you left. Right?

17 A Correct.

18 Q All right. And I'm going to hand you your report back
19 and just ask you, one of the things that -- that is your
20 report. Right? You would've filled in all those blanks?
21 Is that the incident report?

22 A Everything except for the supplemental statement on
23 the bottom of this one, but yes, ---

24 Q Okay.

25 A --- everything up here I would've done.

1 Q All right. Let's -- if you could, just look at the
2 property. Correct?

3 A I wouldn't have done that, no, ma'am.

4 Q You didn't do that?

5 A No, ma'am.

6 Q Okay. You don't list what items are taken from the
7 burglary?

8 A No, ma'am.

9 Q Who does that?

10 A Forensics.

11 Q Forensics would've indicated that. All right. And
12 you stated that you were there while forensics was there.
13 Correct?

14 A Yes, ma'am.

15 Q All right. You stated when you got there that he was
16 very irate. Correct?

17 A I stated that he -- he seemed to be mad.

18 Q All right. And you stated when you got there the
19 children were inside the home. Correct?

20 A Correct.

21 Q And he already put the dogs up as well or were they
22 out when you got there?

23 A I never saw a dog.

24 Q You never saw a dog at all?

25 A No.

1 Q Or any fenced-in area for the dogs?

2 A Not that I can recall, no, ma'am.

3 Q All right. And he indicated to you, I believe, that
4 he had had this encounter with Mr. Dover and that he had
5 told him to take the t.v. back inside and that they had
6 gone back inside to that bedroom. Correct?

7 A I'm sorry, could you repeat that?

8 Q I apologize. He told you that he initially confronts
9 the Defendant outside. Right?

10 A Coming out of his residence, yes.

11 Q And then they run around to the front yard. Right?

12 A Correct.

13 Q And then he makes him carry the t.v. back inside.

14 Right?

15 A Correct.

16 Q And then he punched him in the head. Correct?

17 A He ---

18 Q Or the ear.

19 A Punched him is what -- what I was told.

20 Q All right. And where -- when you looked around the
21 bedroom, was there any sign of a struggle or anything like
22 that? Were there lights knocked over or those kind of
23 things?

24 A Nothing knocked over other than the t.v. laying on the
25 bed.

1 Q And did he also tell you that he had bumped up against
2 the lamp in the corner? Did he ever tell you that?

3 A I don't remember that.

4 Q All right. And you stated that when forensics got
5 there, they processed that bedroom door. Correct?

6 A The outside glass, yes.

7 Q The outside glass.

8 A Yes, leading into the inside, yes.

9 Q All right. Did he tell you that the Defendant had
10 exited through that door?

11 A He didn't say specifically he'd exited through the
12 door, but the story he was telling gave all indications
13 that the struggle took place there and he left out of that
14 same door.

15 Q Okay. And did he get -- and did you -- you respond to
16 burglaries. This isn't your first one, let's say.

17 A Correct.

18 Q And one -- do you investigate it or do you leave that
19 to the detective or do you kind of split up what you do?

20 A I think it all depends. We try to do as much as we
21 can possibly do with what we have to work with on the road,
22 and then when we get to a point as much (sic) -- I like to
23 get as much information as I can get to pass onto the
24 responding detective, because they don't have to start over
25 from square one.

1 Q All right. One of the things you do in terms of a
2 burglary though is look for signs of forced entry.

3 Correct?

4 A That is correct.

5 Q And did you see any in this particular case?

6 A I did not.

7 Q And other than the victim telling you that the
8 Defendant came in through that door -- Right?

9 A Correct.

10 Q Did you independently investigate to determine whether
11 or not that was the point of entry beyond that?

12 A Yes.

13 Q Okay. What did you do to investigate that that was
14 the point of entry beyond that?

15 A To ensure that nothing was pried open, windows broken,
16 to that -- to that extent.

17 Q So you walked around and made sure there were no pry
18 marks. Right?

19 A Well, or -- or broke windows, yes.

20 Q Broke windows. Right?

21 A (Indicating yes)

22 Q But you don't know if any other doors were unlocked or
23 he could've made entry through any other means.

24 A No, I do not know that.

1 Q Let me just show you -- refer you back to these
2 photographs of the truck and the mud that you looked at.
3 You didn't see any other stolen property in the truck?

4 A No. No.

5 Q Did you have an opportunity to go through the rest of
6 the house? You stated you could tell that the bedroom was
7 cut off from the living room where the children were at.
8 Did you walk through house?

9 A I did not.

10 Q You did not. So you didn't look to see if there were
11 any other large screen t.v.s or anything like that in the
12 house itself.

13 A I did not, no.

14 Q All right. You pretty much stayed where the victim
15 directed you to look.

16 A Based on the story he was telling, yes.

17 MS. LIPINSKI - That's all we have of this
18 officer.

19 MS. DESCH - Just briefly, Your Honor?

20 THE COURT - Yes, ma'am.

21 RE-DIRECT EXAMINATION

22 BY MS. DESCH

23 Q The dispatch system, the 911 system and the radio call
24 from dispatch out to you, is that happening all at the same
25 time? How does that work?

1 A I'm not -- I'm not sure what you're asking.

2 Q In other words when I call -- sorry. When I call 911
3 and I'm talking to a 911 operator, ---

4 A Okay.

5 Q --- if the operator is taking information from me,
6 what else are they doing?

7 A That -- the way it's set up is, you have a call taker
8 who takes the call, puts -- keys the information into a
9 computer. From that point it goes to a dispatcher who
10 dispatches that information to us.

11 Q So it's contemporaneous. It's happening about the
12 same time.

13 A Yes.

14 Q Otherwise we wouldn't make it out to calls in an
15 emergency fashion.

16 A Right.

17 Q In this particular case, if you were dispatched out at
18 12:33, is it fair to say that the 911 call is coming in
19 around that time?

20 A Sure, oh, yes.

21 MS. LIPINSKI - Calls for speculation. He's
22 already testified he's not aware of when the 911 call was
23 made. He's not the 911 operator and he can't hear it
24 coming in.

1 THE COURT - I think he's describing how it works.

2 Overruled.

3 Q So it's fair to say that that 911 call was coming in
4 about the time that you were being dispatched at 12:33.

5 A Yes.

6 Q And as part of your investigation, you talked to the
7 victim, Lucas Taylor. Correct?

8 A Correct.

9 Q And you had mentioned earlier in your testimony that
10 he said he was coming back from picking up his kids.

11 A That's correct, from school.

12 Q What was his rendition of the point of entry?

13 A I don't remember where he said he went in at. I can
14 remember where he said he come out of.

15 Q Did he discuss with you whether the house was locked
16 or unlocked when he went to go pick up his kids ---

17 A He did state that the doors were unlocked.

18 MS. DESCH - Thank you.

19 MS. LIPINSKI - Just for clarification.

20 RE-CROSS EXMANINATION

21 BY MS. LIPINSKI -

22 Q You said the doors were unlocked.

23 A That's what I was told, yes.

24 Q So not just one door; the doors to the house just
25 generally left unlocked.

1 A The explanation I got was the doors were unlocked.

2 Q All right. And he talked to you about point of entry.

3 Right? And you stated that he not only didn't get from you

4 where he came in originally to the home; was he able to

5 tell you what door they went into when he told him to go

6 back inside and move the t.v. in the house?

7 A Yes.

8 Q Which door was that?

9 A The bedroom door.

10 Q So they walked all the way back around the house and

11 went back in the bedroom door he stated?

12 A The same door, yes, that he came out of. Correct.

13 Q Okay. They did enter the house on the other side

14 where the t.v. was?

15 A I'm sorry?

16 Q I may have been confusing. He had a rendition of a

17 facts (sic) that he sees the Defendant walking outside the

18 house. Correct? With the t.v.

19 A Coming out of the residence, yes.

20 Q Right. And he makes him go back inside the house.

21 Correct?

22 A That's correct.

23 Q Are you clear with the homeowner what door they re-

24 enter, if that makes sense?

25 A Yes, the bedroom door.

1 Q He said the bedroom door; they went back in that one.

2 A Yes.

3 Q Not the other side of the house or anything like that.

4 A That's correct.

5 MS. LIPINSKI - Okay.

6 THE COURT - Thank you, sir. You may stand down.

7 MS. DESCH - State would call Cheryl Gregory. If
8 you could get Cheryl Gregory, please.

9 CHERYL GREGORY, AFTER BEING FIRST DULY SWORN,

10 TESTIFIES AS FOLLOWS -

11 DIRECT EXAXMINATION

12 BY MS. DESCH -

13 Q Good afternoon.

14 A Good afternoon.

15 Q Can you please state your name and spell your last
16 name for the record?

17 A My name is Cheryl S. Gregory, G-r-e-g-o-r-y.

18 Q And where is it that you work?

19 A I'm employed with the Clover Police Department, but I
20 was assigned to the Forensics Services Unit in 2011.

21 Q Starting first with Clover Police Department, how long
22 have you been in law enforcement?

23 A Almost eight years. February of next year will be
24 eight years.

1 Q When did you get assigned to the Forensic Service Unit
2 from Clover PD?

3 A 2011. About March of 2011.

4 Q How does the forensic unit work?

5 A It's a collection -- well, I don't want to say
6 collections -- multi-jurisdictional, so there are different
7 people from each agency on the unit, and we process crime
8 scenes and investigate crime scenes throughout the county.

9 Q Did you have to get additional training once you
10 joined the forensic unit?

11 A Yes.

12 Q Can you tell the jury about what that entails?

13 A I went to a basic crime scene academy in 2011. I also
14 went to a fingerprint recognition comparison class that
15 same year but later on in the year. I have had fingerprint
16 basics analysis and some other like textbooks -- reading
17 textbooks about different stuff. It's a continuing
18 educated mainly. There's always training to do.

19 Q In addition to your training, do you also get
20 experience in the field by going out to scenes and taking
21 fingerprints?

22 A Yes.

23 Q About how many have you gone out to in the last --
24 well, I guess from here to 2011?

1 A I would probably say more than a hundred, definitely
2 more than a hundred.

3 Q How does it work within the unit as far as working
4 together with other members of your unit?

5 A Sometimes we have bigger crime scenes that we need
6 help on. As far as like just the verification of certain
7 items of evidence and just kind of a peer review type
8 thing.

9 Q So you often work together.

10 A Yes.

11 Q So if you find something, peer review means that
12 somebody else comes behind you just to make sure
13 everything's what you say it is.

14 A Yes.

15 Q Is there a mechanism in place if it's not what you say
16 it is?

17 A Um ---

18 Q In other words, if you find something and you do a
19 peer review and they don't agree with you, is there a
20 mechanism in place to deal with that?

21 A There is. We would not come to a conclusion. If
22 there -- there's some type of dispute about an item of
23 evidence, we would not come to a positive conclusion.

1 Q During your time as a forensic investigator, have you
2 been asked to identify people by comparing latent
3 fingerprints with their own inked prints?

4 A Yes, ma'am.

5 Q Can you explain to the jury what a latent fingerprint
6 is?

7 A A latent fingerprint is the collection of oils and
8 acids from your finger. Whenever you touch a surface, it
9 leaves those behind, and it's not visible to the naked eye.

10 Q I know this sounds silly, so when you're -- when it
11 says prints, it's not because your actual ridges imprint in
12 the object ---

13 A No.

14 Q --- it's more of the oils or whatever's on the skin
15 that is left behind.

16 A Um, it's sweat really. Sweat.

17 Q So does surface matter?

18 A It does. It matters as far as what can be left on it,
19 yes.

20 Q What's an inked fingerprint?

21 A An inked fingerprint is a controlled ink of --
22 somebody's hand is -- ink is applied to somebody's hand and
23 you're controlling obtaining those prints.

24 Q So if you were taking my inked fingerprint, you would
25 watch me as I put ink on my fingers and I would put it on a

1 piece of paper or a card or something where you'd know it's
2 my print being put down.

3 A (Indicating yes)

4 COURT REPORTER - She needs to answer verbally.

5 A Yes. Sorry.

6 Q And you've said a little bit of this already, but
7 could you tell the jury how it's possible for a person to
8 leave a fingerprint behind?

9 A Your friction ridges, which are the parts of your
10 fingers that are fingerprint, they have pores in them and
11 they sweat and that secretion of the oil and acids are left
12 behind whenever you touch something.

13 Q Is it possible for a person to touch a surface and not
14 leave a fingerprint?

15 A Yes.

16 Q How come?

17 A It depends on the surface ---

18 MS. LIPSINKI - Your know, I think we're getting
19 into opinion testimony, and she hasn't been qualified as an
20 expert in that regard.

21 A It depends on --

22 THE COURT - Hold on. You want to ask her some
23 more questions. Or do you want to offer -- let me put it
24 that way.

25 MS. DESCH - Sorry.

1 Q How many -- how many hours have you been in training
2 total, if you recall?

3 A If I had to say total, 48 hours of just fingerprint
4 recognition training.

5 Q So 48 just in fingerprints, but you've done other
6 trainings as far as forensics.

7 A Yes, ma'am.

8 Q And you said you've been to about a hundred crime
9 scenes where you've had to deal with fingerprints in your
10 three years on the ---

11 A (Indicating yes)

12 Q --- unit.

13 A Yes, ma'am.

14 Q Now, you haven't testified before though, however.
15 Correct?

16 A No, I haven't.

17 Q And the trainings that you've gone to, have you been
18 certified in fingerprint analysis?

19 A Recognition and comparison, yes, ma'am.

20 Q Sorry. So you're -- so technically it's recognition
21 and comparison for fingerprints.

22 A Yes, ma'am.

23 MS. DESCH - Your Honor, if we could move Ms. --
24 Investigator Gregory in as an expert in the recognition and
25 comparison of fingerprints?

1 MS. LIPINSKI - If I could ask just one question,
2 Your Honor.

3 THE COURT - Sure.

4 CROSS EXAMINATION

5 BY MS. LIPINSKI -

6 Q You stated that you've been to a hundred crime scenes.
7 Correct?

8 A Yes, ma'am.

9 Q All right. But how many actual fingerprint
10 comparisons of those hundred crime scenes have you done?
11 Would you say half, more than most, a few?

12 A I would say three-fourths of the amount.

13 Q All right. And you were the fingerprint examiner or
14 other people in your office did that?

15 A Either or. We work in -- well, not work in teams, but
16 if I have prints from a crime scene that I've lifted, I'll
17 look at them, examine them, and then, of course, I have to
18 have somebody else look at them, examine them for
19 verification and then sometimes it's the opposite for
20 verification purposes.

21 Q Is there ever an occasion where you might lift
22 fingerprints but somebody else would do the fingerprint
23 comparison for you?

24 A There could be, yes, ma'am.

1 Q Okay. And so that could've happened at least some of
2 those cases. So you would say roughly 50 to 75 you've done
3 a comparison?

4 A Yes, ma'am.

5 MS. LIPINSKI - Your Honor, at this point I -- I
6 think if she -- the defense would object to her being
7 qualified as an expert. I'm not sure a week-long class
8 gets her there. She's never been certified as an expert
9 before, as her experience is I think somewhat minimal. I
10 know everybody has to start somewhere, but the defense
11 would just feel that she hasn't risen to the level of
12 having training expertise and experience to get to that
13 stinger.

14 THE COURT - (Pause) Well, let me say this. I'll
15 listen to her testimony some more, but I find her qualified
16 and I'm reading the cases here, and the State's expert is
17 not limited to any class of persons acting professionally,
18 no exact requirement concerning how knowledge or skill must
19 be required. Certainly if the witness's testimony will be
20 helpful to the jury and have more knowledge than a jury on
21 a particular issue and it's going to be helpful to the jury
22 in understanding they're allowed to testify as an expert.
23 However, having said that, you still have to have some
24 quality to base it on and not just that they have opinion
25 an there, but she has testified that she has at least 48

1 hours -- that's actual hours, not over a 48 hour period --
2 but 48 actual hours. When you go to semester college it
3 might be 90 hours spread over six months, but yet they've
4 had some to get to the 90 hours. She said she's had 48
5 hours of actually -- she has been participating in
6 detecting or lifting and analyzing fingerprints; sometimes
7 she is the person who did it; sometimes she is doing a peer
8 review of what somebody else is going, but in all those
9 cases, whether it be 50, 75 or 100 times, she's done it,
10 but she has that experience and she has some training, at
11 least 48 hours plus some other training in the field of
12 forensics, and so the Court will find her qualified. The
13 weight to be given her testimony -- and I'll instruct the
14 jury on that. As a matter of fact, I'll do that right now,
15 but the weight to be given her testimony will be a matter
16 for the jury to determine, the weight to give it, but I
17 find her qualified. Let me give the jury this qualifying
18 instruction. I charge you that although lay witnesses are
19 not limited to testifying about facts within their
20 knowledge are not allowed to give opinions. Certain
21 witnesses who by training, educational experience are
22 considered as experts in a particular field may give
23 opinions in that field based upon the facts of the matter
24 and their conclusions. These opinions constitute evidence
25 to be considered by you and connect with all of the other

1 evidence and testimony in the case, and it is for you the
2 jury to give it such weight as you in your experience and
3 discretion may determine. By this I mean that you must
4 weigh such evidence and accept or reject it in the same
5 manner as you treat all other evidence in the case. The
6 value of expert testimony does not depend upon the skill
7 and knowledge professed by experts but upon the skill and
8 knowledge they actually possess. Expert testimony is given
9 for the purposes of enlightening you and not for the
10 purpose of controlling your judgment. With that
11 explanation about expert testimony the weight to give it
12 and you may proceed.

13 MS. DESCH - Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. DESCH (contd.) -

16 Q Investigator Gregory, were you called out to assist in
17 this particular case?

18 A Yes, ma'am.

19 Q What was your role?

20 A I was there to investigate the crime scene and process
21 for evidence.

22 Q And where did you go first?

23 A To McFarland, the address on McFarland.

24 Q What did you observe when you got to the address on
25 McFarland Road?

1 A When I arrived there were -- I noticed the house, of
2 course, and a deputy on the scene.

3 Q And what did you do when you got there?

4 A I spoke with the deputy to find out what the situation
5 was, and then I started processing the crime scene.

6 Q What did processing the scene entail? What does that
7 mean?

8 A First of all we take pictures of crime scene and then
9 latent prints are tested for and anything like that,
10 fingerprinting, anything that I think might develop
11 evidence.

12 Q And that is partly from what you learned from the
13 deputy that was the first on scene.

14 A Yes.

15 Q Did you talk to Mr. Taylor at all?

16 A I did.

17 Q To what extent did you talk to Mr. Taylor?

18 A Throughout the whole process here and there trying to
19 find out exactly how the room was set-up, where the t.v.
20 was originally at, things that would make a difference in
21 how I process something.

22 MS. DESCH - Beg the Court's indulgence.

23 Q I'm sorry. Going back to -- so you talked to him
24 throughout while you were out there.

25 A Yes, ma'am.

1 Q Did you go into the back bedroom part?

2 A I did.

3 Q And what did you observe when you got there?

4 A When I got there, the t.v., the television was laying
5 on the bed. There was a cable box in the floor and I'm --
6 I think the door was opened when I was there.

7 Q Did you process what you could based on what you
8 thought would elicit evidence?

9 A Yes, ma'am.

10 Q And what did that entail?

11 A I processed, of course, the television, the cable box
12 and the door, the front of the door.

13 Q What did you observe on the door that you thought
14 would elicit evidence?

15 A There were some smudge marks on the window pane part
16 of the door and also near the door handle.

17 Q Outside looking in?

18 MS. LIPINSKI - I'm sorry. I didn't hear the last
19 part of her answer. I'm sorry.

20 THE COURT - Yes, can you repeat your answer,
21 please, ma'am.

22 MS. LIPINSKI - If she can speak up; I'm just
23 having a little bit of problem ---

24 A There were smudge marks on the window pane part of the
25 door and also near the door handle.

1 MS. LIPINSKI - Handle. Thank you, Your Honor.

2 Q I know this sounds silly, but you're holding your
3 hands up like this. Is that what it looked like on the
4 door, the window?

5 A Yes, ma'am. Yes, ma'am. It looked maybe like
6 somebody was looking in.

7 Q Were you able to lift anything from those smudges?

8 A No, ma'am.

9 Q And so smudges on the outside of the door as though
10 someone was looking in, and then smudges on the handle.

11 A (Indicating yes) Yes, ma'am.

12 Q Were you able to get anything on the handle?

13 A No, ma'am.

14 Q Anything on the cable box?

15 A No, ma'am.

16 Q Now, going to the t.v., what did you do with the t.v.
17 to process that?

18 A I lifted the t.v. off the bed, of course, and then I
19 took it outside to a table, because the fingerprint powder
20 is really messy, so I processed the front of the -- well, I
21 processed the whole t.v., but I began with the front screen
22 area, and I used a feather brush and the fingerprint
23 powder, which is just carbon powder based, and with light
24 pressure I just applied the powder until a print's
25 developed and then I lifted them off.

1 Q What -- what, if anything, are you wearing on your
2 hands so you don't transfer any fingerprints to what you're
3 processing?

4 A Gloves. We always wear gloves any time we go into a
5 crime scene.

6 Q To your knowledge, are you the only one at that point
7 that touched the t.v. when you took it outside to process
8 it?

9 A At that -- at that point, yes. I was the only person
10 that had touched it.

11 Q Now, you say black powder and lifting. Can you
12 explain that to people that don't do this everyday?

13 A The carbon powder binds to the oils or sweat in the
14 friction ridge detail on the print that's left behind, and
15 then we'll take lifting tape is what it's called and lift
16 the print from the surface and place it on a white card and
17 fill out the back of the card and where it came from.

18 Q Did you bring those cards with you today for Court?

19 A I did.

20 MS. DESCH - Could I approach?

21 THE COURT - Yes, ma'am.

22 Q Now, as you're pulling these out, are these cards that
23 you've made copies for me and for the defense?

24 A Yes, ma'am.

CHERYL GREGORY - DIRECT BY MS. DESCH (CONTD.)

1 (WHEREUPON, DOCUMENTS MARKED FOR IDENTIFICATION
2 AS STATE'S EXHIBITS 20 AND 21.)

3 Q Investigator Gregory, I'm going to hand these back to
4 you and show you what's been marked, the first two for
5 identification, 21 and 22. Do you recognize those?

6 A Yes, ma'am.

7 Q What do you recognize them to be?

8 A Latent print lifts from television at the scene.

9 Q So you've gone out to the scene, you've processed with
10 the black powder, so basically sprinkling the black powder.
11 Correct?

12 A Yes.

13 Q And then once you've sprinkled the black powder, what
14 do you do with that feather brush that you talked about?

15 A I would lightly apply pressure to the area that I'm
16 testing for prints so that the powder bonds well to the
17 oils and develops the print.

18 Q And then where does the tape come in?

19 A The tape comes in after I've developed a print and I
20 would lift it and collect it, I'll apply the tape over top
21 of the print and then I'll remove and tape it on one of the
22 cards.

23 Q And the cards marked for identification as 22 and 21,
24 what specifically are those?

1 A These are from the windows from bottom corner of the
2 front of the t.v. and one is from the top corner of the
3 front of the t.v.

4 Q For the record which -- of 21 or 22, which one's the
5 bottom corner?

6 A 20 is the bottom corner. I've got 20 and 21 here.

7 Q Sorry. So I have the numbers wrong. So 20 is the
8 bottom corner, ---

9 A Yes, ma'am.

10 Q --- and 21 is what?

11 A The top corner.

12 Q Did you do that at the scene?

13 A Yes, ma'am.

14 Q And when you take that taped card and mark on it, what
15 do you do with it then?

16 A I place it -- well, I take it with me, of course, back
17 to the office and I put it in a folder.

18 Q Is it kept in your control the entire time?

19 A Yes. Yes.

20 Q And so what we're looking at there, 20 and 21, that's
21 an accurate representation of the prints you lifted from
22 the t.v. on February 10th ---

23 A Yes, ma'am.

24 Q --- at McFarland Road.

25 A Yes.

1 MS. DESCH - State would like to move in 20 and 21
2 into evidence.

3 MR. LIPINSKI - Your Honor, we have an objection,
4 and it may be something we need to take up outside the
5 presence of the jury.

6 THE COURT - All right, Mr. Foreman and ladies and
7 gentlemen of the jury panel, there's a matter I need to
8 take up with counsel at this time out of your presence. We
9 will go ahead and take a short break at this time. We'll
10 probably take about 10 or 15 minutes.

11 (WHEREUPON, JURY EXITS THE COURTROOM)

12 THE COURT - Yes, ma'am.

13 MS. LIPINSKI - Just briefly, Your Honor. Could I
14 borrow those just for a minute ---

15 MS. GREGORY - Yes.

16 MS. LIPINSKI - --- just to show Your Honor. I
17 notice, Your Honor, on State's Exhibit Number 20 and 21,
18 she's then added at the bottom of that her opinion that
19 these are -- it says David Dover, that type thing -- so I
20 assume, obviously, that's where we're getting -- there's
21 been no evidence of his known prints, and without that I
22 don't know that she gets to that conclusion.

23 THE COURT - I'm assuming she's going there.
24 Maybe you need to wait then since this is written on here,

1 hold off on getting them admitted until you're able to pull
2 it ---

3 MS. DESCH - Yes, Your Honor.

4 THE COURT - Otherwise, you'd have to take those
5 off.

6 MS. DESCH - Yes, Your Honor.

7 MS. LIPINSKI - And I've not been given a known
8 ten-print card that she used as part of discovery, Your
9 Honor. I got the pictures of the latent lift cards
10 themselves, but I didn't get a ten-print card that I
11 caught. May have missed is somewhere but ---

12 THE COURT - Have you got a ten-print card?

13 MS. DESCH - Yes, Your Honor, I believe I sent a
14 copy of it -- I have a copy of this that was provided to
15 defense.

16 THE COURT - You're saying you haven't gotten a
17 copy of that before in discovery?

18 MS. LIPINSKI - I don't believe so, Your Honor.
19 We did exchange discovery a number of times. I did get a
20 big packet of all the latent lifts themselves; I just
21 didn't get the ten-print card. I also haven't heard any
22 testimony unless she was the one -- because this appears to
23 be from an assault and battery arrest some time ago in
24 2002. She -- she didn't ink him, so it's just like a --
25 you know, a known DNA sample that she didn't collect. They

1 still have to authenticate that these are her prints. She
2 could've pulled it out of some database, but I don't know
3 what David Wayne Dover that is or who collected it or who
4 inked it or those type things, so I think until they can
5 establish that, I don't know that they get to make that
6 conclusion. It's like, you know, I understand just like
7 DNA, they get hits off the database, but in DNA they still
8 have to go back and get a known DNA sample; they don't use
9 the database.

10 THE COURT - All right. Point well taken.
11 Counsel, what do you want do?

12 MS. DESCH - Your Honor, to my knowledge it was
13 what was taken from him from this arrest, and so I will --
14 if I could have ---

15 THE COURT - She's saying it's not.

16 MS. DESCH - No, I -- I understand what she's
17 saying, but I'm saying my understanding from the
18 investigators is that it was, and if I could have a few
19 minutes, I can investigate that.

20 THE COURT - All right. Well, let's do this,
21 we'll go ahead and take about 15 minutes or so or 20 or
22 whatever it takes, and whatever you've got, show it to
23 counsel and y'all will have a chance to discuss it before
24 we take it back up again.

25 MS. DESCH - Yes, sir.

1 MS. LIPINSKI - Your Honor, she's being asked to
2 talk to a witness who is on the stand and resolve her
3 testimony.

4 THE COURT - No. No, she's not. Have to get the
5 information from somewhere else.

6 MS. DESCH - Yes, Your Honor, I understand.

7 THE COURT - Ms. Gregory, we're going to take a
8 recess at this time. During the recess you cannot discuss
9 with the attorneys or anyone else your testimony in this
10 case.

11 MS. GREGORY - Yes, sir.

12 THE COURT - It's the same as if you were still
13 sitting on the stand the whole time, you couldn't talk to
14 anybody. Now, you can go to the restroom and you can talk
15 to anybody about anything else, but, please, do not talk to
16 them about the case at all, the attorneys or anyone else --
17 Okay?

18 MS. GREGORY - Yes, sir.

19 THE COURT - --- during the break. All right.
20 Thank you. We'll take about whatever -- take about 15 or
21 20 minutes, whatever you need.

22 MS. DESCH - Thank you, Your Honor.

23 (WHEREUPON RECESS IS TAKEN)

24 THE COURT - Please be seated. Thank you.

25 MS. DESCH - May it please the Court, Your Honor.

1 THE COURT - You can come on back and get on the
2 stand, please, ma'am.

3 (WHEREUPON, THE WITNESS RETAKES THE STAND)

4 MS. DESCH - Your Honor, just so I don't belabor a
5 point that the Court's not asking for, I just want to make
6 it the understanding that the Court's concern is, is this
7 the David Dover sitting here that gave the prints that were
8 compared, correct, and how that identity would be
9 confirmed.

10 THE COURT - Yes, in a sense, because if something
11 was used for comparison sake, then you have to be able to
12 establish that, in fact, those records were what they say
13 they were. If you don't have a records custodian here to
14 say that those are fingerprints out of his record that were
15 accurately kept, you know, with the other information, then
16 I don't know you do it.

17 MS. DESCH - Correct, Your Honor. And just going
18 through -- and I understand that completely, but just going
19 through the constraints of what we have here, we have a
20 2002 prints signed by David Dover with his social security
21 number and that is also the same social security number and
22 signature that we see on documents in this case including
23 Waiver of Rights. There is also an address on this card
24 from 2002 that is a Wayne Wright address that is in the
25 global system that has been linked to Mr. Dover. I did

1 talk to George Weeks in the Forensics Department and he was
2 able to -- in fact, he's walked in now -- Court's
3 indulgence.

4 (WHEREUPON, DISCUSSION IS HELD WITH MR. WEEKS
5 WHICH WAS NOT REPORTED)

6 MS. DESCH - What he's handing me -- what he
7 originally pulled up and what I was able to show to defense
8 counsel was an arrest from May 20th of -- or April 20th of
9 this year, because that's what he thought was the arrest
10 date here, and I clarified that, no, it was February, and
11 so that's what he's brought in now. There is the card from
12 the February booking incident which is this one, along with
13 the inmate records that have a picture linking him, so
14 however the Court wishes to remedy that, to have somebody
15 compare it right now and testify -- I can move into my next
16 witness and come back to the issue so that we're not
17 holding up the Court, however the Court would like to
18 remedy the situation.

19 MS. LIPINSKI - There is no -- they called the
20 case; they did the testing; they have the evidence; they've
21 failed to present me a ten-print card; they now are
22 acknowledging the card that they can't authenticate the
23 ten-print card that this examiner used when she did her
24 report. Now they're wanting to substitute two more ten-
25 print cards. I've been handed three today. I made a

1 motion at the start of the trial, give me all the evidence
2 you intend to introduce. I don't know who inked him; I
3 don't know who the custodian of records is. I'm pretty
4 sure they're not on our witness list and she's wanting to
5 clean up what she should've had going the day she called
6 the case to trial, and she should've presented that
7 evidence to the defense prior to the trial starting. You
8 don't get to then come in here afterwards and do DNA and
9 fingerprint testing in the middle of the trial and claim no
10 harm/no foul to the defense. There is a harm and a foul to
11 the defense, because I didn't have that ten-print card. I
12 didn't have any number of other ten-print cards. I
13 couldn't compare them to the latent lifts I was provided.
14 I couldn't do any of that, because they failed to comply
15 with Rule 5 and Brady. It's a fingerprint case. You know
16 going into it, just like DNA, you've got to have a known
17 sample; you've got to be able to authenticate it; you may
18 need a chain of custody or custodian of records, and they
19 don't have any of that, and now they're wanting the Court
20 on 4:00 o'clock well into the trial to allow him to back
21 clean-up. It shouldn't be allowed; it's a Brady violation.
22 These people aren't on the witness list; the prejudice is
23 to the Defendant; now we have multiple arrests; this
24 witness is already on the stand, so now we're going to have
25 a third fingerprint examiner to go back and do it, because

1 that's not who she did, so we're going to allow a witness
2 to come off the stand and now conduct another examination
3 in the middle of trial in the middle of her testimony or
4 add yet another examiner to the witness list to try and do
5 it? It's -- it shouldn't be allowed. It's a -- they've
6 called the case. They want control of the docket; their
7 argument as to why they get control of the document (sic)
8 is we know when we're ready; we know when we have
9 everything we need; we know when the witnesses are
10 available and all these kind of things, and the State gets
11 ready based on that, looks at the witness list, looks at
12 the evidence, asked them at the beginning of the trial, I
13 got everything; yes, she's got everything, and now she
14 pulls out a ten-print card I've never seen and now they
15 want to bring me two new ones today and add witnesses to
16 the witness list. I think the fingerprint evidence
17 comparing it to Mr. Dover needs to be excluded because they
18 can't authenticate the evidence they put the defense on
19 notice that they were going to present at this trial.

20 MS. DESCH - Your Honor, a report was provided to
21 the defense that clearly talks about the matches to the
22 ten-print card. She is correct; she doesn't have the ten-
23 print card from the booking of this arrest in February. I
24 didn't have that. So she is correct in that matter, but
25 the prejudice to the defense -- I'm allowing for -- I'm

1 asking us to move on to another one and not interrupt the
2 trial. I can have Brian Bagwell who is on the witness list
3 do the comparison. There is not a prejudice to the defense
4 when she is on notice that there was a matched fingerprint
5 to a ten-print card belonging to David Dover, so there is
6 notice to the defense that we'd be presenting fingerprint
7 evidence.

8 THE COURT - Tell you what I'll let you do. I'm
9 not going to let you put it in through this witness. Brian
10 Bagwell is on the list.

11 MS. DESCH - He is.

12 THE COURT - And he's a forensics guy; he's
13 testified before in Court. And so you can put it in
14 through him. But I think she's right that you all haven't
15 done what you had to do to lay a foundation to authenticate
16 what she used to compare it with, and that might seem to be
17 technical, but it doesn't matter. That's what the rule is.
18 You all know the rule, and so -- but what you can do --
19 your out would be to use Brian Bagwell who can then -- he's
20 on the witness list, and he can come in and testify.

21 They're on notice that he'll be a witness. I don't -- I'm
22 not going to let you get into it through this witness, ---

23 MS. DESCH - Yes, sir.

24 THE COURT - --- because you haven't laid the
25 foundation. You've still got your opportunity, however,

1 you need to make available to the defense what it is you're
2 going to use, and I understand you've done that now. It
3 should've been done earlier.

4 MS. DESCH - Yes, sir.

5 THE COURT - But be that as it may, I don't find
6 that's sufficient prejudice to the defense that you
7 shouldn't be able to do it. That's not their defense
8 anyway as I understand it, that Mr. Dover was not there and
9 didn't touch this t.v. He's given statements to the -
10 statement to the contrary that he was there and touched the
11 t.v., but be -- and that's why I say there'd be minimal
12 prejudice to the defense if you're allowed to do that,
13 because these people are on the witness list. Brian
14 Bagwell is on the defense list as forensic service guy, and
15 so if he can do the same thing this witness can do, then
16 you'll have an opportunity to call him and do it, but I'm
17 not going to let you do it -- not let this witness get off
18 the stand, ---

19 MS. DESCH - I understand.

20 THE COURT - --- go make the comparison based on
21 the new cards, the print and -- and come back in and
22 testify. Not going to do that.

23 MS. DESCH - I understand.

24 THE COURT - And so -- but if you can do that --
25 Mr. Bagwell can do -- if he's able to do it. I don't know

1 if he's able to do it or not, but if he's able to do it,
2 you still have an out there, because he is on the witness
3 list, provided you have provided now to the defense
4 everything that he might testify to and any kind of
5 comparison, etcetera.

6 MS. DESCH - Yes, sir.

7 THE COURT - She has testified concerning
8 collection of it; she collected it in the cards. You
9 haven't put that in evidence yet, and so that might be a
10 problem that you need to address, because it's got this
11 writing on here.

12 MS. DESCH - We can take out the writing on the
13 bottom ---

14 THE COURT - I think you -- probably what you're
15 going to have to do.

16 MS. DESCH - --- for the purpose of just putting
17 those in.

18 MS. LIPINSKI - If we could just mark them for ID
19 and then if she's able to actually tie them up then put
20 them in.

21 THE COURT - Yes, either way you want to do it.

22 MS. DESCH - Yes, sir

23 MS. LIPINSKI - And also she's flashed some ten-
24 print cards in front of me. I don't have copies of any one
25 of them, so I would ask that I get copies of whatever ---

1 THE COURT - Well, you haven't provided that yet.

2 MS. DESCH - I handed it to her; she handed it
3 back to me. I can absolutely provide a copy.

4 THE COURT - Whatever you're going to use, let her
5 have it, and we'll delay that testimony until tomorrow and
6 she'll have a chance to look at it.

7 MS. LIPINSKI - Your Honor, I'd also like a copy
8 of what this examiner originally used just so I can make a
9 comparison.

10 MS. DESCH - Absolutely.

11 THE COURT - Okay.

12 MS. DESCH - Absolutely, Your Honor.

13 THE COURT - All right. We know where we are now?

14 MS. DESCH - I don't need to redact that as well
15 or we're just marking it for ID.

16 THE COURT - Well, we have -- we have not -- you
17 can either redact it off here if you're going to try to get
18 it in through witness or if you're going to have a witness
19 who's going to testify then you're comparing it --
20 comparing it appropriately with existing prints, known
21 prints, and you can establish those are Mr. Dover's prints
22 kept on file in the public record wherever somebody can
23 verify all that, custodian records and that -- if you can
24 do that, then you may be able to leave it on here, because
25 at that point it would've been identified, but what you'd

1 have to do now is just offer them for ID and not put them
2 in yet. Or if you want to put them in through this
3 witness, then you're going to have to take off the
4 identification on here of Mr. Dover.

5 MS. DESCH - Yes, Your Honor. So for the purpose
6 -- before we bring the jury out, so that would be
7 essentially the -- that would be the conclusion of my
8 questions of Ms. Gregory -- Investigator Gregory's -- I
9 believe they're marked as ID, but I can do that officially
10 and then move on to Detective Lovelace.

11 THE COURT - Okay. All right.

12 MS. LIPINSKI - And just to be clear ---

13 THE COURT - Just wait -- have to do that in front
14 of the jury, yes, ma'am.

15 MS. LIPINSKI - And I just want to be clear, and I
16 don't want to bring the jury out and bring the jury in, I
17 also have a report that she compared a print to the victim.
18 I take it they're not going into that report? There was
19 yet another lift taken that they ruled out the victim of,
20 which again is ---

21 THE COURT - And there's another print that ruled
22 out the victim and also the Defendant?

23 MS. LIPINSKI - Yes. And I haven't been provided
24 the victim's ten-print card, so I just would ask that she
25 also not be allowed to go into that, just that she

1 collected a third print. They can obviously identify where
2 they collect it, but I would object to any conclusion that
3 it's not the victim or the Defendant in that I've also not
4 been provided a ten-print card of the victim, so it's
5 impossible to make that comparison and authenticate it.

6 MS. DESCH - I had just said that my last question
7 with her would be just marking it as ID, so I was not
8 getting into ---

9 THE COURT - Well, I guess she's not only talking
10 -- she's not only talking about this witness but another
11 witness as well, if you put up another witness. Is that
12 right? You're not -- she said not going to ask her any
13 more questions. What we'll do, the jury come in, say I
14 have no further questions for this witness or we'll go
15 ahead and mark these for ID, and I don't know if we need to
16 do that in front of the jury. You could. Like to have
17 these just marked for ID at the present time; I have no
18 further questions of this witness, unless -- well, we
19 haven't gotten to cross yet, have we? You need to ---

20 MS. LIPINKSI - We have not, Your Honor.

21 THE COURT - So she's still got to cross.

22 MS. DESCH - Correct, Your Honor.

23 THE COURT - Okay. So we'll leave her up there.
24 She'll have to be there for cross examination.

1 MS. DESCH - I do -- and since it was brought up
2 by the defense, just to be clear, so when Investigator
3 Gregory did compare -- there's -- just for the Court's
4 edification, there's the two cards that are in front of
5 you. David Dover was identified as the person who put the
6 print on the t.v. There is a print that has sufficient
7 detail to compare, but it didn't come back to David Dover.
8 So at some point during the investigation I asked
9 Investigator Gregory just to ask -- compare it to the
10 victim just for elimination purposes. That report was
11 filed to us and that's what was given to the defense. She
12 is correct that there is no ink print card, so if she's
13 objecting to us talking about it based on the discovery
14 violation, how are we going to deal with then later -- I
15 mean I guess since we didn't identify -- it doesn't come
16 back to the victim either so ---

17 THE COURT - Well, what -- you plan to go in and
18 say there's some third party here somewhere?

19 MS. LIPINSKI - There's a print they lifted that's
20 not the victim or David Dover; yes, sir, I think that's
21 relevant to the case. Unless they cannot, you know, make
22 that conclusion, if there's another print out there that is
23 not the Defendant on that t.v. Now, all they're precluded
24 from doing at this point is saying that it's not that of
25 the victim, but I think it is relevant that they lifted

1 another print off that t.v. that's somebody else. It's
2 always an issue.

3 THE COURT - Here's the problem I've got with
4 that. Of course it could be the wife, could be a child,
5 somebody else maybe visiting the home. It's not your
6 defense that he didn't have his hands on that t.v, so I
7 don't know what that gains anymore. I really don't.

8 MS. LIPINSKI - Because at this point part of the
9 defense is how much they're willing to identify my client
10 as being the one who did this and what transpired that day
11 and I think the fact the third print is involved is
12 pertinent issue before the jury. You're right, there are
13 other plausible explanations that it's a wife, a child or
14 the cable t.v. guy, but nonetheless, there is a print
15 lifted from the crime scene that is not Mr. Dover and I
16 think that is relevant evidence to put before the jury and
17 whether or not forensics made any attempt to identify who
18 that person was and whether they were able to do it. If
19 they weren't, that's fine. If they want to be able to say
20 they ruled out the victim, then they need to give me the
21 victim's ten-print card that they used just like this one
22 so that she can render that opinion. Just like if we had a
23 mixture of ---

24 THE COURT - Well, I don't know you want to render
25 out the victim then, do you? You don't want to rule him

1 out, do you? You know, if there's no ten-print card,
2 you're not going to be able to get into any of that. I
3 don't know why -- your choice what you're going to do, how
4 you try your case, but there'll be no need to even go into
5 if you're saying they can't get into it anyway because of
6 the ten-print card or you didn't get discovery so it will
7 be kept out altogether.

8 MS. LIPINSKI - No, it's just like they were able
9 to get out of this witness that they lifted lift (sic) --
10 they got lifts off the scene. I think that is probative
11 relevant. Think it then comes into question as to what
12 they did with that. If they ever made any attempt to ID
13 it, if they did, what they found, but they have to be ---

14 THE COURT - But you're objecting them being able
15 to being able to do that because you didn't get your ten-
16 print card.

17 MS. LIPINSKI - They still -- then the State is
18 left with the fact that we have an unknown print out there
19 that they can't get to that conclusion. I mean I think
20 that's still relevant evidence. The fact that they didn't
21 rule out or rule in the victim ---

22 THE COURT - Well, how you going to deal with that
23 on questioning? How you're going to deal with that on
24 questioning, because if you ask them, did you find any
25 other prints on there, and so she says, yes, I did find

1 prints that were not the Defendant's victim (sic) on there,
2 then where do you go with it? You going to say, well,
3 these were unknown people? Well, they say they are known -
4 - they did rule out the -- one of them -- I guess you said
5 did identify as the victim? Right? One of them you
6 didn't? Is that right?

7 MS. DESCH - Yes, sir.

8 MS. LIPINSKI - No, I believe there's two that are
9 the Defendant and the third one they ruled out the victim,
10 but they don't know who it is.

11 THE COURT - Oh, is that correct?

12 MS. DESCH - My understanding, and this is from
13 the report, LP1, which is one of the two cards in front of
14 you, it's the opinion of the examiner that the latent print
15 marked A matched the left ring finger of the ten-print card
16 labeled David Wayne Dover. Latent print marked B matched
17 his left middle finger, and then the second card before you
18 is LP2, it's the opinion of the examiner that A matches the
19 right middle finger of David Dover and B could not be
20 matched to David Dover, so there's three prints, the fourth
21 one could not be matched to Mr. Dover.

22 THE COURT - How about to the victim?

23 MS. DESCH - The fourth one was not matched to the
24 victim.

1 THE COURT - Okay. So it was not matched to
2 anybody on the fourth one?

3 MS. DESCH - Well, was not matched -- the only
4 other person tested was the victim. And I -- she wants to
5 keep it out, but I think if she's ---

6 THE COURT - Well, if she keeps it out, it's going
7 to be out. I mean you can't -- you can't have it both
8 ways. You can't have your cake and eat it too. You can't
9 say you didn't -- test this and find anybody with it; you
10 know, you can't say that and then say, you know, you didn't
11 rule out the victim when, in fact, they did, but you're
12 saying keep it because of -- you see what I mean about your
13 questioning?

14 MS. LIPINKSI - I understand, but and I don't mean
15 to belabor the issue, but it gets more difficult. The
16 report says that latent print B cannot be matched to David
17 Dover and did not contain sufficient ridge detail for ID
18 purposes, but then somehow it contains enough sufficient
19 ridge detail to rule out the victim, so they're in part
20 implying that it still could be David Dover there, but they
21 don't have enough ridge detail to say it, but then say they
22 still got enough to say that it's not the victim, and I do
23 think it goes to the credibility of this witness and making
24 a comparison, does it contain sufficient ridge detail, does
25 it not, and if they get to that, I think it's fair game,

1 but I think the jury is entitled to know that there's a
2 third print out there that they were not able to match to
3 David Dover, and I think that's still fair game.

4 THE COURT - I don't have a problem with that at
5 all. The problem I got is where we going to go if you try
6 to rule out anybody. That's the problem I got as they
7 having their print on there. That's where I have a
8 problem, because you're objecting to that coming in. Leave
9 it up to y'all. Leave it up to you. All right. They'll
10 be able to get into that insofar as there's a print that
11 was lift that they -- and whatever she -- the witnesses say
12 with regard to that print - whether they're -- they didn't
13 identify who made that print or there wasn't enough ridge
14 detail to identify the person that made the print or to
15 match it or if they just simply were not able to match it
16 with anybody -- that match it to the Defendant and they
17 don't know who it is. There you go. That's where we are.

18 MS. DESCH - Just out of fear of what's going to
19 be presented to the jury, my understanding is that during
20 cross examination of this witness the defense wants to get
21 into the comparison, but we're not bringing the comparison
22 out, because we're not using this witness for the
23 comparison so ---

24 MS. LIPINSKI - No, I won't get into comparison on
25 the cross of this witness.

1 MS. DESCH - Okay.

2 THE COURT - As I understand it, the only thing is
3 they -- she lifted a print and it hadn't been identified as
4 being the Defendant, so it'd be some other person. That's
5 where we are as I understand it. Correct?

6 MS. LIPINSKI - Yes, Your Honor.

7 THE COURT - Please bring the jury in. Now, if
8 you want to have these marked for ID, counsel ---

9 MS. DESCH - Yes, sir.

10 THE COURT - --- and then if you have any more
11 questions of the witness, you can ask; if not, turn it over
12 on cross.

13 MS. DESCH - Thank you, Your Honor.

14 (WHEREUPON, JURY ENTERS THE COURTROOM)

15 THE COURT - Again, Mr. Foreman, ladies and
16 gentlemen, I apologize for the delay, but issues came up we
17 had to address. It took a little time to do that. We're
18 ready to resume now. Counsel ready to proceed?

19 MS. DESCH - Yes, sir. May I approach?

20 THE COURT - Yes, ma'am.

21 DIRECT EXAMINATION

22 BY MS. DESCH (CONTD.) -

23 Q State's 20 and 21, just to kind of refresh where we
24 left off, at this point that's just been marked for
25 identification purposes. Correct?

1 A Yes.

2 Q Now, just to be clear, those are the prints that you
3 lifted from the scene from the t.v. ---

4 A Yes.

5 Q --- on February 10th, 2014.

6 A Yes.

7 Q And that's how you secured them was on those cards.

8 A Yes, ma'am.

9 Q And then when you bring those back where -- are they
10 stored securely at FSC?

11 A Yes, usually in my desk.

12 MS. DESCH - Thank you. Please answer any
13 questions that the defense might have.

14 CROSS EXAMINATION

15 BY MS. LIPINSKI -

16 Q And I'm sorry, I didn't catch your last answer again.
17 Your talk in the direction of the jury; it just fades over
18 here. Where'd you see you kept those?

19 A I usually keep them in my desk or they go in a file
20 and I file them with the other latent files.

21 Q Do you remember approximately what time you would've
22 arrived out there, Ms. Gregory?

23 A It was -- I believe it was around -- it was -- after
24 noon time.

1 MS. LIPINSKI - May I approach just briefly, Your
2 Honor?

3 THE COURT - Yes, ma'am.

4 Q How you doing, ma'am?

5 A I'm good.

6 Q Asking you all these questions and I've taken your
7 notes away. Is this something you would've worked on?

8 A Yes, that is a report that I completed, ---

9 Q All right. So you actually generate this report.

10 A --- yes.

11 Q All right. And so it says up here dispatch time 1:00
12 p.m.?

13 A (Indicating yes)

14 Q Arrival time 1:24 p.m.

15 A Yes.

16 Q And depart time 3:00 p.m.

17 A Yes.

18 Q And is that depart time the house or the truck, to the
19 case in general?

20 A The truck. It would've been the whole ---

21 Q Okay. So you don't get out there until approximately
22 1:00 p.m. Correct?

23 A Yes, ma'am. Yes, ma'am.

24 Q And as part of your duties and responsibilities of
25 being now with the forensics services unit -- right -- you

1 understand the importance of preserving what's called the
2 integrity of the crime scene, do you not?

3 A Yes.

4 Q And what this means is that once a crime has occurred,
5 we really don't want anyone going back inside the crime
6 scene and tampering with any evidence that may be there.

7 Correct?

8 A Yes.

9 Q And this is why they may instruct sometimes burglary
10 victims don't -- you know, the temptation is to go in there
11 and find out what they took from you, but we don't want you
12 going in there because you want to see exactly how the
13 Defendant left the crime scene. Correct?

14 A Yes.

15 Q And in this particular case, when you arrived, do you
16 remember are there people inside the house when you get
17 there?

18 A I don't recall.

19 Q All right. Was it possible that the Defendant and his
20 -- or the victim and his children had gone back inside the
21 house by the time you get there?

22 A Possibility, yes.

23 Q All right. So in your opinion, though, that that is
24 not a preserved crime scene to what you would desired it to
25 be. Correct?

1 A Correct.

2 Q You don't always get that, but in a perfect world as a
3 forensics officer that's what you're looking for. Correct?

4 A Yes.

5 Q All right. And you stated that you talked briefly to
6 Sergeant Ellis who gave you verbal consent from the victim
7 to search the residence.

8 A Yes.

9 Q And he didn't limit you to any particular area?

10 A No.

11 Q And you got a little bit of a story of what
12 transpired. Correct?

13 A Yes.

14 Q And did they tell you that all of the doors had been
15 left unlocked prior to the incident taking place?

16 A I don't recall all of the doors. I specifically asked
17 about the entry door.

18 Q The entry door.

19 A (Indicating yes)

20 Q And in terms of the entry door, were -- did Sergeant
21 Ellis indicate that anyone was there when the Defendant
22 allegedly entered the house?

23 A No.

24 Q All right. So there are at least four doors to this
25 house. Correct?

1 A Yes.

2 Q All right. So there's the front door -- right --
3 which didn't appear that anybody really went through, which
4 is typical of houses these days. Correct?

5 A Yes.

6 Q And there is a back bedroom door; I think that's the
7 one you printed. Correct?

8 A Yes.

9 Q And then there was a glass sliding door. Correct?

10 A I don't recall.

11 Q Don't recall that.

12 A No, ma'am.

13 Q And there was actually another door on the opposite
14 side of the house. Do you remember that?

15 A No, ma'am.

16 Q All right. But in that no one is there when the
17 Defendant made entry -- right?

18 A Yes.

19 Q No one -- neighbors across the street say, I saw him
20 go into this door, that kind of thing. You are -- part of
21 your role is to try and identify points of entry. Correct?

22 A Yes.

23 Q so you would look for things like force, pry marks,
24 where somebody's shouldered in a door, those type things.
25 Correct?

CHERYL GREGORY - CROSS BY MS. LIPINSKI

1 A Yes.

2 Q And in the absence of that, if all the doors were
3 unlocked, it would be possible that he would've made entry
4 through any one of the four doors. Correct?

5 A Correct.

6 Q And you stated, however, that you focused in on this
7 back bedroom door. Correct?

8 A Yes, ma'am.

9 Q So you did not fingerprint the glass sliding door.
10 Correct?

11 A No, ma'am.

12 Q And you did not fingerprint the door on the opposite
13 side of the house. Correct?

14 A No, ma'am.

15 Q You did not fingerprint the door at the front of the
16 house. Correct?

17 A No, ma'am.

18 Q And you did not fingerprint any windows. Correct?

19 A No, ma'am.

20 Q All right. And you say you've worked about a hundred
21 cases as a forensics service officer, and before that were
22 in law enforcement for approximately eight years, if I
23 recall correctly?

24 A Yes.

1 Q All right. And during that time you know that a --
2 burglar's don't always get lucky the first door they go
3 into; sometimes they work their way around the house until
4 they find something that is unopened (sic) or find a point
5 of entry. Correct?

6 A Correct.

7 Q All right. And so that's why it's important that it's
8 possible even if entry was made into a certain door, it is
9 possible that the Defendant approached other doors
10 attempting to gain entry through those doors as well.
11 Correct?

12 A Correct.

13 Q Also fair to say that a glass sliding door is easier
14 to gain entry through than some other more solid wood
15 doors. Is that fair to say?

16 A It's fair to say, but if the doors were unlocked ---

17 Q Then any -- anyone could've -- correct?

18 A Yes, correct.

19 Q And you, however, focused on solely the exterior of a
20 bedroom door. Correct?

21 A Yes.

22 Q Which you describe as the point of entry but you're
23 getting that from the victim. Right?

24 A Yes.

1 Q So that means you did no independent investigation to
2 try and ascertain whether or not there is possibly another
3 point of entry into the home. Correct?

4 A I spoke to the victim who stated that he witnessed the
5 vic -- the suspect coming out of the bedroom, of course,
6 carrying a t.v. and made the suspect take the t.v. back in.

7 Q So the victim told you not that he saw the Defendant
8 coming off the back porch, but that he saw him actually
9 coming out of that door?

10 A If I recall correctly, yes.

11 Q But you only processed the out exterior of that door
12 but not the interior. Correct?

13 A Yes.

14 Q And you also still didn't hear from the victim that he
15 saw what door the Defendant would've gone into the house.
16 Correct?

17 A Correct.

18 Q So it's possible that he could've entered the house
19 through one door, made his way through the house and exited
20 another door. Correct?

21 A Correct.

22 Q All right. And you did no independent investigation
23 to determine whether or not that occurred in this case.
24 You focused on the door the victim told you to look at.
25 Right?

1 A Correct.

2 Q And you stated that the reason that it's important to
3 preserve the integrity of a crime scene is because we don't
4 want -- victim's not necessarily maliciously but even
5 unintentionally tampering with evidence inside the home.
6 Correct?

7 A Correct.

8 Q It's important that -- because so often times we don't
9 just find fingerprints where the Defendants are able to
10 take things, but sometimes fingerprints can be located
11 where they ransacked an area or they went through an area
12 or they tried to get something or weren't able to obtain
13 that item. Fair to say?

14 A (Indicating yes) Yes, ma'am.

15 Q Were you directed to any other areas in the house
16 where that might've happened, or did you just look at the
17 t.v. the victim told you to look at?

18 A I was not directed toward any other rooms in the
19 house. I was told that nothing was missing from inside the
20 house, and that it didn't appear that suspect went in any
21 other room in the house.

22 Q And that was after the victim, however, was inside the
23 house himself with his children, possibly.

24 A Possibly.

1 Q All right. So if there were any other areas disturbed
2 or anything like that or anything else -- something else
3 had happened inside the house, other than a burglary, the
4 evidence of those other explanations could have been
5 altered or moved in some way. Correct?

6 A It's a possibility, yes.

7 Q If there had a struggle in the living room, he had
8 opportunity to clean that up. Fair to say?

9 A Fair.

10 Q Okay. Now, in this particular case you stated that
11 you took some fingerprints off a t.v. Do any of your notes
12 or anything indicate the measurements of that t.v., that it
13 was a 27 inch Samsung?

14 A No, ma'am.

15 Q You would not have entered that in that?

16 A No, ma'am.

17 Q You don't know how that got into the report?

18 A I don't remember putting that in there or in my notes.

19 I don't ---

20 Q In addition to your report, do you go in and some of
21 the information you put in is also entered into like the
22 general incident report? Does that ever happen?

23 A I don't -- I don't do a general incident report.

24 Q I know you don't. Some of this is all done on
25 computer. Right?

1 A Yes.

2 Q Is the only thing you generate are your reports, or
3 does some of the things that you go in supplement the
4 actual incident report that perhaps Detective Lovelace
5 might use in investigating this?

6 A No, I would not supplement ---

7 Q All right.

8 A --- their reports for investigation ---

9 Q So you would not go in and document property was taken
10 or anything of that nature.

11 A No, ma'am. No, ma'am.

12 Q And you stated that the victim directed you
13 specifically towards this t.v. and towards this door.
14 Right?

15 A Yes, ma'am.

16 Q And you stated that -- did he tell you that the
17 Defendant had in any way bumped up to or come into contact
18 with a lamp in the corner?

19 A I don't recall that, no, ma'am.

20 Q But that would've been something you might be
21 interested to know and that might've directed you to
22 another area to possibly lift fingerprints. Is that
23 correct?

24 A Possibly.

1 Q Did the Defendant ever -- you stated that you
2 fingerprinted also a cable box. Correct?

3 A Yes.

4 Q And in your report it just says a general summary of
5 all areas processed but it doesn't specifically list out,
6 for instance, that you processed the door, does it?

7 A No, ma'am.

8 Q Or the cable box?

9 A No, ma'am.

10 Q All right. And let me show you what's been marked and
11 admitted as State's Exhibit Number 9. Is that the cable
12 box, or was it the one in State's Exhibit Number 8 that was
13 on the floor?

14 A Would've been Number 8.

15 Q That was on the floor?

16 A Yes.

17 Q So you made no effort to fingerprint State's Exhibit
18 Number 9.

19 A I don't recall, but usually in my experience I
20 would've done all of it.

21 Q You would've done all of it.

22 A (Indicating yes)

23 Q But you don't recall.

24 A I don't recall.

1 Q So you don't know in this case exactly what you
2 printed; you just know -- remember you processed one cable
3 box but not which one.

4 A Yes, ma'am.

5 Q Now, you would've also taken some photographs.
6 Correct?

7 A Yes, ma'am.

8 Q That's part of your job, take photographs.

9 A Yes, ma'am.

10 Q Right? Do you have copies of the photographs with you
11 that you took?

12 A No, ma'am.

13 Q You don't?

14 A No, ma'am.

15 Q Do you remember the photographs that you took?

16 A Some of them, yes.

17 MS. LIPINSKI - Beg the Court's indulgence.

18 Q Let me show you what's been marked as State's 4, 5, 6,
19 7, 8 and 9 and ask you if those look like they're your
20 photographs.

21 A Yes.

22 Q All right. And State's Exhibit 18?

23 A Yes.

24 Q Now, let me show you what's been marked as State's
25 Exhibit Number 2 and 3. Are these your photographs?

1 A I don't recall taking pictures of the back porch area.

2 Q The back porch area?

3 A (Indicating yes) Where the door is.

4 COURT REPORTER - She needs to speak up a little
5 bit.

6 A I'm sorry. Where the entry door was.

7 Q All right. And that -- let me show you State's
8 Exhibit Number 2, the bedroom door; you didn't take a
9 photograph of that door.

10 A No, ma'am.

11 Q So the -- where you lifted fingerprints, what is
12 supposedly the point of entry and exit of this crime, you
13 as a forensic service officer thought it's not important to
14 take a picture of that.

15 A I did not lift fingerprints from the door, the entry
16 door. I did process it for fingerprints, but I did not
17 lift any from that door, and um I can't recall for sure,
18 but the door was still open when I arrived, which is why I
19 did not take a full picture of the closed door, because it
20 was still standing open when I arrived.

21 Q All right. But you did not feel that it was important
22 to document the door that is allegedly the point of entry
23 and exit in this crime, whether it was open or closed when
24 you took that photograph.

1 A There was no significant damage as if it forced, so,
2 no, ma'am.

3 Q But you understand that part of your role as a
4 forensic service officer is not just to document use of
5 force, that there were pry marks or those kind of things.
6 It still might be pertinent to document what is allegedly
7 the point of entry or exit for a burglary. Correct?

8 A Yes.

9 Q And you did not in this case.

10 A I photographed the opened area where the door
11 should've been opened and closed, yes, ma'am.

12 Q You photographed the opened area ---

13 A The door was still opened when I arrived, and I
14 photograph the area -- the -- like the suspect or a victim
15 whoever was looking inside the bedroom, the opened door, I
16 photographed that area as if I was walking into the room.

17 Q The bedroom.

18 A Yes.

19 Q But from standing outside the residence, you didn't
20 document that.

21 A No, ma'am.

22 Q So you didn't think it was important to preserve the
23 relationship of this point of entry to the Defendant's car
24 or the victim's car?

25 A I -- no, ma'am, I don't ---

1 Q Do you remember the Defendant saying that he was
2 coming off -- the victim telling Sergeant Ellis or Sergeant
3 Ellis telling you that he was coming off some back steps?

4 A I don't recall that, no, ma'am.

5 Q All right. So you wouldn't have felt it important to
6 document the back steps that the victim allegedly saw the
7 Defendant leaving or gaining entry through?

8 A No, ma'am.

9 Q You were given the information from Sergeant Ellis
10 that the victim struck the Defendant with his fist.
11 Correct?

12 A Yes.

13 Q Did you have an opportunity to observe the victim's
14 fist and take any pictures whether or not there was any
15 injuries consistent with that story?

16 A I did not.

17 Q You didn't see any injuries or you didn't bother to
18 look?

19 A I did not examine his hands, no, ma'am.

20 Q All right. So he tells you that there has been some
21 type of physical encounter between he and the Defendant and
22 you don't feel that it is important to at least photograph
23 the condition of his hands after the burglary.

24 A I don't recall discussing that, no, ma'am.

1 Q All right. And they then give you some version of
2 events, and I don't know how clear you got, that the
3 Defendant drove around the residence and then through the
4 front yard and out. Correct?

5 A Yes.

6 Q All right. The State has marked and admitted into
7 evidence 4, 5, 6 and 7. Correct?

8 A Yes, ma'am.

9 Q And if you could, just look through those, or if you
10 recall, did you take any photographs of something to where
11 -- document where the Defendant said his vehicle or victim
12 says his vehicle or the Defendant's vehicle was when he
13 pulled in?

14 A No, ma'am. I don't recall where they said their
15 vehicles were or where the victim stated his vehicle or the
16 Defendant's vehicle was. I don't recall that.

17 Q Did anyone ever provide any information to you that
18 the victim kicked off his flip-flops or his shoes at some
19 point during his encounter?

20 A No, ma'am, I don't recall that.

21 Q Did you ever take the opportunity to walk through the
22 front yard of the residence other than to take those
23 photographs?

1 A I did walk around the house and around the front yard
2 while was taking the residence (sic) -- I mean taking the
3 pictures of the residence.

4 Q And it was fairly wet for it to leave those type of
5 ruts. Correct?

6 A Yes, ma'am.

7 Q All right. Did you see any footprints or anything
8 like that that indicated that there was any foot traffic
9 through the front yard, the side yard or the backyard?

10 A No, ma'am, not that I seen.

11 Q Did you have the occasion to walk through the house
12 itself?

13 A Did I have the occasion to?

14 Q Yes.

15 A I did not.

16 Q So ---

17 A I could have, yes, ma'am, but I did not.

18 Q So really even the only place you went inside the
19 house was inside that bedroom?

20 A Yes, ma'am.

21 Q You never went into the living room or anything else?

22 A No, ma'am.

23 Q Have you ever been involved in a burglary where
24 initially they thought a Defendant went to a certain area,
25 but then in hindsight it was learned that a camera's

1 missing out of the guest bedroom we don't go in very often
2 or those kind of things where we later learned that the
3 Defendant may have gone to other places. Correct?

4 A Yes.

5 Q And but you did not feel it was your role as a
6 forensics service officer to just do a cursory walk-through
7 and see things that might stick out to you as a trained
8 forensics officers that might not necessarily be sticking
9 out to the victim.

10 A Because when I arrived, the victim stated to me that
11 he witnessed the Defendant have the t.v. in his hands
12 leaving from the backdoor area, from the bedroom door area,
13 I focused on that specific room and on those specific items
14 because he knew for sure that the Defendant had touched
15 those items instead of just going through and
16 fingerprinting everything that looks like it's moved; I
17 don't live there; I don't know where everything is, and he
18 told me for sure that the Defendant had those items in his
19 hands, which is why I focused on the area specifically.

20 Q But when you process latent fingerprints at a crime
21 scene, you have no way of knowing whether or not those
22 latent lifts are going to actually produce any results for
23 you back at the lab. Correct?

24 A Correct.

1 Q So to sit there and say, I knew if I just focused on
2 this t.v. that would provide enough, you could have found
3 prints elsewhere; you just looked where the Defendant
4 directed you. Correct?

5 A Correct.

6 Q And you didn't even have the occasion to walk through
7 the residence to document the condition of the residence in
8 any other way. Correct?

9 A Correct.

10 MS. LIPINSKI - Court's indulgence one moment,
11 Your Honor.

12 Q You stated that you had walked through the front yard.
13 Right?

14 A Yes.

15 Q And it's fairly wet that day, muddy. That's why the
16 ruts were so big. Correct?

17 A (Indicating yes) Yes.

18 Q Did you observe any footprints going into that bedroom
19 or coming out of that bedroom?

20 A I don't recall.

21 Q If you had, when you went into the bedroom, the one
22 you went through -- you went into, it's likely that's
23 something you would've called attention to and attempted to
24 document?

25 A Yes.

1 Q And this is State's Exhibit Number 8. Correct?

2 A Yes.

3 Q And you took this picture? I believe you said this
4 one is yours.

5 A Yes.

6 Q All right. And it shows this kind of little sideways
7 area of the bed ---

8 A Yes.

9 Q --- and the floor. So at least within that you didn't
10 see any visible footprints that you felt the need to
11 document.

12 A Yes, ma'am.

13 Ms. LIPINSKI - That's all we have of this officer
14 at this time, Your Honor.

15 MS. DESCH - Brief re-direct, Your Honor.

16 THE COURT - Yes, ma'am.

17 RE-DIRECT EXAMINATION

18 BY MS. DESCH -

19 Q When you arrived on the scene, David Dover was not
20 there. Correct?

21 A Correct.

22 Q Defense asked you about State's Exhibit 2. That's the
23 picture with the back door coming onto the deck where the
24 stairs are. Correct?

25 A Yes, ma'am.

1 Q And this looking here is that back door where you
2 focused on?

3 A Yes, ma'am.

4 Q Because that's where the victim indicated he saw
5 someone coming out and walking onto the deck. Correct?

6 A Yes.

7 Q And you're called out as a forensic service person to
8 supplement the investigators. Correct?

9 A Correct.

10 Q This is not your complete investigation to follow
11 through, as if you would've done when you worked for Clover
12 PD.

13 A Correct, as a support service.

14 Q And you used your resources when you got there from
15 Sergeant Ellis and Lucas Taylor to direct you on what was
16 missing from the house.

17 A Yes, ma'am.

18 Q Everywhere that you went in the house, was that as a
19 directive of somebody that was on scene, Lucas Taylor or
20 Sergeant Ellis?

21 A Yes, ma'am.

22 Q So it's fair to say if there's nothing documented in
23 your report about lamps or living room ransacked or
24 anything, that means nobody directed you to go there.

25 A Correct.

1 Q I'm going to show you what's been marked as 19 for --
2 (pause) -- I don't know if I finished that sentence. I'm
3 showing you what has been marked as ID for 19. Do you
4 recognize that?

5 A I do.

6 Q What do you recognize it to be?

7 A A disc made in my handwriting.

8 Q So that's your handwriting on that disc?

9 A Yes.

10 Q What's on that disc?

11 A Photographs.

12 Q Is that the photographs that are (sic) include the
13 State's Exhibits that you've been shown?

14 A Yes, ma'am.

15 Q And is that a disc that you made to provide of all the
16 photographs you took of the scene?

17 A Yes, ma'am.

18 Q Since you made them, you looked at them, is it an
19 accurate depiction of all the photographs that you took of
20 the scene?

21 A Yes.

22 Q Where else did you -- besides taking the scene photos
23 from McFarland Road, where else did you take photos?

24 A The Moss Creek Road location.

25 Q And that would be some of these ---

1 A [REDACTED] ---

2 Q --- that included the truck?

3 A Yes, ma'am.

4 Q And on that disc you put on all the photos that you
5 took, both from Moss Creek and from McFarland.

6 A Yes, ma'am. I had them separated into two separate
7 folders with the addresses on them.

8 Q And so that disc compiles all the photographs you took
9 and they're an accurate representation of those two scenes.

10 A Yes, ma'am.

11 MS. DESCH - State would like to move that into
12 evidence, please.

13 MS. LIPINSKI - Your Honor, I -- I don't know
14 what's on that disc. I may have been given a copy of it,
15 and I'm not trying to challenge her testimony; I was given
16 a printout of those photographs, but I wasn't given that --
17 that disc, and I just -- she doesn't say she looked at it
18 before; she does say it's her handwriting, but she doesn't
19 say that she looked at that disc before and put her
20 initials on it and those kind of things that we typically
21 see in this, and I don't understand the relevance of all
22 those pictures, because they haven't been testified to.
23 Just to say she took them at the crime scene doesn't mean
24 they're all ---

1 THE COURT - Well, could testify about them now.
2 If they put them in, they've got a right to publish them.
3 So she's testified that that's her disc, her writing, her
4 pictures, she's identified, authenticated it. Now, if you
5 need an opportunity to review it and make sure it is what
6 they say it is, I'll give you an opportunity to do that.
7 Is that what you want to do?

8 MS. LIPINSKI - Your Honor, I'll -- if I could
9 just preserve my objection, I'll look at the disc; I don't
10 want to interrupt and belabor the trial. We can move on.
11 I'll just look at it at the end of the day and if there's
12 anything I'll bring it out ---

13 THE COURT - We'll give you the opportunity --
14 we'll give an opportunity to challenge it if you wish on
15 whatever grounds at a later day. All right. Admitted with
16 that understanding.

17 WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
18 EXHIBIT NUMBER 19.)

19 MS. DESCH - Thank you, Your Honor. Thank you.
20 Nothing further, Your Honor.

21 MS. LIPINSKI - We have nothing further of this
22 witness.

23 THE COURT - Thank you, ma'am, you may stand down.
24 You don't have a short witness, do you?

1 MS. DESCH - Your Honor, it would be the
2 detective. I don't know how long cross-examination will
3 be.

4 THE COURT - Probably going to be a while.

5 MS. LIPINSKI - It may, Your Honor.

6 THE COURT - All right, I don't want to stay too
7 late, but she may be on the stand for a while, so it's
8 already almost 10 minutes til 5:00. I think we'll go ahead
9 and adjourn for the afternoon. Counsel, we're going to
10 have to move forward with this tomorrow, get started and
11 move it, so please get your ducks in a row. Mr. Foreman,
12 ladies and gentlemen of the jury panel, we're going to go
13 ahead and recess for the evening. It's almost -- just
14 around 10 minutes until 5:00, so we'll go ahead and recess
15 for the evening. I'm going to ask you to be back in the
16 jury room ready to go in the morning at 9:30, 9:30 in the
17 morning. We got something else -- we've got an issue
18 already before that, so if you'll be back in the jury room
19 no later than 9:30. Thank you.

20 (WHEREUPON, JURY EXITS THE COURTROOM)

21 THE COURT - All right, any matter we need to take
22 up out of the presence of the jury at this time from either
23 side?

24 MS. LIPINSKI - Nothing from the -- oh, I'm sorry,
25 I didn't mean to skip you. You looked at me. I apologize.

1 THE COURT - I'm looking at both of you.

2 MS. DESCH - Nothing from the State.

3 THE COURT - And then I'm going to tell you both
4 that I expect you to be fully prepared tomorrow. I'm not
5 going to spend a half a day tomorrow arguing these legal
6 motions when you've got plenty opportunity to do that, with
7 the jury sitting back there cooling their heels. I'm not
8 going to do that. So you'd better be prepared to move and
9 get all your ducks in a row. We're going to finish this
10 case, and we're going to finish it by noon tomorrow. We're
11 going to have this case finished as far as testimony and
12 evidence is concerned. So you better have your ducks in a
13 row and be ready to go, and if there's anything we need to
14 take up -- I think I had agreed to hear something in the
15 morning about 9:15. After that I'll be ready to go, and if
16 there's something that needs to come to my attention, be
17 ready to go by 9:15. As soon as we do whatever else we've
18 got to do, we'll go right into it.

19 MS. DESCH - Yes, sir.

20 MS. LIPINSKI - Yes, sir.

21 THE COURT - All right.

22 (WHEREUPON, COURT IN RECESS AT 4:55 P.M.)

23 * * * * *

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
) CASE NOS.: 2014-GS-46-1522, 1523

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
vs.)
) DAY 3 - VOLUME 3
)
DAVID W. DOVER) (PAGES 262 - 407)

NOVEMBER 13, 2014
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LEE S. ALFORD

APPEARANCES:

JENNIFER DESCH, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

CHRIS JONES, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MINDY LIPINSKI, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I N D E X

Witnesses:	Direct	Cross	Re-Direct	Re-Cross
Lucas Taylor				
By Mr. Jones	106			
By Ms. Lipinski	135			
Neil v. Biggers:				
Kelly Lovelace				
By Ms. Desch	153			
By Ms. Lipinski		161		
Robert Ellis				
By Ms. Desch	168			
By Ms. Lipinski		182		
By Ms. Desch			194	
By Ms. Lipinski				196
Cheryl Gregory				
By Ms. Desch	198			
By Ms. Lipinski		204		
By Ms. Desch -contd.	207			
By Ms. Desch -contd.	234			
By Ms. Lipinski		235		
By Ms. Desch			255	
Brian Bagwell				
By Ms. Desch	264			
By Ms. Lipinski		276		
By Ms. Desch			287	
Kelly Lovelace				
By Ms. Desch	288			
By Ms. Lipinski		303		
Proffered:				
By Ms. Lipinski	326			
By Ms. Lipinski-contd.	328			
By Ms. Desch			330	
By Mr. Lipinski				335

E X H I B I T S

		ID	ID
S-1	Printed photos (taken 10/7/14)	4	
S-2	Printed photos	4	128
S-3	Printed photos	4	128
S-4	Printed photos (house)	4	116
S-5	Printed photos	4	116
S-6	Printed photos	4	116
S-7	Printed photos	4	116
S-8	Printed photos	4	116
S-9	Printed photos	4	116
S-10	911 call	4	132
S-11	Calls to Kelly	4	
S-12	Photo lineup	4	300
	(Neil v. Biggers)	4	161
S-13	Printed photos (truck)	4	133
S-14	Printed photos	4	179
S-15	Printed photos	4	179
S-16	Printed photos	4	179
S-17	Printed photos	4	179
S-18	Printed photo (house)	4	116
S-19	Photo disc (truck and Victim's house)	4	259
S-20	Latent print card	212	276
S-21	Latent print card	212	276
S-22	10 Print card (front only)	272	273
C-1	Dispositions for prior Certified convictions	4	
C-2	Note from jury	384	
C-3	Note from jury	388	
C-4	Note from jury	388	
C-5	Note from jury	392	
C-6	Note from jury	396	

1 THE COURT - All right, counsel ready to proceed?

2 MS. DESCH - Yes, Your Honor.

3 MS. LIPINSKI - Yes, Your Honor.

4 THE COURT - What about the cases you've handed me
5 up? What do you want to do with that?

6 MS. DESCH - I was just giving them to you -- if
7 you wanted to proffer the testimony from Brian Bagwell just
8 to be sure, if -- I was just preparing those for an
9 argument in case there was a further challenge on the
10 authenticity.

11 THE COURT - Well, I think you have -- I think
12 what -- even the cases you handed me up say -- somebody's
13 got to authenticate what they -- what cards they had and so
14 -- and you didn't do that.

15 MS. DESCH - Right. But we're prepared -- I was
16 just giving them to you in advance because I knew that we
17 were on a time crunch today, so we have Brian Bagwell here.
18 He has taken the arrest card from this particular arrest.
19 He's prepared to testify about how it's known to belong to
20 David Dover, and then he'll go into the comparison.

21 THE COURT - All right. Anything else before we
22 get started?

23 MS. LIPINSKI - No, Your Honor. I received an e-
24 mail from Ms. Desch that she's going to elicit testimony
25 about prior arrest. We would object to that. I also

1 received a power point presentation last night about --
2 that they were intending to admit I guess the face portion
3 of the ten-print card because that's part of the power
4 point. We would just make sure it was limited to this part
5 which shows the print, because there's a lot of stuff on
6 the back in terms of offenses and statutes and the codes
7 and the charges, and we would just not want obviously that
8 before the jury in order to unduly prejudice Mr. Dover. I
9 also received a map for the first time last night that she
10 said she's going to use for the witness, so I got that last
11 night as well, which I assume Lovelace can authenticate and
12 that kind of thing, but I did get that piece of evidence
13 late last night so.

14 THE COURT - Plan to use that for demonstrative
15 purposes ---

16 MS. DESCH - Correct, Your Honor, which I don't go
17 into the defense at all, but out of an abundance of caution
18 in trying to get all of our objections done and early, I
19 just sent everything last night on things that I could
20 possibly use today.

21 THE COURT - All right, are we ready to proceed
22 then?

23 MS. DESCH - Yes, Your Honor.

24 MS. LIPINSKI - Yes, Your Honor.

25 THE COURT - Please bring the jury in.

1 (WHEREUPON, JURY ENTERS THE COURTROOM)

2 THE COURT - Good morning, Mr. Foreman, ladies and
3 gentlemen of the jury panel. I want to start off by
4 apologizing again and tell you that we had a couple of
5 matters scheduled this morning. We started about 9:00
6 o'clock. We thought we'd be through by about 9:30 but
7 we're just now getting through with these other matters
8 that we agreed to hear this morning, so we ran over a
9 little bit. We're ready to get started now. Counsel ready
10 to proceed?

11 MS. DESCH - Yes, sir. Thank you, Your Honor.
12 The State would call Brian Bagwell.

13 BRIAN BAGWELL, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 DIRECT EXAMINATION

16 BY MS. DESCH -

17 Q Good morning.

18 A Good morning.

19 Q Would you please state your name and spell your last
20 name for the record.

21 A Yes. My name is Brian Bagwell. Spelling of the last
22 name is B-a-g-w-e-l-l.

23 Q And what is it that you do?

24 A I work for the York County Sheriff's Office, currently
25 assigned to the Forensics Services Unit.

1 Q How long have you worked for the county?

2 A I have worked for the county approximately 17 years
3 since -- or excuse me -- I started in '97 on the road and
4 went to forensics in 2002.

5 Q So you've been with forensics for about 12 years?

6 A Yes, ma'am.

7 Q What kind of training did you have to do specifically
8 for forensic investigation?

9 A I've had numerous classes, basic fingerprints through
10 the Public Agency Training Council, basic fingerprint
11 identification through the South Carolina Criminal Justice
12 Academy. I have had advanced palm print comparison class
13 through Ron Smith & Associates. I've had various other
14 classes, DNA classes, that sort of thing, but that's my
15 fingerprint qualifications.

16 Q Sticking specifically with fingerprint qualifications,
17 would you be able to quantify the number of hours and
18 training you've had over the years?

19 A It would be a rough guess. You know, I've looked at
20 thousands of fingerprints, made thousands of IDs, worked in
21 the jail rolling fingerprints, so I've had a lot of
22 fingerprint experience.

23 Q Were you called in to help with this particular case?

24 A I was.

25 Q What was your role?

1 A To confirm the confirmation of the prints that were
2 identified to the Defendant.

3 Q So you mentioned that you -- over the years you've
4 done thousands of fingerprint comparisons. Have you had
5 the occasion to identify people who were previously unknown
6 by comparing latent prints from a crime scene to a known
7 ink print?

8 A Yes, ma'am.

9 Q How does that work?

10 A We take the latent print, which is the print that's
11 developed at a crime scene and we take the ink ten-print
12 card which is a known standard, and we put them side-by-
13 side and we look at three levels of detail in the prints.
14 We're looking for ridge flow, the ridge type. We start
15 looking for points of minutia, print bifurcations, ending
16 ridges, dots, scars, that sort of thing. We look at level
17 3 detail which includes the way ridges are shaped. They
18 may have little abutment, little unique characteristics in
19 them, that's level 3, and that's what we use as well.

20 Q About how many times have you identified people using
21 that method?

22 A It would be a rough guess again, but thousands of
23 fingerprints that we've identified.

24 Q Have you had the occasion to qualify as an expert in
25 fingerprint analysis in the Courts in York County?

BRIAN BAGWELL - DIRECT BY MS. DESCH

1 A I have, yes, ma'am.

2 Q About how many times?

3 A Roughly about six times.

4 Q And pursuant to qualifying you as an expert in
5 fingerprint analysis, have you had the occasion to testify
6 as an expert in Court on the identification of persons
7 based on that comparison?

8 A I have.

9 Q And how many times?

10 A About six times as well.

11 MS. DESCH - Your Honor, at this time we would
12 like to move in Investigator Bagwell as an expert in
13 fingerprint analysis.

14 MS. LIPINSKI - Without objection.

15 THE COURT - Without objection he's so qualified.
16 Please proceed.

17 Q Now, you indicated how to compare latent and known.
18 How does that identify a person?

19 A Well, fingerprints are unique to an individual.
20 Nobody has the same fingerprints has anybody else. So when
21 you have those like characteristics that match up from the
22 ink ten-print card to a latent card to a latent print, then
23 you can make a determination that's a positive ID based on
24 the fact that you have all this points of minutia matching
25 up. It's an identical print.

1 Q So you said they're unique to individuals. So in all
2 your years of doing fingerprints, have you seen someone
3 with the same fingerprints?

4 A No, ma'am.

5 Q So no two people have the same fingerprints.

6 A That's correct.

7 Q In this particular case we had ---

8 MS. DESCH - May I approach?

9 THE COURT - Yes, ma'am.

10 MS. DESCH - Just referring to 20 and 21 for ID.

11 Q In this particular case we've marked State's Exhibit
12 20 and 21 for ID purposes only.

13 A Okay.

14 Q Do you know where those came from?

15 A They were processed -- or excuse me -- they were
16 lifted from the incident location by Investigator Gregory.

17 Q And she also works in the unit with you.

18 A That's correct.

19 Q Now, when we get the fingerprints from the scene, you
20 have to compare it to find somebody. How does that work?
21 How do you start looking to compare it to somebody?

22 A We rely on detectives or officers to give us suspect
23 names. Lot of times they have information of people they
24 want us to compare it to. If we don't have a name, like
25 it's an unknown situation, then we the AFIS that we can

1 entered it into to try to match it to a known offender, but
2 typically we rely on detectives to give us a lead, a name.

3 Q What is AFIS?

4 A AFIS is Automated Fingerprint Identification System.
5 It maintains all the criminal records in South Carolina.
6 They go into a database that we can scan a print in; we
7 take a picture of it and mark the points of minutia and it
8 does an algorithm and does its little magic and finds
9 possible matches for us.

10 Q In this particular case, were you led to a suspect's
11 name?

12 A Yes, ma'am, by confirmation I was given this to
13 confirm, so I already had a suspect's name and his ink ten-
14 print card to compare.

15 Q Can you explain in this particular case how you got a
16 known sample from David Dover?

17 A It was provided to me by Investigator Gregory. She
18 got the information, I believe, from officers at the scene
19 that he was a possible suspect, so she had a ink ten-print
20 card printed out. We did a comparison -- well, she did the
21 comparison and gave it to me for confirmation.

22 Q Where does that ten-print card come from?

23 A Ten-print cards are maintained in two areas. The York
24 County Detention Center has a database that when you're
25 arrested in York County, they take mug shots, photographs,

1 everything and put it into a database system. We have
2 access to that system, so we can print-out ink ten-print
3 cards to compare with. SLED also maintains a database.
4 SLED being the South Carolina Law Enforcement Division.
5 They maintain a database of all South Carolina arrest
6 records, not just York County. So if we have a State
7 identification number from an individual, we can print a
8 ten-print card if they're from Orangeburg County ---

9 MS. LIPINSKI - Your Honor, I'm going to object to
10 this point. If they didn't pull it from that database, why
11 are we going into all this about prior arrest? It was my
12 understanding that's what wasn't used.

13 THE COURT - Thank you, counsel. Overruled.
14 Proceed.

15 Q Just specifically to -- not -- I'm sorry -- not
16 overall all people arrested, but just specifically to David
17 Dover and locally here.

18 A Okay, it was printed from the York County Detention
19 Center's database.

20 Q And how do you know that what you -- what you gathered
21 in a ten-print card belongs to David Dover?

22 A That ten-print card contains, like I said, a State
23 identification number, which is a unique number to an
24 individual and it also contains a mug shot of the
25 individual.

1 Q So if I come in, I'm arrested, I get booked, I roll my
2 fingers, that goes onto a card and I'm assigned a State
3 identification number that is unique to me or the
4 arresting..

5 A That is correct.

6 Q Does that ever change?

7 A Your State ID number never changes. It's assigned to
8 you for each arrest. Any time you get arrested, that same
9 identification number is given to you.

10 MS. LIPINSKI - Again, I'm going to object to --
11 it creates an impression that there's some long criminal
12 history here ---

13 THE COURT - Well, I sustain the objection.

14 MS. LIPINSKI - --- on the scope of relevance.
15 I'm sorry, Your Honor.

16 THE COURT - Counsel, words -- a brief objection
17 is sufficient. I understand your objection. Counsel, I
18 don't think we need to go into all of that, ---

19 MS. DESCH - Yes, sir.

20 THE COURT - --- because it doesn't apply in this
21 case. So let's move on.

22 MS. DESCH - Yes, sir. Thank you.

23 Q Did you bring the ten-print card for David Dover that
24 you used to compare?

25 A Yes, ma'am.

1 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
2 STATE'S EXHIBIT NUMBER 22.)

3 Q I'm going to show you what's now been marked for
4 identification as State's Exhibit 22. Can you tell the
5 jury what that is?

6 A Yes, ma'am. This is an inked ten-print card that was
7 printed out of the jail database, York County Detention
8 Center's database.

9 Q And who does it belong to?

10 A It belongs to David Wayne Dover.

11 Q And how do you know that?

12 A It has the State identification number on it that is
13 associated with Mr. Dover. It also has the printout, the
14 mug shot, which has a bar code on it, which references a
15 unique number; it's a booking number that's assigned to
16 that individual at the time. The mug shot booking number
17 matches the booking number on the ten-print card.

18 Q And does it match the person sitting in the courtroom
19 today?

20 A Yes, it does.

21 MS. DESCH - State would like to move in the ten-
22 print card into evidence as State's Exhibit 22.

23 MS. LIPINSKI - Your Honor, we had a previous
24 objection. There is some collateral information to this.
25 We don't have any objection to the front of the card, but

BRIAN BAGWELL - DIRECT BY MS. DESCH

273

1 the back of the card, and we had asked that they only
2 submit a copy of the front of the card. I raised that
3 prior to Court.

4 MS. DESCH - We can ---

5 THE COURT - The objection is noted and sustained.
6 Only that part that applies would be admitted into
7 evidence.

8 MS. LISPINSKI - If the State could just
9 substitute it out at a break, we would have no objection to
10 that.

11 MS. DESCH - The front of the card, yes.

12 THE COURT - Only that that's relevant to ---

13 MS. DESCH - Yes, Your Honor.

14 THE COURT - --- the testimony and evidence.

15 MS. DESCH - Yes, sir.

16 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
17 STATE'S EXHIBIT NUMBER 22.)

18 Q Taking -- have you had the occasion -- now numbering
19 it as State's 22, have you had the occasion to compare 22
20 to the latent prints lifted in State's Exhibit 20 and 21
21 from the scene?

22 A Yes, ma'am.

23 Q Did you arrive at a conclusion and result of your
24 examination and comparison?

25 A Yes, ma'am, I did.

1 Q What was your -- what was your conclusion?

2 A The latent fingerprint card number 1, which is marked
3 as State's Exhibit 20, has two identifiable prints on it.
4 LP1A was positively identified to finger number 9, which is
5 the left ring finger of David Dover. Print Number B
6 labeled as Number B was finger number 8, which is the left
7 middle finger of David Dover. LP2 card, which is State's
8 Exhibit 21, has one identifiable print on it -- or excuse
9 me -- two identifiable prints, one of which was identified
10 to Mr. Dover as well.

11 Q Is that marked A as well?

12 A Yes, it is.

13 Q And you said there was two. Was there anybody -- was
14 it -- was anybody identified as the person that put on that
15 print?

16 A For B? Is that what you're asking?

17 Q Yes, that's ---

18 A Yes. B was never identified. We run it through AFIS,
19 never got a positive match back to it. We compared it to
20 victims and suspects and it never matched anybody that we
21 looked ---

22 MS. LIPSINKI - Your Honor, object to that
23 testimony as -- the cards he used for that comparison or
24 those kind of things are not in evidence. He's reaching a

1 conclusion, the underlying facts of which haven't been
2 submitted by the State.

3 THE COURT - Well, I think what he's testified is
4 that it didn't match any -- any known person, and so let's
5 leave it at that. Sustain the objection, overruled. (sic)
6 Proceed.

7 MS. DESCH - Thank you, Your Honor.

8 Q And upon what facts did you use to base those
9 conclusions, the match to David Dover?

10 A The levels of detail that we look at, like I mentioned
11 before, the level 1 detail, the level 2 detail, the level 3
12 detail -- level 1 being the pattern type, pattern flow, we
13 look at that first. If it's similar, then we start looking
14 for the level 2 detail. Level 2 detail is the bifurcations
15 and ending ridges, dots, enclosures, that sort of thing
16 that's unique to an individual in a fingerprint. Then we
17 start looking at level 3. All three of those combined led
18 us to a positive identification of Mr. Dover.

19 Q So based on your experience in the field of
20 fingerprint analysis, did the Defendant, David Dover, make
21 the latent prints that we have on State's 20 and 21?

22 A Yes.

23 MS. DESCH - State would like to move in 20 and 21
24 into evidence.

25 MS. LIPINSKI - Without objection.

1 THE COURT - Admitted without objection.

2 (WHEREUPON DOCUMENTS MARKED INTO EVIDENCE AS
3 STATE'S EXHIBITS 20 AND 21.)

4 MS. DESCH - Please answer any questions the
5 defense might have.

6 MR. BAGWELL - Yes, ma'am.

7 CROSS EXAMINATION

8 BY MS. LIPINSKI -

9 Q Mr. Bagwell, fair to say you've got a little bit
10 more experience than Ms. Gregory, but I don't believe she's
11 been with the Department quite as long as you have.

12 A That's correct. I have more experience looking at
13 prints.

14 Q And in that time, either with you or in your training,
15 younger officers such as Ms. Gregory, you know, it's
16 important to pay attention to detail?

17 A (Indicating yes) Correct.

18 Q You have to answer out loud. I'm sorry, she's
19 recording.

20 A I'm sorry. I'm sorry. Correct.

21 Q It's easy just nodding your head. We do that
22 everyday.

23 A It is, yes, ma'am.

24 Q But unfortunately here we can't. And sometimes
25 mistakes are made in your line of work.

1 A Correct.

2 Q And part of peer review is to try and catch those
3 mistakes so that they don't happen and so that the wrong
4 people are not identified. Correct?

5 A Correct.

6 Q So let's start a little bit -- you gave some testimony
7 earlier here today that Cheryl Gregory was the officer who
8 lifted the latent prints from the crime scene. You weren't
9 there when she lifted the prints.

10 A That's correct.

11 Q You have no ability to testify where the prints came
12 from, the condition of those prints or anything of that
13 nature.

14 A Only what's marked on the card is what I have to go
15 by.

16 Q All right. So basically her handwriting, your view.

17 A Correct.

18 Q All right. And I know you rely in terms of doing peer
19 review you weren't that person, but you testified in some
20 respects -- I just want to make sure you weren't out there
21 training her when she lifted these prints. Correct?

22 A No, I was not at the scene, no.

23 Q All right. And in terms of lifting the prints and
24 bringing them back there in order to be confirmed, you
25 testified that no two fingerprints are alike. Correct?

1 A That's correct.

2 Q But that's in your experience.

3 A That's in everyone's. That's a accepted Court's
4 ruling that no fingerprints are alike. It's a scientific
5 fact that has been accepted by all the Courts.

6 Q Okay. But is there a database of all the known
7 fingerprints in the world?

8 A No.

9 Q All right. So while you haven't come across any, that
10 it doesn't mean to say that it can't happen; it just means
11 you haven't found any two that are alike yet.

12 A I can say I have never seen any.

13 Q All right. And in terms of lifting latent lifts --
14 and you also go out; you don't just sit in the office and
15 confirm what some of the field officers do; you actually go
16 out and process crime scenes yourself as well. Correct?

17 A I used to. I am now assigned AFIS on a full-time
18 basis, so I fill in as needed, but I do still respond to
19 some scenes, yes.

20 Q But you do have that experience. That was part of
21 your training and education.

22 A Absolutely, yes.

23 Q All right. And so you have responded to also a
24 significant number of crime scenes in your tenure with the
25 forensic services unit.

BRIAN BAGWELL - CROSS BY MS. LIPINSKI

279

1 A Correct.

2 Q Fair to say?

3 A Yes.

4 Q And, approximately, how many would you say that you've
5 responded to?

6 A That would be hard to guess, thousands upon thousands
7 of scenes that we have been to, yes. It's ---

8 Q So if Ms. Gregory testified that she's been to about a
9 hundred, you would have a larger realm of experience.
10 Correct?

11 A Correct.

12 THE COURT - Counsel, are we going anywhere with
13 this or we just what?

14 MS. LIPINSKI - Yes, we're going somewhere, Your
15 Honor. I ---

16 THE COURT - Well, tell me where you're going. It
17 doesn't matter how much experience he's got and all that.
18 I mean that -- he's been qualified as an expert. Where you
19 going?

20 MS. LIPINSKI - I just want to get to his
21 credibility a little bit, Your Honor, and understand why he
22 had to come in and testify over Ms. Gregory. That's all.

23 THE COURT - Well, that's just irrelevant. Move
24 on, please.

25 MS. LIPINSKI - All right.

1 Q You stated that you were asked to see these two latent
2 lifts in this case; I believe it's State's 21 and 20. Let
3 me pick these up.

4 A Okay.

5 Q Correct? 20 and 21?

6 A That's correct.

7 Q All right. Were you asked to look at any of the other
8 cards that she lifted?

9 A Yes, I look at everything as a case in general. Well,
10 she had the confirmations for me to make and -- but we look
11 at all of them in general.

12 Q All right. And so you would've looked at all of those
13 in general, so would you have confirmed -- because I
14 believe she testified there were some that were smudges or
15 just weren't enough there for her to make a comparison.

16 A That's correct.

17 Q All right, so you would've also looked at those and
18 also confirmed that she didn't have enough to make those
19 comparisons as well.

20 A That's correct.

21 Q All right. And you stated that -- if you could, I
22 just want to draw your attention to the back of State's
23 Number 21.

24 A Okay.

- 1 Q Fair to say? And she's written, and I assume this is
2 her handwriting and not yours ---
- 3 A That's correct.
- 4 Q She's written an A, which there's an A right here.
5 Right? Located ---
- 6 A (Indicating yes)
- 7 Q --- somewhere around where that print is, ---
- 8 A (Indicating yes)
- 9 Q --- and it says Number 3, David Dover, like his third
10 finger?
- 11 A Correct.
- 12 Q Am I interpreting that correct?
- 13 A Correct?
- 14 Q And then she originally writes B, NO E-N-O (sic).
15 A Okay.
- 16 Q So that would say not enough. Correct?
- 17 A I ---
- 18 Q Is that what that stands for?
- 19 A I would assume so, but I don't know what she was
20 trying to write. I would assume that's what she was
21 writing.
- 22 Q All right. And so that would've been her opinion that
23 there wasn't enough ridge detail.
- 24 A Correct.

1 Q But you stated that you then took that B fingerprint
2 and were able to enter it into AFIS and rule out the victim
3 and those kind of things. Correct?

4 A That's correct.

5 Q So in your opinion you disagree with her; there was
6 sufficient ridge detail in order to examine that print.

7 A Correct.

8 Q All right. And that's what I mean in terms of
9 mistakes that are occasionally made in your office,
10 especially with some younger latent lift examiners.

11 A That would be the kind of mistake we make. Some of
12 the younger examiners are not comfortable looking at some
13 of the fingerprints that have not significant detail.
14 They're very faint; they're very edge of the print kind of
15 prints. They would rather have an experienced examiner
16 look at it. So it was in her opinion that it didn't have
17 enough ridge detail for identification purposes. It is not
18 the best quality print. If I recall right, I only got a
19 few points on it, enough to enter it in AFIS. It was not
20 like we had 30 points on it, so it was not a good quality
21 print to start with.

22 Q And in your tenure with the forensics service
23 department, have you ever made a mistake similar to Ms.
24 Gregory's?

1 A I have missed prints; I have looked at them and said,
2 okay, I don't see it as a possible suspect, hand it to a
3 more experienced officer and they point out some ridge
4 detail and we start looking at more level 3, so it could be
5 a number of things, but yes, I have missed a print; not
6 seen it, never falsely identified one, but have seen or
7 missed finding one.

8 Q Have you ever indicate compared prints to a known
9 suspect and stated that comparing the latent lifts to a
10 known suspect with negative results and then issued another
11 report days later stating that -- with different results?

12 A I feel sure we have. We enter into AFIS and may not
13 hit it, enter it again and we have results, so, yes, things
14 change.

15 Q Well, not just AFIS. Have you ever taken a known ten-
16 print card of a suspect, compared it to a latent lift and
17 issued a report stating that you compared that with
18 negative results or did the peer review on negative results
19 and then later on compared the same ten-print card to a
20 known suspect and this time made a positive ID?

21 A It's very possible, and I say this, because sometimes
22 the ten-print cards we may look at a different card. If we
23 have one card and we look at it and don't see it because
24 the detail's not there, I very well may have. I don't
25 know.

1 Q And did you -- so there are mistakes that are made.

2 A It's not a mistake. It's just you didn't see it the
3 first time, because the print quality is not right on the
4 inked ten-print card. Sometimes you have smudges and
5 smears. You have a piece of a latent that is very small
6 sometimes, and you may not have all that piece of that
7 print showing in the inked ten-print card, but when we look
8 at it originally, just because you can't see it on this
9 card and that's all we have to work with at the time, we'll
10 generate a report saying it was negative. If we get a new
11 arrest card or anything else on an individual and re-look
12 at it, then absolutely, we may see that detail now, because
13 it's there, it's not hidden by smudges.

14 Q What if you were at the same ten-print card?

15 A Then it's -- it would be a mistake.

16 Q And do your reports indicate whether or not the same
17 ten-print card is used or whether or not you change your
18 ten-print card?

19 A No, ma'am, it doesn't specify whether we changed or
20 not.

21 MS. DESCH - Your Honor, could we approach
22 briefly?

23 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
25 WHICH WAS NOT REPORTED.)

1 Q So generally speaking, while you stated there are
2 mistakes made, you try and go back and check your work; you
3 don't always document on what basis that you make those
4 changes. Correct?

5 A That's correct.

6 Q All right. And in this particular case, while Ms.
7 Gregory originally said there wasn't sufficient ridge
8 detail, you disagreed with that.

9 A I don't know if she originally marked that before I
10 got the cards. Typically, that writing that's on there
11 where the latent actually is, is done after a confirmation
12 has been made, you want to identify that card so that when
13 you go back and look at it again you can easily pull it
14 out, and go A was already identified, B was already
15 identified and so forth. So I don't know that that writing
16 was already on there. I don't know when she wrote that or
17 for what reason. No idea.

18 Q But it was written initial (sic) after she made A to
19 David Dover. Correct?

20 A I don't recall it being on there when she gave it to
21 me for confirmation purposes.

22 Q Would you have also looked at other lifts? Because
23 you stated that you looked at the other lifts.

24 A Correct.

1 Q All right. And so -- are you just looking at it to
2 confirm her results, or are you looking at it to confirm
3 that she doesn't have enough detail on these other cards?

4 A We're looking at the whole thing as a big picture.
5 You're looking to confirm her work, but I'm also looking at
6 any other latents that are there to see if she might've
7 missed one, to see if there's something that she deems
8 might not have enough ridge detail but I see enough to make
9 identification with, so I'm looking at the whole card and
10 everything on it.

11 Q So she not only made this mistake in terms of
12 ascertaining whether or not there was sufficient ridge
13 detail on this card ---

14 MS. DESCH - Objection. That's pitting witnesses,
15 Your Honor, and -- pitting witnesses, Your Honor.

16 THE COURT - Well, I -- counsel, you can rephrase
17 your question. You're testifying she made a mistake. He
18 is saying there's a difference of opinion about whether
19 there's enough ridge there or not, would appear to be, so -
20 - so if you want to rephrase your question, you can do
21 that.

22 Q Just going back. You also weren't there when she
23 processed the crime scene. Correct?

24 A That's correct.

BRIAN BAGWELL - RE-DIRECT BY MS. DESCH

287

1 Q So you don't know if any similar issues came up in
2 terms of processing the crime scene.

3 A I have no idea what happened at the scene.

4 MS. LIPINSKI - That's all we have of this
5 witness.

6 MS. DESCH - Just briefly, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MS. DESCH -

9 Q Investigator Bagwell, in this particular case,
10 regardless of what was found by Cheryl Gregory, you,
11 yourself analyzed and came to the conclusions you came to.

12 A That's correct.

13 Q And based on your experience, David Dover was the
14 contributor to the latent prints that were taken off the
15 t.v. ---

16 A Correct.

17 Q --- that are on 20 and 21.

18 A Correct.

19 MS. DESCH - Thank you.

20 THE COURT - Anything else?

21 MS. LIPINSKI - Nothing, Your Honor.

22 THE COURT - Thank you, sir. You may stand down.

23 MS. DESCH - We would call Detective Kelly
24 Lovelace.

1 KELLY LOVELACE, AFTER BEING FIRST DULY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MS. DESCH -

5 Q Good morning.

6 A Good morning.

7 Q Can you please state your name and spell your last
8 name for the record?

9 A Yes. Kelly Carol Lovelace, L-o-v-e-l-a-c-e.

10 Q And where is it that you work?

11 A The York County Sheriff's Office.

12 Q And how long have you worked there?

13 A Twenty-three years.

14 Q Twenty-three years.

15 A Yes, ma'am.

16 Q Are you assigned to anything in particular right now?

17 A Yes, ma'am, I'm a detective working property crimes.

18 Q And how long have you been in property crimes,

19 Detective?

20 A Six years.

21 Q What did you do before that?

22 A I was assigned to the York County Multi-Jurisdictional
23 Drug Enforcement Unit and eight of the 13 years I was a
24 lieutenant in that unit.

1 Q So you were a lieutenant with the drug enforcement
2 unit prior to property crimes.

3 A Yes, ma'am, I was.

4 Q Were you working on February 10th, 2014?

5 A Yes, ma'am, I was.

6 Q In what capacity were you working?

7 A As a detective in property crimes.

8 Q Were you called out to assist on -- with a patrol
9 officer at [REDACTED] McFarland?

10 A Yes, ma'am, I was.

11 Q Did you go out there that day?

12 A I did, yes, ma'am.

13 Q What did you see when you got out there?

14 A Sergeant Robbie Ellis was speaking with a victim who
15 seemed highly agitated and when -- when he got through
16 speaking with him, he came and briefed me on the incident
17 that had occurred.

18 Q How does the detective system work with the patrol
19 system with the county?

20 A We try to work closely together. For the most part I
21 get cases assigned to me after the deputies have responded
22 and done their reports and gone home for the day.
23 Sometimes it's two days later that a case will get assigned
24 to me. My lieutenant reviews all the cases that comes in
25 and she applies them to the area that the detective works,

1 and that's how they normally get assigned, but we also
2 listen to radio traffic and try to keep abreast of what's
3 going on at the moment so we can be of assistance if
4 something's going on real time if you will.

5 Q So in this particular you actually went out real time
6 while it was being investigated.

7 A Yes, ma'am, I did.

8 Q Did you -- what did you do after you got to the
9 McFarland Road address and got briefed by Sergeant Ellis?

10 A Sergeant Ellis had advised me that he had two patrol
11 deputies out with a vehicle that had the same tag number on
12 it about four minutes down the road, straight down
13 McFarland Road onto another road, and that they were
14 sitting there investigating it. So I told him that I would
15 go there and try to make contact with the person that the
16 vehicle was registered to.

17 Q So you get to McFarland Road; the victim is there;
18 he's talking to the patrol officer; there's an identity
19 that's been made and matched to the license and it's up the
20 road.

21 A Yes, ma'am, it is.

22 Q Is that the Moss Creek address?

23 A It is, yes, ma'am.

24 Q Is that the address that belongs to David Dover?

25 A Yes, ma'am, it is.

KELLY LOVELACE - DIRECT BY MS. DESCH

1 MS. LIPINSKI - Your Honor, object to the leading.

2 THE COURT - Please avoid the leading, counsel.

3 MS. DESCH - Yes, sir.

4 Q Who does the Moss -- the [REDACTED] Moss Creek Road address
5 belong to?

6 A David Dover.

7 Q And is that where you headed after the McFarland Road?

8 A Yes, ma'am, it was.

9 Q Are you familiar with the McFarland Road area?

10 A Yes, ma'am.

11 Q And have you driven that distance recently to confirm
12 the distance between the two houses?

13 A Yes, ma'am. Actually this morning.

14 Q And what is the distance between the McFarland Road
15 address and the Moss Creek Road?

16 A I didn't actually do distance. I did time. It took
17 me four minutes exactly.

18 Q So David Dover lives four minutes from Lucas Taylor.

19 A Yes, ma'am, that's correct.

20 Q What's the -- what's the area like out there?

21 A It's wooded. There's farmland out there. Actually,
22 one side across from Mr. Taylor's residence is all woods.
23 There's no houses over there. The majority of the houses
24 are single resident houses with wood barriers between each
25 of the individual houses.

1 Q So are there acres between houses, as opposed to, like
2 a subdivision where houses are an arms reach apart?

3 A Yes, ma'am, there are. They're bigger lots.

4 Q Does Mr. Taylor at the McFarland Road address, does he
5 have any neighbors that are close by?

6 A No, ma'am, none whatsoever.

7 Q And there's nothing across the street from him as
8 well.

9 A No, ma'am.

10 Q When you got to the Moss Creek address, what did you
11 see?

12 A I saw a vehicle matching the description that Sergeant
13 Ellis had told me and that Lucas Taylor had told me sitting
14 in a driveway. I approached the vehicle and saw mud
15 dripping -- fresh mud dripping from the tires and the wheel
16 wells of the truck.

17 Q And what did that mean to you at that time?

18 A It meant that the vehicle had been in a muddy area
19 that was consistent with the scene that I had just left
20 where I saw tire tracks and ruts in the front yard of the
21 McFarland Road home.

22 Q Was David Dover present when you got there?

23 A No, ma'am, I could not locate him.

24 Q What did you do at that point?

KELLY LOVELACE - DIRECT BY MS. DESCH

1 A I spoke again with Sergeant Ellis telling him of my
2 intent of going back to the office to investigate further,
3 pull records in our database, to continue to confirm
4 whether Mr. Dover was involved in this situation or not.

5 Q Did that include pulling the photo line-up?

6 A Yes, ma'am, it did.

7 Q And why do we pull photo line-ups?

8 A For positive identification. We do it for identifying
9 or -- and/or, you know, confirming whether the person was
10 involved or not involved.

11 Q And did you do that in this case?

12 A Yes, ma'am, I did. I sent a request to the State Law
13 Enforcement Division via e-mail. We have a standard form
14 that we maintain on our computers. We have to fill in the
15 case number of the person that we suspect and ask for a
16 photographic line-up to be compiled.

17 Q And does SLED -- did SLED assist you with putting
18 together a photo line-up in this case?

19 A Yes, ma'am, they did.

20 Q And how did that come back to you?

21 A Via e-mail.

22 Q And what do you do at that point?

23 A I print it out. I gather the form that we maintain
24 with the York County Sheriff's Office. It's a standard

1 form that we use in all situations when we're showing
2 someone a photographic line-up.

3 MS. DESCH - If I could approach ---

4 Q I'm showing you what has been marked as State's
5 Exhibit 12 for identification. There are two pages for
6 that Exhibit. Correct?

7 A Yes, ma'am, that's correct.

8 Q Do you recognize those two pages?

9 A Yes, ma'am, I do.

10 Q What do you recognize them to be?

11 A The photographic line-up that I utilized on February
12 the 10th and the form that I utilized to show Lucas Taylor
13 on February the 10th.

14 Q When you get that back from SLED, those pictures, are
15 they marked in any way?

16 A The only thing that they have are numbers up under
17 each photograph.

18 Q So six -- and how many photos are in that?

19 A There's six.

20 Q Were the persons that SLED -- the photographs that
21 they sent back all similar in physical description?

22 A Yes, ma'am.

23 Q And you said that they're only marked with numbers.
24 Any wording on them?

25 A No, ma'am.

1 Q Any names at all?

2 A No, ma'am.

3 Q Any identifying information regarding the six photos
4 that are given to you for photo line-up?

5 A No, ma'am.

6 Q What did you do once you got that back from SLED?

7 A As I said, I gathered a copy of the form that I use
8 during this process, and I went back to the scene to speak
9 to Mr. Taylor.

10 Q So you went back to McFarland Road to talk to Lucas
11 Taylor.

12 A Yes, ma'am, I did. I went back to his residence.

13 Q And when did this occur? Was it still on the same ---

14 A Same day, yes, ma'am, just a couple of hours later. I
15 asked SLED for an expedited copy of a photographic line-up.
16 Sometimes it can take a day for them to get those back to
17 us. I asked that it be expedited.

18 Q And they were able to do so obviously.

19 A Yes, ma'am, they were.

20 Q When you went back to Lucas Taylor's residence to talk
21 to him, what did you do at that point?

22 A I'm sorry?

23 Q When you went back to talk to Lucas Taylor at his
24 residence, what did you observe? How as he acting at that
25 point?

1 A He was still very agitated, very aggressive, very
2 angry. He was pacing. I had a really hard time getting
3 him to calm down where he would communicate with me.

4 Q Were you able to finally do so at some point?

5 A Yes, ma'am, I did.

6 Q And did you, in fact, show him the line-up?

7 A Yes, ma'am, I did.

8 Q Was anybody else present with you at that line-up with
9 Mr. Taylor?

10 A No, ma'am, there was not.

11 Q And who participated -- I know I keep repeating
12 questions, but who participated in the line-up?

13 A Myself and Mr. Taylor.

14 Q How many line-ups was Mr. Taylor shown?

15 A Just one.

16 Q And how did you present that to him?

17 A I normally start off by talking with him; I got a
18 little bit of background from him about the situation,
19 again, just confirming what he had told the deputy, and
20 then I read this standard form that I use in all photograph
21 line-ups that's produced by the York County Sheriff's
22 Office.

23 Q Could you read that, please?

24 A I can. Yes, ma'am. It starts off with the heading of
25 Photographic Line-up Form. There is a place for the date.

KELLY LOVELACE - DIRECT BY MS. DESCH

297

1 I inserted February the 10th, 2014. There's a place for the
2 time. I put 2:48 p.m. There's a place for the location.
3 I put [REDACTED] McFarland Road, and there's also a place for the
4 sheriff's office generated incident report which I put in
5 there as 2014-00004519, and then in a standard portion of
6 it it says, read to the witness. It says: In a moment I
7 am going to show you a group of photographs. This group of
8 photographs may or may not contain a picture of the person
9 who committed the crime now being investigated. Keep in
10 mind that hair styles, beards and mustaches may easily --
11 may be easily changed ---

12 MS. LIPINSKI - Your Honor, I don't mean to cut
13 her off, but she's kind of showing it to the jury, and that
14 --- as far as I know, that piece of evidence isn't in
15 evidence yet, ---

16 A I'm actually trying to read it; ---

17 THE COURT - Hold on. Hold ---

18 A -- I'm sorry, I ---

19 THE COURT - --- on. There's an objection.
20 Please don't talk while there's objection -- until the
21 Court rules on the objection. It's not admitted into
22 evidence, counsel, and she's reading from it.

23 MS. DESCH - Yes, Your Honor. We will go back and
24 do that then.

1 Q The next question I was going to ask was, what, if
2 anything was the witness to the photo line-up told before
3 permitted to see the -- if you could, just in your own
4 words, what did you tell him before you showed him the
5 photo line-up?

6 A I told him that the person may or may not be in the
7 photograph lineup and that I would like for him to look at
8 this, and there is -- again, the person may or may not be
9 in there. I didn't coerce him in any way; I didn't point
10 to anything. You know, I told him that skin colorations,
11 hair styles, those sort of things may change, but certain
12 physical characteristics remain the same, and I just asked
13 him to look at the -- the six-pack is what we call it, the
14 group of photographs and see if the person that committed
15 this offense was in those pictures.

16 Q And did you or anybody else influence or suggest to
17 Mr. Taylor which photo to select?

18 A No, ma'am.

19 Q Did you or anyone point to, suggest, comment on any of
20 the photos in the line-up?

21 A No, ma'am.

22 Q Was Mr. Taylor able to select a photo from that six-
23 pack line-up?

24 A Yes, ma'am, he did.

25 Q And which photo did he select?

KELLY LOVELACE - DIRECT BY MS. DESCH

1 MS. LIPINSKI - I object at that point goes to
2 hearsay, out of the Court statement. Mr. Taylor didn't
3 testify that he identified anyone.

4 MS. DESCH - He did actually, Your Honor. He
5 pointed to it, circled it and showed ---

6 THE COURT - I agree. Overruled. Proceed.

7 Q Which photo was he able to select?

8 A Number 2.

9 Q How long did it take him to select Number 2?

10 A Immediately.

11 Q Was anything said to him during or after selecting the
12 photo?

13 A No, ma'am.

14 Q Was anything said by him prior to selecting the photo?

15 A After he saw the photo, he had a few expletives to
16 say, and he said that is the person that committed the
17 offense. He was still very agitated and very angry.

18 Q Who was in the two spot that was selected by Lucas
19 Taylor?

20 A David Wayne Dover.

21 Q Now, looking at both pages in Exhibit 12, does that
22 photo line-up fairly and accurately represent the photo
23 line-up that you showed to Lucas Taylor on 2/10/14?

24 A Yes, ma'am, it does.

25 Q And was it changed or altered in any way?

1 A No, ma'am.

2 MS. DESCH - State would like to move in State's
3 Exhibit 12 into evidence.

4 MS. LIPINSKI - Subject to my previous objection
5 that it contains hearsay. My recollection is that they
6 didn't show that to Mr. Lucas when he testified. I could
7 be wrong, but that was my recollection.

8 THE COURT - Well, I don't recall about that. I
9 think you did ask him if he was able to identify -- so
10 appears to be the same thing. So admitted over objection.

11 MS. DESCH - Thank you, Your Honor.

12 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
13 STATE'S EXHIBIT NUMBER 12.)

14 Q Given that information, the identity by Mr. Taylor of
15 Mr. Dover as the person committing the crime, what did you
16 do next?

17 A I took a written statement from Mr. Taylor about his
18 recollection of the events that had occurred.

19 Q And did you review that statement?

20 A Have I? Yes, ma'am.

21 Q And was it consistent with what he was telling you
22 happened that day?

23 A Yes, ma'am, with some little small ---

24 MS. LIPINSKI - Your Honor, I object at this
25 point. She's bolstering the witness. I think the jury

KELLY LOVELACE - DIRECT BY MS. DESCH

1 needs to evaluate his consistency and not have the
2 detective do that.

3 THE COURT - Well, I agree. Move on.

4 Q Did that -- taking a statement from him, did that
5 conclude your investigation that day?

6 A No, ma'am.

7 Q What did you do then?

8 A I went back to the office and spoke with the
9 responding deputies and the sergeant further about the
10 investigation.

11 Q To what end?

12 A To ---

13 Q Sorry. What -- how did it lead to an arrest of David
14 Dover?

15 A Just the totality of the investigation. You know, it
16 confirmed the things that I had already been told. I just
17 always like to go back and ---

18 MS. LIPINSKI - I'm going to object as to hear
19 reaching the ultimate conclusion as to ---

20 THE COURT - I don't think she gave ---

21 MS. LIPINSKI - --- where the evidence ---

22 THE COURT - --- a conclusion as to the guilt or
23 innocence of the Defendant, so I overrule your objection.

24 Q You can finish your sentence.

1 A Yes, ma'am, I just used the evidence that I gather to
2 make a decision as to whether or not I have the amount of
3 evidence that I need to get an arrest warrant or arrest
4 warrants.

5 Q Thank you. And what evidence did you look at to come
6 to that conclusion?

7 A I looked at the ---

8 MS. LIPINSKI - I'm going to object to the
9 relevance of this summarizing of all the evidence.

10 THE COURT - Well, counsel, I agree. I think
11 we've been over all that. She said she had enough evidence
12 for her to seek an arrest warrant. That's as far as we
13 need to go with that. You need to move on.

14 MS. DESCH - Thank you, Your Honor.

15 Q Just briefly looking at State's 13, 14, 15 and 16, if
16 you could just briefly look through those ---

17 A Yes, ma'am. (WITNESS COMPLIES) Yes, ma'am.

18 Q Had you seen that truck before?

19 A Yes, ma'am.

20 Q And what is that truck?

21 A That's the truck that was described to me by the
22 victim Lucas Taylor that was parked at the Moss Creek
23 address that belongs to David Dover.

24 Q So that was the truck that Lucas Taylor saw on his
25 proper belonging to David Dover.

KELLY LOVELACE - CROSS BY MS. LIPINSKI

303

1 A Yes, ma'am, and that's denoted ---

2 MS. LIPINSKI - Your Honor, I object to the
3 question as what Lucas Taylor saw. She doesn't know what
4 Lucas Taylor saw. It may have been what Lucas told her;
5 she may be reaching that comparison; that's a leading
6 question.

7 THE COURT - All right. Counsel, you can rephrase
8 it. I sustain the objection.

9 MS. DESCH - Thank you, Your Honor.

10 Q How did you come to that conclusion?

11 A Based off the information provided to me by Mr. Taylor
12 and the vehicle registration that's attached to the back of
13 the vehicle that was passed on to me, the tag number, the
14 South Carolina tag number.

15 Q And that was also where you saw the mud that was
16 consistent with the ruts in the yard.

17 A Yes, ma'am, it was.

18 MS. DESCH - Thank you. Please answer any
19 questions the defense may have.

20 MS. LOVELACE - Yes, ma'am.

21 CROSS EXAMINATION

22 BY MS. LIPINSKI -

23 Q Detective Lovelace, let's kind of start with the end.
24 You stated that you went back that day and you spoke with
25 Officers Robbie Ellis and maybe some other people that were

1 out there and based on that, you reached the conclusion
2 that you had enough probable cause for an arrest warrant.

3 Correct?

4 A Yes, ma'am, that's correct.

5 Q You don't reach an ultimate decision -- success of the
6 charge at trial, just that you have enough suspicions to
7 issue an arrest warrant at that particular time.

8 A Always like to get a little more than probable cause,
9 but, yes, ma'am, that is our standard.

10 Q And on that particular day -- and you didn't actually
11 go get the warrant for a few days after that. Is that
12 correct?

13 A That's correct. Yes, ma'am.

14 Q So you didn't get the warrants that day.

15 A That's correct.

16 Q All right. And in terms of you stated that you went
17 out and you spoke with Mr. Taylor and you stated that when
18 you talked to him he was still in a very highly agitated
19 state. Correct?

20 A He was agitated, yes, ma'am.

21 Q And is that -- you stated that was also when you went
22 back out to show him the photographic line-up. Correct?

23 A Correct, yes, ma'am.

24 Q So about what time is it believed that this crime
25 occurred?

1 A All the information that I received was around 12:30,
2 12:30-ish.

3 Q 12:30-ish.

4 A Yes, ma'am. That's an approximation.

5 Q And the reason that you're not able to pinpoint it
6 obviously is that you rely on when the individual called
7 911.

8 A Correct.

9 Q And so if he waited 10 to 15 minutes to call 911, that
10 would've provided some lag for you.

11 A Yes, ma'am, it would have.

12 Q And then there's also the delay in terms of dispatch
13 time that you all arrived and those kind of things.

14 A They usually expedite crimes that are in progress like
15 that. They get those out quickly but it can cause a lag,
16 yes.

17 Q And that depends on the availability of officers.
18 Correct?

19 A Correct.

20 Q So even if a crime is in process, if it's short
21 demand, it could still be 20 minutes between dispatch time
22 and actual arrival time.

23 A Yes, ma'am, that's correct.

24 Q All right. And that delay obviously impacts your
25 ability to do an investigation.

1 A Not on my part it usually doesn't.

2 Q But sometimes it contributes. Obviously that any laps
3 of time means things can change by the time you get there;
4 the crime scene can be contaminated by the time you get
5 there. All of those things -- it can impact your
6 investigation versus if you arrive more quickly.

7 A Yes, ma'am, things than happen.

8 Q All right. And you have been a detective, and you
9 stated for a long time you were with the -- in the
10 narcotics unit as well.

11 A Yes, ma'am.

12 Q So you understand the importance of preserving a crime
13 scene unit (sic). Correct?

14 A Yes, ma'am.

15 Q So if a victim is told not to go back -- and you do
16 burglary crimes now. Correct?

17 A Yes, ma'am, that's correct.

18 Q And often time people come home, they find their house
19 has been burglarized, they call 911, and is it not common
20 that they tell people don't touch anything, don't go back
21 into the house, because you all want to examine it before
22 the victims tamper with anything that might be inside.

23 A It would make sense that our communication folks tell
24 them that, but I really don't know. I haven't -- haven't
25 heard them tell that.

1 Q As a detective is that something that you would prefer
2 so that it would preserve your crime scene and you would be
3 able to observe it?

4 A Yes, ma'am.

5 Q Obviously, if the victim went back inside and moved
6 things or straightened things up, that would preclude you
7 from identifying whether or not the Defendant or whoever
8 touched anything else in the home.

9 A Yes, ma'am.

10 Q All right. So a better course of action would be to
11 stay outside and leave the crime scene in tact.

12 A That's correct.

13 Q All right. And in this particular occasion you stated
14 that you went out to the McFarland Road address. Correct?

15 A (Indicating yes)

16 Q But you're not the one actually processing the crime
17 scene?

18 A No, ma'am, I'm not.

19 Q All right. And was FSU completed with their job
20 before you got there, or were they still doing it when you
21 got there or in between?

22 A I think I had left before they actually got there and
23 gone to the other address.

24 Q So you weren't able to direct them in any particular
25 way or ask them to pay attention to any kind of detail.

1 A No, ma'am. Sergeant Ellis had the majority of the
2 information at that point, and he was handling the crime
3 scene.

4 Q All right. So you didn't get involved in that at all.

5 A No, ma'am, I did not.

6 Q You just briefly got a brief synopsis from Sergeant
7 Ellis, focused instead on locating the possible suspect
8 based on this tag number that had been given by the victim,
9 and that was your immediate focus and you left the crime
10 scene to the other officers.

11 A Yes, ma'am.

12 Q All right. But obviously you're dependent on how well
13 of a job they do. Correct?

14 A Yes, ma'am, it does have ---

15 Q So if they don't process all the affected areas or
16 they leave some areas un -- unreviewed, that impacts your
17 ability in your investigation later. Correct?

18 A I can't say ---

19 Q It could.

20 A Yes, it could.

21 Q All right. So, for instance, if we found out about a
22 burglary and forensics failed to process an area where the
23 suspect had gone inside the house or something had
24 transpired inside the house and that evidence wasn't
25 preserved, that may impact you down the road. Correct?

KELLY LOVELACE - CROSS BY MS. LIPINSKI

309

1 A Yes, ma'am, but we usually trust the forensics folks
2 and the officers investigating the scene, you know, to
3 review the scene and see where the most likely points of
4 entry or what the victim -- the information the victim
5 provides, and we -- we act upon that information that's
6 provided to us.

7 Q But in that respect then you're then dependent upon
8 what the victim is telling you. Correct?

9 A Yes, ma'am.

10 Q If he directs you to certain areas and draws your
11 attention away or tells them not to process, those other
12 areas were not affected, you are then left with that
13 direction or conclusion from the victim. Correct?

14 A I didn't -- I'm sorry, I didn't hear part of your
15 question.

16 Q All right. If a victim says the only thing that
17 happened was right here in the bedroom ---

18 A (Indicating yes)

19 Q --- and you all limit your focus to that bedroom, when
20 in reality something else may have happened in the other
21 part of the house, you are then limited to what the victim
22 has told you. Correct?

23 A Yes, ma'am, that's correct.

24 Q All right. So if a victim had some type of lag in
25 terms of response time or calling 911 and then went back

1 inside the house and moved items within the house and then
2 limited the detective's focus to one area of the house,
3 that obviously narrowed the scope of your investigation in
4 a very specific way.

5 A Yes, ma'am, but I don't see why a victim would do
6 that, because they're wanting us to catch the person that
7 burglarized or broke into their home or whatever crime
8 occurred.

9 Q All right. And in a typical burglary that may be the
10 case, but what if in the (sic) fact that a burglary had not
11 been what happened at that particular crime scene, then
12 that still may impact you. Correct?

13 A Yes, ma'am.

14 Q And you have responded to crime scenes to some people
15 who may necessarily do things they don't want the law to
16 know about and they don't want you going to certain areas
17 of their home.

18 A Yes, ma'am, that can be.

19 Q And are you -- when you went out and spoke to Mr.
20 Taylor, did he take you through the house?

21 A No, ma'am, I didn't ask to go through the house.

22 Q When you say you met with him and showed him the photo
23 line-up, where was that done?

24 A In the bedroom where the crime had occurred.

25 Q So you didn't go into the living room either?

1 A No, ma'am, I did not.

2 Q So you didn't see if there were any other items that a
3 burglar may have paid particular interest to or anything
4 like that.

5 A No, ma'am, it was a pretty simple case to me.

6 Q All right. From the victim's perspective.

7 A From the information that I gathered and the evidence
8 that I had seen, yes, ma'am.

9 Q All right. And you've investigated a number of
10 burglaries.

11 A I have, yes, ma'am.

12 Q And certain burglars do develop patterns over time.
13 They're not all the same, but certainly they -- there are
14 things more commonly stolen in burglaries?

15 A Yes, ma'am.

16 Q And those are things like electronics and cash, those
17 type things. Correct?

18 A Yes, ma'am.

19 Q And certain things that burglars look for, those kind
20 of things when they approach a house. Correct?

21 A Yes, ma'am.

22 Q And in this particular case, were you able to identify
23 the point of entry as part of your investigation?

24 A It was already -- it had already been determined upon
25 my arrival.

1 Q So you did nothing to participate in that
2 investigation.

3 A No, ma'am.

4 Q All right. And when we talk about the point of entry,
5 you said it had already been determined. What had it been
6 determined to be? The bedroom door?

7 A The bedroom door, yes, ma'am.

8 Q But in the statement that the victim gave you, did he
9 state that he witnessed the suspect going into his house?

10 A No, ma'am.

11 Q So you have no basis for which that was identified as
12 the point of entry. It was just the victim's conclusion.

13 A The victim's conclusion, yes, ma'am.

14 Q Did you also receive the same information that
15 Sergeant Ellis received that all of the doors of the house
16 were unlocked at the time?

17 A No, ma'am. The only thing that I was told was that
18 bedroom door was unlocked.

19 Q That was the only door you were told.

20 A Yes, ma'am.

21 Q Because that is Mr. Taylor's statement that he gave
22 you?

23 A I'm not sure if it's in the statement or not. I would
24 have to review it.

KELLY LOVELACE - CROSS BY MS. LIPINSKI

313

1 Q But obviously that would be a key piece of information
2 that you would want to preserve in a statement from a
3 victim. Would it not?

4 A Not necessarily.

5 Q You don't think it's important to identify the point
6 of entry?

7 A Well, I felt sure that that's what it was.

8 Q I understand that you felt sure that's what it was,
9 but he told -- he told you that he didn't witness the
10 individual going in. Correct?

11 A Right, yes, ma'am.

12 Q You didn't walk around to see if there were any other
13 doors left unlocked. Correct?

14 A The other officers had already done that upon my
15 arrival.

16 Q All right, so you relied upon them doing that.

17 A Yes, ma'am, I did.

18 Q But the victim told you he didn't see him enter the
19 home. Correct?

20 A Right, yes, ma'am.

21 Q So had there been times where you thought a point of
22 entry was one thing and later learned that he had gotten in
23 through an another door?

1 A No, ma'am, it's usually pretty obvious. Either a door
2 was left unlocked or a window was broken out or there are
3 pry marks. It's usually pretty obvious.

4 Q Sometimes they can go in one door and then also use
5 another door as access. Correct?

6 A Yes, ma'am, that's correct.

7 Q So they don't always stick to one door. That's fair
8 to say.

9 A That's correct, yes, ma'am.

10 Q And so you were not aware of whether or not there were
11 any other more valuable electronics in the home?

12 A No, ma'am, I'm not.

13 Q You were not aware whether or not there were any other
14 cash or any other items that would be of particular
15 interest to a burglar inside the home?

16 A No, ma'am, I'm not.

17 Q And you didn't do any -- when you got there initially
18 -- because you say you initially go out there and then you
19 go to the Moss Creek address and then you come back -- you
20 don't do anything -- do you do a walk-around the whole
21 area?

22 A No, ma'am, I didn't.

23 Q All right. You don't do anything that, you know what,
24 Mr. and Mrs. Victim, let me double check this, let me walk

KELLY LOVELACE - CROSS BY MS. LIPINSKI

315

1 around the house and just as an investigator with my
2 trained eye make sure you're right on what happened.

3 A I'm sorry.

4 (WHEREUPON DEPUTY CLERK IS COUGHING AND WITNESS
5 CAN'T UNDERSTAND THE QUESTION.)

6 MS. LIPINSKI - I apologize. Everybody's got to
7 cough these days.

8 A No, that's all right. Yes, ma'am, they do. I'm
9 sorry.

10 Q You didn't when you got out there say, you know what,
11 let me just as an investigator walk around the crime scene
12 and take my own fresh eyes at it.

13 A No, ma'am. My intent at that point was going with the
14 deputies; the sergeant had the crime scene; he had
15 forensics on the way. My intent at that point was going to
16 the vehicle that had been described and going with the
17 deputies that were standing by with it and trying to make
18 contact with Mr. Dover and speak with him.

19 Q And so initially you had that emergent need to attempt
20 to locate Mr. Dover, but when you go back with the photo
21 line-up, you had the luxury of more time then. Correct?

22 A I did, yes, ma'am.

23 Q And at that particular time, do you walk around the
24 crime scene with Mr. Taylor?

25 A No, ma'am, I don't.

1 Q All right. And he tells you that as he's pulling into
2 the driveway he sits in his car for like 30 seconds and
3 then sees a guy coming off his back deck.

4 A Yes, ma'am.

5 Q Did you do anything in terms of ascertaining where his
6 car was parked?

7 A No, ma'am.

8 Q Whether or not he was capable of even viewing Mr.
9 Dover coming off his back deck from where he pulled into
10 his driveway?

11 A No, ma'am.

12 Q And he stated that he saw an unknown vehicle and that
13 he stated he saw someone and that he exited to confront
14 that individual. Correct?

15 A That's correct.

16 Q And did you identify where in the yard that
17 confrontation initially occurred?

18 A No, ma'am, I didn't.

19 Q And -- but it's possible that that might've also led
20 you to some evidence as well.

21 A All the evidence was back in the home. I mean the
22 television that he alleged that he stole from him, he saw
23 him with outside of his home, he made him carry it back in
24 the home.

1 Q I understand that's what he told you, but he does
2 state that there's an initial confrontation. Correct?

3 A Yes, ma'am, he does.

4 Q And you say that he particularly paid attention to
5 some ruts in the front yard. Correct?

6 A Yes, ma'am, they were obvious. I didn't have to walk
7 out across there to see them. Where I parked my car in the
8 driveway, you could see the ruts coming through the yard
9 and down through the woods.

10 Q But if you approach this individual while carrying a
11 t.v. off his back deck and there was some type of
12 confrontation or disagreement, it's possible that that
13 could've disrupted the environment as well. Correct?

14 A Yes, ma'am.

15 Q And you didn't look for any of those kind of things.
16 Correct?

17 A No, ma'am.

18 Q And he then states that -- did he tell you the same
19 story about running around and confronting him again at the
20 front of the house?

21 A Yes, ma'am. He told me that there was a foot chase
22 through the yard.

23 Q All right. Did he tell you that they both ran the
24 same way or one ran one way and one ran the other?

1 A I think he said the suspect took off around the front
2 of the -- I don't have the house, so I can't tell you. I'm
3 standing at the back of the house; the suspect took off
4 around the left side of the house and he ran around the
5 driveway side to cut him off in the front yard.

6 Q All right. And did you walk out into the front yard
7 to see any evidence of that confrontation?

8 A No, ma'am, the leaves were about ankle-deep out there,
9 so I think the only that would've been visible was the ruts
10 in the yard because they were so deep. I don't think you
11 would've been able to see footprints.

12 Q But they may have disrupted the leaves. Right? The
13 dry ones could've revealed wet ones; there could've been
14 some sign of some type of foot path through that area.

15 A There could have, yes, ma'am.

16 Q And you did not look for that.

17 A No, ma'am, I did not.

18 Q And he further states that he put the t.v. down at
19 some point; between the meeting at the front of the house,
20 he put the t.v. down somewhere. Correct?

21 A Yes, ma'am.

22 Q And that also could've left marks or evidence behind
23 and you did nothing to locate that either.

24 A That's correct.

KELLY LOVELACE - CROSS BY MS. LIPINSKI 319

1 Q All right. And you then stated that the only place
2 that you went inside the house was the bedroom. Correct?

3 A Yes, ma'am.

4 Q And is this where he tells you that he tried to knock
5 his teeth out but hit his ear instead?

6 A Yes, ma'am.

7 Q All right. And you went into that bedroom. Correct?

8 A I did.

9 Q Fairly small bedroom, would you say?

10 A Yes, ma'am.

11 Q And maybe not so small in terms of square footage, but
12 there's a bed that takes up a lot of it and some other
13 furniture which is typical of bedrooms these days.

14 Correct?

15 A Yes, ma'am.

16 Q All right. Let me show you what's been marked as
17 State's Exhibit Number 8. Have you had the opportunity to
18 view this photograph before?

19 A Yes, ma'am.

20 Q All right. And to the best of your recollection, is
21 that the bedroom where you spoke with Mr. Taylor?

22 A It is, yes, ma'am.

23 Q All right. And did he tell you where in -- exactly in
24 the bedroom that the struggle took place? Did he tell you

1 that it took you in this small area over here near the
2 lamp?

3 A No, ma'am, he never provided me with that information.

4 Q But that would've been pertinent to you or helpful to
5 you as a detective, perhaps. Correct?

6 A Yes, ma'am.

7 Q All right. And even stating that he knocked up
8 against this lamp in the back corner. Correct?

9 A He being whom?

10 Q If the -- if when he struck the Defendant, the
11 Defendant knocked into the lamp at the back of that
12 bedroom, that would've been important for you. Correct?

13 A Yes, ma'am, it would have.

14 Q And you didn't see any area of any items on this back
15 table that were disturbed. Correct?

16 A No, ma'am, I did not.

17 Q But that's a fairly thin lamp.

18 A It is.

19 Q And I think it may be hard, but there's some glasses
20 or a water bottle on that, and that may be hard for you to
21 see, and I apologize, but there's a couple other cylinder-
22 type items on that table ---

23 A Right.

24 Q --- that appear to be upright and not mis-lodged in
25 any way.

1 A That's correct.

2 Q All right. And were you able to review the
3 photographs of the crime scene that FSU did take? Once
4 they took them, did they provide those to you?

5 A Yes, ma'am.

6 Q And in those photographs, were there originally any
7 photographs of this bedroom door that was the alleged point
8 of entry?

9 A I haven't seen any, no, ma'am.

10 Q All right. Do you remember this house?

11 A I do, yes, ma'am.

12 Q And would you not think it was important for FSU to
13 document the point of entry at a burglary?

14 A It's normally documented, yes, ma'am.

15 Q So that's something that's important to you in case
16 there's any argument later that there was pry marks or any
17 damage to the door or fingerprints happened to be lifted
18 from that door, that would be a key piece of evidence for
19 you. Correct?

20 A Yes, ma'am, it could be.

21 Q And you would normally want a photograph of that point
22 of entry. Correct?

23 A Yes, ma'am.

24 Q But you state you remember the house?

25 A Yes, ma'am.

1 Q Let me show you what's been marked as State's Exhibit
2 Number 2. Is that the back of the house to the best of
3 your recollection?

4 A Yes, ma'am.

5 Q All right. And you walk up these back steps here --
6 they're actually in front of a glass sliding door.

7 Correct?

8 A They are, yes, ma'am.

9 Q And glass sliding door, generally for burglars, are
10 fairly easy point of entry. Correct?

11 A Yes, ma'am.

12 Q Especially if they're unlocked.

13 A Right.

14 Q And instead, he's going over here, the allegations
15 are, around the furniture that is here and into that door.

16 Correct?

17 A Yes, ma'am.

18 Q And do you remember being able to see into that
19 bedroom door or were there's a (sic) blind covering the
20 window?

21 A The door was open the whole time I was there as well.

22 Q Okay, but in terms of if the door had been initially
23 closed and not left open by the victim when he left, is
24 there -- see how -- the glass sliding door you can see
25 into. Right?

KELLY LOVELACE -- CROSS BY MS. LIPINSKI 323

1 A Yes, ma'am.

2 Q But there does appear to be some type of blind over
3 the window on the bedroom door.

4 A I don't recall what ---

5 Q You don't recall that.

6 A --- whether there was a blind there or a ---

7 THE COURT - Counsel, how about letting her finish
8 her answer before you interrupt her and ask her another
9 one.

10 MS. LIPINSKI - I apologize, Your Honor. I'm
11 sorry.

12 Q You don't recall that.

13 A I don't recall if there was a blind there or a curtain
14 there.

15 Q When you were speaking to Mr. Taylor, did you do
16 anything in terms of looking at his knuckles or anything
17 else to ascertain whether or not there were any signs of
18 the struggle that he described to you?

19 A I saw his hands as he was viewing the photographic
20 line-up and writing the statement for me, and I didn't see
21 any signs of discoloration or swelling.

22 Q But you remember the size of Mr. Taylor. Correct?

23 A Yes, ma'am.

24 Q And you now have been made aware of the size of Mr.
25 Dover. Correct?

1 A Yes, ma'am.

2 Q Fair to say that Mr. Dover is much more smaller in
3 stature than the victim Lucas Taylor. Correct?

4 A Yes, ma'am.

5 Q And he -- did Mr. Taylor ever tell you that at some
6 point that he kicked off his flip-flops and tried to engage
7 Mr. Dover in a confrontation in the front of the house?

8 A He told me he confronted him. I don't remember him
9 saying anything about kicking off his flip-flops, no,
10 ma'am.

11 Q And you stated that you went out to the Moss Creek
12 address, there was some mud, some wet mud there. Correct?

13 A Yes, ma'am.

14 Q And -- but again you're not a mud expert.

15 A I am not.

16 Q Have no idea where that truck was.

17 A I do not.

18 Q Have no idea who was driving that truck earlier in the
19 day.

20 A No, ma'am, I do not. I know who it's registered to.

21 Q And you stated that you got this photo line-up from
22 SLED. That comes from DMV photos. Correct?

23 A It does, yes, ma'am.

1 Q All right. And Mr. Taylor you stated was still
2 agitated. Were you aware that he had actually asked the
3 911 operator for the name and address of the Defendant?

4 A No, ma'am, I didn't know that until it was presented
5 here in the courtroom.

6 Q He never asked you that for -- that information from
7 you?

8 A No, ma'am.

9 Q When you identified it, he didn't ask you to identify
10 that suspect by name?

11 A No, ma'am.

12 Q But you stated -- and just briefly, because this
13 wasn't gone over -- the photo line-up -- here ---

14 A Yes, ma'am.

15 Q You stated that this crime occurred some time between
16 let's say 12:00 and 12:30-ish. Right?

17 A Yes, ma'am.

18 Q All right. And you don't go back out to talk to Mr.
19 Taylor and do the photo line-up until about 2:30, 3:00
20 o'clock.

21 A Yes, ma'am.

22 Q All right. So some point after that. Mr. Taylor did
23 tell you that he struck Mr. Dover in the ear?

24 A Yes, ma'am.

25 Q And that Mr. Dover screamed?

1 A Yes, ma'am.

2 Q And that he then left.

3 A Yes, ma'am.

4 Q And then he drove away.

5 A Though the yard, yes, ma'am, and through the woods.

6 MS. LIPINSKI - Your Honor, if we could approach
7 just briefly.

8 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
9 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
10 WHICH WAS NOT REPORTED.)

11 THE COURT - Mr. Foreman, ladies and gentlemen of
12 the jury panel, there's a matter I need to take up very
13 briefly with counsel. I'll ask you to retire back to the
14 jury room very briefly. If you need to refresh yourselves,
15 do that, but it'll only be a few minutes and I'll have you
16 back. Thank you.

17 (WHEREUPON JURY EXITS THE COURTROOM)

18 PROFFERED EXAMINATION

19 BY MS. LIPINSKI -

20 Q And Detective Lovelace, I know you were here for some
21 pre-trial -- of the pre-trial motions and us lawyers tend
22 to change things as we go along, and I just want to end my
23 cross examination with you with a few questions, and I'm
24 going to lead you and I know that it might not necessarily
25 be a complete answer, but we are trying to honor the

1 Court's ruling as to the admissibility of evidence. All
2 right?

3 A Yes, ma'am.

4 Q All right. And so what I'd like to proffer is that on
5 the day in question, the day -- the day of the incident,
6 you do speak to Mr. Dover by phone.

7 A I do.

8 Q And he denies being involved in a burglary.

9 A Yes.

10 Q And that subsequently when you did get warrants --
11 Correct?

12 A Yes, ma'am.

13 Q You also made contact with him by phone ---

14 A I know I ---

15 Q -- and asked -- he turned himself in.

16 A Yes, ma'am, I know I talked with him on a couple of
17 occasions.

18 Q Got it. But once you made him aware that there were
19 warrants outstanding for him, he turned himself in.

20 Correct?

21 A I wasn't at work when he turned himself in, but, yes,
22 ma'am, he must've surrendered to law enforcement. I don't
23 have first-hand knowledge of that.

24 Q All right. But you didn't go out looking for him,
25 that type thing. Correct?

1 A No, ma'am.

2 MS. LIPINSKI - That's all I'm going to ask, and
3 if I've violated it ---

4 THE COURT - Okay, let me get back. I've got a
5 note here that the jury wants a smoke break. But let me --
6 I guess I missed part of it. But what did you ask her
7 about anything he said?

8 MS. LIPINSKI - I asked her, you spoke with him
9 that day, that he denied being involved in a burglary.

10 THE COURT - Okay. All right, I think that's as
11 far as we'll go with that. All right, I think we're good
12 to go. Bring the jury back, please.

13 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

14 MS. LIPINSKI - Just briefly in conclusion, Your
15 Honor.

16 CROSS EXAMINATION

17 BY MS. LIPINSKI (CONTD.)

18 Q You stated that I think it was approximately nine days
19 later you got the arrest warrants in this case. Correct?

20 A I'm not sure of the exact date, but, yes, ma'am, it
21 was some time later.

22 Q Not that day.

23 A Not that day. That's correct.

24 Q And at least a few days later after that.

25 A Yes, ma'am, that's correct.

KELLY LOVELACE - CROSS BY MS. LIPINSKI (CONTD.)

329

1 Q All right. And on the day in question you stated that
2 you went out to Mr. Dover's residence. Correct?

3 A Yes, ma'am.

4 Q And I believe spoke with his father, Russell Dover?

5 A Yes, ma'am.

6 Q And he was able to put you at least in contact with
7 Mr. Dover by phone that day.

8 A I asked his father for him to call me, that I needed
9 to speak with him.

10 Q And you were able to speak to Mr. Dover that day.

11 A Yes, ma'am.

12 Q And he denied being involved in a burglary.

13 A That's correct.

14 Q And that later on you made contact with him and
15 advised him that there are warrants outstanding.

16 A Yes, ma'am.

17 Q And after that he surrendered himself to law
18 enforcement, not to you, but to law enforcement.

19 A Yes, ma'am.

20 MS. LIPINSKI - That's all we have of this
21 witness, Your Honor.

22 MS. DESCH - Re-direct, Your Honor.

23 THE COURT - Yes, ma'am.

24 RE-DIRECT EXAMINATION

25 BY MS. DESCH -

1 Q Working in property crimes how often percentage-wise
2 do you have a known suspect versus a crime scene where you
3 have no idea who committed it?

4 A It's a very small percentage.

5 Q So it's a small percentage of having someone
6 identified coming out of a house for instance.

7 A That's correct, yes, ma'am.

8 Q So for the most part when you go out to a scene where
9 let's say somebody comes home after work and they notice
10 that their house has been broken into, how is that treated?
11 So if I call you; I come home from work; I notice that my
12 house is broken into, things are missing; I call the
13 police; you come out; there's nobody that's around, how do
14 you treat that as opposed to someone who you know was seen
15 coming out of the house?

16 A The deputies normally handle that case. As I was
17 saying earlier, the case gets assigned to me some days
18 later after it goes through our process of my lieutenant
19 reviewing it and seeing who it's assigned to. It's handled
20 totally different than a perpetrator that a victim has seen
21 at their home and had just seen them leave. There's more
22 immediacy to a case like the one that we investigated in
23 this incident.

1 Q So if it's an unknown person, you'd be more likely to
2 go through the house, look for any points of entry, look
3 for anything that would gather evidence ---

4 MS. LIPINSKI - Your Honor, object as to the
5 leading at this point.

6 THE COURT - Yes, please avoid leaving, counsel.

7 Q What would you do if you responded to a house to
8 investigate an unknown suspect?

9 A We would go to every door, every window; we would
10 check for footprints in the yard; we would look for items
11 that had been touched or moved or disturbed based off the
12 information that the victims give us, because the home is
13 not ours, and we don't know where they keep their
14 television remote or where their television was sitting or
15 if their jewelry box had been moved. We have to go under
16 the direction of the victim, but we would -- we would
17 process the whole home on the direction of the victim. We
18 would not go in their bathroom if nothing had been
19 disturbed in their bathroom and fingerprint the commode
20 lid. We would only fingerprint the areas, because
21 fingerprinting is very dirty. It causes a lot of damage to
22 carpets and surfaces. We would only try to get evidence
23 from the areas that it's obvious that the person had been.
24 Q And in this particular case, Lucas Taylor picks his
25 kids up at noon, is home after the nine minute, nine mile

1 drive back from the Episcopal Day School to his house.

2 Correct?

3 MS. LIPINSKI - Your Honor, I object as to her
4 testifying. She wasn't aware of that.

5 THE COURT - Counsel, you know, a simple objection
6 would do. We don't have to a running objection -- a
7 reading objection to everything. Counsel, please avoid
8 leading; ask questions.

9 MS. DESCH - Yes, Your Honor.

10 Q Are you aware of what time Lucas said he was away from
11 the home?

12 A Yes, ma'am.

13 Q And about what time and length of time was he away
14 from his home?

15 A Around nine to ten minutes.

16 Q And what time did you say that this might've occurred,
17 around 12:30?

18 A Yes, ma'am.

19 Q And just to complete the timeframe, I think it was
20 mentioned, what time did you come out with the photo line-
21 up?

22 A It was between 2:30 and 3:00 o'clock that afternoon.

23 It was 2:48 if I recall what's on -- what I wrote on the
24 form.

KELLY LOVELACE - RE-DIRECT BY MS. DESCH

333

1 Q And in this case, what did Lucas Taylor -- who did he
2 identify seeing coming out of his house?

3 MS. LIPSINKI - Your Honor, objection as to
4 hearsay.

5 MS. DESCH - Your Honor, may we approach?

6 THE COURT - Yes, ma'am.

7 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
8 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
9 WHICH WAS NOT REPORTED.)

10 Q Detective Lovelace, you said you were there; you went
11 out to McFarland Road prior to FSU getting there. Correct?

12 A Yes, ma'am.

13 Q Did you see David Dover out there at all?

14 A No, ma'am.

15 Q At some point during cross examination you indicated
16 that you thought this was a simple case.

17 A I'm sorry.

18 Q Sorry. Let me repeat that. During cross examination
19 you indicated in response to one of the questions that you
20 thought this was a simple case.

21 A Yes, ma'am.

22 Q Why use that terminology? What is simple about this
23 case?

24 A You've got the victim coming home seeing a suspect
25 coming down his back steps with his television in his hand;

1 you've got him confronting him, getting him to take the
2 television back in the house; you've got the suspect
3 fleeing through the yard leaving tracks in the mud, going
4 down through the woods; you've got the victim providing law
5 enforcement with the vehicle registration on a very unique-
6 looking vehicle which he describes; we go to the scene; we
7 find the vehicle -- we go to the -- I'm sorry -- we run the
8 vehicle registration that's provided by the victim; it
9 leads us to the house at [REDACTED] Moss Creek; we get there,
10 find the described truck in the yard with fresh mud
11 dripping from it; we look and see, and it's the same
12 license plate that the victim has provided over and over
13 again to law enforcement. It just -- it was just a simple
14 case. It wasn't a who-done-it to me. It was a simple
15 case. We continued the investigation by going and getting
16 a photographic line-up with the person that's registered to
17 that home and that vehicle through out database. We
18 contact the State Law Enforcement Division and get a
19 photographic line-up that included David Dover in it. We
20 take it back and show it to the victim, and he identifies
21 him immediately as the person that he had face-to-face
22 confrontation with coming out of his home with his
23 television. It seemed like a simple case to me.

24 MS. DESCH - Thank you.

25 MS. LIPINSKI - One follow-up.

1 RE-CROSS EXAMINATION

2 BY MS. LIPINSKI -

3 Q But you have been involved in cases where victims had
4 given you unreliable or incorrect information.

5 A Yes.

6 THE COURT - Thank you, ma'am. You may stand
7 down.

8 MS. LOVELACE - Yes, sir. Thank you, Your Honor.

9 MS. DESCH - Your Honor, would you be inclined to
10 take a small morning break?

11 THE COURT - Yes, probably so. Everybody hadn't
12 had a chance to refresh themselves. All right, Mr.
13 Foreman, ladies and gentlemen of the jury panel, we'll take
14 a short break. You may refresh yourselves. Those that
15 would like to smoke, I'll allow you to do that during this
16 break. Thank you. Please retire to the jury room.

17 (WHEREUPON, JURY EXITS THE COURTROOM)

18 THE COURT - All right, we'll take about ten
19 minutes.

20 MS. DESCH - Thank you, Your Honor.

21 (WHEREUPON, RECESS TAKEN.)

22 THE COURT - Please bring the jury in.

23 MS. LIPINSKI - Your Honor, I don't want to bring
24 them in and sent them out. I anticipate they're going to
25 rest. I think they can do that now. They can do it again

1 in front of the jury; we can do all the motions and only
2 bringing them in once instead of ---

3 THE COURT - Is that correct? You're not calling
4 anybody else?

5 MS. DESCH - Correct.

6 MS. LIPINSKI - So I just wanted to do that, and I
7 apologize, Your Honor.

8 THE COURT - No, I appreciate your doing that. We
9 can save a little time that way. All right, if the State's
10 going to rest, you can rest before the jury when they come
11 in, but we can go ahead and take up any -- as though you
12 had rested, we can go ahead and take up any motions you
13 wish to make at this time, and they'll be considered timely
14 made if they're made at this time.

15 MS. LIPINSKI - Your Honor, at this time the
16 Defendant would make a motion for a directed verdict on the
17 grounds that the State has failed to meet their burden in
18 terms of the evidence of burglary and petty larceny.
19 Specifically as to the burglary, the State feels that -- or
20 the defense feels that mainly the State's evidence proved
21 that he was there that day. They can place him at the
22 crime scene and that he left, but there's no evidence that
23 he entered without consent or there's not credible evidence
24 that he entered without consent. As to the petty larceny
25 again, the t.v. was found inside the home from where it was

1 before the burglary is alleged to have occurred, so there's
2 no evidence that he carried it away or that he carried it
3 away with the intent to permanently deprive the owner of
4 the property. We'd also renew our objections to evidence.
5 I know the Judge overruled some, but I think at this time
6 I'd have to review those motions just to preserve the
7 record on appeal and include them as part of the basis for
8 the motion of the directed verdict on both charges.

9 THE COURT - All right, thank you. State wish to
10 be heard?

11 MS. DESCH - Your Honor, just for the -- yes,
12 please, briefly. I think it's clear that Lucas Taylor's
13 testimony would count for each of those in a -- without
14 consent there was direct testimony that he said absolutely
15 I did not give consent; the t.v. was in the bedroom when I
16 left to go pick up my kids; when I got back, it was
17 outside; I saw him carrying it and the only reason it
18 wasn't permanently deprived is the fact that Lucas caught
19 him in the act of doing it and made him take it back into
20 the house, and we can certainly point to the fact that
21 there's fingerprints on the t.v. that shows that David
22 Dove, in fact, had it in his hands, and so we would ask you
23 to consider, of course, Lucas identified David Dover as the
24 one he saw carrying his t.v. leaving his house, so giving

1 the evidence that was presented in direct testimony and
2 forensic testimony that you would deny the motions.

3 THE COURT - Looking at the motion for a directed
4 verdict, the Court's required to look at the evidence in
5 light most favorable to the party against whom the motion
6 is case. In this case then in looking at the evidence in
7 the light most favorable to the State I find there is
8 substantial evidence from which the jury could infer that
9 the State has proven the elements of both burglary second
10 degree and petty larceny beyond a reasonable doubt. The
11 weight of the evidence and credibility of the witnesses are
12 not matters for the Court; they are matters for the jury,
13 but I find there is substantial evidence from which the
14 jury could infer the State has met its burden of proof as
15 to the elements of this case. I'm not going to go through
16 all of the details of why the Court finds that. It's
17 simple to say that there is testimony and evidence that the
18 Defendant himself was inside the house without permission,
19 without consent of the victim in this case. The victim has
20 testified that the television was taken from inside the
21 house where he left it and was seen outside the house in
22 the hands of the Defendant, was taken back in and put in
23 the house. There's testimony from which he was able to
24 identify the Defendant as that person he saw and confronted
25 and had a confrontation with there. The value of the t.v.

1 was a little less than five hundred dollars as I recall,
2 four hundred and some odd dollars, so qualify for a petty
3 petit larceny. And so I find there is substantial
4 evidence. I therefore deny the motion for directed verdict
5 as to these two charges. Anything else?

6 MS. LIPINSKI - We have not had to put on a case
7 in chief Your Honor. I told my client that you may
8 question him and make sure that he understands his right to
9 testify. It's ultimately his decision. I've advised him
10 what I think is prudent. Based on where we go from there
11 that ---

12 THE COURT - Bring him around. Let's put him
13 under oath and I'll question him about that.

14 (WHEREUPON, DAVID DOVER IS DULY SWORN BY THE
15 DEPUTY CLERK.)

16 THE COURT - Sir, for the record, you are David
17 Wayne Dover?

18 MR. DOVER - Sir, yes, sir.

19 THE COURT - Mr. Dover, we've reached the stage of
20 your trial where you may present your defense. You have
21 the right to testify in your own behalf, however, no one
22 can make you testify. In the event you have a record for
23 any convictions involving dishonesty or false statement or
24 for a crime punishable by imprisonment for more than one
25 year and this Court determines that the probative value of

1 admitting this evidence outweighs its prejudicial effect to
2 you, the Solicitor will be able to introduce this record
3 for impeachment purposes to attack your credibility. If
4 you elect not to take the stand, I will charge the jury
5 that they are not to give the fact that you did not testify
6 any consideration whatsoever, and there is to be absolutely
7 no prejudice to you because you did not testify. It is
8 left entirely up to you whether or not you testify. You
9 may talk with your attorney, family or friends or anyone
10 else, but the ultimate decision is left entirely up to you.
11 Do you understand it is your decision as to whether you
12 will or will not testify or present evidence in your case?

13 MR. DOVER - Sir, yes, sir.

14 THE COURT - Have you discussed with your attorney
15 the advantages and disadvantages of testifying in your
16 case?

17 MR. DOVER - Sir, yes, sir.

18 THE COURT - And do you wish to testify in your
19 case?

20 MR. DOVER - Sir, no, sir.

21 THE COURT - Is that your decision?

22 MR. DOVER - Sir, yes, sir.

23 THE COURT - Thank you. You may return to your
24 seat. I'll ask counsel if they'll approach back just a
25 minute.

1 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
2 NOT REPORTED.)

3 THE COURT - Counsel, let me suggest, the State is
4 going to rest, the defense is intending on rest (sic) -- if
5 you -- any motions that you were ordinarily want to make or
6 would like to make at the close of the defense's case if
7 it's different from the State, I'll allow you to do that.

8 MS. LIPINSKI - Yes, Your Honor, thank you. Just
9 I -- I do believe I'm required to renew my Motion for a
10 Directed Verdict even though no new evidence was presented,
11 but we would in order to reserve our objections renew any
12 objections previously to evidence that had been overruled
13 and also renew our Motion for a Directed Verdict at that
14 time based on the grounds we stipulated at the end of the
15 State's case.

16 THE COURT - I deny that motion for the same
17 reason I gave you earlier; nothing's really changed on
18 that, but your motion is made and noted for the record.

19 MS. LIPINSKI - Thank you, Your Honor.

20 THE COURT - All right, please bring the jury in,
21 sir.

22 (DISCUSSION IS HELD BETWEEN THE COURT AND THE
23 DEPUTY CLERK REGARDING ORDERING LUNCH WHICH WAS NOT
24 REPORTED.)

25 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

1 THE COURT - All right, counsel ready to proceed
2 for the State?

3 MS. DESCH - Yes, Your Honor. At this time the
4 State would rest.

5 THE COURT - Counsel for the defense?

6 MS. LIPINSKI - Defense rest, Your Honor.

7 THE COURT - Now, Mr. Foreman, ladies and
8 gentlemen of the jury panel, this will conclude the taking
9 of testimony and evidence in this case, so we're to that
10 part of the trial now where counsel will make their final
11 arguments to you, and then the Court will follow that --
12 the Court will instruct you on the law that applies. I
13 would tell you I suspect this process will probably take
14 about an hour or so and we'll try to hold it to that, but
15 in any event, I've asked the Clerk to go ahead and order
16 some pizza for lunch, so hopefully we can get it here by
17 the time we finish up with the final arguments and
18 instruction on the law and hopefully you'll be able to eat
19 at that point. It should be then or shortly after. So
20 we'll have that hopefully waiting on you when we get
21 through. All right, now I'll ask you to listen attentively
22 now as counsel address you in final arguments.

23 MS. DESCH - Thank you, Your Honor. Madam Clerk,
24 could you get the lights, please.

25 (WHEREUPON, DEPUTY CLERK COMPLIES)

1 (WHEREUPON, THE VIDEO IS PLAYED FOR THE JURY.)
2 MS. DESCH - [REDACTED]. We give plate numbers when
3 something happens to us to help the law enforcement
4 officers identify who committed a crime. Lucas Taylor did
5 that in this instance. In fact, you can hear that over and
6 over again in the beginning of the 911 call, because he's
7 afraid that he's going to forget it and he won't identify
8 the person that just came out of his house with his t.v.
9 You can hear the intenseness in his voice, almost breathy
10 as he's coming down from this experience and repeating [REDACTED]
11 [REDACTED]. He describes the truck he saw when he got home from
12 picking up his children. He describes the person that he
13 saw. Law enforcement came out; they got the name, David
14 Dover, from the tag; they go four minutes up the road and
15 the truck is there with mud on the back bumper, consistent
16 with the mud tracks that are in the house. (Pause)
17 Consistent with what Lucas Taylor told you happened. Let's
18 talk about Lucas Taylor. He's a little bit of a unique
19 individual, aggressive, angry, frustrated. His emotions
20 have been evident throughout this -- throughout the three
21 days he's been here, throughout the testimony, throughout
22 the 911 call, throughout the experiences with law
23 enforcement. He might react differently than the rest of
24 us in the same situation, but the issue before you is
25 simply this: Is Lucas Taylor telling you the truth about

1 what happened out there February 10th? Ms. Lipinski has
2 been quite good at bringing other things to light,
3 inconsistencies in different witnesses, and that's her job.
4 But for you to determine the credibility of the witnesses,
5 the inconsistencies have to matter. They have to call into
6 question the credibility of the witness, and the one
7 witness that matters in this case is Lucas Taylor. Why?
8 Because he is the one that comes home from picking up his
9 children and finds David Dover walking down the back steps
10 with his t.v. in his hand. Sergeant Ellis can come to the
11 scene and he can talk to him and he can interpret what he
12 says and he can follow-through. The forensic investigators
13 can come, and they too can interpret what people say to
14 them and they can do what they need to do, and the
15 detective can come and she can take everything on her
16 observations, her experience and put it all together. But
17 Lucas Taylor is the one that came home to his house and saw
18 David Dover walking down the steps on the deck holding the
19 t.v. in his hand. The 911 operator asked, do you know this
20 person. What was his reaction? No. Not, I mean, no, I --
21 no, I don't know him, no. There was absolutely no
22 hesitation in his voice whatsoever. No. Did you give him
23 permission to be in your house? No. Did you give him
24 permission to take the t.v.? No. I know this sounds like
25 silly questions, but that's exactly what you have to

1 determine. Did David Dover go in the house with consent or
2 without it? The evidence before you is that he did not
3 have consent to go into the house at McFarland. The
4 evidence before you is he did not have consent to take the
5 t.v. from the bedroom. Now, you've spent two days
6 listening to cross examinations about crime scenes and
7 messing up and timeframes, 10 to 15 minutes he had time to
8 fix things in the house, law enforcement didn't go in the
9 living room. This is not a who-done-it case. This was not
10 a case where someone came home in the afternoon and just
11 knows that there was something done to their house and
12 calls law enforcement and after-the-fact and says, this is
13 what I see missing, this is where I think they got in, look
14 around and tell me what else you see. Detective Lovelace
15 said this is a simple case. The word simple sometimes
16 makes people nervous, because this is a very serious
17 matter, but sometimes it is exactly that. Lucas Taylor
18 came home; he spotted somebody coming down his deck. How
19 did he do that? Because he came into his yard; he comes up
20 the driveway. You have all these pictures at your
21 disposal. There is a whole disc of pictures for you to
22 look at. We've printed out the ones that seem most
23 pertinent, but we want to provide you with whatever you
24 need to look at to determine. This is the driveway; he
25 comes in; the gate's off to the side; he comes in. When he

1 turns into his driveway, he finds a truck that he's not
2 familiar with. He told you it took a second to kind of
3 figure out, did my wife tell somebody to come over, is
4 there a repair -- something. It took him a minute to kind
5 of focus on, why would this truck be in my yard. He gets
6 out and then he can see, there's someone coming down with
7 his t.v. Some of us might at that point retreat and call
8 911. That's not his personality. He was incredibly
9 candid. He didn't call 911 right away, because he wanted
10 to take care of it himself. He told you he wanted to beat
11 his ass. He was so inflamed, so violated, he made David
12 Dover pick up the t.v. and take it back into the house.
13 Just because he had an aggressive way of dealing with it,
14 it doesn't necessarily mean that he's making it up. It
15 just means that's his personality. And when you judge
16 someone's credibility, look at everything. I submit to you
17 that the fact that he's so candid with what he wanted to do
18 actually bolsters his credibility. The State has to prove
19 each and every element beyond a reasonable doubt. Those
20 elements do include if you take a t.v. or you take personal
21 property of any kind it has to be with the intent to
22 permanently deprive an owner. The defense might come up
23 here and argue that the t.v. was found in the bedroom in
24 the house, therefore, David Dover didn't have any intent to
25 permanently deprive. Well, keep in mind how it got back in

1 the bedroom. He was caught red-handed walking out of the
2 house with it. He was confronted by the owner. The owner
3 told him to take it back in, and he did. It's not where
4 the t.v. was when Mr. Taylor went to go pick up his kids.
5 He didn't leave the cable box on the floor; he didn't put
6 the t.v. on the bed. The evidence that is before you is
7 clear that David Dover was made to take it back in, and
8 that's where he put it while begging him -- while begging
9 Mr. Taylor not to call the police. And probably it sounds
10 like cowering a little bit as Lucas Taylor is coming after
11 him. Defense is likely to get up and talk about the lamp
12 being knocked over or something along those lines; she
13 asked several questions about the lamp being knocked over.
14 There was no testimony from Lucas Taylor about the lamp
15 being knocked over. If you'll recall, they talk about --
16 when they're referring to State's Exhibit 8, Lucas Taylor
17 was testifying about this was the direction in which he
18 pushed David Dover, where he led him, where he was
19 confronting him. That was the reference to this side.
20 That was the reference to the side of the bed that was the
21 lamp. At no time was there any testimony from Lucas Taylor
22 about a lamp being disturbed or knocked over in any way.
23 And it's your recollection of the testimony. It's not my
24 interpretation. It's not Ms. Lipinski's interpretation.
25 It's your recollection. And if need be it can be listened

1 to again. There was no reference by him about knocking
2 over the lamp. All these little things might not seem like
3 a big deal, but when added up -- and the defense will add
4 it up. They're going to add it up and say all of these
5 things mean reasonable doubt. But reasonable doubt has to
6 be reasonable. There's a reason that word is in that
7 burden. You should try to think of examples to explain
8 looking at credibility and beyond reasonable doubt, and I
9 think one of the things you can come up with is making
10 cookies at home. If any of you have children and you've
11 made cookies at home, when they come fresh out of the oven
12 -- even spouses -- everybody smells that fresh cookie
13 coming out of the oven and you want one immediately. What
14 if you're making those cookies for a kid's school project
15 and you need all 12, and your four year old comes bounding
16 down at the smell of chocolate chips wafting through the
17 house and says, I want one. Well, you can't have one; it's
18 for your school project; you can't have a cookie. You
19 leave the room, you come back in the room, there's one
20 missing. There's now 11 cookies, and you turn to your four
21 year-old and say, did you eat one, and the four year old
22 can look at you and just nod, no, but what you see is
23 remnants of the cookie in their mouth or dribbling on their
24 shirt. You would use your own common sense to determine
25 that that four year-old is not telling you the truth. Use

1 that common sense here. Look at the evidence that is
2 presented to you. David Dover is seen coming out of Lucas
3 Taylor's house. Point of entry is something the defense is
4 going to bring up, but nobody was there when David Dover
5 went into the house. Each person can surmise or conclude
6 based on what they see that the point of entry was the
7 bedroom. Even Mr. Taylor, he knows he left to pick up his
8 kids; kids get done school at noon; it's approximately 9.8
9 miles to the kids' school. Think about that timeline. He
10 gets home and he sees David Dover coming out with the t.v.
11 The t.v. when he left it was in the bedroom. So it's fair
12 to conclude that that's where he went in to get it. The
13 bedroom door was unlocked. The defense wants to bring up
14 that it's easier to get into sliding glass doors or did
15 everybody check if every door was unlocked. What does that
16 matter in the overall scheme of things? I'm sure she'll
17 have a reason. But the t.v. was in the bedroom. The t.v.
18 was what was in David Dover's hands when he's coming out
19 onto the deck when he's seen. The cable box is knocked to
20 the floor. You can make that same conclusion, that David
21 Dover was in that house. There's no other evidence before
22 you as to how he got his hands on that t.v. How do you
23 know he got his hands on that t.v.? Because his
24 fingerprints were on it. Cheryl Gregory is a relatively
25 new investigator. Never testified before. Made some

1 mistakes. Didn't take pictures of things that probably
2 should've been taken. But whatever mistakes the defense
3 wants to put in front of you to consider, consider this.
4 Brian Bagwell did his own interpretation. They work in the
5 peer system for a reason. Identifying someone by
6 fingerprints is something that they don't want to get
7 wrong. Everybody is new at some time, and Cheryl Gregory
8 is new. She made a comparison. She gave it to a much more
9 experienced forensic officer. He looked at it; he
10 confirmed. That's the evidence that is before you. Cheryl
11 Gregory was on the scene. She took the t.v. outside to do
12 the processing. She lifted prints. They were identified
13 as belonging to David Dover. There's no other explanation
14 before you as to how those prints got on that t.v. Lucas
15 Taylor doesn't know David Dover. Ms. Lipinski's going to
16 get up here and do a very effective job. She's done a very
17 effective job for the last two and a half days. But I
18 submit to you it's an effective job of giving you, the
19 jury, a look at a shell game. The ball in this case is the
20 burden that the State has met. The ball in this case is a
21 man coming off a deck with a t.v. in his hand, identified
22 by Lucas Taylor, getting into a truck that was identified,
23 driving through the yard in an escape of the attack that he
24 was facing with Mr. Taylor, in such a frenzy that he goes
25 over monkey grass, causes ruts, drives through mud, and

1 because the car was originally blocked in, he couldn't
2 escape any other way, left in such a hurry he drove through
3 the woods. The identity of the truck was confirmed; the
4 identity of the tag was confirmed belonging to David Dover.
5 Law enforcement got to David Dover's house very quickly and
6 saw mud consistent with driving through a yard. That's the
7 evidence before you. I submit the State has met its
8 burden. We have proven to you David Dover was in that
9 house; he was in that house without consent. How do you
10 know? Because he had the t.v. that was in the house before
11 he left; he had it in his hands. How do you know it was in
12 his hands? Because of the fingerprint, because of the
13 testimony, the eye-witness testimony, the fingerprints; it
14 was in his hand. What's the value of that t.v.? Lucas
15 Taylor says five hundred and eighteen dollars. Does it
16 matter that there was a bigger t.v. in the living room?
17 No. Does it matter that there was other things in the house
18 that were electronics or cash or he might've gotten his
19 hands on something else? No. The law doesn't require us
20 to prove that he wanted to take a whole lot of stuff. It
21 requires in this particular instance that he took personal
22 property without consent with the intent to permanently
23 deprive, and the value was under two thousand. We have
24 done that. The defense can bring questions to crime scenes
25 or living room or other valuables in the house. They can

1 talk about that all day long. That is not what we're
2 required to tell you. That is not the proof that we have
3 to do. We have proven to you that David Dover had the
4 intent to steal that t.v. He just got caught doing it.
5 It's that simple. He got caught doing it. Don't be swayed
6 by the shell game. Before David Dover came in here, there
7 is a cloak of innocence that is wrapped around him. He
8 denied the burglaries -- the burglary, but that shouldn't
9 be surprising. That's what we're here for. That's why the
10 evidence is in your hands for you to make the
11 determination. It's a very important role, but as you'll
12 hear from the Judge, it's not beyond every and all doubt.
13 To find someone guilty you must be firmly convinced. Ms.
14 Lipinski said something in her opening about you can't
15 hesitate at all. Let's be clear what hesitating means. Of
16 course, you're going to go back into the room and you're
17 going to discuss it. You're going to deliberate, because
18 you all have to agree. That's not what the law means by
19 hesitate. You're making a thoughtful decision based on the
20 evidence. And we very much appreciate all of your time.
21 We appreciate your patience. It is your view of the
22 evidence that comes from that chair and the evidence that's
23 taken back from you. It's not mine. It's not Ms.
24 Lipinski's. It's yours. Lucas Taylor is aggressive, but
25 he was consistent in his testimony here, in his statements

1 to Kelly Lovelace, in the 911 call. Think about that
2 consistency. The reason the cross examination questions
3 came through other witnesses, because nothing was pointed
4 out as being inconsistent with Lucas Taylor himself, the
5 eye-witness, the owner that's telling you, I don't know
6 him; I didn't give him permission to be in my house; I
7 didn't give him permission to take my t.v. Think about
8 that when you're making that determination. That's the
9 evidence before you, and the evidence before you has proven
10 that David Dover is guilty of stealing the t.v., from going
11 inside of Lucas Taylor's house. Thank you.

12 MS. LIPINSKI - Ladies and gentlemen of the jury,
13 I want to thank you for your time and your attention. I
14 know sometimes when you come in here lawyers get up in
15 front of you and at times you think we're just throwing
16 stuff out, maybe we get paid by the word and why are we
17 making things so difficult and all those sort of things,
18 but I think after now being asked to serve on a jury you
19 also understand the significance of your role, and you also
20 see that it's not like t.v. There's no dramatic re-
21 enactment; there's no DNA lab within 30 seconds of results
22 or anything of those things that you tend to see on t.v.
23 Unfortunately, reality is a much more laborious process.
24 We have to bring things to you one at a time and it is our
25 goal to see and put that evidence before you and test that

1 evidence, because you were selected in a jury in the State
2 of South Carolina vs. David Dover, not Lucas Taylor vs.
3 David Dover. And there's a reason. I know some people
4 don't understand that reason. In a civil case if these two
5 had gotten into a wreck at an intersection near his house
6 and it was a Plaintiff's case, the title would be that. It
7 would be Lucas Taylor vs. David Dover, and they would both
8 have to come in here and tell their stories and you would
9 evaluate that evidence. But in a criminal case it's the
10 State of South Carolina vs. David Dover, because victim's
11 don't control prosecution. They're not the sword and
12 shield of the victim that's out there to zap the vigilante
13 justice they weren't able to exact that day. You have been
14 selected as an object of evaluation of that evidence. And
15 while the prosecution and Detective Lovelace would all like
16 you to believe that it's a very simple case, and it's a
17 who-done-it, and they answered that question, I told you at
18 the beginning of this trial that you wouldn't be asked who
19 did it. The Judge is going to give you guilty forms or
20 verdict forms that try and ask you the questions you do
21 have to ask yourself, and that you will have to be able to
22 answer in the affirmative or the negative beyond a
23 reasonable doubt, is David Dover guilty of two crimes,
24 burglary in the second degree and petty larceny. It's not
25 a who-done-it. Once we resolve who was at the house that

1 day, we don't all get to pack up, go home and call it a
2 day. That's not it. It's not that simple, and the
3 evidence doesn't go as far as they would like it to. I'm
4 kind of glad that the prosecution started out with the 911
5 tape, because when I heard the 911 tape, there were some
6 red flags early on. This isn't your typical burglary. The
7 prosecution has acknowledged this isn't how much people
8 respond to their homes getting broken into. When he calls
9 911 he states that he pulled in the driveway and he saw a
10 guy coming off his back deck. There's no other evidence of
11 that other than his testimony. There's no scuff marks in
12 the driveway; there's no camera surveillance of the house;
13 there's none of that. And they have brought you two
14 pictures to try and substantiate that claim. State's
15 Exhibit Number 2, which is the back of the house, which
16 forensics didn't take; the prosecution had to go take last
17 week, and State's Exhibit Number 5, a picture forensics did
18 take which shows you the ruts in the yard, but doesn't do
19 anything to show you where the cars in question were
20 parked. All we know is that they're about five feet back
21 of this money grass towards the road. Notice nobody stood
22 where the victim would've been in his car and asked
23 themselves was it even -- and because his truck's right --
24 and the Defendant's truck is allegedly right in front of
25 him -- from where he is back where the pavement meets the

1 gravel at the start of his driveway -- and this is the
2 corner of the house that shows you the distance. You can't
3 even see around the house -- in this picture, from this
4 point in the picture, can he even see anyone coming off the
5 back deck of his house? Because it's not right here in the
6 corner; it's way back here in the middle of the house at
7 the glass sliding door. Is that even physically possible?
8 You don't even know, because we didn't take that picture.
9 He then tells you that the 911 operator, he was carrying my
10 huge widescreen t.v., but what we later learn is, he's
11 carrying the smaller bedroom t.v., not the huge widescreen
12 t.v. he's got in the living room. And they're telling him,
13 calm down, calm down, and he tells you what? I just got
14 into a fight. A fight. After the fact he tags on the
15 burglary, but his first thing to tell you is, I just got
16 into a fight. He then tells you that he knocked his teeth
17 out or he's hit him so hard; he tries to describe the
18 truck, and at the very end, they say, sir, whatever you do
19 -- where are you? He said I come out of the driveway; my
20 kids are in the car. Whatever you do, don't go back in the
21 house; we don't want you to contaminate that crime scene;
22 you know, we don't know where the Defendant's been. And
23 the Defendant tells you -- or the victim tells you at that
24 particular point a very important clue. He says the only
25 place he's been is my bedroom, and all he took was the t.v.

1 And he then proceeds to disregard the dispatcher's
2 instructions to remain outside of the house and goes back
3 inside the house himself, lets his kids go back inside the
4 house themselves and when law enforcement gets there,
5 closes off the rest of the house. Now, put yourself in the
6 victim's shoes and ask yourself if these (sic) conduct is
7 consistent with someone whose house has just been
8 burglarized. You didn't see them go into the house; you
9 didn't sit across the street at your neighbor's having tea
10 and go, I think that guy's breaking into my house; I'm
11 going to watch through the windows and see where he goes
12 and see how much time he spends in there and when he comes
13 out and then I'm going to exactly know. Your house has
14 been burglarized; you don't know how long the guy's been
15 there; you don't know what he took. All know (sic) you
16 know is you confronted him with the t.v., but somehow
17 you're able to tell the 911 operator emphatically, he only
18 went into the bedroom and all he took. How do you know he
19 didn't go through the rest of the house? How do you know
20 he didn't pick up an IPOD and put it in his pocket? How do
21 you know he didn't find some cash? At that point when
22 you're calling 911 before he's been back in the house, how
23 does he know the answer to that question? Because most
24 people would be like, I don't know what he (sic) went; I
25 don't know what he took; I made him put the t.v. back or he

1 dropped the t.v., but I don't know; I was outside away
2 (sic) -- law enforcement will get here, but he already
3 knows the answers to the these questions that every other
4 person would be asking themselves. And then also, quite --
5 commenting about the 911 tape is -- because he's -- you
6 know, when he first calls, it's IGG-655, that's it, that's
7 it, I got to tell the number; I got to tell the number.
8 But notice how quickly he calms down. And then at the end
9 she says, yes, sir, this just happened, right, it just
10 happened five minutes ago, because when you pick up the
11 phone you were screaming, it's like, no, I'm -- like 10 or
12 15 minutes ago. This guy is running away from your house
13 through the woods, and you wait 10 to 15 minutes to call
14 911. Why? Because ultimately this is what you do know.
15 At some point David Dover was at that house and at some
16 point his hands were on that t.v. and there was some type
17 of physical altercation between the victim and the
18 Defendant. That's what the evidence shows. They'd like to
19 stretch it and try and show that it shows some more, but
20 the forensic evidence and the multiple people who came up
21 here and all the pictures that they want to take, none of
22 that results anything else than that. At some point David
23 Dover was in that house; his hands touched the t.v.; there
24 was some physical fight and he left. That's all we know.
25 That's all the evidence shows. Every single other piece of

1 evidence that they want to use to get them to proof beyond
2 a reasonable doubt comes from the victim's mouth, and
3 that's it. So his credibility does become significantly
4 important. What he says happen does become significantly
5 important. And you may be asking yourself, well, why call
6 and report a burglary if a burglary didn't happen? Well,
7 you just physically assaulted him in your home. You admit
8 that. You may be afraid that David Dover's going to go
9 call 911 on you, and instead you're going on the offense.
10 Because the only thing evidence show was that you two got
11 in a fight over the t.v. in your house. And it's curious
12 where the victim limits the investigation. They want to
13 gloss over that he's an unusual fellow, he's emotional,
14 he's passionate, and I understand your house got
15 burglarized and you're not necessarily running on all
16 common sense and reasonable thinking, but this wasn't a
17 simple burglary. This wasn't he ran out of the house and I
18 saw attack. This is a victim who with his two young kids
19 in the car doesn't immediately call 911 when he pulls up
20 into the driveway, because "I'm going to handle things
21 myself." This is a victim who gets out of the car, goes
22 around back, according to his story, confronts the
23 Defendant, then says he runs around one side of the house
24 and I run around the other. That's his version of events.
25 However, he tells you that he's wearing flip-flops in the

1 middle of February when he does it, and Detective Lovelace
2 tells you the leaves are ankle-deep in the middle of
3 the front yard, but somehow he in flip-flops runs through
4 those leaves, undisturbing them, and confronts him at the
5 other corner of the house and then commands him to go back
6 inside the house and put the t.v. back. Here's the thing.
7 If you just violated me, I don't want you back inside my
8 house; I'll carry my own t.v. back inside; I don't need you
9 to do it for me. Or leave it right there so when the
10 police get there that your fingerprints were on it and not
11 mine. But his whole round-about struggle at the house, no
12 evidence. Nothing. No one looks; no one bothers to walk
13 around the house and no one bothers to question it either.
14 At the end of the 911 tape they play you, he wants to
15 finish the argument, because he wants the 911 operator to
16 give him the name and address of the suspect, because he
17 still isn't done with whatever physical altercation he just
18 got into in his house. I did ask a lot of questions of
19 Detective Lovelace. She's a very experienced detective.
20 She's investigated a number of burglaries. Because
21 ultimately you have to ask yourself does the burglary story
22 even make sense? Does it even make sense? Irrelevant of
23 what happens afterwards, does the burglary story even make
24 sense? You have to believe that this house out in the
25 middle of the woods with one way in and one way out that

1 the Defendant decides to rob -- somebody who's usually only
2 away from their house maybe 10, 15 minutes a day, because
3 he's usually there with his children, that he pulls into
4 this driveway; instead of pulling up back around the house
5 where his truck won't be visibly seen by neighbors or
6 somebody driving by, he parks at the end of the driveway
7 where in order to leave, he either has to drive up and
8 around through the woods, or he'd have to back out onto
9 McFarland. Then he goes to the back of the house, at a
10 house where all of the doors that are unlocked, up these
11 steps, because these are the only steps up the back deck
12 that's from the far side of the house, and instead of going
13 to the glass sliding door, which is also open, curiously
14 you can look through and see, there's a huge widescreen
15 t.v. there just waiting for the taking, God knows what
16 other toys and trinkets exist, and you think, hmm, no, I
17 don't want that, oh, man, I don't like that t.v.; maybe
18 it's a wrong brand; maybe it's a Vizio, and I don't like
19 Vizios; and instead I am going to work my way around the
20 deck and the picnic table and the bench over here to this
21 back door that has a blind on it that I can't see into and
22 take my chances that that's where the mother load exists,
23 and I'm going to go into that door. So with whatever I
24 carry, I then have to wind my way back around the deck.
25 Now, the burglary story doesn't even make sense. Why would

1 you do that? And curiously, they don't take any pictures
2 of all the dogs the victim admits he has. So as I am a
3 burglar, I'm going to pick a house on a road with one way
4 in, one way out and a ton of dogs there.

5 MS. DESCH - Your Honor, I'm just going to address
6 that there was no evidence that the dogs were out during
7 this. Nobody testified about dogs being out.

8 THE COURT - All right, the jury heard testimony
9 and evidence about that, and the jury's instructed to
10 recall their remembrance of the testimony.

11 MS. LIPINSKI - And curiously, no pictures of the
12 dogs, because they didn't want you to see that neither.

13 MS. DESCH - Same objection, Your Honor.

14 MS. LIPINSKI - The dogs were there.

15 MS. DESCH - Same objection, Your Honor.

16 THE COURT - Counsel, I leave it up to the jury to
17 recall their recollection what the testimony and evidence
18 was about the dogs.

19 MS. LIPINSKI - At this point you may be asking
20 yourself, well, then what did happen. Why doesn't David
21 Dover get on the stand and give his own version of events?
22 But again, this is a criminal case. And it is the State of
23 South Carolina vs. David Dover. He has no obligation to
24 come forward with his explanation of events. None. He has
25 every right to exercise and say you're not getting into

1 this. And the Judge is going to instruct you that you
2 cannot consider that in your deliberations, and you cannot
3 hold that against him. Because this is not a case where we
4 decide who has the better story by the preponderance of the
5 evidence. They picked their version. They took the
6 evidence they had; they picked it and they went with it.
7 They let the victim lead them down the monkey grass path to
8 this story of burglary and they did nothing to second guess
9 it, nothing to investigate it and nothing to look at any of
10 the red flags that came up on any number of occasions. So
11 let's look at what evidence you do have. A tag number,
12 took fingerprints and a t.v. on the bed. That's it. No
13 sign of forced entry, no fingerprints on any door, and you
14 have for some reason the victim keeping them in the bedroom
15 in the entire time. The entire time. Not just, let me
16 show you where it happened or let me show you where my t.v.
17 was. He keeps them there. Sergeant Ellis tells you that
18 when he gets there, he's closed off the rest of the house.
19 Detective Lovelace says when she goes back almost three
20 hours later, they go into that same bedroom to do the photo
21 line-up, not let's go into the living room or the kitchen
22 table where there's some place we can all sit down and let
23 me tell you my side of the story and let me give you my
24 statement. Again, we're in and out this rear bedroom door,
25 and the victim does say that after the Defendant put the

1 t.v. down and he wanted to knock his teeth out he hit him
2 so hard, but instead he hit his ear, he does say that he
3 brushed up against this lamp, because I was like, where is
4 the altercation, let's be clear; are you at the end of the
5 bed, are you in a hallway, are you out on the porch, and he
6 was like, no, we were between the bed and the wall and he
7 actually brushed up against that lamp. Now, you all have
8 seen the victim. He stood up at jury selection, walked to
9 the witness stand; you saw the Defendant, a much smaller
10 man. You're telling me the guy you were so hot for, just
11 burglarized your home and violated everything and you were
12 so mad you want to knock his teeth out and you have him
13 trapped between the door and this lamp, but somehow he
14 manages to get away. How? How? And then when you tell
15 this story about his escape, you state that he runs out of
16 the house back to his truck. And what is your reaction? I
17 slowly followed him out of the house, because I knew there
18 was no point of escape. Really? Slowly? Really? You're
19 going to slowly follow the fleeing burglar out of your
20 house with your kids parked in a truck outside? Well, I
21 had the keys; I had it locked; I was not in fear for kids;
22 he was going to do any -- they don't know what he's going
23 to do. You're not going to run out after him? You're just
24 going to slowly follow him out of your house. But still
25 you manage to get out to him and get on the truck at the

1 driver's side. Let's talk about the forensics evidence.
2 As compelling as it is, it does not tell you that that t.v.
3 ever left that house, period. There was no sign of forced
4 entry. Conveniently all the doors were unlocked. There's
5 no fingerprints on any of the doors. We don't want
6 forensics to fingerprint anything but one door in
7 particular. The door we say -- the only door he knows he
8 went into that door, he was carrying his prize 32 inch t.v.
9 What'd he do, make him open the door himself? No evidence
10 that he touched the door. I don't want any evidence that
11 he tried to get anywhere else in my house. None of that.
12 Forensics does not tell you in any way shape or form that
13 that t.v. ever left that house. Sheriff Gregory is a young
14 officer. Everybody has to start somewhere, but by God we
15 have got to get basics right here. You don't take pictures
16 of the front of the house. You don't take pictures of the
17 back of the house. You don't take pictures of the driveway
18 where an altercation allegedly occurred at the driver's
19 side door of the Defendant's truck. You don't take
20 pictures of the corner of the house where another encounter
21 allegedly occurred. You don't look for footprints, and the
22 mud and the leaves and the tires evidently can leave a
23 track print. You only fingerprint what the victim points
24 you to. You don't find it curious that he's closed off the
25 rest of the house to you. You don't find it curious that

1 nothing else in the house is disturbed, and then when you
2 look at the fingerprints and you made the comparison, you
3 initially say at least for one print there's insufficient
4 ridge detail, and then somebody's got to come back up and
5 pull the -- says enough, there is enough; we rule out the
6 Defendant; we can even rule out the victim's prints from
7 our database and we don't know who that mystery third
8 person next. That's the forensics. You are going to be
9 asked did he commit these crimes? Was it a burglary? At
10 first glance, at first blush, if you believe everything the
11 victim tells you, maybe that's true; don't fault Detective
12 Lovelace; she's got probable cause; she goes and gets some
13 warrants. Curious as simple as the case she says it was,
14 she doesn't get the warrants for several days. If it was
15 such a simple who-done-it wrapped up in a nice neat
16 package, we don't go get the warrants that day. And they
17 want you to hold David Dover accountable for burglary in
18 the second degree, for petty larceny, and all they've
19 established is his mere presence at that house, and
20 everything else you're asked to look at is based on the
21 victim's credibility, a victim who's inconsistent in his
22 testimony, a victim who describes the victim -- the
23 Defendant originally as being five ten, a gentleman when
24 questioned, are you sure you don't any acquaintances in
25 common? His reponses, I have no friends for 80 miles,

1 nothing. But can't possibly have any friends in common; I
2 have no friends for 80 miles, none whatsoever. Your kids
3 go to the local Episcopal preschool; your wife's self-
4 employed as a horse veterinarian; you've lived there for
5 some time, but you have no friends for 80 miles. What is
6 it that the victim does not want everybody to see? And why
7 is it that law enforcement clearly equipped with a lot of
8 toys and tools to use the forensics to document the crime
9 scene to even call a canine unit out to track David Dover
10 from his muddy truck that they all say must be the same mud
11 as the front yard, why did they not do any of these things
12 in this relatively simple case. Your role is not to follow
13 the same primrose act. Your role is to be more objective.
14 Your role is to say do I really know what happened in that
15 house that day. Your role is to say, you know what, the
16 fact that the victim doesn't want us to look anywhere and
17 everywhere else in their house causes us some concern. You
18 know what, the fact that the victim doesn't want to
19 acknowledge there's no friends in common because he doesn't
20 have friends for 80 miles, that raises some red flags. You
21 know what, the fact that he's going to get out of his truck
22 with his kids in the car and go confront this guy and chase
23 him around the house that there's no evidence of
24 whatsoever, that causes us some concern. The fact that he
25 is going to wait 10 to 15 minutes to even wait to call 911,

1 that causes us some concern, that maybe he's not being
2 truthful about that the physical encounter wasn't about the
3 burglary, but that it was about something else, because the
4 burglary has some key elements, that he entered without
5 consent with the intent to commit a crime therein. And the
6 only evidence of that -- nobody's there when he walks in
7 and no evidence what the plan was when he went inside. And
8 the victim's testimony with what should be a relatively
9 simple burglary, for some reason it's filled with
10 inconsistencies and holes. It doesn't make sense to
11 anything we know about what a burglar would do or what
12 about a victim of a burglary would do. And law
13 enforcement, instead of doing their job, took everything at
14 face value, didn't conduct an investigation, didn't even
15 take pictures, didn't collect evidence, swallowed whatever
16 the victim served up on a silver plate, even though it just
17 seems completely bazaar, said, oh, we're done. You all
18 figure it out. The State has failed to meet its burden of
19 proof that the Defendant is guilty of these charges beyond
20 a reasonable doubt. You 12 must unanimously agree that he
21 is guilty of each of these offenses of each and every
22 element of these offenses in order to return the verdict
23 the State wants you to seek. Do not jump on the vigilante
24 band wagon. Stop and look at the evidence and realize is
25 all it does is merely put the Defendant present at the

1 house that day. And beyond that, you really don't know
2 what happened.

3 THE COURT - Mr. Foreman, ladies and gentlemen of
4 the jury panel, that concludes our arguments with counsel.
5 It's now time for me to charge you, that is, to instruct
6 you with regard to the law that applies to the issues in
7 this case. In this case the State of South Carolina
8 charges David Wayne Dover with offenses that charge him
9 with burglary second degree and they charge him with petit
10 larceny. To these charges the Defendant has pled not
11 guilty, which then places upon the State the burden of
12 proving the Defendant guilty. A person charged with
13 committing a criminal offense in South Carolina is never
14 required to prove himself innocent. I charge you that it
15 is a vital important rule of law that a Defendant in a
16 criminal trial must always be presumed innocent until his
17 guilt has been proved beyond a reasonable doubt, and this
18 presumption of innocence remains with the Defendant at all
19 times throughout the trial. It is only removed when and if
20 the State has proved guilt beyond a reasonable doubt. For
21 it is your solemn duty, ladies and gentlemen, if not
22 clearly convinced of guilt beyond every reasonable doubt to
23 the contrary to find the Defendant not guilty. Mr.
24 Foreman, ladies and gentlemen of the jury panel I instruct
25 you now and emphasize to you that the fact that the

1 Defendant does not testify or present evidence in his own
2 behalf in a criminal trial is not a factor to be considered
3 by you in any way in your deliberation. You must not
4 consider the fact the Defendant has chosen not to testify
5 or present evidence when you determine the guilt or
6 innocence of the Defendant. It must not be considered by
7 you in any manner whatsoever either against or for the
8 Defendant. A Defendant has the constitutional right to
9 remain silent. The assertion of that constitutional right
10 cannot and must not be considered by you in your
11 deliberations. Under you oath then you are to reach no
12 inference and draw no conclusion whatsoever from the fact
13 that the Defendant did not testify or present evidence.
14 The fact that the Defendant did not testify or present
15 evidence should not even be discussed in your jury room.
16 The burden of proof as I will state to you is upon the
17 State. It is not the burden of the accused to prove his
18 innocence. The burden of proof remains upon the State to
19 prove guilt beyond every reasonable doubt. Again, I
20 emphasize the fact the Defendant did not testify is not a
21 factor to be considered by you in determining the guilt or
22 innocence of the Defendant. So the State has the burden of
23 proving the Defendant guilty beyond a reasonable doubt.
24 What is a reasonable doubt? Some of you may have served as
25 jurors in civil cases where you were told it is only

1 necessary to prove the fact is more likely true than not,
2 such as by the greater weight or the preponderance of the
3 evidence. However, in criminal cases the State's proof
4 must be more powerful than that. It must be beyond a
5 reasonable doubt. Now, ladies and gentlemen, proof beyond
6 a reasonable doubt is proof that leaves you firmly
7 convinced of the Defendant's guilt. There are very few
8 things in this world that we know with absolute certainty,
9 and in criminal cases the law does not require proof that
10 overcomes every possible doubt. A reasonable doubt may
11 also be described to the kind of doubt that would cause a
12 reasonable person to hesitate to act. If you have such a
13 doubt as to the guilt of the Defendant, then he would be
14 entitled to a verdict of not guilty. Reasonable doubt may
15 arise from evidence which is in the case or from the
16 absence or lack of evidence in the case. If, based on your
17 consideration of the evidence, you are firmly convinced
18 that the Defendant is guilty of the crimes charged, you
19 must find him guilty. If on the other hand you think
20 there's a real possibility that he's not guilty, you must
21 give him the benefit of the doubt and find him not guilty.
22 You alone must make a determination of whether or not
23 reasonable doubt exists as to the guilt of the Defendant.
24 Mr. Foreman, ladies and gentlemen of the jury panel, there
25 are two types of evidence that are generally presented

1 during a trial. There is direct evidence and
2 circumstantial evidence. Direct evidence directly proves
3 the existence of a fact and does not require deduction.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances indicating the existence of a fact. Crimes
6 may be proven by circumstantial evidence. The law makes no
7 distinction between the weight or value to be given to
8 either direct or circumstantial evidence. However, to the
9 extent that the State relies on circumstantial evidence,
10 all of the circumstances must be consistent with each other
11 and when taken together point conclusively to the guilt of
12 the accused beyond a reasonable doubt. If these
13 circumstances merely portray the Defendant's behavior
14 suspicious, the proof has failed. The State has the burden
15 of proving the Defendant guilty beyond a reasonable doubt.
16 This burden rests with the State regardless of whether the
17 State relies on direct evidence, circumstantial evidence or
18 some combination of the two. Mr. Foreman, ladies and
19 gentlemen of the jury panel, under the Constitution of
20 South Carolina you are the finders of facts in this case.
21 I do not have the right to pass upon the facts, even to
22 express any opinion I might have as to the facts, nor may I
23 suggest in any way what I may think about the guilt or
24 innocence of the Defendant. You should form no opinion in
25 that regard from anything I have said or any ruling I may

1 have made during the course of the trial. As the sole
2 Judges of the facts in this case, you are also necessarily
3 the sole Judges of the credibility or believability of each
4 of the witnesses that have testified during the course of
5 the trial. There are a number of factors which you may
6 consider in arriving at your assessment as to a particular
7 witnesses' credibility or believability. Some factors I'm
8 going to list for you and should you think of other factors
9 that you believe also ought to be considered when you go
10 back into your jury room on the question of credibility or
11 believability, then you should consider those factors as
12 well, but you may consider the demeanor of the witness from
13 the witness stand, what was that witness's manner of
14 appearance, was the witness straight forward in answering
15 questions or hesitant in responding to questions, simply
16 put, do you believe the witness was telling the truth or
17 not telling the truth; do you believe the witness knew of
18 what that witness testified or did not know of what that
19 witnessed testified. You may consider whether or not the
20 testimony of a witness is consistent or inconsistent with
21 that witness's own testimony or with other testimony or
22 evidence presented during the course of the trial. You may
23 also consider how the witness came to know the facts to
24 which he or she testified. You may consider the
25 opportunity that a witness had to observe or hear, that is,

1 to perceive the existence of a fact by means of their
2 senses. You may also consider whether or not a witness is
3 biased or prejudiced. That simply means do you find that a
4 particular witness had some reason to come into Court and
5 testify one way or the other to help or hurt one side or
6 the other. You may also consider whether or not the
7 testimony of a witness was strengthened or weakened by
8 other testimony or other evidence presented during the
9 course of the trial. You as the finders of the facts in
10 this case and you as the Judges of the credibility or
11 believability of each of the witnesses that have testified
12 may believe as much or as little of what a witness
13 testifies to as you deem appropriate. You may believe all
14 of what a witness says; you may believe none of what a
15 witness says, or you may believe only part of what a
16 witness has said. Mr. Foreman, ladies and gentlemen of the
17 jury panel, the same Constitution that makes you the
18 finders of facts makes me the sole and only instructor in
19 the law. You must accept as correct the law that I charge
20 and apply to the law the evidence as you find it and reach
21 your verdict; put aside any conceptions you may have had as
22 to the law before coming here today, and accept the law as
23 I instruct it to be. You for purposes of your duty as
24 jurors today should not be concerned about what the law
25 ought to be but what I charge you the law is now in this

1 State. Mr. Foreman, ladies and gentlemen of the jury
2 panel, I charge you with regard to criminal intent.
3 Criminal intent is a necessary element of each crime that
4 must be proved by the State beyond a reasonable doubt.
5 Criminal intent is always a matter that must be determined
6 by the jury from the circumstances surrounding the
7 situation. There is no way to prove intent to a
8 mathematical certainty. There is no way medical science
9 can dissect a person's brain and determine what he had in
10 mind, so the law says that criminal intent may be inferred
11 from the circumstances shown to have existed. This is how
12 the jury makes a determination whether or not the element
13 requiring intent was present. Criminal intent is a state
14 of mind that which operated jointly with an act is the
15 commission of a crime. Criminal intent is a mental state,
16 a conscious wrong-doing, so it is up to you the jury to
17 determine what the Defendant intended to do based on the
18 circumstances shown to have existed. I tell you that the
19 State must prove criminal intent beyond a reasonable doubt
20 just as the State must prove every element beyond a
21 reasonable doubt. It is not necessary to establish intent
22 by direct and positive evidence, but intent may be
23 established by inference in the same way as any other fact
24 by taking into consideration the acts of the parties and
25 all of the facts and circumstances of the case. While the

1 State may prove motive, it is unnecessary for the State to
2 do so, however, the State must prove intent. Mr. Foreman,
3 ladies and gentlemen of the jury, I charge you that mere
4 presence is not enough. A Defendant cannot be found guilty
5 on any charge solely because he was merely present at the
6 scene of a crime. To be found guilty, a person must
7 personally commit the crime or be present at the scene and
8 intentionally take a role in the commission of a crime.
9 Now, Mr. Foreman, ladies and gentlemen of the jury panel,
10 I'm going to charge you specifically with the law
11 concerning the two charges against the Defendant in this
12 case. You're not going to have any of these instructions
13 written down for you back in the jury room, so you're going
14 to have to call on your collective memories as to what I
15 tell you -- instruct you the law is. However, once you
16 begin deliberating, if you're still not sure about some
17 part of the law or all of it for that matter, upon your
18 request I'll bring you back out and re-instruct you on any
19 part of the law, but what I would ask you at this time is
20 to listen carefully as I go through this so you -- again,
21 so that you will understand it. First, I'm going to charge
22 you with regard to the offense of burglary second degree as
23 applied to a dwelling under Section 16-11-312 Subsection
24 (a) of the South Carolina Code of Laws of 1976, as amended.
25 In order for the Defendant in this case to be found guilty

1 of burglary second degree, the State must prove beyond a
2 reasonable doubt that the Defendant, David Wayne Dover,
3 entered a dwelling without consent with intent to commit a
4 crime therein, and the State must prove all three elements
5 for the Defendant to be found guilty of burglary second
6 degree. With regard to entering, the State must prove that
7 there was an entering, that the Defendant actually went
8 inside the dwelling or some part of it. It is not
9 necessary to have the entire body of the Defendant to enter
10 a dwelling. The smallest entry is sufficient. The place
11 entered must be a dwelling. The entry must be without
12 consent. Aside from the usual and normal understanding of
13 the phrase without consent, the term also means to enter a
14 dwelling by misrepresentation, trick, artifice, some manner
15 to gain consent to enter the dwelling from the person in
16 lawful possession. There must be an intent to commit a
17 crime. The mere entry into a dwelling without consent is
18 not a violation of the burglary statute. It is only where
19 there is an intent to commit a crime, whether it be a
20 felony or misdemeanor that crime is complete. The proof of
21 intent necessarily rest on inference from conduct. With
22 regard to petit larceny -- and I'm going to go ahead and
23 deviate a little bit and just say to you that when you hear
24 petit larceny -- and it's spelled p-e-t-i-t -- it's from
25 the French word small, which meaning a smaller amount.

1 You've hear the word grand larceny. That comes from the
2 French word wrong which means large. And so this is where
3 these laws are taken. And grand larceny means -- again
4 that means the larger amount. Petit larceny, p-e-t-i-t
5 means the smaller amount. Same way when we have a grand
6 jury, if a larger jury, which considers indictments against
7 persons and renders indictments, and it's made up of 16 or
8 more members. A petit jury, which you are, petit jury in
9 this case, is spelled again p-e-t-i-t, it means the smaller
10 juror, in this case at least 12. You have an alternate to
11 make it 13, but it's at least, -- just thought I'd explain
12 that to you. In this case the Defendant, David Wayne
13 Dover, is charged with petit larceny. Petit larceny is
14 felonious taking and carrying away by any person of the
15 personal goods or things of another valued at less than two
16 thousand dollars. If it's more than two thousand dollars
17 it'd be grand larceny. In this case it's less than two
18 thousand that he's charged with, which is, of course, a
19 petit larceny, so he -- the Defendant would be -- that the
20 State would have to prove that the Defendant in this case,
21 David Wayne Dover, to find him guilty of petit larceny it
22 is the felonious taking and carrying away by any person of
23 the personal goods or things of another valued at less than
24 two thousand dollars with the intent to appropriate them to
25 one's own use and to deprive the owner permanently of the

1 property. There are five elements that must present to
2 establish beyond a reasonable doubt to constitute the crime
3 of petit larceny. They are, first, there must be a taking.
4 To take means to obtain actual custody or control. Second,
5 the taking must be personal property of another valued at,
6 in this case, less than two thousand dollars. Third, after
7 being taken, the property must be carried away, and there
8 must be some asportation, a taking away. The asportation
9 of stolen property which is an indispensable element of the
10 offense of larceny is ordinarily established by the
11 slightest removal of the property with felonious intent.
12 The taking and carrying away must be accomplished against
13 the will and without the consent of the owner. The taking
14 and carrying away of property must be done with an intent
15 to steal -- this is the fifth element. The intent to steal
16 is the intent to deprive the true owner of his property in
17 converting it to his own use. Intent is a material element
18 of the offense that must be proved beyond a reasonable
19 doubt. Mr. Foreman, ladies and gentlemen of the jury
20 panel, nothing that I may have said or done during the
21 course of this trial has been in any way intended to
22 express or suggest a view of the case an opinion as to the
23 facts, the weight of the evidence or the credibility of the
24 witnesses. If any of my actions or words have seemed to so
25 indicate, you would disregard such, form your own opinion

1 as to these matters. You have been selected as fair and
2 impartial jurors sworn to impartially try and determine the
3 facts of this case and when you comply with your oath to do
4 so, then no one will have a right to criticize your verdict
5 and you'll have fully discharged your duty as jurors. You
6 are to decide this case according to the testimony that you
7 have heard from the lips of the sworn witnesses along with
8 other evidence introduced during the course of the trial.
9 I charge you that a juror must decide the issues in this
10 proceeding without bias and without prejudice to any party.
11 You cannot allow yourself to be governed by sympathy, by
12 prejudice, by passion, by public opinion or any other
13 arbitrary factor. Both the State and the Defendant have
14 the right to expect that each of you will carefully and
15 impartially consider all of the evidence in the case and
16 that you will follow the law as I have explained it to you.
17 Mr. Foreman, ladies and gentlemen of the jury panel,
18 whatever your verdict in this case, it must be your
19 unanimous verdict. All 12 jurors must agree on the verdict
20 which the foreperson will be authorized to write as to each
21 of these two charges. Mr. Foreman, I charge you that once
22 you begin your deliberations that you maintain some order
23 in those deliberations, make sure everyone who wants to
24 participate and to be heard during the deliberations be
25 allowed to do so. If for any reasons any members of the

1 jury panel take a break from deliberations, all should take
2 a break. By that I mean all 12 jurors should be present
3 and deliberating when deliberations are going on. Now, I
4 have prepared for your use in the jury room a verdict room
5 for each of the two charges in this case, and I'm going to
6 go over them with you at this time. They're really very
7 simple. The first, as to the burglary second degree charge
8 -- there are two possible verdict listed on the verdict
9 form. They are: We, the jury, find David Wayne Dover
10 guilty of burglary in the second degree, or: We, the jury,
11 find the Defendant not guilty. Now in the other case as to
12 petit larceny: We, the jury, find David Wayne Dover guilty
13 of petit larceny, or: We, the jury, find David Wayne Dover
14 not guilty. Now, in preparing the verdict forms I have to
15 put the possible verdicts on the form in some order. I do
16 it the same way every time, but the order in which the
17 possible verdicts appear on the verdict form means
18 absolutely nothing, and you should infer nothing from it.
19 What you should do, Mr. Foreman, the jury should deliberate
20 as to each of these two charges. Once the jury has reached
21 a unanimous verdict on each of these charges, you will then
22 go to the verdict form, find the verdict on the verdict
23 form which corresponds to the unanimous verdict reached by
24 the jury, simply put a checkmark in the blank beside that
25 particular verdict, sign your name on the line above the

1 word Foreperson's signature and date it. Once you've done
2 that for each of these two charges, you will simply knock
3 on the door and let the bailiff know you've reached a
4 verdict, the bailiff will let me know and I'll bring you
5 back out in the courtroom and receive those verdicts. Now,
6 I'm going to ask you to retire to the jury room, but do not
7 yet begin your deliberations. I have to give counsel an
8 opportunity to request additional instructions on the law.
9 If additional instructions are requested and I deem them
10 necessary, I'll bring you back out and give you those
11 additional instructions. It follows that we should make
12 sure all instructions are complete before you begin
13 deliberating. So if you will at this please -- and oh, and
14 let me say, if no additional instructions are necessary, I
15 will send to you by means of the bailiff, the verdict
16 forms, exhibits which have been admitted into the evidence
17 and instructions to begin deliberating. Please do not
18 begin deliberating until you get that instruction. Please
19 retire to the jury room all except the alternate. Ma'am,
20 I'll ask you at this time not to go into the jury room, but
21 wait just outside the courtroom door for further
22 instructions.

23 (WHEREUPON JURY EXITS THE COURTROOM)

24 THE COURT - Exceptions, additional requested
25 charge from the State?

1 MS. DESCH - Nothing from the State, Your Honor.

2 THE COURT - From the defense?

3 MS. LIPINSKI - Nothing from the defense.

4 THE COURT - Counsel, would you check the exhibits
5 and make sure only those that actually got admitted into
6 evidence go back to the jury room.

7 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
8 REPORTER AND COUNSEL REGARDING EXHIBITS, WHICH INCLUDES THE
9 DISCUSSION REGARDING THE CORRECTION TO EXHIBIT NUMBER 22
10 WHICH WAS NOT REPORTED.)

11 THE COURT - All accounted for?

12 MS. DESCH - Yes, sir.

13 THE COURT - All right, take this back, and has
14 the food come in?

15 DEPUTY CLERK - Yes, sir, it's been back there for
16 a few minutes.

17 THE COURT - Well, you can tell them they can
18 begin deliberating when they get ready. Of course, they
19 can eat first if they want to. But they can begin
20 deliberating. Give them those and ask the alternate to
21 come in.

22 (WHEREUPON, JURY DELIBERATES AT 1:30 P.M.)

23 (WHEREUPON, THE ALTERNATE ENTERS THE COURTROOM.)

24 THE COURT - Ma'am, you can stand right there if
25 you will. As it turned out, we made it all the way through

1 the trial without an emergency developing with regard to
2 one of the first 12 juror chosen, so it will not be
3 necessary for you to participate in deliberations, so we're
4 going to excuse you at this time with our thanks. We will
5 not draw another jury this week, so this completes your
6 service on this case, and it completes your service for the
7 week. Do you need anything to take to your employer
8 showing you were here? Okay, and you're free to go now.
9 Now, we have pizza back there. If you'd like to take a
10 couple of pieces of pizza with you, you're welcome to do
11 that, and you're welcome to stay in the courtroom, but
12 otherwise you're free for the week. All you have to do is
13 bring your badge in to the bailiff and you're free to go,
14 and if you want some pizza -- get her a couple of pizzas
15 there and she can -- Okay?

16 ALTERNATE JUROR - Thank you.

17 THE COURT - All right. Thank you. All right,
18 we'll be at ease.

19 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

20 (WHEREUPON, NOTE IS SENT OUT FROM THE JURY AT
21 1:55 P.M.)

22 (WHEREUPON, LAP-TOP IS SENT TO THE JURY;
23 DISCUSSION NOT ON RECORD)

24 (WHEREUPON, NOTE MARKED AS COURT'S EXHIBIT NUMBER
25 2.)

1 (WHEREUPON, NOTE IS SENT OUT FROM THE JURY AT
2 3:30 P.M.)

3 THE COURT - All right, bring the jury in. In
4 case you don't know, they want to be recharged on the law,
5 so I'm -- on the elements and the two offenses.

6 (WHEREUPON, JURY ENTERS THE COURTROOM AT 3:38 PM)

7 THE COURT - All right, Mr. Foreman, ladies and
8 gentlemen of the jury panel, I have your note out
9 indicating you're like to be re-instructed with regard to
10 the elements of the offenses with which the two charges
11 against the Defendant in this case, so I'm going to
12 recharge you on that, and hopefully that you'll get what
13 you need from this re-instruction. The Defendant, David
14 Wayne Dover, is charged with two offenses. Of course, he's
15 charged first of all on the charge of burglary second
16 degree to which he's charged, and that's pursuant to
17 Section 16-11-312, Subsection (a) South Carolina Code of
18 Laws, 1976, as amended, and I instructed you that in order
19 for the Defendant to be found guilty of the burglary second
20 degree charge, the State must prove beyond a reasonable
21 doubt that the Defendant, David Wayne Dover, entered a
22 dwelling -- that's -- a dwelling, of course, where people
23 live and sleep is the definition of a dwelling -- without
24 consent with the intent to commit a crime therein. The
25 State must prove all three elements for the Defendant to be

1 found guilty of burglary second degree. I charged you
2 first with regard to entering. The State must prove that
3 there was an entering, that the Defendant actually went
4 inside the dwelling or some part of it. I charged you it's
5 not necessary, however, the entire body of the Defendant
6 enter the building, the dwelling; the smallest entry is
7 sufficient and may be of any part of the body, as a hand or
8 foot or even an implement, such as a hook or other
9 instrument. No force need be used to gain entry. The
10 place entered must be a dwelling. Third, the entry must be
11 without consent, and fourth, there must be an intent to
12 commit a crime. The mere entry into a building without
13 consent is not a violation of the burglary statute. It is
14 only where there is an intent to commit a crime, whether it
15 be a felony or a misdemeanor, that the crime is complete.
16 Proof of intent necessarily rest on inference from conduct.
17 So I -- to reiterate, that there must -- that the State
18 must prove that the Defendant entered a dwelling without
19 consent of the owners with intent to commit a crime
20 therein. As to the larceny charge -- in this case David
21 Wayne Dover is charged with petit larceny. Petit larceny
22 is the felonious taking and carrying away by any person of
23 the personal goods or things of another valued at less than
24 two thousand dollar, in this case of petit larceny with the
25 intent to appropriate them to one's own use and to deprive

1 the owner permanently of his property. The elements that
2 must be present to establish beyond a reasonable doubt to
3 constitute the crime of petit larceny are as follows:
4 There must be a taking. To make means to actually -- to
5 obtain actual custody or control. Second, the taking must
6 be personal property of another, in this case valued at
7 less than two thousand dollars is the allegation. After
8 being taken, the property must be carried away. There must
9 be some asportation, a taking away. The asportation of
10 stolen property which is an indispensable element of the
11 offense of larceny is ordinarily established by the
12 slightest removal of the property with felonious intent.
13 Next, the taking and carrying away must be accomplished
14 against the will or without the consent of the owner.
15 Finally the taking and carrying away of property must be
16 done with an intent to steal. The intent to steal is the
17 intent to deprive the true owner of his property and
18 converting it to his own use. Intent is a material element
19 of the offense that must be proved beyond a reasonable
20 doubt. Hope this will be helpful to you. If you still
21 don't understand it, let me know and I can go back over it
22 again, but that's my instruction to you. Please return to
23 the jury room and resume your deliberation.
24 (WHEREUPON EXITS THE COURTROOM TO FURTHER
25 DELIBERATE AT 3:44 PM.)

1 THE COURT - Exceptions from State?

2 MS. DESCH - Nothing from the State.

3 THE COURT - Exceptions from defense?

4 MS. LIPINSKI - Nothing from the defense, Your
5 Honor.

6 THE COURT - All right, we'll be at ease. We'll
7 make this a Court's Exhibit.

8 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
9 NUMBER 3.)

10 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

11 (WHEREUPON, NOTE IS SENT OUT FROM JURY AT 4:07
12 PM.)

13 THE COURT - Thank you. Please be seated. Bring
14 them in, please, Mr. Bailiff. Tracey, would you give that
15 to Shirley? Mark it but keep it to yourself.

16 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
17 NUMBER 4.)

18 (WHEREUPON, JURY RETURNS TO THE COURTROOM AT 4:18
19 P.M.)

20 THE COURT - Mr. Foreman, ladies and gentlemen of
21 the jury panel I have your note out indicating you all have
22 not been able to reach a verdict and you're divided at this
23 time, and I want to give you an additional instruction with
24 regard to trying to get a verdict in this case, so if
25 you'll please listen attentively. When any matter is in

1 dispute, it's not always easy for even two persons to
2 agree. Therefore, I understand when 12 persons must agree,
3 it becomes much more difficult, but it is important that
4 this case be ended if it can be ended without a single one
5 of you doing violence to your conscious. It is your duty
6 as jurors to consult with one another and to deliberate
7 with a view towards reaching an agreement, if you can do so
8 without violence to your individual judgment. Each of you
9 must decide the case for himself or herself, but do so only
10 after an impartial consideration of the evidence in the
11 case with your fellow jurors. In the course of your
12 deliberation, do not hesitate to reexamine your own views
13 and change your opinion if convinced that you should change
14 your opinion. No juror is expected to give up his or her
15 opinion based on reasoning satisfactory to yourself merely
16 for the purpose of being an agreement, and I want you to
17 understand that. And do not surrender your honest
18 convictions as to the weight or the effect of the evidence
19 solely because the opinion of your fellow jurors is
20 contrary to your own opinion or for the mere purpose of
21 returning a verdict, but it has never been intended that
22 the verdict of the jury should be the verdict of any one
23 person. On the other hand, the verdict of the jury is the
24 collective reasoning of all persons put together. The
25 reason we have a jury is that so we might have the benefit

1 of the collective thought and collective reasoning of the
2 jury. It may help to tell the other jurors how you feel
3 about the case and why you think as you do, and I'm sure
4 that you've been doing that. On the other hand, it may be
5 helpful if the other jurors exchange views with you, and I
6 ask that you listen to each other and give to the others'
7 thoughts such meanings as you think they should have. A
8 mistrial of a case is a very unfortunate thing. If you as
9 a jury do not agree on a verdict, it doesn't mean that the
10 case is over. It just means that at some future time in
11 another term of Court before me or some other Judge, that
12 some other jury will sit where you are in the trial of the
13 case. The same participates will come; the same lawyers
14 will probably come, and they will basically ask the same
15 questions and presumably will probably get the same
16 answers. We will go through the entire process again. I
17 have no reason to believe that any other 12 jurors from
18 York County will represent more of a cross section of the
19 county and will be more intelligent or will be more capable
20 of deciding the matter than you are. And one day this
21 matter will have to be decided. I'm going to ask you again
22 to retire to your jury room for further deliberations and
23 see if you can reach a verdict in this case. Let me close
24 by reminding you again, that while it is important that
25 this case be ended, it should be ended in the form of a

1 verdict without any juror doing violence to his or her own
2 conscious. No juror is expected to give up an opinion
3 based on reasoning satisfactory to himself or herself
4 merely for the purpose of being in agreement. So with
5 these added instructions, I'm going to ask you to go back
6 to your jury room, start over and see if you can deliberate
7 and reach a unanimous verdict in this case. Thank you.
8 Please retire back to the jury room.

9 (WHEREUPON JURY EXITS THE COURTROOM TO FURTHER
10 DELIBERATE AT 4:23 PM)

11 THE COURT - Any exceptions to the instructions?

12 MS. DESCH - Nothing from the State, Your Honor.

13 MS. LIPINSKI - Nothing from the defense.

14 THE COURT - We'll be at ease. Please make sure I
15 can find you when I need you.

16 MS. DESCH - Yes, sir.

17 (WHEREUPON, COURT IN RECESS WHILE AWAITING
18 VERDICT.)

19 (WHEREUPON, NOTE SENT OUT BY THE JURY AT 5:35 PM)

20 THE COURT - Please bring the jury in.

21 (WHEREUPON, JURY ENTERS THE COURTROOM AT 5:42 PM)

22 THE COURT - Mr. Foreman, ladies and gentlemen of
23 the jury panel I have your note indicating I believe that
24 you wish to have the testimony replayed of Mr. Taylor. Is
25 that right?

1 MR. FOREMAN - That's correct.

2 THE COURT - Lucas Taylor. All right, and what
3 we'll do is -- of course, we don't have it transcribed, but
4 the Court Reporter will play it back for you, the recorded
5 portion of his testimony.

6 (WHEREUPON, THE TESTIMONY OF LUCAS TAYLOR IS
7 PLAYED FOR THE JURY.)

8 THE COURT - All right, Mr. Foreman, ladies and
9 gentlemen of the jury, if you will please resume your
10 deliberations. Thank you.

11 (WHEREUPON, JURY EXITS THE COURTROOM AND RESUMES
12 DELIBERATION AT 7:04 PM)

13 THE COURT - All right, I'm going to ease back to
14 the office. Please stay close. I think -- you know, I
15 think they'll either be able to get a verdict or not get a
16 verdict pretty soon, so I'll ask you to stay close.

17 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
18 NUMBER 5.)

19 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

20 THE COURT - Got a verdict. All right, please
21 bring the jury in.

22 (WHEREUPON, JURY RETURNS WITH VERDICT AT 7:40 PM.)

23 THE COURT - Mr. Foreman, have you and the jury
24 reached a unanimous verdict in this case?

25 MR. FOREMAN - We have, Your Honor.

1 THE COURT - All right, sir, please hand the
2 verdict forms up to the bailiff.

3 (WHEREUPON, VERDICT HANDED UP TO THE COURT.)

4 THE COURT - The Clerk will please publish the
5 verdicts.

6 DEPUTY CLERK - In the State of South Carolina
7 versus David Wayne Dover with Indictment 2014-GS-46-1523,
8 we the jury find the Defendant, David Wayne Dover, not
9 guilty, signed by the Foreperson this day. Indictment
10 2014-GS-46-1522, we the jury find David Wayne Dover guilty
11 of burglary in the second degree, signed by the Foreperson
12 this date. If this so be your verdicts, so say you all by
13 raising your right hand.

14 (WHEREUPON, JURORS AFFIRM)

15 DEPUTY CLERK - Let the record show all affirmed.

16 THE COURT - Thank you. You can put your hands
17 down. Any question of the jury panel from the State?

18 MS. DESCH - Nothing from the State, Your Honor.

19 THE COURT - From the defense?

20 MS. LIPINSKI - Nothing from the defense, Your
21 Honor.

22 THE COURT - Mr. Foreman, ladies and gentlemen of
23 the jury, this will conclude your service on this
24 particular case, and it will conclude your service for the
25 week. We're not going to start another case this week. We

1 have other work to do tomorrow, and it's been a good week.
2 We've been very busy -- really in both Courts, and we've
3 been busy in here even when you all were deliberating or
4 when you're sometimes in the jury room, so we've gotten a
5 lot done this week. I want to thank you for your service
6 this week, the sacrifices you've made to help make our
7 justice system work. As I told you at the beginning of the
8 week when I qualified you downstairs that you would see how
9 important the jury is to our justice system once you've
10 served on a jury this week, and I think you can see just
11 how important the jury is to that service -- to our justice
12 system and also how difficult it is sometimes to be able to
13 reach a decision on these. I understand that's not easy
14 and -- but I appreciate your staying with it, appreciate
15 your willingness to deliberate back in the jury room and to
16 reach a verdict in this case. Does anybody on the jury
17 panel need anything to take to your employer showing that
18 you're required to be here on the jury this week? Anybody
19 need that?

20 JUROR - I would like to have it, yes, sir.

21 JUROR - I would eventually ---

22 (WHEREUPON, SEVERAL JURORS RAISED THEIR HAND)

23 THE COURT - Okay, it looks like we've got about
24 three. Can you give them something when they start out?

25 DEPUTY CLERK - I'll have to go downstairs.

1 THE COURT - Okay.

2 JUROR - We'll get our stub -- right -- on our
3 check. That's what they said.

4 THE COURT - You will get that, and you'll get a
5 check in the near future for your service this week.
6 They'll put a check in the mail to you in the near future.
7 It's not ready tonight, is it?

8 DEPUTY CLERK - I think Melissa said -- if they'll
9 follow me down, I think they're on her desk; I can give
10 them to them -- the checks.

11 THE COURT - All right. Why don't we do that
12 then. If you'll follow the Clerk downstairs, the checks
13 may be down there already; if not, they'll be put in the
14 mail quickly.

15 DEPUTY CLERK - And I need the Foreman to sign ---

16 THE COURT - And, Mr. Foreman, if you'll come up,
17 please and sign the Indictments for us, and then if you all
18 will follow the Clerk down and she will either -- have --
19 you the checks or what you need to take -- thank you for
20 your service this week.

21 (WHEREUPON, REMAINING JURY EXITS THE COURTROOM;
22 THE FOREMAN REMAINS TO SIGN THE VERDICT FORM.)

23 THE COURT - Thank you very much for your service
24 this week, sir.

25 MR. FOREMAN - Thank you.

1 (WHEREUPON, FOREMAN EXITS THE COURTROOM.)

2 COURT REPORTER - Judge, do we need to mark this
3 note where they reached their verdict?

4 THE COURT - Yes, we need to. That'll be a
5 Court's Exhibit.

6 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
7 NUMBER 6.)

8 THE COURT - You ready? I'll give you a chance to
9 make any motion you might wish to make at this time?

10 MS. LIPINSKI - Your Honor, we'd make a motion to
11 set aside the verdict, that it wasn't supported by the
12 evidence. I don't want to take exception to it, but at
13 this time we'd make a motion for a new trial in this case
14 on the fact that the jury's verdict wasn't based on
15 substantial evidence presented.

16 THE COURT - Of course, I disagree with you.

17 MS. LIPINSKI - I understand.

18 THE COURT - I don't know why they didn't have a
19 verdict in ten minutes. I think they just didn't
20 understand the law. Of course, that's the jury's decision.
21 That's why we have a jury. It wasn't the Court's decision.
22 It was the jury's decision. If I'd been the fact finder,
23 it wouldn't have taken me long, but that's why we have a
24 jury, and so -- and this is their decision. They're the
25 fact finders in the case, and I respect their verdict,

1 their right to reach that decision. Of course, you know,
2 if you look at it, they found them guilty of the burglary,
3 didn't find him guilty of the petit larceny, and I think
4 that -- when I got the note out telling me that they were
5 divided -- I didn't tell you how they were divided, but
6 they were divided -- because sometimes that interferes with
7 us being able to get the thing resolved at some point, but
8 they -- I got the note out, and the note's in there if you
9 want to see it now, but they were divided ten to two to
10 convict on the burglary, seven to five on the petit
11 larceny, and that didn't make a lot of sense, and -- but
12 the only thing I can figure is -- and ultimately, they
13 found him not guilty on the petit larceny, guilty on the
14 burglary, but the only thing I can figure is they don't
15 understand with petit larceny you don't have to take the
16 property and remove it from the premises and I thought
17 about it later when I got that note out that maybe the
18 instructions could've been a little clearer, that you don't
19 have to move personal property from the premises all the
20 way from the property and the slightest removal, and that
21 is in there, but I think they just didn't understand that
22 and -- but I was not going -- obviously was not going to
23 give them a new instruction on that after I'd already given
24 them -- had to stay with the instruction I had, but I think
25 that's probably an explanation. I just don't think they

1 understand that larceny requires you -- doesn't require you
2 to remove it from the premises altogether and be gone with
3 it, and I think that's the only way I can understand how
4 they were confused about it, but nevertheless ---

5 MS. LIPINSKI - I understand, Your Honor, and I
6 wasn't taking exception. I just think -- I have to make
7 that motion in order to preserve certain rights.

8 THE COURT - Well, I understand and I -- I think
9 there was substantial evidence to support the jury's
10 verdict in this case. There's no question about that, and
11 so certainly -- in that regard. The Court's certainly not
12 shocked by the verdict and is not -- and denies any motion
13 for a new trial in this case. All right, if you'd get a
14 sentencing sheet ready on the burglary, please.

15 MS. LIPINSKI - Your Honor, the only -- I was
16 handed the sentencing sheet by the State. The only thing
17 I'm going to change is -- they have burglary second degree
18 zero to ten years, non-violent as indicted, but the -- the
19 sentencing code for -- and I think it just pulls out of
20 their system, but it says 313, and I believe the statute
21 code is 312(a).

22 THE COURT - It is 312(a)

23 MS. LIPINSKI - So I'm just going to cross 313 out
24 and mark 312(a) just -- because I think that's a proper
25 statute code.

1 THE COURT - That's correct.

2 MS. LIPINSKI - I just wanted to explain that
3 change.

4 THE COURT - Yes, I don't think that was changed
5 by the -- it reduced the penalties ---

6 MS. DESCH - Your Honor, I -- originally I'd
7 giving them paperwork for a burglary third, and when we
8 went to trial I had changed it back to a burglary second,
9 so that was probably why.

10 THE COURT - All right, I'll hear the State with
11 regard to sentencing, particularly like to know his
12 complete record.

13 MS. DESCH - Yes, Your Honor. Your Honor, looking
14 through his record in Georgia, there was a January of 2000
15 possession of marijuana charge. It appears that in
16 September -- in September of '04 it appears that he had a
17 burglary conviction where he was given a ten year sentence
18 in Georgia. In North Carolina he had a shoplifting. In
19 Florida in 1998 he had a dealing with stolen with property.
20 In South Carolina, Your Honor, his record dates back -- in
21 1994 he had a driving under suspended license, two counts.
22 October of '94 a forgery charge. In January of '96 driving
23 under suspended license, again, suspended license in
24 November of '96. August of '97 receiving stolen goods,
25 December of '97 obtaining goods and receiving stolen goods,

1 January of 2002, again, receiving stolen goods and breach
2 of trust. All of these were under two thousand back at the
3 time. Those are on his SLED rap sheet. On the convictions
4 out of the York Police Department which is documented in a
5 different way than on the NCIC, he has convictions, petty
6 larceny from '96, receiving stolen property from July of
7 '97, obtaining goods by false pretenses, December of '97
8 receiving stolen goods. Again, that might be duplicative
9 on the NCIC. Breach of trust from December of 2001, two
10 counts; there's a traffic ticket -- sorry -- it was a
11 traffic ticket in April of '94, and a shoplifting from
12 January of this year, 2014. Your Honor, he was also
13 convicted of petty larceny in Spartanburg. He pled to it,
14 reduced down from a burglary. He pled to a petty larceny
15 on that burglary out of Cherokee or Spartanburg, and he has
16 two pending shoplifting charges out of York right now.

17 THE COURT - How much time did he serve on the
18 other burglary? Did say he got a ten year sentence?

19 MS. DESCH - The bulk of it was the ten years in
20 Georgia. He spent ten years. The remainder of his record
21 is misdemeanors where he was charged a fine or did minimal
22 jail time, but the bulk of it was that ten year sentence in
23 Georgia.

24 THE COURT - But he did get a ten year sentence on
25 the burglary.

1 MS. DESCH - He did.

2 THE COURT - All right. Thank you. Counsel?

3 MS. LIPINKSI - May it please the Court, Your
4 Honor. As you've heard, a lot of the record is quite old,
5 in the 90's predominantly when he was younger.
6 Unfortunately, he did pick up that burglary he does tell me
7 when he was released and didn't serve obviously the ten
8 year sentence. He did try and turn his life around. He
9 went to a -- through a Christian program. He completed
10 that. That -- they made a significant effort, I think, to
11 connect him back, but unfortunately, with that kind of
12 record, finding employment was always very difficult for
13 Mr. Dover, and a large part of his reluctance to accept the
14 plea that was offered by the State in this case is he had
15 finally got a good job. He was laying carpet and traveling
16 and making decent money, probably the first time in a very
17 long time in his life and finally got his life back on
18 track. Unfortunately, had made some shorter -- short-sided
19 decisions a little bit earlier before he did that. His
20 family has been in contact with me. His parents live next
21 door. He has a very beautiful girlfriend who has a very
22 good job here in town, so I think it was just finally
23 getting to that life that he had always wanted, and
24 unfortunately, his past caught up with him yet again. The
25 State did originally offer him a sentence, Your Honor, in

1 the neighborhood of four years. I'd ask the Court to
2 consider that again. I know the Court may not be willing
3 to, but I do ask respectfully that the Court consider that
4 and be as merciful as you can in this particular case. He
5 is very remorseful, not somebody who, I think, has a
6 violent record by any means, but just has always struggled
7 in life, and I think that's what his record indicates, Your
8 Honor.

9 THE COURT - All right, thank you. Mr. Dover,
10 anything you wish to say to the Court?

11 MR. DOVER - Sir, yes, sir, if I could have
12 permission to speak, sir?

13 THE COURT - Of course, I'm asking you.

14 MR. DOVER - I had -- and like she said, I had
15 made some -- a few spontaneous decisions like earlier, like
16 after what had happened, but I have recently got a good
17 job. I was working for a carpet place. We come -- I mean
18 one of those jobs we went down to the Moss Justice Center
19 here and we laid carpet here, I mean it's -- Advanced
20 Flooring is who I was working for and it was one of the
21 greater opportunities that I was looking for, because
22 employment was hard to find and the struggle was hard, and
23 I mean -- the decisions I had made prior to getting into
24 this trouble here, one ain't no better than the other, and
25 I was wrong for that, and I'd like to apologize to the

1 Court, to the Solicitor and everybody here whose time that
2 I did take up. I was trying to hold onto my job. I have
3 my own place. I live alone. I make my own bills. I was
4 trying to keep my place. I didn't want to lose it. I
5 didn't want to lose the things that I was -- struggled so
6 hard to get. It's -- like I said, I had just -- not too
7 long ago -- I graduated from Cornerstone Christian Academy.
8 I finally -- I had went back and got my high school diploma
9 and then from there I looked for jobs and it was kind of
10 hard to find a job, and then I went to Adult Ed and went
11 and got my Work Keys certificate and ended scoring gold in
12 that, and that right there -- I think that's what kind of
13 scored me a pretty decent job is the two combined, but then
14 after that I went up here and joined Jubilee Christian
15 Center right up above the York Seafood, and I had made a
16 great change in my life after all that had took place, and
17 the last -- last probably ten or eleven months is actually
18 the life that I had been looking for that has been a
19 struggle to find. You know, I mean through the broken up
20 home that I come from and the struggle and then it took the
21 years of maturity to actually mature to the point to where,
22 you know, I was struggling to decide to actually make the
23 decisions that I should've been making all along through
24 life and -- but, sir, I understand that there was an offer,
25 and looking back now I really -- you know, I should've took

1 it, and I really wasn't trying to waste nobody's time here,
2 and at the same time I wasn't trying to actually get away
3 with committing a crime. I'm sorry for all the time and
4 the effort and the money that I had costs not just the
5 Court, but the State and the taxpayers, I apologize for
6 that, sir, but through all of this I had said my prayers,
7 and not saying my prayers just to get me through this, but,
8 you know, I had made a change in my life, sir, and I just
9 ask that you take all this in consideration, and I do wish
10 maybe I would've took the four years and it would've -- had
11 been -- it would've caused a lot less pain and heartache to
12 everybody in here and the Court to, but in saying that I
13 say I apologize, but I just ask for your understanding and
14 I wish I could maybe take things back, and I'm not just
15 talking about today, I'm talking all the way back to the
16 beginning of the year so I actually went out on my own, but
17 in saying all that, I'm sorry, sir, and I'm sorry to the
18 Courts, but just please have understanding for me, sir.

19 THE COURT - Mr. Dover, you know, things were
20 going for you, I don't know why you would do this, go back
21 to your old ways here with this and stealing, but, you
22 know, people don't like to have their houses broken into
23 and their property stolen, and sometimes people kill people
24 that they find breaking into their places. You got by with
25 a slap of the head, but you could've gotten killed if

1 somebody had a gun. And, you know, and people feel
2 violated when that happens, but the fact of the matter is,
3 you know, I have to take a look at your record. I don't
4 believe in punishing people for going to trial, although in
5 this case I'm -- obviously, the case had -- the State had a
6 very strong case and -- you know, in this case. They had
7 all the factual evidence that they don't have in some
8 cases, but I think they had a very strong case, so -- you
9 know, in any event, I don't punish people for not taking a
10 plea offer and not going to trial. I don't believe in
11 that, but I think you had a constitutional right to do
12 that. Nevertheless, I do have to look at your record, and
13 I do always look at it. And, you know, you've served time
14 and it didn't do you any good. Well, you say it was doing
15 you some good; I'm not so sure it did. You know, people
16 that just have a larcenist or larceny in part of their
17 character and make-up they just have it. Don't understand
18 it, but you get punished for it. Case Number 2014-GS-46-
19 1522, David W. Dover, having pled -- excuse me -- the jury
20 having found him guilty of burglary in the second degree,
21 the sentence of the Court is he be committed to the State
22 Department of Corrections for a determinate term of eight
23 years.

24 MS. LIPINSKI - Thank you, Your Honor.

25 MS. DESCH - Thank you, Your Honor.

(END OF TRANSCRIPT)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

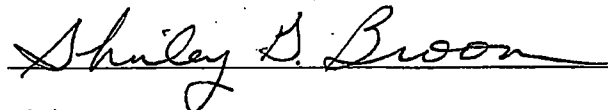
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 407 pages consisting of Volumes 1, 2 and 3 is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of The State of South Carolina vs. David W. Dover, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on November 10, 12 and 13, 2014, and provided by me this the 21st day of February, 2015.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

414

WITNESSES

YCSO Lovelace

dc

ARREST WARRANT NUMBER

2014A4610100208

ACTION OF GRAND JURY

TRUE BILL

Rebecca W. Meares
Foreperson of Grand Jury
Date: 5/29/14

VERDICT

Guilty

Foreperson of Petit Jury
Date: 11/13/2014

DOCKET NO. 2014-GS-46-01522

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 29, Term 2014

THE STATE

vs.

DAVID WAYNE DOVER

Indictment for
BURGLARY SECOND DEGREE

SC Code: 16-11-312
CDR Code: 0080

After being full
legal rights, I
to the Grand J

Defendant

hereby appeal
guilty to the wi

Defendant

Witness:

C.C.C. PLS. A

STATE OF SOUTH CAROLINA)

INDICTMENT

CERTIFIED TRUE COPY

COUNTY OF YORK

2017 MAR -8 AM 9:02

At a Court of General Sessions, convened on May 29, 2014, the Grand Jurors of York County present upon their oath: COUNTY, SC

BURGLARY SECOND DEGREE

The Defendant, David Wayne Dover, did in York County, South Carolina, on or about February 10, 2014, willfully and unlawfully entered the dwelling of Lucas Chadwick Taylor located at [REDACTED], York, South Carolina, without consent and with the intent to commit a crime therein. All in violation of Section 16-11-312, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

DAVID W DOVER

AKA: David Wayne Dover

Race: White

Sex: M

Age: 39

DOB: [REDACTED]

SSN: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29730-0000

DL# 00

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, Second Degree (0-10 yrs)

In violation of § 16-11-0313 of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Jenny E. Desch, Assistant Solicitor

72806
SC Bar #

Defendant

Attorney for Defendant

14704
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100 -

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25 -

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5 -

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 130 -Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Shirley Broom

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Bar ID: _____

Judge Code: 2113Sentence Date: 11-13-14

FORM 5

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

County of York 2017 MAR -6 PM 1:51 IN THE COURT OF COMMON PLEAS

DAVID W. DOWEN 3162 DAVID HAMILTON
Full name and prison number (if any) of Applicant CLERK OF COURT
COUNTY, SC.

2017 CP46-698

v.

State of South Carolina

**APPLICATION FOR
POST-CONVICTION RELIEF**

FILED-RECEIVED
2017 MAR -6 PM 1:53
DAVID HAMILTON
C.C.C. & GS
YORK COUNTY, SC
RECEIVED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turkeyville C.I. - 1518 Clarendon Cove Rd
Horry-Turkeyville, S.C 29162
2. Name and location of Court which imposed sentence York County General
Sessions - York County - North Hill, S.C
3. Name(s) of co-defendant(s) (if any) X
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2014-01522 - Burglary 2nd degree
- (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 13, 2014 - 8 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals - Direct Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction, Sentence Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 22, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Interventive Assistance of Counsel
- (b) "see memorandum attached"
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) "see memorandum attached"
- (b) _____
- (c) _____
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? ~~no~~
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals - South Carolina
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Conviction + Sentence Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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) Not the proper time
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

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. Mindy Lipinski - Asst. Public Defender
York, South Carolina
 ii. Lana Candy - Appellate Defender - Division
of Appellate Defense
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment, Trial, Sentencing
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

Sentence, Conviction Reverse, Remanded, Vacated
New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, DAVID DAVEN, 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.

DDP

SWORN to and subscribed before me this 16th
 day of February, 2017.

Emily Hulse (L.S.)
 Notary Public

My Commission Expires: 5-18-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Daniel D. Dyer, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

16 day of Feb, 2017.


Notary Public

My Commission Expires: 5-18-26

Memorandum Supporting

CERTIFIED TRUE COPY

2017 MAR -6 PM 1:51

FILED RECEIVED
2017 MAR -6 PM 1:51
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Issue's: Ineffective Assistance of Trial

(1) Trial Counsel was ineffective for not informing Defendant that in order to be allowed to have his statements to law Enforcement admitted and made part of the record, he must testify and present his version of events, under Rule 801 SCHE, (Present a Defense) and be subject to cross-examination by the state (State v. Nelson 380 S.C. 226, 669 S.E.2d 395) Had Petitioner known, he had to testify to have the statement admitted to present his version of the events, as he adamantly wanted to, he would have testified.

(2) Trial Counsel was ineffective, for not raising and arguing, under Rule 608 SCHE, the issue of the alleged victims credibility, that was the concern to the Defendants Defense, Due to the victims untruthfulness and the victims motive to misrepresent the facts to make his actions and conduct appear to be that of the victim (State v. McKen, 368 S.C. 1, 626 S.E.2d 890)

(3) Trial Counsel was ineffective for comparing Defendant's case with State v. Burton, which is totally different from Petitioner's situation which caused the trial court to view and rule contrary to the facts presented at trial, due to this misquote of case law.

(4) Trial Counsel was ineffective for not objecting to the State's repeated characterization of Defendant as being aggressive, emotional and inconsistent to the Jury allowing the State to continuously tarnish Petitioner's character without any supporting testimony nor documentation, which prejudiced Petitioner.

(5) Trial Counsel was ineffective for not acquiring and challenging the victims (State's witness) many and numerous inconsistent testimony regarding the events that transpired based upon the officers reports and photographs as well as evidence from the crime scene which is contrary to the victims version of events; (A) testimony about the T.U., i.e., Defendant Broke into his Home (caught) (B) made defendant carry T.U. inside, et. cetera

(6) Trial Counsel was ineffective for not challenging and objecting to victims perjured testimony, i.e., he did not know Defendant, when in fact, they do

(7) Trial Counsel was ineffective for not presenting and arguing that although the "victim" stated that a struggle ensued when the evidence shows no sign of a struggle, as claimed by the State (see Sgt. Ellis testimony)

(8) Trial Counsel was ineffective for not requesting and obtaining a analysis of the prints found on the T.U. Victim stated, under oath, that Defendant handled the T.U. and he made the defendant carry it back inside

(9) Trial Counsel Ineffective For Her Failure To preserve her numerous objections throughout trial.

(10) Trial Counsel Ineffective by not objecting and Bringing to the Courts attention that ms. Desch informed the Court and Jury that the Defendants Punks was on the T.V. in Post Trial and pre Verdict at Trial

This PCN applicant, Do not waive any Rights nor grounds For Relief that is not listed and/or not known to him at this time and reserves The right to amend the application to Do so when said knowledge of these claims arise

David Doven
 X D/D 2/16/17

Subscribed and sworn to before me this
16th day of Feb, 2017
[Signature] (L.S.)
 Notary Public for South Carolina

My Commission Expires: 5-18-26

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
David Dover, #362139,	)	2017-CP-46-0698
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on March 6, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In May 2014, the York County Grand Jury indicted Applicant for burglary in the second degree (2014-GS-46-1522) and petit larceny (2014-GS-46-1523). Assistant Public Defender Mindy Lipinski, Esquire represented Applicant. Assistant Solicitors Jennifer Desch and Chris Jones, Esquires prosecuted the case. On November 13, 2014, Applicant proceeded to trial before the Honorable Lee S. Alford. The jury found Applicant guilty as indicted for burglary in the second degree and not guilty for petit larceny. Judge Alford sentenced Applicant to imprisonment for eight years for burglary in the second degree.

Applicant filed a timely notice of appeal. Lara Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 22, 2016. State v. Dover, Op. No. 2016-UP-319 (S.C. Ct. App. filed June 22, 2016). The remittitur was returned to the circuit court on July 15, 2016.

Applicant filed a previous PCR claim on March 23, 2015 with the similar allegations. The PCR claim was dismissed without prejudice by the Honorable John C. Hayes, III on November 3, 2015 due to Applicant's pending direct appeal to the South Carolina Court of Appeals.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "Trial counsel was ineffective for not informing [Applicant] that in order to have his statements to law enforcement admitted and made part of the record, [Applicant] must testify and present his version of events and be subject to cross examination."
- b. "Trial counsel was ineffective for not raising and arguing the issue of the alleged victim's credibility, which was the cornerstone to the [Applicant's] defense."
- c. "Trial counsel was ineffective for comparing [applicant's] case with State v. Burton, which is totally different from [Applicant's] situation. This caused the trial court to view and rule contrary to the facts presented at trial."
- d. "Trial counsel was ineffective for not objecting to the State's repeated characterization of [Applicant] as being aggressive, emotional, and inconsistent to the jury, thereby allowing the State to continuously tarnish [Applicant's] character without any supporting testimony or documentation."
- e. "Trial counsel was ineffective for not arguing and challenging the [alleged] victim's many and numerous inconsistent testimonies regarding the events that transpired based upon the official reports and photographs as well as evidence from the from the crime scene which is contrary to the [alleged] victim's version of events."
- f. "Trial counsel was ineffective for not challenging and objecting to the [alleged] victim's perjured testimony."

- g. "Trial counsel was ineffective for not presenting and arguing that the evidence shows no sign of a struggle, even though the alleged victim stated that there was a struggle."
- h. "Trial counsel was ineffective for not requesting and obtaining an analysis of the [fingerprints] found on the TV. [The alleged] victim stated under oath that [applicant] handled the TV and [the alleged] victim made the [applicant] carry the TV back inside."
- i. "Trial counsel was ineffective for failing to preserve her numerous objections though out trial."
- j. "Trial counsel was ineffective by not objecting and bringing to the Court's attention that [the solicitor] informed the Court and jury that the [Applicant's] [fingerprints] were on the TV during [closing statements]."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of trial counsel.

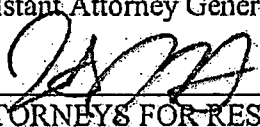
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 8, 2017

STATE OF SOUTH CAROLINA

COUNTY OF YORK

DAVID DOVER, #362139

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

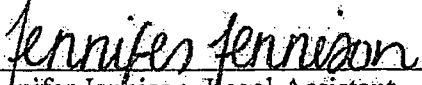
2017-CP-46-698

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:

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 235 E. Main St., Ste 115
 PO Box 1015
 Rock Hill, SC 29730

DATED this the 8th day of June, 2017.


 Jennifer Jernison, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 DAVID DOVER,

4 Appellant,

5 Case No.

6 -against-

2017-CP-46-698

7 STATE,

8 Respondent.

9 -----x

10 August 2, 2017

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE R. LAWTON MCINTOSH

15

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

17 LEAH MOODY, Esquire

18 Attorney for the Appellant

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the State

22

23 Aileen Butler

24 Official Court Reporter

25

1			<u>I N D E X</u>	
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	David Dover			
4	Ms. Moody	6		
5	Mindy Lipinski			
6	Mr. Hunter	24		
7	Ms. Moody		39	
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25			<u>E X H I B I T S</u>	

1

2 NO.DESCRIPTIONI.D.EVD.

3

4

NO EXHIBITS INTRODUCED

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. HUNTER: May it please the Court. The next

1 case is David Dover versus State of South Carolina,
2 2017-CP-46-698.

3 Your Honor, he was indicted May 2014 in York County
4 for burglary, 2nd degree non-violent, and petit
5 larceny. He was represented by Miss Mindy Lipinski.
6 On November the 10, 2014 he underwent a jury trial
7 before Judge Alford. He was found guilty to the
8 burglary charge and not guilty of petit larceny. He
9 did file a Notice of Appeal and appeal was perfected
10 by appellant defense. The Court of Appeals affirmed
11 his conviction June 22, 2016 and Remittitur was sent
12 June 15, 2016. On March 6, 2017 he filed this current
13 action. He is present today represent by Miss Leah
14 Moody.

15 THE COURT: Miss Moody.

16 MS. MOODY: I would just like to put on the record
17 I was going to ask for a continuance, but my client
18 tells me that he wants to go forward. I have written
19 him and talked to him about the case but I can not
20 remember whether we got cut off from the phone and my
21 notes in my office says that we talked for an hour.
22 He indicated that we didn't go over it and he had
23 another PCR application. I'm not sure whether -- I
24 mean we can go forward. I'm clear on the case, but he
25 he had another PCR application and another lawyer and

1 I think his facts are different on the other PCR
2 application.

3 THE COURT: Do you know anything about that Mr.
4 Hunter?

5 MR. HUNTER: I'm not aware of another PCR action
6 in this case. I know he did have a previous PCR
7 action on these charges that was filed while the
8 direct appeal was still pending. So that was
9 dismissed without prejudice. But he didn't have an
10 attorney on that case. It's hard for me to check to
11 get in to our system's data base remotely to be able
12 to check that, but I do not believe he has another one
13 on these charges.

14 MS. MOODY: Your Honor, he will go forward.

15 THE COURT: Mr. Dover, is that correct?

16 MR. DOVER: Sir, yes, sir.

17 THE COURT: I would be inclined to go forward.
18 Thank you. Would you call your first witness.

19 MS. MOODY: Mr. Dover, David Dover to the stand.
20 Thank you, Your Honor.

21 DAVID DOVER, called as a witness, having been duly
22 sworn by The Clerk, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MS. MOODY:

1 Q Mr. Dover, could you please state your full name for
2 the record?

3 A My name is David Wayne Dover,

4 Q Mr. Dover where are you currently incarcerated?

5 A Turbeville Institution in Turbeville, South Carolina.

6 Q Okay, and you were incarcerated for burglary charges?

7 A Ma'am, yes, ma'am.

8 Q Well, one burglary charge?

9 A One.

10 Q And your attorney was Mindy Lipinski?

11 A Ma'am, yes, ma'am.

12 Q Okay. And was she your attorney from the beginning of
13 your case?

14 A I had two attorneys.

15 Q Okay. Who were they?

16 A I wasn't aware of my first attorney that was on the
17 larceny, but I had attorney on the larceny and an attorney on
18 the burglary.

19 Q So your larceny was in Magistrate's Court?

20 A Yes, ma'am, until it was enhanced and then that's when
21 I gained a second attorney after it was enhanced.

22 Q And who was second attorney?

23 A I do not know because she never let me -- she never
24 introduced me to that attorney. She took me in front of a judge
25 and she said the State said that I had to allow her to handle

1 both cases.

2 Q When you say "she" you are talking about Miss Lipinski?

3 A Miss Lipinski advised me that the State said that I had
4 to let her handle both cases. She never allowed me to on speak
5 with the other attorney.

6 Q But the petit larceny and the burglary were considered
7 to be out of the same incident?

8 A Yes, ma'am.

9 Q So. Miss Lipinski was your attorney for --

10 A The burglary. And then she took me in front of a judge
11 and she took both cases at one time.

12 Q Okay. All right. And so you filed your post
13 conviction relief application against Miss Lipinski?

14 A Ma'am, yes, ma'am.

15 Q Anyone else?

16 A No, ma'am.

17 Q Okay.

18 A Could you say that again.

19 Q You filed your application, your PCR application
20 against your trial attorney?

21 A Yes, ma'am.

22 Q Miss Lipinski?

23 A The trial attorney.

24 Q Okay. And you did have appeal in the case?

25 A Yes, ma'am.

1 Q And you are not filing your post conviction relief act
2 against them?

3 A No, ma'am.

4 Q So it's only your trial counsel?

5 A Only my trial counsel.

6 Q So now in your grounds for ineffective assistance of
7 counsel one of your grounds against Miss Lipinski was your
8 lawyer - or Miss Lipinski, did not inform you that in order for
9 your statement to be placed into evidence that you would have to
10 testify and be subject to cross examination?

11 A Ma'am, correct.

12 Q Okay, and what do you mean by that? What happened that
13 you wanted that statement in evidence?

14 A I wanted that statement in evidence to -- for my
15 defense so I wouldn't have to take the trial. So I wouldn't
16 have to be crossed on certain evidence that they may have
17 against me.

18 Q Okay. So, at your time when you are presenting your
19 defense you wanted that statement to substitute -- to be the
20 substitution for you actually getting on the stand?

21 A Ma'am, yes, ma'am.

22 Q Okay. Did you talk about your testimony or your
23 statement with Miss Lipinski and she said you shouldn't testify?

24 A Yes, ma'am. She advised me that during the pretrial
25 that they had stated, and I seen that in the transcript that

1 during the pretrial, that they was going to allow the statement.

2 Q Okay.

3 A And the statement was during the pretrial stated by the
4 judge that it would be placed in to the -- to the trial.

5 Q Okay.

6 A And it was later the following day during the trial as
7 the trial was commenced the starting the State said that they
8 didn't want it in and she never asked for dismissal or even put
9 up the greatest fight to keep it in. She just agreed with them
10 and they went ahead and took the statement right now.

11 Q Okay. And you felt it should have been in?

12 A Yes, ma'am. And if it was taken out I felt like that
13 she should have fought to really keep it in or file something to
14 keep it in so later on I would have open doors for more appeals
15 to fight for that statement.

16 Q Okay. You state in your application your counsel, or
17 Miss Lipinski I should say, was ineffective for not raising and
18 arguing the issue regarding the victim's credibility which was
19 the cornerstone of the defense?

20 A Yes, ma'am, because I have right here in his record
21 he's has been locked up certain times and it says it in the
22 transcript right here on page -- if you need me to pull it up.

23 Q Sure. Tell the Court.

24 A Okay, its right here on -- I brought the wrong one, but
25 it's on page six I believe. Where it says that the victim had

1 been arrested. Yeah, the victim had a police record.

2 Q Okay?

3 A And she never from them saying that he had a record and
4 he has been arrested on multiple times whether there is a
5 conviction or not she never asked for dismissal. She never
6 asked to place no motion for the dismissal. She never asked the
7 judge for dismissal for his credibility being that it state
8 right there.

9 Q So let me make sure I'm clear. You wanted her to get
10 the entire case dismissed because he had been arrested before?

11 A Yes, ma'am, because his credibility was at stake and
12 knowing that it was actually a drug deal that went bad and the
13 judge was waiting to hear about the drug deal that went bad and
14 if he would lie about that then he would lie about it being from
15 a drug deal to a burglary.

16 Q Okay. So you are saying that this whole incident arose
17 -- your coming in contact with the victim arose out of a bad
18 drug deal?

19 A Yes. I was at his house selling marijuana.

20 Q And did you tell your lawyer about that?

21 A Yes, ma'am, I did and I made a statement to that and I
22 made -- I told her. I told the day of the incident when it
23 happened when I got -- he called the police and I called the
24 police and the police went to his house and when I called the
25 police they come to my house and I told Miss Loveless also that

1 it was a drug deal went bad. And I believe to my understanding
2 to what I feel like is why it did take almost from nine to like
3 13 days before they did come back with a warrant because she
4 stated that she had worked a drug unit before and she was
5 familiar with these acts before, and that people did often do
6 that because the drug deal might have not went his way or such.
7 He want credit more drugs and use credit instead of -- I mean
8 collateral instead of money and we had an altercation with that
9 and the man who I had got the drugs from wasn't going for that.
10 He wanted his money and he had half money and he wanted to do
11 half and come back get the TV that evening. I was okay with
12 that but I had to make something. But that's not neither here
13 nor there. But I felt that through that she should have stood
14 up more for that.

15 Q Okay. All right. You also indicate that Miss Lipinski
16 was ineffective for comparing your case to State v Burton which
17 is totally different from your situation or your case and that
18 it caused the trial judge or the trial court to view and rule
19 contrary to the facts presented at your trial?

20 A Yes, ma'am.

21 Q So what do you mean that she compared your case to
22 State v Burton?

23 A Where they -- where they allowed -- like they allowed
24 that statement in. Where they allowed their statement in.

25 Q When you say "their statement", whose statement?

1 A The State versus -- I believe it was the State versus
2 the Burton, wasn't it?

3 Q State v Burton, that's a court case?

4 A Yes, ma'am.

5 Q You're saying that the court allowed State v Burton
6 into your case in front of the jury?

7 A She was comparing mine to their's. I believe if I'm
8 correct because it has been like three years ago. I believe to
9 my understanding that they allowed his statement in without him
10 ever taking the stand.

11 Q In the State v Burton they let the defendant's
12 statement in without him being on the stand?

13 A Without him getting on the stand.

14 Q And so you felt that case, she used that case and it
15 caused the court to look at your case the same way?

16 A Similar. Well, when she did that that opened up the
17 door for the State to come back with something that was even
18 more stronger. And from that right there she never asked for on
19 that, she never asked for no dismissals during my trial. None.
20 And I feel like during that right there from, I believe, because
21 like I say it's been three years -- when she did that right
22 there and she wasn't fully familiar with it and the State come
23 back she just complied and just fell back from that and she
24 didn't ask for dismissal. None during my trial. Not one time
25 did she ask for a dismissal.

1 Q You mean dismissal of your case.

2 A Dismissal of the trial. To dismiss all of it because
3 it was unjust and unfair.

4 Q So you felt she should have gotten your case dismissed
5 based off of that?

6 A At least ask. At least ask the judge. Ask the judge
7 to dismiss.

8 Q Okay. You indicate Miss Lipinski was ineffective for
9 not objecting to the State's repeated characterization of you as
10 being aggressive, emotional and inconsistent to the jury and as
11 such they allowed the State to continuously tarnish your
12 character without any supporting testimony or documentation?

13 A Ma'am, yes, ma'am.

14 Q How did they characterize -- or the State I should say
15 -- how did the State characterize you as being aggressive
16 emotional and inconsistent to the jury?

17 A Well, aggressive and emotional and being inconsistent
18 to the jury was actually the guy because he was being real
19 aggressive and stuff on the stand and being like supper
20 emotional trying to coerce (sic) the jury into being more into
21 his heart.

22 Q He was trying to persuade --

23 A He was trying to persuade and if you could read the
24 rest of that. Could you read that one more time because behind
25 that there is something else.

1 Q I will get to it.

2 A Okay.

3 Q You indicate that because they allowed the victim to be
4 aggressive, emotional and inconsistent to the jury that allowed
5 the State to continuously tarnish your character without any
6 supporting testimony or documentation?

7 A Yes, ma'am, because they kept stating that they brought
8 -- the State kept asking like where did -- where did my police
9 line-up come from. Where did this come from, and they kept
10 stating it come from the Moss Justice Center. It come from the
11 the detention center. Where I felt like if I wasn't going to
12 take the stand they should have brought it from D.M.V. or may be
13 brought pictures of me or such or use such from somewhere else
14 and not saying, well, that stuff come from the D.M.V. -- in
15 instead of staying it come from here, it come from the D.M.V..
16 she never objected. I ask for dismissal because they just put
17 his character on the stand by saying it come from the Moss
18 Justice Center and they just heard that I had been arrested.

19 Q So you're saying they did a hearing in front of the
20 jury about your identification?

21 A Yes, ma'am.

22 Q And they told the jury where they got the the pictures
23 from?

24 A Yes, ma'am. And they said the pictures come from the
25 Moss Justice Center from various like from '04, I believe, or

1 back 'o2 maybe and they kept on saying that.

2 Q Okay. And so you felt she should have objected to
3 that?

4 A Yes, and from that maybe ask for a dismissal.

5 Q Okay. All right. You next indicate that your attorney
6 was ineffective for arguing -- for not arguing and challenging
7 the victim's many and numerous inconsistent testimony regarding
8 the offense that transpired based upon the official reports and
9 photographs as well as the evidence from the crime scene from
10 which is contrary to the victim's version of events.

11 A Yes.

12 Q So you're saying the victim gave multiple statements?

13 A Yes, ma'am. My attorney stated to me that before we
14 ever got to trial, because she was -- they made a couple offers.
15 The lowest they had got was like four years. But she had stated
16 -- she said I believe the man might be mental health because I
17 think he done gave like three different statements. Three
18 different officers. And none being consistent. And if you look
19 at my past record. I have one. I have been in trouble and if
20 you notice every time that I have been in trouble I maned up. I
21 accepted it. I have not put the courts through no extras. No
22 juries or none of that. So when this did happen, I said, I'm
23 right. I'm right. I might not have been right selling the
24 drugs, the marijuana, but I did not do the burglary. And from
25 that right there I said you know what, I'm going to stand up for

1 my right this time. And she's telling me that he done made
2 multiple statements so I felt like that right there when we get
3 to Court that right there would come out and that would shame
4 him too. That would make his character not withhold. And then
5 when we got here not only did we not have no witnesses, none of
6 the police that was there first on the scene. No witnesses. I
7 did not get not one witness. But none of his statements. She
8 didn't ask to have his statement brought there to be put on the
9 stand too along with his urinalysis. I asked her to have the
10 urine brought forward too to prove that he was -- that he might
11 have been doing drugs.

12 Q Okay. All right. And so she didn't do that. Your
13 next allegation that is that Miss Lipinski was ineffective for
14 not challenging and objecting to the victim's prior -- I mean
15 the perjured testimony. So on the stand he -- you say that he
16 perjured himself?

17 A Yes, ma'am, he did.

18 Q And you wanted Miss Lipinski to object to his perjury?

19 A His perjury.

20 Q And she did not?

21 A She he did not.

22 Q Okay. Your next ground is that Miss Lipinski was
23 ineffective for not presenting and arguing that the evidence
24 shows no sign of struggle even though the alleged victim stated
25 that there was a struggle. And so you're saying you did not

1 engage in a struggle with the victim?

2 A Yes, ma'am, we did. But he stated it was in the
3 bedroom when actually it was in the living room. And when he
4 stated that I never been in none of the house but the bedroom,
5 okay. But he stated in there that he walked me back through the
6 house. So he said he made me pick the TV up and carry it back
7 off the ground, up the porch, and in through the house. That's
8 what he said. Through the house and back into the bedroom. But
9 in saying that if he made me do all that then why didn't he just
10 make me sit there until the police got there.

11 He said it was in the bedroom when actually it was in the
12 living room where he said we never went through none of the rest
13 of the house, but only the bedroom we was at and we come in and
14 out. I come out the bedroom when I took it. All right. But he
15 said, I made him walk back through the house.

16 Q Okay, but so you're saying she didn't object to the
17 struggle?

18 A None of that.

19 Q Okay. And there was no sign of a struggle is what
20 you're saying?

21 A There was no sign of no struggle. There was no sign.
22 No struggle.

23 Q Okay, so you wanted her to object to his testimony in
24 that regard?

25 A In that regard, yes, ma'am.

1 Q And so your next allegation is that Miss Lipinski was
2 ineffective for not requesting and obtaining an analysis of the
3 fingerprints found on the TV. The victim stated under oath that
4 the applicant, or you, handed the TV and the victim made the --
5 made you carry the TV back inside. And so based off of that
6 that you had to carry the TV and there should have been prints
7 on and they have prints --

8 A And there was one extra print that they said that was
9 unidentified, but -- and that's what I was telling them. We
10 both knew a girl named Jennifer. That is how me and him come to
11 know each other and maybe Jennifer had been at his house and
12 that extra print might have been hers and they didn't run that
13 because why? Why? Because his wife. They was worried about
14 his wife finding out about Jennifer and that might have been her
15 print and they didn't want to talk about the third print on the
16 TV and she didn't press that. And I was like what about the
17 third print but she didn't want to talk about that.

18 Q Okay. So, on this allegation you're saying that she
19 didn't request and obtain an analysis found on the TV. So you
20 wanted to outside of what the State done or the law enforcement
21 had done you wanted her to get another analysis?

22 A I wanted her to do a private investigation for herself
23 not only on the print, not only on the urinalysis, but the
24 pictures. Because where he say the driveway, he said I only
25 pulled 12 feet up the driveway. You can't. If she would have

1 went and took the pictures and not used the States pictures you
2 could have seen 12 foot up. If we would have had our pictures
3 you would have seen you couldn't even have been 25 foot up the
4 driveway and seen the back doors that he allegedly said he seen
5 me come out of.

6 Q Okay.

7 A If we would had pictures. We had nothing. She did no
8 investigation. None whatsoever.

9 Q Okay. The next issue you state is that Miss Lipinski
10 was ineffective for failing to preserve her numerous objections
11 throughout the trial?

12 A Yes, ma'am.

13 Q And so you're saying she didn't object?

14 A By her not objecting that stopped me from having the
15 numerous appeals that I could have. If she would have objected
16 when it would have got to the Court of Appeals in Columbia.
17 Well, when they went to affirm it because I had spoke with them
18 on the phone and they said we would only -- we would only go off
19 what she appealed. So when she didn't appeal that's a lot of
20 doors that was closed for me.

21 Q All right, when she didn't object and preserve.

22 A Object and preserve. I meant to say. That was a lot
23 of doors that was shut in my face. There was a lot of appeals
24 that I could have been offered. Not saying they would effected
25 me but not saying they would have either. They could have.

1 Because Columbia is only going to go off of what she objected
2 to. So I could only appeal to what she objected to and if I'm
3 asking her to object to this or that and she don't, shh, shh,
4 shh. Then I can't. I'm not the law and I can't make her do
5 what she does. Okay.

6 Q All right. Then your last and final ground you state
7 that Miss Lipinski was ineffective because she did not object
8 and bring to the Court's attention that the solicitor informed
9 the Court and the jury that your fingerprints were on the TV
10 during the closing argument?

11 A Yes, ma'am.

12 Q And what do you mean by that?

13 A That --okay, is this. If she would have -- if she
14 would have -- you're saying that she did?

15 Q She did not.

16 A She did not bring up the prints on the TV.

17 Q Right. That's what you have.

18 A Okay. So, if she would have -- say I did break into
19 the house. If we wouldn't of -- when went to go to trial when
20 we went to combine I didn't want to combine the two cases. She
21 said it was in the best interest and the State said that we had
22 to combine the two cases. Okay. Had we not it would have been
23 a third degree burglary because I wouldn't have been stealing
24 nothing as to the criminal trespass. And the State had it down
25 to third degree until we combined it to two. Then it become a

1 second and then they was ready to take it to trial because the
2 larceny was going to convict me. All right. And then so if the
3 fingerprint is on the TV and they know I've been in that house.
4 You know, I went in that house and you know that my fingerprint
5 is on that TV but you don't feel like I stole nothing because --
6 and if you would have been in the closing statement, okay. They
7 was already saying they come out three times and couldn't reach
8 a verdict. She never asked for dismissal on none of them. All
9 right. So they already believe I'm in the house. Okay, just
10 say I go in the house. Just say I did take the TV. All right.
11 I had it in my possession. Not say take it. All right. If she
12 would have said, okay, he's in the house. The fingerprint is on
13 the TV. He's in the house. To have the burglary he has to
14 steal. They found me not guilty of stealing. They said I
15 didn't steal nothing. That there was nothing gone. That I
16 didn't steal nothing. And if I didn't steal nothing -- excuse
17 me. If I didn't steal nothing then where's the burglary. He
18 said he made me go in to the house. Okay, if you took me into
19 the house where's the burglary? I understand the criminal
20 trespassing and I even understand the selling of the weed. But
21 if she would have brought that print up during the closing they
22 would had to understand well, he's in the house. The print is
23 on the TV. They would have understood. The jury is the one
24 that found me not guilty of the larceny. I did not steal
25 nothing. I wasn't there to steal nothing. I was in house.

1 There was no burglary. They would have had knowledge in the
2 closing and understanding that, okay, he was in the house but
3 did he really break in. Was that really what it was. And they
4 would had better understanding of the law in saying that, you
5 know what, this isn't a burglary.

6 Q Okay.

7 A This isn't a larceny. Okay. They didn't find my
8 guilty of the larceny.

9 Q Okay. All right. So as to all these allegations your
10 saying that you were prejudiced by your representation from Miss
11 Lipinski, correct?

12 A Yes, ma'am.

13 Q Okay. And what relief are you seeking from the Court
14 here today?

15 A Excuse me. This is the relief I am seeking here today.
16 And if I can explain why I am seeking this.

17 Q Tell me what the relief is first.

18 A I'm seeking a new trial.

19 Q Okay. Your seeking a new trial because your counsel
20 did all these things or failed to do all these things on your
21 behalf, correct?

22 A Ma'am, yes, ma'am.

23 Q Okay. And in doing so you understand if you get a new
24 trial you start all the way over?

25 A Ma'am, yes, ma'am.

1 Q Okay. And you still want to go forward?

2 A Ma'am, yes, ma'am.

3 Q Is there anything else you would like to tell the
4 Court?

5 A Ma'am, yes, ma'am. I feel like if Miss Lipinski
6 wouldn't have been rushing to get through this -- okay -- she
7 made me come up here every Friday from March to November. I
8 lost two jobs behind that. Every Friday she made me come. I
9 lost the money that I had put down for an attorney. I was going
10 to go hire me an attorney. Okay. But had that not happened,
11 okay, then she wouldn't have combined the two and I would have
12 been in her best interest and she would have slowed down and
13 handled my case. I would have at the end result, the worse case
14 scenario would have been I would have had a third degree
15 burglary and they were offering me four years. They was
16 offering me four.

17 Q Why didn't you you take the four-year offer?

18 A I didn't because they was trying to have me -- they was
19 taking me to trial to two charges that I wasn't guilty for. And
20 I might have -- I might have on the third degree criminal
21 trespassing, your right, I would have accepted the four years
22 and I would have went on about my business because I would had
23 better understanding for the criminal trespassing then I would
24 have for the burglary and the larceny. I would have understood
25 the criminal trespassing.

1 Q Okay.

2 Q I understood that.

3 Q Okay.

4 MS. MOODY: No further questions for this witness
5 Your Honor?

6 THE COURT: Mr. Hunter.

7 MR. HUNTER: Nothing for this witness.

8 THE COURT: Thank you, sir. You may step down.

9 MS. MOODY: Your Honor, I don't have any other
10 witnesses.

11 THE COURT: Very good. Call your first witness,
12 Mr. Hunter.

13 MR. HUNTER: The State would call Miss Lipinski.

14 MINDY LIPINSKI, called as a witness, having been
15 duly sworn by The Clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. HUNTER:

19 Q Good morning. Please state your name for the record.

20 A Mindy Hervey Lipinski.

21 Q And where are you currently employed?

22 A For the 16th Circuit Public Defender's office.

23 Q How long have you been there?

24 A Since 2011 or 12.

25 Q Can you explain how you became involved in Mr. Dover's

1 case?

2 A Its was assigned to me on a normal rotation.

3 Q Okay, and just give the judge a clear picture. Can you
4 just briefly explain the State's version of the facts? What
5 happened in this case according to the State?

6 A The State's version of the facts was that the homeowner
7 came home. That he recently he was either out picking up his
8 kids from school or something about taking his kids to school.
9 That he came home. Saw a truck in his driveway. Told his
10 children to wait in the truck, I believe. Went out. Confronted
11 the defendant coming out of his house with a TV. Told the
12 defendant to take the TV back inside. That the defendant then
13 fled and that he called 911.

14 Q Okay. And how many times before trial did you met with
15 Mr. Dover?

16 A As he said pretty much every Friday or every other
17 Friday because we only have Court every other Friday.

18 Q And so during those meetings did you all have
19 opportunity to go over the evidence?

20 A Yes. We went he over the evidence. We went over his
21 statement. We went over what he thought the plea offer should
22 be. We went over trying to get her to counter offer. I think
23 she originally came higher then four and we gradually worked her
24 down to four. But I think that was ultimately her bottom line.

25 Q Okay. And he rejected the plea offer, is that correct?

1 A Yes.

2 Q But again, you explained to him what rejecting that
3 plea offer would mean?

4 A Yes. I advised him that I thought it was in his best
5 interest to take the plea offer. He always kind of willing to
6 take the criminal trespass. I told him that they were never
7 going to put that on the table because it didn't carry enough
8 time in their opinion base on his record. He asked me about
9 doing a cap or trying to get a probationary recommendation. I
10 told him that she wasn't going to recommend probation. That I
11 felt that even if I secured, you know, a straight-up plea I
12 didn't think that a judge with his record would give him
13 probation. That I thought the four years while it did mean
14 going back to SCDC was in his best interest. He told me that he
15 couldn't plead to a burglary he didn't commit.

16 We went over his trial strategy, this kind of drug deal gone
17 bad statement that he had given which is what he always
18 maintained. I told him that I thought that was a dangerous
19 defense. I thought that if he raised that in front of a jury
20 while that was his version of events that I thought the wrong
21 jury would hold that against him and convict him regardless.
22 But he was always, you know, I'll plead to criminal trespass or
23 I'll take probation. And I just told him I never thought those
24 options were on the table and explained to him the risk of going
25 to trial. That he could be get sentenced and likely would well

1 above the four years that they had put on the table.

2 Q Okay. Let's go over the statement issue. Do you
3 remember arguing with the judge about that at trial?

4 A Yes.

5 Q And did you explain to him that in order to put a self
6 serving statement in that he would have to take the stand?

7 A We had many conversations about his version of events
8 and how that might be presented at trial. The problem was that
9 I really couldn't predict how that would play out. There were
10 different times that I spoke with the prosecutor and having been
11 a prosecutor I don't know that I would have put his statement in
12 because he admits to being there and I don't know that the drug
13 deal gone bad theory hurts me. As I said I thought a jury might
14 actually use that against him.

15 There were times I had conversations with Miss Desch where I
16 thought she was inclined to put it in herself. So at that
17 point, you know, if she puts it in then it gets in. However,
18 she may want to cross examine you. She may not want it in. And
19 I think as a matter of fact even at the eve of trial she had
20 told me she was going to put it in and then subsequently changed
21 her mind. We then argued about that, about trying to get the
22 statement admitted because I think there were parts that I
23 thought she was going to at least try and backdoor in that he
24 admitted to being there but not under what guise. She objected
25 to it on the grounds that it was self-serving hearsay. And I

1 remember an in chamber's discussion where we talked about the
2 State v Holmes and Fuller which talk about self-serving hearsay.
3 And my argument was always to try to get it out of self-serving
4 hearsay. That it was not self-serving hearsay. That he was
5 actually incriminating himself, not to the burglary but to a
6 different crime and therefore it fell into this unique or -- and
7 I think I even called it on the record a novel area of the law.

8 Did I have those discussions with him, yes. Is it an
9 intricate evidentiary issue that he grasped one hundred percent,
10 I don't know. But I certainly had those conversations with him
11 and warned him that there was a potential he might have to
12 testify. I did say best case scenario we're able to elicit it
13 on cross. Best case scenario the prosecutor puts that in. But
14 how well he digested all of it and the multiple variables I
15 don't know. But we had numerous conversations about it.

16 Q Okay. And do you remember I guess essentially how that
17 whole statement was eventually -- I guess how parts of it were
18 able to be brought out through the detective or the substance of
19 it?

20 A Because there were -- he had reoccurring contact with
21 the detective. There's where he calls 911 himself. There are
22 also other attempts where he talks to her on the phone but he
23 doesn't tell her the full version and then there are
24 conversations about him turning himself in. And so I did argue
25 that. I argued that if they got those parts out then it should

1 kind of open the door to everything. But the Court was very
2 much cutting me off at the pass.

3 Q Okay. And I guess that brings us to the issue about
4 the case.

5 MR. HUNTER: And Your Honor, just for the record,
6 the case that was described as Burton, is State
7 versus Blurton, B-l-u-r-t-o-n.

8 THE COURT: Blurton or Burton?

9 THE WITNESS: It's actually Blurton.

10 THE COURT: Blurton.

11 MR. HUNTER: And that's 342 S.C.500. It was
12 reversed on other grounds but I believe that's a Court
13 of Appeals case.

14 Q And could you just explain how you brought up that
15 issue?

16 A I think in that case it was similar one where a guy was
17 involved in an armed robbery but admitted to being there but was
18 saying he wasn't the shooter or something to that effect and
19 they allowed that in. I don't remember how that eventually
20 played out. But I remember the self-serving hearsay cases they
21 were presenting to try and keep it out were all defendants
22 denying outright that they committed any crime. And I think I
23 had found a case where a defendant admitted being there or being
24 involved but not necessarily what they were accusing him of and
25 that was allowed in and the Court just didn't go for it.

1 Q Okay. So essentially you argued that and the judge.
2 just wasn't buying it. Is that what you are saying?

3 A Right.

4 Q Okay. Now, I guess let's discuss the victim here and
5 the issue with the victim's credibility. Do you recall I guess
6 how you attacked -- or do you recall how you cross examined the
7 victim?

8 A I remember cross examining him, yes.

9 Q Do you recall what your strategy was?

10 A For the most part to try and call into question I
11 thought that his behavior even as he described it, that he would
12 order the guy back into his house to put the TV back. If
13 somebody breaks into my home I'm never going to order them back
14 in there and invite a struggle to ensue. I thought he was at
15 times inconsistent emotionally on the stand. Kelly Loveless
16 described him as being very agitated and angry versus on the
17 stand he tried to come off as much more sympathetic. I think he
18 either teared up or cried at one point talking about, you know,
19 how upset he was and his children. And so I think it was trying
20 to put that juxtaposition out there in front of the jury to --
21 to I think disarm some of that sympathy he was trying to create
22 for himself.

23 Q Okay. Were you aware of I guess prior convictions of
24 his or arrests that you could have brought up?

25 A They had arrests. He did not have convictions.

1 Q Okay.

2 A The defendant had told me that he had an extensive drug
3 record and was known to him to be a drug user. I told him prior
4 to trial I couldn't find that on the public index. That if he
5 had a record outside the county that they would have to provide
6 them me with a rap sheet. They did provide me with a rap sheet.
7 It showed those arrests. I don't know if he worked off his
8 charges or went through diversion programs or what, but even
9 then most of them were Magistrate level type offenses.

10 Q So nothing you could use at trial?

11 A No.

12 Q As far the victim's testimony. You talked about
13 certain inconsistencies with him. Are you aware of other
14 statements that the victim made?

15 A Well, I don't know that it's other statements. He
16 called 911 so there's that statement. It's not a statement, but
17 he made statements about the crime. He then gives I think
18 Sergeant Loveless or the responding officer some version of
19 events. That appears in the original police report and then
20 when he talks to the detective. So I don't want to say there's
21 multiple statements but he talked to law enforcement on
22 different occasions. They weren't all the same but he also
23 talks about various levels of detail over time and with
24 different people. But I do remember trying to elicit some those
25 inconsistencies with him on the stand.

1 Q Okay, during your cross examination?

2 A Yes.

3 Q And as far as his testimony is concerned, the victim,
4 were you aware of any incidents of perjury that you could have
5 objected to?

6 A I wouldn't characterize them as perjury because the 911
7 call is not under oath. You know his conversations with
8 responding officer who is recording his versions of it or his
9 interpretation of it I don't consider to be, you know, evidence
10 of perjury. Then his statement to Sergeant Loveless versus how
11 he testified, it was all with various degrees of detail and
12 hi-lighting things which is what you typically see in criminal
13 cases. And I tried to cross examination him regarding those
14 inconsistencies to the best of my ability. But I wasn't aware
15 of any prior sworn statement that would give rise to, you know,
16 an allegation of outright perjury.

17 Q Okay. Moving on to Mr. Dover's character, or at least
18 how he said that he was characterized during the trial. Are you
19 aware of any objectionable testimony that came out regarding his
20 character?

21 A You know, when I saw that in the application I really
22 didn't. The victim obviously refers to him in somewhat
23 disparaging terms, but I didn't feel that would be
24 objectionable.

25 The prosecutor in closing argument makes statements about

1 you have been able to observe his demeanor and behavior
2 throughout the trial, which I don't think again was
3 objectionable.

4 Q Okay. And on to the allegation of presenting that
5 there was no struggled. Can you just explain if you brought
6 that up during trial how you did so?

7 A I believe I brought it up with the victim. I also know
8 that I cross examined -- because I don't know that the detective
9 ever went out -- I think -- I don't know that the detective ever
10 went out to the scene. I do remember cross examining
11 extensively the forensic service officer and the responding
12 officer that they didn't see anything consistent with a
13 struggle. They didn't see the house in a state of disarray.
14 That she didn't accurately document the condition of the scene
15 in terms of photographing the areas where the defendant would
16 have allegedly went to. The points of entry that were alleged.
17 There was something about a lamp. I don't remember that as
18 clearly now, but I remember cross examining her about not
19 photographing the bedroom where the TV was taken from and
20 whether or not a lamp may have been disturbed because I think
21 the victim's statement was that he pushed him in the direction
22 of the lamp or towards a lamp and there was no photographs of
23 that.

24 Q Okay. And moving on to the issue of the fingerprints
25 on the TV. The fingerprints were analyzed by the State's

1 expert; is that correct?

2 A Yes.

3 Q And did you see any -- well, first off. You saw the
4 reports from that pretrial?

5 A Yes.

6 Q And did you feel the need after seeing those reports to
7 get your own expert?

8 A You know, I didn't feel that there was anything
9 obviously inconsistent with the prints. I thought, you know,
10 having looked at prints for over 20 years myself I didn't see
11 anything wrong about them. It has been my experience with
12 courts that unless you can point to some irregularity your
13 ability to get an independent fingerprint examiner funded is
14 highly remote. And I didn't see anything that would allow me to
15 go there.

16 In terms of who this other fingerprint might be. It's a TV
17 in a household with multiple members who probably -- you know --
18 it didn't come up through AFIS, so I didn't feel that hiring an
19 examiner was going to lead to the identity of that third person.
20 If I hired an independent examiner it would be to challenge the
21 accuracy of the match itself.

22 Q Okay. So did he ever tell you about someone named
23 Jennifer and a print of hers that could be on the TV?

24 A He had that story but as I told him similar to the
25 urinalysis of the victim, I don't have the ability to go out and

1 compel independent third parties to submit to examination.
2 That's not something within our ability to do. And so while
3 defendants think we have that ability I don't feel that we do
4 and I don't feel that claiming that he had alleged mistress who
5 may have been there was going to get a Court to order her to
6 submit to any type of examination.

7 Q So essentially as far as the fingerprints on the TV are
8 concerned and analysis that was done, do you think there is
9 anything more that could have been done that you should have
10 done to that TV that would have I guess been exculpatory?

11 A No.

12 Q Okay. And did you see a pictures of the driveway that
13 he was referring to?

14 A I saw the pictures that the FSU officer took. I
15 actually remember that we took our own. I remember sending out
16 an investigator to take pictures of his driveway and actually
17 having some at the time but choose not to introduce them because
18 I felt we were able to make the point based on the photographs
19 that the State admitted and that I felt by introducing evidence
20 and losing last argument it wasn't worth it.

21 Q Okay. But you did analyze all that pretrial.

22 A We did go out there and look and see. I remember
23 driving out there with the investigator to just drive by the
24 yard and I remember we took some photographs from the end of the
25 driveway.

1 Q Okay. And just on the preservation issue. Did you
2 have any involvement with the appeal?

3 A No, but I looked back through the record. You know, I
4 made an appropriate motion for a directed verdict. I think even
5 after he declined to testify I renewed the motion for a directed
6 verdict. And I remember doing that post, you know, the verdict
7 coming back. So I made every effort possible. I don't think
8 the appeal was denied based on failure to preserve any
9 objection.

10 Q Okay. And can you just explain briefly how he talks
11 about combining cases. Can you explain how that was involved, I
12 guess the larceny. Was that handled by someone else first?

13 A The 16th Circuit I think contrary to what I see -- I
14 mean, I worked in 13th Circuit. I worked in the 10th Circuit.
15 When I started out in the 13th Circuit if you got charged with a
16 burglary and then a subsequent petit larceny the solicitor's
17 office picked up the entire case. Here they don't like to do
18 that. So if his petit larceny for instance had not been
19 enhanceable or as some officers are they just charge them simple
20 petit larceny because they can't get their record at the time or
21 it's not coming up, or NCIC is down, we'll just charge him with
22 petit larceny but then once the solicitor finds out that they do
23 have the record then they can enhance the charges. So he was
24 charged originally with just un-enhanced petit larceny. Once
25 the solicitor found out that he had a record that would allow

1 her to enhance she brought the petit larceny up and I remember
2 we got -- I was appointed on that charge as well. I don't know
3 why I wasn't originally or our office wasn't originally
4 appointed on the petit larceny. It could have been we have
5 attorneys who just go out to Magistrate Court. That he was
6 assigned one of those on the petit larceny when it stayed in
7 Magistrate Court and then when it was brought up here I was
8 assigned to both of them. But he would never have kept the
9 magistrate attorney on the petit larceny. It would have always
10 been mine. It wasn't something that I consented to. It's
11 something the solicitor's office did as a matter of course. We
12 dealt with it accordingly.

13 Q Okay. And just to go over a couple more things. Did
14 you go over the elements of burglary with him and what the State
15 would have to prove on burglary second?

16 A Yes, because that was something we discussed more so
17 then any other case. Because of his unique defense in terms of
18 the drug deal gone bad. That he had gone there to buy weed.
19 That the guy didn't have enough money. That he was trying to
20 get him to take the TV. That he called his source who didn't
21 want the TV. That he called his mom to see if she would pay him
22 for the TV and then he could take that money to the drug dealer.
23 So we talked a lot about burglary because he was always quite
24 adamant that he didn't commit it. That he instead had committed
25 this drug deal gone bad and that he had put the TV back. And I

1 remember telling him, you know, regardless of whether or not you
2 put the items back even if you move the items from within the
3 house there is case law that supports a burglary conviction.
4 And even if they cut you loose on the petit larceny I think
5 still if the jury finds that you entered the house with the
6 intent to steal, or even with the intent to commit a drug deal,
7 and then subsequently leave that was going to be enough to
8 sustain the conviction which is why I told him he needed to take
9 the offer is because I didn't think that the drug deal gone bad
10 story was going to exonerate him in the eyes of the jury the way
11 he was so committed to it. So it was something we discussed
12 probably more so than most burglaries because of his alternative
13 fact pattern.

14 Q And just lastly, how much time did you have -- what was
15 the period of time when you were appointed to trial, do you
16 recall?

17 A I was appointed I think almost at arrest. I would have
18 met with him at initial appearance which would have been within
19 40 days and I stayed with him until the time we went to trial.

20 Q So you had enough time to go over everything?

21 A Yes. He would call me a lot. I not only talked to him
22 and saw him just about every other Friday he would call me at
23 intervening occasions. So I talked to him a lot.

24 Q Did you feel like you were rushed on this trial?

25 A No.

1 Q That's all I have. Thank you for your time.

2 CROSS EXAMINATION

3 BY MS. MOODY:

4 Q Good afternoon Miss Lipinski. As it relates to the
5 charges, the burglary and petit larceny being brought together
6 and you maintaining the case, did the judge ask Mr. Dover
7 whether or not he wanted you to stay on the case?

8 A Yes.

9 Q Okay. And why did the judge ask that?

10 A They do it as a matter of course. Do you have any
11 objection to her being appointed on both cases and he stated no.

12 Q Okay. And so you would normally -- you don't ever
13 reject the case because it is with your main case, correct?

14 A Right, and I would consider it bad form to say I'm not
15 going to take the petit larceny. I only want the burglary. I
16 think a judge is going to always as a matter of practice is
17 appoint me. So we always stand up and say we have no objection.
18 And I think our office probably would have been appointed on
19 both charges even if it was different lawyers. Some times some
20 of the Magistrates handle public defender appointments
21 differently so I don't exactly remember what track he went down.

22 Q Okay. Now you indicated that you talked to Mr. Dover
23 quite a bit?

24 A Yes.

25 Q Was there any confusion as to how you all were going to

1 proceed in trial with the defense?

2 A I don't know what was in his head. We had multiple
3 conversations. It was a unique case. It was a unique fact
4 pattern. There were complicated legal issues with a multitude
5 of variables. Meaning, if the State admits your statement
6 anyway then that's easy. If the State doesn't admit your
7 statement can it parse it out. If we can't parse it out what
8 can we get in. What will the Court allow us to do. And then
9 ultimately if you have to testify.

10 Did he grasp all of those with the skill set of a lawyer I
11 don't know. Did we have multiple conversations about it, yes.
12 Did he grasp all of it, I would hope so, but I don't know
13 because we did have multiple conversations. Clearly there was
14 some confusion. I don't know if he was, you know, biting on all
15 of it just because of how many variables were involved. But
16 certainly I tried to the best of my ability to explain it to
17 him. I think at times he had a kind of tunnel vision on his
18 version of events and how he wanted the trial to play out
19 without realizing understanding that he doesn't necessary drive
20 that train.

21 Q Okay. And so in going to his defense you said that he
22 wanted to go forward on the specific drug deal I think it was,
23 drug deal defense gone bad?

24 A Right.

25 Q All right. So by the time you get to trial had you

1 convinced him that was not the route to go?

2 A No. He wanted to proceed with getting his statement in
3 and proceeding with that defense.

4 Q Okay. And so during the trial -- I mean, what occurred
5 in the trial in terms of getting some of that in?

6 A They got in that I think he admitted to being there to
7 Sergeant Loveless. But that was about it. And then we were cut
8 off at the knees which I felt was, you know, probably the most
9 prejudicial thing that could have happened to him. I felt that
10 either they should have excluded everything he said and it's all
11 hearsay because it's all out of court statements or it all comes
12 in. That you can't have your cake and eat it too. And
13 unfortunately that kind of happened.

14 That being said, with the print evidence that existed I
15 don't know that that was, you know, the single nail in the
16 coffin. I think with the prints being found on the TV and
17 really any inability to undercut that evidence that the jury was
18 always going to kind of know that he was there or at least
19 believed that he was there. Would they know what happened, that
20 kind of became the defense strategy. Maybe it wasn't a
21 burglary. Maybe the victim was covering something up. And
22 trying to kind of get a hint of not necessarily as far as drug
23 deal gone bad but you don't really know what happened out there
24 because this story is so incredulous that, you know, the average
25 juror wouldn't act that way in a similar set of circumstances.

1 Q Miss Lipinski, as to the drug deal gone bad you asked
2 it maybe one time. Why didn't you move to dismiss the case
3 based on it being a drug deal gone bad?

4 A I legally didn't feel that was a remedy available to
5 me.

6 Q Okay. So all the incidences you heard about Mr. Dover
7 testify in terms of there were issues with the jury, that the
8 drug deal gone bad, the perjury by the victim on the stand, the
9 inconsistent statements, can you tell the Court why you didn't
10 ask for dismissal based on those grounds?

11 A I didn't find that anything rose to the level of being
12 a mistrial. There were certainly times that I objected to
13 evidence that I thought it might provide him with a basis on
14 appeal but I never found anything so egregious that I thought
15 the Court be inclined to grant a mistrial.

16 My recollection of the jury is that they came back and said
17 that they had reached a decision on the burglary but they were
18 hung on the petit larceny. Again, I do think -- I don't
19 remember them coming back three separate times. I think they
20 may have originally come back saying that they were just
21 generically hung and then coming back once and kind of outing
22 that they had made a decision as to one charge but not the
23 other. And I think they were really struggling with did he
24 commit a petit larceny because he never gets the TV out of the
25 house and he's confronted which is somewhat what, you know, a

1 unique set of circumstance. And I don't remember -- even if I
2 got him to, you know, throw out the petit larceny at that point
3 because they shouldn't be Allen charged or something. It never
4 ripened to that stage.

5 Q Okay.

6 MS. MOODY: No further questions for this witness.

7 THE COURT: Redirect.

8 MR. HUNTER: No, Your Honor. That is all.

9 THE COURT: May this witness be excused.

10 MR. HUNTER: Yes, sir.

11 MS. MOODY: Yes, sir.

12 THE COURT: Thank you ma'am.

13 THE WITNESS: Thank you sir.

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

16 MS. MOODY: Nothing else from the defense.

17 THE COURT: Nothing in reply. Okay. I'll read
18 through the submissions and I'll issue an Order.

19 MR. HUNTER: Thank you.

20 MS. MOODY: Okay, thank you.

21 (END OF TRANSCRIPT)

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 2nd day of August, 2017.

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

January 2, 2018

Aileen Butler

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

David Dover,
S.C.D.C. No. 362139,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-0698

ORDER OF DISMISSAL

FILED-RECEIVED
2017 SEP 15 PM 3:55
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2017. Respondent made its Return on or about June 8, 2017. An evidentiary hearing into the matter was convened on August 2, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Mindy Lipinski, Esquire, also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In May 2014, the York County Grand Jury indicted Applicant for burglary in the second degree (2014-GS-46-1522) and petit larceny (2014-GS-46-1523). Assistant Public Defender Mindy Lipinski, Esquire represented Applicant. Assistant Solicitors Jennifer Desch and Chris Jones, Esquires prosecuted the case. On

November 13, 2014, Applicant proceeded to trial before the Honorable Lee S. Alford. The jury found Applicant guilty as indicted for burglary in the second degree and not guilty for petit larceny. Judge Alford sentenced Applicant to imprisonment for eight years for burglary in the second degree.

Applicant filed a timely notice of appeal. Lara Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 22, 2016. State v. Dover, Op. No. 2016-UP-319 (S.C. Ct. App. filed June 22, 2016). The remittitur was returned to the circuit court on July 15, 2016.

PCR Application

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel

- a. "Trial counsel was ineffective for not informing [Applicant] that in order to have his statements to law enforcement admitted and made part of the record, [Applicant] must testify and present his version of events and be subject to cross examination."
- b. "Trial counsel was ineffective for not raising and arguing the issue of the alleged victim's credibility, which was the cornerstone to the [Applicant's] defense."
- c. "Trial counsel was ineffective for comparing [applicant's] case with State v. Burton, which is totally different from [Applicant's] situation. This caused the trial court to view and rule contrary to the facts presented at trial."
- d. "Trial counsel was ineffective for not objecting to the State's repeated characterization of [Applicant] as being aggressive, emotional, and inconsistent to the jury, thereby allowing the State to continuously tarnish [Applicant's] character without any supporting testimony or documentation."
- e. "Trial counsel was ineffective for not arguing and challenging the [alleged] victim's many and numerous inconsistent testimonies regarding the events that transpired based upon the official reports and photographs

as well as evidence from the from the crime scene which is contrary to the [alleged] victim's version of events."

- f. "Trial counsel was ineffective for not challenging and objecting to the [alleged] victim's perjured testimony."
- g. "Trial counsel was ineffective for not presenting and arguing that the evidence shows no sign of a struggle, even though the alleged victim stated that there was a struggle."
- h. "Trial counsel was ineffective for not requesting and obtaining an analysis of the [fingerprints] found on the TV. [The alleged] victim stated under oath that [applicant] handled the TV and [the alleged] victim made the [applicant] carry the TV back inside."
- i. "Trial counsel was ineffective for failing to preserve her numerous objections though out trial."
- j. "Trial counsel was ineffective by not objecting and bringing to the Court's attention that [the solicitor] informed the Court and jury that the [Applicant's] [fingerprints] were on the TV during [closing statements]."
- k. Failure to investigate

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. This Court finds that Applicant's testimony was not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Trial counsel was ineffective for not informing Applicant that in order to have his statements to law enforcement admitted and made part of the record, Applicant must testify and present his version of events and be subject to cross examination.

Applicant alleged that Counsel was ineffective for not informing Applicant that he must testify to have his statements to law enforcement made part of the trial record. He alleged that he

would have testified if he had known that this was required to present his statement and version of events. Applicant testified that Counsel told him not to testify. He testified that the State wanted to use his statement pre-trial but later did not want to enter it at trial.

Counsel testified that she could not predict how the version of events surrounding Applicant's statement would play out at trial. She testified that, shortly after the incident, Applicant talked to a detective and gave a statement. She testified that the solicitor originally wanted to use the statement but changed her mind during trial. She testified that the solicitor eventually objected to Applicant's statement as self-serving hearsay. Counsel testified that she discussed Applicant's statement with him and that he would have to testify for it to be entered into evidence. She testified that she tried to get his statement in but the trial court denied her request. Counsel further testified Applicant wanted her to move for a dismissal based on his theory that the incident was a drug deal gone wrong; however Counsel testified that a dismissal of this sort was not a legal remedy for her.

This Court finds that Counsel was not deficient for failing to consult with Applicant regarding his statement. This Court finds that Counsel provided credible testimony that she and Applicant did discuss his statement and the fact that he would have to testify for it to be entered into evidence. This Court finds that Counsel did not act unreasonably and argued extensively with the trial court to allow Applicant's statement into evidence. Ultimately, the trial court ruled that the defense would not be allowed to enter the statement into evidence as it was not hearsay but was self-serving. The trial court ruled that Applicant could not enter a self-serving statement through a State's witness, but notified Applicant that there was "nothing to prevent [Applicant] from testifying or putting up any witnesses he may have to support his defense..." Trial Transcript p. 80-81. This Court finds that even if Counsel did not inform Applicant that he would

have to testify to enter his statement in evidence, Applicant was not prejudiced by the lack of advice because the trial court gave the same information to Applicant during the pre-trial motion stage. This Court finds that any lack of advice from Counsel was cured by the trial court prior to opening statements. Applicant has failed to meet his burden of proving that Counsel was deficient and that he was prejudiced as a result of her actions, and accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not raising and arguing the issue of the alleged victim's credibility, which was the cornerstone to the Applicant's defense

Applicant alleged that Counsel was ineffective for failing to raise, under Rule 608 of the Rules of Evidence, the issue of the victim's credibility. He alleged that the victim's untruthfulness and motive to misrepresent the facts made the victim's actions appear to be that of a victim. Applicant testified that the victim has been "locked up several times." He testified that he told Counsel about this and that the incident was a drug deal gone wrong.

Counsel testified that she attacked the victim's credibility on cross examination by attacking the inconsistencies in his emotions surrounding the crime. She testified that the victim did not have any prior convictions on the public index and his rap sheet revealed arrests but no convictions.

This Court finds that Counsel was not ineffective for failing to raise and argue the issue of the victim's credibility. This Court finds, and the record reflects, that Counsel attacked the victim's credibility and inconsistencies on cross-examination. Cross-examination is a matter of trial strategy, and as such, this Court must presume that Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting

effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

Counsel provided credible testimony, and the record reflects, that she cross-examined the victim to attack his credibility and inconsistencies in his version of events. Any inconsistent testimony was an issue of credibility to be resolved by the finder of fact. See e.g., State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 830 (2001) (witness's credibility an issue for the jury's consideration). Counsel also testified that the victim had no prior felonies so she could not cross-examine him on a prior record, despite Applicant's assertion that the victim had been "locked up" multiple times. This Court finds Counsel adequately cross-examined the victim and pointed out inconsistencies in his testimony. Applicant has failed to produce any evidence regarding what information Counsel could have uncovered had she cross-examined the victim more extensively, or how it would have changed the outcome of his trial. Therefore, Applicant has failed to produce any evidence to substantiate his claim that there would have been a different outcome if counsel had been "more vigorous" in her cross-examination of the witness. As a result, this Court "can only speculate whether a 'better' cross examination would have helped [Applicant]." Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Applicant has failed to meet his burden of proving that Counsel's performance was deficient and that he was prejudiced by her performance. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for comparing Applicant's case with State v. Blurton, which is totally different from Applicant's situation

Applicant testified that Counsel was ineffective for arguing to the trial judge that Applicant's case was similar to State v. Blurton, 342 S.C. 500 (2000). He alleged that Counsel's reference to Blurton caused the trial court to rule contrary to the facts presented at trial. He testified that this case allowed a defendant's statement to come in without the defendant testifying but allowed the State to have a stronger argument.

Counsel testified that she argued to the trial court that Applicant's statement to police should come in based on State v. Blurton, where the defendant's statement was allowed to come in without the defendant testifying because it was not used for the truth of the matter asserted.

This Court finds that Counsel was not deficient in arguing Blurton to the trial court after the trial court had already made its ruling about Applicant's statement. Counsel admitted in her argument to the trial court that Blurton was a bizarre case, however her argument centered around Blurton's holding that a defendant's taped conversation should be let in to show that the defendant lacked the mens rea to commit the crime and not for the truth of the matter asserted. This Court finds that Counsel was not deficient in arguing to the court that it should follow Blurton and allow Applicant's conversation in evidence for purposes other than for the truth of the matter asserted.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's argument concerning Blurton because he has failed to show that the outcome of his trial would have been different. The record reflects that the trial court had already made its ruling that Applicant's self-serving statement could not come in through the State's witness and Counsel's Blurton argument was simply additional persuasive argument by Counsel on the issue. This Court finds that Applicant has failed to show that Counsel was deficient in making this

argument and that he was prejudiced by her actions. Accordingly this allegation must be dismissed.

Trial counsel was ineffective for not objecting to the State's repeated characterization of Applicant as being aggressive, emotional, and inconsistent to the jury, thereby allowing the State to continuously tarnish Applicant's character without any supporting testimony or documentation

Applicant alleged that Counsel was ineffective for failing to object to the State's repeated negative characterization of Applicant. He alleged that the State tarnished his character without supporting documentation by making him seem aggressive, emotional, and inconsistent. Applicant testified that the State improperly attacked his character by using pictures of him from the Justice Center. Counsel testified that she believed the testimony elicited from the State concerning Applicant's character was not objectionable but simply disparaging. She further testified that she did not believe the State's characterization of Applicant during its closing argument was objectionable.

This Court finds that Applicant has failed to show that Counsel was ineffective for failing to object to the State's characterization of Applicant. This Court agrees with Counsel that none of the testimony elicited from the State characterizing Applicant as aggressive, emotional, and inconsistent was objectionable under the Rules of Evidence. As this testimony was not objectionable, Counsel was not deficient for failing to object. Furthermore, Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show that the outcome of the trial would have been different had Counsel objected to the testimony at issue. Furthermore, Applicant's allegation that the State improperly attacked his character by using his picture from the Justice Center is without merit. Counsel successfully argued to the trial court during the Neil v. Biggers¹ hearing that the State should make the jury aware that the photos of Applicant came

¹ 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972).

from DMV records, and the State's witness testified accordingly. See Trial Transcript p. 165; 324. As Applicant has failed to show that Counsel was deficient for failing to object or that he was prejudiced by her actions, this allegation must be dismissed.

Trial counsel was ineffective for not arguing and challenging the victim's many and numerous inconsistent testimonies regarding the events that transpired based upon the official reports and photographs as well as evidence from the crime scene which is contrary to the victim's version of events

Applicant alleged that Counsel was ineffective for failing to challenge the victim's inconsistent testimony regarding the incident. He argued that Counsel should have challenged the victim's testimony based on reports, photographs, and evidence from the crime scene which was different than the victim's version of events. He argued that the victim gave inconsistent testimony about the television including testimony about Applicant breaking into the victim's home and the victim forcing Applicant to carry the television inside the victim's house. Applicant testified that there were multiple statements from the victim that were not put into evidence at trial.

Counsel testified that the victim called 911 and gave his version of the incident. She testified that she was able to bring out the victim's inconsistencies on cross-examination.

This Court finds that Counsel was not deficient for failing to challenge the victim's inconsistent testimony. This Court finds that Counsel provided credible testimony that she attacked the victim's inconsistencies regarding his version of events. The record reflects that Counsel was not deficient as she effectively brought out these inconsistencies on cross-examination and during her closing argument. Furthermore, Applicant has failed to produce any evidence to substantiate his claim that there would have been a different outcome if counsel had been cross-examined the victim differently. As a result, this Court "can only speculate whether a 'better' cross examination would have helped [Applicant]." Skeen, 325 S.C. at 216-17, 481

S.E.2d at 133. As Applicant has failed to show how the outcome would have been different, he has failed to show that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not challenging and objecting to the victim's perjured testimony

Applicant alleged that Counsel was ineffective for not objecting to the victim's perjured testimony. He alleged that the victim committed perjury when he testified that he did not know Applicant. Applicant alleged that the victim does know him. Counsel testified that the victim did not commit perjury because his statements in the 911 calls were not under oath.

This Court finds that Applicant's allegation must be dismissed. Applicant has failed to provide evidence that the victim perjured himself during his testimony. Testimony from the victim that he did not know Applicant is not material to Applicant's guilt or innocence and is simply a credibility question for the jury. Counsel cross-examined the victim about whether he knew Applicant or if they had friends in common. This Court finds that Counsel was not deficient as she credibly testified that the victim did not commit perjury and did not have a reason to object. This Court further finds that Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show actual perjury and that an objection by Counsel would have been sustained. As Applicant has failed to show that Counsel was deficient or that he was prejudiced by her actions, this allegation must be dismissed.

Trial counsel was ineffective for not presenting and arguing that the evidence shows no sign of a struggle, even though the alleged victim stated that there was a struggle

Applicant alleged that Counsel was ineffective for failing to argue that there was no sign of a struggle at the scene of the crime. He argued that the evidence showed no signs of a struggle, contrary to the State's testimony from Sergeant Robert Ellis. Counsel testified that she

cross-examined the police officers about how they processed the crime scene and the lack of signs showing a struggle between Applicant and the victim.

This Court finds that Counsel was not deficient for failing to argue that there were no signs of a struggle at the crime scene. On the contrary, this Court finds that Counsel effectively cross-examined Sergeant Robert Ellis, Investigator Cheryl Gregory, and Detective Kelly Lovelace about the crime scene and the lack of evidence showing a struggle. Trial Transcript pp. 191-192; 244; 323. Furthermore, Counsel argued in her closing argument that there was no evidence of a struggle at the victim's house and that the officers were deficient in investigating this fact. Trial Transcript p. 360. As Counsel did effectively cross-examine the State's witnesses and argue during her closing argument concerning the lack of evidence showing signs of a struggle, her performance was not deficient. Furthermore, Applicant has failed to show that he was prejudiced as he has failed to show what further actions Counsel should have taken and that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not requesting and obtaining an analysis of the fingerprints found on the TV

Applicant alleged that Counsel was ineffective for not requesting a fingerprint analysis of the fingerprints found on the television. He argued that this would counter the victim's testimony that Applicant handled the television and was forced by the victim to carry it back in the victim's house. Applicant testified that there was an extra fingerprint on the television that was unidentified and could have belonged to a friend named Jennifer. He testified that he wanted Counsel to hire an expert to analyze the fingerprints on the television and pictures of the driveway.

Counsel testified that she did not hire her own expert to analyze the fingerprints on the television. She testified that she did not find anything wrong with the State's experts' analyses of the fingerprints. She testified that because this was a household item, it could have multiple fingerprints on it from other people. She testified that even if she could show that Applicant's friend named Jennifer had a fingerprint on the television, she would not be able to compel Jennifer to come to trial. Counsel testified that there was nothing else on the television for a separate expert to analyze and hiring one would not have changed the outcome. Counsel further testified that she received her own pictures from the driveway and did not need an expert to analyze them.

This Court finds Applicant has failed to meet his burden of proving that Counsel was deficient for failing to procure her own expert witness to analyze the fingerprint evidence. Counsel provided credible testimony that she did not need to hire her own expert because there was nothing wrong with the State's experts' analyses of the fingerprints. Further, Counsel vigorously cross-examined Investigator Cheryl Gregory about her reports and the locations in the house that she chose not to analyze for fingerprints. Counsel also cross-examined Investigator Brian Bagwell concerning the fingerprints and potential mistakes that were made. Counsel's failure to procure expert witnesses does not render their representation deficient when counsel vigorously cross-examines the State's witnesses and attacked the accuracy of the evidence. Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008). See also Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991).

Furthermore, Applicant can show no prejudice due to Counsel's failure to obtain a fingerprint expert's testimony at trial. Notably, Applicant failed to produce any expert testimony on this very issue at the PCR hearing. As a result, this Court will not speculate as to what

potential testimony could have been elicited from such an expert. See Dempsev v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative"). As a result, this Court finds Applicant's allegation must be denied and dismissed.

Trial counsel was ineffective for failing to preserve her numerous objections though out trial

Applicant testified that Counsel was ineffective for failing to preserve her objections throughout the trial. Counsel testified that she made the proper motion for a directed verdict and although her motion was denied, it was not denied based on any preservation issues.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to preserve her objections. This Court finds that Applicant has failed to point out specifically which objections were not preserved and he has failed to show that Counsel was deficient in this regard. Furthermore, this Court finds that Applicant has failed to prove that he was prejudiced by Counsel's actions as he has failed to show that the outcome of his trial or appeal would have been different had Counsel preserved her objections. Applicant's appeal was not dismissed for preservation issues and there is no indication that a lack of preserving Counsel's objections harmed Applicant's case in any way. Applicant has failed to meet his burden of proving Counsel was ineffective and this allegation must be dismissed.

Trial counsel was ineffective by not objecting and bringing to the Court's attention that the solicitor informed the Court and jury that the Applicant's fingerprints were on the TV during closing statements

Applicant alleged that Counsel was ineffective by not objecting to the Assistant Solicitor's closing argument where she argued to the jury that Applicant's fingerprints were found on the television. As stated above, Counsel testified that she did not find anything wrong with the State's expert's analysis of the fingerprints found on the television, which showed two

prints belonged to Applicant. She testified that because this was a household item, it could have multiple fingerprints on it from other people.

Applicant has failed to meet his burden of proving that Counsel was deficient for failing to the Assistant Solicitor's mention during closing argument that Applicant's fingerprints were found on the television. This Court finds that Counsel was not deficient as the record shows the State produced evidence showing that two fingerprints lifted from the victim's television matched Applicant's fingerprints. This is a factual question for the jury and is not objectionable. Furthermore, Applicant has failed to show that he suffered prejudice as he has failed to show that such an objection during the State's closing argument would have been sustained or that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failure to investigate

Applicant alleged that Counsel failed to investigate his case. He testified that Counsel was rushing him and did not conduct an independent investigation prior to trial. He testified that Counsel discussed the elements of burglary but he believed the State could not prove the elements of burglary.

Counsel testified that she was originally appointed to only Applicant's burglary charge, but when his petit larceny charge went to General Sessions, Applicant said he had no objection to her representation on both charges. Counsel testified that she met with Applicant many times and went over his version of events. She testified that she received the discovery which included his statement. She testified that she negotiated plea offers with the State and wanted him to take the offer. Counsel testified that Applicant did not agree with the burglary charge but she discussed with him the elements of second-degree burglary many times. She testified that she told Applicant that one can still be charged with burglary even if he was not guilty of the petit larceny and put the items back where he found them. Counsel testified that she explained to

Applicant that the intent to commit a crime was important for a burglary charge. She further testified that she told Applicant that she believed his statement that the incident was a drug deal gone bad was dangerous because the jury could hold that against him.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This Court finds that Counsel undertook reasonable investigation, met with Applicant many times prior to the trial, and discussed the State's evidence and Applicant's version of events. This Court finds that Applicant has failed to show how Counsel's investigation was deficient. Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show how the outcome would have been different had Counsel undertaken different investigation. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

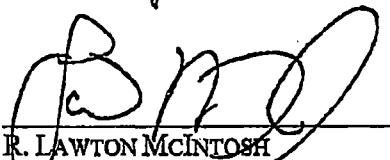
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

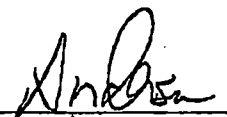
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of Sept, 2017.


 R. LAWTON MCINTOSH
 Presiding Judge
 Sixteenth Judicial Circuit


 _____, South Carolina