

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

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Honorable J. Cordell Maddox, Circuit Court Judge **SC SUPREME COURT**

JONATHAN A. FINNEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000842

APPENDIX

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

3

4 The State of South Carolina,)
5 Plaintiff,) 2013-GS-37-00115 &
6 -vs-) 2013-GS-37-00118
7 Jonathan Allen Finney,) May 27, 2014
8 Defendant.) Volume 1 of 3
9) Pages 1 - 108
) Transcript of Record
)

10

11

B E F O R E:

12

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

13

14

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

15

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Attorney for Defendant

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Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:46 a.m.)

4 THE COURT: All right. Good morning. My name is
5 Lawton McIntosh, and I'm the resident circuit court judge
6 from Anderson, but the Tenth Judicial Circuit is part of
7 our circuit, which is Anderson and Oconee County. It is
8 my pleasure to be with you this week for a term of
9 general sessions or criminal court.

10 Just to kind of give you an idea of what the
11 logistics are, my understanding is we have a number of
12 cases that have been disposed of, but we still have three
13 on the docket for this week. We will pick a jury this
14 morning, and then we have some administrative matters to
15 do this afternoon. I am required to be in Atlanta
16 tomorrow, and so we'll start back Thursday and finish up
17 on Friday just so you will know for your schedules.

18 With that being said, Madam Court Reporter --
19 Clerk -- I was about to call you court reporter -- Madam
20 Clerk, would you call the roll.

21 THE CLERK: Yes, sir.

22 Ladies and gentlemen, before we begin, I do need
23 to administer an oath to you, so if you would please
24 stand.

25 (WHEREUPON, the jury was sworn.)

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

3 Ladies and gentlemen, as I call your name, if you
4 would please stand. We will need to know the name of
5 your employer and the job that you hold with your
6 employer. If you are married, we will need to know the
7 name of your spouse's employer and the job they hold with
8 their employer. If you or your spouse are retired, we
9 need to know your last job held.

10 Number 5, Meredith Arrington.

11 PROSPECTIVE JUROR: What did you need to know
12 again?

13 THE CLERK: We will need to know the name of your
14 employer and the job that you hold with your employer.

15 PROSPECTIVE JUROR: I don't have a job.

16 THE CLERK: Okay. And are you married?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Okay. So -- and if you are a
19 student, you can tell us you're a student.

20 PROSPECTIVE JUROR: I'm a student.

21 THE CLERK: Okay. Thank you.

22 Number 6, Jason Barden.

23 PROSPECTIVE JUROR: Here. I am chief information
24 officer for Clemson Eye, and I'm also system
25 administrator for Net Doctors in Seneca.

1 THE CLERK: Number 7, Horace Barrett.

2 PROSPECTIVE JUROR: Retired, Bobby Wood
3 Chevrolet. Spouse is retired, formerly at Clemson
4 University.

5 THE CLERK: Thank you.
6 Number 9, Katie Baumann.

7 PROSPECTIVE JUROR: I'm a cashier at McDonald's.

8 THE CLERK: Okay.
9 Number 16, Michael Boggs.

10 PROSPECTIVE JUROR: I work for the South Carolina
11 Army National Guard as a supply sergeant. My wife is
12 Laura Boggs, and she works for Les Walden Real Estate.

13 THE CLERK: And what does she do for Les Walden?

14 PROSPECTIVE JUROR: She sells real estate.

15 THE CLERK: Okay. So she's an agent?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE CLERK: Thank you.

18 Number 17, Edna Bowen.

19 PROSPECTIVE JUROR: I'm unemployed. My husband
20 is a self-employed truck driver.

21 THE CLERK: Okay.

22 Number 19, Michelle Bridgman.

23 PROSPECTIVE JUROR: I'm nurse manager at AnMed
24 Health Carolina Kids, and my husband owns his own
25 business.

1 THE CLERK: And what does he do being
2 self-employed?

3 PROSPECTIVE JUROR: He does maintenance. He does
4 repairs on rental properties.

5 THE CLERK: Okay. Thank you.

6 Number 28, Andrades Carter.

7 PROSPECTIVE JUROR: I am a professional tutor
8 with Aim to Attain Educational Services, and my husband
9 is a reliability technician for Michelin.

10 THE CLERK: Number 29, Rachael Cary.

11 PROSPECTIVE JUROR: I'm a full-time Clemson
12 University student, and I'm also part-time employed by
13 the Spinx in Seneca.

14 THE CLERK: Okay. Thank you.

15 Number 32, Kendra Chapman.

16 PROSPECTIVE JUROR: I am a dental assistant at
17 Seneca Orthodontics, and my husband is a self-employed
18 contractor.

19 THE CLERK: Number 33, Shera Chastain.

20 PROSPECTIVE JUROR: Community First Bank teller.
21 My spouse works for Oconee County Facilities Maintenance.

22 THE CLERK: Okay.

23 Number 34, Noel Clarkson.

24 PROSPECTIVE JUROR: Engineering supervisor for
25 Duke Energy, and my wife is an engineer at Duke Energy.

1 THE CLERK: Number 38, Lee Creswell.

2 PROSPECTIVE JUROR: Santee Cooper power plant
3 technician. My wife is unemployed.

4 THE CLERK: Number 41, Jack Davis.

5 PROSPECTIVE JUROR: I work with Clemson
6 University in the College of Ag Department of Life
7 Sciences Dean's office. My wife is retired from the
8 student health center also at Clemson University.

9 THE CLERK: Number 47, Linda Doty.

10 PROSPECTIVE JUROR: I'm an adjunct health care
11 instructor and part-time at Tri-County Tech, and my
12 husband is retired Navy and also formerly worked at
13 Clemson and is retired.

14 THE CLERK: Number 51, Hannah Everett.

15 PROSPECTIVE JUROR: My name is Hannah Everett. I
16 work at Eye & Contact Lens Associates, and I'm the
17 optical manager.

18 THE CLERK: Number 56, Craig Fischer.

19 PROSPECTIVE JUROR: I work at Publix Supermarket.
20 I'm a deli associate.

21 THE CLERK: Number 57, Lois Fitzgerald.

22 PROSPECTIVE JUROR: My husband and I are retired.
23 My husband was director of planning for a pipeline --
24 Teppco Pipeline Company in Texas. I was preschool
25 director at Bay Harbor Methodist early childhood program.

1 THE CLERK: Number 61, Rebecca Galbreath.

2 PROSPECTIVE JUROR: I work at Home Instead Senior
3 Care.

4 THE CLERK: And what do you do there?

5 PROSPECTIVE JUROR: I take care of the elderly.

6 THE CLERK: Okay. That's fine. You're a
7 caretaker.

8 Number 65, June Grant.

9 PROSPECTIVE JUROR: I am a product technician at
10 U.S. Engine Valve. My husband is disabled. His last
11 employer was maintenance technician at Covidien in
12 Seneca.

13 THE CLERK: Number 68, Taylor Hamilton.

14 PROSPECTIVE JUROR: I'm a full-time student.

15 THE CLERK: Okay.

16 Number 69, Lee Hand.

17 PROSPECTIVE JUROR: I am a stay-at-home mom, and
18 my husband is a plastics consultant. He works for a
19 couple different companies. I couldn't tell you which
20 companies.

21 THE CLERK: That's fine. All right.

22 Number 72, William Harvey.

23 PROSPECTIVE JUROR: Yes. I'm a retired president
24 of Local 387, Atlanta, Georgia, and my wife is a
25 housekeeper.

1 THE CLERK: Number 74, Harry -- Barry Hendricks,
2 I'm sorry.

3 PROSPECTIVE JUROR: I'm a nursery worker with
4 Zone 7 Nursery.

5 THE CLERK: Number 75, William Hightower.

6 PROSPECTIVE JUROR: I'm a machinist II at Borg
7 Warner.

8 THE CLERK: Number 76, Jeffrey Hodges.

9 PROSPECTIVE JUROR: I work for Blue Ridge Tool &
10 Machinery as a quality manager. My wife works at Easley
11 Country Medical as a radiology technician.

12 THE CLERK: Number 78, Catherine Huston.

13 PROSPECTIVE JUROR: I'm a certified pharmacy
14 technician at Ken's Pharmacy. My husband is a chef at
15 Keowee Key Country Club.

16 THE CLERK: Number 80, Samuel Jenkins.

17 PROSPECTIVE JUROR: I work for IPG. My wife is
18 retired from Covidien.

19 THE CLERK: And what do you do for IPG?

20 PROSPECTIVE JUROR: I'm a technician.

21 THE CLERK: Okay. Thank you.

22 Number 81, Morgan Jones.

23 PROSPECTIVE JUROR: I work for Hutchison
24 Construction and I pour concrete.

25 THE CLERK: Okay.

1 Number 82, Tina Justice.

2 PROSPECTIVE JUROR: Case manager at Collins Home
3 and Family Ministries. My husband's a truck driver for
4 Builders First Source.

5 THE CLERK: Number 85, Sharon Klaren.

6 PROSPECTIVE JUROR: I work for orthodontic
7 Associates in Greenville. I'm an orthodontist assistant.
8 My husband works for the City of Seneca as a building
9 inspector.

10 THE CLERK: Number 89, Carolyn Lecroy Smith.

11 PROSPECTIVE JUROR: I work for Oconee County in
12 the assessor's office and part-time for Attorney Leslie
13 Shayne, and my husband works for Koyo Bearings. He's a
14 supervisor.

15 THE CLERK: Number 90, Charles Lee.

16 PROSPECTIVE JUROR: I work at S&S Construction
17 out of Anderson as general superintendent. My wife works
18 at James M. Brown, the cafeteria at school.

19 THE CLERK: Number 95, Velda McCoy.

20 PROSPECTIVE JUROR: I work at BASF as a
21 production engineer.

22 THE CLERK: Okay.

23 Number 96, Joseph McDavid.

24 PROSPECTIVE JUROR: I'm a full-time student at
25 Clemson University, and I work part-time at Clemson

1 University as a data visualization intern.

2 THE CLERK: Number 97, Susan Megilvra.

3 PROSPECTIVE JUROR: I work at Oconee Pediatrics
4 as a nurse practitioner, and my husband is retired from
5 Atlantic Southeast Airlines.

6 THE CLERK: Number 99, Ashley McGuffin.

7 PROSPECTIVE JUROR: I'm a full-time student at
8 Coastal Carolina University.

9 THE CLERK: Number 102, Lynn McWhorter.

10 PROSPECTIVE JUROR: I work for the Seneca post
11 office. I'm a rural carrier. I recently was in a car
12 accident and I had neck surgery. And my husband is Louis
13 McWhorter, and he's disabled.

14 THE CLERK: Okay. Thank you.

15 Number 105, Mari Merrell.

16 PROSPECTIVE JUROR: I'm retired. I worked in
17 medical billing. My husband is also retired. He was in
18 human resources for a Department of Defense office.

19 THE CLERK: Okay.

20 Number 114, Luke Pace.

21 PROSPECTIVE JUROR: I'm a full-time student and a
22 computer technician at Advanced Electronics.

23 THE CLERK: Number 115, Michael Peay.

24 PROSPECTIVE JUROR: I'm a CNC programmer at
25 Sharpe Manufacturing.

1 THE CLERK: Number 117, Debra Powchak.

2 PROSPECTIVE JUROR: I'm retired from the postal
3 service, and my husband is retired from Southern New
4 England Telephone.

5 THE CLERK: Number 119, Elaine Putnam.

6 PROSPECTIVE JUROR: I work at ITT Compact, and I
7 work in the stockroom.

8 THE CLERK: Number 122, Rod Raines.

9 PROSPECTIVE JUROR: Self-employed, retired. My
10 wife is a housewife.

11 THE CLERK: What did you do being self-employed?

12 PROSPECTIVE JUROR: Plastic broker.

13 THE CLERK: Okay. Thank you.

14 Number 123, Morgan Rampy.

15 PROSPECTIVE JUROR: Full-time nursing student at
16 Tri-County.

17 THE CLERK: Number 124, Thomas Ray.

18 PROSPECTIVE JUROR: Plant manager, Oconee Nuclear
19 Station. My wife is lead engineer for Duke Energy.

20 THE CLERK: Number 128, Michelle Roach.

21 PROSPECTIVE JUROR: First grade teacher at Blue
22 Ridge Elementary. My husband works in the graphics
23 department at Sealed Air in Simpsonville.

24 THE CLERK: Number 138, William Scrudato.

25 PROSPECTIVE JUROR: I work at Mountaintop Golf &

1 Lake Club. I'm the golf course chef.

2 THE CLERK: Number 139, Lois Seitz.

3 PROSPECTIVE JUROR: "Seitz." I'm retired from
4 Dow Brands, which is a division of Dow Chemical, and my
5 husband is retired from Batson Architects.

6 THE CLERK: Okay. Number 142, Wayne Sloan.

7 PROSPECTIVE JUROR: I am a real estate appraiser
8 with the County of Oconee. Wife works at Oconee Federal
9 as escrow and insurance.

10 THE CLERK: Number 145, Jesse Smith.

11 PROSPECTIVE JUROR: I'm retired, engineer, worked
12 for United Technologies. My wife is a retired teacher.

13 THE CLERK: Number 150, Rachel Spiva.

14 PROSPECTIVE JUROR: I'm a nursing student at
15 Tri-County, and I work as a nursing assistant at Oconee
16 Medical.

17 THE CLERK: Number 151, William Staples.

18 PROSPECTIVE JUROR: Unemployed, unmarried.

19 THE CLERK: Number 153, Patricia Strickland.

20 PROSPECTIVE JUROR: I'm a material handler at
21 Itron.

22 THE CLERK: Number 154, Kevin Underwood.

23 PROSPECTIVE JUROR: Borg Warner, maintenance
24 electrician.

25 THE CLERK: Okay.

1 Number 156, Megan Van der Toorn.

2 PROSPECTIVE JUROR: I'm a student at Vanderbilt
3 University. I work in their office of student life.

4 THE CLERK: Number 157, Shawn Vereb.

5 PROSPECTIVE JUROR: I'm an equipment operator at
6 rock quarry in Oconee. Wife is a homemaker.

7 THE CLERK: Number 160, Donna Waites.

8 PROSPECTIVE JUROR: I'm a licensed optician,
9 Wal-Mart Vision Center.

10 THE CLERK: Number 164, Michelle Washington.

11 PROSPECTIVE JUROR: I work at Lila Doyle in
12 dietary. My husband works at Schneider Electric.

13 THE CLERK: What does he do at Schneider
14 Electric?

15 PROSPECTIVE JUROR: He's an assembly worker.

16 THE CLERK: Okay. Thank you.

17 Number 166, Janice Watkins.

18 PROSPECTIVE JUROR: I'm a custodian at Walhalla
19 High School. My husband is Johnny Watkins. He's a
20 self-employed landscaper.

21 THE CLERK: Okay.

22 PROSPECTIVE JUROR: Equipment operator.

23 THE CLERK: Number 171, James Williams.

24 PROSPECTIVE JUROR: Night shift security
25 supervisor for First Quality Tissue. Wife is a full-time

1 student.

2 THE CLERK: Number 172, Cathy Woodland.

3 PROSPECTIVE JUROR: Office assistant at Just
4 Aircraft, and my husband is a supervisor for Just
5 Aircraft.

6 THE CLERK: Number 173, Morgan Young.

7 PROSPECTIVE JUROR: Dental assistant at Smith
8 Dental Care.

9 THE CLERK: Okay.

10 Is there anyone here whose name I did not call,
11 if you would please stand.

12 Yes, sir. Your name?

13 PROSPECTIVE JUROR: James Case, Lowe's delivery.

14 THE COURT: Did you check in downstairs?

15 PROSPECTIVE JUROR: (Nodding.)

16 THE CLERK: If you will bear with me just a
17 moment.

18 Okay. You're Juror Number 30. If you would
19 stand, and if you would just go ahead and give us the
20 information that everyone else has given.

21 PROSPECTIVE JUROR: Truck driver for Lowe's.

22 THE CLERK: Thank you.

23 Is there anyone else? Okay.

24 THE COURT: All right. Thank you, Madam Clerk.

25 All right. Ladies and gentlemen, first we

1 understand -- can you hear me? If you can't, raise your
2 hand.

3 We understand the court system, the inconvenience
4 it is to all of you being required to be here and to
5 potentially sit in judgment on cases. I think it was
6 Winston Churchill who said that during peace time,
7 there's no higher service that a citizen can do for its
8 county and state than to sit on a jury. With that being
9 said, we will do our best to try to minimize the
10 inconvenience to you this week of having to be here, and
11 hopefully we maybe even can make this somewhat of an
12 educational experience for you.

13 Are the bailiffs here? If you will stand up.

14 If at any time during this week you have any
15 questions, you have any problems, your initial thing
16 would be to contact one of these bailiffs. They know the
17 inner workings of this courthouse probably as good as
18 anybody except for your clerk of court and can direct you
19 in the direction you need to go, whether it be to me or
20 to our clerk. And they're very knowledgeable and want to
21 help you.

22 Now, this morning we are about to go through what
23 we call qualification procedures. I have a list of
24 questions that I have to ask as required by state law to
25 determine whether or not, number one, that you're

1 qualified to serve as jurors, and, number two, whether an
2 exemption applies to you so you can say though I'm
3 qualified, I choose not to serve this week.

4 Quite frankly, several of these questions are
5 very personal and you may not want to stand up in front
6 of your peers and give the information in open court, and
7 that's okay. The last thing that we want to do is cause
8 anybody any embarrassment whatsoever. If a question
9 applies to you and you do not want to stand up, you don't
10 need to tell us you're not standing up, you just need to
11 make a mental note. At the end of this process, I'll
12 allow each one of you to come up and speak with us in a
13 more confidential setting.

14 I would remind you, though, that, number one,
15 that you're under oath. Number two, we need both
16 accurate and truthful information. With that being said,
17 as I told you, the first questions will do with your
18 qualifications. If you don't mind standing up and
19 answering the question that's being asked, if you would
20 first give us your jury number and then give us your
21 name. If you don't have that card -- you should have it
22 on the card with you. Also if anybody has any phones at
23 all in the courtroom, please turn them off now, please.
24 Okay? If you don't have it, that's okay. We can figure
25 it out.

1 First qualification question is this: Is any
2 member of the jury panel not a citizen of the United
3 States? If any member of the jury panel is not a citizen
4 of the United States, would you please stand.

5 Next question: Is any member of the jury panel
6 not a resident and citizen of Oconee County, South
7 Carolina? If you're not a citizen and resident of Oconee
8 County, would you please stand.

9 Is there a member of the jury panel that is
10 unable to read, write, speak or understand the English
11 language? If so, would you please stand.

12 Does any member of the jury panel have less than
13 a sixth grade education or its equivalent? If so, would
14 you please stand.

15 Is there any member of the jury panel that is
16 unable, because of a physical or mental infirmity, to
17 render efficient jury service if you are selected to
18 serve on the trial or trials this week? I'll tell you
19 that typically I run my court in segments of an hour to
20 two hours at a time. Depending on the circumstances, it
21 may be a little bit longer, it may be a little shorter.
22 But you'll need to be able to listen to the statements of
23 the attorneys, listen to the testimony, listen to the law
24 as I give it to you and be able to engage in meaningful
25 deliberations at the end of the case. But if somebody

1 has a physical or mental infirmity that would prevent
2 them from rendering efficient jury service, would you
3 please stand.

4 I see the neck brace on you. What is your name,
5 please?

6 PROSPECTIVE JUROR: Lynn McWhorter.

7 THE COURT: What is your jury number?

8 THE CLERK: Number 102.

9 THE COURT: 102. Other than your neck -- and I'm
10 not trying to point that out -- but other than your
11 problem with your neck, do you have any other problems?

12 PROSPECTIVE JUROR: Yes. It's hard for me to
13 bend down. It's hard for me to bend down to read or even
14 write.

15 THE COURT: If we could make any accommodations
16 for you that may assist you, would that be sufficient?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: You think so? I'm not trying to
19 pressure you. I'm wanting to make sure if you're wanting
20 to serve, you're able to serve.

21 PROSPECTIVE JUROR: Well, I'm taking medication,
22 too.

23 THE COURT: What kind of medications are you
24 taking?

25 PROSPECTIVE JUROR: Something for my muscles.

1 THE COURT: I'll tell you what. Let me speak
2 with you at the end of the process so I don't have to go
3 through all your litany -- do you mind doing that?

4 PROSPECTIVE JUROR: Yeah.

5 THE COURT: Thank you very much.

6 Did you get that, Madam Court Reporter?

7 THE REPORTER: Yes.

8 THE COURT: Anyone else?

9 Has any member of the jury panel been convicted
10 by a guilty plea or a trial in a state or federal court
11 of record for a crime that's punishable by more than one
12 year in prison and your civil rights have not been
13 restored by pardon or amnesty? Now by more than one
14 year, what I mean is you could have received in excess of
15 one year, regardless of the sentence you actually
16 received. If that applies to you and you don't mind
17 standing at this juncture, would you please do so.

18 Is any member of the jury panel a clerk or deputy
19 clerk of court, constable, sheriff, or other commissioned
20 law enforcement officer, probate judge, county
21 commissioner, magistrate, any county officer or employed
22 within the walls of any courthouse? If so, would you
23 please stand.

24 PROSPECTIVE JUROR: I'm not sure if this counts,
25 your Honor, but I am part of Net Doctors, which in turn

1 does IT support for the City of Seneca and the Seneca
2 Police Department, and we have SLED, CJIS.

3 THE COURT: Well, you just do ITT support for
4 Seneca and all that?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: Okay, sir. That would not qualify,
7 but thank you. I appreciate it. Thank you. What is
8 your name and number?

9 PROSPECTIVE JUROR: Jason Barden, Juror Number 6.

10 THE COURT: Thank you very much.

11 Anyone else?

12 Is there any member of the jury panel who has
13 previously served jury duty -- on jury duty in circuit
14 court this calendar year? By circuit court I mean here
15 in state court as opposed to magistrate's court, city
16 court, or maybe even federal court. But if you have
17 served on a state court jury in 2014, would you please
18 stand.

19 Has any member of the jury panel served as a
20 member of the Oconee County Grand Jury during the last
21 several years? If so, would you please stand.

22 Very good.

23 All right. Ladies and gentlemen, those are the
24 questions that have to do with your qualifications. I'll
25 now go into the questions that involve exemptions.

1 Again, exemptions simply mean you're qualified to serve,
2 but you have a right to say, I choose not to serve this
3 week.

4 The first of those are for those of you who may
5 have reached the age of 65 years or older. If you're 65
6 years or older, you have a right to say, I choose not to
7 serve this week. Before any of you who may fit that
8 description exercise your exemption, let me urge you to
9 stay with us. We could all benefit from your experience
10 and knowledge of 65 or more years sitting on our juries.

11 But with that being said, if you are 65 or older,
12 you have an absolute right to say, I choose not to serve.
13 If that applies to you and you wish to be excused, would
14 you please stand.

15 Very good. Another exemption that also has to do
16 with prior jury service. In South Carolina, a juror
17 cannot be required to serve in state court again as
18 opposed to magistrate's court, city court, or federal
19 court, more often than once every three calendar years.
20 Now, the prior question wanted to know whether or not you
21 served in state court in 2014 which would make you not
22 qualified.

23 This question asks whether or not you served in
24 state court in 2012 or 2013. If you did and you choose
25 not to serve again in 2014, that is your right. If that

1 applies to you, would you please stand.

2 PROSPECTIVE JUROR: I was in here. I'm not sure
3 if it was criminal.

4 THE COURT: What is your name and number?

5 PROSPECTIVE JUROR: 138, William Scrudato.

6 THE COURT: Okay. We have great computers and
7 they can check them out for you, Brother, guaranteed.

8 PROSPECTIVE JUROR: Awesome.

9 THE COURT: While she's checking that, let me go
10 forward, then I'll get you to come up with me at the end,
11 please. Thank you, sir.

12 All right. Also anyone who served as a grand
13 juror in any county in this state within the last five
14 calendar years also has the right to be exempted from
15 service. If that applies to you and you wish to be
16 exempt, would you please stand.

17 Next exemption is for those of you who have small
18 children. There are four subparts to this question, so
19 listen to each one because each one must apply before you
20 may exercise the exemption. But you may be exempt if you
21 have a small child or children that are under the age of
22 seven; number two, you have legal custody of your child
23 or children; number three, you are the primary caretaker
24 of that child or children; and, number four, you're
25 unable to make suitable arrangements for their care if

1 you are selected to serve this week. If all four of
2 those subparts apply to you and you wish to be exempted,
3 would you please stand.

4 Also the next exemption involves those of you who
5 may be attending school on a full-time basis or working
6 at a school. It applies whether or not you are going to
7 a public school, a private school, or a technical school.
8 If this exemption applies to you, you will not be
9 excused. What we'll do is to transfer you to a term of
10 court that will not conflict with your education or your
11 work at an educational institution.

12 Therefore, if any member of the jury panel is a
13 full-time student, a school teacher, certified personnel,
14 crossing guard, bus driver, or who serves in a public,
15 private, or technical school in some other capacity who
16 wishes to be transferred to another term of court that
17 does not conflict with their school or education, would
18 you please stand.

19 Very good. Is there any member of the jury panel
20 that is employed with the Department of Corrections at a
21 penitentiary? If so, would you please stand.

22 Is there any juror who performs services for a
23 business, commercial, or agricultural enterprise which
24 are so essential to the operation of that business that
25 if you were selected to serve this week, that business

1 would shut its doors and not operate while you're
2 performing your duties as a juror? If that applies to
3 you and you wish to be exempted, would you please stand.

4 Is there any juror who is the primary caretaker
5 of a severely disabled person who is unable to care for
6 him or herself and cannot be left alone or is the primary
7 caretaker of someone who is 65 years or older? If this
8 applies to you and you wish to be exempted, would you
9 please stand.

10 Very good. All right. Ladies and gentlemen,
11 that concludes the questions that have to do with your
12 qualifications and exemptions. It may be that you're
13 qualified and that no exemption applies to you; however,
14 because of your peculiar circumstances it would be an
15 undue hardship for you to have to serve this week. Now,
16 state law does not allow me to excuse qualified and
17 nonexempt jurors; however, in compelling circumstances I
18 can transfer someone to another term of court which would
19 not present such a hardship for them.

20 If anyone would like me to consider their
21 particular circumstances at this juncture, would you
22 please stand.

23 I'm going to talk to you at the end. Thank you.

24 You're still good. You're very good. All right.

25 Anyone else?

1 Yes, sir. Your juror number?

2 PROSPECTIVE JUROR: 157.

3 THE COURT: 157? Just one second, please.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Mr. Vereb?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: I'm going to be out of town
9 next week. We have already preplanned stuff.

10 THE COURT: You're going on vacation next week?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: So two weeks back to back is going to
13 put you in a financial burden?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: Would you like to be transferred to
16 another term?

17 PROSPECTIVE JUROR: It's up to the Court, I
18 guess. It's from the 8th to the 16th.

19 THE CLERK: He's going on vacation next week. We
20 won't be going next week.

21 THE COURT: Right. Let me make sure you
22 understand my question to you. We're not going to be
23 going into next week, but I thought you were telling me
24 that because you're going to be on vacation next week, to
25 be out this week would cause you undue problems.

1 PROSPECTIVE JUROR: I was told to bring it up up
2 here, so --

3 THE COURT: So if I assure you that you would not
4 be conflicted out of your -- when are you leaving on
5 vacation?

6 PROSPECTIVE JUROR: The 8th.

7 THE COURT: The 8th, that's Monday?

8 PROSPECTIVE JUROR: I think so, yeah.

9 THE COURT: Or Sunday. Well, I tell you what.
10 If we're not done by then, some of these lawyers up here,
11 they're going to be in real trouble. Okay?

12 PROSPECTIVE JUROR: Thank you.

13 THE COURT: All right. Thank you.

14 Anything else? Anyone else?

15 All right. If anyone has a question as to
16 whether or not they're qualified, whether or not they're
17 exempt, or I asked you to come speak with me at the end
18 of the process, or if you want me to consider a transfer
19 request to another term of court, would you stand up here
20 at the turnstile and I'll speak with you on an individual
21 basis.

22 THE CLERK: That juror did serve in November of
23 2012.

24 THE COURT: You served in 2012, so you are
25 excused if you wish to be.

1 Do you wish to be excused?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay, sir. You are excused.

4 PROSPECTIVE JUROR: Thank you very much.

5 THE COURT: Okay.. Now, you had surgery when?

6 PROSPECTIVE JUROR: In January.

7 THE COURT: January?

8 PROSPECTIVE JUROR: Yeah, I had a spine --

9 THE COURT: I didn't want to try to embarrass
10 you. I'm saying we're glad to make accomodation for you.

11 What is your juror number?

12 PROSPECTIVE JUROR: 102, I think.

13 THE COURT: 102, okay. Let me double-check it.

14 Ms. McWhorter. So what I'm saying to you is I don't mind
15 making accommodations for you and let you get up, move
16 around, whatever. But if you feel like you're just
17 unable to serve, we can go to another time, let you heal
18 up, bring you back at a later date.

19 PROSPECTIVE JUROR: Probably need to let me come
20 back because I'm not driving. I can't drive.

21 THE COURT: How about -- do we have any terms in
22 October?

23 THE CLERK: We do. We have got October 13th.

24 THE COURT: How about that? Will that give you
25 time to heal up?

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: Is that okay?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: I'm just going to transfer you to
5 October 13th. You will get a new notice in the mail.
6 And you will come like you did with this one. You're
7 excused today. Thank you for coming. I hope you get
8 better soon.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Yes, ma'am.

11 Hey, what is your juror number?

12 PROSPECTIVE JUROR: 123.

13 THE COURT: 123. You are Ms. Rampy?

14 PROSPECTIVE JUROR: Yes. I have to have surgery
15 on Thursday, and my preparations for my surgery start
16 tomorrow. I already told her downstairs, and she just
17 told me to let you know up here.

18 THE COURT: We're going to excuse you. Good luck
19 with it.

20 PROSPECTIVE JUROR: Thank you so much.

21 THE COURT: If anybody has any objections, let me
22 know.

23 Hey.

24 PROSPECTIVE JUROR: Yes, sir. I just want to be
25 sure I answered a question honestly. I was on jury

1 duty --

2 THE COURT: You're Mr. Davis. I remember you.
3 You went to the Masters.

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: I got you in my mind.

6 PROSPECTIVE JUROR: I just don't want to have
7 answered that question wrong, had I served.

8 THE COURT: My law clerk pointed you out to me.
9 How was it?

10 PROSPECTIVE JUROR: It was great.

11 THE COURT: You're a student?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you want to be transferred?

14 PROSPECTIVE JUROR: Yes. And but the reason I
15 come up here, because I'm going on vacation on Friday.
16 So, I mean, I can be transferred.

17 THE COURT: When would be a good time for you to
18 come? Are you out for the summer?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Really?

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Do they make you paint your
23 fingernails black at college?

24 PROSPECTIVE JUROR: No. They're really blue, I
25 promise.

1 THE COURT: They're blue?

2 PROSPECTIVE JUROR: They're blue.

3 THE COURT: Dang, that's the blackest blue I have
4 ever seen.

5 Are you going to be around in July?

6 PROSPECTIVE JUROR: I'm going on a mission trip
7 like the third week.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: But the first of July, I'm
10 okay.

11 THE CLERK: Number 68.

12 THE COURT: When do you start back to school?

13 PROSPECTIVE JUROR: Late August.

14 THE COURT: You're going to be on a mission trip
15 at that time?

16 THE CLERK: The week of August 4th.

17 THE COURT: That should be fine. Have a good
18 one. Where you going on vacation?

19 PROSPECTIVE JUROR: To visit in North Carolina.
20 I'm good to leave?

21 THE COURT: Yes, ma'am, you are.

22 Hey, what's your jury number?

23 PROSPECTIVE JUROR: 74.

24 THE COURT: 74?

25 PROSPECTIVE JUROR: Yes, sir.

1 I just finished two years probation in the state
2 of Georgia.

3 THE COURT: What was your charge?

4 PROSPECTIVE JUROR: Two -- well, I was charged
5 with two felony counts of shoplifting. I pled guilty to
6 two misdemeanor counts.

7 THE COURT: Did you check him out?

8 MR. WAGNER: This is the notes I made. None were
9 over 12 months max.

10 THE COURT: So you're still good. Thank you, but
11 you're still good.

12 PROSPECTIVE JUROR: Okay. Thank you.

13 THE COURT: Hey.

14 PROSPECTIVE JUROR: Good morning, your Honor.

15 THE COURT: How you doing?

16 PROSPECTIVE JUROR: I don't wish to be exempted
17 or excused, but I wanted to explain my circumstances.

18 THE COURT: What is your jury number and name?

19 PROSPECTIVE JUROR: 145, Jesse Walter Smith.

20 THE COURT: You are the one who's going to share
21 with us your wisdom?

22 PROSPECTIVE JUROR: Yes. All I have.

23 THE COURT: Okay, Jesse.

24 PROSPECTIVE JUROR: My wife and I are expecting a
25 grandchild that's due on June . I don't think

1 there's any risk, but my wife insisted that I at least
2 describe my circumstances.

3 THE COURT: Let me tell you. I can assure you.
4 I have played with these lawyers. I know them well. We
5 will be through Friday. Or Saturday at the latest. If
6 something should happen, we'll let you go. Would you
7 rather just be transferred to another term, just to be
8 sure?

9 PROSPECTIVE JUROR: I would prefer to serve. If,
10 however, the risk is acceptable that, say, Friday I had
11 to leave, is that an undue burden on the Court? If it
12 is --

13 THE COURT: Well, we don't want to start a case
14 if we let somebody go without an alternate.

15 PROSPECTIVE JUROR: I wish to do my duty.

16 THE COURT: Sure. And probably you're good to
17 go. If you get selected -- every time I tell that to
18 somebody, they get selected. We'll do an alternate.
19 That way, otherwise, we'd have to mistry the case. We
20 don't want to do that.

21 PROSPECTIVE JUROR: I understand. Thank you.

22 THE COURT: Thank you.

23 THE CLERK: Actually, I have already worked in
24 two alternates just in case.

25 THE COURT: Good.

1 Is there anybody else who would like for me to
2 consider any special requests, or do you have any
3 questions?

4 All right. Madam Clerk, I'm going to find that
5 the panel is otherwise qualified.

6 All right. Ladies and gentlemen, if I may, let
7 me go over some of the basic rules that we have here to
8 allow for the efficient and orderly conduct of court.

9 Number one, if you have a cell phone, iPhone,
10 iPad, or anything that's capable of ringing, beeping or
11 disrupting the proceedings, number one, cut it off now.
12 Number two, I'm going to ask that either you not bring it
13 with you to the courthouse, or if you do, the bailiffs
14 will make you leave it back in the jury room and not
15 bring it into the courtroom. I can tell you that we
16 travel all over the state, and during some of the most
17 inopportune times in trial these phones can go off. So
18 we'd ask that that not happen.

19 Also, in counties such as Oconee and Anderson, we
20 don't necessarily have or use a jury qualification room.
21 There is an opportunity for litigants and witnesses and
22 jurors and attorneys to bump into each other. Now, the
23 attorneys know and their clients know that they're not
24 allowed to have any communication with a juror or
25 potential juror. But if you happen to know somebody

1 who's participating in this trial in some capacity, I'm
2 going to ask that you not speak with them. If they don't
3 speak with you, they're not being rude. It's okay to
4 nod, but if somebody on the other side sees you speaking
5 with a juror or potential juror, the natural conclusion
6 would be that there's improper ex parte communications
7 going on and those taint into the whole process. So if
8 you would not have any interaction with any participant
9 in the courtroom, I would greatly appreciate it.

10 Also, as I told you for your schedules, no court
11 tomorrow, start Thursday morning, and then we'll finish
12 up Friday probably -- I would think that it's most
13 probable that we will. We will not go into the next
14 week. Likely we'll start court Thursday around 9 o'clock
15 or 9:30. But if you're asked to be here at 9:00 or 9:30,
16 would you please be prompt. And I'll assure you that in
17 the courtroom we'll not dally. Sometimes you will be
18 required to sit back in the jury room without knowing
19 what's going on, but that's because of the process we
20 have. But we will not be out here drinking coffee and
21 playing around, I can assure you that.

22 If anyone anticipates having an emergency going
23 on, you can leave your name with one of the bailiffs, and
24 they can -- and the person who you may need to contact
25 you can call into the clerk's office and they can chase

1 you down.

2 Other than that, we have a jury call-in system
3 that will be activated. I don't believe that we're going
4 to probably do more than one trial this week. But to be
5 on the safe side -- is it on this jury card here?

6 THE CLERK: It is. It's on their letter, yes.

7 THE COURT: The number that you have on the slip
8 that you have with you that has your jury number, that
9 has a number on it. If you're not selected to serve this
10 week, every day until you hear otherwise on a message,
11 call in after 6 o'clock, and there will be a message as
12 to whether or not you need to report or whether or not
13 you do not need to report any longer. Other than that,
14 those will be the rules of court.

15 Ladies and gentlemen, in just a minute we're
16 about to pick the jury in the first case. But since
17 we've been going for a few minutes, I'm going to take a
18 ten-minute break, then I'll come back in here and we'll
19 select the jury on the first case of this week.

20 We'll be in recess until 11:10. Thank you very
21 much.

22 (WHEREUPON, the jury pool exited the courtroom
23 at 10:59 a.m.)

24 (WHEREUPON, recess taken from 11:00 a.m.
25 to 11:15 a.m.)

1 (WHEREUPON, the jury came into open court at
2 approximately 11:15 a.m.)

3 THE COURT: All right. Ladies and gentlemen,
4 just going over some logistics with the attorneys.

5 Let me just say something to clarify. I think
6 they took offense to my veiled threat to them a little
7 while ago. I've been knowing both of these attorneys for
8 years. I practiced law in Anderson for 25 years, so
9 anything I may say is certainly not an indication of
10 anything, but I hold them in the highest esteem.

11 With that being said, what we're about to do, the
12 State is going to call its case. We'll go through, and I
13 have certain questions that I have to ask by law about
14 that. There will also be some other cases -- other
15 questions that I will ask. If the question applies to
16 you, you need to respond. Unlike the way we did it
17 earlier, I'm going to ask you to stand up right where you
18 are and then give us your jury number and then your name
19 and your response. And then after that, we'll pick a
20 jury.

21 If you are selected or if your name is called at
22 the end of the process, what you will do is come to the
23 turnstile, stand between our clerks and the court
24 reporter, face the State, face the defense, and they will
25 make a decision as to whether or not they call you. But

1 I'll go over that with you in just a minute.

2 Mr. Wagner, would you please call your case, sir.

3 MR. WAGNER: Yes, sir. The State would call
4 2013-GS-37-01115 charging Jonathan Allen Finney with
5 first-degree burglary and 2013-GS-37-01118 for petty
6 larceny.

7 THE COURT: Thank you.

8 All right. As you heard from Mr. Wagner, we're
9 about to begin the trial of the State versus Jonathan
10 Allen Finney, who's charged with burglary and petty
11 larceny. Let me point out to you, and I'll do so again,
12 that the fact that this gentleman has been arrested,
13 charged, and indicted is not evidence of his guilt. It
14 does not raise an inference or any type of conclusion of
15 his guilt.

16 I'll tell you that these indictments are simply
17 the mechanism by which the State of South Carolina has
18 people such as Mr. Finney come before a jury as yourself
19 for a trial and a determination of whether or not he is
20 guilty or not guilty.

21 With that being said -- who is the victim in this
22 case, Mr. Wagner?

23 MR. WAGNER: Your Honor, the victim is --

24 THE COURT: Or the alleged victim?

25 MR. WAGNER: Mary Jane Giordano or her husband,

1 Joseph Giordano.

2 THE COURT: Joseph? Okay. Thank you.

3 All right. Ladies and gentlemen, can everybody
4 still hear me? If you can't, make sure you let me know.

5 Has anyone ever been related by blood or marriage
6 to either, number one, Jonathan Finney; number two, Mary
7 Jane Giordano, or Joseph Giordano? If you have ever been
8 related by blood or marriage to any of these folks, would
9 you please stand.

10 Has anyone ever had a close personal or social
11 relationship with either Jonathan Finney, Mary Jane
12 Giordano, or Joseph Giordano? If so, would you please
13 stand.

14 All right. Ladies and gentlemen, the following
15 is a list of potential witnesses who may appear in this
16 case. There will be 11 of them. I'm going to read all
17 of them to you. If anybody doesn't understand, I'll be
18 glad to read it to you as much as you need so that you do
19 understand all the names. The following are the
20 potential witnesses in this case: David McMahan, Oconee
21 County Sheriff's Office; Scott Arnold, Oconee County
22 Sheriff's Office; Nina McKee, Oconee County Sheriff's
23 Department; Brandon Meadows, Oconee County Sheriff's
24 Department; Tina Elrod; Randy Allsep; David Duncan; Dia
25 Roberts; Josh Burrell; Tia Finney; Charese Brown; is that

1 correct?

2 MR. DAY: Yes.

3 THE COURT: Okay. Did everybody get those names?

4 Has any member of the jury panel ever been

5 related by blood or marriage to any of the potential

6 witnesses I've just read to you? If so, would you please

7 stand.

8 What's your jury number, please, sir?

9 PROSPECTIVE JUROR: 115.

10 THE COURT: 115. You are Mr. Peay?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Okay. Which one was that?

13 PROSPECTIVE JUROR: Scott Arnold. I think we're

14 related by marriage.

15 THE COURT: From the Oconee County Sheriff's

16 Department?

17 PROSPECTIVE JUROR: (Nodding.)

18 THE COURT: Is that correct?

19 PROSPECTIVE JUROR: I think so.

20 THE COURT: And what is your relationship with

21 him?

22 PROSPECTIVE JUROR: I think he's married into our

23 family.

24 THE COURT: Do you see him very often?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. Then would the fact that he is
2 somehow related to you by marriage affect your ability to
3 listen to the testimony, to listen to the evidence, to be
4 fair and impartial to both the State and to the
5 defendant?

6 PROSPECTIVE JUROR: No, I can be fair.

7 THE COURT: Sir?

8 PROSPECTIVE JUROR: I can be fair.

9 THE COURT: And would the fact that this
10 gentleman, Mr. Arnold, married into your family make you
11 believe his testimony over anybody else who may come and
12 testify in this matter?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you, sir.

15 Anyone else?

16 Has any member of the jury panel ever had a close
17 personal or a social relationship with any of the
18 potential witnesses I've just read to you? If so, would
19 you please stand.

20 Okay, ma'am. What is your jury number?

21 PROSPECTIVE JUROR: 32.

22 THE COURT: 32?

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: You're Ms. Chapman?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: Nina McKee, I worked with
3 her. When she was a child, I was her -- I worked at her
4 orthodontic place.

5 THE COURT: How long ago has that been?

6 PROSPECTIVE JUROR: Probably about ten years, but
7 I talk to her on and off when I see her in public.

8 THE COURT: Would this relationship and prior
9 professional relationship with her affect your ability to
10 give both the State and the defendant a fair and
11 impartial trial?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Would you believe her testimony, if
14 she were to testify, over somebody else's because of your
15 relationship?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you very much.

18 Anyone else?

19 All right. Mr. Day, would you stand up and
20 introduce yourself and your client, please, sir.

21 MR. DAY: I'm Danny Day. I practice law here in
22 Oconee County with the public defender's office. This is
23 Jonathan Finney. Thank you.

24 THE COURT: All right.

25 Mr. Wagner, will you do the same at your table.

1 MR. WAGNER: Yes, sir. I'm David Wagner. I'm
2 with the Solicitor's office. I'll be prosecuting the
3 case on behalf of the County. This is Scott Arnold, a
4 detective in the sheriff's office. He's working on the
5 case with me. And David McMahan. He's also a detective
6 with the sheriff's office.

7 THE COURT: All right.

8 Has any member of the jury panel ever been
9 represented by either of these attorneys here in the
10 courtroom or any members of the public defender's office
11 or the Tenth Judicial Circuit solicitor's office? If so,
12 would you please stand.

13 Okay. What is your jury number?

14 PROSPECTIVE JUROR: 89.

15 THE COURT: 89?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You're Ms. LeCroy?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: Danny Day was my attorney for
21 a divorce some years ago.

22 THE COURT: How long ago has that been?

23 PROSPECTIVE JUROR: Ten years.

24 THE COURT: Ten years. Would the fact that
25 Mr. Day represented you ten years ago make you believe or

1 disbelieve his side of the case over the State's side of
2 the case?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Can you be fair and impartial to both
5 the defense and to the State in this matter?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Any additional voir dire from either
8 side?

9 MR. WAGNER: No, sir.

10 MR. DAY: No, your Honor.

11 THE COURT: Thank you, ma'am.

12 Anyone else?

13 Has any member of the jury panel ever been
14 related by blood or marriage or have you ever had a close
15 personal or social relationship with either of these
16 attorneys here in the courtroom or any member of the
17 Tenth Judicial Circuit public defender's office or
18 solicitor's office? If so, would you please stand.

19 Very good.

20 Has any member of the jury panel read, heard, or
21 seen anything about the case of the State vs. Jonathan
22 Finney prior to coming to court today? If so, would you
23 please stand.

24 Has any member of the jury panel formed or
25 expressed an opinion about any matter or issued involved

1 in the case of the State of South Carolina vs. Jonathan
2 Finney? If so, would you please stand.

3 Is any member of the jury panel aware of any bias
4 or prejudice they may have against this defendant or
5 against the State of South Carolina or their respective
6 attorneys? If so, would you please stand.

7 Is any member of the jury panel a member of the
8 Oconee County Grand Jury that issued the indictments in
9 this matter? If so, would you please stand.

10 Is there any member of the jury panel who is a
11 member of or a contributor to any group which has as its
12 primary concern the promotion of law enforcement or
13 victims' rights? Examples but certainly not an
14 exhaustive list of these type of groups would be MADD,
15 SADD, or FADD. But if you are a member of or a
16 contributor to any group which has as its primary concern
17 the promotion of law enforcement or victims' rights,
18 would you please stand.

19 Does any member of the jury panel know of any
20 reason whatsoever why he or she should not be selected to
21 serve in the trial of this matter with particular
22 emphasis being placed on your ability to be fair and
23 impartial to both the defendant and to the State of South
24 Carolina? If you know of any reason why you should not
25 serve, would you please stand.

1 Has any member of the jury panel or their close
2 friends or family been the victim of any crime? If so,
3 would you please stand.

4 Okay, sir. Would you please stand and give me
5 your jury number.

6 PROSPECTIVE JUROR: 38.

7 THE COURT: 38? Mr. Creswell?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Do you mind telling me what it was?

10 PROSPECTIVE JUROR: My nephew was burglarized and
11 his house set on fire in Anderson County.

12 THE COURT: In Anderson County? How long ago was
13 that?

14 PROSPECTIVE JUROR: Two months ago -- no, about a
15 month ago.

16 THE COURT: About a month ago. Would that impact
17 on your ability to be fair and impartial in the trial of
18 this matter?

19 PROSPECTIVE JUROR: No.

20 THE COURT: All right.

21 Now, Counsel, if anybody wishes to have any
22 additional questions or voir dire, please let me know,
23 otherwise I'm going assume you don't.

24 MR. WAGNER: Yes.

25 MR. DAY: Yes.

1 THE COURT: Thank you, Mr. Creswell.

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

3 PROSPECTIVE JUROR: 145.

4 THE COURT: 145?

5 PROSPECTIVE JUROR: Yep.

6 THE COURT: I know we spoke, but I've forgotten
7 your name already.

8 PROSPECTIVE JUROR: Jesse Smith.

9 THE COURT: Okay, sir. What was the
10 circumstances, if you don't mind telling us in open
11 court?

12 PROSPECTIVE JUROR: Sure. No problem. 35 years
13 or so ago or thereabouts in Florida our house was
14 burglarized, breaking and entering and stealing things
15 from it. So that's a long time ago.

16 THE COURT: Would that experience impact on your
17 ability to be fair and impartial in the trial of this
18 matter?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Thank you very much.

21 Ma'am, what is your jury number?

22 PROSPECTIVE JUROR: 65.

23 THE COURT: And you are Ms. Grant?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay, Ms. Grant.

1 PROSPECTIVE JUROR: My granddaughter was charged
2 with shoplifting several months back.

3 THE COURT: Would that impact on your ability to
4 be fair and impartial to both sides in this case?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: No?

7 PROSPECTIVE JUROR: It won't.

8 THE COURT: Okay. Thank you. I just couldn't
9 hear you.

10 Yes, ma'am. Tell me your number one more time.

11 PROSPECTIVE JUROR: 89.

12 THE COURT: 89, okay.

13 PROSPECTIVE JUROR: My son, who's in the Navy,
14 just got back from being out to sea. He's in Florida.
15 And he was robbed while he was gone, broke into.

16 THE COURT: Would that impact your ability to be
17 fair and impartial in this trial?

18 PROSPECTIVE JUROR: No, it wouldn't.

19 THE COURT: Thank you so much.

20 Anyone else?

21 All right. Any additional voir dire from the
22 defense?

23 MR. DAY: No, your Honor.

24 THE COURT: From the State?

25 MR. WAGNER: No, sir.

1 THE COURT: Okay.

2 Now, ladies and gentlemen, back before I had gray
3 hair, the way we used to pick juries would be that we
4 would have somebody who couldn't read or write, they
5 would reach into a spindle and they would draw out names.
6 That way we could assure that they weren't picking out a
7 name of somebody they knew, that they would be favorable
8 or unfavorable. Now we have a computer which will
9 randomly shake all your names up. There will be a list
10 of names drawn. The list will be given to myself and my
11 clerk. Your name will be called out. If your name is
12 called out, I'm going to ask that you bring your personal
13 belongings with you. You walk through the turnstile and
14 stand up here at the credenza in front of the State and
15 the defense so they can make a determination as to
16 whether or not you will be selected to serve in this
17 case.

18 Madam Clerk, we're going to have two alternates;
19 is that correct?

20 THE CLERK: Yes, sir.

21 THE COURT: You agree with that, Mr. Day?

22 MR. DAY: Yes, your Honor.

23 THE COURT: Mr. Wagner, do you agree with two
24 alternates?

25 MR. WAGNER: Yes, sir.

1 THE COURT: Very good. Thank you.

2 And two and one on alternates, right?

3 MR. WAGNER: Yes, sir.

4 MR. DAY: Yes.

5 THE COURT: Very good.

6 THE CLERK: Ladies and gentlemen, if you would,
7 as I call your name, if you would come forward bringing
8 your personal belongings, standing in front of the bar
9 and face the gallery.

10 Juror Number 114, Luke Pace.

11 (WHEREUPON, a white male approached the bar.)

12 THE CLERK: What says the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What says the defense?

15 MR. DAY: Please swear the juror.

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

18 Number 95, Velda McCoy..

19 (WHEREUPON, a white female approached the bar.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. DAY: Please swear Ms. McCoy.

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

1 Number 153, Patricia Strickland.
2 (WHEREUPON, a white female approached the bar.)
3 THE CLERK: What says the State?
4 MR. WAGNER: Present the juror.
5 THE CLERK: What says the defense?
6 MR. DAY: Please swear Ms. Strickland.
7 THE CLERK: Ma'am, if you would, please take a
8 seat in the jury box.
9 Number 105, Mari Merrell.
10 (WHEREUPON, a white female approached the bar.)
11 THE CLERK: What says the State?
12 MR. WAGNER: Present the juror.
13 THE CLERK: What says the defense?
14 MR. DAY: Excuse Ms. Merrell in this case,
15 please.
16 THE CLERK: Ma'am, you have been excused from
17 this case. You may be seated.
18 Number 160, Donna Waites.
19 (WHEREUPON, a white female approached the bar.)
20 THE CLERK: What says the State?
21 MR. WAGNER: Present the juror.
22 THE CLERK: What says the defense?
23 MR. DAY: Excuse Ms. Waites in this case, please.
24 THE CLERK: Ma'am, you have been excused from
25 this case. You may be seated.

1 Number 38, Lee Creswell.

2 (WHEREUPON, a white male approached the bar.)

3 THE CLERK: What says the State?

4 MR. WAGNER: Present the juror.

5 THE CLERK: What says the defense?

6 MR. DAY: Excuse Mr. Creswell in this case,

7 please.

8 THE CLERK: Sir, you have been excused from this

9 case. You may be seated.

10 Number 124, Thomas Ray.

11 (WHEREUPON, a white male approached the bar.)

12 THE CLERK: What says the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What says the defense?

15 MR. DAY: Please swear Mr. Ray.

16 THE CLERK: Sir, if you would please take a seat

17 in the jury box.

18 Number 34, Noel Clarkson.

19 (WHEREUPON, a white male approached the bar.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. DAY: Please swear Mr. Clarkson.

24 THE CLERK: Sir, if you would please take a seat

25 in the jury box.

1 Number 30, James Case.

2 (WHEREUPON, a white male approached the bar.)

3 THE CLERK: What says the State?

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

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

8 Number 28, Andrades Carter.

9 (WHEREUPON, a black female approached the bar.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Please excuse the juror on this
12 case.

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

15 Number 117, Debra Powchak.

16 (WHEREUPON, a white female approached the bar.)

17 THE CLERK: What says the State?

18 MR. WAGNER: Present the juror.

19 THE CLERK: What says the defense?

20 MR. DAY: Please swear Ms. Powchak.

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

23 Number 97, Susan McGilvra.

24 (WHEREUPON, a white female approached the bar.)

25 MR. DAY: What was that number again?

1 THE CLERK: Number 97.
2 What says the State?
3 MR. WAGNER: Present the juror.
4 THE CLERK: What says the defense?
5 MR. DAY: Excuse Ms. McGilvra in this case,
6 please.
7 THE CLERK: Ma'am, you have been excused from
8 this case. You may be seated.
9 Number 78, Catherine Huston.
10 (WHEREUPON, a white female approached the bar.)
11 THE CLERK: What says the State?
12 MR. WAGNER: Present the juror.
13 THE CLERK: What says the defense?
14 MR. DAY: Please swear Ms. Huston in this case.
15 THE CLERK: Ma'am, if you would, please take a
16 seat in the jury box.
17 Number 150, Rachel Spiva.
18 (WHEREUPON, a white female approached the bar.)
19 THE CLERK: What says the State?
20 MR. WAGNER: Present the juror.
21 THE CLERK: What says the defense?
22 MR. DAY: Please swear Ms. Spiva.
23 THE CLERK: Ma'am, if you would, please take a
24 seat in the jury box.
25 Number 9, Katie Baumann.

1 (WHEREUPON, a white female approached the bar.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the defense?

5 MR. DAY: Please swear Ms. Baumann in this case.

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

8 Number 96, Joseph McDavid.

9 (WHEREUPON, a white male approached the bar.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Please excuse the juror on this
12 case.

13 THE CLERK: Sir, you have been excused from this
14 case. You may be seated.

15 Number 81, Morgan Jones.

16 (WHEREUPON, a white male approached the bar.)

17 THE CLERK: What says the State?

18 MR. WAGNER: Please excuse the juror on this
19 case.

20 THE CLERK: Sir, you have been excused from this
21 case. You may be seated.

22 Number 19, Michelle Bridgman.

23 (WHEREUPON, a white female approached the bar.)

24 THE CLERK: What says the State?

25 MR. WAGNER: Present the juror.

1 THE CLERK: What says the defense?

2 MR. DAY: Excuse Ms. Bridgman in this case,

3 please.

4 THE CLERK: Ma'am, if you would, please take a

5 seat.

6 Number 156, Megan Van der Toorn.

7 (WHEREUPON, a white female approached the bar.)

8 THE CLERK: What says the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the defense?

11 MR. DAY: Please swear Ms. Van der Toorn.

12 THE CLERK: Ma'am, if you would, please take a

13 seat in the jury box.

14 Number 128, Michelle Roach.

15 (WHEREUPON, a white female approached the bar.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What says the defense?

19 MR. DAY: Please swear Ms. Roach.

20 THE CLERK: Ma'am, if you would, please take a

21 seat in the jury box.

22 Number 145, Jesse Smith.

23 (WHEREUPON, a white male approached the bar.)

24 THE CLERK: What says the State?

25 MR. WAGNER: Present the juror.

1 THE CLERK: What says the defense?

2 MR. DAY: Your Honor, someone who remembers their
3 first grandchild, I'm going to excuse Mr. Smith in this
4 case.

5 THE CLERK: Sir, you have been excused from this
6 case. You may be seated.

7 Number 16, Michael Boggs.

8 (WHEREUPON, a white male approached the bar.)

9 THE CLERK: What says the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What says the defense?

12 MR. DAY: I'm going to excuse Sergeant Boggs in
13 this case.

14 THE CLERK: Sir, you have been excused from this
15 case. You may be seated.

16 Number 65, June Grant.

17 (WHEREUPON, a white female approached the bar.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the defense?

21 MR. DAY: Please swear Ms. Grant.

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

24 This will be for Alternate Number 1.

25 Number 17, Edna Bowen.

1 (WHEREUPON, a white female approached the bar.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the defense?

5 MR. DAY: Please swear Ms. Bowen.

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

8 And this will be for Alternate Number 2.

9 Number 51, Hannah Everett.

10 (WHEREUPON, a white female approached the bar.)

11 THE CLERK: What says the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What says the defense?

14 MR. DAY: Excuse Ms. Everett in this case,
15 please.

16 THE CLERK: Ma'am, you have been excused in this
17 case. You may be seated.

18 Number 82, Tina Justice.

19 (WHEREUPON, a white female approached the bar.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. DAY: Excuse Ms. Justice in this case,
24 please.

25 THE CLERK: Ma'am, you have been excused in this

1 case. You may be seated.

2 Number 32, Kendra Chapman.

3 (WHEREUPON, a white female approached the bar.)

4 THE CLERK: What says the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What says the defense for cause?

7 MR. DAY: No challenge.

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

10 THE COURT: Any motions directed at jury
11 selection from the State?

12 MR. WAGNER: No, sir.

13 THE COURT: From the defense?

14 MR. DAY: None, your Honor.

15 THE COURT: Very good.

16 All right. Ladies and gentlemen, those of you
17 who were selected in the trial of this matter, as I told
18 you earlier, we're going to excuse you for the remainder
19 of the day. We'll start trial on Thursday. But before
20 you leave, I'm going to ask that you go back to your jury
21 room and select someone that you would like to be the
22 foreperson of the jury. The foreperson will be someone
23 to communicate with the Court if and ever there is a need
24 for it. And also they would preside over deliberations.
25 The only prohibition about serving as foreperson is that

1 our alternates may not serve. They certainly may vote on
2 the foreperson, but they're not allowed to serve in that
3 capacity. It doesn't have to be unanimous but by simple
4 majority.

5 Once you select your foreperson, I'm going to ask
6 that person to write their name down on a piece of paper
7 and then turn around and tally your fellow jurors to
8 determine whom, if anyone, would like to have pad and pen
9 to take notes with during this trial. Once you get that
10 number, if there's any, just write it down on the same
11 piece of paper that you have your name on, give it to our
12 bailiff, and we'll receive it here in the courtroom and
13 give you some instructions to excuse you with. Okay?

14 With that being said, will you follow the bailiff
15 to the jury room.

16 (WHEREUPON, the jury exited the courtroom
17 at 11:49 a.m.)

18 THE COURT: All right. For those of you who
19 weren't selected, number one, I can see the look of
20 chagrin on all your faces out there not being selected to
21 serve in this trial, but we're going to give you another
22 chance potentially. So if you would, make sure when you
23 leave to keep the number for calling in after 6 o'clock
24 this evening. And if you will do that until the clerk
25 gives you a message that you are excused from service

1 this week.

2 But let me thank you on behalf of the County of
3 Oconee and the State of South Carolina for your being
4 here and for your willingness to serve. Some people may
5 disagree with our system or may think that there should
6 be some other system out there instead of what we have,
7 but without means of resolving our disputes in a
8 civilized manner, whether it be criminal or civil, then
9 the only way to resolve our differences is in an
10 uncivilized manner, and we see examples of that around
11 the world. I really believe when we tell you there's no
12 higher service you can do during peacetime than to sit on
13 a jury.

14 With that being said, I'm going to excuse you for
15 the day. If you will call in, it may be for the week.

16 Does anyone need any work excuses? Okay.

17 Madam Clerk, will they be sent to her or what
18 will we do?

19 THE CLERK: They will come in the mail with their
20 check.

21 THE COURT: Oh, yeah. All of you will receive a
22 big, fat, whopping check. Don't spend all of it in one
23 place. But your work excuses will be sent in the mail to
24 you. Thank you for being here.

25 PROSPECTIVE JUROR: I need a work excuse. I need

1 one.

2 THE COURT: It will be sent to you when your
3 check comes. Is that going to be okay? Do you need me
4 to call your employer?

5 PROSPECTIVE JUROR: No, that's fine.

6 THE COURT: Are you sure?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you.

9 Thank you very much. Everyone is excused.

10 (WHEREUPON, the jury pool exited the courtroom
11 at 11:50 a.m.)

12 (A prospective juror was brought before the
13 Court.)

14 THE COURT: Come up here. What is your name,
15 sir?

16 MR. FRETWELL: Dale Fretwell.

17 THE COURT: Dale Fretwell? You were in here when
18 I was asking everybody about their cameras?

19 MR. FRETWELL: No.

20 THE COURT: You were not?

21 MR. FRETWELL: I was at the door and I was making
22 sure my phone was off.

23 THE COURT: Uh-huh. And you've been in here
24 taking pictures in this courtroom?

25 MR. FRETWELL: No, I ain't got no pictures.

1 THE COURT: Really? Will you pass your phone
2 forward and I'll look at it.

3 If there's any -- I'm going to give you a chance
4 before I look to tell me the truth. If you are telling
5 me incorrect, I can hold you in contempt.

6 MR. FRETWELL: Yeah. No, I didn't take no
7 pictures.

8 THE COURT: You got any audio?

9 MR. FRETWELL: No.

10 THE COURT: Then what were you doing with this
11 phone out like that?

12 MR. FRETWELL: I was trying to make sure it was
13 all turned down and off.

14 THE COURT: Are you sure?

15 MR. FRETWELL: Yes, sir.

16 THE COURT: Okay.

17 Come around here, please. Come around this way.

18 Where are your pictures?

19 MR. FRETWELL: I was just trying to shut it down.

20 THE COURT: Okay. I'm just making sure.

21 MR. FRETWELL: Yes, sir.

22 THE COURT: Thank you. Thank you. There is
23 nothing on his phone, so we're good to go.

24 Thank you very much.

25 All right. As far as the foreperson, it will be

1 -- Number 65 will be the foreperson.

2 And, Madam Clerk, there will be nine pads and
3 pens requested in this matter.

4 Okay. All right. Anything from the defense
5 before we break for lunch -- we need to bring the jury
6 in. Excuse me. Anything from the defense at this stage?

7 MR. DAY: No, your Honor.

8 THE COURT: From the State?

9 MR. WAGNER: No, sir.

10 THE COURT: All right. Will you bring the jury
11 in, please.

12 (WHEREUPON, the jury came into open court at
13 approximately 11:56 a.m.)

14 THE COURT: Are you Juror Number 65?

15 JURY FOREPERSON: Yes.

16 THE COURT: Are you the foreperson?

17 JURY FOREPERSON: Yes.

18 THE COURT: Okay. I'm going to ask that, if you
19 would, each time we come in and out of the courtroom, you
20 just remain in that seat. And our alternates, if you
21 would remain in those seats. It just helps us keep up
22 with administrative matters. The rest of you may sit
23 wherever you like other than those seats each time we
24 come in and out of the courtroom. I'm getting ready to
25 excuse you, but my understanding is there's nine jurors

1 who would like to have pads and pen; is that correct?

2 JURY FOREPERSON: That's correct.

3 THE COURT: They will be provided to you. The
4 pads and pens will not be allowed to be taken home at
5 night. In the event we go over, they will remain in the
6 courtroom, and I'll tell you more about that.

7 But, ladies and gentlemen, before I excuse you,
8 let me go over a couple things with you that I need to.
9 This is more of a negative aspect of my instructions to
10 you.

11 Number one, you will not be allowed to read,
12 write, hear or see anything about this case during this
13 trial. I don't know that there will be anything out
14 there. But if there's any type of coverage, regardless
15 of whatever format it is in, you are instructed and
16 required not to see it, hear it, or view it. The reason
17 being we want you to be able to make your decision about
18 this case based on the testimony and the evidence you
19 hear in this courtroom and in accord with the law as I
20 give it to you.

21 Now, there will be breaks during this case.
22 There may be overnight breaks. Certainly today there
23 will be a break, but there will also be breaks for
24 lunches and otherwise throughout the trial. It would be
25 improper for you to begin to discuss or deliberate this

1 case in any fashion until the end of this case. When I
2 give you instructions, you may do so.

3 What that simply means is during a break or lunch
4 break, you walk out there and you look at your fellow
5 juror or a group of you. Well, what about this
6 testimony? This is what I think about that. That is
7 exactly what I'm instructing you that you cannot do. You
8 cannot discuss this case amongst yourselves or amongst
9 your family or friends or anyone else, whether it be by
10 phone, computer or otherwise. I'm married. I have a
11 daughter. I know if I were selected on a jury, they
12 would be asking me a bunch of questions about the case
13 and what it's all about. There will be plenty of time to
14 speak with them after the case is over with. We just
15 want to make sure that you're not affected or influenced
16 by any outside influences that we don't have any access
17 to or right to cross-examine and see.

18 Also, our Chief Justice of the South Carolina
19 Supreme Court has instructed all trial judges to instruct
20 jurors that they may not and shall not engage in what's
21 called independent jury research. What that simply means
22 is this: That if you see anyone, a court official,
23 myself, clerks, the attorneys, the parties, you may not
24 look up anything about anybody involved in this case.
25 You may not look up any issue involved in this case or

1 any issue you think may be helpful during this case until
2 after you have returned your verdict.

3 Again, the reason is we want you to be able to
4 listen to the testimony, listen to the evidence, listen
5 to the law and make your decision on that uninfluenced by
6 any outside influences that no one can see and no one can
7 question you about.

8 With that being said, I'm finished with the
9 negativity over here. We're going to excuse you for the
10 day. I'm going to bring you back -- any reason why we
11 can't get started at 9 o'clock on Thursday?

12 MR. WAGNER: No, sir.

13 THE COURT: Mr. Day?

14 MR. DAY: No, your Honor.

15 THE COURT: Okay. If you'll be back in your jury
16 room a few minutes before 9 o'clock, I assure you we will
17 try to start as close to that time as possible. Okay?

18 I'm going to excuse you for today, and I'll see
19 you Thursday morning at 9 o'clock.

20 (WHEREUPON, the jury exited the courtroom
21 at 12:00 p.m.)

22 THE COURT: All right. Any additions or
23 exceptions from the State?

24 MR. WAGNER: No, sir.

25 THE COURT: From the defense?

1 MR. DAY: None, your Honor.

2 THE COURT: Okay. What do y'all want to do,
3 start back 1:15, 1:30?

4 MR. WAGNER: Yes, sir. That will be fine.

5 (Whereupon, an off-the-record discussion
6 was held regarding scheduling.)

7 THE COURT: Start back at 1:30?

8 MR. WAGNER: Yes, sir.

9 THE COURT: All right. Now, Mr. Finney, he
10 hadn't obtained bond?

11 MR. DAY: No, sir.

12 THE COURT: All right. Thank you, Guys.
13 Anything from you, Mr. Day, before we take a
14 break?

15 MR. DAY: No, your Honor.

16 THE COURT: All right. Thank you, Guys.
17 (Whereupon, lunch recess taken from 12:01 p.m.
18 to 1:43 p.m.)

19 THE COURT: Mr. Wagner, are you ready with the
20 *Jackson v. Denno* in Mr. Finney's case?

21 MR. WAGNER: Yes, sir.

22 THE COURT: You can call your first witness.

23 MR. WAGNER: Your Honor, we'd call David McMahan.

24 THE COURT: Come around, please, sir.

25 THE WITNESS: Yes, sir.

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DAVID McMAHAN,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. WAGNER:

Q. Officer, will you give us your whole name, spell
your last name for the record, please.

A. My name is David R. McMahan. It's M-c-M-a-h-a-n.

Q. And what do you do for a living?

A. I'm an investigator for Oconee County Sheriff's
Office.

Q. How long have you been working for the sheriff's
office?

A. Six years.

Q. And what are your current job duties there?

A. I'm a property crimes investigator.

Q. Were you working in that capacity back in
September or late August, early September of 2013?

A. Yes, sir.

Q. And as part of your job duties, did you investigate
and charge or investigate the case with Jonathan Finney
involved in the burglary that we're here for today?

A. Yes, sir.

Q. What was the address of the burglary that we're here
for today?

A. or Ebenezer.

1 Q. Okay. Let me -- yeah.

2 A. And I believe that's a mailing address.

3 Q. ?

4 A. Yeah. That's a mailing address. Physical address
5 is a location at the end of McMahan Road.

6 Q. Now, has the defendant got -- we will not go into
7 this in front of the jury, but has the defendant got
8 other charges that ya'll charged him with, similar-type
9 charges?

10 A. Yes, sir, he has several pending charges.

11 Q. Okay. About what kind of time frame did you guys
12 start looking for Jonathan Finney as a potential suspect,
13 and what did you do?

14 A. Yes, sir. In the Fairview community, I was
15 assisting -- Sergeant Arnold was the lead investigator,
16 and I was assisting Sergeant Arnold. And I decided to
17 start going from door to door, basically, knocking on
18 doors basically to see if any of the neighbors in that
19 community had seen anything unusual. That community is a
20 very old community. Everybody knows everybody.

21 So I approached a gentleman who lived in the
22 neighborhood, and he said that he had seen a white male
23 with tattoos carrying a sack coming from the --

24 MR. DAY: Objection, your Honor. Getting into
25 hearsay, "he said." We don't know what this witness is

1 testifying to.

2 THE COURT: I'll sustain that.

3 BY MR. WAGNER:

4 Q. Let me just go here just for time sake, too.

5 At some point in time did you and Sergeant Arnold
6 set up a place where you thought the defendant was going
7 to be coming to?

8 A. Yes, sir. My -- our investigation led to a location
9 where we had made contact with Mr. Finney.

10 Q. Okay. And did you see Mr. Finney at that location?

11 A. Not at that time when we were there, but later we
12 did, yes, sir.

13 Q. Explain what y'all were doing, how you were looking
14 for him and what happened.

15 A. Okay. During the course of our investigation, we
16 had information that a man by the name of Jonathan Finney
17 was -- had moved from this location of where these
18 burglaries were happening to a new location in the Seneca
19 area.

20 So myself and Sergeant Arnold, we responded to
21 that location to try to make contact with Mr. Finney.
22 And at that point we did make contact with the homeowner.
23 This homeowner allowed us to come in and told us that --

24 Q. Let me just stop you there. Did y'all set up on
25 that location?

- 1 A. We did. We set up on that location.
- 2 Q. Did the defendant show back up?
- 3 A. He did.
- 4 Q. Did y'all do what you call, I guess, a felony
- 5 takedown, or what did you do?
- 6 A. Yes, sir. We had reason to believe that he was
- 7 armed. For officer safety, we did take what's described
- 8 as a felony takedown, which you ask the individuals to be
- 9 prone on the ground so that we could search their persons
- 10 for any weapons or whatnot. We did do that.
- 11 Q. Okay. Was he present?
- 12 A. Yes.
- 13 Q. Did you talk to him?
- 14 A. Yes, sir.
- 15 Q. Before you talked to him, did you advise him of his
- 16 Miranda rights?
- 17 A. I did.
- 18 (WHEREUPON, State's Exhibit Number 1 was marked
- 19 for identification.)
- 20 BY MR. WAGNER:
- 21 Q. Let me show you what's been marked State's Exhibit
- 22 Number 1, State's Number 1 for identification. Do you
- 23 recognize that?
- 24 A. Yes, sir, I do.
- 25 Q. What is that?

1 A. It is a Miranda form that is from the Oconee County
2 Sheriff's Office that we use when we are interviewing
3 people.

4 Q. Is that the same form that you had that day?

5 A. This is the form, yes.

6 Q. And did you advise him of his rights from that form?

7 A. I did.

8 Q. Where did this occur?

9 A. This occurred at Return Church Road.

10 Q. Where approximately is that?

11 A. That is in Seneca.

12 Q. Was that where y'all actually took him down, for
13 lack of a better term?

14 A. That's the same address, yes, sir.

15 Q. And how did you go about advising him of his rights?

16 A. We used this form. And when we display this form to
17 an individual, we read line for line the Miranda waiver.
18 And as we do that, we ask the person if he will either
19 initial, check off that he understands each line for line
20 of the Miranda.

21 Q. Okay. And what does that form say, and how did you
22 go about advising him of his rights that day out on
23 Return Church Road?

24 A. I had advised Mr. Finney that I was going to read
25 him his Miranda, and that if he had any questions as I

1 read them, to do that. And as I did, I read it line for
2 line. Would you like me to read that at this time?

3 Q. Exactly how you did it, please.

4 A. "Before we ask you any questions, you must
5 understand your rights." He checked off that he
6 understood that line. "You have the right to remain
7 silent." He checked off that he understood that line.
8 "Anything you say can be used against you in court." He
9 checked off that line. "You have the right to talk to a
10 lawyer for advice before we ask you any questions and to
11 have him with you during questioning." He checked off
12 that line. "If you cannot afford a lawyer, one will be
13 appointed for you before any questions if you wish." He
14 checked off that line.

15 "If you decide to answer questions without a
16 lawyer present, you will still have the right to stop
17 answering at any time." He checked off that line. "I
18 have read this statement of my rights and understand what
19 my rights are. I'm willing to make a statement and
20 answer questions. I understand and know what I'm doing.
21 No promises or threats have been made to me, and no
22 pressure or coercion of any kind has been used against
23 me." He checked off that line, and then he signed it.

24 Q. Okay. Is that form still substantially in the same
25 condition as it was when you filled it out that day?

- 1 A. Yes, sir.
- 2 Q. And the checkmarks, was that checkmarks made by him?
- 3 A. Yes, sir.
- 4 Q. And that's his signature at the bottom and you
- 5 signed as a witness?
- 6 A. Yes, sir.
- 7 Q. Okay. At that point in time what did y'all do? Did
- 8 you start questioning then or did you ask him to go back
- 9 to the sheriff's office?
- 10 A. Yes, sir. Because of the volatility of the area and
- 11 everything, we just asked him if he could come to the
- 12 sheriff's office where we could sit down in a comfortable
- 13 setting, in a room, and talk about it, things.
- 14 Q. Was he under arrest at that time?
- 15 A. No, sir, he wasn't under arrest.
- 16 Q. Okay. But did y'all transport him in a patrol car?
- 17 A. We offered him transportation in a patrol car.
- 18 Q. Did he come talk to you?
- 19 A. He did.
- 20 Q. Did he later give -- who did talk with him?
- 21 A. Myself and Sergeant Arnold.
- 22 Q. Okay. Did he later give y'all a written statement?
- 23 A. He did.
- 24 Q. Were you present when that written statement was
- 25 given?

1 A. Yes, sir.

2 Q. Did you at any time ever offer him anything, hold
3 out any hope for reward; did you ever promise him
4 anything or threaten him to give y'all a statement?

5 A. No, sir.

6 Q. Did you threaten him or promise him anything to
7 waive his rights to talk to you?

8 A. No, sir.

9 Q. Did he agree to talk to you?

10 A. He did. He agreed.

11 Q. When his statement was over, did y'all keep working
12 on the case?

13 A. We did. We kept working.

14 Q. Was he under arrest from you guys at that point in
15 time?

16 A. No, sir. During that time other cases were
17 evolving. The city of Seneca had another case as well,
18 and he was placed under a temporary custody order at that
19 time based on that case. So --

20 Q. So he was held on other charges but not y'all's?

21 A. Yes, sir. That's correct.

22 Q. Did y'all find anything out in the next couple of
23 days that led you to go back and talk to him again?

24 A. Yes, sir, we did.

25 Q. And what was that?

1 A. We had discovered that there was some pawn tickets
2 that were being discovered where Mr. Finney had brought
3 some jewelry that was similar to what was being taken
4 from other burglaries in the area as well. So at that
5 point we decided to speak to Mr. Finney again.

6 (WHEREUPON, State's Exhibit Number 2 was marked
7 for identification.)

8 BY MR. WAGNER:

9 Q. Let me show you what's been marked State's Exhibit
10 Number 2 for identification. Do you recognize that?

11 A. Yes, sir.

12 Q. What is that?

13 A. It is a Miranda form.

14 Q. Is that the same type of Miranda form that you just
15 read into the record?

16 A. It's the exact same type, yes, sir.

17 Q. And when did that actual -- when did that form come
18 about?

19 A. This come about on August the 30th.

20 Q. Okay. So two days after the first time you talked
21 to him --

22 A. Yes.

23 Q. -- y'all went back up there and talked to him again?

24 A. Yes, sir.

25 Q. And where was he?

1 A. He was in the detention center. He brought him up
2 to a room in our investigations department where we sit
3 down and interview, talk to people.

4 Q. Okay. So he was in custody?

5 A. Yes, sir, he was in custody at that time.

6 Q. And how did you go about advising him of his rights
7 at that time?

8 A. Once again, when we speak to anyone, we advise them
9 of the Miranda rights. We bring out this form that we
10 all use in the sheriff's office. And I asked him line
11 for line as before, I said, "Before we ask you any
12 questions, you must understand your rights." He
13 initialed it JF. "You have the right to remain silent."
14 He initialed it JF. "Anything you say can be used
15 against you in court." He initialed that line JF. "You
16 have the right to talk to a lawyer for advice before we
17 ask you any questions and have him with you during
18 questioning." He initialed it JF.

19 "If you cannot afford a lawyer, one will be
20 appointed for you before any questions if you wish." He
21 initialed it JF. "If you decide to answer any questions
22 now without a lawyer present you will still have the
23 right to stop answering at any time." He initialed it
24 JF. "I have read this statement of my rights and
25 understand what my rights are. I'm willing to make a

1 statement and answer questions. I understand and know
2 what I'm doing. No promises or threats have been made to
3 me and no pressure or coercion of any kind has been used
4 against me." He initialed that JF and signed his name.

5 Q. Okay. And who was present in the room with you?

6 A. Sergeant Scott Arnold.

7 Q. Just the three of y'all, the defendant and the two
8 of y'all?

9 A. Yes, sir.

10 Q. Did you ever give him any kind of promises, any kind
11 of threats, or hold out any hope for reward or try to
12 coerce him into talking to you?

13 A. No, sir, we did not.

14 Q. Did he agree to waive his rights and to talk to you
15 at that time?

16 A. He did.

17 Q. Did he give you a written statement -- we're talking
18 on the 30th of August. Did he give you a written
19 statement at that point?

20 A. He didn't give a written statement at that point.

21 Q. Did he refuse, did y'all ask him, or what happened?

22 A. We asked him if he wanted to tell us what had
23 happened during this time period. He said he did not
24 want to give a statement, but he would talk to us and
25 tell us what happened.

1 Q. Did y'all show him anything that you didn't have
2 before? Was there anything that y'all went about and got
3 to where he'd talk to you?

4 A. We had -- we had -- I'm pretty sure we showed him,
5 but we did tell him that we had the pawn tickets and that
6 his name was on these pawn tickets, and this jewelry was
7 matching the descriptions of the burglary locations. And
8 so at that point he said, Well, I'd like to tell you what
9 happened.

10 Q. Okay. What did he say exactly in response to the
11 burglary that we're here for today?

12 A. For this? He told us about how he says he and
13 another person went to this location, took a shotgun off
14 the bunk bed of the home -- of the bed inside the home,
15 took some keys, looked at a motorcycle in the shed nearby
16 and was going to try to devise a plan to take it later on
17 that day or that night. So -- told us how he cut a
18 little slit in the screen -- back screen door to get into
19 the place. And he mentioned about maybe taking the boat,
20 too.

21 Q. Did he steal any liquor?

22 A. He stole liquor out of the home.

23 Q. What happened with the liquor?

24 A. It's my understanding the liquor was drank sometime
25 afterwards.

1 Q. Okay. Did what he told you match what you already
2 knew about the facts of the burglary?

3 A. Yes.

4 Q. As far as what was missing and things?

5 A. That was consistent with the stuff that was missing
6 inside the home, as well as a BB gun and an air rifle was
7 missing as well.

8 Q. And did you ever threaten him in any manner to talk
9 to you and tell you what he did?

10 A. No, sir.

11 Q. What did he say his job was during the robbery, the
12 burglary? What did he say?

13 A. This particular burglary, he said that his job was
14 to be the lookout man. I believe he described it as
15 being the crow. That's how he described it, as being a
16 lookout man.

17 Q. And it was Officer Arnold with you, present when he
18 admitted to this?

19 A. Yes, sir.

20 Q. Describe his demeanor when y'all were talking to him
21 as far as did he appear to be under the influence of
22 alcohol or drugs or anything?

23 A. Didn't appear to be. And at that time he was -- he
24 had been in the jail for at least two days at that point.

25 Q. Did he respond to your questions?

1 A. He did.

2 Q. Did he respond appropriately?

3 A. Yes.

4 Q. Okay. At any time did he ever ask to -- for an
5 attorney? Did he ever ask to stop questioning?

6 A. No, he did not.

7 Q. If he had, would y'all have stopped?

8 A. We would have stopped and returned him back to the
9 jail.

10 Q. Did he also tell you things about these other
11 charges that he had against him?

12 A. Yes, sir. He agreed to even go a step further and
13 show us these locations where he had been.

14 Q. So what happened next? Did he show y'all the
15 location?

16 A. That was on the -- couple days later, yes, sir, he
17 did.

18 (WHEREUPON, State's Exhibit Number 3 was marked.
19 for identification.)

20 BY MR. WAGNER:

21 Q. Let me show you what's been marked State's Exhibit
22 Number 3. Please look at State's Number 3 for I.D.,
23 please. Do you recognize State's Number 3?

24 A. Yes, sir, I do.

25 Q. What is that?

1 A. It is the same Miranda form that we all use.

2 Q. And is it still substantially in the same condition
3 as it was when it was filled out?

4 A. It's an identical Miranda form, yes, sir.

5 Q. What is the date and time on that, and what led to
6 the creation of that form?

7 A. What led to the creation of this form was Mr. Finney
8 agreeing to show us these incident locations.

9 Q. Okay. What date -- what day did y'all decide to do
10 that?

11 A. September 4th.

12 Q. Okay. And who was present when this happened?

13 A. Sergeant Arnold and myself.

14 Q. Okay. So y'all Mirandized him a third time at that
15 point?

16 A. Yes.

17 Q. And that statement, the rights waiver, did y'all
18 read it to him again just as you did the other two times?

19 A. We did line for line. "Before we ask you any
20 questions, you must understand your rights." He
21 initialed it JF. "You have the right to remain silent."
22 He initialed that line JF. "Anything you say can be used
23 against you in court." He initialed it JF. "You have
24 the right to talk to a lawyer for advice before we ask
25 you any questions and to have him with you during

1 questioning." He initialed that line JF. "If you cannot
2 afford a lawyer, one will be appointed for you before any
3 questions if you wish." He initialed it JF.

4 "If you decide to answer questions now without a
5 lawyer present, you will still have the right to stop
6 answering at any time." He initialed it JF. "I have
7 read this statement of my rights and I understand what my
8 rights are. I'm willing to make a statement and answer
9 questions. I understand and know what I'm doing. No
10 promises or threats have been made to me, and no pressure
11 or coercion of any kind has been used against me." He
12 initialed that line JF and he signed it.

13 Q. Okay. And did you at any time ever try to coerce
14 him or use any force to get him to waive his rights and
15 talk to you?

16 A. No, sir.

17 Q. Did you promise him anything? Did you hold out any
18 hope for reward or benefit for him?

19 A. No, sir.

20 Q. Did he agree to take you to the locations, at least
21 in this case, the location of this burglary?

22 A. That's correct, he did.

23 Q. Did y'all tell him where to go?

24 A. No, sir, we did not.

25 Q. How did you go about getting him to take you there?

1 Did you put him in y'all's patrol car?

2 A. Yes. We were in Sergeant Arnold's truck, his
3 vehicle that's assigned to him. I sat in the back.
4 Mr. Finney sat up front where he had a clear view, right
5 next to Sergeant Arnold.

6 We responded to the area. We pulled over on the
7 side of the road and we said, Mr. Finney, now give us
8 directions where this incident location occurred.

9 Q. Okay. And what did he say?

10 A. He said, Okay. And he said, Go down Ebenezer Road.
11 And he said, I'll show you the road where we went down.
12 And he said, Stop. Take a right right here. And I
13 identified that as McMahan Road. We proceeded down to
14 the very end, which McMahan Road is a dead end. It ends
15 into the lake.

16 Mr. Finney, at that point, while we were there in
17 the truck, he looked at the house and said, That's the
18 house, and pointed to it. At that point we all got out
19 of the vehicle, and Sergeant Arnold once again asked him,
20 he said, Are you sure this is the house that -- where
21 this incident occurred and where you were down here? He
22 says, Yes that's it.

23 I took photos. Mr. Finney was pointing to the
24 house. I was taking photos at that time.

25 Q. Okay. Did he give any more facts as to what was

1 taken out of the house?

2 A. He mentioned the shotgun, and he mentioned the bunk
3 bed, which is consistent with the victim said the shotgun
4 was on top of the bunk beds. He mentioned some keys.
5 The victim said some keys were missing. He mentioned an
6 air rifle and a BB gun, which is what was missing out of
7 there. He told us that he saw a Kawasaki dirt bike in
8 the shed which belonged to the victim's son. He told us
9 that they were planning on coming back and trying to get
10 it out, but they were concerned about it being a one-way
11 street, if anybody would see them. So he was having this
12 type of talk while we were just out there in the yard.

13 Q. And just to sum up your testimony here, at any time
14 during any three of these rights waivers, State's Exhibit
15 Numbers 1, 2 and 3, did you or Sergeant Arnold or anyone
16 in your presence ever promise him anything to get him to
17 talk to you?

18 A. No, sir.

19 Q. Did you ever threaten him in any manner?

20 A. No, sir.

21 Q. Did you ever threaten his family?

22 A. No, sir.

23 Q. Did you ever hold out any hope for reward or gain by
24 talking to you and admitting to being present as the
25 lookout at this burglary?

1 A. No, sir.

2 Q. Do you feel like he voluntarily waived his rights in
3 all three instances?

4 A. Yes, sir, he did.

5 Q. Was he cooperative with you when he did it?

6 A. He was.

7 Q. Okay.

8 MR. WAGNER: Your Honor, we're going to have one
9 more for the same, and up to that point in time, that's
10 all I've got.

11 THE COURT: Okay. Any cross-examination?

12 MR. DAY: Just a couple things, if I may, your
13 Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. DAY:

17 Q. Just so I understand, on this September 4, 2013,
18 when y'all were, you say, out in the sheriff's vehicle
19 riding around the county; is that correct?

20 A. Yes, sir.

21 Q. And you went to the Giordano house?

22 A. I'm sorry, sir.

23 Q. The Giordano house?

24 A. Yes, sir.

25 Q. There on McMahan Road?

1 A. Yes, sir.

2 Q. And said he talked about getting a shotgun. Then
3 you said something about an air rifle and a BB gun?

4 A. Yes, sir. That was some of the things that was
5 taken from that home.

6 Q. An air rifle and a BB gun?

7 A. It's an airsoft. I'm sorry, airsoft rifle, which is
8 something similar to a BB gun, but it's got little small
9 plastic pellets. It was an airsoft gun and a BB gun.

10 Q. Because I've been looking again and again through my
11 discovery, and I can't find anything about that coming
12 from the house. Not in the statement. I'm looking here
13 where you wrote down in your notes to make sure. I'm
14 just looking at the notes here, record of interview.
15 Took photos. Finney pointed to the hose. We are on
16 Ebenezer Road. Finney says to turn on McMahan Road. I
17 was looking down there. We went to a white house, end of
18 the road. Shotgun was on the bunk bed. We looked at a
19 motorcycle. Josh Burrell got the gun. Finney said the
20 house made the Rogers house, meaning Josh, and it stops.
21 I'm looking back through here for Mr. Giordano, and in
22 this report you said shotgun.

23 A. Yes, sir. Later on the Giordanos discovered these
24 were missing. This is a weekend home-type thing. And
25 they don't live there all the time. So they later

1 discovered the BB gun and the air rifle was missing.

2 Q. Never got that.

3 A. Sir?

4 Q. I got a supplemental, but I didn't see anything in
5 there about it, about a BB gun. All I saw was there was
6 a statement made to y'all from Mr. Giordano that said he
7 would try to find out what kind of shotgun it was, make
8 and model, and would get back to you. End of report.

9 So I'm trying to figure out where this BB gun
10 knowledge came in.

11 A. Again, it was later discovered at the home where
12 Mr. Finney was staying. And it was later discovered.
13 Even the victim didn't know these items were missing.
14 That's the only explanation I can give you at this time.

15 Q. I'm trying to figure out why that wasn't in the
16 discovery.

17 A. I'll have to review my notes. I...

18 Q. Now, let's go back. First time you spoke to him was
19 on August 28th. That's when you took him to the
20 sheriff's department?

21 A. Yes, sir.

22 Q. Did you take him back home?

23 A. No, sir. As I said earlier, Seneca Police
24 Department had a temporary custody order on him at that
25 time and he remained in jail.

1 Q. Okay. So he went to jail on the 28th, then you got
2 him out of the jail on the 30th?

3 A. That's -- yes, sir.

4 Q. Okay.

5 A. To interview him, not to take him.

6 Q. Right.

7 MR. DAY: Those are all the questions I have,
8 your Honor.

9 THE COURT: Redirect?

10 MR. WAGNER: Nothing further, your Honor.

11 THE COURT: Thank you, sir. You may step down.
12 Call your next witness.

13 MR. WAGNER: Scott Arnold.

14 **SCOTT ARNOLD,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. WAGNER:

18 Q. Officer, could you give us your full name and spell
19 your last name for the record, please.

20 A. Scott Bradley Arnold, A-r-n-o-l-d.

21 Q. And who are you employed with?

22 A. Oconee County Sheriff's Office.

23 Q. How long have you been working for the sheriff's
24 office?

25 A. Sheriff's office, about 17 years.

1 Q. What were your job duties at the sheriff's office
2 back in August, September of last year?

3 A. Property crimes investigator.

4 Q. Are you still a property crimes investigator?

5 A. Yes, I am.

6 Q. Was one of your cases assigned to you McMahan
7 Road or --

8 A. Yeah, at the end of McMahan Road, McMahan Road.

9 Q. Was that house burglarized?

10 A. Yes, it was.

11 Q. Did you investigate and later charge Jonathan Finney
12 with that burglary?

13 A. Yes, I did.

14 Q. At some point in time when y'all got his name,
15 figured out it was him as a suspect, did y'all go arrest
16 him or did you do a takedown, you and Sergeant McMahan?

17 A. Yes. We went to Return Church Road. That's where
18 he's located.

19 Q. Okay. And at that point in time did you ask him to
20 go back to the sheriff's office with y'all?

21 A. Yes, we did.

22 Q. Were you present when Sergeant McMahan Mirandized
23 him at the scene?

24 A. No, I was actually talking to some other
25 individuals --

1 Q. Okay.

2 A. -- when that happened.

3 Q. Okay. Did you go back to the sheriff's office after
4 that, and did you talk to him there?

5 A. Yes. Which I did see the Miranda rights, where he
6 had already read them to him.

7 Q. What was his -- what was his demeanor that day? Did
8 he appear to be under the influence of alcohol or drugs?

9 A. He didn't appear to be, no.

10 Q. Did he respond to y'all's questions?

11 A. Yes, he did.

12 Q. Did he talk to you?

13 A. Yes.

14 Q. Did he agree to give you a written statement?

15 A. Yes, he did.

16 Q. Did you guys ever promise him or did you ever
17 promise him or hold out hope for reward or benefit, or
18 did you ever threaten him or his family in any manner?

19 A. No, I didn't.

20 Q. Did you try to coerce a statement out of him?

21 A. No.

22 Q. Did he give you a statement?

23 A. Yes, he did.

24 (WHEREUPON, State's Exhibit Number 4 was marked
25 for identification.)

1 BY MR. WAGNER:

2 Q. Let me show you what's been marked State's
3 Exhibit 4. Do you recognize that?

4 A. Yes, sir.

5 Q. What is that?

6 A. That's a statement that Mr. Finney gave us that day.

7 Q. And where did that occur and when did that occur?

8 A. It occurred August 28th at the Oconee County Law
9 Enforcement Center, approximately 5 o'clock.

10 Q. Who was present when that statement was given?

11 A. Me and Mr. Finney and Sergeant McMahan.

12 Q. Did you sign down there as a witness?

13 A. Yes, I did.

14 Q. Did the defendant sign it?

15 A. Yes, he did.

16 Q. To the best of your knowledge, was that statement
17 freely and voluntarily given by the defendant?

18 A. Yes, it was.

19 Q. Y'all never promised him or threatened him in any
20 manner?

21 A. No, sir.

22 Q. What exactly did he say in his statement?

23 A. Basically we talked to him about the burglaries. He
24 stated that Josh Burrell had done it, saw him with a blue
25 bag, saw him with a 12-gauge shotgun and an airsoft

1 machine-like gun and a BB gun. And kept talking about
2 some other burglaries that Josh had done.

3 Q. If you could, could you read us -- did he write this
4 in his own handwriting?

5 A. Yes, he wrote it.

6 Q. Did what did he say?

7 A. "All I can say is that we were all at the house and
8 Josh was starting to get ready. He said he was going to
9 the store and he left. He got back. It was a couple
10 hours later, and he walked in with a blue long bag with a
11 12-gauge gun, airsoft machine gun, and a BB gun. Then
12 he" -- I don't know what that -- I can't read that word.
13 "Then he something in a scared tone was saying rolled up
14 change in a box, that he had came across a lick was what
15 he said and that he had gone to get rid of the gun so he
16 could make a little money. The only thing he ever talked
17 about was hitting licks and making money. Haven't seen
18 since at stepdaughter. So don't know where at now. The
19 Liberty house has lots of things from safe to guns,
20 tools, antiques and more, and all was seen when we were
21 there and was told everything hot and needed to sell.
22 And I saw the gun. It was a 12-gauge single-shot
23 breakdown, older wood stock, not too" -- hard for me to
24 read his writing -- "not too something. Josh Burrell had
25 the gun." I can't read that one word.

1 Q. Okay. Was that the end of his statement?

2 A. Yes.

3 Q. Did y'all put a big X there where nothing could be
4 added to it?

5 A. Yes, we did.

6 Q. Did he sign that and say that was his statement?

7 A. Yes, he did.

8 Q. Basically what was he telling y'all there?

9 A. That Josh Burrell had done all this. He had saw the
10 items that we were looking for.

11 Q. And you said the shotgun went to some house in
12 Liberty?

13 A. Yes.

14 Q. And that Josh showed up with a blue bag with an
15 airsoft rifle, shotgun, and a BB gun?

16 A. Yes.

17 Q. And Josh had done it?

18 A. Uh-huh.

19 Q. Did y'all find out within the next couple of days
20 any additional information on this case that led you to
21 believe that he wasn't telling you the truth?

22 A. We found -- we got copies of pawn tickets where he
23 had pawned some jewelry that was similar with other
24 burglaries, the jewelry that was taken out of other
25 burglaries.

1 Q. Did y'all go back up and talk to him again?

2 A. Yes. We went down to the detention center and
3 brought him back up and explained to him what we had got.

4 Q. Let me show you what is marked State's Exhibit 2. I
5 think it's still up here. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. That's a Miranda rights form we use for the Oconee
9 County Sheriff's Department.

10 Q. Is that still in the same condition as it was on
11 August 30th, 2013?

12 A. Yes, it is.

13 Q. What time did y'all go down and where did y'all talk
14 to him?

15 A. We talked to him in the sheriff's office in our
16 interview room in the CID division.

17 Q. What time did you talk to him?

18 A. We read him his rights at 3:05.

19 Q. Were you present when that was done?

20 A. Yes.

21 Q. Did you watch him initial each right as it was read?

22 A. Yes, I did.

23 Q. Did you or David McMahan ever promise him anything
24 to waive his rights?

25 A. No.

- 1 Q. Did you ever threaten him in any manner?
- 2 A. No, I did not.
- 3 Q. Did you ever hold out any hope for reward or gain?
- 4 A. No, I did not.
- 5 Q. Did he waive his rights to talk to you?
- 6 A. Yes, he did.
- 7 Q. Did y'all confront him with the pawn tickets?
- 8 A. Yes.
- 9 Q. What happened when you confronted him with the pawn
10 tickets?
- 11 A. He pretty well just basically said, I did it all,
12 and he would cooperate with us.
- 13 Q. Did he give you specifics?
- 14 A. Yes, he did. In my interview notes he had told
15 about all the burglaries he was involved in.
- 16 Q. Did he talk about the one we're on trial for today,
17 the one on McMahan Road?
- 18 A. Yes, he did.
- 19 Q. What did he say about that?
- 20 A. He basically said he was more like a lookout man,
21 but he had went down there and seen the 12-gauge shotgun,
22 and the house was at the end of the road.
- 23 Q. Did he say anything about the liquor or the
24 motorcycles?
- 25 A. Yes, he did.

1 Q. What did he say?

2 A. He said they had drank liquor, and he had seen the
3 motorcycle and other things down there.

4 Q. Where did the shotgun come from in the house?

5 A. He had mentioned that it came from the bunk bed
6 area.

7 Q. Okay. Did y'all later come back and talk to him
8 again?

9 A. Yes.

10 Q. Why did you come back and talk to him again?

11 A. Because he had agreed to take us and show us where
12 he had been breaking into places.

13 Q. What day did y'all go back and do that?

14 A. September 4th.

15 Q. Did you Mirandize him a third time at that point in
16 time?

17 A. Yes, we did. Sergeant McMahan did. I was driving
18 the vehicle. He had him in the truck and David McMahan
19 read him the Miranda rights.

20 Q. Were you present when that was done?

21 A. Yes.

22 Q. He did agree to talk to you and tell you where to
23 go?

24 A. Yes.

25 Q. What did he say?

1 A. After he signed the Miranda rights, we went to the
2 Ebenezer area and he realized where he was at, and he
3 told us where to go.

4 Q. Where did he tell you to go?

5 A. Down Ebenezer Road. And finally we took a right on
6 which was McMahan Road. He said, Go to the very end down
7 there. It will be the house down at the very end.

8 Q. Was that the house that you were assigned the
9 burglary case, McMahan Road?

10 A. Yes. We got out of the vehicle, and he pointed at
11 the house, and that's when pictures were taken.

12 Q. Did he take you anywhere else in regards to this
13 particular burglary? Did he take you to Liberty?

14 A. Yes, he did.

15 Q. And what did y'all -- where did y'all go in Liberty?
16 Did he tell you how to get there?

17 A. Yes. He verbally told us, and I think Sergeant
18 McMahan may have wrote the addresses down. I'm not real
19 sure of the addresses. But he was just telling us where
20 to go and actually showed us where he believed the
21 shotgun went, to a house in Pickens.

22 Q. Okay. And was that the -- the house near Liberty,
23 was that the house he was talking about in his statement,
24 State's Exhibit 4?

25 A. I think so.

1 Q. At any time did y'all threaten him in any manner to
2 waive his rights in all three instances?

3 A. No.

4 Q. Did you ever promise him anything?

5 A. No, sir.

6 Q. To the best of your knowledge, the things he
7 admitted to, did he admit to them freely and voluntarily
8 of his own free will?

9 A. Yes, he did.

10 Q. All right. That's all the questions I have.

11 THE COURT: Cross-examination?

12 MR. DAY: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. DAY:

15 Q. Mr. Arnold, going to the August 28th, 2013,
16 statement that Mr. Finney wrote out, this is one y'all
17 took?

18 A. Yes.

19 Q. Is that correct?

20 A. Uh-huh.

21 Q. All right. And in that statement he states that he
22 was at home or where he was staying, and Josh Burrell
23 walked in with a 12-gauge shotgun and a BB gun or
24 something else; is that correct?

25 A. That's correct.

1 Q. Okay. And in that statement of 8/28 he did not
2 admit to going into this house on McMahan Road, did he?

3 A. Not at that time, no, sir.

4 Q. Okay. Now, on August 30th is where you said that
5 y'all rode around the county; is that right?

6 A. No, September 4th.

7 Q. September 4th. Excuse me. You're right. Yes. On
8 August 30th, this is where you wrote down, you numbered
9 them, talked about the pawn tickets, et cetera. And he
10 was in jail at the time. You noted that he was wearing
11 orange; is that correct?

12 A. Yeah, he was wearing orange that day.

13 Q. And y'all talked about several different charges
14 that y'all were investigating?

15 A. Yes, sir.

16 Q. And that's the statement, that's according to what
17 you wrote down. You said Josh, meaning Josh Burrell; is
18 that correct?

19 A. Yes, sir.

20 Q. That Josh Burrell went in. He had the gun. And
21 that Josh Burrell got the gun on -- or he got the gun and
22 it was on the bunk bed?

23 A. Yeah. He had mentioned that Josh had went in and
24 done it.

25 Q. Now, when y'all went riding around, did -- the

1 statements that you wrote, as you wrote out about
2 September the 4th -- this is where you rode around and he
3 spoke of the end of McMahan Road -- you're saying he
4 said, I was lookout man down there. We went to white
5 house end of road. Shotgun on the bunk bed. We looked
6 at the motorcycle. Josh Burrell got the gun. And that
7 was the end of that portion having to do with anything
8 about this particular case, is that it?

9 A. Yes, sir.

10 Q. Okay.

11 MR. DAY: That's all the questions I have, your
12 Honor.

13 THE COURT: Redirect?

14 MR. WAGNER: Nothing further, your Honor.

15 THE COURT: All right. Thank you, sir. You may
16 step down.

17 Any other witnesses?

18 MR. WAGNER: That's all we have on this issue.

19 THE COURT: Mr. Day, what's your position with
20 regard to whether or not you intend to present any
21 evidence?

22 MR. DAY: Your Honor, as to the matter under
23 *Jackson v. Denno* as to whether or not they were given
24 freely and voluntarily, which is our issue here, not
25 whether they were truthful or not, I don't think there's

1 any evidence here that would indicate that they forced a
2 statement out of him, threatened him on that. So I have
3 nothing further on it, your Honor.

4 THE COURT: Thank you very much. All right.

5 MR. DAY: And I do understand that would still be
6 the charge to the jury. The jury still has to determine
7 its voluntariness in the end.

8 THE COURT: That's right, beyond a reasonable
9 doubt.

10 For the record, I'm going to find from the
11 totality of the circumstances that the statements were
12 voluntarily made, all three, by the defendant based on
13 the factors set forth in *State vs. Miller*, which would
14 include coercion, length of interrogation, location, the
15 maturity of the defendant, education of the defendant,
16 his physical condition, mental health condition,
17 experience, misrepresentation of law enforcement, threats
18 of violence by law enforcement, promises of leniency,
19 isolation, factors we look at based on the totality of
20 all of those, not all of which would apply or were
21 brought out in this matter. Those statements were freely
22 and voluntarily given.

23 But to the extent that there may be other
24 instances, I thought I heard that related in other
25 charges -- they're not being charged here -- my ruling

1 would be subject to other evidentiary objections to those
2 being brought up in court. Okay?

3 MR. DAY: Yes, sir.

4 THE COURT: All right. Anything further?

5 MR. WAGNER: No, sir. I understand your ruling.
6 I just for purposes of the voluntariness and all of that,
7 I had to ask some of that. We discussed it, and we're
8 going to limit it to strictly the burglary he's on trial
9 for here today and do our best to stay out of anything
10 else that wouldn't even be coming close to that.

11 THE COURT: I'm not saying you can't, you just
12 have to lay a foundation.

13 MR. WAGNER: Sure.

14 THE COURT: Anything further in Mr. Finney's case
15 before we adjourn for the day?

16 MR. WAGNER: No, sir.

17 THE COURT: Mr. Day?

18 MR. DAY: No, your Honor. Just one thing, if I
19 may very quickly, just for the record, ensure from the
20 Solicitor's office I received all the discovery in this
21 case and that there is no other.

22 THE COURT: Let me ask you. I'm sure,
23 Mr. Wagner, you have tried to use good faith in keeping
24 up with the documents. But double-check, especially with
25 regard to some sort of air rifles and pellet guns or

1 plastic ball guns that were reported by the alleged
2 victims in this matter because Mr. Day is saying he
3 didn't get any evidence of that.

4 MR. WAGNER: I don't know that it was ever put in
5 a report, Judge. They found out after the fact. You
6 know how when people -- oftentimes when people are
7 burglarized, they don't necessarily notice something is
8 missing right away and it doesn't get put in a report.
9 They did tell the officers later that the stuff was
10 missing. It was recovered out of a house and will be
11 linked through another witness that this defendant is the
12 one that brought those two items in. And the victims
13 will, in fact, I.D. the items as being theirs. There's
14 some pictures of those items. One is an airsoft rifle,
15 one is a BB gun. There's also a flashlight that was
16 attached to it. We have given copies of those pictures
17 to them, so I think there's --

18 THE COURT: Well, listen. I don't want you to go
19 over the whole thing. If you feel like there's any
20 material omission of discovery in this case, you just
21 need to raise the appropriate objection at the
22 appropriate time.

23 MR. DAY: Yes, your Honor.

24 THE COURT: If you need time to look at it or to
25 investigate, we may have to do that. Thank you, Guys.

1 9 o'clock Thursday morning?

2 MR. WAGNER: Yes, your Honor.

3 Your Honor, the indictment stated -- I guess we
4 move to amend the victim's name on the indictment. We're
5 probably going to use the wife's name. Her name is Mary
6 Jane. The indictment reads Joseph Giordano. They live
7 together. They are married. We would move to amend the
8 indictment at this time for Mary Jane so she can testify
9 as to being the victim as opposed to Joseph.

10 THE COURT: Any objection?

11 MR. DAY: I do, your Honor. Needless to say, the
12 discovery never mentions her name at all except to say
13 the wife had come there and noticed something and called
14 him sometime after this supposedly happened, but nothing
15 from her about identifying anything. Everything came
16 from Mr. Giordano according to the discovery that was
17 given to me completely. And, as a matter of fact, I
18 don't believe her name is even mentioned in there except
19 when they say that he said that she was the first one to
20 arrive at the house.

21 THE COURT: Is she here today?

22 MR. WAGNER: She's not here. She'll be here
23 Thursday morning. She's a nurse.

24 THE COURT: How about tomorrow morning since
25 we're out of court to give Mr. Day a chance to have a

1 conversation with her and feel like he can discuss it
2 with her. I think that would be -- with this lady --
3 that would be fair to me before I agree to amend the
4 indictment. Thursday morning is not going to be
5 sufficient time for him to do that.

6 MR. WAGNER: I can try to get her here tomorrow.
7 Our standpoint is it's not an element of the crime.
8 We're not changing any of the elements of the crime.
9 It's just one of those things where it's her house, too.
10 When it was written up, it was written up as Joe
11 Giordano's house. That's how it was indicted. It's just
12 easier for her to come instead of both of them.

13 THE COURT: Well, let's do this. I'm going to
14 take your amendment under advisement. Make her available
15 if you can.

16 If you feel like you have had insufficient
17 opportunity to speak with her, I'll be glad to hear from
18 you Thursday morning.

19 MR. DAY: Yes, sir. I'll be here all day
20 tomorrow.

21 THE COURT: Thank you. You might have to get in
22 your car and drive out to her. Okay?

23 MR. DAY: All right.

24 THE COURT: Thank you, Guys.

25 (WHEREUPON, proceedings adjourned at 2:32 p.m.)

1 Certificate of Reporter

2

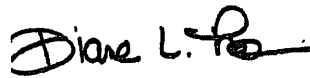
3 I, Diane L. Thommes, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate, and complete transcript of record of a portion
7 of the proceedings had and evidence introduced in the
8 trial of the captioned case, relative to appeal, in the
9 Circuit Court for Oconee County, South Carolina, on the
10 27th day of May 2014.

11 This transcript may contain quoted material.
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13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 August 12, 2014

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Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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

3

4 The State of South Carolina,)
5 Plaintiff,) 2013-GS-37-00115 &
6 -vs-) 2013-GS-37-00118
7 Jonathan Allen Finney,) May 29, 2014
8 Defendant.) Volume 2 of 3
9) Pages 109 - 259
10) Transcript of Record

10

11

B E F O R E:

12

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

13

14

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

16

David R. Wagner, Jr., Esquire
Attorney for the State

17

18

R. Daniel Day, Jr., Esquire
Attorney for Defendant

19

20

21

22

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

23

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1 E x h i b i t s

2 For the State:

3	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
4	1	Waiver of Miranda rights form dated 8/28/13		201
5	2	Waiver of Miranda rights form dated 8/30/13		204
6	3	Waiver of Miranda rights form dated 9/4/13		207
7	4	Statement of Defendant		237
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9	8	Photograph of exterior of mobile home	192	192
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12	11	Photo of defendant pointing	208	209

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:23 a.m.)

4 THE COURT: Based on my meeting with counsel in
5 chambers, I believe there's a motion directed towards the
6 indictment we need to hear, and also we have an in-camera
7 hearing as to certain evidence in this case; is that
8 correct?

9 MR. WAGNER: Yes, sir.

10 MR. DAY: Yes, sir.

11 THE COURT: All right. Mr. Day, I'll be glad to
12 hear from you.

13 MR. DAY: Your Honor, first we would move to
14 quash the indictment in that the indictment sets forth
15 and alleges that the defendant entered into -- let me get
16 to my -- let me back up here again. On the indictment,
17 if I can find a copy of the indictment.

18 David, you got your copy of the indictment,
19 orange one or whatever?

20 THE COURT: The clerk has got them.

21 MR. DAY: Great.

22 THE CLERK: These are the originals.

23 MR. DAY: Okay. I'll just hold on to these.

24 Your Honor, the two indictments under which
25 Mr. Finney stands here today charges him with burglary in

1 the first degree. And it states, as does the warrant,
2 that he did on or between August 3rd and August 10th
3 willfully and unlawfully enter the dwelling of Joseph
4 Giordano located at McMahan Road without consent, et
5 cetera, and while there armed with a deadly weapon,
6 turning into a first degree.

7 However, the first thing in that, your Honor, is
8 that he must enter into a dwelling of Joseph Giordano.
9 That's what he's being charged with. In this case,
10 according to the records of Oconee County, Mr. Giordano
11 is not an owner of this property, has no interest in it
12 whatsoever. None. The property is in the name of his
13 wife, having been left to her by her father.

14 In that regard it is left to her, along with
15 other property to other members of the family or brothers
16 and sisters, to her. She has not transferred an interest
17 over to Mr. Giordano. There's been no filing that I can
18 find in family court that would indicate a separate
19 maintenance or divorce action had been filed which would
20 create a question of marital property which would be an
21 inchoate cause of action.

22 That being the case, your Honor, I submit, one,
23 that the warrant as well as particularly the indictment
24 is on its face defective and it sets forth a matter that
25 is not true. This matter went before the grand jury. An

1 officer with the sheriff's department took an oath to
2 tell the truth to the grand jury and asked for the
3 indictment to be returned. And that's what she -- not
4 one of these officers but another officer for the
5 sheriff's department went before the grand jury and swore
6 that that's, in fact, true.

7 We submit, your Honor, that that creates a
8 problem with the indictment, and it does not set forth
9 the truth. Mr. Giordano is not the owner of this
10 property, and therefore it can't be a burglary first
11 degree against him. That being the case, since it is a
12 property crime, then the owner of the property is an
13 essential element. I would submit, your Honor, that it
14 fails in that regard. And that being the case, I would
15 submit that it should be quashed.

16 THE COURT: Mr. Wagner, what is your response to
17 that, please, sir?

18 MR. WAGNER: Your Honor, I think the indictment
19 is merely a notice document. They were on notice that
20 the burglary occurred within about a week's time frame in
21 early August 2013. Joseph Giordano and his wife, Mary
22 Jane, are, in fact, the owners of the property. But even
23 if they weren't the owners, if Mr. Giordano had
24 permission to be staying there and he sleeps there and
25 all, I think under the law that technically would be his

1 residence, too. I mean, he's the one that's living there
2 and staying there. Along with Mary Jane, his wife, and
3 their son. So I think it is indeed his residence as well
4 as hers. Both of them will be here to testify today that
5 it is their residence and that they do stay there on the
6 weekend or every other weekend, spend the night, sleep.
7 And their property is in there. It's all their property
8 that's in there, and it is a house and it is a dwelling.

9 THE COURT: All right. As to your first ground,
10 I'm going to deny your motion. I'm looking at elements
11 set forth for burglary first. And this is *State vs.*
12 *Clamp*, which is set forth in the *Criminal Offenses South*
13 *Carolina Third Edition* by John Ferguson. And I do note
14 that the elements as recited for burglary first does not
15 include the named owner of the property. Just says
16 dwelling. And I understand that, based on what you told
17 me earlier, that there is another argument as to what a
18 dwelling is. And I'll hear you on that.

19 But as to the proper owner being named in the
20 indictment, I think the indictment, as I've looked at it
21 and have before me, properly sets forth the elements of
22 the charge, properly gives the defendant notice in which
23 he can prepare a defense, so I'll deny your motion on
24 those grounds.

25 What is your other ground, please, sir?

1 MR. DAY: The other ground, your Honor, is the
2 question of whether or not under the terms of the statute
3 it requires that it be a dwelling. I submit to you that,
4 based upon burglary first, says it must be a dwelling.
5 That's the first issue. The first element, dwelling. In
6 that regard it then goes into what is a dwelling, and it
7 refers to the statute at 16-11-10, dwelling definition:
8 Where a person sleeps, who lodges there, an occupant, a
9 guard. It means something more permanent. A dwelling --
10 and I think one thing we had talked about -- is like a
11 motel room. You rent a motel room, you pay for that
12 motel room and you're in there, and that's where you're
13 staying for three days. Somebody breaks into that motel
14 room. Our supreme court says that that is a burglary
15 because that is your dwelling at that moment.

16 However, at the end of your three days, you leave
17 and that's an empty place, somebody breaks into it.
18 That's not a burglary because that's not a dwelling
19 anymore. It's not being leased. In this regard, your
20 Honor, looking at whether or not it is a dwelling, there
21 has to be a resident. This has to be someone's home.
22 This entire statute comes from the Old English rule that
23 a man's home is his castle. The second most serious
24 crime was burglary of a person's home. Comes after
25 murder. Because you could get the same penalty of life

1 in prison for a burglary that you can for murder. That's
2 why it's so serious, and that's why they say it's your
3 home.

4 They then reduced it down to say, well, other
5 buildings, et cetera, can also still be a burglary, but
6 they're not as serious because that's not a man's home.
7 Therefore, you're not interfering. And I think anyone
8 who's ever been a victim of a burglary can understand
9 that feeling. Because I know. I have been. And there's
10 nothing worse than coming to your home and realizing
11 somebody has been in there taking your stuff regardless
12 of what it was. I know. He took my Tatra guitar. And
13 if I ever find that person, one of these days, 40 years
14 later, I would love to make amends.

15 But it still comes down to in this case the
16 Solicitor just acknowledged this is certainly not
17 Mr. Giordano's home. Their address is in Greenville.
18 That is where they live. Looking at Black's dictionary,
19 it says an occupant, a person who intends to stay there.
20 It's a permanent thing. It's a residence. You look at
21 someone, they use the word "lodges." If you look at that
22 lodges as a verb, it's talking about in this case a
23 resident. That's the way it's used.

24 That being the case, this is not a burglary-first
25 dwelling because it does not have a permanent person

1 living there. It is not owned and used as a permanent
2 dwelling. Therefore, I submit to the Court, that being
3 the case, the burglary first would not lie in this case
4 because it does not meet the requirements of a dwelling.
5 It just doesn't rise to that.

6 If they had moved here -- don't get me wrong. If
7 this was their residence and they stayed there and then
8 worked in Greenville or wherever, we wouldn't be arguing
9 this. But that is not the case. This property, while
10 still in the estate, is not a dwelling place. I submit
11 to the Court therefore that the indictment should be
12 quashed as to that issue.

13 THE COURT: All right. Let me ask you this.
14 Based on what I heard when we were in chambers, this is a
15 weekend house, for lack of a better term, or vacation
16 home? Do you agree with that?

17 MR. DAY: I'm not sure. The property was left to
18 the wife by her father.

19 THE COURT: All right. I know the title issue.
20 But as far as the use of the --

21 MR. DAY: That's correct, your Honor. They would
22 only use it on the weekends that I'm aware of, vacations
23 or something.

24 THE COURT: I'm going to take your motion under
25 advisement on that issue. But I'm going to refer you, if

1 you would, I'm going to give you a case cite to look at.
2 *State vs. Evans*, 656 S.E.2d 782, 2002 court of appeals
3 case. I'll give you the opportunity. I have not read
4 that case, but the definition seems to appear to include
5 vacation homes as a dwelling under the definition.

6 But once you have had a chance to look at that,
7 I'll let both of you respond and I will make my ruling on
8 that later.

9 MR. DAY: Can I get that cite one more time?

10 THE COURT: Yes, sir. 656 S.E.2d 782, *State vs.*
11 *Evans*, court of appeals 2008 case.

12 MR. DAY: I had *State vs. Evans*. It was 1882.
13 On the same issue.

14 THE COURT: Might be a descendant. All right.
15 Any other motions directed toward the indictment?

16 MR. DAY: Your Honor, I would at this time move
17 to exclude certain evidence.

18 Based upon the incident report and the discovery
19 given, and I have reviewed through the report and looked
20 at notes from the officer which was given to me
21 yesterday, that everything that I had said a shotgun was
22 taken and four keys, four --

23 THE COURT: Four what?

24 MR. DAY: Keys to a vehicle and I think a boat or
25 something of that nature, but four keys that were

1 supposedly inside the residence. That's all I have found
2 that existed as far as any notice whatsoever of there
3 being other than that shotgun. The shotgun is
4 specifically stated. Other than that, there's nothing
5 else. Now they're saying there is a BB pistol and a soft
6 air-type gun, something like that.

7 THE COURT: We had that discussion.

8 MR. DAY: Neither one of those had been
9 mentioned. I had no idea what those were. And in that
10 regard, your Honor, as we talked back there, there are
11 some other issues between the defendant and Oconee
12 County, State of South Carolina. As a result, we
13 received -- the pictures that we received, once we
14 printed them out, was that thick. But that covered
15 everything he might be charged with. And nowhere in that
16 did it indicate that those, if those pictures, which
17 didn't come to me until May 13th, 14th, had anything to
18 do with this case. None. I would submit, your Honor,
19 any testimony as to the BB gun or the airsoft rifle to be
20 excluded.

21 THE COURT: Mr. Wagner, what's your response?

22 MR. WAGNER: Well, your Honor, the indictment --
23 he's been indicted for some time -- reads "12-gauge
24 shotgun and other items." There were other things
25 stolen. These two particular items, the airsoft rifle

1 and the BB gun, were not discovered missing at first. It
2 was several weeks after the burglary after the fact that
3 they were discovered missing, and they were not written
4 up individually. But most of the stuff that -- this
5 defendant has so many charges pending that there were all
6 kinds of items that were later identified and all that
7 were not listed individually. And I don't know that we
8 could have, even if we were supposed to, could have done
9 it that way, and I don't think we're required to. It
10 says "other items." These are other items.

11 When I found out -- I didn't actually have the
12 pictures initially because another officer had taken them
13 and I had not gotten those yet. But when I got them --
14 it's been two or three weeks ago when we were going to
15 put this case on the docket -- I immediately knew we
16 would try to put those in evidence, so I sent those to
17 Mr. Day. So they were on notice that those existed and
18 it was about this case. I don't know what else more we
19 could have done. They were actually stolen, and we can
20 link them to this defendant by other witnesses, and this
21 victim can identify them as their property that was taken
22 out of the burglary that we're here for today.

23 THE COURT: So you did give it to him several
24 weeks ago?

25 MR. WAGNER: Yes, sir.

1 THE COURT: All right.

2 MR. DAY: Your Honor, I got pictures May 13th.
3 Didn't even know what they were. I didn't even know --
4 there were some pictures, one of which has been marked,
5 of the defendant at the residence where this allegedly
6 occurred. I got those. I didn't know which -- I got
7 several of those. I didn't know which one went to what,
8 so I had to go out to the house -- went to all these
9 places so I could identify which one that was. And
10 that's when I began to find out about that.

11 But just as the officer testified yesterday, he
12 said he was given that information later, never did a
13 supplemental report, apparently never told the Solicitor,
14 never told anybody until we got ready to come to court.
15 I submit, your Honor, that those two items should be
16 excluded.

17 THE COURT: I'm going to deny your motion.

18 Let me say this. I understand that one of the
19 investigating officers, Officer McMahan, is related to
20 the victims in this case and that there are other charges
21 pending in Oconee County against this particular
22 defendant. And during the testimony in this trial I want
23 to admonish any witness from the State that while it's
24 certainly okay to say why you're on the case and subject
25 to cross-examination, I don't want it to be brought up

1 that there are other charges involving this gentleman
2 pending against him. Okay? Just tailor your testimony
3 to exclude that. All right?

4 And if you would, Mr. Wagner, try to make sure
5 that that's the case for your witnesses.

6 MR. WAGNER: Yes, sir.

7 THE COURT: If you need me to give that warning
8 again, I'll be glad to.

9 MR. WAGNER: Yes, sir.

10 THE COURT: Anything further?

11 MR. WAGNER: No, sir.

12 MR. DAY: No, your Honor.

13 THE COURT: All right. Would you bring the jury
14 in, please.

15 (WHEREUPON, the jury came into open court at
16 approximately 9:40 a.m.)

17 THE COURT: Good morning, ladies and gentlemen.
18 I hope everybody is okay. Before we get started, I'm
19 going to ask the clerk to swear you in, please.

20 (WHEREUPON, the jury was sworn.)

21 THE COURT: All right. Madam Forelady, ladies
22 and gentlemen of the jury, before I get into some just
23 general explanation of the process to you, let me tell
24 you that this is not an endurance contest. So at any
25 time I ask you to come back to the courtroom before

1 you're ready to come back, just send word back that we
2 need a couple more minutes. If during this trial anybody
3 needs to take a break before I declare a break here,
4 raise your hand, pass a note, a word up to your forelady
5 and we'll certainly accommodate you and what your needs
6 are. Okay?

7 If at any time also you need to communicate with
8 me or court personnel, if you would follow the same
9 procedure you used earlier. Write out the issue,
10 question, or request, sign your name to it, give it to
11 the bailiff, and we'll make sure we respond accordingly.
12 Okay?

13 Now, ladies and gentlemen, with that being said,
14 we're about to begin the trial of the case of the State
15 of South Carolina vs. Jonathan Allen Finney who's been
16 charged with burglary first degree and petty larceny. Is
17 that correct, Mr. Wagner?

18 MR. WAGNER: Yes, sir.

19 THE COURT: Mr. Day, you agree with that?

20 MR. DAY: Yes, your Honor.

21 THE COURT: Very good.

22 I'll remind you, ladies and gentlemen, that the
23 fact that this defendant has been arrested and charged
24 and indicted is not evidence of guilt. It does not raise
25 an inference nor a presumption of his guilt. It is

1 simply the charging mechanism by which the State of South
2 Carolina brings a person such as this defendant before
3 the Court for a trial and a determination of guilt or
4 innocence. At this juncture he is presumed innocent.
5 And I will tell you a little bit more about that as we
6 go.

7 Now, I don't know if any of you have ever been
8 involved in a trial before. I would suspect that all of
9 you have watched on TV or at the movies what purports to
10 be a trial of a criminal case. Let me dispel you of any
11 notions you may have. This trial will be nothing like
12 you have seen at the movies, nothing like you have seen
13 on TV. Trials are not entertainment. They are very
14 slow, they're very deliberate, and they're methodical.
15 But I point out to you that they are a fundamental part
16 of our democracy which each and every one of us has a
17 right to, as South Carolinians, trial or search to see
18 that justice is done.

19 These attorneys have introduced themselves to
20 you. If I may say something about them. They are, when
21 they are sworn like any other attorney, they have an
22 ethical duty to be advocates for their clients. They
23 have to zealously advocate their positions before this
24 Court and before you. With that being said, they're also
25 officers of the court. What that simply means is you can

1 expect that these attorneys will be professional, that
2 they will be competent, and they will be ethical in their
3 dealings with one another, in their dealings with me and
4 any witness that appears before you during the course of
5 this trial.

6 Likewise, you have just taken an oath that you
7 would be fair and just and try to reach a verdict in an
8 impartial and fair manner. What that means is the Court
9 and the parties and the attorneys have a right to expect
10 of you that you will be fair, that you will be impartial,
11 and that you will be ethical in your dealings in this
12 case.

13 Now, what I've told you and what I will tell you
14 now is not the law, the substantive law that you will
15 apply. That will be given to you at the end of this
16 case. I will give you basically an explanation of the
17 procedure so you will understand the process you're going
18 through and generally know where you are during the
19 course of this trial.

20 Number one, several of you have asked to take
21 notes, and that is fine. Does everybody who asked to
22 take notes have their pen and pads with them? Let me say
23 a little bit about note-taking. You are -- and I will
24 tell you more about that in one second -- are finders of
25 fact. And part of your function of being finders of fact

1 is to determine the credibility of witnesses that appear
2 before you during this trial. And in determining
3 credibility, one of the issues that you will look at and
4 you will consider is the person's demeanor on the stand.
5 In other words, how they act on the stand. If you get so
6 engrossed in taking your notes that you miss a subtle
7 reaction, you may miss some necessary or helpful part of
8 the elements of credibility of the witnesses and
9 credibility of the evidence in making the determination
10 of which testimony to believe or disbelieve, so I just
11 try to caution you on that.

12 Also at the end of this case when you are
13 instructed to begin your deliberations, just because
14 something appears in a juror's notes as opposed to
15 somebody's memory of that same fact doesn't mean because
16 it's written down that it trumps somebody's memory.

17 Madam Forelady, that's why there's deliberations,
18 and that's why you'll just have to hash out any
19 differences that may occur between notes and memories out
20 there. Okay.

21 Now, in this case the defendant has said. I'm
22 not guilty to both of these charges. What that simply
23 means is that places the burden on the State of South
24 Carolina to prove each and every element of both of these
25 indictments by proof beyond a reasonable doubt.

1 I'll further instruct you that each indictment
2 stands alone at the end of this case, and I'll remind you
3 that you will consider each indictment unaffected by your
4 decision as to the other indictment. In other words, you
5 could find somebody not guilty on one indictment and find
6 him guilty on another indictment. You can find him
7 guilty on both or not guilty on both, but you don't
8 consider just because I have found somebody not guilty or
9 guilty on an indictment that it runs into the other.
10 Both of them stand alone.

11 Now, at the end of this case you'll determine
12 whether or not the State has met its burden of proof by
13 establishing the defendant's guilt by proof beyond a
14 reasonable doubt. So let me give you a brief definition
15 of reasonable doubt, and I'll charge you again in just a
16 minute or at the end of this case on what that means.
17 But a reasonable doubt is this: It is the kind of doubt
18 that would cause a reasonable person to hesitate to act
19 in an important matter in their own affairs.

20 In this case the State has the burden of proving
21 the defendant's guilt by proof beyond a reasonable doubt.
22 Some of you may have sat on civil juries in the past. In
23 those cases the burden of proof is what is called a
24 preponderance or a greater weight of the evidence. We
25 give, as trial judges, the description of a set of scales

1 that are equal, and if it tilts ever so slightly in favor
2 of one or the other, then that is a preponderance of the
3 evidence.

4 In criminal cases the burden is much more
5 powerful than that. It is proof beyond a reasonable
6 doubt. Now, proof beyond a reasonable doubt is proof
7 that leaves you firmly convinced of the defendant's
8 guilt. Now, there are also very few things in this life,
9 ladies and gentlemen, that we know with absolute
10 certainty. And in criminal cases the law does not
11 require proof that overcomes every possible doubt.

12 If, based on your consideration of the evidence,
13 you are firmly convinced that a defendant is guilty of
14 the charges for which he sits here, it will be your duty
15 to find him guilty. On the other hand, if you think
16 there is a real possibility that the defendant is not
17 guilty to one or both of these charges, you must give the
18 defendant the benefit of the doubt and find him not
19 guilty.

20 Now, your purpose as jurors are to find facts.
21 In the vernacular of the law, you are the sole judges of
22 the facts. In other words, you'll determine which
23 verdict you will reach. If during the course of this
24 trial I do anything or I make any type of expression
25 which seems to indicate to you how you are to find facts

1 or the verdict you are to reach, I'm going to instruct
2 you to disregard that. Our constitution of South
3 Carolina does not allow any trial judge to comment on the
4 facts, nor to have an opinion on the facts.

5 I'll tell you that I have no opinion about this
6 case. I look at my job as being somewhat akin to being a
7 referee, to make sure that the process is followed and
8 that a fair and impartial trial is had for both the State
9 and this defendant and also to instruct you on the law at
10 the end of this case so you know how to apply it to the
11 facts or find facts as you find them to be.

12 Now, you are to determine the facts from the
13 testimony and evidence you hear in this courtroom from
14 this witness stand by way of sworn testimony and any
15 exhibits that are allowed into evidence in this case.
16 You are not and you shall not be influenced by anything
17 you see outside of court. I'm not going to go over my
18 charge again with you Monday, but I'll remind you that
19 you may not begin your deliberations until you're
20 instructed to. You also may not engage in any
21 independent jury research at any time until after you
22 have returned a verdict in this case.

23 Now, the law that makes you the sole judges of
24 the facts makes me the sole instructor on the law. I
25 cannot invade your province of being fact finders, and

1 you may not invade my province as being the instructor on
2 the law. At the end of this case when I instruct you on
3 the law, you may disagree with it or think it should be
4 something other than what it is. It would be a
5 dereliction of your duty to follow anything but the law
6 as I give it to you in this case. And I will tell you,
7 if I'm incorrect on the law as I give it to you, there
8 are groups down in Columbia that will correct my errors.

9 Now, in every case there are five phases. In
10 just a moment the State will make what is called an
11 opening statement. The State will tell you what their
12 contentions of this case are and what they intend to
13 prove in this case. Now, what the State tells you is not
14 evidence in the true sense of the word. The only true
15 evidence that you will hear in this case is the sworn
16 testimony from this witness stand and exhibits allowed
17 into this case. I'm not minimizing what the attorney
18 tells you, but it is not evidence. He will not be sworn.
19 He will not be subject to cross-examination. So at the
20 end of this case, if your memory differs from what either
21 of these lawyers tell you throughout this trial, then
22 your memory of that fact will control.

23 Also the State -- I mean the defense has a right
24 but is not required to make an opening statement. If
25 they choose to avail themselves of the opportunity to

1 make an opening statement, the same rule will apply. It
2 is not evidence. I will remind you, though, that the
3 defendant can sit here in this courtroom and not say
4 anything at all because the burden remains on the State
5 of South Carolina to prove his guilt by proof beyond a
6 reasonable doubt. He has no burden at all to prove
7 himself innocent.

8 Now, every single case I've ever been involved
9 with as an attorney or as a trial judge, there will be
10 objections. Sometimes, Madam Forelady, ladies and
11 gentlemen of the jury, you may feel like you're cattle
12 being ushered in and out of the courtroom because of some
13 of the things being argued. It's not appropriate for you
14 to hear. I will tell you that the fact that there are
15 objections raised or to the extent I let you stay in here
16 and see my rulings on those objections is not and shall
17 not be considered by you in your deliberations when
18 you're instructed to begin your deliberations.

19 And, Madam Forelady, it will be your job as
20 presiding over the deliberations to not allow anyone to
21 discuss the fact that an objection was raised or my
22 rulings on those objections. I will point out to you
23 that that is merely the process that is followed in each
24 and every case. These attorneys have an ethical
25 obligation to raise an objection anytime they feel like

1 something is brought up in a case that is improper.

2 Now, with that being said, ladies and gentlemen,
3 Madam Forelady, I will remind you if you have any
4 questions, you have any needs, write it down. I'm going
5 to send you back to your jury room for a brief moment to
6 determine whether or not I have stated something to you
7 that I shouldn't have or I have omitted to tell you
8 something that I should have. We'll bring you back in,
9 and we'll allow the State to begin its opening statement
10 in just one moment.

11 If you will go back to the jury room.

12 (WHEREUPON, the jury exited the courtroom
13 at 9:54 a.m.)

14 THE COURT: Any additions or exceptions from the
15 State?

16 MR. WAGNER: No, sir.

17 THE COURT: From the defense?

18 MR. DAY: None, your Honor.

19 THE COURT: All right. Do you want a brief break
20 before we start?

21 MR. WAGNER: Two minutes.

22 THE COURT: Let's take about a three, four-minute
23 break and we'll come back with opening statements.

24 (WHEREUPON, recess taken from 9:54 a.m.
25 to 10:00 a.m.)

1 THE COURT: Mr. Wagner, you ready?

2 MR. WAGNER: Yes, sir.

3 THE COURT: Mr. Day?

4 MR. DAY: Yes.

5 THE COURT: Would you bring the jury in, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 10:01 a.m.)

8 THE COURT: Mr. Wagner, opening statements.

9 MR. WAGNER: Yes, sir. Thank you.

10 THE COURT: Yes, sir.

11 MR. WAGNER: Joseph and Mary Jane Giordano have a
12 summer home. They live in Greenville. He works in
13 Spartanburg. I believe she's a nurse in Greenville. She
14 grew up over here, inherited her dad's house. They come
15 over here on the weekends, spend the weekends quite often
16 at McMahan Road. It's a farmhouse. She lives -- the
17 property adjoins, actually, her brother, David McMahan,
18 who works for the sheriff's office, who was involved in
19 the investigation of this case.

20 Her husband came up on August 10th, 2013, last
21 year, noticed immediately that stuff was awry. His wife
22 had been up the week earlier and noticed things looked a
23 little bit out of place, but there was stuff there that
24 was not there when they had come in August 3rd. They had
25 a shotgun missing. They had some keys missing. There

1 had been a forced entry, the door jimmied and a spring
2 cut.

3 They didn't have really anywhere to go. No
4 suspects initially. Sergeant Arnold got assigned the
5 case. They came out, took a report, turned it over to
6 investigations. Sergeant Arnold started working on the
7 case. He asked for some help from David McMahan because
8 it was right near his house in his community. They do
9 that from time to time. They help each other.

10 David McMahan went around canvassing the
11 neighborhood, talking to neighbors he knew getting a
12 description of a slim white male staying in a trailer
13 right down the road. He ended up linking that person to
14 the defendant, Jonathan Finney, who was staying there at
15 the time and had since moved on.

16 They ended up talking to Mr. Finney. They
17 Mirandized him. Later on down the line he ended up
18 admitting to doing the burglary. It's burglary first
19 because in South Carolina, if you go into a dwelling, and
20 the dwelling is basically just a place where somebody
21 lodges, intends to return, sleeps. The Giordanos come
22 over there, if not every weekend, every other weekend or
23 thereabouts. They stay the weekend. They fish. They
24 have got a son who shoots BB guns and fishes and that
25 sort of thing. But they stay there and they sleep there,

1 and I will submit to you that it is a dwelling.

2 Shotgun, you're going to hear was a real weapon,
3 a deadly weapon. But somebody breaks into a residence in
4 South Carolina and harms themselves with a deadly weapon
5 during the commission of that crime -- doesn't matter
6 whether they come in armed like a home invasion kind of
7 scenario or they come in there and they steal a person's
8 shotgun off the bed or out of the corner, they're armed
9 during the commission of that burglary. Or if they
10 participate as a lookout, help carry the stuff off, they
11 have active participation as a participant in that
12 burglary. Whether they're the one that actually picks
13 the gun up or not, that's burglary first under the law.
14 And that's what we're here for today.

15 There's also a charge of petty larceny. That's
16 basically for stealing less than \$2,000 worth of stuff,
17 which is what was taken in this case. You're going to
18 find out there was a shotgun, some keys, an airsoft
19 rifle, a BB gun, those sort of things were stolen, some
20 of which were recovered, some of which were not. But
21 their value was less than \$2,000. Anything over \$2,000
22 is called grand larceny in this state.

23 The evidence is going to point directly to the
24 defendant, Jonathan Finney. At the end of this case
25 after you have heard the testimony, we're going to be

1 back up before you asking for a verdict of guilty on both
2 counts. We'll have probably seven or eight witnesses.
3 We'll try to speed it along as best we can. Appreciate
4 you being here. Thank you.

5 THE COURT: Mr. Day, does the defense wish to
6 have an opening statement?

7 MR. DAY: Yes, please. Thank you, your Honor.

8 THE COURT: Yes, sir.

9 MR. DAY: Ladies and gentlemen, as I said before
10 when we started all this on Tuesday, I'm Danny Day with
11 the public defender's office, and I represent Jonathan
12 Finney who is sitting here.

13 This is a very serious matter. Burglary. We're
14 not talking about murder, which is, of course, the
15 absolute worst crime that can be committed when you come
16 right down to it, taking someone else's life. There are
17 other very serious crimes as well, all of which we hear
18 about in the paper all the time -- molestation, rape.
19 These are all very serious, horrible crimes.

20 This crime was a property crime. It's a very
21 personal crime because you are charged with going into
22 someone's home and taking what belongs to them. You're
23 violating the sanctity of someone's home.

24 What can make you feel worse about a property
25 crime? I'm sure probably all of us during our lives have

1 lost things or had someone take something from you or
2 something that belongs to you and it upset you. But when
3 someone comes into your house and takes something, they
4 violate your private space, your home, particularly when
5 you realize if you were to come home and find someone had
6 gone into your bedroom and taking personal items. You
7 get so mad. I know how that feels. You get mad. And
8 that's why it's such a serious law. It is.

9 So in this case the State of South Carolina is
10 saying that Jonathan Finney has violated that law. The
11 judge will explain to you, as he already has, about some
12 of the elements of that crime, just as the Solicitor has
13 also talked about it being a dwelling. That's why it's
14 so serious. Because it speaks about and comes from the
15 Old English a man's house is his castle. Your home is
16 your castle.

17 But in this case I submit to you that Mr. Finney
18 is charged with doing something, but it doesn't reach
19 that level. And that's the issue here. If you find and
20 you believe that he committed this crime, you've got to
21 also determine he committed the crime for which he has
22 been charged. That crime. Not any crime. Not stealing,
23 not breaking into a house, that crime of burglary in the
24 first degree. That is the issue here today.

25 The Solicitor says Mr. and Mrs. Giordano have a

1 summer house here. This was her father's house. It was
2 left to her by his will. And as a matter of fact, it's
3 still in his estate, and the estate has not been closed.
4 They live in Greenville. Now, Ms. Giordano grew up here
5 in Oconee County and then moved over to Greenville where
6 she works, close to where her husband works. Been there
7 for quite a while. So now you have got to determine the
8 factual issue presented to you of whether or not you
9 believe that that is enough for him to be charged with
10 this heinous crime. It's very serious.

11 I want you to listen to all of the testimony that
12 comes out because that's going to be a serious issue for
13 you to consider. That's important. And it's important
14 for this reason: When you are charged with a crime --
15 that's you and me, the judge, the Solicitor, police
16 officers -- when you are charged with something, that's
17 what you have to be convicted of. That has to be proven
18 that you did that. Not that you did something else, but
19 that you did that crime. That's what makes us different.

20 I have seen trials, been involved in other
21 countries in which it doesn't take much to get somebody
22 put in jail for life. Or in the case of one I saw
23 getting hung was stealing. There they don't have that,
24 what we have. What we have, you've got to prove he did
25 that. You have got to prove it. Beyond a reasonable

1 doubt. And that's you. You have taken an oath that
2 you're going to consider everything, and upon that oath
3 you will make a decision individually. Not as a group
4 coming up with a majority opinion, but individually each
5 of you must make that decision. Each of you.

6 I ask that you listen very carefully to this
7 evidence. There are so many questions in this case that
8 you're going to have to answer yourself when you go back
9 in that room back there. So I ask you to please pay
10 attention. I know you will. I know you would all rather
11 be someplace else rather than spending today with us, but
12 it's so important that you've been chosen. Thank you.

13 THE COURT: Call your first witness, please, sir.

14 MR. WAGNER: Yes, sir. Joseph Giordano.

15 **JOSEPH GIORDANO,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q. Mr. Giordano, could you give us your full name,
20 spelling your last name for the record, please.

21 A. Joseph Giordano, G-i-o-r-d-a-n-o.

22 Q. And where are you from, Mr. Giordano? Where do you
23 live?

24 A. Greenville, South Carolina.

25 Q. Where do you work?

1 A. In Spartanburg.

2 Q. Okay. And are you married to Mary Jane Giordano?

3 A. Yes, I am.

4 Q. Do y'all own a house in Oconee County?

5 A. Yes, we do. It is my wife's, passed to her, estate
6 settlement when her father passed.

7 Q. Okay. And how long have y'all been going to that
8 house?

9 A. We redid the house going on seven years now.

10 Q. Okay. Is it McMahan Road?

11 A. Correct.

12 Q. Okay. Is it here in Oconee County?

13 A. That's correct.

14 Q. Do y'all come and spend the weekends there? Is it
15 like a summertime house? How much are you all there?

16 A. It's a weekend place for us. My wife and our two
17 children will go up there two to three times on weekends
18 during school. And when school is out my wife will go up
19 there with the kids during the week, and then I will meet
20 up with them on weekends later.

21 Q. So at times you spend the entire week there?

22 A. Correct, when school is out.

23 Q. Y'all sleep there?

24 A. Correct.

25 Q. Y'all intend to return there and sleep every week,

1 every other week, week at a time here and there?

2 A. Yes. Yes.

3 Q. Back on August the 10th, 2013, did you go to your
4 house at McMahan Road?

5 A. Right. Yes, we did. My son and I went up earlier
6 than my wife and my daughter, and I went in the
7 residence. And we always want to get started doing the
8 work, which our keys to our tractors and our things are
9 in the master bedroom to the right. I walked in the room
10 and immediately walked in the room and saw the closet
11 door was open. I thought that was somewhat odd.

12 I went to the closet and went to grab the keys.
13 I saw the keys were missing. And I called my wife right
14 away and said -- asked her what she did with the keys.
15 At that point she said she didn't move them and didn't
16 touch them.

17 While she was saying that, I turned to the left
18 where we keep a shotgun and I noticed that was gone. And
19 then I told her, We've got a problem. And I said I would
20 have to call her back.

21 Q. What kind of shotgun was it?

22 A. It was a single-shot 12-gauge shotgun.

23 Q. Okay. Where -- who had it belonged to?

24 A. It belonged to her father. It was a family heirloom
25 passed down to my son.

1 Q. Did it work?

2 A. Yes, it did.

3 Q. Did y'all keep it there for protection?

4 A. More for sporting is what we used it for.

5 Q. Y'all shot it?

6 A. Right. We would shoot skeet in the pasture.

7 Q. Did you notice anything else missing?

8 A. Yes. When -- after I noticed the gun was gone, I
9 immediately called out to my son because I knew something
10 wasn't right. He was outside. Excuse me. I told him to
11 stay outside. I walked outside, walked out of the room
12 and looked to the right, and I noticed the locked door to
13 the screened-in porch was broken open. Sorry.

14 THE COURT: Do you need some water?

15 THE WITNESS: No, I'm fine. Thank you.

16 I noticed that door was open and the lock was
17 broken. I then walked in the screened-in porch and I
18 noticed the door, the lock on the screened-in porch was
19 open and the screen was cut. I then walked into the
20 kitchen, and I noticed all the cabinets were open. I
21 know some things were missing out of the cabinet. And
22 you could tell the house was in total disarray.

23 I then walked out through the rest of the house,
24 and those things were in complete disarray. And then I
25 called my wife back and told her that we had a robbery

1 and things were missing, then I called the police.

2 BY MR. WAGNER:

3 Q. Okay. Did Nina McKee from the sheriff's office come
4 out there?

5 A. Yes. They came out rather quickly.

6 Q. The keys that were missing, what did they go to?

7 A. One went to a boat, to a jet ski, to a Ranger
8 four-by-four and to our riding lawnmower.

9 Q. Was all that stuff stored on the premises?

10 A. Correct.

11 Q. Was all of it still there?

12 A. Yes.

13 Q. Just the keys were missing?

14 A. That's correct.

15 Q. And the shotgun?

16 A. That's correct.

17 Q. Did you notice anything else missing out of the
18 cabinets or anything?

19 A. I noticed -- we had a liquor cabinet. That was
20 empty. And I believe at that time that was the only
21 thing that I knew was gone.

22 Q. What was the value of the stuff that was taken
23 approximately?

24 A. I don't know what the value of that shotgun was.

25 Like I said, it was older and kind of a family heirloom.

1 But the liquor value was limited, I'm sure, and then the
2 keys.

3 Q. Less than \$2,000?

4 A. Yes. Thank you.

5 Q. Do you know the defendant in this case?

6 A. No.

7 Q. Did he or anybody else with him or anybody else have
8 your consent to break in your house and steal stuff?

9 A. No.

10 Q. Thank you.

11 That's all the questions I have.

12 THE COURT: Cross-examination?

13 MR. DAY: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. DAY:

16 Q. Mr. Giordano, I'm Danny Day. I have a few
17 questions. If you don't understand one of my questions,
18 don't be afraid to say so. Okay?

19 A. Sure.

20 Q. I want to make sure. You don't really have an
21 ownership interest in this property, do you?

22 A. My wife does.

23 Q. But you do not personally?

24 A. Correct.

25 Q. And when the officers came down there, deputy came

1 out probably in uniform, I think?

2 A. That's correct.

3 Q. And went through -- was there with you at the
4 house --

5 A. Right.

6 Q. -- that particular house, okay.

7 At the time you said something about the shotgun,
8 you said it was your son's shotgun?

9 A. Right. It passed to him when his grandfather died.

10 Q. Okay. And how old is your son?

11 A. Eleven.

12 Q. So this particular gun we're talking about, you
13 referred to it when you spoke to the officer as your
14 son's shotgun; that's how you identified it?

15 A. I really don't remember how I referred to it. It
16 was the gun that we kept in the house that was passed to
17 my son. When he got to the correct age I was going to
18 give it to him.

19 Q. Yes. Just looking at the incident report that the
20 officer said, "Noticed his son's 12-gauge side-by-side
21 shotgun was missing." So that would sound about right as
22 you were talking to him?

23 A. Yes, that sounds right.

24 Q. Just to make sure I'm correct here, your residence
25 is in Greenville?

1 A. Correct.

2 Q. Thank you, sir.

3 I think that's all the questions I have.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q. The shotgun, was it single barrel or side by side?

8 A. It was a single barrel.

9 Q. So if the report said side by side, that would be
10 inaccurate?

11 A. That's not correct. It was a single barrel, not
12 side by side.

13 Q. How long was the barrel?

14 A. A normal shotgun, 12-gauge. I don't know the exact
15 size of it, just a normal 12-gauge.

16 Q. Was it long-barrel?

17 A. No. It wasn't extended barrel. It was a normal
18 barrel.

19 Q. And even though you don't have an ownership interest
20 in the house, do you have permission -- I mean you're
21 married to the person that does and you stay there with
22 her?

23 A. That's correct.

24 Q. You have permission to be there?

25 A. That's correct.

1 Q. Thank you.

2 That's all the questions I have.

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

4 MR. WAGNER: I would ask if he can be excused.

5 THE COURT: Do you wish to be excused?

6 THE WITNESS: I'll wait until after my wife, and
7 then I will go.

8 MR. DAY: I have no objection to him being
9 excused.

10 THE COURT: All right. This witness is excused
11 when he desires.

12 Next witness.

13 MR. WAGNER: Call Mary Jane Giordano.

14 **MARY JANE GIORDANO,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. WAGNER:

18 Q. Ma'am, could you give us your full name and spell
19 your last name for the record, please.

20 A. Mary Jane Giordano, G-i-o-r-d-a-n-o.

21 Q. What do you do for a living, Ms. Giordano?

22 A. A registered nurse.

23 Q. Where do you work?

24 A. Greenville Memorial Hospital.

25 Q. How long have you been working there?

1 A. 19 years.

2 Q. Do you live there with your husband, Joe, who just
3 testified?

4 A. Yes.

5 Q. And how many kids do you have?

6 A. Two.

7 Q. Do you also own a house at McMahan Road here in
8 Oconee County?

9 A. Yes.

10 Q. How did you come to have the house? I guess what's
11 your history with the house?

12 A. I inherited the house from my father when he passed
13 away but grew up there.

14 Q. Could you speak up just a little bit?

15 A. I'm sorry.

16 Q. Maybe move that microphone a little bit closer.

17 A. Can you hear me now?

18 Q. A little bit louder.

19 A. I inherited the house from my father but grew up
20 there, you know, my whole life until I moved to
21 Greenville 19 years ago.

22 Q. Okay. Do you still come over there on the weekends?

23 A. Yes, we do.

24 Q. How often?

25 A. During the winter months about two weekends per

1 month. During the summer, almost every weekend, and then
2 I'll come up with my kids and stay the whole week. So we
3 live there quite frequently.

4 Q. Do you remember being at the house a week prior to
5 8/10/13, would have been a Saturday?

6 A. Yes.

7 Q. And at that time was a shotgun still there?

8 A. Yes.

9 Q. Did you notice something weird about the house or
10 was everything still relatively intact?

11 A. I noticed some bedcovers were kind of messed up on
12 the bed -- one of the beds. My son wanted to go fishing.
13 I just went in the house to get a fishing pole, so I
14 didn't, you know, investigate anything thoroughly at that
15 point. I just said -- I just thought -- because we
16 always make up the beds when we leave, and I noticed that
17 the covers were a little messed up, and I thought that
18 looked strange.

19 Q. But the shotgun was still there?

20 A. Yes.

21 Q. Okay. Was the liquor still there?

22 A. I don't know. I didn't look into the cabinet.

23 Q. Were the cabinets open?

24 A. The bottom cabinets were open. The upper cabinets
25 where that was was.

1 Q. Had the house been ransacked?

2 A. There was definitely -- things changed. I mean, I
3 didn't notice a broken window or anything like that at
4 that time.

5 Q. Did you tell your husband that information?

6 A. Yes.

7 Are you talking about before -- I'm confused.

8 Q. I'm talking about before. He went over there on the
9 10th?

10 A. That's correct.

11 Q. Before that.

12 A. Yes.

13 Q. In the week before that.

14 A. Yes. Yes.

15 Q. Okay.

16 THE COURT: Let me stop you. Can the jurors hear
17 this witness?

18 THE WITNESS: Can you hear me okay?

19 THE COURT: Okay.

20 BY MR. WAGNER:

21 Q. So something looked out of place and you told your
22 husband?

23 A. Correct.

24 Q. Then he came back over on the 10th?

25 A. That's right.

1 Q. That's when he found forced entry and the shotgun
2 was missing at that point?

3 A. Correct.

4 Q. Are you related to your neighbor, David McMahan --

5 A. Yes.

6 Q. -- from the sheriff's office?

7 A. Yes.

8 Q. He's your brother?

9 A. Yes.

10 Q. Does his property adjoin yours?

11 A. Yes.

12 Q. Did you notice anything else missing at a later
13 point?

14 A. From August the 10th?

15 Q. Yes, ma'am.

16 A. Yes.

17 Q. Okay. And what was that?

18 A. My son's -- his BB gun.

19 MR. DAY: This is where I would enter an
20 objection.

21 THE COURT: Note your objection for the record.

22 MR. DAY: Thank you.

23 THE WITNESS: His BB gun, airsoft gun. There was
24 a little flashlight that went on top of his gun for his
25 airsoft gun. The alcohol was missing. There was

1 flashlights that we had that were missing. And those
2 things we noticed just from, you know, going to get those
3 things when we needed them and they weren't there, you
4 know, after the initial day that we called the police.
5 So, you know, we didn't really notice that.

6 BY MR. WAGNER:

7 Q. Were they kept in a closet?

8 A. Yes.

9 Q. Is this something you would have been looking for
10 immediately?

11 A. No.

12 Q. When did you first notice the airsoft rifle and the
13 BB gun were missing?

14 A. I guess the following weekend when we went up.

15 Q. Okay. Let me show you something.

16 MR. DAY: Your Honor, these are the pictures.

17 Again, I enter my objection.

18 THE COURT: Note your objection.

19 MR. DAY: What numbers are those, David?

20 MR. WAGNER: 5, 6 and 7.

21 MR. DAY: 5, 6 and 7.

22 THE COURT: Thank you, sir.

23 (WHEREUPON, State's Exhibit Number 5 was marked
24 for identification.)

25 BY MR. WAGNER:

1 Q. Ms. Giordano, let me hand you up State's Exhibit 5
2 for identification, ask you if you recognize that.

3 A. Yes.

4 Q. What is that?

5 A. That is my son's airsoft rifle.

6 Q. Did you get that back from the sheriff's office?

7 A. Yes.

8 Q. Was it the same airsoft rifle?

9 A. Yes.

10 Q. Was that in your house prior to August the 10th?

11 A. Yes.

12 (WHEREUPON, State's Exhibit Number 6 was marked
13 for identification.)

14 BY MR. WAGNER:

15 Q. Let me show you State's Exhibit No. 7 -- excuse me,
16 6 for identification. Do you recognize that?

17 A. Yes.

18 Q. What is that?

19 A. That's my son's BB gun.

20 Q. Okay. And did you get that back from the sheriff's
21 office?

22 A. Yes.

23 (WHEREUPON, State's Exhibit Number 7 was marked
24 for identification.)

25 BY MR. WAGNER:

1 Q. Let me show you State's Exhibit No. 7 for
2 identification.

3 A. That's my son's Remington BB gun.

4 Q. Is it another angle?

5 A. Yes.

6 Q. Do States 5, 6 and 7, do they fairly and accurately
7 depict the airsoft rifle, and on 6 and 7 the BB gun as
8 they were August 10th and the week prior?

9 A. Yes.

10 Q. In your home?

11 A. Yes.

12 MR. WAGNER: Your Honor, at this time we would
13 move to admit State's 5, 6 and 7.

14 THE COURT: Admitted subject to objection.

15 (WHEREUPON, State's Exhibit Numbers 5, 6 and 7
16 were admitted into evidence.)

17 BY MR. WAGNER:

18 Q. But you got all those back. Did you ever get the
19 shotgun back?

20 A. No.

21 Q. Did you ever get the liquor back?

22 A. No.

23 Q. Did you ever get the keys back?

24 A. No.

25 Q. Did you ever give the defendant or anybody with him

1 consent to go into your house and steal these things?

2 A. No.

3 Q. Thank you, ma'am.

4 That's all the questions I have.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. DAY:

8 Q. Just a few questions, Ms. Giordano. Again, if you
9 don't understand any of my questions, please don't

10 hesitate to let me know.

11 You are the sister of David McMahan, the officer
12 sitting here?

13 A. Yes.

14 Q. I almost started to ask you how long you have know
15 him, but then realized that would be a pretty silly
16 question.

17 The property that we're talking about here, that
18 was y'all's father's property; is that correct?

19 A. Yes.

20 Q. Is this the same house that y'all grew up in?

21 A. Actually -- I actually grew up in a house about
22 three miles from there.

23 Q. Okay. But this was your dad's house?

24 A. Yes. He was born and raised there.

25 Q. I remember seeing a house that had 1897, I think it

1 was.

2 A. That's it.

3 Q. That's when it was built?

4 A. Yes.

5 Q. Been there a while?

6 A. Yes.

7 Q. Okay. When your dad left that to you, he left David
8 some other property, and you've got other brothers and
9 sisters, and they got other property and other matters
10 out of the estate which are not at issue here and I don't
11 need to go into. But on this particular piece of
12 property we're talking about where this occurred, you
13 were left that property, but David was left an interest
14 in that property by having a right of first refusal
15 should you decide to sell it, correct?

16 A. Correct.

17 Q. And that continues through today?

18 A. Correct.

19 Q. That's still the same? That status hasn't changed?

20 A. No.

21 Q. Okay. And just to clear up one thing. Your
22 father's estate is still open, hasn't been closed out?

23 A. There are some things that are still in probate.

24 Q. Thank you, ma'am.

25 MR. DAY: Your Honor, that's all I have of this

1 witness.

2 THE COURT: Redirect?

3 MR. WAGNER: Nothing further.

4 THE COURT: May this witness be excused?

5 MR. WAGNER: Yes.

6 MR. DAY: We have no objection to her being
7 excused.

8 THE COURT: Thank you, ma'am. You may be
9 excused.

10 Call your next witness, please, sir.

11 MR. WAGNER: Yes, sir. Call Nina McKee.

12 **NINA McKee,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. WAGNER:

16 Q. Deputy McKee, could you give us your full name,
17 spelling your last name for the record.

18 A. Yes, sir. It's Nina McKee, M-c-K-e-e.

19 Q. And who are you employed with?

20 A. With the Oconee County Sheriff's Office.

21 Q. And were you employed with the sheriff's office back
22 on August 10, 2013?

23 A. Yes, sir, I was.

24 Q. Did you get a call or dispatched to go out to
25 McMahan Road?

1 A. Yes, sir. I responded to a burglary that had
2 already occurred at McMahan Road, which is in our
3 jurisdiction of Oconee sheriff's office.

4 Q. Who did you meet with there?

5 A. I met with Mr. Joseph Giordano.

6 Q. And what did you see? What happened? Tell us what
7 was going on.

8 A. I initially made contact with Mr. Giordano who
9 advised that this was currently their weekend home for
10 the family. He advised that his wife, Ms. Mary Jane
11 Giordano, had attended the residence about a week prior
12 and noticed some things out of place. So he advised that
13 he took this initiative to come up to the residence to
14 perform some weekly routine maintenance on the residence
15 and noticed that there was some damage to the property.

16 We began to walk on the exterior of the house.
17 He led me to a back screened-in porch area, and there was
18 an apparent cut to the screen on the door. We did enter
19 the screened-in porch at that time, and there's an
20 interior-exterior door to the left of us. We gained
21 entry through that door. There was apparent damage --
22 the door is secured with a sliding lock where you slide
23 over and latch it down, almost like a -- I don't know how
24 to explain it. But it's an older locking mechanism that
25 appeared to be forced open. It was pulled away from the

1 door not allowing it to secure properly.

2 We then went into a bedroom in the residence.

3 There was a bunk bed and a queen-sized bed and a closet.

4 Mr. Giordano advised when he had gained entry into the

5 residence to do the maintenance, the keys for his

6 lawnmower were stored in the top shelf of that closet.

7 When we went to retrieve those keys, they were missing.

8 He also advised there had been a 12-gauge shotgun stored

9 on the top bunk of the bunk bed he noticed was missing

10 from that room.

11 As we continued to walk through the residence, he

12 pointed out that different closets had been opened that

13 were routinely closed, cabinets in the residence had been

14 opened, drawers had been opened. Then we exited through

15 the back door of the residence which was also found

16 unlocked, which is normally secured by them prior to

17 leaving.

18 Q. Did you see evidence of a forced entry?

19 A. Yes, sir, I did. In that initial screened-in porch,

20 there was a slit in the screen which allowed access to a

21 locking mechanism that was unsecured. Then the interior

22 door, again where there was a sliding lock, it appeared

23 that had been pushed open and it was not allowing the

24 door to secure properly.

25 Q. Did the house appear, for lack of a better word, to

1 be ransacked?

2 A. Yes, sir. You could definitely tell things had been
3 moved around, not in a normal condition that you would
4 think would be left, cabinet doors open, drawers open.

5 Q. You put the double-barrel shotgun in your report?

6 A. Yes, sir.

7 Q. And can you explain that?

8 A. My only explanation for that would be is that's how,
9 in being explained of the way the gun was described, that
10 was my impression of how it appeared to be or what it
11 was. It was definitely described as a 12-gauge shotgun.
12 I'm not clear of how I got two barrels. That could have
13 been my error.

14 Q. At that point in time did you turn it over -- I mean
15 when you took your report and did your report --

16 A. Yes, sir, I did a routine initial incident report
17 depicting what I observed on scene. I did take photos of
18 what I observed and turned it over to investigations for
19 further.

20 Q. And did your involvement end at that point?

21 A. Yes, sir, it does.

22 Q. Thank you, ma'am.

23 That's all the questions I have.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION

1 BY MR. DAY:

2 Q. This is Pages 1 through 4. Is that the only portion
3 of the incident report that you did?

4 A. Yes, sir.

5 Q. So you didn't make out any of the others?

6 A. No, sir.

7 Q. When the incident report is done, just so the jury
8 understands, as I understand it, is that this is the
9 paperwork based on what you know at that point?

10 A. Yes, sir.

11 Q. And you fill that out. And at that point, once you
12 have completed it in a case like this where there's going
13 to be further investigation, it's then taken over by
14 investigators?

15 A. Yes, sir.

16 Q. And that's where Mr. Arnold and Mr. McMahan would be
17 the ones, and they took over from there?

18 A. Yes, sir.

19 Q. Okay. I just want to make sure as I'm looking at it
20 here. This is -- your information when you put it there,
21 you said something about the old side-by-side shotgun,
22 and you heard Mr. Giordano say he thinks it was a single
23 barrel?

24 A. Yes, sir.

25 Q. But what you remember was a side by side. That's

1 what you put down?

2 A. Yes, sir.

3 Q. I understand. Okay. And in that you describe what
4 appears to be what occurred. I wonder if you would read
5 for me under the offenses right there.

6 A. Burglary first. I'm sorry, is that the offense?

7 Q. Yes, the sentence that's in there.

8 A. Says, "Burglary third degree, first offense."

9 Q. Okay. So what you put down there and then again as
10 you go through that, on that page on the first and then
11 back here there are other places where you put down what
12 the offenses are. As you're putting down each one of
13 those, says burglary third degree?

14 A. Yes, sir.

15 Q. Okay. I'm sorry. I'm not going to stop you from
16 answering the question.

17 A. No, sir. And that's fine. I guess just my lack of
18 training at the time and the experience, I felt like it
19 was third degree. But after further investigating and
20 reading the proper statutes and seeing all the elements
21 in the crime, this is just an initial report and it can
22 be changed to -- if there's more elements that fit the
23 appropriate charge, we will go ahead and change that to
24 burglary first since there was a weapon taken from the
25 residence.

1 Q. Okay. But that decision was made by the
2 investigators who were doing the follow-up investigation?

3 A. Yes, sir.

4 Q. But when you did that, that's what you found in
5 the -- excuse me again. And on Page 3 of 4 here, it
6 states the property that was taken noted under
7 "property." And that's where you put down so you can
8 identify what stolen property there was?

9 A. Yes, sir.

10 Q. In that it says the side-by-side shotgun and then
11 four keys?

12 A. Four keys, yes, sir.

13 Q. Okay. Did Mr. Giordano, when you met with him --
14 and you didn't meet with Mrs. Giordano, did you?

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

16 Q. Just Mr. Giordano?

17 A. Yes, sir.

18 Q. Did he mention anything about the relationship
19 between his wife and Mr. McMahan?

20 A. No, sir, I don't believe so at that time.

21 Q. And then down at the very bottom of your narrative
22 here it says last thing is that photos were taken and are
23 attached?

24 A. Yes, sir.

25 Q. That's normal procedure for you to take pictures?

1 A. Yes, sir. We do initially attach them to the
2 report. It's through our computer system.

3 Q. Then those are turned over, I think, to Mr. --
4 Deputy Burke who takes care of evidence?

5 A. They're logged into a computer so investigations and
6 different departments in the sheriff's department have
7 access to follow up with, yes, sir.

8 Q. All right. Hold on just one second, please.

9 Just so I understand, so that's the part you did.
10 After that you didn't add anything else to the incident
11 report by way of other information you came in contact
12 with in this case?

13 A. No, sir.

14 Q. Normal procedure would be if you came across other
15 information, you would contact the investigators and make
16 sure that's supplemented into your report?

17 A. Yes, sir.

18 Q. Okay. And the photos are those that you took?

19 A. Yes, sir.

20 Q. Okay. Were any other officers there with you at the
21 time?

22 A. No, sir.

23 Q. I believe that's all the questions I have. Thank
24 you very much.

25 THE COURT: Redirect?

1 MR. WAGNER: No. Ask that she be excused.

2 MR. DAY: No objection.

3 THE COURT: Thank you, ma'am. You may be
4 excused.

5 MR. WAGNER: Call Randy Allsep.

6 **RANDY ALLSEP,**

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. WAGNER:

10 Q. Sir, if you would give us your full name spell your
11 last name for the record, please.

12 A. Randy Allsep, A-l-l-s-e-p.

13 Q. Where are you from, Mr. Allsep?

14 A. I live on McMahan Road.

15 Q. You live near McMahan Road?

16 A. Yes, sir, about a quarter mile up the road.

17 Q. Describe McMahan Road for us. Is it like a thruway
18 where lots of people travel down it, or is it a dead end?

19 A. No, it dead ends.

20 Q. If anybody goes by your house towards McMahan
21 Road, are they going towards the end of the dead end?

22 A. Yes.

23 Q. Is it unusual for people to be down there?

24 A. Yes. You don't see too much traffic there.

25 Q. Back around the first week in August, did you see

1 anything unusual near your house?

2 A. Yes. I saw a slim-built white guy with dark hair
3 with a bag on his back with something sticking out of the
4 bag.

5 Q. What was sticking out? Could you tell?

6 A. I couldn't really tell. I saw him from about
7 50 yards away as he was going by my house. I just
8 thought it was kind of unusual seeing somebody like that.

9 Q. Had you ever seen the guy before?

10 A. No, sir.

11 Q. Did he look out of place?

12 A. Yeah, I thought it was kind of unusual.

13 Q. Did you later talk to David McMahan about what you
14 had seen?

15 A. Yes, sir. I found out that there had been a
16 burglary down there, and that's when it occurred to me,
17 you know, that that may have something to do with it.

18 Q. What did you tell David McMahan?

19 A. I just told him exactly what I told you.

20 Q. Thank you, sir.

21 That's all the questions I have.

22 THE COURT: Cross-examination?

23 MR. DAY: I have no questions, your Honor.

24 THE COURT: May this witness be excused?

25 MR. WAGNER: Please, your Honor.

1 MR. DAY: No objection.

2 THE COURT: You may be excused.

3 Thank you.

4 MR. WAGNER: Call David Duncan.

5 **DAVID DUNCAN,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q. Sir, could you give us your full name.

10 A. David Duncan, D-u-n-c-a-n.

11 Q. Mr. Duncan, do you also live down near McMahan Road?

12 A. I live off Jennings Road. It's about right across
13 the street from McMahan.

14 Q. Okay. If you're coming out from down around
15 McMahan Road, would you go down possibly near your house?

16 A. Say that again.

17 Q. If you were coming -- if you're walking from the
18 direction of McMahan Road, would you go near your
19 house? Would you pass your house?

20 A. Yeah, you could if you come -- well, just coming up
21 McMahan you would not.

22 Q. Okay. Back around the first week in August or so,
23 did you see anything unusual around your house?

24 A. Well, I seen a gentleman that I did not recognize,
25 and he was pacing out in back on Jennings Road in front

1 of my house. So I asked, you know, just stepped out in
2 the yard and kind of spoke to the guy. He said he just
3 needed to get out of the house, was taking a smoke break,
4 and that he was staying on a trailer on Jay Jay Road.

5 Q. What did the guy look like?

6 A. Slim white guy, tattoos down his arm.

7 Q. Did you talk to David McMahan at some point in time
8 about what you had seen?

9 A. I did. He called, said they were investigating a
10 burglary in the area, wanted to know had I seen anybody
11 different in the neighborhood. And I told him I had seen
12 this guy that was pacing back and forth in front of the
13 house, I didn't recognize him, hadn't saw him before, and
14 described him to David.

15 Q. Okay. The trailer that this guy was staying in, was
16 it -- how far away from your house was it?

17 A. A hundred yards, 200 yards.

18 Q. What would be the approximate address there?

19 A. I'm not sure. I live on Jennings, and it branches
20 off onto Jay Jay, so I'm not actually sure how the
21 numbers go on Jay Jay.

22 Q. How far is your house from McMahan Road where
23 the Giordanos live?

24 A. Quarter mile.

25 Q. How long would it take you to walk there?

1 A. Ten minutes.
2 Q. Did you tell David McMahan where to look for this
3 guy? Did you point him in the direction of that trailer?
4 A. I just told him where the guy told me he was living.
5 Q. Okay. Thank you.

6 I don't have any further questions.

7 THE COURT: Cross-examination?

8 MR. DAY: No questions, your Honor.

9 THE COURT: May he be excused?

10 MR. WAGNER: Yes, sir.

11 THE COURT: Any objection?

12 MR. DAY: No objection.

13 THE COURT: Thank you, sir. You may be excused.

14 MR. WAGNER: Call Dia Roberts.

15 **DIA ROBERTS,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q. Ma'am, could you give us your full name and spell
20 your last name for the record, please.

21 A. Dia Roberts, R-o-b-e-r-t-s.

22 Q. And, Ms. Roberts, where were you living back on
23 August 10th, 2013?

24 A. I was living Jay Jay, and I remember the number.

25 It's Jay Jay Road.

1 Q. Did you live near Mr. Duncan, who just testified?

2 A. Yes. I've seen that man a couple times at a bus
3 stop.

4 Q. Kind of across the street from him or down the
5 street?

6 A. Yeah, we're kind of like diagonal in a way, but my
7 road cut off.

8 Q. Who were you living at that address with?

9 A. I was living with a friend, William Brinkley.

10 Q. Give it to me one more time, ?

11 A. , yes, sir.

12 Q. Jay Jay Road?

13 A. Uh-huh.

14 Q. Do you know the defendant in this case, Jonathan
15 Finney?

16 A. Yes, I do.

17 Q. How do you know him?

18 A. He is, by marriage, my stepfather.

19 Q. So he's married to --

20 A. My mother.

21 Q. -- or was married to your mother?

22 A. Uh-huh.

23 Q. At some point in time in early August, late July,
24 did he and your mother come stay with you?

25 A. Yes. They said they were having some issues at

1 their home, and I offered them to stay with me for just a
2 little while.

3 Q. Did they have a vehicle at that time?

4 A. No, they didn't.

5 Q. How long did that last? At some point in time did
6 you kick them out?

7 A. Yes, I eventually had to. It was about three weeks
8 at the most, maybe a month.

9 Q. Did you kick them out on or around August 10th,
10 2013?

11 A. It was -- yeah, because school was in. My daughter
12 goes to school.

13 Q. How did they leave your house?

14 A. They called -- well, there was -- they called -- I
15 actually took two of the people they invited to live
16 there, and then I took -- Tina Elrod took my mother and
17 her husband.

18 Q. Okay. Did Tina Elrod come over to your house to
19 pick them up?

20 A. Yes.

21 Q. At some time, a week or two after that, did you talk
22 to David McMahan from the sheriff's office?

23 A. Yes.

24 Q. Okay. And how did that come about? Did he come to
25 your house?

1 A. Yeah, he came to my house with a description of a
2 guy that was staying there. And my brother had been
3 there that weekend, so I thought he was talking about my
4 brother. Then he said a tattoo on his neck, and I was
5 like no, but that description kind of fits someone else
6 that was staying here.

7 Q. What name did you give him?

8 A. I gave him Jonathan Finney.

9 Q. And did you tell him where Jonathan Finney had gone
10 to?

11 A. Yes, I told him who picked him up and where she
12 lived.

13 Q. And the person that picked him up again was?

14 A. Tina Elrod.

15 Q. Did you know Tina?

16 A. Yes, she is actually my second cousin.

17 Q. Okay. At that point in time did your involvement
18 with David McMahan end?

19 A. Yes.

20 Q. Okay. Thank you, ma'am.

21 That's all the questions I have.

22 THE COURT: Cross-examination?

23 MR. DAY: I have no questions, your Honor. Thank
24 you very much.

25 THE COURT: May this witness be excused?

1 MR. WAGNER: Yes, sir.

2 MR. DAY: No objection.

3 THE COURT: Thank you, ma'am. You're excused.

4 MR. WAGNER: Call Tina Elrod.

5 **TINA ELROD,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q. Ms. Elrod, could you give us your full name and
10 spell your last name for the record, please.

11 A. Tina Michelle Elrod, E-l-r-o-d.

12 Q. Ms. Elrod, where do you live?

13 A. Return Church Road, Seneca, South Carolina,
14 29678.

15 Q. Whereabouts is Return Church Road in the county?

16 A. It's the -- on the line of Seneca and Oakway, next
17 to the highway -- Seneca highway department.

18 Q. Okay. And how long have you lived there?

19 A. I have been living there ever since I was seven
20 years old.

21 Q. Do you know the defendant in this case, Joshua -- I
22 mean Jonathan Finney?

23 A. Yes, sir.

24 Q. How do you know him?

25 A. Through Tia Finney.

1 Q. Tia Finney, that's his wife?

2 A. Yes, sir.

3 Q. Were you friends, or I guess maybe even relatives,
4 kin? Are y'all related to each other?

5 A. Mr. Finney?

6 Q. No, Tia.

7 A. Oh, Tia, no.

8 Q. How long have you known the defendant, Jonathan
9 Finney?

10 A. I honestly -- I mean, I really don't know him-know
11 him except when he did stay with me for about three
12 months, I guess.

13 Q. On August the 10th, 2013, did you receive a call
14 from Tia Finney, his wife?

15 A. Yes, sir.

16 Q. Okay. And as a result of that phone call, what did
17 you do?

18 A. I went to pick them up at Dia's residence, Dia --
19 Tia told me that Dia had throwed (sic) them out and they
20 needed a place to go. And they started packing stuff up
21 in my vehicle and Dia's vehicle. And we were leaving,
22 and Tia did not want to go to the place where they were
23 --

24 MR. DAY: Objection, your Honor, as to what other
25 people say.

1 THE COURT: I'm sorry?

2 MR. DAY: I'm objecting to what other people say
3 as hearsay.

4 THE COURT: Sustained.

5 BY MR. WAGNER:

6 Q. Did you go pick them up?

7 A. Yes.

8 Q. You can't say what they said.

9 A. Yes.

10 Q. You can say what you said. Okay?

11 Did you let them come to your place?

12 A. Yes.

13 Q. Did Jonathan Finney have anything with him?

14 A. Yes, sir.

15 Q. What was it?

16 A. He had a blue bag that you put like a chair, a
17 fold-up chair in, and it was covered up with a blanket.

18 And when he opened it up, it had a shotgun in it and two
19 like BB gun-looking things.

20 Q. Okay. Let me show you what's been marked as State's
21 Exhibit Number 5.

22 A. Yes, sir, that's it.

23 Q. What is that?

24 A. That is the blue bag and the BB gun that he brought
25 into my home.

1 Q. Okay. Let me show you State's Exhibit 6.

2 MR. DAY: Again, subject to my objection, your
3 Honor.

4 THE COURT: Subject to your objection.

5 BY MR. WAGNER:

6 Q. Do you recognize that?

7 A. Yes, sir. He brought that one into my home with the
8 blue bag, too, sir.

9 Q. And State's Exhibit No. 7.

10 A. Yes, sir. That's what he brought in my home. It's
11 an air rifle, BB gun thingy. I really don't know too
12 much about guns.

13 Q. Did he tell you what he was going to do with it?

14 A. He -- the shotgun he was trying to get rid of. He
15 was supposed to sell it and divide the money between him
16 and another guy. And he finally got rid of it. He went
17 to a guy and met him at the park in Walhalla. I took
18 them. And me and Tia sat on a rock, and he took and sold
19 the guy the shotgun for meth.

20 MR. DAY: Your Honor, I object to this testimony
21 in that what she's testifying to, she hasn't said she was
22 there. She said something about driving someone there,
23 but she has not testified that she was there when any
24 transaction took place.

25 THE COURT: All right, sir.

1 Would you lay further foundation.

2 MR. WAGNER: Yes, sir.

3 BY MR. WAGNER:

4 Q. Did you drive him to this place?

5 A. Yes, sir.

6 Q. Were you there when this took place?

7 A. Yes, sir.

8 Q. Did you watch it take place?

9 A. Yes, sir.

10 Q. What did he do?

11 A. He got it out of my vehicle, and he put it into a --
12 it's a double, dual cab truck. He put it in the backseat
13 of it, and I watched them. You know, the guy took it.

14 Q. Okay. So he sold it to him?

15 A. Yes.

16 Q. Describe this shotgun. What did it look like?

17 A. It was a long-barrel shotgun. I mean, I had the
18 picture of it on my phone.

19 Q. Did it look new or old?

20 A. Old.

21 Q. And the two -- the airsoft rifle and the BB gun, did
22 that stay at your house?

23 A. Yes, sir.

24 Q. Did the sheriff's office, Detective Arnold and
25 Detective McMahan, later show up at your house?

1 A. Yes, sir.

2 Q. Was that on August the 28th?

3 A. I'm not good with dates, but they did show up, and I
4 helped them get everything together.

5 Q. Okay. Did you -- did they seize the airsoft rifle
6 and a BB gun? Did they take that?

7 A. Yes, sir.

8 Q. Did they ask you where the defendant was?

9 A. Yes, sir.

10 Q. Did you offer to do anything? Did you tell them
11 where he was?

12 A. I told them I didn't know where he was at the time.

13 Q. Did you later talk to him that day?

14 A. Yes, sir.

15 Q. And did you inform Detective Arnold?

16 A. Yes, sir, I sure did.

17 Q. Okay. And were you present when they came and
18 talked to him at your house?

19 A. Yes.

20 Q. Okay. Was Tia still living with y'all at that time?

21 A. No.

22 Q. Where had she gone?

23 A. She went to a friend's place is all I know.

24 Q. But you let the defendant stay there after she left?

25 A. Yes.

1 Q. How long was he at your house total? Approximately
2 how much time are we talking?

3 A. He stayed for at least maybe two to three weeks
4 after she left.

5 Q. Thank you, ma'am.

6 Those are all the questions I have.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. DAY:

10 Q. Let me make sure I understand this. Tia is the one
11 who called you and asked you to come pick them up; is
12 that correct?

13 A. Yes.

14 Q. And that was at Dia's house?

15 A. Yes, sir.

16 Q. Okay. They came to stay with you, and as I
17 understand it, you're testifying that you went somewhere
18 about selling the shotgun. Where was that? Where did
19 you go?

20 A. I took him and Tia to Walhalla -- a pier in Walhalla
21 at the park where the fish are, the pond, right up
22 here -- I don't know the name of the little park that
23 y'all have built.

24 Q. So you were there with him the whole time?

25 A. Yes, sir.

- 1 Q. And you're saying -- and your testimony is that a
2 shotgun was sold to someone there?
- 3 A. Yes, sir.
- 4 Q. And how much was paid for it?
- 5 A. Not in cash, but \$100.
- 6 Q. Not in cash?
- 7 A. No, sir.
- 8 Q. What was it?
- 9 A. It was meth.
- 10 Q. Meth?
- 11 A. Yes, sir.
- 12 Q. Do you know what meth looks like?
- 13 A. Yes, sir, I sure do.
- 14 Q. Have you used meth?
- 15 A. Yes, sir, I sure have.
- 16 Q. Okay. And you're saying this occurred then and you
17 were there when it happened?
- 18 A. Yes, sir, I was.
- 19 Q. Then y'all left, and sometime after that you spoke
20 with David McMahan?
- 21 A. Yes, sir.
- 22 Q. Did you tell him about this transaction?
- 23 A. Yes, sir, I sure did.
- 24 Q. And are you a witness in the case against this
25 person who was transferring meth?

- 1 A. Yeah -- I didn't -- I don't understand.
- 2 Q. This person up in Walhalla who supposedly supplied
- 3 the meth, are you a witness in a case against him?
- 4 A. I don't even know the man, but I seen it happen.
- 5 Q. Okay. And did you describe all that to Mr. McMahan?
- 6 A. Yes, sir, I sure did.
- 7 Q. Give him a license number?
- 8 A. No, sir.
- 9 Q. You said the guy was in a pickup truck, but you
- 10 didn't notice a license number of any kind?
- 11 A. No, because I was parked facing the little park
- 12 water thing and he pulled in the same way. I didn't pay
- 13 attention to license.
- 14 Q. So you were there present when a crime took place?
- 15 A. Yes, sir.
- 16 Q. Distribution of methamphetamine?
- 17 A. Yes, sir.
- 18 Q. What other statements or information have you given
- 19 to the sheriff's department about that case?
- 20 A. I told them what I just said.
- 21 Q. Just -- and that's all you told them?
- 22 A. Yeah.
- 23 Q. And they have not been back to you to ask you any
- 24 follow-up questions?
- 25 A. No, because I don't know the man.

1 Q. But they didn't come back. They have not come back
2 to ask you anything, have they?

3 A. No.

4 Q. Okay. Now, you said an old shotgun?

5 A. Yes, sir.

6 Q. Describe this shotgun for me, please.

7 A. It's a shotgun. I mean, I don't know much about
8 them. I do have the picture of the shotgun on my phone
9 where he was trying to sell it.

10 Q. Okay. And have you ever fired a shotgun?

11 A. When I was little.

12 Q. Have you ever owned a shotgun?

13 A. No, sir.

14 Q. And this particular gun you said was old. And by
15 saying it's old, what do you mean?

16 A. You could tell it's not brand new. I mean, you
17 could tell that there was a little wear and tear on it.

18 Q. Okay. How many barrels did it have?

19 A. One.

20 Q. Just one. Having identified it, any idea of what
21 its gauge would be, meaning how big the barrel is, the
22 bore on the barrel?

23 A. I'm not sure. I don't know that much about guns.

24 Q. While you were there, was the shotgun loaded or
25 unloaded or anything like that?

- 1 A. As far as I know, it was unloaded.
- 2 Q. How do you think you know it was unloaded?
- 3 A. I'm just guessing it was. I'm not sure. I mean, I
- 4 didn't pull the trigger to find out or they didn't in
- 5 front of me, so I don't know.
- 6 Q. You didn't see anyone load it or unload it, did you?
- 7 A. No, sir.
- 8 Q. How would this gun be loaded? What would you have
- 9 to do to load it?
- 10 A. You would have to pull the thing -- you'd have to
- 11 break it down, the barrel part, to put the -- put it in
- 12 there.
- 13 Q. Now, when Jonathan came to the house along with Tia,
- 14 that was the first time that something about the shotgun
- 15 was mentioned, right?
- 16 A. It was mentioned at Dia's house, the shotgun.
- 17 Q. And at that point didn't you say that Josh was the
- 18 one that had the shotgun?
- 19 A. I was told that he had got the gun out of the woods.
- 20 Q. Okay. So he didn't never say that to you?
- 21 A. Who? I'm sorry.
- 22 Q. Jonathan.
- 23 A. Yes, Jonathan did.
- 24 Q. And he told you he was trying to sell it and split
- 25 it with a guy named Josh?

1 A. Yes, sir, for \$150.

2 Q. So he did mention Josh. You knew who he was talking
3 about?

4 A. No, sir. I've never met the guy before.

5 Q. Have you ever heard the name Josh Burrell?

6 A. No, sir. I met him at Dia's, but that was just a
7 brief, where he was packing up stuff. Other than that,
8 that was it.

9 Q. So you did meet him at Tia's?

10 A. Yes, sir.

11 Q. Josh Burrell?

12 A. I don't know.

13 Q. That's who they said he was or --

14 A. All I know is his name was Josh.

15 Q. Okay. You said they came to your house there. Did
16 you rent a room at the Town & Country?

17 A. Yes, sir.

18 Q. So y'all stayed there for a while?

19 A. One night.

20 Q. Okay.

21 MR. DAY: That's all the questions I have of this
22 witness.

23 Thank you very much.

24 THE COURT: Redirect?

25 MR. WAGNER: No, your Honor.

1 THE COURT: Thank you very much.

2 May this witness be excused?

3 MR. WAGNER: Yes.

4 MR. DAY: No objection.

5 THE COURT: Thank you, ma'am. You may be
6 excused.

7 Are you about at a point where it's a good time
8 to take a break?

9 MR. WAGNER: Yes, sir.

10 THE COURT: Do you think so, Mr. Day?

11 MR. DAY: That would be fine with me.

12 THE COURT: Ladies and gentlemen, we're about
13 midmorning, so let's go ahead and take a morning break.
14 We'll have about a 15-minute break. If you need
15 additional time, let us know. If you need anything, let
16 the bailiff know, please.

17 (WHEREUPON, the jury exited the courtroom
18 at 11:08 a.m.)

19 THE COURT: 15 minutes.

20 (WHEREUPON, recess taken from 11:08 a.m.
21 to 11:26 a.m.)

22 THE COURT: Mr. Wagner, you ready with your next
23 witness?

24 MR. WAGNER: Yes, sir.

25 THE COURT: Defense ready?

1 MR. DAY: Yes.

2 THE COURT: Would you bring the jury in, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 11:28 a.m.)

5 THE COURT: Next witness, please.

6 MR. WAGNER: Your Honor, the State would call

7 David McMahan.

8 **DAVID McMAHAN,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q. Sergeant McMahan, if you would give us your full
13 name and spell your last name for the record.

14 A. My name is David R. McMahan, spelled M-c-M-a-h-a-n.

15 Q. Who do you work for?

16 A. I work for Oconee County Sheriff's Office.

17 Q. How long have you been working for the sheriff's
18 office?

19 A. Six years.

20 Q. Prior to that, what did you do for a living?

21 A. Prior to that, I was an auto repair mechanic for
22 25 years.

23 Q. Okay. How long have you been in investigations with
24 the sheriff's office?

25 A. Since early 2012.

1 Q. Back in the early part of August 2013, your sister's
2 house got broken into. Were you working in
3 investigations then?

4 A. Yes, sir.

5 Q. So the case got assigned to Scott Arnold. Did he
6 ask you for assistance?

7 A. Yes, sir, he did.

8 Q. Why did he ask you for assistance?

9 A. Sergeant Arnold, being the lead investigator, had
10 asked me for assistance because this burglary occurred in
11 the neighborhood that I grew up in. I know the
12 neighborhood very well, know the people that live in it.
13 So he asked if there would be anything that I could help
14 him with maybe to try to solve this crime.

15 Q. What was the first step that you did in trying to
16 assist Sergeant Arnold with trying to solve this case?

17 A. First thing I did was I decided to start canvassing
18 the neighborhood. I literally just started going from
19 house to house. I would pull in the neighbor's yard
20 asking some basic questions. An investigation always
21 starts off with basic questions, and one of the things I
22 ask is, Did you see anything unusual? Did you see any
23 folks that you didn't recognize in this community during
24 the times that that incident occurred?

25 Q. Did you talk to Randy Allsep?

- 1 A. I did.
- 2 Q. And did you end up talking to David Duncan?
- 3 A. I did.
- 4 Q. Based on your conversations with David Duncan and
- 5 Randy Allsep, what did you do next?
- 6 A. Based on information that they gave me, that led me
- 7 to a mobile home on Jay Jay Road.
- 8 Q. Was that Dia Roberts' mobile home?
- 9 A. That was Dia Roberts' mobile home.
- 10 Q. When you went down there, what did you do down at
- 11 Dia Roberts' place?
- 12 A. Well, I just, of course, knocked on the door.
- 13 Ms. Roberts come to the door, and I explained to her that
- 14 I was there to investigate a burglary that had happened,
- 15 and the reason why I was at her home was because I had
- 16 information that a person of interest lived there at the
- 17 home. And once I described the person I was looking for,
- 18 she said, That sounds like Jonathan Finney.
- 19 Q. What was the description you gave her?
- 20 A. A slender white male with tattoos.
- 21 Q. Okay. Did she tell you who Jonathan Finney was?
- 22 A. She said that he had married her mother.
- 23 Q. Okay. Was he still staying there?
- 24 A. Just prior to me going to that residence, said that
- 25 she had gotten into some kind of a fight or an

1 altercation with Mr. Finney and her mother, and that she
2 had asked them to leave. She basically kicked them out.

3 Q. And were you able to determine how long he had been
4 staying there?

5 A. I believe she told me there on the front porch maybe
6 they had been there a couple of weeks, three weeks.

7 Q. Was he staying at her house within the time frame of
8 when your sister's house got broken into?

9 A. Yes, sir.

10 Q. How long would it take to walk from Dia Roberts'
11 house to your sister's house?

12 A. It would take no more than ten minutes. Maybe
13 between five to ten minutes, depending on how fast you
14 walk.

15 Q. Would it be unusual for your neighbors or you to see
16 people coming out from the dead-end road where your
17 sister lives?

18 A. Yes, sir. That community is an old community.
19 Families have lived there for generations. Everybody
20 knows everybody. It would be unusual to see a stranger
21 walking down that road, yes.

22 Q. So after you talked to Dia Roberts, at that point in
23 time you had a name?

24 A. At that point I had a name, yes.

25 Q. And did you find out where you thought you could

1 find Jonathan Finney?

2 A. I asked Ms. Roberts, since she had evicted him or
3 kicked him out, where could I find Mr. Finney. I'd like
4 to talk to him. And she give me an address of Return
5 Church Road, which is in the Seneca area.

6 Q. Who lived there?

7 A. Tina Elrod.

8 (WHEREUPON, State's Exhibit Number 8 was marked
9 for identification.)

10 (WHEREUPON, State's Exhibit Number 9 was marked
11 for identification.)

12 (WHEREUPON, State's Exhibit Number 10 was marked
13 for identification.)

14 BY MR. WAGNER:

15 Q. Let me show you --

16 MR. DAY: No objection, your Honor.

17 THE COURT: Admitted without objection.

18 What are those exhibit numbers, please?

19 MR. WAGNER: Your Honor, 8, 9 and 10.

20 (WHEREUPON, State's Exhibit Numbers 8, 9 & 10
21 were admitted into evidence.)

22 BY MR. WAGNER:

23 Q. Starting with 8, do you recognize 8? Then, if you
24 would, go to 9 and say 9 and say 10, please.

25 A. I'm looking at Exhibit No. 8, and I do recognize

1 Exhibit No. 8.

2 Q. What is that?

3 A. It is a mobile home identified as Return Church
4 Road.

5 Q. Is that where y'all went to Tina Elrod's house?

6 A. Yes, sir.

7 Q. Is that where she was living in a mobile home?

8 A. Yes, sir.

9 Q. And look at 9, please.

10 A. I'm looking at 9.

11 Q. What is that?

12 A. This is also the backyard of the same residence.

13 Q. Okay. And how about 10?

14 A. I'm looking at No. 10, and that is inside the
15 residence of the mobile home there at the same location.

16 Q. Were those taken on the day that y'all went out
17 there?

18 A. Yes, sir.

19 Q. Is that August the 28th, 2013?

20 A. That's correct.

21 Q. Do they fairly and accurately depict Ms. Elrod's
22 place as it looked that day?

23 A. Yes, sir, it does.

24 MR. WAGNER: Your Honor, at this time we'd ask to
25 admit 8, 9 and 10.

1 THE COURT: Want those admitted? I think they
2 were admitted without objection.

3 MR. WAGNER: Just want to make sure.

4 BY MR. WAGNER:

5 Q. When you got in Ms. Elrod's house, what do y'all do?

6 A. Well, we arrived, myself and Sergeant Arnold. We
7 arrived there at that address, knocked on the door.
8 Ms. Elrod come to the door. We immediately, you know,
9 introduced ourselves, who we were. Ms. Elrod was very
10 courteous and polite to us. And I told her, and Sergeant
11 Arnold, that he also mentioned we were looking for
12 Mr. Finney. We would like to speak with him. And she
13 informed us that he wasn't there at the time, didn't know
14 where he was. But she said, Y'all come on in, so we come
15 on in the house.

16 Q. Did she give consent to search the place?

17 A. She did.

18 Q. Let me show you State's 5, 6 and 7. Do you
19 recognize State's Exhibit No. 5? That's the big picture.

20 A. Yes. No. 5, yes.

21 Q. And what is that?

22 A. That is what's known as an airsoft rifle. It's -- I
23 guess you consider it a toy for a child.

24 Q. And what else is in the picture?

25 A. A blue bag. And also there is a pocketknife in the

1 picture.

2 Q. Okay. Were those items, they fairly and accurately
3 depict the items as they were in Ms. Elrod's mobile home?

4 A. Yes, sir.

5 Q. How about 6?

6 A. No. 6, yes, sir. It's also a photo of a pellet
7 rifle that was taken in the home of Ms. Elrod's.

8 Q. And how about 7?

9 A. Number 7, yes. That's a picture showing the model
10 of the BB gun there at Ms. Elrod's house.

11 Q. Were you able to determine who those items belonged
12 to, at least the airsoft rifle and the BB gun?

13 A. Yes, sir. I was able to determine that it did
14 belong to Mary Jane Giordano or her son, toys belonging
15 to the family.

16 Q. Were they able to positively I.D. those?

17 A. Yes, sir.

18 Q. Were you able to determine if those items had been
19 in your sister's house prior to August 10th?

20 A. I was able to establish that, yes.

21 Q. Were they returned to the Giordanos?

22 A. They were.

23 Q. Did you notice anything interesting about the bag,
24 the blue bag?

25 A. There was something interesting about the blue bag

1 because further -- previous testimony, there was a
2 slender white male walking away from the incident
3 location with a bag over his back. So that sparked my
4 interest, yes.

5 Q. Was that bag big enough to house a single-barrel
6 shotgun?

7 A. It was big enough to house it, but it wouldn't have
8 been able to completely cover it from length to length.
9 So there would have been a partial amount sticking out,
10 just because of the length.

11 Q. Okay. When did you first talk to the defendant?

12 A. First time I talked to the defendant was later on
13 that same day.

14 Q. How did you end up finding where he was?

15 A. Sergeant Arnold and I had left that residence, and
16 Sergeant Arnold received a phone call from Ms. Elrod
17 stating that she had just gotten word that Mr. Finney and
18 others were on their way back to that residence at .
19 So Sergeant Arnold and I decided to stay real close in
20 the neighborhood across the street and watch for them to
21 return so that we could have an opportunity to speak with
22 Mr. Finney.

23 Q. Okay. And when he pulled up, did y'all talk to him?

24 A. Yes, we did.

25 Q. Let me show you what's been marked State's Exhibit

1 Number 1. That's for I.D.

2 Do you recognize that?

3 A. I do.

4 Q. What is that?

5 A. This is a standard form that the sheriff's offices
6 use to advise someone that you're wanting to speak with

7 of their rights. It's called a Miranda form, which we

8 read these rights to the individual and have them sign it

9 that they do understand their Miranda rights.

10 Q. Did you have that on your person or with you that
11 day?

12 A. Yes, sir.

13 Q. Is that the same form that you used when you went
14 over that with Mr. Finney?

15 A. Yes, sir.

16 Q. Explain how -- why do you go about doing that and
17 how did you do it that day in detail, if you would.

18 A. Any time we, as investigators, we want to talk about
19 a case or a crime that has occurred, we always inform
20 anyone that they don't have to talk to us. And that's
21 called a Miranda form, and we make sure they understand
22 their Miranda rights. We do that. So this is a standard
23 procedure that we do to let them know they don't have to
24 talk to us.

25 Q. Okay. And what exactly does that form say and how

1 did you, I guess, put the form to him?

2 A. This form --

3 MR. DAY: Excuse me, your Honor. I hate to
4 interrupt. I just want to make sure we can identify it
5 by the date.

6 THE COURT: Please, sir.

7 THE WITNESS: August 28th, 2013.

8 MR. DAY: Thank you.

9 BY MR. WAGNER:

10 Q. Where did this occur? What's on there?

11 A. This occurred at Return Church Road.

12 Q. About what time?

13 A. It was about 1 o'clock in the afternoon.

14 Q. Okay. And the defendant that day, you, in law
15 enforcement, did you have an opportunity to observe
16 people who were under the influence of alcohol or drugs?

17 A. I'm sorry, the question again.

18 Q. Have you had an opportunity in six years of law
19 enforcement to observe people that have been under the
20 influence of alcohol?

21 A. Oh, yes, sir.

22 Q. Did he appear to you to be under the influence of
23 anything that day?

24 A. No, just nervous and excited because we were there.

25 Q. Did he respond to you when you talked to him?

1 A. He did.

2 Q. Was he polite?

3 A. Yeah, he was polite.

4 Q. Explain how you read him his Miranda rights. What
5 did you do? What did you say?

6 A. Okay. When I approached Mr. Finney, I identified
7 myself, told him my name, who I was. And I presented
8 this Miranda form to him. And this Miranda form is laid
9 out so that it's very easy to understand. As a matter of
10 fact, we ask the individuals, we read these line for
11 line. And once we do that, we ask them to check off or
12 initial, either/or, however they prefer it, that they
13 understand their Miranda rights.

14 So I pulled this form out. Mr. Finney was in
15 front of me, and I read each line for line, and I'll read
16 it now.

17 "Before we ask you any questions, you must
18 understand your rights." He checked it off that he
19 understood that. The next line is, "You have the right
20 to remain silent." He checked that off. "Anything you
21 say can be used against you in court." He checked it
22 off. "You have the right to talk to a lawyer for advice
23 before we ask you any questions and to have him with you
24 during questioning." He checked that off.

25 "If you cannot afford a lawyer, one will be

1 appointed for you before any questions if you wish." He
2 checked it off. "If you decide to answer questions now
3 without a lawyer present, you will still have the right
4 to stop answering at any time." He checked it off. "I
5 have read this statement of my rights, and I understand
6 what my rights are. I am willing to make a statement and
7 answer questions. I understand and know what I am doing.
8 No promises or threats have been made to me, and no
9 pressure or coercion of any kind has been used against
10 me." And he checked that off. And then down there at
11 the bottom he signed it.

12 Q. Did you ever promise him anything, hold out any hope
13 for reward to get him to talk to you?

14 A. No, sir.

15 Q. Or to waive his rights on that rights waiver?

16 A. No, sir.

17 Q. Did you ever use any threats or coercion?

18 A. No, sir.

19 Q. Is that form in substantially the same condition as
20 it was when you filled it out that day and he signed it?

21 A. Yes, sir.

22 MR. WAGNER: Your Honor, at this time we would
23 move to admit State's Exhibit 1.

24 THE COURT: It will be admitted subject to the
25 prior ruling.

1 (WHEREUPON, State's Exhibit Number 1 was admitted
2 into evidence.)

3 BY MR. WAGNER:

4 Q. Did y'all go back to the sheriff's office with him?

5 A. Yes, we did.

6 Q. And did Sergeant Arnold take a statement from him
7 back at the sheriff's office?

8 A. Yes, Sergeant Arnold took a statement from him.

9 Q. Did y'all keep investigating the case?

10 A. We did.

11 Q. Did you later go back and talk to him again two days
12 later on the 30th?

13 A. Yes, sir, we did.

14 Q. What did you tell him when you went back to talk to
15 him, and did you -- did y'all re-Mirandize him in the
16 same fashion?

17 A. We re-Mirandized. It's our standard policy that any
18 time we talk to someone, we always remind them of their
19 Miranda rights.

20 Q. Let me show you what's been marked as State's
21 Exhibit 2 for identification.

22 A. Yes, sir, I recognize it.

23 Q. What is the date and time and location on State's
24 Exhibit Number 2?

25 A. This is the Miranda form that I have spoken of.

1 It's a separate one. The place this was taken was at
2 Oconee County Law Enforcement Center. The date was
3 8/30/2013, and this one was taken at around 3:05 in the
4 afternoon.

5 Q. And did you or Scott Arnold -- who advised him of
6 his rights on this occasion?

7 A. Myself, and Scott Arnold was in the room, Sergeant
8 Arnold.

9 Q. Did y'all do that in the same manner that you just
10 testified to on State's Exhibit 1?

11 A. I did. Yes, sir. If you would like, I'll read what
12 this Miranda form says.

13 Q. Please. How did y'all present it to him?

14 A. We presented this to him, and it's line for line.

15 "Before we ask you any questions, you must
16 understand your rights." At this time Mr. Finney chose
17 to initial it. He initialed it JF. "You have the right
18 to remain silent." He initialed JF. "Anything you say
19 can be used against you in court." He initialed it JF.
20 "You have the right to talk to a lawyer for advice before
21 we ask you any questions and to have him with you during
22 questioning." He initialed JF.

23 "If you cannot afford a lawyer, one will be
24 appointed for you before any questions if you wish." He
25 initialed it JF. "If you decide to answer questions now

1 without a lawyer present, you will still have the right
2 to stop answering at any time." He initialed it JF. "I
3 have read this statement of my rights and understand what
4 my rights are. I am willing to make a statement and
5 answer questions. I understand and I know what I am
6 doing. No promises or threats have been made to me, and
7 no pressure or coercion of any kind has been used against
8 me." He initialed that JF and he signed it.

9 Q. Okay. Did you sign it?

10 A. I did.

11 Q. Did Scott Arnold sign it?

12 A. I did -- I'm sorry. He did, yes.

13 Q. Did y'all use any pressure or coerce him to get him
14 to waive his rights and talk to ya'll?

15 A. No, sir.

16 Q. Did you hold out any hope for reward or make him any
17 promises, hold out any hope of leniency or anything like
18 that in order to get him to talk to you?

19 A. No, sir.

20 Q. Do you feel like he freely and voluntarily agreed to
21 talk to you?

22 A. Yes.

23 MR. WAGNER: Your Honor, at this time we would
24 move State's Exhibit Number 2.

25 THE COURT: It will be admitted subject to prior

1 ruling.

2 (WHEREUPON, State's Exhibit Number 2 was admitted
3 into evidence.)

4 BY MR. WAGNER:

5 Q. Did you talk to Jonathan Finney at that point?

6 A. Myself and Sergeant Arnold did talk to him.

7 Q. What exactly did y'all tell him? How did you, I
8 guess, break the ice, so to speak?

9 A. Well, as the investigation was progressing, we
10 informed Mr. Finney that there may have been some
11 property that may be linking him to this, and we just
12 wanted to inform him and see what he had to say about it.

13 Q. What did he say?

14 A. He said, Okay, I did it.

15 Q. Did he give any details as to how he did it?

16 A. Yes, he did.

17 Q. What did he say?

18 A. He mentioned that he went down this dead-end road,
19 come to this white house at the end of the dead-end road.
20 He mentioned that he was a lookout man. He implicated
21 another person was involved.

22 Q. Who did he say was involved?

23 A. He said that Josh Burrell was involved as well.

24 Q. And then what happened?

25 A. Okay. As we discussed, he mentioned that Josh

- 1 Burrell was involved. He was a lookout man. He
2 implicated Josh Burrell as the one going in the house.
3 He mentioned the shotgun, 12-gauge single-shot shotgun.
4 It was an old gun. He mentioned drinking some liquor.
5 He even mentioned that there was a motorcycle on the
6 property that he planned, maybe he and this Josh Burrell,
7 planned to come back and get at a later time. He was
8 mentioning all sorts of stuff like that that was
9 consistent with only someone who would have been down
10 there would have known.
- 11 Q. Did he mention the keys?
- 12 A. He -- I believe he did mention the keys, yes.
- 13 Q. Did he offer to take y'all to this location?
- 14 A. He did.
- 15 Q. And did y'all later do that? What date did you do
16 that?
- 17 A. On the 4th of the following month, September the
18 4th, which was just a few days later, he did offer to
19 take us to this location and show us what he had done.
- 20 Q. When you went down to the detention center to pick
21 him up at that point in time, let me show you what's been
22 marked State's Exhibit Number 3. If you could, give us
23 the date, time, and location of that.
- 24 A. This is a, of course, again, a standard Miranda
25 form. This time this Miranda form was taken in the

1 Ocone County Law Enforcement Center parking lot
2 September the 4th, 2013. It was around 1 o'clock in the
3 afternoon. And I will read the Miranda that I issued to
4 Mr. Finney.

5 "Before we ask you any questions, you must
6 understand your rights." He initialed it JF. "You have
7 the right to remain silent." He initial it JF.
8 "Anything you say can be used against you in court." He
9 initialed it JF. "You have the right to talk to a lawyer
10 for advice before we ask you any questions and to have
11 him with you during questioning." He initialed it JF.

12 "If you cannot afford a lawyer, one will be
13 appointed for you before any questions if you wish." He
14 initialed it JF. "If you decide to answer questions now
15 without a lawyer present, you will still have the right
16 to stop answering at any time." He initialed it JF.
17 "I've read this statement of my rights and I understand
18 what my rights are. I'm willing to make a statement and
19 answer questions. I understand and know what I am doing.
20 No promises or threats have been made to me, and no
21 pressure or coercion of any kind has been used against
22 me." He initialed it JF, and he signed the bottom.

23 Q. Did you give any pressure or try to coerce him in
24 any manner to waive his rights and talk to you?

25 A. No, sir.

1 Q. Did you offer him any hope for reward or hold out
2 any recommendations of leniency or anything to try to
3 coerce him or entice him to talk to y'all further?

4 A. No, sir.

5 Q. To the best of your knowledge, did he freely and
6 voluntarily go talk to y'all and go riding with y'all
7 around Oconee County after the Miranda form here, State's
8 Exhibit Number 3, was done?

9 A. Yes, sir, that's correct.

10 Q. Okay.

11 MR. WAGNER: Your Honor, at this time we would
12 move to admit State's Exhibit 3.

13 THE COURT: It will be admitted subject to the
14 prior ruling.

15 (WHEREUPON, State's Exhibit Number 3 was admitted
16 into evidence.)

17 BY MR. WAGNER:

18 Q. What did y'all do next?

19 A. At that point we, all of us, got into the truck, the
20 patrol vehicle of Sergeant Scott Arnold. I sat in the
21 back. Mr. Finney got up in the front seat, the passenger
22 seat, along with Sergeant Arnold. He was driving.
23 Mr. Finney said, I will show you the house in question,
24 the burglary location.

25 So Sergeant Arnold drove to the community and

1 just basically kind of slowed down on the side of the
2 road and said, Okay, Mr. Finney. Take us to this house.
3 So he started saying, Okay. Continue on down this road.
4 And I'm taking notes. He's telling us where to go. As
5 we started approaching into the community off of Ebenezer
6 Road, he said, Right here. Take a right right here.

7 Sergeant Arnold took a right. I wrote down in my
8 notes we were taking a right onto McMahan Road. He said,
9 Keep going down here and it dead-ends. Well, we rode
10 down there and it's a dead end. At that point we come to
11 the burglary location. All of us get out. Sergeant
12 Arnold asked Mr. Finney, he said, Is this the house that
13 y'all or he went into? He said, That's the house, and he
14 pointed to the house. At that point I snapped a photo of
15 him pointing to the house.

16 (WHEREUPON, State's Exhibit Number 11 was marked
17 for identification.)

18 BY MR. WAGNER:

19 Q. Let me show you what's been marked as State's
20 Exhibit Number 11.

21 MR. DAY: Your Honor, of course we object to it,
22 but we acknowledge it is a picture of the defendant shown
23 there, but we deny the way he's described it is what it
24 is.

25 THE COURT: All right. Subject to objection, it

1 will be admitted.

2 (WHEREUPON, State's Exhibit Number 11 was
3 admitted into evidence.)

4 BY MR. WAGNER:

5 Q. Let me show you State's Exhibit Number 11. What is
6 that?

7 A. This is the incident location, the home that was
8 broken into.

9 Q. Okay. Is that your sister's house?

10 A. That's my sister house, yes.

11 Q. What is that a picture of?

12 A. It is a picture of my sister's house, and it is a
13 picture of the defendant, Mr. Finney, pointing to the
14 house.

15 Q. Okay. Does that picture fairly and accurately
16 depict as it was when you took it when he was pointing at
17 your sister's house?

18 A. Yes.

19 Q. This is the same house he said he was a lookout on
20 during the burglary of it?

21 A. He said he was a lookout when this burglary
22 occurred.

23 Q. He took you directly to it; y'all didn't drive him
24 to it?

25 A. No. We asked him to take us to the house, and he

1 did so.

2 MR. WAGNER: Your Honor, I believe State's
3 Exhibit Number 11 was admitted. If so, I have no further
4 questions for Sergeant McMahan.

5 THE COURT: Yes.

6 Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. DAY:

9 Q. All right, sir. Just want to clear up a few things,
10 if I can.

11 This particular house we're talking about, you're
12 very familiar with that, are you not?

13 A. Yes, sir.

14 Q. Did you live in this house at one time?

15 A. No, sir.

16 Q. Okay. But this was your father's home?

17 A. Yes, sir.

18 Q. And you have property that's actually adjoined to
19 this somewhat?

20 A. Yes, sir.

21 Q. That had been part of your father's estate?

22 A. Yes.

23 Q. And the estate is still open?

24 A. Yes, sir. The estate is not closed.

25 Q. Right. And you have an interest in that particular

1 piece of property in that your father granted you a right
2 of first refusal should your sister decide -- you and
3 your brother, I'm sorry -- a first refusal in case she
4 wanted to sell that property?

5 A. Yes, sir. I think that's standard procedure in a
6 will. Yes, sir.

7 Q. In 36 years I did that once.

8 A. Okay.

9 Q. And also the property that your father left you also
10 has that in there granting a right of first refusal to
11 your brother and sister as well?

12 A. Yes, sir.

13 Q. Because he wanted it to stay in the family?

14 A. Yes, sir. It's been in the family 120 years or
15 something like that.

16 Q. I can understand why he would want to do that.

17 Now, when you became involved in this case, you
18 were aware that this was property -- this was family
19 property?

20 A. Oh, yes, sir.

21 Q. This particular shotgun we're talking about, had you
22 ever seen that shotgun? Were you familiar with it?

23 A. Yes, sir. Used to shoot crows out of the garden
24 when I was a kid with it.

25 Q. Excuse me?

1 A. Used to shoot crows with it out of the garden when I
2 was a kid.

3 Q. So you're aware of what this gun actually looked
4 like? I mean from years. Not identical --

5 A. Yes, sir. When I say a kid, we're talking 35, 40
6 years ago. I haven't seen it in years because my dad,
7 you know, had it. Of course, I didn't live with him
8 after I became an adult and left.

9 Q. Okay. Now, you have got the incident report from
10 this case, the case report?

11 A. Yes, sir.

12 Q. What is the case number?

13 A. Case number is 2013-00027446.

14 Q. So we can refer to that as 27446?

15 A. Yes, sir.

16 Q. And Deputy McKee said she started this. She's the
17 one who started the report and created the first incident
18 report since she was the first on the scene and the
19 reporting officer; is that correct?

20 A. Yes, sir.

21 Q. And she said she did everything up to on Page 4
22 where it says "photos were taken that are attached"?

23 A. "Photos were taken and are attached," yes, sir, I
24 see it.

25 Q. Now, it starts with the supplemental. It speaks

1 about an arrest warrant being issued, and it says
2 "supplemental by NG." That's right below there where it
3 says "photos were taken."

4 A. My particular copy doesn't have it. Sir, I'll be
5 glad to look at yours.

6 (Off-the-record discussion between counsel.)

7 BY MR. DAY:

8 Q. All right. What I'm talking about is that right
9 there where it says "supplemental."

10 A. Yes, sir. If you would like for me to explain.

11 Q. I was just wondering, who is NG?

12 A. NG is an office clerk who records any warrants, and
13 she's the one that puts them in, records them.

14 Q. All right.

15 A. Nina Galloway, I believe, her name is.

16 Q. Okay. Now I can understand that better. Thank you.

17 A. Yes, sir.

18 Q. But yours doesn't have that on it?

19 A. The reason why mine doesn't is we can pick and
20 choose what we want to print, and I know that this was
21 information that I already knew about, and I didn't print
22 it because it wasn't necessary to me to print it in my
23 copy.

24 Q. Okay. I'll just leave this up here. He has another
25 one. I will go look at mine.

1 After that, continuing on Page 4 of 5 there, we
2 have the supplemental by Scott Arnold?

3 A. Yes, sir.

4 Q. That would be what he wrote and what he added to the
5 incident report; is that correct?

6 A. Yes, sir.

7 Q. And continues over -- I'm going over to Page 5 now.

8 A. Okay.

9 Q. And the continuation of that supplemental continues
10 about halfway down.

11 A. Okay.

12 Q. And down at the bottom it's got notes; is that
13 correct?

14 A. Yes, sir.

15 Q. Now, those notes, would those have been made by
16 Deputy McKee or would have been by one of y'all?

17 A. Yes, sir. Notes are when either an investigator or
18 anyone that might have just wanted to put a note in there
19 for future reference. It could be any one of us.

20 Q. So in that particular, since the only two people
21 really working on this are you and Mr. Arnold, it's
22 probably one of the two of you probably did that?

23 A. Yes, sir.

24 Q. And in that it says that Mr. Giordano could not
25 provide a make, model or serial number for the shotgun.

1 Said he would attempt to locate the information and
2 contact the sheriff's office if he's able to locate it?

3 A. Yes, sir, it says that.

4 Q. Now, the next page starts into the property detail
5 report. Do you have that?

6 A. Yes, sir.

7 Q. All right. And in that on Page 1 of 6 it says, Old
8 side-by-side 12-gauge shotgun. And this is what y'all
9 do, to make sure I understand this. When you have
10 evidence, property evidence, you need to identify it and
11 track it; is that right?

12 A. Yes, sir.

13 Q. And this is the first step. You identified this
14 piece of property as being involved in this case either
15 as missing property, property that was taken, but it's
16 got to do with this case?

17 A. Yes, sir.

18 Q. Okay. And that property detail report is still
19 under case number 27446?

20 A. Yes, sir.

21 Q. Okay. And I notice in that, of course, it shows the
22 item, but it doesn't have anything else on there because
23 it never, again, anything was done with it, you didn't
24 find it or locate it or anything like that?

25 A. We did not locate the shotgun, no, sir.

1 Q. Okay. On the next page, 206, again property detail
2 report, four keys to the lawnmower, Ranger, a boat and a
3 jet ski. That's identified as property?

4 A. Yes, sir.

5 Q. And down below that on the same case report it says
6 "other property," and it says "initial value \$8"; is that
7 correct?

8 A. Yes, sir.

9 Q. All right. And there's nothing else identified with
10 that?

11 A. That's correct.

12 Q. Okay. Then we go over to Page 3 of 6. Again, we're
13 under case number 27446?

14 A. Yes, sir.

15 Q. And down below that it has, "Sealed bag, SDC's
16 letter and envelope," and below that "evidence general
17 property." What exactly is that?

18 A. Mr. Day, sometimes when a victim has a lot of items
19 that are taken and they're not for sure, exactly sure of
20 what all has been taken, sometimes it might take them a
21 week to go through and actually find out what may have
22 been taken because they just don't know at the time.

23 And so sometimes we'll list that there are
24 several items missing, but that's a general synopsis that
25 there's more property missing, we just don't know what it

1 is, and that's why it's listed in that way in the detail
2 report.

3 Q. It says a letter and envelope?

4 A. Yes, sir.

5 Q. What letter and envelope?

6 A. You'll probably have to refer to the lead
7 investigator. I was just assisting. I don't know.

8 Q. Okay. And then down again on the bottom of that
9 page on the right side near the bottom, it states again
10 on this same page "lab report"?

11 A. Yes, sir, I see that.

12 Q. Says "fingerprints"?

13 A. Yes, sir, I see that.

14 Q. Okay. And that just says, "An envelope processed
15 for latent fingerprints using," whatever that word is,
16 and "one latent fingerprint photographed." Is that what
17 it says?

18 A. Yes, sir.

19 Q. Okay. Then it says another one, under the same case
20 number, "fingerprint" and again "letter processed -- a
21 letter processed for latent fingerprints" again using
22 that, whatever that was, "four latent fingerprints
23 photographed"?

24 A. Yes, sir.

25 Q. All right. Down below that begins a chain of

1 custody?

2 A. Yes, sir.

3 Q. And I'm not trying to take away from it. If I say
4 this wrong, you tell me. But you keep up with the chain
5 of custody so that you can show where a piece of evidence
6 went, each place, who had it, to make sure nothing has
7 happened to it; is that correct?

8 A. That's correct.

9 Q. And who is responsible for having that piece of
10 property and taking it to the next person?

11 A. That's correct.

12 Q. Even if you were sending this to Columbia or
13 California or whatever, you would still have to track it
14 everywhere it goes?

15 A. Yes, sir.

16 Q. And that's standard procedure of what y'all do, and
17 that's to make sure that the evidence is not tampered
18 with and that nobody gets a chance to mess with it?

19 A. Yes, sir.

20 Q. And down at the bottom there in that chain of
21 custody it states that it went from William Freestate to
22 John Merck, who I understand is the property officer for
23 the sheriff's department?

24 A. That is correct.

25 Q. Go to Page 5, if I may. Page 5 is just, again, a

1 property detail report where it speaks about apparently
2 evidence and photography. When it says "optical
3 equipment," I assume that's either one of those little
4 things they stick in your phone or telephones or cameras,
5 whatever, or a CD or something. When an officer takes
6 pictures, like in this case Officer McKee, this is where
7 she took the pictures, now she has turned them in and
8 here they are?

9 A. Yes, sir. Everything is digital now. So it was
10 digital photography that was turned in.

11 Q. Again, the chain of custody again shows it went to
12 the property officer?

13 A. That's correct, yes, sir.

14 Q. Now, I'm looking on Page 6 of 6. As we go down
15 there, again talking about the property, each time you do
16 this, you have to actually identify the piece of property
17 you're talking about so there won't be any mistake. You
18 know which one you're talking about when you say
19 something happened to it?

20 A. Yes, sir. You describe the property.

21 Q. I'm sorry?

22 A. You describe the property, yes, sir, that's correct.

23 Q. That one describes an "envelope containing CD with
24 latent print photos, working disk." That's what's on
25 there?

1 A. On 6 of 6?

2 Q. Yes, sir. It's that second section.

3 A. Yes, sir. Yes, sir, I see it.

4 Q. And then on the third section, again it's
5 "photographic optical equipment"?

6 A. Yes, sir.

7 Q. And down here in the property room, it says
8 "property room facility investigation, bin location,
9 investigator." What exactly does bin location mean?
10 A. Yes, sir. When a responding officer or
11 investigations, when we want to turn our evidence in to
12 evidence for safekeeping into the evidence room, there
13 are a number of bins with numbers on them. And so what
14 you do is if I have, for example, this microphone, I want
15 to turn it in to evidence. I would go into the evidence
16 room where these bins are located. And these bins are
17 numbered. I would take this microphone and I would fill
18 out a form saying I am turning in this microphone in bin
19 number, we'll just say Number 3. So that way the chain
20 of custody, we follow our evidence right into the
21 evidence room. We know where it went to.

22 Q. So you can get to it. So if I come saying I want to
23 look at it, you know exactly where to get it?

24 A. Yes, sir.

25 Q. I understand. Then at the bottom under chain of

1 custody, again, if I may, on September 5th it says,
2 "Transferred from John Merck," the property officer, "to
3 John Merck," which means he apparently handled the
4 property, just had it there. Then it says, "Expected
5 return date to John Merck, going to lab tech"; is that
6 correct?

7 A. Yes.

8 Q. Then, "Expected return date released for AFIS and
9 comparison." What is AFIS?

10 A. AFIS is an abbreviation for a national database of
11 fingerprints across the nation where you can go in there
12 and compare. If you turn in a fingerprint, you can
13 compare it to other existing fingerprints to see if you
14 have a match.

15 Q. I see. And it says "and comparison." Is a lab tech
16 going to be the one doing the comparison?

17 A. A lab tech will compare it, and if he feels like he
18 has a match, he will notify us and then possibly even go
19 on to SLED for further analysis to maybe have a second
20 opinion.

21 Q. All right, sir. And when Mr. Finney was arrested,
22 he was fingerprinted, wasn't he? Isn't that normal
23 procedure?

24 A. That's normal procedure, yes, sir.

25 Q. Okay.

1 MR. DAY: Now, subject to my objections, your
2 Honor, if I may.

3 Q. In that incident report, property report, property
4 identification, all of that, the paperwork, there's
5 nothing about a BB gun or an airsoft rifle of any kind,
6 is there?

7 A. No, sir.

8 Q. And I've been looking through the discovery given to
9 me indicating all of this in here. I'm trying to find --
10 where are your notes on Randy Allsep?

11 A. I didn't put my notes in for Randy Allsep. I do
12 refer to it in my notes, but I didn't give it by name.

13 Q. How about David Duncan?

14 A. Yes, sir. Again, I refer to it in my notes, but I
15 do not give a name.

16 Q. So neither one of those people are identified by any
17 notes or anything within the evidence reports and
18 packages in this case?

19 A. That's pretty custom. If we're investigating
20 something, we don't always put people's names in it just
21 to protect their identities. If they asked -- if they
22 don't want to be identified, we respect that.

23 Q. I understand that, but he came here today and
24 testified, didn't he?

25 A. He sure did.

1 Q. So apparently it was important enough for them to be
2 called in this trial, but they're not identified
3 anywhere?

4 A. Well, again, it's standard for it to be noted as I
5 did, but I did not give any names out at that time.

6 Q. All right. So on the day in which you first saw
7 Jonathan Finney, y'all took him into custody; is that
8 correct?

9 A. We asked him to come to the sheriff's office, yes,
10 sir, and he did.

11 Q. And he was carried there and remained at Oconee
12 County detention center?

13 A. That's correct.

14 Q. Then y'all came back the next -- I'm sorry. Excuse
15 me. That was the 28th. I believe it was the 30th that
16 you came back the second time?

17 A. Came back?

18 Q. Or is it -- I'm looking at August 30th. Or is it
19 August 29th?

20 A. What -- I'm sorry, I don't understand what you're
21 referring to.

22 Q. I'm talking about when you spoke to Mr. Finney.

23 A. We spoke to Mr. Finney that day as well as the 30th.

24 Q. Right. That's the 28th?

25 A. Yes, sir.

1 Q. Okay. And the second time was when?

2 A. 30th.

3 Q. Okay. I couldn't read my own writing.

4 A. I'm sorry, I didn't understand your question.

5 Q. All right. So you spoke to him on that day, and
6 you're saying that's when he said, I did it?

7 A. That is correct.

8 Q. And then on September 4th you said that y'all took
9 him out of the Oconee County detention center, put him in
10 a vehicle, and y'all began riding around the county going
11 down here to McMahan Road?

12 A. That's correct, yes, sir.

13 Q. Who all was with y'all?

14 A. Myself, the defendant, Mr. Finney, and Sergeant
15 Arnold.

16 Q. So it was just the three of you?

17 A. Yes, sir.

18 Q. No other officers were present or came with you for
19 any reason?

20 A. No, sir.

21 Q. And looking at that picture, the picture you said of
22 Mr. Finney standing there at the gate --

23 A. Yes.

24 Q. Okay. That's a picture that you took?

25 A. Yes, sir, it's a picture that I took.

1 Q. And you were standing how far away?

2 A. I was standing about ten feet away from Mr. Finney,
3 just guessing.

4 Q. Okay. All right, sir. Now, as I understand it,
5 looking here at the warrants issued in this case, I
6 believe it was Mr. Arnold who actually went and got the
7 warrants?

8 A. That's correct, yes, sir.

9 Q. Were you with him or assisted him in preparing the
10 warrants or the information for the warrants?

11 A. No, sir. As I stated earlier, I was assisting
12 Mr. Arnold on this investigation, and he was the one who
13 signed the warrants. So a culmination of all the
14 evidence gathered is the reason why he signed it.

15 Q. And when he did that, did he discuss with you
16 beforehand what he was going to put in the warrant?

17 A. I don't recall that, no, sir. He may have --

18 Q. I'm sorry. Had you seen the warrant after it was
19 issued?

20 A. I don't think I did, no, sir.

21 Q. So you never saw a warrant after it was issued or
22 served on the defendant or at any time?

23 A. Well, of course, as you pointed out, it's available
24 for me to look at. I may have. I honestly can't sit
25 here and tell you that I sat down and studied it. I

1 can't.

2 Q. And in that, that's where Mr. Arnold under oath
3 states that he broke and entered the dwelling home of
4 Joseph Giordano. That's what it says?

5 A. That's what it says.

6 Q. That's on both warrants?

7 A. Yes, sir.

8 Q. What about the preparation of the indictment to go
9 to the grand jury, were you involved in that?

10 A. No, sir.

11 Q. Did you ever see it?

12 A. No, sir.

13 Q. In this particular case, did you testify before the
14 grand jury?

15 A. No, sir.

16 Q. I believe a Ms. Tinsley is the one listed on that.
17 Is she an officer with the sheriff's department?

18 A. A Ms. Kinsley?

19 Q. Let me look again.

20 A. I'm not aware of a Ms. Kinsley.

21 Q. Amanda Tinsley.

22 A. Oh, yes, sir. She's an investigator.

23 Q. Okay. And she is the one, according to the official
24 documents, is the one that went before the grand jury and
25 stated these things occurred?

1 A. Yes, sir. We are assigned the grand jury
2 assignments, all of us are, and it was her turn, I'm
3 assuming.

4 Q. Okay. Was Ms. Tinsley in any way involved in this
5 case?

6 A. No, sir.

7 Q. At any time did you review with Ms. Tinsley any of
8 the evidence in this case?

9 A. No, sir.

10 Q. Did you provide her with any documentation or
11 anything to be used for her testimony in front of the
12 grand jury or anywhere else?

13 A. No, sir.

14 Q. All right, sir. I believe that's all the questions
15 I have. Thank you.

16 THE COURT: Redirect?

17 MR. WAGNER: Just one quickly, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. WAGNER:

20 Q. The airsoft rifle and the BB gun --

21 A. Yes, sir.

22 Q. -- they didn't show up on the property list as being
23 put into evidence, and why would that be?

24 A. That's because the victims were not aware of
25 everything that was taken at the time the incident report

1 was taken. They were still trying to assess, figure out
2 what all was taken. They just didn't know these items
3 had been taken at the time. They later found out that it
4 was gone.

5 Q. When you knew what they were, were they ever put
6 into evidence or released back to the victims?

7 A. A lot of times what we do in investigations is if we
8 can identify property as belonging to a victim, it's
9 standard for us to go ahead and return it back to the
10 victim once they have identified it.

11 Q. Do you photograph it and then turn it back over?

12 A. Photograph it for documentation at a later time,
13 then turn it back over to them.

14 Q. So the record of that in this case is the
15 photographs that we have in court here today?

16 A. That's correct.

17 MR. WAGNER: Thank you. That's all I have.

18 MR. DAY: Briefly, your Honor, if I may.

19 RECROSS-EXAMINATION

20 BY MR. DAY:

21 Q. If that's the case, when were the photos taken?

22 A. Sir, these photos were taken August the 28th.

23 Q. August 28th?

24 A. I'm sorry -- yes, sir, August 28th, the day of when
25 we made first contact with Mr. Finney.

1 Q. Okay. So at that time you were aware of the BB gun
2 and the airsoft rifle, whatever you call it?

3 A. I remember calling the victim and confirming that
4 there was some BB guns and air guns missing, and she
5 confirmed, Oh, yes they are. So at that point, yes, sir,
6 I confirmed it.

7 Q. Okay. I'm looking at the notes I got yesterday.
8 "Also Sergeant McMahan calls victim Joe Giordano and
9 speaks with his wife, and she describes BB gun, airsoft
10 gun from their burglary"?

11 A. Yes, sir.

12 Q. So that was done August 28th approximately?

13 A. Yes, sir, it was.

14 Q. And those two items were never identified in the
15 report or by supplemental or anything else?

16 A. In my supplement it identifies it, yes, sir. That
17 you just read?

18 Q. That I just read. Those are your notes. That's the
19 notes I was sent yesterday. That's not in the incident
20 report.

21 A. Yes, sir. It's a supplemental to my report.

22 Q. And I got that yesterday. According to the
23 Solicitor's office, it was put on -- came to me by e-mail
24 at 10:45 yesterday. "Attached are officer notes in the
25 pending case. Detective McMahan went through his case

1 file. We're sending these to you out of an abundance of
2 caution."

3 A. It's in our reporting system, and that's how I
4 copied it, sir. So I don't know all the particulars of
5 that, but it was copied from the incident report which is
6 called New World. So I don't know.

7 Q. But you've got the incident report right there?

8 A. Yes, sir, I do.

9 Q. It's not in there, is it?

10 A. Again, the -- also Nina Galloway's information
11 wasn't in there as well. You can print what you want on
12 these. It doesn't throw out everything to you. You can
13 just print what you want to know, and that's what you
14 bring with you. However, it is recorded.

15 Q. It's not in that report, is it?

16 A. It's in the report, yes, sir. Maybe not in this
17 hard copy.

18 Q. I'm looking at it. You've got the same copy I got.

19 A. Maybe not in the hard copy, but it's in the report.
20 It's in our system, computer system.

21 Q. You're saying it's in the computer system?

22 A. Yes, sir.

23 Q. If it's not in the report given to me, then I didn't
24 get it and it wasn't sent to me.

25 A. Yes, sir, it was sent to you.

1 Q. I got the same thing you got right there.

2 A. You read -- you read what -- what's a supplemental
3 of mine.

4 Q. No, that was the officer's notes.

5 A. That's a supplemental from me.

6 Q. Doesn't say such. It's just a regular printout.

7 A. Well, sir, we go into the computer system. I wish I
8 could show it to you. It's there.

9 Q. Thank you very much.

10 MR. DAY: That's all I have, your Honor.

11 THE COURT: Thank you, sir. You may step down.
12 Who's your next witness?

13 MR. WAGNER: Sergeant Arnold.

14 THE COURT: Be a little while?

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Let's go ahead and have a
17 lunch break now.

18 Madam Forelady, ladies and gentlemen of the jury,
19 I'm going to go ahead and call a lunch break right now at
20 12:30. I'm going to ask that you be back in your jury
21 room a little bit before 2 o'clock, and we'll resume
22 testimony at that point. I'll remind you not to speak
23 with each other about this case or anyone else about this
24 case. Okay? Have a nice lunch.

25 (WHEREUPON, the jury exited the courtroom

1 at 12:29 p.m.)

2 THE COURT: All right. We'll be in recess until
3 2 o'clock.

4 (Lunch recess was taken from 12:29 p.m.
5 to 2:05 p.m.)

6 THE COURT: Is the State ready to proceed?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Defense ready?

9 MR. DAY: Yes, your Honor.

10 THE COURT: Would you bring the jury in, please.
11 (WHEREUPON, the jury came into open court at
12 approximately 2:06 p.m.)

13 THE COURT: Mr. Wagner, State ready to proceed?

14 MR. WAGNER: Yes, sir.

15 THE COURT: You can call your next witness.

16 MR. WAGNER: Scott Arnold.

17 **SCOTT ARNOLD,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. WAGNER:

21 Q. Sir, could you give us your first and last name and
22 spell your last name for the record.

23 A. Scott Arnold, A-r-n-o-l-d.

24 Q. What are your job duties right now?

25 A. I'm a property crimes investigator with the

1 sheriff's office.

2 Q. And how long have you worked for the sheriff's
3 office?

4 A. For the sheriff's office, around 17 years. Been in
5 law enforcement around 19 years.

6 Q. Are you a sergeant?

7 A. Yes, I am.

8 Q. Do you work oftentimes with David McMahan and other
9 property crimes investigators and investigators at the
10 sheriff's office?

11 A. Yes, I do. I work with them on a daily basis. And
12 during the month usually I work murders, sexual assaults,
13 and arson cases also.

14 Q. Are y'all like on a rotating call basis for violent
15 crimes, that sort of thing?

16 A. Yes, sir.

17 Q. But the primary focus is burglaries, robberies,
18 thefts, that sort of property --

19 A. Yes. Yes, it is.

20 Q. Okay. Did you get assigned to this case at
21 McMahan Road?

22 A. Yes, I did.

23 Q. And just before we go there, what is your average
24 day, week, month like as a property crimes investigator?
25 What do y'all deal with?

1 A. Basically during the month I usually get between 25,
2 30 cases a month. Then Sergeant McMahan, we usually team
3 up, and he gets around 15, 20 cases a month. And we team
4 up and work together and assist each other with cases.

5 Q. Did you get assigned to work this case?

6 A. Yes, I did.

7 Q. Did you ask for some assistance from Sergeant
8 McMahan?

9 A. Yes, I did. Due to the fact that he lived in the
10 area and he's familiar with the area and he knew a lot of
11 people there, I asked him to help me.

12 Q. When he came up with the name Jonathan Finney and
13 y'all went to Tina Elrod's house, tell us about what
14 happened there. Was that y'all's first break on the
15 case?

16 A. Yes. He came up to me and told me that he got the
17 name Jonathan Finney. We did some research on him. Then
18 we went down to Return Church Road and spoke with Tina
19 Elrod.

20 Q. Okay. And while y'all were there, did you later
21 come into contact with the defendant at that location?

22 A. Later on that evening we did.

23 Q. Sergeant McMahan, I believe, Mirandized him, and
24 y'all asked him to follow you back or go back with y'all
25 to the sheriff's office?

1 A. Yes, he did. And he went back voluntarily.

2 Q. At the sheriff's office did you -- did he agree to
3 talk to you?

4 A. Yes, he did.

5 Q. And did you take a statement from him?

6 A. Yes, I did.

7 Q. Let me show you what's been marked State's Exhibit
8 No. 4. Do you recognize that?

9 A. Yes, I do. This is a statement Jon Finney had gave
10 us at the law enforcement center.

11 Q. Did you take that statement from him after he had
12 been advised of his Miranda rights?

13 A. Yes, I did.

14 Q. In your opinion, did he freely and voluntarily waive
15 his Miranda rights with you present and agree to give you
16 that statement?

17 A. Yes, he did.

18 Q. Did you offer him anything in hope for reward? Did
19 you promise him anything or threaten him in any manner or
20 coerce him to get him to give a statement?

21 A. No.

22 Q. Did you give him a statement form and ask him to
23 write what happened?

24 A. Yes, I did.

25 Q. Did he do that?

1 A. Yes, he did.

2 Q. When did this occur, what time? What did he say?

3 A. This occurred on August the 28th at the Oconee

4 County Law Enforcement Center. At approximately

5 5 o'clock p.m. he wrote out this statement. This is what

6 he wrote.

7 "All I can say is we were at the house, and Josh

8 was starting to get ready. He said he was going to the

9 store and left and he got back. It was a couple hours

10 later. And he walked in with a blue bag, a 12-gauge

11 shotgun -- or a gun, airsoft machine gun, and a BB gun.

12 And he" -- I can't read that word -- "and he in a scared

13 tone with some rolled change and a box that he had come

14 across a lick, was what he said, and he had to get rid of

15 the gun so he could make a little money. The only thing

16 he ever talked about was hitting licks and make us money.

17 Haven't seen since at stepdaughter's so don't know where

18 at now. The Liberty house has lots of things from

19 Sudafed to guns, tools, antiques and more. And all was

20 seen when -- when went there and was told everything was

21 hot and needed to sell. I saw the gun. It was a

22 12-gauge single shotgun, breakdown, older wood stock, not

23 too" -- can't read that word either --

24 Josh Burrell had the gun."

25 Q. Is that the end of the statement?

1 A. End of the statement.

2 Q. And did you put a big X so nobody could add anything
3 or take anything away from it?

4 A. Yes.

5 Q. Did he sign that as his statement and did you sign
6 as a witness?

7 A. Yes, I did.

8 Q. Is that statement still in the same condition as it
9 was when he wrote it and gave it to you?

10 A. Yes.

11 MR. WAGNER: Your Honor, at this time we would
12 ask to move State's Exhibit No. 4 into evidence.

13 THE COURT: Subject to prior ruling?

14 MR. DAY: Yes.

15 THE COURT: Admitted subject to prior ruling.

16 (WHEREUPON, State's Exhibit Number 4 was admitted
17 into evidence.)

18 BY MR. WAGNER:

19 Q. Now, did you believe what Joshua (sic) Finney had
20 told you?

21 A. No, I did not.

22 Q. Did you continue investigating?

23 A. Yes, I did.

24 Q. Were you able to link the airsoft rifle and the BB
25 gun to the defendant, Jonathan Finney?

1 A. Yes, I did.

2 Q. And did you confront him with that evidence on
3 August the 30th of 2013?

4 A. Yes, I did.

5 Q. Where did this occur?

6 A. That occurred at the law enforcement center
7 interview room.

8 Q. And who was present?

9 A. It was myself, the defendant, and Sergeant McMahan.

10 Q. When you confronted him with that, what did he say?
11 Is this -- let me back up.

12 Did you Mirandize him again prior to that
13 interaction on the 30th?

14 A. Yes, he was.

15 Q. I believe that was State's Exhibit 2. Were you
16 present when that was done, and did you sign that as a
17 witness?

18 A. Yes.

19 Q. Did you or anybody else in your presence ever
20 promise him anything or hold out any hope for reward or
21 make any threats or try to coerce him into talking to you
22 further about this burglary?

23 A. No, I did not.

24 Q. Did he agree to talk to you?

25 A. Yes, he did.

1 Q. What did he tell you?

2 A. After I explained to him that I linked those items
3 to him, he just spontaneously told us that he did it and
4 he would cooperate. Verbally he told us that Josh had
5 had the keys, that Josh went in, Josh had the gun, and
6 they drank the liquor. And he was a lookout, and he saw
7 the motorcycle, and the gun was taken off the bunk bed.

8 Q. Were you able to recover the shotgun? Were you able
9 to recover the shotgun?

10 A. No, never recovered it.

11 Q. Did you later talk to him again on the 4th of
12 September?

13 A. Yes.

14 Q. Why did you talk to him again on the 4th of
15 September?

16 A. Because during this interview on the 30th he agreed
17 to go ride around with us and show us the house that he
18 had broken into.

19 Q. And did y'all go up there and talk to him again?

20 A. We went and got him out on the 4th.

21 Q. Were you present when his rights were read to him,
22 again he was Mirandized by Sergeant McMahan?

23 A. Yes, I was present.

24 Q. To the best of your knowledge, did he freely and
25 voluntarily agree to talk to you and ride you around?

1 A. Yes.

2 Q. How did that happen? What did y'all do?

3 A. Once he was Mirandized, I was driving my patrol
4 truck. David McMahan was in the backseat, and Jonathan
5 was sitting beside me. I had got into the Ebenezer
6 community, got close. And he kept telling me, Proceed
7 down Ebenezer Road. Then he said, Take a right on this
8 road here, which was McMahan Road. He told me to go all
9 the way to the very end, which was the house that was
10 broken into, McMahan Road.

11 We got out of the vehicle and he pointed at the
12 house and he said, That's the house that we broke into.
13 That's when Sergeant McMahan took a picture of him
14 pointing at the residence.

15 Q. Did you ever find out where the shotgun went?

16 A. He had made a statement or he had told us he thinks
17 he may have known where it went. We left there and went
18 to a location in Liberty in Pickens, and he showed us a
19 roadway or saw it was a driveway. Couldn't see the
20 residence. He thought that the gun was down there. He
21 wasn't a hundred percent sure, but he was giving us
22 something to go on. Very cooperative.

23 Q. Okay. And at that point in time or within a few
24 days thereafter did you obtain warrants for him?

25 A. Yes, I did.

1 Q. What did you charge him with?

2 A. I charged him with burglary first and petty larceny.

3 Q. Was he arrested for those warrants at that time?

4 A. Yes, he was.

5 Q. Thank you.

6 MR. WAGNER: That's all the questions I have.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. DAY:

10 Q. So when did David tell you about his connection with
11 this property?

12 A. Sir?

13 Q. When did David McMahan tell you about his connection
14 with this particular piece of property?

15 A. I've known that for a long time.

16 Q. So --

17 A. Are you talking about the victim's house?

18 Q. Yes.

19 A. I've known that was his father's house for years.

20 Q. So at the time when you did this, you knew that he
21 had an interest in the property?

22 A. No, I didn't. I knew his daddy had grown up there.

23 Q. All right. And that this particular property, you
24 knew that it had been left to his sister?

25 A. Yes, I knew it was his sister's.

1 Q. And that Mr. McMahan had a right of first refusal to
2 purchase that property?

3 A. I did not know that.

4 Q. Y'all didn't discuss any of that?

5 A. No.

6 Q. Is it usual for an officer to be involved in a case
7 in which he has an interest in the property?

8 A. He didn't have an interest in that property. It
9 belonged to his sister.

10 Q. I'm sorry, do I not speak English? Let me try
11 again. Is it unusual for an officer to be involved in a
12 case in which the property involved in the crime he has
13 an interest in?

14 A. If an officer usually has an interest, you know, we
15 -- he can assist at some point. He can give information
16 to other officers.

17 Q. I understand that. But to be actively involved in
18 the investigation?

19 A. He can assist. Any officer can assist with a crime
20 that occurs in Oconee County.

21 Q. So you don't think that's unusual?

22 A. No.

23 Q. Okay. I can understand assist and give information.
24 Certainly would expect an officer to do that, but to be
25 actively involved in the investigation, interviewing

1 witnesses, tracking down, talking to the defendant,
2 interrogating the defendant, driving him around, all
3 that, that's not assisting. That's actually doing the
4 investigation, is it not?

5 A. Yes, it is.

6 Q. Okay. All right, sir. You did say that Mr. Finney
7 was cooperative with you?

8 A. Yes, he was.

9 Q. He didn't argue with you or protest, anything like
10 that?

11 A. No, sir.

12 Q. Okay. And when y'all were out riding around, you
13 said in doing this, it was you, David McMahan, and
14 Jonathan Finney; is that correct?

15 A. That's correct.

16 Q. When y'all were down there and had the picture
17 there, I think that Mr. McMahan stated -- if I can get it
18 here, get my fingers to work. I'm talking about State's
19 Exhibit 11, the picture. This is what I'm talking about.
20 Where were you when this picture was taken?

21 A. I was standing to the back.

22 Q. So you were over there with Mr. McMahan, where he
23 was taking the picture?

24 A. Yes.

25 Q. Okay. And Jonathan is looking straight ahead, and

1 y'all are back here to the right?

2 A. Yeah. We're standing back here, and I'm standing
3 near Sergeant McMahan.

4 Q. Okay. And he's not looking at y'all. He's looking
5 straight ahead, away from y'all, about a 90-degree angle
6 or so?

7 A. Yes.

8 Q. Okay.

9 MR. DAY: Just one second, if you would, your
10 Honor, please.

11 THE COURT: Yes, sir.

12 BY MR. DAY:

13 Q. I think we have already established it. I think
14 it's already been said, but you're the one that swore out
15 the warrants on Mr. Finney?

16 A. Yes.

17 Q. You went before the magistrate?

18 A. Yes, I did.

19 Q. And we determined that Amanda Tinsley went before
20 the grand jury; is that correct?

21 A. That's what I heard this morning.

22 Q. Yes?

23 A. I didn't know it until this morning.

24 Q. All right. And how much time did you spend with
25 Ms. Tinsley prior to her appearance before the grand

1 jury?

2 A. None whatsoever.

3 MR. DAY: Thank you, sir. I appreciate it.

4 THE COURT: Redirect?

5 MR. WAGNER: No, your Honor.

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

7 MR. WAGNER: Might I have a minute to check
8 things?

9 THE COURT: Sure.

10 MR. WAGNER: Your Honor, that's all the witnesses
11 we've got. We would rest.

12 THE COURT: State's case?

13 MR. WAGNER: Yes.

14 THE COURT: Madam Forelady, ladies and gentlemen
15 of the jury, the State has advised that's the
16 presentation of their case-in-chief. At this point I
17 have some administrative matters to take up, so I'm going
18 to send you back to your jury room. Lasts generally 15,
19 30 minutes. Just relax. If you need anything, let the
20 bailiff know and then we'll bring you back out here.

21 (WHEREUPON, the jury exited the courtroom
22 at 2:25 p.m.)

23 THE COURT: All right. Mr. Day, I assume that
24 you are renewing your motions made prior to trial?

25 MR. DAY: I am, your Honor.

1 THE COURT: And on Monday?

2 MR. DAY: And also to that, your Honor, asking
3 for a directed verdict upon grounds that the evidence
4 that's submitted does not support what was put in the
5 indictment; therefore, the indictment being incorrect,
6 that should be a directed verdict on the matter of
7 first-degree burglary in that regard and ask that case be
8 dismissed or -- well, we can't quash the indictment
9 now -- dismiss or a directed verdict made.

10 THE COURT: I will deny your motion. Again, same
11 as with the motion to quash. The indictment is a notice
12 document, and technical deviations or problems with the
13 indictment should not be sufficient to warrant a
14 dismissal or to quash or at this point a directed
15 verdict. The elements of burglary first are properly
16 alleged in this, in the indictment in this matter.
17 Further, under the *State vs. Evans* case, I gave you the
18 cite earlier --

19 MR. DAY: Yes, sir.

20 THE COURT: -- with regard to your argument of
21 dwelling, that case clearly says that vacation property,
22 although it's temporary in nature, is sufficient to
23 constitute a dwelling under the statute for burglary
24 first purposes, so I'll deny your motions on those
25 grounds as well. Okay, sir?

1 MR. DAY: Thank you, your Honor.

2 THE COURT: Anything further from the defense?

3 MR. DAY: No, sir. I need a few minutes with my
4 client, if I may.

5 THE COURT: May I talk to him first?

6 MR. DAY: Yes, sir. I understand.

7 THE COURT: Would you stand up, please, sir.
8 Would you raise your right hand.

9 Do you swear or affirm to tell the truth, the
10 whole truth, and nothing but the truth?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I need you to speak loud enough for
13 me to hear you.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. At this point, Mr. Finney, I
16 need to explain to you certain of your rights. If you do
17 not understand anything I say to you, I'll make sure that
18 you -- I explain it to you such that you do.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And in conjunction with your
21 attorney, we'll make sure you definitely understand what
22 I'm telling you now. Okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you want me to re-explain
25 something at any point during this process, stop me and

1 I'll be glad to do so. Okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, we've reached the stage in this
4 trial, Mr. Finney, where you may present your defense.
5 You have the right also to claim the protections that are
6 afforded to you by the Fifth Amendment to the United
7 States Constitution. Now, has your attorney explained to
8 you your Fifth Amendment rights at this point?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand them?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Let me go ahead and explain them
13 again just to make sure since we're on the record. Okay,
14 sir?

15 THE WITNESS: Yes, sir.

16 THE COURT: Under the Fifth Amendment to the
17 United States Constitution, it provides, in pertinent
18 part, as follows: No person shall be compelled in any
19 criminal case to be a witness against himself. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: What that means is no one in this
23 courtroom, no one in this state, no one in this country
24 can require that you come up here and take the stand and
25 testify in this matter. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. On the other hand, you have a
3 right to testify if you desire to testify. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Whatever decision you make
7 either not to take the stand or to take the stand, you
8 have a right to consult with people of your choice who
9 are reasonably available to you including your fine
10 attorney. However, ultimately the decision whether or
11 not to take the stand and testify or to invoke your
12 rights under the Fifth Amendment is a personal choice
13 that only you and you alone can make. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay, sir. If you decide that you
17 will testify in this matter, you will be subject to the
18 same rules that apply to other witnesses as well. You
19 will be subject to direct examination by your attorney.
20 You will also be subject to cross-examination by the
21 State's attorney. If you have a prior criminal record
22 either by a finding of guilt or a guilty plea and the
23 charge involves dishonesty or a crime from which a
24 punishment -- you may be punished for more than a year
25 and I find that the probative value of those prior

1 convictions or conviction outweighs the prejudice to
2 you --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- then the State will be allowed to
5 cross-examine you about your prior criminal record. Do
6 you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The obvious purpose would be to
9 impeach your credibility as a witness in this case. Do
10 you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, if you decide that you want to
13 testify, you must make that decision freely and
14 voluntarily and understanding the consequences of your
15 decision to testify. Also, you must make it with the
16 understanding of the protections that are afforded to you
17 by the Fifth Amendment to the Constitution of the United
18 States. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, if you decide you -- if you do
21 not want to testify, and when I charge the jury on the
22 law, I will instruct the jury that they shall not
23 consider, discuss, or in any way consider the fact that
24 you did not testify because, as I told them at the
25 beginning of the case and I'll tell them later, that you

1 don't have an obligation to disprove your guilt. You
2 don't have to do anything. The burden rests entirely on
3 the State of South Carolina to prove each and every
4 element of the charges against you by proof beyond a
5 reasonable doubt. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand everything that
8 I've explained to you thus far?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions of me?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you have any questions of your
13 attorney? I'm sure you do. Mr. Day asked to have a few
14 minutes with you. I'm going to give that to you now.

15 I assume you will let me know in just a few
16 minutes.

17 MR. DAY: Yes.

18 THE COURT: We'll be in recess for -- just send
19 word back to my chambers when you have had a reasonable
20 amount of time. Thank you.

21 We're in recess.

22 (WHEREUPON, recess taken from 2:31 p.m.
23 to 2:59 p.m.)

24 THE COURT: All right. Mr. Wagner, is the State
25 ready to proceed?

1 MR. WAGNER: Yes, sir.

2 THE COURT: Mr. Day, defense ready?

3 MR. DAY: Yes, your Honor.

4 At this time the defense rests.

5 THE COURT: Okay. Very good.

6 Mr. Finney?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Your attorney advises that the
9 defense rests, meaning you do not intend to testify in
10 this case. Is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you made that decision freely
13 and voluntarily?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand the
16 ramifications of your decision to testify and your rights
17 or consequences if you don't testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you made this decision of your
20 own free will?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Anybody force, threaten, or promise
23 you anything to get you to exercise your rights under the
24 Fifth Amendment?

25 THE DEFENDANT: No, sir.

1 THE COURT: Very good. Thank you.

2 THE DEFENDANT: Thank you.

3 THE COURT: I'm going to have you tell me that
4 again when the jury is present, if you don't mind.

5 MR. DAY: Yes, your Honor.

6 THE COURT: Would you bring the jury in, please.

7 (WHEREUPON, the jury came into open court at
8 approximately 3:01 p.m.)

9 THE COURT: All right.

10 Mr. Day, are you ready to proceed?

11 MR. DAY: Yes, your Honor. The defense rests,
12 your Honor.

13 THE COURT: Thank you very much.

14 All right. Ladies and gentlemen of the jury, if
15 you recall, at the beginning of this case I told you
16 there are five phases in every trial. You have the
17 opening statements by the attorneys, and you had the
18 presentation of evidence in this case.

19 Now, the defense advises that it rests, which
20 means they're not going to go forward with any testimony.
21 All the testimonial aspect of the case has been presented
22 to you at this point. What we have to do next is go over
23 with the attorneys and make sure that I have the law
24 that's correct to charge you in this matter.

25 My rule of thumb as a trial judge is I do not

1 give a case to a jury after 4:00 p.m. if I could possibly
2 help it, and today I can. I want you -- so, therefore,
3 I'm going to dismiss you for the afternoon. I'm going to
4 bring you back in the morning.

5 Which suits you more, Madam Forelady, 9:00 or
6 9:30?

7 THE FORELADY: 9:30.

8 THE COURT: I'm going to ask that each and every
9 one of you be back in the jury room at or before 9:30. I
10 will remind you that you still may not discuss this case
11 amongst yourselves, still may not discuss this case with
12 anybody else. You may not go out to any scene or
13 property you have heard about in this case. You may not
14 read about it, hear about it, or look at anything about
15 this case. Okay?

16 That being said, I'll see you in the morning at
17 9:30, and we'll have closing argument and charge the law
18 at that time. Thank you.

19 (WHEREUPON, the jury exited the courtroom
20 at 3:03 p.m.)

21 THE COURT: All right. Any additions or
22 exceptions from the State?

23 MR. WAGNER: No, sir.

24 THE COURT: From the defense?

25 MR. DAY: None, your Honor.

1 THE COURT: All right. Have you had an
2 opportunity to look at the proposed charge that my clerk
3 gave to you?

4 MR. DAY: Yes.

5 THE COURT: Any objections to the charge? I know
6 that there was mentioned in my chambers, and I discussed
7 the issue about a BB gun. And my feeling was in this
8 case that a BB gun is not a deadly weapon unless there's
9 some type of evidence that it was used as a deadly
10 weapon. In this case there's absolutely zero evidence
11 that it was used as a deadly weapon, so I strike that
12 from the charge. And I note your objection to that,
13 Mr. Wagner.

14 Other than that, any objections to the charge?

15 MR. DAY: Your Honor, I'd like to hold back on
16 that, if I may. I want to review it a little more. But
17 what I would do is I would send an e-mail to you over the
18 evening.

19 THE COURT: You don't have to. I'm going to let
20 you make any objections now and I'll let you -- it will
21 be without prejudice to you until I begin the charge to
22 the jury tomorrow.

23 MR. DAY: All right.

24 THE COURT: Fair enough? Same thing with
25 Mr. Wagner. In other words, I'll give both of you the

1 same rights.

2 MR. DAY: The only other thing I would have, your
3 Honor, is put on the record that I would ask the Court to
4 consider a lesser charge, lesser-degree charge in the
5 case to present to the jury, either a second or a third
6 burglary -- third-degree burglary, I should say, in this
7 regard because of the evidence that was presented.

8 THE COURT: All right. And you know the law
9 requires that I charge on the evidence presented as long
10 as it's requested. In this case, the only evidence
11 presented in this case was that there was a dwelling
12 house that was entered into by the defendant or with
13 defendant being the one being involved. There's no
14 evidence of a burglary second which would -- in other
15 words, looking at the elements -- excuse me for just a
16 minute. I'm trying to read this and speak at the same
17 time.

18 There's no elements under burglary second or
19 burglary third that was presented into evidence here. I
20 know your position on that because this is a vacation
21 home that, number one, it's not a dwelling under the
22 statute. And the case *State vs. Evans* says it is.
23 Number two, the ownership issue makes it not a dwelling
24 either, or that the indictments are valid. I just don't
25 find that there's any testimony in the record that would

1 show an element of burglary second or third.

2 Now I'll be glad to listen to you if you can
3 point it out to me, I'll consider it. And I'll wait
4 until tomorrow if you would rather do that. You can
5 point those out to me.

6 MR. DAY: Yes, I may do that. And I would be
7 able to straight and succinctly tell you why I think it
8 is rather than hold up the jury, yes.

9 THE COURT: All right. That would be good.
10 Let's just do that.

11 Any other matters -- my rulings right now on my
12 charge are without prejudice to the State or defense. I
13 did change the verdict form just to provide "Juror
14 No. 65" as the Foreperson. Since that's going to be a
15 public record, I prefer that instead of names. Other
16 than that, any objection to the verdict form?

17 MR. DAY: No, sir.

18 MR. WAGNER: No, sir.

19 THE COURT: Okay. Finally, for your
20 consideration -- don't have to make a call. I always
21 give the attorneys the option if you want me to charge on
22 the law before you give your closing statements. Some
23 people prefer that I do that, some people prefer not to.
24 So if you are unanimous in your willingness for me to
25 charge first, I'll do that. If you're not, then we'll do

1 it the old-fashioned way.

2 MR. DAY: All right, sir.

3 THE COURT: Y'all let me know. And if you have
4 any proposed charges for me to look at, bring them to me
5 tomorrow in writing for me to look at.

6 Anything else for the State before we recess for
7 the afternoon?

8 MR. WAGNER: No, sir.

9 THE COURT: From the defense?

10 MR. DAY: No, your Honor.

11 THE COURT: Very good. Thank you, Gentlemen.

12 Let me just say this to the attorneys. When I
13 came here this morning or Monday and I saw there was 12
14 witnesses on the list, I never believed we would be
15 through with this case Friday afternoon, much less be in
16 the posture that we are in now. You tried your case.
17 You were prepared, and you did not belabor points and
18 repeat things as is often the case, as we all know. So I
19 want to thank you for being prepared, ready, and
20 professional. That being said, see y'all in the morning.

21 (WHEREUPON, proceedings adjourned at 3:08 p.m.)

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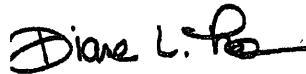
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate, and complete transcript of record of a portion
of the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal, in the
Circuit Court for Oconee County, South Carolina, on the
29th day of May 2014.

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

August 12, 2014



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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

3

4 The State of South Carolina,)
5 Plaintiff,) 2013-GS-37-00115 &
6 -vs-) 2013-GS-37-00118
7 Jonathan Allen Finney,) May 30, 2014
8 Defendant.) Volume 3 of 3
9) Pages 260 - 328
) Transcript of Record
)

10

11

B E F O R E:

12

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

15

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

16 David R. Wagner, Jr., Esquire
17 Attorney for the State

18

19 R. Daniel Day, Jr., Esquire
20 Attorney for Defendant

21

22

23

24 Diane L. Thommes, RPR, CRR
25 Circuit Court Reporter

26

27

28

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:37 a.m.)

4 THE COURT: Good morning, Gentlemen. How you
5 doing? I understand that you want me to go ahead and
6 charge first; is that correct, Mr. Wagner?

7 MR. WAGNER: Your Honor, I kind of like it that
8 way. That would be my preference.

9 THE COURT: Mr. Day?

10 MR. DAY: Fine with me, yes.

11 THE COURT: I got your proposed charge. I've got
12 that included substantially in my charge, so I'm not
13 going to charge that. I'm going to make it a court
14 exhibit, however, in the event I'm incorrect. Okay?

15 MR. DAY: I understand.

16 THE COURT: I didn't share with you my basic
17 charge that I give. I'm glad for you to look at it.

18 MR. WAGNER: Your basic is fine. I'm just
19 looking through what Callie gave us last night. I
20 figured all that stuff was in your general stuff, just
21 wasn't attached to it.

22 THE COURT: I shamelessly plagiarize Judge Hill's
23 charge, basic structure. I have it in three parts. The
24 first part discusses the duties. Define and control the
25 jurors' duties. Second part would be on the substantive

1 law in that I have burglary first, petit larceny,
2 statement of the defendant. And then hand of one is hand
3 of all. Last part would be some considerations about
4 their deliberations. But I'm more than glad to go over
5 it with you on the record or let ya'll look at it, either
6 way.

7 MR. WAGNER: No, sir.

8 MR. DAY: Just for the record, as soon as you
9 said that, I know why I had written a note down here
10 about that. The hand of one is the hand of all, your
11 Honor, I'm going to have to object to that because he is
12 not charged as being one of someone who broke in or a
13 codefendant or he with someone else committed this crime.

14 Apparently, only thing I can figure out from
15 going back over my notes is they're basing that on the
16 fact that they took a statement from the defendant which
17 he said somebody else should be implicated in it and then
18 testified they didn't believe him anyway. For that
19 reason, your Honor, I think that hand of one hand of all
20 would not apply in this case since there's been no
21 testimony other than that statement that they said the
22 defendant made that someone else was involved. They
23 presented no testimony whatsoever that anyone else was
24 there, involved in any way that I can find. And I would
25 submit, your Honor, actually it was not a charge that

1 would stand in this case.

2 THE COURT: Mr. Wagner, what's your position?

3 MR. WAGNER: Your Honor, I think they said they
4 didn't believe his written statement that this other guy
5 did the whole thing. I think they believed he was
6 involved was their testimony, what they meant. However,
7 the statements that he did give the police basically
8 said, I was there with this other guy. I was the
9 lookout. He implicated himself along with this other guy
10 who apparently was around that time frame, at least
11 around, hanging out around with him, although this
12 defendant was the one that was in possession of the stuff
13 that was stolen out of it that can be linked to him. The
14 other guy was never linked to any of it, nor linked to
15 being there. But by his own statement he put himself
16 there, actively participating with another person in the
17 crime of burglary first with petty larceny.

18 THE COURT: I think it's right. I think hand of
19 one hand of all is the appropriate charge. I know that
20 I'm not being favorable to you, but I note your objection
21 to my ruling on that. I think it is appropriate based on
22 the statement that he was the lookout while the other guy
23 went in.

24 MR. DAY: All right, sir.

25 THE COURT: All right. Anything further from the

1 State?

2 MR. WAGNER: No, sir.

3 THE COURT: From the defense?

4 MR. DAY: Excuse me, sir?

5 THE COURT: Anything further?

6 MR. DAY: No. No, sir. Thank you.

7 THE COURT: Okay. Would you bring the jury in,
8 please, sir.

9 THE BAILIFF: Yes, sir.

10 (WHEREUPON, the jury came into open court at
11 approximately 9:42 a.m.)

12 THE COURT: Good morning. Ladies and gentlemen,
13 we have concluded the testimonial part of the trial. I
14 told you that there's five phases. The third phase would
15 be closing arguments by the attorneys, then I would
16 charge you on the law. By agreement I'm going to go
17 ahead and charge you on the law first, then the attorneys
18 will give you their closing statements. We'll have a
19 brief conference after my charge before they do that,
20 then we'll again have a brief conference before you begin
21 your deliberations. Okay? Just to let you know where we
22 are.

23 Let me forewarn you that I'm not intelligent
24 enough to go over all of this by memory, so some of this
25 will be read. I apologize, but the point is it's very

1 important, the issues involved and points of law, so I
2 would rather be cautious than not.

3 That being said, ladies and gentlemen, it is my
4 duty as the trial judge to instruct you on the law that
5 you must apply to this case.

6 Can each of you hear me okay?

7 I'm going to give you this charge in three
8 sections. The first section will be the general rules
9 that define and control your duties as jurors. The
10 second will be the substantive law that applies in this
11 case. In other words, what the State has to prove in
12 order to make out its case against the defendant. And
13 the third will be some considerations about your
14 deliberations. Then after the charge, I will go over the
15 verdict form with you, Madam Forelady, for your execution
16 when the jury reaches a verdict.

17 Now, as I've told you at the beginning of this
18 case, you are the judges of the facts, and it's your duty
19 to find the facts from the testimony and the evidence
20 that you have heard here in this courtroom during the
21 trial of this case. You must and you shall apply to
22 those facts, as you find them to be, the law as I give it
23 to you now. You may not and you shall not be concerned
24 with what you would like the law to be or what you wish
25 it would be.

1 Also you shall not and must not be influenced by
2 any personal likes or dislikes, opinions, prejudice, or
3 undue sympathy that you may have for one side or the
4 other. In other words, you have no friends to reward and
5 no enemies to punish. What that simply means in plain
6 common sense is that you must decide this case solely on
7 the evidence before you that's been presented here in
8 this courtroom and according to the law as I give it to
9 you now. If you recall, at the beginning of this case
10 when you took your oath, you agreed to do just that.

11 In following these instructions, ladies and
12 gentlemen, you must follow all of them. You can't pick
13 out certain aspects of my instructions to you and apply
14 those that you like and disregard other aspects you may
15 dislike. They're all equally important. Also, if I have
16 said or done anything throughout this trial that
17 indicates to you how you are to find the facts, in other
18 words, what verdict you are to reach, I'm going to ask
19 you and also instruct you to disregard that. Again, our
20 state Constitution does not allow any trial judge to have
21 an opinion on the facts nor make any comments on the
22 facts. So if I've done anything to indicate otherwise,
23 you are to disregard that. And I'll remind you that you
24 and you alone are the judges of what the facts are in
25 this case, and you will determine what those facts are by

1 evaluating and weighing the evidence that you heard
2 during this trial.

3 Now, there's no way that I can give you a set of
4 scales for you to weigh the evidence. It is entirely a
5 mental process that you use by using your good common
6 sense and your sound judgment. Now, the type of evidence
7 that is involved in front of in this case is the
8 following: You have sworn testimony from witnesses,
9 whether it be on direct examination or cross-examination.
10 Also there are exhibits that have been allowed into this
11 case. That is the only true evidence that you may
12 consider in this case.

13 So that leads me to what is not evidence. I
14 remind you that what these attorneys have told you
15 throughout this trial or will tell you in just a minute
16 is important and it's designed to help you, but it is not
17 evidence. They have not been sworn. They have not been
18 subject to cross-examination. So, therefore, when you
19 begin your deliberations at the end of this case when
20 you're instructed to do so, if your memory of what the
21 facts are differs from what you're told by either or both
22 of these attorneys, then your memory will control. Also,
23 I'll remind you that because something may appear in a
24 juror's notes does not mean it trumps another juror's
25 memory.

1 Madam Forelady, that's why they call them
2 deliberations, and you'll just need to hash out those
3 differences to come up with what the finding should be.

4 Also, ladies and gentlemen, questions and
5 objections by lawyers is not evidence. It's designed to
6 enlighten you about the case, but it's not evidence.
7 Also objections occur in every case. And that is simply
8 the process that goes on in every single trial that comes
9 before this Court.

10 The fact that there was an objection and the fact
11 that I let you stay in here and listen to my ruling on it
12 is not proper for your considerations during your
13 deliberations.

14 And, Ms. Forelady, it will be your job to make
15 sure that that is not engaged in.

16 Also, anything that you may have heard when court
17 is not in session is not evidence. Bottom line is what
18 you heard from this witness stand and what is presented
19 as exhibits in this case is the only evidence that you
20 may consider. And to follow up with that, after the
21 testimony is closed, that is the end of the testimony,
22 and there will be no more supplement of the record, so
23 you must decide the case on the evidence before you at
24 this point.

25 In South Carolina, we recognize two types of

1 evidence. The first type of evidence is direct evidence,
2 and the other is circumstantial evidence. And,
3 generally, both types of evidence are presented in any
4 given case. Direct evidence is this: It directly proves
5 the existence of a fact and does not require deduction.
6 In other words, if I was standing on a street corner, and
7 the issue is whether or not a car ran a red light, and I
8 said, I saw this yellow car run a red light, that's
9 direct evidence. It doesn't require an inference.

10 Circumstantial evidence, on the other hand, is
11 proof of a chain of facts and circumstances indicating
12 the existence of a fact. If that doesn't confuse you,
13 let me give you an example. If each of you were to go to
14 bed at night and have a fresh sheet of snow in your front
15 yard, if you were to wake up in the morning and there
16 were tracks in that snow, you may reasonably infer that
17 someone or something walked through your yard although
18 you did not see it.

19 Now, the inference you draw from circumstantial
20 evidence may not be surmise or conjecture or speculation.
21 Now, I'll tell you that South Carolina crimes may be
22 proven by both circumstantial evidence and direct
23 evidence. The law makes no distinction between the
24 weight or the value to be given to either direct or
25 circumstantial evidence. However, to the extent that the

1 State relies on circumstantial evidence, all of the
2 circumstances must be consistent with each other, and
3 when taken together, point conclusively to the guilt of
4 the accused beyond a reasonable doubt.

5 If these circumstances merely portray the
6 defendant's behavior as suspicious, that proof has
7 failed. The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt. This burden
9 rests with the State regardless of whether the State
10 relies on direct evidence, circumstantial evidence, or
11 some combination of the two.

12 Now, in deciding what the facts are in this case,
13 you must decide which testimony that you wish to believe
14 and which testimony you wish not to believe. You have a
15 right to disbelieve all or part of any witness'
16 testimony. You have a right to believe all of a witness'
17 testimony. In making this determination of the
18 credibility of the witnesses, you may take into account
19 some of the following factors.

20 Number one, you may ask yourselves, Was the
21 witness able to see or hear or know about the things they
22 testified about? How well was the witness able to recall
23 and describe the things that was the subject of their
24 testimony? What was the witness' manner while they were
25 testifying? In other words, what was their demeanor

1 while they were on the stand?

2 You may ask yourself, Is there some reason that a
3 witness would want to give testimony that would help or
4 hurt one side or the other? Did they have an interest in
5 the outcome of this case or any bias or prejudice
6 concerning any party or matter involving this case? Also
7 you can consider how reasonable was the witness'
8 testimony considered in light of all the testimony in
9 this case and whether that witness' testimony was
10 contradicted by what that witness had said or done at
11 another time -- excuse me -- by the testimony of other
12 witnesses or by the other evidence in this case.

13 Ladies and gentlemen, those are just some but
14 certainly not all the factors that you may consider in
15 making this determination of the credibility of the
16 testimony before you. And, of course, when you're sworn
17 in as jurors, you do not check your common sense at the
18 door. You should use those things in your day-to-day
19 lives that you find indicative of truthfulness and
20 indicative of lack of truthfulness when you make this
21 determination of credibility of the witnesses.

22 You have a right to believe as much or as little
23 of any witness that you want to. You can believe one
24 over many or many over one. But certainly what you do
25 not do is add up the number of witnesses that may have

1 appeared on behalf of a party in this case in making that
2 determination because it does not matter for you where
3 the truth comes from, but I remind you that your sole
4 goal in this case is to try to find the truth from the
5 evidence presented to you in this case.

6 I also remind you, ladies and gentlemen, that the
7 fact that this defendant has been charged, arrested and
8 indicted is not evidence of his guilt. It does not raise
9 an inference of his guilt nor a presumption of his guilt.
10 These documents are simply the charging mechanism by
11 which the State of South Carolina brings a defendant such
12 as Mr. Finney for a trial and a determination by a jury
13 after a trial of guilt or innocence.

14 Also I will remind you, Madam Forelady, that each
15 of these two indictments stands alone. You must make
16 your decision as to guilt or innocence on each indictment
17 unaffected by your decision as to the other indictment.
18 You have a right to find the defendant guilty on both,
19 innocent of both, or a combination of those two. Okay?

20 In this case the defendant has said, I am not
21 guilty to either of the charges pending against me.
22 Therefore, that puts the burden on the State of South
23 Carolina to prove his guilt. I'll tell you that a person
24 in South Carolina is never required to prove himself
25 innocent when he's been charged of any crime. I charge

1 you that it is an important rule of law that a defendant
2 in a criminal trial, no matter how serious the charges
3 may be, will always be presumed innocent of the crime for
4 which the indictment has been issued unless guilt has
5 been proven by evidence satisfying you of guilt beyond a
6 reasonable doubt.

7 Now, this presumption of innocence, ladies and
8 gentlemen, does not end when you begin your
9 deliberations, but it accompanies the defendant
10 throughout the trial until you, the jury, reach a
11 unanimous verdict of guilt based on evidence satisfying
12 you of guilt beyond a reasonable doubt.

13 In the vernacular of the law, it is said the
14 presumption of innocence is like a robe of righteousness
15 that remains on the defendant's shoulders until it has
16 been stripped by evidence satisfying you of guilt beyond
17 a reasonable doubt. I'll also tell you that presumption
18 of innocence is not a mere legal theory. It's not just a
19 legal phrase, but it is a substantial fundamental right
20 which every defendant is entitled to unless you, the
21 jury, are satisfied based on the evidence of guilt beyond
22 a reasonable doubt.

23 So that leads me to a definition of reasonable
24 doubt. A reasonable doubt is the kind of doubt that
25 would cause a reasonable, sincere, honest, and

1 conscientious person to hesitate to act in an important
2 matter in their own affairs. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 defendant's guilt.

5 Now, ladies and gentlemen, there are very few
6 things in this world that we know with absolute
7 certainty, and in criminal cases the law does not require
8 proof that overcomes every possible doubt. If, based on
9 your consideration of the evidence, you are firmly
10 convinced that the defendant is guilty of the crime
11 charged, you must find the defendant guilty. If, on the
12 other hand, you think there is a real possibility that
13 the defendant is not guilty, you must give the defendant
14 the benefit of the doubt and find him not guilty.

15 A reasonable doubt may arise from the evidence or
16 from the lack of evidence. And I will further instruct
17 you that a defendant is entitled to every reasonable
18 doubt that may arise in a case. Now, what that simply
19 means, ladies and gentlemen, that if upon any issue of
20 fact essential to a conviction and a verdict of guilty of
21 the offense or offenses charged, if you have any
22 reasonable doubt as to how that issue should be resolved,
23 it is your duty to resolve that doubt in favor of the
24 defendant.

25 Now, in order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for a particular
3 crime may be purpose, intent, knowledge, recklessness or
4 criminal negligence. Criminal intent must be proven by
5 the State beyond a reasonable doubt. Criminal intent is
6 always a matter that must be determined by the jury based
7 on the circumstances surrounding the situation.

8 Now, there's no way to prove intent to a
9 mathematical certainty, and there's no way that medical
10 science can dissect a person's brain to determine what
11 they had in mind, so the law says that criminal intent
12 may be inferred from the circumstances shown to have
13 existed. And that is how you make a determination of
14 whether or not the element requiring intent is present.
15 It is not necessary to establish intent by direct and
16 positive evidence, but intent may be established by
17 inference in the same way as any other fact, by taking
18 into consideration the acts of the parties and all the
19 facts and circumstances of the case.

20 Criminal intent, ladies and gentlemen, is a
21 mental state, a conscious wrongdoing. It will be up to
22 you to determine what the defendant intended to do based
23 on the circumstances shown to have existed. Criminal
24 intent, ladies and gentlemen, can arise from an action or
25 a failure to act. It may arise from negligence,

1 recklessness, or indifference to a duty or to the
2 consequences that is considered by law to be the
3 equivalent of criminal intent.

4 As I've told you at the beginning of this case,
5 ladies and gentlemen, the defendant has absolutely no
6 duty whatsoever to prove his innocence. The burden
7 remains always on the State of South Carolina to prove
8 his guilt by establishing each and every element of the
9 charges against him by proof beyond a reasonable doubt.
10 And I'll instruct you now that during your deliberations
11 you may not and you shall not consider the failure of
12 this defendant to testify in this case in reaching your
13 decision. That is his absolute constitutional right.

14 And, Madam Forelady, it will be your job to make
15 sure there is no discussion along those lines.

16 Now, ladies and gentlemen, those are the general
17 rules that define and control your duties as jurors. I'm
18 next going to give you the substantive law in this case.
19 The first will be the law of first-degree burglary.

20 The defendant is charged with first-degree
21 burglary. The State must prove beyond a reasonable doubt
22 that the defendant entered a dwelling without consent. A
23 dwelling is any building or portion of a building in
24 which a person ordinarily sleeps. A building constructed
25 as a dwelling that has never been occupied cannot be

1 considered a dwelling for purposes of burglary, but a
2 building is a dwelling even if the residents are
3 temporarily absent from the building.

4 In order to prove that the defendant entered the
5 dwelling, the State does not have to show that the
6 defendant's entire body entered the dwelling. The
7 smallest entry is sufficient. It may be any part of the
8 body such as a hand or foot or an instrument such as a
9 hook or other instrument. In addition, the State does
10 not have to prove that force was used to gain entry. If
11 a person enters a building by using deception, artifice,
12 trick, or misrepresentation to get consent to enter, this
13 is entry without consent.

14 Next, the State must prove beyond a reasonable
15 doubt that the defendant intended to commit a crime,
16 either a felony or a misdemeanor, at the time of the
17 entry. The mere entry into a dwelling without consent is
18 not burglary. If the intent to commit a crime is formed
19 after the entry, it is not burglary. On the other hand,
20 if the defendant intended to commit a crime at the time
21 of entry, it is a burglary even if the intent was
22 abandoned after the entry. It does not matter that the
23 intended crime was not completed. Intent may be shown by
24 acts and conduct of the defendant and other circumstances
25 from which you may naturally and reasonably infer intent.

1 Finally, the State must prove beyond a reasonable
2 doubt that with entering, while in the dwelling or when
3 fleeing, the defendant or an accomplice was armed with a
4 deadly weapon or explosive. A deadly weapon is any
5 article, instrument, or substance which is likely to
6 cause death or great bodily harm. Whether an instrument
7 has been used as a deadly weapon depends on the facts and
8 circumstances of each case.

9 The following are examples of instruments which
10 may be deadly weapons: A pistol, a shotgun, and a rifle.
11 A gun may be a deadly weapon even if it is not operating.
12 That is the law on burglary first.

13 Next is the law of petty or petit larceny. In
14 this case the defendant has been charged with petit
15 larceny. The State must prove beyond a reasonable doubt
16 that the defendant took and carried away the property of
17 another against the will or without the consent of the
18 other person.

19 The slightest removal of the property or the
20 complete possession of the property even for an instant
21 by the defendant is enough to show a taking and carrying
22 away of the property. The State must also prove beyond a
23 reasonable doubt that the defendant intended to
24 permanently deprive the owner of the property. And,
25 finally, the State must prove that the value of the thing

1 taken was \$2,000 or less.

2 Ladies and gentlemen, a statement alleged to have
3 been made by the defendant has been admitted into
4 evidence in this case. While the Court has determined
5 that the statement is admissible, I instruct you that you
6 make the ultimate decision of whether or not the
7 defendant made the statement. If the defendant did make
8 the statement, you must determine whether the statement
9 was made by the defendant voluntarily and of his own free
10 will. This means that the statement was not caused by
11 pressure, force, fear, threats, coercion, or
12 intimidation, or by hope or a promise of leniency or
13 reward of any kind.

14 In determining whether the statement was
15 voluntary, you should consider both the characteristics
16 of the defendant and the details of the questioning.
17 Some of the factors you must consider are: The age of
18 the defendant, the defendant's education or lack of
19 education, the defendant's mental ability or capacity,
20 the defendant's I.Q. or intelligence, the defendant's
21 background and environment, the place and length of
22 detention, the nature of the questioning, and the advice
23 or lack thereof to the defendant of his constitutional
24 rights including but not limited to the right to remain
25 silent, that any statement could be used against him in a

1 court of law, the right to have a lawyer present, that if
2 he could not afford a lawyer, a lawyer would be appointed
3 to represent him without any cost, and that he could stop
4 making a statement at any time.

5 You must carefully consider all of the
6 surrounding circumstances before you give any weight to
7 an alleged statement. The State has the burden of
8 proving beyond a reasonable doubt that the alleged
9 statement was voluntary. If you determine it was, you
10 may give the statement any further consideration you deem
11 proper. You must decide what weight, if any, should be
12 given to the alleged statement. If you determine the
13 alleged statement was not the free and voluntary
14 statement of the defendant, you should not consider the
15 statement at all.

16 Now, ladies and gentlemen, in South Carolina, if
17 a crime is committed by two or more people who are acting
18 together and committing a crime, the act of one is the
19 act of all. A person who joins with another to commit an
20 unlawful act is criminally responsible for everything
21 done by the other person which happens as a probable or
22 natural consequence of the acts done in carrying out the
23 common plan and purpose.

24 For example, two people can be guilty of killing
25 another person when only one of the two had a gun, there

1 was only one bullet, and only one of the two fired the
2 shot that caused the death. If two or more people are
3 together, acting together, assisting each other in
4 committing the offense, the act of one is the act of all;
5 or as it is sometimes said, the hand of one is the hand
6 of all.

7 Prior knowledge that a crime is going to be
8 committed without more is not sufficient to make a person
9 guilty of that crime. Mere knowledge that another person
10 is going to commit a crime, even if the defendant is
11 present when the crime is committed, is not sufficient to
12 convict the defendant as a principal. Guilt as a
13 principal is shown by actual or constructive presence at
14 the scene as a result of a prior arrangement.

15 Therefore, a finding of a prior arranged plan or
16 scheme is necessary for a finding of guilt as a
17 principal. The State must prove beyond a reasonable
18 doubt by competent evidence the theory of the hand of one
19 is the hand of all. A principal in a crime is one who
20 either actually commits the crime or who was present,
21 aiding, abetting, or assisting in committing the crime.

22 When a person does an act in the presence of and
23 with the assistance of another, the act is done by both.
24 Where two or more acting with a common plan or intent are
25 present at the commission of a crime, it does not matter

1 who actually commits the crime. All are guilty. The
2 hand of one is the hand of all.

3 "Present at the commission of a crime" needs to
4 be sufficiently near to aid and abet and assist in the
5 commission of the crime. However, mere presence at the
6 scene of a crime is not sufficient to convict one as a
7 principal on the theory of aiding and abetting.

8 Intent is also a necessary element, or there must
9 have been a common design or intent to commit the crime,
10 and the crime must have been committed pursuant thereto
11 with the person aiding and abetting by some overt act.
12 Intent means intending the result which actually occurs,
13 not accidentally or involuntarily.

14 Intent may be shown by acts and conduct of the
15 defendant and other circumstances from which you may
16 naturally and reasonably infer intent. The State must
17 prove these elements -- excuse me. The State must prove
18 these elements beyond a reasonable doubt.

19 Now, ladies and gentlemen, that is the
20 substantive law which applies in this case. I will tell
21 you that I do not send charges back to the jury, but,
22 Madam Forelady, if at any time the jury needs me to give
23 them a further explanation of the law, just let us know
24 by following the procedure, writing the question down or
25 the request down and giving it to the bailiff. Okay?

1 Now, finally, that leads me to some
2 considerations of your deliberations. Number one, I
3 point out to you that you don't serve as jurors to be
4 partisans or advocates for one side or the other. You
5 were chosen by both sides because each side believed you
6 could be fair and impartial and decide this case based
7 solely on the evidence presented here in this courtroom
8 without any bias or prejudice towards either side.

9 That means that you are, when you begin your
10 deliberations, to use your experiences in life, your
11 common sense and your sense of logic and reason in
12 reaching the facts as you find them to be and according
13 to the law as I give it to you.

14 Deliberation is defined as this: It is a careful
15 consideration, weighed up with a view to a decision.
16 Now, regardless of what you may think about the system, I
17 would submit to you that the genius of our jury system is
18 that it allows 12 men and women such as yourselves who
19 come from different backgrounds, who have different life
20 experiences and perspectives, to listen to the evidence
21 presented in the case, to listen to the law as I give it
22 to you now. You go back and talk about that and
23 ultimately reach a verdict. We call them deliberations
24 for a reason. You are to consider all of the evidence
25 carefully, courteously, deliberately and discuss it with

1 each other in a calm and reasonable manner.

2 Again, you're not partisans or advocates for one
3 side or the other. You are the judges of the facts. And
4 your sole interest in this case is to find the truth
5 based on the evidence that has been presented here in
6 this courtroom. I'm going to ask you and also instruct
7 you that you are to listen to your fellow jurors,
8 consider their points and their points of view, talk to
9 and walk through the evidence thoroughly and
10 deliberately. And if you're doing something, you should
11 not be in a hurry, and I'll instruct you not to be in one
12 today.

13 I'll also tell you that this is each side's only
14 day in court. They do not get a second bite at the
15 apple. So this case is extremely important to the State
16 and extremely important to this defendant. In order for
17 your verdict to stand, it has to be unanimous. With that
18 being said, however, each of you must decide this case
19 for yourselves, but you should do so only after you have
20 impartially considered all the evidence, you have
21 discussed it thoroughly with the other jurors, listened
22 to their points and points of view. Don't be afraid to
23 change your opinion if you think discussion persuades you
24 to do so. On the other hand, do not come to a decision
25 simply because your fellow jurors think it's the right

1 thing to do.

2 With that being said, ladies and gentlemen, that
3 concludes my instructions on the law. After the
4 attorneys give you their closing argument, I'll go over
5 the verdict form with you, Madam Forelady. But for right
6 now I'm going to ask you to step back to your jury room
7 to have a conference with these attorneys to determine
8 whether I stated something wrong or need to add something
9 to it. We'll bring you back shortly.

10 (WHEREUPON, the jury exited the courtroom
11 at 10:11 a.m.)

12 THE COURT: Mr. Day, do you renew your prior
13 objections to the charge?

14 MR. DAY: I do, your Honor.

15 THE COURT: Any additional objections, exceptions
16 or omissions?

17 MR. DAY: No, your Honor. I think those are the
18 ones I want.

19 THE COURT: Thank you, sir.

20 Mr. Wagner?

21 MR. WAGNER: Nothing from us.

22 THE COURT: Did y'all want a minute before you do
23 your closing?

24 MR. WAGNER: Restroom, yeah.

25 THE COURT: Let's take about five minutes.

1 (WHEREUPON, recess taken from 10:12 a.m.
2 to 10:19 a.m.)

3 THE COURT: I believe everybody agrees, Mr. Day,
4 the defendant did not present evidence. They get last
5 argument.

6 You agree with that, Mr. Wagner?

7 MR. WAGNER: Yes.

8 THE COURT: Mr. Day, you ready?

9 MR. DAY: Yes, sir.

10 THE COURT: Would you bring the jury in, please,
11 sir.

12 (WHEREUPON, the jury came into open court at
13 approximately 10:20 a.m.)

14 THE COURT: State ready for closing?

15 MR. WAGNER: Yes, sir.

16 THE COURT: Defense ready?

17 MR. DAY: Yes.

18 THE COURT: Mr. Wagner?

19 MR. WAGNER: Thank you, your Honor.

20 This will be the last time you will hear from me
21 during this trial. I appreciate you being here and
22 listening, and I'll try to make it brief.

23 We're here because the defendant, back during the
24 week, the early week in August, there between the 3rd and
25 the 10th, broke into the victim's house, stole a shotgun,

1 airsoft rifle, BB gun, drank -- stole the liquor, drank
2 the liquor, forcibly entered. He's charged with that and
3 petty larceny.

4 How do we know he did it? What evidence do we
5 have that says he did it? And I think probably when I
6 sit down, you know, I anticipate probably hearing from
7 the defense side about what we don't have. You know, we
8 don't have fingerprints. We don't have DNA. We don't
9 have the things that you see on TV, which I submit to you
10 is Hollywood. It's rare on any case that you get stuff
11 like that. It's just not real life. The State doesn't
12 have the manpower. They don't do those sort of things.
13 People don't go find one hair of this defendant in that
14 house. And DNA, it just doesn't exist.

15 Rather than focusing on what we don't have or
16 mistakes that could have been made or something like
17 that, let me talk about what we do have which is
18 important. We've got two neighbors. Sergeant Arnold got
19 assigned this case. You heard from the victims. Both
20 victims came over there. There was forced entry.
21 Somebody slit the screen where they could stick their
22 hand in there, jimmied the latch, went in, forced in the
23 door, which was just a simple, small dead bolt, stole the
24 things.

25 When they got there, of course, the BB gun -- the

1 house was ransacked. The cabinets were open. The stuff
2 was missing. We know the shotgun may have been there
3 prior to that because Mrs. Giordano had been there on the
4 3rd and it was there. And then on the 10th, when
5 Mr. Giordano came, the stuff was all gone and there had
6 been force to get in.

7 The keys were missing. Nina McKee comes out
8 there. I don't know why she wrote "double-barrel
9 shotgun." It was obviously a single-barrel shotgun. I
10 think maybe she just misunderstood. Probably didn't know
11 a lot about shotguns. But it was a shotgun, a working
12 shotgun, stolen. Single barrel.

13 Nina turns it over to investigations. It gets
14 assigned to Detective Arnold. He's a good detective.
15 He's got a lot on his plate. He told you they get
16 30 cases a month every month. They solve as many as they
17 can. These guys work hard. He knew where the burglary
18 had occurred. He knew that it was David McMahan's
19 neighbor when David was growing up. He also knew it was
20 David's sister. He needed some expertise in that
21 neighborhood.

22 He asked for David's help. David got involved.
23 It's probably a good thing David did get involved because
24 David knew the neighbors, grown up there. He knew the
25 two guys that came up here, Mr. Allsep and David Duncan.

1 He went and talked to Mr. Allsep. He said, Hey, what
2 have you seen? Skinny white guy, slender white guy,
3 walking, carrying a sack of some sort over his shoulder
4 with something sticking out the top, something long,
5 i.e., a gun barrel from a single-barrel shotgun, going
6 that direction.

7 David went and talked to another neighbor that he
8 knew, David Duncan, said, Hey, have you seen anything?
9 Looking for some people that broke into my sister's
10 house. He said, Yeah, well, I seen something suspicious.
11 Slender white guy, tattoos down his arms, staying in that
12 trailer right over there. Trailer was Dia Roberts'.

13 David went and knocked on her door. Hey, I'm
14 looking for this guy. Where is he? Who is he? He
15 didn't have a name. Dia listened to the description,
16 said, Well, that doesn't sound like my brother or
17 whatever, that sounds like Jonathan Finney. Where is
18 John, he says. Jonathan has gone over to Tina Elrod's
19 house. Where does she live? She lives over on Return
20 Church Road. She had kicked him out by that point. This
21 is her stepfather.

22 He went over, found Tina Elrod. They knocked on
23 the door. Detective Arnold, Detective McMahan knocked on
24 the door. Tina comes to the door. They end up talking
25 to her, ask for consent to search. What do they find?

1 They find the stolen property, everything but the shotgun
2 and the liquor, in the house. Tina says -- you heard her
3 from the witness stand -- that she went, got a call from
4 this defendant's wife needing a ride. Of course they
5 didn't have a car. He walked everywhere. And this
6 burglary occurred within a short walking distance of
7 where he was staying for about the month. We know he was
8 living there at the same time the house was broken into.

9 They find the stuff. You will be able to look at
10 these pictures. I know you haven't had a real good
11 chance to look at them yet. But this is an airsoft rifle
12 and a BB gun that were recovered. The airsoft rifle
13 actually kind of looking like a real rifle, but it shoots
14 little plastic pellets. The victims positively
15 identified that as theirs. BB gun, pellet rifle found at
16 Ms. Elrod's house positively identified as theirs. Blue
17 sack that he got in the car with when Ms. Elrod went and
18 picked him up with this rifle, that rifle, BB guns, and
19 the shotgun stuffed down in it.

20 Now, we know Mr. Allsep saw a single white male
21 walking down the road with the bag over his shoulder with
22 something sticking out the top around that same time
23 frame as the house got broken into. A person matching
24 the description of the defendant, slender white guy, with
25 the bag. I submit to you that would have been the

1 shotgun barrel sticking out.

2 This is another view of the same pellet rifle
3 just from a different angle. The victim was able to
4 positively identify that. Tina Elrod was positively able
5 to identify this stuff in his possession, not some Josh
6 Burrell guy or anything, that he's the one that got into
7 the stuff. He's the one that had it.

8 This is where Ms. Elrod lived. She lived over
9 there off of Return Church Road. This is where this
10 defendant had gone to stay after Dia Roberts had kicked
11 him out. This is where they first talked to him.
12 Another angle in the back.

13 When they walked in, had -- basically, in plain
14 view was the pellet gun they were able to see. Sergeant
15 McMahan was able to get on the phone with his sister,
16 call her and say, Are y'all missing a pellet gun and
17 airsoft rifle? That's how they were able to match that
18 initially when they got there. And then they were able
19 to find where this came from. It came from the defendant
20 when he got in the car with Tina Elrod when she went to
21 pick him up.

22 So what do they do? They did anything a good
23 detective would do. They went to find the guy. They
24 knew, you know, a description of him. They knew that he
25 was staying at Tina Elrod's house. They knew that he

1 might be coming back there. So when they found out he
2 was coming back there, they went out there and waited on
3 him. He pulls up. David McMahan goes over there to talk
4 to him.

5 Now, he's under suspicion, fixing to possibly be
6 in custody. What they have to do legally is when they
7 want to talk to him, question him about a crime, they're
8 going to have to Mirandize him. So they use a form,
9 which is pretty much a standard form. They ended up
10 doing this three times with him. But they read him his
11 rights off this form. They make sure so that you can be
12 sure his rights were read to him in an appropriate manner
13 that's required by law.

14 In each case he checked that he understood those
15 rights and he signed that he would talk to them. So they
16 went back to the sheriff's office with him. And what did
17 he say? Well, he gave a written statement which you will
18 be able to take back there and read. But he basically
19 blamed Josh Burrell. This Josh Burrell guy, he said he
20 is the one who brought this blue bag and stuff. Blamed
21 him.

22 Well, David McMahan is not necessarily buying it.
23 They kept looking into it. They were able to piece
24 together. They had recovered this stuff by that time.
25 David -- they knew that that stuff belonged to his

1 sister. They knew it had come out of the burglary.

2 So they went back down there a couple days later
3 on the 30th, and they read him his Miranda rights again.
4 And they confronted him with that evidence that, Hey, we
5 got you with the stolen stuff. Whereupon at that point
6 in time he said, I did it. All right. I did it. He
7 said, I did it. I was the lookout man. Shotgun was on
8 the bunk bed. Josh got the gun. We looked at a
9 motorcycle. Josh had the keys. We drank the liquor.

10 He basically admitted to everything there. Now,
11 he minimized his involvement in it by saying he was the
12 lookout man, which, as you heard the judge's charge,
13 that's where the principle of hand of one hand of all
14 comes in. If you believe it the way he told it the
15 second go-round, he changed his story from Josh did it
16 all and Josh showed up with the stuff to, All right. I
17 was there. I was the lookout, but Josh took the gun off
18 the bed, Josh took the keys. I was just the lookout.

19 But the principle of hand of one is the hand of
20 all is basically the two of them go to this house, and
21 they conspire to go to the house and burglarize that
22 house. It doesn't matter which one. It doesn't matter
23 if this defendant doesn't actually set foot in the
24 doorway. If he stands outside as the lookout and allows
25 this Josh guy to go in there and burglarize this place

1 and they walk off carrying the stuff, he's just as guilty
2 as if he set foot in the house himself.

3 I submit to you he did probably set foot in the
4 house. And he probably did it by himself. There's no
5 evidence that Josh Burrell was actually there. There is
6 evidence that he was there, direct evidence from his own
7 mouth. But under the hand of one hand of all, they're
8 getting together and conspiring to go break into this
9 house and steal this lady's stuff. And he's the one that
10 got caught with it.

11 Under that, under the law, he's guilty just as if
12 he set foot in the house and took that shotgun off the
13 bed himself. His job in this crime, he says, was he was
14 the lookout. And how do we know we're talking about the
15 same house, same thing? They did Mirandize him again.
16 He initialed every single one of those that he
17 understood, said he would willingly talk to them.

18 He had told them that, I'll ride you to the place
19 and show you what I did. So they went back. They asked
20 him again, got him in Sergeant Arnold's truck, three of
21 them. They rode out, said, All right. Show us where to
22 go. He said, Take a right here, take a left here. They
23 ended up down at a dead-end road where Mr. Allsep had
24 seen him walking back from that day in front of the
25 victim's house and said, Where is the house that y'all

1 went into? There it is, right there. And he pointed at
2 it.

3 The evidence in this case -- what we do have,
4 like I say, not concentrating on the fact that there's no
5 physical evidence. It's a serious burglary case, but
6 it's a typical burglary case probably anywhere you go in
7 this state, probably anywhere in this country. There's
8 just not a lot of physical evidence. There's no
9 eyewitnesses. People aren't generally home when people
10 like Jonathan Finney want to go in your house. They're
11 not going to go in there most of the time. They're going
12 to wait until somebody is at work, something like that.
13 They're not going to be there. So there's generally not
14 eyewitnesses. It's generally detective work, canvassing
15 the neighborhood, finding out who saw something a little
16 out of whack and tracking down witnesses. Which is a
17 good thing David McMahan was involved because he knew the
18 neighborhood, he knew the people, and he was able to make
19 that initial connection with Jonathan Finney's name.
20 Without that, they wouldn't have anywhere to go to, to
21 Tina Elrod's house to recover the stuff and solve the
22 crime. Two good detectives that did a good job.

23 David can't really help that it was his sister's
24 house that got broken into. I think he would have
25 reacted the same whether it would have been his neighbor

1 or anybody else. He's got a job to do. He was asked to
2 help. He did what he could do. So the fact that he
3 supposedly partially inherited this property from his dad
4 or might have had some sort of interest from it, I submit
5 to you has no bearing on the truth here as to whether or
6 not Jonathan Finney broke into the Giordanos' house back
7 on the week of August the 3rd to August the 10th, 2013,
8 here in Oconee County.

9 That's all I've got to say. I told you at the
10 start of this case that you would hear the evidence. I
11 think the evidence is pretty overwhelming. I submit to
12 you that the evidence suggests one true verdict in this
13 case which is guilty. That's guilty on burglary first
14 and petty larceny. Thank you.

15 THE COURT: Closing argument, Mr. Day?

16 MR. DAY: Thank you, your Honor.

17 Ladies and gentlemen, we've come to the end of
18 this. I still cannot believe in some states they have
19 cases that take months to try. As you can see, in South
20 Carolina we don't do it that way. The Solicitor knows he
21 has to put up a case, he puts it up. He don't mess
22 around for two months doing something, which I've never
23 been able to figure out what they have done.

24 So you've got it. Now it's going to be your
25 turn. We've been doing all the work until now. You've

1 just been the ones that's been indisposed. Now it's your
2 turn to do the work.

3 You're going to have to start sorting through
4 this, and there is a lot of questions that have to be
5 answered, a lot of questions. You have to look at
6 exactly what the judge said. The judge has charged you
7 on the law, and the first thing he has told you is you
8 are the finders of fact in this case, and you have got to
9 make a decision based on all the elements of the crimes
10 for which the person is charged. An important part of
11 that is the charge, the crime that he has been charged
12 with. That is what we're here about. Nothing else.

13 You have to determine whether or not the State
14 has met its burden of proof. The judge has told you that
15 burden of proof is here. Never over here. Just as it
16 would be with you. The reason it's that way, very
17 simply, is when this country started, we were a colony,
18 and if the King said you were guilty of something, you
19 were guilty. It was then up to you to prove your
20 innocence.

21 Our founding fathers decided that was not a good
22 idea and it wasn't fair. So now we say the burden is
23 here. The person who makes the accusation has the burden
24 of proof. Not the defendant. As a matter of fact, under
25 our laws the defendant doesn't even have to be here. He

1 doesn't even have to show up because the burden stays
2 here. He doesn't have to come in and answer anything.
3 It has to be proven against him beyond a reasonable doubt
4 like the judge said.

5 And in that regard, we'll go back and look and
6 see what he's charged with here. He is charged with
7 burglary in the first degree. We talked about it
8 yesterday. As I -- the way I understand, that the law,
9 burglary first degree, comes from the Old English common
10 law that a man's house is his castle and his home is
11 inviolate. No one may enter it. That's one of the
12 reasons we had the Revolution is the King thought he
13 could just take his soldiers and put them in anybody's
14 house he wanted to and you can't do anything about it.

15 We decided that's not right. So we have a
16 Constitution that says you have got to have a reason to
17 go in somebody's house. That's where you hear the terms
18 search warrants and things. Somebody has got to make a
19 determination there is a good reason for that. And it
20 also comes with why you would arrest someone.

21 So you have to look at something as serious as
22 this, what is the law. The judge has told you what the
23 law is. He is charged with first-degree burglary. The
24 State must prove beyond a reasonable doubt the defendant
25 entered a dwelling without consent. A dwelling is any

1 building or a portion of a building in which a person
2 ordinarily sleeps. A building constructed as a dwelling
3 that has never been occupied cannot be considered a
4 dwelling for purposes of burglary, but a building is a
5 dwelling even if the residents are temporarily absent
6 from the building. Absent from the building.

7 This house we're talking about, which is one of
8 the things that we have to look at, according to the
9 State of South Carolina in the sworn testimony in front
10 of a magistrate who could issue a warrant and in front of
11 a grand jury to get an indictment, have sworn that Joseph
12 Giordano is the victim and owner of this property. He is
13 not. You heard the testimony. He has no interest in
14 this property whatsoever. None. It's not there. This
15 property is in the estate of his wife's father. And his
16 wife is David McMahan's sister. David McMahan even has
17 an interest in this property, and he has a right of first
18 refusal should she decide to sell it because his daddy
19 wants it to stay in the family. Wonderful thing.

20 But that is what he's charged with, is going into
21 a dwelling of Joseph Giordano. Joseph Giordano lives in
22 Greenville. He's not temporarily absent from Oconee
23 County. If he comes over here, he is temporarily absent
24 from Greenville County where his home is. The State has
25 to prove this is a dwelling under the terms of the law,

1 and that's pretty harsh because that's what they chose to
2 charge, and that's their responsibility. That's their
3 burden to cover. It has to be proven beyond a reasonable
4 doubt that it's a dwelling, that it meets the
5 requirements of the statute.

6 Does he have an interest in the house? No.
7 Remember the warrant and the indictment are not evidence,
8 as the judge said. They're not evidence in the case but
9 they're what starts this whole thing. You can't arrest
10 anybody unless you have a warrant or probable cause to
11 believe a crime has just occurred in front of an officer,
12 and he can't go arrest you until he gets that warrant.
13 Okay? Yet an indictment, though, you have got to go in
14 front of 18 people into a room where they lock the doors
15 and they don't let anybody know what's going on in there,
16 but it's sworn testimony.

17 You heard the testimony. Neither of these
18 officers ever spoke to Amanda Tinsley, who was the
19 sheriff's department deputy who went before the grand
20 jury and swore that this was true. Never spoke to her.
21 Never discussed it. Never nothing.

22 So, have they met their burden of proof? I
23 submit to you no, they did not prove it. They're not
24 residents. Not of Oconee County. Mrs. Giordano used to
25 be a resident, certainly. Now she's a resident in

1 Greenville County. That's where she votes. I bet that's
2 what's on her driver's license. I bet that's all of her
3 documents, her residence there. That's where they pay
4 taxes on their house. As a residence. Their primary
5 residence.

6 There is a lot of questions here as to what was
7 going on during this entire investigation. We're looking
8 at evidence here. And the testimony given by these
9 officers, one of the things they did is they brought in
10 two witnesses. That was Mr. Allsep and Mr. Duncan,
11 neither one of which were ever mentioned in any notes
12 whatsoever in the investigation of this trial. None.
13 These are supposedly eyewitnesses.

14 They got up on this stand, first time I ever knew
15 of them, and said they saw something apparently at the
16 time which this took place as eyewitnesses. But you know
17 what they did not do? They were sitting in that seat
18 right there. They were looking at this person right
19 here, and not one time did that hand of either one of
20 them come up and say, That's him. That's who I saw. Did
21 they even say, That looks like him? Didn't say that
22 either. They never even said, That could be him. Didn't
23 say that either. They said -- they walked through here,
24 walked through here and back out here and never once
25 said, That's him. That's the guy I saw out there. Now,

1 they weren't asked if they saw him inside of a house or a
2 building or anything else or if he had anything that
3 would make them believe that. They never said, That's
4 him. They were never asked that. Because they didn't
5 know. Don't know where he came from.

6 Some other things are interesting. You'll have
7 the pictures here of the BB gun, pellet gun, whichever it
8 is, and an airsoft rifle, which I have never seen. Looks
9 like an AR-15 or whatever. That was never mentioned in
10 any report until we got to trial, and then all of a
11 sudden, Hey, we took a picture of this. When I looked at
12 it, I didn't know what it was for. They said, Oh, that's
13 what was stolen.

14 Well, where is that? I went back and looked. I
15 looked through the whole incident report, all through
16 here, page by page by page, went over it with the
17 officers. Never mentioned it. Never mentioned it at
18 all. All of a sudden here we are today. The blue bag.
19 Say it wouldn't hold a gun. Haven't quite figured out
20 where all that came from. But they put a picture of that
21 into evidence. Don't understand it either.

22 Let's look at some of the other testimony they
23 put up. Tina Elrod. Tina Elrod tells you she uses meth.
24 She knows meth. She got up here and she testified about
25 what she said went on and what she saw. Her credibility

1 is to be determined by you, not by me or the judge or
2 anyone else, but by you. But does it make sense that she
3 tells two officers with the Oconee County Sheriff's
4 Department that she watched a drug transaction take place
5 and where it occurred and nobody asked her anything else
6 about it? Does that make sense? She was a witness to
7 and part of an illegal drug transaction, and yet no one
8 ever asked her anything about it. No follow-up, no
9 investigation, nothing. Not at all. Is that true? Is
10 her testimony true? Does she know that she wouldn't have
11 to worry about what she said? And why did she say it?
12 None of that made any sense.

13 There's considerable missing information in the
14 report. All the things that weren't in there. This was
15 his family property. That was never divulged. You heard
16 Investigator Arnold say, Well, I knew about it. I said,
17 You know he had an interest in the property? No. He
18 knew he was from out in that neighborhood, certainly.
19 The road is named for his daddy, Mr. McMahan's daddy.
20 That's why it's McMahan Road. He owned a good piece --
21 good bit of property out there, and his family had been
22 there for a long time. That's why it's named that.

23 And don't get me wrong. I understand it's hard,
24 particularly when one thing pops in my mind when thinking
25 about this. He works for the sheriff's department, law

1 enforcement. His family property supposedly has been
2 broken into. That would cause me concern. I know it
3 caused him. I've known David McMahan for a long time.
4 Knew him before he became a law enforcement officer. I
5 know that would bother him. His family means a lot to
6 him. His family is close. Very fortunate in that
7 regard. But in that case, he gets involved in this case,
8 and then it becomes personal. So you've got to look at
9 what evidence has been deduced because of that.

10 When you look at the report that was done that we
11 talked about and we read through it, remember Officer
12 McKee came in, who was the first responding officer on
13 the scene, and she put down that it appeared to be a
14 burglary third degree from what she was told while she
15 was there. But then it turned into a burglary first
16 degree only after and later when other officers got
17 involved.

18 When looking back through there and you look in
19 that report, it's one thing to say -- I asked about, had
20 to make sure they understood it was in the report. He
21 acknowledged it was in the report, and that was there
22 were fingerprints. Now here is a piece of evidence. Had
23 fingerprints. Fingerprints were collected. The
24 fingerprints were sent to be compared, in other words, to
25 be processed.

1 And you know what? The one person they had to
2 compare that to, Mr. Finney, who was sitting in a jail,
3 and they took his fingerprints. So the sheriff's
4 department has his fingerprints. They had these
5 fingerprints from this place on McMahan Road. And yet
6 nowhere does it say those fingerprints belonged to him.
7 I can assure you if they had found fingerprints that
8 matched Mr. Finney, they would have been standing in
9 front of you going, Here you go. This would be almost
10 proof positive that man was in this house. And he never
11 had permission to be there. And I'm sure that Mr. and
12 Mrs. Giordano would have testified that as far as they
13 know, he had never been a guest in their house or their
14 daddy's house at all.

15 This particular piece of property belonged to
16 Mr. McMahan. He passed away. It went to his daughter.
17 Mr. Finney wasn't part of that family or ever had
18 anything to do with them. So where, where are these
19 fingerprints? I don't know.

20 One of the things you can consider not only as
21 evidence, but what evidence is missing. What evidence is
22 wrong. That is also part of your considerations that you
23 need to work with.

24 Remember we had Dia Roberts come in and testify.
25 This is the daughter of Mr. Finney's wife. They were

1 there for a while, and apparently they didn't get along.
2 Ms. Roberts apparently wanted them to leave. And that's
3 apparently where Tina Elrod became involved, come to give
4 them a ride because they had to leave. Then she comes in
5 here and testifies. And then as she's leaving, the first
6 thing I notice, she stops to speak to David McMahan on
7 the way out. Apparently they've known each other. She
8 lives out there on the road, same place near where David
9 lives, I'm sure. They have had contact, their families
10 have.

11 Another thing that bothered me was no written
12 statements about this particular crime. They said that
13 Mr. Finney gave a statement. They put it in evidence.
14 You saw it there. And then they said they came back to
15 him, and all of a sudden he says, Yeah, I did it. So now
16 he is cooperating again. He cooperated supposedly the
17 first time. Even the officer said, you know, he didn't
18 give him a hard time. Didn't fight with them. They
19 certainly -- I don't think there's any evidence, and if
20 there was, of course I would be screaming and hollering
21 about it if they tried to threaten him in some way,
22 coerce him, take him out behind the building and threaten
23 him or something. There's no evidence of any of that,
24 and certainly we're not suggesting that there is. But
25 they said he was cooperating and he gave a statement.

1 And then they came back to him, read him the Miranda
2 rights again, as you see there, and all of a sudden he
3 says, Yeah, I did it. And they come back and say, Let's
4 go ride around. He said he wouldn't make a written
5 statement. Then he said he did all these things. Said
6 he took a picture out there. Picture that was taken
7 there. I believe, as I remember it, that Mr. McMahan,
8 David McMahan, said he took the picture himself. I'm
9 trying to think. I think he said he took it with his
10 phone like all of us now, walking around with phones that
11 can do just about everything.

12 So here they are out there. All of this time and
13 all of their contacts with Mr. Finney, nothing has been
14 recorded. At all. And here they are out here, and they
15 are saying that he is telling them what crimes he has
16 committed. And my five-year-old grandson has filled up
17 my phone with pictures of himself and me and his great
18 grandmother and grandmother. He loves to do videos. He
19 thinks that's the most wonderful thing in the world, to
20 have a phone that he can turn on and dance around in
21 front of. Or take pictures of me making fun of him. So
22 why couldn't we have out there, just like my grandson
23 does, turn it on, video and record him saying, This is
24 where I broke in, walked in this courtroom, put it down
25 right here in front of this court reporter in front of

1 her microphone and punch it. Here. Here is where he
2 says it. It would have answered any questions, wouldn't
3 it? But it's not here.

4 What we have is a picture. When you look at all
5 of this, the judge, of course, has already told you what
6 the law is. He's talked about reasonable doubt. One of
7 the tenets of our law is that if you have doubt about any
8 one of the elements that are required to be proven as set
9 forth, that doubt belongs to Mr. Finney. That's his.
10 That's any element. Because all the elements must be
11 proven beyond a reasonable doubt. Each and every one.
12 Not most of them. This is not going to be horseshoes.
13 Being close don't count. They have got to ringer every
14 single element. You've got to believe that. You've got
15 to believe the evidence is there beyond a reasonable
16 doubt. If it's not, they have not met their burden of
17 proof, and our law says he's not guilty because it hadn't
18 been proven. Has to be proven, otherwise this whole
19 system would fall apart. We'd never have any faith in it
20 again.

21 You can't get close. That is why you have got to
22 look at each one of them. Even if one element isn't
23 there, they haven't met their burden of proof and they're
24 required to do that. The judge told you that. They have
25 got to do it.

1 I submit to you that there's so many questions in
2 this that are unanswered. So many, it just doesn't make
3 sense. I keep coming back to things that were missing in
4 there, things such as a BB gun, et cetera.

5 One of the things that caught my eye, I just
6 couldn't figure out why all this kept coming up again, is
7 the notes that were given to me on Wednesday of
8 Mr. McMahan in which he spoke of where he found out at
9 the end of August that a BB gun and this air rifle were
10 part of this. I never found out about it until we got
11 here at the end of the trial. He wrote, "Also, I,
12 Sergeant McMahan, called the victim, Joe Giordano, and
13 spoke with his wife, and she described a BB gun and
14 airsoft gun from their burglary." I just sometimes don't
15 understand policespeak. I don't think at any time I ever
16 spoke to my brother-in-law that I referred to my sister
17 as his wife. Just none of this makes sense as to why
18 this was placed in that posture. My sister had three
19 husbands. I got along with all three of them, but I
20 don't think whenever I spoke to them I ever said
21 something about, "I spoke to your wife." I spoke to my
22 sister. That's who I spoke to.

23 All these things just, they keep jumping around.
24 Nothing is making sense. I submit to you the State has
25 not met their burden of proof. They have failed to do

1 what is required, and that included burglary and the
2 larceny because if you go to the larceny, according to
3 the evidence that they have to prove, he had to go and
4 get property here that belonged to someone else. In this
5 case it's not the dwelling which is required. It must be
6 a dwelling where people reside. And that isn't the case
7 here. It's just not there.

8 I have probably bored you to death now. These
9 things are so important. As the judge said, this is it.
10 This is the only time Mr. Finney has a time in court to
11 hear the charges against him in detail. The first time.
12 And it's the first time you've heard them. We're all on
13 the same page.

14 I ask you, when you go back into that room,
15 remember what the judge said. You have to individually
16 make a decision. It must be unanimous. I'm not telling
17 you that if you believe something, that you should
18 disbelieve it. What I'm asking you to do is you should
19 apply the law as the judge says to the facts you have
20 heard and see if they meet the requirements of the law to
21 close that gap. And I submit to you they did not. That
22 is what we're here for.

23 Again, we appreciate you being here. We thank
24 you for your time. If you ever find yourself in a court
25 of law, whether it be as a criminal defendant for some

1 reason or in a civil case where a matter has to be
2 determined by a jury, you'll know what it's like to sit
3 over there. And you're ahead of me. It wasn't so long
4 ago they wouldn't let lawyers serve on juries, which I
5 always thought was kind of insulting. Why can't I be on
6 a jury? No. They're not going to let you do it. Now we
7 can. Y'all are luckier than me. The computer won't pick
8 my name. I wish it would. But it hadn't yet. You will
9 see how important this is and why little things count.
10 Thank you.

11 THE COURT: All right. Madam Forelady, I'm going
12 to go over the verdict form with you and give you a few
13 more instructions.

14 Number one, the order the two options appear is
15 of no consequence. I have to place them in some order.
16 Pay that no attention, please. But your option will be
17 this: First is the charge of burglary first. The first
18 option you have, once the jury makes a decision, would be
19 as to burglary in the first degree, Indictment
20 No. 2013-GS-37-1115, "We, the jury, unanimously find the
21 defendant not guilty." If that is your unanimous
22 verdict, then you will just simply check that option.
23 The next option under burglary first would be as to
24 burglary in the first degree, Indictment 2013-GS-37-1115,
25 "We, the jury, unanimously find the defendant guilty."

1 If that's the jury's verdict, then you would simply check
2 that.

3 Then you would consider the charge of petit or
4 petty larceny. It would be unaffected by your decision
5 on burglary first. Your option would be as to petty
6 larceny, under Indictment 2013-GS-37-1118, "We, the jury,
7 unanimously find the defendant not guilty." If that's
8 your verdict, check that. The other option as to
9 indictment -- petty larceny, Indictment 2013-GS-37-1118,
10 "We, the jury, unanimously find the defendant guilty."
11 Once the jury has made its unanimous decision as to both
12 charges, if you would sign your name to the verdict form,
13 knock on the door, and we will receive your verdict back
14 here in the courtroom.

15 If, during the term -- over the course of your
16 deliberations you have any questions about anything,
17 write it out. I'll receive it here. Sign your name,
18 give it to the bailiff. If you need anything, the
19 bailiffs will make sure you have it.

20 Now, all the evidence that can be admitted has
21 been admitted at this point, so you must make your
22 determination based on the record that you have before
23 you now. Okay? That being said, I'm going to ask you to
24 go back to your jury room. I'm going to get the
25 attorneys to review the exhibits. They will be sent back

1 with the verdict form, and the bailiff will tell you in
2 no uncertain terms that you may begin your deliberations.
3 Until that time, please do not begin. Okay?

4 I'm going to ask the alternates to stay here with
5 us, if you don't mind.

6 (WHEREUPON, the jury exited the courtroom
7 at 11:02 a.m.)

8 THE COURT: All right. Any additions or
9 exceptions from the State?

10 MR. WAGNER: No, sir.

11 THE COURT: From the defense?

12 MR. DAY: No, your Honor.

13 THE COURT: Other than what has already been
14 stated?

15 MR. DAY: Yes, subject to the prior objections.

16 THE COURT: I'm going to make a typographical
17 correction to the verdict form. If y'all would check the
18 exhibits, we'll send them back.

19 (The attorneys reviewed the exhibits.)

20 (Court in recess, pending verdict, from 11:02
21 a.m.

22 until 11:47 a.m.)

23 THE COURT: We have a request.

24 All right. Gentlemen, the jury has asked that I
25 reread the first-degree burglary charge. I think that's

1 a simple enough request.

2 (WHEREUPON, the jury came into open court at
3 approximately 11:49 a.m.)

4 THE COURT: Madam Forelady, the jury is
5 requesting I recharge on burglary first; is that correct?

6 JURY FORELADY: Right.

7 THE COURT: Okay. This is the charge on burglary
8 first. Can everybody hear me okay?

9 The defendant is charged with first-degree
10 burglary. The State must prove -- the State must first
11 prove beyond a reasonable doubt that the defendant
12 entered a dwelling without consent. A dwelling is any
13 building or portion of a building in which a person
14 ordinarily sleeps. A building constructed as a dwelling
15 that has never been occupied cannot be considered a
16 dwelling for purposes of burglary, but a building is a
17 dwelling even if the residents are temporarily absent
18 from the building.

19 In order to prove that the defendant entered the
20 dwelling, the State does not have to show that the
21 defendant's entire body entered the dwelling. The
22 smallest entry is sufficient. It may be any part of the
23 body such as a hand or foot, or even an instrument such
24 as a hook or other instrument.

25 In addition, the State does not have to prove

1 that force was used to gain entry. If a person enters a
2 building by using deception, artifice, trick, or
3 misrepresentation to get consent to enter, this is an
4 entry without consent.

5 Next, the State must prove beyond a reasonable
6 doubt that the defendant intended to commit a crime,
7 either a felony or misdemeanor, at the time of the entry.
8 The mere entry into a dwelling without consent is not
9 burglary. If the intent to commit a crime is formed
10 after the entry, it is not burglary.

11 On the other hand, if the defendant intended to
12 commit a crime at the time of the entry, it is a burglary
13 even if the intent was abandoned after the entry. It
14 does not matter that the intended crime was not
15 completed. Intent may be shown by acts and conduct of
16 the defendant and other circumstances from which you may
17 naturally and reasonably infer intent.

18 Finally, the State must prove beyond a reasonable
19 doubt that when entering, while in the dwelling, or when
20 fleeing, the defendant or an accomplice -- excuse me --
21 or an accomplice was armed with a deadly weapon or
22 explosive. A deadly weapon is any article, instrument,
23 or substance which is likely to cause death or great
24 bodily harm. Whether an instrument has been used as a
25 deadly weapon depends on the facts and circumstances of

1 each case.

2 The following are examples of instruments which
3 may be deadly weapons: A pistol, a shotgun, and a rifle.
4 A gun may be a deadly weapon even if it is not operating.

5 Now, Madam Forelady, does that answer the jury's
6 request?

7 JURY FORELADY: Yes, sir.

8 THE COURT: Okay. I'm going to ask that you go
9 back to your jury room, but that you do not resume your
10 deliberations until I meet with the attorneys. We'll
11 send word back when you are to resume your deliberations,
12 please.

13 JURY FORELADY: Okay.

14 THE COURT: Thank you.

15 (WHEREUPON, the jury exited the courtroom
16 at 11:53 a.m.)

17 THE COURT: Any additions or exceptions from the
18 State?

19 MR. WAGNER: No, sir.

20 THE COURT: From the defense?

21 MR. DAY: None, your Honor.

22 THE COURT: Okay. Back at ease again. Thank you
23 guys.

24 (Court in recess, pending verdict, from 11:53
25 a.m.)

1 until 12:26 p.m.)

2 THE COURT: Please be seated. Gentlemen,
3 apparently we have a verdict.

4 Would you bring the jury in, please.

5 (WHEREUPON, the jury came into open court at
6 approximately 12:27 p.m.)

7 THE COURT: Madam Forelady, my understanding is
8 the jury has reached a verdict; is that correct?

9 JURY FORELADY: Yes, sir, your Honor, we have.

10 THE COURT: Is it unanimous?

11 JURY FORELADY: Yes.

12 THE COURT: Would you pass the verdict form to
13 the bailiff, please, ma'am.

14 Madam Clerk, would you publish the verdict.

15 THE CLERK: Yes, sir.

16 In the matter of the State of South Carolina
17 versus Jonathan Allen Finney, as to burglary first degree
18 on Indictment Number 2013-GS-37-01115, we, the jury,
19 unanimously find the defendant guilty.

20 As to petty larceny on Indictment Number
21 2013-GS-37-01118, we, the jury, unanimously find the
22 defendant guilty.

23 Ladies and gentlemen of the jury, if this was
24 your verdict and remains your verdict, please indicate so
25 by raising your right hand..

1 Let the record reflect that all members of the
2 jury have raised their hand.

3 THE COURT: Very good. Thank you, ma'am.

4 Ladies and gentlemen of the jury, the Court is
5 never concerned with your verdict but is concerned that
6 the process is followed and that folks receive a fair and
7 impartial trial. One of those factors that plays in that
8 is that you stay engaged during the course of the trial.
9 And I watched you variously throughout the case. You
10 stayed in tune when I was giving you the charge, which is
11 not the easiest thing to do. For that and not for your
12 verdict we appreciate your service and we thank you from
13 Oconee County and the State of South Carolina. The good
14 thing is you don't have to come back and do this again
15 for three years. But I will tell you this, and I tell
16 this to all jurors, that without people like you who are
17 willing to do their civic duty, the system doesn't work.
18 And if we don't have a way of resolving our differences
19 in a civilized manner, there is only one way to resolve
20 them, which is an uncivilized manner, and we see examples
21 of that all over the world.

22 So we thank you. You will receive a check in the
23 mail from the Clerk for your service. Don't plan on
24 paying any mortgages or anything. It won't be very much.
25 Also there will be a statement for your employers. If

1 anybody needs one, it will be sent to you in the mail.

2 Does anybody need one sooner than that? Very
3 good.

4 Before you leave, I'm going to ask you to step
5 back to your jury room. I will answer any questions you
6 may have, then we'll let you come back or leave, whatever
7 you want to do, and then we'll pass sentence.

8 (WHEREUPON, the jury exited the courtroom
9 at 12:30 p.m.)

10 THE COURT: All right. Mr. Wagner, if you will
11 prepare me the sentencing sheets, and I will be right
12 back in just a moment.

13 MR. WAGNER: Yes.

14 (WHEREUPON, recess taken from 12:30 p.m.
15 to 12:35 p.m.)

16 THE COURT: Mr. Day, would you bring your client
17 around, please, sir. If his father would like to step
18 in, he may.

19 Ms. Giordano, would you like to make any
20 statements in addition to what your testimony was?

21 MS. GIORDANO: I would like to just say that I
22 hope he can be reformed and be a better citizen when he
23 is released. That's it. I hope that will happen.

24 THE COURT: Okay. Thank you very much.

25 All right. Give me his criminal background,

1 please, sir.

2 MR. WAGNER: Your Honor, he's got convictions
3 from -- he comes over here from the state of Georgia,
4 basically Stephens and Habersham County. I know he's got
5 two burglary convictions over there that we have
6 certified copies on. He's also got meth possession, and
7 he's on five years probation for theft by taking. It's a
8 felony charge over there, but they word it "theft by
9 taking." I never understood that, how you can have a
10 theft without taking something.

11 THE COURT: Are their burglaries similar to our
12 burglaries?

13 MR. WAGNER: Yes, sir, I believe so. He also has
14 pending at this time -- I'm not going to ask you consider
15 pending charges, but he has been a menace to Oconee
16 County since he's been here. He's got a bench warrant
17 over there, too, and that's why he's been, I suspect,
18 hiding out over here, but they have an active bench
19 warrant over there. I spoke with the district attorney's
20 office.

21 THE COURT: How many cases are pending now?

22 MR. WAGNER: He has eight pending burglaries plus
23 the one he's here on today.

24 THE COURT: Eight?

25 MR. DAY: Yeah. Two of those were burglary

1 first. He's also got safe-cracking attached to that and
2 larcenies on almost every charge.

3 What has kind of happened with him is he was
4 originally in the Tamassee-Salem area. He did some
5 burglaries up there. He got run off from up there,
6 somebody kicked him out or he lost his rent or whatever,
7 I don't know. But he ended up on McMahan Road or right
8 over near where this burglary occurred. Several
9 burglaries occurred near there, including a church.

10 THE COURT: He has pending charges on a church?

11 MR. DAY: Yes, sir. He's got pending charges on
12 a church here and the church on Return Church Road across
13 the street from where he was living. He's charged with
14 both of those. And he got some in Seneca. After
15 Ms. Roberts kicked him out, he went to Seneca and was
16 staying there with Ms. Elrod. He was breaking into
17 places over there. He would just walk around, you know,
18 breaking in places and stealing. They raided -- I say
19 "raided." When they searched Ms. Elrod's mobile home,
20 there was a lot more stolen stuff there than just this
21 charge he's on. It's just that we had to pick one and go
22 with it one at a time.

23 So, anyways, he does have a significant prior
24 record, and he does have a significant history here in
25 Oconee County, although he's not been to trial on those

1 other charges.

2 THE COURT: All right.

3 Mr. Day.

4 MR. DAY: Thank you, your Honor. We'd ask the
5 Court, needless to say, those are still pending charges
6 and he has not been tried for those here in Oconee
7 County. Your Honor, he does have an eight-year-old son
8 who lives with his mother over in Georgia, and he advises
9 me he does pay child support, but he does have problems
10 with it at times because of working. He has been
11 off-and-on employed. His parents came over here to stand
12 with him, and they understand he's gotten into trouble,
13 but they stand with their son and are asking the Court
14 for what mercy that you can.

15 THE COURT: Has Mr. Finney worked at any gainful
16 employment for any period of time that you're aware of?

17 MR. DAY: He tells me his last employment where
18 they were withholding was in 2010, but he's worked off
19 and on sporadically in between then earning money as he
20 can at short-time jobs, pick-up jobs, whatever it takes
21 because he has been supporting his child.

22 THE COURT: Mr. Finney, do you have anything you
23 want to say?

24 THE DEFENDANT: Sorry.

25 THE COURT: Sir?

1 THE DEFENDANT: Yes, sir. I just want to say --

2 THE COURT: I can't hear you. Please --

3 THE DEFENDANT: I want to say I'm sorry for, you
4 know, I can't take back what -- the record that I've got,
5 and I'm sorry for it. And I just pray I can get my life
6 together, and I'm just going to do what's right.

7 THE COURT: Did he spend any time in jail?

8 MR. DAY: Yes, sir. He's been in jail since --

9 THE DEFENDANT: The 28th of August.

10 MR. DAY: Since 8/28, August 28th of last year.
11 And I apologize. I had a printout of the number of days
12 and I left it downstairs.

13 THE COURT: She can calculate it over here.
14 275, does that sound about right?

15 MR. DAY: That sounds about right, yes, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I got my GED.

18 THE COURT: Did you get it in prison?

19 MR. DAY: Diversion center, yes, sir.

20 THE COURT: Anything further?

21 MR. DAY: No, your Honor. His father is with him
22 and his mother is in the courtroom.

23 THE COURT: I would be glad for the dad to speak.
24 I'm sorry I had you stand up here. I'm sure you are,
25 too.

1 Are you Mr. Finney? Do you have anything you
2 would like to state?

3 MR. FINNEY: I would, your Honor, if I may.

4 THE COURT: Yes, sir.

5 MR. DAY: You need to identify yourself.

6 MR. FINNEY: My name is Charles Allen Finney.

7 It's very difficult for his mom and I. My major
8 concern is his mother. I know we, as fathers, have to be
9 tough. He is our only son. What the Lord has brought us
10 through for 17 years with Jonathan is that we recognize
11 he needs help. He needs the Lord first, and second we'd
12 just ask, even in the state of Georgia, some program,
13 some something that is more than a rehabilitary-type
14 situation.

15 I do have a friend of mine who was gracious
16 enough as another judge who had sent him, but it wasn't
17 long enough. He changed for a period of time, but we're
18 just praying for something more permanent. I'm 55 years
19 of age. Jonathan is 32. He does have an eight-year-old
20 son that doesn't know his father. We didn't come here to
21 say Jonathan is not guilty. Whatever he's done, we
22 believe as Christians, Lord, your will be done. 30 to
23 life, yes, that did take us aback because I thought, Son,
24 I don't want your life wasted. God created you for a
25 plan and a purpose.

1 I want him to contribute to be a living example
2 to a little boy that we pray would grow up and say, you
3 know what? I see what the Lord did in my dad, and this
4 is the way that I know that I should live.

5 His mother is beyond -- I know she's my wife, but
6 she has been more than I could ever admire in a woman as
7 a mother. We have cried. We have prayed. We had known.
8 We have been burglarized many times in the past, and I
9 could not help but apologize to the precious folks that
10 were here yesterday, and she's here today, that we know.
11 It's a terrible thing. It's such a violation.

12 But just as much as I know the State would like
13 to see anyone in trouble, there is a reason. I know
14 there's been things in his life that he's done,
15 addictions or whatever, but we're just praying that the
16 Lord provides some avenue that he can get the help that
17 he needs to change. To be productive. To be a blessing.
18 And that's why we're here, just to let him know that we
19 love him very much as parents.

20 THE COURT: Thank you.

21 MR. FINNEY: And I thank you, your Honor, for
22 this time.

23 THE COURT: Yes, sir. Very articulate.

24 Anything in addition to that, Mr. Day?

25 MR. DAY: Your Honor, all I ask is that as part

1 of his sentence he receive help for drug addiction.

2 THE COURT: Mr. Finney --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- the jury having found you guilty
5 under Indictment 2013-1118, petty larceny, petit larceny,
6 I'm sentencing you to 30 days, credit for 30 days.

7 Under Indictment 2013-1115, burglary first
8 degree, sentence is 20 years suspended on 16 years with
9 five years probation. It will be concurrent. You will
10 have credit for 275 days. I will recommend while you're
11 in jail that you get ATU. When you come out on
12 probation, which will not begin until your period of
13 incarceration has ended, you will be subject to random
14 drug testing, substance abuse counseling. You will go to
15 voc rehab or Job Corps. You will also pay the victim
16 \$500 as restitution. Okay, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Anything further from the State?

19 MR. WAGNER: No, sir.

20 THE COURT: Anything further from the defense?

21 MR. DAY: No, your Honor.

22 THE COURT: Thank you, gentlemen.

23 Good luck to you.

24 (WHEREUPON, the hearing ended at approximately 12:45 p.m.)

25 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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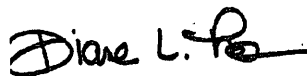
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate, and complete transcript of record of a portion
of the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal, in the
Circuit Court for Oconee County, South Carolina, on the
30th day of May 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

August 12, 2014



Diane L. Thommes, RPR, CRR
Circuit Court Reporter



329
CLOSED

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 22, 2015

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: The State v. Jonathan A. Finney
Lower Court Case No. 2013GS3700115, 2013GS3700118
Appellate Case No. 2014-001270

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Jonathan Allen Finney, 360193
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
LaNelle Cantey DuRant, Esquire

RECEIVED
MAY 04 2018
APPELLATE DEFENSE

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Jonathan Allen Finney, Appellant.

Appellate Case No. 2014-001270

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

Unpublished Opinion No. 2015-UP-544
Submitted October 1, 2015 – Filed November 25, 2015

APPEAL DISMISSED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FILED OCT 27, 30
DEVELOPMENTAL FIELD
CLERK OF COURT

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Oconee

Jonathan Allen Finney 360193
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

7016-104 23 PM 11-57

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional
2. Name and location of Court which imposed sentence Oconee County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-37-00115 Simple Larceny
 - (b) 2013-GS-37-00118 Burglary 1st Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 30, 2014 20 Years suspended to 16 Years, 5 Years Probation upon release
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made: ---
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Direct Appeal Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 25, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Applicant's Sixth Amendment rights to a fair trial, the effective assistance of counsel, Fourteenth Amendment right to Due Process, as guaranteed by the United States Constitution, as well as South Carolina law were separately and/or collectively violated and are the grounds upon which I/A below are based:

(a) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out

In (10):

(a) *counsel never told me the states plea before trial, there was conflict of interest*

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) _____ the date of each such disposition: _____

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes _____
- (c) your sentencing? Yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. R. Daniel Day Jr. Oconee County, SC
 - ii. R. Daniel Day Jr. Oconee County, SC
 - iii. Lonelle Cantey Durant 1330 Lady Street Suite 401 Columbia, SC 29201
- (b) the proceedings at which each such attorney represented you:
- i. Trial
 - ii. Sentencing
 - iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Oconee

VERIFICATION

I, JF, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jonathan L. ...

SWORN to and subscribed before me this 15th
day of November, 2016.

Ludham Bryant (L.S.)
Notary Public

My Commission Expires: May 21, 2020

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
JUN 23 PM 4:57

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JF, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Janeth Fanning
Applicant

SWORN or affirmed to and subscribed before me this
15th day of November, 2011.

Leahann Bryant
Notary Public

My Commission Expires: May 26, 2016

FILED
CLERK OF COURT
BEVERLY H. WILKINS
SC
2016 NOV 23 PM 4:57

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Jonathan A. Finney, #353719,	)	Case No.: 2016-CP-37-0706
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION
v.	)	TO DISMISS AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 23, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In December 2013, the Oconee County Grand Jury indicted Applicant for three counts of burglary – first degree (2013-GS-37-1115) and three counts of petit larceny in an amount less than \$2000 (2013-GS-37-1118). R. Daniel Day, Jr., Esquire, represented Applicant. Assistant Solicitor David R. Wagner, Esquire, prosecuted the case. On February 11, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury on one count each of burglary – first degree and petit larceny. The remaining charges were dismissed. The jury found Applicant guilty as indicted. Judge McIntosh sentenced Applicant to imprisonment for twenty years suspended upon the service of sixteen years with five years' probation for burglary – first degree and thirty days for petit larceny, to be served concurrently.

Applicant filed a timely notice of appeal. LaNelle Cantey DuRant, Esquire, of the Office of Indigent Defense – Appellate Defense Division perfected the appeal. The South Carolina Court of

Appeals affirmed Applicant's conviction on November 25, 2015. State v. Finney, Op. No. 2015-UP-544 (S.C. Ct. App. filed November 25, 2015). The remittitur was returned to the circuit court on December 22, 2015.

Attached to this Return and incorporated by reference are the records of the Oconee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Violations of Applicant's rights pursuant to the Sixth Amendment, Fourteenth Amendment, and his right to effective assistance of counsel in that:
 - a. Plea counsel did not convey the State's plea offer before trial, plea counsel had a conflict of interest, and there was insufficient evidence.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant further alleges ineffective assistance of counsel due to a conflict of interest. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse

to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)). See also Burger v. Kemp, 483 U.S. 776, 783 (1987). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges the evidence presented at trial by the State was insufficient to convict him. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (2016) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.") The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

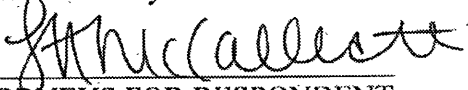
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

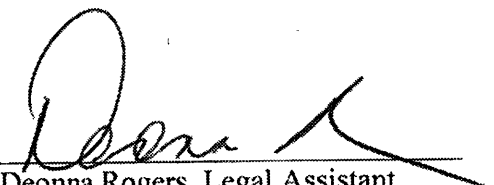
5/12, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
	)	2016-CP-37-706
	)	
JONATHAN A. FINNEY, #360193	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss and Motion for A More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee St.
 Greenville, SC 29601

DATED this the 12th day of May, 2017.


 Deonna Rogers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JONATHAN A. FINNEY,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

SUPPLEMENTAL APPLICATION

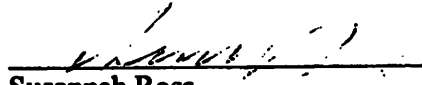
CASE # 2016-CP-37-0706

FILED OCONEE COUNTY SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2016 FEB 20 P 2:51

This matter comes before the Court by way of application of post conviction relief filed November 23, 2016, alleging ineffective assistance of trial counsel and due process violations. A Return and Partial Motion to Dismiss and Motion for a More Definite Statement was made on May 12, 2017. This application is intended to incorporate Mr. Finney's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of:

- 1) ineffective assistance of plea counsel for failing to investigate the Applicant's assertion that another person, Josh Burrell, had committed the burglary; and
- 2) Due Process violation because the lead investigator on case, David McMahan, had a conflict of interest because his father was the owner of the house that was burglarized on McMahan Rd.

Respectfully submitted,


Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 11 day of January , 2018

mailed per atty Reg. 
in index

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

JONATHAN A. FINNEY,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

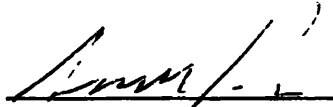
IN THE COURT OF COMMON PLEAS

CASE # 2018 CP-37-0706

AFFIDAVIT OF SERVICE
BY MAILFILED OCONEE COUNTY, SC
BEVERLY H. WITFIELD
CLERK OF COURT
2018 FEB 20 P 2:52

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Supplemental Application on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211
Attn: Kelly Oppenheimer


Attorney for Defendant

This 17 day of February, 2018

emailed per atty Reg.
no copies 

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
-----) IN THE COURT OF
 COMMON PLEAS
 2016-CP-37-00706

JONATHAN ALLEN FINNEY)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
 DEFENDANT)
-----)

FEBRUARY 21, 2018
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX

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

SUSANNAH CONYERS ROSS, ESQUIRE
ATTORNEY FOR APPLICANT

KELLY OPPENHEIMER, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS

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TIA C. FINNEY				

BY MS. ROSS	13			

BY MS. OPPENHEIMER		--		

R. DANIEL DAY				

BY MS. OPPENHEIMER	16			

BY MS. ROSS		25		

* * * FEBRUARY 21, 2018 * * *

THE COURT: Okay. This is Raymond -- no, which one are we on?

MS. ROSS: Jonathan Finney, Your Honor.

THE COURT: Okay. All right. Yes, ma'am.

MS. OPPENHEIMER: Your Honor, may it please the court. The next matter is Jonathan A. Finney vs. the State of South Carolina, docket number 2016-CP-37-706.

During its December 2013 term, the Occonee County Grand Jury indicted Applicant for three counts of Burglary in the 1st degree and three counts of Petit Larceny \$2000 or less. R. Daniel Day, Jr. from the 10th Circuit Public Defender's Office represented him.

On May 27th through the 30th, 2014, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh on one count of Burglary in the 1st degree and one count of Petit Larceny \$2,000 or less. The jury convicted Applicant as indicted and Judge McIntosh sentenced him to 20 years imprisonment, suspended on the service of 16 years with five years probation for Burglary in the 1st degree, and to 30 days for Petit Larceny, to run concurrently.

Applicant filed a timely notice of appeal and appellant/defender, Lanell Canteay Durant, of the South

1 Carolina Commission on Indigent Defense Office of
2 Appellant Defense perfected an Anders appeal on
3 Applicant's behalf.

4 Thereafter, the South Carolina Court of Appeals
5 dismissed Applicant's appeal and granted counsel's
6 request to withdraw. The remittitur was issued on
7 December 22, 2015.

8 On November 23, 2016, Applicant filed an
9 Application for Post Conviction Relief alleging
10 ineffective assistance of counsel for failure to inform
11 Applicant of a plea offer and for having a conflict of
12 interest. Applicant also asserted an allegation of
13 insufficient evidence.

14 The State made its Return and partial Motion to
15 Dismiss and Motion for a More Definite Statement on May
16 12, 2017, requesting an evidentiary hearing be held on
17 Applicant's allegations of ineffective assistance of
18 counsel and requesting the Applicant's allegation of
19 insufficient evidence be summarily dismissed.

20 On February 14, 2018, through his counsel,
21 Applicant amended his application to include the
22 following claims: One, ineffective assistant of
23 counsel for failing to investigate the Applicant's
24 assertion that another person, Josh Burrell, had
25 committed the burglary; and, two, due process violation

J. FINNEY -- DIRECT

1 because the lead investigator on the case had a
2 conflict of interest because his father was the owner
3 of the house that was burglarized. Applicant is
4 represented by Susannah Ross, and both she and Mr.
5 Finney are present today.

6 THE COURT: All right. Yes, ma'am.

7 MS. ROSS: Thank you, Your Honor. May it please
8 the court. We'd call Jonathan Finney at this time.

9 THE COURT: Okay.

10 JONATHAN ALLEN FINNEY,
11 having been first duly sworn, testified as follows:

12 THE CLERK: If you would take the witness stand,
13 please, sir, and state your name and spell your last
14 name, please, sir.

15 THE WITNESS: Jonathan Finney. F-I-n-n-e-y.

16 **DIRECT EXAMINATION BY MS. ROSS:**

17 Q. Okay. Mr. Finney, you filed for post
18 conviction relief; is that correct?

19 A. Yes, ma'am.

20 Q. And do you understand you're put back in the
21 position of a plea, where the dismissed charges as part
22 of this plea can be brought back against you?

23 A. Yes, ma'am.

24 Q. And you still wish to go forward?

25 A. Yes, ma'am.

J. FINNEY -- DIRECT

1 Q. Now, you allege that your lawyer was
2 ineffective; why do you say that?

3 A. At the start of the trial, what he did was he
4 told me about a plea that was never came -- offered to
5 me. He said something about a ten year plea that I
6 should have took, but it was too late. And I was never
7 -- never even told about any plea.

8 Q. Okay. And so what would you have done if you
9 had been told about that plea?

10 A. I still would have -- I still would have
11 fought it because I know I'm innocent.

12 Q. Okay. So you don't know whether you would
13 have accepted that plea or not? Are you saying you
14 wouldn't have?

15 A. No, ma'am.

16 Q. Okay. Now, with -- you gave a statement; is
17 that correct?

18 A. Yes, ma'am.

19 Q. And it's on page 94, but basically you say
20 y'all were staying at the house and a guy named Josh
21 Burrell and his girlfriend were staying with you?

22 A. Yes, ma'am.

23 Q. And whose house was this?

24 A. My step-daughter's, Tia.

25 Q. Okay. And who were you staying with?

J. FINNEY -- DIRECT

1 A. It was Tia Roberts -- it was me and my wife.

2 Q. And what's her name?

3 A. Tia.

4 Q. And then how long did Josh Burrell and his
5 girlfriend stay there?

6 A. About a week -- a week or so.

7 Q. And did -- did he ever do anything that made
8 you suspect that he had stolen something?

9 A. Well, actually, we was in there with the
10 grandbabies, and the young step-daughter, watching TV,
11 me and my wife. And -- and Josh and his girlfriend, he
12 had left and he came back. And when he had came back,
13 he had a blue bag on him. He walked around, and he had
14 me come back there to look and said that he had --

15 MS. OPPENHEIMER: Objection, Your Honor, as to
16 what Josh Burrell said.

17 THE COURT: Yeah. You --you can't testify about
18 what somebody else told you, just testify about what
19 you know; sustained.

20 A. Yeah.

21 BY MS. ROSS:

22 Q. But you wrote a statement out saying all that?

23 A. Yes, ma'am.

24 Q. Isn't that correct?

25 A. Yes, ma'am.

J. FINNEY -- DIRECT

1 Q. And before that, you signed a waiver and you
2 talked to law enforcement, you wrote out that statement
3 and you signed it; right?

4 A. Yes, ma'am.

5 Q. Now, there were two other statements that were
6 brought in, in your trial, and those were oral
7 statements?

8 A. Yes, ma'am.

9 Q. Were those true?

10 A. Yes, ma'am.

11 Q. Now, wait -- when the statement that you said
12 that you were the look-ut person, was that --

13 A. No, ma'am. No, ma'am.

14 Q. And I say "oral statement", I mean that
15 something that you wrote, you said out loud, but you
16 didn't write down and sign anything?

17 A. Yes, ma'am.

18 Q. So ,at a later date, after you signed a
19 statement that was written out saying that Josh Burrell
20 did this --

21 A. Yes, ma'am.

22 Q. -- you went along with law enforcement; what
23 happened then?

24 A. What they did, they came to the county and
25 asked me to show them where the places where -- whether

J. FINNEY -- DIRECT

1 they said they would get me something to eat, -- took
2 me out, got something to eat, came right straight to
3 the house, and got out and ask me -- I -- he -- I got
4 out of the truck. The other officer got out, stood
5 beside me, the other officer backed the truck up. And
6 he asked me, he said, you seen this house before? I
7 said, well, it's right -- I said my stepdaughter stays
8 with her boyfriend down the road. I said, come down
9 with her boyfriend, and seen the house. And that's
10 when I come in the house. And the other officer had
11 took a picture.

12 Q. Okay. Now, the officer says that you were the
13 one who directed them to that house?

14 A. No, ma'am.

15 Q. How far was that house from where you were
16 staying with your wife's daughter?

17 A. About 200 yards or 300 yards.

18 Q. So how did you know that house or why would
19 you be pointing at that house?

20 A. Because that's where -- when her boyfriend,
21 when he jog, go down the road. And he said the road
22 ends, he just turn around and come back. Each road --
23 on each side -- on the next side, this side, ends -- so
24 you run, turn around, come back; and turn around and
25 come back.

1 Q. Now, did you testify at trial?

2 A. No, ma'am.

3 Q. If you had testified, what would you have
4 said?

5 A. The same thing. The same thing, that I'm
6 innocent. I did not do this.

7 Q. All right. And so the first statement you
8 gave was true?

9 A. Yes, ma'am.

10 Q. And the second and third ones that the police
11 officers attributed to you, were they true or not?

12 A. No, ma'am. They was trying to say that I was
13 looking -- they're trying to put -- I don't understand
14 -- they was trying to put -- trying different things --
15 different crimes, and different -- adding this one,
16 saying this one happened and this one happened and
17 trying to make me -- kind of, putting them together.

18 Q. Do you know if Josh Burrell was charged?

19 A. No, ma'am.

20 MS. ROSS: No further questions.

21 THE COURT: Okay. Yes, ma'am.

22 **CROSS EXAMINATION BY MS. OPPENHEIMER:**

23 Q. How many times did you meet with Mr. Day
24 before your trial?

25 A. Probably twice -- two or three times. It was

1 for court, like bond hearings.

2 Q. Okay. And do you recall reviewing the
3 discovery with him?

4 A. No, ma'am.

5 Q. Okay. Did you ever review your statements to
6 law enforcement with him?

7 A. No, ma'am. I don't -- I don't recall any --
8 no, ma'am.

9 Q. Okay. But you did admit to law enforcement
10 that you were look-out, that you were crow in this
11 involvement -- in this burglary?

12 A. No -- no, ma'am.

13 Q. Okay. And did you take the police to the
14 location you burglarized?

15 A. No, ma'am.

16 Q. You did not give them directions to the house?

17 A. No, ma'am.

18 Q. Okay. You did not point to the house and say,
19 "that's the house we broke into"?

20 A. No, ma'am. I was standing there and they got
21 the picture. I was doing like this (indicating), he
22 said, "Do you recognize this house?" And I said, "This
23 house, yes, sir, I recognize it because that's where we
24 was jogging." And that's when -- the other officer, he
25 was taking pictures, the one that his family's home --

1 Q. But you did go to the house with law
2 enforcement?

3 A. Yes, ma'am. They took me straight there.

4 Q. Do you recall discussing possible defenses
5 with your attorney?

6 A. No, ma'am.

7 Q. Did you ever tell him to investigate Josh
8 Burrell?

9 A. Yes, ma'am.

10 Q. Did you ever tell him to talk to any other
11 witnesses?

12 A. Yes, ma'am.

13 MS. OPPENHEIMER: I have no further questions.

14 THE COURT: Anything on redirect?

15 MS. ROSS: Yeah.

16 **REDIRECT EXAMINATION BY MS. ROSS:**

17 Q. Did you see -- the other officer who was
18 taking pictures, did he have a phone or -- how was he
19 taking pictures? What was he using?

20 A. He -- he had a camera if I'm not mistaken.

21 Q. All right.

22 A. I'm not sure.

23 MS. ROSS: Okay. No further questions.

24 THE COURT: Okay. Thank you, sir. You can step
25 down. I appreciate it.

T. FINNEY -- DIRECT

1 THE WITNESS: Thank you.

2 THE COURT: Yes, ma'am.

3 MS. ROSS: Thank you, Your Honor. We call Tia
4 Chapman Finney.

5 TIA CHAPMEN FINNEY, having
6 been first duly sworn, testified as follows:

7 THE CLERK: If you would take the witness stand
8 please, and state your name and spell your last name
9 for the reporter, please.

10 THE WITNESS: Tia Chapman Finney, F-i-n-n-e-y.

11 **DIRECT EXAMINATION BY MS. ROSS:**

12 Q. Hi there, Ms. Finney, how are you related to
13 Mr. Jonathan Finney?

14 A. That's my husband.

15 Q. Okay. And you have been sworn and you're
16 going to tell the whole truth here?

17 A. Absolutely.

18 Q. Okay. Do you recall anything about this
19 incident?

20 A. Yes, I do, like it was yesterday.

21 Q. And you heard the testimony before, did you
22 know -- who was Josh Burrell?

23 A. Josh Burrell was living with a lady that I
24 considered my daughter. So to me, he's nothing. But
25 to her, he was a lot, so yeah.

T. FINNEY -- DIRECT

1 Q. And were they staying with you?

2 A. They were staying with me -- they had called a
3 few -- about a week before that, Josh had got in
4 trouble withs somebody else, and was -- they was
5 threatening when I called my daughter, Danielle, which
6 is a friend --

7 Q. Uh-huh.

8 A. So we went and got him, brought him to my
9 daughter's, Deviah's home, with Will Brinkley. And
10 that's when he was there.

11 Q. And so y'all are all staying with your
12 daughter?

13 A. With Deviah, yes, ma'am.

14 Q. And you're there for a few days and then she
15 told y'all to leave?

16 A. Yeah, actually she told us to leave not long
17 after this happened.

18 Q. Now, did an incident occur with Josh Burrell
19 coming into the house when you were with Mr. Finney?

20 A. Oh, yes.

21 Q. Can you tell me what happened?

22 A. I was at the -- me and Danielle had just got
23 done with the kitchen, and we was watching TV. And
24 Josh came in and he had all kind of snacks and change
25 and bags, you know, book bags and stuff like that,

T. FINNEY -- DIRECT

1 blankets and stuff, and he went to the back room.
2 That's -- you know, that's pretty much all -- Josh said
3 he wanted Jonathan back there with him.

4 Q. So he called Jonathan back there with him?

5 A. Yes, he did.

6 Q. Now, when he came in, was Jonathan with him at
7 all?

8 A. No. Jonathan was with me and my child.

9 Q. And how about for the past -- the days prior
10 to that, where was Jonathan?

11 A. With us.

12 Q. Now, would you have -- did you ever talk to
13 Mr. Day, Jonathan's attorney, about the case? Did he
14 ever question you?

15 A. No, ma'am.

16 Q. Did he have an investigator or anyone question
17 you?

18 A. McMahan and Arnold did, but you know.

19 Q. And what did you tell them?

20 A. They didn't ask me anything that pertained to
21 this case. It was something other than this case.

22 Q. Okay. And would you have testified if you
23 were asked to testify at trial?

24 A. Absolutely.

25 Q. And that testimony would have been --

D. DAY -- DIRECT

1 A. The exact same thing.

2 Q. Okay.

3 MS. ROSS: I've got no further questions.

4 THE COURT: All right. Yes, ma'am.

5 MS. OPPENHEIMER: I have no questions for this
6 witness.

7 THE COURT: Okay. Thank you. You can step down.

8 MS. ROSS: No more witnesses, Your Honor.

9 THE COURT: All right. Yes, ma'am.

10 MS. OPPENHEIMER: The State would call Danny Day.

11 R. DANIEL DAY, having been
12 first duly sworn, testified as follows:

13 THE CLERK: If you'll take the witness stand,
14 please, sir, and state your name and spell your last
15 name for the reporter, please.

16 THE WITNESS: R. Daniel Day, D-a-y.

17 **DIRECT EXAMINATION BY MS. OPPENHEIMER:**

18 Q. Good afternoon, Mr. Day. How long have you
19 been practicing law?

20 A. Forty years.

21 Q. And where are you employed?

22 A. I'm with the 10th Judicial Circuit Public
23 Defender's Office.

24 Q. And how long have you been there?

25 A. Ten years, will be ten years in July.

D. DAY -- DIRECT

1 Q. Okay. Do you recall how you became involved
2 in this case?

3 A. Mr. Finney applied for a public defender and I
4 took that case.

5 Q. Okay. And do you recall the approximate date?

6 A. I do not. It was right after he was arrested.
7 He was arrested in August, I think it was, and shortly
8 thereafter.

9 Q. Okay. How many times did you meet with Mr.
10 Finney prior to his trial?

11 A. Well, I know we met several times at the
12 detention center, and they would bring him up to court
13 and we would talk there as well prior to the term in
14 which we went to trial.

15 Q. Okay. And did you file any Brady or Rule 5
16 motions?

17 A. I did.

18 Q. Okay. And did you review the discovery
19 material with Mr. Finney?

20 A. I did. I went over -- because there were
21 numerous statements and things that the officers said,
22 we went over those as well as just before trial, they
23 started giving us more stuff, so we went over all of
24 that, too, while they -- the pictures.

25 Q. What sort of statements were in evidence -- or

D. DAY -- DIRECT

1 did the State have?

2 A. They had statements from Mr. Finney, from
3 Tina, and also from Tia and from Josh Burrell and the
4 officers that were -- what they said in their incident
5 reports.

6 Q. Okay. And did you review specifically Mr.
7 Finney's statements with him?

8 A. Yes.

9 Q. Okay. And can you give the court a general
10 overview of what the State alleged occurred?

11 A. Well, there were several burglaries they
12 charged -- they charged him with, but this particular
13 one on McMahan Road was the one we were going to go to
14 trial on. And we certainly went over that and we
15 talked about the other cases that were involved with --
16 because there were incident reports on that information
17 and they had asked about that, and they interviewed him
18 extensively about the other charges as well, and went
19 over those.

20 He basically said that he -- he admitted being
21 involved in it. He -- he talked about Mr. Burrell. He
22 also talked about information there -- and I had to ask
23 him about what was in the other statement, that he
24 actually had possession of things that were stolen from
25 the McMahan house, and that he had sold some of it --

D. DAY -- DIRECT

1 or traded it for drugs at the time. And we went over
2 all of that, some of which he acknowledged was true,
3 but he -- he -- he did not wish to go to jail. That's
4 what we were trying to get around. He also had
5 safecracking pending on the other charges as well.

6 Q. Okay. And you said he had possession of
7 things that were stolen from the house, what did he
8 have possession of?

9 A. One of the statements -- one of them said that
10 he stole the shotgun, traded it, and that there were
11 other things that were brought into the house. One
12 person -- Tina's statement and -- is saying Josh
13 Burrell brought it in -- and another witness, Tina said
14 that actually it was brought in by Mr. Finney.

15 Q. Okay.

16 A. And that was a shotgun, the BB gun, roll of
17 coins from other places, things like that --

18 Q. Okay.

19 A. -- or loose change rather.

20 Q. Did you have a Jackson v. Denno hearing in
21 this case?

22 A. We did.

23 Q. And did you argue the suppression of his
24 statements?

25 A. Yes.

D. DAY -- DIRECT

1 Q. And what -- what occurred at that hearing?

2 A. The issue only being whether or not the
3 statements were freely and voluntarily given. We tried
4 to argue against that, that there was bias with one of
5 the investigators, being that -- since the property
6 belonged to his family and because of that, we felt
7 that that should have tainted the statement as well as
8 he denied them. He made conflicting statements, and
9 for those reasons, we were trying to keep those
10 statements out.

11 Q. Were you successful?

12 A. Unfortunately, no.

13 Q. Okay. And from your understanding, did Mr.
14 Finney take law enforcement to the house that he
15 burglarized?

16 A. Yes.

17 Q. He -- and from your understanding, he admitted
18 his involvement in this crime?

19 A. That was what the officer was willing to
20 testify to, and said that these are the ones he was
21 involved in. They testified -- the pictures showed him
22 standing at the -- at the gate -- particularly the
23 McMahan case that we were going to trial on, pointing
24 to the house, saying that's one that he broke into.

25 Q. Okay. And did you discuss any possible

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1 defenses with Mr. Finney?

2 A. The only real defenses we had at that point
3 was whether or not a jury is going to believe what the
4 officer said, basically is what he would say if he
5 testified, or what Tina would testify to for the
6 others. And that's really what it came down to. I
7 told him we -- I didn't like the idea that the
8 indictment was returned from a witness who had nothing
9 to do with the case. We went down that. And then we
10 talked about the fact that the statements themselves
11 were conflicting, and also being involved in the fact
12 that they withheld evidence from us up until and during
13 the trial, and it came in. So that was about all we
14 had to go on at that point.

15 Q. Okay. And did the Applicant give you any
16 potential witnesses or leads into an investigation?

17 A. He did. He told me about Tina and Tia and
18 Josh Burrell, yes, and I put --

19 Q. Did you --

20 A. And I put those down as possible witness for
21 the trial on my witness list.

22 Q. Okay. And did you investigate Josh Burrell?

23 A. I don't think I ever spoke to Josh Burrell at
24 that time. I don't know whether or not they could not
25 get a hold of him or what, but I do not remember

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1 interviewing him.

2 Q. Do you recall talking to Tia?

3 A. I don't think I spoke to Tia, and I don't
4 think I spoke to Tina unless it was at the courthouse
5 when it came up on -- before the trial as we were
6 trying to determine trial strategy as to what we would
7 go on. And I explained to him about last argument, if
8 we didn't put up witnesses or testimony. I think I
9 spoke to her at the courthouse. I don't remember going
10 out to see her anywhere though.

11 Q. So your testimony is today is that you talked
12 to Tia at the courthouse?

13 A. To Tina, as the best I remember, yes.

14 Q. Okay. Did you ever talk to Tia, the woman who
15 just testified?

16 A. I don't think so.

17 Q. Okay. Did you have an overall strategy in
18 this case?

19 A. The main thing was trying to attack the
20 evidence that was being placed before the court,
21 particularly trying to get around the fact that the --
22 again, the officer who had an interest in the house
23 that was involved in the investigation, and the
24 question on whether or not what his involvement was. I
25 explained to him that unfortunately that if he was

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1 involved with it, he'd still charge with the same
2 charge. Because he had mentioned being a look-out and
3 such like that, and I tried to explain to him that that
4 is still the same as if he had gone in the house
5 himself.

6 Q. Okay. And you confronted Officer McMahan
7 about his interest in the property?

8 A. Yes.

9 Q. Okay. And the jury was able to hear that
10 argument?

11 A. They did.

12 Q. Okay.

13 A. During the cross examination and during final
14 argument.

15 MS. OPPENHEIMER: I beg the court's indulgence.

16 THE COURT: All right.

17 BY MS. OPPENHEIMER:

18 Q. These witnesses that Applicant gave you, did
19 you have at least their statements or something from
20 the Applicant indicating what they would testify to?

21 A. No. Just what he told me.

22 Q. So he told you what he thought they would say?

23 A. Yes. I had the statements that they gave. Of
24 course, I reviewed those and what the officers said
25 about them and what he told them. But other than that,

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1 no, he -- I told him what the statement said. I went
2 over that with him in preparation for court, and he was
3 saying that they would support him.

4 Q. And based on your review of these statements,
5 do you believe that they would have been helpful?

6 A. The problem I had with for every one thing
7 that would be helpful for him, ten things would kill us
8 with their own statements they had made prior to the
9 court. I had told the officers everything they said
10 put him involved with the crime, and I just did not
11 want to bolster the State's case by putting in more
12 evidence with the fact that he was involved with this
13 case.

14 Q. Okay. And so it was some part of your
15 strategy not to call these witnesses?

16 A. Once we got to -- to the point where we had
17 heard all of their evidence, then that's when we
18 decided to go forward with it rather than let them hear
19 the same thing again, that we would go ahead and have
20 last argument. And I would have an opportunity to
21 argue to the jury, that after the Solicitor completed
22 his argument, as to the weaknesses in the case.

23 Q. Okay. And Mr. Finney testified as to a plea
24 offer; do you recall any offers that were made by the
25 State?

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1 A. Yes. And on February the 6th of 2014, the
2 Solicitor offered to reduce the Burglary 1st to a
3 Burglary 2nd on all of these charges, and two
4 safecracking, and also a recommendation of 15 years
5 suspended to ten years in jail, five years probation,
6 and payment of restitution.

7 Q. And you would have -- did you review that with
8 the Applicant?

9 A. Yes, I did.

10 MS. OPPENHEIMER: I have no further questions.

11 **CROSS EXAMINATION BY MS. ROSS:**

12 Q. Okay. Mr. Day, just going back to that plea
13 offer, you were reading it there, but that's not from
14 your file; is it?

15 A. No, it's not.

16 Q. And do the notes in your file reflect that you
17 gave that plea offer to Mr. Finney in person?

18 A. I believe it would, yes. Unfortunately I do
19 not have my files. I had it out when we had -- were
20 previously scheduled in September, and since then we
21 have moved around things in the office to create more
22 space for another attorney, and I do not know whether
23 that file has been mis-filed or what.

24 Q. But you believe you would have given him that
25 plea offer?

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1 A. Yeah.

2 Q. And as far as the witnesses being -- cutting
3 both ways for Mr. Finney, was that regarding this
4 particular burglary or other instances?

5 A. I think this is just one that they were going
6 to trial on for sure, but it also spoke of evidence of
7 items that were stolen from the other places like coins
8 and things of that nature, which were brought out in
9 the incident reports for the other cases that he had
10 been indicted on. But I was -- I was just worried that
11 everything good they would say that might help, would
12 also have to talk about the fact that he was certainly
13 involved if he had -- there was indication he was
14 involved by having items that were stolen.

15 Q. All right. And you recognized it was some
16 witness preparation you couldn't -- unless they opened
17 the door, you could have kept out any reference to any
18 other crimes --

19 A. I'm afraid in order for them to testify, they
20 would have to open the door.

21 Q. And now Ms. Chapman just testified just now,
22 and she -- I don't believe opened the door to any other
23 charges or discussed any other goods found from other
24 places, did she?

25 A. Not now, no. I -- I didn't hear anything.

1 Q. Okay. And going to Mr. Burrell, you're
2 familiar with him recently as he just pled guilty and
3 you represented him on some charges?

4 A. Yeah. When he -- when he was first arrested,
5 Mr. Byrd represented him. And he represented him up
6 until he left our office, and then that case was handed
7 over to me, and that was well after this trial.

8 Q. Okay. So there is no conflict of interest
9 there?

10 A. No. I was not representing him at that time
11 and I don't believe Mr. Byrd was at that -- because his
12 crime began right about the same time that Mr.
13 Chapman's (ph) cases were going on as far as getting
14 started.

15 Q. Okay. And just to say that, like Mr. Burrell
16 was not like a made-up invented person, he's a person
17 that they knew who he was and -- and -- Mr. Finney
18 didn't make this person up? He's another guy who's
19 involved in criminal activity --

20 A. No question -- he did not make him up, no.

21 Q. Okay. Now, as far as Mr. McMahan, originally
22 the indictment did not list the owner, correct, of the
23 house?

24 A. The -- the warrant, et cetera, represents a
25 Mr. Giodono (ph) was the owner, which is Mr. McMahan's

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1 brother-in-law.

2 Q. All right.

3 A. Married to his sister. And then the house
4 was in an estate. And in the estate, the house, the
5 home place, was left to Ms. Giodono, Mr. McMahan's
6 sister. He was, as part of the will, was granted a
7 right of first refusal -- an option to purchase the
8 property if she decided to sell it. If at any time she
9 wanted to sell that property, he would have the
10 opportunity to have first refusal to purchase it. So
11 he still, in my opinion, had an interest in that
12 property because that -- an interest in the property
13 which would affect the title to it. He received other
14 property that was adjacent to it, and other brothers
15 and sisters got some other property.

16 Q. And you made that argument on the record, that
17 they -- he had an interest?

18 A. Yes.

19 Q. I believe you said in cross examination?

20 A. Yes.

21 Q. However, did you ever do -- did you do a
22 specific Motion to Dismiss based on conflict of
23 interest?

24 A. I moved to suppress the evidence, and I
25 thought the case should be dismissed, yes.

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1 Q. Are you aware of whether any objection to that
2 or specific ruling was preserved on the record?

3 A. It was.

4 Q. Okay. Now, basically just getting into the --
5 the statements, you've already testified about that.
6 There was one written statement by Mr. Finney and then
7 two oral statements that came in through Investigator
8 McMahan?

9 A. McMahan and Arnold, yes.

10 Q. Okay. Now, on page 281, line 16, there's an
11 argument about putting a hand of one, giving the jury a
12 charge on the hand of one, hand of all?

13 A. Yes.

14 Q. And you objected to that charge?

15 A. I did.

16 Q. Correct -- now, -- and you renewed that
17 objection actually on page 286, so it was preserved on
18 the record?

19 A. Yes.

20 Q. At that point, did you ever request a third
21 party guilt charge?

22 A. I don't think so.

23 Q. And I guess a hand of one would have been
24 based on the oral statement, the third party guilt
25 would be based on the written statement?

1 A. Yes.

2 Q. So there was testimony of third party guilt in
3 the record?

4 A. There was as to that being a possibility, most
5 definitely, yes.

6 Q. And did you ever request a charge on receiving
7 stolen goods or a lesser included Burglary 2nd or 3rd?

8 A. I did not.

9 Q. All right.

10 A. Well, I did as to -- I argued it was not a
11 Burglary 1st, that it should not have gone to a
12 Burglary 1st because I -- I objected and tried to have
13 the judge make a finding that it should not be a
14 Burglary 1st because it was not a residence, so we
15 argued that with the judge and tried to take that out
16 of Burglary 1st, acknowledged that it could be a
17 Burglary 2nd or some other charge, but it should not be
18 a 1st.

19 Q. All right.

20 A. And the judge ruled against that.

21 Q. Okay. Now, in your -- on page 310, in your
22 closing argument, you're addressing why just a picture
23 without a video or another statement when they are out
24 at the scene, the investigators; correct?

25 A. Yes.

1 Q. Now, in your closing, you don't go after Josh
2 Burrell as this other person, as a third party who
3 might have done this? That wasn't your theory of the
4 case, was it?

5 A. No.

6 Q. Okay.

7 MS. ROSS: I've got no further questions.

8 THE COURT: Okay. Anything else?

9 MS. OPPENHEIMER: No, Your Honor.

10 THE COURT: Okay. You can step down. Anything
11 else from the petitioner or the State?

12 MS. ROSS: Well, I would just offer this Norr v.
13 State case on third party --

14 THE COURT: Okay.

15 MS. ROSS: -- for your review, Your Honor. If I
16 may approach?

17 THE COURT: Sure. Yeah. Thank you. Mr. Finney,
18 let me tell you what happens, I get handed this box
19 this morning, which is your file. I haven't looked at
20 it yet. I take the testimony and then I'll review it.
21 I'll take it under advisement and let one side or the
22 other know sometime. It's probably going to be a
23 couple of weeks to be frank with you.

24 MR. FINNEY: Yes, sir.

25 THE COURT: Then they'll prepare an order,

1 exchange it between each other, to make sure they agree
2 on what I ruled, then I'll sign it. Okay.

3 MR. FINNEY: Yes, sir.

4 THE COURT: But don't get ancy if you haven't
5 heard in two or three weeks. It's just -- when is your
6 max out date?

7 MR. FINNEY: In 2026, sir.

8 THE COURT: Okay. All right. Be safe now.

9 MS. ROSS: Thank you, Your Honor.

10 THE COURT: Thank you. Thanks for y'all patience
11 today.

12 (Whereupon, the hearing adjourned.)

13

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END OF TRANSCRIPT

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR ANDERSON COUNTY ON THE 21ST OF
FEBRUARY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

8/2/2018

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
COMMISSION EXPIRES 9.22.2024

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jonathan A. Finney, #360193,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2016-CP-37-706

ORDER OF DISMISSAL

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2018 APR 27 P 1:31

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed November 23, 2016. Respondent made its Return and Partial Motion to Dismiss and Motion for More Definite Statement on May 12, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegation of insufficient evidence be summarily dismissed. Thereafter, Applicant, through his counsel filed an amended application for post-conviction relief on February 20, 2018. An evidentiary hearing was convened on February 21, 2018, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Susannah C. Ross, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. During its December 2013 term, the Oconee County Grand Jury indicted Applicant for three counts of first-degree burglary (2013-GS-37-01115) and three counts of petit larceny \$2,000 or less (2013-GS-37-01118). Oconee County Chief Public Defender R. Daniel

Copies to:

Atty (P) Ross (D) McCallister
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Day, Jr. of the Tenth Circuit Public Defender's Office represented Applicant on these charges. On May 27-30, 2014, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh on one count of first-degree burglary and one count of petit larceny \$2,000 or less. The jury convicted Applicant as indicted, and Judge McIntosh sentenced him to a term of imprisonment for twenty years suspended on the service of sixteen years with five years' probation for first-degree burglary and to a concurrent term of imprisonment for thirty days for petit larceny.

Applicant filed a timely notice of appeal, and Appellate Defender. LaNelle Cantey DuRant of the South Carolina Commission on Indigent Defense, Office of Appellate Defense perfected an appeal on Applicant's behalf. Following the submission of an *Anders*¹ brief, the South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's request to withdraw by Order dated November 25, 2015. *State v. Finney*, Op. No. 2015-UP-544 (S.C. Ct. App. Filed November 25, 2015). The Remittitur was issued on December 22, 2015.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to convey a plea offer to Applicant;
2. Ineffective assistance of counsel for having a conflict of interest; and
3. Insufficient evidence.

In his amended application, Applicant raised the following allegations:

1. Ineffective assistance of counsel for failing to investigate the Applicant's assertion that another person, Josh Burrell, had committed the burglary; and
2. Due process violation because the lead investigator on the case, David McMahan, had a conflict of interest because his father was the owner of the house that was burglarized on McMahan Rd.

At the hearing, Applicant proceeded forward on the claims of ineffective assistance of counsel

¹ *Anders v. California*, 386 U.S. 738 (1967).

raised in his original application, as well as the grounds raised in his amended application for post-conviction relief.

STATEMENT OF FACTS ADDUCED AT TRIAL

On August 10, 2013, Joseph Giordano arrived at his family's weekend home in Oconee County (hereinafter "the Giordano home"). Tr. 143; 160. Mr. Giordano's wife, Mary Jane Giordano, owns the home, which is located on McMahan Road; and her brother, Sergeant David McMahan, has a right of first refusal in the home. Tr. 150, 158, 210-11. While at the Giordano home, Mr. Giordano discovered the locked door to the screened-in porch leading into the home had been broken open and the lock on the porch door leading outside was open and the screen was cut. Tr. 143-44, 150, 160, 161. The house was in total disarray, and a 12-gauge shotgun, keys to various vehicles, and liquor were missing. Tr. 143-44, 145, 154, 161. Later, Mr. and Mrs. Giordano discovered an airsoft rifle and BB gun were also missing. Tr. 153, 154.

Although the investigation into the burglary at the Giordano home was assigned to Sergeant Scott Arnold, Sergeant Arnold asked Sergeant McMahan for his assistance because Sergeant McMahan grew up in the neighborhood where the house was located. Tr. 189, 233, 234. As a result, Sergeant McMahan canvassed the neighborhood. Tr. 189. In canvassing the neighborhood, he talked to two individuals: Randy Allsep and David Duncan. Tr. 168, 170, 190. Mr. Allsep lives on McMahan Road, about one-quarter of a mile up the road from the Giordano home. Tr. 167. During the first week of August, Mr. Allsep saw a slim, white male with dark hair carrying a bag on his back, which had something sticking out of it. Tr. 167-68. Mr. Duncan lives off of Jennings Road, which is across the street from McMahan Road. Tr. 169. During the first week of August, Mr. Duncan saw a slim, white male with tattoos down his arm pacing on Jennings Road in front of Mr. Duncan's home. Tr. 169-70. The man told Mr. Duncan

he was staying in a trailer on Jay Jay Road, which is about one-quarter of a mile from the Giordano home. Tr. 170.

After talking to Mr. Allsep and Mr. Duncan, Sergeant McMahan went to a mobile home on Jay Jay Road, where he spoke to Dia Roberts. Tr. 173-74; 190. Sergeant McMahan described the man for whom he was looking to Ms. Roberts, who she identified as Applicant. Tr. 173-74, 190. Ms. Roberts indicated Applicant and her mother, Tia Chapman Finney, had been staying with her for about two to three weeks in early August. Tr. 172-73, 191. She also told Sergeant McMahan Applicant and Mrs. Finney left her home around August 10, 2013, with Tina Elrod, who lived on Return Church Road. Tr. 173, 174, 175, 176, 192.

When Ms. Elrod picked Applicant and Mrs. Finney up from Ms. Roberts's home, Applicant had a blue bag, which contained a shotgun and two BB guns. Tr. 177. Applicant indicated to Ms. Elrod he was supposed to sell the shotgun and divide the money between him and another individual, Josh Burrell, so Ms. Elrod took him to a park in Walhalla to sell the shotgun. Tr. 178, 185-86. While there, Applicant sold the shotgun in exchange for meth. Tr. 178, 181-82. Applicant resided with Ms. Elrod for approximately three months. Tr. 176.

On August 28, 2013, Sergeant McMahan and Sergeant Arnold went to Ms. Elrod's home, where she gave them consent to search. Tr. 179-80, 193, 194, 234. In Ms. Elrod's home, they found an airsoft rifle, a blue bag, which was large enough to carry a shotgun with part of the gun sticking out, a pocketknife, a pellet rifle, and a BB gun. Tr. 194-95, 196. The airsoft rifle and BB gun belonged to the Giordanos. Tr. 195. During their initial search, Applicant was not at Ms. Elrod's home, but she later called Sergeant Arnold and informed him Applicant was returning to her home. Tr. 180, 196. When Sergeant Arnold and Sergeant McMahan made contact with Applicant that evening, Applicant agreed to return to the sheriff's office and gave a

statement to Sergeant Arnold. Tr. 201, 234-37. In that statement, Applicant indicated Josh Burrell broke into the Giordano home. Tr. 235-37.

Sergeant Arnold and Sergeant McMahan continued their investigation and obtained information connecting the airsoft rifle and the BB gun to Applicant. Tr. 204, 237-38. On August 30, 2013, Sergeant Arnold and Sergeant McMahan confronted Applicant with this new information. Tr. 201, 223-24, 238. During that conversation, Applicant admitted his involvement in this crime, as well as Josh Burrell's involvement, and agreed to cooperate with law enforcement. Tr. 204-05, 239.

Later, on September 4, 2013, Applicant offered to take Sergeant Arnold and Sergeant McMahan to the location of the burglary. Tr. 205, 239. As they drove around the county, Applicant gave them directions. Tr. 207-08, 224, 240. Applicant's directions led them to the Giordano home. Tr. 208, 240. When they arrived at the Giordano home, Applicant got out of the car, pointed to the house, and told Sergeant Arnold and Sergeant McMahan that was the house he burglarized. Tr. 240.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Tia Chapman Finney. Respondent presented testimony from trial counsel, Oconee County Chief Public Defender R. Daniel Day, Jr. (hereinafter "Counsel"). This Court also had before it a copy of Applicant's trial transcript, the records of the Oconee County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel told him about a plea offer for ten years, which he was never previously offered, at his trial. He further testified Counsel

told him he should have taken the offer, but it was too late at that time. Applicant elaborated, however, that he would not have taken the plea because he wanted to fight these charges, and he maintained his innocence.

Applicant testified he met with Counsel two or three times for a bond hearing. He testified he did not recall reviewing discovery with Counsel, and they did not review his statements to law enforcement. Applicant also testified he did not discuss any possible defenses with Counsel. Applicant testified he told Counsel to investigate Josh Burrell and other witnesses.

Applicant also testified he gave a statement to law enforcement, which he signed. In this statement, he testified he told law enforcement that he and his wife were staying with his stepdaughter at the time, and Josh Burrell and his girlfriend were also staying there at that time. He elaborated in his statement, he told law enforcement that Josh Burrell came into his stepdaughter's house with a blue bag, which made him think Mr. Burrell had burglarized the home. He further testified after he gave this statement, law enforcement came to get him and took him to the Giordano home, which was about 200 to 300 yards from where they were staying at the time. Applicant denied giving law enforcement directions to the Giordano home and denied being the lookout at the home while Josh Burrell burglarized the home. He further testified his oral statements, to which witnesses at trial testified, were not true. He testified had he testified at trial, he would have testified his first statement was true, but the other statements were not.

Next, Applicant presented testimony from Tia Chapman Finney, who is Applicant's wife. She testified Josh Burrell was living with a woman who she considers her daughter, and Josh Burrell and this woman stayed with her and Applicant at her daughter's house for a few days

until her daughter kicked all of them out. She testified Josh Burrell came into the house carrying snacks, change, and some bags. She testified Josh Burrell called Applicant into the back room with him. She further testified Applicant had not been with Josh Burrell before Mr. Burrell returned to her daughter's home. She also testified she never talked to Counsel, but she did talk to an investigator. She elaborated the investigator did not ask her anything about this case. She testified that she would have testified at trial.

Following Applicant's case, Respondent presented testimony from Counsel. He testified he has been practicing law for forty years and is approaching his tenth year at the Tenth Circuit Public Defender's Office in July of this year. He testified he was appointed to represent Applicant right immediately his arrest, and he met with Applicant several times at both the detention center and at court. He testified he filed Rule 5, SCRCrimP, and *Brady* motions and reviewed all discovery items with Applicant. He elaborated he reviewed the photographs from the scene and the various statements from witnesses with him, including Applicant's statements to law enforcement, Tia's statements, Josh Burrell's statements, and officer statements.

Counsel testified the State alleged Applicant had committed several burglaries around the area, including the burglary at the Giordano home. He elaborated Applicant admitted being involved in these burglaries with Josh Burrell. He further testified Applicant had possession of some of the stolen items from the burglarized homes, including a shotgun, BB gun, and coins, which Applicant had brought into the home at which he was staying. He elaborated some witnesses said Josh Burrell brought those items, whereas others said Applicant brought them.

Counsel also testified he argued the suppression of Applicant's statements at a *Jackson v. Denno*² hearing prior to trial. He elaborated Applicant gave one written statement and two oral statements to law enforcement, which were admitted into evidence. He further testified he

² 378 U.S. 368 (1964).

argued the bias of the investigator because the property belonged to his family, which could have tainted the statements, at this hearing. Counsel testified, however, he was unsuccessful in arguing the suppression of Applicant's statements. He testified Applicant took law enforcement to Giordano home and identified the house as being that which he and Josh Burrell burglarized. Counsel elaborated the law enforcement officers testified Applicant admitted his involvement in this crime.

Counsel testified his only possible defense at trial was to attack the credibility of the officers. He testified he did not like the idea that the indictment named a victim who had no connection to the property burglarized, which he argued at trial. Counsel testified based on this, he moved to dismiss the case. He further testified he argued officer conflict at trial. Counsel explained this was his main strategy at trial. He elaborated the indictment named Mr. Giordano, who was Sergeant McMahan's brother-in-law. He further testified the house that was burglarized was in Sergeant McMahan's father's estate and had been left to Sergeant McMahan's sister. He explained Sergeant McMahan had a right of first refusal in the property and, therefore, Sergeant McMahan still had an interest in the property. He testified he made this argument on the record and cross-examined Sergeant McMahan as to his interest in the property.

Counsel testified Josh Burrell and Mrs. Finney were on the witness list for trial. He testified he did not speak to the witnesses directly but could not recall whether or not he could get in touch with them. He elaborated he had statements from these witnesses, what law enforcement indicated what they would testify to, and what Applicant said these witnesses would testify to in support of his story. He explained, however, with every one beneficial thing for Applicant's case, there were ten harmful things. He further elaborated all of the witness statements implicated Applicant, and he did not want to bolster these statements by calling them

as witnesses. He explained the witnesses cut both ways regarding this burglary but also brought in issues from other cases, and he was concerned everything beneficial for this case would open the door for the witnesses to testify about other burglaries in which Applicant was involved. He further testified he explained to Applicant that acting as the lookout was synonymous with going into the house himself. He testified once the State presented all of its evidence, he wanted to maintain the last argument in order to highlight the weaknesses in the State's case. He elaborated he explained this strategy to Applicant.

Counsel testified the State made a plea offer on February 6, 2014, for a reduction to second-degree burglary on all charged burglaries with a sentence of fifteen years suspended to ten years and restitution. He testified he reviewed this offer with Applicant.

Counsel testified he does, in fact, know Josh Burrell because he represented Mr. Burrell on other charges. He explained these charges on which he represented Mr. Burrell were well after Applicant's trial. He further testified he undertook representation of Mr. Burrell from another attorney who had left his office.

Counsel also testified he objected to a hand of one, hand of all charge but did not request a charge of third party guilt based on Applicant's first statement. He elaborated there was evidence of third party guilty, but that was not his theory of the case. He further testified he did not request a lesser-included offense charge. He elaborated, however, he did ask the trial court for a finding that this was not a first-degree burglary because the Giordano home was not a residence. He testified the trial court ruled against him on this argument.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to convey a plea offer

Applicant alleges Counsel was ineffective for failing to convey a plea offer from the State. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance; in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601; 675 S.E. 416 (2009).

Here, Applicant testified Counsel did not convey a plea offer for a term of imprisonment of ten years. Specifically, Applicant alleges Counsel told him of the ten year offer when it was "too late." Applicant testified, however, he would not have accepted the plea offer because he maintained his innocence. By contrast, Counsel testified the State made an offer on February 6, 2014, for a reduction to second-degree burglary on all charged burglaries with a sentence of fifteen years suspended to ten years and restitution. He testified he conveyed and thoroughly reviewed this offer with Applicant. This Court finds Counsel's testimony with regards to this allegation very credible, whereas Applicant's testimony is not credible. Furthermore, because Counsel did indeed convey the State's offer to Applicant, this Court finds Applicant has failed to establish any deficiency on the part of Applicant.

Moreover, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant specifically testified he would not have accepted the plea offer

because he wanted to fight these charges. He further asserted he would not have accepted the offer because he maintained his innocence. Therefore, Applicant has wholly failed to establish despite Counsel's alleged deficiencies, he would have accepted the plea offer. This Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged conflict of interest

Applicant alleges Counsel was ineffective for having a conflict of interest between Applicant and Josh Burrell. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). Furthermore, a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). "Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation." *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." *State v. Gregory*, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). Here, Counsel testified he represented Josh Burrell on other charges. He explained the charges on which he represented Mr. Burrell were well after Applicant's trial. He further explained he undertook representation of Mr. Burrell from another attorney who had left his office. As Counsel's representation of Mr. Burrell was well after Applicant's trial and had no relation to Applicant's charges, this Court finds Counsel did not have a conflict of interest and, therefore, Applicant has failed to establish any deficiency or resulting prejudice. This Court further finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate

Applicant alleges Counsel was ineffective for failing to investigate. Specifically, Applicant alleges Counsel was ineffective for failing to investigate Applicant's assertion that Josh Burrell committed the burglary. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006). (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22. (2003). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

Applicant testified he gave a statement to law enforcement, which he signed. In this statement, he told law enforcement that Josh Burrell came into his stepdaughter's house with a blue bag, which made him think Mr. Burrell had burglarized the home. Applicant denied giving law enforcement directions to the Giordano home and denied being the lookout at the home while Josh Burrell burglarized the home. He further testified his oral statements, to which

witnesses at trial testified, were not true. In further support of this allegation, Applicant presented the testimony of Tia Chapman Finney. She testified Josh Burrell came into the house in which they were staying carrying snacks, change, and some bags. She further testified Applicant had not been with Josh Burrell before Mr. Burrell returned to her daughter's home.

On the other hand, Counsel testified Josh Burrell and Mrs. Finney were on the witness list for trial. He testified he did not speak to the witnesses directly but could not recall whether or not he could get in touch with them. He elaborated he had statements from these witnesses, what law enforcement indicated what they would testify to, and what Applicant said these witnesses would testify to in support of his story. He further elaborated all of the witness statements implicated Applicant, and he did not want to bolster these statements by calling them as witnesses. This Court finds Counsel's testimony concerning this allegation very credible, whereas Applicant's and Mrs. Finney's testimony is not credible.

Counsel articulated a specific trial strategy when deciding not to call Mr. Burrell and Mrs. Finney as witnesses at trial. Specifically, Counsel indicated based on the information provided to him, he wanted to avoid opening the door for these witnesses to implicate Applicant in other burglaries with which he was originally charged and also wanted to maintain the last argument in order to emphasize the weaknesses in the State's case. Moreover, Counsel indicated each witness who Applicant believed would be a helpful witness ultimately implicated Applicant in this burglary in some manner. Based on the foregoing, this Court finds Counsel's conduct was reasonable under professional norms; and therefore, Applicant has failed to establish any deficiency.

Moreover, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Under the hand of one, hand of all theory, "one who joins with another

to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). In his statement to law enforcement, Applicant indicated he acted as lookout while Josh Burrell burglarized the Giordano home. Specifically, Applicant told law enforcement Mr. Burrell had the keys, went into the home, took the gun, and Applicant acted as lookout. Tr. 239. Applicant also indicated to law enforcement both he and Mr. Burrell drank the liquor in the Giordano home. Tr. 239. Applicant, therefore, was an active participant in the burglary of the Giordano home. Based on the foregoing, Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as his own statement not only put him in the Giordano home but also implicated him as an active participant in the burglary. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Due Process

Applicant alleges a due process violation based on a perceived conflict of interest of the lead investigator on the case, Sergeant David McMahan, because his father was the owner of the Giordano home. "No state shall . . . deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1, S.C. Const. Art I, § 3. Specifically, substantive due process protects against the arbitrary infringement of "'fundamental rights that are so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *State v. Dykes*, 398 S.C. 351, 357, 728 S.E.2d 455, 458 (2012) (quoting *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005) (internal citations omitted)). Interests that fall within the meaning of liberty or property in the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law." *Paul v. Davis*, 424 U.S. 693, 710 (1976) (holding when state law does not extend a legal

guarantee of present enjoyment of reputation; the interest in reputation alone does not implicate any liberty or property interest required to invoke the Due Process Clause). Moreover, the procedural protections guaranteed by the Fourteenth Amendment will "apply whenever the State seeks to remove or significantly alter that protected status." *Id.* Such an alteration must equate to an official removal of the interest from the recognition and protection previously afforded by the State. *Id.* A due process violation resulting from law enforcement conduct must be conduct which offends more than "some fastidious squeamishness or private sentimentalism about combating crime too energetically." *Rochin v. California*, 342 U.S. 165, 172 (1952). Rather, it must be conduct that shocks the conscience. *Id.*; see also *Hampton v. United States*, 425 U.S. 484 (1976) (holding the conduct of an undercover law enforcement during a controlled buy of illegal substances did not deprive the defendant of any constitutional right); *United States v. Goodwin*, 854 F.2d 33 (4th Cir. 1988) (holding a program implemented by the United States Postal Inspection Service to identify and prosecute those who received child pornography through the mails was neither shocking nor offensive to fundamental fairness). Here, the State of South Carolina does not extend to Applicant the present enjoyment of having a law enforcement officer who is not in some manner related to the victims of the underlying crime not investigate that crime. Furthermore, Applicant has wholly failed to identify any instance of malfeasance or impropriety resulting from Sergeant McMahan's investigation of the burglary occurring at the Giordano home. Therefore, the potential threat of bias in an investigation alone is neither liberty nor property sufficient to invoke the procedural protection of the Due Process Clause, and Sergeant McMahan's conduct in investigating the crime neither deprived Applicant of any constitutional right nor was shocking or offensive to fundamental fairness. This Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71:1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 11 day of April, 2018.


J. CORDELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

Page 17 of 17

CERTIFIED TRUE COPY

APR 27 2018

CLERK OF COURT
OCONEE COUNTY, SC

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2018 APR 27 P 1:31

STATE OF SOUTH CAROLINA)

INDICTMENT

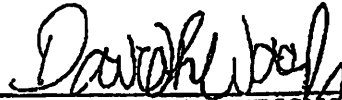
COUNTY OF Oconee)

At a Court of General Sessions, convened on DEC 02 2013 the Grand Jurors of Oconee County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First Degree

Count 1: That Jonathan Allen Finney did in Oconee County, on or between June 7, 2013 and June 18, 2013, willfully and unlawfully enter the dwelling of Tina McEachin located at [REDACTED], Tamasee, without consent and with the intent to commit a crime therein and aggravating circumstances were present to wit: while effecting entry or while in the dwelling or in immediate flight the defendant was armed with a deadly weapon. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended

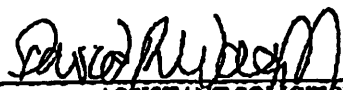
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SHERIFF

Count 2: That Jonathan Allen Finney did in Oconee County, on or about July 29, 2013, willfully and unlawfully enter the dwelling of Tina McEachin located at [REDACTED] [REDACTED] Tamassee, without consent and with the intent to commit a crime therein and aggravating circumstances were present to wit: while effecting entry or while in the dwelling or in immediate flight the defendant was armed with a deadly weapon. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended

Count 3: That Jonathan Allen Finney did in Oconee County, on or between August 3, 2013 and August 10, 2013 willfully and unlawfully enter the dwelling of Joseph Gioirdano located at [REDACTED], Seneca, without consent and with the intent to commit a crime therein and aggravating circumstances were present to wit: while effecting entry or while in the dwelling or in immediate flight the defendant was armed with a deadly weapon. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Scott Arnold, Oconee Co Sheriff's Dept.

Amanda Tinsley
Amanda Tinsley

ARREST WARRANT NUMBER

2013A3710400723, 725, 764

ACTION OF GRAND JURY

True Bill

Pro K
 Foreperson of Grand Jury
 Date: DEC 02 2013

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2013GS37 01115

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

DEC 02 2013

Term

THE STATE

vs.

Jonathan Allen Finney

DRW

Indictment for

Counts 1 through 3
 Burglary / Burglary (After June 20, 1985) - First
 Degree

SC Code: 16-11-0311
 CDR Code: 0079

FILED
 CLERK OF COURT
 OCONEE COUNTY
 2013 DEC 5 PM 4:20

ENTERED
 88
 COMPUTER

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Oconee

VS.

Jonathan Allen Finney

AKA:

Race: W Sex: M Age: 32

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2013GS3701115

A/W#: 2013A3710400764

Date of Offense: 8/3/2013

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Wagner, David Rhys

064068

SC Bar#

Defendant

Attorney for Defendant

SC Bar# 1575

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ 16; provided that upon the service of 16 days/months/years and/or payment
of \$ 5; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (275 0045)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 500 plus 20% fee: \$ 100.00

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL	\$	\$ 648.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☒May serve W/B beginning ☒Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Re Commenced AT Uprobation shall not commence
until period of incarceration has
ended.☐ Appointed PD or appointed other counsel.§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on DEC 02 2013, the Grand Jurors of Oconee County present upon their oath:

Larceny/Petit or Simple Larceny \$2,000 or less

Count 1: That Jonathan Allen Finney did in Oconee County, on or between August 18, 2013 and August 19, 2013 feloniously take and carry away the personal property of Return Baptist Church, to wit: \$425.00 in cash, with a total value of less than Two Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of 16-13-30(A) 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.


ASSISTANT SOLICITOR

Count 2: That Jonathan Allen Finney did in Oconee County, on or between August 4, 2013 and August 11, 2013 feloniously take and carry away the personal property of Fairview Methodist Church, to wit: money, with a total value of less than Two Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of 16-13-30(A) of the South Carolina Code of Laws (1976) as amended

Count 3: That Jonathan Allen Finney did in Oconee County, on or between August 3, 2013 and August 10, 2013 feloniously take and carry away the personal property of Joseph Giordano, to wit: a .12 gauge shotgun and other items, with a total value of less than Two Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of 16-13-30(A) 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.


ASSISTANT SOLICITOR

DOCKET NO. 2013GS37 01118

WITNESSES

David B Smith, Oconee Co Sheriff's Dept.

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

DEC 02 2013

Term

THE STATE

vs.

Jonathan Allen Finney

ACTION OF GRAND JURY

Inue Bill

DRW

Indictment for

Counts 1 through 3
Larceny/Petit or Simple Larceny \$2,000 or less

SC Code: 16-13-30(A)
CDR Code: 3419

VERDICT

Foreperson of Grand Jury
Date: DEC 02 2013

Foreperson of Petit Jury
Date:

RECEIVED
CLERK OF COURT
2013 DEC 5 PM 4 10

ENTERED
88
COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Oconee

VS.

Jonathan Allen Finney

AKA:

Race: W Sex: M Age: 32

DOB: SS#

Address:

City, State, Zip: Tamassee, SC 29686

DL#: SID#:

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

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

TO: Larceny / Petit or Simple Larceny - \$2,000 or less

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3701118

A/W#: 2013A3710400765

Date of Offense: 8/3/2013

S.C. Code § : 16-13-30(A)

CDR Code #: 3419

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-30(A) of the S.C. Code of Laws, bearing CDR Code # 3419

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: David Rhys Wagner 064068 Jonathan Finney 1575
Wagner, David Rhys SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 300 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (30 days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Dianne Thommes

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2185
5-30-14