

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 5534 (Filed February 7, 2018)
Appellate Case No. 2015-000981

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S.C. SUPREME COURT

The State,.....Respondent,

V.

Teresa Annette Davis, ...Petitioner.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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The South Carolina Court of Appeals

The State, Respondent,

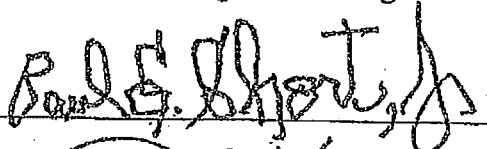
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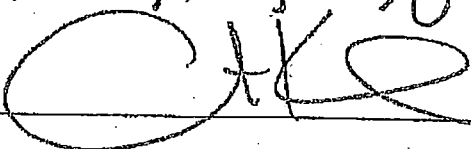
Teresa Annette Davis, Appellant.

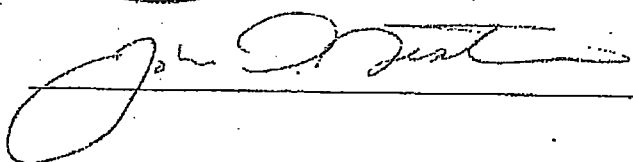
Appellate Case No. 2015-000981

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.


_____ J.

Columbia, South Carolina.

cc:

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FILED

April 26, 2018

David A. Spencer, Esquire

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
R. Lawton McIntosh, Circuit Court Judge

RECEIVED

Appellate Case No. 2015-000981

MAR. 09 2018

SC Court of Appeals

The State, ... Respondent,

v.

Teresa Annette Davis, ...Appellant.

APPELLANT'S PETITION FOR REHEARING

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS:

Pursuant to Rules 221 and 240 of the South Carolina Appellate
Court Rules, Appellant Teresa Annette Davis ("Appellant")
respectfully moves this Court for rehearing in the instant matter. The
opinion of this Court, which affirmed the Circuit Court's denial of

Appellant's request to sever charges and motions for directed verdict, and is the catalyst of this petition, was filed on February 7, 2018.¹

FACTS/PROCEDURAL BACKGROUND

On February 10, 2014, Douglas Paul drove by his mother's residence in Seneca, South Carolina. (Tr. P. 73, lines 24 – P. 77, line 17). Prior to February 10, 2014, Paul's mother moved into a nursing home and the house was placed on the market. (R. p. 78, line 1 – p. 81, line 14). As Paul drove by the house, he noticed a car in the driveway that was not supposed to be there. (R. p. 82, lines 2-6). Paul stopped and returned to the house to investigate. (R. p. 82, lines 20-22). Paul looked in the car's windows and went to the front door of the house, which was locked. (R. p. 82, line 21 – p. 83, line 6). Paul noticed the interior garage door into the house was open. (R. p. 83, lines 9-15). Paul called his wife to bring a key to the house so he could gain entry into the house. (R. p. 83, lines 17-22). Once he gained entry into the house, Paul noticed a back sliding glass door open and he heard noises

¹ Appellant timely filed a motion for extension of time to file this Petition for Hearing. The motion was granted pursuant to Order filed February 23, 2018.

from the second floor. (R. p. 84, lines 9-24). Paul then called 9-1-1. (R. p. 85, lines 11-12). After a sweep of the house was conducted by law enforcement, Paul entered the property and noticed that a number of items inside the residence had been shifted or moved. (R. p. 88, line 11 – p. 90, line 8).

Paul informed law enforcement that his wife observed an individual who did not “look like he belong[ed]” in the neighborhood. (R. p. 85, lines 16-22). Appellant’s brother was located a short distance from the house, detained, and brought back to the scene. (R. p. 111, line 25 – p. 112, line 20).

Officer William Freestate of the Oconee County Sherriff’s Department arranged for the vehicle in the driveway, which was determined to be registered to Appellant’s mother, to be towed from the property. (R. p. 123, line 20 – p. 124, line 3). Officer Freestate conducted an inventory of the car. During his search of the vehicle, he discovered a black purse and small plaid bag on the driver’s seat. (R. p. 124, line 21 – p. 131, line 23). Appellant’s driver’s license, lip gloss, and paperwork were recovered from inside the black purse. (R. p. 130,

lines 5-7). Inside the small plaid bag, law enforcement found two bags containing a crystal-like substance, which was eventually tested and later confirmed to be methamphetamine. (R. p. 131, line 25 – p. 132, line 5; p. 152, lines 6-9).

After the house was searched, the vehicle inventoried and towed, law enforcement observed Appellant on the roof of the house, clinging to the chimney. (R. p. 134, line 21 – p. 135, line 9). Officers retrieved a ladder from the garage and assisted Appellant down from the roof. (R. p. 135, lines 19-24). Appellant was placed in investigative detention. (R. p. 136, lines 1-2).

Following Appellant's arrest, she stated to law enforcement that she was dropping her friend off at the house. (R. p. 136, lines 14-16). When asked why she was on the roof of the house, she responded that she was scared. (R. p. 136, lines 17-19). When asked who the crystal-like substance belonged to, Appellant stated that it belonged to her and that her brother did not do methamphetamine. (R. p. 137, lines 4-8). Appellant later recanted her statement that the drugs were hers and

instead stated to law enforcement that the drugs were not hers. (R. p. 137, lines 9-12).

Law enforcement were unable to recover any fingerprints from inside the house matching Appellant. (R. p. 156, lines 1-3).

Appellant was indicted by a grand jury for first-degree burglary and possession with intent to distribute methamphetamine, second offense. (R. p. 9, lines 7-10). At trial, Appellant moved to sever her charges on the grounds the charges were not closely related in kind of character and the prejudicial effect of trying to charges together would be substantial. The Circuit Court denied Appellant's motion.

At the close of the State's case, Appellant moved for a directed verdict on two grounds: (1) the State failed to prove Appellant had control over the methamphetamine found in the vehicle since Appellant was on the roof of the home at the time the drugs were discovered; and (2) the State failed to show there was an occupant or habitant of the home against whom the offense of burglary had been committed. The court denied Appellant's motion.

Appellant was ultimately convicted, by a jury, as indictment. (R. pp. 3-6; p. 229, lines 6-15). She was sentenced to an aggregate term of eighteen years' imprisonment. (R. pp. 3-6; p. 234, lines 10-11).

Appellant appealed, arguing the Circuit Court erred in denying Appellant's motion to sever the charges. Appellant further argued the Circuit Court erred in denying the motions for directed verdict.

This Court affirmed the Circuit Court's ruling on the motion to sever the charges and motions for directed verdict. With regard to the ruling on the motion to sever charges, this Court held that while the grand jury issued two indictments against Appellant, her arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation; therefore, Appellant's offenses originated from the same chain of events and required the same witnesses.

With regard to the motion for directed verdict on the methamphetamine charge, this Court held that there was evidence—specifically Appellant's admission that the drugs were hers; Appellant's acknowledgement that she drove the car to the home; and the location of

Appellant's purse and smaller plaid bag—in which a jury could reasonably deduce Appellant's guilt.

Finally, with regard to the denial of Appellant's motion for direct verdict as to the burglary charge, this Court held that Paul's testimony that his mother would return to the home if she was able and that he only placed the home on the market because the future was uncertain was evidence manifesting an intent of the mother to return to the home. Accordingly, this Court held there was "sufficient circumstantial evidence to create a factual dispute as to what type of structure [Appellant] entered" and, therefore, the Circuit Court properly denied Appellant's motion for directed verdict.

LAW/ANALYSIS

I. The Court Erred in Affirming the Circuit Court's Denial of Appellant's Motion to Sever Her Charges

In the instant case, Appellant was indicted for first-degree burglary and possession with intent to distribute methamphetamine, second offense. At trial, Appellant moved to sever her charges on the grounds the charges were not closely related in kind or character. Appellant further alleged the prejudicial effect of trying the charges

together would be substantial to Appellant. The court denied Appellant's motion.

In affirming the Circuit Court's denial of Appellant's Motion to Sever, the Court held that while the grand jury issues two indictments against Appellant, her arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation and, therefore, Appellant's offenses originated from the same chain of events and required the same witnesses.

However, the Court seemingly ignored that the charges—burglary and PWID methamphetamine—did not require proof by the same evidence or the same witnesses. Indeed, Officer William Freestate was the only witness to testify regarding where the methamphetamine was found, while other officers, who did not participate in the search of the vehicle where the drugs were found, testified regarding finding Appellant on the roof of the home. Thus, the evidence in the record does not support the notion that Appellant's charges were of the same general nature and closely related in kind, place, and character. See See State v. Sullivan, 277 S.C. 35, 44, 282 S.E.2d 838, 843 (1981) (noting

where offenses charged in separate indictments are of same general nature, involving connected transactions closely related in kind, place, and character, trial judge has authority to order indictments tried together, absent a showing that defendant's substantive rights would be violated); see also State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) (stating joinder of charges proper if the chargers were of the same general nature and sprung from the same series of transactions, were committed by the same offender, and required the same proof).

Accordingly, the Court erred in affirming the Circuit Court's denial of Appellant's motion to sever her charges. Consequently, the Court should reverse the Circuit Court's ruling.

II. The Court Erred in Affirming the Circuit Court's Denial of Appellant's Motions for Directed Verdict

The Circuit Court denial Appellant's Motions for Direct Verdict on the PWID methamphetamine charge and burglary charge. The Court affirmed the Circuit Court's denial of the motion on both charges.

a. The State Failed to Present Evidence Appellant Had Control over the Drugs Found in the Vehicle

In affirming the Circuit Court's denial of Appellant's Motion for Directed Verdict on the PWID methamphetamine charge, the Court held the State presented sufficient evidence in which a jury could reasonably deduce Appellant's guilt.

"Possession of any amount of controlled substance coupled with sufficient indicia of intent to distribute will support a conviction for possession with intent to distribute." State v. James, 362 S.C. 557, 562, 608 S.E.2d 455, 457 (Ct. App. 2004). Possession is an essential element of the crime of possession with intent to distribute narcotics. Possession may be actual or constructive. Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). A defendant's mere presence in or around location where the illegal substance is found is insufficient to prove constructive possession of the illegal substance. Id.

In State v. Heath, our Supreme Court found the evidence presented by the State was insufficient to establish that defendant was in constructive possession of the controlled substance where: (1) the controlled substance was found in car-washing mitt in outside recycling bin near back door of home owned by defendant's mother, (2) there was no direct circumstantial evidence that linked defendant to the controlled substance; and (3) the State presented no evidence that defendant could have exercised dominion and control over area where controlled substance was found. State v. Heath, 370 S.C. 326, 330, 635 S.E.2d 18, 19 (2006).

Contrary to the Court's holding, the State failed to present direct or circumstantial evidence tending to prove Appellant either actually or constructively possessed the methamphetamine found in the vehicle. With regard to actual possession, the State did not present any evidence the methamphetamine was found on Appellant's person. Therefore, the State failed to prove Appellant actually possessed the methamphetamine.

Moreover, Officer William Freestate testified the car was registered to Lavina Davis, Appellant's mother. Officer Freestate further testified that when he searched the vehicle, a purse, containing Appellant's driver's license, was found on the driver's seat. However, Freestate stated he observed a plaid bag on the driver's seat next to the purse. It was in this small plaid bag that investigators discovered the methamphetamine. Appellant did not exercise dominion and control over the vehicle and the small plaid bag that had no identification indicating the small plaid bag belonged to Appellant. The State failed to present any evidence, direct or circumstantial, that would tend to prove Appellant could have exercised dominion and control over the small plaid bag where the drugs were found. See Heath, supra.

According the Court should reverse the Circuit Court's denial of Appellant's Motion for Directed Verdict as to the PWID charge.

b. The State Failed to Present Evidence that the Home Was Occupied at the Time of the Incident

While recognizing South Carolina jurisprudence does not speak directly to the facts of the subject case, the Court held that the Circuit Court properly denied Appellant's directed verdict motion with regard to

the burglary charge. Specifically, the Court held the State presented sufficient evidence to create a jury question as to whether the home's occupant had intention to return to the home.

In its opinion, the Court focused on the owner's son's action as the power of attorney. The Court noted that the son testified the owner's belongings remained in the home, the home was placed on the market because of the uncertain future of the owner, but it was the family's hope that the owner would return to the home at some point. The Court properly noted that the record lacks direct evidence of the occupant's intent. However, the Court erred in finding that the above testimony of the owner's son, particularly that the family hoped the owner would return to the home, is insufficient to establish a factual dispute as to the owner's intent on returning to the home. Notably, there was no direct testimony from the owner that she had intent to return or evidence tending to show she could ever return. See State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979) ("[A] house, although furnished as a dwelling house loses its character as such for the purpose of burglary, if the occupant leaves it without the intention to return."); Id. ("While

authorities agree that the temporary absence of occupants will not prevent a resident from becoming the subject of a burglary it is required that such occupants leave with the purpose of returning in order for a breaking and entering during their absence to constitute burglary.”).

Furthermore, unlike in State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988), where the Court found sufficient evidence of an intent to return existed when the occupant left \$10,000 worth of possession in the structure, such evidence—particularly the amount and value of possessions—is not present in the instant case.

Moreover, unlike State v. Kautz, where the prior owner kept tools and personal belongings at the home and worked at the home at least once a day, there is insufficient evidence that the owner or the son was working in the home to maintain the subject property. Rather, the only evidence was that the son checked on the house and kept on the utilities. This evidence is distinguishable from that in Kautz.

Based on the foregoing, the State failed to present sufficient evidence to create a jury question as to the intent of the owner to return

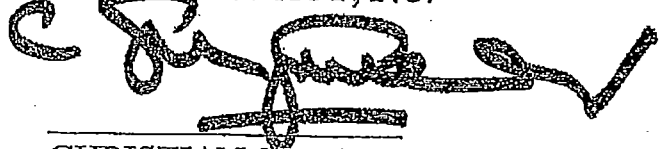
to the home. Accordingly, the Circuit Court erred in denying Appellant's motion for a directed verdict on the burglary charge.

CONCLUSION

For the foregoing reasons, Appellant's conviction and sentence should be reversed and this case remanded for a new trial.

Respectfully submitted,

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Columbia, South Carolina
March 9, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

RECEIVED

MAR 09 2018

SC Court of Appeals

The State, ...Respondent,

v.

Teresa Davis, ...Appellant.

PROOF OF SERVICE

I hereby certify that I served a copy of the Appellant's Petition for Rehearing upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on March 9, 2018, addressed to the following:

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Respectfully submitted,
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PROOF OF SERVICE –
APPELLANT'S PETITION FOR
REHEARING

Columbia, South Carolina
March 9, 2018



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Re: The State v. Teresa Annette Davis
Appellate Case No. 2015-000981

Dear Counsel:

I am enclosing a copy of the Return to Petition for Rehearing in the above-referenced case.

Sincerely,

Mary Frances Jowers

Mary Frances Jowers
Assistant Deputy Attorney General
S.C. Bar No. 68413

MFJ/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
R. LAWTON McINTOSH, Circuit Court Judge

Appellate Case No. 2015-000981

THE STATE RESPONDENT

v.

TERESA ANNETTE DAVIS APPELLANT.

RETURN TO PETITION FOR REHEARING

On February 7, 2018, this Court issued an opinion which affirmed the convictions of Davis for burglary and possession with intent to distribute (PIWD) methamphetamine, second offense. *State v. Davis*, Op. No. 5534 (Ct. App. filed February 7, 2018). On March 9, 2018, Davis served a Petition for Rehearing, and by letter dated March 22, 2018, this Court requested that the State submit a Return within 10 days of the date of the letter. The State respectfully submits this Return in opposition to the Petition for Rehearing and in addition craves reference to the State's previous arguments in brief and at oral argument.

FACTS/PROCEDURAL BACKGROUND

On Monday, February 10, 2014, Douglas Paul (Paul) drove by his mother's home. His mother had dementia, and for the past six months she stayed at a skilled nursing facility. She and her family hoped her health would improve at the facility and that she could move back home.

All of her possessions remained in the home, including her bed, furniture, and other items from her 37 years in the home. (R. 78-80)

Paul saw a strange car in the driveway. (R. 82) He noticed a door to the house left open that should be shut. (R. 83) He thought something was wrong, so he called his wife and asked her to bring the key to the house as well as his handgun. She did so. (R. 82-83) He decided to go in the house through the front door. Upon doing so, he heard noise upstairs, and he left the house and called the police. (R. 84-85)

The Oconee County Sheriff's Office responded. Officer George Mayer, IV, (Mayer) was the first officer to arrive. More officers arrived. Paul and his wife went inside the house with the officers, and they noticed a number of items were moved or out of place. (R. 88-89, 133)

Officer William M. Freestate, II, (Freestate) of the Oconee County Sheriff's Department was called to the scene. (R. 119-120) Freestate called a wrecker service to remove the vehicle in the driveway. (R. 123-124) While completing an inventory of the vehicle, Freestate found a small plaid bag that was next to a purse on the front passenger seat. Inside the plaid bag were two bags with a crystal-like substance. There was also a spoon, money, several baggies, a digital scale, and a lot of tissue paper. (R. 126-127)

Once the purse and other items were discovered in the vehicle, the officers believed that someone else either was or had been present on the scene. (R. 134) Officers examined the roof and realized someone was on the roof, crouching near the chimney. (R. 135, 164)

The officers used a ladder and were able to get Teresa Davis (Davis) down from the roof. While Davis came down, a glass pipe came sliding down the roof. (R. 135) She was placed in investigative detention and read her *Miranda* rights. Davis said she was scared and afraid, and

that is why she remained on the roof. Freestate pointed out that he and the other officers were in police clothing and easily identifiable as law enforcement who were there to help. (R. 136-137, 143-144)

When Freestate asked her about the narcotics and the crystal-like substance found in the vehicle, she admitted, "That's mine. My brother doesn't do that." Freestate placed her under arrest for possession with intent to distribute methamphetamine. She retracted, stating, "No, those aren't mine." (R. 137)

Meredith Lanford, a forensic chemist, examined the substance from the vehicle found on the scene. One bag contained 4.61 grams of methamphetamine, and the other bag contained 2.63 grams of methamphetamine. (R. 151-152)

Davis was indicted by the Oconee County Grand Jury for first degree burglary and possession with intent to distribute methamphetamine, second offense. (R. 9) Following a trial by jury, Davis was found guilty on both charges. (R. 229) She was sentenced to an aggregate eighteen years imprisonment. (R. 234) Davis appealed, and this Court affirmed her conviction. *State v. Davis*, Op. No. 5534 (Ct. App. Filed February 7, 2018). Davis filed a Petition for Rehearing, and this Return follows.

ARGUMENT

I. The Court properly found the Circuit Court did not abuse its discretion in denying Davis' Motion to Sever her Charges.

Prior to trial, Davis moved to sever the charges. (R. 9-10) This Court correctly found that the Circuit Court properly denied her Motion. Davis contends that this Court ignored that the charges of burglary and PWID methamphetamine did not require proof by the same evidence or the same witnesses. To the contrary, the Court correctly found that these charges require proof by the same evidence and the same witnesses.

Criminal charges may be tried together when they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996).

Paul provided background evidence about the home and the unknown vehicle in the driveway, and this was relevant to both charges. (R. 79-82) Freestate testified about locating Davis on the roof, the missing items, and Davis' statements, as well as the inventory of the vehicle. (R. 120, 124-126, 137) While some individual evidence is specific to each crime, much of the evidence produced at trial pertained to both the charges. In *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (Ct. Ap. 2008), the Court explained that even some additional evidence from separate witnesses is not fatal to the joinder of charges. In *Caldwell*, as in the present case, the charges arose out of a single chain of circumstances, occurred on the same afternoon, during the same event, and at the same place.

Without evidence of both charges, the jury would not receive an accurate portrayal of the events and circumstances that occurred. The evidence of methamphetamine in the vehicle was

necessary for a full presentation of the case without fragmentation. *See State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006) (“One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case . . .”).

II. The Court properly affirmed the Trial Court’s denial of Davis’ Motions for Directed Verdict.

At the conclusion of the evidence, Davis moved for a directed verdict on both of her charges. The Trial Court denied the Motions as to both charges, and this Court properly affirmed the denial. (R. 171-172, 182)

A. The Court properly found that the Trial Court did not abuse its discretion in denying Davis’ Motion for Directed Verdict on the Possession with Intent to Distribute Charge.

Evidence supports the Trial Court’s denial of a directed verdict on the possession with intent to distribute charge, and the Court did not err in affirming the Trial Court. Davis contends that contrary to the Court’s holding, the State failed to present direct or circumstantial evidence tending to prove Davis either actually or constructively possessed the methamphetamine found in the vehicle. However, the Court correctly ruled that there is sufficient evidence to support the trial Court’s ruling.

Davis admitted to Officer Freestate the drugs were hers, stating the following: “That’s mine. My brother doesn’t do that.” (R. 137) In addition to her statements, the drugs were found in a bag right next to her purse, along with her South Carolina driver’s license, lip balm, paperwork, and personal items. (R. 135) Also, the forensic chemist testified that the plaid bag contained a bag holding 4.61 grams of methamphetamine and another with 2.63 grams of

methamphetamine. (R. 152) McCreary, a narcotics officer, testified that these materials indicated the drugs were for distribution rather than personal use. (R. 166)

Because the State presented sufficient evidence of Davis' guilt, this Court properly affirmed the Trial Court's denial of the directed verdict motion on the burglary charge. See *State v. Pearson*, 415 S.C. 463, 783 S.E.2d 802 (2016) (The reviewing Court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty.").

B. The Court properly found the Trial Court did not abuse its discretion in denying Davis' Motion for Directed Verdict on the burglary charge.

Evidence supports the Trial Court's denial of a directed verdict on the burglary charge, and the Court did not err in affirming the Trial Court. S.C. Code Ann. § 16-11-311(A)(2) explains that "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]" The parties stipulated Davis had two prior convictions for burglary, so she met this element. (R. 168-170) As the Court stated, the pivotal question in this case is whether the burglarized home was being utilized as a dwelling at the time of the alleged offense.

In *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), the Court cited William Shepard McAninch & W. Gaston Faurey, *The Criminal Law of South Carolina* 445 (4th ed. 2002) which states "[A] person could have more than a single dwelling house, any of which might be the object of a burglary despite the occupant's absence for extended periods of time, so long as he had an intention to return." In the present case, the owner was away due to her

medical situation, but her possessions remained in the home and there is no evidence she abandoned her intent to return home. In addition, family members continued to check on the residence on a regular basis. Paul explained that as his mother's attorney in fact, he placed the home on the market because of the uncertain real estate market although the family hoped she would return. (R. 80) The Court properly noted Paul was entitled to protect and enforce his mother's rights as to the home pursuant to S.C. Code Ann. § 62-8-204(A).

The Court properly found that other jurisdictions with similar cases have found the structure to be a dwelling, although South Carolina courts have not addressed a first degree burglary case with these facts. For example, in *Mains v. State*, 375 So.2d 1299 (Ala. App. 1979), the Court affirmed a conviction of second-degree burglary, pursuant to a statute defining that crime as including entering "any uninhabited dwelling house," holding that the jury could reasonably conclude that the victim's premises constituted a dwelling house within the meaning of the statute where the victim had been in a nursing home for some two years but intended to return to her house and reside therein when her condition improved.

Because there was sufficient evidence to create a factual question as to what type of structure the home was, the Court properly affirmed the trial Court's denial of the directed verdict motion. See *State v. Stanley*, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury.").

CONCLUSION

Based on the foregoing arguments and the arguments raised in the Final Brief of Respondent and at oral argument, the State respectfully requests that this Court deny the Petition for Rehearing.

Respectfully submitted,

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Attorney General

DAVID SPENCER
Senior Assistant Attorney General

MARY FRANCES JOWERS
Assistant Deputy Attorney General

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

BY: Mary Frances Jowers
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
March 29, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
R. LAWTON McINTOSH, Circuit Court Judge

Appellate Case No. 2015-000981

THE STATE RESPONDENT

v.

TERESA ANNETTE DAVIS APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for Rehearing*, dated March ____, 2018 on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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S.C. Commission on Indigent Defense
Division of Appellate Defense
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Christian Stegmaier, Esq.
Kelsey J. Brudvig, Esq.
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I further certified that all parties required by Rule to be served have been served. This 27th day of March 2018.


Angela Bennett
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RECEIVED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APR 13 2018
SC Court of Appeals

APPEAL FROM OCONEE COUNTY
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

v.

Teresa Annette Davis, ... Appellant.

APPELLANT'S REPLY TO
RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR REHEARING

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT
OF APPEALS:

Pursuant to Rule 221 and 240 of the South Carolina Appellate Court
Rules, Appellant Teresa Annette Davis ("Appellant") submits the following in
reply to Respondent's ("the State's") Return to Petition for Rehearing.

LAW/ANALYSIS

I. The Charges Did Not Require Proof by the Same Evidence or the Same Witnesses

The Court held that while the grand jury issued two indictments against Appellant, her arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation and, therefore, Appellant's offenses originated from the same chain of events and required the same witnesses.

The State, in its return, cites State v. Caldwell, 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008), for the proposition that additional evidence from separate witnesses is not fatal to the joinder of charges. However, the facts in the instant case are distinguishable for Caldwell.

In Caldwell, appellant was indicated in three separate indictments which alleged appellant eavesdropped or peeped on the premises of a homeowners association, invading the privacy of three different young boys. Specifically, the State contended that on the same date, appellant eavesdropped or peeped on three young boys in the men's restroom at a swim meet held on the property. At trial, the three young boys testified on behalf of the State. Additionally, a

school teacher who was at the swim meet, as well as a party of one of the young boys and the arresting officer testified at trial.

Notably distinguishable in the instant case from Caldwell is that the three charges appellant was indicted for were the same charges arising on the same day at the same location. Here, Petitioner's charges were not the same. Rather, Petitioner was charged with PWID methamphetamine and first-degree burglary. Accordingly, the charges were not related in kind or of a similar nature, like appellant's charges in Caldwell.¹

Moreover, Appellant's charges for burglary and PWID methamphetamine did not require proof by the same evidence or the same witnesses. Notably, Officer Freestate was the only witness to testify regarding where the methamphetamine was found, while other officers testified regarding finding petitioner on the roof of the home. Criminal charges may only be tried together when they (1) arise out of a single chain or circumstance; (2) are provable by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been prejudiced. See State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996).

¹ Notably, in Caldwell, appellant did not dispute that the indictments were of a similar nature.

Because the charges are not of the same general nature nor are the charges provable by the same evidence, the Circuit Court abused its discretion in denying Appellant's motion to sever the charges. Accordingly, this Court erred in affirming the Circuit Court's denial of Appellant's motion to sever.

II. The State Failed to Present Evidence That Petitioner Exercised Dominion and Control Over the Small Plaid Bag

The State contends the Court properly affirmed the Circuit Court's denial of Appellant's motion for directed verdict as to the PWID methamphetamine charge. The State avers it presented circumstantial evidence that could induce a reasonable juror to find Appellant guilty of PWID.

However, the State failed to prove that Appellant had possession over the small plaid bag which contained the methamphetamine, a critical element to the crime of PWID. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). Specifically, Appellant was not in actual possession of the methamphetamine at the time of her arrest. Furthermore, the vehicle in which the small plaid bag containing the methamphetamine was found was registered to Lavina Davis, Appellant's mother. There were no identifying papers or evidence linking the small plaid bag to Appellant. Indeed, the methamphetamine was not found in Appellant's purse which contained her

driver's license; rather, the small plaid bag was located on the driver's seat next to the purse.

Accordingly, because there was no direct or circumstantial evidence tending to show Appellant possessed the methamphetamine, the Court erred in affirming the Circuit Court's denial of Appellant's motion for directed verdict as to the PWID methamphetamine charge.

III. The State Failed to Present Evidence of the Owner's Intent to Return to the Home

The State maintains the Court did not err in affirming the Circuit Court's denial of Appellant's motion for a directed verdict on the burglary charge. Specifically, the State contends it presented sufficient evidence that the homeowner had intent to return to the residence and, therefore, the residence was occupied at the time of the burglary.

The State relies on State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), where the Court of Appeals held that while occupants were unable to live at their secondary home or spend significant amounts of time at the home due to the wife's medical condition, the home constituted a dwelling because the owners intended to return to the home. The Court noted the family visited the home about once every two weeks or month, the utilities were on in

the home, and the home was ready to be lived in. Id. at 426, 656 S.E.2d at 784.

Importantly, no South Carolina court has addressed this issue with regard to the specific facts in this case, i.e., the owner residing at a nursing facility at the time of the incident. Indeed, the record lacks direct evidence of the owner's intent. While the Court relied on the owner's son's testimony that it was the hope of the family that the owner would return to the residence, there is no direct or circumstantial evidence establishing that the owner intended to return to the home. South Carolina case law is clear that it must be the owner's intent to return to the home. See State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988) ("[T]he test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return.") (emphasis added). The record indicates it was the intent of the occupant's children for the occupant to return to the house. Indeed, the occupant's children testified to the same. (R. p. 80, lines 13-21). However, the State failed to present any evidence of the occupant's intention of returning to the home. Indeed, the occupant never returned to the residence and the house was subsequently sold. (R. p. 102, lines 14-24).

While the son may have been entitled to protect and enforce the owner's right as to the home, there still lacks evidence that the owner herself intended

to return; rather, the only evidence was the family's hope of her return. Without the intent of the owner established, the State failed to establish an essential element of the crime of burglary. State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979) ("[A] house, although furnished as a dwelling house loses its character as such for the purpose of burglary, if the occupant leaves it without the intention to return.").

Because there is no evidence of the owner's intent to return to the residence, the Court erred in affirming the Circuit Court's denial of Appellant's motion for directed verdict as to the burglary charge.

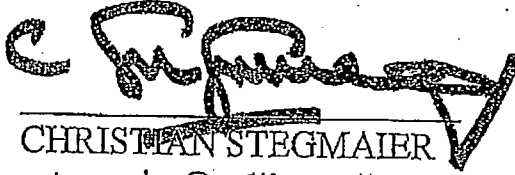
CONCLUSION

For the reasons stated herein, as well as those stated within Appellant's Petition for Rehearing, Appellant respectfully requests the Court reverse her convictions.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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Columbia, South Carolina
April 13, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 13 2018

APPEAL FROM OCONEE COUNTY SC Court of Appeals
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

Teresa Davis, ... Appellant.

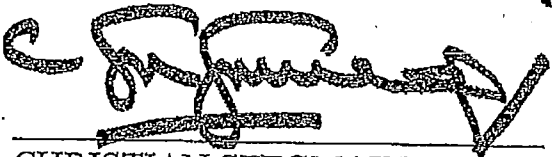
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Appellant's Reply to the State's Return to Appellant's Petition for Rehearing upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on April 13, 2018, addressed to the following:

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Respectfully submitted,
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The South Carolina Court of Appeals

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February 07, 2018

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Re: The State v. Teresa A. Davis
Appellate Case No. 2015-000981

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Mary Frances G. Jowers, Esquire
The Honorable R. Lawton McIntosh

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

The State, Respondent,

v.

Teresa Annette Davis, Appellant.

Appellate Case No. 2015-000981

Appeal From Oconee County
R. Lawton McIntosh, Circuit Court Judge

Opinion No. 5534
Heard December 11, 2017 – Filed February 7, 2018

AFFIRMED

Christian Stegmaier and Kelsey Jan Brudvig, both of
Collins & Lacy, PC, and Chief Appellate Defender
Robert Michael Dudek, all of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General David A. Spencer, and
Assistant Attorney General Mary Frances G. Jowers, all
of Columbia, for Respondent.

SHORT, J.: Teresa Davis appeals her convictions of first-degree burglary and possession with intent to distribute (PWID) methamphetamine, second offense, for which the trial court sentenced her to a cumulative term of eighteen years' imprisonment. On appeal, Davis argues the trial court erred by (1) denying Davis's motion to sever her charges, (2) refusing to direct a verdict of acquittal when the State failed to present evidence showing Davis had control over the drugs found in the vehicle, and (3) refusing to direct a verdict of acquittal because the State failed

to introduce any direct or substantial circumstantial evidence that the home was occupied, for the purposes of qualifying as a dwelling, at the time of the alleged burglary. We affirm.

FACTS

As he was driving to work on February 10, 2014, Douglas Paul noticed a strange car in the driveway of his mother's home. Paul testified his mother suffered from Alzheimer's disease and had moved to a nursing home in the area about six months prior. His mother had given him a power of attorney, and he placed her home on the market but maintained and cared for the property, usually stopping by at least once a week. Not recognizing the car, Paul stopped at the house and looked around the property. After finding the car empty, Paul approached the house and found the front door was still locked. He walked to the garage door, which was still closed. Peering through the garage window, Paul noticed the door adjoining the house and garage was open. Suspecting an intruder, Paul called his wife and asked her to bring the key to the house as well as his handgun.¹ Once his wife arrived, Paul entered the home through the front door and noticed the glass sliding door at the back of the house was open. Hearing a noise upstairs, Paul shouted, "I know somebody is here. You know, whoever you are, you need to answer me." Paul also warned the intruder he was armed with a handgun. Paul exited the house and called the police because the noise from upstairs became clangorous, sounding as if "someone was tossing furniture." About eight to ten officers responded to the scene at various points throughout the day and most were in uniform. Officer George Mayer was the first to respond. Paul's wife informed Mayer she saw a man, who looked out of place, walking down the street. Mayer located the man and placed him in investigative detention in a squad car at the scene. Mayer identified the man as Ted Davis ("Brother"). Mayer searched Brother, finding a pair of work gloves in his boot as well as a white substance and glass pipe adjacent to his person.²

After a sweep of the scene, the police did not find anyone within the home or on the property. Paul walked through the home with the police, finding various doors, cabinets, and closets open throughout the home and garage, as well as an open window in the master bathroom located on the back part of the roof. Paul testified

¹ Paul testified he and his wife lived "under a quarter of a mile" from his mother's home.

² Mayer testified the white substance "appeared to be methamphetamine."

many of his mother's antiques and jewelry were collected in piles throughout the home. The police found a latex glove on the floor in the garage.

The police completed an inventory of the vehicle in the driveway, finding a purse and a small plaid bag next to each other in the driver's seat. Inside the purse, the police found Teresa Davis's South Carolina driver's license, lip balm, and some paperwork. The smaller plaid bag contained money, a digital scale, tissue paper, little baggies, a spoon, and a metal tin that contained two bags containing a crystal-like substance. The police also found mail in the back of the car behind the driver's seat. The mail was addressed to Davis, and the address matched the one on her driver's license. After running the license plate tag on the car, the police found it was registered to Lavina Davis.

After inventorying the vehicle, the police suspected another person may still be on the property. As some officers were walking along the back of the house, they spotted Teresa Davis crouching on the roof behind the chimney. As the police assisted Davis down from the chimney, a glass pipe rolled down the roof. The police placed Davis in investigative detention and read her *Miranda*³ rights to her. After waiving her rights, Davis told police she was at the home because she was dropping off her friend Joe Mann. Davis further explained she hid on the roof because she was frightened. When asked why she remained on the roof for hours while the police were investigating, Davis did not respond.

When the police inquired about the drugs found in the car, Davis admitted the drugs were hers, stating, "That's mine. My brother doesn't do that." The police then placed Davis under arrest for PWID methamphetamine, after which Davis recanted her confession.⁴ While conducting a search of Davis's person, the police found gloves and a flashlight in her jacket pocket. A grand jury indicted Davis for first-degree burglary and PWID methamphetamine, second offense.

At the beginning of trial, Davis moved to sever her charges, arguing the offenses were not closely related in kind or character. The trial court denied Davis's motion, finding both charges required the same witnesses.

During trial, Paul testified his mother lived in the home for thirty-seven years before moving to a nursing home in the area for medical reasons. Paul explained

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ The trial court conducted a *Jackson v. Denno* hearing and found Davis's confession admissible. 378 U.S. 368 (1964).

as his mother's attorney in fact, he placed the home on the market because the future was uncertain; however, it was the family's hope that she would be able to return to the home at some point. Paul testified either he or his wife checked on the home every "two to three days." Paul testified all of his mother's furniture, as well as some of her clothing, remained in the home. Paul also testified he and his wife stopped by the home a couple days before the incident, and they left the home with all the doors and windows closed and locked. Paul specified he kept "big, round wooden sticks" in the sliding glass doors that had to be removed from inside the house to open the doors. Paul testified the utilities were still on in the home. Paul testified he was "a hundred percent certain" he did not leave the bathroom window open, and for it to be opened, someone would have to open both the window and the outer storm window. Paul noted it was cold and the heat was on in the house, so neither he nor his wife would have left any doors or windows open. On cross-examination, Paul admitted the home was on the market at the time of the incident. Paul testified his mother had not returned to the residence since moving to the nursing home, and he did not stay at the home because he lived within walking distance.

The trial court recognized Meredith Landford as an expert in forensic chemistry. Landford testified that after testing the amounts found in the plaid bag, she ascertained the first bag contained 4.61 grams of methamphetamine and the second bag contained 2.63 grams of methamphetamine. Investigator William Freestate testified the items found within the plaid bag, such as the digital scale, spoon, and baggies, indicated the methamphetamine was for distribution rather than personal use. Additionally, Patrick Wagner, an evidence technician for the sheriff's office, testified he recovered one latent print from the home, and it did not match Davis's prints.

At the close of the State's case, the trial court instructed the jury the parties stipulated Davis had two prior burglary convictions. Davis moved for a directed verdict on the first-degree burglary charge, arguing the State failed to show there was an "occupant or inhabitant against whom the offense could have been committed"; therefore, the home did not qualify as a dwelling for purposes of first-degree burglary. Specifically, Davis asserted the vacant house was on the market and neither the owner nor Paul resided therein. The State argued all of Paul's mother's furniture remained in the home, and she would have returned to the home had her condition improved. The State further noted the family only placed the home on the market as a precautionary measure. The trial court denied Davis's motion, finding it was a question for the jury whether the home constituted a dwelling as provided by statute.

Additionally, Davis moved for a directed verdict on the PWID charge, arguing the State failed to show she had control over the drugs found in the car because the police found her on the roof of the home. In response, the State contended it presented circumstantial evidence showing the drugs were in Davis's control because the police found the methamphetamine in a bag next to Davis's purse in a car that she admitted to driving. The trial court denied Davis's motion, finding it was a question for the jury whether Davis had control or possession of the drugs.

At the close of trial, the jury found Davis guilty of both charges as indicted. The trial court sentenced Davis to concurrent terms of eighteen years' imprisonment on each charge. This appeal followed:

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous," *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). Thus, "this [c]ourt is limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Accordingly, "[t]his [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Id.*

LAW/ANALYSIS

I. Severance of Charges

Davis argues the trial court abused its discretion in failing to sever the first-degree burglary and PWID methamphetamine charges. Davis maintains the methamphetamine found in the car was unrelated to the burglary and the charges did not require proof by the same evidence. Davis contends her charges were not related in kind or character and she suffered prejudice from the joinder of these charges. We disagree.

"A motion for severance is addressed to the sound discretion of the trial court." *State v. Rice*, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). "The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion." *Id.* "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* at 613, 629 S.E.2d at 395.

"The appellate court considers several factors when deciding whether the trial court's consolidation of charges was proper." *Id.* at 614, 629 S.E.2d at 395.

"[J]oinder of offenses in one trial is 'proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.'" *State v. Simmons*, 352 S.C. 342, 351, 573 S.E.2d 856, 861 (Ct. App. 2002) (quoting *State v. Carter*, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996)). "Offenses are considered to be of the same general nature where they are interconnected." *Id.* at 350, 573 S.E.2d at 860. "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *Rice*, 368 S.C. at 614, 629 S.E.2d at 395. "[O]ffenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *Id.*

In the instant case, the joinder of Davis's first-degree burglary and PWID methamphetamine offenses was proper. Although a grand jury issued two indictments against Davis, her arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation. Therefore, Davis's offenses originated from the same chain of events and required the same witnesses. *See id.* ("Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced."); *Simmons*, 352 S.C. at 351, 573 S.E.2d at 861 (quoting *Carter*, 324 S.C. at 386, 478 S.E.2d at 88 ("[J]oinder of offenses in one trial is 'proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.'")). Accordingly, we find Davis suffered no prejudice and the trial court did not abuse its discretion in refusing to sever the indictments.

II. Directed Verdict

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *Id.* "On appeal from the denial of a directed verdict in a criminal case, an appellate court

must view the evidence in the light most favorable to the State." *State v. Stanley*, 365 S.C. 24, 41, 615 S.E.2d 455, 464 (Ct. App. 2005). "If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury." *State v. Mollison*, 319 S.C. 41, 46, 459 S.E.2d 88, 91 (Ct. App. 1995). "Nevertheless, a[n appellate] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). "[T]he lens through which a[n appellate] court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *Id.* "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, th[is] court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id.* at 237, 781 S.E.2d at 354.

A. PWID Methamphetamine

Davis argues the trial court erred in denying her motion for a directed verdict because the State failed to introduce any direct or substantial circumstantial evidence that she actually or constructively possessed the methamphetamine found in the vehicle at the scene of the burglary. We disagree.

In South Carolina, it is illegal for a person to "knowingly or intentionally" possess methamphetamine. *See* S.C. Code Ann. § 44-53-370(c) (2018). Subsection 44-53-375(B) of the South Carolina Code (2018) provides:

A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine . . . is guilty of a felony Possession of one or more grams of methamphetamine . . . is prima facie evidence of a violation of this subsection.

"Possession of any amount of controlled substance coupled with sufficient indicia of intent to distribute will support a conviction for possession with intent to distribute." *State v. James*, 362 S.C. 557, 561-62, 608 S.E.2d 455, 457 (Ct. App. 2004). Possession may be actual or constructive. *See Mollison*, 319 S.C. at 45, 459 S.E.2d at 91. "Actual possession occurs when the drugs are found to be in the

actual physical custody of the person charged with possession." *Stanley*, 365 S.C. at 42, 615 S.E.2d at 464. "Mere presence is insufficient to prove constructive possession." *State v. Heath*, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). "In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found." *Stanley*, 365 S.C. at 42-43, 615 S.E.2d at 464. "Such possession can be established by circumstantial or direct evidence or a combination of the two." *Id.* at 43, 615 S.E.2d at 464-65.

Here, the police inventoried the vehicle as part of their investigation of the burglary of the Paul home. A purse and a smaller plaid bag sat on the driver's seat. Inside the purse, the police found Davis's South Carolina driver's license, lip balm, and some paperwork. The smaller plaid bag contained money, a digital scale, tissue paper, little baggies, a spoon, and a metal tin in which there were two bags containing a crystal-like substance. When the police located Davis on the roof, a glass pipe rolled down from where she was hiding. Further, after waiving her *Miranda* rights, Davis admitted the drugs were hers, stating, "That's mine. My brother doesn't do that." Davis also acknowledged she drove the car to the home to drop off her friend Joe Mann. *See Stanley*, 365 S.C. at 42-43, 615 S.E.2d at 464-65. ("In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found. Such possession can be established by circumstantial or direct evidence or a combination of the two.").

At trial, a forensic chemist testified the plaid bag contained a bag holding 4.61 grams of methamphetamine and another with 2.63 grams of methamphetamine. Finally, an investigator testified the items found within the plaid bag, such as the digital scale, spoon, and baggies, indicated the methamphetamine was for distribution rather than personal use. *See James*, 362 S.C. at 561-62, 608 S.E.2d at 457 ("Possession of any amount of controlled substance coupled with sufficient indicia of intent to distribute will support a conviction for possession with intent to distribute."). Viewing the aforementioned evidence in the light most favorable to the State, we find a jury could reasonably deduce Davis's guilt. Accordingly, the trial court properly refused to direct a verdict in Davis's favor. *See Mollison*, 319 S.C. at 46, 459 S.E.2d at 91 ("If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury.").

B. First-Degree Burglary

Davis argues the trial court abused its discretion in denying her motion for a directed verdict because the State failed to introduce any direct or substantial circumstantial evidence that the home was occupied, for the purposes of qualifying as a dwelling, at the time of the alleged burglary. Specifically, Davis contends the State failed to present direct or circumstantial evidence showing the homeowner left with the intention of returning. We disagree.

The pivotal question in the case at bar is whether the burglarized home was being utilized as a dwelling at the time of the alleged offense. As an initial matter, we find the trial court properly denied Davis's directed verdict motion. *See Weston*, 367 S.C. at 292, 625 S.E.2d at 648 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."). However, we recognize our jurisprudence does not speak directly to the facts of the case *sub judice*.

In South Carolina, "[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . the burglary is committed by a person with a prior record of two or more convictions for burglary." S.C. Code Ann. § 16-11-311(A)(2) (2015). In the context of burglary, a "dwelling" is defined as "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property." S.C. Code Ann. § 16-11-10 (2015).

"[B]urglary is a crime against possession and not against property." *State v. Clamp*, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954). Therefore, "the test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return." *State v. Glenn*, 297 S.C. 29, 32, 374 S.E.2d 671, 672 (1988). "Thus, the mere fact that a building is suitable for use as a dwelling is insufficient" *State v. Ferebee*, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979). However, "the temporary absence of occupants will not prevent a residence from becoming the subject of a burglary." *Id.*

In considering whether an occupant had an intention to return, courts may consider circumstantial evidence depicting such an intent. *See State v. Evans*, 376 S.C. 421, 425, 656 S.E.2d 782, 784 (Ct. App. 2008). For example, in *Evans*, this court found that although the occupants were unable to frequently stay at their secondary home due to health concerns, the home was still a dwelling because the occupants maintained the habitability of the structure by leaving the utilities on and checking on the home periodically. 376 S.C. at 425-26, 656 S.E.2d at 784. Additionally, in

Glenn, our supreme court found sufficient evidence of an intent to return existed when the occupant left \$10,000 worth of possessions in the structure. 297 S.C. at 32, 374 S.E.2d at 672.

Although our appellate courts have not yet addressed a first-degree burglary case with the factual framework of the present case, other jurisdictions with similar cases have found the structure in question to be a dwelling. For instance, in *State v. Kautz*, the occupants lived in the burglarized home for many years but moved out six months prior to the burglary, leaving the home vacant. 39 P.3d 937, 939 (Or. Ct. App. 2002). The Oregon Court of Appeals found the home still constituted a dwelling, stating, "[The] defendant entered into the [occupants'] house during a short period of vacancy that followed a long period of overnight occupancy. The fortuity that [the] defendant burglarized the home during an interval when occupancy had ceased does not change the nature of his crime." *Id.* at 940. In *Mains v. State*, the occupant of the burglarized home had been living in a nursing home for two years but intended to return to the home once her health improved. 375 So. 2d 1299, 1300, 1302 (Ala. Crim. App. 1979). While in the nursing home, her grandson cared for and maintained the habitability of the home. *Id.* at 1301. The Alabama Court of Criminal Appeals held "the jury could reasonably conclude from the testimony that, although she had been in a nursing home for some two years, the owner, . . . intended to return to her house and reside therein when her condition improved." *Id.* at 1302. In *People v. Marquez*, a California appellate court stated, "It is clear the issue in the instant case turns on whether a dwelling can be considered 'inhabited' where the resident has moved to a boarding home, has had a conservatorship appointed over her, the house is being maintained, and there is a doubt she will return." 192 Cal. Rptr. 193, 196 (Cal. Ct. App. 1983). Finding "[i]t is the intent and not the length of absence which controls," the court held the home was a dwelling within the context of burglary. *Id.* at 196.

Subsection 62-8-204(5)(A) of the South Carolina Code (Supp. 2017) provides that unless otherwise stipulated, "a power of attorney granting general authority with respect to real property authorizes the agent to . . . manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal," including the right to "insur[e] against liability or casualty or other loss."

Here, Paul testified his mother lived in the home for thirty-seven years before moving to a nursing home for medical reasons. Paul explained as his mother's attorney in fact, he placed the home on the market because the future was

uncertain; however, it was the family's hope that she would return to the home at some point. Although the record lacks direct evidence of the occupant's intent, Paul testified thirty-seven years' worth of his mother's furniture and possessions remained in the home. *See Evans*, 376 S.C. at 425, 656 S.E.2d at 784 (establishing when conducting an inquiry of whether an occupant had an intention to return, courts may consider circumstantial evidence depicting such an intent); *Glenn*, 297 S.C. at 32, 374 S.E.2d at 672 (holding sufficient circumstantial evidence of an intent to return existed when the occupant left \$10,000 worth of possessions in the structure and had previously returned to gather some possessions). Further, Paul and his wife acted to protect and maintain the habitability of the home by leaving on the utilities and regularly checking on the home. Paul testified either he or his wife checked on the home every "two to three days," always leaving all the doors and windows locked.

Additionally, Paul's actions manifested an intent to return to the home. As his mother's attorney in fact, Paul was entitled to protect and enforce his mother's rights as to the home. *See* S.C. Code Ann. § 62-8-204(5)(A) (Supp. 2017) (providing that unless otherwise stipulated, "a power of attorney granting general authority with respect to real property authorizes the agent to . . . manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal," including the right to "insur[e] against liability or casualty or other loss").

Viewing the foregoing in the light most favorable to the State, we find sufficient circumstantial evidence existed to create a factual dispute as to what type of structure Davis entered. *See Stanley*, 365 S.C. at 41, 615 S.E.2d at 464 ("On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State."); *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354 ("[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, th[is] court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."). Accordingly, the trial court properly refused to direct a verdict in Davis's favor. *See Bennett*, 415 S.C. at 236, 781 S.E.2d at 354 ("[T]he lens through which a[n appellate] court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury."); *Mollison*, 319 S.C. at 46, 459 S.E.2d at 91 ("If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury.").

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

KONDUROS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM OCONEE COUNTY
Court of General Sessions

SC Court of Appeals

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

TERESA ANNETTE DAVIS

.....Appellant.

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In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

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LAW/ANALYSIS

I. Appellant's Charges are Not Closely Related in Kind, Place, and Character

The State alleges that much of the evidence produced at trial pertained to both the possession with intent to distribute and burglary charges. (Resp. Br. at 9). However, the State concedes there is individual evidence that is specific to each crime. (Resp. Br. at 9). Nevertheless, the State rests its case on the exclusive argument that "the charges arise out of a single chain of circumstances[.]" (Id.). The State relies on State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), to support its argument.

However, the facts of Rice are distinguishable from the facts in this case. In Rice, Rice's acquaintance was murdered. Id. at 612, 629 S.E.2d at 394. Officers became suspicious of Rice and began to surveillance him. Id. As he left the motel where his acquaintance was found murdered, officers pulled Rice over for improper vehicle registration. Id. When Rice was unable to provide proof of insurance, officers asked Rice to step out of the vehicle, where he was patted down. Id. Officers found a pistol in Rice's front pocket and \$2,500. Id. Rice was arrested for traffic violations and an inventory search of the vehicle was conducted. Id. at 613, 629 S.E.2d at 394.

During the search, officers found a large amount of cocaine, a scale, and a rifle cut into several pieces in a plastic bag. Id. Officers believed this was the weapon used to murder Rice's acquaintance. Rice was arrested and charged with possession with intent to distribute cocaine and murder. Id. Rice moved to sever his charges; the trial court denied Rice's motion. Id.

The Court of Appeals held the trial court did not err in denying Rice's motion to sever his charges. The Court of Appeals noted the State's theory for the murder revolved around the relationship between Rice and Rice's acquaintance which was largely based on selling drugs. The Court of Appeals stated: "[W]ithout the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case The information regarding the cocaine trafficking was relevant to show the complete, whole, unfragmented story regarding [Rice's acquaintance's] murder." Rice, 368 S.C. at 616, 629 S.E.2d at 396.

Unlike in Rice where the State used the evidence of trafficking cocaine as evidence of the relationship between Rice and the acquaintance and as evidence of motive, in the case at bar, evidence from one charge was not used as evidence for the other charge. Unlike Rice, Appellant's possession with intent to distribute and burglary charges were not interconnected. The State

did not rely on evidence of one charge as evidence of the other charge. Indeed, the complete story of each charge could be had without reference to the other charge. As well, the charges did not require proof by the same evidence or the same witnesses. Likewise, the evidence regarding methamphetamine in the vehicle did not provide context to the burglary.

II. The State Failed to Present Sufficient Evidence Appellant had Control over the Methamphetamine

Our law clearly provides that a trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625, 677 S.E.2d 603, 305 (2009). To prove the crime of possession with intent to distribute, the State must establish the defendant possessed the drug, either actually or constructively. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 2005).

The State argues it presented substantial circumstantial evidence at trial to establish Appellant had constructive possession over the methamphetamine found in the vehicle. (Resp. Br. at 13). The State relies on State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005). However, the facts of Stanley are distinguishable from the facts at hand.

In Stanley, an officer observed a vehicle driving over the posted speed limit. Id. at 29, 615 S.E.2d at 457. The officer followed the vehicle and activated his blue lights. Id. A high speed chase ensued. Id. The officer observed two people in the vehicle. Id. After the vehicle eventually came to a stop, the driver fled the vehicle. Id. at 29, 615 S.E.2d at 458. The passenger, Stanley, then fled the vehicle. Id. at 30, 615 S.E.2d at 458. The officer immediately ordered Stanley to get on the ground, handcuffed Stanley, and arrested him. Id. The officer noticed a large bag of crack cocaine on the ground where Stanley was laying. Id. A pat-down revealed a large sum of cash. Id. An inventory search of the vehicle revealed other drug paraphernalia, plastic baggies and digital scales on the passenger-side floorboard. Id.

The driver of the vehicle gave a statement that he was driving Stanley to "sell somebody something." Id. at 43, 615 S.E.2d at 465.

In finding the trial court did not err in denying Stanley's motion for a directed verdict, the Court of Appeals noted the record provided substantial circumstantial evidence reasonably tending to prove Stanley's guilt, including: (1) the arresting officer found a large bag containing more than ten grams of crack cocaine on the ground beneath Stanley; (2) the arresting

officer discovery a large sum of cash in Stanley's pocketed; and (3) the arresting officer found plastic bags and scales on the passenger's side floorboard of the vehicle in which Stanley was the passenger. The Court further noted the driver's statement to officers that he was driving Stanley to "sell somebody something" shows intent to distribute. Id.

Conversely, in the instant case, the methamphetamine was found in a vehicle registered to Lavina Davis. (R. p. 122, lines 16-21). Furthermore, in searching the vehicle, Appellant's purse was found on the driver's seat. (R. p. 128, lines 20-21). A plaid bag was on the driver's seat next to the purse, not in Appellant's purse. (R. p. 131, lines 10-14). It was in this plaid bag the officers found the methamphetamine. (R. p. 131, line 25 – p. 132, line 5). Unlike Stanley, Appellant was nowhere near the vehicle where the methamphetamine was found, nor did officers observe Appellant in the vehicle at any time prior to discovering the methamphetamine. (R. p. 134, line 21 – p. 135, line 9).

The State failed to present sufficient evidence at trial that Appellant had control, either actually or constructively, of the methamphetamine. The evidence adduced at trial by the State only raises a mere suspicion that Appellant had either actual or constructive control and/or possession of the

methamphetamine. This mere suspicion is not enough to defeat a motion for directed verdict. See Hernandez, 382 at 625, 677 S.E.2d at 305. For these reasons, the Circuit Court erred in denying Appellant's motion for a directed verdict.

III. The Subject Home of the Alleged Burglary was Not Occupied at the Time of the Incident

A person is only guilty of burglary if the person enters a dwelling without consent and with intent to commit a crime in the dwelling. S.C. Code Ann. § 16-11-311(A)(2) (2015). A dwelling loses its status as such when the occupants or residents leave without the purpose of returning. State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979) (“[A] house, although furnished as a dwelling house loses its character as such for the purpose of burglary, if the occupant leaves it without the intention to return.”).

The State contends the homeowner, though placed in a nursing home, had the intention of returning to the home. The State rests on State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), where the Court of Appeals held that while occupants were unable to live at their secondary home or spend significant amounts of time at the home due to the wife's medical

condition, the home constituted a dwelling because the owners intended to return to the home. The Court noted the family visited the home about once every two weeks or month, the utilities were on, in the home, and the home was ready to be lived in. Id. at 426, 656 S.E.2d at 784.

However, our case law is clear that it must be the occupant's intent to return to the home. See State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988). (“[T]he test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return.”) (emphasis added). The record indicates it was the intent of the occupant's children for the occupant to return to the house. Indeed, the occupant's children testified to the same. (R. p. 80, lines 13-21). However, the State failed to present any evidence of the occupant's intention of returning to the home. Indeed, the occupant never returned to the residence and the house was subsequently sold. (R. p. 102, lines 14-24).

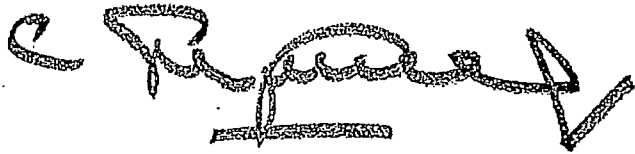
However, because the house was unoccupied at the time of the alleged burglary, the State failed to prove all essential elements of burglary. Accordingly, the Circuit Court erred in denying Appellant's Motion for a Directed Verdict as to Appellant's burglary charge.

CONCLUSION

For the reasons stated within the argument of Appellant's Brief and Reply Brief, Appellant respectfully requests this Court reverse her convictions.

Respectfully submitted,

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September 6, 2016

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
R. LAWTON McINTOSH, Circuit Court Judge

Appellate Case No. 2015-000981

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SC Court of Appeals

THE STATE RESPONDENT

v.

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William Shepard McAninch & W. Gaston Fairey, *The Criminal Law of South Carolina* 445 (4th ed. 2002) 17

STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in denying Davis' Motion to Sever her Charges.
- II. The trial court did not err in denying Davis' Motions for Directed Verdict.

STATEMENT OF THE CASE

Theresa Davis (Davis) was indicted by the Oconee County Grand Jury for first degree burglary and possession with intent to distribute methamphetamine second offense. (R. 9)

Davis was represented at trial by Russell W. Patrick and W. Wilson Burr. (R. 7) Following a trial by jury, Davis was found guilty on both charges. (R. 229) She was sentenced by the Honorable R. Lawton McIntosh to an aggregate eighteen years imprisonment. (R. 234) Davis timely filed a notice of intent to appeal her conviction and sentence, and she subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On Monday, February 10, 2014, Douglas Paul (Paul) drove by his mother's home in Oconee County. His mother had dementia, and about 6 months earlier she had transitioned to a skilled nursing facility. She and her family were hoping that being there would improve her health so she could move back home. All of her possessions remained in the home, including her bed, furniture, and other items from her 37 years in the home. (R. 78-80)

Paul drove by the home about 8:00 a.m., and he saw a strange car in the driveway. He had most recently driven by on Saturday, February 8. (R. 82) He got out of his vehicle and looked in the car, and there was nobody in the car. He noticed that a door to the house was open that should not have been. (R. 83) He thought something was wrong, so he called his wife and asked her to bring the key to the house as well as his handgun. She did so. (R. 82-83) He decided to go in the house through the front door. Upon doing so, he heard noise upstairs. He shouted out, "I know somebody is here. You know, whoever you are, you need to answer me[,]" and he warned that he had a gun. After he called out, he explained that "it just went crazy up there" with noise and commotion, so he left the house and called the police. (R. 84-85)

The Oconee County Sheriff's Office responded. Officer George Mayer, IV, (Mayer) was the first officer to arrive. Paul's wife told Mayer she saw a man go down the road whom she thought may have been involved, and Mayer went down the road after him. (R. 85-86) More officers came to the scene. Paul and his wife went inside the house with the officers, and they noticed a number of items had been moved. There were also several doors that had been opened.

Boxes of jewelry were pulled out of the closet. At the top of the stairs, a pot and other items were out of place. (R. 88-89, 133) Paul also noticed that a window on the second floor that was open, and the window had previously been locked: to open the window, a person would have to open the storm window and push the catches. (R. 89-90)

Mayer located and identified the man Paul's wife had seen, Ted Davis (Ted). Mayer placed Ted in investigative detention in the rear of the law enforcement vehicle. (R. 112-113) Mayer noticed Ted fidgeting around in the vehicle, and Mayer opened the door. At that time he found what appeared to be methamphetamine sprinkled in the backseat where Ted was sitting, along with a meth pipe. (R. 113) Mayer also discovered gloves in Ted's boots. Ted was placed under arrest and taken to the Oconee County Detention Center. (R. 113)

Officer William M. Freestate, II, (Freestate) of the Oconee County Sheriff's Department was called to the scene because he worked property crimes. (R. 119-120) Freestate called a wrecker service to remove the vehicle, as Paul did not want it on the property. (R. 123-124) Freestate completed an inventory of the vehicle, which is the policy when a vehicle is towed. While completing the inventory, he found a small plaid bag that was next to a purse on the front passenger seat. Inside the bag were two bags with a crystal-like substance. There was also a spoon, money, several baggies, a digital scale, and a lot of tissue paper. (R. 126-127) Freestate explained that the small baggies were for "distribution purposes" and that a person would "cut up and put narcotics in [the baggies]." These were next to the identification. (R. 131-132)

Once the purse and other items were discovered in the vehicle, the officers believed that someone else either was or had been present on the scene. (R. 134) Additional officers arrived to help look for the other person. (R. 134) Officers Scott McCreary (McCreary) and Jason Kilpatrick (Kilpatrick) went around to the back of the home to look around. (R. 163) McCreary was informed about the open window; after examining the scene, he decided that a person could not have jumped off the roof so he began to look at the roof. Once he examined the roof, he realized someone was on the roof. Someone was crouching near the chimney. (R. 135, 164)

Freestate saw her and yelled "Hey, get down from there." (R. 135) The officers used a ladder and were able to get the individual down from the roof. The individual on the roof was the defendant, Teresa Davis (Davis). While Davis was coming down, a glass pipe came sliding down the roof. (R. 135) At that time, she was placed in investigative detention and read her *Miranda* rights. Freestate asked her what she was doing on the roof, and she said she was dropping her friend off. She said she was scared and afraid; and that is why she remained on the roof. Freestate pointed out that he and the other officers were in police clothing and easily identifiable as law enforcement who were there to help. He stated that "[s]he didn't really have any good -- any kind of answer" for why she remained on the roof for so long. (R. 136-137, 143-144) The officers had been there for hours, and she had remained on the roof during the entire time. (R. 136)

When Freestate asked her about the narcotics and the crystal-like substance found in the vehicle, she stated, "That's mine. My brother doesn't do

that." At that time, Officer Freestate placed her under arrest for possession with intent to distribute methamphetamine. She then stated, "No, those aren't mine." Officer Patrick Merck then pointed out to her that "You just said they were yours." And after he said that, she stopped talking. When she was patted down, the officers discovered gloves and a flashlight in her pockets. (R. 137-138)

Meredith Lanford, a forensic chemist at Anderson-Oconee Regional Forensics Laboratory, was qualified as an expert in the area of forensic chemistry. (R. 146-148) She examined the substance from the vehicle found on the scene. There were two different bags. One bag contained 4.61 grams of methamphetamine, and the other bag contained 2.63 grams of methamphetamine. (R. 151-152)

ARGUMENT

I. The trial court did not err in denying Davis' Motion to Sever her Charges.

The trial court properly denied Davis' Motion to Sever her Charges. Davis was indicted for first degree burglary and possession with intent to distribute methamphetamine, second offense. Prior to trial, she moved to sever the charges. (R. 9-10) The trial court denied her Motion. (R. 12)

A. Standard of Review

A motion for severance is addressed to the sound discretion of the trial court. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967); *State v. Carter*, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); *State v. Anderson*, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). The court's ruling will not be disturbed on appeal absent an abuse of that discretion. *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265; *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993); *State v. Deal*, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995); *see also State v. Harris*, 351 S.C. 643, 572 S.E.2d 267 (2002) (stating a motion for severance is addressed to the trial court and should not be disturbed unless abuse of discretion is shown). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Walker*, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).

B. Law/Analysis

Criminal charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same

general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant's substantive rights would not be prejudiced. *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (2005); *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996). See also *State v. Sullivan*, 277 S.C. 35, 282 S.E.2d 838 (1981) (where offenses charged in separate indictments are of same general nature, involving connected transactions closely related in kind, place and character, the trial judge has authority, in his discretion, to order indictments tried together over the objection of the defendant absent a showing that the defendant's substantive rights were violated); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967) (stating "[t]he two offenses were of the same general nature, involving connected transactions closely related in time, place and character; and the trial judge had power, in his discretion, to order them tried together over objection by the defendant in the absence of a showing that the latter's substantive rights would have been thereby prejudiced.").

In the present case, the charges arise out of a single chain of circumstances and are closely related in kind, place and character. Davis was found on the roof of the home that is the subject of the burglary, and the drugs were found in the vehicle located on the property at the time of the burglary. The officers who responded to the burglary discovered the drugs as they were inventorying the

vehicle; meanwhile, Davis remained in hiding on the roof of the home that she burglarized. (R. 131-135)

Both charges in the present case are proved by the same evidence. The charges all arise out of a single chain of circumstances, occurring the same morning, during the same event, at the same place, and with the same responding officers. While there is some individual evidence that is specific to each crime, much of the evidence produced at trial pertained to both the charges, including the information about the home, the vehicle in the driveway, and the fact that Davis remained on the roof for so long while the officers were investigating. Thus, the separate offenses are proved by the same evidence. In *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (Ct. Ap. 2008), the Court explained that when there is some additional evidence from separate victims, that is not fatal to the joinder of charges. In *Caldwell*, as in the present case, the charges arose out of a single chain of circumstances, occurred on the same afternoon, during the same event, and at the same place.

The charges here are of the same general nature. Offenses are considered to be of the same general nature where they are interconnected. *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence, may not properly be tried together. *Id.* In the present case, the charges arise out of a single chain of circumstances as described above. They are interconnected in that they involve the same

underlying facts, the same evidence, and the evidence is all part of the same chain of circumstances.

In addition, no right of the defendant has been prejudiced. Without evidence of both charges, the jury would not have received an accurate portrayal of the events and circumstances that occurred. The evidence of methamphetamine in the vehicle was necessary for a full presentation of the case without fragmentation, just as drug evidence was necessary for a full presentation in *State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006). The Court in *Rice* explained as follows:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the *res gestae* or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . . [and is thus] part of the *res gestae* of the crime charged. And where evidence is admissible to provide this full presentation of the offense, [t]here is no reason to fragmentize the event under inquiry by suppressing parts of the *res gestae*.

(quoting *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996), *reversed on other grounds*, *State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014)).

Similarly in the present case, the evidence of methamphetamine in the vehicles gives context to the burglary, and the presence of Davis on the roof was relevant to show the complete story regarding the burglary and Davis remaining on the roof for several hours. Therefore, she was not prejudiced by the Court's denial of her Motion to Sever.

II. The trial court did not err in denying Davis' Motions for Directed Verdict.

At the conclusion of the evidence, Davis moved for a directed verdict on both of her charges. The trial court denied the Motions as to both charges. (R. 171-172, 182)

A. Standard of Review

In criminal cases, an appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); *State v. Wood*, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quatilebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000); *State v. Patterson*, 367 S.C. 219, 625 S.E.2d 239 (Ct. App. 2006). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001); *State v. Mattison*, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. *State v. Walker*, 349 S.C. 49, 562 S.E.2d 313 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *Id.* Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 426 S.E.2d 317

(1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, “the evidence could induce a reasonable juror to find [the defendant] guilty.” See *State v. Pearson*, 415 S.C. 463, 783 S.E.2d 802 (2016).

“The appellate court may reverse the trial judge’s denial of a motion for a directed verdict only if there is no evidence to support the judge’s ruling.” *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (citing *State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002)). On appeal, the appellate court is limited to determining whether the trial judge abused his discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998); *State v. Walker*, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005). “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.” *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011).

B. The trial court did not abuse its discretion in denying Davis’ Motion for Directed Verdict on the Possession with Intent to Distribute Charge.

There is evidence to support the trial court’s denial of a directed verdict on the possession with intent to distribute charge, and the court did not err.

Davis contends that there was not sufficient evidence to show that she had control over the methamphetamine found in the vehicle. However, there was sufficient evidence to show control, and the trial court correctly denied the motion for directed verdict.

Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession. *State v. Stanley*, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005) (citing *State v. Ballenger*, 322 S.C. 196, 470 S.E.2d 851 (1996); *State v. Hudson*, 277 S.C. 200, 284 S.E.2d 773 (1981)). In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found. *Ballenger* at 199, 470 S.E.2d at 854. Such possession can be established by circumstantial or direct evidence or a combination of the two. *State v. Brown*, 267 S.C. 311, 227 S.E.2d 674 (1976). Possession requires more than mere presence. *State v. Muhammed*, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). The State must show the defendant had dominion or control over the thing allegedly possessed or had the right to exercise dominion or control over it. *Id.*

In *Stanley*, the Court found that there was substantial circumstantial evidence reasonably tending to prove the defendant's guilt where the arresting officer found a large bag containing more than ten grams of crack cocaine on the ground beneath the defendant, there was \$4,220 in cash in the defendant's pockets, and plastic bags and scales on the passenger's side floorboard of the vehicle that the defendant had been sitting in the passenger seat.

In the present case, there is sufficient evidence to support the trial court's ruling. Davis herself told Officer Freestate the drugs were hers. She stated as following regarding the drugs: "That's mine. My brother doesn't do that." (R. 137) Although she changed her story once she was placed under arrest, this evidence in and of itself is sufficient to support the judge's ruling. In addition to her statements which were direct evidence of possession, the drugs were found in a bag right next to her purse with her South Carolina driver's license, lip balm, paperwork, and other things, all sitting there together. This provides further evidence that the drugs were hers. (R. 135) In addition, McCreary testified that as a narcotics officers, in the narcotics world, "[a]ll the little baggies, distribution of some sort. In the narcotics field." (R. 166) Thus in his opinion the evidence indicates an intent to distribute. Because there is evidence to support the trial court's ruling, the decision should be affirmed.

C. The trial court did not abuse its discretion in denying Davis' Motion for Directed Verdict on the burglary charge.

There is evidence to support the trial court's denial of a directed verdict on the burglary charge, and the court did not err. S.C. Code Ann. § 16-11-311(A)(2) explains that "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and ... (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]" The parties stipulated that Davis had two prior convictions for burglary, so she met this element. (R. 168-170)

Davis argues that the home was not a "dwelling" for purposes of the burglary statute and therefore the court should have granted a directed verdict on the burglary charge. Davis contends that the home was not a dwelling because the owner was in skilled nursing care and the home was for sale at the time of the incident. However, these arguments are without merit, and the home remained a dwelling for purposes of the statute while the homeowner was in skilled care and the home was for sale.¹

Davis relies on *State v. Ferebee*, 273 S.C. 403, 257 S.E.2d 154 (1979) to support her position. However, this case is distinguished from the present case. In *Ferebee*, the Defendant was found guilty of burglary. He appealed, arguing that the unoccupied apartment he entered did not constitute a "dwelling house" as defined by the burglary statute. The appellate court noted that resolution of the appeal was governed by the pivotal question of whether the apartment was being used as a dwelling house at the time of the alleged offense. At the relevant time, the apartment had been abandoned by the former tenants. The apartment was partially furnished and was for rent. The Court found that the apartment was not a dwelling because there was no occupant or inhabitant against whom the offense

¹ Davis asks this Court to take judicial notice of three facts: (1) that the house was placed on the market; (2) that the house was subsequently sold; and (3) that the homeowner never resided at the residence once she was placed in nursing home. These three facts are already in the record, and therefore there is no need to take judicial notice of them. Paul testified that the house "was on the market just because we weren't sure what was going to happen. And, you know, sometimes it can take a while to get interest in houses, so we went ahead and got a real estate agent and we did put the house on the market." (R. 81) Paul testified that the house was sold "a couple few months after this incident." (R. 102) Paul also testified that they were hoping his mother would get better and move back home but "that's not how it turned out." (R. 80)

could have been committed. The former tenant had permanently abandoned the premises without the intention of returning, and there was no regular or irregular occupancy of the apartment by any person during the period in question. *Id.* at 406, 257 S.E.2d at 155. This case is distinguished from the present case for several reasons. First, the apartment in *Ferebee* was abandoned. In the present case, the owner moved to a skilled nursing facility, but she did not abandon her home. In fact, her possessions from over 37 years of living in the home remained there. (R. 79) In addition, the intention was for her to move back in. Paul, her son, stated as follows: "So when we got her into Clemson Downs and they could finally get her taking medication, we were kind of hoping it was going to help her and her memory would get better and possibly maybe she could move home." (R. 80) When asked whether the family hoped she would come back, Paul stated, "[w]e were hoping that would be the case, yes." (R. 80) The fact that she died before returning does not change the nature of the home, and it was a dwelling at the time of the incident.

State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008) is closer to the present case. In *Evans*, the issue before the Court was whether the trial court erred in denying appellant's motion for directed verdict on a first-degree burglary charge because the building did not meet the statutory definition of a dwelling. The family had been "living in [the home] off and on, going up there as a secondary house . . . until about three years [prior to the incident]." Because of the wife's medical condition and the treatments she received, they were unable to live there or spend significant amounts of time at the home anymore. In finding

that there was sufficient evidence of the family's intent to return to the property for it to be considered a dwelling, the Court noted that the family visited the home about once every two weeks or month, the utilities were all on in the home, and it was "ready to be lived in." The only reason the family had not been staying overnight in the home the last three years was the wife's current medical condition prevented them from doing so. *Id.* at 425, 656 S.E.2d at 784. The Court cited William Shepard McAninch & W. Gaston Faurey, *The Criminal Law of South Carolina* 445 (4th ed. 2002) which states "[A] person could have more than a single dwelling house, any of which might be the object of a burglary despite the occupant's absence for extended periods of time, so long as he had an intention to return. Consequently, a vacation cottage would qualify as a dwelling house even though the owner had not been there in months." Similarly in the present case, the owner was away for a while due to a medical situation, but her possessions remained in the home and there is no evidence she abandoned her intent to return home. In addition, family members continued to check on the residence on a regular basis, just as in *Evans*.

Other courts have held that a residential structure was a dwelling house for purposes of the burglary statute when the occupant was confined to a hospital or nursing home. *See Mains v. State*, 375 So.2d 1299 (Ala. App. 1979) (affirming a conviction of second-degree burglary, pursuant to a statute defining that crime as including entering "any uninhabited dwelling house," holding that the jury could reasonably conclude that the victim's premises constituted a dwelling house within the meaning of the statute where the victim had been in a nursing home for

some two years but intended to return to her house and reside therein when her condition improved); *People v. Meredith*, 95 Cal. Rptr. 3d 297 (Cal. App. 4th 2009) (burglary victim's alleged removal from life support, while he was being treated for dementia and age-related physical problems in a skilled nursing facility, did not cause him to cease to use his house as a dwelling for purposes of burglary statute, and thus did not preclude the burglary of the house from being first degree burglary, even if victim would in all likelihood not be able to return to his house); *Course v State*, 469 So.2d 80 (Miss. 1985) (for purposes of burglary prosecution, victim's house retained its status as dwelling during her forced stay in a nursing home, where all of victim's personal possessions remained in the house, victim continued to receive mail there, and it was victim's intention to return to house when her health permitted).

In the present case, the fact that the home was for sale does not change its character from a dwelling, as the relevant question is what was the status of the home on the day of the alleged burglary. Individuals and families often live in homes while they are for sale, and the sale itself does not change the nature of the home. Further, the fact that the home was sold after the incident is irrelevant to the home's status on the date of the incident. Moreover, the fact that the owner was ultimately unable to return to the home does not change its character, either. The relevant question is what was the owner's intent, and not whether she was ultimately able to return to the residence.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, convictions, and sentence of the trial court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
August 26, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
R. LAWTON McINTOSH, Circuit Court Judge

Appellate Case No. 2015-000981

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AUG 26 2016
SC Court of Appeals

THE STATE.....RESPONDENT

v.

TERESA ANNETTE DAVIS.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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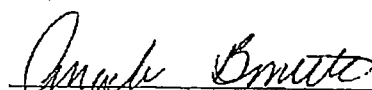
PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated August 26, 2016, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to her attorney of record:

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I further certified that all parties required by Rule to be served have been served.
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Re: The State v. Teresa A. Davis
Appellate Case No. 2015-000981

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

Mary Frances Jowers

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MFJ/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 14 copies enclosed)
Victim Services

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SEP 06 2016

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The State, ... Respondent,

V.

TERESA ANNETTE DAVIS

Appellant.

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ATTORNEYS FOR APPELLANT

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LAW/ANALYSIS

I. Appellant's Charges are Not Closely Related in Kind, Place, and Character

The State alleges that much of the evidence produced at trial pertained to both the possession with intent to distribute and burglary charges. (Resp. Br. at 9). However, the State concedes there is individual evidence that is specific to each crime. (Resp. Br. at 9). Nevertheless, the State rests its case on the exclusive argument that "the charges arise out of a single chain of circumstances[.]" (Id.). The State relies on State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), to support its argument.

However, the facts of Rice are distinguishable from the facts in this case. In Rice, Rice's acquaintance was murdered. Id. at 612, 629 S.E.2d at 394. Officers became suspicious of Rice and began to surveill him. Id. As he left the motel where his acquaintance was found murdered, officers pulled Rice over for improper vehicle registration. Id. When Rice was unable to provide proof of insurance, officers asked Rice to step out of the vehicle, where he was patted down. Id. Officers found a pistol in Rice's front pocket and \$2,500. Id. Rice was arrested for traffic violations and an inventory search of the vehicle was conducted. Id. at 613, 629 S.E.2d at 394.

During the search, officers found a large amount of cocaine, a scale, and a rifle cut into several pieces in a plastic bag. Id. Officers believed this was the weapon used to murder Rice's acquaintance. Rice was arrested and charged with possession with intent to distribute cocaine and murder. Id. Rice moved to sever his charges; the trial court denied Rice's motion. Id.

The Court of Appeals held the trial court did not err in denying Rice's motion to sever his charges. The Court of Appeals noted the State's theory for the murder revolved around the relationship between Rice and Rice's acquaintance which was largely based on selling drugs. The Court of Appeals stated: "[W]ithout the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case The information regarding the cocaine trafficking was relevant to show the complete, whole, unfragmented story regarding [Rice's acquaintance's] murder." Rice, 368 S.C. at 616, 629 S.E.2d at 396.

Unlike in Rice where the State used the evidence of trafficking cocaine as evidence of the relationship between Rice and the acquaintance and as evidence of motive, in the case at bar, evidence from one charge was not used as evidence for the other charge. Unlike Rice, Appellant's possession with intent to distribute and burglary charges were not interconnected. The State

did not rely on evidence of one charge as evidence of the other charge. Indeed, the complete story of each charge could be had without reference to the other charge. As well, the charges did not require proof by the same evidence or the same witnesses. Likewise, the evidence regarding methamphetamine in the vehicle did not provide context to the burglary.

II. The State Failed to Present Sufficient Evidence Appellant had Control over the Methamphetamine

Our law clearly provides that a trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625, 677 S.E.2d 603, 305 (2009). To prove the crime of possession with intent to distribute, the State must establish the defendant possessed the drug, either actually or constructively. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 2005).

The State argues it presented substantial circumstantial evidence at trial to establish Appellant had constructive possession over the methamphetamine found in the vehicle. (Resp. Br. at 13). The State relies on State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005). However, the facts of Stanley are distinguishable from the facts at hand.

In Stanley, an officer observed a vehicle driving over the posted speed limit. Id. at 29, 615 S.E.2d at 457. The officer followed the vehicle and activated his blue lights. Id. A high speed chase ensued. Id. The officer observed two people in the vehicle. Id. After the vehicle eventually came to a stop, the driver fled the vehicle. Id. at 29, 615 S.E.2d at 458. The passenger, Stanley, then fled the vehicle. Id. at 30, 615 S.E.2d at 458. The officer immediately ordered Stanley to get on the ground, handcuffed Stanley, and arrested him. Id. The officer noticed a large bag of crack cocaine on the ground where Stanley was laying. Id. A pat-down revealed a large sum of cash. Id. An inventory search of the vehicle revealed other drug paraphernalia, plastic baggies and digital scales on the passenger-side floorboard. Id.

The driver of the vehicle gave a statement that he was driving Stanley to "sell somebody something." Id. at 43, 615 S.E.2d at 465.

In finding the trial court did not err in denying Stanley's motion for a directed verdict, the Court of Appeals noted the record provided substantial circumstantial evidence reasonably tending to prove Stanley's guilt, including: (1) the arresting officer found a large bag containing more than ten grams of crack cocaine on the ground beneath Stanley; (2) the arresting

officer discovery a large sum of cash in Stanley's pocketed; and (3) the arresting officer found plastic bags and scales on the passenger's side floorboard of the vehicle in which Stanley was the passenger. The Court further noted the driver's statement to officers that he was driving Stanley to "sell somebody something" shows intent to distribute. Id.

Conversely, in the instant case, the methamphetamine was found in a vehicle registered to Lavina Davis. (R. p. 122, lines 16-21). Furthermore, in searching the vehicle, Appellant's purse was found on the driver's seat. (R. p. 128, lines 20-21). A plaid bag was on the driver's seat next to the purse, not in Appellant's purse. (R. p. 131, lines 10-14). It was in this plaid bag the officers found the methamphetamine. (R. p. 131, line 25 – p. 132, line 5). Unlike Stanley, Appellant was nowhere near the vehicle where the methamphetamine was found, nor did officers observe Appellant in the vehicle at any time prior to discovering the methamphetamine. (R. p. 134, line 21 – p. 135, line 9).

The State failed to present sufficient evidence at trial that Appellant had control, either actually or constructively, of the methamphetamine. The evidence adduced at trial by the State only raises a mere suspicion that Appellant had either actual or constructive control and/or possession of the

methamphetamine. This mere suspicion is not enough to defeat a motion for directed verdict. See Hernandez, 382 at 625, 677 S.E.2d at 305. For these reasons, the Circuit Court erred in denying Appellant's motion for a directed verdict.

III. The Subject Home of the Alleged Burglary was Not Occupied at the Time of the Incident

A person is only guilty of burglary if the person enters a dwelling without consent and with intent to commit a crime in the dwelling. S.C. Code Ann. § 16-11-311(A)(2) (2015). A dwelling loses its status as such when the occupants or residents leave without the purpose of returning. State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979) (“[A] house, although furnished as a dwelling house loses its character as such for the purpose of burglary, if the occupant leaves it without the intention to return.”).

The State contends the homeowner, though placed in a nursing home, had the intention of returning to the home. The State rests on State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), where the Court of Appeals held that while occupants were unable to live at their secondary home or spend significant amounts of time at the home due to the wife's medical

condition, the home constituted a dwelling because the owners intended to return to the home. The Court noted the family visited the home about once every two weeks or month, the utilities were on in the home, and the home was ready to be lived in. Id. at 426, 656 S.E.2d at 784.

However, our case law is clear that it must be the occupant's intent to return to the home. See State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988) (“[T]he test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return.”) (emphasis added). The record indicates it was the intent of the occupant's children for the occupant to return to the house. Indeed, the occupant's children testified to the same. (R. p. 80, lines 13-21). However, the State failed to present any evidence of the occupant's intention of returning to the home. Indeed, the occupant never returned to the residence and the house was subsequently sold. (R. p. 102, lines 14-24).

However, because the house was unoccupied at the time of the alleged burglary, the State failed to prove all essential elements of burglary. Accordingly, the Circuit Court erred in denying Appellant's Motion for a Directed Verdict as to Appellant's burglary charge.

CONCLUSION

For the reasons stated within the argument of Appellant's Brief and Reply Brief, Appellant respectfully requests this Court reverse her convictions.

Respectfully submitted,

COLLINS & LACY, P.C.



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Columbia, South Carolina
September 6, 2016

5

22770

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

SEP 28 2016

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

TERESA ANNETTE DAVIS

.....Appellant.

RECORD ON APPEAL

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RESPONDENT

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THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No(s): 2014-GS-37-645, 646

The State,

Teresa Annette Davis,

v.

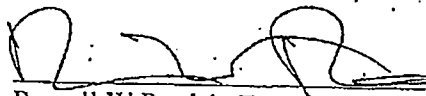
Respondent.

Appellant.

NOTICE OF APPEAL

Teresa Annette Davis appeals her conviction and sentence in this case. The sentence was imposed by the Honorable R. Lawton McIntosh on April 23, 2015.

Date: April 30, 2015


Russell W Patrick, Esq.
Assistant Public Defender
415 S. Pine Street
Walhalla, SC 29691
Attorney for Appellant

Other Counsel of Record:
David R Wagner, Esq.
Assistant Solicitor, 10th Judicial Circuit

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 APR 30 A 9:44

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MAY 04 2015
SC Court of Appeals

0001

0111

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No(s): 2014-GS-37-645, 646

RECEIVED
MAY 04 2015
SC Court of Appeals

The State,

Teresa Annette Davis,

v.

Respondent.

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 30, 2015, addressed to:

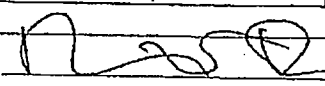
Office of the Solicitor, Tenth Judicial Circuit
Oconee County Courthouse
ATTN: David R. Wagner, Esq.
205 W. Main Street
Walhalla, SC 29691

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P.O. Box 11549
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Sharon Graham
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Columbia, SC 29211

The Honorable Tanya Gee
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Date: April 30, 2015


Russell W. Patrick, Esq.
Assistant Public Defender
415 S. Pine Street
WALHALLA, SC 29691
Attorney for Appellant

0002

0112

General Sessions Tracking Sheet
Indictment # 0000GS37

Name: Davis, Teresa Annette

AKA:

Addr: 880 N. Old Mill Road
Basley, SC 29640

SSN#

Sex: F Race: W

DOB:

DL# KS/ K01690323

Warrant/Ticket #: 2014A3710400162

Date of Arrest: 02/11/2014

Date of Offense: 02/10/2014

Date Rcv by Clerk 02/20/2014

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0079/Burglary / Burglary (After June
20, 1985) - First degree

Indictment # 0000GS37

2014-GS-37-645

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
1. Guilty plea
 2. Trial -- guilty
 3. Trial -- not guilty
 4. Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain:

Burglary-1st

Explain:

Explain:

Explain:

Explain:

Judge:

MacIntosh

Defense Atty:

Patrick Russell

Court Reporter:

Dianne MacIntosh

Solicitor:

Counts:

Code:

Sentence:

18 yrs; credit 56 days TIS; ATU

0003

0113

COUNTY OF OCONEE
STATE VS.

TERESA ANNETTE DAVIS

AKA: Teresa Davis

Race: White Sex: F Age: 48

DOB: SSN:

Address: N. Old Mill Road

City, State, Zip: Easley, SC 29640

DL# SIC

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

INDICTMENT/CASE#: 2014GS3700645
A/W: 2014A3710400162
Date of Offense: 02/10/2014
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David Rhys Wagner, Deputy Solicitor 64068
SC Bar #

Defendant

Russell Patrick 1575
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 56 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment
Total: \$ plus 20% fee: \$ Obtain GED ☐

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \$ 3.90

TOTAL \$ 133.90

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: Recommended RTU

☐ Appointed PD or appointed other counsel,

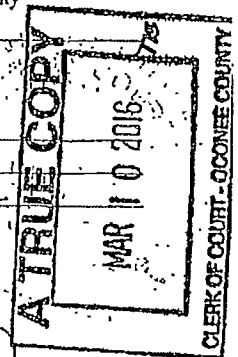
\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]

Judge Bar ID: 7739 Judge Code: 2155

Sentence Date: 2-23-15



0004

General Sessions Tracking Sheet
Indictment # 0000GS37

Name: Davis, Teresa Annette

AKA:

Addr: N. Old Mill Road
Easley, SC 29640

SSN#

Sex: F Race: W

DOB:

DL#

Warrant/Ticket #: 2014A3710400164

Date of Arrest: 02/11/2014

Date of Offense: 02/10/2014

Date Rev by Clerk: 02/20/2014

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 3199/Drugs / Manufacture, distribution,
etc. of methamphetamine, 2nd

Indictment # 0000GS37

2014-GS-37-646

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
1. Guilty plea
 - ☒ 2. Trial -- guilty
 3. Trial -- not guilty
 4. Dismiss/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge:

Defense Atty:

Counts: Code:

Sentence:

Court Reporter:

Solicitor:

PWID Meth 2nd
~~Guilty~~ Guilty

Guilty

C. Antosh

Datrick, Russell

Dianne Marcenell

Wagner

18 yrs; credit 50 days TIS

0005

0115

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE
STATE VS.

TERESA ANNETTE DAVIS

AKA: Teresa Davis

Race: White

Sex: F

Age: 48

DOB: _____

SS#: _____

Address: N. Old Mill Road

City, State, Zip: Easley, SC 29640

DL# _____

SID# SC01004247

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Dist/PWID Meth 2nd

In violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199

☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory OPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury..

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

David R. Wagner, Deputy Solicitor 64068
SC Bar #

Defendant

Russell Patrick 1575
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter: Diane Marcengill

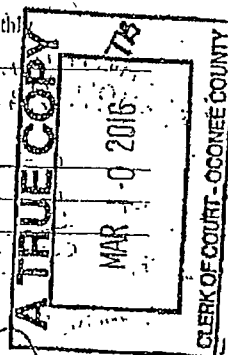
SCCJA 14-1-211

Presiding Judge:

Judge Bar ID:

Sentence Date:

Judge Code:



0116

1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina,

5

2014-GS-37-645, 646

6 -vs-

April 22, 2015

7 Teresa A. Davis,

Volume 1

8 Defendant.

Pages 1 - 21

9

Transcript of Record

10

11

B E F O R E:

12

13 The Honorable R. Lawton McIntosh, Judge;
and a jury.

14

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Attorney for the State

17

18 Russell W. Patrick, Esquire
W. Wilson Burr, Esquire
Attorneys for Defendant

19

20

21

22

23

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

24

25

I N D E X

Witnesses

Page

Jackson v. Denno hearing

WILLIAM M. FREESTATE, II

Direct Examination By Mr. Wagner

7

Cross-Examination By Mr. Patrick

16

Reporter's Certificate

21

E x h i b i t s

For the State:

Marked

Description

I.D.

Admitted

None offered

For the Defendant:

Marked

Description

I.D.

Admitted

None offered

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 4:30 p.m.)

4 THE COURT: Put the name of the case on the
5 record, and, Mr. Patrick, I will be glad to hear your
6 motion.

7 MR. WAGNER: Teresa Annette Davis, indictment
8 number 2014-GS-37-645 and 646, charges are first-degree
9 burglary and possession with intent to distribute
10 methamphetamine, second offense.

11 THE COURT: Second-degree burglary or first
12 degree?

13 MR. WAGNER: It's first degree that she's charged
14 with and a second offense drug charge.

15 THE COURT: Got you.

16 All right, Mr. Patrick.

17 MR. PATRICK: Yes, sir, your Honor. It's my
18 motion to sever the charges. Some of the facts to the
19 case, just to kind of give a little background, owner
20 of the house came by, saw the car parked out, calls the
21 cops. There is a car that's parked out front that
22 raises suspicion to go inside -- I think it was
23 actually his mother's house. Well, he goes inside and
24 calls --

25 THE COURT: Goes inside his mother's house?

1 MR. PATRICK: He's watching over the house for
2 her. She's in a home for dementia, is my
3 understanding, so he's kind of caretaker for the house
4 and saw a suspicious vehicle, goes to investigate, ends
5 up calling the police. Police get out there, find my
6 client on the roof. Her car is parked in the driveway,
7 and in the car is found some quantity of meth, so she's
8 charged with PWID methamphetamine second and burglary
9 first.

10 We are asking the Court to sever those charges.
11 While they occur close in time, we would argue that
12 they're not of kind nature or similar -- closely
13 related in place, but they're not closely related in
14 kind or character. We feel like the prejudicial effect
15 of trying them together would be substantial to my
16 client.

17 There are also some issues of my client taking the
18 stand and wanting to testify to one of the charges, but
19 then potentially pleading the Fifth on the other, and I
20 don't know how that would play out or how that would be
21 handled, your Honor.

22 THE COURT: Mr. Wagner.

23 MR. WAGNER: Your Honor, we would move to try them
24 both together. I think it's essentially one entire
25 act. I think kind of the res gestae of the event, I

1 think it would hamper our ability to try the case
2 without doing them both together. It's essentially
3 she's hiding on a roof behind the -- she climbed out a
4 window or the State would allege she was upstairs
5 burglarizing a house. When the homeowner came and he
6 saw that there was a car there and he went in, looked
7 in the window, noticed there was some disarray inside
8 the home; a door was open that had not been two days
9 prior when he checked on the house, he called his wife.
10 He's a concealed weapons carrier. She brought his
11 pistol up. They live just around the block. Wife came
12 over immediately, brought the pistol. He went into the
13 residence. In the stairwell, he immediately heard the
14 people, serious noises and movement upstairs. He
15 hollered that he had a gun; whoever was up there needed
16 to come down. He said he just wanted to make sure it
17 wasn't somebody, the Realtor, there; something like
18 that.

19 Later a Realtor box -- the lady had been put into
20 a nursing home, his mother, a few months prior to this.
21 They had put the house on the market. Figured if she
22 couldn't come back, that if they can sell the house,
23 they would. If she can come back to the house and her
24 condition improved, which is basically short-term
25 memory, there is dementia, that they would take it back

1 off the market and mom can move back in.

2 Anyway, he ended up backing out, calling 911. At
3 some point in time they went in, cleared the house,
4 didn't find this defendant. There was a window opened
5 that shouldn't have been open, had been closed and
6 locked. They didn't see her in there, but she was up
7 hiding behind the chimney. Meanwhile, the homeowner
8 asked for the car to be towed because it was blocking
9 the driveway, and it was right there on their property.
10 They did an inventory of the car, and right there on
11 the front seat was her purse with the drugs in it and
12 her driver's license. They ended up towing it.

13 THE COURT: Let me ask you this: If I were to
14 separate the trials, would it necessitate bringing back
15 the same witnesses and the same case twice?

16 MR. WAGNER: Yes, sir.

17 THE COURT: All right. I'm going to deny your
18 motion. Thank you, sir.

19 MR. PATRICK: Thank you, your Honor.

20 THE COURT: I know we have a Jackson/Denno. May I
21 see Mr. Day for a second up here and Ms. Simmons.

22 (Whereupon, counsel approached the bench.)

23 MR. WAGNER: Teresa Annette Davis, 2014-GS-37-646
24 for first-degree burglary and 646 for manufacturing,
25 distribution of -- PWID methamphetamine second offense.

1 THE COURT: Okay, sir. Would you call your first
2 witness.

3 MR. WAGNER: Your Honor, we call Sergeant Will
4 Freestate.

5 WILLIAM M. FREESTATE, II,
6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q Sergeant Freestate, please state your name and
10 spell your last name for the record.

11 A William M. Freestate, II, F-r-e-e-s-t-a-t-e.

12 Q And who do you work for?

13 A The Oconee County Sheriff's Office.

14 Q Were you working for them back on February 10th of
15 2014?

16 A Yes, sir, I was.

17 Q And did you get a call of a burglary in progress,
18 call out on North Bayshore Drive?

19 A Yes, sir, I did.

20 Q And did you respond to the scene?

21 A Yes, sir, I did.

22 Q Okay. Was there a vehicle parked there that did
23 not belong at the residence?

24 A When I arrived there, there was a white vehicle
25 parked in front of the house. I was told by the

1 complainant, Mr. Paul, that that vehicle did not belong
2 at the residence.

3 Q Okay. And in the process of your investigation
4 there, did you come in contact -- did y'all, I guess,
5 take into custody the brother of the defendant?

6 A Yes, sir. Deputy Mayer was working at the
7 sheriff's office at that time, placed him in
8 investigative detention and brought him back to the
9 scene for questioning.

10 Q Okay. And based on your conversations with him
11 and the car that was there, did y'all suspect that
12 there was somebody else present at the scene or had
13 been present at the scene?

14 A Yes, sir. If I may, he stated his sister was the
15 one that drove him there. They were going to look for
16 work, and he didn't know where she was. The vehicle
17 belonged to his mother, who was deceased. And while we
18 were there with Mr. Davis, we couldn't find his sister.
19 He didn't know where she went, and we had no idea where
20 she went.

21 Q Did the homeowner ask you to tow the vehicle?

22 A Yes, sir, he did.

23 Q Did you have it towed?

24 A I did, sir.

25 Q Did you do an inventory of the compartment there

1 prior to towing?

2 A Yes, sir. We did do an inventory of the entire
3 vehicle.

4 Q Did you find the contents of the purse that
5 belonged to the defendant, at least had her driver's
6 license there?

7 A Yes, sir, we did, in the driver's side where he
8 stated his sister was driving.

9 Q So y'all were looking for her at that time?

10 A Well, no. I mean, at the time we -- you know, he
11 stated she was gone. I mean, basically we were doing
12 an inventory of a vehicle to have it towed. We were
13 just -- myself, Patrick Merck, and the other two
14 narcotics agents were basically just hanging out. I
15 mean, for lack of a better word.

16 Q Okay. Did you locate her at the scene?

17 A We did. Scott McCreary, Agent Scott McCreary,
18 went around the back of the house to see if he could
19 find her, just to look around. I had not been to the
20 back of the house, nor any other officer until they
21 showed up. I remember people specifically yelling --
22 people call me Freestate, saying, "Freestate, she's on
23 the roof." And I looked. The defendant, as I was
24 coming from the back of the house, was holding on to
25 the chimney, I guess, hiding from Agent McCreary.

1 Q Were you able to see her holding on to the
2 chimney?

3 A I was. And I actually yelled at her to get down
4 from there, to which she moved from the back where I
5 could see her at the front, she moved back around to
6 the other side of the chimney, I guess in a bid to hide
7 from us. I don't know.

8 Q How were y'all able to get her down from the
9 chimney?

10 A She came to the back of the house, and basically
11 we -- you know, she really didn't have any choice. We
12 told her come down from there, please. She was up
13 there pretty high. We had to get a ladder -- well,
14 Mr. Paul was nice enough to give us a ladder from the
15 garage to help her get down from there. As she's
16 coming down, this pipe comes sliding down the roof.
17 It's a glass pipe. It's one that I'm familiar with;
18 being a police officer over ten years. It's commonly
19 used for smoking drugs; usually methamphetamine. We
20 got that. We got her down there, and then I placed her
21 in investigative detention just for the simple fact
22 that she has drug paraphernalia on her and she's hiding
23 from us. I didn't at the time know exactly who she was
24 until she came down from the building. I had already
25 seen her I.D., and that was her face. That was

1 Ms. Davis.

2 Q You did suspect there was a burglary in progress?

3 A Yes, sir. When we went to clear the residence,
4 Mr. Paul, we had him come in, and he was looking around
5 at certain items. And we came to the top of the steps,
6 and he said, "These items weren't here." They looked
7 like things were piled up right by the steps as if they
8 were being -- going to be carted out. And I asked him
9 if he was sure, and he said, "Absolutely. Those things
10 were not there. We didn't put them by the steps."

11 We also, when we were clearing the residence, we
12 found a bathroom door to the far side of the house on
13 the second floor open. And I asked him, was that open,
14 and he goes, "Absolutely not. I'm not going to leave a
15 window open in the middle of February at my mother's
16 house." So at that time this is before we found
17 Ms. Davis I figured that's where the burglar had made
18 their escape.

19 Q So y'all got her off the roof?

20 A Yes, sir.

21 Q When you say you placed her in investigative
22 detention, did you handcuff her?

23 A Yes, sir, I did.

24 Q And did you put her in a patrol car, I think, or
25 was she standing outside?

1 A She's standing outside. I walked her out to the
2 front of the residence, right in front of the garage.
3 From what I can remember I Mirandized her, I said,
4 "MS. Davis, I'm going to read you your Miranda rights.
5 You have the right to remain silent. Anything you say
6 can and will be used against you in a court of law.
7 You have a right to an attorney being present during
8 any questioning. If you cannot afford one, one will be
9 appointed for you free of charge." I asked her if she
10 understood those rights. She was coherent. I mean, I
11 know I referenced that she had a methamphetamine pipe,
12 but I didn't see any signs that she was intoxicated or
13 didn't understand me. She said, yeah, she will talk
14 about it, and I asked her what she was doing on the
15 roof.

16 Q Did you advise her orally, I mean just orally, you
17 didn't do a written rights waiver?

18 A No. At the time it was just kind of like a fluid
19 situation. It was just me standing there talking to
20 her with Sergeant Merck, who is our evidence tech, who
21 was there helping me process the scene because it was a
22 burglary, and he was standing there with me.

23 Q Okay. And did she agree to talk to you?

24 A Yeah, she didn't -- she said she'd talk to us.

25 Q Did you promise her anything; did you hold out any

1 hope for reward, did you threaten, try to coerce her in
2 any manner to talk to you?

3 A No. I just basically wanted to know why she was
4 on the roof and what was going on. I didn't promise
5 her anything. I don't know what I could have promised
6 her.

7 Q Just briefly, when you were talking to her, did
8 she seem to understand what you were saying?

9 A Yeah, absolutely.

10 Q Did you ask her any questions?

11 A I did. I started with the roof. I asked her what
12 she was doing there and why her car was there, and she
13 said, if I can refer to my notes. Actually, I remember
14 because it was just such a weird thing. She said she
15 was dropping her friend Joe Mann off for work. I said,
16 you know, that doesn't make any sense. She changed her
17 story again and said that, you know, her brother was
18 there and she got scared because the homeowner had come
19 home or had come to the house and threatened them with
20 a gun or said he had a gun, which he stated he did. He
21 stated he went in the house and said, "Listen. I have
22 a gun. I'm calling the police," then left and waited
23 for his wife. She said she got scared and then climbed
24 on the roof. I said, "Well, that's fine and good, but,
25 you know, that was two to three hours ago." I mean,

1 she had seen myself. I'm in my uniform with my badge
2 around my neck. Sergeant Merck wears a green Oconee
3 County uniform. George Mayer was in a uniform, patrol
4 car. I mean, there was no way she didn't see us, all
5 law enforcement officers down there, so I don't know
6 what she was scared of.

7 Q How far were y'all from her where she was at the
8 chimney?

9 A Goodness. I mean, it's a two-story house. I
10 mean, she could clearly see us, obviously, because she
11 was hiding. I can't really estimate how far we were,
12 but we were in line of sight.

13 Q Were you in probable earshot?

14 A Oh, yeah, absolutely.

15 Q Do you think she could hear what y'all were
16 saying?

17 A Yes, sir. I think that's why she was hiding from
18 us.

19 Q Did she say anything else about her brother?

20 A I asked her about the drugs that we had found in
21 the vehicle and actually in her purse. She stated,
22 "Those are mine. You know, my brother Ted doesn't do
23 that." And then like five seconds later, you know, I
24 actually turned and told someone she's claimed the
25 drugs. She says, "No, I didn't." And I remember

1 Sergeant Merck looking at her going, "You just told us
2 those were your drugs and your brother doesn't do that
3 kind of stuff," so.

4 Q Did she say anything else? Did you ask her any
5 more questions?

6 A No. She kind of was -- she was done after that.
7 She was --

8 Q Did you ever take any written statements from her?

9 A No, sir.

10 Q That was -- basically your involvement with her
11 ended at that point?

12 A She was taken to the detention center and it ended
13 there. We served search warrants, I believe, on the
14 vehicle after it was towed, just to see if there's any
15 stolen property in there, which there wasn't, and that
16 was pretty much it.

17 Q To the best of your knowledge, were the oral
18 statements that she said to you that she mentioned that
19 the drugs were hers, to the best of your knowledge,
20 were those given freely and voluntarily by her?

21 A Yes, sir, absolutely.

22 Q Did you try to coerce her, offer her anything?

23 A No, sir.

24 Q Promise her anything?

25 A No, sir.

1 MR. WAGNER: That's the only questions I have.

2 THE COURT: Mr. Patrick.

3 MR. PATRICK: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MR. PATRICK:

6 Q Was Sergeant Merck wearing an AXON camera or any
7 kind of device to your knowledge?

8 A Unfortunately not at that time, no, sir.

9 Q How long were y'all there before Ms. Davis was
10 found on the roof?

11 A Like I said, sir, I'm estimating it was at least
12 two hours. I mean, we were processing -- it was a
13 burglary. It took that long for Sergeant Merck to get
14 out there, who is an evidence tech, to come from
15 Walhalla. He was there. We were fingerprinting. He
16 fingerprinted the doors inside, any place that
17 people -- any place that a burglar could touch. I
18 mean, it was a long period of time.

19 Q You say when you found her, there was a pipe found
20 with her. Did she seem to be under the influence?

21 A Not at that time. I mean, like I said, the pipe
22 slid down when she changed positions. She was trying
23 to come down the roof, and I don't know where the pipe
24 was on her person, but it just slid down the roof at
25 first, and we're kind of like, "Oh, wow." But, no, she

1 was coherent. She was not happy with me because me
2 being a police officer. I don't know if that's her
3 testimony, but.

4 MR. PATRICK: Nothing further, your Honor.

5 THE COURT: Redirect?

6 MR. WAGNER: No, sir.

7 THE COURT: All right.

8 MR. WAGNER: That's all I have on that issue.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: Anything further?

12 MR. WAGNER: No, sir.

13 THE COURT: All right. Clearly defendant was in
14 custody. She had been given Miranda, appropriately so.
15 From the totality, there's nothing to indicate to me,
16 considering the factors of this case, that her
17 statement should not be admitted for the jury's
18 consideration. No evidence of coercion, duration of
19 interrogation, it was not a long interrogation. I
20 don't know a whole lot about her maturity, education,
21 but not a whole lot to indicate something about her
22 physical condition.

23 There is a little bit of concern about her
24 inebriation or lack thereof. The officer said -- he
25 indicated she seemed to appear cognizant of what she

1 was doing and saying at the same time she made a
2 statement about, "My brother doesn't do that," and a
3 few minutes later she contradicts herself, which would
4 indicate maybe there is not necessarily total cognition
5 of what's happening.

6 All being said, from the totality of the
7 circumstances, no threats of violence, no promise of
8 leniency. I don't know anything about her experience.
9 From all the evidence presented, I'm going to let her
10 statement in.

11 Very good. See y'all in the morning 9:30. Okay?

12 MR. BURR: May it please the Court. I want to
13 bring up one issue. This burglary first is an
14 aggravated factor, being her prior burglaries. This is
15 a burglary first based on her prior burglaries. Client
16 would be more than willing to stipulate to her record
17 and her prior burglaries if we could redact that
18 information in the indictment and not discuss her prior
19 burglaries.

20 MR. WAGNER: Your Honor, there is a case out there
21 that says I don't think we have to stipulate.

22 THE COURT: You don't have to. You can't do more
23 than is necessary to establish jurisdiction. You don't
24 have to do that, but you could, if you wanted to. It's
25 up to you.

1 MR. WAGNER: Your Honor, I think we probably would
2 just to prove that element, but I guess I would -- I've
3 got to put the prior conviction in, and I've got
4 certified copies to put in on that.

5 THE COURT: There was a question the other day
6 about certified copies of what. I know they had the
7 indictment as opposed to -- and the sentencing sheet as
8 part of the certified record. Would you just do the
9 sentencing sheet?

10 MR. WAGNER: Yes, sir.. That would be fine. And I
11 would have no objection to.

12 THE COURT: I mean, I think what Mr. Burr is
13 worried about, you start saying that in the indictment,
14 to wit, da, da, da, da, da, da. I think that's the
15 concern he has coming into evidence, isn't it?

16 MR. BURR: Yes, your Honor. And I think the case
17 Mr. Wagner is referring to is the James case. In that
18 case they were using seven priors versus two, and my
19 interpretation it's still -- if there's no discussion
20 of them, we're willing to stipulate to it. If you have
21 got to prove the element, all you need is two.

22 THE COURT: But if he does want to stipulate. He
23 doesn't have to. See if you would be agreeable, if you
24 just don't put in the indictment.

25 MR. WAGNER: What we've done in the past and it's

1 worked, I think tell the jury that the person has the
2 two priors and leave it at that. And not actually put
3 in evidence of the actual certified convictions.

4 THE COURT: If you stipulate, it's going to be
5 charged to the jury as a stipulation that you agree and
6 you agree in that as when they get back into their
7 deliberations, they will not be allowed to challenge
8 whether or not she had two prior burglary convictions
9 or enhancement provisions. They will have to accept
10 that as true.

11 MR. WAGNER: Yes, sir. And not put, actually put
12 the -- maybe we can make them a court record of some
13 sort if she's convicted on that for sentencing
14 purposes, but I'm not actually wanting to put that
15 stuff in.

16 THE COURT: Okay. That's what you're looking for?

17 MR. BURR: Yes, sir. Thank you, your Honor.

18 THE COURT: All right, guys. See you in the
19 morning.

20 (WHEREUPON, proceedings adjourned at 4:56 p.m.)
21
22
23
24
25

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 2nd day of April 2015.

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

July 31, 2015

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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Exhibits

For the State:

Marked	Description	I.D.	Admitted
1	Best evidence kit		152
2	Gloves & flashlight		133
3	Drug paraphernalia		153
4	Black zipper container		154
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For the Defendant:

Marked	Description	I.D.	Admitted
1	Photograph	102	
2	Photograph	103	

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:43 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.
5 Thank you all for being here. To give you somewhat of
6 an update, we finished one trial yesterday. We moved
7 several other cases as a result of your presence or
8 willingness to be here and serve. We have a case we're
9 about to pick a jury on. Actually, we had two, and I'm
10 informed that one has been resolved, so you've been
11 working at night even though you didn't know you were
12 working.

13 With that being said, Mr. Wagner, would you call
14 your next case, please, sir.

15 MR. WAGNER: Yes, sir. The State would call
16 2014-645 charging Teresa Annette Davis with
17 first-degree burglary and 2014-646 for possession with
18 intent to distribute methamphetamine.

19 THE COURT: Counsel agree the strikes with ten and
20 five?

21 MR. WAGNER: Yes, sir.

22 MR. PATRICK: Yes, your Honor.

23 THE COURT: Madam Clerk, would you swear the panel
24 for me, please.

25 THE CLERK: Yes, sir.

1 (The jury panel was sworn in.)

2 THE CLERK: Let the record reflect that all
3 members of the jury panel have accepted the oath.

4 THE COURT: Very good. All right.

5 Ladies and gentlemen, we're about to begin jury
6 selection on the case of the State of South Carolina
7 versus Teresa Annette Davis who has been indicted for
8 burglary first degree and possession with intent to
9 distribute methamphetamine.

10 Again I remind you the fact that Ms. Davis has
11 been arrested, charged and indicted is not evidence of
12 her guilt nor inference or presumption of her guilt.
13 It's simply the mechanism by which the State brings her
14 to court for a trial and a determination of guilt or
15 innocence.

16 As we did the first part of the week, I have
17 several questions I'm going to ask. If you would,
18 stand up, give us your jury number if you need to
19 respond and your name, give us your response from where
20 you're standing unless you have an absolute need to
21 come forward, then we'll talk to you in a more
22 confidential setting.

23 Can everyone hear me okay? If you don't
24 understand a question, please let me know.

25 Then we'll begin with the selection process.

1 The first question: Has anyone on the jury panel
2 ever been related by blood or marriage to Teresa A.
3 Davis, Doug Paul or Debra Paul? If so, would you
4 please stand.

5 Has any member of the jury panel ever had a close
6 personal or social relationship with Teresa A. Davis,
7 Doug Paul, or Debra Paul? If so, would you please
8 stand.

9 All right, sir. What's your jury number?

10 POTENTIAL JUROR: 151.

11 THE COURT: 151. Mr. Silver.

12 POTENTIAL JUROR: Yes.

13 THE COURT: Okay, sir. To whom did you have a
14 close personal or social relationship?

15 POTENTIAL JUROR: I know Debbie and Doug pretty
16 good.

17 THE COURT: How do you know them?

18 POTENTIAL JUROR: They have lived in the same
19 subdivision, probably known them, I guess, 15 years or
20 so.

21 THE COURT: You live in the same subdivision with
22 them currently?

23 POTENTIAL JUROR: I do.

24 THE COURT: As such, do you socialize with them,
25 see them around?

1 POTENTIAL JUROR: Pretty regular.

2 THE COURT: Tell you what, Mr. Silver. I'm going
3 to excuse you from the trial of this case. Okay, sir?
4 I do appreciate you being here, but I'm going to ask
5 you to stick around just in case the other trial does
6 not resolve itself. I think it will, but just in case.
7 Thank you very much.

8 Anyone else?

9 All right. Ladies and gentlemen, this is a list
10 of potential witnesses who may appear in this case.
11 I'm going to read through the list and then ask you the
12 follow-up questions. If you don't get a name, let me
13 know and I'll redo them.

14 First potential witness is George Mayer, Seneca
15 Police Department; David Philpott, Oconee County
16 Sheriff's Department; William Freestate, Oconee County
17 Sheriff's Department; Scott McCreary, Oconee County
18 Sheriff's Department; Jason Kilpatrick, Oconee County
19 Sheriff's Department; Patrick Merck, Oconee County
20 Sheriff's Department; and Meredith Lanford, Anderson
21 Oconee Drug Lab.

22 Did everyone get those names? Very good.

23 Has anyone on the jury panel ever been related by
24 blood or marriage to any of the potential witnesses
25 I've just read to you? If so, would you please stand.

1 Has any member of the jury panel ever had a close
2 personal or social relationship with any of the
3 potential witnesses I just read to you? If so, would
4 you please stand.

5 Very good.

6 Mr. Patrick, would you stand and introduce
7 yourself and your co-counsel.

8 MR. PATRICK: My name is Rusty Patrick. I work at
9 the public defender's office here in Oconee County.
10 This is Wilson Burr. He also works at the public
11 defender's office in Oconee County, and we represent
12 Teresa Davis.

13 THE COURT: Thank you, sir.

14 All right. Mr. Wagner, would you do the same,
15 please.

16 MR. WAGNER: Yes, sir. I'm David Wagner I'm with
17 the solicitor's office. Sitting here at the table with
18 me is Sergeant Will Freestate. He's with the sheriff's
19 office.

20 THE COURT: Very good.

21 Has any member of the jury panel ever been
22 represented by any of these attorneys here in the
23 courtroom, any attorney from the Oconee County or Tenth
24 Judicial Circuit public defender's office or the Tenth
25 Judicial Circuit solicitor's office? If so, would you

1 please stand.

2 Has any member of the jury panel ever been related
3 by blood or marriage or have you ever had a close
4 personal or social relationship with any of these
5 attorneys in the courtroom, any attorney who works for
6 the Tenth Judicial Circuit public defender's office or
7 the Tenth Judicial Circuit solicitor's office? If so,
8 would you please stand.

9 Has any member of the jury panel read, heard or
10 seen anything about the case of the State of South
11 Carolina versus Teresa Annette Davis prior to the case
12 being called today? If so, would you please stand.

13 Has any member of the jury panel formed or
14 expressed an opinion about any issue or matter involved
15 in the case of the State of South Carolina versus
16 Teresa Annette Davis? If so, would you please stand.

17 Is any member of the jury panel aware of any bias
18 or prejudice they may harbor either toward the State of
19 South Carolina or towards the defendant, Teresa Annette
20 Davis, or their respective attorneys? If so, would you
21 please stand.

22 Is any member of the jury panel a member of the
23 Oconee County Grand Jury that issued the indictments
24 against Teresa Annette Davis in this matter? If so,
25 would you please stand.

1 Is there any member of the jury panel who is a
2 member of or a contributor to any group which has as
3 its primary purpose the promotion of law enforcement or
4 victim's rights? Examples of such groups are MADD,
5 SADD, or CAVE. But if anyone is a member of or a
6 contributor to any group which has as its primary
7 purpose the promotion of law enforcement or victim's
8 rights, would you please stand.

9 Okay, sir. What is your jury number?

10 POTENTIAL JUROR: 83.

11 THE COURT: 83. You're Mr. Hammond?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Which group are you a member or
14 contributor to?

15 POTENTIAL JUROR: None that you mentioned, but I
16 am a member of the Fraternal Order of Police Capital
17 City Lodge Number 9 in Ohio.

18 THE COURT: In Ohio?

19 POTENTIAL JUROR: Yes.

20 THE COURT: Would the fact that you are a member
21 in that organization prevent you from being able to
22 listen to the testimony and evidence and law as I give
23 at the end of the case and be fair to the State and
24 also to the defendant in this matter?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: Because of your membership in this
2 organization, would you tend to believe the testimony
3 of law enforcement over any other witness just because
4 they're a member of law enforcement?

5 POTENTIAL JUROR: Absolutely not.

6 THE COURT: Very good.

7 Any additional voir dire from the defense?

8 MR. PATRICK: No, your Honor.

9 THE COURT: From the State?

10 MR. WAGNER: No, sir.

11 THE COURT: Thank you, Mr. Hammond.

12 Anyone else?

13 Does any member of the jury panel know of any
14 reason whatsoever why he or she should not be selected
15 to serve on the trial of this matter with particular
16 emphasis being placed on your ability to be fair and
17 impartial to both the State and to Teresa Annette
18 Davis, the defendant in this matter? If so, would you
19 please stand.

20 Very good. Any additional voir dire from either
21 the State or the defense?

22 MR. WAGNER: No, sir.

23 MR. PATRICK: No, your Honor.

24 THE COURT: All right. Ladies and gentlemen, if
25 you recall on Monday when we selected the jury, what

1 we're going to do is your name will be called. You're
2 going to be randomly selected from the computer. But
3 if your name is called, come through the turn door,
4 stand up here at the bar, face the State, face the
5 defense. If you have personal belongings, bring them
6 with you, and they will make a selection as to whether
7 or not you will be picked on the next jury.

8 Madam Clerk.

9 THE CLERK: Do we want an alternate?

10 THE COURT: Yes, we do want one alternate.

11 THE CLERK: Ladies and gentlemen, as I call your
12 name, if you would please come forward.

13 Number 47, Chevis Crenshaw.

14 (WHEREUPON, a white male stepped forward.)

15 THE CLERK: What says the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What says the defense?

18 MR. PATRICK: Please seat Mr. Crenshaw.

19 THE CLERK: Sir, if you would, please take a seat
20 in the jury box.

21 Number 99, Sydney Jones.

22 (WHEREUPON, a white female stepped forward.)

23 THE CLERK: What says the State?

24 MR. WAGNER: Present the juror.

25 THE CLERK: What says the defense?

1 MR. PATRICK: Please seat Ms. Jones.

2 THE CLERK: Ma'am, if you would, please take a
3 seat in the jury box.

4 Number 113, Patricia McKinney.

5 (WHEREUPON, a white female stepped forward.)

6 THE CLERK: What says the State?

7 MR. WAGNER: Present the juror.

8 THE CLERK: What says the defense?

9 MR. PATRICK: Please seat Ms. McKinney.

10 THE CLERK: Ma'am, if you would, please take a
11 seat in the jury box.

12 Number 85, Russell Harris.

13 (WHEREUPON, a white male stepped forward.)

14 THE CLERK: What says the State?

15 MR. WAGNER: Please excuse the juror on this case.

16 THE COURT: Sir, you have been excused from this
17 case. You may be seated.

18 Number 12, Joyce Barnes.

19 (WHEREUPON, a white female stepped forward.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. PATRICK: Please seat Ms. Barnes.

24 THE CLERK: Ma'am, if you would, please take a
25 seat in the jury box.

1 Number 88, Margaret Hoelscher.
2 (WHEREUPON, a white female stepped forward.)
3 MR. BURR: What number?
4 THE CLERK: Number 88.
5 What says the State?
6 MR. WAGNER: Present the juror.
7 THE CLERK: What says the defense?
8 MR. PATRICK: Please present the juror.
9 THE CLERK: Ma'am, if you would, please take a
10 seat in the jury box.
11 Number 166, Micky Ward.
12 (WHEREUPON, a white female stepped forward.)
13 THE CLERK: What says the State?
14 MR. WAGNER: Present the juror.
15 THE CLERK: What says the defense?
16 MR. PATRICK: Please excuse the juror.
17 THE CLERK: Ma'am, you have been excused from this
18 case. You may be seated.
19 Number 133, Ellen Pearson.
20 (WHEREUPON, a white female stepped forward.)
21 THE CLERK: What says the State?
22 MR. WAGNER: Present the juror.
23 THE CLERK: What says the defense?
24 MR. PATRICK: Please excuse the juror.
25 THE CLERK: Ma'am, you have been excused from this

1 case. You may be seated.

2 Number 16, Amber Beers.

3 (WHEREUPON, a white female stepped forward.)

4 THE CLERK: What says the State?

5 MR. WAGNER: Please excuse the juror on this case.

6 THE CLERK: Ma'am, you have been excused from this
7 case. You may be seated.

8 Number 126, Jason Olbrich.

9 (WHEREUPON, a white male stepped forward.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the defense?

13 MR. PATRICK: Present the juror.

14 THE CLERK: Sir, if you would, please take a seat
15 in the jury box.

16 Number 38, Rebecca Chastain.

17 (WHEREUPON, a white female stepped forward.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the defense?

21 MR. PATRICK: Excuse the juror.

22 THE CLERK: Ma'am, you have been excused from this
23 case. You may be seated.

24 Number 171, Eric White.

25 (WHEREUPON, a white male stepped forward.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the defense?

4 MR. PATRICK: Present the juror.

5 THE CLERK: Sir, if you would, please take a seat
6 in the jury box.

7 Number 131, Clinton Patterson.

8 (WHEREUPON, a white male stepped forward.)

9 THE CLERK: What says the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What says the defense?

12 MR. PATRICK: Present the juror.

13 THE CLERK: Sir, if you would, please take a seat
14 in the jury box.

15 Number 123, Brianca Nelson.

16 (WHEREUPON, a black female stepped forward.)

17 THE CLERK: What says the State?

18 MR. WAGNER: Present the juror.

19 THE CLERK: What says the defense?

20 MR. PATRICK: Present the juror.

21 THE CLERK: Ma'am, if you would, please take a
22 seat in the jury box.

23 Number 97, Connie James.

24 (WHEREUPON, a white female stepped forward.)

25 THE CLERK: What says the State?

1 MR. WAGNER: Present the juror.

2 THE CLERK: What says the defense?

3 MR. PATRICK: Please excuse the juror.

4 THE CLERK: Ma'am, you have been excused from this
5 case. You may be seated.

6 Number 42, Candace Claudson.

7 (WHEREUPON, a white female stepped forward.)

8 THE CLERK: What says the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the defense?

11 MR. PATRICK: Present the juror.

12 THE CLERK: Ma'am, if you would, please take a
13 seat in the jury box.

14 Number 5, Mary Arnette.

15 (WHEREUPON, a white female stepped forward.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Please excuse the juror on this case.

18 THE CLERK: Ma'am, you have been excused on this
19 case. You may be seated.

20 Number 32, Narven Campbell.

21 (WHEREUPON, a black male stepped forward.)

22 THE CLERK: What says the State?

23 MR. WAGNER: Present the juror.

24 THE CLERK: What says the defense?

25 MR. PATRICK: Present the juror.

1 THE CLERK: Sir, if you would, please take a seat
2 in the jury box.

3 Number 19, Leslie Blackwell.

4 (WHEREUPON, a white female stepped forward.)

5 THE CLERK: What says the State?

6 MR. WAGNER: Please excuse the juror on this case.

7 THE CLERK: Ma'am, you have been excused from this
8 case. You may be seated.

9 Number 46, Kyle Craig.

10 (WHEREUPON, a white male stepped forward.)

11 THE CLERK: What says the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What says the defense?

14 MR. PATRICK: Present the juror.

15 THE CLERK: Sir, if you would, please take a seat
16 in the jury box.

17 This will be for our alternate.

18 Number 89, Jeffrey Hogan.

19 (WHEREUPON, a white male stepped forward.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. PATRICK: Present the juror.

24 THE CLERK: Sir, if you would, please take a seat
25 in the jury box.

1 THE COURT: Very good. All right. Ladies and
2 gentlemen who were selected, I'm going to ask that you
3 go back to your jury room, pick a foreperson who will
4 preside over the deliberations and also be responsible
5 for communicating with the Court in the event that
6 needs to be done. Our alternate may not be the
7 foreperson. You have a right to vote. It doesn't have
8 to be unanimous but by a simple majority.

9 Once you determine who that foreperson will be,
10 write your name down on a piece of paper. Poll your
11 fellow jurors to determine who, if anyone, would like
12 to have pad and pencil to use during the trial of this
13 matter. Write that number down and we'll bring you
14 back into the courtroom.

15 If you will go with Buck, please.

16 (WHEREUPON, the jury exited the courtroom
17 at 10:23 a.m.)

18 THE COURT: All right.

19 Ladies and gentlemen, those of you who were not
20 selected, just to ensure that the next trial -- I'm
21 informed by my conference with the attorneys that it is
22 not going to be a trial but it's going to be a
23 resolution. But to ensure that, I'm going to ask that,
24 on suggestion of your fine clerk, that you go down to
25 the jury room. You will be a little more comfortable,

1 have a little more room and chat instead of being up
2 here in a more confined area. We'll send word back
3 shortly once we know whether we will have to do trial.
4 But if you will go down with the bailiffs to the jury
5 selection room and we'll call you back in just a few
6 minutes.

7 Yes, sir.

8 JUROR: May we stay here?

9 THE COURT: Actually, you can't because I have a
10 couple things I have to do that would not be
11 appropriate for the jury to view.

12 After we dismiss you, you can stay here all you
13 like, but while we're doing that, if you will go with
14 them, please, sir.

15 (WHEREUPON, the remaining prospective jury panel
16 left the courtroom.)

17 THE COURT: Juror Number 126 was the foreperson.

18 (WHEREUPON, Court takes up other matters from
19 10:29 a.m. to 10:51 a.m.)

20 THE COURT: Back on the record with the State
21 versus Teresa Annette Davis. She is not here. I've
22 got two things. One, I want to make sure that she had
23 received notice of her right to attend trial. Also the
24 warning that if she did not attend trial, that she
25 would be tried in her absence should she fail to

1 attend.

2 Mr. Wagner, I would assume that's in the bonding
3 information; is that correct?

4 MR. WAGNER: Yes, your Honor. I could give this
5 to you, make a court exhibit or something if you want
6 to.

7 THE COURT: If you can just point out in the bond
8 where it is. And I believe in our conference she also
9 was advised by the solicitor's office last term of
10 court this case would come up for trial this term; is
11 that correct?

12 MR. WAGNER: Yes, sir, and I have a copy of a
13 letter here, too, that we served on her on March 26th
14 of 2015 and it did say that her case would be on the
15 trial docket this week here in general sessions court,
16 that failure to appear or remain until discharged would
17 result in her being tried in her absence and a bench
18 warrant issued and her case would be on the docket. So
19 she did receive that, and she did acknowledge it. We
20 served it on her personally. And I do have a copy of
21 her bond here. She was originally bonded out on a
22 \$25,000 surety bond. I think -- it looks like Judge
23 Maddox's signature, but it was from April 1, 2014. She
24 was ordered to appear on Monday, April 21, 2014, and if
25 her case was not resolved, that she was to be here

1 every term of court until it was resolved.

2 THE COURT: And that bond also advises her of her
3 right to attend and participate in trial, standard
4 language?

5 MR. WAGNER: I'm looking on here, Judge. I know
6 it's the standard stuff and it's probably on here
7 somewhere, but I'm not finding it.

8 THE COURT: Okay. Now --

9 MR. BURR: Your Honor, may we see the bond
10 paperwork?

11 THE COURT: Mr. Patrick, while Mr. Burr is looking
12 at that, based on our pretrial meeting, my
13 understanding is that you had communicated with
14 Ms. Davis and she is aware that this trial is on the
15 docket this week; is that correct?

16 MR. PATRICK: That is correct, your Honor.

17 THE COURT: Okay. Also before we came in here, I
18 know that you have several motions. We're going to let
19 you put those on the record. My law clerk says
20 apparently you, the public defender's office or
21 solicitor's office, somebody received a call from some
22 attorney in Greenville saying this lady has contacted
23 him about representing her. She's not in his office,
24 et cetera. And he was told or she was told that
25 they're selecting the jury now, and Ms. Davis was

1 apparently told by this attorney she needs to get on up
2 here. I don't know anything about it. Who had that
3 conversation?

4 MR. WAGNER: Your Honor, I was told by my
5 paralegal that it happened. I think it came into our
6 office. It was from Ivan Toney. He's an attorney. I
7 think he's over towards Spartanburg. But I've dealt
8 with him. He used to be in Anderson. He called, and I
9 don't think she was in his office but she was on the
10 phone with him, I believe. And when he found out the
11 jury was being drawn, he told her to come up here
12 immediately is my understanding.

13 THE COURT: Mr. Burr, do you have any problems
14 with the bonding paperwork?

15 MR. BURR: Your Honor, the only condition I see on
16 here is that if you do not show up, a bench warrant
17 will be issued.

18 THE COURT: Let me see. Well, also have you seen
19 the paperwork?

20 MR. BURR: I would argue against that as improper
21 service because it's common knowledge she had an
22 attorney.

23 THE COURT: Specifically say that so somebody
24 looking at the record will know what you're talking
25 about.

1 MR. BURR: The letter provided to the defendant at
2 her last appearance was never provided to her attorney.

3 MR. WAGNER: Your Honor, we did cc Mr. Patrick.
4 It's on there.

5 MR. PATRICK: We did receive a copy of that, but
6 they were served on her without our knowledge at the
7 time.

8 THE COURT: So the solicitor, on March 26, 2015,
9 served Ms. Davis a letter which appears to have her
10 signature and you acknowledge receipt of a copy of
11 that, even though you got it after the fact.

12 MR. PATRICK: Yes, your Honor. We did receive a
13 copy, just after the fact.

14 THE COURT: Acknowledgement by the defendant says,
15 "I understand that I'm informed that I have a right and
16 obligation to be present at trial and that if I fail to
17 attend trial we will proceed in my absence," on the
18 bonding, so it does advise her of that right.

19 Further, the letter of March 16, 2015, clearly
20 tells Ms. Davis that the trial is on the docket this
21 week and that if she doesn't appear, that the trial --
22 she will be tried in her absence. That is sufficient
23 notice. I'm going to find for a fact on the record
24 that the defendant was advised of her notice and she
25 acknowledged notice of right to be present at trial or

1 obligation to be here at trial, and that if she was not
2 in attendance, that she would be tried in her absence.
3 I'm going to make these court exhibits, if I may, Madam
4 Clerk -- I mean Madam Court Reporter.

5 THE COURT: By the the way, my law clerk just
6 showed me an e-mail from Iyan Toney he just received
7 saying that he is not Ms. Davis' attorney. Okay. All
8 right.

9 Now, you had, I understand, Mr. Patrick, some
10 motions you wanted to make, place on the record at this
11 time; is that correct?

12 MR. BURR: Your Honor, we wanted to renew our
13 motions from yesterday. We're still of the opinion
14 that the two charges should have been severed. They're
15 different witnesses, different defenses, which I think
16 your Honor has ruled that. We wanted to reserve that.
17 We still feel strongly -- I feel strongly on the prior
18 burglaries. Reading that list of cases, that's still a
19 developing theory. And it is clear that the Court's
20 concluded having prior convictions is prejudicial. The
21 exception being when it's necessary, you have to put it
22 in.

23 We, as I mentioned yesterday, would do a
24 stipulation that she agrees to the prior -- to her
25 record and the prior burglaries and then the elements

1 of the burglary for the jury would be entering a
2 dwelling to commit a crime. If that's proved with the
3 stipulation, then it's burglary first.

4 THE COURT: And remind me. Did we enter a
5 stipulation that you were just going to stipulate to
6 the two prior -- are they burglaries?

7 MR. BURR: Yes, sir.

8 THE COURT: Or did you want to go ahead and
9 present certified evidence of those?

10 MR. WAGNER: My understanding was that we were
11 going to stipulate in front of the jury that she did
12 have the necessary two priors for the aggravating
13 circumstance. I've got the certified copies here. Two
14 of them are from Anderson County, one from Oconee
15 County. I thought --

16 THE COURT: Just as a matter of precaution, let's
17 make those certified copies court exhibits not to go to
18 the jury so it's in the record. Then when you, at such
19 point in time that you bring up the stipulation, I need
20 to give the jury a cautionary instruction that that is
21 not being presented to show that she's a bad person or
22 that she committed the crime, in this case only to meet
23 the burden or the element of the burglary that says two
24 prior convictions makes this a burglary first,
25 whatever.

1 MR. WAGNER: Your Honor, I probably would mention
2 in my opening just if the elements of the crime --

3 THE COURT: Unless y'all want me to do it in my
4 opening charge, I'll just do it during the case and
5 I'll do it again in my closing charge to the jury. I
6 think that will be sufficient. Unless the defense has
7 another suggested procedure, that's the way I would
8 intend to do it.

9 Mr. Burr.

10 MR. BURR: Your Honor, we still object to it, know
11 your ruling, so it doesn't matter how it comes in.

12 THE COURT: I think you have to continue on your
13 objection.

14 MR. BURR: Either is fine.

15 THE COURT: Now, Mr. Patrick, any other motions at
16 this point?

17 MR. PATRICK: Your Honor, we'd just ask the
18 witnesses be sequestered. And also yesterday there was
19 mention of a pipe that was found on Ms. Davis.

20 THE COURT: About a what?

21 MR. PATRICK: A pipe that was found on Ms. Davis
22 as they were getting her off the roof, and I believe it
23 was referred to as a meth pipe. I would ask that
24 that -- any mention that there was a meth pipe, it's
25 all right to say it's a pipe, but not that it was a

1 meth pipe. I think that's prejudicial.

2 They have it in evidence. To my knowledge, they
3 have not tested it for any kind of residue or anything
4 of that nature, so I'd just ask for that.

5 THE COURT: I see the officer shaking his head.
6 You don't have a problem with that?

7 MR. WAGNER: We don't have it in evidence. Either
8 she intentionally broke it on the roof or accidentally
9 broke it on the roof, but it was in pieces with what
10 they believe to be meth crystals. It was not tested.
11 They didn't even pick it up there because it was sharp
12 shards of glass with meth on it. It was a hazard.
13 They left it on the roof. There was pieces that fell
14 off in front of the officers.

15 THE COURT: Let's just do this, then. Let's just,
16 if you would, instruct your witnesses that in referring
17 to that, just refer to it as what appeared to be a pipe
18 or a pipe.

19 MR. WAGNER: Glass pipe, would that be sufficient?

20 THE COURT: Glass pipe is fine.

21 Any other motions, Mr. Patrick?

22 MR. PATRICK: I believe that is it, your Honor.

23 THE COURT: Okay.

24 MR. WAGNER: Just so I'm clear on the two priors,
25 just what I've done in the past is I have generally

1 done it from the start just told them that the person
2 had two priors, that that's been stipulated to and
3 basically leave it at that. I guess I'm not sure from
4 your ruling whether or not I need to put it in through
5 a witness which, to me, is going to highlight a little
6 more if I do that.

7 THE COURT: You know, that's interesting now.
8 Either you do it through a witness or I will read a
9 stipulation of the parties to the jury and tell them
10 that they cannot, since this is a stipulation, that is
11 a conceded fact and they cannot debate whether or not
12 she has two prior burglary convictions.

13 However, I remind them that it's only used for the
14 purposes of establishing burglary first elements and
15 not to show that she is a bad person or committed the
16 act of the crime in this case, et cetera, et cetera,
17 whatever way y'all want to do it.

18 MR. PATRICK: I'd probably prefer the stipulation
19 and with that instruction connected with it. I think
20 that would probably be the best, your Honor.

21 THE COURT: All right.

22 MR. WAGNER: That's kind of what I've always done
23 in the past.

24 THE COURT: That works well. And that way we have
25 got the court's exhibits to verify that's correct, not

1 disputed. All right. Anything further?

2 MR. PATRICK: Nothing further from defense, your
3 Honor.

4 THE COURT: Mr. Wagner, are you ready with your
5 opening statement?

6 MR. WAGNER: Yes, sir.

7 THE COURT: Mr. Patrick?

8 MR. PATRICK: Yes, your Honor.

9 THE COURT: Y'all want a break or anything or are
10 you ready to go?

11 MR. PATRICK: I could use the restroom, if you
12 don't mind.

13 THE COURT: Let's take about a two or three-minute
14 break and come back.

15 (WHEREUPON, recess taken from 11:03 a.m.
16 to 11:07 a.m.)

17 MR. WAGNER: Your Honor, as far as the
18 sequestering of witnesses, I have two victims. I don't
19 plan on calling Mr. Paul.

20 THE COURT: Victim's don't get sequestered.
21 Primary investigator doesn't get sequestered. Anybody
22 else should be. Does anybody disagree with that?

23 MR. PATRICK: No, your Honor.

24 THE COURT: You ready?

25 MR. WAGNER: Yes, your Honor.

1 THE COURT: Mr. Patrick?

2 MR. PATRICK: Yes, your Honor.

3 THE COURT: Would you bring the jury in.

4 (WHEREUPON, the jury came into open court at
5 approximately 11:09 a.m.)

6 THE COURT: Madam Clerk, would you swear the jury,
7 please, ma'am.

8 (WHEREUPON, the jury was impaneled.)

9 THE COURT: All right. Ladies and gentlemen of
10 the jury, good morning to each and every one of you.
11 Let me give you some preliminary ideas about serving on
12 a jury. I know some of you have served, but I'm going
13 to repeat what I said to you earlier so everybody will
14 be on the same page.

15 Number one, I don't know if anybody on this jury
16 has ever been involved in a jury trial before.
17 However, I suspect that each one of you have watched
18 what purports to be a trial on TV. This is not going
19 to be like TV. It's not entertainment. Trials are
20 very slow and deliberate and methodical.

21 In fact, there may be times during this trial when
22 you feel like you're cattle being ushered in and out
23 the courtroom because there will be things that occur
24 in here that would not be appropriate for you to see.
25 But fair to say that trials are a fundamental part of

1 our democracy, and they are a search for the truth to
2 try to make sure that justice is done for both of the
3 participants in the trial.

4 Now, the attorney for the State and the attorney
5 for the defense, when they're sworn in, they take an
6 oath to zealously represent their respective positions
7 in each case and every case and you expect that they
8 will do that in this case. At the same time, they're
9 officers of this court. What that means is you could
10 expect them to be professional, competent, ethical
11 towards one another, towards the Court, towards any
12 witness that may appear in this court in this trial.

13 When you took an oath and during the qualification
14 you represented that you could be fair and impartial
15 and decide the case based on the testimony, the
16 evidence presented here in the courtroom and according
17 to the law as I give it to you. That means that the
18 parties, the attorneys, and the Court have the right to
19 expect of you that you will be fair and you will be
20 impartial and you will be ethical in your roles as
21 jurors in this case.

22 Now, what I'm about to tell you is not the
23 substantive law that you will apply, but it's just a
24 general roadmap to let you understand where we are and
25 what we're doing in this case.

1 Mr. Foreman, I understand that the jury has
2 selected to have no pads or pens, right?

3 JURY FOREMAN: Your Honor, we already had them.

4 THE COURT: Oh, you had them. Okay. So anyone
5 who has selected to use pad and pens, do you have them
6 with you? Anyone need them?

7 Before we get started, let me just say this:
8 Trials are not endurance contests. If at any time
9 someone blocks your view from the testimony being
10 presented, you can't hear it, or if you need to take a
11 personal break, indicate so and we'll be more than glad
12 to accommodate you and we'll do so.

13 Now, for those of you who have elected to have pad
14 and pencil, let me give you a little bit of caution.
15 Some people are better note-takers than others.

16 And I know, Mr. Foreman, you know this, but just
17 because something appears in somebody's pad or notes
18 doesn't mean that it trumps somebody's memory. And in
19 the case when you are instructed to begin your
20 deliberations, you will have to hash out any
21 differences that may appear.

22 Also, in performing your role as jurors or what we
23 refer to as the judges of the facts, you have to
24 evaluate the testimony you wish to believe or which
25 testimony you may not want to believe. And in

1 performing that evaluation, you will need to be able to
2 look at a witness and look at their demeanor on the
3 stand. They may do something while they are on the
4 stand that indicates to you that they are telling the
5 truth or that they are not telling the truth. But if
6 you're so engrossed in taking your notes, you may miss
7 some subtle reaction that may be indicative to you of
8 that aspect of your role. So make sure you try to not
9 become so engaged that you miss testimony.

10 Now, in this case the defendant is charged with
11 possession with intent to distribute methamphetamine
12 and burglary first. Two different charges. Each
13 charge stands separately and independently of each
14 other.

15 And I'll tell you more about that, Mr. Foreman, at
16 the end of this case.

17 Again, the indictments in this case, as I said
18 multiple times during this week, is not evidence of
19 Ms. Davis' guilt. It does not raise an inference nor a
20 presumption of her guilt. These documents are simply
21 the charging mechanisms by which the State brings a
22 defendant before the Court for trial and a
23 determination of her guilt or innocence.

24 With that being said, you may notice that
25 presently Ms. Davis is not here. And under the law in

1 this state a defendant may be tried even in their
2 absence, in other words, even if they don't attend
3 trial.

4 However, and I'll remind you of this at the end of
5 the case, the fact the defendant is not present may not
6 be considered by you against this defendant in any form
7 or fashion. I will tell you now and I'll tell you
8 again that the burden remains on the State of South
9 Carolina to prove each and every element of the charges
10 against her by proof that satisfies you of her guilt
11 beyond a reasonable doubt.

12 In fact, in this case the defendant has said, "I
13 am not guilty." Therefore, the State has the burden of
14 proving their case beyond a reasonable doubt. So let
15 me give you a quick idea of what reasonable doubt is.
16 A reasonable doubt is the kind of doubt that would
17 cause a reasonable, sincere and conscientious person to
18 hesitate to act in an important matter in their own
19 affairs.

20 Now, the State, again, has this burden of proving
21 each and every element of their case. If any of you
22 have ever been involved in a civil case, the burden of
23 proof is what we call a preponderance or greater weight
24 of the evidence, which means just a very little bit.

25 Criminal cases are much different. The burden is

1 much higher. It's proof beyond a reasonable doubt.
2 And a reasonable doubt is proof that leaves you firmly
3 convinced that the defendant is guilty of the charge or
4 charges pending against her.

5 And with that being said, ladies and gentlemen, in
6 this world there are very few things that we know with
7 absolute certainty, and the law does not require in a
8 criminal case that the State overcomes every possible
9 doubt that may exist in the case. If, at the end of
10 case when you are told to begin your deliberations, you
11 are firmly convinced that the defendant is guilty of
12 the crime or crimes for which she's been charged, it
13 will be your duty find her guilty.

14 On the other hand, if you think there is a real
15 possibility that the defendant is not guilty to either
16 or both of these charges, it will be your duty to give
17 her the benefit of the doubt and find her not guilty.

18 Now, as I referred to earlier, you are referred to
19 in the law as the sole judges of the facts. Your
20 purpose today is to find facts and hopefully reach a
21 verdict. No one, not myself, not the State or the
22 defense, can interfere with your sole role as being
23 judges of the facts. If I do anything or say anything
24 throughout the course of this trial that seems to
25 indicate to you how you are to find facts, in other

1 words, the verdict you are to reach, I'm going to ask
2 you and also instruct you to disregard it. I have no
3 such feeling. This case came before me this morning,
4 and I look at my role as being somewhat akin to being a
5 referee, to make sure the State and the defendant have
6 a fair and impartial trial. At the end of this case,
7 as instructor to instruct the law that you must apply
8 in this case.

9 Now, you will determine what those facts are from
10 the testimony and the evidence that you hear during the
11 course of this trial. And that testimony and evidence
12 will come from this witness stand right here by way of
13 sworn testimony or exhibits that I allow into evidence
14 in this case. You may not and you shall not be
15 influenced by anything you may see or hear when court
16 is not in session, whether during a break, or if we go
17 into tomorrow over the evening, and it will be up to
18 you throughout the course of this trial also to pay
19 close attention to the testimony and the evidence being
20 presented.

21 Normally, if I make a mistake, they have a group
22 or groups down in Columbia that will correct my legal
23 errors. But factual determinations are generally not
24 correctable on appeal. So please pay close attention
25 throughout the course of this trial.

1 The law that makes you the sole judges of the
2 facts makes me the sole judge of the law. You may not
3 like the law as I give it to you, but you must and you
4 are duty bound to accept the law as I give it to you.
5 I can't invade your role as being the fact finders.
6 You may not invade my role as being the instructor of
7 the law.

8 Also do not begin your deliberations at any time
9 until I send you explicit, express word to do so. That
10 means even during breaks of this trial, you can't speak
11 amongst yourselves about the testimony you just heard
12 or about anything involving this case. You can speak
13 with yourselves friendly about extraneous matters, not
14 about this case. You can't speak with other people
15 about this case whether it be expressly, face-to-face,
16 over the phone, by e-mail or some other form of
17 communication.

18 Likewise, I doubt it would be the case, but in the
19 event there's some type of publication about this case
20 out there, whether it be on the radio, TV, newspaper or
21 some type of blog, you may not and shall not read it,
22 hear it or listen to it.

23 Also if anybody asks you about this case, you are
24 to tell them, "I'll talk to you after the case is over
25 with," if you want to. If you don't want to, that is

1 your sole discretion.

2 Finally, ladies and gentlemen, you may not engage
3 in what is called independent jury research about the
4 case. You can't look up anything about one of the
5 attorneys or parties, me or any court staff about an
6 issue you hear about in the testimony or about an issue
7 you think may be helpful. The reason we don't want you
8 to begin your deliberations earlier or we don't want
9 you doing independent investigation is this: We want
10 you to listen to the testimony and evidence presented
11 here in this courtroom and make your decision based
12 solely on that and according to the law that I give to
13 you uninfluenced by any outside influences whatsoever.

14 Now, in every case we have five phases. In just a
15 minute the State is about to give you what is called an
16 opening statement. Next, after the opening statements,
17 there will be the presentation of the evidence, then
18 there will be the closing arguments by the attorneys,
19 I'll give you the charge on the law, then you will
20 begin your deliberations. I tell you that so you will
21 generally know where you are during the course of the
22 trial.

23 Also, the defense has the right, if they want and
24 they choose, to give an opening statement but they're
25 not required to. The reason being the burden is on the

1 State of South Carolina to prove Ms. Davis' guilt.

2 Now, what the attorneys tell you is helpful and
3 it's designed to give you a roadmap about what they
4 contend the issues are in this case and what the case
5 is about. But bear in mind this, they're not put upon
6 the witness stand. They're not subjected to
7 cross-examination. What they tell you is not evidence.
8 So at the end of the case, and I'll remind you, if what
9 either or both of these attorneys tell you differs from
10 your collective memory as to what the facts are in this
11 case, your memory will control as to that issue.

12 In every case there is a duty -- let me back up.
13 An attorney has a moral and ethical obligation to
14 object any time he or she thinks something goes on in
15 court that's inappropriate. I anticipate that there
16 will be objections in this case because there have been
17 in every case I have been involved with before. The
18 fact that an attorney may object to some evidence or to
19 the extent I let you stay in the courtroom and rule,
20 when I rule on that evidence, may not and shall not be
21 considered by you. Just consider it as part of the
22 process. Okay?

23 With that being said, I'm going to excuse you for
24 just a minute. We'll bring you back here for the
25 State's opening statement and maybe the defense's and

1 we'll begin with the testimony.

2 (WHEREUPON, the jury exited the courtroom
3 at 11:22 a.m.)

4 THE COURT: Any additions or exceptions from the
5 State?

6 MR. WAGNER: No, sir.

7 THE COURT: From the defense?

8 MR. PATRICK: No, your Honor.

9 THE COURT: All right. Y'all ready to go now?

10 MR. WAGNER: Yes, sir.

11 MR. PATRICK: Yes, your Honor.

12 (Whereupon, the jury came into open court at
13 approximately 11:25 a.m.)

14 THE COURT: Mr. Wagner, State ready?

15 MR. WAGNER: Yes, sir.

16 THE COURT: Mr. Patrick?

17 MR. PATRICK: Your Honor, I feel there's something
18 I have to take up with you.

19 THE COURT: Would y'all step up here, please.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 THE COURT: All right. Mr. Foreman, do you mind
24 taking the jury back to the jury room for just one
25 second.

1 JURY FOREMAN: Yes, your Honor.

2 THE COURT: Very good.

3 (WHEREUPON, the jury exited the courtroom
4 at 11:26 a.m.)

5 (The defendant entered the courtroom.)

6 MR. PATRICK: Sorry, your Honor.

7 THE COURT: That's all right. That's not in your
8 control.

9 Mr. Burr, would you explain to Ms. Davis the
10 nature of your stipulation about the two prior
11 burglaries?

12 MR. BURR: Yes, sir.

13 THE COURT: Make sure that's not a problem.

14 (WHEREUPON, recess taken from 11:26 a.m.
15 to 11:27 a.m.)

16 THE COURT: All right. Couple things,
17 Mr. Patrick, Mr. Burr. Have you explained to Ms. Davis
18 the nature of your stipulation as to her prior record?

19 MR. PATRICK: We have, your Honor, and she's in
20 agreement with that, but she wishes to speak to you.

21 THE COURT: All right. Ms. Davis, be glad to hear
22 from you.

23 THE DEFENDANT: Yes, sir. Do I need to come up
24 there?

25 THE COURT: You can speak wherever you want to.

1 THE DEFENDANT: I mean, granted that Mr. Patrick
2 has done a wonderful job these last couple weeks he's
3 had my case. He has just been given my case a couple
4 weeks ago, two, three weeks ago. I don't feel like I
5 have been represented properly because he hasn't had
6 time to do what he needs to do. There is a lot to
7 that, you know. It might not look like it, but there
8 is. And I just -- I never talked to anybody until the
9 beginning of this month about this.

10 THE COURT: Well, Ms. Davis, my understanding, I
11 have had conversations with your attorneys, and that
12 was previously with another public defender --

13 THE DEFENDANT: Yes; and he never --

14 THE COURT: Hang on.

15 THE DEFENDANT: Sorry.

16 THE COURT: That's all right -- and that although
17 your new attorneys have worked this case as best they
18 could, they tried to be in touch with you, but you have
19 failed to communicate with them. And so that being the
20 case, this case is going to go forward today. If
21 you're asking for a continuance, that will be denied.

22 THE DEFENDANT: Yes, sir. I understand. Well, I
23 hate that for the mere fact, like I said, I never even
24 talked to Mr. Day until the beginning of the -- and,
25 granted, I had some car problems this week. I have had

1 the worst week I think I could ever have in my life,
2 but I have had some car problems and I have talked to
3 somebody else, as you know.

4 THE COURT: Mr. Toney advised the Court that he's
5 not your attorney.

6 THE DEFENDANT: Right. He's not. He's not. But,
7 I mean, I would love to be able to have the chance to
8 have better representation because I just don't feel
9 like it has happened.

10 THE COURT: I understand that. I'm not going to
11 grant you a continuance. We're going to go forward
12 today. You are noted on the record that you moved for
13 a continuance. It is denied.

14 THE DEFENDANT: Yes, sir. Thank you.

15 THE COURT: Yes, ma'am.

16 Now, Mr. Patrick, Mr. Burr, do you want to
17 introduce Ms. Davis when the jury comes in and I can
18 tell them that she has arrived, or what do you think
19 would be the best way to handle it?

20 MR. BURR: Yes, sir. I think that would be a good
21 idea.

22 MR. WAGNER: I might be able to address that in
23 opening statements, too.

24 THE DEFENDANT: Sorry about that.

25 THE COURT: Do you have any problem with me

1 telling the jury, "Ms. Davis is here. Stand up.
2 Ms. Davis," whatever -- not now. I'm talking about
3 when the jury comes in.

4 MR. WAGNER: No, sir, Judge. No.

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

6 (Whereupon, the jury came into open court at
7 approximately 11:32 a.m.)

8 THE COURT: Before we do opening statements,
9 ladies and gentlemen, Mr. Foreperson, Ms. Davis has
10 arrived.

11 Ms. Davis, would you stand up, please.

12 All right. Ladies and gentlemen, this is Teresa
13 Annette Davis. Very good.

14 You may be seated.

15 State ready?

16 MR. WAGNER: Yes, sir.

17 THE COURT: Defense ready?

18 MR. PATRICK: We are, your Honor.

19 THE COURT: All right. Go ahead, Mr. Wagner.

20 MR. WAGNER: Back on February 10, 2014, off the
21 North Bayshore Drive here in Oconee County, defendant
22 and her brother went to the victim's house, Doug Paul.
23 The house belonged to his mother. You're going to hear
24 from him here shortly. She had dementia, and a few
25 months prior to this they had to move her into a

1 nursing home. But the house was intact. All her stuff
2 was there. Her bed was there. All her possessions
3 were there, 37 years of marriage belonged to her and
4 his father were there.

5 He came by to check on the house early in the
6 morning that day, about 8 o'clock in the morning, saw a
7 strange car in the driveway. Didn't think it should be
8 there. He went to check it out. He noticed, looking
9 in the windows, that there was some things kind of
10 awry. One of the doors was open. Shouldn't have been
11 open. He had been there two days prior and he lived
12 just a short distance away, general vicinity right down
13 the road.

14 He ended up calling his wife, thinking something
15 was a problem. He said, "Look, bring my pistol. I
16 think somebody basically is burglarizing mama's house."
17 She brought the gun up. He ended up going in the front
18 door into the house, immediately hears some commotion
19 upstairs. Sounded like somebody was up there moving
20 things around.

21 He ended up hollering up the stairs, "I'm here.
22 I've got a gun. Come out." Nobody would come out. He
23 kept hearing noises upstairs, thought he heard somebody
24 go out the back door. He backed out of the house,
25 called 911. Sheriff's office came immediately. They

1 ended up looking around. They were not able to find
2 her at the time. They were able to locate another guy,
3 which turned out to be her brother, walking down the
4 road about two hundred yards away.

5 They ended up taking him into custody, and in the
6 process of inventorying the car and having the car
7 towed, because it was blocking the driveway, they ended
8 up discovering a quantity of drugs, and they ended up
9 later finding this defendant hiding on a roof behind
10 the chimney. The only way to get onto the roof was
11 through an open window that they found open upstairs,
12 which had to be accessed from inside the house.

13 She's charged with first-degree burglary and
14 possession with intent to distribute methamphetamine.
15 The State is going to prove to you that she went into
16 the house. And the elements of burglary first
17 essentially is she went into the house, a dwelling,
18 with the intent to commit a crime. The crime in this
19 instance would be theft.

20 There are things that you will hear and see
21 pictures that there was property that was being put at
22 the top of the stairs and moved around inside the
23 house. There were open doors, open cabinets, people
24 were going through Mr. Paul's mother's residence
25 looking for things and got caught, basically, in the

1 act.

2 When they called the tow truck, tow truck came.
3 They ended up towing the car. Drugs were in the front
4 seat in a purse, and you're going to hear from the
5 chemist that tested those that it tested positive for
6 methamphetamine.

7 There's going to be a stipulation between the
8 parties. One of the elements is that you go into the
9 residence with the intent to commit a crime. And if
10 it's done by a person that has two prior convictions
11 for burglary, then it's aggravated. That's the
12 aggravating circumstance that makes it first-degree
13 burglary.

14 So what you're going to hear and the judge is
15 going to charge you later that it was stipulated that
16 this defendant did have the two prior convictions on
17 her record that would enhance it to first-degree
18 burglary.

19 I don't anticipate this being a long case. We
20 will try to make every effort to get through quickly I
21 know some of y'all have been here all week. I
22 anticipate we will be done today and we'll do our best
23 to move it along. Thanks.

24 THE COURT: Mr. Patrick, do you wish to make an
25 opening statement?

1 MR. PATRICK: I do, your Honor. May it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. PATRICK: People do dumb things every day.
5 One reason why people do some things that sometimes can
6 seem inexcusable is because they are scared. You will
7 hear that Ms. Davis heard that Mr. Paul had a gun or
8 that he was going to retrieve a gun. She was outside
9 the house. She got scared. And she climbed up onto
10 the roof. I'm sure you're thinking probably what I
11 thought when I first heard that, "Why would somebody
12 climb on a roof?" That seems like the last place you
13 would want to go.

14 Well, ladies and gentlemen, when you're scared,
15 your mind sometimes shuts down. And you do, you know,
16 weird things. I can think back when I was a little
17 kid, and I would be sleeping upstairs away from my
18 parents, and I would think there was a monster in my
19 room. And I had to go to the bathroom. So I'd get
20 out, run to the bathroom, run back in, pull the sheets
21 over my head. I mean, pulling the sheets over my head
22 wouldn't protect me from a monster if there was really
23 a monster in that room, but in my mind, I was being
24 protected.

25 Hollywood has made billions of dollars making

1 horror movies, and one of the main things in horror
2 movies is you see somebody running up the stairs. I've
3 yelled at the TV multiple times, "Why would you run up
4 the stairs? That's the last place you would want to
5 go." But I'm not in that position that they were in.

6 When people get scared, sometimes their mind kind
7 of shuts off and they do the first thing that comes to
8 their mind. And you will hear that Ms. Davis heard
9 that there was somebody out front who was getting a
10 gun. So she gets scared, and she climbs up on the
11 roof.

12 Now, with this case, this case, the State is going
13 to try to prove through circumstantial evidence. They
14 will have nobody that can testify that they saw
15 Ms. Davis inside this house. They're not going to have
16 anybody that will testify that Ms. Davis was in
17 possession of these drugs. She was on the roof. The
18 drugs were in the car. So they're going to try to use
19 circumstantial evidence to prove to you that she was
20 inside the house.

21 Now, circumstantial evidence, I like to think of
22 that, for instance, let's say you were driving down the
23 road. Country road. You see a post and you see a
24 turtle sitting on that post. You didn't see anybody
25 place that turtle on that post, but you can reasonably

1 deduce that somebody placed it up there. I mean, the
2 turtle didn't, you know, get wings and fly up there.

3 Now, take that post and put that in Intracoastal
4 Waterway where the tide goes up and down. And when the
5 tide is up, the post is completely submerged. And as
6 that water goes down, it slowly, slowly comes out of
7 the water.

8 Now, if you see a turtle on that post, there's two
9 reasonable explanations about how that turtle could
10 have gotten up there. Somebody could, again, have
11 placed the turtle on the post. Or as that tide is
12 coming down, a turtle could have come, swam, swam on
13 top of the post to sunbathe, as turtle do, and then got
14 stuck as the tide kept going down. So there's two
15 reasonable explanations of how that turtle could have
16 gotten up there.

17 Now, at the end of this trial, if you see there
18 are two reasonable explanations or there are other
19 explanations that you can put a reason to, one that
20 points to guilt and one that points to not guilt, then
21 you will need to return a verdict of not guilty for
22 Ms. Davis. And all I ask is that you please pay
23 special attention to all the evidence, and I believe
24 that at the end of this trial you will see that there
25 are more than one explanation for what happened here

1 and you will return a verdict of not guilty. Thank
2 you.

3 THE COURT: Call your first witness.

4 MR. WAGNER: Doug Paul.

5 DOUGLAS PAUL,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q Can you give us your full name, spell your last
10 name for the record, please.

11 A Sure. My name is Douglas Paul, and the last name
12 is P-a-u-l.

13 Q Where are you from, Mr. Paul?

14 A Seneca. I live at 209 Redbud Street in Seneca.

15 Q Have you grown up here?

16 A Yeah. I went to high school in Seneca, and I went
17 to Clemson University also.

18 Q You still work and live here?

19 A I do, yes.

20 Q How far from 2932 North Bayshore Drive do you
21 live?

22 A It's within walking distance. I mean, it's under
23 a quarter of a mile.

24 Q Back on February 10, 2014, who lived at 2932 North
25 Bayshore Drive in Seneca?

1 A That's my mother's house.

2 Q Okay. And how long has she lived there?

3 A My mom and dad lived there for 37 years. My dad
4 passed away in April of 2013, so my mom was there by
5 herself for a little bit. But she has Alzheimer's, so
6 eventually we had to move her out.

7 Q How long prior to February 10th had she moved out?

8 A She'd been out about six months.

9 Q Was -- were all her things as far as possessions,
10 her bed, furniture, were they all still in the house?

11 A Yes. Yeah. Her bed, all the -- you know, all my
12 mom and dad's possessions and everything from 37 years
13 was in the house. I mean, I grew up in that house, so
14 yeah.

15 Q Okay. Have you since sold the house?

16 A Yes.

17 Q Are there people living in it now?

18 A Yes.

19 Q At the time that she had moved out, where did she
20 go?

21 A She's at Clemson Downs.

22 Q Is that a nursing home?

23 A Yeah. She's in skilled nursing at Clemson Downs.

24 Q Are they giving her medications and things there
25 for --

1 A They, do. She's on medication. Her problem with
2 her Alzheimer's is she has no short-term memory, so you
3 can imagine trying to take care of yourself and live
4 independently. If you have no short-term memory, it
5 doesn't work real well. I mean, we had to do things
6 like turn the stove and oven and all that off, because
7 she would leave them on, you know. So she is on
8 medication that was -- that's supposed to help her
9 memory, and we were kind of hoping that -- well, part
10 of the problem was before we put her in there, she
11 wouldn't take her medication. There's different
12 medications for Alzheimer's and things like that, and
13 she wouldn't take them. So when we got her into
14 Clemson Downs and they could finally get her taking
15 medication, we were kind of hoping it was going to help
16 her and her memory would get better and possibly maybe
17 she could move home. I mean, that's not how it turned
18 out.

19 Q At the time, on February 10, 2014, were y'all
20 still planning on her possibly coming back?

21 A We were hoping that would be the case, yes.

22 Q And what was your job? Were you like caretaker of
23 her house in the meantime?

24 A Well, I have power of attorney, so I'm in charge
25 of all her financial and medical issues. So, I mean,

1 as power of attorney, I have control over the property.

2 Q Okay. At the time, though, when this occurred,
3 had you previously put her house on the market for
4 sale?

5 A It was on the market just because we weren't sure
6 what was going to happen. And, you know, sometimes it
7 can take a while to get interest in houses, so we went
8 ahead and got a real estate agent and we did put the
9 house on the market. But we really didn't have very
10 many people looking at it. I wouldn't say it was
11 priced real attractively at first. We weren't just
12 trying to make it go away immediately, so we really
13 didn't have a whole lot of people coming through to
14 look at it.

15 Q Did you check up on the house every week?

16 A Oh, we were there -- either my wife or I were
17 there every two, two to three days. Sometimes more.
18 Sometimes we'd go by every day. I mean, because we
19 just live right around the corner, so it was not an
20 issue to go by the house.

21 Q When you went by the house on February 10, 2014,
22 did you notice anything unusual?

23 A Well, the reason I was going by the house was I
24 was going to work. I mean, just as a matter of going
25 to work, I'm an engineer, and I have my own business.

1 and I have an office in Seneca. So just as a course of
2 driving to work, I have to go by her house. And that's
3 when I saw the car in the driveway, and I turned around
4 and went back because I knew that wasn't right. I
5 mean, I knew there wasn't supposed to be a car in the
6 driveway.

7 Q When previously had you been at the house?

8 A My wife and I had been there on Saturday, just
9 that previous Saturday.

10 Q Okay. What day was the 10th?

11 A That's Monday.

12 Q Okay.

13 A Yeah.

14 Q What time of day were you going by there?

15 A On Monday?

16 Q Yes.

17 A It was about 8 o'clock.

18 Q When you saw the car, what did you decide to do?

19 A Well, I went past. And, of course, you know, I
20 was like that's not right, so I went, turned my truck
21 around and went back down to the house. And I pulled
22 in the driveway, and I walked over and I looked in the
23 car because I thought, well, you know, there is a
24 possibility maybe it's a real estate agent or somebody,
25 although really we had a deal worked out with the real

1 estate agent where if they were going to show the
2 house; they had to call us first so we knew when there
3 were going to be people in the house.

4 So I went and looked in the car, just looked in
5 the windows, and thought that's not anybody I know. I
6 went to the front door. The front door was locked. I
7 went to the outside garage door. There is a
8 walk-through door and there is also the regular, you
9 know, car garage door. So that door was locked, but I
10 looked in the window of the garage. There's a door in
11 the garage that goes between the house and the garage,
12 and that door was open. And I also knew that wasn't
13 right because I knew we hadn't left that open because
14 we were very meticulous about locking everything up,
15 closing everything up when we left.

16 Q So what did you decide to do?

17 A Well, I didn't have -- at the time I didn't have
18 the key to the house, and so I called my wife and I
19 said, "Could you bring the key to the house?" And also
20 since I had half a suspicion that there might be
21 someone in the house, I asked her to bring my handgun
22 up.

23 Now, you know, it was kind of thinking I want to
24 make sure there's somebody in the house or there's
25 something going on before I call the police, and that

1 may or may not have been a smart thing to do. But,
2 anyways, that's what I did. So she brought it up to
3 me.

4 I opened the house. I went in the front door of
5 the house, and I went in the living room. Right when I
6 got in the living room, I kind of heard just a little
7 bit of a something upstairs. Wasn't anything major,
8 but it was just a little bit.

9 I also noticed that there is a back sliding glass
10 door that's all the way through the house and back, and
11 when you go in the front door, you can see it. And
12 that door was open. So I knew that wasn't right. So I
13 went halfway up the steps, and I basically yelled, and
14 I said, "I know somebody is here. You know, whoever
15 you are, you need to answer me." And I did say that I
16 had a gun and I was armed. But I was on the steps
17 inside the house when I said that.

18 And there is a -- on the front door, there is a
19 front door, and then there is a storm door, and that
20 storm door closed behind me. So I was in the house.
21 And as soon as I said that, it just went crazy up
22 there, I mean, like someone was tossing furniture
23 around or something. And at that point, I mean, I was
24 like, I'm out of here, I'm just going to go call the
25 police. So I went back out. Plus my wife was standing

1 out in the driveway. I didn't know who was there, what
2 was going on. So I went back out, and that's when we
3 called the police.

4 Q When you say "up there," are you talking about
5 upstairs inside the house?

6 A Yeah. It's an interior step. So I went through
7 the living room, through the kitchen and up the stairs
8 that go to the second story in the house, and those are
9 in the inside of the house. I mean, they're as in the
10 middle of the house as you can possibly get.

11 Q Okay. So did you call 911?

12 A I did, yes.

13 Q And the sheriff's office dispatched some officers?

14 A They did, yes.

15 Q And who -- do you remember who came out?

16 A What I know was there was -- the first officer
17 there was a uniformed officer in a patrol car. And
18 there was a -- my wife had seen -- when my wife came up
19 the road, she said, hey, there is a guy that's coming
20 up the road that she passed that she said doesn't look
21 right, doesn't look like he belongs in the
22 neighborhood.

23 And so when the uniformed -- this was after I had
24 already been in the house and we had gone back out --
25 and I had gone back outside and we called. He -- he

1 was walking up the street, and he walked by us, and he
2 went down, there is a side street on the other side of
3 the road. It makes a loop. And he went down that
4 road.

5 Well, when the uniformed officer showed up, my
6 wife went up and told him, "Hey, that guy went down
7 that road right there." So he took off and went down
8 the road after him.

9 Q And did he later come back with the guy?

10 A Yeah. He had the guy that we had seen in the back
11 of the car, yeah.

12 Q What happened next?

13 A After that, a bunch of other officers showed up.
14 You know, I don't remember the exact order of who
15 showed up when because, you know, 15 minutes in we had,
16 you know, eight or ten officers there and a bunch of
17 police cars and stuff. But people were showing up.
18 And I know that at that point they went in and, you
19 know, cleared the house, so.

20 Q Did you hear any noise downstairs?

21 A When I went in?

22 Q Yeah.

23 A You know, I thought I kind of heard something. I
24 kind of heard something in the back near the sliding
25 glass door, but I can't say that I saw anybody. But I

1 do know the back door was open, and I know that
2 shouldn't have been open.

3 Q When you say "open," was it unlocked or wide open?

4 A No, no. It was wide open. It had been slid open.
5 One of the things we did at that house for security is
6 we had these big, round wooden sticks we'd stick in
7 behind the sliding glass doors so you couldn't just
8 grab the door and slide it open. I mean, somebody had
9 to take the stick out of the door and slide the door
10 open.

11 Q And had the doors and everything, had they all
12 been locked up?

13 A Oh, yeah. We were always -- every time we were in
14 that house, we always locked everything, closed
15 everything, locked everything, double-checked
16 everything.

17 Q Did you keep the heat on in there?

18 A Yeah. It was set for about 60, 65 degrees,
19 somewhere around there, yeah.

20 Q When this guy was outside the house, where is the
21 first time you saw him?

22 A The first time I saw him was when my wife and I
23 were standing in the driveway talking to the
24 dispatcher, the police dispatcher, and he came walking
25 up by us, and he was kind of shuffling along, kind of

1 looking -- he had a hood over his head, and he was kind
2 of not really wanting to make eye contact, but he's
3 kind of looking. And because, I guess, we were
4 standing there, he just went on. And he made a
5 right-hand turn, went down the road. That's across the
6 street from my mom's house.

7 Q Did you go back inside with the officers?

8 A Yeah. My wife and I both did, yes..

9 Q And what, if anything, did you see inside the
10 house?

11 A There were a number of items that had been moved.
12 There were some antiques. Upstairs at the top of the
13 steps, there is a hallway. The hallway, there is a
14 guest bedroom and then the master bedroom is at the end
15 of the hallway and there is a bathroom in the master.
16 Right at the very top of the steps there were a bunch
17 of antiques that were put there. These are all family
18 antiques. There were a lot of antiques in the house
19 that were from my dad's family. I mean stuff that's
20 150 years old, you know, that kind of stuff. And there
21 was -- that stuff was stacked up.

22 There were a lot of doors, cabinet doors and
23 things, that were open. There were boxes pulled out of
24 my mom's closet in the master bedroom. There were some
25 boxes in there that had jewelry and like -- I don't

1 want to call it costume jewelry, but, you know,
2 different kinds of jewelry. She had boxes and boxes of
3 jewelry. And those had been all pulled out of the
4 closet.

5 Q Where was some of the stuff put -- the stuff that
6 was moved; was some of it moved near the top of the
7 stairs?

8 A Yeah. That's the antiques. There were some
9 antiques, ceramics, antique dolls, hat pins and things
10 that were inside. It was like a big pot. Actually,
11 funny thing is, actually, it's a chamber pot. I mean,
12 you know your history, you know what that is. But it's
13 antique. It's a family antique, but it was filled up
14 with other antiques, and it was at the top of the
15 steps.

16 The other thing was there was -- one of the things
17 also I remember seeing, there was an antique gun
18 cabinet in the garage. It was my grandfather's, and
19 they had pried the door open on that. Now, there
20 weren't any guns in it, thankfully. There was antique
21 ammunition in there that was taken out. It was gone
22 when we looked in there.

23 Q Did you notice anything else missing or awry
24 upstairs?

25 A Closet doors were open, cabinet doors were open,

1 the boxes were pulled out, the window in the bathroom
2 was open, and that, we never left any windows open in
3 the bathroom. So that was -- that's probably the big
4 thing about that was we would have had -- we had all
5 the windows locked, all the doors locked, so I'm a
6 hundred percent certain we did not leave that window
7 open. Plus it was in February and the heat is running,
8 so there's no way we left that window open.

9 Q Had that window been locked?

10 A Yes, it was locked. And there is also a storm
11 window. It's not just a window with a lock, but
12 there's actually a storm window, too. If you want to
13 open that window completely, you have to actually push
14 the catches on that and lift the storm window up.

15 Q Okay. When you say it was open, it was wide open?

16 A It was wide open, yes.

17 Q Cold air coming in, wide open?

18 A Yes.

19 Q Where was that window in relation to the noise
20 that you had heard when you hollered up the stairs?

21 A Well, I heard the noise in the master bedroom.
22 And the window that was open is in the master bathroom.
23 And the master bathroom is just -- I mean, it adjoins
24 the master bedroom. It's right there. I mean, it's
25 within 15 feet of the probably the center of the master

1 bedroom.

2 Q Do you know the defendant in this case?

3 A I don't.

4 Q Did you at any time ever give her or her brother
5 consent to go into your house?

6 A No.

7 Q If I could, I would like to show you some
8 photographs. I'm going to refer to them by the number
9 on the exhibit, and so you will know what I'm saying.

10 A Okay.

11 THE COURT: Mr. Patrick, do you have any
12 objections to any of these photographs?

13 MR. PATRICK: I do not.

14 THE COURT: Would you put the numbers in the
15 record for me.

16 MR. WAGNER: 6A through 6X.

17 THE COURT: Okay, sir. They will be admitted.

18 (WHEREUPON, State's Exhibit Numbers 6A through 6X
19 were admitted into evidence.)

20 BY MR. WAGNER:

21 Q I'm going to show you State's Exhibit 6A here, and
22 there should be a laser pointer here. Just explain
23 what are we looking at here?

24 A Sure. This is the front of the house. This is
25 the right. In here is the front door that I went in

1 through. The garage door is actually down here. It's
2 out of the picture. This is -- this is -- these are
3 two windows for the master bedroom, okay. The master
4 bathroom is on the back side of this, and I think -- I
5 don't know if we have another picture of that or not,
6 but the master bathroom is on the back side of that.
7 And the window that was open leads out onto the back
8 part of this roof right here. And you can get from
9 this roof up to this roof is really easy to climb up.
10 I've done it a bunch of times myself cleaning gutters
11 and helping my dad to maintain the house. So that's my
12 truck there. That's where I pulled in and parked when
13 I first saw the car in the driveway.

14 Q Okay. Is that the white car that you had
15 originally seen that made you stop?

16 A Yeah. I mean, the doors and stuff weren't open
17 when I got there. I mean, it was closed, but that is
18 the car, yes.

19 Q Let's look at 6B here.

20 A That's pretty much the same view. Again, the
21 garage door is over here. The one where I -- and the
22 window that I looked in is over here to see the door.
23 There's probably a better picture of that, I would
24 imagine.

25 Q Okay. Maybe 6C.

1 A Yeah, there you go. So this is part of the
2 interior of the house. This is the garage. This door
3 was locked, but there is a door that goes right between
4 here. And I looked in this window, and I saw that that
5 door was open, so that immediately raised my suspicion
6 there was a problem because, again, we never left those
7 doors open, never.

8 Q 6D.. I think that that's just another --

9 A That's basically the same.

10 Q Okay. 6E.

11 A That's the address.

12 Q That's 2932 North Bayshore?

13 A North Bayshore Drive.

14 Q Is that in Oconee County?

15 A That is in Oconee County.

16 Q 6F?

17 A Okay. Now, that's looking on the back roof.

18 That's looking on the back roof where that window was
19 open in the master bathroom. So, basically, if you
20 looked out that window, that's the roof you're looking
21 at right there. And to get up to the chimney, you
22 would climb up that roof. And there is another top
23 roof, but it's only like, I don't know, maybe it's a
24 foot or a foot and a half, little bump up to the top
25 roof where the chimney is.

1 Q Okay. Show you State's 6G.

2 A Okay. This is the steps. Like I said, I was
3 basically in this position right here when I yelled up
4 the steps, "Hey, I know there's somebody in here. You
5 need to answer me." And I said I was armed and I had a
6 gun. I was right here on the steps. And this is
7 inside the house.

8 If you walk back down this hall like this, that
9 goes to the master bedroom. There is a guest bedroom
10 right here, but you would have to walk down that hall.
11 It's about maybe a 20 -- maybe a 20-foot walk down the
12 hall to the master bedroom.

13 So when I was standing here after I said that and
14 I heard all that banging, it was just coming from down
15 that hall. So, I mean, there was no mistaking that.

16 Q Okay. 6H.

17 A Okay. These are the items -- these are the items
18 that were placed right here. We did not leave these in
19 this position, so they were not supposed to be there.

20 Q Was there stuff inside those items?

21 A Yeah. There was stuff inside of this one right
22 here.

23 Q What was the stuff that was in there?

24 A There were just assorted like antique items. I
25 think there was some hat pins, maybe some little dolls.

1 Just assorted items in there.

2 Q Show you a little bit different version, 6I.

3 A Well, everything that was in there was antique. I
4 mean, everything that was in there was antiques, so.

5 That's -- this is the guest bedroom here. And that's
6 looking out from the guest bedroom at the top of the
7 stairs.

8 Q Okay. 6J.

9 A Okay. That -- this is a cabinet in the guest
10 bathroom, and it was open and it wasn't supposed to be
11 open like that. Again, all the cabinets, drawers,
12 everything were kept closed, so this was open. We did
13 not leave it this way.

14 Q 6K.

15 A Okay. This is the master bathroom, and that's the
16 open window right there. Also this closet here, there
17 is a walk-in closet, a bunch of my mom's clothes in it.
18 I don't know if you can see it real good. A bunch of
19 my mom's clothes are hanging in there. That closet
20 door was open. We didn't leave those doors open. But
21 this window was wide open, and we definitely didn't
22 leave that window wide open.

23 Q Is that the window we looked at earlier where you
24 can see out on the roof?

25 A Yeah, because right outside this window is a short

1 drop down to the bottom roof.

2 Q 6L.

3 A This is the -- this is the guest bedroom bathroom.

4 So the guest bedroom has a bathroom. It's just right
5 attached to it. And, actually, that -- the chamber pot
6 and that stuff that was out at the top of the steps was
7 actually on this counter here. That's actually a
8 matching, like a -- that's a matching set. That --
9 those ceramics there go with what was out in the hall.

10 Q 6M.

11 A Okay. That's the same -- that's the same
12 bathroom. You can see the cabinets open.

13 Q 6N.

14 A That's a picture of the open window. And I will
15 say, like I said, you have the window, just the regular
16 part of the window, but there is a storm -- there is a
17 storm window in there, too, so you actually have to
18 open two windows to actually go through the window.

19 Q 6O.

20 A Okay. This is my mom's bedroom. This is the
21 master bedroom. Just as a point of reference, that's
22 the top of the stairs right there. So that's the hall
23 I'm talking about. All this stuff was pulled out of
24 this closet and this closet was open. There's
25 different kinds of jewelry, costume jewelry, and just a

1 lot of my mom's personal stuff that was in this closet
2 that was all pulled out. These doors were open and we
3 didn't leave any of that stuff out like that.

4 Q Where is that in relation to where you heard the
5 noises upstairs?

6 A I was down here on the steps, if you kind of think
7 about being down these steps right here. I was halfway
8 up these steps, and I clearly heard all the banging in
9 this room. I can't tell you where it was in the room,
10 but it sounded to me like someone was throwing
11 furniture around. It was extremely loud.

12 Q 6P.

13 A That's another picture of that closet with all the
14 stuff pulled out. And also that's an access way --
15 that's actually an access way into the attic, and
16 that's open, too. We didn't leave that open either
17 because, of course, again, it's February. And if you
18 leave the attic open, you're going to have all kinds of
19 cold air coming in the house, so. Well, actually,
20 that's the door right there that goes in there.

21 Q 6Q.

22 A That's just a picture of the sink in the master
23 bathroom.

24 Q 6R.

25 A That is the bathroom -- there is a downstairs

1 bedroom. It was actually my dad's office, but it was
2 originally a bedroom. It's downstairs in the far end
3 of the house. That's an attached bathroom with the
4 cabinets open.

5 Q 6S.

6 A That's my mother's closet in the master bathroom,
7 and that's all her clothes in there.

8 Q Was that door open or closed --

9 A No. All the closet doors and things were kept
10 closed because we didn't know when somebody was going
11 to do -- if they were going to do a real estate showing
12 or something, so we tried to at least keep doors and
13 cabinets closed, things like that.

14 Q 6T.

15 A That's a shop in the garage. These cabinets were
16 open. These tool boxes were pulled around. Again, we
17 tried to keep everything, you know, closed up and
18 everything just because the house was on the market, so
19 these cabinets would not have been left open by us.

20 Q 6U.

21 A That's just another picture of the -- it's just a
22 close-up of that same picture. It's the toolboxes and
23 the cabinet that's open.

24 Q 6V.

25 A That's the -- that's the cabinets in the same shop

1 area. That's the upper cabinet with the doors open.

2 Q 6W.

3 A This is if you -- if you walked in the door of the
4 garage, not the car door but the people door in the
5 garage, if you walked in, this is exactly what you
6 would see. The door that I saw open is over here on
7 the side. This is a back door that goes out to the
8 back deck, and that door was open. And we, again, we
9 always kept this door closed and locked.

10 Q And last, 6X.

11 A Can I point something else out? That's the gun
12 cabinet there that was pried open. This was -- there
13 was a lock on it, but this got pried open and basically
14 destroyed the cabinet. And while, you know -- you
15 know, it's probably a 60- or 70-year-old metal gun
16 cabinet that was my grandfather's, but it did have
17 sentimental value, but it pretty much got destroyed.
18 There was also some antique ammunition in there that
19 was missing.

20 Q 6X. This is the last one.

21 A That's a latex glove that was found on the floor
22 in the garage.

23 Q Had you used the latex glove?

24 A No. No, we didn't use latex gloves.

25 Q Do all those pictures, do they fairly and

1 accurately depict your mother's house was they were
2 that morning?

3 A They do.

4 MR. WAGNER: Your Honor, at this time we would
5 move State's --

6 THE COURT: They're admitted.

7 MR. WAGNER: Thank you.

8 Q Did you ask the sheriff's office, Sergeant.
9 Freestate, to tow the car out of your driveway?

10 A Yeah. I wanted that car gone out of our driveway,
11 so I asked him to get it towed.

12 Q Were you present when the tow truck came?

13 A Yes.

14 Q Did they tow it off?

15 A Yes, they took it off.

16 Q Did you have any ladders at your mom's place?

17 A There was a ladder, but it was in the garage.

18 Q What part of the garage, the, big gray roll-back
19 door?

20 A Yeah. In the part where you normally park a car.
21 The picture that showed the gun cabinet sitting there,
22 that's the big, open part of the garage where you park
23 a car, and the ladder was in there.

24 Q When you got to your mom's house that morning,
25 while you were there, was it still in the same place it

1 had been?

2 A Yes.

3 Q Were there any other ladders, any other way to
4 access the roof outside around your house?

5 A No. And after -- and once the officer showed up,
6 too, we all walked around the house, too. So my wife
7 and myself and the officers at various times walked all
8 the way around the house. There were no ladders
9 propped up. There were no ladders on the ground, you
10 know, nothing like that. They did ask me to borrow the
11 ladder. They went and got the ladder to get the
12 defendant off the roof. So they had asked if they
13 could use it, so they actually had to go get it.

14 Q Were you present when that happened?

15 A Yeah. My wife and I were inside the house, but
16 where they brought her off the roof, there was a window
17 and we were looking right through the window when they
18 brought her off the roof. They told us to stay in the
19 house, so.

20 Q Thank you, Mr. Paul. That's all the questions I
21 have. If you would answer anything the defense may
22 have.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. PATRICK:

1 Q Mr. Paul, just to be clear, you didn't see anybody
2 inside the house, correct?

3 A That's correct.

4 Q You said that you lived just down the road from
5 that house, from your mother's house?

6 A Yes.

7 Q How long have you been living down the road from
8 your mother?

9 A We've lived in two different houses right down the
10 road. Pretty much -- as of today, pretty much a total
11 of like 17 years.

12 Q Okay.

13 A Yeah.

14 Q And you say that your mother was in a home because
15 of her dementia at the time?

16 A That's correct.

17 Q And she had been there for six months or so?

18 A About six months, yes.

19 Q And you had had the house on the market since
20 about July, July of --

21 A Yeah. End of July, beginning of August, yes.

22 Q And then actually you actually sold this house
23 about a couple few months after this incident, correct?

24 A That's correct.

25 Q During the six months that your mother was at this

1 home, did she ever come back to the house?

2 A She didn't, no.

3 Q And you never stayed in the house. You've stayed
4 at your own house, correct?

5 A That's correct.

6 Q Okay. Around -- around back, if you go from your
7 garage, isn't there like a walkway that kind of curves
8 around the garage?

9 A There is.

10 Q And a railing back there?

11 A There is.

12 Q How high would you say that railing would be?

13 A You know, it's probably the height of that railing
14 right there probably.

15 Q Pretty typical railing. I think all railing --

16 A It's a typical deck railing, yes.

17 Q And the roof on the garage is actually lower than
18 the rest of the roofs on the rest of the house,
19 correct?

20 A Well, it's not really like that. There's -- that
21 house had a lot of additions put on it. There is a
22 roof on the garage. There is a roof over the family
23 room, and I think the area you're referring to is the
24 deck that comes off the family room. So those -- all
25 those roofs are pretty much at the same height. It's

1 the second story roof that's up, it's rotated
2 90 degrees, and that's the high roof where the chimney
3 is. But there is a lower roof.

4 Q I'm going to point you to State's Exhibit 6C that
5 shows the garage being --

6 A Right. The garage is lightly lower. This is
7 where the family room and all that is. And the deck,
8 okay, with the railing on it is right off of this roof
9 but in the back of the house.

10 Q Okay.

11 A Yeah.

12 Q But the walkway I'm talking about, there is a
13 walkway that goes around that side of the garage all
14 the way to the deck?

15 A Yeah. There is no railing on that walkway.

16 Q Okay.

17 A Behind -- there is a walkway that goes behind this
18 garage, but there is no railing on that walkway.

19 Q There is a bench or a sitting area that has like a
20 railing on it that's directly, actually, straight
21 through that door, correct --

22 A There is a bench and it's -- there is a bench and
23 it's on the back side of the deck.

24 Q And then close to that bench is also a chain-link
25 fence?

- 1 A There is a chain-link fence there, yes.
- 2 Q Right there near that --
- 3 A Well, there is a chain-link fence.
- 4 Q In between --
- 5 A Basically, if you went straight through this wall
- 6 out the back, there is a chain-link fence.
- 7 Q Kind of connected to the house, correct?
- 8 A Well, it's right up to it.
- 9 Q And that chain-link fence is the same kind of
- 10 height as the railing would be?
- 11 A Typical chain-link fence.
- 12 Q About three feet-ish, would you think?
- 13 A It's a typical chain-link fence, you know.
- 14 Q Mr. Paul, you said that when you first got to the
- 15 house, you didn't -- you didn't have your gun with you,
- 16 correct?
- 17 A No. My wife brought it up.
- 18 Q So you had to call your wife --
- 19 A But I didn't have the keys to the house either, so
- 20 I had to get her to bring me the keys and my pistol.
- 21 Q So you called her, I assume, outside the house.
- 22 You called her to tell her to bring your keys and your
- 23 gun?
- 24 A Correct.
- 25 Q I assume you didn't whisper that, you know, on the

1 phone. You were probably kind of excited, I would
2 think, thinking that someone might be in your house.
3 Not excited that someone is in your house, but kind of
4 on edge, I would think?

5 A I was talking normally into a cell phone. I mean,
6 you don't have to yell in a cell phone for someone to
7 hear you. So -- and if you, on that original picture
8 where my truck is, you know, I was standing, you know,
9 out by my truck and just talking in a normal voice on
10 the cell phone. So, I mean, you know, that's about all
11 I can say on that.

12 Q You said after you went in the house the storm
13 door closed, the front door closed, correct?

14 A The storm door closed.

15 Q But you said that there was a door open in the
16 back of the house?

17 A There is a -- there was a sliding glass door that
18 goes onto a porch and it's a covered porch. It's
19 totally enclosed with windows. And another glass door.
20 So it's almost like another room to the house. It's
21 got carpet in it, and so, yeah, that door was open.

22 Now, if you go out that door and you go out the
23 storm door that's off of that porch, it automatically
24 closes back on you, so that door was closed.

25 Q But you didn't see any doors that had been pried

1 open? I mean, all of the doors that you saw had been
2 locked on the outside?

3 A The two doors that I checked, which is that door,
4 that door, and the front door, were both locked. But
5 the door inside there was open.

6 Q I'd like to draw your attention to State's
7 Exhibit 6N. That is the window that was open, correct?

8 A Right.

9 Q How high off the ground would you estimate that
10 window is?

11 A On the inside?

12 Q On the inside.

13 A Well, you can see there is a toilet right there.
14 It's, you know, probably waist high or somewhere around
15 there.

16 Q About two, three feet?

17 A Yeah. Somewhere around there.

18 Q Now, if you had to give an estimate, how wide do
19 you think that window is open?

20 A Oh, maybe, I don't know, maybe a foot and a half,
21 two feet maybe.

22 (WHEREUPON, Defendant's Exhibit Number 1
23 was marked for identification.)

24 BY MR. PATRICK:

25 Q I'd like to draw your attention to Defense

1 Exhibit 1 for identification purposes. Can you tell me
2 what this is a picture of?

3 A Yeah. That's the back side of the house.

4 Q Would that single window, would that be the window
5 that would have been open to the bathroom window?

6 A Are you talking about this one?

7 Q That one up there.

8 A Yeah, it is.

9 Q It is? And that's not directly over the roof,
10 correct?

11 A It partially is. Actually, if you look out the
12 window and you look down, it's about -- it's about half
13 and half. It's -- the angle you got it at, if you were
14 to look out through this window, you would see that
15 half of it is the roof and half of it's not.

16 Q Yeah, I don't --

17 A I'm just telling you the angle that picture is
18 taken at, if you look out this window, you can see
19 right down on the roof there.

20 Q How far down to the roof would you say that was?

21 A It's about -- it's about three or four feet
22 probably. About four feet.

23 (WHEREUPON, Defendant's Exhibit Number 2
24 was marked for identification.)

25 BY MR. PATRICK:

1 Q Okay. And Defense Exhibit for identification
2 purposes 2 is another picture, just kind of taken at
3 kind of a further angle. And, again, that window does
4 not look like it is directly over the roof?

5 A Well, if you look, here are -- it's not directly
6 over, but it's pretty much split. I mean, there's kind
7 of the window that's hanging over the roof and there's
8 part that's not.

9 Q And you would think that's four, four to
10 five feet, you think?

11 A It's probably about four feet.

12 Q It's a long drop all the way to the ground there,
13 correct?

14 A Yeah. To the ground there is, yeah.

15 MR. PATRICK: I have no further questions, your
16 Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. WAGNER:

20 Q I'm going to show you 6F. Is that the same window
21 we were just looking at?

22 A Yes.

23 Q Is that the angle?

24 A Yes. That's why I say if you look out the window,
25 there's part of the roof that's in line with the window

1 and you can see the gutters right here.

2 Q Can you climb out of that window and climb onto
3 the roof if you wanted to?

4 A You could climb -- especially if you were in a
5 panic, you could climb out that window and get on that
6 roof if you had to.

7 Q Thank you. That's the only thing I have.

8 THE COURT: Do you have further questions?

9 MR. WAGNER: No, sir.

10 THE COURT: Thank you, sir. You may step down.
11 How long is your next witness?

12 MR. WAGNER: Short, your Honor.

13 THE COURT: Okay.

14 MR. WAGNER: George Mayer.

15 GEORGE MAYER, IV,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q Please state and spell your last name for the
20 record.

21 A George Mayer, IV, M-a-y-e-r.

22 Q Who do you work for?

23 A Currently I'm with the Seneca Police Department.

24 Q Back on February 10, 2014, were you working for
25 the sheriff's office?

1 A Yes, sir.

2 Q What were your job duties there?

3 A I was a patrol officer over road patrol on my
4 shift. My duties were just to do patrol, answer 911
5 calls.

6 Q Did you get a dispatch of a burglary in progress
7 at 2932 North Bayshore Drive?

8 A Yes, sir.

9 Q Did you answer that call?

10 A Yes, sir.

11 Q When you got out there, what did you see?

12 A There was a vehicle at the residence. The
13 complainant was there stating that a man had just -- he
14 saw a man -- I don't recollect that he said he saw him
15 coming from the residence or saw him walking towards
16 the residence. I can't recollect that, but he said
17 there was a man that was in that area that he thought
18 had just come from the house.

19 Q Okay. Did you go looking for the guy?

20 A Yes, sir.

21 Q Did you find somebody that matched the description
22 of what he told you?

23 A Yes, sir.

24 Q And what did you do?

25 A I placed him in investigative detention. It's a

1 technique we use instead of placing somebody under
2 arrest. I actually placed him in handcuffs until I
3 figured out what was going on. Then I brought him back
4 to the scene.

5 Q Did you bring him back to the scene, and was there
6 anybody else from the sheriff's office there?

7 A Yes. Around that time Sergeant Freestate was
8 there, and we proceeded to clear the house, which is a
9 technique that we go into the house, make sure there's
10 no one else in the house.

11 Q Okay. Did you find anybody else inside?

12 A No, sir.

13 Q Did the guy have any I.D. on him?

14 A I don't recall.

15 Q Were you able to determine who he was?

16 A I do remember running the plates on the car and it
17 came back to a Davis. I asked him -- I do remember
18 asking him if that was his car. He said that it was
19 the car that he had got there in. I don't recollect
20 how I determined that's who he was.

21 Q He didn't own the car, though, did he?

22 A No. I think what I recollect is after I did a
23 little more investigating, it belonged to his mom. Mom
24 or sister, I can't remember.

25 Q All right. Were you present when anybody else was

1 discovered there or found there?

2 A No.

3 Q Okay. What did you do after you and Sergeant
4 Freestate cleared the house? What did you do?

5 A I went back to my vehicle, and I was towards the
6 rear of the vehicle, and I was just keeping my eye on
7 Mr. Davis while we were waiting for -- I believe we had
8 someone coming to process the scene. And I saw him
9 fidgeting around and just didn't look right with my
10 years of experience, and so I immediately opened up the
11 door, pulled him out. I said, "What are you doing?"
12 and I found what appeared to be methamphetamine
13 sprinkled all out in the backseat where he was sitting
14 as well as a meth pipe. I pulled up -- you know, I
15 patted him down a little bit more vigorously than I did
16 when I detained him, and there was some gloves. I
17 believe they were stuffed in his boot. About that
18 time, since I had enough evidence to charge him with
19 what appeared to be methamphetamine, I charged -- I
20 placed him under arrest and took him to the Oconee
21 County detention center and booked him.

22 Q Okay. Does your involvement in this case end at
23 that point?

24 A Yes, sir.

25 Q Thank you. If you would answer any questions.

1 THE COURT: Cross-exam.

2 CROSS-EXAMINATION

3 BY MR. PATRICK:

4 Q Officer Mayer, did you see anyone inside the
5 house?

6 A No, sir.

7 Q You said that you cleared the house. How long did
8 that take?

9 A Approximately maybe four or five minutes.

10 Q In clearing the house, you came upon that window
11 that was opened in the bathroom. And I'll point you to
12 State's Exhibit 6N, correct?

13 A Yes, sir.

14 Q From that window you can see the roof, correct?

15 A A portion of it, yes, sir.

16 Q A portion of it. Did you go out that window and
17 get on the roof to search the roof?

18 A No, sir.

19 Q Did y'all search the roof at all? I mean, did
20 y'all walk around the house?

21 A I did -- I did go to the back of the house.
22 There's some heavy -- I recollect there was heavy
23 growth around the back of the house, and to my
24 recollection, there was a very large chimney, I
25 believe. So, I mean, but as far as I did look to where

1 I could see the actual back of the roof. Yeah, I
2 believe I did stick my head out that window and took a
3 peek to see if there was anything close, but I didn't
4 observe anything at that time.

5 Q I want to point your attention to Defendant's
6 Exhibit Number 2. And that is an outside view of that
7 window, correct? How far down would you estimate that
8 roof is from that window, five feet?

9 A Maybe five feet. Six feet tops.

10 Q If you felt somebody had gone out the window, you
11 would have gone out there and searched the roof,
12 correct?

13 A Maybe, maybe not.

14 Q Did you field test what Mr. Davis left in your
15 backseat?

16 A I don't recall if I did or not.

17 Q But it was your thought that it was
18 methamphetamine?

19 A It was my professional opinion at the time, yes,
20 sir.

21 Q And I'm going to show you again Exhibit 6N,
22 State's Exhibit 6N. How big of an opening would you
23 estimate that was?

24 A Maybe two and a half by three and a half feet.

25 Q How much is the actual portion, though, the window

1 that is opened?

2 A Yeah. I mean it was (indicating), you know, about
3 two foot by three foot.

4 Q Could you have gotten out that window?

5 A I believe I could have.

6 Q How would you have gone out that window if you
7 were to have gone out that window? Would you have gone
8 head first?

9 A Probably would have put my legs out first.

10 Q Frontwards or backwards?

11 A Probably would have been on my belly and backed
12 out.

13 Q You would be going frontwards you wouldn't have a
14 whole lot of things to hold on to. And from the
15 picture, from Defendant's Exhibit Number 2, if you were
16 going out that window, you would be basically going out
17 blind and kind of lined up not over the roof?

18 A Yeah. I'm not sure on that angle. I mean, if
19 it's --

20 Q Show you Defendant's Exhibit Number 1. Is that a
21 better angle?

22 A That looks better.

23 Q That angle doesn't look like you would be going
24 out over the roof?

25 A Right. Right.

1 Q You would be hanging from the second story.

2 MR. PATRICK: I have no further questions, your
3 Honor.

4 THE COURT: Redirect?

5 MR. WAGNER: No, sir. Ask this witness be
6 excused.

7 THE COURT: Any objection?

8 MR. PATRICK: No objection, your Honor.

9 THE COURT: Thank you, sir. You may be excused.

10 Let me see the attorneys up here real quick.

11 (WHEREUPON, a bench conference was held off the
12 record in the presence of the jury, but out of the
13 hearing of the jury.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of
15 the jury, we're going to go ahead and break now so we
16 don't break up testimony in the middle of it. I'm
17 going to ask that you be back in your jury room a few
18 minutes before 1:45. Remember, don't speak amongst
19 yourselves about this case or anyone else, and I hope
20 you have a nice lunch. See you back a few minutes
21 before 1:45.

22 JURY FOREMAN: Thank you, your Honor.

23 (WHEREUPON, the jury exited the courtroom
24 at 12:38 p.m.)

25 THE COURT: Was Ms. Davis out on bond?

1 MR. BURR: Yes, your Honor.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Ms. Davis, I'm not inclined to let you
4 out. I don't believe that you will show back up. You
5 haven't shown me any good faith so far.

6 THE DEFENDANT: I'm sorry, sir. I just had
7 trouble with my car this morning.

8 THE COURT: Really? You were able to call
9 Mr. Toney in Greenville or Spartanburg and didn't
10 bother to call here at the courthouse, so I'm not
11 inclined to let you out.

12 Let me ask you this: Will that impede your case
13 at all by me keeping her detained over lunch?

14 MR. BURR: Your Honor, we can meet with her here.

15 THE COURT: I'm going to have her detained over
16 lunchtime. All right. We're at break.

17 (WHEREUPON, Lunch recess was taken
18 from 12:39 p.m. to 1:47 p.m..)

19 THE COURT: State ready to proceed?

20 MR. WAGNER: Yes, sir.

21 THE COURT: Mr. Patrick, you ready to proceed?

22 MR. PATRICK: We are, your Honor.

23 THE COURT: Very good.

24 Would you bring the jury in.

25 (WHEREUPON, the jury came into open court at

1 approximately 1:49 p.m.)

2 THE COURT: Mr. Wagner, State ready with its next
3 witness?

4 MR. WAGNER: Yes, sir.

5 THE COURT: Okay, sir.

6 MR. WAGNER: Call Sergeant Freestate.

7 WILLIAM M. FREESTATE, II,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. WAGNER:

11 Q Would you give us your full name, spell your last
12 name for the record, please.

13 A Yes, sir. My name is William M. Freestate, II.
14 Last name spelled F-r-e-e-s-t-a-t-e.

15 Q Who do you work for?

16 A I'm employed with the Oconee County Sheriff's
17 Department in the CID division, criminal
18 investigations.

19 Q How long have you been in law enforcement?

20 A In law enforcement total, almost, I want to say,
21 ten years. I've worked other places before the
22 sheriff's department.

23 Q Okay. Were you working in investigations back on
24 February 10, 2014?

25 A Yes, sir, I was.

1 Q And did you get or hear a call go out about a
2 burglary in progress that you responded to?

3 A Yes, sir, I did. On the date in question I had
4 actually just signed on, and I worked property crimes,
5 which means I deal with any kind of felonies --
6 burglaries, larcenies, grand theft autos, anything that
7 deals with property alleged to be stolen. I just
8 signed on that day, and on the radio I heard a burglary
9 in progress call go out at the address on North
10 Bayshore. Being a property crimes detective, I thought
11 it prudent I go down there, so I immediately went down
12 there to back up Officer Mayer, who was the one who was
13 dispatched to the call.

14 Q What time did you get there, before or after
15 Officer Mayer?

16 A Officer Mayer, I was after him. He was not there
17 when I got there. He was apparently trying to find
18 this other individual that was walking on the road.

19 Q Okay. What did you find when you got there, who
20 did you see, what happened?

21 A When I arrived on scene, there was a white car
22 parked -- it's kind of in front of the house. And then
23 I saw the victim, Mr. Paul, and his red truck there.
24 When I pulled up, you know, he kind of said -- you
25 know, kind of gave me a synopsis of what happened. He

1 stated he had come there. He found there was a lock;
2 like a Realtor box that was supposed to be on the house
3 with the key in it, that was missing. The door was
4 unlocked. He stated he had gone in there and yelled
5 and said, "Listen, I'm inside." You know, he thought
6 some people were in there. He yelled up there and
7 stated, you know, "I'm here. I have a gun. You need
8 to come out. I'm going to call the police." He had
9 heard a commotion and had come out and waited and then
10 called us.

11 He stated that the other officer was actually
12 trying to locate a male he said was walking -- actually
13 walked past his house, and that officer was Officer
14 Mayer.

15 Q Okay. Did Officer Mayer show back up with this
16 other guy?

17 A He did. He had the gentleman in investigative
18 detention, which is not under arrest. And he pulled up
19 into the driveway.

20 Q Did you Mirandize this guy?

21 A I did. First, we left -- the gentleman was secure
22 in the back of Officer Mayer's vehicle. We didn't know
23 who was inside. Mr. Paul was outside. Myself and
24 Officer Mayer cleared the residence, which basically --
25 you know, him and I moved in as a team to make sure

1 there was no one else in the house, you know, anything,
2 you know, nothing was awry in there. We didn't see
3 anybody else in the house. We came back out.

4 Officer Mayer got the gentleman out of the car. I
5 Mirandized him verbally. When I Mirandize somebody, it
6 basically sounds like this. The gentleman's name was
7 Ted Davis. I basically state, "Mr. Davis, you have the
8 right to remain silent. Anything you say can and will
9 be used against you in a court of law. You have a
10 right to have an attorney present during any
11 questioning. If you cannot afford one, one will be
12 appointed for you free of charge." He waived those
13 rights and agreed to talk to me.

14 Q Were you able to determine who he was?

15 A At that time he told me his name.

16 Q Okay. Did y'all run the car, figure out whose car
17 it was?

18 A Yes, sir. It came back -- you're going to have to
19 forgive me. The first name, I believe, is Lavina
20 Davis. Mr. Davis stated that was his mother and that
21 she was --

22 MR. PATRICK: Objection; hearsay.

23 THE COURT: Sustained.

24 BY MR. WAGNER:

25 Q Okay. Were you able to locate the owner of the

1 vehicle?

2 A Yes, sir. I mean, we knew who she was, but we
3 never made contact with her. We were unable to.

4 Q What did you do next? What happened?

5 A We spoke to Mr. Davis. He stated that --

6 MR. PATRICK: Objection; hearsay.

7 THE COURT: Sustained.

8 BY MR. WAGNER:

9 Q Without saying what Mr. Davis said, what was
10 y'all's next step?

11 A The next step was just to basically find out what
12 was going on. You know, we were trying to figure out
13 why that car was there, why those people were there.
14 You know, what was going on basically. I mean, I can't
15 go into what he told me, but, I mean --

16 Q Did you talk to the victim?

17 A We did talk to the victim, yes, sir.

18 Q Mr. Paul?

19 A Yes, sir.

20 Q All right. Did Mr. Paul ask you to get the car
21 towed because it was blocking the driveway and didn't
22 belong there?

23 A Yeah. He was adamant he wanted that vehicle off
24 his property.

25 Q Did you call a wrecker service?

1 A I did, sir.

2 Q Did the wrecker service come out there?

3 A It did, sir.

4 Q Were you expecting to find -- based on your
5 investigation at the scene at the time, were you
6 expecting to possibly locate anybody else that had been
7 in the white vehicle?

8 A I was not expecting to, no, sir.

9 Q Didn't find anybody in the house?

10 A No, sir, we did not.

11 Q How many officers came out there and how many of
12 y'all were there?

13 A When it first -- first, we were dispatched to the
14 area, it was myself and Officer Mayer. I called
15 Patrick Merck, who is our crime scene tech. Whenever
16 we have a burglary, you know, and I think it needs to
17 be worked, I call him out. He comes out, fingerprints,
18 does what crime scene techs do.

19 He came from Walhalla. He arrived on scene.

20 Prior to that Officer Mayer had already left with the
21 individual. While we were there, prior to towing any
22 vehicle, it's our policy to inventory it. The reason
23 we inventory vehicles is basically to protect everybody
24 involved. I couldn't find the owner of the vehicle.

25 It was going to be towed to a wrecker lot. So we have

1 what's called an inventory sheet. We go in, and
2 basically what I do, what I've done since I've been on
3 the road, is I start at the driver's side of the door,
4 open it, and we just take a detailed note of what --
5 everything that's in the vehicle. We do that so if
6 later the owner comes back and says there was a solid
7 gold brick in the backseat of the car and it wasn't
8 inventoried, we said it wasn't there when we towed it,
9 just to protect us, them and everybody else.

10 Q Did y'all search Mr. Davis?

11 A Officer Mayer did.

12 Q Were you present when he was searched?

13 A I was.

14 Q Was there anything on his person?

15 A He did have work gloves. They're like tan in
16 color, and they were in his boot.

17 Q Let me show you what's been marked State's Exhibit
18 Number 5 for I.D. Do you recognize that?

19 A Both pairs of gloves I recognize. Yes. Those are
20 the gloves that were taken out of Mr. Davis' boot.

21 Q Are they substantially in the same condition as
22 they were?

23 A Yes, sir.

24 Q Have they been tampered with in any manner?

25 A No, sir.

1 MR. WAGNER: Your Honor we would move State's
2 Exhibit 5.

3 THE COURT: Any objection?

4 MR. PATRICK: No objection, your Honor.

5 THE COURT: Admitted.

6 (WHEREUPON, State's Exhibit Number 5 was admitted
7 into evidence.)

8 BY MR. WAGNER:

9 Q Let me show you what's been marked State's
10 Exhibit 7A through 7U.

11 THE COURT: Do you have any objection to those?

12 MR. PATRICK: I have no objection, your Honor.

13 THE COURT: They will be admitted without
14 objection.

15 (WHEREUPON, State's Exhibit Numbers 7A-7U
16 were admitted into evidence.)

17 BY MR. WAGNER:

18 Q Start with 7A. There is a laser pointer over
19 there. Do you recognize this?

20 A Yes, sir. That's the vehicle actually where it
21 was parked when I arrived on scene. Of course, when I
22 arrived on scene, the doors were all closed. Over
23 here, this is Patrick Merck's crime scene vehicle.
24 That's where he parked it. As soon as he came in, he
25 parked behind the vehicle.

1 Q How long was he parked there?

2 A Oh, goodness. We were there for several hours at
3 least.

4 Q And how long was he parked there before you
5 located the defendant?

6 A He was -- like I said, several hours. It was a
7 long amount of time.

8 Q When you got there, you said the doors were all
9 still closed?

10 A Yes, sir. The doors were all still closed. It
11 appeared like it did right there, but all the doors
12 were closed.

13 Q Here is 7B. Had y'all ran the tag, so to speak?

14 A Yes, sir, through dispatch.

15 Q It came back to a lady named Davis?

16 A Yes, sir.

17 Q 7C.

18 A That's basically the same, just another angle of
19 the vehicle. Like I said before, all the doors were
20 closed when we arrived on scene.

21 Q 7D.

22 A Again, the same thing. There was mail up here,
23 but, again, all the doors were closed.

24 Q Where is the chimney in relation to this car?

25 A There is a glare right there, but you can see the

1 chimney is going to be like up over here.

2 Q While all this was going on, were y'all standing
3 right here talking about it?

4 A Yes, sir. I was in this vicinity. Like I said,
5 when I was inventorying the vehicle, my main focus at
6 that time was making sure we found everything in that
7 vehicle and logged it before it was towed.

8 Q 7E.

9 A Again, same deal. This is all the vehicle.

10 Q 7F.

11 A Same deal. The chimney is actually up again --
12 sorry, it's up here. You can see it, but I was here.
13 Like I said, when I start to inventory vehicles, as
14 I've been trained, you start at the driver's side door
15 and work your way around including the trunk, just to
16 make sure you get everything. And I do it the same way
17 every time.

18 Q 7G.

19 A This is actually a picture of the driver's side
20 door. There was a black purse there which was in the
21 driver's seat when we opened it. All these pictures
22 were taken prior to us entering the vehicle. We take
23 pictures. You know, we open the doors, and just
24 Patrick Merck will just take pictures around the
25 vehicle. We even go inside it so nothing had been

1 touched at that time.

2 Q 7H.

3 A Again, it's the passenger door. You can see that
4 was in the passenger seat. There was -- this was still
5 there, purse. Everything had been untouched.

6 Q 7I.

7 A The rear driver's side -- excuse me, driver's side
8 door. Like I said, nothing had been touched. It was
9 chock full of stuff.

10 Q 7J.

11 A This is the passenger side. Like I said, you can
12 see this looks like some kind of linoleum or something
13 right here in the passenger side rolled up.

14 Q 7R.

15 A The back passenger side. As with the other side,
16 there was all kinds of stuff back there. It was filled
17 with things.

18 Q 7L.

19 A As I said before; this is the driver's side. You
20 can't -- this is -- that is addressed to some
21 individual, but at the top the name is Teresa Davis
22 with the address from Easley, which was on the license
23 that we found.

24 Q 7M.

25 A The VIN number to the vehicle. Like I said, when

1 you're inventorying the vehicle, you obviously have to
2 take a picture of the tag also the VIN, as tags can be
3 changed.

4 Q 7N.

5 A This actually was inside the purse. In there is
6 an I.D. This was lip balm, paperwork and other things.
7 This is a South Carolina driver's license.

8 Q Is that the purse that was on the driver's seat?

9 A Yes, sir. That's the same black purse, yes, sir.

10 Q Has it still not been touched by y'all?

11 A No, sir. Patrick is basically -- like we said, we
12 start and we're taking surrounding pictures around the
13 vehicle. Now he's back at the driver's side and we're
14 taking pictures of the purse which is sitting there in
15 the driver's side door.

16 Q 70.

17 A Again, a long shot of the purse, just how it was
18 when we took it out to examine it.

19 Q Okay. This is the same purse that was on the
20 driver's seat, but now y'all put it on the hood of the
21 car to take pictures of it?

22 A Yes, sir. It's just easier. Patrick Merck is
23 6'3", and it's hard for him to get into enclosed
24 spaces. In order to get a wide shot anyway, it would
25 be better to put it on top of the vehicle so we can get

1 a full view of the purse so, you know, we have an
2 accurate representation of what's in it before we had
3 gone in it or anything like that.

4 Q 7P.

5 A The South Carolina driver's license you saw in the
6 previous picture that was lying on its side, this is
7 it. It's being held for the picture. As you can see,
8 it's the defendant's driver's license.

9 Q 7Q.

10 A This actually was a plaid smaller bag that was
11 found in the vicinity -- next to the purse.. Inside it,
12 when we get to further pictures you can see what's
13 inside it, but basically you see there is a black box
14 and some plastic, stuff like that.

15 Q 7R.

16 A Again, a wide shot of both the purse and the small
17 bag, both of which were found in the driver's seat.

18 Q 7S.

19 A Again, a close-up of kind of just opening the bag
20 just to get a better view of what's inside it prior to
21 taking the contents out and logging it in. There's
22 some money, and like I said, a black box and other
23 metal tin, it appears.

24 Q 7T.

25 A This was what was inside that small bag. You can

1 see there were two bags with a crystal-like substance.
2 That was inside of this tin. There was a spoon, money,
3 several baggies. This is what turned out to be what's
4 called a digital scale for weighing stuff and just a
5 lot of, I believe, tissue paper was inside of it.

6 Q Last is 7U.

7 A Again, just another shot of the driver's license
8 which was found in the black purse which you can see is
9 the defendant with the same address that was actually
10 on the mail that was in the driver's side right there
11 in front of the window.

12 Q So after y'all inventoried the car, did the tow
13 truck actually come and tow it away?

14 A Yes, sir, it did. What we did with the other
15 things inside the vehicle, you know, we just logged
16 them. We asked Mr. Paul --- it's a burglary. Obviously
17 there was a lot of items in that vehicle. He stated he
18 couldn't tell if they came from the house or not, but
19 we logged everything that was in there. We called
20 what's called an Exxon rotation. We have a list of tow
21 truck drivers who work for the sheriff's office on
22 contract. I called dispatch at the property owner's
23 request and he showed up and towed the vehicle.

24 Q In your experience as a property crimes
25 investigator, did you go in the house with the victim

1 and look at stuff?

2 A Yes, sir, we did. Obviously, I had never been in
3 the house, so it would behoove us to take him in there
4 so at least he could tell us if anything was out of
5 place.

6 Q Was there stuff out of place?

7 A Yes, sir. He was very specific. As we walked in,
8 obviously he showed us the door that was open at the
9 bottom. We walked up the steps and he's kind of
10 telling us what he did and where he went.

11 As we get to the top of the steps, there is a pot
12 laying there and some other items. And he was adamant
13 from that point. He goes, "That was not there. That's
14 been moved. Somebody put that there. I had not moved
15 it." I asked him again, and he was adamant.

16 Q Do you know how many police cars total showed up
17 approximately?

18 A Approximately? Myself, I was in my black truck.
19 Let's see... George Mayer is in a marked vehicle. Like
20 I said, Patrick Merck, who was there for hours, in the
21 big F-250 with sheriff's office emblems all over the
22 side. Once we located the crystal-like substance, we
23 notified Agent Scott McCreary. He showed up as well
24 with his partner. They both wear badges like I do.
25 Jason Kilpatrick is his name. So maybe five total.

1 Q About the time you had found the objects that we
2 just looked at the pictures of, the purse and the
3 defendant's driver's license and all, were y'all
4 expecting possibly that there was somebody else present
5 on the scene or had been?

6 A I mean, yes, sir. I mean, I'm assuming it. But
7 like I said, that's all I was doing. There was no -- I
8 didn't see anyone else there.

9 Q Did anybody else show up to help y'all look for
10 them?

11 A Yes, sir. Like I said, we notified Agent McCreary
12 and Agent Kilpatrick due to the crystal-like substance.
13 He showed up. I call him Scott. Scott McCreary gets
14 out. We're standing there in the front. And Scott
15 said, "Do you know where this girl is?" And I said, "I
16 don't know." I really didn't know where she was, if
17 she was even there. Scott says, "I'm going to go
18 around the back and I'm just going to check for her."
19 I said that was fine. At this point the tow truck
20 hadn't shown up, so we were just hanging out there.

21 Scott and Jason Kilpatrick go in the back. It
22 wasn't five minutes, maybe less, that I heard -- at the
23 sheriff's office, I have an unusual last name. It's
24 Freestate. Everyone calls me Freestate. I hear in the
25 back from the house, I hear Scott yell, "Freestate,

1 she's on the roof." And I looked up, and I saw a
2 female, actually the defendant, kind of crouching with
3 her butt to me around the chimney, you know, coming
4 around.

5 And I saw her and I yelled up to her, I said,
6 "Hey, get down from there." And she saw me and then
7 began to crouch around, move back around the chimney to
8 the other side where I assume she was hiding. I don't
9 know.

10 Q Okay. Did y'all get her down?

11 A We did, sir.

12 Q How did you do that?

13 A We came around to the back of the house, and there
14 is kind of like a walkway area. It was wide. We
15 figured out we couldn't make it onto the roof
16 ourselves. I'm 6'1". Kilpatrick is 6'3". Even with
17 that, we couldn't climb onto the roof without breaking
18 the gutters where we were at.

19 Mr. Paul graciously said, "You can use one of my
20 ladders." We come around, get the ladder down. She
21 was compliant. Obviously, she didn't have anywhere to
22 go. So she was coming down. While she's coming down,
23 a glass pipe comes sliding down the roof. Then Jason
24 was able to help her down.

25 When we got her down, just by the fact that she's

1 hiding on the roof, I put her in investigative
2 detention and walked her to the front of house with
3 Sergeant Merck, Patrick Merck..

4 Q At that point in time did you say or tell her her
5 Miranda rights?

6 A I did. As I stated before and I'll state again,
7 Miranda is pretty cut and dry. It was just, you know,
8 "You have the right to remain silent. Anything you say
9 can and will be used against you in a court of law.
10 You have a right to have an attorney present during
11 questioning. If you cannot afford one, one will be
12 provided for you free of charge."

13 She waived her rights, and basically I asked her,
14 "What were you doing on the roof? What are you doing
15 here?" And she stated she was dropping her friend off.
16 I'll never forget the name, Joe Mann. And I was like,
17 "Joe Mann?" And I asked her, "Why were you on the roof
18 for so long with police officers there?" She said she
19 was scared, she was afraid. I said "Well, we've been
20 here for hours." I mean, it's February. It's cold. I
21 mean, you can see us down there. I guess -- I am in a
22 tie and I have this, but Patrick Merck is in full
23 sheriff's department gear. George Mayer prior to that
24 is in the blues that the bailiffs wear. You can see
25 our outfits. You know we're police officers.

1 She didn't really have any good -- any kind of
2 answer for that. So then I asked her about the
3 narcotics we found or the crystal-like substance we
4 found in there. I said, "Who's is that?" She stated,
5 "That's mine. My brother doesn't do that." And I said
6 okay. And at that time, you know, I placed her under
7 arrest for, you know, possession with intent to
8 distribute methamphetamine.

9 She then stated that, "No, those aren't mine."
10 And I'll never forget Patrick, who was right there with
11 me the entire time, said, "You just said they were
12 yours." And after that she just stopped talking.

13 Q Were you able to determine who the other guy was
14 who was there?

15 A The gentleman that George Mayer --

16 Q The Ted Davis guy.

17 A Yeah. That was actually her brother.

18 Q So they were related?

19 A Yes, sir.

20 Q And to the best of your knowledge, did she freely
21 and voluntarily waive her rights and agree to tell you
22 that?

23 A Yes, sir. I mean, there was no coercion. I
24 didn't threaten her or anything like that, so.

25 Q Let me show you State's Exhibit 2. Do you

1 recognize State's Exhibit 2?

2 A Yes, sir, I do. These gloves and this flashlight,
3 when I placed her in investigative detention, this was
4 prior to that, we pat subjects down for our safety.
5 She had gloves, these gloves, in her jacket pocket as
6 well as a flashlight.

7 Q Are those substantially in the same condition as
8 they were?

9 A Yes, sir.

10 MR. WAGNER: Your Honor, at this time we'd move in
11 State's Exhibit 2.

12 THE COURT: Any objection?

13 MR. PATRICK: No objection, your Honor.

14 THE COURT: What were those exhibit numbers?

15 MR. WAGNER: Your Honor, that's Number 2 there.

16 (WHEREUPON, State's Exhibit Number 2 was admitted
17 into evidence.)

18 BY MR. WAGNER:

19 Q Did you ask Sergeant Merck to go in and photograph
20 the residence and stuff?

21 A Yes, sir. Since it was a burglary, he
22 fingerprinted and went in and took pictures of the
23 residence and all the items there.

24 Q Were the pictures that we've looked at in court,
25 were those taken by Sergeant Merck?

1 A Yes, sir.

2 Q Why did you charge her with possession with intent
3 to distribute?

4 A Basically it was due to the fact that we found the
5 methamphetamine or, excuse me, crystal-like substance
6 and that there were several baggies, and there was a
7 scale. All that would make a reasonable person believe
8 this was not for personal use. This was for
9 distribution purposes. They're small baggies, you
10 know, to cut up and put narcotics in. That's basically
11 to sell, for sale. There's, you know, a scale there.
12 You would weigh there, you know. So as the statute
13 states, that constitutes PWID.

14 Q Thank you. That's all the questions I have.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. PATRICK:

18 Q Sergeant Freestate, did you see anybody ever in
19 the house?

20 A No, sir, I did not.

21 Q Did you do any investigation about trying to
22 locate Joe Mann?

23 A No, sir, I did not.

24 Q Were you -- you were there when Deputy Mayer found
25 the drugs on Ted Davis, correct?

- 1 A Yes, sir, I was.
- 2 Q Ms. Davis was never found in any possession of any
3 drugs?
- 4 A No, sir, she was not.
- 5 Q You said the purse or the small purse was
6 alongside the bigger black purse, so it wasn't --
- 7 A Yes.
- 8 Q The small purse wasn't inside the big purse?
- 9 A No, sir, it was not. It was just alongside it in
10 the passenger -- in the driver's seat, excuse me.
- 11 Q You were with Deputy Mayer when y'all cleared the
12 house?
- 13 A Yes, sir, I was.
- 14 Q And y'all didn't find anybody inside, correct?
- 15 A No, sir.
- 16 Q You saw the window that was open?
- 17 A Yes, sir, I did.
- 18 Q Did you go out onto the roof and search the roof?
- 19 A No, sir.
- 20 Q I'm going to show you State's Exhibit 6N. That's
21 the window that y'all saw that leads outside?
- 22 A Yes, sir, it was.
- 23 Q If you were to be going outside out that window,
24 which way would you go?
- 25 A Well, Mr. Patrick, to be totally honest, as a

1 police officer, if I'm searching that house and there
2 is a window open, I'm not going to stick my head
3 through there basically because I'm going to get shot.
4 So that's why I wasn't going out on the roof. I can't
5 see -- I would have never stuck my head through the
6 window. I looked out. I could see that you could get
7 out there and jump on it, but I didn't stick my head
8 out there just for the simple fact that a lot of
9 officers have been killed that way, sticking their head
10 in where they have no idea what's out there.

11 Q That's understandable. You said you could jump?

12 A I could see there's -- this is not the picture,
13 but there is another picture that was taken by Sergeant
14 Merck where you could look out and see the satellite
15 dish and I could see the curvature of the house --
16 excuse me, the roof. And I could look out there, and
17 it was totally feasible somebody could get out there.
18 But at that time I had no reasonable belief that
19 anybody was out there.

20 Q How big of an opening do you think that is?

21 A Maybe three feet maybe.

22 Q You think the opening to that window is three
23 feet?

24 A Two to three feet, I mean.

25 Q Then how much is it from the bottom of the floor

1 to the top? That looks like it's at least double that
2 opening. So you're saying it's six feet?

3 A Like I said, I went to Carolina. My math is not
4 great. I'm estimating.

5 Q Okay. I'm just trying to figure out if you were
6 going to be jumping out that window, you wouldn't be
7 crouching to jump, correct? I mean you would have to
8 slide out some way?

9 A It's feasible somebody of a smaller stature other
10 than me. I mean, I'm 300 pounds. I'm not getting out
11 that window. But someone of a smaller, thinner
12 stature, it's totally feasible they could get out
13 there. Stick one leg through and then just jump right
14 onto the roof. In my opinion, sir.

15 Q I'm going to show you Defense Exhibit Number 2.
16 So your testimony is that somebody could sling their
17 leg over there through the window and jump in that
18 small opening?

19 A Well, sir, I mean, I'm basing it on my opinion. I
20 mean, I'm 300 pounds but I was not this big when I was
21 a kid. I could definitely do it when I was younger and
22 thinner.

23 Q Going face first out?

24 A No, sir. Crawling out. I could -- I tell you, I
25 was not this big when I was younger.

1 Q Going -- you mean feet first this way or --

2 A You could stick one leg through and crawl through.
3 It's possible. I've done it. When I was younger,
4 Long time ago.

5 Q I'll take your word for that. Did you walk all
6 the way around the house?

7 A I did not. George Mayer did. I stayed at the
8 front of the house.

9 Q So you never went around?

10 A No, sir. I stayed with the vehicle. That was
11 where I was until I heard Scott McCreary say,
12 "Freestate, she's on the roof." That's when I came
13 around the garage side.

14 Q But Ms. Davis did tell you right when you found
15 her that she had climbed on the roof because she was
16 scared when she heard somebody had a gun?

17 A She did tell me that. It wasn't like when we
18 right found her. She was doing something else. But
19 when we got her down and everything like that, she was
20 on the ground, she said she was scared, yes. Someone
21 had yelled out that they had a gun and that she wasn't
22 coming down. And I asked her, I was like, "We've been
23 here for hours. Police officer. And so are the four
24 other guys with me. I mean, we're here to help you.
25 We're not going to hurt you." Like I said, she didn't

- 1 really have an answer for that at all.
- 2 Q But she did tell you that she climbed on the roof
- 3 because she heard somebody had a gun?
- 4 A Yes, sir.
- 5 Q And that she was scared?
- 6 A Yes, sir. That is true.
- 7 Q And there was a Joe Mann there also?
- 8 A She said she dropped Joe Mann off to look for
- 9 work. That's what I remember, sir.
- 10 Q You said she initially claimed ownership of the
- 11 drugs, but then immediately thereafter said they
- 12 weren't hers?
- 13 A She claimed ownership of the drugs. Her statement
- 14 to me was, best of my recollection, was, "Those are
- 15 mine. My brother doesn't do that," meaning the other
- 16 subject. She also stated that she got -- they weren't
- 17 hers after I told her she was under arrest for PWID
- 18 methamphetamine.
- 19 Q Her brother was found with meth, though, so we
- 20 know that's --
- 21 A Yes, sir. He was found -- he was taken to jail
- 22 for that.
- 23 Q I'm going to show you State's Exhibit 7K. Would
- 24 you agree that that's a place somebody could sit,
- 25 correct?

1 A Oh, yes, sir. I mean, it's possible.

2 Q As well as in the driver's seat, in the front
3 seat?

4 A Yes, sir.

5 MR. PATRICK: No further questions, your Honor.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q 7K we just looked at, in with the other pictures
10 that were of the car, do you see any way possible that
11 there could have been three people in the car?

12 A Yes, sir. It's possible. I mean, it's unlikely
13 but it's possible.

14 Q But there was room there?

15 A Yes, sir. There's room there.

16 Q And looking at 7J, was there room there?

17 A Without the linoleum there, but yes, sir.

18 Q Okay.

19 Q And 7I?

20 A No, not with those items there, sir.

21 Q And 7H?

22 A Absolutely, yes, sir.

23 Q Okay. So in the course of your investigation, did
24 you determine how many people came there in that car?

25 A At least --

1 MR. PATRICK: Objection; speculation.

2 THE COURT: Sustained.

3 BY MR. WAGNER:

4 Q The roof, not stick your head out of the roof, but
5 did you look as far as you can out and down?

6 A Yes, sir, I did, I mean, without putting my head
7 out there.

8 Q This is 6F. Is that basically what it looked
9 like?

10 A Yes, sir.

11 Q So if you could get through that window, do you
12 feel like you could get out on the roof?

13 A Absolutely.

14 MR. WAGNER: No further questions.

15 THE COURT: All right, sir. You may step down.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: Would you call your next witness,
18 please.

19 MR. WAGNER: Meredith Lanford.

20 MEREDITH LANFORD,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. WAGNER:

24 Q Ma'am, could you give us your name, spell your
25 last name for the record, please?

1 A Meredith Lanford, L-a-n-f-o-r-d.

2 Q Where are you from?

3 A I am from Anderson.

4 Q And what do you do?

5 A I work for the Anderson-Oconee Regional Forensics
6 Laboratory as a forensic chemist.

7 Q How long have you been employed there?

8 A I've been employed there for nine years.

9 Q What are your duties as a forensic chemist?

10 A My main job function is to analyze evidence that's
11 brought to our laboratory to find if it contains
12 controlled substances.

13 Q And what kind of education do you have to do that?

14 A I have a bachelor's of science degree in chemistry
15 from Clemson University. I then went on to complete
16 the forensic science certificate program at Greenville
17 Technical College. I was trained and certified as a
18 forensic chemist for the Charleston police laboratory
19 as well as my current laboratory. I was also trained
20 in the area of drug chemistry from the drug
21 administration -- Drug Enforcement Administration, and
22 I also am a member of the American Chemical Society as
23 well as the Clandestine Laboratory Investigating
24 Chemists, and I also have to perform a yearly
25 proficiency test as well as several hours in training

1 in seminars.

2 Q As part of your training and your job duties, do
3 you analyze substances for potentially being
4 methamphetamine?

5 A Yes, I do.

6 Q And how many times have you tested stuff to check
7 whether it's been methamphetamine or cocaine or other
8 substances?

9 A Probably over 5,000 times.

10 Q Have you testified as an expert in, I guess,
11 forensic drug chemistry?

12 A Yes, I have.

13 Q How many times?

14 A 18.

15 MR. WAGNER: Your Honor, at this time we would
16 proffer Ms. Lanford as an expert in forensic chemistry.

17 THE COURT: Forensic chemistry?

18 MR. WAGNER: Yes, sir.

19 THE COURT: Any objection?

20 MR. PATRICK: No objection, your Honor.

21 THE COURT: All right.

22 Ladies and gentlemen, normally witnesses are
23 limited in what they can testify to as through their
24 senses, in other words, what they see, they saw, they
25 smelled, they felt. Along those lines they're usually

1 not allowed to give their opinion but for a limited
2 circumstance.

3 However, a person, because of their education or
4 experience has become educated or has gained expertise
5 in a particular field and it will help you, the jury,
6 to aid and assist you as finders of fact, they're
7 allowed to give their opinion in areas of their
8 expertise.

9 In this case this witness, Ms. Lanford, will be
10 determined to be a forensic -- expert in forensic
11 chemistry. She will be allowed to give her opinion
12 this that area.

13 Expert testimony is just like any other testimony
14 you will hear in this case. You can accept it, you may
15 reject it, give it as much weight as you believe it
16 deserves.

17 Okay, sir.

18 BY MR. WAGNER:

19 Q Can you tell me about the composition of
20 methamphetamine?

21 A Most of the methamphetamine we are seeing now
22 is -- looks more like a crystalline substance. Like
23 ice is the main form that we see it in. But it can be
24 anything from a powder to a rock substance, and it can
25 come in many different colors. I've seen it blue,

1 pink. It just depends on how they make it.

2 Q You don't really know until you test it?

3 A Correct.

4 Q But there are some things that you can look at
5 that would lead you to believe initially that it could
6 be that?

7 A Yes.

8 Q Let me show you what's marked State's Exhibit
9 Number 1. Do you recognize that?

10 A I do.

11 Q Can you identify it?

12 A This is what we call our best kit evidence. What
13 we ask all the agencies to do is to place whatever
14 drugs they get, to put into this outer bag that's right
15 here and seal it up. And this is how they bring the
16 substances to the lab. And I mark it with our lab
17 number, the date that I received it, and I make sure
18 that the control number matches the control number on
19 the outside envelope that these bags come in.

20 Q Okay. So when was it marked?

21 A I marked this on February 28, 2014.

22 Q And when did you -- did you receive it that day?

23 A Yes, I did.

24 Q Okay. Who did you receive it from?

25 A I received this from Sergeant Patrick Merck.

1 Q And has it remained in your -- while you had it,
2 was it in your care, custody and control?

3 A Yes.

4 Q What kind of -- how did it come in to you? Was it
5 sealed?

6 A Yes, it was.

7 Q And then did you open it at that point?

8 A No. What I do is I put these in an evidence
9 drawer until I'm ready to analyze them. And the day
10 that I analyze them is when, of course, I open them.

11 Q Is your lab, your evidence drawer, is it secure?

12 A Yes, it is.

13 Q Does anybody else have access to it?

14 A No. I'm the only one with a key.

15 Q For what purpose did it come into your possession?

16 A To test to see if there were any controlled
17 substances present.

18 Q When did you test it?

19 A I analyzed this on March 6, 2014.

20 Q How do you go about testing a substance for
21 methamphetamine or another drug?

22 A Okay. The first thing I do is I have to remove
23 the substance from any kind of packaging, and I take
24 the weight of the substance. Then the next thing we do
25 is perform two screening tests just to help us to

1 determine what kind of drug, if at all, may be there.
2 And then we perform two tests on our instruments in
3 order to confirm what kind of substance is there.

4 Q And do you have -- were you able to form an expert
5 opinion as to what that substance was?

6 A Yes. In this case there was two different bags,
7 so. Each item, the first item I found contained
8 methamphetamine of 4.61 grams. And then the second
9 item I found to contain methamphetamine at 2.63 grams.

10 Q When you were done testing State's Exhibit Number
11 1 there, what did you do with it?

12 A What I do is I put it back into the bags. I label
13 everything with the item number, the lab number,
14 initial it, and I place everything in this outer what
15 we call a K pack bag, and I seal it right here with my
16 initials, the date, and it's heat sealed.

17 Q And is it still heat sealed today?

18 A Yes, it is.

19 Q And the fact that it's still heat sealed, does
20 that tell you anything? Has it been tampered or
21 altered in any manner?

22 A Right. I would say no because it looks the same.

23 Q You would be able to tell if the seal had been
24 tampered with?

25 A Right.

1 Q So when you finished testing it and put it back in
2 there and sealed it, it's still in that condition?

3 A Correct.

4 Q What did you do with it then?

5 A I then placed it in another evidence drawer for
6 the -- and it sits there until the agency comes back to
7 pick the evidence back up.

8 Q And did you turn that back over to the Ocone
9 sheriff's office?

10 A I did.

11 Q You haven't seen it since then until today?

12 A Correct.

13 Q That's all the questions I have. If you will go
14 ahead --

15 THE COURT: Just one second.

16 Let's -- Mr. Foreman, ladies and gentlemen, let's
17 go ahead and take an afternoon break. Take about a
18 ten-minute break. If you need any further time, let us
19 know.

20 JURY FOREMAN: Thank you, your Honor.

21 (WHEREUPON, the jury exited the courtroom
22 at 2:35 p.m.)

23 THE COURT: Ms. Lanford, you can't speak with
24 anybody, but you can step down. We'll be in recess for
25 about ten, 15 minutes.

1 (WHEREUPON, recess taken from 2:35 p.m.

2 to 2:47 p.m.)

3 THE COURT: Mr. Patrick, you ready?

4 MR. PATRICK: I am.

5 THE COURT: Mr. Wagner, you ready?

6 MR. WAGNER: Yes, sir.

7 (Whereupon, the jury came into open court at

8 approximately 2:48 p.m.)

9 THE COURT: Mr. Patrick, you ready for
10 cross-examination?

11 MR. PATRICK: I don't have any questions.

12 THE COURT: May this witness be excused?

13 MR. WAGNER: Yes.

14 MR. PATRICK: Yes.

15 MR. WAGNER: The State will call Patrick Merck.

16 PATRICK MERCK,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. WAGNER:

20 Q Would you give us your full name and spell your
21 last name for the record.

22 A Patrick Merck, M-e-r-c-k.

23 Q What is your occupation? Who do you work for?
24 What do you do?

25 A The Oconee County Sheriff's Office, evidence

1 technician.

2 Q Okay. How long have you been doing that?

3 A 17 years.

4 Q Are you a certified deputy working to basically
5 process crime scenes?

6 A Yes, sir.

7 Q Did you get a call to go out to 2932 North
8 Bayshore Drive back on February 10, 2014?

9 A Yes, sir, I did.

10 Q And did Sergeant Freestate call you out there?

11 A Yes, sir, he did.

12 Q When you got out there, what did you find?

13 A We had a vehicle sitting in front of the
14 residence, had some items on the vehicle itself and, of
15 course, a residence that had been broken into.

16 Q Did you take pictures?

17 A Yes, sir, I did.

18 Q Did you take pictures throughout the house?

19 A Yes, sir.

20 Q Did you do any fingerprints?

21 A Yes, sir, I did.

22 Q What did you fingerprint?

23 A Various items in the garage area throughout the
24 house, some doors, doorknobs things of that nature.

25 Q Were you able to recover any prints?

- 1 A One print. Recovered one latent print.
- 2 Q Were you able to do anything with that?
- 3 A No, sir. I did not match it.
- 4 Q Let me show you what's been marked State's
- 5 Exhibit 1. It's actually right in front of you there.
- 6 A Okay.
- 7 Q Do you recognize that?
- 8 A Yes, sir, I do.
- 9 Q What is that?
- 10 A It is a plastic bag that is contained within a
- 11 best kit, best evidence kit, in which we submit drugs
- 12 to the Anderson-Oconee Regional Forensic Lab for
- 13 analysis.
- 14 Q How can you identify it?
- 15 A It has, of course, my name, signature and date.
- 16 Q And do you remember -- did you take custody of
- 17 that back at the crime scene in this case?
- 18 A Yes, sir, I did.
- 19 Q Was it in your custody until you delivered it to
- 20 the lab?
- 21 A Yes, sir, it was.
- 22 Q Has it been altered or tampered with in any
- 23 manner?
- 24 A No, sir.
- 25 Q Is it still in substantially the same condition as

1 it was when you received it back from the lab?

2 A Yes, sir, it is.

3 Q Is it still sealed?

4 A Yes, sir...

5 MR. WAGNER: Your Honor, at this time we would
6 move State's Exhibit 1 into evidence.

7 THE COURT: Any objection?

8 MR. PATRICK: No objection, Your Honor.

9 THE COURT: Admitted.

10 (WHEREUPON, State's Exhibit Number 1 was admitted
11 into evidence.)

12 BY MR. WAGNER:

13 Q Let me also show you State's Exhibit -- let's
14 start with 3. Can you identify State's Exhibit Number
15 3?

16 A Yes, sir. It is a small purse or some type of
17 zipper container that I collected on February 10, 2014,
18 at the location we just talked about.

19 Q Okay. And is it still substantially in the same
20 condition, those items are, as they were when you took
21 custody of them?

22 A Yes, sir, they are.

23 Q Have they been in your custody, care and control
24 ever since?

25 A Yes, sir, they have.

1 Q Have they been altered or tampered with in any
2 manner?

3 A No, sir, they have not.

4 MR. WAGNER: Your Honor, at this time we'd ask to
5 move State's Exhibit 3 into evidence.

6 THE COURT: Any objection?

7 MR. PATRICK: No objection.

8 THE COURT: It will be admitted.

9 (WHEREUPON, State's Exhibit Number 3 was admitted
10 into evidence.)

11 BY MR. WAGNER:

12 Q Let me last show you State's Exhibit 4. Do you
13 recognize that?

14 A Yes, sir. It is a small black zipper container
15 that I collected on February 10th as well, 2014.

16 Q Okay. And the zipper container the other items
17 that are there, were they inside of that zipper
18 container?

19 A Yes, sir, they were.

20 Q Are they still in the same condition as they were
21 when you collected them at the scene that day?

22 A Yes.

23 Q Did they also come out of that white car?

24 A Yes.

25 Q Have you altered or tampered with them in any

1 manner?

2 A. No, sir.

3 MR. WAGNER: At this time we would move State's
4 Exhibit 4 in.

5 THE COURT: Any objection?

6 MR. PATRICK: No objection.

7 THE COURT: Admitted.

8 (WHEREUPON, State's Exhibit Number 4 was admitted
9 into evidence.)

10 MR. WAGNER: That's the only questions I have.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. PATRICK:

14 Q Deputy Merck, you were the one who took the
15 pictures of all the crime scene?

16 A Yes, sir.

17 Q And you did all the fingerprints also?

18 A Yes, sir.

19 Q Did you take fingerprints in the bathroom where
20 the window was open?

21 A Yes, sir, I did.

22 Q Were there any fingerprints found?

23 A One latent print was on the window sill.

24 Q Could you explain latent print?

25 A It is essentially a print such as if I touch this

1 object here, the moisture that's on my hand is what I
2 leave behind. Basically that turns into a latent
3 print. When you see someone dust, what the dust is
4 doing, basically, is adhering to the moisture that's
5 left behind. That's what develops prints. And that's
6 what, in turn, we lift with tape or a photograph in
7 some manner.

8 Q But that print didn't match Ms. Davis?

9 A No, sir.

10 Q Were there any marks whatsoever in that bathroom,
11 scuff marks from somebody trying to climb out a window?

12 A Not that I remember.

13 Q Was the toilet seat skewed over or kicked over
14 with somebody trying to use that to step up?

15 A Not that I remember, without looking at a
16 photograph, if you have one handy.

17 Q Show you what's been marked as State's Exhibit 6K.
18 Does it look like there's any marks on the toilet seat
19 broken or skewed or anything to your --

20 A Does not appear to be, no, sir.

21 Q Did you walk all the way around the residence to
22 take pictures or did you just take pictures inside?

23 A I may have gone around certain portions. I try
24 normally to go around the house. I'm not sure if I did
25 at that particular one.

1 Q Do you recall walking behind the garage?

2 A I do remember walking back there, whether I
3 snapped a photo or not. Sometimes it's in an area
4 that's close --

5 Q Do you recall as you walked behind the garage, the
6 short -- how tall the garage was -- I mean the roof
7 line from the garage? How tall are you?

8 A About 6'7".

9 Q Do you recall having to duck or almost hit your
10 head on the roof line on that garage?

11 A Honestly, I duck so much I don't remember.

12 MR. PATRICK: I have no further questions, your
13 Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. WAGNER:

17 Q Let me show you what's admitted as State's
18 Exhibit 2. Did you take that into evidence, too?

19 A Yes, sir, I did.

20 Q If a person -- what is that?

21 A It is two or one pair of gloves, a right and a
22 left glove, and a small flashlight.

23 Q If a person's got those gloves on, would they
24 leave a fingerprint?

25 A No, sir.

1 MR. WAGNER: That's the only questions I have.

2 THE COURT: Any questions? May this witness be
3 excused?

4 MR. WAGNER: Yes, sir, please.

5 MR. PATRICK: No objection, your Honor.

6 THE COURT: Thank you, sir.

7 Call your next witness, please.

8 MR. WAGNER: Scott McCreary.

9 SCOTT ANTHONY MCCREARY,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. WAGNER:

13 Q Please tell us your name and spell your last name
14 for the record.

15 A Spell my last name?

16 Q Yes.

17 A Scott Anthony McCreary, M-c-C-r-e-a-r-y.

18 Q Who do you work for?

19 A Ocone County Sheriff's Office.

20 Q How long have you worked for the sheriff's office?

21 A About 13 years; I think.

22 Q What are your job duties there?

23 A I'm a narcotics agent.

24 Q Were you working in that capacity back

25 February 10th of 2014?

1 A Yes, sir.

2 Q Did you respond to a burglary in progress call or
3 request another officer out to 2932 North Bayshore
4 Drive?

5 A Yes, sir.

6 Q And what was the reason for you going out there?
7 What happened?

8 A The investigator had found some drugs out there,
9 and they had a party they thought was there in the area
10 they couldn't find, so we went out -- me and actually
11 Agent Kilpatrick went out to assist him.

12 Q Did y'all go out there and assist?

13 A Yes, sir.

14 Q When you got out there, what did you see and what
15 did you do?

16 A Well, we got out there. We rode together in
17 Kilpatrick's vehicle. Got out there, talked to
18 Freestate, met him in the driveway, asked him, you
19 know, "What you got?". And I said, because I'm kind of
20 a nonprofessional tracker, but I like to track stuff.
21 And I asked him, you know, "What did he have?" And he
22 said, "Well, I think we had some people in the house.
23 There was an open window upstairs, and we think they
24 went out on the roof and jumped off the back of the
25 house." So I walked around the back, looked up at the

1 window and the roof, and I said, "There ain't no way
2 nobody jumped off that roof. It's like 20 to 30 feet
3 tall." I kind of looked around, didn't see any sign,
4 and I thought, "They're still on the roof."

5 So I motion for Agent Kilpatrick, my buddy there,
6 gave him the look up on the roof sign. And I ran
7 around the front of the house, scanned the roof, and
8 ran around through the garage onto the back deck and
9 got up on the handrail and could see a person hiding
10 behind the chimney on the back side of the house.

11 Q Okay. What did you do?

12 A I hollered, "Freestate, somebody's on the roof,"
13 or, "She's on the roof."

14 Q And then what happened?

15 A We got a ladder out of the garage and assisted her
16 off the roof.

17 Q Okay. How long have you been in narcotics?

18 A About two years, four months.

19 Q Do you deal with methamphetamine and what they
20 call PWID, possession with intent to distribute,
21 methamphetamine charge?

22 A Mostly distributions, but occasionally when we do
23 a buy bust or a search warrant or something, we'll get
24 that charge, possession with intent to distribute.

25 Q Let me show you State's Exhibit 3. Do you

1 recognize that?

2 A I didn't never see this when I was out there.

3 Q Okay. Do you recognize what those items are in
4 that?

5 A Can I move this around?

6 Q Yeah.

7 A Yes, sir.

8 Q Is there anything as a narcotics officer in that
9 exhibit that would catch your eye?

10 MR. PATRICK: Objection, your Honor. Speculation.
11 He said he didn't recognize that, first time seeing it.

12 THE COURT: Overruled. I'll let you lay some
13 foundation for it. Go ahead.

14 BY MR. WAGNER:

15 Q As a narcotics officer --

16 A Yes, sir.

17 Q -- do you see anything in that exhibit that might
18 catch your eye dealing with narcotics?

19 A Yes, sir.

20 Q And what would that be?

21 A The little baggies, little tin scale.

22 Q Okay.

23 A Spoon.

24 Q Okay. And what would you -- what would those
25 items be used for in the narcotics world?

1 A All the little baggies, distribution of some sort.
2 In the narcotics field.

3 Q Okay. That's the only questions I have. Thank
4 you.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. PATRICK:

8 Q You testified that you went around the whole
9 house; is that correct?

10 A Yeah.

11 Q Did you walk around where the garage was, the
12 little small walkway that kind of wraps around the
13 garage and then leads to the deck behind the house?

14 A No. I went through the garage.

15 Q Through the garage?

16 A Yeah. The garage door was open and there was a
17 door on the back side, and I ran through there, got up
18 on the handrail and looked up on the back of the house.

19 Q How tall would you say the roof is, roof line,
20 after you walked to the back and through that door to
21 the back?

22 A On the back deck?

23 Q Uh-huh.

24 A Probably seven, eight foot.

25 Q Were you -- you're saying you're in the house or

1 were you through the garage?

2 A Just straight through the garage. There is, you
3 know, like the garage door faces the road and then the
4 back. There was a door that led to the -- onto the
5 back deck, which I had never seen before until I walked
6 through that door.

7 Q Okay. Were you there when Ted Davis was being
8 arrested?

9 A No. I think that happened shortly before we got
10 there. I never even saw him.

11 MR. PATRICK: I have no further questions, your
12 Honor.

13 THE COURT: Redirect?

14 MR. WAGNER: No, sir.

15 THE COURT: May this witness be excused?

16 MR. WAGNER: Please.

17 MR. PATRICK: No objection, your Honor.

18 THE COURT: Thank you, sir. You may step down.

19 MR. WAGNER: Might I have one minute to check? I
20 think I'm done.

21 State rests.

22 THE COURT: Just one second.

23 Mr. Foreman, would you take your jury to the jury
24 room right quick, please?

25 JURY FOREMAN: Yes, your Honor.

1 (WHEREUPON, the jury exited the courtroom
2 at 3:08 p.m.)

3 THE COURT: All right. Before you rest, you
4 probably need to have the stipulation placed on the
5 record.

6 MR. WAGNER: Yes, sir.

7 THE COURT: Let me make sure I get the stipulation
8 right. The stipulation is that the defendant has two
9 prior convictions for burglary; is that correct?

10 MR. PATRICK: That is correct, your Honor.

11 THE COURT: All right. It would be my intention,
12 I'm going to ask the State for comment and you,
13 Mr. Patrick or Mr. Burr, to say that, "Ladies and
14 gentlemen, the parties have entered into the following
15 stipulation: A stipulation is an agreement of fact or
16 facts. Parties agree or stipulate that the defendant,
17 Teresa Annette Davis, has two prior convictions for
18 burglary." And then I'd go through and charge them
19 that evidence of prior offenses committed by the
20 defendant is not offered to prove that she is of bad
21 character; that she committed the alleged charge in
22 this case. They may only be considered for the
23 purposes of determining whether or not that satisfies
24 the element. That makes it first-degree burglary if
25 you enter a dwelling without the consent to commit a

1 crime and you have two prior convictions of burglary
2 and/or housebreaking.

3 Any objection from the State?

4 MR. WAGNER: No, sir.

5 THE COURT: From the defense?

6 MR. BURR: Your Honor, we still object to that --

7 THE COURT: Continuing subject to your prior
8 objection.

9 MR. BURR: Yes, sir. Thank you.

10 THE COURT: And renewing the prior objection but
11 as worded.

12 MR. BURR: Right. Yes, sir.

13 THE COURT: Okay.

14 Would you bring the jury in.

15 (WHEREUPON, the jury came into open court at
16 approximately 3:11 p.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, as part of the State's case, the State and
19 the defense have entered into a stipulation. A
20 stipulation is simply an agreement as to facts in this
21 case.

22 The State and the defendant agree that the
23 defendant, Teresa Annette Davis, has two prior
24 convictions for burglary. Let me tell you this
25 further, that evidence of these prior offenses that

1 were committed by the defendant is not offered in this
2 case to prove that she has bad character or to prove
3 that she, in fact, committed the burglary in this case.

4 The prior convictions that were stipulated to may
5 be considered by you only for the purpose of
6 determining whether or not it satisfies the element
7 that makes it first-degree burglary. If you enter into
8 a dwelling without consent to commit a crime and you
9 have two prior convictions for burglary and/or
10 housebreaking.

11 With that stipulation being read into the record,
12 does the State have any further witnesses?

13 MR. WAGNER: No, sir, your Honor. We would rest.

14 THE COURT: Now, Mr. Foreman, ladies and gentlemen
15 of the jury, the State has rested which means it's
16 presented its case-in-chief. I have some
17 administrative matters to take up. While we're back
18 here I'm going to give the jury the option tonight if
19 you would like to work a little bit longer tonight with
20 the potential of getting the case resolved today, that
21 would be your option. If that doesn't suit, certainly
22 we'll do whatever the jury wants to do. Just poll your
23 jury, and when we call you, let us know, send word back
24 to us. Take your jury to the jury room, please.

25 JURY FOREMAN: Yes, sir.

1 (WHEREUPON, the jury exited the courtroom.

2 at 3:14 p.m.)

3 THE COURT: Okay. Mr. Patrick, any motions?

4 MR. PATRICK: Yes, sir, your Honor. I'd like to
5 move for a directed verdict. I believe that in this
6 instance, and I'm relying on State vs. Ferebee.

7 I have a copy I could pass up to your Honor.

8 THE COURT: Okay.

9 MR. PATRICK: I might not be pronouncing that
10 correctly, your Honor, but --

11 THE COURT: Ferebee.

12 MR. PATRICK: In that particular case, your Honor,
13 it says that the conviction of burglary was not
14 warranted where there was no occupant or habitant
15 against whom the offense could have been committed.

16 In this case I believe there is evidence to prove
17 this house was on the market, had been on the market
18 for some time, the owner of the house had been moved
19 out of the house to a home. The power of attorney, her
20 son, did not reside at this residence. He actually
21 lived down the street and had been living there there
22 quite some time.

23 The fact that -- I believe that this was just more
24 of a storage, empty house that was being used for
25 storage, and there was no occupant or inhabitant

1 against whom the offense could be committed. We also
2 believe that on the charge of PWID meth that the State
3 did not prove that she had control over these drugs.
4 She was on the roof of a house, your Honor, and these
5 drugs were found in a car. We'd argue that they have
6 not put forth enough evidence to prove that she had any
7 control over these drugs and, therefore, a directed
8 verdict should be granted.

9 THE COURT: All right, sir.

10 What would be your response to the PWID argument
11 first?

12 MR. WAGNER: Your Honor, the drugs, granted they
13 were not on her person, but they were in a bag right
14 next to her purse with her identification, her driver's
15 license and all, sitting there on the driver's seat all
16 together, which, I guess, the State would argue that
17 was her custody and control at the time. Just wasn't
18 on her person, they were sitting in the driver's seat
19 where she had driven the car.

20 THE COURT: How about as to the burglary first?

21 MR. WAGNER: Your Honor, as to that, in this case,
22 just looking at the case, it looks like -- I mean, the
23 question I think that was before the supreme court when
24 they decided this, looks like there was a former tenant
25 in an apartment that had abandoned the premises with no

1 intention of returning. I think that's not what we
2 have in this case.

3 We have a lady who had lived there for 37 years
4 who had gotten dementia who had had some troubles with
5 short-term memory who her family put her in a nursing
6 home hoping, with the medicine that they gave her would
7 make her able to come back. Her bed was still in
8 there. Almost all her possessions were still in there.
9 You know, if she had improved, she would have been
10 back. I don't think there's any intention to abandon
11 the premises or leave the premises permanently.

12 Now, she never did make it back, but I don't think
13 that was the intent. I think she very well could have,
14 which I think distinguishes it from this case and that
15 line of cases out there as far as to what is actually a
16 dwelling. She still had her stuff there and I think
17 had intentions to come back, if possible. I think her
18 family would have loved to have her move back, just
19 wasn't able to do it. I submit there are houses for
20 sale all over the Upstate where people are living in
21 it. It's hard to sell a house these days. They just
22 put it on the market thinking if they couldn't move her
23 back in, they could sell the house.

24 THE COURT: I think that's going to be a question
25 for the jury to determine whether or not she had

1 control or possession of drugs also whether or not this
2 house is a dwelling as provided by the statute, so I'm
3 going to deny your motion.

4 If you would, Ms. Davis, would you please stand.

5 Now, at this point, Ms. Davis, would you raise
6 your right hand.

7 (WHEREUPON, the defendant was sworn.)

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Ma'am?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. I need you to speak loud enough
12 for me to hear you.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, at this time I need
15 to explain to you certain of your rights. If you do
16 not understand anything I say to you, please make sure
17 you let me know. Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, we have reached that stage in the
20 trial where the State has presented its case. You have
21 a right to present a defense. You have the right to --
22 which would include your right to testify or your right
23 not to testify.

24 Have your attorneys explained to you your right
25 under the Fifth Amendment to the United States

1 Constitution?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Ma'am? They have?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I'm going to go ahead and go over some
6 of that with you just to make sure you understand.

7 Would you like a glass of water?

8 Okay. Under the Fifth Amendment to the United
9 States Constitution, in pertinent part, it provides
10 that no person shall be compelled in any criminal case
11 to be a witness against himself, which would include
12 you as well. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What that simply means, Ms. Davis, is
15 your attorneys, the State, the Court, no one can make
16 you take the witness stand. Okay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The decision of whether or not you
19 wish to testify is a personal decision. It can only be
20 determined by you and you can only make that decision
21 after you've been advised and you understand your
22 rights under the Fifth Amendment, also of your rights
23 to testify, and if you do testify, the consequences of
24 that decision. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ma'am?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Now, if you decide that you
4 want to testify, you'll be subject to direct
5 examination by your lawyers. You will be subject to
6 cross-examination by Mr. Wagner such as any other
7 witness. If you have a prior criminal record that fits
8 the rules of admissibility and I determine that the
9 probative value of your criminal record outweighs its
10 prejudice to you, then the State will be allowed to
11 cross-examine you. More importantly, if you have a
12 prior record that affects your -- tends to affect your
13 honesty or dishonesty, okay, then if I determine that
14 it's appropriate, then they will be allowed to
15 cross-examine you because they will be trying to
16 impeach your credibility. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you sure?

19 THE DEFENDANT: Not really.

20 THE COURT: Okay. Do you have a prior record on
21 this lady? Obviously she does.

22 MR. WAGNER: Yes, sir. The certified convictions
23 that we put in as a court exhibit that was -- she had
24 one burglary from here, and that was April 23rd back in
25 2007, what, nine years ago, whatever. I think it was

1 2007. My math is not good either. Then the other one
2 is from Anderson County. She had at least six counts
3 in those two indictments of burglary, some second, some
4 third, I think. She's also got a couple prior
5 convictions for methamphetamine and some various
6 larcenies, grand larceny, that sort of thing, too.

7 THE COURT: So of her record, does the State
8 contend that they have convictions or pleas or
9 convictions that she can be cross-examined on?

10 MR. WAGNER: Yes, sir.

11 THE COURT: Okay.

12 MR. WAGNER: The ones I just stated, I think
13 they're all in the last ten years.

14 THE COURT: The burglaries, larcenies involve
15 dishonesty, deceit. Do you understand what I'm saying,
16 Ms. Davis?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Just to make sure you understand, the
19 State says that you have a fairly lengthy record for
20 burglaries and larcenies. And if you would take the
21 stand, they would attempt to cross-examine you about
22 that prior record. Do you understand that?

23 THE DEFENDANT: Okay.

24 THE COURT: Now, it would be up to me to determine
25 whether I'd let them do that or not, but that certainly

1 is a potential. Okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you understood everything that
4 I've gone over with you at this point?

5 THE DEFENDANT: Yes, sir, I have.

6 THE COURT: Now, if you decide you do want to
7 testify, you have to make that decision of your own.
8 You have to make it freely, voluntarily and knowing
9 your rights to testify or not to testify, the
10 consequences of either one. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you decide that you do not want to
13 testify, when I charge the jury on the law, I will tell
14 them that they may not and shall not consider your
15 failure to testify because that's your right under the
16 Fifth Amendment to say nothing, and they shall not be
17 allowed to consider it. And the State at all times
18 remains with the burden of proof to prove your guilt by
19 proof beyond a reasonable doubt. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand everything I've gone
23 over with you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, in making your decision, I'm

1 going to let you have a reasonable amount of time to
2 speak with your attorneys or someone else who's
3 reasonably available to you. But ultimately the
4 decision has to be made by you and you alone. Okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right.

7 Have you had a chance to talk with your client
8 about whether or not she wishes to testify,
9 Mr. Patrick?

10 MR. PATRICK: Your Honor, we haven't had the
11 in-depth discussion because she got here late.

12 THE COURT: Let's take a few-minute break and
13 speak with your client.

14 Would you please send word back to us in just a
15 moment, please?

16 MR. PATRICK: Yes, sir.

17 THE COURT: All right. We'll be in recess for
18 just a few minutes.

19 (WHEREUPON, recess taken from 3:23 p.m.
20 to 3:34 p.m.)

21 THE COURT: Ms. Davis, have you had sufficient
22 opportunity to speak with your attorneys to consider
23 whether or not you wish to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you wish to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Mr. Patrick, do you have any witnesses
3 to call in this case?

4 MR. PATRICK: No, your Honor.

5 THE COURT: Any evidence to present?

6 MR. PATRICK: No, your Honor.

7 THE COURT: Okay. Would you propose that I bring
8 the jury in so that you say the defense rests, then
9 send them back out so we can do a charge conference?

10 MR. PATRICK: Yes, your Honor.

11 MR. WAGNER: Yes, sir.

12 THE COURT: Okay.

13 (WHEREUPON, the jury came into open court at
14 approximately 3:35 p.m.)

15 THE COURT: All right. Mr. Patrick, would you
16 call your first witness, please, sir.

17 MR. PATRICK: Your Honor, the defense rests.

18 THE COURT: The defense rests?

19 MR. PATRICK: Yes, sir, your Honor.

20 THE COURT: Okay. Mr. Foreman, ladies and
21 gentlemen of the jury, the State has presented its
22 case-in-chief. The defense says it rests. That means
23 we have ended the second phase of this case, which is
24 the presentation of the evidence. The next will be the
25 attorneys' closing arguments and I charge on the law.

1 I'm going to send you back again for a few more
2 minutes so I can review with these attorneys the law I
3 intend to charge with you, and we'll bring you back
4 here for closing arguments and the charge. If you need
5 anything, please let Buck know.

6 THE BAILIFF: Are you going to answer their
7 question, sir?

8 THE COURT: Oh, thank you. I asked the jury to
9 consider whether or not they would be willing to work a
10 little bit later.

11 First question the jury has: Do we have to come
12 back tomorrow regardless of outcome? How late would we
13 stay past 7:00? This is the last trial of the week,
14 okay. So, number one, you don't have to come back for
15 another trial. The answer, how late will we stay, it
16 will be up to you. I'll let you stay as late or go
17 when you want with one caveat. Number one -- well,
18 it's a big caveat. This is the only case, the only day
19 the State and the defendant has in court. They can't
20 come back for another day and have a second bite at the
21 apple. So to devote sufficient time to your
22 deliberations, we'll stay as long as or a little as you
23 like, okay? If it requires you coming back tomorrow,
24 then maybe not. It's up to you. Okay? Go on back.
25 (WHEREUPON, the jury exited the courtroom

1 at 3:37 p.m.)

2 MR. PATRICK: Your Honor, I would just like to
3 renew my objections and my motions from earlier.

4 THE COURT: Okay. Let's do that. First, any
5 additions or exceptions to my last instruction to the
6 jury in answer to their question?

7 MR. WAGNER: No, sir.

8 THE COURT: Patrick?

9 MR. PATRICK: No, your Honor.

10 THE COURT: You were renewing your objection from
11 the beginning of this trial?

12 MR. PATRICK: Yes, and then the motion for
13 directed verdict as well.

14 THE COURT: Very good. I'm going to deny those
15 motions, but you should be protected on the record.

16 All right. My law clerk should be providing you a
17 copy of the burglary first charge as well as the charge
18 on possession with intent to distribute.

19 For the record, the jury says they would like to
20 work late today if they could.

21 Does either one of y'all have a problem with that?

22 MR. WAGNER: No, sir.

23 MR. PATRICK: No, your Honor.

24 THE COURT: Have you had a chance to look at the
25 charge, Mr. Wagner?

1 MR. WAGNER: Yes, sir.

2 THE COURT: Any objection to the charge?

3 MR. WAGNER: No, sir.

4 THE COURT: Any additions to the proposed
5 substantive charge?

6 MR. WAGNER: No, sir.

7 THE COURT: Mr. Patrick?

8 MR. PATRICK: Nothing. Nothing further.

9 THE COURT: You may sit down Ms. Davis.

10 THE DEFENDANT: Oh, okay.

11 THE COURT: Let me ask you this: There has been
12 some testimony about a statement by the defendant. Do
13 you think that I need to give a charge of the statement
14 of the defendant? I mean she said -- apparently she
15 made some statements at the scene according to my
16 notes.

17 MR. PATRICK: I don't have that -- I mean, I don't
18 know what the charge says, your Honor. I'd have to
19 look over it.

20 MR. WAGNER: I think you probably do, Judge,
21 because what she is alleged to have said is an
22 admission that the drugs were hers.

23 THE COURT: Right.

24 MR. WAGNER: And I think under the circumstances,
25 I think it probably would be better.

1 THE COURT: I think cautionary, you're probably
2 right. Have y'all looked at the verdict form?

3 MR. PATRICK: We have, your Honor.

4 THE COURT: Any requests for lesser included..
5 charges?

6 MR. PATRICK: Your Honor, we'd ask for a lesser
7 included of possession of methamphetamine.

8 THE COURT: I think you're correct on that. Would
9 you give me that as well.

10 Any objection to that?

11 MR. WAGNER: No, sir.

12 THE COURT: Anything with regard to the burglary?

13 MR. BURR: We're discussing the mere presence of
14 drugs does not indicate ownership.

15 THE COURT: I have in the first-degree burglary,
16 it says that constructive possession, et cetera, et
17 cetera, et cetera, mere presence at the scene where the
18 drugs were found is not enough to prove possession.
19 Okay?

20 MR. BURR: Yes, sir.

21 THE COURT: Is that sufficient?

22 MR. BURR: Yes, sir. Your Honor, I think it is
23 appropriate.

24 THE COURT: Have you had a chance to review the
25 proposed charges on burglary, possession with intent to

1 distribute, and possession?

2 MR. PATRICK: I have.

3 THE COURT: Any objections to those?

4 MR. PATRICK: No objection, your Honor.

5 THE COURT: And also the statement of defendant,
6 no objection to that?

7 MR. PATRICK: No objection to that either, your
8 Honor.

9 THE COURT: How about the proposed verdict form?

10 MR. PATRICK: Looks good to me, your Honor.

11 THE COURT: Very good. Mr. Wagner?

12 MR. WAGNER: No objections, your Honor.

13 THE COURT: Okay. Final question. Let's see.

14 You did not introduce those photographs, you just used
15 them as identification only.

16 MR. PATRICK: Yes, your Honor.

17 THE COURT: So you get final argument.

18 MR. PATRICK: Yes, sir, your Honor.

19 THE COURT: Any objection or dispute with that?

20 MR. WAGNER: No, sir.

21 THE COURT: Do you want me to charge the jury
22 first or do you want to close first?

23 MR. WAGNER: I would say go ahead and charge, but
24 it doesn't matter to me.

25 MR. PATRICK: I would rather charge.

1 THE COURT: Charge them now, let y'all close out.

2 All right, guys. Let's do it.

3 (WHEREUPON, the jury came into open court at
4 approximately 4:05 p.m.)

5 THE COURT: Mr. Foreman, my understanding is the
6 jury would like to work late tonight?

7 JURY FOREMAN: We would like to.

8 THE COURT: We will do that, but make sure you
9 give the case your full attention. This is their only
10 day in court. All right?

11 JURY FOREMAN: We absolutely will, your Honor.

12 THE COURT: With that being said, we're going to
13 change things around a little bit. When I was going
14 through the phases of the trial, you have opening
15 statements, presentation of arguments (sic), closing
16 statements by the attorneys, and the charge on the law.
17 We're going to swap around the closing and the charge.
18 I'm going to charge first. I'll send you out to let
19 the lawyers correct me if I misstate or omit to state
20 significant aspects. Then the lawyers will come back
21 and give you their closing statements. They will
22 collect the evidence. You will be given the exhibits
23 with the verdict form and with word from your bailiff
24 to begin your deliberations.

25 All right. Now, before we get started, let me

1 point out several things to you. Number one, as I told
2 you at the beginning of the case, you have to determine
3 what the facts are or what your verdict will be based
4 on the evidence that's been presented in the courtroom,
5 okay, and according to the law as I'm about to give it
6 to you.

7 All of the evidence that is going to be admitted
8 by way of testimony or exhibits has been. There will
9 be no further testimony. There will be no further
10 exhibits submitted into evidence. That has closed off.
11 Okay?

12 At the end of the case, I point out the
13 indictments. I'm not sending those back. My charge on
14 the law will not go back with you either. If you want
15 me to charge you the law as many times as you would
16 like, I'll be glad to do so, the entire charge or
17 certain aspects of it, but I want you focused on what
18 the facts are and not what the law is so we can perform
19 our respective roles.

20 With that being said, my instructions are going to
21 be in three parts. First I'm going to go over the
22 general rules that define and control your duties as
23 jurors. Number two, I'm going to give you the
24 substantive law that you must apply in this case. It
25 will be the law that applies to burglary or

1 first-degree burglary, to the charge possession with
2 intent to distribute methamphetamine, and also the
3 lesser included charge of possession of
4 methamphetamine. Next, the third aspect will be some
5 considerations for your deliberations.

6 And, Mr. Foreman, I will go over your verdict form
7 with you after the closing arguments. Okay, sir?

8 JURY FOREMAN: Okay.

9 THE COURT: With that being said, if you recall
10 and I've said it throughout, your duty as jurors, your
11 sworn duty is to find the facts from the evidence in
12 this case and the evidence that's been presented. To
13 those facts as you find them to be, it will be your
14 duty to apply the law as I give it to you now. You
15 must follow the law as I give it to you and you may not
16 and you shall not be concerned with what you would like
17 it to be but only what it is.

18 Also you may not and shall not be influenced by
19 any personal likes or dislikes that you may have for
20 one side or the other, any opinions, prejudice, or
21 undue sympathy you may have for one side or the other.
22 What that simply means, ladies and gentlemen, is you
23 have no friends to reward or enemies to punish. You
24 are to make your decision based solely on the testimony
25 and evidence presented in this courtroom and according.

1 to the law as I give it to you now. If you recall,
2 that's what you agreed to do when you took your oath at
3 the beginning of this case.

4 All aspects of my instructions; ladies and
5 gentlemen, are equally important. You must follow all
6 the aspects of these instructions I give you now. You
7 can't pick out things in there that you like and follow
8 those and disregard the things you may not like.

9 Also, if I have done anything throughout the
10 course of this trial that seems to indicate to you how
11 you are to find the facts, in other words, what verdict
12 you are to reach, I am going to ask you and also to
13 instruct you to disregard those. I can assure you that
14 I have no feeling one way or the other as to what the
15 facts are in this case. You and you alone are the
16 judges of the facts, and you will determine what those
17 facts are by evaluating and weighing the evidence that
18 you have had presented to you in this case and applying
19 the law as I give it to you.

20 Now, when I say evaluate and weigh, I can't give
21 you a set of scales in the literal sense but it's
22 figurative. You are to use your good sense, your sense
23 of logic and good reason and apply those to the facts
24 and to the law and ultimately reach a verdict in this
25 case.

1 Now, the evidence that you are to find the facts
2 from is the following: It's the sworn testimony from
3 the witnesses from this witness stand that you heard
4 testify, whether it be on direct examination or
5 cross-examination. Also any exhibits that have been
6 admitted into evidence is also evidence.

7 Finally, there is a stipulation, as you heard on
8 the record, that the parties have agreed to. Again, a
9 stipulation is a fact or facts that both the State and
10 the defendant have agreed upon, in other words, they
11 don't dispute that these are, in fact, true facts. And
12 in this case the parties have stipulated that the
13 defendant has two prior convictions for burglary. And
14 I'll tell you more about that later when I charge you
15 on the law of first-degree burglary, but the
16 stipulation was only entered into for the sole purpose
17 of establishing the elements of first-degree burglary,
18 not to establish that the defendant was a bad person or
19 that she committed the burglary in this case that she's
20 charged with. Okay?

21 Now that leads me to what is not evidence. What
22 is not evidence, number one, the arguments and
23 statements that the lawyers have made up until this
24 point or will make to you in just a minute. It's not
25 evidence. They're not sworn. They're not put up on

1 the stand and subjected to cross-examination. What
2 they tell you is intended to help you understand their
3 case and give you a roadmap. But at the end of the
4 case and when you begin your deliberations, if your
5 memory of what these attorneys tell you differs from
6 what they say, your memory will control.

7 Also questions and objections by attorneys is not
8 evidence. Remember, objections is part of any trial.
9 You may not and shall not consider the fact that a
10 party objected or that I ruled on that objection in
11 your presence. Just suffice it to say, that's part of
12 the process in every single case.

13 Finally, ladies and gentlemen, anything that you
14 may have seen when court is not in session is not
15 evidence. You are to make your decision based on what
16 you've heard here in the courtroom and according to the
17 law.

18 Now, in South Carolina we recognize two types of
19 evidence. We have direct evidence and we have
20 circumstantial evidence. Direct evidence is this:
21 It's evidence that directly proves the existence of a
22 fact and does not require deduction nor inference. For
23 example, if the issue is whether or not I ran a stop
24 sign and my law clerk testified that he saw me run a
25 stop sign, that would immediately establish that issue.

1 Okay. Doesn't require you to infer or deduce anything
2 from the testimony.

3 Also we recognize what is called circumstantial
4 evidence. Circumstantial evidence is proof of a chain
5 of facts and circumstances indicating the existence of
6 a fact, in other words, it requires inference and
7 deduction. The inference that you draw may not be
8 conjecture. It may not be surmise or speculation.

9 Giving you that example or giving you an example
10 of what circumstantial evidence is, if each of you were
11 to go to bed at night with a fresh sheet of snow in
12 your yard and wake up in the morning with tracks in
13 that snow, you can reasonably infer that someone or
14 something walked through your yard during the night
15 even though you did not see that person or thing. It
16 requires you to infer.

17 Now, crimes may be proven in South Carolina by
18 circumstantial or direct evidence, and the law makes no
19 distinction between the value between the weight --
20 excuse me, the law makes no distinction between the
21 weight or value that you may give to either direct or
22 circumstantial evidence.

23 However, to the extent that the State relies on
24 circumstantial evidence in this case, all of the
25 circumstances must be consistent with each other, and

1 when taken together, point conclusively to the guilt of
2 the accused beyond a reasonable doubt. If these
3 circumstances merely portray the defendant's behavior
4 as suspicious, then the State's proof has failed, and
5 the State has the burden of proving the defendant
6 guilty beyond a reasonable doubt whether or not the
7 State uses direct evidence, circumstantial evidence or
8 a combination of the two.

9 In deciding what the facts are, you have to decide
10 which testimony you wish to believe and which testimony
11 you wish not to believe. You have a right to believe
12 all of any and all the witnesses' testimony. You have
13 a right to disbelieve all or any part of all the
14 witnesses' testimony. In making this decision of which
15 testimony you wish to believe or which testimony you
16 may wish not to believe, you may take into account the
17 following factors: You may ask yourself, was the
18 witness able to see or hear or know about that which
19 the witness testified? How well was the witness able
20 to recall the things about which they testified? What
21 was their manner while they're on the witness stand, in
22 other words, what was their demeanor while they were up
23 on the stand? You can ask yourself whether that
24 witness had a reason to want to give testimony that
25 would help or hurt one side or the other, whether they

1 had a bias or prejudice towards any issue in this case
2 or to any party or matter involved in this case. You
3 can ask how reasonable the witness' testimony was in
4 light of all the testimony in this case and whether or
5 not that witness' testimony had been contradicted by
6 what they said at another date and time by other
7 testimony of other witnesses or evidence, other
8 evidence presented in this case.

9 Now, ladies and gentlemen, those are just some of
10 the factors you may consider in deciding which
11 testimony you wish to believe or wish not to believe,
12 or what we say, credibility of the witnesses. Of
13 course when you're sworn in at the door, you do not
14 check in your common sense as jurors and you shouldn't
15 in this case. You should use those things in your
16 day-to-day lives that you find indicative of
17 truthfulness and indicative of lack of truthfulness.
18 when you go through this exercise of credibility of the
19 witnesses.

20 One thing that you may not do, however, is to add
21 up the number of witnesses who appear for one side or
22 the other in making this determination because it
23 doesn't matter from you whether it's a witness for the
24 State or otherwise, whether it comes from direct
25 examination or cross-examination. But your sole

1 interest is to try to find the truth from the testimony
2 and evidence presented.

3 Now, ladies and gentlemen, you've heard testimony
4 from an expert or experts. As I've told you, normally
5 people's testimony are limited to what they see, they
6 hear, they smelled, they felt. However, if a person,
7 because of their education or experience or a
8 combination of the two, has developed the expertise
9 helpful to you, the jury, then they're allowed to give
10 their opinions.

11 Expert testimony is just like any other testimony
12 you will hear in this case. You may accept it, you may
13 reject it, or give it as much weight as you think it
14 deserves considering that person's education, their
15 experience, the basis for their opinions and the other
16 testimony in this case.

17 Now, Mr. Foreman, Ladies and gentlemen, I remind
18 you that these indictments do not raise an inference of
19 guilt nor a presumption of guilt. These are simply the
20 mechanism by which Ms. Davis has been brought before
21 you for a determination of innocence or guilt.

22 Also, each of these indictments is freestanding.
23 You must decide the case of burglary first degree
24 unaffected by the charge of possession with intent to
25 distribute. Now, the charge of simple possession of

1 methamphetamine is only to be considered by you, the
2 jury, in the event you do not find the defendant guilty
3 of possession with intent to distribute. I told you
4 that earlier. Otherwise, each of the charges is
5 freestanding. Okay, sir? In other words, you make it
6 independent of your decision on the other.

7 In this case the defendant has said and pled not
8 guilty to both charges. And that plea places the
9 burden on the State of South Carolina to prove her
10 guilt by proof beyond a reasonable doubt, and I'll tell
11 you that in South Carolina, a person charged with
12 committing a criminal offense is never required to
13 prove herself innocent. And I charge you that it is an
14 important rule of law that a defendant in a criminal
15 matter, a criminal trial, no matter how serious the
16 charge may be, will never be required to prove
17 themselves innocent and they will always be presumed
18 innocent of the crime for which they have been charged
19 until you, the jury, are satisfied of their guilt by
20 proof beyond a reasonable doubt.

21 Now, this presumption of innocence does not end
22 when you begin your deliberations, but it will
23 accompany the defendant throughout your deliberations
24 until you reach a verdict of guilt based on proof
25 beyond a reasonable doubt.

1 It's been said the presumption of innocence is
2 like a robe of righteousness that hangs about the
3 shoulders of the defendant where it remains until it's
4 been stripped by the State by sufficient evidence of
5 proof beyond a reasonable doubt. Now, this presumption
6 of innocence is not a mere legal theory, it's not just
7 a legal phrase, but it is a substantial and fundamental
8 right which every defendant is entitled to unless you,
9 the jury, are satisfied from the evidence of their
10 guilt beyond a reasonable doubt.

11 So let me give you a definition of what reasonable
12 doubt is. A reasonable doubt is the kind of doubt that
13 would cause a reasonable, sincere, honest and
14 conscientious person to hesitate to act in an important
15 matter in their own affairs. Proof beyond a reasonable
16 doubt is proof that leaves you firmly convinced of the
17 defendant's guilt.

18 Now, there are very few things in this world that
19 we know with absolute certainty. In criminal cases,
20 the law does not require the State to overcome every
21 possible doubt. At the end of this when you begin your
22 deliberations, if you, based on your consideration of
23 the evidence, are firmly convinced of the defendant's
24 guilt, then it will be your duty to find him guilty or
25 her guilty. On the other hand, if you have a -- if you

1 believe that there is a real possibility the defendant
2 is not guilty, you must give her the benefit of the
3 doubt and find her not guilty.

4 Now, reasonable doubt may arise from the evidence
5 or from a lack of the evidence. I further instruct you
6 that a defendant in every criminal case is entitled to
7 every reasonable doubt that may arise in a case, and
8 what that simply means in your application is if there
9 is a doubt as to any fact essential to a verdict of
10 guilty on an issue, that if you have any doubt that has
11 to be resolved, you are to resolve it in favor of the
12 defendant.

13 Now, in order to establish criminal liability,
14 criminal intent is required to be proven. For example,
15 the state -- the mental state required to be proven by
16 the State of South Carolina for a particular crime
17 might be purpose, might be intent, knowledge,
18 recklessness or criminal negligence. Criminal intent
19 must be proven by the State beyond a reasonable doubt.

20 Now, ladies and gentlemen, criminal intent is also
21 a matter that must be determined by you, the jury, from
22 the circumstances surrounding the situation. There's
23 no way that we can prove intent to a mathematical
24 certainty, and there's no way that you can dissect a
25 person's brain to determine what they had in mind at

1 the time of the circumstances in this case. So the law
2 says that criminal intent may be inferred from the
3 circumstances shown to have existed. And that is how
4 you make a determination of whether or not the element
5 requiring intent is present.

6 It is not necessary to establish intent by direct
7 and positive evidence, but intent may be established by
8 inference in the same way as any other fact, by taking
9 into consideration the acts of the parties and all the
10 facts and circumstances of the case. Criminal intent
11 is a mental state. It is a conscious wrongdoing.

12 Ladies and gentlemen, it's up to you to determine
13 what the defendant intended to do in this case based on
14 the circumstances shown to have existed. Criminal
15 intent can arise from action or from a failure to act.
16 It may arise from negligence, recklessness or
17 indifference to duty or from consequences that is
18 considered by the law to be equivalent to criminal
19 intent.

20 Finally, as to the first part of my charge, ladies
21 and gentlemen, I'll instruct and emphasize to you that
22 the failure of the defendant to testify may not and
23 shall not be considered by you in any form or fashion.
24 That is her right under the Fifth Amendment. And the
25 burden remains on the State of South Carolina to prove

1 her guilt beyond a reasonable doubt.

2 Also -- well, that would be the end of my first
3 part of my charge to you. I'm going to let you -- I
4 can watch you from this side get a little heavy-eyed.
5 I'll let you move around.

6 Would anyone like to take a break? Would you like
7 a break?

8 JURY FOREMAN: We would not.

9 THE COURT: Does anyone want to stand up, move
10 around, get the blood flowing back from their eyes to
11 their legs again?

12 JURY FOREMAN: I think we're ready.

13 THE COURT: I'm going to charge you on the law of
14 first-degree burglary, the law of possession with
15 intent to distribute methamphetamine and the lesser
16 included charge of simple possession of methamphetamine
17 and the law about a statement allegedly made by the
18 defendant.

19 The defendant is charged with first-degree
20 burglary. The State must prove beyond a reasonable
21 doubt that the defendant entered a dwelling without
22 consent. A dwelling is any building or portion of a
23 building in which a person ordinarily sleeps. A
24 building constructed as a dwelling that has never been
25 occupied cannot be considered a dwelling for purposes

1 of burglary, but a building is a dwelling even if the
2 residents are temporarily absent from the building.

3 In order to prove that the defendant entered the
4 dwelling, the State does not have to show that the
5 defendant's entire body entered the dwelling. The
6 smallest entry is sufficient. It may be any part of
7 the body such as a hand or foot or even an instrument
8 such as a hook or other instrument.

9 In addition, the State does not have to prove that
10 force was used to gain entry. If a person enters a
11 building by using deception, artifice, trick or
12 misrepresentation to get consent to enter, this is an
13 entry without consent.

14 Next, the State must prove beyond a reasonable
15 doubt that the defendant intended to commit a crime,
16 either a felony or misdemeanor, at the time of the
17 entry. The mere entry into a dwelling without consent
18 is not burglary. If the intent to commit a crime is
19 formed after the entry, it is not burglary.

20 On the other hand, if the defendant intended to
21 commit a crime at the time of the entry, it is a
22 burglary even if the intent was abandoned after the
23 entry. It does not matter that the intended crime was
24 not completed. Intent may be shown by acts and conduct
25 of the defendant and of the circumstances from which

1 you may naturally and reasonably infer intent.

2 Finally, the State must prove beyond a reasonable
3 doubt that the defendant has a prior record of two or
4 more convictions for burglary and/or housebreaking.
5 Evidence of prior offenses committed by the defendant
6 was not offered to prove that the defendant has a bad
7 character or to prove the defendant committed the
8 burglary on this occasion. The prior convictions may
9 be considered by you only for the purpose of
10 determining whether or not it satisfies the element of
11 the offense that makes it first-degree burglary: If
12 you enter a dwelling without consent to commit a crime
13 and you have two prior convictions for burglary and/or
14 housebreaking.

15 Before you can even consider the evidence of the
16 defendant's prior burglary and/or housebreaking
17 convictions, you must first find that the State has
18 proved beyond a reasonable doubt that a burglary was
19 committed by the defendant in this case. If you find
20 beyond a reasonable doubt that the burglary was
21 committed, then you may consider the evidence of the
22 prior convictions as evidence of one of the
23 circumstances which would make the burglary first
24 degree. If you do not find beyond a reasonable doubt
25 that the defendant committed these alleged prior

1 offenses, then you cannot return a verdict of
2 first-degree burglary.

3 Next, ladies and gentlemen, is the law of
4 possession with intent to distribute methamphetamine.
5 The defendant is charged with possession with intent to
6 distribute methamphetamine. The State must prove
7 beyond a reasonable doubt that the defendant possessed
8 methamphetamine with the intent to distribute it. To
9 prove possession, the State must prove beyond a
10 reasonable doubt that the defendant had both the power
11 and the intent to control the disposition or use of the
12 methamphetamine. Possession may be either actual or
13 constructive.

14 Actual possession means that the methamphetamine
15 was in the actual physical custody of the defendant.
16 Constructive possession means that the defendant had
17 dominion and control or the right to exercise dominion
18 or control over either the methamphetamine itself or
19 the property on which the methamphetamine was found.
20 The mere presence at the scene where the drugs were
21 found is not enough to prove possession.

22 The defendant's knowledge and possession may be
23 inferred when a substance is found on the property
24 under the defendant's control. However, this inference
25 is simply an evidentiary fact to be taken into

1 consideration by you along with the other evidence in
2 this case and to be given the weight you decide it
3 should have. Two or more persons may have joint
4 possession of a drug.

5 The State must also prove beyond a reasonable
6 doubt that the defendant intended to distribute the
7 methamphetamine. Distribute means to deliver other
8 than by administering or dispensing the drug. Intent
9 may be shown by acts and conduct of the defendant and
10 other circumstances from which you may naturally and
11 reasonably infer intent.

12 In determining whether defendant had the intent to
13 distribute methamphetamine, you may consider the
14 circumstances surrounding the defendant's alleged
15 possession. You may consider the amount of the
16 substance alleged to have been possessed, the manner in
17 which it was allegedly possessed, the place at which it
18 was allegedly possessed and other factors which you
19 consider to be important. You must find that the
20 defendant did not intend to have the methamphetamine
21 solely for her own use.

22 Possession of more than one gram of
23 methamphetamine creates an inference that the defendant
24 possessed methamphetamine with an intent to distribute
25 it. This inference does not relieve the State from

1 proving beyond a reasonable doubt that the defendant
2 had the intent to distribute. It is simply an
3 evidentiary fact to be taken into consideration by you
4 along with the other evidence in this case and to be
5 given the weight you decide it should have.

6 If you find the State has failed to prove beyond a
7 reasonable doubt that the defendant is guilty of
8 possession with intent to distribute methamphetamine,
9 you may consider whether the State has proved beyond a
10 reasonable doubt that the defendant is guilty of simple
11 possession of methamphetamine. Simple possession does
12 not require an intent to distribute the
13 methamphetamine.

14 The State must prove beyond a reasonable doubt
15 that the defendant knowingly or intentionally possessed
16 methamphetamine. Knowingly means with knowledge,
17 consciously, not accidentally. Intentionally means
18 willfully, intending the result which actually occurs,
19 not accidentally or involuntarily. Intent may be shown
20 by acts and conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent.

23 All right. Ladies and gentlemen, those are the
24 charges involving this case. Now, there's a statement
25 alleged, a statement or statements alleged to have been

1 made by the defendant that's been admitted into
2 evidence in this case. While the Court has determined
3 that the statement is admissible, I instruct you that
4 you make the ultimate decision of whether the defendant
5 made the statement.

6 If the defendant did make the statement, you must
7 determine whether defendant made the statement
8 voluntarily and of her own free will. That means that
9 the statement was not caused by pressure, force, fear,
10 threats, coercion or intimidation or by hope or promise
11 of leniency or reward of any kind.

12 In determining whether the statement was
13 voluntary, you should consider both the characteristics
14 of the defendant and the details of the questioning.
15 Some of the factors that you must consider are: The
16 age of the defendant, the defendant's education or lack
17 of education, the defendant's mental ability or
18 capacity, the defendant's IQ or intelligence, the
19 defendant's background and environment, the place and
20 length of detention, the nature of the questioning and
21 the advice or lack thereof to the defendant of her
22 constitutional rights including but not limited to the
23 right to remain silent, that any statement could be
24 used against her in a court of law, her right to have a
25 lawyer present, that if she could not afford a lawyer a

1 lawyer would be appointed to represent her without any
2 cost, and she could stop making the statement at any
3 time. You must carefully consider all of the
4 surrounding circumstances before you give any weight to
5 an alleged statement.

6 The State has the burden of proving beyond a
7 reasonable doubt that the alleged statement was
8 voluntary. If you determine it was, you may give the
9 statement any further consideration you deem proper.
10 You must decide what weight, if any, should be given to
11 the alleged statement. If you determine the alleged
12 statement was not the free and voluntary statement of
13 the defendant, you should not consider the statement at
14 all.

15 All right, Ladies and gentlemen, that leads me to
16 the final points in my charge, and that is this: You
17 don't serve as jurors to be partisans or advocates for
18 one side or the other, and both sides picked you
19 because you said you could be fair and impartial, and
20 both sides believe that you could be fair and
21 impartial. When you begin your deliberations, you
22 should use your experiences in life, your good common
23 sense and your good sense of logic and reasoning in
24 going through the evidence and hopefully reach a
25 decision.

1 Let me say something about deliberations. It's
2 defined as this: It is a careful consideration,
3 weighing up with a view to a decision. Now, regardless
4 of what you may think, the genius of our jury system is
5 it allows 12 good men such as yourselves from 12
6 different backgrounds who have 12 different experiences
7 to come together, listen to a trial, listen to the law,
8 go back and discuss the evidence and discuss each
9 other's points of view and ultimately reach a verdict.

10 You are to consider all the evidence carefully and
11 courteously and deliberately, listen to everyone's
12 points and their points of view and their reasons for
13 giving their points of view. You are the sole judges
14 of the facts, and you're only concerned with trying to
15 find the truth from the evidence you heard here in the
16 courtroom. Again, listen to everyone's points and
17 their points of view and their reasons for giving them.
18 Do not be in a big hurry. This is the State's only day
19 in court, the defendant's only day in court, and it's
20 very important that you give them the opportunity to be
21 considered when you make your -- when you enter into
22 your deliberations.

23 In order to stand, your verdict must be unanimous.
24 But with that being said, each of you must decide this
25 case for yourself. You should only make your decision

1 after you have considered all the evidence, everybody's
2 points and points of view. Don't be afraid to change
3 your decision as to what the verdict is based on a
4 conversation if that convinces you that's the right
5 thing to do. But, on the other hand, don't change your
6 decision as to the weight of the evidence solely to
7 appease your fellow jurors, in other words, simply to
8 reach a verdict.

9 With that being said, at the end of this case and
10 at the end of the deliberations, when you begin at the
11 end of the closing statements when you begin your
12 deliberations if you have any questions, if you want to
13 hear the law any further, let us know by writing us a
14 note and we'll be glad to go over it as many times as
15 you want.

16 With that being said, I'm going to let you go
17 back, walk around, and then come back for the closing
18 statements by the attorneys. Okay?

19 JURY FOREMAN: Thank you, your Honor.

20 (WHEREUPON, the jury exited the courtroom
21 at 4:37 p.m.)

22 THE COURT: Any addition or exceptions from the
23 State?

24 MR. WAGNER: No, sir.

25 THE COURT: From the defense?

1 MR.. PATRICK: No, your Honor.

2 THE COURT: All right. Let's let them wake up for
3 a minute before y'all start doing your closing.

4 (WHEREUPON, recess taken from 4:37 p.m.
5 to 4:47 p.m.)

6 THE COURT: You guys ready?

7 MR. WAGNER: Yes, sir.

8 MR. PATRICK: Yes, your Honor.

9 (WHEREUPON, the jury came into open court at
10 approximately 4:48 p.m.)

11 THE COURT: Mr. Wagner, State ready to proceed?

12 MR. WAGNER: Yes, sir.

13 THE COURT: Go ahead, please.

14 MR. WAGNER: Thank you, Judge.

15 This is the last you're going to hear from me, and
16 I'm going to try to make it brief. I was going to go
17 over exactly what the defendant is charged with. You
18 heard the judge's charge. First-degree burglary is
19 going into someone's dwelling with the intent to commit
20 a crime in there, and in this case by a person who has
21 two prior convictions for burglary which has been
22 stipulated to that that's a fact, she does.

23 So taking that element out of it as a fact, did
24 the defendant go into the residence with the intent to
25 commit a crime? And I would submit to you the stuff

1 that had been gone through in the house, the open
2 cabinets, the stuff moved to the top of the stairs
3 where somebody is fixing to take it out of the house
4 and take it downstairs, all those things are evidence
5 that somebody was in there trying to take stuff, fixing
6 to take stuff.

7 8 o'clock in the morning. The victim goes in the
8 house, hears commotion going on upstairs. Somebody was
9 in there, and that somebody was this defendant. He
10 called up the stairs. The victim told you that he
11 called up the stairs. Didn't yell it out the windows.
12 All the windows and doors were shut. He was halfway up
13 the stairs. He called out he had a gun and come on
14 down, then he could hear a commotion.

15 I would submit to you that commotion was this
16 defendant opening both of those windows, the window,
17 the outer window, getting on the commode or however she
18 did it, climbing out that window, climbing on that
19 roof, hid close to two hours. As the officer told you,
20 it was cold, February 10th. She hid up there on the
21 roof with multiple cars in the driveway, multiple
22 police cars, multiple uniformed officers just really
23 feet away talking out there, working out there, looking
24 through the car, getting the car towed. She sat there
25 with -- had gloves. And I submit to you the fact that

1 he heard her in the building and they caught her on the
2 roof. is the evidence you need to convict of
3 first-degree burglary.

4 She did go into -- it was a dwelling. The victim
5 lived there for 37 years. She had been temporarily
6 absent from the building, from the dwelling, to go into
7 the nursing home. They were hoping she would come back
8 home. Her bed was still there. Her clothes were still
9 there. Her items were still there. Her life was still
10 there. It was still her house. The fact that it was
11 on the market, you know, they knew they might have to
12 sell it at some time in the future, and they went ahead
13 and listed it in a rough real estate market. I think
14 that's what they needed to do, but I submit to you it
15 was her dwelling. This lady went in there, was going
16 through her stuff with the intent to steal. That's
17 first-degree burglary.

18 With possession with intent to distribute, as you
19 heard the officer testify, when they actually did go
20 around and see her up hiding behind the chimney, they
21 realized that, you know, she started trying to go
22 around the other way, and she was trying to stay
23 hidden. They were hollering back and forth. He
24 hollered, "Freestate, she's there." He saw her coming
25 back around. They ended up having to go into the

1 garage -- it was closed -- to get the ladder. There
2 was no other ladders, no other way up on that roof.
3 She's not Superman or Spiderman. She didn't climb up
4 on that roof as they testified. The only way to do
5 that would have been to be strong enough to pull
6 yourself up and over seven, eight feet, 10 feet up,
7 which the gutters wouldn't hold you. Anyway, she
8 didn't have any other way up on there. I submit to you
9 it's not -- you might do crazy things if you're caught
10 in the middle of a burglary. One of the crazy things
11 would be climbing out a window and jumping out on the
12 roof to get away and you've got nowhere else to go to
13 and that's the predicament on this day that she found
14 herself in. And she couldn't get off the roof. They
15 had to get the ladder to get her down. The only way
16 onto that roof was through that window. There was no
17 other way.

18 She was charged with PWID, possession with intent
19 to distribute, the drugs. When they got her down off
20 the roof, there was a glass pipe that fell off with
21 her, came down the roof. They looked into the car to
22 do an inventory. They found -- you will be able to
23 look at these pictures again when you go back in there.
24 But on the driver's seat, that black purse, that's
25 where her I.D. was, right on the top of that purse.

1 They took a closer picture to find out --

2 THE COURT: Just one second. I'm sorry, sir.

3 JUROR: That pipe you mentioned, would that be
4 considered a piece of evidence since Officer Freestate
5 stated that up there on the stand during this
6 testimony?

7 THE COURT: Let me get you to do this: Let him
8 finish his argument, write it down on a question for
9 your foreman and send it back here. Okay, sir? Thank
10 you.

11 Mr. Wagner.

12 MR. WAGNER: Yes, sir.

13 Right next to the purse that was there on the
14 front seat that had the driver's license that was none
15 other than her driver's license from her purse, right
16 next to that purse was what's been identified here as
17 State's Exhibit 3, was this small purse. And inside
18 that was this container. And inside the container was
19 this methamphetamine the chemist tested, told you it
20 was roughly -- there's two bags in there, and it was
21 roughly six or seven grams, whatever she said, two
22 different bags of methamphetamine inside here.

23 She also had multiple small baggies like this that
24 they were in, scales to weigh it out, spoon to reach in
25 there and divvy it out into smaller baggies. I submit

1 to you that is what the officer said, Officer Freestate
2 and Officer McCreary, who is also a narcotics officer,
3 would be -- somebody would use that if they intended to
4 distribute. So that's where they're coming from with
5 that.

6 You will also have the lesser included charge of
7 just simple possession, that she had it, that she did
8 admit that it's hers. I submit they met the burden on
9 that, but they have also met the burden with the intent
10 to distribute by her, just the weight of her having
11 this stuff, the residue, and the scales, that she
12 intended to distribute these drugs.

13 Both she and her brother who was caught there, and
14 the brother has not been in court today, he was on the
15 scene. They got his driver's license out of the car,
16 too. His address was 880 North Old Mill Road in
17 Easley, same as hers.

18 She got down from the ladder. She told them she
19 came over there to drop off a friend of hers to work,
20 Joe Mann. There was no evidence of a Joe Mann on the
21 scene. There was evidence of her brother being there
22 because he was caught trying to walk behind -- I submit
23 to you, the open door in the back is where he ran out,
24 came out of the woods, was caught later walking down
25 there because he didn't have a ride. He was hoping she

1 had got off. She didn't get off the roof. She got
2 caught and, hence, he got caught.

3 She had on gloves or had gloves with her, a
4 flashlight. He had gloves stuck in his boot. If
5 you're wearing gloves during the commission of a
6 burglary, you don't leave fingerprints. That's
7 consistent with the fact that Merck tried to
8 fingerprint some of the things that were touched to
9 move and there was no fingerprints found. That would
10 be consistent because they were wearing these gloves.
11 There was also a glove found that there is a picture of
12 of a plastic-type glove that was in there laying on the
13 floor. The victim testified that wasn't his, didn't
14 know where that came from.

15 You have all the tools you need here to decide
16 this case. You have got all that you've got now to
17 decide the case, and I will submit to you that the
18 evidence in this case says strictly one thing: The
19 Defendant is guilty of first-degree burglary and
20 possession with intent of methamphetamine, and we would
21 ask you to return a guilty verdict on both counts.
22 Thanks.

23 THE COURT: Mr. Patrick.

24 MR. PATRICK: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. PATRICK: Ted Davis. What part did he play in
2 all this? You just heard the Solicitor, it was his
3 opinion that he was in the house and he ran out the
4 back -- back door. If he was in the house and that's
5 their position, maybe that's the noise that Mr. Paul
6 heard upstairs.

7 What do we know about Ted Davis? Well, we know he
8 was found close to the house. We know that he was
9 found with methamphetamine on him. And he was
10 subsequently arrested for that meth.

11 Ms. Davis was never found with any meth on her.
12 And as I was telling you in opening statement, if there
13 were two reasonable explanations, one showing guilt,
14 one showing not guilt, it would be your duty to return
15 a verdict of not guilty.

16 Now, if you were to decide who had control over
17 that meth, wouldn't you think it would be the person
18 who actually had methamphetamine on them when they were
19 arrested? Because if you can draw that conclusion and
20 that you think it's reasonable that he was the one in
21 control of the meth, then you should find Ms. Davis not
22 guilty.

23 Now, Ms. Davis said when she got off the roof and
24 they asked her about the drugs, she did what, you know,
25 brothers and sisters do all over the world when they

1 get caught. They try to take up for their brother.
2 She said, "Oh, he doesn't do that. It's mine." She
3 immediately changed that after she said that. She was
4 trying to take up for her brother, trying to protect
5 him. But he was the one found with meth. So he does
6 do that. He was the one in control and possession of
7 that meth, not Ms. Davis.

8 Now, ladies and gentlemen, being on the roof does
9 not make Ms. Davis guilty. I want to go through some
10 of the pictures with you one last time. This is a
11 picture of the garage roof. As you can see with the
12 truck there, you can tell how high that roof is. I
13 would argue it's -- you can see the car -- six, seven
14 feet. You heard from the testimony from Mr. Paul that
15 directly through this door kind of lined up with
16 this, -- with that is a chain-link fence that is
17 connected to the house that runs off the house, and
18 that chain-link fence was the size of this railing
19 right here, about three feet. So if she were to stand
20 up on that railing, three feet, she would have four
21 feet to get onto the roof.

22 Now, ladies and gentlemen, I just want to talk to
23 you a little about climbing stuff. It is really easy
24 to climb a tree. Really easy to get on top of stuff.
25 If you were ever a kid or ever had a cat, you see kids

1 climb up in a tree or the cat climb up the tree. It's
2 really hard getting down from that tree. How many
3 times have you seen a cat stuck in a tree? How many
4 times has a kid gotten up in a high spot and had
5 trouble getting down. Climbing up is the easy part.
6 Getting down in the hard part.

7 Now, the State's position is that Ms. Davis went
8 out the window. And we have pictures of that window.
9 Now, ladies and gentlemen, you will have that picture
10 back there with you, and you will be able to make that
11 determination of how big that opening is. When I asked
12 Sergeant Freestate about climbing out of there, he
13 said, "I couldn't do that, but back in the day I
14 could."

15 Ms. Davis, would you stand up, please. Step right
16 out here.

17 Ms. Davis is 50 years old. And they're claiming
18 that she climbed out that window, that she went -- we
19 know you can't go face first climbing out of the
20 window. The only way to get out that window would be
21 to go feet first, and slide out. And you would be
22 sliding over that storm window. It would be scraping
23 you up. You would be going out blind. And I don't
24 know if any of you have climbed in and out of windows.
25 I hate to say I have locked myself out of my house on a

1 few occasions and I have had to climb in the window.
2 And when I go in, I go head first and it's not very
3 graceful. I literally just fall into the house.

4 Climbing out of the window blind over two stories
5 is not likely. They tried to show a picture from the
6 inside of the house. And if you want to talk about a
7 misleading photo of an angle, it would be this. They
8 are showing -- you can see from the angle this being
9 lower, the sill being, you know, smaller there and
10 wider up here, they are taking that at an angle. They
11 are taking that photo out looking back towards that,
12 that roof.

13 Ladies and gentlemen, I would argue that angle is
14 not misleading. That is straight on. And that is not
15 over that roof. Somebody climbing out of that window
16 would have to go backwards, hang, and somehow --
17 talking about being Spiderman -- yeah, she would have
18 to fly onto that roof from there. If you're hanging
19 from the window and you're trying to feel a roof and
20 you put your feet on it and you let go, where is your
21 center of gravity hanging? That way. This is a -- the
22 roof is at an incline.

23 I submit to you I don't see any way that she could
24 get from that window to that roof. And from this angle
25 you can see just how far down she would have to go to

1 get on that roof. The State's whole case is saying
2 that she was in the house and she got on the roof
3 through that window, and I would argue that is
4 impossible, ladies and gentlemen. As the State says,
5 she's not Spiderman. She's not Batman. She's not a
6 superhero. There's no way she could have gotten on
7 that roof from that window.

8 As I told you before, at the end of the trial
9 you're going to have to decide what to believe. You're
10 going to have to decide what explanations there are.
11 And if you're able to come to an explanation that
12 says -- one that points to guilt, one that points to
13 not guilt, if you can put a reason to both of those, it
14 is your duty as jurors to find Ms. Davis not guilty.

15 And I would say that with both these counts, with
16 possession with intent to distribute, the logical
17 decision, explanation, is that the person who was found
18 with meth is the one who had control over that meth.
19 And I'd also argue there is no way that Ms. Davis was
20 able to climb out that window onto that roof, and that
21 is the State's whole position.

22 Ladies and gentlemen, I ask you to please return a
23 verdict of not guilty on both counts. Thank you.

24 THE COURT: All right. Mr. Foreman, I'm going to
25 go over the verdict form with you. The order in which

1 your options appear is of no consequence. I have to
2 put them in some order. Remember each charge is
3 independent of each other with regard to the burglary
4 and the possession with intent to distribute. But your
5 options are this: As regard to the first-degree
6 burglary, we do find the defendant not guilty or we
7 find the defendant guilty. Whichever the jury
8 unanimously agrees upon, you will check the applicable
9 line next to that option, then you will go to the
10 possession with intent to distribute methamphetamine.
11 The option is not guilty or guilty. If you find the
12 defendant guilty, you will stop. If you find the
13 defendant not guilty, then you will consider or you may
14 consider, rather, whether or not the State has proven
15 the lesser included charge of simple possession of
16 methamphetamine. Your options there would be not
17 guilty and guilty. Again you will check the applicable
18 box of the option that's given to you. You will sign
19 your name, you will fold and crease the verdict form
20 and return it to the bailiff, and we'll receive you
21 here in the courtroom. Okay, sir?

22 If you have any questions about anything, would
23 you write it down. We'll send it back here and we'll
24 try to respond accordingly. Okay, sir?

25 JURY FOREMAN: Yes, sir.

1 THE COURT: If you would, everyone except our
2 alternate, if you would go to the jury room now. We'll
3 gather the evidence in just a few minutes. We're going
4 to let you start your deliberations, but do not start
5 yet.

6 THE COURT: You've got some personal things? Once
7 you get those, I'll meet you in the hallway.

8 If your juror still has a question, write it down
9 and send it out here.

10 JURY FOREMAN: Yes, your Honor.

11 (WHEREUPON, the jury, including the alternate,
12 exited the courtroom at 5:09 p.m.)

13 THE COURT: Any additions or exceptions from the
14 State?

15 MR. WAGNER: No, sir.

16 THE COURT: From the defense?

17 MR. PATRICK: None, your Honor.

18 THE COURT: All right. Let me thank the attorneys
19 for their presentation. Both of you are very prepared
20 and professional, and I appreciate that.

21 (Court in recess, pending verdict, from 5:09 p.m.
22 until 5:21 p.m.)

23 THE COURT: All right. There are three -- four
24 questions. First is, and I think this comes from the
25 juror who interrupted Mr. Wagner, "Is the presence of

1 the pipe that slid down the roof admissible as evidence
2 because of Officer Freestate's testimony?"

3 What I would propose that I respond is that
4 Officer Freestate's testimony is evidence that you may
5 consider, otherwise the pipe has not been admitted. --
6 well, the only thing you can consider about the pipe is
7 his testimony. The pipe is not admitted into evidence.
8 I think he said it busted, didn't he?

9 MR. WAGNER: It did break. They were afraid to
10 pick it up, the pieces. I don't know that I made that
11 real clear in my direct.

12 THE COURT: I'm just going to say --

13 MR. PATRICK: His testimony is --

14 THE COURT: His testimony is what you may consider
15 as evidence. Fair enough?

16 MR. PATRICK: I agree with that.

17 MR. WAGNER: Yes, sir.

18 THE COURT: "What type of shoes was the defendant
19 wearing?" That's not before you. You must make your
20 decision based on the evidence.

21 "Was the defendant drug tested?" Same response.
22 This is a little closer. "Is presence of the defendant
23 on the roof considered within the dwelling?" No. I
24 will charge them, though, unless you, from the State's
25 standpoint, have a problem with it. I'm sure you don't

1 have a problem with me telling them no.

2 MR. PATRICK: No, your Honor!

3 MR. WAGNER: If she had been under the house, I
4 would say yes. But on top of the roof, no.

5 THE COURT: Entry, I'm going to say that there is
6 not a definition of entry in the statute. Or I could,
7 but Webster's defines entry as the act of going or
8 coming in -- that's a ledger. He went to Furman.

9 Would you want me to charge the definition or just
10 leave it alone to say that is not entry; it has to be
11 inside? Or would you want me to go -- I don't want
12 to --

13 MR. WAGNER: I think it's not --

14 THE COURT: Well, let me ask you this: In order
15 to prove the defendant entered a dwelling, the state
16 does not have to show the defendant's entire body
17 entered the dwelling, the smallest entry is sufficient.
18 Would you want me to give any aspects of my charge?

19 MR. PATRICK: I would prefer just no. I mean --

20 THE COURT: That's a shocker, Mr. Patrick. What's
21 your position, seriously?

22 MR. WAGNER: Honestly, I think the safest thing
23 would be to read that part of the charge again, what
24 entry is.

25 THE COURT: What if I do this. What if I say the

1 answer to your question is no, and I'll be glad to
2 recharge you on the first-degree burglary or aspect of
3 entry from that charge if you want to hear it again.

4 MR. WAGNER: That would be fine.

5 MR. PATRICK: That's fine, your Honor.

6 THE COURT: Okay.

7 (WHEREUPON, the jury came into open court at
8 approximately 5:25 p.m.)

9 THE COURT: All right. Mr. Foreman, ladies and
10 gentlemen, I have several items here the jury is
11 requesting.

12 First, let me remind you the record is closed.
13 There's not going to be any more evidence admitted by
14 way of testimony or exhibits or otherwise.

15 But the first question: Is the presence of the
16 pipe that slid down the roof admissible as evidence
17 because of Officer Freestate's testimony?

18 Officer Freestate's testimony is, in fact,
19 evidence and you can consider it and give it as much
20 weight that you, the jury, collectively determine that
21 it should receive. Okay?

22 Next: What type of shoes was the defendant
23 wearing?

24 I cannot respond to that. You have to make your
25 decision based solely on the record that's been made

1 before you. Okay?

2 Was the defendant drug tested?

3 Same response. You have to make your decision
4 based on the record before you and whether or not the
5 State has met its burden in this case.

6 Next: Is the presence of defendant on the roof
7 considered within the dwelling?

8 No.

9 Okay. Now, I have and I'll be glad to, and I'll
10 let you query your jury and send me out word, I'll be
11 glad to recharge you on the first-degree burglary
12 aspect of it or on the part that discusses entry into
13 the dwelling if the jury thinks that would be helpful.

14 If you would go back, query your jury, send us
15 word back as to whether or not you want us to charge
16 you further, and then we'll respond accordingly. Do
17 not begin your deliberations until I confer with
18 counsel. Okay, sir? Thank you.

19 JURY FOREMAN: Thank you, your Honor.

20 (WHEREUPON, the jury exited the courtroom
21 at 5:27 p.m.)

22 THE COURT: Any additions or exceptions from the
23 State with regard to my explanation?

24 MR. WAGNER: No, sir.

25 THE COURT: From the defense?

1 MR. PATRICK: No, your Honor.

2 THE COURT: All right. Let's hang tight and see
3 their response and we can react.

4 (WHEREUPON, note received from jury.)

5 THE COURT: "We do not need any further
6 information."

7 All right. Tell them to begin their
8 deliberations, if you don't mind. Thank you.

9 (Court in recess, pending verdict, from 5:28 p.m.
10 until 6:45 p.m.)

11 THE COURT: It is my understanding the jury has
12 reached a verdict. Let's have the proper decorum
13 regardless of what the verdict is. I certainly don't
14 know what it is.

15 Buck, will you bring the jury in, please, sir.

16 (WHEREUPON, the jury came into open court at
17 approximately 6:48 p.m.)

18 THE COURT: All right. Mr. Foreman, my
19 understanding is the jury has reached a verdict; is
20 that correct?

21 JURY FOREMAN: We have, your Honor.

22 THE COURT: Is it unanimous?

23 JURY FOREMAN: It is, your Honor.

24 THE COURT: Would you pass it to the bailiff,
25 please.

1 (Verdict handed to bailiff.)

2 THE COURT: Thank you, sir.

3 THE BAILIFF: Yes, sir.

4 THE COURT: Publish the verdict, please, ma'am.

5 THE CLERK: Yes, sir.

6 2014-GS-37-645 and 646, the State of South
7 Carolina versus Teresa A. Davis, first-degree burglary,
8 as to the charge of first-degree burglary, indictment
9 2014-GS-37-645, we, the jury, unanimously find the
10 defendant guilty.

11 Possession with intent to distribute
12 methamphetamine, as to the charge of possession with
13 intent to distribute methamphetamine, indictment
14 2014-GS-37-646, we, the jury, unanimously find the
15 defendant guilty.

16 Ladies and gentlemen of the jury, if this was your
17 verdict and is still your verdict, please signify by
18 raising your right hand.

19 Let the record reflect that all 12 raised their
20 hand.

21 THE COURT: Very good. All right.

22 Mr. Foreman, ladies and gentlemen of the jury, the
23 Court is never concerned with your verdict, only that
24 you performed your duties and you did perform your
25 duties. For that we thank you. We thank you for your

1 civic service to the county of Oconee.

2 We are done for the week. Before we leave, I need
3 you to sign a couple pieces of paper, Mr. Foreman, and
4 I would like to speak with you very briefly, then I
5 will excuse you for the rest of the week. Thank you
6 very much.

7 (WHEREUPON, the jury exited the courtroom
8 at 6:53 p.m.)

9 (WHEREUPON, recess taken from 6:50 p.m.
10 to 6:54 p.m.)

11 THE COURT: Mr. Patrick, would you bring your
12 client around, please, sir.

13 MR. PATRICK: Yes, your Honor.

14 THE COURT: If you would, would you give me
15 Ms. Davis' prior record.

16 MR. WAGNER: Yes, sir, Judge.

17 Your Honor, she got driving under suspension, DUS,
18 both of those back in '95, '97. She had a grand
19 larceny in 2007. And the rap sheet doesn't show -- I
20 mean, I didn't realize how bad her record was until I
21 got certified convictions because she had two
22 burglaries in Anderson County -- one was two counts of
23 burglary, one was four counts of burglary. The
24 four-counter was burglary second degree, the
25 two-counter was burglary third degree. She also had a

1 burglary and it's -- I can't remember. I think it was
2 a second degree here around 2007. She got jail time
3 for those.

4 Since then I think she's been in and out of prison.
5 with probation and stuff. I'm not so sure. She's had
6 a couple of drug charges for, I think, PWID for
7 possession of methamphetamine, and that's the prior
8 drug charge. That's from 2009 and 2011, it looks like.
9 So I think it's possible --

10 THE COURT: She had a PWID meth both years?

11 MR. WAGNER: Yes, sir. I'm saying PWID. It's
12 either that or possession. But it was a meth charge
13 that she was convicted of. Looks like she got seven
14 years suspended on six months and weekend time of some
15 sort.

16 It looks like she got another grand larceny in
17 2013, but that could have been some sort of probation
18 violation, so I'm not positive about that. She does
19 have four or five pending charges in Pickens that are
20 pending charges for similar-type stuff. There is a
21 burglary first over there and there's some
22 methamphetamine charges pending in Pickens that I think
23 have occurred since her arrest on this charge. I know
24 that's pending charges, but I think she's got a bad
25 drug problem I think is probably what her deal is.

1 THE COURT: Range on burglary first is zero to 30?

2 MR. WAGNER: 15 to life.

3 THE COURT: 15 to life, okay. PWID second, what's
4 the range?

5 MR. WAGNER: Five to 30.

6 THE COURT: Five to 30?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Did you spend any time in jail?

9 MR. PATRICK: I have down 56 days, your Honor, but
10 it's written by Danny, so I'm not entirely sure if
11 that's accurate or not.

12 THE COURT: All right. I know the Pauls are here.
13 Do they wish to say anything other than what your
14 testimony was, Mr. Paul, Ms. Paul?

15 MR. PAUL: No, sir.

16 THE COURT: Thank you very much.

17 All right. Mr. Patrick, Mr. Burr.

18 MR. PATRICK: Yes, sir, your Honor. We understand
19 there is mandatory minimums in this case. We would
20 respectfully ask the Court to go with the mandatory
21 minimums, possibly a combination of active time and
22 home incarceration with ankle monitoring. I understand
23 her rap sheet is lengthy. I believe this all stems
24 from meth use, your Honor. And we just, at your mercy,
25 beg for leniency, your Honor.

1 THE COURT: Ms. Davis, would you like to say
2 anything?

3 THE DEFENDANT: Yes, your Honor. And that is it
4 is true. I do have a drug problem. And I've never
5 really been offered any help for that, and I've tried
6 to do it on my own. I just can't. I would love to
7 have some help with that. And my older brother has
8 tried to do that and has got a place for me in Georgia
9 at a rehab, but I know it's too late now. But meth use
10 is -- winds me up in here every time. I can't do this
11 anymore. I'm so sorry what happened to these people's
12 home. And this is definitely what I did not want to
13 do. I have a bad rap sheet, I know that. All of it is
14 from 2007. I have never done that since. I learned a
15 lesson from that. I've never even tried to do anything
16 like that since then. I got me a job. And, yes, it is
17 restoring old houses and stuff, most of it is, but I
18 would never do that again. And I'm sorry they found me
19 guilty of that.

20 THE COURT: Did you pick up those charges in
21 Pickens after you were arrested on these charges?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And they were burglary charges?

24 THE DEFENDANT: No, sir.

25 THE COURT: What are the charges?

1 THE DEFENDANT: One was -- should have been
2 possession of stolen goods or something. Granted the
3 girl that was staying with me --

4 THE COURT: You don't have to tell me. Don't say
5 anything about it.

6 THE DEFENDANT: Okay.

7 THE COURT: Okay. Do you have anything else you
8 would like to add?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. These will be concurrent.
11 Sentence of the Court will be 18 years, 56 days
12 credit. I'll recommend ATU. Ms. Davis, you will have
13 ten days to appeal this sentence not counting today.
14 Good luck to you.

15 THE DEFENDANT: Thank you.

16 MR. BURR: Thank you, your Honor.

17 MR. PATRICK: Thank you, your Honor.

18 MR. WAGNER: Thank you, your Honor.

19 (WHEREUPON, the proceedings ended at 7:01 p.m.)

20 ***END OF REQUESTED TRANSCRIPT OF RECORD***

21

22

23

24

25

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 23rd day of April 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

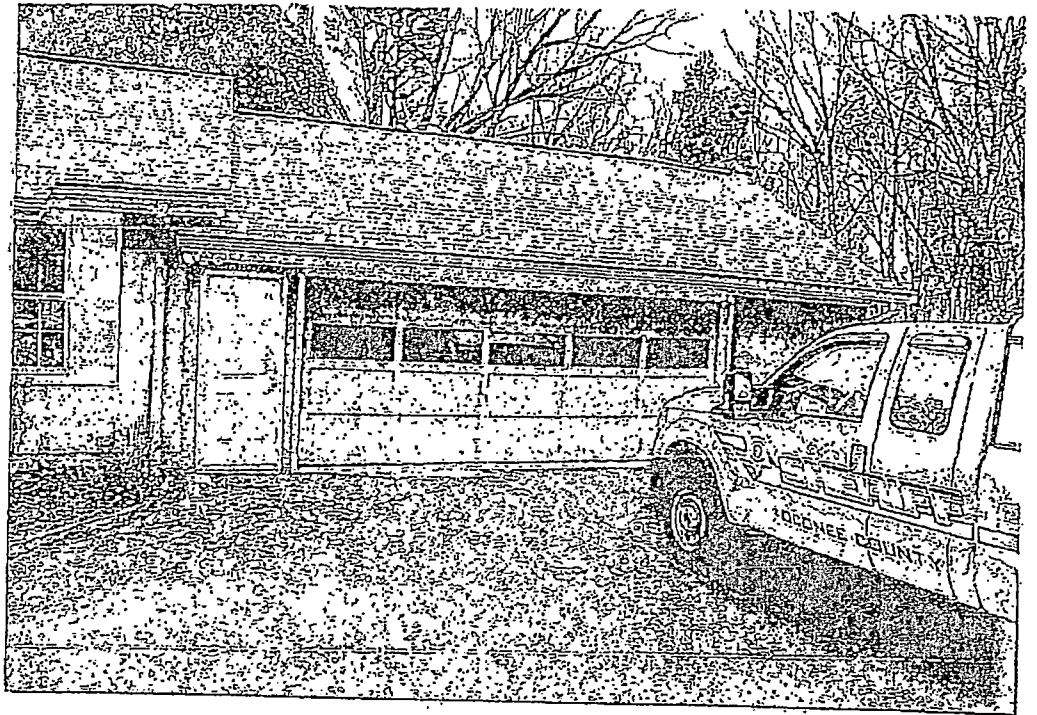
July 31, 2015

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter



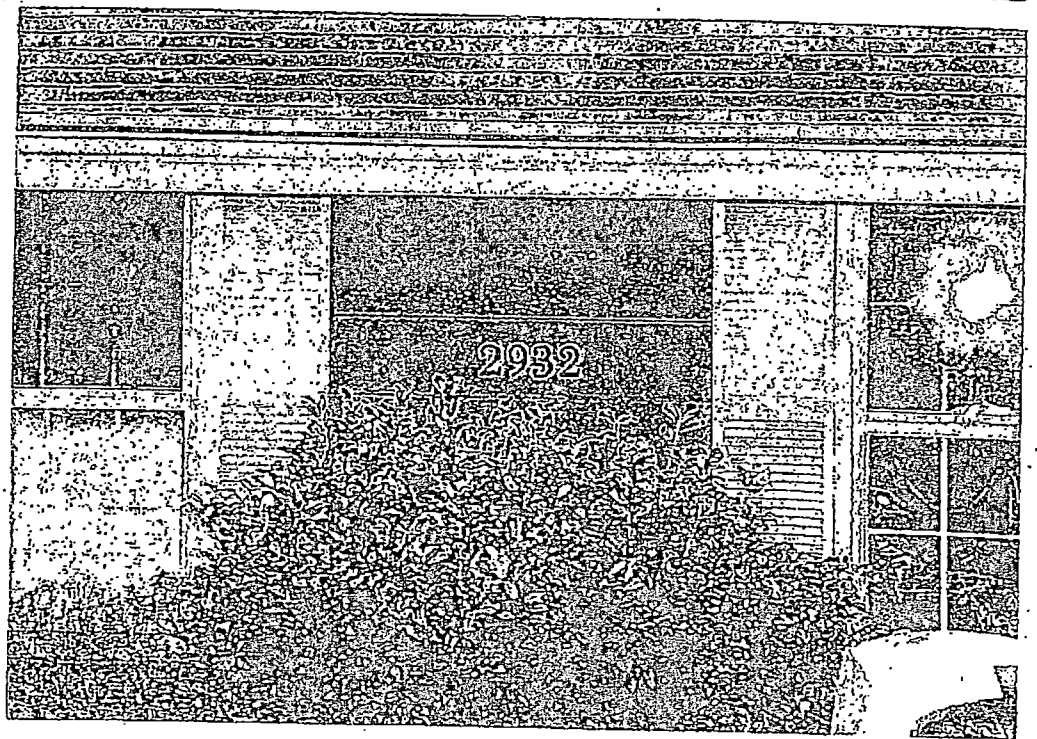
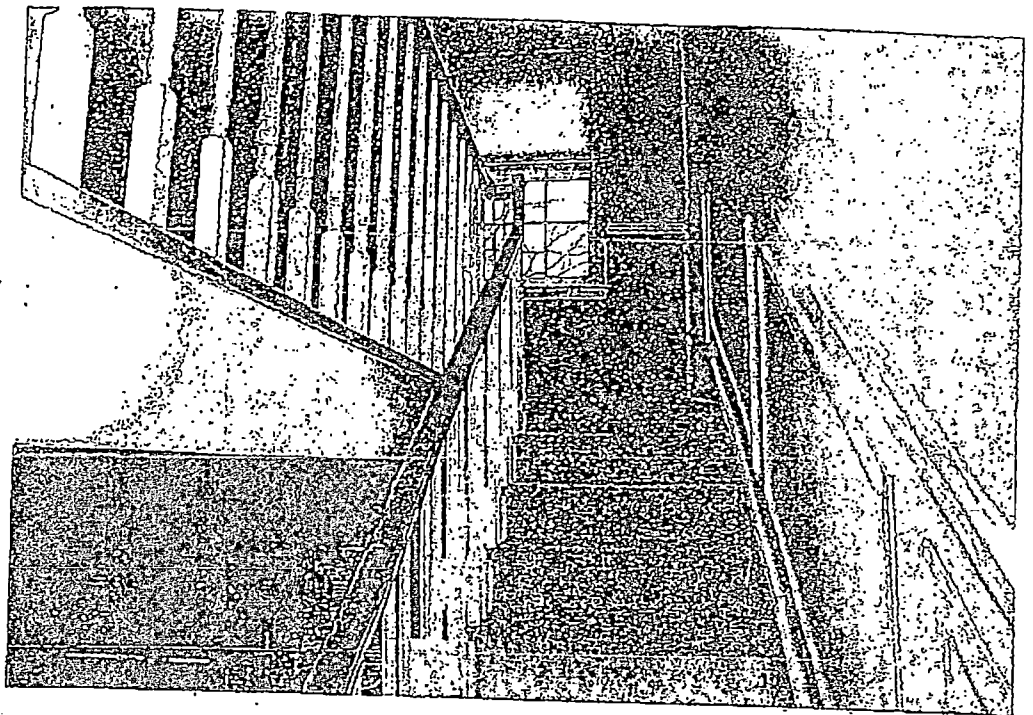
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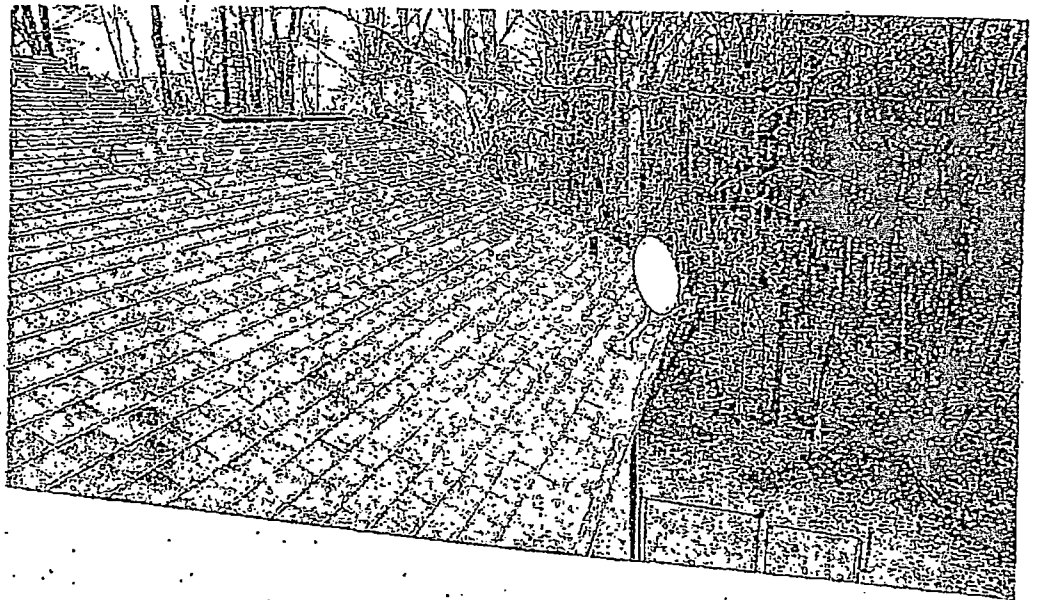
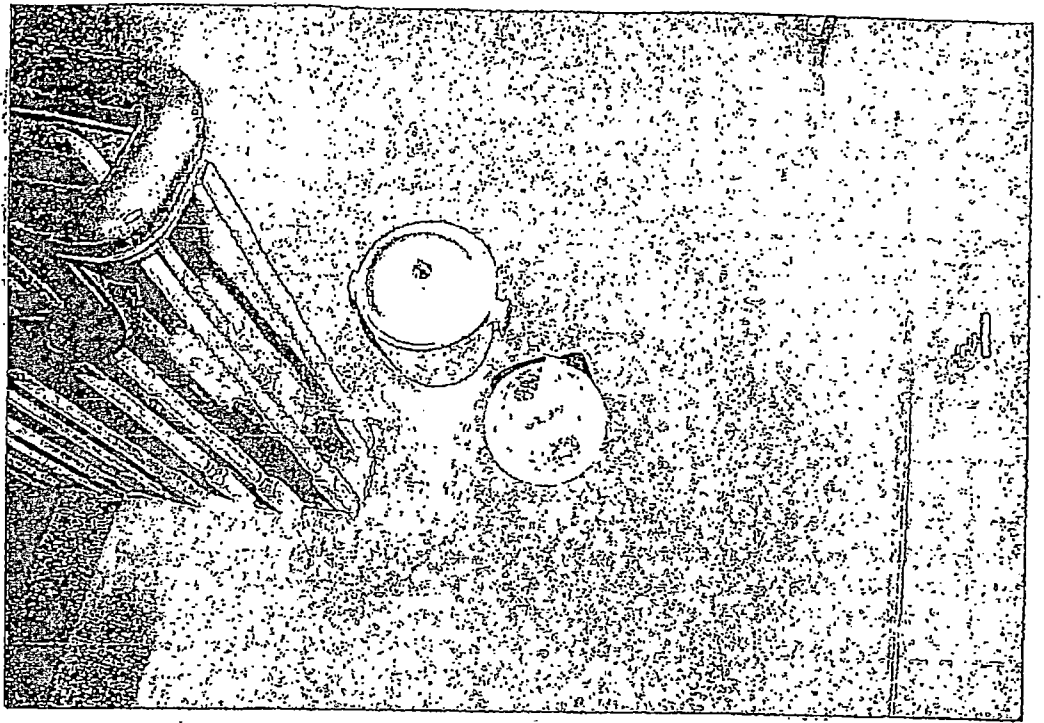
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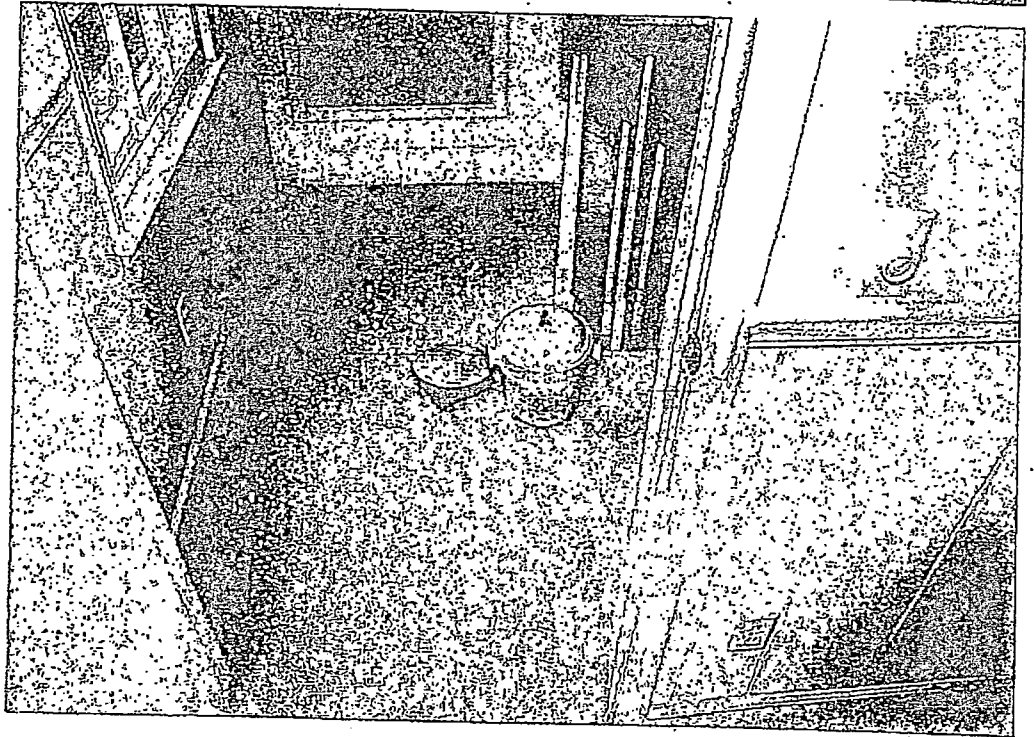
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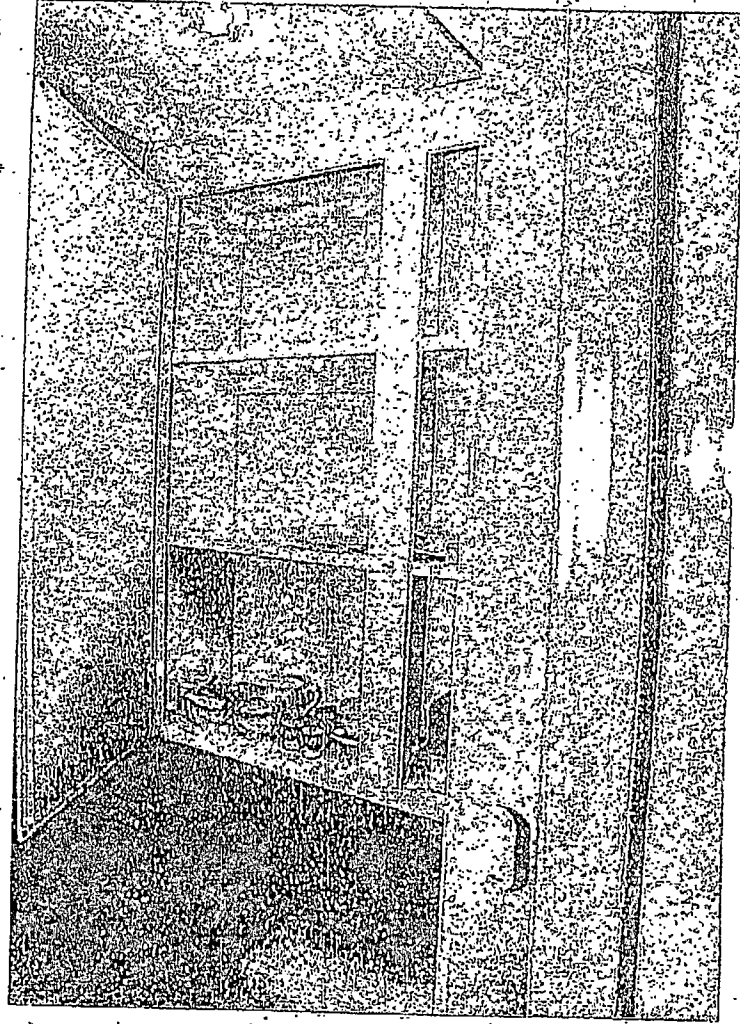
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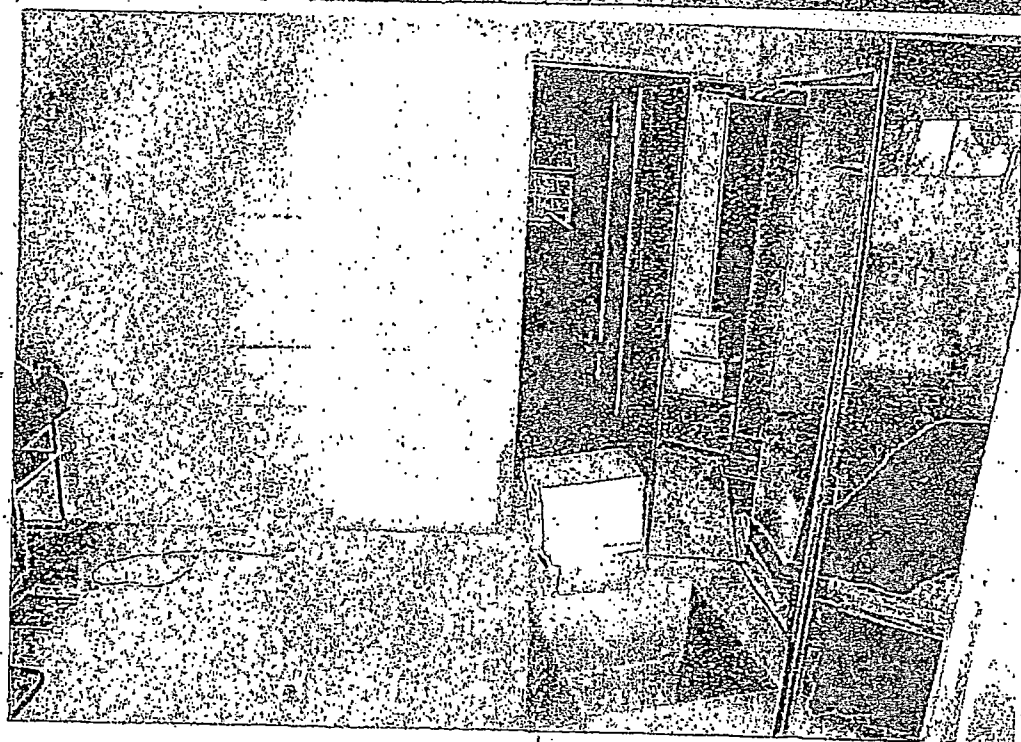
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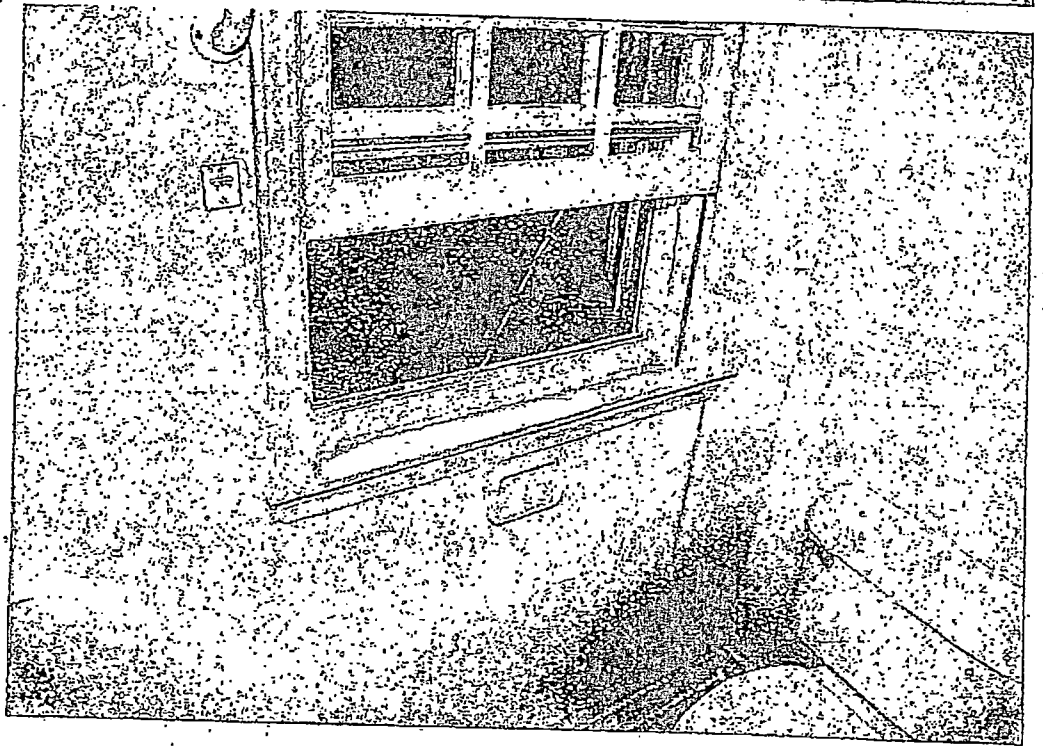
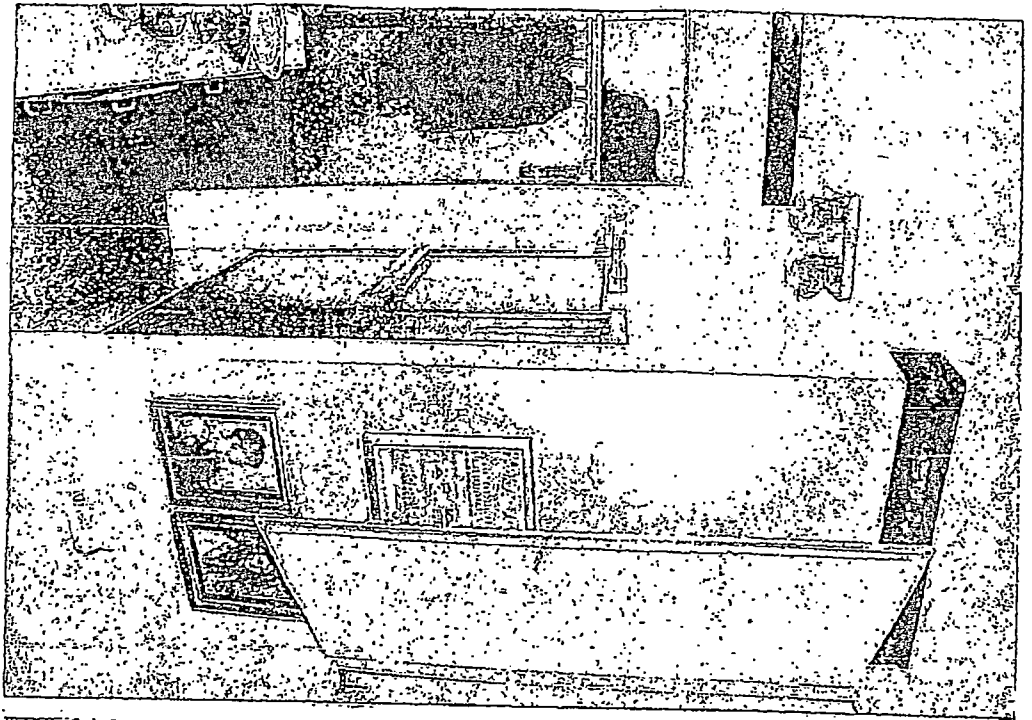
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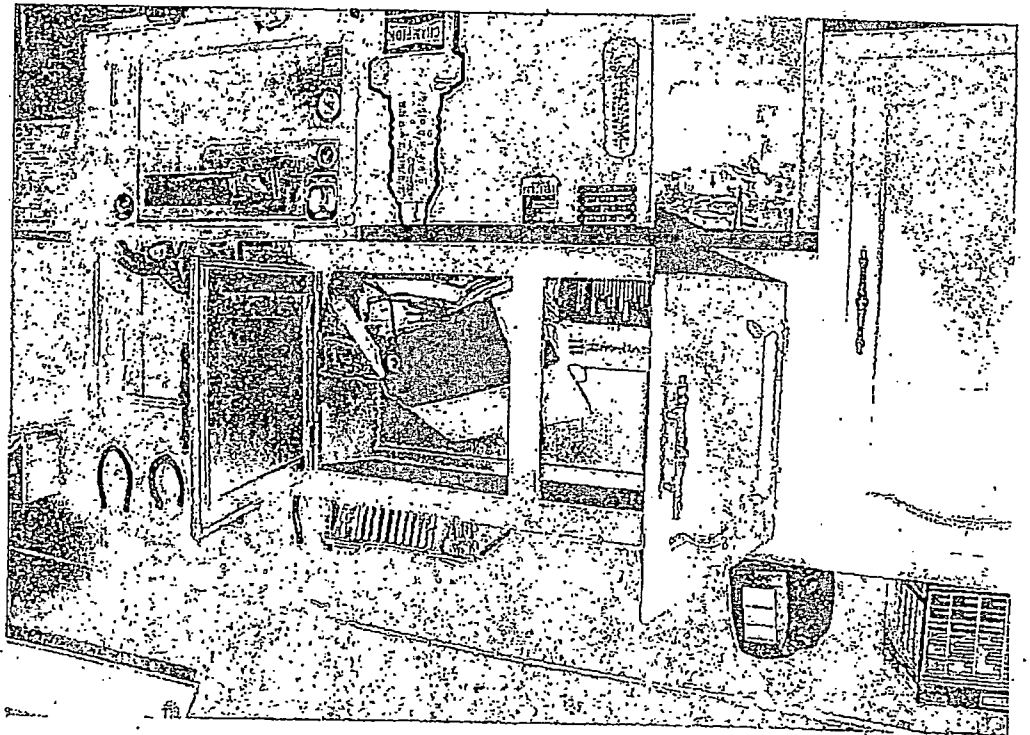
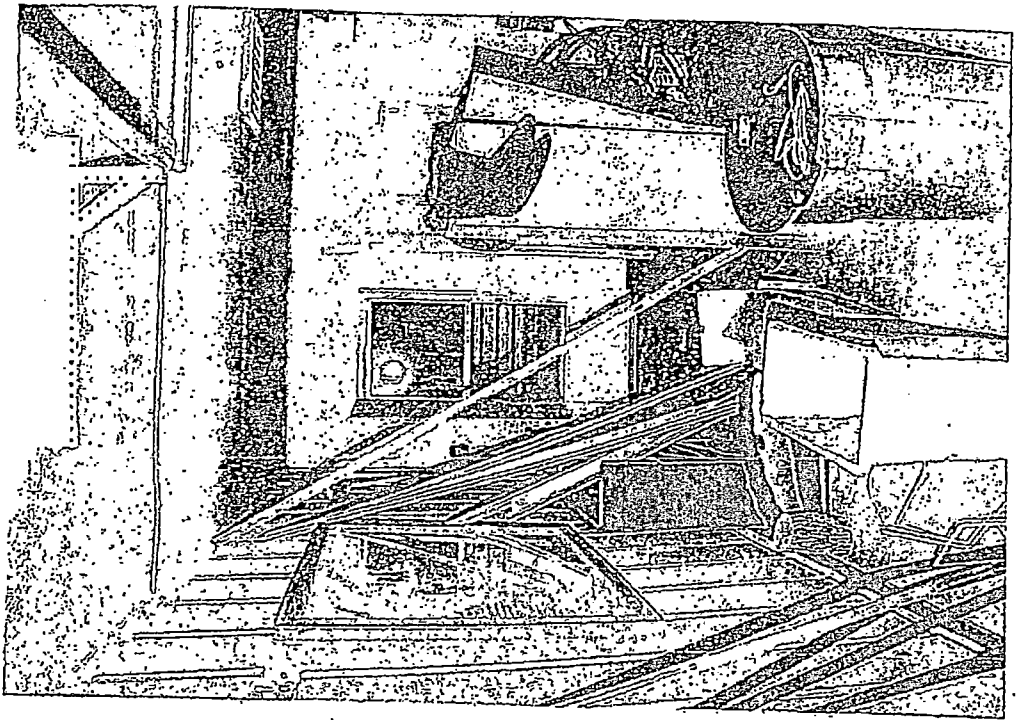
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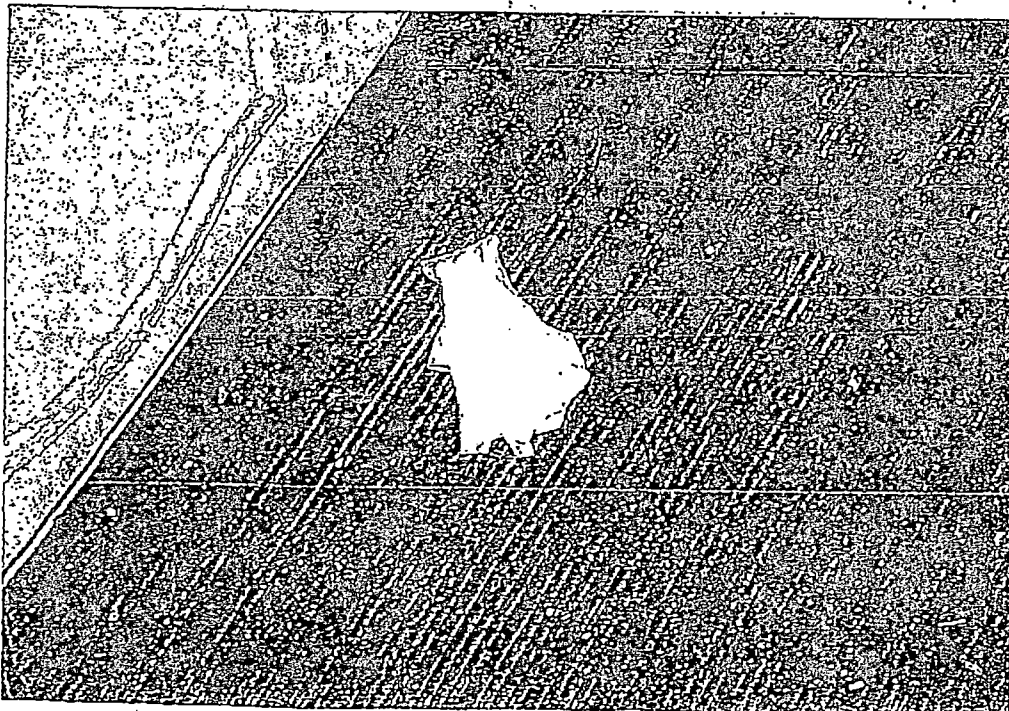
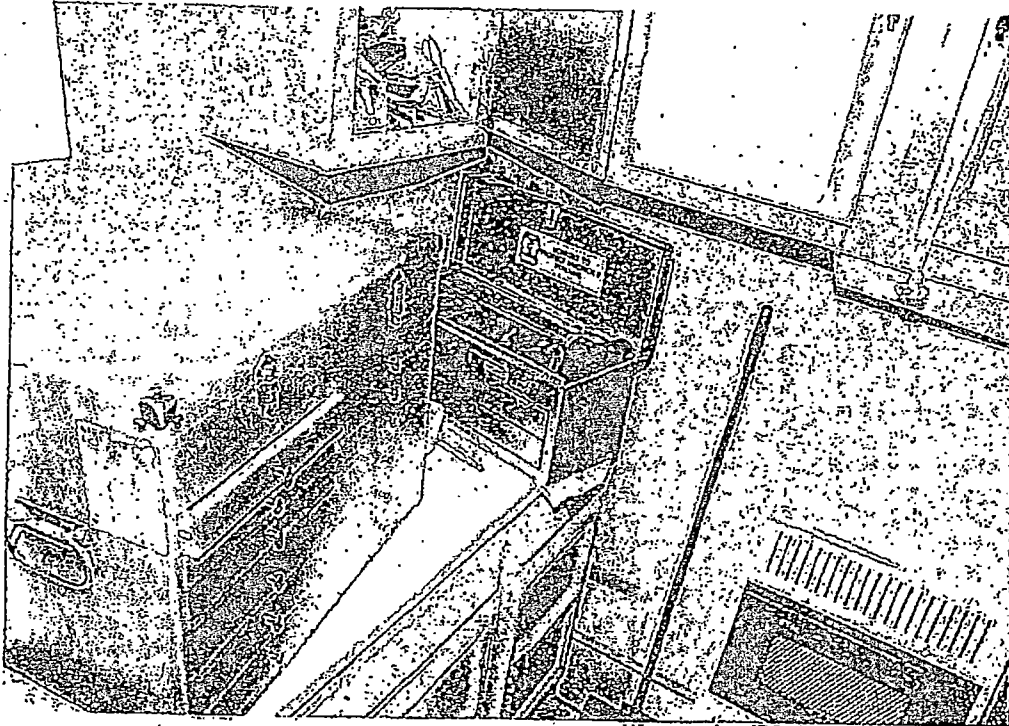
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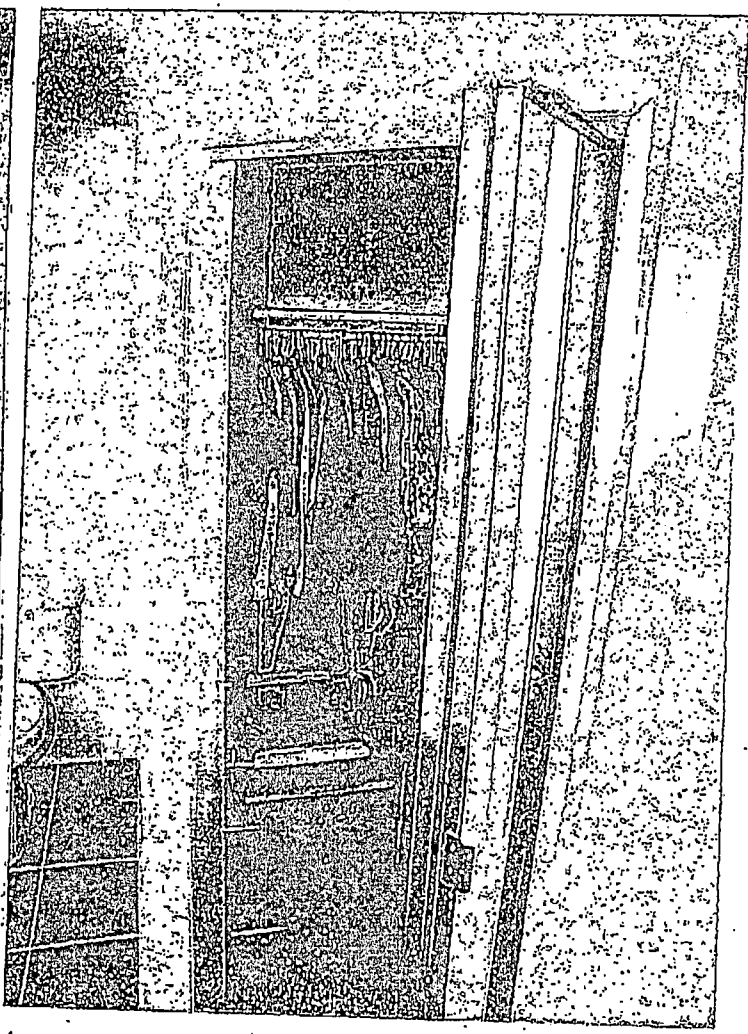
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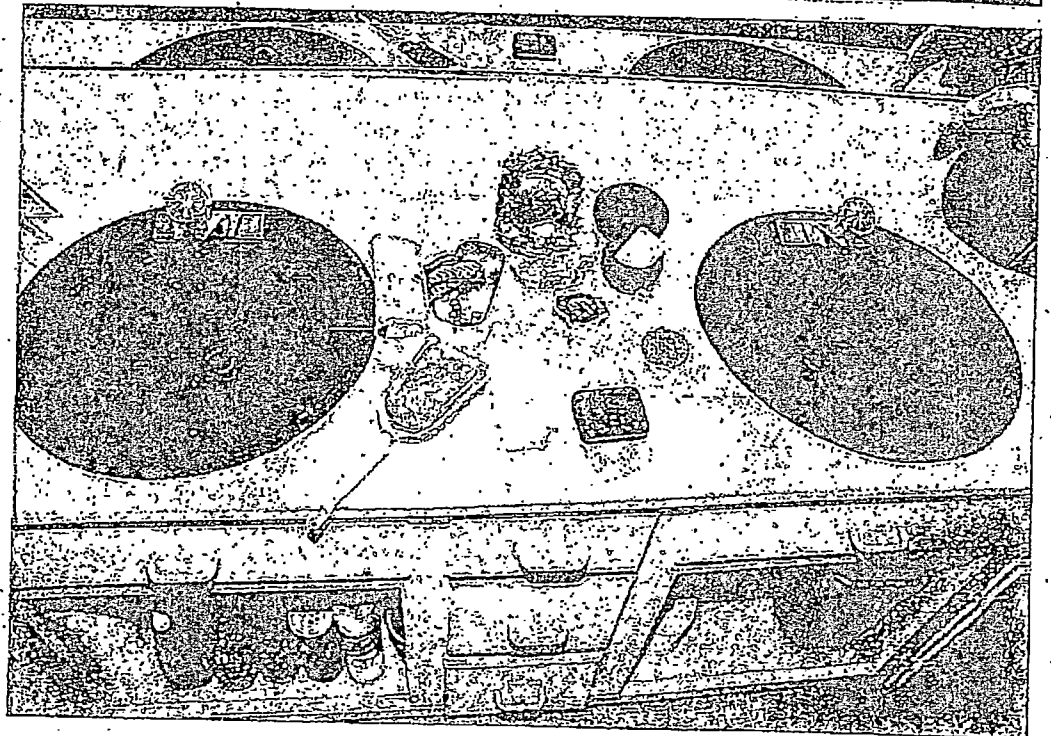
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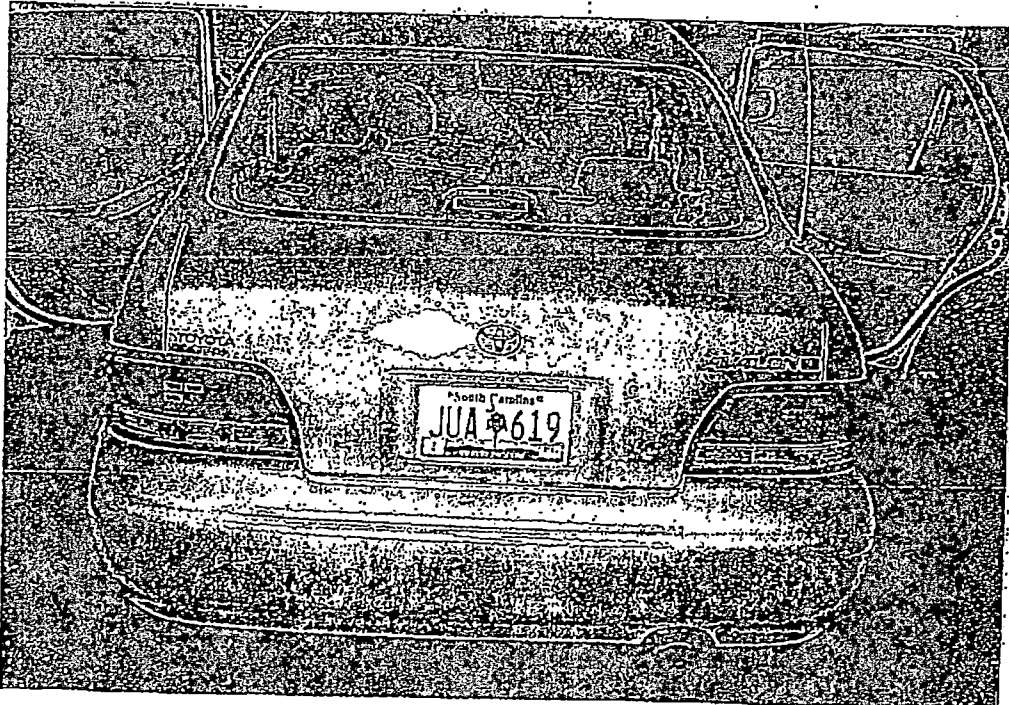
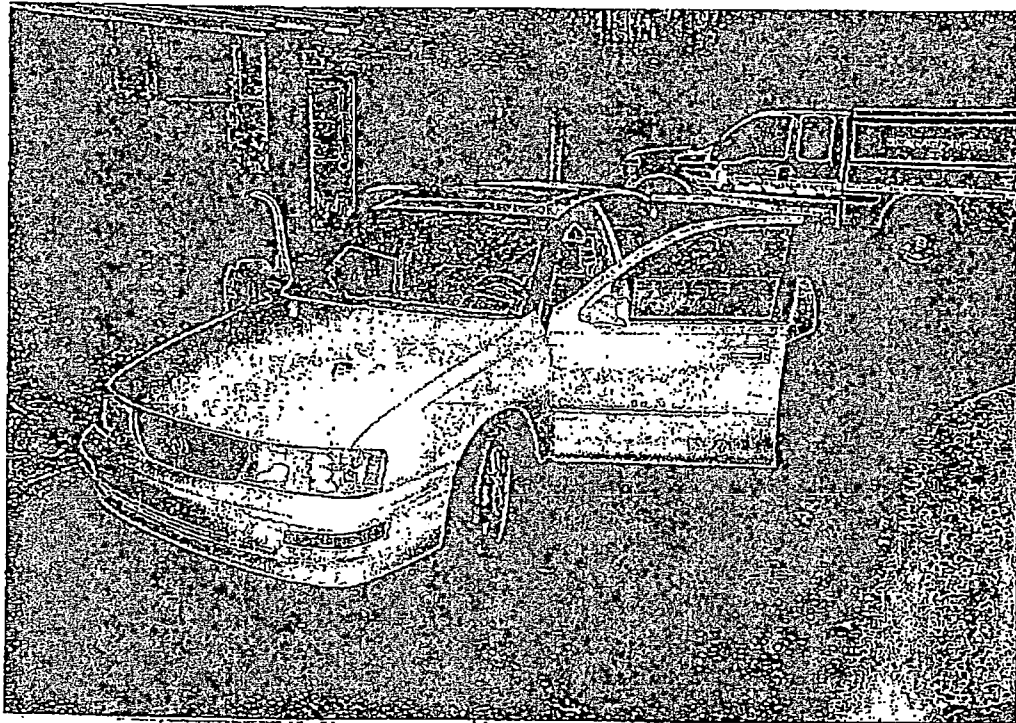
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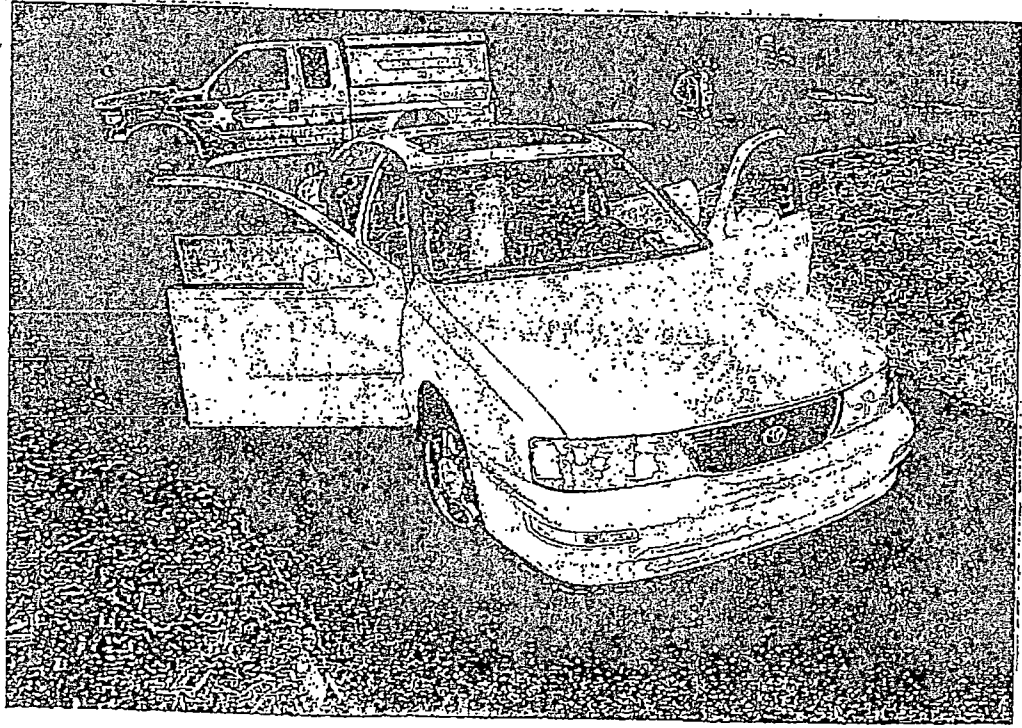
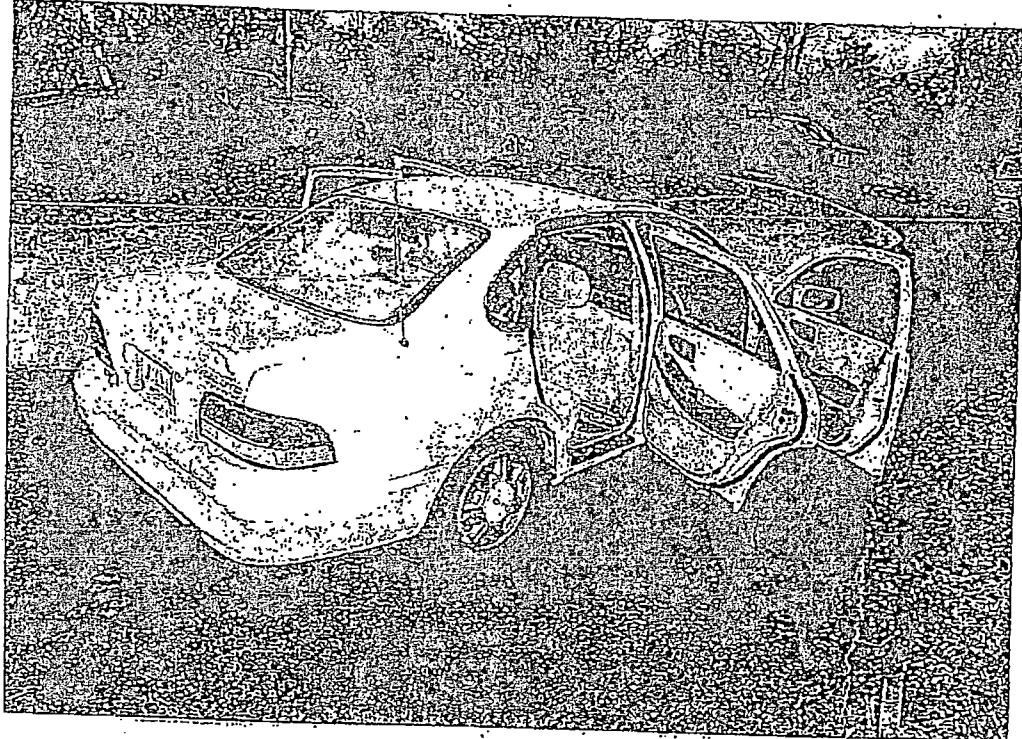
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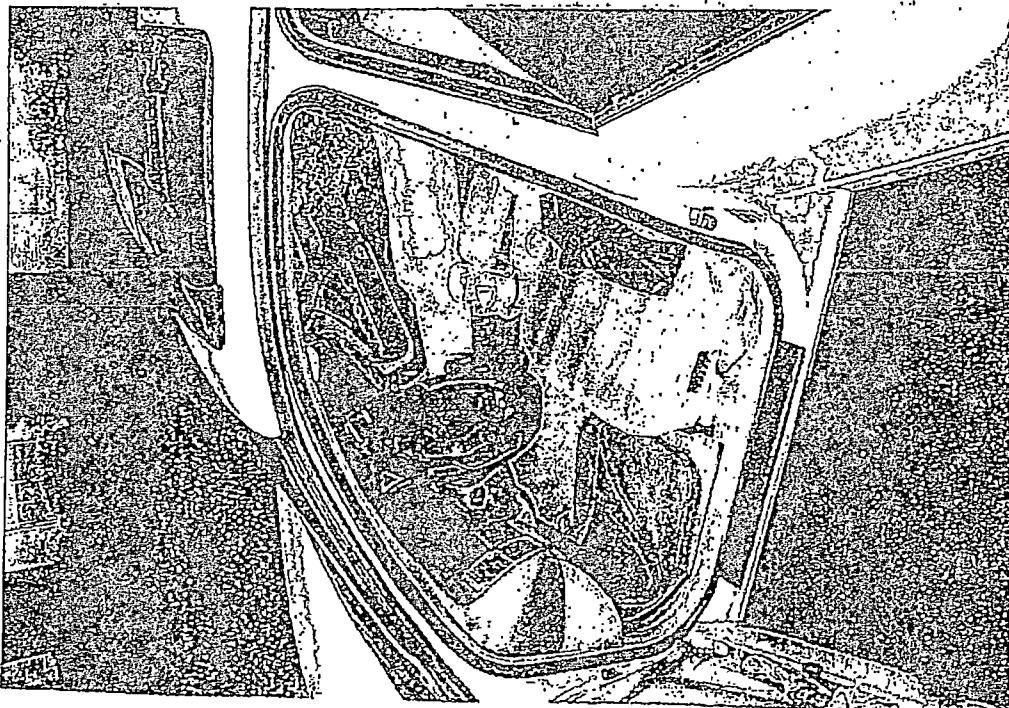


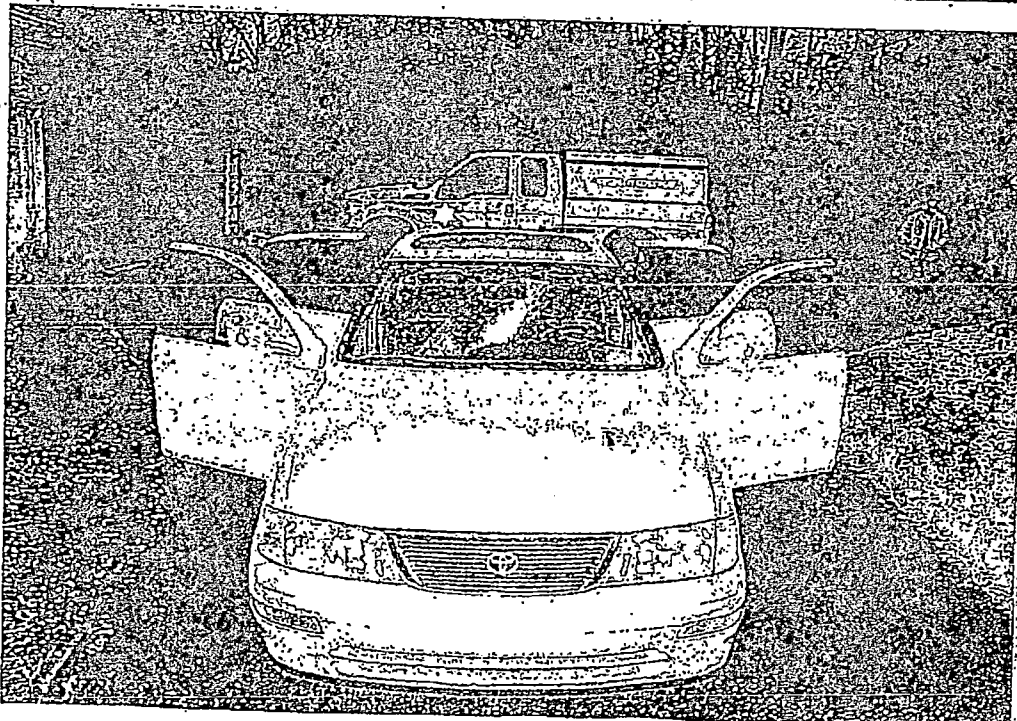
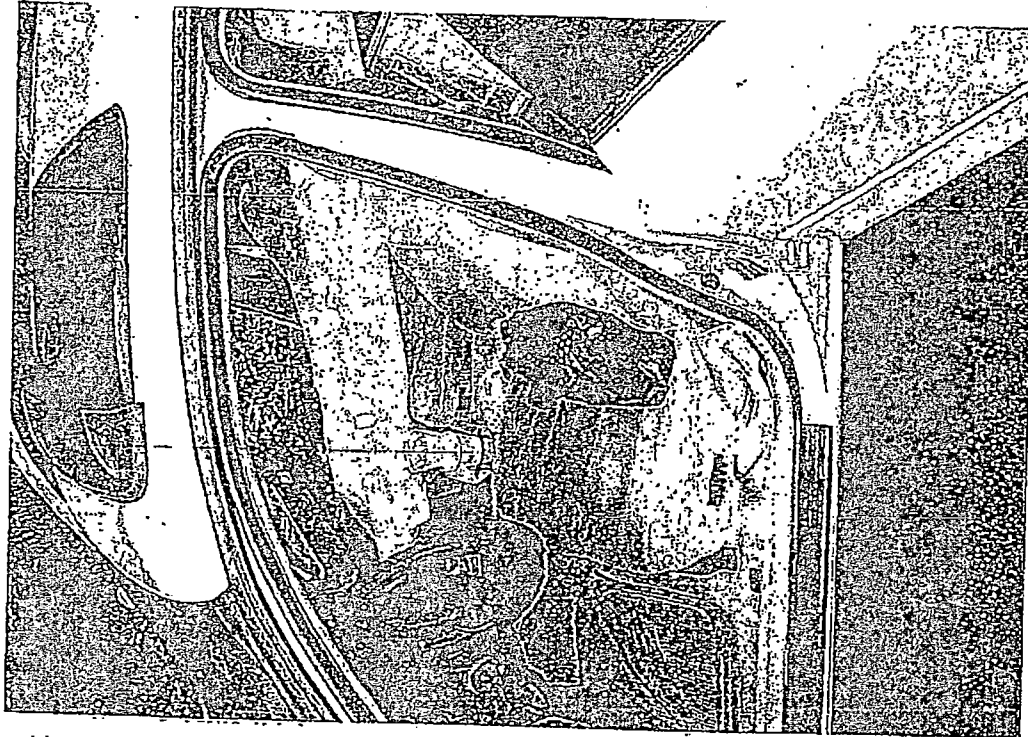
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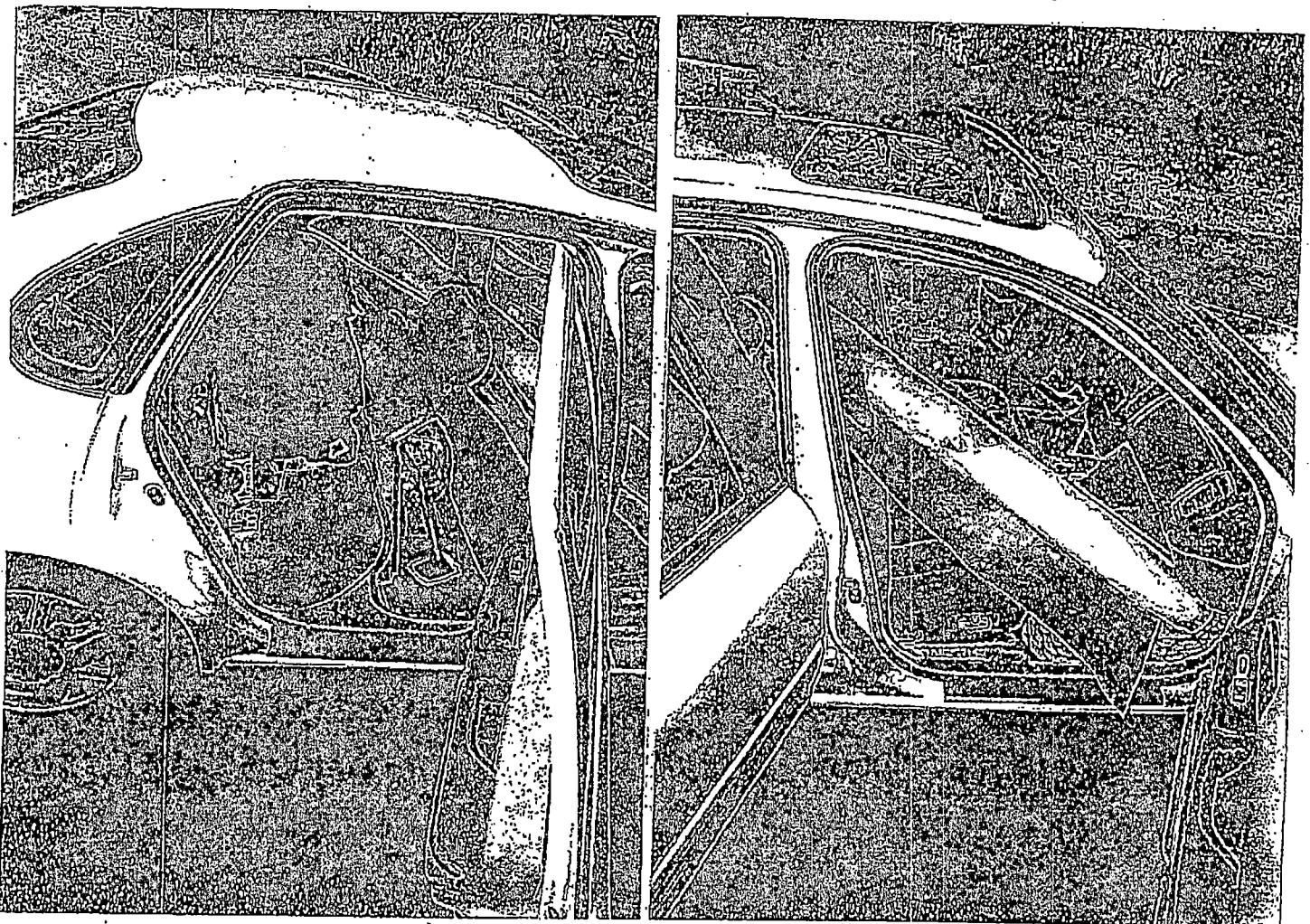
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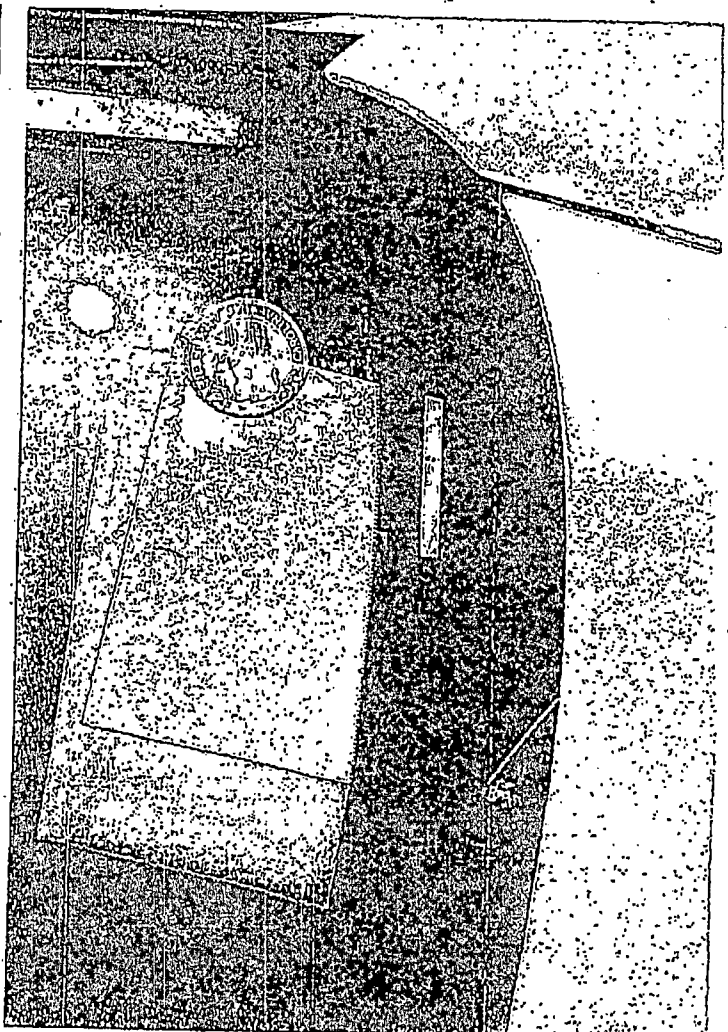






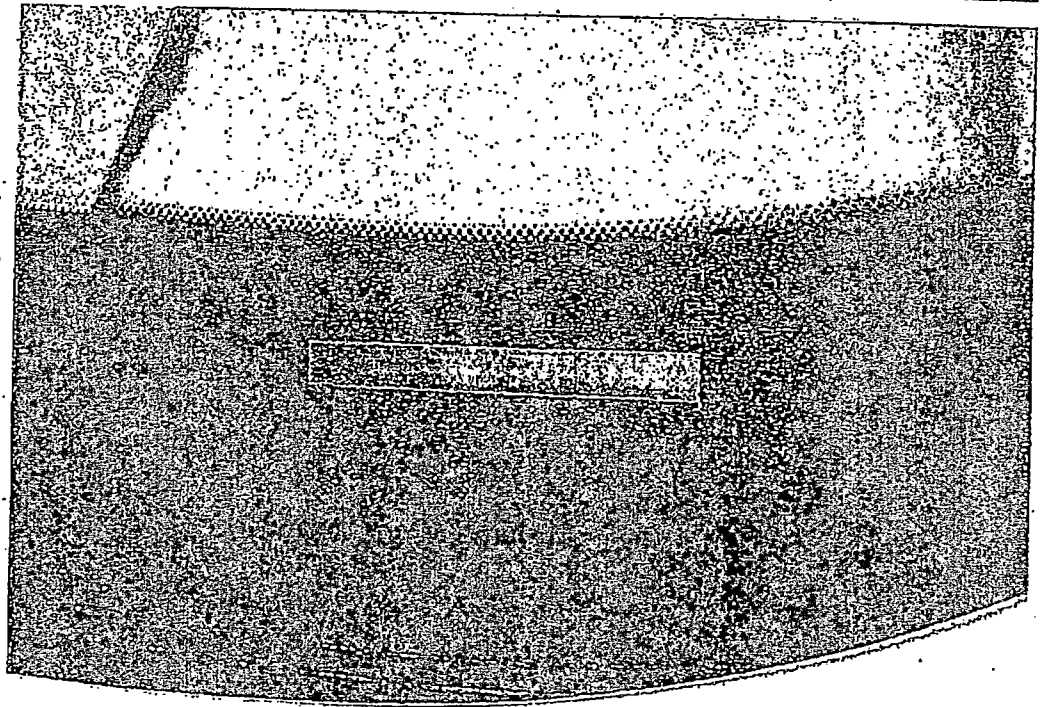
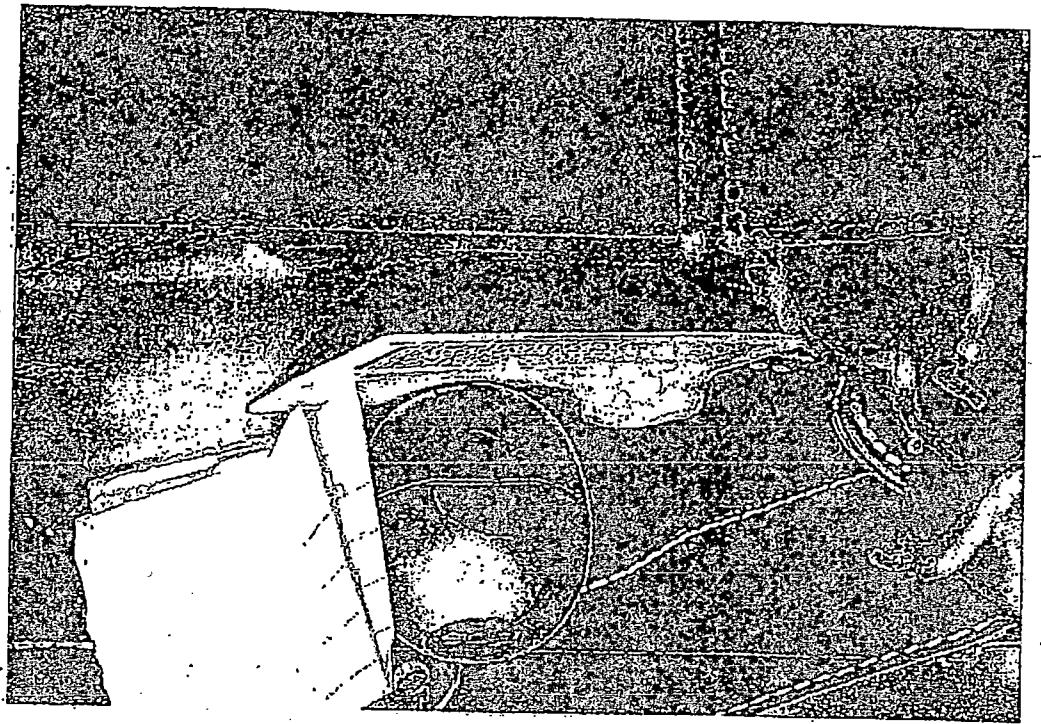
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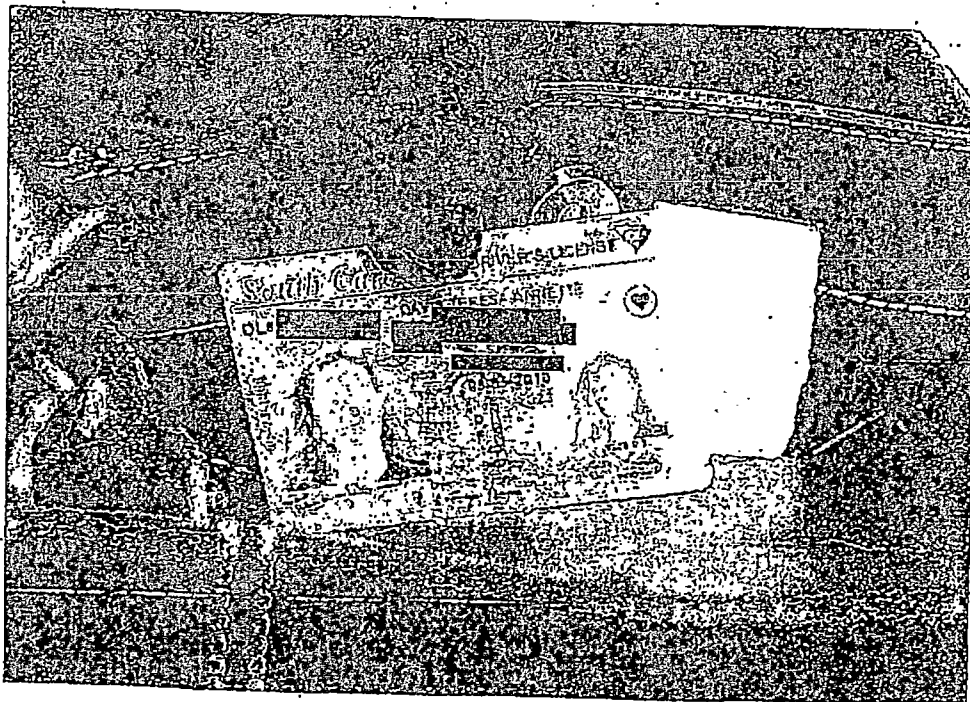
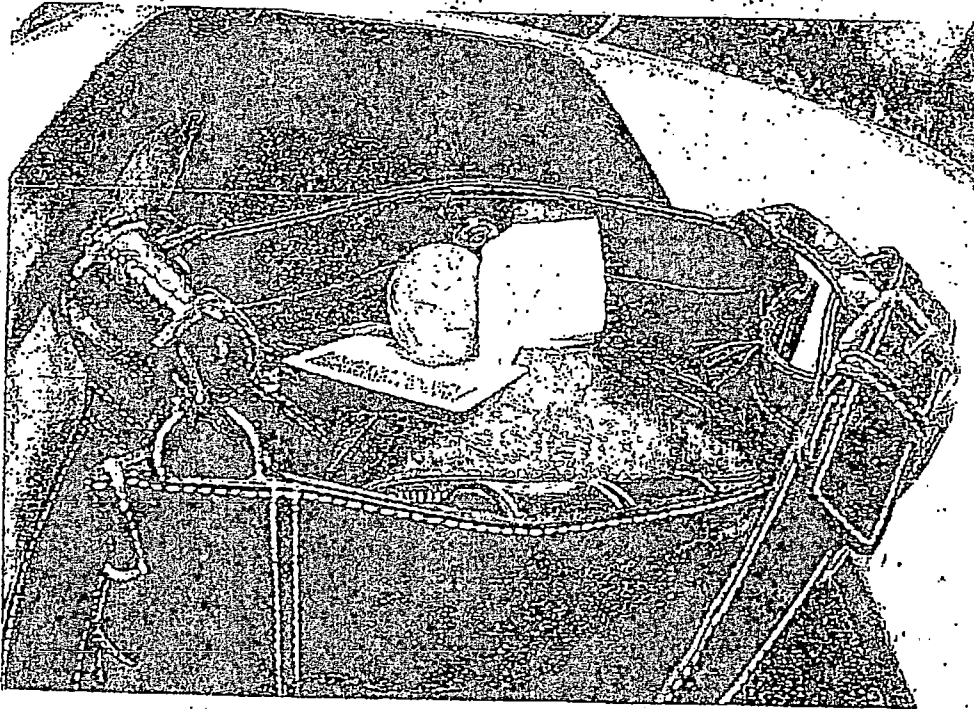
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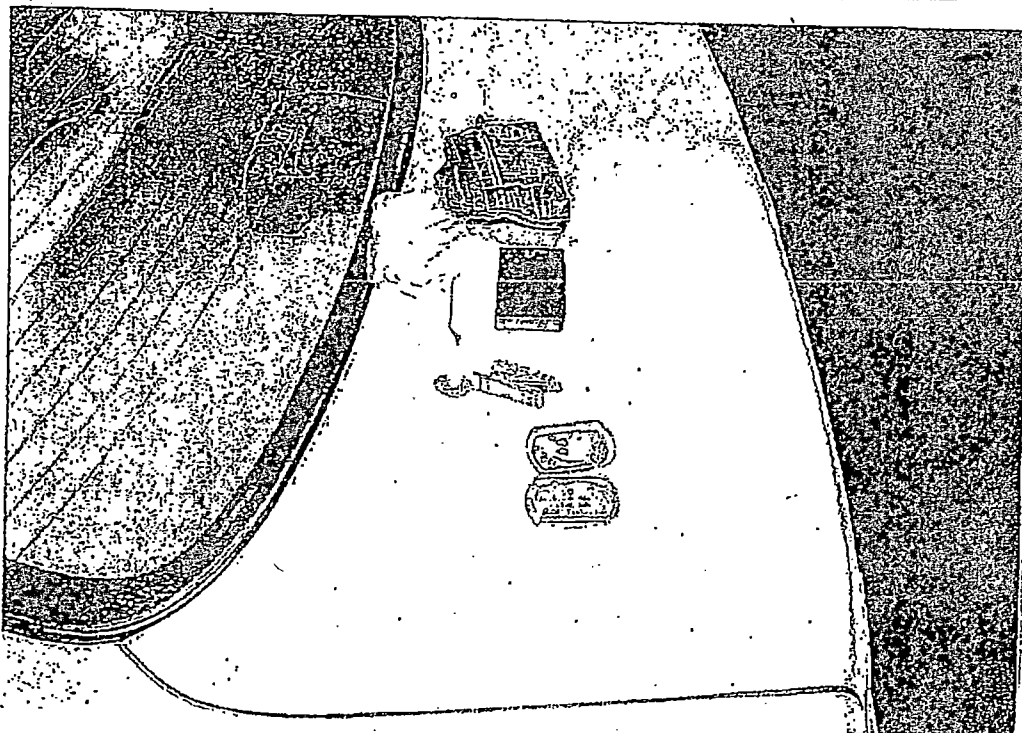
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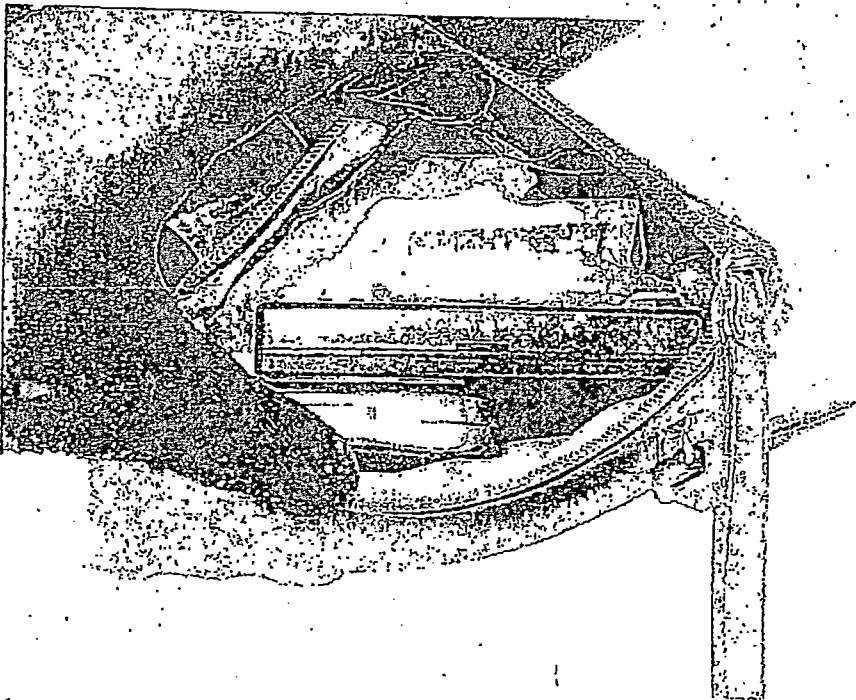


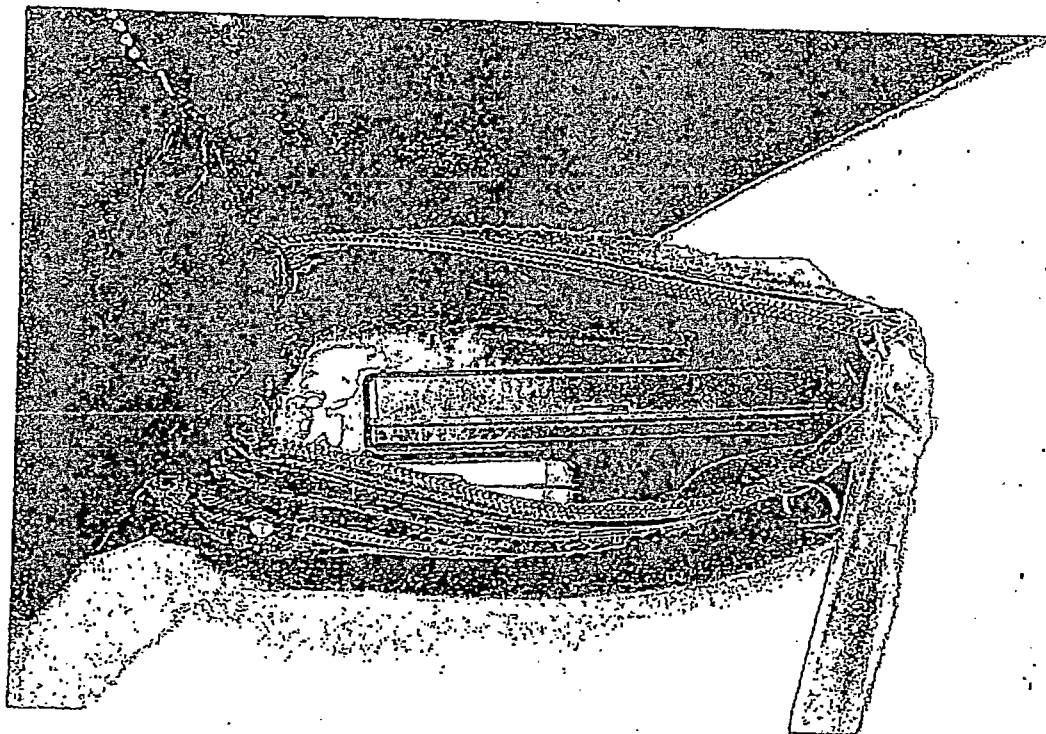
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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SEP 28 2016

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

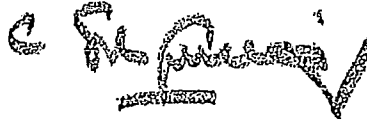
Teresa Davis, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,
COLLINS & LACY, P.C.



By: _____

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Columbia, South Carolina
September 28, 2016