

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 5355 (S.C. Ct. App. filed 9/23/2015)

12-GS-10-07545

THE STATE,

RESPONDENT,

V.

LAMAR SEQUAN BROWN,

PETITIONER

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Lamar Sequan Brown, Appellant.

Appellate Case No. 2013-000725

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5355
Heard May 5, 2015 – Filed September 23, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

THOMAS, J.: Lamar Sequan Brown appeals his conviction for first-degree burglary, arguing the trial court erred in admitting evidence obtained from a warrantless search of the contents of his code-locked cell phone. We affirm.

FACTS AND PROCEDURAL HISTORY

The two victims shared a first-floor condominium in Charleston County. Neither was home during the evening of Thursday, December 22, 2011. Sometime after 10:30 p.m. that night, one of the victims heard a phone ring after he returned to the residence. When he went to investigate, he saw an unfamiliar cell phone on the floor and noticed a window had been broken, his television was gone, and his bedroom had been ransacked. The victim claimed he "immediately knew that [the cell phone] was none of ours."

When the police arrived, the victim who discovered the burglary gave Officer Matthew Randall the unfamiliar cell phone. Officer Randall took the phone to the police station and placed it inside a secure box by the evidence desk. Fingerprints could not be obtained from the phone because the victim had handled it. Attempts to take fingerprint evidence from the crime scene were also unsuccessful.

Jordan Lester, the lead detective assigned to the case, began his investigation on December 28, 2011, and learned nobody had claimed the phone found at the crime scene. Considering the phone abandoned, Detective Lester opened the phone and noticed the background picture portrayed a black male with dreadlocks.¹ Detective Lester then searched the contacts list to look for a possible relative. He found an entry for "Grandma," took the corresponding number, entered it into a comprehensive database maintained by the Charleston Police Department, and obtained a list of relatives and their age ranges. Using this information, Detective Lester accessed records of the South Carolina Department of Motor Vehicles (DMV), found a driver's license photograph that matched the image on the phone, and obtained a name and address for the individual in question. The individual was identified as Lamar S. Brown.

Later the same day, Officer Dustin Thompson visited Brown at the address Detective Lester obtained from the DMV records. After Officer Thompson informed Brown he was investigating a burglary, Brown agreed to speak with him privately. The two went into Officer Thompson's vehicle to discuss the matter. Although Brown was given *Miranda*² warnings, he was not handcuffed or placed under arrest.

While questioning Brown, Officer Thompson did not initially disclose that the burglary he was investigating had taken place on December 22, 2011. Brown told

¹ The phone was protected by a passcode, but Detective Lester unlocked the phone by entering "1-2-3-4," which he described as a "lucky guess."

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

Officer Thompson he lost his phone on Friday, December 23, 2011. Brown claimed he had the phone with him when he drove to the store but could not find it when he returned to his vehicle. Brown stated he disconnected service to the phone when he learned from a friend that someone else had it. When Officer Thompson asked Brown whether he left his home between 6:00 p.m. and midnight on December 22, 2011, Brown answered he did not. Brown also told Officer Thompson no one else had possession of his phone during that time. When Officer Thompson showed Brown the phone found at the victims' residence on the night of the burglary, he acknowledged the phone belonged to him.

During the meeting, Brown signed a form with printed language indicating he had been advised of his *Miranda* rights but chose to waive them and answer questions concerning a possible burglary charge. The form also included a handwritten "witness statement" on which Officer Thompson's questions and Brown's answers were recorded. Some of the responses were written by Brown himself.

Subsequently, police obtained consent to search Brown's residence but did not recover any of the stolen items. A warrant for Brown's arrest was issued on December 29, 2011, and he was arrested a few weeks later.

On November 5, 2012, Detective Lester obtained a search warrant for records from T-Mobile, the service provider for Brown's phone. The warrant directed T-Mobile to provide its records from December 9, 2011, to January 3, 2012, for the number assigned to the phone. The information T-Mobile provided revealed the phone was deactivated on January 22, 2012, apparently later than when Brown indicated he cancelled his service.³ T-Mobile's records also showed activity on the phone during the interval the victims were away from the residence.

On November 13, 2012, a grand jury indicted Brown for first-degree burglary, and he proceeded to trial on March 6, 2013. During a pretrial hearing, Brown moved to suppress all evidence obtained from his cell phone, arguing his Fourth Amendment rights were violated because the police did not obtain a search warrant before unlocking the phone. In the jury's absence, the trial court heard testimony from Detective Lester and Officer Thompson on the motion.⁴

³ A T-Mobile representative testified the phone would not have been automatically deactivated; an individual would have to call T-Mobile to deactivate the phone.

⁴ The trial court also heard a motion in limine from Brown regarding the admission of testimony from the clerk of court that Brown had two prior burglary convictions. The State advised that Brown actually had six prior convictions but it

The trial court initially found Brown had a Fourth Amendment expectation of privacy in the phone because it was passcode-protected. However, the court denied Brown's motion to suppress, concluding that regardless of whether the phone was inadvertently dropped or deliberately discarded at the victims' residence, this expectation of privacy had been abandoned. During the State's case-in-chief, Brown made several unsuccessful motions based on his pretrial objection to suppress evidence obtained directly or indirectly from the warrantless search of his cell phone.

After the State rested, Brown declined to testify and did not call any witnesses. The jury found Brown guilty as charged, and Brown moved for a new trial based on his previous Fourth Amendment objections. The trial court denied the motion and sentenced Brown to eighteen years' imprisonment. This appeal followed.

ISSUE ON APPEAL

Did the trial court's admission of evidence obtained from the warrantless search of Brown's code-locked cell phone violate Brown's Fourth Amendment rights?

STANDARD OF REVIEW

When reviewing a trial court's ruling on the admissibility of evidence in a Fourth Amendment search and seizure case, the appellate court "will review the trial court's ruling like any other factual finding and reverse if there is clear error." *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). The appellate court "will affirm if there is any evidence to support the ruling." *Id.*; see also *Robinson v. State*, 407 S.C. 169, 180-81, 754 S.E.2d 862, 868 (2014) ("On appeal from a motion to suppress on Fourth Amendment grounds, [appellate courts] appl[y] a deferential standard of review and will reverse only if there is clear error.").

LAW/ANALYSIS

would limit the evidence to two convictions pursuant to *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000), to satisfy a required element of burglary in the first degree. The court allowed the State to present evidence of the convictions but prohibited evidence on the underlying facts. Brown has not appealed this ruling.

Brown argues the police needed a warrant to search his phone and no exception to the warrant requirement applied to the facts of this case. He disputes the trial court's finding that he abandoned his expectation of privacy in his phone, asserting he maintained this expectation by locking the phone with a passcode. The purpose of the passcode, Brown claims, was to protect sensitive personal information contained within the phone rather than to protect the phone itself.

The State argues the trial court properly found the police could search the phone without a warrant because it was abandoned property left at the scene of a crime. We agree with the State.

The Fourth Amendment to the United States Constitution recognizes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Our state constitution also recognizes this right. *See* S.C. Const. art. I, § 10 (containing language nearly identical to that in the Fourth Amendment). "[T]he ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). "Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant." *Id.* at 653.

In *Riley v. California*, 134 S. Ct. 2473 (2014), a decision issued after Brown's trial, the Supreme Court of the United States addressed the constitutionality of a warrantless search of a cell phone seized incident to a lawful arrest. Although the present case does not involve such a search, we are mindful of the Court's recognition that the immense storage capacity of modern cell phones presents privacy concerns that have not arisen in searches of other physical items:

The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information . . . that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. . . . Third, the data on a phone can date back to the purchase of the phone, or even earlier. . . .

Finally, there is an element of pervasiveness that

characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. . . .

Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different.

Id. at 2489-90.⁵

Based on these considerations, the Court refused to extend its holding in *United States v. Robinson*, 414 U.S. 218, 224 (1973), that despite the absence of any concern about loss of evidence or weapons within the defendant's reach, the arresting officer's actions in (1) removing a crumpled cigarette package from the defendant's person during the arrest, (2) opening it, and (3) discovering capsules of white powder that later proved to be heroin "did not offend the limits imposed by the Fourth Amendment." The Court in *Riley* expressly "decline[d] to extend *Robinson* to searches of data on cell phones." *Riley*, 134 S. Ct. at 2485. Rather, the Court stated:

Modern cell phones are not just another technological convenience. With all they contain and all they may

⁵ The Court actually considered two cases that were consolidated for appeal, both of which raised the question of whether the police had the right to perform a warrantless search of digital information on a cell phone seized from an arrestee. *Riley*, 134 S. Ct. at 2480. One case involved a "smart phone," which had "a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity." *Id.* The cell phone at issue in the companion appeal was a "flip phone," which the Court described as "a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone." *Id.* at 2481. Although the Court's analysis appears to focus on privacy concerns arising from the more contemporary smart phones, the Court expressed similar concerns regarding basic, older model phones such as the phone at issue in the present appeal. *See id.* at 2489 ("Even the most basic phones that sell for less than \$20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on.").

reveal, they hold for many Americans "the privacies of life[.]" The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

Id. at 2494-95 (citation omitted).

Despite the decisive tone in these statements, the Court did not require law enforcement officers to obtain a warrant to search every cell phone that falls into their possession. *See id.* at 2494 ("[E]ven though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone."). Although "a warrantless search is per se unreasonable and violative of the Fourth Amendment," there are "several well-recognized exceptions to the warrant requirement." *State v. Morris*, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015). Our supreme court has recognized the doctrine of abandonment as one such exception to the Fourth Amendment warrant requirement. *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995). Under this doctrine, "[a]bandoned property has no protection from either the search or seizure provisions of the Fourth Amendment." *Id.*; *see also United States v. Tugwell*, 125 F.3d 600, 602 (8th Cir. 1997) ("A warrantless search of abandoned property does not implicate the Fourth Amendment, for any expectation of privacy in the item searched is forfeited upon its abandonment.").

"[T]he Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy or unless the government commits a common-law trespass for the purpose of obtaining information." *State v. Robinson*, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014) (citation omitted). Whether such an expectation of privacy has been abandoned "is determined on the basis of the objective facts available to the investigating officers, not on the basis of the owner's subjective intent." *Tugwell*, 125 F.3d at 602; *see also State v. Taylor*, 401 S.C. 104, 119, 736 S.E.2d 663, 670-71 (2013) ("Whether a Fourth Amendment violation has occurred turns on an objective assessment of [an officer's] actions in light of the facts and circumstances confronting him at the time" (alteration by court) (internal quotation marks omitted)). Moreover, in determining whether property has been abandoned in the Fourth Amendment context, the inquiry is not whether the owner of the property has relinquished his or her interest in it such that

another, having acquired possession, may successfully assert a superior interest. *Dupree*, 319 S.C. at 457, 462 S.E.2d at 281. Rather, "the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein." *Id.* (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 371 (Minn. 1975)).

Here, during the suppression hearing, the State advised the trial court of case law supporting the proposition that Brown's apparent lack of effort to locate his phone after it was discovered at the crime scene was objective evidence establishing he abandoned any reasonable expectation of privacy in the phone and its data. Among the cases the State cited to the trial court was *United States v. Oswald*, 783 F.2d 663 (6th Cir. 1986), which concerned the denial of a motion to suppress drugs found during a warrantless search of a locked metal briefcase taken by the police from the locked trunk of a burned-out automobile the defendant left on the berm of an interstate highway. The trial court found the defendant had already abandoned both the car and the items left inside before responding law enforcement officers found and searched the briefcase inside the car trunk. *Id.* at 664-65. In affirming the finding of abandonment, the United States Court of Appeals for the Sixth Circuit stated:

[A] guilty conscience cannot create an expectation of privacy that would not otherwise exist. Where an ordinary person could fairly be said to have abandoned his privacy interests by failing to come forward, a reasonable expectation of privacy cannot be thought to have been retained solely by virtue of the fact that the person happens to be guilty of a crime.

Id. at 667. Although the court expressly noted Oswald locked both the briefcase and car trunk, these precautions were not mentioned as possible reasons to support a finding that he continued to maintain an expectation of privacy after fleeing from the burning automobile. *Id.* On the contrary, the court determined Oswald's flight "provided objective abandonment evidence." *Id.* at 669.

The State also cited *People v. Daggs*, 34 Cal. Rptr. 3d 649 (Cal. Ct. App. 2005), during the suppression hearing. *Daggs* involved the warrantless search of the defendant's cell phone, which was found shortly after a robbery at a drug store. *Id.* at 650. After no one came forward to claim the phone during the twenty to thirty

minutes the officers remained at the store, the phone was booked into evidence at the police station, where it remained unclaimed for one week. *Id.* A passcode had been installed on the phone, but a detective discovered the phone's electronic serial number and other numbers by removing the battery. *Id.* at 650-51. Using these numbers, the detective procured a search warrant to release the subscriber's name, telephone number, and telephone records; however, the detective did not obtain a search warrant before removing the battery. *Id.* at 651. The subscriber was the defendant's brother, who told the police he had given the phone to the defendant. *Id.*

After the trial court denied the defendant's motion to suppress this evidence, the defendant entered a plea of no contest to one count of robbery. *Id.* at 650. The California Court of Appeal affirmed the trial court's finding the defendant abandoned his phone at the scene of the robbery. *Id.* The court held no unlawful search took place when the police removed the battery to view the numbers identifying the phone and gave the following explanation for its decision:

Defendant contends . . . that since it was undisputed that he *accidentally* dropped the phone at Walgreen's, the court could not find that he intentionally or voluntarily discarded it. Defendant's testimony, assuming it were credited, would support an inference that at the moment he first dropped the phone he did not subjectively intend to discard it. Nonetheless, his own testimony also unequivocally established that as soon as he realized he had left the phone behind, he made a conscious and deliberate decision not to reclaim his phone, and never did. He therefore voluntarily abandoned it.

In any event, the intent to abandon is determined by objective factors, not the defendant's subjective intent. Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective* facts. Abandonment here is not meant in the strict property-right sense, but rests instead on whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search. [The victim] informed the officers who found the phone at the scene that he had not seen the cell phone in that area prior to his confrontation

with the robber. No one else at the scene claimed the phone, nor did anyone assert a claim to it in the week after the robbery. Therefore, when the police seized the phone, and certainly by the time [police] finally performed the challenged search, these circumstances were all objective indications that defendant had discarded the phone, and would not reclaim it.

Id. at 651-52 (citations and internal quotation marks omitted).

Oswald and *Daggs* establish that an individual can abandon an expectation of privacy in the contents of a locked container, including a cell phone, when objective facts support law enforcement's belief the owner of the container has forgone his intent to protect the container or its contents. *See also Wilson v. State*, 966 N.E.2d 1259, 1264 (Ind. Ct. App. 2012) (rejecting a defendant's argument that he did not abandon a car when he locked the car before fleeing from police and holding "the fact that the vehicle was locked does not necessarily negate a reasonable inference that [the defendant] abandoned it"); *State v. Smith*, 681 So. 2d 980, 989 (La. Ct. App. 1996) (same); *State v. List*, 636 A.2d 1097, 1100-01 (N.J. Super. Ct. Law Div. 1990) *aff'd*, 636 A.2d 1054 (N.J. Super. Ct. App. Div. 1993) (holding the defendant abandoned any expectation of privacy in a locked desk and file cabinets inside his house when law enforcement were aware of the following objective facts before searching the desk and cabinets: defendant's neighbors had not seen or heard from the defendant or his family in weeks, light bulbs in the defendant's house were burning out and not being replaced, and the defendant left an envelope on the desk containing the keys to the desk and file cabinets and a note instructing the finder of the note to "contact the proper authorities").

In the case *sub judice*, the trial court admitted evidence obtained from Brown's cell phone, finding any expectation of privacy Brown had in the phone had been abandoned by the time the police searched it. All the evidence presented during the suppression hearing supports the trial court's conclusion. The State's witnesses testified the phone had been in police custody for at least five days. Brown did not dispute that the phone was found in a private residence shortly after the residence was burglarized. The phone did not belong to anyone who lived at or frequented the residence, and no evidence of any attempts to reclaim the phone after it was confiscated by the police was presented. When Detective Lester made the decision to unlock the phone several days later, he was aware of these circumstances, all of which, when considered together, provided sufficient objective facts to support his belief that any expectation of privacy in the phone and its data had been

abandoned. *See Tugwell*, 125 F.3d at 602 (explaining whether one has abandoned an expectation of privacy "is determined on the basis of the *objective facts available to the investigating officers, not on the basis of the owner's subjective intent*" (emphasis added)); *Daggs*, 34 Cal. Rep. at 652 ("[T]he intent to abandon is determined by objective factors, not the defendant's subjective intent. Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective facts*." (internal quotation marks omitted)).

The dissent distinguishes *Oswald* on the basis that a cell phone contains much more information than a locked briefcase is capable of containing. However, this misses the point because it is not the volume of a locked container's contents that determines whether or not the container and its contents have been abandoned under the Fourth Amendment. *See Riley*, 134 S. Ct. at 2494 (discussing the massive storage capabilities of modern cell phones but acknowledging "case-specific exceptions may still justify a warrantless search of a" cell phone). Rather, it is the objective indicia of the owner's intent, viewed from the perspective of law enforcement, to forgo protecting the container or its contents that determines whether the owner has abandoned them. *See Tugwell*, 125 F.3d at 602 (explaining whether one has abandoned an expectation of privacy "is determined on the basis of the *objective facts available to the investigating officers, not on the basis of the owner's subjective intent*" (emphasis added)); *Taylor*, 401 S.C. at 119, 736 S.E.2d at 670-71 (stating "[w]hether a Fourth Amendment violation has occurred turns on an *objective assessment* of [an officer's] actions in light of the facts and circumstances confronting him at the time" (second alteration by court) (emphasis added) (internal quotation marks omitted)). Locking a container does not erase these objective indicia because the act of locking the container merely demonstrates to a law enforcement officer that the owner of the container *started out* with an expectation of privacy in the container's contents. One may start out with a desire to protect the container's contents only to later abandon the container and its contents upon experiencing a superior desire to avoid being arrested for a crime. *See Oswald*, 783 F.2d at 667 ("[A] guilty conscience cannot create an expectation of privacy that would not otherwise exist."). This is precisely what the circuit court held when it ruled that Brown had a reasonable expectation of privacy in the phone but later abandoned that expectation by discarding the phone.

Whether a container is locked or unlocked, once a reasonable amount of time in which to claim the container and its contents has passed, an objective assessment of the circumstances leads a law enforcement officer to the inescapable conclusion that the owner of the container has abandoned the container and its contents. *See United States v. Basinski*, 226 F.3d 829, 836 (7th Cir. 2000) ("Because this is an

objective test, it does not matter whether the defendant harbors a desire to later reclaim an item; we look solely to the external manifestations of his intent as judged by a reasonable person possessing the same knowledge available to the government agents."); *Oswald*, 783 F.2d at 667 ("Where an ordinary person could fairly be said to have abandoned his privacy interests by failing to come forward, a reasonable expectation of privacy cannot be thought to have been retained solely by virtue of the fact that the person happens to be guilty of a crime."). More specifically, in the case of a smartphone, the mere use of a passcode does not always lead law enforcement to conclude the owner of the phone retained an expectation of privacy in the phone and its contents when other objective facts to the contrary are available.

Accordingly, consistent with our standard of review, we hold the trial court properly admitted evidence obtained from Brown's cell phone because all the evidence offered at the suppression hearing established that at the time Detective Lester searched Brown's cell phone, objective facts supported his belief that Brown had abandoned any expectation of privacy in the phone and its data, and therefore, Detective Lester was not required to obtain a warrant before searching the phone. *See Brockman*, 339 S.C. at 66, 528 S.E.2d at 666 (explaining a trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence); *Dupree*, 319 S.C. at 457, 462 S.E.2d at 281 (explaining "[a]bandoned property has no protection from either the search or seizure provisions of the Fourth Amendment" (emphasis added)). As a result, we affirm the trial court's denial of Brown's motion to suppress evidence obtained from the warrantless search of his cell phone based on the abandonment exception to the warrant requirement.

CONCLUSION

We hold, based on our standard of review, the State presented evidence at the suppression hearing that supported the trial court's finding of abandonment. Thus, we affirm the trial court's decision to admit evidence obtained from the warrantless search of Brown's cell phone.⁶

⁶ The State also argues the evidence obtained from Brown's cell phone was admissible pursuant to the independent source doctrine. Because we conclude the evidence was admissible under the abandonment exception to the warrant requirement, we need not address the State's independent source argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d

AFFIRMED.

GEATHERS, J., concurs.

KONDUROS, J.: I respectfully dissent. I would find Brown did not abandon his expectation of privacy in the contents of his cell phone and therefore, law enforcement's warrantless search violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. amend. IV. Generally, "a warrantless search is per se unreasonable and violative of the Fourth Amendment," unless an exception applies. *State v. Morris*, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015).

The doctrine of abandonment, which our supreme court has recognized as an exception to the warrant requirement, provides "[a]bandoned property has no protection from either the search or seizure provisions of the Fourth Amendment." *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995). In determining whether property has been abandoned in the Fourth Amendment search and seizure context,

the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.

Id. (internal quotation marks omitted).

The United States Supreme Court recently held law enforcement must generally obtain a warrant before searching the contents of a cell phone seized pursuant to a search incident to arrest. *Riley v. California*, 134 S. Ct. 2473, 2493-95 (2014). The Court's "answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant." *Id.* at 2495. In distinguishing other physical objects obtained during searches incident to

591, 598 (1999) (holding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive).

arrest, the Court recognized the unique nature of modern cell phones, their capacity for storage of vast amounts of personal information on devices easily carried, and the resulting privacy concerns triggered. *Id.* at 2488-91. Although *Riley* focused on how the search incident to arrest doctrine applies to modern cell phones, the decision provides guidance on the protection of privacy interests under the Fourth Amendment given substantial advancements in technology. *Id.* (noting modern cell phones may store an immense range of sensitive personal information and a search of a cell phone "would typically expose to the government far *more* than the most exhaustive search of a house").

In my opinion, Brown did not relinquish his reasonable expectation of privacy in the *contents* of the phone merely by its discovery at the scene of a crime, especially in light of the presence of a passcode on the phone. In addition, the lack of any exigency justifying a warrantless search and the ease with which law enforcement could have obtained a warrant demonstrates further the need to comply with the warrant requirement.

I disagree with the majority's reliance on *United States v. Oswald*, 783 F.2d 663 (6th Cir. 1986), and on *People v. Daggs*, 34 Cal. Rptr. 3d 649 (Cal. Ct. App. 2005), in affirming the trial court's conclusion. The events in *Oswald* do not involve a cell phone and occurred decades before the technology on which modern cell phones are based was fully conceivable. 783 F.2d at 663-65; *see also Riley*, 134 S. Ct. at 2484 ("Both phones [at issue in the case] are based on technology nearly inconceivable just a few decades ago."). What the defendant in *Oswald* abandoned—a locked briefcase inside the trunk of a burned-out automobile left next to the interstate—is substantially different from a cell phone discovered at the scene of a crime. 783 F.2d at 663-64. While tangible items similar to those digitally contained on a cell phone, such as photographs, contact information, and correspondence, may be stored in a briefcase, it is significantly limited compared to what may be stored on a cell phone. *Riley*, 134 S. Ct. at 2489-90.

In addition, the law enforcement officers in *Daggs* did not access the data contained on the cell phone discovered at the scene of a crime but instead procured the phone's electronic serial number by removing the battery. 34 Cal. Rptr. 3d at 650-51. Unlike opening a passcode-locked phone without first obtaining a warrant, removing the battery to the cell phone to discover a serial number does not intrude upon a person's extensive private information that may be stored therein. *Id.* Moreover, the officers in *Daggs* used the serial number to obtain a warrant for the subscriber's name, telephone number, and telephone records, which led to the identification of the defendant. *Id.* at 651.

By contrast, the officers in the present case possessed the phone for nearly a week before unlocking it by a "lucky guess," yet did not seek a warrant, which likely would have been granted given that the cell phone was discovered at the scene of a burglary and did not belong to any of the residents. The officers' delay in accessing the cell phone belies the presence of any exigent circumstances justifying the warrantless intrusion. *See Riley*, 134 S. Ct. at 2494 (stating exigent circumstances may justify a warrantless search of a cell phone). As the majority notes, after unlocking the phone six days after the burglary, the lead detective searched through the contacts list until he found a relative, "Grandma," from whose number he then obtained a list of relatives and age ranges from a comprehensive database. The detective then compared photographs for driver's licenses in the records of the DMV to the background picture on the cell phone until he discovered a match. This match directly identified and led the officers to Brown. The evidence leading the officers to Brown was found entirely through the warrantless search of the phone and is the only evidence connecting Brown to the burglary. Law enforcement did not find Brown's fingerprints on the cell phone or at the crime scene, nor did a search of Brown's residence uncover any of the stolen items.

The Court in *Riley* made clear its holding "is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, *even* when a cell phone is seized incident to arrest." *Id.* at 2493 (emphasis added). In my opinion, the Court's language indicates law enforcement must obtain warrants to search cell phones, even in cases when a person's expectation of privacy is diminished, absent the applicability of an exception. *See id.* at 2488 ("[W]hen privacy-related concerns are weighty enough a search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee." (internal quotation marks omitted)). The existence of the passcode also displays an expectation of privacy in the contents of the phone, and the simplicity of Brown's passcode of "1-2-3-4" does not negate law enforcement's need to obtain a warrant. While under these circumstances I would not find a reasonable expectation of privacy existed in the physical object of the phone, I believe a person preserves their reasonable expectation of privacy in its *contents*, which is precisely what provides a phone its significance.

For the foregoing reasons, I believe Brown did not abandon his reasonable expectation of privacy in the contents of the phone and law enforcement's warrantless search violated the Fourth Amendment. The trial court therefore erred

in failing to exclude the evidence obtained from the warrantless search, and I would reverse and remand for a new trial.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LAMAR SEQUAN BROWN,

APPELLANT

APPELLATE CASE NO. 2013-000725

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 5355

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, the majority's opinion overlooks key points that necessitate reversal of appellant's conviction.

The majority states that in Riley v. California, 134 S.Ct. 2473 (2014), the United States Supreme Court recognized that searches of modern cell phones are categorically different than searches of other items. Op. at 5. Citing Riley, the majority states that "the immense storage capacity of modern cell phones presents privacy concerns that have not arisen in searches of other physical items." Op. at 5-6. Despite this recognition, the majority then treats appellant's cell phone

as just another physical container. The cases cited by the majority involve a cigarette package (United States v. Robinson, 414 U.S. 218 (1973)), a briefcase (United States v. Oswald, 783 F.2d 663 (6th Cir. 1986)), a car (Wilson v. State, 966 N.E.2d 1259 (Ind. Ct. App. 2012)), and a desk and file cabinets (State v. Smith, 636 A.2d 1097 (N.J. Super. Ct. Law Div. 1990)). Using these cases as authority expressly contradicts the reasoning of Riley.

The principal case relied upon by the majority involves a cell phone, but does not involve a cell phone's data. Op. at 9, *citing* People v. Daggs, 34 Cal. Rptr.3d 649 (Cal. Ct. App. 2005). The majority's statement of the facts shows that Daggs does not support the holding in this case. In Daggs, the police never searched the phone's data, but just examined numbers on the outside of the phone and then obtained a warrant. In appellant's case, the police invaded the data on the phone without a warrant.

In this distinction lies the fundamental error in the majority's opinion. While the physical object of the phone could be abandoned, the data which could be accessed from the phone was not abandoned. The following example shows the flaw in this reasoning. Consider a person who loses their cell phone, decides it will never be found, and "abandons" it in favor of a new phone. The old phone has a code lock on it. Another person finds the phone, guesses the code, and then uses the information on the phone to steal intellectual property contained on the phone or accessible from the phone. Under the majority's reasoning, the thief would have committed no crime because the data on the phone was also abandoned along with the physical device.

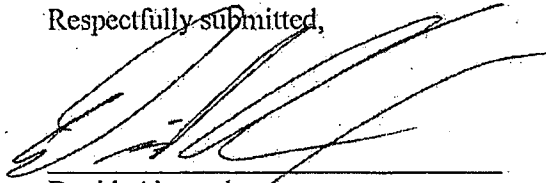
Appellant never relinquished his expectation of privacy in the data contained on the phone or that could be accessed from the phone. As Chief Justice Roberts wrote in Riley, cell phones "differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person." Riley at 2489. The storage capacity differentiates cell phones from other items.

Id. “The sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions. . . .” Id. The Court noted that “it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate.” Id. at 2490.

The Fourth Circuit recently recognized the broad applicability of Riley when it held that citizens have an expectation of privacy in their historical cell site location information even though such information was given to and maintained by third parties. United States v. Graham, 796 F.3d 332 (4th Cir. 2015). The court recognized the primacy of the data—not its physical location. If a person maintains an expectation of privacy in data knowingly held by third parties, then appellant certainly maintained an expectation of privacy in his data accessible by and contained in his code-locked cell phone.

Appellant urges the Court to adopt the reasoning of the dissent. The dissent stated, “While under these circumstances I would not find a reasonable expectation of privacy existed in the physical object of the phone, I believe a person preserves their reasonable expectation of privacy in its *contents*, which is precisely what provides a phone its significance.” Op. at 16, Konduros, J., dissenting. This case turns on the critical distinction between a physical device and its data. Riley compels courts to focus on the data of a phone when conducting a Fourth Amendment analysis. Respectfully, appellant asks the Court to grant rehearing in this case to correct this flaw in the Court’s opinion and reverse appellant’s conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

This 8th day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

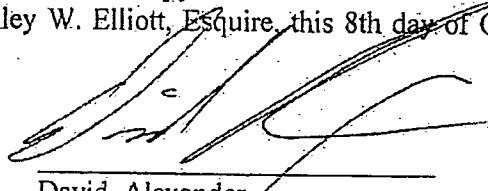
LAMAR SEQUAN BROWN,

APPELLANT

APPELLATE CASE NO. 2013-000725

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Salley W. Elliott, Esquire, this 8th day of October, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of October, 2015.

Susan B. Hackett (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/25/2023

The South Carolina Court of Appeals

The State, Respondent,

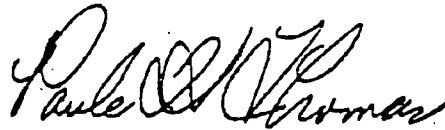
v.

Lamar Sequan Brown, Appellant.

Appellate Case No. 2013-000725

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

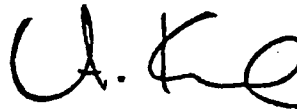


J.



J.

I would grant the petition for rehearing.



J.

Columbia, South Carolina

FILED

cc: Salley W. Elliott, Esquire
David Alexander, Esquire

October 19, 2015

Alan McCrory Wilson, Esquire
Scarlett Anne Wilson, Esquire

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMAR SEQUAN BROWN,

APPELLANT

APPELLATE CASE NO. 2013-000725

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT # 3 (PHOTOGRAPH), EXHIBIT # 12 – 14 (CELL PHONE RECORDS) AND EXHIBIT # 15 (CELL PHONE)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2012-GS-10-7545
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
LAMAR SEQUAN BROWN	)	
	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on March 6, 2013, Commencing at 9:55 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF:

Kelly Ann Flynn, Esquire
Chad Simpson, Esquire
9th Circuit Solicitor's Office
101 Meeting Street
Charleston, South Carolina 29401

FOR THE DEFENDANT:

Victoria Anderson, Esquire
Lori Proctor, Esquire
Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina 29401

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PROCEEDINGS

THE COURT: All right. Y'all had a motion you wanted to hear before we brought the jury in. Which motion; I've got several here. Which motion, Ms. Anderson you want to hear?

MS. ANDERSON: The motion regarding the defendant's prior bad acts --

THE COURT: Let me ask you this. Is there any reason we can't go ahead and draw the jury and hear all these motions after we get the jury drawn? And I won't charge them until then.

MS. ANDERSON: We were wanting to hold off to -- on reading the Indictment in front of the jury because the Indictment alleges Burg First entry at night into a dwelling and also his two prior convictions of Burglary. And that's why we wanted to have...

THE COURT: Well I wasn't going to read the prior conviction. I was just going to say he was charged with Burglary First. I haven't seen the Indictment.

MS. ANDERSON: I was just served with it this morning. I've known about it for a little while, but I was just served with it.

THE COURT: It just says that on December 22 he entered a dwelling at Rolling Woods Place to commit a crime. And then the Burglary First -- Second is a person

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1 with prior records of two or more convictions of
2 Burglary.

3 MR. SIMPSON: We don't have any objection to
4 admitting that for purposes of now.

5 THE COURT: At this point in time that just sort of
6 goes to sentencing doesn't it?

7 MR. SIMPSON: Yes, Your Honor. We're going to put
8 forth evidence of this and I think it's the bigger issue
9 but for our purposes of right now ---

10 THE COURT: --- for our purposes right now I
11 generally don't read the Indictment anyhow. I just tell
12 them what they are charged with and there is an
13 Indictment and when it occurred and where it occurred.
14 That's basically all I ever tell the jury.

15 MS. ANDERSON: That's fine. We just didn't want
16 them to hear it ---

17 THE COURT: --- at this point in time.

18 MS. PROCTOR: Yes, sir.

19 MS. ANDERSON: Yes, sir.

20 THE COURT: We can make the argument when we get
21 the jury drawn and I'll listen to both sides and make a
22 decision.

23 MS. ANDERSON: Yes, sir. That's fine.

24 THE COURT: Anything else that we need to hear
25 before we bring the jury?

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1 defense wants to keep in the courtroom? You don't have
2 but one other witness other than the defendant.

3 MS. ANDERSON: No, Your Honor.

4 THE COURT: Okay. So we will sequester the
5 witnesses. Would you please, Solicitor Anderson, please
6 tell -- I'm sorry, Solicitor Flynn, tell your witnesses
7 don't go out in the hall and tell new witnesses what
8 transpired, okay?

9 MS. FLYNN: Yes, Your Honor.

10 THE COURT: I'm going to depend on you to do that,
11 okay.

12 MS. FLYNN: Yes, Your Honor.

13 THE COURT: Same thing for the defendant, please.

14 MS. ANDERSON: Yes, Your Honor.

15 THE COURT: Which motion do y'all want to hear
16 first?

17 MR. SIMPSON: I don't mean to interrupt. I think
18 he was asking you -- our detective is testifying on the
19 search warrant motion and is not feeling very well. So
20 we would appreciate if it is okay by the defense we would
21 get his testimony done so he can ---

22 THE COURT: --- which motion is he going to testify
23 and proceed on?

24 MR. SIMPSON: The search warrant motion, the
25 suppression motion, Your Honor.

State v Lamar S. Brown
(2012-GS-10-7545)
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1 THE COURT: The suppression -- motion to suppress?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: Is it okay if we hear that one first?

4 MS. ANDERSON: Yes, Your Honor.

5 THE COURT: Okay. Is he here?

6 MR. SIMPSON: He's here.

7 MS. FLYNN: Yes, Your Honor.

8 THE COURT: All right. Let me hear you on the
9 motion to suppress.

10 [Whereupon, all counsel confer]

11 THE COURT: Is that the -- are we going to hear the
12 motion to suppress?

13 MS. FLYNN: That's correct, Your Honor.

14 THE COURT: Okay. I'll be glad to hear you.

15 MOTION TO SUPPRESS

16 MS. ANDERSON: The defendant moves to suppress all
17 the evidence obtained from his cell phone. Just briefly,
18 there was a cell phone found at the scene of the burglary
19 and that's how they connected it to Mr. Brown.

20 THE COURT: The cell phone was found at the scene
21 of the burglary?

22 MS. ANDERSON: Yes. It was found at the scene of
23 the burglary ---

24 THE COURT: --- where at the scene?

25 MS. ANDERSON: In the bedroom according to the

State v Lamar S. Brown
(2012-GS-10-7545)
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1 victims.

2 THE COURT: In the bedroom?

3 MS. ANDERSON: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. ANDERSON: After that time it was collected and
6 taken into evidence and a few days later Detective Lester
7 pulled it from evidence and started going through the
8 cell phone. He pulled -- from my understanding of it he
9 pulled -- he pulled phone numbers, the ones that had
10 family attached to it, put those into the -- database and
11 used that ---

12 THE COURT: --- he pulled phone numbers and what
13 else?

14 MS. ANDERSON: Phone numbers from individuals in
15 the contact list that were identified as family members.

16 THE COURT: Okay.

17 MS. ANDERSON: And he put those into the accurate
18 data base and used that to find the home address and
19 developed Mr. Brown as a suspect.

20 THE COURT: Okay.

21 MS. ANDERSON: He did not get a warrant before
22 going into that cell phone. And we believe that it
23 violates Mr. Brown's 4th Amendment rights to go into that
24 phone without a warrant. And that's pretty much --

25 THE COURT: You got any cases that address the cell

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1 phone and the 4th Amendment?

2 MS. ANDERSON: We have a recent case from the 7th
3 Circuit.

4 THE COURT: You got anything from the 4th Circuit?

5 MS. ANDERSON: No, Your Honor. It's a fairly new --
6 may I approach?

7 THE COURT: You got any State court cases?

8 MS. ANDERSON: I'm sorry?

9 THE COURT: You got any State court cases?

10 MS. ANDERSON: No.

11 [Whereupon, documents are proffered to the court]

12 THE COURT: None. Not in South Carolina, Georgia,
13 or North Carolina?

14 MS. ANDERSON: It's new -- it's a new issue about
15 cell phones ---

16 THE COURT: --- okay.

17 MS. ANDERSON: So basically what this case argues
18 is -- United States v Lawrence Lopez. It comes out of
19 the 7th circuit. What happened in that case is the
20 defendant was arrested. He had a cell phone in his
21 pocket. The police seized it, went through it and got
22 the phone number; just the phone number that was attached
23 to the phone and used that to get a search warrant and
24 get phone numbers from the carrier. And that Court held
25 that that was minimally intrusive because all they did

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1 was get the information and they didn't address the issue
2 of what else they could have gotten from there. And we
3 argue that due to the fact that there are -- cell phones
4 are becoming increasingly personal. We can get a lot of
5 personal information -- there is a lot of information in
6 there; not just phone numbers, not just contacts.

7 And that gives Mr. Brown a right to privacy to a
8 cell phone that is his. And by going in without a
9 warrant that the police violated that right and violated
10 the requirement of ---

11 THE COURT: --- let me ask you this. And I haven't
12 heard from the State yet but I assume they were
13 investigating a burglary. They go into the house and
14 they find a phone. They have no idea who it belongs to.
15 I assume the residents of the apartment or the building
16 said it is not their phone.

17 MS. ANDERSON: That's correct, Your Honor.

18 THE COURT: So in the course of the investigation
19 they start looking at phone numbers and people trying to
20 determine who owns the phone, is that correct, during the
21 course of the investigation?

22 MS. ANDERSON: That's what they did. There was a
23 time period -- the cell phone was entered into evidence
24 either the night of the 22nd or the early morning of the
25 23rd and Detective Lester went in into the phone on the

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1 28th of December. So several days later ---

2 THE COURT: --- when did they finally focus on Mr.
3 Brown?

4 MS. ANDERSON: That same day, the 28th.

5 THE COURT: They focused on him for what reason;
6 from information from the phone or what?

7 MS. ANDERSON: Information from the phone. And it
8 wasn't that this phone says this phone belongs to Lamar
9 Brown. There was a picture of him on the screen of the
10 phone. But what they did is go into the contacts and get
11 information on different people that were identified as
12 family members. And we argue that is the information
13 that is entitled to privacy. Not the number of the
14 phone; that would be minimally intrusive. But ---

15 THE COURT: --- how ---

16 MS. ANDERSON: --- just going in and getting it ---

17 THE COURT: --- I don't know if there are any cases
18 but are there any cases concerning the right of privacy
19 to Facebook on the Internet and Twitter and all the
20 information that is out there on the Internet? I mean
21 because basically we talking to something very similar.

22 MS. ANDERSON: It's a new thing ---

23 THE COURT: --- I just question the expectation of
24 privacy to begin with. And you've got to cross that
25 hurdle before you get to the seizure.

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1 MS. ANDERSON: Yes, sir. Legally he had an
2 expectation of privacy and we may be able to get this
3 from the ---

4 THE COURT: --- because I'm -- that's why I asked
5 you about Facebook in particular. Are there any cases
6 about expectation on Facebook from your -- you probably
7 haven't researched that issue. I think it's a similar
8 type issue.

9 MS. ANDERSON: I haven't seen anything on Facebook
10 but the way that people make things on Facebook private
11 is they put privacy controls on it. They control who
12 may or may not be able to get into their Facebook. Mr.
13 Brown had a lock on his phone. He had to unlock the
14 screen and then he had to put in a code to get into the
15 phone to even look at the contact list.

16 THE COURT: Okay.

17 MS. ANDERSON: And so by putting that lock on there
18 he asserted his right to privacy is all I'm saying. I
19 don't want anybody who doesn't know ---

20 THE COURT: --- I guess it's a simple matter to
21 probably bypass the lock; I don't know.

22 MS. ANDERSON: It was not a very complicated code
23 but he put one on there and that's why ---

24 THE COURT: --- well how did the police bypass the
25 code?

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1 MS. ANDERSON: That would be a question I would
2 have to ask the detective ---

3 THE COURT: --- you don't know yet?

4 MS. ANDERSON: I don't.

5 THE COURT: You're getting ready to find out? So
6 basically your argument because of the code you think he
7 had an expectation of privacy. They should have gotten a
8 search warrant before they examined the phone.

9 MS. ANDERSON: They should have and there is no
10 reason not to. There weren't any exigent circumstances;
11 nothing was going to happen to that phone. It was
12 sitting in evidence.

13 They could have easily protected his rights, gone
14 about it the right way if they needed to go into it to
15 get the phone number to get the search warrant to
16 subpoena the records that would have been the right path
17 to go. But instead he bypassed it ---

18 THE COURT: --- at that point in time during the
19 investigative process did they even have enough
20 information to obtain a search warrant?

21 MS. ANDERSON: Uh huh. I think so. That's why ---

22 THE COURT: --- I mean just the fact it was found
23 on the scene of the crime is probably sufficient to get a
24 search warrant.

25 MS. ANDERSON: Well, it's the same stuff they used

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1 a year later to get a search warrant on the phone because
2 they did eventually get one in November of 2012; almost a
3 year later.

4 THE COURT: They got a search warrant a year later?

5 MS. ANDERSON: A year later.

6 THE COURT: What did they retrieve from that search
7 warrant?

8 MS. ANDERSON: They retrieved the call records, the
9 call logs, the subscriber information and I believe at
10 the same time, I don't know if this was part of the
11 search warrant, C-P-D has a I guess a digital -- phone to
12 download the contact list from that. So if they had
13 enough information to go back a year later to get it they
14 certainly had the same amount of information on the 28th
15 of December, 2011 ---

16 THE COURT: --- well what do you think they
17 obtained illegally assuming your argument is correct that
18 there was an expectation of privacy simply because he did
19 have a lock on the phone. What do you think they
20 obtained illegally that should be suppressed?

21 MS. ANDERSON: What they did from what I understand
22 they did was go in and look through the contacts in the
23 phone; the people who had been in the defendant's
24 contacts. They looked at ones that specifically had
25 family things on it like aunts, or a grandparent or

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1 something like that and took those -- and rather than
2 them have to look for it they took those and put those
3 into a database and researched those people and got their
4 personal information, you know address and contact
5 information and then used that to develop Mr. Brown's ---

6 THE COURT: --- they were getting other people
7 other than the defendant?

8 MS. ANDERSON: But ---

9 THE COURT: --- but what did they ultimately get
10 about the defendant off the phone?

11 MS. ANDERSON: Who he was; his identity.

12 THE COURT: Pardon?

13 MS. ANDERSON: They got his identity from all that.
14 That's how they identified him. Other than that there is
15 nothing to connect him to this. It's strictly what they
16 got from the cell phone that way.

17 THE COURT: Anything else?

18 MS. ANDERSON: Beg the court's indulgence.

19 [Whereupon, Ms. Anderson and Ms. Proctor confer]

20 MS. ANDERSON: We also wanted to argue the
21 sufficiency of the evidence supporting the search
22 warrant. Do you want to hear that a little bit later or
23 do you just ---

24 THE COURT: --- I'm sorry, want to argue what?

25 MS. ANDERSON: The sufficiency of the affidavit of

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1 that search warrant that was issued a year later. Do you
2 want to do that?

3 THE COURT: Yes, if you're talking about -- I
4 assume you're talking about suppressing the information
5 received from the seizure of the phone and you're also
6 saying the search warrant is insufficient?

7 MS. ANDERSON: Yes.

8 THE COURT: What did they receive on the second
9 time they searched that you think ---

10 MS. ANDERSON: --- there are two searches. The
11 initial search happened in December of 2011. That one
12 was warrantless and we argued that that was illegal as a
13 warrant to search under the Fourth Amendment.

14 There was a second search in December of -- I mean
15 November of 2012 of the same cell phone. They didn't
16 have any more information than they had on the 28th of
17 December 2011.

18 And we argue that what they put in there was
19 insufficient on its face. So that search warrant is
20 invalid as well. So there are two searches and we think
21 they are both illegal.

22 THE COURT: Well, let's do both of them since we're
23 talking about them. Let me hear you on the second one.

24 MS. ANDERSON: Our issue with this search warrant
25 is that he lists in there the reason it was issued that

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1 the affiant believed that the property sought was on the
2 subject's premises. That on -- beg the court's
3 indulgence.

4 [Whereupon, Ms. Anderson and Ms. Proctor confer]

5 THE COURT: Ms. Anderson, pull the microphone
6 around. The court reporter is having a hard time hearing
7 you. Speak up.

8 MS. ANDERSON: I'm sorry. I will thank you. What
9 he lists in there there is some inaccuracies within there
10 that he presented to the Magistrate Judge in this
11 warrant. He states that on December 22, 2011 between
12 19:00 and 22:30 hours P.D. officers responded to the
13 scene. That's inaccurate. He -- they responded
14 afterwards. I believe it was 23:08. So that ---

15 THE COURT: --- the time is inaccurate?

16 MS. ANDERSON: The time is inaccurate. They were
17 not there for that whole time; they did not respond
18 during that time. They came afterwards.

19 THE COURT: What difference would that make?
20 Assuming it's a Scribner's error what difference would
21 that make as far as the validity of the warrant?

22 MS. ANDERSON: The reason that it is important is
23 that when an officer writes out an affidavit for a search
24 warrant they are swearing before a Magistrate judge that
25 everything in here is accurate to the best of their

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1 knowledge ---

2 THE COURT: --- I know. But just assume it's a
3 Scribner's error; so what?

4 MS. ANDERSON: We're just pointing out what we
5 believe is wrong and that they actually ---

6 THE COURT: --- I know you're pointing out what you
7 believe is wrong but answer my question. If it's a
8 Scribner's error so what?

9 MS. ANDERSON: So what? It just shows that he is
10 being inaccurate in what he is presenting to the
11 Magistrate ---

12 THE COURT: --- okay, go ahead ---

13 MS. ANDERSON: --- and it brings into question
14 everything else that he is putting in the affidavit.

15 THE COURT: Okay.

16 MS. ANDERSON: He also listed as -- since Mr. Brown
17 is qualified as a suspect. At that time Mr. Brown had
18 been in jail for about ten months. He had already been
19 arrested, he had already been charged. He had already
20 been indicted the first time.

21 And it was only after turning down this deal
22 preparing for trial that they indicted him the second
23 time they decided that they needed to do a search
24 warrant. So at that time he was no longer a suspect. He
25 was charged, he was in jail, and he was preparing for

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1 trial. And that's what we believe is inaccurate in
2 there. It's exclusionary; it's just stating things that
3 don't have a reason for why they are being stated; it's
4 just saying the defendant is a suspect. And we believe
5 that due to those inaccuracies that if the Magistrate had
6 known he may or may not have issued that warrant.

7 THE COURT: If he had known the time was wrong?

8 MS. ANDERSON: If he had known the time was wrong
9 and that Mr. Brown had already been charged ---

10 THE COURT: --- you mind sharing a copy of that
11 with me?

12 MS. ANDERSON: Of the warrant?

13 MR. SIMPSON: It's -- we pre-marked one for I.D.
14 only as State's 1 if you'd like me to...

15 THE COURT: Under what?

16 MR. SIMPSON: I've got one pre-marked. May I
17 approach?

18 THE COURT: Yes.

19 MR. SIMPSON: It's marked but obviously not entered
20 as State's 1. It's a copy of the warrant Ms. Anderson...

21 [Whereupon, documents are proffered to the court]

22 THE COURT: Thank you, sir. Anything else on the
23 warrant?

24 MS. ANDERSON: No, Your Honor.

25 THE COURT: All right. I'll be glad to hear from

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1 the State.

2 MR. SIMPSON: Thank you, Your Honor. We have
3 present in the court right now Detective Lester who came
4 in to testify on this issue. I'm going to suggest after
5 hearing Ms. Anderson's argument that there is obviously
6 some great legal disagreement between us but there are
7 really no factual disputes that need to be resolved
8 through testimony from Detective Lester.

9 And if any time I am arguing that there is anything
10 that Ms. Anderson thinks needs testimony on we're happy
11 to accommodate her. It sounds to me like at least the
12 bare facts of what happened here there is really no
13 factually dispute requiring testimony.

14 THE COURT: Okay.

15 MR. SIMPSON: As to the underlying issue I guess
16 we'll start with the constitutional issues. The State's
17 position is that while Detective Lester did later obtain
18 a search warrant in being cautious that the 4th Amendment
19 doesn't require a warrant either for his initial search
20 or his later search. I'd like to approach, Your Honor,
21 if I may with a few cases. Court's indulgence.

22 [Whereupon, Mr. Simpson reviews documents]

23 MR. SIMPSON: I'd point you first to the South
24 Carolina State case of State v Williams. I have a copy
25 here for you but that's 297 S.C. 404 -- I'm sorry; the

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1 State v Dupree 319 S.C. 454 which states abandoned
2 property has no protection from either the search or
3 seizure provisions of the 4th Amendment.

4 And I think what we have to realize here is as has
5 already been pointed out, police responded to a
6 residence. At the residence the back window was broken
7 out, there was property missing, and on the floor was a
8 cell phone.

9 So in all this hearing the defendant is asserting a
10 4th Amendment expectation of privacy in a device in a
11 cell phone that was left in another person's residence.
12 And I would submit that is an unreasonable expectation of
13 privacy. And again I cite State v Williams -- may I
14 approach?

15 THE COURT: Yes.

16 MR. SIMPSON: Which is a case discussing abandoned
17 property.

18 [Whereupon, Mr. Simpson proffers documents to the
19 court].

20 THE COURT: The point that -- I understand your
21 argument but abandoned property -- here we are talking
22 about a cell phone that has a locked -- you've got to
23 know a code to get into it, okay ---

24 MR. SIMPSON: --- oh, and on that fact ---

25 THE COURT: --- why doesn't that give you

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1 expectation of privacy when you put a code on that phone
2 and then the police come in and circumvent that code to
3 get into that phone to retrieve information. Now why
4 isn't that an expectation of privacy? I don't think that
5 has anything to do with abandoned property.

6 MR. SIMPSON: Well, Your Honor ---

7 THE COURT: --- now I understand the analogy you
8 are making but I guess my question to you in my opinion
9 the only reason that this could possibly be an
10 expectation of privacy is that he put a code on it.

11 Now if the phone didn't have a code on it he may not
12 have an expectation of privacy. But obviously why didn't
13 he have an expectation of privacy with the code? Then
14 the police take it and circumvent the code.

15 MR. SIMPSON: Well Your Honor, I would draw the
16 analogy ---

17 THE COURT: --- I need to hear some testimony on
18 that. You said you're not going to call him but I
19 suggest you call him to find out how he circumvented it,
20 why he circumvented, and what he obtained as a result of
21 that.

22 MR. SIMPSON: I'd be happy to. The code was 1-2-3-
23 4.

24 THE COURT: Okay. Well, that was probably easy to
25 figure out to begin with. But it's still a code.

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1 MR. SIMPSON: That's correct, Your Honor. And I
2 would draw the analogy between the legal situation. I've
3 got to go back to get the case name but there is a case
4 where an individual is transporting a large amount of
5 cocaine in a locked suitcase.

6 THE COURT: Okay.

7 MR. SIMPSON: What happened; very unlucky for him,
8 is his car breaks down and catches on fire. Knowing the
9 situation he runs from the scene. When the police
10 arrive and at the scene is a burning car and a suitcase.
11 They circumvent the lock on that suitcase and find the
12 cocaine.

13 I believe the holding of that case in so doing is
14 abandoned property. He can't leave it at the scene and
15 then later assert that because the suitcase was locked
16 that it was a 4th Amendment violation.

17 THE COURT: Do you have that case?

18 MR. SIMPSON: If I can have a moment, I will. I
19 didn't expect we would go here. I do have a case ---

20 THE COURT: --- why didn't you expect we were going
21 here?

22 MR. SIMPSON: Well, I have the case here of People
23 v Daggs, which is a California case. This involves a
24 dropped cell phone ---

25 THE COURT: --- where else would we be going?

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1 MR. SIMPSON: Well, I think -- it involves a locked
2 cell phone.

3 [Whereupon, Mr. Simpson proffers documents to the
4 court]

5 MR. SIMPSON: One second, Your Honor, let me find
6 the case.

7 THE COURT: The locked suitcase has a lot of
8 similarities to the case we are talking about.

9 MR. SIMPSON: I agree. I thought that -- in the
10 case that I just handed you about the dropped cell phone
11 on the scene, which is exactly the situation here ---

12 THE COURT: --- did it have a code on it?

13 MR. SIMPSON: I don't know on that case.

14 THE COURT: This case you just handed me in
15 California on a dropped ---

16 MR. SIMPSON: --- I don't think it mentions a code
17 on the cell phone but I don't think that is dispositive
18 of whether or not they retained the property ---

19 THE COURT: --- so you think the right of privacy
20 was abandoned when the phone was left at the scene of the
21 crime or the alleged crime?

22 MR. SIMPSON: I think when an individual takes
23 items from another person's house without permission
24 breaking through a rear window and the fact that he
25 dropped something doesn't mean he later gets to assert

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1 4th Amendment rights in the possessions that he dropped
2 in another individual's house.

3 THE COURT: Because it's not in his home, it's not
4 on his person ---

5 MR. SIMPSON: --- it's been left ---

6 THE COURT: --- stand up ---

7 MR. SIMPSON: --- I apologize. I mean no
8 disrespect. It was left in the course of a crime and
9 obviously the police have a right -- its basic
10 investigation; they are not taking something off a person
11 or going in a person's car. They are finding something
12 on the scene of a crime ---

13 THE COURT: --- but they knew it was not the owner
14 of the residence's phone.

15 MR. SIMPSON: Absolutely. The owner said I've
16 never seen that phone before ---

17 THE COURT: --- and they got it in their
18 possession.

19 MR. SIMPSON: Correct.

20 THE COURT: And they have absolute control over it.

21 MR. SIMPSON: Absolutely.

22 THE COURT: It's found at a crime scene. They got
23 obviously a reason to get a search warrant. Why not get
24 one?

25 MR. SIMPSON: They believed ---

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1 THE COURT: --- it's not like the phone is going to
2 run off somewhere or somebody is going to take it. The
3 battery may run down, but the battery can be recharged.
4 Why not get a search warrant?

5 MR. SIMPSON: They later did is the answer to that.

6 THE COURT: I know they later did. But the
7 identification of the defendant had already been made
8 from the phone.

9 MR. SIMPSON: My argument would be that there is
10 legally no requirement that they get it. Why they didn't
11 I think they would say they are on the scene of the crime
12 and they are investigating a crime. It's the first thing
13 that naturally investigating a crime they are going to do
14 is pick up this evidence. What is this? What is it?

15 Actually it was the victim of the residence had it
16 in his hand when they arrived and said this was on my
17 floor. It's not mine. I think that's basic police work.
18 And again we can always look back and pick it apart but
19 the question here is there a 4th Amendment violation ---

20 THE COURT: --- well, let's just assume for purposes
21 of your argument let's assume that it was on his person
22 when they arrested him.

23 MR. SIMPSON: I think we are looking at a whole
24 different ballpark if it was on his person ---

25 THE COURT: --- so you -- the crux of your argument

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1 is you think became it was abandoned at the crime scene
2 therefore there is no expectation of privacy under the
3 4th Amendment?

4 MR. SIMPSON: Absolutely, Your Honor. And I think
5 in California dealing with the specific -- and I realize
6 it is not a finding of course ---

7 THE COURT: --- well do you have anything east of
8 the Mississippi?

9 MR. SIMPSON: I don't, Your Honor. But the case I
10 presented was this very situation where a person dropped
11 his cell phone at the crime scene and it was used
12 initially -- here is something we suspect belongs to the
13 person that did this.

14 It was then picked up and used to track down the
15 person in the same manner it was here. We would ask you
16 to follow the same we think is a very thorough
17 Constitutional analysis in that case and very persuasive.
18 And we would ask you to follow that in finding no ---

19 THE COURT: --- what was retrieved as a result of
20 that?

21 MR. SIMPSON: He opened the -- I'm thinking at this
22 point maybe testimony might be the better idea. But he
23 opened the phone, there were a few contacts -- you know
24 everyone has a contact list in his phone, labeled as
25 family members. I think in this instance ---

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1 THE COURT: --- the problem -- if I grant her
2 motion she doesn't even know what needs to be suppressed.

3 MR. SIMPSON: This has all been documented pretty
4 well. I think Ms. Anderson knows that. We talked about
5 what if it didn't happen. The warrant was part of it.
6 It was merely oh, here's the person's Grandma let's call
7 Grandma. The Grandma -- the detective will testify the
8 Grandmother said -- there was a background photograph,
9 the phone had background photographs of the defendant.

10 I believe the Grandmother said -- no, I believe he
11 looked in the D-M-V records and said this photo belongs
12 to so and so. And then -- I would also add that when
13 they talked to the defendant he said yes, that's
14 absolutely is my phone. So ownership of the phone is not
15 really...

16 Following that a search warrant was obtained and
17 what we are seeking to admit in this trial is quite some
18 detailed records of the activity on that phone and later
19 obtained by a warrant. And I would submit -- respond to
20 Ms. Anderson's questions of the warrant that they were
21 just mere Scribner's error. She is correct the time --
22 the detective in the time put the timeframe of the actual
23 crime and they responded actually five or ten minutes
24 later. I don't believe that renders the warrant
25 meaningless.

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1 THE COURT: I mean looking at the warrant -- as far
2 as her motion to suppress as a result of the warrant that
3 was obtained on November the 5th, 2012 that motion is
4 denied. Now whether or not ---

5 MR. SIMPSON: --- I do ---

6 THE COURT: --- the second of obtaining the warrant
7 should be a fruit of the poisonous tree as a result of
8 the initial search is a different issue.

9 MR. SIMPSON: And I would totally agree with Ms.
10 Anderson. This entire case arises from this phone.
11 We're not disputing that. I think the warrant later
12 cures a lot of the problem, but certainly it -- and the
13 detective will testify to those, locating this phone,
14 which ---

15 THE COURT: --- how did the police identify the
16 owner of the phone? You said it had a picture on the
17 phone when you flip it open or what?

18 MR. SIMPSON: Can I -- may I present the detective?
19 I just don't want to ---

20 THE COURT: --- yes ---

21 MR. SIMPSON: --- the State calls Detective Jordan
22 Lester ---

23 THE COURT: --- and I'm not trying to implicate how
24 I'm going to rule but I think she's got a legitimate
25 issue she is raising.

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1 MR. SIMPSON: Sure. I agree. I thought maybe we
2 were agreeing with most things but I guess not.

3 [Whereupon, Detective Lester comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court as follows: do you swear or affirm your
6 testimony will be the truth, the whole truth, and nothing
7 but the truth so help you God]

8 CLERK OF COURT: State your full name and spell
9 your last name for the record.

10 THE WITNESS: Detective Lester with the City of
11 Charleston Police Department.

12 - - - - -

13 DETECTIVE JORDAN LESTER,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. Detective Lester you've been present for our
19 discussion involving the phone, correct?

20 A. Yes, sir.

21 Q. And you didn't respond to the scene on that night,
22 correct?

23 A. I did not.

24 Q. But you were assigned to this case later as lead
25 detective?

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1 A. Yes, sir.

2 Q. And were you informed that a phone had been found?

3 A. Yes, sir.

4 Q. And it had been found in the residence of the
5 victim?

6 A. Yes, sir.

7 Q. And that the victim did not know whose phone that
8 was?

9 A. No.

10 Q. Did you think perhaps this phone found on the scene
11 might further your investigation?

12 A. Yes.

13 Q. And so how did you proceed?

14 A. I turned on the phone. There was a pass code on it,
15 1-2-3-4; lucky guess. When I opened the phone up and
16 unlocked the device a picture of a black male with
17 dreadlocks was in the background of the phone as soon as
18 you flipped it open; the same as the background photo.

19 We then went to the contacts list and looked through
20 the contacts looking for a relative. I believe we found
21 a Grandmother in the contact list. We took her phone
22 number and ran it in a database in Accrate [ph] it gives
23 a list of everyone, relatives, associates, neighbors;
24 things of that nature. And we were looking for a black
25 male roughly in his 20's. We wanted to determine who the

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1 owner of the phone was. So with the number of Grandma
2 putting that in the database we got the list of
3 relatives. It also gives an age range in Accrate and we
4 began to look those people up in South Carolina D-M-V to
5 get their license picture. And we matched the background
6 of the phone with the South Carolina D-M-V.

7 Q. Now, this phone when you are looking at this phone
8 -- and it's already been logged into evidence at the
9 Charleston Police Department correct?

10 A. Yes.

11 Q. And you know that -- you have knowledge at that
12 point that this phone was left at a crime scene?

13 A. Yes.

14 Q. So why open the phone? Why not obtain a warrant
15 right then?

16 A. It's abandoned property. No one is claiming it.

17 Q. So I understand that a legal conclusion but under
18 your understanding at the time?

19 A. We didn't know whose phone it was.

20 Q. And you later -- we came up to court and later you
21 met with the Solicitor's office and we discussed
22 obtaining some further records?

23 A. Yes, we did.

24 Q. And at that time we -- you obtained a search warrant
25 for those ---

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1 A. --- yes ---

2 Q. --- records. And a Magistrate signed that search
3 warrant?

4 A. Yes.

5 Q. Detective, I'm handing you what has been marked for
6 I.D. only as State's exhibit 1. Do you recognize that?

7 [Whereupon, the witness is shown item]

8 A. Yes, sir.

9 Q. And what is that?

10 A. It's a search warrant for the cell phone that I
11 obtained.

12 Q. And what date was that approved by the Magistrate?

13 A. November 5, 2012.

14 Q. Could you flip to the affidavit supporting that
15 search warrant?

16 [Whereupon, the witness complies]

17 Q. I believe the defense pointed out that in your
18 affidavit you put on December 22, 2011 between 19:00
19 hours and 22:30 hours.

20 A. Yes..

21 Q. Is that -- now is that the suspected time of the
22 crime or is that when the police responded?

23 A. It was the suspected time of the incident -- the
24 crime.

25 Q. And when did police respond?

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1 A. I believe they responded shortly after 22:30.

2 Q. Okay. So technically -- in the strictest sense of
3 the word that is incorrect, correct?

4 A. Yes.

5 Q. They responded shortly after 22:30, not between
6 19:00 and 22:00?

7 A. Yes.

8 Q. Also you referred to the defendant as a suspect. Is
9 there any real significance to that word suspect?

10 A. No.

11 Q. Had he been proven convicted of this crime at that
12 time?

13 A. No.

14 Q. Did you later -- taking this information from the
15 cell phone did it later lead you to the defendant?

16 A. Yes.

17 Q. You didn't personally speak with the defendant did
18 you?

19 A. I did not.

20 Q. But as the lead agent do other officers report back
21 to you on the progress in this case?

22 A. Yes.

23 Q. Is it your understanding that this was the
24 defendant's phone?

25 A. Yes.

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1 Q. And that was admitted?

2 A. I'm sorry?

3 Q. That he admitted it was his phone?

4 A. Yes, he did.

5 Q. Did he -- is it your understanding he admitted he
6 had his phone at the time of the burglary?

7 A. Yes, sir.

8 Q. Detective, please answer any questions Ms. Anderson
9 has.

10 THE COURT: Ms. Anderson?

11 MS. ANDERSON: Thank you.

12 CROSS-EXAMINATION

13 BY MS. ANDERSON:

14 Q. I just have a few questions for you. So when the
15 phone was collected as evidence it was submitted by
16 another officer in the case and that was on probably the
17 early morning of Friday the 23rd of December, correct?

18 A. Uh huh.

19 Q. And the first time you had any contact with the
20 phone was on the 28th of December, five days later?

21 A. Yes, ma'am.

22 Q. So almost a week later. There is no physical
23 evidence attached to it as far as being fingerprints or
24 anything else like that.

25 A. No, ma'am.

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1 Q. So the only connection to whoever may or may not
2 have been in that apartment was the phone?

3 A. Yes, ma'am.

4 Q. The cell phone that was in evidence?

5 A. The lost cell phone, yes.

6 Q. And the evidence -- and the cell phone was in
7 evidence that entire time?

8 A. Uh huh.

9 Q. You thought that whoever had been in that apartment
10 and left the phone they didn't do it on purpose did they?
11 You didn't think so?

12 A. Probably not.

13 Q. But that was your understanding. You didn't think
14 that they had just thrown in the phone, here's my phone.
15 You thought it was left behind.

16 A. Yes.

17 Q. So when you pulled it from evidence you activated it
18 and went through it and you unlocked it to get into it.
19 There was a lock on there.

20 And you would not have been able to figure out the
21 owner of the cell phone without getting into that phone;
22 without getting into that contact list.

23 A. At the time, no.

24 Q. Okay. Well, why didn't you get a search warrant?

25 A. Because it was lost property. It was in the middle

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1 of the scene, you know.

2 Q. But you just said you thought he hadn't dropped it
3 on purpose. Why would you think something maybe not
4 dropped on purpose wouldn't need a search warrant for?

5 A. I'm sorry; what's the question?

6 Q. Sorry. Let me -- you just said that you didn't
7 think that the phone had been left on purpose, that it
8 had been left behind by accident. So why wouldn't you
9 just get a search warrant for something left behind by
10 accident?

11 A. Because it's lost property.

12 Q. Because all you knew is that it didn't belong to the
13 resident. You just did not know who it belonged to?

14 A. Uh huh.

15 Q. So you went into the phone and you got the list of
16 relatives. And by doing that you got -- I'm sorry, let
17 me back up. You got the Grandmother's phone number and
18 looked her up in the database right?

19 A. Uh huh.

20 Q. You went through and put her in that database with a
21 list of relatives?

22 A. Yes. Her number came up with her name and then the
23 relatives.

24 Q. And one of the relatives that came up was Lamar
25 Brown, correct?

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- 1 A. Yes, ma'am.
- 2 Q. And you used his name and went into the D-M-V
3 database to pull up his driving record and photo; mainly
4 for the photo reasons?
- 5 A. Yes.
- 6 Q. And used that to identify him?
- 7 A. Yes.
- 8 Q. The side by side ---
- 9 A. --- exactly ---
- 10 Q. --- with the individual in the background picture.
11 Let's go through that search warrant. Do you still have
12 it up there?
- 13 A. Yes, ma'am.
- 14 Q. So all this information that you listed in the
15 warrant -- not the -- the serial number of the phone, the
16 phone number, the model number you got those from the
17 phone itself when you went into it, correct?
- 18 A. Yes, ma'am. They are located on the phone.
- 19 Q. You said that the subscriber that was being looked
20 at as a suspect in this case and you said you knew the
21 subscriber was Lamar Brown, correct?
- 22 A. Yes, ma'am.
- 23 Q. And you knew it was Lamar Brown because you had
24 already gone into the phone back in December of 2011?
- 25 A. And him admitting that that's his phone.

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1 Q. But you got to go talk to him because of the
2 information that you got from the search on ---

3 A. --- that's how we were able to put it all...

4 Q. But you were never would have been able to talk to
5 him or have anybody to talk to if you hadn't gone into
6 that phone in the first place.

7 A. At that time.

8 Q. And that's the information that you used in this
9 warrant here?

10 A. Yes, ma'am.

11 Q. And again you said Mr. Brown was qualified as a
12 suspect but he had already been arrested at that time and
13 charged.

14 A. Yes, ma'am.

15 Q. So you weren't looking for anybody else at that
16 time?

17 A. Not at that time.

18 Q. And he -- it says he admitted the phone located at
19 the scene was his phone and that he lost it after the
20 burglary occurred. And you never spoke to him; this
21 comes from other officers correct?

22 A. Yes.

23 Q. And they didn't write any reports? They just told
24 you about it?

25 A. Yes. They took the statement.

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1 Q. But they were only able to get there and take the
2 statement because of what the information that you got
3 back in 2011?

4 A. Yes.

5 Q. And they went that same day that you got the
6 information?

7 A. Yes.

8 Q. The next page, page 2 of your search warrant
9 affidavit you're listing your reasons of why you wanted
10 to get it.

11 You stated, through experience and training you know
12 that cellular service providers maintain records and they
13 include subscriber information, account registration,
14 billing and air time records, outbound and inbound call
15 detail, connection time and dates, Internet routing
16 information, message content.

17 You know there is a lot of stuff you can get off of
18 a cell phone, correct?

19 A. Yes, ma'am.

20 Q. And you know that through your training and
21 experience correct?

22 A. Yes, ma'am.

23 Q. You know that a lot of that information on cell
24 phones is personal?

25 A. Yes, ma'am.

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1 Q. It's not just limited to the number that they called
2 or anything; you know there is a lot more information
3 that can be retrieved from cell phones.

4 A. Yes, ma'am.

5 Q. And some of that may or may not be -- some of that
6 may not be connected to any crime at all; let alone the
7 crime that you're investigating, correct?

8 A. Yes, ma'am.

9 Q. So knowing all of that and knowing what could be in
10 this phone you still did not get a search warrant before
11 going into it that first day. I'm sorry, the 28th --

12 A. It was abandoned.

13 Q. And as far as you know nobody tried to get into the
14 phone at the scene? Officer Randall didn't try to get in
15 the phone there?

16 A. Not that I am aware of.

17 Q. So the first time anybody tried to get into the
18 phone was on the 28th when you got into it.

19 A. Yes, ma'am.

20 MS. FLYNN: Beg the court's indulgence for just a
21 minute.

22 Q. That's all my questions. Thank you.

23 THE COURT: Mr. Simpson, any reply?

24 MR. SIMPSON: No reply, Your Honor.

25 THE COURT: Okay. You may step down. Thank you

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1 so very much.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Did you find that site on that case you
5 were talking about the suitcase?

6 MR. SIMPSON: I'm still looking, Your Honor.

7 THE COURT: You're still looking? Okay.

8 MR. SIMPSON: I am.

9 THE COURT: Ms. Flynn, you wouldn't have it would
10 you?

11 MS. FLYNN: No, Your Honor. I don't have it.

12 THE COURT: Ms. Proctor, would you happen to know
13 what case he is talking about?

14 MS. PROCTOR: I have no idea.

15 THE COURT: Huh?

16 MS. PROCTOR: I don't.

17 THE COURT: Where was it? What case, what state?
18 It's a federal court case?

19 MR. SIMPSON: Your Honor, last night I read while I
20 was home a review of several cases on ---

21 THE COURT: --- was it a federal case or a South
22 Carolina case or?

23 MR. SIMPSON: I don't know. I really don't know.
24 I read it in an article about many cases involving
25 abandoned property last night. I promise you if I can

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1 find it I'm going to ---

2 THE COURT: --- all right. Keep looking. I am
3 going to ---

4 MS. ANDERSON: --- I do have one more thing to add
5 if that's okay --

6 THE COURT: You have one more thing what; on the
7 motion to suppress?

8 MS. ANDERSON: Yes, just one more thing in response
9 to what Mr. Simpson said about that vehicle and the drugs
10 that were in the car.

11 In that instance that meets the -- because there was
12 an emergency on the scene. That car was on fire. There
13 is no way they are going to find out what, who, or
14 anything is in there without going in there; without
15 looking. In this case it would make more sense if ---

16 THE COURT: --- if it was an emergency all they had
17 to do was take the suitcase out.

18 MS. ANDERSON: All they had to do was take it. A
19 seizure is different than a search. Taking something for
20 the limited purpose of holding onto it to determine
21 whether a search warrant is required or not is something
22 different than just taking it and going through it
23 because you feel like you can; you feel like you should
24 be able to. In this case it would make more sense if the
25 officer on scene had started going through it right there

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1 -- right then and there to see if maybe there was
2 something he could do to catch somebody if they were
3 still nearby. That would make a little bit more sense.
4 In this case the phone sat in evidence for five days.
5 There is no hurry. There is no emergency. There is no
6 reason to not get a search warrant for the cell phone.

7 And in South Carolina the Constitution provides
8 great protection for just the 4th Amendment itself
9 because it includes a right to privacy. And by including
10 that express protection of a right to privacy the people
11 of South Carolina have greater protection than just the
12 mere 4th Amendment just in and of itself.

13 And we argue that that means that Mr. Brown did have
14 a right to privacy. And that they should have taken
15 precautions. They should have gone about it the right
16 way and gotten a search warrant before getting into that
17 question ---

18 THE COURT: --- but why isn't it abandoned property
19 or lost property? The detective phrased it as lost
20 property. Mr. Simpson phrased it as abandoned property
21 but they are both the same. Why isn't it lost property
22 or abandoned property at a crime scene?

23 MS. ANDERSON: Well, a ---

24 THE COURT: --- and they have the right to do
25 whatever they have since it's been abandoned and

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1 therefore it's expectation of privacy is therefore ---

2 MS. ANDERSON: --- well, abandonment implies ---

3 THE COURT: --- gone. I'm sorry, what?

4 MS. ANDERSON: I'm sorry, abandonment implies a
5 voluntary relinquishment of the property. And the
6 detective called to the scene said he didn't think
7 somebody had just thrown it away. He thought that it had
8 been left behind. He thought that it still belonged to
9 somebody else and he knew that. And that was the reason
10 he wanted to get into it because that somebody else it
11 belonged to he believed was the person involved in ---

12 THE COURT: --- so you think the cases that refer
13 to lost property and abandonment is they did it
14 intentionally -- abandoned the property? I'm sure it
15 probably fell out of his pocket or wherever he had it
16 when he was in the house. But your theory is he has to
17 willfully, intentionally abandon the property? So if he
18 had put it on the table and said I don't want that phone
19 anymore that would be the abandonment?

20 MS. ANDERSON: Well, the classic example of that is
21 when a defendant is walking -- or an individual is
22 walking down and throws some drugs away on the street and
23 the officers see that and the guy is like well, that's
24 mine; you can't get into that. But they threw it down on
25 the ground; they showed that they didn't want it anymore.

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1 Or perhaps putting something in a garbage can and putting
2 it out on the street corner. That's different than
3 losing something. That person who has lost something
4 doesn't automatically give up their ownership right to it
5 and the right to privacy of it ---

6 THE COURT: --- do you have any cases that address
7 that issue?

8 MS. ANDERSON: The one case that I gave you from I
9 believe Indiana address that --

10 THE COURT: --- that 4th circuit -- I mean the 7th
11 circuit?

12 MS. ANDERSON: Yes, the 7th circuit case. And it
13 is east of the Mississippi.

14 THE COURT: Pardon?

15 MS. ANDERSON: It is east of the Mississippi.

16 THE COURT: All right. I'm just curious if he had
17 anything east of the Mississippi.

18 MS. ANDERSON: Well, Indiana.

19 THE COURT: Pardon? Indiana.

20 MS. ANDERSON: The 7th circuit; that's a little bit
21 closer. Or am I wrong ---

22 THE COURT: --- Okay. Thank you so very much.

23 MS. ANDERSON: Thank you.

24 MR. SIMPSON: Your Honor, this isn't the case that
25 I was referring to earlier but its U.S. v Tolbert 692 F2d

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1 1041, a 6th circuit case. It involves a locked suitcase
2 left at an airport full of cocaine. The lower court
3 suppressed it for this very reason because the law
4 enforcement broke the locks to go into the suitcase.
5 It was deemed an error because it was clearly abandoned
6 property seized. The facts in that case established that
7 the suitcase had been abandoned so it was fine for the
8 law enforcement to circumvent that lock.

9 THE COURT: Okay. All right. You got the site?

10 MR. SIMPSON: 692 F2d 1041.

11 THE COURT: Okay. Thank you so very much.

12 MS. ANDERSON: I do have something in here -- it's
13 U.S. v Place and it's a Supreme Court case. It says for
14 law enforcement authorities to have probable cause to
15 believe that a container was contraband or evidence of a
16 crime but have not secured a warrant the court interprets
17 the Amendment to permit seizure pending issuance of a
18 warrant to examine the contents.

19 THE COURT: And what case was that?

20 MS. ANDERSON: U.S. v Place, 462 U.S. 696.

21 MR. SIMPSON: And that is when they seized property
22 from the person. It does not involve abandoned property
23 left and abandoned at a crime scene.

24 THE COURT: Is that correct, Ms. Anderson? What's
25 the facts of the case? I mean it's easily -- I mean you

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1 look at the facts and answer that question.

2 MS. ANDERSON: I don't know ---

3 THE COURT: --- was it seized or was it abandoned?

4 MS. ANDERSON: In this case it says the officers'
5 observations led them to reasonably believe the traveler
6 was carrying luggage. So the traveler ---

7 THE COURT: --- okay. So that wasn't necessarily
8 abandonment.

9 MS. ANDERSON: But by extension I believe that
10 seizure was fine in that case that I ended up to you
11 Florence Lopez where they went into the phone for the
12 limited purpose of getting the number so they could
13 obtain a search warrant. That's fine. And that phone
14 was found on the person that they -- that's fine for the
15 limited purpose.

16 The right to privacy in the 4th Amendment is very
17 important. It's there to protect the individual against
18 unreasonable search and seizures. There is no reason
19 that they should not have done it other than they didn't
20 feel like they had to. It's just such an important
21 right. They should be able to protect it by getting a
22 search warrant.

23 THE COURT: Okay. All right. Let's move on to
24 the -- you want to do the motion in limine or the prior
25 convictions?

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1 MR. SIMPSON: Your Honor, I found the case.

2 THE COURT: Pardon?

3 MR. SIMPSON: I found the case. I just wanted you
4 to know I wasn't making up facts. It's United States v
5 Oswald, the case that I described to the court earlier.
6 And that's 783 F2d 663 --

7 MS. ANDERSON: 6 what?

8 MR. SIMPSON: 663.

9 THE COURT: That's the one you were talking about
10 the suitcase?

11 MR. SIMPSON: Yes, Your Honor. It's got two other
12 cites therein with similar issues. I think it's very
13 relevant to what we are talking about.

14 THE COURT: Okay. Thank you very much. You want
15 to do the motion in limine first or you want to do the
16 prior convictions?

17 MS. ANDERSON: Prior convictions.

18 THE COURT: Okay. First of all let me ask the
19 State what did it plan on doing concerning the prior
20 conviction? I know you got an Indictment. One of the
21 elements of the Burglary was it two or three prior
22 burglary convictions or house break-in convictions?
23 That's the element of the new statute.

24 MS. FLYNN: Your Honor, it's two prior. He does
25 have more than that but we're only pursuing the two prior

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1 but ---

2 THE COURT: --- what do you plan on doing as far as
3 those convictions are concerned because the case I read
4 says all you can do is offer the conviction itself. And
5 the court is supposed to give them a limited instruction;
6 limited for the purpose of the element of the Burglary
7 not bad acts.

8 MR. SIMPSON: We are limiting it just as that case
9 follows. We're going to put up Sarah Lippe from the
10 Clerk's office ---

11 THE COURT: --- there is a case in South Carolina
12 on that point.

13 MR. SIMPSON: State v Benton.

14 THE COURT: Right.

15 MR. SIMPSON: And then I think a later case says
16 even like in this case where we have six we have to limit
17 it to two. And that's what we are going to do is present
18 that through testimony from the Clerk's Office, present
19 two sentencing sheets, have her merely state that yes, we
20 have two prior convictions for Burglary on this person
21 and leave it at that.

22 THE COURT: Why isn't that admissible under the
23 case of...

24 MS. ANDERSON: Here's what our issue is with this.
25 There is no question that evidence of prior convictions

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1 is completely prejudicial under Rule 403. It's only
2 recognized under Lyle and normally its only let in under
3 Lyle you know for ---

4 THE COURT: --- I agree with it but we've got a
5 statute that specifically makes that an element of
6 Burglary. Basically what the legislature had done is
7 allowed the State to come in with bad acts as an element
8 of Burglary is what they have done, but that's the
9 statute.

10 MS. ANDERSON: Our argument, and we're just putting
11 it on the record here, is that originally they indicted
12 this case back in April of 2012 strictly on Burglary
13 First Degree elements of entry into a dwelling at night
14 with the intent to commit a crime therein. It was only
15 thereafter after he turned down a plea deal and said I
16 wanted a trial and I wanted to go down into trial that
17 they re-indicted him with the ---

18 THE COURT: --- I understand. But the statute
19 allows that. Now are you saying the statute is
20 unconstitutional?

21 MS. ANDERSON: I believe so.

22 THE COURT: I mean what -- in order to buy your
23 argument I'm going to have to say that statute is
24 unconstitutional.

25 MS. ANDERSON: We are just arguing that the

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1 prosecution re-indicted him to allege his prior
2 convictions only after turning down a plea deal; only
3 after saying he wants a trial is just bootstrapping.
4 It's just a thinly veiled attempt to get in his prior
5 record when there is no reason that he prove a Burglary
6 First, they say they can prove a Burglary First without
7 the elements of his prior convictions.

8 THE COURT: Well, I understand that's what occurred
9 but what's wrong with that?

10 MS. ANDERSON: Its ---

11 THE COURT: --- I know you don't like it but what's
12 wrong with it legally?

13 MS. ANDERSON: It's violating his right to a fair
14 trial by allowing the jurors to hear his convictions ---

15 THE COURT: --- well I just said the statute, I
16 looked at it; it doesn't say and, it says or. It says at
17 night or two prior convictions. So they have that
18 option.

19 MS. ANDERSON: Well, I ---

20 THE COURT: --- now in order to buy your argument I
21 would have to say that -- allowing two convictions, two
22 prior convictions violates rules of evidence. But what
23 is unconstitutional about it?

24 MS. ANDERSON: Well, just that fact that it
25 violates his right to a fair trial by bringing it in when

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1 it is not necessary -- the State does not need to prove
2 those convictions in order to try it as a Burglary First
3 charge ---

4 THE COURT: --- so you think it's denial of due
5 process?

6 MS. ANDERSON: It does.

7 THE COURT: Okay. Thank you very much.

8 MS. ANDERSON: Thank you.

9 THE COURT: Mr. Simpson, do you think the statute
10 is unconstitutional and denial of due process?

11 MR. SIMPSON: No, Your Honor.

12 THE COURT: Bringing in the prior bad acts?

13 MR. SIMPSON: State ---

14 THE COURT: --- because common law in South
15 Carolina it would never be allowed unless he testified
16 and you impeach him with it.

17 MR. SIMPSON: Understood. I think Ms. Anderson
18 makes great points but they have already been resolved in
19 State v Benton.

20 THE COURT: Pardon?

21 MR. SIMPSON: They have already been resolved in
22 State v Benton by our South Carolina ---

23 THE COURT: --- but did they raise the
24 constitutionality of the statute in that case? I don't
25 think they did.

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1 MR. SIMPSON: Well, the objection ---

2 THE COURT: --- I don't think that issue was
3 raised.

4 MR. SIMPSON: In State v Benton ---

5 THE COURT: --- in that case they tried to
6 stipulate to it therefore they felt like since they
7 stipulated it shouldn't be allowed to go into it and the
8 court said no, that's not right. That was the issue.

9 MR. SIMPSON: Correct ---

10 THE COURT: --- not the constitutionality of the
11 statute. Now I'm asking you why doesn't it deny his due
12 process to a fair trial by allowing prior bad acts to
13 come in when you have at night in this case the statute
14 theoretically was designed when it was a Burglary in the
15 daytime.

16 MR. SIMPSON: Correct, Your Honor.

17 THE COURT: Somebody with two prior convictions --
18 now you're using it in the nighttime.

19 MR. SIMPSON: That's correct, Your Honor. But
20 again, we have more language in the statute. The statute
21 then upheld in State v Benton ---

22 THE COURT: --- but that issue wasn't raised ---

23 MR. SIMPSON: --- constitutional undercurrents in
24 Benton. They are saying that it was a violation of Lyle.
25 It was a violation of Rule 403(b) wasn't strictly put in

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1 constitutional terms but this is the issue they are
2 talking about. Is the unfairness caused by bringing in
3 prior records and the Supreme Court said very clearly in
4 that case they can do that. A legislature has determined
5 that in this one instance it is perfectly permissible to
6 meet an element, a direct element on the offense for us
7 to put in two and only two.

8 And again here we have six; but we are limiting it
9 to two because that's the direction they have given us.
10 I don't think that is a due process violation or any sort
11 of constitutional issue. Ms. Anderson is alleging that.
12 I don't know the specific part of the Constitution that
13 that would ---

14 THE COURT: --- I ---

15 MR. SIMPSON: --- other than a general due process.

16 THE COURT: I'm going to allow him to go into
17 convictions under the statute. You've raised the
18 constitutionality and it's on the record but your motion
19 is denied. I'm limiting them just to the convictions;
20 not the facts of the convictions or anything, okay.

21 MS. ANDERSON: If the defendant wishes to testify
22 will they still be limited to those two convictions?

23 THE COURT: Do what?

24 MS. ANDERSON: If the defendant wishes to testify
25 will they still be limited to those two convictions?

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1 THE COURT: I think so. I assume they will. I
2 assume you are.

3 MR. SIMPSON: I'm not going to fight this too but
4 when ---

5 THE COURT: --- I'm not going to tell him ---

6 MR. SIMPSON: --- for impeachment purposes is a
7 whole other ---

8 THE COURT: --- how to try their case. Whether
9 they want to go into it in the nighttime and conviction
10 or wait for impeachment that's their decision; not mine.
11 I'm not going to tell them how to try their case.

12 MR. SIMPSON: I believe that all six burglaries are
13 directly relevant to dishonesty. Were he to testify we
14 would seek to amend for his entire prior records, B and E
15 motor vehicles...

16 Now in our case in chief we are limiting it to as
17 direct -- cases.

18 THE COURT: I mean the only argument you can make
19 if he testifies is we can argue about -- talk about this
20 later is the ten years. And I don't know if any of them
21 are outside the ten years. As young as you are you're
22 probably not.

23 MS. ANDERSON: So outside ten --

24 THE COURT: Your motion is denied.

25 MS. ANDERSON: Thank you.

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1 MOTION IN LIMINE

2 THE COURT: All right. Motion in limine as to
3 statements. What statements did he make, Ms. Anderson
4 that you are concerned about?

5 MS. ANDERSON: There is a written statement.

6 THE COURT: A what?

7 MS. ANDERSON: Taken by Officer Thompson and we
8 believe that it was not made knowingly, voluntarily, and
9 knowingly.

10 THE COURT: The defendant made it?

11 MS. ANDERSON: It's a written statement.

12 THE COURT: Written statement. Does he admit going
13 into the house?

14 MS. ANDERSON: No. What he ---

15 THE COURT: --- does he incriminate himself?

16 MS. ANDERSON: The police believe so. What is in
17 his statement is he told the police that he had lost his
18 cell phone. He told them -- he wrote in here he lost it
19 the day after the Burglary.

20 And they had written, do you know where you lost
21 your phone. Not exactly. Where were you on the evening
22 of -- he says he was eating or something. Did you leave
23 the residence at all between the hours of 6 p.m. and
24 midnight -- there is a copy up here if you would like to
25 read through it. And he says did anyone have your cell

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1 phone during this same time 6 p.m. to midnight on
2 Thursday the 22nd or through the time of the burglary,
3 and he wrote no. And he admits that the cell phone is
4 his.

5 THE COURT: So I mean there is nothing in the face
6 of the statement where he incriminated himself.

7 MS. ANDERSON: No.

8 THE COURT: Other than ---

9 MS. ANDERSON: --- other than ---

10 THE COURT: --- other than saying that he didn't
11 lose his phone at the site of the crime?

12 MS. ANDERSON: He's saying he didn't lose it until
13 after the burglary and that -- and saying that nobody
14 else had his cell phone during that time of the burglary
15 that's the incrimination part of his statement.

16 THE COURT: Okay. Now are you saying they didn't
17 advise him of his Miranda rights? Do we have to go into
18 all that or you're saying it's not freely and voluntarily
19 given or what are you saying?

20 MS. ANDERSON: Both.

21 THE COURT: Both?

22 MS. ANDERSON: Both. That he wasn't advised of the
23 signature here but there -- normally when I see these
24 from the police department there is several lines that
25 they go through. And they usually have ---

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1 THE COURT: --- is he denying that it is his
2 signature or he's just denying it wasn't freely and
3 voluntarily given?

4 MS. ANDERSON: That it wasn't freely and
5 voluntarily given.

6 THE COURT: So we're talking about freely and
7 voluntarily?

8 MS. ANDERSON: Yes.

9 THE COURT: Giving the Miranda rights as well as
10 the statement, is that what we are talking about?

11 MS. ANDERSON: Yes. Freely and voluntarily and
12 knowingly that he knew what he was doing.

13 THE COURT: All right. Solicitor, let's limit the
14 testimony to that please, sir.

15 MR. SIMPSON: Yes, Your Honor.

16 THE COURT: I don't want to hear all the other
17 stuff okay.

18 MR. SIMPSON: Understood. Understood. The State
19 would call Dustin Thompson.

20 [Whereupon, Mr. Thompson comes forward]

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court as follows: do you swear or affirm your
23 testimony will be the truth, the whole truth, and nothing
24 but the truth so help you God]

25 CLERK OF COURT: Please state your full name and

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1 spell your last name.

2 THE WITNESS: Sergeant Dustin Thompson, T-H-O-M-P-
3 S-O-N.

4 - - - - -

5 DUSTIN THOMPSON,

6 Having been first duly sworn,

7 Was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Sergeant, good afternoon. Where are you employed?

11 A. I'm employed with the Charleston Police Department.

12 Q. And were you so employed in December of 2011?

13 A. I was.

14 Q. In what unit?

15 A. I was the administrative sergeant for James and
16 Johns Island.

17 Q. Did you have occasion on December 28th, 2011 to
18 become involved in a Burglary investigation?

19 A. Yes.

20 Q. And as part of that investigation did you speak with
21 the defendant?

22 A. Yes.

23 Q. And on what day did that conversation occur?

24 A. On the 28th of December, 2011.

25 Q. On that day did the defendant appear intoxicated?

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1 A. No.

2 Q. Did he appear to understand what you were saying?

3 A. Yes.

4 Q. Did he interact with you in a way that was easy to
5 understand?

6 A. Yes.

7 Q. Did he have any apparent mental defects?

8 A. Not to my knowledge.

9 Q. Any physical defects that you could observe causing
10 him pain?

11 A. Not to my knowledge.

12 Q. Was it a particularly long interview?

13 A. I would say probably 30 minutes.

14 Q. Okay. The entire conversation?

15 A. Yes.

16 Q. Did you hold out any promises to him in exchange for
17 talking to you?

18 A. No.

19 Q. Did you make any threats to get him to talk to you?

20 A. No.

21 Q. Did you make any misrepresentations? Did you
22 intentionally lie about anything to illicit him to
23 talking?

24 A. No.

25 Q. Explain to the court briefly if you will how you go

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1 about -- how you went about taking this statement.

2 A. When we arrived at Riverland Drive I got out of
3 the vehicle asked where Mr. Lamar Brown was; he
4 identified himself as Quan.

5 I asked him if he wanted to speak to me about an
6 incident. His family was out there. He agreed to speak
7 to me. We sat in the car -- we went and sat in the car.
8 He was in the front seat passenger seat and I was in the
9 driver's seat.

10 Q. Was he cuffed at the time?

11 A. No, he was not.

12 Q. Continue.

13 A. I advised him that it was a burglary investigation
14 and I read him his rights and then he proceeded to give
15 me the written statement.

16 MR. SIMPSON: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q. [Mr. Simpson] Sergeant, I'm handing you what has
19 been marked as I.D. only as State's exhibit 2. Do you
20 recognize that?

21 [Whereupon, the witness is shown exhibit]

22 A. Yes.

23 Q. And what is that?

24 A. It's the Charleston Police Department Advisement of
25 Constitutional Rights and his statement is after it.

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- 1 Q. Okay. Is this the material that you would have
2 reviewed on that day with Mr. Brown?
- 3 A. Yes.
- 4 Q. And does that include what we would call Miranda
5 Rights?
- 6 A. It does.
- 7 Q. And what are those rights?
- 8 A. Do you want me to read them?
- 9 THE COURT: Please don't read them all.
- 10 Q. [Mr. Simpson] Did you review all of the rights with
11 Mr. Brown that are present on that piece of paper?
- 12 A. Yes, I did.
- 13 Q. And did he appear to understand them?
- 14 A. He did.
- 15 Q. And again, any indication to you that he was
16 intoxicated?
- 17 A. No.
- 18 Q. Had any mental defects?
- 19 A. No.
- 20 Q. In any kind of pain?
- 21 A. No.
- 22 Q. Was he acting in any kind of duress --
- 23 A. He was not.
- 24 Q. And in fact you told him we are here to talk about a
25 burglary, correct?

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1 A. Yes.

2 Q. And after reviewing those rights with him did he
3 waive those rights and speak to you?

4 A. He did.

5 Q. And he did in your estimation voluntarily?

6 A. Yes.

7 Q. You then took his statement correct?

8 A. I did.

9 Q. I'm sorry; did you get him to sign anything on that
10 document before you indicated that he understood his
11 rights and was waiving them?

12 A. Yes. I read the rights and advised him of the
13 burglary investigation he did sign before the statement
14 was taken.

15 Q. Now sometimes when officers are taking a statement
16 you'll write the statement for somebody, correct?

17 A. That's correct.

18 Q. Was that true in this case?

19 A. I wrote the questions for him and he wrote the
20 answers.

21 Q. So this is written by the defendant with his own
22 hand?

23 A. Correct.

24 Q. Again, did you give him an opportunity that day to
25 fully explain himself?

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1 A. I did.

2 Q. Were there any limits placed on him on what he wrote
3 in his own statement?

4 A. There was not.

5 Q. But you did follow up with questions, correct?

6 A. Yes.

7 Q. So this is your handwriting asking the questions?

8 A. Yes, it is.

9 Q. And these questions, again this is in his own
10 handwriting. He is physically writing this on the page,
11 correct?

12 A. Correct.

13 Q. I don't have anything further.

14 THE COURT: Okay. Cross-examination?

15 MS. ANDERSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. ANDERSON:

18 Q. Good afternoon. So when you arrived at his house
19 Mr. Brown was out in the yard with his family?

20 A. Yes.

21 Q. And you pulled up. How many officers were with you?

22 A. Two.

23 Q. Two and ---

24 A. --- Me and one other officer.

25 Q. Okay. So there were two officers there?

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1 A. Yes.

2 Q. Did both of you get out?

3 A. Yes.

4 Q. And did you walk up to him or call him over to you?

5 A. When we got out of the vehicle they obviously were
6 wondering why we were there. And I asked for him and
7 that's when he identified himself as Quan.

8 Q. And you took him back in the car with you?

9 A. Yes.

10 Q. You were in the front seat and he was in the
11 passenger seat and the other officer was in the back
12 seat?

13 A. Yes.

14 Q. Did any other officers arrive during that time?

15 A. Not to my knowledge.

16 Q. Let's talk about what your practice is when you
17 enter the vehicle with either a witness or a suspect;
18 whoever you are interviewing. What do you normally do
19 when you have --

20 A. I'm sorry, could you repeat that?

21 Q. What do you normally do when you have somebody you
22 want to talk to and you want a statement from them?

23 A. First of all ---

24 Q. --- what's your usual practice?

25 A. Well, you ask them if they -- first of all you ask

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1 them if they want to talk to you. Get a verbal agreement
2 acknowledgment that they do want to talk to you. Usually
3 I don't let them talk in front of other people. I want
4 to take them somewhere where they feel private and not
5 intimidated by somebody else.

6 And if they are a suspect in a crime I are going to
7 give them their Miranda rights before I speak to them.

8 Q. Do you usually interview them in a car?

9 A. Sometimes.

10 Q. Why didn't you just take him back to the station and
11 talk to him?

12 A. I felt like at that time he didn't need to go to the
13 police department.

14 Q. But he needed to sit in the front seat of your car?

15 A. He needed to be away from his family.

16 Q. Did you ask him if he wanted his family to be there?

17 A. My recollection was he didn't want to speak in front
18 of his family.

19 Q. So going back to the statement -- and do you have it
20 in front of you?

21 A. Yes.

22 Q. Do you normally go through each and every single one
23 of these statements with an individual you are getting a
24 statement from? Do you read it to them?

25 A. Yes.

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1 Q. And say do you understand this?

2 A. In this case I do not recall because it wasn't
3 recorded but when I read it to them I look at them and
4 get an acknowledgement from them that they do understand
5 each line.

6 Q. Do you normally get them to initial next to it
7 saying yes, I understand that is what my right is?

8 A. My practice has not been to do that.

9 Q. Why not?

10 A. Just I don't do it.

11 Q. So there is nothing on here saying that you went
12 through each and every single one of these individually
13 with him?

14 A. Just his signature.

15 Q. Did you actually read those to him?

16 A. Yes.

17 Q. Did he ask you any questions about them?

18 A. Not to my knowledge.

19 Q. Did you ask him anything before giving him --
20 handing him this piece of paper?

21 A. Did I ask him anything?

22 Q. Anything at all?

23 A. In the vehicle or out of the vehicle? I mean when I
24 arrived there I asked him if he wanted to speak to me.

25 Q. Did you show him the phone when you got in the

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1 vehicle and hey, is this your phone?

2 A. When we got in the vehicle the phone was sitting in
3 my car door handle. And I didn't show him the phone
4 until after I read everything to him. And then I just
5 kind of held it up and said is this your phone. And
6 that's when we started the statement.

7 Q. Just one moment.

8 MS. ANDERSON: Beg the court's indulgence for just
9 one minute.

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Anderson, and Ms. Procter confer
12 with their client]

13 Q. No further questions.

14 THE COURT: Okay. Any redirect?

15 MR. SIMPSON: No, Your Honor.

16 THE COURT: You may step down. Thank you very
17 much.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: Anything else on the -- any other
21 witnesses?

22 MR. SIMPSON: Not on this issue, Your Honor.

23 THE COURT: Any other arguments?

24 MS. ANDERSON: No, Your Honor.

25 THE COURT: Can you tell me why you think it was

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1 not voluntarily given?

2 MS. ANDERSON: Just the fact that there is nothing
3 on here to indicate that he knew and understood each and
4 every single one of these statements and that he went
5 through it with him.

6 THE COURT: Just because he didn't initial the
7 Miranda?

8 MS. ANDERSON: And that he had him in a small
9 police vehicle with one policeman on one side and one
10 policeman on the other side --

11 THE COURT: Do you want to offer any testimony from
12 the defendant? I didn't give you -- afford you that
13 opportunity on this issue alone?

14 MS. ANDERSON: No, Your Honor.

15 THE COURT: Okay. Any other arguments?

16 MS. ANDERSON: No, Your Honor.

17 THE COURT: On the voluntariness, truthfulness, and
18 knowingly I believe you said you added to it?

19 MS. ANDERSON: No, Your Honor. I don't have
20 anything more.

21 THE COURT: Okay. Thank you so very much. All
22 right. The motion to suppress is denied. I find he was
23 fully advised of his rights in Miranda and the statement
24 was freely and voluntarily given without duress. There
25 was no -- he said it was approximately 30 minutes. He

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1 testified he understood the -- appeared to understand. I
2 heard nothing that would affect the voluntariness of the
3 giving of the Miranda rights as well as giving the
4 statement there was no undue influence, no reward without
5 promise, or hope of reward, no promise of leniency, and
6 no threat of injury without compulsion of inducement.

7 I find it was a voluntary product of free and
8 unconstrained will of the defendant in writing out the
9 statement and signing it. Any other motions that need to
10 be heard?

11 MS. ANDERSON: Not at this time, Your Honor.

12 THE COURT: Pardon?

13 MS. ANDERSON: No, Your Honor.

14 THE COURT: Okay. Then I guess we will adjourn
15 until what -- we said 2:15, is that correct? And I will
16 give you my ruling on the cell phone at that time. I
17 just want to read that case that you -- I want an
18 opportunity to look at the facts of the particular case
19 you were reading. I know you probably -- y'all got to
20 eat lunch but do you have anything that would define what
21 is lost and what is abandoned?

22 MS. ANDERSON: Not in the courtroom but I will
23 certainly look and get your something --

24 THE COURT: Let me say this; and I will put this on
25 the record, okay. In this court's opinion when you have

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1 a cell phone that has a code I think there is an
2 expectation of privacy to that phone, okay. If it
3 doesn't have a code I don't think there is an expectation
4 of privacy.

5 However, this was not taken off his person. It was
6 lost or possibly abandoned. And possibly that changes
7 this court's opinion as to the privacy. The defendant at
8 that time may have abandoned his right to privacy to that
9 phone. That's why I want to see what amounts to that
10 legally, okay.

11 MS. ANDERSON: Thank you.

12 THE COURT: And I'll be glad to hear from you on
13 that issue. But I just don't think how you could
14 possibly say that an individual has a phone and he has a
15 code to get into it that there is no expectation of
16 privacy as to that phone.

17 MR. SIMPSON: Well ---

18 THE COURT: --- now if there was no code, I don't
19 agree with that.

20 MR. SIMPSON: To be clear I think -- I mean I've
21 got my smart phone right here and it's got a code on it.
22 Of course I have a reasonable expectation of privacy to
23 this phone. But that changes and it becomes an
24 unreasonable right to leave this at a crime scene and ---

25 THE COURT: --- didn't I just say it's a question

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1 of abandonment or lost issue may modify that?

2 MR. SIMPSON: Absolutely, Your Honor.

3 THE COURT: That's what I just said. I just said
4 that.

5 MR. SIMPSON: Okay.

6 THE COURT: And if you want to give me something on
7 the lost issue and abandonment issue I will be glad to
8 receive it. I want both of you to understand this court
9 is of the opinion it was an expectation of privacy. The
10 safe thing to have done was to get a search warrant; it
11 would have been easy to do.

12 MR. SIMPSON: I understand, Your Honor.

13 THE COURT: Now whether or not the abandonment
14 issue and the lost issue he did away with his expectation
15 of privacy is what I've got to rule on.

16 MR. SIMPSON: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. ANDERSON: We'll see what we can find and get
19 it to you.

20 THE COURT: Pardon?

21 MS. ANDERSON: I said we'll see what we can find
22 and if it's anything we'll get it to you.

23 THE COURT: Okay. See you at 2:15.

24 MS. ANDERSON: Thank you.

25 [Whereupon, court is in recess from 12:50 p.m. to

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1 2:23 p.m.]

2 THE COURT: Does anybody want to address the issue
3 on the lost or abandoned issue? I believe we covered it
4 briefly before lunch.

5 MS. PROCTOR: Your Honor, just going over the two
6 cases that the Solicitor had given the case of People v
7 Daggs what distinguishes our case from that this was a
8 case where somebody committed a robbery at a convenience
9 store.

10 THE COURT: A robbery and what?

11 MS. PROCTOR: I think a convenience store. And
12 they -- I think this is the one -- he robbed something
13 and dropped his phone.

14 THE COURT: Right.

15 MS. PROCTOR: Whether it is abandonment or not he
16 knew he dropped it there.

17 THE COURT: Right.

18 MS. PROCTOR: He did not relinquish it. So he said
19 I know it's there. And he told the police I know you
20 have it, but I did not want to go back and get it because
21 I knew I would be arrested. He knew where the phone was.

22 The second case that we had, the burning car case
23 the defendant said well, I knew the suitcase was in the
24 car but I didn't want to go back and get it because I
25 would be arrested for drugs. In this case Mr. Brown did

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1 not know where the phone was. It was lost; he didn't
2 know where it was. And I think if you look -- I just was
3 handed this as I was coming over, the case I think Mr.
4 Butler gave you. In this case he did not know where it
5 was.

6 And if you look at the cases -- and I think even the
7 case that Mr. Simpson gave us they said it was sort of a
8 novel argument; these cases are just now happening. That
9 he never made an attempt to reclaim it, and I think
10 that's important ---

11 THE COURT: --- he never what?

12 MS. PROCTOR: He -- I think the cases where they
13 are abandoned the people say we never made an attempt to
14 go back and get it because we knew we would be in
15 trouble. He never knew where it was. I think that's
16 different.

17 Also, the cases that I was looking at the one case
18 of State v Smith, which is an Ohio case but it says you
19 can get a lot of information off a phone. Without a
20 warrant officers may take steps to reserve data in cell
21 phone. They may not search it absent an officer safety
22 concern or extrinsic circumstances ---

23 THE COURT: --- how -- where did they get that
24 phone from?

25 MS. PROCTOR: Well, here's the thing. No, they got

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1 it at the scene and if they would have looked at it that
2 night -- here's the difference I think, if they would
3 have looked at it that night that is lost or abandoned.
4 But once it was in evidence for a week, Judge it's not
5 lost or abandoned at that point. At that point it's
6 evidence. It is evidence; it is not lost or abandoned.
7 It had been there for one week. The thing on the cell
8 phone ---

9 THE COURT: --- you think that would make a
10 difference on a 4th Amendment search and seizure ---

11 MS. PROCTOR: --- no ---

12 THE COURT: --- because it was actually logged in
13 the evidence room?

14 MS. PROCTOR: No ---

15 THE COURT: --- by the police ---

16 MS. PROCTOR: --- but it's not been lost or
17 abandoned; it's seized. It is seized at that point.

18 THE COURT: But the lost or abandonment runs to the
19 owner of the phone in this situation.

20 MS. PROCTOR: But at that point it's a -- this
21 night if they would have done it that night because they
22 had to run out and find who did it. They put it in
23 evidence. It sat there for one week. The phone is now
24 seized. It is a seized piece of evidence. The phone
25 calls were not going away. And I think the other cases

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1 that they do have, and there are not a lot on this, but
2 in all the other cases they say you can get a warrant.
3 Nothing is going to be destroyed in that phone. It's
4 still going to be there. There is no reason that a
5 warrant can't -- you can't get one. You don't need it
6 that night, it's not officer safety, it's not that the
7 phone calls were going to be destroyed, they would still
8 be there.

9 It is now seized property. Seized property they
10 needed a warrant. They had a week to do it. They could
11 have gotten a warrant; there is no reason they didn't.
12 He had said he even told the police in the statement, I
13 lost my phone. I don't know where it is. I don't know
14 where it is. He didn't go back to reclaim it and then if
15 I do I will get arrested; he did not know he lost the
16 phone.

17 And I think that distinguishes it from the other
18 cases that the State has given. And as I said I just --
19 I didn't realize Mr. Butler could get me this and so I
20 just got it so I just had been going over it like five
21 minutes. But the State -- I looked at United States v
22 Wall holding that cell phones may not be searched
23 infinite to arrest if the contents of a cell phone
24 present no risk of danger to the arresting officers. And
25 because searching through information stored on a cell

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1 phone is ---

2 THE COURT: --- well that ---

3 MS. PROCTOR: --- search of a sealed letter ---

4 THE COURT: --- I think that particular phone was
5 taken off the defendant at the time wasn't it? The case
6 that you are reading now?

7 MS. PROCTOR: To be honest I am just now reading
8 it.

9 THE COURT: Take a look at the facts.

10 MS. PROCTOR: I didn't have time to pull them all
11 up. But it's like reading a letter. You can't do that;
12 you need to get a search warrant. There is no reason in
13 this case. They had the phone for a week. That's --
14 they could have gotten a search warrant and they didn't.

15 THE COURT: All right. I'll be glad to hear you.

16 MR. SIMPSON: Thank you, Your Honor. With respect
17 to Ms. Proctor I just don't think those are
18 distinguishing facts that have a lot of meaning under our
19 analysis in this case. In fact in the case that we
20 talked about, the Oswald case where the suitcase was left
21 in a burning car the facts in that case point out that
22 the cops left and did other things for a short amount of
23 time but I think they went and did other things for like
24 45 minutes it said and worked on another case and then
25 came back and opened the suitcase. This was not a -- how

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1 long it sat it evidence is not determinate of the issue
2 at hand. The issue at hand is where was the phone
3 recovered and it was recovered, again, in someone else's
4 residence that was the scene of a burglary. I think that
5 is an objective fact reflecting abandoned property.

6 THE COURT: But do you think it makes a difference
7 on whether it's lost or abandoned?

8 MR. SIMPSON: I don't. And I think ---

9 THE COURT: --- there are two different definitions
10 of lost versus abandoned.

11 MR. SIMPSON: Sure. But I think the case law that
12 we have presented talks about the subjective intent of
13 the owner is not the relevant thing we are looking at
14 here. We are looking at the objective facts -- if this
15 is a fact of abandoned property.

16 And I thank Mr. Butler who helped us out quite a bit
17 in sending these cases over at lunch. There is a section
18 -- and this is a really interesting issue with cell
19 phones when they find it on a person, but there is a
20 section in the cases that Mr. Butler provided headed
21 lost, abandoned, and mislaid property.

22 And in these cases that Mr. Butler presented to you
23 it explains that that is again a distinction ruling
24 without meaning under the law and I would point to State
25 v Daly where the defendant abandoned his coat at the

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1 scene and they found the phone in the coat. In short I
2 think what you are asking is does it matter if the
3 defendant didn't mean to leave his phone there; that this
4 was an accident. And I don't think it did.

5 THE COURT: Well, abandonment would be I assume the
6 difference is whether you choose to leave it there. In
7 this particular case I don't know if it was abandoned or
8 lost because the defendant didn't testify one way or the
9 other.

10 MR. SIMPSON: And I don't think that ---

11 THE COURT: --- I mean I don't know if he intended
12 to abandon it or it was lost in this particular situation
13 because he hasn't -- it was in evidence -- that evidence
14 hasn't been offered by either party on the abandonment
15 issue versus the lost issue as far as the distinction.

16 MR. SIMPSON: And I don't think even if it were it
17 would be determinate of this issue. I think the quote
18 that you see repeated in a lot of these cases that goes
19 to that fact is whether property has been abandoned in
20 the constitutional sense -- I'm reading now -- does not
21 depend on where legal title rests or whether one is
22 asserting the 4th Amendment as a legally, enforceable,
23 possessory interest in the property. In other words, the
24 fact that it is still his phone doesn't matter.

25 THE COURT: I can see that when you are talking

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1 about abandoned but what if it is just lost and he had no
2 intention of abandoning it. Does that change the 4th
3 Amendment expectation of the owner of the phone?

4 MR. SIMPSON: I really don't think ---

5 THE COURT: --- the lost versus the abandoned. You
6 keep referring to abandonment. I doubt seriously he
7 abandoned that phone. I imagine it fell out -- assuming
8 he was in the apartment for purposes of my argument; it
9 fell out of his pocket. He didn't know it had fallen
10 out.

11 So I suspect it was probably lost. I don't know
12 because I don't know you know and I'm not going to ask
13 him to address that because he would be incriminating
14 himself if he did.

15 MR. SIMPSON: Sure. I see your point, Your Honor.
16 And our position is that no, it wouldn't.

17 THE COURT: Pardon?

18 MR. SIMPSON: No, it wouldn't have a 4th Amendment
19 bearing. And especially if you look at the facts in this
20 case, and I hate to keep belaboring this ---

21 THE COURT: --- well, it ---

22 MR. SIMPSON: --- he dropped it inside the person's
23 house ---

24 THE COURT: --- I understand. But isn't the line
25 of cases on abandonment when you abandon your property

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1 you abandon your expectation of privacy? Does that also
2 apply if you lose the property that you have lost your
3 expectation of privacy?

4 MR. SIMPSON: I think when lost under the
5 circumstances that we have presented to the court that
6 yes, it does.

7 THE COURT: Okay.

8 MS. PROCTOR: Your Honor, a minute ago Mr. Simpson
9 was talking about the case that Mr. Butler provided. He
10 just gave one. But the two cases both basically say that
11 the police can't search.

12 And as far as the Burney [ph] the two cases that he
13 keeps talking about they said, we conclude that by his
14 conduct the defendant objectively manifested an intent to
15 abandon his property and thereby relinquished any
16 reasonable expectation of privacy.

17 THE COURT: Well, that was the question ---

18 MS. PROCTOR: --- right, he ---

19 THE COURT: --- if it's lost have you lost your
20 expectation versus abandoned where you abandon your
21 expectations?

22 MS. PROCTOR: I think if there was evidence that
23 there was somebody with him at this building and said, oh
24 my gosh your phone is there, go back and get it and he
25 says, I'm not going back to get it because I don't want

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1 to be arrested. I think that is totally different. But
2 in this case, this whole case, all they have is one
3 thing; his cell phone. So that would mean if I left my
4 cell phone in this courtroom when I went to lunch and all
5 of a sudden it's in the parking garage in a car that is
6 broken into all of a sudden they are like okay, it's you
7 because here's your phone. And I'm like wait a minute I
8 left it or lost it in the courthouse.

9 There is nothing that says he was in that apartment
10 and said hey, I know my phone is there. That is why I'm
11 not going back to get it. He gave a statement. The
12 police officer read it that said I lost my phone and I
13 don't know where I lost it.

14 But I think all the cases that you read there is
15 still no reason they could not get a search warrant; it
16 was seized evidence five days later, six days later ---

17 THE COURT: --- I understand that. I think that
18 goes without saying. But that doesn't affect whether he
19 has lost his expectation of privacy when he lost the
20 phone.

21 MS. PROCTOR: I think you ---

22 THE COURT: --- whether they could get the warrant
23 or couldn't get the warrant. You've got to get to the
24 expectation and then you've got ease of ability to get to
25 one.

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1 MS. PROCTOR: Well, I think if you lose your phone
2 you don't assume that the police are going to go through
3 it.

4 THE COURT: Well, a lot of people need to go through
5 it just to find out who owns it ---

6 MS. PROCTOR: --- you can find out ---

7 THE COURT: --- so you can return it to the owner.

8 MS. PROCTOR: Then you find out, Judge who owns it.
9 What you're saying is you look at their name.

10 MR. SIMPSON: I would just like to briefly respond
11 to how Ms. Proctor characterized some of these cases.
12 What the court is saying is that when you objectively
13 look at the facts of these cases you can see that the
14 property has been abandoned. Not that the person went
15 back or things of that nature.

16 And I'll point out to you this great case of Able v
17 United States and it's great because it's got cool facts.
18 It's about a Russian spy. It's cited within Oswald. And
19 what the Russian spy did was hollow out a pencil -- and
20 it sounds like it's from a movie, but it's from a real
21 case, and put microfilm down in the pencil.

22 Well, the police went into a hotel room and found
23 this hollowed out pencil with the hidden microphone in it
24 and opened up that container without a warrant. And you
25 asked yourself subjectively did the spy expect that that

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1 would remain private? Well, of course he did. That's
2 why you hide it in a pencil and close the thing up. But
3 nevertheless the subjective facts of that case he had
4 clearly abandoned it in that hotel room.

5 Same thing with the burning car; he leaves it and
6 runs away because he doesn't want to get caught. Now
7 there are a couple of little things he said on scene that
8 go to that point. The fact of the matter is the court
9 looked at those objective facts and said you bolted; you
10 left, therefore we can objectively say this property has
11 been abandoned.

12 Similarly in Oswald they cite these whole line of
13 cases involving luggage at airports. And the line they
14 have drawn, and this is a very instructive line I think
15 in this case, is when I check my bag at the airport of
16 course I don't abandon it. A reasonable person expects
17 to pick up that bag later.

18 But when I check my bag with some contraband in it
19 and get nervous and freak out and leave I've objectively
20 shown without saying anything or without having any extra
21 burden on the State's to prove this element, I've
22 objectively shown under a common sense view of the facts
23 when I don't pick up that luggage that I have abandoned
24 that property and therefore abandoning it -- the -- that
25 I have. What happened here we can only guess. But I

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1 think what happened here, and there will be evidence
2 presented in this trial when we talk about what is going
3 on with this phone leading right up to pretty much the
4 moment of the burglary that there is a good chance that
5 he was inside the house as the victim came home and in a
6 moment of panic bolted from the house. Whether he had a
7 thought oh, let me leave my phone here, you're right Your
8 Honor, that's probably not a decision he made.

9 But nevertheless the objective facts of the case are
10 that he abandoned this phone. And I don't think that the
11 defense gets to come in when he is fleeing a crime scene
12 to avoid apprehension and say well it wasn't -- I didn't
13 mean to abandon it. You don't get the credit for getting
14 caught in the act of doing something. And I think those
15 line of cases are really the determinate issue on the
16 cell phone.

17 THE COURT: All right. Thank you very much. I'm
18 going to find as I said before lunch this court is of the
19 opinion since he had a privacy code installed on the
20 phone that there was an expectation of privacy as to the
21 phone.

22 However, leaving the phone or dropping the phone or
23 whatever happened to the phone at the scene of the crime
24 I think at that point in time it was either lost or
25 abandoned; factually I don't know which. But looking at

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1 the totality of the circumstances I think at that time
2 whether you want to say it's lost or abandoned that the
3 4th Amendment right of expectation of privacy as to that
4 phone was also abandoned and your motion is denied --
5 your suppression motion is denied. Are y'all ready for
6 opening statements?

7 MS. ANDERSON: Yes, Your Honor.

8 MS. FLYNN: Yes, Your Honor.

9 THE COURT: Is there anything else that we need to
10 take up before we bring the jury out?

11 MS. FLYNN: No, Your Honor.

12 THE COURT: Okay. Bring us the jury, please?

13 [Whereupon, the jury enters the courtroom at 2:38
14 p.m.]

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

16 THE COURT: Thank you very much. Mr. Buyck, would
17 you swap with the gentleman on the end here. I am going
18 to appoint you as Foreman of the jury, please sir if you
19 will swap with this gentleman.

20 [Whereupon, the jurors comply]

21 THE COURT: And if you will sit in that chair. The
22 rest of you can sit as you please except for the two
23 alternates if you will sit in those two chairs. The rest
24 of you it depends on how you file into the courtroom.
25 Madame Clerk, if you will swear the jury.

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1 CLERK OF COURT: Mr. Foreman and ladies and
2 gentlemen of the jury if you will please raise your right
3 hand to be sworn. Do you swear or affirm that you shall
4 well and truly try and a true deliverance make between
5 the State of Carolina and the defendant at the bar, whom
6 you shall have in charge and a true verdict render
7 according to the evidence and the laws so help you God.
8 Please indicate by saying I do.

9 THE JURY: I do.

10 THE COURT: Solicitor?

11 MS. FLYNN: Thank you, Your Honor. May it please
12 the court?

13 OPENING STATEMENT

14 BY MS. FLYNN:

15 December 22, 2011 was the night that the victims
16 Amber Winkler and Justin Poole will never forget. It was
17 the night Justin came home from a Holiday dinner with his
18 parents to find out that his home had been burglarized.

19 Now ladies and gentlemen, the man responsible for
20 that burglary is in this courtroom today, it's the
21 defendant sitting right over there [indicates] Lamar
22 Brown. Now the State has the burden of proof in this
23 case. The defendant is charged with Burglary in the
24 First Degree and we have the burden of proving each and
25 every element beyond a reasonable doubt. The elements

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1 are that we have to prove that he entered the dwelling
2 without consent with the intent to commit a crime
3 therein. And what makes the Burglary First Degree is
4 what the law calls aggravating circumstances.

5 Now there is a list of these aggravating
6 circumstances but if any one of those apply in the case
7 then it is properly a Burg First. In this case the State
8 will present evidence that two of those circumstances
9 apply. First that the defendant has two prior
10 convictions for Burglary and the second one is that this
11 crime occurred at night.

12 Let me go through the witnesses that you will hear
13 from for the State in this case. First you are going to
14 hear from the victim, Justin Poole. He can explain on
15 December 22, 2011 he came home around 10:30 or a little
16 bit after that with his girlfriend and they had been to
17 dinner with his parents.

18 He gets back in the house and all of a sudden hears
19 a phone ring. That ring is unfamiliar; he doesn't know
20 whose phone it is. At first he doesn't think much of it
21 because he thinks maybe it is his roommate's boyfriend's
22 phone but then it rings again and again. At some point
23 he sees a flash of light coming from his room. At the
24 time he doesn't know if it is a flashlight or what it is
25 so he goes to check it out. It is at this point that

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1 everything changes. He comes in there and he sees a
2 phone on the ground that doesn't belong there. He then
3 turns on the light, sees the shattered window. That's
4 when he realizes there is a T.V. missing, several
5 laptops.

6 At this point he freaks out and he calls his
7 roommate Amber to see where her gun is. He doesn't know
8 if anybody is inside at this point. Then he calls the
9 police. They arrive shortly thereafter and that's who
10 you will hear from next is Officer Randall from the
11 Charleston Police Department.

12 He responded that night around 11 p.m. He can
13 explain to you how he spoke with the victim and he went
14 through and logged in what items were taken from the
15 house that night. And he will explain to you how he
16 collected that cell phone that was found on the scene and
17 secured it into evidence.

18 Next you will hear from crime scene, Renee Charles.
19 He is going to explain to you how he arrived and how the
20 police work was done efficiently in this case. He
21 photographed the scene and he dusted for fingerprints.
22 And he'll explain to you how in some cases they aren't
23 found and in this case there weren't any fingerprints.
24 Next you will hear from Sergeant Thompson. He also works
25 for the Charleston Police Department. They will explain

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1 to you that he took a statement from Lamar Brown. He'll
2 explain that Lamar Brown said that phone found on the
3 scene is his phone. He also admitted that during the
4 time of the burglary between the hours of 6 p.m. and
5 midnight on December 22, 2011 nobody else had that phone.

6 Next you are going to hear from two different
7 witnesses that are going to explain to you the phone data
8 itself; the information that was taken from the phone on
9 the scene. So I want you to play close attention. They
10 are going to go over several terms with us and we will
11 get a better understanding of what that is showing us and
12 why it's relevant and important to this case.

13 First you will hear from Rodney Van Horn. He works
14 for the Digital Evidence Unit at C-P-D. He is going to
15 explain to you that basically what's relevant for this
16 case is he pulled out the phone contacts that are listed
17 in that phone so it shows him any name that would have
18 been stored in that phone.

19 Next you will hear from Susan Johnson from T-Mobile.
20 She is going to explain to you that she pulled the phone
21 logs from the defendant's phone for the date of December
22 22, 2011. She'll go over the terms again so we can
23 understand who is making calls and receiving calls, who
24 is sending texts and who is receiving texts from that
25 phone on that phone long. Finally you are going to hear

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1 from Detective Lester. He is the lead investigator on
2 the case. He is going to go through with us step by step
3 what led to Lamar Brown as the suspect. He's also going
4 to explain to you he took the T-Mobile phone log bills
5 that show calls and texts from that day made to and from
6 the phone. He then looked at the phone contacts; all
7 those names listed in the phone and he matched them up.
8 And ladies and gentlemen he will testify to that and you
9 will realize why that becomes important.

10 Now at the end of the case it's your job as jurors
11 throughout the trial to use your common sense when
12 viewing all the evidence and listening to all the
13 testimony. And you're going to realize at the end of the
14 case it matches up and when it does I will ask you to
15 return a verdict of guilty for Burglary in the First
16 Degree. Thank you.

17 THE COURT: Ms. Anderson?

18 MS. ANDERSON: Thank you. May it please the court?

19 OPENING STATEMENT

20 BY MS. ANDERSON:

21 Careless and quick; a careless investigation and a
22 quick leap to judgment are what bring us together in this
23 courtroom today. As I have been working through this
24 case I've been thinking about everything. I was actually
25 reminded of a story from my childhood and I was going to

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1 share that with you if you will bear with me. Back in
2 third grade I had a teacher; she was very, very strict.
3 You know one of those that make kids cry if they raise
4 their hand to go to the bathroom at the wrong time.
5 There were rules you had to follow and if you broke them
6 she would write your name on the chalkboard; very
7 embarrassing for an eight year old.

8 One day I was caught passing notes in class.
9 Something silly I was writing to my friend but the
10 teacher saw me. She grabbed the note, held it up and
11 said, Torrie Anderson is passing notes in class and
12 everybody that is wrong. And she wrote my name on the
13 board.

14 My poor little eight year old heart was mortified;
15 so embarrassed. But I kept my head down for the rest of
16 the day. But what got me through it was knowing that at
17 the end of the day as long as I stayed out of trouble my
18 name would be erased from that board and I would start
19 the next day fresh.

20 The next day I came in determined to show my teacher
21 I was good. I'm not going to do anything wrong. So I
22 was busy doing my work and right before lunch I had just
23 finished an assignment. I folded up my paper and was
24 getting ready to put it in my desk and I dropped it. I
25 didn't think anything of it, bent down to pick it up.

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1 And the next thing I know the teacher is standing in
2 front of me and she -- the piece of paper in her hand.
3 Ms. Anderson, you're writing notes again. Ms. -- it's
4 not a note, it's my assignment; it's not a note. She
5 didn't listen. She crumpled it up and threw it away and
6 wrote my name on the board again with a check mark next
7 to it -- that's extra bad.

8 And all I could think -- and I still remember this
9 -- is how unfair it was and how quickly she leapt to that
10 conclusion. It was just assumed that I was passing notes
11 again. And here we are again today. Fast forward to
12 December 2011. Another careless investigation, another
13 quick leap to judgment; this time it's much more serious
14 consequences.

15 On December 28th, 2011 just a few days after
16 Christmas most people are at home with their family and
17 friends and they are recovering from the hectic Holidays
18 and looking forward to the New Year.

19 And that's where Lamar Brown found himself. He was
20 with his family at home on Riverland Drive when the
21 police drive up. They get out of the car and call out
22 his name. Lamar Brown? That's me. He walks over
23 wondering as most of us would what's going on? What do
24 they want? He knows the police come by just to notify
25 you of things and ask you questions. But that's not why

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1 they were there that day. The police were there not to
2 notify him, not to help, but to accuse because as you've
3 heard a few days earlier on December 22nd the police had
4 found a cell phone at the scene of a burglary and they
5 wanted to ask him about it, is this your phone? He walks
6 over and gets in the car with the police and says okay,
7 that's my phone. I'll tell you whatever you need to know
8 and he writes it down in his statement telling them what
9 he knows.

10 The police say can we take a look around your house.
11 Yes, look in my house. He gives them consent. They go
12 search his house. They don't find anything and the
13 police go on their way. They don't arrest him; they just
14 leave. Later he finds out there is a warrant for his
15 arrest and he goes and he turns himself in trusting that
16 they would keep working, they would keep looking and
17 investigating -- he trusted them.

18 But instead of looking deeper and investigating
19 further they stopped and Lamar Brown learned that he had
20 placed his trust in the wrong people. You have heard
21 what the State plans to present and you have heard that
22 it all centers around the law. There is no physical
23 evidence from Mr. Brown, Lamar Brown, at the scene.
24 There is fingerprints, there is no D-N-A, there is
25 nothing connecting him to this scene -- none of the

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1 stolen property was ever connected to him. The police
2 found the cell phone and led to a quick conclusion. It
3 was an easy investigation and easy arrest. Now with
4 respect to evidence we don't expect perfection from the
5 State but it has to be pretty darn close because this is
6 very -- this is a very big deal to Lamar Brown and to
7 those who love him.

8 The standard, what the State has got to do is
9 convince each and every single one of you, every single
10 one of you beyond a reasonable doubt that Lamar Brown
11 actually burglarized the apartment of Justin Poole and
12 Amber Winkler.

13 Now the Judge will give you what the legal
14 definition of reasonable doubt is but it helps me when
15 I'm thinking about it -- this way. And if what I say is
16 different from what he says obviously go with what he
17 says. But here's what helps. Imagine that your Mother
18 has been accused of a crime. Now how much would it take
19 for you to be convinced of her guilt. What evidence
20 would it take? Now for me; it's going to take a lot.
21 It's not impossible but it can be done. But there has
22 got to be a lot and there's got to be evidence and that's
23 what is required to hold the State to a very high
24 standard because Lamar Brown is putting his faith and his
25 fate in your hand. At the end of all the evidence there

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1 will be some questions in your mind as to some facts that
2 will give you pause as to whether Lamar Brown actually
3 committed these burglaries. And that is because he did
4 not break into that apartment. He did not steal -- he
5 certainly did not leave his cell phone. So at the end of
6 the evidence when all is said and done we ask that you
7 find Lamar Brown not guilty. Thank you very much.

8 THE COURT: Thank you very much. Call your first
9 witness.

10 MS. FLYNN: Thank you, Your Honor. The State calls
11 Richard Justin Poole.

12 [Whereupon, Mr. Poole comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court as follows: do you swear or affirm your
15 testimony will be the truth, the whole truth, and nothing
16 but the truth so help you God]

17 CLERK OF COURT: State your full name and spell
18 your last name.

19 THE WITNESS: My full name is Richard Justin
20 Poole, last name is spelled P-O-O-L-E.

21

22

RICHARD JUSTIN POOLE,

23

Having been first duly sworn,

24

Was examined and testified as follows:

25

DIRECT EXAMINATION

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1 BY MS. FLYNN:
2 Q. Good afternoon. You go by Justin, right?
3 A. Correct.
4 Q. Where do you currently work, Justin?
5 A. I work for a company called Blue Acorn.
6 Q. And how long have you worked there?
7 A. I've been there about a year and a half.
8 Q. Do you live in Charleston County?
9 A. I do.
10 Q. How long have you lived here?
11 A. I've lived in Charleston 12 years now; one year in
12 Raleigh but 12 in Charleston County.
13 Q. Okay. Where do you live now?
14 A. I live on James Island.
15 Q. Okay. Did you live at that same address back in
16 December of 2011?
17 A. No, I've moved since then.
18 Q. Where did you live back in December of 2011?
19 A. I lived in a condo community on James Island
20 Riverland Woods Place. It's called the Retreat.
21 Q. And was there an apartment or a condo number?
22 A. It was a condo. It was number . . .
23 Q. And did you live there alone?
24 A. I had two roommates. One was really never there,
25 but the other was a good friend of mine for a long time.

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1 Q. And can you kind of explain to the jury the layout
2 of your apartment?

3 A. Okay. So it is on the bottom floor of the
4 building, an end unit. It has two sides and a lot of
5 windows on it.

6 When you walk in the front door there is a hallway,
7 to the left there is a kitchen, there is a dining area,
8 and then to the far end to the left is a living room.
9 The couch overlooks the fireplace and separates the
10 dining area and the living area.

11 And to the right is the hallway that goes down to
12 the bedrooms. Go down that hallway and the first door on
13 your left is a guest bedroom that was our roommate who
14 mainly used it for additional closet space.

15 Second left was my bedroom and that's the one in the
16 corner that has windows on two of the four walls. And
17 then to the right was the master bedroom and bathroom and
18 that was Amber Winkler's room.

19 Q. So could you kind of see through the windows in the
20 condo since it was on the first floor if you were walking
21 by?

22 A. Yes. That was something I learned very quickly when
23 getting out of the shower not to have the windows open.

24 Q. Okay. Let's turn your attention to Thursday,
25 December 22nd, 2011. Do you remember that day?

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1 A. Yes.

2 Q. Do you remember -- what did you do that day?

3 A. Just really a nice day winding down from the work
4 week and moving into the holidays. I ran some errands
5 with my girlfriend for most of the day. That night we
6 went over to my parents to have kind of a holiday dinner.

7 Q. What time did you leave the condo to go over to your
8 parents?

9 A. I would say about 7 o'clock.

10 Q. And was your roommate, Amber home at that time?

11 A. She was but she was just about to leave with her
12 boyfriend to go downtown to a holiday party.

13 Q. So after having dinner with your parents did you and
14 your girlfriend come back to the condo at some point?

15 A. Correct. We came back around 10:30ish.

16 Q. Okay. And what happened once you got home?

17 A. Came in and like I said when you first come in you
18 see the kitchen to the left and kind of the hallway
19 leading into the living room.

20 I had arranged all of her Christmas presents in the
21 living room on the center coffee table. And so we just
22 kind of went straight to the living room and sat down and
23 began opening presents.

24 Q. What happened next?

25 A. I kept hearing a phone ring. And I didn't recognize

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1 the ring but thought maybe it was my roommate's boyfriend
2 because he generally changes his ringtones pretty often;
3 kind of annoying. But it just rang but I didn't think
4 anything of it.

5 I just thought they were doing something that would
6 preclude them wanting to answer a phone. So we just sort
7 of stayed in the living room opening presents. The
8 ringing started to pick up in terms of how many times it
9 was being called. It was being called over and over and
10 over.

11 And finally I was looking over when I heard it ring
12 and I saw kind of a flash of light but I couldn't tell if
13 it was a flashlight or if it was a phone light or
14 whatever it was. I got a little nervous so I got up and
15 told my girlfriend to stay in the living room and I
16 walked down the hall and learned that the ringing phone
17 was sitting on my bedroom floor near the door.

18 I immediately knew that it was none of ours and I
19 turned on the light in my bedroom and noticed that one of
20 my windows had been broken out and glass everywhere.
21 My T.V. was gone; all the drawers had been pulled out and
22 riffled through. I quickly put two and two together
23 because this had never happened to me before. But it
24 didn't take very long to realize that we had been robbed.
25 My immediate reaction was to call the police and then to

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1 call my roommate. I knew that she kept a gun nearby. At
2 that point I still didn't know if there was someone still
3 further in her room or in the bathroom or -- if they
4 didn't have that gun yet I wanted to be the first one to
5 have it.

6 And then within I would say 15 or 20 minutes the
7 police started to arrive. Amber came back, cancelled her
8 holiday party and came back from downtown.

9 Q. What did you do with the phone when you got in the
10 room? Did you pick the phone up?

11 A. No, I believe my girlfriend picked the phone up.

12 Q. Do you recall what the phone looked like?

13 A. It was an older phone. It's a red Samsung or Nokia;
14 one of the two.

15 Q. And you said at some point the police arrived
16 shortly thereafter.

17 A. Uh huh.

18 Q. What did you do with the phone when they arrived?

19 A. I handed it to them.

20 Q. Okay. And then did you at some point explain to
21 the officers what had happened?

22 A. Correct.

23 Q. And then did you go over what items were taken from
24 the house?

25 A. Correct.

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1 Q. Okay. What was taken from your room?

2 A. From my room there was a big flat screen T.V.; it
3 was about 42 inches, and my work laptop that was in a
4 bag.

5 It was kind of awkward to explain to an employer
6 that you just started working for that you need to get me
7 a new computer because the one -- everything in it is
8 gone. Then I went through and didn't really see anything
9 obvious else in my room.

10 Q. What was taken from the rest of the home?

11 A. My roommate got there and she went through her room
12 and learned that both her laptops were taken, which was
13 really hard for her because she was trying to start her
14 own business and was transitioning over to a new laptop
15 so she had to start from zero pretty much.

16 There was some kind of costume jewelry that was
17 taken. But the bulk of what was taken came out to three
18 laptops and a big screen T.V.

19 Q. Since this burglary you've moved right?

20 A. Correct.

21 Q. So how has this burglary impacted you all?

22 A. It's kind of -- it's definitely has had its affect
23 on both of us. I've been in Charleston for twelve years
24 and knew living in areas of downtown where I've lived and
25 it's always good to be safe. And that just smart. I

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1 grew up in an urban area -- it's just how I was raised.
2 But it really took a toll on Amber. Just watching her
3 constantly being nervous, not being able to sleep.

4 She now carries that gun with her from room to room
5 to room and after a year or so she still doesn't feel
6 safe in her own house and actually has the house on the
7 market.

8 There was an alarm installed within days, and lights
9 all over the place. You could always know which unit was
10 ours from the outside at night because it was lit up like
11 a spaceship.

12 Q. Thank you. Please answer any questions the defense
13 attorney has.

14 A. Okay.

15 THE COURT: Cross-examination?

16 MS. ANDERSON: Thank you.

17 CROSS-EXAMINATION

18 BY MS. ANDERSON:

19 Q. I don't talk very loud so I'm going to move a little
20 closer. So in the summer of 2011 you lived in the
21 Retreat, correct?

22 A. Correct.

23 Q. That's a gated community isn't it?

24 A. Correct.

25 Q. So you've got to have either a little card to get

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1 into it or a code?

2 A. Yes, if you want to drive a car into it you do.

3 Q. To drive in there?

4 A. Uh huh.

5 Q. And the buildings themselves are secure as well.

6 You have to touch in a little code to get in or be a
7 resident to be able to...

8 A. Yes, to get in through the doors you do.

9 Q. So -- and then you can walk to your own door
10 obviously.

11 A. Uh huh.

12 Q. So you've got about three levels of security just
13 within the complex itself.

14 A. Uh huh.

15 Q. You've talked a little bit about the area itself.

16 Yours was the 200 buildings that are in the front of the
17 complex?

18 A. Correct.

19 Q. And pretty much right next to the gate. You can see
20 the gate from your windows?

21 A. Correct.

22 Q. And there is another apartment community that
23 neighbors yours?

24 A. Uh huh.

25 Q. With a little -- I guess a little -- at each one --

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1 and you can see that from your window as well?
2 A. Correct. You mean a walkway between the two?
3 Q. Yes. I think it's a dog path. And that goes all
4 the way around?
5 A. Correct.
6 Q. And so you said that you had gotten home, it was
7 about 10:30ish and there were presents on the living room
8 coffee table.
9 A. Uh huh.
10 Q. At some point after that is when you heard the phone
11 ring. A bunch of times you heard the phone ring?
12 A. Uh huh.
13 Q. Over and over and over you said?
14 A. Uh huh.
15 THE COURT: If you would answer yes or no instead
16 of uh huh.
17 THE WITNESS: I'm sorry.
18 THE COURT: That could be confused with uh huh or
19 whatever, okay?
20 THE WITNESS: Yes, sir.
21 THE COURT: Please proceed.
22 Q. [Ms. Anderson] So yes, you heard the phone ring ---
23 A. --- yes ---
24 Q. --- a bunch of times over and over and over again.
25 So what was missing from your room was a you said 42 inch

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- 1 T.V.?
- 2 A. Correct.
- 3 Q. That is pretty big, right?
- 4 A. Uh huh.
- 5 THE COURT: Yes or no please.
- 6 THE WITNESS: Sorry; yes.
- 7 Q. [Ms. Anderson] Was there anything else missing from
- 8 your room?
- 9 A. No.
- 10 Q. Was there a little bit of weed missing from your
- 11 room?
- 12 A. Yes.
- 13 Q. Where was that taken from?
- 14 A. Bedside table.
- 15 Q. It was just on or inside the bedside table?
- 16 A. Inside.
- 17 Q. That's not -- you know it's illegal to have
- 18 marijuana right?
- 19 A. Yes.
- 20 Q. That's not something you can just buy in a store.
- 21 You had somebody sell it to you?
- 22 A. Yes.
- 23 Q. Did that person ever come by your house?
- 24 A. No.
- 25 Q. Who else knew that you had weed in the house?

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- 1 A. My roommate.
- 2 Q. Amber?
- 3 A. Correct.
- 4 Q. You didn't tell the cops about that when they came
5 by?
- 6 A. Correct.
- 7 Q. Because you didn't want to get in trouble for the
8 weed. Back to the police they didn't take any written
9 statements from you did they? You didn't write down what
10 happened?
- 11 A. I don't recall writing anything down, no.
- 12 Q. But you talked to the officer. He just didn't have
13 you write anything down.
- 14 A. Correct.
- 15 Q. He didn't take you back to the station or record an
16 interview with you or anything?
- 17 A. No.
- 18 Q. And as far as you know they didn't do that with
19 Amber either?
- 20 A. I believe he talked to Amber in person but I'm not
21 sure though; it could be via phone.
- 22 Q. And they never -- did they ever bring by a photo
23 lineup for you to see if you could identify somebody?
- 24 A. No.
- 25 Q. But when you arrived home you didn't see anybody in

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1 your apartment did you?

2 A. When I arrived home, no.

3 Q. And you didn't hear anything other than that phone
4 ringing?

5 A. Correct.

6 Q. And all those phone calls and I guess the ringtones
7 you heard were after 10:30 when you got home?

8 A. Correct.

9 MS. ANDERSON: Beg the court's indulgence just for
10 one moment.

11 THE COURT: Yes, ma'am.

12 [Whereupon, Ms. Anderson and Ms. Proctor confer]

13 MS. ANDERSON: No further questions.

14 THE COURT: Any redirect?

15 MS. FLYNN: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. FLYNN:

18 Q. Now you didn't tell the cops about the weed that was
19 stolen from your house that night did you?

20 A. No, I did not.

21 Q. But you were pretty honest with me about it and told
22 me about it, right?

23 A. Yes.

24 Q. In fact the defense attorney knows because I relayed
25 that to her.

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1 A. I assumed.

2 Q. Now this happened on December 22, 2011 you said you
3 left around 7 p.m.

4 A. Correct.

5 Q. What time did you come home that night?

6 A. I'd say 10 to 10:30.

7 Q. Okay. Now right behind your apartment there are
8 some woods correct?

9 A. Correct.

10 Q. And as you -- the window that was broken was in your
11 bedroom?

12 A. Correct.

13 Q. Okay. That was the back of the house?

14 A. Correct.

15 Q. By the woods?

16 A. Correct.

17 MS. FLYNN: Court's indulgence.

18 [Whereupon, Ms. Flynn and Mr. Simpson confer]

19 Q. [Ms. Flynn] So you said there are woods right behind
20 your apartment?

21 A. Correct.

22 Q. Do you know what is beyond those woods?

23 A. My understanding is that it is a protected old
24 battleground of some sort that is pretty much all the way
25 around the Retreat. And there is a pathway that goes

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1 from there to Riverland Woods Drive. There is kind of
2 between the condo community and these protected woods
3 there is kind of a running trail that goes all the way
4 around.

5 It's the same trail that kind of connects the corner
6 units where my room was to the parking lot I'd say 20
7 yards or so from it.

8 Q. Okay, which eventually leads through the woods to
9 Riverland Drive, is that what you said?

10 A. So there is the parking lot for the apartment
11 complex by the pool there, a little round about that is
12 generally empty at night, and there is a jogging trail
13 that goes all around.

14 The jogging trail comes to my -- towards my bedroom
15 from the parking lot. You can either go left and you can
16 go around that way [indicates] or right and go down
17 around the woods.

18 Q. Okay. You mentioned earlier that you saw some sort
19 of light and that is what eventually what led you to get
20 up. Can you kind of describe that light for us?

21 A. It was a flash of light. I thought it was a flash
22 light at first. When I went over and saw the phone I
23 thought maybe it could have just been the phone since the
24 phone was laying face up ringing.

25 Q. If told you that the responding officers got the

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1 call ---

2 MS. ANDERSON: --- objection. He can't say what
3 the responding officers ---

4 THE COURT: Pardon?

5 MS. ANDERSON: He can't say what the responding
6 officers would ---

7 THE COURT: --- I haven't heard the question yet.
8 Ask the question and I'll rule on the objection.

9 MS. FLYNN: Thank you, Your Honor.

10 Q. [Ms. Flynn] If I would to tell you the responding
11 officer's report indicates that they arrived around --
12 received the call around 11:08 p.m. would you say -- how
13 long would you say you were home before you called the
14 cops?

15 THE COURT: All right. Do you have an objection?

16 MS. ANDERSON: She can't say what is in an
17 officer's report because he wouldn't know what was in the
18 officer's report ---

19 THE COURT: --- I'll sustain the objection.
20 Disregard the statement. Please proceed.

21 MS. FLYNN: Thank you, Your Honor.

22 Q. [Ms. Flynn] What time did you get home on December
23 22nd, 2011?

24 A. Like I said probably around 10 to 10:30.

25 Q. Okay. And how long after you discovered the phone

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1 and that a burglary had occurred would you say give or
2 take that you called the officers?

3 A. After I found the phone it was pretty immediate. I
4 would say within two or three minutes.

5 Q. Okay.

6 A. A minute maybe.

7 Q. Okay. No further questions.

8 THE COURT: Recross?

9 MS. ANDERSON: Yes. Thank you, your Honor. May I
10 approach?

11 THE COURT: Yes, ma'am.

12 [Whereupon, defendant's exhibit number 1 is marked
13 by the court reporter]

14 RE CROSS EXAMINATION

15 BY MS. ANDERSON:

16 Q. I have here what has been marked as Defendant's
17 exhibit 1.

18 [Whereupon, the witness is shown exhibit]

19 Q. Do you recognize this; can you tell the court?

20 A. Yes, it's an aerial view.

21 Q. Of what?

22 A. Of the condo community and the apartment community.

23 Q. How do you know what it is?

24 A. I've looked at it from Google before.

25 Q. You have?

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1 A. Yes.

2 Q. And you recognize that is where you lived?

3 A. Correct.

4 Q. And you are familiar with the area?

5 A. Correct.

6 Q. Very familiar?

7 A. How familiar are you talking?

8 Q. Familiar enough that you know what this is and what
9 everything is on it.

10 A. Correct. Yes.

11 MS. ANDERSON: At this time we ask to admit exhibit
12 1.

13 MS. FLYNN: No objection.

14 THE COURT: Defendant's exhibit number 1 admitted
15 without objection.

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

18 MS. ANDERSON: Thank you. Permission to publish to
19 the jury?

20 Q. [Ms. Anderson] You can actually write on this screen
21 right here [indicates].

22 A. Okay.

23 Q. I figured this might help a little bit in kind of
24 orientating ourselves as to where you are. Can you mark
25 on the map where your apartment is?

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- 1 A. Right here [indicates].
- 2 Q. Are you sure -- okay, I see -- I thought you were --
- 3 So that's your apartment up there [indicates] at the end.
- 4 Could you mark where the gate to the condo complex is?
- 5 A. Right here [indicates].
- 6 Q. And that's a gate that you need a key or a card to
- 7 drive through?
- 8 A. Correct.
- 9 Q. And can you show the jury where that path is that
- 10 you were talking about; the -- I guess the running path?
- 11 A. Right here [indicates] and also [indicates].
- 12 Q. It's kind of a long way --
- 13 A. And then you can also get on at [indicates].
- 14 Q. Does it go all the way around?
- 15 A. I believe it does, yes.
- 16 Q. And have you walked down that long way down the
- 17 pathway area at the bottom?
- 18 A. This one down here [indicates] yes.
- 19 Q. It's kind of a long way, huh?
- 20 A. Uh huh.
- 21 Q. And then that path sitting on the other side I guess
- 22 next to the other community.
- 23 A. This one over here [indicates]?
- 24 Q. Yes?
- 25 A. Yes.

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- 1 Q. And what are those [indicates] I guess dark areas
2 here to the left [indicates]?
- 3 A. Dark areas to the left?
- 4 Q. Uh huh.
- 5 A. These [indicates] are little drainage ponds.
- 6 Q. It's supposed to look pretty like the water?
- 7 A. Yes.
- 8 Q. Yes? And do you know what is at the end of that
9 path right there [indicates] at the bottom?
- 10 A. At the bottom? I believe that's kind of the corner
11 end of the shopping center that is further this way
12 [indicates].
- 13 Q. What do you see when you get to the end of the path
14 right there [indicates]? Is there a fence?
- 15 A. Yes. There is a fence that kind of separates the
16 condo community from the wooded area.
- 17 Q. Okay. And then it's one of those preserves that
18 you are talking about; it's a wooded area?
- 19 A. Correct.
- 20 Q. It's kind of far from where your apartment is right?
- 21 A. Correct.
- 22 Q. And you said you can see your gate from the window
23 of your condo -- from your window?
- 24 A. Correct. Correct.
- 25 Q. Give me just one second.

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1 [Whereupon, Ms. Anderson and Ms. Proctor confer]

2 Q. [Ms. Anderson] I think that's all the questions I
3 have. Thank you.

4 A. Okay.

5 THE COURT: You may step down. Thank you very
6 much.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. FLYNN: Thank you, Your Honor. The State calls
11 Matthew Randall, Charleston Police Department.

12 [Whereupon, Mr. Randall comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court as follows: do you swear or affirm your
15 testimony will be the truth, the whole truth, and nothing
16 but the truth so help you God]

17 CLERK OF COURT: State your full name and spell
18 your last name.

19 THE WITNESS: My name is Matthew Randall,
20 R-A-N-D-A-L-L.

21

- - - - -

22

MATTHEW RANDALL,

23

Having been first duly sworn,

24

Was examined and testified as follows:

25

DIRECT EXAMINATION

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1 BY MS. FLYNN:

2 Q. Good afternoon, Officer Randall. Where are you
3 employed?

4 A. City of Charleston Police Department.

5 Q. And what are your duties at the City of Charleston
6 Police Department?

7 A. I am a street patrol officer.

8 Q. And were you working that back in December of 2011?

9 A. Yes, I was.

10 Q. Did you respond to a burglary call on the evening of
11 December 22, 2011?

12 A. Yes, I did.

13 Q. Where did you respond to?

14 A. It was Riverland Woods Place, apartment .

15 Q. And what county is that in?

16 A. Charleston.

17 Q. Approximately what time did you receive that call
18 that evening?

19 A. It was just after 11 o'clock that night.

20 Q. What did you observe when you first arrived on the
21 scene?

22 A. The window at the rear of the apartment was broken
23 out and there was some glass inside the window. The
24 victim explained to me that they were missing items from
25 the apartment.

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1 Q. When you arrived on the scene what did you
2 eventually learn from your investigation what occurred?

3 A. That while they were out that evening someone had
4 come into their home and removed several items from their
5 house.

6 Q. And did you learn through your investigation what
7 time they alleged to have returned that evening?

8 A. They had -- the victim stated to me that they had
9 left around 7 p.m. that night and returned home
10 approximately 10:30.

11 Q. When a burglary occurs is it standard procedure to
12 catalog the items that were taken from the home?

13 A. Yes, it is.

14 Q. And did you do that in this case?

15 A. I did.

16 Q. Okay. What sort of items were taken from the home?

17 A. The victim stated there was a 42 inch T.V. missing,
18 three laptop computers, and some jewelry.

19 Q. Did crime scene arrive at some point to process the
20 scene?

21 A. Yes.

22 Q. Okay. Did an investigator or the detective come
23 out that night?

24 A. No detective came that night.

25 Q. Is it standard procedure for them to come out for

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1 every burglary?

2 A. Just if there is a witness to the burglary then we
3 will have a detective come out or if an arrest was made
4 that night and neither happened so...

5 Q. So there were no detectives there that evening?

6 A. Right.

7 Q. So after speaking with the victim did you locate the
8 phone that the victim found?

9 A. Yes. He had it out in the I believe it was the
10 dining room area.

11 Q. And what did the phone look like?

12 A. It was a smaller red Samsung telephone.

13 Q. And then would you have been the officer that
14 collected the phone that evening?

15 A. Yes, I did.

16 MS. FLYNN: May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 Q. [Ms. Flynn] I'm showing you has been previously
19 marked as State's exhibit 15 for identification only.

20 [Whereupon, the witness is shown exhibit]

21 Q. Do you recognize this?

22 A. Yes, I do.

23 Q. What do you recognize it to be?

24 A. The cell phone I admitted as evidence from the
25 burglary that night.

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1 Q. That's the phone you collected that night?
2 A. Yes, ma'am.
3 Q. Does it appear to be in the same condition as it
4 was?
5 A. Yes, ma'am.
6 MS. FLYNN: At this time, Your Honor, I would ask
7 that State's exhibit 15 be admitted into evidence.
8 THE COURT: Any objection?
9 MS. ANDERSON: Just note our previous objection.
10 THE COURT: Pardon?
11 MS. ANDERSON: Just noting our previous objection.
12 THE COURT: Okay. Admitted with objection; the
13 pretrial objection is that correct?
14 MS. ANDERSON: Yes, Your Honor.
15 THE COURT: Okay. You renew that objection?
16 MS. ANDERSON: I do.
17 THE COURT: All right. That motion is denied.
18 MS. ANDERSON: Thank you.
19 THE COURT: You're welcome.
20 [Whereupon, State's exhibit number 15 is entered
21 into evidence by the court]
22 Q. [Ms. Flynn] Now after you collected that phone you
23 secured it into evidence --
24 A. Yes, ma'am.
25 Q. What does it mean to secure something into evidence?

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1 A. I take it from the scene down to the police station,
2 at 180 Lockwood, up into our evidence room. I then fill
3 out it's called a voucher, which is basic general
4 information about what I'm placing into evidence.

5 I seal it; its heat sealed in plastic -- and initial
6 it with my initials. And then place it in a secure box
7 we log by the evidence desk.

8 Q. After this did you later convey what you learned
9 about the phone and the incident to the lead detective,
10 Detective Lester in this case?

11 A. Yes, I did.

12 Q. And then at that point was that the end of your
13 involvement in this case?

14 A. Yes, it was.

15 Q. Thank you. Please answer any questions the defense
16 attorney may have.

17 THE COURT: Cross-examination?

18 MS. ANDERSON: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. ANDERSON:

21 Q. So you were dispatched out there just after 11
22 o'clock?

23 A. Yes, ma'am.

24 Q. 11:08?

25 A. Yes.

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1 Q. You were the first one on the scene?

2 A. Yes, I was.

3 Q. You -- were Justin Poole and Amber Winkler both
4 there when you arrived?

5 A. When I arrived it was just Mr. Poole and Ms. Winkler
6 I believe arrived sometime shortly after that?

7 Q. About how long would you say?

8 A. I couldn't tell you exactly, maybe between 15
9 minutes and a half hour.

10 Q. So your role as a responding officer is upon arrival
11 you begin to investigate the case, right?

12 A. Yes, ma'am.

13 Q. To find out as best you can what happened?

14 A. Right.

15 Q. That's because that's what you do; you're there to
16 find out the truth of matter of what happened.

17 A. Yes, ma'am.

18 Q. And you do that by securing the scene.

19 A. Right.

20 Q. Making sure that no further contamination can take
21 place, control who comes in and out of there.

22 A. Uh huh.

23 Q. That's so that no one messes anything up. You talk
24 to anyone who might be a witness in a case, take
25 statements from them if necessary.

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1 A. Right.
2 Q. And you report your own observations. And depending
3 on where the crime scene is you collect evidence yourself
4 or you call crime scene, which you did in this case.
5 A. Right.
6 Q. For them to come and process the scene, correct?
7 A. Yes, ma'am.
8 Q. And once the crime scene tech shows up you kind of
9 tell them what is going on, directing them that this is
10 what happened and let them evaluate the scene.
11 A. Right.
12 Q. So let's talk about what you did when you came on
13 the scene. You first came and you spoke with the
14 resident, Richard Poole, but he goes by Justin, correct?
15 A. Yes.
16 Q. He told you how he came to discover someone had
17 broken in.
18 A. Right.
19 Q. And he hands you a cell phone ---
20 A. --- yes, ma'am ---
21 Q. --- out in the living room. You didn't have him sit
22 down and write a statement?
23 A. No, ma'am.
24 Q. You didn't take him back to the police station to
25 record a statement or anything like that?

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1 A. No, ma'am.

2 Q. And you didn't -- you said Amber Winkler came home
3 some short time later.

4 A. Right.

5 Q. And you didn't get a written statement from her.

6 A. No, ma'am.

7 Q. She wasn't there from what was -- was she?

8 A. Right.

9 Q. So Justin told you what was missing from his room
10 was a 42 inch T.V. and a laptop.

11 A. Yes, ma'am.

12 Q. And he showed you where it was in the room?

13 A. Yes, ma'am.

14 Q. When you arrived were the blinds open or closed do
15 you remember?

16 A. I don't recall.

17 Q. There is mention of a third roommate there. Did you
18 ever speak with a third roommate?

19 A. No, I did not.

20 Q. They never came home and you never spoke with them?

21 A. No.

22 Q. Did you get contact information for them?

23 A. No. I want to say, I'm not 100 percent sure, but I
24 believe they were out of town or something like that or
25 they were no longer living there; something to that

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1 effect.

2 Q. So you called in crime scene and the tech showed up
3 you handed him the phone and asked him to process the
4 phone?

5 A. The crime tech stated that since the phone had
6 already been handled by Mr. Poole that it wouldn't be
7 able to have fingerprints lifted from it and so he did
8 not take it into evidence himself.

9 Q. But you didn't ask him to try anyway?

10 A. I mean it's not really my call.

11 Q. That's fair.

12 A. I'm not sure how they do their job so I just leave
13 it up to them.

14 Q. Did you -- you didn't go out -- the residents of the
15 apartment weren't home at the time somebody broke in,
16 correct?

17 A. Correct.

18 Q. But it's possible that there may have been other
19 witnesses maybe in the area?

20 A. Possibly.

21 Q. You didn't ever go and check with the neighbors to
22 see if anyone had seen or heard anything?

23 A. No.

24 Q. You didn't go check with them. You didn't go walk
25 around the complex at all? You stayed in the apartment?

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- 1 A. No, we walked around the outside in the parking lot
2 area outside where the window was broken and around along
3 the front side of the...
- 4 Q. So around the building itself?
- 5 A. Yes, ma'am.
- 6 Q. But not around the complex?
- 7 A. Well, I mean the complex is ---
- 8 Q. --- I know it is ---
- 9 A. --- extremely large so it would have...
- 10 Q. I understand ---
- 11 A. --- there is I think nine buildings in that complex.
12 But yes, around the building where the incident occurred.
- 13 Q. So just to sum up from what you saw there was
14 nothing in that house other than the cell phone, correct?
- 15 A. Correct.
- 16 Q. As far as you know the crime scene tech Charles
17 didn't find any other evidence; no prints, no D-N-A like
18 that?
- 19 A. He didn't tell me whether he did or not.
- 20 Q. And you didn't go into any of the rooms besides
21 Justin's bedroom and Amber's? Did you go in the other
22 ones too?
- 23 A. Yes. There was only three bedrooms in the house but
24 I did look in all three of them.
- 25 Q. But nothing else was missing from anywhere else in

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1 the house?
2 A. No.
3 Q. No other items was taken from any of the other
4 rooms?
5 A. Not that I am aware of.
6 Q. So once you were back in you took the cell phone,
7 submitted it, and wrote your report and that was all you
8 did in the case?
9 A. Yes, ma'am.
10 Q. Did any of the officers arrive other than the crime
11 scene tech?
12 A. No, ma'am.
13 Q. It was just you and him?
14 A. It was just me and him.
15 Q. And what time did y'all leave?
16 A. We were probably there for roughly an hour.
17 Q. About an hour.
18 MS. ANDERSON: Court's indulgence just a minute,
19 Your Honor.
20 [Whereupon, Ms. Anderson and Ms. Proctor confer]
21 Q. Nothing further. Thank you.
22 THE COURT: Any redirect?
23 MS. FLYNN: No, Your Honor.
24 THE COURT: Okay. You may step down. Is there
25 any reason Officer Randall can't be excused?

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1 MS. FLYNN: Yes.

2 MS. PROCTOR: Yes.

3 MS. FLYNN: Yes. I'm sorry.

4 THE COURT: You may be excused. Thank you so very
5 much.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness please.

9 MR. SIMPSON: Your Honor, may I approach briefly?

10 THE COURT: Yes, sir.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: All right. Mr. Foreman and ladies and
14 gentlemen of the jury we will take a break at this time.
15 We'll try to take a break about every hour and a half.
16 We've been in the courtroom for longer than that --
17 almost -- I know you haven't. So we're going to take a
18 break at this time.

19 And please don't discuss the case amongst
20 yourselves. Don't use any electronic means to
21 investigate the case or the crime or anything. I want
22 you to make your decision on what you hear from the sworn
23 testimony in the courtroom; not outside the courtroom.
24 If there are any smokers let the Bailiff's know and they
25 will take you to the appropriate place for smoking. I

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1 guess -- can you still smoke in the streets in
2 Charleston? I don't know if you can or not. Anyhow they
3 will take you to the proper place for smoking. If you'll
4 follow the Bailiff to the jury room please.

5 [Whereupon, the jury exits the courtroom at 3:30
6 p.m.]

7 THE COURT: Let me see the attorneys up here just a
8 second.

9 [Whereupon, an off the record bench conference is
10 held]

11 [Whereupon, court is in recess from 3:32 p.m. to
12 3:57 p.m.]

13 THE COURT: Anything from the State before we bring
14 in the jury?

15 MS. FLYNN: No, Your Honor.

16 THE COURT: Anything from the defendant?

17 MS. ANDERSON: No, Your Honor.

18 THE COURT: Bring us the jury please as soon as we
19 get the defendant -- there he is. Is Van Horn your next
20 witness?

21 MR. SIMPSON: The crime scene tech Charles.

22 THE COURT: Okay.

23 MR. SIMPSON: Your Honor, for planning purposes we
24 have two more witnesses ready to go today.

25 THE COURT: Okay.

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1 MR. SIMPSON: That will bring us to close to 5 if
2 that is okay with you.

3 THE COURT: That's fine.

4 [Whereupon, the jury enters the courtroom at 3:38
5 p.m.]

6 THE BAILIFF: Jury is all present, Your Honor.

7 THE COURT: Thank you very much. Call your next
8 witness please.

9 MR. SIMPSON: Thank you, Your Honor. The State
10 calls crime scene tech, Renee Charles.

11 [Whereupon, Mr. Charles comes forward]

12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court as follows: do you swear or affirm your
14 testimony will be the truth, the whole truth, and nothing
15 but the truth so help you God]

16 CLERK OF COURT: State your full name and spell
17 your last name.

18 THE WITNESS: My first name is Renee, last name
19 Charles, C-H-A-R-L-E-S.

20 - - - - -

21 RENEE CHARLES,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

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1 Q. Good afternoon, Mr. Charles. How are you?

2 A. Good, sir.

3 Q. Where do you work?

4 A. I work for the City of Charleston Police Department.

5 Q. And in what capacity do you work for that agency?

6 A. I work as a crime scene technician in forensics.

7 Q. And describe a little bit for the jury what your job
8 is in that role.

9 A. My job basically is to respond to a crime scene
10 call, process the crime scene, document the crime scene,
11 photographs, collect evidence, and also document the
12 crime scene.

13 Q. So it's to document what you find when you get
14 there?

15 A. Yes sir, absolutely.

16 Q. And then process the scene and search for evidence.

17 A. Search for any evidence and also photographs.

18 Q. Were you working in that capacity in December of
19 2001?

20 A. Yes sir, I did.

21 Q. Do you recall at that time responding to a burglary
22 that brings us here today?

23 A. Yes, sir. On December 22nd I responded to
24 Riverland Woods in reference to a burglary scene, yes.

25 Q. Okay. Now you're not what we would call a

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- 1 responding officer are you?
- 2 A. No, sir. The first responding officer would be
- 3 Officer Randall or whoever was dispatched. Crime scene
- 4 would need to be processed for -- evidence.
- 5 Q. So it's not your role to interview people?
- 6 A. No, sir.
- 7 Q. But never the less is it often helpful when you get
- 8 on the scene to be apprised of the basic...
- 9 A. Yes.
- 10 Q. Facts and circumstances?
- 11 A. Yes sir, absolutely. My first -- first would be
- 12 talking to the first responding officer and they would be
- 13 briefing me about the --
- 14 Q. And does that help you lead to where you might
- 15 search for the evidence that may be at the scene?
- 16 A. Absolutely, yes sir.
- 17 Q. In this case what was your first step you took when
- 18 responding or arriving at the scene?
- 19 A. My first step I spoke with the officer -- Officer
- 20 Randall and he explained to me he said that the residence
- 21 was burglarized. The bedroom window was observed to be
- 22 broken and several items were taken from inside the
- 23 residence. And also items were missing from the
- 24 roommate's bedroom.
- 25 Q. And is your -- how did you proceed then?

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1 A. From that -- he pointed at the location where the
2 items were located in the bedrooms. And he also
3 mentioned to me that the point of entry was observed to
4 be the bedroom window so that's going to help me in my
5 investigation also.

6 Q. Did you take any photographs of the...

7 A. Yes, I did photograph the broken windows and the
8 interior of the bedrooms.

9 MR. SIMPSON: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir.

12 Q. [Mr. Simpson] Crime scene tech Charles, I'm handing
13 you what has been marked as I.D. only as State's exhibit
14 3 through 8. Can you review those for me?

15 [Whereupon, the witness is shown exhibits]

16 A. Yes, sir. That's the ---

17 Q. --- I'm sorry, I don't mean to interrupt. We'll
18 publish them if you just want to flip through and ---

19 A. --- okay, I'm sorry ---

20 Q. --- let me know if you recognize those.

21 A. Yes, give me one second.

22 THE COURT: While he is looking through does the
23 defense have any objections to the pictures?

24 MS. ANDERSON: No, Your Honor.

25 THE COURT: All right. Go ahead.

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1 MR. SIMPSON: The State at this time would move 3
2 through 8 into evidence.

3 THE COURT: All right. 3 through 8 admitted
4 without objection.

5 [Whereupon, State's exhibit numbers 3, 4, 5, 6, 7,
6 and 8 are entered into evidence by the court]

7 A. Yes, these are photographs that I took.

8 Q. [Mr. Simpson] Are those all the photographs you
9 took at the scene?

10 A. Yes, sir.

11 Q. You sure there weren't some more?

12 A. I know those were ones I took.

13 Q. I'm publishing what has been entered into evidence
14 as State's exhibit 3.

15 [Whereupon, the photo is shown]

16 Q. Can you describe that exhibit for the jury?

17 A. Yes, sir. That was the cell phone, Samsung cell
18 phone that was found at the scene. I was notified by
19 Officer Randall that the cell phone was located in the
20 bedroom -- the bedroom floor.

21 Q. And now State's exhibit 4.

22 [Whereupon, the photo is shown]

23 A. That was the photograph -- that was the dresser
24 drawer where the items were located at. The items that
25 were taken from inside the dresser drawer or on top of

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1 the drawer.
2 Q. Now, State's exhibit 5.
3 [Whereupon, the photo is shown]
4 A. That represents the location where the items was
5 taken from.
6 Q. And were there some computers alleged ---
7 A. --- yes, some computers or monitors or T.V.'s or
8 something like that.
9 Q. State's exhibit 6.
10 [Whereupon, the photo is shown]
11 A. That's the bedroom window and also that's the brick
12 that was thrown through the window.
13 Q. When you say brick do you mean this [indicates]?
14 A. That's a piece of a rock or brick or something.
15 Q. Okay. And State's 7.
16 [Whereupon, the photo is shown]
17 A. That's the interior of the bedroom window, broken
18 glass showing the point of entry.
19 Q. And 8.
20 [Whereupon, the photo is shown]
21 A. That's the exterior of the bedroom windows and also
22 showing that the broken window and the screen damaged.
23 Q. Okay. And when you talk about a suspected point of
24 entry ---
25 A. --- that's where the suspect got entry into the

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1 house.

2 Q. You mentioned to the jury that your first purpose is
3 to document the scene.

4 A. Yes, sir.

5 Q. And you're taking photographs as you go. Moving on
6 from documenting the scene how do you proceed at that
7 point?

8 A. From there I took photographs of the broken bedroom
9 windows, photographed the exterior, the interior, and
10 also the -- inside the bedroom.

11 Q. Do you also continue to search for further evidence?

12 A. Yes, sir. After that I continued to look around the
13 bedroom for items that we can process for latent
14 fingerprint, which I did process the interior windows.
15 And the exterior window --

16 Q. --- let's slow down for a minute. What do you mean
17 when you say latent fingerprints?

18 A. Latent fingerprints is when the subject or suspect
19 enter any type of residence or businesses if they touch
20 the items or any type of surface it will leave behind
21 some details of the fingerprints or the fingers.

22 Q. That is extracted from the oils of the skin?

23 A. From the oils of the skin and all the other
24 substances.

25 Q. Now every time a -- how many scenes do you think you

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1 have responded to and processed over the course of your
2 career?

3 A. Several scenes; I would say hundreds.

4 Q. Hundreds?

5 A. Yes, sir.

6 Q. So it's hard to put a solid number on it?

7 A. Yes, it is very difficult.

8 Q. But you would approximate this is in the hundreds?

9 A. Yes, it is over a hundred.

10 Q. Do you find fingerprints at every scene you respond
11 to?

12 A. Not necessarily. It depends if the subject or the
13 suspect was wearing gloves; most likely it's not going to
14 -- a latent fingerprint. It's also going to be a --
15 surface. If it's a wood surface -- or a rough surface
16 it's real difficult -- to locate.

17 Q. So it is your duty to look?

18 A. Yes, sir. Absolutely it is my duty to search for
19 latent fingerprints and locate fingerprints, lift them
20 and then submit it to AFIS.

21 Q. But undertaking a search does not necessarily
22 dictate that you will find fingerprints?

23 A. Exactly. It doesn't mean I am going to find latent
24 fingerprints.

25 Q. So what type of area at a crime scene would you look

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1 for fingerprints?

2 A. I would look most of the time if it is a flat
3 surface, for example a glass table, a nice smooth surface
4 it is easier to obtain latent fingerprints compared to a
5 rough surface.

6 Q. Would you also look at areas where the facts might
7 reflect an intruder might have ---

8 A. --- absolutely, yes sir. I would look everywhere.

9 Q. So moving on to the present case where did you
10 search for fingerprints in this case?

11 A. I did search; I looked around the bedroom room
12 window on the exterior and also the interior for latent
13 fingerprints.

14 I did process the base, the frame, the window frames
15 for latent fingerprints. And I also looked at the -- I
16 searched the debris; the piece of rock and I didn't get
17 latents --

18 Q. Explain to the jury the process when you say search.
19 Are you just staring at it hard?

20 A. No, I will physically examine the items. I will log
21 and I will use the fingerprint brush to search and look
22 to see if there is anything on the item itself.

23 Q. And what are you brushing on when you say you use
24 the fingerprint brush ---

25 A. --- I use the fingerprint brush and also what we

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1 call fingerprint powder, which is a black type powder
2 that we use to lift off the latents if any latents are on
3 the surface.

4 Q. And again if any latents are there?

5 A. If they are there you will see them. If it's not
6 there, it's not there; there is no way you can find them.

7 Q. Did you also perform a latent search on any other
8 areas of the home?

9 A. I did process the bedroom door handles for latents
10 but I didn't get anything off the bedroom door handles.

11 Q. Anything with the dressers?

12 A. I did try also sir, but I didn't get any...

13 Q. So crime scene tech Charles, you processed the
14 interior and exterior of the bedroom windows?

15 A. I did, yes sir.

16 Q. The rock?

17 A. Yes, sir.

18 Q. The bedroom door handles?

19 A. Yes, sir.

20 Q. And the dresser drawers?

21 A. I did. Yes, sir.

22 Q. Did any of those searches reveal fingerprints?

23 A. No, sir. Negative items.

24 Q. To be clear they did not -- you're saying no
25 latents?

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1 A. No latents. I did process it but with no result.
2 Q. It's not a situation where there is a fingerprint
3 matching ---
4 A. --- no results ---
5 Q. --- no results?
6 A. No results.
7 Q. And you searched all those different areas?
8 A. Yes, sir.
9 Q. Any apparent blood on the scene?
10 A. I did not find blood on the scene.
11 Q. Any reason to suspect semen on the scene in a case
12 like that?
13 A. If there is no blood there is no reason to
14 speculate.
15 Q. And again you talk to the officer when you get there
16 to sort of apprise yourself of what is expected to have
17 happened?
18 A. Yes, sir. Roughly he would brief me about the
19 incident and I would go from there based on the
20 information that was given to me.
21 Q. Was there any reason to think after you covered the
22 scene and in several different locations looked for
23 prints to think there might be bodily fluids somewhere?
24 A. No. I wasn't told about any bodily fluid. The only
25 thing the officer explained to me that the suspect -- the

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1 offender came in through the front bedroom windows for
2 entry to inside the residence and took some items from
3 inside the residence.

4 Q. You've processed hundreds of scenes I believe you
5 testified?

6 A. Yes, sir.

7 Q. You've performed collection of D-N-A evidence before
8 correct?

9 A. Yes, sir.

10 Q. And why not in this case?

11 A. I was advised that the scene has been -- prior to my
12 arrival the scene has been contaminated by the victims
13 and also the people inside the residence. So basically I
14 was there to photograph and also look for fingerprints.
15 So as far as D-N-A I didn't search for D-N-A.

16 Q. And D-N-A would typically be associated with some
17 sort of bodily fluid?

18 A. Bodily fluid, blood; any type of blood...

19 Q. Now sometimes it's associated with hair, correct?

20 A. Yes, sir. Fibers, hair.

21 Q. And every crime scene you respond to do you scour
22 with a microscope looking for hair?

23 A. Not necessarily no, sir. It just depends on the
24 type of crime scene. If it were burglary where they just
25 entered the front door and took items and went out the

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1 front door.

2 Q. And are you familiar with the concept of touch
3 D-N-A?

4 A. Yes. I'm not an expert at it but I have some
5 experience, yes.

6 Q. So again, it is possible to obtain D-N-A from an
7 area that a person has touched?

8 A. That is true, yes sir.

9 Q. But also an area a person has touched, at least
10 presuming no gloves ---

11 A. --- no gloves ---

12 Q. --- would reveal a fingerprint as well, is that
13 correct?

14 A. Yes, if the person wore gloves it's going to be
15 difficult for D-N-A or latent fingerprints.

16 Q. And again you searched the suspected areas where a
17 person might have touched and found no latent prints?

18 A. No latent prints.

19 MR. SIMPSON: Court's indulgence.

20 Q. [Mr. Simpson] Crime scene tech Charles, why did you
21 not print the cell phone?

22 A. I was advised by Officer Randall that the cell phone
23 has been contaminated by the victims and also the other
24 people inside the residence. So the fact that the phone
25 has been contaminated there is no reason for crime scene

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1 to dust the cell phone.

2 Q. And contaminated is kind of a scary word. As a crime
3 scene tech what do you mean?

4 A. Contaminated means the phone has been handled,
5 touched, went through, manipulated; the handle touched by
6 the victims and most likely the victim's fingerprints
7 would be on the cell phone.

8 Q. Thank you, Mr. Charles. Please answer any questions
9 that defense may have.

10 MS. PROCTOR: Court's indulgence one moment.

11 THE COURT: Yes, ma'am.

12 MS. ANDERSON: Thank you.

13 CROSS-EXAMINATION

14 BY MS. ANDERSON:

15 Q. Good afternoon Mr. Charles. You talked a little bit
16 about how you documented the scene when you arrived.

17 A. Yes, ma'am.

18 Q. And you document it as you find it.

19 A. Yes, ma'am.

20 Q. You document it the way it is when you get there;
21 not when everybody else got there but when you got there?

22 A. Yes, ma'am.

23 MS. ANDERSON: May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25 [Whereupon, defendant's exhibit numbers 6, 7, 8, and

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1 9 are marked by the court reporter]
2 Q. [Ms. Anderson] I'm handing you what has been marked
3 for identification purposes only as defendant's 2 through
4 5. Would you take a look at those?
5 [Whereupon, the witness is shown exhibits]
6 A. Okay.
7 Q. Do you recognize those?
8 A. Yes, ma'am.
9 Q. And what are they?
10 A. These are the photographs that I took from the crime
11 scene ---
12 Q. --- from the crime scene. And those are in addition
13 to the ones the State has already shown you.
14 A. Yes, ma'am.
15 MS. ANDERSON: At this time we would move to admit
16 these photos into evidence, defendant's 2 through 5.
17 THE COURT: Any objection?
18 MS. FLYNN: No, Your Honor.
19 THE COURT: Mr. Simpson, you have any objection?
20 MR. SIMPSON: No, Your Honor.
21 THE COURT: All right. Admitted without
22 objection.
23 [Whereupon, defendant's exhibit numbers 2, 3, 4, and
24 5 are entered into evidence by the court]
25 Q. [Ms. Anderson] Can you tell me about this one. Tell

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1 me what that [indicates] is?

2 A. Yes. This photograph you can see the red brick from
3 the inside of the bedroom window and also the broken
4 glass on the inside at the base of the window.

5 Q. And which window -- I mean which bedroom is this?

6 A. I would say -- I know it's the bedroom where he came
7 into, that would be the victim's bedroom. I don't know
8 which one exactly but I know it's one of the victim's
9 bedrooms.

10 Q. Okay. Can you tell me about that one? That's
11 defendant's 3.

12 [Whereupon, the witness is shown exhibit]

13 A. Yes. That's the victim's bedroom window. That's
14 showing the exterior of the window, and also showing the
15 broken glass on the other side. The window was pushed up
16 so that's showing the entry where the defendant came
17 into.

18 Q. So is the broken window if the window were closed
19 would it have been on the bottom or the top?

20 A. Now the window is up so I'm assuming if it was
21 closed it would be all the way down with the hole in the
22 top part of the window.

23 Q. So do you know if the hole is in the top or are you
24 assuming the hole is in the top?

25 A. No, the hole was there.

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1 Q. The hole was at the top?

2 A. Yes, ma'am.

3 Q. And the blinds are closed in this picture. Were
4 they closed when you got there -- I mean down, not
5 closed?

6 A. The way I took it that's the way it was when I first
7 arrived at the scene.

8 Q. So you took the outside pictures before you went
9 inside?

10 A. I do the -- yes, ma'am. I photograph from the
11 outside showing the point of entry and then I went inside
12 the residence and photographed the inside of the
13 residence.

14 Q. So those were down when you got there?

15 A. Yes, that's just the way it was.

16 Q. This is defendant's exhibit 4.

17 [Whereupon, the witness is shown exhibit]

18 Q. Tell me what is in this picture.

19 A. That's -- I'm showing the location where the items
20 was taken from.

21 Q. What items? What items were taken?

22 A. I took -- I know the officer explained to me the
23 T.V. was taken, the computer; all the items there were
24 taken. I don't have all the lists so I'm assuming all
25 those items were taken. So what I'm doing is just

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1 showing the location where the items were located at.

2 Q. So you don't know what was taken from this
3 [indicates] area?

4 A. That's T.V., laptop computers.

5 Q. You just know something was taken?

6 A. Something was taken. What I am doing is just
7 showing the area where officer was -- the items were
8 taken from. This was the location and I would photograph
9 the area and then go back and process the scene.

10 Q. So Officer Randall said something was taken from
11 here and you just took a picture of it?

12 A. Yes, based on his information.

13 Q. Did you process that tape ---

14 A. --- I was ---

15 Q. --- on that dresser?

16 A. Yes. If the items were located on top of the
17 surface I would process the surface, yes.

18 Q. Because you said in your report you processed the
19 dresser drawers but you didn't say anything about
20 processing the top of the dresser.

21 A. When I processed I processed the dresser drawer I
22 processed pretty much all the area that the suspect may
23 either have touched or handled.

24 Q. Is that what you normally do or is that what you did
25 in ---

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- 1 A. --- that's normally what I do. If I process an item
2 I will process pretty much the area where in my mind
3 thinking the suspect may or may not have touched the
4 surface, yes.
- 5 Q. But when you process something when you go through
6 you are careful to document what you do as you go along,
7 correct?
- 8 A. Yes, that's correct.
- 9 Q. And so you write down what you document and where
10 you took these from correct?
- 11 A. Yes, ma'am.
- 12 Q. And you said in your report that you processed the
13 dresser drawers for latent fingerprints, correct?
- 14 A. Yes, I did.
- 15 Q. You also said that you processed the exterior --
16 interior of the Vic's bedroom window.
- 17 A. Yes.
- 18 Q. Small rock that we just saw?
- 19 A. Yes, I did..
- 20 Q. And the bedroom door handles.
- 21 A. Yes, I did.
- 22 Q. But you did not put in there that you processed the
23 top of that dresser.
- 24 A. At the top of the dresser I took a photograph to
25 show the area but if I process the door handles I can

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1 either look -- when I do process I process by looking, by
2 dusting, by using different light sources just to see if
3 any latent -- either dusting or by looking at different
4 type of surfaces.

5 Q. And you took this picture before you dusted for
6 prints?

7 A. Yes, always before.

8 Q. And this is a surface that you could get prints
9 from?

10 A. Absolutely because it is a flat surface. It it's a
11 wooden type of material it's going to make it difficult
12 for latent fingerprints.

13 But certain type of surfaces are really hard for
14 latents; it doesn't mean because somebody touched an item
15 you're going to leave behind fingerprints.

16 Q. So if I put my hand right here on this wood surface
17 right here you wouldn't be able to get prints.

18 A. It doesn't mean -- see, the thing about fingerprints
19 we all our bodies secrete differently so you can touch an
20 item and leave behind fingerprints and somebody else
21 touch it and not leave fingerprints. It all depends on
22 if you sweat more or you don't sweat it's all different
23 types ---

24 Q. --- I understand that it depends on the conditions
25 from the individual but generally you can get something

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1 from a flatter ---
2 A. --- yes, ma'am ---
3 Q. --- flatter surface.
4 A. Yes, ma'am.
5 Q. But you didn't write in your report that you took it
6 from the top of the dresser.
7 A. I didn't get latents off none of the items at all.
8 Q. I know you didn't get latents off the items that you
9 listed in your report. But you didn't write down that
10 you took anything from the top of the dresser.
11 A. No, I did not.
12 Q. Okay. I'm showing you what has been marked as
13 defendant's exhibit 5.
14 [Whereupon, the witness is shown exhibit]
15 Q. Do you recognize -- tell me about this picture.
16 A. Officer Randall advised me that jewelry was taken
17 from the -- inside the -- I would call it the purse or
18 from the area right there [indicates]. So I photographed
19 the area where the item was taken from.
20 Q. And this is a different bedroom than the one with
21 the broken window.
22 A. That is correct, yes ma'am.
23 Q. And what did he tell you was taken from here?
24 A. A ring or jewelry --
25 Q. Tell me -- this [indicates] was on the dresser when

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1 you walked in the room correct?
2 A. Yes.
3 Q. And all of these items were sitting on top of the
4 dresser when you walked in there?
5 A. Yes, ma'am.
6 Q. Tell me what you see in this picture.
7 A. I see rings, jewelry, various jewelry items.
8 Q. Do you see some what looks -- what appear to be
9 diamond earrings in the top left?
10 A. Yes, ma'am.
11 Q. Some rings in the middle, looks like another diamond
12 I can't tell if it's a necklace toward the middle of that
13 I guess it's a carrying case. What do you see in that
14 top right hand corner? Can you tell what that
15 [indicates] is?
16 A. It's more earrings, just more jewelry.
17 Q. It's just more jewelry ---
18 A. --- more jewelry.
19 Q. And those were there when you got there too?
20 A. Yes.
21 Q. Just on top of the dresser?
22 A. On the top of the dresser.
23 Q. And what do you see to the left of the little
24 carrying case? Is that [indicates] a watch?
25 A. A watch, yes.

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- 1 Q. And so like we said when you get there you document
2 it and it's everything that is there when you get there.
3 A. That is correct, yes.
4 Q. And you processed the dresser drawer handles,
5 correct?
6 A. Yes, I did.
7 Q. Was that like those little pull knobs you see in the
8 bottom right there [indicates]?
9 A. Yes, ma'am.
10 Q. Did you dust the door handles in both rooms?
11 A. Probably I did, yes.
12 Q. I'm just checking; you said dresser drawer handles?
13 A. Yes, usually the one that you pull; that's the
14 handle.
15 Q. So you processed these ones [indicates]?
16 A. Most likely, yes.
17 Q. And you got no prints off that that?
18 A. No prints at all.
19 Q. But you didn't process the top of the dresser?
20 A. I don't recall.
21 Q. And I know it's wood and I know you told me it's not
22 something that ---
23 A. --- yes ---
24 Q. --- can be difficult, but you did not process it to
25 see if there were any latent ---

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1 A. --- I don't recall. I did process the handles but I
2 don't recall processing the top.

3 Q. Okay. I'm showing you what is defendant's exhibit
4 6.

5 [Whereupon, the witness is shown exhibit]

6 Q. Tell me what this picture is.

7 A. This picture is showing the broken glass window and
8 also the point of entry the suspect came in --

9 Q. I know I asked you this but I can't remember what
10 the answer is was the broken window at the top or at the
11 bottom?

12 A. The broken window is up at the top. I'm assuming
13 that he broke the top and then he would reach in ---

14 Q. --- so it was the top like that [indicates] is what
15 you are assuming?

16 A. Yes.

17 Q. This is defendant's exhibit 7.

18 [Whereupon, the witness is shown exhibit]

19 A. That's the piece of rock and also broken glass on
20 the interior base of the window frame.

21 Q. Okay. So the rock was sitting right there
22 [indicates] when you came. As far as you know nobody had
23 touched that.

24 A. Nobody had messed with the rock.

25 Q. So that had not been contaminated in any way by

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1 anybody?
2 A. That's correct.
3 Q. You weren't able to pull prints from that?
4 A. No, not on those surfaces.
5 Q. But you did process that?
6 A. I did process it, yes ma'am.
7 Q. When you say you processed the interior and exterior
8 of the window what do you mean by that?
9 A. I mean processed for fingerprints, processed around
10 the window frame ---
11 Q. --- the window frame?
12 A. The window frame I dusted for fingerprints on the
13 outside and also on the inside.
14 Q. So can you point to where you would have processed?
15 A. I would process the area at the base [indicates] the
16 window frame base of the window, I would go on the side
17 here [indicates], left, right, the top; all around I
18 would process that.
19 Q. And when you processed the exterior was it just the
20 window frames on the other side?
21 A. Yes. If I process the exterior I would do the same
22 thing except it would be on the frame; only on the frame.
23 Q. Did you process any of the broken glass?
24 A. Yes ma'am I did. But there was negative results; no
25 latents.

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1 Q. I've just got two more to show you. This is
2 defendant's exhibit 8.

3 [Whereupon, the witness is shown exhibit]

4 Q. Tell us what you see in this picture.

5 A. I see a broken windows, frames, screens, damages,
6 brick.

7 Q. It's a little hard to see on this; it's a little bit
8 better on this one [indicates]. That was the screen that
9 was cut?

10 A. Yes, and the damage.

11 Q. Did you take any -- you didn't take any -- you
12 didn't process the blinds themselves?

13 A. No, I did not.

14 Q. And was it you who pulled them open?

15 A. I wasn't me.

16 Q. It wasn't you? But they were down?

17 A. I processed the window -- if I processed the bottom
18 I probably pulled them a little just to give me room to
19 dust for latents. I don't recall if I did it or not.

20 Q. Okay. And last one, defendant's exhibit 9.

21 [Whereupon, the witness is shown exhibit]

22 Q. Tell us what is in this picture, please?

23 A. This is the screen, the broken glass window, and
24 showing the entry point. Pretty much what you see is the
25 broken glass window and also the screen that was -- the

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1 cut screen.

2 Q. You didn't process those -- I guess they were power
3 boxes off to the side.

4 A. You're talking about the top right there
5 [indicates]?

6 Q. No, right here [indicates].

7 A. No, I did not.

8 Q. Would you point so the jury knows what I pointed to?

9 A. No, I did not process that area [indicates]. I only
10 processed the exterior window frame; that's pretty much
11 what I did.

12 Q. You didn't process the locks on the top?

13 A. I did on the inside yes, ma'am.

14 Q. And you didn't find anything on ---

15 A. --- no latents at all.

16 Q. I have a few more questions. This is what has
17 already been admitted as State's 5.

18 [Whereupon, the witness is shown exhibit]

19 Q. And you said that this [indicates] is where some of
20 the items were taken?

21 A. Yes, computer ---

22 Q. --- what other items were taken from here
23 [indicates], do you know?

24 A. That's a computer desk so probably a laptop or
25 monitor or something.

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1 Q. And you didn't process the desk itself for prints?

2 A. I don't recall processing the desk but I probably
3 did -- normally if the item was taken from a surface I
4 would process the surface.

5 Q. Well let's talk -- let's move back a little bit and
6 talk about how you document what you do. Part of your
7 job is to document the scene and to take a record of
8 everything. But the way that you do that is you document
9 what you do by writing a report, correct?

10 A. That is correct. It's one way to document it.

11 Q. And you've been through the Police Academy, correct?

12 A. I went to the Forensic Academy.

13 Q. To the Forensic Academy. So you had training on
14 what you need to do to make sure that everything is put
15 in the report that needs to be put in?

16 A. Yes, ma'am.

17 Q. So as you know at some point that this crime that
18 you are investigating could end up in court, correct?

19 A. Yes, ma'am.

20 Q. You know that at some point that you could be on the
21 stand like you are today?

22 A. Yes, ma'am.

23 Q. Testifying in front of a room full of people, right?

24 A. Yes, ma'am.

25 Q. You know that there is a discovery process right?

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1 A. Yes, ma'am.

2 Q. Meaning that the reports you write, the things that
3 you document, the evidence that you take gets sent to the
4 State so that if -- I mean we weren't there so we need to
5 know what happened you said --

6 A. That is correct.

7 Q. And we also get a copy so we can prepare a defense,
8 correct?

9 A. Sure.

10 Q. And it's been awhile. You work a lot. You talked
11 about how you do -- you've been on hundreds and hundreds
12 of crime scenes and hundreds and hundreds of cases,
13 correct?

14 A. That's correct.

15 Q. And this happened back in December of 2011, correct?

16 A. That's correct.

17 Q. You've been on a lot of scenes since then haven't
18 you?

19 A. Yes, ma'am.

20 Q. Documented a lot of different crimes correct?

21 A. That's correct.

22 Q. At a lot of different places, yes?

23 A. Yes.

24 Q. Involving a lot of different people?

25 A. Yes.

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1 Q. And so it's important for you to write everything
2 down so that when you do end up in court you can remember
3 it.

4 A. Absolutely, yes ma'am.

5 Q. Because otherwise you've got all this other stuff
6 that you have been working on and when you come back in
7 you've got to review and know what you did.

8 A. Sure.

9 Q. So for that reason what you put in your report needs
10 to be complete?

11 A. That's correct.

12 Q. It needs to be everything that you did in this case
13 needs to be in that report, correct?

14 A. Uh huh.

15 Q. But in this case you did not document and you did
16 not write that you processed the top of the desk?

17 A. If it's not in my report I probably processed the
18 desk by looking at the desk on the surface. If it's a
19 good surface I would probably just say okay.

20 If it wasn't like handles or any -- all of the items
21 were just sitting on the top or bottom just assuming if
22 the suspect is going to grab the items he is going to
23 reach and grab. He's not going to touch the whole
24 surface. So in my mind if you go in to a scene and you
25 see an item sitting on top of the computer desk you're

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1 not going to touch the desk. You're going to pretty much
2 grab the item and exit out.

3 So that's probably one reason why I didn't mention
4 it in my report. I didn't process the computer desk
5 because it was just items on top.

6 Q. So you didn't process it because you assumed that
7 what was on the desk was just lifted?

8 A. Lifted.

9 Q. And that there wouldn't be ---

10 A. --- exactly. That's what I am saying ---

11 Q. --- so you didn't process it for that reason?

12 A. That's correct. That's why it's not in my report
13 because of the fact that if it was an item sitting on top
14 most likely the subject would just grab the item and then
15 exit out. He's not going to touch the whole surface.
16 You're not going to do that.

17 Q. And so -- I guess that's the reason you didn't
18 process the top of the dresser -- you just assumed there
19 wouldn't be anything there ---

20 A. --- exactly because they were sitting on top.

21 Places like if it was in an area where -- I know -- the
22 bedroom window I know they are climbing and they put
23 their hands and touch different places. But the bedroom
24 handle they have to reach and pull the door and the knob.

25 Q. Did you process all of the bedroom door handles or

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1 just the two bedrooms?

2 A. The two bedrooms.

3 Q. The two bedrooms from inside and outside?

4 A. Inside, yes ma'am.

5 Q. You didn't process the front door?

6 A. Because the front door handle had been contaminated
7 by the victims and also individuals in the house.

8 Q. There's also I believe a sliding glass door.

9 A. I don't remember a sliding glass door.

10 Q. But you never saw a sliding glass door.

11 A. No, ma'am.

12 Q. So if it was then you wouldn't process it?

13 A. Exactly.

14 Q. Because you didn't see it.

15 A. I didn't see it.

16 Q. All right. This is what has already been admitted
17 as State's exhibit 4.

18 [Whereupon, the witness is shown exhibit]

19 Q. Do you remember if that door was open when you got
20 there or if you opened it?

21 A. Yes, I photographed as is but it was most likely
22 already left open.

23 Q. Okay. And this is State's exhibit 3.

24 [Whereupon, the witness is shown exhibit]

25 Q. Just to be clear that's not where the cell phone was

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1 found?

2 A. No, ma'am. The victim had found the cell phone in
3 the bedroom and removed the cell phone from the location
4 where it was. It wasn't there when I first came.

5 Q. I'm just trying to be clear.

6 A. Yes. They had already handled the cell phone prior
7 to my arrival.

8 Q. And so you didn't process that either?

9 A. No, I did not process it. I was advised that the
10 cell phone was already handled by several individuals in
11 the house and the victim's admitted that they touched the
12 cell phone so I did not.

13 Q. You didn't open up the cell phone to see if there
14 were any...

15 A. All I did was take photographs.

16 Q. You didn't open it to see if any prints were inside?

17 A. I did not.

18 Q. There was no indication of any blood or tissue or...

19 A. No.

20 Q. Any bodily fluid?

21 A. No body fluid. No fibers, no hair, nothing.

22 Q. So you didn't pull anything from the scene other
23 than taking the photographs and doing the process you
24 mentioned it. And just briefly some of the -- you talked
25 about some of the surfaces that are good to pull prints

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1 off of just flat things maybe -- furniture, glass?

2 A. A flat surface is more easy because it's flat.

3 There is no rough surface and easier to lift fingerprints
4 from flat surfaces than rough surfaces.

5 Q. You didn't take any -- you didn't process any of the
6 door frames themselves?

7 A. Door frames, no ma'am. Only bedroom windows.

8 Q. How about light switch panels?

9 A. I did not.

10 Q. Any of the other furniture other than what you wrote
11 in your report; chairs or anything like that?

12 A. Pretty much --

13 MS. ANDERSON: Beg the court's indulgence.

14 [Whereupon, Ms. Anderson and Ms. Proctor confer]

15 Q. [Ms. Anderson] Just a little more. When you came in
16 the room did you ever stand -- you didn't ever stand back
17 and take a picture of the whole room itself?

18 A. I was only taking pictures of the area and location
19 of the different -- yes.

20 Q. Did you ever check under the window to see if there
21 were any footprints or anything underneath there?

22 A. On the exterior of the outside I did look at the
23 surface. It was like right next to bushes. It's wasn't
24 a nice clean surface to locate any footprint because it
25 was like bushes and trees ---

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1 Q. --- so there was like bushes and dirt and everything
2 on the outside?

3 A. Yes ma'am, on the outside.

4 Q. From the inside I didn't see a picture -- there
5 wasn't any dirt or anything underneath the window?

6 A. I don't recall seeing any dirt, ma'am.

7 Q. No dirt under the window?

8 A. No.

9 Q. No shoe print?

10 A. No shoe prints, no ma'am.

11 MS. ANDERSON: Beg the court's indulgence one
12 moment.

13 [Whereupon, Ms. Anderson and Ms. Proctor confer]

14 Q. [Ms. Anderson] No further questions. Thank you.

15 THE COURT: Redirect?

16 MR. SIMPSON: Thank you, Your Honor, just briefly.

17 REDIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q. So crime scene tech Charles did you go in the pantry
20 or in the cupboards?

21 A. No sir, I did not.

22 Q. Did you process any of the canned goods?

23 A. No, I did not.

24 Q. Did you process anything in the refrigerator?

25 A. No sir, I did not.

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1 Q. Did you go in the individual coat hangers in the
2 closets and process each coat hanger?

3 A. No sir, I did not.

4 Q. The truth is you could spend weeks at any crime
5 scene, correct?

6 A. Yes, sir.

7 Q. If the Charleston Police Department so determined
8 you could displace these victims of a burglary and
9 practically move in for months in fact?

10 A. Yes, sir.

11 Q. And so you have make decisions, correct?

12 A. Yes, sir.

13 Q. On what to process, what to look for and where?

14 A. Based on the information from the officer if the
15 suspect either came in contact with the items or touched
16 the item or disturbed the items I will process based on
17 the information.

18 Q. And in that vein you processed the exterior of the
19 window, correct?

20 A. Yes, sir.

21 Q. That's just the point we suspect perhaps the person
22 would --

23 A. Where he would reach in to gain entry inside?

24 Q. No latents?

25 A. No latents.

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- 1 Q. Interior of the window?
- 2 A. No latents.
- 3 Q. The rock?
- 4 A. No latents.
- 5 Q. And that's a bad surface.
- 6 A. It is a rough surface, yes.
- 7 Q. And also the handles in the bedroom, correct?
- 8 A. Yes sir, I did process the handles.
- 9 Q. And the handles of the drawers?
- 10 A. I did, yes sir.
- 11 Q. Any latents on those?
- 12 A. No latents.
- 13 Q. And if a person was wearing gloves?
- 14 A. If the person was wearing gloves you will get
- 15 nothing at all.
- 16 Q. And again, of course you could have spent months in
- 17 that apartment, correct?
- 18 A. Yes. You could spend hours and hours and months,
- 19 yes sir.
- 20 Q. But at some point in time it's a determination you
- 21 have to make in every case.
- 22 A. That's correct.
- 23 Q. That you've done a job.
- 24 A. Yes, sir.
- 25 Q. You've been thorough. There are victims who live

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1 here.

2 A. Yes, sir.

3 Q. And at this point in time to take a report, write
4 the report and...

5 A. Yes, sir.

6 MR. SIMPSON: Nothing further, Your Honor.

7 THE COURT: Any recross?

8 MS. ANDERSON: No, Your Honor.

9 THE COURT: Okay. You may step down. Thank you
10 very much. Any reason Officer Charles can't -- be
11 excused?

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: You may be excused. Thank you very
14 much.

15 THE WITNESS: Thank you, sir.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 THE COURT: Call your next witness.

19 MR. SIMPSON: Thank you, Your Honor. The state
20 calls Sergeant Dustin Thompson.

21 [Whereupon, Sergeant Thompson comes forward]

22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court as follows: do you swear or affirm your
24 testimony will be the truth, the whole truth, and nothing
25 but the truth so help you God]

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1 CLERK OF COURT: State your full name and spell
2 your last name.

3 THE WITNESS: Sergeant Dustin Thompson,
4 T-H-O-M-P-S-O-N.

5 - - - - -

6 DUSTIN THOMPSON,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. Good afternoon, Officer Thompson. How are you
12 today?

13 A. Good.

14 Q. Where do you work?

15 A. Charleston Police Department.

16 Q. And how long have you worked there?

17 A. I've worked there for eleven years.

18 Q. What's your current job with Charleston Police
19 Department?

20 A. I'm the administrative sergeant with the Burglary
21 Unit.

22 Q. Were you so employed in December of 2011?

23 A. I was.

24 Q. And do you recall becoming involved in a case
25 involving the defendant?

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1 A. Yes.

2 Q. What was your role in that investigation?

3 A. I took the statement from the defendant.

4 Q. Were you the lead detective in that investigation?

5 A. No, I was not.

6 Q. Explain to the jury a little bit about what a lead
7 detective does on a case.

8 A. A lead detective will handle all follow ups, all the
9 supplemental reports, search warrants, conducting
10 interviews. In this particular case I was just asked to
11 do -- statement.

12 Q. So the lead detective is the one that people report
13 to on a case?

14 A. Yes.

15 Q. And collects all the big picture so to speak?

16 A. Yes.

17 Q. And sometimes as lead detective -- will a lead
18 detective get someone else to go do something?

19 A. Yes.

20 Q. Is that how you became involved in this case?

21 A. That is correct.

22 Q. Explain to the jury what was explained to you and
23 what you were sent to do on this case.

24 MS. PROCTOR: Your Honor, just for the record note
25 our previous objection.

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1 THE COURT: Yes, ma'am. Overruled.

2 Q. [Mr. Simpson] Could you explain to the jury how you
3 became involved and what you were asked to do on this
4 case.

5 A. The lead detective asked me to respond to this
6 location while he was handling another part of this
7 particular investigation to attempt to locate him, and if
8 I did locate him to take a statement from him.

9 Q. Okay. When you say locate him you mean locate a
10 specific person?

11 A. Yes.

12 Q. Was this a person of interest in this investigation?

13 A. Yes.

14 Q. And how that person became a person of interest you
15 don't know.

16 A. That's correct.

17 Q. You didn't respond to the scene.

18 A. No, I did not.

19 Q. Okay. Did you have any background regarding a
20 telephone in this case?

21 A. Did I?

22 Q. Were you given before you went to the location to
23 take a statement from this person given any background
24 whatsoever on this telephone?

25 A. I was given the telephone.

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1 Q. Okay. And what was part of your role in going to
2 take this statement from this person?

3 A. To find out if this was his phone.

4 MR. SIMPSON: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 Q. [Mr. Simpson] Do you recall the -- while I'm getting
8 this together, who was the lead detective on this case?

9 A. Detective Jordan Lester.

10 Q. And so for the broad big picture if you will he
11 would probably be a better guy.

12 A. That's correct.

13 Q. But as to the statement this was your role?

14 A. Yes.

15 Q. Officer, I'm handing you what has been marked as
16 State's exhibit 2 for I.D. only. Do you recognize that?

17 [Whereupon, the witness is shown exhibit]

18 A. I do.

19 Q. And what is that?

20 A. It's a Charleston Police Department advisement of
21 constitutional rights and the defendant's statement
22 afterwards.

23 Q. Okay. So what -- where did you go to speak with
24 him --

25 A. We went over to Riverland Drive on James

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1 Island.

2 Q. Again, was that an address given to you by Detective

3 Lester?

4 A. Yes.

5 Q. And when you -- was it provided to you as a place

6 where you might locate the defendant?

7 A. Yes.

8 Q. And when we are referring to the defendant is the

9 defendant in the courtroom right now?

10 A. He is.

11 Q. And where is the defendant?

12 A. Right here [indicates].

13 Q. And was this individual present at that address when

14 you arrived?

15 A. He was.

16 Q. And how did you proceed?

17 A. When we pulled into the driveway of the yard there

18 we got out of the vehicle and asked for Mr. Lamar Brown

19 and he identified himself as Quan.

20 Q. And was Quan present?

21 A. Yes.

22 Q. What did you do then?

23 A. Asked him if he wished to speak to us about an

24 incident that occurred on James Island and he agreed to

25 speak to us.

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1 Q. Okay. And did you inform him it was a burglary?

2 A. Yes.

3 Q. What did you do next?

4 A. We asked him if he wanted to -- there was a lot of
5 family members out in the yard and we asked him if we
6 could speak to him in private. And the vehicle is what
7 we had there that would be private and he agreed to sit
8 in the vehicle and speak to us.

9 Q. Okay. Was he cuffed?

10 A. No.

11 Q. Was he arrested?

12 A. No.

13 Q. Did he walk freely to the vehicle?

14 A. He did.

15 Q. Okay. What did you do once you got in the vehicle?

16 A. Once we got in the car I got the written statement
17 out and I asked him his name, wrote down the date and
18 time that it was occurring, asked him where he was
19 living, gave him his Miranda warning then I --

20 Q. Let me stop you for a second. We've all watched
21 T.V. but what do you mean by Miranda warnings?

22 A. I advised him that he had the right to remain silent
23 and that he didn't have to speak with me and he could
24 have an attorney present if he wished one.

25 Q. Okay. And in fact on this form that you have in

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1 front of you that leads with some standard language

2 correct?

3 A. Yes.

4 Q. And is the purpose of -- I'm sure you could go by

5 memory but is the purpose of writing that right on the

6 form to -- so you have those rights right in front of you

7 when you're talking to somebody?

8 A. That's correct.

9 Q. And did you review those with the defendant?

10 A. I did.

11 Q. And if you could go through each right if you would

12 as you would recount it to the defendant.

13 A. The top part is just his name, address, my name, how

14 old he is. And at the bottom there is he has advised me

15 that he is a member of the Charleston Police Department

16 and also advised me that I had the right to absolutely

17 remain silent and do not have to answer any questions or

18 give a statement and this fact cannot be used against me,

19 that if I do answer any questions or give a statement

20 anything I say can and will be used against me in a court

21 of law.

22 I have the right to consult with a lawyer of my

23 choice before I answer questions or give a statement and

24 also to have him present while I am being questioned.

25 And if I wish to talk with a lawyer or have him present

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1 but am unable to afford to hire a lawyer one will be
2 appointed to represent me free of charge.

3 That if I decide to answer questions or give a
4 statement without having a lawyer present representing me
5 I have the absolute right during this interview to stop
6 answering questions and to remain silent.

7 Q. In the introductory part of this document in front
8 of you did you inquire as to the defendant's age?

9 A. I did.

10 Q. And what did he tell you?

11 A. Twenty-two.

12 Q. And did you inquire into his education?

13 A. Yes.

14 Q. And what did he tell you?

15 A. Completed the 9th grade in school.

16 Q. In these interactions with the defendant did he
17 appear to understand what you were saying?

18 A. He did.

19 Q. Were there any apparent mental difficulties that he
20 presented to you at that time?

21 A. Not to my knowledge.

22 Q. Any sign whatsoever that he would have been
23 intoxicated or under the influence of any drugs?

24 A. Not to my knowledge.

25 Q. And again in responses to you talking to you were

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1 they cogent?

2 A. Yes.

3 Q. You could understand them?

4 A. Yes.

5 Q. And did he later demonstrate that he understood what
6 was going on?

7 A. He did.

8 Q. Now after reviewing those rights with him did you --
9 did he express to you his desire to waive those rights
10 and speak to you?

11 A. He did.

12 Q. And how did he -- the way that was documented on the
13 paper?

14 A. He signed it.

15 Q. And again I think you testified earlier your purpose
16 there had to do something with a phone. Could you again
17 explain that?

18 A. There was a phone found at the incident location and
19 through Detective Lester's investigation it was
20 determined that it could possibly be his -- Mr. Lamar
21 Brown's phone. And Detective Lester gave me the phone if
22 I was going over there to inquire about was it or was it
23 not his cell phone.

24 Q. Okay. Sometimes when you are taking a statement
25 the officer will write everything down as told to them

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1 correct?

2 A. Yes.

3 Q. Was that the case in this particular case?

4 A. I wrote the questions and he wrote the answers.

5 Q. And did you give him an opportunity when addressing
6 the phone to write out at first his kind of explanation?

7 A. Yes.

8 Q. And at this time he knew you were investigating a
9 burglary, correct?

10 A. He did.

11 Q. Did you convey to him the time of this burglary;
12 when it occurred?

13 A. Not at this point.

14 Q. Okay. So he wrote in his own handwriting
15 initially. If you could what did he convey to you in
16 writing was the situation with this phone?

17 A. He stated when I was going to the store in a car I
18 had my phone in my lap and when I got out it fell
19 somewhere because when I got back in the car I couldn't
20 find it.

21 So a friend called me and said someone has your
22 phone so I turned the phone off. I did not have it all I
23 I promise.

24 Q. So he conveyed to you essentially that he lost the
25 phone?

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- 1 A. Yes.
- 2 Q. Okay. And he also said that he knows he lost it
3 because a friend called him.
- 4 A. Correct.
- 5 Q. And told him you lost his phone.
- 6 A. Yes.
- 7 Q. Any interest in how that might have occurred? Did
8 that interest you at all?
- 9 A. It was just kind of vague the answers he was giving
10 as to how he lost it and where he lost it.
- 11 Q. I lost the phone but somebody called me on the phone
12 and told me I lost it. Now he also says to you when I
13 realized I lost it I turned the phone off.
- 14 A. Yes.
- 15 Q. Did you interpret that to mean that he discontinued
16 service on the phone once he realized it was gone?
- 17 A. That was my interpretation.
- 18 Q. Okay. Did you then inquire when -- ask him when he
19 lost his phone?
- 20 A. I did.
- 21 Q. And what was his response?
- 22 A. He said he lost the phone on Friday December 23,
23 2011.
- 24 Q. And when was the -- when did this burglary occur?
- 25 A. It occurred on Thursday evening December 22, 2011.

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- 1 Q. Now you weren't just going to leave that out there.
2 A. No.
3 Q. You asked him follow up questions.
4 A. That's correct.
5 Q. What was your first follow up question?
6 A. Do you know where you lost your phone.
7 Q. And his response?
8 A. Not exactly.
9 Q. Now did you then ask him where he was between 6 and
10 midnight on the incident night?
11 A. My specific question was where were you on the
12 evening of Thursday, December 22nd.
13 Q. And how did he respond to that in yes or no?
14 A. He just said in the house eating or something.
15 Q. Did you follow up and ask him if anyone else could
16 have had his cell phone on that Thursday night later that
17 evening?
18 A. I did.
19 Q. And how did he respond to that?
20 A. No.
21 Q. Did you ask him if he had ever been to the
22 apartments in question?
23 A. I did.
24 Q. And how did he respond to that?
25 A. No.

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1 Q. Now that's interesting. Where is this location that
2 you're talking to him?

3 A. Riverland Drive.

4 Q. And is the apartment complex where this occurred far
5 away from that location?

6 A. No, it's not.

7 Q. Is it very close to this location?

8 A. I would say its close.

9 Q. So the defendant conveyed to you that he had -- no
10 one else could have had this phone on the night in
11 question, is that correct?

12 A. That's correct.

13 Q. Then at some point he lost his phone but he's not
14 sure when.

15 A. That's correct.

16 Q. That once he lost his phone he discontinued service?

17 A. That's correct.

18 Q. And he knows he lost his phone because someone
19 called him on his phone to tell him that.

20 A. That's what he said.

21 Q. Please answer any questions that the defense has.

22 THE COURT: Cross-examination?

23 - - -

24 CROSS-EXAMINATION

25 BY MS. PROCTOR:

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1 Q. Officer, you said you went out to his house on the
2 28th correct?

3 A. Yes.

4 Q. And he was out in the yard when you got there.

5 A. That's my recollection.

6 Q. And there were other family members?

7 A. Yes.

8 Q. And when you went out there who was with you?

9 A. Lieutenant Peter Farrell.

10 Q. Wasn't there another officer with you? Weren't
11 there three of you?

12 A. I believe Detective Lester arrived sometime later.

13 Q. So he came but he wasn't with you when you drove up?

14 A. No, he was not.

15 Q. And when you drove up you stated you walked up to
16 him and asked him if he would come talk to you correct?

17 A. Uh huh.

18 Q. And he didn't run away?

19 A. No.

20 Q. And he walked with you to your car?

21 A. He did.

22 Q. And is it normal procedure to take a statement in
23 your car?

24 A. We can take statements in the car or the house or
25 police department; wherever its convenient.

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1 Q. And at the Charleston Police Department isn't it
2 common practice now that most statements from either
3 victims, witnesses, and defendants are taped -- video
4 taped for audio and video?

5 A. We have audio recorders and then we have video and
6 audio at the police department.

7 Q. And so you do have that at the police department?

8 A. We do.

9 Q. And so when you went into the car where was he
10 sitting?

11 A. He was sitting in the passenger side front seat.

12 Q. And where were you?

13 A. Driver's side front seat.

14 Q. And the other officer was in the backseat?

15 A. Yes, ma'am.

16 Q. And when you -- you said that when you got him in
17 the car you asked him some questions. You asked him his
18 name, age, he said he was in the 9th grade, and then you
19 said that you read him his rights, correct?

20 A. Yes.

21 Q. Now did you read them one at the time and ask him if
22 he understood it or did you read them fast like you did
23 in court?

24 A. I read them one at a time and in this particular
25 case I would look over and get an acknowledgment from

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1 him.

2 Q. And isn't it common practice when you give somebody
3 their advisement of rights that you have them initial
4 each right?

5 A. That's not my practice.

6 Q. But isn't that the common practice with the city
7 police, the city police department that each right is
8 acknowledged so that when you come into court a year or
9 two later and say well he understood them we know that he
10 understood them because he acknowledged each one,
11 correct?

12 A. Some detectives do that.

13 Q. Most -- that's common practice though in the city
14 police department.

15 A. I can't testify to that.

16 Q. And so -- but you do acknowledge that is practiced
17 that usually when a police officer they can or they can't
18 read them the rights they do initial each one so that we
19 know that when it was read to them they do understand?

20 A. Some detectives do do that.

21 Q. And so when you gave him this you say that he wrote
22 the very first part did you just say tell me what
23 happened and he just started writing?

24 A. Yes.

25 Q. And after he was writing -- could you tell by his

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1 writing that he probably didn't have a lot of education
2 in his writing? It was sort of like all one sentence
3 correct?

4 A. From looking at it it's all one sentence.

5 Q. And you said that you asked him about his phone and
6 he said that his phone was in his lap and he lost it,
7 correct?

8 A. He said that, yes.

9 Q. And he said that a friend called him. Can you read
10 -- read his paragraph that he wrote?

11 A. [Reading] When I was going to the store in a car I
12 had my phone in my lap and when I got out it fell
13 somewhere because when I got back in the car I couldn't
14 find it so a friend called me said someone has your phone
15 so I turned the phone off I didn't know who had it at all
16 I promise.

17 Q. So when he said a friend called him he didn't tell
18 you on what phone a friend called him did he? He just
19 said somebody called and said they had the phone.

20 A. That's correct.

21 Q. And then you started asking him questions, and those
22 are in your handwriting correct?

23 A. Yes.

24 Q. And when you asked him do you know where you lost
25 the phone he said not exactly, correct?

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1 A. Correct.

2 Q. Because when you lose something you don't know
3 exactly where it is.

4 A. That's correct.

5 Q. And then you asked him where he was that evening of
6 Thursday and he said that he was at home, correct, eating
7 or something?

8 A. He just said eating, in the house eating or
9 something.

10 Q. And you asked him if he had ever been to those
11 apartments correct, and he said no.

12 A. That's correct.

13 Q. And you showed him -- when did you show him the cell
14 phone? Before the statement or after the statement?

15 A. After I read him his rights and he signed I showed
16 him the phone. I don't know if he saw it before then or
17 not.

18 Q. Okay. And he told you yes, that's my phone.

19 A. That's correct.

20 Q. And he answered all the questions that you asked him
21 correct?

22 A. He did.

23 Q. And as a matter of fact the last question was have
24 you ever been arrested for burglary and he didn't lie.

25 He said yes, correct? Your last question, have you ever

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1 been arrested for burglary? Yes.
2 A. Yes.
3 Q. And he told you the exact date April of 2008
4 correct?
5 A. Yes.
6 Q. Now you also asked him if you could search his
7 house?
8 A. That's correct.
9 Q. And as a matter of fact you had a consent to search
10 form and he signed it. Did you have this with you or is
11 this -- did the other officer bring this form?
12 A. No, I had it with me.
13 Q. Because it says Sergeant Light [ph] and Sergeant
14 Farrell.
15 A. They were at the scene.
16 Q. Okay. So they weren't with you when you did the
17 search?
18 A. Yes, they were there when we searched his residence.
19 Q. Okay. Well didn't you search it -- I thought you
20 said there were only two of you there.
21 A. We conducted the interview. After the interview was
22 conducted when we got out the vehicle we advised him and
23 the family that we were going to be doing a search
24 warrant for the residence. They refused to let us search
25 the residence so ---

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1 Q. --- I thought you said they signed a consent?

2 A. Yes.

3 Q. Okay. But you did -- they said no at first but
4 then you did get the consent form.

5 A. Yes.

6 Q. And then they were all still out there and you went
7 in and you searched the house and you found none of these
8 items that were stolen.

9 A. We did not.

10 Q. And when you were talking to him that day this was
11 about six days after the burglary correct?

12 A. Yes.

13 Q. And we also had Christmas in between there.

14 A. That's correct.

15 Q. And so when you were talking to him and he said --
16 you said when did you lose your phone it would have been
17 a week prior.

18 A. That's correct.

19 MS. PROCTOR: Court's indulgence.

20 [Whereupon, Ms. Proctor and Ms. Anderson confer]

21 Q. No further questions.

22 THE COURT: Any redirect?

23 MR. SIMPSON: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. SIMPSON:

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1 Q. Officer, so when you are conducting an interview you
2 want to be in a place absent of distraction?

3 A. That's correct.

4 Q. And often you will take the guy, put him in the car,
5 take him all the way down to the police department and
6 give him an interview, correct?

7 A. We have done that.

8 Q. And in these interview rooms there is video and
9 audio recording capability, correct?

10 A. There is.

11 Q. In this case though you decided to do it in your
12 car.

13 A. That's correct.

14 Q. And what was the purpose of you not doing it right
15 there on the front porch and taking him to the car?

16 A. It was my recollection that he didn't want his
17 family involved in what we were talking about and he
18 wanted a place that was private.

19 Q. And you did show him the phone correct?

20 A. Yes.

21 Q. Was there any ambiguity to his answer as far as
22 that's my phone?

23 A. No, he acknowledged that was his phone.

24 Q. There was -- I don't want to read too much into this
25 but at least somebody implied that perhaps there was some

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1 coercive element to this statement.

2 Is there anything at any time that you -- did you
3 threaten any physical violence on the defendant to get
4 him to give you this statement?

5 A. No, I did not.

6 Q. Did you promise him any leniency to give this
7 statement?

8 A. No, I did not.

9 Q. Was there any sort of physical confrontation
10 whatsoever with the defendant?

11 A. No.

12 Q. And you did ultimately gain consent to search this
13 location, correct?

14 A. Yes.

15 Q. And one week after the incident you had not
16 recovered any stolen property?

17 A. That's correct.

18 Q. Oh, and you asked him what his address was, correct?

19 A. Yes.

20 Q. And what was that?

21 A. He said that he lived at Woodlawn Street.

22 Q. Is that in North Charleston?

23 A. Yes.

24 Q. But he was present there at Riverland Drive?

25 A. He was.

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1 MR. SIMPSON: Nothing further, Your Honor.

2 THE COURT: Any recross?

3 RECROSS-EXAMINATION

4 BY MS. PROCTOR:

5 Q. And when you asked him where he was on the evening
6 of Thursday, December 22nd he said he was at Woodlawn,
7 correct?

8 A. That's correct.

9 Q. And you never wrote any reports in this case did
10 you?

11 A. No, I did not.

12 Q. Thank you.

13 THE COURT: You may step down. Thank you very
14 much. Any reason Sergeant Thompson that can't be
15 excused?

16 MS. FLYNN: No reason, Your Honor.

17 MS. ANDERSON: No, Your Honor.

18 THE COURT: Sergeant Thompson, you may be excused.
19 Thank you so very much.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Let me see the attorneys up here just a
23 second.

24 [Whereupon, an off the record bench conference is
25 held]

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1 THE COURT: Mr. Foreman and ladies and gentlemen of
2 the jury we are going to stop at this time. It's about 7
3 or 8 minutes after 5. Please don't discuss the case with
4 anyone at home. And I don't know if there would be
5 anything in the paper or on the news media but if there
6 is please don't listen to it or read it.

7 I want you to listen to testimony and make your
8 decision based on what you hear in the courtroom; not
9 what some news reporter interprets the testimony to be or
10 some friend of your wife or husband, or boyfriend or
11 girlfriend thinks the evidence should be when they
12 haven't heard it.

13 So just if somebody wants to talk to you just tell
14 them you have been instructed not to discuss it. And
15 don't get on the Internet; don't get on any I-phone or I-
16 pad or anything else to try to do some research on
17 Burglary First or this particular crime or any other
18 similar crimes.

19 Having said that I will see you in the morning at
20 9:30. Come straight to the jury room when you come to
21 the courthouse and we'll get started at 9:30 in the
22 morning. Have a good evening.

23 [Whereupon, the jury exits the courtroom at 5:09
24 p.m.]

25 THE COURT: All right. You wanted to bring

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1 something up?

2 MR. SIMPSON: Not pertaining to this case.

3 THE COURT: Pardon?

4 MR. SIMPSON: Not pertaining to this case.

5 THE COURT: Oh okay. If y'all have any requests to
6 charge can y'all sort of produce them in the morning if
7 you would.

8 MR. SIMPSON: Yes, sir.

9 MS. PROCTOR: Yes, sir.

10 MS. ANDERSON: Yes, sir.

11 THE COURT: How many -- you got six more witnesses?

12 MR. SIMPSON: I think we've culled that a bit.

13 Maybe I think four.

14 THE COURT: Four? All right. We'll recess until
15 9:30 in the morning.

16 [Whereupon, court adjourns at 5:10 p.m.]

17

18

19

20

21

22

23

24

25

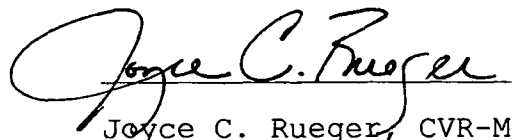
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case reported by Mia Perron,
transcribed by Joyce Rueger relative to appeal, in the
Court of General Sessions for Charleston County, South
Carolina on the 6th day of March, 2013.

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

June 15, 2013



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2012-GS-10-7545
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
LAMAR SEQUAN BROWN	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on March 7, 2013, Commencing at 9:38 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: Kelly Ann Flynn, Esquire
Chad Simpson, Esquire
9th Circuit Solicitor's Office
101 Meeting Street
Charleston, South Carolina 29401

FOR THE DEFENDANT: Victoria Anderson, Esquire
Lori Proctor, Esquire
Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina 29401

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10	Sentencing sheet	367
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DEFENDANT

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10	Photo	336

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1 PROCEEDINGS
2 THE COURT: You want to bring us the jury?
3 MS. FLYNN: Your Honor, we're waiting for our
4 witness to get here from T-Mobile.
5 THE COURT: D you have anybody else you can call
6 while we are waiting?
7 MR. SIMPSON: She's here ---
8 MS. FLYNN: --- she's here, Your Honor.
9 THE COURT: Okay. Anything else other than that?
10 MS. FLYNN: No, Your Honor.
11 THE COURT: Anything from the defense before we
12 bring the jury?
13 MS. ANDERSON: No, Your Honor.
14 THE COURT: Do y'all have any requests for Charge?
15 MS. PROCTOR: We're -- I'm working on it.
16 THE COURT: Working on it, okay. How about the
17 State? Y'all got any?
18 MS. FLYNN: No, Your Honor.
19 THE COURT: You're working on it or y'all don't
20 have any?
21 MS. FLYNN: Other than the standard Charge, Your
22 Honor, we don't have anything else.
23 THE COURT: All right. Bring us the jury, please
24 sir.
25 [Whereupon, the jury enters the courtroom at 9:40

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1 a.m.]

2 THE BAILIFF: All present, Your Honor.

3 THE COURT: Okay. Thank you very much. If you
4 will call your next witness, please?

5 MS. FLYNN: Thank you, Your Honor. The State calls
6 Susan Johnson.

7 [Whereupon, Ms. Johnson comes forward]

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court as follows: do you swear or affirm your
10 testimony will be the truth, the whole truth, and nothing
11 but the truth so help you God]

12 CLERK OF COURT: State your full name and spell
13 your last name.

14 THE WITNESS: Susan Johnson, J-O-H-N-S-O-N.

15 - - - - -

16 SUSAN JOHNSON,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FLYNN:

21 Q. Good morning, Ms. Johnson.

22 A. Good morning.

23 Q. How you doing today?

24 A. Good.

25 Q. Where are you currently employed?

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1 A. At T-Mobile.

2 Q. And how long have you been employed by T-mobile?

3 A. Sixteen years.

4 Q. What are your duties with T-Mobile?

5 A. I am the custodian of records, which means that we
6 respond to subpoenas from various law enforcement
7 agencies across the United States.

8 Q. Okay.

9 MS. FLYNN: Your Honor, may I approach?

10 THE COURT: Yes, ma'am.

11 Q. [Ms. Flynn] I'm going to show you what has been
12 previously marked as State's exhibit 12. If you will
13 take a look at that.

14 [Whereupon, the witness is shown exhibit]

15 Q. Do you recognize it?

16 A. Yes, I do.

17 Q. What do you recognize it to be?

18 A. Subscriber information as well as call detail
19 records.

20 Q. And have you reviewed these records?

21 A. Yes.

22 Q. Are they an accurate and true record of the call
23 detail for the phone number 843-345- ?

24 A. Yes.

25 Q. And are these for the dates of December 9, 2011

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1 through January 3, 2012?

2 A. Yes, they are.

3 MS. FLYNN: At this time the State moves to have
4 State's exhibit 12 entered into evidence.

5 THE COURT: Any objections other than your pretrial
6 objections?

7 MS. PROCTOR: Pretrial. But I just want to see
8 what she handed her.

9 [Whereupon, Ms. Proctor is shown documents]

10 MS. PROCTOR: No objection, Your Honor, except for
11 our pretrial ---

12 THE COURT: --- so you renew your pretrial
13 objection?

14 MS. PROCTOR: Yes, Your Honor.

15 THE COURT: That is overruled.

16 MS. PROCTOR: Thank you.

17 [Whereupon, State's exhibit number 12 is entered
18 into evidence by the court]

19 MS. FLYNN: May I publish to the jury?

20 THE COURT: Yes, ma'am.

21 Q. [Ms. Flynn] Now, Ms. Johnson if you could tell me
22 the name listed on that account?

23 A. Lamar Brown.

24 Q. And what is the date of birth listed for that
25 account?

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1 A. 9.
2 Q. And can you tell from this record what the day that
3 these minutes were refilled?
4 A. The last refill date was December 22, 2011.
5 Q. Okay. And can you tell from these records what day
6 the phone was deactivated or if it was deactivated?
7 A. Yes.
8 Q. And what's that date?
9 A. January 22, 2012.
10 Q. And would this have been an automatically
11 deactivated or did someone have to physically call
12 T-Mobile to deactivate the phone?
13 A. Someone would have had to call T-Mobile to
14 deactivate the phone.
15 Q. And again what date was that done?
16 A. January 22, 2012.
17 Q. Now let's just go through some of the terms at the
18 top. Now what does this M-S-I-S-D-N mean?
19 A. That's the actual target number that was subpoenaed.
20 That's the cellular telephone number whose records these
21 belong to.
22 Q. Okay. So that will be the same number all the way
23 down the list?
24 A. Correct.
25 Q. And then under date of call and it says P-D-T. What

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1 does that mean?

2 A. That's the date and time that the call was either
3 placed or received as well as any text messages. And
4 then the P-D-T stands for Pacific daylight time, which
5 means that these records are in Pacific Time.

6 Q. Okay. And in South Carolina that time would not be
7 Pacific daylight time, is that correct?

8 A. That's correct.

9 Q. So what would the time difference be? For instance,
10 if that one says 7:07 a.m. the first call, what time
11 would that be here?

12 A. It would be 10:07 a.m.

13 Q. Okay. And then next is the called number. What
14 does that mean?

15 A. The called number is the number that either called
16 into the cell phone or that the cell phone called out to
17 or text messaged.

18 Q. So that will be a different number than what is
19 listed under the M-S-I-S-D-N number?

20 A. Correct.

21 Q. Okay. And then the next category is event
22 description -- excuse me, call direction. And it either
23 says outgoing or terminated. Can you explain what those
24 terms mean?

25 A. Sure. Outgoing means that the subscriber of the

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1 cellular telephone placed an outgoing call or a text
2 message. Terminating means that it is incoming either a
3 phone call or a text message.

4 Q. Okay. And then next the event description. Now it
5 says either voice or S-M-S or M-M-S. Can you explain
6 what those terms mean?

7 A. Sure. Voice means it's an actual call; phone call
8 to phone call. M-M-S is a multi-media service which
9 means that a picture message was sent or received. And
10 then S-M-S stands for short message service, which is a
11 text message.

12 Q. And then finally that last category can you go over
13 what the bill duration means for us.

14 A. Sure. We bill in one minute increments. So if the
15 phone call is 52 seconds we're going to round it up and
16 bill it at one minute. If the call is one minute two
17 seconds we're going to round it up and bill it a two
18 minutes.

19 Q. Okay. Let's go through an example so that we all
20 kind of get what all these categories mean if we're
21 looking at one line.

22 If I am looking at 4:55 p.m. could you kind of walk
23 us through that line right there [indicates].

24 A. Sure. Cellular telephone number 843-345- on
25 December 22nd, 2011 at 4:55 Pacific time, which would be

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1 4:55 east coast time, received an incoming text message
2 from phone number 843-751- .

3 Q. Okay. And let's do the one below it as well.

4 A. December 22nd, 2011 there was an incoming phone call
5 from 843-934- and we billed that at 42 minutes.

6 Q. Okay. Now if you wouldn't mind --

7 MS. FLYNN: May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q. [Ms. Flynn] I'm going to have you kind of write this
10 out for us so that we get a better understanding if you
11 wouldn't mind.

12 So that call we just went over for 42 minutes if you
13 wouldn't mind standing up and writing that down for us
14 and kind of showing us the time it is listed, the time in
15 South Carolina eastern standard time, and then fill out
16 the phone number right there [indicates] for us.

17 [Whereupon, the witness complies]

18 Q. That's all I need, thank you. And just to clarify
19 that phone number that you wrote that's the number listed
20 on the account right?

21 A. Correct.

22 Q. Okay. And so you just testified that was an
23 incoming call correct?

24 A. Correct.

25 Q. Okay. And that would have been a 42 minute

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1 incoming call from that number listed right there

2 [indicates]?

3 A. Correct.

4 Q. Okay. Now if you wouldn't mind going through the
5 last three outgoing calls for December 22nd, 2011 from
6 this phone.

7 A. Just read the last three phone calls?

8 Q. Just read the phone number that they were made to.

9 A. 843-926- .

10 Q. And if you wouldn't mind writing that up on the
11 board for us, and if you could just write the times again
12 so that we can see the difference in the times for all
13 three. Is it the same phone number for all three of
14 those outgoing calls?

15 A. Yes.

16 Q. If you just want to write the times for all three if
17 you don't mind.

18 [Whereupon, the witness complies]

19 Q. Thank you, Ms. Johnson. Let's kind of go over again
20 what we are looking at here. So that first call I had
21 you write down at 4:55 p.m. that would really be 7:55 in
22 Charleston right?

23 A. Correct.

24 Q. And that was an incoming call because it says
25 terminating up there [indicates] right?

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1 A. Correct.

2 Q. And that would be an incoming call from the number
3 843-934- ?

4 A. Correct.

5 Q. Okay. And again that tells us the duration was 42
6 minutes?

7 A. Correct.

8 Q. So next these are the last three outgoing calls from
9 the phone on the date of December 22nd, 2011?

10 A. Correct.

11 Q. And we wrote -- you wrote down 7:09 p.m., 7:10 p.m.
12 and 7:10 p.m. as well and that correlates to 10:09 p.m.,
13 10:10 p.m. in Charleston right?

14 A. Correct.

15 Q. And all those calls were outgoing from the
16 subscriber's phone, Mr. Brown's phone to the number 843-
17 926- ?

18 A. Correct.

19 Q. And this would be the duration of all three of those
20 calls is that correct?

21 A. Correct.

22 Q. So were they all one minute or can you kind of
23 explain to us again what that means?

24 A. They would have been under one minute but we billed
25 the call at one minute because we round up.

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1 Q. So they could have just been seconds?

2 A. Correct.

3 Q. Okay. So the last three outgoing calls on December
4 22nd, 2011 are three real quick calls?

5 A. Correct.

6 Q. To the same number?

7 A. Correct.

8 MS. FLYNN: Court's indulgence.

9 [Whereupon, Ms. Flynn and Mr. Simpson confer]

10 MS. FLYNN: No further questions, Your Honor.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MS. PROCTOR:

14 Q. At the beginning of this starting on 12/22 just at
15 the top of this page [indicates] since we're on it all
16 those 4 o'clock phone calls those all would have been
17 made at 7 o'clock correct? Like 7:35, 7:37; all
18 weekend?

19 A. Correct. They are text messages though not phone
20 calls.

21 Q. And those are all made at 7 and then as you go down
22 the next ones would be at 5:37 so that would be all those
23 are 8 o'clock correct?

24 A. Correct.

25 Q. And then we have them at 9. And then the last three

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1 7:08, 7:09, and 7:10 those are all outgoing messages at
2 10 o'clock correct? So we have phone calls at 7, 8, 9,
3 and 10 that are coming in or coming out?

4 A. And text messages.

5 Q. Yes, coming in and coming out.

6 A. Yes, ma'am.

7 Q. And basically when you get phone records from a
8 phone all you know is those are the numbers that are
9 coming in and that is the number that is coming out but
10 you don't know who is making the calls right?

11 A. Correct.

12 Q. Now on your billing sheet when you say that the type
13 of phone is prepaid what does that mean?

14 A. Prepaid means that the subscriber pays for their
15 minutes up front. Once they run out of minutes they
16 would then have to agree to put money back down on that
17 phone.

18 Q. And so you can tell on this bill that you have it
19 says prepaid. Do you know how many how much he prepaid
20 or how many minutes?

21 A. No, we don't know that.

22 Q. So if the phone is deactivated on -- the phone was
23 activated on -- deactivated on 1/22. Does it say on here
24 when that phone was activated?

25 A. Yes.

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1 Q. Okay. And what -- when did he activate the phone?

2 A. I'd have to see the subscriber page.

3 [Whereupon, witness is shown document]

4 A. The account was established May 12, 2010.

5 Q. And it was deactivated on January 22nd. So if he --
6 if somebody say had not paid their bill that's when the
7 phone could also be deactivated?

8 A. No, not for a prepaid phone.

9 Q. So how would a prepaid phone be deactivated?

10 A. Looking at that subscriber page we can tell that the
11 subscriber deactivated the phone based on the date that
12 the minutes were put down. I believe the last time
13 minutes were put down on the phone was December 22nd.

14 Q. So on December 22nd they were put on the phone. Do
15 you know for how long?

16 A. No.

17 Q. And then it says deactivated on January 22nd would
18 that be because the bill hadn't been paid?

19 A. No. That would have been because the subscriber
20 would have called us to deactivate it. We hold prepaid
21 accounts open for 90 days so that they don't lose the
22 number.

23 This was done prior to the 90 days. It was done
24 within 30 days of them last putting the minutes down on
25 the phone.

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1 Q. So somebody called in on January 22nd and
2 deactivated the phone?

3 A. Correct.

4 [Whereupon, Ms. Proctor and Ms. Anderson confer]

5 Q. We have no further questions.

6 THE COURT: Any redirect.

7 MS. FLYNN: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. FLYNN:

10 Q. Ms. Johnson I'm going to show you the calls for
11 December 9th as well.

12 [Whereupon, the witness is shown document]

13 Q. I draw your attention to December 9th. Could you
14 read that phone number that -- again terminating that
15 means incoming call or incoming text, excuse me. What's
16 that number?

17 A. It's actually an incoming picture.

18 Q. Okay. Picture?

19 A. Correct.

20 Q. And what is that phone number that is incoming from?

21 A. 843-934-2010.

22 Q. And is that the same number down this list
23 [indicates]?

24 A. Yes.

25 Q. Okay. And that was December 9th 2011.

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1 A. Correct.

2 Q. Okay. And then the number you wrote up on the
3 board there at the top is that the same number?

4 A. Yes, it is.

5 Q. And that was December 22, 2011?

6 A. Correct.

7 MS. FLYNN: Court's indulgence.

8 [Whereupon, Ms. Flynn and Mr. Simpson confer]

9 Q. [Ms. Flynn] So, that phone number is sending texts
10 to Mr. Brown's phone on December 9th, 2011?

11 A. Text messages and picture messages, yes.

12 Q. Several of them in fact?

13 A. Correct.

14 Q. That same number is having a 42 minute call on
15 December 22, 2011 at 7:55 p.m.

16 A. Correct.

17 Q. And that -- so that's the same number on December
18 9th several times and then we see it again December 22nd
19 2011?

20 A. Correct.

21 MS. FLYNN: No further questions, Your Honor.

22 THE COURT: Any recross?

23 MS. PROCTOR: One moment, Your Honor.

24 [Whereupon, Ms. Proctor and Ms. Anderson confer]

25 MS. PROCTOR: No questions, Your Honor.

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1 THE COURT: Any reason this witness Ms. Johnson
2 can't be excused?

3 MS. FLYNN: No, Your Honor.

4 THE COURT: Thank you, Ms. Johnson. You may be
5 excused. Thank you very much.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness please.

9 MS. FLYNN: Thank you, Your Honor. The State calls
10 Rodney Van Horn.

11 [Whereupon, Mr. Van Horn comes forward]

12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court as follows: do you swear or affirm your
14 testimony will be the truth, the whole truth, and nothing
15 but the truth so help you God]

16 CLERK OF COURT: State your full name and spell
17 your last name.

18 THE WITNESS: My full name is Rodney Thomas Van
19 Horn, the spelling is Van Horn.

20 - - - - -

21 RODNEY VAN HORN,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. FLYNN:

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1 Q. Good morning Rodney Van Horn. How are you doing
2 this morning?

3 A. I'm fine.

4 Q. What's your job title?

5 A. I am a police officer with the City of Charleston
6 Police Department currently serving in the digital
7 evidence unit.

8 Q. And what's your educational background?

9 A. I have a Bachelor of Science from a local university
10 and then I attended the Criminal Justice Academy in this
11 State to become a certified law enforcement officer and
12 then I've had several training background classes in
13 digital evidence.

14 Q. And what are your duties in the digital evidence
15 unit laboratory?

16 A. In that lab we are an accredited -- an
17 internationally accredited lab. We provide technical
18 assistance. We search and seize computer equipment from
19 crime scenes. We accept that equipment directly from the
20 investigators.

21 We examine the equipment, mark, seal, acquire,
22 analyze, produce reports and then release those reports
23 to the investigators for follow up.

24 Q. And how long have you worked there?

25 A. In the digital evidence unit almost six and a half

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1 years.

2 Q. Can you list the relevant training you've received
3 regarding extracting data from phones as well as in the
4 field of digital evidence as a whole?

5 A. Yes, ma'am. Just to start off in that unit six and
6 a half years ago I had to do a year internship. Within
7 the department I did some internal training.

8 I've done F-B-I training with -- several cyber cop
9 classes for data recovery acquisition, windows operating
10 systems, N-T file system training; all that was with
11 M-W-C-3 Corporation.

12 I've had training in manipulation of digital
13 evidence and investigations, intrusion detection network
14 security training, also training in digital forensics
15 with NIST cloud investigations and forensics, UFED
16 training, which is what we used for the cell phone, and
17 decoding digital evidence --

18 Q. Do you perform digital extraction and analysis for
19 other agencies besides the Charleston Police Department?

20 A. Yes. Through our history we've done many different
21 agencies including F-B-I, SLED, Attorney General's
22 office, all the local agencies here we've worked for;
23 county, local, and then city agencies.

24 Q. Can you kind of explain what does digital evidence
25 mean?

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1 A. Digital evidence is just the -- any kind of evidence
2 that might be retrieved or extracted from some kind of
3 storage device such as a cell phone, a laptop, desktop,
4 P-D-A's; anything where you can store magnetic data and
5 digital data and then retrieve it and use it as evidence
6 is considered digital evidence.

7 Q. Now when you extract information from a phone what
8 type of information can you generally get?

9 A. It varies on the make and model of the phone and the
10 firmware that is inside the phone; the way that the
11 company sets the phone up you can get things such as
12 address books, or simply what we call contacts list, text
13 messages, M-M-S messages which are just text messages
14 with some kind of picture or video attached to it.

15 You can get call logs. And some of the smart phones
16 now you can get Internet history, G-P-S data; just about
17 anything off a cell phone.

18 Q. So the kind of limitation depending on the type of
19 phone what information you may get from the phone?

20 A. Yes. The UFED extraction device that we use that
21 company basically has contracts with the different phone
22 carriers and they are -- they develop their product to
23 allow them to be able to extract more data as time goes
24 on. But in some cases we're only able to get say a
25 phone book or a phone book and text messages or some

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1 phones it just might be your call logs or something like
2 that. So there are some restrictions.

3 Q. Have you previously been qualified as an expert in
4 digital evidence?

5 A. I have.

6 MS. FLYNN: Your Honor, at this point the State
7 would ask that Rodney Van Horn be offered as an expert in
8 the area of digital evidence.

9 THE COURT: Any objection or you want to ask
10 questions on his qualifications?

11 MS. ANDERSON: No objection, Your Honor.

12 THE COURT: All right. The court so finds.

13 MS. FLYNN: May I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Flynn] I'm showing you what has previously been
16 marked and admitted as State's exhibit 15, if you will
17 take a look at that?

18 [Whereupon, the witness is shown exhibit]

19 Q. Do you recognize that?

20 A. I do.

21 Q. What do you recognize it as?

22 A. This is a Samsung S-G-H T-239 that was submitted to
23 our office verified through the serial number and through
24 my initials that were on this bag after I sealed it.

25 Q. So is that the phone that you analyzed for this

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1 case?

2 A. Yes.

3 Q. Can you kind of explain the exercises you went
4 through for this phone as far as what you were able to
5 extract and what you weren't able to extract?

6 A. It's very simple with our UFED the external
7 extraction devise is basically a standalone piece of
8 hardware.

9 Many of the cell phone companies you can take your
10 phone in and say I want to transfer my contacts to the
11 new phone that you buy they use the same thing; they take
12 it in the back.

13 Ours is just a forensic model which prevents any
14 change to the data that is on the phone. It prohibits
15 any manipulation of the data. On one side of the box you
16 put the phone; you connect it through a cable to the box.

17 On the other side you have your output and you can
18 put it into your computer, connect it to a phone drive or
19 an SD card or whatever you want your output to go to.

20 In our case and in my case with this one here I used
21 a phone drive and then you go through the screen; it's
22 all digital readout and you pick the make and model of
23 the phone and then it finds that make and model and then
24 comes back and tells you what you can get off the phone.
25 In this case it was the phone book and images book were.

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1 checked and then the extraction was completed. Then you
2 take the phone drive out and put it in the machine and
3 just produced the reports.

4 Q. Okay. So you extracted the phone contacts from
5 that phone?

6 A. Yes.

7 Q. So they would have come directly off of that red
8 cell phone that you analyzed?

9 A. Yes, without manipulation.

10 Q. And then print them out in a version that we could
11 look out?

12 A. Yes. You would print them out as a hard copy.
13 Generally what we do is we take our report and put it on
14 a disk, a D-V-D so that it can't be changed. It's a
15 onetime writeable D-V-D and then you give it to the
16 investigator for follow-up.

17 Q. So you can't take ---

18 MS. ANDERSON: --- objection, leading.

19 THE COURT: I'm sorry?

20 MS. ANDERSON: Leading..

21 THE COURT: Leading the witness. Don't lead your
22 witness please, ma'am.

23 MS. FLYNN: Yes, Your Honor.

24 Q. [Ms. Flynn] So you did testify that you put it on a
25 disk so that it can't be manipulated?

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1 A. Correct.

2 Q. Okay. So would you have pulled that from the phone
3 then?

4 A. Yes.

5 Q. And you can't change those?

6 A. No. No, once it's on a disk it's a one-time burn to
7 some rewritable disk. In other words it's a onetime burn
8 and when that process is completed the session on the
9 disk is loaded and it's can't be altered or changed.

10 MS. FLYNN: May I approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 [Whereupon, Ms. Flynn provides documents to Ms.
13 Anderson]

14 Q. [Ms. Flynn] I'm showing you what's been previously
15 marked for identification as State's exhibit 13. Would
16 you take a look at that for me and review it?

17 [Whereupon, the witness is shown exhibit]

18 A. There are 34 pages here. Do you want me to look at
19 each one? This is the address contact list of all the
20 contacts.

21 Q. Okay. And is this what you pulled from the phone?

22 A. Yes.

23 Q. So just the phone contacts that were pulled from
24 that phone?

25 A. Correct.

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1 MS. FLYNN: Your Honor, at this point the State
2 would ask that State's exhibit 13 be admitted into
3 evidence.

4 THE COURT: Any objection?

5 MS. ANDERSON: Over our previous objections.

6 THE COURT: Okay. All right. So you renew your
7 previous objection?

8 MS. ANDERSON: Yes, Your Honor.

9 THE COURT: All right. Overruled. Thank you very
10 much.

11 [Whereupon, State's exhibit number 13 is entered
12 into evidence by the court]

13 MS. FLYNN: Your Honor, may I publish for the jury?

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Flynn] Let's go through a few of these. So
16 these would have been -- those sets of phone contacts
17 these again would have been the phone contacts that you
18 pulled from that red cell phone?

19 A. Correct. I can verify that through the N-D 5 patch
20 and the Shaw 256 hash as you see there are considered
21 digital fingerprints --

22 Q. Okay. And the total entries would have been the
23 amount of names listed in that phone?

24 A. The total number of spaces occupied in the phone.

25 Q. Okay. So let's just go through. Kind of explain

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1 to me this says number 2 and is that a name? Could you
2 read that out for us?
3 A. That would be the name entered by the user of the
4 phone A Dog Bro A Dog.
5 Q. Okay. And what's the mobile number listed there?
6 A. 843-926- .
7 Q. I'm going to direct your attention to the board
8 behind you. Do you see that number you just read out to
9 us right here [indicates]?
10 A. Number two?
11 Q. Mr. Van Horn, I'm sorry. Direct your attention this
12 way [indicates]. Do you see that same phone number?
13 A. Yes.
14 Q. Would you mind writing the name next to that phone
15 number, which is the 843-926-7 number you just read to
16 me? I'll give you a pen.
17 A. You want it all three times?
18 Q. You can just write next to it and we'll know it is
19 all three. If you don't mind doing it to the right of
20 that phone number at the end that would be great. Thank
21 you.
22 [Whereupon, the witness complies]
23 Q. All right. I'm going to show you one more example
24 just so we make sure we're on the same -- number 67 on
25 the list. So that would be 67 is the contact in his

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1 phone?

2 A. The 67 spot, yes.

3 Q. And what name is associated with that?

4 A. Juicy.

5 Q. Okay. And could you read me the general number.

6 And what's the difference between a mobile and a general?

7 A. Typically the mobile is going to be another cell

8 phone. Some people don't distinguish when they put a

9 number in whether it's mobile, general, or home;

10 whatever. General would be any other number say home,

11 work, any other distinction.

12 Q. So if we're looking at the name Juicy there are two

13 numbers associated to him; same person though?

14 A. Yes. Same person, two numbers.

15 Q. Okay. So that second number -- do you see that

16 second number on the board behind you?

17 A. I do.

18 Q. Could you write his name or her name next to that

19 phone number which is 843-934- ?

20 [Whereupon, the witness complies]

21 MS. FLYNN: Court's indulgence.

22 [Whereupon, Ms. Flynn and Mr. Simpson confer]

23 Q. [Ms. Flynn] Rodney, I'm going to show you the first

24 page of the report you generated. Now could you tell me

25 what phone number you extracted the data from? In other

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1 words what number is associated with that red cell phone?

2 A. The red cell phone's own number would be 843-345-

3

4 Q. And is that listed right here [indicates] under

5 M-M-I-S-D-N?

6 A. M-M-I-S-D-N; yes it is.

7 Q. Okay. And so you went over those 292 contacts?

8 A. Correct.

9 Q. And again you would have extracted that data which
10 means just pull the data from the phone?

11 A. Right.

12 Q. Okay.

13 A. In our lab we can do extractions and examinations.

14 In this case we just did an extraction. There was no
15 examination.

16 MS. FLYNN: Thank you, Your Honor. No further
17 questions.

18 THE COURT: Cross-examination?

19 MS. ANDERSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. ANDERSON:

22 Q. Good morning.

23 A. Good morning.

24 Q. So when were you actually asked to look at this
25 phone?

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- 1 A. The phone was submitted to us on November 6th, 2012
2 was the first submission.
- 3 Q. So November 6th, 2012 was the very first time you
4 ever saw this phone?
- 5 A. The first time we saw the phone is our lab.
- 6 Q. And you never examined it before then either?
- 7 A. No, ma'am.
- 8 Q. Were you aware that this investigation began back in
9 December of 2011?
- 10 A. We don't ---
- 11 Q. --- you didn't know that when you looked at it ---
- 12 A. --- we are kind of what would be considered an
13 independent entity of the police department so we don't
14 know the background.
- 15 Q. You mentioned before that there are a lot of things
16 that you can get from a cell phone, correct, depending on
17 the make and model and depending on the limitations of
18 the device that you use correct?
- 19 A. Correct.
- 20 Q. Some of what you can get are if the model is enabled
21 with G-P-S you would be able to pull that from the phone?
- 22 A. Correct.
- 23 Q. If you can do that would be able to ping from this
24 phone?
- 25 A. From this particular phone?

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- 1 Q. Yes?
- 2 A. Very doubtful. This is an older model phone.
- 3 Q. Can you explain to the jury what I mean by ping?
- 4 A. It just means that you are tracking the cell phone
5 off a cell phone tower that we use at a certain
6 particular date and time to try to track it -- with a
7 satellite and they are using the towers instead.
- 8 Q. You said it was unlikely but it's not impossible
9 from that phone?
- 10 A. It wouldn't be impossible.
- 11 Q. But that's not something that you would try to do?
- 12 A. No, we don't do that in our office. That would be a
13 cell phone provider.
- 14 Q. Would it have mattered if the phone was activated or
15 not in being able to do that then?
- 16 A. Yes, to be able to use the tower.
- 17 Q. And so if it was deactivated you wouldn't be able to
18 do that anyway?
- 19 A. We don't do it.
- 20 Q. Well, not you but it would be impossible to do it if
21 the phone was deactivated?
- 22 A. I can't answer that. I'm not -- we don't do that so
23 I don't speculate on that.
- 24 Q. So the contact list that Ms. Flynn showed you -- do
25 you still have it up there with you?

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- 1 A. I have my copy.
- 2 Q. There is an order to the contacts in that phone just
- 3 1, 2, 3, 4 and then so on down to the bottom?
- 4 A. Correct.
- 5 Q. Is there any significance to the order of that?
- 6 A. Generally when you put a contact in the phone it
- 7 will take the next available spot. In some phones you
- 8 can designate what spot you want it to go in.
- 9 Q. Well in this phone it appears -- and I'll put it
- 10 back up for you, this is State's exhibit 13. It appears
- 11 that the list goes in alphabetical order.
- 12 A. Correct.
- 13 Q. So with this phone it would appear it's just going
- 14 A, B, C, D ---
- 15 A. --- correct ---
- 16 Q. --- E, F, G.
- 17 A. Correct.
- 18 Q. And you can't tell when those contacts were put in?
- 19 A. No.
- 20 Q. And you can't tell who put those contacts in the
- 21 phone; just that they are in the phone.
- 22 A. They are in the phone.
- 23 MS. ANDERSON: Court's indulgence for one moment.
- 24 [Whereupon, Ms. Anderson and Ms. Proctor confer]
- 25 Q. No further questions. Thank you.

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1 THE COURT: Any redirect?

2 MS. FLYNN: Court's indulgence, Your Honor.

3 [Whereupon, Ms. Flynn and Mr. Simpson confer]

4 MS. FLYNN: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. FLYNN:

7 Q. Mr. Van Horn, through that contact list you can't
8 tell when those contacts were put in there right?

9 A. No.

10 Q. But if you look at a phone log you could tell
11 whether those contacts and those phone numbers match the
12 phone log.

13 A. [No response]

14 Q. In other words if it matches those numbers up there.

15 A. If we were able to extract the phone log, again
16 depending on the make and model of the phone, and if it
17 gave us dates and times we would be able to match the
18 dates and times with the number that was called if it was
19 stored in the phone if that is what you're asking me.

20 Q. Basically. We went through that exercise.

21 A. Right.

22 Q. And like you just said you can't tell when those
23 names were put in the phone.

24 A. In the phone, stored in the phone, no.

25 Q. But you can tell that that's the same number there

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1 as it was in the phone contacts right?

2 A. Correct. Correct.

3 Q. Thank you.

4 THE COURT: Recross?

5 MS. FLYNN: No, Your Honor.

6 THE COURT: Okay. You may step down. Thank you
7 very much. Any reason Officer Van Horn can't be excused
8 from the State?

9 MS. FLYNN: No.

10 MS. ANDERSON: No, Your Honor.

11 THE COURT: Thank you very much.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness please.

15 MS. FLYNN: The State calls Investigator Jordan
16 Lester.

17 [Whereupon, Mr. Lester comes forward]

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court as follows: do you swear or affirm your
20 testimony will be the truth, the whole truth, and nothing
21 but the truth so help you God]

22 CLERK OF COURT: State your full name and spell
23 your last name.

24 THE WITNESS: It's Jordan Lester, L-E-S-T-E-R with
25 the City of Charleston Police Department.

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1 JORDAN LESTER,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. FLYNN:
6 Q. What's your current position at the City of
7 Charleston Police Department?
8 A. I'm currently a detective working burglaries.
9 Q. And what are your primary duties as a detective?
10 A. Basically I get assigned burglary cases and then my
11 job is to solve them.
12 Q. Okay. Were you working in that position back in
13 December 2011?
14 A. I was working as a team investigator. I was
15 assigned burglaries among other things such as car break-
16 ins, shoplifting cases; so yes.
17 Q. Were you assigned as the lead detective for this
18 case for the burglary that occurred on December 22, 2011?
19 A. I was.
20 Q. Would you have responded to the actual incident?
21 A. No, I wouldn't have.
22 Q. Can you kind of explain to us why you wouldn't have
23 responded?
24 A. We only respond to burglaries if we have a witness.
25 In this case there was no witness so I wouldn't have

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1 responded.

2 Q. When you say witness, a witness to the actual crime?

3 A. Yes, somebody actually seeing the suspect.

4 Q. Okay. What does it mean to be the lead detective
5 of the case?

6 A. Basically I am the point man. I have other
7 officers, other detectives that will go out and they will
8 gather intelligence and then they will bring it back to
9 me.

10 And my job is to gather it all together and
11 essentially make the final decision as far as the arrest
12 and things like that.

13 Q. So throughout the case you would have received
14 information from other officers?

15 A. Yes.

16 Q. You had to manage the big picture?

17 A. Yes.

18 Q. And at the beginning of this investigation did you
19 learn that there was a cell phone left at the scene on
20 December 22, 2011?

21 A. I did.

22 Q. At some point did you look at the cell phone left on
23 the night of the burglary?

24 A. Yes, I did.

25 Q. When did you first look at the cell phone?

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1 A. On the 28th of December.

2 Q. Okay. So the burglary happened on the 22nd and you
3 looked on the 28th?

4 A. Yes.

5 Q. Can you kind of explain that gap in time?

6 A. It was the Christmas holidays so I wasn't working.

7 Q. Okay. So when you got back to work that's when you
8 looked at the phone?

9 A. Yes, ma'am.

10 Q. So kind of talk us through your investigation of how
11 you eventually developed Lamar Brown as a suspect.

12 A. I pulled his cell phone out of evidence; it's a T-
13 Mobile red in color cell phone. I opened it up and I had
14 a background picture of a black male with dreadlocks on
15 the phone. I was able to go into the phone and look at
16 the contacts. Going through the phone ---

17 MS. ANDERSON: --- objection. At this point we're
18 renewing our previous objection.

19 THE COURT: Let me see y'all up here just a second.

20 [Whereupon, an off the record bench conference is
21 held]

22 THE COURT: Ms. Anderson, your objection is based
23 upon the pretrial motion to suppress, is that correct?

24 MS. ANDERSON: Yes, Your Honor.

25 THE COURT: And you are renewing that objection?

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1 MS. ANDERSON: I am.

2 THE COURT: All right. That motion is denied.

3 Please proceed.

4 MS. ANDERSON: Thank you, Your Honor.

5 Q. [Ms. Flynn] So let's start from the beginning. You
6 looked at the phone on December 28, 2011. Talk us
7 through what you do next.

8 A. I opened the phone up. I have a saved background.
9 As soon as you open the phone up I see a black male with
10 dreadlocks holding a child. And then I go into the
11 contact list and I'm looking for a relative, something
12 that possibly says Grandma, Grandpa, Mom, Dad.

13 I look at I believe it was a Grandma. I took that
14 phone number and we have a data base called Accurant [ph]
15 and I plugged that phone number into our database into
16 Accurant. And I know I'm looking for a black male
17 roughly in his 30's or early 20's.

18 So when I put that number into Accurant I get a
19 woman who lives at Riverland. I can -- through
20 Accurant I can also click a button and it lists
21 relatives, associates, and neighbors.

22 That gives me a list of individuals in the relative
23 section in the phone saved as Grandma and it gives me a
24 name and it also gives me a date of birth. I take that
25 name and then I put it into a South Carolina D-M-V which

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1 is where you have your license -- has your picture for
2 your South Carolina driver's license. Basically you can
3 look at your license on line. Then I start comparing the
4 pictures that I located in Accurant to the pictures on
5 the cell phone as the background.

6 In comparing them I -- it was pretty easy to see
7 that the person on the background of this cell phone is
8 the D-M-V says in Lamar S. Brown who also lives at
9 Riverland Drive.

10 So I know that this person is the same driver's
11 license so I am able to positively identify him. Next I
12 have to go talk to him to talk about the phone and why
13 his picture of the background of this phone was located
14 at the scene of a crime.

15 Q. So let's stop there. So through his D-M-V you
16 located the address you said as Riverland Drive?

17 A. Yes.

18 Q. And at some point would you have sent other officers
19 or did you go out there and speak with the defendant?

20 A. I sent other officers out there.

21 Q. Okay. And that was to Riverland Drive?

22 A. Yes.

23 Q. And where did -- where was the victim's home that
24 was burglarized? What was the address?

25 A. Riverland Woods Place, Apartment .

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1 MS. FLYNN: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 [Whereupon, Ms. Flynn provides documents to Ms.
4 Anderson]

5 Q. [Ms. Flynn] I'm showing you what has been marked as
6 defendant's exhibit 1; it's already been admitted. Do
7 you recognize this?

8 [Whereupon, the witness is shown exhibit]

9 A. Yes, ma'am.

10 Q. Okay. I'm going to -- if you could point out to me
11 where is the victim's residence, and we'll do it for the
12 jury.

13 [Whereupon, the witness complies]

14 A. Here [indicates].

15 Q. Okay. And then where is Riverland?

16 A. Right here [indicates].

17 Q. Okay. Now I'm just going to get you to publish
18 this for the jury so I'll put it up here for -- is that
19 the easiest way for you to look at it?

20 A. Yes, ma'am.

21 Q. Okay. So can you point out to me the address of
22 the victim's residence which is Riverland Woods
23 Place?

24 [Whereupon, the witness complies]

25 Q. Okay. And then can you point out to me the address

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1 of the defendant's residence, which is Riverland
2 Drive?

3 [Whereupon, the witness complies]

4 Q. Okay. Can you make that mark a little bit bigger?

5 [Whereupon, the witness complies]

6 Q. Okay, great. Thank you. And through the course of
7 your investigation how far did you learn that was from
8 the victim's residence?

9 A. If you're in vehicles I believe less than half a
10 mile and there are trails throughout these woods here
11 [indicates]. If you're taking the trails it would be
12 less than a quarter of a mile.

13 Q. So less than a quarter mile through the trails in
14 the residence area?

15 A. Yes.

16 Q. And then about a half mile driving?

17 A. Yes.

18 Q. During the course of your investigation you said
19 that officers spoke with the defendant. What did you
20 learn as a result of the interview?

21 A. He stated he had the phone on the date of the
22 burglary. He advised us the phone was his.

23 Q. I want to turn your attention now to the information
24 that was retrieved from the defendant's cell phone. So
25 as lead investigator in this case you eventually executed

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1 a search warrant for the phone records from T-Mobile
2 right?

3 A. Yes.

4 Q. And then did you also have digital evidence from the
5 Charleston Police Department extract some data from the
6 phone?

7 A. Yes.

8 Q. So after receiving that information did you have an
9 opportunity to review the phone contacts taken from the
10 digital evidence unit with the T-Mobile phone logs?

11 A. Yes.

12 MS. FLYNN: May I approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 Q. [Ms. Flynn] I'm showing you what has already been
15 admitted as State's exhibit 12 and State's exhibit 13.

16 [Whereupon, the witness is shown exhibits]

17 Q. State's exhibit 12 do you recognize that?

18 A. Yes, ma'am.

19 Q. And what is that?

20 A. It's basically the incoming and outgoing -- all the
21 phone calls and the numbers that made during the 9th and
22 22nd of December; the date of the burglary.

23 Q. And that's what was received from T-Mobile?

24 A. Yes, ma'am.

25 Q. And then now State's 13?

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- 1 A. This is the contact list located in the phone that
2 was pulled from digital evidence.
- 3 Q. And so did you review State's 13, which is the
4 contacts, with the phone logs which you received from T-
5 Mobile as State's 12?
- 6 A. Yes, ma'am.
- 7 Q. And in looking at State's -- am I saying the right
8 numbers 12 through 13?
- 9 A. Yes ---
- 10 Q. --- I just want to make sure ---
- 11 A. --- 12 is the call logs and then 13 is the contact
12 list.
- 13 Q. Okay. And -- State's 12 and 13 did you compare
14 these to see if there were any known contacts connected
15 with those phone logs?
- 16 A. Yes, ma'am.
- 17 Q. And did you have an opportunity to count all of the
18 phone calls and texts that were received and made to that
19 phone for December 22, 2011?
- 20 A. I did.
- 21 Q. And how many total calls were made to and from that
22 phone and text?
- 23 A. Seventy-six.
- 24 Q. Okay. And out of 76 how many were known contacts
25 that you matched?

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- 1 A. Seventy-three.
- 2 Q. How many were unknown?
- 3 A. Only three were unknown.
- 4 Q. So only three out of 76 on December 22, 2011?
- 5 A. On the date of the burglary, yes ma'am only three
- 6 were unknown --
- 7 Q. So after you reviewed all of these --
- 8 MS. FLYNN: May I approach, Your Honor?
- 9 THE COURT: Yes, ma'am.
- 10 Q. [Ms. Flynn] I'm showing you what has been marked
- 11 for identification purposes only as State's exhibit 14,
- 12 which is a document that we've complied is that correct?
- 13 A. Yes, ma'am.
- 14 Q. And you've had a chance to review that haven't you?
- 15 A. Yes, ma'am.
- 16 Q. And what does that basically show us?
- 17 A. It basically shows us that he is in contact with
- 18 known people that have been programmed into his contact
- 19 list; it's not random numbers. He's calling people that
- 20 he has actually programmed into his phone.
- 21 Q. And is that a list that basically puts together
- 22 State's 12 and 13 the phone contact, the phone log for
- 23 December 22, 2011?
- 24 A. Yes, ma'am.
- 25 Q. So basically let's kind of go through an example.

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1 MS. FLYNN: At this time the State would ask that
2 State's exhibit 14 be published for the jury? Moved into
3 evidence and then published for the jury, Your Honor.

4 THE COURT: Okay. Any objection?

5 MS. PROCTOR: Court's indulgence.

6 [Whereupon, Ms. Proctor and Ms. Anderson confer]

7 THE COURT: Let me see what you are offering so I
8 can take a look at it please?

9 [Whereupon, Ms. Flynn provides documents to the
10 court]

11 MS. PROCTOR: Your Honor, may we approach?

12 THE COURT: Yes, ma'am.

13 [Whereupon, an off the record bench conference is
14 held]

15 THE COURT: Mr. Foreman and ladies and gentlemen of
16 the jury it's close to taking a morning break and I'm
17 going to have to listen to this motion. And the reason I
18 send you out sometimes when I have to listen to the
19 motions made by the attorneys it's my job to make a
20 determination whether or not that evidence is admissible
21 under the rules of evidence.

22 The rules of evidence are designed hopefully to
23 bring the most trustworthy testimony and evidence that we
24 can present to you. And my job is to see if it complies
25 with the rules of evidence. During the trial I'm not

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1 permitted to comment on the facts of the case. So when
2 I'm listening to the arguments of the attorneys
3 occasionally I will send you out of the courtroom so I'll
4 be free to comment on the facts and discuss the motion
5 with the attorneys before I make up my mind whether I
6 think it's admissible or not admissible.

7 So that's the reason I'm sending you out of the
8 courtroom; not to hide anything from you but primarily
9 for me to make a determination whether it's admissible
10 and I will be free to comment on the facts out of your
11 presence.

12 So if you will go to the jury room you can take your
13 morning break. If you have smokers let the Bailiffs
14 know. Please don't discuss the case amongst yourselves.

15 [Whereupon, the jury exits the courtroom at 10:41
16 a.m.]

17 THE COURT: All right. I believe the State is
18 offering State's exhibit number 14, which is the
19 subscriber records from the phone that was earlier
20 testified to by the T-Mobile lady, Susan Johnson and also
21 by Detective Rodney Van Horn and also -- what is the
22 defendant's objection?

23 MS. PROCTOR: Your Honor, if I may look at it? It
24 seems like they have already put in the phone records.
25 May I just compare the two? It seems like we've already

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1 got ---

2 MR. SIMPSON: --- to end any confusion -- we've put
3 in a contact list; we've put in the phone records. We
4 have, as we just explained to the jury, compiled the two
5 together in a demonstrative ---

6 THE COURT: --- State's exhibit -- this is State's
7 exhibit 14, 15 has been admitted, 13 has been admitted.
8 The cell phone records were admitted right?

9 MR. SIMPSON: Right. This is ---

10 THE COURT: --- how is this -- this is not your
11 witness. Let me hear from the attorney whose witness it
12 belongs to. You don't want them -- I don't them to
13 double team you.

14 MS. PROCTOR: That's okay. I just wanted to see
15 because all of a sudden ---

16 THE COURT: --- how is this different from State's
17 exhibit number 15 is my question, Solicitor.

18 MS. FLYNN: I'm sorry, Your Honor. What is...

19 THE COURT: State's exhibit 15 is the cell phone
20 records. How is this different is my question.

21 MS. FLYNN: Your Honor, I believe that 12 and 13 --
22 12 is the contact ---

23 THE COURT: --- 12 is the defendant's phone
24 records.

25 MS. FLYNN: And 13 is the phone contacts.

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1 THE COURT: I'm sorry, I'm talking about 12. How
2 is that different from 15?

3 MS. FLYNN: The phone records?

4 THE COURT: Yes, what's different?

5 MS. FLYNN: Your Honor, what we have done is taken
6 State's 12, which is the phone records and 13 ---

7 THE COURT: --- let me see 12. I haven't seen it;
8 somebody hand it to me.

9 [Whereupon, documents are proffered to the court]

10 MS. FLYNN: And basically put the names, Your Honor
11 ---

12 THE COURT: --- first of all what is your legal
13 objection?

14 MS. PROCTOR: Well, they've already got 12 and
15 they've already got 13 in. And what they have done is
16 combined them. This is what the Solicitor's office did.

17 THE COURT: How is that -- come up here for just a
18 second please? How is what -- the second page of 13 how
19 is that different from this [indicates]? Look at it.

20 MS. FLYNN: Right.

21 THE COURT: It's the same thing isn't it?

22 MS. FLYNN: No, Your Honor. The phone contacts are
23 what this detective went through. And we told the jury
24 that we have compiled this list. It's basically to aid
25 the jury so that they understand that 12 and 13 go

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1 together and they match up.

2 THE COURT: So the only difference between this and
3 12 is outside the contact list?

4 MS. FLYNN: It's a combination of 12 and 13 ---

5 THE COURT: --- of what was in his phone a
6 combination of 12 and 13?

7 MS. FLYNN: Yes, Your Honor.

8 THE COURT: Does 13 show the -- so really it's just
9 a synopsis of 12 and 13 is that correct?

10 MS. FLYNN: Yes, Your Honor.

11 THE COURT: Now that I know what it is I can
12 hopefully listen to your objection.

13 MS. PROCTOR: Your Honor -- the Solicitor I think
14 that was part of the discovery that we received that the
15 officer had made. But this is something the Solicitor's
16 office did to help the jury understand but it's not
17 evidence in this case. They can take the phone records
18 and they can take the call logs and they can go back
19 there. I mean that's what their job is. I mean it's
20 like we kept making ---

21 THE COURT: --- what's your legal objection? I
22 mean it's just a summation with the addition of the names
23 of the contacts that this gentleman pulled off the phone,
24 is that correct Solicitor?

25 MS. FLYNN: I'm sorry, Your Honor?

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1 THE COURT: The contacts that he pulled off the
2 phone -- who put those contact names on there? Did this
3 gentleman give it to you or who?

4 MS. FLYNN: No, Your Honor. That is the
5 Solicitor's office that prepared the document under rule
6 1006 for a summary for the jury to let them have a better
7 understanding of these phone logs and these phone
8 contacts.

9 THE COURT: Rule 1006.

10 MS. FLYNN: Summaries, Your Honor.

11 THE COURT: I mean summaries are submitted all the
12 time. Do you think it's an inaccurate summary or?

13 MS. PROCTOR: I haven't seen it.

14 THE COURT: Well, take a look at it.

15 MS. PROCTOR: Well, I've got to...

16 THE COURT: Take a look at it. I'm not trying to
17 hurry you. Take a look at it and let me hear your
18 arguments and I will rule.

19 MS. FLYNN: Your Honor, if I may? The written list
20 was given in discovery. It's just typed up so the jury
21 can see it more clearly.

22 THE COURT: I understand it's just a summary of the
23 other documents. Take a look at it and we'll take a
24 break. And when we come back you make your argument and
25 I will make a decision.

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1 MS. FLYNN: Thank you, Your Honor.

2 THE COURT: Okay. We'll take about a 15 or 20
3 minute break. Solicitor, help her find what we're
4 talking about. And Investigator Lester, don't talk to
5 anybody during the break about the case please, sir.

6 THE WITNESS: Yes, sir.

7 [Whereupon, court is in recess from 10:47 a.m. until
8 11:10 a.m.]

9 THE COURT: All right. Could y'all come up here
10 for just a second?

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: All right. Ms. Boyd, stand up and if
14 you would come stand right by that gate there [indicates]
15 please?

16 [Whereupon, Ms. Boyd complies]

17 THE COURT: And what's your full name?

18 MS. BOYD: Quintisha -- Boyd.

19 THE COURT: And what is your relationship to the
20 defendant Lamar Sequan Brown?

21 MS. BOYD: That's my boyfriend.

22 THE COURT: Pardon?

23 MS. BOYD: My boyfriend.

24 THE COURT: Boyfriend?

25 MS. BOYD: Yes.

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1 THE COURT: Okay. Raise your right hand.

2 [Whereupon, Ms. Boyd complies]

3 [Whereupon, the witness is duly sworn by the court
4 as follows: do you swear to tell the truth and nothing
5 but the truth so help you God]

6 MS. BOYD: Yes.

7 THE COURT: It's been reported to the court that
8 you were having a conversation yesterday with one of the
9 jurors. Is that correct or incorrect?

10 MS. BOYD: Incorrect.

11 THE COURT: You didn't say anything to the jurors?

12 MS. BOYD: We were trying to find a way out.

13 THE COURT: Pardon?

14 MS. BOYD: We were trying to find an exit.

15 THE COURT: Come on up here and sit on the witness
16 stand please ma'am?

17 [Whereupon, Ms. Boyd comes forward and takes the
18 witness stand]

19 THE COURT: My question to you did you have a
20 conversation with one of the jurors when you got off the
21 elevator yesterday, yes or no?

22 MS. BOYD: No.

23 THE COURT: You haven't had any conversation with
24 any of the jurors?

25 MS. BOYD: It wasn't a conversation.

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1 THE COURT: Okay. What occurred with the juror?

2 MS. BOYD: We were trying to find an exit, me and
3 my Pastor and all the doors were locked. So we had to go
4 through that door and he was trying to get out the door
5 too. So we told him the door was open. And that's ---

6 THE COURT: --- so it was a conversation with a
7 juror about getting out of the courthouse?

8 MS. BOYD: Yes.

9 THE COURT: So you did have a conversation with a
10 juror?

11 MS. BOYD: Well, yes.

12 THE COURT: Is that correct or incorrect?

13 MS. BOYD: Yes, that's correct.

14 THE COURT: And you were having a conversation as
15 to how to get out of the courthouse?

16 MS. BOYD: Yes, sir.

17 THE COURT: How long did the conversation last?

18 MS. BOYD: Five seconds.

19 THE COURT: That's all?

20 MS. BOYD: That's it.

21 THE COURT: And nothing else occurred?

22 MS. BOYD: No, sir.

23 THE COURT: You didn't mention anything about the
24 case or did you tell him anything about who you were?

25 MS. BOYD: No, sir.

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1 THE COURT: Did you tell him your boyfriend was the
2 defendant?

3 MS. BOYD: No, sir.

4 THE COURT: What did you specifically tell him?

5 MS. BOYD: How to get out -- I mean we were all
6 trying to find a way out; that was it.

7 THE COURT: That was it?

8 MS. BOYD: That was it.

9 THE COURT: Okay.

10 MR. SIMPSON: Your Honor, the witness informs me
11 that it appeared -- and again ---

12 THE COURT: --- I'm going to hear from him. Let me
13 deal with it okay?

14 MR. SIMPSON: Sure.

15 THE COURT: Is there anything else you want to tell
16 the court about what transpired because I'm going to call
17 two more witnesses on this issue.

18 MS. BOYD: Okay.

19 THE COURT: Okay. And I want to tell you if you
20 were trying to influence a juror I'm going to bring you
21 back on the issue of contempt of court do you understand,
22 and I will give you an opportunity to retain counsel
23 before we have that hearing. But I do want to tell you
24 if you were talking to a juror and trying to influence a
25 juror you're going to be subject to contempt of court and

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1 you may be fined and or incarcerated, do you understand?

2 MS. BOYD: Okay.

3 THE COURT: So I'm asking you to tell me the truth.

4 MS. BOYD: I am.

5 THE COURT: You've told me the truth?

6 MS. BOYD: I'm telling the truth.

7 THE COURT: Okay. Go have a seat.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: If you will come around please sir?

11 [Whereupon, Mr. Poole comes forward]

12 THE COURT: Whitney, see if -- what time -- come up
13 and have a seat if you would first. Let me find out what
14 time this occurred and we'll get the video. Would you
15 state your name please?

16 MR. POOLE: Richard Justin Poole.

17 THE COURT: Mr. Poole, raise your right hand.

18 [Whereupon, the witness is duly sworn by the Court
19 as follows: do you swear to tell the truth and nothing
20 but the truth so help you God]

21 THE COURT: You observed a conversation yesterday
22 between Ms. Boyd and juror -- Mr. Scott is that correct?

23 MR. POOLE: Correct. Actually there was another
24 gentleman over there [indicates] with them. And it was
25 him and the young woman who was just up here who were

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1 walking through the large walkway area entrance to the
2 judicial center. And she was more I think trailing
3 behind at that point and he and the juror were walking
4 what appeared to be side by side.

5 THE COURT: Who is he?

6 MR. POOLE: The gentleman I believe she said her
7 Pastor.

8 THE COURT: Sitting out here [indicates]?

9 MR. POOLE: Yes, sir.

10 THE COURT: He was walking beside the juror?

11 MR. POOLE: Correct.

12 THE COURT: What time was this?

13 MR. POOLE: This was immediately following the close
14 of trial yesterday.

15 THE COURT: Mia, do you know what time we adjourned
16 yesterday? About ten minutes after 5?

17 THE COURT REPORTER: I have 5:10.

18 THE COURT: Pardon?

19 THE COURT REPORTER: 5:10.

20 THE COURT: 5:10? We adjourned in here at 5:10 so
21 it was sometimes after ten minutes after 5 is that
22 correct?

23 MR. POOLE: Correct.

24 THE COURT: Do you know about what time it was?

25 MR. POOLE: If we adjourned here at 5:10 I would say

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1 sometime between 5:10 and 5:15.

2 THE COURT: Okay. Whitney, see if you can find
3 the tapes of that area from 5:10 to about 5:30.

4 CLERK OF COURT: What area is it again?

5 THE COURT: What area did it occur?

6 MR. POOLE: The large hall downstairs.

7 CLERK OF COURT: Near the scanners?

8 THE COURT: Was it outside the secured area where
9 you go through the...

10 MR. POOLE: It was where you walk if you're exiting
11 the building there are the standard areas where you are
12 coming in and it was walking down the hall like beside
13 the wall ---

14 THE COURT: --- do you know where the magnetic
15 devices are you come through?

16 MR. POOLE: Uh huh.

17 THE COURT: Was it -- which side did it occur on
18 that?

19 MR. POOLE: If you are coming from the elevators and
20 you're facing the magnetic devices people are coming
21 through them towards you it was on the left side where
22 you walk out the little exit gate there.

23 THE COURT: Right. So it was that area going
24 towards the exit further down the hall?

25 MR. POOLE: Correct.

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1 THE COURT: There's a big desk where someone
2 generally sits on your left.

3 MR. POOLE: Correct.

4 THE COURT: Where was it in relation to that desk?

5 MR. POOLE: It was right around that area actually.

6 THE COURT: Okay. Does that help you?

7 CLERK OF COURT: Yes sir, thank you.

8 THE COURT: All right. Tell me what you observed.

9 MR. POOLE: I just observed the two gentlemen
10 walking close to one another. They looked like they were
11 all leaving together.

12 THE COURT: Were they having a conversation or
13 talking to one another or do you know?

14 MR. POOLE: I can't recall. It appeared that they
15 were but I don't like to be an absolutist.

16 THE COURT: How close were you to them?

17 MR. POOLE: I would say within 20 feet.

18 THE COURT: Could you hear any conversation or you
19 just observed?

20 MR. POOLE: No.

21 THE COURT: And the lady Ms. Boyd was actually
22 walking behind them?

23 MR. POOLE: Correct. They did appear to be leaving
24 together though.

25 THE COURT: Is there anything else you want to tell

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1 me about what you observed and what you saw?

2 MR. POOLE: No. As I told the Solicitor I don't
3 like to be a conspiracy theorist but it just seemed odd
4 to me.

5 THE COURT: Okay. Thank you very much. Go have
6 a seat.

7 MR. POOLE: Thank you.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: The gentleman sitting there [indicates]
11 -- I don't know his name if you'll come on up please sir.
12 Come and have a seat on the witness stand.

13 [Whereupon, the individual comes forward]

14 THE COURT: What's your full name?

15 MR. GRANT: My name is Ronald Grant.

16 THE COURT: Mr. Grant, would you raise your right
17 hand?

18 [Whereupon, the witness is duly sworn by the Court
19 as follows: do you swear to tell the truth and nothing
20 but the truth so help you God].

21 MR. GRANT: Yes, sir.

22 THE COURT: You've been in the courtroom and you've
23 heard Ms. Boyd testify and you heard the victim in this
24 particular case testify also, Mr. Richard Poole. Do you
25 recall that incident yesterday?

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1 MR. GRANT: Yes, sir.

2 THE COURT: Tell me what occurred from your
3 perspective?

4 MR. GRANT: Well what occurred is we were in front
5 of the jurors as we was walking out after we left the
6 security desk. And we walked all the way to the very end
7 to go out. We tried one of the doors on the right but
8 the door did not open.

9 So we went over to the far end and that door was
10 locked also. So we turned back around and we said those
11 doors are locked. So when we turned back around and at
12 the same time that we turned around the juror was coming
13 up we said that door is locked.

14 So he went what door is open? I said why didn't
15 they tell us and let us walk all the way down and they
16 knew the door was locked on the end. That's all the
17 conversation was. We wasn't talking to the juror; I was
18 just voicing my opinion saying ---

19 THE COURT: --- the door that was locked was at the
20 far end of the hall?

21 MR. GRANT: All the way at the far end.

22 THE COURT: Which door did you go out?

23 MR. GRANT: The only door that was open was the
24 door next to the turning -- the revolving door.

25 THE COURT: The revolving door?

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1 MR. GRANT: Yes. That was the only door that was
2 next to it and one of the doors ---

3 THE COURT: --- what did you say to the juror?

4 MR. GRANT: Nothing. I was just saying that
5 security should have told us that all those doors are
6 locked; we locked all the doors except for this door.
7 And they didn't say anything; they just let us walk -- I
8 was just talking...

9 THE COURT: Mr. Grant, what's your relation to the
10 defendant, Lamar Sequan Brown?

11 MR. GRANT: I'm his Pastor.

12 THE COURT: Pardon?

13 MR. GRANT: I'm his Pastor.

14 THE COURT: You're his Pastor?

15 MR. GRANT: Yes.

16 THE COURT: All right. Did Ms. Boyd say anything
17 to the juror?

18 MR. GRANT: No, not at all.

19 THE COURT: Were you walking beside the juror ---

20 MR. GRANT: --- and it might have looked -- he said
21 that she was maybe a step or two behind me. When I
22 turned around the juror was there and we met him at the
23 same time because he was walking out also. But he wasn't
24 with us. But as we came back and turned around to go to
25 the other door that was open it might have seemed like he

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1 was with us because we all went to the same door ---

2 THE COURT: --- you didn't say anything to the
3 juror ---

4 MR. GRANT: --- never said ---

5 THE COURT: --- other than how to get out of the
6 courthouse?

7 MR. GRANT: Right. That's it, sir.

8 THE COURT: How long did this encounter last?

9 MR. GRANT: It didn't last at all. As soon as we
10 could get to the door we walked to the door he went one
11 way and we went the other. We did not go the same way.

12 THE COURT: Okay. Thank you very much. You may
13 -- Mr. Grant, let me ask you just one more question.
14 Were there any other jurors around?

15 MR. GRANT: No.

16 THE COURT: Just this one juror?

17 MR. GRANT: That's the only one I saw.

18 THE COURT: That's the only one you saw?

19 MR. GRANT: Yes.

20 THE COURT: All right. Thank you very much Mr.
21 Grant. You may go have a seat.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Mr. Bailiff, would you go bring George
25 Scott in here please sir?

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1 [Whereupon, the Bailiff complies]

2 [Whereupon, the juror enters at 11:18 a.m.]

3 THE COURT: If you would have a seat, please sir.

4 [Whereupon, the juror complies]

5 THE COURT: Hey Mr. Scott, how are you doing today?

6 MR. SCOTT: All right, sir.

7 THE COURT: It's been brought to the court's
8 attention when you were leaving the courthouse yesterday
9 that you had a possible conversation with the gentleman
10 in the tie and the lady in the white here yesterday when
11 y'all were exiting the courthouse. Do you recall that?

12 MR. SCOTT: Yes, sir.

13 THE COURT: Tell me what transpired.

14 MR. SCOTT: We were trying to exit the courthouse
15 and the doors were locked and we couldn't figure out
16 which doors we were supposed to exit through. And I
17 commented on the fact that we were confused by that.
18 That was all.

19 THE COURT: Okay. Was there any conversation at
20 all about this particular case?

21 MR. SCOTT: No, sir.

22 THE COURT: Did you make any comment to them about
23 the case?

24 MR. SCOTT: No, sir.

25 THE COURT: Did they make any comment to you about

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1 the case?

2 MR. SCOTT: No, sir.

3 THE COURT: Did you know who they were when you saw
4 them?

5 MR. SCOTT: No, sir.

6 THE COURT: Had you ever seen them before?

7 MR. SCOTT: No, sir.

8 THE COURT: Do you know them?

9 MR. SCOTT: No, sir.

10 THE COURT: Do you know who they are now other than
11 I pointed them out to you the gentleman in the grey coat
12 with the tie and white shirt and the lady with the white
13 sweater do you know who they are?

14 MR. SCOTT: I'm going to guess they are related to
15 the defendant.

16 THE COURT: Pardon?

17 MR. SCOTT: I'm going to guess they are related to
18 the defendant somehow.

19 THE COURT: But do you know that of your own
20 knowledge?

21 MR. SCOTT: No, sir.

22 THE COURT: Did this conversation influence you in
23 any way about this case?

24 MR. SCOTT: No, sir.

25 THE COURT: Okay. So you don't think anybody was

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1 trying to influence you about this case?

2 MR. SCOTT: No, sir. No one even brought it up so.

3 THE COURT: All right.. Is there anything else you
4 want to tell me about what transpired?

5 MR. SCOTT: I didn't know they locked the doors at
6 5 o'clock.

7 THE COURT: And so y'all finally got out?

8 MR. SCOTT: Uh huh.

9 THE COURT: Which door did you get out?

10 MR. SCOTT: Apparently there is a push door
11 between the two revolving doors ---

12 THE COURT: --- so the revolving doors were locked
13 huh?

14 MR. SCOTT: No. I thought the push door was the
15 fire exit. I didn't know.

16 THE COURT: And which way did you go when you went
17 out?

18 MR. SCOTT: I went to the right and then across the
19 street to catch the shuttle.

20 THE COURT: And which way did they go?

21 MR. SCOTT: They went to the left for reasons I
22 don't know. I guess they have a vehicle.

23 THE COURT: Okay. Mr. Scott, I appreciate you
24 coming. I'm not trying to embarrass you or cause you any
25 difficulties ---

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1 MR. SCOTT: --- oh, not at all ---

2 THE COURT: --- it was just brought to my attention
3 and I felt like I needed to ask some questions about it
4 okay?

5 MR. SCOTT: Perfectly understood.

6 THE COURT: Okay. If you will go back to the jury
7 room? Thank you so very much.

8 MR. SCOTT: No problem.

9 THE COURT: And don't discuss what transpired
10 concerning this at all either downstairs yesterday or
11 today with the other jurors.

12 MR. SCOTT: Very well.

13 THE COURT: Can you do that?

14 MR. SCOTT: No problem.

15 THE COURT: All right. Thank you very much. Let
16 me see the attorneys up here just a second.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: Forget about the video, okay.

20 CLERK OF COURT: Okay.

21 THE COURT: All right. As far as that juror is
22 concerned are there any motions from the State?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: Any from the defendant?

25 MS. ANDERSON: No, Your Honor.

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1 THE COURT: All right. The court makes a finding
2 that their stories pretty well confirm what Mr. Grant
3 said, what Ms. Boyd said, and what Mr. Scott said and the
4 court is not going to take any action replacing Mr. Scott
5 with an alternate.

6 Now as far as the Indictment is concerned we've got
7 Indictment number 7545, which was a True Bill handed down
8 on December 3rd, 2012 I believe which was a direct
9 Indictment is that correct?

10 MS. FLYNN: Yes, Your Honor.

11 THE COURT: We had the original Indictment number
12 2130, which was indicted on January 18th, 2012 and that
13 original Indictment on the alleged aggravated
14 circumstances of at nighttime. The direct Indictment
15 number 7545 alleged nighttime as well as two or more
16 prior convictions as to aggravating circumstances.

17 The court is going to judicially dismiss Indictment
18 number 2012-GS-10-02130 and we will proceed on Indictment
19 number 7545 which alleges both aggravating circumstances;
20 i.e. prior convictions as well as at nighttime. Any
21 objection from the State?

22 MS. FLYNN: None from the State, Your Honor.

23 THE COURT: Any from the defendant?

24 MS. ANDERSON: We just renew our prior objections
25 about the --

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1 THE COURT: About what?

2 MS. ANDERSON: About his prior convictions we just
3 renew ---

4 THE COURT: --- oh I understand; as far as coming
5 in testimony?

6 MS. ANDERSON: Yes.

7 THE COURT: We hadn't got to that point yet. I
8 think we are getting ready to get there. All right.
9 Before we took a break Ms. Proctor you made an objection
10 to the admissibility I believe -- what number was it
11 Solicitor?

12 MS. PROCTOR: I have it. Its number 14.

13 THE COURT: Number 14, which was a summation of 12
14 and 13 with the addition of the names of the phone
15 contact -- I think there was one name brought out of
16 First Dog. What is your objection?

17 MS. PROCTOR: Your Honor, they said that they bring
18 it in under Rule 1006 which say that the contents of
19 voluminous writings, recordings, and photographs which
20 cannot be examined in court may be presented in the form
21 of a chart summary, etcetera.

22 First of all it isn't voluminous; it's two pages.
23 And if you don't -- I put on the bench at the corner
24 there [indicates] the original. And if you notice what
25 they -- they stop their sheet and it's not a complete

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1 listing. They stop the sheet they want to give -- and
2 here is -- and if you notice it goes further; even though
3 that says terminated they stop up here [indicates]. It
4 still shows that phone calls were coming in and those are
5 unknown numbers.

6 THE COURT: All right.

7 MS. PROCTOR: So I think that they summarize a two
8 page document, which the jury can -- they are going to
9 have both sheets; they can figure it out. And it's not a
10 complete listing.

11 THE COURT: All right. Solicitor, if you want to
12 add -- I don't have any problem with the summary, however
13 for completeness I'm going to require you to add all the
14 rest of them off of 12 to 14 before I'm going to admit it
15 because apparently you have left off your last -- subject
16 I.D. -- your last subject I.D. is 538-5379.

17 And after that there are three more of the same
18 subject one coming in at 8:06, 2:51, 10:58, and 7:19 on
19 10/23 and also on 10/22. I'm going to ask you to add
20 those before I will admit it into evidence for purposes
21 of completeness okay?

22 MS. FLYNN: Okay.

23 THE COURT: Okay.

24 MR. SIMPSON: Can we have one minute, Your Honor,
25 to do that.

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1 THE COURT: I will admit it subject to adding those
2 others because I think she is correct that it has to be
3 complete.

4 MS. FLYNN: Okay.

5 THE COURT: Anything else before we -- anything
6 else before we bring the jury?

7 MS. PROCTOR: Nothing from us, Your Honor.

8 MS. FLYNN: No, Your Honor.

9 MS. ANDERSON: No, Your Honor.

10 THE COURT: Bring us the jury, please sir?

11 [Whereupon, the Court confers with the Clerk]

12 THE COURT: The video corroborates what they
13 testified to in court, okay.

14 MR. SIMPSON: Thank you, Your Honor.

15 [Whereupon, the jury enters the courtroom at 11:28
16 a.m.]

17 THE BAILIFF: All are seated, Your Honor.

18 THE COURT: Thank you very much. If you will
19 please, proceed.

20 MS. FLYNN: Thank you, Your Honor. Your Honor, at
21 this time the State would ask that State's exhibit 14 be
22 admitted subject to your prior ruling.

23 THE COURT: I'll admit it when you make it
24 complete, okay.

25 MS. FLYNN: Yes, Your Honor.

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1 THE COURT: Subject to the objection made in
2 camera.

3 MS. PROCTOR: Thank you, Your Honor.

4 THE COURT: And your objection is overruled except
5 for completeness. I'm going to make them add the other
6 numbers to it.

7 MS. FLYNN: Thank you.

8 [Whereupon, Mr. Lester retakes the witness stand]

9 - - - - -

10 JORDAN LESTER,

11 Having been previously duly sworn,

12 Was examined and testified as follows:

13 CONTINUED DIRECT EXAMINATION

14 BY MS. FLYNN:

15 Q. Detective Lester, we left off talking about State's
16 exhibit 12, which you said was a T-Mobile bill -- phone
17 log, excuse me, and then State's exhibit 13, which was
18 the phone contacts.

19 A. Yes, ma'am.

20 Q. So explain to us have you had an opportunity to
21 review both of those exhibits or both of those?

22 A. Yes, ma'am.

23 Q. And again, explain to us did you look at all the
24 calls and texting to and from the defendant's phone for
25 the date of December 22, 2011?

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- 1 A. Yes, ma'am.
- 2 Q. And how many of those calls and texts were to known
3 contacts or from known contacts on his phone?
- 4 A. Seventy three of them.
- 5 Q. Okay. And out of how many calls or texts received
6 or made from that phone that day?
- 7 A. The total was 76.
- 8 Q. Okay. Seventy three were known?
- 9 A. Yes.
- 10 Q. And then how many were unknown again?
- 11 A. Three.
- 12 Q. Okay. I'm going to show you State's exhibit 14,
13 which is a document we've compiled that you have
14 reviewed, correct?
- 15 A. Yes, ma'am.
- 16 Q. And what is that a compilation of?
- 17 A. The calls going in and out that day, text messages
18 and the contact list basically, looking at the numbers
19 that were called or received to the defendant's phone and
20 then taking the contact list and matching up the numbers
21 which ones he called or he received calls from.
- 22 Q. And we compiled that list -- you physically went
23 through the contact list and then went through the phone
24 log and you put them together?
- 25 A. Yes, ma'am.

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1 Q. Okay. And that's where you are getting that number
2 76 total, 73 known ---

3 MS. ANDERSON: --- objection. She's leading again.

4 THE COURT: Overruled. Go ahead.

5 Q. [Ms. Flynn] And that's where you got the number 76
6 total and 73 known contacts?

7 A. Seventy six total and 73 unknown -- I'm sorry, three
8 unknown.

9 Q. Three unknown ---

10 A. --- seventy three were known contacts in the phone.

11 Q. Okay. And so 14 just kind of shows the summary of
12 what you would have went through as far as through your
13 investigation?

14 A. I'm sorry; I didn't hear the first part.

15 Q. That's okay. State's exhibit 14 would just show you
16 a summary of what you went through to match these
17 numbers?

18 A. Yes, ma'am.

19 Q. Okay. So let's go through an example.

20 MS. FLYNN: May I publish to the jury, Your Honor?

21 THE COURT: Yes, ma'am.

22 Q. [Ms. Flynn] So these are the calls from December
23 22nd, 2011 from the defendant's phone listed right here
24 is that correct?

25 A. Yes, ma'am.

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1 Q. Okay. And then you would have matched them with
2 the phone contacts is that correct ---
3 A. --- yes ma'am, in the contact list.
4 Q. Okay. So let's go through an example. You would
5 have looked at -- is this the number [indicates] you
6 would have looked at?
7 A. Yes ma'am, it would have been..
8 Q. So where would you have found that [indicates] phone
9 number?
10 A. I went to the contact list.
11 Q. And is that's State's exhibit 13?
12 A. Yes, it is.
13 Q. Okay. And that's what we got from the digital
14 evidence lab?
15 A. Yes, ma'am.
16 Q. Pulled from that red cell phone?
17 A. Yes, ma'am.
18 Q. Okay. So walk us through what you would have done.
19 A. I would have taken the contact list and looked at
20 the number and then compared that number with what is
21 listed as the contact to State's exhibit 12, which shows
22 the numbers that were ingoing and outgoing that day, and
23 then just basically matched up which contact matched up
24 with that number that was made or received on the date of
25 the burglary.

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1 Q. Okay. And this is what you would have done for all
2 of them for December 22nd ---

3 MS. ANDERSON: --- objection, Your Honor.

4 THE COURT: What's your legal objection?

5 MS. ANDERSON: It's not in evidence yet so I would
6 object subject to our discussions.

7 THE COURT: Well, I'll let her use it at this point
8 in time for demonstrative purposes okay. Please proceed.

9 MS. FLYNN: Thank you, Your Honor.

10 A. Yes, ma'am.

11 Q. [Ms. Flynn] Okay. Now let's go through -- you
12 said there were some unknown. Would you have written --
13 would you have marked those unknown as well? For example
14 the third call listed you would have -- the contact ---

15 A. --- unknown basically meaning it did not match
16 anyone in his contact list associated with that number.

17 Q. Okay. Let's go through some examples. So again
18 tell me -- so looking at the bottom on 12/22 we have 4:55
19 p.m. Kind of walk us through what you figured out from
20 what that call was.

21 A. Basically 843-345- is the defendant's number
22 because that's the same number all the way through out.
23 843-934- that is determining someone is calling his
24 phone and it's a voice. So someone is physically is
25 speaking to this person, obviously the defendant. Using

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1 that number I go through the contact list and I match it
2 with State exhibit 13 and that matches 843-934-
3 matches Juicy, which is his saved contact in his list.
4 And that phone call was a total of 42 minutes.

5 Q. Okay. And when we say 4:55 what time would that be
6 in Charleston?

7 A. That's going to be 7:55.

8 Q. Okay, so three hour's difference?

9 A. Yes. It is Pacific Time --

10 Q. Okay. And then did you have an opportunity to view
11 the last three calls on December 22 that were made from
12 the defendant's phone?

13 A. Yes, ma'am.

14 Q. Okay. Let's look at those. Talk us through that.
15 What does that [indicates] show us?

16 A. It shows at 10:09 at 10:10 and then another one at
17 10:10 he is receiving -- he is calling a phone number
18 926-7768, which in his contact list that number matches
19 up with A Dog Bro A Dog.

20 Q. And without going through all of these steps again
21 is that what you did for all of those numbers for that
22 day?

23 A. Yes, ma'am.

24 Q. Okay. So after you viewed that what did you learn
25 through your investigation? What does all this mean?

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1 A. Basically means my victim discovers the burglary
2 roughly 10:30 or a little before that.

3 Q. You said 10:30?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. He is in contact with people in his saved contact
7 list all the way up until 10:10; basically up until --
8 during the burglary.

9 Q. Okay. And if I can show you again the map for
10 purposes of -- it didn't get -- I didn't print it out
11 when you marked it earlier. If you don't mind marking it
12 for us so we can print it out for the jury.

13 [Whereupon, the witness complies]

14 Q. Okay. You testified earlier the victim's residence
15 was 1025 Rolling Woods Place.

16 A. Uh huh.

17 Q. Would you mark that on the map for us?

18 [Whereupon, the witness complies]

19 Q. Okay. And then you said the defendant's residence
20 was 1020 -- what was the defendant's residence?

21 A. It was 1025 ---

22 Q. --- I'm sorry, that's the victim's residence.
23 Riverland Drive, is that right?

24 A. Yes.

25 Q. Okay. Can you mark that on the map for us?

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1 [Whereupon, the witness complies]

2 Q. Okay. Thank you.

3 MS. FLYNN: Court's indulgence, Your Honor.

4 [Whereupon, Ms. Flynn and Mr. Simpson confer]

5 Q. [Ms. Flynn] That's all I have for you. Please
6 answer any questions the defense attorney may have.

7 THE COURT: Cross-examination?

8 MS. ANDERSON: Thank you.

9 CROSS-EXAMINATION

10 BY MS. ANDERSON:

11 Q. Good afternoon.

12 A. How you doing?

13 Q. So your job on this case you were the chief
14 investigative detective right?

15 A. Yes, ma'am.

16 Q. And so what that means is for this case there is an
17 initial responding officer; that was Officer Randall.

18 A. Uh huh.

19 Q. He responded to the scene and pretty much evaluated
20 it; collected everything that needed to be collected
21 along with crime scene tech Charles and submitted it
22 along with the phone. And then what happens is you pick
23 that up and begin to investigate it when you picked it
24 up.

25 A. Yes, ma'am.

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1 Q. When was -- the first date that you picked anything
2 up was on the 28th of December 2011, correct?

3 A. Yes, ma'am.

4 Q. That was the first time you had anything to do with
5 this case?

6 A. Yes, ma'am.

7 Q. Because you were on Christmas holiday before that?

8 A. Yes, ma'am.

9 Q. So what you do -- part of what you do when you are
10 developing a suspect is you evaluate what has already
11 been given to you and then decide if there is anything
12 more that needs to be done, correct?

13 A. Yes, ma'am.

14 Q. That could be anything from going out and
15 interviewing any potential witnesses, victims, again
16 after some crime scene feedback -- you can do that right?

17 A. Yes, ma'am.

18 Q. There is any number of things you can do to make
19 sure that your investigation is complete.

20 A. Yes, ma'am.

21 Q. And you do that because as much as you want to make
22 an arrest in the case you want to make the right one?

23 A. Absolutely.

24 Q. Just for example you don't want an innocent person
25 in jail anymore than you want a burglar out on the

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1 street.
2 A. Yes, ma'am.
3 Q. So you make sure you do everything that you can
4 possible do to make sure that doesn't happen.
5 A. Yes, ma'am.
6 Q. So again you were assigned to this case. You
7 started working on it on 12/28 but nobody had touched it
8 since Randall had submitted everything?
9 A. No, ma'am.
10 Q. So that was the first time anybody saw anything
11 after Randall and I guess Charles --
12 A. Yes, ma'am.
13 Q. So the first thing you did is you went out to the
14 scene correct, to meet with the witness Amber Winkler?
15 A. Yes, ma'am. Yes, she got the cell phone so yes, we
16 spoke with her.
17 Q. Did you drive out there?
18 A. To speak with the victim?
19 Q. Uh huh?
20 A. Yes, ma'am.
21 Q. At her apartment?
22 A. Yes, ma'am.
23 Q. Would you recognize the gate of the apartment?
24 A. Yes ma'am ---
25 Q. --- the complex at the Retreat?

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1 A. Uh huh.

2 MS. ANDERSON: May I approach?

3 THE COURT: Yes, ma'am.

4 Q. [Ms. Anderson] I'm showing you what has been marked
5 as defendant's exhibit 10. Do you recognize that?

6 [Whereupon, the witness is shown exhibit]

7 A. Yes, ma'am.

8 Q. What is that?

9 A. The front entrance to the Retreat.

10 Q. How do you recognize that?

11 A. I've worked James Island for a long time.

12 Q. So you're very familiar with it?

13 A. Yes, ma'am.

14 Q. Does that appear to be in substantially the same
15 condition it was back in 2011?

16 A. Yes, ma'am.

17 Q. And you recognize that?

18 A. Yes.

19 MS. ANDERSON: At this point we move for admission
20 of defendant's exhibit 10 into evidence.

21 THE COURT: [No response]

22 MS. ANDERSON: Your Honor?

23 THE COURT: Yes, ma'am?

24 MS. ANDERSON: At this point we move defendant's
25 exhibit 10 into evidence.

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1 THE COURT: Any objection?

2 MS. FLYNN: No objection, Your Honor.

3 THE COURT: All right. Defendant's 10 admitted
4 without objection.

5 [Whereupon, defendant's exhibit number 10 is entered
6 into evidence by the court]

7 MS. ANDERSON: Thank you. Permission to publish?

8 THE COURT: Yes, ma'am.

9 Q. [Ms. Anderson] Before I take this down I want to ask
10 you a quick question. You circled up there [indicates]
11 what was the victim's residence, correct?

12 A. Yes.

13 Q. Is that the right side of the apartment building
14 where he is or is it actually on the other side; can you
15 tell? That's the building [indicates].

16 A. Okay.

17 Q. That he lives in but his apartment was actually on
18 the other side.

19 A. Okay.

20 Q. Is that right?

21 A. Yes.

22 Q. All right. I just wanted to make sure.

23 A. Okay.

24 Q. Can you tell the jury what that is?

25 [Whereupon, the witness is shown exhibit]

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1 A. It's the front entrance to the Retreat apartment
2 complex ---
3 Q. --- on the end ---
4 A. --- where the victims resided.
5 Q. And that's where you would need to go in if you
6 wanted to drive into the complex community, correct?
7 A. Yes, ma'am.
8 Q. And you see that there is a gate right there
9 [indicates]. It's a gated community?
10 A. Yes ma'am, it is.
11 Q. And you can't get in there driving through without a
12 card or a code as far as you know?
13 A. Yes, ma'am. As far as I know unless they know
14 someone who lives there and they just happen...
15 Q. But you have to know somebody --
16 A. --- yes ---
17 Q. --- to get in there right? And this [indicates] is
18 within viewing distance of the victim's apartment
19 correct?
20 A. Yes, ma'am.
21 Q. You can see it from there. It's actually pretty
22 close.
23 A. Oh yes, it's real close.
24 Q. Okay. And so when you went out with Amber -- you
25 went out to meet with Amber Winkler -- she actually is

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1 the only victim that you met with face to face, correct?

2 A. Yes, ma'am.

3 Q. You did not meet with Justin Poole or talk to him?

4 A. No.

5 Q. And you didn't get written statements from either
6 one of them about what they knew?

7 A. The patrol officer takes the initial call and he
8 speaks with the victim and determines if there has been a
9 crime that occurred?

10 Q. Yes. But you didn't see any need to take any other
11 statements after that?

12 A. No, ma'am.

13 Q. You're aware that there was also a third roommate in
14 that apartment?

15 A. I'm not aware of it at all.

16 Q. You knew it was a three bedroom apartment?

17 A. I don't.

18 Q. You don't?

19 A. No. I went into -- yes, I mean I went in to the
20 apartment but I'm not sure if I went into any individual
21 room.

22 Q. So -- but as far as you know you've never spoken to
23 a third roommate and you didn't know there was a third
24 roommate at all?

25 A. Off the top of my head, no.

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1 Q. So what they reported to you is pretty much what
2 they had told Randall before was what happened and what
3 was missing from the apartment.

4 A. Uh huh.

5 Q. Any of the property ever recovered?

6 A. No, ma'am.

7 Q. Are you familiar with the pawn shop database?

8 A. Yes.

9 Q. Can you explain to the jury what that is.

10 A. If someone goes in to pawn an item the pawn shop
11 takes it in they will enter the serial number and they
12 have to show their license when they pawn the item.

13 They take out a loan on it or they sell the item to
14 the pawn shop. And it goes into a database and we have
15 access to that database.

16 Q. And so in that database you can tell if somebody
17 pawned something by writing their names in the database
18 correct?

19 A. Yes.

20 Q. And you can also write serial numbers of electronics
21 and things of that nature to see if that comes up as
22 well.

23 A. Yes, ma'am.

24 Q. But you didn't do that in this case?

25 A. Giving the serial number to the victim's laptop?

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1 Yes, I absolutely checked it several times to see if it
2 had been pawned.

3 Q. You checked the pawn shop database?

4 A. Yes, ma'am.

5 Q. We talked about what it means to be an officer a
6 little bit and part of what you do is gather information.
7 Also what you do is document your investigation correct?

8 A. Yes, ma'am.

9 Q. And the reason for doing that is you work on so many
10 cases over the course of your career correct?

11 A. Yes, ma'am.

12 Q. And in the past year I'm sure you've worked on many,
13 many, many at the same time.

14 A. Yes, ma'am.

15 Q. How many would you guess that you've worked on last
16 year?

17 A. Last year?

18 Q. Just...

19 A. About a hundred.

20 Q. About a hundred?

21 A. Yes.

22 Q. Some of them were burglaries correct?

23 A. Uh huh.

24 Q. And some of them were crimes of them were crimes of
25 other natures right?

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1 A. Yes, ma'am.

2 Q. So the reason that you document your investigations
3 is because you know that you will end up in court one
4 day; there is a possibility that you will end up on the
5 stand like you are today testifying?

6 A. Yes, ma'am.

7 Q. You need to be able to remember what you did?

8 A. Yes, ma'am.

9 Q. You need to be able to know all that you did right?

10 A. Yes, ma'am.

11 Q. And that's why you write reports. You've actually
12 been trained on writing reports.

13 A. Yes, ma'am.

14 Q. Both at the Academy and I'm sure you've had on the
15 job training since graduating from the Academy right?

16 A. Uh huh.

17 Q. And that's something that they do. They teach you
18 how to write reports and -- put in them.

19 A. Yes, ma'am.

20 Q. And you put in there things that are important to
21 the case.

22 A. Yes, ma'am.

23 Q. Things that matter when you are in the course of
24 your investigation. But in this case you never put that
25 in your report.

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- 1 A. If I checked the pawn shops or not?
- 2 Q. Yes? You did not.
- 3 A. I did not put that. I checked it. I did not locate
- 4 the missing laptops --
- 5 Q. So you put the serial number in to the database and
- 6 did not locate a missing laptop?
- 7 A. I did not locate ---
- 8 Q. --- and you did not record that what you did in any
- 9 way shape or form?
- 10 A. Not in my initial report.
- 11 Q. So this is the first time that we've been hearing
- 12 about that today?
- 13 A. Yes, ma'am.
- 14 Q. Did you ever run Lamar Brown's name through the
- 15 database?
- 16 A. I'm sure I did, yes.
- 17 Q. You're sure you did or you know you did?
- 18 A. I know I did.
- 19 Q. But you didn't write that in your report either?
- 20 A. No, ma'am.
- 21 Q. So you didn't document that in any way. So this is
- 22 the first time we're hearing that today as well.
- 23 A. Yes, ma'am.
- 24 Q. That you ran any of this through the database or did
- 25 any of that checking?

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1 A. It's what I do in every case.

2 Q. It's what you do in every case but we don't know if
3 you did it in this case because you didn't put it in your
4 report. So you testified about how you went into the
5 phone and how you identified Lamar Brown as a suspect
6 correct?

7 A. Yes, ma'am.

8 Q. You said that what you did is when you got the phone
9 back in December of 2011 you pulled it out and got into
10 the phone.

11 A. Yes, ma'am.

12 Q. You had to unlock the device to get into it; there
13 was a code?

14 A. Yes, ma'am.

15 Q. Did you just guess at it?

16 A. Yes, ma'am.

17 Q. So you guessed it and went into the phone and
18 started running through the contact list. Tell us -- you
19 did exactly what you said you did?

20 A. Yes, ma'am.

21 Q. You were able to identify him first by -- let me
22 back up. The first thing you saw when you turned it on
23 was a picture of a black male with dreads and a child on
24 the phone.

25 A. Yes, ma'am.

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1 Q. On the phone background?

2 A. Yes, ma'am.

3 Q. And then you went through the contacts and you
4 identified a relative; in this case a grandmother.

5 A. Yes, ma'am.

6 Q. And you put her through the database and that
7 brought up a list of relatives ---

8 A. --- relatives.

9 Q. And all of that and you looked closely at all the
10 black males in their 20's and 30's.

11 A. Yes ma'am, because it was the background on the
12 phone.

13 Q. Because you were trying to match the background on
14 the phone right?

15 A. Yes, ma'am.

16 Q. And doing that you came up with the name of Lamar
17 Brown. You pulled up his picture from the D-M-V
18 database.

19 A. Yes, ma'am.

20 Q. Now there are two ways to have an I.D. in a
21 database. You can have a driver's license and a South
22 Carolina I.D.?

23 A. Yes, ma'am.

24 Q. This one wasn't a driver's license it was an I.D.
25 right or you don't remember.

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- 1 A. I don't remember.
- 2 Q. But he had a picture ---
- 3 A. --- I had a picture, yes.
- 4 Q. Okay. And you matched that picture to the picture
5 on the cell phone.
- 6 A. Yes, ma'am.
- 7 Q. And you knew it was him the second you saw this.
8 You said that is Lamar Brown.
- 9 A. We wanted to verify it for sure, but...
- 10 Q. But you were pretty sure.
- 11 A. Yes, we were pretty sure.
- 12 Q. You were like hey, this picture and this picture
13 they match; it's Lamar Brown.
- 14 A. Yes.
- 15 Q. So to verify that you went out -- well, you didn't
16 go out. You sent some officers out to Riverland
17 Drive.
- 18 A. Yes, ma'am.
- 19 Q. And that was officer's Thompson and I believe
20 Farrell?
- 21 A. Yes, ma'am.
- 22 Q. And they went out there -- and we heard testimony
23 from them about them going to interview Mr. Brown.
- 24 A. Yes, ma'am.
- 25 Q. Did you end up out there at some point?

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1 A. Yes, ma'am.

2 Q. At what point did you end up out at Riverland?

3 A. After I had obtained a search warrant for his
4 residence.

5 Q. Okay. So you obtained a search warrant for his
6 residence?

7 A. Yes.

8 Q. But by the time that you got there ---

9 A. --- they had already been given consent to search
10 the residence and they had already interviewed the
11 defendant.

12 Q. Okay. Tell us about the process of what you need
13 to do to go about getting a search warrant.

14 A. Basically with that the cell phone is left at the
15 scene. I needed to verify that my victim's did not know
16 the defendant. Then he also admitted that the phone was
17 his.

18 Q. He admitted that in that written statement ---

19 A. --- yes, ma'am ---

20 Q. --- that we discussed earlier.

21 A. And after verifying this through the victim's that
22 the phone was not -- they didn't know who was the owner
23 of the phone and why was it at the scene then I obtained
24 a search warrant for the house and it was to locate the
25 stolen property.

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1 Q. So what you need to do to get a search warrant is
2 there are a few steps in the process that you have to go
3 through correct?
4 A. Uh huh.
5 Q. The first thing that you have to do is you have to
6 identify what you are seeking?
7 A. Yes.
8 Q. In the process of the search warrant.
9 A. Yes.
10 Q. You also have to identify the description of the
11 premises.
12 A. Yes.
13 Q. That you are seeking a search. So you need to tell
14 them what you're looking for, where you want to find it,
15 and then you have to list why you want this warrant.
16 A. Yes.
17 Q. You have to list what the reasons are. What the
18 probable cause is for this warrant.
19 A. Yes.
20 Q. And then what you do is you go in front of a
21 Magistrate and swear Judge, this is what I've discovered
22 in the course of my investigation. I believe there is
23 more I can get from this warrant will you sign off on it?
24 And this is a sworn statement.
25 A. Yes, ma'am.

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1 Q. I have a copy here of the search warrant that you
2 did for Riverland Drive. And you did the search
3 warrant after you went through the phone in December of
4 2011.

5 A. Uh huh.

6 Q. And after you spoke with the officers Farrell and
7 Thompson about what they learned in their interview of
8 him.

9 A. Yes.

10 Q. This was before you ever went to go talk to Lamar
11 Brown.

12 A. Yes, they were at the scene.

13 MS. ANDERSON: May I approach?

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Anderson] I'm handing you what I've identified
16 as a copy of the search warrant.

17 [Whereupon, the witness is shown item]

18 Q. Do you recognize that?

19 A. Yes, ma'am.

20 Q. How do you recognize it?

21 A. It's the search warrant that I typed up.

22 Q. That you typed up?

23 A. Yes, ma'am.

24 Q. Is that your signature at the bottom?

25 A. It is.

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1 Q. And this is the search warrant that you submitted to
2 the Magistrate to enable you to search the residence of
3 Riverland Drive?

4 A. Yes, ma'am.

5 Q. I'm going to go through this with you, okay?

6 A. Uh huh.

7 Q. We'll start on the first page about the description
8 of the property to be sought. You went in front of the
9 Judge and you told him you were seeking -- property to
10 include electronic equipment including car stereos. I'll
11 stop you right there -- car stereos, correct?

12 A. Uh huh.

13 Q. Do you need a second to review it --

14 A. Yes, ma'am.

15 Q. So there were no car stereos alleged in this
16 burglary -- alleged to have been taken?

17 A. If that is in there then it is possibly a typo.
18 Electronic equipment I don't know...

19 Q. But you went through ---

20 A. --- I can't recall all the property off the top of
21 my head ---

22 Q. --- but you weren't looking for a car stereo ---

23 THE COURT: --- hold on a second.

24 MS. ANDERSON: I'm sorry. I'm sorry.

25 THE COURT: Let him finish his answer before you

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1 interrupt him.

2 MS. ANDERSON: I realized that. I'm sorry. Finish
3 your ---

4 THE COURT: --- finish your answer.

5 A. Do you have a copy of the report?

6 Q. [Ms. Anderson] Of your report?

7 A. Yes, just so I can verify that there were no car
8 stereos taken.

9 Q. I do. Let me go grab it.

10 MS. FLYNN: Your Honor, may we approach?

11 THE COURT: I'm sorry?

12 MS. FLYNN: Your Honor, may we approach?

13 THE COURT: Yes, ma'am.

14 [Whereupon, an off the record bench conference is
15 held]

16 THE COURT: All right. For the record I believe
17 your objection is to relevancy, is that correct
18 Solicitor?

19 MS. FLYNN: Yes, Your Honor.

20 THE COURT: All right. Overruled. Please
21 proceed, Ms. Anderson.

22 Q. [Ms. Anderson] I'll give you my copy.

23 [Whereupon, the witness is shown documents]

24 Q. Is this your report?

25 A. Do you have a copy of the cover sheet that has the

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1 items that were stolen?

2 Q. I'm sure we do.

3 THE COURT: Solicitor, you got a full copy of the
4 search warrant?

5 MS. FLYNN: I've got his search warrant.

6 THE COURT: Y'all got a copy of it, Solicitor?

7 MS. FLYNN: I do.

8 THE COURT: If you'll give it to the witness so
9 they will both have copies please?

10 MS. FLYNN: Yes, Your Honor.

11 THE COURT: Ms. Anderson do you have a copy?

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: Okay.

14 [Whereupon, the witness reviews documents]

15 Q. [Ms. Anderson] I believe the question was were you
16 looking for any car stereos in this case?

17 A. In this case no stereos were taken so that is a
18 typo.

19 Q. All right. Let's move on to the next page of the
20 warrant where we get to the reason the affiant believe
21 that the property sought is on the premises. Just to
22 start, this search warrant is for Riverland Drive
23 correct?

24 A. Yes, ma'am.

25 Q. And this is the search warrant that you put together

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1 after going through the phone and after hearing from the
2 officers on the scene at Riverland, correct?

3 A. Yes, ma'am.

4 Q. All right. So you stated on December 22, 2011 Mr.
5 Marquis Terrell Brown was identified as a suspect
6 breaking into the residence at Riverland Woods
7 Place, apartment .

8 A. Yes, ma'am.

9 Q. Marquis Terrell Brown. That's not Lamar Brown is
10 it?

11 A. No it's not. It's his brother.

12 Q. That's his brother. But you put this in here in
13 your warrant that you put in front of the Judge to sign.

14 A. Yes, ma'am.

15 Q. You stated that the apartment belonged to victim's
16 Amber Winkler, J. Poston, and Richard Poole; who is
17 Justin Poole correct? So J. Poston is the third roommate
18 correct?

19 A. Yes, ma'am.

20 Q. So you knew at least at this time that there was a
21 third roommate?

22 A. Yes, ma'am.

23 Q. And this warrant was sworn out on the 28th of
24 December 2011.

25 A. Yes, it was.

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- 1 Q. The same day that you -- the first day that you
2 started looking at the phone, right?
- 3 A. Yes, ma'am.
- 4 Q. You stated in there that the suspect's cell phone
5 was located inside the victim's residence. And by
6 suspect you meant Marquis Terrell Brown?
- 7 A. In this part, yes ---
- 8 Q. --- in this part, yes. And you stated that the
9 suspect verbally admitted to being previously convicted
10 of burglaries in the James Island area. You meant
11 Marquis Terrell Brown in this affidavit?
- 12 A. At the time I typed it that is...
- 13 Q. That is who you meant?
- 14 A. Yes.
- 15 Q. And you also put in there investigators have reason
16 to suspect that Marquis Terrell Brown is involved in
17 numerous burglaries in the area, correct?
- 18 A. Yes, ma'am.
- 19 Q. Marquis Terrell Brown.
- 20 A. It was a typo at the time.
- 21 Q. A typo?
- 22 A. We were able to determine that Marquis was his
23 brother.
- 24 Q. Marquis is his brother but you went in front of the
25 Magistrate and swore that every single thing in here is

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1 true, correct, and that was after you had gone into the
2 phone and retrieved all of that information when you said
3 you were -- on the stand here today that you identified
4 as Lamar Brown?

5 A. Yes, ma'am.

6 Q. So -- but here, and this was before you went out
7 there, you said Marquis?

8 A. Yes, ma'am.

9 Q. So you went in front of a Magistrate and swore an
10 oath just like you swore today saying Judge I know this
11 is true through my own investigation and experience.

12 A. At that point in time ---

13 Q. --- based on what I have.

14 A. To the best of my knowledge the information I had in
15 front of me I believed to be true.

16 Q. But you testified today that you knew it was Lamar
17 Brown when you went through the phone. That you looked
18 at those pictures and you knew it was Lamar Brown.

19 A. Yes, ma'am.

20 Q. So you said this search warrant you signed for
21 Marquis Terrell Brown's residence and went over to
22 Riverland Drive when they had been talking to Lamar
23 Brown.

24 A. Yes, ma'am. And that was relayed to me through the
25 phone with Sergeant Thompson ---

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1 Q. --- so you put something you heard over the phone in
2 that warrant?

3 A. Based on my supervisor, yes.

4 Q. But you still put together that warrant, a sworn
5 statement in front of the Magistrate and said Marquis
6 Terrell Brown.

7 A. Yes, ma'am.

8 Q. So when you went over there they had already gone
9 into the because Mr. Brown and his mother had signed
10 a consent to search and they had already gotten in there
11 correct?

12 A. Yes, they gave us full permission to go in there.

13 Q. And they did a full search and they didn't find
14 anything?

15 A. No, they had none of the stolen property.

16 Q. No T.V.?

17 A. No, ma'am.

18 Q. None of the stolen laptops?

19 A. No, ma'am.

20 Q. And they didn't find that cocktail ring?

21 A. It had been several days since the initial burglary.

22 Q. But they still did not find anything in there?

23 A. No.

24 Q. So there is no connection between Mr. Brown and any
25 of the stolen property? Mr. Lamar Brown?

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1 A. No.

2 Q. So the 28th was kind of a busy day for you right?

3 A. It was.

4 Q. You started off you went and interviewed the witness
5 Ms. Amber Winkler. You went to -- you actually went out
6 to her residence is where you were.

7 A. Uh huh.

8 Q. You went through the cell phone and were able to
9 pull together all that information. You put together the
10 search warrant, you went out to and you were out
11 there doing that as well.

12 You said in your report that you were unable to
13 verify -- what Lamar Brown had told Officers Thompson and
14 Farrell in his statement was that he lived at
15 Woodlawn, correct?

16 A. Yes.

17 Q. And that's over in North Charleston.

18 A. Yes.

19 Q. You put in your report that you were unable to
20 verify that he was there at ?

21 A. Yes, ma'am.

22 Q. What did you do to verify that?

23 A. We basically felt like the defendant was not telling
24 the truth when he was giving his statement as far as
25 being at Woodlawn.

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1 Q. So you just believed that he was being untruthful.
2 Did you actually go over to Woodlawn?
3 A. I didn't go physically.
4 Q. Did you try and call over there and see if anybody
5 knew him?
6 A. No, ma'am.
7 Q. Did you ask him who he was with that day to see if
8 maybe somebody else could -- you could ask somebody else?
9 A. He said he was with his child.
10 Q. But you didn't go check anything?
11 A. No, ma'am. Given the facts I did not.
12 Q. Because you just believed that he was not telling
13 the truth.
14 A. I did.
15 Q. And so you didn't go anywhere over there at all?
16 A. I didn't go to Woodlawn, no.
17 Q. And then after you did all this you issued his
18 arrest warrant on the 29th of December, 2011 correct?
19 A. Yes, ma'am.
20 Q. You mentioned -- you testified that you had executed
21 a search warrant on the phone and that's how we were able
22 to talk about these records ---
23 A. --- yes, ma'am ---
24 Q. --- that you were discussing. You didn't do that
25 search warrant until November of 2012.

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- 1 A. Yes, ma'am.
- 2 Q. And that's the first time that you ever did anything
3 like that to get through the contacts of the phone other
4 than contacts --
- 5 A. Yes, ma'am.
- 6 Q. You know that's almost a year later?
- 7 A. Yes, ma'am.
- 8 Q. It took you almost a whole year to get a search
9 warrant and go through that phone.
- 10 A. Yes, ma'am.
- 11 Q. But you had arrested -- Mr. Brown had been arrested
12 in January of 2012.
- 13 A. Yes, ma'am.
- 14 Q. January 18th I believe is that right?
- 15 A. I'm sure --
- 16 Q. I have the return on the search warrant if you want
17 to have a look at that?
- 18 A. Okay.
- 19 MS. ANDERSON: May I approach?
- 20 THE COURT: Yes, ma'am.
- 21 A. The arrest warrant?
- 22 Q. [Ms. Anderson] Yes?
- 23 [Whereupon, the witness views documents]
- 24 A. Okay. Yes, it was served on the 18th.
- 25 Q. It was served on the 18th so that would have been

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1 the day he was booked into the jail.
2 A. Uh huh.
3 Q. And arrested and incarcerated.
4 A. Yes, ma'am.
5 Q. But you never spoke to Lamar Brown yourself?
6 A. No, I didn't.
7 MS. ANDERSON: Court's indulgence just a moment.
8 [Whereupon, Ms. Anderson and Ms. Proctor confer]
9 Q. [Ms. Anderson] No further questions.
10 THE COURT: Any redirect?
11 MS. FLYNN: Briefly, Your Honor.
12 THE COURT: Yes, ma'am.
13 MS. FLYNN: May I approach, Your Honor?
14 THE COURT: Yes, ma'am.
15 REDIRECT EXAMINATION
16 BY MS. FLYNN:
17 Q. I'm going to put up what has been admitted as
18 State's -- defendant's 10, which is a photo of the gate
19 at the Retreat, is that correct?
20 [Whereupon, a photo is shown]
21 A. Yes, ma'am.
22 Q. Let's zoom in and look at that gate. Would you
23 categorize that gate as very hard to get around?
24 A. No.
25 Q. Could you walk through that gate?

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- 1 A. Absolutely.
- 2 Q. Could you walk under the gate?
- 3 A. Yes.
- 4 Q. Walk around the gate?
- 5 A. Yes.
- 6 Q. And that was the gate again that was close to the
7 victim's residence?
- 8 A. Yes, ma'am.
- 9 Q. Now let's talk about when you went to Riverland
10 Drive, the defendant's residence. You went there on
11 December 28th, 2011 right?
- 12 A. The...
- 13 Q. The defendant's residence?
- 14 A. Yes.
- 15 Q. Okay. The burglary occurred on December 22nd?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Can items that are taken from a house be
18 sold on the street?
- 19 A. Absolutely.
- 20 Q. Is there a database for that if they are sold or
21 bought on the street?
- 22 A. No.
- 23 Q. And this was six days later?
- 24 A. Yes.
- 25 Q. Okay. And let's talk about that phone code. When

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1 you say you guessed what the phone code was did you spend
2 a lot of time doing that?

3 A. No, it was pretty simple.

4 Q. What was the code?

5 A. 1-2-3-4.

6 Q. Okay. So through the course of your investigation
7 it's your job to look at several people and kind of
8 narrow it down.

9 A. Yes.

10 Q. One of the ways to do that is through a search
11 warrant?

12 A. Yes.

13 Q. And in this case the defendant admitted it was his
14 phone?

15 A. Yes.

16 Q. It was him in the background of the photo on the
17 phone.

18 A. Yes.

19 Q. And you explained that those phone contacts matched
20 his phone records.

21 A. Yes.

22 Q. And the defendant resides at Riverland Drive.

23 A. Yes.

24 MS. FLYNN: Court's indulgence.

25 Q. [Ms. Flynn] No further questions.

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1 THE COURT: Any recross?

2 MS. ANDERSON: No, Your Honor.

3 THE COURT: Okay. You may step down. Thank you
4 very much.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: Call your next witness please.

8 MR. SIMPSON: Thank you, Your Honor. The State
9 would call Sarah Lippe from the Charleston County Clerk
10 of Court.

11 THE COURT: Okay.

12 [Whereupon, Ms. Lippe comes forward]

13 MS. PROCTOR: We are again renewing our motion we
14 made pretrial.

15 THE COURT: Let's wait until she gets up here and
16 then you can make your motion, okay. Let's get her on
17 the witness stand and swear her.

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court as follows: do you swear or affirm your
20 testimony will be the truth, the whole truth; and nothing
21 but the truth so help you God]

22 CLERK OF COURT: State your full name and spell
23 your last name.

24 THE WITNESS: Sarah Lippe, L-I-P-P-E.

25 - - -

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1 SARAH LIPPE,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. SIMPSON:
6 Q. Good afternoon, Ms. Lippe.
7 A. Good afternoon.
8 Q. Your hair is different. A little bit darker?
9 A. A little bit, yes.
10 Q. Where do you work?
11 A. I work in the Clerk's office downstairs; General
12 Sessions.
13 Q. What is the Clerk's office?
14 A. Basically we are the record keepers. We are
15 responsible for the retention and maintenance of criminal
16 records in Charleston County.
17 Q. Okay. So is the Clerk's office the repository of
18 documents and things that reflect what happens in court?
19 A. Yes.
20 Q. And are you the custodian of those records?
21 A. Yes.
22 Q. And is your agency's job through the normal course
23 of your business to maintain those records?
24 A. Yes.
25 Q. What is the purpose of maintaining court records?

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1 A. To keep an accurate history of what has happened
2 both during the course of that charge; what happens with
3 the charge.

4 Q. And if another government agency or a citizen or
5 someone had any questions about what exactly happened in
6 a courtroom you are where they come, correct?

7 A. Yes.

8 Q. And can the public obtain documents from your
9 agency?

10 A. Yes.

11 Q. And do you get to hand out originals?

12 A. No, attested copies.

13 Q. And if you will explain to the jury what that means
14 by attested copies.

15 A. We would make a copy of the original and then it is
16 signed and sealed by a deputy clerk appointed by Julie
17 Armstrong who is the Clerk of Court attesting to its
18 authenticity.

19 Q. Okay. And is that kind of like a notary stamp?

20 A. It's similar, yes.

21 Q. And what you're doing when someone obtains that is
22 saying it is our job to maintain accurate records and you
23 are attesting to that as the --

24 A. Through the copy of the original.

25 MR. SIMPSON: Your Honor, may I approach the

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1 witness?

2 THE COURT: Yes, sir.

3 MS. PROCTOR: Your Honor, again just...

4 THE COURT: All right. Are you making your
5 objection -- pretrial objections?

6 MS. PROCTOR: Yes, sir.

7 THE COURT: All right. You renew that motion?
8 That motion is denied.

9 MS. PROCTOR: Thank you.

10 THE COURT: Ladies and gentlemen -- just hold on
11 just a second. Mr. Foreman and ladies and gentlemen of
12 the jury let me explain something very briefly to you.

13 In South Carolina I'm going to very briefly explain
14 burglary to you. Burglary is entering a dwelling with
15 the intent to commit a crime without the person who owns
16 the dwelling's consent. I will more fully explain that
17 to you when I do a Charge.

18 However, the State has also added certain aggravated
19 circumstances for it to be Burglary First, which
20 distinguishes it between Burglary First and Burglary
21 Second.

22 One of those aggravated circumstances is if a person
23 has been convicted previously of prior housebreakings or
24 burglaries; two or more. The State is getting ready to
25 introduce the two prior convictions of the defendant as

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1 for burglary and housebreaking. It is offered merely to
2 show the aggravated circumstances; not to challenge his
3 character or not to presume that he is a bad person and
4 he committed this crime because of the prior acts. It's
5 merely to meet that aggravated circumstance.

6 The other aggravated circumstance in this case is
7 the defendant entered a dwelling at nighttime so the
8 State is trying to prove one or both of those aggravated
9 circumstances.

10 In this situation here we are going to introduce the
11 prior convictions based upon the aggravating
12 circumstances; not to show that he committed any crimes.
13 Please proceed.

14 MR. SIMPSON: Thank you, Your Honor.

15 Q. [Mr. Simpson] Ms. Lippe, I'm handing you what has
16 been marked for I.D. only as State's 10 and 11. Can you
17 take a moment to review those documents?

18 [Whereupon, the witness is shown documents]

19 Q. Do you recognize -- is that a pretty standard
20 document that is handled by your office?

21 A. It is.

22 Q. And what is that document?

23 A. These are sentencing sheets.

24 Q. And what does that document indicate?

25 A. This -- they both indicate that the defendant, Lamar

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1 Brown, pled guilty June 17th of 2008 to the charge of --
2 both of them are to the charge of Burglary Second Degree.
3 Q. Okay. And is that the document maintained -- the
4 sentencing sheet, is that the document maintained by your
5 office that indicates a conviction?
6 A. It is.
7 Q. And is it the record of that previous conviction?
8 A. It is.
9 Q. And a conviction means -- can be by trial?
10 A. Either through a trial or a plea.
11 Q. Or a plea ---
12 A. --- by the defendant --
13 Q. Okay.
14 MR. SIMPSON: Court's indulgence. Your Honor, at
15 this time the State would move to introduce 10 and 11
16 into evidence.
17 THE COURT: Subject to your previous objection and
18 overrule your objection and admit 10 and 11.
19 [Whereupon, State's exhibit numbers 10 and 11 are
20 entered into evidence by the court]
21 MR. SIMPSON: Thank you, Your Honor. I have no
22 further questions.
23 CROSS-EXAMINATION
24 BY MS. PROCTOR:
25 Q. You just said that the sentence sheets says whether

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1 it was a trial or a plea. And in this case it was a
2 guilty plea correct?

3 A. They were both pleas, yes.

4 Q. Thank you.

5 THE COURT: Anything else?

6 MR. SIMPSON: No, Your Honor.

7 MS. PROCTOR: Nothing, Your Honor.

8 THE COURT: Any redirect?

9 MR. SIMPSON: No, Your Honor.

10 THE COURT: Okay. You may step down. If you
11 would, hand the two to the court reporter if you would
12 please, ma'am.

13 [Whereupon, the witness complies]

14 THE COURT: Thank you so very much. You may be
15 excused.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 THE COURT: Call your next witness.

19 MS. FLYNN: Your Honor, at this time the State
20 rests.

21 THE COURT: Okay. Thank you very much. All
22 right. Mr. Foreman and ladies and gentlemen of the jury
23 I've got to hear certain motions at this time and cover a
24 couple of other items with the State and the defendant.
25 So I'm going to let you go to lunch at this time. I

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1 don't know how long it is going to take me to do these
2 motions. Why don't you be back in the jury room at 2
3 o'clock and that will give me time to hear these motions
4 and let the attorneys go to lunch. And that gives you a
5 little extra time if you need to run some errands.

6 MS. ANDERSON: Judge, could we have them come back
7 at 2:30?

8 THE COURT: Why? Y'all come on up here and talk to
9 me.

10 [Whereupon, an off the record bench conference is
11 held]

12 THE COURT: All right. Mr. Foreman and ladies and
13 gentlemen of the jury, be back in the jury room at 2:30.
14 I'd rather bring you back later than you sit back there
15 waiting and looking at the four walls. So I hope I can
16 get everything done and get you started back at 2:30.

17 So be back in the jury room at 2:30. When you come
18 to the courthouse come straight to the jury room. Please
19 don't discuss the case with anyone or amongst yourselves.
20 Thank you so very much. See you at 2:30.

21 [Whereupon, the jury exits the courtroom at 12:17
22 p.m.]

23 THE COURT: All right. Any motions from the
24 State?

25 MS. FLYNN: No, Your Honor.

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1 THE COURT: Any motions from the defendant?

2 MS. PROCTOR: Yes, Your Honor. At this time we
3 would make a motion for a directed verdict. We know that
4 the court is concerned with the existence of evidence
5 rather than just the weight of the evidence. And also
6 that you view the evidence in the light most favorable to
7 the State.

8 Your Honor, I know that in a lot of the case law it
9 states that the Judge should grant a directed verdict
10 when the evidence barely breaks the suspicion that the
11 accused is guilty.

12 And I think in this case the evidence that is
13 submitted is basically one thing; and that's a cell
14 phone. And I know some of the cases have been just a
15 fingerprint or a ---

16 THE COURT: --- well there is one case where the
17 footprints were outside the house ---

18 MS. PROCTOR: --- yes, sir ---

19 THE COURT: --- they said footprints alone but that
20 was matching up footprints but this is a little bit
21 different than a phone isn't it?

22 MS. PROCTOR: Well, all they have is a phone. I
23 mean no I don't think it is any different ---

24 THE COURT: --- I know but it was his phone. It
25 was his phone.

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1 MS. PROCTOR: It's his phone but there is no
2 evidence to -- just because you find a phone that would
3 be like if your phone would have been in there ---

4 THE COURT: --- right and I guess I'd be on trial,
5 huh?

6 MS. PROCTOR: Probably you would.

7 THE COURT: Okay.

8 MS. PROCTOR: But I don't think there is any other
9 evidence of him being in there. There were no
10 fingerprints. There is other evidence that just now the
11 police officer says there was a warrant that they went --
12 a search warrant to his house with his brother's name on
13 it. His brother could have had the phone. Anybody could
14 have had that phone.

15 That is the only evidence there is in this case.
16 And I think it is just a mere suspicion. I don't believe
17 that is any -- if you look at the weight of all the other
18 evidence there is there is nothing that places him in
19 that apartment.

20 THE COURT: Okay. Let me hear from the State.

21 MS. FLYNN: Thank you, Your Honor. The State has
22 presented enough evidence in the light most favorable ---

23 THE COURT: --- what have you presented other than
24 that his phone was there in the house?

25 MS. FLYNN: Your Honor, it's not just the phone.

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1 It's the defendant admitting it is his phone and
2 admitting that no one else had that phone on December 22
3 between the hours of 6 and midnight.

4 THE COURT: Give me a copy of the statement and let
5 me look at it real quick. So all you really have is the
6 phone and the fact that he acknowledges that it was his
7 phone, right?

8 [Whereupon, documents are provided to the court]

9 THE COURT: What else do you have that would point
10 to this gentleman's guilt?

11 MS. FLYNN: We have the phone records which show
12 over 76 calls made to and from the phone that day ---

13 THE COURT: --- but what does that show? That
14 doesn't have anything to do with whether he was in the
15 house or not in the house.

16 MS. FLYNN: It shows all the way up to the time of
17 the burglary, Your Honor, that this defendant was making
18 phone calls because he admits he had that phone between 6
19 and midnight that night making calls to known contacts in
20 his phone book.

21 THE COURT: Give me a chance to look at it his
22 statement real quick.

23 [Whereupon, court reviews statement]

24 THE COURT: He said he went to a store and it fell
25 out; his statement, and he couldn't find it and a friend

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1 called him and said someone had your phone and he turned
2 the phone off. I don't know how you turn a phone off if
3 you don't have it but. He said he lost it on 12/23/11.
4 It says did anyone have your cell phone during this time
5 and he said no.

6 Based upon the phone and his statement the motion is
7 denied. And I am going to enumerate the court's
8 position. The question did you have your cell phone
9 during this time? No. And that was 6 p.m. until
10 midnight on Thursday, 12/22/11.

11 And the next question do you know anyone who lives
12 at the Riverland Woods apartment on Folly Road? He says
13 no. Have you ever been to the apartment? He says no.
14 And he identified the phone. I think -- your motion is
15 denied. Here is your statement back.

16 [Whereupon, the court returns statement to Ms.
17 Flynn]

18 THE COURT: Any other motions?

19 MS. ANDERSON: No, Your Honor.

20 THE COURT: Okay. I mean coupled with his statement
21 and the fact that the phone was there I will deny your
22 motion.

23 Mr. Brown, could you please stand and raise your
24 right hand.

25 [Whereupon, the witness is duly sworn by the Court

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1 as follows: do you swear to tell the truth, nothing but
2 the truth so help you God]

3 MR. BROWN: Yes sir, I do.

4 FIFTH AMENDMENT RIGHTS

5 THE COURT: All right. Mr. Brown, I'm going to
6 ask you some questions, okay. And those questions are
7 about your right to testify. Do you understand?

8 MR. BROWN: Yes, sir.

9 THE COURT: Has your attorney talked to you about
10 your right to testify?

11 MR. BROWN: Yes, sir.

12 THE COURT: Have you understood those
13 conversations?

14 MR. BROWN: Yes, sir.

15 THE COURT: Do you understand that in South
16 Carolina no person can be compelled in any criminal case
17 to be a witness against himself. Do you understand?

18 MR. BROWN: Yes, sir.

19 THE COURT: It's commonly referred to as the right
20 to remain silent under the Fifth Amendment. Do you
21 understand?

22 MR. BROWN: Yes, sir.

23 THE COURT: Do you understand that no one can
24 compel you to testify. No one can compel you not to
25 testify?

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1 MR. BROWN: Yes, sir.

2 THE COURT: It's a personal privilege that you have
3 and only you can waive that privilege. Do you
4 understand?

5 MR. BROWN: Yes, sir.

6 THE COURT: Your attorney can advise you one way or
7 the other but you have to make the decision on whether
8 you want to testify or not testify. Do you understand?

9 MR. BROWN: Yes, sir.

10 THE COURT: Now have you had ample opportunity to
11 talk to your attorney before you make a decision to
12 testify or not testify?

13 MR. BROWN: Can I have that chance right now, sir?

14 THE COURT: I'm going to give it to you if you want
15 to; not right this minute but I will give it to you. Do
16 you want to talk to your attorney further about your
17 right to testify?

18 MR. BROWN: Yes sir, I do.

19 THE COURT: Okay. Do you understand that if you
20 elect not to testify that failure to testify cannot be
21 used by the State as any inference of guilt and your
22 failure to testify cannot be considered by the jury in
23 its deliberations and I will so instruct the jury? Do
24 you understand?

25 MR. BROWN: Yes sir, I do.

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1 THE COURT: Now do you understand that if you elect
2 to testify then you assume the role of a witness? Do you
3 understand?

4 MR. BROWN: Yes, sir.

5 THE COURT: So if you take the witness stand you'll
6 have to answer the questions if they are proper under the
7 rules of evidence. Do you understand?

8 MR. BROWN: Yes sir, I do.

9 THE COURT: It's not like television where somebody
10 gets on the witness stand and answers one question and
11 the next question I take the Fifth. You either take the
12 Fifth and not testify or you testify and answer questions
13 if they are proper questions. Do you understand?

14 MR. BROWN: Yes, sir.

15 THE COURT: Has anybody put any pressure on you to
16 testify or not testify?

17 MR. BROWN: No, sir.

18 THE COURT: Has anybody threatened you to testify
19 or not testify?

20 MR. BROWN: No, sir.

21 THE COURT: Have you understood what I have talked
22 to you about?

23 MR. BROWN: Yes sir, I do.

24 THE COURT: Do you have any questions of the court
25 about your right to testify or not testify?

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1 MR. BROWN: No, sir.

2 THE COURT: And you said earlier you would like to
3 have some time to talk to your attorney about this
4 matter. Is that correct?

5 MR. BROWN: Yes, sir.

6 THE COURT: All right. It is 12:30. We are not
7 going to reconvene court until 2:30 okay. So I'm going
8 to give you an opportunity to talk to your attorney
9 during that time period, okay?

10 MR. BROWN: Yes, sir.

11 THE COURT: When we come back to court at 2:30 I'm
12 going to ask you at that time if you are going to testify
13 or not testify. Do you understand?

14 MR. BROWN: Yes, sir.

15 THE COURT: Or if you have any further questions
16 about your right to testify at that time I would be glad
17 to try to answer them, okay?

18 MR. BROWN: Yes, sir.

19 THE COURT: Can you do that?

20 MR. BROWN: Yes, sir.

21 THE COURT: All right. Thank you very much.
22 Anything else we need to cover before we take a break?

23 MS. PROCTOR: Jury charges.

24 THE COURT: I'm going to do that right now as soon
25 as he hands it to me. You got it?

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1 MR. SIMPSON: Yes.

2 THE COURT: If y'all want to come up here off the
3 record I'll go through it real quick with you.

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

6 [Whereupon, court is in recess from 12:27 p.m. until
7 2:35 p.m.]

8 THE COURT: Mr. Brown, before I guess about 12:30
9 which was two hours ago you wanted an opportunity to talk
10 to your attorney about your right to testify is that
11 correct?

12 MR. BROWN: Yes, sir.

13 THE COURT: Have you had an opportunity to talk
14 with them?

15 MR. BROWN: Yes sir, I did.

16 THE COURT: And what's your decision on whether you
17 want to testify or not testify?

18 MR. BROWN: Not testify.

19 THE COURT: You do not want to testify?

20 MR. BROWN: No, sir.

21 THE COURT: Okay. Has anybody forced you or
22 threatened you to not testify?

23 MR. BROWN: No, sir.

24 THE COURT: And that's your decision?

25 MR. BROWN: Yes sir, it is.

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1 THE COURT: Okay. Thank you so very much. Is the
2 defense going to offer any other testimony from anyone
3 else?

4 MS. ANDERSON: No, Your Honor.

5 THE COURT: Okay. Let me see the attorneys up
6 here just a second.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: Is there anything else from the State
10 before we bring in the jury?

11 MS. FLYNN: No, Your Honor.

12 THE COURT: Is the State ready for closing
13 arguments?

14 MS. FLYNN: Yes, Your Honor.

15 THE COURT: Is the defense ready for closing
16 arguments?

17 MS. ANDERSON: Yes, Your Honor.

18 THE COURT: Okay. If you will bring us the jury,
19 please?

20 [Whereupon, the jury enters the courtroom at 2:40
21 p.m.]

22 THE BAILIFF: All seated, Your Honor.

23 THE COURT: Thank you very much. I don't know
24 which juror wanted to take notes. At this conjecture
25 I'm not going to -- if you wanted to take them I would

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1 have been happy to let you take notes during the
2 evidentiary portion of the trial. However, during
3 closing arguments I'm not going to let you take notes at
4 this time. Closing arguments are not -- is not evidence.
5 It's merely the attorneys explaining their position and
6 it's intended to help you interpret the evidence but it's
7 not evidence so I'm not going to allow you to take notes
8 at this time.

9 Is the State -- the State has rested. Is the
10 defense calling any witnesses?

11 MS. ANDERSON: The defense rests, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, the only
13 thing left now will be the closing arguments of the
14 attorneys and the Charge on the law which I will give to
15 you after the closing arguments between the State and the
16 defendant. Ms. Anderson?

17 MS. ANDERSON: Thank you. May it please the court?

18 CLOSING ARGUMENTS

19 MS. ANDERSON: Careless -- at this point careless
20 investigation and a quick leap to judgment. Lamar Brown
21 was in the yard with his brother at Riverland Drive
22 on December 28th, 2011 when the police rolled up, called
23 out his name. Lamar Brown? Who is Lamar Brown? He
24 raised his hand, I'm Lamar. My middle name is Sequan;
25 sometimes he goes by Quan, said here I am. He didn't run

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1 away. He walked over to them and got in the car with
2 them. They wanted to talk to him about a cell phone; a
3 cell phone that they found at the scene of the burglary.
4 That's my phone he tells them. His phone is in here --
5 that's my phone. And they had him write a statement.

6 He's got a ninth grade education and does the best
7 he can, they don't explain the questions to him but he
8 answers them. He answers what they ask. Hey Lamar, let
9 us in your house. We want to take a look around and see
10 if we can find any of the property. Okay, take a look
11 around. They do. They search his house and find
12 nothing. No T.V., no laptops, no cocktail ring; nothing.

13 So the police leave; they don't arrest him. About a
14 month later in January he goes and turns himself in over
15 to the jail. Here, go ahead, take me. He trusted them.
16 They'll keep working on this case. They will
17 investigate; they'll find what they are looking for.
18 Surely they will have to keep looking.

19 Surely they will take a closer look at the evidence.
20 Surely they will find out who did this. But instead they
21 stopped. They say hey, Lamar Brown. They had his phone,
22 he lives near the crime scene, and he's got prior
23 burglaries. We've got our guy. It was that quick; very
24 quick leap to judgment. They say they have enough. But
25 today we heard from Detective Lester on the stand. What

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1 about Marquis? He had done a search warrant for Lamar's
2 brother, Marquis Brown. Nobody ever talked to him. He
3 went over to a Magistrate Judge, swore that based on the
4 evidence that he had -- he needed to go search the house
5 of Marquis Terrell Brown.

6 You know if the warrant had been for Lamat Sequan
7 Brown, okay typo. But Marquis Terrell; very different.
8 It's very real different person. He mentioned in that
9 search warrant that Marquis had prior burglaries
10 convictions; something that he considered was important.
11 Somebody who has done it before must have done it again;
12 an assumption.

13 Lamar was out in the yard with his brother that day.
14 Nobody ever talked to him. His brother Marquis -- he had
15 access to the phone. They know all the same people so
16 he'd know all the people in his contact list and they
17 know him. But we don't have ---

18 MS. FLYNN: --- objection. May we approach?

19 THE COURT: Yes, ma'am.

20 [Whereupon, an off the record bench conference is
21 held]

22 MS. ANDERSON: But no one ever talked to Marquis.
23 They didn't bother him. The phone belongs to Lamar; it
24 must have been him. While we're talking about Lester --
25 let's talk about him. There is a lot you can do in an

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1 investigation and we talked about some of that. Part of
2 what you do is talk to witnesses. He didn't talk to
3 anybody. He talked to Amber Winkler who was not the one
4 who discovered the burglary. But he did not -- he talked
5 to Justin. He did not talk to this mystery third
6 roommate,

7 He didn't talk to Lamar Brown. He didn't talk to
8 Marquis; he didn't talk to anybody. He didn't go check
9 to see if any of the neighbors had witnessed anything;
10 just did not talk to anybody. He's got a phone, he's got
11 his guy.

12 They made a big deal about the phone records that
13 they logged into evidence today. They didn't -- those
14 didn't come to light until November of 2012. The
15 burglary happened on December 22, 2011. Detective Lester
16 came back to work on the 28th because he was on Christmas
17 break. Didn't do anything until then; he was on
18 Christmas holiday.

19 They issued a warrant on December 29th. Mr. Brown
20 was arrested on January 18th. They did not get those
21 records until almost an entire year later. And entire
22 year they didn't look inside that phone. They didn't see
23 who had been making those calls. They didn't see when
24 those calls were made. It was almost an entire year
25 later. When I asked him, if Mr. Brown gave a statement.

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1 He told you where he was the night of the burglary. That
2 he was over on Woodlawn. Did you go check? No, I
3 just assumed he was lying. I didn't go over there. I
4 didn't call them. I didn't check his alibi. He was
5 lying. It was his phone; he's got to be lying.

6 So even given all of that the State would still just
7 have to accept what they say. So there are a lot of
8 unanswered questions that come to mind when you are
9 looking at evidence in this case. Number one, the State
10 has made a big deal about this cell phone; that it
11 belongs to Lamar Brown and that there were calls made to
12 people in his contact list on December 22, 2011.

13 The -- is his phone you know it's his phone. Lamar
14 told them it was his phone. There were calls made from
15 his phone; they can't say he made them. All they can say
16 is the calls were made from Lamar's cell phone. They
17 made a big deal about putting up this big list of these
18 are the calls that were made.

19 These are the people that they were made to; back
20 and forth text messages and phone calls. And they
21 matched up to people in his contact list. Did they ever
22 go and get in touch with any of those people? They had
23 their phone numbers. You heard Detective Lester talk
24 about that database that he used to find Lamar Brown's
25 name. He never put those in there. They talked about

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1 how there is a phone conversation with a contact named
2 Juicy. Where is Juicy? Did they ever try to find her?
3 No. I know it was almost a year later but they didn't
4 try to find her.

5 What about A Dog A Dog? They pointed him out. Who
6 is he? How hard would it have been for them to put those
7 numbers in that database and run them? They knew who
8 they had. I don't know -- they knew that, it was his
9 phone, he lives in the area; he had priors.

10 So what it comes down to is his cell phone. There
11 is no physical evidence in the apartment that Lamar Brown
12 was ever there. There are no fingerprints. There is no
13 D-N-A. There is not a thing to say that he was there but
14 his cell phone.

15 So the question becomes how did it get there and who
16 left it. The State would argue that because of these
17 phone calls they knew it was him. We know that these
18 people are in his contact list. We know because these --
19 people in his contact list, people that he knows, that it
20 had to be him. So again what about Marquis? Marquis
21 could have known the same people. They are brothers;
22 they live in the same place. But nobody ever talked to
23 him to find out. Detective Lester didn't even talk to
24 Lamar. Nobody tried to find out who made those phone
25 calls. They just assumed that because it was Lamar's

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1 phone that it was him. Let's talk about Justin Poole for
2 a minute. He got up on the stand and he testified as to
3 what he found when he came home. He said my T.V. was
4 gone, my laptops were gone. He talks about what time he
5 got home and all that good stuff. When I asked him was
6 anything else missing from your apartment? No. What
7 about the weed? Oh yes, somebody took the weed.

8 You know if he's willing to not tell the truth about
9 that what else isn't he telling us. What else isn't
10 there? What else is there? We don't know; Lester
11 never went back to talk to him. He called him on the
12 phone the day and said hey; do you know a Lamar Brown?
13 He never went to talk to him. He never went to get a
14 statement. Nothing.

15 He asked Amber Winkler, the other roommate; hey do
16 you know Lamar Brown? No. Never called that third
17 roommate, Jamie Poston. We only found out about her
18 because of Justin and there was mention of her in the
19 search warrant. Nobody ever talked to her. Did she know
20 Lamar Brown? We don't know. It's an unanswered
21 question. Let's talk about -- I want to show you this
22 map again up here and I want to talk a little bit about
23 the scene. The burglary happened at -- right here
24 [indicates] is the building where Justin Poole and Amber
25 Winkler lived. That's where they lived. There was

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1 testimony that Lamar Brown lived right about here
2 [indicates]. So from here [indicates] to here
3 [indicates] the victim's apartment to Lamar Brown's
4 house.

5 The prosecution makes a big deal and so did
6 Detective Lester about the fact that it's only a half
7 mile away. But what they don't mention is you've got to
8 walk down this [indicates] long path. It's dark, it can
9 be dark, but it's a long way to go with a 42 inch T.V.,
10 three laptops; little guy. Lamar Brown is not a big guy.
11 Somebody would have seen him.

12 They didn't ask. Hey, did y'all see somebody
13 carrying a T.V.? No. It makes more sense for somebody
14 who lives over here [indicates] that is going to
15 burglarize something how about this side [indicates] and
16 this side [indicates]. All of these over there
17 [indicates] so much less visible than the apartment of
18 Justin Poole.

19 You've heard testimony that his room is visible from
20 the gate. The other way around; the gate is visible from
21 his room. And why that is important is that you can see
22 his window from the gate. You can just see a straight
23 shot. But it's in a gated community and anyone dragging
24 it out would have to stop at that gate. 7 to 10:30 at
25 night is high traffic time. People are coming and going,

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1 leaving, coming out and going back. Why would somebody
2 who lives all the way across this big wooded area
3 [indicates] -- and its woods; there is not a trail
4 through it, it is woods, go all the way through there go
5 as far as you can here [indicates] and rob an apartment
6 right in front of the gate where anybody could see him.
7 It doesn't make any sense.

8 And we don't know because nobody ever went and
9 interviewed hey, did you see somebody? Did you see
10 something? As far as we know there were no calls made.
11 Hey somebody is going out carrying a T.V. I lived in an
12 apartment for a little while. Even if you're not
13 friends with them you know who everyone is. Nobody said
14 hey, there is somebody carrying a T.V. in my building; a
15 secure building.

16 Let's talk about the crime scene a little bit more.
17 There was a window broken, a top window. And you'll have
18 these pictures back there so you can look at them
19 yourselves. Take a look at them closely.

20 There is a window [indicates] and nobody ever
21 mentioned this window, you see a 42 inch T.V. that
22 wouldn't fit through that. There is no mention -- right
23 before the window and there is no mention of them being
24 trampled. He talked about dirt being inside. There was
25 no dirt on the inside of the apartment. There are some

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1 things underneath the window right here [indicates].
2 Take a look at the pictures. Look closely when you are
3 in there. There is a rock sitting near the window. Look
4 at all those pictures. It's sitting there nicely on top
5 of the glass; almost like somebody put it there. There
6 is just something strange about the whole thing. It
7 leaves some questions in your mind.

8 As far as the crime scene I keep making a big deal
9 they found no evidence of Mr. Brown in the apartment at
10 all. But a lot of what they did -- he did very minimal
11 work. He checked the dresser drawers, he checked the
12 windows. He checked the doorknobs in the bedrooms. He
13 only processed a few things. I asked him why didn't you
14 check the dresser or the T.V. stand. I just assumed
15 there wouldn't be anything there; I didn't try. Why
16 didn't you check the desk where Amber Winkler's computer
17 was taken? I just assumed there wasn't anything there so
18 I didn't try.

19 He didn't test the blinds. He said they were down
20 when he came in. The blinds weren't askew, they weren't
21 torn, they weren't wrinkled; they weren't messed up.
22 They are just hanging there nicely. It's strange. If
23 you break in you would have to reach over the top and
24 unlock, lift, cut the screen, slide the door something
25 would have been knocked over. Something would have been

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1 pushed aside. But the blind weren't messed up. Maybe
2 they would have been knocked down. Maybe dirt would have
3 been there. Nothing is there. It's strange. They
4 didn't test any of the other door knobs, they didn't test
5 the phone. They just assumed they wouldn't find
6 anything. Another assumption; didn't try.

7 Justin Poole talked about he left the condo about 7
8 o'clock with his girlfriend. His roommate Amber Winkler
9 was still there. We don't know what time she left. He
10 assumed that she left sometime later. We don't know, we
11 don't know. She could have been there longer; she could
12 have been there later. But she wasn't here so we don't
13 know.

14 He got home around 10:30ish and they were opening
15 presents that were just out on the coffee table, wrapped,
16 ready to go, untouched; still there when he got home. He
17 said he went into his room and turned on the light after
18 he found the cell phone on the ground. So the light was
19 on when he got home.

20 Do they think the burglar came in and was fumbling
21 around in the dark trying to take a T.V. and three
22 laptops something would have been knocked over? They
23 would have been bumping around in the night. Nothing;
24 there is no evidence that anything else is knocked over,
25 anything else is out of place. We also saw pictures of

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1 Amber Winkler's room. She said her laptops were missing
2 and a gold cocktail ring was taken from the top of her
3 dresser -- we saw a picture of her dresser with some
4 jewelry still on there.

5 Take a look at that [indicates]. We blew it up so
6 that you could see it. It's an easy travel jewelry type
7 box, earrings, necklace, some bracelets over here
8 [indicates] and a watch. A burglar would just pick that
9 up and take it. It's not like it's a big jewelry box
10 that would be hard to carry along with a T.V. and some
11 laptops. Stick that whole thing in your pocket and to.
12 It wasn't touched. Does that seem strange to you?
13 Strange.

14 So what it all comes down to and why I'm bringing
15 this up is that all the State has is a phone. There is
16 no evidence other than this phone connecting Lamar Brown
17 to the burglary. They did not find the stolen property
18 on the -- they did not find any physical connection to
19 the apartment, just the phone. That's what it comes down
20 to.

21 He gave a statement to the police. And the State
22 will argue and say well, we talked with him and he said
23 nobody else had the phone. The question was did anyone
24 have your cell phone during this time. Not did you have
25 it but did anyone have it? No. I don't know where it

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1 is, nobody has it. It's lost. Like I said he's got a
2 ninth grade education, nobody explained the questions to
3 him. He answered as best as he could. As far as he knew
4 nobody had his phone; it was lost.

5 It's interesting that the phone -- they talked about
6 the phone being deactivated in January of 2012. Susan
7 Johnson from T-Mobile came up and said that somebody had
8 to call in to deactivate it. It wouldn't just run out of
9 minutes and deactivate. Somebody would have to call in.
10 Lamar Brown was in jail. He was arrested on the 18th.
11 So that just shows that somebody had access to that
12 account. Somebody called it in to deactivate it. It
13 wouldn't just show up on a phone. It wasn't him.

14 And the phone calls and texts that they showed to
15 you were pretty constant. You'll have that list back
16 there; I won't go through it with you. They were pretty
17 constant throughout the night up until about 10:10, 10
18 o'clock; somewhere in there. That was the last call made
19 from the phone. Justin Poole got home at 10:30 so he
20 says. Are they -- it's almost -- are they asking you to
21 believe -- they are asking you to assume that he was on
22 his phone. It was constant. This is maybe 20 minutes
23 to get in and out take the T.V., run down the road and
24 nobody see you. We shouldn't have this many questions
25 unanswered. There shouldn't be this many funny things

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1 about the case. It's too many questions that we have.
2 And the reason we have them is because we have a careless
3 investigation.

4 Detective Lester got the case on the 28th, got into
5 the phone, looked up the defendant, looked up Lamar Brown
6 and said hey, it's his phone -- they -- his phone, he has
7 priors, he lives close by, it's got to be him. He closed
8 the case. Put out the warrant on the 29th; done. He
9 didn't do anything else until almost a year later when he
10 went and got these arrest warrants.

11 When I started off with kind of a funny little story
12 about my childhood, about being accused of something by a
13 teacher who jumped to the wrong conclusion, assuming I
14 was guilty of something just because I had done it in the
15 past. No questions; no investigation.

16 That's exactly what happened here except it's not
17 funny. It's very serious and there is a lot at stake
18 here. I'm not trying to minimize what Justin Poole and
19 Amber Winkler went through on the night of December 22nd,
20 2011. I cannot imagine what it would be like to have
21 your home violated in such a way. But that's all the
22 more reason for the police to do a complete and thorough
23 job. Not just to make sure they have the right guy but
24 to make sure they put the right person behind bars. To
25 make sure that the actual person who burglarized the

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1 house is put behind bars. That's why it needs to be --
2 to protect them. But instead of doing that they let --
3 they made assumptions that included just enough
4 information to -- warrants to justify it because we would
5 not have heard anything about Marquis if I had not asked
6 him about it. They didn't present that, he didn't tell
7 you, he didn't put it in his report -- I asked him about
8 it and he said yes --

9 But instead of doing all they could, instead of
10 investigating the way that they should by failing to take
11 into account or even address all these little
12 questionable things should beg your attention that they
13 stopped their investigation. And it's all about a phone.
14 There is nothing at all, nothing at all that connects
15 Lamar Brown to the crime; nothing but the phone.

16 And the State and the police they think that's
17 enough. They think that was enough. They want you to
18 assume and they want you to assume that he made those
19 calls but the evidence is just not there. They cannot
20 say who made those calls. All they can say is its from
21 the phone. They did not check and question Marquis who
22 was initially a person of interest. They did not ask --
23 they want you to just do the same thing but the evidence
24 is not there. No one -- and he had access and we don't
25 know because they did not investigate. All those things

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1 that I just mentioned they add up to reasonable doubt and
2 the State wants you to believe all those things.

3 Lamar Brown did all that he could do to help them
4 hoping that the police would investigate further and find
5 the real person and clear his name. He gave a statement,
6 he gave consent to search, he turned himself in hoping,
7 placing his faith in this, putting his trust in the
8 system that fails him again and again until today, until
9 all of you.

10 Don't fail him. Don't be careless as you go through
11 the evidence. Don't be too quick to make a conclusion
12 the way that the police did. Make this system work.
13 Hold the State to that high standard. Don't accept any
14 excuses from them.

15 Lamar Brown sits here today putting his trust in
16 each and every single one of you that you will not accept
17 the half-hearted efforts of the police. That you will
18 not make the assumption that they did and you will see
19 that all they have is a phone. The evidence is not
20 there. It's not there because Lamar Brown did not commit
21 this burglary and we ask you to find him not guilty.
22 Thank you.

23 THE COURT: Solicitor?

24 MS. FLYNN: Thank you, Your Honor. May it please
25 the court?

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1 CLOSING ARGUMENT

2 MS. FLYNN: This was a thorough and well thought out
3 investigation. And ladies and gentlemen I want to thank
4 you for your patience through the last two days. I know
5 we put up a lot of testimony about the phone logs that
6 may have gotten a little boring at first. But all this
7 information is important. It's important to the victims
8 in this case and it's important to our community. And
9 without you we cannot do our job so I really thank you
10 for being with us.

11 Now I want to go through with you the elements of
12 Burglary First Degree. First is entering a dwelling.
13 The State has proved that Lamar Brown entered a dwelling.
14 In this case you heard testimony from the victim that
15 came home and there was a broken window. You saw
16 photographs of the broken window; that was the point of
17 entry that night. There are photos showing where the
18 items were taken from and then there's a cell phone,
19 which we'll get back to.

20 Enter a dwelling is the next element without
21 consent. These victims did not know Lamar Brown. This
22 was a random crime. He certainly did not have permission
23 to be there. Third, with the intent to commit a crime
24 therein. You've heard testimony that there were several
25 items taken. Sure there was some marijuana taken too but

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1 let's focus on what was taken; a 42 inch screen
2 television and three laptops and some jewelry. Maybe
3 they didn't take everything in the house but maybe it's
4 because the victim came home at 10:30.

5 Finally, the last element is what we call
6 aggravating circumstances. That is what makes something
7 a Burglary First Degree. Now, there is a list of these
8 that the law provides. If any one of those applies then
9 it's properly a Burglary First Degree.

10 The State has presented evidence to you that two
11 exist in this case. The first one is that it occurred at
12 night. There is testimony that the victim left around 7
13 p.m. and this is in December mind you when it gets dark
14 probably around 5:30 or 6. Amber Winkler left at some
15 point after that. And we know the victim came home
16 around 10:30 p.m. And again, we'll get to those phone
17 calls.

18 The second is that the defendant has two prior
19 convictions for burglary. Now it's the State's burden to
20 prove all of these elements beyond a reasonable doubt.
21 But that's not beyond all doubt. There are few things in
22 life that we know with absolute certainty. And the law
23 does not require that. It's your job as jurors to
24 realize that and to use your common sense. Now this is
25 how we prove that Lamar Brown committed that burglary on

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1 December 22nd, 2011. You heard testimony from Justin
2 Poole. He explained to you how nobody in that house has
3 ever seen Lamar Brown or heard of him. He gave testimony
4 that he left the house at 7, came home around 10:30.
5 That's when it all changed. That's when he heard this
6 phone ringing; a phone that didn't belong there; a phone
7 that he had never seen before. Then he sees a flash of
8 light, which could have been a flashlight coming from
9 near out of the window in his room.

10 Let's talk about crime scene for a minute. Crime
11 scene came to the scene and they did the proper police
12 work. You've heard testimony that fingerprints weren't
13 found, D-N-A weren't found in this case. But they
14 checked for it and you heard that in some cases there
15 just aren't fingerprints. And there is a variety of
16 reasons, one of which the defendant was wearing gloves.

17 But let's not lose sight on what they did find; the
18 red cell phone. And I'm like the defense attorney who
19 said it's not just a cell phone; it says so much more.
20 The defendant admitted it was his phone in the victim's
21 house. And there is no question who left that phone in
22 that house. He admitted to police no one had that phone
23 on December 22nd, 2011 between 6 p.m. and midnight. What
24 was the time of the crime? Between 7 p.m. and 10:30 that
25 night. And what do the phone records tell us? They tell

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1 us Lamar Brown's phone, which he said he had, was calling
2 and receiving calls and texts all the way up to the time
3 of the burglary.

4 I had Susan Johnson from T-Mobile write up for you
5 on the board those calls. Let's see if they are still on
6 there. Now why did I have her do that? She wrote out
7 the defendant's phone number 843-345- . She then
8 explained to us how the times differ. So let's talk
9 about that second call. 7:55 p.m. a 42 minute phone call
10 with a number listed in the defendant's phone. A number
11 he knows for 42 minutes.

12 The last three calls occur around 10:09 to 10:10
13 p.m.; three quick calls. They are from a known number.
14 A known number listed in the defendant's phone that was
15 found on the scene. Those calls were made from A Dog Bro
16 A Dog; someone the defendant knows.

17 How do we know it was the defendant making those
18 calls? It's your job as jurors to think about what is
19 reasonable, what makes sense. If I were going to borrow
20 a stranger's phone for the day if we then pull out his
21 phone contacts and if we pull out his phone logs that's
22 not going to match up. I wouldn't have called people
23 that he knows in his phone; that just doesn't make sense.
24 So again look at the phone logs when you go back there
25 and look at what the phone logs tell us. He made calls

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1 and texts and he received calls and texts all day on
2 December 22, 2011. And he made and received calls to 73
3 people listed in his phone book. So although there is no
4 D-N-A and there are no fingerprints we don't need that;
5 nobody else had his phone.

6 And sure the police didn't get a search warrant for
7 this phone until a year later. But you heard from Rodney
8 Van Horn. You can't manipulate those phone contacts.
9 That phone has been in evidence for a year. Those
10 records don't lie.

11 Now you heard from Detective Lester. And he
12 explained how these all matched up. But what else did he
13 show us? He showed us the defendant's address
14 Riverland Drive. He showed you the victim's address
15 Riverland Woods Place apartment ; less than a half
16 mile driving, less than a quarter mile walking or
17 running.

18 And ladies and gentlemen we saw the gate in this
19 case. This wasn't Fort Knox; it was a little gate you
20 could just walk around. Detective Lester testified to
21 that. You could fairly easily just walk around and hop
22 in a car. Now the defense attorney tried to make a big
23 deal about this search warrant in this case and how it
24 says the defendant's brother name and about how they
25 never talked to him. This was throughout the ongoing

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1 investigation when they were still gathering information.
2 Detective Lester did proper police work in this case. He
3 eliminated all suspects when he found that phone and he
4 linked it to Lamar Brown. And Lamar Brown told us it
5 was his phone. Oh, and that no one else had it during
6 that time.

7 Now nothing was found in Lamar Brown's house. The
8 burglary happened on December 22nd. We had Christmas
9 season between that time and then December 28th is when
10 they go in the house; six days later. Those items were
11 long gone by then.

12 And the defense attorney tried to make a big deal
13 about Detective Lester never checked out that Woodlawn
14 address where the defendant said he was. He didn't
15 believe the defendant at that point. And don't lose
16 sight of the fact of where the defendant was when the
17 cops talked to him. And the address that was listed on
18 the defendant's D-M-V Riverland Drive; a half mile
19 from the victim's residence.

20 It's your job as jurors to use your common sense
21 when you listen to all the testimony and you view all
22 this evidence. So remember this as you deliberate.
23 Lamar Brown's house is a half mile from the burglary. He
24 left his cell phone there. He admitted that phone was
25 his. And those phone records prove that he was making

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1 and receiving those calls all the way up until 10:10.
2 The victim gets home at 10:30. He had the motive and he
3 had the ability to commit this crime. Remember our duty
4 is to prove this beyond a reasonable doubt; not all
5 doubt. Do your duty and hold Lamar Brown accountable for
6 this burglary of this random house.

7 Now, after you've listened to all this testimony and
8 you've viewed all this evidence you will realize it all
9 matches up. It's your duty to deliver a verdict that
10 justice demands. And that's a verdict of guilty for
11 Burglary in the First Degree. Thank you.

12 CHARGE OF THE COURT

13 THE COURT: Mr. Foreman and ladies and gentlemen of
14 the jury I will give you a copy of these instructions in
15 written form. During your deliberations you may refer to
16 the instructions to guide your decision making. You must
17 consider the instructions as a whole and not follow some
18 and ignore others. Please return the instructions to the
19 court, Mr. Foreman, at the time the verdict is rendered.

20 The defendant has pled not guilty to the Indictment
21 which places the burden on the State to prove the
22 defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent. I charge you as a vital
25 important rule of law that the defendant in a criminal

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1 trial, no matter what the seriousness of the charge may
2 be, must always be presumed to be innocent until his
3 guilt has been proven beyond a reasonable doubt. This
4 presumption of innocence remains with the defendant at
5 all times from the moment he appears in the court
6 throughout the trial until you, the jury, reach a verdict
7 of guilty beyond a reasonable doubt based on the
8 testimony and evidence presented.

9 The presumption of innocence is a substantial right
10 to which every defendant is entitled unless and until you
11 reach a verdict of guilty beyond a reasonable doubt. If
12 you, the jury do not find the defendant guilty beyond a
13 reasonable doubt it is your duty to acquit the defendant.

14 Now what is reasonable doubt? A reasonable doubt is
15 the kind of doubt that would cause a reasonable person to
16 hesitate to act. The State has the burden of proving the
17 defendant guilty beyond a reasonable doubt.

18 Some of you may have served as jurors in civil cases
19 where you were told it's only necessary to prove that a
20 fact is more likely true than not, such as by the greater
21 weight of preponderance of the evidence. In criminal
22 cases the State's proof must be more powerful than that.
23 It must be beyond a reasonable doubt. Proof beyond a
24 reasonable doubt is proof that leaves you firmly
25 convinced of the defendant's guilt. There are very few

1 things in this world that we know with absolute
2 certainty. And in criminal cases the law does not
3 require proof that overcomes every possible doubt. If
4 based on your consideration of the evidence you are
5 firmly convinced the defendant is guilty of the crime
6 charged you must find the defendant guilty.

7 On the other hand if you think there is a real
8 possibility the defendant is not guilty you must give the
9 defendant the benefit of the doubt and find the defendant
10 not guilty. Now there are two types of evidence which is
11 generally presented during a trial; direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 claims to have actual knowledge of a fact such as an
15 eyewitness. It is evidence which immediately establishes
16 the main fact to be proved. Circumstantial evidence is
17 proof of a chain of facts and circumstances indicating
18 the existence of a fact. It is evidence which
19 immediately establishes collateral facts from which a
20 main fact may be inferred.

21 Circumstantial evidence is based on inference and
22 not on personal knowledge or observation. The law makes
23 absolutely no distinction between a weight or value to be
24 given to either direct or circumstantial evidence, nor is
25 a greater degree of certainty required of circumstantial

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1 evidence than of direct evidence. You should weigh all
2 the evidence in the case. After weighing all the
3 evidence you're not convinced of the guilt of the
4 defendant beyond a reasonable doubt you must find the
5 defendant not guilty.

6 The evidence or lack of evidence on which you are to
7 decide the facts include the following: the sworn
8 testimony of a witness both on direct and cross-
9 examination, regardless of which side called the witness,
10 the exhibits that have been received into evidence by the
11 court, and any facts agreed or stipulated to by the
12 lawyers.

13 The following things are not evidence and you may
14 not consider them in deciding the facts: arguments and
15 statements made by the lawyers are not evidence. The
16 lawyers are not witnesses. Their opening statements,
17 closing arguments or other statements are intended to
18 help you interpret the evidence, but are not evidence.

19 If the facts as you remember them differ from the
20 lawyer's statement, your memory controls. Questions and
21 objections by the lawyers are not evidence. Lawyers have
22 a duty to their clients to make objections when they
23 believe a question is improper under the rules of
24 evidence. You should not allow any objections, or the
25 court's ruling on the objections to influence you.

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1 Testimony that has been stricken or that you have been
2 instructed to disregard is not evidence and must not be
3 considered. Anything you may have seen on television,
4 read in the newspaper or on the Internet or heard from
5 others when court is not in session is not evidence. You
6 should base your decisions solely on the sworn testimony
7 of witnesses, exhibits received into evidence by the
8 court, and any facts agreed or stipulated to by all the
9 lawyers.

10 The fact that the defendant was arrested, charged,
11 and indicted in this case is not evidence and cannot be
12 considered as evidence of guilt, nor does it create any
13 presumption or inference of guilt. The Indictment is
14 simply the formal written instrument which contains the
15 charge made against the defendant.

16 Now under the Constitution and Code of Laws only you
17 the jury can make findings of facts in this case. I'm
18 not permitted to indicate to you how I may feel about the
19 testimony or evidence which has been presented.

20 Throughout the trial it's been my intention to be fair
21 and impartial towards each of the parties involved.
22 Necessarily you must determine the creditability of the
23 witnesses who have testified in this case. Creditability
24 simply means believability. It's your duty as jurors to
25 analyze and evaluate the evidence and determine which

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1 evidence convinces you of its truth. As you decide
2 whether or not to believe the witness's testimony about a
3 particular matter you may consider the following: the
4 manner and appearance of the witness while on the witness
5 stand. Was he or she straight forward or hesitant in
6 answering. The testimony of a witness; was it consistent
7 or inconsistent?

8 How the witness came to know the facts that he or
9 she testified to, was the witness present during the
10 incident, or did the witness happen on the scene after,
11 the reason the witness would want to give testimony which
12 would help or hurt one side or the other.

13 Has the witness exhibited to you any interest,
14 bias, prejudice or other motive in this case that you may
15 consider whether a particular witness may gain some other
16 reward, payment, personal advantage, or vindication
17 through his or her testimony.

18 The strength of the testimony of the witness; was
19 the testimony of the witness strengthened or weakened by
20 other testimony or evidence, the duration and length of
21 time between the incident and when they were reported.
22 Would the duration or length of the time weaken or
23 strengthen the witness's memory of the incident. All
24 prior statements; were prior statements made by the
25 witness consistent or inconsistent with the witness's

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1 testimony. In determining the believability of
2 witnesses who have testified in this case you may believe
3 one witness over several or several over one. You may
4 believe a part of the testimony of a witness and reject
5 the remaining part of the testimony of the same witness.
6 You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its
8 entirety.

9 The same Constitution and Laws which designate and
10 make you the finders of fact make me the sole instructor
11 of the law. It's my duty to Charge you the law
12 applicable to this case and it's your duty as jurors to
13 accept and apply the law as I now state it to you. The
14 lawyers are not the instructors of the law. You must
15 accept the law and apply the law exactly as I state it to
16 you. You must not base your decision on your idea of
17 what the law is or what you think the law should be.

18 First Degree Burglary: The defendant is charged
19 with First Degree Burglary. The State must prove beyond
20 a reasonable doubt that the defendant entered a dwelling
21 without consent. A dwelling is any building or portion
22 of a building in which a person ordinarily sleeps. Next
23 the State must prove beyond a reasonable doubt that the
24 defendant intended to commit a crime; either a Felony or
25 a Misdemeanor at the time of the entry. The mere entry

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1 into a dwelling without consent is not Burglary. If the
2 intent to commit a crime is formed after the entry it is
3 not Burglary. On the other hand if the defendant
4 intended to commit a crime at the time of the entry it is
5 a Burglary even if the intent was abandoned after the
6 entry.

7 Finally, the State must prove beyond a reasonable
8 doubt one of the following aggravating circumstances to
9 prove Burglary in the First Degree. The defendant has a
10 prior record of two or more convictions for two or more
11 burglaries and or house breaking.

12 Evidence of prior offenses committed by the
13 defendant was not offered to prove the defendant has a
14 bad character or to prove the defendant committed the
15 burglary on this occasion. The prior conviction may be
16 considered by you only for the purpose of proving the
17 aggravated circumstances of prior convictions which is
18 required for First Degree Burglary.

19 Before you even consider the evidence of the
20 defendant's prior burglary and or housebreaking
21 convictions as an element of First Degree Burglary you
22 must first find that the State has proved beyond a
23 reasonable doubt that the defendant entered the dwelling
24 of another without consent with the intent to commit a
25 crime. The State may also prove beyond a reasonable

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1 doubt that the defendant entered or remained in the
2 dwelling in the nighttime. Nighttime is the period
3 between sunset and sunrise during which there is not
4 enough light to recognize a person's face except by
5 artificial light or moonlight.

6 Therefore, in order to prove First Degree Burglary
7 the State does not have to prove both aggravating
8 circumstances. The State must only prove beyond a
9 reasonable doubt either the defendant has two or more
10 prior convictions for burglary or that the defendant
11 entered the dwelling at nighttime. If you do not find
12 beyond a reasonable doubt that the defendant was
13 convicted of these alleged prior offenses or entered the
14 dwelling at nighttime then you cannot return a verdict of
15 First Degree Burglary.

16 I instruct you and emphasize that the fact that the
17 defendant did not elect to testify on his own behalf is
18 not a factor to be considered by you in any of your
19 deliberations or your consideration on the question of
20 guilt or innocence of the defendant. It must not be
21 considered by you in any manner whatsoever. A defendant
22 has a constitutional right to remain silent and the
23 assertion of this right must not be considered by you in
24 your deliberations. I repeat under your oath you are not
25 to draw any conclusion whatsoever from the fact that the

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1 defendant in this case did not testify. The fact that
2 this defendant did not testify should not even be
3 discussed in the jury room. The burden of proof as I
4 have stated to you is on the State. The defendant is not
5 required to prove his innocence. The burden of proof
6 remains on the State to prove guilt beyond a reasonable
7 doubt.

8 A statement alleged to have been made by the
9 defendant has been admitted into evidence in this case.
10 While the court has determined the statement is
11 admissible I instruct you that you make the ultimate
12 decision of whether or not the defendant made the
13 statement. If the defendant did make the statement you
14 must determine whether the statement was made by the
15 defendant voluntarily of his own free will. This means
16 that the statement was not caused by pressure, force,
17 fear, threats, coercion, or intimidation or by hope or a
18 promise of leniency or reward of any kind.

19 In determining whether the statement was voluntary
20 you should consider both the characteristics of the
21 defendant and the details of the question. Some of the
22 facts you may consider are: the age of the defendant,
23 the defendant's education or lack of education,
24 defendant's mental ability or capacity, defendant's I.Q.
25 or intelligence, the defendant's background, environment,

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1 the place and lengths of detention, the nature of the
2 questioning and the advise or the lack thereof to the
3 defendant of his or her Constitutional Rights including
4 but not limited to the right to remain silent, that any
5 statement could be used against him in a court of law,
6 the right to have a lawyer present. If he or she could
7 not afford a lawyer a lawyer would be appointed to
8 represent him or her without any cost, that he could stop
9 making the statement at any time. You must carefully
10 consider all the surrounding circumstances before you
11 give any weight to an alleged statement.

12 The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was
14 voluntary. If you determine it was you may give the
15 statement any further consideration that you deem proper.
16 You must decide what weight, if any, should be given to
17 the alleged statement.

18 If you determine the alleged statement was not a
19 free and voluntary statement or independent -- free and
20 voluntary statement of the defendant you should not
21 consider the statement at all. The rules of evidence do
22 not permit a witness to testify to opinions or
23 conclusions. An exception to this rule exists if the
24 witness is what we call expert witnesses. A witness who
25 by education and experience has become expert in some

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1 art, science, profession, or calling may state an opinion
2 as to the relevant material matter in which the witness
3 claims to be an expert and may also state the reasons for
4 the opinion. You should consider any expert opinion
5 received into evidence in this case like any other
6 evidence; give it the weight you think it deserves.

7 If you decide that the opinion of an expert witness
8 is not based on sufficient education and experience or if
9 you conclude that the reason given in support of the
10 opinion are not sound or the opinion is outweighed by
11 other evidence you may disregard the opinion entirely.

12 An expert witness's testimony is to be given no
13 greater weight than any other witness simply because the
14 witness is an expert. Further you are not required to
15 accept the expert's opinion even though it is not
16 contradicted.

17 You have been selected as fair and impartial jurors
18 sworn to impartiality to try and determine the facts of
19 this case. And when you comply with your oath to do so
20 no one will have the right to criticize your verdict; you
21 have fully discharged your duties as jurors.

22 You are to decide this case according to testimony
23 that you have heard from the sworn witnesses along with
24 other evidence introduced. I Charge you as jurors you
25 must make your decision in this case without bias,

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1 without prejudice to any party. You cannot allow
2 yourself to be governed by sympathy, prejudice, passion,
3 public opinion, or any other arbitrary factor. Both the
4 State and the defendant have the right to expect each one
5 of you will carefully and impartially consider all the
6 evidence in the case, you will follow the law as I
7 explained it to you.

8 Nothing I may have said or done during the course of
9 this trial has been in any way intended to express or
10 suggest a view of this case or an opinion as to the
11 facts, the weight of the evidence, or the creditability
12 of the witness. If you believe any of my actions or
13 words have indicated otherwise you must disregard such
14 and form your own view of this case or your own opinions
15 as to the facts and weight of the evidence or the
16 creditability of the witnesses.

17 Mr. Foreman, ladies and gentlemen of the jury I have
18 prepared a verdict form. It has the State versus Lamar
19 Sequan Brown and has the verdict form and the number of
20 the Indictment. Your verdict has to be unanimous; all
21 twelve of you have to agree.

22 As to the charge of Burglary First Degree we the
23 jury by unanimous consent find the defendant guilty of
24 Burglary First or not guilty and a place for the
25 Foreperson to sign and date. Ladies and gentlemen I will

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1 tell you as I said earlier your verdict has to be
2 unanimous. It is a collective reasoning process on all
3 your part. I would ask you to respect each other's
4 opinions, listen to each other's opinions, and reach a
5 fair and just decision based upon the evidence that has
6 been presented in the case.

7 I am going to ask you very shortly to go to the jury
8 room, however please don't begin your deliberations
9 because I've got to take my Charge up with the attorneys.
10 I may have to bring you back to correct something I said
11 or add something I didn't say before you begin your
12 deliberations.

13 Mr. Foreman, the Bailiff will bring you the verdict
14 form, the Charge book, and all the exhibits that have
15 been admitted into evidence and inform you to begin your
16 deliberations at that time. The alternates Mr. Hunter
17 and Ms. Smith if y'all would just keep your seats please
18 while the rest of the jury return to the jury room.

19 Mr. Foreman, members of the jury if y'all would go
20 follow the Bailiff to the jury room please.

21 [Whereupon, the jury exits the courtroom at 3:35
22 p.m.]

23 THE COURT: Any exceptions to the Charge from the
24 State?

25 MS. FLYNN: No, Your Honor.

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1 THE COURT: Any from the defendant?

2 MS. ANDERSON: No, Your Honor.

3 THE COURT: All right. If the parties will come
4 up and make sure all the exhibits are present and
5 admitted then we will get the Bailiff to take the
6 exhibits back, the verdict form, and the Charge book and
7 tell them to begin their deliberations.

8 [Whereupon, counsel complies]

9 THE COURT: Let me see the attorneys up here just a
10 second.

11 [Whereupon, an off the record bench conference is
12 held]

13 [Whereupon, evidence out to the jury at 3:40 p.m.]

14 [Whereupon, court is in recess from 3:40 p.m. to
15 6:04 p.m.]

16 THE COURT: Bring us the jury please.

17 [Whereupon, the jury enters the courtroom at 6:05
18 p.m.]

19 THE BAILIFF: All present, Your Honor.

20 THE COURT: All right. We got everybody? Mr.

21 Foreman and ladies and gentlemen of the jury I received
22 your last note. I'm going to excuse you for the evening
23 and bring you back at 9:30 and I will Charge you further
24 concerning any further deliberations at that time.

25 Tonight don't discuss the case with anyone; your husband,

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1 wife, or anybody else. Be back at 9:30 and I will Charge
2 you further about your deliberations at that time. See
3 you in the morning at 9:30. Have a good evening.

4 [Whereupon, the jury exits the courtroom at 6:06
5 p.m.]

6 THE COURT: All right. For the record the Foreman
7 sent out a note saying we are a hung jury. It is now 5
8 after 6 I am not going to give them an Allen charge until
9 in the morning. I will give it to them in the morning at
10 9:30 and let them continue their deliberations.

11 I'm not going to keep the court staff here with an
12 Allen charge and let them deliberate for another two or
13 three hours depending upon what happens. But I will give
14 them an Allen charge in the morning at 9:30 and let them
15 continue their deliberations. We will adjourn until in
16 the morning at 9:30. Have a good evening.

17 MS. PROCTOR: Thank you, Your Honor.

18 MS. ANDERSON: Thank you, Your Honor.

19 MS. FLYNN: Thank you, Your Honor.

20 MR. SIMPSON: Thank you, Your Honor.

21 [Whereupon, court adjourns at 6:08 p.m.]
22
23
24
25

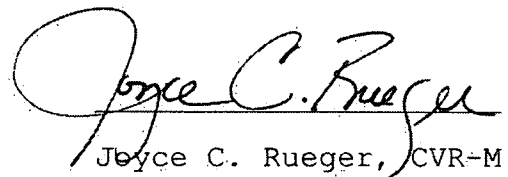
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case reported by Mia Perron,
transcribed by Joyce Rueger relative to appeal, in the
Court of General Sessions for Charleston County, South
Carolina on the 7th day of March, 2013.

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

June 15, 2013

A handwritten signature in cursive script that reads "Joyce C. Rueger". The signature is written in dark ink and is positioned above the printed name and title.

Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2012-GS-10-7545
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
LAMAR SEQUAN BROWN	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on March 8, 2013, Commencing at 9:36 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF:

Kelly Ann Flynn, Esquire
Chad Simpson, Esquire
9th Circuit Solicitor's Office
101 Meeting Street
Charleston, South Carolina 29401

FOR THE DEFENDANT:

Victoria Anderson, Esquire
Lori Proctor, Esquire
Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina 29401

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1 PROCEEDINGS

2 THE COURT: Anything from the State before we
3 bring the jury in?

4 MS. FLYNN: No, Your Honor.

5 THE COURT: Anything from the defendant?

6 MS. ANDERSON: Just our client.

7 THE COURT: You got your client coming?

8 [Whereupon, the defendant enters the courtroom at
9 9:37 a.m.]

10 THE COURT: Would you bring us the jury, please?
11 Let me see the attorneys up here.

12 [Whereupon, an off the record bench conference is
13 held]

14 [Whereupon, Court's exhibit number 3 is marked by
15 the court reporter]

16 THE COURT: For the record it is Friday, March the
17 8th at approximately 9:45. Yesterday at approximately 6
18 p.m. the Foreman sent a note to the court stating that
19 they were hung.

20 The court at that time instructed the jury not to
21 talk to anyone, sent them home, and brought them back
22 this morning. And the court's intention was to give an
23 Allen charge this morning. But the entire jury panel
24 appeared in the jury room -- or at least the Bailiff
25 informed the court that all jurors were present at

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1 approximately 9:30. I came into the courtroom for
2 purposes of giving an Allen charge and I got a note from
3 the Foreman saying they had resolved their impasse and
4 they needed a few more minutes or some more time to
5 deliberate. Now the court is going to give them that
6 time to deliberate. The defendant I believe had a
7 motion. I'll be glad to hear you.

8 MS. PROCTOR: Judge, I would just ask you ---

9 THE COURT: --- is that basically what has
10 transpired?

11 MS. PROCTOR: Yes ---

12 THE COURT: --- does anybody want to add anything
13 to that?

14 MS. PROCTOR: No.

15 THE COURT: I believe I sent them home with the
16 consent of both parties; the State and the defendant, is
17 that correct?

18 MS. PROCTOR: Yes sir, Your Honor. I just think
19 that -- they weren't supposed to begin deliberations
20 until they came out and you gave them the Charge. Then
21 obviously in ten minutes they already ---

22 THE COURT: --- I don't agree with that. I mean
23 once they are in the jury room all twelve of them they
24 can deliberate and talk about the case. My instruction
25 was not to talk to anyone else amongst themselves. Now

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1 apparently they did talk for a few minutes and whatever
2 the impasse is they apparently have resolved it. I don't
3 know what that impasse is. What do you want me to do?

4 MS. PROCTOR: I would just ask if you would bring
5 the jury out and ask them if they have read or talked to
6 anybody last night when they went home; just the normal
7 charge when they go out overnight.

8 THE COURT: Okay. That's what you want me to do,
9 now?

10 MS. PROCTOR: Yes, sir.

11 THE COURT: And then at that point I am going to
12 send them back to the jury room to continue their
13 deliberations.

14 MS. PROCTOR: Yes, sir.

15 THE COURT: Okay. Bring me the jury please?

16 [Whereupon, the jury enters the courtroom at 9:49
17 a.m.]

18 THE BAILIFF: All the jurors are present, Your
19 Honor.

20 THE COURT: Thank you very much. All right. Mr.
21 Foreman and ladies and gentlemen of the jury, yesterday
22 you said y'all had reached an impasse and I sent you home
23 with the intention of giving you some additional
24 instructions. This morning I got a note from the Foreman
25 saying that your impasse had been resolved and y'all

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1 wanted some more time to deliberate. And that's fine; I
2 have no problem with that. I will let you do that. But
3 before we do that I don't know what your impasse was.
4 I'm not asking what it was; don't want to know what it
5 was. But I do want to ask this question.

6 When you went home last night has any member of the
7 jury talked to anyone else about this case other than
8 each other when you came into the jury room at
9 approximately 9:30 this morning? If you have, please
10 raise your hand.

11 Let the record reflect that no juror has raised
12 their right hand. Mr. Foreman, if you and the jury will
13 go to the jury room you can continue your deliberations.
14 Thank you so very much.

15 THE FOREMAN: Thank you, Your Honor. We have
16 completed our deliberations.

17 THE COURT: Okay. Have you reached a verdict?

18 THE FOREMAN: We have, Your Honor.

19 THE COURT: Do you have a verdict form?

20 THE FOREMAN: I do, Your Honor.

21 THE COURT: All right. If you will, hand it to
22 the Bailiff?

23 [Whereupon, the Foreman complies]

24 THE COURT: Thank you so very much.

25 - - -

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1 VERDICT

2 THE COURT: Mr. Foreman, I have filled out the --
3 your verdict on the Indictment. I'm going to ask you --
4 I have -- wrote down the verdict and I have dated it
5 3/8/13. Whitney, will you come get the Foreman to sign
6 it please ma'am and then you can publish the Verdict.

7 [Whereupon, the Clerk complies]

8 THE COURT: Mr. Foreman, if you will just sign
9 right above where it says Foreperson.

10 [Whereupon, the Foreman signs document]

11 CLERK OF COURT: Permission to publish?

12 THE COURT: Yes, ma'am. Go ahead and publish the
13 verdict if you would please.

14 CLERK OF COURT: Case number 2012-GS-10-7545 the
15 State of South Carolina versus Lamar Sequan Brown as to
16 the charge of Burglary in the First Degree we, the jury,
17 by unanimous consent find the defendant guilty of
18 Burglary in the First Degree, signed Hugh Buyck, Foreman.

19 Mr. Foreman and ladies and gentlemen of the jury, if
20 this is your verdict please raise your right hand.

21 [Whereupon, the jury complies]

22 THE COURT: Thank you, ma'am. Does the State have
23 a sentencing sheet?

24 MS. FLYNN: No, Your Honor, if you could give me
25 just one minute.

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1 THE COURT: Pardon?

2 MS. FLYNN: No, Your Honor, I do not. I can get it
3 if you will give me just one minute.

4 THE COURT: All right. How about get me a
5 sentencing sheet please?

6 MS. PROCTOR: And Your Honor, we'd ask that the
7 jury be polled.

8 THE COURT: I will do that just as soon as the
9 Solicitor -- is there any motion concerning the jury as
10 far as the jury itself is concerned?

11 MS. PROCTOR: We would just ask -- not a motion for
12 the jury just asked that they be polled.

13 THE COURT: You want the jury to be polled?

14 MS. PROCTOR: Yes, sir.

15 THE COURT: All right. Madame Clerk, will you
16 poll the jury? Ladies and gentlemen, the Clerk is going
17 to ask you some questions about your verdict. It's real
18 simple and you just follow her instructions.

19 POLLING OF THE JURY

20 CLERK OF COURT: Ladies and gentlemen when I call
21 your name and juror number please raise your hand and
22 answer my questions. Juror number 154 Kimberly
23 Lamontagne, is this your verdict?

24 JUROR 154: Yes.

25 CLERK OF COURT: Is this still your verdict?

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1 JUROR 154: Yes.

2 CLERK OF COURT: Juror number 259, John Spratt, is
3 this your verdict?

4 JUROR 259: Yes.

5 CLERK OF COURT: Is this your verdict?

6 JUROR 259: Yes.

7 CLERK OF COURT: Juror number 247 Kristen Sloan.
8 Is this still your verdict?

9 JUROR 247: Yes.

10 CLERK OF COURT: Is this still your verdict?

11 JUROR 247: Yes.

12 CLERK OF COURT: Juror number 116, Terry Harmon.
13 Is this your verdict?

14 JUROR 116: Yes.

15 CLERK OF COURT: Is this your verdict?

16 JUROR 116: Yes.

17 CLERK OF COURT: Juror number 159 Gwendolyn Leland.
18 Is it still your verdict?

19 JUROR 159: Yes.

20 CLERK OF COURT: Is this still your verdict?

21 JUROR 159: Yes.

22 CLERK OF COURT: Juror number 197 Juliann Moore.
23 Is this your verdict?

24 JUROR 197: Yes.

25 CLERK OF COURT: Is this still your verdict?

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1 JUROR 197: Yes.
2 CLERK OF COURT: Juror number 234 George Scott. Is
3 this still your verdict?
4 JUROR 234: Yes.
5 CLERK OF COURT: Is this still your verdict?
6 JUROR 234: Yes.
7 CLERK OF COURT: Juror number 265 Stanley Styk. Is
8 this your verdict?
9 JUROR 265: Yes.
10 CLERK OF COURT: Is this still your verdict?
11 JUROR 265: Yes.
12 CLERK OF COURT: Juror number 11, Allison Ashmore.
13 Is this your verdict?
14 JUROR 11: Yes?
15 CLERK OF COURT: Is this your verdict?
16 JUROR 11: Yes.
17 CLERK OF COURT: Juror number 142 Felicia Johnson.
18 Is this still your verdict?
19 JUROR 142: Yes.
20 CLERK OF COURT: Is this still your verdict?
21 JUROR 142: Yes.
22 CLERK OF COURT: Juror number 52 Hugh Buyck. Is
23 this your verdict?
24 JUROR 52: Yes.
25 CLERK OF COURT: Is this still your verdict?

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1 JUROR 52: Yes.

2 CLERK OF COURT: Juror number 219 Timothy Quarrick.
3 Is this still your verdict?

4 JUROR 219: Yes.

5 CLERK OF COURT: Is this still your verdict?

6 JUROR 219: Yes.

7 CLERK OF COURT: Your Honor, the jury has been
8 polled.

9 THE COURT: Let the record reflect all jurors have
10 signified to the Clerk's response that this was their
11 verdict and is still their verdict by raising their right
12 hand. While we are waiting on a sentencing sheet I'll be
13 glad to hear you concerning the sentencing, okay.

14 MS. PROCTOR: Your Honor, at this time do you want
15 us to make our post trial motions?

16 THE COURT: You can make them now or I'll give you
17 the ten days; whatever you would like.

18 MS. PROCTOR: Okay.

19 THE COURT: It doesn't matter to me. You can make
20 them now verbally or I'll give you the ten days to do
21 them in writing.

22 MS. PROCTOR: We'll take the ten days but I would
23 ask you to hold off your sentencing for a moment. His
24 family -- there are so many people here and they are
25 trying to park so we'd just ask if you would hold off ---

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1 THE COURT: --- if you would go get the family. I
2 just want some basic information about the defendant.

3 MS. PROCTOR: Yes, sir.

4 THE COURT: That's what I need because he didn't
5 testify; I don't even know how old he is okay.

6 MS. PROCTOR: Yes, sir.

7 THE COURT: If you will go get the family I'll be
8 glad to hear -- listen to them Ms. Anderson. But before
9 we get there Solicitor I would be glad to hear from you
10 first concerning sentencing. My understanding is it is
11 15 to life is that correct?

12 MS. FLYNN: That's correct, Your Honor.

13 SENTENCING

14 THE COURT: I'll be glad to hear you concerning
15 sentencing. I would like to hear his prior criminal
16 record also.

17 MS. FLYNN: Thank you, Your Honor. May it please
18 the court? This defendant has six prior burglaries,
19 Your Honor, in 2008; convictions. And he also has a
20 breaking into auto tanks. Your Honor, this is his
21 seventh burglary ---

22 THE COURT: --- what's the date of -- when did
23 these burglaries commence or start?

24 MS. FLYNN: I believe he was arrested in 2008, Your
25 Honor and convicted in '08 for all six.

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1 THE COURT: So it was -- he pled at one time to all
2 six?

3 MS. FLYNN: That is correct, Your Honor. They all
4 occurred at -- it's my understanding they all occurred on
5 the same day.

6 THE COURT: Okay.

7 MS. FLYNN: Within two streets he broke into
8 several homes.

9 THE COURT: What was his sentence, do you know? Is
10 he on probation or did he...

11 MS. FLYNN: He received a Y-O-A. I don't know if
12 he is still on probation.

13 MS. ANDERSON: He's still on his Y-O-A.

14 THE COURT: So he got a Y-O-A and he's on Y-O-A
15 parole?

16 MS. ANDERSON: He did a 90 day shock and he came
17 out and he is on Y-O-A parole.

18 THE COURT: So he did a 90 day shock?

19 MS. ANDERSON: That's correct, Your Honor.

20 THE COURT: Burglary 2nd or what?

21 MS. FLYNN: They are all Burglary Second Degree non
22 violent.

23 THE COURT: Non violent Burglary Second?

24 MS. FLYNN: That's correct, Your Honor.

25 THE COURT: So basically that was probably the

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1 recommended sentence, Solicitor?

2 MS. FLYNN: I don't know for sure, Your Honor.

3 THE COURT: Okay. Does he have any other criminal
4 record?

5 MS. FLYNN: He also in '08 a Breaking into Auto
6 Tanks where fuel was stored. Your Honor, this would be
7 his seventh time breaking into a home. Now he is young
8 but he's just not getting it. And I think you need to
9 send a message 15 years to life is what this Burglary
10 First Degree is designed for.

11 He has shown that he cannot be trusted in our
12 community. He has affected the victim and Amber Winkler,
13 the other victim in the case; she has written a note
14 which I will show the defense attorney that she would
15 like me to read. She was at a business conference all
16 week. She owns her own business and she just could not
17 be here.

18 THE COURT: Would you hand it up to me?

19 MS. FLYNN: I just wanted to give the defense a
20 chance to read it. I'm not sure if Mr. Poole would like
21 to speak. I believe he does. But Your Honor, I want to
22 reiterate that this is somebody that just continuously
23 breaks into homes and disrupts the community. And I
24 think anything less than a 30 year is inappropriate in
25 this case.

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1 THE COURT: You want me to hear from the victim you
2 said?

3 MS. FLYNN: Yes, Your Honor. And then I'll pass
4 the note up.

5 THE COURT: All right. Mr. Poole, I will be glad
6 to hear you.

7 MR. POOLE: Your Honor, this is my first time -- my
8 name is Richard Justin Poole. This has been my first
9 time experiencing any burglary and I sincerely hope it is
10 the last. I can't describe the feeling unless you've had
11 it happen to you.

12 Knowing that with this particular individual it has
13 happened many times its scares me the possibility that he
14 could be released. I feel this is something the people
15 in Charleston shouldn't have to worry about. And prior
16 to this occurrence I never did and now I can't live in a
17 home that is not alarmed and armed to the teeth. And
18 that's regrettable.

19 I've seen what it has done to my roommate mentally
20 and physically and it's more than just a handful of
21 electronic items. It's kind of the way we feel about
22 going about our daily lives in our homes, not out in the
23 streets where she's not familiar with, she is scared in
24 her own home. She carries a gun from room, to room, to
25 room. And right now she's looking to sell her condo and

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1 get whatever she can get for it just to get out of there.

2 So I really hope to see a hefty sentence.

3 THE COURT: Okay. Thank you very much.

4 MS. FLYNN: Your Honor, at this time if we may pass
5 up the other victim's statement.

6 THE COURT: Yes, ma'am.

7 [Whereupon, Ms. Flynn proffers documents to the
8 court]

9 THE COURT: Thank you.

10 [Whereupon, the court views document]

11 THE COURT: Mia, if you will mark this as court's
12 exhibit number 4 I believe. Thank you very much.

13 [Whereupon, Court's exhibit number 4 is marked by
14 the court reporter]

15 THE COURT: Anything else, Solicitor?

16 MS. FLYNN: No, Your Honor. Thank you.

17 THE COURT: All right. I'll be glad to hear from
18 Ms. Anderson, Ms. Proctor; whoever you like me to hear
19 from.

20 MS. ANDERSON: Thank you. Mr. Brown has been here
21 in Charleston all of his life. He's 22 years old. He
22 has -- every time I talk to him he's always been really
23 great. He's very kind, he's very considerate. He's very
24 respectful to me so he's been really great to work with.
25 He's got all of his family here. He's got his mother,

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1 there are some siblings. He's been with his girlfriend
2 for seven years now. They have a three year old daughter
3 together and I'll tell you now she is the center of
4 everything that he does. When he was released from his
5 Y-O-A back in 2008 he said I came out, I had a daughter,
6 and I planned for my daughter because I knew I needed to
7 change.

8 He said I was humbled by my experience up at the 90
9 day boot camp. I knew that was not the life that I
10 wanted for myself so I wanted to make a change. I had a
11 daughter because I knew that she would call me -- that
12 she would make me into the man ---

13 THE COURT: --- well, what was his problem? Was he
14 on drugs? He's never been an addict?

15 MS. ANDERSON: No, Your Honor.

16 THE COURT: These prior break-ins weren't drug
17 related?

18 MS. ANDERSON: No. He was 18 years old and it was
19 all in one day. And he was with another individual that
20 day and I believe they were not a good influence ---

21 THE COURT: --- okay.

22 MS. ANDERSON: But that experience did change him.
23 Obviously, we understand what the verdict is but we do
24 disagree with it. He does maintain his innocence.

25 THE COURT: Well, that's past due okay. We're

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1 talking about sentencing now.

2 MS. ANDERSON: I know but from what I could see
3 he's made every effort that he could to change his life.
4 He was working at the time he was picked up. He was
5 working at Melvin's Barbeque. He's got pretty good
6 hours; between 30 and 40 hours a week. So he was
7 working, he had planned on going back and getting his
8 G-E-D.

9 His educational goals he wanted to go finish high
10 school and he wanted to go get a trade in underwater
11 welding just like his father. His father passed away
12 when he was about 11 or 12 years old. And in talking
13 with his mother and with his aunts he said, my dad was a
14 good guy. I want to be like him. So those were his
15 goals. He wanted to move on, finish school, get a trade
16 and begin providing for himself, his daughter, and his
17 girlfriend Quintisha in the way that a real man does; by
18 working.

19 He goes to church over at the Abundant Life over on
20 Johns Island. That's something else that he did after
21 getting out back in 2008. He has a really good
22 relationship with his Pastor. He's been in the courtroom
23 the entire time. And he does wish to address the court,
24 Your Honor.

25 THE COURT: I'll be glad to hear from Mr. Grant.

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1 MS. ANDERSON: They are on the way -- oh, he's
2 here.

3 THE COURT: He's here. He's right behind you.

4 MS. ANDERSON: I didn't see him come in.

5 THE COURT: Let me ask you. Does he have a
6 juvenile record?

7 MS. ANDERSON: I don't believe so. I don't have
8 anything.

9 MS. FLYNN: No, Your Honor.

10 THE COURT: Do you want me to hear from Mr. Grant?

11 MS. ANDERSON: Yes, Your Honor.

12 THE COURT: I'll be glad to hear from you.

13 MR. GRANT: Yes, sir. I would like to address the
14 court to ask for some leniency. I met Lamar about two
15 years ago and talked to him. He would come by the church
16 and came by the church. He liked the church and he
17 joined the church. So from then on I have been almost
18 like a mentor to him because I realized that he did not
19 have a father in his life. So I tried my best to be an
20 example for him.

21 The time he went to court and turned himself in I
22 took him to turn himself in because he did not know they
23 had the warrant when they first arrested him. I said
24 you've got to turn yourself in. But I've been here
25 every day to keep him encouraged. It's a sad day for the

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1 Brown family and his mother. I too was burglarized. I
2 went into the United States Army in 1979 and came out in
3 1993. In 1992 I was getting ready to retire. I came
4 home and bought a house in Columbia and moved my family.
5 And three months later they called and said when they
6 came back somebody had burglarized the house.

7 I came home from Fort Dix to Columbia and had a long
8 system -- and then I went to court and never seen
9 anything reported about it. And we picked up and moved
10 here to Johns Island for the last 18 years to hopefully
11 reach some of the young people, young men that I could
12 inspire them to go in the right direction.

13 And that is what my goal is for Lamar. And I hope
14 the court will be lenient because he has changed his life
15 in the last few years and so I've known him -- I've
16 talked to him and he said I'm not guilty and here we are.
17 I said if you feel like you're not guilty you go to trial
18 for it. He says he's not.

19 I ask you Your Honor to please be lenient because he
20 is a great man; humble, obedient, respectful, don't talk
21 loud, don't back talk, don't do anything -- everybody in
22 the community and everybody in the church loves him
23 because he does just whatever you ask him to. Thank you.

24 THE COURT: Okay. Thank you so very much. I
25 appreciate you being here.

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1 MS. PROCTOR: Your Honor, he would like to address
2 you.

3 THE COURT: Any other family members you want me to
4 hear from?

5 MS. ANDERSON: They told me yesterday they --

6 THE COURT: Pardon?

7 MS. ANDERSON: No, Your Honor.

8 THE COURT: Okay. Mr. Brown, anything you would
9 like to add?

10 MR. BROWN: I am a good person, Your Honor. I
11 changed my life after the 90 day shock. They showed me a
12 lot of things. They showed me how to dress and how to
13 present myself and everything. I really learned
14 something from the program when I got out in 2009, sir.
15 I went to church and gave my life to the Lord and
16 everything. Every since I got out I didn't get into any
17 trouble.

18 THE COURT: How long were you in shock, 90 days, or
19 120 days or how long?

20 MR. BROWN: Ninety days sir.

21 THE COURT: Ninety days? Okay.

22 MR. BROWN: I completed it, went home and did the
23 right thing for me and Quintisha Boyd -- and we planned
24 my daughter because I knew she would change my life and
25 she did. She really did. I got a job, stayed home, went

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1 to church and everything, and do everything my Momma
2 asked me, and my Grandmother and everything. I was
3 respectful, obedient. I just think I don't deserve this,
4 sir. I didn't do this. I didn't. I didn't sir. I did
5 not do this.

6 MS. PROCTOR: Your Honor, when he was arrested I
7 would add he did spend 298 days ---

8 THE COURT: --- 298 days?

9 MS. PROCTOR: Yes, sir.

10 THE COURT: Okay. Anything else from the defense?

11 MS. PROCTOR: No, sir.

12 THE COURT: Anything else from the Solicitor in
13 rebuttal you would like to offer?

14 MS. FLYNN: No, Your Honor.

15 THE COURT: Okay. Thank you very much.

16 [Whereupon, the court reviews documents]

17 THE COURT: All right. Mr. Brown, on Indictment
18 number 7545 you are sentenced to the State Department of
19 Corrections for a period of 18 years. I'll give you
20 credit for 298 days.

21 Ms. Anderson, can I get you to sign the sentencing
22 sheet please, ma'am?

23 [Whereupon, Ms. Anderson complies]

24 THE COURT: Jury, y'all may go to the jury room.
25 Thank you so much for your service this week.

1 [Whereupon, the jury exits the courtroom at 10:11
2 a.m.]

3 [Whereupon, jury trial concludes at 10:11 a.m.]
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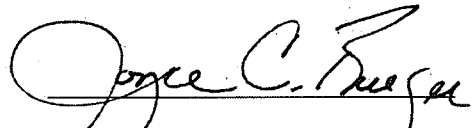
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case reported by Mia Perron,
transcribed by Joyce Rueger, relative to appeal, in the
Court of General Sessions for Charleston County, South
Carolina on the 8th day of March, 2013.

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

June 15, 2013



Handwritten signature of Joyce C. Rueger in cursive script.

Joyce C. Rueger, CVR-M

Court Reporter

SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-versus-

LAMAR SEQUAN BROWN,
Defendant.IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Indictment Number(s): 2012GS1007545

Charge(s): Burglary, 1st Degree

MOTION FOR A NEW TRIAL

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 MAR 14 PM 4:28

FILED

The Defendant, indicted for Burglary in the First Degree, proceeded to trial before the Honorable J.C. Nicholson, Jr. on March 6, 2013. The jury returned a verdict on Friday, March 8, 2013, finding the Defendant guilty of Burglary in the First Degree. The Court sentenced the Defendant to eighteen years.

The Defendant hereby moves for a new trial on the following bases:

1. All defense motions made, but denied;
2. All defense objections made, but overruled.

Defense Counsel submits the following in support of this motion:

1. The trial court erred in denying the Defense's motion for a directed verdict because the evidence presented by the State did not rise to the level necessary to submit the Defendant's case to a jury. *See State v. Arnold*, 361 S.C. 386 (2004), *State v. Bostick*, 392 S.C. 134 (2011).
2. The trial court erred when it declined to give an *Allen* charge to the jury immediately after receiving notice that the jury was unable to reach a verdict. *See Allen v. U.S.*, 164 U.S. 492 (1896). On March 7, 2013, after the close of trial, the jury was sent to the jury room to deliberate. At or around 6:00 p.m., the jury sent a note to the judge indicating that they were deadlocked. Rather than give the jury an *Allen* charge immediately, the Court released the jury for the evening with the intention of giving an *Allen* charge in the morning. The jury was released with instructions to return on March 8, 2013 at 9:30 a.m. At 9:40 a.m., before the jury was called in for the *Allen* charge and morning instruction, the judge received another note from the jury indicating that they had come to a resolution of the matter and needed a few minutes more to look at the evidence before reaching their verdict. The jury was brought in and at the request of defense counsel asked if they had talked to anybody about the case. All jurors indicated that they had not. At that time, the jury foreman indicated that they had reached a verdict and that he had the verdict form ready to give the judge.

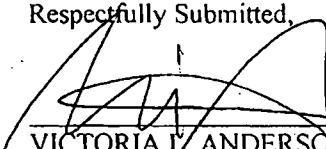
3. At sentencing, defense counsel was handed a copy of a letter from the victim Amber Winkler. The State was provided with that letter on February 28, 2013, at which time the State was aware that Ms. Winkler would not be present or testifying at the trial. The defense was not informed that Ms. Winkler would not be present until on or about the day of trial. Ms. Winkler's letter contained factual allegations that were not addressed at trial—specifically, that Justin Poole's family was present when she arrived home, that there were muddy boot marks on the floors, her room gone through and that her drawers were open. Those facts were not in the reports from CST Charles, Officer Randall, or Detective Lester. Additionally, during the cross-examination of CST Charles, he testified that there were not any shoe prints found in the apartment, nor was there any dirt. Those are facts on which the Defendant would have cross-examined Mr. Poole, CST Charles, and Ms. Winkler, had she testified. Such information should have been provided prior to the start of trial.
4. One of the pre-trial motions was for a hearing to determine the admissibility of Defendant's prior burglary convictions as an element of Burglary in the First Degree. The defense asked the trial court to disallow the introduction of the Defendant's prior convictions to the jury on the basis that they were not being admitted within the five grounds for admission; intent, motive, identity of the person charged with the commission of the crime on trial, common scheme or plan, and absence of mistake or accident (see *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)) and that such would be unfairly prejudicial to the Defendant under Rule 403 of the South Carolina Rules of Evidence. Because this burglary happened at night, there is no need to introduce evidence of two prior burglary convictions in order to make a case for Burglary in the First Degree. As such, the Defendant argued that introduction of his prior record under these circumstances deprived him of due process and denied him his right to a fair trial. This motion was denied.
5. One of the Defendant's pre-trial motions was a motion to suppress the Defendant's statement because that statement was not knowingly, freely, and voluntarily given. See *Jackson v. Denno*, 378 U.S. 368 (U.S. 1964). Rather than being taken to the police station, the police had the Defendant write his statement while seated in the front seat of a police car, with one officer in the seat next to him and the other seated behind him. Additionally, while the Defendant signed the statement, the officer did not have him initial next to each sentence of the Miranda admonition to signify that the Defendant understood his rights and that he wished to waive them and write a statement. The motion was denied.
6. Another of the Defendant's pre-trial motions was a motion to suppress any and all evidence obtained from the Defendant's cell phone as the poisonous fruit of an illegal, warrantless search. The Defendant asserted a right to privacy in his phone and its contents by requiring entry of a code to get access the phone. Detective Lester, in order to obtain access to the phone, guessed the code and proceeded to perform an invasive search on the phone's contents, rather than just obtaining enough information to secure a proper search warrant. See *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. Ind. 2012). Though the phone appeared to have been lost, the Defendant made no additional outward expressions of intent to abandon the cell phone. See *State v. Dailey*, 2010 WL 3836204 (Ohio Ct. App. 3

Dist. Oct. 4, 2010), *People v. Schutter*, __ P.3d __, 2011 WL 1106768 (Colo. Mar. 28, 2011), *United States v. Crist*, 627 F.Supp.2d 575 (M.D. Pa. 2008).

Additionally, once the cell phone was seized and submitted as evidence, it no longer qualified as either lost or abandoned property, but rather seized property. The cell phone was seized at the crime scene on December 22, 2011 and entered into evidence where it remained until it was retrieved by Detective Lester on December 28, 2011. Because the phone was in evidence and untouched for those five days, there were no exigent circumstances that would justify a warrantless search of the seized cell phone. See *State v. Smith*, 920 N.E.2d 949 (Ohio 2009), *United States v. Wall*, 2008 WL 5381412 (S.D. Fla. Dec. 22, 2008) (unpublished), *United States v. Park*, 2007 WL 1521573 (N.D. Cal. May 23, 2007). The motion was denied.

7. During the trial, the State introduced evidence from the Defendant's written statement. The State did not read into the record the Defendant's statement in its entirety, nor did the State enter the statement into evidence for the jury to consider during deliberations. The State's apparently piecemeal introduction of the Defendant's statement was misleading to the jury and denied the Defendant his right to a fair trial.

Respectfully Submitted,


VICTORIA L. ANDERSON
Attorney for Defendant

FILED
2013 MAR 14 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT

Charleston, South Carolina

March 14, 2013

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)
MAR 22 PM 2:56
THE NINTH JUDICIAL CIRCUIT

INDICTMENT NO.: 2012-GS-10-7545

VS.

BY MDG) Order Denying Defendant's
Motion for a New Trial

LAMAR SEQUAN BROWN,
Defendant.

THIS MATTER CAME BEFORE THE COURT on the Defendant's motion for a new trial filed on March 14, 2013.

IT IS THEREFORE ORDERED, after having fully considered the Defendant's motion for a new trial, as well as having fully reviewed the record and the various interests balanced by the Court at the time of its rulings, the Defendant's Motion is hereby **DENIED** pursuant to Rule 29, SCRCrimP.¹ The Court finds that there is competent direct and substantial circumstantial evidence to sustain the jury's verdict and the verdict will stand.

IT IS SO ORDERED.

3/22, 2013
Charleston, SC


J.C. Nicholson Jr.
Presiding Judge

¹ This motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 29, SCRCrimP.

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, INV. J. LESTER, who first being duly sworn deposed and says that, Lamar Sequan Brown, did within this county and state on the 22 December-2011 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Burglary 1st
16-11-311

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 12-22-2011 between the hours of 1900 and 2230 while at Riverland Woods Place Apt (The Retreat), which is in the City and County of Charleston, SC 29412, the above named defendant Lamar Sequan Brown, did willfully, knowingly and unlawfully violate SC Statute 16-11-311 - Burglary 1st.

That the defendant did forcefully enter the rear bedroom window to the residence of Riverland Woods Place Apt# with out the permission or consent from either victim, Richard Poole or Amber Winkler. In that the defendant did remove one Apple laptop computer(\$2000.00), one Nove Thinkpad laptop computer(\$800.00), one Sony Vaio laptop computer(\$800.00), one 42inch Phillips television(\$1200.00), and one gold "cocktail" ring(\$50.00) from the residence. In that the victim, Richard Poole, located a red in color Samsung T-Mobile (Serial#RQ3Z182459W, Model#SGH-T239) cell phone on his bedroom floor that was left behind after the burglary occurred. In that the cell phone did not belong to him or anyone living in the residence. In that through the investigations of Inv. J. Lester and Sgt D. Thompson of the Charleston Police Department the defendant was identified from pictures on the cell phone.

In that the defendant provided investigators a written statement. The defendant positively identified the cell phone as his and stated that no one else had his phone during the time the burglary occurred. He stated that he does not know anyone who lives at the incident location.

In that the offender's residence is less than .5 miles away from the victim's residence.

Based on the investigations and evidence in this case it is reasonable to believe that the defendant committed the offense.

The above is true and believable based upon the investigations and observations of Inv. Lester and Sgt. D. Thompson of the Charleston Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 29th DAY OF December 2011

INV. J. LESTER

AFFIANT

180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

[Signature]
SIGNATURE OF JUDGE

ORIGINAL

COMPLAINT # 11-20927

WARRANT #

CPD Form OT3

2011 DEC 29 PM 6:02

KFN20120100453

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1120927

ARREST WARRANT NUMBER

M640700

DATE OF ARREST

January 18, 2012

ACTION OF GRAND JURY

TRUE

Foreperson of Grand Jury

Date: APR 19 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1002130

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

LAMAR SEQUAN BROWN

DOB:

B/M

Indictment for

Burglary First Degree

395

FILED

4/30/2012 8:37:10 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary First Degree

That in Charleston County, South Carolina, on or about December 22, 2011, the Defendant LAMAR SEQUAN BROWN, did enter the dwelling of Richard Poole and Amber Winkler, located at Riverland Woods Place, Apartment without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KELLEY FLYNN
ASSISTANT SOLICITOR

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1120927

ARREST WARRANT NUMBER

DIRIND1792

DATE OF ARREST

December 3, 2012

ACTION OF GRAND JURY

TRUE BILL

Sam Coe
Foreperson of Grand Jury
Date: 12/3/12

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 3/8/13

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

vs.

LAMAR SEQUAN BROWN

DOB: 1

B/M

Indictment for

Burglary 1st Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

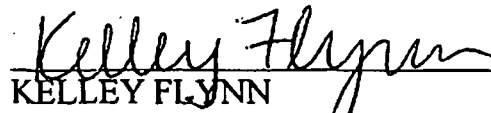
INDICTMENT

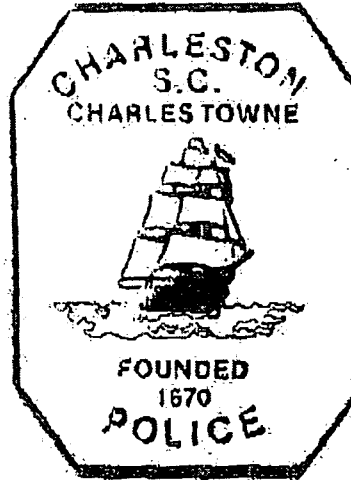
At a Court of General Sessions, convened on November 13, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary 1st Degree

That in Charleston County, South Carolina, on or about December 22, 2011, the Defendant LAMAR SEQUAN BROWN, did enter the dwelling of Richard Poole and Amber Winkler, located at Riverland Woods Place, Apartment without consent and with the intent to commit a crime therein. That, in addition, it was committed by a person with a prior record of 2 or more convictions for burglary or housebreaking or a combination of both; or entry occurred at night; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KELLEY FLYNN
ASSISTANT SOLICITOR



CHARLESTON POLICE DEPARTMENT
180 LOCKWOOD BLVD.
CHARLESTON, SC 29403
843-577-7434
FAX: 843-577-0117

DATE: 11/05/2012
TO: T-MOBILE
FROM: DET. J. LESTER

THIS IS PAGE 1 OF 6 PAGES. IF THIS TRANSMISSION IS INCOMPLETE, PLEASE CALL CENTRAL DETECTIVES AT 343-720-2487.

COMMENTS: DET. JORDAN LESTER (PHONE # 843-720-2361,
email = lester.j@charleston-sc.gov)



STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

Date 11/05/2012

Officer Jordan T Lester

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-150
March 16, 1910TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF CharlestonIt appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDT-Mobile4 Sylvan WayParsippany, NJ 07054Fax: 973-292-8697 Phone: 973-292-8911 E-mail: LER2@TMOBILE.COMNow, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize
such property if found:

DESCRIPTION OF PROPERTY

Subscriber information, account comments, billing records, outbound and inbound calls, subscriber information
on any other T-Mobile numbers listed in the report, call origination location, physical address of cell sites and rf
coverage map, all stored communication, or files including voice mail, e-mail, digital images, text messages,
buddy lists, and call detail records for (843) 345 from 12-09-2011 to 01-03-2012.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Issuing Judgewithin ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person
in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy
shall be attached to a prominent place on such premises.Charleston, S.C.November 5, 20 12Bonnie L. Kord
Signature of Judge

(L.S.)

SCCA/513
(3-78)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Charleston

Personally appeared before me, one Detective Jordan Lester
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Subscriber information, billing records, outbound and inbound calls, subscriber information on any other T-
Mobile numbers listed in the report, call origination location, physical address of cell sites and rf coverage map,
all stored communications, in reference to (843)345-

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDT-Mobile4 Sylvan WayParsippany, NJ 07054Fax: 973-292-8697 Phone: 973-292-8911REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On December 22, 2011 between 1900hrs. and 2230hrs., CPD Officers responded to Riverland Woods
Place Apt# Charleston, SC 29412 in reference to a burglary. That the victim, Richard Poole, located a red in
color Samsung T-Mobile (Serial#RQ3Z182459W, Model#SGH-T239, number (843)345) cell phone on his
bedroom floor that was left behind. The subscriber assigned to (843)345- , is being looked at as a suspect in
this case. This subscriber is known to CPD as Lamar Sequan Brown, and has been in possession of this
telephone. Mr. Brown is qualified as a suspect due to him admitting that the phone located at the scene is his
personal phone and that he lost his phone after the burglary occurred. The I/O believes obtaining the above listed
cell phone records will assist in furthering the investigation.

Sworn to and Subscribed before me
 this 5th day of Nov, 2012

Bonnie G. Lester
 Signature of Judge

(L.S.)

11:05 AM

DET. S. Lester

Affiant

Address 180 LOCKWOOD BLVD.CHARLESTON, SC 29403Phone 843-577-7434

Search Warrant Affidavit
Page 2 of 2

Through experience and training, The Officer knows cellular service providers maintain records related to subscriber information, account registration, billing and airtime records, outbound and inbound call detail, connection time and dates, internet routing information (Internet Protocol numbers), and message content, that may assist in the identification of person/s accessing and utilizing the account.

The Officer is requesting subscriber information for any T-Mobile numbers listed therein.

Through experience and training, The Officer knows that the cellular service provider maintains records that include cell site information and GPS location. Cell site information shows which cell site a particular cellular telephone was within at the time of the cellular phone's usage. Some model cellular phones are GPS enabled which allows the provider and user to determine the exact geographic position of the phone. Further, the cellular service provider maintains cell site maps that show the geographical location of all cell sites within its service area. Using the cell site geographical information or GPS information, officers would be able to determine the physical location of the individual using the cell phone numbers (843-345-). That information is necessary to the investigating officers in order to investigate the crime. If it is possible, please e-mail the results to the investigator in an excel format to Detective Jordan Lester e-mail address is lesterj@charleston-sc.gov.

The Detective is aware that cellular service provider is located within the State of California, and they have requested that this warrant be served by facsimile to the attention of T-Mobile subpoena compliance 973-292-8911.

Signature of Affiant

DET. S. Lel

Signature of Judge

Bonnie L. Kuntz

RETURN

I received the attached Search Warrant November 5th, 20 12, and have executed it as follows:
On November 5th, 20 12 at approximately 1300 o'clock P M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with T-Mobile
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:
All cell phone data was received.

This inventory was made in the presence of Sgt. Thompson
AND Det. Lester

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of

15th
November 2012

Samuel J. Korte
Signature of Judge

(L.S.)

DET. J. Lester
(Signature of Officer Executing Warrant)

Charleston Police Department Advice of Constitutional Rights

This statement of Quan Sequan Brown is taken before Sgt D. Thompson
of the Charleston Police Department. DATE: 12-28-2011 TIME: 1445
I, Quan Sequan Brown, whose address is Wood Lawn Street
am 22 years of age and have completed the 9th grade in school, Sgt D. Thompson
has advised me that (s)he is a member of the Charleston Police Department, and also advised me:

- (1) That I have the absolute right to remain silent and do not have to answer any questions or give a statement, and this fact cannot be used against me.
- (2) That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
- (3) That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- (4) That if I wish to talk with a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- (5) That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and to remain silent.

I fully understand each of these rights which have been explained to me and having these in mind, I wish to waive these rights and answer questions concerning the charge of Burglary
which I have been accused of committing. No threats, force or promise of any kind have been made by anyone to induce or cause me to waive these rights and answer questions.

Witness

Witness

When I was going to the store in a car I had my phone in my lap in when I get out it fell somewhere because when I got back in the car I couldn't find it so a friend called me in said someone has your phone so I turned the phone off I didn't know had it at all in premis.

Q: When did you lose your phone Day/Date/Time?

A: Friday ~~12-28-11~~ 12-28-11

Q: Do you know where you lost your phone?

A: not exactly

Q: What and where were you on the evening of Thursday December 22nd?

I have read the foregoing statement or have had it read to me and it is true and correct to the best of my knowledge. I have given this statement freely and voluntarily and have been provided a copy of my statement.



Quan Sequan Brown

**WITNESS STATEMENT
CONTINUATION SHEET**

Page 2 of 2

CASE NUMBER 1120927

A: in the house eaten or something

Q: Where? A: Yes I was on
1745 Woodlawn.

Q: Did you leave the residence at all between the hours of 6pm and midnight on Thursday 12-22-11?

A: no, i don't i had my little girl

Q: Did anyone have your cellphone during this same time? A: no

Q: Do you know anyone who lives at The Riverland Woods Apartments on Folly Road Behind Walmart?

A: No

Q: Have you ever been to these Apartments?

A: No

Q: Is the cell phone that this officer, Sgt D. Thompson, showed you, your cell phone? A: Yes it is

Q: Have you ever been arrested for Burglary?

A: Yes April 4, 2008

End of Statement

[Signature]

I have read the foregoing statement or have had it read to me and it is true and correct to the best of my knowledge. I have given this statement freely and voluntarily.

[Signature]
Signature

Witness: *[Signature]*

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 26th, 2014


David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2013-000725

THE STATE,

Respondent,

vs.

LAMAR SEQUAN BROWN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court properly decline to suppress evidence obtained from a warrantless search of Appellant's abandoned cell phone when a search warrant was not required because the Fourth Amendment does not apply to abandoned property found at the scene of the burglary; nevertheless, the information was obtained from an independent source pursuant to a lawful search warrant?

STATEMENT OF THE CASE

On November 13, 2012, Appellant was indicted for First-Degree Burglary (2012-GS-10-7545). He was tried before a jury on March 6-8, 2013, with the Honorable J.C. Nicholson, Jr., presiding. [R. 1.] On March 8, the jury returned a verdict of guilty, and Appellant was sentenced to 18 years in prison. [R. 372, 387.] On March 14, 2013, Appellant filed a motion for a new trial, which was denied without a hearing on March 22, 2013. [R. 390-393].

Appellant filed and served Notice of Appeal. Thereafter, Appellant's brief was filed and served. This brief of respondent follows.

STATEMENT OF FACTS

On December 22, 2011, Richard Poole returned to the condominium he shared with two other roommates to open Christmas presents with his girlfriend. [R. 101-103]. When he came home, he heard a strange phone ringing in his bedroom. [R. 103; 114]. After it rang several times, Poole got up and investigated the bedroom. He discovered that his window had been smashed, his television was gone, all of the drawers had been pulled out and searched, and three laptops were missing. [R. 104; 106; 155]. Poole also found an older red T-Mobile phone lying on the bedroom floor. [R. 105]. No one knew who the phone belonged to. [R. 104]

When the police arrived fifteen minutes later, Poole showed them the phone.¹ [R. 105; 123]. No other evidence was found at the scene of the crime. [R. 38; 143-147; 158-159; 167]. The phone was taken to the police department, where it was held until December 28, 2011, when Detective Jordan Lester opened the cell phone without a warrant. [R. 34; 123-125, 235-237]. The phone was password protected, but unlocked when Lester typed in "1234." [R. 34; 289; 307] After guessing the password, Lester noted that the background picture on the phone was of a black male with dreadlocks. [Id.; 343] He accessed the contacts list and identified a number that belonged to the owner's grandmother. [R. 34; 238]. After collecting these two pieces of information, Lester closed the phone and entered Grandma's number into the Accurint² system. After locating her driver's license, he then started comparing pictures of her relatives in the Accurint system until he located a match to the background photo on the cell phone. [R. 34-36; 238-239]. Lester determined that the phone belonged to Appellant. [R. 34-

¹ No fingerprints were taken from the phone because it had been contaminated by Poole and his girlfriend's initial investigation. [R. 129; 166]

² Accurint is a powerful database containing public records of most individuals, including their driver's licenses. <http://www.lexisnexis.com/risk/solutions/accurint.aspx> (last visited April 11, 2014).

41;239.] Appellant was located less than a half mile from Poole's condominium. [R. 241].

On the same day, another police officer contacted Appellant and took his statement. [R. 405]. When questioned, Appellant admitted the cell phone belonged to him but claimed that he was going to the store in a car, and that the cell phone must have fallen out somewhere because when he returned to the car it was missing. [R. 181, 405].³ Appellant also claimed that he had turned off the phone in December before talking to the police. [R. 182,405]. Appellant claimed this incident occurred on December 23, one day after the burglary. [R. 182.]

However, the cell phone was found at the scene of the burglary one day before Appellant claimed to have lost it, and Appellant did not turn his phone off until January 22, 2012. [R. 207] Detective Lester applied for and received a search warrant for the phone records from T-Mobile on November 5, 2012. [R. 399].

Trial

During a pretrial suppression hearing, the trial court heard argument on the issue whether Appellant's Fourth Amendment expectation of privacy in his cell phone had been violated. [R. 9-50, 74-90]. Both parties fully litigated the issue, and the trial court ultimately concluded that, while Appellant had a reasonable expectation of privacy in the cell phone based upon the password, he lost that right by **discarding** the phone at the scene of the burglary and making no efforts to retrieve the phone. [R. 89-90]. Appellant renewed his objections when later data obtained from the cell phone or cell phone records were introduced. [R. 124, 206, 226; 390].

³ Appellant's statement is difficult to read, so the above is based partially on his statements and partially on the testimony of the police officer taking his statements.

The State introduced testimony from Poole, Detective Lester, as well as the crime scene technician and a T-Mobile employee, who testified about the phone records. The State also presented Van Horn, a forensic analyst who testified about the phone records. At the conclusion of trial, Appellant chose not to testify, and did not put on a defense. He was convicted and sentenced to 18 years in prison. Afterwards, Appellant made a motion for a new trial in which he renewed the Fourth Amendment objections he had made at trial. [R. 390.]

ARGUMENT

The trial court properly declined to suppress evidence obtained from a warrantless search of Appellant's abandoned cell phone when a search warrant was not required because the Fourth Amendment does not apply to abandoned property found at the scene of the burglary; nevertheless, the information was obtained from an independent source pursuant to a lawful search warrant.

Appellant claims the trial court erred in refusing to suppress the warrantless search of his password-locked cell phone. Respondent submits that Appellant lost the expectation of privacy in his cell phone by discarding it in the house he burglarized, and, even if the search did violate the Fourth Amendment, evidence of Appellant's identity would not be excluded because the State obtained the same evidence through an independent warrant based off of the cell phone's serial number.

"In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous." State v Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012). "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." Id. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. "When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial court's ruling if there is any evidence to support it; the appellate court may reverse only for clear error." Id. at 82, 736 S.E.2d at 265-266.

I: Appellant lost whatever reasonable expectation of privacy he may have had in his phone by discarding it in the house he burglarized and making no effort to retrieve it.

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

U.S. Const. amend. IV. "The Fourth Amendment protects people, not places." Katz v. U.S., 389 U.S. 347, 361 (1967)(Justice Harlan, concurring). The touchstone of the Fourth Amendment is "reasonableness" subjecting the warrant requirement to exceptions. Kentucky v. King, 131 S.Ct. 1849 (2011); Riley v. California, ___ U.S. ___, 134 S.Ct. 2475, 2483 (2014), citing Brigham City v. Stuart, 547 U.S. 398 (2006). Consistent with Katz, the Supreme Court has uniformly held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a reasonable expectation of privacy that has been invaded by government action. U.S. v. Knotts, 460 U.S. 276 (1983), citing Smith v. Maryland, 442 U.S. 735 (1979).

The reasonable expectation of privacy inquiry involves two discrete questions: First, whether the individual, by his conduct, has "exhibited an actual (subjective) expectation of privacy." Knotts at 281 (citations omitted). Second, whether the individual's expectation, viewed objectively, is one society is prepared to recognize as reasonable under the circumstances. Id. The United States Supreme Court has opined that when a search is conducted by law enforcement officers to discover evidence of criminal wrongdoing, "reasonableness generally requires the obtaining of a judicial warrant." Id., citing Veronia School Dist. 47J v. Acton, 515 U.S. 646 (1995). What is

deemed reasonable depends upon the surrounding circumstances and the nature of the search and seizure. United States v. Montoya de Hernandez, 473 U.S. 531 (1985).

However, if a warrant is not obtained, a search will withstand constitutional scrutiny if it falls within one of several well recognized exceptions to the warrant requirement. See Kentucky v. King, 563 U.S. ___, 131 S.Ct. 1849 (2011); State v. Gamble, 405 S.C. 409, 747 S.E.2d 784 (2013); State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012). The exceptions to the warrant requirement include: (1) search incident to lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile; (5) plain view; (6) consent; and (7) abandonment. State v. Brown, 401 S.C. at 89, 736 S.E.2d at 266; State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (Ct. App. 1995); Fernandez v. State, 306 S.C. 264, 411 S.E.2d 426 (1991).

A. Detective Lester's inspection of Appellant's phone did not violate the Fourth Amendment because Appellant had abandoned his phone, relinquishing all expectations of privacy.

Appellant contends the State did not argue that a warrantless exception applied to the search by Detective Lester of his cell phone. Brief of Appellant 6. Appellant also argues that "[b]y placing a password on his phone, Appellant maintained his expectation of privacy, even if it were lost, abandoned or stolen." Brief of Appellant 7. Both of these arguments are incorrect: abandonment is an exception to the warrant requirement and was argued to and ruled upon by the trial court, and even if Appellant put a password on his cell phone, what matters is whether he maintained that expectation of privacy after discarding the phone. The record clearly shows that he did not.

The trial court paid significant attention to this issue, and over fifty pages of the record are devoted exclusively to the Fourth Amendment analysis. [R. 9-50, 74-90.] The

trial court determined that whether the phone was abandoned or lost was irrelevant. [R. 89-90.] Instead, the trial court held that the question was whether the reasonable expectation of privacy in the phone had been extinguished when Appellant discarded the phone. Id. Further, the trial court found that, while Appellant did have a reasonable expectation of privacy in the phone before the phone was discarded, he lost that expectation by discarding the phone, whatever his subjective intent. [R. 74; 89-90]

Our Supreme Court has long held that warrantless searches are *per se* unreasonable unless an exception to the warrant requirement is present. State v. Dupree, 319 S.C. 454, 456, 462 S.E.2d 279, 281 (1995). The Court has specifically recognized several exceptions, including abandoned property, which has no protection from search and seizure under the Fourth Amendment. Id., 319 S.C. at 457. (citing California v. Greenwood, 486 U.S. 35 (1988)).

Appellant's phone was left in a burglarized apartment by someone who had no right to be in that apartment. Appellant argued at trial that the intent to abandon the property is less clear here, and that, according to property law, the property had not been "abandoned," merely "lost." [R. 47-49]

In State v. Dupree, our Supreme Court rejected this formulation of the abandonment doctrine, instead holding that abandonment has two different meanings: one rooted in property law and another rooted in the Fourth Amendment. 319 S.C. at 457, 462 S.E.2d at 281 (citing California v. Greenwood, 486 U.S. 35 (1988)). In property law, the question is whether the owner has voluntarily, intentionally and unconditionally relinquished his interest in the property, so that another, having acquired possession, may assert a superior interest. Id. But in a search and seizure context, the question is whether, in discarding the property, the person has relinquished their reasonable expectation of

privacy in the property so that its seizure and search is reasonable under the Fourth Amendment. Id. Our Supreme Court noted that the property is not necessarily abandoned but the defendant's reasonable expectation of privacy in the property is abandoned.

In Dupree, our Supreme Court held: "Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for the purpose of search and seizure." Id. (quoting City of St. Paul v. Vaughn, 306 Minn. 337, 237 N.W.2d 365, 370-371 (1975)).

The only way this case varies from the Dupree test is that the phone was not found in a public place. If anything, this strengthens the argument that the property was abandoned: Appellant had no right to be in the victim's home in the first place. The police presence was lawful and Appellant's cell phone was discarded in another person's private residence. There is no indication on the record that Appellant knew the victim, or that Appellant had been a guest at the time. Instead, the cell phone was discarded by Appellant during the commission of the crime.

As the trial court found, this case squarely fits within the definition of abandonment of a reasonable expectation of privacy as provided by Dupree. [R. 89.]

Appellant also argues that searching personal containers requires a warrant. Brief of Appellant 7-8. Respondent acknowledges that Appellant's cell phone had a password of "1234." However, several courts have found that abandoned, locked containers do not retain a reasonable expectation of privacy. See, e.g., United States v. Busic, 592 F.2d 13, 22-23 (2d. Cir. 1978) (no reasonable expectation of privacy when defendant left her locked suitcase, an item in which citizens have a high expectation of privacy, in an airplane which she and her associates had illegally hijacked); United States v. Oswald,

783 F.2d 663, 666-667 (6th Cir. 1986), citing U.S. v. Tolbert, 692 F.2d 1041 (6th Cir. 1982) and Able v. U.S., 362 U.S. 217 (1960) (holding that police action in breaking into a locked suitcase full of cocaine found in a burning car did not violate defendant's Fourth Amendment rights because Appellant had abandoned the property.).

Nonetheless, Appellant argues that “[b]y placing a password on his phone, [Appellant] maintained his expectation of privacy, even if it were . . . abandoned.” Brief of Appellant 6-7 (citations omitted). This argument cannot be squared with what Appellant argued to the court below.

At the suppression hearing, Appellant’s counsel stated: “But what [the State] did was go into the contacts and get information on different people that were identified as family members. And we argue that is the information that is entitled to privacy. **Not the number of the phone; that would be minimally intrusive.**” R. 14 (emphasis added). Therefore, Appellant waived the issue of password protection, since he admitted that the State could retrieve his number from his cell phone.

To the extent this issue is not waived, the actions Appellant took before he discarded the phone are irrelevant under Dupree. What matters is what Appellant **did** to maintain his expectation of privacy after he discarded the phone, since these actions most clearly manifest whether he intended to maintain his reasonable expectation of privacy or not. See People v. Daggs, 133 Cal.App.4th 31 (Calif. 2005)(stating there is no reasonable expectation of privacy in cell phone where defendant left it unattended at the crime scene, fled, and made no effort to reclaim and that defendant’s testimony that he did not intend to abandon the phone is immaterial where the objective circumstances reveal he left the phone unattended); U.S. v. Duran, 884 F.Supp. 548 (D.D.C. 1995)(stating that defendant abandoned any reasonable expectation of privacy he may have had in personal

belongings kept at former workplace, permitting warrantless search of workplace where defendant was automatically discharged through failure to report to work); U. S. v. Rem, 984 F.2d 806 (7th Cir. 1993)(stating defendant's later claims of subjective intent are not dispositive; rather, the objective manifestations of intent must control and indicate defendant's abandonment of suitcase on train); U.S. v. Morris, 738 F.Supp. 20 (D.D.C. 1990)(stating defendant surrendered any reasonable expectation of privacy when he abandoned vials by stuffing into crevice between bus seats and left the seat); U.S. v. Brown, 473 F.2d 952 (5th Cir. 1973)(stating that leaving suitcase buried in chicken coop in open field was abandonment and officers were justified in opening without a warrant);

On December 22, 2011, Appellant left his cell phone in the victim's condominium – the scene of the crime. Appellant took no further action between the 22nd and the 27th to recover the phone.⁴ On December 28, Sgt. Thompson contacted Appellant and obtained a statement from Appellant about the phone. [R. 405] Appellant took no further action between December 28, 2011, and January 22, 2012. [R. 207]

Appellant's lack of action demonstrates he had no desire to maintain an expectation of privacy. Appellant could have, at any time, asked for his phone back. He could have reported the phone stolen to the police department. He could have deactivated the phone immediately after he discovered it was lost. Yet Appellant did none of these things.

⁴ For example, Appellant could have knocked on the victim's door and ask for his cell phone back. He also could have contacted police to report his lost cell phone. It is unclear whether Appellant called the phone to locate it during this time.

B. This Court need not address Appellant's expectation of privacy in his cell phone, as the trial court found that he had one, but had abandoned it.

Appellant expresses concern over the privacy issues at stake in a cell phone.

Brief of Appellant 9-11. Privacy expectations in a cell phone are not dispositive. The trial court found that Appellant had a reasonable expectation of privacy in his phone, but then abandoned that expectation by discarding the phone. [R. 89-90]. Moreover, the password proves nothing about whether Appellant attempted to secure his expectation of privacy in his cell phone. The password on the cell phone is one commonly known and used and was more likely in place through default. The common password fails to signify Appellant's intent to protect the information contained in the cell phone. See California v. Greenwood, 486 U.S. 35 (1988)(stating it is **common knowledge** that plastic garbage bags left on or at the site of a street are readily accessible to snoops, scavengers, and members of the public thereby defeating any claim to Fourth Amendment protection).

Further, Detective Lester did no more here than what a reasonably responsible citizen would do, presented with similar alternatives and resources. The actions Appellant claims were a search are nothing more than opening up a phone, guessing a common password, looking at phone's main screen, and then locating a number within the contact log to determine the identity of the owner. It is difficult to imagine how police would obtain information from an unidentified cell phone in a less intrusive way than what occurred here. Most phones do not have their numbers emblazoned across the startup screen. Some investigation was necessary to determine the identity of the owner.

C. The authority relied upon by Appellant is factually and legally distinguishable.

Respondent submits that the decisions relied upon by Appellant in advancing his argument to this Court are factually and legally distinguishable and provide no guidance on appeal. The decisions offered by Appellant all pertain to cell phones seized at arrest and not abandoned at the scene of the crime. The analysis and rationale for search incident to arrest simply does not apply here. To the extent Appellant may now rely on Riley v. California, ___ U.S. ___, 134 S.Ct. 2475, 2483 (2014), to support his argument the trial court erred in this case in finding an exception to the warrant requirement, Respondent submits the decision provides no guidance as it is also factually and legally distinguishable. Riley was determined based upon an analysis of the search incident to arrest exception and not abandonment. A different analysis applies here. The United States Supreme Court specifically recognized that “other case-specific exceptions may still justify a warrantless search of a particular phone.” Riley v. California, at 2493. The cell phone in this case was abandoned at the crime scene. Clearly no expectation of privacy exists that society is prepared to recognize as reasonable.

II. Even if this search were to be held illegal, Appellant’s identity and phone number should not be excluded because the State also introduced the T-Mobile phone records of Appellant’s phone, an independent source obtained under a lawful search warrant.

On November 5, 2012, Detective Lester obtained a search warrant for the T-Mobile phone records.⁵ In the warrant, Detective Lester swore “[t]hat the victim, Richard

⁵Appellant sought to preempt the State's warrant arguments by stating that the search warrant is invalid for purposes of searching Appellant's phone for the data. Brief of Appellant p. 10-11. The warrant is directed towards T-Mobile for the recovery of information relating to Appellant's account, including subscriber information, account comments, billing record, outbound and inbound calls, call origination, address of cell sites, and all stored communications, such as voicemail, email, texts, buddy lists, images

Poole, located a red in color Samsung T-Mobile (Serial # RQ3Z182459W, Model #SGH-T239, number (843)345-8868) cell phone on his bedroom floor that was left behind.” [R.399-403] (emphasis added). The serial number is unique to that specific phone. Even without the provided phone number, T-Mobile could have provided Appellant’s account information to Detective Lester, including his name and phone number based solely on the serial number. This information was provided to the State by T-Mobile, and the State introduced it at trial. [State’s Exhibits 12-14; R. 206, 226.]

The “fruit of the poisonous tree” doctrine, cited by Appellant provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996). However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct. Id. On reply, Appellant might point out that we could not have obtained the evidence “but for” the initial, warrantless search. This would misstate the fruit of the poisonous tree doctrine and the facts of this case. The independent source doctrine is an exception to the general fruits doctrine, not a separate, related concept. Murray v. United States, 487 U.S. 533, 542 n.3 (1988) (“one must ask whether [the warrant] would have been sought even if what actually happened....had not occurred.”). The cell phone’s serial number was obtained wholly independently of the warrantless search and would have been obtained regardless of the complained of search.

and call details. (State’s Exhibit 1, Page 4). The warrant is valid for information obtained from T-Mobile.

Appellant's identity and phone number in this case were lawfully obtained from T-Mobile, an independent source. As Appellant conceded at trial, issuing a warrant for the records of this phone under these circumstances was proper. R. 16.

Additionally, the evidence inevitably would have been discovered through the request for a search warrant to search the information on the cell phone. State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012). Therefore, this Court should not apply the exclusionary rule, and the trial court's ruling should be affirmed.

CONCLUSION

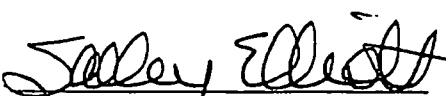
Based on the foregoing, the State submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY 
Salley W. Elliott
S.C. Bar No: 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 16, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2013-000725

THE STATE,

Respondent,

vs.

LAMAR SEQUAN BROWN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b),
SCACR.

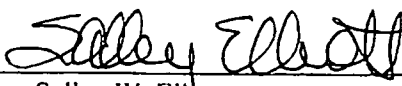
Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY:


Salley W. Elliott
S.C. Bar No: 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of December, 2014.


Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMAR SEQUAN BROWN,

APPELLANT

APPELLATE CASE NO. 2013-000725

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether admission of evidence gleaned from a warrantless search of the contents of appellant's code-locked cell phone violated the Fourth Amendment and the South Carolina Constitution?

STATEMENT OF THE CASE

On November 13, 2012, a Charleston County grand jury indicted appellant Lamar Sequan Brown for first degree burglary. R 395. On March 6, 2013, appellant was tried before the Honorable J.C. Nicholson, Jr. and a jury. R. 1. Kelly Ann Flynn and Chad Simpson of the Ninth Circuit Solicitor's Office represented the State. R 2. Victoria Anderson and Lori Proctor represented appellant. R. 2. The jury convicted appellant. R. 372, ll. 14 – 18. Judge Nicholson sentenced appellant to eighteen years' imprisonment. R. 387, ll. 17 – 20. On March 14, 2013, appellant filed a motion for a new trial. R. 390. On March 22, 2013, Judge Nicholson denied the motion without a hearing. R. 393. This appeal follows.

STATEMENT OF FACTS

The facts of this case are simple. On December 22, 2011, the resident of a condominium returned from an evening on the town to find his apartment burglarized. R. 102, l. 24 – 106, l. 18. His bedroom window was broken. R. 104, ll. 18 – 20. On the floor of his bedroom he found an unfamiliar cell phone. R. 104, l. 11 – 105, l. 11. When the police arrived, he gave the cell phone to them. R. 105, ll. 18 – 19. The police did not find fingerprints or any other physical evidence at the scene. R. 143, l. 22 – 146, l. 18. The police admitted the cell phone was “the only connection to whoever may or may not have been in that apartment.” R. 39, ll. 1 – 3.

Detective Jordan Lester was assigned the case. R. 33, l. 24 – 34, l. 1. Five days after the burglary, Detective Lester opened the phone and guessed the code (1-2-3-4) to unlock its contents. R. 38, ll. 19 – 21. R. 34, ll. 13 – 18. Detective Lester did not get a search warrant before examining the data contained in the cell phone. R. 35, ll. 14 – 16.

Using the information in the phone, Detective Lester developed appellant Lamar Sequan Brown (“Brown”) as a suspect. R. 34, l. 13 – 35, l. 19. R. 37, l. 23 – 38, l. 4. Detective Lester candidly admitted that without searching the phone’s data, he would not have been able to determine its owner. R. 39, ll. 17 – 23. Another officer interviewed Brown who admitted the phone was his. R. 189, ll. 18 – 22. Brown told the police he lost the phone the day after the burglary. R. 182, ll. 18 – 25. He denied committing the robbery. R. 183, ll. 9 – 25.

ARGUMENT

Admission of evidence gleaned from a warrantless search of the contents of appellant's code-locked cell phone violated the Fourth Amendment and the South Carolina Constitution.

The police needed a warrant to search Brown's phone. Searches without a warrant are *per se* unreasonable under the Fourth Amendment unless some exception applies. Katz v. United States, 389 U.S. 347, 357 (1967). No exception applies, nor did the State argue that any exception applied. Since police did not obtain a warrant, evidence obtained from the search of the phone should be suppressed.

The State only argued that Brown lost any expectation of privacy in the phone because it was abandoned. R. 23, l. 15 – 30, l. 6. Judge Nicholson held that Brown had an expectation of privacy in the phone because of his privacy code. R. 89, ll. 17 – 21. However, the trial judge ultimately held that Brown lost his any constitutional protections in the phone because it “was either lost or abandoned.”¹ R. 89, l. 17 – 90, l. 5.

The categorization of the phone as lost or abandoned property makes no difference to this case. Once the phone came into the possession of the police, it became seized property. This case does not present the situation of a responsible citizen giving police a lost phone for the purpose of identifying its owner. Even in such a situation, it does not necessarily follow that the owner of the phone gives up all expectations of privacy in the phone. See People v. Schutter, 249 P.3d 1123, 1125-26 (Colo. 2011)

¹ Brown renewed his pretrial suppression motion when the phone was entered into evidence, when Detective Lester testified about his search of the phone's data, and again in his motion for a new trial. R. 124, ll. 6 – 21. R. 237, l. 10 – 238, l. 3. R. 390.

(holding that owner of phone left behind at gas station maintained an expectation of privacy and upholding suppression of warrantless search of phone's contents).

By placing a password on his phone, Brown maintained his expectation of privacy, even if it were lost, abandoned, or stolen. One of the primary reasons for placing a password on a phone is to prevent anyone but the owner from accessing its contents. A person with a password-protected phone would likely hope that any unauthorized person coming into possession of the phone would be unable to learn anything about its owner. Many reasonable people who have their phones lost or stolen would prefer to never recover the phone rather than have unknown persons access a device that contains a wealth of sensitive personal information. Hoping for the phone's destruction is more likely in this day when the contents are increasingly backed up to a computer elsewhere, such as a cloud. State v. Granville, ___ S.W.3d ___ 2014 WL 714730, *2 (Tex. Crim. App. Feb. 26, 2014). It is not the device itself that a person wants to keep private—it is the data on the phone. The device is merely a key to unlock the content, which is sensitive and personal. A phone protected with a password should—at a minimum—receive the same protection as a sealed letter. Ex parte Jackson, 96 U.S. 727, 733 (1878). The Fourth Amendment protects people, not places. Katz, 389 U.S. at 351. Nothing in this case shows that Brown intentionally abdicated his privacy interest in his personal data merely because he lost his phone.

Even in the case of a simple physical container lawfully seized by police, a warrant is required. United States v. Chadwick, 433 U.S. 1 (1977) (overruled on grounds related to the automobile exception to the warrant requirement by California v. Acevedo, 500 U.S. 565 (1991)). Chadwick is particularly instructive in this case. Amtrak officials

saw a man load a 200-pound padlocked footlocker on a train in San Diego. Chadwick at 3. The footlocker was leaking talcum powder, a substance used to camouflage the scent of marijuana. Id. When the train arrived in Boston, federal agents watched men retrieve the footlocker and sent a drug dog, who signaled to the agents that contraband was present without alerting the men. Id. at 3-4. The agents watched the men place the footlocker in the trunk of a car, but before the trunk could be closed, arrested them. Id. at 4.

The agents seized the footlocker and transported it and the men (in separate cars) to a federal building for questioning. Id. at 4-5. An hour and a half after the arrest, the agents opened the footlocker and found marijuana. Id. The agents did not obtain a warrant before opening the footlocker. Id.

The United States Supreme Court held that a warrant was required before the government could open the footlocker. Id. at 11. The Court held, “There being no exigency, it was unreasonable for the Government to conduct this search without the safeguards a judicial warrant provides.” Id. Chadwick emphasized that the ruling was based on the fact that the police had seized the footlocker. “Once the federal agents had seized it at the railroad station and safely transferred it to the Boston Federal Building under their exclusive control, there was not the slightest danger that the footlocker or its contents could have been removed before a valid search warrant could be obtained.” Id. at 13. The principle that the police need a warrant before searching closed containers seized from an automobile has been recognized by South Carolina. State v. Brown, 401 S.C. 82, 91, 736 S.E.2d 263, 267 (2012).

The Chadwick rule regarding seized, locked containers applies to this case. At the time the police took possession of the phone, regardless of its legal status of lost, abandoned, or any other status, it became seized property just like the footlocker. The password on the phone served the same function as the footlocker's padlock. No exigency required Detective Lester—five days after the phone's seizure—to inspect its contents. Therefore, the police were required to obtain a warrant. Since they did not, the search was illegal and all of the evidence flowing from this search should be suppressed as fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963). The State admitted at the suppression hearing, "This entire case arises from this phone. We're not disputing that." R. 32, ll. 9 – 11.

Indeed, cell phones, because of the "almost unlimited amount of private information" they contain should be given even greater protection than a simple locked container like in Chadwick. See Granville at *4 (discussing the "enormous" potential for invasion of privacy and embarrassment inherent in modern cell phones); United States v. Wurie, 728 F.3d 1, 13-14 (1st Cir. 2013) (recognizing that the "most personal 'papers' and 'effects'" protected by the Fourth Amendment are now stored in cell phones); State v. Smith, 920 N.E.2d 949, 955-56 (Ohio 2009) (giving cell phones greater protection than containers and requiring a warrant even when a phone is seized during a search incident to arrest). Because South Carolina's constitution contains an express right of privacy, this Court should adopt an interpretation maximizing citizens' privacy interests in their

cell phones.² “The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001).

In Granville, the Texas Court of Criminal Appeals held invalid a warrantless search of a cell phone seized from an arrestee and placed into a jail property room. Granville, at *7. The Texas court recognized the extreme intrusiveness of a search of a cell phone, stating that “Searching a person’s cell phone is like searching his home desk, computer, bank vault, and medicine cabinet all at once.” Id. at *6. The phone searched in Granville did not even have a password, but the court nevertheless held police needed a warrant. Id. at *1. Brown had an even greater expectation of privacy than the defendant in Granville because Brown locked his phone with a password. Therefore, the warrantless search was illegal.

The State may argue, as the solicitor did below, that the illegal search was corrected because the police subsequently obtained a warrant. Indeed, without much analysis, the trial court found the subsequent warrant was valid if the first search was valid. R. 32, ll. 1 – 8. In looking at the face of the warrant, it is clear that it is invalid. R. 399. The warrant is not for searching the phone. It is for obtaining records. One only need look at the description of what is to be searched to see that the warrant was directed at the cell phone provider. R. 399. By its own terms, the warrant did not authorize the police to search the phone. R. 399.

² Brown argued the application of the South Carolina Constitution to the trial court. R. 47, ll. 7 – 17.

Furthermore, the information in the warrant's description of property includes the cell phone number, which was only obtained when the phone was illegally searched without a warrant.

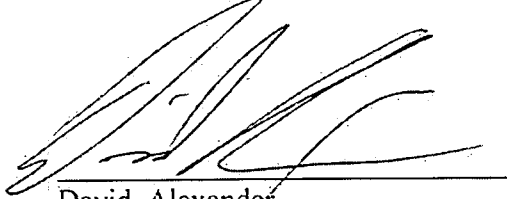
R. 399. This warrant is fruit of the poisonous tree and does not validate the warrantless intrusion into the phone.

In accordance with the United States and South Carolina Constitutions, this Court should recognize the great interest its citizens have in the privacy of their personal data, especially as can be accessed by their cell phones. Even though Brown was not in physical possession of his phone, he never intended anyone to have unlimited access to his personal data. Because the police failed to obtain a warrant, the search of Brown's phone was illegal and all evidence flowing from the phone—which is all of the evidence in this case—should be suppressed.

CONCLUSION

For the foregoing reasons, Brown's conviction must be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander
Appellate Defender

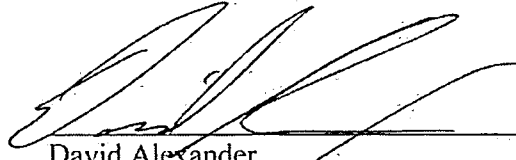
ATTORNEY FOR APPELLANT

This 2nd day of December, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 2nd, 2014



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

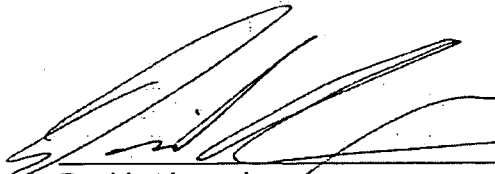
V.

LAMAR SEQUAN BROWN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of December, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 2, 2014

Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Lamar Sequan Brown

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

David Alexander
Appellate Defender

DAA/brb

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMAR SEQUAN BROWN,

APPELLANT

APPELLATE CASE NO. 2013-000725

FINAL REPLY BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

The United States Supreme Court's decision in Riley v. California, 134 S.Ct. 2473 (2014) controls the result in this case. Riley struck an important blow for Americans' privacy rights. The Court recognized that cell phones "differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person." Riley at 2489. The storage capacity differentiates cell phones from other items. Id. "The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions. . . ." Id. The Court noted that "it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate." Id. at 2490.

The State seeks to limit Riley to when the State acquires a cell phone through a search incident to arrest. The Supreme Court did not announce its holding in such limited terms. The Court stated: "Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." Id. at 2493. The Court's own language in stating its holding creates a rule that the police must obtain a warrant before searching a phone. The Court could have limited its holding to the search incident to arrest situation, but explicitly chose not to do so. Reading such a limitation into Riley would ignore Chief Justice Roberts' long discussion of the categorical difference of cell phones and the greater privacy concerns regarding their treatment by the police.

The State claims the theory of abandonment absolves the police of the necessity of obtaining a warrant. Nothing in Riley or the facts of this case support that opinion. As noted in Riley, the information on the phone is what is important, not the physical object itself. Even if the physical object is abandoned, it cannot be argued that the “intimate” and “mundane” details of appellant’s life were abandoned for all the world to know. The fact that appellant maintained a lock on his phone demonstrates that he did not want anyone to access his phone. Most citizens whose phone was lost would prefer that their phone be destroyed or irrevocably locked instead of allowing a stranger to access their entire life through their phone. Abandonment theory may be relevant when the object itself is what is abandoned. But when the item is more than a physical object—which is the entire thrust of the Riley opinion—abandonment theory does not apply, especially when a citizen has a lock code on his phone. Furthermore, the express right of privacy in the South Carolina Constitution supports the idea that a citizen’s personal data is still protected even if the physical phone is lost. S.C. Const. art. I, § 10.

Nor should the analysis change because the lock code on appellant’s phone was easy to crack. Such a rule would lack any logical force or clear line. It would beg the question of how easy must the code be to break. Would a birthday be too easy? Would an address be too easy? The Court should not seriously consider making Fourth Amendment rights contingent on a citizen’s ability to invent a difficult code for their phone.

The State’s independent source argument is not supported by the record. The police could not have obtained the warrant without first searching the phone. The police officer’s testimony on this point was clear:

Q. So when you pulled [the phone] from evidence you activated it and went through it and you unlocked it to get into it. There was a lock on there. And you would not have been able to figure out the owner of the cell phone without getting into that phone; without getting into that contact list.

A. At the time, no.

R. 39, ll. 17 – 23.

Q. So all this information that you listed in the warrant—not the—the serial number of the phone, the phone number, the model number you got those from the phone itself when you went into it, correct?

A. Yes, ma'am, they are located on the phone.

R. 41, ll. 14 – 22.

Q. But you were never would have been able to talk to him or have anybody to talk to if you hadn't gone into that phone in the first place.

A. At that time.

Q. And that's the information that you used in this warrant here?

A. Yes, ma'am.

R. 42, ll. 4 – 10. The subsequent warrant was based on the initial illegal search. The Court should disregard the State's attempt to save this search on a ground that is not supported by the record.

Finally, the State attempts to assert the inevitable discovery doctrine to save this illegal search. After Riley, it seems clear that a warrantless inventory search is not allowed. Furthermore, the State neither argued nor presented evidence of any kind of standardized procedure for obtaining warrants to search abandoned cell phones. See Nix v. Williams, 467 U.S. 431, 442-43 (1984). Williams is instructive as to the specificity of the evidence required to satisfy the prosecution's burden. 467 U.S. at 448-49. In Williams, the defendant

kidnapped and murdered a child on Christmas Eve. Police were engaged in a massive, systematic search for the child's body. While the search was ongoing, Williams led the police to the child's body. The search was halted. The evidence surrounding Williams' statements and helping police to find the body were suppressed because of violations of his Sixth Amendment right to counsel.

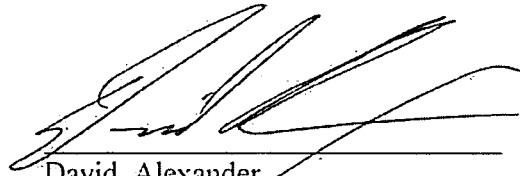
However, the Supreme Court held that the state met its burden of showing that the police would have discovered the child's body. See id. at 448-49. The prosecution presented the testimony of the agent in charge of the search. The agent testified that he had marked off two entire counties in grids and instructed the search teams to check all roads, ditches, culverts, abandoned farm buildings or any other places where a child's body would be found. Teams of four to six persons were assigned specific parts of the grid. The child's body was ultimately found in a culvert—exactly where the searchers had been instructed to look. The agent testified that the child's body would have been found within several hours of the time it was actually found had the search not been halted. See id.

No such specific evidence was presented in this case. The State had ample opportunity to present such evidence. But no such evidence appears in the record and indeed, the State's argument concerning inevitable discovery in its brief fails to cite to the record. The Court should ignore this attempt to save the illegal search.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction.

Respectfully submitted,

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David Alexander
Appellate Defender

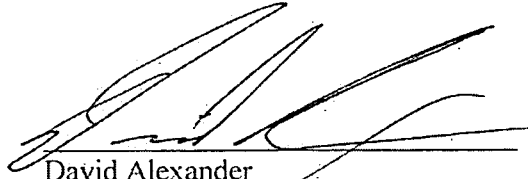
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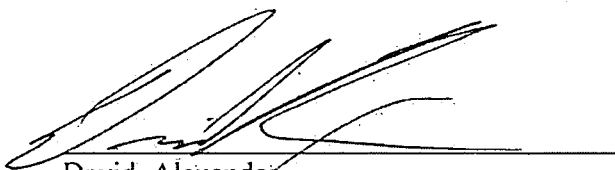
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David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
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Senior Assistant Deputy Attorney General
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