

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

V.

LUTHER BRIAN MARCUS (2),

RECEIVED
RESPONDENT, DEC 10 2018
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2017-002623

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
DEFENDANT'S EXHIBIT 10 (AFFIDAVIT FOR GPS ORDER)**

1 1

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2017-GS-39-00183
COUNTY OF PICKENS	)	
	)	
	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LUTHER BRIAN MARCUS,	)	
DEFENDANT.	)	
_____	)	

December 11 and 12, 2017
Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE; and a jury.

A P P E A R A N C E S:

SHANNON SWORDS ODOM, ESQ.
Attorney for the Plaintiff

DAVID D. CANTRELL, JR., ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

P R O C E E D I N G S

(WHEREUPON, the jury panel entered the courtroom at
12:41 p.m.)

THE COURT: Okay. Ladies and gentlemen, welcome upstairs to the courtroom. Sorry I didn't get to meet you downstairs, but to introduce myself, my name is Ned Miller. I am one of your 13th Circuit judges.

I apologize to those of you who are blocked out by this machine. You're the lucky ones, probably. But in any event, I'm glad to be here in Pickens. My main base is in Greenville, but I come to Pickens just as often as they let me, so I'm glad to be here.

I want to tell you that I am holding a term of General Sessions court, also or commonly known as criminal court, and while you all have been qualified to serve generally for the week as jurors, we're now going to begin the process of qualifying you all to serve for this particular case. So in order for us to do that, let me introduce the case to you. This is the case of the State of South Carolina vs. Luther Brian Marcus.

This is an indictment for indecent exposure. This indictment alleges that Luther Brian Marcus did, in Pickens County, on or about the 13th day of December 2016, willfully, maliciously and indecently expose his person in

1 a public place on property of others or to the view of any
2 person on a street or a highway in violation of our
3 statutes and laws.

4 Now, to this indictment, Mr. Marcus has pled not
5 guilty, and as such, certain rights attach to every person
6 charged with an offense, and that is that he is presumed
7 to be innocent unless and until the charging body, in this
8 case the State of South Carolina, can prove to a jury
9 beyond a reasonable doubt each and every element of the
10 offense that he is charged with. Please keep that in mind
11 throughout the course of these proceedings.

12 I would also tell you that this document which I read
13 to you, this indictment is nothing more than it appears to
14 be, which is a piece of paper that contains the
15 allegations made against the defendant, and you should
16 take no inference or make any presumption from the fact
17 that this document has issued. It's just the vehicle that
18 allows this case to wind its way through the court system
19 to arrive here in court for disposition. So please keep
20 that in mind as well.

21 JURY QUALIFICATION

22 THE COURT: Now, before I begin the questioning,
23 which will be pretty brief, I would ask the attorneys to
24 stand and introduce themselves and their client when the
25 time is appropriate.

1 deliberations. If y'all can decide, that would be great.
2 If not, I can help you out with it.

3 Okay. If y'all at this time will stand and your
4 clerk will place you under oath.

5 THE CLERK: Again, after the oath is administered,
6 answer by saying "I will." Raise your right hands.
7 (WHEREUPON, the jury is duly sworn and exits the courtroom
8 at 1:24 p.m.)

9 THE COURT: All right. Anything before we break for
10 lunch?

11 MS. ODOM: Just when do you want us back in the
12 courtroom to handle the two motions?

13 THE COURT: What two motions?

14 MS. ODOM: We have the tracking device motion and
15 then the lineup motion.

16 THE COURT: Okay. Well, just y'all be back at 2:15.
17 45 minutes good?

18 MR. CANTRELL: Yes, sir.

19 MS. ODOM: Yes, sir.

20 THE COURT: Okay. All right. Mr. Crockett,
21 Mr. Conley, y'all are free to go. You can stay and watch
22 any of the proceedings you want, but you've got to be here
23 when that jury's here, okay?

24 Great. Thank you. Y'all have a good lunch.

25 (WHEREUPON, a recess is taken at 1:25 p.m.)

1 (WHEREUPON, proceedings reconvened at 2:22 p.m.)

2 THE COURT: All right. Are you ready to go?

3 MS. ODOM: Yes, Your Honor.

4 MR. CANTRELL: Your Honor, can we approach one
5 second?

6 (WHEREUPON, a bench conference was held off the record.)

7 THE COURT: Mr. Cantrell, I understand you have a
8 motion.

9 MR. CANTRELL: Yes, Your Honor. The motion is that
10 any and all evidence or testimony related to -- or derived
11 from may be more appropriate -- a GPS device that was
12 attached to a vehicle that was driven at times by the
13 defendant, that all such evidence or testimony be
14 suppressed. So it's because of the lack of validity and
15 validity of the affidavit and warrant to secure the GPS
16 monitoring.

17 THE COURT: Well, it's your motion, so . . .

18 MR. CANTRELL: So to that extent, Your Honor, I would
19 ask that Art Taylor step up and be sworn.

20 WHEREUPON,

21 JAMES ART TAYLOR

22 After having been duly sworn, testified as follows:

23 THE CLERK: If you would have a seat and state your
24 name for the record, please.

25 THE WITNESS: James Art Taylor.

DIRECT EXAMINATION

BY MR. CANTRELL:

Q Detective Taylor, you're a detective with the Pickens County Sheriff's Department; is that correct?

A That's correct.

Q And on or about November the 16th of 2016, you were employed as a detective with the Pickens County Sheriff's Department.

A That's correct.

Q And on that date, did you execute and submit -- or submit with the help of the Solicitor's Office an affidavit seeking a warrant for a GPS monitor that related to Luther Brian Marcus?

A Yes, sir.

Q And let me first ask you, do you have a copy of that affidavit?

A I do.

MR. CANTRELL: And, Judge, I don't think you do, so with the solicitor's permission and consent, Your Honor, I would hand up just for the Court's information.

THE COURT: All right.

BY MR. CANTRELL:

Q And did you provide all of the information in that affidavit?

A I did.

1 Q And all of that was in an effort to secure a GPS
2 monitor to be placed on a vehicle, correct?

3 A That's correct.

4 Q And the vehicle was -- or can you tell us what
5 vehicle that was?

6 A That vehicle is a 2006 Ford F150 truck with a tag
7 number [REDACTED] that had been driven by Mr. Marcus.

8 Q Okay. It had been driven by him but it was not
9 titled to him; is that correct?

10 A That's correct. It's titled to a Calvin and I don't
11 remember the female's name. Fortescue.

12 Q And just being simply that, Ms. Fortescue is a
13 relative of Mr. Marcus; is that correct?

14 A Correct.

15 Q Did you determine or did you present as truth that
16 Mr. Marcus was the only person that drove that vehicle?

17 A I presumed it as that's the vehicle that I have seen
18 him in and also that he had been stopped in on previous
19 occasions.

20 Q So you knew that he was driving that vehicle on
21 occasion, correct?

22 A That's correct.

23 Q Okay. And the affidavit that you have indicates that
24 it was submitted -- signed and submitted on November the
25 16th of 2016; is that correct?

1 A That's correct.

2 Q And the first four or five paragraphs basically just
3 set up who you are and why you're the one presenting this
4 affidavit; is that correct?

5 A Yes, sir.

6 Q Nothing specific about the allegations?

7 A That's correct.

8 Q Okay. Starting with Paragraph Number 6, you have set
9 out in Paragraph 6 through 13 allegations pertaining to a
10 separate incident in each paragraph that related to
11 convenience store break-ins or robberies; is that correct?

12 A That's correct.

13 Q In Paragraph 14, you indicate that these eight
14 burglaries appear to follow the same modus operandi to
15 believe that they are related. That was your statement?

16 A Yes, sir.

17 Q Now, other than the fact that they were all
18 convenience stores, there is no one trait or no one fact
19 that links all of these convenience store robberies, is
20 there?

21 A Just the entry, the way entry was made except for one
22 of the burglaries. One was through a front door when all
23 the rest were going through the wall of the business.

24 Q Okay. There was one where entry was made by prying
25 open the front door?

1 A The front door. That's at the M Mart, correct.

2 Q And then the burglary at Holly Springs General Store
3 was through a window.

4 A Through a boarded-up window.

5 Q Okay. And Number 10, Stop-A-Minit, was a breaking
6 into an adjacent building and then coming through a wall.

7 A Coming through a wall, correct.

8 Q And one was a break-in through a wall in a cooler,
9 and the others were break in through walls -- exterior
10 walls, I guess would be the most accurate way; is that
11 correct?

12 A That's correct.

13 Q So the points of entry obviously came from outside to
14 inside ---

15 A Correct.

16 Q --- but the points of entry were not the same on all
17 of these at all, were they, other than from being outside
18 to inside the building?

19 A Other -- I mean, went through the wall.

20 Q Or a window or a door?

21 A There was one window and one door. The rest were
22 through the walls.

23 And if I can say, the one that went through the door
24 appears to be the same person that went through the cooler
25 that went through the wall at the one in Central, also in

1 video.

2 Q All right. And that --

3 A Monterrey's. This happened on the same night.

4 Q Okay. So you would relate those two -- that's in
5 Paragraph 12 and 13; is that correct? M Mart and
6 Monterrey?

7 A That's correct.

8 Q You indicate in Paragraph 16 that the defendant,
9 Mr. Marcus, was arrested in 2008 but that he employed a
10 unique method of entry which consisted of breaking through
11 cinder block walls. Is it your testimony that all
12 break-ins in Pickens county that went through cinder block
13 walls were committed by Luther Marcus?

14 A No, sir.

15 Q Is it your testimony that after he was incarcerated
16 in 2008 and prior to his release in 2016, that there were
17 no break-ins in convenience stores that went through
18 cinder block walls?

19 A We probably had a handful since he's been in prison.

20 Q So no others through cinder block walls?

21 A That's correct.

22 Q Now, is it your testimony that is a unique way to
23 break into a convenience store? Is that your belief?

24 A Yes, sir.

25 Q And do you know of your own knowledge or had you ever

1 checked -- strike that. Let me back up.

2 Are you aware of the pages of entries if you Google
3 breaking into walls into convenience stores that there are
4 pages upon pages of information about that method of
5 entry?

6 A In Pickens county?

7 Q I'm talking about that method of entry in general.

8 A No. I have not searched that.

9 Q And it was in Paragraph 17 you're stating to the
10 Court at the time of this affidavit that due to the fact
11 that Marcus was recently released from prison and that a
12 very short time afterwards crimes which follow this method
13 of operation utilized by Mr. Marcus, it was reasonable to
14 believe that he was committing these crimes that you were
15 investigating. Is that the basis for your warrant?

16 A Reasonable to believe that he was a viable suspect.
17 That's correct.

18 Q And you based all of that exclusively on your
19 investigation of these eight break-ins.

20 A On these eight break-ins along with forensic -- our
21 forensics personnel.

22 Q Okay. But where is the forensic personnel referred
23 to in your affidavit presented to the judge?

24 A It's not.

25 Q So on this warrant, what you presented to the Court

1 was exclusively based on your opinion of his method of
2 operation, his release from prison and the videos that you
3 had seen.

4 A Correct.

5 MR. CANTRELL: Your Honor, with the Court's
6 permission, may I approach the witness?

7 THE COURT: Sure.

8 BY MR. CANTRELL:

9 Q Let me ask you to look at this map of Pickens county.
10 And as I call out the addresses or locations of these
11 break-ins, can I ask you to mark them with a pen at your
12 best approximation of where they would be on that map?

13 A Yes, sir.

14 Q I'm confident you're pretty thoroughly familiar with
15 Pickens county geographically.

16 301 Ann Street in Pickens. If you will put a small
17 Number 6 by that for the paragraph that it's referred to.

18 A Oh, a 6.

19 Q 2304 Farris Bridge Road, Easley.

20 A What number?

21 Q 2304 Farris Bridge Road, Easley. That would be the
22 One Stop.

23 A So you want it by number that I have it in here
24 or ---

25 Q Just whatever, where you think or where you best

1 believe that location is on that map. I'm asking you to
2 mark that point, and then you'll put a Number 7 beside it.

3 A A Number 7.

4 Q But the address is 2304 Farris Bridge Road. And that
5 would be Number 7.

6 A Okay.

7 Q Now, this will be Number 8, but the street address is
8 2800 Greenville Highway, Easley. That is the Bi-Fast
9 location.

10 Number 9 would be street address 625 Sheffield Road,
11 Easley.

12 Number 10 will be 301 Summit Drive, Liberty. That's
13 the Stop-A-Minute.

14 Number 11 will be the Holly Springs Grocery. That is
15 at 6491 Highway 11, which is also Number 11.

16 Number 12 is the M Mart, 5798 Moorefield Memorial
17 Highway, Liberty.

18 And Number 13 will be 1710 West Main Street, Central.
19 That's the Monterrey's location.

20 MR. CANTRELL: Your Honor, if I may have a minute, I
21 would like to be able to show this while I talk to him on
22 this screen, if that's all right with the Court. >

23 THE COURT: Okay.

24 MR. CANTRELL: Your Honor, I apologize. I do not
25 know how to do this. Thank you.

1 If I may approach again.

2 BY MR. CANTRELL:

3 Q Okay. If I can go back through very briefly,
4 Number 6, the Blue Ridge Produce is in Pickens. That
5 would be this location here (indicating); is that correct?

6 A That's correct.

7 Q And then Farris Bridge Road, Easley, that's Number 7?

8 A Yes. I did circle that one. I'm sorry.

9 Q That's this one here (indicating).

10 A Yes.

11 Q If you don't mind, I'll circle that one.

12 Number 8 is Bi-Fast, Greenville Highway in Easley.
13 That's this (indicating) location?

14 A Correct.

15 Q Number 9 is Sheffield Road in Easley. That's over
16 here (indicating).

17 A Correct.

18 Q Number 10 is Summit Drive, Liberty. Would that be
19 this (indicating) location?

20 A Correct.

21 Q Number 11 would be up here on Highway 11.

22 A That's correct.

23 Q That is the Holly Springs General Store.

24 A Yes.

25 Q And then the last one is down here (indicating) in

1 Central; is that correct?

2 A That's correct.

3 Q Down here (indicating).

4 A Did you -- the M Mart?

5 Q Number 12. I'm sorry.

6 A Yes. It's in the middle of 178.

7 Q Oh, yeah. Right there (indicating).

8 A Yes.

9 Q Okay. So those are all eight locations. And in
10 Paragraph 14, you reference that as being in geographic
11 proximity to one another; is that correct?

12 A Yes, sir.

13 Q Now, they're all in Pickens county, but they are in
14 all those eight separate locations; is that correct?

15 A That's correct.

16 Q Now, in Paragraph 7, you reference a pickup truck
17 picture that was taken by a game cam or deer cam?

18 A That's correct.

19 Q And was that related to any other incidents or just
20 to that location, or did you believe it was related to any
21 of the other incidents?

22 A I believe there was a truck that was related to other
23 incidents, but for that deer camera itself, that was from
24 the One Stop convenience store here.

25 Q And you believe that the truck was involved in all

1 those?

2 A I do.

3 Q We just asked you first when I put this up if you can
4 identify it or had seen it before.

5 A That's the vehicle from the deer -- from the game
6 cam.

7 Q Okay. From that -- just looking at this picture, can
8 you tell what the make and model of that truck is just
9 from looking at this picture?

10 A Just from looking at the picture, at -- at beginning,
11 no.

12 Q Can I ask you, if you would look at this closely, can
13 you tell me what that is right there (indicating)?

14 A That is -- from the best that we could tell, it's a
15 reflection from the camera when it was -- when the picture
16 was taken.

17 Q I'm talking about this square.

18 A Yes.

19 Q Y'all think that looks like a license plate?

20 A No, sir.

21 Q And why not?

22 A Because that's not where a license plate belongs on a
23 vehicle.

24 Q Even though some pickup trucks don't have license
25 plates on the back tailgate?

1 A No, sir.

2 Q None at all?

3 A None that I've observed.

4 Q Is this a picture that you took of what you believe
5 to be the vehicle that Luther Marcus drives?

6 A That's correct.

7 Q And regardless of placement of license plate, this
8 license plate is down here on the bumper.

9 A That's correct.

10 Q And it would be your testimony, or more importantly
11 what you presented to the judge for this affidavit, that
12 these are the same vehicle?

13 A That's correct.

14 Q Whereas these lights appear to be all white, these
15 are red, and whereas this appears to be -- could appear to
16 be a license plate and this appears to be the license
17 plate on the back bumper.

18 A Okay. The whiteness, that's also a black-and-white
19 picture. It's not a color picture. So it would -- it
20 would appear to be white when there's a flash when you hit
21 the brake lights on a black-and-white camera.

22 Q But you are telling me that no pickup trucks
23 whatsoever have license plates on the tailgate?

24 A That I've seen, no, sir. Especially in the middle of
25 a tailgate.

1 Q But you cannot conclusively state that that is not a
2 license plate on that tailgate, can you?

3 A I can't 100 percent.

4 Q Now, you have indicated that there are pictures of
5 suspects from these videos that you say show a remarkable
6 resemblance to the defendant; is that correct?

7 A That's correct.

8 Q Have you seen photographs or videos similar to this
9 before?

10 A I have.

11 Q Are you familiar with this?

12 A I am. That's the one from Monterrey's.

13 Q Is it your testimony that you believe that to look
14 similar to Luther Marcus?

15 A That exact picture there, no. There was other
16 pictures that we were able to get of the face area.

17 Q Do you have any of those here today?

18 A I don't have it with me. No, I don't.

19 Q Let me back up. Just for reference, this is the
20 picture of Luther Marcus that was taken on or about
21 December 13th here in the courthouse; is that correct?

22 A That's correct.

23 Q So that would be your suspect?

24 A Correct.

25 Q Do you see any resemblance in those two individuals?

1 THE COURT: Where are we going with this? This is a
2 motion to suppress based on a warrant.

3 MR. CANTRELL: Based on a warrant where they say this
4 is the suspect, the defendant in these photographs, that
5 do, in these photographs ---

6 THE COURT: Well, you're asking for a factual
7 determination. This is a legal question. So ---

8 MR. CANTRELL: And, Your Honor, all I want to do then
9 is ask questions about these, the photographs of the
10 suspects in these break-ins and how they may or may not be
11 considered to look like the defendant, because that is the
12 basis for their GPS warrant is that this -- they're saying
13 this is the defendant. And I would ask the Court to look
14 and consider that that is not, and for that reason, there
15 was insufficient basis for the warrant.

16 THE COURT: That there's no probable cause?

17 MR. CANTRELL: Correct.

18 THE COURT: That's where we're going? That's opinion
19 testimony.

20 All right. Speed it up. This is taking way ---

21 BY MR. CANTRELL:

22 Q Is this another picture from one of the locations?

23 A I believe that's from the same place, Monterrey's, if
24 I'm not mistaken.

25 Q And is this from one of the locations?

1 A Yes, sir..

2 Q And is this from one of the locations?

3 A Yes.

4 Q Is this from one of the locations?

5 A Yes.

6 Q Do you believe you have any photographs that show a
7 better perspective on the suspect in these break-ins ---

8 A I do.

9 Q --- than these that were shown?

10 A Yes.

11 Q Do you have any photographs from any of these
12 locations where the suspect did not have a mask on?

13 A No, sir.

14 Q After this affidavit was presented, the warrant was
15 signed that same day, I believe; is that correct?

16 A Yes, sir.

17 Q That would be November the 16th?

18 A Yes, sir.

19 Q And what date -- or on what date did you or someone
20 with your knowledge attach the GPS to the vehicle in
21 question?

22 A December 8th.

23 Q Was there any reason for such a delay?

24 A Yes, there was.

25 Q And what was that?

1 A That was during the Pinnacle fire. We had to leave
2 from what we were doing in office to go assist on it.

3 Q On what fire? I'm sorry.

4 A Pinnacle fire.

5 Q Oh, okay. Did you have, when you came back, an
6 opportunity to go back and seek to update or freshen up
7 the warrant? Or could you have done that to make it
8 closer in time to the date that the GPS was attached?

9 A I'd already had it signed, so that's -- when we got
10 done with that detail, that's when we had it placed back
11 on.

12 Q So you're saying you could not and did not attach the
13 GPS within ten days of the signing of this warrant?

14 A That's correct.

15 Q Now, on December the 13th, did you or someone from
16 the Sheriff's Department have physical contact with the
17 truck involved in this case?

18 A Yes.

19 Q And what happened on that date, the date of the
20 alleged incident that we're in trial for?

21 A That's the date where we had to replace the tracker
22 because the battery was running low on that -- on the
23 tracker that was on the truck.

24 Q And where did that take place?

25 A Where did we replace it?

1 Q Yeah. Where were you? Where was the truck when it
2 was replaced?

3 A When it was replaced, it was in the parking lot here
4 at the courthouse on the other side of the road here.

5 Q How long does it take to do that?

6 A It doesn't take but probably 45 seconds.

7 Q And was anyone around when you did that? Other than
8 law enforcement, was anyone else around or nearby?

9 A Not that I observed.

10 MR. CANTRELL: Your Honor, if I can take a moment,
11 let me, if I can, ask the solicitor to review these. I
12 would like to have them marked and submitted to the Court,
13 but I'd like to let the solicitor look at them first.

14 (Pause in proceedings.)

15 MR. CANTRELL: Your Honor, with the Court's
16 permission, I would ask that these be marked. I did note
17 just now that I had written on the back of one of them.
18 If we can have it marked on the front, I can eradicate
19 that at some point. It's just my notes to myself, quite
20 frankly. But it's the only copy I have. I can make a new
21 copy, if you want.

22 THE COURT: For what purpose are we marking these?

23 MR. CANTRELL: I'm going to ask that they be admitted
24 into evidence for the purposes of this hearing.

25 THE COURT: Okay. Can you run one quick copy? All

1 You're interested in is the front, right?

2 MR. CANTRELL: Yes.

3 THE COURT: Okay.

4 MR. CANTRELL: It would be best if it was color, and
5 I don't know if we can do that or not.

6 THE CLERK: I don't have a color copier.

7 THE COURT: I don't know what to tell you. They're
8 not going to the jury, so . . .

9 MR. CANTRELL: Oh, no. This would not be for the
10 purpose for the jury anyway. If it's not going to the
11 jury, nobody objects, I'll just submit it this way.

12 THE COURT: Yeah. That's fine

13 (WHEREUPON, Defendant's Exhibit Numbers 1 through 9 were
14 marked for identification.)

15 BY MR. CANTRELL:

16 Q Just for clarification, we have Exhibit 1 is a
17 picture of the pickup truck taken here in this courthouse
18 parking lot; is that correct?

19 A That's correct.

20 Q And Number 2 is the game camera of the truck that was
21 alleged to be involved in one of the break-ins.

22 A Correct.

23 Q And then 3 through 8 are the pictures from the video
24 cameras at the various location as well as the photograph
25 of Mr. Marcus here at the courthouse.

1 A That's correct.

2 Q And 9 is the map where you marked these locations.

3 A Yes, sir.

4 Q Now, in your affidavit that was presented and you
5 talk about the resemblance of this individual to Luther
6 Marcus, did you, at any point in this affidavit, state
7 that all of the pictures or videos of the suspect had the
8 suspect wearing a mask?

9 A No, I did not.

10 Q So your affidavit was to secure the GPS based on your
11 statements that this defendant, Luther Marcus, was
12 connected to these eight specific break-ins. Is that the
13 point behind it?

14 A That's my reasonable belief, yes.

15 Q And you did that based on the videos and the pictures
16 from the video, or the videos that we've seen pictures
17 from. You based that on an alleged method of operation,
18 an alleged geographic similarity, and if you get to the
19 pickup truck, an allegation that that is the same pickup
20 truck that's in the picture here from the courthouse.
21 Those were the bases for your presentation to Judge
22 Gravely?

23 A Not the pictures that you showed up here of the
24 person. There's another -- couple of other pictures that
25 I had are the ones that I based it on.

1 Q And you say you do not have those today?

2 A I do not have them with me. No, sir.

3 Q But it was your testimony that these videos bore a
4 striking resemblance to this defendant.

5 A That's correct.

6 Q And the pictures you do not have here today, the
7 suspect is wearing a mask.

8 A Stockings, like pantyhose.

9 THE COURT: All right. Anything else?

10 MR. CANTRELL: No questions. No further questions,
11 Your Honor.

12 THE COURT: You have any questions?

13 MS. ODOM: Your Honor, I can ask questions, or if you
14 think there's sufficient testimony on the record, I can go
15 ahead and make my argument.

16 THE COURT: That's up to you. Whatever you want to
17 do.

18 CROSS EXAMINATION

19 BY MS. ODOM:

20 Q Can you just tell us about your experience? How long
21 have you been an investigator?

22 A Since 2009.

23 Q And how long have you been working in the Sheriff's
24 Office?

25 A For 25 -- 24 years now.

1 Q Can you just ballpark at how many burglaries or how
2 many crimes in general you worked?

3 A Crimes in general, we're talking over -- it used to
4 run around 250 to 300 a year.

5 Q How about burglaries?

6 A Burglaries usually ran around half of those.

7 Q So would you say you have plenty of experience in
8 burglaries?

9 A Yes, ma'am.

10 Q And is it your -- would you say that you felt like
11 you had probable cause that information gained from the
12 tracking device would be relevant and help you in an
13 ongoing criminal investigation?

14 A Yes, ma'am.

15 MS. ODOM: Nothing further, Your Honor.

16 THE COURT: All right. And you've known Mr. Marcus
17 for how long?

18 THE WITNESS: I have not known Mr. Marcus personally
19 myself.

20 THE COURT: Okay. But have you ever observed him
21 before?

22 THE WITNESS: In other cases?

23 THE COURT: Yeah.

24 THE WITNESS: No, sir. That was other personnel in
25 our division.

1 THE COURT: Okay. All right. Any other questions?

2 MR. CANTRELL: No, Your Honor.

3 THE COURT: All right. Thank you. You can step
4 down. Thank you.

5 Anything else?

6 MR. CANTRELL: Nothing Your Honor.

7 THE COURT: All right. Why would I throw it out?

8 MR. CANTRELL: Your Honor, because the affidavit that
9 the search warrant was based on was complete with
10 misstatements, not just opinion but just misstatements and
11 inaccuracies that led the judge who was seeing it who did
12 not have the benefit of video, did not have the benefit of
13 pictures to issue this.

14 I submit that the picture of the truck conclusively
15 shows it was not the same truck. There was not a square
16 reflection on the back of a truck in any type of photo,
17 even a game cam. That was a license plate, and the
18 license plate on the subject truck here was in a totally
19 different location. No pictures involved in this case
20 that have been presented to the Court come anywhere close
21 to appearing to be Luther Marcus, and the judge was told
22 that they did. They were told it was the same truck, and
23 it was not. They were told it was in geographic
24 proximity, and the markings on that map show that they
25 were all over Pickens county, none of them within less

1 than approximately five to seven miles of each other. And
2 this is not a large county.

3 We're told about a method of operation that allegedly
4 this defendant used eight or nine years ago, ten now,
5 which was breaking through a wall, and that is something
6 that everybody knows how to do, everybody -- anybody
7 that's broken into a convenience store could have done,
8 and many have done. There is nothing unique about this
9 method of operation as far as the break-ins go.

10 We heard nothing, no testimony of any sort to say
11 that Mr. Marcus was ever charged to this date for any
12 break-ins with or without GPS monitoring, and that they
13 had probable cause to believe it was him to get a search
14 warrant. They should have had probable cause to ask for
15 an arrest warrant, and they did not.

16 And just, again, I think it's significant.
17 Paragraph 18: a striking resemblance to Luther Brian
18 Marcus. That's -- that's going well past I think it looks
19 like him or it could be him. The same thing about the
20 truck.

21 It's just that this affidavit is full of statements
22 that the pictures and the testimony today show were not
23 accurate, and an inaccurate affidavit should be sufficient
24 and does not give probable cause to believe that Luther
25 Brian Marcus was involved in those break-ins at all. No

1 probable cause at all.

2 THE COURT: All right. Well, I'm going to decline to
3 suppress. I think it's a matter of subjective opinion,
4 and so I'm not going to suppress.

5 Anything else?

6 MS. ODOM: Nothing on that matter. We have the photo
7 ID lineup.

8 THE COURT: Let's make it quick.

9 MR. CANTRELL: No more motions for the defendant,
10 Your Honor.

11 MS. ODOM: The State calls Noe Suddeth.
12 WHEREUPON,

13 NOE SUDDETH

14 After first having been duly sworn, testified as follows:

15 THE CLERK: If you'd have a seat, and state your name
16 for the record, please.

17 THE WITNESS: Noe Casey Suddeth.

18 DIRECT EXAMINATION

19 BY MS. ODOM:

20 Q Where do you work now?

21 A Seneca Police Department.

22 Q And where did you work before then?

23 A City of Pickens police.

24 Q Were you working there in December of last year?

25 A I was.

1 (WHEREUPON, State's Exhibit Numbers 1 and 2 were marked
2 for identification.)

3 BY MS. ODOM:

4 Q All right. Officer Suddeth, did you have the
5 opportunity to work on the case that we're here about
6 today?

7 A I did.

8 Q And were you involved in the photo lineup?

9 A Yes.

10 Q Tell me about your involvement with that.

11 A I received it from my supervisor, Detective Byers,
12 and I gave it to the person that witnessed the crime.

13 Q I'm going to show you what's been marked as State's 1
14 and 2 for purposes of this hearing. Tell me what Number 1
15 is.

16 A Which one are you talking about?

17 Q Right here. Tell me what this is.

18 A That's the form they sign once they identify the
19 subject.

20 Q All right. And then what is Number 2? What's that
21 piece of paper?

22 A That's the actual photo lineup.

23 Q All right. Can you tell me the date that you showed
24 the witness the photo lineup?

25 A I believe it was December 15th.

1 Q Do you know the time?

2 A I believe it was around 12:30.

3 Q And what location were you at?

4 A We were at the Pickens Middle School.

5 Q And how long had that been since the crime
6 occurred?

7 A I believe it was the third day.

8 Q Who were the witnesses on the photo lineup?

9 A That watched me give it or the one that did it?

10 Q Who watched you give it?

11 A That would have been the principal at the school.

12 Q What's her name?

13 A Ms. Stapleton.

14 Q And who was the witness that you showed the photo
15 lineup to?

16 A Sammy Owen, the assistant principal.

17 Q What, if anything, did you tell him before you showed
18 him the lineup?

19 A I just laid it on the table and told him to take his
20 time, look at every picture.

21 Q All right. And how many photos are displayed?

22 A Six.

23 Q And are they all on the same page?

24 A Yes.

25 Q Can you tell me the nature of the photos you used?

1 A They're all full facial pictures, similar that they
2 have facial hair, or color hair. Everything's about the
3 same. Approximate same age.

4 Q And are the photos displayed in a non-suggestive
5 manner?

6 A Yes, ma'am.

7 Q Did you influence the witness in any way to pick out
8 any particular person?

9 A No, ma'am.

10 Q And you didn't show him pictures before -- you didn't
11 show him pictures of the person before this?

12 A No, ma'am.

13 Q All right. Did he pick out anyone in the lineup?

14 A Yes, ma'am. He picked out Number 4.

15 Q Okay. And how long do you think it took him to pick
16 him out?

17 A Somewhat immediately.

18 Q And is the person he picked out in the courtroom
19 today?

20 A Yes, ma'am.

21 Q And can you point to him?

22 A The defendant (indicating).

23 MS. ODOM: And, Your Honor, if the record could
24 reflect he's pointing to the defendant.

25 THE COURT: Yes.

1 BY MS. ODOM:

2 Q What was the witness's reaction upon picking out the
3 defendant?

4 A He was obviously, you know, excited. His personality
5 is kind of like, you know, hey, that's him, definitely
6 him.

7 Q Okay. So he was pretty certain?

8 A Yes, ma'am.

9 MS. ODOM: Please answer any questions that
10 Mr. Cantrell has for you.

11 CROSS EXAMINATION

12 BY MR. CANTRELL:

13 Q Now, was this the first time you had met Mr. Owen?

14 A I worked with him for a few months before.

15 Q Was anyone with you when you showed him these
16 pictures other than the principal?

17 A It was just me, Mr. Owen and Ms. Stapleton.

18 Q And who had arranged this meeting?

19 A At the school?

20 Q Yes.

21 A I did.

22 Q And at whose direction did you arrange it?

23 A Per Detective Byers.

24 Q Are you aware of any communication that anyone else
25 would have had with Mr. Owen about this case?

1 A No, sir.

2 Q I'm sorry. I think you've answered this, but the
3 photo lineup, it was put together by Detective Byers or
4 requested by Detective Byers, I believe.

5 A Yeah. He submitted it to SLED which they gave to me.

6 Q Was there any statement by Mr. Owen as to whether he
7 knew this individual or anyone else in the photo lineup?

8 A No, sir.

9 MR. CANTRELL: No further questions, Your Honor.

10 THE COURT: Anything else?

11 MS. ODOM: No, sir.

12 THE COURT: Okay. You can step down.

13 Any motions?

14 MS. ODOM: Your Honor, I make the motion to have the
15 photo lineup meeting reliable ---

16 THE COURT: Well, do you object to the photo lineup?

17 MR. CANTRELL: I cannot consent, so yes, I object.

18 THE COURT: Well, Okay. I'm going to find that it
19 was reliable and it wasn't overly suggestive.

20 Are y'all ready to go?

21 MS. ODOM: Yes, sir.

22 THE COURT: Okay.

23 MR. CANTRELL: Your Honor, can we approach one second
24 before we do that?

25 THE COURT: Okay.

1 MR. CANTRELL: I have just one quick question.

2 (WHEREUPON, a bench conference was held off the record.)

3 THE COURT: And the foreperson is Sonya Caldwell.

4 (WHEREUPON, the jury entered the courtroom at 3:12 p.m.)

5 (WHEREUPON, Court's Exhibit Number 1 was marked for
6 identification.)

7 THE COURT: All right. Ladies and gentlemen, thank
8 you for your patience. One thing I forgot to tell you is
9 that from time to time, we have issues that we have to
10 take up outside your presence that might involve, for
11 instance, some disputed piece of evidence that may or may
12 not constitutionally be proper to be admitted, and, of
13 course, you can understand why we need to discuss those
14 things out of your presence. So I thank you for your
15 patience. But I will tell you that now we are ready to
16 proceed to the trial.

17 All right. Ms. Odom?

18 OPENING STATEMENTS

19 MS. ODOM: Thank you, Your Honor.

20 December 13, 2016, almost a year ago, chances are you
21 probably don't remember what you were doing on that day
22 unless it's somebody's birthday or you were in a wreck,
23 something out of the ordinary happened. I'll tell you who
24 does remember that date. Sammy Owen. He was the vice
25 principal at Pickens Middle School, and he remembers that

1 day because the defendant seated beside Mr. Cantrell was
2 watching some of the middle schoolers play on the
3 playground, and while he was watching them, he was
4 masturbating. Mr. Owen saw the defendant, confronted him,
5 and immediately got an officer out there. So for him,
6 December 13th stands out.

7 The charge in this case is indecent exposure, and
8 it's kind of straightforward. I'm going to skim over it a
9 little just so during the trial you'll know what you're
10 looking for.

11 Now, crimes are kind of like pies or cookies. To
12 make cookies, you have to have a recipe. For a crime, you
13 also have a recipe. There are certain things you need for
14 the crime to exist.

15 So with indecent exposure, the State, through
16 witnesses, through testimony, through evidence, we will
17 show that the defendant exposed himself, that it was
18 indecent and willful, and that it happened in either a
19 public place or on the property of others.

20 So here in a minute after Mr. Cantrell has his
21 opening, we'll go ahead and start, and you'll hear from
22 Mr. Owen. What the judge said earlier before lunch, pay
23 attention, listen to what everyone's saying, but also,
24 look at their demeanor. Take everything into account.
25 Then after all the witnesses have testified and we've done

1 closing, you'll go back there and deliberate. I'm going
2 to ask you now just like I'm going to ask you in closing
3 to do the only thing I think you should do and find the
4 defendant guilty.

5 Thank you.

6 THE COURT: Mr. Cantrell?

7 MR. CANTRELL: Ms. Odom and I agree on a lot of
8 things, and that is, you know, what your job is and what
9 we're here for and what this process is. But I can't
10 agree with that last statement.

11 Your only job is to find the truth, your only job is
12 to analyze all the testimony that you hear with common
13 sense, with a good evaluation and a diligent evaluation
14 taking into account what the allegations are, what the
15 testimony is, and taking into account that, as with all
16 things, in court and really all things in life, we're
17 dealing with the human equation. We're dealing with the
18 fact that you're going to hear what good, normal people
19 say and testify, but also take into account that we all
20 have our shortcomings, we all can misstate and
21 misunderstand, misinterpret. And then you go through your
22 diligent deliberation in the courtroom and determine
23 something.

24 But what you're determining is a little bit different
25 than what we're all commonly used to, and, in fact, might

1 not be true. When I say "we," I'm talking about Ms. Odom
2 and myself or the judge and myself. We're used to being
3 in court, and what you're not used to is the fact that, as
4 we sit here, you do need to understand that Luther Brian
5 Marcus is innocent. He's not guilty. And that is the
6 fact as we sit right here. And it is incumbent upon the
7 State to prove guilt beyond a reasonable doubt.

8 You heard the analogy of the recipe, and I can't
9 disagree with that, but the most important element, most
10 important ingredient is proof beyond a reasonable doubt
11 that it was this gentleman that was there that day. And I
12 will submit to you that that will not be proven beyond a
13 reasonable doubt. It doesn't matter if it's that close.
14 It doesn't matter how close it may be or how far apart it
15 is. It's got to be proven beyond a reasonable doubt, and
16 there are a lot of elements in this including the human
17 equation, the human elements of this for you to think
18 about before you render a verdict. And in the end,
19 Ms. Odom and I agree, all we want is for you to render a
20 verdict that you believe speaks the truth after doing your
21 due deliberation.

22 You're the triers of the facts in this case, so you
23 will decide what happened. The judge will tell you what
24 the law is. We can tell you our interpretation of it, but
25 the judge tells you what the law is, but you're the only

1 ones who can go back there and make the decision. And I
2 will ask you at that point to think it through and then
3 say is it proof beyond a reasonable doubt, because I don't
4 think so. That would require a verdict of not guilty.

5 Thank you.

6 THE COURT: All right. Call your first witness.

7 MS. ODOM: Thank you, Your Honor. The State calls
8 Sammy Owen.

9 WHEREUPON,

10 SAMUEL OWEN

11 After having been duly sworn, testified as follows:

12 THE CLERK: Thank you. Sir, if you would have a seat
13 and state your name for the record please.

14 THE WITNESS: Full name, Samuel David Owen.

15 DIRECT EXAMINATION

16 BY MS. ODOM:

17 Q Mr. Owen, where do you work?

18 A Now?

19 Q Yes, sir.

20 A Easley High School.

21 Q And where did you work a year ago?

22 A Pickens Middle School.

23 Q And what was your job there?

24 A Assistant principal.

25 Q How long had you worked at the middle school?

1 A Last year was my fourth year.

2 Q And how long have you been an educator?

3 A Oh, this is 21 years.

4 Q And how long have you been a vice principal?

5 A This is my -- going on my seventh year.

6 Q Can you tell me where Pickens Middle School is
7 located?

8 A From Easley if you come up Highway 8, you hit the ---

9 Q Or just in relation to the courthouse.

10 A Okay. If I'm looking at the courthouse, it's down
11 past McDonald's on the left.

12 Q Is it where the old high school used to be?

13 A Yes, ma'am.

14 Q All right. Do you remember December 13th of last
15 year?

16 A Yes, ma'am.

17 Q Can you tell me what you were doing around 11:20?

18 A I was on lunch duty outside behind the middle school
19 right near the basketball courts.

20 Q And tell me what surrounds that part of the school.

21 A If you're standing up on the hill, you're facing
22 down, you're looking down at the old practice field. To
23 the right, of course, is the OWT, but on the left is a
24 neighborhood. There's a fence, and there's a neighborhood
25 to the left side to where I was facing.

1 Q What kind of fence is it?

2 A It's a chain-link fence and has a barbed wire at the
3 top.

4 Q So you can see through the fence?

5 A Absolutely.

6 Q And without telling me what they said, did someone
7 approach you and tell you something?

8 A Yes, ma'am.

9 Q And who was that?

10 A It was -- it was a student.

11 Q And how old was the student?

12 A The student was a seventh grader.

13 Q And was it just seventh grade out there at recess?

14 A During that time the way we had lunches set up, it
15 was a little bit of half of seventh grade and all of sixth
16 grade. So it was -- we only had two lunches at that time,
17 so we split up seventh grade and all the sixth grade was
18 out there.

19 Q All right. And after the child said something to
20 you, what did you do?

21 A Well, I approached the fence, and I noticed a
22 gentleman with his pants down around his thighs with his
23 penis in his hand.

24 Q And sorry to be vulgar and ask this, but tell me what
25 he was doing.

1 A He was masturbating.

2 Q And did he initially see you?

3 A No. He did not as I was going towards an angle. I
4 saw him, and I was -- I was really taken aback because
5 that's not really what I woke up expecting to see that
6 morning at school.

7 But as I approached, his eyes were fixated on the
8 students playing basketball or just kind of hanging around
9 out about 30 yards or so from the fence. And so I went up
10 in front of him and I grabbed the fence and I said, Hey,
11 buddy, are you having fun?

12 Well, my first job is the safety of my kids. And so
13 at that point, he kind of jerked his pants up and started
14 running. I tried to climb the fence but there was barbed
15 wire that prevented me. It was facing this way. So at
16 that point, I called our SRO.

17 Q And who is your SRO?

18 A Noe Suddeth.

19 And I gave him a description of what the gentleman
20 was wearing and what kind of truck he went into.

21 Q What was he wearing?

22 A He was wearing jeans, and he was wearing a sweater.
23 And I noticed it was kind of like a Christmassy color. I
24 know it was a red, white and a dark colored stripe
25 sweater. He had a stocking cap on with a beanie, red

1 beanie hat.

2 Q And did he say anything to you?

3 A No. Just turn and ran.

4 Q And what kind of vehicle did he get into?

5 A He jumped into a truck. It was a two-toned. It was
6 a blue and a silver or maybe a light brown truck. It was
7 an American-made truck, I know that. It wasn't a Dodge.
8 I knew that because that's what I had driven before. It
9 was like a Ford or Chevy. I'm pretty sure it was a Ford.

10 Q And when you say two tone, what do you mean?

11 A It was blue on the top and I think there might have
12 been like a little silver stripe at the bottom underneath
13 like a running -- running board like under the door.

14 Q And you said the fence, you could see through it.

15 A Yes, ma'am.

16 Q Is there any reason you didn't see the defendant or
17 you didn't see the person before the child approached you?

18 A Where I was standing there was a building, and that
19 building obstructed my view from seeing everything. And
20 so when I was approached, I went at a different angle, and
21 so that's when I went back, and that's when I saw the
22 gentleman.

23 Q When you say "building," is it on the school site?

24 A No. It was -- it was -- it was in the -- on the
25 property. It was on the other side of the fence. It was

1 like a shed. The building's a shed, a tool shed.

2 Q And in addition to the fence and houses being there,
3 are there trees or anything else near the fence?

4 A Yes. But they're Leyland cypresses so they were
5 spread far apart and you could see. I mean, you could
6 see.

7 Q And was the defendant standing near any shrubbery or
8 tree or anything?

9 A He was standing beside like a tall like a holly-type
10 -- it's a bush, but he was standing beside it. He wasn't
11 behind -- behind anything. He was beside it.

12 Q Do you know who lives in the home?,

13 A Not personally, but our speech pathologist at the
14 school, it's her mom's house. She's elderly. She's the
15 only person living there. I knew that.

16 Q And so you knew a man did not live in that home.

17 A Right.

18 Q All right. After telling you the -- after telling
19 the school resource officer what had happened, what was
20 your next involvement in the case?

21 A Well, I made the report to the officers and made a
22 description. And then after that, my next involvement was
23 looking at a lineup.

24 Q Okay.

25 MR. CANTRELL: Subject to prior objection, Your

1 Honor, no objection -- no further objection at this time.

2 MS. ODOM: May I approach the witness, Your Honor?

3 THE COURT: Yes. You may.

4 BY MS. ODOM:

5 Q I'm going to show you what's been marked as State's
6 Exhibit 1 for identification purposes. Do you know what
7 this piece of paper is?

8 A Yeah. That was the -- what I had to sign saying that
9 I told the truth when it comes to the lineup.

10 Q Okay. So who talked to you about the lineup? What
11 officer?

12 A Noe Suddeth.

13 Q And was he suggestive to you in any way before he
14 showed you any pictures?

15 A No, ma'am.

16 Q All right. When he showed you the lineup, who else
17 was there besides you and he?

18 A Reggia Stapleton. She's the principal at Pickens
19 Middle School.

20 Q And where were you all at when you ---

21 A We were in the guidance conference room.

22 Q Okay. I'm going to show you what's been marked as
23 State's Number 2. Do you recognize what that is?

24 A That was a photo lineup that I was given.

25 Q Okay. And did you pick anyone out of the lineup?

1 A Yes, ma'am. Number 4.

2 Q And how sure were you that that was him?

3 A 100 percent sure.

4 Q How long do you think your opportunity was to see the
5 defendant before he fled -- or, excuse me, to see the
6 person before he fled?

7 A I would say by the time I walked down there, it took
8 me -- I was walking at the side. I would say it's
9 probably about 20 seconds where I was just because I
10 actually really stopped and was trying to gather am I
11 really seeing what I think I'm seeing. And then when I
12 got up in front of him, it was eye to eye. So I would say
13 -- I would say probably 45 seconds to a minute where I
14 looked him in the face.

15 Q In reference to State's 1 and 2 that I've just shown
16 you, do those appear to be the same things that you saw
17 that day you were present with the lineup?

18 A Yes, ma'am.

19 MS. ODOM: Beg the Court's indulgence just one
20 moment.

21 BY MS. ODOM:

22 Q Mr. Owen, even though it's been a year ago roughly,
23 was that day pretty burned in your memory?

24 A Yes, ma'am.

25 Q Is there any doubt in your mind what the defendant

1 was doing?

2 A No, ma'am.

3 Q And it's your testimony that he was masturbating?

4 A Yes, ma'am.

5 Q And is the person you saw that day in the courtroom?

6 A Yes, ma'am.

7 Q Can you point him out to us?

8 A Yes, ma'am.

9 Q Go ahead and point to him.

10 A (Indicating) Sitting beside the guy in the blue
11 tie.

12 MS. ODOM: If the record could reflect the witness
13 has pointed to the defendant.

14 THE COURT: All right. Yeah.

15 BY MS. ODOM:

16 Q And is that school in Pickens county?

17 A Yes, ma'am.

18 MS. ODOM: Please answer any questions Mr. Cantrell
19 has for you.

20 THE WITNESS: Yes, ma'am.

21 CROSS EXAMINATION

22 BY MR. CANTRELL:

23 Q Mr. Owen, just a couple of points for clarification.
24 How far did you say you had to walk from where you were
25 standing to this location?

1 A About from here to the door.

2 Q And would that be to the fence?

3 A Yes, ma'am. Yes, sir. I apologize. I apologize.

4 I'm sorry.

5 Q I answer to anything.

6 A I'm sorry.

7 Q No problem.

8 And the individual you saw was how close to that
9 fence?

10 A About from me to the door.

11 Q So now, was it from you to the door to the fence and
12 then that much further to where the individual was ---

13 A Yes.

14 Q --- approximately?

15 So I'm horrible with this, but we're talking about
16 25 or 30 feet plus another 25 or 30 feet?

17 A Right.

18 Q Maybe 50 to 60 feet altogether? Ballpark, yes?

19 A Initially from where I was standing, but not from
20 where I saw him.

21 Q Okay. When you walked up, you went right to the
22 fence?

23 A Yes, sir.

24 Q So that left us with 25 or 30 feet, give or take?

25 A That left us about me to the officer at the door over

1 here.

2 Q And when you started walking, how long did you have
3 to walk before you caught sight of this individual?

4 A About four steps. It was just an obstruction from
5 where I was standing looking at the kids, the guys who
6 were playing. He was right there. There was just a
7 building, and I just had to walk about four steps and then
8 I saw the guy.

9 Q Now, when you walked this way, did you walk through a
10 group of kids or were they all over in this direction?

11 A No. They're -- they're down. I'm on a hill. I was
12 not obstructed.

13 Q And when you're standing here and looking, from your
14 vantage point, there was a building between you and him.

15 A Uh-huh.

16 Q So you had to walk closer to get to the point where
17 you could see him. Well, about four steps, but you had to
18 walk four steps before you saw him.

19 A Not necessarily closer. Just to the side.

20 Q And which direction did you walk when you first
21 walked? If he's that way, did you walk to your left or to
22 your right?

23 A If I'm this way, I walked to my left straight to the
24 fence.

25 Q And just to clarify, when you were standing ---

1 A Yes, sir.

2 Q --- you couldn't see him. When you walked a few
3 steps is when you saw him.

4 A Yes, sir.

5 Q And he's over here, and the kids are down in that
6 direction.,

7 A Right.

8 Q And did you know this individual once you saw him?
9 Did you recognize him?

10 A The defendant?

11 Q The individual you saw on the other side of the
12 fence ---

13 A No, I --- I didn't.

14 Q --- did you recognize him at all?

15 A No, sir.

16 Q Did you describe anything about him from the
17 standpoint of facial hair or lack of facial hair or
18 anything like that? Or do you remember?

19 A He kind of had a little scruff on his face, but as
20 far as any -- any -- might have had a little bit of a
21 shadow, a little bit of a goatee as far as that goes, but
22 I just -- I just -- just recognized the eyes and the
23 clothes that he was wearing and the fact -- what he was
24 doing.

25 Q So you saw the eyes, and that was what you

1 remembered?

2 A (Nods head affirmatively).

3 Q You said there was a stocking cap?

4 A A little hat.

5 Q Pulled down over his head?

6 A Not over -- yeah. Over his hair.

7 Q So you would have no idea what type of hair he had.

8 A No.

9 Q And you would have no idea, or you don't remember for
10 sure what type of facial hair he may have had.

11 A No, sir.

12 Q The truck you saw, was it substantially one color or
13 was it half-and-half, different colors?

14 A Just really remembered the blue at the top and the
15 fact that it wasn't a Dodge and it was like a Chevy or a
16 Ford. It looked like that body style to me.

17 Q But what portion of it was two tone, I guess is what
18 I'm asking.

19 A Can you reiterate that, please.

20 Q What portion of it was two tone? What were the two
21 tones that were -- that you saw?

22 A Well, as far as like if you open -- if I'm looking at
23 the side of the truck?

24 Q Right. Yeah. Just your best description of what you
25 saw.

1 A The top part of the truck was blue and the bottom,
2 like maybe a little section was lighter color at the
3 bottom.

4 Q And I'm sorry. You said this was apparently around
5 lunchtime or something, so it was midday, I assume.

6 A It was lunchtime. Yes, sir.

7 Q Was it sunny?

8 A Yes, sir. Well, it was light enough that I could
9 tell what kind of truck he went into.

10 Q All right. And was there anything specific about the
11 hat or the toboggan or whatever that you noticed?

12 A No. The sweater stood out, and the jeans that were
13 halfway down his legs.

14 Q Nothing about the toboggan on his head.

15 A No.

16 Q From the date of the incident until the day this
17 photo lineup was brought to you, did you have any meetings
18 or discussions about this case with law enforcement at
19 all?

20 A No, sir.

21 Q And on the date of the incident, what officers did
22 you talk to?

23 A Officer Suddeth.

24 Q Okay. So that's the only person really you talked to
25 law enforcement-wise about this case ---

1 A Right.

2 Q --- is that correct?

3 A There was another officer that was actually with him
4 when I gave him my statement, though, but, I mean, he was
5 the one who took my statement as far as that goes.

6 MR. CANTRELL: Oh, okay. Oh, sure. Okay.

7 Your Honor, if I could have just one second. I'll be
8 through in just a second.

9 BY MR. CANTRELL:

10 Q And in your original statement to the police, you
11 basically just said he ran to a blue truck and full-size
12 truck and drove off; is that correct?

13 A Right.

14 MR. CANTRELL: No further questions. Thank you.

15 MS. ODOM: Nothing further, Your Honor.

16 THE COURT: All right. Thank you. You can step
17 down.

18 THE WITNESS: Thank you.

19 THE COURT: Yes, sir.

20 MS. ODOM: I'd like to request that Mr. Owen be
21 released from his subpoena.

22 THE COURT: Any objection?

23 MR. CANTRELL: None, Your Honor.

24 THE COURT: All right. Thank you. You're released.

25 All right. Call your next witness.

1 MS. ODOM: The State calls Sam Byers.

2 WHEREUPON,

3 SAMUEL BYERS

4 After having been duly sworn, testified as follows:

5 THE CLERK: Thank you, sir. If you would have a seat
6 and state your name for the record, please.

7 THE WITNESS: Samuel Lane Byers.

8 DIRECT EXAMINATION

9 BY MS. ODOM:

10 Q Where do you work?

11 A I work for the Pickens City Police Department.

12 Q And what is your job description there?

13 A I am a lieutenant over the department. I work in the
14 Investigations Division.

15 Q And how long have you been there?

16 A I've been with them 14 1/2 years.

17 Q What are your job responsibilities at the Pickens
18 Police Department?

19 A Short and sweet, I work investigations and also
20 supervise employees for the department.

21 Q And did you have an opportunity to become involved in
22 this case?

23 A I did.

24 Q And how did you become involved?

25 A I received information from the Pickens County

1 Sheriff's Office, a photo and e-mail and also a name of
2 Luther Marcus -- or Luther Brian Marcus.

3 Q And what did you do when you received that photo?

4 A I ran the name through South Carolina Department of
5 Motor Vehicles, used the information to submit to SLED for
6 a photo lineup.

7 Q And what is the process for requesting that from
8 SLED?

9 A We have a form given to us from SLED that we put the
10 requesting officer's information on there. We put the
11 type of crime that is being reported to us, and we also
12 put biographical information from the person of interest
13 or suspect in a case.

14 Q And what do you do once you receive a lineup back
15 from them?

16 A Once we receive a photo lineup back from SLED, we
17 will print off the photo lineup. And we have a form that
18 we fill out, that there's two places on there, one states
19 a person can sign that they are absolute sure that the
20 person that they pick out in a photo lineup is the person
21 that they witnessed in a crime or was the victim of a
22 crime, or they can mark another line which means that they
23 have doubt and they are not sure.

24 Q All right. I'm going to show you what's been
25 marked as State's 1 and 2. Do you recognize what those

1 are?

2 A Yes, ma'am. One is the form that we have filled out
3 for a photo lineup for a victim or a witness to sign. The
4 other one is the photo lineup that I received back from
5 SLED.

6 Q And did this conclude your involvement with the case?

7 A Yes, ma'am.

8 MS. ODOM: Please answer any questions Mr. Cantrell
9 has for you.

10 MR. CANTRELL: No questions, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 MS. ODOM: And may he be released from his subpoena,
14 Judge?

15 MR. CANTRELL: Yes, Your Honor. No objection.

16 THE COURT: Without objection.

17 THE WITNESS: Thank you, Your Honor.

18 MS. ODOM: Thank you.

19 Your Honor, the State calls Noe Suddeth.

20 WHEREUPON,

21 NOE SUDDETH

22 After having been duly sworn, testified as follows:

23 THE CLERK: If you would have a seat and state your
24 name for the record, please.

25 THE WITNESS: Noe Casey Suddeth.

DIRECT EXAMINATION

BY MS. ODOM:

Q Officer Suddeth, where do you work?

A Seneca Police Department.

Q And how long have you worked in Seneca?

A A few months. I started in September, I believe.

Q Before then, where did you work?

A City of Pickens.

Q Did you work at the police department?

A I did as SRO in the middle school.

Q And what does SRO stand for?

A School resource officer.

Q Can you tell us a little bit what that means? What are your duties as an SRO?

A My day-to-day function is to be there at the school, basically like their security guard, interact with the kids. And sometimes they're inside. I go outside with them or inside or whatever, you know, where they're at and, you know, handling things at the school, any kind of legal questions or anything.

Q And were you working in that position on December 13th of 2016?

A I was.

Q And were you involved in this case against Mr. Marcus?

1 A Yes.

2 Q Tell us what happened that day that you know of.

3 A Yeah. During lunch, I believe it was after 11:15,
4 probably around 11:20, I was up here near the front of the
5 school, Mr. Owens was outside with some of the kids. We
6 have a school walkie-talkie instead of my police one, and
7 I could just hear like screaming on it. I didn't really
8 know what was going on. I could tell it was him.

9 So I started working my way towards the playground.
10 As I got a little bit closer towards the middle of the
11 school, he starts saying, He's masturbating. Something
12 else. I just couldn't hear that. And ---

13 Q So did Mr. Owens sound pretty upset?

14 A Oh, yeah. I mean, his personality, he's already like
15 normally high energy. Even with that, I mean, it was,
16 like I said, the only thing you could understand is "he's
17 masturbating," and I know what he meant.

18 From there I still kept going towards him, and then
19 he started saying go towards TD Bank and like Legacy
20 Square and off of the middle school. So I ran back
21 towards my car, got in my car, started driving that way.
22 Knowing he was outside on the playground, I assume he
23 meant Queens Court, which is the neighborhood that's right
24 next to the playground outside.

25 Q So the homes that are adjacent to the playground,

1 they're Queens Court?

2 A Yes, ma'am.

3 Q Okay. All right. So where did you go once you got
4 in your car?

5 A Well, I drove that way. I was calling the other
6 officer that was working, which was Braden Wimpey, to go
7 ahead and be en route to that area, and I was calling
8 Mr. Owen on my cell phone trying to see if I could figure
9 out more of what was going on, see if he calmed down.
10 They explained to me what he saw and the subject leaving
11 and what he saw him to be driving, and as I was working my
12 way there, I didn't observe anybody leaving that area.

13 Q Is it a one-way -- is it just one way in?

14 A It's kind of like a square. I don't know if anybody
15 knows about it, but there's one way out. And, I mean, you
16 can go around either way, but there's only one way out
17 that street.

18 Q When you say one way out, like you can enter the
19 street from one direction and leave from a different
20 direction?

21 A No. It's like a -- like more like a square
22 (gesturing), and one way into the side of.

23 Q All right. And so once you obtained the description
24 of the vehicle and the person, what did you do?

25 A We BOLO'd it out, which a BOLO is like when we give

1 to the Sheriff's Department and the other surrounding
2 agencies description of the vehicle or whatever we're
3 looking for.

4 Q And what does BOLO stand for?

5 A Be on the lookout.

6 Q So you let surrounding law enforcement agencies know
7 that y'all were looking for that vehicle?

8 A Uh-huh.

9 Q All right. So were you able to -- what did you do
10 next with the case?

11 A Well, once I arrived at the incident location, which
12 was -- I believe was 138 Queens Court, I could see
13 Mr. Owen on the school property side of the fence pacing
14 back and forth, you know, like a dog or whatever, real
15 excited, and he was trying to tell me, you know,
16 everything again. And that's when I went back up to the
17 school, and that's when I took statements and did the
18 initial report.

19 Q Now, who did you take statements from?

20 A The juvenile and Mr. Owen.

21 Q Do you know how old the juvenile was?

22 A Not exactly. It was sixth or seventh grade. I
23 couldn't remember.

24 Q All right. And after doing that, what's your next
25 involvement in the case?

1 A The next day, the 14th, I was notified by Detective
2 Byers and told me that I needed to contact I believe it
3 was Detective Art Taylor at the Sheriff's Department, that
4 he had possible suspect information. And once I made
5 contact with him, I was given GPS, like tracking
6 coordinates to the subject and pictures of the subject at
7 the courthouse that day.

8 Q And what did you do with that picture you were
9 seeing?

10 A I took that to Detective Byers with our agency.

11 Q And what did Detective Byers give back to you?

12 A That day, those -- we received that information as
13 far as to go forward with the photo lineup and -- from
14 there. But I didn't ---

15 Q So you got a photo lineup?

16 A From Byers on the 15th after we received all this
17 information.

18 Q All right. And what did you do then once you had the
19 photo lineup?

20 A I took it to the police department, took it to
21 Pickens Middle School at the guidance counselor's office
22 in their little conference room and gave it to Mr. Owen
23 for him to look at, and Ms. Stapleton the principal
24 witnessed it.

25 Q And did he pick someone out?

1 A He did. It was Number 4 on the list -- or the
2 lineup. It was Mr. Brian -- Luther Brian Marcus. I'm
3 sorry.

4 Q I'm going to show you State's 1 and 2. Can you tell
5 me what those are?

6 A Number 1 is the form that we give the individuals
7 when they look at the lineup, check one, the top one if
8 they did identify them 100 percent, and then at the bottom
9 if they're not 100 percent, they check it and sign it and
10 the witness's signature and mine.

11 Q And tell me what Number 2 is.

12 A Number 2 is the photo lineup. This one's black and
13 white. The original was in color.

14 Q And can you tell me, is that what you had?

15 A Yes. This is the exact same thing other than the
16 color.

17 MS. ODOM: All right. Your Honor, at this point in
18 time, I'd move to have these entered into evidence as
19 State's 1 and 2.

20 MR. CANTRELL: Subject to prior objection.

21 THE COURT: All right.

22 (WHEREUPON, State's Exhibit Numbers 1 and 2 were admitted
23 into evidence.)

24 MS. ODOM: And, Your Honor, I'd like permission to
25 publish these to the jury.

1 THE COURT: Yes, you may.

2 BY MS. ODOM:

3 Q All right. So after you did the photo lineup, did
4 you have any other involvement with the case?

5 A After the lineup, I went back to the police
6 department, did a supplemental to the report and submitted
7 a warrant request.

8 Q All right. And tell me just for the record what date
9 this all -- what date the incident occurred on.

10 A It happened on the 13th of December.

11 Q Of what year?

12 A '16, 2016.

13 Q Okay. And what county was the incident location
14 located in?

15 A Pickens county. And we were inside the city limits
16 of Pickens.

17 MS. ODOM: Please answer any questions that
18 Mr. Cantrell has for you.

19 CROSS EXAMINATION

20 BY MR. CANTRELL:

21 Q Mr. Suddeth, how long did it take you -- I'm sorry.
22 Let me back up. When you first responded, you didn't go
23 straight to the location. I think you said you went to
24 your car and pulled out.

25 A Yes, sir. I was in the school on foot, of course,

1 and was going towards the playground. I had to turn
2 around and go back to my vehicle.

3 Q And that was for the purpose of getting out and
4 looking for a suspect vehicle of some sort?

5 A Yes, sir. With the fence and all, it was just more
6 sense to drive around.

7 Q And did Mr. Owen give you a description of the
8 vehicle?

9 A Yes, sir.

10 Q What did he say?

11 A He did say -- he couldn't tell me if it was a -- he'd
12 said it was a Ford or a Chevy, he believed. He said it
13 was more than a four-door -- or than a regular cab. It
14 was either extended or a four-door truck. He told me it
15 was blue in color or darker. And I call it like the mud
16 or splash guard on the bottom side of the door, he said it
17 was a lighter color than the blue.

18 Q And the fact of the matter is, you got out and went
19 around, but you never did see a suspect vehicle.

20 A No, sir.

21 Q And none of the other officers, to your knowledge,
22 saw a vehicle like that around.

23 A No, sir.

24 Q You believe you and then also the other officers
25 responded pretty quickly after you got the call?

1 A Honestly, I mean, with the time with me on foot and
2 getting back to the car, I mean, it would have took -- it
3 took me a lot longer. And by -- I don't have radio
4 service on my walkie-talkie to the police department side
5 of the school, so I had to get back in my car to just be
6 able to talk to the other police. I mean, that did eat up
7 a little bit of time.

8 Q We're talking a couple minutes, you think?

9 A Possibly, yes.

10 Q And I think you mentioned a couple times over the
11 walkie-talkie, and then when you got around and pulled
12 onto Queens Court, you saw Mr. Owen, and he was pretty
13 excited.

14 A Yes, sir.

15 Q Pretty hyped up.

16 A Yes, sir.

17 MR. CANTRELL: Nothing further. Thank you, sir.

18 MS. ODOM: Nothing further. And may he be excused?

19 THE COURT: Any objection?

20 MR. CANTRELL: No objection.

21 THE COURT: All right. Thanks, sir. You're released
22 from subpoena.

23 MS. ODOM: Your Honor, may I call the next witness?

24 THE COURT: Yes, please.

25 MS. ODOM: The State calls Sheriff Rick Clark.

1 WHEREUPON,

2 RICK CLARK

3 After having been duly sworn, testified as follows:

4 THE CLERK: Sir, if you would have a seat and state
5 your name for the record, please.

6 (WHEREUPON, State's Exhibit Number 3 was marked for
7 identification.)

8 DIRECT EXAMINATION

9 BY MS. ODOM:

10 Q Please state your name for the record.

11 A Rick Clark.

12 Q And what do you do?

13 A I'm the sheriff of Pickens County.

14 Q Tell me what your duties are as sheriff.

15 A It changes every second. Of course, to be the chief
16 law enforcement officer of Pickens County. We have about
17 158 employees, we have the detention center, and, of
18 course, we do uniform patrol that you see out and about.
19 We also have detectives and courthouse security and SRO's
20 also.

21 Q And so you stated that one of the many things that
22 you do as sheriff and the Sheriff's Office is in charge of
23 is courthouse security.

24 A Yes. By law, the sheriff is the chief law
25 enforcement officer and over courthouse security.

1 Q And does the courthouse have cameras?

2 A Yes, they do.

3 Q And can you tell me a little bit about how that
4 camera system works?

5 A I can because I installed about 80 percent of it.
6 You'll see a camera just above the door there. Our
7 system is called an IP, an Internet system of where we
8 have a server here in the courthouse, and about 50 cameras
9 all throughout the courthouse that we use on a daily
10 basis.

11 Q And do you have to be in the courthouse to view the
12 cameras?

13 A No. On the Internet and through our Pickens County
14 network. So I can pull it up from the courthouse here or
15 I can go to my office or even through a VPN, which is a
16 ton of information. I can pull it up from my house if I
17 need to.

18 Q And do the cameras record for a period of time?

19 A The large majority of cameras here are motion
20 activated, and then all that goes back -- all the data
21 information, the video goes back to a centralized
22 server.

23 MR. CANTRELL: Your Honor, no objection. And we will
24 be able to stipulate to anything related to this photo as
25 to date and time and place, so we would stipulate to all

1 of that.

2 THE COURT: Okay.

3 BY MS. ODOM:

4 Q Sheriff, I want to show you what's 3, what's been
5 marked as State's Exhibit 3. Do you know what this is?

6 A This is a picture that I was asked to go back on the
7 server and pull up. And this is kind of a freeze motion
8 of a video.

9 Q All right. And what's the date and time on that, if
10 you can see it?

11 A The date and time is the -- I believe the 13th, 2016
12 10:45 a.m.

13 MS. ODOM: Your Honor, at this time, the State would
14 move to have this introduced as State's 3.

15 THE COURT: All right. Without objection.

16 MR. CANTRELL: Without objection, Your Honor. Yes,
17 sir.

18 (WHEREUPON, State's Exhibit Number 3 was admitted into
19 evidence.)

20 BY MS. ODOM:

21 Q And so that is the picture you pulled off the
22 security camera?

23 A Yes.

24 MS. ODOM: Please answer any questions that
25 Mr. Cantrell has for you.

CROSS EXAMINATION

BY MR. CANTRELL:

Q Sheriff, this is a picture of Mr. Marcus. And can you tell by the positioning, is he walking into the courthouse? Is his back to the door?

A That is on the first floor, and the entrance would be behind him.

Q And this -- the upper left, 10:45 in the morning.

A Yes.

Q And have you looked at this photograph? It's not quite as big as I would like, but have you looked at it enough to recognize what type of toboggan or stocking cap that is?

A It's just a -- maybe a wool or something. I don't know what type it is.

Q Okay. You don't know that it's got the Carolina Gamecocks on it?

A I didn't look that much. Just the color is really all I ever noticed and the shirt stripes.

Q All right. And does that sweater have any white stripes in it?

A Just stripes of -- I don't see any white that stands out like that. The lighter gray.

Q If you were -- do you believe that if you were within 25 feet of that individual and he had on a Gamecock

1 stocking cap, you would be able to know that he had a ---

2 MS. ODOM: I'm going to object to this line of
3 questioning.

4 THE COURT: It's speculative.

5 BY MR. CANTRELL:

6 Q But you can tell from here that there are no white
7 stripes in his sweater, correct?

8 A I can tell because that's inside the building, but
9 the sunshine will probably make a great difference in that
10 shirt.

11 MR. CANTRELL: Your Honor, objection. That's
12 unresponsive to the question.

13 THE COURT: All right.

14 MR. CANTRELL: No further questions. Thank you,
15 Sheriff.

16 THE COURT: Anything else?

17 MS. ODOM: No, sir. He can be released.

18 THE COURT: Yes. Without objection?

19 MR. CANTRELL: No objection, Your Honor.

20 THE COURT: All right. Thank you, Sheriff.

21 MS. ODOM: Your Honor, if we can take a small break,
22 I'd appreciate it.

23 THE COURT: All right. It's probably a pretty good
24 time for it. Ladies and gentlemen, we'll get back to you
25 in about ten minutes. Don't discuss the case.

1 All right. Thank you.

2 (WHEREUPON, the jury exits the courtroom at 4:01 p.m.)

3 THE COURT: Okay. Let's take about ten minutes.

4 (WHEREUPON, a recess is taken at 4:02 p.m.)

5 (WHEREUPON, the jury entered the courtroom at 4:12 p.m.)

6 (WHEREUPON, State's Exhibit Numbers 4 and 5 were marked
7 for identification.)

8 THE COURT: All right. Ma'am, call your next
9 witness.

10 MS. ODOM: Thank you, Your Honor. The State calls
11 Art Taylor.

12 WHEREUPON,

13 JAMES ART TAYLOR

14 After having been duly sworn, testified as follows:

15 THE CLERK: If you would have a seat and state your
16 name for the record.

17 THE WITNESS: James Art Taylor.

18 DIRECT EXAMINATION

19 BY MS. ODOM:

20 Q Where do you work?

21 A Pickens County Sheriff's Office.

22 Q What is your job there?

23 A I'm an investigator with the Sheriff's Office.

24 Q And how long have you been an investigator?

25 A Since 2009, so it will be eight years now.

1 Q And how long have you worked at the Sheriff's Office?

2 A 23 or 24 years.

3 Q And do you work closely with Pickens PD on occasion?

4 A On occasions I do.

5 Q And have you worked with Sam Byers before?

6 A I have.

7 Q Do you know who Luther Brian Marcus is?

8 A I do.

9 Q And do you know what kind of vehicle he was driving
10 in December of last year?

11 A Yes.

12 Q What kind of vehicle was it?

13 A It's a Ford truck, extended cab.

14 Q And what color is it?

15 A Blue.

16 Q I'm going to show you what's been -- I'm going to
17 show you what's been marked as State's Number 4 for
18 identification purposes. Can you tell me what that is?

19 A That's a picture of his truck that I took sitting
20 here in the parking lot at the courthouse.

21 Q So you know without a doubt that's a picture of the
22 defendant's truck?

23 A Yes.

24 Q And you took this picture?

25 A That's a truck he drives. It's not registered to

1 him, but it's a truck that I know he drives.

2 Q And how do you know he drives that or drove it last
3 year?

4 A Because there is an officer that stopped him driving
5 that truck. I also saw him driving it back and forth to
6 work one day, and also observed him driving it to the
7 courthouse two different times.

8 MS. ODOM: Your Honor, the State moves to have
9 Number 4 introduced into evidence.

10 MR. CANTRELL: No objection, Your Honor.

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit Number 4 was admitted into
13 evidence.)

14 BY MS. ODOM:

15 Q Can you tell me what color it is?

16 A It's blue with a light color gray to silver stripe
17 down at the bottom.

18 Q And what make is it?

19 A It's a Ford F150.

20 Q Is it extended cab?

21 A Yes, it is.

22 Q All right. I'm going to show you what was marked as
23 State's 3. Can you tell me who that is in that picture?

24 A Yes. That's Brian Luther Marcus, the defendant.

25 Q So is he in the courtroom today?

1 A Yes. This defendant.

2 Q All right. And that's the person you saw driving
3 that blue two-toned truck?

4 A That's correct.

5 Q All right. Did you have a tracking device on that
6 truck?

7 A I did.

8 Q And tell me what a tracking device on a vehicle does.

9 A What -- a tracking device, when it's placed on a
10 vehicle or anything of that nature, it just tracks the
11 whereabouts of that vehicle. It could tell me -- I could
12 pull up on a computer, I can tell how fast it's going,
13 when it stops, when it starts again and its location of
14 every movement.

15 Q And do you know where the defendant, the truck he
16 drove, where it was -- what time it was at the courthouse
17 on December 13th?

18 A It was -- I don't have that paperwork with me, but it
19 was around 10:00, 10:45 or so it was in the parking lot at
20 the courthouse on the 13th.

21 Q And you said you saw the truck there?

22 A Yes. The reason I know it was there is because we
23 had to replace the tracker. The tracker was on it and the
24 battery was running low, and so we had to put a new
25 tracker on it.

1 Q All right. I want to show you what's been marked for
2 identification purposes as State's Number 5. Can you tell
3 me what that is?

4 A Yes. That's a printout that we can print from the
5 GPS court -- locations of the vehicle.

6 Q Is that a fair and accurate copy -- or tell me what
7 tracking devices are listed on that.

8 A Tracker 52 and Tracker 51.

9 Q All right. And did you put both those trackers on
10 that vehicle?

11 A Yes. On the 13th, the tracker that was originally on
12 the vehicle was Number 52, and then we replaced it that
13 morning with Tracker Number 51.

14 Q So that's an accurate representation of the
15 coordinates of those two trackers on December 13, 2016?

16 A That's correct.

17 MS. ODOM: Your Honor, at this time, the State would
18 move to have Number 5 introduced into evidence.

19 MR. CANTRELL: No objection.

20 THE COURT: No objection.

21 (WHEREUPON, State's Exhibit Number 5 was admitted into
22 evidence.)

23 BY MS. ODOM:

24 Q At any point that day, were those trackers picked up
25 on Queens Court?

1 A Yes, they were.

2 Q Can you tell me when?

3 A Number 52, on 12/13/2016 at 10:31 to 10:35, was
4 stationary on Queens Court in Pickens city.

5 Q All right. And how long was it at Queens Court?

6 A Approximately four minutes.

7 Q Can you tell me when the tracker was at the
8 courthouse?

9 A At 10:40 a.m. on the 13th.

10 Q All right. And what's the address of the
11 courthouse?

12 A I don't -- I don't know the exact address here. I'm
13 sorry.

14 Q What does it show up on?

15 A Highway 178, Pickens.

16 Q All right. So when does the second tracker that you
17 placed on that vehicle leave the courthouse?

18 A The second one?

19 Q Yes, sir.

20 A Number 51? It leaves the courthouse around -- it
21 looks to me around 10:41, 10:43.

22 Q The tracker that was placed on the vehicle, the
23 second tracker, if that makes sense, Tracker 51.

24 A What I'm looking at, I'm sorry, you'll have to excuse
25 me, was the Tracker 51 at the beginning was tracking us

1 because we had it in our vehicle to place it onto the Ford
2 truck. So it was -- it was stopped at the courthouse at
3 10:47, and it left the courthouse at 11:16.

4 Q All right. And did that truck go back to Queens
5 Court?

6 A It did. It went to Queens Court at 11:18 and left at
7 11:26 a.m.

8 MS. ODOM: Beg the Court's indulgence one moment.

9 BY MS. ODOM:

10 Q Investigator Taylor, do you know of addresses or do
11 you know where the defendant lived?

12 A Yes. He had two separate addresses, one that was in
13 Six Mile and one that was just outside of Norris, I
14 believe the Liberty area.

15 Q Were either of his addresses on Queens Court?

16 A No.

17 Q And to your knowledge, he didn't own a home on Queens
18 Court?

19 A No.

20 As a matter of fact, it was pretty odd to me that day
21 for him to stop there and then stop there again. It kind
22 of threw up a red flag to me about stopping there twice.
23 I think it was only the following day that I found out
24 what had happened because I had overheard a Pickens city
25 unit on their radio calling out X Patrol on Queens Court.

1 And then at that time is when I called Lieutenant Byers
2 with Pickens City, and he informed me what had transpired.
3 And at that time, I told him I -- he told me he had a
4 description of the vehicle and male suspect, and when he
5 gave me a description of the vehicle and the time, I said
6 I can check and see if this is going to be the same
7 suspect that I've been watching.

8 Q And so what did you do after that?

9 A Okay. After that, I was able to confirm that it was
10 -- you know, with the times, they did match up of when he
11 was on Queens Court.

12 Q And were you able to get -- spur the sheriff getting
13 that picture?

14 A Yes. I was able to meet with the sheriff and see if
15 he would go ahead and download a picture of Mr. Brian
16 Marcus coming into the courthouse to be able to provide
17 with Pickens city.

18 Q So the times on the GPS tracker as far as the
19 courthouse goes matches the times the defendant was there
20 and left.

21 A Correct.

22 Q Okay. And is that location in Pickens county?

23 A It is. It's in the city of Pickens.

24 MS. ODOM: All right. Please answer any questions
25 Mr. Cantrell has for you.

CROSS EXAMINATION

BY MR. CANTRELL:

Q Based on your testimony, you have no testimony that Brian Marcus was driving these trucks to -- this truck to any of these locations. You have no direct ---

A Yes. I saw him.

Q You saw him. Which time?

A When he pulled into the parking lot of the courthouse here.

Q At 10:31?

A Yes. He came in from Domino's. As a matter of fact, I can tell you the route he came in from, and we observed him from a distance away as he parked and got out of the truck and came into the courthouse.

Q Okay. And that would be here? I'm sorry. I said 10:40. 10:40?

A Yeah. It's around the 10:40:19 a.m., yes.

Q So that would be when you saw him pull into the courthouse.

A That's correct.

Q Okay. Let me ask you, Tracker 52 then went somewhere, and at 10:52 it shows it at C David Stone Road. That's the Sheriff's Department, correct?

A That's correct.

Q And then the new tracker, Number 51, was at C David

1 Stone. And when on here does it show that it was up here
2 at the courthouse being placed on the vehicle? Would that
3 be up here (indicating)?

4 A That's at the 10:45 to 10:47 one.

5 Q Okay. That's when it would be up here (indicating)?

6 A Yes.

7 Q So y'all apparently jumped out and started replacing
8 it a few seconds after he -- well, at the time he was
9 walking down the hallway.

10 A Yes.

11 Q Would that be right?

12 A That's correct.

13 Q So does that mean there was a period of time when
14 there was no tracker in the truck? Did y'all go out to
15 the Sheriff's Department and bring it back? Or what ---

16 A No. We were sitting here in the parking lot waiting
17 to replace Tracker 51 with 52.

18 Q So 52 was the new one?

19 A No. 52 was the original one that was on there, and
20 we replaced it with 51.

21 Q So it's your testimony he went to the Sheriff's
22 Department, Number 52, before it was replaced?

23 A No.

24 Q So how did 52 end up at the Sheriff's Department?

25 A That's when we took it off because it was with us

1 then.

2 Q So there's a few little gaps in here between 51 and
3 52. Those times just change around a little bit; is that
4 fair?

5 A I don't understand. Can you point out what you're
6 talking about?

7 Q Well, we've got -- right here we've got 10:52, and
8 then we come down here, all of a sudden we're back to
9 10:00. So when we switched ---

10 A Yes.

11 Q --- devices, we backtracked a little bit on the time
12 on this printout, in other words, correct?

13 A Yes.

14 Q Okay. So this would say -- now, let me back up.
15 When was he at Domino's?

16 A I don't recall -- I don't recall the exact time. I
17 just recall him coming through Domino's parking lot to
18 park into the parking lot.

19 Q Okay. So he didn't stop at Domino's?

20 A No, no, no.

21 Q All right. My fault.

22 So we've got something going on at Queens Court at
23 10:35 -- 10:31 to 10:35.

24 A Yes.

25 Q Nobody saw this vehicle or Mr. Marcus or anybody

1 there at that occasion.

2 A No. No, sir.

3 Q And then we've got somebody back at Queens Court at
4 11:18.

5 A That's correct.

6 Q But the testimony earlier has been that the call came
7 in about 11:15 that someone was at the fence; is that
8 correct?

9 A I don't recall that.

10 Q You admitted yourself you thought it was odd to see
11 they stopped at Queens Court on two separate times that
12 day, right?

13 A I did.

14 Q And this verifies that the truck at least was in that
15 parking lot from 10:47 to 11:16 that day.

16 A That's correct.

17 Q And can you tell me what this -- where it says
18 "miles," what that 31 reflects?

19 A I can't right now. Is . . .

20 Q And maybe the last question up here, 10:45:58 to
21 10:47, it says "running," correct?

22 A That's correct.

23 Q And so does that mean the vehicle was moving? Is
24 that what "running" means?

25 A Yes. That's the way I understand it.

1 Q And that reflects it was running from 10:45:58 to
2 10:47, which is the same time Luther Marcus was walking
3 down the hallway in this courthouse based on this
4 photograph that was submitted into evidence?

5 A If those times are the same as what we have on the
6 tracker.

7 MR. CANTRELL: No further questions. Thank you.

8 REDIRECT EXAMINATION

9 BY MS. ODOM:

10 Q Detective Taylor, when y'all physically take the GPS
11 tracker and walk it over to someone's car but readjust it
12 and walk around the car and find the spot you want, does
13 that pick up its movement?

14 A It shows movement.

15 Q So if you're trying to find a place to put the
16 tracker, it's going to show movement?

17 A That's correct.

18 MS. ODOM: All right. Thank you. No further
19 questions.

20 MR. CANTRELL: If I can follow up with one quick
21 question.

22 THE COURT: All right. Yeah.

23 RECROSS EXAMINATION

24 BY MR. CANTRELL:

25 Q Replacing that tracker is a matter of taking maybe as

1 much as 45 seconds to stick it back where the other one
2 was. Is that not true?

3 A That's correct. Taking the one off and putting the
4 other one on.

5 Q And that would not require any movement except to
6 walk it up, put it on, and take it off.

7 A It's just like hand movements.

8 MR. CANTRELL: It's that simple. Thank you.

9 THE COURT: All right. Thank you. You may step
10 down.

11 MS. ODOM: Your Honor, that's all from the State.

12 THE COURT: All right. Ladies and gentlemen, it's
13 4:35, and this is probably a good time for us to break for
14 the evening. So we're going to stop now and ask you all
15 to be back at 10:00 in the morning.

16 Do not discuss the case, do not go to any location
17 that you heard about, don't get on the Internet and do
18 research. Don't get on some social media site, okay? No
19 tweeting, no Facebook, okay? Everything you need to know
20 to decide this case you'll hear in this courtroom, and
21 it's vital that you all protect that. And if you protect
22 it today, it's protected for our whole system and that's
23 what we need.

24 So you all have a pleasant night, and we'll see you
25 back at 10:00 in the morning. Thank you very much.

1 (WHEREUPON, the jury exits the courtroom at 4:34 p.m.)

2 THE COURT: All right. Mr. Marcus?

3 DEFENDANT MARCUS: Yes, sir.

4 THE COURT: Stand for me, please. Raise your right
5 hand.

6 WHEREUPON,

7 LUTHER BRIAN MARCUS

8 After having been duly sworn, testified as follows:

9 THE COURT: I want you to understand you have an
10 absolute right to testify in your own defense. You have
11 an equal absolute right to not testify and it cannot be
12 held against you in any way. Whether or not you decide to
13 testify is a matter that involves strategic decisions,
14 trial strategy type things with your lawyer.

15 Are there any impeachable offenses?

16 MS. ODOM: Your Honor, I think there may be. He does
17 have -- yes, sir. It would be the State's position that
18 he does have a few impeachable offenses.

19 THE COURT: We need to tell him what they are.

20 MS. ODOM: All right. He has a fraudulent tax
21 return. It's from 2005. He does have several property
22 offenses on here, burglaries, grand larcenies, safe
23 cracking, as well as a CSC with a minor.

24 THE COURT: Does it fit within the rule?

25 MS. ODOM: Probably the fraudulent tax returns. It

1 says that -- I have the conviction down as 2005, but he
2 did 18 months on it, so let me see if I can find when he
3 was released. I can't find a release date on those.

4 THE COURT: I've been told he just got out of prison.
5 What was he in prison for?

6 MS. ODOM: For three burglary seconds, two grand
7 larcenies and a safe cracking.

8 THE COURT: You understand that the State, if you
9 testify, can impeach your credibility or believability by
10 those convictions. You understand that?

11 DEFENDANT MARCUS: Yes, sir.

12 THE COURT: All right. I'm sure you and your
13 attorney have talked about it and will continue to talk
14 about it. I want to tell you that I suggest that you
15 listen closely to the advice given to you by your
16 attorney, but in the end, the decision about whether or
17 not you testify is a constitutional right that belongs
18 solely to you. So it's up to you to make that decision.
19 And, again, I would encourage you to listen carefully to
20 any advice that your attorney gives you with respect to
21 that.

22 So I'm going to give you overnight to think about it.
23 When we come back tomorrow, it will be your turn to
24 present any evidence which might be presented. So do you
25 have any questions you want to ask me about that?

1 DEFENDANT MARCUS: No, sir.

2 THE COURT: All right. Good. We'll see you back
3 here in the morning then.

4 All right. Thank you very much.

5 (WHEREUPON, proceedings are adjourned at 4:38 p.m., to be
6 reconvened on Tuesday, December 12, 2017.)

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Tuesday, December 12, 2017

(WHEREUPON, proceedings commenced at 10:09 a.m.)
(WHEREUPON, Defendant's Exhibit Numbers 11 and 12 were
marked for identification.)

THE COURT: All right. Mr. Cantrell, what did you
decide?

MR. CANTRELL: Your Honor, we have discussed this
several times, but Mr. Marcus, I believe, chooses not to
testify.

THE COURT: All right. Mr. Marcus, please consider
yourself still under oath.

You heard what your attorney just said to me. Is
there anything you want to tell me, any questions you want
to ask?

DEFENDANT MARCUS: No, sir. We discussed it at
length. I decided not to testify.

THE COURT: All right. Okay. And that's your free
and voluntary decision?

DEFENDANT MARCUS: Yes, sir.

THE COURT: Okay. Do you want to charge --
Mr. Cantrell, do you want a charge on his failure to
testify?

MR. CANTRELL: Yes, sir.

THE COURT: Okay. All right. Anything?

1 MS. ODOM: Your Honor, I think I just need to
2 formally close on the record, and then -- I said I was
3 done, but I didn't say the magic words. But if you're
4 good with it, I'm good with it.

5 THE COURT: I'm fine with it. You said that was the
6 State's case or something to that effect. I don't think
7 there's any question about it.

8 MS. ODOM: Yes, sir.

9 And then I think Mr. Cantrell's directed verdict
10 motion.

11 THE COURT: Well, yeah. We're going to do the
12 motions here in just a second.

13 Do y'all have any requested voir dire -- I mean jury
14 charges?

15 MR. CANTRELL: None for the defense other than what I
16 would expect to be the standard. No, sir.

17 THE COURT: Do you want circumstantial evidence?

18 MS. ODOM: Yes, sir.

19 THE COURT: Okay. Do you have any requests?

20 MS. ODOM: No. Nothing.

21 THE COURT: All right. Any motions?

22 MR. CANTRELL: And, Your Honor, I would renew all
23 motions previously made, and at this time, I would also
24 move for a directed verdict on the grounds that there's
25 not sufficient evidence to move forward at this time that

1 has been presented by the State.

2 THE COURT: All right. Do you want to reply to that?

3 MS. ODOM: If you need me to, Judge. I think it's
4 pretty clear, though, that ---

5 THE COURT: There's certainly enough evidence to
6 survive a directed verdict motion. Okay.

7 Give me just a second to get these charges organized,
8 please.

9 (Pause in proceedings.)

10 THE COURT: All right. Are y'all ready to go?

11 MS. ODOM: Yes, sir.

12 MR. CANTRELL: Yes, sir.

13 THE COURT: Okay.

14 (WHEREUPON, the jury entered the courtroom at 10:18 a.m.)

15 THE COURT: All right. Ladies and gentlemen, welcome
16 back. Hope everyone had a pleasant evening.

17 Hope you all can remember back yesterday to my
18 opening comments to you when I told you that there were
19 five parts of a trial. The first part, opening
20 statements, second part, presentation of the testimony and
21 the evidence. We've completed the first two parts, and so
22 all the testimony, all the evidence that you're going to
23 hear is now before you and we're ready to proceed right
24 now to the third part of the trial which are the closing
25 arguments of these attorneys. So I ask you to pay close

1 attention as you have throughout the trial to the
2 arguments of these fine attorneys.

3 All right.

4 CLOSING ARGUMENTS

5 MS. ODOM: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. ODOM: I didn't wake up that morning expecting.
9 That's what the vice principal, Mr. Owens, stated. I
10 didn't wake up that morning expecting that. It's been a
11 year ago tomorrow since this incident happened, but it's
12 still just as fresh in his mind as it was a year ago.

13 Now, what the defendant is charged with is indecent
14 exposure. I want to get into the nitty-gritty of what the
15 crime means and how this offense fits the crime.

16 Now, indecent exposure, the defendant exposed
17 himself, it was willful, malicious, and it occurred in a
18 public place on the property of others or in the view of
19 any person on a street.

20 Now, this is very straightforward. By the defendant
21 having his penis out in that sexual manner masturbating on
22 the property of someone else, that's indecent exposure.
23 Mr. Owen saw that.

24 Now, I don't want you to get tripped up on like the
25 little legal words, the malicious. All malicious means is

1 that it was an intentional, wrongful act, that he meant to
2 do it.

3 Mr. Owen testified that he saw the defendant touching
4 himself, the defendant had his penis in his hand. It was
5 not an accident what he was doing. It was an intentional
6 act.

7 Indecent just more or less means that it's vulgar,
8 obscene, offensive. Masturbating in somebody's yard while
9 watching a bunch of 12-year-olds play on the playground is
10 pretty vulgar. So what the defendant did is indecent
11 exposure.

12 Now, we heard several witnesses yesterday testify. I
13 think the ones you need to hone in on, Mr. Sammy Owen, the
14 vice principal, and Mr. Art Taylor from the Sheriff's
15 Office. And when you think about the testimony and you
16 think back of what people said, also consider their
17 demeanor. Did they have a bias? Do they have a dog in
18 the fight? What's their motivation?

19 Mr. Owen, he doesn't know the defendant. He never
20 met him, had never seen him. He doesn't know anything
21 about him. He had no dog in this fight. Did he seem
22 sincere up there on that stand when he said that his first
23 thought was to protect those children, and then when he
24 realized what he saw and what was happening, that he
25 became enraged? He was ticked off that some guy was

1 watching his students play and receiving some kind of
2 sexual satisfaction from it.

3 You heard Noe Suddeth, that first officer, the SRO
4 that was out there. When he got out there on scene,
5 Mr. Owen was pacing back and forth at that fence.
6 Mr. Owen said he had tried to climb that fence. Does this
7 sound like someone who has made up this story? Does he
8 have something to gain to make up a story that he saw the
9 defendant masturbating? He's got nothing to gain here.
10 It's not like he would get a promotion if he caught
11 somebody doing this. No. He's got nothing to gain. But
12 more than that, he's got nothing to gain to say it was the
13 defendant, someone he's never met. He doesn't have an ax
14 to grind or anything. His testimony was strong. He
15 picked the defendant out of a photo lineup instantly.

16 Now, when y'all go back to the jury room, you'll have
17 the evidence with you, everything that we've entered.
18 You'll have that photo lineup. You will be able to look
19 at it, engage how reasonable that was, how similar those
20 six people look. And even though Mr. Owen saw the
21 defendant a minute or less, he was able to pick him out of
22 a lineup.

23 Also, Mr. Owen said, he let the officer know this guy
24 had on blue jeans, a red beanie hat, he's wearing a
25 toboggan, and then a Christmassy sweater, red and black.

1 Mr. Owen said a little white in there, too. But he saw
2 the defendant, like he took it all in in that moment, and
3 then he's able to tell the officers this is what he looks
4 like, this is what he was wearing.

5 Now, Mr. Owen hadn't seen this picture. He didn't
6 see this picture. It's not like officers went to him and
7 said, well, look at this picture. Was he wearing
8 something like this? No. Mr. Owen let them know from the
9 get-go this is what the guy was wearing, this is what
10 happened, this is what kind of truck he was driving. He
11 made these identifications knowing nothing about the
12 defendant, nothing about his clothes or where he had been,
13 where he was going, what kind of vehicle he was in. He
14 made all these independent observations and was able to
15 quickly, immediately relay that to law enforcement, pick
16 the defendant out of a lineup. And yesterday he was able
17 to point to him in the courtroom. It's pretty open and
18 shut.

19 But then we also have a little added layer in there
20 with it. Art Taylor. Art Taylor is able to say that the
21 defendant drives this truck. He had personal knowledge
22 about it, that he saw the defendant getting out of this
23 truck in the courthouse parking lot that day, that he saw
24 him drive through the Domino's parking lot and come and
25 park at the courthouse, that the defendant was alone when

1 he got out of the truck. And then he switched out those
2 tracking devices. Mr. Taylor's able to testify that
3 that's the defendant.

4 Now, even though we have the picture of the
5 defendant's vehicle, the picture of the defendant, what he
6 was wearing, testimony from Mr. Owen, that right there is
7 so much. But fortunately, in this case, we had a little
8 more. The tracking.

9 Now, yesterday some of the testimony might have been
10 a little confusing, maybe a little muddled about the
11 tracking printout, like we kind of went back and forth on
12 it. And, again, you'll have this back in the jury room,
13 but I just wanted to talk about it a little with you.

14 Two tracking devices were on that truck. The first
15 one is labeled Number 52. And be careful when y'all are
16 looking at this piece of evidence, and pay close attention
17 to the top. Because this top should be shifted over a
18 little. "Start time" should be shifted over one. So you
19 have your "start time" column. "End time" should be
20 shifted over one, "duration." So everything should go
21 over one. So don't be confused about that. Just
22 something with the printout. Everything got shifted.

23 So we have the tracker that was on that truck before
24 the defendant got to the courthouse, the defendant who was
25 the one driving it, the only one in the vehicle. Goes to

1 Queens Court, and he's there for 3 minutes and 41 seconds,
2 that the vehicle is stopped 10:31 to 10:35.

3 Queens Court is the road that the houses are on that
4 back up to the school. So that truck where the defendant
5 was in, it stops at Queens Court that morning before he
6 goes to the courthouse.

7 Mr. Owen testified that the students had been -- that
8 they had started recess at some point. But at this point
9 in time, the defendant's out there scoping it out, finding
10 a spot, finding where he's going to park, finding where
11 he's going to stand. You know, he's out there looking.
12 And maybe he thinks, you know, this is pretty good. I
13 think it's going to work. I don't know if any kids were
14 out there yet or not, but for whatever reason, he decides
15 to run an errand or whatever, comes up to the courthouse.

16 So he leaves Queens Court, comes up to the
17 courthouse. Now, here you can see where the other
18 tracking device leaves the Sheriff's Office and comes up
19 to West Cedar Rock Street right here near the courthouse.
20 And it stops for two minutes. Detective Taylor has the
21 other tracking device, and he is stopped right beside the
22 courthouse parking lot.

23 Again, the second tracker that Detective Taylor has,
24 he's still at West Cedar Rock Street. Then he makes
25 movement. At 10:45 to 10:47 he's moving with the tracker,

1 walking across the parking lot from West Cedar Rock Street
2 to the courthouse parking lot, and then he is able to put
3 it on the vehicle. And so that -- his movement stops at
4 10:47, they put it on the vehicle, and from 10:47 to 11:16
5 it's stationary at the courthouse. 11:16 the vehicle
6 moves, and it takes a minute and a half to get down .4
7 miles to Queens Court. The vehicle becomes stationary at
8 11:18. Mr. Owen testified that they were out at recess at
9 that time. I can't remember if he said sixth or seventh
10 graders. Middle schoolers. The child that spoke with him
11 was 12 years old. So they're out there at that time.

12 And so at 11:26, the tracker -- the vehicle starts
13 moving. And again, with the columns being shifted over,
14 the miles per hour, he goes 57 miles per hour here in
15 downtown Pickens. Somebody -- the defendant got in that
16 truck and jetted out of there. Queens Court, residential
17 area, he was moving. He was getting out of there because
18 he had been caught. He had to get out of there.

19 Now, remember what Mr. Owen said to the defendant in
20 his moment of, oh, my gosh, I can't believe this is
21 happening. He grabbed that fence, that chain-link fence
22 and shook it, said, Hey, buddy, are you having fun? The
23 defendant hadn't seen him up to that point. Why? Because
24 he was dead set on what he was watching, and Mr. Owen was
25 able to come up on him, get a good look at him, get a good

1 look at what he was wearing. Hey, buddy, are you having
2 fun? And then the defendant jumps in that truck, jets out
3 of there.

4 Now, this is the last time I'll get to address you.
5 And so I'm not quite sure what Mr. Cantrell will say to
6 you, so I want to do a little anticipating. There's not a
7 whole lot to say. Maybe that maybe it wasn't the
8 defendant. Well, you've got the tracker on the truck.
9 Well, maybe he gave the truck to someone else. Well, he's
10 wearing the exact same thing he was just wearing at the
11 courthouse. Maybe he gives his clothes to somebody else.
12 Well, the principal picks him out of the lineup, picks him
13 out in the courtroom.

14 It's him, he was down there, and with your witnesses,
15 you can believe everything they say, you can believe
16 nothing they say, you can believe a little bit of this and
17 that. But Mr. Owen, consistent, very consistent. There's
18 no reason for you to believe that he saw the defendant
19 down there but not believe him when he says that he saw
20 the defendant masturbating. You know, it just does not
21 make sense. All this evidence points to the defendant.

22 The standard you use when you're in a criminal trial
23 is reasonable doubt. Is the proof beyond a reasonable
24 doubt? And it doesn't mean an absolute certainty. It
25 doesn't mean 100 percent. There are few things in this

1 world that are 100 percent. But it means do you hesitate
2 to act? Are you unsure? No. The evidence is here.

3 These types of cases, sometimes I struggle with my
4 closing because the evidence is so heavy. To me, it's so
5 overwhelming. What do I say to you that you haven't seen,
6 that you haven't already heard? What can I say to you
7 where you're not, oh, the hell with this, I wish she would
8 sit down already? Like there's no elaborate argument that
9 I can make to you. You have the evidence. He's guilty.
10 That's all there is to it. The evidence speaks for
11 itself. The evidence speaks, and now it's your turn to
12 speak. It's your turn to go back there and deliberate,
13 and I want to ask you to find him guilty.

14 Thank you.

15 MR. CANTRELL: If it please the Court, Ms. Odom. You
16 will be told about reasonable doubt, and if you're told
17 that reasonable doubt or proof beyond a reasonable doubt
18 does not mean beyond any doubt whatsoever, then that's
19 right. That's accurate. You understood that correctly.
20 Nothing can be proven beyond any doubt whatsoever. So
21 that's not the burden that the State has.

22 So it might be easy to just say, hey, we've got an
23 ID, we've got a vehicle that's supposedly at this
24 location. That's easy. No doubt. It's open and shut.
25 But that would require you to overlook some things that

1 you have heard from the witness stand, and I'm going to
2 ask that you not overlook those things. I'm going to ask
3 that you take into account all of the evidence you've
4 heard.

5 The other thing is, it's easy, easy for all of us
6 when we hear of allegations like have been made in this
7 case to say, okay, we've got to do something. We've got
8 to take care of this. We've got to solve this,
9 particularly in our -- particularly in our current times.
10 We've got to find an answer. We've got to take care of
11 this. It would be easy to say, okay, we're going to take
12 care of this, open and shut case. But that would be a
13 disservice to everybody in this room, but also everybody
14 in this country because our country says, no, it's not
15 that easy.

16 You do have to deliberate. You do have to
17 deliberate. Even when it's tough, even when the issues
18 are tough issues, you've got to deliberate and do what is
19 right, you've got to do what is reasonable, and that
20 includes reviewing all of the evidence and render a
21 verdict which speaks the truth. And for it to be guilty,
22 that's got to be beyond any reasonable doubt. So to take
23 the easy way or to just attack an issue that our society
24 is facing and to think that it's open and shut would be to
25 take the wrong route.

1 What you do, what all jurors do and what I'm
2 satisfied you will do, because you've been listening
3 intently to everything is you take into account everything
4 that you have heard.

5 I'll start backwards maybe a little bit since this is
6 on the screen. You see information about where this
7 vehicle was. And, first of all, no, it's not Luther
8 Marcus's vehicle. It is one that he drives. I do
9 remember that it was said he was seen driving it that
10 morning. I don't remember anything about him being alone.
11 I don't know for sure. That's up to your memory to
12 remember that. Or who might have been around to the
13 courthouse at that time. But we're talking a lot about
14 where this vehicle supposedly was. And why GPS was being
15 changed out on that day in particular, we don't know. But
16 what we do know is allegedly, the GPS Number 52 was
17 supposed to be on this vehicle up until the time it came
18 to the courthouse right outside here.

19 It is regrettable that these things are shifted
20 because that requires you to use your imagination a little
21 bit, so you've got to shift these things over. But if you
22 do that, there's some questions that come out.
23 Particularly, they're saying that this vehicle that
24 apparently they believe Mr. Marcus was driving that day
25 when it had Number 52 on it at, it looks like, 10:52 that

1 morning stopped at C David Stone Road, better known as
2 Pickens County Law Enforcement Center, and then it's
3 running and went to another section of C David Stone Road
4 -- I'm sorry. Now it went to Number 51, so that's where
5 the confusion comes in. But the one that was on his
6 truck, Number 52, earlier in the day allegedly stopped at
7 the Sheriff's Department, and then 51 is at the Sheriff's
8 Department and then comes to downtown.

9 Then you're told that this movement was -- which is
10 while Mr. Marcus was admittedly, you know that, inside
11 this courthouse, that there was movement there, but that
12 was the Sheriff's Department moving and installing. But,
13 again, it leads to confusion as to who was where, when,
14 what time.

15 So all of this shows something about a vehicle. It
16 does not show or tell you who was in that vehicle, and
17 that's obviously very important. So you take this for
18 whatever weight you give to it. But you're going to have
19 to do a lot of analysis. You're going to have to review
20 all that. You might have to read running time and stopped
21 time, what was where and when, and how somebody could go,
22 if they're in this courthouse doing business in this
23 courthouse at that time on that photograph because he was
24 coming in, according to the sheriff, coming away from the
25 entrance, how somebody could do all of this, conduct

1 business here and travel back and forth.

2 Now, quite frankly, one thing I will point out is you
3 were told that somebody took off from 82 Queens Court at a
4 high rate of speed. This doesn't say that. This says
5 that a maximum miles per hour, as we shift this over, was
6 57 miles per hour, but it went 1.38 miles in a
7 three-minute period of time. So that doesn't calculate
8 out to 57 miles an hour from any particular location. So,
9 again, shift everything over. But do the math. Miles was
10 1.38, the amount of time to drive those miles was two and
11 a half to three minutes. That is not 57 miles an hour.
12 That is not peeling out and taking off from any particular
13 location. And add to that law enforcement was around and
14 nobody saw a truck or any other vehicle driving off at a
15 high rate of speed.

16 We do know that Luther Marcus was here at the
17 courthouse at the time stamped on the picture. We don't
18 know how long he stayed, but we know he was just coming in
19 at that time. I believe 2:45, 2:46 he was just getting
20 here. This shows where the truck was. The only thing
21 that tells you where Luther Marcus was is that picture,
22 and it shows you that he was here.

23 So I would submit to you, be cautious about how you
24 read this and what it may or may not tell you. Do pay
25 attention to the picture where you know Luther Marcus was.

1 We did hear Mr. Owen testify, and you heard
2 everything that I heard. You perceived it the way you
3 perceived it.

4 I think one thing that was obvious and one thing that
5 was made a fact, particularly by the deputy or the school
6 resource officer, is that Mr. Owen was a hyper guy anyway,
7 and he was hyper, he was excited, he was concerned that
8 day. And I'll be honest, I don't think we'd want it any
9 other way. He was the man that was there in charge of
10 these kids at school. We want someone to pay particular
11 attention to the kids.

12 But you do have to take into account how hyper he was
13 and how that may affect what he saw, what he thought he
14 saw, because he first said where he was standing, he could
15 not see whoever this individual was. Someone brought him
16 to his attention. But if you -- and I asked him a couple
17 of times. He's sitting on the witness stand, and I asked
18 him where he was and where the kids were, and he said that
19 the individual was, I believe -- I think he said to his
20 left, but he could not see him because of a shed, and the
21 kids were in front of him, Mr. Owen. So that would lead
22 me to believe that whoever this individual was, was hard
23 to see in the first place. When he walked out a few steps
24 and then he did see this individual and he walked down,
25 and I think he told you that his opportunity to view him

1. was 30 to 45 seconds, and his opportunity to view him
2. started at 50 to 60 feet and then got as close as 25 to
3. 30 feet.

4. And then he told you what he saw. He saw an
5. individual with a stocking cap with a shirt that had
6. different colors including a white stripe, and this was
7. broad daylight so there should be no confusion about
8. colors, but a sweater with a white stripe. He didn't know
9. anything about the cap, just that he had on a stocking
10. cap. But, folks, we live in Pickens county. When is the
11. last time you saw somebody with a Gamecock or a Tiger
12. emblem on that you didn't notice? It doesn't matter whose
13. side you're on. You notice it. You see it. It's a
14. natural reflex for us to know, well, that was a Gamecock
15. cap or that was a Tiger cap. And he didn't, or he didn't
16. report it that way, and we know that's what it was based
17. on this picture.

18. What I'm trying to say is, very simply, this is an
19. excited person and an excited set of circumstances, and I
20. think that impaired and affected his opportunity to
21. observe. He told you how angry he was, how the officer
22. told you how hyper he was. He got his description wrong.
23. No white stripes on the sweater, did not say it was a
24. Gamecock toboggan.

25. Let's go to the other things that he said. He said

1 he couldn't give you a very good description of the face.
2 Now, I'll be honest with you, I'm going to ask you to
3 disregard a courtroom identification. I mean, take into
4 account Mr. Owen is sitting there, he's asked, Can you
5 identify the defendant? Look around you, ladies and
6 gentlemen. Who else was he going to identify? He didn't
7 think it was me. He didn't think it was Deputy Taylor.
8 He didn't think it was any of the other males in this
9 room. There was only one person he could identify. So to
10 say he identified the defendant in this courtroom is to
11 say he identified this defendant as being in the
12 courtroom.

13 But what's even more interesting is when I did ask
14 him about facial hair, he said, Yeah, I think there was
15 some facial hair. Maybe a goatee. We've got a goatee
16 here today. Nothing like a goatee on that date in
17 question, and you know that by looking at the picture.
18 Mr. Marcus was unshaven, but no goatee.

19 So we get around to the identification on the photo.
20 And essentially, what Mr. Owen says is that he identified
21 him by his eyes, that he felt like he had an opportunity
22 to look at him and see him by his eyes. We know he was
23 not exactly right about the facial hair. We know that he
24 was -- didn't have any idea about the hair because there
25 was this toboggan on.

1 So you've got this photo lineup. All he knows are
2 the eyes. He doesn't know about the facial hair. So you
3 take away that part of the individuals in the picture. He
4 doesn't know what type hair he had, so you take away the
5 hair, take away the facial hair of the ones above, and
6 then you take away the hair of these up here. That's what
7 he used to identify someone, and he immediately, without
8 hesitation, picked out, according to the officer, Luther
9 Marcus. But how? What do you think could have made him
10 do that seeing someone outside for a fairly brief period
11 of time only going by his eyes? And what I would submit
12 to you, ladies and gentlemen, it was pure luck, pure bad
13 luck because he had a one in six chance of picking out
14 Luther Marcus anyway. But if you believe that he could
15 look at this view and be able to identify someone he saw
16 under an excited, exhilarated set of circumstances a
17 couple of days before, it's highly questionable at best.

18 Luther Marcus was at the Pickens County courthouse,
19 and he was here seen coming in. A vehicle he drives was
20 outside, and this vehicle was all over the place before
21 and after this alleged incident. But all we know is where
22 Luther Marcus was, and that is here at this courthouse.

23 What is even more interesting about this in a curious
24 sort of way is what was described to you by Mr. Owen. And
25 you already heard the definition of indecent exposure. It

1 involves willful, malicious and indecently exposing
2 yourself. If this individual could not be seen from where
3 Mr. Owen was because he was on the other side of the shed,
4 there is even a possibility that that individual, whoever
5 it may be, was not violating this statute because he was
6 not trying to be seen. His exposure was not willful,
7 malicious and indecent. We might have some more stupid
8 guy going to the bathroom and didn't realize that he was
9 within sight of these other people. We don't know. But
10 we do know that what Mr. Owen said was that he could not
11 see, and that the kids were down this way and the
12 gentleman was down this way.

13 So there's even a chance there was no crime committed
14 in the first place, but more likely probably is that
15 whoever it was, was not Luther Marcus. He was at the
16 courthouse. The identification that was presented to you
17 by Mr. Owen was, I believe, tainted because he couldn't
18 identify the cap, he only saw a part of this individual's
19 face, he gave a wrong description of the sweater, and he
20 was super excited and super concerned about the kids,
21 which means not paying attention to the identification as
22 much as wanting to get him and wanting to protect his
23 kids, all of which are commendable but doesn't lend to a
24 good ID. And you can form your own opinion as to how
25 accurate the eyewitness identifications are or can be just

1 based on your own human experience.

2 So what I am asking you to do is not consider this
3 open and shut even though if you were told when you walked
4 in you're going to have a case that has an ID, you're
5 going to have a case that has a car in a certain place,
6 open and shut, easy, I'm going to ask you not to let it be
7 quite so easy, not rush to judgment because of the type of
8 charge or the location of the charge. That would be
9 unfair not just to this defendant, but to all victims and
10 defendants in various type cases like this because you've
11 got to always look for the right answer, a true answer,
12 the answer that is proven beyond a reasonable doubt. And,
13 you know, the simple fact is there's some evidence there,
14 but the more convincing evidence is where Luther Marcus
15 was, and that's the only thing you know for sure. And
16 there's some doubts about the other evidence and the other
17 testimony.

18 So I'm going to ask you not to rush to judgment, not
19 to consider it open and shut. I'm going to ask you to
20 review all of that evidence and say, you know, yeah,
21 there's some evidence here, there's some good evidence
22 here, but I'm not sure. I'm not convinced beyond a
23 reasonable doubt. I don't know that this happened this
24 way. In fact, I think there's a pretty good chance it
25 didn't happen this way based on everything that I see,

1 including the GPS, including the pictures from the
2 courthouse, including these pictures, for that matter.
3 I'm not sure. I don't believe it necessarily happened
4 that way. If you have that thought, you have that doubt,
5 you should return a verdict of not guilty.

6 Thank you.

7 CHARGE ON THE LAW

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, during this trial, you and I have certain duties to
10 perform. As the trial judge, it is my responsibility to
11 preside over the trial of the case and to rule on the
12 admissibility of the evidence offered during the trial.
13 It is also my duty to charge you the law applicable to the
14 case, and it is your duty as jurors to accept and apply
15 the law as I now state it to you. If you think you have
16 any idea as to what the law is or what the law ought to be
17 and it does not agree with what I tell you the law is, you
18 must forget your own idea because you have sworn an oath
19 to accept and apply the law precisely as I state it to
20 you.

21 I also remind you that in every case tried in this
22 court before a jury, the jury is the sole and exclusive
23 judge of the facts. A trial judge by law is not entitled
24 to have an opinion about the facts, so don't think by
25 anything I may have said or done throughout the course of

1 the trial I have such an opinion. You all are the sole
2 judges of the facts.

3 I also, again, instruct you that the fact that the
4 defendant was arrested, charged and indicted in the case
5 is not evidence, nor does it create any presumption or
6 inference of guilt. These documents are simply the formal
7 written instruments which contain the charge made against
8 this defendant, and they serve as the formal documents by
9 which the case is processed and brought into court.

10 Now, necessarily, your job as jurors is to determine
11 the credibility or believability of the witnesses who have
12 testified, and it becomes your duty as jurors to evaluate
13 the evidence and determine which evidence convinces you it
14 is true. And in determining the believability of the
15 witnesses, you may believe one witness over several or
16 several over one, you may believe a part of the testimony
17 of a witness and reject the remaining part, you may
18 believe the testimony of a witness in its entirety or
19 reject that same testimony in its entirety, and you may
20 consider whether the witness has an interest in the result
21 of the trial, whether the witness is prejudiced towards
22 either the State or the defendant, the opportunity for the
23 witness to have seen the matters and things about which
24 the witness has testified, and the way the witness acts on
25 the witness stand or what we call a witness's demeanor.

1 I instruct you and I emphasize that the fact that the
2 defendant did not testify is not a factor to be considered
3 by you in any way in your deliberations on the question of
4 the guilt or the innocence of the defendant. It must not
5 be considered by you in any manner whatsoever. A
6 defendant has the constitutional right to remain silent,
7 and the assertion of this right must not be considered by
8 you in your deliberations.

9 The defendant has pled not guilty to the indictment,
10 and that plea puts the burden on the State to prove the
11 defendant guilty. A person charged with committing a
12 criminal offense in South Carolina is never required to
13 prove themselves innocent, and I charge you that it is a
14 cardinal and a signal rule of the law that the defendant
15 in a criminal trial will always be presumed innocent of
16 the crime for which an indictment has issued unless guilt
17 has been proven by evidence satisfying you the jury of
18 guilt beyond a reasonable doubt.

19 Now, a reasonable doubt is the kind of doubt which
20 would cause a reasonable person to hesitate to act, and
21 reasonable doubt may arise from the evidence which is in
22 the case or from the lack or absence of evidence in the
23 case, and you the jury must determine whether or not
24 reasonable doubt exists as to the guilt of this defendant.
25 I remind you the State has the burden of proving each and

1 every element of the crime beyond a reasonable doubt.

2 Now, an issue in this case is the identification of
3 the defendant as the person who committed the crime
4 charged, and the State has the burden of proving identity
5 beyond a reasonable doubt. You must be satisfied beyond a
6 reasonable doubt of the accuracy of the identification of
7 the defendant before you may convict the defendant.

8 An identification testimony is an expression of
9 belief or impression by a witness. You must determine the
10 accuracy of the identification of the defendant, and you
11 must consider the believability of each identification
12 witness in the same way as any other witness. You may
13 consider whether the witness had an adequate opportunity
14 to observe the offender at the time of the offense, and
15 this will be affected by things like how long or short a
16 time was available, how far or close the witness was, the
17 lighting conditions and whether the witness had the chance
18 to see or know the person in the past. Once again, I
19 instruct you the burden of proof on the State extends to
20 every element of the crime charged, and this includes the
21 burden of proving the identity of the defendant beyond a
22 reasonable doubt.

23 Now, there are two types of evidence which are
24 generally presented during a trial: direct evidence and
25 circumstantial evidence. Direct evidence directly proves

1 the existence of a fact and does not require deduction.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact.

4 Crimes may be proven by circumstantial evidence, and
5 the law makes no distinction between the weight or the
6 value to be given to either direct evidence or
7 circumstantial evidence. However, to the extent the State
8 relies on circumstantial evidence, all of the
9 circumstances must be consistent with each other, and,
10 when taken together, point conclusively to the guilt of
11 the accused beyond a reasonable doubt. If these
12 circumstances merely portray the defendant's behavior as
13 suspicious, the proof has failed. The State has the
14 burden of proving the defendant guilty beyond a reasonable
15 doubt, and the burden rests with the State regardless of
16 whether the State relies on direct evidence,
17 circumstantial evidence or some combination of the two.

18 Now, the defendant is charged with indecent exposure.
19 The State must prove that the defendant willfully,
20 maliciously and indecently exposed his private parts in a
21 public place on property of others or to the view of any
22 person on a street or highway.

23 "Willfully" means that the act is not done by
24 accident, but that it is done knowingly, consciously and
25 of a stubborn purpose.

1 "Maliciously" means that the act was done with wicked
2 or mischievous intentions or motives, wrongfully and
3 intentionally without just cause or excuse.

4 And "indecent" means offensive, immodest, grossly
5 vulgar, obscene, unseemly, unbecoming, unfit to be seen or
6 heard.

7 Now, ladies and gentlemen, there are two possible
8 verdicts which you may reach in this case, and there's no
9 significance whatsoever in the order in which I state
10 them, one's got to be stated first, and they are guilty or
11 not guilty. I will tell you that your verdict must be
12 unanimous. All 12 of you must agree, and your verdict
13 cannot be based on sympathy, passion, prejudice, emotion
14 or any other consideration which is not in evidence in the
15 case. You have no friends to reward, you have no enemies
16 to punish.

17 Now, Madam Forelady, when the jury -- and we have
18 prepared a verdict form we'll send back in there with you.
19 It will come in with the evidence. I think it's pretty
20 simple and easy to understand, but if you have any
21 problems with it, let me know and I'll explain it so that
22 it's clearly understandable.

23 When you all have agreed unanimously on a verdict,
24 please indicate to the bailiffs and we'll receive you back
25 in the courtroom to take the verdict.

1 At this time, I'm going to excuse you all back to the
2 jury room, ask you not to begin your deliberations just
3 yet. I need to go over my charge on the law with the
4 attorneys to make sure I didn't misstate or omit
5 something. But when the verdict form comes back with the
6 evidence, you all may begin your deliberations.

7 So at this time, I'll excuse everyone on the jury
8 with the exception of Mr. Whitwell. Okay. Thank you.

9 (WHEREUPON, the jury exits the courtroom at 11:03 a.m.)

10 THE COURT: Mr. Whitwell, you're just as qualified as
11 all 12 of those, but you're Number 13. I guess that's
12 unlucky. Or maybe lucky. I don't know. I'd love to let
13 you go back and deliberate, but the law just won't allow
14 it. I want to thank you very much for your service.
15 You've fulfilled your service for the week and for the
16 year, two weeks left. But if you need a statement for
17 your work, stop by the clerk's office and they'll provide
18 it for you. You're welcome to stay, go, whatever you wish
19 to do.

20 Okay. Thank you.

21 All right. Any exception or objection to the charge
22 from the State?

23 MS. ODOM: No, sir.

24 THE COURT: Defense?

25 MR. CANTRELL: Nothing, Your Honor.

1 THE COURT: Okay. Well, you all make sure we got all
2 the evidence together. Here's the verdict form. Tell
3 them to get going.

4 (WHEREUPON, a recess is taken at 11:04 a.m., and the jury
5 starts their deliberations.)

6 THE COURT: I've got a question from the jury that
7 just says definition of "indecent exposure." I'd suggest
8 making some copies of my charge and send it to them. Any
9 objection?

10 MR. CANTRELL: None, Your Honor.

11 (WHEREUPON, Court's Exhibit No. 2 was marked for
12 identification, and a recess is taken at 11:46 a.m.)

13 (WHEREUPON, the jury entered the courtroom at 12:05 p.m.)

14 THE COURT: Madam Forelady, I understand you've
15 reached a verdict.

16 JURY FOREPERSON: We have.

17 THE COURT: Okay. Would you hand it to the clerk for
18 me, please.

19 All right. Would you please publish.

20 VERDICT

21 THE CLERK: This is Case Number 2017-GS-39-0183, the
22 State of South Carolina vs. Luther Brian Marcus. As to
23 the charge of indecent exposure, we the jury find the
24 defendant guilty.

25 This is your verdict and still your verdict, so say

1 you all by raising your right hands.

2 (WHEREUPON, all jurors raised their right hands.)

3 THE CLERK: Thank you very much.

4 THE COURT: All right. Anything further from the
5 jury from the State?

6 MS. ODOM: No, sir.

7 THE COURT: From the defense?

8 MR. CANTRELL: Nothing Your Honor.

9 THE COURT: All right. Madam Forelady, ladies and
10 gentlemen of the jury, I want to thank you very much for
11 your service. I know you all are disappointed or will be
12 disappointed to learn that you're done for the week and
13 done for the year. So I hope I didn't make a liar out of
14 myself, and I hope you recognize the importance of jury
15 service. And it's not like you're going to walk down the
16 street and have all your fellow citizens slap you on the
17 back, but I hope you feel a deep sense of satisfaction for
18 participating in our justice system, and I wish you all a
19 happy holiday. Thank you very much. Stay, go, whatever
20 you'd like to do.

21 (WHEREUPON, the jury exits the courtroom at 12:07 p.m.)

22 THE COURT: All right. Any motions?

23 MR. CANTRELL: And, Your Honor, I would simply renew
24 all prior motions as well as the motion for a directed
25 verdict.

1 THE COURT: All right. The jury has spoken and I
2 won't disturb their wisdom.

3 All right. Come on around.

4 How many days in jail does he have?

5 MS. ODOM: 363.

6 MR. CANTRELL: I have 364. Tomorrow will be one
7 year. Was he arrested the day after?

8 MS. ODOM: He was arrested on the 15th.

9 MR. CANTRELL: 363 then.

10 THE COURT: All right. What do you want to tell me?

11 MR. CANTRELL: Well, Your Honor, simply the jury has
12 rendered their verdict so I won't address that. You've
13 heard our position and our information as far as to the
14 charges.

15 Mr. Marcus, as the Court is also well aware, he had
16 been out of SCDC only a fairly brief period of time but
17 was already employed, had a good job. He was here because
18 two primary things: one is he has a young daughter that
19 lives in this area that he was in position of supporting
20 at that point in time, he also has his father who is in
21 bad health that he tends to and lives with part of the
22 time, so he was taking care of him, as well as being
23 gainfully employed.

24 So as to the sentence on the indecent exposure, Your
25 Honor, I realize it can be up to three years. I would ask

1 -- he served a year, basically, and I would ask the Court
2 to take that into account. Obviously, we would love time
3 served, but we understand that he is susceptible to a
4 three-year sentence, and we ask the Court to take all that
5 into account. He is prepared to get back out and work and
6 support his daughter and help his father.

7 THE COURT: All right. He was on probation. This is
8 a violation of that probation. Do you understand that?

9 MR. CANTRELL: Yes, sir. We do have some issues with
10 the probation itself that I would ask to be heard on as to
11 circumstances surrounding the probation.

12 THE COURT: Well, you can tell me about it. He just
13 got convicted of a crime while he's on probation. So tell
14 me whatever it is you want to tell me.

15 MR. CANTRELL: Part of the issues are some of the
16 complications involving probation, as to the status of the
17 probation. He was sentenced in Pickens County and then
18 subsequently sentenced in Oconee County. The sentences in
19 Oconee County were all concurrent with the Pickens County
20 sentences. His overall sentences in both were 15 -- the
21 largest overall sentencing in both were 15 years, in
22 Pickens County suspended to five years and then probation.
23 In Oconee County, some were suspended to seven years and
24 then probation. But once entering SCDC, Your Honor, he
25 ended up serving a combined or a total time of seven years

1 and 11 months, which maxed him out on the 15-year
2 sentences, would be our position. So even though he was
3 sentenced to serve seven years, he served more than that.
4 He served more than the suspended amount of sentence. So
5 we believe that that would, in fact, max out his sentence
6 on the 15-year sentence, therefore, he should not be
7 continued to be on probation and would have -- and he
8 would have maxed out on the five-year sentences in 2012
9 and continued to serve time until 2016. So there was
10 additional time served there. And he remained in custody
11 of SCDC until his release in 2016.

12 We believe he would be entitled to all credit for all
13 of those times and that that would -- should be credited
14 to any active sentences, and that that maxed him out on
15 all the sentences.

16 And, in fact, his sentence in Pickens County -- I'm
17 sorry -- his probation in Pickens County was terminated.
18 He was served with a warrant for violation of Pickens
19 County -- probation in Pickens County, but then that
20 warrant was dismissed because it was indicated that it was
21 invalidly issued, that his case should have been closed in
22 February of 2016, which is while he was still in the
23 custody of SCDC.

24 THE COURT: Well, that's all not in my jurisdiction,
25 as you are aware.

1 Ms. Ford, anything you can tell me?

2 PROBATION AGENT: No, sir. I mean, he's on the
3 probation case for the Oconee charges. He was released
4 September 30th of 2016. He owed restitution, which he did
5 make. He did pay \$474 and some change and then he was
6 arrested on these charges a short time later.

7 THE COURT: And what's his criminal history?

8 MS ODOM: Thank you, Your Honor. He has from 1993,
9 eight grand larcenies, three petit larcenies, eight B&E
10 autos and a burglary, and it looks like he did 120 days
11 and then a probationary sentence; in 1994 he has two
12 charges of criminal sexual conduct with a minor that he
13 received a 12-year sentence on, and he is on the sex
14 offender registry; 2005, a fraudulent tax return that he
15 did 18 months on; and then from 2010, three burglary
16 seconds, two grand larcenies and a safe cracking.

17 THE COURT: All right. Anything you want to tell me?

18 DEFENDANT MARCUS: Yes, Your Honor. I just feel like
19 I maxed a total of 15 years out from those suspended
20 sentences that was ran concurrent with my Pickens. I feel
21 like I gave my time to the State. I exceed those
22 15 years. I was ---

23 THE COURT: You understand that's not up to me.

24 DEFENDANT MARCUS: I understand that.

25 THE COURT: Okay.

1 DEFENDANT MARCUS: Who is it up to? Who do I appeal
2 it to?

3 THE COURT: Well, you can talk to your lawyer about
4 that.

5 SENTENCING

6 THE COURT: I'm going to give you three years on
7 this, revoke him in full. Good luck.

8 PROBATION AGENT: Civil judgment for restitution?

9 THE COURT: Civil judgment.

10 (WHEREUPON, Court's Exhibit No. 3 was marked for
11 identification, and proceedings concluded at 12:14 p.m.)

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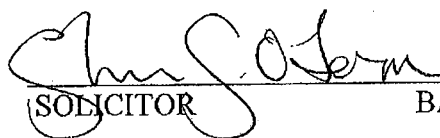
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
INDECENT EXPOSURE

At a Court of General Sessions, convened on **MAY 16 2017** the Grand Jurors of Pickens
County present upon their oath:

That LUTHER BRIAN MARCUS did in Pickens County, on or about the 13th day of December, 2016, willfully,
maliciously and indecently expose his person in a public place, on property of others, or to the view of any person
on a street or highway. This is in violation of §16-15-130 of the South Carolina Code of Laws (1976) as
amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 77891

WITNESSES

Noe Sudduth

Pickens Police Department

12/15/2016

ARREST WARRANT NUMBER

2016A3920700232

ACTION OF GRAND JURY

TRUE BILL

Date MAY 16 2017

Melanie Davis
Foreperson of Grand Jury

VERDICT

Guilty

Samuel Caldwell 12-12-17
Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-39-SSO 0183

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 16 2017

TERM 2017

THE STATE

vs.

LUTHER BRIAN MARCUS

Indictment for

0091

INDECENT EXPOSURE

VIOLATION § 16-15-0130

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger
Appellate Defender

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

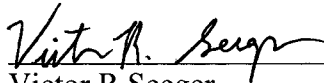
ATTORNEY FOR APPELLANT

This 10th day of December, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 10th day of December, 2018.

RECEIVED
DEC 10 2018
SC Court of Appeals