

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Circuit Court Judge

BERNARD MCFADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002319

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case: 10-GS-43-0257
	)	
Bernard McFadden,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within trial was held November 16-19, 2010, before The Honorable W. Jeffrey Young in the Court of General Sessions for Sumter County; attended by counsel, as follows:

APPEARANCES:

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 Sumter, South Carolina
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INDEX OF TESTIMONY

(Pretrial Motions)

Witness	Direct	Cross	Redirect	Recross
Derrick McDonald	30	36		
Robbie Richburg	46	51		

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INDEX OF TRIAL TESTIMONY

Witness	Direct	Cross	Redirect	Recross
David Capell	75	85		
K.B.	96	100	108	
Derrick McDonald	109	128	148	
Shanice Cummings	152	155		
Teresa Cummings	170	174		
Irene Culick	188	211	251	255
Janice Billups	256	264		
Nikki Perry	274	281		
Robbie Richburg	285	297		
John Litaker	315	322		
Truman Duggin	330	340		

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INDEX OF STATE'S EXHIBITS

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4	Photographs (6)	194
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7	Brick	358
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9	Photograph	234
10	Photograph	239
11	Photograph	197
12	Photograph	197
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21	Lottery Tickets	355
22	Cigarettes	354
23	Evidence Envelope	300
24	Pill bottle with shards of glass	356
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INDEX OF DEFENSE EXHIBITS

Number	Description	Reference
1	Chain of Custody	ID only
2	Photograph	241

INDEX OF COURT'S EXHIBITS

Number	Description	Reference
(None)		

1

2

(DEFENDANT PRESENT)

3

THE COURT: All right, Ladies and

4

Gentlemen, we are about to start the trial of

5

the State versus Bernard McFadden, Indictment

6

2010-GS-43-257. The indictment in this case

7

reads, as follows, that: "Bernard McFadden did,

8

in Sumter County, on or about July 3rd, 2009,

9

enter without consent, and with the intent to

10

commit a crime therein, the building of Youngs

11

Food Store located at 940 East Liberty Street

12

and that the defendant, Bernard McFadden, did

13

enter the building in the nighttime, in

14

violation of 16-11-312(b) of the South Carolina

15

Code of Laws."

16

Now, as we've done several time before

17

in selecting a jury, I will need to ask you

18

several questions in order to make sure -- may I

19

see the attorneys for a second?

20

(OFF RECORD BENCH CONFERENCE)

21

THE COURT: All right, Ladies and

22

Gentlemen. These are familiar questions that

23

you have had asked to you before, but there may

24

be a few differences. All right?

25

Has anyone ever been related, by blood

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1 or marriage, or have a close personal
2 relationship with the defendant, Bernard
3 McFadden? If so, please stand. (No response).

4 Does anyone have any -- and I think
5 that I may have asked you this -- business or
6 social relationship in addition to being related
7 by blood or marriage? Is so, please stand. (No
8 response).

9 The following is a list of possible
10 witnesses in this case. Listen closely, there
11 are a number of them:

12 David Capell with the Sumter Police
13 Department

14 Robbie Richburg, with the Sumter Police
15 Department

16 Truman Duggin from the Sumter Police
17 Department

18 Irene Culick of the Sumter Police
19 Department

20 Jim Alsbrook of the Sumter Police
21 Department

22 John Litaker of the Sumter Police
23 Department

24 Todd Sims of the Sumter Police
25 Department

1 Cerdetricia Furman of the Sumter Police

2 Department

3 Katie Urka of the State Law Enforcement

4 Division

5 Nikki Perry of the State Law

6 Enforcement Division

7 Derrick McDonald

8 Teresa Cummings

9 Shanice Cummings

10 K.B.

11 Janice Billups

12 Kendra Brown

13 Catherine Blocker

14 Alberta Lewis

15 Ethel Lewis

16 Is there anyone who is related by blood or
17 marriage or have any social or business
18 relationship with any of these possible
19 witnesses?

20 JUROR: Yes, sir, I worked with Irene
21 Culick at one time.

22 THE COURT: And what is your name and
23 number?

24 JUROR NUMBER 79: Carl (inaudible due
25 to coughing in courtroom). 79.

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1 THE COURT: The fact that you worked
2 with Irene Culick, does make it such that you
3 could not be fair and impartial with the State
4 or with the defense in this case?

5 JUROR NUMBER 79: No, sir.

6 THE COURT: Yes, sir, in the back?

7 JUROR: Derrick McDonald is my cousin.

8 THE COURT: All right. Does the fact
9 that Derrick McDonald is your cousin make it so
10 that you can't be fair and impartial to the
11 State or to the defense in this case?

12 JUROR: No, sir.

13 THE COURT: You don't think that you
14 could be impartial?

15 JUROR: I can be impartial.

16 THE COURT: All right. The attorneys
17 in this case are Mr. Kirk Griffin of the
18 Solicitor's office and Mr. Willie Brunson,
19 representing the defendant.

20 Has any member of the jury panel ever
21 been represented by either of these attorneys,
22 or their law firms, or they are related by blood
23 or marriage, or who has a close personal
24 relationship with either of these attorneys. If
25 so, please stand. Yes?

1 JUROR NUMBER 132: Your Honor, I am
2 Juror 132. I've been represented by Mr.
3 Brunson's firm on a couple of occasions.

4 THE COURT: Does the fact that you've
5 been represented by Mr. Brunson in the past make
6 it so that you wouldn't be fair and impartial to
7 the State or to the Defense in this case?

8 JUROR NUMBER 132: No.

9 THE COURT: Thank you. Has any
10 member of the jury panel formed or expressed an
11 opinion about any issue or matter involved in
12 this case. If so, please stand. (No response).
13 Thank you. No one is standing.

14 Is there any member of the jury panel
15 aware of any bias or prejudice towards either
16 the State or the Defendant in this case? If so,
17 please stand. (No response). No one is
18 standing.

19 Is there any member of the jury panel
20 who could not be fair and impartial to both the
21 State and to the Defense in a case where DNA
22 evidence may be introduced? Is so, please
23 stand. (No response). Thank you. No one is
24 standing.

25 Is there any member of the jury panel

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1 who was a member of the grand jury which issued
2 the indictment in this case? If so, please
3 stand. (No response). Thank you. No one is
4 standing.

5 THE COURT: Is there any member of
6 the jury panel who is a member of or who has
7 contributed to any group that would have as its
8 primary concern the promotion of law enforcement
9 or victim's rights. These groups would include,
10 but certainly would not be limited to:

11 Mothers Against Drunk Driving,
12 Students Against Drunk Drivers; or
13 Citizens Against Violent Crimes, known
14 as CAVC.

15 If so, please stand. (No response).
16 No one is standing.

17 Does any member of the jury panel know
18 of any reason whatsoever why he or she should
19 not serve as a juror in this case, with
20 particular emphasis on the ability to be fair
21 and impartial to both the State and the Defense.
22 If so, please stand. (No response). Thank you.

23 Does the State have any additional
24 questions that they would like for me to ask.

25 SOLICITOR: None from the State, Your

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1 Honor.

2 THE COURT: Does the Defense have any
3 additional questions that they would like for me
4 to ask?

5 DEFENSE COUNSEL: One from the
6 Defense, Your Honor, (tendering).

7 THE COURT: Any objection from the
8 State?

9 SOLICITOR: No.

10 THE COURT: Thank you. Has any
11 member of the jury panel or any family members
12 been the victim of the crime of burglary. If
13 so, please stand. Yes, sir?

14 JUROR NUMBER 102: I was
15 burglarized three weeks ago.

16 THE COURT: Does the fact that --
17 state your name and number, please.

18 JUROR NUMBER 102: James H. Moore,
19 Juror 102.

20 THE COURT: All right. Mr. Moore,
21 the fact that you were burglarized three weeks
22 ago, approximately three weeks ago, make it so
23 that you could not be fair and impartial to the
24 State and Defense in this case?

25 JUROR NUMBER 102: No, sir, Your

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1 Honor.

2 THE COURT: Yes, ma'am, state your
3 name and number.

4 JUROR NUMBER 122: Juror Number
5 122. I was burglarized about three weeks ago.

6 THE COURT: Ma'am, the fact that you
7 were burglarized about three weeks ago, would
8 that make it so that you couldn't be fair and
9 impartial to the State or to the defense in this
10 case?

11 JUROR NUMBER 122: No, sir.

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

14 JUROR NUMBER 157: I'm Juror Number
15 157. I'd say it was about six years ago, I was
16 burglarized.

17 THE COURT: And does the fact that
18 you were burglarized about six years ago make it
19 such that you could not be fair to both ---

20 JUROR NUMBER 157: No.

21 THE COURT: Thank you. All right,
22 that being all the questions, we will draw a
23 list at random and -- Ladies and Gentlemen,
24 y'all are getting pretty good at this. I may
25 just let y'all get in groups of twelve -- but

1 you're not at that point yet, so what we will
2 have to do is do it just like we have done on
3 every other occasions.

4 If your name is called, please stand.
5 The State will have an opportunity to strike,
6 then the defense will have an opportunity to
7 strike. Bring all your personal items with you
8 in case you are seated in the jury box..

9 And remember that if you're stricken
10 to please don't take it personal. The parties
11 have the right to strike you for any reason, or
12 for no reason, except that they can't strike
13 you based on your race or on your gender.
14 Thank you.

15 CLERK: May it please the Court.
16 As the judge has instructed, just stand in
17 place. If you're chosen, bring all your
18 personal belongings and make your way to the
19 left or to your right.

20 Number 30, Leon Chisholm. What says
21 the State?

22 SOLICITOR: Please present the
23 juror.

24 CLERK: What says the defense?

25 DEFENSE COUNSEL: Please seat the

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1 juror.

2 CLERK: Make your way forward.

3 (JUROR NUMBER 30 SEATED)

4 CLERK: Number 42, Leo Dennis, Sr.

5 What says the State?

6 SOLICITOR: Please present the

7 juror.

8 CLERK: What says the defense?

9 DEFENSE COUNSEL: Please excuse the

10 juror.

11 (JUROR NUMBER 42 EXCUSED)

12 CLERK: Have a seat, sir. You've

13 been excused from this trial. Michael

14 Cotterman, Jr. What says the State?

15 SOLICITOR: Excuse the juror from

16 the trial of this case.

17 CLERK: Have a seat, sir. You'veA.

18 been excused from the trial in this case at

19 this time.

20 (JUROR EXCUSED)

21 THE COURT: 119, George Rembert, Jr.

22 What says the State?

23 SOLICITOR: Please present the

24 juror.

25 CLERK: What says the defense?

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1 DEFENSE COUNSEL: Please swear the
2 juror.

3 CLERK: Make your way forward, sir.
4 (JUROR NUMBER 119 SEATED)

5 CLERK: Number 72, Katherine James.
6 What says the State?

7 SOLICITOR: Please present the
8 juror.

9 CLERK: What says the defense?

10 DEFENSE COUNSEL: Please excuse the
11 juror.

12 CLERK: Please, ma'am, you've been
13 excused from this trial at this time.

14 (JUROR NUMBER 72 EXCUSED)

15 CLERK: Number 53, Anthony Fields.
16 What says the State?

17 SOLICITOR: Please present the
18 juror.

19 CLERK: What says the defense?

20 DEFENSE COUNSEL: Swear the juror.

21 THE COURT: Make your way forward,
22 sir.

23 (JUROR NUMBER 53 SEATED)

24 CLERK: Number 44, Diane Drakeford.
25 What says the State?

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1 SOLICITOR: Please present the
2 juror.

3 CLERK: What says the defense?

4 DEFENSE COUNSEL: Please excuse the
5 juror.

6 CLERK: Have a seat, ma'am. You've
7 been excused from the trial of this case at
8 this time.

9 (JUROR NUMBER 44 EXCUSED)

10 CLERK: Number 117, Gavin Prince.
11 What says the State?

12 SOLICITOR: Please excuse the juror
13 from the trial of this case.

14 CLERK: Have a seat, sir. You've
15 been excused from this trial at this time.

16 (JUROR NUMBER 117 EXCUSED)

17 CLERK: Number 107, India Nelson.
18 What says the State?

19 SOLICITOR: Please present the
20 juror.

21 CLERK: What says the defense?

22 DEFENSE COUNSEL: Please swear the
23 juror.

24 CLERK: Make your way forward, ma'am.

25 (JUROR NUMBER 107 SEATED)

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1 CLERK: Number 132, Ernest Session.

2 What says the State?

3 SOLICITOR: Please excuse the juror
4 from the trial in this case.

5 CLERK: Have a seat, sir. You've
6 been excused from this trial at this time.

7 (JUROR NUMBER 132 EXCUSED)

8 CLERK: Number 143, Randy Turner, Jr.
9 What says the State?

10 SOLICITOR: Please present the
11 juror.

12 CLERK: What says the defense?

13 DEFENSE COUNSEL: Please excuse the
14 juror.

15 CLERK: Have a seat. You've been
16 excused from this trial at this time.

17 (JUROR NUMBER 143 EXCUSED)

18 CLERK: 142, Emma Richardson. What
19 says the State?

20 SOLICITOR: Please present the
21 juror.

22 CLERK: What says the defense?

23 DEFENSE COUNSEL: Please swear the
24 juror.

25 CLERK: Make your way forward, ma'am.

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1 (JUROR NUMBER 142 SEATED)

2 CLERK: 85, Angie Lowder. What says
3 the State?

4 SOLICITOR: Please present the
5 juror.

6 THE COURT: What says the defense?

7 DEFENSE COUNSEL: Please excuse the
8 juror.

9 CLERK: Have a seat. You've been
10 excused from this trial at this time.

11 (JUROR NUMBER 85 EXCUSED)

12 CLERK: Number 145, Kathy Vanderpool.
13 What says the State?

14 SOLICITOR: Please present the
15 juror.

16 CLERK: What says the defense?

17 DEFENSE COUNSEL: Please excuse the
18 juror.

19 CLERK: Have a seat, ma'am. You
20 are excused from this trial at this time.

21 (JUROR NUMBER 145 EXCUSED)

22 CLERK: 136, Johnnie Smith. What
23 says the State?

24 SOLICITOR: Please excuse the juror
25 from the trial of this case.

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1 CLERK: Have a seat, sir.

2 You've been excused from this trial at this
3 time.

4 (JUROR NUMBER 136 EXCUSED)

5 CLERK: Number 7, Walter Vaughn.

6 What says the State?

7 SOLICITOR: Please present the
8 juror.

9 CLERK: What says the defense?

10 DEFENSE COUNSEL: Please swear the
11 juror.

12 CLERK: Make your way forward, sir.

13 (JUROR NUMBER 7 SEATED)

14 CLERK: Number 159, Todd Lowder.

15 What says the State?

16 SOLICITOR: Please present the
17 juror.

18 CLERK: What says the defense?

19 DEFENSE COUNSEL: Please swear the
20 juror.

21 CLERK: Make your way forward, sir.

22 (JUROR NUMBER 159 SEATED)

23 CLERK: Number 29, James Chewning.

24 What says the State?

25 SOLICITOR: Please present the

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1 juror.

2 THE COURT: What says the defense?

3 DEFENSE COUNSEL: Please excuse the

4 juror.

5 CLERK: Have a seat, sir. You've
6 been excused from this trial of this case at
7 this time.

8 (JUROR NUMBER 29 EXCUSED)

9 CLERK: Number 45, Matthew Driggers.
10 What says the State?

11 SOLICITOR: Please present the
12 juror.

13 CLERK: What says the defense?

14 DEFENSE COUNSEL: Please swear the
15 juror.

16 CLERK: Make your way forward, sir.

17 (JUROR NUMBER 45 SEATED)

18 CLERK: Number 31, Terry Choice.

19 What says the State?

20 SOLICITOR: Please present the
21 juror.

22 CLERK: What says the defense?

23 DEFENSE COUNSEL: Swear the juror.

24 CLERK: Make your way forward, sir.

25 (JUROR NUMBER 31 SEATED)

1 CLERK: Number 79, Karl Langland.

2 What says the State?

3 SOLICITOR: Please present the

4 juror. CLERK: What says the defense?

5 DEFENSE COUNSEL: Please excuse the

6 juror.

7 CLERK: Have a seat, sir. You've

8 been excused from this trial at this point.

9 (JUROR NUMBER 79 EXCUSED)

10 CLERK: 153, Ella Williams. What

11 says the State?

12 SOLICITOR: Please present the

13 juror.

14 CLERK: What says the defense?

15 DEFENSE COUNSEL: Please swear the

16 juror.

17 CLERK: Make your way forward.

18 (JUROR NUMBER 153 SEATED)

19 CLERK: Number 144, Shirelle Turner.

20 What says the State?

21 SOLICITOR: Please excuse the juror

22 from the trial in this case.

23 CLERK: Have a seat. You've been

24 excused from this trial in this case at this

25 time.

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1 (JUROR NUMBER 144 EXCUSED)

2 CLERK: Number 23, Stanley Bridges.

3 What says the State?

4 SOLICITOR: Seat the juror.

5 CLERK: Make your way -- excuse me.

6 What says the defense?

7 DEFENSE COUNSEL: Please excuse the
8 juror.

9 CLERK: Have a seat, sir. You've
10 been excused in this trial at this time.

11 (JUROR NUMBER 23 EXCUSED)

12 CLERK: Number 133, Brandon Simmons.

13 What says the State?

14 SOLICITOR: Seat the juror.

15 CLERK: What says the defense?

16 DEFENSE COUNSEL: Please swear the
17 juror.

18 CLERK: Make your way forward, sir.

19 (JUROR NUMBER 133 SEATED)

20 CLERK: Number 137, Kenneth Smith.

21 What says the State?

22 SOLICITOR: Please present the

23 juror. CLERK: What says the defense?

24 DEFENSE COUNSEL: Please swear the
25 juror.

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1 CLERK: Make your way forward, sir.

2 (JUROR NUMBER 137 SEATED)

3 CLERK: Do you want an alternate?

4 THE COURT: Yes.

5 CLERK: For alternate, Number 131,

6 James Schull, Jr. What says the State?

7 SOLICITOR: Please present the

8 juror.

9 CLERK: What sayeth the defense?

10 DEFENSE COUNSEL: Please excuse the

11 juror.

12 CLERK: Have a seat, sir. You've

13 been excused from this trial at this time.

14 (JUROR NUMBER 131 EXCUSED)

15 CLERK: Juror Number 156, George

16 Zeigler. What says the State?

17 SOLICITOR: Please present the

18 juror.

19 CLERK: What says the defense?

20 DEFENSE COUNSEL: Please excuse the

21 juror.

22 CLERK: Have a seat, sir. You've

23 been excused from this trial at this time.

24 (JUROR NUMBER 131 EXCUSED)

25 CLERK: Number 90, Edna Martin.

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1 What says the State?

2 SOLICITOR: Please present the
3 juror.

4 CLERK: What says the defense?

5 DEFENSE COUNSEL: Swear the juror.

6 CLERK: Make your way forward, ma'am.

7 (JUROR NUMBER 90 SEATED)

8 CLERK: Number 68, Eric Holloman.

9 What says the State?

10 SOLICITOR: Please present the
11 juror.

12 CLERK: What says the defense?

13 DEFENSE COUNSEL: Please present the
14 juror.

15 CLERK: Make your way forward, sir.

16 (JUROR NUMBER 68 SEATED)

17 CLERK: When I call your name and
18 number, please answer:

19 Number 30, Leon Chisholm.

20 JUROR NUMBER 30: Here.

21 CLERK: Number 119, George Rembert?

22 JUROR NUMBER 119: Here.

23 CLERK: Number 53, Anthony Fields.

24 JUROR NUMBER 53: Here.

25 CLERK: Number 107, India Nelson.

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1 JUROR NUMBER 107: (No verbal
2 response).
3 CLERK: Number 122, Emma Richardson.
4 JUROR NUMBER 122: Here.
5 CLERK: Number 7, Walter Vaughn.
6 JUROR NUMBER 7: Yes, sir.
7 CLERK: Number 159, Todd Lowder.
8 JUROR NUMBER 159: (No verbal
9 response).
10 THE COURT: Number 45, Matthew
11 Driggers.
12 JUROR NUMBER 45: Here.
13 THE COURT: Number 31, Terry Choice.
14 JUROR NUMBER 31: Here.
15 THE COURT: Number 153, Ella
16 Williams.
17 JUROR NUMBER 153: Ella Williams.
18 THE COURT: Number 133, Brandon
19 Simmons.
20 JUROR NUMBER 133: Here.
21 THE COURT: Number 137, Kenneth
22 Smith.
23 JUROR NUMBER 137: Here.
24 CLERK: Number 9, Edna Martin.
25 JUROR NUMBER 9: Yes, sir.

State of South Carolina v. Bernard McFadden

29

Case No. 10-GS-43-0257

Jury Trial of November 16-18, 2010

Before The Honorable W. Jeffrey Young

1 CLERK: Number 68, Eric Holloman.

2 JUROR NUMBER 68: Here.

3 THE COURT: Thank you, Ladies and
4 Gentlemen. Y'all have been selected for this
5 trial as the jury. I'm going to send you back
6 to your jury room for a few moments and then I
7 will bring you back out.

8 (JURY OUT)

9 THE COURT: Are there any objections
10 from the State as to the jury as struck, any
11 matters which need to be discussed?

12 MR. GRIFFIN, SOLICITOR: Nothing,
13 Your Honor.

14 THE COURT: Defense?

15 MR. BRUNSON: Nothing with regards
16 to the jury.

17 THE COURT: Thank you. All right,
18 Ladies and Gentlemen, you're excused from this
19 jury room at this point in time.

20 (JURY PANEL EXCUSED)

21 MR. BRUNSON: Your Honor, I
22 believe that -- we would make a Motion to
23 sequester the witnesses.

24 THE COURT: Except for the chief
25 investigation officer, ---

1 MR. GRIFFIN, SOLICITOR: Yes, sir.

2 THE COURT: And, Your Honor, there
3 is also the matter of identification that we
4 would like to ---

5 MR. GRIFFIN, SOLICITOR: Your
6 Honor, since we're in close quarters in this
7 courtroom, I've got a witness outside that I
8 need to get, who made the identification.

9 THE COURT: Okay.

10 MR. GRIFFIN, SOLICITOR: Let me go
11 check on him.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: All right, Mr. Griffin,
15 you may call your witness to the stand.

16 MR. GRIFFIN, SOLICITOR: Yes, Your
17 Honor. The State would call Derrick McDonald.

18 (WITNESS TAKES STAND)

19 DERRICK McDONALD, being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY MR. GRIFFIN:

24 Q. Mr. McDonald, on July 2, 2009, what were
25 you doing on that day?

1 A. All I am sure is that I was at my address,
2 at home at the time.

3 Q. At that time you lived on Sherwood Street?

4 A. Right.

5 Q. Okay. Did you come into contact with
6 anybody on that evening?

7 A. I came into contact -- at that time, I
8 didn't knew (sic) Mr. McFadden.

9 Q. Tell us a little bit about how you'all came
10 into contact with each that day?

11 A. Well, I was in the back room. I'd got off
12 work and then in about thirty minutes, maybe
13 forty minutes, my little girl -- there was a
14 knock on the door, my little girl went to the
15 door to see who is was and, uh, they came back
16 in the room, it the bedroom, and they said,
17 'Daddy, there's somebody, a man, out there out
18 there on our porch, laying down, and he's
19 bleeding.' I asked them, uh, -- you know, I
20 kinda repeated what they said. I just told
21 them to get away from the door and I went on to
22 see what was going on.

23 I went on the outside and I asked him,
24 'What's wrong?' He told me that, 'I fell off
25 my bicycle.' That he fell off his bicycle.

1 So I said, 'Where you live at?' And he said,
2 'I live over there -- over there off Industrial
3 Road by Cohen's Concrete.'

4 Q. Okay. Now, when he came -- when you met
5 him at the door, did you notice anything
6 particular about him?

7 A. He was bleeding.

8 Q. Did you notice any individual
9 characteristics about what he was wearing?

10 A. It's been so long that I've forgot.

11 Q. Okay. Did he have a hat on?

12 A. I don't think so.

13 Q. Now, when you looked at him, was the porch
14 lit?

15 A. Yeah, the porch was lit but where the porch
16 light was, it was on the right-hand side and he
17 was on the left-hand side of the porch and the
18 porch light wasn't that bright.

19 Q. What did he ask you to do that night?

20 A. He told -- he asked me could I give him a
21 ride home, so -- he said that he fell off his
22 bike, so I asked him, 'You got cut like that
23 just falling off your bike?' And I said, 'if
24 you live on Industrial Road by Cohen Concrete,
25 why is you -- how you got stuck in Sherwood?'

1 Q. Did you end up giving him a ride, though?

2 A. Yeah, I ended up giving him a ride.

3 Q. Where did you take him?

4 A. I took him on the south side of town, over
5 there on Olive Street.

6 Q. Okay. How long would you say that it took
7 you to get from Sherwood to Olive Street?

8 A. Twenty to thirty minutes.

9 Q. Y'all were together that whole time?

10 A. Yes, sir.

11 Q. Now, did -- was he wearing glasses that
12 night?

13 A. Yes, sir.

14 Q. Now, subsequently did you have an
15 opportunity to meet with Detective Richburg at
16 the law enforcement center?

17 A. Yes, sir.

18 Q. And what did you -- what was the purpose of
19 that meeting?

20 A. He wanted a statement on, you know, how it
21 came about him -- and after I found out, you
22 know, what took place and as I was bringing him
23 on the south side of town, there was a
24 convenience store right there and see, you
25 know, the way that he was acting while I was

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1 bringing him cross town. You know, all the
2 police with their lights and stuff on, and --
3 he told me, you know, 'hey, don't drive slow,
4 get going man, don't look that way 'cause the
5 police might want to pull you over.'

6 Q. Okay. Now, when you met with Detective
7 Richburg, did he show you any documents?

8 A. Yes.

9 Q. I am going to show you what has been marked
10 for identification purposes as State's Exhibit
11 1 and ask you if you recognize this document?

12 A. Yes, sir.

13 Q. Whose signature do you see on that
14 document?

15 A. My signature, Derrick McDonald.

16 Q. Did Detective Richburg read that to you?

17 A. Yes, sir.

18 Q. I'll show you what has been marked for
19 identification purposes as State's Exhibit 2
20 and ask if you recognize this document.

21 A. Yes, sir.

22 Q. What is that?

23 A. That is -- number three is my initials and
24 date.

25 Q. You said number three. What is above

1 number three?

2 A. The same guy that I seen at the house that
3 night.

4 Q. Okay. The same guy that you gave a ride
5 to?

6 A. Right.

7 Q. And you initialed below the number three?

8 A. Right.

9 Q. That's your handwriting?

10 A. That's my handwriting.

11 Q. Did Detective Richburg suggest that you
12 pick any particular person out of that six
13 person lineup?

14 A. He suggested -- I mean, he said to 'make
15 sure that you pick the right person out.'

16 Q. Did he tell you who the right person was?

17 A. No, sir.

18 Q. Did he point to any of those people in the
19 picture?

20 A. No, sir.

21 Q. Were you under the influence of any alcohol
22 that day when you made that identification?

23 A. No, sir.

24 Q. Did Detective Richburg force you to pick
25 anybody out?

1 A. No, sir.

2 Q. Now, do you see the person that you rode
3 with that night and the person that showed up
4 at your house that right here in the courtroom
5 today?

6 A. Yes, sir.

7 Q. Where is he?

8 A. Over there, sitting with Counselor Brunson.

9 Q. Now, does he look any different today than
10 he did that night?

11 A. Yes, sir, he looks a whole lot different
12 now, weightwise.

13 Q. Weightwise, he is a little heavier ---

14 A. Right.

15 Q. --- now than he was then?

16 A. Yes, sir.

17 MR. GRIFFIN, SOLICITOR: Please
18 answer any questions that Mr. Brunson might
19 have.

20 THE COURT: Mr. Brunson.

21 MR. BRUNSON: Thank you, Your
22 Honor.

23 CROSS EXAMINATION

24 BY MR. BRUNSON:

25 Q. Mr. McDonald, ---

1 A. Yes, sir?

2 Q. You testified earlier that you were home
3 and your girl said that there was a man at the
4 front porch, or something to that effect?

5 A. Yes, sir.

6 Q. And the first time you saw the person who
7 you've identified today was when? When he came
8 on the front porch?

9 A. When I came out on the front porch.

10 Q. Had you ever seen him before?

11 A. No, sir.

12 Q. Now, you testified that you met with
13 Detective Richburg. Was that the same night of
14 the incident where you took him home, or was it
15 the next night?

16 A. Say that again?

17 Q. Which night did you meet with Detective
18 Richburg, the same night or the next night?

19 A. I think that it was the next day.

20 Q. Next day?

21 A. (No verbal response).

22 Q. Now, did you talk to Detective Richburg
23 prior to meeting with him at the station?

24 A. Did I spoke (sic) to him prior to that?

25 Q. Yeah.

1 A. Well, I talked to -- you know, that night.
2 But I had to go in the next day and finish
3 giving the statement and was given a photo
4 lineup.

5 Q. Now, who set that up?

6 A. Huh?

7 Q. Who set up the photo lineup? Who told you
8 to come to the station?

9 A. I can't recall.

10 Q. So ---

11 A. Whoever it was taking the statement that
12 night.

13 Q. So your testimony is that you don't know
14 whether you talked to Detective Richburg that
15 night or not?

16 A. I talked to quite a few officers that
17 night, a lot of people down at the law
18 enforcement ---

19 Q. So you don't know if you talked to
20 Detective Richburg that night?

21 A. I'm not sure.

22 Q. All right. Now, when you arrived, was the
23 photo lineup already prepared?

24 A. No, sir. I mean, it was prepared paperwise
25 but he hadn't give it to me, he told me 'I want

1 you to look at something.'

2 Q. How long were you at the station before you
3 were presented with the photo lineup?

4 A. About twenty minutes.

5 Q. Did you have an interview with the
6 detective before he presented the photo lineup?

7 A. No, sir.

8 Q. All right. Did you -- so you never told
9 the detective who put together this lineup who
10 you had given a ride to?

11 A. I missed that.

12 Q. Did you ever talk to anybody from the
13 police department and tell them who you gave a
14 ride that night?

15 A. Okay. The officer, when he came up with
16 the photos, he explained to me -- he -- okay,
17 you know, 'You look at these photos. If you
18 recognize the person you sent that night' -- I
19 mean, just the person. 'If that's the person
20 or if that is the person, if you pick them out,
21 you initial and you date it.' So I picked
22 these guy right here out from what he showed
23 me.

24 A. The question is, did you know his name?

25 A. No, sir.

1 Q. You never told law enforcement that you'd
2 given Bernard McFadden a ride home?

3 A. (No verbal response).

4 Q. You never said that to the police?

5 A. I never -- yeah, I told them that.

6 Q. So you knew his name?

7 A. I knew what he told me, but I wasn't sure
8 that was his name. He told my family members
9 his name. I never asked him his name.

10 Q. All right. Let me ask you another
11 question, did you tell law enforcement on the
12 night that you gave the gentleman a ride home a
13 name of the person that you gave a ride ---

14 A. I called back to my wife and I asked her
15 what was the name. Law enforcement was there
16 at the time, so -- I mean, he told them his
17 name but he never told me. I never requested
18 or asked his name. I just see a guy that was
19 hurt.

20 Q. So the answer is yes, that you told the
21 police 'Bernard McFadden'?

22 A. I told them Bernard. My wife told me
23 "Bernard."

24 Q. You told them Bernard?

25 A. Right.

1 Q. When did that happen? The night that you
2 gave him the ride?

3 A. Right.

4 Q. I am going to ask you to take a look at
5 what is marked as State's Exhibit 2. You
6 testified on direct that you recognized that
7 document. Now, you also concede that there are
8 writings on this page; right?

9 A. Right.

10 Q. What writing appears on that photo lineup?

11 A. On number two?

12 Q. Any writing, any writing on there at all.
13 What do you see?

14 A. (No verbal response).

15 Q. Is there a "B.M." on that document?

16 A. No, not on two. It's on three.

17 MR. GRIFFIN, SOLICITOR: Your
18 Honor, I believe that he is referring to
19 document number two. I think he is confusing
20 the numbers of the lineup. That's what ---

21 MR. BRUNSON: Let the record
22 reflect that I am only passing Mr. McDonald
23 State's Exhibit 2, which is a photo lineup.

24 THE WITNESS: Okay.

25 CROSS EXAMINATION CONTINUED

1 BY MR. BRUNSON:

2 Q. On the document that I just passed you ---

3 A. You talked about this one.

4 Q. On that document, is there any writing on
5 it?

6 A. Yeah.

7 Q. Okay.

8 A. My initials and date.

9 Q. All right. There are initials and a date,
10 and that's in what color ink?

11 A. Looks to me like blue.

12 Q. Who made that writing?

13 A. I made that writing.

14 Q. All right. Is there any other writing on
15 the document?

16 A. No more than number two.

17 Q. All right. Now, describe for us what you
18 see on this page. You see pictures, right?

19 A. Right.

20 Q. And you see numbers under those pictures,
21 correct?

22 A. Right.

23 Q. Is there a number circled under the
24 picture?

25 A. Yes, sir.

- 1 Q. Is that a writing?
- 2 A. It's a mark.
- 3 Q. Okay, so it's a mark?
- 4 A. (No verbal response).
- 5 Q. So number three is circled?
- 6 A. Circled.
- 7 Q. And what color ink is it circled in?
- 8 A. Looks to me like black.
- 9 Q. All right. Now, you just testified that
- 10 you wrote your initials in blue; right?
- 11 A. Right.
- 12 Q. And you wrote the date in blue?
- 13 A. Right.
- 14 Q. So you had a blue pen?
- 15 A. Right.
- 16 Q. Did you have a black marker too?
- 17 A. Probably did. Probably did.
- 18 Q. So you can't recall?
- 19 A. I mean, I knew that I had an ink pen.
- 20 Q. All right.
- 21 A. And I don't know if I had a marker or who
- 22 did. I brought neither one of them in my
- 23 possession, neither an ink pen, neither a
- 24 marker. So evidently it was given to me at the
- 25 law enforcement center. I mean, they may have

1 given me a black marker and a blue ink pen.

2 Q. But you're saying 'probably', so you don't
3 remember?

4 A. Yeah.

5 Q. So you're saying your testimony is that --
6 so is it your testimony that you circled number
7 three with a black marker?

8 A. Yes, sir.

9 Q. And then you initialed in blue ink?

10 A. Yes, sir.

11 Q. And dated it?

12 A. Yes, sir.

13 Q. Why did you do that?

14 A. I mean, that's just what was given to me at
15 the time.

16 Q. So you remember, all of a sudden.

17 A. All of a sudden.

18 Q. What helped you to remember?

19 A. I mean, you know, I -- I know that I didn't
20 come in there with a marker, neither an ink
21 pen. So evidently somebody told me to initial
22 it in ink and circle it in a marker.

23 Q. Isn't it true that you didn't circle that
24 three?

25 A. No, it's not. No, it's not.

1 Q. Tell us why you used a black marker to
2 circle that and -- what happened?

3 A. Well, like I explained, maybe ---

4 THE COURT: He's already explained
5 that's what he was given. I think further
6 testimony from the officer would go to that.
7 He has answered that question.

8 MR. BRUNSON: I understand, Your
9 Honor, but I didn't understand his answer.

10 THE COURT: Well, I heard him. He
11 said that he circled it with a black pen and
12 then he had the blue one when he signed it.

13 MR. BRUNSON: I understand that he
14 explained he what he did.

15 THE COURT: You might not like his
16 answer, but ---

17 MR. BRUNSON: I asked a different
18 question. I asked why did he use different
19 pens.

20 THE COURT: And he said that's what
21 was given to him. I mean, that was his answer.

22 MR. BRUNSON: I didn't hear him.
23 I didn't understand him.

24 CROSS EXAMINATION CONTINUED

25 BY MR. BRUNSON:

1 Q. All right. In this document, you circled
2 number three under the person who you
3 identified as my client?

4 A. Correct.

5 Q. Now, isn't it true that this number three
6 appears larger to you than the other numbers?

7 A. Looks larger?

8 Q. That's my question.

9 A. All these numbers look equal size.

10 MR. BRUNSON: No further
11 questions.

12 THE COURT: Any redirect?

13 MR. GRIFFIN, SOLICITOR: No, sir,
14 Judge.

15 THE COURT: Could I see the exhibit?
16 (Upon review), you may step down.

17 (WITNESS STEPS DOWN)

18 MR. GRIFFIN, SOLICITOR: Your
19 Honor, we would call Detective Richburg.

20 (WITNESS TAKES STAND)

21 ROBBIE RICHBURG, being duly sworn to
22 tell the truth, the whole truth and nothing but
23 the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. GRIFFIN, SOLICITOR:

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Case No. 10-GS-43-0257

Jury Trial of November 16-18, 2010

Before The Honorable W. Jeffrey Young

1 Q. Detective Richburg, by whom are you
2 employed?

3 A. Sumter City Police Department.

4 Q. In what division are you employed?

5 A. I am currently assigned to investigative
6 service division, specifically property crimes.

7 Q. Okay. Did you become involved with this
8 case?

9 A. Yes, sir, I did.

10 Q. Now, tell us about how Mr. McDonald came to
11 ---

12 A. The night of the incident, officers
13 responded to the scene. They were told that --
14 he said that he had given someone a ride.
15 Detective Culik and Detective John Litaker
16 responded to the scene as well. Detective
17 Culik processed the scene and John Litaker
18 helped out interviewing the persons.

19 Q. Did you have an occasion to compile a photo
20 lineup?

21 A. I did. There was -- the original reporting
22 officer forwarded what is called a lieutenant's
23 report, which is a document goes along with the
24 report, and in that lieutenant's report it
25 stated that he was approached by a witness and

1 given the name of Bernard. Due to my knowledge
2 and my experience, I knew of someone who lived
3 in that area with the general characteristics,
4 the glasses and the description that I was
5 given, so I -- I then compiled a photo lineup
6 which included Mr. Bernard McFadden along with
7 five other individuals of similar
8 characteristics: glasses, haircut. Prepared
9 that and had it ready for the witness.

10 Q. I am going to show you what has been marked
11 for identification purposes as State's Exhibit
12 1 and ask you if you could identify that.

13 A. Yes, sir, this is our Sumter Police
14 Department witness lineup identification form.
15 It states to witness, where he prints his name,
16 the position of the person in the lineup, from
17 left to right, beginning with the one on your
18 left. 'If you have previously seen one or more
19 of the persons in the lineup, place an "X" in
20 the appropriate square corresponding to the
21 number of the person in the lineup. When
22 finished, sign your name and fill in the date
23 and time. When completed, give this sheet to
24 the officer.' This is the coversheet, Your
25 Honor. We put this on the front of our lineup

1 before we present it to the witness and give
2 them instructions 'to be sure who you're
3 talking to' or 'who you are identifying in the
4 lineup.' This is on the front of the lineup.

5 Q. Were you present when Mr. McDonald reviewed
6 that and signed it?

7 A. Yes, sir, I was.

8 Q. Who else was with you?

9 A. Senior Detective.

10 Q. Detective, I am going to show you what has
11 been marked State's Exhibit, for identification
12 purposes, 2 and ask if you recognize that?

13 A. This is a photo lineup that was compiled
14 with Mr. Bernard McFadden.

15 Q. Which number is that?

16 A. He's number three in this lineup.

17 Q. Now, you compiled the lineup?

18 A. That's correct.

19 Q. Okay. Now, did Mr. McDonald pick anybody
20 out of there?

21 A. He did. Whenever he was given the lineup,
22 he picked Mr. McFadden, number three, as being
23 the person that he gave a ride to that night.

24 Q. Okay. Now, when you handed him the lineup,
25 did you provide him with instruments to write

1 with?

2 A. Yes, sir, I did.

3 Q. Now, what did you give him?

4 A. I gave him a Sharpie and a MagicMarker, the
5 Sharpie to circle the -- the reason that it is
6 marked in blue, as far as his initials and the
7 date and time, is so that I distinguish in my
8 case file the original from a copy. I do that
9 for that reason, because -- if you look on the
10 other one, it's all blue. In this one we have
11 it circled in black. That's so that I would
12 know that's my original document.

13 Q. Now, did you or anyone in your presence
14 influence or suggest to Mr. McDonald that he
15 pick out any particular one?

16 A. No, sir, we did not.

17 Q. Did he talk to any other witnesses in your
18 presence before or during the lineup?

19 A. No, sir, he did not.

20 Q. Did he appear to be under the influence of
21 any alcohol or drugs that night?

22 A. No, sir, he didn't.

23 Q. Okay. Did you force him to make a
24 decision?

25 A. No, sir, I did not.

1 Q. Was he sure of the person that he picked
2 out?

3 A. Yes, sir, he was.

4 Q. Did you show him any other pictures of
5 anybody else other than that six-person photo
6 lineup?

7 A. No, sir, I didn't.

8 MR. GRIFFIN, SOLICITOR: Please
9 answer any questions that the defense may have.

10 THE COURT: Mr. Brunson.

11 MR. BRUNSON: Thank you, Your
12 Honor.

13 CROSS EXAMINATION

14 BY MR. BRUNSON:

15 Q. Detective Richburg, is it your testimony
16 that when you received the lieutenant's report
17 that Mr. McFadden already knew the name Bernard
18 McFadden?

19 A. In the lieutenant's report it states that
20 he gave the name "Bernard." Based on my
21 experience, I had charged Mr. McFadden with a
22 burglary prior to this incident of the same
23 nature, the glass was broken, cigarettes were
24 taken, so when the detectives that responded to
25 the scene that night called me and said that it

1 had happened and that they had a witness come
2 up there, with the name of "Bernard", we all
3 knew -- or we -- we knew that Bernard McFadden
4 had been charged just prior to -- that's how I
5 knew that, because I personally had arrested
6 shortly after a burglary, same -- he was in the
7 area and had eighteen packs of cigarettes in
8 his pocket after the burglary.

9 Q. So Detective Culick had worked as the
10 lieutenant before ---

11 A. No, sir, Officer Capell.

12 Q. Gotcha. Okay. Now, I believe that you
13 testified that there were two sheets for a
14 photo lineup?

15 A. That's correct.

16 Q. One where the three was circled in blue and
17 one where the three was circled in black.

18 A. No, sir. This one, the cover sheet where
19 it was marked with an "X" and then this one
20 where we have the black.

21 Q. The first one?

22 A. That's correct.

23 Q. How many people in the room, again?

24 A. Me and the senior detective.

25 MR. BRUNSON: That's all. Nothing

1 further.

2 THE COURT: Anything else?

3 MR. GRIFFIN, SOLICITOR: Nothing
4 further, Judge.

5 THE COURT: All right. You may step
6 down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Mr. Griffin?

9 MR. GRIFFIN, SOLICITOR: Your
10 Honor, the State would submit to the court that
11 the identification was freely and voluntarily
12 made by the witness, Mr. McDonald. He
13 testified that he'd spent twenty to thirty
14 minutes with the defendant, that he had given
15 him a ride across town, that he'd observed him
16 on his front porch and observed that he was
17 wearing glasses, that he was bleeding. He came
18 in a few days later and picked Mr. McFadden out
19 of a lineup, with no suggestion of who to pick
20 from law enforcement, Your Honor. He was sure
21 about his identification. He wasn't under the
22 influence of any drugs and/or alcohol the day
23 that the identification was made. Your Honor,
24 based on what has been presented at this
25 hearing, we would submit that the ID should be

1 admitted.

2 THE COURT: Mr. Brunson?

3 MR. BRUNSON: Your Honor, I would
4 submit that he's testified that he doesn't
5 remember exactly how it came to be that his
6 initials are in blue and that he circled the
7 picture in black, just "probably", and that's
8 speculation.

9 THE COURT: All right. In
10 evaluating an out-of-court identification,
11 there are two things: one, was the identifi-
12 cation process unduly suggestive. I have
13 reviewed the photo lineup and, quite frankly,
14 it's one of the most fair lineups that I have
15 ever viewed: the hair is the same, they all
16 have the same skin tones, all very similar.
17 It was not unduly suggestive. The witness had
18 ample opportunity to look at the defendant near
19 the time, he came to his place, he saw him on
20 his front porch, and at that point in time even
21 if there wasn't real good light, then he gave
22 him a ride in his vehicle and was with him for
23 thirty to forty minutes therefore. So the
24 witness certainly would not only have been able
25 to see him on the porch but then was in the car

1 with him, talking with him. He had there with
2 the man, in close proximity. The witness was
3 certain of the defendant's identification. So
4 weighing all these factors, I find that the
5 identification process was not so suggestive
6 and that the witness had not been tainted prior
7 to that, and that he had ample opportunity to
8 view the defendant. Therefore, I am going to
9 allow the out-of-court identification be
10 admitted in trial. Anything further?

11 MR. BRUNSON: Your Honor, before
12 we bring the jury in, I moved to sequester the
13 State's witnesses. I do need to have the
14 evidence custodian to bring the evidence back
15 in before we start.

16 THE COURT: Do you have any
17 objection to the evidence custodian ---

18 MR. BRUNSON: No.

19 THE COURT: We can wait for him to
20 get here. Why don't we bring the jury back in
21 in about ten minutes.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: Anything else before we
25 bring the jury in?

1 MR. GRIFFIN, SOLICITOR: We're
2 ready for the jury, Your Honor.

3 (JURY IN)

4 THE COURT: Please swear the jury.

5 (WHEREUPON JURY SWORN)

6 THE COURT: Ladies and Gentlemen, I
7 know you will be glad to know that in two years
8 we will have a brand new courthouse with an
9 air-conditioning and heating system that is
10 consistent.

11 Ms. India Nelson, I am going to name
12 you as foreperson of this jury. So from here
13 on out, she will sit in this seat. The rest of
14 you can sit wherever you want to, but she will
15 always sit in that seat.

16 All right, Ladies and Gentlemen,
17 before we begin this trial, I want to tell you
18 that this trial will probably be different from
19 what you might expect. Many people never have
20 the opportunity to attend and be a part of an
21 actual court session as you are today. You may
22 think, from watching TV, reading books, that
23 trials are always full of high drama, intense
24 action and gripping circumstances. Now, while
25 all this may be true at times, this trial is

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1 not for entertainment. This is a real trial, a
2 fundamental part of our democracy. This is a
3 search for the truth, an effort to make sure
4 than justice is done. It will proceed slowly,
5 deliberately; the exact opposite of what you
6 see in movies or TV or in books.

7 This courtroom is a place of honor.
8 It's dedicated to the protection and
9 preservation of our citizen's rights and is the
10 greatest justice system that's ever been
11 created.

12 The attorneys who are appearing before
13 you are advocates for the parties that they
14 represent, but first and foremost they are
15 officers of this court and are sworn to uphold
16 the integrity and the fairness of our judicial
17 system to help you, the jury, in your search
18 for the truth. You should expect them to be
19 professional, competent and ethical in their
20 representation of their clients.

21 You, Ladies and Gentlemen, as you will
22 recall, you just took an oath to listen to the
23 evidence in this case and reach a fair and just
24 verdict. In that, you expected to be
25 professional, reasonable and ethical as well.

1 Now, what I am going to tell you now
2 is intended just to serve as an introduction to
3 the trial of this case. There remarks are not
4 a charge on the law. I will charge you the law
5 at the conclusion of the trial. This is merely
6 an explanation of the procedure that we will
7 follow so that you may better understand what
8 is happening. Understand, Ladies and
9 Gentlemen, that you will not be allowed to make
10 notes during this trial, so therefore it is
11 very important that you listen closely
12 throughout this trial.

13 The defendant in this case is charged,
14 by Indictment 10-GS-43-0257 with burglary in
15 the second degree. The actual elements of
16 burglary will be explained to you.

17 The indictment itself is simply the
18 charging paper by which the case itself is
19 brought forth and is not any evidence of the
20 allegation(s) therein.

21 The Defendant has pled Not Guilty to
22 the charge in the indictment. The State,
23 therefore, has the burden of proving all of the
24 elements to the charge of the indictments below
25 a reasonable doubt.

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1 It will be your duty, Ladies and
2 Gentlemen, as the jury to decide whether the
3 State has met that burden. Your purpose is to
4 do determine the facts of the case. You will
5 determine the evidence from the testimony of
6 witnesses that you will hear and all other
7 evidence that is introduced in court. It is up
8 to you to determine the inferences which you
9 feel may be properly drawn.

10 Ladies and Gentlemen, you have sworn
11 to evaluate the evidence deliberately and
12 carefully because, ordinarily, there is no way
13 to correct an erroneous conclusion of facts by
14 a jury.

15 On the other hand, the same law that
16 makes you the judge of the facts makes me the
17 judge of the law. The law as given to you by
18 me is the only law that you may consider. You
19 must accept the law as I give it to you and
20 follow it, even though you may disagree. I
21 cannot tell you what the facts are and you
22 cannot disagree with me about what the law is
23 or what the law should be.

24 Your job is to take the law as I give
25 it to you and apply it to the facts as you find

1 them from the testimony of the witnesses and
2 any other evidence that may be introduced.

3 After hearing the evidence, you will
4 deliberate and render a true and just verdict
5 under the solemn oath that you just took as a
6 juror.

7 Until I tell you to begin your
8 deliberations at the conclusion of the trial,
9 you must not discuss the case with any of your
10 fellow jurors except when so authorized by me.
11 You may not use a computer or other electronic
12 device with communication ability while here in
13 the courthouse or during your deliberations.
14 These devices may be used during lunch breaks
15 but may not be used to research, attain or
16 disclose information about -- information about
17 the case, information about a party, the
18 defendant or any officer of the court. You may
19 not listen to any news accounts about the case
20 or read any media. You may not do juror
21 research on any topic that you think might in
22 helpful in deciding the case.

23 After the case is submitted to you,
24 you must discuss it only in the jury room with
25 your fellow jurors.

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1 The attorneys, the parties in this
2 case are advised not to talk with you at all.
3 So if you should see anyone involved in the
4 case in the hallway and they do not speak,
5 they're not being unfriendly, they are just
6 following my instructions.

7 Now, Ladies and Gentlemen, you are
8 instructed that you may not decide any issue in
9 this case until all the evidence has been
10 presented, the attorneys have made their
11 closing arguments and I have instructed you on
12 the law. It is your solemn responsibility to
13 determine the guilt or the innocence and your
14 verdict must be basically solely on the
15 evidence you hear during this trial and also on
16 the law as I instructed it to you during in and
17 at the close of the trial.

18 In just a moment the Solicitor will
19 make what is called an opening statement, in
20 which he will explain to you what he believes
21 the issues are.

22 The defense attorney may also make an
23 opening statement, although he is not required
24 to do so.

25 What the attorneys tell you during

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1 their opening statements or their closings is
2 not evidence. It's just their contention of
3 what they believe the issue are in this case.

4 Now, during this trial you may one of
5 the lawyer say something like 'Your Honor, we
6 have a question of law, matter or law' or 'Your
7 Honor, Objection.' Or, 'May we approach the
8 bench?' Sometimes, obviously, it will be
9 necessary to excuse you from the courtroom for
10 a short while so that the attorneys and I can
11 discuss a matter of law. The reason for this
12 because, as I've said, you're the judges of the
13 facts. Some times when I discuss matters of
14 law with the attorneys, it may be necessary for
15 make some comment on the fact in making a my
16 ruling on whether or not a particular law
17 applies. As I said, I am not supposed to tell
18 you what the facts are, so I will excuse you
19 from the courtroom while any such discussion
20 takes place so that you will in no way be
21 influenced by anything that I might say or do
22 in connection with the facts.

23 Also during the trial you may hear one
24 of the attorneys say they have an objection,
25 and state the grounds. You will hear me say

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1 that I either sustained the objection or
2 overrule the objection. Whatever my ruling, do
3 not think that I favor one side over the other.
4 I do not. Nor should you infer that the
5 objecting party is trying to hide something
6 from you. In this courtroom, as in all
7 situations in life, there are certain rules
8 that must be followed. The officers of these
9 court as merely trying to follow the rules of
10 evidence in making their objections, and I rule
11 based on what I believe the law of this state
12 to be concerning the evidence being presented.

13 In determining what the true facts are
14 in this case, you must decide whether or not
15 testimony of a witness is believable. It
16 would be my responsibility to rule as a matter
17 of law as to whether certain testimony is
18 admitted. Once testimony is admitted, whether
19 or not you decide to believe it is solely for
20 you, the jury, to determine.

21 In deciding whether to believe a
22 witness, you have the right to consider the
23 interests of any witness, the bias of any
24 witness, the prejudice of any witness, the
25 opportunity for the witness to have actually

1 observed, to have observed the matter or thing
2 that the witness may testify and how the
3 witness acts on the witness stand. You have
4 the right to consider anything that is in the
5 record that will help you evaluate the
6 testimony of the witness. It is your duty,
7 Ladies and Gentlemen, to observe the witnesses
8 and to pay close attention to the remarks of
9 the attorneys and to the court. Please do not
10 let your attention wander.

11 At the end of all the testimony, after
12 argument of counsel, the charge on the law by
13 me, you will then be in a position to determine
14 what the true facts are and can apply the law
15 to those facts and, thus, make a true and just
16 verdict.

17 Madame Foreman, you are the jury's
18 spokesperson here in court. You will also sign
19 the verdict form, and I'll give you more
20 instruction on that later.

21 Now, in order to preserve everyone's
22 rights, I want to give anyone the opportunity
23 to object to any of my comments. Does the
24 State have any objections to my opening?

25 MR. GRIFFIN, SOLICITOR: None from

1 the State, Your Honor.

2 THE COURT: Does the defense have
3 any objections to my opening remarks?

4 MR. BRUNSON: None from the
5 defense, Your Honor.

6 THE COURT: Thank you. We will now
7 proceed with the jury trial.

8 MR. GRIFFIN, SOLICITOR: Ladies and
9 Gentlemen of the jury, as Judge Young just told
10 you, now is my opportunity to give you a "road
11 map", so to speak, of what the State tends to
12 prove in this case. In opening statement, we
13 kinda lay out what we intend to prove to you.

14 You may be asking how the proof comes.
15 Primarily it comes from testimony from that
16 witness stand and it comes from tangible
17 exhibits of evidence that anything come into
18 play. Also in this case there will expert
19 testimony, which I will get into later.

20 Ladies and Gentlemen, what the -- the
21 case is about a case that occurred over the
22 evening of July 2nd, into July 3rd, right around
23 midnight at the Young Food Store at 940 East
24 Liberty Street. Some individuals were there to
25 pressure wash the building and noticed that a

1 brick had been thrown through a glass door.

2 So law enforcement was notified and
3 they responded to the scene. Officer David
4 Capell was the first officer on the scene. He
5 secured the location. By securing the
6 location, that just means that he didn't let
7 anybody else inside. He observed the brick
8 that had been thrown through the front door and
9 called for further backup, called for the on-
10 call detective to come out and investigate
11 that.

12 Now, while the scene was being
13 secured, Officer Capel was approached by an
14 individual named Derrick McDonald. Derrick
15 McDonald drove up to the Youngs Market and
16 spoke with Officer Capell. He noticed law
17 enforcement vehicles there and told officers
18 that he -- that he may know something. He'd
19 given a ride to a man that night. A man that
20 had showed up at his residence off of Sherwood
21 Street, which is in fairly close proximity to
22 the Youngs Market.

23 He said that when this man showed up
24 at his front door, he was bleeding, that he
25 wore glasses, that he was looking for a ride to

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1 the south side. Mr. McDonald, who was at his
2 home minding his own business, decided 'I will
3 give this man a ride.' He took him back down
4 past the Youngs Market.

5 He will tell you about what happened
6 on that ride from Sherwood Street to the south
7 side, how the person in the car with him
8 started acting nervous as they approached
9 Youngs Market. Said, 'No, man, don't slow
10 down. They might pull you over, want to talk
11 to you.'

12 Ladies and Gentlemen, he took it on
13 his own initiative to stop and talk with law
14 enforcement. He gave Officer Capell seven
15 packs of Newport cigarettes that the individual
16 that had ridden with him had given him for the
17 ride -- seven packs of Newport.

18 Ladies and Gentlemen, you'll hear from
19 law enforcement detectives that went in to
20 process the crime scene. Processing a crime
21 scene just means that they go in, observe the
22 crime scene number one, take pictures of what
23 they see. Ladies and Gentlemen, you will see
24 these photographs that we have. In these
25 photographs, you'll see Newport cigarettes

1 strewn all over the floor of Youngs Market.

2 You will also see photographs of what is
3 droplets suspected to be blood, inside the
4 store.

5 You will hear from Detective Irene
6 Culick, who was the on-call detective that
7 night. She responded to the scene, didn't let
8 anybody else in the store. She went in, took
9 the photographs and collected samples of what
10 she suspected to be blood in there. She will
11 tell you that she took these samples back to
12 the law enforcement center and placed them into
13 the evidence locker where the evidence is kept.
14 She will tell you about what she saw and what
15 she did.

16 You will also hear from Janice
17 Billups, who was the manager of that particular
18 Youngs Market. She will tell you that that
19 night that they were missing Newport
20 cigarettes, \$480 worth of Newport cigarettes.

21 Also you will hear that they were
22 missing about a hundred and twenty dollars
23 worth of lottery tickets.

24 Ladies and Gentlemen, she will tell
25 you that -- she was the manager of the store

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1 and she will tell you about how their
2 procedures are for cleaning up the store when
3 they close at night.

4 Ladies and Gentlemen, you will also
5 hear from someone by the name of Taylor Brown,
6 who was at that residence on Sherwood Street
7 that night and answered the door, observed a
8 man bleeding, a man wearing glasses. He was
9 asking for the man that 'drove the yellow
10 truck.' That is important because the evidence
11 will show that Derrick McDonald drives a big
12 yellow truck. It stands out. A yellow box
13 truck. She will tell you about the bleeding
14 man that showed up at the door.

15 Ladies and Gentlemen, you will also
16 hear some expert testimony. You will hear from
17 two ladies from the State Law Enforcement
18 Division. You will hear about how they
19 received the samples of what was suspected to
20 be blood from Youngs Market. That they also
21 received swabs from the inside of Bernard
22 McFadden's, the defendant, mouth. That they
23 compared these samples of the suspected blood
24 and the swab from the defendant's mouth. You
25 will hear expert testimony that will tell you

1 who that suspected blood belonged to.

2 Ladies and Gentlemen, as I told you
3 before, the case is all about the evidence that
4 is presented to you from testimony, from the
5 people that were there that night, and the
6 photographs, what actually occurred that night.
7 We will be able to show you what occurred that
8 night through the photographs, through the
9 testimony of the witnesses and through the
10 expert testimony of the analysts from the South
11 Carolina Law Enforcement.

12 Ladies and Gentlemen, as Your Honor
13 told you, you are the judges of the facts. It
14 is the State's job to prove to you what
15 occurred -- to prove to you the facts. That is
16 your sole duty in this case, is to be the judge
17 of the facts.

18 Ladies and Gentlemen, we just ask that
19 you pay close attention to the testimony,
20 carefully look at the exhibits that are
21 presented to you. We feel that at the end of
22 the trial that we will have proven that Bernard
23 McFadden committed the burglary at Youngs
24 Market by throwing a brick through a glass
25 door, went in the store and at some point cut

1 himself, took some cigarettes, took some
2 lottery tickets and left some blood on the
3 floor. That he entered the building of another
4 in the nighttime with the intent to commit a
5 crime, not just intent but the crime was
6 actually committed.

7 Ladies and Gentlemen, again I just ask
8 that you pay close attention to the case. At
9 the end, we will have proven to you that
10 Bernard McFadden committed the burglary at the
11 Youngs Food Store at 940 East Liberty Street.

12 THE COURT: Thank you. Mr. Brunson.

13 MR. BRUNSON: Thank you, Your
14 Honor. May it please the court, ---

15 THE COURT: Yes, sir.

16 MR. BRUNSON: Ladies and Gentlemen
17 of the jury, Madame Forelady, good afternoon.

18 Wrong time, wrong place, and wrong
19 person. That's what this case is about.

20 Now, as you were advised earlier by
21 Your Honor, your job as jurors is a very
22 serious one. I would like to take this
23 opportunity to thank you for fulfilling your
24 role, your civic responsibility as serving as a
25 juror.

1 I know that you will be attentive and
2 that you will listen to the evidence as it is
3 presented, as this case is very important to my
4 client, Mr. Bernard McFadden.

5 Mr. McFadden has maintained his
6 innocence since I met him. He was charged with
7 burglary second degree and, as indicated by
8 Assistant Solicitor Griffin, the duty of the
9 State is to prove that my client committed this
10 crime beyond a reasonable doubt.

11 I submit to you that the State will
12 not be able to meet nor satisfy its burden in
13 this case, because the evidence in this case
14 will show that on July 2nd, 2009, my client was
15 on a bicycle; that he normally rides a bicycle;
16 and that on this particular night that he
17 injured himself while on the bicycle.

18 The evidence will show that he did in
19 fact go to the house of a citizen and that he
20 asked for help, asked for a ride. I believe
21 the evidence will show that while he was on
22 this porch that he was bleeding; that while in
23 this truck that he bleeding, all the way to the
24 destination that this individual was put at.

25 Now, it is our position that the

1 evidence will show that on the same night
2 somebody broke a window in Youngs Market store.
3 The evidence will show that DNA evidence was
4 collected. DNA expert will testify in regard
5 to the DNA evidence.

6 Now, what the evidence won't show is
7 who entered that store. What the evidence
8 will not show is who broke the window. What
9 the evidence will not show is who put any
10 biological evidence in Youngs Market. Now,
11 I submit to you that those are very critical
12 aspects of this case.

13 Since the evidence will be deficient
14 in those regards, when you return to your jury
15 room at the conclusion of this case you'll have
16 no choice but to come back with a Not Guilty
17 verdict for Mr. McFadden.

18 Now, you will hear a lot of testimony
19 from law enforcement. In fact, you will hear
20 from about six, maybe even seven. You'll hear
21 from a number of local officers. You will hear
22 from some officers with SLED. Not one of them
23 will be able to tell you that they saw my
24 client in the store.

25 In fact, you'll also learn that the

1 best evidence is not available in this case.
2 That there is no evidence of any videos, there
3 will be evidence of any fingerprints, there
4 will be no evidence of any eyewitnesses.

5 Now, my client sits before you
6 presumed innocent. In fact, ever since he was
7 arrested on this charge he has had that
8 presumption. In fact, today he sits at this
9 table cloaked in a robe of innocence. The
10 burden on the State is remove that cloak and
11 strip away that presumption until my client
12 stands before you guilty in your eyes.

13 The State will not be able to meet
14 that burden, because after Your Honor charges
15 you on the law he'll tell you that in order to
16 be guilty of burglary in the second degree that
17 the State has to prove that my client entered
18 the building. The State has to prove that.
19 That he entered it without consent and with the
20 intent to commit a crime and that this unlawful
21 entry occurred in the nighttime.

22 Well, we contend that this case is
23 filled with reasonable doubt. After all this
24 testimony is presented, that you will come back
25 with a Not Guilty verdict on my client.

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1 Just one other thing, the defendant I
2 this case had indicated earlier and contends
3 that the evidence in this case will show that
4 law enforcement did a poor job. The evidence
5 will show that law enforcement did not
6 investigation whatsoever. The evidence in this
7 case will show that there is a potential that
8 my client was set up. Wrong person, wrong
9 place, wrong time. Thank you.

10 THE COURT: The State may call its
11 first witness.

12 MR. GRIFFIN, SOLICITOR: Your
13 Honor, the State calls Officer David Capell.

14 (WITNESS TAKES STAND)

15 DAVID CAPELL, being duly sworn to tell
16 the truth, the whole truth and nothing but the
17 truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. GRIFFIN, SOLICITOR:

20 Q. Officer Capell, by whom are you employed?

21 A. City of Sumter Police Department.

22 Q. How long have been with the Police
23 Department?

24 A. Almost three years.

25 Q. What division within the Police Department

1 do you work?

2 A. The patrol division.

3 Q. Tell the jury what the patrol division
4 does.

5 A. We patrol around, answer calls for service,
6 check properties in the evening.

7 Q. Now, on the evening of July 2nd, were you on
8 duty?

9 A. Yes, sir, I was.

10 Q. Did you receive any calls for service at
11 that time?

12 A. Yes, sir, at the Youngs Food Market.

13 Q. Okay. Did you respond to that store?

14 A. Yes, sir, I did.

15 Q. When you got there, what did you see?

16 A. The front glass of the door had been broken
17 out and there was a brick laying inside.

18 Q. When you responded to the scene and
19 observed that, what did you do next?

20 A. Called for backup, informed dispatch of
21 what we had and waited for another officer to
22 arrive. Then we went in to clear the building.

23 Q. When you say clear the building, what does
24 that mean?

25 A. To make sure that whoever had broken in was

1 no longer there and to check if -- to make sure
2 that any evidence that is there is preserved
3 until the crime scene can take custody of it.

4 Q. Okay. Now, when you clear a scene, do you
5 touch anything?

6 A. No, sir.

7 Q. When you cleared this particular scene, did
8 you observe anything inside the building?

9 A. Yes, sir. As we went through the front
10 door -- like I said earlier, the brick that had
11 been thrown through was laying like five or six
12 feet inside. As we were clearing the business,
13 we noticed that there were packs of Newport
14 cigarette scattered on and about the floor and
15 that more had been removed from the shelf.
16 There were lottery tickets that had also been
17 ripped off the display stand.

18 Q. Now, tell the jury the difference between
19 clearing the scene and processing the scene.

20 A. Clearing the building is just where we are
21 making sure that whoever went in there is no
22 longer there, that it is safe so that the
23 detectives can come in and do their work and
24 process, gather evidence.

25 Q. Now, when you went in to clear the scene,

1 did you take any items into the store with you
2 other than what is ---

3 A. No.

4 Q. You said that you called dispatch for
5 backup.

6 A. (Affirmative nod).

7 Q. Did backup officer arrive?

8 A. Yes.

9 Q. Who responded? Who else responded to the
10 scene that night?

11 A. Then Sergeant Stubbs.

12 Q. What is her name now?

13 A. I -- I'm not sure.

14 Q. She was your supervisor?

15 A. Yes, sir.

16 Q. Did any detectives respond?

17 A. Yes, sir, Detective Culik was called out by
18 the sergeant.

19 Q. Now, were you present when Detective Culick
20 arrived?

21 A. Yes, sir, I was.

22 Q. And what did she do?

23 A. She went in, I went in and assisted her in
24 processing/collecting evidence.

25 Q. Now, when you say that you assisted. By

1 assisting, what did you do?

2 A. Just whatever she asked me to do. I'd hold
3 a bag for her while she place evidence in
4 there.

5 Q. Okay. Now, Officer Capell, as a patrol
6 officer is it normally your job to interview
7 witnesses?

8 A. Normally the detectives do, but if somebody
9 comes up to speak to me then I will direct them
10 to a detective and they can give the
11 information to them.

12 Q. Now, in this case, did you have an occasion
13 to speak with a witness that night?

14 A. Yes, sir. Mr. McDonald come up, approached
15 us that evening while we were out there and
16 stated that he might have some information for
17 us.

18 Q. Do you remember how Mr. McDonald got to the
19 scene?

20 A. Yes, sir, in a yellow box truck.

21 Q. Did he approach law enforcement or did
22 y'all flag him down, how did that happen?

23 A. No, sir, he pulled in the parking lot and
24 asked to speak to us.

25 Q. Did Mr. McDonald have anything in his

1 possession that day?

2 A. He had stated that he had given a gentleman
3 a ride and that this gentleman had had a cut
4 and had been bleeding, and that the man in
5 question had given him packs of cigarettes to
6 take him to that location.

7 Q. Officer Capell, I am going to show you what
8 has been marked for identification as State's
9 Exhibit 3 and ask if you recognize it?

10 A. Yes, sir.

11 Q. What is inside that box?

12 A. Newport cigarettes.

13 Q. And did you receive those cigarettes?

14 A. Mr. McDonald gave them to us. These are
15 the ones that he said that he had been handed
16 by the gentleman he'd give the ride to.

17 Q. Okay. Officer Capell, did you take these
18 cigarettes inside Youngs Market at any time
19 that night?

20 A. No, sir.

21 Q. What did you do with them after you
22 received them from Derrick McDonald?

23 A. I placed them in a bag and put them in my
24 trunk to secure them.

25 Q. After you placed them in your trunk and

1 secured them, what did you do with them after
2 that?

3 A. I placed them in the evidence locker.

4 Q. The evidence locker, where is that?

5 A. At the police station.

6 Q. Is that something that you normally have
7 free access to or -- tell the jury what you do
8 when you put something in the evidence locker.

9 A. When we have evidence from some kind of
10 crime, the area where we secure it at is
11 padlocked and put in there and then nobody else
12 can get to it.

13 Q. Did you fill out the chain of custody form
14 when you relinquished this evidence?

15 A. Yes, sir, that's standard procedure. You
16 always fill out the chain of custody so that
17 you know who has had the evidence.

18 Q. So in taking the evidence from the scene to
19 the evidence locker, why is it important to
20 fill out the chain of custody?

21 A. So that we know who all has had contact wit
22 that evidence.

23 Q. Okay. Is it fair to say that while it is
24 in your possession that you don't have to fill
25 out a chain of custody until you give it to

1 someone else?

2 A. Yes, sir, when it changes hands it's
3 supposed to be documented on the chain of
4 custody as to who received it from you.

5 Q. Okay. Did you take the packs of cigarettes
6 out of the Youngs Market?

7 A. Those ones were received by me from Mr.
8 McDonald. I didn't take them out of the store.

9 Q. Okay. Now, did Mr. McDonald tell you
10 anything about the physical characteristics of
11 the person he gave a ride?

12 A. He wasn't able to give me a whole lot. He
13 did say that the person that he give a ride to
14 did give him the name "Bernard" and that he had
15 had a cut on his leg, that he was bleeding, and
16 that the gentleman that came up to him had had
17 a bicycle with him at the time -- I forget if
18 he had to take the bicycle with him. I don't
19 have my report with me so that I could give you
20 any further ---

21 Q. Okay. When you respond to an incident as
22 the first responder, do you fill out reports?

23 A. Yes.

24 Q. When did you do that?

25 A. Whenever we finish on a scene.

1 Q. You filed an incident report in this case?

2 A. Yes, sir, I did, as well as the
3 lieutenant's report.

4 Q. What is the purpose of the lieutenant's
5 report?

6 A. Just initial information that may be
7 pertinent to the detectives, may have other
8 leads that they could check into.

9 Q. So you prepare those to make the next
10 person who is going to be involved in the case
11 aware of what you've seen and heard?

12 A. Yes, sir.

13 Q. Now, after you responded to the scene and
14 complete your duties as a first responder, do
15 you generally have any other role in the
16 investigation?

17 A. No, sir.

18 Q. After completing your reports in this case
19 and placing the cigarettes, which have been
20 identified as State's Exhibit 3 for
21 identification, did you do anything else with
22 regard to the investigation of this particular
23 offense?

24 A. There was a warrant that I -- that Mr.
25 McFadden was picked up on, later on, and I was

1 the serving officer on that warrant.

2 Q. But as far as investigating, you didn't do
3 any further investigation? Didn't collect any
4 other evidence or anything like that?

5 A. No, sir, that was all that I had.

6 Q. You didn't take any further statements?

7 A. No, sir.

8 Q. Didn't go back to that Youngs Market in a
9 police capacity after your participation in
10 this crime scene that night?

11 A. No, sir.

12 MR. GRIFFIN, SOLICITOR: Court's
13 indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. GRIFFIN, SOLICITOR:

17 Q. Officer Capell, did you have any contact
18 with Bernard McFadden on the night of the
19 incident?

20 A. On the night of the 2nd?

21 Q. Yes, sir.

22 A. No, sir.

23 Q. Did you see him that night?

24 A. No, sir. I did not.

25 MR. GRIFFIN, SOLICITOR: Answer any

1 questions that Mr. Brunson may have for you.

2 THE COURT: Mr. Brunson, you may
3 proceed.

4 MR. BRUNSON: Thank you, Your
5 Honor.

6 CROSS EXAMINATION

7 BY MR. BRUNSON: .

8 Q. Officer Capell, what time did the time come
9 in from dispatch?

10 A. I don't have the report with me. It was
11 just before midnight, I believe.

12 Q. Would looking at your report refresh your
13 recollection?

14 A. Yes, sir, it would.

15 MR. BRUNSON: May I approach the
16 witness?

17 THE COURT: You may.

18 CROSS EXAMINATION CONTINUED

19 BY MR. BRUNSON:

20 Q. (Tenders to witness).

21 A. (Upon review), the call was dispatch on
22 12:29 on the third.

23 Q. At 12:29 on July 3rd?

24 A. Yes, sir.

25 Q. Okay. And this call -- did dispatch

1 indicate where they'd received the call from?

2 A. Yes, sir, there were gentlemen out there to
3 pressure wash the windows and they called and
4 notified that the front glass had been broken
5 out.

6 Q. Do you know what time the pressurewashers
7 called it in?

8 A. I assume just before they called dispatch,
9 I would imagine within a minute.

10 Q. Probably a minute?

11 A. Yes, sir.

12 Q. That's standard, right?

13 A. Yes, sir.

14 Q. Now, so there is no alarm on this premises?

15 A. I believe that there was an alarm. I don't
16 know if it was on that night or not.

17 Q. What makes you say that you believe that
18 there was an alarm?

19 A. Because most convenience stores have one.

20 Q. But you have no knowledge of this
21 particular store having one?

22 A. I don't know either way, sir.

23 Q. Okay. When you arrived on the scene, what
24 time was it?

25 A. My arrival time was 12:37.

1 Q. Twelve-thirty?

2 A. Seven.

3 Q. All right. When you got there, who was
4 there?

5 A. The pressure washing individuals that had
6 called it in.

7 Q. How many?

8 A. It was two, I believe.

9 Q. Two guys?

10 A. The two gentlemen who were pressure washing
11 the building.

12 Q. And they were the only individuals on the
13 premises?

14 A. At the time that I arrived. Yes, sir.

15 Q. Okay. All right. Did they tell you what
16 time that they had gotten there?

17 A. They -- it was within a few minutes of
18 calling. I mean, they hadn't even started the
19 work.

20 Q. So -- this was the front door?

21 A. Yes, sir.

22 Q. So they would have seen it as they pulled
23 up?

24 A. Yes, sir, there is no way they could have
25 missed it.

1 Q. All right. Now, you arrive and is that when
2 you did your clearing of the scene, when you
3 arrived?

4 A. When I arrived, I got another officer there
5 with me and then cleared the scene.

6 Q. And that was Stubbs?

7 A. Yes, sir.

8 Q. So the two pressurewashers were there the
9 whole time, correct?

10 A. They were there from -- they weren't there
11 the entire time that I was there. They did
12 leave after we got the information that they
13 could provide.

14 Q. So they were there when you and Sergeant
15 Stubbs cleared the scene?

16 A. Yes, sir.

17 Q. And did you call an investigator before you
18 cleared or after you cleared?

19 A. After we cleared we made the determination
20 and made the call.

21 Q. And that is when Culik arrived?

22 A. She come out, yes.

23 Q. So two pressurewashers, you and then
24 Stubbs?

25 A. Yes.

1 Q. Who was the next person to arrive on the
2 scene after Sergeant Stubbs?

3 A. After Sergeant Stubbs, it was Detective
4 Culick that arrived next.

5 Q. All right. Now. All right, now you've
6 mentioned or testified on direct that at some
7 point this Mr. McDonald arrived?

8 A. Yes, sir.

9 Q. Is it your testimony that he arrived before
10 or after Culik?

11 A. I think he arrived after Culik, after
12 Detective Culik did.

13 Q. All right. So when Detective Culik
14 arrived, then McDonald arrived; is that
15 correct?

16 A. I believe so.

17 Q. To the best of your recollection?

18 A. Yes.

19 Q. You didn't write down the sequence of who
20 arrived when, did you?

21 A. No, sir.

22 Q. So after McDonald arrived, who arrived next
23 -- if anybody?

24 A. That was it.

25 Q. That was it. Now, you testified that when

1 McDonald arrived that he approached you,
2 correct?

3 A. Yes, he approached law enforcement.

4 Q. You and other officers?

5 A. Yes, there were several others.

6 Q. But you had interaction with them, you
7 spoke with them?

8 A. That's right, different people.

9 Q. And he said that he may information about
10 this?

11 A. Yes.

12 Q. Okay. To the best of your recollection,
13 what did he say?

14 A. That he'd given a ride to a gentleman named
15 Bernard, that Bernard had a cut on his leg, and
16 that he'd given him some Newport cigarettes for
17 the ride. That was about it.

18 Q. All right. Now, you arrived on the scene
19 about 12:37.

20 A. Yes.

21 Q. Stubbs arrived and then you cleared the
22 scene, correct?

23 A. I'm sorry?

24 Q. When Sergeant Stubbs arrived, you and
25 Stubbs cleared the scene?

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- 1 A. Yes, sir.
- 2 Q. That took about how long?
- 3 A. Couple minutes.
- 4 Q. A couple minutes, in and out?
- 5 A. Yes.
- 6 Q. Detective Culik arrived approximately how
- 7 long after you had been there?
- 8 A. Twenty minutes, twenty-five minutes maybe.
- 9 Q. She arrived before McDonald, correct?
- 10 A. Around then.
- 11 Q. How long had you been there before Mr.
- 12 McDonald arrived?
- 13 A. It was around about the same time that
- 14 Detective Culik arrived, thirty, thirty-five,
- 15 maybe forty minutes.
- 16 Q. So you had been on the scene forty minutes
- 17 before he arrived?
- 18 A. Possibly.
- 19 Q. Between twenty-five and forty?
- 20 A. (No verbal response).
- 21 Q. Now, you testified that he said that he'd
- 22 given him some cigarettes. These, seven packs
- 23 of Newports?
- 24 A. Yes.
- 25 Q. Okay. Now, when he gave them to you, were

1 they in anything or -- how did he do it? What
2 happened?

3 A. No, sir, he had them in the truck and he
4 handed them to me.

5 Q. He gave you all seven at one time?

6 A. (No verbal response).

7 Q. This is what he gave you?

8 A. Well, he couldn't hold all seven of them in
9 his hand at one time. But he handed them -- he
10 got them out of the truck and handed them to
11 me.

12 Q. Did you share with him any information as
13 to what was happening on this crime scene?

14 A. No, sir. He gave me the information that
15 he had.

16 Q. All right. So he told you -- he pulls up
17 and says, 'hey, I know what happened', 'I know
18 something that happened here' and began to tell
19 you about giving a guy a ride and then
20 proceeded to pass your packs of cigarettes?

21 A. He told me that he'd given a gentleman a
22 ride, that the gentleman had become nervous and
23 he felt that this may possibly have something
24 to do with it. So -- cigarettes, considering
25 that they were taken, we told him that we were

1 going to take those for evidence.

2 Q. Okay.

3 A. He gave them to us.

4 Q. You didn't see my client enter this store?

5 A. No, sir, I did not.

6 Q. In fact, you testified that you didn't
7 participate in any investigations, so you don't
8 know whether my client broke in that store or
9 not, do you?

10 A. I didn't see him.

11 Q. So you don't know.

12 A. I didn't see him.

13 Q. Okay.

14 MR. BRUNSON: Court's indulgence, Your
15 Honor?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION RESUMED

18 BY MR. BRUNSON:

19 Q. One other question, did he tell you that he
20 bought these cigarettes or that he had been
21 given these cigarettes in exchange for a ride?

22 A. I didn't understand the question.

23 Q. On direct, you testified that McDonald
24 passed you seven cigarettes?

25 A. Seven packs.

1 Q. Seven packs of cigarettes. That he'd
2 obtained these packs from my client.

3 A. That's what he said.

4 Q. And my question is, did McDonald tell you
5 that he paid for the cigarettes or that they
6 were given in exchange for a ride?

7 A. That they were given to him I exchange for
8 the ride.

9 MR. BRUNSON: Okay. Nothing
10 further, Your Honor.

11 THE COURT: Any redirect?

12 MR. GRIFFIN, SOLICITOR: No, sir,
13 Judge.

14 THE COURT: Thank you, you may step
15 down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Any objection to the
18 witness being excused?

19 MR. BRUNSON: None from me, Your
20 Honor.

21 THE COURT: Thank you. You are also
22 excused. Let me see the attorneys up here.

23 (OFF RECORD BENCH CONFERENCE)

24 THE COURT: Ladies and Gentlemen, we
25 will recess for the day. Please don't listen

1 to anything on the news or do any research on
2 this matter.

3 Now, you won't have to be here as
4 early tomorrow. We will start back by 11:00,
5 so if you could be in your jury room by that
6 time we will get started then. You get some
7 sleep tonight, have a nice evening and we will
8 see you in the morning.

9 (JURY EXITS COURTROOM)

10 THE COURT: Is there anything that
11 we need to take up before we adjourn for the
12 day?

13 MR. GRIFFIN, SOLICITOR: Nothing
14 from the State?

15 MR. BRUNSON: Nothing from the
16 defense, Your Honor.

17 THE COURT: Court is adjourned until
18 11:00 a.m. tomorrow morning.

19 (COURT IN RECESS)

20 (TRANSCRIPT CONTINUED NEXT PAGE)

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22

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24

25

1 NOVEMBER 17, 2010 11:00 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: What I anticipate is
5 that we will go about an hour and then take a
6 lunch break.

7 MR. GRIFFIN, SOLICITOR: Yes, sir.

8 THE COURT: Bring in the jury.

9 (JURY ENTERS COURTROOM)

10 THE COURT: Good morning, Ladies and
11 Gentlemen. I'm sorry. It's my fault that
12 court didn't start on time. I was in the
13 doctor's office and that's why -- did you all
14 get the notice that you didn't have to report
15 until 11:30. Hopefully you weren't waiting too
16 long. We will now continue with our testimony.
17 The State may call it's next witness.

18 MR. GRIFFIN, SOLICITOR: Thank you,
19 Your Honor, the State calls K.B.

20 (WITNESS TAKES STAND)

21 K.B. being duly sworn to tell
22 the truth, the whole truth and nothing but the
23 truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. GRIFFIN, SOLICITOR:

1 Q. K.B. how old are you?

2 A. Sixteen.

3 Q. Where were you living on the evening of
4 July 2nd, 2009?

5 A. Sherwood Street.

6 Q. And who was living there with you?

7 A. Me, my dad, my stepmom, my sister, my
8 grandma and my stepsister.

9 Q. Who is your dad?

10 A. Derrick McDonald.

11 Q. What were you doing that night?

12 A. I was in the living room watching TV.

13 Q. Did anything unusual happen that night?

14 A. Yes, sir.

15 Q. Tell the jury what happened.

16 A. A knock came to the door and I said, 'Who
17 is it?' A man said, 'It's Bernard.' I opened
18 the door and he said, 'Where is the man that
19 drives the yellow truck.' I said that he was
20 there and I said I' get him, and I shut the
21 door.

22 Q. The yellow truck, does your dad have a
23 yellow truck?

24 A. Yes, sir.

25 Q. What kind of truck is that?

1 A. A box truck.

2 Q. After you shut the door, what did you do
3 then?

4 A. I went and told my dad.

5 Q. The man that came to the door identified
6 himself as Bernard. What did you notice about
7 him in particular?

8 A. He was bleeding.

9 Q. Bleeding from where?

10 A. His leg.

11 Q. And you saw the injury?

12 A. Yes, sir.

13 Q. Did he -- did he give you anything that
14 night?

15 A. No, sir.

16 Q. After you went and got your dad, what did
17 you dad do?

18 A. My dad came to the door. My dad started
19 asking him questions about stuff. He asked him
20 if he wanted him to call an ambulance and he
21 said no, just take him home. So he take (sic)
22 him home.

23 Q. Okay. Now, did he tell you all how he had
24 gotten hurt?

25 A. He told us that he fall off a bike.

1 Q. Now, did your dad give him a ride?

2 A. Yes, sir.

3 Q. You said that he had a bicycle, did you see
4 the gentleman with a bicycle?

5 A. Yes, sir. My dad, he put it on the back of
6 the truck.

7 Q. Now, do you see the person that came to
8 your door that night inside the courtroom here
9 today?

10 A. Yes, sir.

11 Q. Where is he in the courtroom?

12 A. Sitting beside him.

13 Q. Sitting beside the other attorney, Mr.
14 Brunson?

15 A. Yes, sir.

16 Q. Okay. Now, what time of night was this?

17 A. It was late, I have no idea of what time it
18 was.

19 Q. Was it early evening or late evening?

20 A. Late, late.

21 Q. Now, were you -- when your dad left the
22 house, were you worried about what was going
23 on?

24 A. Yes, sir.

25 Q. Why is that?

1 A. Because he had a bad behind the truck and
2 all and we didn't know what was in the bag.

3 Q. Did you know Bernard McFadden?

4 A. No, sir.

5 Q. Had you ever seen him -- on that night, had
6 you ever seen him before?

7 A. No, sir.

8 MR. GRIFFIN, SOLICITOR: Please
9 answer any questions that Mr. Brunson may have
10 for you.

11 THE COURT: Mr. Brunson.

12 MR. BRUNSON: Thank you, Your
13 Honor, may it please the Court.

14 CROSS EXAMINATION

15 BY MR. BRUNSON:

16 Q. Hi, K.B. How you doing?

17 A. Fine.

18 Q. Good. You testified that you were home
19 watching TV, correct?

20 A. Yes, sir.

21 Q. Now, your dad was home that night?

22 A. Yes, sir.

23 Q. Your stepmom?

24 A. Yes, sir.

25 Q. Your sister?

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- 1 A. Yes, sir.
- 2 Q. Your grandmother?
- 3 A. Yes, sir.
- 4 Q. Your stepsister?
- 5 A. Yes, sir.
- 6 Q. And who else?
- 7 A. My friend.
- 8 Q. What is your friend's name?
- 9 A. Arturo McDaniel (phonetic).
- 10 Q. She spent the night with you?
- 11 A. Yes, sir.
- 12 Q. What kind of work does your dad do?
- 13 A. He remodels houses, builds houses -- does
- 14 carpentry.
- 15 Q. Sounds like a contractor?
- 16 A. Yes, sir.
- 17 Q. And this yellow truck that you described
- 18 was your dad's truck?
- 19 A. Yes, sir.
- 20 Q. Okay. Now, you testified that my client
- 21 came to your house that night.
- 22 A. Yes, sir.
- 23 Q. What were you watching on TV?
- 24 A. I don't remember.
- 25 Q. You don't remember?

- 1 A. (No verbal response).
- 2 Q. But it was about 11:00 o'clock?
- 3 A. Yes, sir.
- 4 Q. Now, did he ride a bike up to your house?
- 5 A. Yes, sir.
- 6 Q. You saw the bike?
- 7 A. Yes, sir.
- 8 Q. When you opened the door, did you see him
- 9 bleeding?
- 10 A. Yes, sir.
- 11 Q. And you said from the leg?
- 12 A. Yes, sir.
- 13 Q. Which leg?
- 14 A. Right.
- 15 Q. You sure about that?
- 16 A. Yes, sir.
- 17 Q. Okay. And did you give him some tissue or
- 18 a napkin?
- 19 A. No, sir.
- 20 Q. You didn't?
- 21 A. (No verbal response).
- 22 Q. Okay. Who all came outside?
- 23 A. Nobody went outside. Everybody came to the
- 24 front room.
- 25 Q. When you say "everybody", that means your

1 stepmom had got -- had come to the door?

2 A. After my dad.

3 Q. Your sister came to the door?

4 A. Yes, sir.

5 Q. Your grandmother too?

6 A. Yes, sir.

7 Q. Okay. Everybody?

8 A. (No verbal response).

9 Q. Now, you said that you answered the door
10 and then you went and got your dad; right??

11 A. Yes, sir.

12 Q. And when your dad came to the door, he
13 ultimately took his man in his truck; right?

14 A. After he stopped asking him question, after
15 he wanted him to do that.

16 Q. All right. But, now, uh, -- did this man
17 ultimately leave in the truck with your father?

18 A. Yes, sir.

19 Q. How long -- how much time would you say
20 passed from the time that he knocked at your
21 door ---

22 MR. GRIFFIN, SOLICITOR: Your
23 Honor, he is asking her to speculate.

24 MR. BRUNSON: I will rephrase.

25 THE COURT: Yes, rephrase your

1 question.

2 MR. BRUNSON: Thank you, Your
3 Honor.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BRUNSON:

6 Q. So how much time had passed from the time
7 that he knocked at the door until the time that
8 he left in the truck?

9 A. Ten minutes or so.

10 Q. Okay. So -- did he give anybody a phone
11 number that night?

12 A. Yes, sir.

13 Q. Who did he give a phone number to?

14 A. My stepmother.

15 Q. What is her name?

16 A. Teresa Cummings.

17 Q. Did she know him?

18 A. No, sir.

19 Q. He gave his phone number to her?

20 A. Yes, sir.

21 Q. So Teresa Cummings -- your father is
22 Derrick McDonald?

23 A. Yes, sir.

24 Q. And your stepmother is Teresa? They're
25 married? Derrick and Teresa?

1 A. Um-humm.

2 Q. Okay. They are, like, boyfriend and
3 girlfriend, right?

4 A. Um-humm.

5 Q. So your testimony is that my client gave
6 your father's girlfriend his phone number?

7 A. Would you say that again?

8 Q. My client gave your father's girlfriend his
9 phone number?

10 A. Yes.

11 MR. BRUNSON: Court's indulgence.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. BRUNSON:

15 Q. You saw blood, correct?

16 A. Yes, sir.

17 Q. He was bleeding bad, wasn't he?

18 A. Yeah.

19 Q. Somebody gave him -- you said that you
20 didn't, but somebody gave him a tissue; right?

21 A. I didn't give him any tissue.

22 Q. You just let him bleed on the porch?

23 A. I did.

24 Q. Was blood left on your floor?

25 A. I don't know.

1 Q. You didn't see?

2 A. (No verbal response).

3 Q. But, uh, -- how do you know that he was
4 bleeding?

5 A. Because I saw it when I opened the door.

6 Q. You saw blood where?

7 A. On his leg.

8 Q. Did you see blood anywhere else?

9 A. No, sir.

10 Q. Was it a lot of blood?

11 A. Yeah.

12 MR. BRUNSON: Court's indulgence.

13 CROSS EXAMINATION CONTINUED

14 BY MR. BRUNSON:

15 Q. Question, did anybody else get any
16 cigarettes? Did my client give anybody any
17 cigarettes that night?

18 A. Yes, sir.

19 Q. Who did he give cigarettes to?

20 A. He gave some to my grandma, to my sister.

21 Q. He gave them cigarettes?

22 A. Um-humm.

23 Q. How much did he charge them?

24 A. (No verbal response).

25 Q. How much money did they give him?

1 A. They didn't give him any money.

2 Q. How do you know?

3 A. Because I was right there.

4 Q. Why did he give them cigarettes?

5 A. I don't know.

6 Q. Did they ask him for any?

7 A. They asked him.

8 Q. Okay. They asked him for cigarettes and he
9 gave them to him?

10 A. Yes, sir.

11 Q. All right. Were you ever interviewed --
12 well, let me ask you this. When is the first
13 time that you talked to a police officer about
14 this case?

15 MR. GRIFFIN, SOLICITOR: Your
16 Honor, may we approach?

17 THE COURT: Yes.

18 (OFF RECORD BENCH CONFERENCE)

19 CROSS EXAMINATION CONTINUED

20 BY MR. BRUNSON:

21 Q. You are describing what happened back in
22 July of 2009. Right?

23 A. Yes.

24 Q. Did you talk to the police in July of 2009?
25 Did the investigator contact you?

1 A. No, sir.

2 Q. Did an investigator contact you before
3 December of 2009?

4 A. No.

5 Q. In fact, isn't it true that law enforcement
6 didn't talk to you until this year? Isn't that
7 true?

8 A. (No verbal response).

9 Q. That is a yes or no.

10 A. (No verbal response).

11 Q. You didn't talk to an investigator about
12 this case in 2009.

13 A. No, sir.

14 Q. You didn't talk to an investigator about
15 this case until September of this year, a
16 couple of months ago; right?

17 A. Yes, sir.

18 MR. BRUNSON: Nothing further.

19 THE COURT: Any redirect, Mr.
20 Griffin?

21 REDIRECT EXAMINATION

22 BY MR. GRIFFIN, SOLICITOR:

23 Q. What type of cigarettes did Bernard give
24 these family members?

25 A. Newports.

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1 MR. GRIFFIN, SOLICITOR: That's all
2 that I have, Judge.

3 THE COURT: Any recross?

4 MR. BRUNSON: None, Your Honor.

5 THE COURT: Thank you. You may step
6 down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Any objection to this
9 witness being excused at this time?

10 MR. BRUNSON: No objection.

11 MR. GRIFFIN, SOLICITOR: The State
12 next calls Derrick McDonald.

13 (WITNESS TAKES STAND)

14 DERRICK McDONALD, being duly sworn to
15 tell the truth, the whole truth and nothing but
16 the truth, testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. GRIFFIN, SOLICITOR:

19 Q. Mr. McDonald, how old are you?

20 A. Fifty-two (52).

21 Q. Where do you live now?

22 A. I live [REDACTED] Crescent.

23 Q. Back in July of 2009, where were you
24 living?

25 A. Sherwood Drive.

- 1 Q. Mr. McDonald, where do you work?
- 2 A. Capital Investment.
- 3 Q. How long have you been with Capital?
- 4 A. Thirteen years.
- 5 Q. What do you do for them?
- 6 A. Maintenance supervisor.
- 7 Q. Tell the jury the type of stuff that you
- 8 might do as a maintenance supervisor.
- 9 A. Repair, build, -- I mean anything that
- 10 deals with maintenance. Paint, all sorts of
- 11 stuff.
- 12 Q. Do they own property that you repair? Is
- 13 that basically your work?
- 14 A. Yes, sir.
- 15 Q. Do you drive a truck for them?
- 16 A. Yes, sir.
- 17 Q. What kind of truck is it?
- 18 A. It's a 2002 GMC box truck.
- 19 Q. What color is it?
- 20 A. Yellow.
- 21 Q. Mr. McDonald, I am going to show you what
- 22 has been marked for identification as State's
- 23 Exhibit 31 and ask if you recognize what is in
- 24 this photograph?
- 25 A. Yes, that's the truck.

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1 Q. That is the truck that you drive for
2 Capital Investment?

3 A. Yes, sir.

4 Q. Is this the same truck that you were
5 driving back in July of 2009?

6 A. Yes, sir.

7 MR. GRIFFIN, SOLICITOR: Your
8 Honor, we would offer this photograph, State's
9 Exhibit 31, into evidence.

10 THE COURT: Any objection?

11 MR. BRUNSON: May I see it?

12 THE COURT: Certainly.

13 MR. GRIFFIN, SOLICITOR: (Tenders
14 exhibit to Mr. Brunson).

15 MR. BRUNSON: (Upon review),
16 without objection.

17 THE COURT: State's Exhibit 31 is
18 admitted without objection.

19 (SO ENTERED AS STATE'S EXHIBIT 31)

20 MR. GRIFFIN, SOLICITOR: May I
21 publish it to the jury, Your Honor?

22 THE COURT: You may publish.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. GRIFFIN, SOLICITOR:

25 Q. Mr. McDonald, on the night of July 2nd over

1 on into July 3rd of 2009, tell the jury what
2 happened that night.

3 A. Well, I was just getting in from work.
4 It was maybe about thirty minutes, thirty-five
5 minutes. I was back there in my bedroom and my
6 little girl came to the bedroom and said,
7 'Daddy, there's a man out outside, he's laying
8 on the porch, he's bleeding.'

9 So I told my daughter, 'Get away from that
10 door, I'll go out there and see what's going
11 on.'

12 The guy was laying out there, I asked him,
13 'What happened? What's wrong? And he told me
14 that he fell off his bicycle. He was bleeding,
15 had a laceration on, I think it was his right
16 leg. I asked him if he wanted me to call 911,
17 get his some medical attention. He said no, so
18 -- he said, 'I need to get home.' So I said,
19 'you're hurt real bad.' And he said 'no,' and
20 asked if I could just take him home. I said,
21 'Well, I don't know you.' Like that. So he
22 said, 'you can just give me a ride home, my
23 wife and all is waiting.'

24 Q. Where did he say home was?

25 A. He said home was over there on Industrial

1 Road.

2 Q. Where did he want you to take him?

3 A. On Industrial Road, Bowens Concrete.

4 Q. Did he mention anything about going to the
5 south side of town?

6 A. Well, that was after. After the fact.

7 After we started riding, then he changed
8 direction.

9 Q. You mean he wanted you to take him to the
10 south side?

11 A. Right.

12 Q. Let's back up a little bit. Now, after you
13 talked with him and found out that he wanted
14 you to give him a ride, what did you do next?

15 A. I went ahead on and got his bicycle and put
16 it on the back of the truck, tried to gather up
17 his other stuff. He had a black bag with him
18 and I could see cigarettes and lottery tickets
19 and all up in there. He gathered that up on
20 his own.

21 Q. You saw a black bag that had cigarettes and
22 lottery tickets?

23 A. Yes, sir.

24 Q. Do you know what kind of cigarettes they
25 were?

1 A. Newport.

2 Q. Now, after you loaded the truck up, did you
3 -- did you go back inside the house?

4 A. No, sir.

5 Q. Did you have -- did you have anything with
6 you that night for protection?

7 A. I had my revolver.

8 Q. Why did you have your revolver?

9 A. Okay. I went -- yes, I did. I went back
10 into the house and I got that, because I didn't
11 know him.

12 Q. You had never met ---

13 A. I had never met him before.

14 Q. So you went and got your revolver. Tell
15 the jury what happened next. What did you do
16 next?

17 A. So I put the gun in my pants and came back.
18 You know, got in the truck. I told him to keep
19 both his hands right on his lap because, I told
20 him, 'I don't know you, you don't me, you just
21 a stranger.' We proceeded along, come out of
22 Sherwood and made a left. I was getting ready
23 to go down on the Florence highway and what
24 happened there was that some blue lights, some
25 patrol was out there in the road where

1 something had went on at the Youngs Market
2 store. So all of a sudden he reclined back in
3 on the passenger seat, in the seat. He was
4 tense, nervous and he was hiding. He told me,
5 "Don't slow down. Don't slow down. Keep
6 going. Keep going, man. You gotta drive a
7 little faster."

8 Q. Hold on a minute, Mr. McDonald. Let me ask
9 you to step down from the witness stand. I am
10 going to show you a map that has been prepared.
11 If you could, come on down.

12 A. (Complies).

13 Q. Turn so that the jury can see the map.

14 A. (Complies).

15 Q. I am going to hand you this and ask you to
16 show me where your house is on this map.

17 A. (Indicating), is this Sherwood coming all
18 the way around? The west -- just east here is
19 my house.

20 Q. Where the star is?

21 A. Right.

22 Q. Now, after you got in the truck with
23 Bernard, where did y'all go next?

24 A. We were coming off Sherwood. There is a
25 stop sign right here. So we made a left and

1 when we came all the way down, down here, and
2 once we got up here and come on out -- come on
3 out right here, and we got in here, that's when
4 we spotted the blue lights and the police was
5 over here.

6 Q. That is on Liberty Street?

7 A. Right.

8 Q. And where is Youngs Market?

9 A. (Indicating), that should be Youngs right
10 here.

11 Q. And y'all drove past Youngs?

12 A. Yeah, we drove by it but he started getting
13 tense and nervous along up in here. There was
14 police cars, patrol cars up in here.

15 Q. Where did you take him to after you passed
16 the Youngs Market?

17 A. I took him all the way down Liberty, then
18 took a left turn on Lafayette and then went on
19 down and made a right on south side.

20 Q. Did you drop him off somewhere?

21 A. Dropped him off on Olive Street.

22 Q. You can take your seat back on the stand.

23 A. (Complies).

24 Q. The area that you dropped him off at, were
25 you familiar with that area?

1 A. Yes, sir.

2 Q. After you dropped him off, what did you do?

3 A. After I dropped him off -- okay? He was
4 telling me, you know, 'Remember, man, I'm the
5 cigarette man.' You know, the dude when we was
6 talking. And, uh, he gave me some cigarettes,
7 so I gave him some -- I gave him some money. I
8 gave him some money at the time.

9 Q. How much money did you give him?

10 A. I think it was about ten dollars.

11 Q. How much -- how many packs of cigarettes
12 did he give you?

13 A. I think it was about seven.

14 Q. All right. Now, after you dropped him off,
15 where did you go next?

16 A. I was in suspense about what was going on
17 and why he buried himself like that. And ---

18 Q. When you say "buried himself", what do you
19 mean?

20 A. Well, he reclined back in the truck on the
21 passenger side. It seemed to me like he was
22 hiding from somebody, somebody who was hiding
23 something. So I was interested in getting
24 back to Youngs to see what was going on. When I
25 pulled up there, I asked the officer what was

1 going on. He asked me why. So I explained to
2 him what was going on, what I thought, -- 'was
3 there a robbery here?'

4 Q. And what did you tell the officers at that
5 time?

6 A. I told him, you know, I just dropped a guy
7 off and he was bleeding, he's got cigarettes,
8 he's got lottery cards.

9 Q. Did you tell the officers the name that
10 this individual had given?

11 A. No. I had to call my wife back because
12 he'd gave her the name.

13 Q. He had told y'all at the house "Bernard"?

14 A. Right.

15 Q. Did he give y'all a phone number that
16 night?

17 A. Yes.

18 Q. Why did he give you his phone number?

19 A. Just in case we ran back by -- just in case
20 we run across more cigarettes.

21 Q. So he gave you the number ---

22 MR. BRUNSON: Objection, Your
23 Honor, leading.

24 THE COURT: Rephrase your question.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. GRIFFIN, SOLICITOR:

2 Q. So why did you feel like he'd given y'all
3 his number?

4 A. Because, you know, like he told her, if
5 there anything that you all need just call,
6 'there's a lot more where that came from.'

7 Q. Now, when you talked with the officers that
8 were at Youngs Market that night, did you ever
9 go inside the store?

10 A. No, sir.

11 Q. Did you have anything to gain by stopping
12 and talking with law enforcement that night?

13 A. No, sir.

14 Q. Now, you said that he gave you seven packs
15 of cigarettes?

16 A. Yes, sir.

17 Q. And who did you give those cigarettes to?

18 A. I gave them to a patrol officer that was in
19 uniform that night.

20 Q. Do you remember what he looked like?

21 A. It's been so long. I remember that he was
22 short.

23 Q. Short?

24 A. Um-humm, white.

25 Q. He had dark hair or light hair?

1 A. I don't know if he had any hair or not.

2 Q. Was his hair thin?

3 A. Thin.

4 Q. Did you eventually go to the police
5 station that night?

6 A. Yes, sir.

7 Q. What did you do when you went to the
8 police station?

9 A. I gave a statement and then I wrote up
10 everything. They told me 'we will be getting
11 back to you shortly, we'll be giving you a
12 call.'

13 Q. Did the officer at the station, did he
14 look inside the truck?

15 A. No, sir.

16 Q. Did he do anything to ---

17 A. Well, one officer did. Well, quite a them
18 were looking inside the truck.

19 Q. All right. So it may not have been at the
20 station but officers did look inside the truck?

21 A. Right.

22 Q. All right. Now, you went to the police
23 station that night, gave a statement and they
24 told you that they would be in contact; right?

25 A. Right.

1 Q. Did you ever have an occasion to talk with
2 this detective, Detective Richburg?

3 A. Maybe about a few days later.

4 Q. Now, when you talked with Detective
5 Richburg, did you contact them or did they
6 contact you to come in and talk with them?

7 A. They contacted me.

8 Q. Now, when you went to the station a few
9 days later, what happened?

10 A. Well, I went down there because they -- he
11 told me that they just wanted me to look at
12 some photos. He advised me, he said 'Just look
13 at these photos. I can't help, I can't choose
14 for you but if you see the guy, then you point
15 him out.'

16 Q. Let's go back a little bit. The night
17 that you gave the man named Bernard a ride, how
18 long did you spend with him?

19 A. About an hour.

20 Q. He shows up at your house, how long were
21 y'all at your house before you gave him a ride?

22 A. About thirty, thirty-five minutes.

23 Q. Then you gave him a ride from Sherwood to
24 Olive Street?

25 A. Yes, sir.

1 Q. How long were with him inside the vehicle?

2 A. About thirty-five minutes.

3 Q. Did you get a good opportunity to look at
4 him?

5 A. Yes, sir.

6 Q. Was he wearing glasses at that time?

7 A. He was wearing glasses.

8 Q. Now, were you -- do you see the person
9 that you saw that night here inside the
10 courtroom today?

11 A. Yes, sir, he's sitting next to Counselor
12 Brunson, on his right-hand side.

13 Q. Okay. All right. Now, let's go back to
14 when you were speaking with the detective. I
15 am going to show you what has been marked as
16 State's Exhibit 1 for identification and ask if
17 you recognize this document.

18 A. Yes, sir.

19 Q. What is that?

20 A. Lineup, identification form.

21 Q. Did Detective Richburg read that to you or
22 have you read it?

23 A. He read it to me.

24 Q. Do you see a signature on that?

25 A. Yes, sir.

1 Q. Whose signature is that?

2 A. My signature, Derrick McDonald.

3 Q. Okay. There is an "X" mark over on number
4 three on this form. Did you make that X?

5 A. Yes, sir.

6 Q. You signed the document?

7 A. Yes, sir.

8 Q. What date did you sign it?

9 A. 7/7/09.

10 Q. I am going to show you what has been
11 marked for identification as State's Exhibit 2.
12 I am going to ask if you recognize this?

13 A. Yes, sir. In blue is my initials, the
14 date and the black marker is where I circled
15 number three.

16 Q. Okay. All right. Now, the blue on this
17 form, the D.M., who wrote that?

18 A. I did.

19 Q. And the date below it?

20 A. I did.

21 Q. Who made the circle with the black?

22 A. I did.

23 Q. Now, did Detective Richburg suggest that
24 you pick out -- any of these six photos?

25 A. He just told me if you see there the man

1 that you see at your house that night. And to
2 make sure 'you have the right person.'

3 Q. But he didn't ---

4 A. He didn't instruct me or show me which guy
5 it was or anything.

6 Q. He didn't say 'see if you can pick out guy
7 number three?'

8 A. No, sir.

9 Q. Now, when you came in to make this
10 identification, did he provide you with a pen
11 to write with?

12 A. Yes, sir.

13 Q. You didn't bring the black marker in, did
14 you?

15 A. No, sir.

16 Q. He gave you the marker and said to circle?

17 A. Yes, sir.

18 Q. Then he gave you the blue pen to make ---

19 A. Yes, sir.

20 Q. Mr. McDonald, were you paid any money, by
21 Crime Stoppers or anybody for helping law
22 enforcement in this case?

23 A. No, sir. I ain't making nothing.

24 Q. Mr. McDonald, did anybody in your house
25 know Bernard McFadden before July 2nd, ---

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1 A. No, sir. No, sir.

2 Q. Okay. The lady you call your wife, what
3 is her name?

4 A. Teresa.

5 Q. Teresa what?

6 A. Cummings.

7 Q. To your knowledge, did she know Mr.
8 McFadden before that night?

9 A. No, sir.

10 Q. How long have you and Teresa been
11 together?

12 A. About six years.

13 Q. Are y'all still together today?

14 A. Yes, sir.

15 Q. Do y'all ever have any problems over what
16 happened on that night.

17 A. Only that I didn't want this man to be no
18 threat to my family, showing up at my door.

19 Q. Did it cause any problems in your
20 relationship as far as another man giving her
21 his phone number?

22 A. No, sir.

23 Q. Mr. McDonald, I am going to show you what
24 has been marked as State's Exhibit 3 and ask
25 you how many packs of cigarettes there are.

- 1 Just see how many that there are.
- 2 A. Seven.
- 3 Q. Seven packs of cigarettes in here?
- 4 A. Seven.
- 5 Q. And you gave the officer how many packs of
- 6 cigarettes?
- 7 A. Seven.
- 8 Q. Okay. And where did these cigarettes --
- 9 where did you have them prior to giving them to
- 10 the officer?
- 11 A. I had them in the truck, in the console.
- 12 Q. In the console of the truck?
- 13 A. Yeah.
- 14 Q. You didn't -- did you take these from
- 15 Youngs Market?
- 16 A. No, sir.
- 17 Q. Did you take any cigarettes back inside
- 18 Youngs Market when you arrived on the scene to
- 19 talk with the officers?
- 20 A. No, sir.
- 21 Q. Mr. McDonald, let me ask you a few more
- 22 questions. Back in 2001, you had a conviction
- 23 for sale on property with a lien against?
- 24 A. Sale on property with a lien against it?
- 25 I mean, I -- I thought that was supposed to be

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1 the other Derrick McDonald. Not me.

2 Q. Okay. So there is another individual
3 named Derrick McDonald?

4 A. Yes, sir.

5 Q. So you didn't do forty hours of public
6 service for that?

7 A. No, sir.

8 Q. Mr. McDonald, is there any question in
9 your mind that the man that came to your door
10 that night, that you gave a ride to, is in the
11 courtroom here today?

12 A. Yes, sir.

13 Q. Is there any doubt in your mind?

14 A. No, sir.

15 Q. Who was that?

16 A. I mean, I'm just knowing him as Bernard
17 McFadden.

18 Q. Do you see the man ---

19 A. I see him.

20 MR. GRIFFIN, SOLICITOR: Answer any
21 questions that Mr. Brunson might have for you.

22 THE COURT: Mr. Brunson.

23 MR. BRUNSON: Thank you, Your
24 Honor, may it please the Court.

25 CROSS EXAMINATION

1 BY MR. BRUNSON:

2 Q. On direct exam, you were asked did law
3 enforcement look in the truck. You testified
4 'no, they didn't look in the truck' and then, a
5 couple of seconds later, you said 'yeah, they
6 did look in the truck.' Which is it? Did they
7 look in the truck or not?

8 A. Two different places. At the store and at
9 the police station. They looked in the truck
10 at law enforcement -- I mean at the Youngs
11 Market. But I can't recall nobody looking into
12 the truck down at the station.

13 Q. Who looked in the truck at Youngs?

14 A. It was a patrol officer.

15 Q. Why did he look in the truck?

16 A. About the cigarettes.

17 Q. Why?

18 A. I told him that those cigarettes were in
19 here, what I got from him.

20 Q. And he looked where?

21 A. In the console, where I showed him the
22 cigarettes were at.

23 Q. Did he get in the back of your truck?

24 A. No, sir.

25 Q. Did he look in the back of your truck?

1 A. No, sir.

2 Q. Did any cop ever look in the back of your
3 truck?

4 A. No, sir.

5 Q. All right. In fact, no cop looked in your
6 console either, did they?

7 A. Yes, sir. They looked in the console.

8 Q. So you didn't handle the cigarettes. He
9 got them out.

10 A. He got them out. He told me not to touch
11 it.

12 Q. So if he said that you handed them to him,
13 he is not telling the truth?

14 A. Say that again?

15 Q. If the cop says that you handed him the
16 cigarettes, he's not telling the truth?

17 A. I mean, I didn't hand him all the
18 cigarettes.

19 Q. You handed him some?

20 A. I may have handed him some, the ones that
21 he couldn't get to.

22 Q. And he may have gone and got some ---

23 A. That's the ones that was in there, double
24 bagged.

25 Q. Who is Capital Investment Group?

1 A. That's me.

2 Q. You don't work for a company, you work for
3 yourself?

4 A. No, sir. No, sir.

5 Q. Capital Investment ---

6 A. Capital Investment UVI operates with a
7 real estate company and the owner is here on
8 Broad Street, owned by Mr. Ted Wilson.

9 Q. So when I asked who is Capital Investment
10 Group a minute ago and you said 'that's me'.

11 A. That's me. I drive that truck, that's
12 Capital. I'm employed by Capital. I am also
13 self-employed.

14 Q. So you didn't set up the LLC, Capital
15 Investment Group?

16 A. No, sir.

17 Q. Your name doesn't appear on that paperwork
18 in the Secretary of State's office?

19 A. What did you say?

20 Q. You didn't -- you are not an owner or
21 operator of Capital Investment?

22 A. I am just an employee.

23 Q. And your name isn't on any of those
24 paperworks for Capital Investment?

25 A. I mean, not ownership. Being an employee,

1 I might be on the paperwork.

2 MR. GRIFFIN, SOLICITOR: Your
3 Honor, I am going to ask what the relevance of
4 who owns the business is. I wonder where he is
5 going with this.

6 THE COURT: Mr. Brunson.

7 MR. BRUNSON: Your Honor, they
8 just admitted through evidence a picture of a
9 truck.

10 THE COURT: That he says he drives.

11 MR. BRUNSON: Capital
12 Investments, LLC. Now, he testified that the
13 Capital Investment Group was him and then he
14 changed it. So I am just trying to get
15 clarification, Your Honor, as to ownership or
16 employee and he has answered that for me.

17 THE COURT: Okay. Move on.

18 CROSS EXAMINATION CONTINUED

19 BY MR. BRUNSON:

20 Q. What time -- you said that you were just
21 getting home that night?

22 A. I have various time that I get off. I
23 don't have a designated time to be off.

24 Whenever I get finished, I ---

25 Q. What time ---

1 A. I'm really twenty-four hours. I'm on call
2 at all times.

3 Q. What time do you think that you arrived at
4 home on this night?

5 A. Somewhere around about maybe 8:30 or 9:00
6 o'clock.

7 Q. Okay.

8 A. Maybe after 9:00.

9 Q. Around 9:00, is that fair?

10 A. After 9:00.

11 Q. 9:30?

12 A. 9:30.

13 Q. Around 9:30, you got home?

14 A. Maybe.

15 Q. And you said that you had been home a
16 couple of minutes before your daughter came and
17 got you?

18 A. Right.

19 Q. Thirty minutes?

20 A. Can I say something?

21 Q. Well, I am just asking a question and my
22 question -- let me repeat my question.

23 THE COURT: Yeah, repeat your
24 question.

25 CROSS EXAMINATION CONTINUED

1 BY MR. GRIFFIN, SOLICITOR:

2 Q. You testified on direct that you had been
3 home a couple of minutes, I believe.

4 A. Right.

5 Q. And my question to you was, you said that
6 you got home around 9:30. You say that your
7 daughter came to you about thirty minutes after
8 you had gotten home?

9 A. Yeah.

10 Q. Now, 10:00 -- your testimony, my client is
11 on your porch, bleeding? Right.

12 A. I am not sure, you know, as to the
13 timeline. I am just giving you some numbers on
14 time, but I didn't really pay no attention to
15 the time. But at that time when the child came
16 to the room, I can estimate the time since I'd
17 come into the house, how long it had been
18 before she came to my room and told me, 'Dad,
19 somebody out there on the porch.'

20 Q. I understand. So when you -- after your
21 daughter had come to your room, you went out
22 onto the porch?

23 A. Right.

24 Q. Your testimony is that you saw my client
25 on your porch, bleeding?

- 1 A. Right.
- 2 Q. And isn't it true that you saw a bicycle?
- 3 A. Right.
- 4 Q. And isn't it true that he told you that he
- 5 fell on his bike?
- 6 A. Right.
- 7 Q. And at some point after he told you that
- 8 he'd fell on the bike, you noticed that he was
- 9 bleeding; right?
- 10 A. Right.
- 11 Q. Okay. Now, someone had given him a paper
- 12 towel, tissue, or something to wipe off the
- 13 blood?
- 14 A. Right.
- 15 Q. Okay. Now, he's bleeding on your porch?
- 16 A. Right.
- 17 Q. And you don't know him?
- 18 A. Don't know him.
- 19 Q. And he asked for a ride home and you said,
- 20 'oh, sure.' You give him a ride.
- 21 A. Well, it wasn't that easy. I asked him
- 22 what he doing here, how he got here, and he
- 23 told me that he followed the truck -- he
- 24 recognized that big yellow truck. He know that
- 25 truck but he don't know me.

1 Q. So he followed the truck.

2 A. He followed the truck. He know the truck.

3 He say, 'I see that truck all over.'

4 Q. All right.

5 A. So the truck told him a whole lot about

6 me, I'm a nice guy.

7 Q. The truck tells him that you are a nice

8 guy?

9 A. I guess so. He followed that truck. I

10 mean he passed West Sherwood all the way to get

11 to East Sherwood, so -- he followed the truck

12 and I don't ---

13 Q. Can you stop for a second? You don't know

14 where my client came from.

15 A. I know what he told me.

16 Q. Okay. So you at some point decide to give

17 him a ride.

18 A. Right.

19 Q. All right. Now, how long after you

20 discovered him on your porch did you leave your

21 house?

22 A. Okay.

23 Q. How much time did you ---

24 A. Okay. I didn't go with him, with him

25 laying out there on the porch I asked him some

1 question for maybe about fifteen -- maybe
2 fifteen -- minutes.

3 Q. Uh-huh.

4 A. And he was telling me -- basically, I
5 don't know how true it was.

6 Q. I didn't ---

7 A. He said that ---

8 Q. --- ask you that. I asked you how long
9 and you said ten or fifteen minutes.

10 A. Ten or fifteen minutes.

11 Q. Okay. So that would put you around 10:15,
12 10:30 when you're leaving your house?

13 A. Probably.

14 Q. Okay. Now, during this fifteen minutes
15 that he is at your house, he gives our
16 cigarettes.

17 A. Yes, sir.

18 Q. He sells some cigarettes at your house?

19 A. No, sir.

20 Q. Okay. Who did he give cigarettes to?

21 A. To my wife, to my mother-in-law, some to
22 my daughter.

23 Q. He also gave a phone number?

24 A. Right.

25 Q. And a name?

1 A. Right.

2 Q. What did he say? What number -- did you
3 hear him when he told them ---

4 A. Well, I was studying him at the time while
5 the rest of them was talking to him, so I heard
6 one time him say, 'Well, I'll leave you my
7 number in case y'all need anything else y'all
8 can give me a call.' The whole time I was
9 focusing on him, who he was.

10 Q. And she took the number?

11 A. She took it.

12 Q. She called it, didn't she?

13 A. She had ---

14 Q. She called him on that number?

15 A. Back at the law enforcement.

16 Q. She called him back at law enforcement?

17 A. Right. Law enforcement was out there at
18 the time to get his name. You know, what they
19 was going through was that they were going
20 through the process of trying to find out who
21 he really was, stuff like that. Also they was
22 there at the time that she was making that
23 call.

24 Q. All right. So your testimony is that she
25 has been interviewed by law enforcement?

1 A. Naw, I wouldn't say interviewed.

2 Q. Well, how can she make a call to law
3 enforcement and never talk to them?

4 A. I was there at the time and I'm telling
5 her to make the call. The patrol officer was
6 right there at the time we was calling it, and
7 then -- then she called this number out.

8 Q. All right. All right, so she called this
9 number for law enforcement?

10 A. Yeah.

11 Q. Somebody answer?

12 A. He did.

13 Q. And what did you say?

14 A. I don't know.

15 Q. How do you know that he answered?

16 A. Huh? I know he answered, 'cause I know
17 that she wasn't talking to herself.

18 Q. Okay. But wasn't she supposed to call and
19 get a full name or something like that?

20 A. She got it.

21 Q. Okay. So he told her his full name?

22 A. Bernard. I mean, that's -- I guess that
23 was the full -- law enforcement wanted that
24 first name.

25 Q. But you had already given them the first

1 name, right?

2 A. Wasn't sure.

3 Q. So she called him to get the first name
4 again? Is that what she did?

5 A. Do what?

6 Q. To get his first name again?

7 A. I mean, just to be sure about it.

8 Q. She didn't ask his last name?

9 A. Naw.

10 Q. So what did she say when she called?

11 A. Just called -- I guess he said hello and
12 then she went to ---

13 MR. GRIFFIN, SOLICITOR: Objection.

14 If he wasn't making the call, he can't know
15 what was said other than what he heard ----

16 THE COURT: Speculation.

17 MR. BRUNSON: Your Honor, ---

18 THE COURT: Rephrase the question.

19 Unless he heard it, he is just speculating.

20 MR. BRUNSON: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY MR. BRUNSON:

23 Q. You testified earlier that she called.

24 A. Right.

25 Q. What did you hear her say to him?

1 A. "Hello."

2 Q. Okay.

3 A. And, "I'm the lady that you gave the
4 cigarettes to." Then they went on from there.

5 As far as they's conversation, I don't know.

6 Q. When did this occur? The same night?

7 A. The same night.

8 Q. So this must have occurred somewhere 2:00
9 or 3:00 o'clock in the morning?

10 A. It was late.

11 Q. Now, you testified that after being home
12 for about fifteen minutes you left?

13 A. (No verbal response).

14 Q. What did you do with the bicycle?

15 A. Put it on the back of the truck.

16 Q. Okay.

17 A. That was before I left.

18 Q. You left with the bike?

19 A. Me and him, we left with the bike.

20 Q. The bike that he told you that he fell on?

21 A. That he fell off of.

22 Q. Okay. Now, you took him from -- what is
23 the name of your street?

24 A. Sherwood. ■ East Sherwood Drive.

25 Q. East Sherwood?

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1 A. East Sherwood.

2 Q. To Olive Street?

3 A. To Olive Street.

4 Q. And that trip took you how long?

5 A. With the law enforcement -- I'd estimated

6 along about may twenty to twenty-five minutes.

7 Q. All right. You leave your house about

8 10:30 and it took you about twenty-five minutes

9 to get there. Then did you unload the bike?

10 A. I unloaded the bike, too.

11 Q. Then came back?

12 A. Then came back, stopped at the store.

13 Q. Did you go anywhere else?

14 A. No.

15 Q. You just dropped him off and then came

16 back?

17 A. Came straight back to the store.

18 Q. All right.

19 A. Then I went to law enforcement. That was

20 the last stop, went with the officer to law

21 enforcement.

22 Q. Okay. Now, when you got back -- I think

23 you testified earlier that when you left your

24 house that you saw police at the Youngs. That

25 he started acting nervous.

1 A. Yes, sir.

2 Q. So if you left your house around 10:30,
3 you passed the Youngs about 10:35 -- or how
4 long does it take you to get to Youngs from
5 your house?

6 A. I'd say -- okay, I wasn't really, you
7 know, counting or focusing on time.

8 Q. I understand.

9 A. For the timeline, I'm doing from the -- I
10 am guessing as to the time. Maybe I said too
11 fast. It was maybe thirty minutes, maybe
12 longer. I don't know.

13 Q. All right. Let me ask you a direct
14 question.

15 A. Okay.

16 Q. How long does it take you to get from your
17 place to the Youngs Market?

18 A. About ten minutes.

19 Q. Okay. So you would have passed Youngs
20 Market before 11:00?

21 A. (No verbal response).

22 Q. All right. Now, your testimony is that
23 when you passed Youngs Market you saw -- that
24 before you passed that you saw blue lights,
25 right?

1 A. Right.

2 Q. And as you passed Youngs, you saw police
3 cars, multiple cars?

4 A. Right.

5 Q. How many?

6 A. I'd say about three, four.

7 Q. Three or four police cars?

8 A. Right, and the guys that were out there
9 who were pressure washing the store.

10 Q. This is while my client is in the car with
11 you?

12 A. Right.

13 Q. And then you took him somewhere, and then
14 came back to Youngs?

15 A. Right.

16 Q. Now, do you smoke cigarettes?

17 A. Yes.

18 Q. What brand?

19 A. Newport.

20 Q. Newport is a popular cigarette?

21 A. I guess.

22 Q. How long have you smoked Newports?

23 A. I'm 52 now, so about seventeen years.

24 Q. Do you smoke any other brands other than
25 Newports?

1 A. I could.

2 Q. Does your wife -- Ms. Cummings is your
3 girlfriend but you refer to her as your wife?

4 A. Right.

5 Q. She smokes Newports?

6 A. Yes, sir.

7 Q. Any other brand? I mean, if she -- is
8 Newport her cigarette of preference?

9 A. Right. But if she has to smoke another, I
10 guess she does.

11 Q. Her mother lived with you at the time?

12 A. Yes, sir.

13 Q. Does she smoke cigarettes?

14 A. Yes, sir.

15 Q. What brand?

16 A. Newport. On occasion they smoke others
17 but, you know, if they are free you smoke as
18 much as you want.

19 Q. I understand. This individual that you
20 said rode with you in the car said that he was
21 "the cigarette man"?

22 A. That's what he said.

23 Q. Meaning that he sells cigarettes?

24 A. Huh?

25 Q. Meaning that he sells cigarettes?

1 A. He probably do.

2 MR. GRIFFIN, SOLICITOR: He's

3 asking ---

4 THE COURT: Sustained.

5 CROSS EXAMINATION CONTINUED

6 BY MR. BRUNSON:

7 Q. Tell us what he said about being the
8 cigarette man.

9 A. "I'm the cigarette man. I've got what you
10 need." I mean, I guess he got 100's, short
11 packs, boxes, whatever. I mean, he just said
12 that he was the cigarette man. That's the way
13 he advertised himself to me that night.

14 Q. For sale?

15 A. Huh?

16 Q. Did he say that they were for sale?

17 A. Well, in my case it was free -- but, you
18 know, I gave him ten dollars, you know.

19 Q. Okay. How much money did you give him?

20 A. Ten dollars.

21 Q. But you're saying that they were free?

22 A. Free.

23 Q. Free. Why?

24 A. Just like me giving him a ride. I just
25 did that as a courtesy, giving him the money.

1 Q. Gave him ten dollars?

2 A. Ten dollars.

3 Q. You bought the cigarettes from him?

4 A. Huh?

5 Q. You bought the cigarettes from him?

6 A. Well, you could say that I bought them
7 from him.

8 MR. BRUNSON: Court's indulgence.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 BY MR. BRUNSON:

12 Q. Let me back up. When you arrived at the -
13 - well, when you dropped him off on Olive
14 Street -- I'm sorry. Is that what you're
15 saying, that you dropped him off on Olive
16 Street?

17 A. Yes, sir.

18 Q. You left Olive Street and went to Youngs?

19 A. Went back to Youngs.

20 Q. All right. And when you got to Youngs,
21 did you tell the officer that you gave Bernard
22 a ride. Did you call that name then?

23 A. "Cigarette man".

24 Q. My question is, did you tell him the name
25 "Bernard"?

1 A. Okay. When you were asking that question
2 earlier about the phone call, that's what was
3 the reason why I called my wife, because she
4 had that number that gave me his real name.
5 But he was telling me that night in the car
6 "I'm the cigarette man", but the officer asked
7 me the same question and I said, 'I think my
8 wife knows.' That's when he called, asked me
9 to call her and get that name.

10 Q. All right, here's my question, ---

11 A. But I never did told him that his name --
12 that that guy's name was Bernard, because I
13 didn't know him.

14 Q. And if anybody says that you came up and
15 said "Bernard", then they're not telling the
16 truth?

17 A. Well, I will put it this way, I didn't
18 know his name, blood type, nothing like that,
19 but I know faces. I recognized him by face. I
20 don't know him but, you know, if I see him
21 again anywhere I'll know who he is. I know how
22 he looks.

23 Q. Here is my question, if anyone says that
24 you pulled up and said, 'I gave a ride to a guy
25 named Bernard,' they are not telling the truth.

1 Is that your testimony?

2 A. Well, since I know his name now, I gave a
3 ride to Bernard.

4 Q. Did you tell that to the cops when you
5 first pulled up at Youngs?

6 A. No, sir.

7 Q. If they said you did, ---

8 A. It would be a lie.

9 Q. Okay. You testified that you saw my
10 client bleeding, on the porch?

11 A. Yes.

12 Q. That he had some tissue, but he was still
13 bleeding, though, right?

14 A. I gave him a piece of tissue.

15 Q. You gave him the tissue. All right. Did
16 he get -- he was bleeding on the porch. Was he
17 bleeding in your truck, too?

18 A. No, it was just a little bit of blood that
19 had run down on his shoe that he had on.

20 Q. All right.

21 MR. BRUNSON: Nothing further.

22 THE COURT: Any redirect?

23 MR. GRIFFIN, SOLICITOR: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. GRIFFIN, SOLICITOR:

1 Q. Mr. McDonald, before Bernard showed up to
2 your house that night, were you watching the
3 clock?

4 A. No, sir.

5 Q. Were you really paying any attention to
6 what time it was?

7 A. No, sir.

8 Q. And while y'all were together, were you
9 really paying any attention to the time?

10 A. No, sir.

11 Q. Okay. What were you most concerned with
12 when he showed up at the house?

13 A. I was concerned about -- the most
14 important thing was you're hurt, you live on
15 the other side of town, you coming all the way
16 my way to my home, and -- I mean, great god,
17 how far does that put you out of the way, and
18 you bleeding like that. You're bleeding. Then
19 you tell me that you don't know me, that you
20 know this truck right here. So it should have
21 been the truck over here helping you out,
22 instead of me.

23 Q. Well, let's talk a little bit about that.
24 You say -- when you testified that he was
25 following the truck, he wasn't -- he didn't

1 follow you home, did he?

2 A. Evidently he was -- I mean, I was getting
3 home way before and he got behind that truck at
4 the corner.

5 Q. So when you get home, is there a car
6 parked in your driveway of the house?

7 A. Yes, sir.

8 Q. Would he have been able to see it from the
9 street?

10 A. Yes, sir.

11 Q. And he asked for the man that drives that
12 yellow truck?

13 A. Right.

14 Q. Now, you -- when you went back to Youngs
15 Market, who did you talk to?

16 A. The little short patrolman.

17 Q. Were there any other law enforcement folks
18 there?

19 A. There was quite a few of them.

20 Q. And you -- you testified that you went to
21 law enforcement, the law enforcement center
22 that night.

23 A. That's right.

24 Q. You talked with more cops there?

25 A. Yes, sir.

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1 Q. What had Bernard referred to himself as?

2 A. "Cigarette Man."

3 Q. And did he tell your wife that his first
4 name was Bernard?

5 A. Yeah.

6 Q. So he told you that he was the Cigarette
7 Man and gave y'all his phone number?

8 A. Right.

9 Q. You identified Mr. McFadden?

10 A. That's him.

11 MR. GRIFFIN, SOLICITOR: Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 MR. GRIFFIN, SOLICITOR: That's all
15 that I have on redirect, Your Honor.

16 THE COURT: Any recross, Mr.
17 Brunson?

18 MR. BRUNSON: None, Your Honor.

19 THE COURT: Thank you, you may step
20 down.

21 (WITNESS STEPS DOWN)

22 THE COURT: Ladies and Gentlemen,
23 I think now would be a good time to break for
24 lunch. I am going to send you to lunch with
25 instructions that you are not going to speak

1 with anyone about this case, with the
2 instruction that you're to be back in your jury
3 room at 2:30 and we will continue the case at
4 that time. Thank you, have a nice lunch.

5 (JURY EXITS COURTROOM)

6 THE COURT: All right. Court is in
7 recess until 2:30.

8 (LUNCH RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: Bring in the jury.

11 (JURY ENTERS COURTROOM)

12 THE COURT: Call your next witness.

13 MR. GRIFFIN, SOLICITOR: The State
14 calls Shanice Cummings.

15 (WITNESS TAKES STAND)

16 SHANICE CUMMINGS, being duly sworn to
17 tell the truth, the whole truth and nothing but
18 the truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. GRIFFIN, SOLICITOR:

21 Q. Ms. Cummings, how old are you?

22 A. Eighteen (18).

23 Q. Where were you living back in July of
24 2009?

25 A. East Sherwood Drive.

1 Q. Did anything unusual happen on the night
2 of July 2nd?

3 A. Well, I was in my room, me and my baby,
4 and everybody else was doing their thing. We
5 heard a knock on the door. My little sister,
6 K.B. she went to the door. She had opened it
7 and then -- before she opened the door she was
8 like, 'Who is it?' He said, "Bernard." She
9 opened the door. Next time you know, he was
10 right there ---

11 Q. Who did you see outside?

12 A. This man sitting by Mr. -- Johnson?

13 Q. The other lawyer?

14 A. Mr. Brunson.

15 Q. All right. He said that his name was
16 Bernard?

17 A. Yes, sir.

18 Q. Did he ask for anybody in particular that
19 night?

20 A. He was -- my stepfather, who was driving
21 the yellow truck, Derrick McDonald.

22 Q. Okay. Did you notice anything about
23 Bernard that evening?

24 A. Well, he had blood on him.

25 Q. Whereabouts was the blood?

1 A. On his right -- to the right leg.

2 Q. You saw that?

3 A. Yes, sir.

4 Q. Did he have anything with him that night?

5 A. We went behind the truck and he got a
6 black bag. What was in the black bag was
7 cigarettes, a lot of cigarettes.

8 Q. Now, did he -- did he give you anything?

9 A. Yeah. Yes, sir, he gave me a pack of
10 cigarettes, my mama and my grandmother.

11 Q. Now, before he showed up at the house that
12 night did you know Bernard at all?

13 A. No, sir.

14 Q. Had you ever seen him before?

15 A. No, sir.

16 Q. Now, did you see him leave the house?

17 A. Yes, sir.

18 Q. Who did he leave with?

19 A. With my stepfather.

20 Q. What did they leave in?

21 A. In the yellow truck.

22 Q. What type of cigarettes was he giving out?

23 A. Newport 100's.

24 Q. Newport 100's?

25 A. Yes, sir.

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1 MR. GRIFFIN, SOLICITOR: Please
2 answer any questions that Mr. Brunson has for
3 you.

4 THE WITNESS: Yes, sir.

5 THE COURT: Mr. Brunson.

6 MR. BRUNSON: Yes, sir.

7 THE COURT: You may cross-examine
8 the witness.

9 MR. BRUNSON: Thank you, Your
10 Honor.

11 CROSS EXAMINATION

12 BY MR. BRUNSON:

13 Q. Ms. Shanice, how you doing?

14 A. Fine.

15 Q. Who all was present at the home on this
16 night, July 2nd, 2009?

17 A. Me, my baby, my little sister, my older
18 sister, my grandmother, and my mother -- and my
19 stepfather.

20 Q. That's a lot of people.

21 A. And their babies.

22 Q. And their babies. All right. Let's start
23 from the top. Your mom, Teresa?

24 A. Um-humm.

25 Q. Your grandmother?

1 A. Yes.

2 Q. What is her name?

3 A. Bertha Shaw (phonetic).

4 Q. What is your sister's name?

5 A. Kendra Brown.

6 Q. And you said another sister?

7 A. K.B.

8 Q. And who else?

9 A. My two babies.

10 Q. Okay. How old are your babies?

11 A. A year, and I was eight months.

12 Q. Both of them?

13 A. (No verbal response).

14 Q. Both of your babies was there in July of
15 2009?

16 A. (No verbal response).

17 Q. An eight-month old?

18 A. (No verbal response).

19 Q. So its your testimony that in July of 2009
20 an eight-month old baby was present?

21 A. I was pregnant. I'm sorry.

22 Q. This is real important that you pay
23 attention to what I ask you.

24 A. Yes, sir.

25 Q. Okay.

1 A. Yes, sir.

2 Q. All right. Now, you testified that you
3 and your baby -- right? One baby?

4 A. The one-year-old.

5 Q. Who else?

6 A. And my mother, my stepfather and my two
7 sisters and their babies.

8 Q. Let me go back and recapture your
9 testimony, if I may. You testified that your
10 mother, Teresa; your grandmother, Bertha; your
11 sister Kendra; your sister K.B. you; your one
12 child; -- and who else?

13 A. That's all.

14 Q. Your stepfather?

15 A. Um-humm.

16 Q. Okay. I thought that you said that one of
17 your sisters had a child?

18 A. She got two babies.

19 Q. Were they there?

20 A. Yes, sir.

21 Q. Okay. How old are her babies?

22 A. One. I mean two and one.

23 Q. Which sister?

24 A. Kendra Brown.

25 Q. Kendra has got a boy and a girl?

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1 A. She's got two girls.

2 Q. All right. Two little girls?

3 A. Yes, sir.

4 Q. Anybody else?

5 A. No, sir, not that I can remember.

6 Q. Are you sure?

7 A. Yes, sir.

8 Q. If someone said that somebody else is
9 there, are they telling the truth? Or are
10 they telling a lie?

11 A. That's all who I remember was at the
12 house.

13 Q. Does your little sister have a friend that
14 spends the night sometimes?

15 A. Not all the time.

16 Q. Was your little sister's friend there that
17 night?

18 A. I can't remember.

19 Q. All right. Okay. You testified that you
20 heard a knock at the door. Did you hear the
21 knock?

22 A. Yes, sir.

23 Q. Okay. And who went to the door first?

24 A. My little six-year-old sister, and that
25 would be K.B.

1 Q. Okay. And you went to the door as well?

2 A. I went behind her as she opened the door.

3 Q. So everybody else in the house was awake?

4 A. Pretty much, but the house is kinda big so
5 -- a lot of people didn't hear the door knock.

6 Q. I understand but my question was, was
7 everybody in the house awake?

8 A. Yes, sir.

9 Q. Okay. So you saw Mr. Bernard McFadden on
10 your porch?

11 A. Yes, sir.

12 Q. You saw him bleeding?

13 A. Yes, sir.

14 Q. And did you see a bicycle?

15 A. Yes, sir.

16 Q. Isn't it true that he said that he fell on
17 his bike?

18 A. Yes, sir.

19 Q. He was bleeding from his leg?

20 A. Yes, sir.

21 Q. Isn't that consistent with a bicycle fall?

22 MR. GRIFFIN, SOLICITOR: Objection,
23 Your Honor. She can't ---

24 THE COURT: Sustained.

25 CROSS EXAMINATION CONTINUED

1 BY MR. BRUNSON:

2 Q. Did you see anyone ride the bike?

3 A. No, sir.

4 Q. Was the bike damaged?

5 A. No, sir. I could really see it. It was
6 in the nighttime.

7 Q. So, no, it wasn't or you don't know?

8 A. I don't know.

9 Q. Okay. The bike could have been damaged.

10 MR. GRIFFIN, SOLICITOR: Your
11 Honor, he is asking her to speculate.

12 THE COURT: Asked and answered.

13 MR. BRUNSON: Yes, sir I will
14 move on.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BRUNSON:

17 Q. Where did you see blood on Mr. McFadden?

18 A. On his right leg.

19 Q. Did you see blood anywhere else?

20 A. Not that I remember.

21 Q. Was he bleeding or ---

22 A. He was bleeding.

23 Q. Was he wiping the blood with something?

24 A. I can't remember.

25 Q. Now, how long did he stay at your house?

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1 A. I can remember.

2 Q. Did he stay at your house for ten minutes?

3 MR. GRIFFIN, SOLICITOR: Judge, she
4 said that she can't remember.

5 THE COURT: I think he can proceed
6 a little further to see if she starts to
7 remember.

8 CROSS EXAMINATION CONTINUED

9 BY MR. BRUNSON:

10 Q. Was it ten minutes, or longer, or less?

11 A. I can't remember.

12 Q. He sold cigarettes at your house?

13 A. He didn't sold 'em, he gave them out.

14 Q. Who did he give cigarettes to?

15 A. Me, my mother and my grandfather -- I mean
16 my grandmother.

17 Q. Okay. Do you smoke cigarettes?

18 A. No.

19 Q. You don't smoke?

20 A. No. Used to.

21 Q. During this time you smoked -- back last
22 year, July '09?

23 A. Yes, sir.

24 Q. Did you smoke Newports?

25 A. Yes, sir.

1 Q. Did your mother smoke?

2 A. Yes, sir.

3 Q. She smoked Newports?

4 A. Yes, sir.

5 Q. Did your grandmother smoke?

6 A. Yes, sir.

7 Q. Did she smoke Newports?

8 A. Yes, sir.

9 Q. Did Mr. McFadden smoke -- I'm sorry, Mr.
10 McDonald.

11 A. Yes, sir.

12 Q. Your stepfather?

13 A. Yes, sir.

14 Q. He smoked Newports?

15 A. Yes, sir.

16 Q. Did anybody else in the house smoke?

17 A. My sister.

18 Q. Kendra.

19 A. Kendra.

20 Q. Kendra smoked Newports too?

21 A. Yes, sir.

22 Q. All right. Now, at this point in time,
23 five people living in this household smoked
24 cigarettes?

25 A. Yes, sir.

1 Q. Smoked Newport cigarettes?

2 A. Yes, sir.

3 MR. BRUNSON: Court's indulgence.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BRUNSON:

6 Q. All right, you testified that he had --
7 well, let me ask you a question. You came
8 outside the house at any point in time?

9 A. I came outside?

10 Q. While Mr. McFadden was on the premises?

11 A. I can't recall. Not as I know of.

12 Q. Let me tell you what -- your testimony is
13 that he gave you cigarettes, right?

14 A. Yeah.

15 Q. Did he come in your house?

16 A. No, he was on porch. I was looking at him
17 from the door, and he was on the porch.

18 Q. Now, I don't want you to testify to what
19 you could have done.

20 A. Okay.

21 Q. My question is, do you recall whether or
22 not you came outside of your house?

23 A. No, sir.

24 Q. But you know that -- your testimony is
25 that he never entered the house?

1 A. He never entered the house. He was on the
2 porch. He was outside the house.

3 Q. But he gave you cigarettes?

4 A. He was on the porch, outside. I was in
5 the doorway, and it's nothing like three little
6 steps -- it's a little porch, and I was right
7 there and he was like right on the porch.

8 Q. How many packs of cigarettes did he give
9 you?

10 A. He gave me two packs.

11 Q. Who else did he give cigarettes to?

12 A. My grandmother.

13 Q. How many packs did he give her?

14 A. I can't remember.

15 Q. Who else did he give cigarettes to?

16 A. My mother. He also gave my mother his
17 phone number.

18 Q. All right. How many packs of cigarettes
19 did he give your mother?

20 A. I can't remember.

21 Q. You were present when he gave your mother
22 his phone number?

23 A. Yes, sir.

24 Q. What did he say when he gave it to her?

25 A. I can't remember.

1 Q. All right. So your testimony is that the
2 porch is -- how big?

3 A. It's like -- (pause) -- a little -- I
4 can't really explain.

5 MR. BRUNSON: Your Honor, may I
6 ask the witness to step down?

7 THE COURT: You may.

8 MR. BRUNSON: Step down, please.

9 THE WITNESS: (Complies)

10 CROSS EXAMINATION CONTINUED

11 BY MR. BRUNSON:

12 Q. If you would, stand right here. Now, if
13 you could describe, by using your hands, the
14 size of the porch.

15 A. I can ---

16 Q. Explain what you're about to testify.

17 A. The steps are like right here, the steps
18 are right here and the porch is like right
19 here. This is like the little doorway and the
20 porch is right here.

21 Q. So would you estimate ---

22 A. I was like in front of the door.

23 Q. Is your porch more than three feet wide?

24 A. I am not sure.

25 Q. When you walk out of your front door, how

1 many steps would it take before you got off the
2 porch?

3 A. Two.

4 Q. Two steps?

5 A. Uh-huh.

6 Q. All right. And the length of the porch,
7 if you had to walk the length of the porch, how
8 many steps would it take -- long-ways?

9 A. Long-ways?

10 Q. Um-humm.

11 A. (Pause) -- I don't know.

12 Q. Let me rephrase the question. If you
13 stepped up on the side of your porch and you
14 walked from the front of the door and stepped
15 off the other side of the porch, how many steps
16 would you have made?

17 A. Two.

18 Q. So the porch is two-by-two, two steps.

19 A. I can't really explain how it is. I don't
20 know.

21 Q. Thank you. Your testimony is that my
22 client was on the porch bleeding; isn't that
23 right.

24 A. (Returns to witness stand) -- yes, sir.

25 Q. And when you looked out the door, you saw

1 him on the porch, right?

2 A. His leg -- if I looked like -- if I opened
3 the door, the porch is right there.

4 Q. I understand. It's your testimony that
5 you saw him on the porch?

6 A. Yes, sir.

7 Q. Was he standing up, laying down, sitting
8 down, what was he doing on the porch?

9 A. Standing up.

10 Q. Did you ever see him laying down on the
11 porch?

12 A. No, sir.

13 Q. All right. Now, he left with your
14 stepfather, Mr. McDonald?

15 A. Yes, sir.

16 Q. Who put the bike -- what did they do with
17 the bicycle?

18 A. They put it on the back of the yellow
19 truck.

20 Q. Who put it there?

21 A. I can't remember.

22 Q. You didn't see?

23 A. I know they put it on the back.

24 Q. And left, and they left?

25 A. Yes, sir.

1 Q. Just the two of them?

2 A. Yes, sir.

3 Q. All right. Now, you were in the room with
4 your daughter, with your child when someone
5 knocked on the door?

6 A. Yes, sir.

7 Q. What were you doing in the room?

8 A. I was doing something.

9 Q. Okay. Like -- were you watching TV?

10 A. I can't remember. I was doing something
11 to keep me occupied.

12 Q. But you weren't asleep?

13 A. No, sir.

14 Q. All right. So -- did you know what time
15 Derrick McDonald came home that night?

16 A. No, sir.

17 Q. All right. Did you talk to any
18 investigators in this case that night?

19 A. No, sir.

20 Q. Did you talk to any investigator in this
21 case in the year of 2009?

22 A. No, sir.

23 Q. Did you talk to any investigator in this
24 case prior to September of this year?

25 A. Yes, sir. Of this year?

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1 Q. Yes.

2 A. Around that area.

3 Q. Around that area?

4 A. (No verbal response).

5 Q. So your testimony is that it was around

6 September when you first talked to an

7 investigator about this case?

8 A. (No verbal response).

9 Q. Around September?

10 A. I can't remember, sir.

11 Q. All right. Okay.

12 MR. BRUNSON: Court's indulgence?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION CONTINUED

15 BY MR. BRUNSON:

16 Q. Did you ever at any point see my client

17 laying down?

18 A. No, sir.

19 MR. BRUNSON: Nothing further.

20 THE COURT: Redirect?

21 MR. GRIFFIN, SOLICITOR: No

22 redirect, Your Honor.

23 THE COURT: Okay, you may step down.

24 (WITNESS STEPS DOWN)

25 THE COURT: Any objection to this

1 witness being excused?

2 MR. GRIFFIN, SOLICITOR: No, sir.

3 MR. BRUNSON: Your Honor, I

4 believe that we've got her on ours.

5 THE COURT: Okay, she is under

6 subpoena?

7 MR. BRUNSON: Yes, sir.

8 THE COURT: Okay. Call your next

9 witness.

10 MR. GRIFFIN, SOLICITOR: Your

11 Honor, the State calls Teresa Cummings.

12 (WITNESS TAKES STAND)

13 TERESA CUMMINGS, being duly sworn to
14 tell the truth, the whole truth and nothing but
15 the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. GRIFFIN, SOLICITOR:

18 Q. Ms. Cummings, what was your address back
19 in July of 2009?

20 A. [REDACTED] East Sherwood Drive.

21 Q. Tell the jury what happened that night.

22 A. We heard a knock on the door. There was a
23 knock on the door and my little girl answered
24 the door. There was this man, named Bernard,
25 that came to the house, said that he'd hurt

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1 himself on a bicycle.

2 Q. Did you see his injuries?

3 A. His leg was bleeding.

4 Q. He told y'all that his name was Bernard?

5 A. Yes, sir.

6 Q. Did he ask for anybody?

7 A. The man who drive the yellow truck.

8 Q. Who is the man who drives the yellow
9 truck?

10 A. Derrick McDonald.

11 Q. What relation is Derrick to you?

12 A. My boyfriend.

13 Q. Now, did Bernard give you anything that
14 night.

15 A. He give me a piece of paper with his phone
16 number and his name was on it, and some
17 cigarettes.

18 Q. Why type cigarettes was it?

19 A. Newport.

20 Q. Now, before that night had you ever met
21 Bernard McFadden?

22 A. No, sir.

23 Q. Were you in a relationship with Bernard
24 McFadden?

25 A. No, sir.

1 Q. Now, why did he give you his phone number?

2 A. He said like if we need cigarettes or
3 anything to give him a call, that they called
4 him the Cigarette Man.

5 Q. Now, you -- were you interested in dating
6 Mr. McFadden?

7 A. No, sir.

8 Q. Are you still with Mr. McDonald?

9 A. Yes, sir.

10 Q. How long have y'all been together?

11 A. About seven years.

12 Q. Did you see who Mr. McFadden left the
13 house with?

14 A. With Derrick, in the yellow truck.

15 Q. Now, did you have any concern about this?

16 A. I told him that Derrick couldn't give him
17 a ride 'cause we didn't even know who he was.
18 So he said that he wanted to speak to Derrick.

19 Q. Did you ever call this phone number that
20 he'd given you?

21 A. I called it that night to check on Derrick
22 because Derrick took a long time coming and I
23 thought something had happened to him.

24 Q. So you called the number out of concern
25 for your boyfriend?

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1 A. Yes, sir.

2 Q. Did you ever go to Youngs Market that
3 night, July 2nd?

4 A. No, sir.

5 Q. Do you know about how long Mr. McFadden
6 was at your house?

7 A. About fifteen minutes, waiting on Derrick.

8 Q. Ms. Cummings, when you called the phone
9 number that you had been given, did you talk
10 with a man or a woman?

11 A. Woman.

12 Q. It was a woman that answered?

13 A. Yes, sir.

14 Q. What did that person tell you?

15 A. She said ---

16 MR. BRUNSON: I object, Your
17 Honor.

18 MR. GRIFFIN, SOLICITOR: Your
19 Honor, I am not offering it for the truth of
20 the matter what she said. I am offering it for
21 the effect that it had on ---

22 THE COURT: Approach.

23 (OFF RECORD BENCH CONFERENCE)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. GRIFFIN, SOLICITOR:

1 Q. Is there any doubt in your mind that the
2 person that came to your house on July 2nd,
3 2009, -- do you have any doubt in your mind as
4 to who that was?

5 A. It was the man sitting beside Mr. Brunson.

6 MR. GRIFFIN, SOLICITOR: Answer any
7 questions that Mr. Brunson has for you.

8 THE COURT: Mr. Brunson.

9 MR. BRUNSON: Thank you, Your
10 Honor.

11 CROSS EXAMINATION

12 BY MR. BRUNSON:

13 Q. Good afternoon, Ms. Cummings.

14 A. Hello.

15 Q. How old are you?

16 A. Thirty-six.

17 Q. You still live at Sherwood?

18 A. No, sir.

19 Q. Where do you live now?

20 A. Crescent.

21 Q. Crankton?

22 A. Crescent.

23 Q. Is that a drive or ---

24 A. I don't know.

25 Q. Is that here in Sumter?

1 A. Yes, sir.

2 Q. How long did you live at this address,
3 this Crescent address?

4 A. About a couple months.

5 Q. How long did you live at the Sherwood
6 address?

7 A. About three years.

8 Q. How long after this incident did you live
9 at this address?

10 A. About -- well, we moved in -- about --

11 Q. You lived there for about a year after
12 this incident?

13 A. Yes.

14 Q. All right. Did any investigators ever
15 come to your house?

16 A. No, sir.

17 Q. Did any police officer ever come to your
18 house?

19 A. No, sir.

20 Q. There was a gentleman on the porch that
21 night, you testified?

22 A. Yes, sir.

23 Q. Bleeding?

24 A. Yes, sir.

25 Q. Did you call the police that night?

- 1 A. No, sir, I didn't.
- 2 Q. How many people were in the home that
- 3 night -- well, instead of -- I will withdraw
- 4 that question. Tell me who was in the home
- 5 that night, starting with you.
- 6 A. Me, my mother, my two stepdaughters, ---
- 7 Q. What are their names?
- 8 A. K.B. ---
- 9 Q. K.B.
- 10 A. --- Kendra Brown, ---
- 11 Q. Kendra.
- 12 A. --- and Kendra's friend, Popeye.
- 13 Q. Okay.
- 14 A. Derrick was there.
- 15 Q. Derrick. Okay. Who else?
- 16 A. That's about it.
- 17 Q. That's about it or that is it?
- 18 A. That's it.
- 19 Q. Were there any children in the house?
- 20 A. Oh, my seven-year-old.
- 21 Q. What is your seven-year-old's name?
- 22 A. Shanice.
- 23 Q. Is that it?
- 24 A. Yeah.
- 25 Q. Are you sure?

- 1 A. Does Shanice (sic) have a child?
- 2 A. She has two kids?
- 3 Q. Did she have them there that night?
- 4 A. They wasn't there that night, though.
- 5 Q. Are you sure?
- 6 A. I'm sure.
- 7 Q. Does Kendra have a child?
- 8 A. Kendra have two kids.
- 9 Q. Were they there that night?
- 10 A. No, Kendra -- all the kids that was there
- 11 was my seven-year-old.
- 12 Q. Your seven-year-old was the youngest
- 13 person in the house?
- 14 A. That was home.
- 15 Q. Where were you when -- I believe that you
- 16 testified that you heard the knock?
- 17 A. Um-humm.
- 18 Q. Where were you when you heard this knock?
- 19 A. In my room.
- 20 Q. Doing what?
- 21 A. Looking at TV.
- 22 Q. Who was in the room with you?
- 23 A. I was by myself.
- 24 Q. Okay. How many rooms in the house?
- 25 A. Four.

1 Q. How many bedrooms?

2 A. Four bedrooms.

3 Q. So when the knock occurred on your door,
4 Derrick wasn't in the bedroom with you?

5 A. Derrick was in the restroom.

6 Q. Okay. And who answered the knock?

7 A. K.B.

8 Q. At some point did you go to the door?

9 A. I went to the door after everybody else
10 came, to see who it was, when everybody else
11 ran to the door.

12 Q. And tell us what you saw when you opened
13 the door?

14 A. Well, -- when she opened the door. We
15 see a man had came to the door -- well, when I
16 went to the door, he had a black bag in his
17 hand, he as bleeding on one of his legs, that
18 part right there, and he was like can he speak
19 to the man you drive the yellow truck --
20 Derrick. So Derrick took about five or ten
21 minutes to come out of the bathroom. He was
22 still at the door talking to the rest of the
23 people, telling us that he'd got hurt on his
24 bike.

25 Q. So you got to the door before Derrick

1 did?

2 A. We all was to the door before Derrick got
3 there.

4 Q. Okay. So the answer is yes, that you
5 were there before he was?

6 A. Yes.

7 Q. Okay.

8 A. 'Cause he was still in the restroom.

9 Q. Okay. Now, at some point this man gave
10 you something.

11 A. He gave me a pack of -- he gave me two
12 packs of cigarettes, he gave my mother a pack
13 and my two daughters a pack of cigarettes, and
14 a piece of paper with his phone number and his
15 name was on it.

16 Q. His name was on it?

17 A. Um-humm.

18 Q. What name was on this piece of paper?

19 A. "Bernard."

20 Q. What else?

21 A. His phone number.

22 Q. What did he say to you when he gave that
23 to you?

24 A. He said that we needed anything to just
25 call him because they called him the Cigarette

1 Man.

2 Q. Now, he gave you this number before or
3 after Derrick arrived?

4 A. He gave me the phone number after Derrick
5 arrived. He gave me the number in front of
6 all of us: the kids, Derrick.

7 Q. You asked him for a number?

8 A. No, sir.

9 Q. How many packs of cigarettes did he give
10 out that night at your house?

11 A. Five packs.

12 Q. Do you smoke cigarettes?

13 A. Um-humm.

14 THE COURT: You need to say yes or
15 not.

16 THE WITNESS: Yes, sir.

17 CROSS EXAMINATION CONTINUED

18 BY MR. BRUNSON:

19 Q. And you smoked cigarettes back then,
20 correct?

21 A. Sir?

22 Q. You smokes cigarettes back then, in July
23 of 2009?

24 A. Yes, sir.

25 Q. What kind of cigarettes do you smoke?

1 A. Newport.

2 Q. Who else in the house smokes Newport?

3 A. Derrick, my mama, and my daughter, my
4 stepdaughter.

5 Q. At that time, how many people in the
6 house smoked Newport? Five? You said that
7 you smoked Newports?

8 A. Yes.

9 Q. Your mother smoked Newports?

10 A. It was four of us at the time.

11 Q. All right, let me ask you this question,
12 those four people -- that's Derrick, that's
13 you, that's your mother, that's your daughter.

14 A. Five with Derrick.

15 Q. So two of your daughters?

16 A. My stepdaughter.

17 Q. So five people in the house smokes
18 Newports?

19 A. (No verbal response).

20 Q. Correct?

21 A. Yes.

22 Q. Okay. Now, do you recall what you were
23 watching on television that night?

24 A. No. No, sir.

25 Q. To your knowledge, everyone in the house

1 was awake; correct?

2 A. Yes, sir.

3 Q. And Derrick got home about 9:30 that
4 night; right?

5 A. No, sir.

6 Q. 9:00 o'clock?

7 A. No, sir.

8 Q. 10:00 o'clock?

9 A. I don't recall what time it was.

10 Q. Okay. Now, on direct you testified that
11 you called this number that Bernard had given
12 you; is that correct?

13 A. Yes, sir.

14 Q. You called it that night?

15 A. I called it that night because Derrick
16 took so long to come back.

17 Q. Derrick never called you and asked you to
18 call this number, isn't that true?

19 A. No, he didn't.

20 Q. And if Derrick said that, Derrick is
21 telling a lie?

22 A. Derrick never -- Derrick didn't told
23 (sic) me to call it, I just called to check on
24 him because it was taking a long time.

25 Q. I understand. And you said that's when a

1 woman answered the phone?

2 A. A woman, yes, sir.

3 Q. Now, did you ever see my client riding a
4 bicycle?

5 A. I haven't seen him ride a bicycle. When
6 he was there, the bike was beside the steps.

7 Q. And you saw him bleeding?

8 A. Yes.

9 Q. Not -- well, how do you know he was
10 bleeding?

11 A. Because he was on the porch, we were all
12 standing at the screen and his leg was pouring
13 down blood, bleeding.

14 Q. Okay. And did blood get on your porch?

15 A. I can't remember.

16 Q. And Derrick gave him a paper towel;
17 right?

18 A. I don't remember any of that. No, sir.

19 Q. Okay. Who put the bike into the truck?

20 A. I don't remember.

21 Q. Did you see -- you just went back in the
22 house?

23 A. During that time, yeah.

24 Q. You left Derrick and Bernard outside and
25 went back in?

1 A. The kids were -- they were standing by
2 the screen door and Derrick and Bernard was
3 outside by the truck. So I didn't go outside.
4 I was still at the door, protecting my home.

5 Q. Bernard told you that he hurt himself?

6 A. Yes, on his bike.

7 Q. What did he say? That he fell?

8 A. He just said that he hurt himself on the
9 bike. That was it.

10 MR. BRUNSON: Court's
11 indulgence, Your Honor?

12 THE COURT: Yes.

13 CROSS EXAMINATION CONTINUED

14 BY MR. BRUNSON:

15 Q. Just a couple more questions. Did you
16 ever see Bernard McFadden laying down?

17 A. Laying down, not that I remember.

18 Q. I am asking about now, do you remember
19 now whether or not your saw Mr. McFadden
20 laying down that night?

21 A. (Negative gesture).

22 Q. You have to speak, so she (court
23 reporter) can ---

24 A. No. I can't remember.

25 Q. You can't remember?

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1 A. No.

2 Q. Okay.

3 A. No, sir.

4 Q. Do you know where Wellington Road is?

5 A. No, sir.

6 Q. Did you talk with a member of law
7 enforcement or an investigator about this case
8 prior to September of this year?

9 A. No, sir.

10 MR. BRUNSON: Nothing further.

11 THE COURT: Redirect?

12 MR. GRIFFIN, SOLICITOR: No, sir.

13 THE COURT: You may step down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Any objection to this
16 witness being excused -- or do you have her
17 under subpoena?

18 MR. BRUNSON: (No verbal
19 response).

20 MR. GRIFFIN, SOLICITOR: The State
21 calls Detective Irene Culik.

22 THE COURT: How long will this
23 witness be?

24 MR. GRIFFIN, SOLICITOR: Your Honor,
25 she will be fairly lengthy.

1 THE COURT: Why don't I go ahead
2 and give the jury a quick break before you
3 start?

4 Ladies and Gentlemen, we'll take about
5 ten minutes for you smoke or get something to
6 drink.

7 (JURY EXITS COURTROOM)

8 THE COURT: Court will be in recess
9 for approximately ten minutes.

10 (BRIEF RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Mr. Brunson, was there
13 something that you want to bring up to the
14 court at this time?

15 MR. BRUNSON: Yes, Your Honor.
16 Would the court provide an instruction to my
17 client in regard to the danger of discussing
18 prior events, prior cases that was brought
19 against him? And the reason that we are
20 asking for this is ---

21 THE COURT: What I can tell you is
22 that if on cross examination you were -- the
23 State is not going to be allowed to bring it
24 up in their case in chief.

25 MR. GRIFFIN, SOLICITOR: Yes, sir.

1 THE COURT: However, if on your
2 cross examination you bring up something about
3 some events that happened in case where you
4 were a defendant, I am not going to muzzle
5 them. They have a right -- if you are
6 accusing them of something improper, that
7 happened years ago, and how they would know
8 it, then it is proper -- that's what is known
9 as "opening the door." You will have opened a
10 door and prior convictions, or whatever she
11 was investigating, can come in merely because
12 you brought it up, and I am not going to
13 muzzle the State.

14 So if you want to go there, there is
15 danger because -- and I am still going to
16 charge this jury that this gentleman is only
17 on trial for this case. I can't take it out
18 of their minds thought if they hear knowledge
19 that he was involved in something else,
20 before. People have a general tendency to
21 think 'if he did it once, he'd do it again.'
22 Never done it, you might be -- if you've done
23 it before, they might make that assumption.

24 It's your call as to whether or not
25 -- now, whether or not you want to testify or

1 not, I'll go through a litany of questions on
2 that.

3 MR. BRUNSON: And, Your Honor,
4 that applies even if there was no conviction
5 in that?

6 THE COURT: That does, because it
7 brings up how she would know him and --
8 therefore, she could say how she knew him. It
9 is not a conviction but it would certainly --
10 you can't take a swipe at them and then make
11 them keep it out.

12 MR. BRUNSON: Yes, sir. Thank
13 you, Your Honor.

14 THE COURT: All right. Are we
15 ready?

16 MR. GRIFFIN, SOLICITOR: Yes, sir.

17 THE COURT: Bring our jury in.

18 (JURY ENTERS COURTROOM)

19 THE COURT: The State may call its
20 next witness.

21 MR. GRIFFIN, SOLICITOR: The State
22 calls detective Irene Culick.

23 (WITNESS TAKES STAND)

24 IRENE CULICK, being duly sworn to
25 tell the truth, the whole truth and nothing

1 but the truth, testified, as follows:

2 DIRECT EXAMINATION

3 BY MR. GRIFFIN, SOLICITOR:

4 Q. Detective Culick, by whom are you
5 employed?

6 A. I am employed by the Sumter Police
7 Department.

8 Q. In what capacity are you employed by the
9 Police Department?

10 A. I am now currently the sergeant over the
11 detective division of the Police Department.

12 Q. Let's talk a little bit about your prior
13 work with the Department. When did you start
14 with the Sumter Police Department?

15 A. February of 1998.

16 Q. What department were you in, in February
17 of '98?

18 A. When I started there, I started in
19 Evidence. I was an evidence custodian.

20 After that I went to Patrol and I worked
21 with the patrol officers.

22 Then about eight years ago I was assigned
23 to the Detectives Division. I think this
24 June, eight years ago.

25 Q. June of 2002?

1 A. Yes.

2 Q. Tell the jury what a police detective
3 does generally?

4 A. What we do is basically follow up on
5 reports and case that patrol doesn't have time
6 to do. If a patrol officer goes to a house
7 where there is a break-in or to a store where
8 there is a robbery, they make an initial
9 incident report. Then those reports come
10 to back to the detectives division, we are
11 assigned these cases based on different areas
12 that we work in. I work in Violent Crimes.
13 We have a detectives division that handles
14 burglaries, we have a division that handles
15 fraud and forgeries, we have a division that
16 handles juveniles. We get assigned cases that
17 we are to work on, make arrests that are
18 appropriate, come to court, things like that.
19 We also process crime scenes. There's always
20 a detective on call.

21 Q. Back in July of 2009, specifically the
22 night of July 2nd, were you on duty that
23 night?

24 A. That night I was on call. What that
25 means is that we worked regular hours that

1 day, 8:30 to 5:30, and then we have an on-call
2 schedule. This night I was on call and got
3 the call at the house.

4 Q. About what time were you called out?

5 A. It was after midnight. I was at the
6 house and I was still up, because the next day
7 I was going to be leaving when I got off call
8 to go on go on vacation with my family for the
9 holiday. I got a phone call when I was up
10 packing and getting ready, saying that there
11 was a burglary that had occurred at the Youngs
12 store on East Liberty Street and that they
13 needed me to respond for processing.

14 Q. Tell the jury what processing means.

15 A. As far as processing, it's basically
16 gathering evidence at a crime scene. I
17 responded. I went by the department and there
18 was another detective that was there at the
19 office, doing some paperwork. I told him what
20 I had, a break-in. I then responded to the
21 store.

22 What we do is that we first take pictures
23 of a crime scene. Initially, we start with
24 that. I ask the officers what they have, then
25 I take pictures and I just work my way from

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1 the outside in looking for any type of
2 evidence that there may be.

3 Q. Is it important to take photographs
4 first?

5 A. Yes. You want to take photographs of the
6 crime scene so that you can see where
7 everything is as you arrive, how things are
8 and what you see when you initially get there.

9 Q. Okay. You mentioned another detective
10 that you spoke with before you responded to
11 Youngs. Who was that?

12 A. That was Detective John Litaker.

13 Q. When you responded to Youngs Market, who
14 was there?

15 A. When I responded to Youngs, Patrol was
16 there -- Officer Capell was the officer on
17 scene. His lieutenant was there. There was
18 also the store clerk, Ms. Billups, she was
19 there. There were a couple of people there
20 that were going to pressure wash the business.

21
22 Also Derrick McDonald was there.

23 Q. Now, when you arrived, was anyone inside
24 the business?

25 A. No, nobody was inside. The patrol

1 officers had done a good job. What their job
2 is, is to keep people away from the crime
3 scene and out of it so that they can't
4 contaminate or damage any evidence that might
5 be there by walking through a crime scene.
6 Their job is to respond, to make sure that no
7 one is still inside a business, and then
8 secure the scene so that no one else can get
9 in until a detective responds.

10 Q. Detective Culick, now I am going to show
11 you a number of photographs. We will start
12 with what has been identified as State's
13 Exhibit 4 for identification. I ask if you
14 recognize that?

15 A. (Upon review), yes, I do.

16 Q. Who took that photograph?

17 A. I did.

18 Q. What does it depict?

19 A. It depicts the Youngs store, the way that
20 it looked when I got there that night.

21 MR. GRIFFIN, SOLICITOR: Your
22 Honor, we would offer State's Exhibit 4 for
23 identification?

24 THE COURT: Any objection, Mr.
25 Brunson?

1 MR. BRUNSON: No objection, Your
2 Honor, but -- may we approach, very briefly?

3 THE COURT: Yes, you may.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: State's Exhibit ---

6 MR. GRIFFIN, SOLICITOR: I will
7 identify each as I hand it to the detective.
8 I believe that we had offered number four.

9 THE COURT: You had.

10 MR. GRIFFIN, SOLICITOR: May I
11 publish?

12 THE COURT: You may.

13 (SO ENTERED AS STATE'S EXHIBIT 4)

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GRIFFIN, SOLICITOR:

16 Q. Detective Culick, this is State's Exhibit
17 5.

18 A. I took this picture along with other
19 crime scene photos that night. This picture
20 is a picture of the one that you're seeing
21 now. It's got the door shattered on the right
22 side here and you can see the brick better
23 that was laying inside.

24 MR. GRIFFIN, SOLICITOR: Your
25 Honor, may I publish?

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1 THE COURT: You may.

2 (SO ENTERED AS STATE'S EXHIBIT 5)

3 DIRECT EXAMINATION CONTINUED

4 BY MR. GRIFFIN, SOLICITOR:

5 Q. Detective Culick, State's 6?

6 A. This a closeup picture of the same. What
7 I do is take pictures from far away and then
8 move in closer, and this is a closeup shoot.

9 (SO ENTERED AS STATE'S EXHIBIT 6)

10 MR. GRIFFIN, SOLICITOR: Let me
11 back up a little bit, Your Honor. I am going
12 to show her State's Exhibit 31.

13 THE COURT: If you could do in
14 order.

15 MR. GRIFFIN, SOLICITOR: Yes, sir,
16 they got a little shuffled.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. GRIFFIN, SOLICITOR:

19 Q. What is that?

20 A. This picture just shows the counter where
21 a person would stand, the register, and it
22 shows where the cigarettes are here. You can
23 observe the cigarette packs and the whole --
24 that is just what that shows, shows a picture
25 of that.

1 Q. This is State's Exhibit 8.

2 A. This next picture shows the counter area
3 that comes around, where the clerk would
4 stand, and it shows cigarette packs down here
5 on the floor, here on the floor, and lottery
6 tickets. It looks like one of the little
7 holders that was holding the cigarettes in
8 place behind the counter is on the floor.

9 Q. State's Exhibit 9?

10 A. This is another picture just showing the
11 same area, the area behind the register.

12 Q. State's Exhibit 10?

13 A. This is actually a picture where I am --
14 and I think that there is another one in
15 there, too -- where the cashier would stand,
16 an employee behind the counter. You can see
17 the cigarettes that are behind the counter.
18 This is going out the door area.

19 Q. And this is out of order, State's Exhibit
20 29?

21 A. This is behind the counter here. You can
22 see that the cigarettes are kinda pulled out
23 of the little racks that hold them. There are
24 cigarettes on the floor. There are cigarettes
25 on the floor. This shows you another angle,

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1 shows how it was pulled out.

2 Q. State's Exhibit 11?

3 A. This is would be -- (indicating).

4 Q. State's Exhibit 12?

5 A. State's Exhibit 12, I just got closer to
6 what you can see -- the little plastic device
7 that holds cigarettes.

8 Here you can see a little marker that I
9 put on the floor. That dot in front of it is
10 what appeared to be blood to me, so I marked
11 it and then I took a picture so that you could
12 see where that blood was located in the store.

13 Then I took a closer up, a closer
14 picture.

15 Q. State's Exhibit 11?

16 A. This is a picture that shows that a
17 little bit closer. I just wrote the case
18 number on a scale here and then this spot over
19 here that appeared to be blood.

20 Q. State's Exhibit 13?

21 A. Same picture, just a close up.

22 Q. State's Exhibit 14?

23 A. This is a picture that I took that was
24 some Newports and there is a small spot, small
25 spot right here, red spot that appeared to be

1 a blood stain, so I took a picture of it
2 before I collected it.

3 Q. State's Exhibit 15?

4 A. This picture shows the cigarettes on the
5 floor behind the counter, and you can see in
6 the -- it's a far off shot -- picture some
7 packs here that appear to be -- the red
8 appears to be blood, and that's why I took the
9 picture. I've got some more that show it a
10 little bit closer. That gives you an idea of
11 where the blood was.

12 Q. State's Exhibit 16?

13 A. This is a closeup of that picture which
14 shows a pack of Newport cigarettes that had
15 blood on it and what appears to be blood on
16 the floor beside the pack of cigarettes.

17 Q. State's Exhibit 17?

18 A. This is a picture that I took of the
19 lottery tickets. I photographed the back of
20 it, what the clerk would see, what she pulls
21 out to give them to somebody. You can see how
22 this is torn right here. This lottery ticket
23 matches the lottery tickets that are down
24 there on the floor that you can see where
25 somebody pulled them out and ripped them

1 quickly. Didn't take their time. It was
2 torn.

3 Q. State's Exhibit 18?

4 A. This is just another picture that I took
5 that, you can see in some other photographs,
6 shows the cigarettes, how they were disturbed.
7 It wasn't that somebody come in and said 'let
8 me have some cigarettes' and they took them
9 out. These were grabbed quickly, pulling it
10 out -- the little container that holds them up
11 in place.

12 Q. State's Exhibit 19?

13 A. This shows the cigarettes here but it
14 also shows the back area that the
15 clerk/employees use. On the shelf here is a
16 first aid kit that was opened. We weren't
17 sure if the clerk had opened it and left it
18 that way or if that is how they store it, or
19 if the suspect -- obviously he's cut himself
20 in the business and I thought that he might
21 have touched or used it, so I went ahead and
22 took a picture of it before I collected that.

23 Q. State's Exhibit 20?

24 A. This is just a closeup picture of that
25 first aid kit, opened. I wasn't sure if it

1. was used, but just out of an abundance of
2. caution I went ahead and took a picture.

3. Q. State's Exhibit 28?

4. A. Number 28 is just another picture of the
5. front of the store. It just shows the glass
6. that was broken out, on the left side, and the
7. brick.

8. Q. Then, lastly, State's Exhibit 30?

9. A. This is just another picture, a little
10. bit closer, of the cigarettes that have what
11. appears to be blood on them. Then right
12. beside it you can see a spot of blood on the
13. floor, as if they might have been standing
14. over it.

15. Q. Now, Detective Culick, after you took
16. these photographs, what did you do?

17. A. After I took the photographs, that's when
18. I started processing the scene, collecting the
19. blood from the floor, the sample that you saw
20. in the picture, with swabs that we use to
21. collect blood. I then collected the brick,
22. collected the cigarettes that had blood on
23. them, I collected the first aid kit. Then I
24. went through the glass that was broken at the
25. door, trying to find if there was any glass

1 that had blood on it. I wasn't able to find
2 any on the pieces, but I collected some of the
3 glass in case we got a suspect that night - so
4 that I could send it to SLED, in case they got
5 some in their shoes where they walked into the
6 store. They may have had glass in the bottom
7 of their shoes and SLED could match that glass
8 to the bottom of those shoes, so I collected
9 that.

10 The lottery tickets that were down there
11 on the floor had some blood on them, so I
12 collected that, -- or to see if they had
13 fingerprints on them. They were near the
14 cigarette packs.

15 Q. Okay. I am going to show you what has
16 been marked for identification as State's
17 Exhibit 23. Do you recognize that item?

18 A. This item contains the swab that I took
19 from the business floor. This is just how it
20 was packaged from SLED. It was packaged by me
21 that night, but this is what SLED puts it in.
22 This was the swab, which is -- basically you
23 take a Q-tip, you wet that Q-tip and swab it
24 over the area that you think is blood, collect
25 that and turn it in.

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1 Q. When you say turn it in, what does that
2 mean?

3 A. All the evidence that I collect, I turn
4 in to our Evidence department. Of course, at
5 that time in the morning they weren't in. So
6 they have lockers that only the Evidence
7 technician has access to. So that's -- when I
8 got through with all of my processing, I did a
9 chain of custody that says that these are the
10 items that I took in. I put all those items
11 in a locker for the evidence technicians in
12 the forensics department to process.

13 Q. Okay. That swab that you took, you put
14 it in the evidence locker and filled out a
15 chain of custody?

16 A. Yes, I did.

17 Q. I am going to show you what has been
18 marked as State's Exhibit 21 and ask if you
19 recognize this?

20 A. These are the lottery tickets. It
21 matches that ticket that you could see in the
22 photograph where the ticket was torn. These
23 were found on the floor of the business near a
24 pack of cigarettes. I collected them to see
25 if there was what I believed to be possibly

1 blood on it here, and fingerprints; just so
2 that they could be processed in the lab.

3 Q. And what did you do with that after you
4 collected it?

5 A. I turned these into evidence along with
6 the ---

7 Q. In the same fashion that you did the
8 swabs on the floor?

9 A. Correct.

10 Q. Detective, I want to show you what has
11 been marked for identification as State's
12 Exhibit 22. Do you recognize that?

13 A. Yes, these are the packs of cigarettes
14 that I turned in. You can see somewhat on
15 here what I was looking at that time, which is
16 shown in some of the pictures, of what I felt
17 to be blood -- some type of blood.

18 Q. Okay, what did you ---

19 A. I also took these and turned them into
20 Evidence, for them to be processed by our
21 Forensics.

22 Q. Okay. I show you what has been marked as
23 State's Exhibit 24.

24 A. This is just -- there was a pill bottle,
25 that are brand new clean pill bottles that we

1 use to collect different things. Like I used
2 this to collect the glass in. Sometimes I use
3 it if I go to a shooting to collect shell
4 casings. This is what I used to collect glass
5 from the door that was shattered.

6 Q. What did you do with that after you
7 collected?

8 A. I also put this on the chain of custody
9 and turned it into the evidence locker.

10 Q. Detective Culick, I show you what has
11 been marked for ID as State's Exhibit 7. Do
12 you recognize that?

13 A. Yes, this is the brick/block that's in
14 the picture that was -- that I felt like was
15 used to break the window out. I collected it
16 and turned it into Evidence.

17 Q. And filled out a chain of custody?

18 A. Right, it was on the chain of custody
19 along with the other items turned into
20 Evidence.

21 Q. Detective, I am going to show you what
22 has been marked as State's Exhibit 25 for
23 identification and ask if you recognize the
24 contents of that?

25 A. Yes, this is the first aid kit seen in

1 the picture. This is a bottle of rubbing
2 alcohol that was inside the kit, that I had
3 taken that night. I wasn't sure if anyone
4 had touched it or done anything with this kit,
5 other than employees, but I took it, put it on
6 the chain of custody with the other items and
7 placed it in the evidence locker.

8 Q. Now, Detective Culik, as the on-call
9 detective, did you have any other further
10 duties as far as investigating this case?

11 A. What I did with this case was, when I
12 arrived and I was briefed by the officers that
13 we've got a break-in, I was informed by
14 Officer Capell that there was a possible
15 witness there, Mr. Derrick McDonald, that had
16 come up and given them some information about
17 giving someone a ride, that had a cut, and who
18 had had some cigarettes.

19 So what I did was to call Detective John
20 Litaker, that was still at the station working
21 on paperwork, and asked him if he would come
22 assist me. So while I was processing the
23 scene, I had Detective Litaker come and get
24 Mr. Derrick McDonald and take him to the
25 station, so that he didn't have to wait on me

1 to do the crime scene and then interview him,
2 because I knew that would take a while.

3 After that, when I got through
4 processing, I let the business manager go in,
5 Ms. Billups, and asked her if there was any
6 video. I like to try to get the store videos
7 quickly. Sometimes they record over each day,
8 so -- they just don't have a lot of memory to
9 save. It was at that time that she could not
10 retrieve the video and she tried to get her, I
11 think the district manager to help her
12 retrieve the video. They did not have video
13 from that night, is what I was told by her.
14 She said that she could see it on the screen -
15 - you could see it on the screen but it wasn't
16 recording at that time.

17 Q. Let me show you what has been marked as
18 State's Exhibit 3. Did you collect this item
19 of evidence?

20 A. No, I did not.

21 Q. Do you -- are you familiar with this
22 item?

23 A. Yes, when I was being brief by Officer
24 Capell, he informed me that when this witness
25 came up and that he stated to him that he had

1 actually given him cigarettes, that this
2 person had given him cigarettes, and he asked
3 what should he do with them. I told him that
4 we would take them into custody, and we turned
5 them into Evidence.

6 Q. Now, if you had taken these items to the
7 evidence locker, would you have written that
8 down on your chain of custody?

9 A. Oh, yeah. I mean, there are times that
10 we do that. There are times that we say that
11 we will collect everything. There are things
12 that the patrol office has it in his
13 possession and I want him to get it, and then
14 we'd do a chain of custody on that. There are
15 times that we do collect everything.

16 Q. But on this occasion you didn't?

17 A. On this occasion I did not. He was going
18 to turn it into Evidence. He did the chain of
19 custody form and he turned those into
20 Evidence.

21 Q. Detective Culick, what was your
22 impression of this crime scene, based on what
23 you observed?

24 A. Based on my years of experience at the
25 department, numerous crime scenes, in looking

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1 at video footage from crime scenes and things
2 like that -- of course we didn't have it this
3 time, but that's something that I like to do
4 at the end, is look at that to see if there is
5 anything that someone else has touched or some
6 other place that I could possibly look for
7 other evidence. This crime scene, it looked
8 like something classic that you would see on
9 TV, someone throws a brick through a window,
10 they gain entry, are cut in the process.
11 People know DNA, everything knows that you
12 don't want to leave your DNA or blood at a
13 crime scene. It looks like the person ran in
14 and ran out as quickly as possible. Due to
15 the cigarettes being pulled out, cigarettes
16 being on the floor, the lottery tickets the
17 way that they were pulled out, torn.

18 MR. BRUNSON: Your Honor, ---

19 THE WITNESS: Somebody didn't
20 stand there taking their time to collect items
21 or ---

22 THE COURT: Whoa, whoa, whoa. What
23 is your objection?

24 MR. BRUNSON: Your Honor, she
25 said based on what she observed there that

1 things were strewn all over the floor and ---

2 THE COURT: They can make that
3 conclusion. She can say -- she has not been
4 qualified to give her opinions. Therefore, I
5 will sustain the objection. She can say what
6 she saw but what her interpretation is.

7 MR. GRIFFIN, SOLICITOR: Good
8 enough, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. GRIFFIN, SOLICITOR:

11 Q. Detective Culick, you were the on-call
12 detective that night; correct?

13 A. Correct.

14 Q. Okay. What was your primary focus as the
15 on-call detective?

16 A. My primary focus was to process the crime
17 scene, make sure that the witness that was
18 there was talked to and interviewed. I also
19 directed officers to go in the area where the
20 witness said that they had dropped the suspect
21 off, to see if they could locate the suspect.
22 From there, I informed my supervisor and also
23 the property crimes division -- because I was
24 going on vacation, I wanted to let somebody
25 know, 'hey, this is what we had, this is what

1 the witness' -- when I got back to the station
2 and put the evidence in, I called Detective
3 Litaker. Derrick McDonald had already left at
4 that time, because I was going to have him
5 taken us to the house but he had already left
6 -- to where he had dropped the person off. He
7 had already been released by the detective.
8 So what I did was, I talked to him, got the
9 information that he gave him about what the
10 witness said. I passed all that information
11 along. Then in the meantime we got a call
12 saying that there was a shooting victim, they
13 needed a detective to respond to.

14 Q. That wasn't related to this case?

15 A. Not related to this one. Just as the on-
16 call detective, you might be called out three
17 or four different times a night on different
18 cases. This is another case where it
19 happened.

20 Q. So you didn't go to the address on
21 Sherwood to conduct an interview with the
22 defendant?

23 A. No. No, sir, I didn't.

24 Q. Now, did you have the opportunity to go
25 into the yellow truck that was driven by

1 Derrick McDonald?

2 A. No, I didn't. I didn't interview him and
3 I didn't get a statement from him. I just
4 thanked him for coming and told him that I
5 would get a detective there to talk to him.

6 Q. So your focus wasn't on Mr. McDonald that
7 night?

8 A. No, it was on the business, so that I
9 could get that crime scene wrapped up, get
10 back in, and clean up for the next day.

11 Q. While you were processing the crime
12 scene, did anybody other than law enforcement
13 personnel go inside Youngs Market?

14 A. No. No one else was allowed in other
15 than law enforcement. I had Officer Capell
16 with me when I was processing the crime scene.
17 Then there was another officer posted on the
18 outside that didn't let anybody in the crime
19 scene.

20 MR. GRIFFIN, SOLICITOR: Answer
21 any questions that Mr. Brunson has for you.

22 THE COURT: Mr. Brunson, you may
23 cross examine the witness.

24 MR. BRUNSON: Thank you, Your
25 Honor.

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1 CROSS EXAMINATION

2 BY MR. BRUNSON:

3 Q. Detective Culick, you testified that you
4 were the on-call detective.

5 A. Yes, sir.

6 Q. So as an on-call detective, you don't
7 conduct any investigation other than what you
8 do that night?

9 A. Yes, I would. If the case were assigned
10 to me, then I would continue to follow up.

11 Q. Then you would change from on-call to
12 lead investigator?

13 A. Yes, sir.

14 Q. You didn't in this case, did you?

15 A. No. At that time I was part of the
16 Violent Crimes Division, ---

17 Q. Okay.

18 A. --- mainly crimes against persons. This
19 was a crime -- this was a property crime
20 issue, so it went to the property crimes
21 division.

22 Q. Who was the lead investigator on this
23 case?

24 A. The lead investigator was Detective
25 Robbie Richburg.

1 Q. So would it be his job then to
2 investigate?

3 A. To follow up, yes.

4 Q. Now, he wasn't assigned that night?

5 A. Oh, no.

6 Q. When was he assigned this case?

7 A. He would have assigned that case the next
8 day or the next business day.

9 Q. So the next day is usually when they are
10 assigned.

11 A. Well, if it was on like a weekend it
12 might not be assigned until Monday, or if it
13 was a holiday until after that holiday. He
14 could tell you, because it would be written on
15 the top of his report when he was assigned
16 specifically. He can tell you exactly when.

17 Q. Have you discussed -- did you discuss
18 this case with Investigator Richburg?

19 A. Yes.

20 Q. Now, take us back to this night. Around
21 what time did you arrive at this crime scene?

22 A. I received the call after midnight, so
23 probably around 1:00, 1:00 a.m. or shortly
24 after 1:00 a.m.

25 Q. Around 1:00?

1 A. (No verbal response).

2 Q. And what type of vehicle were you driving
3 that night, what did you drive to Youngs
4 Market?

5 A. My police vehicle.

6 Q. Is it marked or unmarked?

7 A. It's unmarked. It's a Crown Vic and it
8 has a blue light.

9 Q. So it's a black, blue-solid car?

10 A. I don't know if I had a red car at that
11 time or a blue car.

12 Q. But it's a solid car?

13 A. Yes, sir.

14 Q. But you did not arrive until
15 approximately 1:00?

16 A. It was probably after 1:00. Sometime
17 after 1:00.

18 Q. When you arrived, how many police cars
19 were present?

20 A. Several.

21 Q. Let's go back through them. You said
22 that Capell was there and Stubbs(phonetic)
23 was there, correct?

24 A. Um-humm.

25 Q. They drove separate cars?

1 A. Correct.

2 Q. Were there any other officers there?

3 A. There was another vehicle there. There
4 was another vehicle there. That's when they
5 were briefing me about what happened and I
6 asked them if they could go to that area that
7 -- that if they could do to that area and
8 circulate, to see if they saw a suspect
9 matching that description. I can't remember
10 who I sent there, but I know that Lieutenant
11 Stubbs was there. I believe that she might
12 have been a sergeant at the time. Stubbs was
13 there, Officer Capell and -- I can't remember
14 who else.

15 Q. Would you have that written down
16 somewhere? Where would that be, who all
17 responded, who all was there? Is there a
18 document that that would be on?

19 A. There's a CAD report that was filled out,
20 and that should be with dispatch.

21 Q. So your testimony is that Capell was
22 there, Stubbs was there, another officer was
23 there, the pressure washers were there,
24 someone from Youngs Market was there ---

25 A. Ms. Billups was there.

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1 Q. And McDonald was there?

2 A. He was.

3 Q. When you arrived?

4 A. That's correct.

5 Q. Okay. Now, being that McDonald was there
6 before you, when you arrived on the scene did
7 you interview McDonald?

8 A. No, I did not.

9 Q. Who told you that McDonald was there with
10 information?

11 A. Officer Capell.

12 Q. Okay. Now, he isn't an investigator;
13 correct?

14 A. That's correct.

15 Q. He's a patrolman?

16 A. Um-humm.

17 Q. You did not talk to or interview
18 McDonald. Instead, you called Litaker to do
19 that?

20 A. Correct.

21 Q. All right. Said you went to take
22 pictures, to process?

23 A. That's right.

24 Q. All right. Now, you did not move -- or
25 did you move any of the items in the store

1 before you took any pictures?

2 A. I took initial overall pictures.

3 Q. Okay.

4 A. Then as I started to go through, to
5 process things, I picked up packs of
6 cigarettes one by one to see if there were any
7 type of blood or anything on them, if there
8 was a blood drop on the floor. When I located
9 it, when I turned it over, then I'd take a
10 picture or something like that. But initially
11 I take overall pictures and then I go in -- of
12 course, you've got to look for things like
13 glass, cigarettes, picking up each pack and
14 looking at them, sorting through them. Things
15 like that.

16 Q. Did you take any pictures after you
17 sorted through things?

18 A. Oh, yes. Yes, sir.

19 Q. You did?

20 A. Yes, sir.

21 Q. You took -- okay. So your testimony is
22 that some of these photos are before you moved
23 things around.

24 A. Correct.

25 Q. And some of them are after?

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1 A. Correct.

2 Q. Okay.

3 A. If you have the pictures I can look at
4 them. I'd turn them on their side if they
5 appeared to have blood on them.

6 Q. I want to show you what is marked State's
7 Exhibit 29. You testified that you took this
8 picture, correct?

9 A. Yes, sir.

10 Q. Does that picture pretty much show -- did
11 you take that picture before you touched
12 anything, or after?

13 A. It appears that I took it before.

14 Q. I am going to show you State's Exhibit 9.
15 Do you think that you took this picture before
16 you touched anything or afterwards?

17 A. It appears that it was before. I was
18 working my way out, so I believe that it was
19 before. I don't see the marker on the floor
20 where the blood was. I can't see that yet.

21 Q. All right. Let the record reflect that I
22 passed you State's Exhibit 10.

23 A. That appears to be before also.

24 Q. All right.

25 A. Because you can see the spot here.

1 That's where the blood was that I was looking
2 at. I don't have that marked yet. This has
3 some blood here. So I believe that was
4 before.

5 Q. All right. Now, ---

6 A. If it has a marker, then it would be
7 afterwards.

8 Q. Okay. You testified that -- well, let me
9 ask you a question. Now, these green lottery
10 tickets. Those are green lottery tickets in
11 State's Exhibit 10?

12 A. (No verbal response).

13 Q. How many of them did you find on the
14 floor?

15 A. (No verbal response).

16 Q. As depicted in the before picture, how
17 many -- how many do you recall?

18 A. (No verbal response).

19 Q. How many do you see in the photos?

20 A. Some could be folded or underneath.

21 That's just how I saw it there. Now, when I
22 collected -- what I collected is in that bag,
23 so if you want to count those.

24 Q. Okay. So these are the items that you
25 collected from the store?

1 A. Correct.

2 Q. These pictures, it appears that Exhibit 9
3 is entering the cashier area?

4 A. Yes.

5 Q. And it appears that Exhibit 10 is looking
6 out of the cash register area?

7 A. Yes. That's where I am trying to get a
8 better closeup, and it shows you the blood
9 droplet on the floor. I was trying to get a
10 better view in this picture of where the blood
11 is here, and the blood there also.

12 Q. Okay. Now, did you move any cigarettes
13 and lottery tickets and take pictures of them
14 on the floor, after you moved them?

15 A. When I am moving items and going through
16 things, yeah, I would sit things down so that
17 I can get a closeup picture of some of the
18 evidence. So, yeah, I might do that before
19 putting it into the bag to take to the police
20 department.

21 Q. All right. State's Exhibit 28, is that
22 the front of Youngs Market?

23 A. Yes.

24 Q. And those are -- are those cameras on the
25 front?

1 A. Yes, sir.

2 Q. How many cameras were there throughout
3 the store?

4 A. I don't know how many were throughout the
5 store.

6 Q. Okay. But you testified that the system
7 wasn't working?

8 A. Correct.

9 Q. Now, who checked that? Did you check it
10 or did the clerk?

11 A. The clerk checked it and the district
12 manager.

13 Q. That night?

14 A. Yes, sir, that morning, the wee hours of
15 that morning.

16 Q. Okay.

17 A. What I wanted to do was to see if there
18 was anything that I needed to process. Then
19 also to put that in evidence, we put video in
20 evidence.

21 Q. But you don't have any in evidence
22 because it wasn't working?

23 A. No. She'll testify to that.

24 Q. And her name is what, the clerk's?

25 A. Ms. Billups.

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1 Q. That is the one that was there before you
2 got there?

3 A. Yes, sir.

4 Q. And who was the district manager?

5 A. I don't know.

6 Q. You don't recall?

7 A. I don't.

8 Q. But she was out there that night also?

9 A. I think it was a he. She had paged the
10 district manager but I'm not sure of his name.

11 Q. But two employees of Youngs were out
12 there that night?

13 A. Correct. I think the district manager
14 might have arrived after I did.

15 Q. Now, if that video had been working, it
16 would have helped your case, wouldn't have it?

17 A. It possibly could. It depends on the
18 angle of the camera, it depends if they have a
19 one or more than one view -- sometimes this
20 camera will record this angle for awhile, this
21 angle for awhile, this angle. It depends on
22 whether the person has a mask on, gloves,
23 things like that, but it still helps. That
24 gives us items to look at. It might not help
25 us identify who the person is but, yes, camera

1 definitely help. Videos help.

2 Q. Fingerprints also help, correct?

3 A. Yes, sir.

4 Q. Did you dust for fingerprints inside the
5 store?

6 A. No.

7 Q. Okay. Now, on State's Exhibit 12 -- let
8 me hand you that. What is depicted in that
9 picture?

10 A. This appears to be the tray that I was
11 telling you about that held the cigarettes on
12 the counter, where the clerk is. That's what
13 it appears to be, that just in the motion of a
14 grab that it was flung, possibly, on the
15 floor.

16 Q. But you didn't check it for fingerprints?

17 A. No, sir, I didn't.

18 Q. Did you instruct anyone to check it for
19 fingerprints?

20 A. No, sir. This was behind the counter. A
21 person worked there all day long refilling,
22 redoing cigarettes, in and out. This -- I
23 don't feel like in my opinion that the suspect
24 picked it up and said, 'let me roll it here.'
25 So what I did was a judgment call. I said I

1 am going to get the blood that I felt like
2 should not have been in the store.

3 Q. Right.

4 A. The blood that was here on cigarettes and
5 possibly on the lottery cards that looked like
6 they were strewn.

7 Q. But no fingerprints?

8 A. I collected those and I collected those
9 not just for the blood but for any kind of
10 finger-prints on those, because I felt like if
11 they had the blood that it might have
12 fingerprints. So I collected those to let our
13 forensic lieutenant examine those, because
14 they can do things that we can't do. They
15 have things to do that that I can't do at a
16 crime scene.

17 Q. Okay.

18 A. So I processed what I thought was the
19 bulk of it. Blood is good evidence.

20 Q. Thank you.

21 A. Yes, sir.

22 Q. Now, tell me what did you dust for prints
23 yourself?

24 A. I didn't.

25 Q. Yourself?

1 A. That's right. The things that I
2 collected for prints, they were done by our
3 forensic person, and he can testify to those
4 prints.

5 Q. Right. But you didn't dust anything?

6 A. No, I collected the best evidence that I
7 felt like and he ---

8 Q. Okay.

9 A. --- can process it better because he has
10 better techniques.

11 Q. You answered my question.

12 A. All right.

13 Q. Thank you. You collected a first aid
14 kit, correct?

15 A. Yes, sir.

16 Q. And a bottle of alcohol?

17 A. I believe that was inside the kit.

18 Q. Is this what you collected here?

19 A. (No verbal response).

20 Q. In fact, State's Exhibit 8 shows the
21 first aid kit?

22 A. Yes, sir, and the alcohol is right by it.
23 Yes, sir.

24 Q. So it wasn't in it, was it?

25 A. You're right.

1 Q. All right.

2 A. Yeah. I wasn't sure. I didn't know if
3 the clerk left it like that.

4 Q. Okay.

5 A. And I didn't have all the employees there
6 to ask him but -- so I collected it.

7 Q. All right. Now, Derrick McDonald was on
8 the scene when you got there?

9 A. Yes, sir.

10 Q. You were advised by the patrolman that he
11 came up and said that he had information about
12 this case?

13 A. Well, I was advised by the patrolman that
14 he came up and said that he gave somebody a
15 ride that had cigarettes, thought he possible
16 might have news about someone being involved.

17 Q. So that's a yes?

18 A. (No verbal response).

19 Q. So the answer is yes?

20 A. Yes.

21 Q. Okay. And why did you collect these
22 again?

23 A. I collected that because there are
24 different types of glass. Like some stores
25 have glass that has Plexiglass under it. Some

1 stores have glass that have, uh, tints, dark-
2 colored tint on them. So if we were able to
3 catch a suspect that night and they were
4 wearing the same as at the time that they
5 entered the store, there could be glass shards
6 in their shoes from stepping on that glass.
7 So I was going to send it to SLED to see if
8 they could analyze some glass from the
9 business with anything found on the bottom of
10 a shoe that might match.

11 Q. Well, did Derrick McDonald's shoes have
12 any glass on them?

13 A. Not that I know of. I didn't order that
14 they inspect the bottom of his shoes. I
15 didn't feel like he was a suspect at that
16 time.

17 Q. Well, did the inside of his truck have
18 any glass in the floorboard?

19 A. Again, I didn't look in his truck.
20 Another detective talked to him and they can
21 testify as to that.

22 Q. I am going to hand you what is marked
23 Defendant's Exhibit 1. Do you recognize that?

24 A. Yes, sir, I do.

25 Q. What is that?

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1 A. This is from the Sumter Police
2 Department, it is the Evidence chain of
3 custody that I was talking about earlier where
4 I write down the items that I take before I
5 turn them into Evidence. I sign it, sign for
6 the items that I turned into Evidence.

7 Q. Is that yours? I mean, does that look
8 accurate?

9 A. Yes, sir.

10 Q. Is that an accurate copy?

11 A. Yes, sir. These are the items that I
12 turned in, items one through six: the
13 biological kit that contained the blood sample
14 from the store; the prescription bottle with a
15 glass sample; the three packs of Newport
16 cigarettes that I saw that looked like they
17 have some blood on them; the brick used;
18 several lottery tickets recovered from the
19 floor with possible prints, fingerprints, on
20 them or blood that I wanted to be process; and
21 a first aid kit from the Youngs, possibly used
22 by the suspect.

23 Then I turned those items into Forensics.

24 Q. Okay.

25 A. That was analyzed. All these items were

1 analyzed by Lieutenant Duggin. Lieutenant
2 Duggin, he added number seven, blood swabs.
3 He took swabs from the things that I turned in
4 that had blood.

5 Q. So that's called a chain of custody
6 document?

7 A. Yes.

8 Q. All right. When did you fill out this
9 document?

10 A. I filled it out on the third, the morning
11 of the third before I left the Police
12 Department. I turned everything into Evidence
13 along with this. Whatever goes to Evidence
14 has to have one of these submitted along with
15 the evidence.

16 Q. So you filled this out on July 3rd, 2009?

17 A. Yes, sir.

18 Q. Okay. And this alleged crime occurred
19 when?

20 A. The second into the third. I believe
21 that the store closes around 11:00 o'clock. I
22 don't know what time that they get out of
23 that. I am sure the clerk can testify to
24 that. But sometime after closing at 11:00,
25 into when I was called shortly -- sometime

1 after midnight.

2 Q. Now, I am going to ask you a direct
3 question. Officer Capell told you that
4 Bernard had -- that -- that -- I'm sorry.

5 Officer Capell told you that Derrick came
6 up and said that he'd given a ride to Bernard.
7 Right?

8 A. He told me that he'd given a ride to an
9 individual in reference to -- in reference to
10 -- that the person had a cut on his leg, that
11 he had cigarettes. I had Detective Litaker
12 talk to him, get a statement.

13 Q. So are you testifying that he didn't tell
14 you that it was Bernard?

15 A. I don't remember that he did at that
16 time. I don't remember if he mentioned the
17 name "Bernard" to me or not.

18 Q. You don't know?

19 A. I didn't interview Derrick.

20 Q. I understand.

21 A. I just got a brief overview of what they
22 had when I first got to the crime scene.

23 Q. I understand

24 A. Then I moved on with what I had to do.

25 After that I spoke with Detective Litaker, who

1 had interviewed Mr. McDonald and that's when I
2 was filled in on what he knew. So I know that
3 -- you know, that the name "Bernard" came from
4 Detective Latiker, came from that.

5 Q. Okay.

6 A. In talking with the detective.

7 Q. Now, you've testified that you've been
8 with the Police Department twelve years?

9 A. Yes, sir.

10 Q. You're a sergeant in Investigations?

11 A. Yes, sir.

12 Q. You are the on scene investigator?

13 A. At the time ---

14 Q. And your testimony is that you don't
15 remember if he told you that it was Bernard?

16 A. I'm saying -- when I first got there and
17 the officer came up and said 'This is what we
18 have, we have a break-in to the store. We
19 have two people here that came to pressure
20 wash the business, they're here. We've got
21 the manager here. We also have a person here
22 by the name of Derrick. He states that a man
23 came to his house that was cut and had
24 cigarettes.'

25 So he was a witness. What I did was I

1 got Detective Litaker to come and get him and
2 take him to the station to interview him while
3 I processed the scene. When I got through
4 processing the scene, I went to the station.
5 Derrick McDonald had already been released to
6 go home. So I asked Detective Litaker, 'What
7 did he tell you? What do we have?' I called
8 the property crimes people, I called the
9 lieutenant on call to let them know what we
10 had and I let this people know what the
11 situation we had was, talked to them about it
12 so that they could follow up since I was going
13 on vacation.

14 Q. Okay. But you have not answered my
15 question. I am going to ask it one more time.

16 A. That's all that I did.

17 Q. I am going to try to simplify it.

18 A. That's all that I did that night.

19 Q. I understand.

20 THE COURT: Just listen and answer
21 the question.

22 CROSS EXAMINATION CONTINUED

23 BY MR. BRUNSON:

24 Q. My question is, is it your testimony that
25 while you were at Youngs Market that night ---

1 A. Correct.

2 Q. -- as the on duty detective, that
3 Patrolman Capell did not tell you that Derrick
4 said this individual's name was Bernard?

5 A. The same as I told you earlier, I ---

6 Q. That's a yes or no, actually.

7 A. I ---

8 THE COURT: Answer yes or not, then
9 you can explain.

10 THE WITNESS: I don't remember.

11 MR. BRUNSON: Okay.

12 THE WITNESS: That's what I told
13 you earlier, that I don't remember.

14 CROSS EXAMINATION CONTINUED

15 BY MR. BRUNSON:

16 Q. All right. When you filled out this
17 document, the evidence inventory chain of
18 custody that has been marked for
19 identification as Defendant's Exhibit 1, ---

20 A. Yes, sir.

21 Q. --- isn't it true that you named a
22 suspect?

23 A. Yes, I have Bernard on here as a suspect.

24 Q. And when did you fill that out?

25 A. On the third of July.

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1 Q. And this break-in happened when?

2 A. Between the 2nd and the 3rd.

3 Q. All right.

4 A. The name Bernard was given.

5 Q. All right.

6 MR. BRUNSON: Court's
7 indulgence.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION CONTINUED

10 BY MR. BRUNSON:

11 Q. Now, in regard to these photos that
12 you've taken, your testimony was that you
13 believe -- or in your opinion or recollection
14 -- that State's Exhibit 10, State's Exhibit 9,
15 and State's Exhibit 29 were taken before you
16 moved anything in the store. Is that correct?

17 A. It's my testimony that when I go in and
18 take pictures, and you can ask Lieutenant
19 Duggin if he can give us some kind of exact
20 order maybe on the disk, if there is any order
21 on the disk, but my testimony is that I try to
22 take pictures, then move in closer -- this is
23 a shot right here that's behind the counter
24 that I would have moved in closer. It could
25 be after I've examined things. It could be

1 that I saw a blood droplet and I'm trying to
2 get a picture of just that. It appears that -
3 - it appears that there are cigarettes strewn
4 all about, so I feel like it was towards the
5 beginning. Can I say exactly whether it was
6 there or when I started processing and then
7 found those, I can't tell you that part. But,
8 you know, ---

9 Q. Okay.

10 A. --- it appears that it was before.

11 Q. Okay. Which one is the way that you
12 found it before?

13 A. This picture here, number nine.

14 Q. That's ---

15 A. Appears how I found it, with the
16 cigarettes coming in, the floor, the lottery
17 tickets down here, items here.

18 Q. Okay.

19 A. I try to take another one from another
20 view just to show you that here the same:
21 cigarettes, lottery tickets.

22 Q. So these two are how you found the store?

23 A. I believe so.

24 Q. Okay.

25 MR. BRUNSON: For the record,

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1 State's Exhibit 9 and State's Exhibit 29 are
2 how Detective Culick things she found this
3 store, the crime scene.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BRUNSON?

6 Q. Correct?

7 A. Yes.

8 Q. Okay.

9 MR. BRUNSON: I am going to
10 publish these to the jury with Your Honor's
11 permission.

12 THE COURT: They have already been
13 published.

14 MR. BRUNSON: Yes, sir, 9 and
15 29.

16 CROSS EXAMINATION CONTINUED

17 BY MR. BRUNSON:

18 Q. Now, isn't it true that in this Youngs
19 Market store there are two different types of
20 flooring? Isn't there a speckled type of
21 flooring as well as a block with no speckles
22 type of flooring?

23 A. Yes, sir.

24 Q. Okay. Isn't it also true that these
25 types of flooring are separated -- the

1 speckled type up top where the register is and
2 the solid type on the bottom?

3 A. That's right.

4 Q. All right. Now, isn't it also true that
5 in these photos that you have identified as
6 how you found the crime scene that green
7 lottery tickets are seen on the speckled type
8 of flooring; isn't that true?

9 A. Yes.

10 Q. Isn't it also true that no green lottery
11 tickets are seen on the solid type of
12 flooring?

13 A. There's a lottery ticket here.

14 Q. Let me restate my question.

15 A. I see a lottery ticket, to answer your
16 question, ---

17 THE COURT: Tell here which photo-
18 graph you're referring to and then she can
19 take it from there.

20 CROSS EXAMINATION CONTINUED

21 BY MR. BRUNSON:

22 Q. State's Exhibit 9, ---

23 A. Correct.

24 Q. --- do you see lottery ticket on the
25 floor in this picture?

1 A. There are lottery tickets here on the
2 solid type that you're talking about and
3 lottery tickets behind the counter on the
4 speckled type.

5 Q. Okay. What color are on the speckled
6 flooring?

7 A. The speckled flooring it appears that
8 they are all turned up -- well, this is not
9 close but from what I can see, and from this
10 other picture, referring to it, ---

11 Q. Okay.

12 A. On this one, on the solid type surface is
13 a lottery ticket.

14 Q. All right. Now, the lottery ticket that
15 you said is faced up is green in coloring.

16 A. Yes.

17 Q. And is on the speckled floor?

18 A. Yes.

19 Q. All right. I am going to hand you what
20 is marked ---

21 THE COURT: Sir, do not hold that
22 up. You may show it to your attorney but put
23 that down. You may proceed.

24 MR. BRUNSON: Thank you, Your
25 Honor.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. BRUNSON:

3 Q. I am going to show you what the State
4 has marked as State's Exhibit 30. Now, in
5 Exhibit 30, that shows the speckled flooring;
6 correct?

7 A. Right.

8 Q. It also shows the green lottery tickets
9 on the speckled flooring?

10 A. It does.

11 Q. And it also shows cigarettes on the green
12 lottery tickets, correct?

13 A. Correct.

14 Q. All right.

15 A. The one that you just showed me, it shows
16 the same one.

17 Q. Okay. Yes, it does. In fact, the one
18 that you just referred to is State's Exhibit
19 10 is actually the closeup.

20 A. This is the closeup.

21 Q. Let's operate from ten for right now. I
22 am going to ask you to hold it out.

23 A. Okay.

24 Q. Now, on State's Exhibit 10, where do you
25 see the green in color lottery ticket? On

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1 which type of flooring?

2 A. Speckled.

3 Q. All right. I am going to show you --
4 excuse me -- I am going to show you what is
5 marked as Defendant's Exhibit 2 for
6 identification. Do you recognize that
7 picture?

8 A. Yes.

9 Q. What is it?

10 A. This is a picture that I took of a box of
11 Newport cigarettes, that I was trying to get -
12 - remember I told you that I was going through
13 boxes trying to see if there was any blood on
14 any? This is one that I went through that
15 appeared to have a speck of blood on it.

16 Q. Okay. And you took that picture?

17 A. Yes, sir, I did.

18 MR. BRUNSON: Your Honor, I
19 would like to move this into evidence as
20 Defendant's Exhibit 2.

21 THE COURT: Any objection?

22 MR. GRIFFIN, SOLICITOR: No, sir.

23 THE COURT: Without objection,
24 Defendant's Exhibit 2 is admitted.

25 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

1 THE COURT: You only have one
2 exhibit admitted. The other one was marked
3 for identification?

4 MR. BRUNSON: That's correct,
5 Your Honor.

6 THE COURT: So this is Defendant's
7 Exhibit 2. That's the only exhibit entered?

8 MR. BRUNSON: Yes, sir, because
9 the first one was for ID.

10 CROSS EXAMINATION CONTINUED

11 BY MR. BRUNSON:

12 Q. Now, you rearranged things in this crime
13 scene, didn't you?

14 A. Items moved as I processed and collected
15 evidence.

16 Q. And in your processing and collecting,
17 you moved things around?

18 A. Yes. I mean, you have to.

19 Q. And you took pictures of things in
20 different places?

21 A. Yes, after I started processing. Yes, I
22 did.

23 Q. Okay.

24 MR. BRUNSON: May I publish to
25 the jury?

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1 THE COURT: Yes, sir.

2 CROSS EXAMINATION CONTINUED

3 BY MR. BRUNSON:

4 Q. How many packs of cigarettes did you put
5 in custody for custody?

6 A. I found three packs of cigarettes that
7 appeared to have blood on them.

8 Q. All right. And one pack -- well,

9 A. One pack was larger, the other pack was
10 smaller.

11 Q. Why then in the photo ---

12 MR. BRUNSON: Beg the court's
13 indulgence, Your Honor. I need to show her
14 that exhibit that's with the jury.

15 THE COURT: You can retrieve it.

16 CROSS EXAMINATION CONTINUED

17 BY MR. BRUNSON:

18 Q. All right, Defendant's Exhibit 2, as
19 compared to State's Exhibit 10, -- now,
20 State's Exhibit 109 doesn't have -- well, you
21 took State's Exhibit 10 before you moved these
22 and took pictures in Defendant's Exhibit 2.
23 Right?

24 A. State's Exhibit 10 was taken initially,
25 right.

1 Q. Right. Then you moved these and took
2 Defendant's Exhibit 2?

3 A. No, when I processed -- going through the
4 crime scene, looking for cigarettes, these are
5 not that obvious. The little spots of blood
6 are not that obvious. That's when I went
7 through -- when I located some that had blood,
8 that's when I set them down with the stuff I'm
9 collecting, took pictures and put all these in
10 a bag to take with me to the Police
11 Department.

12 This right here was very obviously, so
13 you can see -- excuse me -- in State's Exhibit
14 30, the closeup view, and State's Exhibit 10,
15 you've got the cigarettes here with the blood
16 on it; you've got your lottery ticket, and
17 you've got your speckled floor. Here it is in
18 a close up view of the same area. Because
19 those were obvious.

20 All these cigarettes that were spread
21 across the floor that you can see in State's
22 Exhibit 12, you had to pick up and look at
23 each individual packet to see if there was any
24 blood on them.

25 Q. All right. If that is in fact the case,

1 why then would you move lottery tickets with
2 the cigarettes, put the lottery tickets on the
3 solid floor, then put cigarettes on the
4 lottery tickets, then take the picture. Why
5 did you do that?

6 A. These are items that I was collecting.
7 These are items that I am showing that I am
8 collecting these, I am putting them into
9 evidence bags. I've already taken my overalls
10 and now I'm showing you -- I am taking a
11 closeup view before I put them in the bag.
12 This is what I am collecting to take to the
13 Forensics at the Police Department.

14 Q. Okay.

15 A. Then there was also another lottery
16 ticket down there.

17 Q. Okay. Now, you swabbed blood in the
18 store; is that your testimony, that you took a
19 swab?

20 A. I did swab that one area that's marked
21 right here, and there is a closeup here in
22 State's Exhibit 12.

23 Q. Isn't it true that you swabbed the
24 cigarette pack on thirty?

25 A. No, I didn't swab the cigarette pack on

1 thirty.

2 Q. You just swabbed what?

3 A. I swabbed the floor, that has the label
4 here that shows there was a drop of blood. I
5 swabbed that. I took the cigarette pack and
6 turned it into evidence so that Forensics
7 could process it. I didn't want to swab them
8 because they were going to fingerprint them
9 and I didn't want to mess up any prints. We
10 fingerprint first, swab second.

11 Q. Okay. How many swabs -- you've testified
12 that this packet was a swab. Correct?

13 A. It's -- normally in the kit ---

14 Q. I am just asking you.

15 A. I would have to open that. I don't know
16 if I took two Q-tips to swab the one area or
17 one Q-tip. You'd have to open the packet,
18 then I could look. It would have my initials
19 on the box.

20 Q. You don't remember if you swabbed once or
21 twice?

22 A. Usually I take two swabs. I can tell you
23 without opening the package that I normally
24 take two swabs and rub it on ---

25 Q. But you didn't swab ---

1 A. No, sir, because I wanted them to finger-
2 print it and then swabbed, and I wanted that
3 done by Lieutenant Duggin.

4 Q. Did you write on this packet?

5 A. No, which is what I told you -- this is
6 something else that I turned in. I turned in
7 a box that had my identifiers on it.

8 Q. You turned in a box. You put a box into
9 evidence?

10 A. I put a box into evidence and this is how
11 it was packaged when it went through -- when
12 it went to SLED and came back from SLED and
13 this is the package that it was in.

14 Q. All right. Okay. You didn't see my
15 client enter the Youngs Market, did you?

16 A. No.

17 MR. BRUNSON: Court's
18 indulgence, Your Honor.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MR. BRUNSON:

22 Q. All right, just one other question. All
23 right. The Newport box on the speckled floor,
24 did you move that one too?

25 A. I collected it.

1 Q. Did you move it prior to take the photo?

2 A. The far off photo, no. This, I tried to
3 get in a closer view. Did I move it to do
4 that? I don't think I did, but -- it appears
5 that it is in the same position as it was when
6 I took off the far off photo.

7 Q. All right. So you can identify on the
8 before picture where that one was, before you
9 moved it?

10 . That's correct.

11 Q. Tell me where these two were before you
12 moved them.

13 A. Those two packs of cigarettes were
14 somewhere in this area out there on the other
15 floor, the solid colored floor.

16 Q. Well, I noticed that in this photo marked
17 State's Exhibit 12 you've got a little white
18 identifying marker on the floor there.

19 A. I just wanted to be able to -- that would
20 be hard to see from far off, so I wanted to
21 put that marker down so that when I took the
22 picture that you wouldn't just think that's
23 floor. That white label just helps, from a
24 far off distance, identify that that is what
25 we are looking at in that picture. That's the

1 focus of that picture.

2 Q. Okay. So that you can tell where things
3 are in a crime scene?

4 A. Yes, it is showing where that is -- like
5 over here, you can see this pack of
6 cigarettes. When you get closer you can see
7 that it is blood.

8 Q. But you didn't put a white marker on
9 that?

10 A. No, I didn't collect that blood. I just
11 got the camera over it, like a ninety degree
12 angle and took a picture, like straight down,
13 of that wood.

14 Q. Okay, let me ask you a question. What is
15 this white marker? What is it called?

16 A. That's just a label that I have that a
17 lot of times that I use, like if somebody is
18 cut I might put it next to a cut or a bullet -
19 - a bullet wound.

20 Q. You call it a label?

21 A. Label. It also lets me know the case
22 number. Like if you're taking pictures of a
23 cut, it helps you to identify the case number.

24 Q. All right. So you wrote that case number
25 on that label and put it there?

1 A. Right.

2 Q. Now, that is done before you started
3 photographing, right?

4 A. No. I took pictures and then I started
5 processing. So as I am going through, I'm
6 looking at things, I'm trying to identify
7 them, I'm marking ---

8 Q. All right. So there's no order ---

9 A. Well, there is an order. You take
10 pictures, then you start moving in to see what
11 you have, 'what do I have, what do I have
12 here', just trying to label/identify what's in
13 the photographs.

14 Q. Do you recall whether or not you wrote
15 out this marker/label before you took the
16 photo, do you recall?

17 A. I am pretty sure that I probably -- well,
18 I can't recall but I think that I did the --
19 collected that blood first.

20 Q. Who helped you process this scene?

21 A. I processed the scene. Officer Capell
22 was standing by while I was there. He held
23 bags open. I try not to cross-contaminate. I
24 don't want it to touch the outside of the bag,
25 things like that.

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1 Q. Did you interview anybody in connection
2 with this case?

3 A. Interview?

4 Q. Yes.

5 A. No.

6 Q. Did you do anything by way of
7 investigation aside from taking pictures and
8 placing items into evidence?

9 A. I did.

10 Q. What was that?

11 A. I talked with the detective over property
12 crimes and let him know what we had. I talked
13 with the lieutenant to let her know what we
14 had.

15 I talked with our forensics person.

16 Since I was going on vacation, I had the
17 name "Bernard" that was given to me by
18 Detective Litaker, and in talking with
19 property crimes I researched the name
20 "Bernard" and passed on information to them,
21 to see if anybody was in jail or out of jail
22 by the name of Bernard. I passed all that
23 information along before I went on vacation.

24 Q. So you didn't do all this that night?

25 A. Yes, I did.

1 Q. You responded at 1:00, ---

2 A. Um-humm.

3 Q. --- and you talked to all these people
4 before 6:00 a.m.?

5 A. That's correct.

6 Q. Okay.

7 MR. BRUNSON: Nothing further.

8 THE COURT: Any redirect?

9 MR. GRIFFIN, SOLICITOR: Judge,
10 may we approach?

11 THE COURT: You may.

12 (OFF RECORD BENCH CONFERENCE)

13 THE COURT: Ladies and Gentlemen, I
14 am going to give you'all a short break. We've
15 got another ---

16 MR. GRIFFIN, SOLICITOR: Judge, I
17 have a short redirect. I'm sorry.

18 THE COURT: Okay. You may proceed.

19 REDIRECT EXAMINATION

20 BY MR. GRIFFIN, SOLICITOR:

21 Q. Detective Culick, can you process a crime
22 scene without touching anything?

23 A. No.

24 Q. And explain to the jury the difference
25 between photographing something and processing

1 it.

2 A. When you photograph something, uh, you
3 take pictures initially when you get there.
4 Then as you're going through things processing
5 and you find items of evidence, then you
6 photograph those. So there's -- there's a
7 difference. Some things you can photograph in
8 place, some things you have to process to do.
9 Some things you have to locate, uh, ---

10 Q. Do you process to determine what you're
11 going to collect?

12 A. Yes.

13 Q. Now, Mr. Brunson asked you about
14 interviewing Derrick McDonald. What was your
15 main focus when you got to Youngs Market that
16 night?

17 A. When I got to the Youngs Market that
18 night there was a crime scene and there was a
19 lot of people out there. So my main focus was
20 to get somebody talking to the witness, so
21 that they're not held up any longer than they
22 have to be; to get officers patrolling the
23 area where we feel like the suspect may be;
24 tell the pressure washer people 'sorry' we
25 have to process the scene; and tell the

1 managers, 'sorry, I know you all have to wait
2 here while we process and when we are through
3 we will let you in to start doing inventory,
4 cleaning up and getting ready to open the
5 store.'

6 Q. And in ---

7 A. So it's important to go ahead and process
8 the scene, collect what you've got. You don't
9 want to interview somebody when you've got a
10 crime scene sitting there with the chance of
11 somebody trying to go inside before -- or
12 tying up patrol any longer, because that
13 patrol officer is in that area. So you want
14 to go ahead and clear up the crime scene.
15 That way you can clear the patrol officers to
16 go back and patrol the streets. Then you go
17 further from there.

18 Q. So is it fair to say that it is standard
19 for the on-call detective to secure and
20 process a crime scene first?

21 A. Yes. You want to collect your valuable
22 evidence. Now, sometimes we do have a
23 shooting and you've got somebody at the
24 hospital, you've got a crime scene where there
25 are shots and you may need to go there first

1 to collect what is called gunshot residence or
2 things like that. You have to evaluate your
3 crime scene as to where you need to go first.

4 Q. Okay. So ---

5 A. In general, you want to collect your
6 evidence.

7 Q. So in your evaluation of this particular
8 crime scene, what assessment did you make of
9 what needed to be done?

10 A. I needed to go ahead and process Youngs.
11 I was thankful that there was another
12 detective still at the station, working on
13 case files, that was able to assist me and
14 come out and do that, interview the witness.

15 Q. Would he have been working a late shift
16 that day or what was ---

17 A. He -- I believe his hours were 2:00 to
18 10:00 that day and this was well after
19 midnight, but he had stayed late because he
20 had files that he needed to catch up on and
21 paperwork. So he happened to just still be
22 there working on stuff after it was his time
23 to get off.

24 MR. GRIFFIN, SOLICITOR: That's
25 all that I have, Judge.

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1 THE COURT: Any recross?

2 MR. BRUNSON: One question.

3 THE COURT: All right.

4 RECROSS EXAMINATION

5 BY MR. BRUNSON:

6 Q. So McDonald -- Derrick McDonald and the
7 cigarettes were there before you?

8 A. Derrick McDonald and the cigarettes?

9 Q. Were at Youngs Market that night before
10 you?

11 A. The market sells cigarettes.

12 Q. Okay. Let me rephrase my question.

13 Derrick McDonald came to the Youngs Market
14 that night before you got there and he had
15 cigarettes that he said that he'd got from my
16 client before you got there?

17 A. (No verbal response).

18 Q. Isn't that true?

19 A. That's what the officer testified to, and
20 the officer was given the cigarettes and the
21 officer turned the cigarettes into Evidence.

22 MR. BRUNSON: Nothing further.

23 THE COURT: You may step down.

24 (WITNESS STEPS DOWN)

25 THE COURT: Ladies and Gentlemen, I

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1 am going to give y'all a quick five-minute
2 break, just a restroom break, then we will
3 come back. We have another witness we can
4 hear from this afternoon. Please don't
5 discuss anything about the case while you're
6 out on break.

7 (JURY EXITS COURTROOM)

8 THE COURT: We'll take about five
9 minutes.

10 (BRIEF RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Bring the jury in.

13 (JURY ENTERS COURTROOM)

14 THE COURT: Solicitor, call your
15 next witness.

16 MR. GRIFFIN, SOLICITOR: The State
17 calls Janice Billups.

18 (WITNESS TAKES STAND)

19 JANICE BILLUPS, being duly sworn to
20 tell the truth, the whole truth and nothing
21 but the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY MR. GRIFFIN, SOLICITOR:

24 Q. Ms. Billups, where do you work?

25 A. Now at Youngs, Store 652, at 1063 Manning

1 Road.

2 Q. What is your job title?

3 A. Manager.

4 Q. Back on July 2nd, where were you working?

5 A. Youngs, 607.

6 Q. Where is that?

7 A. 940 East Liberty Street.

8 Q. Did you receive a call on the night of
9 the 2nd on into the 3rd?

10 A. Yes, from the alarm company stating that
11 the alarm had went off. Normally when I get
12 those calls, I have to get up and go to the
13 location.

14 Q. Did you get up and go to the location at
15 940 East Liberty Street that night?

16 A. Yes.

17 Q. What did you do when you got there?

18 A. When I pulled up, I had to park out at
19 the gas pumps and stand out there because I
20 couldn't go up to the store because the
21 officers had arrived.

22 Q. So they didn't let you inside the store
23 while ---

24 A. Right.

25 Q. While they were inside?

1 A. Right.

2 Q. Okay. Now, did you have an employee at
3 that time named Bernard McFadden?

4 A. No, sir.

5 Q. Did anyone have permission to enter that
6 store after y'all closed that night?

7 A. No. Once we close at 11:00 o'clock at
8 night, no one is allowed to go back in the
9 store.

10 Q. And the store always closes at 11:00?

11 A. Yes.

12 Q. Now, Ms. Billups, as the manager did you
13 have an opportunity to view what was taken
14 from the store?

15 A. Yes.

16 Q. What was taken?

17 A. Cigarettes and lottery tickets.

18 Q. Do you know the approximate cost of the
19 item that were taken?

20 A. About \$480 in cigarettes and about \$143
21 in lottery tickets.

22 Q. About how much do cigarettes cost per
23 pack?

24 A. At that time I do believe that they were
25 around \$5.55.

1 Q. Okay.

2 A. No, I'm sorry. About \$5.25.

3 Q. Now, Ms. Billups, when you close the
4 store down on a particular evening, do you
5 have a standard procedure that you follow?

6 A. At night we clean the store to make sure
7 the floors are wet-mopped, fully stock.

8 Q. When you say fully stock, what does that
9 mean?

10 A. Stock cigarettes, beer, sodas, anything
11 that you can fill up.

12 Q. And that's required to be done every
13 night?

14 A. Every night.

15 Q. Would employees be allowed to leave the
16 store with cigarettes packs all over the
17 floor?

18 A. No.

19 Q. How about lottery tickets?

20 A. No.

21 Q. And you say that the floor is swept?

22 A. Correct, and mopped.

23 Q. Now, this store -- you mentioned an
24 alarm. Was it a silent alarm?

25 A. The alarm when it first goes off is loud

1 but after just a couple of minutes it goes
2 silent.

3 Q. Okay. Now, in this -- in this store were
4 there cameras?

5 A. There were cameras. At that time we
6 didn't know that they cameras weren't working.
7 Every time I'd go into the back room you could
8 see the scene and it had different, uh,
9 different views on it. We thought that it was
10 recording, but it wasn't recording at that
11 time.

12 Q. So you could see it on the screen but
13 there was nothing being kept?

14 A. Right.

15 Q. After law enforcement finished in the
16 store, did you have an opportunity to go in?

17 A. I had to wait until after the detective
18 had come in to do her job, what she has to do.
19 After that, I was allowed to go in.

20 Q. Were you scheduled to work on the day of
21 the 3rd?

22 A. The following day, yes.

23 Q. So you got there after midnight -- when
24 were you scheduled to work?

25 A. If I got there after midnight, I still

1 had to work my shift the next day. I stayed
2 until 8:00 the next day.

3 Q. So when did your shift start?

4 A. It started at 5:00.

5 Q. 5:00 o'clock in the morning?

6 A. Yeah.

7 Q. Okay. So you were on the scene from
8 whenever you got there in the middle of the
9 night until ---

10 A. 8:00 the next day.

11 Q. Okay. Was the store cleaned up after the
12 police finished there?

13 A. After they finished, myself, my kitchen
14 manager and my district manager, Brian, we had
15 to clean up the store.

16 Q. When you say Brian, who is that?

17 A. My assistant.

18 Q. What is his last name?

19 A. Cross (phonetic).

20 Q. And the district manager was who?

21 A. Karen.

22 Q. And the three of you cleaned up the
23 store?

24 A. Yes.

25 Q. Did you open as scheduled, at 5:00 that

1 same morning?

2 A. Yes.

3 Q. Now, when you cleaned up, what did you
4 all do?

5 A. We had to clean by the -- there were a
6 few drops of blood on the floor, so we had to
7 clean up, wipe stuff down, get ready to work
8 the next shift.

9 Q. All right. Now, ---

10 A. And before that we had to count -- you
11 know, we had to physically look at what was
12 out of place, to know where to start counting
13 so that we could determine what was missing,
14 how much was missing.

15 Q. Did you have to restock any shelves?

16 A. One of the shelves was ripping out, so
17 that had to be fixed. Yeah, we had to
18 restock.

19 Q. Tell us which shelf was ripped out?

20 A. It was a cigarettes shelf, Newport
21 cigarettes.

22 Q. Okay. Within the store can a patron go
23 grab their own cigarettes or does an employee
24 have to get them for them?

25 A. No, we have to get them. They're behind

1 the counter.

2 Q. How many employees will be behind the
3 counter during the course of a normal day --
4 say from 5:00 in the morning until 11:00?

5 A. Five to three. Three to maybe six or
6 seven is one person or maybe at 6:00 someone
7 else will come to assist, so there are two
8 people at night.

9 Q. There are two people at night?

10 A. (No verbal response).

11 Q. So there could be as many as four
12 employees?

13 A. Three, I'd say.

14 Q. So it is fair to say that there are
15 multiple people handling this cigarettes?

16 A. Yes.

17 Q. And Ms. Billups, to your knowledge, is
18 the store at East Liberty Street in Sumter
19 County?

20 A. Yes.

21 Q. All right. And the store closes at what
22 time every night?

23 A. 11:00

24 Q. All right. So it is dark at night?

25 A. Yes.

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1 MR. GRIFFIN, SOLICITOR: Answer
2 any questions that Mr. Brunson may have for
3 you.

4 THE COURT: Mr. Brunson.

5 MR. BRUNSON: Thank you, Your
6 Honor.

7 CROSS EXAMINATION

8 BY MR. BRUNSON:

9 Q. Hello, Ms. Billups.

10 A. Hello.

11 Q. You testified that you're the manager at
12 a different number now?

13 A. Yes.

14 Q. But back on July of last year you were
15 the manager of this store, where ---

16 A. July of last year?

17 Q. During this robbery, this break-in, this
18 incident?

19 A. I was in -- in 2009?

20 Q. Yes.

21 A. Yes.

22 Q. You sure?

23 A. We move around to different stores. They
24 move us a lot.

25 Q. All right. Let me ask you this. How

1 long have you been a manager, Ms. Billups?

2 A. Four years.

3 Q. All right. So last year you were a
4 manager as well?

5 A. Yes.

6 Q. Now, what number is this store, the one
7 that we're talking about today?

8 A. 940 East Liberty Street.

9 Q. Number 607?

10 A. Right.

11 Q. All right. 607 is the store?

12 A. Right.

13 Q. How many employees at 607 at the time of
14 this incident?

15 A. Six?

16 Q. Six?

17 A. (No verbal response).

18 Q. Not including or including yourself?

19 A. Including myself.

20 Q. Okay. And this Youngs Market, is it a
21 privately-owned store or a corporation-owned
22 store or ---

23 A. It was a corporation, chain stores.

24 Q. How many Youngs Markets are there in
25 South Carolina?

1 A. I couldn't tell you how many there are in
2 South Carolina.

3 Q. How many are there in Sumter County?

4 A. Nine? I am not sure.

5 Q. How much money does Youngs Market makes
6 in a day?

7 A. It depends on the location of the store.

8 Q. 607?

9 A. 607.

10 Q. In a day?

11 A. Six, seven thousand.

12 Q. That's average?

13 A. Average.

14 Q. Your testimony is that on this particular
15 day that lottery tickets were stolen.

16 A. Yes.

17 Q. Valued at what?

18 A. About \$143.

19 Q. Okay. And how do you know exactly how
20 much the tickets would cost?

21 A. We do an inventory report every day and
22 at the end of each shift everybody writes down
23 the number of the last ticket that's left in
24 the slot. The slots are numbered. So if I
25 come in at 5:00 a.m., my beginning numbers are

1 last night's ending numbers. When I leave at
2 3:00 p.m., my ending numbers are the second
3 shift's beginning numbers.

4 Q. Yeah.

5 A. And we get a report from the register to
6 determine how many lottery tickets are rung
7 up. So we know how many is rung up and if any
8 is missing, if we're short.

9 Q. I am going to hand you what is marked as
10 Defendant's Exhibit 2. Okay, \$143 worth of
11 lottery tickets. And \$400-what was the value
12 of the cigarettes?

13 A. \$480.

14 Q. \$480?

15 A. Yes.

16 Q. Now, how do you determine the value of
17 the cigarettes?

18 A. Inventory count. Every day when I come
19 in, I have to count cigarettes and lottery.
20 There are certain things that I have to count
21 but those are two things that I count every
22 day.

23 Q. Now, you testified that an alarm is on
24 this store?

25 A. Yes.

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1 Q. Okay. And that it's loud initially?

2 A. It goes off but after a while -- I mean,
3 it comes on and then after a while it goes
4 off.

5 Q. Do you know that it rang loud that night
6 or are you just ---

7 A. No, I ---

8 Q. --- saying what it normally does?

9 A. The only way that I know that it went off
10 is the alarm company called.

11 Q. Tell me about that. This alarm company,
12 they call you because you're the manager?

13 A. Right.

14 Q. Who else do they call?

15 A. I believe they call ---

16 Q. They don't call the police?

17 A. They should call the police.

18 Q. Did they?

19 A. I don't know. I know that they called
20 me, to let me know that the alarm was going
21 off.

22 Q. Now, just briefly, tell me when -- around
23 about what time did you arrive?

24 A. I can't give you a time.

25 Q. Do you remember if police were already

1 there when you got there?

2 A. When I got there the police were there.

3 Q. Do you recall seeing a large yellow box
4 truck?

5 A. Yes, it was parked back at the pumps.

6 Q. All right.

7 MR. BRUNSON: Court's
8 indulgence.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 BY MR. BRUNSON:

12 Q. The box truck that you saw, let me show
13 you what is marked as State's Exhibit 31, is
14 that the truck that was there?

15 A. It was a yellow truck. I am not sure
16 about the writing on the side.

17 Q. But it looked similar to this?

18 A. Yes.

19 Q. Did you talk to the person that drove
20 that truck?

21 A. He was standing back at the back where I
22 standing at the back, just waiting. We may
23 have talked but basically me and Brian were
24 talking.

25 Q. So you don't know -- you don't remember

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1 if he told you anything or not?

2 A. No, I don't recall.

3 Q. You talked to an investigator?

4 A. Afterwards -- the detective?

5 Q. Yes, detective.

6 A. After she came out. We had to wait until
7 she come and do her job and then afterwards we
8 were allowed to go in the store.

9 Q. Did she interview you?

10 A. Me?

11 Q. Yeah, did anybody from the Police
12 Department ask you ---

13 A. Asked me my name.

14 Q. --- about employees? Did they ask you
15 about who was working that night? Did they
16 ask you anything?

17 A. No.

18 Q. Okay.

19 MR. BRUNSON: Nothing further,
20 Your Honor.

21 THE COURT: Any redirect?

22 MR. GRIFFIN, SOLICITOR: No, sir.

23 THE COURT: Thank you, you may step
24 down.

25 (WITNESS STEPS DOWN)

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1 THE COURT: Any objection to Ms.
2 Billups being excused for the balance of the
3 trial.

4 MR. BRUNSON: None from the
5 Defendant.

6 THE COURT: All right, Ladies and
7 Gentlemen, this is an appropriate time for us
8 to break for the evening. You have paid
9 attention all afternoon, it's been a long
10 afternoon. Again, I apologize for making you
11 go late today because of my lateness this
12 morning.

13 Have a nice evening. Do not discuss
14 the same with anyone. We will see you back
15 here in the morning at 9:30.

16 (JURY EXITS COURTROOM)

17 THE COURT: Anything that we need
18 to take up before we break for the evening?
19 Anything that we need to discuss now before
20 testimony resumes tomorrow?

21 MR. GRIFFIN, SOLICITOR: Your
22 Honor, I don't believe so.

23 MR. BRUNSON: Nothing at this
24 time.

25 THE COURT: How many witnesses do

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1 you figure? You've got a couple more police
2 officers?

3 MR. GRIFFIN, SOLICITOR: Yes, sir.
4 I have Detective Duggin, Detective Richburg,
5 Detective Litaker, and the two SLED witnesses.

6 THE COURT: Will the SLED witnesses
7 be in the morning or the afternoon?

8 MR. GRIFFIN, SOLICITOR: I've got
9 them coming tomorrow at 10:00. That's
10 probably a little ambitious but that was my
11 best guess.

12 THE COURT: Okay. How long do you
13 think that you will need -- tomorrow is
14 Thursday, but take as long as you need.

15 MR. BRUNSON: Yes, sir. We
16 anticipate at this time calling Ms. Lewis, mr.
17 Lewis, and we've got one other witness, Ms.
18 Meyers, and the defendant. We've got four.

19 THE COURT: What I would like to be
20 able to do is finish the testimony tomorrow,
21 without rushing you, and then do the closing
22 and charge on Friday. If not, if we finish
23 then I'd like to argue and charge before 1:00

24 MR. GRIFFIN, SOLICITOR: Your
25 Honor, if we get started right at 9:30, I

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1 would think we can close the State's case.

2 THE COURT: Okay. Well, maybe we
3 can work straight through. We'll see.

4 (COURT IN RECESS)

5 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 NOVEMBER 18, 2010 9:30 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Good morning, Ladies
5 and Gentlemen. I hope that y'all had a nice
6 evening of rest. We are now ready to
7 continue the trial in this case. Solicitor,
8 you may call your next witness.

9 MR. GRIFFIN, SOLICITOR: Yes, Your
10 Honor. The State calls Nikki Perry.

11 THE COURT: All right.

12 (WITNESS TAKES STAND)

13 NIKKI PERRY, being duly sworn to
14 tell the truth, the whole truth and nothing
15 but the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. GRIFFIN, SOLICITOR:

18 Q. Ms. Perry, where do you work?

19 A. I am currently employed with the State
20 Law Enforcement Division, commonly known as
21 SLED.

22 Q. How long have you been there?

23 A. I have worked there since June of 2006.

24 Q. And what is your position with SLED?

25 A. I am a forensic technician in the

1 Evidence Control Department.

2 Q. Tell the jury briefly what an evidence
3 technician does, what you do in your position
4 there?

5 A. We log in, package and properly seal
6 evidence that is submitted to the lab for
7 forensic analyses.

8 Q. Ms. Perry, I am going to hand you what
9 has been marked for identification as State's
10 Exhibit 26 and ask if you recognize this?

11 A. (Upon review), I do.

12 Q. Ms. Perry, did you come into contact with
13 the items inside that bag?

14 A. I did. It was delivered to me by James
15 Alsbrook of the Sumter Police Department on
16 August 11, 2010 (sic).

17 Q. And after it was delivered to you, what
18 did you do with it?

19 A. After I properly sealed it in a heat-
20 sealed pouch, I then placed it in our DNA
21 evidence storage located in a sealed evidence
22 room.

23 Q. So what he brought you is inside this
24 clear bag?

25 A. Yes.

1 Q. And it was heat-sealed when he brought it
2 in?

3 A. In his presence, I would place it in that
4 heat-sealed pouch and I'd seal it, then in his
5 presence enter it into our program and sign
6 and date it on the back.

7 Q. Does SLED assign a number to an item
8 submitted by local law enforcement agencies?

9 A. Yes, sir. When someone submits evidence
10 to our lab, they provide us with a log-in
11 sheet that provides us with all the pertinent
12 information and also tell us the item(s) that
13 they are going to submit. I log all that
14 information into our computer and our computer
15 system generates a unique number for each case
16 and an item number for each item.

17 Q. And what case number was this case given?

18 A. This case was given L-09-08292 and it is
19 item number three.

20 Q. Now, you said that after it is sealed and
21 assigned a number, where does the item go
22 next, or where did this particular item go?

23 A. This particular item was placed in the
24 DNA intake storage; that is our refrigerator
25 that we keep in our locked evidence room.

1 Q. Okay. Now, did anybody else handle this
2 item after you put it in the evidence locker?

3 A. Yes. How it works in the lab is that a
4 DNA technician will come down to our
5 department, evidence control, and pick up the
6 DNA evidence for a day. So after I have taken
7 in it and place it in the DNA storage, another
8 technician from my department, Patricia
9 Crooks, retrieved it out of the DNA storage,
10 placed it in her custody, and she transfers it
11 to the custody of Lori Giles, the forensic
12 technician in our department.

13 Q. After Mr. Giles handles the evidence, who
14 did what next?

15 A. According to my chain of custody, Ms.
16 Giles placed it in DNA storage drawer 14-B and
17 that is located upstairs in the DNA
18 department.

19 Q. Did another individual subsequently
20 handle
21 the evidence?

22 A. Yes. According to my chain of custody,
23 the forensic scientist, Katie Urka, retrieved
24 that item out of the DNA storage drawer, 14-B,

25 ---

1 Q. You referred to chain of custody, tell
2 the just why you have a chain of custody?

3 A. We maintain a chain of custody -- our
4 computer generates an electronic chain of
5 custody. How it works is that each person or
6 location in our lab has a bar code of their
7 own. Each item that comes into the lab, we
8 maintain a chain of custody by scanning it
9 into our custody or scanning it to a location.
10 It generated an electronic chain of custody so
11 that we can follow that piece of evidence
12 everywhere that it went throughout the lab.

13 Q. Okay. Now, after an item is received,
14 would it be retained in SLED custody, under
15 the care and control of SLED, until it is
16 returned to local law enforcement?

17 A. Yes, sir.

18 Q. So who would have access -- who would
19 have access to evidence?

20 A. In my department there are four log-in
21 technicians and an evidence technician. We
22 are the only ones that have custody/control of
23 the evidence in our department. Then in the
24 DNA department, once it is transferred to
25 their custody then they maintain custody and

1 control.

2 Q. But you said that this bar code generates
3 a chain of custody?

4 A. Right, it will tell you where it is and
5 who it was handled by.

6 Q. All right. Did it appear that the
7 evidence was tampered in any way, in your
8 opinion?

9 A. Not when I received it. No.

10 Q. Ms. Perry, I am going to show you what
11 has been marked for identification as State's
12 Exhibit 23, and ask if you can identify that?

13 A. I can identify that State's Exhibit 23 is
14 L-09-08292.

15 Q. When was this received?

16 A. This was received on July 9th, 2009.

17 Q. And who received that?

18 A. Selena Kinard received this item from
19 James Alsbrook of the Sumter Police Department
20 on July 9th, 2009.

21 Q. And does it appear that there was a chain
22 of custody for this item?

23 A. Yes, there was a chain of custody.

24 Q. That would be the heat-sealed pouch?

25 A. We place it in a heat-seal pouch, seal it

1 and then have Mr. Alsbrook initial and date.

2 Q. Ms. Perry, do you have a chain of custody
3 for the items in that, as well?

4 A. I do.

5 Q. After Ms. Kinard received the evidence,
6 where did it go next?

7 A. She placed it in the DNA evidence storage
8 locker.

9 Q. And after being placed in the storage
10 locker, what happened next?

11 A. Patricia Crooks received it from DNA
12 Intake Storage and she transferred custody to
13 Sherry Brown, who was one of the technicians
14 in that department.

15 Q. After going to Ms. Brown, where did it
16 go?

17 A. Ms. Brown placed it in the DNA storage
18 drawer 3C.

19 Q. And after that?

20 A. Forensic Scientist Katie Urka retrieved
21 that item from the DNA storage drawer on
22 December 11th, 2009.

23 Q. And does that chain of custody that
24 you're referring to relate to what has been
25 marked as State's Exhibit 23, was that

1 generated in the same fashion as the other
2 items?

3 A. Yes.

4 Q. So according to the chain of custody,
5 that tells you what?

6 A. It would tell me who has custody of that
7 item while it was in the lab with SLED.

8 Q. While it was under the custody and
9 control of the State Law Enforcement Division?

10 A. Yes.

11 Q. Subsequently these items were returned to
12 the submitting agency?

13 A. Correct, after you go through the
14 analysis it is sealed back up by the DNA
15 analyst and then returned back to my
16 department, and that's where we retain it in
17 our lab until the submitting agency comes to
18 retrieve it.

19 Q. Ms. Perry, do either of these items,
20 State's Exhibit 26 and State's Exhibit 23, do
21 they appear to have been tampered with in any
22 way?

23 A. No.

24 MR. GRIFFIN, SOLICITOR: Answer
25 any questions that Mr. Brunson may have for

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1 you.

2 THE COURT: Mr. Brunson.

3 MR. BRUNSON: Thank you, Your
4 Honor.

5 CROSS EXAMINATION

6 BY MR. BRUNSON:

7 Q. Ms. Perry, I understand that you would
8 mark the evidence for SLED and that -- that
9 you just testified about, these two packages.

10 Now, you kinda did it backwards -- did
11 three first and then one and two after that.

12 A. Right.

13 Q. So when these packages arrive at your
14 agency, who assigns the lab number?

15 A. The technician that receives the first
16 item of evidence, that is when the lab number
17 is generated. Then as additional evidence
18 comes in, we will assign an item number under
19 the lab number that was originally assigned.

20 Q. All right. So in this particular case
21 you were not the technician that received
22 items one and two?

23 A. I was not.

24 Q. So you didn't sign for one and two?

25 A. No, sir.

1 Q. But you did receive three?

2 A. I did.

3 Q. So you would have signed for number
4 three?

5 A. I did.

6 Q. Just because that was the third item that
7 was received?

8 A. Yes, sir.

9 Q. All right. My question then is, if you
10 received three items, identified them as one,
11 two and three, why isn't it ---

12 A. Because if someone is -- what we do is,
13 they can be placed in the same heat-sealed
14 pouch. They are -- and we assign a number,
15 like if there -- we might have a container "A"
16 and what that means is that there is more than
17 one item in this one packet. It doesn't
18 necessarily have to be in two separate
19 packages, there could be two items inside one.

20 Q. Okay. And how are they packaged inside a
21 package? Are they in there together?

22 A. What we receive is this envelope.

23 Q. Okay.

24 A. So the DNA analyst who is the person who
25 can open it up, they inventory what is inside

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1 the packet.

2 Q. Okay.

3 A. In my department we work on a contained
4 basis and we go by the sheet of paper that is
5 handed to us. You log it in and what they say
6 is in the container is what is in the
7 container. The DNA analyst is the one that
8 opens it up and inventories the items inside
9 the package.

10 Q. So you don't know if there are two swabs
11 in there, you don't know if there are four
12 swabs in there?

13 A. I do not.

14 Q. So how do you know to call it one and
15 two? You just call it one, two?

16 A. Exactly. That is the description we
17 give.

18 Q. Now, I presume then that you don't have
19 any knowledge as to who committed a burglary
20 on July 2nd of 2009, do you?

21 A. No.

22 Q. And ---

23 MR. BRUNSON: Court's
24 indulgence?

25 THE COURT: Yes.

1 MR. BRUNSON: Nothing further,
2 Your Honor.

3 THE COURT: Thank you. Mr.
4 Griffin, any redirect?

5 MR. GRIFFIN, SOLICITOR: No, sir,
6 Your Honor.

7 THE COURT: Thank you, you may step
8 down.

9 (WITNESS STEPS DOWN)

10 THE COURT: Any objection to this
11 witness being excused for the balance of the
12 trial?

13 MR. BRUNSON: No objection.

14 THE COURT: Solicitor, you don't
15 have any objection?

16 MR. GRIFFIN, SOLICITOR: No, sir,
17 Your Honor.

18 THE COURT: Solicitor, call your
19 next witness.

20 MR. GRIFFIN, SOLICITOR: Your
21 Honor, the State next calls Detective Robbie
22 Richburg.

23 THE COURT: All right.

24 (WITNESS TAKES STAND)

25 ROBERT RICHBURG, being duly sworn to

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1 tell the truth, the whole truth and nothing
2 but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. GRIFFIN, SOLICITOR:

5 Q. Detective Richburg, by whom are you
6 employed?

7 A. The City of Sumter Police Department.

8 Q. How long have you been with the City of
9 Sumter Police Department?

10 A. Seven to seven-and-a-half years.

11 Q. Prior to working for the Sumter Police
12 Department, where did you work?

13 A. I was employed with the Summerton
14 (phonetic) police department.

15 Q. So your total time spent in law
16 enforcement is how long?

17 A. I've been in law enforcement for ten
18 years.

19 Q. Within the Sumter Police Department, what
20 division do you work in?

21 A. I am currently with the investigative
22 services division, detective division.

23 Q. Do you have occasion to investigate
24 property crimes?

25 A. Yes.

1 Q. Okay. Tell the jury what your department
2 would consider property.

3 A. We investigate crimes against property:
4 burglary, larceny, copper theft, any property.

5 Q. So you don't necessarily deal with,
6 customarily deal with or investigate violent
7 crimes against persons?

8 A. That's correct. We primarily deal with
9 property crimes.

10 Q. Detective Richburg, did you have an
11 opportunity to become involved with this case?

12 A. Yes, sir, I did.

13 Q. Tell the jury how you became involved in
14 the case.

15 A. When the incident happened, Detective
16 Culick called me and told me that she's been
17 called out on this incident the morning of the
18 day that she was to go on vacation and asked
19 if I could assist. We exchanged some
20 information over the telephone and she
21 basically asked if I could help with the
22 interview of the witness. I assisted. Then
23 the case was assigned to me.

24 Q. So you were contacted by Detective
25 Culick?

1 A. Right.

2 Q. Then you were assigned the case as the
3 lead detective?

4 A. Right.

5 Q. What information were you provided, did
6 you receive?

7 A. She asked if I could come to the crime
8 scene and speak with a witness that might have
9 some information.

10 Q. So when you got this case, what did you
11 do next?

12 A. She said that there was a man who had
13 arrived on the scene and who had told officers
14 that he might have some information about what
15 had happened, that he'd given a ride to a man
16 who was bleeding, who had given him some
17 cigarettes, who'd told him that his name was
18 Bernard.

19 Q. Based on that knowledge, what did you do
20 next?

21 A. I was familiar with someone that fit the
22 description, the fact that he wore glasses,
23 that he rode a bike, who I knew by the name of
24 Bernard. He fit the description. I composed
25 a photo lineup that consisted of Mr. McFadden

1 along with five other individual of similar
2 characteristics, with glasses.

3 Q. Detective Richburg, did you contact
4 Derrick McDonald with regard to coming into
5 the office?

6 A. Yes, sir. I called Mr. McDonald after I
7 got the photo lineup and asked him to come to
8 the law enforcement center and take a look at
9 the photo lineup to see if he could identify
10 the person who he had given the ride to that
11 night.

12 Q. Did you interview Mr. McDonald?

13 A. No, sir, I did not. Like I said, the
14 detective that was on call that night had
15 already done a lot of the work on this case.

16 Q. So what was your primary focus in regard
17 to dealing with Mr. McDonald on that day?

18 A. I showed Mr. McDonald the photo lineup
19 and he picked out Mr. McFadden as the
20 gentleman that he had given a ride that night.

21 Q. Detective Richburg, I am going to show
22 you what has been marked for identification as
23 State's Exhibit 1 and ask if you can identify
24 that document.

25 A. (Upon review), yes, sir. This is the

1 cover sheet that we put on photo lineups when
2 we show it to someone. We have this cover
3 sheet first, and it gives them instructions.
4 It says -- you know, they print their name and
5 it says, "The position of the persons in the
6 lineup will be numbered left to right,
7 beginning with number one on your left. If
8 you have previously seen one or more persons
9 in the lineup, place an "X" in the appropriate
10 square corresponding to the number of the
11 person in the lineup. When finished, fill in
12 the date and time and when completed, give
13 this back to the officer."

14 So I hand them the photo lineup with this
15 and I instruct them to "be very careful" and
16 if they see the person to circle the photo and
17 then place an X in the block corresponding to
18 the person they saw.

19 Q. On that sheet is there a block marked?

20 A. Yes. Mr. McDonald put an X in the square
21 corresponding to number three and he signed
22 it, dated it, and it was witnessed by me.

23 Q. Let me show you what has been marked as
24 State's Exhibit for identification purposes
25 and ask you to identify that one.

1 A. That's the one that I'd shown Mr.
2 McDonald that morning with the exception of I
3 think I'd made photocopies of -- but it was
4 fresh off of the printer, I'd just printed it.
5 So this was the photo lineup that I showed Mr.
6 McDonald.

7 Q. When you showed him that particular
8 photographic lineup, did you suggest any
9 particular person for him to pick out?

10 A. No, sir, I didn't.

11 Q. Did you pressure him to choose anybody?

12 A. No, sir.

13 Q. To your knowledge, did the witness talk
14 to any other law enforcement officer that day
15 he viewed the lineup?

16 A. Not to my knowledge.

17 Q. Did the witness appear to be under the
18 influence of drugs or alcohol?

19 A. No, sir.

20 Q. How long did it take the witness to make
21 the selection that he made?

22 A. When he was presented with the lineup, he
23 pretty much immediately said it was number
24 three. Within a minute's time, seconds.

25 Q. On that form, State's Exhibit 2, what

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1 number did he pick?

2 A. Number three.

3 Q. Who circled number three?

4 A. Mr. McDonald circled number three.

5 Q. Is there any writing below number three?

6 A. His initials and the date.

7 Q. Did he do that in your presence?

8 A. That's correct.

9 Q. Okay. Now, who -- who provided Mr.
10 McDonald an instrument to write on the form?

11 A. I did. I gave him a Sharpie for the
12 circle and a blue pen to initial and date it.
13 The reason why I use a blue pen is so that I
14 can tell the original from a photocopy.

15 Q. The color makes a difference to you?

16 A. That's right. This is the original
17 lineup. I can tell that it's the original
18 lineup because his initials are in blue ink.

19 Q. Now, Detective Richburg, -- let me back
20 up.

21 MR. GRIFFIN, SOLICITOR: Your
22 Honor, at this time we would offer State's
23 Exhibit 1 and State's Exhibit 2 into evidence.

24 THE COURT: Any objection, Mr.
25 Brunson?

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1 MR. BRUNSON: No objection, Your
2 Honor.

3 THE COURT: State's Exhibits 1 and
4 2 are admitted without objection.

5 (SO ENTERED AS STATE'S EXHIBIT 1)

6 (SO ENTERED AS STATE'S EXHIBIT 2)

7 DIRECT EXAMINATION CONTINUED

8 BY MR. GRIFFIN, SOLICITOR:

9 Q. Now, Detective Richburg, you may have
10 already said this, but the individual in
11 photograph number three is ---

12 A. --- Bernard McFadden.

13 Q. So based on the identification by the
14 witness of Bernard McFadden, what did you do
15 next?

16 A. I went to -- based on the witness
17 identifying Mr. McFadden and based on
18 information gathered by the other detectives
19 when they had talked to Mr. McDonald, that he
20 told them that he'd given him a ride and that
21 they were passing the store that Mr. McFadden
22 slouched down in his seat and became very
23 nervous. All that together, I went to the
24 magistrate and he signed a warrant for his
25 arrest.

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1 Q. Okay. You presented the warrant to the
2 judge.

3 A. Right, I gave the judge all the
4 information that we had along with this photo
5 lineup identification.

6 Q. And subsequently was Mr. McFadden
7 arrested on this warrant?

8 A. He was.

9 Q. After Mr. McFadden was arrested, what did
10 you do after that?

11 A. I obtained a buccal swab from Mr.
12 McFadden, swabbed the inside of his cheek with
13 a cotton swab that is provided to us by SLED.
14 We then packaged that with our evidence kit
15 and delivered it to SLED for analysis.

16 Q. I am going to show you what has been
17 marked as State's Exhibit 26 for
18 identification and ask if you recognize that
19 document.

20 A. (Upon review), the envelope on the inside
21 of this is the envelope that we put the buccal
22 swabs in. The buccal swab is put in a box,
23 then the box is put in this envelope and we
24 actually take those to SLED. So we actually
25 take those and deliver them to SLED. That's

1 the preferred way. We used to have to draw
2 blood but now we can do a buccal swab.

3 Q. Now, Detective Richburg, did you take
4 this item straight to the evidence locker
5 after you retrieved it -- or, what did you do
6 with it?

7 A. Whenever this item was taken, I took it
8 to the office and turned it in to Mr. Alsbrook
9 in Evidence.

10 Q. Now, when you transferred it to Mr.
11 Alsbrook, did you fill out a chain of custody?

12 A. Yes, sir.

13 Q. Tell the jury when and why an officer has
14 to fill out a chain of custody.

15 A. A chain of custody is done anything we
16 collect some -- it basically says that we
17 collected some type of evidence and it says
18 that I've maintained it in my custody and
19 control and that it has not been changed from
20 the time it's collected.

21 Q. Okay. So after you collect the evidence
22 it remains in your custody and control ---

23 A. That's right.

24 Q. --- until you turn it over to Evidence?

25 A. That's right.

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1 Q. While you had it, did you tamper with it
2 in any way?

3 A. No, sir.

4 Q. Now, Detective Richburg, did you
5 interview anybody in regard to the break-in?

6 A. No, sir, because Detective Litaker had
7 interviewed Mr. McDonald. He was the one who
8 was at the law enforcement center at the time
9 the report was made.

10 Q. So when you -- when you got the case the
11 interview of Mr. McDonald had already been
12 done?

13 A. Yes, Detective Culick had responded and
14 Detective Litaker had worked the case.

15 Q. So as far as your goals, what were you
16 trying to determine when you were assigned the
17 case?

18 A. My goal was to identify who was
19 "Bernard", to see if the witness could
20 identify anyone. I prepared the photographic
21 lineup.

22 Q. Did you interview anybody who was at the
23 residence on Sherwood?

24 A. No, sir. The Sherwood address, there was
25 no criminal act committed there. The fact

1 that he'd gone to the house to ask for a ride
2 was not a criminal act.

3 Q. The effort to get the cheek swab, what
4 was your goal in doing that?

5 A. We do a cheek swab so that we can get a
6 known sample for comparison of DNA left at the
7 crime scene, to determine whether or not it
8 was Mr. McFadden's DNA at the scene.

9 Q. Detective Richburg, again, was it common
10 for you to be assigned a case where a lot of
11 the investigative work had already processed?

12 A. No. A lot of times -- we work together,
13 we're truly a team. A lot of times other
14 detectives do a lot of the work. The main
15 reason, with me being in property crimes, is
16 I'm involved so that we can track burglaries.
17 We keep track of where all burglaries are.

18 That way anyone can come to us and get
19 information on burglaries in different areas.

20 Q. 940 East Liberty, the place where the
21 break-in occurred, to your knowledge is that
22 in Sumter County?

23 A. Yes, it is.

24 MR. GRIFFIN, SOLICITOR: Court's
25 indulgence.

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1 THE COURT: Yes, sir.

2 MR. GRIFFIN, SOLICITOR: Answer

3 any questions that Mr. Brunson has.

4 THE COURT: Mr. Brunson.

5 MR. BRUNSON: Thank you, Your

6 Honor.

7 CROSS EXAMINATION

8 BY MR. BRUNSON:

9 Q. Detective Richburg, you testified that
10 you've got ten years of experience; correct?

11 A. Yes, sir.

12 Q. And how many in investigations?

13 A. Six.

14 Q. All right.

15 Q. Isn't it true that you did no
16 investigation in this case?

17 A. I don't know if you'd call what I did an
18 investigation or not, but I investigated.

19 Q. You think that you did an investigation?

20 A. I followed up.

21 Q. My question was, did you investigate?

22 A. Yes.

23 Q. Okay. You were assigned this case three
24 days after the incident, right?

25 A. Yes, after the holiday weekend.

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1 Q. And when you got this case, Detective
2 Culick had already told you who the suspect
3 was; isn't that correct?

4 A. She told me that it was fellow by the
5 name of Bernard.

6 Q. I want to hand you what has been marked
7 as Defendant's Exhibit 1.

8 A. Yes, sir.

9 Q. Did you have an opportunity to review
10 that?

11 A. Yes, sir.

12 Q. All right. Does it state a suspect's
13 name?

14 A. Yes, sir. I gave them the last name of
15 McFadden.

16 Q. Okay. What date was that?

17 A. That was on the 3rd. As I said, we
18 communicated with each other about it. She
19 told me what she had and I knew the name. The
20 fact that I knew a male individual matching
21 that description from that part of town didn't
22 change from the 3rd to the 6th. It's what I
23 knew prior to the 3rd.

24 Q. So you were assigned on the 6th?

25 A. That's correct.

1 Q. Detective Culick filled out this document
2 on the 3rd?

3 A. Yes, sir.

4 Q. With his name on it?

5 A. Yes.

6 Q. Now, you put together a photo lineup?

7 A. Yes.

8 Q. Is that what you were referring to as an
9 "investigation"?

10 A. A followup investigation.

11 Q. But isn't it true that you picked people,
12 put them together in a photo with a fellow
13 that you already knew?

14 A. That's right.

15 Q. And then you presented them to a guy to
16 identify who already had told you that it was
17 Bernard?

18 A. As I stated earlier, when they told me
19 that he'd said his name was Bernard I knew a
20 black male from that part of town that wore
21 glasses, I knew him to ride a bicycle, and I
22 knew that individual to be Bernard McFadden.
23 That is the same information that I related to
24 Detective Culick when she told me that the man
25 had said his name was Bernard.

1 Q. Isn't it true that Derrick McDonald did
2 all the investigation for you?

3 A. No, sir, Derrick McDonald was a witness.

4 Q. Well, isn't it true that shortly after
5 this thing happened that Derrick McDonald
6 showed up on the scene?

7 A. Yes, he did. He came to the scene to
8 give information to law enforcement.

9 Q. So he showed up on the scene?

10 A. Right.

11 Q. And he showed up and said that he had
12 been given a ride to a fellow who had been
13 bleeding?

14 A. Yes, sir.

15 Q. Correct?

16 A. Yes, sir.

17 Q. So isn't it true that blood could have
18 gotten on the cigarettes when ---

19 MR. GRIFFIN, SOLICITOR;

20 Objection, speculation.

21 THE COURT: Sustained.

22 CROSS EXAMINATION CONTINUED

23 BY MR. BRUNSON:

24 Q. All right. You had an opportunity to
25 meet with this witness for the photo lineup?

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1 A. That's correct.

2 Q. Now, this witness told you that he got
3 off and arrived home around 9:30?

4 A. I didn't ever conduct an interview of Mr.
5 McDonald.

6 Q. But you were the lead investigator?

7 A. That information had already been taken.

8 Q. Where is the statement?

9 A. He told Detective Litaker that. He had
10 already told him. I prepared the photo
11 lineup.

12 Q. Who told you that?

13 A. Who told me what?

14 Q. That that was the purpose?

15 A. Of the lineup?

16 Q. Yes.

17 A. To see if he could identify the
18 individual that we knew as Bernard as being
19 the individual that showed up at his house,
20 that he had given the ride to.

21 Q. Oh, I thought you said that somebody told
22 you that was the purpose?

23 A. (No verbal response).

24 Q. Now, if you received information as the
25 lead investigator that the alleged suspect was

1 at a residence bleeding, isn't it prudent to
2 go to that place?

3 A. If it was a crime scene that needed to be
4 investigated, I would. They had already
5 investigated at the scene.

6 Q. Okay. But if you received information
7 that people saw and talked to this suspect
8 shortly after he allegedly committed the
9 crime, why didn't you go talk to them?

10 A. Even if I had gone to the house and
11 talked to the people at house, I couldn't
12 testify that -- they would testify as to what
13 they know. I can't testify for what they'd
14 say that they saw.

15 Q. But you can corroborate Mr. McDonald's
16 testimony?

17 A. Mr. McDonald's testimony is corroborated
18 by the actions of the individual, the fact
19 that the individual was bleeding and the fact
20 that he identified that person as being the
21 person who came to his residence.

22 Q. All right. Did you receive information
23 that the suspect put a bicycle in the back of
24 Mr. McDonald's truck?

25 A. No, I did not have any information about

1 a bicycle being put in the back of a truck.

2 Q. You didn't know that?

3 A. I didn't interview him.

4 Q. I didn't ask you whether you interviewed
5 him. I asked you whether you knew that a
6 bicycle was put in the back of Mr. McDonald's
7 truck?

8 A. I don't believe that I have any
9 information about a bike being put in the back
10 of a truck.

11 Q. Did you receive any information about
12 what they'd used to break the window out?

13 A. Yes, that was a brick that was recovered.

14 Q. But you did not followup investigation on
15 that brick, did you?

16 A. There was no followup investigation to be
17 done on the brick, it was there among the
18 broken glass.

19 Q. Were there any brick like that in the
20 back of Mr. McDonald's truck?

21 A. No.

22 Q. How do you know?

23 A. I don't know.

24 Q. Were there any bicycle tracks around
25 Youngs Market?

1 A. I don't know. There probably were
2 bicycle tracks, people come and go around the
3 market.

4 Q. Were there any bloody tissues left in Mr.
5 McDonald's cab?

6 A. I didn't talk to Mr. McDonald about
7 bloody tissues.

8 Q. Okay. So you put together a photo
9 lineup?

10 A. Yes, sir.

11 Q. And you took a swab?

12 A. Yes, sir.

13 Q. What else did you do?

14 A. You mean about the swab?

15 Q. No, for investigative purposes, what else
16 did you do?

17 A. I -- the affidavit.

18 Q. Was that part of an investigation?

19 A. Yes, sir.

20 Q. You put together an affidavit?

21 A. Yes, sir.

22 Q. Okay.

23 MR. BRUNSON: Court's
24 indulgence.

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION CONTINUED

2 BY MR. BRUNSON:

3 Q. Let's talk about one of the things that
4 you did, this buccal swab. You collected this
5 swab from my client. Correct?

6 A. Yes, sir.

7 Q. When did you collect that?

8 A. I believe that it was -- if I could see
9 my report -- (reviewing).

10 Q. You testified that you took a Q-tip and
11 you obtained swabs from the inside of my
12 client's mouth; correct?

13 A. Yes, sir.

14 Q. What did you then do with the Q-tip?

15 A. Placed it in a box, labeled it.

16 Q. When did that occur?

17 A. On the 28th.

18 Q. What time?

19 A. I don't recall the time.

20 Q. Would it have been morning, noon, night?

21 A. Mid-day.

22 Q. Mid-day. All right. Before 5:00?

23 A. Yes.

24 Q. Okay. After you obtained the swab,
25 before 5:00, what did you do next with the

1 swab?

2 A. I secured the swab in Evidence.

3 Q. What does that mean, secured the swab?

4 A. At the time the swab is taken, you place
5 it into a box, seal the box, put the box in an
6 envelope, label it and secure it in evidence.

7 Q. Hold on. I'm sorry. You said that you
8 turned it in to Mr. Alsbrook on the 29th?

9 A. That's correct.

10 Q. And you said that you took it on the 27th.

11 A. 28th.

12 Q. 28th?

13 A. Yes, sir.

14 Q. So if you obtained this swab during the
15 day on the 28th and you didn't turn it over to
16 the evidence tech until the next day, -- what
17 time was that?

18 A. It's dated the 29th at 1500 hours.

19 Q. That's military?

20 A. Yes, sir.

21 Q. So you turned it in on 3:00 o'clock on
22 the 29th.

23 A. That's correct.

24 Q. All right. So that's almost twenty-four
25 hours?

1 A. I don't know the exact time that it was
2 collected.

3 Q. You said that you secured it. What
4 exactly did you do with it?

5 A. We have a lockbox in our office where we
6 can lock up evidence until it's turned into
7 Evidence.

8 Q. A lockbox?

9 A. Yes, sir.

10 Q. What kind of lockbox?

11 A. It's a locked evidence box.

12 Q. How many people have access to that box?

13 A. At that time two other people,
14 detectives.

15 Q. What is your department's policy in
16 regards to turning over evidence to an
17 evidence tech?

18 A. That you turn it in, get a receipt.

19 Q. Isn't it true that you're supposed to
20 turn it over to an evidence tech as soon as
21 possible?

22 A. Yes, sir. There are times when it's not
23 feasible, the tech is not available, etc.,
24 that you might lock it up until you have a
25 chance to turn it in.

1 Q. However, other people had access to it?

2 A. Detectives.

3 Q. Did you monitor it twenty-four hours a
4 day?

5 Did you monitor it from the time that you put
6 it in this locked box until the time that you
7 got it out?

8 A. No, sir.

9 Q. So how do you know whether one of this
10 other people gained access to it?

11 A. They could have accessed it.

12 Q. So your testimony is that you don't know
13 whether someone else gained access to it or
14 not?

15 A. No, sir.

16 Q. Now, this is sensitive biological
17 evidence, is it not?

18 A. Yes, sir.

19 Q. It was put in a locked box. Was this
20 lockbox temperature controlled?

21 A. It's in a temperature controlled room.

22 Q. So it stays in this thing overnight and
23 now, uh, -- (pause) ---

24 MR. BRUNSON: Court's
25 indulgence.

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1 THE COURT: Yes, sir.

2 CROSS EXAMINATION CONTINUED

3 BY MR. BRUNSON:

4 Q. As lead investigator on the case, you're
5 required to put together some documents, are
6 you not?

7 A. Yes, sir.

8 Q. In fact, you prepared an affidavit in
9 this case?

10 A. Yes, sir.

11 Q. How many affidavits have you prepared for
12 this case?

13 A. I don't know the exact number.

14 Q. All right. Isn't it true that in your
15 affidavit to Judge Tindall, dated July 7th,
16 2009, that you provided her with information
17 that was not true and correct?

18 A. I provided her with the information that
19 we had as of that time.

20 Q. All right. Isn't it true that in that
21 affidavit that you indicated that the manager
22 responded to the scene after the officers,
23 that Detective Culick responded after the
24 manager, and that while on the scene Mr.
25 McDonald came last. Is that your recollection

1 of what you put in your affidavit?

2 A. Without looking at the affidavit, I
3 couldn't tell you.

4 Q. Would looking at your affidavit refresh
5 your recollection?

6 A. Yes, sir.

7 Q. But that's not true, is it?

8 A. I ---

9 Q. So your affidavit to Judge Tindall was
10 wrong?

11 A. I couldn't say without seeing it.

12 MR. GRIFFIN, SOLICITOR: Judge, in
13 the affidavit they were looking for probable
14 cause. It doesn't have to be ---

15 THE COURT: Probable cause is all
16 that they had to show at the time.

17 MR. BRUNSON: I understand, Your
18 Honor, and I haven't attacked the sufficiency
19 of what he put in there. I am just asking the
20 officer these questions.

21 THE COURT: You are inferring it.

22 MR. BRUNSON: Yes, sir. I will
23 withdraw that question.

24 CROSS EXAMINATION RESUMED

25 BY MR. BRUNSON:

1 Q. Did you have an occasion to do an
2 investigative report?

3 A. Yes, sir.

4 Q. What is the purpose of an investigative
5 report?

6 A. To document the sequence of the case, the
7 investigation.

8 Q. All right. Okay. Now, you were putting
9 information in this report based on your
10 investigation; correct?

11 A. Yes.

12 Q. But you haven't interviewed any
13 witnesses?

14 A. The investigation is -- as I said, we
15 conduct the investigation as a team, we work
16 together. We rely on each other to gather all
17 the information.

18 Q. So the investigative report that you
19 submit is cumulative?

20 A. Correct, can be.

21 Q. What -- well -- but yet you're the only
22 officer named as the officer?

23 A. As I said, it's a team effort.

24 Q. Let me ---

25 A. It comes from the total investigation.

1 Q. As the investigative officer, let me ask
2 you a couple of questions. What time did the
3 store -- did this break-in occur?

4 A. The time should be on the dispatch
5 report.

6 Q. Okay. You don't know.

7 A. The time would be on the report.

8 Q. You didn't talk to anyone from Youngs
9 Market?

10 A. No, sir.

11 Q. What time did Youngs close that night?

12 A. I don't know.

13 Q. You don't know what time that the store
14 closed that night?

15 A. No, sir.

16 Q. All right. Generally?

17 A. (No verbal response).

18 Q. Isn't it important to find out what time
19 that the store closed if you're conducting an
20 investigation?

21 A. If the break-in occurred after the store
22 closed, it doesn't matter what time the store
23 closed. The dispatch will tell us what time
24 the crime was reported. I don't know that
25 knowing what time the store closed compared

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1 to what time that the burglary happened is
2 significant or important.

3 Q. If the store closed at 11:00 and your
4 testimony is that ---

5 MR. GRIFFIN, SOLICITOR: Your
6 Honor, he said that he didn't know when the
7 store closed.

8 THE COURT: If he doesn't know, he
9 doesn't know. You're pitting one witness
10 against another.

11 MR. BRUNSON: Okay.

12 THE COURT: Move on.

13 MR. BRUNSON: I will withdraw
14 it.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BRUNSON:

17 Q. Is it your testimony that the break-in
18 occurred after 11:00?

19 A. Yes, it was after 11:00 when the officers
20 responded to the scene.

21 Q. If my client was at Mr. McDonald's house
22 before 11:00, is it reasonable that he could
23 have broken into that store?

24 MR. GRIFFIN, SOLICITOR:
25 Objection.

1 THE COURT: Sustained.

2 MR. BRUNSON: Court's
3 indulgence.

4 THE COURT: Yes, sir.

5 MR. BRUNSON: Nothing further,
6 Your Honor.

7 THE COURT: Any redirect?

8 MR. GRIFFIN, SOLICITOR: Nothing
9 further.

10 THE COURT: Thank you, you may step
11 down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Ladies and Gentlemen,
14 we have been going about an hour. We will
15 take a short break, let you get a cup of
16 coffee or stretch. Don't discuss the case
17 among yourself. We'll be with you shortly.

18 (JURY EXITS COURTROOM)

19 THE COURT: All right, we will be
20 in recess for a few minutes.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: Ready to proceed?

24 MR. GRIFFIN, SOLICITOR: Yes, sir.

25 MR. BRUNSON: Ready, Your Honor.

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1 THE COURT: Bring in the jury.

2 (JURY ENTERS COURTROOM)

3 THE COURT: You may call your next
4 witness.

5 MR. GRIFFIN, SOLICITOR: Your
6 Honor, the State calls Detective John Litaker.

7 (WITNESS TAKES STAND)

8 JOHN LITAKER, being duly sworn to
9 tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. GRIFFIN, SOLICITOR:

13 Q. Detective Litaker, where do you work?

14 A. I work at the Sumter Police Department,
15 in the Investigative Services division.

16 Q. Within the investigative services
17 division, what do you do?

18 A. I work in the financial crimes unit.

19 Q. Tell the jury what the financial crimes
20 unit is.

21 A. In financial crimes, we investigate
22 crimes dealing principally with white collar
23 crimes: check forgeries, checking documents,
24 counterfeiting, forging government documents,
25 stuff of that nature.

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1 Q. Were you on duty on the night of July 2nd,
2 2009?

3 A. I was.

4 Q. Tell the jury what you were doing that
5 evening?

6 A. I was assigned to work, scheduled that
7 week and I was in the office that evening
8 trying to get caught up on some paperwork, was
9 there after midnight.

10 Q. Did you get information that a burglary
11 had taken place at the Youngs Market?

12 A. I did.

13 Q. Who did you receive that information
14 from?

15 A. Detective Irene Culick was the on call
16 detective and when she was called out, she
17 contacted me and that's how I became aware of
18 it. She asked me to meet with Mr. McDonald.

19 Q. Did you subsequently participate in an
20 investigation at that particular time?

21 A. I did. I went to 940 East Liberty
22 Street, Youngs Market, and met there with Mr.
23 McDonald and Detective Culick.

24 Q. Did you ever go inside the store that
25 night?

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1 A. I did not go inside the store.

2 Q. Upon arriving at the scene, what did you
3 do?

4 A. When I arrived at the scene, I learned
5 that there was a gentleman there, a gentleman
6 by the name of Derrick McDonald, and I was
7 informed that he felt like he might be in
8 possession of some information that could be
9 helpful to use in our investigation of the
10 burglary.

11 Q. Upon learning that information, what did
12 you do next?

13 A. At that time Mr. McDonald had driven his
14 vehicle to the store and I just asked him to
15 follow me back to the law enforcement center,
16 so that I could interview him. He followed me
17 back to the law enforcement center.

18 Q. Did he make any stops along the way?

19 A. No, he did not.

20 Q. Once you got back to the law enforcement
21 center, what did you?

22 A. Once we arrived at the law enforcement
23 center, myself and Mr. McDonald went inside
24 and I asked him what it was, the information
25 that he felt would be helpful. He indicated

1 that he thought someone who he'd given a ride
2 to might have had something to do with the
3 break-in because, he said, ---

4 Q. Don't go into what he told you, but just
5 -- you took his statement?

6 A. Yes, I got a voice recorder and I took
7 his statement, pretty much his statement in
8 his own words.

9 Q. Did you forward that statement to
10 Detective Richburg after it was taken?

11 A. Yes. That statement -- yes, it was a
12 digital voice recorder.

13 Q. Detective Litaker, did you have an
14 opportunity to look in the cab of Mr.
15 McDonald's truck?

16 A. I did. After he had given his statement,
17 because there was an indication that the
18 person in question was bleeding, I did inspect
19 the interior of the cab, on the passenger side
20 where that person would have been sitting, to
21 see if there was any traces of blood.

22 Q. Were you able to recover anything ---

23 A. There was a footwear impression on the
24 floorboard that was -- I held a flashlight at
25 an angle and I could tell that there was a

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1 footwear impression. I used what we call a
2 gel lift to lift that impression.

3 Q. I am going to show you what has been
4 marked for identification as State's Exhibit
5 27.

6 A. Yes, this is the gel lift that I took.

7 Q. That you attempted to retrieve from the
8 cab of the yellow truck?

9 A. That's correct.

10 Q. Now, Detective Litaker, when you take
11 what you believe to be a footwear impression,
12 customarily what do you compare it to?

13 A. Customarily footwear impressions would be
14 compared to footwear, if you in fact have a
15 suspect. Let's say that somebody is
16 apprehended within a reasonable amount of time
17 to where they might still be wearing that
18 footwear -- or that footwear might reasonably
19 be found at a place/residence, if you have a
20 search warrant. You have to have a suspect
21 pair to compare it to.

22 Q. You would compare shoes with the gel
23 lift?

24 A. We did not collect any shoes in this
25 particular case. The information that I was

1 given was that the suspect in this case was
2 bleeding heavily, that blood may have gotten
3 on the shoe or down into the shoes.

4 Q. But you didn't have any footwear to
5 compare in this case?

6 A. I did not.

7 Q. Detective Litaker, did you -- did you
8 collect anything from the cab of that yellow
9 truck that you suspected to be blood?

10 A. I did not.

11 Q. Did you see anything that you suspected
12 to be blood?

13 A. No. I think I did a pretty close
14 inspection and there was no indication of
15 blood.

16 Q. Did you see any bloody Kleenex, tissues
17 or paper towels?

18 A. No, I did not.

19 Q. After interviewing Mr. McDonald, what did
20 you tell -- what did you do after your part of
21 the investigation was complete?

22 A. After interviewing him and after
23 inspecting the cab of the truck, I pretty well
24 at that point bid him a good night. He had to
25 get up and get to work and it was already by

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1 then about 3:00 o'clock in the morning.

2 Q. To your knowledge did Detective Culick
3 ever speak to Mr. McDonald after he got to the
4 law enforcement center?

5 A. I don't recall her speaking with him,
6 because she was still at the scene. By the
7 time I had released him, Mr. McDonald, to go
8 home and get in the bed and try to get some
9 sleep because he had to get up in the morning,
10 I believe that she was still at the scene at
11 Youngs Market.

12 Q. Did Mr. McDonald give you any items of
13 evidence?

14 A. No.

15 Q. This gel lift, after you took it, what
16 did you do with it?

17 A. The gel lift was secured in my office
18 because I did not have a box like you see that
19 you'd place evidence in. I didn't want to put
20 it in the evidence locker without it being
21 contained in something. It was maintained in
22 my office until later that morning, about five
23 or six hours later, when I turned it in to
24 evidence.

25 Q. All right.

1 MR. GRIFFIN, SOLICITOR: Court's
2 indulgence.

3 THE COURT: Yes, sir.

4 MR. GRIFFIN, SOLICITOR: Answer
5 any questions that Mr. Brunson may have for
6 you.

7 THE COURT: Mr. Brunson, yes, sir.

8 MR. BRUNSON: Thank you, Your
9 Honor.

10 CROSS EXAMINATION

11 BY MR. BRUNSON:

12 Q. Detective Litaker, how you doing?

13 A. Good.

14 Q. You testified earlier that you are an
15 investigator with Sumter and that you have
16 been for -- how long?

17 A. I've been a detective for seven
18 (phonetic) years now.

19 Q. You took a gel lift?

20 A. Yes.

21 Q. The inside of the truck was dirty?

22 A. There was some surface dirt from the
23 floorboard of the truck.

24 Q. Enough to give a foot impression?

25 A. Yes, there was a textured-like floormat.

1 Q. Did you recover any glass in this gel
2 lift?

3 A. I don't -- I did not see anything that I
4 recognized as glass. Whether or not there is
5 any glass, microscopically, present, I have no
6 idea.

7 Q. So the answer is no, that you didn't?

8 A. To my knowledge.

9 Q. You didn't recover any?

10 A. There was not any that was obvious.

11 Q. Okay. Did you look on the driver's side
12 of the cabin?

13 A. I looked over there just as a cursory
14 inspection of the interior of the cabin. I
15 didn't pay particular attention because I had
16 not information that the person had entered or
17 been over there.

18 Q. So you do not know whether glass was on
19 the floorboard on the passenger's side or not?

20 A. I did not see any indication of glass on
21 the floorboard on the passenger's side.

22 Q. In fact, you didn't look at Mr.
23 McDonald's shoes either, did you?

24 A. No, I did not inspect Mr. McDonald's
25 shoes.

1 Q. Now, you went to the scene; correct?

2 A. That's correct.

3 Q. And upon receiving this information, you
4 still didn't look in the back of the truck,
5 did you?

6 A. No, I did not.

7 Q. Did he tell you that the bike was put in
8 the back of the truck?

9 A. Mr. McDonald told me that the bike was
10 put in the back of the truck.

11 Q. You didn't think to take a look?

12 A. I, quite frankly, didn't see anything to
13 be gained by looking at the bicycle.

14 Q. So obviously then if the back of this
15 truck was filled with brick like this, you
16 wouldn't know?

17 A. No, I didn't look in the back of the
18 truck.

19 Q. After you obtained this gel lift, your
20 intent was to possibly match it with a pair of
21 shoes; correct?

22 A. Yes, if a person could have been found at
23 that time that we could have matched the shoes
24 to.

25 Q. You weren't the lead investigator?

1 A. No, I wasn't.

2 Q. So all followup investigation is supposed
3 to be done by the lead investigator, correct?

4 A. Whoever the -- whoever is assigned.

5 Q. Isn't it true that there were bags in
6 this truck, of trash, garbage?

7 A. There was, as I recall, at least one bag
8 that looked like a plastic grocery bag that
9 had trash items in it.

10 Q. Isn't it true that it had one tissue in
11 it?

12 A. Well, if it had one tissue in it, I
13 didn't see it.

14 Q. Well, is it your testimony that you
15 looked through the bag?

16 A. Yes. As a matter of fact, it was blood
17 or blood residue that I was inspecting the
18 inside of the truck for. A bloody tissue
19 would definitely have been something that I
20 would have taken.

21 Q. Was Derrick McDonald with you when you
22 looked in the truck?

23 A. Derrick McDonald was present, standing in
24 the parking lot, by the truck while I was
25 inspecting the inside.

1 Q. Did he assist in the investigation?

2 A. He was observing as I was looking in the
3 truck.

4 Q. Did he see you look in any trash bags?

5 A. I don't -- I wouldn't know what he saw.

6 Q. But you did search through it? I mean,
7 did you dump it out?

8 A. No, I did not.

9 Q. What kind of bag are we talking about?

10 A. I believe that it was like a plastic
11 grocery bag.

12 Q. Where was this bag located?

13 A. Inbetween the driver's and the
14 passenger's side.

15 Q. And your account is that the search
16 entailed what? What did you do?

17 A. I didn't dump it out, I didn't inspect
18 each individual piece. I just basically
19 looked in it to see if there was anything
20 laying on the top that would look like it was
21 blood and I didn't see anything like that.

22 Q. So you didn't search the bag thoroughly?

23 A. No, I didn't -- I didn't look at what was
24 in the bottom of the bag or anything like
25 that?

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1 Q. I see. So you don't know what was it?

2 A. I don't know what was in the bottom of
3 the bag.

4 Q. Okay.

5 MR. BRUNSON: Court's
6 indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BRUNSON: Just a few more
9 questions.

10 CROSS EXAMINATION CONTINUED

11 BY MR. BRUNSON:

12 Q. Were you aware that McDonald's testimony
13 is that my client was at his house?

14 A. I am not ---

15 MR. GRIFFIN, SOLICITOR: Your
16 Honor, if he could clarify.

17 THE COURT: Yes.

18 THE WITNESS: I mean, he wasn't
19 there were ---

20 MR. BRUNSON: Let me ask the
21 question.

22 THE WITNESS: All right.

23 CROSS EXAMINATION CONTINUED

24 BY MR. BRUNSON:

25 Q. Were you aware that Mr. -- did Mr.

1 McDonald tell you that my client was at his
2 house that night?

3 A. Mr. McDonald stated that an individual
4 had come to his house and, from what I
5 understand, he later identified Mr. McFadden
6 as being that person.

7 Q. So it's your testimony that you didn't
8 instruct Mr. McDonald to call his girlfriend
9 and she, in turn, called somebody on the
10 phone? That didn't happen?

11 A. I didn't instruct him to call anybody.
12 While he was talking, he received a call.

13 Q. He received a call. All right. Let me
14 ask you another question, are you aware that
15 during that conversation whether or not -- are
16 you aware of who he received a call from?

17 A. I believe that it was from his wife,
18 girlfriend, checking to see where he was or
19 why he hadn't come back.

20 Q. All right. Did it sound like -- or, did
21 he tell her to call somebody while they were
22 on the phone?

23 A. Exactly what their conversation was, I
24 don't have any specific recollection. It
25 would be recorded in that recorded statement.

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1 Q. You didn't tell him to tell her to call
2 anybody?

3 A. I didn't instruct him to call anyone.

4 Q. You never met his wife, his girlfriend?

5 A. No.

6 Q. You didn't interview anyone else in
7 connection with this case?

8 A. No. I interviewed him that night. As
9 far as any phone calls, as best I recall I
10 believe that someone called him. I don't
11 remember specifically whether he called her or
12 she called him, but I remember that he was on
13 a call.

14 Q. Thank you.

15 MR. BRUNSON: Thank you.

16 THE COURT: Is that all your
17 questions?

18 MR. BRUNSON: That's it.

19 THE COURT: Thank you. Any
20 redirect?

21 MR. GRIFFIN, SOLICITOR: No, sir,
22 Judge.

23 THE COURT: Thank you, you may step
24 down.

25 (WITNESS STEPS DOWN)

1 THE COURT: Any objection to the
2 officer being excused at this time?

3 MR. BRUNSON: No objection.

4 THE COURT: Thank you. If the
5 jurors would like to stand up, please feel
6 free to take a stretch break..

7 MR. GRIFFIN, SOLICITOR: The State
8 calls Truman Duggin.

9 (WITNESS TAKES STAND)

10 TRUMAN DUGGIN, being duly sworn to
11 tell the truth, the whole truth and nothing
12 but the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY MR. GRIFFIN, SOLICITOR:

15 Q. Lieutenant Duggin, by whom are you
16 employed?

17 A. City of Sumter Police Department.

18 Q. In what capacity are you employed there?

19 A. I am a lieutenant, I'm a supervisor over
20 the investigative services sections, crime
21 scene, evidence identification, polygraphs.

22 Q. Did you receive training to become the
23 head of this department?

24 A. I've been with the department seventeen
25 years full-time and then the last five years

1 of my career I was with the Reserved for the
2 Police Department. I received training and
3 for the last thirteen years that's what I have
4 been doing, from the South Carolina Criminal
5 Justice Academy and thorough specialty
6 organizations.

7 Q. Lieutenant Duggin, did you have an
8 opportunity to receive certain items of
9 evidence in this particular case?

10 A. Yes, sir, I did.

11 Q. And Lieutenant Duggin, I'm going to show
12 you what has been marked for identification
13 purposes as State's Exhibit 23 and ask if you
14 can identify that item?

15 A. State's Exhibit 23 is an envelope
16 containing a swab that I took to the lab.

17 Q. Would it also contain anything else?

18 A. (Upon review), it also -- the item that
19 was collected from the blood on the floor.

20 Q. The swab taken from the scene, from the
21 floor, who collected that item of evidence?

22 A. That would be Detective Sergeant Culick.

23 Q. Lieutenant Duggin, I am going to show you
24 what has been marked for identification as
25 State's Exhibit 22 and ask you if you

1 recognize this item.

2 A. Yes, State's Exhibit 22 is three
3 cigarette packs that I received from Detective
4 Sergeant Culick, that I processed into
5 evidence.

6 Q. What identified that as your markings?

7 A. I used a black Sharpie and I drew like a
8 line and I have my initials.

9 Q. All right. Now, when you say processed,
10 what did you do to collect samples from this
11 particular pack of cigarettes?

12 A. I processed that using -- I used one
13 sterile Q-tip swab and just rubbed it over the
14 blood stain. Then the swab is placed into a
15 carton and the carton is put into an envelope.

16 Q. And the swab that you took from that
17 Newport box -- I am going to show you State's
18 Exhibit 23 for identification again. Can you
19 tell us whether the swab is located inside the
20 package?

21 A. The swab would be inside -- State's
22 Exhibit 23 is a brown envelope with the
23 markings that I put on, then it denotes where
24 it is returned from the lab after analysis.

25 Q. But after you -- after you processed the

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1 Newport box, you took the swab and placed the
2 swab inside a tube and then you turned these
3 two items, State's Exhibit 23 for ID and
4 State's Exhibit 22 for ID, into evidence?

5 A. That's correct.

6 Q. Lieutenant Duggin, I am going to show you
7 what has been marked for identification as
8 State's Exhibit 24 and ask you if you came
9 into contact with that item?

10 A. State's Exhibit 24 contains glass from
11 Youngs Market.

12 Q. Who turned that evidence over to you?

13 A. Detective Sergeant Culick.

14 Q. And did you do anything with regards to
15 processing this item?

16 A. No, sir.

17 Q. Okay. What did you subsequently do with
18 State's Exhibit 24?

19 A. It was just put back into evidence.

20 Q. Okay. Lieutenant Duggin, I am going to
21 show you what has been marked for identifica-
22 tion purposes as State's Exhibit 27 and ask if
23 you recognize this item.

24 A. Yes, State's Exhibit 7 (sic) was turned
25 in by Detective Sergeant Culick. It was

1 turned in for processing and I did an
2 examination. No blood.

3 Q. And you received this from Detective
4 Culick?

5 A. That's correct.

6 Q. What did you do with it after you
7 processed it?

8 A. Returned it to Evidence.

9 Q. Lieutenant Duggin, I am going to show you
10 what has been marked for identification as
11 State's Exhibit 21 and ask you if can identify
12 this item?

13 A. State's Exhibit 21 are lottery tickets
14 turned in by Detective Sergeant Culick and
15 they were processed for fingerprints.

16 Q. They were processed for fingerprints?

17 A. (No verbal response).

18 Q. Tell the jury how an item is processed
19 for fingerprints,

20 A. Well, this type of item -- there are two
21 types of surface that you look at for
22 fingerprints, porous and nonporous.

23 Porous surfaces will get the oil absorb -
24 - such as wood. Then you have nonporous --
25 metals, glass, plastics or papers that have a

1 slick surface. Using magnetic powder and by
2 fuming, fuming with SuperGlue, we are able to
3 place these items into a tank and the oils are
4 distinguishable -- SuperGlue -- and you can
5 process it using powder, black powder. They
6 were processed and no ridge detail was ---

7 Q. What does that mean -- for the jury?

8 A. Just because you touch something doesn't
9 mean that you are going to leave fingerprints.
10 But this is the way that we find out if
11 fingerprints are left. By looking at the
12 ridge detail on the fingers, you can -- as a
13 matter of fact, I wrote down that there was
14 insufficient detail for identification.

15 Q. Lieutenant Duggin, again, you received
16 this item from who?

17 A. Detective Sergeant Culick.

18 Q. And after you processed it, what did you
19 do?

20 A. Put it in Evidence.

21 Q. Okay. I show you what has been marked
22 for identification as State's Exhibit 25. Do
23 you recognize this item?

24 A. Yes. State's Exhibit 25 is a first aid
25 kit and a bottle of rubbing alcohol.

1 Q. Who did you receive that from?

2 A. Detective Sergeant Culick.

3 Q. Was any processing done on these two
4 items?

5 A. Yes. The cigarettes packs, the lottery
6 tickets, an alcohol bottle and the first aid
7 kit were all processed using black powder.

8 Q. Was anything of evidentiary value
9 recovered from the items processed?

10 A. No sufficient ridge detail.

11 Q. What did you do with these items after
12 processing?

13 A. Turned them back to Evidence.

14 Q. Lieutenant Duggin, I am going to show you
15 what has been marked State's Exhibit 3 for
16 identification and ask you if you can identify
17 this?

18 A. Yeah. State's Exhibit 3 is seven packs
19 of Newport cigarettes that I received for
20 processing. They were processed with black
21 powder.

22 Q. Who did you receive that from, or who
23 placed these items into Evidence?

24 A. The seven packs of cigarettes were placed
25 into evidence by Officer Capell.

1 Q. Officer Capell?

2 A. (No verbal response).

3 Q. When you processed those seven packs of
4 cigarettes, did you find anything of
5 evidentiary value on the packs?

6 A. There was a partial fingerprints noted
7 but there was insufficient ridge detail to
8 identify the print through AFIS.

9 Q. So there was a fingerprint on that pack
10 but it wasn't identified through the automated
11 fingerprint identification system?

12 A. That's correct.

13 Q. And after processing those seven packs of
14 cigarettes, were you able to -- what did you
15 do with those items on processing, after
16 processing?

17 A. They were returned to Evidence, the
18 evidence room.

19 Q. Now, Lieutenant Duggin, did you take part
20 in any of the actual crime scene
21 investigation? Did you go to Youngs Market
22 that night?

23 A. No, sir, I did not.

24 Q. So when you processed the items, where
25 was that done?

1 A. It was done at the law enforcement center
2 in downtown Sumter. We have a lab where we
3 process evidence.

4 Q. In your experience as an investigator in
5 the forensics department, is there processing
6 done at the crime scene?

7 A. Yes, there is processing done at the
8 crime scene.

9 Q. And then items can be further processed
10 from the crime scene?

11 A. That's correct.

12 Q. In this case, which did you do?

13 A. I received items that were received from
14 the officer(s) in the field and placed into
15 the evidence locker.

16 Q. Now, Lieutenant Duggin, you testified
17 that you created a sample from a pack of
18 cigarettes in State's Exhibit for
19 identification, State's Exhibit 22; is that
20 correct?

21 A. Yes, sir, that's correct.

22 Q. Now, when you created that sample, did
23 you make a notation of that on the chain of
24 custody form?

25 A. Yes, sir. I received six items from

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1 Detective Sergeant Culick. As I normally do
2 when I have an item of evidence turned in and
3 I obtain additional evidence from that, I
4 number the evidence. So it was my item number
5 seven, one blood swab from item number three -
6 - my initials, the date and time. Item three
7 on my chain of custody is actually Newport
8 cigarettes, inspected for blood.

9 Q. So to summarize that, item seven was
10 collected from item three?

11 A. That's correct.

12 Q. Detective Duggin, from your experience as
13 a forensic officer, does fingerprint dust
14 damage items of evidence at all?

15 A. In this case it did not damage anything,
16 to include blood. The only thing that
17 fingerprint dust could damage would be is
18 somebody handled it, they'd get powder on
19 their hands.

20 Q. Like if the prosecutor touched the
21 cigarettes, it might leave fingerprints ==

22 A. That's right.

23 MR. GRIFFIN, SOLICITOR: Detective
24 Duggin, I think that's all the questions that
25 I have. Answer any questions that Mr. Brunson

1 may have for you.

2 THE COURT: Mr. Brunson.

3 MR. BRUNSON: Thank you, Your
4 Honor.

5 CROSS EXAMINATION

6 BY MR. BRUNSON:

7 Q. Mr. Duggin, how you doing, sir?

8 A. Fine, sir.

9 Q. What is your rank at the department?

10 A. I am a lieutenant.

11 Q. Lieutenant. All right. So, Lieutenant
12 Duggin, isn't it true that you did not find a
13 single fingerprint to match my client?

14 A. That's correct.

15 Q. And you operate AFIS. What is AFIS,
16 again?

17 A. Automated Fingerprint Identification
18 System.

19 Q. Okay. And on all these cigarettes,
20 lottery tickets, you performed two types of
21 tests. You performed the SuperGlue fuming
22 process and the magnetic black powder test?

23 A. Right.

24 Q. And came up with a partial print?

25 A. Correct.

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1 Q. But nothing linking my client, no prints
2 matching my client?

3 A. That's correct. I developed one finger-
4 print off the items but it did not match.

5 Q. All right. In fact, you don't have any
6 information that my client broke into Youngs
7 Market, do you?

8 A. The only thing that I have is the
9 evidence that he had the cigarette packs.

10 Q. But you didn't discover any evidence
11 linking him to this crime, did you?

12 A. The blood swab, buccal swab.

13 Q. Now, you didn't collect the swab?

14 A. No, sir, it was turned in to me.

15 Q. All right. Everything was pretty much
16 turned in to you, to Evidence?

17 A. That's correct.

18 Q. Tell me about crime scene investigation.
19 Isn't it true that, like, in burglary cases
20 that you can obtain fingerprints from glass?

21 MR. GRIFFIN, SOLICITOR: Your
22 Honor, I think other crime scenes are
23 irrelevant to this case.

24 THE COURT: Sustained.

25 CROSS EXAMINATION CONTINUED

1 BY MR. BRUNSON:

2 Q. You didn't receive any fingerprints to
3 analyze, did you?

4 MR. GRIFFIN, SOLICITOR: Your
5 Honor, I think he has already testified that
6 he found one fingerprint and he couldn't match
7 it.

8 THE COURT: Sustained.

9 MR. BRUNSON: Nothing further.
10 Thank you.

11 THE COURT: Any redirect.

12 MR. GRIFFIN, SOLICITOR: Nothing
13 further.

14 THE COURT: Thank you. You may
15 step down.

16 (WITNESS STEPS DOWN)

17 (JURY EXITS COURTROOM)

18 (RECORDING RT111810B)*

19 MR. BRUNSON: That he didn't
20 turn it over to the evidence tech until the
21 following day. Our position is that that is
22 not secured, because it could have been
23 tampered with. If it wasn't given to the
24 evidence tech, then the chain of custody
25 wasn't preserved.

1 THE COURT: That was the standard,
2 correct?

3 MR. GRIFFIN, SOLICITOR: Your
4 Honor, the ---

5 THE COURT: That was the standard.

6 MR. BRUNSON: Yes, sir.

7 THE COURT: If it was the variable,
8 the unknown, -- but this was the known. I
9 don't see where that makes a whole lot of
10 difference.

11 MR. GRIFFIN, SOLICITOR: Your
12 Honor, Detective Richburg testified that he
13 locked it up in the safe, that he turned it
14 over to the evidence custodian the following
15 day. Any questions regarding that would go to
16 the weight of the evidence, not the
17 admissibility. He testified as to what he did
18 with it, that he felt it was secured.

19 We are about to put up Mr. Alsbrook,
20 who is the evidence custodian to testify about
21 what he with the evidence; that he took it to
22 SLED, that he retrieved it from SLED.

23 Any alleged defects would go to the
24 weight of the evidence, certainly not the
25 admissibility. Again, it goes to the weight,

1 not the admissibility.

2 THE COURT: Mr. Brunson?

3 MR. BRUNSON: I disagree. I
4 think that the evidence should not be allowed.

5 THE COURT: Merely because two
6 other officers had the combination to that
7 safe?

8 MR. BRUNSON: Yes, Your Honor.

9 THE COURT: I would probably go
10 along with you more if this was the next day.
11 This is the same day. I can see where it
12 would be possible for it to be variable if
13 there was delay, but this is one where it
14 would be his sample. It was in a locked
15 secure area by the police officers that were
16 basically working the case. I am going to
17 allow it in.

18 If you want to cross-examine, if you
19 want to argue that in your closing argument,
20 you can do so but the jury can -- whether I
21 admit it or not doesn't mean that they will
22 consider it.

23 MR. GRIFFIN, SOLICITOR: Your
24 Honor, before we bring the jury back, may I
25 confer with the court reporter to make sure

1 which items have been entered into evidence.

2 THE COURT: You may. Let's take a
3 break.

4 (OFF RECORD REVIEW OF EXHIBITS)

5 (BRIEF RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Bring in the jury.

8 (JURY ENTERS COURTROOM)

9 THE COURT: Solicitor, call your
10 next witness.

11 MR. GRIFFIN, SOLICITOR: Your
12 Honor, the State calls Jim Alsbrook.

13 (WITNESS TAKES STAND)

14 JAMES ALSBROOK, being duly sworn to
15 tell the truth, the whole truth and nothing
16 but the truth, testified, as follows: .

17 DIRECT EXAMINATION

18 BY MR. GRIFFIN, SOLICITOR:

19 Q. Mr. Alsbrook, by whom are you employed?

20 A. Sumter City Police Department.

21 Q. And what is your job there?

22 A. My job is -- my title is evidence
23 technician. My job is to maintain the
24 evidence that officers acquire over the course
25 of their shift, to maintain the care, custody

1 and control of it throughout the process.

2 Q. You are what is commonly referred to as
3 the evidence custodian?

4 A. Yes, sir.

5 Q. Now, Mr. Alsbrook, tell the jury a little
6 bit about the evidence, where it is kept in
7 the Sumter Police Department.

8 A. When an officer collects an item of
9 evidence, basically I come in contact with it
10 one of two ways: either a hand-to-hand
11 transfer or an officer will place it into a
12 locker that we have in the department.

13 If it is in the locker, I go there every
14 morning, open the locked box and retrieve the
15 item and the chain of custody for it. I make
16 sure that the chain of custody is filled out
17 properly and notate every item that is in the
18 locker, make sure that it is signed, dated and
19 the proper box is filled out. I take the
20 items back to my office where I sign the chain
21 of custody accepting them, become responsible
22 for the items. I then log it in to our
23 computer and place them into the next process
24 step required by the officer or the courts.

25 Q. Okay. You also take evidence to the

1 State Law Enforcement Division?

2 A. Yes, I do.

3 Q. You go to SLED every day, or how often do
4 you go to SLED?

5 A. Not every day. It depends on the
6 importance of an item, the type of crime that
7 we are talking about. Generally I'll go once
8 a week. When court is in session like now, I
9 might have to appear in court. But I'll go up
10 there and take all the evidence that is
11 required and turn it in to SLED for their
12 processing.

13 Q. Okay. Now, when you receive items of
14 evidence -- who has access to the evidence
15 room other than yourself?

16 A. Other than myself, my immediately super-
17 visor, Lieutenant Duggin.

18 Q. Lieutenant Duggin who testified here
19 today?

20 A. Yes, sir.

21 Q. All right. Items that you maintain, once
22 you receive them they are in your care,
23 custody and control?

24 A. Yes, sir. Behind my desk, that area is
25 not only a locked door but within that area we

1 have several other security measures. If
2 anybody goes past there, we know about it.

3 Q. Mr. Alsbrook, I am going to show you what
4 has been marked as State's Exhibit 23 and ask
5 you if you're familiar with this item?

6 A. Yes, that's an envelope. Contained
7 within the package is, as Lieutenant Duggin
8 testified to, a sample that he turned over to
9 evidence after he processed it.

10 Q. And you received that item from
11 Lieutenant Duggin?

12 A. Yes.

13 Q. And who did he receive the item from?

14 A. According to the chain of custody, Irene
15 Culick.

16 Q. Okay. Now, Mr. Alsbrook, did you
17 subsequently take that particular item
18 anywhere?

19 A. Yes, sir.

20 Q. Where did you take it?

21 A. Up to SLED.

22 Q. Did you subsequently get the item back
23 from SLED?

24 A. Yes, sir.

25 Q. How do you know that?

1 A. I have a receipt. The process of taking
2 items to and from SLED, specifically this item
3 and inside it are contained two swabs, one
4 being from the floor and one being from a
5 buccal swab. The -- I am required under SLED
6 processes to fill out a form showing the type
7 of crime, the crime case number, any incidents
8 or any individuals that are involved --
9 business, whatever, -- and then list on the
10 second sheet exactly what am I giving them.

11 Q. And on this item, are you listed as the
12 sealing individual, the sealing official?

13 A. Yes, sir, I am.

14 Q. And you subsequently retrieved that item
15 from SLED?

16 A. Yes, I did.

17 Q. Since you retrieved it from SLED, has it
18 been in your continuous care, custody and
19 control?

20 A. Yes, sir, it has.

21 Q. Has it been tampered with in any way?

22 A. No, sir. All the seals are still intact.

23 Q. Has that item been in your care, custody
24 and control until you brought it to court here
25 today?

1 A. Yes, it has.

2 MR. GRIFFIN, SOLICITOR: Your
3 Honor, at this time I would offer State's
4 Exhibit 23 into evidence.

5 THE COURT: Any objection, Mr.
6 Brunson?

7 MR. BRUNSON: No objection.

8 THE COURT: Without objection,
9 State's Exhibit 23 is admitted into evidence.

10 (SO ENTERED AS STATE'S EXHIBIT 23)

11 Direct EXAMINATION CONTINUED

12 BY MR. GRIFFIN, SOLICITOR:

13 Q. Again, Mr. Alsbrook, State's Exhibit 26,
14 do you recognize this item?

15 A. Yes, sir.

16 Q. From whom did you receive that?

17 A. From Detective Richburg.

18 Q. Okay. And did you take that item to
19 SLED?

20 A. Yes, sir, I did.

21 Q. And did you subsequently retrieve that
22 item?

23 A. Yes, sir.

24 Q. Now, when it's been in your custody, has
25 anybody tampered with it?

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1 A. No, sir.

2 Q. Prior to taking it to SLED -- well, let
3 me back up. From when you got it from
4 Detective Richburg and prior to taking it to
5 SLED, did you have the care, custody and
6 control of that evidence?

7 A. Yes, it was contained in our evidence
8 locker room.

9 Q. Did anybody tamper with it at that time,
10 to your knowledge?

11 A. Not to my knowledge, no, sir.

12 Q. After you retrieved it from SLED, has it
13 been in your care, custody and control?

14 A. Yes.

15 Q. Did it leave the evidence room prior to
16 being brought to court for this trial?

17 A. No.

18 MR. GRIFFIN, SOLICITOR: Your
19 Honor, at this time we would offer State's
20 Exhibit 26.

21 MR. BRUNSON: Your Honor, we
22 would renew our objection to that one.

23 THE COURT: Subject to your
24 objection, it is admitted.

25 (SO ENTERED AS STATE'S EXHIBIT 26)

1 DIRECT EXAMINATION CONTINUED

2 BY MR. GRIFFIN, SOLICITOR:

3 Q. Mr. Alsbrook, I am going to show you what
4 has been marked for identification as State's
5 Exhibit 22 and ask if you recognize that item?

6 A. Yes, sir.

7 Q. Who did you received that item from?

8 A. From Lieutenant Duggin.

9 Q. Is that noted on the chain of custody
10 sheet?

11 A. Yes, sir.

12 Q. Did he receive it from Detective Culick?

13 A. Yes, sir.

14 Q. Is that noted, as well?

15 A. Yes, sir.

16 Q. Now, Mr. Alsbrook, has this item of
17 evidence, State's Exhibit 22, has it been --
18 let me back up. After you got it from
19 Lieutenant Duggin, has it been in your
20 continuous care, custody and control?

21 A. Yes, sir.

22 Q. Has it been tampered with in any way?

23 A. No, sir.

24 Q. Prior to being brought to court here
25 today did it leave the evidence room?

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1 A. No, sir.

2 Q. This item, did it go to SLED or did it
3 stay in the evidence locker?

4 A. It stayed in the evidence locker.

5 MR. GRIFFIN, SOLICITOR: Your
6 Honor we would offer State's Exhibit 22.

7 THE COURT: Any objection?

8 MR. BRUNSON: No objection.

9 THE COURT: Without objection,
10 State's Exhibit 22 is admitted.

11 (SO ENTERED AS STATE'S EXHIBIT 22)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. GRIFFIN, SOLICITOR:

14 Q. Mr. Alsbrook, I am going to show you what
15 has been marked as State's Exhibit 21. Can
16 you identify that item?

17 A. (Upon review), yes, sir.

18 Q. What is that item?

19 A. It's a Zip-Loc bag containing lottery
20 tickets.

21 Q. Who did you receive that item from?

22 A. Lieutenant Duggin.

23 Q. And who did Lieutenant Duggin receive
24 that item from?

25 A. Detective Culick.

1 Q. Okay. After you got that from Lieutenant
2 Duggin, has it been in your continuous care
3 and custody and control?

4 A. Yes, sir.

5 Q. Has it been tampered with in any way?

6 A. No, sir.

7 Q. Did it remain in your care, custody and
8 control prior to coming to court for this
9 trial?

10 A. Yes, sir.

11 MR. GRIFFIN, SOLICITOR: Your
12 Honor, we would offer State's Exhibit 21.

13 THE COURT: Any objection, Mr.
14 Brunson?

15 MR. BRUNSON: No objection, Your
16 Honor.

17 THE COURT: Without objection,
18 State's Exhibit 21 is admitted into evidence.

19 (SO ENTERED AS STATE'S EXHIBIT 21)

20 DIRECT EXAMINATION CONTINUED

21 BY MR. GRIFFIN, SOLICITOR:

22 Q. Mr. Alsbrook, showing you what has been
23 identified as State's Exhibit 24. Do you
24 recognize that item?

25 A. Yes, sir.

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1 Q. What is that?

2 A. That is a prescription pill bottle
3 containing shards of glass.

4 Q. Who did you get that item from?

5 A. Lieutenant Duggin.

6 Q. And who did Lieutenant Duggin get that
7 item from?

8 A. Detective Culick.

9 Q. And after you received it from Lieutenant
10 Duggin, has it been in your continuous care,
11 custody and control?

12 A. Yes, sir.

13 Q. Has it been tampered with in any way?

14 A. No.

15 Q. Did it ever leave the evidence room prior
16 to being brought to court for this trial?

17 A. No, sir.

18 MR. GRIFFIN, SOLICITOR: Your
19 Honor, we would offer State's Exhibit 24.

20 THE COURT: Any objection?

21 MR. BRUNSON: No objection.

22 THE COURT: Without objection,
23 State's Exhibit 24 is admitted into evidence.

24 (SO ENTERED AS STATE'S EXHIBIT 24)

25 DIRECT EXAMINATION CONTINUED

1 BY MR. GRIFFIN, SOLICITOR:

2 Q. Mr. Alsbrook, I show you what has been
3 marked State's Exhibit 25 for identification.

4 Do you recognize this item?

5 A. Yes, sir.

6 Q. What is that?

7 A. It's a cardboard box containing the first
8 aid kit and alcohol bottle.

9 Q. Who did you receive that from?

10 A. Lieutenant Duggin.

11 Q. And who did he receive it from?

12 A. Detective Culick.

13 Q. Has it been tampered with in any way
14 since it has been in your possession?

15 A. No, sir.

16 Q. Has it been in your care, custody and
17 control prior to coming -- being brought to
18 court here today?

19 A. Yes, sir.

20 MR. GRIFFIN, SOLICITOR: Your
21 Honor, we would offer State's Exhibit 25 into
22 evidence.

23 THE COURT: Any objection to
24 State's Exhibit 25?

25 MR. BRUNSON: If we could look

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1 in the box.

2 THE COURT: Okay.

3 MR. BRUNSON: (Upon review), no
4 objection.

5 THE COURT: All right. Without
6 objection, State's Exhibit 25 is admitted into
7 evidence.

8 (SO ENTERED AS STATE'S EXHIBIT 25)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. GRIFFIN, SOLICITOR:

11 Q. Mr. Alsbrook, I am going to show you what
12 has been marked as State's Exhibit 7. Are you
13 familiar with that item?

14 A. Yes, sir.

15 Q. Who did you receive that item from?

16 A. Lieutenant Duggin.

17 Q. And who did he receive that item from?

18 A. Detective Culick.

19 Q. After you received it, has it been in
20 your continuous care, custody and control?

21 A. Yes, sir.

22 Q. Has anybody tampered with it in any way,
23 to your knowledge?

24 A. No, sir.

25 Q. Has it been kept in the evidence locker

1 prior to being brought to this trial?

2 A. Yes, sir.

3 MR. GRIFFIN, SOLICITOR: Your

4 Honor, we would offer State's Exhibit 7.

5 MR. BRUNSON: No objection.

6 THE COURT: Without objection,
7 State's Exhibit 7 is admitted into evidence.

8 (SO ENTERED AS STATE'S EXHIBIT 7)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. GRIFFIN, SOLICITOR:

11 Q. And Mr. Alsbrook, I am going to show you
12 what has been marked as State's Exhibit 3 for
13 ID and ask if you can identify that item.

14 A. Yes, sir.

15 Q. What is inside that box, Mr. Alsbrook?

16 A. Seven packs of Newport cigarettes.

17 Q. And who did you receive that item from?

18 A. Lieutenant Duggin.

19 Q. And who did he get it from?

20 A. Officer Capell.

21 Q. Officer Capell. Okay. After receiving
22 this item, has it been in your continuous
23 care, custody and control?

24 A. Yes, sir.

25 Q. To your knowledge, has it been tampered

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1 with or damaged in any way?

2 A. No, sir.

3 Q. Prior to it being brought to court, has
4 it left the evidence room of the Sumter Police
5 Department?

6 A. No, sir.

7 MR. GRIFFIN, SOLICITOR: Your
8 Honor, we would offer State's Exhibit 3.

9 MR. BRUNSON: Without objection.

10 THE COURT: Without objection,
11 State's Exhibit 3 is in evidence.

12 (SO ENTERED AS STATE'S EXHIBIT 3)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. GRIFFIN, SOLICITOR:

15 Q. Mr. Alsbrook, I show you what is State's
16 Exhibit 27 and ask if you can identify that
17 for me.

18 A. Yes, sir.

19 Q. What is that?

20 A. That is what is commonly known as a gel
21 lift that was turned into evidence.

22 Q. Who turned that item into evidence?

23 A. Detective John Litaker.

24 Q. And who handled the evidence after Mr.
25 Litaker turned it in?

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1 A. Lieutenant Duggin, who gave it to me.

2 Q. And after receiving this from Lieutenant
3 Duggin, has it been in your continuous care,
4 custody and control?

5 A. Yes.

6 Q. Has anybody tampered with it, to your
7 knowledge?

8 A. No, sir.

9 Q. Has it left the evidence room prior to
10 its being brought to trial here today?

11 A. No, sir.

12 MR. GRIFFIN, SOLICITOR: Your
13 Honor, we would offer State's Exhibit 27.

14 THE COURT: Any objection?

15 MR. BRUNSON: No objection, Your
16 Honor.

17 THE COURT: State's Exhibit 27 is
18 admitted into evidence, without objection.

19 (SO ENTERED AS STATE'S EXHIBIT 27)

20 DIRECT EXAMINATION CONTINUED

21 BY MR. GRIFFIN, SOLICITOR:

22 Q. Mr. Alsbrook, when you take an item to
23 SLED and relinquish it to them, do you have
24 any way of making entries on their chain of
25 custody?

1 A. No, sir. Because they are a State agency
2 and Sumter is a local agency, Police
3 Department, they do not sign our local chains
4 of custody. They print out a receipt for the
5 items that I submit when they take
6 responsibility.

7 Q. So the chain of custody that is done in
8 the Sumter Police Department, that's for
9 people who are police officers or who are
10 affiliated with the evidence?

11 A. It can be both.

12 Q. Explain that.

13 A. SLED does not sign our chains of custody.
14 If a higher agency comes to us specifically
15 for a piece of evidence, they will sign our
16 chain of custody and I will sign their chain
17 of custody, relinquishing the item to them.

18 Q. But SLED doesn't ever sign a local's
19 chain?

20 A. No, sir.

21 Q. Now, but you make a notation in your
22 chain when you relinquish an item to SLED?

23 A. I make a notation in our computer system
24 that an item is no longer in our possession.
25 We don't have joint custody.

1 Q. So there is a mechanism to make sure when
2 items are relinquished to another agency and
3 you can track all that in your day-to-day
4 operation?

5 A. Yes, that and the receipt that I receive
6 from SLED is maintained in the case files.

7 MR. GRIFFIN, SOLICITOR: Answer
8 any questions that Mr. Brunson may have.

9 THE COURT: Mr. Brunson.

10 MR. BRUNSON: Thank you, Your
11 Honor.

12 CROSS EXAMINATION

13 BY MR. BRUNSON:

14 Q. Mr. Alsbrook, as an evidence tech you
15 have no rank?

16 A. That's correct.

17 Q. You are a civilian. You are not a police
18 officer?

19 A. That's correct.

20 Q. You have not been through the Academy?

21 A. That's correct.

22 Q. In fact, you testified that your evidence
23 room is very secure?

24 A. In my opinion, yes.

25 Q. In your opinion, is it the most secure

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1 place for evidence to be kept?

2 A. I would ---

3 MR. GRIFFIN, SOLICITOR: Compared
4 to?

5 THE COURT: Yeah, ask him what it -
6 - compared to what?

7 MR. BRUNSON: Okay. Let me
8 rephrase.

9 CROSS EXAMINATION CONTINUED

10 BY MR. BRUNSON:

11 Q. Is that the most secure place to keep
12 evidence within your police department?

13 A. Yes, sir.

14 Q. The evidence door has a combination lock?

15 A. There is a key and a security code that
16 you have to enter.

17 Q. That only two people have access to it?

18 A. Only myself and Lieutenant Duggin at that
19 time. We now have a third person in my office
20 and she has that same key, and a separate code
21 for herself.

22 Q. Now, you've testified about all of these
23 items that have been presented. I want to
24 pass you what has been marked as Defendant's
25 Exhibit 1. Do you recognize that?

1 A. Yes, sir.

2 Q. What is it?

3 A. It is a copy of the chain of custody that
4 Detective Culick turned over for a number of
5 items that she turned into evidence.

6 Q. Is that the same chain of custody,
7 referring to the same evidence that has been
8 entered today as evidence?

9 A. Yes.

10 MR. BRUNSON: Your Honor, at
11 this time we would like to move this
12 defendant's proposed exhibit into evidence as
13 Defendant's Exhibit 1.

14 THE COURT: Any objection?

15 MR. GRIFFIN, SOLICITOR: Your
16 Honor, I think the document itself would be
17 hearsay. We had testimony regarding the chain
18 of custody. I don't see the point of getting
19 that into evidence. If we could admit the
20 chain of custody into evidence, we wouldn't
21 have to bring these folks here to have them
22 testify. I think that it is cumulative. I
23 don't believe that it serves any purpose.

24 THE COURT: What is your reason for
25 doing it, Mr. Brunson?

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1 MR. BRUNSON: Well, Your Honor,
2 what I would like to do is to offer it for
3 itself as being a document that testifies to
4 what he's testified to, and to also ---

5 THE COURT: Go ahead.

6 CROSS EXAMINATION CONTINUED

7 BY MR. BRUNSON:

8 Q. Mr. Alsbrook, Defendant's proposed
9 Exhibit 1, what is it?

10 A. It's a copy of the chain of custody that
11 Detective Culick filled out.

12 Q. When was it filled out?

13 MR. GRIFFIN, SOLICITOR: Your
14 Honor, ---

15 THE COURT: You are trying to be in
16 indirectly what I told you that you couldn't
17 get in directly.

18 MR. BRUNSON: I can't question
19 him about the document?

20 THE COURT: You can question him
21 about what he did with the document.

22 MR. BRUNSON: Court's
23 indulgence, Your Honor?

24 THE COURT: Yes, sir.

25 MR. BRUNSON: Nothing further.

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1 THE COURT: Redirect?

2 MR. GRIFFIN, SOLICITOR: Your

3 Honor, I have no more questions of Mr.

4 Alsbrook.

5 THE COURT: Thank you. You may

6 step down.

7 (WITNESS STEPS DOWN)

8 THE COURT: May this witness be

9 excused for the balance of the trial?

10 MR. BRUNSON: No objection.

11 MR. GRIFFIN, SOLICITOR: Yes, Your

12 Honor. Your Honor, that's the State's

13 evidence.

14 THE COURT: All right, Ladies and
15 Gentlemen. The State has submitted all their
16 evidence. At this time, I am going to dismiss
17 you for lunch. We have some other matters
18 that we need to take up at this point in time.

19 Please do not discuss this case among
20 yourselves or allow anyone to discuss this
21 case with you. Be back here at 2:30.

22 (JURY EXITS COURTROOM)

23 THE COURT: Are there any motions
24 at this time, from the State or the Defendant.

25 MR. BRUNSON: Motion from the

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1 Defendant, Your Honor.

2 THE COURT: Yes, sir.

3 MR. BRUNSON: At this time, I
4 would like to move for a directed verdict.
5 The State has not proven facts sufficient to
6 sustain a verdict.

7 THE COURT: Mr. Griffin?

8 MR. GRIFFIN, SOLICITOR: Your
9 Honor, the facts taken in the light most
10 favorable to the State, we have got a witness
11 who testified that he gave a man named Bernard
12 a ride, that he acted nervous while they were
13 passing Youngs Market, uh, blood found inside
14 Youngs matched via forensic testing to Bernard
15 McFadden. Your Honor, the evidence certainly
16 creates an issue for the case to go to the
17 jury. Considering the evidence altogether,
18 his blood was inside Youngs. We would submit
19 that the case has proven the elements
20 sufficiently.

21 THE COURT: Mr. Brunson?

22 MR. BRUNSON: Your Honor, it is
23 position that we would ask the Court to
24 consider that Mr. Griffin has represented the
25 State in an action that we don't believe has

1 proved the facts.

2 THE COURT: What does that Motion
3 mean?

4 MR. BRUNSON: I guess it's just
5 another way of putting ---

6 THE COURT: Because he's acting
7 like a prosecutor? Thank you. Having heard
8 all the testimony, I find that there is
9 sufficient evidence to send it to the jury.
10 Whatever the jury wants to do, believe it or
11 not, that is their decision.

12 Do you expect your client to
13 testify?

14 MR. BRUNSON: Your Honor, my
15 client and I discussed the possibility of his
16 testifying earlier in the trial and he
17 indicated that he wanted to at that point.

18 THE COURT: Let me go through my
19 questions now and then before we start back at
20 2:30, I'll ask for his decision. That gives
21 him sufficient time to think about it.

22 MR. BRUNSON: Yes, sir.

23 THE COURT: Please put the defen-
24 dant under oath.

25 CLERK: Please place your left hand

1 on the Bible. Do you swear or affirm that the
2 testimony you give be the truth, the whole
3 truth and nothing but the truth, so help you
4 God?

5 DEFENDANT: Yes, dir.

6 THE COURT: Mr. McFadden -- and you
7 are Bernard McFadden, is that correct?

8 DEFENDANT: Yes, sir.

9 THE COURT: Mr. McFadden, at this
10 time I am going to explain to you certain of
11 your rights. If you do not understand any-
12 thing that I say, please let me know. Or if
13 you want me to explain them to you in more
14 detail, please let me know. Do you under-
15 stand?

16 DEFENDANT: Yes.

17 THE COURT: We've reached the stage
18 of the trial where you may present your
19 defense. You have the right to claim the
20 protection given to you by the Fifth Amendment
21 of the United States Constitution, which in
22 part states that no person shall be compelled
23 in any criminal case to be a witness against
24 himself. This means that you cannot be
25 required to testify in this case. You have

1 the right to testify on your own behalf,
2 however no one can make you testify. This is
3 a personal right and no one can waive this
4 right except for you.

5 If you decide to testify, you would
6 be subject to the same rules that govern other
7 witnesses. You may be examined and cross-
8 examined on any relevant issue in this case.

9 In addition, sir, if you have any
10 convictions involving dishonesty or false
11 statement, or for crimes punishable by
12 imprisonment for more than one year, and this
13 court determines the probative value of
14 admitting that evidence outweighs the
15 prejudicial effect(s) on you, the Solicitor
16 will be able to introduce your record after it
17 has been identified.

18 If you decide to testify, that
19 decision will be made freely, voluntarily,
20 intelligently and with the knowledge of the
21 protections given you by the Fifth Amendment,
22 knowing the consequences of your decision to
23 testify.

24 If you decide not to testify, I will
25 instruct the jurors that they cannot give the

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1 fact that you did not testify any
2 consideration whatsoever, and that there is
3 absolutely no prejudice to you because you did
4 not testify.

5 It's left you entirely to you as to
6 whether or not you want to testify. You may
7 talk to your attorney, to your family, to our
8 friends or anyone else but the final decision
9 will be left up to you. Do you understand
10 what I have explained to you?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you have any
13 questions about what I have explained to you?

14 DEFENDANT: I have a slight
15 question about my prior record for burglary.

16 THE COURT: Yes, I think we've
17 discussed that with counsel. That -- you were
18 released from prison, as I understand, in
19 December of 2000; which would place that
20 within ten years, and therefore that one would
21 come in. But another one that was vacated
22 would not come in.

23 DEFENDANT: The one that was
24 fifteen, they applied four months jail time
25 credit.

1 THE COURT: This is -- the one that
2 was vacated doesn't matter. You got out of
3 jail in December of 2000, therefore that's
4 less than ten years since you were released
5 and therefore that conviction -- only one
6 conviction can come in.

7 DEFENDANT: I think that the
8 problem is that they ---

9 THE COURT: The vacated one doesn't
10 come in, doesn't get mentioned.

11 DEFENDANT: I understand that. But
12 the ten-year sentence didn't get triggered
13 until I ---

14 THE COURT: That doesn't matter.
15 The time doesn't matter -- the date is the
16 time that you were released. It doesn't
17 matter how much credit that you had or should
18 have had, it is from when you were released.

19 DEFENDANT: I would have been
20 released earlier had they given me credit for
21 the jail time.

22 THE COURT: That's irrelevant. You
23 were released in December 2000, and that one
24 would come in.

25 DEFENDANT: Well, Your Honor, I ---

1 THE COURT: Do you understand what
2 I've explained?

3 DEFENDANT: Yes, sir.

4 THE COURT: What I am going to do
5 is that I am going to give you over the next
6 hour and a half to discuss with Mr. Brunson as
7 to whether or not you want to testify and then
8 I will ask you the ultimate question before we
9 start back, as to whether you want to testify.

10 MR. GRIFFIN, SOLICITOR: And,
11 Judge, essentially since we're talking about
12 prior convictions this might be a good time to
13 inform the court that he had an assaulting a
14 police officer while resisting arrest
15 conviction from September 25th, 2003. He
16 received an eight-year prison sentence for
17 that conviction. We would submit that
18 conviction should come in to impeach him if he
19 should decide to testify.

20 THE COURT: Mr. Brunson?

21 MR. BRUNSON: We were told that
22 that would come in, Your Honor. Our reason
23 for opposing it is that it also is within the
24 ten-year period.

25 THE COURT: I will give you a

1 chance to talk about it during lunch.

2 Anything further before we break?

3 MR. GRIFFIN, SOLICITOR: No, sir,
4 Your Honor.

5 THE COURT: Why don't you all be
6 back here about 2:25?

7 MR. GRIFFIN, SOLICITOR: Your
8 Honor, one thing. If Mr. Brunson could
9 provide me with the birth dates and the race
10 of his witnesses on his witness list, four
11 through seven, so that we can run criminal
12 records.

13 MR. BRUNSON: No problem, Your
14 Honor.

15 THE COURT: All right. Thank you.

16 MR. BRUNSON: Thank you.

17 (LUNCH RECESS)

18 (DEFENDANT PRESENT)

19 (EXAMINATION OF DEFENDANT)

20 (TRIAL CONTINUED, NO AUDIO PROVIDED

21 FOR TRANSCRIBING)

22

23

24

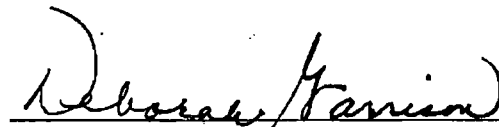
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison, official court reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the audio provided by Margaret Sullivan, Court Reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

April 23, 2012

State of South Carolina)
)
 County of Sumter)
)

) Remaining Portion of
) Transcript of Record
 The State of South Carolina,) 2010-GS-43-257
 Plaintiffs

) November 17th & 18th, 2010
) Sumter, S.C.
 The State of South Carolina,)
 Defendants)

Before the Honorable W. Jeffrey Young, Judge.

A P P E A R A N C E S:

Mr. R. Kirk Griffin,
 Assistant Solicitor for the State

Mr. Willie H. Brunson,
 Attorney for Defendant

Margaret T. Sullivan,
 Court Reporter

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	Catherine Myers				
2	by Mr Brunson	379			
	Albertus Lewis				
3	by Mr. Brunson	386		392	
	by Mr. Griffin		390		
4	Ethel Lewis				
	by Mr. Brunson	393			
5	by Mr. Griffin		396		
	Closing Statements				
6	by Mr. Griffin	404, 428			
	by Mr. Brunson	410			
7	Charge to the Jury:	455			
	Polling of the Jury:	456			
8	Sentence of the Court:	465			
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1 (Whereupon, the trial commences after lunch.
2 The following takes place outside the presence of the
3 jury.)

4 THE COURT: It is my ruling that the prior
5 burglaries, and is probably a 5-part test. The
6 impeachment value of these prior crimes is high. And
7 the state quite frankly it is within the 10 years. And
8 granted it is similar to this charge. And I will charge
9 the jury that he is only on trial for this charge. Is
10 my understanding. And again, I think that will go to
11 the credibility issue as well.

12 As to the other charge of assault on a police
13 officer.

14 MR. BRUNSON: Yes, sir.

15 THE COURT: I am ruling that under the same
16 value that that becomes very prejudicial because of the
17 fact that the jury may hold that it is not. It doesn't
18 have anything to do with prior honesty. And I think
19 that would be more prejudicial I think because of that.
20 And I am going to rule that the 2003 conviction would
21 not come in. But the prior burglary will be admissible
22 if he takes the stand.

23 Now, Mr. McFadden, have you had an opportunity
24 to speak to your attorney about whether or not you want
25 to testify?

1 THE DEFENDANT: Yes.

2 THE COURT: And have you decided whether
3 you want to testify?

4 THE DEFENDANT: Not yet.

5 THE COURT: Do you want to wait until
6 after your other witnesses?

7 THE DEFENDANT: Correct.

8 THE COURT: That's fine. Thank you.
9 Anything from the state or defense before we
10 proceed?

11 MR. GRIFFIN: Your Honor, just for the
12 record, the witnesses that Mr. Brunson has
13 provided on the witness list, I have run their
14 criminal record. I have provided copies to
15 Mr. Brunson. I don't believe there is any
16 impeachable offense on any these three folks'
17 record. And I wanted to state that before we got
18 started. I've reviewed it. And I don't see
19 anything that is impeachable.

20 THE COURT: Very well. Let's bring the
21 jury.

22 (Whereupon, the following takes place
23 within the presence of the jury.)

24 THE COURT: When you left, the state had
25 rested their case in chief. Mr. Brunson, are you

1 ready to proceed?

2 MR. BRUNSON: I am, Your Honor.

3 THE COURT: You may call your first
4 witness.

5 MR. BRUNSON: May it Please the Court, the
6 defense is going to call Ms. Catherine Myers
7 Anderson to the stand.

8 THE COURT: Come forward, please, Ms.
9 Anderson.

10 MR. BRUNSON: May she speak with me for a
11 minute, Your Honor?

12 THE COURT: Yes, I will give you a moment
13 to speak with her.

14 MR. BRUNSON: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen of the
16 jury, I will ask you to go to the jury room for a
17 few minutes. We have a matter of law. Please do
18 not discuss anything and make no speculation about
19 what we are discussing.

20 (Whereupon, the following takes place
21 outside the presence of the jury.)

22 THE COURT: Mr. Brunson.

23 MR. BRUNSON: Your Honor, I just wanted to
24 advise the court that it just came to my
25 attention, that Ms. Catherine Myers Anderson---

1 THE COURT: And her name was called out
2 as---

3 MR. BRUNSON: Catherine Myers.

4 THE COURT: Catherine Myers.

5 MR. BRUNSON: I am advised that she is now
6 married and has a new last name of Anderson. The
7 second part, Your Honor, she just advised me that
8 she is related by marriage to a juror.

9 THE COURT: What is the relationship?

10 MR. BRUNSON: May I call Ms. Myers to the
11 stand?

12 THE COURT: You may. And which juror is
13 it?

14 Catherine Myers, after being duly sworn,
15 testified as follows:

16 Q By The Clerk) State your name and spell your
17 last for the record.

18 A Catherine Myers Anderson.

19 A-N-D-E-R-S-O-N-

20 THE COURT: You may voir dire.

21 Direct Examination by Mr. Brunson:

22 Q Is it true that your maiden name is Myers?

23 A Yes, sir.

24 Q And that you are now married?

25 A Yes, sir.

1 Q And your name currently is Catherine Myers
2 Anderson?

3 A Yes, sir.

4 Q Is it also true that you are related to a
5 juror?

6 A Yes, sir. Uh-huh. (affirmative.)

7 Q Can you please identify the juror that you
8 believe you have a relationship with?

9 A The one with the white sweater on.

10 Q What is his name?

11 A Anthony Robinson.

12 Q And can you explain for the court what
13 your relationship is with Mr. Robinson?

14 A He is married to one of my cousins.

15 Q And who is his wife?

16 A Francine.

17 Q Francine. And now Robinson?

18 A Yes, last name Robinson.

19 Q And what relationship exactly are you with
20 Francine his wife?

21 A Third cousins.

22 Q Okay. Do you know Mr. Robinson
23 personally?

24 A Yes.

25 Q When did he marry your cousin?

1 A I am not sure.

2 Q Was it more than 5 years ago?

3 A I think -- I think they were married. I
4 know they lived together more than, I think, it
5 was 14 something years.

6 Q So they have been together for a number of
7 years. You are not sure whether they are married
8 or not?

9 A Legally, that I don't know.

10 THE COURT: What was the juror's name
11 again?

12 MR. BRUNSON: Anthony Robinson.

13 THE COURT: There is not an Anthony
14 Robinson on this jury.

15 A I think his last is Robinson.

16 THE CLERK: The jurors are supposed to
17 come back.

18 A All I know he has a white sweater. I
19 think his last name is Robinson.

20 THE COURT: Well he is a relative of yours
21 and you don't know his name?

22 A I think his name is Robinson.

23 THE COURT: There is no Robinson on this
24 jury panel.

25 A I think his name is Robinson.

1 THE COURT: The only Robinson in the jury
2 pool is a female.

3 MR. BRUNSON: If it Please the Court, Your
4 Honor, would it be appropriate at this time to
5 voir dire the jury as to their relationship with
6 Catherine Myers Anderson? Anthony Robinson?

7 THE COURT: I mean, Mr., to a large extent
8 the jurors.

9 Q Mrs., May it Please the Court?

10 THE COURT: You may, yes.

11 Q Ms. Myers, could it be the juror by the
12 name of Anthony Fields?

13 A Yeah, that's his last name. I always
14 thought it was Anthony Robinson. It's the fellow,
15 the one with the white sweater. That rings a
16 bell. I always used to call him Robinson.

17 THE COURT: What is the relationship
18 again?

19 A I just said he is married to my cousin.
20 Not really to me.

21 THE COURT: How distant a cousin?

22 A My third cousin. Second cousin.

23 THE COURT: She's married, she's your
24 third cousin. This is her husband?

25 A Yes.

1 THE COURT: That's certainly not in the
2 realm.

3 A I just knew her.

4 THE COURT: He has got it showing his
5 marital status as he is single.

6 Q What is your cousin's name?

7 A I've known them to be together for common
8 law.

9 THE COURT: Well therefore there is no
10 relationship.

11 A Now I just say I knew him that's all.

12 MR. GRIFFIN: Judge, I know we could have
13 stricken for cause if this had been made aware to
14 be me during the jury selection. I know very well
15 in exercising a strike, we would have kept this
16 juror off the jury. We got have two alternates.

17 THE COURT: In fact, I mean that's why I
18 picked two alternates. And one time this happened
19 before in a criminal trial. You may step down
20 now. In a criminal trial it's a random selection.
21 It's not alternate one or alternate two. It's
22 just two alternates. And now we have to start
23 probably to draw the name of one of the....

24 MR. BRUNSON: Your Honor, if it Please the
25 Court, we did provide the name of Catherine Myers.

1 THE COURT: And you didn't do anything
2 wrong. And in no way have I insinuated that you
3 did anything wrong. The name was called, and you
4 acted appropriately based upon that name. The
5 problem is, she such a distant name. She doesn't
6 even know his marital status. But obviously,
7 it's a concern to her. And I think what the
8 better route to take in an abundance of caution,
9 would be have the clerk randomly select one of
10 names of the alternates and that would be the
11 alternate. And we will replace Mr. Robinson. We
12 will relieve him from further service on this
13 jury.

14 THE COURT: Any objections to that?

15 MR. BRUNSON: Court's indulgence.
16 Actually, Your Honor, instead of doing that, we
17 would Please the Court, excuse the witness
18 altogether.

19 THE COURT: Well that takes care of it
20 completely. Then there is absolutely no
21 prejudice. I mean that's up to you. We are back
22 to ground zero if you now decide not to call the
23 witness.

24 MR. GRIFFIN: Your Honor, if he chooses
25 not to call her, I guess that's a decision they

1 need. If they make a decision they can't go back.

2 THE COURT: I am going to tell the jury
3 that they were prepared to call her and they
4 decided not to call that witness. And leave it at
5 that. That's all the questions?

6 MR. BRUNSON: Yes, sir.

7 THE COURT: If you all need 10 minutes to
8 talk about it.

9 MR. BRUNSON: No, maybe two, Your Honor.

10 (Whereupon, attorney confers with client.)

11 MR. BRUNSON: May it please the Court,
12 Your Honor, after discussing the matter with my
13 client he and I have both agreed that it is in his
14 best interest not to call her.

15 THE COURT: Okay.

16 MR. BRUNSON: So we have excused Ms.
17 Catherine Myers from this trial and from my
18 subpoena.

19 THE COURT: Very well, you are excused,
20 Ms. Anderson. Let's bring our jury out.

21 (Whereupon, the following takes place
22 within the presence of the jury.)

23 THE COURT: Thank you. Ladies and
24 gentlemen, the defense has decided to call another
25 witness. Are you ready to call?

Albertus Lewis-direct by Brunson

1 MR. BRUNSON: We are, Your Honor. The
2 defense calls Mr. Albertus Lewis at this time.

3 THE COURT: All right.

4 Albertus Lewis, being first
5 duly sworn, testified as follows:

6 THE BAILIFF: State your name and spell
7 your last for the record.

8 A Albertus Lewis. You say spell it for you?

9 THE BAILIFF: Yes.

10 A L-E-W-I-S.

11 THE COURT: You may proceed.

12 Direct Examination by Mr. Brunson:

13 Q Mr. Lewis, how old are you?

14 A 17, sir.

15 Q Okay. And where do you currently reside?

16 A At 435 Deshamps Road. But I still live
17 over there by [REDACTED] Barwick Road.

18 Q Let me re-ask the question, if I may.

19 Where do you currently reside today?

20 A [REDACTED] Deshamps.

21 Q And that's in Sumter County?

22 A Yes, sir.

23 Q Where did you reside back in July of 2009?

24 A The address is [REDACTED] Barwick Road.

25 Q Barwick Road?

Albertus Lewis-direct by Brunson

1 A Yes, sir.

2 Q Who lives at this address with you?

3 A Lee Ethel Lewis, Bernard McFadden and me.

4 Q What is your relationship to Lee Ethel
5 Lewis?

6 A She is my mother.

7 Q And Bernard McFadden lives in the house
8 with you and your mother?

9 A Yes, sir.

10 Q Okay. Now do you recall anything in
11 particular happening on the night of July 3rd
12 2009?

13 A No, sir.

14 Q Okay. Did you have a cell phone at that
15 time?

16 A Yes, sir.

17 Q And did anybody call you on that phone
18 that night?

19 A Yes, sir.

20 Q Okay. Who did you receive a call from?

21 A I didn't know who the other person was,
22 the name or anything but it was a lady.

23 Q Okay. And this call came in around when?

24 A I can't remember the time, but it was
25 like, I don't know.

Albertus Lewis-direct by Brunson

1 Q Okay. You can't remember. Now did you
2 talk to the person on the phone, or did you give
3 the phone to someone else?

4 A I talked to the person on the phone for a
5 little bit, then I gave the phone to my mother.

6 Q What if anything did the person on the
7 phone say to you?

8 A It was like do you know Bernard McFadden.

9 THE COURT: Hold on one second.

10 MR. GRIFFIN: Your Honor, it might be a
11 little premature, but I am going to object to
12 hearsay. And I don't know what he is offering the
13 statement for.

14 MR. BRUNSON: I will withdraw that
15 statement---

16 THE COURT: All right.

17 MR. BRUNSON: ---as to what that person
18 said.

19 Q But after you talked to this person, what
20 did you do with the telephone?

21 A I gave it to my mother.

22 Q And did she talk with someone on this
23 phone? Yes or no?

24 A Yes.

25 Q And do you recall seeing Mr. Bernard

Albertus Lewis-direct by Brunson

1 McFadden at some point after this call came in?

2 A He was in the bed.

3 MR. GRIFFIN: Your Honor, this---

4 THE COURT: Let me see you all up here.

5 (Whereupon, the attorneys approach the
6 bench and confer with the judge.)

7 THE COURT: The Court Reporter will strike
8 the last statement of the witness.

9 MR. BRUNSON: Yes, sir.

10 THE COURT: And the jury is to disregard
11 that.

12 Q Did -- well how did Bernard get around
13 when he lived in the house with you?

14 A He would walk. Sometimes cars.

15 Q So have you seen him ride a bicycle
16 before?

17 A Yes, sir.

18 Q To your knowledge, has he ever fallen from
19 a bicycle at any point and time?

20 A Yes.

21 MR. BRUNSON: Court's indulgence.

22 Q So to your knowledge or to your
23 recollection, has he ever driven a vehicle since
24 he was living in the home with you? Did he have a
25 car.

Albertus Lewis-direct by Brunson

1 A No, sir.

2 MR. BRUNSON: Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. BRUNSON: Nothing further, Your Honor.

5 THE COURT: Mr. Griffin.

6 Cross Examination by Mr. Griffin:

7 Q Mr. Lewis, you lived at 720 Barwick Road
8 at that time?

9 A Yes, sir.

10 Q Are you sure it wasn't [REDACTED] Barwick Road?

11 A No, sir.

12 Q And Bernard lived with you and your
13 mother; right?

14 A You say I stayed over at [REDACTED]?

15 Q Yeah, [REDACTED] Barwick Road?

16 A It's probably one of them.

17 Q One of the two?

18 A It's next to my grandmother's house.

19 Q So it was next to your grandmother's house
20 and her house is [REDACTED]

21 A [REDACTED]

22 Q So your testimony here today is you all
23 got a phone call; isn't that right?

24 A Yes, sir.

25 Q And then you gave the phone to your

Albertus Lewis-cross by Griffin

1 mother.

2 A Yes, sir.

3 Q But she possibly -- she possibly talked to
4 the person on the other line but you are not sure.

5 A Yes. She said the person---

6 Q I didn't ask you what she said. She
7 possibly talked to him but you are not sure.

8 A Yes, sir.

9 Q And you know that Bernard had a bike.

10 A Yes, sir.

11 Q But you're not sure whether she lived at
12 [REDACTED] Barwick Road or [REDACTED]; right?

13 A No, sir.

14 Q You're not sure. And you're not sure
15 whether your mom talked to her or to the person on
16 the phone or not. You said possibly; right?
17 You're not sure.

18 A Yeah, I gave her the phone.

19 Q You gave it to her, but you are not sure
20 about it?

21 A Yes.

22 Q So the only thing you are sure about is
23 Bernard had a bike?

24 A Yes.

25 Q You're not sure about your address at the

Albertus Lewis-cross by Griffin

1 time; right? I mean that's what you said; isn't
2 it?

3 A Yes.

4 MR. GRIFFIN: No further questions.

5 THE COURT: Mr. Brunson, any redirect?

6 MR. BRUNSON: Just one, Your Honor.

7 Redirect Examination by Mr. Brunson:

8 Q This person that called you, was it a male
9 or female?

10 A Female.

11 MR. BRUNSON: Nothing further.

12 THE COURT: Thank you. You may step down.

13 Any objection to this witness being excused?

14 MR. BRUNSON: None from the defendant.

15 MR. GRIFFIN: No, sir.

16 THE COURT: Thank you.

17 MR. BRUNSON: The defendant would like to
18 call Ms. Ethel Lewis at this time.

19 THE COURT: All right.

20 Ethel Lewis, being first
21 duly sworn, testified as follows:

22 THE CLERK: State your name and spell your
23 last for the record?

24 A Ethel Lewis. L-E-W-I-S.

25 Direct Examination by Mr. Brunson:

Albertus Lewis-redirect by Brunson

1 Q Ms. Lewis, do you recall where you resided
2 in July of 2009?

3 A [REDACTED] Barwick Street.

4 Q Barwick.

5 A Yes.

6 Q Is that here in Sumter?

7 A Yes.

8 Q And who lives at that address with you?

9 A My son and Mr. McFadden.

10 Q And what is your son's name?

11 A Albertus.

12 Q And do you recall the night of July 2nd
13 into the morning of July 3rd 2009? Do you recall
14 that night?

15 A Yes.

16 Q Okay. What if anything happened that
17 night?

18 A My son brought me the phone.

19 Q Okay.

20 A He said somebody called and said---

21 Q Hold it. Don't tell us what they said.

22 But your son brought you a phone.

23 A Right.

24 Q And did you accept the phone from him?

25 A Yes, I did.

Ethel Lewis-direct by Brunson

1 Q Did you talk with someone on the phone?

2 A Yes, I did.

3 Q Was that someone a male or a female?

4 A Female.

5 Q Now you testified that Mr. McFadden lived

6 with you during this period of time?

7 A Right.

8 Q Did he continue to reside in your

9 residence after July 4th 2009?

10 A Yes, he did.

11 Q And did you ever have an occasion to see a

12 cut on him?

13 A No, I didn't.

14 Q You didn't?

15 A No, I didn't.

16 Q You didn't know that he had been cut.

17 A No, I didn't.

18 Q What was his primary mode of

19 transportation?

20 A A bicycle.

21 Q And do you have any knowledge of

22 Mr. McFadden ever falling from a bicycle?

23 A Uh-huh. (affirmative.) Yes, sir.

24 Q How many times were you aware that Mr.

25 McFadden fell from a bike?

Ethel Lewis-direct by Brunson

1 A Numerous times.

2 Q Did Mr. McFadden have a job during that
3 time?

4 A Yes, he was working at Voc. Rehab.

5 MR. GRIFFIN: I didn't understand what she
6 said.

7 THE COURT: Voc. Rehab.

8 A Voc. Rehab.

9 Q Did he have like any means of getting
10 money on the side of these jobs that you are aware
11 of?

12 A Cutting grass. Raking yards, that I am
13 aware of.

14 MR. BRUNSON: Court's Indulgence.

15 Q Are you aware or whether Mr. McFadden had
16 a driver's license?

17 A At one time, but he lost it.

18 Q During this period of time?

19 A I don't think he had one.

20 MR. BRUNSON: Thank you. Nothing further.

21 THE COURT: Mr. Griffin, cross
22 examination?

23 MR. GRIFFIN: Yes, sir, Your Honor.

24 Cross Examination by Mr. Griffin:

25 Q He didn't have a driver's license; is

Ethel Lewis-direct by Brunson

1 correct?

2 A No, sir, that I know of.

3 Q He didn't have it because it was
4 suspended; correct?

5 A I don't know. I just know he didn't have
6 a license.

7 Q And you lived at 870 Barwick; correct?

8 A Right.

9 Q With Mr. McFadden and with your son.

10 A Right.

11 Q Did you all ever live at 720 Barwick Road?

12 A No.

13 Q Now you lived with Mr. McFadden. Were you
14 all boyfriend or girlfriend or what was the nature
15 of your relationship?

16 A Not at the beginning.

17 Q Not at the beginning.

18 A No.

19 Q So when he moved in with you, you weren't
20 in a romantic relationship but you were at some
21 point?

22 A Yes.

23 Q In July of 2009, were you all in a
24 romantic relationship?

25 A Yes, later on.

Ethel Lewis-cross by Griffin

1 Q So it's fair to say that you wouldn't want
2 to see someone that you're in a romantic
3 relationship with, get in any kind of trouble.
4 That's fair to say; right?

5 A Yes, sir.

6 Q You don't want to see anything bad happen
7 to Bernard; right?

8 A No, sir.

9 Q But especially somebody that you are
10 romantically involved with; right?

11 A Yes.

12 Q Ms. Lewis, I am going to show you a map.
13 Come on down here and look at this with me,
14 please.

15 (Whereupon, the witness steps down from
16 the witness stand.)

17 A Okay.

18 Q Turn that way so the jury can see.

19 THE COURT: Your attorney is right there.

20 Q That green star you would agree with me
21 that's Barwick---

22 A Yes.

23 Q ---Road right there.

24 A Uh-huh. (affirmative.)

25 Q And the Young's Market on Liberty Street

Ethel Lewis-cross by Griffin

1 with the yellow star. You see that's Liberty
2 Street; right?

3 A Uh-huh. (affirmative.)

4 THE COURT: Ma'am, I need you to say yes
5 or no.

6 A Oh, yes, sir.

7 Q And the white star over here is 1027 East
8 Sherwood Drive. Would you agree with me that is
9 Sherwood? Come around right there. The white
10 star is Sherwood Drive.

11 A Yes.

12 Q And your home where Bernard was living
13 with you is a pretty fair distance from Sherwood
14 Drive, wouldn't you say?

15 A Yes.

16 Q A good ways to ride on a bicycle?

17 A Uh-huh. (affirmative.)

18 THE COURT: Yes or no.

19 A Yes.

20 Q And Liberty Street, Young's Market 940,
21 that's a pretty fair distance from where you lived
22 at the time; right?

23 A Yes.

24 Q Not in the same neighborhood?

25 A No, it is not.

Ethel Lewis-cross by Griffin

1 Q This would be considered the south side?

2 A Yes.

3 Q And Olive Street again is a pretty fair
4 distance from the Young's Market on Liberty and
5 Sherwood Drive.

6 A Yes.

7 Q Would you agree with that?

8 A Yes.

9 Q And that is on the south side as well?

10 A Yes.

11 Q By Mr. Griffin) You can take the stand again.

12 (Whereupon, the witness resumes the
13 witness stand.)

14 Q Ms. Lewis, you said Bernard, you knew him
15 to fall numerous times on a bicycle?

16 A Yes. The chain popping.

17 Q And that he made extra money from raking
18 yards.

19 A Cutting grass.

20 Q He worked for Ramrod Construction.

21 A Yes.

22 Q Ms. Lewis, when you started living with
23 Mr. McFadden, was he renting a room from you or
24 how did you all -- how did that relationship
25 start?

Ethel Lewis-cross by Griffin

1 A Oh, he was renting a room from me.

2 Q Sometime over the course of him being a
3 border in your home, a romantic relationship
4 ensued?

5 A Yes, It did.

6 Q And again, you don't want to see him get
7 in any trouble.

8 MR. BRUNSON: Objection, Your Honor.

9 THE COURT: Asked and answered.

10 MR. GRIFFIN: Yes, Your Honor.

11 Q And this phone call, you don't know who it
12 was on the other line; do you?

13 A No, I do not.

14 MR. GRIFFIN: That's all I have.

15 THE COURT: Any redirect?

16 MR. BRUNSON: Court's indulgence.

17 Nothing.

18 THE COURT: Thank you, ma'am. You may
19 step down. Any objection to this witness being
20 excused?

21 MR. GRIFFIN: None from the state.

22 MR. BRUNSON: None from the defense.

23 THE COURT: Let me see the attorneys up
24 here just a minute.

25 MR. BRUNSON: Yes, sir.

1 (Whereupon, the attorneys and the judge
2 confer at the bench.)

3 THE COURT: Ladies and gentlemen, I am
4 going to give you all an early afternoon break.
5 If you would like a coca cola or something like
6 that let the bailiff know. As always, please do
7 not discuss anything about the caes until I direct
8 you to do so.

9 (Whereupon, the following takes place
10 outside the presence of the jury.)

11 THE COURT: We will be in recess about 5
12 minutes.

13 (Whereupon, the court takes a short
14 recess.)

15 THE COURT: Mr. McFadden, I have asked you
16 on several occasions whether or not you wanted to
17 testify. And after the lunch break you said you
18 wanted to wait until your witnesses testified.

19 Have you had an opportunity to speak to
20 your attorney as whether or not want to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you want to testify?

23 THE DEFENDANT: Based on the fact that my
24 prior record is coming in.

25 THE COURT: Yes, sir.

1 THE DEFENDANT: No, sir. You ruled that
2 my prior record will come in. Based on that fact;
3 no, sir.

4 THE COURT: Then we will call, let me see
5 the attorneys back here for just a minute.

6 (Whereupon, the attorneys and the judge
7 confer at the bench.)

8 THE COURT: You may bring the jury in.

9 (Whereupon, the following takes place
10 within the presence of the jury.)

11 THE COURT: Mr. Brunson.

12 MR. BRUNSON: The defense rests at this
13 time, Your Honor.

14 THE COURT: Ladies and gentlemen, that is
15 all the testimony hat you are going to hear for
16 today. I am going to dismiss you for the evening
17 with the instructions that you return at 9:30
18 tomorrow morning. Please do not discuss this case
19 with anyone and do not discuss it amongst
20 yourselves. After all the testimony has been
21 presented and the attorneys will give you their
22 closing arguments and I charge you on the law.

23 At that time, you may begin your
24 deliberations. So even in your own mind, do not
25 begin your deliberations at that time. I will see

1 you tomorrow morning at 9:30. And again, you all
2 have been very prompt in every occasion. And I am
3 sorry we kept you running back and forth. It will
4 give you a little exercise this afternoon. But
5 you all are free for the day. See you at 9:30
6 tomorrow morning. Thank you.

7 (Whereupon, at 3:25 p.m. jury dismissed.)

8 THE COURT: On the request to charges.
9 Does the state plan to present any reply
10 testimony?

11 MR. GRIFFIN: Your Honor, at this time, we
12 don't plan to. I don't see any need to do it.

13 THE COURT: Mr. Brunson, do you have any
14 motions at this time now that all the evidence is
15 in?

16 MR. BRUNSON: Yes, sir. I would like to
17 renew my earlier motions for a directed verdict.

18 THE COURT: I don't think there has been
19 any change since the last motion. The motion is
20 denied. They will be preparing a draft of the
21 charge. At this point, do you all have anything
22 else? If you all want to wait around for that.
23 We will have that in about a half an hour. We
24 will have a draft of charge. If you want to look
25 at that over night. And then if you all will be

1 here about 9:15 tomorrow morning we will have a
2 charge conference to see if we need anything.

3 MR. BRUNSON: That's fine.

4 THE COURT: Thank you. Court's adjourned
5 until 9:30 in the morning. 9:15 for you.

6 MR. GRIFFIN: Your Honor, the Court
7 Reporter has informed me that she marked two of
8 the exhibits with the same number, 31(A) and 31
9 (B). I know that this picture of convenience
10 store came in second.

11 THE COURT: Do you have any objection, Mr.
12 Brunson to making them A and B?

13 MR. BRUNSON: No objection.

14 (Photographs marked 31(A) and 31 (B) into
15 evidence.)

16 (Whereupon, the trial commences at 9:30 a.m. on
17 Thursday, November 18th 2009.)

18 MR. GRIFFIN: Ladies and gentlemen, when
19 we got to Tuesday afternoon in this case, I stood
20 before you and told you that we were going to
21 prove to you that Bernard McFadden had committed
22 the criminal offense of burglary in the second
23 degree.

24 Now is the time when I get the opportunity
25 to open on the law. And what that means is, I get

1 to go over the law of the case and inform all of
2 you what burglary in the second degree is. Tell
3 you the elements of the offense. And then we talk
4 about the types of evidence that have been
5 presented to you throughout this trial. Ladies
6 and gentlemen, burglary in the second degree is
7 entering the building of another without consent,
8 and with the intent to commit a crime while inside
9 the building.

10 Ladies and gentlemen, every element of
11 that we are required to prove. And what we have
12 done in this case, is present witnesses to prove
13 those elements to you. Now after I talked about
14 the law, Mr. Brunson is going to get the
15 opportunity to stand up and make his closing
16 argument. And then I will get another chance to
17 stand before you and talk about the evidence in
18 this case. But at this time, we're just talking
19 about what the law of case is. Burglary in the
20 second degree is entering the building of another
21 without consent with the intent to commit a crime
22 therein, in the nighttime.

23 Ladies and gentlemen, how do you -- how in
24 a criminal case does the prosecution prove those
25 elements. It's through the testimony of

1 witnesses. It's through exhibits that have been
2 introduced. And in this case, it's through expert
3 testimony of people that have been trained in
4 certain fields. And through training, education
5 and experience, they have been qualified as an
6 expert in the field. They get to give you an
7 opinion. So in this case, we've got those types
8 of evidence. Testimony from the witnesses,
9 exhibits that have been introduced, and an opinion
10 from an expert.

11 In going further talking about what types
12 of evidence, you have direct evidence, which is
13 what a witness saw, heard, observed. What they
14 have personal knowledge of. You have the direct
15 evidence of what the witnesses saw at a particular
16 crime scene. And then, Ladies and gentlemen, you
17 have circumstantial evidence. That's the type of
18 evidence that an individual can see something and
19 make a determination on the circumstances
20 surrounding the evidence. A lot of times judges
21 will use examples like say this room for example,
22 no windows in it. We don't know what is going on
23 outside. But when you walk out in the hallway, if
24 you see somebody shaking off an umbrella, you can
25 infer from watching that person shaking off that

1 umbrella, it's probably raining out there. That's
2 circumstantial evidence. You didn't see the rain,
3 but based upon something else you saw, you can
4 infer what that evidence is.

5 Ladies and gentlemen, the judge is going
6 to charge you on the law when the lawyers have sat
7 down. He's going to tell you that it's your job
8 to judge the credibility of the witnesses.
9 Credibility just means believability. And it's
10 the jury's job to determine whether a witness is
11 credible and whether you believe what they say.
12 It's also your job to determine whether they have
13 a motive for their testimony. Do they have
14 anything to gain or lose by their testimony. Do
15 they have any bias for or against a particular
16 side.

17 Ladies and gentlemen, all of that is to be
18 determined by the jury, the judge of the facts.
19 You are the judges of the evidence. Ladies and
20 gentlemen, the judge is also going to charge you
21 about reasonable doubt. And he is going to tell
22 you that it's not necessarily going to eliminate
23 all doubt, but that reasonable doubt would cause a
24 person and let me read it off so I can get this
25 correct.

1 Ladies and gentlemen, proof beyond a
2 reasonable doubt is proof that leaves you firmly
3 convinced. And the law doesn't require absolute
4 certainty. And it's your job and your
5 deliberations to determine reasonable doubt. The
6 judge is going to tell you all about the law of
7 the case. And I will have the opportunity to
8 discuss facts and evidence a little bit later.

9 Ladies and gentlemen, again, during the
10 closing arguments, focus on the law of the case.
11 Focus on what the elements of burglary in the
12 second degree are; entering the building of
13 another without consent, in the nighttime, with
14 the intent to commit a crime therein. Think
15 about the testimony you have heard. Think about
16 the exhibits that have been introduced. Think
17 about the expert testimony you heard in this case.
18 And when you go back in your jury room, you will
19 have the items of evidence that have been
20 introduced. You will have those with you. You
21 will be able to look at them. You will be able to
22 review them. You will be able to study them.

23 Ladies and gentlemen, the testimony you
24 will have to rely on your collective memory and
25 remember what the witnesses testified to. And I

1 am sure I know that in my closing, we will go over
2 the testimony of the witnesses. I am sure
3 Mr. Brunson will have some idea about the
4 testimony as well. But you're going to have to
5 rely on your memory in regard to the testimony.
6 But you will have these items of evidence. You
7 will be able to review them, and look at them.
8 And also remember, think about the credibility of
9 the witnesses. Who do you believe. Think about a
10 witness' motive for testifying. Think about any
11 bias they may have.

12 Ladies and gentlemen, at the end of this
13 case, it is the your job to take everything that
14 has been presented to you during this trial, sit
15 down as a group, give it thoughtful consideration
16 and deliberation. It's your job to determine the
17 truth in the case and render a verdict. And I
18 will tell you now that the word verdict comes from
19 a Latin word that means to the speak the truth.
20 And that's all we can ask you as jurors to do;
21 review the evidence. Apply the evidence to the
22 law as the judge charges you and speak the truth.
23 As I said, I am going to have an opportunity to
24 talk about the facts with you after Mr. Brunson
25 gives his closing argument. But I would submit to

1 you that as you are listening to the closing
2 arguments, think about the elements of the offense
3 of burglary second degree.

4 Think about the testimony you have heard;
5 the evidence that has been presented. And at the
6 end of the day, we will ask you to speak the truth
7 in this case.

8 THE COURT: Mr. Brunson.

9 MR. BRUNSON: Thank, Your Honor. Court's
10 indulgence just one moment.

11 THE COURT: Yes, sir.

12 MR. BRUNSON: Thank you, Your Honor. May
13 it Please the Court.

14 THE COURT: Yes, sir.

15 MR. BRUNSON: Ladies and gentlemen of the
16 jury, Madam Forelady, good morning. I wanted to
17 again thank you. This trial has been a long one.
18 And over the course of the trial, I paid attention
19 to you all paying attention to me, and you are
20 paying attention to the witnesses. I thank you
21 for that. In the beginning, I told you that this
22 case was extremely important. And it is a very
23 important case. And it's important because as
24 indicated by the state, my client is charged with
25 burglary in the second degree.

1 Solicitor Griffin just opened on the law.
2 And in that opening, he told you that the state
3 was charged with the the burden of proving my
4 client's guilt. And I submit to you that the
5 state has fallen short of its task. In the
6 beginning, we also discussed and Your Honor will
7 also give you the charge about his innocence; that
8 my client and has how he sits there presumed
9 innocent until the state has stripped him of that
10 presumption. And I submit to you today that since
11 the beginning of this trial, he sat with that
12 presumption at the end of this trial. And he is
13 still presumes the cloak of innocence because the
14 state is negligent in its burden.

15 Now, my client was in the wrong place at
16 the wrong time, and the state has charged the
17 wrong person. There are some things that came out
18 in this trial that are a fact and can't be
19 ignored. There were some witnesses that were more
20 important than others. They all offered evidence
21 that is important. But there were key witnesses
22 in this case.

23 First, we heard from Officer Capell, a key
24 witness in this case. He testified that he was
25 the on call officer; that he first responded to

1 this scene. He testified that when he arrived, it
2 was 12:37. I submit to you it is no longer July
3 2nd. It is now July 3rd. Well into the next
4 morning.

5 He testified that dispatch got a call at
6 12:29 on July 3rd. He's a key witness. And the
7 reason his testimony in that time is critical in
8 this case, is because we heard from the state's
9 star witness, Mr. Derrick McDonald. He testified
10 about the time as well. The time is critical in
11 this case. Derrick McDonald testified that he got
12 home, he couldn't really remember about 9:30. He
13 testified that my client came to his house. He
14 was there about 15 minutes or so and that they
15 left.

16 Now the state has a large exhibit. Let me
17 retrieve it. The state has this very large
18 exhibit. And this exhibit proves to be very
19 helpful when we are talking about this time frame.
20 Now remember Officer Capell said he got there at
21 12:37, and Mr. McDonald saying that he got home
22 around 9:30. Spent about 15 minutes or so with
23 the defendant at this house. Okay. That would
24 be around 10 o'clock.

25 And The state has Mr. McFadden testify --

1 I'm sorry, Mr. McDonald testify that they left
2 here, Sherwood Drive. Drove past here. And past
3 the Young's Market that was burglarized. Well
4 Mr. McDonald said that there were blue lights all
5 over the place; that there were several police
6 cars there when he first passed. I submit to you
7 is that possible? I don't think it is. The
8 reason I don't think it is possible is because we
9 heard from the store clerk, the manager who said
10 well the store doesn't close until 11. And after
11 it closes, they got to clean up. They got to
12 sweep and they got to mop.

13 Well if you go by Mr. McDonald's testimony
14 when they left his house, the store is still open.
15 How then can his account then be true. He said
16 when they passed by, when they left his house, my
17 client appeared nervous in the car. Well I submit
18 to you, it's not true, because it doesn't make
19 sense. Because the first police officer didn't
20 arrive there until 12:37.

21 Now clearly if Mr. McDonald's statement is
22 true that he got off around 9:30 and that my
23 client was there about 15 minutes later and then
24 he left. 10 o'clock, leaving his house. 12:37
25 police arrive. The time line just doesn't add up.

1 And that is central. But I will tell you what
2 does add up. Mr. McDonald did tell the truth in
3 something, that it was in fact around 9:30 when he
4 left his house. That he did take my client all
5 the way to Olive Street. He also had time to come
6 from Olive Street. He testified that my client
7 was bleeding. He testified that he give my client
8 a paper towel. Did he have my client's blood in
9 his car? Did he have cigarettes that he had
10 gotten from my client and blood? And did he come
11 back to Young's Market. He was the third person
12 on the scene. But anyway, we are going to get to
13 the testimony. We are going to go over the
14 material. But let's stick to the Officer Capell
15 since he was the first witness. He told us about
16 this time, which I think is great.

17 Now he also told us that he personally had
18 no evidence that my client entered that store.
19 That was his testimony. He said that while he was
20 there, Mr. Derrick McDonald pulled up and said, I
21 may have some information about this. And told
22 him, Bernard. That's what he said.

23 Now I submit to you Officer Capell did not
24 testify that he told Mr. McDonald what had
25 happened. He didn't testify that Mr. McDonald

1 pulled up and he said hey somebody broke in, and
2 left a drop of blood. No. When Derrick McDonald,
3 he already knew the critical witness is Officer
4 Capell. He is setting out the time frame. And I
5 submit to you that he is a credible witness. And
6 that 12:37 if he said that's when he arrived,
7 that's when he arrived. That he was first
8 officer. Next you heard from Taylor Brown, a very
9 young girl. Ms. Brown testified that there was a
10 knock on the door. She was in the room watching
11 television; she and a friend. Nobody was asleep
12 in the house. That's more along the lines of
13 9:30.

14 Now she testified that she saw my client
15 and she saw him standing up on the porch. And
16 that he was bleeding. And she testified that he
17 said that he had fallen off of a bicycle. That
18 she in fact saw the bicycle. And that she in fact
19 saw him bleeding. And that he had he asked for
20 the man that drove the yellow truck; that she went
21 and got her stepfather. Now we heard from her
22 stepfather Mr. Derrick McDonald.

23 Now his testimony I submit to you, is not
24 credible. But before we get into it, let's look
25 at some photos. A big yellow box truck. This is

1 the truck that Derrick McDonald testified that he
2 drove. This is also the truck that nobody in law
3 enforcement looked in the back of. This is also
4 the truck that appeared on the crime scene
5 carrying what the state wants you to consider
6 evidence; the same truck.

7 Now this is a very large brick. The
8 state's position is that this very large brick was
9 used to bust and shatter the front window to gain
10 entry into the Young's Market. Well I submit to
11 you that it may have happened; however, my client
12 was a riding a bicycle that night, not driving a
13 big box truck that could have been filled with
14 large bricks. Now then he showed you a photo of
15 the front door that shattered in very small
16 pieces. Completely shattered. They also had
17 fresh laid glass. What the state wants you to
18 believe is that somebody cut themselves on that.

19 The state wants you to believe that
20 somebody threw this brick through this glass; went
21 into this store. Cut themselves. Went and got
22 cigarettes. Got lottery tickets. Oh, cut
23 themselves. What is this? Went to the first aid
24 kit. Opened the first aid kit. Opened the first
25 aid kit, because it was open. Used alcohol. With

1 an alarm blaring. We heard from the manager of
2 the store who testified that this store had an
3 alarm. And that this alarm system was loud. It
4 was very loud. But then goes silent. I submit to
5 you that doesn't make sense. The state has failed
6 to meet its burden, because if the state's theory
7 is true, where is the blood trail?

8 This blood, the state says there is blood
9 on a New Port box. The state submits there is
10 blood on the floor. And that there is blood on
11 two other New Port boxes. That's it. State's
12 case. There is not a blood trail. There is not
13 multiple splatterings of blood. No blood found
14 outside the Young's. No blood trail. I asked him
15 about boxes of trash from the Young's. No boxes
16 of trash from the Young's. I submit to you
17 reasonable doubt exists. The solicitor told you
18 what reasonable doubt was. He said it's the type
19 of doubt that causes you to hesitate to act. This
20 case is filled with it.

21 Let's talk about Mr. McDonald and his
22 testimony. Mr. McDonald said I didn't know the
23 man's name. Law enforcement testified that he
24 said he gave a ride to a man named Bernard. He
25 testified from the stand, I didn't know the man's

1 name. I had to call my wife to get it. He
2 testified that he called, and told her to call him
3 while the cop was there. I submit to you that we
4 only heard from one officer who talked to this
5 gentleman. And I asked him, I said did you tell
6 Derrick McDonald to call his wife? No. Did he
7 call his wife? No. I think she might have called
8 him; was the officer's statement. But we are
9 supposed to believe the testimony of Derrick
10 McDonald.

11 I submit to you he is not a credible
12 witness. He testified that a complete stranger
13 showed up at his house bleeding. He said he
14 looked nervous. But yet, he is going to allow
15 this man to give a cigarette to a family member,
16 multiple family members, like he testified? And
17 he was going to give him a ride all the way across
18 town? A complete stranger? He didn't say he
19 called the police. He didn't say any of that.
20 Then he testified that my client give him
21 cigarettes, but he said he bought them. So did
22 you buy them or did he give them to you. Oh, I
23 bought them because I am Derrick McDonald. That's
24 what he said.

25 I submit to you that if a man is bleeding,

1 do you give that man a paper towel? And if that
2 man had cigarettes, that blood could have gotten
3 on the cigarettes. I submit to you that blood was
4 on the paper towel, because that's what he did.
5 That's what Mr. McDonald gave him. Mr. McDonald
6 didn't have enough time to drop this gentleman off
7 to go in this Young's Market. And that begs the
8 question why. Well everybody in the house smoked
9 New Port cigarettes.

10 What was taken from this Young's Market?
11 New Port cigarettes. Derrick McDonald smokes New
12 Port Cigarettes. Teresa Cummings smoked New Port
13 cigarettes. Teresa Cummings' mother smoked New
14 Port cigarettes. Teresa Cummings' daughter smoked
15 New Port cigarettes. Teresa Cummings'
16 stepdaughter smoked New Port cigarettes. So the
17 testimony from this stand what was taken from the
18 Young's? New Port cigarettes. Who had New Port
19 cigarettes was my client. The other part, Derrick
20 McDonald testifies when he gets on the scene, he
21 turns over 7 packs of New Port cigarettes to the
22 officer; that he's a good citizen.

23 He didn't tell the officer there were 15
24 more packs at his house. Where is Ms. Cummings?
25 Where is the mother? Where is the daughter?

1 Where are all the cigarettes they have got?

2 Smoke them. They didn't turn them over to law
3 enforcement, because law enforcement only had
4 seven according to them.

5 We submit to you, we don't know how many
6 cigarettes were given. We don't know how many had
7 blood on them. We know that my client is
8 bleeding. Now since Derrick McDonald's box truck
9 wasn't searched---

10 MR. GRIFFIN: Your Honor, objection.
11 Mischaracterization of the evidence.

12 (Whereupon, the attorneys approach the
13 bench and confer with judge.)

14 THE COURT: Ladies and gentlemen of the
15 jury, Mr. Brunson has misquoted a prior statement.

16 MR. BRUNSON: I will withdraw that last
17 statement. Mr. McDonald's box truck, we have
18 heard testimony that the cab portion of this truck
19 was locked by law enforcement. We also heard
20 testimony that no members of law enforcement
21 searched the back; looked in the bag. I submit to
22 you, we don't know what's in there. And what
23 could have been in there. He told the officer
24 that my client's bicycle was in there. They
25 didn't even think to look.

1 Now we heard from experts in this case.
2 And from the South Carolina Law Enforcement
3 Division, Sled. And one expert said, well I
4 received these packages from law enforcement and I
5 put them in the box. The other expert from sled
6 said I took these packages out of the box and I
7 tested them. She does not know, she did not
8 know whether that sample came from the floor of
9 the Young's. She testified that she tested it.

10 Now I submit to you that Ms. Urka, she may
11 have tested it properly. She's an expert. She
12 said that she developed a profile, but that she
13 didn't finalize the test. She said that somebody
14 else from sled had to finalize it. And there was
15 an electronic signature upon the finalization.
16 Well, that finalization arguably occurred New
17 Years Eve.

18 Under the circumstances, Ladies and
19 gentlemen, there are reasonable doubts in various
20 aspects of this case. We heard from Investigator
21 Culick. Sloppy police work. Culick testified
22 that she was the on call officer or detective.
23 And that when she got the call, she responded.
24 She testified she collected glass; that nobody
25 tested. She collected glass, because it could

1 have been in the shoes of the burglar. But no
2 one's shoes were checked for glass.

3 Asked Detective Litaker whether he checked
4 Mr. McDonald's shoes. He testified no, he did
5 not. I asked Detective Litaker whether he looked
6 in the floorboard on the driver's side of the box
7 truck that night for glass. He said, I shined the
8 light in there. Is that police work? I don't
9 know. Now Detective Culick also testified that
10 her job was to process the scene. Well again, we
11 asked Detective Culick about cameras. She took
12 the pictures in front of the Young's Market.
13 Cameras all on the top of the store.

14 So real good evidence. Footage from the
15 cameras if the cameras had been working. They
16 weren't. We aren't able to see anything in the
17 Young's Market. So we asked Detective Culick
18 about when she entered the crime scene to take
19 pictures. Does she take pictures coming into it.
20 She said yes. In fact, she took this picture
21 coming into the crime scene. We asked Detective
22 Culick about the floor in the Young's. Some are
23 solid. Some are speckled.

24 Detective Culick admitted on the stand
25 that she moved packs of cigarettes around. Took

1 pictures of ones with blood on it in Young's.
2 Detective Culick, he said where are the cigarettes
3 and the lottery tickets on the solid floor, where
4 is that in this picture. Detective Culick said
5 she had to move things around to take pictures of
6 it. Well she said that these New Port boxes had
7 blood spots on them. Why did you move the lottery
8 tickets.

9 We asked Detective Culick about swabbing
10 for blood. She said she swabbed blood in Young's.
11 Now on this photo there's a pack of New Port
12 cigarettes and a lottery ticket lined up
13 perfectly. There's blood on -- what appears to be
14 blood on the box. Was that swabbed? When you go
15 into the jury room you will have these pictures.
16 You will be able to look at them when you get in
17 there. There is blood on the floor. Is that the
18 same diameter as the Q tip? You will be able to
19 ask yourself these questions. And you will be
20 able to look at these photos. And you will be
21 able to compare and contrast.

22 Now Investigator Culick said she is not
23 the lead investigator. But she did the
24 investigation that night. She didn't take any
25 fingerprints from anything in that store. We have

1 got photos, Ladies and gentlemen, of trays on the
2 floor. She testified what it looked like. Well
3 did you dust those for fingerprints. She said no.
4 Could the real burglar's fingerprints be on there.
5 We don't know.

6 Investigator Culick testified that she
7 prepared the document. She testified that she
8 prepared that document on July 3rd 2008. My
9 client was named on that document. I submit to you
10 that's because there was no police. Well let's
11 see, we heard from the lead investigator, Robbie
12 Richburg. Mr. Richburg took the stand and we
13 asked Mr. Richburg, well you are the lead
14 investigator. What did you do. He put together a
15 photo lineup.

16 Well did you interview anyone. No. Did
17 you visit any scenes. Did you go to the house
18 where the alleged suspect was? No. What did you
19 do? I prepared an affidavit. Okay. What else?
20 I prepared a photo lineup. I submit to you what
21 he testified that he didn't do, is an
22 investigation. Not a thorough one.

23 Now Mr. Richburg testified he has got 10
24 years of experience. He is assigned this case
25 three days after the incident occurred. He showed

1 pictures to Mr. McDonald of the guy who
2 Mr. McDonald said he gave a ride to. Case closed.
3 I submit to you, this case was closed 12:45 July
4 3rd. Now he's obtained a buccal swab from the
5 same man that Derrick McDonald picked out of a
6 photo lineup. He obtained a buccal swab from the
7 same man that Derrick McDonald said he gave a
8 piece of tissue to, who was bleeding on the front
9 porch. What does that prove?

10 But then let's look at his police work
11 after that. What did he do now with the buccal
12 swab. And instead of turning it over to the
13 evidence tech. Mr. Alsbrook who testified, and
14 Mr. Duggin who testified, oh, he takes the buccal
15 swab back to his office and he locks it up in a
16 box. Well we asked him about that. Is that
17 secure? I don't know. Well do other people have
18 access to it. Yeah. Is it temperature
19 controlled. So when did you turn it in to the
20 evidence tech. Oh, the next day about 3 o'clock.
21 I submit to you that this is sloppy police work.

22 Now our position is that that chain of
23 custody, that he should have turned it into the
24 evidence tech. That's what our position is. Now
25 in this case, you have the ability to judge the

1 facts; to try the facts. You are the triers of
2 the facts. It's up to you to weigh the evidence
3 and assign the credibility. And now I submit to
4 you that when you get back into your jury room and
5 you look at this evidence, that you will have to
6 come back with not guilty.

7 Now what else will you have back there?

8 Well you will have this. What is this? A gel
9 pack. Detective Litaker said he took this out of
10 the passenger's seat of Mr. McDonald's truck.

11 Well did anybody ever try to find a shoe to match
12 the impression? No. Sloppy police work. Now
13 just a couple of more things in regard to these
14 photographs. Now the DNA expert Katie Urka, I
15 asked her a question in her professional opinion.
16 And she's an expert so she can give that. I asked
17 her. I said well if a sample was provided to your
18 office for analysis, with a swab from my client
19 and a buccal swab, be in your control, and a swab
20 of blood taken from inside of Mr. McDonald's truck
21 from my client when he is there bleeding, and that
22 was submitted for analysis. Would the results be
23 any different from the results that you have today
24 from what law enforcement said they got from
25 inside of the building. She said no.

1 So I submit to you that it is possible
2 that in the realms of reality that this blood was
3 placed in this Young's Market. And that my client
4 could not have been the one to break in this
5 Young's, because the time line just does not add
6 up. So in your deliberations, I want you to
7 remember these things. And I want you to remember
8 what Mr. McDonald testified to in regard to the
9 time line. I want you to compare Mr. McDonald's
10 time line to the corroboration to the family
11 members at this home.

12 Got off work around 9:30. 15 minutes
13 later he is at my house. Before 11 o'clock we
14 have already passed the Young's. 11 o'clock the
15 Young's is still open. Takes this man all the way
16 to Olive Street. Drops him off. Takes the bike
17 out of the truck. Buys cigarettes from him.
18 Drives all the way back. And then you have time
19 before the officers arrive still, because they
20 didn't arrive until 12:37.

21 So in your deliberations, I know that you
22 will do the right thing in looking at the
23 evidence. I know that you will compare it. Think
24 about it. Discuss it. And come back with the
25 only possible verdict in this case, and that's the

1 verdict of not guilty.

2 THE COURT: Thank you Mr. Brunson.

3 Mr. Griffin.

4 MR. GRIFFIN: Ladies and gentlemen,
5 Mr. Brunson, said this case was about being at
6 the wrong place at the wrong time. And I
7 understand why that is the defense's position.
8 Why he would say he was at the wrong place at the
9 wrong time. Because his blood is inside that
10 Young's. For him, it was the wrong place at the
11 wrong time, because it was right after a burglary.
12 We know that Bernard McFadden's blood is inside
13 the Young's Market. One in 870 quadrillion chance
14 that was not Bernard McFadden's DNA.

15 I asked the expert how many people are on
16 earth. 6 billion. I asked how many times bigger
17 is a quadrillion than a billion. About a
18 100 million. Do you know how many 0's are in a
19 quadrillion? It's a lot. Now, Ladies and
20 gentlemen, let's talk a little bit about the
21 witnesses. Let's take this thing chronologically.
22 We know that this brick was thrown through the
23 glass at a Young's Market at 940 East Liberty
24 Street.

25 We know that Bernard McFadden's blood is

1 inside the Young's Market. We know Bernard
2 McFadden showed up at [REDACTED] East Sherwood Street,
3 bleeding. Asking for the man in the yellow truck.
4 Mr. Brunson makes an issue of the time line.
5 Remember what I asked Mr. Derrick McDonald. Were
6 you watching the clock that night. No, sir, I
7 wasn't. Was this a normal night until a bleeding
8 man shows up at your door. Was it a normal night.
9 Were you watching the clock. Remember what Taylor
10 Brown, his 16-year-old daughter said. I was
11 watching TV and it was late around 11 or so.

12 Ladies and gentlemen, I would submit to
13 you that these witness were excited by this
14 unusual event that occurred that night. A man, a
15 bleeding man showing up on their door step asking
16 for a ride to the south side. Does it make sense
17 that these folks on a normal evening in
18 summertime, would have been sitting there, I
19 better watch this clock. I better know exactly
20 what time it is this night because something might
21 happen.

22 They couldn't tell you what was going to
23 happen that night. So it's entirely reasonable
24 that they would have only had an idea of what time
25 it was when this startling event, this man coming

1 on their doorstep, bleeding, asking for a ride to
2 the south side. Now let's talk a little bit about
3 Derrick McDonald. You heard the testimony that
4 the daughter answers the door. He's in the back
5 of the house. Teresa Cummings said he was in a
6 rest room. He comes to the door, sees what is
7 going on, and talks with Bernard McFadden. Says
8 he's kind of concerned about the situation. He
9 goes and gets his revolver. But he asked him if
10 wanted to call 911, take him to the hospital and
11 get some help. No, I just need to get back to the
12 south side. Kind of concerned about the
13 situation. Goes and gets his revolver. Agrees to
14 take him -- to take Bernard back to the south
15 side. Loads his bicycle up on the truck, base of
16 the truck. Sees a bag of New Port cigarettes and
17 lottery tickets.

18 And you heard the testimony of Teresa
19 Cummings and Shanice Cummings, they were given New
20 Ports. Shanice Cummings even said he give me New
21 Port 100's. She was pretty specific about it. I
22 said, what brand were they. She just didn't say
23 New Port. New Port 100's. Two packs here.
24 Different from regular New Port. Compare them.
25 On first glance they might look all the same. But

1 I would submit to you that a New Port 100's are a
2 longer cigarette. She was very specific about
3 what kind of cigarette she was given. Does that
4 make her testimony more credible? New Port 100's?
5 Exactly what she said. But we will get back to
6 Derrick McDonald.

7 He gives the man a ride to the south side.
8 Goes out of Sherwood. Gets on the frontage road.
9 Back on Liberty. Passes the Young's Market. The
10 cops are there. Bernard McFadden slumps down in
11 the seat. Keep on going, man, those cops might
12 stop you. Raising suspicion in Derrick McDonald's
13 mind. Completes the trip. He goes back. Drops
14 him off at the south side of Sumter. Heads back
15 towards the Young's. Stops and talks to Officer
16 Capell. Gives Officer Capell 7 packs of New Port
17 cigarettes right here. I asked Officer Capell did
18 these cigarettes ever go inside the Young's
19 Market. No, sir, they didn't. I secured them and
20 then turned them into evidence.

21 Bernard McFadden the cigarette man, has
22 been to Derrick McDonald. Now Derrick McDonald, I
23 asked him, did you have anything to gain by
24 stopping and speaking with law enforcement and
25 involving yourself in this situation. No, sir, I

1 didn't. Did you ever get paid by crimestoppers
2 for turning in a tip. No, sir, I did not. Did
3 you ever go inside the Young's Market that night.
4 I stayed on the outside. Went back to the law
5 enforcement center. Spoke with Detective Litaker.
6 Gave him a recorded statement. This is in the
7 middle of the night. You heard Detective Litaker
8 say, it was late, in the middle of the night. He
9 had nothing to gain by involving himself in that
10 situation.

11 The box truck he was driving, drove it
12 back to law enforcement center. Detective Litaker
13 attempted to take a gel lift from the inside
14 passenger floorboard of the truck. Thinking if we
15 ever recover the shoes that the burglar was
16 wearing, we might could match them up. Is that
17 thorough police work to you. Mr. Brunson talks
18 about this police work being sloppy. I would
19 submit to you thorough police work. He testified
20 to you well we have to have a pair of shoes to
21 compare this to. And unfortunately no shoes were
22 ever recovered. I would submit to you this is
23 thorough.

24 Ladies and gentlemen, let's talk about the
25 investigation. The defense characterizes this

1 investigation as sloppy, and that the lead
2 Detective, Detective Richburg, he says, you
3 really didn't do any investigation. Well, Ladies
4 and gentlemen, you heard from Detective Culick.
5 She was the first detective on the scene. And I
6 asked her what detectives do. And they follow up
7 after the initial responding officer is there.
8 Processed the crime scene. Look for evidence.
9 Potentially conduct interviews with any witnesses.
10 She did all this work. Took all these
11 photographs. Collected all of this evidence.
12 Ladies and gentlemen, I would submit to you,
13 thorough police work.

14 She testified that it's important that
15 after the scene is secured, clear the scene,
16 that's what Officer Capell testified, go in and
17 make sure nobody is there; that it's very
18 important that the detective's photograph and
19 process the crime scene. She took the photographs
20 and processed the scene. Now Mr. Brunson asked
21 about well, did you move things. Ladies and
22 gentlemen, I would submit to you that to process
23 the crime scene sufficiently, the items have to be
24 moved to be collected.

25 Again, the on call detective starts the

1 process. And she told you that the police
2 department within the investigative division, is
3 set up in different parts. Detective Culick
4 normally investigates violent crimes. Detective
5 Richburg does property crimes.

6 Ladies and gentlemen, these law
7 enforcement officers, they work together as a
8 team. Does it make sense just because Detective
9 Richburg is the property crimes investigator,
10 should he have to go back and redo the
11 investigation that has already been done. Where
12 is the logic in that. When detective Richburg was
13 assigned this case, he testified he was assigned
14 the case because he gets all the burglaries in the
15 City of Sumter. He was assigned the case a few
16 days later, because this occurred right before the
17 holiday weekend. He was assigned to the case. He
18 took information from the detectives that already
19 been on the scene: Detective Culick, Detective
20 Litaker.

21 He takes the work that has already been
22 done by the people that are on his team, that work
23 with him day to day. And then proceeds with the
24 investigation. Detective Richburg knew that
25 Derrick McDonald had given a ride to an individual

1 named Bernard that night. So based on that
2 knowledge, based on Detective Richburg's
3 experience, he compiled a photo lineup. Called
4 Mr. McDonald and said come on down to the
5 station. And take a look at this. And I am going
6 to show you these six photographs. And if you see
7 the man that you gave the ride to that night, the
8 man that was at your house, pick him out. I asked
9 Detective Richburg did you suggest any particular
10 photograph. No, I did not. Did you promise
11 Mr. McDonald anything. Did you make him select
12 any of these particular photographs. No, sir.

13 Mr. McDonald was sure, No. 3, Bernard
14 McFadden. So based on a positive identification,
15 Detective Richburg goes and gets an arrest
16 warrant. Mr. McFadden is arrested. But the
17 investigation didn't stop there. Detective
18 Richburg collected this swab from Bernard
19 McFadden's mouth. Inside his mouth. It's called
20 a buccal swab. That just means the mouth. The
21 cells inside the mouth contain DNA. This swab was
22 sent to sled. Further investigation. I may not
23 have taken a lot of time with you. One swab
24 inside the mouth. But it's further investigation.
25 I would submit to you thorough police work.

1 And this swab was sent to the South
2 Carolina Law Enforcement Division; along with the
3 blood collected from the business floor. Shown in
4 the photograph. A drop of blood. Not a smearing
5 of blood. Think about it, if somebody had planted
6 this blood on this scene, especially somebody like
7 Derrick McDonald. The defense wants you to
8 believe that he somehow was the mastermind behind
9 this scene. If this blood had been brought into
10 the crime scene by another individual, would it be
11 smeared or would it be a drop? Think about that.

12 And while we are on that point, you heard
13 Derrick McDonald testify. No offense to the man,
14 but I would submit to you, he is not the type of
15 person to dream up the conspiracy theory. I am
16 going to frame this man bleeding on my porch. I
17 am going to take his blood, and I am going to go
18 in Young's Market and I am going to put it in
19 there, and we going to convict him of burglary.
20 You can judge the type of witness Mr. McDonald
21 was. Do you really believe that he put this blood
22 in the crime scene. That's for you to determine.

23 Ladies and gentlemen, the blood inside
24 Young's was Bernard McFadden's. He took this
25 brick threw it through the door. Went inside.

1 Grabbed all the New Port cigarettes he could, some
2 lottery tickets, and got out. We know it's his
3 blood, because this is known DNA from Bernard
4 McFadden. Blood from the scene, and the blood
5 collected off of this pack of New Port menthol
6 100's. Lieutenant Duggin testified he took the
7 sample off of this pack. Submitted these two
8 samples to sled. Agent Urka told you, Bernard
9 McFadden's blood.

10 The forensic evidence I would submit to
11 you, does not lie in the case. Forensic evidence,
12 the blood at the scene, blood on the cigarette
13 packs, that evidence I will submit to you, is
14 consistent. It can't be manipulated by the
15 excitement of the situation. Ladies and
16 gentlemen, we know from the testimony of the
17 expert, that Bernard McFadden's blood was inside
18 the Young's Market that night. And I would submit
19 to you that all this glass, he cut himself when he
20 went in.

21 Now these photographs show the door being
22 knocked out. But Ladies and gentlemen, I would
23 submit to you that the glass wouldn't fall all
24 over the place. If a man throws a brick through
25 the glass door, it's not going to be a completely

1 clean as he rushes in. These photographs were
2 taken after this burglary was committed. Bernard
3 McFadden cut himself, I submit to you, going
4 through that door. Bled inside the store, because
5 he committed the burglary. And that brings me to
6 Janice Billups. If you remember, she was the
7 manager of the Young's Market on Liberty Street
8 back in July of 2009. Well let's think about her
9 testimony. She testified that the store closed at
10 11 o'clock. And that they restock shelves. Sweep
11 and mop the floor so the store will be ready for
12 the next shift that starts at 5 a.m.

13 She testified that after law enforcement
14 processed the scene, collected evidence; that she
15 and her assistant manager and the Young's district
16 manager had to clean up the store to get it ready
17 for opening at 5. I asked her, did you miss any
18 time being open as a result of this. No, we
19 stayed there all night, got the store ready. What
20 did she tell you? We had to bleach the floor
21 because it looked like there was blood on it.

22 Now her testimony corroborates what the
23 law enforcement witnesses said was at the scene.
24 She didn't go in the store until they were done.
25 She has no reason to make anything up. She's

1 telling you what she saw that night. I asked her
2 if Bernard McFadden was an employee. No. Did
3 anybody have consent to take this big brick and
4 throw it through your front door. No, sir.

5 Ladies and gentlemen, I know that a lot
6 has been made about whether there was cameras.
7 You heard Ms. Billups testify that they had a
8 camera system, and that it would show images on
9 their screens within the store, but that the
10 cameras weren't working. And that this burglary
11 was the event that let the people at Young's know
12 that the cameras were not working. Ladies and
13 gentlemen, we have got Bernard McFadden's blood
14 inside this Young's Market. It wasn't there when
15 the store closed according to Ms. Billups. She
16 cleaned. It was there after this brick was thrown
17 through the door. And the New Port cigarettes,
18 stolen New Port cigarettes, were in possession of
19 Derrick McDonald; given to him by Bernard
20 McFadden. Cigarettes from inside the building
21 with Bernard McFadden's blood.

22 Ladies and gentlemen, the forensic
23 evidence proves this case. And, Ladies and
24 gentlemen, in closing, I want to read to you a
25 quote from a man named Edmond Locar. He was

1 Frenchmen and he was considered to be a pioneer in
2 forensic evidence. And I would submit to you that
3 this quote from him is a good summary of him about
4 what forensic evidence means in a criminal case.
5 Wherever he steps, wherever he touches, whatever
6 he leaves even without consciousness, will serve
7 as a silent witness against him. Not only his
8 fingerprints or his footprints, but his hair, the
9 fibers from his clothes, the glass he breaks, the
10 tool mark he leaves, the painting scratchings, the
11 blood or semen he deposits or collects, all of
12 these and more bear mute witness against him.
13 This is evidence that does not forget. It is not
14 confused by the excitement of the moment. It is
15 not absent because human witnesses are. It is
16 factual evidence. Physical evidence cannot be
17 wrong. It cannot perjure itself. It cannot be
18 wholly absent. Only human failure can find it,
19 and study and understand it and diminish it's
20 value.

21 Now, Ladies and gentlemen, we have had
22 some human witnesses in this caes. And we have
23 had some that I would submit to you were excited
24 by a startling moment. A person showing at their
25 house late at night, bleeding. Asking for a ride.

1 Does not want to go to the hospital. But, Ladies
2 and gentlemen, we have forensic, physical
3 evidence. We don't have any human failure to
4 find. We've got law enforcement investigation.
5 The human's involved in the investigation in this
6 case found forensic evidence. There is no failure
7 to find it here. They sent it off to have it
8 analyzed. We have presented an expert witness who
9 understands the physical evidence. She
10 understands, because she has training, education
11 and experience to understand it. She gave her
12 opinion. Bernard McFadden bled inside the Young's
13 Market.

14 The blood wasn't there when the store
15 closed at 11:00 o'clock at night. The blood that
16 was there after the brick was thrown through the
17 window and the cigarettes and lottery tickets were
18 stolen. Mr. Brunson talked about fingerprints
19 another type of forensic evidence.
20 You heard Ms. Billups testify. These cigarette
21 racks employees touch them all day long. You
22 heard Detective Culick testify that she had to
23 make a decision when processing that scene of
24 where the most evidentiary value would be found.
25 She thought that what she suspected to be blood

1 would be better evidence than searching for
2 fingerprints on cigarette packs that are touched
3 by multiple people every day. Every time a person
4 asked for a pack of cigarettes, the clerk in the
5 store has to reach up and hand it to them. You
6 can't just walk up and get them yourself. I asked
7 Ms. Billups that. She said yes, the clerks would
8 reach and hand the patron the cigarettes.

9 Ladies and gentlemen, there are going to
10 be fingerprints on those packs of cigarettes.
11 This blood in the store only belonged to one
12 person, Bernard McFadden. Ladies and gentlemen,
13 I would submit to you even though multiple people
14 could have touched these cigarettes, Lieutenant
15 Duggin attempted to lift fingerprints. I submit
16 to you further thorough police work. He said he
17 found it to have insufficient ridge detail. That
18 just means I can tell you it's a fingerprint, but
19 I can't tell you whose it is. But we know whose
20 blood. We know Bernard McFadden's blood. This
21 evidence does not forget. It is not confused by
22 the excitement of the moment. It is not adamant
23 because human witnesses are. It's factual
24 evidence. Physical evidence cannot be wrong. It
25 cannot perjure itself. It cannot be wholly

1 adamant. Only human failure to find it, study and
2 understand it, and diminish its value.

3 Ladies and gentlemen, I would submit to
4 you in closing, that Bernard McFadden entered the
5 Young's Market, the property of another, the
6 building of another, in the nighttime, with the
7 intent to commit a crime therein. Not just the
8 intent, completed this commission of the crime.
9 Stole \$480 worth of cigarettes. I believe Ms.
10 Billups said \$143 in lottery tickets.

11 Ladies and gentlemen, I would submit to
12 you that that is the truth in this case. When I
13 spoke to you this morning, I said that you were
14 going to take the law that the judge charges you
15 with, the testimony from the witness stand,
16 exhibits that have been introduced. In the
17 opinion of the expert, deliberate and reach a
18 verdict that speaks the truth in this case.

19 Ladies and gentlemen, the truth is, there was no
20 blood in the store when that Young's Market closed
21 at 11:00 o'clock. Bernard McFadden's blood was on
22 the floor after the robbery was committed.

23 Ladies and gentlemen, the only way his
24 blood should be on this floor is because he
25 committed this burglary, not Derrick McDonald. He

1 never went inside the Young's that day. He didn't
2 put the blood there. Ladies and gentlemen, speak
3 the truth. And i submit to you the truth is that
4 Bernard McFadden is guilty of burglary in the
5 second degree.

6 THE COURT: Ladies and Gentlemen, before I
7 charge you the law in this case, I am going to
8 give you a break. So I am going to send you back
9 to the jury room. Do not discuss anything with
10 each other. Use the restroom if you need to, and
11 we will come back out. Thank you.

12 (Whereupon, the court takes a short
13 recess.)

14 THE COURT: Ladies and gentlemen, now is
15 the time where I will charge you the law in this
16 case. The indictment in this case under
17 2010-GS-43-257 alleges one offense against the
18 defendant Bernard McFadden, burglary in the second
19 degree. I will remind you the fact that the
20 defendant was arrested, charged and indicted in
21 this case, is not evidence and cannot be
22 considered by you as evidence of guilt. Nor does
23 it create any presumption or inference of guilt.
24 The indictment is simply the formal written
25 instrument by which this case is brought to trial

1 against this defendant. And that's all it is,
2 nothing more.

3 I remind you that during this trial, you
4 and I have certain duties to perform. As the
5 trial judge, it is my responsibility to preside
6 over the trial of this case. And I also have the
7 duty to rule on the admissibility offered during
8 the trial. You are to consider only the competent
9 evidence before you. If there was any testimony
10 ordered stricken from the record of this case
11 during this trial, you must disregard that
12 testimony. You are to consider only the testimony
13 which has been presented from this witness stand,
14 any exhibits which have been made a part of the
15 record of this case. And any stipulations of
16 counsel. I have the additional duty to charge you
17 the law applicable to this case. As the presiding
18 judge, I am sole judge of the law of this case,
19 and it is your duty as jurors to accept and apply
20 the law as I state it to you. Now if you have any
21 idea of what you think the law is or what the law
22 ought to be and it does not agree with what I tell
23 you the law is, you must abandon this idea,
24 because you are sworn to accept the law and apply
25 the law exactly as I state it to you.

1 In every cased tried in this court before
2 a jury, the jury becomes the sole and exclusive
3 judge of the facts. As the trial judge, I cannot
4 intimate, state, comment or make any statement to
5 the trial jury about the facts in a case. Since
6 you are the jury, you are the sole judges of the
7 facts in this case. And you are not to infer from
8 what I have said during the progress of this trial
9 in ruling upon the admissibility of evidence, or
10 otherwise, or anything that I say to you now
11 during the instructions that I have any
12 opinion about the facts in this case. The law
13 does has not allow me to have an opinion about the
14 facts in this case. This is a matter solely for
15 you the jury.

16 And as jurors, it is you duty to determine
17 the effect, the value, the weight, and the truth
18 of the evidence that is presented. The defendant
19 Bernard McFadden, has pled not guilty to the
20 indictment. And that plea puts the burden on the
21 state to prove the defendant guilty. A person
22 charged with committing a criminal offense in the
23 State of South Carolina is never required to prove
24 their innocence. This is an important rule of law
25 that a defendant in a criminal trial no matter how

1 serious the charge might be will always be
2 presumed to be innocent of the crime. This
3 presumption of innocence does not end when you
4 begin your deliberations, but it accompanies the
5 defendant throughout the trial until you reach a
6 verdict of guilt based upon the evidence
7 satisfying you of that guilt beyond a reasonable
8 doubt.

9 The presumption of innocence is like a
10 robe of righteousness placed about the shoulders
11 of the defendant which remains with the defendant
12 until it has been stripped from that defendant by
13 evidence that satisfies you again of the
14 defendant's guilt beyond a reasonable doubt.
15 Presumption of innocence is not a mere legal
16 theory. It is not just a phrase we use here in
17 court. But it's a substantial right to which
18 every defendant is entitled. And again, until you
19 are satisfied of the defendant's guilt beyond a
20 reasonable doubt.

21 Now during the trial there are only two
22 types of evidence that are presented. There is
23 direct evidence and circumstantial evidence.
24 Direct evidence is the testimony of a person who
25 claims to have actual knowledge of a fact; such

1 as, an eye witness. It is evidence that
2 immediately establishes the main fact to be
3 proved. Circumstantial evidence on the hand, is
4 proof of a chain of facts and circumstances
5 indicating the existence of a fact. It is
6 evidence that immediately establishes collateral
7 facts from which the main fact may be inferred.
8 Circumstantial evidence is based on inference and
9 not on personal knowledge or observation. The law
10 makes absolutely no distinction between the weight
11 or value to be given to either direct or
12 circumstantial evidence. Nor is a greater degree
13 of certainty required of circumstantial evidence
14 than of direct evidence. You should weigh all of
15 the evidence in this case. And if after weighing
16 all the evidence if you not convinced of the
17 guilt of the defendant beyond a reasonable doubt,
18 you must find the defendant guilty.

19 Now that begs the question what is
20 reasonable doubt in the law. A reasonable doubt
21 is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The state has the
23 burden of proving the defendant guilty beyond a
24 reasonable doubt. Some of you may have served in
25 a civil jury where you were told that it is only

1 necessary that a fact is more likely true than not
2 true. However in a criminal case, the state's
3 proof must be more powerful than that. Proof
4 beyond a reasonable doubt is proof that leaves you
5 firmly convinced of the defendant's guilt. There
6 are very few things in this world that we know
7 with absolute certainty. And in criminal cases
8 the law does not require proof that overcomes
9 every possible doubt. If based on your
10 consideration of the evidence you are firmly
11 convinced that the defendant is guilty of the
12 crime charged, you must find the defendant guilty.

13 If on the other hand, you think there is a
14 real possibility that the defendant is not guilty,
15 you must give this defendant the benefit of the
16 doubt and find him not guilty. And during the
17 trial necessarily, you must determine the
18 credibility of witnesses who have testified in
19 this case. Credibility simply means
20 believability. It becomes your duty as jurors and
21 to evaluate the evidence, to analyze and evaluate
22 the evidence and determine which evidence
23 convinces you of its truth.

24 In determining the believability of a
25 witness who has testified in this case, you may

1 believe one witness over several witnesses or
2 several witnesses over one witness. You may
3 believe part of the testimony of a witness and
4 reject the remaining part of the testimony of that
5 same witness. You may believe the testimony of a
6 witness in its entirety or reject the testimony of
7 that same witness in its entirety.

8 You may consider whether any witness has
9 exhibited to you any interest, any bias, prejudice
10 or other motive in this case. You may also
11 consider the appearance and manner of a witness
12 while on the witness stand. I instruct you and
13 emphasize that the fact that the defendant did not
14 testify is not a factor to be considered by you in
15 any way in your deliberations or in your
16 consideration of the question of guilt or
17 innocence of the defendant. It must not be
18 considered by you in any manner whatsoever.

19 A defendant has the constitutional right
20 to remain silent. And the assertion of this right
21 must not be considered by you in your
22 deliberations. I repeat, under your oath, you are
23 to draw no conclusion whatsoever from the fact
24 that the defendant in this case did not testify.
25 The fact that the defendant did not testify should

1 not even be discussed in the jury room. The
2 burden of proof as I have stated it to you, is on
3 the state. The defendant is not required to prove
4 his innocence. The burden of proof is on the
5 state to prove guilt beyond a reasonable doubt.

6 Rules of Evidence ordinarily do not permit
7 witnessed to testify to opinions or conclusions.
8 An exception to this rule as I told you; is that,
9 there exists from witnesses who are called expert
10 witnesses. A witness who by education and
11 experience has become an expert in some art,
12 science, profession or calling may state an
13 opinion as to relevant and material matter in
14 which the witness claims to be an expert, and may
15 also state the reason for the opinion.

16 You should consider any expert opinion
17 received in the evidence in this case like any
18 other evidence. Give it the weight you think it
19 deserves. If you decide that the opinion of the
20 expert witness is not based on sufficient
21 education and experience or if you conclude that
22 the reason given in support of the opinions are
23 not sound or that the opinion is outweighed by
24 other evidence, you may disregard the opinion
25 entirely.

1 An expert witness' testimony is to be
2 given no greater weight than that of other
3 witnesses simply because the witness is an expert.
4 Further, you are not required to accept an
5 expert's opinion even though it is not
6 contradicted.

7 The indictment in this case charges the
8 defendant Bernard McFadden with the crime of
9 burglary in the second degree. To prove second
10 degree burglary, the state must prove beyond a
11 reasonable doubt that the defendant entered in a
12 building without consent with the intent to commit
13 a crime in the building. A building is any
14 structure where a person lodges or lives. Or
15 where people assemble for the purpose of business
16 or public use. Or where goods are stored.

17 In order to prove that the defendant
18 entered the building, the state does not have to
19 show that the defendant's entire body entered the
20 building. The smallest entry is sufficient. It
21 may be any part of the body such as a hand or a
22 foot or even an instrument such as a hook or other
23 instrument. In addition, the state does not have
24 to prove that force was used to gain entry.

25 Next, the state must proof beyond a

1 reasonable doubt that the defendant intended to
2 commit a crime either a felony or a misdemeanor at
3 the time of the entry. Mere entry into the
4 building without consent, is not burglary. If the
5 intent to a commit a crime is formed after the
6 entry, it is not burglary. On other hand if the
7 defendant intended to commit a crime at the time
8 of entry, it is a burglary even if the intent was
9 abandoned after the entry. It does not matter
10 that the intended crime was not completed. Intent
11 may be shown by acts and conduct of the defendant
12 and other circumstances from which you may
13 naturally and reasonably infer intent.

14 Finally, the state must prove, excuse me,
15 beyond a reasonable doubt that the defendant
16 entered or remained in the building in the
17 nighttime. Nighttime is the period between sunset
18 and sunrise during which there is insufficient
19 daylight to recognize a person's face except by
20 artificial light or moonlight. There are two
21 possible verdicts which you may find in this case
22 on the charge under Indictment 2010-GS-43-257 on
23 burglary in the second degree, not guilty or
24 guilty.

25 Now, Ladies and gentlemen, there is no

1 significance whatsoever in the order that I state
2 these verdicts. It's just that one must be stated
3 first. Now, Ladies and gentlemen, your verdict
4 must be unanimous. All 12 of you must agree on a
5 verdict. Your decision must not be based on
6 sympathy, passion, prejudice, emotion or any other
7 consideration that is not in evidence in this
8 case.

9 Madam Forelady, when the jury reaches a
10 verdict, you will then write the verdict on this
11 verdict form. Knock on the, sign your name, knock
12 on the jury room door. Inform the bailiff that
13 you have reached a verdict. At that time, you
14 will then be received back in the courtroom for
15 publication of the verdict. Ladies and Gentlemen,
16 I am going to ask that you now return to the jury
17 room. But do not begin your deliberations until
18 you have been instructed to do so. There are
19 still a few matters of law that I must discuss
20 with the attorneys.

21 Thank you, Ladies and gentlemen. Return
22 but do not begin your deliberations. Please
23 separate the alternates.

24 (Whereupon, the alternates are put in a
25 separate room.)

1 THE COURT: Are there any additions or
2 exceptions to the charge?

3 MR. GRIFFIN: No, sir, Your Honor.

4 THE COURT: From the defendant?

5 MR. BRUNSON: No, Your Honor.

6 (Whereupon, at 11:45 a.m. jury commences
7 deliberations.)

8 (Whereupon, at 12:40 p.m. jury reached
9 verdict.)

10 THE COURT: I am going to excuse the
11 alternates.

12 (Alternates are excused.)

13 THE COURT: You may bring the jury.

14 (Whereupon, the following takes place
15 within the presence of the jury.)

16 THE COURT: Madame forelady, has the jury
17 reached a verdict in this case?

18 THE FORELADY: Yes, we have.

19 THE COURT: Is it a unanimous verdict?

20 THE FORELADY: Yes, it is.

21 THE COURT: Bailiff, please publish the
22 verdict. The defendant will stand.

23 THE BAILIFF: The State of South Carolina
24 versus Bernard McFadden Indictment No. 2010-GS-43-
25 257. As to the Indictment No. 2010-GS-43-257

1 charges Bernard McFadden with the crime of
2 burglary in the second degree. We the jury
3 unanimously find the defendant guilty. Signed
4 November 19th 2010. Signed by the foreperson
5 India Nelson. Is this your verdict? So say you
6 all. Please signify by raising your right hand.

7 THE COURT: Thank you. Mr. Brunson, do
8 you request polling of the jury.

9 MR. BRUNSON: I do, Your Honor.

10 THE COURT: Please poll the jury.

11 THE COURT: And does either attorney want
12 to examine the verdict?

13 THE BAILIFF: Ladies and gentlemen, when I
14 call your number and name, please stand and raise
15 your right hand.

16 No. 30, Leon Chisholm, is this your
17 verdict and still your verdict?

18 THE JUROR: Yes.

19 THE BAILIFF: No. 119, George Rembert,
20 Jr., is this your verdict and still your verdict?

21 THE JUROR: Yes, sir.

22 THE BAILIFF: No. 53 Anthony Fields, is
23 this your verdict and still your verdict?

24 THE JUROR: Yes, sir.

25 THE BAILIFF: No. 107 India Nelson, is

1 this your Verdict and still your verdict?

2 THE JUROR: Yes, sir.

3 THE BAILIFF: No. 122 Emma Richardson, is
4 this your verdict and still your verdict?

5 THE JUROR: Yes.

6 THE BAILIFF: No. 7 Walter Vaughn, is this
7 your verdict and still your verdict?

8 THE JUROR: Yes.

9 THE BAILIFF: No. 159 Todd Lowder, is this
10 your verdict and still your verdict?

11 THE JUROR: Yes.

12 THE BAILIFF: No. 45 Mathew Driggers, is
13 this your verdict and still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: No. 31 Terry Choice, is this
16 your verdict and still your verdict?

17 THE JUROR: Yes.

18 THE BAILIFF: 153 Ella Williams, is this
19 your verdict and still your verdict?

20 THE JUROR: Yes.

21 THE BAILIFF: No. 133 Brandon Simmons, is
22 this your verdict and still your verdict?

23 THE JUROR: Yes.

24 THE BAILIFF: No. 137 Kenneth Smith, is
25 this your verdict and still your verdict?

1 THE JUROR: Yes.

2 THE BAILIFF: Your Honor, the panel has
3 been polled and the verdict stands.

4 THE COURT: The verdict does stand.
5 Ladies and gentlemen, let me take this opportunity
6 to thank you. This has been a long week. It is
7 never easy to sit in judgment of your fellow
8 citizens. It really isn't. It's not something,
9 the reason we have to subpoena you to come up
10 because most people wouldn't do it voluntarily.
11 But you have been a part of our system of self
12 government that is so crucial. Because in this
13 country is not just for the police to say somebody
14 is guilty. You the jury have listened to the
15 evidence. And you all made that determination.

16 Now I have told you, you couldn't discuss
17 the case with anybody. Many times during this
18 week. That prohibition is now lifted. You may
19 speak to whoever you want to for as long as you
20 want to. Or if they persist in talking to you
21 and you don't want to talk to anyone, let the
22 bailiff know, and he will contact me and I will
23 address that.

24 There is a small amount of money that you
25 receive from your days here. I thought it was 25

1 dollars.

2 THE BAILIFF: It is only 15.

3 THE COURT: The amount of your service has
4 no value. It will end today. So again, thank
5 you. Thank you for your attention in this.
6 Normally I like to take the honor of shaking your
7 hand as you go out. But I think I am developing a
8 cold here, and I don't want to get you all sick
9 since we have holiday times.

10 Now I am going to give the defense
11 attorneys some time. But in about 10 minutes, I
12 am going to pass sentence on the defendant. If
13 you want to stay and see that, we will do it at
14 1:05. And you all can sit in the back of the
15 courtroom if you want to. Or you can go out and
16 have a nice day. But I'm sorry on the county that
17 you didn't get need to get lunch. The lunch is on
18 your own. Thank you very much. Thank the
19 alternates as well. And again, you do not have to
20 serve on jury for the next 3 years.

21 (Whereupon jury is excused.)

22 THE COURT: Post-trial motions?

23 MR. BRUNSON: Your Honor, I don't think
24 the facts substantiated the verdict of the jury,
25 and we would ask for a new trial on that ground.

1 THE COURT: Mr. Griffin.

2 MR. GRIFFIN: Your Honor, we would just
3 ask you to renew your prior rulings. You sent the
4 case to the jury, and they came up with -- during
5 their deliberations they came to a verdict of
6 guilty. And we certainly think there was ample
7 facts to prove that Mr. McFadden is guilty. nwe
8 ask that the motion be denied.

9 THE COURT: Mr. Brunson, the jury looked
10 at all of the evidence. They weighed it. They
11 determined who they thought was believable or not
12 believable. Their determination was found based
13 upon the evidence. Whether it is right one or
14 not, I don't know. But they certainly have
15 sufficient evidence. And that's the way they held
16 it out. I am going to give you about 10 minutes
17 to talk to your client. And at that point and
18 time, I will hear from the state and from you in
19 mitigation before I sentence. The court will be
20 recess for 10 minutes.

21 (Whereupon, the court takes a short
22 recess.)

23 THE COURT: Do you have the sentencing
24 sheet?

25 MR. GRIFFIN: Yes, sir.

1 THE COURT: Do you have the defendant's
2 prior criminal history?

3 MR. GRIFFIN: Yes, Your Honor. In 1993
4 distribution of crack cocaine. Driving under
5 suspension from 1994. Crack cocaine possession
6 from 1995. Burglary in the second degree from
7 1995. Distribution of crack cocaine. Assaulting
8 a police.

9 THE COURT: What year is that distribution
10 of crack?

11 MR. GRIFFIN: Your Honor, the distribution
12 looks to be, they were adjudicated at the same
13 time as the burglaries from 1995.

14 THE COURT: 1995.

15 MR. GRIFFIN: Yes, sir, Your Honor. And
16 assaulting a police officer while resisting arrest
17 from 2003. Driving under suspension from 2008.
18 And, Your Honor, law enforcement would like to be
19 heard in regard to sentencing.

20 OFFICER RICHBURG: Your Honor, if it
21 please the court, throughout the testimony on the
22 case, it was asked how I knew Mr. McFadden, but
23 the jury could not. The reason why I knew
24 Mr. McFadden was on 4/23 of 2009, I was the
25 detective on call that responded to the Corner

1 Pantry at 1175 Loring Mill Road. As I processed,
2 watched video, I saw that it was black male on a
3 to bicycle. Clothing. As I was leaving, I
4 stopped from the store. I observed Mr. McFadden
5 on Loring Mill Road riding a bicycle. He was
6 subsequently arrested and he had 18 packs of
7 cigarettes in his pocket at that time. He was
8 charged and taken to jail on that, to where he
9 was bonded out May 15th.

10 THE COURT: He has not been convicted.

11 OFFICER RICHBURG: No, sir. He has not
12 been convicted on that. But he was currently on
13 bond. He made bond on May 15th, and was still on
14 bond July 3rd when this happened. So the history
15 of that, the fact that he was out on bond on a
16 charge, when he committed this charge. We just
17 ask that you take that into consideration. And it
18 speaks volumes that basically he's thumbing his
19 nose at the system while he is out on bond.

20 THE COURT: Anything further from the
21 state?

22 MR. GRIFFIN: Your Honor, just his prior
23 burglary conviction he received 10 years. We
24 would ask over a repeat burglary, we would ask for
25 the maximum sentence allowed by law on this

1 charge, which is 15 years.

2 THE COURT: The defendant will stand.

3 Mr. McFadden, you have been tried by a jury of
4 your peers. They have found you, they have
5 analyzed the evidence. They have deliberated.
6 And they have found you guilty beyond a reasonable
7 doubt. Is there anything you or your attorney
8 would like to tell the court at this time?

9 MR. BRUNSON: May It Please the Court,
10 Your Honor. Your Honor, my client is 40 years of
11 age. He went as far as a high school graduate.
12 Mainly from the Clarendon County area. Your Honor
13 he, he has got two kids. One of which is 3 years
14 of age. The other is 22. He has had a sketchy
15 employment history. And he has got to a plan now
16 that what he would like to do is get this behind
17 him. Your Honor, he has been driving a truck in
18 the past, and indicates that that's what he wants
19 to do in the future.

20 I think that's within his grasp. And he
21 also wanted me to communicate to the court that
22 his mother, she is a very important figure in his
23 life. He understands the jury has spoken, and
24 that Your Honor must give him a sentence. We
25 would ask the court not to give him the maximum

1 sentence in this case. Although he has been
2 convicted at this point, once he gets this behind
3 him, he will be able to get his life together and
4 get his life on track.

5 So we would ask the court to not I guess
6 impose the maximum sentence in this case, and to
7 consider something less.

8 THE COURT: And would he like to say
9 anything at this time?

10 THE DEFENDANT: Yes, sir. I have a
11 similar conviction. I mean, he indicated I have a
12 prior. Just like not remote, but according to
13 your ruling. But it is distance away from this
14 conviction. That's all.

15 THE COURT: You know, it's always
16 difficult to determine what sentence you should
17 give. Sometimes it's easier to do. But in a case
18 where the jury finds someone not guilty, I don't
19 worry about it. But in this case, Mr. McFadden,
20 you just have a history. You continue to violate
21 the law. You have done this exact same thing
22 before. You were given 10 years and that didn't
23 stop you from doing it. You know, you get out of
24 jail. You're troubled with other things, and then
25 you go back. And then I saw no remorse.

1 I mean you are sorry you got caught. So I
2 find no mitigation here. This is the second time.
3 And I will remind you at this point and time, if
4 you get caught again for burglary second, that
5 that becomes a burglary first, and you can serve
6 the rest of your life in jail. But the Sentence
7 of this Court is you be committed to the State
8 Department of Corrections for a period of 15
9 years. Thank you.

10 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions Court on July 5, 2013 in Sumter County, Sumter, South Carolina.

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

7/5/13

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

FORM 5

STATE OF SOUTH CAROLINA

County of

Sumter

2011 OCT 20

PM

IN THE COURT OF COMMON PLEAS

Bernard McFadden, 199135

Full name and prison number (if any) of Applicant

JAIL
COURT
COUNTY, S.C.2011-CP-43-1952

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

Attached Pages 1 through 9 with 10
Of Detective Irene Culick's PicturesINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2d. Degree Burglary, Indictment Unknown
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 19th, 2010, 15 years - violent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed as untimely Notice of Intent.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 31st, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached pages 1 through 2 of 9 with 10 Pictures
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages 2 through 8 of 9 with 10 Pictures.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 3 Petitions for Writ of Habeas Corpus, S.C. Supreme Court
- ii. 5 Petitions in various U.S. District Courts
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Supreme Court, Columbia
- ii. Charleston, Greenville, Florence and Spartanburg U.S. Dist. Courts
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Unfiled for want of filing fees by clerk, Shearouse.
- ii. No response to 3; 2 are still pending as of today.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 20th, 2011; August 23rd, 2011; other unknown at this time.
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

5 grounds set forth in (10) have been previously presented to S.C. Supreme Court and various U.S. District Courts.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. 5 grounds set forth in 10 have been presented.
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. In S.C. Supreme Court, (3) Petitions for Habeas Corpus
- ii. In various U.S. District Courts, (5) Petitions for Habeas Corpus
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) All presented.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Mr. Willie Brunson, Attorney, The Weeks Law Firm
35 South Sumter Street, Sumter, S.C. 29150
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Mr Brunson represented the Applicant / Petitioner at
both the trial and sentencing proceedings.
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Petitioner/Applicant seeks a new trial regarding Issue #1, #2, #3 and #5; he seeks resentencing to perfect a direct appeal regarding issue #4.

20. Are you now under sentence from any other court that you have not challenged?

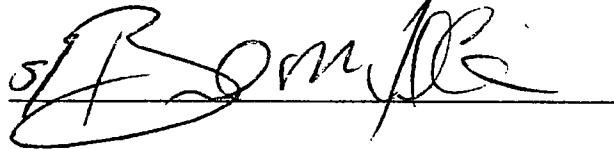
Yes

STATE OF SOUTH CAROLINA)

County of Kershaw)

VERIFICATION

I, Bernard McFadden, 1991/35, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 18
day of October, 2011.

Catherine A. Amos (L.S.)
Notary Public

My Commission Expires My Commission Expires December 22, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2011 OCT 20 PM 1:37

CLERK OF COURT
JULIETTE COUNTY, S.C.

I, Bernard McFadden, 199135, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this

19 day of October, 2011.

Catherine A. Cenera
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

State of South Carolina
County of _____

2011 OCT 20 PM 1:38
In The Court of Common Pleas
Case # _____
SOUTH CAROLINA COUNTY, S.C.

Bernard McFadden, 199135,

Applicant-Petitioner,

2011-CP-43-1952

VS.

State of South Carolina; Warden of

Petition, Application With Memorandum
Of Law, Affidavit In Support With
(10) Pictures Attached And Motion For
Retention Of Court Reporter's Tapes
Respondent. Until Review Of Trial Transcript

Petitioner / Applicant's Allegations

Issue # 1: Perjured testimony where Det. Irene Culick testified I used First Aid kit, when in fact, attached pictures show she moved the kit from somewhere location, in violation of the 14th Amendment rights of the U.S. Constitution.

Issue # 2: Trial Court erroneously ruled that the probative value of my prior August 16th, 1995, burglary conviction (indictment # 95-GS-14-187) out-weighed its prejudicial effect when allowing State to use said conviction for impeachment purposes, resulting into my decision not to testify in my defense, in violation of the 14th Amendment of the U.S. Constitution and State VS Goff, 525 S.E.2d. 246 (S.C. 2000).

Issue # 3: Counsel was ineffective for not investigating to determine whether my prior August 16th, 1995, burglary conviction was more than (10) yrs. old when considering all jail-time credits and
Page 1 of 9 With 10
Pictures

and SCDC disciplinary convictions to determine the amount of good-time and work credits lost to obtain a ruling that said conviction was too remote, in violation of the 6th and 14th Amendment of the U.S. Constitution.

Issue # 4 : Counsel was ineffective for not perfecting the Notice of Intent to Appeal my conviction to obtain appellant review of perjured testimony for suppression, erroneous rulings regarding my prior burglary conviction for impeachment purposes and my claim regarding his alleged ineffectiveness regarding his investigation about the moteness of my 1995 burglary conviction.

Issue # 5 : Counsel was ineffective for not filing a motion to suppress evidence or dismiss the indictment on the grounds of the police's outrageous conduct, in violation of the 6th and 14th Amendment of the U.S. Constitution pursuant to George vs. Government of Virginia Island, 109 F.Supp 2d. 514, affirmed 265 F.3d. 1055 (4th Cir. 2000)

Supporting Facts For Issues

Facts For Issue # 1:

Attached herewith this Petition / Application are (10) pictures of the alleged - staged - burglarized crime scene taken by Det. Irene Culick. Pictures 1, 2 and 3 show Det. Irene Culick taking photos around the store's counter and over the solid floor onto the speckled floor showing a Newport box evenly flushed at the top of a set of lottery tickets. Blood smeared, flushed Newport box appears to have been swipped with a cue tip swab in picture # 4. Picture 5 shows the only spot of blood on the floor with a diameter of about the size of a cue tip swab. Picture # 3 shows the same (2) sets of lottery tickets appearing on the speckled floor moved to

a different location on a solid floor for no apparent reason in picture # 6.

Moreover, picture # 7, 8 and 9 show a First Aid kit box opened with its corner partly over-lapping the shelf while behind 1 of 2 metal poles on shelf. However, a review of the attached picture # 10 clearly shows, in color, no First Aid kit box at this location behind the metal pole on this shelf over-lapping its corner, suggesting Det. Culick or the only other person in the store planted it there (See attached picture # 10 in color clearly showing no First Aid kit box.) Thus, Det. Culick false testimony of kit's location bolstered State's credibility on entry and explains why only (1) spot of blood was found.

Memorandum Of Law

Law For Issue # 1:

Using or planting false evidence in an effort to obtain a conviction violates the Constitution's 14th Amendment. Napue vs. Illinois 360 U.S. 264, 268-70, 79 S.Ct. 1173, 3 LEd 2d. 1217 (1959). Our 4th Circuit U.S. Court of Appeals has held that knowingly false or misleading testimony by a law enforcement officer is imputed to the prosecution for purposes of determining whether there have been a Napue violation. See Boyd vs. French, 147 F.3d. 319, 329 (4th Cir 1998)

To obtain relief on basis of subornation of perjury, petitioner must demonstrate in petition for habeas corpus that witness made false statement, that false statement was material and that false statement was knowingly and intentionally employed by government in order to obtain conviction. Beasley vs. Holland, 649 F.Supp. 561, 566 (4th Cir. 1986). See, for example, Chamberlain vs. Montello, 954 F.Supp. 499, 505 (2d. Cir. 1997) (Habeas relief granted where state trooper admitted that his testimony regarding bando he found at crime scene in a hit and run incident was false

Since he actually removed it from the petitioner's car when it was impounded at State police barracks.) See also U.S. vs. Young, 17 F3d. 1201, 1204 (9th Cir. 1994) (Defendant entitled to new trial based on evidence that detective's testimony regarding location of incriminating note books was false, even if government presented false evidence unwittingly.)

Facts For Issue # 2:

During trial, the State's motion to use the Petitioner/Applicant's prior August 16th, 1995, burglary conviction (indictment # 95-05-14-187) for impeachment purposes was granted by the trial court, a conviction identical to the offense for which he stood trial. The Court ruled that the probative value of said conviction out-weighed its prejudicial effect. Prior to this ruling, Petitioner informed the trial court that the conviction was more than (10) years old and requested new counsel because, among other things, counsel did not investigate to determine whether the prior conviction was, in fact, too remote. Petitioner, during trial, informed the court that because of this erroneous ruling, his decision was not to testify.

Law For Issue # 2:

When a prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission. State vs. Dunlap, 579 S.E.2d. 318, 353 S.C. 359 (S.C. 2003). And since evidence of a similar offense should be admitted only rarely, a similar offense already presumptively barred from admission by rule governing use of prior convictions to impeach a defendant should be admitted even more rarely. State vs. Golf, 525 S.E.2d. 246, Page 4 of 9 With 10 Pictures

337 S.C. 622 (S.C. 2000). See also United States vs. Beahm, 664 F.2d 414 (4th Cir 1981) (4th Circuit U.S. Court of Appeals stating any conviction at least ten years old presumptively prejudice a defendant ... and government must meet heavy burden of rebutting the presumption ... *Id.* at p 417.)

Facts For Issue # 3:

Prior to trial, a pro-se Motion For New Counsel was filed on October 26th, 2010, alleging that trial counsel, among other issues, refused to investigate SDC and Clarendon County Clerk of Court's records to determine whether my prior 1995 burglary conviction (Indictment # 95-65-14-187) was too remote. On November 4th, 2010, the trial court denied this motion and counsel proceeded to trial on November 16th, 2010. After counsel brought forth no information regarding the true max-out date of said prior burglary conviction during trial, Petitioner/Applicant renewed his motion for new counsel on November 18th, 2010; no action was taken on this motion and important testimony regarding a 2002 incident where Det. Culick removed items from the Petitioner/Applicant's home that were not items sought in the 2002 searchwarrant and painted glass shards from business in his bathroom and on his motorcycle pegs in their unprosecuted case #3 27077 / S.C. 0430100 was never given to the jury by the Petitioner/Applicant, as done in the 1st hung jury trial upon jury hearing such testimony on September 24th, 2010.

Law For Issue # 3:

In a post conviction relief proceeding, the Petitioner must meet the ineffective assistance of counsel standard established in Strickland vs. Washington, which requires he show: 1) Counsel's

Page 5 of 9 with 10
Pictures

representation fell below an objective standard of reasonableness and 2) but for counsel's errors, there's a reasonable probability the results of the trial would have been different. Solomon vs. State, 557 S.E2d. 666, 347 S.C. 635 (S.C. 2001). The Petitioner/Applicant submits that trial counsel rendered ineffective assistance regarding efforts to investigate moteness of his 1995 burglary 2d. conviction for which he received (10) years to clear a way to present his testimony regarding Det. Culick, and as a result, the jury was completely ignorant regarding a prior 2002 case of alleged fabricated evidence in connection with Det. Culick, touching basis with factors # 4 and 5 for the trial court's consideration pursuant to Green vs. State, 521 S.E2d. 98, 338 S.C. 428 (S.C. 2000).

Facts For Issue # 4:

Per S.C. Appellate Court Judge John Cannon Few's December 31st, 2010, Order of Dismissal, the grounds for dismissal was due to failure of Appellant to timely serve the Notice of Intent to Appeal on opposing counsel, as provided for in Rule 203 of South Carolina Appellate Court Rules. Counsel was aware of the Petitioner/Applicant's desire to appeal which is supported by the fact that after sentencing, trial judge Young had the Applicant/Petitioner escorted back into the courtroom and instructed him not to contact courtreporter Margaret Sullivan for his trial transcript, witnessed by defendants James Rodgers and Mr. Sumter during their probation revocation hearings.

Law For Issue # 4:

It is well established that the failure of a defense counsel to properly perfect appeal from a criminal conviction constitutes ineffective assistance of counsel. See, for example, Rodriguez vs.

Page 6 of 9 with 10
Pictures

7

United States, 395 U.S. 327, 330, 89 S.Ct. 1715, 1717, 23 L.Ed.2d. 340 (1969); Abels vs. Kaiser, 913 F.2d. 821, 822-23 (10th Cir. 1990). The proper remedy is not a reversal of the conviction, but resentencing by the district court. In Rodriguez vs. United States, Supra, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d. 340, the Supreme Court held that the petitioner was improperly denied his right to appeal and remanded the case to the district court where petitioner was resentenced so that he [could] perfect an appeal in the manner prescribed by the applicable rules. Id. at 330-32, 89 S.Ct. at 1717-18.

Facts For Issue # 5:

The attached (10) pictures demonstrate an obvious-outrageously-staged-burglarized crime scene, particularly where a First Aid kit box has been clearly moved and presented at a location on a shelf (See attached pictures 7, 8 and 9.) when an initial picture does not show its presence at this location (See attached picture # 10.), as described in the above Facts For Issue # 1. Trial counsel reviewed these pictures and was previously asked to file motions for suppression through discussions and written correspondences on grounds of outrageous conduct prior to trial.

Law For Issue # 5:

Integrity of evidence is preserved unless there is showing of bad faith, ill will or proof that evidence has been tampered with. U.S. vs. Mays, 822 F.2d 793 (8th Cir. 1987). Due process clause of the 5th Amendment maybe invoked to suppress evidence or to dismiss indictment when government conduct is so outrageous that it reaches a level of shocking conscience. See

Page 7 of 9 With 10
Pictures

U.S. Vs. Romano, 711 F.Supp. 78 (1989). See also George Vs. Government of Virginia Island, 119 F.Supp. 2d. 574, affirmed 265 F3d. 1055 (4th Cir. 2000) (Evidence seized by investigative techniques so shocking that they violate the universal sense of justice may be suppressed.)

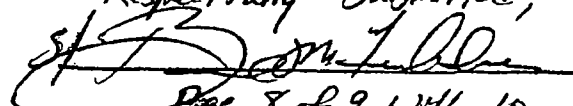
Relief Sought

Petitioner/Applicant seeks a new trial regarding Issues # 1, # 2, # 3 and # 5; he seeks resentencing to perfect a direct appeal regarding Issue # 4.

Motion For Retention Of Court Reporter's Tape Until Review Of Trial Transcript By Applicant

The Petitioner/Applicant moves before this Court, with an attached letter from court reporter Margaret Sullivan's manager, Mrs. Desiree Allen dated March 17th, 2011 (See Attachment B.), for an Order directing Mrs. Sullivan not to destroy tapes of the burglary trial held at the Sumter County Courthouse on November 16th through the 19th, 2010, before Judge Jeffrey Young; and of a pretrial hearing on November 4th, 2010, regarding a Motion for New Counsel before Judge Young that is in possession of that assigned court reporter after transcribing.

WHEREFORE, Petitioner/Applicant prays this Court issues an Order accordingly.

Respectfully Submitted,

 Page 8 of 9 with 10 Pictures

Bernard McFadden, 199135
Petitioner / Applicant

Affidavit of Bernard McFadden,
#199135, Supporting Petition /
Application

Personally appeared Before me, one Bernard McFadden, 199135, who is being duly sworn, deposes and states:

- 1) That I have subscribed the foregoing petition / application.
- 2) That I know the content thereof, alongwith attached (10) pictures and Attachments A and B.
- 3) That it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attached in this petition / application.
- 4) And that the matters and allegations therein, with all the attached (10) pictures and Attachments A and B thereto set forth, are true.

Further Affiant, Sayth Not.

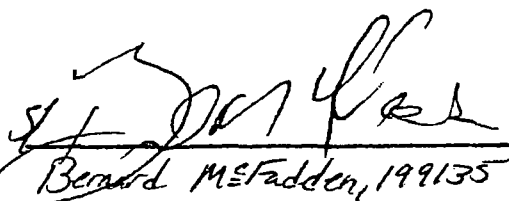
Sworn And Subscribed Before me

This 26th day of July 2011

Mischa Michel

Notary Public For South Carolina

My commission expires: 9-3-2014 Affiant


Bernard McFadden, 199135

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINABernard McFadden, 199135,
[Enter the full name of the plaintiff in this action]

Petitioner,

v.

The State of South Carolina; Henry
McMaster, South Carolina Attorney
General,

Respondent.

Enter above the full name of defendant(s) in this action

Civil Action No. 3:11-cv-00959-JMC
(to be assigned by Clerk)

State Prisoner

BME

Habeas Corpus Petition Under
28 USC § 2254 Seeking
Release From State Custody

I. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise related to your imprisonment? NA Yes _____ No _____

B. If your answer to A is Yes, describe the lawsuit in the space below. If there is more than one lawsuit, describe the additional lawsuits on another piece of paper using the same outline.

1. Parties to this previous lawsuit:

Plaintiff: _____

Defendant(s): None

2. Court: _____

(If federal court, name the district; if state court, name the county)

3. Docket Number: _____

4. Name(s) of Judge(s) to whom case was assigned: None

5. Disposition: _____

(For example, was the case dismissed? Appealed? Pending?)

6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: None

II. PLACE OF PRESENT CONFINEMENT

- A. Name of Prison/Jail/Institution: South Carolina Department of Corrections
- B. What are the issues that you are attempting to litigate in the above-captioned case? 1) Conviction Obtained Via Perjured Testimony; 2) Resolved Upon Receipt of Trial Transcript
- C. (1) Is there a prisoner grievance procedure in this institution? Yes N/A No _____
- (2) Did you file a grievance concerning the claims you are raising in this matter? Yes N/A No _____
- When _____ Grievance Number (if available) _____
- D. Have you received a final agency/departamental/institutional answer or determination concerning this matter (i.e., your grievance)? Yes N/A No _____
- E. When was the final agency/departamental/institutional answer or determination received by you? N/A
- If possible, please attach a copy of your grievance and a copy of the highest level decision concerning your grievance that you have received.*
- F. If there is no prison grievance procedures in this institution, did you complain to prison, jail, or institutional authorities? Yes N/A No _____
- G. If your answer is YES:
- What steps did you take? N/A
 - What was the result? N/A

III. PARTIES

In Item A below, place your name, inmate number, and address in the space provided. Do the same for additional plaintiffs, if any.

- A. Name of Plaintiff: Petitioner: Bernard McFadden Inmate No.: 199135
- Address: _____

In Item B below, place the full name of the defendant, his official position, and place of employment in the space provided. Use Item C for additional defendants, if any.

- B. Name of Defendant: Respondent: Henry McMaster Position: S.C. Atty. General
- Place of Employment: P.O. Box 11549, Columbia, South Carolina 29211
- C. Additional Defendants (provide the same information for each defendant as listed in Item B above): None
- _____
- _____
- _____

IV. STATEMENT OF CLAIM

State here, as briefly as possible, the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an extra sheet if necessary.

Allegations: 1) Conviction Obtained Via Perjured Testimony And Court's Erraneous Rulings (See Det. Irene Culick's 5 Photographs Attached Herewith Petition); and 2) Reserved Upon Receipt Of Trial Transcript.

* Extra Ordinary Circumstances Warranting This *
Court's Equitable or Original Jurisdiction

Petitioner urges intervention of alleged - on-going conspiracy to violate his civil rights in obtaining and securing his 11/19/2010 conviction after a hung jury on 9/24/2010 for burglary 2d. in Sumter County 3rd Circuit Court, S.C. Court of Appeals and S.C. Supreme Court.

Petitioner offers proof in a chain of events out-lined below, one of which resulted into the above conviction he now brings with 5 of Det. Irene Culick's photographs suggesting she staged blood in crime scene, opined by (10) inmates whose signatures are shown below after review, declaring the blood staged crime scene appears obvious:

We too declare that review of photos show a blood smeared Newport box evenly flushed with lottery tickets; smear on Newport box appears to have been swipped with cue tip sized swab and dabbed on floor of business. Excluded photo # 6 shows (2) sets of lottery tickets were moved from one location (a speckled floor) to another location (a solid floor) under penalty of perjury this day of _____ 20__ that the foregoing is true and correct:

1) 5/	#	5) 5/	#
2) 5/	#	6) 5/	#
3) 5/	#	7) 5/	#
4) 5/	#	8) 5/	#

IV. STATEMENT OF CLAIM

State here, as briefly as possible, the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an extra sheet if necessary.

9)S/	#	14)S/	#
10)S/	#	15)S/	#
11)S/	#	16)S/	#
12)S/	#	17)S/	#
13)S/	#	18)S/	#

Doctrine of Extortion / Bad Faith And Harassment Exceptions

Petitioner offers proof upon an Order of discovery from this Court allowing him to inspect documents and obtaining witnesses statements. Petitioner submits a chain of events below that he can prove show Sumter County prosecuting and judicial officials have violated his 1, 4, 5, 6, 8 and 14th Amendment rights under the U.S. Constitution or otherwise prevented him from obtaining access to court over a (10)yr. period from allegations such as fabricating evidence during illegal searches, trial judges making hostile statements and facial expressions toward him before jurors, trial judges making erroneous rulings, court reporters altering trial transcripts and destroying tapes to secure convictions, for examples:

1) in 2002 Det. Irene Culick - the very same person whose photographs are attached - conspired with other detectives who intentionally made a false statement in a searchwarrant affidavit to conduct an illegal search at 1128 Cherryvale Dr., Sumter, S.C.;

2) in 2002 Det. Culick removed items from this location that were not the items sought in the searchwarrant and planted glass shards

IV. STATEMENT OF CLAIM

State here, as briefly as possible, the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an extra sheet if necessary.

- from business in his bathroom and on his motorcycle pegs in their unprosecuted Sumter Police Dept. case #s 27077 / S.C. 0430100; ^(A)
- 3) in 2003 his trial transcript was altered by court reporter Margaret Sullivan for which could have been easily proven and clearly obvious by comparing pages 89 and 90 to page 62 (See Complaint in McFadden vs. Allen, 193 Fed. Appx. 251, 2006 WL 202651 (4th Cir. 2006) to cover-up Judge Clifton Newman's hostile statement before jury witnessed by Catherine Myers; ^(B)
- 4) in 2003 trial judge refused to direct verdict after arresting officer testified [sic] I knew he had the streaks, I went ahead - like I say - I grabbed him by the collar... making the arrest unlawful pursuant to State vs. Nalls, 404 S.E.2d 202 ();
- 5) in 2003 trial counsel was ineffective for failure to object to solicitor's vouching for and putting testimony against that of a police officer as alleged in (PCR) case # 2005-CP-43-0110;
- 6) in 2004 S.C. Court of Appeals denied his direct appeal, despite fact that arresting officer testified he grabbed Petitioner first (See Unpublished Opinion # 2004-UP-502) (Cert. denied Nov. 8th, 2004);
- 7) in 2005 (PCR) court turned blind eye on several meritorious issues alleged in (PCR) application # 2005-CP-43-0110 - particularly the unlawful arrest by first grabbing pursuant to Nalls;
- 8) in 2006 U.S. District Court, Columbia Division, erroneously applied Hick vs. Humphrey to McFadden vs. Allen, case #: 3:05-887-RBH-JRM - despite fact that Mrs. Sullivan and Allen were not prosecuting officials and thus Hick didn't apply;

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① Trial attorney Willie Brunson stated Mrs. Myers didn't remember Culick taking pictures of the motorcycle pegs for which he claims she staged with glass shards.
② Again, Mrs. Myers was never questioned about Newman's conduct, as well as (13) jurors.

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5 pictures

- 9) in 2009 more than (9) different other incidents enumerated in Habeas Corpus Petition on page 4 of 5, a case #: 3:09-2927-RBH-JRM filed in U.S. District Court, Columbia Division, urging its intervention; and 10) in 2010 Attorney Willie H. Brunson deliberately delayed Filing Notice of Appeal of his November 19th 2010, burglary 2d. conviction to prevent appellate review of numerous trial court erroneous rulings, false testimony and a blood staged crime scene to secure his current conviction.

Therefore, Petitioner offers to prove all these extraordinary incidents as causation for this Court's intervention, as other courts have maintained a long history of being bias and partial or otherwise "turning a blind eye" with "deaf ears" to any and all claims he has presented unto them.

A Show Of Irreparable Injury

Petitioner also recognizes the importance of showing an irreparable injury, the traditional prerequisite requirement in obtaining an injunction.

See Ex parte Young, Supra.

Petitioner therefore submits that there will be absolutely no way to obtain direct appellate review of his current conviction as a result of, once again, ineffective assistance of counsel. For an example, a (PER) court may not sit as an appellate court under state law. Thus, meaningful appellate review will be lost - if Petitioner's case is by chance assigned to judges who are not partial or bias. *Petitioner also submits the conspirators next overt act of altering his 2010 trial transcript to secure his conviction will be non-detectable once court report Margaret Sullivan destroys the tapes -

This case urged intervention after Petitioner's bond was changed from 10 to \$50,000 from Det. Robert Richburg vindictively manipulating bonds when a defendant pleads the 5th. Petitioner submitted (3) affidavits - not including his own - from Johnathan Goodman, Jamie Hinnent and Devon Osborne demonstrating the same.

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a scheme Petitioner has previously presented trial counsel Willie H. Brunson with through several written letters in his possession.

Clearly, the threat of losing direct appellate review of numerous erroneous rulings and the tapes to detect transcript alterations are threats against Petitioner's federally protected 5th, 6th and 14th Amendment rights that cannot be eliminated by any state court proceeding and therefore will result into an irreparable injury similar to the ones mentioned in Ex parte Young, 209 U.S. 123, at 145-147 (1908).

Exhaustion State Court Remedies

Third Circuit Trial Court:

Prior to November 16th, 2010, after a hung jury on September 24th, before trial Judge George James, a Motion For New Counsel was denied by trial Judge Jeffrey Young. Between November 16th and 19th, 2010, several erroneous rulings and/or denied motions were made. Numerous hostile facial expressions and gestures designed to demonstrate disbelief of defense theories were exhibited by Judge Young before jury, particularly with his appointed forewoman of the jury who actually giggled with an out burst "oop" while witness Catherine M. Anderson looked on - confused about testifying.

Still being represented by Mr. Willie H. Brunson, Petitioner filed a Renewed Motion For New Counsel, Adding Grounds 5, 6, 7 and 8 on November 18th, 2010, but he was subsequently convicted November 19th, 2010.

Judge Young was unlike Judge James in Petitioner's September 24th, 2010, hung jury trial. Judge James followed S.C. Rules of Judicial Conduct, Rule (), accordingly in regards to not showing judicial bias and partialness toward either party. Although the record will be silent regarding Young's facial expressions and body gestures, testimony from honest jurors may one day come forward confirming Young's conduct.

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5 pictures

Exhaustion of State Court Remedies Continues

S.C. Court of Appeals:

In furtherance of a conspiracy to now secure his unlawful conviction by preventing appellate review, the Notice of Appeal was deliberately not timely filed by Attorney Brinson. Remittitur was sent back down to the lower court on February 7th, 2011, after no petition reinstating this appeal was pursued by Mr. Brinson.

S.C. Supreme Court:

Petitioner presented this very same Petition to S.C. Supreme Court; it was denied

U.S. District Court:

Petitioner next filed this Petition in the United States District Court on the date reflected thereon the Proof of Mailing shown on the very next page, page # 9, under the Relief section.

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5 pictures

V. RELIEF

State briefly and exactly what you want the court to do for you.

Petitioner seeks the following relief: 1) An Order of injunction directing any and all prosecuting officials or witnesses to produce any and all documents or other evidence in their possession for inspection; 2) Issue an Order to Margaret Sullivan to produce transcript and hold tapes until transcript is reviewed by no one other than Petitioner; 3) Upon a showing of constitutional violations regarding his conviction, issue an Order releasing Petitioner; and 4) Issue any other Order this Court deems just and proper.

* Proof of Mailing *

The undersigned hereby certifies that a true copy of this Petition/ (5) pictures have been mailed to the person(s) listed below by depositing properly-addressed-stamped envelope in the U.S. Mail this 11th day of March 20 11: Petition for writ of Habeas Corpus

Sworn And Subscribed Before me

This day of 20

Off. Westley unavailable

Notary Public For South Carolina

My commission expires:

Content and deposit for mailing are witnessed this 11th day of

March 2011 by:

P/ JEW #322712

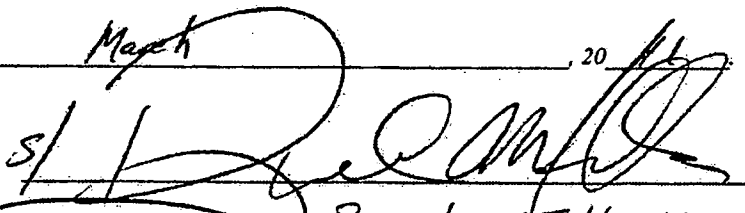
P/ M.D. #289315

1) Daniel Sherouse, Clerk, S.C. Supreme Court, P.O. Box 11330, Columbia, S.C.

29221

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 10th day of March 20 11



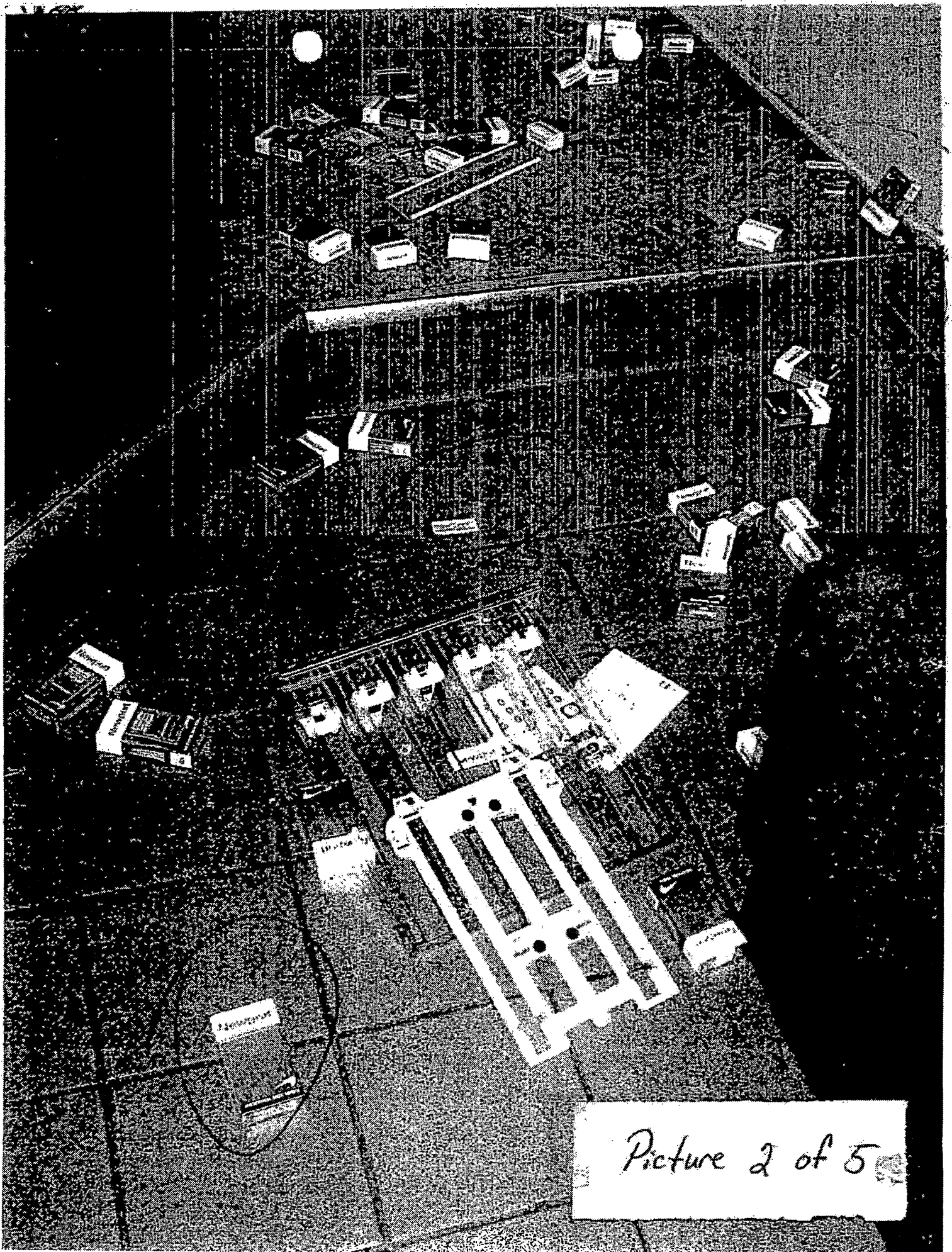
Signature of Plaintiff

Bernard McFadden, 199135

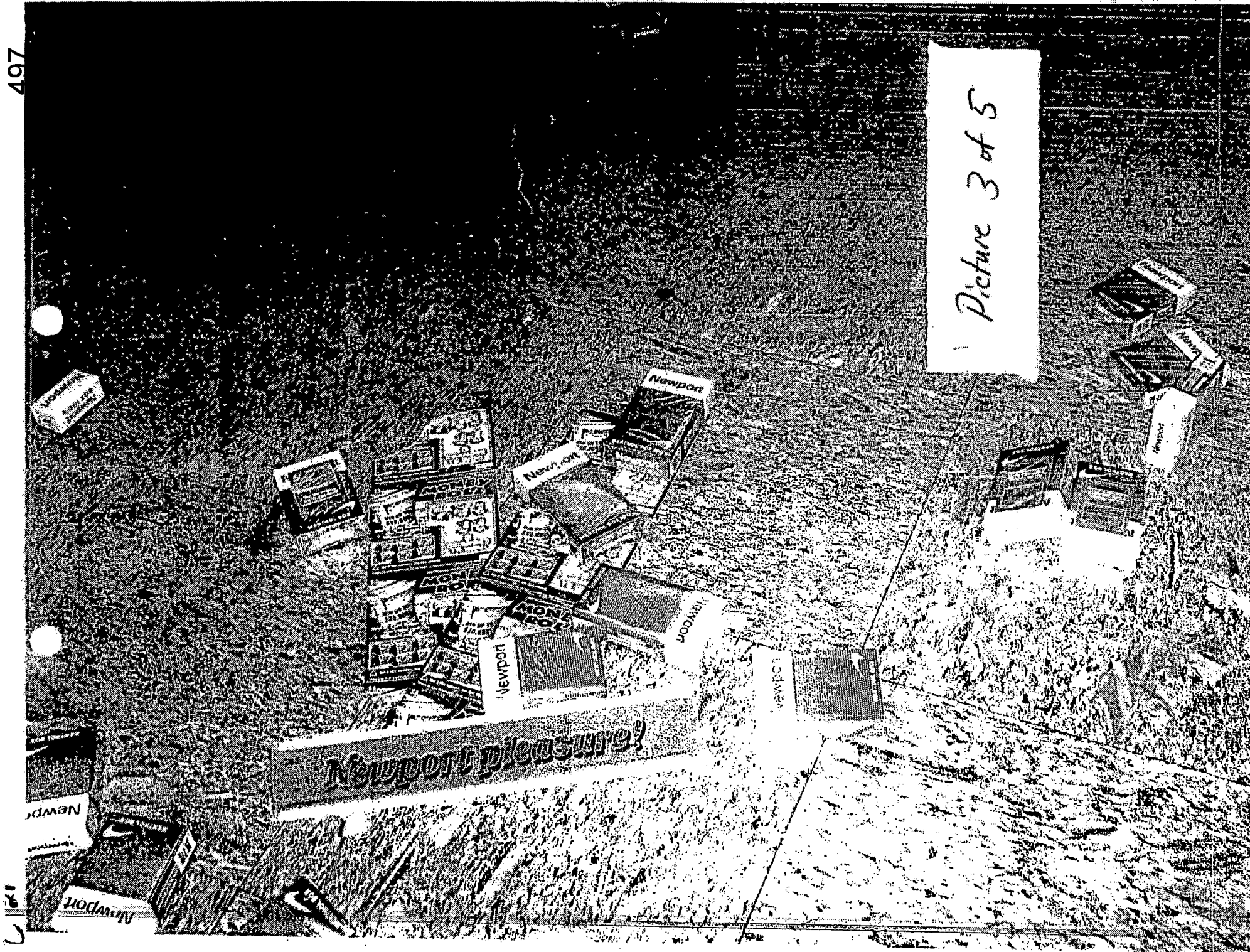
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Picture 1 of 5



Picture 2 of 5



It's not likely possible for this Newport box to have fallen from a shelf and become so evenly flushed with this lottery ticket until you can evenly read 6 chances to win. Doesn't make sense to the Defense; does it make sense to you?

Defendant's
Exhibit M

Newport



MENTHOL BOX 100's

6
CHANCES
TO WIN!

082

BEEN CLAIMED

Picture 4 of 5

400

This alleged blood spot on floor looks like it
could have been smeared with swab gently (dab)
on this floor, unlike a blood droplet.

Defendant's
Exhibit K

Picture 5 of 5

09072555



Picture 6 of 10